

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.22 of 2008**

Mohan Lal Sahu, aged about 46 years, S/o Dwijram Sahu,
Occupation Labour, R/o village Saurabandha, PS Kurud,
District Dhamtari (CG)

---- Appellant

Versus

The State Of Chhattisgarh Through P.S. Kurud, District
Dhamtari (CG)

---- Respondent

For Appellant : Shri D.N. Prajapati, Advocate

For State/ Respondent : Shri Lav Sharma, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****06/12/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 7.12.2007, passed by the Special Judge under the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989 Dhamtari(CG) in Special Sessions Trial No. 07/2006, whereby the appellant has been convicted under Section 325 of the Indian Penal Code, 1860 (for short the IPC) and sentenced to undergo R.I. for 7 days (period undergone) and fine of Rs.4,000/- with default stipulation.

2. In the present case, name of the victim is Hira Lal (PW). As per version of the prosecution on the date of incident, the appellant abused the victim Hira Lal near his house and there was some exchange of hot words between them and in that process, the appellant assaulted the victim by crowbar which resulted into breaking of Tibia bone of left leg of the victim. The matter was reported and appellant was charge sheeted. After completion of trial, the trial Court has convicted and sentenced the appellant as aforementioned.
3. I have heard learned counsel for the parties and perused the record.
4. Learned counsel for the appellant submits as under :
 - (i) There was altercation between sister of the appellant and the victim and sister of the appellant lodged report against the victim that is why he reported thereafter falsely.
 - (ii) The prosecution witnesses are interested witnesses and they are not reliable, therefore, the trial Court has erred in recording the finding on the basis of their statement.
 - (iii) The trial Court has removed material contradictions and omissions in the version of prosecution witnesses, therefore, finding arrived at by the trial court is liable to be set aside.

5. On the other hand, learned counsel for the State supporting the judgment submits that the finding recorded by the trial Court is based on proper marshalling of evidence and same is not liable to be interfered with.
6. Hira Lal (PW6) is the victim and injured of the case. As per version of this witness Mohan Lal and his brother, sister and wife reached in the field where he was taking meal and they assaulted him by crowbar which resulted into fracture of Tibia bone near his left knee joint. Version of this witness is supported by the version of Ku. Deepeshwari (PW4) and Manshir Bai (PW5). Indiya Bai(PW3) deposed that the appellant assaulted the victim Hira Lal, but in her cross-examination, she deposed that this information was given to her by the victim Hira Lal.
7. Indiya Bai(PW3) deposed that sister of the appellant reported against the victim, but the fact remains that sister of the victim has not been medically examined and no medical report was produced before the trial Court in this regard that sister of the appellant received any injury during altercation. Therefore, right of private defence of body is not available to sister of the appellant or to the appellant. It is not a case where only oral evidence of the witness of incident is adduced before the trial Court but it is corroborated by the evidence of Dr.Iqbal Parvej (PW10), who examined the victim on 28.6.2004 at District

Community Hospital Dhamtari. After examination of the victim, he found that Tibia bone of left leg of the victim was broken. He further deposed that injuries sustained by the injured were grievous in nature. Again, one iron rod was seized from the appellant and brought before the medical expert for examination and as per opinion of medical expert, injuries caused to the victim could be caused by this article. Looking to the supportive piece of evidence, version of the victim inspires confidence and same is merited in all respect. Therefore, arguments advanced on behalf of the appellant is not sustainable.

8. It is not a case where the appellant has acted in view of any exception mentioned under Sections 76 to 106 IPC. It was within his knowledge that the assault to victim will cause pain to him and therefore, act of the appellant is voluntary in nature. Voluntarily causing grievous hurt is an offence punishable under Section 325 IPC for which the trial Court has convicted and sentenced the appellant and this Court has no reason to record a contrary finding and the same is hereby affirmed.

9. Heard on the point of sentence :

The trial Court has not awarded anymore corporeal punishment, but awarded sentence for R.I. for 7 days which is undergone period and awarded fine sentence. The sentence

awarded by the trial Court cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with.

- 10.** Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/

(Ram Prasanna Sharma)
JUDGE