

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2279 of 1999

Reserved on : 11.12.2019

Delivered on : 06.02.2020

Phoolchand alias Bhikhu, S/o Ramgulam, aged about 40 years, R/o Semra, Police Station- Jainagar, District- Surguja (M.P.) (Now C.G.)

---- Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh) through Police Station- Jainagar, District- Surguja (C.G.)

---- Respondent

For Appellant : Mr. Sunil Tripathi, Advocate.

For State/respondent : Mr. Raghvendra Verma, G.A.

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 10.08.1999 passed by Additional Sessions Judge, Surajpur, District- Surguja (C.G.) in Session Trial No. 204/1989, wherein the said court convicted the appellant for commission of offence under Section 333 of IPC, 1860 and sentenced to undergo R.I. for 5 years and fine of Rs. 200/- with further default stipulations.
2. In the present case, complainant is Shashikant Mishra who was Forest Guard. On the date of incident i.e. on 05.06.1988, when he was coming to his residence at Village- Latori at about 7:00 p.m., the appellant assaulted him by club. It is alleged that some action was taken by the Forest Guard

against the appellant for unauthorized possession of some wood that is why 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) There is no proper evidence to show that the complainant was performing official duty at the time of commission of offence or the offence is committed regarding his any official act performed in the past, therefore, it is not a case under Section 333 of IPC.

(ii) The independent witnesses have not supported version of the complainant- Shashikant Mishra, therefore, version of the complainant is not dependable.

(iii) The trial court has not evaluated the evidence properly, therefore, the 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 proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record.

6. Dr. B.P. Chandra (PW-8) examined the complainant namely Shashikant Mishra on 06.06.1988 and recorded injuries on body of the complainant. He referred the matter for X-ray and after X-ray, Dr. Mukesh Kumar Jain (PW-9) opined that there was fracture in Ulna bone of left hand. From evidence of this witness, it is established that Shashikant Mishra suffered fracture which is grievous injury as per Section 320 of IPC, 1860.
7. In the present case, the only eye-witness account to the incident is Shashikant Mishra. As per version of this witness, when he was returning to his residence and reached near house of the appellant, the appellant assaulted him. As per version of this witness, he assaulted him because he had taken action against him regarding cutting of wood from forest. Version of this witness is unrebutted and from his evidence, it is established that he has been assaulted because he had taken action against the appellant. Causing grievous hurt to deter public servant from his duty or for his previous act during duty is offence punishable under Section 333 of IPC for which the trial court convicted the appellant and his conviction is hereby affirmed.
8. The appellant has suffered jail sentence from 10.08.1999 to 10.09.1999 i.e. for 1 month. Considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the appellant is sentenced to the jail sentence of the period already undergone by him.

Accordingly, his sentence is reduced to the period already undergone by him. However, the fine amount imposed by the trial court shall remain intact.

9. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun