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**(2020) 02 CHH CK 0066**  
**In the Chhattisgarh High Court**  
**Case No : Criminal Appeal No. 2279 Of 1999**

Phoolchand Alias Bhikhu

APPELLANT

Vs

State Of Madhya Pradesh (Now Chhattisgarh)

RESPONDENT

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**Date of Decision :** 06-02-2020

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 374(2)  
Indian Penal Code, 1860 — Section 320, 333

**Citation :** (2020) 02 CHH CK 0066

**Hon'ble Judges :** Ram Prasanna Sharma, J

**Bench :** Single Bench

**Advocate :** Sunil Tripathi, Raghvendra Verma

**Final Decision :** Partly Allowed

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## Judgement

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 10.08.1999 passed by Additional

Sessions Judge, Surajpur, District- Surguja (C.G.) in Session Trial No. 204/1989, wherein the said court convicted the appellant for commission of

offence under Section 333 of IPC, 1860 and sentenced to undergo R.I. for 5 years and fine of Rs. 200/- with further default stipulations.

2. In the present case, complainant is Shashikant Mishra who was Forest Guard. On the date of incident i.e. on 05.06.1988, when he was coming to

his residence at Village- Latori at about 7:00 p.m., the appellant assaulted him by club. It is alleged that some action was taken by the Forest Guard

against the appellant for unauthorized possession of some wood that is why the appellant assaulted him. The matter was reported, the appellant was

charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

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

(i) There is no proper evidence to show that the complainant was performing official duty at the time of commission of offence or the offence is

committed regarding his any official act performed in the past, therefore, it is not a case under Section 333 of IPC.

(ii) The independent witnesses have not supported version of the complainant-Shashikant Mishra, therefore, version of the complainant is not dependable.

(iii) The trial court has not evaluated the evidence properly, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the

same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record.

6. Dr. B.P. Chandra (PW-8) examined the complainant namely Shashikant Mishra on 06.06.1988 and recorded injuries on body of the complainant.

He referred the matter for X-ray and after X-ray, Dr. Mukesh Kumar Jain (PW-9) opined that there was fracture in Ulna bone of left hand. From

evidence of this witness, it is established that Shashikant Mishra suffered fracture which is grievous injury as per Section 320 of IPC, 1860.

7. In the present case, the only eye-witness account to the incident is Shashikant Mishra. As per version of this witness, when he was returning to his

residence and reached near house of the appellant, the appellant assaulted him. As per version of this witness, he assaulted him because he had taken

action against him regarding cutting of wood from forest. Version of this witness is un rebutted and from his evidence, it is established that he has been

assaulted because he had taken action against the appellant. Causing grievous hurt to deter public servant from his duty or for his previous act during

duty is offence punishable under Section 333 of IPC for which the trial court convicted the appellant and his conviction is hereby affirmed.

8. The appellant has suffered jail sentence from 10.08.1999 to 10.09.1999 i.e. for 1 month. Considering the facts and circumstances of the case, this

Court is of the opinion that the ends of justice would be met if the appellant is sentenced to the jail sentence of the period already undergone by him.

Accordingly, his sentence is reduced to the period already undergone by him. However, the fine amount imposed by the trial court shall remain intact.

9. With these modifications, the appeal is partly allowed.