

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 03/01/2020

Delivered on 05/03/2020

CRA No. 1088 of 2001

Lakhan Lal, So- Shamlal, Aged about- 30 years, R/o-
Village Edka, Present R/o- Bakhroo Para, narayanpur,
District- Bastar(C.G.) **---- Appellant**

Versus

State of Chhattisgarh, through the District Magistrate, Kanker
(C.G.) **---- Respondent**

For Appellant : Mr. K.P. Sahu, Advocate
For State/respondent: Mr. Aman Kesharwani, P.L.

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

1. This appeal is preferred against judgment dated 03.11.2001 passed by the Second Additional Sessions Judge (F.T.C.), Kanker (C.G.) in Sessions Trial No.33/1996 wherein the said Court convicted the appellant for commission of offence punishable under Sections 307, 436 and 323 of the Indian Penal Code, 1860 and sentenced him to undergo R.I. for 1 year and fine of Rs. 1000/-, R.I. for 2 years and fine of Rs. 1000/-, Fine of Rs. 200/- with default stipulations.
2. In the present case, name of the victim is Hiruram and Somaru. As per version of prosecution on 26th of April, 1995 in village Mainpur the appellant burned the hut of Somaru and inflicted injuries on him and one Hiru. Thereafter, matter was reported and investigated and the appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits that Somaru Ram has admitted that he was unable to see in the night therefore, finding of the trial Court on the basis of his statement is not proper. The trial Court has recorded finding of conviction on the basis of interested witness without independent corroboration. Therefore, same is not sustainable. 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 finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. The question for consideration of this Court is whether the appellant burned the hut of Somaru and caused injury on the body of Somaru and Heeru. Both Hiru and Somaru deposed that hut was burned by the appellant at night. Though, Somaru deposed in cross examination that his visibility is low in the night but he has not deposed that he has not seen the incident therefore, his version was unrebutted. Both witnesses have deposed that appellant assaulted them with sharp article like knife. Version of these witnesses is supported by version of R.K. Dwivedi (PW-4) who examined Heeru and Samaru on 27th of April, 1995 and noticed following injuries-
 - (I) Deep incised wound of 6x1 cm. near parietal region of head.
 - (ii) Deep incised wound on left forehead of 3x1 cm

- (iii) incised wound of 5 cm on chest to right side of stomach.
- (iv) incised wound of 3 cm long on right side of neck.
- (v) incised wound of 2.5 cm on collar bone.
- (vi) Bruise on right lower knee of 3x1 cm.

6. From the evidence of the medical expert, injuries were simple in nature which is caused by sharp object and offence is punishable under Section 324 of IPC therefore, conviction of the appellant under Section 307 of IPC for causing injuries to Hiru is altered to Section 324 of IPC. From the evidence, it is established that the appellant committed offence of mischief by fire in the hut of Somaru which falls within mischief under Section 436 of IPC. As per evidence, injury sustained by Hiru is simple in nature which falls within Section 323 of IPC.
7. In view of the above, on an overall assessment act of the appellant is falls within mischief of Section 436 of IPC, 323 and 324 of IPC. Conviction of the appellant is altered into Section 324 of IPC and conviction under Section 307 of IPC and sentence is hereby set-aside. He is acquitted of the said charge.
8. As per report of the jail authority appellant has suffered jail term from 12th of July 1995 to 26th of September, 1995, 12th of March, 2001 to 27th of March, 2001 and 3rd of November, 2001 to 12th of November, 2001. Therefore, sentence awarded to the appellant by the trial Court is reduced to the period already undergone by him. However, fine amount shall remain intact.

9. With this modification, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

N.Mohle