

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 976 of 2003**

- Santosh Singh S/o Shri Gajanand Singh Rajput, aged about 24 years
R/o Charoda Railway Colony Jon-1 Quater 113 D. Police Station O. P.
Charoda G.R. P. Dist.- Durg (C.G.) (Driving License No. 521409).

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station-O.P. Charoda
G.R.P. Durg Dist.- Durg (C.G.).

---- Respondent

For Appellant : Shri R. S. Patel, Advocate.
For Respondent/State : Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****12/12/2019**

This appeal arises out of the judgment of conviction and order of sentence dated 27.08.2003, passed by the 8th Additional District & Sessions Judge (FTC), Durg C.G. in Special Case No. 242/2001 whereby the appellant was convicted under Section 338 of Indian Penal Code and sentencing him R. I. For six months with default stipulation.

02. Brief facts of the case are that on the date of incident i.e. 19.04.1999, the appellant was driving Mini bus bearing No. M.P. 23 JN/307 very rashly & negligently and dashed the Motorcycle of the

complainant bearing No. MP23-4B/5258 due to which Banshi Sahni (PW01), complainant sustained injuries. Prompt FIR (Ex.P/1) lodged by Shri M. S. Nanda on the same day and crime was registered under Section 337 of IPC. Spot map (Ex.P/2) was prepared by Dharamchand (PW02). Dr. Ku. Kalpna Sathati (PW-5) has conducted medical examination (Ex.P-9-A) of the complainant, in which, she found the following injuries:

- (I) one bruise over left cheek.
- (ii) one bruise over left eye.
- (iii) bruise with fracture of humerus bone over upper 1/3rd left arm.
- (iv) haematoma over right parietal region.
- (v) crushed injury over left palm.
- (vi) bruise over 1/4th of left knee.

All the injuries were caused by hard & blunt object. Dr. M. K. Dwivedi (PW09) conducted X-ray examination of injured victim- Banshi Sahni (PW09) vide Ex. P/10, 11 & 12 and found fracture of upper tibia & fibula of left knee.

03. After investigation charge-sheet under Sections 337, 338 & 308 of Indian Penal Code (in short "IPC") was filed against the accused appellant. After filing of charge-sheet, the trial Judge framed charge against the accused under Section 308 of IPC.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 9 witnesses namely- Banshi Sahni (PW-1), Dharmchand Singh (PW-2), G. P. Sharma (PW-3), A. R. Kapile (PW-4), Ku. Kalpna Sathati (PW-5), M. S. Nanda (PW-6), Pawan Kumar (PW-7), Shesh Narayan Singh (PW08) and Dr. M. K. Dwivedi (PW-09).

Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No defence witness has been examined on behalf of the accused/appellant.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

06. Learned counsel for the appellant submits that learned trial Court has not properly appreciated the evidence available on record. There is no any negligence proved on behalf of the appellant, he was not driving the vehicle in a rash & negligent manner therefore, the appellant was wrongly convicted by the trial Court. He alternatively submits that if this Court comes to the conclusion that the appellant found guilty of the offence under Section 338 of IPC, considering the fact that the incident occurred on 19.04.1999, near about 20 years lapsed and the manner in which the incident took place, the age of the appellant at the relevant time and he remained jail for about 9 days, it is prayed that give him benefit of probation of offender Act and his (appellant) jail sentence is reduced to the period already undergone by him.

07. On the other hand, learned counsel for the State while supporting the impugned judgment submits that after the incident the prompt FIR was lodged against the present appellant (driver of the offending vehicle) and medical report (Ex.P-9-A) is prepared & proved by Ku.

Kalpna Sathati (PW-5). He further submits that the damaged motorcycle & the offending vehicle both were seized at the time of incident vide Ex. P/4 & P/5 and as per Ex. P/6-A bed head ticket of the complainant- Banshi Sahni was also seized. The prosecution proved his case beyond reasonable doubt and the conviction of the appellant is based on proper appreciation of the evidence available on record and, as such, there is no scope for interference in the judgment impugned.

08. Heard counsel for the respective parties and perused the material on record.

09. Complainant -Banshi Sahni (PW-1) has stated, in paragraph 1 to 3 of his statement, when he was riding his motorcycle, from the backside the driver of the offending vehicle dashed his motorcycle and he was dragged near about 200 feet due to which he sustained injuries i.e. one bruise over left cheek, one bruise over left eye, bruise with fracture of humerus bone over upper 1/3rd left arm, haematoma over right parietal region, crushed injury over left palm, bruise over 1/4th of left knee. All the injuries were caused by hard & blunt object and was admitted in the hospital for about one month.

10. Dharmchand Singh (PW02), Sub-Inspector posted at Police Station- Supela stated that during investigation from the place of occurrence he seized the motor-cycle vide Ex. P/4 and on the same day the offending vehicle (Mini Bus) was also seized from the accused vide Ex.P/5. The statement of Dharmchand Singh (PW02) regarding seizure memo was uncontroverted in his cross-examination.

11. Shesh Narayan Singh (PW08) is the eyewitness to the incident

and he has supported the case of the prosecution. In his Court statement in paragraph one, he has specifically stated that how the incident occurred and his cross-examination he admitted that when he come back to the police station after admitting the complainant he saw the accused and his vehicle (offending vehicle) at Police-station.

11. Ku. Kalpna Sathati (PW-5), prepared the MLC report (Ex.P/9-A) of the complainant in which she found the above said injuries. These injuries were caused by hard & blunt object. She admitted the suggestion in her cross-examination that due to fall from his own vehicle or being dragged by another vehicle the person can sustain the injuries as suffered by the complainant.

12. Dr. M. K. Dwivedi (PW09) conducted X-ray examination of injured victim- Banshi Sahni (PW09) vide Ex. P/10, 11 & 12 and noticed fracture of tibia & fibula bone of right leg as also fracture of upper tibia & fibula of left knee.

13. Looking to the above facts & circumstance of the case, the un rebutted evidence of the prosecution witnesses particularly the statement of eyewitness- Shesh Narayan Singh (PW08), prompt FIR (Ex.P/1), MLC report (Ex.P/9-A) and the statement of Dr. M. K. Dwivedi (PW09) who proved the X-ray report of the compliant vide Ex.P/10, Ex. P/11 & Ex. P/12, this Court is of the opinion that the trial Court was absolutely justified in convicting the appellant under Sections 338 of IPC.

14. So far as the sentence of the appellant under Sections 338 of IPC is concerned, considering the fact that the incident occurred way back in the year 1999, the appellant is facing trial since 1999 and the

fact that the appellant has already remained in jail for nine days and at present he is on bail, this Court is of the opinion that the ends of justice would be served if he is sentenced to the period already undergone by him and is directed to pay fine of Rs. 1,000/- under Section 338 of IPC with default stipulation.

15. Resultantly, the appeal is allowed in part. While maintaining the conviction of the appellant under Sections 338 of IPC, his jail sentence is reduced to the period already undergone by him. However, he is directed to pay fine of Rs. 1,000/-. In default of payment of fine amount Rs. 1,000/- he shall suffer additional simple imprisonment for two months. On such fine amount being deposited by the appellant, the same shall be given as compensation to the complainant- Banshi Sahni (PW01) under Section 357 of Cr.P.C. after due verification by the trial Court.

The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge