

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 968 of 2002**

Tirupati @ Dakait S/o. Danteshwar Rao, Aged about 20 years, R/o.
Mahadev Ghat Jagdalpur, District Bastar, Chhattisgarh

---- Appellant**Versus**

State of Chhattisgarh, Through: Police Station Jagdalpur, District
Bastar, Chhattisgarh

----Respondent

For Appellant	:	Mr. Akhil Agrawal, Advocate (Amicus appointed by the Court)
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****24/03/2018**

1. None appears for the appellant. The appeal being of the year 2002 and considering the seniority and since there was no representation on behalf of the appellant on repeated calls, this Court considering the seniority of the case directed Mr. Akhil Agrawal, Advocate present in the Court to assist the Court for final disposal of the appeal. The High Court Legal Aid Department should ensure providing necessary power and authorization to Shri Akhil Agrawal, Advocate for prosecuting this case.
2. The present appeal is filed assailing the judgment of conviction dated 06.07.2002, passed by the Sessions Judge, Bastar, at Jagdalpur, Chhattisgarh in S.T. No. No. 560/2001.
3. Vide the said judgment, the appellant has been convicted and sentenced to undergo rigorous imprisonment for 7 years and fine of Rs.500/- with default stipulation.

4. The case of the prosecution against the present applicant is that on 06.02.2001 in the night, the present applicant is said to have entered into the house of PW/1 Chinna Mistri and is said to have assaulted him with a knife and two stab injuries was caused on the right side of the chest of PW/1. The said injured Chinna Mishtri immediately lodged a report with the police authorities and an F.I.R. was lodged and the present appellant was prosecuted for the said act for the offence under Section 307 of Indian Penal Code. The matter in due course was put to trial before the Sessions Judge, Bastar at Jagdalpur, where the case was registered as Sessions Trial No. 506/2001.
5. In all the prosecution has examined 5 witnesses. PW/1 is the injured witness, PW/4 is alleged eyewitness Govind, who is the son of the injured PW/1. PW/2 is the Doctor namely Dr. N.A.H. Rijvi who had examined the injured. There was no witness examined on behalf of the prosecution.
6. The counsel for the appellant on due consideration of the record submits that this Court should consider the fact that the appellant herein is the grandson of the injured PW/1 and that he could not have committed the said offence as alleged by the prosecution. He further submits that even the prosecution has not been able to specifically established the involvement of the present appellant in the commission of the offence except for the statement of PW/1, whose statement cannot be accepted as admittedly there was a property dispute between the present appellant and the PW/1 and apart from PW/1 there is no material available on record with which

the appellant could be convicted. He further submits that considering the age of the appellant and the fact that even if the prosecution story is accepted, even then it reveals that it was a family dispute and the incident occurred because of some family property dispute and this Court may take a lenient view against the present appellant.

7. The State counsel on the contrary opposing the appeal submits that the case in fact has been duly proved by the witnesses before the Courts below and the case of the prosecution has been well established from the statement of PW/1 the injured himself, who has specifically stated of the present appellant entering into the house where the PW/1 was staying and has assaulted him with a knife and he has received a couple of injuries on account of the assault made by the present appellant. The State counsel submits that there is no reason to disbelieve the statement of PW/1 and since he is the victim himself, his statement has to be given due weightage. He further submits that there is no reason why a grandfather would implicate a grandson for no reason at all. He submits that the injury which has been sustained by the PW/1 stands proved and established from the Doctor PW/2, who has examined before the trial Court. Dr. N.A.H. Rijvi (PW/2) in his statement has specifically stated that there were two injuries on the right side of the chest and both the injuries had the same measurement of $1 \times \frac{1}{2} \times 2 \frac{1}{2}$, one was on the left side of the chest and other was between the 3rd inter-coastal space and vertical thorax and both these wounds were profusely bleeding when the victim was examined. Thus the injured himself has proved the case

of the prosecution and the injuries part stands proved from the statement of the Doctor and the State counsel therefore prayed for the appeal to be rejected.

8. Having heard the contentions put forth on either side and on perusal of record, what reflects from the evidence is the fact that the appellant at the time of incident was a young boy aged around 20 years. From the statement of the PW/1 injured Chinna Mistri itself it is established that there was a property dispute in the family going on. What also stands established is the fact that there does not appear to be any grievous injury sustained by the PW/1 to the extent that there was no fracture, nor did the treatment require prolonged hospitalization in any manner. Thus the gravity of the injury also does not seem to be very serious in nature. Moreover, the present appellant had already remained in custody for a period of around 14 months before he was granted bail by this Court in the present appeal on 20.11.2002, thereafter whether he had been released on furnishing bail is not known to the Court neither to the State counsel.
9. Given the aforesaid facts and circumstances of the case, considering the age of the present appellant and the fact that the nature of injury also was not too grievous and the fact that there was a family dispute pertaining to the partition of property between the PW/1 and present appellant, moreover there does not appear to be any track record of the appellant, with which it could be said that he was a hardcore criminal or had any past antecedent, this Court is of the opinion that the nature of offence also does not appear to

be one which could be brought under Section 307 of Indian Penal Code rather considering the entire factual matrix particularly the statement of the Doctor, and the nature of treatment underwent by the PW/1 the victim, this Court is of the opinion that the offence at best could be one which can be brought under Section 325 of Indian Penal Code, which is punishment for voluntarily causing grievous hurt.

10. Accordingly the conviction of the appellant stands converted from section 307 of Indian Penal Code to one under Section 325 of Indian Penal Code and considering the entire factual matrix of the case particularly the age of the appellant and the fact that he had already remained in custody for 14 months before he was granted bail by this Court in November, 2002, the sentence part for the offence punishable under Section 325 of Indian Penal Code deserves to be reduced and is accordingly reduced to the period already undergone by the appellant.
11. The appeal thus stands allowed in part.

Sd/-
(P. Sam Koshy)
Judge