

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 144 of 2012**

- State of Chhattisgarh Through – Station House Officer, P.S. Tadoki, Distt. North Bastar Kanker , C.G. , Chhattisgarh

---- Appellant

Versus

- Laxminath S/o Shyamlal Komra aged about 23 Years R/o Village Chhoteghounsa , Thana - Tadoki, Distt. Kanker C.G. , Chhattisgarh

---- Respondent

For Appellant/State	Mr. R.K.Mishra, Deputy Advocate General
For respondent	None

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Judgment on Board**Per Ram Prasanna Sharma, J****21-2-2018**

1. Challenge in this acquittal appeal is to the judgment dated 15-3-2012 passed by the Additional Sessions Judge, North Bastar, Kanker, Session Division Kanker (CG) in Session Trial No. 14 of 2011 wherein the trial Court acquitted the respondent for commission of offence under Sections 147, 148, 364/149, 302/149 of IPC, 1860, Sections 25 & 27 of the Arms Act, 1959 (with effect from 1-10-1962) and Sections 4 & 5 of the Explosive Substance Act, 1908 (as amended by Act, 54 of 2001 vide enforcement dated 11-12-2001) for making unlawful assembly with deadly weapons; kidnapping one

Ramkumar in order to murder him; or for committing murder of Ram Kumar; for having illegal possession of fire arms rifle and for having possession of explosive substances.

2. In the present case, name of the deceased is Ram Kumar who was son of Jhaduram (PW/6). It is alleged that family members of Jhaduram were in the house at village Sarandi and some people knocked the door of the house and called deceased Ram Kumar. When Jhaduram and his son Ramkumar came out of the house, some members of prohibited Maoist Communist Organization commonly known as Naxals were present with arms and took Ram Kumar with them to attend some meeting and thereafter Ram Kumar did not return. Search was made and dead body of Ram Kumar was found on road between village Sarandi and village Dhousa. Merg intimation was registered at Police Station Tadoki as per Ex.P/9. Dead body of the deceased was sent for autopsy where medical expert opined that deceased died homicidal death due to strangulation. First information report for offences as mentioned above was registered and the matter was investigated. After completion of investigation, charge-sheet was filed and after completion of trial, the trial Court acquitted the respondent as mentioned above.

3. Learned counsel for the State submits as under:

- i) The trial Court has failed to appreciate the evidence of Kheman Lal Bhoyar (PW/5), Jhaduram (PW/6), Amarnath (PW/7) and Ved Prakash (PW/8) in its right perspective and came to wrong conclusion in cryptic and laconic

manner.

ii) The trial Court overlooked the fact that deceased was taken from the house of Jhaduram (PW/6) and thereafter he did not return, therefore, case of abduction and murder is clearly established.

iii) The trial Court has failed to marshal surrounding circumstances and gave weightage to minor contradictions against the settled principles of law.

4. We have heard learned counsel for the State and perused the material on record.
5. The respondent is charged for commission of offence under Sections 25 & 27 of the Arms Act for having possession of fire arms and using the same. As per Section 39 of the Arms Act, 1959, no prosecution shall be instituted against any person in respect of any offence under Section 3 of the Act which is related to possession of fire arm and ammunition without the previous sanction of the District Magistrate. In the present case, no such sanction was obtained and no one was produced before the trial Court to establish the factum of sanction. The respondent is also charged for commission of offence under Sections 4 & 5 of the Explosive Substances Act, 1908 (as amended by the Act of 54 of 2001 vide enforcement dated 11-12-2001). As per Section 7 of the said Act, there is restriction on trial of offence of the Act and no court shall proceed to the trial of any person for an offence

against the Act except with consent of District Magistrate. But, in the present case, no consent was obtained from the District Magistrate before filing the charge-sheet and no one was produced to prove such consent of the District Magistrate, therefore, cognizance taken by the trial Court is not in the letter and spirit of the enactments and respondent is liable to be discharged for offence under Sections of Arms Act and under Sections 4 & 5 of the Explosive Substances Act.

6. To sustain the other charges, prosecution has examined as many as ten witnesses.
7. PW/1 Sagruram, PW/2 Roop Singh, PW/9 Rajendra Sahu have not supported the version of the prosecution. Dr. R.D. Kori (P:W/3) is Medical Officer posted at Community Health Centre, Bhanuprattappur on 1-5-2010 and on the same day he conducted autopsy of deceased Ramkumar and found that his death is caused due to strangulation and nature of death is homicidal. Version of this witness is unshaken during cross examination and there is no other medical expert's opinion contrary to that and there is nothing to disbelieve the same
8. PW/5 Kheman Lal Bhoyar deposed that the Naxals came to their house and kidnapped the deceased Ramkumar. He further deposed that one meeting was organized by the Naxals where villagers requested them to release Ramkumar, but they did not release him. In cross examination he deposed that the person who assaulted Ramkumar was unknown to him but the respondent was present there. In the present case, incident took place between 11-5-2010 to 15-5-2010. Statement of this witness was recorded under Section 161 of the Cr.P.C by the Investigating Officer on 26-10-2010 and no

cogent explanation is offered explaining the delay in recording his statement. If he had seen the respondent on 11-5-2010, the name of respondent should have been mentioned in first information report lodged on 15-5-2010 but his name is not mentioned. In absence of mentioning the name of respondent in first information report and explanation for delay in recording the statement of this witness during investigation, it is unsafe to act on bald statement of this witness.

9. PW/6 Jhaduram is father of the deceased. He deposed that 30-35 members of Naxals took Ramkumar from his house and respondent assaulted Ramkumar but this fact is not mentioned in his statement recorded under Section 161 of the Cr.P.C and name of the respondent is not mentioned in FIR (Ex.P/10) recorded by this witness. If he had seen the respondent at the time of incident or just thereafter, there was no reason for him for not mentioning the name of the respondent in FIR. Accordingly, version of this witness is also not acceptable.
10. PW/7 Amarnath has deposed that one meeting was organized by the Naxals in which respondent was present and in the said meeting Ramkumar was also brought and was strangulated, but this kind of statement is missing in his previous statement recorded under Section 161 of the Cr.P.C, therefore, version of this witness was also liable to be rejected. PW/8 Ved Prakash deposed in his examination-in-chief that the respondent was assaulting the deceased, but in his cross examination he deposed that he has not seen the commission of the murder of the deceased. It is not mentioned in his previous statement recorded under Section 161 of the Cr.P.C that he has seen the respondent assaulting the deceased and version before the Court is

exaggerated version without explanation. All these witnesses adduced by the prosecution were not reliable, therefore, the trial Court was not in a position to record the judgment of conviction. Facts were not established to bring home the guilt as charged by the trial Court and the finding of the trial Court is not liable to be disturbed.

11. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)

Raju