

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.993 of 2013**

1. Manesh Markam. S/o . Sahdeo Markam Aged About 20 Years
R/o. Vill.Sarandi, P.S. Tadoki, Revenue and Civil District North
Bastar (C.G.)
2. Bishmbhar Sahu S/o . Late Girdhari Teli Aged About 30 Years
R/o. Vill. Sarandi, P.S. Tadoki, Revenue and Civil District North
Bastar (C.G.)
3. Rahul Kumar Baghel S/o. Ramjeeram Gond Aged About 19
Years R/o. Vill. Sarandi, P.S. Tadoki, Revenue and Civil District
North Bastar (C.G.)
4. Harendra Kumar Komara S/o. Shrawan Kormara Aged About 22
Years R/o. Vill. Sarandi, P.S. Tadoki, Revenue and Civil District
North Bastar (C.G.)

---- Appellants**Versus**

- State Of C.G. Through: P.S. Tadoki, Distt. Kanker (C.G.)

---- Respondent

For Appellant	: Shri Shishir Dixit, counsel for the appellants.
For respondent	: Shri Sumit Jhavar, Panel Lawyer.

Judgment On Board**13.12.2016**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 05.9.2013 passed by the Additional Sessions Judge (FTC), North Bastar, Kanker in Sessions Trial No.114/2012 whereby and whereunder the learned Sessions Judge after holding the appellants along with absconded accused guilty for forming unlawful assembly in prosecution of common object along with explosives and arms for opening fire to the police force and without having licence as required for fire arm, attempt to take life of members of police force, convicted them under Section 147/149, 148/149 and 307/149 of the Indian Penal Code , under Section 25(1-B)(a) read with Section 3 & 27 of the

Arms Act and under Sections 4 & 5 of the Explosive Substances Act 1908 read with Section 149 of the IPC and sentenced to undergo rigorous imprisonment for 6 months, 1 year, 7 years, 3 years, 5 years, 5 years, 5 years, 5 years with direction to run the sentences concurrently. The trial Court also awarded fine of Rs. 100/-, 100/-, 100/-, 100/-, 100/-, 100/- and 100/- respective and in default of payment of fine, to further undergo additional RI for one month, two months, six months, two months, three months, three months and three months respectively. Further directed that the period of detention shall be set off under Section 428 of the Code of Criminal Procedure, 1973 (for short 'the Code').

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

3. As per the case of the prosecution, on 03.8.2012 between 6-7 pm near village Edanar Jampara Forest Police Station Tadoki, the accused appellants and about 20-25 other accused had formed unlawful assembly and in furtherance of common object of said assembly attempted to take life of police force. The accused were armed with fire arms and explosives without any licence to dispose of the said firearms and the explosives. They opened the fire on the police party and also kept fire explosives under their control. The police force in response also opened fire, some members of the unlawful assembly fled from the spot and the

accused appellants were caught while attempting to run away from the spot. The police seized many fire explosives other connected items fire arms, detonator used for explosion also prepared unnumbered merg against members of said unlawful assembly found, thereafter the accused appellants were arrested, first information report was lodged vide Ex-P/16, after necessary investigation recorded the statement of the witnesses under Section 161 of the Code. Thereafter charge sheet has been filed before Judicial Magistrate First Class, Bhanupratappur, who registered the matter as Criminal Case No.359/12 committed the case vide order dated 02.11.2012 to the Court of Session. The learned Additional Sessions Judge received the case on transfer and conducted the trial. The accused/appellants and one co-accused Amarlal were charged for the offence by the trial Court under Section 147/149, 148/149, 307/149 of the IPC, Section 25(1-B), (A) read with Sections 3 & 27 of the Arms Act, Sections 4 & 5 of the Explosives Substances Act read with Section 149 of the IPC,

4. In order to prove the guilt of the appellants, the prosecution has examined as many as 11 witnesses. Statements of the accused were recorded under Section 313 of the Code wherein they denied the circumstances appearing against them, pleaded innocence and false implication in crime in question. After providing opportunity of hearing to the parties, the learned

Sessions Judge convicted and sentenced the appellants as aforementioned.

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

6. Learned counsel for the appellants after examining the entire evidence adduced by the prosecution submits that looking to the evidence available, he is not contesting the instant appeal for the conviction awarded to the appellants. Instead, he is confining his argument on the point of quantum of sentence awarded to the accused/ appellants as the appellants were aged about 20 years, 30 years, 19 years and 22 years at the time of the incident. They are first offenders and are in jail since 03.8.2012, thereby they remained in jail for 4 years 4 months and 10 days till date. He further submits that the appellants were forced by the other co-accused persons to take part in unlawful assembly and under fear and threat they took part. They will not commit any offence in future, they be given an opportunity to reform and their case may be considered sympathetically with an object to grant them opportunity to remain in the society without committing any offence in future. As the Court below directed to run the sentences imposed upon the appellants concurrently, they may be sentenced for the period already undergone by them. There is no minimum sentence prescribed for the offence, and also looking to the entire facts that nothing has been recovered from their

possession, they may be sentenced for the period already undergone by them.

7. On the other hand, learned counsel for the State opposed the prayer and submitted that the accused appellants were members of the unlawful assembly responsible for opening fire with object to take life of the police force and also in open fire it would be very difficult to collect evidence for each accused appellant convicted, they were caught hold when they attempted to flee from spot. With the entire facts and circumstances, the prosecution has proved the case against them, hence, prayer of the accused/appellants may be dismissed and the appeal may be dismissed.

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

9. Upon perusal of the entire evidence, it appears that the accused/appellants were caught hold by the police force after the incident of exchange of bullets between the police force and the members of the unlawful assembly. The accused appellants were aged about 20 years, 30 years, 19 years and 22 years at the time of the incident, but the police have not collected any evidence regarding their antecedent. They are in jail since 4 years 4 months and 10 days till date. Though nothing has been seized from their possession, the police recovered explosives, fire arms, detonators other articles from the place where fire came from.

As the accused appellants failed to demonstrate any proper cause regarding their presence in the said forest during said exchange of fire, the Court below after examination of the evidence adduced by the prosecution in said case convicted the accused/ appellants for the offence as above mentioned. Also considering the fact that learned counsel for the accused/ appellants is not challenging the conviction part, I do not see any reason to take a different view regarding conviction of the accused appellants. So far as the sentence parts are concerned, looking to the entire preposition as above mentioned and as argued, it would be appropriate to sentence the accused/appellants for the period already undergone by them for the sections under which they have been sentenced for RI for 5 years, 5 years, 5 years and 7 years. For other sentences awarded to them, the accused appellants have already served the sentences. With this, the period already undergone by the accused appellants is sufficient for their sentence parts of RI for 5 years and above.

10. Consequently, the appeal filed by the appellants is allowed in part. Conviction awarded to the appellants are hereby affirmed. Fine sentences awarded to the accused/appellants for all the sections are also hereby affirmed. So far as the jail sentences awarded to the accused/appellants for the offence under Section 27 of the Arms Act, Section 4 of the Explosive Substances Act/147 of the IPC, Section 5 of the Explosive Substances Act/149 IPC and 307/149 IPC for RI for 5 years, 5 years, 5 years, 7 years

are reduced and they are sentenced for the period already undergone by them, substantive jail sentences for remaining penal sections are hereby affirmed and sentences have already been directed to run concurrently, hence, it is held that the accused/appellants have already served the sentences awarded by this Court. The accused appellants are reported to be in jail. They be released forthwith if not required in any other case after depositing the fine sentences awarded to them. If the fine sentences awarded by the trial Court are not deposited, the authorities concerned are directed to serve with the default sentences to the appellants and release them only thereafter.

11. Appeal allowed in part.

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