

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 215 of 1999**

1. Budhram alias Munau, son of Pancham Gond, aged about 33 years.
2. Khorbahra, son of Man Singh, aged about 50 years.
3. Ind Ram, son of Pusau Ram Gond, aged about 24 years.
4. Goverdhan, son of Pancham Gond, aged about 44 years.

All cultivators and residents of village Birkona, Police Station Koni,
District Bilaspur

5. Govind Ram, son of Bahore Gond, aged about 37 years, cultivator,
resident of village Farhada, Police Station Seepat, District Bilaspur
(MP)
6. Sukhram, son of Kartik Ram Gond, aged about 55 years, cultivator
and resident of village Birkona, Police Station Koni, District
Bilaspur.

---- Appellants

Versus

- The State of Madhya Pradesh (now Chhattisgarh)

---- Respondent

For Appellants : Shri Malay Shrivastava, Advocate.
For Respondent/State : Shri Chandresh Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****07/04/2015**

1. This appeal has been preferred by the appellants challenging their conviction under Sections 436/34, 325/34 and 323/34 of the IPC and sentence of RI for 5 years; RI for 1 year and RI for 6 months with usual default clauses respectively for each of the appellants.

2. The incident giving rise to the offence happened at 9 pm on 9.12.1996. At that time, all the accused persons assembled outside the house of informant PW-6 Bhagwati Bai, PW-8 Kallu @ Narendra, PW-9 Babulal and PW-10 Radha Bai. As per Dehati Nalishi (Ex.-P/13) lodged by PW-6 Bhagwati Bai, the accused persons were raising quarrel with her husband, hearing which she came out of the house to witness that appellant Sakharam (since deceased), Munaru Gond, Bahul Gond, Khorbahara Gond, Mahaliya, Govind Ram Gond, Goverdhan and one or two more persons carrying club and Tabbal in their hands were abusing her husband and other inmates of the house by using filthy language. They assaulted her husband, mother-in-law, Jeth and father-in-law Babulal. They also put the house on fire, damaging the same completely. She and other family members escaped from the place to save their lives. Dehati Nalishi was taken down at 10.30 am on 10.12.1996. Based on Dehati Nalishi, FIR (Ex.-P/9) was registered at 12.40 hours on 10.12.1996.
3. In course of trial, amongst other witnesses, the prosecution examined complainant Bhagwati Bai as PW-6, witnesses Babulal and Radha Bai, as PW-9 & PW-10, respectively. PW-8 Kallu @ Narendra is the husband of complainant Bhagwati Bai, however, he was not in the village at the time of incident, therefore, he is not an eyewitness.
4. In her Court statement, PW-6 Bhagwati Bai has identified all the appellants as perpetrators of the crime and has named each one of them as persons who assembled outside the house with club and Tabbal in their hands. In her examination-in-chief, she has stated

that all the accused persons assaulted the inmates of the house and put the house on fire. She has specifically named Sakharam (deceased) and Indram as the persons who committed mischief by fire.

5. PW-9 Babulal is the father-in-law of complainant Bhagwati Bai. He has given vivid description of the manner in which the house was put on fire by the accused persons. He has clearly explained the role played by each of the accused while committing mischief by fire. Similarly, PW-10 Radha Bai, mother-in-law of the complainant, has also named all the appellants as the persons who assaulted inmates of the house and committed mischief by fire.
6. PW-3 Dr. H. Chatterjee has proved the X-ray reports Ex.-P/10 and Ex.-P/10A finding fractures on the person of injured Radha Bai. PW-5 Dr. B.R. Nanda has submitted the report Ex.-P/12A in respect of medical examination of injured Kallu @ Narendra (PW-8). However, the said injured was not present at the time of incident, and was assaulted next day morning on 10.12.1996. PW-7 Dr. AK Shukla is the Assistant Surgeon, who medically examined Radha Bai and submitted the report Ex.-P/14. He also examined Babulal and submitted his medical report as Ex.-P/15; and for Ramawatar, he submitted medical report Ex.-P/16 whereas the medical report in respect of injuries sustained by Govind and Lallu have been proved as Ex.-P/17 and Ex.-P/18.
7. The evidence of above referred witnesses would clearly implicate the present appellants as the persons who assaulted the injured persons and put the house of the victim on fire. There is no such

discrepancy or inconsistency or contradiction in the evidence of these witnesses which would make their evidence untrustworthy. Thus, the offences for which the appellants have been convicted have been established beyond all reasonable doubt and the trial Court has not committed any illegality by convicting them for committing offence under Sections 436/34, 325/34 and 323/34 of the IPC.

8. The appellants have moved applications under Sections 320(1), 320(5) and 320(9) of the CrPC seeking permission to compound the offences. However, the applications are not supported by affidavit of the injured persons. Even otherwise, offence under Section 436 of the IPC is not compoundable.
9. Although compounding may not be permissible, but if some of the parties to the incident have entered into settlement and have diluted their case against the accused persons, it provides an occasion to the Court to consider adequacy of the sentence on the basis of subsequent development. In the present case, the incident happened on 9.10.1996 i.e. more than 18 years back. As per the affidavit of complainant Bhagwati Bai, parties have developed cordial relations. However, there is no mention that the appellants in any manner have compensated the victim for the loss sustained by them on account of their house being put on fire.
10. In the considered opinion of this Court, in view of the time elapsed since happening of the incident and the subsequent development of settlement between the parties, ends of justice would be served if the appellants are sentenced to the period already

undergone by them and at the same time directing them to compensate the victim by paying an amount of Rs.20,000/- each.

11. The appellants have been in jail for about 2 months & 23 days during the pendency of trial, as mentioned in para-24 of the impugned judgment. From the date of conviction till their release on bail by the High Court, they further remained in jail for little more than 3 months. Thus, they have already suffered jail sentence of about 6 months. Therefore, while reducing the jail sentence to the period already undergone by them, the appellants are directed to pay compensation of Rs.20,000/-each to complainant Bhagwati Bai, failing which the appellants shall undergo additional sentence of RI for 6 months. The amount of compensation shall be deposited by the appellants before the trial Court on or before **15th June, 2015**. Upon their failure to deposit the amount of compensation by the said period, they shall surrender before the trial Court on **16th June, 2015** for serving additional sentence of RI for 6 months. In the event, they do not surrender on the said date, the concerned police shall arrest and send them to the concerned jail for serving the sentence.

12. The appeal stands allowed in part.

J U D G E

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