

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 10.02.2017

Judgment delivered on : 01.03.2017

Criminal Appeal No. 986 of 2015

Bharat Nishad, S/o Panchu Nishad, aged about 22 years, R/o Gandaikala, Police Station- Pandatarai, Civil and Revenue District- Kabirdham (CG) **---- Appellant**

Versus

State of Chhattisgarh, Through - Station House Officer, Police Station - Bodla, District - Kabirdham (CG)

----Respondent

Criminal Appeal No. 1006 of 2015

1. Vinod Chandrawanshi, son of late Shri Ramjheel Chandrawanshi, aged about 24 years, resident of Raitapara, Police Station Pandatarai, District Kabirdham, Chhattisgarh
2. Kaushal Chandrawanshi, son of Sawantran Chandrawanshi, aged about 40 years, resident of Gandaikala, Police Station Pandatarai, District Kabirdham, Chhattisgarh

---- Appellants

Versus

State of Chhattisgarh, Through - Station House Officer, Police Station - Bodla, District - Kabirdham (CG)

----Respondent

Criminal Appeal No. 1045 of 2015

Parvez Sefi @ Yusuf S/o Yamin Sefi, aged about 27 years, R/o Village - Halalpur, Police Station - Chhaprauli, Civil and Revenue District - Bagpat Uttar Pradesh

---- Appellant

Versus

State of Chhattisgarh, Through - Station House Officer,
Police Station - Bodla, District - Kabirdham (CG)

----Respondent

For Appellants : Smt Fouzia Mirza, Shri Dharmesh Shrivastava and Shri Amit Kumar Sahu on behalf of Shri Ashok Soni, Advocates for the respective appellants.

For Respondent/State : Shri Neeraj Sharma, Dy GA

Hon'ble Shri Justice Anil Kumar Shukla
CAV Judgment

- 1) Since these Criminal Appeals arise out of a common judgment dated 06.08.2015 passed by the Additional Sessions Judge, Kabirdham in Sessions Trial- 09 of 2013, they are being disposed of by this common judgment.
- 2) The appellants have preferred these appeals against the judgment of conviction and order of sentence dated 06.08.2015 passed by the learned Additional Sessions Judge, Kabirdham (Kawardha) in Sessions Trial No. 09 of 2013, whereby the appellants have been convicted and sentenced as given below:

Cri. Appeal No	Name of the appellant	Convicted under Section (s)	Jail Sentence	Fine amount in rupees	Additional jail sentence, if fine not paid	Period stayed in jail
986 of 2015	Bharat Nishad	402 IPC	2 yrs RI	100/-	7 days	nearly 1 yr
		411 IPC	1 yr			
1006 of 2015	Vinod Chandrawanshi	402 IPC	2 yrs RI	100/-	7 days	nearly 1 yr & 5 months
		411 IPC	1 yr			
	Kaushal Chandrawanshi	392 IPC	3 yrs RI	100/-	7 days	nearly 2 yrs & 8 months

1045 of 2015	Parvez Sefi @ Yusuf	392/397 IPC	7 yrs RI	100/-	7 days	nearly 4 yrs & 5 months
		25(1)(a) Arms Act	5 yrs RI	100/-	7 days	
		27(2) Arms Act	7 yrs RI	100/-	7 days	

3) Prosecution story, in brief, is that injured Rishabh Jain @ Monu was having a jewellery shop at Pandatarai and every day he used to travel in a bus from Kawardha to Pandatarai. On 29.08.2012 he closed his shop and kept gold and silver ornaments of the shop in a white bag and was returning to Kawardha by Bhoramdev bus. At that time, near Sarangpur square he heard a loud voice and an unknown man who was sitting next to him tried to loot his white bag and also tried to take his phone and cash which he had kept in his pocket. Rishabh Jain when resisted him to take his white bag, that unknown man assaulted him on his head with a country made pistol by which he fell on the ground and became unconscious. The unknown man fled with the white bag. When Rishabh Jain became conscious, the checker of the said bus told him that some unknown person had gunned down driver of the bus. On the basis of a complaint lodged by one Suresh Kumar Vaishnav (PW-3), Crime No.176 of 2012 has been registered at Police Station Bodla.

4) After completion of the investigation charge-sheet was filed against the present appellants before the Chief Judicial Magistrate, Kawardha, who committed the case to the Court of Session at Kabirdham (Kawardha) from where the Additional Sessions Judge received the case on transfer.

5) After appreciation of the evidence available on record and providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellants as aforementioned.

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

7) Learned counsel for the appellants at the outset submit that they confine their arguments to the sentence part only and do not challenge the conviction imposed upon the appellants. Accosting the sentence part awarded to the appellants, learned counsel submit that out of the four appellants, three appellants, Bharat Nishad, Vinod Chandrawanshi and Pervez Sefi @ Yusuf are young persons while appellant Kaushal Chandrawanshi is forty years old. Out of the total jail sentence awarded to them, they have undergone half of the period. Therefore, the jail sentence of the appellants may be reduced to the period already undergone by them.

8) On the other hand, learned State counsel supported the impugned judgment of conviction and sentence and opposed the arguments advanced by learned counsel for the appellants.

9) From the record, it reveals that the incident is of 29.08.2012. No evidence has been led by the prosecution regarding criminal antecedent of the appellants. More than 4 years have already passed since the date of incident and the appellants have already suffered half of the jail sentence awarded to them. Out of the four

appellants, three appellants, Bharat Nishad, Vinod Chandrawanshi and Pervez Sefi @ Yusuf are young persons while appellant Kaushal Chandrawanshi is forty years old.

10) In light of above discussion, I am of the considered opinion that interest of justice would be served if, while upholding the conviction imposed upon the appellants, they are sentenced with the imprisonment already suffered by them.

11) Accordingly, the appeals filed by the appellants are hereby allowed in part. The conviction of the appellants is hereby maintained. However, the jail sentence of the appellants is reduced to the period already undergone by them. The sentence of fine, with default stipulation, imposed upon the appellants by the impugned judgment shall remain unchanged.

12) It appears that appellants Bharat Nishad, Vinod Chandrawanshi and Kaushal Chandrawanshi are on bail. Their bail bonds are not discharged at this stage and shall remain operative for a further period of six months from today in view of the provisions contained under Section 437-A of the Cr.P.C.

13) It is stated that appellant Parvez Sefi @ Yusuf is in jail. He be released at once, if not required in any other case.

14) A copy of this judgment be sent to the trial Court along with the record of the trial Court for information and compliance forthwith.

Sd/-
(Anil Kumar Shukla)
JUDGE