

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 769 of 2008**

- Banafer Yadav, S/o. Chintaram Yadav, Aged about 35 years, R/o. Village-Janta, Police Station Saja, District Durg (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Saja, District Durg (CG)
-

---- Respondent

For Appellant	: Shri Avinash Chand Sahu, Advocate
For Respondent /State	: Shri Sameer Sharma, Dy.GA

Hon'ble Smt. Justice Rajani Dubey**Order On Board By Virtual Hearing****12/07/2021**

This appeal arises out of judgment and order dated 31.07.2008 passed by the Additional Sessions Judge (FTC), Bemetara district Durg (CG) in S.T. No. 04/2007 convicting the accused/appellant under Section 325 IPC and sentencing him to undergo RI for two years with default stipulation.

2. As per prosecution case, on 22.10.2006, at about 3.00 p.m., when she was going to her son-in-law's house for taking meals on the occasion of Deepavali, the accused/appellant along with his companions were intoxicated and celebrating the folk dance (*Raut*

Naacha), after seeing her near the house of one Lallu Pandey, abused her in filthy language, threatened to kill and assaulted on her head with club. She was taken to Govt. Hospital but as there was no doctor, she was taken to private hospital and thereafter at about 4.00 p.m., report was lodged against the appellant. However, looking to the serious condition of the victim, she was shifted to district hospital at Durg. During treatment he succumbed to the injuries sustained by him. After investigation, charge sheet was filed against him under Section 307 IPC.

3. In support of its case, prosecution has examined 14 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, considering the entire evidence on record, by acquitting the appellant under Section 307 of IPC altered his conviction under Section 325 IPC and sentenced to undergo 2 years rigorous imprisonment with fine of Rs.1,000/-. Hence the present appeal.

5. Counsel for the appellant submits that the accused/appellant has been falsely implicated in the crime in question. He submits that the incident took place about 16 years back, appellant has already remained in jail for about 2 1/2 months and therefore his sentence be reduced to the period already undergone by him.

6. On the other hand State counsel supports the impugned

judgment and submits that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Close scrutiny of the evidence makes it clear that on the date of incident, accused/appellant was intoxicated, he abused and assaulted with club causing injury to the victim with club as a result of which she sustained lacerated wound on the head and contusions of hands and legs. At the instance of injured, prompt FIR was registered. Moreover the medical report also supports the prosecution case. The complicity of the appellant in the commission of the offence has been duly proved. It is apparent that the injuries sustained by the victim were caused by the accused/appellant with club on her head.

9. Considering the nature of injuries sustained by the victim, offence under Section 325 IPC is made out against the appellant. Thus looking to the act of appellant and the evidence adduced by the prosecution, his conviction under Section 325 IPC appears to be justified.

10. Thus, taking into considering the fact that the incident occurred on account of he being intoxicated, looking to the facts and circumstances of the case and keeping in mind the fact that the incident occurred in the year 2006, appellant by now must be a middle aged person, he remained in jail for about 2 ½ months, I am of the view that ends of justice would be served if the sentence imposed on him is reduced to the period undergone by him. Consequently, the

appeal is partly allowed. Accused/appellant is reported to be on bail and therefore no further order is required. His bail bond stands discharged.

Sd/-

(Rajani Dubey)
Judge

suguna