



2026:CGHC:12662

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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 384 of 2017

Lallan Singh S/o Jaiprakash Singh, Aged About 35 Years R/o Village Manjholi, Police Station Nadi Nagar, District- Aurangabad, Bihar.

... Appellant.

versus

State Of Chhattisgarh Through District Magistrate, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondent

For the Appellant : Mr. SC Verma, Sr. Advocate
assisted by Mr. ML Sahu & Mr.
Naqeeb, Advocates.

For the State/Respondent : Mr. Suresh Tandon, PL.

Hon'ble Shri Arvind Kumar Verma, Judge

Judgment on Board

17.03.2026

1. Challenge in this criminal appeal is to the impugned judgment dated 16.02.2017 passed in Session Trial No.76/2016 by which learned Session Judge, Bilaspur, (CG), has convicted the appellant for offence punishable under Section 25 (1-B) (B) of the Arms Act and sentenced him to undergo maximum RI for



03 years and fine of Rs.1,000/-, in default to undergo additional RI for 03 months.

2. Case of prosecution, in brief, is that on 12.04.2016 at about 6.15 p.m. present appellant and other 07 co-accused persons assembled with preparation for committing the Dacoity at village -Tikarikhar with weapons. The police on receiving aforesaid information from an informer raided the alleged spot and rounded up them, upon which, they admitted of having assembled there with preparation to commit the Dacoity and one sword (तलवार) was also seized from the possession of present applicant. Based upon which, FIR was registered against the appellant alongwith co-accused persons.
3. After completion of investigation, charge-sheet was filed and based upon which trial Court framed the charges against the accused persons under Sections 399, 402 of IPC and Section 25 (1-B)(B) of Arms Act.
4. In order to prove guilt of appellant-accused, prosecution examined total 12 witnesses and their statements were recorded. However, no defence witnesses was examined. Statement of appellant (accused) was recorded under Section 313 CrPC in which he pleaded innocence and false implication.
5. After completion of trial and hearing both the parties, the learned trial Court acquitted the appellant and other co-



accused persons from the charges under Sections 399 and 402 of IPC, however, convicted and sentence the present appellant under Section 25 (1-B)(B) of Arms Act. Hence, this appeal.

6. Learned counsel for the appellant submits that the impugned judgment is per se illegal and contrary to the evidence available on record as trial Court has failed to appreciate the prosecution evidence/witnesses in accordance with law. Impugned judgment is passed on surmises and conjectures as the evidence laid by the prosecution to establish the charge against the appellant is not trustworthy and reliable as they suffers from the material contradiction and omission; there have been several lacunae making the prosecution story of occurrence highly unbelievable and incredible under the facts and circumstances of the case. Prosecution has absolutely failed to prove its case beyond all reasonable doubts by adducing trustworthy and cogent evidence being capable of inspiring the confidence of the Court for bringing home the charges against the appellant. Learned Counsel further contended that prosecution has failed to prove and even produce the notification under Section 4 of the Arms Act, 1959. All the prosecution witnesses are the Police Officials and there is no any independent witness in this case, therefore, prosecution story is highly unreliable. Trial Court convicted the appellant only on the basis of evidence of the Police Officials, which is



not acceptable in the eyes of law. As such, the impugned judgment of conviction recorded and sentence awarded deserves to be set-aside. In support of his contention, he places reliance upon the decisions of Hon'ble Supreme Court in cases of **Sans Pal Singh versus State of Delhi, AIR 1999 SC 49; Gorakh Nath Prasad versus State of Bihar, AIR 2018 SC 704** as also the decision of the co-ordinate Bench of this Court passed in CRA No.785/2008 (Aashish & Ors versus State of Chhattisgarh).

7. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that sword has been seized from the present appellant. Impugned judgment passed by the trial Court is based on proper appreciation of material and evidence available on record and the same requires no interference.
8. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
9. Section 4 of the Arms Act reads as under:

“4. Licence for acquisition and possession of arms of specified description in certain cases. -

If the Central Government is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms



other than firearms should also be regulated, it may, by notification in the Official Gazette, direct that this section shall apply to the area specified in the notification and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.”

10. Relevant para of **Sans Pal Singh** (supra) reads as under:

“3. Inter alia, it has been urged by the learned counsel for the appellant that it would not be safe to maintain the conviction because the recovery of the illicit arms did not inspire confidence, supported as it is, by the evidence of two police officials alone, unassociated by the testimony of any independent witness. It has also been urged that witnesses of the public were available and neither were they associated nor was any explanation given at the trial as to why they were not associated. From the evidence of PW 5 Head Constable Sat Pal Singh, it is clear that the police party did not ask any public witness to be witness at the time of search of the accused. Likewise, PW 6 Sub-Inspector Mahipal Singh has also stated that no public witness was joined at the time of the search of the accused even though a number of persons were passing through at the time when the recovery was being effected. It is thus evident that public witnesses were available and could have been associated to witness the



recovery. It would have been a different matter altogether had there been no public witness available or none was willing to associate. Here, as said before, public witnesses were available but no explanation on these lines is forthcoming. Thus, we got to the view that it would be unsafe to maintain the conviction of the appellant for the offences charged. We, therefore, order his acquittal. He is in jail. He be set at liberty forthwith.

11. PW-1/Smt. Sita Sahu (Assistant Sub-Inspector) in her evidence has stated that at the place of occurrence, upon production by the appellant/accused Lallan Singh, one iron sword was seized and a seizure memo was prepared which is Exhibit P-2, her signatures appear on the portion marked "A to A". In her cross-examination, she stated that second witness to the seizure memo is PW-2/Rakesh Shrivastava, who is employed as a driver of the police vehicle and it was he who was driving the said vehicle in which the police party proceeded to the place of occurrence on the date of alleged incident.
12. PW-2/Rakesh Shrivastava in his evidence has stated that it is incorrect to state that accused persons were arrested in his presence or his signatures were obtained on the said arrest memos at the time of such arrest.
13. It is an admitted fact that learned trial Court acquitted the appellant and other co-accused persons from the charges



under Sections 399 and 402 of IPC, however, only on the basis of seizure of Sword (Ex.P-2) and evidence of Investigating Officer and other Police Officials, trial Court convicted the present appellant under Section 25 (1-B)(B) of Arms Act.

14. It is also important fact that PW-2/Rakesh Shrivastava is the driver of the Police, therefore, he is not the independent witness. PW-2 also turned hostile and not supported the case of prosecution.
15. In case at hand, prosecution has failed to prove and even though produce the notification in the Official Gazette for requirement of acquisition and possession of arms of specified description in that area.
16. As per prosecution, one sword has been recovered/seized from the possession of the appellant and recovery of said arm/weapon is based on the evidence of the Police Official alone and there is no any independent witness in this case and all the witnesses are the Police Officials.
17. In case of **Sans Pal Singh** (supra), the hon'ble Supreme Court held that public witnesses were available and could have been associated to witness the recovery. It would have been a different matter altogether had there been no public witness available or none was willing to associate. Thus, it would be unsafe to maintain the conviction of the appellant for the



offences charged.

18. As per prosecution, the Police has recovered/seized one sword from the possession of the appellant near the liquor shop on 12.04.2016 at about 6.15 p.m at village -Tikarikhar, therefore, in such circumstances, presence of independent witnesses would ordinarily be expected, but no explanation has been given by the prosecution as to why the public witnesses was not associated with evidence of recovery of arm/weapon (sword).
19. For the foregoing discussion/observation, this Court is of the considered view that conviction of the appellant under Section 25(1-B)(B) of the Arms Act is unsustainable in law.
20. Accordingly, the appeal is allowed and the impugned judgment dated 16.02.2017 (Annexure A-1) is hereby set aside and the appellant is acquitted from the aforesaid charge/offence.
21. Record of this case alongwith copy of this judgment be sent back immediately to trial Court concerned for compliance and necessary action.

Sd/-
(Arvind Kumar Verma)
JUDGE

J/-