

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.921 of 2009**

Yogesh Mandavi, S/o Chamru Ram Mandavi, aged about 32 years, Occupation Bamboo worker, R/o. Mahatma Gandhi Ward, Kanker, Distt. Kanker (CG)

---- Appellant**Versus**

State Of Chhattisgarh, Through the Police Station Kanker, Distt. Kanker (CG)

---- 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****06.12.2018.**

1. This appeal is directed against the judgment dated 17.11.2009 passed by Sessions Judge, North Bastar Kanker (CG) in Session Trial No.06/2008 wherein the said Court convicted the appellant for commission of offence under Sections 326 and 506 Part II of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for five years and to pay fine of 1000/-; RI for 2 years with default stipulations with a direction to run the sentences concurrently.

2. As per the prosecution case, on 16.10.2007 at about 8.30 in the night the appellant threw burning chimney towards his wife/victim namely Neetu Sahu who sustained burn injuries on her throat, chest, abdomen and front portion of both the hands and he also threatened her to kill. The matter was reported and

investigated. The appellant was charge sheeted and after completion of the trial he was convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) There is delay in lodging the report but the trial Court fail to consider this aspect of the matter, therefore, finding of the trial court is not sustainable.

(ii) Nirasa Sahu (PW-4), mother of the victim, deposed that victim herself has suffered the burn injuries, therefore, conviction of the appellant is not in the fitness of factual aspects of the matter.

(iii) There is material contradictions in the statement of the witnesses and in the FIR, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. Prosecutrix (PW-1) deposed before the trial Court that she was married to the appellant in the year 2007 and resided with him. She further deposed that she was the second wife of the appellant and his first wife Mukta was residing in another house of the appellant. As per the version of this witness, on the date of incident, when she entered into the room, the appellant threw burning chimney towards her body resulted into burning of her clothes and she was also sustained burn injuries on her throat, chest, abdomen and other parts of the body. Version of this

witness is supported by the version of Viren Singh (PW-2), Smt. Lakshmi Thakur (PW-3) and Nirasa Sahu (PW-4) who have seen the burn injuries on the body of the victim. Again it is supported by the version of DR Thakur (PW-9) who is the Naib Tahsildar/Executive Magistrate who recorded the dying declaration of the victim in which it is submitted that the appellant threw the burning chimney on her. All these witnesses have been subjected to searching cross-examination but nothing could be elicited from them in favour of the defence. Though Smt. Lakshmi Thakur (PW-3) deposed that the victim informed her that due to burning of corner of her sari, she sustained burn injuries, but the fact remains that this witness has not witnessed the incident. Eye witness of the incident is the victim herself who has deposed against the appellant. Her version is supported by the version of official witness who is the Executive Magistrate.

6. Version of the direct evidence is supported by the version of medical evidence. As per the version of Dr. AK Verma (PW-6), he examined the victim on 16.10.2007 at KD Hospital Kanker and found burn injuries on her throat, chest, abdomen and front portion of both the hands.

7. As per the version of the medical expert, the victim was under treatment for two months. As per Section 320 (*Eighthly*) IPC any hurt which causes the sufferer to be during of space of twenty days in sever bodily pain or unable to follow his ordinary pursuits is a grievous hurt. Causing grievous injuries by burn voluntarily is an offence under Section 326 IPC for which the trial Court convicted the appellant. Again from the evidence it is clear

that the appellant threatened the victim to kill her, which is offence punishable under Section 506 Part-II IPC and this Court has no reason to record a contrary finding. Conviction of the appellant is hereby affirmed.

8. Heard on the point of sentence.

The trial Court awarded RI for five years for the offence under Section 326 of the IPC and RI for two years for the offence under Section 506 Part-II IPC which cannot be termed as harsh or unreasonable or disproportionate looking to the gravity of the offence. Therefore, sentence part is not liable to be interfered with. 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.

9. Accordingly, the appeal is dismissed.

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