

(2026) 01 RAJ CK 1820

In the Rajasthan High Court, Jodhpur Bench

Case No : Criminal Revision Petition No. 99 Of 2026

Ramkunwar

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 29-01-2026

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 361, 386, 438, 442

Wild Life Protection Act, 1972 — Section 9, 15, 51

Arms Act, 1959 — Section 3, 25, 30

Citation : (2026) 01 RAJ CK 1820

Hon'ble Judges : Farjand Ali, J

Bench : Single Bench

Advocate : Bhawani Singh Patel, R.K. Acharya, N.S. Chandawat

Final Decision : Disposed Of

Judgement

Farjand Ali, J

1. This criminal revision petition, instituted under Sections 438 and 442 of the Code of Criminal Procedure, assails the judgment dated 05.08.2025 rendered by the learned Additional Sessions Judge, Jayal, District Nagaur, in Criminal Appeal Nos. 212323 (71/14), 06/15, 129/15 & 22/2023 (72/14), 3515 (242/15), wherein, while partly allowing the appeals, the appellate court set aside the order of sentence dated 28.10.2014 and remanded the matter to the trial court for reconsideration of the quantum of sentence after hearing the parties. The petition emanates from the conviction and sentence imposed by the Judicial Magistrate, First Class, Jayal, District Nagaur, in Criminal Original Case No.159/2011, wherein petitioners were convicted and sentenced as under:-

Name of the Offence for Substantive

Fine and default

accused

which

sentence

sentence

convicted

1.

Virendra Singh

Section

9/15

2 Years RI

Rs.10,000/-

each

2.

Ram Kunwar

of

the

Wild

and in

default to

Life

Protection

further one

month

Act

additional

imprisonment

3.

Surendra Singh

Section

3/25

2 Years RI

Rs.3,000/- each and
of
the
Arms
in
default
to
further
Act
15
days
additional
imprisonment

4.

Parmeshwari

Section

3/25

6 months RI

Rs.2,000/- each and
of
the
Arms
in
default
to
further
Act
10
days
additional

imprisonment

All the sentences were ordered to run concurrently.

2. At the threshold, it is noted that the petition is barred by a period of 78 days. However, an application under Section 5 of the Limitation Act has been filed, and the delay in presenting the petition is hereby condoned. With the express consent of the parties, the petition is being heard and decided at the earliest opportunity, today itself.

3. The factual backdrop discloses that on the early morning of 29.04.2011, the complainants, Laxminarayan and Bhag Chand Bishnoi, were proceeding by motorcycle from Rotu to Jayal when, near a point two kilometers from Dugoli, they were purportedly alerted by the discharge of firearms. Upon approaching the source of the noise, they allegedly observed the accused at a distance, one of whom was armed, with a deer lying lifeless. Alarmed by the presence of the armed group, the complainants retreated and apprised the villagers, following which the SHO, P.S. Jayal, registered FIR No.41/2011 under Sections 9/51 of the Wildlife Protection Act and 3/25 of the Arms Act. Subsequent investigations culminated in the filing of charge sheets against Petitioners Nos.1 to 3 under Sections 9/51 and 3/25, and against Petitioner No.4 under Section 3/30 of the Arms Act. The trial court framed the charges, which the petitioners denied, and upon trial, twelve witnesses were examined, twenty-four documentary exhibits and one material exhibit were adduced, and the petitioners were examined under Section 313 Cr.P.C. whereafter they were convicted and sentenced as above. Hence the instant revision petition.

4. It is contended on behalf of the petitioners that the learned appellate court committed a grave error in setting aside the sentence and remanding the matter despite the absence of any appeal by the State challenging the quantum. It is submitted that the trial court misappreciated critical testimony, particularly that of P.W.6 and P.W.7, who observed the accused at a distance, and that no recovery of deer meat from Petitioners Nos.1 to 3 was established, nor was any evidence adduced to situate them at the time of such recovery. Further, the Regional Forensic Science Laboratory did not conclusively identify the meat as belonging to a deer or chinkara. Petitioner No.4, in possession of a licensed firearm, was erroneously convicted without proof of involvement. The absence of indicia of hunting at the scene, coupled with contradictions and improbabilities in the prosecution's narrative including second-hand information, logistical implausibilities regarding transportation of the deer, and discrepancies concerning recovered items and firearms cast serious doubt on the veracity of the prosecution story.

5. Conversely, the State, represented by the Dy. Government Advocate, contends that the appellate court acted well within its supervisory jurisdiction in remanding the matter for reconsideration of the sentence to ensure proportionality and compliance with statutory mandates. It is submitted that the convictions are

underpinned by credible evidence, including identification of the accused, recovery of cooked and raw meat, and possession of firearms. Alleged absences of bloodstains, forensic ambiguities, or logistical improbabilities go to the weight of evidence rather than its admissibility. The State further submits that Petitioner No.4's licensed firearm does not preclude liability if employed or facilitated in hunting, and that the trial court rightly evaluated the evidence to establish guilt beyond reasonable doubt. The remand was, therefore, justified to ensure judicial scrutiny of the sentence in conformity with the law.

6. This Court has accorded its anxious and deliberate consideration to the rival submissions advanced by learned counsel for the parties and has carefully examined the record, including the judgments impugned herein, with the degree of scrutiny warranted by the nature of the controversy.

6.1. Upon an exhaustive appraisal of the material on record, it emerges with clarity that the offences for which the petitioners stand convicted prescribe a maximum sentence not exceeding two years' imprisonment. The findings of guilt recorded by the courts below are not under challenge before this Court and, upon independent examination, do not suffer from any infirmity warranting interference. The convictions, therefore, merit affirmation. However, the question of sentence stands on a different footing and calls for a nuanced judicial evaluation, particularly in light of the mitigating circumstances demonstrably borne out from the record.

6.2. It is not in dispute that the petitioners are first-time offenders and possess no prior criminal antecedents. The incident in question arises out of a localized and personal dispute, devoid of any element suggestive of broader societal impact or threat to public order. The complainant, a widow, and the petitioners share close familial ties and reside within the same vicinity, indicating that the dispute is essentially interpersonal in nature. These circumstances, taken cumulatively, substantially dilute the necessity for a retributive or deterrent custodial sentence.

6.3. Notwithstanding the existence of such compelling mitigating factors, it is evident that neither the trial court nor the appellate court extended the benefit of probation or exercised sentencing discretion with the degree of circumspection mandated by law. More significantly, the courts below have failed to record any cogent, convincing, or legally sustainable reasons justifying the

denial of probation, despite the statutory obligation cast under Section 361 of the Code of Criminal Procedure, which requires courts to expressly record reasons where the benefit of probation is declined in cases where it could otherwise be considered.

6.4. The broader factual canvas further fortifies the case for leniency. The incident dates back more than fifteen years, and the petitioners have remained entangled in the rigours of criminal litigation for an unduly prolonged period. During this interregnum, they have already undergone a measure of

incarceration and, significantly, have not been implicated in any subsequent criminal activity. At the time of the occurrence, the petitioners were young and impressionable; today, they stand at an advanced stage of life, encumbered with familial obligations, socio-economic responsibilities, and the inexorable burdens of age. To insist upon further incarceration at this juncture would amount to a rigid and disproportionate application of penal sanctions, divorced from the reformatory and rehabilitative objectives that underpin modern sentencing jurisprudence.

6.5. This Court deems it apposite to observe that the learned appellate court, while exercising jurisdiction under Chapter XXIX of the Code of Criminal Procedure, was vested with ample statutory authority under Section 386 Cr.P.C. to finally and effectively adjudicate upon the issue of sentence. The appellate court, having seized of the entire record and being fully competent to reappraise the sentencing discretion exercised by the trial court, could have maintained the conviction and appropriately modified the sentence in accordance with law. The power of remand is neither mechanical nor obligatory; it is an exceptional recourse to be adopted only where the circumstances of the case so inexorably demand. In matters pertaining solely to sentencing particularly where the factual substratum is undisputed and the conviction stands affirmed, judicial prudence, procedural economy, and the interests of substantive justice warrant the appellate court itself to bring the lis to a quietus rather than prolong the litigation by remitting the matter to the trial court.

6.6. This Court further observes that while determining the appropriate sentence, the appellate court was under a solemn obligation to undertake an independent, conscious, and reasoned consideration of all relevant circumstances, including the mitigating factors specifically pressed into service by the petitioners. The plea seeking extension of the benefit of probation was not a peripheral submission but went to the very heart of the sentencing exercise. The appellate court was, therefore, required to apply its judicial mind to the said plea and to record explicit reasons for either granting or declining such benefit. The absence of any discernible reasoning as to why probation was denied despite statutory permissibility and the presence of compelling mitigating circumstances, betrays a failure to discharge the duty cast upon the appellate court by law. Such non-consideration vitiates the sentencing determination and renders it unsustainable.

7. In view of the foregoing discussion, this Court is of the considered opinion that while the findings of guilt recorded against the petitioners are legally sound and warrant no interference, the sentences imposed upon them are manifestly excessive and disproportionate to the nature of the offence and the attendant circumstances. The ends of justice would be adequately served by limiting the sentence to the period of incarceration already undergone by the petitioners. The prolonged passage of time, absence of criminal antecedents, reformatory conduct, and the personal and localized nature of the dispute collectively persuade this Court that no useful purpose would be served by subjecting the

petitioners to further custodial confinement.

8. Accordingly, the revision petition is partly allowed. The judgment of conviction dated 28.10.2014, passed by the learned Judicial Magistrate, First Class, Jayal, District Nagaur, in Criminal Original Case No. 159/2011, is hereby affirmed and maintained. However, the order of sentence is modified, and the period of imprisonment imposed upon the petitioners is reduced to the period already undergone by them. The sentence of fine, as imposed by the trial court, shall remain unaltered and shall be deposited before the learned trial court within a period of ninety (90) days from the date of this judgment, if not already deposited.

9. The stay petition and all other pending applications, if any, stand disposed of accordingly.

10. A copy of this judgment be transmitted forthwith to the learned trial court for information and for ensuring necessary compliance.