

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 19-12-2019

Delivered on 30-01-2020

CRA No. 841 of 2001

- Amir Das s/o. Sawant Satnami, aged about 42 years, r/o. Village Jagannathpur, Police Station Saja, Tahsil Saja, District Durg (CG).

---- Appellant.

Versus

- State of Chhattisgarh through Station House Officer, Police Station Saja, District Durg (CG).

---- Respondent

For Appellant : Mr. Manoj Mishra, Advocate appears
as Amicus Curiae

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

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment dated 17-7-2001 passed by 2nd Additional Sessions Judge, (FTC), Bemetara (CG) in Sessions Trial No. 201 of 1993 wherein the said Court has convicted the appellant for commission of offence under Section 323 of IPC for which maximum sentence prescribed for jail term is one year and he has already suffered jail term for the said period and he has been convicted for the period already undergone by him.

2. As per version of prosecution, there was rivalry between the appellant and complainant party in which Chaitram and others were members. The dispute was regarding land and in one side one Manwa and others were claiming right over the land while from other side appellant and others were claiming right over the land. On the date of incident, appellant along with other co-accused had gone for harvesting the paddy crop and at that time appellant was restrained by Ghansbhyam, Ghasiya and Chaitram. It is alleged that the appellant and other co-accused assaulted Chaitram and Manwa and due to assault Chaitram died. The trial court after evaluating the evidence recorded finding that Sukhram is the person by whose assault Chaitram died, therefore, the trial Court convicted the co-accused Sukhram under Section 304 Part 2 of IPC and present appellant Amir Das was convicted under Section 323 of IPC.

3. Learned counsel for the appellant would submit as under:

- i) The trial court recorded finding that the appellant was acting in right of private defence of property and as per version of trial court, he has caused simple injury, therefore, his act is protected and same is not an offence.
- ii) The trial court has not evaluated the evidence properly, 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 marshalling of the evidence and the same is not liable to be interfered 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. The only question for consideration of this court is whether the appellant was acting in private defence of property. The trial court recorded finding that the property in question was owned by Amirdas and injured Chaitram and others entered into his property which gives right of private defence of property to Amirdas. The finding of the trial court is not challenged by the State, therefore, that finding attained finality.

7. From the evidence, it is clear that when the trial court recorded finding that the appellant caused simple injury on the body of Chaitram, it cannot be said that the appellant committed infringement of the right of private defence of property as per Section 104 of the IPC, 1860. Right of private defence of property does not extend to the voluntary causing of death but does extend to the voluntary causing to the wrong doer of any harm other than death. In the present case, appellant has caused simple injury in the right of private defence, therefore, his act is protected under

Section 104 of IPC, 1860 and his act is not criminal act and he cannot be convicted for offence under Section 323 of IPC.

8. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court against the appellant is hereby set aside and he is acquitted of the charge under Section 323 of IPC.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju