

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1020 of 2013**

1. Chandrashekhar Markam S/o. Rambharos Markam Aged About 19 Years R/o. Chilparas, P.S. Koylibeda, Civil And Rev. Distt. North Bastar Kanker, Chhattisgarh
2. Sudhram Usendi S/o. Late Chaituram Usendi Aged About 27 Years R/o. Chilparas, P.S. Koylibeda, Civil And Rev. Distt. North Bastar Kanker Chhattisgarh
3. Beeraram Usendi S/o. Late Chaituram Usendi Aged About 35 Years R/o. Chilparas, P.S. Koylibeda, Civil And Rev. Distt. North Bastar Kanker Chhattisgarh
4. Sakhamram Usendi S/o. Kolumram Usendi Aged About 35 Years R/o. Chilparas, P.S. Koylibeda, Civil And Rev. Distt. North Bastar Kanker Chhattisgarh
5. Birjoram S/o. Late Chaituram Usendi Aged About 26 Years P.S. Koylibeda, Civil And Rev. Distt. North Bastar Kanker Chhattisgarh
6. Smt.Mali Bai W/o. Late Punit Ram Netam Aged About 35 Years P.S. Koylibeda, Civil And Rev. Distt. North Bastar Kanker Chhattisgarh

---- Appellants**Versus**

- State Of C.G. Through Station House Officer, Police Station Koylibeda, Civil And Rev. Distt. North Bastar Kanker Chhattisgarh

---- Respondent

For the appellants : Shri DN Prajapati and Shri Abhinav
Shrivastava, Advocates

For the Respondent/State: Shri Ishwar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****09.12.2019**

1. The appeal is preferred against judgment dated 04.10.2013 passed by Additional Sessions Judge (FTC), North Bastar, Kanker (CG) in Session Trial No.110/2012 wherein the said Court convicted appellants 1, 2, 3 & 5 for the commission of offence

under Section 147, 148 read with Section 149 of the Indian Penal Code, 1860 and under Section 25(1B)(a) of the Arms Act, 1959 and sentenced them to undergo rigorous imprisonment for six months and to pay fine of Rs.100/-; RI for one year and to pay fine of Rs.100 and RI for three years and to pay fine of Rs.100/- respectively with default stipulation. Appellant Sakharam has been convicted under Sections 147, 148 read with Section 149 IPC and under Sections 4/5 of the Explosives Substances Act, 1908 and sentenced to undergo RI for six months and to pay fine of Rs.100/-; RI for one year and to pay fine of Rs.100/- and RI for five years and to pay fine of Rs.100/- respectively with default stipulation. Appellant Mali Bai has been convicted under Sections 147, 148 read with Section 149 IPC and sentenced to undergo RI for six months and to pay fine of Rs.100/- and RI for one year and to pay fine of Rs.100/- respectively with default stipulation.

2. In the present case, the appellants have been convicted for being the members of unlawful assembly held on 19.6.2010 at about 7.30 at village Chilparas and for committing violence. Appellants Chandrashekhar, Sudharam, Beeraram and Birjoram have been charged for having illegal fire arms in their possession, appellant Sakharam has been charged for having detonator and other explosive substances which is used for making any explosive substance. On report, all of them have been charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellants submits that the finding arrived at by the trial Court is erroneous because act of the

appellants is not substantiated by the evidence adduced by the prosecution before the trial Court. The trial Court has ignored the material contradiction and omissions, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. From the evidence of Asst. Sub Inspector RS Netam (PW-1), it is established that these appellants have formed unlawful assembly at Chilparas forest and they were having fire arms and explosive substances for violence and when they have been surrounded by police party, some of them fled away and the appellants have been arrested on the spot. Version of this witness is supported by version of Armour Rajesh Vishwakaram (PW-5). As per the version of the prosecution witnesses, four fire arms were seized from the possession of appellant Chandrashekhar, Sudharam, Biraram and Birju and the same was sent for examination and after examination it was found by armour Rajesh Vishwakarma (PW-5) that all the fire arms were fit to fire. Version of this witness is unrebutted and it is established that these four appellants were in possession of fire arms which is punishable under Section 25(1B) of the Act 1959. Again there is

unlawful assembly with fire arms for violence and the offence fall under Sections 147 & 148 of the IPC. Looking to the evidence, arguments advanced on behalf of these four appellants is not sustainable and therefore, conviction for the offence by the trial Court is hereby affirmed.

7. From the evidence it is clear that detonators were seized from appellant Sakharam and as per Platoon Commander Naresh Singh (PW-4) the detonators were explosives substance which was deactivated by blast. From the entire evidence, it is clear that Sakharam was in possession of explosives substance. His act falls within mischief under Section 4/5 of the Explosives Substances Act and under Section 147 and 148 of the IPC. The trial Court awarded sentence from six months to five years and looking to the gravity of the offence, the same cannot be termed as disproportionate, harsh or unreasonable, therefore, sentence part is also not liable to be interfered with.

8. Accordingly, appeal filed on behalf of appellants Chandrashekhar Markam, Sudharam Usendi, Beeraram, Birju Ram and Sakharam is hereby dismissed. As these appellants have suffered full jail term, no further order for their arrest etc. is required.

9. So far as appellant Mali Bai is concerned, she has been convicted only for being member of the unlawful assembly for violence. Therefore, her act falls within mischief under Section 147 IPC. As this appellant was not having any deadly weapon, her act does not fall within mischief under Section 148 IPC,

therefore, her conviction under Section 148 IPC is hereby set aside and she is acquitted of the said charge. This appellant has been convicted under Section 147 of the IPC by the trial Court and the same is hereby affirmed. As per the record, this appellant has suffered jail term from 19.6.2012 to 19.10.2012 thereby she suffered the jail term of four months and two days. Considering the facts and circumstances of the case, this court is of the opinion that ends of justice would be met if appellant Mali Bai is sentenced to the jail term of period already undergone by her. Accordingly, her sentence is reduced to the period already undergone by her. However, fine sentence imposed by the trial Court shall remain intact.

10. With this modification, the appeal filed by appellant Mali Bai is allowed in part while appeal filed by remaining appellants is dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE