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**(2018) 05 CHH CK 0169**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal No. 3357 Of 1999

Devi Singh And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** May 18, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 307, 308, 325
- Code Of Criminal Procedure, 1973 - Section 161, 313

**Hon'ble Judges:** Arvind Singh Chandel, J

**Bench:** Single Bench

**Advocate:** Keshav Dewangan, Neeraj Kumar Sharma

**Final Decision:** Allowed

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**Judgement**

Arvind Singh Chandel, J

1. The appeal is directed against the judgment dated 25.11.1999 passed in Sessions Trial No.328 of 1998 by the 1 st Additional Sessions Judge, Bastar

at Jagdalpur convicting and sentencing each of the Appellants as under:

Appellants Conviction Sentence Appellant No.2, Under Section 307 of the Rigorous Imprisonment Goverdhan Indian Penal Code for 4 years and fine

of Rs.1000/- with default stipulation Appellant No.1, Under Section 307/34 of Rigorous Imprisonment Devi Singh and the Indian Penal Code for 3

years and fine of Appellant No.3, Rs.500/- with default Budhram stipulation

2. Facts of the case, in brief, are that on 29.8.1998 at about 10:00 p.m., Complainant/injured Pravin Kumar Tiwari (PW4) was dancing in a tent of

Lord Ganesh Festival being celebrated in Village Jaitgiri. At that time, for a dispute taken due to an old enmity relating to money, Appellant Goverdhan

armed with tangiya and Appellants Budhram and Devi Singh armed with lathi came there. They assaulted Complainant Pravin Kumar Tiwari (PW4).

Pravin Kumar Tiwari sustained injury on head and got unconscious. Thereafter, the Appellants fled from there. The incident was witnessed by

Pradeep Tiwari (PW5), brother of Complainant Pravin Kumar Tiwari and two others Bhagwandas and Narsingh. Pradeep Tiwari (PW5) lodged First

Information Report (Ex.P7) at Police Station Nagarnar. Offence under Section 307, 34 of the Indian Penal Code was registered. Injured Pravin

Kumar Tiwari (PW4) was first examined by Dr. Sarita Mahobia (PW1) on 29.8.1998. Her report is Ex.P1 in which she found one injury on the head

measuring 4 inches in length and 1½ inches in depth which was inflicted by a hard and sharp edged object. Nature of the injury was grievous. The

Complainant was later on examined by Dr. Kishore Jha (PW2). His report is Ex.P6. During investigation, on the basis of memorandum statement of

Appellant Devi Singh, one danda was seized from the possession of Devi Singh vide Ex.P11. The said danda was examined by Dr. Sarita Mahobia

(PW1), who opined that the injury sustained by Complainant Pravin Kumar Tiwari could be caused by the said danda. Vide Ex.P9, plain and blood

stained soil were seized from the place of occurrence. Statements of witnesses under Sections 161 of the Code of Criminal Procedure were recorded.

On completion of the investigation, a charge-sheet was filed against the Appellants for offence punishable under Sections 307, 34 of the Indian Penal

Code. Charges were framed against them under Sections 307, 307/34 of the Indian Penal Code.

3. To rope in the Appellants, the prosecution examined as many as 10 witnesses. Statements of the Appellants were also recorded under Section 313

of the Cr.P.C. in which they denied the guilt and pleaded innocence. 2 witnesses have been examined in their defence.

4. The Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellants argued that the Appellants have falsely been implicated in the case due to a previous enmity. The

victim was caused only single injury. Dr. Kishore Jha (PW2) has opined that though injury was grievous in nature yet the same was not dangerous to

life. In these circumstances, offence under Section 307 of the Indian Penal Code is not established. For the act alleged to have been committed by the

Appellants, they can be held guilty for offence punishable under Section 308 of the Indian Penal Code or under Section 325 of the Indian Penal Code.

He further submitted that during trial, Appellant No.1 remained in custody for about 4 months and 5 days, Appellant No.2 for about 7 months and

Appellant No.3 for about 3½ months. They are facing the lis since 1998. Therefore, they may be sentenced with the period already undergone by them.

6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence. He submits that the injury

was caused by tangiya and lathi on the vital parts of the body of the victim. Therefore, the offence committed by the Appellants falls under Section

307 of the Indian Penal Code.

7. I have heard Learned Counsel appearing for the parties and perused the record minutely.

8. Complainant Pravin Kumar Tiwari (PW4) has deposed that at the relevant point of time, he was dancing in a tent of Ganesh festival. At that time,

the Appellants came there with lathi and tangiya. Appellant Devi Singh assaulted him with lathi which resulted into injury on his head. Appellant

Budhram assaulted him with lathi which resulted into injury on his shoulder and Appellant Goverdhan assaulted him with tangiya on his head. He fell

down and got unconscious. He has further stated that the incident was witnessed by his brother Pradeep Tiwari (PW5) and his friends. In paragraph 2

of his examination-in-chief, he has stated that Appellant Devi Singh and his elder brother had taken a loan from him and were not repaying the same

and on this issue, first a dispute took place with Appellant Goverdhan and a scuffle also took place with him. Thereafter, he again got busy in dancing.

At that time, all the Appellants came there and assaulted him. In his cross-examination also, he admitted that the dispute was already going on

between them for the money to be recovered by him from the Appellants.

9. Pradeep Tiwari (PW5), brother of Complainant Pravin Kumar Tiwari has supported the statement of Pravin Kumar Tiwari (PW4) and stated that

at the relevant point of time, he was also dancing in the same tent of Ganesh festival. At that time, the Appellants came there and assaulted his

brother Pravin Kumar Tiwari with lathi and tangiya and thereafter they fled from there. He has further stated that he lodged FIR (Ex.P8). This

witness has also admitted the fact that there was a dispute going on between his brother Pravin Kumar Tiwari and the Appellants and, therefore, the

incident took place.

10. Satyendra Singh (PW7) and Hitendra Tiwari (PW8) have corroborated the above statements of Pravin Kumar Tiwari (PW4) and Pradeep Tiwari

(PW5) and they have stated that they were also present at the spot. At that time, the Appellants came there with lathi and tangiya and assaulted

Complainant Pravin Kumar Tiwari (PW4) with the said weapons as a result of which Pravin Kumar Tiwari fell down.

11. Pravin Kumar Tiwari (PW4) was first medically examined by Dr. Sarita Mahobia (PW1). She has stated that Pravin Kumar Tiwari was in semi-

conscious condition. An injury measuring 4 inches in length x 1½ inches in depth was present on his head which was caused by a hard and sharp

object. The injury was grievous in nature. In cross-examination, she has stated that she could not state whether the injury was grievous or not.

Complainant/injured Pravin Kumar Tiwari was further examined and treated by Dr. Kishore Jha (PW2). He has stated that he had done operation of

the head of Pravin Kumar Tiwari. During the operation, he had found that bone of the head had been fractured and the same had stuck in the brain

and blood clot was present there. He has also opined that the injury was grievous in nature, but was not dangerous to life. His report is Ex.P6.

12. Investigating Officer Sub-Inspector S.K. Pandey (PW10) is the witness who recorded First Information Report (Ex.P8) on the information

received from Pradeep Tiwari (PW5). He has stated that on 31.8.1998, he recorded memorandum statement (Ex.P10) of Appellant Devi Singh and

on the basis of said statement, he recovered a lathi from the possession of Appellant Devi Singh vide Ex.P11. The seized lathi was examined by Dr.

Sarita Mohobia (PW1). She opined that the injury suffered by Complainant Pravin Kumar Tiwari (PW4) could be caused by the said lathi. Her report

is Ex.P5.

13. From a minute examination of the above statements of the witnesses, it is clear that at the relevant point of time when Complainant Pravin Kumar

Tiwari (PW4) was dancing in the tent of Ganesh festival, the Appellants assaulted him with lathi and tangiya. His statement is duly corroborated by his

brother Pradeep Tiwari (PW5) and other independent witnesses Satyendra Singh (PW7) and Hitendra Tiwari (PW8). They have remained firm during

their cross-examination. From the statements of Dr. Sarita Mahobia (PW1) and Dr. Kishore Jha (PW2), it is clear that Complainant Pravin Kumar

Tiwari (PW4) had sustained one injury on his head which was grievous in nature. From the statements of Pravin Kumar Tiwari (PW4) and his brother

Pradeep Tiwari (PW5), it is also clear that Pravin Kumar Tiwari had given some money to the Appellants as loan which was not repaid by them and,

therefore, a dispute was going on between them. From the statements of Pravin Kumar Tiwari (PW4) and Pradeep Tiwari (PW5), it is also clear that

before this incident, same day, at the place of incident itself, a dispute had taken place between Complainant Pravin Kumar Tiwari (PW4) and

Appellant No.2, Goverdhan on the same issue. Thereafter, Appellant Goverdhan had returned. Later on, the present incident took place. From the

statements of the witnesses, it is also clear that the incident took place where the dance programme was going on in the tent of Ganesh festival.

14. From the above discussion, I find that there was an old dispute going on between the Complainant and the Appellants, but the assault was made in

a crowd. If intention of making the assault had been to commit murder of the Complainant, the Appellants would not have assaulted him in the crowd,

instead they would have assaulted him in a lonely place. Secondly, only one injury was caused on the head of the Complainant which was found to be

grievous in nature. But, as per the statement of Dr. Kishore Jha (PW2), the injury was not dangerous to life. Had intention of making the assault been

to commit murder of the Complainant, the Appellants would have caused him more than one injury. In these circumstances, it is not established that

the injury suffered by the Complainant was caused with an intent to commit his murder. But, the injury was caused on the head, therefore, it can be

considered that the Appellants were aware that this injury could cause death of the Complainant. Hence, in my considered opinion, the offence of the

Appellants falls under Section 308 of the Indian Penal Code and not under Section 307 of the Indian Penal Code. Therefore, the conviction is altered

from Section 307 of the Indian Penal Code to Section 308 read with Section 34 of the Indian Penal Code.

15. It was submitted on behalf of the Appellants that during trial, Appellant No.1 remained in custody for about 4 months and 5 days, Appellant No.2

for about 7 months and Appellant No.3 for about 3½ months. They are facing the lis since 1998. Therefore, they may be sentenced with the period

already undergone by them.

16. Considering the above facts and circumstances of the case, I am of the view that it would be in the interest of justice if, for the conviction under

Section 308 read with Section 34 of the Indian Penal Code, the Appellants are sentenced with the period already undergone by them. Ordered

accordingly. Each of the Appellants shall also pay fine of Rs.50,000/-. This amount of fine shall be paid by each of the Appellants within 2 months

from the date of receipt of a copy of this judgment. In default of payment, each of the Appellants shall be liable to undergo rigorous imprisonment for

1 year. The amount of fine already paid, if any, shall be adjusted in the amount of fine imposed today. After deposit of the total amount of fine of

Rs.1,50,000/-, the same shall be paid to victim Pravin Kumar Tiwari (PW4) as compensation within one month from the date of deposit of the total

amount of fine.

17. In the result, the appeal is allowed in part to the extent indicated above.

18. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.