
(2010) 01 JH CK 0155
In the Jharkhand High Court

Santosh Kumar Gupta

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 307, 326, 34, 353

Citation : (2010) 01 JH CK 0155

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—This Criminal appeal is directed against the judgment of conviction dated 28.4.2006 and order of sentence dated 1.5.2006 recorded in S.T. Nos. 346 of 2004, 424 of 2004 and 127 of 2005 by the Additional Sessions Judge FTC No. III Jamshedpur by which the appellant and another two accused were held guilty for the charge under Sections 353/307/34 of the Indian Penal Code as also u/s 27 of the Arms Act. The appellant has been sentenced to undergo Rigorous Imprisonment for seven years with a fine of Rs. 10,000/- for his conviction u/s 307/34 of the Indian penal Code, Rigorous Imprisonment for one year for the charge under Sections 353/34 of the Indian Penal Code and Rigorous Imprisonment for three years for separate charge u/s 27 of the Arms Act and fine on each count with default stipulation. All the sentences awarded against the appellant and others were directed to run concurrently.

2. The prosecution story in short was that the informant Arvind Kumar Singh (P.W.7) the then Officer-in-charge of Dumaria police station narrated that pursuant to secret information on 20.6.2002 at about 8.45 a.m. that one Akhilesh Singh, who was declared absconder in the case of kidnapping and murder of a Jailor, was seen at Road No. 20 along with his associates near Tata Workers Union School at Sidhgora area and that the Appellant Santosh Kumar Gupta was also there amongst them, making preparation for committing serious

offence, the informant communicated such information to the Senior Police Officers and on their instruction he took Arvind Kumar,(P.W.5) the then Officer-in-charge of Burma Mines Police Station with him and further picked up Shri Ohm Prakash Police Officer from Sidgora Police Station and then proceeded towards Road No. 20 on a Maruti Car No. BR 16N 6061 where they arrived at about 9.20 a.m. and spotted the appellant, Santosh Kumar Gupta, Akhilesh Singh and one unknown standing around a Yamaha motor cycle and talking together. The informant with other witnesses came closer near them with the intention to apprehend Akhilesh Singh and other culprits and when the informant and the S.I. Ohm Prakash attempted to surround the accused Akhilesh Singh after alighting from the car, Akhilesh Singh identified both of them and cautioned them to return back, lest they would be killed. The informant and the S.I. Ohm Prakash tried to surround him from both sides but it was alleged that in the meantime Akhilesh Singh fired two shots aiming S.I. Arvind Kumar and that one of the shots caused injury by penetrating glass screen of the car on the lower portion of the right eye of S.I. Arvind Kumar who was sitting on the driving seat of the said Maruti car. In the same transaction it was alleged against the appellant Santosh Kumar Gupta that he fired two shots from his revolver aiming at the informant and the S.I. Ohm Prakash but it did not hit the target. In retaliation the informant and the S.I. Ohm Prakash fired two shots from their service revolvers aiming the culprits. Witnessing the counter fire from the police side, all the culprits then started fleeing towards western side and that they were chased by the informant and the S.I. Shri Ohm Prakash but all the three culprits snatched a Kawasaki Bajaj motor cycle of a by passer on the point of gun and escaped however, leaving their Yamaha motor cycle No. BR-16C-2547 at the place of occurrence. The victim S.I. Arvind Kumar was removed to Tata Main Hospital where his injury was treated and on the basis of the written report of the informant Arvind Kumar Singh Sidgora P.S. Case No. 68 of 2002 was registered on 20.6.2002 for the alleged offence under Sections 307/326/353/34 of the Indian Penal Code as also u/s 27 of the Arms Act against Akhilesh Singh, Santosh Kumar Gupta (appellant) and one unknown criminal.

3. The police after investigation submitted charge sheet against three accused persons namely (i) Santosh Pandey (ii) Santosh Kumar Gupta (appellant) (iii) Akhilesh Singh, accordingly, charge against them was framed under Sections 307/326/353/34 of the Indian Penal Code as also 27 of the Arms Act and they were put on trial.

4. After their criminal trial all the three accused were convicted for the charge under Sections 307/34, 353/34 of the Indian Penal Code and also u/s 27 of the Arms Act, accordingly they were sentenced for imprisonment and with fine as referred to herein before.

5. The appellant Santosh Kumar Gupta preferred the instant appeal independently with the prayer for setting aside the judgment of his conviction and the order of his sentence recorded against him on the grounds taken in

appeal. Yet, Mr. M.K. Dey, the learned Counsel assisted by Mr. D.K. Chakravarty, Advocate, clearly submitted at the outset that the appellant was inclined to argue his case only on the point of sentence awarded by the trial court. Mr. Dey submitted that the prosecution could not be able to prove the charge against the appellant Santosh Kumar Gupta beyond all reasonable doubts in view of the material omissions and contradictions in the uncorroborated statements of the prosecution witnesses. Mr. Dey further urged that the appellant is in custody since 21.6.2004 with the intervening period of four months when he was enlarged on ad-interim bail by the order of this Court but he immediately surrendered in the court during pendency of appeal on the direction of this Court when it was found that bail was obtained on suppression of fact that as the same was earlier refused by the Hon''ble Supreme Court. If the entire period of his detention in judicial custody is considered in the instant case. Mr. Dey submitted that it could be calculated that he remained in custody for five years and four months and in that manner it can safely be said that the appellant has sufficiently served out the maximum period of sentence in the judicial custody as against total seven years of imprisonment that was awarded against him. Mr. Dey further submitted that the appellant belongs to a poor socio economic back ground and no proper care could be given to him in his bringing up, therefore, sympathetic view may be taken by modifying the sentence for the period already undergone by him without interfering in his conviction for the charge under Sections 307/34, 353/34 of the Indian Penal Code and also u/s 27 of the Arms Act. The appellant is ready to pay the fine amount that has been imposed by the trial court while awarding sentence in different counts.

6. The learned A.P.P. opposed the submission advanced on behalf of the appellant Santosh Kumar Gupta on the point of sentence and submitted that it would be evident from the order of sentence awarded by the trial court that the appellant and co-convict Akhilesh Singh had got criminal antecedent and for that the trial court declined to take any lenient view while awarding sentence of imprisonment. It was proved beyond doubts before the trial court that the appellant had attempted on the lives of the police officers by firing two shots while they were on duty but fortunately they escaped the shots. However, it was proved that one of the shots fired by the co-convict Akhilesh Singh hit the lower portion of the right eye of another police officer Arvind Kumar who was sitting on the driving seat of the Maruti car and had arrived at the spot with the other police officers to apprehend the culprits .The appellant did not deserve leniency in view of his criminal antecedent and association with co-convict Akhilesh Singh against whom there was charge of committing murder of a Jailor besides other criminal charges.

7. Having regard to the facts and circumstances of the case, arguments advanced on behalf of the parties, I find that though Mr. Dey, the learned Counsel, has argued only on the point of sentence for its modification by taking lenient view but the learned Counsel failed to show any convincing ground for modification in the quantum of sentence that has been awarded to the appellant Santosh Kumar Gupta by reducing it for the period already undergone by him in

judicial custody pursuant to his conviction u/s 353/307/34 of the Indian Penal Code and Section 27 of the Arms Act. The allegation was serious in nature since it was proved beyond suspensions that attempt was made on the lives of the police officers who were on duty while trying to apprehend the culprits including the appellant and I do not find it to be a fit case in which leniency could be shown to the appellant by reducing the quantum of imprisonment to that of undergone by the appellant Santosh Kumar Gupta. I do not find any merit in this appeal even on the point of sentence and therefore, this appeal is dismissed. Let the L.C.R. be returned back to the court concerned.

I.A. No. 2218 of 2009

In view of the finding and observation made herein before in this appeal, the I.A. No. 2218 of 2009 stands dismissed.