

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 347 of 2015**

Yakub Khan S/o Lal Khan, aged about 27 years, Occupation Labourer, R/o, Village Tangartoli, P.S. Jashpur, District Jashpur C.G.

---- Appellant

Versus

State of Chhattisgarh through Police Station Jashpur, District Jashpur C.G.

---- Respondent

Criminal Appeal No. 102 of 2015

Sarwej Ansari S/o Farukh Ansari, aged about 24 years, R/o Village - Bargidand, P.S. Raydih, Distt. Gumla (Jharkhand)

---- Appellant

Vs

State of Chhattisgarh through Police Station Jashpur, District Jashpur C.G.

---- Respondent

Criminal Appeal No. 384 of 2012

1. Amroz S/o Jan Khan, occupation Agriculturist, R/o village Tanger, P.S. Jashpur, District Jashpur
2. Mohammad Sabdul S/o Kangress Khan , Occupation Agriculturist, R/o Village Bargidand , P.S. Raidih, Distt. Gumla (JH) Accused No 8
3. Amjad @ Babloo S/o Jalil Khan, Occupation Driver, R/o Village Saitangertoli, P.S. Jashpur, Distt. Jashpur, C.G. Accused No 11
4. Mohib Khan S/o Mehboob Khan, occupation-carpenter, R/o Village Tanger Toli, P.S. Jashpur, Distt. Jashpur, C.G. Accused No 12
5. Sarwez Ansari S/o Farooq Ansari, occupation – bus agent, R/o Village Bargidand, P.S. Raidih, Distt. Gumla (JH) Accused 13
6. Shamshad Khan S/o Sanjoor Khan, occupation – Labour, R/o Village -Tanger Toli, P.S. Jashpur, Distt. Jashpur, C.G. Accused 14

---- Appellants

Vs

State of Chhattisgarh through Prabhari Arakshi Grih – Jashpur, District Jashpur, CG

---- Respondent

Criminal Appeal No. 348 of 2015

Yakub Khan S/o Lal Khan, aged about 27 years, Occupation Labourer, R/o, Village Tangartoli, P.S. Jashpur, District Jashpur, C.G.

---- Appellant

Vs

State of Chhattisgarh through Police Station, Jashpur, District Jashpur, C.G.

---- Respondent

Criminal Appeal No. 656 of 2012

1. Mohammad Sabdul S/o Kangress Khan , Occupation Agriculturist, R/o Village Bargidand , P.S. Raidih, Distt. Gumla (JH) Accused No 8
2. Amjad @ Babloo S/o Jalil Khan, Occupation Driver, R/o Village Saitangertoli, P.S. Jashpur, Distt. Jashpur, C.G. Accused No 11
3. Mohib Khan S/o Mehboob Khan, occupation-carpenter, R/o Village Tanger Toli, P.S. Jashpur, Distt. Jashpur, C.G. Accused No 12
4. Shamshad Khan S/o Sanjoor Khan, occupation – Labour, R/o Village -Tanger Toli, P.S. Jashpur, Distt. Jashpur, C.G. Accused 14

---- Appellants

Vs

State of C.G. through Prabhari Arakshi Grih- Jashpur, Distt. - Jashpur C.G.

---- Respondent

Criminal Appeal No. 680 of 2012

Valiul Haque S/o Hashim Shah, aged about 18 years, occupation – Businessman, R/o Village Tangartoli, Ps Jashpur, Distt. Jashpur, C.G.

---- Appellant

Vs

State of C.G. through PS Jashpur, Distt. Jashpur C.G.

---- Respondent

Criminal Appeal No. 681 of 2012

Valiul Haque S/o Hashim Shah, aged about 18 years, occupation – Businessman, R/o Village Tangartoli, Ps Jashpur, Distt. Jashpur, C.G.

---- Appellant

Vs

State of C.G. through PS Jashpur, Distt. Jashpur C.G.

---- Respondent

Criminal Appeal No. 816 of 2012

1. Enamul Haque S/o Abdul Sattar, aged about 27 years, occupation – labourer, R/o Village Tangartoli, PS Jashpur, Distt. Jashpur C.G.
2. Sajab Khan S/o Nazir Khan, aged about 21 years, occupation-agriculturist, R/o Village Tangartoli, PS Jashpur, Distt. Jashpur, C.G.
3. Mohd. Sagir S/o Mohd. Shahjahan, aged about 24 years, occupation-driver, R/o Village Tangartoli, PS Jashpur, Distt. Jashpur, C.G.
4. Mohd. Ijharul Haque S/o Abul Shah, aged about 22 years, occupation-labourer, R/o Village Tangartoli, PS Jashpur, Distt. Jashpur, C.G.
5. Islam Shah S/o Abul Shah, aged about 22 years, occupation-driver, R/o Village Tangartoli, PS Jashpur, Distt. Jashpur, C.G.

---- Appellants

Vs

State of Chhattisgarh through PS Jashpur, Distt. Jashpur, C.G.

---- Respondent

Criminal Appeal No. 975 of 2012

1. Enamul Haque S/o Abdul Sattar, aged about 27 years, occupation – labourer, R/o Village Tangartoli, PS Jashpur, Distt. Jashpur C.G.
2. Sajab Khan S/o Nazir Khan, aged about 21 years, occupation-agriculturist, R/o Village Tangartoli, PS Jashpur, Distt. Jashpur, C.G.
3. Mohd. Sagir S/o Mohd. Shahjahan, aged about 24 years, occupation-driver, R/o Village Tangartoli, PS Jashpur, Distt. Jashpur, C.G.
4. Mohd. Ijharul Haque S/o Abul Shah, aged about 22 years, occupation - labourer, R/o Village Tangartoli, PS Jashpur, Distt. Jashpur, C.G.
5. Islam Shah S/o Abul Shah, aged about 22 years, occupation-driver, R/o Village Tangartoli, PS Jashpur, Distt. Jashpur, C.G.

---- Appellants

Vs

State of Chhattisgarh through PS Jashpur, Distt. Jashpur C.G.

---- Respondent

For Appellants	:	Ms. Hamida Siddiqui and Shri Azad Siddiqui, Advocates
For Respondent/State	:	Shri Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****18.11.2016**

All these nine appeals have been taken up together at the request of the counsel appearing for the appellants as the nature of offence and the incident are common. Therefore, all these appeals are being analogously decided by this common order.

2. These appeals arise out of two Sessions Trials; one is Sessions Trial No. 17 of 2009 and the other is Sessions Trial No.18 of 2009. In both the Sessions trials the accused persons are same.

3. The appellants in Sessions Trial No.17 of 2009 have been convicted for the offence under Sections 341, 399, 395, 397 & 365 of IPC and sentenced to undergo RI for 15 days u/s 341, RI for 7 years with fine of Rs.1,000/- u/s 399, RI for 10 years with fine of Rs.1,000/- u/s 395, RI for 7 years with fine of Rs. 1,000/- u/s 397 and RI for 3 years with fine of Rs.500/- u/s 365 with default stipulations by the Sessions Judge, Sessions Division, Jashpur vide order dated 22.02.2012.

The appellants in Sessions Trial No. 18 of 2009 have been convicted for the offence under Sections 395 & 398 IPC and 25 & 27 of Arms Act and sentenced to undergo RI for 10 years with fine of Rs.1,000/- u/s 395, RI for 7 years with fine of Rs.1,000/- u/s 398, RI for 5 years with fine of Rs.1,000/- on both count u/s 25 & 27 with default stipulations by the Sessions Judge, Session Division, Jashpur vide order dated 08.06.2012.

4. In Sessions Trial No.17/09 the FIR Ex.P-28 was lodged on 09.10.2008 at Police Out Post, Lodam, Jashpur on a written report received by PW-14 Kripa Prasad Singh against 12 unknown persons for the offence under Sections 341, 363 & 395 IPC. In Sessions Trial No.18/09, the FIR Ex.P-7

was lodged on 12.10.2008 by PW-1 Philip Kujur against 12 unknown persons for the offence under Section 395 of IPC. In both the cases, initially the FIR was registered at Out Post Lodam on zero number and later on, in S.T. No. 17/09, the FIR Ex. P-34 was registered in Crime No. 253/08 on 09.10.2008 and in ST No. 18/09, FIR Ex.P-09 was registered in Crime No. 258/08 on 13.10.2008 at Police Station, Jashpur.

5. During the course of investigation, firstly three accused persons namely Yakub Khan, Saddam Khan and Enamul Haque were arrested on 14.10.2008 and thereafter the other accused persons were also arrested. Charge sheet in Crime No. 253/08 and 258/08 were filed before the Sessions Judge, Jashpur which were registered as Sessions Trial No. 17 of 2009 and Sessions Trial No. 18 of 2009 respectively.

6. During the course of evidence, 15 witnesses were examined by the prosecution in ST No.17/09 and 16 witnesses were examined in S.T. No.18. The defence did not examine any witness in both the sessions trial number.

7. After conclusion of trial, the Court below in ST No.17/09 which was decided first on 22.02.2012 found the accused persons guilty of having committed the offence under Sections 341, 399, 395, 397 & 365 of IPC and accordingly, convicted them under the said sections and sentenced them as mentioned in paragraph-3 of this judgment. Subsequently, in S.T. No.18/09 also the Court below vide its order dated 08.06.2012 reached to the conclusion that the appellants are guilty of having committed the offence under Sections 395 & 398 of IPC and 25 & 27 of Arms Act. Accordingly convicted them under the said sections and sentenced them as mentioned in paragraph-3 of this judgment.

8. The case of the prosecution in short is that the entire incident occurred in the intervening night of 8/9.10.2008 when PW-15 Baratu Ram

accompanied by complainant Kripa Prasad Singh PW-14 and Radheshyam in ST No.17/09 were coming from Ranchi, Jharkhand to Jashpur in an Ambulance of the Ashram. When they reached at Sankh More (river), a group of persons armed with knife, dagger, air gun and country made pistols blocked them and entered into the Ambulance which was being driven by PW-15 Baratu. The accused persons assaulted them and looted their articles, camera and Rs.1465/-. All the three were blind folded and taken in the said ambulance by the accused persons. Thereafter, the accused persons proceeded further and again enroute stopped one Maruti car which was being driven by Satyendra Kumar PW-9 in ST No.17/09 and looted his gold chain, one mobile, a wrist watch and some clothes which were bought for a marriage in his family. Subsequently, the accused persons further looted one Mahindra Pickup and also a bus and the passengers of the said Pathan Bus Service. Thereafter, the accused persons had proceeded further and reached village Charaidand, Deepatoli and entered the house of PW-1 Philip Kujur in S.T. No.18/09. It is said that they had assaulted PW-1 and looted from him some cash and household articles, clothes, two bags, wrist watch etc. It is this incident which took place in the house of Philip Kujur which was registered by him at the Police Out Post, Lodam and which has been subsequently registered as S.T. No. 18/09.

9. Counsel appearing for the appellants Smt. Hamida Siddiqui and Shri Azad Siddiqui both make a joint prayer to the Court that taking into consideration the evidences which have been led by the prosecution and the finding of the Court below they do not intend to contest the case on merits so far as the conviction of the appellants are concerned. However, they jointly make a prayer that taking into consideration the fact that in both the Session Trials the accused appellants are same and the sentences awarded to them are same except for the fact that the judgments have been passed on two

different dates, the sentences awarded in the two Sessions Trials i.e. ST No.17/09 and ST No. 18/09 dated 22.02.2012 and 08.06.2012 may be directed to run concurrently.

10. Counsel for the appellants submit that the reason for making request for the judgments to run concurrently is that all the accused persons by now have already undergone custody for a period of 8 years and at the time of commission of the offence they were very young boys and now, they have all reached to their middle age. Counsel for the appellants tried to emphasize on the fact that all the appellants come from very poor and rustic background and they have already suffered sufficient punishment. They submit that if the two judgments are directed to run separately, it would amount to a capital punishment and a irreparable damage to them. Thus, counsel for the appellants prayed that the two judgments may be ordered for running concurrently.

11. Counsel for the appellants referred to a decision of the Supreme Court in the case of **Shyam Pal Vs. Dayawati Besoya & Anr.** decided on 28th October, 2016 whereby the Hon'ble Supreme Court has dealt with the issue of sentence ordering to run concurrently under the provisions of 427 of CrPC. In addition, counsel for the appellants also relied upon the decisions of the Supreme Court in the case of **Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmedabad and others** reported in **AIR 1988 SC 2143**.

12. It was lastly contended by the counsel for the appellants that in addition to the two sentences being ordered to run concurrently, the Authority concerned may be directed for permitting the appellants to avail the period of set off as is enunciated under Section 428 CrPC in each of the cases.

13. State counsel opposes the appeals on the ground that a bare reading of the FIRs in the two complaints one lodged by PW-14 Kripa Prasad Singh in ST No.17/09 i.e. Ex.P-34 and one lodged by PW-1 Philip Kujur in ST No. 18/09 Ex. P-9 by itself clearly indicate the gravity of the offence committed by the appellants. According to the State counsel, it is a case where on the same intervening night, the appellants had committed offences at four different places and therefore taking into consideration the act committed by the appellants which is gruesome they do not deserve the benefit of ordering the two sentences passed in the two judgments to run concurrently. Thus, prayed for rejection of the appeals.

14. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the record what is clearly reflected from the record is that all the accused persons in the instant case are young middle aged boys and the transactions took place in continuation on the same night. It was only two complainants who had lodged two complaints on two different dates which led registration of two separate FIRs and conducting of the trial separately.

15. The Supreme Court in the case of Shyam Pal (supra) in paragraph-13 relying upon its earlier decision in the case of V. K. Bansal vs. State of Haryana and Another (2013) 7 SCC 211 has held that “it was underlined that there is no cut and dried formula for the Court to follow, in the exercise of such power and that the justifiability or otherwise of the same, would depend on the nature of the offence or offences committed and the attendant facts and circumstances. It was however postulated, that the legal position favours the exercise of the discretion to the benefit of the prisoners in cases where the prosecution is based on a single transaction, no matter even if different complaints in relation thereto might have been filed.” In paragraph-15 of the said judgment the Supreme Court has also referred to a

decision of it decided on 03.10.2016 in the case of Benson vs. State of Kerala in Criminal Appeal No. 958 of 2016 wherein also the Supreme Court has ordered for concurrently running the sentences.

16. It would be trite at this juncture to refer to a decision of the Supreme Court in the case of **Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmedabad and others** reported in **AIR 1988 SC 2143** wherein paragraph-9 & 10 the Supreme Court after discussing the law of Section 427 CrPC has held as under:

“9. The Section relates to administration of criminal justice and provides procedure for sentencing. The sentencing court is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or consecutive?

10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.”

17. Taking into consideration the evidences which have been led by the prosecution in the two Sessions Trials what is apparently clear is that the incident occurred in the same night and only the victims are different who had lodged the FIR on different dates and which were registered in two crime numbers and the matter was put in two different sessions trials. The appellants in both the Sessions trials were same and they have ultimately been convicted by the same Sessions Judge.

18. Thus, by bringing the entire incident under the purview of one single transaction this Court is of the opinion that in the given facts and circumstances of the case the appellants would be entitled for the two sentences passed in the two impugned judgments to run concurrently and it is ordered accordingly.

19. With the modification in the sentence part to the extent that the two sentences passed in the two impugned judgments to run concurrently, the appeals of the appellants stand dismissed.

20. So far as the question of availing the period of set off is concerned, needless to mention that the trial judge has already ordered that the appellants shall be entitled for the benefit of set off under Section 428 of CrPC in each of the cases.

**Sd/-
P. Sam Koshy
Judge**