

IN THE COURT OF ASSTT. SESSIONS JUDGE::
GOALPARA.

Sessions Case No. 19/2018.

U/S 25 (1-A) of Arms Act.

STATE

-Vs-

1) Kusha Rabha and

2) Simanta Rabha ,

.... Accused persons.

PRESENT: A.K. Basfor., A.J.S.

For the Prosecution : Mr. N.N. Islam, learned Addl. P.P.

For the Accused : Mr. S. Rahman and Mr. B.Hussain
learned Advocate.

Evidence recorded on : 18/06/18, 08/10/18, 30/11/18, 20/02/19 and
30/04/19.

Argument heard on : 31/05/2019.

Judgment delivered on: 12-06-2019.

JUDGMENT

1. The case of the prosecution case as unfolded the F.I.R. may, in brief, be stated as follows:

2. During interrogation of arrested accused namely Kucha Rabha, in connection with Nangalbibr P.S. Case No. 09(09) 2017 u/s 170B/171/175A/386/511 of IPC r/w Sec. 16/17/18/20 UA(P) Act, the accused admitted that he was having one M-20 Pistol which was hidden at Doshimapara village under Rongjuli Police Station. Based on confession made by the said accused, on 10/10/2017 at about 7.50 a.m, the informant along with Dy. S.P (Headquarter) Resubalpara, North Garo Hills, Army personnel of camp-Damra, O.C., Kharkuta P.S. and I.C., Darangiri Out Post conducted search, on being lead by the said accused person. Accordingly, one M-20 pistol with one Magazine was recovered from the compound of Smti. Bani Bala Rabha, wife of Lt. Krishna Mohan Rabha of Vill. Doshimapara under Rongjuli P.S., Goalpara, which was hidden under earth packed with black polythene bag. The same was duly seized at the place of occurrence in the presence of the independent witnesses.

Informant namely Jeffri M.Momin, S.I. of police of South Garo Hills Meghalaya, lodged an FIR at Rongjuli Police Station on 10/10/2017 in connection with the said occurrence. Hence, the case for taking necessary action.

3. On the basis of the aforesaid FIR, a case being Rangjuli P.S. Case no. 116/2017 u/s 25(1-A) of the Arms Act came to be registered and investigation was also conducted. During investigation, the I.O. seized the incriminating articles viz, one factory made M-20 pistol bearing body no. 4603326, magazine of M-20 pistol and one black colour polythene bag. The I.O. forwarded the accused person to Court. The seized arms were sent to expert for examination and

report. The witnesses were examined by the I.O. The I.O. collected the report of Armourer and collected Sanction of Prosecution against the accused persons from District Magistrate, Goalpara. Finally, the investigation culminated into the submission of the charge-sheet against the accused persons namely, Kusha Rabha and Shimanta Rabha u/s 25(1-A) of Arms Act, 1959.

4. On appearance of the accused persons, copies of relevant documents were furnished to them in compliance of the provision of section 207 of Cr. P.C. and the case being one triable exclusively by the learned Court of Sessions, the same was committed to the learned Court of Sessions for trial whereupon the same was again re-transmitted to this Court for trial on 30/01/2018.

5. Having heard both sides and considering the materials on record, charge u/s 25 (1-A) of Arms Act against the accused persons had been formally framed by me and the contents of said charge had been read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. During trial, the prosecution examined as many as 6 (six) witnesses including the I.O. Defence adduced no evidence and stood the plea of total denial. On closure of the prosecution evidence, the accused persons have been examined u/s 313 of Cr. P.C. I have heard the argument advanced by learned counsels for both sides.

POINT FOR DETERMINATION:

7. Whether the accused persons on 10/10/2017 at about 7.50 a.m. at village Dosimapara under Rongjuli Police Station, District Goalpara (Assam) were found having in possession/acquired prohibited arms i.e., one M-20 pistol with one magazine in contravention of section 7 of the Arms Act and thereby committed an offence punishable u/s 25 (1-A) of Arms Act ?

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

8. **P.W-1, Jeffri M. Momin** who is informant of the case, deposed that on 10/10/2017 when he was interrogating the accused in connection with Nangal Bibra P.S. Case No. 09(09)/2017 u/s 120(B)/121/121(A)/386/511 of IPC r/w Sec. 16/17/18/20 of U.A.(P) Act, the accused confessed that one pistol was hide underground and so he (P.W.1) asked the accused to led him to the place of recovery of the pistol. Accordingly, Head Quarter D.S.P. of North Garo Hills and their staff went to Doshimapara under Rongjuli P.S. along with I.C. of Darangiri Out Post. And on being located by accused Kusha Rabha, they recovered one M-20 pistol and one magazine from the compound of Smti. Banibala Rabha of Doshimapara village, which were kept inside a phlythene bag which was under earth. Accordingly, he (P.W.1) seized the pistol and magazine which were handed over to the O.C. of Rongjuli police station as the place of recovery falls under Rongjuli police station. The O.C. of Rangjuli PS seized the seizure list from him along with pistol and magazine. Exhibit 1 is the FIR

lodged by him at Rangjuli P.S. ; Exhibit1 (1) is his signature. Exhibit 2 is the seizure list and Exhibit 2 (1) is his signature.

In his cross examination he clearly deposed that accused Simanta Rabha is not involved in the recovery of pistol and magazine. He also deposed that he has not seen the seized pistol and magazine in the Court (on the day of his deposition). He also deposed that he recorded the confessional statement of the accused Kusha Rabha in connection with Nangal Bibra P.S. Case no.09(09)/2017 u/s 120(B)/121/121(A)/386/511 of I.P.C. read with sections 16/17/18/20 of U.A. (P) Act. **He clearly admitted that he had not supplied copy of the said confessional statement to the O.C. of Rongjuli police station.** He further deposed that the neighboring people told them that the premises of the seizure belongs to Smit. Banibala Rabha who was then lying sick.

9. **P.W-2, Akan Rabha,** deposed that he and Ranjay Rabha accompanied the police in the house of Bani Rabha and on search, police recovered an article from the premises of Bani Rabha which was wrapped with polythene. **He clearly deposed that the police did not show them the article by unwrapping the polythene.**

10. **P.W-3, Ranjay Rabha,** deposed that one day at about 9:00 a.m. police, he and Akand Rabha accompanied the police to the house of Bani Rabha of their village and on search the premises of Bani Rabha one pistol was recovered which was wrapped with polythene and police showed him the pistol by unwrapping the pollythene.

In his cross-examination, **he clearly deposed that he did not see who dug and unearth the polythene bag from the premises of Banibala Rabha. He further clearly admitted that he did not state in his previous statement before the I.O. that police showed him the pistol having unwrapped the polythene.**

11. **P.W-4, Bani Bala Rabha,** deposed that one morning some police personnel came to her house and recovered one pistol from her compound.

In her cross examination, she clearly deposed that she did not see the pistol recovered by police. She also clearly deposed that she does not know who kept the pistol in her compound.

12. **P.W-5, Havilder Sukra Bahadur Lama,** who is Armourer, deposed that on 23/10/17, he examined the M-20 pistol bearing pistol no. 4603326 with magazine ammunition capacity 13 rounds which is found ordinary factory made pistol, serviceable and non-prohibited. Ext.-3 is the said examination report given by him and Ext.-3(1) is his signature.

13. **P.W.6, Bhabesh Chandra Biswas,** who is I.O. of the case, deposed that he investigated the case. And during investigation, he seized the pistol and magazine and sent them to Armourer for examination. He visited the place of occurrence (P.O.); drew the sketch map of the P.O., recorded the statements of the witnesses u/s 161 of Cr.P.C., collected the report of Armourer and also collected the prosecution sanction order against both the accused who were shown arrest in the present case. However, on completion of investigation,

he submitted the charge-sheet against the accused Simanta Rabha and Kucha Rabha u/s 25(1-A) of Arms Act. Ext.-2 is the seizer list original seizer list. Ext.-2(2) is his signature. Ext.-4 is the sketch map of P.O., Ext.-4(1) is his signature. Ext.-5 is the charge-sheet; Ext.-5(1) is his signature. Ext.-6 is the Prosecution Sanction Order; Ext.-6(1) is the signature of District Magistrate Sri Ghanashyam Das and he has recognized the signature.

In his cross examination, he deposed that he did not accompany Sub-Inspector Jeffri M. Momin to the place of occurrence for recovery of the pistol and magazine. He also deposed that at the time of recovery of arms he was not present at the place of occurrence.

He denied the suggestions put to him by learned defence counsel.

These are the evidence on record.

Appreciation of evidence, Argument & Law:

14. The learned defence counsel during his argument submitted that it is not proved that the accused made any statement regarding leading to discovery and/or recovery of arms as alleged in the case. Further, it is not proved that the house or compound in question belongs to the accused. It is vehemently argued that the accused neither made any confessional statement regarding discovery of arms in question nor the same had been recovered from their exclusive possession. It is also argued that the evidence of P.Ws. have appeared not sufficient or convincing to convict the accused persons. It is,

thus, submitted that the prosecution has failed to prove the case against the accused persons beyond all reasonable doubt and hence the accused are entitled to get acquittal in the case. **On the other hand**, the learned Addl. P.P. during his argument submitted that the recovery of arms has proved that the same is effected on the basis of statement of accused Kusha Rabha while he was in police custody which led to discovery and recovery of arms which were accordingly seized from the complex of Banibala Rabha and hence accused are liable to be punished under the charge brought against them.

15. Now, let us go to see the requirements of law involved in the case.

16. In the instant case, the prime and basic law involved in the case is **section 27 of the Indian Evidence Act** which is reproduced as under.-

“Section 27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to as discovered in consequence of information recovered from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

17. (i) Now, I would say that there must be discovery in the sense that the knowledge of the fact was first of all derived from information given by the accused which is not found in the present case. Because in the instant case, though P.W-1 stated that the accused confessed before him that one pistol was hidden under earth; but no

such statement of accused Kucha Rabha has been produced or exhibited in the case to believe the version of P.W-1. Be it also mentioned that P.W-1 clearly admitted that he had not supplied copy of the said confessional statement to the O.C. of Rongjuli police station. So, it can be held that there is no effect of section 27 of Evidence Act in the present case. Further, I would like to highlight that in a case reported in **AIR 1993 SC 1469 the Hon'ble Supreme Court held that – “Recovery unaccompanied with disclosure statement is of no consequence.”** From the available evidence on record, it is crystal clear that there is nothing on record to indicate that any discovery was made in consequence of the information given by the accused. It is pertinent to mention that the informant in his FIR stated that the pistol and magazine were seized at the place of occurrence in the presence of the independent witnesses. But prosecution has failed to examine any such independent seizure witnesses. Hence, the version of FIR has also appeared doubtful.

(ii) Now, I would say that P.W-2 and P.W-3 claimed that they were present at the place of recovery. But none of them is the seizure witness of the case. Further, according to P.W-2 police did not show them the article by unwrapping the polythene; but according to P.W-3 police showed him the pistol by unwrapping the polythene. So, the evidence of P.W-2 and P.W-3 have appeared contradictory and found not corroborative on material point. It is pertinent to mention that the evidence of P.W-3 that police showed him the pistol has appeared contradictory with his previous statement made before the I.O. as

admitted by him. The said contradiction is major and hence his evidence is found not believable.

Further, from the compound of P.W-4, the pistol was recovered as alleged in the case; but P.W-4 clearly stated that she did not see the pistol recovered by the police. So, the prosecution story has further appeared doubtful and hence not believable. From the evidence of P.W-5, it is not evident that the recovery of pistol was made as per statement of accused or the pistol and magazine were under exclusive possession of the accused persons.

18. In view of what has been discussed herein above coupled with my reasons, I am of the firm view that the prosecution has totally failed to lead cogent, sufficient and convincing evidence on record to bring home the charge u/s 25 (1-A) of Arms Act against the accused persons. The case of the prosecution is therefore held to have failed. Accused persons are not found guilty of the offence as charged and as such acquitted of the same on benefit of doubt and set at their liberty forthwith. Inform the Jail Authority accordingly.

19. The accused persons are directed to furnish fresh bail bond as required u/s 437-A of Cr. P.C. and till then they are allowed to remain on their previous bail.

20. The seized M-20 pistol and magazine be confiscated to the State. And the seized black colour polythene be destroyed.

21. The case stands disposed of on contest.

22. Forward a copy of this judgment to the District Magistrate in compliance of section 365 of Cr.P.C.

Given under my hand and the seal of this Court on this 12th day of June, 2019.

Dictated and corrected by me:

**Asstt. Sessions Judge,
Goalpara::::: Assam.**

(A.K. Basfor., A.J.S.)

Asstt. Sessions Judge,
Goalpara, Assam.

....Appendix..

APPENDIX. (Sessions Case No.19/2018).

Prosecution witness :

P.W.1 Jeffri M. Momin (informant),

P.W.2 Akan Rabha,

P.W.3 Ranjay Rabha,

P.W.4 Bani Bala Rabha,

P.W.5 Hav. Sukra Bahadur Lama and

P.W.6 Bhabesh Chandra Biswas (I.O.).

Defence witness : Nil.

Prosecution Document :

Ext.-1..... FIR;

Ext.-2 Seizure list

Ext.-3..... Armourer Report;

Ext.-4 Sketch Map of P.O.,

Ext.-5 Charge Sheet &

Ext.-6..... Prosecution Sanction Order.

Defence Document : Nil.

Court's witness : Nil.

Court's Document : Nil.

(A. K. Basfor, A.J.S.)

Asst. Sessions Judge:: Goalpara.