

**HIGH COURT OF TRIPURA  
A\_G\_A\_R\_T\_A\_L\_A**

**Crl.A. No. 25 of 2022**

1. Shri Nalesh Debbarma, son of Shri Phulendra Debbarma, resident of Juddhapabari, P.S. Khowai, District: Khowai Tripura.
2. Shri Sanjit Debbarma 42 years, son of Shri Suresh Debbarma, resident of Chibukkar, Gayamanipara, P.S. Khowai, District: Khowai Tripura.

**.....Appellants**

**-VERSUS-**

1. The State of Tripura (notice to be served through the Ld. Public Prosecutor), High Court of Tripura, Agartala.

**..... Respondent.**

**B\_E\_F\_O\_R\_E**

**HON'BLE MR. JUSTICE T. AMARNATH GOUD**

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|---------------------------|---|---------------------------------|
| For Appellant(s)          | : | Mr. J. Bhattacharjee, Advocate. |
| For Respondent(s)         | : | Mr. Samrat Ghosh, Addl. P.P.    |
| Date of hearing           | : | <b>08.08.2023</b>               |
| and delivery of           | : |                                 |
| judgment and order        | : | <b>10.08.2023</b>               |
| Whether fit for reporting | : | <b>YES/NO</b>                   |

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**JUDGMENT & ORDER**

Heard Mr. J. Bhattacharjee, learned counsel appearing for the appellants also heard Mr. S. Ghosh, learned Addl. Public Prosecutor appearing for the respondent-State.

[2] The present criminal appeal has been filed under Section-374 of the Code of Criminal Procedure, 1973 against the impugned judgment and order of conviction and sentence dated 11.11.2022 and 14.11.2022 passed by the learned Addl. Sessions Judge, Gomati Judicial District, Udaipur in connection with Case No. S.T.(GT/U) 54 of 2015 whereby and whereunder, the appellants named in the cause title have been convicted under Section-25(1-B)(a) of the Arms Act, 1959 and both of them are hereby sentenced to suffer RI for the period of 2 years with fine of Rs.5,000/- only for the said offence and in default of payment of such fine is liable to suffer SI for 2 months. The period of detention undergone by the

convict-appellants shall be set off as per provision of Section-428 of the Code of Criminal Procedure.

[3] The prosecution case as unfolded during trial is as follows: On 12.03.2015 an ejahar was lodged by one Prithwish Roy, S/O – Shri Gobinda Chandra Roy of village – South Golaghati, PS – Takarjala, District –Sepahijala, Tripura with the O/C of Killa PS stating inter alia to the facts that on 12.03.2015 during noon at anytime in between 1.00 PM to 2.00 PM the cousin brother of the informant namely Manik Roy, S/O – Kshirod Mohan Roy of Amtali, West Tripura has been shot dead by some unknown miscreants over on Udaipur-Jampuijala road near Bijoy Nandi Cherra. The informant further alleged that his cousin brother, who was posted in 10th Bn. of TSR, Headquarters at Jirania, received fatal injuries of firearms on the head, chest and back and the dead body of his cousin brother along with motorbike were lying at the P.O.

[4] The O/C of Killa PS, Gomati District received the ejahar on 12.03.2015 at around 2100 hours and registered a case vide Killa PS Case No. 2015 KLA 002 under Section 302 of IPC and Section 27 of the Arms Act. The O/C of Killa PS namely Shri Hemanta Debbarma self took up for its investigation.

[5] During investigation the 1st IO namely Hemanta Debbarma, Inspector of Police visited the POs, prepared hand sketch maps with separate indexes, seized some photographs, call details of some mobile numbers, wearing apparels of deceased Manik Roy, motorbike bearing registration No. TR-01Q-9356 with helmet, two numbers of used 9 mm pistol bullets, blood clot, one Nokia & one Samsung mobile set, SBI ATM card and withdrawal slip dated 12.03.2015, Scooty of Mahindra company with helmet, two numbers of DVD disc, Bank Account details of Rajib Roy lying with SBI, TMC Branch & Teliamura Branch, Bank Account details of Smt. Banani Sarkar (Roy), Bank Account details of Manik Roy & Nalesh Debbarma, examined available witnesses and recorded their statements u/sec. 161 of Cr.P.C. The 2nd IO namely Ratan Kr. Das, the then SDPO, Udaipur, Gomati District had seized some cheque Books of SBI Bank, one memory card, one red coloured T-shirt, one LIC policy, one passbook of SBI, some letters, one passbook of TGB, examined available witnesses and recorded their statements u/sec.161 of Cr.P.C. The SI of Police namely Binode Behari Debbarma, O/C of Baijalbari OP had seized 14 numbers of Indian currency of

₹7,000/-, one Discover motor cycle bearing Registration No. TR-01K-6101. The 3rd IO namely Sanat Kumar Paul, Inspector of Police, CID had seized some vouchers from Sree Ram motors, some mobile call sheets, two numbers of Sony DVD-R disc containing disclosure statements of three accused persons, documents of one motor cycle bearing Registration No. TR-01K-6101, examined available witnesses and recorded their statements u/sec.161 of Cr.P.C. After the completion of investigation the Inspector of Police, CID namely Sanat Kumar Paul has filed the Charge Sheet vide Killa PS Charge Sheet No.14 dated 12.10.2015 against the accused persons namely (i) Nalesh Debbarma and (ii) Sanjit Debbarma under Sections 114/120(B)/302 of IPC & under Sections 25(1(A)/27 of the Arms Act, (iii) Banani Sarkar, (iv) Rajib Roy, (v) Sanjit Debbarma alias Sangsha and (vi) Rajib Debbarma under Sections 114/120(B)/302 of IPC.

[6] The learned Chief Judicial Magistrate, Gomati Judicial District, Udaipur received the charge sheet on 31.10.2015 and on 09.11.2015 transferred the case record to the Court of learned Judicial Magistrate 1st Class, Court No.2, Udaipur for disposal according to law. On 27.11.2015 cognizance of offence under Sections 114/120(B)/302 of IPC and under Sections 25(1(A)/27 of the Arms Act was taken by the learned Judicial Magistrate 1st Class, Court No.2, Udaipur and on the same date the case has been committed to the Court of Learned Sessions Judge, Gomati Judicial District, Udaipur.

[7] On 03.08.2016 the then learned Sessions Judge, Gomati Judicial District, Udaipur has been framed the charges under Sections 120(B)/302/34 of IPC against accused Sanjit Debbarma alias Sangsha, under Section 25(1-B)(a) of the Arms Act and under Section 201 of IPC against accused Sanjit Debbarma, under Sections 302/34 of IPC against accused Rajib Debbarma, under Sections 120(B)/302/34 of IPC and under Section 27(1) of the Arms Act against accused Nalesh Debbarma and under Sections 120(B)/302/109 of IPC against accused Rajib Roy and Smti Banani Sarkar (Roy) were framed to which all them pleaded not guilty. The contents of charges were framed against the accused persons Shri Sanjit Debbarma @ Sangsha are as follows:

*Firstly, that you along with Sri Rajib Roy, Smti Banani Sarkar (Roy) and Sri Nalesh Debbarma at any time on or before 12.03.2015 agreed to commit murder*

*of Manik Roy, an illegal act and also by illegal means and that said Manik Roy was murdered in pursuance of your such agreement and you thereby committed an offence punishable under section 120(B) of the Indian Penal Code and within the cognizance of this court.*

*Secondly, that you along with Nalesh Debbarma and Rajib Debbarma in furtherance of your common intention and also in pursuance of criminal conspiracy with said Sri Rajib Roy and Smti Banani Sarkar (Roy) to commit murder of Manik Roy, on 12.03.2015 at about 1400 hours near Bijoy Nandi Cherra on Udaipur-Jampuijala Road under PS Killa, did commit murder by intentionally causing death of one Manik Roy and that you thereby committed an offence punishable under section 302 read with section 34 of the Indian Penal Code and within the cognizance of this court;*

[8] The Charges against the accused Sanjit Debbarma alias Sangsha are as follows:

*"Firstly that, during the period from 15.03.2015 to 02.04.2015 you had in possession of one 9 MM pistol, which is a fire arms along with 3 (three) live cartridges, which are ammunition, without having valid licence in your house situated at Chibukkar under PS Khowai and thereby you have committed an offence punishable under section 25(1-B)(a) of Arms Act and within the cognizance of this court;*

*Secondly, that you on 15.03.2015 knowing that Nalesh Debbarma, Sanjit Debbarma alias Sangsha and Rajib Debbarma had committed murder of one Manik Roy by shooting with a 9 MM pistol, which is an offence punishable with death or imprisonment for life, did cause certain evidence i.e. the 9 MM pistol of said offence to disappear with the intention of screening the offenders from legal punishment and that thereby you committed an offence punishable under section 201 read with section of the Indian Penal Code and within the cognizance of this court;*

[9] The Charges against the accused Rajib Debbarma are as follows:-

*That, you along with Sanjit Debbarma @ Sangsha and Nalesh Debbarma in furtherance of your common intention, on 12.03.2015 at about 1400 hours near Bijoy Nandi Cherra on Udaipur-Jampuijala Road under PS Killa, did commit*

*murder by intentionally causing death of one Manik Roy and that you thereby committed an offence punishable under section 302 read with section 34 of the Indian Penal Code and within the cognizance of this court;*

[10] The Charges against the accused Nalesh Debbarma are as follows:-

*Firstly, that you along with Sri Rajib Roy, Smti Banani Sarkar (Roy) and Sri Sanjit Debbarma @ Sangsha, at any time on or before 12.03.2015 agreed to commit murder of Manik Roy, an illegal act and also by illegal means and that said Manik Roy was murdered in pursuance of the agreement and you thereby committed an offence punishable under section 120(B) of the Indian Penal Code and within the cognizance of this court;*

*Secondly, that, you along with Sanjit Debbarma @ Sangsha and Rajib Debbarma in furtherance of your common intention and also in pursuance of criminal conspiracy with said Sri Rajib Roy and Smti Banani Sarkar (Roy) to commit murder of Manik Roy, on 12.03.2015 at about 1400 hours near Bijoy Nandi Cherra on Udaipur- ampuijala Road under PS Killa, did commit murder by intentionally causing death of one Manik Roy and that you thereby committed an offence punishable under section 302 read with section 34 of the Indian Penal Code and within the cognizance of this court;*

*Thirdly, that you on 12.03.2015 at about 1400 hours used one 9 MM pistol which is a fire arms without having any valid licence in this behalf and committed murder of said Manik Roy by shooting him with said pistol and you thereby committed an offence punishable under section 27(1) of Arms Act and within the cognizance of this court;*

[11] The Charges against the accused Rajib Roy and Banani Sarkar (Roy) are as follows:-

*Firstly, that both of you along with Sri Nalesh Debbarma and Sri Sanjit Debbarma @ Sangsha, at any time on or before 12.03.2015 agreed to commit murder of Manik Roy, an illegal act and also by illegal means and that said Manik Roy was murdered in pursuance of the said agreement and both of you thereby committed an offence punishable under section 120(B) of the Indian Penal Code and within the cognizance of this court;*

*Secondly, that Nalesh Debbarma, Rajib Debbarma and Sanjit Debbarma @ Sangsha on 12.03.2015 at about 1400 hours near Bijoy Nandi Cherra on Udaipur-Jampuijala Road under PS Killa, committed the offence of murder of one Manik Roy and that both of you abetted said Nalesh Debbarma, Rajib Debbarma and Sanjit Debbarma in the commission of the said offence of murder, and said offence was committed in consequence of your abetment and that both of you thereby committed an offence punishable under section 302 of Indian Penal Code read with section 109 of Indian Penal Code and with the cognizance of this court;*

[12] Subsequently, the case has been transferred to this Court vide order dated 01.12.2018 for trial according to law. The prosecution has examined as many as 60 (sixty) witnesses including the IO's of this case and after the closure of prosecution evidences all the accused persons were examined under Section 313 Cr.P.C to which they claimed to be innocent and also declined to adduce any DWs on their behalf.

[13] After hearing the parties and perusal of the material evidence on record, the learned Court below has observed as under:

“75. The convict namely Sanjit Debbarma is hereby sentenced to suffer rigorous imprisonment for the period of two years with fine of Rs.5,000/- under section 25(1B)(a) of the Arms Act, 1959 i.d. of payment of fine to suffer simple imprisonment for two (2) months only.

76. The period of detention undergone by the convict Sanjit Debbarma w.e.f. 03.04.2015 to 13.04.2015 shall be set off as per provision of Section 428 of Cr.P.C.

77. The bail bonds of the convict stands cancelled and the surety is also hereby discharged except the bond submitted u/Sec. 437A of Cr.P.C.

78. Copy of the judgment and order on sentence be provided to the convict free of cost and he is informed about his right to appeal.

79. Copy of the judgment and order on sentence be also forwarded to the District Magistrate, Gomati, Udaipur, as per provision of Section 365 of Cr.P.C.

80. Seized alamats, if any, be destroyed after the expiry of appeal period.

81. Record be consigned to the District Record Room after necessary compliance.”

[14] Being aggrieved by and dissatisfied with the said judgment and order of conviction, the present appeal has been preferred by the appellants.

[15] Mr. J. Bhattacharjee, learned counsel appearing for the appellants has submitted that the findings of the Ld. trial Court is perverse, illegal, unjustified, unreasonable, arbitrary, unwanted in law and facts and as such, not tenable in the eye of law and liable to quash / set aside. The learned Court below by way of misreading and improper appreciation of evidences on record and the facts and circumstances of the case arrived at absolutely illegal, wrong and unwanted findings causing grave miscarriage of justice to the above named appellants. The learned Court below held that the convict appellants to be guilty of alleged offences on the basis of no evidence in-as-much-as the evidence on record does not constitute the alleged offence and in no case implicated the convict appellants in the commission of alleged offence.

[16] The learned Court below ought to have considered that the convict appellants were not convicted against the charges of principal Sections under Sections- 120(B)/302/201/34/109 of the Indian Penal Code by supporting evidences. If the convict appellants were not found guilty of offence of principal Sections then, they will not be convicted under Sections-25(1-B)(a) of the Arms Act, 1959 as because after plain reading of entire evidences of prosecution witnesses and more particularly the P.W-8-Shri Shyamal Debbarma, O/C, Champahour Police Station, P.W- 10 Shri Jyotishman Das Choudhury, S.D.P.O, Khowai, P.W-11 Shri Sambhu Kumar Debbarma, P W-14- Shri Ritesh Debbarma, P.W-42-Smt. Binata Debbarma, Women Constable of police, P.W-53- Shri Hemanta Debbarma, Inspector of police, O/C Killa police station who recorded the FIR and first I.O. of this case, P.W-59-Shri Ratan Kumar Das, S.D.P.O, Udaipur, second I/O of this case and P.W-60- Shri Sanat Kumar Pal, Inspector of police and third I/O of this case whose evidences were related with recovery of 9 MM Pistol as well as cartages were found serious contradictory evidences and more particularly after plain reading of their evidences found at the time of recovery and seizure of pistol and cartages, the mandatory preventive precaution as per law were not taken.

[17] It has been further submitted that the evidences of P.W-8-Shri Shyamal Debbarma, O/C, Champahour police station and P.W-10- Shri Jyotishman Das Choudhury, S.D.P.O, Khowai and the evidence of other prosecution witnesses in respect of recovery and seizure clearly stated that on 01-04-2015, the police officer of Baijalbari Outpost namely Shri Binode Bihari

Debbarma who prepared the seizure list after recovery of pistol, he was not cited witness and recorded his evidence. So, the seizure list of recovery of pistol i.e. weapon of offence was also not proved in connection with this case and as such, in absence of evidence of police officer namely Shri Binode Bihari Debbarma, the case is not proved without infirmities or doubt and such type of weak piece of evidence or in absence of vital piece of evidence for recovery of seizure weapon of offence i.e. pistol, a person cannot be convicted but the learned Court below without considering this vital aspect mechanically convicted both the convict appellants and as such, it is liable to be interfered with by this Court.

[18] It would be revealed from the evidence of P.W-8- Shri Shyamal Debbarma, O/C, Champahour police station found that-"on 01-04-2015, this witness along with P.W-10- Shri Jyotisman Das Choudhury, S.D.P.O, Khowai, two other police officers of Khowai police station and other police personnel went to Baijalbari outpost and there from went to Ganaramsenapatipara but the Khowai police station at about 02 A.M in the night, they have raided the house of one Shri Buddha Munda and arrested two persons namely Shri Nalesh Debbarma and Shri Sanjit Debbarma @ Sangsha. There O/C, Baijalbari outpost namely Shri Binode Bihari Debbarma interrogated those two persons and both of them have confessed that they were involved with the murder of Manik Roy at Jampuijala - Udaipur road on 12-03-2015 and they gunned down said Manik Roy and thereafter Shri Nalesh Debbarma kept said revolver in the house of husband of his maternal aunt "Mash" namely Shrt Sanjit Debbarma of Chibukker of Khowal police station. Shri Binode Bihari Debbarma thereafter recorded their confessional statements and thereafter we all went to the house of said Shri Sanjit Debbarma at Chibukkar under Khowai police station along with arrested Shri Nalesh Debbarma and Shri Sanjit Debbarma.

[19] In the house of Shri Sanjit Debbarma during interrogation, he admitted that Shri Nalesh Debbarma had kept one pistol in his house which was used in the murder of said T.S.R personnel. Thereafter, Shri Sanjit Debbarma brought one pistol with 3 rounds of live cartages after digging earth nearby his kitchen and handed over it to us. Thereafter, the O/C, Baijalbari outpost Shri Binode Bihari Debbarma has seized those pistol and cartages by preparing a seizure list". According to his evidence, it is clearly established after recovery of alleged pistol and cartages, the seizure list was prepared by O/C, Shri Binode

Bihari Debbarma as seizing Officer and the place of seizure in the house of Shri Sanjit Debbarma at Chibukkar under Khowai police station Unless said Shri Binode Bihari Debbarma is not examined prosecution witness and recorded his evidence and shifted the said seizure list, the seizure of pistol or cartages as weapon of offence not established and in absence of this vital piece of evidence, a person cannot be convicted but the Ld. Trial Court miserably failed to appreciate and mechanically convicted the above named Convict Appellants and as such, it is liable to be interfered by this Honble Court.

[20] From the deposition of PW-10 it reveals that there are serious contradictory evidence regarding recovery and seizure of pistol i.e. weapon of offence of this case and the learned trial Court without considering his evidence, mechanically convicted both the convict appellants and as such, it is liable to be set aside. P.W-11 Shri Sambhu Kumar Debbarma and P.W-14 -Shri Ritesh Debbarma both are independent witnesses of recovery and seizure of pistol and cartages according to seizure list as well as prosecution case. But at the time of recording of their evidences, both the witnesses have clearly stated that they put signature on a blank paper at Khowai police station and in their presence, no such pistol and cartages were recovered from the house of Shri Sanjit Debbarma at Chibukkar under Khowai police station. Both the witnesses were not supported the prosecution case and as such, they were declared as hostile. But the learned Court below miserably failed to appreciate their evidences and mechanically convicted and as such, it is liable to be set aside.

[21] P.W-42 Smt. Binata Debbarma, women constable of police at the time of recording of her evidence, she clearly stated that- "On the instruction of O/C and S.D.P.O, Khowai, we went to Baijalbari and on search in the house of Shri Buddha Munda we apprehended Shri Nalesh Debbarma and Shri Sanjit Debbarma. A pistol was also recovered from inside the hut of that house. At the time of recovery, it was raining and I was outside of the house. One pistol is shown to the witness to which she identified and said that now, it is gathered rust". So, after plain reading of her evidence, it has been crystal clear that the alleged pistol was recovered from the house of one Shri Buddha Munda but not from the house of Convict Appellant Shri Sanjit Debbarma. Shri Buddha Munda was not examined and recorded his evidence under Section-161 of the Code of Criminal Procedure, 1973 and as such, he was not cited witness of this case. Unless the

examination and recorded the evidence of Shri Buddha Munda, no case of any Arms Act has been proved against the convict appellants". This vital aspect is not considered by the learned Court below and mechanically convicted them, and as such, it is liable to be set aside.

[22] Mr. S. Ghosh, learned Addl. P.P. has submitted that the prosecution successfully proved the charges leveled against all the accused persons relying on the circumstantial evidences supported by the forensic evidence. He has further submitted that prosecution succeed to prove the chain of evidence where no reasonable ground is left for a conclusion which is relevant with the innocence of the accused person's and it shows that on or before 12.03.2015 at anytime at any place or over on Udaipur – Jampuijala road near Bijoynandi cherra the accused persons namely Sanjit Debbarma alias Sangsha, Rajib Debbarma and Nalesh Debbarma in connivance with other accused persons namely Rajib Roy and Smt. Banani Sarkar (Roy) agreed to do murder of Manik Roy and it was done in pursuance of their agreement. Ld. Addl. PP also argued that another accused namely Sanjit Debbarma has been found in possession of weapon of offence i.e. one 9 MM Pistol and thereby accused namely Sanjit Debbarma has committed an offence punishable under Section 25(1B) (a) of the Arms Act, 1959.

[23] After overall discussion, this Court is of the opinion that for coming to a definite conclusion let us revisit to the witnesses and the material evidence on record once again. PW.1 Pritish Roy, the informant of this case deposed that Manik Roy was his cousin brother who died on 12.03.2015 and on the same day at about 3 PM he received one telephonic call from Takarjala PS that dead body of Manik Roy was lying on Takarjala-Udaipur Road near one Bijoycherra and thereafter he went there along with Swapan Roy, Amit Roy and Ratan Ghosh. PW.1 further deposed that after reaching there he found the dead body of Manik Roy was lying by the roadside with gunshot injury on his chest and head, beside the dead body the motorcycle of Manik Roy was also lying there. Then PW.1 lodged the ejahar on the spot to the police officer, which was written by the O/C of Killa PS as per dictation of PW.1 and on being satisfied he signed in the ejahar which he identified as Exhibit-1, signature therein as Exhibit-1/1.

[24] PW.2 Amit Roy, PW.6 Swapan Roy and PW.7 Ratan Ghosh deposed that on 12-03-2015 at about 4 PM, PW.2 Amit Roy & PW.7 Ratan Ghosh

received one telephone call from Takarjala PS that dead body of Manik Roy was lying on Jampuijala-Udaipur Road near the Bijoy Nadi Cherra. Then they along with Pritish Roy (PW.1) went to the said place and found the dead body of Manik Roy which was lying by the roadside having gunshot injuries on his head and chest, beside the dead body the pulsar motorcycle of Manik Roy bearing No. TR-01Q-9356 was also lying. PW 2 and PW 6 further deposed that police officer thereafter prepared one report after examining the dead body wherein they put their signatures which they identified as Exhibit 2/1 and Exhibit 2/2 PW.2 further deposed that on 15-03-2015 the 'Shraddhya Ceremony' (obsequies) of Manik Roy was performed in their house wherein Banani Sarkar and Joyshree (wife and daughter of deceased Manik Roy) were also present. PW.2 also deposed that at about 7 PM he along with his mother Malati Roy (PW.3), another Kabal Roy (PW.5) and his grandfather Khirode Mohan Roy were discussing about the said Shraddhya Ceremony sitting in a room that time Banani Sarkar entered into the said room and told the mother of PW.2 that she had already been caught, she (Banani) requested his mother to look after Joyshree and to give the marriage of Joyshree in future with a suitable groom and she also told that she had committed mistake. PW.2 further deposed that thereafter his mother asked her as to what sort of mistake she had committed and then Banani Sarkar confessed that she along with Rajib Roy have killed Manik Roy by hiring killer. PW 2 more fully deposed that he had heard from his uncle Manik Roy and his other family members that Rajib Roy had illicit relationship with Banani Sarkar for last 2/3 years. The witness also deposed that he personally know Rajib Roy as once he had visited their house with Manik Roy.

[25] PW.42 Smti. Binata Debbarma, a woman police constable at Khowai PS, deposed that on 14.05.2015 she went to Baijalbari and on search in the house of one Buddha Munda they apprehended Nalesh Debbarma and Sanjit Debbarma. The witness again deposed that a pistol was recovered from inside the hut of that house which she identified.

[26] PW.45 Shri Kanchan Das, the then Dy. Manager, SBI, Teliamura Branch identified his signature as Exhibit-12/1 in the seizure memo dated 27.03.2015 after the seizure of statement of account in 12 pages against the A/c. No.31646094406 of Rajib Roy, S/o. Late Chitta Ranjan Roy by IO. The witness also identified the statement of account in 12 pages as Exhibit-40 (As a whole)

and signatures in page No.11 and 12 were marked as Exhibit-40/1 and 40/2 respectively.

[27] PW.8 Shri Shyamal Debbarma, the OC of Champahaur PS deposed that on 01.04.2015 he along with the SDPO, Khowai namely Jyotisman Das Chowdhury, two other police officers of Khowai PS namely, SI Palash Datta and SI Shibsankar Tripura and other police personnel went to Baijalbari Out Post and therefrom went to Ganaram Senapati Para under Khowai PS at about 2:00 AM in the night and there they raided the house of one Budhu Munda. There they arrested two persons namely Nalesh Debbarma and Sanjit Debbarma @ Sensha in connection with the present case. PW.8 further deposed that there OC, Baijalbari Out Post namely Binodebehari Debbarma interrogated those two persons to which both of them confessed that they were involved in the murder of Manik Roy at Jampuijala-Udaipur road on 12.03.2015 and by a revolver they gunned down said Manik Roy, thereafter Nalesh Debbarma kept said revolver into the house of his relative i.e. the husband of his maternal aunt (Mashi) namely Sanjit Debbarma at Chibukkar of Khowai PS. PW.8 further deposed that thereafter, they all went to the house of said Sanjit Debbarma at Chibukkar along with arrested Nalesh Debbarma and Sanjit Debbarma and reached there at about 4:00 AM, in the house of said maternal uncle namely Sanjit Debbarma, they interrogated him to which he admitted that Nalesh Debbarma had kept one pistol in his house which was used in the murder of said TSR personnel. PW.8 also deposed that thereafter said maternal uncle of Nalesh namely, Sanjit Debbarma brought one pistol with three rounds of live cartridges after digging earth nearby of his kitchen and handed over to them, thereafter said OC, Baijalbari Out Post namely Binodebehari Debbarma seized those pistol and cartridges by preparing a seizure list.

[28] In the cross-examination PW.8 stated that in the house of Budhu Munda they stayed for about 30/45 minutes. PW.8 further stated that the hut from which Nalesh Debbarma and Sanjit Debbarma were found in the house of Budhu Munda it was 'L' pattern mud-wall hut with GCI sheet roofing and in that house only Budhu Munda and those two arrested persons were present. PW.8 also stated that in the house of Sanjit Debbarma (maternal uncle) they stayed for 40/45 minutes.

[29] PW.10 Sri Jyotisman Das Chowdhury, the then SDPO, Khowai deposed that on 01.04.2015 at about 11.30 p.m. the O/C of Baijalbari Out Post, informed him over phone that two accused persons namely Nalesh Debbarma and Sanjit Debbarma @ Sensha, both of them wanted in connection with the present case, were available in the house of one Budhu Munda at Ganaram Senapati Para. Thereafter PW.10 informed the matter to the OC, Khowai PS and instructed him to get ready for raid and also called the O/C of Champahaur PS. PW.10 further deposed that thereafter at around 12.30 a.m. in the night he along with the OC, Champahaur P/S, SI Palash Datta and SI Shibsankar Tripura along with other police personnel reached at Baijalbari OP and therefrom they went to Ganaram Senapati Para at around 2 a.m. There along with two independent witnesses namely Ritesh Debbbarma and Sambhu Debbbarma they searched the house of Budhu Munda and arrested Nalesh Debbarma and Sanjit Debbarma @ Sensha from that house. PW.10 also deposed that there, on interrogation, Nalesh Debbarma stated that he had murdered Manik Roy with one pistol which he kept in the house of another Sanjit Debbarma of Gayamani Para. The witness further deposed that then they went to Gayamani Para on foot at about 4 a.m. in the dawn and said two independent witnesses were also present with them during their raid in the house of Sanjit Debbarma and there on interrogation, Sanjit Debbarma of Gayamani Para, admitted that Nalesh Debbarma had kept one pistol & three rounds of live cartridges in his house, thereafter said Sanjit Debbarma brought out said pistol & 3 number of live cartridges from a lunga type land situated within his house premises. The witness again deposed that before such recovery, statement of Sanjit Debbarma of Gayamani Para was recorded by SI Binode Debbarma, thereafter said items were recovered. Then the pistol and cartridges were seized by SI Binode Debbarma by preparing a seizure list.

[30] In the cross-examination PW.10 stated that SI Binode Debbarma took part in the investigation so far as raid and arrest of Nalesh and Sanjit with recovery of pistol etc. PW.10 further stated that there were two huts in the house of Budhu Munda and they stayed there for around one hour. PW.10 also stated that before arrest the accused persons were communicated about the ground of arrest though he cannot say the exact time of such communication.

[31] PW.61 Shri Sanat Kumar Paul, Inspector of Police deposed that on 17.04.2015 he was posted at CID, Tripura and on that day he took up the

investigation in connection with Killa PS Case No.2015/KLA/002 dated 12.03.2015 registered under Sections 114/120B/302 of IPC and 25(ia)/27 of the Arms Act as per order of the DGP, Tripura. He received the case docket from earlier IO namely Mr. Ratan Kumar Das, the then SDPO, Udaipur. PW.61 identified the disclosure statement (Exhibit-63) of accused Rajib Debbarma, recorded by Hemanta Debbarma in his presence and his signature therein as Exhibit 63/1. PW.61 further deposed that on 25-05-2015 he analyzed the CDR of SIM No. 9862281406 of accused Banani Sarkar (Roy), SIM No. 8575146433 of Manik Roy, SIM No. 9436323491 of accused Nalesh Debbarma, SIM No. 8731075467 of accused Rajib Roy, SIM No. 8974327277 of accused Sanjit Debbarma alias Sensha. PW.61 identified the seizure list dated 25-05-2015 as Exhibit 41/1 after the seizure of 13 Nos. of CDR and identified signature therein as Exhibit 41/2, identified the seizure list dated 26-05-2015 as Exhibit 42/1 after the seizure of 02 DVDs containing the footage regarding visiting places as per disclosure statement of accused Rajib Debbarma and Banani Sarkar (Roy) and identified signatures therein as Exhibit-42/2, also identified those seized DVDs as Exhibit M.O. III/2 and Exhibit M.O. III/1. PW.61 also deposed that on 12-10-2015 he obtained permission from the DM & Collector for initiating prosecution under the Arms Act against accused persons namely Nalesh Debbarma and Sanjit Debbarma S/o. Suresh Debbarma. PW.61 further deposed that on completion of investigation he submitted charge sheet bearing C/S No.14 dated 12.10.2015 against the accused persons namely Nalesh Debbarma, Sanjit Debbarma, S/o. Shri Suresh Debbarma under Sections 114/120B/302 of IPC and under Sections 25(1A)/27 of the Arms Act, against the accused persons namely Banani Sarkar (Roy), Rajib Roy, Sanjit Debbarma @ Sangsha and Rajib Debbarma under Sections 114/120B/302 of IPC.

[32] In the case at hand, the accused persons namely Nalesh Debbarma and Sanjit Debbarma has led to discovery of one 9 mm pistol & three rounds of live cartridges which was used in the crime. This discovered facts was within the special knowledge of both the accused persons. The forensic evidence vide PW.58 shows that Exhibit-A is an improvised firearm, the indoor test firing of Exhibit-Firearm "A" using 3 cartridges marked C/1 C/2,C/3 is conducted successfully indicating Exhibits-C/1 to C/3 are live and Exhibit-A is in working condition. Hence, Exhibit-A could endanger human life if fired upon. So, it is clear that the

firearm has direct nexus with the circumstances of this case which is only inconsistent with the innocence of the accused persons but consistent with the guilt of the accused persons.

[33] It is a settled principle of law that under Section-27 of the Indian Evidence Act, information given by accused person in police custody leading to discovery of a fact is admissible and relevant. But in the present case, there is some contradiction and gaps regarding discovery of the firearm in view of the statement made by the investigating officer and the woman constable PW-42.

[34] Having gone through the entire evidences of prosecution witnesses and more particularly the P.W-8-Shri Shyamal Debbarma, O/C, Champahour Police Station, P.W- 10 Shri Jyotishman Das Choudhury, S.D.P.O, Khowai, P.W- 11 Shri Sambhu Kumar Debbarma, P W-14- Shri Ritesh Debbarma, P.W-42-Smt. Binata Debbarma, Women Constable of police, P.W-53- Shri Hemanta Debbarma, Inspector of police, O/C Killa police station who recorded the FIR and first I.O. of this case, P.W-59-Shri Ratan Kumar Das, S.D.P.O, Udaipur, second I/O of this case and P.W-60- Shri Sanat Kumar Pal, Inspector of police and third I/O of this case whose evidences were related with recovery of 9 MM Pistol as well as cartages were found serious contradictory evidences and more particularly after plain reading of their evidences found at the time of recovery and seizure of pistol and cartages, the mandatory preventive precaution as per law were not taken.

[35] The evidences of P.W-8-Shri Shyamal Debbarma, O/C, Champahour police station and P.W-10- Shri Jyotishman Das Choudhury, S.D.P.O, Khowai and the evidence of other prosecution witnesses in respect of recovery and seizure clearly stated that on 01-04-2015, the police officer of Baijalbari Outpost namely Shri Binode Bihari Debbarma who prepared the seizure list after recovery of pistol, he was not cited witness and recorded his evidence. PW.42 Smti. Binata Debbarma, a woman police constable at Khowai PS, deposed that on 14.05.2015 she went to Baijalbari and on search in the house of one Buddha Munda they apprehended Nalesh Debbarma and Sanjit Debbarma. The witness again deposed that a pistol was recovered from inside the hut of that house which she identified. But, the other I.O. has deposed that the firearm was seized from the house of Sanjit Debbarma, which is according to this Court is quite strange.

[36] PW-10 has specifically stated that they have raided the house of one Shri Buddhua Munda and arrested two persons namely Shri Nalesh Debbarma and Shri Sanjit Debbarma @ Sangsha and they have subsequently confessed that they were involved with the murder of Manik Roy. Shri Binode Bihari Debbarma thereafter recorded their confessional statements and thereafter they all went to the house of said Shri Sanjit Debbarma at Chibukkar under Khowai police station along with arrested Nalesh Debbarma and Shri Sanjit Debbarma. In view of above, it is crystal clear that recovery of alleged pistol and cartages, they seizure list was prepared by O/C Shri Binode Bihari Debbarma as seizing officer and the place of seizure in the house of Shri Sanjit Debbarma at Chibukkar under Khowai P.S.

[37] Unless said Shri Binode Bihari Debbarma is not examined as prosecution witness and recorded his evidence and exhibited the said seizure list, the seizure of pistol or cartages as weapon of offence not established and in absence of this vital piece of evidence, a person cannot be convicted, which is according to this Court, the learned Court below has failed to appreciate.

[38] PW-42, has stated that she along with others went to Baijalbari and on search in the house of Shri Buddha Munda they apprehended Shri Nalesh Debbarma and Shri Sanjit Debbarma. A pistol was also recovered from inside the hut. At the time of recovery, it was raining and she was outside of the house. One pistol is shown to the witness to which she identified and said that now it is gathered rust. In view of this, it is clear that the alleged pistol was recovered from the house of one Buddha Munda but not from the house of convict appellant Shri Sanjit Debbarma and Buddha Munda was also not examined.

[39] Accordingly, this Court is of the view that the prosecution failed to prove the charges against the accused person namely, Shri Sanjit Debbarma, but admittedly Shri Nalesh Debbarma had kept one pistol in his house which was used in the murder of said TSR personnel. The last seen together theory also not proved in this case by the prosecution and *mens rea* is absent in this case. The case of the prosecution is based on the circumstantial evidence, but the prosecution, to some extent has failed to prove the circumstance regarding the guilt of Sanjit Debbarma. As such, the conviction as imposed upon Shri Sanjit Debbarma stands set aside

but the imposition of sentence as observed by the Court below upon the convict-appellant, namely, Shri Nalesh Debbarma shall remain unaltered.

[40] Accordingly, having regard to the evidence on record and the discussion made hereinabove, this Court is of the view that the prosecution has failed to prove their projected case against the accused-person namely, Shri Sanjit Debbarma and thus, he shall be released forthwith but the conviction as imposed upon the convict-appellant namely, Nalesh Debbarma stands confirmed consequently, the instant appeal preferred by the appellant stands partly allowed. Hence, the order of conviction as recorded by the learned Court below upon the convict-appellant namely, Shri Nalesh Debbarma does not deserve any interference.

[41] As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

**JUDGE**

*A.Ghash*

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GHOSH

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