

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 507 of 2013.**

1. Sukhlal Gavde S/o Dasru Ram Gavde Aged About 21 Years R/o Village Videypara , Kharkapal , P.S. Badgoan , Distt. Kanker C.G.
2. Soma Ram @ Hemram S/o Jogi Ram Potai aged 22years R/o village Schoolpara, Badeparali, P.S. Badgoan, District Kanker Civil & Revenue district Kanker, C.G.

---- Appellants**Versus**

State of Chhattisgarh Through - District Magistrate North Baster
Kanker (Station House Officer Badgaon) Civil & Revenue Distt. Kanker
C.G.

---- Respondent

For Appellants	:	Shri N.K. Chatterjee, Advocate.
For the Respondent/State	:	Shri Sanjeev Kumar Agrawal, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****24/08/2015**

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 3.5.2013 passed by the Learned Additional Sessions Judge, North Bastar, Kanker, Chhattisgarh in Sessions Trial No. 113 of 2010, whereby and whereunder the learned trial Court, after holding the Appellants guilty for possession of firearms in contravention of Section 5 of the Arms Act, 1959 (for short 'the Arms Act'), engaged in relation to membership of a terrorist organization and in relation to give support to a terrorist organization which falls under the Unlawful Activities (Prevention) Act, 1967 (for short 'the Act, 1967') and being the members of an unlawful assembly and duly armed with weapons and being the members of such unlawful assembly in furtherance of common object for commission of offence to take the life of the members of the police force,

convicted them under Sections 147, 148 and 307 read with Section 149 of the Indian Penal Code and Sections 25 and 27 of the Arms Act, Section 38 sub-section (2) and Section 39 sub-section (2) of the Unlawful Activities (Prevention) Act, 1967 and sentenced them in the following manner with a direction that the substantive jail sentences shall run concurrently:

Conviction	Sentence
Under Section 147 of the IPC	6 months rigorous imprisonment and to pay fine of ₹100/- each in default of payment of fine further undergo additional RI for 1 month
Under Section 148 of the IPC	1 year rigorous imprisonment and to pay fine of ₹100/- each in default of payment of fine further undergo additional RI for 3 months
Under Sections 307 and 149 IPC	7 years rigorous imprisonment and to pay fine of ₹100/- each in default of payment of fine further undergo additional RI for 6 months
Under 25 Arms Acts (Conviction to Soma Ram)	3 years rigorous imprisonment and to pay fine of ₹100/- each in default of payment of fine further undergo additional RI for 3 months
Conviction under Section 25 Arms Act (Conviction to Sukhlal)	5 years rigorous imprisonment and to pay fine of ₹100/- each in default of payment of fine further undergo additional RI for 3 months
Under 27 Arms Act	5 years rigorous imprisonment and to pay fine of ₹100/- each in default of payment of fine further undergo additional RI for 6 months
Under Section 38(2) the Unlawful Activities (Prevention) Act, 1967	5 years rigorous imprisonment and to pay fine of ₹100/- each in default of payment of fine further undergo additional RI for 6 months
Under Section 39(2) the Unlawful Activities (Prevention) Act, 1967	5 years rigorous imprisonment and to pay fine of ₹100/- each in default of payment of fine further undergo additional RI for 6 months

(2) Conviction is impugned on the ground that without there being any iota of evidence, Learned Court below has convicted and sentenced the Appellants as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, on 5.7.2010, Constable No. 929, namely, Dinesh Kumar lodged First Information Report at Police Station Badgoan that when the police party were on searching duty, they saw three persons sitting behind bushes and on seeing the police, they started running. When the police-party marched ahead in search of those suspects, about 15-20 naxals opened fire to kill the police search party and also for the purpose to rob the arms. Thereafter, in retaliation, the police party also opened the fire and conducted search operation. During the operation, both the Appellants were seen in hidden condition. During interrogation, they admitted themselves to be as active members of Kode Kursi Dalam. Upon searching them, a country-made pistol along with ammunition, other personal belongings, cash of ₹51,500/-, two hand grenades, ammunition and naxal literature etc. were found and seized. The police, after registering Criminal Case No.21 of 2010 at Bhadgoan Police Station, started investigation. They seized the materials as mentioned above vide Ex. P/5 and P/6. Both the Appellants were arrested vide Ex. P/7 and P/8. During investigation, the Appellants gave their disclosure statements Ex. P/11 and P/12 and the police conducted the search, prepared the spot-map. After obtaining necessary sanction for prosecution under Sections 25 and 26 of the Arms Act, from the District Magistrate and also obtaining sanction for prosecution under Section 45 of the Act, 1967 to prosecute the Appellants for the offence registered against them including Section 38 sub-section (2) and Section

39 of the Act of 1967 and after collecting evidence, the police filed charge-sheet before the Judicial Magistrate, First Class, Pakhanjur, who, in turn, committed the case to the Court of Session, North Bastar, Kanker, Chhattisgarh, Learned Additional Sessions Judge received the case on transfer and framed charges against both the Appellants and other co-accused who were absconding from the date of the incident. The present Appellants denied the charges levelled, pleaded innocence and demanded trial.

(4) In order to prove the guilt of the Appellants, the prosecution examined as many as 10 witnesses. The Appellants were examined under Section 313 of the Code of Criminal Procedure, 1973 (for short "the Code"), wherein they denied the circumstances appearing against them and pleaded innocence and false implication in the crime in question.

(5) After affording opportunity of hearing to both the parties, learned trial Judge held that the offences alleged against the Appellants have been proved and therefore convicted and sentenced them as aforementioned.

(6) I have heard Learned counsel for the parties, perused the judgment impugned and records of the Court below.

(7) Learned counsel appearing on behalf of the Appellants submits that he is not contesting the appeal on its merits regarding conviction and sentences passed against the Appellants and he is confining his argument only to the quantum of sentence under Section 307 read with Section 149 of the IPC whereby and whereunder both the Appellants

were sentenced to undergo RI for 7 years and to pay fine of ₹100/- in default of payment of fine to further undergo additional RI for 6 months. Learned counsel further submits that the Appellants are in jail since 5.7.2010 thereby they have served major part of the sentence i.e. for 5 years 1 month and 19 days till today. Both the Appellants were in the age group of 19-20 years as shown in the arrest memo. They are not having any criminal antecedents and they will not commit any offence in future. Learned counsel for the Appellants lastly submits that the Appellants be given an opportunity to live peacefully in the village and society and the sentence imposed upon them may appropriately be reduced. Looking to the entire material proved against them for the offence under Sections 307 and 149 IPC and that they do not assail the judgment of conviction imposed upon them, but assail only the quantum of sentence, they deserve a lesser sentence. Hence, in view of the above-mentioned facts, the Appellants may be sentenced appropriately.

(8) On the other hand, Learned Counsel for the Respondent/State, opposing the submissions advanced on behalf of the Appellants, submitted that the Appellants are the residents of Videypara and Badeparali neighbouring Police Station Badgoan. They were caught by the police force along with cash of more than ₹51,000/-, other personal belongings, a country-made pistol, ammunition, two hand-grenades and ammunition etc. The entire material seized from the Appellants at the time of their arrest goes to show that they were the members of naxal-group who opened fire on search by the police party. Looking to the entire facts, the prayer made by the Appellants regarding reduction of

their sentence deserves to be rejected and the impugned judgment of conviction and sentence may be affirmed in toto.

(9) In order to appreciate the arguments advanced on behalf of the parties, I have perused the entire evidence adduced by the prosecution.

(10) On a close-scrutiny of the evidence available on record, it is revealed that the Appellants were in the age group of 19-20 years at the time of incident. There is no evidence adduced or proved regarding their earlier participation in any of the illegal activities. They are the first offenders. They are in jail since 5 years 1 month and 19 days though they have sentenced to undergo RI for many offences as aforementioned, but the trial Court has ordered to run all the substantive jail sentences concurrently thereby on the maximum side they are sentenced to RI for 7 years which is for the offence under Sections 307 read with Section 149 IPC. The present Appellants were not identified as the persons who opened the fire on the police party. It is quite natural that nobody could identify the same. The Appellants are not assailing their conviction in this appeal and only confining their arguments to the sentence part.

(11) Looking to the entire facts and evidence, in the considered view of this Court, granting of one opportunity to the Appellants by appropriately reducing their sentence would meet the ends of justice so that they may live peacefully in the village and society.

(12) Consequently, the appeal filed by the Appellants is allowed in part. The conviction awarded against the Appellants by the trial Court is hereby affirmed. Fine sentences awarded by the trial Court are also

hereby affirmed. So far as the substantive jail sentence imposed against the Appellants only under Section 307/ 149 of the IPC is concerned, the same is reduced to the period already undergone by them. Other substantive jail sentences are also affirmed.

(13) The Appellants are directed to be released forthwith, if not required in any other case or crime.

Sd/-
(**Chandra Bhushan Bajpai**)
JUDGE