

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 17 of 2001**

1. Suresh Kumar S/o. Sheonandan Kurmi, aged about 25 years.
2. Manharan S/o Sheonandan Kurmi, aged about 23 years.

Both Resident of Village Kharhatla Police chowki Pandatarai, P.S. Kunda
Tahsil, Pandariya Dstt. Kawardha.

---- Appellants**Versus**

- State Of Chhattisgarh

---- Respondent

For Appellants
For State

Mr. Aditya Khare, Advocate
Mr. S.R.J. Jaiswal, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****11.01.2017**

1. The Appellants in the present appeal have been convicted for the offence under Section 325 IPC and have been sentenced to undergo R.I. for 3 years and fine of Rs. 500/- with default stipulation.
2. As per the prosecution case an F.I.R was lodged on 11.03.1999 by PW1 Sheonandan in respect of the Appellants assaulting him at his house causing grievous injuries on his head and other parts of body. Based on the said F.I.R. the Appellants were taken into custody. On due investigation and on the basis of the statements which had been recorded and collected by the prosecution prima facie found the Appellants to have been involved in the said offence. Accordingly

the charge sheet was filed and the matter was put to trial before the Additional Sessions Judge, Mungeli District Bilaspur where the case was registered as Sessions Trial No. 184/1999 for the offence under Section 325/34 IPC. During the course of trial the prosecution examined 9 witnesses whereas the defence did not examine any witness. After the conclusion of the trial the Court below reached to the conclusion that the prosecution in the present case has been able to establish the case beyond all reasonable doubts establishing the guilt of the Appellants for the offence under Section 325/34 IPC and sentenced them for the period as mentioned in the first paragraph.

3. Learned Counsel for the Appellants submits that the narration and evidence of the prosecution case by itself reflects the background under which the assault was made by the Appellants. It was also contended by the Counsel for the Appellants that in the present case the two appellants are the real sons of the injured victim PW-1 Sheonandan. Taking into consideration the relationship between the two i.e. the Appellants and the victim the Court may consider the case sympathetically. It was further contended by the Counsel for the Appellant that the entire incident occurred because of the fact that it was alleged that PW-1 Sheonandan is said to have raped his daughter in law i.e. wife of the Appellant No.1 Suresh and the whole fight between them arose because of this.
4. Learned Counsel for the Appellants further also mentioned that the relationship between the two and the reasons for the incident may be borne in mind by this Court and may consider the case for reducing

the sentence to the period already undergone.

5. According to the Counsel for the Appellants there was no premeditation on part of the present Appellants in assaulting the victim PW-1 but it was the act on part of PW-1 which led to the fight between the sons with their father. The allegation on the victim PW-1 the father of the Appellants was of having raped the wife of the Appellant No.1 which had led to the fight between the Appellants and PW-1. According to the Appellants it was on the spur of the moment and heat of passion which led to the assault. The allegation leveled against PW-1 were so strong which could have agitated any normal human being in the family particularly the act which has been done by the father in law against his daughter in law.
6. Counsel for the Appellants also contended that even if all the statements of the injured PW-1 is accepted there has been no evidence what soever to establish the offence against the Appellant No.2 and benefit of which should go to the Appellant No.2 and he should be let off of the charges leveled against him.
7. It was lastly contended by the Appellants that the evidence would show that the victim to have raped wife of Appellant No.1 and it was the Appellant No.1 who had assaulted the victim with the aid of lathi and there is not much which have come on record which goes against the Appellant No.2 Manharan and therefore at least Manharan should be discharged from the allegation against him and the judgment of acquittal deserves to be passed in favour of the Appellant No. 2.
8. Opposing the appeal learned State Counsel submits that it is a case

where the prosecution has proved its case beyond all reasonable doubts, therefore there is no scope of interference with the impugned judgment of conviction. According to the State Counsel the statement of the injured victim PW-1 Sheonandan by itself is sufficient to establish the charges which have been leveled against the Appellants.

9. According to the State Counsel the case of the prosecution stands further corroborated from the FIR report which has given the finding that the blood stains were found on the lathi belonging to Appellant No.1 Suresh. As such there is no reason to disbelieve the statement of PW-1 Sheonandan for the simple reason that no father would like to implicate his son for an assault made against him and if the father in the present case having done so it would establish that the victim had in fact been assaulted on account of which he has been compelled to lodge the report. Also there is not much contradiction, omission or discrepancies in the initial complaint and statement which the victim PW-1 made before the Police Authorities than one which he has made before the Court during the course of evidence.
10. Learned State Counsel further submits that the nature of injury sustained by PW-1 shows that there were two fracture one on the parietal region and other on the right hand finger which squarely bring the nature of the offence under ambit of Section 325 IPC. Thus the State Counsel prays for rejection of the appeal.
11. Having heard the rival contention put forth on either side and perusal of the records some of the admitted facts which are reflected from the evidence is that the Appellants herein are two sons of PW-1 the

injured victim Sheonandan. There is also allegation that an FIR was lodged on the same date against the PW-1 alleging that PW-1 is said to have raped the wife of the PW-1 which infuriated the appellants and they assaulted their father on the same day. The date of incident in the present case is 10.03.1999 i.e. almost more than 17 years ago. The conviction of the Appellant also is of 27.12.2000 which again is more than 16 years ago. The evidence of PW-8, Devi Prasad Tiwari, the Investing Officer reflects that there was a complaint lodged by the wife of the Appellant No.1 against PW-1. The evidence which is on the record does not show that there was any sort of previous animosity between the Appellants with PW-1 rather their relationship were not inimical stands established from the fact that they were staying together. The evidence which have come on record particularly that of PW-1 the injured victim also would reflect that there was no previous fight. Neither is there any evidence to show any premeditation on part of the Appellants to assault the injured. Another aspect which cannot be brushed aside is the fact that both the appellants are real brothers and injured is their real father and that no grown up sons would assault his father unless there is some serious provoking action on part of the father which might have in the spur of moment and heat of passion made the sons assault their father.

12. In the instant case from the fact that there is an allegation made by the wife of Appellant No.1 that PW-1 has raped her is a sufficient cause which could have generated sufficient heat of passion in the family which must have infuriated the two brothers to assault their

father. Further from the evidence of PW-1 in his cross examination he admits that there was such shameful allegation leveled against PW-1 in respect of his elder son and his wife also and therefore they had left the family and started residing elsewhere.

13. The fact that still remains is that on account of the assault which has been made by the Appellants, PW-1 the injured had received injuries on his head and on other parts of the body. There were as much as 9 injuries made, except for one i.e. on head injury which was on parietal region, all were on the non-vital parts of the body and were simple in nature. It also does not reflect that the PW-1 the injured was hospitalized for a considerable period of time.
14. Thus from the evidence which have come on record the incident definitely stands established from the evidence of PW-1 as well as PW-4, Prasad Mochi and PW-8, Devi Prasad Tiwari, the Investigating Officer and thus the conviction of the Appellant for the said offence stands proved and established and does warrant interference by this Court therefore the same is accordingly affirmed.
15. However taking into consideration the factual matrix of the case and the relationship between the Appellants and the victim and nature of the allegation which provoked and infuriated the Appellants to assault the victim and also the fact that all the injuries except for one were simple in nature and that the incident occurred in March, 1999 i.e. occurred about 17 years ago and the Appellants in the instant case have remained in custody for about 37-38 days, this Court is of the opinion that the ends of justice would meet if sentence of the Appellant is reduced and modified to the period already undergone.

However, the fine amount which has been imposed by the Court below is enhanced and it is ordered that the Appellants shall pay fine of Rs. 2500/- each and said amount shall be payable to the victim PW-1. It is ordered that the Appellants shall pay the fine amount within a period of three months from the date of passing of the order and in case there is default there shall be R.I. for period of three months.

16. In view of the same the appeal with the above modification in the sentence stands dismissed.

17. The Appellants are on bail. Their bails bonds shall remain operative for a period of 6 months in view of the provisions contained in Section 437-A of the Cr.P.C.

Sd/-

(P. Sam Koshy)
JUDGE