

Surendra Oraon and Anr Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jul-27-2017

Appellant : Surendra Oraon and Anr

Respondent : State of Jharkhand

Advocate for Pet/Ap. : Mr. R. P. Gupta

Judgement :

Criminal Revision No. 228 of 2005 Against the judgment of conviction and the order of sentence dated 28.09.2004 passed in Cr. Appeal No. 20 of 2003 by learned Sessions Judge, Lohardaga affirming the judgment of conviction and the order of sentence dated 08.08.2003 passed in G.R. Case No. 233 of 1999 (T.R. No. 89 of 2003) by learned Judicial Magistrate, Lohardaga 1. Surendra Oraon 2. Nawas @ Haura Ansari Petitioners Versus The State of Jharkhand Opposite Party ---- PRESENT HONBLE MR. JUSTICE RONGON MUKHOPADHYAY For the Petitioners : Mr. R. P. Gupta For the State : Mr. Shekhar Sinha, APP ---- By Court: Heard Mr. R. P. Gupta, learned counsel for the petitioners. No one appears for the for the State.

2. This application is directed against the judgment of conviction and the order of sentence dated 28.09.2004 passed in Cr. Appeal No. 20 of 2003 by learned Sessions Judge, Lohardaga, whereby and whereunder, the judgment of conviction and the order of sentence dated 08.08.2003 passed in G.R. Case No. 233 of 1999 (T.R. No. 89 of 2003) by learned Judicial Magistrate, Lohardaga, convicting the

petitioner for the offence punishable u/ s 25(1-B) of the Arms Act and Section 25/35 of the Arms Act and sentencing them to undergo R.I. for two years and R.I. for one year respectively, has been affirmed.

3. It has been stated by learned counsel for the petitioners that that there are vital contradictions in the evidence of the witnesses with respect to recovery of country made pistol. It has further been stated that the seizure list witness has been declared hostile. In such circumstances, the recovery itself has become doubtful and therefore the petitioners deserve to be acquitted.

4. The case of the prosecution in brief is that a raid was conducted in connection with Lohardaga P.S. Case No. 74 of 1999. It has been alleged that on secret information the raiding party reached Powerganj Bus Stand and started searching of an absconder accused in connection with the said Lohardaga P.S. Case No. 74 of 1999 and one Nawaz Ansari, who was coming with other persons from Baba Math Road, was identified by one of the member of the raiding party. He was having a bag with him. It has been further alleged that on seeing the police, the accused persons turned back and tried to flee away but the police succeeded to arrest one person namely, Surendra Oraon. Said Surendra Oraon disclosed that another accused who managed to flee away was Nawaz @ Haura Ansari, who during chase had thrown his bag. It has been further alleged that on search of the apprehended accused in presence of witnesses, one country made pistol of .315 bore loaded with one cartridge was recovered from his waist. The police also searched the bag and a country made pistol of .32 bore along with a live cartridge wrapped in cloth along with other articles were recovered from the said bag. Accordingly a seizure list was prepared. Based on the aforesaid allegation G.R. case No. 233 of 1999 was instituted. After investigation charge-sheet was submitted on the basis of which cognizance was taken and after framing of charges, trial proceeded.

5. In course of trial 11 witnesses were examined on behalf of prosecution. P.W. 1 Javed Raja, who was an A.S.I. and a member of raiding party, has stated that he came to know that the accused of Lohardaga P.S. case NO. 74 of 1999 was going to Ranchi, then he along with other police officials reached Powerganj Bus Stand

and on enquiry they had seen persons coming and when they saw the police they started fleeing away. It is alleged that on chase petitioner No. 1 was apprehended and from his possession one country made pistol was recovered. This witness has also stated that another accused threw his bag and on search a country made pistol was also recovered from the said bag. P.W. 2, Ram Baleshwar Rai, a member of raiding party, has also supported the prosecution case and stated about the recovery of a country made pistol from the possession of petitioner No. 1 and another country made pistol from the bag thrown by another accused. P.W. 3 Dwarika Nath Jha, a member of the raiding party has also supported the prosecution case. P.W. 4 Nagendra Verma and P.W. 5 Mohan Lohar, both seizure list witnesses, have been declared hostile. P.W. 6 Hari Pad Nar Sunder, a member of raiding party, has also deposed that the seizure was made in his presence. P.W. 7, an A.S.I. of Police, has stated that the police had succeeded to catch hold of the petitioner No. 1, whereas the other accused had managed to flee away throwing his bag from which a country made pistol was recovered. P.W. 8 is a formal witness who has proved the sanction order (Ext. 2). P.W. 9, an A.S.I. of Police and the Investigating Officer of the case, has proved the formal F.I.R. as well as the signature and Ext.

3. This witness had identified the arms, cartridges and 3. other articles which were produced in Court. This witness had recorded the statement of witnesses u/s 161 Cr.P.C. He further disclosed that he had sent the arms to Sergeant Major for an expert test. He has obtained sanction from the Deputy Commissioner-cum District Magistrate, Lohardaga. After conclusion of investigation he has submitted charge-sheet. P.W. 10, Ramanuj Sharma, is Sergeant Major, who has deposed that during test he had found the pistols as well as the cartridges in workable condition. P.W. 11, S.I. Ratan Kumar, who is the informant, has supported the prosecution case as well as the recovery of firearms from the possession of petitioner No. 1 and from the bag which was thrown by the petitioner No.

2. 6. Most of the witnesses who have been produced by the prosecution are with respect to the raid conducted and the seizure of arms from the possession of the petitioner as well as from inside the bag which was thrown by petitioner No.

2. There has been consistent and corroborative evidence of the witnesses regarding the aforesaid fact. The pistols, which were seized, were found in workable condition and the said report was also marked as Ext.

5. The sanction was also obtained from the District Magistrate, Lohardaga for prosecuting the petitioners. The Investigating Officer has also proved the place of occurrence. The evidence of the prosecution witnesses is clear and categorical with respect to the recovery of firearms and on such consideration therefore no interference is necessitated in the judgment of conviction passed by the learned trial court and affirmed by the learned appellate court.

7. As regards the sentence, which has been imposed upon the petitioners, it appears that the petitioners have been facing rigours of the prosecution case since 1999 and the petitioner No. 1 has remained in custody for a period of about one year & two and half months and the petitioner No. 2 has remained in custody for a period of about ten months. In such circumstances, petitioners seem to have been sufficiently punished. Accordingly, the order of sentence passed against the petitioners is modified to the period already undergone by the petitioners.

8. This application stands dismissed with the aforesaid modification in the order of sentence awarded to the petitioners. (RONGON MUKHOPADHYAY, J.)
Jharkhand High Court, Ranchi Dated the 27th July, 2017 MK/N.A.F.R.

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