

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 891 of 2002**

1. Ajay Kashyap, S/o Sundar Lal Kashyap, aged about 21 years, R/o Telipara, P.S. City Kotwali, Bilaspur (C.G.)
2. Tarun Alies Patta, S/o Chhedilal Kashyap, aged about 22 years, R/o Telipara, P.S. City Kotwali, District Bilaspur (C.G.)
3. Pradeep Kashyap, S/o Girdhari Lal Kashyap, aged about 28 years, R/o Telipara, P.S. City Kotwali, District Bilaspur (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh, Through Police Station City Kotwali, Bilaspur (C.G.)

---- Respondent

For Appellants	:	Shri Malay Kumar Bhaduri, Advocate.
For Respondent/State	:	Shri Arvind Kumar Dubey, Penal Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****27.04.2018**

1. This appeal is preferred against the judgment dated 13.08.2002 passed by the Second Upper Session Judge, Bilaspur in Session Trial No.74/2002, wherein the said Court has convicted all the three Appellants for commission of offence under Section 323 read with Section 34 of the Indian Penal Code for causing voluntary simple injury to one Rakesh Singh in the intervening night of 23.10.2001 and 24.10.2001.
2. As per the averment of the prosecution incident took place when there was a procession of Goddess Durga and it was advancing towards the City Kotwali, Bilaspur. The Appellants tried to overcome to the procession that is why victim objected and thereafter the Appellants assaulted him by some wooden article.
3. The counsel for the Appellants submits as under:
 - i. At the time of incident victim was under influence of intoxication and

sustained injuries due to his own fault.

- ii. Victim Rakesh Singh (PW-5) admitted in cross examination that 8 to 10 more persons were involved in the incident, therefore, benefit of doubt ought to have been extended to the present Appellants.
 - iii. The Trial Court ought to have extended benefit of provisions of Probation of Offenders Act, 1958, but the same has not extended.
4. Rakesh Singh (PW-5) is the victim of the incident and he deposed that at the time of precession of Goddess Durga all the three Appellants assaulted him by some wooden article (Batta) and he sustained injuries on head and back. Version of this victim is supported by version of Jitendra Singh (PW-6), Anubhav Shukla (PW-7) and Pramod Singh (PW-9). Version of these witnesses is supported by FIR (Ex.P-1) in which names of all the three Appellants are mentioned and FIR is recorded on the date of incident.
 5. Dr. R. Jitpure (PW-1) who examined the victim found simple injury on left head and abrasion over left elbow of the victim. Dr. D.R. Patle (PW-2) answered query made by Police authorities that injuries were simple in nature and on over all assessment of the evidence it is established that the case of the Appellant does not fall in exception mentioned in Section 76 to 106 of the Indian Penal Code. All the Appellants know that the injuries caused by them is painful for the victim, therefore, it was established before the Trial Court that all injuries caused to the victim Rakesh Singh (PW-5) by all the Appellants are simple, therefore, the offence falls under Section 323 read with Section 34 of the IPC for which the Trial Court has convicted the Appellants.
 6. Heard on point of sentence.
 7. For commission of offence under Section 323 of IPC corporeal punishment is not compulsory. Sentence of one year to each of the Appellants awarded by the Trial Court is hereby set aside. Now the Appellants are sentenced to

undergo to the period already undergone by them. Fine amount will remain intact.

8. With the above modification the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
JUDGE