

24.02.2025
SL. 55+56
Court No. 551
Suvayan/
Sourav/GB

C.R.A. 646 of 2005
With
CRAN 2 of 2005 (Old No. CRAN 2100 of 2005)

In the matter of: **Sakir Ansary @ Sakil Ansary & Ors.**
...for the appellants.

With

C.R.A. 593 of 2005

In the matter of: **Uttam Karmakar**
...for the appellant.

Mr. Tapan Datta Gupta
Mr. Parvej Anam
...for the appellants in CRA 646 of 2005

Mr. Navanil De
Ms. Monami Mukherjee
...for the appellant in CRA 593 of 2005.

Ms. Faria Hossain, APP
...for the State.

1. In these two appeals the judgment of conviction dated 19.08.2005 and the order of sentence dated 20.08.2005 as passed in S.T. No. 3(7) 04 (S.C. No. 159 of 2004) by the learned Additional Sessions Judge, F.T.C. 4, Raghunathpur, Purulia is impugned.
2. By the impugned judgment learned Trial Court found nine accused persons viz.; Uttam Karmakar, Sakir Ansary, Gobinda Roy, Sarfuddin Ansary, Riaju alias Riajul Ansary, Samir Ansary, Samsuddin Ansary, Salim Ansary and Khaina @ Yearuddin Ansary guilty of the offence under Sections 399/402 IPC and under Section 25 of the Arms Act and thus sentence them to suffer R.I. for three years each and to pay fine of Rs. 2,000/- each I.D. to suffer six months R.I. each for the offence committed by them under Section 25 of the Arms

Act and the said Court also sentenced the said nine convicts to suffer R.I. for four years each and to pay fine of Rs. 5,000/- each I.D. to suffer R.I. for six months more each for the offence committed under Section 399/402 IPC.

3. The convict No. 1, i.e.; Uttam Karmakar felt aggrieved and thus preferred CRA 593 of 2005. The other convicts of the said trial also felt aggrieved and thus preferred CRA 646 of 2005.
4. Since in these two appeals common question of facts and law are involved and as in these two appeals the self-same judgment has been assailed this Court proposes to dispose of the instant two appeals by passing a common judgment.
5. For effective adjudication of the instant two appeals the facts leading to initiation of the aforementioned trial are required to be dealt with in a nutshell.
6. On 27.12.2000, one Pranab Kumar Mitra, being S.I. and Officer-in-Charge of Kashipur Police Station, District – Purulia lodged a *suo moto* complaint with Officer-in-Charge of the self-same Police Station to the effect that on the basis of a secret information as received by him on 26.12.2000 at 23.45 hrs. to the effect that some miscreants had assembled in an abundant house near Kashipur Rajbari and were preparing to commit a dacoity he diarized the said information in the said Police Station and thereafter to work out the said information, he along with the other police personnel of the said Police Station proceeded to P.O. by their Office vehicle and on reaching there he and the other police personnel surrounded

the said P.O. and apprehended the aforementioned nine accused persons from the said P.O. and after detaining them and after searching some incriminating materials like vojali, one improvise pipe gun with live cartridge, instruments for house breaking, etc. were seized from the said miscreants.

7. It is his further assertion that on being asked the said apprehended accused persons confessed that they have assembled there at the instruction of the said Uttam Karmakar for the purpose of committing a dacoity in Kashipur town. The said accused persons have been arrested and thereafter they were brought to the Police Station. On the basis of such written complaint Kashipur P.S. Case No. 108/2000 dated 27.12.2000 under Sections 399/402 IPC and under Sections 25/27 of the Arms Act was started.
8. Investigation was taken up and on conclusion of the same charge-sheet was submitted under Sections 399/402 IPC and under Sections 25/27/35 of the Arms Act against all the accused persons. After commitment and transfer learned Trial Court considered the charges against the accused persons and on 20.07.2004 learned Trial Court framed charges under Sections 399/402 IPC and under Sections 25/27 of the Arms Act against the said nine accused persons. Since at the time of consideration of charge the accused persons pleaded their innocence and claimed to be tried, the trial before the learned Trial Court proceeded.
9. Trial Court records reveals that in order to bring home the charges, the prosecution has examined 16 witnesses in all

and several documents and materials have been exhibited. Trial Court record reveals further that on behalf of the defence, three witnesses have also been examined. From the trend of the cross-examination of the prosecution witnesses, the answers given by the accused persons in their respective examinations under Section 313 Cr.P.C. and from the evidence as laid by three defence witnesses, it reveals to this Court that the defence case is based on false implication and clear denial. It reveals further from the evidence of defence witnesses that it is the further case of the defence that the appellant in CRA 593 of 2005 that is Uttam Karmakar was not arrested on the relevant day and hour from the P.O. and on the contrary, he was arrested on 25.12.2000 at about 8.00 p.m. from his house in presence of his village people.

10. As discussed supra, learned Trial Court after consideration of the entire evidence, both oral and documentary as adduced by the P.W.s as well as the D.W.s. found the present appellants guilty and thus convicted them in the manner indicated in the foregoing paragraphs.
11. In course of her argument, Ms. Mukherjee, learned advocate appearing on behalf of the appellant, Uttam Karmakar in CRA 593 of 2005 draws attention of this Court to the evidence of P.W. 12 being the informant. It is submitted by her that though P.W. 12 in his examination-in-chief reproduced his versions as made in the written complaint but such evidence practically gets no support from the relevant prosecution witnesses namely, P.W.s. 1, 2, 6, 7, 8 and 13. It is further

submitted by her that the testimonies of the aforementioned prosecution witnesses to that effect that at the time of the apprehension of the accused persons, they disclosed to the police personnel that they have been assembled at the P.O. for committing dacoity as per the direction of the appellant, Uttam Karmakar is not admissible in evidence under Section 25 of the Evidence Act and, therefore, the learned Trial Court is not at all justified to place his reliance upon such alleged statements overlooking the salutary provision of Section 25 of the Evidence Act which deals with the subject that a confession made to a police officer shall not be proved as against a person accused of any offence.

12. It is further submitted by Ms. Mukherjee that the learned Trial Court has failed to consider that none of the independent witnesses to the alleged seizure supported the case of the prosecution and on the contrary, in their cross-examination by the defence they consistently testified that on the relevant day and hour, they were the members of the R.G. Party and as per request of the informant, they put their respective signatures on the relevant seizure lists. It is further argued by Ms. Mukherjee, learned advocate appearing on behalf of the appellant in CRA 593 of 2005, that P.W.s. 1, 2 and 13 being the members of the alleged raiding team did not categorically state from whose possession which offending weapon(s) was/were recovered and thus, the learned Trial Court ought not to have placed much reliance upon their evidence. Drawing further attention to the evidence of P.W. 12

vis-à-vis other prosecution witnesses, it is submitted by Ms. Mukherjee that the said prosecution witnesses had led no evidence at all with regard to the alleged recovery of any offending weapon from the possession of the appellant, Uttam Karmakar.

13. It is further submitted by Ms. Mukherjee, learned advocate appearing on behalf of the appellant in CRA 593 of 2005 that for the sake of argument, even if it is accepted that on the relevant day and hour, the accused persons were assembled at the P.O., their alleged assembly by no stretch of imagination cannot draw any presumption of any guilt under Sections 399/402 IPC. In course of her submission, Ms. Mukherjee places her reliance upon the reported decision of ***Chaturi Yadav and Others Vs. State of Bihar*** reported in ***(1979) 3 SCC 430 : AIR 1979 SC 141***.
14. Ms. Mukherjee, thus submits that it is a fit case for allowing CRA 593 of 2005 by setting aside the impugned judgment of conviction and order of sentence.
15. While adopting the argument of Ms. Mukherjee, Mr. Datta Gupta, learned advocate appearing on behalf of the appellants in CRA 646 of 2005 submits before this Court that from the seizure list as has been exhibited before the learned Trial Court, it would reveal that one improvised pipe gun loaded with one live ammunition was allegedly seized from the possession of accused Gobinda Roy only and, therefore, by no stretch of imagination, it can be said that similar firearms and ammunitions were recovered from the possession of the other

co-accused persons who have been convicted by the learned Trial Court. It is thus submitted by Mr. Datta Gupta that the learned Trial Court had committed a serious error of law as well as of fact in convicting the other co-accused persons under Section 25 of the Arms Act.

16. In his next limb of submission, Mr. Datta Gupta further contends that the alleged possession of the improvised pipe gun together with live ammunition by Gobinda Roy was also not proved beyond shadow of doubt.
17. Mr. Datta Gupta thus submits that it is a fit case for allowing CRA 646 of 2005 by setting aside the impugned judgment of conviction and order of sentence.
18. Ms. Hossain, learned Additional Public Prosecutor for the State submits before this Court that there cannot be any justification to disbelieve the testimonies of the P.W.s since no case has been made out by the defence that there was previous enmity between the informant and the accused persons. It is further submitted by her that no case of false implication has also been made out on behalf of the defence while cross-examining the prosecution witnesses. It is further submitted by her that the police personnel who are also the witnesses to the seizure duly supported the case of the prosecution.
19. For effective adjudication of instant two appeals, this Court at the very outset proposes to look to the provisions of Section 399 IPC and Section 402 IPC and those are quoted hereinbelow in verbatim:

“399. Making preparation to commit dacoity.—

Whoever makes, any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

402. Assembling for purpose of committing dacoity.—

“Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.”

20. Section 25 Arms Act is also quoted hereinbelow in verbatim and the same is as under:

“(1) Whoever--

(a) manufactures, obtains, procures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5; or

(b) shortens the barrel of a firearm or converts an imitation firearm into a firearm or convert from any category of firearms mentioned in the Arms Rules, 2016 into any other category of firearms in contravention of section 6; or

.....

(d) brings into, or takes out of, India, any arms or ammunition of any class or description in contravention of section 11,

shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(1A) Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in

contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to fourteen years] and shall also be liable to fine.

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(1AB)

(1AA)

(1AAA)

(1B) Whoever--

(1C)

(2) Whoever being a person to whom sub-clause (i) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(3)

(4)

(5)

(6)

(7)

(8)

(9)”

21. Since the learned trial court in its impugned judgment has elaborately discussed the evidence of all the prosecution witnesses, this Court considers that detailed reproduction of the evidence of those prosecution witnesses all over again is not necessary, except to the extent the same is required for

effective adjudication of the instant two appeals.

22. Admittedly, the evidence of P.W. 12 seems to be the replica of his written complaint and in course of his examination-in-chief he categorically testified as to how on the relevant day and hour he along with other police personnel went to the P.O. and as to how the accused persons were apprehended by them. He further testified that from whose possession which of the incriminating weapons were seized. He also testified that he arrested the accused persons, prepared the seizure list in presence of seizure list witnesses and thereafter produced the accused persons before the P.S. and lodged the FIR.
23. However, as rightly pointed out on behalf of the appellants before this Court that P.W.s 6, 7 and 8 being the independent alleged seizure witnesses in their respective testimonies had not at all supported the case of the prosecution.
24. This Court finds no whisper from the evidence of those three independent witnesses regarding the presence of the accused persons at the P.O. on the alleged day and hour. They had stated nothing with regard to the alleged recovery of weapon. Admittedly, the said three witnesses stated that the signatures appearing in the seizure lists belonged to them but they had stated that as per request of the O.C. they put their signatures on the blank papers.
25. At this juncture, if I look to the evidence of P.W. 2, who is an A.S.I. of police and a seizure list witness, it reveals that PW2 testified that on the relevant day and hour at the P.O.

Gobinda Roy was armed with a pipe gun but such evidence gets no support at all either from the evidence of P.W. 1 or from P.W. 3 or P.W. 4 or P.W. 13 who are all police personnel and members of the raiding team. Admittedly PW1, PW3, PW14 and PW15 testified to the effect that on the relevant day and hour some incriminating articles were seized from the possession of the accused persons, but they could not give any account from whose possession which incriminating materials were seized. It thus appears to this Court that the alleged seizure of incriminating materials from the possession of the accused persons have really become doubtful which the learned trial court has practically overlooked while passing the impugned judgment.

26. As rightly pointed out by Ms. Mukherjee that in their respective testimonies, most of the prosecution witnesses who are police personnel stated that on the relevant day and hour they came to learn from the other accused persons that they had assembled at the P.O. as per instruction of accused Uttam Karmakar for committing dacoity but as rightly argued by Ms. Mukherjee that such type of evidence is not at all admissible under Section 25 of the Evidence Act.
27. At this juncture, I propose to have a look to the reported decision of **Chaturi Yadav & Ors.** (supra) wherein the Hon'ble Apex Court while deciding an appeal under Sections 399/402 IPC expressed the following view:-

“4. The courts below have drawn the inference that the appellants were guilty under both the offence merely from the fact that they had assembled at a

lonely place at 1 a.m. and could give no explanation for their presence at that odd hour of the night. Mr. Misra appearing for the appellant submitted that taking the prosecution case at its face value, there is no evidence to show that the appellants had assembled for the purpose of committing a dacoity or they had made any preparation for committing the same. We are of the opinion that the contention raised by the learned counsel for the appellants is well founded and must prevail. The evidence led by the prosecution merely shows that eight persons were found in the school premises. Some of them were armed with guns, some has cartridges and other ran away. The mere fact that these persons were found at 1 a.m. does not, by itself, prove that the appellants had assembled for the purpose of committing dacoity or for making preparations to accomplish that object. The High Court itself, has in its judgment, observed that the school was quite close to the market, hence it is difficult to believe that the appellants would assemble at such a conspicuous place with the intention of committing a dacoity and would take such a grave risk. It is true that some of the appellants who were caught hold of by the Head Constable are alleged to have made the statement before him that they were going to commit a dacoity but this statement being dearly inadmissible has to be excluded from consideration. In this view of the matter, there is no legal evidence to support the charge under Sections 399 and 402 against the appellants. The possibility that the appellants may have collected for the purpose of murdering somebody or committing some other offence cannot be safely eliminated. In these circumstances, therefore, we are unable to sustain the judgment of the High Court.”

28. In considered view of this Court the proposition of law as decided in the case of ***Chaturi Yadav & Ors.*** (supra) is squarely applicable in the instant two appeals since, except the oral information of the apprehended accused persons (which are not admissible under Section 25 of the Evidence Act) the prosecution has miserably failed to establish that on the relevant day and hour the accused persons made any preparation to commit dacoity and/or they were assembled at the P.O. for the purpose of committing dacoity. This Court is also astonished to see that even though no evidence was led by none of the prosecution witnesses with regard to the alleged seizure of fire arms and ammunition from the other co-accused persons except accused Gobinda Roy, learned trial court found all the accused persons guilty under Section 25 of the Arms Act in absence of any evidence at all.
29. In view of the discussion made hereinabove, this Court finds sufficient merit in the instant two appeals and accordingly the instant two appeals namely; CRA 646 of 2005 and CRA 593 of 2005 are hereby allowed.
30. Consequently, the judgment of conviction dated 19.08.2005 and the order of sentence dated 20.08.2005 as passed in S.T. No. 3(7) 04 (S.C. No. 159 of 2004) by the learned Additional Sessions Judge, F.T.C. 4, Raghunathpur, Purulia are hereby set aside.
31. The appellant, Uttam Karmakar in CRA 593 of 2005 and the appellants, namely; Sakir Ansary, Gobinda Roy, Sarfuddin Ansary, Raiju @ Riajul Ansary, Samir Ansary, Samsuddin

Ansary, Salim Ansary and Khaina @ Yearuddin Ansary in CRA 646 of 2005 are thus found not guilty under Sections 399/402 IPC and under Sections 25/27 of the Arms Act in connection with S.T. No. 3(7) 04 (S.C. No. 159 of 2004) as disposed of by the learned trial court.

32. The appellant, namely; Uttam Karmakar in CRA 593 of 2005 and the appellants, Sakir Ansary, Gobinda Roy, Sarfuddin Ansary, Raiju @ Riajul Ansary, Samir Ansary, Samsuddin Ansary, Salim Ansary and Khaina @ Yearuddin Ansary in CRA 646 of 2005 are discharged from their respective bail bonds and they be set at free at once, if not wanted in any other case.
33. With the disposal of the instant two appeals, all pending interlocutory applications as filed in connection with the instant two appeals including CRAN 2 of 2005 (Old No. CRAN 2100 of 2005) are disposed of.
34. Trial Court Record be sent down at once along with a copy of this judgment.
35. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)