

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 297 of 2011**

1. Dilharan, S/o- Dukhitram Verma, Aged about- 25 years, R/o- village- Bhaismunda, P.S.- Dharsiva, District- Raipur (C.G.)
2. Hem Singh, S/o- Thanuram Verma, Aged about- 53 years, R/o- village- Dhewra, P.S.- Dharsiva, District -Raipur (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh, through- Police Station- Kharora, District- Raipur (C.G.)

---- Respondent

For Appellants : Shri Anil Singh Rajput, Advocate.
 For State/Respondent : Shri Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****21/11/2019**

1. This appeal is preferred against the judgment dated 4th April, 2011 passed by 4th Additional Sessions Judge, Raipur (C.G.) in Sessions Trial No. 127/2010 wherein the said Court convicted both the appellants for commission of offence under Sections 452 and 325 read with Section 34 of IPC, 1860 and sentenced them to undergo R.I. for four years and fine of Rs. 500/- on each count with default stipulations.
2. In the present case, victim is Beer Singh (PW-3) and date of incident is 17th June, 2010 which occurred at village- Kharora in the house of victim Beer Singh. It is alleged that both the appellants assaulted the victim after entering into his house that

is why report was lodged and after trial they were convicted as mentioned above.

3. The question for consideration of this Court is whether the appellants have assaulted the victim and whether they entered into the house of victim after preparation to cause injury to him. Beer Singh (PW-3) is sole eye witness account to the incident. Other witnesses have deposed before the trial Court what is informed to them by other persons.
4. As per version of Beer Singh (PW-3) both the appellants entered into his house and appellant No. 1 Dilharan caused injury to him with a wooden article kept in the house of the victim. He further deposed that appellant No. 2 Hem Singh assaulted him by hand. From the evidence of the victim, it is clear that both the appellants have not entered into his house with any weapon. Injury was caused with an article which was kept in the house of the victim and Dilharan collected the said article from the house of victim and thereafter assaulted him. From the entire evidence, it is clear that preparation of offence is not established because there is no evidence that anything was done before commission of offence to cause injury. Appellants have not entered into the house of the victim with any article which shows that there was no preparation before commission of offence, therefore, offence under Section 452 of IPC is not established against any of the appellant.
5. The next question for consideration of this Court is whether each of the appellant has committed offence under Section 325 of IPC. When number of persons are involved in crime, the prosecution is under obligation to establish that all the persons were acting in

furtherance of common intention or common object. In the present case, there was no preparation for commission of offence. Appellant No. 1 Dilharan assaulted the victim by a wooden article while appellant No. 2 Hem Singh assaulted him by hand. From the medical evidence it is established that fractures were found on humerus and ulna. From the evidence, it is clear that these injuries were caused by appellant No. 1 Dilharan. Causing fracture of a bone is grievous hurt as defined under Section 320(7) of IPC, 1860. Act of the appellant No. 1 Dilharan does not fall within any of the exception of the Indian Penal Code and he caused pain on the body of the victim, therefore, act of the appellant is voluntarily in nature which falls under Section 325 of IPC for which trial Court convicted him and this Court has no reason to record contrary finding, therefore, conviction of appellant No. 1 Dilharan for offence under Section 325 is hereby affirmed.

6. Appellant No. 2 Hem Singh did not assault the victim with any article, but he assaulted the victim by hand. His act was voluntarily in nature punishable under Section 323 of IPC. In view of the above, conviction of appellant No. 2 Hem Singh is altered to Section 323 of IPC instead of Section 325 IPC. Both the appellants are acquitted of the charge under Section 452 of IPC, and conviction and sentence of the appellants under this Section is hereby set aside.
7. Heard on point of sentence.
8. Appellant No. 1 Dilharan suffered jail term from 18.06.2010 to 04.04.2011, during investigation/trial and after conviction he suffered jail term from 04.04.2011 to 24.06.2011 thereby he has

suffered jail term for one year and six days. In view of this Court, ends of justice would be served if the jail sentence awarded to the appellant Dilharan is reduced to the period already undergone by him. Fine amount imposed on the appellant shall remain intact. It is ordered accordingly.

9. Appellant No. 2 Hem Singh has suffered jail term from 18.06.2010 to 13.07.2010 and from 04.04.2011 to 25.06.2011 and thereby he suffered jail term for 3 months and 15 days. In the facts and circumstances of the case, this Court is of the opinion that ends of justice would be served if the jail sentence imposed by the trial Court is reduced to period already undergone by the appellant. It is ordered accordingly.
10. Both appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.
11. With these modifications, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
Judge