

(2018) 07 CHH CK 0100
In the Chhattisgarh High Court
Case No : CRA No. 1124 of 2001

Neelu		APPELLANT
	Vs	
State Of Chhattisgarh		RESPONDENT

Date of Decision : 19-07-2018

Acts Referred:

Indian Penal Code? 1860 — Section 323, 452, 324, 307, 452, 506B
Code of Criminal Procedure, 1973 — Section 313, 437A
Probation of Offenders Act, 1958 — Section 6

Citation : (2018) 07 CHH CK 0100

Hon'ble Judges : GAUTAM CHOUDIYA, J

Bench : Single Bench

Advocate : Adil Minhaj, K. Tripti Rao

Final Decision : Allowed

Judgement

S.No.,Conviction,Sentence

1.,"Under Section 452 of Indian Penal

Code (for short 'IPC')", "R.I. for 1 year and fine of Rs. 500/-

in default of which 02 months R.I.

2.,Under Section 323 of IPC,"R.I. for 6 months and fine of

Rs.500/- in default of which 2

months R.I.

Neelu was assaulted her by night lamp, scissor and other articles. There is no reason to disbelieve the version of this witness.",,

12. PW-4 Shankar Prasad, husband of the complainant stated that when he came to his home after the incident his wife Janki Bai narrated entire",,

story regarding assault by appellant/accused. PW-4 Shankar Prasad also

supports the witness PW-2 victim's version that Rs.15,000/- was not found",,
when she searched that amount was stolen by someone.,,

13. Statement of PW-5 Lakhan was also not challenged in the cross examination and prior to this incident there is good relation between the accused,,
and victim and their family purchased milk from appellant/accused.,,

14. PW-8 Yashwant also supports the complainant's statement that after the incident Janki Bai informed the villagers and narrated the entire story.,,

Thereafter, Ex.P-9 and Ex.P-10 were registered by PW-9 Surya Prasad and on the same day, he arrested the accused/appellant as per arrest memo",,

Ex. P-12.,,

15. According to the statement of PW-15 Dr. M.C. Mehnot, who examined the victim Janki Bai on the same day i.e. 01.10.1997 and noticed the",,

injuries found on the body of the victim mentioned in para 2 of this judgment.,,

16. Ex.P-6 MLC report of Janki Bai, Ex.P-15 examination of used articles which caused the injury to victim and bed head ticket of the victim Ex.P-20",,

proved by PW-15 Dr. M.C. Mehnot and that statement of PW-15 Dr. M.C. Mehnot is not challenged in cross examination.,,

17. As per Ex.P-7 broken glass, night lamp, one broken scissor, one leather belt and other materials were seized and proved by PW-9 Surya Prasad",,

and that was also not challenged in cross examination. As per Ex.P-17 & Ex.P-18 human blood found on the articles i.e. glass of pieces, earthen soil",,

and saree; Ex. P-19 spot map was proved by PW-14 (Bharatram Sahu). Ex.P-7 and Ex.P-8 were proved by PW-10 (Milap). PW-9 Suryaprasad,,

proved the seized articles as per Ex.P-7 and Ex.P-8.,,

18. DW-1 (Prakash Choubey) & DW-2 (Behalram) both witnesses stated that appellant/accused was not present in the village Rakhi on the date of,,

incident and the accused/appellant was in the house of his Maternal Uncle (Mama) at Tendubhata but both witnesses in his examination admitted that,,

accused/appellant gone Tendubhata after incident they have no knowledge about that fact.,,

19. No any suggestion to the prosecution witness regarding the plea of alibi of accused and no any evidence was produced that at the time of incident",,

accused was not present in the spot where incident happened.,,

20. Going through both the evidence prosecution and defence, prosecution has

proved his case beyond reasonable doubt that accused/appellant was",,,
entered in the home of victim with preparation to cause injury.,,

21. Accused/appellant committed house trespass, having made a preparation for cause hurt to victim Janki Bai; assaulted her and caused simple injury",,,
on the body of the complainant.,,

22. In view of what has been discussed above, this Court is of the considered opinion that the prosecution has proved its case beyond all reasonable",,,
doubt and so the Court below was fully justified in passing on the conclusion collected by the prosecution. No inference finding of the conviction of the,,
Court below is called for interference. Conviction of the trial Court under Section 452 and 323 his conviction affirmed.,,

23. Learned counsel for the appellant argue in this matter that the appellant was below the age of 18 years on the date of incident and was the first,,
offender. After the incident and before the incident he was not committed any offence or crime. He was the first offender. As per Section 6 of,,
Probation of Offenders Act, 1958, below 21 years of age cannot be sentenced unless specific reason was mentioned.",,,

24. Cause of occurrence arises only on the apprehension regarding theft caused by appellant/accused shown by the complainant. Prior to incident",,,
there was good relation between the family members of the victim/complainant and accused and it is also admitted by the PW-4 Shankar Prasad,,
husband of complainant in paragraph No.4 of his statement that prior to incident appellant/accused supply the milk in the house of Victim/complainant.,,
So there is cordial relation between both the family members. Appellant/accused was below the age of 18 years at the time of incident so benefit,,
under the Probation of Offenders Act may be given to the accused. It is also argued by the counsel that if the Probation of Offenders Act is not,,
provided to this accused/appellant, his undergone is sufficient.",,,

25. As per the judgment of trial Court, it is specifically mentioned that the accused/appellant was in 12 days in judicial custody and that 12 days set off",,,
in his sentence.,,

26. The age of accused/appellant was definitely below the 17 years as per Ex. P-14C School Birth Certificate and it is also proved by the prosecution,,
itself. So the age of appellant; nature of offence, cause of offence, looking to the first offender, it is sufficient and justifiable to sentence the",,,

accused/appellant to the period already undergone by the appellant/accused.,,

27. In the result, the appeal is allowed in part. While maintaining the conviction, the appellant/accused is sentenced to the period already undergone",,

with the fine awarded by the trial Court.,,

28. It is reported that the appellant is in bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative,,

for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when,,

directed.,,