

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.190 of 2011**

Hari Lal, S/o. Bandhu Yadav, aged about 42 years, Village Badera Bahra, Kodwahi, Tahsil Pendra, Police Station Pendra, District Bilaspur (CG)

---- Appellants**Versus**

State of Chhattisgarh, Through Police Station Incharge, Police Station Pendra, District Bilaspur, Chhattisgarh

---- Respondent

 For the appellant : Shri Om Kukreja, Advocate on behalf
 of Shri Ankit Singhal, Advocate
 For the Respondent/State: Shri Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****22.10.2019**

1. The appeal is preferred against judgment dated 18.02.2011 passed by Additional Sessions Judge (FTC), Pendra Road, Distt. Bilaspur (CG) in Session Trial No.42/2010 wherein the said Court convicted appellant for the commission of offence under Section 325 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for four years and to pay fine of Rs.100/-, with default stipulations.

2. In the present case name of the victim is Devdas. As per the prosecution case, on 04.3.2010 the appellant assaulted the victim with stones tied up in a towel (gamcha). Due to the assault, the victim suffered serious injury on his head and left eye. The matter was reported and investigated and after completion of the

trial, the appellant has been convicted and sentenced as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) The appellant and the victim are family members and there is dispute regarding family property that is why the appellant was falsely implicated in the present case.

(ii) The trial Court did not appreciate the facts that scuffle took place between the appellant and the victim in which the victim fell down and injured himself.

(iii) There is material contradiction in the statement of Devdas (PW-2) and Basant Lal (PW-3) which is ignored by the trial Court.

(iv) Seized articles were not kept in a sealed cover which creates doubt in the story of the prosecution. Therefore, finding of the trial Court is liable to be sustained.

4. On the other hand, learned counsel for the State submits that there is ample evidence regarding assault by the appellant against the victim and the injuries found in the body of the victim is grievous in nature, therefore, the appellant has been rightly convicted by the trial Court and the same is not liable to be interfered with.

5. The first question for consideration before this Court is whether the appellant assaulted the victim. From the statement of Dev Das (PW-2) and Basant Kumar (PW-3), it is established that the appellant assaulted the victim by stone tied up in a towel. Version of these witnesses is unrebutted during cross examination

and it is further supported by FIR (Ex-P/1) which is lodged on the date of incident i.e. 04.3.2010 in which name of the appellant is clearly mentioned as culprit and his act of assault is also mentioned in the FIR. There is nothing on record that the victim has any grudge against the appellant that is why he has been falsely roped in the charge in question. Again version of these witnesses is supported by version of Dr. HK Tanwar (PW-7) who examined the victim on 04.3.2010 and found fracture in right orbit bone and right frontal bone. Version of this expert is unrebutted in the cross-examination and there is no other expert opinion contrary to the opinion of this expert. Therefore, it is established that the injuries sustained by the victim was grievous in nature. The case of the appellant does not fall in any of the exception mentioned in the Indian Penal Code. From his act, it is clear that he was aware of the fact that his assault will cause injury and pain to the victim, therefore, it is a case of voluntarily causing grievous hurt and his mischief falls within the ambit of Section 325 IPC for which the trial Court has convicted and the same is hereby affirmed.

6. Heard on the point of sentence.

The appellant suffered jail term during the trial from 19.5.2010 to 26.7.2010 and after the conviction he suffered jail term from 18.02.2011 to 16.01.2012, thereby he has suffered jail term for more than one year. 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. Accordingly, his sentence is reduced to the period already undergone by him. However, fine sentence imposed by the trial Court shall remain intact.

7. With this modification, the appeal is allowed in part.

Sd/-
(Ram Prasanna Sharma)
JUDGE