

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 100 of 2007

1. Khageshwar @ Riya S/o. Arjun Mahettar, aged about 34 years, occupation Private Job
2. Arundeeep @ Kalu S/o. Acchirdeep Mehettar, aged about 24 years, occupation Private Job
3. Laxmi Banchhor S/o. Kaliya Soni, Aged about 22 years, occupation Private Job
4. Kishan Dongre S/o. Durga Dongre, Aged about 21 years occupation Private Job
5. Jitudeep S/o. Josandeep Mehttar, Aged about 20 years, occupation Private Job

All of residents of Ganjpara, Udiya Basti Durg, Distrit Durg (CG)

---- Appellants

Versus

State of Chhattisgarh

---- Respondent

For Appellants	: Mr. Vivek Sharma, Advocate.
For Respondent	: Mr. Samir Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

01.10.2020

The prosecution case, in brief, is that on 1.08.2006 Assistant Sub Inspector S.R. Sahu (PW-1) was on patrolling duty, he received the information from the informer, that the appellants having

armed like swords in their hands and were trying to commit dacoity in Ganjapara area. The said information was entered in Dehatinalish (Ex.P-21) and on the basis of that information, he along with staff team reached there. While waiting for some time there the squad team saw that a jeep bearing no. 07/7629 was coming from Udiya Coloney towards them then they stopped the said jeep in the presence of the witnesses namely Kanhaiya, Amritlal, Vickey, Narendra and Ashok Yadav. On being searched, they found five swords from the hands of the appellants which were 27 ½ inches long was seized under Ex.P-4 to Ex.P-8 respectively. A jeep bearing no. 07/7629 was also seized from appellant Kailash under Ex.P-9. On being asked by the police to produce the papers/license, the appellants have not produced any paper/license to possess the same. Thereafter, the appellants were arrested and FIR Ex.P-22 was registered against them in Police Station Durg for the offence under Section 399, 402 IPC and 25 Arms Act. After completion of investigation charge sheet was filed for the said offence followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 23.01.2007 passed in Sessions Trial No. 260 of 2006, acquitted the appellants of the charge under Sections 399 and 402 IPC but convicted them under Section 25(1-B)(b) of the Arms Act with imposition of sentence of 1 year RI with fine of Rs. 500/- each under Section 25(1-B)(b) of the Arms Act, pulse default stipulations. Hence, this appeal.

3. Counsel for the appellants submits that the judgment of conviction and order of sentence passed by trial court is arbitrary, illegal and contrary to the evidence collected by the prosecution. As a last resort counsel for the appellants submits that if this Court does not interfere with the conviction part of the judgment impugned at least the sentence imposed on the appellants may be reduced to the period already undergone.

4. State counsel however, supports the impugned judgment to be fully justified that thus requires no interference in this appeal.

5. I have heard the learned counsel for the parties.

6. Though the independent witnesses namely Kanhaiyalal Chakradhari (PW-1), Vicky (PW-3) Gurucharan Singh (PW-7), Narendra Deshmukh (PW-8) and Ashok Kumar Yadav (PW-11) have turned hostile, the testimony of Assistant Sub Inspector S.R. Sahu (PW-1) is believable. There is no enmity of the appellants with ASI S.R. Sahu (PW-12), so that it can be said that they were falsely implicated in the matter and therefore, it was proved that the appellants kept swords in their possession and was not having any license to possess the same which were seized under Ex.P-4 to Ex.P-8 respectively. Further, from the possession of appellant Kailash one jeep was also seized under Ex.P-9. Assistant Sub Inspector S.R. Sahu (PW-1) was heading the police party who apprehended the appellants and effected the recovery of five

swords from them. He has also fully supported the prosecution case. In the cross-examination nothing could be extracted to create any doubt about the testimony of this witness. The present case is based on the statement of official/police witnesses. At the very outset, it may be mentioned that statement of official/police witnesses cannot be discarded or approached with a suspicion because of their official status. Vickey (PW-3) is a witness of arrest and seizure of sword by seizure memo Ex. P.4 to Ex.P-8. This witness has also supported the case of the prosecution. The statement of Amritlal (PW-9) has corroborated the form testimony of ASI S.R. Sahu (PW-12). In these circumstances, it is proved beyond doubt that the appellants had the swords with them. Thus, the statements of all these witnesses are quite consistent and therefore there is no reason to disbelieve or discard the same. Court below has thus been fully justified in convicting the accused/appellants under Section 25(1-B)(b) of the Arms Act and the finding so recorded being in conformity with the evidence collected by the prosecution does not call for any interference by this Court.

- 7.** However, looking to the incident being of the year 2006, and that since then the accused/appellant have already faced a long drawn prosecution and even remained inside about six months, interest of justice, in the opinion of this Court, would be served if their sentences are reduced to the period already undergone.

8. Appeal is thus allowed in part to the extent indicate above. As the appellants are already on bail, their bail bonds stand discharged.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Santosh