

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved for Judgment on :03.10.2018****Judgment delivered on : 14/12/2018****CRA No. 1287 of 2015**

1. Ravi Kadiyam S/o Bisahu Ram Kadiyam, Aged About 47 Years, R/o Village Mandagaon, P.S. Siksod, District Kanker, Chhattisgarh, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station Abhanpur, District Raipur, Chhattisgarh, Chhattisgarh

---- Respondent**CRA No. 332 of 2018**

1. Chaitram S/o Mangal Singh Darro, Aged About 27 Years, R/o- Village Metabodli, P.S. Siksod, Civil And Revenue District- Kanker, Chhattisgarh., District : Kanker, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through- P.S.- Abhanpur, Raipur, Civil And Revenue District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondent**CRA No. 333 of 2018**

1. Mohpal @ Santosh S/o Chautram Dhurwa, Aged About 29 Years, R/o Village Metabodli, P. S. Siksodh, Distt. Kanker Chhattisgarh, District : Kanker, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through P.S. Abhanpur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondent**CRA No. 334 of 2018**

1. Baliram S/o Bidesi Usendi, Aged About 31 Years, R/o Village Kurusbodi, P. S. Siksodh, Distt. Kanker Chhattisgarh, District : Kanker, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through P.S. Abhanpur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondent**CRA No. 1118 of 2015**

1. Dharmendra Chopra S/o Pokhraj Chopra, Aged About 46 Years, R/o In Front Of Ashoka Ratan, In Front Of V.I.P. State, P.S. Pandri, District Raipur Chhattisgarh , Chhattisgarh
2. Neeraj Chopra S/o Lalchand Chopra, Aged About 36 Years, R/o Village

- Sambalpur, P.S. Bhanupratappur, District Kanker Chhattisgarh ,
District : Kanker, Chhattisgarh

---- Appellants

Versus

- State Of Chhattisgarh Through P.S. Abhanpur, District Raipur Chhattisgarh , Chhattisgarh

---- Respondent

CRA No. 1255 of 2015

1. Badri S/o Megnath Gawde, Aged About 45 Years, R/o Village Tadoki, P.S. Tadoki, Distt. Kanker Chhattisgarh., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Abhanpur, Distt. Raipur Chhattisgarh., Chhattisgarh

---- Respondent

CRA No. 1276 of 2015

1. Mohan Singh Dhruw S/o Shyamlal Dhruv, Aged About 28 Years, (wrongly mention as Dhurva), R/o Bade Pinjodi, Thana Aamabeda, Distt. Kanker Chhattisgarh. , Chhattisgarh

---- Appellant

Versus

- The State Of Chhattisgarh Through Police Station Aabhanpur, Distt. Raipur Chhattisgarh. , Chhattisgarh

---- Respondent

CRA No. 1288 of 2015

1. Phool Singh S/o Mangalram Nag, Aged About 36 Years, R/o Village Markada, Police Station Bade Dongar, District Kondagaon Chhattisgarh. , Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Abhanpur, District Raipur Chhattisgarh. , Chhattisgarh

---- Respondent

CRA No. 1360 of 2016

1. Sukhnath S/o Induvaram Nareti, Aged About 65 Years, R/o Village Porondi, Police Station Siksod, District Kanker, Chhattisgarh., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Abhanpur, District Raipur, Chhattisgarh., Chhattisgarh

---- Respondent

CRA No. 1468 of 2015

1. Ramkumar Mandavi S/o Guman Singh Mandavi, Aged About 38 Years R/o Village - Mujalgodi, Post Office And Police Station - Kanker, District

Kanker Chhattisgarh , Chhattisgarh

2. Dashrath Mandavi S/o Thanwar Singh Mandavi, Aged About 42 Years, R/o Village - Tultuli, Post Office And Police Station - Kanker, District Kanker Chhattisgarh , District : Kanker, Chhattisgarh
3. Laxman Usendi S/o Heeram Usendi, Aged About 45 Years, R/o Village - Tonda - Marka, Post Office And Police Station Kanker, District - Kanker Chhattisgarh , District : Kanker, Chhattisgarh

---- Appellants

Versus

- State Of Chhattisgarh Through The District Magistrate, Raipur, District - Raipur Chhattisgarh , Chhattisgarh

-----Respondent

For Appellant(s) : Shri Surendra Singh, Sr. Advocate with Shri Maneesh Sharma, Advocate (in CRA No.1118/2015),
 Shri Shishir Dixit, Advocate (in CRA No.1287/2015 & CRA No.1255/2015),
 Shri Arun Kochar and Shri Shishir Dixit, Advocates (in CRA No.1288/2015),
 Shri Parag Kotecha, Advocate (in CRA No.1276/2015),
 Shri Adil Minhaj, Advocate (in CRA No.332/2018),
 Shri Kshitij Sharma, Advocate (in CRA No.333/2018),
 Shri Syed Imtiaz Ali, Advocate (in CRA No.334/2018),
 Shri Manoj Paranjpe and Shri Vaibhav A. Goverdhan, Advocates (in CRA No.1360/2016),
 Shri Shivendu Pandya, Advocate (in CRA No.1468/2015).
 For Respondent/State : Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Judgment

14/12/2018

1. These appeals have been preferred against judgment dated 27-08-2015 passed in S.T. No.102/2014 by the Special/Additional Sessions Judge, Raipur C.G. convicting and sentencing all the appellants in the following manner:-

Sl.No.	Conviction	Sentence
1.	U/s 8(1) of C.G. Vishesh Jan Suraksha Adhiniyam, 2005	R.I. for 3 years & Fine of Rs.1000/-, in default of fine R.I. for 3 months,
2.	U/s 8(2) of C.G. Vishesh Jan Suraksha Adhiniyam, 2005	R.I. for 2 years & Fine of Rs.1000/-, in default of fine R.I. for 3 months,
3.	U/s 8(3) of C.G. Vishesh Jan Suraksha	R.I. for 3 years & Fine of

	Adhiniyam, 2005	Rs.1000/-, in default of fine R.I. for 3 months,
4.	U/s 8(5) of C.G. Vishesh Jan Suraksha Adhiniyam, 2005	R.I. for 5 years & Fine of Rs.3000/-, in default of fine R.I. for 6 months,
5.	U/s 18 of the Unlawful Activities (Prevention) Act, 1967	R.I. for 7 years & Fine of Rs.3000/-, in default of fine R.I. for 6 months,
6.	U/s 39 of the Unlawful Activities (Prevention) Act, 1967	R.I. for 7 years & Fine of Rs.3000/-, in default of fine R.I. for 6 months,
7.	U/s 40(1)B of the Unlawful Activities (Prevention) Act, 1967	R.I. for 7 years & Fine of Rs.3000/-, in default of fine R.I. for 6 months,

By the impugned judgment appellants Mohpal @ Santosh (in CRA No.333/2018), Baliram Usendi (in CRA No.334/2018), Chaitram (in CRA 332/2018), Ramkumar Mandavi, Dashrath Mandavi and Laxman Usendi (in CRA No.1468/2018) have also been convicted and sentenced as mentioned below:-

Sr. No.	Conviction	Sentence
1.	U/s 4 of Explosive Substances Act, 1908	R.I. for 7 years & Fine of Rs.3000/-, in default of fine R.I. for 6 months,
2.	U/s 5 of Explosive Substances Act, 1908	R.I. for 5 years & Fine of Rs.3000/-, in default of fine R.I. for 6 months,
3.	U/s 25 of the Arms Act, 1959	R.I. for 3 years & Fine of Rs.1000/-, in default of fine R.I. for 3 months.

By the impugned judgment appellants Sukhnath Nareti (in CRA 1360/2016) and Mohan Singh Dhruw (in CRA 1276/2015) have also been convicted and sentenced as mentioned below:-

Sr. No.	Conviction	Sentence
1.	U/s 4 of Explosive Substances Act, 1908	R.I. for 7 years & Fine of Rs.3000/-, in default of fine R.I. for 6 months,
2.	U/s 5 of Explosive Substances Act,	R.I. for 5 years & Fine of

	1908	Rs.3000/-, in default of fine R.I. for 6 months,
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By the impugned judgment appellants Phool Singh (in CRA 1288/2015) and Ravi Kadiyam (in CRA No. 1287/2015) have also been convicted and sentenced as mentioned below:-

Sr. No.	Conviction	Sentence
1.	U/s 25 of the Arms Act, 1959	R.I. for 3 years & Fine of Rs.1000/-, in default of fine R.I. for 3 months.

2. The case of prosecution is this that on 15-01-2015 at about 11.30 a.m. Inspector A.R.Nuruti (PW-12) of Police Station Abhanpur received a confidential information, that three persons connected with Naxalites are traveling on a motorcycle from Raipur to Bhanupratapur. A.R.Nuruti (PW-12) intercepted the motorcycle bearing registration No.C.G.05 0332 at Abhanpur Chandi Mod, on which, there were three riders namely appellants Mohpal (in CRA No.333/2018), Baliram (in CRA No.334/2018) and Chaitram (in CRA No.332/2018). On search made in the bag carried by appellant Mohpal (appellant in CRA No.333/2018) 223 cartridges of AK 47 rifle, 50 cartridge of Insas rifle, 10 cartridge of .303 rifle, two magazines, Maya magazines of December 2013 and India Today of January month was found in his possession. Cash of Rs. 14,000/- and two mobile phones were also found in his possession which were seized accordingly. On searching the bag carried by appellant Baliram (in CRA No.334/2018), he was found in his possession 20 number of detonators with attached wire, 20 pieces of gelatin, cash Rs. 40,000/-, two mobile phones and one cap which were seized from his possession. The motorcycle No.C.G. 05/S-0332 and a

mobile set was seized from appellant Chaitram (in CRA No.332/2018). These appellants informed on interrogation, that they worked for the banned Naxalite groups and have contacts with commander Prabhakar. They also informed that appellant Neeraj Chopra (appellant No.2 in CRA No.1118/2015) R/o Bhanupratappur makes arrangement to supply necessary things and weapons for the Naxalites and has contact with naxal commander Prabhakar. Subsequent to search and seizure A.R.Nuruti (PW-12)a came back to the police station and recorded the information and procedure of search and seizure in Station House Diary and a communication was sent to Superintendent of Police Raipur vide Ex.-P/39, seeking permission to register offence under Unlawful Activities (Prevention) Act and the permission was granted vide Ex.-P/40.

3. Initial investigation was carried out, in which appellants Phool Singh Nag (appellant in CRA No.1288/2015), Sukhnath (appellant in CRA No.1360/2016), Ravi Kadiyam (appellant in CRA 1287/2015), Badri (appellant in CRA No.1255/2015), Mohan Singh Dhruw (appellant in CRA No.1276/2015), Neeraj Chopra (appellant No.2 in CRA No.1118/2015) and Dharmendra Chopra (appellant No.1 in CRA No.1118/2015) gave statement on memorandum admitting about their contacts with Naxal commander Prabhakar and others and that all of them helped the Naxalites, by supplying them various articles. They stated that appellants Neeraj Chopra and Dharmendra Chopra (appellants in CRA No.1118/2015) used to make purchase from Laxmi Electronics Raipur for Naxalies. Appellant Sukhnath (appellant in CRA No.1360/2016) stated that he used to do

reconnaissance for the persons in hit-list and also used to help the persons who wanted to meet Naxal commander Prabhakar. Similarly, all the appellants were engaged in various manners in helping the banned Naxal groups.

4. At the instance of appellant Mohpal @ Santosh (appellant in CRA No.333/2018), on the basis of his memorandum statement (Ex.-P/10), 20 pieces of gelatin and 20 pieces of detonators were seized from his possession, which were kept in his house. At the instance of Phool Singh (appellant in CRA No.1288/2015) on the basis of his memorandum statement a country-made *katta* of .315 bore and 5 live cartridges were seized from his possession. At the instance of Sukhnath (appellant in CRA No.1360/2016) 1 kg urea, a bundle of fuse wire, two detonators without wire, 5 wired detonators, two books and other magazines of Naxal literature were sized vide seizure memo Ex.-P/16. At the instance of appellant Ravi Kadiyam (appellant in CRA No.1287/2015), on the basis of his memorandum Ex.-P/26 a pistol of 0.32 bore, magazine and three live cartridges were seized from his possession vide Ex.-P/30.
5. At the instance of Badri Gawde (appellant in CRA No.1255/2015) banners displaying Naxal slogans, Naxal pamphlets and drawing sheets were seized vide seizure memo Ex.-P/18. At the instance of appellant Mohan Singh Dhruw (appellant in CRA No.1276/2015) 2 kg explosive, one small pistol, fuse wire, 10 detonators, 15 pieces of gelatin and a letter addressed to Prabhakar were found which were seized accordingly vide Ex.-P/32. At the instance of Mohan Singh Dhruw (appellant in CRA No.1276/2015) from the possession of

appellant Dashrath Mandavi (appellant No.2 in CRA No.1468/2015) 26 cartridges of 12 bore, 19 detonators, 17 gelatin and cash Rs.10,000/-, some documents and two mobiles were seized vide seizure memo Ex.-P/33.

6. At the instance of Mohan Singh Dhuw (appellant in CRA No.1276/2015) himself seizure of 25 cartridges of 12 bore, some papers and motorcycle CG 19/B-6042 and mobile were seized vide Ex.-P/34 from the possession of appellant Ramkumar (appellant No.1 in CRA No.1468/2015). Similarly, at the instance of appellant Mohan Singh Dhruw (appellant in CRA No.1276/2015) seizure of medicines, banners displaying Naxal slogans and drawing sheets were made from the possession of appellant Laxman Usendi (appellant No.3 in CRA No.1468/2015) vide seizure memo Ex.-P/35.
7. Appellant Neeraj Chopra (appellant No.2 in CRA No.1118/2015) admitted in his memorandum statement Ex.-P/27 about purchasing and supplying various articles to the Naxal group and also that he had helped the Naxal commander in getting treatment in Medishine Hospital Raipur by Doctor Advani. Appellant Dharmendra Chopra (appellant No.1 in CRA No.1118/2015) admitted similarly in his memorandum statement Ex.-P/25 about his contact with Naxal commander and other works done to help him out. It was also disclosed in his statement, that Manak Jain took help of the Naxali commander, through Neeraj Chopra (appellant No.2 in CRA No.1118/2015) and Sukhnath Nareti (appellant in CRA No.1360/2016) to get the operations in Metabodali mines started and he paid money in return for the same.

8. Seized articles were sent for FSL examination and report Ex.-P/70 was received confirming the articles as explosive substances and ammunition for firearms. Sanction was granted by the Home Department of C.G. State for prosecution of the appellants.
9. After completion of the investigation charge sheet was filed against appellants before the concerned Court.
10. All the appellants were charged with offence under Sections 8(1), 8(2), 8(3), 8(5) of C.G. Vishesh Jan Suraksha Adhiniyam, 2005, Sections 18, 19, 38, 39, 40(1)B, 10(क)(iv), 10(ख)(ii), 13(1)(ख), 13(2) of Unlawful Activities (Prevention) Act, 1967, Sections 4, 5 of Explosive Substances Act, 1908 and Section 25 of the Arms Act, to which they denied and prayed for trial. After completion of the prosecution evidence, on being examined under Section 313 of the Cr.P.C. the appellants in all the cases denied all the incriminating evidence against them present on record of the case and pleaded innocence and false implication. No witness was examined in defence.
11. After completion of the trial the impugned judgment of conviction and order of sentence was passed by the trial Court wherein the appellants have been convicted and sentenced as mentioned hereinabove.
12. Learned Senior Counsel for appellants Dharmendra Chopra and Neeraj Chopra (appellants in CRA No.1118/2015) have submitted that these appellants were falsely implicated in this case and they have been convicted erroneously without there being any evidence of prosecution beyond reasonable doubt. The statement made by

appellant Neeraj Chopra on memorandum Ex.-P/24 and by appellant Dharmendra Chopra Ex.-P/25 are relevant only to that extent which is relevant under Section 27 of the Evidence Act, rest of the statement of admission etc. are inadmissible in evidence. Seizure of medical documents from appellant Dharmendra Chopra are of no consequence as it is not a proof that the person treated according to those medical documents was a Naxal commander. The other allegations against both these applicants are also not supported with any evidence. There is no evidence on record to show that these appellants have acted to help out the Naxal groups.

Reliance has been placed on the judgment delivered by Hon'ble the Apex Court in the matter of **Anvar P.V. Vs. P.K. Basheer and others**, (2014) 10 SCC 473 on the point of electronic evidence submitting that no such proof has been brought on record.

Further reliance has been placed on **Harpal Singh and Ors. Vs. State of Punjab**, AIR 2016 SC 5389.

It is submitted that it was held by Hon'ble the Supreme Court in **Prabhu Vs. State of Uttar Pradesh**, AIR 1963 SC 1113 that statement not leading to discovery of fact is not admissible in the evidence.

It is further submitted that similarly in the matter of **Mohmed Inayatullah v. State of Maharashtra**, (1976) 1 SCC 828, Hon'ble the Supreme Court has clearly laid down that how much information given by the accused in police custody can be proved in the Court under the provisions of Section 27 of the Evidence Act which shall be other than

the exception provided under Section 25 and 26 of the Evidence Act. It was similarly held in **Khatri Hemraj Amulakh vs The State of Gujarat**, (1972) 3 SCC 671.

Reliance has also been placed on the matter of **State of Delhi Versus Shri Ram Lohia**, 1960 0 AIR(SC) 490 regarding value of statement recorded under Section 161 of the Cr.P.C.

On this basis it is prayed that these appellants be acquitted of charges.

13. Counsel for appellants Ramkumar Mandavi, Dashrath Mandavi and Laxman Usendi (appellants in CRA No.1468/2015) submitted that they are simple villagers and their names were not mentioned in the FIR and they have been implicated as accused only on the memorandum statements given by co-accused Mohpal. Witnesses of search and seizure have turned hostile. Hence, it was a case of no evidence even then the appellants have been convicted in this case. In the alternative, it is prayed that if the Court is not convinced to set aside the conviction, then the jail sentence against these appellants may be reduced to the period of detention they have already undergone in jail as they are in jail since 17-02-2014.
14. Learned counsel for appellant Phool Singh (appellant in CRA No.1288/2015) submits that the witnesses of memorandum and seizure have turned hostile who have not supported the prosecution case, even then this appellant has been convicted without there being any support of any evidence. In the alternative, it is prayed that if the Court is not convinced to set aside the conviction, then the jail sentence against this appellant may be reduced to the period of detention he has already undergone in jail as he is in jail since 17-01-

2014.

15. Learned counsel for appellant Mohan Singh Dhruw (appellant in CRA No.1276/2015) submits that the witnesses of memorandum and seizure have turned hostile who have not supported the prosecution case, even then this appellant has been convicted without there being any support of any evidence. In the alternative, it is prayed that if the Court is not convinced to set aside the conviction part, then the jail sentence against this appellant may be reduced to the period of detention as he is in jail since 14-02-2014. Learned counsel for the appellant placed reliance on the judgment delivered by this Court in the matter of **Jai Kumar Vs. State of Chhattisgarh**, 2013 CRI.L.J. 2851 on the point of admissibility of evidence and has prayed that accordingly this appellant may be acquitted from the charges.
16. Learned counsel for appellant Sukhnath (appellant in CRA No.1360/2016) submits that there is no evidence present on record against this appellant. The witnesses of seizure made from this appellant are not trustworthy, hence, his conviction is bad in law. Therefore, it is prayed that this appellant may be acquitted. In the alternative, it is prayed that if the Court is not convinced to set aside the conviction, then the sentence against this appellant may be reduced to the period he has already undergone in jail as he is in jail since 17-01-2014.
17. Learned counsel for appellant Baliram (appellant in CRA No.334/2018) submits that the conviction against this appellant is without any evidence, hence, he may be acquitted from the charges. In the alternative, it is prayed that if the Court is not convinced to set aside

the conviction, then the sentence against this appellant may be reduced to the period he has already undergone in jail as he is in jail since 16-01-2014.

18. Learned counsel for appellant Ravi Kodiyam (appellant in CRA No.1287/2015) and appellant Badri (appellant in CRA No.1255/2015) submits that these appellants have been convicted without there being any evidence on record against them, hence, their conviction is bad in law. Hence, it is prayed that these appellants may be acquitted from the charges. On behalf of these appellants reliance has been placed in judgment of ***Arup Bhuyan v. State of Assam***; AIR 2011 SC 957 and ***Sri Indra Das v. State of Assam***, 2011 Cr.L.J. 346.
19. Learned counsel for appellant Chaitram (appellant in CRA No.332/2018) submits that the only one motorcycle and one mobile phone has been seized from the possession of this appellant which does not show any connection of this appellant in commission of crime as alleged in this case. Hence, it is prayed that this appellant may be acquitted of the charges.
20. Per contra, learned counsel for the State opposing the grounds raised in these appeals, submits that the prosecution has proved its case beyond reasonable doubt. Dock identification of the appellants has been made by Sangram Kesari (PW-1) and Manakchand Jain (PW-2) and the trial Court has placed reliance on the evidence of Investigating Officer, as that was found worthy of reliance. The offence committed in this case has gravity as the appellants were charged with helping out the Naxali groups who are engaged in war with State and it is a very serious matter. Reliance has been placed

on the judgment delivered by Hon'ble the Supreme Court in the matter of **Tahir v. State**, (1996) 3 SCC 338 wherein it is reiterated that conviction can be recorded if the testimony of police official is found reliable and in such case corroboration from independent witnesses is not necessary. Similarly, it is also submitted that even in absence of proper sanction for prosecution, the proceeding against the appellant can be regarded as valid, as it has been held in the judgment delivered by Hon'ble the Supreme Court in the matter of **Lopchand Naruji Jat And Anr vs State Of Gujarat**, (2004) 7 SCC 566.

21. Heard learned counsel for the parties and record of the trial Court.
22. The allegation against all the appellants is this that they are associated with banned Maoist groups helping them out with supplies, information and also making collection of amount from such concerns by making use of the influence of such banned Maoist/Naxalite groups/commander in execution of project works, which shall be considered step by step.
23. A.R. Nuruti (PW-12) was posted as SHO in P.S. Abhanpur on the date of incident. On 15-01-2014 he received a confidential information that three persons riding in a motorcycle CG 05/0332 are connected with Naxalites and are suppliers of weapons and other articles. After making entry in Rojnamcha Sanha (Ex.-P/36), this witness arrived on the spot and created a blockade. Three persons riding on motorcycle CG 05/0332 arrived on the spot, who were stopped, one of them was appellant Mohpal (appellant in CRA No.333/2018) from whom 223 numbers of cartridges of AK47 rifle, 50 cartridges of Insas rifle, 10 cartridges of 0.303 rifle, some brand of magazines, cash Rs.14000/-

and two mobile sets were recovered and seized vide Ex.-P/8. Similarly, on a search made of appellant Baliram (appellant in CRA No.334/2018), 20 numbers of detonators connected with red colored wires, 20 numbers of gelatine, cash Rs.40,000/-, two mobile sets and one cap was seized vide Ex.-P/9. Motorcycle bearing No. CG 05/0332 and one micromax mobile was seized from appellant Chaitram (appellant in CRA No.332/2018). Rojnamcha entry was made vide Ex.-P/38 in the police station. After obtaining requisite sanction vide Ex.-P/40, FIR Ex.-P/41 was lodged by this witness. In cross-examination his statement in examination-in-chief has remained unrebutted. The other questions put to him regarding the procedure adopted and formalities of the investigation are of no consequence. There is no such statement in his cross-examination so as to contradict the statement given by him in examination-in-chief.

24. Sandeep Kurre (PW-7) has stated that in his presence the articles were recovered and seized vide Ex.-P/8 from appellant Mohpal (appellant in CRA No.333/2018) and similarly, articles were recovered from appellant Baliram (appellant in CRA No. 334/2018). As the witness could not make any other statement, with the permission the Court leading questions were put to him by the prosecutor regarding the statement given by the accused persons on memorandum, which cannot be regarded as legally acceptable evidence, as such statement has been given by the accused persons on the interrogation made by the police personnel, which is not admissible under the provisions of Section 27 of the Evidence Act. In cross-examination by defence his statement regarding search and seizure from appellant Mohpal (appellant in CRA No.333/2018) and appellant Baliram (appellant in CRA No. 334/2018)

has remained unrebutted and he has reiterated the same statement. It is clear from perusal of complete deposition of this witness that only statement made by him that is relevant is the statement regarding seizure vide Ex.-P/8 and Ex.-P/9 and rest of the statement on the point of memorandum given by the accused persons in this case and that too being in the form of admission on suggestion given by the prosecutor are not admissible in evidence. Hence, after scrutinizing of whole deposition, it has appeared that this witness has supported the statement given by A.R.Nuruti (PW-12) with respect to search and seizure from appellant Mohpal (appellant in CRA No.333/2018) and appellant Baliram (appellant in CRA No. 334/2018) vide Ex.-P/8 and Ex.-P/9.

25. According to the statement given by CSP Mukesh Khare (PW-17), the name of all the other appellants has appeared in the memorandum statement given by appellant Mohpal (appellant in CRA No.333/2018) and appellant Baliram (appellant in CRA No. 334/2018) and rest of the appellants are the persons who are associates, helpers, carriers and suppliers of the Naxalites. Apart from narrating the statement given by the accused persons on memorandum, he has stated that at the instance of appellant Mohpal (appellant in CRA No.333/2018) vide his memorandum Ex.-P/10 seizure of articles was made from the place of his residence vide Ex.-P/15. Similarly at the instance of appellant Phoolsingh (appellant in CRA No.1288/2015) vide his memorandum statement Ex.-P/11 some medicines, country-made pistol of 0.315 bore and 5 cartridge were made vide Ex.-P/17, which according to the statement given by appellant Phool Singh (appellant in CRA 1288/2015) were intended for supply to the Naxalite commander. CSP

Mukesh Khare (PW-17) has further stated that appellant Sukhnath (appellant in CRA No.1360/2016) made a statement for discovery of articles vide Ex.-P/12, on the basis of which some articles, urea 1 kg., a fuze wire, a bundle of wire, a bundle of fuze wire, two numbers of detonators without wire, 5 numbers of detonators with red wire and some books and magazines were seized vide Ex.-P/16 from the house of appellant Sukhnath (appellant in CRA No.1360/2016). He has further stated that on interrogation of appellant Ravi Kadiyam (appellant in CRA No.1287/2015) he has given statement vide Ex.-P/26 for recovery of articles and at his instance from his house one pistol of 0.32 bore with magazines, three live cartridge were seized from his possession vide Ex.-P/30. This witness also interrogated appellant Badri (appellant in CRA No.1255/2015) and recorded his memorandum statement vide Ex.-P/13, on which he is stated to get recovered pamphlets of Naxalism which were kept in his house. At the instance of appellant Badri (appellant in CRA No.1255/2015) seizure of banners, pamphlets on which Naxali slogans were printed were seized vide Ex.-P/18 and Ex.-P/19.

26. CSP Mukesh Khare (PW-17) has stated that he made seizure of articles explosive powder, bundle of fuze wire, 10 numbers of detonators with wire, 15 numbers of gelatine sticks and one letter which was addressed to Prabhakar by Sonu Dhruwa from appellant Mohan Singh Dhruw (appellant in CRA No.1276/2015), at his instance according to memorandum given by him Ex.-P/28. On the basis of information received by memorandum statement given by the co-accused persons he made seizure of 26 cartridges of 12 bore, 19 numbers of detonators with wire, 17 numbers of gelatine, cash

Rs.10,000/-, some stamps and mobile vide Ex.-P/33 from appellant Dashrath Mandavi (appellant No.2 in CRA No.1468/2015) vide Ex.-P/33 when he was carrying the same in the motorcycle. He has also stated about making a seizure of 25 cartridge of 12 bore, some papers, a mobile, one motorcycle bearing registration No.CG 19-B/6042, a purse carrying cash of Rs.1600/- and voter ID vide Ex.-P/34 from appellant Ramkumar Mandavi (appellant No.1 in CRA No.1468/2015). Similarly, he made a seizure of some medicines from appellant Laxman Usendi (appellant No.3 in CRA No.1468/2015) which according to the statement given by the accused were intended for supply to the Naxalites.

27. CSP Mukesh Khare (PW-17) has further stated that on interrogating appellant Neeraj Chopra (appellant No.2 in CRA No.1118/2015) he made statement about his connection with the Naxalite groups and Naxali commander and also made various admissions regarding the supply of the articles to Naxali groups in association with appellant Dharmendra Chopra (appellant No.1 in CRA No.1118/2015). This statement is clearly recorded in presence and at the instance of police official, hence, part of the statement which is related to some discovery, only to that extent such statement shall be admissible. He made statement to produce some purchase receipts and at his instance seizure of bills, purchase receipts of various articles which were purchased from Laxmi Electronics Raipur, were seized vide Ex.-P/29. At the instance of appellant Neeraj Chopra (appellant No.2 in CRA No.1118/2015) vide his memorandum statement Ex.-P/27 seizure of papers was made regarding treatment of one Bhaskar Salam in Medishine Hospital, Raipur, which were told to be the papers of

treatment of Naxal commander Prabhakar according to the statement given by accused persons on memorandum, which is not legally admissible as being beyond the scope of Section 27 of the Evidence Act, the only relevance is the fact of the recovery and seizure. He has also stated that at the instance of appellant Neeraj Chopra (appellant No.2 in CRA No.1118/2015) seizure of purchase receipts bills etc. were made from the house of appellant Dharmendra Chopra (appellant No.1 in CRA No.1118/2015) vide Ex.-P/31. The statement that has been made by this witness is relevant to this extent that are related to the support of seizures made from the appellants/accused persons, regarding which there is no such statement in his cross-examination so as to contradict, rebut or discredit the statement given in examination-in-chief. Rest of the statement that has been made by this witness are narration of the statement admitting connection with Naxali people and admitting other activities, which cannot be taken into consideration as being prohibited under the provisions of Section 25 of the Evidence Act.

28. Naveen Dubey (PW-10) is a witness of seizures that have been made by CSP Mukesh Khare (PW-17). Except admitting his signature on the documents, this witness has not given any statement in support of the prosecution case and he has been declared hostile.
29. Another witness Jairam Yadav (PW-11) of these procedures who has clearly not supported the prosecution case and declared hostile by the prosecution and there is no such admission made by him in cross-examination by the prosecutor, so as to help the prosecution case. Hence, the evidence regarding seizures made by CSP Mukesh Khare (PW-17) is not supported by any independent witness and reliability of this evidence shall be considered at the later stage.

30. Some other witnesses have been examined by the prosecution on the point that the appellants are Naxali's associates. Sangram Kesari (PW-1) is President of Neko Jaiswal Company. He has stated that his company has lease of mines in Gram Metabodli, but the mining work could not be started as the nearby villagers were consistently opposing the opening of mines. He has stated that appellant Dharmendra Chopra (appellant No.1 in CRA No.1118/2015) approached him and give assurance that he will get the mining work started. He also assured that he will arrange a meeting with this witness of the villagers for the purpose of coming to any agreement. This witness made no statement regarding Naxali connection of appellant Dharmendra Chopra (appellant No.1 in CRA No.1118/2015 or appellant Neeraj Chopra (appellant No.2 in CRA No.1118/2015). Hence, he was declared hostile and cross-examined by the prosecutor in which he admitted that villagers opposed the operation of the mines for the reason that Naxalites were in opposition of that, but he has not admitted the suggestion, that appellant Neeraj Chopra (appellant No.2 in CRA No.1118/2015) or appellant Dharmendra Chopra (appellant No.1 in CRA No.1118/2015) had connections with the Naxali groups. The evidence of this witness was mainly direct against appellant Dharmendra Chopra (appellant No.1 in CRA No.1118/2015) and appellant Neeraj Chopra (appellant No.2 in CRA No.1118/2015), but in that respect he is a hostile witness.
31. Manakchand Jain (PW-2) is a contractor of Godawari Power and Ispat Company. He has stated about taking the help of appellant Neeraj Chopra (appellant No.2 in CRA No.1118/2015) in getting the operations started in the mines that were leased to the company. As he did not

state about the connection of appellant Neeraj Chopra (appellant No.2 in CRA No.1118/2015) with the Naxali, hence, he was declared hostile and in this respect he has denied giving the previous statement to the police, hence, this witness also had not supported the prosecution case.

32. Rajesh Waswani (PW-3) is proprietor of Laxmi Electronics in Raipur. He has given statement that appellant Neeraj Chopra (appellant No.2 in CRA No.1118/2015) and appellant Dharmendra Chopra (appellant No.1 in CRA No.1118/2015) used to make purchase of various electronic articles from his shop, but he has not made any statement to show that such purchase were intended for supply to the Naxali groups.
33. Doctor Prashant (PW-4) has not made any statement to show that he had treated the Naxali commander Prabhakar at the behest of appellant Neeraj Chopra (appellant No.2 in CRA No.1118/2015) and appellant Dharmendra Chopra (appellant No.1 in CRA No.1118/2015), hence, he was declared hostile by the prosecution and thus he has not supported the prosecution case.
34. Harsh Jain (PW-5) stated about the seizure of treatment papers from Medishine Hospital, but the papers that have been seized do not identify the person treated as being the Naxal commander Prabhakar, though the papers show treatment of one Bhaskar Salam, which do not create any connection with crime alleged to have been committed.
35. After over all consideration on the admissibility of the evidence on record of the trial Court, it is held that neither any of the appellants has been proved to be a member of any unlawful organization, nor there is any evidence that any of the appellants has actively

contributed, assisted, aided or harbored in any part of some unlawful organization, held meeting for any such organization or has abetted to do anything of this sort. The statement of the accused persons in memorandum statement in this respect are not legally admissible and apart from that there is no other evidence, hence, it is held that conviction of the appellants for offence under Section 8(1), 8(2), 8(3) and 8(5) of C.G. Vishesh Jan Suraksha Adhiniyam, 2005 is erroneous without any substance which is liable to be set aside.

36. Similarly there is no legally admissible evidence to hold that any of the appellants has conspired or attempted to commit or advocate or abet or advise or incited or knowingly facilitated the commission of terrorist act, neither there is evidence that any of the appellants had given any support to the terrorist organization or has raised funds for terrorist organization, hence, the conviction of all the appellants under these provisions, i.e., under Sections 18, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 is also bad in law, which needs interference.
37. The evidence of the I.O. A.R.Nuruti (PW-12) and CSP Mukesh Khare (PW-17) on the point of search and seizure of various articles from the possession of the appellants in the respective cases has remained unrebutted in their cross-examination and there is no such other statement made by them to suggest that these witnesses have any special interest to prosecute or persecute the appellants in question. It is a settled law that for considering on the statement of the police official conducting the raid or investigation, there is no such rule to disbelieve or reject them outrightly. In such a case only

a rule of caution applies, although in this case in which the independent witnesses have not given any statement regarding support to the memorandum, search and seizure in their presence, but there is no reason present to hold that A.R. Nuruti (PW-12) and CSP Mukesh Khare (PW-17) had any personal reason to falsely implicate any of the appellants. Hence, for this reason, I am of this opinion that the trial Court has rightly believed the statement of these two witnesses and has found the seizure of articles proved on the basis of their statements, which does not require any interference.

38. There is evidence of recovery of pamphlets of naxalism from appellant Badri (appellant in CRA No.1255/2015) along with banners bearing naxal slogans. One letter addressed to some Prabhakar seized from appellant Mohan Singh Dhruw (appellant in CRA No.1276/015), possession of such banned literature by itself is not an offence under the provisions of the Unlawful Activities Act or under the provisions of C.G. Vishesh Jan Suraksha Adhiniyam, 2005. On the basis of seizure of cartridges from appellant Mohpal @ Santosh (appellant in CRA No.333/2018), it can be said that he had committed offence under Section 25 of the Arms Act. On the basis of seizure of detonator, gelatine etc., other explosive substances, it can be held appellant Baliram (appellant in CRA No.334/2018) has committed the offence under Section 4 and 5 of Explosive Substances Act. On the basis of seizure of one pistol and cartridge from appellant Phool Singh (appellant in CRA No.1288/2015), it can be held that he has committed the offence under Section 25 of the

Arms Act. Appellant Sukhnath (appellant in CRA No.1360/2016) from whom the fuse wire and detonators has been seized has committed the offence under Section 4, 5 of the Explosive Substances Act. From appellant Ravi Kadiyam (appellant in CRA No.1287/2015) pistol, magazine and cartridge have been seized, hence, he is found to have committed the offence under Section 25 of the Arms Act. Explosive powder, fuse wire, detonators, gelatine sticks were seized from appellant Mohan Singh Dhruw (appellant in CRA 1276/2015), hence, he can be held guilty for commission of the offence under Section 4, 5 of the Explosive Substances Act, 1908. From appellant Dashrath Mandavi (appellant No.2 in CRA No.1468/2018) numbers of cartridge of 12 bore, detonators, wire, gelatine were seized, hence, it can be held that he has committed the offence under Section 4, 5 of Explosive Substances Act, 1908 and Section 25 of the Arms Act. From appellant Ramkumar Mandavi (appellant No.1 in CRA No.1468/2015) cartridges of 12 bore have been seized, hence, he can be held guilty for commission of offence under Section 25 of the Arms Act.

39. As there is no legally admissible evidence against appellant Chaitram (appellant in CRA No.332/2018), appellant Badri (appellant in CRA No.1255/2015), appellant Laxman Usendi (appellant No.3 in CRA No.1468/2015), appellants Dharmendra Chopra and Neeraj Chopra (appellant No.1 and appellant No.2 in CRA No.1118/2015), hence, conviction against these appellants is without any basis and they are entitled for acquittal.
40. After due consideration on the material present in the record of the

trial Court and on the basis of the discussion made hereinabove, the appeals are allowed in part. All the appellants in all these appeals are acquitted of the charges under Section 8(1), 8(2), 8(3) and 8(5) of C.G. Vishesh Jan Suraksha Adhiniyam, 2005 and Section U/s 18, 39, 40(1)B of the Unlawful Activities (Prevention) Act, 1967. The conviction and sentence against the appellants under these provisions are hereby set aside.

41. Conviction and sentence against appellant Mohpal @ Santosh (appellant in CRA No.333/2018) under Section 4 and 5 of Explosive Substances Act, 1908 are hereby set aside. His conviction under Section 25 of the Arms Act, 1959 is maintained.
42. Conviction and sentence against appellant Baliram Usendi (appellant in CRA No.334/2018) under Section 4 and 5 of Explosive Substances Act, 1908 are hereby upheld. His conviction under Section 25 of the Arms Act, 1959 is set aside.
43. Conviction and sentence against appellant Ramkumar Mandavi (appellant No.1 in CRA No.1468/2018) under Section 4 and 5 of Explosive Substances Act, 1908 are hereby set aside. His conviction under Section 25 of the Arms Act, 1959 is maintained.
44. Conviction and sentence against appellant Dashrath Mandavi (appellant No.2 in CRA No.1468/2018) under Section 4 and 5 of Explosive Substances Act, 1908 are hereby maintained. His conviction under Section 25 of the Arms Act, 1959 is also maintained.
45. Conviction and sentence against appellant Laxman Usendi (appellant No.3 in CRA No.1468/2018) under Section 4 and 5 of

Explosive Substances Act, 1908 are hereby set aside. His conviction under Section 25 of the Arms Act, 1959 is also set aside. As aforementioned, he has been also acquitted from the charges under Section 8(1), 8(2), 8(3) and 8(5) of C.G. Vishesh Jan Suraksha Adhiniyam, 2005 and Section U/s 18, 39, 40(1)B of the Unlawful Activities (Prevention) Act, 1967. Hence, he is acquitted from all the charges framed against him.

46. Conviction and sentence against appellant Sukhnath Nareti (appellant in CRA No.1360/2016) under Section 4 and 5 of Explosive Substances Act, 1908 are hereby maintained.
47. Conviction and sentence against appellant Mohan Singh Dhruw (appellant in CRA No.1276/2015) under Section 4 and 5 of Explosive Substances Act, 1908 are hereby maintained.
48. Conviction of appellant Ravi Kadiyam (appellant in CRA No.1287/2015) and conviction of appellant Phool Singh (appellant in CRA No.1288/2015) under Section 25 of the Arms Act, 1959 are maintained.
49. Conviction and sentence against appellant Chaitram (appellant in CRA No.332/2018) under Section 4 and 5 of Explosive Substances Act, 1908 are hereby set aside. His conviction under Section 25 of the Arms Act, 1959 is also set aside. As aforementioned, he has been also acquitted from the charges under Section 8(1), 8(2), 8(3) and 8(5) of C.G. Vishesh Jan Suraksha Adhiniyam, 2005 and Section U/s 18, 39, 40(1)B of the Unlawful Activities (Prevention) Act, 1967. Hence, he is acquitted from all the charges framed against him.

50. As aforementioned, appellant Badri (appellant in CRA No.1255/2015), appellants Dharmendra Chopra and Neeraj Chopra (appellants in CRA No.1118/2015) have been acquitted of charges under Section 8(1), 8(2), 8(3) and 8(5) of C.G. Vishesh Jan Suraksha Adhiniyam, 2005 and Section U/s 18, 39, 40(1)B of the Unlawful Activities (Prevention) Act, 1967. Hence, they are acquitted from all the charges framed against them.
51. Prayer for reduction in sentence is considered and allowed. On the basis of finding hereinabove, appellants Baliram Usendi, Dashrath Mandavi, Sukhnath and Mohan Singh Dhruw are sentenced with R.I. of period of sentence of imprisonment already undergone by them in jail along with fine of Rs.1000/- and Rs.1000/- for offences under Section 4 and 5 of Explosive Substances Act, 1908. Appellants Mohpal @ Santosh, Dashrath Mandavi, Ramkumar Mandavi, Ravi Kadiyam and Phool Singh are sentenced with period of sentence of imprisonment already undergone by them in jail along with fine Rs.1000/- for the offence under Section 25 of the Arms Act, 1959. The appellants who are sentenced for more than one offences, their jail sentences are directed to be run concurrently.

In case of default of payment of fine as abovementioned, the convicted appellants shall be required to further undergo R.I. of two months for each default. Appellants in jail be set free if not required to be detained in any other case.

52. The appeals are disposed off accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge