

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.174 of 2010**

- Goverdhan Cherwa S/o. Sukhdeo Cherwa, aged 25 years, R/o. Village Kevtali (Bhandapara) PS Bhatgaon, Distt. Surguja (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Bhatgaon, Distt. Surguja Chhattisgarh

---- Respondent

 For the appellant : Shri DN Prajapati, Advocate
 For the respondent/State : Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****03.10.2018.**

1. This appeal has been directed against the judgment of conviction and order of sentence dated 29.01.2010 passed by Second Additional Sessions Judge (FTC), Surajpur, distt. Surguja (CG) in Session Case No.436/2009, wherein the said Court convicted the appellant for commission of offence under Section 452, 325 and 323 of the Indian Penal Code for causing voluntarily grievous hurt to one Somari Bai and also for causing voluntarily simple hurt to one Mukhdev on 30.11.2008 at 4.30 am at village Kevtali Mahadeopara and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs. 100/- RI for six months and to pay fine of Rs.100/- RI for for three months respectively with default stipulations.

2. As per the case of the prosecution, victim Somari Bai was sleeping in her house on 30.11.2008 at about 4.30 and at the time the appellant entered into her house, assaulted her by club

(bahenga). On hearing her cries, her husband Mukhdev intervened into the matter and the appellant also assaulted him by said club. The matter was reported and investigated. After completion of the trial, the trial Court convicted and and sentenced the appellant as mentioned above.

3. To substantiate the charges the prosecution has examined as many as 8 witnesses. Section 452 of the IPC is related to preparation for causing hurt or assault. In the present case, no one stated before the trial Court that before the commission of offence, the appellant made preparation for causing hurt. The evidence in totality is regarding causing injury to Somari Bai and Mukhdev but the same is not regarding to preparation for the said offence. Preparation is state when any one had intention to commit the offence. After preparation an attempt is made and if one succeeds in his/her attempt the offence is completed. In the present case, there is no evidence that the appellant collected weapon or article for committing the offence. In absence of any effort for preparation offence under Section 452 IPC is not established in the present case.

4. So far as offence under Section 325 IPC is concerned, though Somari deposited that appellant assaulted her and the Dr. Maheshwar Singh (PW-1) who examined Somari deposited that Somari Bai sustained injury in her left arm and left thigh. Though this witness deposited that he examined one x-ray plate and found fracture of humerus bone, but the person who took the x-ray of Somari Bai has not been examined. In absence of examination of radiologist, connecting piece of evidence is lacking. Therefore, the x-ray plate

cannot be connected with crime in question. In absence of report of x-ray the only evidence available in the record is that the appellant caused simple injury on the body of Somari Bai.

5. Again from the evidence of Mukhdev and Dr. Maheshwar Singh (PW-1), it is established that the appellant caused simple injury to Mukhdev. Case of the appellant does not fall under any of the exception as mentioned under the Indian Penal Code and the he knew that his assault will cause pain in the body of Somari Bai and Mukhdev. The act of the appellant was voluntarily causing hurt to Somari Bai and Mukhdev which falls within the ambit of Section 323 IPC and not under Section 325 IPC. Accordingly, conviction of the appellant under Section 325 IPC is converted into Section 323 IPC. His conviction under Section 425 IPC and sentence for the said offence is hereby set aside.

6. Heard sentence part for commission of offence under Section 323 IPC. The appellant has suffered jail sentence of 15 days from 25.12.2008 to 26.12.2008 and from 05.9.2009 to 17.09.2009. His sentence is reduced to the period already undergone by him.

7. With this modification the appeal is allowed in part.

Sd/-
(Ram Prasanna Sharma)
JUDGE