

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.06 of 2012**

1. Umakant S/o. Jagnarayan Pandey, aged about 23 years,
2. Jagnarayan Pandey, S/o. Late Dharmjeet Pandey, aged about
3. Marawati Pandey, W/o. Jagnarayan Pandey, aged about 50 years,

All the above R/o. Village Talwapara, Baikunthpur, Thana Baikunthpur, Distt. Korea (CG)

---- Appellants**Versus**

1. Satyanarayan Pandey, S/o. Late Dharamjeet Pandey, aged about 58 years,
2. Mahendra Kumar Pandey, S/o. Satyanarayan Pandey, aged about 21 years,
3. Mukesh Kumar Pandey, S/o. Satyanarayan Pandey, aged about 18 years,
4. Smt. Umadevi Pandey, W/o. Satyanarayan Pandey, aged about 50 years,
5. Ku. Mahima Pandey, D/o. Satyanarayan Pandey, aged about 23 years,

All are R/o. Talwapara, Baikunthpur, PS Baikunthpur, distt. Korea (CG)

6. State of Chhattisgarh, Through the District Magistrate Korea, Distt. Korea (CG)

---- Respondents

For Appellants	: Shri Vivek Tripathi, Advocate
For respondents 1 to 5 No.1	: None present.
For respondent No.6/State	: Shri Avinash K Mishra, PL

DB: Hon'ble Shri Justice Prashant Kumar Mishra & Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board**03.01.2018.**

Challenge in this acquittal appeal is to the judgment of acquittal passed by the trial Court acquitting respondents 1 to 5 for the charges under Sections 147, 148, 149, 294, 506B, 307/149 and 323/149 of the Indian Penal Code.

2. The incident happened at about 5.30 am on 08.11.2010. Appellant No.2 Jagnarayan Pandey and respondent No.1 Satyanarayan Pandey are real brothers. Appellant No.1 and 3 are son and wife of Jagnarayan Pandey whereas non-applicants 2 to 5 are sons, wife and daughter of Satyanarayan Pandey, they are thus closely related and reside in the adjoining premises. Despite partition of immovable property, they had dispute over a small patch of land which is already possessed by Jagnarayan Pandey. According to the appellants, accused Satyanarayan and his sons are claiming right over the said patch of land.

3. As per the FIR, Umakant Pandey (PW-1) was speaking over the mobile phone with his maternal uncle at about 5.30 am on the date of incident. Accused Uma Devi Pandey saw him and called other accused persons and all of them starting beating Umakant. Hearing the commotion, Jagnarayan Pandey and Marawati Pandey came out of the house and they were also beaten by the accused persons by means of hands, fists, club and *farsa*. The appellants had sustained injuries for which they were medically examined by Dr. DK Chikenjuri (PW-6). In his report, the doctor found all the injuries sustained by the appellants to be simple in nature except injury over head of injured Marawati Pandey which was reported to be serious in nature. In the radiological examination injuries sustained by the appellants were not found to have any fracture.

4. The trial Court has acquitted the accused persons for the reasons that all the injures sustained by the injured were simple in nature; the appellants were the aggressors as they have been

convicted in the counter case lodged against them on the report of present non-applicants and also for the reasons that as per the statement of Jagnarayan Pandey (PW-2), three independent witnesses namely Satish Pandey, Satish Navik and Surjabai have witnessed the incident, yet these persons were not cited as witnesses in the charge sheet, therefore, investigation was not proper and fair. The trial Court concluded that because of the above lacuna as also for the reasons that in their statement under Section 161 CrPC and their deposition, the appellants have narrated a different story as of the genesis of the incident, therefore, the charges are not proved.

5. We have heard learned counsel for the appellants at length and perused the record.

6. The observation made by the trial Court that different story has been narrated about the genesis of the incident is fully based on evidence available on record. In as much as in their statement recorded under Section 161 CrPC, the appellants have stated that the incident took place when Umakant was speaking with his maternal uncle over his mobile phone whereas in their deposition they would state that on the previous night dispute had taken place between the parties and the non-applicants kept on abusing them throughout the night. In the early morning non-applicant Satyanarayan Pandey and Umadevi started abusing the appellant Marawati as soon as she came out of the house. Thus the story narrated in the FIR and in the statement recorded under Section 161

CrPC are wholly different than the one narrated in the Court statement.

7. The learned trial Court also seems to be justified in taking a view that merely because Marawati sustained injuries over the head, the same would not become serious in nature if it was otherwise simple injury. Similarly the reason that three independent witnesses were available as per the case diary statement of appellant No.2 Jagnarayan Pandey (PW-2), yet they were neither cited nor examined by the prosecution appears to be logical.

8. For the above stated reasons, we are fully convinced that the trial Court has not committed any irregularity or illegality while acquitting the accused persons. It is not necessary that the appellants having been convicted in the counter case, the other party also be convicted.

9. In counter cases, one or the other party is found to be aggressor and if such finding is recorded against the appellants, it may not be a ground for entertaining the acquittal appeal in which the judgment rendered by the trial Court is otherwise found to be sustainable under the law.

10. In view of the above, the acquittal appeal is dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)