

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.40 of 2009

(Arising out of Judgment of conviction dated 09/13th January, 2009 respectively passed by the learned Additional Sessions Judge, Fast Track Court-I, Motihari, in Sessions Trial No. 677 of 2006/593 of 2006 arising out of Sugauli P.S. Case No. 52 of 2005, G.R. No. 806 of 2005)

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1. Sheo Raj Sahani, son of late Narayan Sahani
2. Rajeshwar Sahani, son of Sheoraj Sahani
Both resident of village Muswa, P.S. Sugauli, Distt. East Champaran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Swarup Prasad, Advocate
Amicus Curiae.
For the State : Mr. Bal Mukund Prasad Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 21-06-2018

1. This Appeal has been filed against the Judgment of conviction and order of sentence dated 09/13.01.2009 passed by the learned Additional Sessions Judge, Fast Track Court-I, Motihari, in Sessions Trial No. 677 of 2006/593 of 2006 arising out of Sugauli P.S. Case No. 52 of 2005, G.R. No. 806 of 2005 by which the Appellants have been convicted and sentenced to undergo rigorous imprisonment for five years for the offence under Sections 25(1-A), three years for the offence under Section 25(1-B), five years for the offence under Section 25(1-C) and three years for the offence under Section 26 of the Arms Act. All the sentences were ordered to run



concurrently.

2. None appeared on behalf of the Appellants.

3. Mr. Ram Swarup Prasad, has been appointed as Amicus Curiae.

4. Heard learned counsel for the State as well as Amicus Curiae.

5. As per First Information Report lodged by Ajay Kumar, Sub Inspector of Sugauli Police Station, he got information from Gulam Gaus that a Mini Gun Factory was running in the house of Shivraj Sahani. The informant and other police personnel raided the house of Shivraj Sahani in presence of two independent witnesses namely, Rambriksha Sahani and Sheshnath Kumar. At the time of raiding the house, both the Appellants were present. From the house of the Appellants several articles of preparation of gun along with empty cartridges were recovered, and Seizure list was prepared. The Police arrested both the Appellants.

6. The Police after investigation has submitted charge sheet for the offence under Sections 412 of the Indian Penal Code and Sections 25(1-A), 25(1-B), 25 (1-C) and 26 of the Arms Act.

7. The court below has after conclusion of trial acquitted the Appellants for the offence under Section 412 of the Indian Penal Code and has convicted the Appellants for the offence



under Sections 25(1-A), 25(1-B), 25(1-C) and 26 of the Arms Act and sentenced them to undergo rigorous imprisonment for five years for the offence under Section 25(1-A), Rigorous imprisonment for three years under Section 25(1-B), rigorous imprisonment for five years for the offence under Section 25(1-C) and rigorous imprisonment for three years for the offence under Section 26 of the Arms Act. All the sentences were ordered to run concurrently.

8. During trial the prosecution has examined nine witnesses in the case. The articles seized from the house of the Appellants has been marked as material exhibit along with other exhibits as mentioned in detail in the impugned Judgment.

9. Ram Briksha Sahani (PW-1) and Sheshnath Kumar (PW-2) are seizure list witnesses. They have proved the seizure list and identified the signatures on the seizure list which has been marked as Ext. 1 and 1/A, but they have stated in their evidence that they have not seen the seized articles as they had not been seized in their presence. They have been declared hostile.

10. Sudarshan Prasad Sahani (PW-3), Bholu Prasad Sahani (PW-5), Prem Shankar Singh (PW-6) and Gasan Paswan (PW-7) were members of raiding party. They have supported the prosecution case. They have stated that various articles have been recovered from the house of both the Appellants.



11. Abhay Kumar (PW-4) is the informant of the case. He was also the member of the raiding party. He has proved the written report. He has supported the case of the prosecution and stated that various articles have been seized from the house of the Appellants. He has proved seizure list and written report. He has also identified both the Appellants. He has stated in paragraph-13 of his cross-examination that the articles which were recovered from the house of the Appellants were used for preparation of firearms in Mini Gun Factory.

12. Dasrath Paswan (PW-8) is Investigating Officer of the case. He has obtained the prosecution report. He has proved the aforesaid prosecution report which has been marked as Ext. 5. He has submitted charge sheet against both the Appellants.

13. Bashishtha Narayan Madal (PW-9) is formal witness who has brought the material exhibits from *Malkhana* which has been marked in the court below.

14. In this manner, although, the seizure list witnesses have put their signatures on it but they have denied about recovery of any firearms in their presence, but from their evidence, it is apparent that they have not denied the sanctity and genuineness of the seizure list. The other members of the raiding party including the informant have supported the prosecution case about recovery of various articles



from the house of the Appellants.

15. The informant has stated in his evidence that the articles which were seized/recovered from the house of the Appellants are normally used for preparation of firearms in the Mini Gun Factory. The material exhibit has been produced and proved in the court below during trial by PW-9.

16. Therefore, this Court does not find any illegality in judgment of conviction passed by the court below.

17. The Appellants have been enlarged on bail by this Hon'ble Court after filing of the instant Appeal. Sheo Raj Sahani (Appellant No. 1) has been allowed bail on 24.03.2009 and Rajeshwar Sahani (Appellant No. 2) has been allowed bail by order dated 18.05.2009.

18. Both the Appellants have remained in custody all through the trial. From the record it appears that they have remained in custody for about four years during trial. Therefore, this Court is of the view that period already undergone by the Appellants in custody during trial is sufficient punishment for them.

19. Therefore, the sentence passed against the Appellants is modified as the period already undergone by the Appellants. The Appellants are not required to be sent to custody further.



20. This Criminal Appeal is accordingly dismissed with modification in sentence as mentioned above.

(Sanjay Priya, J)

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