

Cr. Appeal (S.J.) No.1207 of 2006

[Against the Judgment of conviction 07.04.2006 and Order of sentence dated 15.04.2006 passed by Additional Sessions Judge, F.T.C.- IV, Bokaro in S.T. No.163 of 2003]

Mausam Chatterjee, son of late Atul Chandra Chatterji, resident of Sector-3, B.S. City, Dist. Bokaro, (Jharkhand)

.... Appellant

Versus

The State of Jharkhand Respondent

For the Appellant : Mr. Rajesh Kumar, Advocate
 Mr. Ramesh Kumar, Advocate
For the State : Mrs. Nehalas Shamin, S.P.P.

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGEMENT

18/11/2024

By court:

1. The present appeal is directed against the judgment of conviction and order of sentence dated 07.04.2006 passed by Additional Sessions Judge, F.T.C.-IV, Bokaro in S.T. No.136 of 2003, whereby and whereunder, the appellant has been held guilty and convicted for the offences under Sections 307, 333, 353 of IPC and section 25(1-B)a, 26(i) and 27(i) of Arms Act and sentenced to undergo R.I. of 5 years under section 307 of IPC, R.I. for 3 years under section 333 of I.P.C and R.I. for 2 years

under section 353 of IPC and R.I. for 2 years under section 25(1-B) a of Arms Act, R.I. for 3 years under section 26(i) of Arms Act and R.I. for 5 years under section 27(i) of Arms Act. However, all the sentences were directed to run concurrently.

FACTUAL MATRIX

2. Factual matrix giving rise to this appeal is that the informant Sub-Inspector, Officer-in-Charge of Sector IV police Station gave a written report on 28.01.2003 to the Officer-in-Charge of B.S. City Police Station stating *inter alia* that a Task Force constituted under leadership of Superintendent of Police, Bokaro has informed the informant that two criminal namely Ranjesh Lohar and Mausam Chatterjee(appellant) are roaming in the town on a blue motorcycle by changing the number plate of the said vehicle with intention to commit offence. Upon receiving information, the Task Force laid a trap to arrest both the miscreants and thereafter the Task Force saw them on the road near Co-operative More. On seeing the police, the appellant started firing upon the police party by taking out one 9 M.M. pistol from his waist. In retaliation, the police party also fired at the miscreants and one of the miscreants, Rajesh Lohar, who got injured with bullets was taken away to Bokaro General Hospital, where he succumbed to death. It is further

alleged that with the help of local persons, the present appellant was apprehended along with 9 MM pistol with four live cartridges, 4 currencies notes of demonetization of Rs.500/-, one driving license in the name of Shyam Mukherjee and four empty cartridges of 9 MM were also found scattered on the road. It is further alleged that from the place of occurrence, a motorcycle, two pistols and cartridges were seized by police and seizure list was prepared.

3. On the basis of above information, the FIR being B.S. City P.S. Case No.22 of 2003 was registered against the appellant for the offences under sections 307, 353, 333/34 of Indian Penal Code and section 25(1-B)a, 26, 27 and 35 of Indian Arms Act. After completion of the investigation, charge-sheet was submitted against the appellant for the offences under sections 307, 353, 333/34 of IPC and Section 25(1-B)a, 26 and 35 of Indian Arms Act. After taking cognizance, the case was committed to the court of Sessions and S.T. No.136 of 2003 was registered. The accused person denied the charges and claimed to be tried. After conclusion of the trial, the impugned judgment and order of conviction and sentence of the appellant was passed, which has been assailed in this appeal.

4. Learned counsel for the appellants has submitted that though the appellant was arrested on spot allegedly with a 9 M.M pistol along with live cartridges for which the appellant has been held guilty and sentenced for R.I. of 5 years under section 307 of IPC. It is further submitted that the conviction and sentence of the appellant for the offence under sections 307, 333, 353 of IPC and section 27(1) of Indian Arms Act is totally unwarranted and the prosecution has miserably failed to prove the aforesaid offences against the appellant rather above offences were attracted against the other co-accused Rajesh Lohar who died in course of said incident by brutal assault given by the police personnels. The appellant was simply arrested with a country made pistol with live cartridges for which he has been convicted for the offence under section 25(1-B)a and 26 of the Arms Act and sentence to undergo imprisonment for 2 years and 3 years respectively. The appellant has already undergone 3 ½ years imprisonment during course of trial and post-trial of the case and he has sufficiently been punished. Therefore, this appeal may be allowed on merits and conviction and sentence of the appellant for the offences under sections 307, 333 and 353 of IPC and section 27(1) of Indian Arms Act may be set aside.

5. On the other hand, learned Special Public Prosecutor appearing for the State has opposed the aforesaid contentions raised on behalf of the appellant and submitted that the prosecution has been able to prove all the charges levelled against the appellant beyond all reasonable doubts and there are cogent and reliable evidence of the witnesses, which has been properly appreciated by the learned trial court. Therefore, there is no reason to interfere with the impugned judgment and order. This appeal has no merits and fit to be dismissed.
6. It appears that all together 5 witnesses were examined by the prosecution in this case to substantiate the charges leveled against the appellants. Out of them, P.W. 2 has not supported the prosecution case and declared hostile.
7. **P.W.1 S.I. Anil Kumar** is the member of raiding party, who has corroborated the contents of FIR and submitted that renowned accused person Rajesh Lohar and Mausham Chatterjee found wandering for committing some serious offences. Upon receiving the said information by the then Officer-in-Charge, a raid was conducted and upon seeing the police party, both the accused persons started opening fire against the police officers. In defence, counter firing was also started by the police personnels and public help was also

sought for. The accused Rajesh Lohar was apprehended in injured condition sustain fire injury and in course of treatment he died. The accused Mausham Chatterjee was also arrested with stolen motorcycle, live cartridges with one 9MM pistol, Rs.1,500/- and driving license, four empty cartridges were found from the place of occurrence, which were seized and the accused/appellant was taken into custody. He has identified the accused person behind the bar. It is further deposed that with intention to kill the police personnels, firearm was used by the accused persons.

8. **P.W.3 S.I. Abhay Kumar Jha**, is the then Officer-in-Charge of Bajidih Police Station. According to his evidence, on direction of Superintendent of Police Bokaro, a task force was constituted for taking action against the renowned criminals. A confidential information was received that the notorious criminals namely Rajesh Lohar and Mausham Chatterjee are wondering on a Hero Honda Motorcycle bearing Reg. No.JH-09-1870 which appears to be fake number towards sector-4 B.S. City, Bokaro. Upon receiving this information, a raid was conducted at 12:45 PM and seeing the police personnels, both the accused persons started firing upon the police personnels. The accused Mausham Chatterjee first opened fire upon the

police personnels then the police party in defence, started firing due to which Rajesh Lohar sustained firearm injury and in course of treatment, he died. He has further deposed that with the help of local person, the accused Mausham Chatterjee was also apprehended and from whose possession a stolen motorcycle, live cartridges with one 9MM pistol, Rs.1,500/- and driving license were recovered and four empty cartridges were also found from the place of occurrence. The seizure list was prepared on the spot. He has identified the accused Mausham Chatterjee behind the dock. This witness had denied the suggestion that no recovery was made from the possession of the accused Mausham Chatterjee rather he was arrested from his house after encounter of the accused Rajesh Lohar and was falsely implicated in this case.

9. **P.W.4 Indradeo Singh** was the then Officer-in-Charge of Sector 4 Police Station B.S. City. According to his evidence, on instruction of Superintendent of Police of Bokaro, a Task Force was constituted along with Officer-in-Charge of Balidih, Abhya Kumar Jha (PW3) and Officer-in-Charge of Harla Police Station Ram Iqbal Yadav. A confidential information was received that Rajesh Lohra and Mausham Chatterjee are wondering near section 4 for committing some serious offence

on a motorcycle bearing Reg. No.JH-09-1870. Upon information, the raiding party reached near section 2, then Rajesh Lohra and Mausham Chatterjee were seen on a motorcycle. Seeing the police personnels, both the accused started firing upon the police personnels then in defence, this witness also fired one round and Abhay Kumar Mishra had also fired three rounds and chased the accused persons, who were apprehended with the help of local persons. This witness has further deposed that Rajesh Lohar has sustained injury and he was sent to BGS, Hospital for treatment but was declared died. The apprehended accused Mausham Chatterjee brought to the police station and from their possession a stolen motorcycle, live cartridges with one 9MM pistol, Rs.1,500/- and driving license were recovered, thereafter seizure list was prepared. He prepared a written report of the occurrence and sent to B.S. City police station, which is proved as Ext.1 and he also identified the accused Mausham Chatterjee.

P.W.5, Madhusudan Singh is a formal witness, who has proved the signature of the present Police Officer on First Information Report, which is marked as Ext.3.

10. Apart from the above witnesses, the Court Witness No.1-S.I. Bachha Prasad Singh had been examined as a formal witness,

who has produced seized pistol allegedly recovered from the possession of the accused/appellant and another country made pistol which are exhibited as material Ext.I-II. This witness had further produced .315 bore live cartridges (Ext III) and one empty cartridge (Ext.IV), 9 MM Pistol with four live cartridges Ext.V to V/3, 4 empty cartridges of 9 MM pistol Ext. VI to VI/3. Driving license of Shyam Chatterjee Ext.VII, telephone diary Ext.VIII, Rs.2,000/- for the currencies of notes Rs.500/- demonetization as Ext.IX.

In cross-examination, he has categorically stated that none of the material produced before the court are sealed and he has no personal knowledge about the aforesaid seized materials rather has produced the same on notice of the court.

11. From perusal of the aforesaid evidence of witnesses examined by the prosecution as well as the documentary evidence available on record, it is crystal clear that none of the police personnels has been found injured in the said occurrence rather Ext.4, he simply produced, which is injury report of Mr. Bhagirath Sharma S.I. of B.S. City Police Station allegedly examined on 28.01.2003 at about 8:20 PM and following injuries found on his person:-

Injury No. 1:- Burse left palm with redness 1/2 x 1/2

Injury No.2:- Abrasion left palm at base of palm of size
1/2 x 1/2

Opinion about the nature of injury has been reserved but no supplementary injury report was produced and proved by examining the conducting doctor.

12. As against above, it is admitted position that one of the accused died due to firearm opened by the police. Admittedly four rounds fire was opened by the police personnels due to which one of the accused Rajesh Lohar died on spot. It does not appear that any of the accused persons had attempted to commit deadly assault upon the police personnels rather they were trapped in this case. As such no ingredients of section 307 of IPC is available against the appellant. Similarly, there is no scope in the given factual background of the case for attracting the offence under sections 333 and 353 of IPC. What type of obstruction was created by the appellant against discharging of public duty by the police officers has not been brought on record, therefore, conviction and sentence of the appellant for the offence under sections 333 and 353 of IPS is also unwarranted. Accordingly, the conviction of the appellant for the offence under section 307, 333 and 353 of IPC is hereby set aside.

13. From the prosecution evidence, it further transpires that the present appellant was simply arrested with firearm and ownership of the motorcycle is not established. The simple possession of the country made pistol and opening firearm without injury to any police personnel, the appellant has been sentenced for maximum period of five years. It is also brought to notice of this Court that the appellant has already undergone 3 ½ years custody during course of trial/post trial of the case.
14. Considering the aforesaid facts and circumstances, nature of offence committed by the appellant, the sentence imposed against him for the offences under sections 25, 26 and 27 of Arms Act is reduced to imprisonment already undergone by the appellant. Accordingly, this appeal is partly allowed with modification in sentence.
15. As the appellant is already on bail, thus he and his bailor(s) is discharged from the liabilities of the bail bond.
16. Pending I.A(s), if any, is also disposed of accordingly.
17. Let the copy of this order along with record of trial court be sent back for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court Of Jharkhand, Ranchi
18/11/2024
N.A.F.R./ Pappu-