

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE:

SONITPUR;TEZPUR.

G.R. Case No. 1855/06

u/s 25(1-B) Arms Act

State

Vs

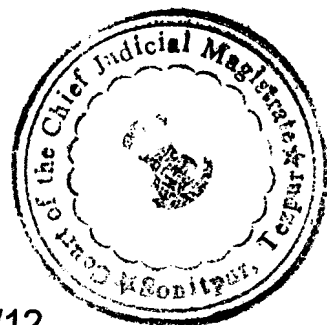
1. Sri Soma Praja
2. Sri Manlu Proja
3. Abdul Kalam
4. Sri Mithun Basumatari.

.....Accused persons

Present: Dr. Manash Baruah
C J M Tezpur.

Appearance:

For the prosecution : Sri N Das & Smti R Chakravorty.
For the defence : Sri S Das & ors.
Charge framed on : 25/11/11.
Evidence recorded on : 29/2/12, 4/9/12, 30/10/12, 23/11/12.
Argument heard on : 19/12/12.
Judgment delivered on : 10/1/13.



J U D G M E N T

The prosecution's case in brief is that the on 24 December, 2006 the Captain of the Army Camp Dhekiajuli Sri R K Tripathy lodged an ejarah before the Dhekiajuli Police Station stating that on the same day a MPC was established near the "Lalchand Nagarmal and Co" petrol pump. at around 9.00pm a Maruti Van bearing Redg. No. AS-01/ R-4209 was stopped for checking. As soon the vehicle stopped, three persons got down and ran away. The army personnel chased and caught them. They searched the Maruti Van and recovered one dagger, one khukuri, one country made weapon in shape of a carbine, one dummy AK-47 made of wood. The accused persons admitted that they were going to Dhekiajuli to commit dacoity and accused Abdul Kalam is also involve.

MD
19/1/13
Chief Judicial Magistrate,
Sonitpur, Tezpur

Upon receive of the ejahar police registered a case being Dhekiajuli P S Case No. 365/06 u/s 398 R/W 25 (1) (B) Arms Act against the accused persons and started investigation. After investigation police filed charge sheet u/s 398 R/W 25 (1) (B) Arms Act against the accused persons.

The accused persons appeared before the trial Court and faced trial. Copy of prosecution documents were furnished to the accused persons. As the alleged offences were triable by the Hon'ble Court of Sessions, therefore the case was committed to the Hon'ble Court of Sessions. The Hon'ble Court of Sessions vide order dated 25/11/11 framed charge against the accused persons u/s 25 (1) (B) Arms Act and remanded the case to this Court for trial.

The accused persons appeared before the court and faced trial. During the trial the accused Mithun Basumatary expired and the case against accused Soma Proja has been kept filed as the said accused failed to turn up before the court and he had been declared absconder.

Prosecution examined the informant and three other witnesses to prove the case. Prosecution failed to produce remaining witnesses. After close of the prosecution evidence, statement U/s.313 Cr.P.C. of the accused persons were recorded. The plea of the accused persons were total denial and they declined to adduce defence evidence.

Points for determination :

(1) Whether the accused persons were found in possession of one dagger, one khukri, one country made weapon in shape of carbine and dummy A.K. 47 made of wood at about 9 p.m. on 24-12-06 during a search operation by the army personnel at Dhekiajuli near Lalchand Nagarmal and Co. Petrol Pump ?

Heard submission of Learned counsel for the defence and Id.
Addl.P.P. Perused the evidence on the case record.



MR
19/11/13
Chief Judicial Magistrate
Tezpur, Assam

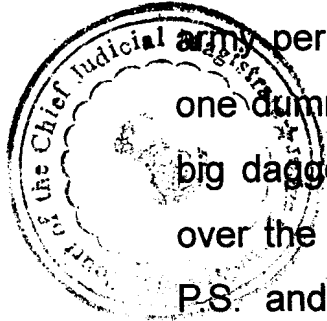
Discussion, Decision and Reasons therefore :-

The informant Major Rajat Kr. Tripathi has been examined as P.W.1. He stated that on 24-12-06 he was discharging his duty as a Company Commander of 5th Bihar Regiment at an Army Camp, Dhekiajuli. On that day at about 6/6:30 p.m. they cordon the area near Dhekiajuli Petrol Pump. There were 18/20 army personnel were present. They intercepted a Maruti Van coming from Dhekiajuli Railway Station. As they signalled the vehicle to stop, it did not stop. So they chased the vehicle and stopped it. Three occupants of the vehicle started to flee away. The army personnel caught the three persons and on search they recovered one dummy A.K. 47 rifle made of wood, one country made weapon, one big dagger and some quantities of gun powder. Thereafter they handed over the culprits and the recovered materials before the O/C, Dhekiajuli P.S. and he filed the ejahar. Ext.1 is the ejahar and Ext.1(1) is his signature. Police seized the arms and ammunitions vide Ext.2 seizure list in which he signed as an witness. Ext.2(1) is his signature. Due to elapse of six years from the date of occurrence he could not identify the three culprits.

During cross examination he stated that he cannot say who is the driver or owner of the vehicle. The gun powder has not been mentioned in the seizure list.

P.W.2 Sri Dharmeswar Nath stated that at the time of the incident he drove the maruti van. One Sri Kamal Bora took his van on hire to carry a patient. On his way at about 9 p.m. four persons got into his van at a place called Sopoy Bagan. The persons asked him to take the van towards Dhekiajuli town. Near the petrol Depot of Dhekiajuli town stopped the vehicle and took the persons away. His vehicle was taken to the police station. He was kept for one hour in the police station and police took his signature on a paper and allowed him to go. Police also allowed Kamal Bora to go. Ext.2(2) is his signature.

P.W.3 Sri Chaya Ram Daimari stated that he does not know about the incident of this case. One day police took his signature when he went to the police station. Ext.2(3) is his signature. He does not know what is written in the said paper.



MD
19/11/13
Chief Judicial Magistrate
Dhekiajuli

P.W.4 Sri Biju Saikia stated that he had a van and he heard that some incriminating materials have been seized from the maruti van driven by Dharmeswar Nath. Police seized the maruti van vide Ext.2 and Ext.2(2) is his signature.

During cross examination he stated that he does not know why the van was seized. He also does not know about the fact of this case.

Now perusing the materials available I found that though the informant, i.e. P.W.1 has stated that the army has recovered the seized arms from the possession of the accused persons but none other witnesses who ~~were~~ ^{had} signed the seizure list have stated that such materials have been seized by the police. The P.W.2 who was the driver the maruti van and was present at the time of apprehension of the accused persons did not prove the seizure of the arms from the possession of the accused persons. The other witnesses also did not support the informant regarding the recovery and seizure of the arms from the possession of the accused persons. In view of the above, I found that the prosecution has failed to prove that the arms were recovered from the possession of the accused persons. As such, the prosecution has failed to prove the allegation against the accused persons.

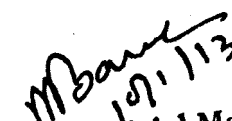
O R D E R

Considering the facts and circumstances of the case I found that prosecution has failed to prove the allegations U/s.25(1-B) of the Arms Act against accused Abdul Kalam and Manglu Proja beyond doubt. As a result, the accused persons named above are acquitted and set at liberty.

Their bail bonds stand cancelled.

The judgment is prepared and typed by me.

Given under my hand and seal of this Court on this 10th day of January, 2013.


10/1/13
Chief Judicial Magistrate,
(Dr. M. Baruah)
Sonitpur

Chief Judicial Magistrate,
Sonitpur, Tezpur.