

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 69 of 2009**

1. Yogendra Tiwari, son of Late Radheshyam Tiwari, aged 38 years, Occupation Government Servant, resident of 7th Batallion, Bhilai (CG)
2. Vijay Bahadur, son of Shri Harishchandra Singh, aged 51 years, resident of 2nd Batallion, Sakri, Bilaspur

---Appellants**Versus**

State of Chhattisgarh, through the Police Station Janjgir,
District Janjgir Champa

--Respondent**And****Acquittal Appeal No. 102 of 2010**

State of Chhattisgarh, Through the District Magistrate
District Janjgir Champa (CG)

Versus

1. Yogendra Tiwari, son of Late Radheshyam Tiwari, aged 38 years, Occupation Government Servant, resident of 7th Batallion, Bhilai (CG)
2. Amarnath @ Rinku S/o P.R.Khunte, Aged about 25 years, R/o Village Shantinagar, Palari, Thana Palari, District Raipur (CG)
3. Vijay Bahadur, son of Shri Harischandra Singh, aged 51 years, resident of 2nd Batallion, Sakri, Bilaspur

--Respondents

For Appellant	: Shri Sandeep Yadav, Advocate in Cr. Appeal No. 69/2009.
For Respondent	: Shri Wasim Miyam, Panel Lawyer
For Appellant/State	: Shri Wasim Miyam, Panel Lawyer in Acquittal Appeal No.102/2010.
For Respondents	: Shri J.A. Lohani, Advocate in Acquittal Appeal No. 102/2010

**DB: Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma
Judgment on Board**

Per Prashant Kumar Mishra, J.
14/05/2018

1. As Criminal Appeal No. 69/2009 and Acquittal Appeal No.102/2010 arise out of common judgment dated 27.12.2008, passed in S.T. No. 142/2006, they are heard analogously and are being disposed of by this common judgment.
2. In Cr. Appeal No.69/2009 appellants Yogendra Tiwari and Vijay Bahadur have assailed their conviction under Section 323 IPC, whereas in Acquittal Appeal No. 102/2010, the State has assailed the impugned judgment whereby all the 3 accused persons have been acquitted of the charge under Section 307 IPC and instead Yogendra Tiwari and Vijay Bahadur have been convicted under Sections 323 IPC.
3. Learned counsel for the appellants Yogendra Tiwari and Vijay Bahadur would raise a legal point, at the outset, that the appellants have allegedly committed offence while on duty as Personal Security Officers/Gunmen of the Hon'ble Member of Parliament, Shri P.R. Khunte, therefore, their prosecution could not have commenced without obtaining sanction as required under Section 197 Cr.P.C.
4. In view of the above submission, we do not propose to deal with the entire facts but will state only bare minimum facts to

appreciate the allegations and the manner in which the alleged incident took place.

5. While the appellants were on duty and were staying as PSO/Gunmen in one of the room of the Rest House at Janjgir Champa, where the Hon'ble Member of Parliament was also staying in another room. Yogendra Tiwari went out to call the Cook employed in the said Rest House. On the way, he met injured Prakash Rathore and one of his friend and he asked as to the purpose of their staying in the Rest House in late night at 22.30 hrs. After brief altercation, a quarrel arose wherein the appellants assaulted the injured and as per allegations, Vijay Bahadur fired with his Service Revolver on Prakash Rathore, but he somehow saved himself.

6. From the medical evidence available on record, vide Ex.P/13, there is no dispute that Prakash Rathore had sustained simple injuries. However, at the same time it is admitted that before filing the charge sheet against the accused persons for commission of offence under Section 307 IPC, the prosecution has not obtained any sanction from the employer of the accused persons. The fact that the appellants have committed the offence while on duty is established from the contents of the FIR Ex. P/12A and the statement of one of the eye witness PW4, Somnath Pal, who has stated that at the time of occurrence Hon'ble Member of Parliament, Shri P.R. Khunte was staying in room No.1, whereas, the accused persons being PSO/Gunmen of the

said Member of Parliament, were staying in room No.3 of the Rest House. There is no dispute about the fact that the accused persons were the Gunmen of Hon'ble Member of Parliament, therefore, they were on duty while the Hon'ble Member of Parliament was staying in the Rest House at the time of occurrence.

7. In view of the above undisputed facts, it was the duty of the prosecution to have obtained sanction under Section 197 Cr.P.C. as the accused persons have allegedly committed the offence while on duty. It is settled law that if a Government Servant is charged for committing any offence while on duty, the prosecution cannot be initiated against the Govt. Servant without obtaining sanction of the employer/competent authority.

8. In absence of sanction having been obtained against the accused persons, the prosecution could not have filed the charge sheet. Accordingly, the impugned judgment of conviction under Section 323 IPC deserves to be and is hereby set-aside on the ground that the prosecution itself was committed contrary to the provisions contained in Section 197 Cr.P.C. For the same reason, the Acquittal Appeal preferred by the State in so far as it relates to Yogendra Tiwari and Vijay Bahadur is concerned, it deserves to be and is hereby dismissed. The third accused Amarnath @ Rinku was not a Govt. Servant, therefore, we are required to consider the State's Acquittal Appeal against this accused on merits.

9. The trial Court has acquitted Amarnath @ Rinku on the ground that from the statement of prosecution witnesses his presence on the spot is not proved.

10. We have carefully scrutinized the evidence to consider the correctness of trial Court's finding in respect of Amarnath @ Rinku. However, on due appreciation, we found that the trial Court's finding on this aspect does not suffer from any perversity because the witnesses have mainly deposed against Yogendra Tiwari and Vijay Bahadur and no allegation is made about the role played by Amarnath @ Rinku, therefore, the trial Court was fully justified in recording the finding that the prosecution has failed to prove the presence of Amarnath @ Rinku on the spot at the time of occurrence. As a consequence of above discussion, the Acquittal Appeal preferred by the State against Amarnath @ Rinku also fails.

11. Accordingly, Cr. Appeal No.69/2009 is allowed and the Acquittal Appeal No.102/2010 is dismissed.

Sd/

Sd/

JUDGE

JUDGE

(Prashant Kumar Mishra)

(Ram Prasanna Sharma)