

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.739 of 2009**

Neera @ Jamuna @ Sapna Sen Wife of Sumeet Bangali @
 Doctor Caste Sen, aged 28 years, R/o. Anhur, Police
 Station Koyalibeda, Distt. Kanker (CG)

---- Appellant**Versus**

State of Chhattisgarh, Through Police Station Manpur, Distt.
 Rajnandgaon (CG)

---- Respondent

 For the appellant : Shri Dheerendra Pandey, Advocate
 For the Respondent/State: Shri Ravish Verma, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****08.11.2019**

1. The appeal is preferred against judgment dated 10.7.2009 passed by Sessions Judge, Rajnandgaon (CG) in Session Trial No.41/2008 wherein the said Court convicted the appellant for the commission of offence under Section 5 of the Explosive Substances Act, 1908 (for short 'the Act 1908') and under Sections 153B and 120B of the Indian Penal Code and sentenced her to undergo rigorous imprisonment for five years and to pay fine of Rs.1000/-, RI for three years and to pay fine of Rs.1000/- and RI for Six months and to pay fine of Rs.1000/- respectively with default stipulations.

2. As per the version of the prosecution, on 05.12.2007 at about 3.35 pm, the appellant and other co-accused persons, jointly with a view to endanger the public life and property used

land mine in earth. On the basis of the memorandum of the appellant, explosive substances were recovered. Report of the seized articles was obtained from the Central Laboratory, Hyderabad and it was found to be explosive substances. Certain articles were also seized in which imputations, assertions Prejudicial to national integration was established. The offence was registered and investigated and after completion of the investigation, the appellant was charge sheeted and convicted as mentioned above.

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

(i) Material prosecution witnesses have not supported the case of the prosecution but the trial Court overlooked the same.

(ii) There is no direct evidence against present appellant and the case is based on the seizure but the same is not established beyond doubt against present appellant, therefore finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State submits that the finding arrived at by the trial Court is based on proper marshaling of evidence and the same is not liable to be interfered with invoking the jurisdiction of the appeal.

5. The first question for consideration before this Court is whether the appellant was in possession of the explosive substances under suspicious circumstances. Definition of explosive substances is defined under Section 2(a) of the Act, 1908 which reads as under:-

“2. Definitions – In this Act,-

(a) the expression “explosive substances” 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. As per Section 5 of the Act, 1908, any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in possession or under his control for a lawful object is a punishable offence.

7. Preet Ram (PW-12), Jagnath (PW-13) and Police Inspector Ansar Hussain (PW-14) deposed before the trial Court that the appellant made recovery statement regarding explosive substances and upon her statements two tiffin bombs were recovered. Version of these witnesses is unrebutted during cross-examination. Seized articles were sent to Forensic Science Laboratory, Hyderabad for chemical examination and as per the report of the said laboratory, the articles which were sent for examination are positive for test of presence of Nitrate, Ammonium ions and Sulphur and Aluminium. As per the report the article are ingredients of Ammonium Nitrate/Aluminium based explosive (slurry explosive). From the entire evidence which is supported by the chemical examination, it is established that the appellant was in possession of explosive substances. From the

evidence, it is clear that explosive substances were kept as land mines under the earth which shows that the appellant was not in possession of that substances for lawful object. The trial Court after evaluating the entire evidence, recorded finding of conviction against the appellant for commission of offence under Section 5 of the Act, 1908 and this Court has no reason to record a contrary finding. Accordingly, conviction of the appellant for the offence under Section 5 of the Act, 1908 is hereby affirmed.

8. There is no evidence on record to show that the appellant made or published any imputation, assertions prejudicial to national-intergration. Again there is no evidence to establish that the appellant involved in any criminal conspiracy with two or more persons as defined as criminal conspiracy which is defined under Section 120 B of the IPC. In absence of evidence charges levelled against the appellant under Section 153B and 120B IPC is not established. Accordingly, her conviction under these two sections is liable to be and is hereby set aside and she is acquitted of the said charges.

9. As the trial Court awarded sentence of five years for the offence under Section 5 of the Act 1908, which cannot be termed as harsh, disproportionate or unreasonable. Accordingly, sentence part for commission of offence under Section 5 of the Act 1908 is not liable to be interfered with and conviction and sentence imposed by the trial Court for this offence is hereby upheld.

10. Accordingly, the appeal is allowed in part. From the report of the jail authorities, it is clear that the appellant suffered full jail term for the offence under Section 5 of the Act 1908, therefore, no further order for her arrest etc. is required.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

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