(2006) 05 JH CK 0002

Jharkhand High Court

Case No: Criminal Appeal No. 12 of 2001

Naresh Prasad, Raghunandan Sao, Dilchand Sahu and Ram Bhajan Sao	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision: May 3, 2006

Acts Referred:

- Forest Act, 1927 - Section 33
- Penal Code, 1860 (IPC) - Section 148, 149, 307, 341, 353

Hon'ble Judges: Dhananjay Prasad Singh, J

Bench: Single Bench

Advocate: Jai Prakas and Amit Keshri, for the Appellant; Tapas Roy, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

D.P. Singh, J.

All the four appellants stand convicted under Sections 353, 426 and 341 of the Indian Penal Code and sentenced to serve rigorous imprisonment for a period of one year and to pay a fine of Rs. 2000/- each and in default thereof further undergo to rigorous imprisonment for a period of three months, rigorous imprisonment for one month and further sentenced to pay a fine of Rs. 200/- each and in default thereof further undergo to simple imprisonment for a period of fifteen days respectively vide judgment and order dated 14.12.2000 and 15.12.2000 in Sessions Trial No. 359 of 1988/48 of 2000 by 3rd Additional Sessions Judge, Chatra. However, all the sentences shall run concurrently.

2. Briefly stated the facts leading to their conviction are that the informant Amarjit Balihar, Probationer I.P.S., serving as Deputy Superintendent of Police, Simariya Police Station, received a confidential information in the afternoon of 28.2.1988 that

the appellants of village- Tungun within the jurisdiction of Simaria Police Station were involved in illegal preparation of Katha and have collected firearms in their house. The informant on this information reached at the house of the appellants and found Katha being prepared in form of biscuit through a machine. It is further alleged that when the police arrested one of the appellants, other house inmates and villagers assembled and resisted their arrest. Further alleged that Constable Driver Nand Kishore was attacked with a Farsa without causing any injury. Thereafter the mob attacked the police force who had to retreat. In the meantime, police vehicle was attacked causing damage to the window screen.

3. The informant returned to Simaria Police Station and again went to the village with extra force in the night and arrested the appellants along with six kilograms of Katha biscuit and 30 kilograms of liquid Katha in presence of two witnesses. Thereafter Simaria Police Station Case No. 23 dated 28.2.1988 was lodged on the statement of the informant under various sections including Sections 307, 379, 411, 427 and Sections 33/42 of the Indian Forest Act against ten accused persons. All the ten accused were charge sheeted to face trial and the case was committed for trial. The trial court framed charges against ten accused persons under Sections 307/149, 353, 379, 341 and 426 of the Indian Penal Code. Accused Naresh Sao, Dilchand Sao, Ram Bhajan Sao and Raghunandan Sao have been further charged u/s 148 of the Indian Penal Code. Appellant Raghunandan Sao has further charged u/s 411 of the Indian Penal Code. After examining the witnesses, the learned trial court acquitted all the accused persons under Sections 307/149 and 379 of the Indian Penal Code and further six persons under Sections 353, 426 and 341 of the Indian Penal Code and appellant Raghunandan Sao under Sections 411 of the Indian Penal Code. However, all the four appellants were found and held guilty under Sections 353, 426 and 341 of the Indian Penal Code and sentenced them as stated above.

4. This appeal has been preferred on the grounds that the lower court has committed mistake of fact and error on records by holding the appellants guilty under Sections 353, 426 and 341 of the Indian Penal Code. According to the memo of appeal, the witnesses examined by the prosecution were not probable and interested. It is also asserted that the conviction under Sections 341/426 of the Indian Penal Code is without any material on record. According to the learned Counsel for the appellants that when the appellants along with others were not found and held guilty for other offences, their conviction for the offence of alleged obstruction in official duties, wrongful restrain as well as mischief could not be maintained. It is also submitted that the learned lower court should not have believed the prosecution version as no independent witness has supported the prosecution case. In this context, my attention was drawn towards the statement of P.W.4, the seizure list witness, who was declared hostile. It is further submitted that P.W.1 has formally proved the signature on the first information report while P.W. 5 has formally proved the signature on the seizure list, who has admitted that he did not recognize the appellants. The learned Counsel for the appellant further criticized

the evidence of P.W.2 and P.W.3, the informant. According to him, the entire prosecution depending on the evidence of these two witnesses appears to be afterthought and hearsay because they could not say the boundary of the place of occurrence and the identity of the appellants. It was further submitted that even if the appellants were found and held guilty for obstructing the police from discharging their duties, they have already remained in custody for nearly three weeks.

6. Learned A.P.P. for the State opposed the contention on the grounds that the appellants have indulged themselves in obstructing the police party in performing the official duties. It is further submitted that they were arrested at the spot and the learned lower court has found and held guilty rightly under the above-mentioned sections of the Indian Penal Code.

7. I have gone through the entire evidence on record and the impugned judgment. The learned lower court has discussed the evidence of the witnesses produced before it at length. The lower court has partly believed the prosecution version to the extent that the raiding party was obstructed in performing their official duties by the appellants on which they have to return back. It is further found and held that the police force was restrained in performing duties. On careful consideration of the materials on record and the impugned judgment, I do not find any material to disagree with the findings. Accordingly, the findings of the learned lower court deserve to be affirmed.

8. At this stage, learned Counsel for the appellants submitted that the appellants have remained in custody for more than three weeks having faced trial for nearly 12 years. In such view of the facts, the sentence may be modified to the period already undergone by them.

9. On consideration of the materials available on the record, I find that the ends of justice may be served adequately if the sentence is reduced to the period already undergone by them. Accordingly, this appeal is dismissed with modification of sentence. The appellants are also discharged from the liability of their bail bonds.