

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.134 of 2010**

1. Nohar Dhiwar S/o Shri Ram Lal Dhiwar, aged about 54 years, Occup.Labour R/o Vill. Pikridih, PS Kharora, Raipur R/o Vill. Rajkamma PS Pali, Tah.Katghora, Distt. Korba (CG)
2. Kameshwar @ Kamleshwar S/o Nohar Dhiwar Occup. Labour R/o Vill. Pikridih, PS Kharora, Raipur. R/o Vill. Rajkamma PS Pali, Tah.Katghora, Distt. Korba (CG)

---- Appellants**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Kharora, District Raipur (CG)

---- Respondent

For the appellants : Shri Bharat Rajput, Advocate

For the State/respondent : Smt. Subha Shrivastava, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****05.3.2019.**

1. Shri CR Sahu, Advocate has been engaged by the appellants, but despite repeated calls, none appeared, therefore, Shri Bharat Rajput, Advocate present in the Court is appointed as Amicus Curiae to argue the matter on behalf of the appellants.

2. The appeal is directed against judgment dated 13.01.2010 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Raipur (CG) in Special Session Trial No.81/2008 wherein the said Court convicted both the appellants for commission of offence under Section 323 of the Indian Penal Code, 1860 and sentenced them to pay fine of Rs.1000/- each with default stipulation.

3. In the present case name of the victim is Mohit (PW-2). On 30.4.2008 at 8.00 pm, both the appellants assaulted him by stick, fists and hand. The matter was reported and the appellants were charge sheeted and convicted as mentioned above.

4. Learned counsel for the appellants submits as under:

(i) Names of the appellants in the FIR is omitted, therefore, case of the prosecution become completely doubtful.

(ii) The trial Court has failed to appreciate the oral and documentary evidence adduced by the prosecution, therefore, finding of the trial Court is liable to be set aside.

5. 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 while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused the record of the Court below.

7. From the evidence of Santosh Khunde (PW-1), Mohit Kumr (PW-2), Budhram (PW-4), it is established that both the appellants assaulted Mohit and their participation in assault is established by the statements of four witnesses whose testimony is unshaken after searching cross-examination. Version of direct witnesses is supported by Dr. Sulbha Ahluwalia (PW-6) who examined victim Mohit and found injuries on his left thigh of 5cm and also found two abrasions on his right parietal region measuring 1-1 cm. Both the injuries were caused by hard and blunt object.

8. The FIR is not a substantive piece of evidence and the substantive piece of evidence is the statement before the court in which there is every right for defence side to cross-examine the witnesses. As both the appellants were named in the FIR (Ex-P/1) as culprits, arguments advanced on behalf of the appellants is not sustainable.

9. Causing voluntary injury is an offence punishable under Section 323 IPC. The act of the appellants does not fall in any of the exception as mentioned under the Indian Penal Code. Both the appellants knew that their assault will cause pain in the body of victim Mohit therefore, their act is voluntary in nature which falls within the mischief under Section 323 IPC for which the trial Court has rightly convicted them and the same is hereby affirmed. This Court finds no infirmity in the judgment passed by the trial Court.

10. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE