

(2011) 12 PAT CK 0133

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 142 of 1999

Bahadur Ray and Pashupati Rai

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Arms Act, 1959 — Section 25B(1), 26, 27

Penal Code, 1860 (IPC) — Section 143, 144, 147, 307, 353

Citation : (2011) 12 PAT CK 0133

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mandhata Singh, J.—Written report of Md. Mohsin Ali, A.S.I., Chiraiya camp has been made basis for F.I.R. which in brief is to the effect that on 22.9.1995 at about 10.00 AM one Baleshwar Choudhary came to Chiraiya camp-Hat and gave a written report about commitment of cognizable case under sections 143, 144, 427, 307 and 353 of the Indian Penal Code and section 27 of the Arms Act. In response to the information, Police party rushed for the place of occurrence along with Havildar Nepal Singh, constable Sirajuddin Khan, Anup Das, Shivmuhi Singh, Ramchandra Yadav, Soman Kumar Singh and Pramod Kumar Singh. Chanchur Paswan and Sahdeo Paswan Chaukidar's son and a villager of Chiraiya were also accompanying the Police Party. They reached the Bandh at 11.00 AM, assembled mob resorted to indiscriminate firing at the Police Party despite their disclosure that they were members of Police force and had reached there to enquire about the happenings but were not listen to the members of Police Force and continued with firing which was replied by firing by constable Sirajuddin Khan to scare the members of unlawful assembly and to save the lives of members of Police force. The members of unlawful assembly left the place but Police party succeeded in catching hold of Bahadur Ray and Pashupati Ray appellants of the case with country made Pistol along with live and empty cartridge without any authority. Both the appellants were arrested, country made

Pistol along with live and empty cartridge were seized. The seizure list was prepared in presence of two independent witnesses namely Sahdeo Yadav and Laxmi Bhagat.

2. It is further said that both the appellants confessed their guilt. After concluding the trial, the case is ended in conviction and sentence to the appellants.

3. Learned counsel appearing for the appellants pressed the case on the point of sentence only. According to him, both the appellants namely Bahadur Ray and Pashupati Ray are sentenced to undergo R.I. for three months each for the offence u/s 353 of the Indian Penal Code, R.I. for three months each for the offence u/s 147 of the Indian Penal Code, R.I. for one year each for the offence u/s 25(1-B) of the Arms Act along with a fine of Rs. 500/- and in default thereof to undergo R.I. for two months each. They are also sentenced to undergo R.I. for six months for the offence u/s 26 of the Arms Act and a fine of Rs. 500/- each, in default of which further to undergo R.I. for one month and to run all the sentences concurrently.

4. According to learned counsel, the appellants remained in custody since 24.9.1995 to 9.9.1996 and 28.5.1999 to 2.6.1999, only 15 days remains to complete one year. Minimum punishment for the offence u/s 25(1-B) is one year. Appellants are entitled for some remissions while remained in jail, if not then also for 15 days" of remaining sentence sending them to custody again is not justified. It is taken as adequate and special reason to minimize the sentence for the period undergone.

5. In the result, the appeal is partly allowed on the point of sentence only that (sentence) is modified and minimized to the period already undergone by the appellants. They are exonerated from the liability of fine imposed by the trial court also.

6. The conviction is maintained with modification in sentence as mentioned above.

7. They shall stand discharged from their liabilities of respective bail bonds.

8. Copy of judgment along with lower court records be sent back to the trial court forthwith.