
(2020) 10 JH CK 0059

In the Jharkhand High Court

Case No : Criminal Revision No. 532 Of 2014

Sajjan Ansari @ Sahjan Ansari And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 16-10-2020

Acts Referred:

Arms Act, 1959 — Section 25(1B)a, 26, 27, 35

Code Of Criminal Procedure, 1973 — Section 164, 313

Citation : (2020) 10 JH CK 0059

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Anish Kumar Mishra, Shekhar Sinha

Final Decision : Disposed Of

Judgement

1. Heard Mr. Anish Kumar Mishra, the learned counsel appearing for the petitioners.
2. Heard Mr. Shekhar Sinha, the leaned counsel appearing for the Opposite Party-State.
3. It has been pointed out by the learned counsel for the state that one of the petitioners namely , Gulam Ansari, has expired on 12.10.2015 and for that purpose an affidavit dated 07.08.2020 has been filed annexing his death certificate and accordingly a prayer has been made to delete the name of the petitioner no. 3 from the cause title as the present petition so far as he is concerned has abated. This fact is admitted by the learned counsel for the petitioners.
4. Accordingly, the present proceedings, so far as petitioner no. 3 is concerned is abated. Office is directed to delete the name of the petitioner no. 3 from the cause title in red ink as and when the records of this case is received in the office.
5. This criminal revision petition is directed against the judgment dated

28.02.2014 passed by the learned District & Addl. Sessions Judge-II, Godda in Criminal Appeal Nos. 07 of 2013 / 31 of 2013 whereby and whereunder the Judgment of conviction and the order of sentence passed by the learned trial court was upheld and both the criminal appeals were dismissed, so far as the petitioners are concerned.

6. The criminal appeal was preferred by the petitioners and one Kudrat Ansari against the judgment of conviction and the order of sentence dated 20.12.2012 passed by the learned Civil Judge-II-cum-Judicial Magistrate, 1st Class, Godda in G.R. No. 787 of 2007 / T.R. No. 672 of 2012 (arising out of Boarijore P.S. Case No.92/2007) whereby and whereunder the petitioners and one Kudrat Ansari were held guilty and convicted under Sections 25(1-B)a / 26/35 of the Arms Act and were sentenced to undergo Rigorous Imprisonment for two years and a fine of Rs. 1,000/- each for committing the offence under Section 25(1- B)a of the Arms Act and they were further sentenced to undergo Rigorous Imprisonment for three years and a fine of Rs. 1,000/- for committing the offence under Section 26 of the Arms Act and both the sentences were directed to run concurrently and the period undergone by the petitioners during trial of the case was directed to be set off. In default of payment of fine, each petitioner was directed to undergo an additional Simple Imprisonment for one month.

7. Said Kudrat Ansari was acquitted by the learned appellate court as he was not apprehended on the spot and was given the benefits of doubt and appeal of the remaining three persons, who were apprehended on the spot with arms, was dismissed and they filed this revision petition. The petitioner no-3 expired during the pendency of this petition as stated above.

Arguments on behalf of the petitioners

8. Learned counsel appearing for the petitioners submitted that although as per the prosecution case, there were two independent witnesses to the seizure, but they were not examined by the prosecution. He submitted that in absence of examination of the two seizure list witnesses, the seizure itself was not proved and as such, the conviction and sentence of the petitioners cannot be sustained and the petitioners are entitled to benefit of doubt.

9. Learned counsel relied upon two judgments passed by this Court, one is order dated 26.04.2010 passed in the case of "Manzar Hussain -Vs- State of Jharkhand" reported (2010) 3 JLJR 114 (HC) and the other is judgment decided on 20.11.2019 in the case of "Ravi Nepali and Another -Vs- State of Jharkhand" reported in 2019 SCC OnLine Jhar 1808 passed in Cr. Revision No. 523 of 2013 and submitted that under similar circumstances, the revision petitions have been allowed by this Court.

10. The learned counsel for the petitioners advanced his arguments further and also relied upon the judgment passed by the Hon'ble Supreme Court in the case of "Megha Singh - versus- State of Haryana" reported in (1996) 11 SCC 709 and also another judgment passed by the Hon'ble Patna High Court in Criminal

Appeal (S.J.) No. 20 of 2007 (Ranjan Kumar @ Raju Vs. State of Bihar) to submit that in absence of independent witness to support the seizure, the present petitioners could not have been convicted and in the present case, admittedly the seizure witnesses have not been examined before the learned trial court.

11. The learned counsel for the petitioners submitted that there are material contradictions in the evidence of the prosecution witnesses and accordingly, upon true appreciation of evidence, no case is made out against the present petitioners and as such, the impugned judgments suffer from perversity and illegality and they are fit to be set aside.

12. However, during the course of arguments, learned counsel for the petitioners did not dispute the fact that it has been recorded by the learned court below that a copy of seizure list was furnished to the petitioners and they had put their signatures on the seizure list as receipt of the same.

13. The learned counsel for the petitioners further submitted that there were altogether four persons who were moving in a motorcycle and only two live cartridges were recovered from the possession of the Petitioner No. 1 and 2 who were riding on the same motor cycle and country made pistol was recovered from Gulam Ansari (deceased petitioner no. 3) and two cartridges were recovered from his tool box. He further submitted that an affidavit has been filed by the State that the petitioner no. 1 and 2 do not have any criminal antecedent and the present F.I.R is of the year 2007 and the Petitioner No. 1 and 2 have remained in custody for a period of about six months. Learned counsel submitted that considering these aspects of the matter, without prejudice to the submissions advanced by him on the merit of the case, some sympathetic view may be taken on the point of sentence and the sentence may be modified.

Arguments on behalf of the Opposite Party-State

14. Learned A.P.P. appearing on behalf of the Opposite Party-State opposed the prayer and submitted that there is consistent evidence of the prosecution witnesses who were part of the raiding team and there is consistent finding of facts recorded by the learned trial court as well as the learned appellate court. He also submitted that summons was issued to all the witnesses including seizure list witnesses, but since the case was very old, the prosecution evidence was closed subsequently considering the fact that the case was lingering for more than 5 years. He further submitted that merely because the independent seizure list witnesses have not deposed before the learned trial court, the same is not fatal to the prosecution case considering the evidences available on record. He also submitted that the signatures of the independent seizure list witnesses were exhibited before the learned trial court without any objection from the side of the defence. Learned counsel, at the end, submitted that there is little scope for interference in revisional jurisdiction in matters where there is consistent finding of facts recorded by the learned courts below and accordingly, the present criminal revision petition is fit to be dismissed.

15. Learned counsel for the Opposite Party-State, on the point of sentence, submitted that the minimum sentence prescribed under Section 25(1-B)a of Arms Act is one year and the minimum sentence prescribed under Section 26(1) of Arms Act is six months. The learned counsel submitted that in case this court is inclined to grant any relief to the petitioners on sentence, the minimum sentence prescribed under the act may also be considered.

Findings of this Court

16. After hearing the learned counsel for the parties and going through the impugned judgments and the lower court records, this Court finds that the case was registered on the basis of the self-statement of Ashok Kumar, Officer-in-charge of Boarijore P.S. alleging that on 23.07.2007 at 08:30 A.M., on the instruction of S.P., Godda, a raiding party was constituted for search of one kidnapped person namely, Raj Kumar Singh for which Lalmatia P.S. Case No.88/2007 was registered which proceeded through the road from Rajabhitta to Chandna, Rajabhitta to Kiro Bazar and Dumra Hill to Pathargama. When the Informant was monitoring the raid going towards Chandna to Rajabhitta, he saw four persons on two motorcycles in suspicious condition who after seeing the police party started fleeing away and one person Kudrat Ansari managed to escape from there, but the Petitioner No. 1 and 2 and Gulam Ansari (deceased petitioner no. 3) were caught on the spot. On search, a country-made pistol loaded with live cartridges of .315 bore was recovered from the possession of Gulam Ansari (deceased Petitioner No.3) from his waist right side, two live cartridges having marked KF 8MM were also recovered from the tool box of the bike Bajaj CT 100 which was without number and from the tool box of motorcycle Super Splendor No. JH-17B-0480, two live cartridges having marked KF 8MM and another cartridge marked as KF 74-7 were recovered. On demand, valid paper for carrying arms was not produced by the Petitioner No. 1 and 2 and Gulam Ansari (deceased petitioner no. 3) and they were arrested and on the disclosure of the petitioners, Kudrat Ansari was also arrested. All the arms and ammunition were seized and accordingly, a seizure list was prepared in presence of two independent witnesses and a copy of the seizure list was also handed over to the three apprehended accused i.e. Petitioner No. 1 and 2 and Gulam Ansari (deceased petitioner no. 3).

17. On the basis of the self-statement, the case was registered as Boarijore P.S. Case No.92/2007. After Completion of investigation, Charge-sheet No.24/2008 was submitted against the Petitioner No. 1 and 2, Gulam Ansari (deceased petitioner no. 3) and Kudrat Ansari. On 25.04.2008, cognizance of the offence was taken against them under the same sections.

18. On 22.07.2009, charges under Sections 25(1-B) a and 26/35 of the Arms Act were framed against them which were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

19. This Court further finds that the prosecution examined altogether eight

witnesses to prove its case. PW-1 is Sunil Kumar Singh, PW-2 is Nagdeo Mistri, PW-3 is Charan Tudu, PW-4 is Chhakku Murmu, PW-5 is Lalitanand Jha who is the investigating officer of the case, PW-6 is Md. Mustakim who has identified the material exhibits produced before the trial court, PW-7 is Rafail Minz who is the Sergeant Major who examined the effectiveness of the fire-arms and found them in active condition and PW-8 is Ashok Kumar Jha who is the Informant of the case.

20. The prosecution exhibited the seizure list as Exhibit-1, Verification report of the pistol as Exhibit-2, formal F.I.R. as Exhibit-3, written report as Exhibit-4, Sanction order as Exhibit- 5, Signature of Ashok Kumar on seizure list as Exhibit-1/1, the letter of Sergeant Major over the letter returning the fire-arms after verification as Exhibit-2/2 and the signature of Sergeant Major over letter returning the fire-arms as Exhibit-2/1. The prosecution also proved the country-made pistol as Material Exhibit-I and the five cartridges as Material Exhibits-II, II/1, II/2, II/3 and II/4.

21. On 21.11.2012, the statements of the petitioners were recorded under Sections 313 of Cr.P.C. wherein they denied the prosecution evidence and claimed to be innocent.

22. This Court further finds that PW-8 (Informant) was a member of the raiding party and he has consistently supported the prosecution case as mentioned in the FIR. In his evidence, he deposed that on 23.07.2007, he was posted as Officer-in- charge of Boarijore P.S. and this case was instituted on the basis of his self-statement against Gulam Ansari, Akhtar Ansari, Sajjan Ansari and Kudrat Ansari. He deposed that the incident is of dated 23.07.2007 at about 01:30 P.M. and he had proceeded from the police station on 23.07.2007 at 08:40 A.M. alongwith A.S.I. Nagdeo Mistri (PW-2), Havaladar Bihari Lal Mandal, Constable Kajal Kumar Mandal and Sunil Kumar Singh (PW-1) for search and raid in respect of a case of kidnaping in connection with Boarijore Lalmatia P.S. Case No.88/2007. He further deposed that he reached to Mahagama and met there with the Officer-in-charge of Lalmatia and the Officer-in-charge of Mahagama and they started the raid of the places of Rajabhitta and nearby places. In course of search, he saw four riders on two motorcycles in suspicious condition coming near the Rajabhitta Dakbangla and after seeing the raiding party, they left the motorcycles and started running away from the place of incident. On chase, the raiding party caught the petitioners, but Kudrat Ansari ran away who was later on arrested on the basis of the confessional statements of the petitioners. All the petitioners were duly searched by PW-8. He further deposed that Gulam Ansari was riding on the Bajaj CT- 100 motorcycle and he had searched Gulam Ansari in the beginning and a country made pistol was recovered from the left side below the shirt on the waist and the country-made pistol was loaded with one live cartridge and when the motorcycle was searched, two live cartridges were recovered from its tool box. On the other motorcycle, Akhtar Ansari and Sajjan Ansari were riding and when their motorcycle was searched, two live cartridges

were recovered from its tool box also. The aforesaid materials were seized in accordance with law at the place of occurrence in presence of two independent witnesses. Accordingly, a seizure list was prepared. This Court finds that PW-8 is consistent regarding date, time and place of the occurrence and also the manner of the seizure of the fire- arms. This Court also finds that testimony of this witness remained intact during his cross-examination and nothing has been brought on record to disbelieve the statement of this witness.

23. This Court further finds that all other prosecution witnesses who were members of the raiding party as well as P.W-7 who had examined the seized arms and given his report have corroborated the evidence of the informant (PW-8). The evidence of all the witnesses have been recorded in the impugned judgements and upon going through the same this court finds that their evidence are consistent and they have been thoroughly cross examined by the defence.

24. This Court further finds that the learned trial court, after considering the evidences of the prosecution witnesses, recorded that all the prosecution witnesses have remained quite consistent on the point of date, place and time of occurrence as well as the occurrence itself and all the witnesses are the eye witnesses who were present at the place of occurrence itself at the time of the seizure. It further recorded that all the witnesses have fully corroborated the statement of the informant and they have said nothing so which is fatal or contrary to the prosecution case. The Sergeant Major (PW-7) who tested the fire-arms came before the court and said that all the fire-arms were tested by him and they were in active condition and they could have been used for damage of life and property of any person. The arms have also been produced and marked before the court.

25. This Court further finds that the learned appellate court upheld the findings of the learned trial court on the point of seizure and was of the view that the seizure was sufficiently proved and which was a proof of the fact that the raiding party recovered and seized the fire-arms from Petitioner No. 1 and 2 and Gulam Ansari (deceased petitioner no. 3) in presence of two independent witnesses and sustained their conviction and sentence.

26. This Court also finds that the appellate court also considered the evidences of the prosecution witnesses and acquitted Kudrat Ansari giving benefit of doubt on the ground that nothing has been recovered from his possession and he was subsequently arrested on the basis of the confessional statements of the petitioners and further recorded that as far the other accused persons namely, Gulam Ansari (deceased petitioner no. 3) and Sajjan Ansari and Akhatar Ansari (Petitioner No. 1 and 2) are concerned, the prosecution has proved its case beyond the shadow of all reasonable doubts.

27. This Court is of the considered view that there is consistent evidence on record regarding seizure of arms from the possession of the petitioners and the preparation of seizure list in presence of two independent witnesses and handing

over a copy of the same to the petitioners. In such circumstances, the evidence of the witnesses who were members of the raiding party cannot be disbelieved only because of their official position or non-examination of independent seizure list witnesses. Admittedly summons was issued to all the witnesses including seizure list witnesses, but since the case was very old, the prosecution evidence was closed subsequently considering the fact that the case was lingering for more than 5 years. In the present case, there is no material, no suggestion and no evidence on record to indicate any ill-will or enmity between the petitioners and any of the witnesses so as to falsely implicate the petitioners in any manner whatsoever. There being consistent finding of facts on the point of seizure against the petitioners after considering the evidences on record, there is no scope for interference by this Court in revisional jurisdiction.

28. The learned counsel for the petitioners has vehemently argued that the independent seizure list witnesses have not been examined and therefore the conviction cannot be sustained in the eyes of law. The learned counsel for the petitioners has relied upon a number of judgements which do not apply to the facts and circumstances of the present case and are considered below.

29. So far as the judgement passed by this Court in the case of "Manzar Hussain Vs. State of Jharkhand" is concerned, the same does not apply to the facts and circumstances of this case. In the said case, the core question was as to whether the appellant who was convicted for offence under Section 25(1-B) of the Arms Act, could be convicted on the basis of the statement of independent witnesses recorded under Section 164 of Code of Criminal Procedure on the point of seizure , as those independent witnesses had turned hostile before the learned trial court at the stage of trial. This Hon'ble Court also considered that the alleged recovery of fire arms and ammunitions were made pursuant to joint confessional statement of the appellant and another accused and both of them stood charged for offence under Section 27 of the Arms Act, but on similar set of evidence, the co-accused was acquitted whereas the appellant before this Court was convicted under Section 25(1-B) of the Arms Act. This Court, in appellate jurisdiction, considered the aforesaid facts and circumstances and was of the considered view that the conviction of the appellant could not be sustained on the basis of statement recorded under Section 164 of Code of Criminal Procedure of the seizure list witnesses and accordingly, the conviction of the appellant of the said case under Section 25(1- B) of the Arms Act was set-aside as the prosecution failed to prove the charge beyond shadow of all reasonable doubt. In the said case, the evidence of three seizure list witnesses was under consideration, two of them had turned hostile and one abstained from witness box. In that case, the prosecution failed to prove that on the confessional statement of the appellant, fire arms and ammunitions were recovered so as to attract the offence under Section 25(1-B) of the Arms Act. In the said case there is no further discussion regarding the evidences of other prosecution witnesses.

The facts of the present case are totally different, in as much as, the

independent witnesses though were summoned by the learned trial court, but they did not appear before the learned trial court for their evidence and as the trial was proceeding for more than five years, the learned trial court closed the prosecution evidence. In the present case, the evidence of the witnesses who were members of the raiding party, have been considered who have consistently deposed about the seizure of the arms from the petitioner nos. 1 and 2 and deceased petitioner no. 3. They have also deposed that a copy of the seizure list was also handed over to all three of them. These witnesses have been thoroughly cross-examined by the defence and the learned courts below did not find any inconsistency or material contradiction in their evidence and no defence was taken by the accused of any enmity or ill-will between the accused and the members of the raiding party. Further, the aforesaid judgement of the High Court was passed in appellate jurisdiction and in the present case, this Court is in revisional jurisdiction. There can be no doubt that the scope of appellate jurisdiction in Criminal Appeal and revisional jurisdiction in Criminal Revision are totally distinct. This Court finds that there are consistent findings recorded by the learned courts below and no perversity or illegality has been pointed out by the learned counsel appearing on behalf of the petitioners calling for any interference in the revisional jurisdiction.

30. So far as the judgement passed by this Court in the case of "Ravi Nepali and Another Vs. State of Jharkhand" in Cr. Revision No. 523 of 2013 decided on 20.11.2019 is concerned, the same also does not apply to the facts and circumstances of this case, in as much as, in the said case neither the independent witnesses/seizure list witnesses were examined nor the investigating officer of the case was examined. In the present case, not only the investigating officer of the case has been examined, but also the informant of the case and other members of the raiding party have been examined and they have given consistent evidence in connection with the seizure as already discussed above. The learned lower courts have carefully scrutinized the evidence of the witnesses who have fully supported and corroborated the prosecution case, which the defence failed to demolish and create any doubt in the prosecution case.

31. So far as the judgement passed by the Hon'ble Patna High Court in Criminal Appeal (S.J.) No. 20 of 2007 dated 30.11.2017 in the case of "Ranjan Kumar @ Raju and Ors. Vs. State of Bihar" is concerned, the same also does not apply to the facts and circumstances of this case. In the said case, the Hon'ble Court found that the appellants were apprehended on motorcycle and in presence of two independent witnesses, the fire arms were recovered from their possession, but the seizure list witnesses never appeared in the case to support the seizure and further, two of the members of the raiding party did not support the seizure of fire arms from the possession of the appellants. The Hon'ble Court was of the considered view in appellate jurisdiction that the fact that two members of the raiding party did not support the seizure coupled with the fact that the seizure list witnesses also did not appear to support the prosecution case created serious

doubt in the prosecution case . So far as the judgement passed by the Hon'ble Supreme Court in the case of "Megha Singh -versus- State of Haryana" reported in (1996) 11 SCC 709 is concerned , in the said case the head constable was the informant of the case and he himself became the investigating officer and there was material discrepancy in the evidence of the witnesses , in such circumstances, the Hon'ble supreme court was of the view that in absence of any independent corroboration such discrepancy did not inspire confidence about the reliability of the prosecution case.

In the present case, as discussed above, the learned courts below found reliable evidence supported by all the members of the raiding party to convict the petitioners. Therefore, the said judgements do not help the petitioners in any manner.

32. In the case of "Selvaraj V. Chinnpriyan vs State" reported in (2015) 2 SCC 662 in para 19, it was observed that it is settled principle of law that benefit of reasonable doubt is required to be given to the accused, only if the reasonable doubt emerges out from the evidence on record.

33. In the case of "Yogesh Singh versus Mahabeer Singh" reported in (2017) 11 SCC 195, it has been held in para 15 that it is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts, however, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts.

34. In "State of Kerala v. M.M. Mathew", (1978) 4 SCC 65, the Supreme Court held that, prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case. This view was reiterated by the Supreme Court in "State of U.P. v. Krishna Gopal", (1988) 4 SCC 302.

35. In the case of "Rameshbhai Mohanbhai Koli and others versus State of Gujarat" reported in (2011) 11 SCC 111 reliance of the evidence of the investigating officer was considered in para 32 to 35 and it was held that merely because the panch- witnesses have turned hostile is no ground to reject the evidence, if the same is based on the testimony of the Investigating Officer alone. Para 32 to 35 of the aforesaid judgement is quoted as under :-

"Evidence of the investigating officer "32. An argument was advanced about reliance based on the evidence of investigating officer. This Court in State of U.P. v. Krishna Gopal has held that courts of law have to judge the evidence before them by applying the well- recognised test of basic human probabilities. "3. ... prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case." (Vide State of Kerala v. M.M. Mathew at SCC p. 68, para 3.)

33. In *Modan Singh v. State of Rajasthan* it was observed (at SCC p. 438, para 9) that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was expressed in *Mohd. Aslam v. State of Maharashtra*.

34. In *Anter Singh v. State of Rajasthan*, it was further held that: (SCC p. 661, para 10) "10. ... even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated."

35. This Court has held in a large number of cases that merely because the panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone. In the instant case, it is not the case of defence that the testimony of the investigating officer suffers from any infirmity or doubt. (Vide *Modan Singh* case, *Krishna Gopal* case and *Anter Singh* case.)"

36. The evidences on record in the present case are on much better footing and the learned courts below have found the evidences of the prosecution witnesses reliable and consistent to convict the petitioners. In the present case, all the members of the raiding party have not only supported the prosecution case, but their evidence is consistent and they have been fully cross-examined. Their evidences have been thoroughly scrutinized by the learned courts below; at the first instance by the learned trial court and thereafter by the learned appellate court and the conviction of the petitioners by the trial court was sustained by the learned appellate court by well- reasoned judgement.

37. In the present case, the investigation officer as well as other witnesses as discussed in the trial court and appellate court judgement have fully supported the prosecution case including on the point of seizure. In the present case the record indicates that summons was issued to the independent witnesses but they ultimately did not turn up for their evidence and the prosecution evidence was closed as the case was lingering for quite some time. This court is of the considered view that non examination of independent seizure list witnesses is not fatal to the prosecution case at hand as the petitioners were caught on the spot and the entire raiding team members have supported the prosecution case , the signature of the seizure list witnesses were exhibited and marked without any objection from the side of the defence and a copy of the seizure list was also handed over to the petitioners. In the instant case the seized arms were also sent for examination by expert who has also fully supported the prosecution case. The Hon'ble Supreme Court, in appropriate cases, has upheld the conviction even when the seizure list witnesses have turned hostile when the investigating officer of the case fully supported the prosecution case along with other evidences on record. Therefore, this court is of the considered view that non examination of the independent seizure list witnesses is not fatal to the prosecution case and there is no scope for re-appreciation of evidences and

coming to a different conclusion in revisional jurisdiction.

38. The Hon'ble Apex Court has explained the power of revisional court in the case of Jagannath Choudhary and others reported in (2002) 5 SCC 659 at para. 9 as under:-

"Incidentally the object of the revisional jurisdiction as envisaged u/s 401 was to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some underserved hardship to individuals. (See in this context the decision of this Court in Janata Dal Vs. H.S. Chowdhary) . The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the application would be entitled to demand an adjudication upon all questions of fact or law which he wishes to raise, but in revision the only question is whether the court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, interference cannot be had in exercise of revisional jurisdiction."

39. The revisional power is further explained in the case of Ramesh Kumar Bajaj reported in (2009) 1 JCR 684 (Jhar) at para. 13 as follows:

"It is well settled that revisional interference may be justified where:

- (i) the decision is grossly erroneous.
- (ii) there is no compliance with the provisions of law.
- (iii) the finding of fact affecting the decision is not based on evidence.
- (iv) material evidence of the parties is not considered and
- (v) judicial discretion is exercised arbitrarily or perversely."

40. In the case of "Duli Chand v. Delhi Administration", (1975) 4 SCC 649, the Hon'ble Supreme Court while considering the scope of revisional power held in paragraph-5 as follows:

"5. The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support

of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

41. In view of the aforesaid discussions and findings and considering the entire facts and circumstances of this case, this Court is of the considered view that the learned courts below have passed well-reasoned judgements considering every aspect of the matter and every argument advanced on behalf of the petitioners. There being no perversity or illegality in the impugned judgements of conviction, no interference is called for.

42. So far as the sentence of the petitioners is concerned, this Court finds that the petitioners have remained in custody for a period of about six months and as per the affidavit filed by the State, the petitioners do not have any criminal antecedent and the incident was of the year 2007 and they have suffered the rigours of the criminal case for the last 13 years.

43. Considering the entire facts and circumstances of the case, this Court is of the view that ends of justice would be served if the sentence of the petitioners is modified to some extent. Accordingly, the sentence of the petitioners for the offence involved in the present case is modified and reduced to two year and fine of Rs.5,000/- each to be deposited before the learned court below within a period of two months from the date of communication of this judgement to the learned court below and if the fine amount is not deposited within the stipulated time frame , the petitioners would serve the sentence imposed by the learned courts below. The period undergone by the petitioners in custody in connection with this case is directed to be set off.

44. Accordingly, with the aforesaid observations, directions and modification in the sentence, this criminal revision petition is disposed of.

45. Interim order, if any, stands vacated.

46. Bail bond furnished by the petitioners is hereby cancelled.

47. Pending interlocutory application, if any, is also dismissed as not pressed.

48. Let the lower court records be immediately sent back to the learned court below.

49. Let a copy of this order be communicated to the learned court below through 'e-mail/FAX'.