
(2019) 03 CHH CK 0033
In the Chhattisgarh High Court
Case No : Criminal Appeal (CRA) No. 481 Of 2010

Naresh Singh

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 05-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 323, 324, 341

Citation : (2019) 03 CHH CK 0033

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Sameer Singh, Raghvendra Verma

Final Decision : Allowed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred against the judgment dated 24th June, 2009 passed by Second Additional Session Judge (FTC), Korba, District - Korba (C.G.) in Session Trial No. 28/2009, wherein the said court convicted the appellant for commission of offence under Sections 341, 324 of IPC, 1860 and sentenced to undergo S.I. for one month and R.I for four months respectively.

2. In the present case name of the victims are Shriram Shriwas, Sunil Kumar and Kranti Sharma. On the date of incident all three, named above were going on motor-cycle towards the temple and when they reached near Chuiya Canal they were stopped by the appellant and other co-accused who assaulted the victims. Some police personnel reached there and caught two of the accused persons involved in the assault. The appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Sunil Kumar Channe (PW-9) deposed that three person were sitting at the place of occurrence and the prosecution made five accused persons in the present

case, therefore, story putforth by the prosecution is concocted. Shriram Shriwas (PW-10) deposed on the same line and 5 persons have been putforth in the identification parade and in the parade Shriram Shriwas identified only two persons. Therefore, version of the prosecution is suspicious. Statement of Kranti Sharma (PW-8) suffers from omissions and contradictions, therefore, his version cannot be the basis for conviction. 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 marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. From the statements of Kranti Sharma (PW-8), Sunil Kumar (PW-9) and Shriram Shriwas (PW-10) it is established that appellant participated in crime in question and he restrained them with other accused and who have been assaulted by club and belt. Version of these witnesses is unshaken and it is further supported by the version of Dr. Pooja Agrawal (PW-1). As per the version of this medical expert she found abrasion on right cheek of Sunil Kumar Channe and again found multiple injury in both sides of his throat. As per the version of this witnesses, the injuries were simple in nature and caused by hard and blunt object. This witnesses also found swelling in left hand of Shriram Shriwas again found abrasion and as per the version of this witness the injuries were simple in nature caused by hard and blunt object. She also examined Kranti Sharma and found injury on his left elbow and wrist which was simple in nature caused by club or belt. Injury of this person is also simple in nature and it appears to be caused by club or belt.

6. On perusal of the entire evidence on record and facts, it is established that the appellant and other co-accused persons assaulted three persons and caused simple injury to them by hard and blunt object.

7. The question for consideration before this court is whether act of the appellant falls within mischief under Section 324 of IPC. As per section 324 of IPC, if anyone voluntary causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death then mischief falls within that section. In the present case no instrument of shooting, stabbing or cutting was seized or the instrument was of nature to cause death. It is an assault by club and belt therefore, act of the appellant does not fall within mischief under Section 324 IPC however, his act falls within mischief under Section 323 of IPC. His conviction for offence in 341 is also established, therefore, conviction of the appellant is modified and he is convicted for offence under Sections 341 and 323 of IPC. As per record he suffered jail term from 8th October 2008 to 01st January 2009 i.e. two months and 24 days. No useful purpose would be served by sending him to jail again. Considering the facts and circumstances of the case, the sentence of period already undergone by the appellant would be sufficient for the offence under Sections 341 and 323 IPC and

accordingly, his sentence is reduced to the period already undergone by him. The fine amount imposed against him shall remain intact.

8. With these modifications, the appeal is allowed in part.