

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 940 of 2019

Dhanesh Yadav S/o Pyarelal Yadav Aged About 20 years R/o Oteband Chowki, Karhibazar, Police Station and District-Baloda Bazar, Chhattisgarh. **---- Appellant**

Versus

State of Chhattisgarh Through Station House Officer, Police Station- Hirri, District- Bilaspur, Chhattisgarh. **---- Respondent**

For appellant	: Ms. Preeti Jha, Advocate, appears as <i>Amicus Curiae</i> .
For State	: Mrs. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

07.02.2020

1. This appeal is preferred against the judgment dated 24th of December, 2018 passed by 5th Additional Sessions Judge, Bilaspur (C.G.), in Sessions Trial No.53/2018 wherein the said Court convicted the appellant for charge under Section 307 of Indian Penal Code, 1860 and sentenced him to undergo R.I. for 5 years with fine Rs. 500/- with default stipulation.
2. In the present case, name of the victim is Chandrika Bai (PW-11). She is wife of the appellant Dhanesh Yadav. As per version of the prosecution on the date of incident i.e 28th of January, 2018. The appellant left the victim in her parental house on 21st of January, 2018. He came there on 28th of January, 2018 for taking her back to his house and when the victim requested that due to her illness she wants to stay for a week in her parental house then the appellant assaulted on

her head by axe and flee away from there. Thereafter, the matter was reported and after investigation the appellant was charge-sheeted and the Court convicted as mentioned above.

3. Learned counsel for the appellant submits that prosecution witnesses have not supported the version of the prosecution therefore, version of the complainant has not corroborated and same is not dependable. Though, Dr. Prakash Ghodeshwar (PW-3) who examined the victim opined that injuries may be sustained by falling of the weapon and seizure witnesses have not supported the factum of seizure of axe from the appellant therefore, case of the prosecution is doubtful. The incident took place suddenly for house hold dispute between the husband and wife and there is no motive to cause death of the wife therefore, it is not a case under Section 307 of I.P.C. The trial Court has overlooked the contradiction and omission and improvement in the statements of the prosecution witnesses therefore, finding of the trial Court is liable to be set-aside.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. In the present case, date of incident was on 28th of January, 2018 and report was lodged against the appellant on the same day of the incident as Ex.P-2 at police station Hirri in which name of the appellant was mentioned as culprit and his act of assault by axe on the head of the victim was also mentioned in the said report. Which was lodged by father of

the victim. Victim (PW-11) deposed that on the date of incident she was in her parental house at village Dhourabhatha where the appellant reached at about 11:00 a.m. and thereafter, he pressed her mouth and closed the door from inside and assaulted her by axe on her head. As per version of this witness, the appellant assaulted her for four times after receiving injuries she got unconscious. Version of this witness is subjected to searching cross examination but nothing could be elicited in favour of the defence. Version of the victim is supported by the version of Faguram Yadav (PW-1) who is father of the victim, he received information regarding assault of her daughter by the appellant. He rushed to the spot and found the victim in injured condition and seen head injuries. Teej Bai (PW-2), Chandravati Yadav (PW-6) and Thanwar Yadav (PW-8) have also seen head injuries on the body of the victim. Version of these witnesses is supported by medical evidence. Dr. Praksh Ghodeswar (PW-3) examined the victim on 28th of January, 2018 at community health centre Bilha and noticed following injuries which is mentioned in Ex.P-4.

(i) Insized wound bone deep bleeding – 3"x1" in mid parietal region and opined that this injury may be caused by hard and sharp object.

(ii) Lacerated wound bleeding– 2.5" x 1/2" near parietal region bone deep, caused by hard and blunt object.

As per version of this witness head injuries of the victim is grievous in nature and due to complication there is possibility

of her death. He also examined the axe brought to him and opined that injuries sustained by the victim may be caused by this weapon(axe). His version is further supported by version of Dr. Ramkrishana Kashyap (PW-12) and Dr. V.Kumar (PW-13) who operate the injuries of head of the victim and also opined that if instant treatment would not have been provided in time then there was possibility of her death.

6. From the entire evidence on record, there is nothing to say that appellant has been roped in false charge. The victim is his wife and there is no reason for her to implicate her husband in false charge. There is nothing on record that appellant has been falsely roped on account of grudge or otherwise. Therefore, argument on behalf of the appellant is not sustainable. It is established that appellant caused injury on the body of the victim there had possibility of death due to injuries.
7. The question for consideration of this Court is whether the act committed by the appellant falls within mischief of Section 307 of IPC, 1860.
8. Hon'ble the Supreme Court in the matter of **Sachin Jana and Another Versus State of West Bengal**, has observed as under:-

To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of

the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

9. On an overall assessment of the evidence, it is clear that Section 307 of IPC has clear application in the present case therefore, argument on behalf of the appellant is not sustainable. Conclusion arrived at by trial Court is not liable to be interfered with and conviction of the appellant under Section 307 of IPC is hereby affirmed.
10. Considering the facts and circumstances of the case and further considering the act of the appellant. Sentence awarded to the appellant by the trial Court cannot be termed as harsh,

disproportionate or unreasonable. Accordingly, the appeal is liable to be and is hereby dismissed.

11. Appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle