

(2012) 09 JH CK 0161

In the Jharkhand High Court

Case No : Criminal Revision No. 61 of 2000 (R)

Raju Sahu

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 307, 323, 324, 34, 341

Citation : (2013) 3 AJR 81 : (2013) 2 JLJR 161

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Rakhi Rani, for the Appellant; Anita Sinha, for the Respondent

Final Decision : Allowed

Judgement

Harish Chandra Mishra, J.—Heard the learned counsel for the petitioner and the learned counsel for the State. The petitioner is aggrieved by the judgment dated 25th September, 1999 passed by Sri Bishwanath Prasad Singh, learned Additional Judicial Commissioner, Lohardaga, in Cr. Appeal No. 32 of 1995/6 of 1995, whereby, the appeal filed against the Judgment dated 8.5.1995 passed by Sri P.N. Lal, learned Assistant Sessions Judge, Lohardaga, in S.T. Case No. 132 of 1992, whereby, the petitioner was convicted for the offence u/s 27 of the Arms Act and was sentenced to undergo S.I. for three years, has been rejected by the learned Appellate Court below.

2. From the F.I.R. available in the Lower Court Records, it appears that the petitioner and the other co-accused persons were made accused in Bhandra P.S. Case No. 29 of 1991 corresponding to G.R. No. 309 of 1991, which was instituted for the offence under Sections 307, 324, 323, 341 of the I.P.C. and 27 of the Arms Act, on the allegation that the accused persons named in the F.I.R., had assaulted and injured the father of the informant, as also the informant. So far as the petitioner is concerned, there is no allegation of assault against him, rather it is alleged that the petitioner had pointed a revolver on the Informant.

3. On the basis of the Fardbeyan of the informant, police case was instituted and investigation was taken up. It appears that after investigation, the police had submitted charge-sheet for the offence under Sections 307, 324, 341, 323 /34 of the I.P.C. and 27 of the Arms Act against the accused persons and the cognizance was taken accordingly. The case was committed to the Court of Session, and in the Court of Session, the charge was framed against the petitioner and the other co-accused persons for the offence u/s 307 of the I.P.C., and against the petitioner, a separate charge was also framed u/s 27 of the Arms Act. It further appears that in course of trial, ten witnesses were examined by the prosecution including the informant, the other injured, the I.O., the Doctor, as also the witnesses who supported the case. The defence has also examined two witnesses in this case.

4. From perusal of the evidence on record, it is apparent that so far as this petitioner is concerned, the witnesses, including the P.W. 2 who is the informant in this case, has only stated that the firearm was pointed on him by the petitioner. It is apparent that there is no use of firearm and no shot was fired and there is nothing in L.C.R. to show that any fire arm was ever recovered from the petitioner and any seizure list was proved. It appears that on the basis of the evidence on record, the trial Court below had convicted this petitioner only for the offence u/s 27 of the Arms Act and upon hearing on the point of sentence, the petitioner was convicted to undergo S.I. for three years. The judgment of conviction and order of sentence passed against the petitioner was maintained in appeal by the learned Appellate Court below, but the judgment of the Appellate Court below shows that the other appellant was given the benefit of the Probation of Offenders Act and was released upon entering into the probation bond. So far as the petitioner is concerned, the learned Appellate Court maintained the conviction of the petitioner u/s 27 of the Arms Act and also maintained the sentence imposed upon the petitioner by the Trial Court below.

5. Learned counsel for the petitioner has submitted that the impugned judgments passed by the Courts below are absolutely illegal, inasmuch as, from the evidence on record, it is apparent that there was nothing to show that any firearm was ever recovered from the petitioner and it was actually used. The witnesses have only stated that the firearm was only pointed on upon the informant. There is no allegation of any further use of firearm. Learned counsel accordingly, submitted that the conviction of the petitioner u/s 27 of the Arms Act cannot be sustained in the eyes of law.

6. Learned counsel for the State on the other hand, has submitted that there is no illegality in the impugned judgments, worth interference in the revisional jurisdiction.

7. In the present case, I find that except the allegation against the petitioner, there is no evidence to show that any firearm was actually used by the petitioner. There is no recovery of any firearm, nor any seizure list is there, to suggest any recovery of the firearm from the petitioner.

8. In that view of the matter, I am of the considered view that the petitioner ought to have been given at least the benefit of doubt, in view of the fact that the enmity between the parties is admitted in the case, due to which, the occurrence had taken place and the false implication of the petitioner with the allegation of pointing the firearm towards the informant, cannot be ruled out in the facts of this case.

9. In view of the aforementioned discussions, the impugned judgment dated 8.5.1995 passed by Sri P.N. Lal, learned Assistant Sessions Judge, Lohardaga, in S.T. No. 132 of 1992, as also the judgment dated 25.9.1999 passed by Sri Bishwanath Prasad Singh, the learned Additional Judicial Commissioner, Lohardaga, in Cr. Appeal Nos. 32 of 1995/6 of 1995 are, hereby, set aside. The petitioner is given the benefit of doubt and he is acquitted of the charge. The petitioner is on bail and he is discharged from the liabilities of his bail bond. This application is accordingly, allowed. Let the Lower Court Records be sent back forthwith.