

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 450 of 2015**

- Komal Yadav, S/o Sukhnandan Yadav @ Dewar, Aged About 25 Years R/o Village Saradih, P.S. Mahasamund, District Mahasamund, Chhattisgarh. Presently R/o Village Tila, Ps Gobra Nawapara, District Raipur Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Mahasamund, District Mahasamund (Chhattisgarh), Civil Distt. Mahasamund Chhattisgarh.

---- Respondent

For Applicant : Shri Vikash Shrivastava, Advocate.
 For Respondent/State : Shri U.K.S. Chandel, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****31.08.2017**

Heard the matter finally.

2. Challenge in this appeal is to the judgement of conviction and order of sentence dated 07/02/2015 passed by the Session Judge, Mahasamund (C.G.) in Session Trial No.51/2012 whereby and whereunder learned Session Judge after holding the accused/appellant guilty under Section 326 of the Indian Penal Code, 1860 (In brevity IPC) and sentenced him to undergo RI for 5 years and also to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo additional RI for 6 months with a further direction that period had already undergone shall be set off.

3. Conviction is impugned on the ground that without there being

an iota of evidence, learned Trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

4. As per the case of the prosecution, on 10/04/2012 at about 08:30 pm, the appellant looted the complainant by causing grievous hurt through club and thereafter looted one motorcycle bearing Registration No. CG 06 P 7316, one Nokia mobile and Rs.150/- cash. After the FIR lodged, the police of Mahasamund had taken cognizance, investigated the matter and after investigation, filed charge-sheet before the Chief Judicial Magistrate, Mahasamund (C.G.), who committed the same vide order dated 16/07/2012. The Trial Judge i.e. Session Judge Mahasamund (C.G.) framed the charges and tried the matter. The prosecution examined witnesses and the appellant was also examined under Section 313 of Cr.P.C. 1973 in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the crime in question.

5. After affording opportunity of hearing to the parties, learned Session Judge acquitted the appellant for the offence under Section 397 read with Section 34 of the IPC and convicted and sentenced the appellant as aforementioned.

6. Heard learned counsel for the parties and perused the judgement impugned and record of the Trial Court.

7. Learned counsel for the appellant would submit that after appreciating the entire matter and the evidence surfaced during the trial, he is not challenging the order of conviction whereby the appellant has been held guilty under Section 326 of the IPC. Learned counsel for the appellant also submits that the appellant is

in custody since 05/10/2012 till date i.e. for 4 years 10 months and 26 days and he was sentenced to undergo RI for 5 years only. The appellant is a poor person. Though his sentence was suspended by the High Court about 2 years ago but the appellant was not in a position to arrange for the surety hence he is languishing in jail since then. With this he is not in a position to pay fine of Rs. 10,000/- hence looking to the fact that the appellant was aged about 25 years at the time of incident, he is the first offender, the principal offence was not proved, he may be sentenced to the period already undergone and the fine sentence awarded may be set aside.

8. On the other hand, learned counsel for the respondent/State opposes the appeal and supported the conviction of the appellant and also sentence awarded to the appellant as he caused grievous injury to the complainant by assaulting over the head hence the conviction and the sentence may be affirmed.

9. To appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

10. On due consideration, the prosecution has sufficiently adduced the evidence so as to hold guilty the appellant under Section 326 of the IPC. Also learned counsel for the appellant is not assailing the conviction of the appellant for the offence. Consequently, conviction under Section 326 of the IPC awarded by the Court below is hereby affirmed.

10. So far as quantum of the substantive jail sentence and fine

sentence are concerned, the appellant has already served almost entire part of the sentence by languishing in jail for 4 years, 10 months and 26 days till date. The appellant is the first offender, aged about 25 years and as the principal offence for which charges were levelled was not proved. After consideration of the entire facts, it would be appropriate to sentence the appellant for the period already undergone by him. So far as quantum of the fine sentence is concerned, though this Court vide order dated 3-7-2015 suspended the substantive jail sentence and directed the appellant to furnish bail bond till disposal of this appeal but in these two years the appellant was not in a position to arrange for the surety and also he was not in a position to engage any private counsel and with the help of the High Court Legal Aid Committee he has filed the appeal. It shows the financial status of the appellant. Also after appreciating the manner by which the offence was committed and other facts, I am inclined to reduce the fine sentence awarded from Rs. 10,000/- to Rs. 1,000/- only.

11. Consequently, instant Criminal Appeal is partly allowed. Conviction of the appellant under Section 326 of the IPC is hereby affirmed. However, jail sentence awarded to the appellant is modified and instead of RI for five years, the appellant is sentenced to the period already undergone by him. Also the fine sentence awarded is reduced from to Rs. 10,000/- to Rs. 1,000/-. The appellant is directed to pay the fine amount Rs. 1,000/- failing which the appellant shall further undergo jail sentence in default for 15 days only. The authorities concerned shall realise the fine amount from the appellant. If not paid then, get him served the

default sentence as directed by the Court.

12. Authorities concerned are further directed to release the appellant immediately thereafter if not required in any other case and also after realization of fine amount/serving default sentence, as the case may be, forthwith. If fine amount is paid by the appellant, the said amount of Rs.1,000/- be given to complainant Nand Kumar Sahu.

13. Copy of the order be sent to the Trial Court immediately for compliance through usual and Fax mode.

14. Appeal partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
Judge