

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1285 of 2015

Ramsharan Yadav S/o Hiranman Yadav Aged About 42 Years R/o
Gadadih, P.S. Uttai, District Durg – Chhattisgarh. ---- **Appellant**

Versus

State of Chhattisgarh Through- Police Station Uttai, District- Durg,
Chhattisgarh. ---- **Respondent**

For Appellant : Ms. Preeti Jha, Advocate appears as *Amicus Curiae*

For State : Mr. Ishwar Jaiswal, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

20.02.2020

1. This appeal is preferred against the judgment dated 09.10.2015, passed by learned Sixth Additional Sessions Judge, Durg (C.G.), in Sessions Case No. 261/2013 wherein the said Court has convicted the respondent for commission of offence under Section 326 of the Indian Penal Code, 1860.
2. In the present case, name of the victim is Hitesh Yadu @ Golu. As per version of the prosecution on 16th of July, 2012 at about 6 pm the complainant Hitesh went to Garadih Chowk and met the appellant and demanded his money back which was taken as loan by the appellant, the appellant getting annoyed by this act and he threw chilly powder on face of the complainant Hitesh and assaulted him with scissor on his stomach. Thereafter, matter was reported and investigated and the appellant was charge-sheeted for commission of offence under Section 307 of I.P.C. but Court convicted under Section 326 of I.P.C. as mentioned above.

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

(I) The victim is a drinker and at the time of incident he was in state of intoxication while, the appellant was doing job of tailor and his scissor felled down on stomach of the appellant and caused injury to him. Therefore, it is not a case under Section 326 of I.P.C. It is supported by version of Dr. N.K.Verma(PW-15) who examined the complainant.

(ii) There are number of omissions and contradictions in the statement of prosecution witnesses but the trial Court overlooked the same.

(iii) 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. Hitesh (PW-1) deposed before the trial Court that he had gone to the house of the appellant for taking his money back which was taken by the appellabt as loan and when he reached to the house of the appellant, the appellant threw chilly powder in his eyes and assaulted him by scissor on right side of his abdomen. Version of this witness is supported by version of Bhuwan Yadav (PW-2) , Laxmi Yadav (PW-3), Rani Bai (PW-4), Mohan Lal Yadav (PW-5), Dinesh Kumar (PW-6), Smt. Kavita Yadav (PW-7), Bojes Bajel (PW-9) and Onkar Yadu (PW-10) who have seen the victim in a pool of blood and noticed injury on his abdominal part. All these witnesses have

been subjected to searching cross-examination but nothing could be elicited in favour of the defence. Version of these witnesses has been supported by Dr. N.K. Verma (PW-15) who examined the victim on 16.07.2012 at BPS Hospital, Nandini at Durg and noticed following injuries which is mentioned in Ex.P-13A.

- (I) Tenderness and hemotoma near wound at lower abdominal region which is measuring into 10 cm x 5cm.
- (ii) Penetratory wound of 2" below and towards right side of navel which is measuring into 1"x0.5 cm x 1" depth with bleeding.

As per version of this witness, these injuries were caused by hard and sharp object and it was grievous in nature. This witness examined one scissor, which was seized in the present case and brought before this witness and he opined that injuries can be caused by this weapon. Version of this expert was unrebutted during cross-examination and there is no other opinion contrary to this opinion of this expert. There is nothing on record to disbelieve of the testimony of direct witnesses and medical expert. It is further supported by F.I.R. Ex.P-1, which was lodged on date of incident i.e. 16.07.2012 at Police Station, Garadih in which name of the appellant was mentioned as culprit and act of assault by scissor was also mentioned in the said report. Version of the victim was constant right from the day of incident to his deposition before the trial Court. It is the quality and not the quantity which can be weighed for evaluating the evidence when victim is

remained constant right from the day of incident. There is nothing to disbelieve him and there is nothing on record that appellant has been roped in false charge on account of grudge or otherwise. There is nothing to disbelieve the testimony of eye witnesses account, medical expert and F.I.R.

6. From the entire evidence, it is clear that the appellant caused grievous injury by scissor on the abdominal part of the victim. Case of the appellant falls squarely within ambit of Section 326 of I.P.C. Taking into consideration and totality of the fact argument advanced on behalf of the appellant is not sustainable. Conviction of the appellant for the said offence is hereby affirmed. The trial Court awarded five year sentences to the appellant cannot be termed as harsh, disproportionate and unreasonable therefore, sentence part is also not interfered with.

7. Accordingly, appeal filed by the appellant is hereby dismissed. As per report of the jail authority, the appellant has suffered full jail term and released after completion of his sentence on 08.06.2019. Therefore, no further order for his arrest etc. is required.

Sd/-
-(Ram Prasanna Sharma)
 Judge