

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 14-02-2020

Delivered on 05-03-2020

CRA No. 751 of 2013

1. Jankiram s/o. Mohan Ram aged about 40 years.
2. Sumitra Bai, w/o. Jankiram,,aged about 35 years.
Both residents of village Potka, Police Station Udaipur,
District Surguja (CG).

---- Appellants

Versus

- State of Chhattisgarh through Police Station Udaipur,
District Surguja (CG).

---- Respondent

For Appellants : Mr. Afroj Khan, Advocate.

For respondent/State : Mr. Ishwar Jaiswal, PL.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 3-12-2012 passed by the 2nd Additional Sessions Judge, Ambikapur, (CG) in Sessions Trial No. 370 of 2011 wherein the said Court has convicted the appellants for commission of offence under Sections 342 and 307 read with Section 34 of IPC, 1860 and sentenced them to undergo rigorous imprisonment for six months and RI for seven years and to pay fine of Rs.1000/- each with default stipulations. Both sentences are directed to run concurrently.

2. In the present case, name of the victim is Khuman Ram Rathiya (PW/1). As per version of prosecution, on 29-4-2011 at about 9.30 O'clock said complainant Khuman Ram Rathiya (PW/1) was in his house. At about 2 O' clock both appellants knocked the door of his house and when victim came out from his house, appellants caught victim and assaulted him by crow-bar. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) There is enmity between the appellants and the complainant due to which they have been falsely implicated in the crime in question.
- ii The trial Court has not evaluated the evidence of appellant which is contrary to law, therefore, finding of the trial court is liable to be set aside.
- lii) Medical expert has given opinion that the injuries are grievous in nature but it is not dangerous to life, therefore finding of the trial court is not sustainable.

- iv) Charge under Section 307 of IPC is not made out but it is a case of Section 324 of IPC, therefore, finding of the trial court 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 marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. PW/1 Khulan Ram deposed before the trial court that both appellants assaulted him mercilessly and broke his leg and hand that is why he became unconscious. Version of this witness is supported by version of PW/2 Dev Kumari and PW/3 Munna Ram. All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. Version of these witnesses is further supported by version of PW/6 Dr. B.M. Kamre who examined the victim on 30-4-2011 at Community Health Centre, Udaipur and noticed the following injuries.

- I) Lacerated wound over left wrist in the size of 3 x 2 cm and

swelling and tenderness present.

- ii) Multiple lacerated wound in both fibular region in the size of 2x1, 3x4, 2x2 and blood stains present.
- iii) Swelling and tenderness present on both foot and tibular region.

As per version of this witness, injuries were caused by hard, blunt and sharp object and it was grievous in nature. This witness examined x-ray report of victim and noticed fracture of 4th metatarsal and fracture of radius alna and fracture of tibia.

7. Dr. J.K. Butani (PW/9) examined x-ray and found fracture of radius alna bone, fracture of metatarsal and fracture of fibula bone. Both bones of left hand were broken. Though this witness opined that there was no possibility of death of the victim. He further opined that the injuries were caused by hard and sharp object and same were grievous in nature.

8. Taking into consideration the totality of the facts, argument advanced on behalf of the appellants is not sustainable. The act of the appellants falls within mischief of Section 326 of IPC. Accordingly both appellants are convicted under Section 326 of IPC instead of Section 307 read with Section 34 of IPC. Their conviction and sentence for offence under Section 307 read with Section 34 of IPC is set aside. They are acquitted of the said

charge framed against them. Both appellants are convicted for offence punishable under Section 326 of IPC and sentenced to undergo RI for seven years and to pay fine of Rs.1000/- each. Their conviction under Section 342 of IPC for offence of wrongful confinement is not liable to be interfered with and their conviction and sentence for the said offence is hereby affirmed. As per report of jail authorities, appellants have suffered full jail term and released from jail, therefore, no further order for their arrest etc., is required.

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

Sd/-
(Ram Prasanna Sharma)
Judge

Raju