

**IN THE COURT OF III ADDL. DISTRICT & SESSIONS
JUDGE, DAKSHINA KANNADA, MANGALURU**

Present:

Sri. B. B. Jakati

B.A., LL.M.

III Addl. District & Sessions Judge,
Dakshina Kannada, Mangaluru.

Dated this the 21st day of October 2021

Sessions Case No.125/2017

Complainant: The State of Karnataka,
represented by Venur Police Station.

(By Public Prosecutor)

Versus

Accused:

1. Vikram Gowda (Split up),
2. Pradeepa (Split up),
3. John (Split up),
4. Prabha (Split up),
5. Sundaru (Split up)
6. Vittala Malekudiya,
S/o. Lingappa Malekudiya,
Aged 23 years,
R/o. Manila Hosa Mane,
Kuthlooru Village,

Belthangady Taluk.

7. Lingappa Malekudiya,
S/o. Late Ganganna Malekudiya,
Aged 51 years,
R/o. Manila Hosa Mane,
Kuthlooru Village,
Belthangady Taluk.

**(A1 to 5 - Split up,
Rep. by Sri D.H.U. Adv. For A6 & A7)**

Particulars regarding date of Commission of offence, date of
Report of the occurrence, etc.

1. Date of Commission of the offence : 03.03.2012
2. Date of Report of occurrence : 03.03.2012
3. Name of the Informant : Sri. Sachin Lawrence
4. Date of commencement of trial : 25.11.2019
5. Date of closing of trial : 30.08.2021
6. Offence complained of : Section 120B, 124A of IPC and Section 19 and 20 of Unlawful Activities (Prevention) Act, 1967.
7. Opinion of the Judge : Accused No.6 and 7 are found not guilty for the offence under Section 120B, 124A of IPC and

Section 19 and 20 of
Unlawful Activities
Prevention Act, 1967.

JUDGMENT

The Assistant Superintendent of Police, Puttur Sub-Division, Puttur, D.K. filed the charge sheet against the accused No.1 to 7 for the offences punishable under Section 120B, of IPC and Section 19 and 20 of Unlawful Activities (Prevention) Act, 1967.

2. The case of the prosecution in brief is that, the accused No.1/Vikram Gowda, accused No.2/Pradeepa, accused No.3/John, accused No.4/Prabha, accused No.5/Sundari were the members of banned Organization by name Communist Party of India (Marxist-Leninist) – People's War. The CPI Mavovadi Naxal Organization is the front or ally organization of Communist Party of India (Marxist-Leninist). There is forest in Kuthlooru village situated within the jurisdiction of Belthangady Taluk and Venur Police Station. In Kuthloor the Tribal are residing. The accused No.7/Lingappa Malekudiya is the father of accused No.6/Vittala Malekudiya. The accused No.6 and 7 were residing in Kuthloor village of Belthangady Taluk. The accused No.1 to 5 entered into criminal conspiracy with the accused No.6 and 7 and all of them decided to wage war

against sovereignty of India. In prosecution of such criminal conspiracy the accused No.6 and 7 harboured or concealed the accused No.1 to 5 in tribal area. The accused No.1 to 5 instigating the tribal people of Kuthloor village to participate in Naxal activities. Such act was known to accused No.6 and 7 and then also they were harbouring and concealing the accused No.1 to 5 and their terrorist activities.

3. It has been alleged that, there was Anti Naxal Force created by the State Government and its office was in Karkala in the year 2012. On 03.03.2012 the Commandant of such force received credible information that the accused No.6 and 7 were concealing or harbouring Naxalites and therefore, he informed the P.W.1/Sachin Lawrence who was Reserve Police Sub Inspector and Member of Anti Naxal Force to go to the house of accused No.7. Accordingly, on 03.03.2012 at about 8.00 a.m. the P.W.1 along with his subordinates went to the house of accused No.7 in Kuthloor Village and searched his house in presence of panch witnesses. The P.W.1 found many articles which were in the nature of using such articles by Nexalites and therefore, he drawn the panchanama, recovered 23 articles. He taken the accused No.6 and 7 into his custody and then went to Venur Police Station and filed his first information on 03.03.2012 before P.W.21 who was the Police Sub Inspector. The P.W.21 registered the FIR, taken the accused No.6 and 7 in

to his custody and received panchanama and M.O.1 to 23 from P.W.21. Thereafter he has handed over the investigation to P.W.22/The Circle Police Inspector of Belthangady. Thereafter the investigation was taken over by P.W.23 who was Assistant Commissioner of Police of Puttur Division. After investigation the P.W.23 has filed the charge sheet against the accused No.1 to 7 for the above said offences showing that accused No.1 to 5 were absconding.

4. The accused No.6 and 7 were released on bail during the crime stage. The committal Magistrate not able to secure the presence of accused No.1 to 5 and therefore, case against them was split up. Thereafter, the committal Magistrate committed the present case for trial only against accused No.6 and 7.

5. The accused No.6 and 7 appeared through their counsel before this court after committal. On hearing both sides, my learned predecessor-in-office framed the charge against accused No.6 and 7 for the offence under section 120B, 124A of IPC and Section 19 and 20 of Unlawful Activities (Prevention) Act, 1967. The accused No.6 and 7 have pleaded not guilty and claim to be tried.

6. In order to prove the guilt of the accused No.6 and 7 the prosecution has examined 23 witnesses, got marked 27 documents and 36 material objects. The accused No.6

and 7 were examined under Section 313 of Cr.P.C. The accused No.6 and 7 have denied the incriminating evidence appearing against them. The accused No.6 and 7 filed their statement under Section 313(5) of Cr.P.C. and produced 10 documents to deny the allegation made by the prosecution. I have perused such documents and the statement of accused No.6 and 7.

7. The learned Public Prosecutor has argued that the P.W.1, 7 and 21 to P.W.23 are the Police officers. Only because they are police officers their statements cannot be discarded and credence has to be given to their statements. He has further argued that, there is some discrepancy in the evidence of P.W.1, P.W.7, P.W.2 and P.W.3 in respect of place where the seizure panchanama produced in Ex.P1 was drawn. But such discrepancy is not a ground to discard the seizure panchanama at Ex.P1 as the seizure of M.O.1 to 23 from the possession of accused No.6 and 7 has been proved. He has argued that, even though the villagers who have been examined as P.W.10 to 20 have not supported the case of the prosecution, then also the evidence of police witnesses is sufficient to prove that the accused No.6 and 7 entered into criminal conspiracy with accused No.1 to 5, committed the offence of sedition, harboured and concealed the accused No.1 to 5 who were the members of banned organization. Hence, accused No.6 and 7 have to be punished in

accordance with law. In support of this argument, he placed reliance on ten decisions which will be quoted in an appropriate stage of the judgment.

8. The learned counsel for the accused No.6 and 7 has argued that, the accused No.7 is the father of accused No.6 and both of them were residing in tribal area in Kuthloor Village in Belthangady Taluk in the year 2012. The accused No.6 was prosecuting his study in Journalism in Mangaluru University, in the year 2012. The articles seized from the house of accused No.6 and 7 and from the room of accused No.6 are the household articles and some of the newspapers including the book of Bhagath Singh. The articles seized by the police and reported in the case are not relating to any activities of banned organization or Naxalites. There was by-election for Udupi - Chickmagalur Parliamentary Constituency in the year 2012 and the accused No.6 has written some request letter to the concerned to fulfill the demands of tribal and warned that the villagers will boycott the elections if such demands are not fulfilled. By seeing such articles the student has been implicated in criminal case and thereby the police made the innocent people to face the criminal charges. No evidence is brought on record to prove the offence against accused No.6 and 7 and therefore, the accused are to be acquitted from all the charges.

9. After hearing the parties and the materials placed on record, the following points arise for my determination:

- 1) Whether the prosecution proves beyond reasonable doubt that on 03.03.2012 and prior to such date the accused No.6 and 7 entered into criminal conspiracy with accused No.1 to 5 to wage war against the government or to commit offence of sedition by engaging in naxalite activities and thereby the accused No.6 and 7 have committed the offence under section 120B of IPC?
- 2) Whether the prosecution further proves beyond reasonable doubt that on 03.03.2012 or prior to such date the accused No.6 and 7 by words or by signs or by visible representations or otherwise brought or attempted to brought hatred or contempt or excited or attempted to excite disaffection towards the Indian Government and thereby committed an offence of sedition punishable under Section 124A of IPC?
- 3) Whether the prosecution further proves beyond reasonable doubt that the accused No.6 and 7 were the members of CPI Mavovadi Naxalite which is the front organization of Communist Party of India (Marxist -Leninist)-People's War and thereby committed the offence under section 20 of Unlawful Activities (Prevention) Act, 1967?
- 4) Whether the prosecution further proves beyond reasonable doubt, that the accused

No.6 and 7 being the residents of Kuthlooru tribal area voluntarily harbored or concealed or attempted to harbor or conceal the accused No.1 to 5 knowing that they were terrorists, and members of banned organization and thereby committed the offence under section 19 of Unlawful Activities (Prevention) Act, 1967?

10. My findings on the above points are as follows:

Point No.1 to 4 : In the negative

for the following:

REASONS

11. **Point No.1 to 4** : Since the allegation made against the accused No.6 and 7 is common along with accused No.1 to 5 and the evidence is overlapping on all the points and therefore, I have taken these points for common discussion.

12. In the first schedule of unlawful activities (Prevention) Act, in serial No.24 the terrorist organization is shown as, "Communist Party of India (Marxist-Leninist)-People's War, all its formations and front organizations." It has been alleged in the present case that, CPI Mavovadi Naxalite is the formation of or front organization of Communist Party of India (Marxist-Leninist)-People's war. This contention of the prosecution is not disputed by the

defence. So, the above said organizations are the banned organization under Unlawful Activities (Prevention) Act, 1967. Such fact has been proved by the prosecution. In order to prosecute the accused the required sanction has been taken by the I.O. and such sanction is in Ex.P27 dated 12.01.2015. Such sanction is also not disputed by the defence. Therefore, the investigation officer filed the charge sheet under the Special Act against accused No.6 and 7 with previous sanction. So, there is no legal bar to take cognizance and to try the accused No.6 and 7 under the provisions of Unlawful Activities (Prevention) Act, 1967.

13. To prove the allegation that the accused No.6 and 7 entered into criminal conspiracy with accused No.1 to 5, committed offence of sedition, harboured or concealed the accused No.1 to 5 in tribal area, the prosecution mainly relied upon seizure of some of the material objects from the possession of accused No.6 and 7 who are the father and son from their house and room of accused No.6. Therefore, the articles seized from the possession of accused No.6 and 7 are more relevant to decide as to whether the accused No.6 and 7 have committed the offences levelled against them.

14. Ex.P1 is the panchanama drawn by P.W.1 on 03.03.2012 between 8.00 a.m. to 12.00 noon in the house of accused No.7 in Kuthloor village. Under this panchanama totally 26 articles have been seized and they are in M.O.1 to

26. In order to prove this panchanama the prosecution has examined P.W.1 to 3 and 7. The P.W.1 and 7 are the Police Officers and whereas the P.W.2 and 3 are the independent witnesses. The P.W.2 and 3 have not supported the case of the prosecution about the seizure of M.O.1 to 26 from the possession of accused No.7. The P.W.1 and 7 have categorically stated that M.O.1 to 26 have been recovered from the house of accused No.7 at Kuthloor villager. These statements of P.W.1 and P.W.7 has been denied by the defence.

15. The P.W.1 who drawn the panchanama in Ex.P1. In the cross-examination has stated that he first prepared the rough panchanama in the house of accused No.7 and then went to Venur Police Station and thereafter took the signature of panch witnesses in Ex.P1 in Venur Police Station. The P.W.7 in the cross-examination has admitted that, mahazar in Ex.P1 has been written in Venur Police station. However, the P.W.7 has again stated that, initially draft mahazar was prepared by P.W.1 in the house of accused No.7 and then it was taken to Venur Police station for fair drafting and thereafter such fair draft mahazar was brought to the house of accused No.7 and his signatures were taken. In Ex.P1 it has been shown that, Mahazar was drawn in the house of accused No.7. So, there is some discrepancy in the mahazar, evidence of P.W.1 and 7 about

place where the signature of witnesses have been taken on the mahazar.

16. The Hon'ble Apex Court in **2002(2) Crimes 33 (SC)** has held that, even if there is any sort of procedural illegality in conducting the search and seizure, evidence collected thereby will not become inadmissible and court would consider all circumstances and find out whether any serious prejudice was caused to accused.

17. In **AIR 1996 Supreme Court 3035** the Hon'ble Apex Court has held that, the mere fact that the investigating officer committed irregularity or illegality during the course of investigation would not and does not cast doubt on the prosecution case nor trustworthy and reliable evidence can be cast aside to record acquittal on that account.

18. In **2001 CRI.L.J. 3969, AIR 2013 SC 3344, AIR 2003 SC 1311, (2001) 9 SCC 362, 2014(4) Crimes 266 (Karnt), ILR 2004 KAR 2531**, the Hon'ble Apex Court and the Hon'ble High Court of Karnataka held that the evidence of police witnesses cannot be doubted only because they are police officers. Therefore, based on these principles, I hold that the evidence of P.W.1, P.W.7, P.W.21 to P.W.23 cannot be discarded only because they are the police officers.

19. In the present case, the P.W.1 and 7 have categorically stated that M.O.1 to 26 have been seized from the house of accused No.7. Such statement is consistent. However, there is discrepancy in respect of place where Ex.P1 was drafted and signatures of the witnesses were taken. Such discrepancy is not sufficient to discard the evidence of P.W.1 and 7 and seizure of M.O.1 to 26 from the house of accused No.7. Apart from that the accused have not shown how the prejudice caused to their defence from the statement of P.W.1 and P.W.7 that fair copy of Mahazar was drafted in police station and signature of the witnesses were taken in the police station. Considering these facts, I hold that the evidence of P.W.1 and 7 is sufficient for the proof of Ex.P1. Accordingly, I hold that, the prosecution has proved the seizure of M.O.1 to 26 from the house of accused No.7 in his presence on 03.02.2012.

20. Ex.P25 is another panchanama drawn by P.W.21 where under mobile from the possession of accused No.6 has been recovered. That Mobile is marked in M.O.27. The P.W.2 and 3 are the panch witnesses to this panchanama. They have not supported the case of the prosecution.

21. Ex.P5 is the Mahazar dated 05.02.2012 drawn by P.W.22 in the Hostel where the accused No.6 was residing during his study. Under such panchanama the articles in M.O.28 to 36 have been recovered at the instance of accused

No.6. The P.W.4 to 6 are the panch witnesses to this panchanama and they have not supported the case of the prosecution and the statement made by P.W.22.

22. Ex.P10 is mahazar drawn by P.W.22. In this mahazar it has been shown that accused No.6 has shown the place used for naxalite activity. No material has been seized under this panchanama. The P.W.8 and 9 are the panch witnesses to this panchanama and they have not supported the case of the prosecution.

23. The panch witnesses for the panchanamas in Ex.P5, P10 and 25 have not been supported the case of the prosecution. Therefore, there appears some doubt about the drawing of panchanama. For the sake of discussion even if the prosecution said to be proved these panchanama, what would be the legal effect will have to be seen. For the purpose of discussion and based on the decisions of the Hon'ble Supreme Court for a movement the court has to presume that the prosecution has proved these panchanamas.

24. In the mahazars conducted by the I.Os., totally three mobiles have been recovered which are in M.O.17, M.O.27 and M.O.29. The CDR of these Mobiles have not been produced. Even during the course of trial the prosecution has not shown which are all the incriminating

evidence is available in original mobiles seized by the I.O. So, mere seizure of mobiles from the custody of accused or at their instance would not help the case of the prosecution in any manner. There should be incriminating material data stored in the mobile to show the activities of the accused No.6 and 7. Further there should have been mobile calls in between accused No.1 to 7. No such data is produced by the prosecution or shown during the trial from the mobiles seized from the possession of accused No.6 and 7. Therefore, the mobiles produced in the case would not help the case of the prosecution in any manner.

25. The list of M.O.1 to 26 is appended to this judgment. On scrutiny of entire list and the article, court found that they are the articles which are required for day to day livelihood. The I.O. has seized some of the writings from the possession of accused which are in Ex.P23. There is expert opinion about the handwriting of accused No.6 in such articles. The handwritings are not disputed by the accused No.6 and 7 and that of accused No.6. On perusal of the hand writing and the letters written by accused No.6 it appears that the accused No.6 being the student of Journalism wrote such letter to boycott the bye-election of Lokasabha because the leaders have not fulfilled the long standing demands of tribal people of Kuthloor Village. On reading of such letters it can be easily stated that, such

letters contains the demand of local people from the state. From such writings one cannot find out that the accused No.6 and 7 are engaged in Naxal activities or they were concealing or harbouring the accused No.1 to 5. Therefore, writings of accused No.6 produced in Ex.P23 are not sufficient to prove that the accused No.6 and 7 are the members of banned organization or they were concealing the accused No.1 to 5.

26. The P.W.1 in his cross-examination has admitted that, out of M.O.1 to 26, excluding M.O.12, 13 and M.O.17 to 20 other articles are articles required for day today life. P.W.7 who is another Police Officer has also admitted that entire M.O.1 to 26 are the things which are required for day to day life. So, the police themselves have admitted that, M.O.1 to 26 are not the articles used by the accused either for concealing the accused No.1 to 5 or for any illegal activities of banned organization. The book of Bhagath Singh has been seized possessing book of Bhagath Singh is not barred under law. The paper cuttings of newspaper have been seized by the I.O. The reading of such newspapers is not barred under law. The accused No.6 and 7 have not published such articles found in the paper. Therefore, even if there is any instigative publication in the newspaper, the accused No.6 and 7 are not answerable for such publication. Mere possession of paper cuttings of newspaper does not

amount any offence. For all these reasons, I hold that, seizure of M.O.1 to 36 either from the possession or at the instance of accused No.6 and 7 are not sufficient to prove that, both accused are the members of banned organization or they concealed or harboured the accused No.1 to 5.

27. In order to establish that, there was criminal conspiracy between accused No.1 to 5 and accused No.6 and 7 and even to prove that the accused No.6 and 7 were the members of banned organization or to prove that they were concealing the accused No.1 to 5, the oral evidence of witnesses who have seen or heard such fact is necessary. In order to prove such activities of accused No.6 and 7 the prosecution has examined P.W.10 to 20. All these witnesses have categorically denied the alleged act of accused No.6 and 7. They were cross-examined by the prosecution. None of the witnesses supported the case of the prosecution. If really the accused No.6 and 7 were involved in Naxalite activity, at-least one of the villager would have spoken such fact. None of the villagers spoken such fact, so, there is absolutely no evidence to prove that the accused No.6 and 7 were the members of Naxalite group and they were concealing the accused No.1 to 5 or assisting them in naxalite activities in Forest area of Kuthloor Village. None of the witnesses have stated that the accused No.6 and 7 have committed the offence of sedition. There is no evidence on

record to show that the accused No.6 or 7 by their words or by signs or by visible representations or otherwise, brought or attempted to brought into hatred or contempt or excited or attempted to excite disaffection towards the Government. Considering over all material brought on record, I am of the considered opinion that the evidence is not sufficient to prove the guilt of accused No.6 and 7 for the offence under section 120B, 124A of IPC and Section 19 and 20 of Unlawful Activity (Prevention) Act, 1967. Accordingly, I answer these points in the Negative and proceed to pass the following:

ORDER

Acting under Section 235 of Code of Criminal Procedure the accused No.6 and 7 are hereby acquitted for the offence punishable under Section 120B, 124A of Indian Penal Code and Section 19 and 20 of Unlawful Activity (Prevention) Act, 1967.

The bail bond of accused No.6 and 7 stands cancelled.

It is ordered to retain the M.O.1 to 36 till the disposal of split up case against accused No.1 to 5.

(Dictated to the Stenographer, transcript, revised, corrected, signed and then pronounced by me in the open court, on this the 21st day of October, 2021.)

(B. B. Jakati)
III Addl. District & Sessions Judge
D.K., Mangaluru.

ANNEXURE

Witnesses examined on behalf of Prosecution:

PW	1	Sachin Lawrence
PW	2	Anil Kumar
PW	3	Dinesh
PW	4	S.K. Mohammad
PW	5	Abdul Rahiman
PW	6	L. Abdul Rahiman
PW	7	Muppanna D.P.
PW	8	Harish Poojary
PW	9	Sanjeeva Poojary
PW	10	Raveesha Kulal
PW	11	Dakayya
PW	12	T.S. Salim
PW	13	Sathish Bhat
PW	14	Chidananda Salian
PW	15	Prasad Pinto
PW	16	Sanjeeva Shetty
PW	17	Vasanth
PW	18	Harish
PW	19	Annu Malekudiya
PW	20	Kitta Malekudiya
PW	21	Umesh
PW	22	Bhaskar Rai N.G.

PW 23 M.N. Anucheth

Witnesses examined on behalf of Defence:

- None -

List of Documents marked for Prosecution:

Ex.P	1	Mahazar P1(a) Signature of P.W1 P1(b) Signature of P.W2 P1(c) Signature of P.W.3 P1(d) Signature of P.W.7
Ex.P	2	Report P2(a) Signature of P.W.1
Ex.P	3	Statement of P.W.2
Ex.P	4	Statement of P.W.3
Ex.P	5	Seizure Mahazar P5(a) Signature of P.W.4 P5(b) Signature of P.W.5 P5(c) Signature of P.W.6
Ex.P	6	Statement of P.W.4
Ex.P	7	Statement of P.W.5
Ex.P	8	Statement of P.W.6
Ex.P	9	Statement of P.W.8
Ex.P	10	Spot Mahazar P10(a) Signature of P.W.9
Ex.P	11	Statement of P.W.9

Ex.P	12	Statement of P.W.10
Ex.P	13	Statement of P.W.11
Ex.P	14	Statement of P.W.12
Ex.P	15	Statement of P.W.13
Ex.P	16	Statement of P.W.16
Ex.P	17	Statement of P.W.15
Ex.P	18	Statement of P.W.16
Ex.P	19	Statement of P.W.17
Ex.P	20	Statement of P.W.18
Ex.P	21	Statement of P.W.19
Ex.P	22	Statement of P.W.2
Ex.P	23	FSL Opinion
Ex.P	24	FIR
Ex.P	25	Mahazar
		P25(a) Signature
Ex.P	26	FSL report dated 09.03.2012
Ex.P	27	Proceedings of Karnataka State.

List of Documents marked for Defense:

-Nil-

List of M.O.s marked for Prosecution:

M.O.1	Nylon bag
M.O.2	Steel Plates 4 in Nos.
M.O.3	Big Steel Chombu-2

M.O.4	Small steel chombu
M.O.5	Steel Plate - 2
M.O.6	Steel Pingani - 5
M.O.7	Steel Glass 1
M.O.8	Knife 1
M.O.9	Plastic tin with sugar
M.O.10	Kamath Cofee Powder
M.O.11	red with black colour bag-1
M.O.12	Black colour box 1
M.O.13	Binacular -1
M.O.14	Knife with fibre handle -1
M.O.15	Tooth paste packet -2
M.O.16	Red colour Plastic Torch
M.O.17	Nokia Company Mobile
M.O.18	Charger Clip
M.O.19	Charger
M.O.20	Mobile Battery Charger clip
M.O.21	One old four pages written document
M.O.22	Election protest letter
M.O.23	Request letter for Election protest

M.O.24	3 bed sheets (Brown, light brown, light blue)
M.O.25	Book about Bhagat Singh
M.O.26	Report of 1 to 26 about Naxal activities.
M.O.27	Max Company Mobile
M.O.28	Small Note Book
M.O.29	Nokia Mobile 1
M.O.30 to M.O.36	Paper cuttings.

(B. B. Jakati)
III Addl. District & Sessions Judge,
D.K., Mangaluru.