

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.122 of 2009**

The State of Chhattisgarh

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Versus

1. Chhotelal S/o. Laman Prasad, aged about 60 years,
 2. Sanad, S/o. Chhotelal Kesharwani, aged about 28 years,
 3. Sushil Kesharwani, S/o. Chhotelal Kesharwani, aged about 25 years,
 4. Rohit Kesharwani, S/o. Chhotelal Kesharwani, aged about 23 years,
 5. Umashankar Kesharwani, S/o. Chhotelal Kesharwani, aged about 22 years,
 6. Ramashankar Kesharwani, S/o. Chhotelal Kesharwani, aged about 21 years,
- All are R/o. Mogahapara, Police Station Sheorinarayan, Distt. Janjgir Champa

---- Respondents

For the appellant/State : Shri Sanjeev Pandey, Govt. Advocate
 For the respondents : Shri Sanjay Pathak, Advocate on behalf
 of Shri Awadh Tripathi, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****11.9.2018.**

1. This appeal is directed against the judgment of acquittal dated 28.10.2002 passed by Judicial Magistrate First Class, Janjgir in Criminal Case No. 468/2000 wherein the said Court acquitted the respondents for commission of offence under Section 325 read with Section 34 and 324 read with Section 34 of the Indian Penal Code for voluntarily causing grievous hurt to one Susheel Kumar on 27.3.1999 at about 7.30 pm at village Mogahapra and also causing injury to him by teeth bite.
2. As per the prosecution story, all the respondents in furtherance of their common intention assaulted victim Susheel Kumar by club, hands and fists. The matter was reported and

investigated. After hearing, the trial Court acquitted the respondents as aforementioned.

3. Learned counsel for the appellant/State submits that from the evidence of Susheel Kumar (PW-1), Sanjay Kumar (PW-3), Arvind Kumar (PW-4) and Tijau Prasad (PW-5), it is established that the respondents have assaulted Susheel Kumar and as per the version of Dr. Ravishankar (PW-2), he found injuries on the wrist, cheek and thigh of said Susheel Kumar on examination on 27.3.1999 and also found injuries on the body of Arvind Kumar and Sanjay Kumar, therefore, case of the prosecution is established against the respondents. Learned counsel for the appellant further submits that it is not a case of right to private defence of body and the finding of the trial Court is not based on proper marshaling of the evidence in its right perspective and the same is liable to be reversed.

4. On the other hand, learned counsel for the respondents submits that as per the version of Tijau Prasad (PW-5) and Chandra Kumar (PW-8), it is established that the complainant party was also having club and other articles and they also assaulted the members of the respondents therefore, it is a case of right of defence of the body and no offence is made out against the respondents.

5. I have heard learned counsel for the parties and perused the material available on record.

6. Susheel Kumar (PW-1) Sanjay Kumar (PW-3) and Arvind Kumar (PW-4) are the persons who sustained injuries during the

course of the incident. As per the version of Tijau Prasad (PW-5) both the side had quarrel on account of some property dispute which was not partitioned and both the side had scuffle during the incident. Chandra Kumar (PW-8) deposed (para 2) that complainant Susheel Kumar was also having club by which he assaulted respondent Ramashankar. He further deposed that member of the complainant party i.e. Susheel Kumar and others came to assault other side and that is why scuffle took place between the parties. Witnesses Tijau Prasad and Chandra Kumar have not been declared hostile by the prosecution, their version is binding on the prosecution. As per the version of these witnesses complainant Susheel Kumar himself assaulted Umashankar and members of his party were also had scuffle with the respondents.

7. Susheel Kumar (PW-1) Sanjay (PW-3) and Arvind Kumar (PW-4) have suppressed this fact that Susheel Kumar also assaulted Umashankar. Therefore, it cannot be inferred from the statement of these witnesses that the respondents have started quarrel and they were the aggressor. If the complainant side started the quarrel then they were the aggressor. The respondents side had all the rights under Sections 97 and 101 IPC in right of private defence of the body to save them and others from assault by the complainant side and they can exercise their right by voluntarily causing them any harm other than death.

8. Looking to the entire evidence, the trial Court opined that the case is not fit for conviction and this Court has not reason to

substitute contrary finding against the finding recorded by the trial Court.

9. Accordingly, the appeal is dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

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