

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 410 of 2017

Judgement reserved on 28-8-2018

Judgement delivered on 20-9-2018

- Anil Dewangan S/o Late Vijay Dewangan, Aged About 23 Years
R/o Sector -6 /471/17, Balco Nagar, Police Station Balco Nagar,
District Korba Chhattisgarh , Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh Through Station House Office, Police
Station Pali, District Korba Chhattisgarh , Chhattisgarh

---- Respondent

Vs.

CRA No. 539 of 2017

1. Baburam @ Raju Kahar @ Babu Paswan S/o Ramchandar Ram
Kahar, Aged About 32 Years R/o Pavapar, Police Station
Pavapur, District Gajiyabad, Uttar Pradesh. At Present Qtr. No.
D.M./ 185, Block Munideeh, Police Station Munideeh District
Dhanbad, Jharkhand., Jharkhand
2. Shahabuddin Ansari @ Kalia @ Gulam Rasul @ Gulab S/o
Alimiya Ansari, Aged About 40 Years R/o Bhuiya Chinaro Basti,
Police Station Topchachi, District Dhanbad, Jharkhand., District :
Dhanbad, Jharkhand

---- Appellants

Versus

- State of Chhattisgarh Through The Police Station Pali, District
Korba, Chhattisgarh., Chhattisgarh

---- Respondent

For Appellant in CRA : Mr. Aditya Khare, Advocate.
No.410 of 2017

For Appellants in CRA : Mr. Akhtar Hussain, Advocate
No. 539 of 2017

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

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

(CAV Judgment)

1. Since both the aforesaid appeals arise out of same Session Trial No. 50 of 2011, they are heard analogously and are being disposed of by this common judgment.
2. Both the appeals are preferred under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 24-12-2016 passed by Additional Sessions Judge, Korba, District Korba in Session Trial No. 50 of 2011 wherein the said Court convicted the appellants for commission of offence under Section 224, 332 and 307 of IPC of IPC and sentenced them to undergo RI for one year and fine of Rs.1000/-, RI for one year and fine of Rs.1000/- and RI for seven years and fine of Rs.2,000/- with default stipulations. In addition to that, appellant No.1 Baburam Kahar @ Raju Kahar @ Babu Paswan in CRA No. 539 of 2017 has also been convicted under Section 27 of the Arms Act, 1959 and sentenced to undergo RI for three years and fine of Rs.1000/- with default stipulations.
3. As per prosecution case, all the appellants were in custody for commission of offence and when they were bringing to Central Jail, Bilspur on 31-3-2011, in order to flee from the custody they threw chilly powder in the eyes of Police Officials and thereafter

appellant Baburam fired from pistol to commit murder of Police officials and again they voluntarily caused hurt to Head Constable Prabhakar Ram, constable Prafull Shukla and constable Rajaram Singh to deter them from their duties. 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 appellants had no intention to kill any police official, therefore, offence under Section 307 is not made out. He further submits that as per report of PW/3 Dr. Pradeep Agrawal, injuries were simple in nature. Conviction is based on the evidence of police officials but the independent witnesses have not supported the prosecution case. He would further submit that there are major contradictions and omissions in the statements of the prosecution witnesses, therefore, the finding recorded by the trial Court is not liable to be sustained.
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 13 witnesses. From the evidence of Sub Inspector PW/6 K.R. Sahu, Sub Inspector and PW/7 Syed Aiman Ali, Moharir, it is established that certificate was issued in favour of Head Constable No. 402 – Prabhakar Ram, constables Prafull Shukla and Rajaram Singh to take the appellants from Central Jail Bilaspur and to produce them before the Court at Korba. Their jail warrant has also been handed over and the appellants Babharam, Sahabuddin and Anil Dewangan were also handed over to them. Version of both these witnesses is unrebutted during cross examination and there is nothing on record to discard their testimony. From their evidence it is established that the police officials were discharging their duties to produce the appellants before the Court at Korba. From the evidence of PW/2 Head Constable Prabhakar Ram, PW/4 constable Prafull Shukla and PW/5 constable Rajaram Singh and PW/13 Shyam Sidar, it is established that appellant Anil Dewangan threw chilly powder in the eyes of police officials, appellant Sahabuddin assaulted him by weapon and again appellant Anil Dewangan threw chilly powder in the eyes of police official and appellant Baburam fired at them which was missed fire. It is stated by these witnesses that all the appellants tried to flee from the custody , but anyhow they managed to control them. Version of these witnesses is

supported by version of Dr. Pradeep Agrawal (PW/3) who examined Head Constable Prabhakar Ram on 23-3-2011 and notice the following injuries.

- (i) Incised wound on back of right upper arm lower third elliptical shape vertically placed 2cm x 1cm x 2cm bleeding out
- (ii) One abrasion on abdomen right lumbar region and one abrasion on right intraxillary region in the size of 0.5 cm x 0.5 cm x skin deep.
- (iii) Incised wound on right axillary region 0.5 cm x 0.5 cm x 0.5cm
- (iv) Contusion on right hand over 5th metacarpal 3cm x 3cm and opined that injuries 1 and 3 are caused by hard and sharp object and injury No. 2 and 4 are caused by hard and blunt object. All the injuries are simple in nature.

He also examined Constable Rajaram Singh on 31.3.2011 and found the following injuries :

- (i) Pain in right shoulder, no external injury seen
- (ii) Pain in both hands, no external injury seen
- (iii) Abrasion on the backside of the left forearm upper 1/3rd 0.5cm x 0.5cm x epidermal deep
- (iv) Abrasion 0.5cm x 0.5cm x epidermal deep on back of right forearm lower 1/3rd. He opined that all the injuries were caused by hard and blunt object.

He also examined Constable Prafull Shukla on 31-3-2011 and found the following injuries.

- (I) Incised wound on RIF 7" lateral and below umbilicus obliquely placed elliptical shape 2 cm. & 5 cm. Going downward laterally and backward.
- (ii) Incised wound on right axillary transversely placed 1.5cm. X 0.5 cm x 1 c.m. bleeding out.
- (iii) Incised wound in front of chest 2.5 cm. Lateral to mid line at level of 5th rib size 0.7 cm. & 5 cm & 1 cm bleeding out.
- (iv) Incised wound on left intra axillary region at mid axillary line at level of 8th rib size 0.5 cm. X 0.5 cm.x 0.5 cm bleeding out. He opined that all injuries caused by hard and sharp object.

8. 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”.

9. In the present case, appellant Baburam fired at Prabhakar Ram by fire arm and he committed every possible part within his power but the final result allured because of proper treatment in time. Looking to the evidence of its entirety, the case falls within the mischief of Section 307 of the IPC for which the trial Court convicted the all the appellants as all the appellants have acted in furtherance of conspiracy and therefore, each one of the appellants is liable to be punished for the act committed by the appellant Baburam. From the evidence, it is established that all the appellants committed conspiracy and in furtherance of their conspiracy they voluntarily caused injuries to public servants to

deter them from their duties which is offence under Section 332 of the IPC. It is also established that they intentionally offered resistance and tried to escape from the custody which is an offence under Section 224 of the IPC for which the trial Court convicted the appellants and looking to the entire evidence, this court has no reason to substitute the contrary finding. Argument advanced on behalf of the appellant is not sustainable.

10. From the evidence of Constable Shyam Sidar (PW/13) and direct evidence of Prabhakar Ram (PW/2) and Prafull Shukla (PW/4), it is established that appellant Baburam was in possession of fire arm and he fired from the said arm. Again from the evidence of Bajrang Kaiwart, Ballistic expert (PW/5), it is established that said fire arm was country made pistol and it was fit to fire and from the evidence of licence clerk of District Magistrate, Korba, Karuna Aaher (PW/8), it is established that the District Magistrate granted sanction for prosecution of Baburam for offence punishable under Section 27 of the Arms Act, 1959. From the entire evidence it is also established that appellant Baburam was in possession of illegal fire arm and he used the said fire arm to commit murder of police officials. Therefore, the act of the appellant Baburam falls within the mischief punishable under Section 27 of the Act, 1959 for which the trial Court convicted him and this court has no reason to substitute the contrary finding.

Conviction of the appellant for the above said offence is hereby affirmed.

11. It is contended on behalf of the appellants that sentence imposed on the appellants by the trial Court should be reduced to the period already undergone by them.
12. The trial Court convicted the appellants for commission of offence under Sections 307, 224 and 332 of IPC for the said offence and sentenced them to undergo as mentioned above looking to the gravity of offence against the public servant and looking to the offence of attempt to commit murder which is punishable for imprisonment of life, the sentence is neither disproportionate, harsh nor unreasonable. Therefore, the sentence part is also not liable to be modified.
13. Accordingly, both the appeals are liable to be and are hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju_