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**(2019) 10 CHH CK 0117**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal No. 1170 Of 2007

Shobharam And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Oct. 17, 2019

**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 323, 324, 342
- Code Of Criminal Procedure, 1973 - Section 320(1)

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

**Bench:** Single Bench

**Advocate:** JK Shastri, Meena Shastri, Ishwar Jaiswal

**Final Decision:** Allowed

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**Judgement**

Ram Prasanna Sharma, J

1. The appeal is preferred against judgment dated 19.12.2007 passed by Sessions Judge, Koriya (Baikunthpur), (CG) in Session Trial No.133/2006

wherein the said Court convicted the appellants for the commission of offence under Sections 324/34, 323/34 and 342 of the Indian Penal Code and

sentenced them to undergo rigorous imprisonment for one year and to pay fine of Rs.300/-, simple imprisonment for one year and RI for six months

and to pay fine of Rs.200/- respectively with default stipulations.

2. Heard on application under Section 320(1) of the Code of Criminal Procedure, 1973 filed by complainant OM Prakash for compounding the offence

under Sections 323/34 and 342 of Indian Penal Code.

3. Complainant Om Prakash is present in person. He submits that he has filed an application to compound the offence under Sections 323/34 and

342/34 IPC for which the appellants have been convicted by the trial Court.

4. In view of the submission of the complainant, the application is allowed and the offence under Sections 323/34 and 342 IPC is compounded and the appellants are acquitted of said charges.

5. However, as Offence under Section 324/34 IPC is not compoundable, judgment is delivered separately regarding this offence.

6. As per the prosecution case, in the morning of 27.5.2005, the appellants assaulted Shobhnath after entering into his courtyard. The matter was reported and investigated and after completion of the trial, the appellants have been convicted under Section 324/34 Indian Penal Code.

7. Learned counsel for the appellants submits that there was land dispute between the parties and the prosecution case is not supported by the independent witnesses and looking to the discrepancies in the statement of the prosecution witnesses, the trial Court is not right in convicting for the offence under Section 324/34 Indian Penal Code and the same is liable to be reversed.

8. 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 while invoking the jurisdiction of the appeal.

9. Now the question for consideration before this Court is whether the appellants with common intention assaulted Shobhnath by means of any heated substance. Shobhnath (PW-5) deposed before the trial Court that appellants Shobharam and Chaitu assaulted him by fire wood due to which he sustained burn injuries. Version of this witness is supported by version of Dr. Ashok Kumar Bhagat (PW-9) who examined Shobhnath on 28.5.2005 and found burn injuries on his chest. Version of Shobhnath is supported by FIR (Ex-P/1) in which name of the appellants are mentioned as culprits.

Version of this witness is unrebutted during cross-examination and there is nothing on record to show that the appellants have been falsely implicated.

Therefore, finding of the trial Court for commission of offence under Section 324/34 IPC is not liable to be interfered with and their conviction is hereby affirmed.

10. Heard on the point of sentence.

The appellants have suffered the agony of trial since 28.11.2006 i.e. for 13 years. Jail sentence is not mandatory for the offence under Section 324

IPC. Therefore, looking to the suffering of the appellants, jail sentence of RI for one year imposed by the trial Court against the appellants for

commission of offence under Section 324/34 IPC is hereby set aside while fine amount imposed by the trial Court is maintained.

11. With this modification, the appeal is allowed in part.