

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 512 of 2009

1. Prem Lal Yadav S/o Jitram Yadav, aged about 25 years, R/o Village Samerkala, P.S. Kartala, District Korba (C.G.)

----- Appellant

Versus

1. State of Chhattisgarh, Through Police Station – Kartala, Distt. – Korba (C.G.)

---- Respondent

And

CRA No. 545 of 2009

1. Sunil Kumar Lakda S/o Bihanu Ram, aged about : 18 years,
2. Junas Lakda S/o Bihanu Ram, aged about : 20 years,
Both are R/o Samarkana (wrongly mentioned in order sheet Samarkala),
Police Station : Kartala, District : Korba (C.G.)

---- Appellants

Versus

1. State of Chhattisgarh, Through Police Station : Kartala, District : Korba (C.G.)

---- Respondent

For Appellants – Mr. Varunendra Mishra, Advocate.
For Respondent – Ms. Shobha Kashyap, Deputy Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

26/08/2015

1. As both the criminal appeals have been filed against a common judgment passed in Sessions Case No.72/07, they are being disposed of by a common judgment.
2. Challenge is in these two appeals is to the judgment of conviction and order of sentence dated 26-06-2009 passed in Sessions Case No.72/07 by the learned IInd Additional Sessions Judge, FTC, Korba, C.G. wherein the appellants have been convicted and sentenced in the following manner with a

direction to run the substantive jail sentence concurrently:-

Appellant	Conviction	Sentence	Fine	Sentence on default of payment of fine
Premlal	Under Section 450 of the Indian Penal Code (in short 'the IPC)	RI for 5 years	Rs.1000/-	RI for 1 month
	Under Section 458 of the IPC	RI for 10 years	Rs.1000/-	RI for 1 month
	Under Section 323 of the IPC	RI for 6 months	Rs. 500/-	RI for 15 days
	Under Section 506 Part II of the IPC	RI for 1 year	Rs.500/-	RI for 15 days
Sunil Lakda	Under Section 395 read with Section 397 of the IPC	RI for 10 years	Rs.5000/-	RI for 5 months
	Under Section 450 of the IPC	RI for 5 years	Rs.1000/-	RI for 1 month
	Under Section 458 of the IPC	RI for 10 years	Rs.1000/-	RI for 1 month
	Under Section 323 of the IPC	RI for 6 months	Rs. 500/-	RI for 15 days
Junas Lakda	Under Section 506 Part II of the IPC	RI for 1 year	Rs.500/-	RI for 15 days
	Under Section 395 read with Section 397 of the IPC	RI for 10 years	Rs.5000/-	RI for 5 months
	Under Section 450 of the the IPC	RI for 5 years	Rs.1000/-	RI for 1 month
	Under Section 458 of the IPC	RI for 10 years	Rs.1000/-	RI for 1 month
	Under Section 323 of the IPC	RI for 6 months	Rs. 500/-	RI for 15 days
	Under Section 506 Part II of the IPC	RI for 1 year	Rs.500/-	RI for 15 days
	Under Section 395 read with Section 397 of the IPC	RI for 10 years	Rs.5000/-	RI for 5 months
	Under Section 25(1-B)(b) of the Arms Act	RI for 1 year	Rs.500/-	RI for 15 days
	Under Section 25(1-B)(a) of the Arms Act	RI for 1 year	Rs.500/-	RI for 15 days

The trial Court further directed regarding the period of detention till the date of judgment that the same be set off as per Section 428 of the Code of Criminal Procedure, 1973 (in short 'the Code'). The period of detention till the date of pronouncement of the judgment are as follow:-

Appellant	Duration of detention period	Detention period (till the date of pronouncement of the judgment of the trial Court)
Junas Lakda	from 23-05-2007 to 26-06-2009	2 years, 1 month and 4 days
Premlal	from 23-05-2007 to 26-06-2009	2 years, 1 month and 4 days
Sunil Lakda	from 24-05-2007 to 26-06-2009	2 years, 1 month and 3 days

The trial Court acquitted co-accused Laluram from all the charges framed against him.

3. Conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

4. As per case of the prosecution, in brief, complainant Shrawan Kumar (PW-1) along with his family is residing at village Shyang and also doing business of grocery and general items. On 21-05-2007, at about 6.45 p.m., when the complainant was in his shop, villager Aziz khan came for some item, at the same time 5 persons came, they were armed with country made pistol and sword. They gave threat and asked for money. Thereafter, they assaulted the complainant and a few of them entered inside the house, gave threat to the wife of the complainant, and on account of fear of death, they gave them Rs.20,000/-. They were asking for more money. They assaulted the complainant and his family members. Son of the complainant ran away towards the village. He informed the villagers regarding the incident, then villagers came and they caught hold one of the accused, other accused were ran away from the spot. Appellant Junas Lakda was caught hold by the villagers who on being interrogated informed regarding the other co-accused persons present at the time of incident and committed the offence. On the report of the complainant, Kartala police lodged an unnumbered FIR and started the investigation. During investigation, spot maps were prepared. Disclosure statement of the appellants and other co-accused were recorded. Country made pistol, cartridge, sharp edged weapon gupti, cash and other items were seized from the appellants which were duly examined by the experts. Statements of the witnesses were recorded under Section 161 of the Code. Co-accused juvenile Prakash was produced before the Juvenile Justice Board and a separate charge sheet was filed against him. After due investigation and sanction to prosecute as required, charge sheet was filed before the concerned Court of Judicial Magistrate First Class, Korba, C.G.,

who, in turn, committed the case to the Court of Sessions, the learned Additional Sessions Judge received the case on transfer and framed the charges against the appellants and other co-accused. They denied the charges and prayed for trial.

5. In order to prove guilt of the accused, the prosecution examined 10 witnesses in all. The statements of the accused were recorded under Section 313 of the Code wherein they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question.

6. After providing opportunity of hearing to the parties, the learned trial Court acquitted the co-accused Laluram from the charges framed against him and convicted and sentenced the appellants as aforementioned.

7. I have heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.

8. Learned counsel appearing on behalf of the appellants submitted that the prosecution failed to prove its case against the appellants. There are omissions, contradictions in the statements which does not inspire confidence to convict the appellants. On the basis of shaky evidence the appellants cannot be convicted for the offence. Hence, learned counsel prayed that the appeal be allowed and the appellants be acquitted for the charges. Inter alia, learned counsel for the appellants submitted that if the Court finds the judgment of conviction appropriate, then looking to the period of detention, as they are the first offender, no any previous similar offence is either adduced or proved and appellant Premlal Yadav was aged about 25 years, Sunil Kumar Lakda was aged about 19 years, Junas Lakda was aged about 20 years at the time of incident; looking to their age and the property looted and the injuries sustained, they be given an opportunity in the light of above facts. Learned counsel for the appellants further submitted that appellant Premlal Yadav was in custody from

23-05-2007 to till the pronouncement of the judgment of the trial Court and also remained in jail serving the remaining part of the sentence. On 20-01-2015, this Court allowed the application for suspension of sentence and grant of bail and he was granted bail thereby for about 7 years and 8 months, appellant Premlal Yadav served major part of the sentence. Appellant Sunil Kumar Lakda served the sentence from 24-05-2007 to till date thereby already served 8 years, 3 months and 2 days of the sentence. Appellant Junas Lakda served the sentence from the date of arrest, i.e., 23-05-2007 to till date thereby he has served the sentence for 8 years, 3 months and 3 days. Maximum sentence awarded to all the appellants is R.I. for 10 years along with other substantive jail sentences as mentioned above with a direction to run all the substantive jail sentences concurrently. There is no any minimum sentence prescribed for offence under Section 458 of the IPC and Section 395 read with 397 of the IPC for which the appellants sentenced R.I. for 10 years and 10 years. Looking to their period of sentence already served till date, they may be considered for reduction of the sentences.

9. On the other hand, learned counsel for the State/respondent opposed the argument advanced on behalf of the appellants and submitted that after detail appreciation of the evidence for the offence adduced by the prosecution, in the judgment, the trial Court convicted the appellants through a reasoned judgment; and as the judgment of conviction is well founded, the appeal for judgment of conviction be dismissed. Learned counsel for the State/respondent further submitted that looking to the act of the appellants, the trial Court rightly sentenced the appellants, hence, the prayer for already undergone by the appellants are also not acceptable. Therefore, the appeal may be dismissed on all counts.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced before the trial Court.

11. On close and careful scrutiny of the evidence adduced before the trial Court, this Court is of the view that the trial Court has rightly convicted the appellants for the offence they committed; there is no illegality or impropriety committed by the trial Court in passing judgment of conviction against all these three appellants. Consequently, in the considered view of this Court, the judgment of conviction passed against all the three appellants requires no interference and is hereby affirmed.

12. So far as fine sentence awarded to the appellants are concerned, they are found guilty and sentenced for many offence with a direction that all the substantive jail sentences shall run concurrently along with set off under Section 428 of the Code. There is no any minimum sentence prescribed for Section 458 of the IPC and Section 395 read with Section 397 of the IPC; the appellants served the sentences as mentioned above, i.e., appellant Premlal Yadav for about 7 years and 8 months, appellant Sunil Kumar Lakda for 8 years, 3 months and 2 days, appellant Junas Lakda for 8 years, 3 months and 3 days. They were in the age group of 19 to 25 years and first offender with no previous criminal history; also the property looted was worth of Rs.20,000/- only. Considering the above facts and circumstances and looking to the injuries received by the complainant and his family, in the considered view of this Court, by granting the appellants opportunity to remain in society as law abiding people sentencing them to the period already undergone by them would meet the ends of justice.

13. Consequently, both the appeals filed on behalf of the appellants are hereby allowed in part. The judgment of conviction passed against all the three appellants are hereby affirmed. Fine sentences awarded to the appellants by the trial Court are also hereby affirmed. So far as substantive jail sentences passed against the appellants under Section 458 of the IPC and Section 395 read with Section 397 of the IPC are concerned, instead of rigorous

imprisonment of 10 years and 10 years, the appellants are sentenced for the period already undergone by them. So far as the other substantive jail sentences are concerned, they are below the period already undergone by the appellants, hence, they are also affirmed along with benefit of set off as ordered by para 64 of the judgment of the trial Court.

14. If the appellants have paid the entire fine amount awarded to them, they be released forthwith if not required in any other case. If fine amount has not been deposited, then the trial Court is directed to serve the appellants with default sentence till the realization of fine amount.

15. Both appeals partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

