

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 392 of 2003

- Gudda @ Tuleshwar Pando, S/o- Biran Pando, Aged about- 29 years, R/o- village- Narayanpur, PS- Ramajunnagar, District- Surguja (C.G.)
----- **Appellant**

Versus

- State of Chhattisgarh, through-PS- Ramanujnagar, District- Surguja (C.G.)
----- **Respondent**

For Appellant : Ms. Preeti Jha, Amicus Curiae.

For State/Respondent : Mr. Dinesh R.K. Tiwari, Dy. G.A.

Hon'ble Shri Justice Ram Prasanna SharmaJudgment on Board21/01/2020

1. This appeal is preferred against the judgment dated 24th February, 2003 passed by 2nd Additional Sessions Judge (F.T.C.), Surajpur, District- Surguja (C.G.) in Sessions Trial No. 249/2002 wherein the said Court convicted the appellant for commission of offence under Sections 325 and 506 Part-II of the Indian Penal Code (for short the 'IPC'), 1860 and sentenced him to undergo R.I. for two years and fine of Rs. 2500/- and R.I. for six months respectively with default stipulation.
2. In the present case, name of the victim is Ramroop. As per version of the prosecution, on 30th October, 2001, the appellant caused serious injuries on body of said Ramroop and threatened 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) The evidence adduced on behalf of the prosecution is not reliable because statement of the witnesses suffered with material discrepancies.

(ii) The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding of the trial Court is based on proper marshaling of evidence which is not required to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below wherein judgment has been passed.

6. The question for consideration of this Court is whether the appellant assaulted the victim Ramroop. As per version of Dinesh (PW-2), Ramroop (PW-3), Mohar Maniya (PW-6) and Ramkeshwar (PW-7), it is established that due to assault by stone the said victim suffered injuries and his two teeth broken. The same is committed by the present appellant and version of these witnesses is unrebutted during cross-examination. It is further supported by evidence of medical expert Dr. D.K. Vishwakarma (PW-9) who examined Ramroop and found his two teeth broken with blood clot. The expert evidence is unrebutted during cross-examination and there is no other expert opinion in the record, therefore, there is sufficient evidence to record finding that victim Ramroop suffered grievous injury by the act of the appellant.

7. Taking into consideration the totality of the evidence, arguments advanced on behalf of the appellant is not sustainable. The act of the appellant falls within mischief of Section 325 of IPC for which the trial court convicted the appellant and the same is hereby affirmed.
8. The appellant was charge-sheeted for commission of offence under Section 506 Part-II, but no witness has deposed regarding intimidation by the appellant. Threatening is basic ingredient for offence to criminal intimidation, but from evidence the threatening on the part of the appellant is not established, therefore, finding of the trial Court regarding commission of offence under Section 506 Part-II is not established. The appellant is acquitted of the charge under Section 506 Part-II. His conviction and sentence is hereby set aside.
9. The incident took place in the year 2001 and since then 18 years have passed. The appellant has suffered jail term for 03 days. In view of this Court, ends of justice would be served if the jail sentence awarded to appellant is reduced to period already undergone by him. The fine amount imposed on the appellant shall remain intact.
10. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge