

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 866 of 2010**

- Ram Iqbal @ Ram Iqbal Pal @ Avadhesh S/o Mahangu Aged About 44 Years Caste - Gaderi, R/o Nawatoli, Police Station Daltenganj, District Palamu.

---- Appellant

Versus

- State of Chhattisgarh Through Arakshi Kendra, Shankargarh, District Surguja Chhattisgarh. ,

---- Respondent

 For Appellant : Mr. T.K. Tiwari Advocate
 appears as Amicus Curiae

For respondent/State : Mr. Ravish Verma, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****10-1-2019**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 29-10-2010 passed by 4th Additional Sessions Judge, Ambikapur, District Surguja (CG) in Sessions Trial No.312 of 2007 wherein the said Court has convicted the appellant for commission of offence under Sections 147, 148 and Section 307 read with Section 149 of the IPC and sentenced him to undergo rigorous imprisonment for two years, RI for three years and RI for ten years and to pay fine of Rs.1000/- with default

stipulations. All the sentences are directed to run concurrently.

2. As per version of prosecution, on 2-9-2004, nine Naxals came at village Samudri with deadly weapons and started meeting in the said village. All have constituted unlawful assembly with a common object to commit murder of police party. After receiving information, police party reached there and surrounded the Naxals and firing was started from both sides. The appellant who is a member of unlawful assembly arrested on 28-4-2007 and charge-sheeted. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. The appeal is preferred on the following grounds.

- i) On the basis of evidence adduced by the prosecution, ingredient constituting the offence for which the appellant is charge-sheeted, is not made out.
- ii) The trial Court has overlooked the fact that after lapse of 2 1/2 years, present appellant was arrested and there is no identification parade conducted by the prosecution.
- iii) The trial Court committed error in convicting the appellant on the basis of evidence of Sapan Choudhari, Assistant Sub Inspector (PW/17) who is not reliable witness.

- iv) Case of the prosecution is based on circumstantial evidence but chain of event is missing, therefore, finding of the trial Court is liable to be reversed.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. From the evidence of Sapan Choudhari, Assistant Sub Inspector (PW/17), it is established that the Naxals, who were more than five in number, have made unlawful assembly with intention to criminal act against the police officials and they fired on police personnel. As per version of this witness he identified the present appellant who was present in unlawful assembly. Version of this witness is subjected to searching cross-examination, but nothing could be elicited in favour of defence. Case of the prosecution is based on eye-witness account of this witness and there is nothing to say that this officer has any grudge against the present appellant to rope

him in a false charge. It is not a case which is based on circumstantial evidence, but the case is based on eye-witness who is a Police Officer and who was present during exchange of firing by both sides. Looking to the entire evidence, the trial Court opined that the charge levelled against the present appellant is established beyond shadow of doubt.

7. After assessing the evidence, this court has no reason to record a contrary finding, Looking to the facts and circumstances of the case, argument advanced on behalf of the appellant is not sustainable. Finding of the trial court is based on relevant material placed on it and same is not based on irrelevant or extraneous material which is not liable to be interfered with. Conviction of the appellant is hereby affirmed.

8. Heard on the point of sentence.

The trial Court awarded RI for ten years looking to commission of offence which cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

9. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. From the record, it appears that the appellant is in jail since 28-4-2007 and has suffered

jail term, therefore, he be released forthwith for the present case, if not required, in any other case.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju