

(2019) 02 CHH CK 0544

Chhattisgarh High Court**Case No:** Criminal Appeal (CRA) No. 339 Of 2009

Gayatri Vayas

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Feb. 28, 2019**Acts Referred:**

- Indian Penal Code, 1860 - Section 325

Hon'ble Judges: Ram Prasanna Sharma, J**Bench:** Single Bench**Advocate:** Bharat Rajput, Subha Shrivastava**Final Decision:** Dismissed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred against the judgment dated 29-1- 2009 passed by the First Additional Sessions Judge, Baloda Bazar, Dist. Raipur (CG) in

Session Trial No. 30 of 2008 wherein the said Court has convicted the appellant for the commission of offence under Section 325 of IPC and

sentenced him to undergo RI for four years and to pay fine of Rs.500/- with default stipulations.

2. In the present case victim is Ripusudan who is husband of the appellant. As per version of prosecution, the appellant had married with one other

woman and on the date of incident the victim asked the appellant to go with him to Jammu for labour work to which she denied and due to which

some dispute took place between them. On the date of incident, the appellant woke up at 4.00 a.m. and assaulted the victim on his head by a small

hammer as a result of which he became unconscious. The matter was reported and investigated and after completion of investigation charge sheet

was filed, the appellant did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant would submit as under:

i) Prosecution has failed to establish the incident because at the time of incident victim was sleeping and he could not see as to who really assaulted him.

ii) The prosecution witnesses have made controversial statement and their statement is not reliable.

iii) The trial Court has not evaluated the evidence in its true perspective, therefore, same is not liable to be sustained.

4. On the other hand, learned counsel for the respondent/State would submit that the finding of the trial Court is based on proper marshalling of the

evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. PW/2 Ripusudan Vayas deposed before the trial Court that on the date of incident at about 4.00 am the appellant assaulted him by a hammer on his

face due to which he became unconscious. Version of this witness is supported by version of Madhusudhan (PW/3), Vayas Narayan (PW/4) and

Lakshmidas Manikpuri (PW/5). All the witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of

defence. Again, version of these witnesses is supported by version of Dr. Gambhir Singh (PW/11) who examined the victim on 15-3-2008 at

Ambedkar Hospital & Pandit Jawaharlal Nehru Medical College Raipur and noticed the following injuries vide Ex.P/10.

i) Lacerated wound of 3 cm stitched wound over nose.

ii) Multiple lacerated wounds over scalp in the size of 3 cm x 1cm

iii) Lacerated wound of 2 cm stitched B/C over supra-vertical ridge.

iv) Lacerated wound of 2 cm over left ear.

v) Two teeth were broken.

7. Dr. Narayan Singh (PW/13) examined the victim and noticed the following injuries on his body vide Ex.P/14.

i) (mid parietal area) 20c.m.+13 c.m.

17 20 c.m.

ii) 16 c.m. 6

iii) 10

iv) (incisors)

8. From the evidence of this witness it is established that there was fracture on right parietal area and two teeth were broken. The injuries were

grievous in nature. Version of these witnesses is unshaken and there is no other expert's opinion contrary to opinion of this witness. Therefore, there is

no reason to disbelieve the version of this witness. There is no material contradiction in the statement of the victim and other supporting witnesses. If

there is minor contradiction, same is insignificant.

9. Looking to the entire evidence, it is established that the appellant caused grievous injury to victim and her act falls within mischief for which the trial

Court convicted her. Argument advanced on behalf of the appellant is not sustainable. Conviction of the appellant is hereby affirmed. The trial court

awarded four years for the said offence which cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also not liable to be

interfered with.

10. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. The trial Court will call report from Central Jail,

Bilaspur/concerned jail whether she is suffering jail term or whether she has completed full jail term or not. If she has not completed full jail term and

released on bail, then warrant of arrest be issued against her and after her arrest she be sent back to concerned jail for serving out the remaining part

of jail sentence. If she has completed the full jail term, then nothing remains to comply with.