

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J) No.48 of 2019

[Against the Judgment of conviction dated 28.07.2018 and Order of sentence dated 03.08.2018, passed by the learned Additional Sessions Judge - I, Garhwa, in Sessions Trial No.186 of 2009, arising out of Ranka P.S. Case No.25 of 2007 (G.R No.266 of 2007)]

Rajendra Singh Kharwar Aged about 30 years, S/O Late Rajbali Singh R/O Village Udaypur P.O Udaypur & P.S. Ramkanda, Distt. Garhwa, Jharkhand. **Appellant**

Versus

The State of Jharkhand **Respondent**

PRESENT
HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellant : Mr. Surendra Prasad Sinha, Advocate
For the State : Mr. Rajesh Kumar, A.P.P

Order No.08/ Dated: 22nd April, 2026

1. Heard Mr. Surendra Prasad Sinha, learned counsel for the appellant and Mr. Rajesh Kumar, learned A.P.P.

2. The present criminal appeal has been preferred against the judgment of conviction dated 28.07.2018 and order of sentence dated 03.08.2018, passed in Sessions Trial No.186 of 2009, arising out of Ranka P.S. Case No. 25 of 2007 (G.R. No.266 of 2007) by the learned Additional Sessions Judge-I, Garhwa, whereby the appellant has been convicted for the offence punishable under Sections 148, 353, 307/149, 120(B) of the Indian Penal Code (I.P.C), Section 27 of the Arms Act and Section 17 of the C.L.A Act and has been sentenced to undergo R. I. For 03 years for the offence under Section 27 of the Arms Act, S.I. for 2 months for the offence under Section 17 of the CLA Act, R.I. for 02 years for the offence under Sections 353/149 IPC, R.I for 02 years for the offence under

Section 148 IPC and R.I. for 07 years for the offence under Section 307/149 of IPC. Though the convict has been found guilty under Section 120(B) IPC also, but as the convict has already been sentenced for the offence u/s 307 IPC hence he has not been separately sentenced under the said section. All the sentences were directed to run concurrently.

3. The criminal law has been put into motion by lodging an F.I.R being Ranka P.S. Case No.25 of 2007, corresponding to G.R. No.266 of 2007.

The case of the prosecution, in brief, is that the informant namely, Manish Chandra Lal, Junior S.I. of Ranka Police Station, Garhwa, in his self statement on 07.04.2007, has stated that on the same day at 12.15 hours, for the purpose of executing the order for conducting raid, reached by different vehicles at village Udaypur, Kasmar. As per the plan of "Operation Tiranga", SDPO Garhwa, namely, Sri Satyendra Singh with Hawaldar Vijendra Narayan Singh and large number of police personnel including Sub-Inspector also reached there. The Superintendent of Police got information that 40 extremists of Bhartiya Communist Party (M) with their Zonal Commander, namely, Sanjay @ Chhotu @ Shrawan, Sub-Zonal Commander, namely, Mahendra Singh Kharwar, all in uniform and were equipped with guns, had assembled at the forest near Udaypur village, Tola-Nawadih are making planing for big incident. The police force under the supervision of the S.P. proceeded towards the *jungle* of Nawadih and after leaving the lane, they proceeded under

the cover of bush. All of a sudden they heard the sound of firing. The police took position. They saw the extremists in uniform making firing from guns. Then the police official gave warning to the extremists not to make firing on the police, but they continued firing. In self defence, the police personnel also started firing from the guns upon which, the extremists started receding. Meanwhile, one extremist was found loading magazine in his gun then at that time S.I. Ravi and Sanjay Toppo ran towards him and caught him. The arrested person revealed his name as Salim Ansari @ Salim Jee. He was arrested with one SLR rifle. He could not produce any document for legally possessing that gun. Other articles were also recovered from his bag. 41 live cartridges of 7.62 bore, 13 round of 7.62 live cartridges were also found in the magazine of the gun. Seizure list was prepared of the seized articles. The arrested persons revealed that he is an active member of Bhartiya Communist Party (M) which is an extremist organization. He also stated that a meeting was organized for committing murder of Dy. S.P. and S.P. Garhwa in which (1) Zonal Commander, Sanjay @ Chhotu @ Shrawan, (2) Sub-Zonal Commander, Mahendra Singh Kharwar, (3) Tarkeshwar Singh @ Mama Jee, (4) Sarita Jee, (5) Vinod Kharwar, (6) Suraj, (7) Rajesh (8) Pankaj, (9) Sudarshan @ Chanchal, (10) Rajendra Singh Kharwar, (11) Kutubuddin @ Maulbi, (12) Rahul Jee, (24) Bhola Jee, (25) Santosh Koeri, (26) Kuldeep Bhuiyan, (27) Lalan Singh and the

arrested accused and 12 other members were present in that meeting. On search various articles left by the extremists like bag, pant, scarf etc. were recovered. The seizure list of all those articles were prepared. It was found that various police personnel had made firing from their guns.

On receipt of self-statement of the informant, the police instituted a case as Ranka P.S. Case No. 25/2007 dated 07.04.07 under Sections 147, 148, 149, 307, 353, 171, 120(b) I.P.C., Section 25(1-b)a, 26, 27, 35 Arms Act and 17 C.L.A. Act against the accused persons.

The police after completing the investigation has submitted the charge-sheet under the above sections. The trial court has also framed the charge under Sections 411/ 413/ 414 IPC and the case has been committed to the court of Sessions to which the appellant has pleaded innocence and claimed to be tried.

4. To substantiate the charges, the prosecution has examined altogether 19 witnesses. Their testimonies, in short, are as follows :-

5. **P.W.-1, Md. Kashid Hussain**, is a police constable and also a member of the raiding party and he has supported the prosecution case.

6. **P.W.-2, Mr. Sanjay Kumar Yadav**, is also a police constable and member of the raiding party. He has deposed that as long time has passed, he is unable to identify the accused in the court.

7. **P.W.-3, Mr. Manish Chandra Lal,** is A.S.I and the informant of the case and he has also supported the prosecution story.

In his cross-examination, at para -31, he has admitted that no empty cartridges, used by the extremists and police party, were recovered from the place of occurrence.

8. **P.W.-4, Satyendra Singh (SDPO) and P.W.-5, Ram Pukar Ram (Constable),** are the members of the police party. The deposition of these witnesses are in carbon copy which has been torn at several places and also not visible.

9. **P.W.-6, Mr. Dharmendra Paswan, P.S.-7, Mr. Govind Paswan, P.W.-8, Mr. Satish Prasad Gupta, P.W.-9, Mr. Santosh Kumar Upadhyay, P.W.-10, Mr. Arvind Kumar Dubey, P.W.-12, Mr. Santosh Ram, P.W.-13, Mr. Kanhai Ram, P.W.-14, Mr. Amit Kumar Pandey, P.W.-15, Mr. Shrawan Yadav, P.W.-16, Mr. Alok Kumar Yadav, P.W.-17, Mr. Sanjay Kumar Pathak, and P.W.-18, Mr. Sunil Kumar Yadav,** all are police personnel and member of the police party. They all have deposed in similar manner, as all were part of the raiding party and had participated in the encounter against the extremists on 07.04.2007 headed by the S.P.

10. **P.W.-11, Mr. Upendra Kumar Singh,** is also a constable and he has also narrated the same story.

In cross-examination, he has deposed that the accused namely, Rajendra Singh Kharwar was identified to him by the Officer-in-Charge and only Salim was arrested

at the place of occurrence.

11. The trial Court, after recording the evidence of witnesses, cross-examination, and the statement of the accused person under Section 313 Cr.P.C, has found the appellant guilty and convicted him, as stated above.

12. Learned counsel for the appellant has made stress upon Section 307 IPC and has drawn attention towards the prosecution evidence, especially P.W.-3 (Informant) at para - 31, which reads as under :-

"मुठभेड़ स्थल से उग्रवादियों द्वारा इस्तेमाल किया खोखा बरामद नहीं हुआ। मेरी पार्टी द्वारा पुलिस द्वारा चलाया खोखा भी नहीं मिला था।"

It has been submitted that thus, it is clear that at the place of occurrence no used shell has been recovered justifying the prosecution story. Apart from oral evidence of firing, even firing made by the police, which is accounted one, nothing corroborative evidence has been brought on record, suggesting that the firing has been made. In absence of the firing, the conviction of the appellant under Section 307 IPC is not sustainable.

13. On the other hand, learned counsel for the State has supported the judgment of conviction and order of sentence, but he could not point out any evidence suggesting that used cartridges have been recovered from the place of occurrence.

14. Having heard learned counsel for the parties and from perusal of the record, this Court finds that the conviction under Section 307 IPC is not sustainable and accordingly, it is, hereby, quashed and set aside.

So far as conviction of the appellant under other Sections of the IPC are concerned, there is enough material on record. His presence has been stated by the witnesses and as such, this Court finds no reason to interfere with those findings. Accordingly, the conviction of the appellant under rest of the Sections of the IPC are, hereby, upheld.

15. From the report submitted by the Jail authority, it appears that the appellant has remained in custody for more than six years and five months. Thus, he has already undergone the conviction, so far as other Sections of the IPC are concerned.

16. In that view of the matter, the appellant stands discharge from the liability the bail bond.

17. In the result, the appeal stands partly allowed.

18. Let the Trial Court Records be sent back to the Court concerned forthwith, along with the copy of this Judgment.

(Rajesh Kumar, J.)

Jharkhand High Court, Ranchi
Dated, the 22nd April, 2026

Chandan/- NAFR

Uploaded on 30.04.2026