

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.219 of 2009**

Mangal Singh, S/o. Shri Premsai Gond, Aged 22 years,
Occupation Mazdoor, R/o. Village Temri (Judwanipara), PS
Patna, Distt. Koriya (CG)

---- Appellant**Versus**

State Of Chhattisgarh, Through Police Station House
officer, Police Station Patna, Distt. Koriya (CG)

---- Respondent

For the appellant : Smt. Savita Tiwari, Advocate
For the respondent/State: Smt. M. Asha, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****22.11.2018.**

1. This appeal is directed against the judgment dated 01.11.2008 passed by Sessions Judge, Koriya (Baikunthpur) (CG) in Session Trial No.48/2007 wherein the said Court convicted the appellant for commission of offence under Sections 326 & 452 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for eight years and to pay fine of 500/-; RI for three years and to pay fine of R.200/- with default stipulations.

2. In the present case, name of the victim is Satyadev Singh. It is alleged that on 31.01.2007, the appellant entered into the house of the complainant with knife and after some verbal altercation inflicted injury on him. The victim sustained injuries on his right eye and back side of the right ear due to which he fell

unconscious. The appellant was charge sheeted and convicted by the trial Court as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) The appellant had no prior intention to cause injury to the complainant and the injuries sustained by the complainant were not intended to cause death.

(ii) Most of the injuries sustained by the complainant are simple in nature, therefore, act of the appellant would fall under the ambit of Section 323 IPC only.

(iii) The appellant has been falsely implicated due to prior enmity between both the parties, which is not appreciated by the trial Court.

(iv) Finding arrived at by the trial Court is not based on relevant material placed before it, therefore, the same is liable to be reversed.

4. On the other hand, learned counsel for the State while opposing the arguments submits that the findings arrived at by the trial Court is based on proper marshaling of evidence and the same is not liable to be interfered with invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record.

6. In the present case date of incident is 31.01.2007 and the report was lodged against the appellant on the same day at Police Station Patna in which the act of the appellant causing injury by knife is clearly mentioned. The report was lodged by the

complainant himself. Complainant (PW-1) deposed before the trial Court that the appellant entered in his house with knife and assaulted him on his right eye and on the back side of the right ear, due to which he fell unconscious. Version of this witness is supported by the version of Smt. Kousalya (PW-2), Smt. Leelavati (PW-3), Anil Kumar (PW-4), Sukul Gond (PW-5) and Smt. Radha Bai (PW-6). All these witnesses have been subjected to incisive and searching cross-examination but nothing could be elicited in favour of the defence. Version of the complainant is stable right from the day of the incident to the statement before the court. It is settled law that it is the quality of the evidence which has to be weighed. As there is nothing in cross-examination of the complainant and other witnesses that they have falsely implicated the appellant or they have any grudge for which they have plotted against the appellant in the evidence, therefore, their version is wholly reliable. Version of the direct witnesses is supported by the version of Dr. SK Sharma (PW-9) who examined the victim on 31.01.2007 at Govt. Hospital Patna and noticed following injuries:-

(1) incised wound present on right eye lid upper part of 1 ½ x ½ x ½”, blood stained red in colour, right eye swelling present and the patient is unable to open the eye

(2) incised wound present on the right side of the neck at upper part of ½ x ½ x ½” margin is smooth and clear cut, blood stains red in colour, profuse bleeding

As per the version of this witness, the injured was referred to eye surgeon for expert opinion. Dr. Rajesh Singh (PW-14)

examined the victim and found that he lost vision of right eye due to injury on the same. According to this witness, injuries caused to the victim was grievous in nature. If the injuries were caused by knife, a dangerous weapon, voluntarily causing grievous hurt by a dangerous weapon is an offence punishable under Section 326 IPC for which the trial Court convicted him for the said offence.

7. There is nothing on record to show material omission or contradiction in the statement of the witnesses to discredit their testimony. Minor contradictions are bound to occur which do not have any significance in deciding the issues, therefore, the arguments advanced on behalf of the appellant is not sustainable.

8. Looking to the fact that the appellant entered in to the house of the complainant with knife with a preparation to assault, this act of the appellant falls within the ambit of mischief under Section 452 of IPC for which the trial Court convicted him. His conviction on both the offence are not liable to be interfered with by this Court invoking the jurisdiction of the appeal.

9. Heard on the point of sentence.

Looking to the fact that due to the injury on the eye, the victim lost his eye sight, the sentence awarded by the trial court cannot be termed as harsh, disproportionate or unreasonable, therefore, sentence part is not liable to be interfered with.

10. Accordingly, the appeal is dismissed. As per the report, the appellant has been released from jail after serving the full jail sentence awarded to him and after remission granted to him by

the jail authorities. In view of this no further order is required for his arrest.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

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