

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1213 of 2014

Judgment Reserved on : 9.2.2021

Judgment Delivered on : 8.6.2021

Mahanguram, S/o Sukara Baghel, aged about 48 years, resident of School Para, Village Gumalwada, P.S. Nagarnar, Revenue and Civil District Bastar, Chhattisgarh

--- Appellant

versus

State of Chhattisgarh through Police Station Nagarnar, District Bastar, Chhattisgarh

--- Respondent

For Appellant : Shri Abhishek Chandravanshi, Advocate on
behalf of Shri Harshwardhan Parganiha, Advocate
For Respondent : Shri Ghanshyam Patel, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 26.11.2014 passed by 1st Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.45 of 2014, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 123 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.2000 with default stipulation
Under Section 4(B) of the Explosive Substances Act (the 'ES Act' for brevity)	Rigorous Imprisonment for 5 years and fine of Rs.2000 with default stipulation
Under Section 8(1) of the Jan Suraksha Adhiniyam (the 'JS Adhiniyam' for brevity)	Rigorous Imprisonment for 1 year and fine of Rs.500 with default stipulation

Under Section 8(2) of the JS Adhinyam	Rigorous Imprisonment for 6 months and fine of Rs.500 with default stipulation
Under Section 8(3) of the JS Adhinyam	Rigorous Imprisonment for 1 year and fine of Rs.500 with default stipulation
Under Section 8(5) of the JS Adhinyam	Rigorous Imprisonment for 3 years and fine of Rs.1000 with default stipulation All the jail sentences are directed to run concurrently

2. Prosecution case, in short, is that on 2.2.2014, Surendra Uike (PW7), Station House Officer of Police Station Nagarnar, along with his staff, was on forest search and village visit. At that time, he received a secret information that the Appellant/Sarpanch of Village Gumalwada had kept naxal literature and explosive substance in his house. He reached the spot along with search party and witnesses. He searched the cow *kotha* (cowshed) of the Appellant. He found there explosive substance detonators, naxal literature, banners and pamphlets. They were seized vide seizure memo (Ex.P2). Search Panchnama (Ex.P3) was prepared. The seized explosive substance detonators were sent to BDS, Jagdalpur for examination. They were examined by Santosh Kumar Verma (PW5), a non-commissioned officer of BDS, Jagdalpur. His report is Ex.P5. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. Necessary sanction for prosecution of the Appellant was obtained from the competent authority. On completion of the investigation, a charge-sheet was filed against the Appellant. The Trial Court framed charges against him.

3. To bring home the offence, the prosecution examined as many as 8 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. One Chaituram Baghel was examined as a witness (DW1) in defence of the Appellant.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in 1st paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that the Trial Court has convicted the Appellant without there being clinching and sufficient evidence against him. There is no documentary or oral evidence on record on the basis of which it could be said that the *kotha* from where the articles were seized was of ownership of the Appellant or was in his exclusive possession. It was further submitted that none of the independent witnesses has supported the case of the prosecution. The conviction is based only on the statements of police witnesses. It was further submitted that after their seizure the explosive substance and other articles were kept where, when and in what condition and when, by whom and in what condition they were sent for examination, no evidence is available on record in this regard. When and where was the seized explosive substance examined by Santosh Kumar Verma (PW5), his report (Ex.P5) mentions nothing about it. There is also no evidence on record to show that whether the seized article was received by Santosh Kumar Verma (PW5) in

a sealed condition or not. Therefore, the prosecution does not get support to its case from the examination report (Ex.P5). In spite of that, the Trial Court, relying on Ex.P5, has convicted the Appellant, which is not sustainable.

6. Opposing the above arguments, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the entire material available including the statements of witnesses with due care.
8. In his Court statement, Investigating Officer Surendra Uike (PW7) has deposed that on the date of incident, during forest search and village patrolling, he received a secret information from an informant that the Appellant/Sarpanch of Village Gumalwada had kept explosive substance and naxal literature in his *kotha*. He gave notice to witnesses Laxminath (PW3) and Fagnuram (PW4) and went to the house of the Appellant along with them. He has further deposed that he searched the *kotha* of the house of the Appellant in presence of witnesses Laxminath (PW3) and Fagnuram (PW4) and other members of the search party. On being searched, explosive substance and naxal literature were found there. They were seized vide seizure memo (Ex.P2). He gave notice to the Appellant under Section 91 of the Cr.P.C. and demanded documents relating to ownership of the recovered and seized articles, but the Appellant could not give him any such document. He has further deposed that after return to the police station, he registered First Information Report (Ex.P13). He has further

deposed that during investigation, on 14.4.2014, he sent the seized explosive substance to B.D.S., Jagdalpur for examination and obtained examination report (Ex.P5) from there.

9. Constable Sandeep Kumar Bhagat (PW2), who was one of the members of the search party and the two witnesses of the seizure, i.e., Laxminath (PW3) and Fagnuram (PW4) have supported the case of the prosecution. Laxminath (PW3) and Fagnuram (PW4) are residents of Village Kawapal. Search was made in Village Gumalwada. Both these witnesses of seizure have admitted that they were constables.
10. Kotwar Suktaram (PW6) is the only independent witness who has not supported the case of the prosecution.
11. Investigating Officer Surendra Uike (PW7) has admitted the fact that he had prepared only spot map (Ex.P16) and had not obtained any revenue map from any revenue officer. He has further deposed that the *kotha* which was searched was of ownership of the Appellant, no document relating to this effect was obtained by him. According to this witness, he was told by the witnesses that the said *kotha* was of the Appellant. One of the witnesses of the search and seizure, Laxminath (PW3) has admitted the fact that he was not aware of the persons living nearby the house of the Appellant. He was also not aware that how many rooms were made in the house of the Appellant. He has further admitted that he had also not gone inside the cow *kotha* (cowshed) where the search was made.
12. Other witness of the search and seizure, Fagnuram (PW4) has also

admitted the fact that he was not aware of the persons living nearby the house of the Appellant. He has further admitted that how many rooms were made in the house of the Appellant was not known to him. In paragraph 10, he has deposed that the cow *kotha* which was searched was situated at some distance from the house of the Appellant and he has also deposed that no door was fixed in the said *kotha*. He has deposed that only a bamboo was fixed in the *kotha*.

13. Constable Sandeep Kumar Bhagat (PW2), who was one of the members of the search party, has also admitted that how many persons were living in the house of the Appellant and how many rooms were made in the said house were not known to him. He has further admitted that the place from where the seizures were made was open from all sides.
14. On a minute examination of the above evidence, it is clear that the *kotha* from where the articles were seized was of ownership of the Appellant or was in his exclusive possession, no documentary evidence was collected by the prosecution in this regard. It appears that other members were also residing in the house of the Appellant. Therefore, the cow *kotha* was of exclusive possession of the Appellant is not established. Apart from this, from the admission made by Constable Sandeep Kumar Bhagat (PW2), it is also clear that the *kotha* from where the seizures were made was open from all sides. In the circumstances, possibility of keeping/planting the seized articles in the *kotha* in question from outside cannot be ruled out. Therefore, the *kotha* was of ownership

of the Appellant or was in his exclusive possession is not established.

15. As stated by Investigating Officer Surendra Uike (PW7), on 14.4.2014, he had sent the seized explosive substance to B.D.S., Jagdalpur for examination. According to the statement of this witness, before that, the seized articles were kept in Malkhana. But, the prosecution has not submitted any Malkhana Register or Stock Register showing entry of deposit of the seized articles in the Malkhana. During cross-examination, in paragraph 24, this witness has deposed that no entry was done in Malkhana Register regarding deposit of the seized articles in Malkhana and their taking out from the Malkhana. He has deposed that such entry is made in Rojnamcha Sanha. He has admitted that no such Rojnamcha Sanha was produced before the Court.
16. Santosh Kumar Verma (PW5), who examined the explosive substance, has deposed that on 14.4.2014, he had examined the explosive substance. He has admitted that in the examination report (Ex.P5), he has not mentioned the place and time of the examination. He has further admitted that in Ex.P5, it is also not mentioned that the said substance was given to him in sealed condition. He has further admitted that he has also not mentioned in Ex.P5 about the person who had brought him the said seized explosive substance.
17. From the above statements of Santosh Kumar Verma (PW5) and Surendra Uike (PW7), it is established that when and in what condition the seized articles were kept in Malkhana and when those

articles were taken out from the Malkhana, there is no documentary evidence available on record in this regard. There is no mention in the examination report (Ex.P5) that the seized articles were brought for examination in a sealed condition. Who brought the seized explosive substance to Santosh Kumar Verma (PW5) and at which place and at what time he examined the said substance, there is no mention about these in the examination report (Ex.P5). Looking to the above, the entire inquiry proceedings become suspicious.

18. From the above discussion, I find that the *kotha* was of ownership of the Appellant or was in his exclusive possession is not established. It is established that there is no evidence on record to show that when, by whom and in what condition the seized articles were kept in Malkhana and when, by whom and in what condition the seized explosive substance was taken out from the Malkhana for sending for examination, there is no documentary evidence available on record in this regard. The examination proceeding of the explosive substance is also suspicious. Therefore, I find that the prosecution is unable to prove the offence beyond reasonable doubt. Hence, the conviction imposed upon the Appellant is not sustainable.
19. Consequently, the appeal is allowed. The conviction and sentence of the Appellant is set aside. He is acquitted of the charges framed against him.

Sd/-
(Arvind Singh Chandel)
JUDGE