

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO. 334 of 2017

Under section 25(1-B)(a) of Arms Act.
(Arising out of G. R Case No. 610 of 2016)

State of Assam

-Vs-

1. Guljar Hussain

... Accused Person

**Present: Sri C.B. Gogoi,
Sessions Judge,
Sonitpur :Sonitpur.**

For the State : Mr. M.C. Baruah, Public Prosecutor

For the accused : Mr. S.E. Alam, Advocate.

Date of Argument : **18-11-2021.**

Date of Judgment : **23-11-2021.**

JUDGMENT

1. The brief fact of the prosecution case as narrated in the FIR dated 01-03-2016 lodged by one Nayak Subedar Birendra Singh is that based on a secret information regarding carrying of arms from Diphu to Biswanath Chariali caused Naka Checking at Solmara area with Asstt. Commandant Jogan Lama, Havildar Karan Singh, Rifleman Kanchan Batt and civil police and stopped one silver colour Alto vehicle bearing Registration No. AS09-D-2614 and on checking found .22 pistol Registration No. K414596 (made in China), 1 magazine, 2 nos of Mobile and cash amount of Rs. 3,000/-. The pistol .22 with 1 magazine was

concealed in left pocket of jacket of accused. Accordingly, informant lodged the FIR for necessary action in accordance with law.

2. Following the information, police of Tezpur Police station registered the case being Tezpur PS case No. 332/2016 u/s 25(1-A) of Arms Act and O/C Anil Kr. Bora of Tezpur Police station entrusted SI Omar Faruk to investigate the case.

3. Accordingly, the Investigating Officer did investigation and in the process recorded the statement of witnesses u/s 161 Cr.P.C., seized one seizure memo prepared by Nayak Subedar Birendra Singh along with one .22 Pistol bearing No. K414596 (made in China), one magazine of .22 pistol, two Nokia Mobile Handsets without SIM and cash amount of Rs. 3,000/- vide MR No. 272/2016 (Ext. 1), collected report of Armourer (Ext. 6), drew the sketch map (Ext. 5) and on conclusion of investigation, having found prima-facie case police finally laid the charge-sheet against accused Guljar Hussain u/s 25(1-A) of Arms Act to stand trial.

4. During the course of trial, when accused appeared in Court, the learned Judicial Magistrate 1st Class, Sonitpur, Tezpur, vide order dated 02-11-2017 committed the case record against accused Guljar Hussain to the Court of Sessions for trial after due compliance of Section 207 Cr.P.C.

5. Receiving the case record on committal, my learned predecessor registered a case being Sessions Case No. 334 of 2016 and transferred the case to the court of the then learned Addl. Sessions Judge and thereafter, having heard the learned lawyers appearing for both sides and on perusal the materials available on record, having found prima-facie case, the then learned Addl. Sessions Judge, vide order dated 03-01-2018 framed charge against accused Guljar Hussain u/s 25(1-B)(a) of Arms Act. The particulars of the offence on being read over and explained accused pleaded not guilty and claimed trial.

6. During the course of trial, prosecution examined 8 (eight) witnesses but failed to examine the informant.

7. At the end of the prosecution evidence, accused was examined u/s 313 Cr.P.C., but, accused denied all the prosecution evidence as totally false and concocted. On being asked, accused declined to adduce any defence witness.

8. **POINT FOR DETERMINATION :**

"Whether on 01-03-2016 at about 03.00 PM at Solmara accused Guljar Hussain found in possession or carrying fire arm and ammunition i.e one pistol .22 Registration No. K414596 (made in China), 1 Magazine in contravention of Section 3 of the Arms Act and thereby committed offence punishable u/s 25(1-B) (a) of Arms Act as alleged?"

Discussion, Decision and Reasons thereof.

9. I have heard the arduous argument of the learned lawyers appearing for both sides.

10. Now, it is to be seen whether accused Guljar Hussain has been found carrying fire arms and ammunitions i.e. one .22 pistol Registration No. K414596 (Made in China) and one magazine in contravention of Section 3 of the Arms Act.

11. To substantiate the point, the learned PP Mr. M.C. Baruah, appearing for the State arduously contended that this is a clear case of recovery of illegal arms by Army personnel and civilian police on duty based on specific information in presence of witnesses who proved the fact of seizure. Even though, prosecution could not examine the informant in spite of best efforts because of frequent change of address

of informant due to transfer in service exigency, nevertheless, other prosecution witnesses establish the fact of seizure of illegal arms along with two mobile handset and cash from the possession of accused. Therefore, non-examination of informant, no way affect the merit of the prosecution case. Moreover, prosecution also proved the prosecution sanction and also proves through the evidence of Armourer that the .22 pistol marked as Ext. "A" is serviceable and dangerous to human life. Therefore, prosecution undoubtedly prove the case against accused Guljar Hussain u/s 25(1-B) (a) Arms Act as he carried the arms in contravention of Section 3 of Arms Act making him liable to punishment u/s 25(1-B)(a) Arms Act.

12. Learned counsel S.E. Alam appearing for accused Guljar Hussain however, vehemently refuted the submissions made by learned P.P. and contended that prosecution has miserably failed to prove the very seizure of the arms, apart from non-compliance of procedure of seizure on which ground alone prosecution case fails.

13. Having heard the learned lawyers appearing for both sides and on careful perusal of the seizure list marked as Ext. 1 and Ext. 2 it transpires that seizure List Ext. 1 and 2 were prepared by S.I. Omar Faruk on 01-03-2016 at 7.30 PM at Tezpur on being produced by Nayak Subedar Birendra Singh, the seized items are one seizure memo prepared by Nayak Subedar Birendra Singh, One .22 pistol bearing No. K414596 (made in China), one magazine of .22 pistol, two Nos. Of Nokia handsets without SIM, Indian Currency 5 x 500= 2500, 4 x 100= 400, 5 x 20= 100, total Rs. 3,000 in presence of witness Karan Singh, Prashanta Tanti and Marshel Bhengra. It is also seen that vide Ext. 2 SI Omar Faruk seized one silver colour Alto K10 Vehicle bearing Registration No. AS-09D-2614, one Registration Certificate, one Driving License from the possession of driver Prashanta Tanti in presence of Marshel Bhengra and Bhaba Kanta Das. However, even though, PW7 SI Omar Faruk stated this fact in his evidence but the original seizure

memo prepared by Nayak Subedar Birendra Singh has not been proved by the prosecution. Therefore, in the absence of original seizure list the Ext. 1 and 2 prepared by Omar Faruk cast a serious doubt as to the seizure of arms, mobile handset and cash from the possession of accused Guljar Hussain more particularly, when the informant Nayak Subedar Birendra Singh has not been examined by prosecution to prove the fact of seizure.

14. It is seen that the statement of seizure witness Prashanta Tanti recorded by Magistrate u/s 164 Cr.P.C. marked as Ext. 4 contradicts his own evidence adduced in court as PW2 wherein he clearly stated that the army caught the accused along with him at Biswanath where one person got down from a bus and accused talked with him and move to his vehicle again and in the meantime army caught them. Whereas, in his 164 Cr.P.C. statement marked as Ext. 4 he clearly stated that army personnel caught accused along with him near Mission Chariali, Tezpur. Moreover, FIR reveals that accused was caught near Solmara, Tezpur. So, it is surprising that the very seizure witness PW2 not only contradicts his own version regarding the recovery and seizure of arms, mobile handsets and cash but his evidence also contradicts the contents of the FIR as well.

15. The evidence of PW3 Dipak Malakar who is the owner of the Alto car Bearing Registration No. AS09D-2614 has not helped the prosecution as he is neither the seizure witness nor he has said anything implicating against the accused.

16. PW4 Marshal Bhengra deposed that on 01-03-2016 while he was working as Constable at Tezpur Sadar Police Station Army officer brought some items like .22 pistol, magazine of .22 pistol, Nokia mobile handsets and cash amount of Rs. 3,000/- which was seized by police officer where he stood as a witness. But, in his cross-examination he clearly stated that he does not know wherefrom the items were brought

and by whom. He simply put his signature in the seizure list at the instruction of senior officer.

17. PW5 Kanchan Kumar Bhatt, Rifleman of 24th Assam Rifle, Station at Lokra Sonitpur deposed that on 01-03-2016 Nayak Subedar Birendra Singh brought accused to the unit camp and deputed him to handover the accused to local police. Accordingly, he handed over the accused along with one .22 pistol, one .22 pistol magazine, two Nokia Handset without SIM and Rs. 3,000/-.

18. Evidence of PW6 Bhaba Kanta Das is also similar in nature as he in his cross-examination stated that he is no aware wherefrom accused was apprehended by army personnel and for what reason.

19. PW7, Md. Omar Faruk the I.O. in his cross-examination stated that he seized the material Exhibit 1 from Nayak Subedar Birendra Singh but evidence of PW5 Kanchan Kumar Bhatt belied the evidence of PW7 as according to him the alleged seized arms and other things were handed over to police station by him not by Nayak Subedar Birendra Singh.

20. In this context, the judgment of the Hon'ble Apex Court reported in AIR 1997 SC 2417 (Sahib Singh ... appellant vs. State of Punjab Respondent) as referred by the learned counsel for the accused is found relevant where in Para 7 in the Judgment Hon'ble Apex Court held as under :

"Having gone through the record we find much substance in each of the above contentions. Before conducting a search the concerned police officer is required to call upon some independent and respectable people of the locality to witness the search. In a given case it may so happen that no such person is available or, even if available, is not willing to be a party to such search. It may also be that after joining the search, such persons later on turn hostile. In any of these eventualities the evidence of the police officers who conducted the search cannot be disbelieved solely on the ground that no independent and respectable witness was examined to prove the search but if it is found - as in the present case - that no attempt was even made by the concerned police officer to join with him some persons of the locality

who were admittedly available to witness the recovery, it would affect the weight of evidence of the Police Officer, though not its admissibility. We next find from the record that the arms and ammunitions allegedly recovered from the appellant and seized were not packeted and sealed. In Amarjit Singh Vs. State of Punjab 1995 Supp. (3) SCC 217 this Court has observed that non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. From the record we further find that there is no evidence to indicate with whom the revolver was after its seizure by P.W.3 till it was sent to the Arms Expert for testing through constable Baita Singh. This missing link also weakens the prosecution case. For all these infirmities we are of the view. that the appellant is entitled to the benefit of reasonable doubt."

21. Coming back to the facts of the present case, it is apparent on record that the army officer who seized the arms and other materials from the possession of accused did not associate any local person as witness at the time of alleged search and seizure. Moreover, prosecution neither proves the original seizure list prepared by informant Nayak Subedar Birendra Singh nor examined informant Birendra Singh as witness to prove the seizure. Moreover, the alleged arms recovered were not packeted/ sealed before sending it to armourer for examination. Non-sealing of the pistol at the spot is a serious infirmity leaving enough scope for tempering with the weapon. It is also evident that the pistol and other materials were handed over to police by one PW5 Kanchan Kumar Bhatt not by the informant. The jacket of accused was also not seized from where the army personnel allegedly recovered the pistol and other things. All these facts made the prosecution case highly doubtful to hold the view that the army personnel in fact, recovered the pistol and other materials from the possession of accused on the relevant day.

22. Another defect pointed out by the learned defence counsel is that the District Magistrate who accord prosecution sanction has not been examined as witness to prove the fact of according sanction to prosecute the accused. In the absence of examination of the person who granted prosecution sanction, it has not been proved whether

before granting sanction mind has been applied for such prosecution sanction.

23. The evidence of PW8 Lankeshwar Narzary head Armourer 13th AP Battalion, Lilabari Lakhimpur stated that he received the exhibits in wooden seal box but in his cross-examination he stated that he did not know on which date the wooden box was handed over to him and who received it and pistol was also in open condition inside the box. He has not examined the factory number of the pistol and not aware whether the letter written by S.P. mentioned the factory number of the pistol. Even if it is assumed that armourer received the .22 pistol in seal cover then also prosecution has failed to prove the case against accused beyond all reasonable doubt because at the initial stage the said .22 pistol was not produced before the I.O. in seal cover. Therefore, the very seizure of the arms and wherefrom it was brought by army personnel remain under the cloud of doubt because of inherent contradictions in the evidence of PW2 as well as in the evidence of PW5 and PW7 the I.O.

24. In view of the forgoing discussion and reason, this court has come to unerring conclusion that prosecution has miserably failed to prove the case against accused Guljar Hussain beyond all reasonable doubt to the extent that accused carried the arms and ammunitions in violation of Section 3 of the Arms Act for sustaining conviction u/s 25(1-B)(a) Arms Act.

25. In the result, this Court has no option but to acquit accused Guljar Hussain from the offence u/s 25(1-B)(a) Arms Act on the ground of benefit of doubt and set him at liberty forthwith.

26. His bail bond is extended till next six months in view of Section 437(A) of Cr.P.C.

27. Let a copy of the judgment be forwarded to the learned District Magistrate, Sonitpur as provided in section 365 Cr.P.C.

28. Send back the GR case to the learned committal court.

29. Let the seized arms and other things be disposed off in accordance with law.

30. Judgment is pronounced and delivered in open court under digital signature of this Court on this **23rd day of November, 2021.**

(C.B.Gogoi)
Sessions Judge
Sonitpur, Tezpur.

Dictated and Corrected by me

(C.B. Gogoi)
Sessions Judge
Sonipur, Tezpur

APPENDIX

Prosecution Witness

1.	Prosecution Witness No.1	:-	Sri Karan Singh.
2.	Prosecution Witness No.2	:-	Sri Prasanta Tanti.
3.	Prosecution Witness No.3	:	Sri Dipak Malakar.
4.	Prosecution Witness No.4	:-	UBC 538 Marshel Bhengra.
5.	Prosecution Witness No.5	:-	Sri Kanchan Kumar Bhatt.
6.	Prosecution Witness No.6	:-	Sri Bhaba Kanta Das.
7.	Prosecution Witness No.7	:-	Md. Omar Faruk, I.O.
8.	Prosecution Witness No.8	:-	Sri Lankeswar Narzary.

EXHIBITS.

Exhibit 1	:	Seizure List.
Exhibit 1(1)	:	Signature of PW1.
Exhibit 1(2)	:	Signature of PW4.
Exhibit 1(2)	:	Signature of PW7
Exhibit 2	:	Seizure List.
Exhibit 2(1)	:	Signatures of PW2.
Exhibit 2(2)	:	Signatures of PW4.
Exhibit 2(3)	:	Signatures of PW6.
Exhibit 2(4)	:	Signature of PW7.
Exhibit 3	:	Seizure Memo.
Exhibit 3 (1)	:	Signatures of PW5.
Exhibit 4	:	Statement u/s 164 Cr.P.C. of PW2.
Exhibit 4(1)	:	Signatures of PW2.
Exhibit 4(2)	:	Signatures of PW2.
Exhibit 5	:	Sketch Map.
Exhibit 5(1)	:	Signatures of PW7.
Exhibit 6	:	Report of Armourer.
Exhibit 6(1)	:	Signature of PW8.
Exhibit 7	:	Charge-sheet.
Exhibit 7(1)	:	Signatures of PW7.
Exhibit 8	:	Prosecution sanction of the District Magistrate.

Material Exhibits

Material Exhibit 1	:	.22 Pistol.
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(C.B. Gogoi)
Sessions Judge
Sonitpur, Tezpur.