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**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No.426 of 2013**

- 1.Laxman Sahu, S/o Janak Ram Sahu, Aged About 50 Years
- 2.Ashish Kumar Sahu, S/o Laxnam Ram Sahu, Aged About 22 Years

Both R/o Ward No.5, Harratoal (Harrapara), P.S.  
and Tehsil Baikunthpur, Distt Koriya,  
Chhattisgarh

**----- Petitioners****Versus**

- 1.Nawal Yadav, S/o Mohan Yadav, Aged About 55 Years
- 2.Shivbali , S/o Nawal Yadav, Aged About 28 Years
- 3.Kamlesh, S/o Nawal Yadav, Aged About 21 Years

All R/o Ward No.5 Harratoal (Harrapara), P.S.  
and Tehsil Baikunthpur, Distt. Koriya,  
Chhattisgarh

- 4.State Of Chhattisgarh, Through - The Collector  
Koriya, Chhattisgarh

**----- Respondents**


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|---------------------------|------------------------------|
| For Petitioners           | Mr. Shobhit Koshta, Advocate |
| For Respondent Nos.1 to 3 | Mr. Tariq Haider, Advocate   |
| For Respondent No.4       | Mr. Soumya Rai, PL           |

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**Hon'ble Justice Shri Sanjay K. Agrawal****Order On Board**

**04/02/2021**

1. Heard on application under Section 378 (4) of Cr.P.C. against the judgment dated 23.02.2013 passed by the learned 1st Additional Session Judge, Manendragarh, Baikunthpur, District Koriya (C.G.) in Criminal Appeal No.104/2012, arising out of the judgment dated 17.09.2012 passed by the Judicial Magistrate Class-I, Baikunthpur, District Koriya (C.G.) in Criminal Case No.223/2012, acquitting the respondent Nos.1 to 3 of the offence under Section 325/34 of IPC.
2. The petitioners are the complainants and on their complaint, the accused persons/ respondent Nos.1 to 3 were arrested for the offence under Sections 325 and 323 read with Section 34 of IPC and the accused respondents were ultimately convicted by the learned Trial Magistrate, but in the appeal preferred by the accused persons against their conviction, the learned Appellate Court acquitted the respondent Nos.1 to 3 for the offence under Section 325/34 of IPC and conviction under Section 323/34 of IPC was maintained.

3. The learned Appellate Court acquitted the respondent Nos.1 to 3 for the offence under Section 325/34 of IPC mainly on the ground that the X-ray plate has not been produced and proved to show that the complainants have suffered grievous fracture. As such, no grievous offence under Section 325 of IPC has been made out and accordingly the respondent Nos.1 to 3 were acquitted.
4. Learned counsel for the petitioners submits that merely because the X-ray plate has not been placed before the Court, it cannot be said that no grievous injury has been caused to the petitioners, therefore, the judgment passed by the learned Appellate Court deserves to be set aside and leave to appeal be granted.
5. On the other hand, learned counsel for the respondent Nos.1 to 3 submits that non production of X-ray report is a serious failure on the part of the prosecution, therefore, the offence under Section 325 of CrPC is not made out against the accused respondents.
6. In the matter of **Faizan Ahmed Abdul Wahab Shah**

**vs The State of Maharashtra<sup>1</sup>**, the Bombay High Court has held that in the event of non production of X-ray plate, offence under Section 325 of IPC cannot be said to be made out. In para 19, it has been held as under:-

19. It is seen that the injuries are not proved to be grievous hurt. There cannot be a presumption that the grievous hurt was caused without formal proof of the fact of fracture. The fact of existence of fracture cannot be diagnosed and certified in absence of proof of x-ray plates, unless the fact of fractured bones is perceivable barely of perception by naked eyes and sheerly by clinical examination, its being vivid and palpable. Therefore, proof of x-ray plates was necessary particularly, the appellant had made an attempt to retract the admission of medical certificate/discharge summary.

7. In view of the aforesaid legal position, it is quite vivid that X-ray plate has not been produced and in absence of that, fracture could not be proved and in light of that fact, the Appellate Court has interfered with the order of conviction under Section 325 of IPC on the finding that no offence under Section 325 of IPC is made out against the accused respondents. The

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<sup>1</sup> (2014) 1 MhLJ (Cr1) 648

said finding recorded by the Appellate Court is a finding of fact based on the correct appreciation of facts and law available on record.

8. I do not consider the present to be a fit case for grant of leave to appeal. The CRMP is accordingly dismissed.

Sd/-  
Sanjay K. Agrawal  
Judge

Nirala