

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 520 of 2006

Sudama son of Jhanduram, aged about 34 years, **Appellant**
occupation Labour, R/o Jepara, Police Station
Charama, District Kanker, CG

Versus

State of Chhattisgarh through Police Station **Respondent**
Charama, District Kanker, CG

CRA No. 738 of 2006

State of Chhattisgarh through PS Charama, District **Appellant**
Kanker, CG

Versus

Sudama S/o Shri Jhanduram, aged about 34 years,
Occupation Labour, R/o Jepara, Police Station
Charama, District Kanker, CG

Janakram S/o Shri Jhanduram, aged about 49
years, Occupation Labour, R/o Akladorigari, Police
Station Arjuni

Pritram S/o Shri Jhanduram, aged about 40 years,
Occupation Agriculturist, R/o Baghapara, Jepara,
Police Station Charama, District Kanker, CG

Kirtan Ram S/o Jhanduram, aged about 35 years, **Respondents**
occupation - Carpenter, R/o Akladongari, Police
Station Arjuni

CRA No. 521 of 2006

Janakram S/o Shri Jhanduram, aged about 49 **Appellant**
years, Occupation Labour, R/o Akladorigari,
Police Station Arjuni

Versus

State of Chhattisgarh through Police Station **Respondent**
Charama, District Kanker, CG

CRA No. 522 of 2006

Pritram S/o Shri Jhanduram, aged about 40 years, **Appellant**
Occupation Agriculturist, R/o Baghapara, Jeparu,
Police Station Charama, District Kanker, CG

Versus

State of Chhattisgarh through Police Station **Respondent**
Charama, District Kanker, CG

CRA No. 523 of 2006

Kirtan Ram S/o Jhanduram, aged about 35 years, **Appellant**
occupation – Carpenter, R/o Akladongari,
Police Station Arjuni

Versus

State of Chhattisgarh through Police Station **Respondent**
Charama, District Kanker, CG

For Accused : Ms. Aditi Singhvi, Smt. Smriti Shrivastava
Shri Anand Gupta and Shivali Dubey,
Advocates
For State : Shri Adil Minhaj, PL

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri A.S. Chandel

Judgment on Board by Pritinker Diwaker, J

27/11/2017

As the aforesaid five Criminal Appeals arise out of the same judgment and order dated 08.06.2006 passed by Additional Sessions Judge Kanker in Sessions Trial No. 390/2005 convicting and sentencing the accused/appellants as detailed below, they are disposed of by this common judgment.

Accused	Conviction (U/s)	Sentence
Sudama	326 IPC	RI for seven years with fine of Rs. 2000/- with default stipulation.
Janakram, Pritram & Kirtanram	326/34 IPC	RI for seven years with fine of Rs. 2000/- with default stipulation, each

2. Criminal Appeal No. 738/2006 is however by the State for enhancement of sentence imposed on the accused persons.

3. According to the case of prosecution, on 13.7.2005 at about 12 noon accused persons went to the agriculture field where injured Suduram was working along with Chhabilal (PW-1) and one Rai Singh Gond (not examined). It is said that accused Janakram, Pritram and Kirtan caught hold of injured Suduram whereas accused Sudama caused number of injuries to him with the help of axe as a result of which his right hand got chopped off from the wrist. On the same day at about 5.30 PM FIR Ex. P-1 was lodged by Chhabilal (PW-1) - the eyewitness to the incident for the offence under Section 307/34 IPC against all the four accused persons. Injured was medically examined by Dr. J.L. Uikey (PW-9) who gave his report Ex. P-27. Treating doctor however is Dr. Iqbal Parvej (PW-10) whose report is Ex. P-29. On the memorandum of accused Sudama Ex. P-3 axe was seized under Ex. P-4; on the memorandum of accused Janakram Ex. P-5, club fitted with iron blade was seized under Ex. P-6; on the memorandum of accused Pritram Ex. P-7, spade was seized under Ex. P-8 and on the memorandum of accused Kirtan Ex. P-9 full shirt was seized under Ex. P-10. As per FSL report Ex. P-31 all the seized articles were stained with blood but there is no serological report on record. Court below framed the charge against the accused persons under Section 307/34 IPC.

4. In order to prove its case the prosecution has examined 10 witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case.

5. After hearing the parties the Court below by the judgment impugned, acquitted the accused persons of the charge u/s 307/34 IPC but has convicted and sentenced them as mentioned in paragraph No.1.

6. Counsel for the accused persons submit as under:

(i) That all the accused persons have been falsely implicated in the case on account of some land dispute.

(ii) That the land belonging to the accused persons was forcibly taken possession of by injured Suduram and on the date of incident when they tried to take back the same, the incident took place where injured Suduram suffered injuries.

(ii) That even if the entire case of the prosecution is taken as it is, at the most the accused persons can be convicted under Section 325 IPC.

7. On the other hand counsel for the respondent/State submits that looking to the evidence on record the accused persons should have been convicted under Section 307/34 IPC but the trial Court has committed an error in acquitting them of the said charge and then convicting them u/s 326 and 326/34 IPC. He further submits that even the sentence awarded by the Court below is too much on the lower side which needs suitable enhancement. According to the State counsel, the Court below has not even asked the accused persons to pay reasonable compensation to the injured under Section 357 of the Code of Criminal Procedure.

8. Chhabilal (PW-1) – the eyewitness to the incident has stated that on the date of incident when he went to the field of injured Suduram to work, the accused persons came there and threw down Suduram. He has further stated that accused Sudama assaulted

Suduram with axe whereas the other accused persons were holding him. In cross-examination also this witness remained firm to what he has stated in the examination-in-chief. Suduram (PW-2) - the injured witness has stated that on the date of incident at about 12 noon when he was tilling his land, accused persons reached there, threw him down and then accused Sudama caused injuries to him with axe chopping off his right palm from the wrist. Cross-examination of this witness carries the same thing as is stated in the examination-in-chief. Siyaram (PW-3) and Ramchandra Jain (PW-4) are the witnesses to memorandums of the accused persons Ex. P-3, P-5, P-7, P-9 and seizure made based thereon vide Ex. P-4, P-6, P-8 and P-10 who have though been declared hostile but have admitted their signature thereon. Kiran Kumar (PW-5) - the witness of seizure of plain and blood stained soil has also not supported the case of the prosecution and has been declared hostile. Kailash Singh (PW-6) is the Patwari who prepared spot map Ex. P-13. S.K. Thakur (PW-7) is the witness who recorded FIR whereas K.R. Bharsal (PW-8) is the investigating officer and they both have supported the case of the prosecution. Dr. J.L. Uikey (PW-9) is the doctor who medically examined the injured and gave his report Ex. P-27 whereas Dr. Iqbal Parvej (PW-10) is the treating doctor. As per report Ex. P-27 given by PW-9 there were three incised wounds and two contusions on the right hand which was hanging over the palm. Report further states that the said injuries were caused by sharp cutting object and were grievous in nature. Treating doctor (PW-10) in his report Ex. P-29 has also stated that one of the injuries suffered by the injured was grievous in nature.

9. We have heard counsel for the parties and perused the material on record including the evidence of the witnesses very

carefully. Evidence of Chhabilal (PW-1) – the eyewitness to the incident that of Suduram (PW-2) – the injured witness goes to show that on the date of incident accused Sudama caused injuries on the right hand of Suduram with axe as a result of which his right palm got chopped off from the wrist whereas the other accused persons were holding him. Evidence of these two witnesses has been fully corroborated by the medical evidence where the doctors (PW-9 and PW-10) have given the reports Ex. P-27 and P-29 stating that the injuries suffered by PW-2 were grievous in nature. Court below has thus been fully justified in convicting accused Sudama under Section 326 and the remaining ones u/s 326/34 IPC and the finding so recorded being in conformity with the evidence collected by the prosecution does not call for any interference by this Court. Likewise, the sentence of seven year rigorous imprisonment awarded to each of the accused persons is also appears to be in proportion to their act and there also no alteration in the same is necessary.

10. Accordingly, Criminal Appeal Nos. 520/2006, 521/2006, 522/2006 and 523/2006 are without any substance and thereby dismissed as such.

11. As the injured has suffered grievous injuries including chopping of his hand from the wrist, he is entitled to be adequately compensated by the accused persons under Section 357 of the Code of Criminal Procedure. This Court thus directs each of the accused persons to deposit Rs. 10,000/- in the Court below within a period of six months from today and on that being done the total amount which comes to Rs. 40,000/- shall be paid to the injured as compensation. Failure in doing that will make the accused persons suffer additional simple imprisonment for one year. With this

observation and direction Cr.A. No. 738/2006 preferred by the State for enhancement of sentence is allowed in part.

12. As the accused persons have already completed their sentence, Registry is directed to communicate this judgment to all the accused persons on their given address. After receiving the record, trial Court shall issue notice to all the accused persons asking them to deposit the amount before it as directed.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(A.S. Chandel)

Judge