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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 546 of 2018

Mohan Lal Dansena S/o Shri Kartik Ram Dansena Aged About 27 Years R/o- Village- Aurda, Police Station And Tahsil- Kharsia, District- Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh

... Appellant

versus

State Of Chhattisgarh Through- S.H.O. Of The Police Station- Kharsia, District- Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh

---- Respondent

(Cause title taken from Case Information System)

For Appellant	:	Mr. Abhishek Saraf, Advocate
For Respondent	:	Ms. Isha Jajodia, Penal Lawyer

Hon'ble Shri Ravindra Kumar Agrawal, Judge
Judgment on Board

04/11/2026

1. Present is an appeal under Section 374(2) of the Code of Criminal Procedure, 1973 against the impugned judgment of conviction and sentence dated 05.04.2018, passed by learned officiating Additional Sessions Judge, Fast Track Court, Raigarh, in Sessions Trial No. 149 of 2016, whereby the appellant has been convicted and sentenced in the following manner:

Conviction	Sentence
U/s. 456 of the IPC	R.I. for 6 months with fine of Rs. 1000/-, in default of payment of fine additional R.I. for 1 month.

2. The case of the prosecution, in brief, is that, on 08.05.2016, the victim (PW-1) has lodged a written complaint (Exhibit P-1) at Police Station Kharsia, alleging that on 08.05.2016 in the night at about 12:00-12:30 AM, when she along with her family members were sleeping, the appellant came there and outraged her modesty. When she woke up and shouted, her husband also woke up and at the same moment the appellant assaulted her husband by axe on his right leg, by which he received injuries on his right leg. He also repeated his blow on his knee, and when he tried to assault on his head, somehow he could save himself and received injury on his hand. Her husband was immediately taken to hospital for his treatment.

3. Based on the written complaint, the FIR (Exhibit P-2) was registered against the appellant for the offence under Sections 354 and 456 of IPC. The injured Sanjeevan Dansena was sent for his medical examination to Civil Hospital Kharsia, where he was medically examined by Dr. Smt. Lalita Rathia (PW-3), who gave her report (Exhibit P-5). On medical examination of the injured Sanjeevan Dansena, the doctor has found one lacerated wound on just above the ankle joint which was bone deep and bleeding present, clinically fracture of tibio-fibula bone of right lower one third of leg bleeding present, lacerated wound on left knee joint bleeding present, fracture of left patella bone, lacerated wound on left

hand with swelling from wound present, and one lacerated wound on left frontal region of head bleeding was present from the injuries. The injuries found on the body of the victim was grievous in nature. The victim Sanjeevan Dansena remained hospitalized at Nayak Nursing Home, Champa from 08.05.2016 to 25.05.2016.

4. Spot map (Exhibit P-3) was prepared by police. The appellant was arrested on 01.06.2016 and one axe has been seized from him vide seizure memo (Exhibit P-15). The axe was sent for its query report to the doctor, who give his query report (Exhibit P-6), whereby he opined that the injuries mentioned in the MLC report of Sanjeevan Dansena can be inflicted by the said axe and in the query report (Exhibit P-7), it has also been opined that the injuries in the MLC report can cause death if not treated immediately.

5. Statement of the witnesses under Section 161 of CrPC and statement of the victim and her daughter under Section 164 of CrPC have been recorded, and after completion of usual investigation, charge-sheet was filed against the appellant before the learned Judicial Magistrate First Class, Kharsia, District Raigarh for the offence under Sections 456, 354, 323, 326 and 459 of IPC. The case was committed to the Court of learned Sessions Judge, Raigarh, from where the same has been transferred to the learned Trial Court for its trial.

6. The learned Trial Court has framed charge against the appellant for the offence under Sections 456, 354, 326 and 459 of the IPC. The appellant denied the charge and claimed trial.

7. In order to prove the charge against the appellant, the prosecution has

examined as many as 7 witnesses. Statement of the appellant under Section 313 of CrPC has also been recorded, in which he denied the circumstances that appeared against him, pleaded innocence and has submitted that he has been falsely implicated in the offence.

8. After appreciation of oral as well as documentary evidence led by the prosecution, the learned Trial Court has acquitted the appellant from the offence of Sections 354, 326 and 459 of IPC, however he has been convicted for the offence under Section 456 of IPC and sentenced as has been mentioned in the earlier part of this judgment, hence this appeal.

9. Learned counsel for the appellant would submit that the appellant is not challenging his conviction, but he is challenging the sentence awarded to the appellant as the same is excessive under the facts and circumstances of the case. He would submit that the offence of Section 456 of IPC does not provide any minimum sentence, the appellant is real brother of the injured Sanjeevan Dansena and the victim is his sister-in-law. The offence is of the year 2016 and their relation has become cordial. The appellant is presently aged about 37 years and having innumerable responsibilities of his family. Looking to the nature of offence, evidence available on record, the relationship between the parties and their cordial relation, and also that there is no minimum sentence provided for the alleged offence, the sentence awarded to the appellant may be reduced for the period already undergone by him by enhancing the fine amount suitably.

10. On the other hand, learned counsel appearing for the State opposes the

submissions made by learned counsel for the appellant and would submit that the appellant had committed the offence of house-trespass by night, which has been proved by the victim (PW-1) and her daughter (PW-2). Though the appellant has been acquitted from the other offences of Sections 354, 326 and 459 of IPC, but considering the evidence available on record, he has rightly been convicted for the offence under Section 456 of IPC and appropriately sentenced by the learned Trial Court. The appellant is not entitled for further leniency in his sentence and his appeal is liable to be dismissed.

11. I have heard learned counsel for the parties and perused the record of the Trial Court.

12. Although the appellant is not challenging his conviction, this Court deems it appropriate to examine the evidence available on record with respect to the appellant's conviction under Section 456 of the IPC. Section 456 provides for punishment for lurking house-trespass or housebreaking by night, which may extend to three years and shall also render the offender liable to a fine. Lurking house-trespass and lurking house-trespass by night have been defined under Sections 443 and 444 of the IPC, respectively, which read as under:

> "**443. Lurking house-trespass**.—Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".
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> **444. Lurking house-trespass by night**.—Whoever commits lurking house-trespass after sunset and before

sunrise, is said to commit “lurking house-trespass by night”.

13. Section 446 of the IPC provided the house-breaking by night, which is also relevant to notice here for its consideration, which reads as under:

> “**446. House-breaking by night**.—Whoever commits house-breaking after sunset and before sunrise, is said to commit “house-breaking by night”.

14. The victim (PW-1) has stated that on the date of the incident, she, along with her family members, was sleeping in her house, and at about 12:30 in the night, the appellant trespassed into her house and pulled her clothes. When she woke up, the appellant dealt an axe blow on the leg of her husband. He assaulted him on his left knee, and the third blow was inflicted on his head. When her husband tried to stop him, he sustained an injury on his hand. The appellant threatened him that if they lodged a report, he would see them. Thereafter, the appellant fled from the house. She called the persons residing in the vicinity and then took her husband to Kharsia Hospital. She made a written complaint, which is Exhibit P-1, and on the basis of her complaint, the FIR was lodged, which is Exhibit P-2. When a leading question was put to this witness, she admitted that at the time when the appellant trespassed into her house, he tried to commit rape upon her.

In her cross-examination, she admitted that the appellant is her brother-in-law. She had married her husband 13-14 years ago. Her house is situated in the middle of the vicinity, and the houses of others are adjacent to her house. The house of the appellant is also situated in the same vicinity, with one intervening house. She admitted that the kitchen of the appellant is separate from her house and that they are

residing separately. She further admitted that there was a land dispute between her husband and the appellant and that quarrels had taken place between them on several occasions. Before the present incident, a report regarding the property dispute had been lodged at Kharsia Police Station. She further stated that on the date of the incident, her daughter was also present in her house and had witnessed the incident. In her further cross-examination, she stated that on 07.09.2015, her husband had tried to assault the appellant. She voluntarily stated that before the said incident, the appellant had assaulted her on the issue of theft of an axe.

15. From the evidence of this witness, the house trespass by night has been clearly proved by the prosecution that it is the appellant who entered into the house of victim.

16. PW-2 is the daughter of the victim, who stated in her evidence that the appellant is her uncle. The appellant assaulted her father with an axe and also outraged the modesty of her mother. When the appellant outraged the modesty of her mother, her mother shouted, upon hearing which PW-2 woke up and saw the incident. At the same time, her father also woke up, and the appellant assaulted him.

In her cross-examination, she admitted that she had herself seen the appellant outraging the modesty of her mother. Though she denied that she had not seen the appellant assaulting her father, she further admitted that she had deposed at the instance of her parents.

17. PW-5 is the injured, to whom the appellant allegedly caused injuries with an axe. He is the elder brother of the appellant and stated that on the

date of the incident, in the evening, while he was cutting a wooden log, he sustained an injury to his leg from an axe. Thereafter, his father took him to Champa Hospital, where he was treated. He has been declared hostile and has not supported the prosecution's case and remained firm in saying that he received the injury while cutting the wooden log.

18. PW-3, Dr. Smt. Lalita Rathia, and PW-6, Dr. G.K. Nayak, are the witnesses with respect to the injuries found on the body of PW-5. When PW-5 has not stated that it was the appellant who caused injuries to him, the evidence of the doctors does not appear to be relevant in the present appeal, as the appellant has been acquitted of the offence under Section 326 of the IPC. Though PW-5 received injuries, he himself has stated that he received the injuries while cutting a wooden log, and he has not stated that it was the appellant who caused injuries to him.

19. From the aforesaid evidence of PW-1 and PW-2, the prosecution has been able to prove that the appellant committed the offence of house-breaking by night. Therefore, the learned Trial Court has rightly convicted him for the offence punishable under Section 456 of the IPC. Though the appellant has been acquitted of the offences punishable under Sections 354, 326 and 459 of the IPC by giving him the benefit of doubt, in view of the substantive evidence available on record, the conviction of the appellant under Section 456 of the IPC is hereby affirmed.

20. So far as the sentence awarded to the appellant is concerned, the submission made by learned counsel appearing for the appellant that the appellant is the real brother of the injured and the real brother-in-law

of the victim, that their relations may become cordial, that the incident occurred in the year 2016, and that no minimum sentence is prescribed for the offence in question, and therefore, the sentence awarded to the appellant may be reduced, is appealing to this Court.

21. So far as sentence part is concerned, the Hon'ble Supreme Court in "**Mohammad Giasuddin Vs. State of Andhra Pradesh" 1977 (3) SCC 287** has laid down the law with respect to awarding sentence to the accused persons. In paragraph 9 it was held as under :-

> "9. Western jurisdiction and 'sociologists, from their own angle have struck a like note. Sir Samual Romilly, critical of the brutal penalties in the then Britain, said in 1817 : "The laws of England are written in blood". Alfieri has suggested : 'society prepares the crime, the criminal commits it. George Micodotis, Director of Criminological Research Centre, Athens, Greece, maintains that 'Crime is the result of the lack of the right kind of education.' It is thus plain that crime is a pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is the individual, and goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defense. We, therefore consider a therapeutic, rather than an in 'terrorem' outlook, should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. In the

words of George Bernard Shaw : 'If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries'. We may permit ourselves the liberty to quote from Judge Sir Jeoffrey Streatfield : 'If you are going to have anything to do with the criminal courts, you should see for yourself the conditions under which prisoners serve their sentences.' In the same strain a British Buddhist-Christian Judge, speaking to a BBC reporter underscored the role of compassion : "Circuit Judge Christmas Humphreys told the BBC reporter recently that a judge looks 'at the man in the dock in a different way : not just a criminal to be punished, but a fellow human being, another form of life who is also a form of the same one life as oneself.' In the context of karuna and punishment for karma the same Judge said : 'The two things are not incompatible. You do punish him for what he did, but you bring in a quality of what is sometimes called mercy, rather than an emotional hate against the man for doing something harmful. You feel with him; that is what compassion means."

22. Further, in the matter of “**Raj Bala Vs. State of Haryana & Others”** 2016 (1) SCC 463 in paragraph 1 & 2 the Hon’ble Supreme Court has held as under :

> “1. In Gopal Singh v. State of Uttrakahand[1], while focusing on the gravity of the crime and the concept of proportionality as regards the punishment, the Court had observed:-
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> > "18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of

a criminal offence. A punishment should not be disproportionately excessive.

The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect - propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner.We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court.The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of

fancy. It should be embedded in the conceptual essence of just punishment."

[Emphasis supplied]

2. Seven years prior to that, in Shailesh Jasvantbhai v. State of Gujarat [2], it has been held that:-

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society.

Friedman in his Law in Changing Society stated that:

"State of criminal law continues to be-as it should be-a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending

circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of T.N.[3]"

[Emphasis supplied]

And again:- "The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal"."

23. Considering the submissions made by learned counsel for the appellant and the facts and circumstances of the case, particularly that no minimum sentence is prescribed for the offence punishable under Section 456 of the IPC, that the appellant is the real brother of the injured and the brother-in-law of the victim, that the incident occurred in the year 2016, that their relations are stated to have been cordial, and also considering the age of the appellant and his numerous family

responsibilities, this Court deems it appropriate to reduce the sentence awarded to the appellant to the period already undergone by him, while enhancing the fine amount.

24. Consequently, while maintaining the conviction of the appellant for the offence punishable under Section 456 of the IPC, his sentence is reduced to the period already undergone by him, subject to payment of an additional fine of Rs. 25,000/-, over and above the fine amount imposed by the learned trial Court. The aforesaid additional fine shall be deposited within three months from today. Any fine amount already deposited by the appellant pursuant to the judgment of the learned trial Court shall be adjusted towards the total fine amount payable. In default of payment of the aforesaid additional fine, the appellant shall undergo further rigorous imprisonment for one month. Upon deposit of the additional fine amount of Rs. 25,000/-, the entire amount shall be paid to Sanjeevan Dansena (PW-5) as compensation under Section 395 of the BNSS, 2023.

25. With the aforesaid modification/alteration of the sentence, the appeal is **partly allowed**.

26. The appellant is reported to be on bail. His bail bond shall remain in force for a further period of six months, as provided under Section 481 of the BNSS, 2023.

27. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

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