2025:CGHC:8264-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 825 of 2024

1 - Kawasi Joga @ Pada Aged About Years, S/o Kawasi Koya, Caste- Madiya, R/o Andalpara, Chandameta, Police Station- Darbha, District- Bastar, C.G.

(Age Not Mentioned In The Judgment)

2 - Dayaram Baghel @ Ramesh Anna Aged About Years, S/o Mangturam Baghel, R/o Village Kuma Koleng Bodawada, Police Station- Tongpal, District- Sukma, C.G. (Age Not Mentioned In The Judgment)

3 - Maniram Korram @ Boti Aged About Years, S/o Chalki, Caste- Madiya, R/o Chandameta, Police Station- Darbha, District- Bastar, C.G. (Age Not Mentioned In The Judgment)

4 - Mahadev Nag Aged about 30 years, S/o Koya Nag, R/o Patelpara, Kandanar, Police Station- Darbha, District- Bastar, C.G.

... Appellants

versus

Union Of India Through The Director General, National Investigation Agency, C.G.O. Complex, Lodhi Road, New Delhi.

... Respondent

For Appellants	:	Ms. Fouzia Mirza, Senior Advocate assisted by Mr. Navin Shukla and Ms. Smita Jha, Advocates.
For Respondent/ Union of India	:	Mr. B.Gopa Kumar, Mr. Himanshu Pandey and Mr. Abhishek Gupta, Advocates.
Date of Hearing	:	14.01.2025
Date of Judgment	:	18.02.2025

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Ravindra Kumar Agrawal, Judge

C.A.V. Judgment

Per Ramesh Sinha, Chief Justice

1. The appellants have preferred this appeal under 21(1) of the National Investigation Agency Act, 2008 (for short, the NIA) questioning the judgment dated 12.02.2024 passed by the learned Special Judge (NIA Act/Scheduled Offence) Bastar, Jagdalpur, in Special Sessions Trial No. 4/2016, whereby the appellants have been convicted and sentenced as under:

Conviction Under Section	**Sentence**
302 of the Indian Penal Code (*for short, the IPC*)	Life imprisonment and fine of Rs. 2000/-. In default, 3 months Rigorous imprisonment (*for short, the RI*) more
307 of the IPC	RI for 7 years with fine of Rs. 1000/-. In default, 2 months RI more.
120-B of the IPC	Life imprisonment with fine of Rs. 2000/-. In default, 3 months RI more.
25(1)(1-B)(A) of the Arms Act, 1959 (*for short, the Arms Act*)	Imprisonment for 1 year and fine of Rs. 500/-. In default, 15 days imprisonment more.
27 of the Arms Act	Imprisonment for 3 years with fine of Rs. 700/-. In default 1 month imprisonment.
3 of Explosive Substances Act (*for short, the ESA*)	Life imprisonment with fine of Rs. 2000/-. In default, 3 months RI more.
4 of the ESA	Life imprisonment with fine of Rs. 2000/-. In default, 3 months RI more.
16 of the Unlawful Activities (Prevention) Act, 1967 (*for short, the*	Life imprisonment with fine of Rs. 2000/-. In default, 3 months RI more.
UAPA)	
18 of the UAPA	Imprisonment for 5 years with fine of Rs. 700/-. In default, 1 month imprisonment more

20 of the UAPA	Imprisonment for 10 years with fine of Rs. 1000/-. In default, 2 months imprisonment more.
23 of the UAPA	Imprisonment for 5 years with fine of Rs. 700/-. In default, 1 month imprisonment more.
38(2) of the UAPA	Imprisonment for 5 years with fine of Rs. 700/-. In default, 1 month imprisonment more.

2. The appellants were charged for the offences under Sections 302, 307, 120B of the IPC, Section 25 (1)(1-B) (A), 27 of the Arms Act, Section 3, 4 Explosive Substances Act and Section 16, 18, 20, 23, 38(2) of the UAPA.

3. The prosecution case in brief is that on 11.03.2014, near Tahakwara on National Highway 30, a road opening party comprising 30 personnel of 'F' Company of 80th Battalion Central Reserve Police Force (for short, the CRPF) and 13 police personnel posted at Tongpal Police Station of District Police was to be deployed to provide security to the workers engaged in road construction. The Road Opening Party (*for short, the ROP*) left from Police Station, Tongpal in 03 Sections at 09:00 a.m. When first section reached near Village Tahakwara, about 04 Km from Police Station Tongpal towards Darbha, at about 10.30 a.m., armed Maoist cadres of Darbha Division led by Surendra, Deva, Vinod, Sonadhar ambushed the ROP. Firing continued for about one hour. Due to firing and IED explosion 15 security personnel (11 CRPF and 04 State Police personnel) of the Force died and 03 other personnel were seriously injured. A local civilian passing by also got killed. The Maoists looted the arms and belongings of the dead and injured personnel, which included 6 AK-47 rifles, including 3 Under Barrel Grenade Launcher (UBGL) were also installed, one Insas LMG, 8- Insas and 2 SLR and bullets were included, after looting the weapons the Maoists fled in the forests on both

sides. On the written complaint of Head Constable Ramcharan Thakur, a crime was registered against Sonadhar, Shankar,

Sanna, Surendra, Ganesh Uike, Raghu, Sukhram, Vinod, Sumitra, Deva, Pooja, Jamili, Masa, Naresh, Anil, Hidme, Deve, Lucky, Jogi, Budhram and about 150 to 200 Maoists. Thereafter, as per order number F.No. 11011/17/2014-IS-IV dated 21.03.2014 issued by Home Department of

Government of India, the case was handed over to National Investigation Agency, New Delhi for conducting a complete and detailed investigation of the case and submitting the final report. On this, National Investigation Agency, New Delhi re-registered the case as RC No. 1/2014/NIA Delhi on 28.03.2014 and started investigation against the said accused and presented a charge-sheet before Special Court NIA Act, Bilaspur for their absconding. As per National Investigation Agency, Ministry of Home Affairs, New Delhi's letter No. 104 / Legal / Special Court /Judge / NIA/ CG01 / 20709 dated 07.12.2015 and Office Order No. 1819/2015, on the recommendation of the Registrar General, Chhattisgarh High Court's letter No. 7977/3-06-03/2010 dated 05.10.2015, Gazette Notification No. 17011/50/2009 IS-(04) dated 24.11.2015, the learned trial Court was notified as Special Court under Section 11(1) and (3) of the NIA, a Special Judge was appointed for Civil Districts North Bastar, Kanker, Bastar, Jagdalpur, South Bastar, Dantewada and Kondagaon.

4. Charges were framed by the learned trial Court against the appellants/accused under Sections 302, 307, 120B IPC, Section- 25 (1) (1B) (a), 27 of the Arms Act, Section 3,4 of the ESA and Section 16, 18, 20, 23, 38 (2) of the UAPA. The accused denied the charges and prayed

for trial.

5. In order to bring home the offence, the prosecution examined the witnesses namely Ramcharan Thakur, Head Constable (PW-1), Ajit Rampal, Assistant Sub-Inspector (PW-2), Rohit Prakash Bhagwat, Constable (PW-3), Phulsingh Kanwar, Constable No. 898 (PW-4), Shantanu Das, Constable (PW-5), Vinod Toppo, Constable No. 1071 (PW-6), Mahesh Kumar Dhruv, Constable No. 1017 (PW-7), Dinesh Baghel, Constable No. 978 (PW-8), Suresh Kumar Narang, Constable No. 219 (PW-9), Ajay Kumar Ekka, Constable No. 925 (PW-10), Ashesh Gunwantrao, (PW-11), Aasman Manjhi, Head Constable (PW-12), Govind Jangle, Constable (PW-13), Dr. Pawan Tekade, Professor (PW14), Avinash Singh, Inspector (PW-15), Dr. Kiran Patil, Associate Professor (PW-16), G.S.Sahu, Joint Director (PW-17), Shivkumar Salam, Patwari (PW-18), Nathusingh Tomar, Retired Deputy Director, Horticulture (PW-19), Santosh Jain (PW-20), Ankul Gupta, Orthopaedics Surgeon (PW-21), Dr. B. Suri Babu, Joint Director (PW-22), Khilanand Sahu, Constable No. 041733278 (PW-23), Dr. Omprakash Dubey, Medico Legal Officer (PW-24), Brijesh Kumar Singh, Inspector (PW-25), Muktanand Khute, District Programme Officer (PW-26), Mukesh Kumar Dewangan, Naib Tehsildar (PW-27), Amit Kumar Shrivastava, Tehsildar (PW-28), Ramnath Singh Parihar, Assistant Sub-Inspector (PW-29), Jagat Singh, Assistant Sub-Inspector (PW-30), Rakinder Singh, Constable (PW-31), B.S. Bhai, Assistant Sub-Inspector (PW-32), B.P. Joshi, Sub-Inspector (PW-33), Barse Balram, Constable Number 95 (PW-34), Munnaram, Constable Number 372 (PW-35), Bhimsen Baghel, Constable Number 965 (PW-36), Fulchand Baghel, Constable Number 934 (PW-37), Mehtu Markam, Constable Number 846 (PW-38), Anthras Ekka, Constable Number-23 (PW-39), Ramchandra, Constable Number179 (PW-40), Manilal Thakur, Constable Number-237 (PW-41), Mahadev Vetti

(PW-42), Ashok Sakia, constable (PW-43), Ramu (P-44), Bucha Ram (PW-45), Devaram Markam (PW-46), Madkami Jitendra
(PW-47), Chule Podiami (PW-48), Hemla Raju, Constable No. 786 (PW49), Mogra Ram Nag, Teacher (PW-50), Lakhmu Maurya (PW-51),
Deuram Nag (PW-52), Sanjay Potam alias Badru, Inspector (PW-53),
Hirma Kawasi (PW-54), Punem Sanna, Assistant Constable No. 90 (PW55), Sannu Potam, Head Constable No. 118 (PW-56), Kosa Kunjam,
Assistant Sub-Inspector (PW-57), Rajesh Maurya, Constable No. 266
(PW-58), Dhenwaram Nag (PW-59), Budra Vetti, Constable No. 30 (PW59). 60), Chaitram Salam, Constable No. 908 (PW-61), Sunil Toppo, Constable No. 1180 (PW-62), Lakhan Patel, Additional Superintendent of Police (PW-63), Sushanto Banerjee, Inspector (PW-64), Keshav
Narayan Aditya, Inspector (PW-65), Durgesh Sharma, Inspector (PW66), Aseem Shrivastava, Voluntarily Retired IPS (PW-67),
Chandshekhar Singh, Inspector in Charge (PW-68), Rajiv Kumar, SubInspector (PW-69), Sudhanshu Singh, Deputy Commandant (PW-70),
N.S. Bisht, Deputy Secretary, Government of India, Ministry of Education
(PW-71), Shailendra Singh Mandavi, Assistant Grade- 02 (PW-72) and
Manoj Singh Tomar, Constable No. 991370292 (PW 73) and exhibited 114 exhibits in support of their case.

6. The statement of the accused under section 313 CrPC were recorded wherein they stated that they were innocent and had been falsely
implicated in this case. In their defence, they got the spot map as well as the police statement made by Kawadi Hidma @ Irma Kunjam Kosa and Budra Vetti @ Budra Madkami exhibited as Exhibits D/1, D/1, D/2 and
D/3, respectively.

7. The learned Special Judge, after considering the evidence on record, convicted the appellants/accused as detailed in the opening paragraph

of this judgment. Hence, the present appeal by the appellants/convicts.

8. Ms. Fouzia Mirza, learned Senior Advocate appearing for the appellants/convicts would submit that the appellants are poor tribal people who have been falsely implicated in this case. At the instance of the appellants/ accused Mahadev and Kawasi Joga from their disclosure memo no incriminating material has been recovered. Neither any explosive substances nor any arms have been seized from the possession of the accused/appellants for sustaining the conviction under Section 25(1)(1B)(a), 27 of Arms Act and Section 4 of the ESA. The weapon and the explosive materials that has been seized from the possession of accused Mahadev Nag pertains to Crime No. 64/2014 registered at Police Station Darbha Bastar (Exhibit -P/97 to P/102) for which the judgment in Session Case No. 106/2014 has been delivered on 05.03.2015 (Exhibit P/103). Similarly from the possession of Maniram Korram the articles and the explosive materials and weapon has been seized in Crime Mo. 35/2014 at Police Station Darbha Bastar (Exhibit P/104 to P/109). The evidences which have been collected in Crime No. 64/2014 and 35/2014 pertains to a different crime number and a separate trial has been conducted and which has been proved by PW-66 Durgesh Sharma and the prosecution cannot rely on the very same set of circumstances for convicting the appellants in the present case.

9. It is further submitted by Ms. Mirza, that the prosecution witnesses No. PW-1 Ramcharan Thakur, PW-25 Brijesh Kumar Singh, PW-29 Ramnath Singh Parihar, PW-30 Jagat Singh, PW-31 Rakinder Singh, PW-32 B.S.Bhai, PW-34 Barse Balram, PW-35 Munnaram, PW-37 Phoolchand Baghel, PW-38 Mehturam Markam, PW-39 Enthress Ekka, PW-40 Ramchandra,

PW-41 Manilal Thakur, PW-42 Mahadev Vetty, PW-43 Ashok, PW-62 Sunil Toppo, PW-73 Manoj Singh Tomar are all

the police personals who were the part of the police party on which the Naxalites had fired by creating ambush. None of the witnesses stated to have identified the appellants to be the member of the Naxalite Team who has fired at the police personnel. PW-19 Nathu Ram Tomar and PW-20 Santosh Jain who are the witness of disclosure memo (Exhibit P/68) by Mahdev Nag and point out memo (Exhibit P/69) and the spot map (Exhibit P/66) have stated that the appellant Mahdev Nag was narrating the memo in Godi Language and similarly PW-26 Muktanand Khunte who is the witness of disclosure memo (Exhibit-P/73) by Kawasi Joga and point out memo (Exhibit-P/74) and the spot map (Exhibit P/75) have stated that the appellant Kawasi Joga was narrating the memo in Gondi language and there was translator who was translating the disclosure memorandum in Hindi, which was being noted by the translator and the NIA personnel. The translator perhaps was from Darbha Police (as per PW-26) and the translator had not been examined by the prosecution. Ramu (PW-44), Bucharam (PW-45) and Devaram Markam (PW-46) have identified appellant Mahadev Nag and appellant Maniram to be present at meeting of Naxalite and who have stated that the Naxalite used to threaten persons who do not help them and he has stated that on being threatened people used to go with Naxalite. Hemla Raju (PW-49) was earlier Naxalite and have later surrendered and have not supported the case of prosecution. Ramchandra (PW-40) and Mongraram (PW-50) earlier used to work for Naxalite people and have later surrendered have identified the accused /appellants to be coming with Naxalite people to the village but have also stated that the people out of fear used to work for Naxalite further extra judicial confession before them is not admissible. Lakhmu Mourya (PW-51) used to prepare food for Naxalites and have not identified the appellants though has seen the incident from

distance Deuram Nag (PW-52) used to prepare food for Naxalite and have stated that the appellants were Villagers. Hidma Kawasi (PW-54) had surrendered after the incident of Village Tahakwada and have stated to have seen the appellants in the meeting. Poonam Sanna (PW-55) and Sannu Potam (PW-56) are working in Police Department after surrendering and have said that he has seen the appellants with the Naxalite people. Kosa Kunjam (PW-57) who was

earlier Naxalite and have later joined the police force have stated that the Naxalite were possession of arms. Budra Vetty (PW-60) have identified the appellants, he was also earlier a Naxalite and have later surrendered have identified appellant after surrendering and joining police force. Chaitram Salam (PW-61) was also a Naxalite and have surrendered and have identified appellant Kawasi Joga PW-69 Rajeev Kumar was SubInspector at NIA Lucknow have deposed that the disclosure memo given by Mahadev Nag has been translated by a translator who has not been examined. No valid and proper sanction has been granted for

prosecution of the accused/ appellants and the sanction order Exhibit P/113 dated 27.08.2015 (Page No. 675), shows that the relevant

material have not been placed before the Authorities and the order does not show the application of mind by the Authority for granting sanction (Exhibit P/114), the sanction granted by the District Magistrate Sukma dated 18.09.2015 for prosecuting the appellants/accused under Sections 25, 27 of Arms Act and Section 3, 4 of ESA shows that sufficient materials have not been placed before the sanctioning authority and the sanction order is not valid and proper as no due application of mind is seen, which is evident from the deposition of N.S. Bisht (PW-71) Deputy Secretary Government of India. Lastly, Ms. Mirza would submit that the extra judicial confession made before the witnesses who were earlier Naxalite and have later join the police force is not

admissible for convicting the accused/appellants. In support of her contentions, with regard to grant of sanction, she relies on the decision of the Apex court in ***Adambhai Sulemanbhai Ajmeri & Others v. State of Gujarat*** {(2014) 7 SCC 716} and ***Seeni Nainar Mohammed v. State, Rep. By Deputy Superintendent of Police*** {AIR 2017 SC 3035}, with regard to the ratio that evidence of one case cannot be appreciated in another, reliance has been placed on the decisions of the Supreme Court in ***Rakesh Rai v. State of Sikkim*** {Cr.A. No. 172/2018, decided on 09.12.2021} and with regard to the issue of extra judicial confession, she relies on a recent decision of the Hon'ble Supreme Court in ***Goverdhan v. State of Chhattisgarh*** {Cr.A. No. 116/2011, decided on 09.01.2025} and the decisions of the Apex Court in ***Kalinga @ Kushal v. State of Karnataka*** {(2024) 4 SCC 735}, ***Subramanya v. State of Karnataka*** {(2023) 11 SCC 255}, ***Pradeep Kumar v. State of Chhattisgarh*** {(2023) 5 SCC 350}, ***Sunil Rai @ Pauya & Others v. Union Territory, Chandigarh*** {(2011 12 SCC 258}, ***Dwarkadas Gehanmal v. State of Gujarat*** {(1999) 1 SCC 57}, ***Tarseem Kumar v. Delhi Administration*** {(1994) Supp 3 SCC 367}, ***Sonia Bahera v. State of Orissa*** {1983 (2) SCC 327}.

10. On the other hand, Mr. B. Gopa Kumar, learned counsel appearing for the Union of India/respondent would submit that the learned trial Court, after hearing the parties and after considering the materials available on record, has rightly convicted and sentenced the appellants as aforesaid which deserves no interference. It is a case of merciless killing by the Maoists of the security personnel including the CRPF and State Police and one innocent civilian has also been killed by the naxalites. Hence, this appeal deserves to be dismissed at the threshold. The prosecution has fully established that it was the appellants who had committed the crime in question. Minor variations in the

deposition of the witnesses cannot shake the credibility of the statement of the witnesses. The medical evidence clearly supports the case of the prosecution. In an offence of the present nature, where more than 200 Maoists had conducted IED explosions and fired gunshots indiscriminately, the evidence that prosecution can collect is basically circumstantial and in such a commotion, the first priority is to save the live of oneself and then to eliminate the imminent threat that is in the form of indiscriminate firing and explosions being done by the Naxalites. Hence, the evidence collected by the prosecution is sufficient to hold the appellants guilty of the offences. The judgment of conviction and sentence awarded by the learned trial Court being just and proper, needs no interference.

11. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

12. It is an undisputed fact that the present is a case where the police personnel of the State as well as Centre were ambushed by around 150200 Maoists in which 15 security personnel and one civilian lost his life and three of the other security personnel were severely injured. The death of those persons was homicidal in nature is evident from postmortem reports (Exhibit P/29, P/30, P/31, P/32, P/34, P/35 to P/45) and the evidence of the Doctors namely Dr. Kiran Patil (PW-16) and Dr Pawan Tekade (PW-14) who had conducted the postmortem. The said fact has not even been disputed by the learned Senior Advocate

appearing for the appellants/ convicts. It is also the contention of the learned Senior Advocate that 21 accused were named in the FIR but the name of the appellants/convicts do not find place in the FIR. Firstly, the FIR was registered by the State Police and thereafter, the FIR was reregistered by the NIA. It is

also not in dispute that some of the witnesses who are police personnel, were earlier the members of banned Naxal organization and under the re-settlement policy of the State Government,

the surrendered Naxalites were appointed as police personnel.

13. The main contention of the learned counsel for the appellants is that there is no direct evidence against the appellants herein that they were involved in the offence in question. The appellants are poor rustic villagers doing the agricultural work and they have been falsely

implicated in the present case. It is also the case of the appellants that when the case of the prosecution itself is that there were 150-200 Maoists, in ordinary course of action, it was not possible for the police personnel or the prosecution witnesses to remember each and every person and hence, the benefit of doubt ought to have been given to the appellants. The appellants have been falsely roped in this case on the basis of mere suspicion. There is no clear cut evidence against the

appellants and they have been made accused on the basis of

circumstantial evidence which is a weak kind of evidence. The injured witnesses have also not deposed anything against the appellants. The presence of the appellants at the place of incident is highly doubtful. The extra judicial confession made by the appellants before PW-40 and PW50 is also a weak nature of evidence which cannot be relied upon solely for maintaining the conviction.

14. Manilal Thakur (PW-41), Ashok Sakiya (PW-43) and Manoj Singh Tomar (PW-73) are the injured witnesses who have described as to the security personnel were ambushed and the manner in which the indiscriminate

firing and explosions were made.

15. Ramchandra, Constable No. 179 (PW-40) in his deposition before the

learned trial Court has stated that earlier, he was the Up-Sarpanch of his village and also used to run a grocery store. He stated that his house was situated in a dense forest and the Naxalites used to visit the said village. He has identified the appellant-Mahadev and Maniram @ Boti who also used to visit the village and threatened them that they should participate in the meetings held by Naxalites. Appellant-Mahadev had made extra judicial confession regarding participation in the ambush before this witness. Similarly, Mongra Ram Nag (PW-50) has stated that he knew the appellant-Maniram @ Boti. He was informed by appellant-Kawasi Joga that Mahadev and Boti had participated in the Naxal attack. This witness has also stated that he had supplied two packets of rice to the

house of Maniram Korram @ Boti.

16. The gist of the deposition of the prosecution witnesses Ramu (PW-44), Bucha Ram (PW-45), Deva Ram Markam (PW-46), is that the

appellants/convicts used to visit their village and threatened them to participate in the meetings and to join the Naxalite groups. Deuram Nag (PW-52) stated that he was taken by a person named Sonadhar to prepare food for the Naxalites among whom one of them was appellantMahadev. After the incident, those persons had informed him that after causing ambush, they had looted the arms and ammunition of the police. Hirma Kawasi (PW-54), Punem Sanna (PW-55), Sannu Potam (PW-56),

Kosa Kunjam (PW-60), Budra Vetti (PW-60), and Chaitram Salam (PW-61) are those police personnel who were earlier the members of the Naxalite groups and had surrendered. They have stated that the

appellants used to visit their villages and used to conduct meetings.

17. In the disclosure memo (Exhibit P/68) of appellant-Mahadev Nag, he has described as to how the incident had happened and how the ambush was

planned. Similarly, there is disclosure memo (Exhibit P/73) of appellant-Kawasi Joga. The appellant-Dayaram Baghel @ Ramesh Anna. The appellants have been identified by photographs (Exhibit P/81)

by Mukesh Kumar (PW-27) and Budhram Vetty (PW-60). Memorandum statement of appellant-Maniram Korram @ Boti (Exhibit P/106 states that after ambushing the security personnel, when he was trying to flee from the spot, the security personnel chased and caught him on the spot. .Arms, ammunition, empty cartridges, etc. have been recovered and

seized from the place of incident. The presence of the

accused/appellants with the Naxalites in the meetings have been proved

by Ramu (PW-44), Dewaram Markam (PW-46), Mongraram Nag (PW50), Deuram Nag (PW-52), Hirma Kawasi (PW-54), Sannu Potam (PW56), Budra Vetty (PW-60), Chaitram Salam (PW-61) who were the

former Naxalities who surrendered later.

18. With regard to involvement of the the appellants-Maniram Korram @ boti and Dayaram Baghel @ Ramesh Anna, Ramchandra (PW-40) and Mongraram Nag (PW-50) have stated that Maniram made extrajudicial confession in his presence. Further Ramu (PW-44), Devaram Markam have seen them alongwith the Naxalites and and Budra Vetty has

identified the accused from the photograph (Exhibit P/76 and P/81).

19. From collective reading of the deposition made by the witnesses namely Nathuram Tomar (PW-19), Muktanand Khunte (PW-26), Ramchandra (PW-40), Ramu (PW-44), Devaram Markam (PW-46), Hemla Raju (PW49), Lakhmu Maurya (PW-51), Hirma Kawasi (PW-54), Budra Vetti (PW60), Chaitram Salam (PW-61), the presence of the appellants and their involvement in the ambush is well established. The fact that the appellants are the member of banned organisation CPI(M), which is a terrorist organisation is also well established.

Many of the prosecution witnesses were earlier the members of the said banned organization and who later surrendered and joined the main stream of the society and as a

rehabilitation policy of the State, they have been appointed as Constables and serving the police force of the State.

20. In ***Ram Narayan Popli v. Central Bureau of Investigation*** {(2003) 3 SCC 641}, the Apex Court observed as under:

> *"342. It would be appropriate to deal with the question of conspiracy. Section 120B of IPC is the provision which provides for punishment for criminal conspiracy. Definition of criminal conspiracy' given in Section 120A reads as follows:*
>
> *"120A- When two or more persons agree to do or cause to be done.-*
>
> *(1) an illegal act, or*
>
> *(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*
>
> *Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof".*
>
> *The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement. or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the*

combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See: American Jurisprudence Vol. II Sec 23, p. 559). For an offence punishable under section 120-B, prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

343. No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

xxx xxx xxx

346. It was held that the expression "in reference to their common intention" in Section 10 is very comprehensive and it appears to have

been designedly used to give it a wider scope than the words "in furtherance of in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is a relevant fact only.

"...as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it". ..."In short, the section can be analysed as follows: (1) There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it, and (5) it can only be used against a co- conspirator and not in his favour." (AIR p. 687, para 8)

We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of a purpose in common between the conspirators. This Court in V.C. Shukla v. State (Delhi Admn.), [1980] 2 SCC 665 held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value,

should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

347. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.

348. The provisions of Section 120A and 120B, IPC have broughtthe law of conspiracy in India in line with the English Law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English Law on this matter is well settled. Russell on Crime (12 Edn.Vol.I, p.202) may be usefully noted:

> *"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties, agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."*

xxx xxx xxx

351. As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the

agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to sub-section (2) of Section 120A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trapping of the provisions contained in section 120B See: Suresh Chandra Bahri v. State of Bihar, AIR (1994) SC 2420.

352. The conspiracies are not hatched in open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. See: E.K. Chandrasenan v.
State of Kerala, AIR (1995) SC 1066.

353. In Kehar Singh v. State (Delhi Administration), AIR (1988) SC 1883 at p. 1954, this Court observed:

> *"275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of*

physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.

"Conspiracy can be proved by circumstances and other materials. See: State of Bihar v. Paramhans Yadav, (1986) Pat LJR 688 (HC).

"To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long as it is (known that the collaborator would put the goods or service to an unlawful use". See: State of Maharashtra v. Som Nath Thapa, JT 1996 4 SC 615.

354. It was noticed that Sections 120-A and 120-B IPC have brought the law of conspiracy in India in line with English law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the

conspirators does an act or series of acts, he would be held guilty under Section 120-B of the Indian Penal Code."

21. Further, a circumstance can be proved through a truthful witness with his testimony fully inspiring confidence. Quality and not quantity of the witness is what matters with overwhelming evidence available on record and in this regard, reliance may be placed on the decision of a threeJudge Bench of the Apex Court in ***Takhaji Hiraji v. Thakore Kubersing Chamansing & Ors***. {(2001) 6 SCC 145}.

22. The Hon'ble Supreme Court, in ***Mohd. Naushad v. State (Govt. of NCT of Delhi)*** {AIROnLine 2023 SC 547}, while dealing with the issue of conspiracy in a matter relating to terrorist attack, has observed at paragraphs 35 to 37 which reads as under:

"35. Conspiracy being a major charge, we take note of the legal position on the point of conspiracy between accused persons, we place reliance on the judgment of this Court in Kehar Singh & Ors. v. State (Delhi Administration), (1988) 3 SCC 609 (3- Judge Bench), wherein this Court observed:

"271. Before considering the other matters against Balbir Singh, it will be useful to consider the concept of criminal conspiracy under Sections 120-A and 120-B of IPC. These provisions have brought the Law of Conspiracy in India in line with the English law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English law on this matter is well settled. The following passage from Russell on Crime (12th Edn., Vol. I, p. 202) may be usefully noted:

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."

272. Glanville Williams in the Criminal Law (2nd Edn., p. 382) explains the proposition with an illustration:

> *"The question arose in an Iowa case, but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P. D was acquitted of conspiracy 90 because there was no agreement for 'concert of action', no agreement to 'co-operate'."*

273. Coleridge, J., while summing up the case to jury in Regina v. Murphy [173 ER 508] (173 Eng. Reports 508) pertinently states:

> *"I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, 'Had they this common design, and did they pursue it by these common means — the design being unlawful?'*

274. It will be thus seen that the most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. Reference to Sections 120-A and 120-B IPC would make these aspects clear beyond doubt. Entering into an agreement by two

or more persons to do an illegal act or legal act by illegal means is the very quintessence of the offence of conspiracy.

275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition: [1974 Criminal Law Review 297,
299]

> *"Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties 'actually came together and agreed in terms' to pursue the unlawful object; there need never have been an express verbal agreement, it being sufficient that there was 'a tacit understanding between conspirators as to what should be done'."*

276. I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot

be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. We must thus be strictly on our guard.

277. It is suggested that in view of Section 10 of the EvidenceAct, the relevancy of evidence in proof of conspiracy in India is wider in scope than that in English law. Section 10 of the Evidence Act introduced the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the co- conspirators. Section 10 reads:

> *"10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it." xxxx*

280. The decision of the Privy Council in Mirza Akbar case [AIR 1940 PC 176, 180] has been referred to with approval in Sardul Singh Caveeshar v. State of Bombay [(1958) SCR 161, 193] where Jagannadhadas, J., said: (SCR p. 193)

> *"The limits of the admissibility of evidence in conspiracy cases under Section 10 of the Evidence Act have been authoritatively laid down by the Privy Council in Mirza Akbar v. King Emperor [AIR 1940 PC 176, 180] . In that case, Their Lordships of the Privy Council held that Section 10 of the Evidence Act must be construed in accordance with the principle that the thing done, written or spoken, was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. They notice that evidence receivable under Section 10 of the Evidence Act of 'anything said, done, or written, by any one of such persons' (i.e., conspirators) must be 'in reference to*

their common intention'. But Their Lordships held that in the context (notwithstanding the amplitude of the above phrase) the words therein are not capable of being widely construed having regard to the well known principle above enunciated."

36. Furthermore, in State through Superintendent of Police, CBI/SIT v. Nalini & Ors. (1999) 5 SCC 253 (3-Judge bench), this Court culled out principles governing the law of conspiracy, though exhaustive in nature, and held:

"581. It is true that provision as contained in Section 10 is a departure from the rule of hearsay evidence. There can be two objections to the admissibility of evidence under Section 10 and they are (1) the conspirator whose evidence is sought to be admitted against the co-conspirator is not confronted or cross- examined in court by the co-conspirator and (2) prosecution merely proves the existence of reasonable ground to believe that two or more persons have conspired to commit an offence and that brings into operation the existence of agency relationship to implicate co- conspirator. But then precisely under Section 10 of the Evidence Act, statement of a conspirator is admissible against a co-conspirator on the premise that this relationship exists. Prosecution, no doubt, has to produce independent evidence as to the existence of the conspiracy for Section 10 to operate but it need not prove the same beyond a reasonable doubt. Criminal conspiracy is a partnership in agreement and there is in each conspiracy a joint or mutual agency for the execution of a common object which is an offence or an actionable wrong. When two or more persons enter into a conspiracy any act done by any one of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution of or in reference to their common intention is deemed to have been said, done or written by each of them. A conspirator is not, however, responsible for acts done by a conspirator after the termination of the conspiracy as aforesaid. The court is, however, to guard itself against readily accepting the statement of a conspirator against a coconspirator. Section 10 is a

special provision in order to deal with dangerous criminal combinations. Normal rule of evidence that prevents the statement of one co-accused being used against another under Section 30 of the Evidence Act does not apply in the trial of conspiracy in view of Section 10 of that Act. When we say that court has to guard itself against readily accepting the statement of a conspirator against a coconspirator what we mean is that court looks for some corroboration to be on the safe side. It is not a rule of law but a rule of prudence bordering on law. All said and done, ultimately it is the appreciation of evidence on which the court has to embark.

582. In Bhagwandas Keshwani v. State of Rajasthan [(1974) 4 SCC 611, 613 : 1974 SCC (Cri) 647] (SCC at p. 613), this Court said that in cases of conspiracy better evidence than acts and statements of co-conspirators in pursuance of the conspiracy is hardly ever available.

583. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of the object of conspiracymay tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act,

which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may for example, be enrolled in a chain – A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrellaspoke enrollment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to thecommon purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator

is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons

enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

37. Lastly, In Esher Singh v. State of A.P., (2004) 11 SCC 585, (2Judge Bench), this Court observed:

"The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied on for the purposes of drawing an inference should be prior in point of time

than the actual commission of the offence in furtherance of the alleged conspiracy.

39. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference."

23. There is no disagreement with regard to the ratio laid down by the Apex Court in the cases cited by learned counsel for the appellants, however, they are distinguishable on facts. Present is a case of organized crime as 150-200 Naxalities had attacked the security personnel in a gruesome manner and opened fire indiscriminately killing 15 security personnel and one civilian. The crime had taken place in an isolated place and as such, availability of independent eye witness was not possible.

24. No doubt, the case in hand rests on circumstantial evidence, but the chain of link is complete and the prosecution has been successful in proving that the appellants/accused had participated in commission of the offence in question. The learned trial Court has taken note of all the aspects of the matter and has dealt with the evidence and the statement

of the witnesses in quite detail.

25. In ***Leela Ram (Dead) through Duli Chand v. State of Haryana & Anr***.

(1999) 9 SCC 525 (2-Judge Bench), the Apex Court observed as under:

"11. The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.

12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same."

26. In a case like the present one, which involves an ambush by the Naxalities/Maoists, generally, the incident takes places in a dense forest or an isolated place away from populated area. Hence, there will always be scarcity of an independent eye witness. Even if any eye witness is present, the situation on the ground remains such that he would not be able to recognize or identify the accused who are involved as in such incidents, a large number of persons are involved and in the commotion, hue and cry that prevails at the scene of crime, the only remedy that lies with the prosecution is to collect the evidence in the form of circumstantial evidence. It cannot be said with certainty as to which accused fired gunshot from which place and upon which security personnel. However, once their presence at the spot is proved, the other

incriminating circumstances is of much assistance to the prosecution.

27. Attacks/ambush by Naxalites on security forces are not just criminal acts but are part of a larger insurgency that threatens national security, law and order, and democratic institutions. These assaults are premeditated, highly organized, and politically motivated, making them far more dangerous than ordinary crimes. Unlike common crimes such as theft, robbery, or even homicide, Naxalite attacks are acts of insurgency aimed at destabilizing the State. These operations involve ambushes, guerrilla warfare tactics, and the use of sophisticated weaponry such as IEDs (Improvised Explosive Devices) and landmines. Security personnel, including the Central Reserve Police Force (CRPF), police, and

paramilitary forces, are often the primary targets. These attacks are wellplanned and executed with the intent to inflict maximum casualties, weaken the morale of the security forces, and assert control over remote and forested regions. Ordinary crimes are usually driven by personal motives such as financial gain, revenge, or passion. In contrast, Naxalite attacks are politically and ideologically driven. They are not isolated incidents but part of a broader movement against the State. Unlike criminals who may seek personal benefits, Naxalites aim to overthrow the democratic system through violent means. Generally, Naxalites operate in remote, forested areas where collecting forensic or material evidence is difficult. Many of their attacks involve IED blasts, ambushes, and guerrilla warfare tactics, making it challenging to identify individual perpetrators. Local villagers, who often witness Naxalite activities, are reluctant to testify due to fear of violent retaliation. Since Naxalites exercise strong control over certain areas, any person cooperating with law enforcement becomes a target, leading to witness intimidation or complete silence. Unlike conventional criminals,

Naxalites do not operate under identifiable names or keep proper records. Many of them use

aliases, making it difficult for authorities to track their real identities. Hence, often the circumstantial evidences play a key role in convicting

and sentencing the accused. Absence of direct evidence cannot

automatically lead to a conclusion regarding innocence of the accused

persons.

28. Considering the facts of the present case, the accused persons were part of conspiracy which was against the State and its instrumentality, therefore, the hatching of conspiracy is proved by the circumstantial evidences and also the statement of the witnesses who earlier were part of Naxal groups, have identified the appellants/convicts to be part of the offence in question, recovery of arms, ammunition and explosives from the place of incident and further seven of the accused persons are

reported to be still absconding, and in light of the ratio laid down by the Hon'ble Apex Court in ***Mohd. Naushad (supra)*** and ***Ram Narayan Popli*** (supra), and from the above analysis, we are of the considered opinion that the prosecution has been successful in proving its case beyond reasonable doubt and the learned trial Court has not committed any legal or factual error in arriving at the finding with regard to the guilt

of the appellants / convicts.

29. Accordingly, the appeal being devoid of merit is liable to be and is hereby **dismissed.**

30. The appellants/convicts are stated to be in jail. They shall serve out the sentence awarded by the trial Court by means of the impugned judgment

of conviction and order of sentence dated 12.02.2024.

31. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their respective jail sentences to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

32. Let a certified copy of this judgment alongwith the original record be transmitted to trial Court concerned forthwith for necessary information and action, if any.

Sd/- Sd/-

(Ravindra Kumar Agrawal) (Ramesh Sinha)

Judge **Chief Justice**

Amit

Head Note

A conspiracy is always hatched in secrecy and it may be difficult to adduce direct evidence of the same and the prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial.