

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 253 of 2010**

1. Bhagwat Lal, S/o Shri Manohar, aged about 39 years, R/o Village- Tumdilewa, P.. Somnani, District- Rajnandgaon (C.G.)
2. Victor Christian, S/o Christian Daud, aged about 69 years, R/o Housing Board Colony, Raipur Naka, Durg (C.G.)

---- Appellants**Versus**

State of Chhattisgarh, through : Station House Office Somni, District- Rajnandgaon (C.G.)

---- Respondent

For Appellants : Mr. Anand Shukla & Mr. Akhil Mishra,
Advocates.

For State/respondent : Ms. K. Tripti Rao, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****19/09/2018**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 23.03.2010 passed by Additional Sessions Judge (FTC) Rajnandgaon (C.G.) in Session Case No. 33/2008, wherein the said court convicted the appellants for commission of offence under Section 5 of Explosive Substances Act, 1908 (for short "the Act, 1908") and sentenced to R.I. for 3 years and fine of Rs. 1000/- each with further default stipulations.
2. The appellants were charge-sheeted for commission of said offence on the ground that they were in possession of 8 Kg. of ammonium nitrate (with diesel), 100 feet Explosive Batti & 6

pieces Electric Detonator on 17.03.2007 at about 16.05 p.m. near Joratarai in Victor Christian Crusher.

3. Learned counsel for the appellants submits as under: -

(i) The prosecution has failed to established that seized articles were materials for making any explosive substances, therefore, provision of Section 5 of the said act is not attracted.

(ii) The prosecution has failed to produce any document in respect of ownership of appellant No. 2 in the crusher.

(iii) Appellant No. 2 has no concerned and he was not present at the time of seizure that shows his false implication.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper appreciation of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. The first question for consideration by this Court is whether the seized material was a material fit for making explosive substances. Section 2 of the Act, 1908 defines explosive substances which reads as under:-

“2(a). The expression “explosive substance” shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or

with any explosive substance; also any part of any such apparatus, machine or implement”

6. To substantiate the charge, the prosecution examined as many as 14 witnesses. Dhalsingh (PW-1) is Sainik who signed in Ex. P/1, but he admitted in his cross-examination that he is unaware as to from where the articles were brought. Prakash Chandrakar (PW2) is a person before whom one bill book was seized. Asharam Yadav (PW-3) is a person who purchased some explosive from appellant Victor previous year. Sheikh Niyazuddin (PW-4) is a person before whom one receipt book was seized. Mohd. Rajak (PW-5) deposed regarding purchasing of explosive from appellant- Victor. Irfan Khan (PW-6) is a person in whose presence some granular explosive powder was seized. M.R. Markandey, Sub-Inspector (PW-7) is a person before whom one receipt book was seized. Rajesh Malve, Minig Officer (PW-8) deposed regarding mining in favour of appellant- Victor. Krishna Kumar, Constable (PW-9) deposed regarding seizure. Shankar Barve, Head Constable (PW-10) also deposed about seizure. Preetam Kumar Sahu (PW-11) is Assistant Grade-III in office of District Magistrate, Rajnandgaon and he deposed regarding sending of record for prosecution. Pitambar Prasad Paikra, Constable (PW-12) is a person who received the seized articles from Malkhana and deposited the same for laboratory at Hyderabad. Ghanshyam Singh, Head Constable (PW-13) is a person who assisted during investigation. Alok Dutta, Sub-Inspector (PW-14) is a person who made seizure in the present case.

7. No expert is examined before the trial court to establish as to whether the seized articles were materials for making any explosive substances. No report regarding explosive substances is filed before the trial court.
8. As per Section 45 of the Indian Evidence Act, 1872, only opinion of the expert is relevant. In the present case, no expert is examined to substantiate the charge that seized articles were explosive substances as defined under Section 2(a) of the Act, 1908.
9. In absence of any expert opinion and in absence of any laboratory report, the seized articles were not proved to be materials for making any explosive substances, therefore, finding of the trial court is not sustainable.
10. Accordingly, appeal is allowed. The conviction and sentence of the appellants are set aside and they are acquitted of the charges framed against them under Section 5 of the Act, 1908.
11. The appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-
(Ram Prasanna Sharma)
Judge