

HIGH COURT OF CHHATTISGARH, BILASPUR
CRR No. 90 of 2008

1. Bhagela, S/o Bahoran Sahu, aged about 57 years,
2. Punau @ Punuram, S/o Bhagela Sahu, aged about 52 years,
Both R/o Village Kalyanpur, P.S. Sahaspur Lohara, Tehsil
Kawardha, District Kabirdham, Chhattisgarh. ----**Applicants**

Versus

State Of Chhattisgarh, through the District Magistrate, Kawardha,
District Kabirdham, CG. ---- **Respondent**

For Applicants	: Shri Avinash Choubey, Advocate
For State/Respondent	: Shri Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

08/03/2019

On 19.10.2004 it was reported by the complainant/victim Brajbai (PW-1) that on that day the accused/applicants came to her house and asking her to get out of the house assaulted her with hands and fists as also with the help of club. After making entry in the *Rojnamcha*, the complainant was medically examined and on receipt of medical and x-ray report, FIR (Ex. P-4) was registered against the accused/applicants under Sections 325 read with 34 IPC and after investigation the charge-sheet was filed.

2. The trial Court vide judgment dated 04.08.2007 passed in Criminal Case No. 726/2006 convicted all the accused/applicants u/s 325/34 IPC and sentenced each of them to undergo RI for six months with fine of Rs. 1,000/- plus default stipulation. By the judgment impugned learned lower appellate Court though maintained the conviction, it reduced the sentence of 6 months imposed by the trial Court to RI for 2 months keeping the fine amount intact. Hence, this revision.

3. Counsel for the applicants submits that though none of witnesses claims to have seen the incident yet the Courts below have convicted the accused/applicants u/s 325/34 IPC. He further submits that there is no evidence to show that any dangerous weapon was used by the accused/ applicants and, therefore, the offence under Section 325/34 IPC is not made out against them. State counsel however supports the judgment impugned and submits that the findings recorded by the Courts below are based on just and proper appreciation of the evidence and, therefore, there is no room for any dislodgement thereof.

4. Having seen the evidence of PW-1 on whom the assault was opened by the accused/applicants it is clear that the accused/applicants had caused number of injuries on various parts of her body with the help of club and brickbats as a result of which her head was damaged and right shoulder was fractured. The incident has been fully supported by PW-2 who at the relevant time was in the same house along with PW-1. Though PW-3 and PW-4 did not see the actual occurrence yet they have stated that after sometime they came to the house of the PW-1 and saw number of injuries on her body which were bleeding profusely. The doctor (PW-5) who medically examined the victim has stated that he noticed contusions on her right shoulder, left foot and lacerations on the back side of her head up to bone deep. He has also stated that right shoulder of victim was found to be fractured. The reports indicating injuries and fracture are Ex-P-1 and P-2. Even the seizure witness (PW-6) has supported the case of the prosecution in particular the seizure of club made from accused Bhagela under Ex. P-9. Investigating Officer (PW-8) has also supported the case of the prosecution as a whole.

5. Thus having gone through the evidence of the witnesses in particular the evidence of PW-1 to PW-4 and PW-8 it is abundantly

clear that on the date of incident when the complainant was in her house, the accused/applicants came there and asking her to come out therefrom, they opened an assault with the help of club and hands and fists. Even the doctor (PW-5) who gave report Ex.P-1 has described contusions, lacerations etc. on her body vide report Ex.P-1. X-ray report (Ex.P-2) also indicates fracture of her right shoulder. Taking all these things into consideration it is unequivocally clear that by causing grievous injuries to the victim, the accused/applicants have committed the offence under Section 325/34 IPC. This Court does not see any error as far as conviction part of the judgment impugned is concerned and being so it is hereby maintained.

6. As regard sentence, the record shows that the incident had taken place in the year 2004 and out of the total sentence of 2 months imposed on them, the accused/applicants have already been inside for 7 days and in these circumstances there is no propriety in again putting them to prison again and thereby disturb their well settled family life. Accordingly, the interest of justice demands the reduction of the sentence to the period for which they have already remained in detention which in this comes to 7 days. Order accordingly.

7. Revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Ajay