

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 810 of 2015

Mahadev Nag S/o. Koya Nag, aged about 28 years, R/o. Kandanar Patelpara, Police Station Darbha, District Bastar (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through the Police Station Darbha, District Bastar (C.G.)

---- Respondent

For Appellant : Mr. Shrawan Kumar Chandel Advocate
For Respondent : Mr. Bhaskar Payashi, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

28.04.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 05.03.2015 passed by the Second Additional Sessions Judge, Bastar, Session Division Bastar at Jagdalpur (C.G.) in Sessions Trial No. 106/2014, wherein the said Court convicted the accused/appellant in the following manner with a direction to run all the sentences concurrently.

Conviction	Sentence
U/s. 4 of the Explosive Substance Act 1908 and convicted accordingly accused is liable for enhance penalties under Section 23 of	R.I. for 7 years and fine of Rs. 200/-, in default of payment of fine, R.I. for 1 month additional.

the Unlawful Activities (Prevention) Act 1967.	
U/s. 5 of the Explosive Substance Act 1908 and convicted accordingly accused is liable for enhance penalties under Section 23 of the Unlawful Activities (Prevention) Act 1967.	R.I. for 7 years and fine of Rs. 200/-, in default of payment of fine, R.I. for 1 month additional.
U/s. 25 of the Arms Act 1959, accused is liable for enhance penalties under Section 23 of the Unlawful Activities (Prevention) Act 1967.	R.I. for 7 years and fine of Rs. 200/-, in default of payment of fine, R.I. for 1 month additional.
U/s. 8(2) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam 2005	R.I. for 2 years and fine of Rs. 200/-, in default of payment of fine, R.I. for 1 month additional.
U/s. 38 of the Unlawful Activities (Prevention) Act 1967	R.I. for 5 years and fine of Rs. 200/-, in default of payment of fine, R.I. for 1 month additional.

2. As per the prosecution case, an information was received by the Police Authorities that the appellant is in possession of some explosive material. Upon the said information, the Police authorities reached the spot and after searching the appellant they seized one Tiffin bomb, four detonators, banners, posters and other articles. Memorandum of the appellant was recorded in which he admitted to work with the Naxal Organization since 2004. The appellant was working as President of Janta Sarkar of Darbha Division Committee. He was also in possession of one firearm (Bharmar Bandook). Tiffin bomb was sent for

examination and after examination it was found to be explosive substance. After completion of the investigation he was tried and sentenced as mentioned above.

3. Learned counsel appearing for the accused/appellant submits that the independent witnesses have not supported the factum of seizure of Tiffin bomb and version of prosecution witnesses is full of discrepancies and contradiction that cannot be acted upon. He submits that the prosecution is not able to establish its case for commission of offence under Section 8 (2) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam 2005 and Section 38 of the Unlawful Activities (Prevention) Act 1967. Learned counsel further submits that the trial Court recorded the conviction on the basis of surmises and conjecture and the punishment imposed upon the appellant is harsh which is liable to be set aside.

4. *Per contra*, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law, well founded and there is no illegality or infirmity in it warranting any interference by this Court while invoking the jurisdiction of appeal.

6. I have heard counsel for the parties and perused the material on record.

7. To substantiate the charge prosecution has examined as many as 9 witnesses in their support.

8. Constable Ajay Kumar (PW-7) is a person who seized the Tiffin bomb from the appellant. As per version of this witness, on 30.07.2014 he was on duty of weekly market at Darbha. Upon seeing the Police personnel one person tried to flee from the place and they surrounded him. After searching they found one Tiffin bomb of 2 kg weight. Seized articles were sealed on the spot. Version of this witness is supported by version of Inspector Alok Dutta (PW-8) and Sub inspector Durgesh Kumar Sharma (PW-9). Version of this witness is again supported by version of Santram Nety (PW-6). These witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence.

9. Version of these witnesses is supported by expert Balwinder Singh (PW-1) who is a bomb disposal squad and as per version of this witness, he examined a tiffin bomb seized in the present case and after examination he opined that the bomb was fit to explode and four safety fuse detonators are alive. Version of this witness is unshaken during the cross examination and there is nothing on record to discard the testimony of this witness. Balwinder Singh (PW-1) deposed that seized tiffin bomb and detonators were disposed off after examination. Version of this witness is again supported by version of Alok Dutta (PW-8) who was inspector in-charge, he deposed that the tiffin bomb was exploded after examination and documents were prepared in this regard.

10. The defence of the appellant is bald denial and the same is merit less.

11. As per section 2(a) of the Explosive Substance Act, 1908- the expression “explosive substance” shall be deemed to include any materials for making any explosive substance. In the present case it is established that tiffin bomb and detonator were fit to explode and they fall in the definition of Explosive Substance.

12. Section 4 of the Explosive Substance Act, 1908- provides that any person makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property or to enable any other person by means thereof to endanger life or cause serious injury to property is punishable under the Explosive Substance Act. Again possessing of explosive substance is punishable under Section 5 of the Explosive Substance Act, when the substance is explosive substance the appellant has not explained as to why he was in possession of such substance, it shall be presumed that he was keeping the same to endanger life or cause serious injury or property. Explosive substance may be used for any construction work also but that is not the case of the appellant, his defence is mere denial, therefore, the act of the appellant falls under Section 4 and 5 of the Explosive Substance Act for which the trial Court convicted the appellant and the same is not liable to be interfered by this Court invoking the jurisdiction of

appeal and conviction of the appellant under Section 4 and 5 of the Explosive Substance Act 1908 is hereby affirmed.

13. The appellant has been convicted under Section 25 of the Arms Act 1959, on the ground that he was possessing a firearm (Bharmar Bandook), the said firearm was sent to expert Anjuras Tigga (PW-2) for examination but after examination he opined that the said arm is not fit to fire. In view of this Court when the said firearm is not fit to fire, it will not come within the definition of firearms, it is not established that the appellant was in possession of any illegal firearms, therefor, conviction under Section 25 of the Arms Act is not sustainable and his conviction for this offence is hereby set aside and he is acquitted of the said charge.

14. The trial Court convicted the appellant under Section 8(2) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam 2005, this section speaks that whoever being a member of an unlawful organization in any manner contributes or receives or solicits any contribution or aid for such organization or harbours, for such organization. As per Section 2 of the Act, organization means any combination body or group of persons which known by any distinctive name or not and whether registered under any relevant law or not and whether governed by any written constitution, is unlawful organization. As per Section 2 of the Act, notification means notification published in the gazette, the words notified shall be construed accordingly. In the present

case, the prosecution has not brought on record any notification regarding unlawful organization.

15. From the evidence, it is not clear that the appellant was the member of any such unlawful organization notified by the State. His activity as member of such organization is also not established, therefore, charge under Section 8(2) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam 2005 is not sustainable and his conviction and sentence for this offence is hereby set aside and he is acquitted of the said offence.

16. The trial Court convicted the appellant for offence punishable under Section 38 of the Unlawful Activities (Prevention) Act 1967, the said Section speaks about terrorist organization means an organization listed in the Schedule or an organization operating under the same name as an organization so listed in Schedule A of the Act. The organizations are listed in the list and the charges levelled against the appellant. But it is not clear from the evidence that as to which organization the appellant is related. Section 38 of the Unlawful Activities (Prevention) Act 1967, provides that a person who associates himself or professes to be associated with a terrorist organization with intention to further its activities commits an offence relating to membership of a terrorist organization. From the evidence, it is not clear as to which organization the appellant is associated with listed in Schedule and discovery statement made under Section 27 of the Indian Evidence Act 1872 is only admissible up to the discovery of any article, rest part of the discovery statement is

inadmissible evidence, therefore, on the basis of discovery statement the appellant cannot be charged or convicted for the offence punishable under 38 of the Unlawful Activities (Prevention) Act 1967, when the said act has no application, in the present case Section 23 of the said Act is also not applicable and his conviction for the said offence section 38 of the Act 1967 is hereby set aside and he is acquitted of the said offence.

17. Accordingly, the appeal is partly allowed. The conviction and sentence imposed upon appellant for the offence punishable under Sections 4 and 5 of the Explosive Substance Act 1908 is hereby affirmed. Conviction and sentence imposed upon the appellant for rest of the offences are hereby set aside and he is acquitted of the said charges. The appellant is reported to be on bail. The trial Court will prepare super-session warrant and issue warrant of arrest against the appellant. After his arrest, he be sent to concerned jail for serving out the remaining part of the jail sentence.

Sd/-
(Ram Prasanna Sharma)
JUDGE