

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1124 of 2001****Judgment Reserved on 11.07.2018****Judgment Delivered on 19.07.2018**

- Neelu S/o Devanta Thethwar, aged about 19 years, R/o Village Rakhi, Police Chowki, Devkar, Tehsil, Bemetara, District Durg C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through P.S. Saja, District Durg.

---- Respondent

For Appellant
For State

Shri Adil Minhaj, Advocate.
Ms. K. Tripti Rao, P.L.

Hon'ble Shri Justice Gautam Chourdiya
C A V Judgment

1. This appeal arises out of the judgment of conviction and order of sentence dated 30.10.2001 passed by learned Additional Sessions Judge, Bemetara, C.G. in Sessions Trial No. 128/1999, whereby, the appellant stands convicted and sentenced as under:-

S.No.	Conviction	Sentence
1.	Under Section 452 of Indian Penal Code (for short 'IPC')	R.I. for 1 year and fine of Rs. 500/- in default of which 02 months R.I.

2.	Under Section 323 of IPC	R.I. for 6 months and fine of Rs.500/- in default of which 2 months R.I.
----	--------------------------	--

2. As per prosecution case, on 01.10.1997 at about 10:30 A.M., victim Janki Bai after taking meal, taking rest at her home. At that time, Neelu Thethwar, accused/appellant entered into the room of victim and assaulted her from belt. From the place of occurrence he suddenly took glass lamp & scissor and sustained various injuries on her body and fell down on floor. Thereafter, appellant/accused started beating the victim by hands and legs. Because of this quarrel, she cried for help; came out from the house and narrated the story to Neeta Bai & other villagers. Before the incident, husband of victim, Shankar Prasad Tiwari, had withdrawn Rs.15,000/- from bank and kept that amount in Almirah but after searching that amount was not found in Almirah. The victim Janki Bai doubted on the family members of appellant/accused that they have stolen the money and for this reason the appellant/accused had beaten the victim. Immediately after the incident, 0/97 FIR Ex.P-11 was lodged by Surya Prasad Constable PW-9, in Outpost Devekar. Thereafter, FIR was lodged in Police Station, Saja Ex.-P/10 No. 99/97. Janki Bai/Victim was sent for medical examination by Ex.P-6. After examination MLC Ex. P-6C

was prepared by Dr. M.C. Mehnot PW-15, who noticed following injuries on the body of the deceased:-

- i) Lacerated wound $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{4}$ " on the right side parietal region.
- ii) Lacerated wound $\frac{1}{4}$ "x $\frac{1}{4}$ "x $\frac{1}{6}$ " on the right side ring finger.
- iii) Contusion & Abrasion $2\frac{1}{2}$ "x 2" on the right side of neck.
- iv) Contusion seen on the left auxiliary regions 2"x2".

3. As per Ex.P-7 one glass lamp, scissor and broken piece of bangles, leather belt etc. were seized. One broken chain (*mala*) was also seized as per Ex. P-8.
4. After completion of investigation charge sheet was filed against the accused/appellant under Sections 452, 324, 307, 506B of IPC. However, while framing charge the trial Court framed charge against the accused/appellant under Section 452 and 307 of IPC.
5. So as to hold the accused person guilty, the prosecution examined as many as 16 witnesses. Statement of the accused person was also recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, he examined 2 witnesses

DW-1 (Prakash Choubey) & DW-2 (Behalram).

6. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted and sentenced the appellant as mentioned in para-1 of this judgment.
7. Learned counsel for the appellant submits as under:-
 - i) the impugned judgment of the trial Court is contrary to law and facts and circumstances available on record.
 - ii) prosecution witnesses have not supported the prosecution case.
 - iii) seizure has not been proved by prosecution witness according to law.
 - iv) medical report does not support the victim statement, therefore, the judgment of trial Court suffers from material illegality and deserves to be set aside.
 - v) at the time of incident appellant/accused was below 19 years old and there is no any previous criminal record on the appellant, therefore, he was the first offender, so Probation of Offenders Act benefit may be given to the appellant.
8. On the other hand, supporting the impugned judgment it has

been argued by the State counsel as under:

- i) complainant statement is supported by PW-1 Daulal and MLC report Ex.P-6 also proved by PW-15 Dr. M.C. Mehnot and other corroborative evidence is available.
- ii) Forensic report also supports the prosecution case, there is no infirmity in the judgment of trial Court and there is no reason to falsely implicate appellant in this case.

9. Heard counsel for the respective parties and perused the material on record.

10. PW-2 Janki Bai in her examination stated that accused/appellant entered into her room and assaulted her with the help of belt. From the place of occurrence he suddenly took glass lamp & scissor and sustained various injuries on her body and fell down on floor. Thereafter, appellant/accused started beating the victim by hands and legs. Because of this quarrel, she cried for help; came out from the house and narrated the story to Neeta Bai, Daulal Gupta (Patwari) and other villagers.

11. PW-1 Daulal & PW-3 Indervasni Gupta wife of Daulal also supported the complainant's statement that after the

incident Janki Bai narrated the story about the assault & injury caused by accused/appellant and Janki Bai informed the villagers who were present there that accused/appellant Neelu was assaulted her by night lamp, scissor and other articles. There is no reason to disbelieve the version of this witness.

12. PW-4 Shankar Prasad, husband of the complainant stated that when he came to his home after the incident his wife Janki Bai narrated entire story regarding assault by appellant/accused. PW-4 Shankar Prasad also supports the witness PW-2 victim's version that Rs.15,000/- was not found when she searched that amount was stolen by someone.

13. Statement of PW-5 Lakhan was also not challenged in the cross examination and prior to this incident there is good relation between the accused and victim and their family purchased milk from appellant/accused.

14. PW-8 Yashwant also supports the complainant's statement that after the incident Janki Bai informed the villagers and narrated the entire story. Thereafter, Ex.P-9 and Ex.P-10 were registered by PW-9 Surya Prasad and on the same day, he arrested the accused/appellant as per arrest memo Ex. P-12.

15. According to the statement of PW-15 Dr. M.C. Mehnot, who examined the victim Janki Bai on the same day i.e. 01.10.1997 and noticed the injuries found on the body of the victim mentioned in para 2 of this judgment.
16. Ex.P-6 MLC report of Janki Bai, Ex.P-15 examination of used articles which caused the injury to victim and bed head ticket of the victim Ex.P-20 proved by PW-15 Dr. M.C. Mehnot and that statement of PW-15 Dr. M.C. Mehnot is not challenged in cross examination.
17. As per Ex.P-7 broken glass, night lamp, one broken scissor, one leather belt and other materials were seized and proved by PW-9 Surya Prasad and that was also not challenged in cross examination. As per Ex.P-17 & Ex.P-18 human blood found on the articles i.e. glass of pieces, earthen soil and saree; Ex. P-19 spot map was proved by PW-14 (Bharatram Sahu). Ex.P-7 and Ex.P-8 were proved by PW-10 (Milap). PW-9 Suryaprasad proved the seized articles as per Ex.P-7 and Ex.P-8.
18. DW-1 (Prakash Choubey) & DW-2 (Behalram) both witnesses stated that appellant/accused was not present in the village Rakhi on the date of incident and the accused/appellant was in the house of his Maternal Uncle (*Mama*) at Tendubhata but both witnesses in his

examination admitted that accused/appellant gone Tendubhata after incident they have no knowledge about that fact.

19. No any suggestion to the prosecution witness regarding the plea of alibi of accused and no any evidence was produced that at the time of incident, accused was not present in the spot where incident happened.
20. Going through both the evidence prosecution and defence, prosecution has proved his case beyond reasonable doubt that accused/appellant was entered in the home of victim with preparation to cause injury.
21. Accused/appellant committed house trespass, having made a preparation for cause hurt to victim Janki Bai; assaulted her and caused simple injury on the body of the complainant.
22. In view of what has been discussed above, this Court is of the considered opinion that the prosecution has proved its case beyond all reasonable doubt and so the Court below was fully justified in passing on the conclusion collected by the prosecution. No inference finding of the conviction of the Court below is called for interference. Conviction of the trial Court under Section 452 and 323 his conviction affirmed.

23. Learned counsel for the appellant argue in this matter that the appellant was below the age of 18 years on the date of incident and was the first offender. After the incident and before the incident he was not committed any offence or crime. He was the first offender. As per Section 6 of Probation of Offenders Act, 1958, below 21 years of age cannot be sentenced unless specific reason was mentioned.
24. Cause of occurrence arises only on the apprehension regarding theft caused by appellant/accused shown by the complainant. Prior to incident, there was good relation between the family members of the victim/complainant and accused and it is also admitted by the PW-4 Shankar Prasad husband of complainant in paragraph No.4 of his statement that prior to incident appellant/accused supply the milk in the house of Victim/complainant. So there is cordial relation between both the family members. Appellant/accused was below the age of 18 years at the time of incident so benefit under the Probation of Offenders Act may be given to the accused. It is also argued by the counsel that if the Probation of Offenders Act is not provided to this accused/appellant, his undergone is sufficient.
25. As per the judgment of trial Court, it is specifically mentioned that the accused/appellant was in 12 days in judicial custody and that 12 days set off in his sentence.

26. The age of accused/appellant was definitely below the 17 years as per Ex. P-14C School Birth Certificate and it is also proved by the prosecution itself. So the age of appellant; nature of offence, cause of offence, looking to the first offender, it is sufficient and justifiable to sentence the accused/appellant to the period already undergone by the appellant/accused.

27. In the result, the appeal is allowed in part. While maintaining the conviction, the appellant/accused is sentenced to the period already undergone with the fine awarded by the trial Court.

28. It is reported that the appellant is in bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-
Gautam Chourdiya
Judge