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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.964 of 2008**

1. Mahendra Ram Gond S/o Ramchander Gond, aged 25 years, resident of village Dignager, Police Station Raipur, District Sarguja (CG)
2. Bhojraj Bhojraj alias Golwa, aged 19 years, S/o Ramdin resident of village Khadagawa, Police Station Pratappur, District Sarguja (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through S.O. Raipur, District
Sarguja

---- Respondent

For Appellants : Shri R.V. Rajwade, Advocate

For State/ Respondent : Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****07/12/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 30.9.2008 passed by the First Additional Sessions Judge, Ambikapur, Sarguja (CG) in Sessions Trial No. 410/2007, whereby the appellants have been convicted under Sections 458, 392 of the IPC and Section 25 (1B) of the Arms Act, 1959 and sentenced to undergo R.I. for 5 years in fine of Rs.1000/-, R.I. for 5 years and fine of Rs.1000/- and

R.I. for 2 years and fine of Rs.500/- with default stipulations. Appellant Bhojraj has been acquitted under Section 4 (b) of the Explosive Substances Act, 1908, whereas, appellant Mahendra Ram has been convicted under said Section 4(b) of the Explosive Substances Act, 1908. All the sentences were directed to run concurrently.

2. In the present case, name of the victim is Rambilas who is resident of village Patarapara. It is alleged that on 17.6.2007 at about 11.00 pm, someone knocked the door of the house of Rambilas and called him. When he opened the door, he saw 2 persons having plastic bag and sword. Both the persons demanded Rs.1 lac from him by stating that he had a fund of Scheme of Employment Guarantee. When the complainant denied for having some fund, the appellants removed Rs.400/- from his possession. Bag of the appellants were seized in which tiffin bomb was found. The matter was reported and the appellants were charge-sheeted. After completion of trial, the trial Court has convicted and sentenced the appellants as aforementioned.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellants submits as under :

(i) As per version of the complainant Rambilas, those persons who had first visited his house were dressed in uniform, but the

appellants were found in civil dress and prosecution has failed to explain as to when the appellants put off their uniform and dressed in civilian, therefore, version of the complainant is not reliable.

(ii) As the complainant Rambilas and his wife Kuntidevi could not identify those persons who first visited their house and robbed Rs.400/-, therefore, the appellants are not the persons who first visited the house of the complainant in uniform.

(iii) As per version of Devsai(PW3) and Kamlapati (PW4), they had seen sword and three tiffin bomb bags which were lying just beneath the cot inside the house of Milho Das, therefore, finding recorded by the trial Court is not based on factual aspect of the matter. The trial Court has overlooked the material contradictions and omissions, therefore, finding arrived at by the trial Court is liable to be set aside.

5. On the other hand, learned counsel for the State supporting the judgment submits that the finding recorded by the trial Court is based on proper marshalling of evidence and same is not liable to be interfered with.

6. From the evidence of Rambilas (PW1), Kunti (PW2), Devsai(PW3) and Kamlapati(PW4), it is established that both the appellants entered into the house of Rambilas and demanded Rs.1 lac from him. When Rambilas denied that he has no fund, they compelled him to give money which is lying in his house and

thereafter, he gave them Rs.400/-. Version of this witness is supported by FIR which is lodged on the date of incident i.e. 17.6.2007 at Police Station Rajpur, in which, names of both the appellants are clearly mentioned as culprit and their act is also mentioned.

7. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

8. Version of the complainant and other witnesses inspired confidence and the trial Court recorded finding that it is a case of lurking house tress pass by night after preparation of hurt and again both have committed robbery against Rambilas. Act of the appellants falls within mischief of Section 458 and 392 IPC for which the trial Court has convicted them and this Court has no reason to substitute a contrary finding.

9. From the evidence of Head Constable, Rajaram(PW8), he seized one plastic bag from the appellant Mahendra Ram and also seized one sword from appellant Bhojraj. As per version of this witness, he has sent the article for examination to Explosive expert and as per version of Ramakant Singh (PW9) who is Explosive expert posted at Sarguja, he received 3 live tiffin bombs for examination and after examination found that all the bombs were live and fit for explosion. Ram Singh (PW11) who is member of Special Branch of Bomb disposal squad deposed that after examination he has disposed of the live tiffin bombs which can be

used as hand grenade or land mine. He further deposed that improvise and explosive ammunition was the content of the bomb which was dangerous explosive. Again, it contains commercial detonator which is also explosive which contained gun powder. All this evidence goes to show that the appellants were in joint possession of ammunition which defined under Section 2 (1) (b) of the Arms Act, 1959 and as per definition of ammunition it includes bombs and grenades. Again, from the definition of explosive substances as defined under Section 2 of the Explosive Substances Act, 1908 it shall be deemed to include any material for making any explosive substance or aiding in causing any explosion or with any explosive substance.

10. From the evidence of Head Constable Rajaram (PW8) it is established that both the appellants were in possession of sword having length of 29 inches and 26.2 inches which falls within contravention of Section 4 of the Arms Act, 1959 and punishable under Section 25 (1B) of the Arms Act. Possession of explosive substances is an offence under Section 5 of the Explosive Substances Act, 1908.

11. Looking to the entire evidence, this Court has no reason to record a contrary finding. Conviction of the appellants for offence under Section 25 (1B) of the Arms Act is affirmed, but since possession of explosive substances is an offence under Section 5 of the Explosive Substances Act, 1908, conviction of the appellants

Mahendra Ram is modified and he is convicted under Section 5 of the Explosive Substances Act, 1908

12. Heard on the point of sentence:

The trial Court has awarded sentence for R.I. for 5 years for the offence under Sections 458 and 392 IPC and R.I. for 2 years under Section 25 (1B) of the Arms Act, in addition the appellant Mahendra Ram is convicted under Section 5 of the Explosive Substances Act 1908 and sentenced to R.I. for 5 years. Looking to the gravity of the offence it cannot be said that the sentence awarded by the trial Court is harsh, disproportionate or unreasonable. The, sentence part is also not liable to be interfered with.

13. Accordingly, the appeal is liable to be and is hereby dismissed. As per record, both the appellants have suffered full term of jail sentence and have been released after getting benefit of remission, therefore, no order for their arrest etc. is required.

Sd/

(Ram Prasanna Sharma)

JUDGE