

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.192 of 2021

Arising Out of PS. Case No.-102 Year-2019 Thana- KHAIRA District- Jamui

SUNIL YADAV Son of Dawarika Yadav Resident of Village- Kurila, Police
Station- Gidhaur, District- Jamui.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Arun Kumar

For the Respondent/s : Mr. Md. Aslam Ansari

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 28-06-2021 Heard Mr. Arun Kumar, learned counsel for the

petitioner and Mr. Md. Aslam Ansari, learned APP for the

State.

The present revision petition is directed against the

judgment and order dated 13.01.2021 passed in Criminal

Appeal No. 11 of 2020, whereby the conviction and sentence

of the revisionist passed by the learned Trial Court has been

affirmed.

The revisionist has been convicted under Section

25(1-B) a and 26 of the Arms act and has been sentenced

to undergo R.I. for three years and one year respectively for

the offences. The conviction and the sentence has been



affirmed by the Appellate Court.

Mr. Kumar learned Advocate for the revisionist has submitted that the Trial Court as well as the Appellate Court did not consider the case of the revisionist in correct perspective. Almost all the witnesses (five witnesses) are police witnesses and it appears that no effort was made to by the prosecution to pitch-in any independent witness. Learned counsel for the petitioner has further submitted that the seized weapon was never sent for any forensic examination to ascertain whether it was in working condition and could be used as a fire arm weapon. P.W. 2, Barun Kumar Singh who is a Constable and was part of the raiding team has confirmed the fact that no independent person had signed the seizure list. In fact, he has stated that no person was ready to sign the seizure list.

Mr. Kumar learned Advocate for the petitioner, therefore, submits that it speaks volumes about the correctness of the case reported and tried at the instance of the local police. Vague statements have been made by most of the witnesses on behalf of the prosecution. A



special reference has been made of the fact that P.W. 4, the Investigating Officer of the case has stated that the weapon which was seized was never sealed or packaged and, therefore, the possibility of planting any other weapon cannot be ruled out. The seizure list is stated to be defective. There are many serious contradictions which have been pointed out in the deposition of witnesses.

On the afore-stated grounds, it has been urged that the order of the Trial Court as also of the Appellate Court be set aside and the revisionist be acquitted of all charges. Alternatively, it has been argued that since the maximum sentence awarded to the petitioner is three years because of the sentences under both the counts having been ordered to run concurrently and that the petitioner has remained in custody since 30.03.2019 i.e. for more than two years, the petitioner would be satisfied if the sentence awarded to the petitioner is reduced to the period which he has already undergone.

After having heard the learned counsel for the petitioner and on perusing the records, it appears that the



petitioner was found in possession of a fire arm weapon for which he has been charged. True it is that there should have been independent person to depose in support of the prosecution but merely on that account, the entire prosecution case could not be thrown off board. There cannot *ipso facto* be a total no confidence on official witnesses. There are some doubts with respect to the seizure and safe custody of the seized weapon in police *malkhana* but in the absence of any positive evidence on behalf of the defence to demonstrate that another weapon was planted, it would be difficult to accept the contention of the petitioner that the entire trial has become defective on that account. The contradictions pointed out by the learned counsel for the petitioner also are not of such magnitude that the witnesses are required to be disbelieved.

For the aforesaid reasons, I am not inclined to interfere with the judgment and order of conviction passed by the Trial Court and its affirmation by the Appellate Court. However, taking into account the entire set of facts, this court is definitely of the view that since the petitioner has



remained in jail for little more than two years whereas the entire sentence is for three years (because of the sentences having been ordered to run concurrently under two counts of the Arms Act), this Court deems it expedient to reduce the sentence to the period of custody which the petitioner has already undergone.

The Court orders likewise.

The revision petition is partially allowed. The judgment of conviction is not interfered with but the sentence is reduced to the period which the petitioner has already undergone.

The revision petition stands allowed.

Let a copy of this order be communicated to the Superintendent of the concerned Jail for the record and compliance.

(Ashutosh Kumar, J)

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