

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 29-11-2019

Delivered on 10-01-2020

CRA No. 436 of 2003

1. Sudharam s/o. Baisakhu Patel, aged about 40 years.
2. Budhram s/o. Baisakhu Patel, aged about 21 years.
3. Sudh ram s/o. Baisakhu Patel, aged about 35 years.
4. Kachra Bai w/o. Sudha Ram, aged about 32 years.
5. Purushottam s/o. Pardeshi, aged about 22 years.

All residents of Gram Pandaripani, Police Station BALCO,
District Korba (CG).

---- Appellants

Versus

- State of Chhattisgarh through Aarakshi Kendra Balco, Police
Staton Balco, District Korba (CG).

---- Respondent

&

CRA No. 464 of 2003

1. Omkishor s/o. Ganpat Patel, aged about 31 years.
2. Mani Prakash s/o. Ganpat Patel, aged about 22 years.
3. Chandrika s/o. Ganpat Patel, aged about 17 years.
4. Umashankar s/o. Ganpat Patel, aged about 20 years.

All residents of Pandari Pani, Police Station BALCO, Dist.
Korba (CG).

– Appellants.

Vs

- State of Chhattisgarh through Police Station BALCO, District
Korba (CG).

– Respondent.

For Appellants in : Mr. Pushpendra Kumar Patel,
CRA No. 436 of 2003 Advocate.

For appellants in : Mr. V.C. Ottalwar and Mr. Azad
CRA No. 464 of 2013 Siddique, Advocates.

For respondent/State : Mr. Aman Kesharwani, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. As both the aforesaid appeals arise out of same incident, they are heard analogously and are being disposed of by this common judgment.

2. CRA No. 436 of 2003 arises out of judgment dated 25-3-2003 passed by the Additional Sessions Judge, Korba (CG) in Session Trial No. 396 of 2002 wherein the said Court has convicted the appellants for commission of offence under Sections 148, 323/34 of IPC 1860 and sentenced them to undergo RI for three years and fine of Rs.1000/- and RI for one month and fine of Rs.500/- with default stipulations.

3. CRA No. 464 of 2003 arises out of judgment dated 25-3-2003 passed by the Additional Sessions Judge, Korba (CG) in Session Trial No. 354 of 2000 wherein the said Court has convicted the appellants for commission of offence under Sections 323/34 and 326

of IPC 1860 and sentenced them to undergo RI for one month and fine of Rs.500/- and RI for 2 years and 6 months and fine of Rs.5000/- with default stipulations.

4. As per allegation of the prosecution, the incident took place on 22-6-2000 at about 6.30 pm. In CRA No. 436 of 2003 the injured persons are Mani Prakash and others while in CRA No. 464 of 2003 the injured persons are Sudharam and others. It is alleged that both sides were present at the time of incident near the field of Mani Prakash. It is further alleged that Sudharam objected that some portion of his land is reduced as the boundary of his land cut by Mani Prakash and others. Both parties called persons of their side and thereafter member of both sides sustained injuries after assault. The matter was reported and investigated and after completion of trial, the trial Court convicted and sentenced the appellants as aforementioned for which two appeals are filed.

5. Learned counsel for the appellants would submit that the trial court has not evaluated the evidence of prosecution witnesses, therefore, the finding of the trial court is liable to be set aside.

6. On the other hand, learned counsel for the State 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 while invoking the jurisdiction of the appeal.

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

8. In Sessions Trial No. 396 of 2002, Mani Prakash (PW/1), Omprakash (PW/2), Chandrika Prasad (PW/3) and Uma Shankar (PW/4) deposed before the trial court that Sudharam came with Budhram, Purushottam, Sukhvar, and Kachara Bai having clubs and Sudharam having some iron weapon. Sudharam assaulted Maniprakash on his head. When his brother tried to save him, they also assaulted him. Version of these witnesses is supported by other witnesses and it is further supported by version of medical evidence of Dr. K. Shrivastava (PW/10) who noticed the injuries on the bodies of Mani Prakash and Omkishore.

9. In Sessions Trial No.354 of 2000 Budhram Patel (PW/1), Budharam (PW/2), Dilbodha Singh (PW/3), Kapur Singh (PW/7) and Sudharam (PW/10) deposed that Omkishore, Mani Prasad, Chandrika and their sister namely Yashomati assaulted Sudhram by club, axe and rod and Chandrika assaulted Sudharam. They further deposed that Mani Prasad assaulted him by rod and Omkishore assaulted Budhram. Version of these witnesses is supported by Dr. K. Shrivastava (PW/10) who noticed incised wound on the neck of Budhram and incised wound on the head of Sudharam. He also noticed injuries on the bodies of Budhram and Sukhwar Singh.

10. Both sides sustained injuries and both sides are claiming that members of other side are aggressors. No party is explaining as to how the members of other side sustained injuries. When both sides were not explaining the injuries of other side, it can be inferred that it is a case of suppressing the origin of the incident for which one side cannot be blamed. As per Section 97 of the IPC, every person has a right to defend his own body, and the body of any other person, against any offence affecting the human body. As per Section 101 of IPC the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend to the voluntary causing to the assailant of any harm other than death.

11. In the present case, both sides sustained injuries and both sides are suppressing the origin of the incident. Every member of each side has right of private defence and it is extended to the voluntary causing to the assailant of any harm other than death. It is not clear from the evidence as to who is first person started assault., therefore, every person has right to defend against aggressor but since the matter has been suppressed, every member has right to defend as mentioned above. Causing injury in defending right of own body and the body of any other person is exempted as per Section 101 of IPC, therefore, no one can be convicted acting in self defence.

12. Accordingly, both appeals are allowed. Conviction and sentence of the appellants in both appeals are hereby set aside. They are acquitted of the charges framed against them. The appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of the Cr.P.C.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju