

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR
(Single Bench : Hon'ble Shri Justice Ram Prasanna Sharma)

CRA No. 893 of 1999

1. Nandua Satnami s/o. Nanhe Satnami, aged 56 years.
2. Rupau s/o. Phool Chand, aged 42 years.
3. Gaya Prasad s/o. Itwari, aged 52 years.
4. Mani Ram s/o. Shri Budh Ram, aged 42 years.
5. Pandu s/o. Sunder aged 35 years.
6. Sabal Das s/o. Chotu Satnami, aged 42 years.
7. Bhoko Satnami s/o. Nanhe Satnami, aged 47 years.
8. Dev Kumar s/o. Rajwa, aged 30 years.
9. Ram Nath s/o. Shri Inderoo, aged 42 years.
10. Deden Dayal s/o. Inderoo aged 35 years.
11. Ram Dayal s/o. Inderoo aged 42 years.
12. Jhandue s/o. Inderoo, aged 43 years.
13. Guharam s/o. Shri Bhoko, aged 46 years.
14. Bhondu s/o. Anandi aged 42 years.
15. Budhari, s/o. Shri Sori Satnami, aged 51 years.
16. Anandi s/o. Shri Sori Satnami, aged 56 years.
17. Kejau s/o. Shri Punsu, aged 48 years.
18. Peela Bai, w/o. Phool Chand, aged 70 years.
19. Jhadu Ram s/o. Inderoo aged 38 years.
20. Pyarelal s/o. Anandi, aged 45 years.

(All residents of village Madhar, Police Station Simga, District Raipur,
MP (now CG).

---- Appellants

Versus

- The State of Madhya Pradesh (Now State of Chhattisgarh)

---- Respondent

For Appellants : Mr. A.S. Raj Put, Advocate.
For respondent/State : Mr. Luv Sharma, Panel Lawyer.

26-10-2017

1. At the outset, learned counsel for both parties submit that appellant No.1 Nandu Satnami, appellant No.7 Bhoko Saltami, appellant No.11 Ram Dayal, appellant No.16 Anandi and appellant No.18 Peela Bai have died during pendency of this appeal, therefore, the appeal preferred by them has become abated.
2. In view of the aforesaid submission made by both the parties, the appeal preferred by the aforesaid appellants stands abated.
3. This appeal is directed against the judgment of conviction and order of sentence dated 23-3-1999 passed by the Additional Sessions judge, Baloda Bazar, Raipur in Sessions Trial No. 235 of 88, whereby the trial Court convicted and sentenced the appellants as under:

<u>CONVICTION</u>	<u>SENTENCE</u>
1) u/S 148 of IPC	RI for two years.
2) u/S 427 of IPC	RI for one year.
3) u/S 447 of IPC	RI for three years.
4) u/S. 436/149 of IPC	RI for ten years and fine of

	Rs.10,000/- each, in default of payment of fine to undergo further RI for year.
5) u/S. 323/149 of IPC	RI for year.

4. As per prosecution case on 14-2-1988 in the morning, complainant Fudan Bai and her family members were cutting crop of grams and at the same time all the appellants made unlawful assembly with deadly weapons, dragged their cattle into the field of complainant party to graze their crop and assaulted Bodhan, Khemchand and Sukhdeo and thereafter they set fire the room of Khemchand.
5. The matter was reported to Police Station, Simga and after receiving information, Police swung into action. The injured persons were sent for medical examination to Government Hospital, Simga. Certain articles were seized. During investigation, the statements of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, charge-sheet was filed before the court of Chief Judicial Magistrate, Baloda Bazar, who in turn committed the case to the court of Sessions. The trial Court framed charges under Sections 436 read with Section 149, 148, 447, 427, 323 read with Section 34 and Section 506 of the IPC against the appellants to which they did not plead guilty and tried for the said offence. After recording the evidence of prosecution witnesses, the statements of the appellants were recorded

under Section 313 of the Cr.P.C., the trial Court found guilty for the offence and sentenced them as mentioned above.

6. At the out set, learned counsel for the appellants submits that he is not pressing this appeal on merits and he would confine his arguments to the sentence part thereof only. He submits that the appellants remained in jail for about more than three months and considering the fact that the incident took place 29 years ago, while maintaining the conviction and fine amount, the appellants may kindly be given the advantage and reduce the sentence of imprisonment to the period already undergone by them.
7. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
8. Heard counsel for the respective parties and perused the material on record.
9. To substantiate the charge, prosecution has examined as many as eighteen witnesses to the incident.
10. PW/2 Anjor Bai, PW/3 Bodhan, PW/4 Khemchand, (PW/5), Sukhdeo, PW/6 Omkar Prasad, PW/13 Fudan Bai, are eye witnesses to the incident. PW/13 Fudan Bai deposed that she knew all the accused/appellants and on the date of incident they were armed with axe and clubs, made unlawful assembly and assaulted Bodhan and Sukhdevo by clubs. She further deposed

that accused/appellants set fire their house. Version of this witness is supported by the version of Omkar Prasad (PW/6), Sukhdeo (PW/5), Khemchand (PW/4), Bodhan (PW/3) and Anjore Bai (PW/2). Ocular evidence of the above witnesses is supported by the version of Dr. B.R. Joshi (PW/11) who examined Bodhan on 14-2-21988 at Government Hospital, Simga and found contusion measuring 2x1 cm on his left waist caused by hard and blunt object and caused within five hours of the examination. He again examined Khemchand and found abrasion on his left knee measuring 2x1cm caused by hard and blunt object and caused within 5 – 6 hours of the examination. Again he examined Sukhdeo and found contusion measuring 4x1.5 cm on his left shoulder and contusion measuring 4x1 cm on his left shoulder and contusion measuring 2x1cm on his left knee. All the injuries were caused by hard and blunt object.

11. All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of the appellants. All the appellants were members of unlawful assembly and the act done by them will be treated as act of all of them and all are responsible for the offence committed by any of the member of unlawful assembly. It is also established that they were armed with axe, clubs and other deadly weapons and their mischief comes under Section 148 of the IPC. Again they dragged their cattle into the field of complainant party for grazing their crop and the same act comes within the purview of offence

under Section 427 of the IPC. It is established from the evidence that the accused/appellants entered into the premises of family of Fudan Bai and set fire one room of their house. From their act it is easily inferred that they intended to cause destruction of building ordinarily used as residence of family members of Fudan Bai. Their act comes within the mischief by fire to destroy the house and the same is punishable under Section 436 of the IPC. Entering into the house of Fudan Bai for committing mischief by fire and causing annoyance to them is an offence of criminal trespass and the same is punishable under Section 447 of the IPC. Again when members of unlawful assembly have assaulted Bodhan, Khemchand and Sukhdeo infurtherance of any object of unlawful assembly, their act falls under Section 323 read with Section 149 of the IPC, therefore, the trial Court was right in convicting the appellants for commission of offence under Sections 148, 447, 436 read with Section 149, 323 read with Section 149 of the IPC and the same is hereby affirmed.

12. Considering all the facts and circumstances of the case and the evidence adduced by the prosecution, I am of the opinion that the trial Court has rightly convicted the appellants and this court has no reason to interfere with the same.
13. So far as the quantum of sentence is concerned, keeping in view the nature of offence and further taking into consideration the fact that the incident took place 29 years ago and out of 20 appellants, five appellants as mentioned above have died during

pendency of this appeal and the appeal preferred by them stands abated, it appears from the judgment of the trial Court that due to mischief by fire, complainant sustained loss of Rs.5,000/- - 6,000/- and the trial Court awarded compensation of Rs.10,000/- to the victim of the incident and also considering the fact that the appellants already remained in jail for about more than three months, I am of the considered opinion that no useful purpose would be served in sending the appellants back to jail and it would be in the interest of justice that if the sentence imposed on them is reduced to the period already undergone by them while maintaining conviction and the fine amount.

14. Consequently, the appeal is partly allowed. Conviction of the appellant imposed on the appellants by the trial Court under Sections 148, 427, 447, 436 read with Section 149 and 323 read with Section 149 of the IPC is hereby affirmed, but the sentence imposed on the appellants by the trial Court is modified and instead they are sentenced to undergo imprisonment for the period already undergone by them for all the offences. However, as regards sentence of fine, the same is intact.
15. The trial Court will verify as to whether the fine amount imposed on the appellants is deposited by them or not and whether the compensation of Rs.10,000/- was paid to the complainant or not. It is stated that the appellants are on bail. Their bail bonds stand discharged.

16. It is made clear that if the fine amount is not paid, then all the appellants will suffer imprisonment for one year as ordered by the trial Court.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju