

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 63 of 2014

- Nasibuddin S/o Salimuddin Aged About 40 years R/O Dhaisiyan, Mohalla Ps Sardana, Distt. Merath (Uttar Pradesh) At Present - Near Sarkari Kuan, Ward No. 2, Masjid Road, Kota PS Amanaka, Raipur, Civil And Rev. Distt. Raipur C.G.
- Arif Khan S/o Mehboob Khan Aged About 28 Years R/O Baihar Thekedari Mahalla Kanha National Park, Near House Of Jamil, PS Baihar, Distt. Balaghat (M.P.) At Present - International Hotel, Kargiroad Kota, PS Kota, Civil And Rev. Distt. Bilaspur C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through SHO PS G.R.P. Raipur, Civil and Rev. Distt. Raipur C.G.

---- Respondent

For appellants : Shri Y.C. Sharma, Adv.
For Respondent/State : Shri Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment

17/04/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 26-6-2013 passed by the 7th Additional Sessions Judge, Raipur in Sessions Trial No. 166/2011 whereby and whereunder learned trial Court after holding the appellants guilty for causing hurt by means of poison, by sharing criminal conspiracy to commit offence to escape from custody in which appellant No. 1 Nasibuddin was lawfully detained for any such offence and facing trial as an undertrial prisoner while returning from hearing of such trial and sentenced as per following manner:

Sr. No.	Name	Conviction u/S	Sentence
1	Nasibuddin	328/120-B, IPC 224, IPC	7 years RI + fine of Rs. 1000/-, in default further RI for 3 months RI for 1 year + Rs. 500/-, in default further RI for 3 months
2.	Aarif Khan	328/120-B, IPC 225, IPC	7 years RI + fine of Rs. 1,000/-, in default further RI for 3 months RI for 1 year + Rs. 500/-, in default further RI for 3 months

2. Conviction is impugned on the ground that without there being an iota of

evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 18-8-2010 appellant No. 1 Nasibuddin was returning after taking part in a trial pending before Durg court. At about 7.55 pm when he was under judicial custody being taken back by complainant Sunil Kumar Khande, Constable, Police Line, Bilaspur along with other constables, both the appellants conspired to commit offence to escape and run away from lawful custody and for committing this act both the appellants offered all the three police constables Lassi in which some intoxicant was mixed. When complainant and other fellow constables became unconscious after consuming intoxicated lassi, appellant No. 1 opened his handcuff and got down from the train at Tilda railway station and both the appellants ran away from the spot. The complainant constable Sunil Kumar Khande and fellow constables in an unconscious condition were noticed by GRP Bilaspur and all of them were admitted in the hospital for treatment. After gaining consciousness, constable Sunil Kumar Khande gave a written report to SHO, GRP, Bilaspur. The GRP after receiving the written report Ex. P-1 lodged the FIR un-number Ex. P-2 and registered a case under Sections 328, 224, 225 and 120-B of Indian Penal Code (in brevity 'IPC') and subsequently the case was registered before the GRP Police Station, Raipur vide Ex. P-3 and the Crime No. 128/2010 was registered for above mentioned offences against the appellants. During investigation, all the three constables were examined and treated by the doctors of CIMS, Bilaspur and police obtained their MLC report. All the three constables after treatment were discharged from CIMS, Bilaspur on 21-8-2010. There bed head tickets, MLC report and other relevant documents were collected by the police during investigation. The appellants were arrested. They were duly identified before test identification parade. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure (in brevity 'Cr.P.C.'). The IO also seized railway warrant regarding return journey and other connected documents. After completion of investigation, charge sheet was filed before the Special Railway Magistrate First Class, Raipur who in turn committed the case to the Court of Session, Raipur. Learned Additional Sessions Judge received the case on transfer and conducted trial.
4. The appellants were charged for offence under Sections 328, 224, 225 and 120-B of IPC. Both the appellants denied the charges and prayed for trial.
5. In order to prove the guilt of the appellants, prosecution examined 18 witnesses in all. Statements of the appellants were recorded under Section

313 of the Cr.P.C. in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question.

6. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellants as aforementioned.
7. Heard learned counsel for the parties and perused the record including the impugned judgment.
8. Learned counsel for the appellants fairly submitted that as instructed he is not assailing this criminal appeal against the conviction of the appellants. He is confining his argument only on the point of quantum of sentence and submitted that as per certificate prepared under Section 428 of the Cr.P.C. both the appellants were arrested on 14-5-2011 and they are in custody till date. As per para 39 of the judgment, set off of the period the appellants remained in custody will be given against the sentence. Learned counsel submits that for about 3 years, 11 months and 3 days i.e. almost about 4 years, the appellants have served the jail sentence. Though they offered intoxicated lassi to the complainant and other fellow constables but such intoxicant was not fatal for life. Both the doctors P.W. 10 Dr. Manoj Kumar Gupta and P.W. 12 Dr. Rajkumar Markam admitted that they had not reached to a conclusion as to which intoxicant was mixed in the lassi. P.W. 12 Dr. Raj Kumar Markam in para 12 of his statement stated that in all the three patients symptoms may be found on account of excessive intoxicant namely liquor, ganja and bhang, thereby it is not yet proved that the intoxicant was fatal for life. The appellants have already remained in jail for the above-mentioned period. They will not commit any offence in future. They be given an opportunity to live like a law abiding citizen. There is no minimum sentence prescribed for the offence under Section 328 read with Section 120-B of IPC. They may be sentenced to the period already undergone.
9. Per contra, learned counsel for the respondent/State opposed the argument advanced on behalf of the appellants and submitted that appellant No. 1 was in custody already facing a trial and while he was returning back after taking part in the trial before Durg court, appellant No. 1 and appellant No. 2 conspired to escape from custody. Both of them offered intoxicated lassi and when police party became unconscious the appellant No. 1 opened his handcuff and got down and escaped at Tilda railway station. Subsequently they were arrested after about 9 months and charge sheeted. Looking to the nature of the offence, the trial Court has rightly convicted them and sentenced. Hence there is no scope to interfere in the impugned judgment of conviction and sentence.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.
11. At the outset, learned counsel for the appellants fairly conceded and accepted the judgment of conviction passed against the appellants. Even otherwise, a perusal of the entire evidence goes to show that the prosecution proved its case beyond all probable doubt. There is no scope for taking a different view regarding conviction of the appellants as aforementioned. Hence conviction part of the judgment is well founded.
12. So far as quantum of sentence is concerned, learned trial Court sentenced the appellant to undergo RI for 7 years and RI for one year and to pay a fine of Rs. 1,000/- and Rs. 500/- with default stipulations. There is no order for running both the substantive jail sentences concurrently meaning thereby both the sentence are to run separately. The trial Court has neither specified regarding running of sentences concurrently or separately, nor shown any reason for running the sentences separately. On the the other hand it ordered that in default of payment of fine, the default sentences be run separately. The trial Court was duty bound to specify whether the sentences are to run concurrently or separately. In the opinion of this Court, both the sentence ought to have been directed to run concurrently.
13. Both the appellants have served 4 years jail sentences. When we appreciate the medical evidence, it goes to show that the intoxicant was not held fatal for life by the doctors. One more point to mention is that if appellant No. 1 was provided lassi filled in a bottle for opening Roza, primarily the complainant and other police constables were not supposed to drink or eat any material and they were required to follow the relevant guidelines and instructions as provided for undertrial prisoners. Suppose, for the sake of argument, for observing any ritual of Roza, the police party allowed the appellant No. 1 to accept Lassi filled in a bottle offered by his suspicious friend even then since the police party was on duty, they were not supposed to accept the lassi offered by the appellant No. 1.
14. Looking to the entire facts and circumstances of the case, in the considered opinion of this Court, the sentences already undergone by the appellants would be sufficient to serve the interest of justice.
15. Consequently, to agree with the arguments of the learned counsel for the appellants, the appeal filed by the appellants is partly allowed. Conviction awarded by the trial Court to the appellants is hereby affirmed. Fine sentence is also maintained. However, instead of the substantive jail sentence awarded by the trial Court, the appellants are sentenced to the period already undergone by them.

16. The appellants are in jail. They be released forthwith if not required in any other case subject to their depositing fine amount failing which they shall undergo sentence under default clause as per para 39 of the impugned judgment.

Sd/

Chandra Bhushan Bajpai
Judge