

HIGH COURT OF CHHATTISGARH AT BILASPURCRA No. 998 of 2003

Girdharilal Sahu S/o Manoharlal Sahu, aged about 45 years, R/o village Sormasinghi, Police Station, Tumgaon, District Mahasamund (C.G.).

---Appellant

Versus

State of Chhattisgarh, Through Police Station Mahasamund, District Mahasamund (C.G.).

---Respondent

For petitioner	:	Smt.Smriti Shrivastava, Panel Lawyer. (Amicus curie appointed by the Court).
For State	:	Shri Sangharsh Pandey, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/03/2018

1. Present is an appeal filed by the appellant in the year 2003. There was no representation on behalf of the appellant when the matter is called.
2. Since the appeal is of the year 2003, this Court thought it fit of engaging Smt.Smriti Shrivastava, Panel Lawyer under the Legal Aid to assist this Court in the disposal of the appeal.
3. Let necessary power in this regard be given by the Legal Aid department to Smt. Smriti Shrivastava for the assistance rendered by her.
4. Present is an appeal filed by the appellant assailing the judgment of conviction passed by the learned Second Additional Judge, Mahasamund in Sessions Trial No.51/2003 decided on 29/07/2003.

5. Vide the impugned order, the trial court has found the appellant guilty of having committed the offence under Sections 307 and 305 of I.P.C. and sentenced him to undergo R.I. for 6 years with a fine of Rs.5,000/- for the offence under Section 307 and R.I. for 2 years with a fine of Rs.1,000/- for the offence under Section 325 of I.P.C. and the court below also imposed default stipulation.

6. The case against the present appellant is that, the present appellant on 04/12/2002 is said to have in the evening reached the house of Draupadi Bai - PW/1 and for small altercation between the two, the appellant is said to have picked up a wooden bat which is used in the villages for washing clothes and assaulted PW/1 on account of which she received injuries. Seeing the assault, PW/2 - the mother of PW/1 is said to have intervened and the present appellant is said to have assaulted PW/2 also with the said bat and she too received fracture injuries. The matter was immediately reported to the police authorities and an F.I.R. was lodged and the present applicant was subjected to trial for the offence punishable under Sections 307 & 325 of I.P.C. In all, the prosecution examined as many as 10 witnesses. There is 1 witness examined on behalf of defend namely Kishan Lal. Apart from PW/1 and PW/2-the two eye-witnesses to the incident, PW/10 - Dr.Girdhari Chandrakar was also examined who has proved the injury sustained by the two injured persons i.e. PW/1 and PW/2.

7. Smt.Smriti Shrivastava appearing for the appellant submits that it is a case where the incident occurred because of the spur of the moment and heat of passion and that the present appellant never had any intention of

assaulting PW/1 and PW/2 and that the fight infact originally started between the present appellant and one Santosh – the son of Bhakli who was teasing the present appellant. That lateron the fight shifted between the appellant and PW/1. Thus, it show that the present appellant never had any intention to assault PW/1 and PW/2 for that matter, but because a spar of moment and heat of passion, the present appellant is said to have assaulted PW/1 and PW/2. She further says that PW/1 is the wife of the present appellant and that there was a cordial relationship between the two and considering the said relationship, a sympathetic approach has to be taken. The contention of the counsel for the appellant is that there is no independent witness examined to prove the incident so also the fracture part. So far as medical evidence is concerned, the doctor who had taken the x-ray has not been examined. Thus, the fracture part of the injury also does not seem to have been established and thus prayed for setting aside of the judgment of conviction and in the alternative she prayed that it may be a case wherein the conviction should be for a lesser offence other than under Sections 307 and 325 of IPC.

8. Per contra, the State counsel opposing the appeal submits that it is a case where the prosecution infact has proved its case beyond all reasonable doubts. That the incident has been proved by the two injured persons themselves and there is no reason to disbelief the injured witness. Further the case of the prosecution also stood established from the evidence of a minor child PW/5 – Khemraj, aged around 12 years who also is the son born from the relationship which the present appellant had with PW/1. According

to the State counsel, these evidences are sufficient to prove the case of the prosecution beyond all reasonable doubts and thus prayed for rejection of the appeal.

9. Having heard the contentions put forth on either side and on perusal of record what undisputedly has come before the trial court by way of evidence is the incident that took place on 04/12/2002. The other aspect is that the present appellant and PW/1 were earlier husband and wife, subsequently there has been a divorce between the two and they both were staying separately. Even then the appellant used to frequently visit the house of PW/1. On the date of incident the present appellant when had come to the house of PW/1, one of the neighbour namely Santosh – the son of Bhakli is said to have teased the present appellant and on account of which there was altercation and fight between the two and Santosh is said to have assaulted the present appellant. Thereafter, the said Santosh has gone to home and brought his mother Bhakli to a place of incident and Bhakli started abusing the present appellant and in the process there was altercation between the present appellant and Bhakli. In between, the present appellant is said to have charged PW/1 saying that as to why she was not intervening or opposing or came to his rescue when he was having a fight with Bhakli. Thereafter, the present appellant is said to have picked up a wooden bat used for washing clothes from nearby courtyard and started assaulting PW/1 on the vital part of her body. In between, the mother of PW/1 also intervened and the present appellant assaulted PW/2 as well and she too received fracture injuries on her hand. The prosecution in the instant case have

examined PW/1, PW/2 & PW/5, the three eye witnesses of which two are injured eye witness. There is no reason to disbelieve the statement of these three witnesses particularly taking note of the relationship which PW/1 and PW/5 had with the present appellant.

10. Apart from the aforesaid evidence of these three witnesses, the injury part further stands established from the evidence of PW/10 – doctor Girdhari Chandra and the injury part also stood fully proved of it being grievous in nature as both the persons PW/1 and PW/2 received fracture injuries of which the injuries suffered by PW/1 was on the vital part of the body particularly on the head and the doctor has clearly stated that the skull got fractured from the centre.

11. Under the circumstances, the conviction of the appellant for the offence under Section 307 for the assault made on PW/1 and Section 325 for the assault made on PW/2 cannot be said to be in any manner contrary to the evidence.

12. Thus, the conviction of the appellant stands affirmed and the appeal fails and it deserves to be and is accordingly rejected.

Sd/-

(P. Sam Koshy)
JUDGE