

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 716 of 2001

1. Chovaram, Aged about- 29 years, S/o- Narttam Gond, Occupation- Cultivation.
2. Santosh Kumar, Aged about- 28 years, S/o- Prem Singh Gond, Occupation- Cultivation.
3. Lalit Chandranahu, Aged about- 48 years, S/o- Shri Bhushanlal Chandranahu.

All residents of village- Banpachri, Police Station- tumgaon, Tehsil & District- Mahasamund (C.G.) **---- Appellants**

Versus

State of Chhattisgarh, through- Police Station- Tumgaon, District- Mahasamund (C.G.)

---- Respondent

CRA No. 861 of 2001

Shiv Kumar, Aged about- 31 years, s/o- Lala Ram Gond, R/o- Village Banpachari, Police Station- tumgaon, Tahsil & District- Mahasamund (C.G.) **---- Appellant**

Versus

State of Chhattisgarh, through- Police Station- Tumgaon, District- Mahasamund (C.G.)

---- Respondent

For appellants in CRA No. 716 of 2001 : Mr. Pawan Kesharwani &
Mr. Utkal Pradhan, Advocates

For appellant in CRA No. 861 of 2001 : None

For State/Respondent : Mr. Afroj Khan, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

05/11/2019

1. These appeals arise from a judgment dated 31st July, 2001 passed by First Additional Sessions Judge, Mahasamund (C.G.), in sessions trial No. 238/1996, wherein, the said Court convicted all the appellants for charge under Sections 323 read with Section 34 of Indian Penal Code, 1860 and

sentenced to undergo R.I. for 1 year and fine of Rs. 1000/- with default stipulations.

2. In the present case, name of victim is Nehru Lal (PW-4). It is alleged by the prosecution that on 20th August, 1995 at about 1 O' clock in village Banpachri all the appellants assaulted the victim, prior to the incident the appellant Chova Ram and Santosh was transporting the wood from forest in a tractor for which valid certificate was not found from their possession that is why tractor in which wood was transported was seized and was taken to the Forest Office by victim Nehru Lal (PW-4). Due to this incident when Nehru Lal (PW-4) was going on his motorcycle with his son Firendra (PW-5) to the hospital, in the mid way all the appellants stopped him and caused injury by means of club. The matter was reported and investigated, appellants were charge-sheeted and convicted under above mentioned Sections.

3. Learned counsel on behalf of appellant submits as under -

(I) Presence of appellant Lalit Chandranahu is not established, as per the evidence adduced by the prosecution and he had no role to play in the crime in question.

(ii) The witnesses have deposed contradictory statements and they have exaggerated their version what is deposed by them earlier before investigating officer, therefore, their version is not dependable.

(iii) The Trial Court has not evaluated the entire evidence in its right perspective therefore, same is liable to be set aside.

4. On the other hand, learned State Counsel submits that looking to the direct evidence and medical evidence, charge levelled against the appellants are clearly established that is why the trial Court recorded finding of conviction which is not liable to be interfered with invoking jurisdiction of appeal.
5. The question for consideration of this Court is whether the appellants assaulted the victim in furtherance of common intension. The case of the prosecution is based on statement of Shridhar (PW-1), Govind Ram Patel (PW-2), Ramkumar (PW-3), Nehru Lal (PW-4), Firendra (PW-5), and Dr. Vipin Rai (PW-13). As per version of Shridhar (PW-1) he was not present at the time of incident and story was narrated to him by Firendra (Para-4). Looking to the hear-say version of this witness, it cannot be acted upon to reach any conclusion. Ramkumar (PW-3) deposed that he has not seen the incident of assault, therefore, version of this witness is also not supporting the version of the prosecution.
6. Govind Ram Patel (PW-2) deposed that Santosh and Chova Ram caught hand of the victim Nehru Patel (PW-4) and Shiv Kumar assaulted him but version of this witness is different from what he stated before Investigating Officer, as per earlier statement i.e. Ex.P-2, this witness stated that all the four appellants assaulted the victim by club. Looking to the

contradictory statements of this witness his version is not dependable to reach any conclusion against the appellant Chova Ram, Santosh Kumar and Lalit. This witness has not deposed before the Trial Court that these three appellants have assaulted the victim therefore, participation in assault by these three appellants is not established from the version of this witness.

7. Nehru Lal (PW-4) deposed before the trial Court that appellant Lalit, Santosh and Chova Ram caught his hand and Shiv Kumar assaulted on his head by club. Version of this witness is contradictory to the version of Govind Ram (PW-2), while Govind Ram Patel (PW-2) deposed that all the four appellants assaulted the victim but this witness deposed only against Shiv Kumar regarding assault.
8. Version of Firendra (PW-5) is in the same line of Nehru (PW-4) but his statement is also contradictory to the statement of Govind Ram Patel (PW-2). On an overall assessment of the entire evidence, participation of appellants Chova Ram, Santosh Kumar and Lalit in assault is not established therefore, finding regarding these three appellants by the trial Court is not sustainable and same is hereby set aside. Appellants Chova Ram, Santosh kumar, Lalit Ram are acquitted of the charge under Section 323/34 of IPC and their conviction and sentence under this Section is set aside.
9. So far as Shiv Kumar is concerned, from the statement of Govind Ram (PW-2) Nehru-(PW-4) and Dr. Vipin Rai (PW-13)

it is established that he assaulted the victim Nehru Lal on his head which caused injury and pain to his body. Case of the appellant does not fall in any of the exception as mentioned in the Indian Penal Code. The act of this appellant is voluntary in nature, voluntary causing hurt is a mischief punishable under Section 323 of IPC for which the Trial Court convicted him and this Court has no reason to take contrary view. Accordingly, conviction of this appellant Shiv Kumar is hereby affirmed.

10. Heard on points of sentence.

The appellant Shiv kumar suffered jail term during the trial from 7th September, 1995 to 1st December, 1995 i.e. for 2 months and 24 days. Considering the facts and circumstances of the case, this Court is of the opinion that ends of justice would be met if the appellant is sentenced to the period already undergone by him. Jail sentence is not mandatory for offence under Section 323/34 of IPC. Accordingly, his sentence is reduced to the period already undergone by him. However, fine sentence imposed by the Trial Court shall remain intact.

11. In view of the above, appeal filed by the appellant Chova Ram, Santosh Kumar and Lalit i.e. Criminal Appeal No. 716 of 2001 is allowed, while appeal filed by the Shiv Kumar i.e. Criminal Appeal No. 861 of 2001 is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge