

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 15-2-2019

Delivered on 28-3-2019

CRA No. 244 of 2009

- Shanker Bharti aged 35 years, s/o. Baijnath Bharti, occupation worker in floor Mill, r/o. Bandhipara, Charcha, PS Charcha, Dist. Korla (CG).

---- Appellant

Versus

- State of Chhattisgarh through PS Charcha, Dist. Korla (CG).

---- Respondent

For Appellant : Mr. D.N. Prajapati, Advocate

For respondent/State : Mr. V.B. Singh, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 17-3-2009 passed by the Sessions Judge, Korla (Baikunthpur) CG in Sessions Trial No.59 of 2006 wherein the said Court has convicted the appellant for the commission of offence under Section 323 read with Section 34 of IPC and sentenced him to undergo SI for three months and to pay fine of Rs.500/- with default stipulations.

2. As per version of prosecution, on 15-6-2006 at about 4.00 p.m., prosecutrix was alone in her house and at the same time appellant and co-accused entered into her house and assaulted

her. The matter was reported and investigated and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) Prosecution has filed to prove its case beyond shadow of doubt, therefore, conviction of the appellant is not sustainable.
- ii) There was previous dispute between the appellant and the prosecutrix and appellant also sustained injuries, therefore, benefit of doubt should have been extended to him.
- iii) The trial Court ignored the statement of Smt. Kiran that the appellant also sustained injuries, therefore, conviction on the basis of suspicion is liable to be set aside.

4. On the other hand, learned counsel for the respondent/State 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.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. As per version of Smt. Phool Kunwar (PW/1), appellant and other co-accused assaulted her. Version of this witness is supported by version of Shiv Charan (PW/5) and Basant Kumar (PW/6) who have been informed about the incident. Dr. J.P. Sahu (PW/8) found abrasion on bruise in various parts of the victim namely Phool Kunwar. The evidence of all these witnesses goes to show that the victim Phool Kunwar was assaulted by the appellant. Though DW/2 Smt. Kiran Bharti deposed that appellant also sustained injuries but there is no direct evidence in support of version of Smt. Kiran Bharti (DW/2), therefore, it cannot be held that the appellant also sustained injuries during the incident. All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence.

7. From the evidence it is established that the appellant assaulted the victim Phool Kunwar and caused simple injury. Case of the appellant does not fall in any exception mentioned in Section 76 to 106 of IPC. The appellant knew that due to injuries caused to victim, she will suffer pain. In view of this discussion, it appears that appellant voluntarily caused simple injury to victim. The act of the appellant falls within mischief of Section 323 of IPC for which the trial Court convicted the appellant and this court

has no reason to substitute contrary finding. Conviction of the appellant under Section 323 of IPC is affirmed. Though the offence under Section 323 of IPC jail sentence is not compulsory, the appellant has already suffered jail sentence of three days. Considering all the facts, this court is of the view that the ends of justice would be served if the jail sentence awarded by the trial court is reduced to the period already undergone by him while maintaining the fine amount. It is ordered accordingly.

8. With the aforesaid modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju