

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 164 of 2009**

Kishore Yadav, S/o Sujan Yadav, aged about 19 years, Resident of Village Behind of Rajabada Mohla, Police Station- Mohla, District- Rajnandgaon (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Police Station Mohla, District- Rajnandgaon (C.G.)

---- Respondent

For Appellant : Mr. Abhishek Sharma, Advocate.

For State/respondent : Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

19/11/2018

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 09.02.2009 passed by Special Judge, Rajnandgaon (C.G.) in Special Case No. 55/2007, wherein the said court convicted the appellant for commission of offence under Section 325 of IPC, 1860 and sentenced to undergo R.I. for 1 year and fine of Rs. 500/- with further default stipulations.
2. In the present case, name of the victim is Kanshiram. It is alleged that on 03.03.2007 at about 5:00 behind of Rajabada, the present appellant caused injury to the victim by club that is why he charge-sheeted and convicted as mentioned above.
3. The date of incident is 03.03.2007 and report is lodged in Police Station- Mohla on the same day naming the appellant as culprit. In FIR, it is clearly mentioned that appellant

assaulted the victim by club. Kanshiram (PW2), Ankaluram (PW-3), Padmani @ Pramila (PW-5) and Smt. Nisha (PW-9) have specifically deposed before the trial court that the appellant assaulted the victim- Kanshiram by club.

4. Though, it has come in cross-examination that the appellant and the victim had scuffle during course of incident, but the fact remains that it is not proved that the victim- Kanshiram was the assailant. From the entire evidence adduce by the prosecution, it is clearly established that the appellant is the aggressor and it is not a case where right of self defence of body is available to the appellant.
5. Case of the appellant dos not fall in any of the exception mentioned in IPC and he knowingly assaulted Kanshiram, therefore, he sustained fracture on his hand which is established from the statement of Dr. S.R. Mandavi (PW-1). Case of the appellant falls to be voluntarily causing grievous hurt which is punishable under Section 325 of IPC for which the trial court convicted the appellant and this Court has no reason to record contrary finding. Accordingly, finding of the trial court regarding commission of offence by the appellant under Section 325 of IPC and his conviction are hereby affirmed.

Heard on the point of sentence.

6. The trial court has awarded jail sentence for 1 year and the appellant has suffered jail sentence from 06.03.2007 to 09.03.2007 (03 days). Looking to the fact that the incident

took place 9 years ago and no useful purpose will be served in sending the appellant in jail again. His corporal punishment i.e. jail sentence is reduced to the period already undergone by him while maintaining fine amount.

7. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge