

**HEADING OF DECISION OF A CRIMINAL CASE**

**IN THE COURT OF THE FIRST ADDITIONAL SESSIONS JUDGE:  
BERHAMPUR**

**P R E S E N T:** **Shri S. K. Sahoo, LL.M.,**  
1<sup>st</sup> Additional Sessions Judge,  
Berhampur.

**Dated the 18<sup>th</sup> day of May, 2019**

**Sessions Trial No.33 of 2015**

*(Arising out of G. R. Case No. 910 of 2014 corresponding to  
Bada Bazar P.S. Case No.127 dated 18.07.2014 committed by  
the learned S.D.J.M., Berhampur)*

**S T A T E**

**-Vrs-**

**Sunil @ Sabyasachi Panda**, aged about 51 years  
S/o : Late Ramesh Chandra Panda,  
Village: Mayorjhalia, P.S: Chandpur,  
Dist: Nayagarh

.... .... **Accused.**

**Appearance**

**Counsel for the**

Prosecution : Sri Gyanendra Nath Jena  
Addl. P.P, Berhampur.

Defence : Sri D.K.Pattnaik & Associates,  
Advocates, Berhampur.

*(Accused is in Jail custody and produced before the court today)*

Date of conclusion of argument : 07.05.2019

Date of delivery of Judgment : 18.05.2019

**J U D G M E N T**

The above named accused stands charged for the offence punishable u/Ss. 353/121/121(A)/124 of Indian Penal Code (in short "I.P.C") and Sections 25(1-B)(a)/27 of the Arms Act.

**02.** The genesis and gist of the prosecution's case as divulged from the F.I.R. and other connected police papers of this case is that, on 18.07.2014 at 12.30 A.M while the complainant one Sri Anil Kumar Mohanty, IIC of Bada Bazar P.S was performing patrolling duty at Bada Bazar P.S area with other staff got information from reliable source that one Sunil @ Sabyasachi Panda, a veteran hard core Naxal against whom series of cases of murder, rioting, kidnapping, sedition and unlawful activities are pending in different districts of Odisha is planning to organize disruptive activities by staying in the house of one Chandra Rao of Mangalavarampeta. Thereafter on getting such information he informed his superior officers and proceeded to apprehend the dreaded Maoist and as per direction of his higher authorities he along with his staff and local witnesses namely Abhimanyu Nayak of Kotharimandir Sahi and Tuna Nayak of Old Berhampur, Pandara Sahi proceeded to the spot for conducting raid. On arrival they gheraoed the house and after repeated attempts to allow enter into the house which was refused, but the police team entered into the house by breaking open the door after giving reasonable time and opportunity. Thereafter on seeing the police team, the accused Sunil @ Sabyasachi Panda tried to open fire from his revolver and also pushed the police team in an attempt to flee, but inspite of such attempt police party could manage to apprehend the accused after physical tussle. Thereafter during the time of personal search of the

accused one CALHAL. 38 revolver (Roger) made in USA having body No.16200038 with four live ammunitions, cash of Rs.2,11,000/-, gold ornaments weighing approximately 800 grams, 45 nos. of SIM Cards of different service providers, 10 nos. of Cell Phones, 7 nos. of Mobile Batteries, one Mobile Charger, one Ear Phone, one Compaq Laptop, 5 nos. of Pen drives, 5 nos. of Memory Cards and 2 nos. of Hard Discs kept in his Laptop bag were recovered from his possession in the presence of witnesses. During enquiry it was found that Sabyasachi Panda had come to Berhampur to plan, organize and execute his disruptive activities in the area which he has been doing in other parts of the State. In order to achieve his goal he had collected money from contractors, businessmen and corporate sectors by giving threaten to them so also he was trying to motivate innocent youths for his nefarious plan. It was further ascertained that he was working for Maoist organization (Banned) for a period of more than 15 years in different districts of the State of Odisha and continued to proliferate his unlawful activities remaining in the Maoist organization which was banned by the State Government and he has carried out many terrorist and unlawful activities against the State in the interim. Some leaflets contain materials to establish Naxalism, Marxism, Leninism and Maobad and his plans of waging war against the Government were recovered from his possession. It was ascertained that he had come with an intention to conspire against the State by organizing terrorist gang attacks and that he was herewith an intention to further his disruptive activities which he has been carrying out in other parts of the State and that his activities are against the unity, integrity, sovereignty and war against the State. On his apprehension he gave slogans against the Government and shouted saying *“Maoist Zindabad, Police Kukuro Murdabad, Maobadi Sasan*

*Shashtra Sangram Dwara Stapan Hebo*” and by such slogans he advocated his unlawful activities. After such raid the complainant Anil Kumar Mohanty, IIC of Bada Bazar P.S returned to P.S, drew a plain paper FIR and since the report reveals a cognizable case, he registered P.S Case No.127 dtd.18.07.2014 u/Ss.353/121/121(A)/124 (A) of the IPC and Sections 25(1-B)(a)/27 of the Arms Act read with Sections 18/20/38 of Unlawful Activities (Prevention) Act 1967 ( in short UAP Act, 1967 ) and requested Shri Pradeep Kumar Pattnaik (OPS), SDPO, Berhampur to take up investigation of the case. Accordingly the case was investigated into and after completion of due investigation the I.O submitted preliminary charge-sheet against the present accused, who was then inside the jail custody keeping investigation open and for arrest of co-accused A. Chandra Rao so also for further follow up action. Thereafter the I.O also received the original sanction order of prosecution from Govt. of Odisha, Home Department, Bhubaneswar through S.P, Berhampur u/s.45 UAP Act 1967 and Sec.196 of Cr.P.C for prosecution of the present accused Sunil @ Sabyasachi Panda vide original sanction order Nos.10575(m)/Bhubaneswar dtd.31.03.2015 and 12476(m) Bhubaneswar dtd.18.04.2015. Thereafter the co-accused A. Chandra Rao was arrested and he was dealt in the split up case record. Considering the materials available on the case record charge u/Ss.353/121/121(A)/124 of the IPC read with Sections 25(1-B)(a)/27 of the Arms Act were framed by the then 2<sup>nd</sup> Addl. District & Sessions Judge, Berhampur Sri Chintamani Panda on 17.07.2015. The contents of the charge was read over and explained to the accused to which he did not plead his guilty and claimed for trial. As such the accused is facing his trial for the above offences. Hence this case.

**03.** Defence plea is one of complete denial of the prosecution allegation and false implication.

**04.** Upon denial of the prosecution case by the defence the questions emerge in this case for determination are:

(i) Whether on 18.07.2014 at about 12.30 A.M. (night) at Mangalavarampeta Street of Berhampur in the house of A. Rama Chandra Rao the present accused used criminal force to the informant, an Inspector of Police namely Anil Kumar Mohanty and his team who were executing their duties as public servants with an intention to prevent them from exercising their official duties as public servants;

(ii) Whether on the above day, date, time and place the present accused attempted to wage war against the Govt. of India;

(iii) Whether on the above day, date, time and place the present accused conspired to wage war by using criminal force against the Government;

(iv) Whether on the above day, date, time and place the present accused used criminal force with an intention to induce or compel for assaulting, restraining or attempting wrongfully to restrain the President of India in exercising his lawful power;

(v) Whether on the above day, date, time and place the present accused was in illegal possession of one Chahal.38 Revolver (Regular) made in U.S.A having body No.16200038 with four ammunitions contravening Sec.3 of the Arms Act 1959; and

(vi) Whether on the above day, date, time and place the present accused had used one Chahal.38 revolver (Regular)

made in U.S.A having body No.16200038 with four ammunicions contravening Sec.5 of the Arms Act?

**05.** In order to prove the charge framed against the accused and the points for determination noted above prosecution has orally examined as many as 15 witnesses out of all total 16 nos. of C.S witnesses among whom P.W.9 is the IIC, Bada Bazar P.S so also the complainant, P.Ws.8, 11 & 15 three S.Is of Police, P.W.7 an ASI of Police, P.W. 5 one Havildar of Police and P.W.10 one Constable of Police those who were the members of the raiding party, P.Ws.1 & 2 are two independent witnesses to the occurrence, P.Ws.3, 4, 6 & 12 are four other independent witnesses to the seizure, P.Ws.13 & 14 are two I.Os of this case. Since the C.S witness No.6, an old ailing lady aged about 85 years who attended the court being produced by IIC, Bada Bazar P.S was unable to open her mouth and utter a single word she was not examined from the side of prosecution and for the said reason as well as under compelling circumstances the witness was discharged without her examination. Besides the above oral evidence prosecution also proved different documents which are marked vide Exts. 1 to 12 and also proved the material objects which are marked vide M.Os. I to XXXVII.

On contrary, no oral or documentary evidence has been tendered by the accused to substantiate his plea.

**06.** During the course of argument the ld. defence counsel submitted that, since the independent witnesses examined by the prosecution have not supported the case of the prosecution, the evidences of official witnesses cannot be relied upon and for the said reason only prosecution case fails. He further submitted that, since necessary sanction order of the Govt. to prosecute against the present accused for the offence punishable u/Ss.121/121-A/124

IPC has been obtained by the I.O after submission of charge sheet, the prosecution case vitiates for the said reason. He also submitted that evidence adduced by the prosecution is not clear, cogent, clinching and trustworthy as to from which place exactly the present accused was apprehended and that though there is allegation of seizure of one Mouser from the possession of the accused and his attempt to fire to police personnel by said Mouser, but during the course of investigation the complainant or any of the I.Os did not take any step to obtain the finger print of the accused from the said Mouser for its chemical examination and that the said Mouser was not sent for its examination and ballistic opinion. He further submitted that no such Station Diary of the P.S was seized basing on which this case was registered and that the alleged laptop, Mobile Phones and SIM cards which are alleged to have been seized from the possession of the present accused were not sent for any examination by the expert nor the C.D.Rs of the alleged telephone numbers (SIM Cards) seized from the possession of the accused were obtained and proved as per law to find out any true against the accused for his involvement in Maoist activities and that though there is allegation of breaking open of the door of the alleged house, but during the course of investigation no such incriminating material including the broken door was seized to establish such plea taken by the prosecution and that though there is allegation of seizure of some gold ornaments from the possession of the accused and weighing of the same, but no such weighing machine has been seized by the I.O during the course of investigation nor the weighing man has been examined by the prosecution to establish such plea. He further submitted that there remains vital material contradiction in the evidences of the official witnesses so also their statements u/s.161 Cr.P.C have not been recorded by the I.Os as

admitted by them for which the same cannot be relied upon to establish the case of the prosecution. During the course of argument the ld. defence counsel relied on a decision held by the Hon'ble Apex Court in the matter of State of Gujarat Vs. Anwar Osman Sumbhanya and others reported in **2019(1) Crimes 255 (SC)**.

Per-contra the ld. Addl. P.P appearing for the State argued that there is clear, cogent, clinching, trustworthy and direct evidence available on the case record against the present accused to held him guilty for the alleged offences. He further submitted that though the independent witnesses examined by the prosecution have not supported the case of the prosecution in toto, but they have supported the case to some extent and that the evidence of the official witnesses are clear, cogent, clinching and trustworthy for which the same cannot be thrown away and that though some contradictions are noticed in the evidences of the official witnesses but the same are trivial and minor in nature for which the same is not harmful for the case of the prosecution and that prosecution has successfully proved the charge framed against the present accused beyond all reasonable doubts for which the accused is liable to be convicted.

**07.** It is the settled proposition of law as held by the Hon'ble Apex Court in the matter of OMA @ Omprakash & Another Vs. State of Tamilnadu reported in **(2013) 3 Supreme Court cases 440** that, *“A Judge shall exercise the judicial function independently on the basis of the Judge's assessment of the facts in accordance with a conscientious understanding of the law, free of any extraneous influences, inducement, pressure, threats or interference, direct or indirect from any quarter or for any reason. A Criminal Court while*

*deciding criminal cases shall be guided or influenced by the views or opinions expressed by the Judges on a private platform. The views or opinions expressed by the Judges, jurists, academicians, law teachers may be food for thought. A Judge has no weapon or sword. A Judge greatest strength is the trust and confidence of the people, whom he serves. Especially when Judges are called upon decide a criminal case which rests only on the evidence adduced by the prosecution as well as defence and guided by settled precedents.*”It is also the settled proposition of law as held by our Hon'ble Court in the matter of State of Orissa Vrs. Uttara Pradhan reported in **2009 (Supp.-II) OLR 632** that, *“while disposing of a sessions cases, the court has to stick to the evidence on record instead of expressing his impression or thoughts and probabilities and possibilities are unknown to criminal jurisprudence.”*

**08.** Before going to discuss on the evidences of prosecution witnesses, it is in the humble opinion of the court to consider the principle of appreciation of evidence of a witness. It is held by the Hon'ble Apex Court in the matter of Vadivelu Thevar vs. State of Madras reported in **AIR 1957 (SC) 614** that :

*“it is a sound and well-established rule of law that the Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely :*

*(1) Wholly reliable. (2) Wholly unreliable.*

*(3) Neither wholly reliable nor wholly unreliable.*

*In the first category of proof, the Court should have no difficulty in coming to its conclusion either way it may convict or may*

*acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in this third category of cases, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if Courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses”.*

**09.** In view of the principles held in the above authorities and considering the argument advanced by the Id. defence counsel it is important to scan and scrutinize the evidences of all the witnesses examined by the prosecution by reproducing the same in gist in order to establish the case of the prosecution. Perused the evidences adduced by the prosecution.

Evidence of P.W.9, one Anil Kumar Mohanty, the then IIC of Bada Bazar P.S who is the complainant as well as one of the members of the raiding party reveals that, in the night of 17/18.07.2014 while he along with his staff were performing night patrolling duty under their P.S area at about 12.30 mid-night he got reliable information that Sabyasachi Panda, a Maobadi leader is residing in the house of one A. Chandra Rao of Mangalabarapeta Sahi under their P.S and doing Maobadi activities from that place so also he is planning to loot the arms and ammunitions of Reserve Police of Berhampur. He further deposed that then he informed the said fact to his higher authorities and proceeded to the spot and that on their way they called two independent witnesses namely Tuna Nayak and Abhimanyu Nayak and after reaching near the

house of A. Chandra Rao they surrounded the said house, knocked the door by giving their identities and inspite of their repeated request the insider did not open the door for which having no other way they broke open the front door of the house and that while they were entering inside the house they found Sabyasachi Panda was present there and started firing towards them, but they tried their best to catch him and could able to catch. He also deposed that when they caught hold him, he shouted loudly saying “MAO SANGATHAN JINDABAD POLICE KUKURA MURDABAD SASATRA SANGRAM DWARA MAOBADI SASAN PRATISHTA HABA” etc. and that during the time of his personal search he recovered one 0.38 loaded revolver made up of U.S.A, one Laptop, Cash of Rs. 2,11,000/-, one bag containing some leaflets on which something was written in respect of Maobadi activities, 10 nos. of Mobile Phones, one Mobile Charger, 2 nos. of Hard Disks, 5 nos. of Pen Drives, 5 nos. of Memory Cards, 18 nos. of SIM Cards of Reliance Company, 15 nos. of SIM Cards of Airtel Company, 7 nos. of SIM Cards of BSNL Company, some other SIM Cards of other companies and gold ornaments of 38 items approximately weighing about 800 Grams from his possession. He further deposed that thereafter he called one gold smith through his official staff, took the weighment of said gold ornaments, seized all the articles at the spot in the presence of witnesses, prepared the seizure list and handed over a copy of the same to the accused. During the course of adducing evidence he proved the seizure list which is marked vide Ext.1/4 wherein he proved his signature marked vide Ext.1/5 and he also proved his signature on the additional list attached with the seizure list which is marked vide Ext.1/6 wherein he proved the signatures of the accused marked vide Exts.1/7 & 1/8 and signatures of witnesses namely Abhimanyu Nayak and Tuna Nayak in the first

page of additional list marked vide Exts.1/9 & 1/10 and their signatures in the second page of seizure list marked vide Exts.1/11 & 1/12. He further deposed that on being asked the accused disclosed his identity as Sunil @ Sabyasachi Panda and on interrogation he confessed that he is residing in the said house of A. Chandra Rao since last 20 days and further disclosed that he came to that place along with the Maobadi posters, leaflets, literature and influencing the innocent people to participate in Mao activities and tried to mix in their Sangathan and that by remaining at that place he was trying to attack the police as well as planning to loot the armory of Reserve Police of Ambapua and that they came to know that the accused is involved in Mao activities since last 15 years in different place of Odisha and that he was managed to involve many innocent young person in his work and that he further disclosed that he was associated with one *Ghasi, Azad, Balkrishna, Ganapati* and involved in various Maobadi activities. He further deposed that in the year 2008 he was involved in looting of armory of Nayagarh so also involved in murder of Swami Laxmananda Saraswati and also involved in kidnapping of Italian citizen and that in the said house one lady, the mother of A. Chandra Rao namely A. Mahalaxmi was present who disclosed before them that Sabyasachi Panda is the friend of her son and he was coming to their house frequently and he was residing in her house since last 20 days and that he was doing work in Laptop and talking with other people over telephone and that since last three to four days she could know that Sabyasachi Panda was the leader of Maobadi Sangathan. He also deposed that thereafter he drew a plain paper FIR, brought the accused and seized articles to P.S and registered one case basing on the FIR and requested S.D.P.O, Berhampur Sri Pradeep Kumar Pattnaik to take up investigation of the case and handed over all the

seized articles along with relevant papers to the I.O and that the SDPO arrested the accused and forwarded him to the court. During the course of adducing evidence he proved the F.I.R which is marked vide Ext.2 wherein he proved his signature marked vide Ext.2/1 and his signature with endorsement marked vide Ext.2/2.

**10.** Evidence of P.W.8, one T. Ranga Babu, the then S.I of Police of Bada Bazar P.S who is a member of the raiding party reveals that, on 18.07.2014 while he along with IIC and other staff were performing patrolling duty at Old Berhampur area at about 12.30 A.M (night) the IIC received credible information that in Mangalabagpeta street in the house of one A. Chandra Rao the Maoist leader Sabyasachi Panda was staying for which they proceeded towards Mangalabagpeta street and on their way they procured two independent witnesses namely Tuna Nayak and Abhimanyu Nayak and reached at the spot. He further deposed that then they knocked the door of the house of A. Chandra Rao, but nobody opened the door and then they broke open the door and entered inside the house and that during that time the accused attempted to fire on them by a revolver, but they could managed to caught hold him and that during that time the accused also gave slogans. He further deposed that in the presence of witnesses IIC recovered one revolver, 4 nos. of bullets, cash of Rs.2,11,000/-, some gold ornaments, 10 nos. of Mobile Handsets, one Laptop, 5 nos. of Pen Drives, 6 nos. of Mobile Batteries and one Earphone and prepared the seizure list in the presence of witnesses. He also deposed that on query the owner of the house A. Mahalaxmi disclosed that accused Sabyasachi Panda was the friend of her son and since last one month he was staying in her house and further disclosed that he used to busy in Laptop and did not come out from the house.

Evidence of P.W.11, one Smt. Rebatl Sabar, another the then S.I of Police of Bada Bazar P.S so also another member of the raiding party reveals that, on 18.07.2014 at about 12.30 A.M while she along with IIC and other staff were performing patrolling duty at Old Berhampur area, IIC received one information that at Kamalabaripeta Sahi in the house of one A. Chandra Rao one Sabyasachi Panda, the Mao leader was residing and making plan for looting from the Berhampur Reserve Office Astragara. She also deposed that thereafter IIC informed the matter to the SDPO and S.P, Berhampur so also received direction from their higher authorities to raid that house for which they proceeded to the said area by calling two independent witnesses namely Tuna Nayak and Abhimanyu Nayak and that IIC disclosed before them about the raid and requested them to remain present as witnesses during the time of raid for which they gave their consent. She further deposed that at Kamalabaripeta Sahi they ascertained from the local people about the house of A. Chandra Rao and thereafter they went to the spot and knocked the door for half an hour, but nobody opened the door for which as per the instruction of the IIC the front door of the house was broke open by their staff and thereafter one lady came out from the house to whom IIC disclosed his identity and told her that he wants to search her house and that the said lady disclosed that she is the mother of A. Chandra Rao and the house belongs to her. She further deposed that initially the said lady did not agree for search of the house, but when the IIC told her actual fact then she agreed and that in the second room of the said house one person was present by holding a pistol and they ascertained from the said person that his name is Sabya Sachi Panda. She further deposed that in the presence of independent witnesses the personal search of the accused was made and one Revolver of Rozer company bearing

Regd. No.16200038 was recovered and that from the said room some bags containing cloths, 45 nos. of SIM Cards, 10 nos. of Mobile Phones, 7 nos. of Mobile Battery, one Mobile Charger, one Mobile Ear Phone, 5 nos. of Pen Drives, 5 nos. of Memory Cards, 2 nos. of Computer Hard Disk, one Compaq company Laptop & cash of Rs.2,11,000/- were recovered and that from another bag they also recovered gold ornaments such as necklace, chain, ear ring etc. which were seized at the spot in the presence of witnesses. She further deposed that IIC put certain questions to the accused regarding his involvement with Nachika Linga, Balakrishna, Azad, Ghasi and that asked him why he is staying at that place to which he replied that for Mao Sanghathan he was inspiring the local male and female young persons to work for their Sangathan and to make them as the member of their Sangathan. She further deposed that in their presence IIC asked him about some other facts and he disclosed that he is also involved in Swamy Laxmananda Saraswati murder case so also kidnapping of two Italian citizens and looting of Nayagarh Astragara. She also deposed that while they apprehended the accused he gave a slogan loudly by saying “*MAOBADI JINDABAD POLICE KUKURA MURDABAD*” and that when the IIC asked to the lady house owner how the accused was staying in her house she replied that when his son was there he came to her house and requested to remain for one month in her house and prior to 20 days he was residing in her house and further disclosed that initially they had no knowledge that the said person is Sabya Sachi Panda, but when he was talking with other people over telephone they could ascertain that he is Sabyasachi Panda, but out of fear they did not disclose to anyone even to police. She further deposed that thereafter they brought the accused and recovered articles to Bada Bazar P.S.

Evidence of P.W.15, one Deepak Kumar Lenka, another the then S.I of Police of Bada Bazar P.S who is another member of the raiding party reveals that, on 17/18.07.2014 in the mid-night at about 12.30 AM while he along with their IIC and other staff were performing patrolling duty in Bada Bazar area, IIC got a reliable information that one veteran Maoist namely Sunil @ Sabyasachi Panda has concealed his presence in the house of one A. Chandra Rao at Mangalabaripeta street under their P.S. and that getting such information IIC informed the matter to their senior officers like S.P., Addl. S.P etc. and sensitized them about the matter. He further deposed that thereafter they all proceeded to the spot and on their way they procured two independent witnesses namely Tuna Nayak and Abhi Nayak and took them to the spot with them and that after reaching at the spot as per the information received they knocked the door of the alleged house, but nobody opened the door and that then having no other way by applying force they broke open the door and found the accused being armed with a revolver was present inside the house and tried to escape through the main door, but forcefully they could able to caught hold him. He further deposed that on being asked he disclosed his identity as Sunil @ Sabyasachi Panda and raised slogan against police and in favour of Maoist organization and that on search of the house they recovered one revolver with four live ammunitions from his hand, one bag containing one Laptop, some gold ornaments, Pen Drive, Maoist Banners, Mobile Phones, SIM Cards and cash more than Rs.2,00,000/- etc. and the IIC seized all the articles at the spot and prepared the seizure list in the presence of witnesses and that the copy of the seizure list was handed over to him with proper acknowledgement. He further deposed that on further enquiry IIC came to know that he is involved in a number of heinous crimes like

Nayagarh Armory attack in the year 2008, kidnap of Italian tourist, killing of Laxmanananda Saraswati and that he is the front leader to motivate the young boys and girls for Maoist activities. He also deposed that the accused was in the said house since last 20 days in order to attack District Armory of Berhampur Police and that the alleged house belongs to one of his friends namely A. Chandra Rao and previously he had come to the said house for several times. He further deposed that they also found an old lady in the said house namely A. Mahalaxmi, the mother of A. Chandra Rao and that on being asked A. Mahalaxmi disclosed that the accused is the friend of his son A. Chandra Rao and that before some days she came to know that he is a Maoist, but she did not dare to oust him from her house out of fear. He also deposed that thereafter they returned to P.S along with the accused and recovered articles and that IIC drew a plain paper FIR and registered the same at P.S and that during the course of investigation he was examined by the I.O in this case.

Evidence of P.W.7, one K. Dandapani Dora, the then ASI of Bada Bazar P.S who is another member of the raiding party reveals that, on 17.07.2014 while he along with IIC and other staff were conducting night patrolling duty, IIC got credible information that Maoist leader Sabyasachi Panda is residing at Mangalabaripeta street in the house of one A. Chandra Rao and prepared to commit loot of Astragara of Berhampur Police Headquarters for which IIC intimated this fact to other police officers and then they immediately proceeded to the spot. He further deposed that on their way they procured two independent witnesses namely Tuna Naik and Abhimanyu Naik, reached at the spot and raided the house of A. Chandra Rao and that they knocked the door of the house, but nobody opened the door and thereafter they broke open the door and entered inside the house and seeing the police he tried to fire

them, but they could manage to apprehend the accused. He also deposed that they recovered some Maoist papers, cash of Rs.2,11,000/-, gold ornaments, 45 nos. of SIM Cards of different companies, 10 nos. of Mobile Phones of different companies, 5 nos. of Pen Drivers, 5 nos. of Memory Cards, 7 nos. of Mobile Batteries, one Laptop of Compaq brand, one Air bag, Ear Phone and other articles were seized by the IIC and seizure list was prepared in the presence of witnesses. He further deposed that on being asked the accused disclosed that he is residing in the said house since last 20 days and that in the year 2008 he along with others had attacked Nayagarh Astragara and that he had kidnapped Italian tourist and that killed Laxmananda Saraswati at Jelespeta, Phulbani and that the unemployed youths were targeted to join in their group and that he also criticized the Government as well as police by giving various slogans and disclosed that he will establish the Moist kingdom and disclosed that Lachika Linga, Ganapati and others are their group leaders.

Evidence of P.W.5, one Maheswara Acharya, the then Havildar of Bada Bazar P.S who is another member of the raiding party reveals that, on 18.07.2014 at about 12.30 A.M (night) while he along with IIC and other staff were performing patrolling duty near Bada Bazar area IIC got a credible information that the accused Sabyasachi Panda is residing at Mangalabagpeta street, Berhampur for which they came to P.S and thereafter proceeded towards Mangalabagpeta street and on their way they met two persons namely Tuna Nayak and Abhimanyu Nayak who accompanied with them to the spot. He further deposed that during that time accused Sabyasachi Panda was inside the house of A. Chandra Rao and that they knocked the door, but he did not open the door and then by breaking open the door they entered inside the

house and seeing the police party the accused tried to flee away from the spot, but they could manage to caught hold him and on personal search they recovered one Rozer company revolver bearing No.16200038 and four live bullets from his possession. He further deposed that on being asked the accused disclosed that he belongs to village Mayourjholi and that on search of the room in the presence of independent witnesses they recovered 45 nos. of Mobile SIM Cards, 10 nos. of Mobile Handsets, 7 nos. of Mobile Batteries, one Laptop with bag, 5 nos. of Memory Cards, some Maoist posters, cash of Rs.2,11,000/- and gold ornaments weighing about 800 Grams which were seized by the IIC at the spot and seizure list was prepared in their presence. He further deposed that at the time of search one old lady namely A. Mahalaxmi was also inside the house and on query by the IIC, she disclosed that accused Sabyasachi Panda used to come to the said house saying that he will remain there for two to three days, but he was residing there for more than 20 to 25 days and that does his work in Laptop and also talks with one Linga, Balakrushna over mobile phone.

Evidence of P.W.10, one Kedar Narayan Patra, the then constable of Bada Bazar P.S who is another member of the raiding party reveals that, on 17.07.2014 at about 11 P.M while he along with IIC and other P.S staff were performing night patrolling duty IIC received telephonic information that accused Sabyasachi Panda was present in the house of A. Chandra Rao for which IIC informed the matter to their higher authorities immediately and called two persons namely Tuna Nayak and Abhimanyu Nayak and asked them to remain present as witnesses. He further deposed that after disclosing the witnesses about the fact they took them to Mangalabarpeta Sahi and that when they reached near the house of A. Chandra Rao by surrounding the house they knocked the door,

but nobody opened the door and that thereafter IIC rang to their higher authorities and broke open the door and entered inside the house. He further deposed that thereafter officers entered inside the house and from the outside he had seen the accused was aiming at the police officer by holding a Mouser in his hand and that he tried to fire from the Mouser for which there was tussle between the accused and their officers. He further deposed that the accused was holding a bag in which 8 to 10 Mobile Phones, SIM Cards, cash of Rs.2,00,000/-, Laptop, Mobile Charger and some gold ornaments such as chain, necklace, earrings, finger rings etc. approximates 800 Grams were recovered from his possession and the same were seized and seizure list was prepared and that thereafter they brought the seized articles along with the accused to the P.S.

**11.** Evidence of P.W.1, one A. Santosh Kumar Subudhi, an independent witness to the occurrence reveals that, he does not know the accused so also the informant of this case. He has specifically deposed that about one year back from his date of deposition police came to their street and arrested a person from their neighbour's house and he does not know the name of his neighbour.

Evidence of P.W.2, one S. Hadi Babu, another independent witness to the occurrence reveals that, he has expressed his complete ignorance about the prosecution case.

Evidence of P.W.3, one Abhimanyu Nayak, an independent witness to the seizure reveals that, he does not know the accused standing in the dock, but he knows the informant of this case and that he does not know anything about the case. He also deposed that nothing has been seized in his presence, but as per the direction of police he put his signatures on some papers.

During the course of adducing evidence he proved his signatures which are marked vide Exts.1 and 1/1.

Evidence of P.W.4, one Tuna Nayak, another independent witness to the seizure reveals that, he does not know the informant so also the accused standing in the dock. He further deposed that nothing has been seized in his presence, but as per the direction of police he put his signatures on some papers. During the course of adducing evidence he proved his signatures which are marked vide Exts. 1/2 and 1/3.

Evidence of P.W.6, one Kalia Subudhi, another independent witness to the seizure reveals that, he does not know the informant so also the accused standing in the dock and that he also does not know anything about the case. He also deposed that nothing has been seized in his presence in connection with this case, but as per the direction of police he put his signatures on some papers. During the course of adducing evidence he proved his signatures which are marked vide Exts.2 and 2/1.

Evidence of P.W.12, one Lilu Das, another independent witness to the seizure reveals that, though he knows the informant, but does not know the accused standing in the dock. During the course of adducing evidence he proved his signatures which are marked vide Exts.2/2, 2/3 and 2/4 and further deposed that he does not remember when and where he gave such signatures.

**12.** Evidence of P.W.14, one Pradeep Kumar Pattnaik, the then SDPO, Berhampur who is the 1<sup>st</sup> I.O of this case reveals that, on 18.07.2014 on the written plain paper FIR of the IIC, Bada Bazar P.S. one Anil Kumar Mohanty, Bada Bazar P.S.Case No.127 dtd.18.07.2014 was registered by the IIC and he was requested to takeup investigation of the case. During the course of adducing

evidence he proved the endorsement with signature of the then IIC, Anil Kumar Mohanty which is marked vide Ext.3/2 on the plain paper FIR marked earlier vide Ext.3. He further deposed that on the same day during the course of investigation he examined the complainant, other witnesses, at about 5.45 AM he visited the spot and prepared the spot map. During the course of adducing evidence he proved the spot map annexed with the crime details form (two sheets) which is marked vide Ext.8 wherein he proved his signatures marked vide Exts.8/1 and 8/2. He further deposed that he also examined some other witnesses, at 11.30 AM arrested accused Sunil @ Sabyasachi Panda and forwarded him to court on the same day at 4 PM in custody and that he made a prayer before the court to take the accused in police remand for a period of 14 days and that on the next day i.e. on 19.07.2014 the Hon'ble Court allowed to take the accused in police remand for 10 days. He also deposed that he sent a requisition to S.P, Berhampur to collect the CDR in respect of different telephone numbers and that on the same day at 8.10 PM he along with other staff conducted raid of the house of A. Chandra Rao of Mangalabaripeta Sahi and found him absent in his house and that he examined the wife of absconding accused and that on 20.07.2014 the accused Sabyasachi Panda was interrogated. He further deposed that on the same day at 12.15 P.M the house of absconding accused A.Chandra Rao was raided, but in vain and that on 21.07.2014 he received the CDRs from S.P., Berhampur and that on the same day though he raided the house of absconding accused A.Chandra Rao, but in vain and that on 22.07.2014 he made prayer to Tahasildar, Berhampur to identify the ownership of the domestic house of the absconding accused A.Chandra Rao and that on 24.07.2014 he sent another requisition to S.P, Berhampur to supply CDR in respect of one telephone

number. He further deposed that on 26.07.2014 he conducted raid in the house of absconding accused A.Chandra Rao and seized gold ornaments, SIM cards, books and leaflets etc. on production by accused Sabyasachi Panda who had accompanied with them and prepared the seizure list in the presence of witnesses and that he supplied copy of the seizure list to accused Sabyasachi Panda with proper acknowledgement. During the course of adducing evidence he proved the said seizure list which is marked vide Ext.2/5 wherein he proved his signature marked vide Ext.2/6 and signatures of accused Sabyasachi Panda marked vide Exts.2/7 and 2/8. He further deposed that then he examined the seizure witnesses and that on the same day he received CDR in respect of one telephone number from the S.P, Berhampur and that on 05.09.2014 he sent the seized exhibits through court to RFSL, Berhampur for it's examination and opinion and that on the same day he also made a prayer to the D.M-cum-Collector, Ganjam, Chatrapur to accord sanction as per provision U/s.39 of Arms Act to prosecute against accused Sabyasachi Panda and that on 26.09.2014 he received the sanction order from the D.M-cum-Collector. During the course of adducing evidence he proved the said sanction order which is marked vide Ext.9. He also deposed that in spite of his sincere effort and raid at different times he could not apprehend the absconding accused A. Chandra Rao and that on 27.10.2014 on his transfer he handed over the charge of the investigation of this case to Sri T.P. Patra, his successor, SDPO, Berhampur along with all relevant papers and materials for further investigation in the case. During the course of adducing evidence he identified different material objects which were seized by him and produced in the court i.e. the solar plate which is marked vide M.O-I, Canon Scan bearing No.15206 which is marked vide M.O-II, Key

Board which is marked vide M.O-III, Note Book which is marked vide M.O-IV, Recharge Battery which is marked vide M.O-V, Extension Circuit Board Galaxy which is marked vide M.O-VI, Red colour clothes (three pieces) which is marked vide M.O-VII, Mobile Charger (six pieces) which is marked vide M.O-VIII, Data Cable which is marked vide M.O-IX, Ear Phone (two pieces) which is marked vide M.O-X, five meters wire which is marked vide M.O-XI, Laptop Charger which is marked vide M.O-XII, Empty Micro Box (two pieces) which is marked vide M.O-XIII, solar power pack which is marked vide M.O-XIV, Home Light Power Pack for TV/Telephone which is marked vide M.O-XV, Micro Max Mobile which is marked vide M.O-XVI, Nokia Mobile Phone which is marked vide M.O-XVII, another Nokia Mobile which is marked vide M.O-XVIII, Max Mobile which is marked vide M.O-XIX, Dongle (one piece) which is marked vide M.O-XX, C.D Plates with plastic cover which is marked vide M.O-XXI, Optical's cover along with the spectacle which is marked vide M.O-XXII, H.P Pendrive which is marked vide M.O-XXIII, Card Reader which is marked vide M.O-XXIV, Note Book Binding which is marked vide M.O-XXV, SIM Cards kept in a packet which is marked vide M.O-XXVI, Horoscope Book which is marked vide M.O-XXVII, Book (one) which is marked vide M.O-XXVIII, Receipt Book which is marked vide M.O-XXIX, one Khata which is marked vide M.O-XXX, one R.C Book which is marked vide M.O-XXXI, small Note Book (Pocket Book) which is marked vide M.O-XXXII, Medium Book which is marked vide M.O-XXXIII, two numbers of leaflets which is marked vide M.O-XXXIV, Road Map which is marked vide M.O-XXXV, Accredited Journalist List which is marked vide M.O-XXXVI and Godrej Expert which is marked vide M.O-XXXVII.

Evidence of P.W.13, one Thakur Prasad Patra, the then SDPO, Berhampur who is the 2<sup>nd</sup> I.O of this case reveals that, on

27.10.2014 he took charge of investigation of this case from Sri P.K.Pattnaik, the then SDPO, Berhampur and that on 29.10.2014 he started investigation. He also deposed that on 04.11.2014 he made prayer to D.G and I.G of Police, Orissa, Cuttack through S.P, Berhampur for re-seizure of the proceeds of terrorism i.e. cash and gold in connection with this case and that he made a prayer to P.P through S.P, Berhampur and also to the D.M-cum-Collector, Ganjam through S.P, Berhampur regarding availability of the evidence against the accused Sunil @ Sabyasachi Panda and submitted the connected papers with that regard. He further deposed that on 28.11.2014 he conducted raid to apprehend the absconding accused A. Chandra Rao, but in vain and that on 28.12.2014 during the course of investigation he ascertained that the seized gold ornaments was robbed from Sorada area from one Brajabandhu Choudhury of Asurabandha and accordingly he intimated to the IIC, Sorada and SDPO, Aska to verify the matter. He also deposed that on 06.01.2015 he received the order from D.G and I.G of Police, Orissa, Cuttack regarding re-seizure of proceeds of terrorism i.e. cash and gold ornaments and that on the same day he seized cash of Rs.2,11,000/- and 800 Grams of gold ornaments on production by IIC, Sri Anil Kumar Mohanty which were recovered from the accused Sunil @ Sabyasachi Panda on 18.07.2014 and he seized those articles in the presence of witnesses namely Santosh Gouda and Santanu Kumar Mohanty and prepared the seizure list. During the course of adducing evidence he proved the said seizure list which is marked vide Ext.4 wherein he proved his signature marked vide Ext.4/1, signature of Anil Kumar Mohanty marked vide Ext.4/2 and signatures of witnesses namely Santosh Gouda and Santanu Kumar Mohanty marked vide Exts.4/3 & 4/4 respectively. He further deposed that on 07.01.2015 he had gone to

Bhubaneswar and met designated authority i.e. Principal Secretary (Home) Department, Bhubaneswar, Orissa for deposit of cash in Government Treasury and the said prayer was allowed for which notice was issued to the accused Sabyasachi Panda in that respect through the Superintendent of Circle Jail, Berhampur and that on 09.01.2015 the said notice was served on him and he received the same and that he received the opinion from P.P in respect of involvement of accused Sabyasachi Panda in connection with this case and that on 10.01.2015 he made a prayer to S.P, Ganjam for submission of the charge-sheet against him keeping investigation open and that on 11.01.2015 he submitted charge sheet against him. He also deposed that on 13.01.2015 as per the order of D.G & I.G of Police he re-seized 800 Grams of gold ornaments on production by IIC, Anil Kumar Mohanty which was recovered from the accused Sunil @ Sabyasachi Panda and prepared the seizure list in the presence of witnesses and that the said gold ornaments were produced before the Home Secretary for passing necessary order for deposit of the same in Government Treasury for which he issued notice to the accused to claim over the seized gold ornaments if so desire. He further deposed that on 15.01.2015 one notice was served on him through the Jailor, Circle Jail, Berhampur and that on 16.01.2015 he contacted the treasury officer so also made prayer before the Collector to deposit the gold ornaments before the treasury and that on 19.01.2015 he received the order of the Collector and on the same day he deposited the seized gold ornaments before the Special Treasury, Berhampur and that on 30.01.2015 he made a prayer to the S.P, Berhampur to move to the Government of Orissa to accord sanction to prosecute against him under UAP Act. He further deposed that on 31.01.2015 he appeared before the Home Secretary for hearing of the case on the objection

filed by the accused and on the same day he contacted R.I, Nayagarh to ascertain about the truthfulness of the information about theft of firearms and that on 15.04.2015 he received sanction order from the Govt. of Orissa under UAP Act to prosecute against him and on 29.04.2015 he received sanction order from the Govt. of Orissa to prosecute against him under different provisions of IPC for which necessary sanction order was required. He also deposed that on 06.05.2015 he submitted another charge sheet against the accused keeping investigation open for arrest of another accused A. Chandra Rao and that on 13.05.2015 he produced the sanction order of the Govt. of Orissa to prosecute against the accused before the SDJM, Berhampur and that on 03.01.2016 he handed over the charge of further investigation of the case to DSP, Santunu Kumar Dash. During the course of adducing evidence he produced xerox copy of the letter issued by D.G & I.G regarding re-seizure of the gold ornaments, xerox copy of the order passed by the Collector, Ganjam to deposit the seized gold ornaments before treasury and that he proved the original treasury challan showing deposit of gold ornaments before the Treasury which is marked vide Ext.5, acknowledgment receipt issued by the Treasury Officer showing receipt of the gold ornaments which is marked vide Ext.6 and also proved the proceeding of the court of Principal Secretary, Govt. of Orissa which is marked vide Ext.7. During the course of adducing evidence he proved the forwarding letter issued by the S.D.J.M, Berhampur to the Registrar, Civil Courts, Berhampur vide it's letter No.1158 dtd.13.05.2015 which is marked vide Ext-10, the sanction order issued by the Government u/S.45 of UAP Act, 1967 in three pages which is marked vide Ext-11 and the forwarding letter of the Government along with the sanction order U/s.196 of Cr.P.C in three sheets which is marked vide Ext.12.

**13.** Before analysis of evidence both oral and documentary available on the case record it is pertinent to reflect some factual aspects of this case. As found from the case record this case was originally registered against the present accused only for the offence punishable U/Ss.353/121/121-A/124-A of IPC, Sections 25(1-B)(a)/27 of Arms Act and Sections 18/20/38 of UAP Act, 1967 and after completion of due investigation the I.O submitted charge sheet on 13.01.2015 for all the above offences against the present accused keeping investigation open U/S.173(8) of Cr.P.C pending for sanction order from Govt. and further follow of action. It is further found that considering the materials available on the case record the Id. SDJM, Berhampur took cognizance of the above offences vide order dtd.16.01.2015 and thereafter the case record was committed to the Court of Sessions and it was received on transfer by the court of 2<sup>nd</sup> Addl. Sessions Judge on 10.04.2015 for disposal according to law. It is further found that basing on the petition u/s. 227 of Cr.P.C filed by the present accused vide order dtd.17.07.2015 the accused was discharged for the offence punishable U/Ss.18/20/38 of UAP Act, 1967 by the then 2<sup>nd</sup> Addl. Dist. & Sessions Judge, Berhampur, Sri Chintamani Panda on the ground that sanction was not obtained prior to submission of the charge sheet to prosecute against the accused and on the same day considering the materials available on the case record framed charge for the offence punishable U/Ss.353/121/121-A/124 of IPC and Sections 25(1-B)(a)/27 of Arms Act. Thereafter as per the order passed by the Hon'ble Court the case record was received by this court on 10.01.2017 from the court of 2<sup>nd</sup> Addl. Dist. & Sessions Judge for disposal according to law. Prior to receipt of the case record by this court as many as 8 nos. of C.S witnesses were examined by the prosecution and after receipt of the case record by this court during

the tenure of my predecessor P.Ws.9 to 13 were examined and thereafter during my tenure P.Ws.14 & 15 were examined. Admittedly the cognizance order passed by the Id. SDJM, Berhampur has not been challenged by the defence or prosecution in any competent court of law. Similarly, the discharge order dtd.17.07.2015 passed by the then 2<sup>nd</sup> Addl. Dist. & Sessions Judge, Berhampur has not been challenged by the prosecution in any competent forum so also rejection of the prayer made by the accused to discharge him from the offence punishable U/Ss.121/121-A/124 of IPC has not been challenged by the defence in any competent forum. It is further found from the order dtd.09.02.2015 passed by the Id. SDJM, Berhampur that as further investigation of the case was pending at the time of commitment of the original case record against the present accused to the court of sessions a part file was opened and subsequently Sri S.K.Das, the then SDPO Berhampur took charge of investigation of the case and during the course of investigation he arrested the absconding accused A. Chandra Rao and the relevant materials in respect of investigation made by the I.O against accused A. Chandra Rao was dealt in the part file which are neither available with this case record nor prosecution thought it proper to produce the same in this case during the course of trial of the case against the present accused. As such with such background now the present accused is only facing his trial in this case for the offence punishable U/Ss.353/121/121-A/124 of IPC and Sections 25(1-B)(a)/27 of Arms Act.

**14.** Since all the points for determination arise in this case are interrelated with each other, the same are taken up together in order to establish the case of the prosecution. It is well settled principle of law that, the prosecution has to establish the charges

framed against the accused beyond all reasonable doubts by adducing cogent and unimpeachable evidence. *However grave the suspicion, it cannot take the place of proof.* Therefore, the heavy burden lies on the prosecution to establish the charges framed against the accused. It is also the settled position of law that, “ *the court must make an attempt to separate grain from the chaff, the truth from the falsehood. Yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the court would have to reconstruct an absolutely new cases for the prosecution by divorcing the essential details presented by the prosecution completely from the content and the background against which they are made, then this principle will not apply.*” (referred **A.I.R.1975 S.C. 1962**, Balka Singh and ors. Vrs. State of Punjab)

**15.** So far the most vital point as raised by the ld. defence counsel that the independent witnesses examined by the prosecution did not support the case of the prosecution for which only basing on the evidences of official witnesses those who are interested for the case of the prosecution the accused cannot be convicted is concerned, on perusal of the evidence adduced by the prosecution it is found that in this case as many as 6 nos. of independent witnesses have been examined by the prosecution and since they did not support the case of the prosecution in toto, they were declared as hostile witnesses by the prosecution and they were cross examined by putting some leading questions. As found from the evidence of P.W.1 who belongs to the same street from where there is allegation of apprehension of the present accused, he has categorically deposed that about one year back from his date of deposition police came to their street and arrested a person from the

house of one of his neighbourers. However, in his evidence he has specifically deposed that he does not know the name of his neighbourer. Though he has been cross examined by the prosecution, but nothing more has been brought out from his mouth to support the case of the prosecution. However, it is found from his evidence that he knows about apprehension of a person from their street. From the other part of evidence available on the case record since it is found that the present accused was apprehended from the street of this witness, it is felt by the court that he has suppressed the truth. As found from evidence of P.W.2 another independent witness he has expressed his complete ignorance about the prosecution case. Though he has been cross examined by the prosecution, but nothing has been brought out from his mouth to support the case of the prosecution. Similarly, P.W.3 another independent witness to the seizure in his evidence though stated that he knows the informant, the then IIC, Bada Bazar P.S namely Anil Kumar Mohanty, but he has expressed his ignorance about the case. He has specifically deposed that nothing has been seized in his presence and as per the direction of police he put his signatures on some papers and during the course of adducing evidence he proved his signatures which are marked vide Exts.1 and 1/1 on that paper. In the similar manner though he has been cross examined by the prosecution, but nothing more has been brought out from his mouth to support the case of the prosecution. As found from the paper on which the witness admitted his signatures marked vide Exts.1 and 1/1 the said paper is one seizure list prepared in respect of the articles alleged to have been seized from the possession of the present accused. It is found that the signature of the present witness is made in English. No such explanation has been given by P.W.3 as to under what

circumstances he put his signatures on the said paper for which it is felt by the court that he has suppressed the truth. Similarly, it is found from the evidence of P.W.4, another independent witness to the seizure that he has expressed his ignorance about the alleged seizure and he has specifically deposed that as per the direction of police he has put his signatures and he proved the same which are marked vide Ext.1/2 and 1/3. Though he was cross examined by the prosecution, but nothing has been brought out from his mouth to establish the case of the prosecution. However, during the course of cross examined he has specifically deposed that while he was going towards Bada Bazar for his business purpose on the way police detained him and took his signatures on some blank papers. He further admitted that though he does not remember the date and place when he signed on those blank papers, but he put his signatures at morning hour. As found from the seizure list on which the signature of this witness found place the witness has signed in English. No such explanation has been given by him under what circumstances he put his signatures on those papers. Since he has specifically deposed that while he was proceeding towards Bada Bazar police took his signatures, the same is found to be supported the case of the prosecution to some extent. Moreover, though he has stated that he put his signatures on some blank papers, but it is found that the seizure list is a printed form. So from the other part of the evidence available on the case record it also creates doubt on the conduct of the witness and it is felt by the court he has suppressed the truth. Similarly, it is found from the evidence of P.W.6 another independent witness to the seizure that he has expressed his ignorance about the case of the prosecution. He has specifically deposed that nothing has been seized in his presence in connection with this case, but as per the direction of police he put

his signatures on some papers which are marked vide Exts.2 and 2/1. Though he has been cross examined by the prosecution, but nothing has been brought out from his mouth to support the case of the prosecution. However, during the course of cross examination he has admitted that his signatures vide Exts.2 and 2/1 were taken on blank papers and police personnel forced him to sign on those papers. As found from the said paper where his signatures are made the same is a printed form for which the above evidence of the witness creates doubt about his conduct. Rather it is felt by the court that he has suppressed the truth. Similarly, it is found from the evidence of P.W.12, another independent witness to the seizure that he has also expressed his ignorance about the seizure, but he has admitted his signatures which are marked vide Exts.2/2, 2/3 and 2/4 on the seizure list dtd.26.07.2014. In his examination in chief he has specifically deposed that he has not remembered when and where he had given such signatures. Though he has been cross examined by the prosecution, but nothing more has been brought out from his mouth to support the case of the prosecution. However, the conduct of the witness is found to be suspicious as reflected by the court in his evidence. Though he has deposed that he has not signed on any printed form, but he admitted his signatures which creates doubt about his conduct. During the course of cross examination he has categorically admitted that on a day while he had been to police station for their matrimonial dispute police took his signatures on some papers. From the evidence of this witness it creates serious doubt on his conduct and it is felt by the court he has suppressed the truth. As such it is clearly found from the evidences of above 6 independent witnesses that they have not given complete goodbye to the case of the prosecution. Rather their

evidence is found to be supported to the case of the prosecution to some extent.

However, it is the settled principle of law that, *“even though the independent witness in such type of cases for one reason or the other do not support the prosecution case, that cannot be ground to discard the prosecution case in toto. On the other hand if the statements of the official witnesses relating to search and seizure are found to be cogent, reliable and trustworthy, the same can be acted upon to adjudicate the guilt of the accused persons. The Court will have to appreciate the relevant evidence and determine whether the evidence of the official witnesses is believable after taking due care and caution in evaluating their evidences”*. It is held by the Hon'ble Apex Court in the matter of Sumit Tomar Vrs. State of Punjab reported in **(2012) 53 OCR (SC) 1308** that, *“it is desirable to examine independent witness, however, in the absence of any such witness if the statements of Police Officer are reliable and when there is no animosity established against them by the accused, conviction based on their statements cannot be faulted with.”* It is also the settled principle of law that, *“the evidence of official witnesses cannot be discarded merely because they are official witnesses, but their evidence should be scrutinized with due care and caution and that the court should separate the grain from chaff and that evidence has to be weighed not to be counted.”* As such in view of above authorities the submission made by the learned defence counsel is not sustainable in the eyes of law.

On the back-drop of above contentions even if it is found that the independent witnesses have not supported the prosecution case in toto, it is to be seen whether the evidences of the official witnesses are clear, cogent, clinching, trustworthy and

credible enough to be relied upon to establish the case of the prosecution and to bring home the charge framed against the accused.

**16.** So far the next vital point as raised by the ld. defence counsel referring to the authority reported in **2019(1) Crimes 255 (SC) (supra)** it is argued that before submission of the charge sheet against the present accused on 13.01.2015 the I.O had not obtained necessary sanction from the Govt. to prosecute against the accused u/Ss.121/121-A/124-A IPC and as sanction order was obtained and filed before the court after submission of the charge sheet so also taking cognizance of the offences by the ld. lower court, prosecution case vitiates. It is also admitted by P.W.14 in his evidence that till handing over the charge of the investigation of the case he had not prayed to the Govt. to obtain sanction order as required under law in UAP Act, 1967 as well as under Sections 121/121-A/124-A of IPC. It is further found from the evidence of P.W.13 the 2<sup>nd</sup> I.O of this case that, the same is not clear as to when he prayed to the Govt. to obtain sanction order against the accused to file the charge sheet. On this aspect on perusal of the case record it is admitted fact that at the first instance charge sheet was submitted against the present accused on 13.01.2015 u/Ss. 353/121/121-A/124-A IPC, Sec.25(1-B)(a)/27 Arms Act and Secs.18/20/38 of UAP Act, 1967 keeping investigation open U/s.173(8) of Cr.P.C pending for sanction order from the Govt. and further follow up action. It is further found that necessary sanction order vide No.12476(m) dtd.18.04.2015 of the Government of Odisha u/s.196 of Cr.P.C was obtained to prosecute against the accused u/Ss.121/121-A/124-A of IPC which was received by the court on 13.05.2015 and cognizance for the above offences was taken by the ld. lower court vide order dtd.16.01.2015 which is

definitely before receipt of the necessary sanction order of the Govt. It is further found from the case record that though necessary sanction order vide No.10575(m) dtd.31.03.2015 u/s.45 of Unlawful Activities (Prevention) Act, 1967 was issued by the Govt. which was received by the ld. lower court on 13.05.2015 and the same was after taking of cognizance of the offence punishable u/Ss.18/20/38/40 of UAP Act, 1967, but basing on the petition u/s. 227 of Cr.P.C filed by the accused he was discharged from the offence punishable u/Ss.18/20/39(1)/40 of UAP Act, 1967 vide order dtd. 17.07.2015. As found from the case record the accused had filed the said petition to discharge him from the offences punishable u/Ss.18/20/39(1)/40 of UAP Act, 1967 so also u/Ss.121/121-A/124-A of IPC and though the petition was partly allowed by the court of 2<sup>nd</sup> Addl. Sessions Judge, Berhampur on 17.07.2015, but the said order in which the court rejected the prayer made by the accused to discharge him from the offence punishable u/Ss.121/121-A/124-A of IPC has not been challenged by the accused in any competent court of law. Moreover though the trial court framed charge for the offences under u/Ss. 121/121-A/124 of IPC along with other offences against the accused on the same day i.e. on 17.07.2015, but the same has not been challenged by the accused before any competent court in any manner. As such it is in the humble opinion of this court that the accused did not dispute the order taking cognizance so also framing of charge u/Ss.121/121-A/124 of IPC against him for which the question raised by the ld. defence counsel on the very same point at this stage is not sustainable in the eyes of law. As such it is felt by the court to see whether sufficient clear, cogent and clinching evidence is available against the accused to hold him guilty for the offence

punishable u/Ss.121/121-A/124 of IPC along with other offences for which charge has been framed against the accused.

**17.** During the course of argument the learned defence counsel also strongly submitted that there remain vital material contradictions and inconsistencies in the evidences of all the official witnesses for which the same cannot be relied upon to establish the case of the prosecution. So far such submission is concerned, it can be ascertained only after careful scrutinisation of the evidences of the witnesses examined by the prosecution. It is categorically found from the evidences adduced by the above official witnesses that though the alleged seizure was made prior to registration of the case, but the seizure list vide Ext.1/4 reflects the P.S case No. Though the P.W.9 complainant in his examination in chief specifically deposed that while they tried to apprehend the accused he started firing towards them, but P.W.10 an official witness being the member of the raiding party in his cross examination has stated that the accused had not fired towards them while they apprehended him. Besides the above some other contradictions are also found from the evidences of official witnesses during the course of their cross examination. However, it is the settled position of law that, cross-examination is an unequal battle between an exponent in the act of such cross-examination and a lesser educated person. In such unequal battle it is always probable that a person appearing as a witness who has no knowledge about the process of the court may fall into traps laid by the skilled defence lawyers. Further a witness though wholly truthful is liable to be overawed by the court atmosphere and the piercing cross-examination made by the counsel and out of nervous mix of facts, get confused regarding sequence of events, feel of the details from imagination on the spur of movement. The subconscious of mind of the witness sometimes

so operates on account of the fear of looking foolish on being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him which is a sort of psychological defence mechanism activated on the spur of the moment. The role of the ld. counsel conducting trial from the side of the prosecution is also of paramount importance and if the trial of the case is not being done properly by the prosecution counsel, there is more possibility of finding of contradictions in the evidences of prosecution witnesses. It is also the settled principle of law that, *“in all criminal cases normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amounts to a contradiction creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court. Such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case should not be made a ground on which the evidence can be rejected in its entirety.”* (Referred on a decision held by Hon'ble Apex Court in the matter of A. Shankar Vrs. State of Karnataka reported in **(2011) 49 OCR-831**). It is also the settled principle of law and held by the Hon'ble Apex Court in the matter of State of Karnataka Vrs. Smt. Suvarnamma and another reported in **(2014) 59 OCR (SC) 1059** that, *“the court dealing with a criminal trial is to perform the task of ascertaining the truth from the material before it. It has to punish the guilt and protect innocent. Burden of proof is on the prosecution and the prosecution has to establish its case beyond reasonable doubt. Much weight cannot be given to minor*

*discrepancies which are bound to occur on account of difference in perception, loss of memory and other invariable factors.”* In the present case though considering the voluminous cross-examination made by the defence to the prosecution witnesses it is not wise to discuss elaborately on the contradictions found from their evidence, but during the analysis of evidence the vital material contradictions noticed are to be taken into consideration and the minor contradictions which do not affect the core of the case are to be ignored to establish the case of the prosecution.

**18.** Since all the points for determination of this case are interrelated to each other, the same are taken up together for its determination and to establish the case of the prosecution. In the instant case the apprehension of the present accused on the alleged date at the relevant time from the spot as claimed by the prosecution is of paramount importance. During the course of argument the ld. defence counsel has categorically submitted that, the evidence adduced by the prosecution is not clear, cogent, clinching and trustworthy to establish that the accused was apprehended on 18.07.2014 at Mangalavarampeta Street of Berhampur from the house of one A. Chandra Rao. He has categorically submitted that, the accused being a businessman had come to Berhampur to purchase rice and he had brought cash as well as gold with him for his business and that police took him from the hotel where he was staying and took away the gold and cash possessed by him. Though this plea has been taken by the accused during the course of cross examination to the complainant P.W.9 so also while he was examined U/s.313 of Cr.P.C in question No.57, but no such oral or documentary evidence has been adduced by him to establish the same. The ld. defence counsel has specifically stated that the evidences of P.Ws.7, 9, 11 and 15 are contradictory

in nature in respect of the place of apprehension of the accused. He further submitted that though P.W.7 in para-5 of his evidence has admitted that the present accused was apprehended in the first room of ground floor of the house of A. Chandra Rao, but P.W.9 in para-31 of his cross examination has categorically submitted that after breaking the door they caught hold the accused from the second room of the said building. He further deposed that though P.W.11 in his examination in chief so also cross examination stated that the raid was conducted at Kamalabaripeta Street, but the other witnesses of the alleged raiding party including the I.O have specifically deposed that the raid was conducted and the accused was apprehended at Mangalabaripeta Street. Since the I.O has admitted that both the streets are two different streets situated under the jurisdiction of Bada Bazar P.S, it creates serious doubt about the apprehension of the accused from the alleged house. He further submitted that P.W.11 has also admitted that she does not know how many rooms were there in the alleged house and that none of the raiding party members ascertained regarding the rooms of that house and that accused was apprehended from the second room of the house. He further submitted that P.W.15 in his cross examination has categorically admitted that the IIC did not call the neighbourers or any Executive Magistrate to the spot for breaking open the door of the alleged house so also the IIC did not call the neighbourer nor he is aware regarding the fact that who are the immediate neighbourers of the alleged house. He further submitted that the alleged building is a three storied house and he is not aware as to how many rooms are there in the said building. He further submitted that as per the admission of the I.O the alleged broken door was not seized by him during the course of investigation for which it also creates doubt about the case of the

prosecution. The ld. defence counsel basing on the above part of the evidence has categorically submitted that since these evidences are contradictory to each other it creates serious doubt whether the witnesses were present at the spot during the time of apprehension of the accused and the accused was apprehended from the alleged house. Admittedly there remain some contradictions in the evidences of above witnesses in respect of the exact room from where the present accused was apprehended. However it is clearly found from the evidences of above P.Ws that they have categorically stated that the accused was apprehended from the house of one A. Chandra Rao located at Mangalabaripeta street. It is felt by the court that the contradictions noticed in the evidences of above P.Ws are minor contradictions which are bound to arise in all criminal cases due to lapse of time and said contradictions are not fatal for the case of the prosecution. Moreover, the accused has specifically deposed that on the alleged date he was apprehended by the police from Berhampur. It is not his plea that he was absent at Berhampur on the alleged date. As such from the sum total evidences available on the case record it is clearly established that the accused was apprehended on the alleged date at the relevant time from the house of A.Chandra Rao located at Mangalabaripeta street and the plea taken by the defence is not sustainable in the eyes of law. While it is established by the prosecution that on the alleged date i.e. on 18.07.2014 the present accused was apprehended from the house of A. Chandra Rao located in Mangalabaripeta street, now it is to be seen whether prosecution could able to establish the charges framed against the accused.

**19.** So far the first, fifth and sixth points for determination of this case are concerned, which are relating to offence U/s.353 of IPC and Sections 25(1-B)(a)/27 of Arms Act on perusal of the evidences

adduced by the prosecution it is found that the complainant (P.W.9) who is none but the then IIC of Bada Bazar P.S along with P.Ws.8, 11, 15, 7, 5 and 10 were the members of the raiding party who apprehended the present accused on the alleged date. It is categorically deposed by the complainant (P.W.9) that while they entered inside the house of A.Chandra Rao by breaking open its door to apprehend the accused, he (the accused) started firing towards them. Similarly, P.W.8 a member of the raiding party in his evidence in chief has categorically deposed that while they broke open the door and entered inside the alleged house to apprehend the accused, at that time the accused attempted to fire on them by a revolver. P.W.11 another member of the raiding party in his evidence in chief deposed that while the door of the alleged house was broken one lady came out from the house and after convincing her they entered inside the alleged house to apprehend the accused and during that time while they tried to apprehend the accused there was push and pull among the accused and the police personnel and finally they could able to apprehend the accused. P.W.15 in his evidence in chief also deposed that after breaking open the door of the alleged house they entered inside the house and while the accused was trying to escape through the main door they could able to caught hold him. P.W.7 in his evidence in chief also deposed that while they entered inside the alleged house by breaking open the door seeing them the accused tried to fire them, but they could manage to apprehend the accused. P.W.5 in his evidence in chief also deposed that after breaking open the door when they entered inside the room seeing them the accused tried to flee away from the spot, but they could able to apprehend him. P.W.10 in his evidence in chief also deposed that when the accused

tried to fire from the Mouser possessed by him there was tussle between their officers and the accused.

**20.** At the cost of repetition, it is worthwhile to quote Section 353 of the IPC and Sections 25(1-B)(a)/27 of the Arms Act, 1959 for ready reference which reads as follows:

Sec.353 of IPC :- Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to 2 years or with fine or with both.

Sec. 25(1-B)(a) the Arms Act: Whoever acquires, has in his possession or carries any firearm or ammunition in contravention of Sec.3

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shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine.

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.

Sec.3 of the Act says as follows:-

License for acquisition and possession of firearms and ammunition (1) no person shall acquire, have or his possession or

carry any firearm or ammunition unless he holds in this behalf a license issued in accordance with the provisions of this Act and the Rules made there under.

Provided that a person may without himself holding a license carry any firearm or ammunition in the presence or under the written authority of the holder of the license for repair or for renewal of the license or use by such holder.

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Sec.27 of the Act says as follows:-

Punishment for using arms etc.

1. Whoever uses any arms or ammunition in contravention of section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.
2. Whoever uses any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.
3. Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person shall be punishable with death.

Sec. 5 of the Act says as follows:-

License for manufacture, sale etc. of arms and ammunitions

1. No person shall

- a. Use, manufacture, sale, transfer, convert, repair, test or prove, or
- b. Expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or prove any firearm or any other arms of such class or description as may be prescribed or any ammunition unless he holds in this behalf a license issued in accordance with the provisions of this Act and Rules made there under

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Sec.7 of the Act says as follows:-

Prohibition of acquisition or possession or of manufacture or sale of prohibitory arms or prohibitory ammunition.-

- a. No person shall acquire, have in his possession or carry, or
- b. Use, manufacture, sale, transfer, convert, repair, test or prove, or
- c. Expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or prove.

Any prohibited arms or prohibited ammunition unless he has been specifically authorized by the Central Govt. in this behalf.

**21.** As found from the seizure list vide Ext.1/4 one Revolver was seized from the possession of the present accused at the spot. As found from the evidences of above P.Ws there was tussle among the accused and the police personnel at the spot during the time of alleged raid. Since the accused was armed with a revolver and tried to flee away from the spot, definitely he might

have used criminal force to the members of the raiding party those who were public servants in execution of their duties with an intention to prevent and deter those persons from discharging their duties as such public servants. As found from the evidences adduced by the prosecution and being admitted by the official witnesses who are the members of the raiding party nobody has sustained any such injury due to the tussle made among the accused and the police personnel. Though in this case it is found that during the course of alleged search different incriminating materials are seized from the possession of the present accused for the first instance on the date of his apprehension, but during the course of cross-examination P.W.5 has categorically admitted that the IIC has not given his personal search prior to search of the accused. Similarly during the course of cross-examination P.W.7 has categorically admitted that the finger print of the accused on the alleged Mouser was not taken either by the IIC or by the scientific team. It is also found from the evidence of P.W.8 that he does not know the denomination of the currents as well as quantity of seized gold's and he further admitted that IIC has not given his personal search and no senior police officer was present at the spot during the time of raid. Admittedly neither any fire bullet was seized from the spot nor any report is received from scientific team regarding firing mark on the seized revolver. However it is found from the case record that during the course of investigation of the case the I.O sent the alleged seized factory made 0.38 revolver to the regional FSL, Berhampur for it's examination and opinion and after due examination it was opined that the alleged revolver is a factory made firearm which comes under the purview of Indian Arms Act and the revolver is in proper working order. Though all the above P.Ws has been cross-examined by the defence at length, but nothing

has been brought out from their mouth to discard their sworn testimonies and to disbelieve the same. However it is found that some minor contradictions are noticed in their evidence which are not fatal for the case of the prosecution. No such rebuttal evidence has been adduced by the accused that neither he was apprehended on the alleged date from the house of A.Chandra Rao nor used any criminal force on the complainant and other police personnel while they were discharging their duties as public servants nor he was in possession of one factory made revolver with live ammunitions nor he had used the revolver at the spot in any manner. Rather on the other hand it is clearly established by the prosecution that the accused was apprehended on the alleged date from the house of A. Chandra Rao and he was in possession of one country made Revolver with live ammunitions in contravention of Sec.3 of the Arms Act 1959 so also used the said revolver in contravention of Sec.5 of the Act at the spot for which the offence U/s.353 of IPC and Sections 25(1-B)(a)/27 of the Arms Act, 1959 are clearly made out against the present accused.

**22.** So far the second, third and fourth points for determination of this case are concerned, which are relating to offence U/Ss.121/121-A/124 of IPC on perusal of the evidences adduced by the prosecution it is found that the entire prosecution case on these points is based on the official witnesses only.

At the cost of repetition, it is worthwhile to quote Sections 121/121-A/124 of IPC for ready reference which reads as follows:

Sec.121:- Waging or attempting to wage war, or abetting waging of war against the Govt. of India- whoever wages war against the Govt. of India or attempts to wage such war or abets the waging

of such war shall be punished with death or imprisonment for life and shall also liable to fine.

Sec.121-A:- Conspiracy to commit offences punishable by Sec.121- whoever within or without India conspires to commit any of the offences punishable by Sec.121 or conspiracy to overawe by means of criminal force or the show of criminal force the Central Govt. or any State Govt. shall be punished with imprisonment for life or with imprisonment of either description which may extend to 10 years and shall also be liable fine.

Explanation: To constitute a conspiracy under this section it is not necessary that any act or illegal omission shall take place in pursuance thereof.

Sec.124:- Assaulting President, Governor, etc. with intend to compel or restrain the exercise of any lawful power- whoever with the intention of inducing or compelling the President of India or the Governor of any State to exercise or reframed from exercising in any manner any of the lawful powers of such President or Governor assaults or wrongfully restrains or attempts wrongfully to restrain or overawes by means of criminal force or the show of criminal force or attempts show to overawe such President or Governor shall be punished with imprisonment for either description for a term which may extend to 7 years or shall also be liable to fine.

**23.** It is the settled principle of law that to constitute the offence U/s.121 IPC no specified number of persons is necessary. Neither the number of persons nor the manner in which they are assembled or armed is material to constitute an offence under this section. The true criterion is the purpose or intention with which the

gathering assembled. The object of the gathering must be to attain, by force and violence, an object of a general public nature thereby striking directly against the Government authority. It is also the settled principle of law that a person taking part in an organized armed attack on the constituted authority and that attack having for its object the subversion of Govt. and the establishment of another in its place would be guilty of the offence of waging war. It is a fundamental right of every citizen to have his own political theory and ideas and to propagate the same and work for their establishment so long he does not seek to do so by force or violence. Where the object of the accused is to overthrow the Govt. and with this object they recruited people punishing those who refused to join it was held that they were guilty of waging war. Abetting the waging of war is also put on the same basis as waging of war itself. So long as a man tries to inflame feeling to excite the state of mind he is not guilty of anything more than sedition. It is only when he incites to action that he is guilty of instigating and therefore abetting the waging of war. There is no distinction between abatement with success or abetments which have failed or for offences U/s.121 IPC there is no distinction.

It is also the settled position of law that, there are two kinds of conspiracies namely (1) conspiracy to commit the offences punishable u/s.121 IPC and (2) conspiracy to overawe by means of criminal force or show of criminal force the Central or State Govt. The word “*overawe*” imports more than the creation of one apprehension or alarm or even fear. It connotes the creation of a situation in which the members of the Central or the State Govt. feel themselves compelled to choose between yielding to force or exposing themselves and the members of the public to a very serious danger and the danger may be to the public or public

property. It is also settled principle of law that no amount of violence however great and with whatever circumstances of a war like kind it may be attended, will make an attack by one subject on another high treason. On the other hand any amount of violence however in significant directed against the king will be high treason and as soon as violence has any political object, it is impossible to say that it is not direct against the king in the sense of being harmed opposition to the lawful exercise of his power.

**24.** In the instant case it is categorically deposed by the complainant (P.W.9) that while the present accused was apprehended he was armed with a revolver and he shouted loudly saying “*Mao Sangathan Jindabad Police Kukura Murdabad, Sasashtra Sangram Dwara Maobadi Sasan Prathista Hebo*”. His evidence also reveals that he recovered the said Revolver, a cash of Rs.2,11,000/-, some leaflets on which something was written in respect of *Maobadi* activities, gold ornaments approximately weighing about 800 grams and some other incriminating materials from the possession of the present accused. P.Ws.8 and 11 witnesses of the raiding party in their evidences also stated the same thing corroborating to the evidence of complainant (P.W.9). Besides the same P.W.11 in his evidence further deposed that while the IIC (P.W.9) put certain questions to accused regarding his involvement with Nachika Linga, Balakrishna, Azad and Ghasi and as to why he is staying at that place he replied that for his Mao Sangathan he is inspiring the local male and female persons to work for their sangathan and to make them as the members of their Mao Sangathan. He further deposed that when they caught hold the accused he gave a slogan loudly by saying “*Maobadi Jindabad Police Kukura Murdabad*”. Similarly P.W.15 another member of the raiding party also deposed the same thing corroborating to the evidence of

complainant (P.W.9). Besides the same P.W.15 further deposed that while the accused was apprehended he raised slogan against police and in favour of Maoist organization. P.W.7 also in his evidence in chief deposed the same thing corroborating to the evidence of complainant (P.W.9). Besides the same he also deposed that on being asked by P.W.9 the accused disclosed that he along with others had attacked Nayagarh Astragara and disclosed they had kidnapped Italian tourists and also disclosed that they killed Laxmanananda Saraswati at Jaleswar, Phulbani and that the unemployed youths are targeted to join in their group and also criticized the Govt. as well as the police by giving various slogans and disclosed that they will establish the Maoist kingdom and further disclosed that Nachika Linga, Ganapati and others are their group leaders. P.W.5 also in his evidence corroborated the evidence of complainant (P.W.9). He also deposed that some Maoist posters were seized from the possession of the present accused.

**25.** During the course of argument the ld. defence counsel submitted that though there is allegation of seizure of different Mobile Phones, SIM cards, Laptop etc. but the same were not sent for any examination by the competent person to establish whether any information is there regarding the Maoist activities of the accused. He further submitted that since the complainant during the course of cross-examination could not say the contents of the seized leaflets and he has not recorded the statement of the accused in the presence of any witnesses nor prayed before the court for recording of the same by any competent court it creates serious doubt on the genuineness of the case of the prosecution. He further submitted that the serial no. of the alleged revolver as reflected in the FIR so also the seizure list are contradictory with each other which creates serious doubt about the genuineness of seizure of any

such revolver in this case. He also submitted that since during the course of trial the I.O did not prefer to produce alleged seized gold ornaments, cash and Revolver before the court for its identification, it creates suspicion about the genuineness of the case of the prosecution. He further submitted that though P.W.15 deposed about seizure of two nos. of banners, but the seizure list prepared by the complainant does not disclose so for which the same is under doubt. He also submitted that though there is allegation of theft of the gold ornaments seized from the possession of the accused from Sorada, but during the course of investigation no such material was collected by the IO to establish the same. He also submitted that during the course of investigation of the case none of the I.Os preferred to seize the Malkhana Register to establish that the gold ornaments were kept inside police Malkhana with proper entry in the Malkhana Register so also the seizure list does not disclose any identification mark on the seized gold ornaments. The ld. defence counsel also submitted that there is absolutely no evidence available on the case record to establish the offence U/Ss.121/121-A/124 IPC against the accused.

On the other hand the ld. Addl. P.P appearing for the State submitted that the accused is a hard core Maoist involved in a good number of heinous cases which are now pending at different courts inside the State. He further submitted that considering the present trend and activities of Maoist through the country and as the present accused was terrorizing the people at large in different parts of our State so also outside the State by showing their Maoist activities nobody is daring either to take legal action against the accused nor deposed anything against him in the court and that the problem of Maoist is a burning topic of our country now a days which is to be handled strictly. He further submitted that no such

explanation has been given by the accused as to how and under what circumstances the alleged incriminating materials including huge amount of cash and huge quantity of gold ornaments were in his possession and that the accused and his Maoist group which was declared as illegal has become a challenge for the country now and hence considering the materials seized from the possession of the accused the evidence adduced by the complainant and other official witnesses cannot be disbelieved and it can be clearly held that the accused was attempting to wage war against the Govt. of India so also making conspiracy to wage war against the Govt. by using criminal force.

**26.** On perusal of the evidences adduced by the prosecution though it is found that seizure of the incriminating materials and the slogans given by the accused at the time of his apprehension has not been supported by any independent witness, but considering the facts and circumstances of the present case the evidences of the official witnesses cannot be disbelieved. Moreover though the above official witnesses have been cross-examined by the defence at length, but nothing has been brought out from their mouth to discard their sworn testimony and to disbelieve the same. Rather it is clearly held by the prosecution by way of adducing clear, cogent, clinching and trustworthy evidence that while the accused was apprehended he was attempting to wage war and abetting others to wage war against the Govt. of India so also he was making conspiracy to wage war against the Govt. and to overawe by means of criminal force. As such the offence U/Ss.121/121-A of IPC are clearly established against the accused. However there is no such evidence available on the case record to establish that the accused had ever used criminal force with an intention to induce or compel for assaulting, restraining or attempting wrongfully to restrain the

President of India in exercising his lawful power for which the offence U/s.124 of IPC is not established against him.

**27.** Besides the fact that the accused is found guilty for certain offences as discussed above and convicted there under, it is found from the case record that so many irregularities are committed in the investigation made by the I.Os and that the trial of the case has not been conducted properly by the Id. counsels appearing from the side of the prosecution. From the entire materials available on the case record, it is found that without considering the gravity of the case in a very casual manner the complainant has performed his work during the time of alleged search and seizure so also both the I.Os have investigated the case in a very casual manner. The authorities supervised the case have not given emphasis as required in such a sensational case. It is also found that prosecution has not conducted the trial of the case properly and the official witnesses have adduced their evidence haphazardly. It is very strange that the statements of the witnesses both independent and official are not recorded by the I.Os in their own hands and that neither any such endorsement is given by the I.Os that as per their dictation some body wrote the statements nor they examined those police personnel those who have written the 161 statements by their own hands. Though after apprehension of the accused while he was in police custody after interrogation he was taken to the alleged house from where on production by the accused some other incriminating materials were seized, but strangely neither any such disclosure statement of the accused u/s.27 of Indian Evidence Act has been recorded by the concerned I.Os nor the alleged seizure was made in consequence of any such disclosure. Though there is allegation of use of one Revolver by the accused, but the senior police officers present at the spot including

the complainant did not take any step to use the scientific team to collect the finger prints of the accused and to send the same for its examination. Though there is allegation of firing from the alleged revolver by the accused but the Revolver was not sent for any examination or ballistic opinion. Though there is allegation of seizure of one laptop, so many mobile phone and Sim cards by the accused, but the same were not sent for any examination by the expert. No CDRs of the alleged telephone no. were obtained or proved as per law to establish the involvement of the accused in the Maoist activities or having relationship with any other person. The I.Os have not prayed before the court for shape deposit of the alleged gold and cash in treasury and without taking any permission from the competent court the same were deposited. Besides the above so many irregularities have been committed by the complainant, the I.Os and the supervising authorities. During the course of trial of the case it is also found that prosecution did not take sincere step to bring out the truth from the mouth of the witnesses.

However it is the settled principle of law that, *“in cases of defective investigation, the court has to be circumspect in evaluating the evidence, but it would not be correct to acute the accused solely on account of defect in investigation. To do so would tantamount to playing into the hands of the investigating officer even if the investigation is designedly defective”*. (relied on a decision held by the Hon'ble Apex Court in the matter of State Vrs. Gurmit Singh reported in **AIR 1996 SC 1393** ). In such circumstances it is in the humble opinion of this court that the court is not to sit as a silent spectator or as a disinterested auditor of the contest before it, but should take an intelligent part in the proceeding and passing the judgment with a view to get the truth. It is also held by the Hon'ble

Apex court in the case of Karnel Singh reported in AIR **1995 SC 2472** that, *“we must admit that the defective investigation gave us some anxious moments and we were at first blush inclined to think that the accused was prejudiced. But on closer scrutiny we have reasoned to think that the loopholes in the investigation were left to help the accused at the cost of the poor victim. To acute solely on that ground would be adding insult to injury. Any deficiency or irregularity in investigation need not necessarily lead to rejection of the case of prosecution when it is otherwise proved”*. It is also the settled position of law that, *“while prosecution will not conduct the trial of the case sincerely for any reason best known to them, the Court will separate grain from chaffs and to decide the case considering all the relevant factors from different angles.”*

In the present case from the materials available on the case record though it is found that starting from registration of this case till submission of the charge sheet the entire process has been done by the senior officers in a very casual manner and trial of the case has been conducted by the ld. counsels appearing for the prosecution haphazardly and in a casual manner, but considering the sum total evidences available on the case record it is in the humble opinion of this court that the case of the prosecution will not vitiate for such irregularities. As per the settled principle of law it is the duty of the court to make an attempt to separate grain from the chaff, the truth from the falsehood and by this way though many irregularities are being done by the complainant, the I.Os for the reason best known to them, but it is in the humble opinion of this court that such irregularities will not vitiate the case of the prosecution where other clear, cogent, clinching and trustworthy materials are produced by the prosecution before the court. In these circumstances a copy of this judgment is to be send to the Director

General of Police, Orissa, Cuttack and Superintendent of Police, Berhampur to do the needful.

**28.** Hence, on a conspectus of the entire prosecution case, therefore, it is irresistibly held that the prosecution has been able to prove its case beyond all reasonable doubt that on 18.07.2014 at 12.30 A.M while the present accused Sunil @ Sabyasachi Panda was apprehended by the complainant and other police personnel from the house of A. Chandra Rao he used criminal force to them, he was in illegal possession of a Revolver contravening Sec.3 of the Arms Act and used the same in order to fire to the complainant and others and that he was making conspiracy to wage war against the Govt. so also abetting others to wage war against the Govt. of India by using criminal force and by showing criminal force. However, there is absolutely no evidence available against the accused to establish that he had assaulted or used criminal force to the President, Governor, etc. with intend to compel or restrain the exercise of any lawful power.

**29.** In the result the accused **Sunil @ Sabyasachi Panda** is found not guilty for the offence punishable U/S.124 of the IPC and hence he is acquitted there from under Section 235(1) of Cr.P.C. At the same time he is found guilty for the offence punishable U/Ss. 353/121/121-A of IPC & Sections 25(1-B)(a)/27 of Arms Act, 1959 and hence convicted there under U/s. 235 (2) Cr.P.C.

**30.** Considering the nature and gravity of the offence alleged against the convict, the manner in which he committed the alleged crime and as so many cases are pending against the convict with heinous allegations, I do not think it proper to release him on any of the beneficiary provisions of the Probation of Offenders Act.

As such, I opt to pass sentence only after hearing him on question of sentence.

**1st Addl. Sessions Judge,  
Berhampur.  
Dtd.18.05.2019**

The judgment is typed to my dictation by the Stenographer attached to this court directly on the computer, corrected by me and pronounced in the open Court today, this the 18<sup>th</sup> day of May, 2019 under my hand and seal of this Court.

**1st Addl. Sessions Judge,  
Berhampur.  
Dtd.18.05.2019**

**HEARING ON THE QUESTION OF SENTENCE**

**31.** Heard the convict, his learned counsel and the learned Addl. Public Prosecutor appearing for the prosecution on the question of sentence. It is submitted by the learned defence counsel that in the mean time the convict has repented for his wrongful acts for which a lenient view may be taken against him in imposing sentence. He further submitted that though intentionally so many cases are being instituted against the convict, but in no case he is being convicted so far and that he is the only earning member of his family. He also submitted that the convict is aged about 51 years having his long future for which a lenient view may be taken against him while imposing the sentence.

On the other hand the learned Addl. Public Prosecutor contended that, the convict was the Mao leader organizing Maoist activities inside and outside the State and he is responsible for death of so many innocent people and that he was challenging both

the Govt. of Orissa as well as Central Govt. by doing his illegal activities for last 15 years and that he was the most wanted Maoist leader of our State and that considering the nature and gravity of the crime committed by him and circumstances in which it was committed, he is not required to be dealt with leniently in imposing sentence and prayed that he may be punished with deterrent punishment for the interest of the society.

**32.** It is the settled principle of law that, *“Punishment is the measurement of public abhorrence towards a criminal act which adversely affects not only the victim, but the society at large. A Court responds to the cry of the society for justice by imposing appropriate sentence. Therefore, the quantum of sentence should commensurate with the gravity of the offence”*. (Relied on a decision held by the Hon'ble Apex Court in the matter of Dhananjay Chhatarjee Vrs. State of West Bengal **(1994) (2) SCC 220** & Ravji Vrs State of Rajsthan **1996 (2) SCC 175**). It is also the settled principle of law and held by the Hon'ble Apex Court in the matter of Shyam Narain Vrs. The State of N.C.T. of Delhi reported in **2013 (2) Crimes 342 (S.C)** that, *“Primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. True it is, on certain occasions opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed*

*and the penalty imposed are to be kept in view. While carrying out this complex exercise, it is obligatory on the part of the court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.” It is also settled position of law that, “If the courts did not protect the injured, the injured would then resort to private vengeance. It is therefore the duty of the court to award proper sentence having regard to the nature of the offence and to manner in which it was executed or committed.”*

**33.** As found from the case record convict is aged about 51 years. It is further found that a good number of cases are instituted against the convict for his Maoist activities. The submission of the Id. Addl. P.P that the convict was organizing the Maoist activities inside as well as outside the State and caused death of so many innocent people is of importance. Though not proved but the above submissions of the Id. Addl. P.P is prima facie found from the case record. As such, considering all the relevant factors it is felt by the court that if just (neither minimum nor maximum) punishment will be imposed on the convict in the instant case, then it will meet the ends of justice.

So the convict **Sunil @ Sabyasachi Panda** is sentenced to undergo Rigorous Imprisonment (in short R.I) **for 2 (two) years** for his conviction U/s. **353** I.P.C, to undergo R.I **for life** and to pay a fine of Rs.10,000/- (Rupees Ten Thousands) only in default to undergo further R.I for **1 (one) year** for his conviction U/s.**121** IPC, to undergo R.I **for 2 (two) years** and to pay a fine of Rs.5,000/- (Rupees Five Thousands) only in default to undergo further R.I for **6 (six) months** for his conviction U/s.**25(1-B)(a)** of the Arms Act, 1959 and to undergo R.I **for 5 (five) years** and to pay a fine of Rs.10,000/- (Rupees Ten Thousands) only in default to undergo

further R.I for **1 (one) year** for his conviction U/s.**27(1)** of the Arms Act. Since punishment is given for the offence U/s.121 of IPC and the offence U/s.121-A of IPC is a minor offence to the offence U/s.121 IPC, as per the provision U/s.222 of Cr.P.C no separate sentence is given to the convict for his conviction U/s.121-A of IPC. Considering the nature and gravity of the offences committed by the convict, it is ordered that the sentences imposed on him is to run **concurrently**. The U.T.P. period undergone by the convict from **18.07.2014 till date** be set off U/s. 428 Cr.P.C.

No property disposal order is passed since the case against another accused **A. Chandra Rao** is still pending and the necessary property disposal order will be passed in the said split up case record.

**1st Addl. Sessions Judge,  
Berhampur.**

Dtd.18.05.2019

The sentence is typed to my dictation by the Stenographer attached to this court directly on the computer, corrected by me and the same is pronounced in the open Court today, this the 18<sup>th</sup> day of May, 2019 under my hand and seal of this Court.

**1st Addl. Sessions Judge,  
Berhampur.**

Dtd.18.05.2019

Transcribed to my dictation by the Stenographer and corrected by me. Judgment is pronounced in the open Court on this the 18<sup>th</sup> day of May, 2019 under my hand and seal of the Court.

**1st Addl. Sessions Judge,  
Berhampur.**

Dtd. 18.05.2019

List of witnesses examined on behalf of the Prosecution

P.W.1	A. Santosh Kumar Subudhi
P.W.2	S. Hadi Babu
P.W.3	Abhimanyu Nayak
P.W.4	Tuna Nayak
P.W.5	Maheswar Acharya
P.W.6	Kalia Subudhi
P.W.7	K. Dandapani Dora
P.W.8	T. Ranga Babu
P.W.9	Anil Kumar Mohanty
P.W.10	Kedarnarayan Patra
P.W.11	Smt. Rebati Sabar
P.W.12	Lilu Das
P.W.13	Thakur Prasad Patra
P.W.14	Pradeep Kumar Pattnaik
P.W.15	Deepak Kumar Lenka

List of Witness examined on behalf of the Defence

None

List of documents admitted in evidence on behalf of the Prosecution

Ext.1	Signature of P.W.3 on seizure list
Ext.1/1	Signature of P.W.3 on seizure list
Ext.1/2	Signature of P.W.4 on seizure list
Ext.1/3	Signature of P.W.4 on seizure list
Ext.1/4	Seizure List
Ext.1/5	Signature of P.W.9 on Ext.1/4
Ext.1/6	Signature of P.W.9 on additional list attached with the seizure list
Ext.1/7	Signature of accused on Ext.1
Ext.1/8	Signature of accused on additional list attached with the seizure list
Ext.1/9	Signature of Abhimanyu Nayak in 1 <sup>st</sup> page on additional list
Ext.1/10	Signature of Tuna Nayak in 1 <sup>st</sup> page on additional list
Ext.1/11	Signature of Abhimanyu Nayak in 2 <sup>nd</sup> page on additional list

Ext.1/12	Signature of Tuna Nayak in 2 <sup>nd</sup> page on additional list
Ext.2	Signature of P.W.6 on seizure list dtd.26.07.2014
Ext.2/1	Signature of P.W.6 on seizure list dtd.26.07.2014
Ext.2/2	Signature of P.W.12 on seizure list dtd.26.07.2014
Ext.2/3	Signature of P.W.12 on seizure list
Ext.2/4	Signature of P.W.12 on the backside of seizure list
Ext.3	F.I.R
Ext.3/1	Signature of P.W.9 on Ext.3
Ext.3/2	Endorsement with signature of P.W.9 on Ext.3
Ext.4	Seizure list
Ext.4/1	Signature of P.W.13 on Ext.4
Ext.4/2	Signature of Sri Anil Kumar Mohanty on Ext.4
Ext.4/3	Signature of Santosh Gouda on Ext.4
Ext.4/4	Signature of Santosh Kumar Mohanty on Ext.4
Ext.5	Treasury Challan
Ext.6	Receipt of gold ornament
Ext.7	Proceeding of the court of Principal Secretary, Govt. of Orissa
Ext.8	Spot map annexed with crime detail form
Ext.8/1	Signature of P.W.14 on Ext.8
Ext.8/2	Signature of P.W.14 on Ext.8
Ext.2/5	Seizure list
Ext.2/6	Signature of P.W.14 on Ext.2/5
Ext.2/7	Signature of accused on Ext.2/5
Ext.2/8	Signature of accused on Ext.2/5
Ext.9	Sanction Order
Ext.10	Forwarding letter
Ext.11	Sanction Order
Ext.12	Forwarding letter along with sanction order

List of document admitted in evidence on behalf of the defence

Nil.

List of M.Os marked on behalf of the prosecution

M.O-I	Solar Plate
M.O-II	Canon Scan bearing No.15206
M.O-III	Key Board
M.O-IV	Note Book
M.O-V	Recharge Battery
M.O-VI	Extension Circuit Board Galaxy

M.O-VII	Red Colour Clothes (three pieces)
M.O-VIII	Mobile Charger (six pieces)
M.O-IX	Data Cable
M.O-X	Ear Phone (two pieces)
M.O-XI	Five Meters Wire
M.O-XII	Laptop Charger
M.O-XIII	Empty Micro Box (two pieces)
M.O-XIV	Solar Power Pack
M.O-XV	Home Light Power Pack for TV/Telephone
M.O-XVI	Micro Max Mobile
M.O-XVII	Nokia Mobile Phone
M.O-XVIII	Another Nokia Mobile Phone
M.O-XIX	Max Mobile
M.O-XX	Dungle
M.O-XXI	C.D Plates with Plastic Cover
M.O-XXII	Optical's Cover along with the spectacle
M.O-XXIII	H.P Pendrive
M.O-XXIV	Card Reader
M.O-XXV	Note Book Binding
M.O-XXVI	Sim Cards kept in a Packet
M.O-XXVII	Horoscope Book
M.O-XXVIII	Book
M.O-XXIX	Receipt Book
M.O-XXX	One Khata
M.O-XXXI	One R.C Book
M.O-XXXII	Small Note Book (Pocket Book)
M.O-XXXIII	Medium Book
M.O-XXXIV	Two Nos. leaflets
M.O-XXXV	Road Map
M.O-XXXVI	Acridated Journalist
M.O-XXXVII	Godrej Expert

List of M.O marked on behalf of the Defence

Nil

**1st Addl. Sessions Judge,  
Berhampur.**

Dtd.18.05.2019