
(2014) 07 BOM CK 0018
In the Bombay High Court
Case No : Criminal Appeal No. 489 of 2013

Laxman Jangu Madavi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Arms Act, 1959 — Section 25(1)(1B)(a), 3, 39
Explosive Substances Act, 1908 — Section 5(a)

Citation : (2014) ALLMR(Cri) 3891

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Advocate : H.P. Lingayat, Advocate for the Appellant; P.V. Bhoyar, Addl. P.P, Advocate for the Respondent

Judgement

M.L. Tahaliyani, J.—The appellant is convicted for the offences punishable under Sections 25(1)(1-B)(a) read with Section 3 of the Arms Act and Section 5(a) of the Explosive Substance Act, 1984. He has been sentenced to suffer rigorous imprisonment for 2 1/2 years for the former offence and rigorous imprisonment for 5 years for the later offence. He was arrested on 9th December, 2008, and since then he is in custody. As such, in fact, he has already undergone the sentence imposed on him, as both the sentences were to run concurrently. However, the learned counsel for the appellant has submitted that the appellant is innocent and he wants to contest the appeal to clear himself of the stigma of conviction. It is submitted by the learned counsel for the appellant that the panch witnesses who were present at the time of alleged seizure had not supported the prosecution. It is further submitted that the evidence of other witnesses is not believable. The learned counsel Mr. Lingayat has submitted that it is unacceptable that a Naxalite would move in the forest alone with out-dated 12 bore gun. It is his contention that gun, cartridges and explosive were planted by the Police to create a false case against the appellant. The appellant was involved in Naxal movement earlier. He had surrendered before the Police. It is submitted that later on he has been implicated in this false case.

2. The learned Additional Public Prosecutor Mr. Bhoyar has submitted that if the appellant had surrendered before the Police, the Police had no reason to involve him in a false case. According to him, almost all the witnesses are part of anti-naxal police and their evidence cannot be rejected.

3. To appreciate the arguments of both the sides, it would be necessary to state the evidence of witnesses in brief.

PW-1 was working as Nayak (Police Constable) and he was heading the party of 15 Police Constables. It is stated by him that Naxals were to celebrate a Naxal Week and there was a secrete information that they were suppose to come in congregation at certain place in jungle at Katangtola forest area. The party headed by PW-1, therefore, started combing. While combing the jungle, the appellant was apprehended. He was in civil dress and was holding one bag of black colour and one gun. He attempted to run away, but was caught by the party headed by PW-1. Personal search of the appellant led to recovery of 18 cartridges and some Naxal literature. He was also found in possession of gun. The Sub Divisional Police Officer and the Police Inspector of the area were informed. Panchnama was recorded by PW-1. He had identified the appellant before the trial Court. The report was lodged vide Exh. 12 and the F.I.R. was registered vide Exh. 13.

4. PW-2 was one of the members of the Police Party led by PW-1. He has more or less repeated the evidence given by PW-1. PW-3 was also the member of the same group and his evidence is more or less similar. He, however, has stated that the appellant was wearing a green dress. This witness at the fag end of the evidence had stated that the appellant was also found in possession of gelatin. PW-4 is another member of the same group headed by PW-1. This witness had stated that the appellant was found in possession of detonators and bullets. He was also found in possession of a gun. PW-5 is an independent witness who has not supported the prosecution case. He has denied the suggestion that he had ever attended the meeting of naxals. He has denied that he had met the appellant. PW-6 has denied that he had gone to jungle and seizure was effected in his presence. As such this witness was also declared hostile.

5. PW-7 is the Naib Tehsildar, who had conducted identification parade. What is important to be noted in the evidence of this witness is that, he has not given any details of the identification parade. He has not given details of the dummies, nor has he given details of the identifying witnesses.

6. PW-8 had also been declared hostile. This witness was examined to establish that the appellant was Commander of Naxal Dalam.

7. PW-9 was one of the members of Police Party led by PW-1. This witness had stated that the appellant was found in possession of a gun and a bag. He was in plain dress. He was apprehended in jungle. This witness has not mentioned anything about the recovery of arms and ammunition.

8. PW-10 was Sub Divisional Police Officer of Kurkheda who was intimated that one Naxalite has been apprehended and he was in custody of Police Party. This witness has stated that he took two panchas with him and seized 27 articles from the appellant. The articles included 12 bore gun, explosive materials and placards of naxals and live rounds. He has identified his signature on panchnama Exh. 40. The rest of evidence of this witness is not necessary to be reproduced here as the appellant has been acquitted of the charge under Unlawful Activities (Prevention) Act, 1967.

9. As such, to examine whether the findings given by the learned trial Court are correct or not, it is necessary to evaluate the evidence of PW-1 and members of his group and the Sub Divisional Police Officer who has been examined as PW-10. In the first place, it may be noted here that PW-1 and PW-2 have stated that the appellant was in civil dress. PW-4 has stated that the appellant was in green dress. If one goes through the evidence of members of Police Party who have been examined as witnesses, it can be seen that the evidence is not consistent. In fact, the evidence is given in a very casual manner. The Sub Divisional Police Officer has also given evidence in a very casual manner, which does not indicate as to what articles and in what quantity were seized from the appellant. I am reproducing the relevant portion of his evidence as under;

"The said naxalwadi had 27 articles with him, therefore, I had seized all those articles like 12 bore gun, explosive materials and play-cards of naxals, live rounds in presence of the two panchas".

10. PW-10 has not stated as to what kind of explosive was found from the possession of the appellant and what was the description of the live rounds. PW-1 had stated that he had prepared the panchnama and the Sub Divisional Police Officer had reached the spot later on. PW-10 had stated that he himself had prepared the panchnama Exh. 40. As such, it is not clear as to whether panchnama was prepared before arrival of S.D.P.O. or after arrival of S.D.P.O. As already stated, the evidence of S.D.P.O. who is one of the responsible officer of Police Force is so superficial that it does not give clear picture of the seized articles. Though PW-10 has stated that he had sent the gun and explosive materials to the Chemical Analyzer, the details thereof are not given in the evidence. PW-13 had carried the articles to the office of Forensic Science Laboratory.

11. As already indicated, there are lot of inconsistencies in the evidence of eye witnesses. Some of the witnesses have stated about the recovery of explosives and the others have not stated anything about the same. One witness has specifically mentioned that gelatin was seized from the appellant. The S.D.P.O., however, is silent as to what was the nature of explosive.

12. Without going through the cross examination of the witnesses, the evidence of prosecution witnesses does not inspire confidence of the court. The evidence given by the witnesses creates serious doubt about the correctness of the fact

that the appellant was apprehended in the forest and was found in possession of gun, live cartridges and explosive.

13. In view of the above finding, it is not necessary to go into the details of report of Chemical Analysis, which is positive in respect of articles received by him. It is also not necessary to examine the evidence of PW-12 who had granted permission/consent for prosecution of the appellant for the offence punishable under Section 5(a) of the Explosive Substance Act. It is also not necessary to examine the consent granted by the District Magistrate under Section 39 of the Arms Act for prosecution of the appellant for violation of Section 3 of the Act, punishable under Section 25(1)(1-B)(a) of the Act.

14. As far as evidence of PW-12 Mr. Sarangi is concerned, it may be stated here that he was working as the Additional Chief Secretary (Home) and he had granted sanction for prosecution of the appellant for the offence under the Unlawful Activities (Prevention) Act. Since the appellant has been acquitted of the said charge, it is not necessary to go into the details of his evidence. As such, it is abundantly clear that though the Chemical Analysis report is favourable to the prosecution, the seizure itself is found to be highly questionable. The plea of the appellant that he had surrendered before the Police and he has been implicated in a false case later on cannot be rejected in view of the unreliable evidence of the prosecution witnesses. Hence, I pass the following order.

Appeal is allowed. The judgment of learned Sessions Judge, Gadchiroli, in Sessions Case No. 40/2009 is set aside. The appellant is acquitted of the offences punishable under Sections 25(1)(1-B)(a) read with Section 3 of the Arms Act and Section 5(a) of the Explosive Substance Act, 1908. He shall be released from prison, if not required in any other case.

The appeal stands disposed of accordingly.