

GAHC040000492023

2024:GAU-AP:913



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

Case No. : Crl.A./1/2023

Yaro Tana
W/o Late Kaka Tana,
A Permanent Resident of Serewa, PO/PS Seppa, District East Kameng, Arunachal Pradesh.

VERSUS

Singdung Gyadi and Anr.
S/o Lt. Nyikam Gyadi,
a Resident of Serewa, PO/PS Seppa, District East Kameng, Arunachal Pradesh.

2:THE STATE OF AP
Age: 0
Occupation :
Represented by the Public Prosecutor

Advocate for the Petitioner : T T Tara, D Loyi, Gegum Lollen, Gamken Bam, Terji Kamchi, Riya Sarkar, Khoda Apa, Y Mugli, Kirmani Lollen

Advocate for the Respondent : P P of AP, Legal Aid Counsel, Nikita Danggen

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MR. JUSTICE BUDI HABUNG**

Date : 30-09-2024

:: JUDGMENT AND ORDER ::

[CAV]

(Budi Habung, J)

Heard Mr. T. T. Tara, learned counsel for the appellant. Also heard Ms. N. Danggen, learned Amicus Curiae for the respondent No.1 and L. Hage, learned Additional Public Prosecutor for the State respondent No. 2.

2. This is an appeal under Section 378(4) of the Cr.P.C, 1973 assailing the impugned judgment and order dated 09.09.2022 passed by the learned Sessions Judge West Kameng District, Bomdila in Sessions Case No. 09/2020 under Section 302 of IPC whereby, the respondent No. 1, namely, **Shri Singdung Gyadi** has been acquitted from the offence under Section 302 of IPC.

FACTS OF THE CASE

3. The brief fact of the case is that on 04.03.2017, a written FIR was lodged by one Inspector M. Kalita alleging therein that the accused Singdung Gyadi of Serewa village appeared at Seppa police station and verbally reported that in the night of 27.02.2017 at around 10:30 PM while he was hunting nearby jungle, unfortunately he shot down one Kaka Tana by his SBBL gun. Furthermore, the accused Singdung Gyadi has surrendered before the police station considering that his life is in danger from the relatives and family members of Tana clan. The accused Singdung Gyadi has also disclosed that he has kept hidden the weapon of offence in the jungle.

4. Accordingly, the case was registered being Seppa P.S. Case No. 25/2017 under Section 302 of IPC read with Sections 25(1B)(a)/27(1)(3) of Arms Act and investigated into. During the course of investigation, the I.O visited the place of occurrence and recorded the statement of the informant and other available witnesses. During investigation, it was revealed that on 27.03.2017, in the evening both

the accused and the deceased went for hunting separately. At around 9:00 to 9:30 PM, the accused shot at the victim presuming him to be an animal. The weapon of offence was recovered and forwarded to FSL for examination and it was reported that the weapon was in serviceable condition. The Post-mortem examination report reveals that the victim died due to loss of blood as a result of fire arm injury. On completion of investigation, the I.O has submitted charge-sheet against the accused Singdung Gyadi for offence under Section 302 of IPC read with Sections 25(1B)(a)/27(1)(3) of Arms Act. Since, the offences were exclusively triable by the Court of Sessions, the case was committed to Sessions Court, Bomdila for trial and disposal.

5. Since, the prosecution did not obtain any prosecution sanction against the accused, the charges under Sections 25/27 of the Arms Act were dropped for want of prosecution sanction. However, the charge was framed against the accused for offence under Section 302 of IPC. The charge so framed was explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

6. In order to establish their case, the prosecution altogether examined 8 (eight) prosecution witnesses. On completion of examination of the prosecution witnesses, the accused was examined and his statement recorded under Section 313 of Cr.P.C where the accused admitted that the deceased died due to the bullet injury caused by him during the time of hunting. The accused did not produce any witness in his defense. However, prosecution witnesses were cross examined by the defense.

7. Upon consideration and hearing the parties, the learned trial Court observed that the prosecution failed to prove guilt of the accused person that he has committed the murder of deceased and accordingly, the accused has been acquitted by order dated 9.9.2022. It is the said acquittal order which is being challenged in this appeal by the appellant amongst others on the following grounds:

(i) that the obtaining of prosecution sanction from the District Magistrate under Section 39 of Arms Act, 1959 is a condition precedent for institution of prosecution under the Arms Act. However, in the instant case there is a procedural error at the stage of taking cognizance and further committed the case before the Sessions Court for trial without considering that the case has been charge-sheeted under Section 302 of IPC read with Sections 25(1B)(a) /27(1)(3) of Arms Act against the accused/respondent No. 1 herein.

(ii) that the learned trial Court committed an error in law by taking cognizance of an offence under Section 302 of IPC read with Sections 25(1B)(a)/27(1)(3) of Arms Act without obtaining previous sanction from the District Magistrate as mandated under Section 39 of the Arms Act, 1959, in respect of serious objection raised by the State Defense Counsel.

(iii) that the learned trial Court dropped the charges against the accused under Section 25/27 of the Arms Act, 1957, despite of objection raised by the State Defense Counsel and framed charge against the accused for offence under Section 302 of IPC only.

(iv) that the learned trial Court ought to have kept in abeyance the entire trial for want of previous sanction under Section 39 of Arms Act, 1959 from the District Magistrate against the accused for prosecution which is a pre-requisite conditions or could have framed charge against the accused for offence under Section 302 of IPC read with Section 25/27 of Arms Act, 1959.

(v) that the learned trial Court failed to appreciate the fact of the case that the accused himself has surrendered after commission of the alleged offence of murder before the police and given disclosure statement basing on which, the weapon of offence i.e., SBBL Gun was recovered. Since, it is apparent that the deceased was killed by the accused by using the recovered weapon of offence SBBL gun, the learned trial Court ought to have either wait for prosecution sanction obtain against the accused for prosecution or to frame charge against the accused under Section 302 of IPC read with Section 25/27 of Arms Act and to proceed with the trial of the case.

(vi) that the learned trial Court having failed to frame charge and proceed with the trial of the case against the accused under Section 302 of IPC read with Section 25/27 of Arms Act has also failed to appreciate the evidences adduced by the prosecution witnesses including the PW-1, PW-2, Doctor and the I.O of the case, resulting the acquittal of the accused and thereby vitiated the entire trial of the case.

SUBMISSION OF THE LEARNED COUNSEL FOR THE APPELLANT

8. For the reason stated above, learned counsel for the appellant submits that as there is a procedural error committed by the learned trial Court at the time of taking cognizance of the case and committed the same before the Sessions Court for trial and disposal without obtaining prosecution sanction that is required under the law under provision of Section 39 of Arms Act, and the learned Sessions Court dropped the offence under Section 25/27 of Arms Act for want of prosecution sanction and proceeded for trial of the case only for offences under Section 302 of IPC resulting the acquittal of the accused the trial has been vitiated. Hence, prays for quashing and setting aside the impugned judgment and order dated 09.09.2022 and remand the case before the trial Court with a direction to frame charge against the accused under section 302 of IPC read with Sections 25/27 of Arms Act and after obtaining requisite prosecution sanction under Section 39 of Arms Act, 1957 from the District Magistrate and proceed for fresh trial and disposal in accordance with law.

SUBMISSION OF THE LEARNED LEGAL AID COUNSEL FOR THE RESPONDENT NO. 1

9. Ms. N. Danggen, learned legal aid counsel for the respondent No. 1, while supporting the judgment and order dated 09.09.2022 submits that that learned trial judge did not commit any error by dropping the Section 25/27 of Arms Act, as there was no prosecution sanction obtained for prosecution of the case against the accused under the Arms Act, as obtaining prosecution sanction under Section 39 of Arms Act, 1957 from the District Magistrate is a pre-requisite condition.

10. She further submits that there is no sufficient material evidence against the accused for his conviction for offence under Section 302 of IPC in as much as the mens-rea to commit the murder is completely absent in the instant case. further, none of the prosecution witnesses is an eye witness to the incident; the use of weapon i.e., SBBL Gun seized by the police has not been proved against the accused. Hence, no interference of this Court is warranted into the impugned judgment and order dated 09.09.2022 and pray for dismissal of the present appeal.

THE LEARNED ADDITIONAL PUBLIC PROSECUTOR MADE THE FOLLOWING SUBMISSIONS:

11. Ms. T. Jini, learned Additional Public Prosecutor, submitted that after commission of the offence,

the accused remain absconded for about 5(five) days as his life was in danger from the clan members of the deceased and hence, he surrendered before the police on 04.03.2017 and gave a disclosure statement basing on which the weapon of offence i.e., SBBL Gun was recovered and seized from the place where the accused had kept the said gun concealed. The seized weapon of offence was sent to Central Forensic Science Laboratory, Kolkata for forensic examination and report. The FSL report reveals that the gun was used for firing before it was submitted for FSL examination. The fire arm was enough to kill a person at close range and the said gun was in used condition.

12. Ms. T. Jini, learned Additional Public Prosecutor further submits that the post-mortem examination report of the dead body of the deceased reveals that there was a bullet entry wound noticed at left lateral umbilicus and left forearm and the cause of death was due to loss of excessive blood and the injury and loss of blood is sufficient to cause death of a person. After his surrender, the accused disclosed that he had killed the deceased by gunshot, believing it was a wild animal. It is further submitted that immediately after commission of the offence, the accused had disclosed before the PW-7, namely, Shri Meka Gyadi that he had killed the deceased by gunshot believing it was a wild animal and since the place of occurrence lies below the village area in jungle, the accused led PW-7 to the place of occurrence. However, after showing the place of occurrence, the accused escaped from the place of occurrence. After being on run for 5(five) days, the accused surrendered himself before the police and revealed that he had killed the deceased with a gun. The accused further disclosed that he had kept the gun hidden in the jungle.

13. It is further submitted that during the course of investigation, the accused although stated that he is the holder of the arm licenses, however, he could not produce any gun licenses of the said SBBL gun which was used for killing the deceased. As the accused failed to produce any documents of license to claim legal ownership over the weapon of offence used by him for killing the deceased the Investigating Officer checked the arm registered being maintained by the Office of the Deputy Commissioner, Seppa. On such cross check being made, it was revealed that no fire arm at any kind was issued in the name of the accused. It is submitted that since the fire arm used for commission of alleged offence was unlicensed gun, against the used of unlicensed gun no prosecution sanction is required for framing charge against the offender under Section 27 of Arms Act. As such, the learned trial Court committed an error of not framing charge against the accused for offence under Section 27 of Arms Act. Hence, the impugned judgment and order dated 09.09.2022 requires to be interfered on

dis-ground.

14. It is the further submission of the learned Additional Public Prosecutor that as the accused has himself informed the PW-7 that he had killed the deceased with the gun and led PW-7 to the place of occurrence, shown him the dead body of the deceased and thereafter, fled the place of occurrence and remain absconding for about 5(five) days and thereafter, he again surrendered himself before the police and admitted his guilt of commission of the alleged offence of killing the deceased by using the SBBL gun and also led to the recovery of the said SBBL gun and that the said evidence are not being controverted or rebutted during the cross-examination; the learned trial Court ought to have convicted the accused for commission of the offence of murder. Further, the accused in his examination under Section 313 of Cr.P.C has also clearly admitted and confessed his guilt for commission of the alleged offence. Under the circumstances, there is no reason to disbelieved the disclosure statement and an admission of the accused for commission of the alleged offence. In such circumstances, the learned trial Court ought to have appreciated the evidences adduced by the prosecution witnesses and the statement and an admission made by the accused and convict him for offence of murder. For the reason stated above, the learned Additional Public Prosecutor submitted that the impugned judgment and order dated 09.09.2022 warranted interference and accordingly, it is liable to be set aside and quash. She further prays that the matter may be remanded back to the trial Court for framing of charges against the accused for offence under Section 27 of Arms Act and direct for fresh trial of the case.

PPOINTS FOR DETERMINATION

15. Heard the argument advanced by the learned counsel for the parties. We have also perused the record including the paper book and considered. Upon hearing the parties and on consideration of the records, the following questions emerged before this Court for consideration:

(i) *Whether the learned trial Court has committed an error by acquitting the accused in the case.*

(ii) *Whether the learned trial Court committed an error by dropping the offence under Section 25/27 of Arms Act against the accused and if not, whether the present case can be remanded back with a direction for framing of charge against the accused under Section 25/27 of Arms Act and to*

proceed with fresh trial against the accused.

16. From the records, it appears that the prosecution failed to prove that there was any intention on the part of the accused to kill the deceased. There is also no evidence on record whereby the prosecution could show that the accused had ever made any plan to kill the deceased. Further, the prosecution failed to establish that there was any prior enmity between the accused and the deceased in the immediate past before his death. The incident occurred due to the mistake of identity; the accused while hunting saw like an animal and shot with his gun which later on came out to be the deceased and not an animal. And since, he could not carry the injured, he went back to village and informed PW-7 and lead him to the spot. However, thereafter the accused left the spot and remained absconding for 5 days. This conduct of the accused created doubts about his intention. But as nothing could be proved by the prosecution in the evidence, the accused can be given the benefit of doubt. And since, the prosecution failed to prove a case against the accused beyond any reasonable doubt, the accused has been acquitted. As such, the order of acquittal dated 09.09.2022 for offence under section 302 IPC is not under serious challenged, no further discussion is required. For such reasons, the acquittal of the accused is maintained.

17. With regard to the point No.2, it is seen that after completion of investigation, the I.O. of the case laid charge sheet against the accused for offence U/S 302 IPC read with Sections 25(1B)(a)/27(1)(3) of Arms Act. The learned Sessions Judge framed charge against the accused for offence under Section 302 of IPC and proceeded for trial and disposal. However, as the prosecution did not obtain any prosecution sanction against the accused, the charges under Sections 25/27 of Arms Act were dropped for want of prosecution sanction. Now, the question is whether, the learned trial Court committed an error by dropping the offence under Section 25/27 of the Arms Act against the accused. Section 5 of the Arms Act read as under:

“5. Licence for manufacture, sale, etc., of arms and ammunition.—1 [(1)] No person shall—

(a) 2 [use, 3 [manufacture, obtain, procure]] sell, transfer, convert, repair, test or prove, or

(b) expose or offer for sale or transfer or have in his possession for sale, transfer,

conversion, repair, test or proof, any firearm or any other arms of such class or description as may be prescribed or any ammunition, unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

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[(2) Notwithstanding anything contained in sub-section (1), a person may, without holding a licence in this behalf, sell or transfer any arms or ammunition which he lawfully possesses for his own private use to another person who is entitled by virtue of this Act or any other law for the time being in force to have, or is not prohibited by this Act or such other law from having in his possession such arms or ammunition:

Provided that no firearm or ammunition in respect of which a licence is required under section 3 and no arms in respect of which a licence is required under section 4 shall be so sold or transferred by any person unless—

(a) he has informed in writing the district magistrate having jurisdiction or the officer in charge of the nearest police station of his intention to sell or transfer such firearms, ammunition or other arms and the name and address of the person to whom he intends to sell or transfer such firearms, ammunition or the other arms, and

(b) a period of not less than forty-five days has expired after the giving of such information.]”

18. The perusal of the record shows that the prosecution has not obtained or produced any prosecution sanction for prosecution as required under section 39 of the Arms Act, 1959. The I.O. of the case had submitted chargesheet against the accused for offence u/s 302 IPC read with Sections 25(1B) (a)/27(1) (3) of Arms Act without any sanction against the accused. The IO also did not keep open or made any request to submit the prosecution sanction against the accused at the later stage. The record also do not shows even at the later stage the IO had made any attempt to obtain prosecution sanction against the accused.

19. Section 39 of the Arms Act, 1959 purports that no prosecution shall be instituted against any person in respect of any offence under section 3 without the previous sanction of the District

Magistrate. Section 3 under Chapter-II of the Arms Act, 1959 purports that acquisition, possession, manufacture, sale, import, export and transport of arms and ammunition.

20. The similar proposition is reiterated in the case of *Sukhlal and another V.State of Madhya Pradesh [1998 CRI. L.J. 1366]* which lays down that sanction is necessary to prosecute the persons under Section 25 & 27 of the Arms Act,1959 and if the sanction is not given then in such case, the prosecution under Section 25 read with Section 27 of the Arms Act cannot be sustained.

21. The learned legal aid counsel for the respondent No.1 also relied on the following decisions:

(i) *Subhash Khichad, son of late Mahendra Singh & Anr Vs. The State of Rajasthan [2023]0 RJ(JD)43388/[2024]0 Supreme (Raj) 18;*

(ii) *H. Bakrudeen Vs. The Forest Ranger reported in CRL.OP (MD)20789/2021.*

22. In *H.Bakrudeen Vs. The Forest Ranger (Supra)* it is held that there can be no dispute that for prosecution a person for the offences under sections 25 (1B)(a) of the Arms Act, previous sanction from the District Collector is required under section 39 of the Arms Act. That is why, the Trial Court in the impugned order had mandated that the complainant should immediately obtain sanction. It is further held that Section 39 of the Arms Act states that no prosecution shall be initiated against any person in respect of any offence under section 3 without the previous sanction of the District Magistrate. It means that obtaining sanction is the condition precedent. In other words, even for taking cognizance under Section 25/27 of the Arms Act sanction must be obtained.

23. Therefore, when admittedly, the prosecution has not obtained previous sanction under Section 39 of the Arms Act, the Court below has not committed any illegality in dropping the Sections 25/27 of Arms Act.

24. In view of the provision of law and the decisions of various Court referred above, the learned Sessions judge i.e. the Trial Court, West kameng has not committed any error in dropping of Section 25 & 27 of the Arms Act in absence of prosecution sanction against the accused/ convict/ respondent No.1.

25. In a result, we find no merit in the appeal; accordingly, the same stands dismissed.

26. Return the record to the Court of the learned Sessions Judge, West Kameng, Bomdila along with a copy of this Order.

27. We appreciate the services rendered by Ms. N. Dangen learned Amicus Curiea in adjudicating this appeal. She shall be paid remuneration as entiled by the Gauhati hgh Court, Itanagar bench, Legal Services Committee on raising bills.

JUDGE

JUDGE

Comparing Assistant