

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1121 of 2003

- 1. Gangaram alias Rakhiram Chauhan, son of Budhram Chauhan, aged about 21 years,
 - 2. Jairam Chauhan, son of Budhram Chauhan, aged about 23 years,
- Both residents of Aurdapara, Chunabhatha, Police Station Kharsia, District Raigarh, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through the District Magistrate, Raigarh, District Raigarh, Chhattisgarh

--- Respondent

For Appellants	:	Smt. Indira Tripathi, Advocate
For Respondent/State	:	Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

10.5.2018

- 1. This appeal is directed against the judgment dated 30.9.2003 passed by the Sessions Judge, Raigarh in Sessions Trial No.136 of 2001 convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 460 of the Indian Penal Code	Rigorous Imprisonment for 2 years and fine of Rs.1,000/- with default stipulation
Under Section 325/34 of the Indian Penal Code	Rigorous Imprisonment for 2 years and fine of Rs.1,000/- with default stipulation

- 2. The prosecution story, in brief, is that in the year 1999, at the time of Ganesh festival, the Appellants had demanded some donation from Complainant Daduram (PW2), but Daduram had refused to donate any sum. Thereafter, due to this enmity, on 15.2.2000 at

about 10:00 p.m., when Daduram was present in his house along with his daughter Tirathbai (PW3) and son-in-law Kundan (PW4), the Appellants, with an intent to cause injuries to Daduram, forcefully broke the door of his house, entered his house and assaulted him. The matter was reported by Daduram which was recorded in Rojnamcha Sanha (Ex.P1). Daduram was medically examined by Dr. R.K. Singh (PW9). His report is Ex.P2A. He was further examined and treated by a Dentist Dr. D.K. Verma (PW8). His report is Ex.P7. Vide Ex.P4, a broken tooth and a danda were seized from the possession of Daduram. First Information Report (Ex.P3) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellants for an offence punishable under Sections 448, 294, 325, 34 of the Indian Penal Code. Charges were framed against them under Sections 460, 325/34 and 294 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 9 witnesses. Statements of the Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt and pleaded innocence. One witness Govindram Chouhan (DW1) has been examined in their defence.
4. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants argued that the Appellants have been falsely implicated due to a previous enmity.

Tirathbai (PW3), daughter of the Complainant and Kundan (PW4), son-in-law of the Complainant are interested witnesses. As per the prosecution story and the statements of witnesses, the Appellants had broken the fixture of the door of the house of the Complainant by kicking the door, but no such fixture or broken door was seized from the spot. Therefore, no offence is made out against the Appellants under Section 460 of the Indian Penal Code. The tooth of the Complainant had already broken due to his falling down. The Appellants did not assault him resulting break of his tooth. Therefore, no offence under Section 325 read with Section 34 of the Indian Penal Code is made out.

6. Per contra, Learned Counsel appearing for the State opposes the above submission, supports the impugned judgment and submits that the testimony of Daduram (PW2), Tirathbai (PW3) and Kundan (PW4) is duly reliable and their statements are duly corroborated by independent witnesses Chheduram (PW5) and Sunil Kumar (PW7). He further submits that from the medical reports (Ex.P2A and P7) also, it is established that Daduram had sustained grievous injury which was caused by the Appellants. Therefore, the Trial Court has rightly convicted and sentenced the Appellants.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Daduram (PW2) has stated that at the time of Ganesh festival, the Appellants had demanded a donation from him. A dispute had taken place between them on this count. Thereafter, the Appellants had threatened him that they will break his hands and legs. He has further stated that on the date of incident at about

10:00 p.m., he was present in his house. The door of his house was closed. At that time, the Appellants came there and kicked on the door of his house and removed the door from its fixture and frame. The Appellants were armed with danda. They assaulted him with a danda. His two teeth broke and he also suffered injuries on his back and thigh. The incident was witnessed by his daughter Tirathbai (PW3) and son-in-law Kundan (PW4). His statement is duly corroborated by Tirathbai (PW3) and Kundan (PW4). Both have stated that the Appellants had entered the house of Daduram by breaking the door of the house with their kicks at about 10:00 p.m. Tirathbai (PW3) has stated that on being cried by his father, she woke up and saw that the Appellants were present there and her father was bleeding from the mouth and his two teeth had broken. Kundan (PW4) has stated that he had made the Appellants run away from there.

9. Chheduram (PW5) has also supported the above statements to some extent. He has stated that when he was passing from the front of the house of Daduram (PW2), at that time, the door of the house of Daduram was closed. He heard some noise from inside the house. After some time, Daduram came out of his house and told him that the Appellants had quarreled with him. He had gone along with Daduram to the police station.
10. Sunil Kumar (PW7) seems to be an independent witness. He has stated that at the relevant point of time, when he reached in front of the house of Daduram (PW2), he saw that the Appellants were beating Daduram inside his house and tooth of Daduram had broken.

- 11.** Daduram (PW2) was first examined by Dr. R.K. Singh (PW9) on 16.2.2000. The doctor has stated that a swelling was present near the mouth of Daduram. On being touched on the swelling, he was complaining of pain. Two canine teeth of upper jaw were not present and Daduram was bleeding from there. He opined that the injury was caused by a hard and blunt object and duration of the injury was 14 to 16 hours. Daduram was further examined by an expert Dentist Dr. D.K. Verma (PW8) on 17.2.2000. Dr. D.K. Verma (PW8) has stated that third and fourth teeth of left side of upper jaw were broken.
- 12.** Head Constable Ranbeer Singh (PW1) is the witness who recorded the report lodged by Complainant Daduram (PW2) vide Rojnamcha Sanha (Ex.P1) and after the medical examination, on the basis of the medical report of Daduram, he registered FIR (Ex.P3). Head Constable Kanhaiyalal Tripathi (PW6) is the witness who investigated the matter. During investigation, he prepared spot-map (Ex.P5). He seized one danda and one broken tooth from Daduram vide Ex.P4 and also recorded statements of witnesses under Section 161 of the Code of Criminal Procedure.
- 13.** From a minute examination of the above evidence, it is clear that Complainant Daduram (PW2) has stated that at the relevant point of time, when he was present in his house, both the Appellants came there, they broke the door of his house by kicking the door and thereafter they assaulted him with a danda. Daduram sustained injuries in which his two teeth broke. Tirathram (PW3), daughter of Daduram and Kundan (PW4), son-in-law of Daduram have duly supported the statement of Daduram (PW2) and they

have remained firm during their cross-examination. Sunil Kumar (PW7) is the independent witness. He has also duly supported the statement of Daduram (PW2). He has categorically stated that he had seen the Appellants assaulting Daduram inside the house of Daduram and he had also seen that teeth of Daduram had broken. Though neither the door nor any fixture or frame of the door of the house of Daduram has been seized yet from the statements of the witnesses it is clear that at the time of incident Daduram was present inside his house and at that time itself the Appellants had entered his house and assaulted him. From the statements of Dr. R.K. Singh (PW9) and Dr. D.K. Verma (PW8), it is also clear that two teeth of Daduram had broken and breaking of the teeth had taken place within 14 to 16 hours and swelling was also present around the mouth on the left side and blood was present over the socket of teeth. Therefore, it cannot be said that teeth of Daduram had already broken prior to the incident.

14. From the above discussion, the offence alleged against the Appellants under Sections 460 and 325/34 of the Indian Penal Code is proved. Therefore, the conviction imposed upon them under Sections 460 and 325/34 of the Indian Penal Code is affirmed.
15. So far as sentence part is concerned, the incident took place in the year 2000. The Appellants are facing the *lis* for the last 18 years. During trial, they remained in custody for about 29 days and during pendency of this appeal they remained in custody for about 1 month, i.e., total about 2 months. They have no known criminal antecedent. Therefore, considering the above facts and

circumstances of the case, it would not be appropriate to send them back to jail after about 18 years. In my considered opinion, the interest of justice would be served if they are sentenced with the period already undergone by them and the sentence of fine of Rs.1,000/- is enhanced to Rs.10,000/- each for the offence under Section 460 of the Indian Penal Code and the fine of Rs.1,000/- is enhanced to Rs.10,000/- each for the offence under Section 325/34 of the Indian Penal Code. Ordered accordingly. The enhanced fine of Rs.10,000/- – Rs.10,000/- shall be paid by the Appellants within two months from the date of receipt of a copy of this judgment. In default of the payment of enhanced fine, the Appellants shall be liable to undergo additional rigorous imprisonment for six months. If any amount has already been paid towards fine, the same shall be adjusted in the amount of fine enhanced today.

16. Consequently, the appeal is allowed in part to the extent indicated above.
17. It is reported that the Appellants are on bail. Their bail bonds shall continue for a further period of six months from today in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
18. Record of the Court below be sent back along with a copy of this judgment for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE