

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 02 of 2009

Shivkumar Kushwaha S/o. Shri Ramlal, Aged about 32 years, R/o.
Village Ramnagar, Police Station Bishrampur, District Sarguja
(C.G.)

-----**Appellant**

Versus

State of Chhattisgarh Through Station House Officer, Schedule
Caste Welfare (AJK) Surajpur, District Sarguja (C.G.)

-----**Respondent**

For the Appellant : Shri Jitendra Shrivastava, Advocate

For the Respondent : Shri Himanshu Sharma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

05.04.2019

On 10.11.2007 complainant Sagar Singh made a written complaint (Ex.P-3) in police station AJK Surajpur, District Sarguja (C.G.) and on the basis of written complaint, FIR (Ex.P-4) was registered against the appellant, alleging in it that the appellant came to his house in a drunken condition, abused him in the name of caste and also assaulted on his left hand with a *danda* on account which bone of left hand got fractured.

2. After the case being committed by Additional Chief Judicial Magistrate, Surajpur, before whom the challan was filed, learned Special Judge acquitted the appellant of the charges under the

Special Act but convicted him under Section 325 IPC and sentenced him to undergo RI for 4 months with fine of Rs. 200/- with default stipulation.

3. Counsel for the applicant/accused does not assail the conviction part of the judgment impugned and his only request is that looking to the incident being quite old and also considering the fact that he has remained under detention of 13 days, the jail sentence imposed on him may be reduced to the period already undergone and thereby protect their well settled family life from being up-rooted at this stage.

4. State counsel however, supports the findings recorded by the both the Courts below.

5. Heard the State counsel and perused the evidence on record.

6. Having gone through the material on record in particular the evidence of PW-5 and PW-6, clearly indicating the involvement the appellant in the crime in question where they caused injuries to the complainants party. Evidence of PW-1 - the doctor who medically examined complainant Sagar Singh and gave his report under Ex.P-1 to Ex.P-2 shows that he examined the complainant and noticed swelling and pain over the left forearm and redness on the left hand. Even the radiologist has noticed fracture on left ulna bone. Overall evidence thus establishes that on account of trivial dispute picked up first by the appellant and he opened an assault on the

victim causing injuries referred to above by a hard blunt object and therefore, his conviction under Sections 325 IPC is maintained.

7. As far as the sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place 12 years ago and the appellant has already remained in jail for a period of 13 days and deposited fine amount imposed on him, in my opinion, no useful purpose is going to be served in again sending him to jail. Accordingly, his sentence is reduced to the period already undergone by him. However, the sentence of fine under section 325 IPC is enhanced from Rs. 200/- to Rs. 1000/-. Let this amount be deposited by the accused/appellant in the trial Court within a period of four months from today. Order accordingly.

8. With the above, the revision stands allowed in part.

Sd/-

(Vimla Singh Kapoor)
JUDGE