

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 04.12.2019****Delivered on 30.01.2020****Criminal Appeal No.288 of 2009**

1. Radheshayam S/o. Sidhram Kewat, aged about 43 years,
2. Lakhan Lal, S/o. Radheshayam Kewat, aged about 19 years,
3. Ramdhan, S/o. Radheshayam Kewat, aged about 22 years,
All R/o. Village Madhuwa, Police Station Akaltara,
Distt. Janjgir-Champa (CG)

---- Appellants**Versus**

State Of Chhattisgarh Through Police Station Akaltara,
Distt. Janjgir-Champa (CG)

---Respondent

For appellants : Ms. Pushpa Dwivedi, Advocate
For respondent/State: Mr. Ishwar Jaiswal, Panel Lawyer

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

1. The appeal is directed against judgment dated 28.3.2009 passed by Second Additional Sessions Judge (FTC), Janjgir (Chhattisgarh) in Session Trial No.05/2009 wherein the said Court convicted the appellants for commission of offence under Sections 325 and 324 read with Section 34 of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for two years and to pay fine of Rs.1000/- each and RI for one year and to pay fine of Rs.500/- each with default stipulations.
2. As per the version of the prosecution, on 29.9.2008 at about 8.00 pm, father of the complainant after returning from market

gave sweets (jalebi) to mother of appellant No.1. Appellant No.1 objected the same due to which a quarrel took place. It is alleged that the appellants assaulted Ghanshyam and Dev Singh by axe and club. The matter was reported and investigated and the appellants were charge sheeted for commission of offence under Section 307 and 325 of IPC, but they were convicted for the above mentioned offences and sentenced accordingly.

3. Learned counsel for the appellants submits as under:

(i) Ghanshaym (PW-2) deposed that due to darkness he could not identify the person who assaulted him but the trial Court overlooked the evidence of the said witness and convicted the appellants which is not permissible.

(ii) The finding arrived at by the trial Court is against the principle of law applicable to the facts and circumstances of the case, therefore, the same is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment 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 with while invoking the jurisdiction of the appeal.

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

6. First question for consideration before this Court is whether all the appellants assaulted Ghanshyam and Dev Singh. In the present case, FIR is lodged by Ghanshyam on the date of incident, i.e. on 29.9.2008 at Police Station Akaltara naming all

the three appellants as culprits and in the said FIR, act of their assault is also mentioned giving particulars of the overtact of each of the appellants.

7. Ghanshyam (PW-2) deposed before the trial Court that Dev Singh is his father and on the date of incident, appellant Radhye Shyam and Lakhan Lal were abusing him as to why he has supplied sweets (jalebi) to mother of Radhe Shyam. He further deposed that all the three appellants were abusing him and his father for supplying sweets. As per the version of this witness, all the three appellants assaulted him by axe and club. Dev Singh (PW-3) who is the eyewitness account to the incident deposed before the trial Court that all the three appellants assaulted his son namely Ghanshyam and him by axe. Taras Ram (PW-4) deposed that Lakhan Lal, Radhye Shyam and Ramdhan have assaulted Ghanshyam. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

8. As per the contention of learned counsel for the appellants that as per the version of Ghanshyam (PW-2) there was darkness and he was not able to state as to which part of his body is assaulted by which of the appellants, but the fact remains that Dev Singh (PW-3) and Taras Ram (PW-4) clearly stated that all the three appellants were involved in commission of crime in assaulting Ghanshyam and Dev Singh. Version of these witnesses is further supported by Dr. CP Singh (PW-8) who examined Ghanshyam and noticed following injuries:-

- (i) Lacerated wound on frontal region of head
longitudinally 6 x .5 cm with bleeding
- (ii) Incised wound on right parietal region 2 x .05 & 3 x .5
cm with bleeding
- (iii) Incised wound on left maxilla 3 x .3 cm with bleeding
- (iv) Lacerated wound on left side of forehead of 2 x .02
cm
- (v) Bruise and swelling on left shoulder
- (vi) Lacerated wound on left leg anteriorly of 2.5 x .05 cm
- (vii) Left eye lid swollen and bluish discolour.

As per the version of this witness, injury No.1, 4, 5 & 6 were caused by hard and blunt object and injury No. 2 & 3 were caused by sharp object. He advised for X-ray examination. X-ray was done and thereafter report was brought before Dr. George M Khakha who noticed fracture on clavicle bone and on 6th & 7th ribs. The injuries were grievous in nature, therefore, act of the appellants falls within mischief under Section 325 read with Section 34 IPC for causing grievous injuries to Ghanshyam.

9. Dr. CP Singh (PW-8) examined Dev Singh and noticed following injuries:

- (i) Lacerated wound on right side of supra orbital margin
of head of 1 x .1 cm
- (ii) Lacerated wound on frontal region of head of 2 x .1
cm
- (iii) Incised wound on left parietal region of 4 x .1 cm

- (iv) Incised wound on right occipital region of 3 x .1 cm & 2.5 x .1 cm
- (v) Tenderness and swelling on left and right shoulder
- (vi) Lacerated wound on left clavicle area of 2 x .1 cm
- (vii) Bruise on right knee anteriorly

As per the opinion of this expert, injury No. 1 & 2 and 5 & 6 were caused by hard and blunt object, within six hours of the examination. This witness has further opined that if prompt treatment would not have been provided, injuries caused to them may be endangered to their life. It is arguable whether the case of the appellants falls within mischief of Section 307 IPC or 325 of IPC, but the facts remain that no appeal is preferred against the finding of the trial Court.

10. The trial Court after evaluation of the evidence, recorded finding on commission of offence under Section 325 and 324 IPC which is clearly substantiated by direct and medical evidence and it is further supported by FIR lodged on the same day. Looking to the evidence on record, arguments advanced on behalf of the appellants is not sustainable and their conviction for the offence as mentioned above is hereby affirmed. The trial Court awarded sentence of two years and one year respectively which shall be run concurrently. Looking to the injuries on the vital part of the body of the victims, the sentence part is not liable to be interfered with.

11. Accordingly, the appeal is dismissed. The appellants are reported to be on bail. Their bail bonds stand cancelled. The trial

Court will prepare super-session warrant and issue warrant of arrest against the appellants and after their arrest, they be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial Court shall submit compliance report on or before **30.6.2020**.

Sd/-
(Ram Prasanna Sharma)
JUDGE

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