

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 487 of 2001**

- Pradeep Sharma@ Bandhu Sharma, S/o Shri Makhanlal, aged 22 years, R/o Kududand Milan Chowk, Bilaspur, C.G., P.S. Civil Line Bilaspur, C.G.

----Appellant

Versus

- State of C.G.

---- Respondent

For Appellant	Shri Vikash Shrivastava, Advocate.
For Respondent/State	Shri Ashish Gupta, P.L.
For Complainant	Shri Awadh Tripathi, Advocate.

CRA No. 488 of 2001

1. Neeraj Mali, S/o Shankar Mali, aged about 21 years
2. Sanjay @ Sanju, S/o Ramesh Pandey, aged about 20 years
3. Bali Sahu, S/o Deendayal Sahu, aged about 20 years
(died on 19.07.2018 hence appeal in respect of this appellant stands abated)
4. Raja Dubey @ Rajay Mali, S/o Narrottam, aged about 22 years
5. Bauwa Marar, S/o Birju Patel, aged about 22 years
All R/o Kududand Milan Chowk Police Station Civil Lines, District Bilaspur, C.G.

----Appellants

Versus

- State of C.G.

---- Respondent

For Appellants	Shri Rahil Kochar, Advocate.
For Respondent/State	Shri Ashish Gupta, P.L.
For Complainant	Shri Awadh Tripathi, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board**

05/12/2019

1. As both these appeals arise out of the common judgment of conviction and order of sentence dated 31.05.2001 passed by the Additional Sessions Judge and Special Judge SC & ST, Bilaspur, C.G. in ST No. 188/1999 convicted and sentenced the accused/appellants as under, they are being disposed of by this common judgment:-

Conviction	Sentence
Under Section 147 of IPC	R.I. for one year
Under Section 148 of IPC	R.I. for one year
Under Section 452 read with 149 of IPC	R.I. for three years
Under Section 323 read with 149 of IPC	R.I. for three months
Under Section 324 read with 149 of IPC	R.I. for six months
Under Section 326 read with 149 of IPC	R.I. for four years

2. These appellants have been convicted for committing offences as mentioned above on the allegation of forming unlawful assembly, committing house trespass and causing grievous hurt to complainant Sanju @ Prannath Tripathi and other persons. For committing the crime they had committed house trespass by illegally and forcibly entering the house of complainant Sanjay @ Sanjay Tripathi. In the incident occurred on 19.12.1998 at 8:45 am, Sanju @ Prannath sustained grievous injury on his hand and his little finger got cut by sharp weapon whereas Chandrakanta his mother and Sukhdev also sustained incised wound by sharp weapon. On the same day, FIR Ex.P-17 was lodged by Sanju @

Prannath Tripathi. The incident was witnessed by Chandrakanta, Sukhdev and Poonam. As per MLC report Ex.P-2, Sanju @ Prannath sustained fresh cut injuries over fingers and both the palms as well as incised wounds over scalp and legs. According to the Doctor, injury No.1 i.e. cut injury of left hand finger was grievous and rest of the injuries were simple in nature caused by sharp edged weapon. As per MLC report Ex.P-4, Sukhdev sustained abrasions over left shoulder and left forearm and incised wound over left palm. As per MLC report Ex.P-1, Chandrakanta sustained lacerated wound over occipital region which was simple in nature and caused by hard and blunt object. The treating doctors PW-1 Dr. Ku. K.S. Rao, PW-2 Dr. Arvind Shukla and PW-3 Dr. S. Chatterjee have duly proved the above medical reports of the victims. After recording the statements of witnesses, charge sheet was filed against the accused persons under Sections 147, 148, 149, 452, 326 and 307 of IPC. The trial Court framed the charges under Sections 147, 148, 452 read with 149, 323 read with 149, 324 read with 149, 326 read with 149 and 307 read with 149 against the appellants which were denied by them and they prayed for trial.

3. So as to hold the accused persons guilty, the prosecution examined as many as 15 witnesses i.e. PW-1 Dr. Ku. S. Rao, PW-2 Dr. Arvind Shukla, PW-3 Dr. S. Chatterjee, PW-4 Suresh Chatrawani, PW-5 Bandhu Bhaskar, PW-6 Sukhdev, PW-7 Alok Shukla, PW-8 Kasmikha, PW-9 Sanju Tripathi @ Prannath Tripathi, PW-10 Smt. Chandrakanta Tripathi, PW-11 Ku. Poonam,

PW-12 K.S. Rathiya, PW-13 Jaikumar Rathore, PW-14 T.P. Singh and PW-15 RajNihora Shukla. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defense, they examined only one witness i.e. DW-1 Deepmala Saini.

4. 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 accused persons as mentioned in para 1 of this judgment while acquitting the accused Atul Shukla, Munu @ Raj Yadav and Mallu Rajak of the charges under Sections 147, 148, 452/149, 323 read with 149, 324 read with 149, 326 read with 149 and 307 read with 149 of IPC.
5. Learned counsel for the appellants submits that during pendency of this appeal accused appellant Baliram Sahu has died on 19.07.2018. In support of the said contention, he has filed death certificate of appellant Baliram Sahu. Learned State counsel does not dispute the fact regarding death of accused appellant Baliram Sahu. Accordingly, the appeal i.e. CRA No.488 of 2001 so far as it relates to appellant Baliram Sahu stands abated. Counsel for the appellants is directed to delete the name of appellant Bali Sahu from the cause title today itself in the Court.

6. During pendency of this appeal accused persons, complainant/victims and legal heirs of complainant Chandrakant have filed compromise petition under Section 320 Cr.PC as victim Chandrakanta has died in the meanwhile.
7. Looking to the offence under Sections 326 read with 149 & 452 read with 149 are not compoundable.
8. Compromise applications for compounding the offence are duly supported by the affidavits of the respective complainants. The applications have also been signed by the complainants in the respective appeals and all are duly identified by their respective counsel.
9. The offence under Sections 147, 148, 323 read with 149 and 324 read with 149 are compoundable, therefore, the prayer for compounding the said offence is allowed and the appellants are acquitted of the charges under Sections 147, 148, 323 read with 149 and 324 read with 149.
10. Only offence under Sections 452 read with 149 and 326 read with 149 are pending for consideration because these offences are not compoundable.
11. Learned counsel for the appellants submit that they are not pressing these appeals on merit and would confine their arguments to the sentence part thereof only. They also submit that the incident took place about 19 years back, by now the accused/appellants are well settled, their relation with the complainant party is normal. The appellants have no criminal

antecedent. Accused/appellants Neeraj Mali, Sanjay @ Sanju, Raja Dubey and Bauwa Marar have already remained in jail for 22 days and accused/appellant Pradeep Sharma has remained in jail for 32 days, therefore, by granting the benefit of Probation of Offenders Act, the accused persons may be sentenced to the period already undergone by them.

12. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same.

13. I have heard learned counsel for the parties and perused the material available on record.

14. Though the appellants counsel are not pressing the appeals on merit but it is the duty of the Court to see where the offence under Sections 326 read with 149 and 452 read with 149 are proved beyond reasonable doubt by prosecution and thereafter only the sentence part can be considered.

15. As per Ex.P-2 Sanju @ Prannath sustained certain injuries as mentioned above and as per X-ray report Ex.P-5 some part of his little finger was amputated. Only the injuries sustained by Sanju @ Prannath is considered and his evidence is appreciated. PW-9 Sanju @ Prannath also proved this fact that on 19th December, 1998 he was at home and after some time accused appellants entered his house and assaulted him with deadly weapons

because of which his little finger got cut. Accused persons also assaulted the other family members of Sanju @ Prannath.

16. PW-6 Sukhdev, PW-10 Smt. Chandrakanta Tripathi and PW-11 Ku. Poonam have supported the case of the prosecution and there is no contradiction or omission in the statement of injured Sanju @ Prannath and medical reports also support the statements of injured which have been proved PW-2 Dr. Arvind Shukla & PW-3 Dr. S. Chatterjee.

17. Prompt FIR is lodged by Sanju @ Prannath Ex.P-17 and it is also supported by the eye-witnesses to the incident as well as MLC & X-ray report. There is no reason to disbelieve the statements of the victim and injured witnesses PW-6 Sukhdev, PW-10 Smt. Chandrakanta and PW-11 Ku. Poonam, therefore, learned trial Court has rightly convicted the accused appellants for the offence under Sections 452 read with 149 and 326 read with 149 of IPC and their conviction is affirmed.

18. In the matter of matter ***Surendra Nath Mohanty and another vs. State of Orissa*** reported in ***AIR 1999 SC 2181***, the Hon'ble Supreme Court while considering compounding offence under Section 326 of IPC observed that though offence under Section 326 of IPC is not compoundable, however, considering the fact that parties have settled their disputes outside the Court and that 10 years have elapsed from the date of incident and further considering that the accused have already suffered three months

rigorous imprisonment, reduced their sentence to the period already undergone by them.

19. In the matter of ***Ishwarlal vs State of Madhya Pradesh*** reported in **(2008) 15 SCC 671** referring to its earlier judgment in the matter of ***Ram Pujan vs State of UP, (1973) 2 SCC 456***, having regarding to the facts and circumstances of the case and having regard to the fact that affidavit for compromise has been filed though the offence is not compoundable, reduced the sentence imposed on the appellants to the period already undergone by them.

20. As regards the sentence, it is not disputed by both the parties that at the time of incident all the accused persons were young offenders aged about 20-22 years respectively. The appellants are not found to be having any previous antecedent of their involvement in similar nature of offence or any other heinous offence. As per defence witness DW-1 Deepmala Saini, she has stated that the dispute arose as accused Sanju @ Prannath was flirting with the girls but in the FIR the reason for the assault made by the accused was not mentioned. Therefore, looking to the facts and circumstances of the case, the judgments cited above, the age of the accused appellants at the relevant time, the fact that the incident took place around 19 years back and they have no criminal antecedent, accused/appellants Neeraj Mali, Sanjay @ Sanju, Raja Dubey and Bauwa Marar have already remained in jail for 22 days and accused/appellant Pradeep Sharma has remained in jail for 32 days, the compromise

applications filed by the respective parties duly supported by their respective affidavits, this Court is of the opinion that the ends of justice would be served if they are sentenced to the period already undergone by them.

21. In the result, both the appeals are allowed in part. Accused appellants namely Pradeep Sharma, Neeraj Mali, Sanjay @ Sanju, Raja Dubey and Bauwa Majwar are acquitted of the charges under Sections 147, 148, 323 read with 149 and 324 read with 149 on account of compounding of the said offence. However, conviction of the appellants under Sections 452 read with 149 and 326 read with 149 of IPC is hereby maintained and their jail sentence is reduced to the period already undergone by them.

22. The appellants are reported to be on bail, therefore, their bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.PC.

-Sd/-
Gautam Chourdiya
Judge