

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 62 of 2009****Reserved on : 15.02.2019****Delivered on : 28.03.2019**

Chotu @ Ashutosh, S/o Dharurao Bhandurkar, Aged about 28 years, R/o Maidem Chowk Nayapara, Police Station- Gobara Nayapara, District- Raipur (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, Through – Police Station Gobara Nayapara, District- Raipur (C.G.)

---- Respondent

For Appellant : Mr. R.R. Sinha, Advocate.

For State/respondent : Mr. Vijay Bahadur Singh, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 27.12.2008 passed by Additional Sessions Judge, Gariyaband, District- Raipur (C.G.) in Session Trial No. 16/2008, wherein the said court convicted the appellant for commission of offence under Sections 294 & 323 of IPC, 1860 and sentenced to undergo R.I. for 3 months and fine of Rs. 500/- on each count with further default stipulations.
2. As per version of the prosecution, on 02.03.2008 at about 22.15 O'clock, there was dispute between the appellant and victim namely Manish Singh Thakur upon which the appellant assaulted him. 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) As many as 12 witnesses have been examined in support of allegation which was different from each other and also differ from statement recorded under Section 161 of the Cr.P.C.

(ii) The trial court has overlooked material contradiction and omission in statement of the prosecution witnesses, therefore, finding arrived at by the trial court is not liable to be sustained.

(iii) The trial court did not appreciate the defence witnesses.

(iv) A criminal case against the victim is also pending in the court at Rajim and there was previous enmity, therefore, finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. In the present case, victim- Manish Singh Thakur (PW-2) deposed before the trial court that it is the appellant who assaulted him by spade (फावड़ा) and abused him in name of mother and sister. Version of Manish Singh Thakur (PW-2) is supported by version of Ujjwal Singh Thakur (PW-1) and Mohit Kumar Sahu (PW-3), Rajendra Singh Thakur (PW-4).

6. Version of the victim is again supported by version of Dr. Pushpa Guru

(PW-5) who examined Manish Singh Thakur on 02.03.2008 at Government Hospital, Gobra Nayapara and noticed following injuries (EX. P/6):-

- (i) Abrasion on left hand 3 x 0.5 x 0.5 cm. and 3 x 0.5 x 0.5 cm. and also found four similar abrasion of same size in left hand
- (ii) Abrasion on right hand 3 x 0.5 x 0.5 cm. and also found three similar abrasion of same size in right hand
- (iii) Contusion on nose 1 x 1 x 0.5 cm. and on lip 1 x 1 x 0.5 cm.

4. In the cross-examination, this medical expert deposed that the injuries were simple in nature. Though at one point of time, she stated that if proper treatment would not have provided to the victim, he would have succumbed to the injuries, but the trial court has not accepted this opinion of the medical expert and judgment of the trial court is not challenged by them, therefore, finding of the trial court attained finality in this regard that the injuries caused to the victim were simple in nature.
5. From the evidence, it is established that the appellant used abusive words in public place against the victim and caused him simple injuries. The case of the appellant does not fall within any of the exception of the IPC and he knew at the time of causing injuries that the same will cause pain to the victim, therefore, his act is voluntary in nature. Case of the appellant falls to be voluntarily causing simple hurt which is punishable under Sections 323 & 294 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 323 & 294 of IPC and his conviction are hereby affirmed.

Heard on the point of sentence

6. The trial court has awarded jail sentence for 3 months and the appellant has suffered jail sentence from 05.03.2008 to 18.03.2008 (14 days). Looking to the fact that the incident took place 10 years ago and no useful purpose will be served in sending the appellant in jail again. His corporal punishment i.e. jail sentence is reduced to the period already undergone by him while maintaining fine amount.
7. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge