

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 174 of 2018**

- Gajendra Nath Sai S/o Fuchung Sai Aged About 41 Years Occupation Agriculture, R/o Village Melwa Fitingpara, Police Station Tumla, District Jashpur Civil And Revenue District Jashpur Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Tumla, District Jashpur Chhattisgarh

---- Respondent

For Appellant	Mr. Arun Shukla, Advocate
For Respondent /State	Mr. R. Tripathi, Panel Lawyer

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Gautam Chourdiya****Judgment on Board by Prashant Kumar Mishra, J.****7/1/2020**

1. Heard.
2. The appellant would call in question his conviction under Section 304 Part-II (twice) and Section 323 of IPC for committing culpable homicide not amounting to murder of deceased Lohrin Bai and Chidru Sai and causing simple hurt to PW-4 Fuchung Sai, vide impugned judgment of conviction and sentence dated 22.11.2012 passed by the Additional Sessions Judge, Kunkuri District Jashpur (CG) in ST No.73/11.

3. As per the prosecution case, at about 10 A.M., on 6.6.2011, the appellant reached his house with a wooden log (*Khurra and Pati*) and demanded food from his wife Meera Bai. Since the appellant was not doing any work, Meera Bai commented that 'he is not doing any work and only having meals' and further said that the food is not cooked. Hearing this, the appellant starting assaulting his wife Meera Bai, on which, informant Lachhan Sai (PW-13) intervened and sustained injuries. Thereafter, the appellant's mother Lohrin Bai (deceased) came and intervened, during which, the appellant caused injuries over her head by means of *Tabbal*. At this time, deceased Chidrun Sai also reached the spot and tried to intervene, on which, he too was assaulted by spade. The appellant further assaulted his father Fuchung Sai (PW-4) by means of club. The merger intimation -Ex.P/10 was lodged by PW-13 Lachhansai, based on which, the FIR -Ex.P/11 was registered almost simultaneously at 10:00 AM on 6.6.2011.
4. The appellant's memorandum statement was recorded vide Ex.P/1, pursuant to which, his blood stained half pant, iron *Sabbal*, Iron Spade, 2 nos. of Iron *Chimta* and one club was recovered vide Ex.P/2 and P/3. The postmortem examination of the dead body was carried by PW-15 Ajit Kumar Minj, who submitted the postmortem report- Ex.P/28 for Lohrin Bai and Ex.P/29 for Chidru Sai. He found death of both the deceased to be homicidal on account of the injuries sustained over their head. He also examined Lachhan Sai (PW-13), Meera Bai (PW-1)

and Fuchung Sai (PW-4) and submitted MLC report vide Ex.P/30, P/31 and P/32 respectively. In the course of trial, the prosecution examined 15 witnesses to bring home the charges. Based on the evidence on record, the trial Judge has convicted the appellant.

5. Learned counsel for the appellant would submit that PW-4 Fuchung Sai and PW-5 Tejram have been produced as eye-witnesses but both of them have not seen the occurrence, therefore, it is a case of no evidence against the appellant. He would submit that the appellant has been falsely implicated, therefore, he deserves to be acquitted.
6. Learned counsel for the State would submit that apart from the eye-witnesses, the appellant's memorandum statement and consequent recovery of weapons are proved against him, therefore, the conviction is fully borne out from the record.
7. PW-1 Meera Bai, wife of the appellant, has turned hostile and has not at all supported the case of the prosecution. PW-2 Ku. Lupda Painkra, daughter of the appellant, has also turned hostile. PW-3 Ayodhya Ram has proved the memorandum statement and seizure memo vide Ex.P/1, P/2 and P/3. These exhibits have also been proved by PW-8 Dhadhu Sai.
8. PW-4 Fuchung Sai, father of the appellant, has fully supported the prosecution by stating that at the time of occurrence, he was sitting outside the house and heard the commotion inside the house and thereafter, he sent his wife Lohrin Bai inside the

house. When Lohrin Bai tried to separate the appellant and his wife Meerabai, the appellant assaulted Lohrin Bai. Thereafter, when this witness tried to save himself, the appellant also caused injuries to him. During cross-examination, he would admit that he has not seen the incident. PW-5 Tejram has also seen the incident and has supported the prosecution in so far as assault made by the appellant over the person of Lohrin Bai is concerned. During cross-examination, this witness has denied of witnessing the incident. PW-6 Shyam Bihari Painkra and PW-7 Sardar Sai are the witnesses to the seizure of blood stained and plain soil, whereas, PW-8 Dhadhu Sai has proved the memorandum and seizure of weapons. PW-9 Head Constable Ramnath Rathia, PW-10 Constable Kaviraj Ram, PW-11 Patwari Ranjit Kumar Bhagat and PW-12 Indrapal Singh Paikra have taken part in the investigation. PW-13 Lachhan Sai is the first informant, however, he has turned hostile. PW-14 ASI Admon Khes is the Investigation Officer, whereas, PW-15 Dr. Ajit Kumar Minj has proved the postmortem and MLC.

9. The evidence available on record would suggest that PW-4 Fuchung Sai and PW-5 Tejram have supported the prosecution in their examination-in-chief but later on, deposed in their cross-examination that they have not seen the incident. It appears, they being the close relatives of the appellant, are hiding the truth. If they would not have seen the incident, they should have refused to be eye-witnesses in their examination-in-chief, which they have not done. These witnesses should either have been

declared hostile or should have been subjected to cross-examination, which has not been done in the present case. PW-3 Ayodhya Ram and PW-8 Dhadhu Sai have proved the memorandum statement and seizure of weapons from the appellant. In his memorandum statement, the appellant discloses to the Police that he has concealed the weapon in his house and thereafter, the weapon was recovered from the same place. Thus, the statements made by PW-4 Fuchung Sai and PW-5 Tejram in their examination-in-chief is fully corroborated by the memorandum statement and consequent recovery of the weapon. In addition, there is positive FSL report vide Ex.P/26 finding the presence of blood over the seized weapons Articles 'E' & 'F' and the seized half pant Article 'G' belonging to the appellant. Thus, the prosecution has fully proved the complicity of the appellant in committing the offence.

10. At this stage, learned counsel for the appellant, would argue that the trial Court has wrongly directed that the sentences shall run one after expiration of the other. He would refer to a Single Bench Order passed by this Court in Criminal Appeal No.347 of 2015 (**Yakub Khan Vs. State of Chhattisgarh**) and other connected appeals decided on 18.11.2016.

11. Countering the submissions, learned counsel for the State, would submit that the provisions contained in Section 31 of Cr.PC, has been followed by passing specific order as to why the sentence should run one after the other, therefore, there is no illegality committed by the trial Court on this count. He would

submit that even otherwise the appellant having caused death of two elderly persons of the family, he has rightly been sentenced separately one after other.

12. In order to appreciate the rival submissions, it would be necessary to refer to the provisions contained Section 31 of Cr.PC, which is reproduced hereunder :

"31. Sentence in cases of conviction of several offences at one trial- (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that -

(a) in no case shall such person be sentenced to

imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.”

13. The above provision confers power on the trial Court to convict a person for two or more offences at one trial and to sentence him in such offences to several punishments prescribed therefor and the sentence of imprisonment to commence one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently. The provision thus speaks of the Court's power to direct that such punishments shall run concurrently, in the absence of which, the sentence shall run one after expiration of the other. The Court is also enjoined to state the reason when the sentence shall be directed to run after expiration of the other. The words “as the Court may direct” is indicative of exercise of judicial discretion by the Court on the basis of available facts.

14. The provisions concerning sentence on offender already sentenced for another offence is provided under Sections 427 of Cr.PC, however, the said power is different than the power conferred on the trial Court under Section 31 of Cr.P.C., when

the accused is convicted for two or more offences in the same trial.

15. While dealing with the power available to the trial Court under Section 427 of Cr.PC, the Supreme Court in **V.K. Bansal Vs. State of Haryana and another, (2013) 7 SCC 211**, has considered the previous decisions on the issue as to when and in what circumstances, the Courts should direct the sentences to run concurrently or to run one after expiration of the other. Having dealt with the issue, the Supreme Court would conclude thus in para 13 to 16 :

“13. There are also cases where the High Courts have depending upon whether facts forming the basis of prosecution arise out of a single transaction or transactions that are akin to each other directed that the sentences awarded should run concurrently. As for instance the High Court of Allahabad has in *Mulaim Singh V. State* directed the sentence to run concurrently since the nature of the offence and the transactions thereto were akin to each other. Suffice it to say that the discretion vested in the Court for a direction in terms of Section 427 can and ought to be exercised having regard to the nature of the offence committed and the facts situation, in which the question arises.

14. We may at this stage refer to the decision of this Court in *Mohd. Akhtar Hussain v. Collector of Customs* in which this Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences. The following passage is in this regard apposite : (SCC p. 187, para 10)

“10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments, generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.”

15. In *Madan Lal case*, this Court relied upon the decision in *Akhtar Hussain case* and affirmed the direction of the High Court for the sentences to run concurrently. That too was a case under Section 138 of the Negotiable Instruments Act. The State was aggrieved of the direction that the sentences shall run concurrently and had appealed to this Court against the same. This Court, however, declined interference with the order passed by the High Court and upheld the direction issued by the High Court.

16. In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.”

16. The same view has been reiterated by the Supreme Court in the decision rendered in the matter of **Shyam Pal Vs. Daywati Besoya and another, (2016) 10 SCC 761.**

17. In view of the above judgments of the Supreme Court, the legal

position which emerges is that whether the conviction is for two or more offences in the same trial or the person is sentenced for separate offences in different trials, the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed.

18. In **VK Bansal (supra)**, the Supreme Court has directed that the sentences imposed on the accused for committing 15 offences under the Negotiable Instruments Act shall run concurrently. Thus, applying the above law, we hold that the sentence imposed upon the appellant for committing offence under Section 304 Part-II (twice) should have been directed to run concurrently instead of one after expiration of the other.

19. Accordingly, while maintaining the appellant's conviction for committing offence under Section 304 Part-II of IPC (twice) for committing culpable homicide not amounting to murder in respect of deceased Lohrin Bai and Chidru Sai, and under Section 323 of IPC for causing simple hurt to PW-4 Fuchung Sai., we direct that the sentence(s) imposed on the appellant shall run concurrently instead of one after other. The appellant is in jail since 7.6.2011, therefore, as of now, he has undergone more than 8 ½ years of jail sentence, which is more than maximum sentence of imprisonment for 7 years awarded against the appellant, when the sentences were directed to run concurrently.

20. The appellant is presently in jail. He be released forthwith if not required in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of 6 months as required under Section 437A of Cr.PC. The appellant shall appear before the higher Court as and when directed.

21. The appeal is allowed in part in the above stated terms.

Sd/-

(Prashant Kumar Mishra)

Judge

Sd/-

(Gautam Chourdiya)

Judge

Shyna

Head Note

Exercise of discretion for allowing the sentence to run concurrently, where the accused is convicted at one trial of two or more offences, should ordinarily be to the benefit of the prisoner in cases where the prosecution is based on a single transaction.