

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 956 of 2012

Judgement reserved on 28-8-2018

Judgement delivered on 20 -9-2018

- Anil Dewangan @ Guchchu S/o Late Vijay Dewangan Aged About 24 Years R/o Village Arjunda , Police Station Arjunda , Distt. Durg C.G. At Present Sector 6/471 /a Type Balco Nagar , Police Station Balco Nagar Distt. Korba C.G. ,

---- Appellant

Versus

- State of Chhattisgarh S/o Through - P.S. Balco Nagar , Distt. Korba C.G. , Chhattisgarh

---- Respondent

CRA No. 850 of 2012

1. Sahabuddin Ansari @ Kela @ Gulam Rasul @ Gulab S/o Ali Miya Ansari Aged About 40 Years R/o Village Buiya, Chitro Basti, Ps Topchachi, Distt. Dhanbad Jharkhand. , Jharkhand
2. Baburam Kahar @ Raju Kahar @ Babu Paswan S/o Ramchandar Ram Kahar Aged About 32 Years R/o Village Pavapur, Ps Pavapur, Distt. Gaziabad U.P., Presently R/o Qr. No. D. 19 - 185, Bccl Munidih, Ps Munidih, Distt. Dhanbad Jharkhand. , District : Dhanbad, Jharkhand

---- Appellants

Versus

- State of C.G. through District Magistrate, Korba C.G. ,

---- Respondent

CRA No. 744 of 2013

- Mhd. Jasimuddin @ Nasim @ Jasim S/o . Mhd. Yakub Aged About 25 Years R/o. Bhuiyan Chitro, P.S. Topchanchi, Post Madaidih, Civil And Rev. Distt. Dhanbad Jharkhand, Jharkhand

---- Appellant

Versus

- State of Chhattisgarh Through Dist. Magistrate, Korba, Civil And Rev. Distt. Korba C.G., Chhattisgarh

---- Respondent

&

CRA No. 1576 of 2015

- Motu @ Shakil @ Haleem Ansari S/o Saleem Ansari Aged About 34 Years R/o Ledatand, P.S. Topchachi, Civil And Revenue Distt. Dhanbad Jharkhand , Jharkhand

---- Appellant

Versus

- State of Chhattisgarh Through District Magistrate, Korba, Civil And Rev. Distt. Bilaspur Chhattisgarh , Chhattisgarh

---- Respondent

For Appellant in CRA : Mr. C.R. Sahu, Advocate.
No.956 of 2012

For Appellants in CRA : Mr. Vivek Shrivastava, Advocate
No. 850 of 2012

For appellant in CRA : Mr. Nitansh Kumar Jaiswal, Advocate
No. 744 of 2013

For appellant in CRA : Mr. Keshav Dewangan, Advocate
No. 1576 of 2015

For Respondent/State : Mr. Sanjeev Pandey, Govt. Advocate.

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)**(CAV Judgment)**

1. Appellant in CRA No. 744 of 2013 and appellants in CRA No. 1576 of 2015 were tried in Session Trial N. 96 of 2011 and the appellant in CRA No. 956 of 2012 and appellants in CRA No. 850 of 2012 were tried in Session Trial No. 19 of 2011, but the incident is one and the same, therefore, they are heard analogously and are being disposed of by this common judgment.

2. CRA No. 956 of 2012 and CRA No. 850 of 2012 are preferred under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 24-5-2011 passed by Sessions Judge, Korba, District Korba in Session Trial No. 19 of 2011. CRA No. 744 of 2013 and CRA No. 1576 of 2015 have been preferred under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 13-5-2013 passed by Sessions Judge, Korba, District Korba in Session Trial No. 96 of 2011. wherein the said Court convicted all the appellants for commission of offence under Section 307 read with Section 149, 395 and 397 of IPC and sentenced them to undergo RI for seven years and fine of Rs.10,000/-, RI for ten years and fine of Rs.25,000/-, RI for seven years and fine of Rs.5,000/- with default stipulations. In addition to that, appellant Baburam Kahar @ Raju Kahar @ Babu Paswan in CRA No. 850 of 2012 has also been convicted under Sections 25(IB) (a) & 27 of the Arms Act, 1959 and sentenced to undergo RI for three years and fine of Rs.1000/- and RI for four years and fine of Rs.2000/- with default stipulations.
3. As per prosecution case, on 17-9-2010, Assistant General Manager of State Bank of India, Branch I.T.I., Rampur, Korba along with his colleague B.L. Bariha, messenger M.L. Yadav and

Security Guard Yafat Khakha were proceeding towards ITI Rampur Korba in a vehicle Gama Trax bearing registration No. CG-11 BB 4797 to put money in ATM cash box of State Bank of India, BALCO, Sector-2, the vehicle was stopped at 1.15 pm and security guard got down from the vehicle and at the same time six unknown persons came there on motorcycles and they fired at the stomach of security guard. Unknown persons blasted the bomb behind ATM machine and committed dacoity of cash amounting to Rs.52 lakhs. The matter was reported and investigated and after completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

4. Learned counsel appearing for the appellants would submit that the offence is not established from the entire evidence and the trial Court committed error in holding the appellants guilty for commission of the said offence. He would further submit that seizure of motorcycle has no bearing with the crime in question and the evidence adduced by the prosecution is not reliable.
5. As against the aforesaid submissions, State counsel submits that the finding arrived at by the trial Court is based on proper marshalling of evidence and the same is not liable to be interfered while invoking jurisdiction of the appeal.
6. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial court.

7. To substantiate the charge, prosecution has examined as many as 20 witnesses in Sessions Trial No. 19 of 2011 and 10 witnesses in Sessions Trial No. 96 of 2011. In Sessions Trial No. 19 of 2011, PW/2 Chandra Prakash Khare is an Assistant General Manager of State bank of India and eye-witness account to the incident. As per version of this witness, he was moving in a cash van of State Bank of India, ITI Branch with B.L. Bariha and messenger M.L. Yadav and Security Guard Yafat Khakha towards ATM of Balco at about 1.00 pm. He deposed (para 4) that number of criminals were six at the time of incident. He further deposed that one of the culprits has snatched rifle from the guard and one has fired from rifle. Again four persons took the cash box and the fled away from the spot in two motorcycles in which three persons were sitting in each motorcycle. This witness has identified Baburam, Anil Dewangan, Shahabuddin and Satya Prakash Sahu as the persons involved in the crime in question. Again he is a witness in Sessions trial No. 96 of 2011 as PW/1 and he identified both the appellants Mohd. Jasimuddin @ Nasim @ Jasim and Motu @ Shakil as culprits of the offence. His version is supported by PW/4 Brilal Bariha and PW/6 Naib Tahsildar L.D Gendle, PW/8 Agneshiv Lakda and PW/9 Yafat Khakha in ST No. 96 of 2011. As per version of this witness, the box was having currency notes of Rs.1000/- and 500/-

denomination and total amount was Rs.52 lakhs. Version of this witness is supported by version of (PW/4) A. Lakda, (PW/5), Yafat Khakha, (PW/6) vehicle driver Ravi Shankar Yadav, (PW/8) Brijlal Bariha, Manharanlal Yadav (PW/14), (PW/16) Ramesh Kumar. All these witnesses have supported the version of Chandra Prakash Khare in one way or the other and in totality of the evidence, it is established that all the appellants have made unlawful assembly of more than five persons with a common object of dacoity of cash box of the Bank. All the appellants have shared for their common object and they joined the assembly to adopt their common intention. Right from the initial stage of assembly, all have associated in commission of crime till completion of crime.

8. Looking to the evidence in its entirety, it is established that six persons have committed dacoity as members of unlawful assembly. Direct evidence of all these witnesses is supported by version of Dr. Akhilesh Shukla (PW/9) who examined Yafat Khakha on 17-9-2010 at 1.40 pm at BALCO Hospital and noticed the following injuries.

- i) Circular punch wound with black margin above umbilicus part to the mid-time of left abdomen (left side of abdomen) supra umbilicus margin.
- ii) Circular wound with irregular margin over left lateral side of upper abdomen and below chest.

- lii) Lacerated wound irregular margin over left temporal region in the size of 2x1cm skin deep.
- iv) Lacerated wound to irregular margin over left temporal region in the size of 1 x ½ cm skin deep.
- v) Lacerated wound over right side of occipital region in the size of 5 x ½ cm skin deep.

9. From his evidence, it is clearly established that injury Nos. 1 and 2 found on the body of Yafat Khakha were danger to human life. Now the point for consideration of this Court is whether all the appellants have acted in furtherance of their common intention and they attempted murder of Yafat Khakha.

10. To constitute an offence under Section 307 of the IPC, two ingredients of the offence must be present.

“(a) an intention of or knowledge relating to
commission of murder; and

(b) The doing of an act towards it.

The essential ingredients required to be proved in the case of an offence under S. 307, IPC are:

- (i) That the death of a human being was attempted;
- (ii) That such death was attempted to be caused by, or in consequence of the act of the accused;
- (iii) That such act was done with the intention of

causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury”.

11. From the direct evidence, it is established that one of the members of unlawful assembly namely Baburam fired at Yafat Khakha by fire arm (rifle). From the medical evidence it is established that injuries were danger to life as the same were caused at vital part i.e., abdomen of Yafat Khakha. Looking to the entire evidence it is established that all the appellants have in their object of dacoity fired at Yafat Khakha and they did everything in their control, but the final result allured because of proper treatment in time. Therefore, argument advanced on behalf of the appellants is not sustainable that marshaling of the evidence of the trial Court is not proper. Attempt to commit

murder by unlawful assembly is an offence under Section 307 read with Section 149 of the IPC for which the trial Court convicted the appellants and this court has no reason to interfere with the finding recorded by the trial Court. Conviction of the appellants for the said offence is hereby affirmed.

12. The next question for consideration of this court is whether the appellants along with other co-accused persons committed dacoity in advancement of their common object.
13. From the evidence, it is established that number of persons made unlawful assembly were six. All the six persons were charge-sheeted but tried to separate sessions trial ie, S.T.No. 19 of 2011 & ST No. 96 of 2011. In first ST No.19 of 2011 four persons were charge-sheeted and in second ST No. 96 of 2011 two persons were charge-sheeted. In all six persons were charge-sheeted for commission of dacoity by unlawful assembly. From the evidence of (PW/18) Sub Inspector M.M. Minj in ST No. 19 of 2011, on discovery statement of appellant Sahabuddin Ansari, he seized Rs.30 lakhs of currency notes of 1000 denomination, Rs.15 lakhs of currency notes of 500 denomination and Rs.1,60,000/- of currency notes of 100 denomination, in all Rs.46,60,000/- seized from him. Version of this witness is unshaken during cross examination and there is nothing against this witness to discard his testimony. It is

established that Police Officer was discharging his duty and in discharging of duty he arrested the appellant Sahabuddin and seized Rs.46,60,000/- from which the appellant Sahabuddin did not offer any explanation. In absence of explanation, it is presumed that currency notes are subject matter of dacoity in question.

14. From overall assessment of evidence, it is established that all the eye-witnesses in both the Sessions Trial have established presence of all the appellants during commission of dacoity and it is established from the evidence that they were six in number and acted in common object of dacoity. It is also established that they attempted to commit murder of Yafat Khakha during object of dacoity. Version of this witness finds support with identification parade which is substantiated by evidence of Naib Tahsildar that appellants were identified as culprits just after the incident. Their identity is again proved before the trial Court, therefore, there is no scope to say that the trial Court has not evaluated the evidence in its true perspective and came to a wrong conclusion. It is settled law that minor discrepancy which does not affect root of the case is insignificant and when the evidence regarding commission of offence is clear and cogent in the present case, the trial Court is right in holding guilty to the appellants. All the offences are committed by all the members of unlawful assembly

in prosecution of common object of dacoity and all have taken active part, therefore, every appellant is guilty of all the offences. Attempt to commit murder is an offence under Section 307 read with Section 149 of the IPC. Dacoity in prosecution of common object is an offence under Section 395 read with Section 149 of IPC and dacoity with attempt to commit murder is an offence under Section 397 read with Section 149 of the IPC for which the trial Court has convicted all the appellants and this court has no reason to interfere with conviction recorded by the trial Court and the same is hereby affirmed.

15. In addition to that, appellant Baburam Kahar @ Raju Kahar @ Babu Paswan in CRA No. 850 of 2011 has also been convicted under Sections 25(1B) (a) & 27 of the Arms Act, 1959. As per version of Inspector Ramesh Kumar (PW/16), one 12 bore gun was seized from him and as per version of Ballistic expert, Bajrang Singh (PW/12), he examined one Katta 315 bore seized in the case and opined that the said fire arm is fit to fire. Again from the evidence of licence clerk of District Magistrate, Korba, Karuna Aaher (PW/17), the District Magistrate granted sanction for prosecution of Baburam for offence punishable under Section 25 of the Arms Act, 1959, as per Section 39 of the said Act. Version of this witness is unrebutted during cross examination and from their evidence it is established that accused/appellant

Baburam was in possession of illegal fire arm and he used the said fire arm during course of dacoity.

16. The trial Court has elaborately discussed the issue while evaluation of evidence and this Court has re-appreciated the evidence and it has no reason to record a different finding to what is recoded by the trial Court. Illegal possession of fire arm is an offence under Section 25 of the Arms Act, 1959 and using the same for commission of attempt to murder is an offence under Section 27 of the Arms Act, 1959 for which the trial Court has convicted the appellant Baburam and this court has no reason to interfere with the finding of the trial Court. Conviction under Sections 25 (1B (a) & 27 of the Act 1959 is also affirmed.
17. Learned counsel for the appellants would further submit that ends of justice would be served if the sentence imposed on the appellants by the trial Court is reduced to the period already undergone by them
18. It is a case of attempt of murder with dacoity and the act of all the appellants is brutal in nature as they tried to kill security guard for committing dacoity of Rs.52 lakhs. Offence under Section 307 of the IPC is punishable with imprisonment of either description for a term which may extend to ten years life and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment of life and offence

under Section 395 is also punishable imprisonment **for** life, or with rigorous imprisonment **for** a term which may extend to ten years, and shall also be liable to fine. The trial Court awarded sentence of ten years and looking to the facts and circumstances of the case, no leniency can be shown to any of the appellants, therefore, sentence part is also not liable to be interfered with.

19. Accordingly, all the four appeals are liable to be and are hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju_