Nathusingh vs The State Of Madhya Pradesh on 15 October, 1973

Equivalent citations: AIR1973SC2783, 1974CRILJ11, (1974)3SCC584, 1974(6)UJ29(SC), AIR 1973 SUPREME COURT 2783, (1974) 3 SCC 584, 1974 SCC(CRI) 62, 1974 (1) SCWR 105, (1974) 1 SCJ 526, 1974 MADLJ(CRI) 296

Bench: A.K. Mukherjea, M.H. Beg

JUDGMENT

Beg, J.

1. The appellant has been convicted under Section 25(1)(a) of Arms Act, 1959, and sentenced to two years' rigorous imprisonment by a Magistrate 1st Class, Bhind, in Madhya Pradesh. He was found in unlicensed possession of 20 live cartridges of mark three and 39 live cartridges of "mouzer" type during the night between 12th and 13th October 1968 at Village Kishorsingh-Ka-Pura in Behad. Learned Sessions' Judge of Bhind dismissed his appeal with the observation "Such crimes connected with dacoity deserve a severe punishment". The High Court had also rejected the revision application of the petitioner.

2. Concurrent findings of fact conclude the case against the petitioner so far as his possession of unlicensed cartridges on the date and the time and place given in the charge are concerned. The fact that the two witnesses called from amongst the members of the public, namely, Raghunathsingh (P.W. 1) and Gambhirsingh Tomar (P.W. 2). had turned hostile was considered by the High Court and the Courts below. They had held that the two prosecution witnesses who had turned hostile could not be relied upon. Their evidence could not destroy the prosecution case or make it doubtful. The prosecution case is fully supported by Mahadevsingh (P.W. 5), and Umashankar (P.W. 6), who are police officers. The mere fact that they are police officers was not enough to discard their evidence. No reason was shown for their hostility to the appellant.

3. The only question which seems to deserve some consideration is that the Sessions Judge, as the final Court of facts, had taken into account the alleged connection of the appellant with the dacoits which is completely unsupported by any admissible evidence. It was stated by the Investigating officer that he had received information that the appellant had been supplying ammunition to the dacoits. This was certainly evidence. It may explain why the accused was searched. But, what the Informer stated about the connection of the appellant with the dacoits was mere hearsay unsupported by any direct or admissible evidence. The High Court had also held that "in the circumstances of the case" the sentence of two years' rigorous imprisonment was deserved.

4. Ordinarily, this Court does not interferes on a question of sentence. But, as the High Court and the Courts below seem to have been affected by inadmissible evidence in awarding two years' rigorous imprisonment to the appellant whom no previous conviction is shown, we think that the ends of justice would be met by reducing the sentence to one year's rigorous imprisonment. Subject to this modification this appeal is dismissed. The appellant shall surrender to his bail and undergo the remaining part of the sentence.