

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 740 of 2009**

Dayashanker, aged about 45 years, S/o Chandulal Gabel, R/o Suklipali, Thana- Malkharoda, District- Janjgir-Champa (C.G.)

---- Appellant

Versus

The State of Chhattisgarh, through Police Station Malkharoda, District- Janjgir-Champa (C.G.)

---- Respondent

For Appellant : Mr. Parag Kotecha, Advocate.

For State/respondent : Mrs. Shubha Shrivastava, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board**

18/03/2019

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 09.10.2009 passed by Additional Sessions Judge, Sakti, Session Division- Janjgir-Champa, District- Janjgir-Champa (C.G.) in Session Trial No. 77/2009, wherein the said court convicted the appellant for commission of offence under Section 325 of IPC, 1860 and sentenced to undergo R.I. for 6 months and fine of Rs. 3000/- with further default stipulations.
2. In the present case, name of the victim is Ratanbai. It is alleged that on 31.01.2009 at about 9:00 a.m., the appellant injured victim- Ratanbai by stick due to which she suffered fracture. The matter was reported, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) The appellant has not participated in the crime in question, there is previous enmity between the appellant and the complainant side, therefore, he has been falsely roped with the charge.

(ii) No independent witness supported version of the prosecution and there is contradiction and omission in the statement of the prosecution witnesses which is overlooked by the trial court, therefore, finding arrived at by the trial court is liable to be set aside.

4. Learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. Toshendra Gabel (PW-1) & Ratanbai (PW-2) are eyewitness account to the incident who deposed before the trial court that the appellant assaulted Ratanbai. Version of these witnesses is supported by version of Ganga Das (PW-5) & Bhukhau Ram (PW-6). Again, it is supported by version of Dr. R.L. Thakur (PW-4) who examined the victim on 31.01.2009 at Community Health Centre, Sakti and noticed following injuries (Ex.P/5):-

(i) L/w on head frontal region 3 x 0.5 cm. deep blood clot.

(ii) Swelling on right temporal region 4 x 3 cm.

(iii) Pain & tenderness on both side of chest.

(iv) Pain & tenderness at the right joint, painful in movement.

6. As per version of Dr. Anil Singh, Radiologist (PW-10), after X-ray of the victim, he found fracture on her skull bone. Looking to the entire evidence, it is established that the victim suffered fracture which is grievous in nature and the same is punishable under Section 325 of IPC for which the trial court convicted the appellant and this Court has no reason to record contrary finding. Accordingly, finding of the trial court regarding commission of offence by the appellant under Section 325 of IPC and his conviction is hereby affirmed.

Heard on the point of sentence.

7. The trial court has awarded jail sentence for six months and the appellant has suffered jail sentence during trial and after conviction for 45 days. His corporal punishment i.e. jail sentence is reduced to the period already undergone by him while maintaining fine amount.
8. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge