

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.13 of 2009**

Heeranand S/o. Dhaniram, aged about 36 years,
Occupation Labourer, R/o. Village Palma, Police Chowki
Chendra, Police Station Jhilmili, Distt. Surguja (CG)

---- Appellant**Versus**

State of Chhattisgarh, Through Incharge Police Chowki,
Chendra, Police Station Jhilmili, Distt. Surguja (CG)

---- Respondent

For the appellant : Smt. Aditi Singhvi, Advocate on behalf
of Shri Utkal Pradhan, Advocate
For the Respondent/State: Shri Ishwar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Judgment on Board

10.12.2019

1. The appeal is preferred against judgment dated 30.9.2008 passed by First Additional Sessions Judge, Surajpur Distt. Surguja in Session Trial No.444/2007 wherein the said Court convicted the appellant for the commission of offence under Section 326 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for four years and to pay fine of Rs.100/- with default stipulation.

2. In the present case name of the victim is Dev Prasad (PW-1). As per the version of prosecution, on 15.8.2007 at about 1.00 pm, the appellant assaulted the victim by sharp edged axe which resulted into grievous injury to him. The matter was reported and the appellant was charge sheeted for the offence under Section 307 of the IPC. After the trial, the appellant was convicted for offence under Section 326 IPC.

3. Learned counsel for the appellant submits that the evidence adduced by the prosecution is not sufficient to bring home the guilt because there is omissions and contradictions in the statement of the prosecution witnesses which makes the entire story suspicious. 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 with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the judgment impugned.

6. Dev Prasad (PW-1) deposed before the trial Court that wife of the appellant namely Chandramani came to his house on the date of incident. At that time, the appellant entered into the house of the victim and said that now he will not keep his wife with him. Some altercation took place among them and thereafter the appellant assaulted him by axe. Version of this witness is supported by version of Budhu Ram (PW-2), Ransai (PW-3) and Dev Narayan (PW-5). All these witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence. Version of direct evidence is supported by version of Dr. VV Toppo (PW-6), who is the medical expert who examined the victim on 16.8.2007 at Community Health Center, Baiyadhan and noticed following injuries.

- (i) Abrasion with lacerated wound of 8" x 1 1/2" x 1" on left lateral side of cheek mandible to lip joint

(ii) Lower jaw left incisor 1 & 2 teeth ache with tilting

As per the version of this witness, injuries were caused by sharp edged weapon and caused within 12-14 hours of the examination and were grievous in nature. Axe was seized in the present case and was brought before this expert and per the opinion of the expert, injuries caused to the victim can be caused by this weapon.

7. On overall assessment of the evidence, the trial Court recorded that causing grievous injury by sharp edged weapon is an offence falls under Section 326 IPC and convicted the appellant accordingly. After reassessing the entire evidence, this Court has no reason to record a contrary finding. Accordingly, conviction of the appellant is hereby affirmed.

8. Heard on the point of sentence.

The trial Court awarded RI for four years for the offence under Section 326 of the IPC which cannot be termed as harsh, disproportionate and unreasonable. Accordingly, the appeal being devoid of merit is hereby dismissed. As per the report of the jail authorities, the appellant has suffered full jail term and thereafter released from jail on 15.08.2010, therefore, no separate order for his arrest etc. is required.

9. The appeal is dismissed

Sd/-
(Ram Prasanna Sharma)
JUDGE