

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 5-10-2021****Pronounced on 17-11-2021****ACQ.A. No. 160 OF 2021**

State of Chhattisgarh through Police Station Khallari, Distt.
Dhamtari CG

---- Appellant**Versus**

Chandrabhan Netam, son of Rajau Ram Netam, aged about 26
years, R/o. Jogibirdo, PS Khallari, Distt. Dhamtari (CG)

---- Respondent

For appellant	:	Mr. Dinesh Tiwari, Dy. Govt. Adv.
For respondent	:	None, though served.

Hon'ble Shri N.K. Chandravanshi, J.**C.A.V. JUDGMENT**

1. This appeal has been preferred against the judgment dated 28-9-2019 passed by the Sessions Judge, Dhamtari (CG), in Sessions Case – 38/2017, whereby respondent has been acquitted from the charges under Section 25 of the Arms Act, 1959 and Section 8(2) of the CG Special Public Security Act, 2005.

2. Brief facts of the case are that one Jivan @ Ramesh was arrested in connection with Crime No. 1/2017 of PS Khallari. In the memorandum statement, he disclosed that prior to 3-4 years, Naxal leader had given one country made pistol to Chandrabhan Netam (present accused) in lieu of providing cloths and ration to nexalites. Based on this information, police arrested respondent/accused and took his memorandum statement Ex. P-2, in which he stated aforesaid fact to the police and on the basis of his statement, one country made pistol was seized and seizure memo Ex. P-3 was prepared. Investigating Officer- TI Raj Kumar Sori (P.W. 4) lodged Dehati Nalishi Ex. P-10 and also registered FIR Ex. P-11, arrested respondent/accused vide arrest memo Ex. P-4 and after due investigation, charge sheet under Section 25 of the Arms Act, 1959 and Section 8 of the CG Public Security Act, 2005 against the respondent/accused was filed in the Court.

3. Learned trial Court framed charges for the aforesaid offences,

which the respondent/accused denied and pleaded not guilty.

4. To bring home the guilt, prosecution examined as many as 11 witnesses. Statement of accused under Section 313 of the Code of Criminal Procedure was recorded with regard to the circumstances appearing against him. In this also, he pleaded not guilty. After affording opportunity of hearing to both the parties, learned Sessions Judge, Dhamtari vide judgment dated 28-9-2019 acquitted the respondent/accused from alleged charges. Hence, this acquittal appeal.

5. Learned counsel for the appellant/State would submit that P.W. 4 TI Rajkumar Sori is investigating officer of this case. Constable Yatis Puri (P.W. 2), Constable Devendra Kumar Sahu (P.W. 3), Constable Mahendra Pratap Sori (P.W. 7), Constable Sourabh Patel (P.W. 8), Constable Vishnu Ram Dhruw (P.W. 9) and Sub-inspector Bhimarjun Tandi (P.W. 11) were members of searching team of Investigating Officer Raj Kumar Sori (P.W. 4). They have supported the case of prosecution in their examination-in-chief. Although some of them have not proved such facts which could prove their statements of examination-in-chief that they had gone while alleged search/seizure was made, but they have supported substantive facts of the case of the prosecution. During course of arguments, learned State Counsel admitted that alleged seized country made pistol has not been examined by expert and prior permission of District Magistrate had not been obtained as per provisions of Section 39 of the Arms Act, 1959 and independent witnesses have not supported the case of prosecution, but it is very difficult to get support for the case of prosecution from independent witnesses in the case of nexalites, therefore, learned trial Court ought to have considered the statements of police officials. Hence, considering the aforesaid facts, the impugned judgment deserves to be set aside and the respondent/accused may be convicted and sentenced for the aforesaid charges.

6. Despite service of notice, neither respondent/accused appeared nor represented by any counsel.

7. I have heard learned counsel for the appellant/State and perused the impugned judgment as also the material available.

8. TI Raj Kumar Sori (P.W. 4) is said to be Investigating Officer of this case. He has deposed in his deposition that naxali Jivan @ Ramesh Netam was arrested in Crime No. 1/2017 of PS Khallari. His memorandum was recorded in that case, in which, he had stated that they used to go to present respondent/accused and he used to provide clothes and ration to them. He had also stated that nexali commander Satyam Gavde had given a country made pistol to accused Chandrabhan Netam. He has further deposed that based on above information, on 4-7-2017, he had gone with independent witnesses and other constables to village Jogibirdo of respondent/accused and on being asked, he had given memorandum statement (Ex. P-2) that prior to 3-4 years, nexalite leader Satyam Gavde had given him a country made pistol and on the basis of his memorandum statement, he seized one country made pistol from lot of straw of paddy, which he seized vide seizure memo Ex. P-3. He has also deposed about other usual proceeding of the investigation, which he had done.

9. P.W. 1 Suresh Kumar Parde and P.W. 10 Dilip Netam are said to be witnesses of memorandum Ex. P-2, seizure memo Ex. P-3 and also arrest memo Ex. P-4 of the accused, but they have not supported the case of prosecution. Even they have denied to recognize the respondent/ accused. They have also denied their alleged signature in the aforesaid documents. Even in suggestive questions put to them by learned Public Prosecutor, they have denied all the suggestions. In other words, they have turned hostile to the case of prosecution. Thus, prosecution does not at all get support from these independent witnesses.

10. Constable Yatis Puri (P.W. 2), Constable Devendra Kumar Sahu (P.W. 3), Constable Mahendra Pratap Sori (P.W. 7), Constable Sourabh Patel (P.W. 8), Constable Vishnu Ram Dhruw (P.W. 9), Sub-inspector Bhimarjun Tandi (P.W. 11) were members of searching/seizure team of IO Raj Kumar Sori (P.W. 4). They have supported the story of prosecution in their examination-in-chief but in cross-examination they have stated some material facts, due to which, their statement made in examination-in-chief does not inspire confidence of this Court. More so, IO Raj Kumar Sori (P.W. 4) himself has stated in his deposition that

alleged memorandum Ex. P-2 and seizure memo of respondent/ accused Ex. P-3 was recorded / prepared in presence of P.W. 1 Surendra Kumar Parde and P.W. 10 Dilip Netam, he has not stated that alleged memorandum statement and seizure which was done on the basis of that memorandum statement were made in presence of aforesaid constables. Even they are not witnesses of that document. Therefore, only on the basis of story of the case narrated by aforesaid constables, statement of IO Raj Kumar Sori (P.W. 4) is not supposed to get support from those police officials.

11. Learned trial Court has discussed the statements of prosecution witnesses in detail and has held that alleged charges have not been proved from the evidence adduced by the prosecution. On the basis of aforesaid discussion, I do not find any infirmity in the findings recorded by learned trial Court.

12. It is also pertinent to mention here that as per case of the prosecution, one country made pistol was seized at the instance of respondent/ accused, but neither it has been examined by the prosecution from expert as to whether the alleged article was country made pistol or not, nor such report has been proved by the prosecution in this case. ASI G.S. Rajput (P.W. 5) had served notice to the witnesses. Head Constable Narendra Kumar Sahu (P.W. 6) has deposited alleged country made pistol in Malkhana of Police Station Khallari, but as has been stated above, prosecution has not proved the fact that alleged seized article was country made pistol. It is also pertinent to mention here that prosecution has not proved that before filing of the charge sheet, prior sanction from concerned District Magistrate as per provisions of Section 39 of the Arms Act, 1959 and Section 16 of the CG Special Public Security Act, 2005 was obtained.

13. On the basis of above discussion, I do not find any merit in the instant acquittal appeal. The same deserves to be and is hereby dismissed.

Sd/-
(N.K. Chandravanshi)
Judge