
(2014) 01 CHH CK 0027
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 332 of 2013

Punem Sonu

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 437A
Penal Code, 1860 (IPC) — Section 148, 149, 307

Citation : (2014) 3 CGLJ 144

Hon'ble Judges : Yatindra Singh, C.J; Manindra Mohan Shrivastava, J

Bench : Division Bench

Advocate : Shishir Dixit, Advocate for the Appellant; Avinash K. Mishra, Panel Lawyer, Advocate for the Respondent

Final Decision : Allowed

Judgement

Manindra Mohan Shrivastava, J.

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 1st March, 2013 passed by learned Additional Sessions Judge, Daxin Bastar, Dantewada, in S.T. No. 173/09 whereby and whereunder, the appellants have been held guilty of commission of offence alleged against them and sentenced as described below:

Sentences to run concurrently

The prosecution story--

An incident of firing by naxallites on the searching police party on 2.6.2009 in the forest area near Machhed hills was reported in the Police Station-Bhairamgarh on 2.6.2009 at 17:40 hrs. by Head Constable-Kiran Kumar Netam (P.W. 4), who was the leader of the police searching party, In the FIR, Kiran Kumar Netam (P.W. 4) stated that he is posted as Head Constable in Police Station-Bhairamgarh and on 1.6.2009 at 11:05 hrs., he along with Constable-Jayram Manjhi (No. 254) of P.S.-Jangla and Constables-Tapeshwar (No. 388) and

Kishore Markam (No. 328) of P.S.-Bhairamgarh had gone for searching and combing operation in the forest area and at about 11:00 am on 2.6.2009 as soon as the searching party reached near Machhed hills, about 40-45 armed naxallites opened firing on the police team with intention to murder and take away the arms and ammunitions of the police. The firing lasted for about 11/2 hrs. and then naxallites started retreating and eloping in the forest. The searching party chased them and from the spot where firing had taken place, Punem Sonu, Madvi Somadu, Sodhi Muya, Madkami Maso and Tamo Rajmati were apprehended and from their possession a gun, tiffin bombs, cartridges, detonators, bundles of wires, naxallite dresses, bow and two arrows with explosive on its tip and other items of daily use were seized.

2. As the incident was reported to have happened within the jurisdiction of Police Station-Jangla, the FIR recorded in Police Station-Bhairamgarh was taken to Police Station-Jangla, where FIR (Ex. P-8) was registered on 7.6.2009 at 11:10 hrs. against the appellants for alleged commission of offences to commit murder of police officers. Spot map was prepared in Ex. P-6. Further case of the prosecution is that from the possession of the appellants, caught from the spot of firing, a gun, explosive, detonators, bags containing items of daily use, wire were seized in presence of witness vide seizure memo of Ex. P-1, Ex. P-4 and Ex. P-7. The samples of explosives were also drawn and sealed and a panchnama of this proceeding was prepared in Ex. P-9 which was sent for chemical analysis to the Forensic Science Laboratory. After completion of usual investigation and recording statements u/s 161 of Cr.P.C., charge sheet was filed in the Court of Chief Judicial Magistrate, Beejapur, who, in turn committed the case for trial court to the Court of Sessions, Dantewada.

3. On the basis of the material contained in the charge-sheet, the learned trial Court framed charges against each of the appellants on 12.3.2010, wherein it was alleged that on 2.6.2009 at 11:10 hrs. at Machhed hills of village Potenar, 22 k.m. away on south-west of Police Station-Bhairamgarh, the appellants along with 40-50 naxallites armed with dangerous weapon, formed un-lawful assembly with the common object of killing members of police party and in furtherance of this common object, opened firing and thereby committed offence under Sections 148 and 307/149 of the IPC. The appellants abjured guilt and they were put to trial.

4. In order to prove its case, the prosecution examined as many as 10 witnesses. The appellants were also examined u/s 313 of Cr.P.C. in respect of the incriminating evidence appearing against them in the evidence led by the prosecution. They denied all the incriminating circumstances and stated that they have not committed any offence and they have been falsely implicated. No defence witness was examined.

5. Relying upon the evidence led by the prosecution, learned trial Court held the appellants guilty of commission of offence alleged against them and sentenced as described above.

6. Assailing the correctness and validity of impugned judgment of conviction and sentence, learned counsel for the appellants argues that the appellants have been falsely implicated only on the basis of suspicion. It is next contended that the appellants are residents of village-Potenar and while they were moving around in connection with their usual activities, they were apprehended by the police party. Learned counsel for the appellants also argues that the independent witnesses of seizure of incriminating articles have not supported the case of the prosecution and turned hostile. It is also argued that even the prosecution witnesses have stated that the articles were found at the spot and the appellants were not holding it. Evidence has also come that the appellants were found coming from the side of the village. Except this, there is no other evidence led by the prosecution and, therefore, on this weak circumstantial evidence, conviction of the appellants cannot be sustained in law. Learned counsel for the appellants further argues that as no hurt is proved to have been caused to any of the police officers, even if offence u/s 307 of the IPC is made out, the period of sentence could not exceed beyond 10 years as provided u/s 307 of the IPC. He also submits that instead of lodging report at Jangla Police Station, lodging of report at Bhairamgarh Police Station, creates serious doubt over the case of the prosecution.

7. On the other hand, learned counsel for the State has supported the judgment of conviction and order of sentence and submitted that the appellants were found and caught at the spot itself immediately after the incident of firing. The incident happened in the forest area and, therefore, the presence of the appellants involves them in the alleged commission of offence. The recovery of incriminating articles which included guns, explosives, wires, bags, including naxallites dresses along with the appellants from the spot clearly proves that the appellants were one of those in the naxallite party who had opened firing on the police party with intention to cause death. Even if independent witnesses have not supported the case of the prosecution, truthful version of Kiran Kumar Netam (P.W. 4) and other prosecution witnesses who had no reason to falsely implicate the appellants, proves beyond reasonable doubt the recovery of incriminating articles from the appellants at the spot immediately after the incident of firing.

8. Kiran Kumar Netam (P.W. 4), Head Constable, has deposed that during the period from March, 2007 to December, 2010, he was posted as Head Constable in Police Station-Bhairamgarh and on 2.6.2009, he along with police party had proceeded in search of naxallites between Bhairamgarh and Potenar. He further deposed that as soon as he along with police party reached Machhed hills near Potenar, from the side of hills, naxallites opened firing on the police party and the police party also, in defence, opened firing on the naxallites. The cross firing continued for about half of an hour. Thereafter, he along with police party carried out search in the nearby area and five persons (the appellants) were found. Out of five, one is named Sonu and the other girl is named Rajmati. This witness further states that because of long lapse of time he couldn't say whether the accused present in the Court are the same. He has further stated that from those

five persons, a gun, cartridges, bow and arrow, detonator, a bundle of wires, a tiffin bomb, naxallites literature and naxallites dresses were seized. He has proved FIR in Ex. P-5 lodged by him. He has also proved the spot map Ex. P-6 prepared by him and has proved his signature.

9. With regard to seizure of various articles, this witness has deposed that from appellant-Punem Sona, one bag, from appellant-Madvi Somdu, a twelve bore gun, from appellant-Sodi Muya, bow and arrow, from appellant-Tamo Rajmati, one detonator and from appellant-Madkami Maso, a bag was recovered. He has proved his signature in seizure memo (Ex. P-1), seizure memo (Ex. P-2), seizure memo (Ex. P-4), seizure memo (Ex. P-7) and seizure memo (Ex. P-8). He has also stated that five accused were arrested by him.

10. Kunjami Sona (P.W. 5), Hidma (P.W. 6) and Manglu Warsa (P.W. 7) who, at the relevant time, were working as SPOs (Special Police Officer) and had gone along with Kiran Netam (P.W. 4) searching for naxallites, have corroborated the evidence of Kiran Kumar (P.W. 4) to the extent that they had gone towards Potenar forest with police party of Bhairamgarh searching naxallites and near the hills, naxallites had opened firing on the police party and in reply, the police party had also opened firing on the naxallites.

11. Kunjami Sona (P.W. 5) has stated that after firing was over and area was searched, the appellants were found and they were taken into custody.

Hidma (P.W. 6) also states that after the firing was over, nearby area was searched in which one woman and appellants-Sonu and Somdu were found.

Manglu Warsa (P.W. 7) has also stated that after the firing was over and nearby area was searched, one woman and three men were found.

12. Thus from the aforesaid evidence led by the prosecution, it is proved that the police party from Police Station-Bhairamgarh had gone towards Potenar forest in search of naxallites and near Machhed hills encounter took place with the team of naxallites in which firing was opened from both sides. It has also been proved that when the nearby area was searched, the appellants were found in an around the area where firing had taken place between the police party and naxallite party.

With regard to number of persons found in and around the area of firing in the forest, while Kiran Kumar (P.W. 4) and Kunjami (P.W. 5) state that five persons/appellants were found, Hidma (P.W. 6) says one woman and appellants-Sonu and Somdu were found at the spot.

13. Kiran (P.W. 4) has stated that the incriminating articles namely-a bag containing bundle of wires and naxallites dresses (pant and shirt), another bag containing articles of daily use, bow and arrow, a twelve bore gun with cartridges, two boxes of Amul Spray said to be contain bomb and wire, and detonators were seized by him from the appellants vides seizure memo Ex. P-1, Ex. P-2, Ex. P-4 and Ex. P-7. According to this witness, the aforesaid articles

were seized from the possession of the appellants as per seizure memo referred to above. In his cross-examination, he has denied suggestion that none of these articles was seized from the possession of the appellants, but found in a thrown-out condition.

14. Chandra Ram Yadav (P.W. 1) and Hapka Rama (P.W. 2) are the witnesses of seizure memorandum (Ex. P-1, Ex. P-2 and Ex. P-4). Vide seizure memo Ex. P-1, a bag containing bundle of wires and naxallites dresses (pant and shirt) is said to have been seized from appellant-Tamo Rajmati, whereas from seizure memo Ex. P-2, a bag containing articles of daily use along with arrow bomb is said to have been seized from appellant-Madkami Maso and twelve bore gun is said to have been seized from appellant-Madwi Somdu in Ex. P-4. These two witnesses, however, have not supported seizure of articles from the possession of appellants-Tamo Rajmati and Madkami Maso and they have stated in their evidence that no seizure was made in their presence. They were not interrogated in connection with the incident by the police, nor their statements were recorded. Chandra Ram (P.W. 1) has denied having witnessed the seizure proceedings. He, however, admits his signature on seizure memo (Ex. P-1 & P-2). Hapka Rama (P.W. 2) has also denied by stating that the proceeding of seizure in Ex. P-4 were not drawn in his presence but he admits his signature in Ex. P-4. Another witness Hapka Mankuram (P.W. 3) has also not supported the prosecution case by stating that he knows nothing about the incident and seizure proceedings in Ex. P-2 Ex. P-4 were not drawn in his presence, though he admits his signature.

15. Learned counsel for the appellant has strenuously urged before us that as the independent witnesses of seizure having not supported the case of the prosecution, seizure of various incriminating articles from appellants-Tamo Rajmati, Madkami Maso and Madwi Somdu vide Ex. P-1, Ex. P-2 and Ex. P-4 respectively becomes doubtful as the evidence of police witness cannot be relied upon without corroboration of seizure from independent witnesses.

16. At the first place, it cannot be accepted on principles and proposition of law that the evidence of a police witness cannot be relied upon without corroboration from an independent witness, be it proceedings of seizure or any other proceedings drawn by the police.

17. In the case of Aher Raja Khima Vs. The State of Saurashtra, , a judgment pronounced more than half a century ago, the Supreme Court noticed the principle that the presumption that a person acts honestly applies as much in favour of a police officer as of any other person and it is not a judicial approach to distrust and suspect him without good grounds therefor.

The aforesaid principle has been referred to, reiterated and reaffirmed in plethora of decisions.

18. In the case of Tahir Vs. State (Delhi), , the Supreme Court held that no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down

that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.

In the case of Karamjit Singh Vs. State (Delhi Administration), , the Supreme Court held that the testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other people and it is not a proper judicial approach to distrust and suspect them without good grounds.

19. In two recent decisions, the aforesaid principle has been re-affirmed. In the case of Safi Mohd. Vs. State of Rajasthan, , the Supreme Court has held that in a case where search was made without search warrant, sole independent witness turning hostile and recovery of most relevant document from accused being disputed, merely because police witnesses alone have spoken about search and seizure of documents from person suspected of spying, merely because the independent witnesses have not supported it or turned hostile, and merely because search warrant was not obtained, version of police witnesses cannot be disbelieved.

In another case of Pramod Kumar Vs. State (GNCT) of Delhi, the Supreme Court referring to its earlier decisions, laid down the principle that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinizing the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence.

20. Therefore, the submission of learned counsel for the appellant that, the whole case should be thrown overboard because either the witnesses of seizure have not supported the case of the prosecution, cannot be accepted. The correct approach, as discernible from the principles carved out from the aforesaid decisions, is-to examine and scrutinize the evidence with more careful scrutiny, applying rule of prudence to find out whether the testimony of police witnesses

inspires confidence and found to be trustworthy and reliable so as to form basis of conviction. If the testimony of police officer is found to be reliable and trustworthy the Court can definitely act upon the same.

21. The evidence of Kiran Kumar (P.W. 4) with regard to appellants found nearby the place where firing had taken place is corroborated from the evidence of other witnesses-namely Kunjami Sona (P.W. 5), Hidma (P.W. 6) and Mangalu Warsa (P.W. 7). It has to be noted that these three witnesses are the SPOs and had accompanied police searching party which had gone in search of naxallites towards Potenar forest and encountered with naxallites near Machhed hills.

The evidence of Kiran Kumar (P.W. 4), Head Constable, is, therefore, reliable to the extent that after search was carried out in the jungle, from a nearby place, five persons/appellants were apprehended. However, the evidence of Kiran Kumar (P.W. 4) that the incriminating articles were seized vide seizure memo Ex. P-1, Ex. P-2, Ex. P-4, Ex. P-7 and Ex. P-8 from Tamo Rajmati, Madkami Maso, Madwi Somdu, Punem Sona and Sodi Muya respectively is not supported from the evidence of the witnesses of seizure namely Chandru Ram (P.W. 1), Hapka Rama (P.W. 2) and Hapka Manku Ram (P.W. 3). It has to be noted that Chandru Ram (P.W. 1), Hapka Rama (P.W. 2) and Hapka Manku Ram (P.W. 3) were witnesses of seizure, said to be made vide Ex. P-1, Ex. P-2 and Ex. P-4. The witnesses of seizure of bomb and wire found in a bag vide seizure memo Ex. P-7 and detonator and bow arrow vide Ex. P-8 have not been examined in the case.

Therefore, in these circumstances, before evidence of Kiran Kumar (PW. 4) is relied upon to prove seizure of incriminating articles from the appellants, rule of prudence requires close scrutiny of this part of evidence of Kiran Kumar (P.W. 4) and also corroboration.

22. The three SPOs who had gone along with police party in a search of naxallites namely-Kunjami (P.W. 5), Hidma (P.W. 6) and Manglu (P.W. 7) have given a different version with regard to recovery of articles.

Kunjami Sona (P.W. 5) has stated that after the firing was over, during search, from the spot of incident tiffin bombs, a bag, detonator, dresses, twelve bore gun thrown by the naxallites were found. These articles along with the appellants were taken to Bhairamgarh police station. This witness has further stated that it cannot be said that which article was seized from which appellant.

Hidma (P.W. 6) has also stated that from the spot of incident, twelve bore gun, detonator, a tiffin bomb etc, were found. He also does not say that these articles were found in the possession of the appellants.

Manglu Warsa (P.W. 7) has also stated that during search, from the spot of incident, a twelve bore gun, detonator, tiffin bomb etc. were found.

All these three witnesses have said that the naxallite had left these articles before running away.

All these three witnesses have admitted in their cross-examination that none of the articles was recovered from the possession of the appellants, but, these articles were collected as thrown articles from the spot.

23. From the minute scrutiny of the evidence of aforesaid three witnesses, who are the police witnesses and members of police search party coupled with the circumstance that the independent witnesses of seizure of articles said to be seized vide Ex. P-1, Ex. P-2 and Ex. P-4 have stated that no seizure proceedings were drawn in their presence, it has to be held that the prosecution has failed to prove beyond doubt that the incriminating articles said to be seized vide Ex. P-1, Ex. P-2, Ex. P-4, Ex. P-7 and Ex. P-8 were seized from the possession of the appellants. On the contrary, the evidence of Kunjami Sona (P.W. 5) Hidma (P.W. 6) and Manglu Warsa (P.W. 7) goes to say that the articles were thrown away by the naxallites which were recovered and seized by Kiran Kumar (P.W. 4) from the spot of the incident.

24. There is yet another evidence led by the prosecution itself which creates doubt with regard to involvement of the appellants in the team of naxallites which opened fire on the police party.

25. Kunjami Sona (P.W. 5) Hidma (P.W. 6) and Manglu Warsa (P.W. 7) all of them have admitted in their cross-examination that the appellants were found coming from the side of their house towards the place of incident and in the action of police in searching area, they were brought within the net of closure.

26. The spot map (Ex. P-6) prepared and proved by Kiran Kumar (P.W. 4) shows that there is a nallah (canal) which separates agriculture fields and Potenar village from forest area where the firing took place. On either sides of the canal, forest area where firing took place and agricultural fields are situated. According to map (Ex. P-6) if a resident of village-Potenar goes towards field, his direction would be towards canal, on the other side of which, the forest including Machhed hill is situated.

27. It is not the evidence of the prosecution that the appellants were found running from forest towards the village. The evidence of Kiran Kumar (P.W. 4), Kunjami. Sona (P.W. 5), Hidma (P.W. 6) and Manglu Warsa (P.W. 7) only proves that after the firing was over and the police party searched the nearby area, five appellants were found. However, there is no specific evidence as to after how much time, the appellants were found and what was the approximate distance of the place where firing had taken place and the place where the appellants were found.

28. For the reasons aforesaid stated, the evidence of Kiran Kumar (P.W. 4) that incriminating articles were seized from the possession of the appellants becomes doubtful. The other three witnesses namely Kunjami Sona (P.W. 5), Hidma (P.W. 6) and Manglu Warsa (P.W. 7) have also not stated that the appellants and incriminating articles were found in so close proximity that they can be said to have virtually covered the incriminating articles with them. Thus the evidence of

prosecution in this regard cannot be said to be clinching. The appellants are stated to be resident of village-Potear.

29. There is one more circumstance of the case which creates doubt with regard to the prosecution case. Kiran Kumar (P.W. 4) has admitted in his cross-examination that no empty cartridge were seized from the place of firing. The explanation offered by Kiran Kumar (P.W. 4) is that as the incident happened in a forest area covered with shaded leaves, empty cartridge could not be recovered. Though, it may be true that it is not possible to collect all empty cartridges of fired bullets by both parties at the place of incident. Even then, if the case of the prosecution is that the firing from both the parties continued for about 1/2 hrs, it was for the prosecution to prove that at least some cartridge were recovered from the spot of incident, which was so close and proximate to the place of arrest of the appellants that a reasonable inference of appellants involved in the firing along with naxallites could be drawn.

30. Therefore, the presence of the appellants nearby the area of incident of firing, which is very near to the village-Potenar and the agricultural fields, near the canal, by itself, without any other incriminating evidence of their involvement creates doubt with regard to any overt act committed by them as members of naxallite party which opened firing on the searching party of the police during encounter. Therefore, in our considered opinion, the appellants are entitled to be acquitted by giving them benefit of doubt.

31. In the result, the appeal is allowed. Impugned judgment of conviction and order of sentenced dated 1st March, 2013 is hereby set aside. The appellants are acquitted of the charges. The appellants shall be set free forthwith if not already required in connection with any other case, on each of them furnishing bond of Rs. 10,000/-. The appellants shall appear before the higher Court as and when directed, as required u/s 437A of the Cr.P.C. The bond shall remain operative for a period of six months.