

(2018) 07 CHH CK 0304
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1050 Of 1999

Dhansai And Ors

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 357

Indian Penal Code, 1860 — Section 34, 294, 323, 307, 325, 341, 506, 506B

Citation : (2018) 07 CHH CK 0304

Hon'ble Judges : Gautam Chourdiya, J

Bench : Single Bench

Advocate : R.S. Marhas, Anubhuti Marhas, Adhiraj Surana

Final Decision : Allowed

Judgement

Gautam Chourdiya, J

1. This appeal arises out of the judgment of conviction and order of sentences dated 06.04.1999 passed by learned Second Additional Sessions Judge, Bilaspur (C.G.) in Sessions Trial No. 253/1998, whereby, the appellants stands convicted and sentenced as under:-

Conviction:

Sentences:

Appellant No.1:

Under Section 307 of the Indian Penal Code (hereinafter referred to as the 'IPC')

Rigorous imprisonment for four years

Appellant No.2:

Under Section 307/34 of IPC

Rigorous imprisonment for four years

2. As per prosecution case, on 17.03.1998 in the morning 8.00 AM First Information Report (FIR-Ex.-P/5) was lodged by Hulas Ram - PW-4, husband of the victim/injured (PW-1) - Pramila Bai, against the accused/appellants under Sections 341, 294, 506-B and 323 of IPC. He (PW-4) stated in FIR that on the date of incident at 8.00 AM, in his home, the accused/appellants- Dhansai and Hiralal both are forcefully taken her wife/victim (PW-1) from front of his home near bamoori (babul) tree and both accused assaulted her wife by hands, fists and by stone. Victim/injured - Pramila Bai sustained injuries on her face and head. Usha Kumari (PW-5), Daya Ram (PW-6) and Fatte Lal (PW-7) are the eye-witnesses of the incident. Dr. A.K. Jha (PW-11) examined the victim/PW-1, his report is Ex.-P/10A and found following injuries on the fact of the victim:-

- i) Bleeding on the left ear;
- ii) Lacerated wound on the right scalp size 3 inch x ¼ inch x skin depth;
- iii) Swelling on the face;
- iv) Lacerated wound on the chin size ½ inch x ¼ inch x skin depth;
- v) Lacerated wound on the left cheek size ¼ inch x ¼ inch x skin depth;
- vi) Pulse was low, BP 80 not reactably and injuries no. 1 to 5, Doctor advised X-ray. All the injuries could be caused by hard and blunt object.

Dr. R.C. Khilwani (PW-2) also examined the tooth of the victim/PW-1, his report is Ex.-P/2 and found that her left side of lower jaw was broken from two place. Dr. Shekhar Chatterji (PW-3) also examined X-ray report (Ex.-P/4) and confirmed the lower jaw was broken.

3. After completion of investigation, the charge-sheet was filed against the accused/appellants under Sections 506-B, 307 and 325 IPC and while framing the charges, the trial Judge framed the charge against the accused/appellant-Dhansai under Section 307 and accused/appellant- Hiralal under Section 307 read with Section 34 IPC.

4. So as to hold the accused persons/appellants guilty, the prosecution, in all, has examined as many as 12 witnesses. Statements of the accused/appellants were also recorded under Section 313 of the Criminal Code of Procedure, in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. There was no witness examined on behalf of the defence.

5. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant- Dhansai under Section 307 IPC and accused/appellant-Hiralal under Section 307 read with Section 34 IPC, hence this appeal.

6. Learned counsel for the appellants submitted that conviction and sentences of the appellants are controversy to law and the facts in this case, there is no

independent eye-witness to the incident. He also submitted that only the statements of victim/injured- Pramila Bai (PW-1) and her daughter- Usha Kumari (PW-5) have supported the prosecution case but in absence of corroboration from any of the independent witness, the accused/appellants cannot be convicted. He submitted that there is no ingredient of offence under Section 307 IPC and was not proved by the prosecution. At least offence under Section 325 was made out. He further submitted that accused/appellant- Hiralal was 19 years of young age at the time of incident and accused/appellant- Dhansai was aged about 50 years, now he become 70 years old. He submitted that there is no previous criminal record against the accused/appellants, therefore they may be given to benefit of the Probation of Offenders Act.

7. On the other hand, counsel for the respondent/State supports the judgment impugned. It has been argued by the State Counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

8. We have heard the counsel for the respective parties and perused the evidence on record.

9. Pramila Bai (PW-1)-victim/injured, stated in her examination, at about 8.00 AM on the date of incident, her husband was out of village. She was in home with her 7 years daughter- Usha Kumari (PW-5). At that time, accused/appellants- Dhansai and Hiralal came and caught her hand in courtyard of the house of victim, forcefully dragging her and taken to the field of Sarju Dhimar near babool tree. Accused-Dhansai climbed on her chest and accused- Hiralal pressed her both legs and start assaulting her with stones on face. The victim/injured sustained injuries on her face and head by stones, left side of her tooth was broken. At the time of assaulting by the accused, she was unconscious. When incident happened, her daughter- Usha Kumari also seen the incident.

10. Usha Kumari (PW-5) was present at that time of incident at home and at the place of occurrence. She was also supported the prosecution case and admitted in her cross-examination, both accused was forcefully taken her mother (Pramila Bai- PW-1) towards field and assaulted her mother with the help of stones. There is no contradiction or omission or any other reason mentioned to disbelieve both witnesses (Pramila Bai-PW-1 and Usha Kumar-PW-5).

11. Statements of both witnesses (PW-1 and PW-5) corroborated with medical examination report conducted by Dr. A.K. Jha (PW-11). On the date of incident i.e. 17.03.1998, he examined Pramila Bai (PW-1) as mentioned in his evidence in para- 1 and proved Ex.-P/10A MLC report and injuries were caused by hard and blunt object and also advised for X-ray of injury no. 1 to 5. Also Dr. Shekhar Chatterjee (PW-3) taken X-ray of the Pramila Bai (PW-1) and found fracture of left mandible. His X-ray report is Ex.-P/4 and proved the same. Dr. R.C. Khilwani (PW-2) also examined the tooth of the victim/PW-1, his report is Ex.-P/2 and found that her left side of lower jaw was broken from two place. From dental wiring, jaw was immobilized. Dr. R.C. Khilwani (PW-2) also found molar tooth

was broken. The statement of the victim (PW-1) supported by Dr. R.C. Khilwani (PW-2), Dr. Shekhar Chaterji (PW-3) proved X-ray report Ex.-P/4 and Dr. A.K. Jha (PW-11). Dr. R.C. Khilwani (PW-2) suggested in cross-examination if any person fall down on the stone, the injury caused to the victim may be caused. There is no defence was proved that the injury caused to the prosecutrix was due to herself fall down on the stone.

12. Victim has been hospitalized from 17.3.1998 to 10.04.2018. Her bed-head tickets marked as Ex.-P/1 and was proved by prosecution. After the incident, immediately FIR (Ex.-P/5) was lodged by the husband of the victim (PW-4, Hulas Ram) and proved Ex.-P/5.

13. Hulas Ram (PW-4) also stated that when he came back village Ratanpur, he saw his wife (PW-1) was lying in injured condition with bleeding on her face, tooth was broken and injuries were on the face, head and jaw. His daughter (PW-5) was weeping on the boundary of field, he was immediately told by her daughter that and accused- Dhansai and Hiralal taken his wife from courtyard towards the field and assaulted her with stones. Then Ex.-P/5 lodged by him (PW-4) and there is no any reason to disbelieve the incident immediately narrated her daughter- Usha Kumari (PW-5) to father (PW-4)

14. Daya Ram (PW-6) and Fatte Lal (PW-7) have been declared hostile. They have not supported the prosecution case. Prior to this incident also, as per Ex.-P/9C (Roznamcha Sahana), one complaint was also recorded against accused- Dhansai on 16.03.1998 that Dhansai abuses filthy language to victim.

15. Dr. R.C. Khilwani (PW-2), in para-8, admitted this fact that the injury caused on the jaw of the victim is grievous and fatal for life and if any complication arises, it is sufficient for death, but later he also examined the injured even then there was no complication arises. Appellants/accused having no intention to cause death caused such injury which was not sufficient in the ordinary course of nature to cause death and it was not established as to which of the two accused had inflicted injury on the face and head of the victim/injured (PW-1) which proved not fatal for life. So it was held that accused/appellants could not be convicted under Sections 307 and 307 read with Section 34 IPC. Instead thereof, the appellants/accused can be convicted under Sections 325 and 325 read with Section 34 IPC respectively for causing grievous hurt to the victim/injured (PW-1).

16. In sum and substance, looking to the injuries caused by the accused/appellants- Dhansai and Hiralal to the victim/injured (PW-1) and the material available on record shows that the accused/appellants have already remained in jail for more than three and half months. Presently, they are on bail. At the time of incident i.e. 17.03.1998, appellant-Dhansai was the age of 50 years, now he becomes 70 years old and appellant- Hiralal on the date of incident was 19 years of age. Therefore keeping in mind the peculiar facts and circumstances involved in this case, this Court is of the considered opinion that no useful purpose would

be served in again sending them to jail. The conviction and sentences imposed upon the accused/appellants under Sections 307 and 307/34 of IPC respectively are set aside and they are acquitted of these charges, instead thereof, they are convicted under Sections 325 and 325/34 IPC respectively to the period already undergone and imposing fine amount on each accused/appellants at Rs.20,000/- payable to the victim/injured (PW-1) as compensation as provided under Section 357 of the Code of Criminal Procedure.

17. Therefore, sentences are accordingly reduced to the period already undergone directing the accused/appellants- Dhansai and Hiralal to deposit fine amount of Rs. 20,000/- each (in total Rs.40,000/-) before the trial Court. If the fine amount is not deposited by the accused/appellants, they shall further undergo rigorous imprisonment for six months respectively. The fine amount of Rs. 40,000/- payable to the victim/injured (PW-1)- Pramila Bai as Compensation.

18. In the result, the appeal is allowed in part.