

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 378 of 2015

Judgment reserved on : 30.11.2016

Judgment delivered on : 16.12.2016

1. Pardeshi @ Beni Prasad Tiwari, aged about 38 years, S/o Mahesh Prasad Tiwari, Resident of Karouti "B", Mahuari ParaChowki Chendra, PS Jhilmili Revenue District - Surajpur, Civil District- Surajpur (CG)

---- Appellant (In jail)

Versus

- State of Chhattisgarh, through, Police Station Jhilmili, district- Surajpur (Chhattisgarh)

---- Respondent

For Appellant	:	Shri Palash Tiwari, Advocate on behalf of Shri Prakash Tiwari, Advocate.
For Respondent/State	:	Shri Sanjeev Pandey, GA

Hon'ble Shri Justice Anil Kumar Shukla

CAV Judgment

1) This appeal is directed against the judgment of conviction and order of sentence dated 11.12.2014 passed by the Third Additional Sessions Judge, Surajpur (CG) in Sessions Trial No. 24 of 2014, whereby learned ASJ after holding the appellant guilty for commission of offence under Section 326 of the IPC, sentenced him to undergo RI for four years and to pay fine of Rs.500/-, in default of payment of fine to further undergo RI for two months.

2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.

3) Case of the prosecution, in brief is that on 06.01.2014 at 8.30 pm complainant- Ayodhya reported that present appellant, his brother Pardeshi @ Beni Prasad Tiwari was wandering after consuming liquor and had lost his mobile. The appellant abused nephew- Tarachand of the complainant- Ayodhya in filthy language, slapped him and took him near the house of Shiva and started some altercation with him and assaulted him with *taangi*, by which he received severe injuries on his body. Shiva and one more person at his house witnessed the incident and they took Tarachand to the district hospital, Ambikapur. Dr JK Bhutani (PW-12) conducted medical examination of Tarachand and submitted his reports vide Ex.P/11 and 12. Tarachand was in hospital from 06.01.2014 to 29.01.2014. FIR has been registered by Ayodhya vide Ex.P/1.

4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973. After completion of investigation, charge-sheet was filed before the Judicial Magistrate First Class, Surajpur who in turn, committed the case to the Court of Sessions from where learned Third Additional Sessions Judge, Surajpur received the case on transfer for trial.

5) In order to prove the guilt of the accused/appellants, the prosecution has examined as many as 14 witnesses. The appellant was examined under Section 313 of the Cr.P.C., in which he denied the circumstances appearing against him and claimed innocence and false implication in the crime in question.

6) After providing opportunity of hearing to the parties, learned Third Additional Sessions Judge, Surajpur has convicted and sentenced the appellant as aforementioned.

7) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

8) Learned counsel for the appellant at the outset submits that the appellant has been falsely implicated in the case as there is no direct evidence to connect the appellant in crime in question. He further submits that there was no *mens rea* or criminal intention proved by the prosecution against the present appellant. The appellant is in jail since 08.01.2004 i.e. nearly for three years and the total sentence awarded to the appellant by the Court below is of four years, there is no other case pending against him. He belongs to a poor family and is not a habitual criminal.

9) Learned counsel lastly submits that the appellant is not challenging his conviction, rather he only prays to reduce his sentence to the period already undergone, as he has been facing trial since the date of incident. Therefore, looking to the age of the appellant and his custody period, his sentence may be reduced to

the period already undergone by him. In support of his argument learned counsel took reference in the matters of **Neelam Bahal and another Vs State of Uttarakhand** {2009 Law Suit (SC) 1978} and **Bharat Ram Vs State of Madhya Pradesh** {2000 Law Suit (Chh) 3}.

10) On the other hand, learned State counsel supported the judgment impugned and submitted that the evidence adduced on behalf of the prosecution is sufficient for drawing inference that the appellant has committed the offence.

11) In order to appreciate the arguments advanced on behalf of the parties, I have examined the evidence available on record.

12) It is not disputed that the incident occurred on 06.01.2014 and age of the appellant at that time was 38 years. The appellant has been granted bail vide order dated 16.04.2015, but, due to poverty, he could not furnish personal bond and the substantive jail sentence awarded to the appellant was not suspended during pendency of this appeal.

13) Looking to the submissions made by learned counsel for the parties and facts and circumstances of the case and also considering the limited prayer for reduction of the sentence, the prayer of learned counsel for the appellant for reduction of the sentence of the appellant appears to be acceptable.

14) Taking into consideration that the incident had taken place in the year 2014, the appellant had undergone the agony of long

drawn trial and has undergone maximum period of three years (approx), I consider present to be a fit case for awarding sentence for the period which he had already undergone.

15) In the result, the appeal is partly allowed. The judgment of conviction against the appellant under Section 326 of the IPC by the Court below is hereby maintained. So far as sentence of the appellant is concerned, since the appellant has already undergone jail sentence for a period of nearly three years; the offence was committed on 06.01.2014 and also looking to the age of the appellant, he is sentenced to the period already undergone by him.

16) It is stated that the appellant is in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-

(Anil Kumar Shukla)
JUDGE