

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 592 of 1999

Order reserved on 25.07.2019

Order pronounced on 28.11.2019

1. Bansilal, S/o. Janakram Agaria, aged about 59 years, (Died)
 2. Jamuna Prasad, S/o. Banarsilal Agaria, aged about 32 years,
 3. Bhubaneshwar, S/o. Banarsilal Agaria, aged about 24 years,
- All 1 to 3 Residence of Village : Maalkharauda, Thana :
Mallkharauda, District : Bilaspur, MP.

---- Appellants

Versus

State of Madhya Pradesh through Station House Officer,
maalkharauda, District Bilaspur, MP.

---- Respondent

For Appellants : Shri Roop Naik, Advocate

For State/ Respondent : Shri Himanshu Sharma, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order

FIR (Ex. P-1) lodged by injured namely Jitendra Bhadur Singh (PW-1) goes to show that on 07.07.1995 at about 6-7 AM when he along with Hetram @ Bhushud (PW-2) and one Pareshwar (not examined) – the driver of the tractor were in the field for cultivating the land, the deceased/accused came there and started abusing to PW-2 saying as to on whose direction he was cultivating the land. When PW-2 asked the deceased/accused not to abuse, he caused injury to him with the club carried by him. While trying to ward off the attack of deceased/accused, PW-2 suffered injury on his thumb. FIR further goes to show that the present accused/appellants who were standing near by also attacked PW-1 and PW-2 with the club. Thereafter when PW-1 –

Jitendra tried to intervene in the matter he too was assaulted by the accused/appellants with club, as a result of which he became unconscious and was bleeding profusely. After sometime when PW-1 regained consciousness he saw all three accused/appellants getting away from the field. Thereafter they were taken to police station and then to hospital for treatment where their statements were recorded by the police. After completion of investigation charge-sheet was filed against the accused/appellants and charges were framed against them under Sections 294, 506-B, 323/34 and 307/34 IPC.

2. After due appreciation of evidence of the witnesses, learned Court below convicted the accused/appellants under Sections 307/34, 323/34 and 506-II IPC and sentenced to undergo RI for five years under Section 307/34, RI for six months under Section 323/34 and RI for three years under Section 506(II) IPC by judgment impugned dated 23 February, 1999 passed in Special Case No. 272/96. Hence this appeal.

3. Counsel for the accused/appellants submits that the accused/appellants had rightfully objected to the complainant party from cultivating the land, which was in their possession and had obtained stay from the Revenue Board Gwalior and it is this which led to the incident. He further submits that apart from the interested witnesses PW-1 and PW-2, no independent witness has supported the case of the prosecution. He submits that the act of the accused/appellants was in exercise of their right of private defence while protecting their property which the complainant party was trying to cultivate. He further submits that the findings

recorded by the Court below are not based on proper appreciation of the witnesses and, therefore, they are liable to be set aside.

4. State counsel however supports the judgment impugned and submits that the Court below has not committed any illegality in convicting and sentencing the accused/appellants as detailed above as the material witnesses being PW-1, PW-2, PW-6 and PW-9 have been duly supported the case of the prosecution.

5. From the statements of PW-1 and PW-2 who were injured in the incident, it became apparent that on the date of incident when they were cultivating their land the accused/appellants came there, started abusing and on being objected thereto, they took out the club and inflicted injuries on their body including head. They are stated to be in the hospital for 20-25 days for treatment. Dr. R.D. Gupta (PW-6) who medically examined (PW-1 and PW-2) vide reports Ex. P-10 and Ex. P-11 has noticed number of wounds on their various parts of their body including head, of various diameters. While answering the query vide Ex. P-15 he has clarified that excessive bleeding could have proved fatal to PW-1 and PW-2 in case immediate treatment was not provided to them. Another query whether the injuries to PW-1 and PW-2 could have been caused by the club produced before him for examination, has been answered by PW-6 in affirmative. The argument of the witnesses of the appellants that the act of the accused/appellants was in exercise of their right of private defence of protecting their property, has no substance and is hereby rejected for the reason that in order to save their property they were not supposed to exceed the parameter described for exercising the right of private defence as has happened in this

case. Mayand (PW-5) – the witness to seizure of club and cloths made under Ex. P – 7, Ex. P-8 and Ex. P-9 has also supported the case of the prosecution.

6. Thus the conviction of the accused/appellants as detailed above being based on proper appreciation of the evidence of the witnesses does not suffer from any legal error and, therefore, it is hereby maintained.

7. As regards sentence, keeping in mind the fact that the incident had taken place in the year 1995, that the parties have already filed an application for compromise stating that the ill-will between them has already come to an end, that they are maintaining cordial relations as of now, that the incident had taken place about 24 years back and thus they have already faced a lot for their felony since then and further keeping in mind that fact that they have already remained in jail for more than three months, this Court is of the opinion that no useful purpose would be served in again sending them to jail and, therefore, the sentence imposed of them is reduced to the period already undergone.

8. Appeal thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge