

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (D.B.) No.1650 of 2023**

[Against the judgment of conviction dated 24.08.2018 and the order of sentence dated 01.09.2018 passed by Additional Sessions Judge-III, West Singhbhum, Chaibasa in S.T. No.147 of 2012]

Soma Tarkot @ Soma Torkot, aged about 62 years, son of Late
Etwa Tarkot, resident of village-Tirilposi, P.O.-Jaraikera, P.S. –
Jaraikella, District-West Singhbhum

.... Appellant

Versus

The State of Jharkhand Respondent

For the Appellant : Mr. Shiv Prasad Singh, Advocate
Mr. Peter Martin T.J., Advocate
For the Resp. State : Mr. Pankaj Kumar, P.P.
Mr. Sanjay Kr. Srivastava, A.P.P.

PRESENT

**HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT**

CAV On 24/02/2026

Pronounce On 25/03/2026

Per- Pradeep Kumar Srivastava, J.

1. Heard Mr. Shiv Kumar Singh, learned counsel appearing for the appellant and learned P.P. assisted by learned A.P.P.
2. The instant criminal appeal has been directed against the judgment of conviction dated 24.08.2018 and the order of sentence dated 01.09.2018 passed by Additional Sessions Judge-III, West Singhbhum, Chaibasa in S.T. No.147 of 2012, whereby and whereunder the appellant has been held guilty for the offences under sections 302/149, 307/149, 353/149 and

148 of Indian Penal Code and sentenced to undergo imprisonment along with fine of Rs.5,000/- under section 302/149 of IPC along with default stipulation; R.I. for 1 year and a fine of Rs.500/- under Section 379/149 of IPC along with default this stipulation; R.I. for 7 years along with fine of Rs.2,000/- under section 307 of IPC along with default stipulation; R.I. for 1 year under section 148 of IPC and R.I. for 1 year under section 353 of IPC. All sentences are directed to run concurrently.

Factual Matrix

3. Factual matrix giving rise to this appeal is that the informant the then O/C. of Manoharpur Police Station received a confidential information vide memo No.4565 dated 23.09.2010 for taking part in an operation "Black Thunder" against prohibited moistest organization, which is active in Saranda Forest Range, West Singhbhum, Chaibasa and a training camp of Maoists was going on in Saranda Forest Range. Therefore, 8 groups of Arms Forces were formed for executing above operation under the leadership of Additional Police of Superintendent, West Singhbhum, Chaibasa along with CRPF Kobra, C/7 and Jharkhand Jaguar Police Force. It is further alleged that they proceeded from Rourkella side on 24.09.2010 at about 9:30 pm for the operation. The member of operation

team started searching training center of the prohibited organization and reached in Saranda forest area and at about 12:00 noon on 26.09.2010, they reached in between the village Thalkobad and Tirilposi, before Tirilposi nearly forest hillock, the extremists started firing indiscriminately by their sophisticated weapons. The member of the operation party warned them against firing through loud voice but they did not stop from firing nor they surrendered before the police personnels rather they started abusing and threatening and also commanding their members by taking name Jonshon, Habil Purty, Habil Cherwa, Nelson, Bimal and other comrades to take position from left side and Muslim, Xavier along with their groups were directed to take position from right side, the women comrades were also ordered to take position. After this order, the informant party also heard saying that Maoists "OK Nirmal Da", we are taking our position. Thereafter, all the Maoists started continuously firing over the police party. In defence, the police party also started firing as per order of Additional S.P. In the meantime, the police Jaimal Singh, who belongs to CRPC Kobra saw an extremist moving from one position to another position then he entered in the zone of the extremist showing his bravery. In the whole of night, firing and counter firing continued and on 27.09.2010 at about 4 am,

striking party No.1 along with S.I. Suresh Ram, O/C Gua, S.I. Chakravarty Kumar Ram along with CRPF Kobra, Jharkhand Jaguar came from village Gundijora to help them. Thereafter, at about 5:30 am, the fire was stopped by the extremists and the police personnel moved forward and saw some extremists were running from the camp. It is alleged that two of the extremists were caught by the police forces, who disclosed their name as Dursona Bodra S/o- Late Manishg Bodra and Soma Tarkot S/o-Etwa Tarkot, village-Tirilposi, P.S. Jaraikella, District-Singhbhum, West at Chaibasa. They also revealed that they belong to this extremist group from longtime and also assisted MCC members by providing ration and fixing explosive. They are also involved in collecting levy and pasting MCC posters and manufacturing of cane bombs and fixing land mines etc. It is further alleged that due to absence of any independent eye-witness at the place of occurrence, both the apprehended accused persons were lawfully searched by the police personnels and during search of Dursona Bodra, one Motorola wireless set and photo Album kept in a bag and from the possession of Soma Tarkot, explosive substance, 50 meter electric wire, six pencil batteries of torch, 1/2 kg iron pebbles and a sabbal of iron were recovered. It is further alleged that from the place of ambush, two mobile sets with

SIM Nos. 9437518779 and 8895030126 were recovered. During search, the dead body of Cobra Police No.041543551 Jaimal Sing also found and his INSAS rifle with cartridges were also looted by Extremists. After some distance, the dead body of one unknown extremist was also found, who has sustained bullet injuries on his chest two bullets fired by the police rifle bearing No. ARSEL No.cz-6155A along with five live cartridges in the magazine was found.

4. On the basis of above information, Jaraikella P.S. No.08/2010 was registered for the offence under sections 147,148, 307/149, 302/149, 353, 121, 121A, 122, 120-B, 379, 414 of IPC and section 25(1-B)a/26/27/35 of Arms Act and Section 17 of CLA Act and Section 10, 13 and 20 of UAP Act and sections 4/5 of Explosive Substance Act against 25 named accused persons and 100 other unknown Maoists. After conclusion of the investigation, charge-sheet No.10/10 dated 25.12.2010 was submitted against Dursona Bodra and Soma Tarkot due to their custody period of 90 days was about to expire continuing investigation against other co-accused persons. One accused, Nalla Bhikshapati was remanded in this case on prayer of I.O. vide order dated 10.12.2010 from Bandgaon P.S. Case No.27/2010 dated 09.10.2010. A supplementary charge-sheet was submitted against accused, Nalla Bhikshapati on 10.03.2011 continuing

the investigation against other co-accused persons. Later on, accused Marshal Bhuiyan had also surrendered before the learned Court of Magistrate and he was also charge-sheeted. Against all the four accused persons, charge-sheet was again submitted and cognizance of offence was taken vide order dated 11.01.2012 and their case was committed to the court of Sessions vide order dated 18.06.2012 keeping continue supplementary investigation against other co-accused persons. After commitment of the case of four accused persons to the court of Sessions, S.T. No.147 of 2012 was registered. The accused persons denial from the charges and claimed to be tried.

5. After conclusion of trial, co-accused Marshal Bhuiya, Dursona Bodra, Nalla Bhikshapati were acquitted extending them to benefit of doubt and Soma Tarkot (appellant) was held guilty and sentenced for the offences as stated above.
6. In course of trial altogether, 10 witnesses have been examined by the prosecution namely:-

P.W. 1-Subodh Kumar Yadav

P.W.2-Mithilesh Tiwari,

P.W.3-Ranjit Minz, informant

P.W.4-Rasmi Kant Pandey

P.W.5-Dr. Bijay Kumar Pandit

P.W.6-Suman Bhagat

P.W.7-Laxmi Mahto

P.W.8-Anil Kumar Sharma

P.W.9-Bhaira Manjhi

P.W.10-Ramta Prasad Singh

7. Apart from oral evidence the prosecution has adduced the following documentary evidence, which are as under:-

Ext.1-Signature of Ranjit Minz on seizure list

Ext.2-Signature of Ranjit Minz on confessional statement

Ext.-2/1-Confessional statement

Ext.-3.Written report

Ext.-3/1-Endorsement on written report

Ext.4-Post-mortem report

Ext.5.-Inquest report of unknown extremist

Ext.6.-Signature of witnesses on inquest report

Ext.7.-Formal FIR

Ext.8.-Case diary containing page Nos.38 and 39 submitted by ASI Suman Bhagat

Ext.9-Sanction order of D.M., Chaibasa

Ext.10-Sanction order of Law (Judicial) Department, Jharkhand

Ext.11 S.F.S.L. report.

8. No oral or documentary evidence has been adduced by the defence.

Submission on behalf of the appellant

9. Learned counsel for the appellant assailing the impugned judgment and order of conviction and sentence of the appellant has submitted that the appellant was simply arrested by the police while he was fleeing from the spot. The appellant is a resident of same village area namely Tirilposi, he was

brought from his house by the police and implicated in this case. The confessional statement recorded before the police have got no evidentiary value in the eye of law. Learned counsel further submits that no incriminating articles were recovered from the possession of the appellant nor he has been identified as a perpetrator in the crime and firing upon the police party or in any way trained the Maoists/Extremists of MCC. Learned trial court on the basis of same evidence has acquitted another apprehended accused person. Even the appellant has also been acquitted from charges for some major offences. Learned trial court has failed to record any specific reasons and the material evidence showing involvement of present appellant that he was taking active role against the police personnels or actively supporting members of extremists organization. Even if, the confessional statement of the accused appellant is taken to be true, there is only admission that he was providing food and other assistance to the MCC extremists due to the fear and no protection was extended by the police to them in the MCC infested area. It is submitted that altogether 10 witnesses were examined in this case, out of them, P.W.1 Subodh Kumar Yadav, Officer-in-Charge, Manjhgaon P.S, P.W. 2, Constable No.1273, Mithelsh Tiwari, P.W.3 Officer-in-Charge Amarpara Police Station

namely Ranjit Minz, P.W.4 Rashmi Kant Pandey, Constable No.345 were members of the raiding party and they have not disclosed about any specific role of the appellant in the alleged offences, for which he has been convicted. Learned counsel further submits that P.W.5 Dr. Vijay Kumar Pandit has conducted an autopsy on the unknown extremist, P.W.6 Suman Bhagat is the partial Investigating Officer, P.W.8 S.I. Anil Kumar Sharma is also a member of raiding party, P.W.9 S.I. Bhairo Minjhi is another I.O. of this case and P.W.10 Ramta Prasad Singh is the second I.O. of this case, who has submitted charge-sheet against all four accused persons continuing the investigation against other co-accused persons. It is further submitted that the documentary evidence adduced by the prosecution does not support any recovery of firearm from the conscious possession of the present appellant. Therefore, there is no iota of evidence showing the involvement of the present appellant in commission of murder of the deceased police personnel or theft of rifle from him. He was also not found in possession of firearm and has not been alleged by any of the witnesses that he was involved in any other activities attracting the offences for which FIR was registered. The appellant has already been acquitted from the charges under sections 120-B, 121, 121A, 122 and 414 of IPC and sections 25(1-

B)a, 26/27/35 of Arms Act and sections 10/13/20 of UAP Act. The learned trial court has clearly held that there was no iota of evidence to prove that the accused persons were members of a banned organization and acquitted thereunder. Similarly, the appellant has also been acquitted from the charges under section 17 of CLA Act and Sections 3/4/5 of Explosive Substance Act, It is further submitted that when the appellant was not found to be a member of MCC (banned Organization), then how he can be said that he was a member of unlawful assembly and in prosecution thereof, he was found present at the place of occurrence. Therefore, mere presence of the appellant at the place of occurrence on next day of morning does not attract the provision of Section 149 of IPC in the given facts and circumstances of the case to saddle him with liability of murder and attempt to murder of the police personnels in this case. Learned trial court has misconceived itself while appreciating and evaluating the evidence of the witnesses particularly in view of the fact that appellant has been acquitted from major charges. Therefore, conviction and sentence of appellant for the offence under sections 302/149, 307/149, 379/149 and 353 of IPC is wholly unwarranted and beyond the weight of evidence available on record. As such, the impugned judgment and order of conviction and sentence

of the appellant is liable to be set aside and this appeal may be allowed.

Submission on behalf of the State

10. On the other hand, learned P.P. as well as learned A.P.P. for the State have vehemently opposed the aforesaid contentions raised on behalf of the appellant and submitted that admittedly the appellant has confessed that he was a member of the extremist organization and providing shelter and also propagating through banners of the Maoists and supplying them explosive cane bombs and other materials. It is further submitted that the appellant was arrested on the spot with incriminating articles therefore, learned trial court has very wisely and aptly held the appellant guilty with aid of section 149 of IPC, hence, there is no illegality or infirmity in the impugned judgment and order of conviction and sentence of the appellant calling for any interference by way of this appeal, which has no merits and fit to be dismissed.

Analysis, Decision and Reasons

11. We have gone through the record of the case along with impugned judgment and order in the light of respective contentions raised on behalf of both side.

12. The only point for consideration in this appeal emerges “as to whether the impugned judgment and order of the conviction

and sentence of the appellant suffers from any serious error of law calling for any interference in this appeal?

13. For better appreciation of the case, we have to apprise with the evidence adduced by the prosecution.

P.W.3-Ranjit Minz is the informant of this case. According to his evidence, occurrence is of 26.09.2010 to 27.09.2010, he was conducting operation "Black Thunder" against MCC extremists under the leadership of ASP, Shambhu Kumar. He further states that total 8 groups of raiding party in the Saranda Forest were constituted inclusive of police personnels, Kobra force and Jharkhand Jaguar Forces. He has proved the contents of his written report and further submitted that in the course of raid from Raurkela to Saranda forest area including the village Thalkobad and Tirilposi hillock and forest area, the encounter took place between the police personnels and the extremists, who were arranging a training camp to spread the terrorist activities in the area. He further deposed that after pacifying the firing, a search was conducted on 27.09.2010, meanwhile the dead body of Kobra Jawan, Jaipal Singh was found and INSAS rifle and cartridges were stolen by the extremists. He further deposed that a .303 Rifle was found nearby the dead body of Kobra Jawan and from where, two extremists making retreat were also

apprehended and from whose possession, Motorola wireless set and photo albums were recovered and from another apprehended person, explosive substances etc. were recovered. The apprehended persons disclosed their name as Dursona Bodra and Soma Tarkot. A dead body of naxalite was also found and they also found rice, pulses, rations, utensils, mobile sets, Naxal uniform and two cane bombs etc. which were also seized and seizure list was prepared and marked as Ext.1. He has recorded confessional statement of the apprehended accused persons marked as Ext.2 and 2/1 respectively and also prepared written self-statement marked as Ext.3 at the place of occurrence.

In his cross-examination, this witness admits that in his written report (Ext.3), it is not mentioned that the extremists were calling name of accused persons Dursona Bodra and Soma Tarkot. He also admits that the apprehended accused persons were not arrested from the place of training camp of the Maoists. He has also failed to assert that from which direction apprehended accused persons fled away. He has also failed to state as to which articles were seized from which of the apprehended accused persons.

P.W.1-Subodh Kumar Yadav is also a member of raiding party. According to his evidence, he was officer-in-

charge of Manjhgaon P.S. and selected under team for “Black Thunder” Operation. He further deposed that as per direction of ASP on 24.09.2010 at about 9:30 pm, his team entered in Saranda Forest area from Raurkela side searching the possible training camp of Maoists. They reached in middle of Tirilposhi and Thalkobad on 26.09.2010 at about 12:00 noon, when they were at a distance of 6 kms from Tirilposhi, the Maoists started firing. The police party under his team also in his defence started firing. When the operation ended due to stoppage of firing from both sides, they started searching the place and found one Kobra Jawan, Jaipal Singh died by firing of Maoists. Two extremists were also apprehended namely Dorsana Bodra and Soma Tarkot and both were resident of Tirilposhi. He has also corroborated the recovery of some explosive articles, 50 meters electric wire, 1 kg iron pebbles, Motorola wireless set etc. The apprehended accused persons also disclosed that they were working for extremist from a long time and providing assistance by supplying ration, fixing poster and card and distributing posters, making cane bombs, fixing land mines etc. This witness has also supported that INSAS rifle of Jawan Jaipal Singh was also stolen by extremists. The dead body of one extremist was also found along with rifle of .303 loaded with five cartridges in magazine. Apart from the above, some

posters, banners, two cane bombs and eight empty containers were also recovered and seized.

P.W.2-Mithlesh Tiwari is also a member of raiding party and was working as constable in Manoharpur P.S. He has also supported the factum of the firing from extremists as well as counter firing of police. He has also stated that one Kobra Jawan, Jaipal Singh died in the said operation. He further deposed that two miscreants were apprehended and have disclosed their name Dursona Bodra and Soma Tarkot and one dead body of extremist was also found with .303 rifle. He has also supported the recovery of mobile, 50 meters wire, Motorola set and explosive substance and cane bomb. The apprehended persons have confessed that they were supplying ration, explosive substance, fixing banners and land mines. He has stated that the seizure list was not prepared in his presence.

P.W.4-Rashmi Kant Pandey was also posted as constable in Manoharpur P.S. According to his evidence, the firing started at 12 noon and continued till the whole night between the police personnels and extremists. In the next day morning, after end of firing from both sides, a search was started then two extremists were apprehended and disclosed their name as Dursona Bodra and Soma Tarkot and from their

possession a Motorola wireless set and pebbles of iron, 50 meters wire explosive substance and 6-7 kg pebbles of iron were recovered. He further deposed that the food articles were also found from the camp of extremists along with explosive substances, one cane bomb, 8 empty canes. The dead body of Kobra Jawan and one extremist were also found. The seizure list was prepared by the police and the dead bodies were sent for postmortem.

In his cross-examination, he categorically admits that he cannot say as to whether seized articles were seized at the place of occurrence or not?

P.W. 5-Dr. Bijay Kumar Pandit has conducted autopsy on unknown male aged about 20/24 years as per inquest report and found following ante-mortem injuries:-

External Injuries: Fire armed wound 6 in number

- (i) On the chest an anterior wall on left side just lateral to sternum to away in third intercasted space. Size $\frac{1}{2}$ " diameter Margin inverted and blackish colour
- (ii) On the anterior chest wall on the left side just lateral to sternum 4" away in fourth intercasted space. Size $\frac{1}{2}$ " margins inverted and blackish in colour.

(iii) on the anterior abdominal wall just lateral to and above the umbilicus on left side ½" in margin inverted and black in colour.

(iv) on the upper half of back of left side 3" lateral to T-one vertebra. Size 1-1/2" diameter margin ragged and inverted.

(v) On upper half of the back in left side 2" away on T 4 vertebra size 1-1/2" diameter margin ragged and inverted

(vi) On the upper half of back left side between lower angle of scapula and vertebra. Size 1-1/2" diameter margin inverted and ragged.

Internal injuries:

C.N.S: Normal. NAD normal chest left. Lungs lacerated and collapsed. There is blood clot in side chest Cavity heart empty. Abdomen: empty. Spleen ruptured. Diaphragm: ruptured. Intestine: ruptured. Stomach: intact but empty.

Time since death: more than 12 hours but within 48 hours, as rigor mortis present in both upper and lower limb receding stage.

Cause of death: Hemorrhage and shocked. Injuries over caused by fire arm.

The post-mortem report marked Ext.4.

P.W.7-Laxmi Mahto is the Home Guard and he has simply proved the signature on inquest report.

P.W.8.-Anil Kumar Sharma is the member of raiding party. He has started raiding against Maoists in Saranda Forest on 24.09.2010 to 26.09.2010. He further deposed that the indiscriminate started firing between both sides in which one Kobra Jawan, Jaipal Singh got bullet injuries and died and one of the Maoists also died in the police firing. He further deposed that two accused persons were apprehended and disclosed their name as Dursona Bodra and Soma Tarkot and both are resident of Tirilposhi and they were searched by S.I. Chakravarty Ram and he has also corroborated the recovery from the accused, Dursona Bodra, a Motorola wireless set and photo album and from Soma Tarkot, 50 meters electric wire, pencil torch battery, pebble of iron, sabbal of iron, mobile set etc.

In his cross-examination, he has admits that recovered articles were not sealed in his presence.

P.W.9-Bhairo Manjhi is the first Investigating Officer of this case. According to his evidence on 27.09.2010, he was posted as S.I. at Jaraikella P.S. and on the basis of written report of Ranjit Minz , Officer-in-Charge, Manoharpur, he

received charge of investigation of Jaraikella P.S. Case No.8 of 2010. In course of investigation, he has recorded the restatement of the informant and other witnesses namely Mithlesh Tiwari and Rashmi Kant Pandey and visited the place of occurrence situated at about 40 kms away from the place of occurrence situated at Tirilposhi and Thalkobad. This place is 4 km away from Tirilposhi in between the forest and mountain and the road has been constructed by forest department to connect Tirilposhi and Thalkobad. At that place, Maoists started firing indiscriminately over the police forces in which CRPF Kobra Jawan, Jaipal Singh died. During search, the rifle of .303 was recovered from the place of occurrence. At the place of occurrence, Maoists were given training to extremists. The police team had destroyed the camp. He further deposed that towards north place of occurrence mountain and dense forest is situated and in south of the place of occurrence mountain and forest situated in the east side, village road and mountain is situated and in west side of place of occurrence mountain forest and after 4 km of that place village Tirilposhi is situated. The place of occurrence is situated in a place which is not easily approachable so that Maoists have chosen for imparting training to their comrades. He has recorded the statement of Anil Kumar Sharma and

Subodh Kumar Yadav and has also sent the arrested accused persons to jail and received post-mortem report of unknown extremist. He has also received original case diary, which was in the writing of S.I. Suman Bhagat, Sadar Police Station and prayed for remand of accused Nala Bhikshapati from Bandgaon P.S. Case No.27 of 2010 dated 09.10.2010. Thereafter, he has submitted the charge-sheet against the accused persons Dursona Bodra and Soma Tarkot for the offence under sections 147, 148, 1479, 307, 302, 353, 121, 121-A, 120B, 379 and 414 of IPC and under Sections 25(1-B)a, 26, 27, 35 of Arms Act and section 17 of CLA Act and Sections 3, 4, 5 of Explosive Substance Act and Sections 10, 13 and 16B of UAP Act. Keeping the investigation continued against other accused persons, he submitted the charge-sheet against accused Nala Bhikshapati for the aforesaid offences. He also received post-mortem report of police Jaipal Singh from Ranchi. Thereafter, by the order of S.P., he handed over the charge of investigation to inspector Ramta Prasad Singh.

P.W.6-Suman Bhagat has also conducted partial investigation in this case. According to his evidence, he has prepared inquest report of the dead body of the unknown extremist. Thereafter he was transferred and further charge of investigation was handed over to O/C Ranjit Minz.

P.W.10-Ramta Prasad Singh is another I.O. of this case. According to his evidence on 28.07.2011, he was posted as police inspector in Manoharpur circle and by the order of S.P., he received of charge of investigation of the case. In the course of investigation, one accused, Muslim Ansari was died in police encounter and he has submitted charge-sheet against accused Marshal Bhuiyan continuing the investigation against other co-accused persons.

In his cross-examination, he admits that he has not conducted substantial part of the investigation of the case and he also not recorded the statement of any of witnesses and none of the accused has been arrested by him.

14. The defence of accused persons is denial from the occurrence and false implication only on the basis of suspicion being the local villager. However, no oral or documentary evidence has been adduced by the defence.
15. It appears that the learned trial court after considering the aforesaid evidence available on record has acquitted three accused persons namely Nala Bhikshapati, Dursona Bodera and Marshal Bhuiyan. Till conclusion of trial, no other accused persons, whose name has been disclosed in the FIR as notorious Maoists has been arrested nor any charge-sheet was submitted against them although the investigation was

continued. Learned trial court has not found the present appellant guilty for the offences under sections 17 of CLA Act as well as sections 10/13/20 of UAP Act and he was not found a member of Maoist/Extremist. He has also been acquitted from the charges under sections 120-B, 121, 121A, 122 and 414 of IPC and sections 3/4/5 of Explosive Substance Act. It further appears that the learned trial court has found no evidence against the accused, Nalla Bhikshapati, who was remanded in this case on the basis of confessional statement and no material was found against him. Similarly, from the accused, Dursona Bodra, no incriminating articles alleged to be recovered has been produced before the court during trial, hence, it was held that it cannot be said that the accused Dursona Bodra has any link with the Maoists. So the theory of police that he was active member of MCC extremists and was helping them in providing food, fixing land mines, manufacturing cane bombs etc. cannot be accepted.

16. Learned trial court distinguished the case of the present appellant, Soma Tarkot on the ground that he was arrested along with explosive substance and other materials, which clearly establishes that he was in training camp. Learned trial court has also held that the present appellant was a member of unlawful assembly and has acted in furtherance of common

object of the said assembly of Maoists which was assembled for imparting training.

17. We have considered the very basis for conviction of the appellant with the aid of section 149 of IPC and twin grounds that he was found in possession of explosive substance and another that he was a member of unlawful assembly along with other accused persons.

Both the above grounds cannot be made the basis for conviction of the appellant in view of the fact that the appellant has been acquitted from the charge under sections 3/4/5 of Explosive Substance Act. So far being member of unlawful assembly is concerned, in the FIR itself there were 25 named accused persons and allegedly disclosing the name of each other. The witnesses of raiding party examined in this case have not whispered that the accused persons were taking the name of each other and also denied in their cross-examination that the member of Maoists, who were indulged in firing, were taking the name of each other, then what was the basis before the learned trial court to held that the present appellant was a member of unlawful assembly and has acted in prosecution of the common object of the said assembly. Admittedly, the present appellant along with other co-accused, Dursona Bodra were arrested at a distance of 4 kms from the

actual place of occurrence, where the camp was going on as per evidence of the first Investigating Officer. The appellant is also a local resident of Tirilposhi and he was not found in possession of any firearm and none of the witnesses have been able to attribute any specific overt act against the present appellant except his presence and recovery of some of the articles, which were not brought on record during trial of the case. Therefore, distinguishing features relied upon by the learned trial court in between the appellant and other co-accused Dursona Bodra, who has been acquitted, has no reasonable nexus. While acquitting the another co-accused, Dursona Bodra, learned trial court has observed at para 28 of the judgment as under

“ Now a days this fact is not a secret that the villagers of Naxal affected belt specially in Jharkhand is being forced by the extremists to help them. If, they did not help them, then they have been tortured by the extremists. It may be possible that Dursona Bodra was taken by the extremists for helping them. Because if, he was taking training from Maoists then certainly he might be in the possession of some arms but no such type arms or ammunition has been recovered from the possession of the Dursona Bodra. Therefore, how it can be said that he was the member of that training camp and he had animus passendi to attack on the police force.”

18. We further find that the said criteria is also applicable against the present appellant because he has been acquitted from the charges under sections 3, 4 and 5 of Explosive Substance Act and he was not found planting any area under cane bombs or involved in manufacturing bombs or other arms or ammunitions to supply the Maoists. None of the seized materials from his possession has been produced before the court during trial.

19. In the above facts and circumstances and the evidence available against the appellant, we are constrained to hold that learned trial court has committed serious error of law while appreciating the evidence available on record against the present appellant and distinguishing the case of the appellant from other apprehended accused, Dusona Bodra. There are no iota of evidence at all showing that the present appellant was a member of unlawful assembly along with other named accused persons against whom charge-sheet has not been submitted up till now. It is also not proved that the appellant was belonging to any extremist organization i.e. MCC, therefore, we find that the appellant is absolutely innocent and his conviction and sentence is based upon conjecture and surmises alone and without any concrete evidence.

20. In view of the above, we are constrained to set aside the conviction and sentence of the appellant passed by the learned trial court for the charges under sections 302/149, 307/149, 353/149, 379/149 and 148 of Indian Penal Code, which is hereby set aside and this appeal is allowed.
21. The appellant is in custody, therefore, he is directed to be released forthwith, if not, wanted in any other case.
22. Pending I.A(s), if any, is also disposed of accordingly.
23. Let a copy of this judgment be sent back to the concerned trial court through FAX/Email for information and needful.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, at Ranchi

Date: 25 / 03/2026

Pappu/- N.A.F.R.