

GAHC040003772022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Criminal Appeal 9(AP)/2022

Shri Tailai Wangsu
S/o. Late Longsha Wangsu
Longkhaw Village,
P.O. Longding
Dist: Longding,
Arunachal Pradesh.

..... Appellant

VERSUS

1. State of Arunachal Pradesh
representing through the Public
Prosecutor
2. N/Subedar Harpinder Singh
19th Sikh Regiment, Indian Army
Longding, Dist: Longding,
Arunachal Pradesh.

..... Respondents

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Appellant : Mr. D.K. Deori, Advocate

Advocate for the Respondent : Ms. L. Hage, Addl. P.P.

Date of Hearing : 18.07.2023

Date of Judgment : 20.11.2023

JUDGMENT & ORDER (CAV)

1. This appeal is preferred seeking defeasance of the judgment and order dated 31.01.2022 passed by the learned Sessions Judge, Tirap at Changlang and Longding at Khonsa, Arunachal Pradesh in connection with Khonsa Sessions Case No. 6/2020 arising out of Longding P.S. Case No. 50 of 2019 convicting Tailai Wangsu (hereinafter referred to as the appellant or the accused) u/s 384 of the Indian Penal Code (IPC for short) and sentencing him to undergo Rigorous Imprisonment for 10 years and a fine of Rs. 20,000/-, u/s 25(1A) of the Arms Act, 1959 and sentencing him to undergo Rigorous Imprisonment for 10 years and a fine of Rs. 20,000/- u/s 5(a) of the Explosive Substances Act, 1908 and sentencing him to undergo Rigorous Imprisonment for 10 years and a fine of Rs. 20,000/-. The sentences were ordered to run concurrently. Default clauses were stipulated with the fine sentences.

2. The factual matrix as per prosecution is that the appellant is alleged to have been an active hardcore member of NSCN (K-YA) with a self-styled title as SS Colonel Tailai Wangsu. An operation was launched by the Longding Battalion

on 12.09.2019 in General area Longkhaw and the appellant was apprehended along with Alua Wangnaw while they were trying to escape from the ongoing firing of the Security Forces. The search operation was launched at 00:45 hours and at about 02:30 hours, the troop fired from a distant location and one of the Jawans SEP Satnam Singh received a bullet hit on his bullet proof jacket, but he did not sustain any bullet injuries. Both the miscreants tried to escape towards Pukha, Nagaland but they were intercepted and apprehended. They were carrying the following arms and ammunitions:-

9 mm Pistol Glock (Regd No. DWS 439), Made in Austria along with one magazine	-	1
Live rounds 9 mm for above mentioned pistol	-	13
Hand Grenades (two types, 3+1)	-	4
Detonators	-	3
Appointment Stamps of Rajapio, GPRN	-	1
Extortion Receipt Pad along with record of extortion Collected previously from various villagers for Rs. 3,21,600/-	-	1

3. It is averred that the appellant admitted that he had joined NSCN (K-YA) in the year 2004 and underwent Military Training in Taga camp at Myanmar and he was operating for Myanmar. Both the cadres (appellant and co-accused) revealed that on 11.04.2019, on the day of General Assembly Election, they along with 5-6 other cadres carried out firing in the village of Longkhaw to instil fear to discourage the public from exercising their right to franchise. It is alleged that the appellant was actively involved in extortion and the funds were forwarded to SS Col. Bopa Wangnow. They were actively involved in planning and administering sabotage and subversive activities against ISF and also in using the route – Longkhaw – Pukha – Longzang – Lungwa – Khanmoi and vice-a-versa for exfiltration and infiltration.

4. An FIR with the above allegations was lodged on 13.09.2019 and Longding P.S. Case No. 50/2019 was registered u/s 384 IPC read with 25(1B)(a) of Arms Act, u/s 10/13 of the Unlawful Activities (Prevention) Act (UA(P) Act for short) and Section 9B(2) of the Explosive Substances Act, by Shri Naib Subedar Mr. Harpinder Singh (hereinafter the informant) and SI J. Wangsu, Investigating Officer (IO for short) embarked upon the investigation. The IO arrested the accused and recorded the statements of the witnesses. During investigation the pistol, magazine, ammunitions, live ammunitions, grenades, detonators, stamp

of Rajapio, GPRN, extortion receipt pad and bullet proof plate etc. were seized. However, no incriminating materials were found against Alua Wangnow and prayer was made to release him. The IO also visited the place of occurrence (PO for short) and submitted the prayer before the District Magistrate for prosecution sanction as provided under Section 39 of the Arms Act and under Section 7 of the Explosive Substances Act. The IO also filed a prayer through the SP, Longding, for prosecution sanctioned under UA(P) Act. The seized arms were also forwarded to the Directorate of Forensic Science (DFS for short) for forensic examination. On completion of investigation charge-sheet was laid against the appellant. On appearance of the appellant copies were furnished to the appellant and the case was committed to the Sessions Judge for trial. At the commencement of trial, a formal charge u/s 384 IPC read with Section 25(1A) and 27(2) of Arms Act was framed and read over and explained to the appellant who abjured his guilt and claimed innocence. Later on, the IO also submitted a supplementary charge-sheet u/s 05(a) of Explosive Substances Act with the prosecution sanction and charge u/s 05(a) of the Act was framed and added and read over and explained to the appellant who pleaded not guilty and claimed to be tried.

5. To connect the appellant to the crime, the prosecution adduced the

evidence of four witnesses including the informant and the IO. In connection to the incriminating materials projected in the evidence, several questions were asked to the appellant u/s 313 Cr.PC and his responses were recorded. The appellant admitted that he was apprehended by army personnel but he stated that was not a member of NSCN (K-YA) and he vehemently denied that any live ammunitions and arms were seized from his possession. The appellant did not adduce any evidence in defence.

6. It was held by learned trial Court that the appellant on different dates extorted money from the villagers of Pumao, Zedua, Senua, Niauxa, Longphong etc. in the form of collecting house tax for raising funds for NSCN (K-YA), a terrorist organisation banned by the Govt. of India. It was also held by the learned trial Court that the appellant who was an active member of NSCN (K-YA) was found in possession of one 9 mm glock pistol with magazine and 13 rounds of live ammunitions which were prohibited arms and ammunitions, 4 hand grenades and 3 detonators which were explosive substances as defined u/s 5(a) of the Explosive Substances Act, 1908 were found with the appellant. The PW-1 is the informant and he was present with the ALPHA company of 19th Sikh Regiment who conducted the operation. The PW-1 also identified the appellant who was facing trial. He proved the photographs of the exhibits seized in

connection with this case. The co-accused had directly implicated the appellant. The co-accused who was apprehended along with the appellant was examined as a witness as he was not found involved in connection with the corresponding case. The learned trial Court then went ahead and held that:- from the depositions of PWs-1, 2 and 4 (co-accused), it was clearly established that the appellant was apprehended at 2:30 AM along with fire arms and explosive substances. The FSL Report was exhibited by the IO and the learned trial Court relied on the FSL Report and convicted the appellant for offences u/s 384 IPC, 25(1A) of the Arms Act and 5(a) of the Explosive Substances Act.

7. Heard Mr. D.K. Deori, learned counsel for the appellant. Also heard Ms. L. Hage, learned Addl. P.P., Arunachal Pradesh.

8. The learned counsel for the appellant laid stress in his argument that the judgment and order was passed against the principles laid down not only under the statutory provisions but also against the principles laid down by Hon'ble the Apex Court. It is averred that the charges were framed by the trial Court on two different dates viz. on 02.09.2021 and 03.10.2021 but the witnesses were not re-examined when charge under the Explosive Substances Act was added against the appellant. The FIR marked as Ext.-1 does not at all indicate from whose possession the articles alleged to be prohibited arms and explosive

substances were recovered. It is averred that the learned trial Court ignored the deposition of PW-1 who deposed that he was not a member of the operation group and during operation the troop apprehended two miscreants and after apprehension the miscreants were taken to the battalion head quarter at Panchu along with the arms and explosives. The evidence of the PW-1 reveals that as commanded, he handed over the appellant along with his co-accused and they handed over the recovered arms and explosives to the OC at Longding P.S. PW-1 also admitted that he did not witness the recovery of arms and explosives from the possession of the appellant. It is contended that the prosecution failed to produce the articles shown in the photographs. The learned trial Court erroneously convicted the appellant on the basis of the photographs. The seized articles were not exhibited in the Court. It is also argued that the learned trial Court ignored the deposition of PW-2 who categorically stated that as he sustained a bullet hit on his chest, he did not take part in the apprehension of the appellant and the co-accused. It is also argued that the co-accused who later was examined as a witness, PW-4, stated that he saw the arms and ammunitions alleged to have been seized from the appellant at Longding camp. The evidence is replete with contradictions but the learned trial court ignored the contradictions and held the accused guilty on

conjectures and surmises. As the informant was not present at the place of occurrence, and as the evidence of PW-3 and PW-4 depicts that they were also not wary of the fact that appellant was in possession of arms and explosives, the learned trial Court erroneously relied on the evidence of PWs-1, 2, 3 and 4 and went ahead and convicted the appellant. The prosecution failed to prove the case beyond reasonable doubt and the appellant deserves acquittal. The prosecution failed to produce any witness, information or documents to show that the seized arms and ammunitions were kept in safe custody and this extends a benefit of doubt to the appellant. Although the seized articles were destroyed and the destruction certificate Ext.-10 was exhibited, no Court order or order of destruction by any authority was produced at the time of trial. No expert opinion was taken at the stage of trial in support of the evidence that the seized articles were explosive substances. Thus the prosecution failed to prove charge u/s 5 of the Explosive Substances Act. The prosecution failed to examine the seizure witnesses nor any member of the search operation team who actually recovered the seized articles to prove that the explosives and arms were seized from the appellant. This is a major discrepancy in the evidence. It is submitted that the seizure memo Ext.-3 is a fictitious and imaginary document. The ingredients to prove a case u/s 384 IPC were ignored by the learned trial

Court. Not a single witness who was 'put in' fear to handover money demanded by the appellant was examined to prove an offence of extortion. On the basis of a writing pad the appellant was held guilty of the offence of extortion. No explanation for the delay in lodgement of the FIR has been assigned by the informant. Not a single witness or expert having knowledge of arms and ammunition was examined to prove that the arms and explosives seized in connection with this case are functional or are in reality arms and explosives. It is submitted that the evidence has not been carefully and cautiously scrutinised and the appellant has been incarcerated in a whimsical and arbitrary manner. The learned counsel has prayed for acquittal of the appellant.

9. Per contra the learned Addl. P.P. Ms. L. Hage laid stress in her argument that the appellant is an active cadre of NSCN (K-YA), which is a faction of NSCN (K), a terrorist organisation banned by the Ministry of Home Affairs, Govt. of India, as provided u/s 3 of the UA(P) Act. The appellant in concert with his companions used to run a simultaneous government in the name of GPRN which stands for Government of People's Republic of Nagaland. In the name of GPRN, the members used to collect house tax from the villagers of different districts of Arunachal Pradesh which they claimed to be their territory for raising funds for the terrorist organisation. They even used to appoint overground persons in

every village in the name of Rajapio to collect taxes from the villagers. The controlling officer of the area identified for collection of taxes is named as Rajapio. The appellant's post is the rank of a Lieutenant and operates as Rajapio for the Tangshang Wangcho Region of Longding Pumao area for collection of taxes. It is submitted by the learned Addl. P.P. that the irony is that no charge under the UAP Act was framed against the appellant as the state government of Arunachal Pradesh did not grant prosecution sanction as provided u/s 45 of the UA(P) Act for prosecuting the appellant under the UA(P) Act. It is submitted that the appellant was caught red handed with arms and ammunition and he was let off by a lenient sentence. His acquittal will be a threat to the security of this Nation.

10. On the anvil of these submissions the question that falls for consideration are that:-

- i. Whether the learned trial Court erroneously convicted the appellant u/s 384 IPC based on the documents allegedly recovered from the possession of the appellant?
- ii. Whether the learned trial Court erroneously convicted the appellant u/s 25(1A) of the Arms Act and u/s 5(a) of the Explosives Substances Act?

To decide this case in its proper prospective the evidence is reappraised.

11. The informant Harpinder Singh, a Naik Subedar at the time of the incident deposed as PW-1 that on the midnight of 13.09.2019, an operation was conducted at Langkhaw village near Pongchau against NSCN (K-YA) members. He was not a member of the operation group. ALPHA company 19th Sikh Regiment conducted an operation and the troop apprehended two miscreants. One was Tailai Wangsu SS Cornel - appellant herein and the other was Alau Wangnow SSCPL. At the time of apprehension, one 9 mm caliber glock pistol made in Austria with one magazine and 13 live rounds of ammunition, 4 hand grenades, 3 detonators, 1 stamp of NSCN (K-YA) organisation and 1 receipt book used for money collection was found. After apprehension of the miscreants with the above mentioned arms and explosives, they were taken to battalion headquarter at Pongchau and thereafter they were taken to the head office at Longding. He (PW-1) was commanded by the Controlling Officer to handover the accused and the recovered arms and explosives to the police station. Accordingly, he proceeded with the accused to the hospital for medical check-up and then he handed over the accused along with the arms and explosives to the OC of Longding police station. He also lodged an FIR with the police.

PW-1 further deposed that during the operation, while the accused were

being apprehended, the accused fired upon the troop and one Sepoy namely Satnam Singh sustained a bullet hit, but the bullet struck against the bullet proof plate, and Satnam Singh did not sustain any major injury. The PW-1 identified the appellant who was present in the dock. He proved the FIR as Ext.-1 and his signature on the FIR as Ext.-1(a). He proved photographs of the seized materials as Ext.-2(a-g). He proved the seizure list as Ext.-3 and Ext.3(a) as his signature. In his cross-examination, he deposed that he was not present during the time of operation. He did not witness the recovery of the arms and explosives from possession of the appellant. He did not find any identity card from the possession of the appellant in support of the allegation that the appellant is a member of the NSCN (K-YA) faction. After the apprehension of the accused, the investigation was conducted by the police.

12. It is manifest that PW-1 was not present during the time of the operation. He did not witness the seizure of the explosives from the possession of the appellant. He took the appellant and the co-accused for medical check-up and that this was his role, at the time of the operation. Admittedly he was not present at all when the appellant was apprehended by the troop.

13. The PW-2, Sepoy Satnam Singh deposed that on 12.09.2019, they have launched a search operation at about 11 PM and they went to Pongchau COBC

and proceeded towards Langkhaw. At around 12:30 AM, they arrived at the place of operation. They were in two groups and one troop was behind them, while he was in the forward team. They thoroughly searched the place of operation at about 2:30 AM. They were in the midst of firing and the bullet hit his chest and he slumped to the ground. He also fired backed three rounds, but he was terrified as he was hit by a bullet. His company commander came near him and asked him whether he was alright. He then checked the bullet hit on the bullet proof plate and he was relieved that he was not injured by the bullet, which stuck into the bullet proof plate. As he was terrified by the incident, his company Commander asked him to return. He sat at the spot and his other team members took position. At that time, the troop behind them sent a message to their company Commander that they have apprehended two miscreants. During search operation, grenade, pistol etc. were recovered from the possession of the accused present in the dock. When they confronted both the apprehended miscreants, one accused namely Alua informed him that the accused standing in the dock (appellant) is Taili of NSCN (K-YA).

PW-2 further deposed that their officers were informed that Taili was holding a responsible post in NSCN (K-YA). They took both the miscreants to Longding and handed them over to the battalion headquarter. His bullet proof

jacket was taken away by their officer to be forwarded for forensic examination. During search operation, 1 pistol, magazine with bullet, 4 hand grenades and 1 rubber stamp and receipt of collected money was recovered from the possession of the appellant. This witness, after verifying, identified photographs of the seized materials as Ext.-2(a-g). In his cross-examination PW-2 deposed that he did not see the person who fired at him. As he was hit by a bullet, he did not proceed to Longding and Naib Subedar Mr. Harpindar Singh (PW-1) took the accused to Longding.

14. Admittedly PW-2 also did not witness the seizure of the explosives along with arms and ammunitions from the appellant. His evidence clearly depicts that as he was hit by a bullet, he did not take part in the operation. There is not even an iota of doubt that he was hit by a bullet. The FIR is substantiated by the evidence of PW-1 who has categorically stated that Satnam Singh was hit by a bullet and Satnam Singh had himself admitted that he was hit by a bullet, but fortunately due to his bullet proof jacket he did not sustain any bullet injury. The evidence of PWs-1 and 2 does not at all implicate that the appellant was carrying fire arms, although they have stated that firearms were recovered from the possession of the appellant. Both of them have admitted that they did not witness the seizure of fire arms from the possession of the appellant. The co-

accused is Alua Wangnow. He was however not charged in connection with this case nor charge-sheet was laid against him because he was not found involved with the offence of extortion or being a member of a banned outfit or any other offence.

15. Alua Wangnow deposed as PW-3 that his residence is at Longkhaw village. He resides with his family in a house with one room and one kitchen. The appellant visited his village as he was on leave. On the night of the incident, somebody knocked at his door calling out his name. When he opened the door, he saw the appellant who informed him that he wanted to stay overnight at his residence. He could not deny shelter to the appellant and he prepared a bed for him. Both of them slept, but at midnight, the defence personnel *gheraoed* his house. They knocked at his door and ordered him to open the door. When he opened the door, the defence personnel apprehended him along with the appellant, and asked them to accompany the troop upto the road and told him that they would allow him to return home, but on the road, they forcefully shoved him into a vehicle with the appellant and blind folded them. One of the army personnel indiscriminately opened fire. Thereafter, he was taken to Longding camp and handed over to the police. He was kept in custody for six days and thereafter he was released on bail.

PW-3 further deposed that the appellant is a member of NSCN (K-YA) and everyone in the village is wary of the fact that he is a member of NSCN (K-YA). The appellant himself told him that he came on leave. He saw the seized arms and ammunitions alleged to have been seized from the appellant at Longding camp when the defence personnel were taking photographs of the seized articles.

In his cross-examination PW-3 deposed that the appellant was alone when he came to his house at night. The appellant was sporting a pair of shorts and a sporting. The appellant was carrying a local *dao* and one *tokri* (traditional basket) on his back. He did not know what was inside the basket. He is acquainted with the appellant because his uncle and the appellant are of the same batch. The appellant himself told him that he is a member of the NSCN (K-YA) and it is known to everyone in their village. He did not witness arms and the ammunitions being recovered from the possession of the appellant.

16. In this case, there is not even an iota of doubt that arms and ammunitions were recovered at the time of the operation, but not a single witness deposed that they witnessed the recovery of arms and ammunitions or the receipt book from the possession of the appellant. The investigation as well as the prosecution was conducted in a very apathetic manner. The PW-3 has

repeatedly stated that the appellant is known to him and he is an active member of the NSCN (K-YA). However no charges were framed under the UA(P) Act nor any prosecution sanction was accorded by the government to proceed against the appellant under the UA(P) Act. Charges were framed u/s 384 IPC, Section 25(1A) of the Arms Act, Section 27(2) of the Arms Act and Section 5(a) of the Explosive Substances Act but not a single witness stated that they saw the arms and ammunitions being seized from the possession of the appellant. The arms and ammunitions were also not produced in the Court to be identified by the witnesses. A certificate of destruction has been proved as Ext.-10 by the IO whereby 4 hand grenades and 3 detonators were destroyed. He proved Ext.-10A as his signature.

17. The IO, Sri Jawpha Wangsa deposed as PW-4 that on 13.09.2019 at about 21:40 hours an FIR was lodged by Naib Subedar H. Singh. He then registered the Longding P.S. Case No. 55/2019 and embarked upon the investigation. He went to the PO and prepared the sketch map. As produced by the informant, he arrested both the accused. He recorded the statements of the witnesses and seized the materials produced by the informant. During investigation it was unearthed that the appellant is an active member of the NSCN (K-YA) cadre in the rank of Captain and the other accused Alau Wangnow

is an innocent villager. He then submitted a prayer before the learned JMFC, Longding for releasing the other accused Alau Wangnow. He obtained prosecution sanction as provided under Section 39 of Arms Act from the District Magistrate.

He seized 9 mm calibre pistol with 5 rounds which was sent to the DFS for forensic examination.

He received a forensic report and obtained prosecution sanction under the Explosive Substances Act and he submitted a supplementary charge-sheet.

He received the report from the DFS wherein it was reported that the fire arms - 9 mm glock pistol was in working condition and is a prohibited firearm.

He received the prosecution sanction against the appellant u/s 7 of the Explosives Substances Act from District Magistrate, Longding.

He seized 4 hand grenades and 3 detonators which were forwarded to the Court and these were also neutralised by the Assam Rifles in his presence and a certificate to that effect was issued. Thereafter he submitted supplementary charge-sheet against the appellant u/s 5(a) of the

Explosive Substances Act. He identified the Ext.-2(a-g) as the photograph of the seized materials.

He identified Ext.-3 as the seizure memo of the arms and explosives and he proved Ext.-3(b) as his signature.

He identified the Ext.-4 as prosecution sanction u/s 39 of the Arms Act.

He proved Ext.-5 as the forwarding of the seized material for forensic examination and his signature as Ext.-5(a).

He proved Ext.-6 as the prayer for prosecution sanction regarding Explosive Substances Act and Ext.-6(a) as his signature.

He proved Ext.-7 as the prayer for prosecution sanction regarding Arms Act and Ext.-7(a) as his signature.

He proved Ext.-8 as the sketch map of the PO and Ext-8(a) as his signature.

He proved Ext.-9 as the charge-sheet and Ext.-9(a) as his signature.

He also proved Ext.-10 as the Explosive Destruction Certificate and Ext.-10(a) as his signature.

He proved Ext.-11 as the Forensic Report regarding the arms and ammunitions.

He proved Ext.-12 as the Prosecution Sanction regarding Explosive Substances Act.

He proved Ext.-13 as a Supplementary charge-sheet and Ext.-13(a) as his signature.

He proved the Material Ext.-1 as the 9 mm glock pistol seized by him.

He proved the Material Ext.-2 as the magazine of the 9 mm glock pistol.

He proved the Material Ext.-3 as the bullet proof plate containing the mark of bullet hit.

He proved Material Ext.-4 as 13 rounds of 9 mm out of which 10 are live rounds and 3 were already fired by the Forensic Laboratory for testing.

He proved Material Ext.-5 as the seal i.e. rubber stamp of Rajapeo of Tangshang Wangcho Region, GPRF, Longding Pumao area seized from the possession of the accused – appellant herein.

He proved the Material Ext.-6 as the extortion pad receipt book with counter foil for collection of house tax.

18. In his cross-examination he deposed that he seized the arms and ammunitions which were produced by the informant at the police station. The said explosives, arms and ammunitions were recovered by the informant during

the search operation at the PO from the possession of the appellant. As per the FIR the informant recovered the materials from the possession of the appellant. The appellant was apprehended along with the co-accused at the PO during the operation and he was formally arrested after he was produced in the police station. There were no independent witnesses during seizure of the explosives and the arms and ammunitions. The bullet which allegedly hit the bullet proof plate adorned by Satnam Singh was not forwarded for forensic examination. As per previous record, there were several other cases registered against the appellant for extortion. He admitted in his cross-examination that in the money receipt recovered from appellant, his name was not mentioned but the stamp of Rajapio is affixed in the money receipt for extortion.

19. The learned counsel for the appellant laid stress in his argument that all the examination reports have been proved by the IO. The certificate of destruction of arms and ammunitions was proved by the IO and so this certificate cannot be relied upon. The Forensic Examination Report was also proved by the IO and not by the Scientific Officer. The learned trial Court strongly relied on the evidence of the official witnesses and held the appellant guilty by ignoring the fact that the informant, PW-1 was not present at the place of occurrence. The operation was conducted by ALPHA company but the

informant was not a member of the operation troop. The person who was present during the cross-firing did not participate in the operation as he was hit by a bullet and he was in a haze after the bullet hit against his bullet proof jacket and finally his team members apprehended the appellant. Not a single team member was examined as a witness. The co-accused, PW-3 who later became a witness did not at all implicate that the appellant was involved in the firing during the operation conducted by the ALPHA company of 19th Sikh regiment. The learned counsel for the appellant relied on the decision of Hon'ble the Supreme Court in ***Jai Prakash Tiwari v. State of Madhya Pradesh***, reported in **(2022) SCC online SC 966**. In this case the appellant was held liable on the basis of the evidence of the complainant and his mother but Hon'ble the Supreme Court set aside the concurrent findings of the trial Court and the High Court and the appellant Jai Prakash Tiwari was set at liberty. It was held by Hon'ble the Supreme Court in ***Jai Prakash Tiwari's*** case (***supra***) that:

"31. In the above circumstances, when there is absence of independent evidence corroborating the statements made by complaint, serious doubts regarding the recovery of the alleged motorcycle and the country made pistol, no connection proved

between the alleged recovered items and the alleged incident, and the plausible version put forward by the accused-appellant in his Section 313 statement has not been satisfactorily responded to by the prosecution, the case against the accused-appellant cannot be sustained.

32. It is the duty of the Court to separate the grain from the chaff and to extract the truth from the mass of evidence. In our opinion, the case of the prosecution is based on mere conjectures and surmises. The High Court and the trial Court failed to consider the abovementioned circumstances while rendering the judgment convicting the accused. The evidence brought on record by the prosecution is insufficient to prove the case against the appellant beyond reasonable doubt.

20. From a recapitulation of the entire evidence, it is clear that no witness was produced by the prosecution who had seen the appellant at the site of the incident. Although the co-accused turned witness, PW-3 stated that the troop came and apprehended him along with the appellant, his evidence depicts that

the troop conducting the operation blindfolded them and forced them into a vehicle and one of the army personnel started firing indiscriminately at them. PW-3 implied that he did not see the arms and ammunition with the appellant but he saw the arms and ammunition at the Longding Camp when the defence personnel were taking photographs of the arms and ammunition. The photographs of the arms and ammunition were not identified by him in the Court. It was the duty of the prosecution to prove beyond a reasonable doubt that the appellant was in possession of the explosive substances and the arms and ammunition. Although PW-3 stated that the appellant is a member of a banned organisation, yet no prosecution sanction was accorded by the government to prosecute the appellant under the UAP Act and the appellant was not prosecuted or held guilty of being a member of NSCN (K-YA). PW-2 deposed that he heard from PW-3 that the appellant is a member of NSCN (K-YA).

21. Suspicion, however, strong, cannot substitute proof beyond reasonable doubt. In the case of ***Ram Pratap vs. The State of Haryana; 2023 3 Supreme 573***, in Criminal Appeal No. 804 of 2011, decided on 01.12.2022, it has been observed by Hon'ble the Supreme Court that-

"9. It has been held by this Court in a catena of cases

including Sharad Birdhichand Sarda v. State of Maharashtra reported at (1984) 4 SCC 116, that suspicion, howsoever strong, cannot substitute proof beyond reasonable doubt. This Court has held that there is not only a grammatical but also a legal distinction between 'may' and 'must'. For proving a case based on circumstantial evidence, it is necessary for the prosecution to establish each and every circumstance beyond reasonable doubt, and further, that the circumstances so proved must form a complete chain of evidence so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show, in all human probability, that the act has been done by the accused. Further, it has been held that the facts so established must exclude every hypothesis except the guilt of the accused.

10. In the present case, if the evidence of Jagdish Chander (PW - 4) is to be appreciated wherein he has stated that the accused came to his house and informed him that he has killed the deceased-Om Prakash, such statement does not

find any mention in the oral report. Apart from this, the delay of 14 hours in lodging the oral report has not been sufficiently explained. The only witness of the last seen theory, i.e. PW-5, has turned hostile and has thus been disbelieved.

11. Apart from that, the trial court disbelieved the very same evidence in so far as the other four accused were concerned. The said acquittal has also been found to be valid by the High Court.

12. In that view of the matter, we find that the High Court as well as the trial court were not justified in convicting the appellant. The appeal is allowed and the appellant is acquitted of the charges. The bail bonds stand cancelled.”

22. In the case at hand, the 19th Sikh Regiment, ALPHA Company conducted the operation, but not a single member of the regiment was examined as a witness. The PW-1 is not an eyewitness. The PW-2, who was hit by a bullet did not see who fired the weapon, resulting in the bullet penetrating into the bulletproof jacket of PW-2. It is apparent that the operation was conducted at midnight. It could not be proved beyond a reasonable doubt that the appellant

fired the weapon and the bullet was discharged from the appellant's weapon hitting PW-2. The injured witness failed to identify the perpetrator. At the cost of repetition, I would like to reiterate that not a single witness saw the arms and ammunition and other articles regarding tax collection, pad, etc. being recovered from the possession of the appellant. It is true that the appellant was very much present with PW-3 at the place of occurrence and during the firing, but the prosecution failed to prove beyond a reasonable doubt that the arms and ammunition was recovered from the possession of the appellant.

23. In the light of the decision of Hon'ble the Supreme Court in ***Ram Pratap's case (supra)***, relied upon by the appellant, a benefit of doubt is extended to the appellant, despite strong suspicion against the appellant. It is needless to state that no Court order of destruction of the seized arms and ammunition was produced and proved at the time of the trial. The evidence of official witnesses cannot be discarded due to lack of independent witnesses, but in this case, the official witnesses did not support the prosecution case. The other arms and ammunition like the 9 mm Glock pistol with rounds of ammunition, was not produced in the Court nor was any scientific officer examined in support of the forensic report to prove if the arms and ammunition were in working condition and functional.

24. In the wake of the foregoing discussions, it is thereby held that the prosecution failed to prove beyond a reasonable doubt that the appellant is guilty of possessing prohibited arms and ammunition and acted in violation of Section 7 of the Arms Act. The prosecution also failed to prove beyond reasonable doubt that the appellant committed an offence u/s 5 of the Explosive Substances Act as he was in possession of 4 grenades and 3 detonators. The prosecution also failed to prove beyond reasonable doubt that the Receipt Book for extortion of money was used by the appellant who acted as a 'Rajapio'-a nomenclature of a person who collects taxes for a banned organisation (NSCN). The prosecution failed to prove beyond reasonable doubt that the appellant committed extortion by putting any person in fear of any injury and thereby inducing the person to pay taxes for NSCN (K-YA).

25. The appellant Shri Tailai Wangsu is hereby acquitted from the charges u/s 384 IPC, Section 25(1)(A) of the Arms Act and Section 5(a) of the Explosive Substances Act on benefit of doubt and he is set at liberty if he is not wanted in connection with any other case. The judgment and order of conviction dated 31.01.2022 in connection with Khonsa Sessions Case No. 6/2020 is hereby set aside.

26. However, keeping in view the provisions of Section 437-A Cr.P.C., the

appellant is directed to furnish a personal bond in the sum of Rs. 50,000/- each and two solvent sureties in the like amount before the learned trial court, which shall be effective for a period of six months.

27. Send back the LCR.

JUDGE

Comparing Assistant