

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 440 of 2014**

1. Chhandu Korva S/o Shri Lohra Korva Aged About 40 Years R/o Village Bankesma, Chowki - Kedma, Ps Udaipur, Distt. Surguja, Civil And Rev. Distt. Surguja, Sessions Division Surguja C.G. , Chhattisgarh
2. Dharmu Korva S/o Shri Lallu Korva Aged About 20 Years R/o Village Bankesma, Chowki - Kedma, Ps Udaipur, Distt. Surguja, Civil And Rev. Distt. Surguja, Sessions Division Surguja C.G. , District : Surguja (Ambikapur), Chhattisgarh
3. Bhurri @ Lallu Korva S/o Shri Lallu Korva R/o Village Bankesma, Chowki - Kedma, Ps Udaipur, Distt. Surguja, Civil And Rev. Distt. Surguja, Sessions Division Surguja C.G.
4. Thepa Korva S/o Shri Lohra Korva Aged About 45 Years R/o Village Bankesma, Chowki - Kedma, Ps Udaipur, Distt. Surguja, Civil And Rev. Distt. Surguja, Sessions Division Surguja C.G. , District : Surguja (Ambikapur), Chhattisgarh
5. Sukhla Korva S/o Shri Boya Korva Aged About 30 Years R/o Village Bankesma, Chowki - Kedma, Ps Udaipur, Distt. Surguja, Civil And Rev. Distt. Surguja, Sessions Division Surguja C.G. , District : Surguja (Ambikapur), Chhattisgarh

---- Appellants**Versus**

State Of Chhattisgarh Through The SHO, PS Udaipur, Distt. Surguja C.G. ,
Chhattisgarh.

---- Respondent

For the Appellants : Shri Neeraj Kumar Mehta, Advocate.
For the Respondent/ State: Ms. Madhunisha Singh, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****30.11.2018**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 17.4.2014 passed by the Learned Additional Sessions Judge, Fast Track Court, Sarguja, Ambikapur, Chhattisgarh in Sessions Trial No. 176 of 2012, whereby and whereunder, the learned Sessions Judge has convicted the appellants with a direction to run all the sentences concurrently, as under:-

CONVICTION	SENTENCE
Under Section 147 of the Indian Penal Code.	RI for 2 years.
Under Section 148 of the Indian Penal Code.	RI for 3 years.
Under Section 149 of the Indian Penal Code.	RI for 7 years and to pay fine of Rs.1,000/-, with default stipulation.
Under Section 294 of the Indian Penal Code.	RI for 3 months.
Under Section 506(B) of the Indian Penal Code.	RI for 7 years and to pay fine of Rs.200/-, with default stipulation.
Under Section 186 of the Indian Penal Code.	RI for 3 months and to pay fine of Rs.100/-, with default stipulation.
Under Section 353 of the Indian Penal Code.	RI for 2 years and to pay fine of Rs.100/-, with default stipulation.
Under Section 307/ 34 of the Indian Penal Code.	RI for 7 months and to pay fine of Rs.1,000/-, with default stipulation.

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

3. The facts of the case, in brief, are that on 26.3.2012 at about 7:00 pm complainant – Mohd. Shamim (PW-2) alongwith Shyamlal Yadav (PW-3) and Ramlal (PW-5), in capacity of forest employees went to the spot in compartment P22-13 in Bankesma Forest, because there had been some incident of fire. When the complainant and others attempted to extinguish the fire, it is alleged that these appellants came forward and opposed. Appellants No.2 – Dharmu Korva and No.4 Thepa Korva threatened that in case the complainant and party make any such attempt then they will shot by arrows. It is alleged that the appellants abused, threatened and deterred the public servants in performing their official duties. Thereafter, appellant No.2 – Dharmu Korva shot three arrows, out of which one arrow found its

mark in the abdomen of Ramlal (PW-5) who got injured. Mohd. Shamim (PW-2) lodged FIR Ex. P/19 and it was later on registered as Ex. P/20. Injured – Ramlal (PW-5) was medically examined and provided medical treatment. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, the charge-sheet was filed before the concerned Court.

4. During trial, the Court below framed the charges against the appellants under Sections 147, 148, 149, 294, 506B, 186, 353 and 307/ 34 of the Indian Penal Code. The prosecution examined 11 witnesses to prove the guilt of the appellants. One witness was examined in defence. Statements of the appellants were recorded under Section 313 of the Cr.P.C. wherein the appellants 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 convicted and sentenced the appellants 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 the appellants have been erroneously convicted by the trial Court without there being any support of evidence of the prosecution beyond reasonable doubt. Practically, there is no evidence against appellants No.1, 3, 4 and 5 and even the complainant has not stated before the Court that they

assaulted or had encouraged appellant No.2/ co-accused – Dharmu Korva to shoot arrow at the victim. Rest of the witnesses have not supported the prosecution case. Hence, it was a clear case that there was no support of appellants No.1, 3, 4 and 5 in commission of offences charged. On behalf of appellant No.2 – Dharmu Korva, it is submitted that no case is made out against him under Section 307 of the IPC., as the injury caused by piercing of arrow to Ramlal (PW-5) has not been reported as fatal in nature. The only statement by the doctor is that the injury was grievous in nature and the conviction of appellant No.2 should have been under Section 326 of the IPC, which is a lesser offence. Hence, the sentence imposed upon appellant No.2 – Dharmu Korva be reduced accordingly.

8. Per contra, learned counsel for the Respondent/ State opposed the grounds raised in the appeal and submissions. It is submitted that the prosecution has proved its case beyond reasonable doubt, that all the appellants were present in the place of incident and have participated as members of unlawful assembly. Any offence committed during such activity holds all the appellants responsible in a similar fashion as the main assailant is held responsible. Hence, no case is made out for acquittal in favour of appellants No.1, 3, 4 and 5. It is also submitted that arrow had pierced the abdomen of victim - Ramlal (PW-5) and his life could be saved only by the intervention of medical surgery otherwise, the injury caused to him would have proved fatal. The opinion though not given by the doctor it could be easily assumed that the injury was caused with intention to cause the death of Ramlal (PW-5). Hence, no case is made out for acquittal of these appellants.

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

10. Ramlal (PW-5) stated that he alongwith other forest personnel of Forest Department, Dilip (PW-4), Bablu @ Virendra Kumar (PW-1) and Mohd. Shamim (PW-2) had been to Bankesma forest to extinguish the fire. When they arrived the spot, he found appellant No.2 – Dharmu Korva and appellant No.4 Thepa Korva, who objected in extinguishing the fire and threatened the witnesses and others to not to extinguish the same. Subsequent to that, all of sudden appellant No.2 – Dharmu Korva started shooting arrows towards the party of Forest Department. One of the arrow found its mark on the left side of the chest of this witness because of which, he got injured. To confront him with the previous statement given by him, he was cross-examined by the prosecutor with the permission of Court and again he has supported the prosecution case. In cross-examination, his statement against appellant No.2 – Dharmu Korva has remained unrebutted.

11. Mohd. Shamim (PW-2) was present on the spot. When he was present on the spot alongwith Ramlal (PW-5), all the appellants came to the spot who abused and threatened them. He has stated that appellant No.2 - Dharmu Korva shot an arrow from his bow which injured Ramlal (PW-5) and rest of the appellants were engaged in assaulting the party of the forest personnel. He lodged a written complaint Ex. P/19. On the basis of which, FIR Ex. P/20 was registered. In cross-examination, he has further stated that while running away from the spot, he fell down in a ditch and got injured and in cross-examination, the statement regarding the assault made by

appellant No.2 - Dharmu Korva on Ramlal (PW-5) has remained unrebutted. Although, he has stated in cross-examination that he saw appellants No.2 – Dharmu Korva and No.1 - Chandu Korva armed with bow and arrow but he could not see as to whose arrow hit Ramlal (PW-5). Shyamlal Yadav (PW-3) was present on the spot and has stated that appellants – Dharmu Korva and Chandu Korva started shooting arrows because of which, he fled from the spot and later on, he came to know Ramlal (PW-5) has suffered one injury from arrow. In cross-examination, his statement has remained unrebutted. Dilip (PW-4) has not supported the prosecution case. Ram Aadhar (PW-5) (2) is an hearsay witness.

12. Dr. Ajay Kumar Gupta (PW-10) initially examined the injured Ramlal (PW-5) and found that one arrow had pierced on his left axillary line. The injured was immediately admitted to the hospital and surgeon was called for further treatment vide Ex. P/26. A report has been given vide Ex. P/24A that the arrow was present on the injury. Dr. F.H. Firdosi (PW-11) stated that he operated injured - Ramlal (PW-5) for the injury caused by arrow and the arrow was removed from the injury and complete treatment was given to the injured victim. He has proved the treatment provided to the injured vide Ex. P/27. None of the examined members or operating members has reported that the injury caused to Ramlal (PW-5) was fatal or dangerous to life.

13. Dr. B.M. Kamre (PW-6) has examined injured Mohd. Shamim and found two abrasions on his body regarding which, he has opined that the injuries caused to him were simple in nature vide Ex. P/22.

14. After closely examining and scrutinizing all the evidence on record of the trial Court, it is found that injured – Mohd. Shamim (PW-2) has suffered injuries not because of the assault by the appellants and for the reason that he was running from the spot and he suffered injury because of fall, which he himself admitted. However, with regard to the injury caused to Ramlal (PW-5) there is clear evidence that Ramlal (PW-5) was injured by appellant No.2 – Dharmu Korva with an arrow which resulted in the injury caused to him. There is evidence that all the appellants were present on the spot opposing to extinguish the fire by the complainant and others who were performing their duties as Forest Officials. According to the evidence, it is also found that all the appellants engaged in abusing the complainant and others by using obscene words but there is no statement that because of hearing such obscene words, they were hurt or felt offended. Hence, in such a case the offence under Section 294 of the IPC is not made out.

15. The evidence present is that the appellants joined in threatening the complainant and others that they will kill them and subsequent to which, it is in the evidence that appellants – Dharmu Korva and Chandu Korva started shooting arrows on the party of Forest Officials which shows that the threat given was not a blank threat. Hence, the offence under Section 506B of the IPC is made out. It is not disputed that complainant – Mohd. Shamim (PW-2) and others had been on the spot to extinguish the forest fire hence, it appears that they were present to perform their duties in which, the appellants objected and interrupted and thus, the offence under Section 186 of the IPC is made out. Similarly, there is evidence that while they were performing their official duties, they were assaulted by the appellants hence,

the offence under Section 353 of the IPC is also made out. Hence, the conviction of the appellants for the offences under Sections 506B, 186 and 153 of the IPC recorded by the trial Court needs no interference.

15. Now, the conviction of appellant No.2 – Dharmu Korva for the offences under Section 307/ 34 of the IPC is to be examined. Although all the appellants were engaged in threatening the complainant party, it was only appellant No.2 - Dharmu Korva who started shooting arrows towards the complainant and others and one of his arrow hit Ramlal (PW-5), because of which, he was injured. Hence, the involvement of rest of the appellants in the said assault does not appear to be clearly made out to show that they also had similar intention to that of appellant No.2 - Dharmu Korva, because according to Ramlal (PW-5) it was only Dharmu Korva who was shooting arrows. He has not given any specific details about the rest of the appellants whether they were encouraging Dharmu Korva to shoot arrows, hence, it cannot be said that rest of the appellants are equally responsible for the assault made by appellant No.2 - Dharmu Korva on Ramlal (PW-5). Hence, the offence under Section 307 of the IPC is made out against appellant No.2 and it cannot be interfered with. The conviction of rest of the appellants for this offence does not seem to be proper. As there is evidence that all the appellants were present as unlawful assembly, their conviction under Section 147 of the IPC is clearly made out and the offence under Section 148 of the IPC is made out only against appellants No.1 and 2 because the evidence shows that these two appellants were in possession of bow and arrows. The conviction of the appellants under Section 149 of the IPC is totally erroneous, because Section 149 of the IPC is not a separate offence and this provision is added in charge of the main offence

that is committed by the accused persons. Thereafter, this provision should have been read with Section 307 of the IPC or the other offences for which the appellants have been charged. Hence, it being totally erroneous, the conviction under Section 149 of the IPC is liable to be set aside.

16. After due consideration of all the evidence present on record of the trial Court and on the basis of the discussions made herein-above, the conviction of the appellants under Sections 147, 506B, 186 and 353 is upheld. The conviction of the appellants under Sections 149 and 294 of the IPC is set aside. The conviction of appellants No.1, 3, 4 and 5 under Section 307 of the IPC is set aside. The conviction of appellants No.3, 4 and 5 under Section 148 of the IPC is set aside.

17. The prayer has been made by counsel for the appellants for reduction of sentence. After considering all the facts and circumstances of the case, it is found that the reason that the appellants were interested in not extinguishing fire from the spot in jungle, as the appellants who are tribal of Korva Committee had set fire to the part of the forest for earning their livelihood which was being obstructed by the Forest Officials. Hence, I feel inclined to reduce the sentence imposed upon the appellants for their conviction in respective offences for appellants No.1, 3, 4 and 5 upheld by this Court. These appellants are sentenced with a period of sentence of imprisonment already undergone by them in jail. As regards appellant No.2, the offence under Section 307 of the IPC has been upheld by this Court and it is submitted that he is in jail since 28.3.2012, which is more than 6 years and he is nearly going to complete the sentence of imprisonment imposed

upon him. Hence, it is ordered that appellant No.2 – Dharmu Korva is sentenced with rigorous imprisonment for a period of detention already undergone by him in jail.

18. Accordingly, the appeal is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi