

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.225 of 2010**

Bundsai, S/o. Parsodhan Rathiya, Aged 30 years, Village
Narkalo, Thana Dharamjaigarh, Distt. Raigarh (CG)

---- Appellant

Versus

State Of Chhattisgarh Through Police Station Dharamjaigarh,
Distt. Raigarh (CG)

---- Respondent

For the appellant : Shri Sanjay Agrawal, Advocate
For the respondent/State : Shri Sanjeev Pandey, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****24.9.2018.**

1. This appeal has been directed against the judgment of conviction and order of sentence dated 19.3.2010 passed by Third Additional Sessions Judge (FTC), Raigarh (CG) in Session Case No.85/2009, wherein the said Court convicted the appellant for commission of offence under Section 325 of the Indian Penal Code and sentenced him to undergo Rigorous imprisonment for seven years and to pay fine of Rs.500/- with default stipulations.

2. As per the prosecution case, on 18.6.2009 at about 7.00 pm quarrel took place between the appellant and other accused persons with complainant Radhe Ram and his mother namely Dhurmati Bai. It is alleged that the appellant assaulted Dhurmati Bai by stone on her head. The matter was reported and investigated. After completion of the trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) There is material contradiction and omission in the statement of Dhurmati Bai (PW-1) and Sahasram (PW-4), therefore, offence against present appellant is not established.

(ii) Independent witnesses Shiv Kumar (PW-3) and Shyamlal (PW-5) have not supported the seizure memo and in absence of proof of seizure, offence under Section 325 is not made out.

(iii) There was old enmity between the parties and looking to the version of the witnesses, it can be inferred that the story is concocted.

4. On the other hand, learned counsel for the State submits that the finding arrived at by the trial Court is based on proper marshaling of evidence which is not liable to be interfered with.

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

6. Dhurmati Bai (PW-1) deposed that at the time of the incident, the appellant assaulted her by stone on her head and she fell down after sustaining injury. Version of this witness is supported by Radhe Ram (PW-2), Sahas Ram (PW-4) and Ram Kumar (PW-6). All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. Her version is also supported by medical evidence of Dr. BL Bhagat (PW-7), who examined Dhurmati Bai and found following injuries:-

(i) Lacerated wound in the upper part of left side of parietal region of scalp of 3 x 2 cm bone deep

- (ii) Lacerated wound just below injury No.1 of 2 x 1 cm and blood clot was present on the wound

7. As per the version of this witness, the injuries were caused by hard and blunt object and duration of both the injuries were 3 to 6 hours of the examination. As per the version of this witness, head injury found on the head of Dhurmati Bai is dangerous to life. Version of this medical expert is unshaken during cross-examination.

There is no other expert opinion in the record contrary to the version of this medical expert.

As per Section 320(8) of the IPC, any hurt which endangers life is designated as grievous hurt.

8. True it is that there may be some contradiction, but there is no material contradiction going to the root of the case which can disapprove the case of the prosecution. If there is no material contradiction same is insignificant against the prosecution case. Looking to the entire evidence in its entity, the trial Court opined that it is a case under Section 325 IPC and this Court has no reason to record a contrary findings to what is recorded by the trial Court. Accordingly, conviction of the appellant under the above section is hereby affirmed.

9.

Heard on sentence part.

The appellant has suffered jail sentence from 24.6.2009 to 25.9.2009 i.e. more than three months during trial and after his

conviction he has suffered the jail sentence from 19.3.2010 to some time near 04.5.2010 thereby the total jail sentence suffered by the appellant is more than four months.

10. Looking to the fact that the offence was committed by throwing stone and no weapon was used, it would be proper to reduce the period of sentence. Accordingly, sentence awarded by the trial Court is reduced to the period already undergone by the appellant while fine sentence shall remain intact.

11. With this modification, the appeal is allowed in part.

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