

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.456 of 2004

Order Reserved on : 21.11.2017

Order Passed on : 16.2.2018

Dinesh, S/o Dharam Raj Telgu, aged about 21 years, R/o Tebular Shed Dalli Rajhara, District Durg, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh

--- Respondent

For Applicant : Shri Praveen Dhurandhar, Advocate
For Respondent/State : Smt. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision is directed against the judgment dated 2.9.2004 passed by the Additional Sessions Judge, Balod in Criminal Appeal No.267 of 2002 affirming the judgment dated 4.6.2002 passed by the Judicial Magistrate First Class, Balod in Criminal Case No.281 of 2001 convicting and sentencing the Applicant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 25(1B)(b) of the Arms Act	Rigorous Imprisonment for 1 year and fine of Rs.100/- with default stipulation

2. Facts of the case, in brief, are that on 2.1.1999 at about 10:30 a.m., Constable Shrawan (PW2), during his duty at Bus-Stand Rajhara, received information that the accused/Applicant was spreading fear among the people present at the said bus-stand by showing a *Katar* (Knife). This fact was telephonically conveyed by

him to Assistant Sub-Inspector G.P. Tiwari (PW3). On receiving the intimation, G.P.Tiwari (PW3) reached the spot and caught the Applicant roaming with the *Katar*. He seized the *Katar* from the Applicant vide Ex.P1. First Information Report (Ex.P3) was registered by him against the Applicant. On completion of the investigation, a charge-sheet was filed against the Applicant under Section 25 of the Arms Act. Charge was framed against him under Section 25(1B)(b) of the Arms Act.

3. In support of its case, the prosecution examined as many as 3 witnesses. Statement of the Applicant was also recorded under Section 313 Cr.P.C. in which he denied the guilt, pleaded innocence and false implication. No witness has been examined in his defence.
4. After Trial, the Trial Court convicted and sentenced the Applicant and the Appellate Court affirmed the judgment of conviction and sentence as mentioned in the first paragraph of this order. Hence, this revision.
5. Learned Counsel appearing for the Applicant argued that Independent Witness Kaushal Kumar (PW1) has not supported the case of the prosecution. There are material contradictions in the statements of Constable Shrawan (PW2) and Assistant Sub-Inspector G.P. Tiwari (PW3). It was further argued that G.P. Tiwari (PW3) registered the FIR (Ex.P3) and he himself investigated the offence in question, therefore, the case of the prosecution is vitiated. It was further submitted that the judgment of the Trial Court is perverse and, therefore, the same deserves to be set aside. Reliance was placed on **(1996) 11 SCC 709 (Megha Singh**

v. State of Haryana).

6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.
8. Kaushal Kumar (PW1) is the independent witness of the seizure of *Katar* made vide Ex.P1. He has not supported the case of the prosecution and has been declared hostile.
9. Constable Shrawan (PW2) has stated that on the date and time of occurrence, he and Assistant Sub-Inspector G.P. Tiwari (PW3) were on duty at the bus-stand. There they were informed by some boys that the Applicant was roaming with a *Katar* in the other corner of the bus-stand. He has further stated that they reached the spot and saw the Applicant roaming there with a *Katar*. He has further stated that the *Katar* was seized from the Applicant by G.P. Tiwari (PW3).
10. Assistant Sub-Inspector G.P. Tiwari (PW3) has stated that on 2.1.1999, Shrawan (PW2) was on duty at the bus-stand and from there he informed him telephonically about the incident. He reached the spot and saw the Applicant roaming with a *Katar* in the bus-stand. He seized the *Katar* from the Applicant vide Ex.P1. He has further stated that after return to the police station, he registered the FIR (Ex.P3) and recorded statements of witnesses. On completion of the investigation, he filed a charge-sheet against the Applicant.

11. From the evidence available on record, it is clear that the independent witness Kaushal Kumar (PW1) has not supported the case of the prosecution. Though Shrawan (PW2) and G.P. Tiwari (PW3) have supported the case of the prosecution and stated that vide Ex.P1 one *Katar* was seized from the possession of the Applicant yet there are material contradictions in their statements. As per the prosecution story and the FIR (Ex.P3), when G.P. Tiwari (PW3) was on patrolling duty, Shrawan (PW2) informed him telephonically from the bus-stand that the Applicant was roaming in the bus-stand with the *Katar*. After receiving the information, he reached the spot. But, contrary to this, in his Court statement, G.P. Tiwari (PW3) has stated that he received the above information at the police station. As per the statement of Shrawan (PW2), both he and G.P. Tiwari were on duty at the bus-stand and both of them had received the information at the bus-stand from some boys that on the other corner of the bus-stand the Applicant was roaming with the *Katar*. Apart from the statements of Shrawan and G.P. Tiwari, there is nothing on record to support the case of the prosecution. The independent witness Kaushal Kumar (PW1) has also not supported the case of the prosecution. Since there is a material contradiction in the statements of Shrawan (PW2) and G.P. Tiwari (PW3) regarding the receiving of information, the whole prosecution story is doubtful. The material available on record does not inspire confidence of this Court to hold the Applicant guilty.
12. In the premises of aforesaid, the revision is allowed. The impugned judgment of conviction and sentence is set aside. The Applicant is acquitted of the charge framed against him.

13. It is reported that the Applicant is on bail. His bail bonds shall continue for a further period of six months from today in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
14. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE