

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 204 of 2011**

Shiv Kumar Gandharv, S/o- Jhaduram Gandharv, Aged about-
35 years, R/o- Village Pipartarai, Police Station- Kota, District-
Bilaspur (C.G.) **---- Appellant**

Versus

State of Chhattisgarh, Through: The Police Station, Kota,
District- Bilaspur(C.G.) **---- Respondent**

Appellant Mr. Shiv Kumar Gandharv is present in person along with
his counsel Mr. Bharat Rajput, Advocate

For State : Mrs. Smita Jha, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board**21/11/2019**

1. This appeal is preferred against the judgment dated 4th February, 2011, passed by Third Additional Sessions Judge, Bilaspur (C.G.) in Sessions Trial No. 66/2010 wherein the said Court convicted the appellant for charge under Section 308 of Indian Penal Code, 1860 and sentenced to undergo R.I. for 5 years and fine of Rs. 100/- with default stipulations.
2. In the present case, name of the victim is Raju Lal Rajak (PW-3). The date of incident is 20th November, 2009 at about 7:30 P.M. in the night at village Pipartarai near bus stand. As per version of the prosecution there was an altercation between the appellant and the victim regarding payment of egg and due to that altercation the appellant assaulted the victim by club.
3. The first question for consideration of this Court is whether the appellant assaulted the victim on the date of the incident. Report was lodged at Police Station Kota on the date of

incident, registered name of appellant as culprit for the act of assault against the victim. Victim Raju Lal Rajak (PW-3) deposed before the Trial Court that appellant assaulted on his head by club. Version of this witness is supported by the version of Hariram Rajak (PW-2) and Chintamani Rajak (PW-6). All these witnesses have been subjected to the cross examination but nothing could be elicited in favour of defence. Version of direct evidence is supported by the version of medical evidence as per version of Dr. Sandeep Dwivedi (PW-1).

4. The Victim was admitted to the community health centre at Kota on the date of incident. Thereafter, he has been shifted to the Chhattisgarh Institute of Medical Sciences, Bilaspur, where Dr. Archana Singh (PW-8) who performed CT Scan of the Victim found head injury on the body of Victim. From the entire evidence, it is clear that appellant has assaulted the victim. Case of the appellant does not fall in any exception mentioned in the IPC and he had knowledge that his act will cause pain in the body of the Victim.
5. Second question for consideration of this Court is whether the offence falls within mischief of under Section 308 of IPC. No medical expert deposed before the Trial Court that he found more than one injury on the head of the victim. Dr. Archana Singh (PW-8) who performed CT Scan of the victim found that no fracture was caused on head of the victim and his brain functioning was normal.
6. From the entire evidence, it is clear that incident took place regarding payment of egg and in that context the victim

assaulted by the appellant. Therefore, It can not be inferred that appellant had knowledge that victim may succumb to the injuries or it is likely that this injury may cause death of the victim. Therefore, it is not safe to hold that appellant had any intention to kill the victim or he committed any act which may be termed as culpable homicide.

7. From the entire evidence, it is clear that injury may endangered life of the victim but same is not equivalent to attempt to murder or culpable homicide. Hence, act of the appellant falls within mischief under Section 320 (8) of IPC which is punishable under Section 325 of IPC instead of 308 of IPC. He is convicted for offence under Section 325 of IPC accordingly.
8. The appellant has suffered jail term during investigation/trial from 03rd January, 2010 to 26th February, 2010. After conviction appellant suffered jail term from 4th February, 2011 to 24th June, 2011 which comes out more than 5 months. The appellant is sentenced to period already undergone by him for offence under Section 325 of IPC. However, fine sentence imposed by the Trial Court shall remain intact.
9. With this modification, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge