

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1223 of 2001**

1. Mahil Yadav, S/o- Sahdeo Yadav, Aged about- 26 years, R/o- Nawagarh Bus Stand, P.S.- Nawagarh, District- Durg (C.G.)
2. Sanjay Sharma viz Sanjay Pandey viz Pintu, S/o- Late Shiv Kumar Sharma, Aged about- 22 years, R/o- Shankar Nagar, Nawagarh, P.S.- Nawagarh, District- Durg (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh, through- P.S.- Nawagarh, District- Durg (C.G.)

---- Respondent**and****CRA No. 40 of 2002**

- Roshan, S/o- Late Ratan Lal Netan, Aged about- 29 years, R/o- Shankar Nagar, Nawagarh, District- Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, through- P.S.- Nawagarh, District- Durg (C.G.)

---- Respondent

For Appellants : Shri J.K. Saxena, Advocate.

For State/Respondent : Shri Ishwar Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****10/12/2019**

1. Criminal Appeals No. 1223 of 2001 and 40 of 2002 filed by the appellants against judgment dated 10.12.2001 passed by the Additional Sessions Judge, Bemetara, District- Durg (C.G.) in Sessions Trial No. 168/2000 are being disposed of by a common judgment.
2. These appeals are preferred against the judgment dated 10th December, 2001 passed by Additional Sessions Judge, Bemetara, District- Durg (C.G.) in Sessions Trial No. 168/2000

wherein the said Court convicted all the three appellants for commission of offence under Section 333 read with Section 34 of IPC, 1860 and sentenced to undergo R.I. for two years and fine of Rs. 500/- for each with default stipulation.

3. In the present case, the complainant is Shankar Ram Yadav. The appellants have been charge-sheeted on the ground that they voluntarily caused grievous hurt to said Shankar Ram Yadav who was a Lineman in the Electricity Board in the discharge of his duty as such public servant, or with intent to prevent or deter that person or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant.
4. Learned counsel for the appellant submits that evidence adduced by the prosecution is contradictory in nature and same is not sufficient to bring home guilt, therefore, finding of the trial Court is liable to be set aside.
5. On the other hand, learned counsel for the State submits that finding of the trial Court is based on proper marshaling of evidence which is not required to be quashed while invoking jurisdiction of appeal.
6. I have heard learned counsel for the parties and perused the record of the Court below wherein judgment has been passed.
7. Shankar Ram Yadav (PW-4) did not depose before the trial Court that any of the appellant caused hurt to him while discharging his duty or prevented or deter him from the duty or in consequence which is done by the said witness, therefore, from his evidence it

is not established that any act is committed against discharge of duty of the said public servant.

8. From the evidence of Ferha Ram Yadav (PW-3) and Shankar Ram Yadav (PW-4) there is material contradiction regarding assault by appellant Mahil Yadav. As per version of Ferha Ram Yadav (PW-3), Roshan and Sanjay Sharma assaulted the complainant Shankar Ram Yadav (PW-4), but appellant Mahil Yadav rescued the scuffle. Looking to contradictory evidence, it is not established that appellant Mahil Yadav assaulted the complainant Shankar Ram Yadav (PW-4).
9. In view of the above, charge under Section 333 is not established against appellant Mahil Yadav. He is acquitted of the said charge and his sentence and conviction is hereby set aside.
10. As per version of Dr. S.K. Sharma (PW-1) he noticed that three injuries were found on the body of the complainant Shankar Ram Yadav out of which two injuries were simple in nature. As per version of this witness he found fracture in metacarpal bone of Shankar Ram Yadav in his left hand, but the fact remains that person who had taken the x-ray to said Shankar Ram Yadav is not examined, therefore, x-ray part is not proved and for remaining injuries the expert opined that it was simple in nature.
11. Voluntary causing simple injury is an offence under Section 323 of IPC, therefore, conviction of appellants Roshan and Sanjay Sharma is altered to Section 323 of IPC instead of Section 333 of IPC, thereby, they are convicted under Section 323 of IPC. As per jail report appellant Roshan has suffered full jail term, he is not required to be detained.

12. Appellant Sanjay Sharma has suffered jail term for four days. In view of this Court, ends of justice would be served if the jail sentence awarded to appellant Sanjay Sharma is reduced to period already undergone by him. Fine amount imposed on the appellant shall remain intact. It is ordered accordingly.
13. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge