

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**(Single Bench : Hon'ble Shri Justice Ram Prasanna Sharma)****CRR No. 570 of 2004**

- Samaru Saunra aged about 32 years son of Shri Santosh Saunra, r/o. Village Bharali, Police Station Bazramkela, Tahsil Sarangarh, District Raigarh (CG)

---- revisioner/applicant.**Versus**

- State of Chhattisgarh through Police Station Baramkela, Tahsil Sarangarh, District Raigarh (CG).

---- Non-revisioner/Respondent

For revisioner	:	Mr. Roop Naik, Advocate.
For respondent	:	Mr. Anil S. Pandey, Govt. Advocate.

26-10-2017

1. This revision is directed against the judgment of conviction and order of sentence dated 27-10-2004 passed by the 4th Additional Sessions judge (FTC), Raigarh, in Criminal Appeal No. 130 of 2004, arising out of the judgment passed by learned Judicial Magistrate First Class, Sarangarh in Criminal Case No. 587 of 2002, whereby the revisioner was convicted for the offence punishable under Section 325 of the IPC and was sentenced to undergo SI for six months with fine of Rs.50/-.
2. As per prosecution case on 9-6-2002 at about 8.00 pm the complainant Ramlal Choudhari (PW/1) while returning to his village Kadalisara from village Gaurdih on cycle and when he

reached near the way of Dumardeeh Dabari, the accused/appellant came from opposite side and dashed the complainant. Due to darkness complainant and appellant were dashed to each other as they could not see each other and thereafter the appellant assaulted the complainant by stick.

3. On a report made by the complainant against the appellant, charge sheet under Section 325 of the IPC was filed and the trial Court convicted and sentenced the appellant as mentioned above. In appeal, the first appellate court dismissed the same.
4. Learned counsel for the applicant submits as under:
 - i) Ingredient of the offence is not proved by the prosecution and the story of the complainant is exaggerated and the same has been overlooked by the trial Court as well as by the first appellate court;
 - ii) X-ray report of the complainant is not proved strictly in accordance with law, therefore, offence under Section 325 of the IPC is not made out;
 - iii) As the offence is suspicious in nature, the findings of both the courts below are liable to be interfered with and the applicant be acquitted.
5. On the other hand, learned State counsel submits that the findings of both the courts below are well founded which do not warrant any interference in this revision.
6. I have heard learned counsel for the parties and perused the record of the court below.
7. To substantiate the charge, prosecution has examined as many

as eight witnesses to the incident.

8. Dr. S. Toppo (PW/7) examined the complainant Ramlal Choudhari on 10-6-2002 and found swelling and wound on left shoulder of the complainant measuring 4.5 cm x 2 cm x 1.5 cm and again he found swelling on right thigh measuring 3 cm x 1.5 cm. He opined that injury No.1 i.e., on right shoulder is grievous in nature.
9. Ramlal Choudhari (PW/1) is the victim of the incident who deposed that due to dash by cycle he fell down and thereafter applicant assaulted him by stick. His version is supported by the version of Amilal and Chinu who reached on the spot after hearing cry of the complainant This version is again supported by the report (ExP/1) lodged by Ramlal Choudhari (PW/1). This version is also supported by the version of Rashmikant Mishra (PW/8), Sub Inspector. Version of this witness is unshaken during cross examination and nothing could be elicited to discard the same. The case of the appellant does not fall in any exception as mentioned in IPC and the injury is caused knowingly that the complainant will suffer pain by causing such assault. In this way, the appellant voluntarily assaulted the complainant.
10. Considering all the facts and circumstances of the case and the evidence adduced by the prosecution, I am of the opinion that as the injury is grievous in nature, the case falls under Section 325 of the IPC for which the trial Court has rightly convicted the

appellant and this court has no reason to interfere with the same.

11. So far as the quantum of sentence is concerned keeping in view the nature of offence and the nature of weapon used in commission of offence and further taking into consideration the fact that the incident took place 15 years ago and also considering the fact that the appellant already remained in jail for about more than one month, I am of the considered opinion that no useful purpose would be served in sending the appellant back to jail and it would be in the interest of justice that if the sentence imposed on him is reduced to the period already undergone by him while maintaining conviction and the fine amount.
12. Consequently, the appeal is partly allowed. Conviction of the appellant imposed on the appellant by the trial Court under Section 325 of the IPC is hereby affirmed, but the sentence imposed on the appellant by the trial Court is modified and instead of SI for six months, he is sentenced to undergo imprisonment for the period already undergone by him. However, as regards sentence of fine, the same is intact.
13. It is stated that the appellant is on bail. His bail bonds stand discharged.

Sd/-

(Ram Prasanna Sharma)

Judge