



THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

AIZAWL BENCH

Criminal Appeal No. 1/2019

(The State) The National Investigation Agency,
Represented by the Superintendent of Police, NIA,
Branch Office - Guwahati, Assam,
Ministry of Home Affairs, Govt. of India.

.....*Appellant*

-Versus-

Shri Rohmingliana @ Hmingte @ Hminga, Aged about 56 yrs.
S/o C.L. Thuama (L), R/o Vaivakawn Zohnuai,
P.S. Vaivakawn, District- Aizawl,
Mizoram.

.....*Respondent*

BEFORE

HON'BLE MR. JUSTICE NELSON SAILO

HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Appellant : Mr. C. Zoramchhana,
Special P.P., NIA.

.....Advocate.

For the Respondent : Mr. B. Lalramenga.

.....Advocate.

Date of Hearing : 24.07.2024
Date of Judgment : **05.09.2024**

JUDGMENT AND ORDER (CAV)

(R. Phukan, J)

Heard Mr. C. Zoramchhana, learned Special Public Prosecutor for the appellant, National Investigation Agency and Mr. B. Lalramenga, learned counsel for the respondent.

2. In this appeal, under Section 21(1) of the National Investigation Agency Act, 2008 ('NIA Act', for short), the appellant has put to challenge the correctness or otherwise of the judgment and order dated 25.10.2018, passed by the learned Special Judge, NIA, Mizoram, Aizawl, in CrI. Trial No. 476 of 2013 (arising out of SC No. 97 of 2013, in Spl. NIA Case No. 1 of 2016).

3. It is to be noted here that vide impugned judgment and order dated 25.10.2018, the learned trial Court had acquitted the respondent, namely, Shri Rohmingliana @ Hmingte @ Hminga, of the charges under Sections 23(2) of the Unlawful Activities (Prevention) Act, 1967 and under Section 25(1AA) of the Arms Act, 1959.

4. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

"On 09.03.2013, Sub-Inspector Lalsanga of Special Narcotics P.S., Aizawl, Mizoram had lodged one FIR with the Officer-in-

Charge, Sairang Police Station, to the effect that acting on a tip off, that was received from the Surveillance Department of 26th Assam Rifles, a joint operation was launched by a team, led by 26th Assam Rifles and Special Narcotics P.S., CID Crime, Aizawl on 07.03.2013, at about 5 p.m. and from the farmhouse, belonging to Pu Rohmingliana, the respondent herein this case, situated at a distance of four kilometers from Lengpui Airport, four Bangladeshi nationals, three Chakma people, namely, (i) Moni Tripuri of Chittagong Hills Tract, Bangladesh, (ii) Robi Chakma of Chittagong Hills Tract, Bangladesh, (iii) Sabuj Chakma of Chittagong Hills Tract, Bangladesh and one Mizo namely, (iv) C. Lalnghakthanga of Sazep, Bangladesh were arrested and 31 numbers of AK47 rifle, LMG 1 No. and Browning Automatic Rifle 1 No. and ammunitions - (i) AK47 (7.62 mm)-86 live rounds, (ii) LMG (5.56 mm)-24 live rounds and, (iv) BAR rifle (7.62 mm)-699 live rounds were recovered and seized, and the arrested persons belong to Parbatya Chattagram Jana Samhati Samiti (PCJSS), a faction of Shanti Bahini Organization formed for upliftment of Chakma people in Bangladesh. Thereafter, the area was kept under surveillance of 26th Assam Rifles throughout the night and having seen suspicious movement, another joint operation was launched by 26th Assam Rifles in conjunction with Special Narcotics P.S. on 08.03.2013, at about 8 am and the operation team made further recovery of arms and ammunitions. And later on, the owner of the farmhouse, the respondent herein was arrested

on 09.03.2013, at about 1:30 am from his house at Vaivakawn, Aizawl.

On receipt of the aforesaid FIR, the Officer In-Charge, Sairang P.S., had registered a case being Sirang P.S. case No. 8/2013, on 09.03.2013, under Section 25(1AA) of the Arms Act, read with Section 34 IPC, read with Section 14 Foreigners Act and endorsed SI Liansangzela to investigate the case. While investigation was being carried out by SI Lalsanga, the Government of India, Ministry of Home Affairs, Internal Security-I Division, vide letter dated 03.06.2013, by exercising the power under Section 6(5), read with Section 8 of the National Investigation Agency Act, 2008, transferred the case to the National Investigation Agency ('NIA', for short) for investigation. Thereafter, the NIA had registered a case, being RC-02/2013/NIA-GUW and carried out the investigation and after completion of investigation, laid final report/charge-sheet, being charge-sheet No. 01/2016, dated 14.03.2016, against accused Moni Tripuri, Sabuj Chakma, Robi Chakma, C. Lalnghakthanga @ Nghaka and the respondent Rohmingliana @ Hmingte @ Hminga, under Section 23(2) of Unlawful Activities (Prevention) Act, 1967, read with Section 25(1AA) of Arms Act, 1959. Upon the said final report/charge-sheet, the learned trial Court took cognizance of the offence and issued process to the accused persons.

It is to be noted here that before the case was handed over to the NIA, the learned Chief Judicial Magistrate, Aizawl had granted bail to the four accused persons, namely, Moni Tripuri, Sabuj Chakma, Robi Chakma and C. Lalnghakthanga @ Nghaka and they had failed to appear before the NIA and also before the learned trial Court, for which non-bailable warrant of arrest was issued against them for evading arrest. But, their presence could not be secured during trial.

However, securing the presence of the present respondent, namely, Pu Rohmingliana, the learned trial Court had proceeded against him. Thereafter, complying with the provision of Section 207 Cr.P.C. and after hearing the learned Advocates of both the parties, the learned trial court had framed the following charges against him:

Firstly, that during the month of March 2013, you with intent to aid A1-A4 terrorists gang of Parbatya Chattagram Jana Samhati Samiti (PCJSS) had tried to procure arms and ammunitions illegally by transporting/transferring and possessing 33 Nos. of rifles and 809 live ammunition from Myanmar and kept all these rifles and live ammunition along with A1 to A3 within the premises of your farmhouse at Lengpui Airport Road (Periodic Patta No. 43 of 1990) for transporting to Bangladesh and thereby you have committed an offences under Section 23(2) of Unlawful Activities (Prevention) Act ,1967.

Secondly, that you kept the said arms and ammunition within the above said premises of your

own farmhouse for the purpose of supplying/selling 33 nos. of rifles (31 numbers of AK series rifles, 01 Browning Automatic rifle, 01 Ultimax 100 Mark iii rifle), 809 live ammunition to PCJSS through the accused No. 1-4 and thereby committed an offences u/s 25 (1AA), Arms Act, 1959.

The learned trial Court, thereafter, had read over the charges to the respondent, to which he pleaded not guilty and claimed to be tried. Thereafter, the prosecution side had examined as many as 22 witnesses and exhibited as many as 49 documents in support of its case and after completion of examination of the witnesses; the learned trial Court had examined the respondent under Section 313 Cr.P.C. Thereafter, hearing arguments of learned Advocates of both the parties, the learned trial Court had acquitted the respondent from both the charges."

5. Being highly aggrieved the prosecution side NIA has approached this Court, by filing the present appeal and contended to set aside the impugned judgment and order of acquittal on the following grounds:

- A. That, the impugned judgment and order passed by the Learned Judge, Special Court, NIA, Mizoram at Aizawl is not only contrary to law and facts on record, but, has resulted in gross miscarriage of justice.*
- B. That, the Learned trial Court has erred both in law and facts in passing the judgment and order dated 25.10.2018, by failing to appreciate the*

evidence of P.W.1, who stated that accused C. Lalnghakthanga @ Nghaka told him that he is a Bangladeshi-Mizo and further stated that he along with three other friends/associates came to Aizawl for taking arms and ammunitions from Rohmingliana of Aizawl which is not rebutted or falsified in the cross- examination;

- C. That, the Learned trial Court had failed to appreciate the evidence of P.W.2 who had stated that one Advocate told him that accused Robi Chakma along with three of his friends/associates came from Bangladesh to Aizawl for taking arms and ammunitions for one terrorist group from Rohmingliana of Aizawl and that he also casually know the said Rohmingliana of Vaivakawn before the present incident, but he did not know the details about him and that further stated that accused Robi Chakma through interpreter stated that he came to take the said arms and ammunitions from Rohmingliana of Aizawl and that he also stated the name of the terrorist group which was an abbreviation, and this piece of evidence is not rebutted or falsified in the cross-examination;
- D. That, the Learned trial Court had failed to appreciate the evidence of P.W.3, who had stated that he had sold his landed property covered by Patta No. 43 of 1990 to Rohmingliana of Vaivakawn in 2005 and he also handed over all the documents relating to the said land to him and the said land is possessed by Rohmingliana, thereafter, and that the said land is located on the Aizawl-Lengpui road and the area is locally known as Sairilzo Khamhnuai and that he also gave the lower portion of his said land to his daughter Manliani who also later sold it to Mr. Liansiama of Chawnpui, Aizawl and that accused Rohmingliana personally came to his house and finalized the said sale and handed

over the consideration amount to him which is not rebutted or falsified in the cross-examination;

- E. That, the Learned trial Court had failed to appreciate the evidence of P.W.6, who had stated that stated that the two Non-Mizo workers present at the P.O. at the time of recovery told him that the recovered boxes containing the seized arms and ammunition were belonging to Pu Rohmingliana of Vaivakawn, Zohnuai and that the Chakma people, present in the P.O. at the relevant time were guarding the said seized articles concealed under the ground in the farm land of Pu Rohmingliana which is not rebutted or falsified in the cross-examination;
- F. That, the Learned trial Court had failed to appreciate the evidence of P.W.7 who has stated that they recovered two metal boxes a little beyond the farm house near the flat area which were locked and that the two Non-Mizo workers present at the P.O. told them that the boxes containing 23 Nos. of AK47 series rifles, 1 No. of Ultimax 100 mark-III and 1 No. of Browning Automatic Rifle (BAR) totaling 25 rifles and 28 Nos. of AK-47 magazine, 1 No. of Ultimax 100 mark-III magazine and 1 No. of BAR magazine totaling 30 magazines and 177 live rounds were belonging to Pu Rohmingliana of Vaivakawn Zohnuai and further which is not rebutted or falsified in the cross-examination and that Ext. P-3 (seizure form) which reflects the names of the three Chakma people as person from whom the arms and ammunitions were seized, is only a readymade form filled up as such only as a formality and does not show real owner of the arms and ammunitions;
- G. That, the Learned trial Court had failed to duly appreciate the evidence of P.W.14 (Protected

Witness-A) who had stated that she had duly identified accused Rohmingliana before the court and he is the same person whom she met earlier, several times, and that he told her that he has got some arms and ammunitions to sell and asked her if she could find a buyer, and he promised her to pay Rs. 10,000/- for each arm sold which is not rebutted in her cross-examination;

- H. That, on being arranged by Protected witness-A, accused C. Lalnghakthanga- A-4, got the contact number of the respondent/ accused Rohmingliana @ Hmingtea @ Hminga and they accordingly met together for no other than in connection with arms smuggling which is un-rebutted in the cross-examination;
- I. That, the Learned trial Court failed to appreciate the unrebutted statements of the Protected Witness-A that accused C. Lalnghakthanga told her that the seized arms were provided to accused Rohmingliana by Pu Khaia and they were seized from the farm of the said Rohmingliana and that there are consignments of arms to come as stated to her and even shown her photographs/ pictures of said arms in his computer and further that this particular witness had earlier dealt in arms smuggling and she fittingly contacted accused Rohmingliana @ Hmingtea @ Hminga for arranging a meeting with accused A-4 C. Lalnghakthanga in matters of arms smuggling;
- J. That, the Learned trial Court had failed to take notice of the un-rebutted statement of this particular witness that her deceased brother C. Lalnghakthanga A-4 had during his lifetime told her that the Chakma people requested him to fetch some arms from Mizoram and they in turn would help him to get elected as member of Up-Ajala, which is

a body higher than the Union Parishad which is admitted by her that in her statement before the Magistrate, and she stated that her brother told her that the arms were provided to the Respondent accused Rohmingliana @ Hmingtea @ Hminga by Khaia;

- K. That, the statement of Protected witness-A was already recorded under Section 164, Cr.P.C. by Judicial Magistrate First Class, which may be taken into consideration for the ends of justice.
- L. That, the Learned trial Court miserably failed to appreciate the evidence of P.W.18 (Protected Witness-B) the first cousin on the paternal side of the respondent/accused Rohmingliana @Hmingtea @ Hminga who stated by identifying the respondent in the Court that day that on 03.03.2013 the said respondent/accused Rohmingliana @ Hmingtea @ Hminga, asked him to drive his Bolero vehicle and they together went to Panisagar Railway Station from where they picked up and dropped the four accused persons of Bangladeshi nationals namely, Moni Tripuri A-1, Robi Chakma A-2, Sabuj Chakma A-3, and C. Lalnghakthanga A-4 in the farm house of the respondent/accused Rohmingliana @ Hmingtea @ Hminga from where they were later arrested along with the seized arms and ammunitions and this alone sufficiently proved the involvement of the respondent/accused Rohmingliana @ Hmingtea @ Hminga;
- M. That, the Learned trial Court had failed to appreciate the statements of the Protected witness-B, who had that after some two/three days of their return from Panisagar Railway Station, he came to know from the local newspaper that four people who were along with them, on 3.3.2013 were arrested by Police Personnel from the farm house of accused Pu Rohmingliana with Arms and

Ammunition and he came to know that one of them who could speak Mizo was named Nghaka from Bangladesh and that he had earlier given his statement under Section 164, Cr.P.C. before Magistrate on the matter and he further stated that he used to visit the respondent/accused's Rohmingliana @ Hmingtea @ Hminga farmhouse sometimes for the purpose of repairing JCB and other equipment's and this statement shows involvement of the respondent/accused Rohmingliana @ Hmingtea @ Hminga in the charged offence;

- N. That, the Learned trial Court failed to appreciate the evidence of P.W.16 and P.W.17, who stated that on 07.03.2013, on receiving information about concealment of arms and ammunition in the farm of accused Rohmingliana at Lengpui Airport Road from source by the 26th Assam Rifle, who shared the information to him and SI Lalsang, they sent a party led by SI Lalsanga together with team from 26th Assam Rifles headed by Major Vidhya Dharan and Special Narcotics party headed by him found two boxes (trunks) in the farm area inside one of which they recovered about 5 nos. of packages inside the box containing 23 Nos. of AK 47 series rifles, 1 No. of C-BAR Rifle, 1 No. of 5.56 LMG Rifle (also known as Ultimax 100 Mark III), 28 magazines of AK 47, 1 No. of C-BAR magazine and 1 No. of 5.56 LMG magazine and 177 rounds of ammunition of three different kind i.e. (i) 7.62 X 39 mm - 86 nos. of live round, (ii) 7.62 X 63 mm - 67 Nos. of live rounds and, (iii) 5.56 X 35 mm - 24 Nos. of live rounds and again on the next day i.e. 08.03.2013, they found some packages containing 8 Nos. of AK 47 rifles, 3 Nos. of AK 47 magazines and 632 rounds of C-BAR ammunition;

- O. That, the Learned trial Court had failed to appreciate the statement of P.W.16 that the said

three arrested Bangladeshi peoples namely, Moni Tripuri A-1, Robi Chakma A-2 and Sabuj Chakma A-3 revealed that they belonged to Parbatya Chattagram Jana Samhati Samiti (PCJSS) an insurgent outfit from Bangladesh who came to collect the said arms and ammunition through accused Rohmingliana also known as Hmingtea, owner of the farm where the arms and ammunitions were concealed;

- P. That, the Learned trial Court had failed to appreciate that P.W.16 stated that the seized arms and ammunitions were to be handed over to the arrested Chakma people through accused Rohmingliana and the statements of this witness was not successfully rebutted and falsified in the cross- examination;
- Q. That, the Learned trial Court failed to appreciate the evidence given by PW-17 that the three detained Bangladeshi persons revealed that they belonged to Parbatya Chattagram Jana Sangata Samiti (PCJSS), an insurgent outfits from Bangladesh who came to Mizoram to collect the above said seized arms and ammunition through the respondent;
- R. That, the Learned trial Court had failed to take into consideration the statement given by P.W.17 that from their interrogation, it was revealed that accused 1. Robi Chakma 2. Moni Tripuri 3. Sabuj Chakma and 4. C. Lalnghakthanga had come to Mizoram to procure arms and ammunition from the respondent/accused Rohmingliana @ Hmingtea @ Hminga which were concealed in his farm and that they came through Panisagar Railway Station and the respondent brought them by his private vehicle three days before they were arrested and kept them at his farm area at Lengpui Airport Road, which

was not rebutted or falsified in the cross-examination;

- S. That, the Learned trial Court failed to appreciate the evidence of P.W.19 who stated among others that he was attached with Shri T.J. Singh Team and investigate the present case of NIA Case No. R.C.No.02/2013/NIA-GUW and that during interrogation, the Respondent had disclosed everything regarding the recovery of arms and ammunitions from his farmland situated at Lengpui Airport road at distance of 4 kilometers from Lengpui towards Aizawl and that he was doing arms smuggling and contacted one C. Lalnghakthanga and Bangladeshi nationals, Robi Chakma, Moni Tripuri and Sabuj Chakma and all these belonged to PCJSS insurgent group of Bangladesh and further that on 03.03.2013, the respondent with the Protected Witness-B driving his vehicle went to Panisagar, Tripura, from where they picked up the above stated four persons and dropped them at his farm house at Lengpui Airport road for purpose of purchasing arms and ammunition from the respondent;
- T. That, the Learned trial Court failed to appreciate the evidence of P.W.21 (Protected Witness-C) brother of accused C. Lalnghakthanga A-4 who stated among others that he came to know from newspaper and television about 3/4 years back that his brother (now late) Mr. C. Lalnghakthanga was arrested along with some Chakma people for seizure of arms and ammunition from the farm of the Respondent and he together with two other sisters visited him later in the Central Jail, Aizawl and after he was released on bail in the present case, he visited him at his home saying he will come again and that was the last he had seen him which

is not rebutted or falsified in the cross-examination;

- U. That, the Learned trial Court had failed to appreciate the evidence of P.W.22, the Investigating Officer, who stated among others that on finding a prima facie case well established against the Respondent under Section 23(2), Unlawful Activities (Prevention) Act 1967, and Section 25(1AA), Arms Act, 1959 on the basis of his investigation he submitted charge sheet against the respondent;*
- V. That, the Learned trial Court had failed to appreciate the documentary evidence and exhibits (Ext. P-1 to Ext. P-49) and in the instant case the value and the credibility of the witnesses are not properly weighed and no sufficient reasons or grounds are discussed for coming to the acquittal order;*
- W. That, the Learned trial Court had failed to appreciate the evidences of the prosecution as a whole, rather picked and choose remote and isolated pieces of depositions of witnesses that may be favourable to the respondent;*

6. Mr. C. Zoramchhana, learned Special Public Prosecution, NIA has criticized the impugned judgment of the learned trial court as being illegal and submitted written argument and also supplemented the same by oral argument. Mr. Zoramchhana has criticized the impugned judgment and order on several grounds. Referring to a decision of Hon'ble Supreme Court in **Baksish Ram and another vs. State of Punjab**, reported in **(2013) 4 SCC 131**; Mr. Zoramchhana submits that being the first appellate court, High Court

has to apply its independent mind and record its own finding on the basis of own assessment of evidence, and mere reproduction of the assessment of trial court, according to him is not sufficient. Reiterating the grounds mentioned in the memo of appeal, Mr. Zoramchhana submits that the prosecution side had succeeded in establishing the seizure of the arms and ammunitions and also arrest of accused Nos. 1 to 4 from the farmhouse of the present respondent and the same had been established by protected witnesses 'A', 'B' and 'E' i.e. P.W.14, P.W.18 and P.W.21, respectively, and the evidence of P.W.1, P.W.2 and P.W.6 had corroborated the same. Mr. Zoramchhana further submits that D.W.1 had also corroborated the prosecution version, but, the learned trial Court had failed to appreciate the evidence in its proper perspective and arrived at an erroneous finding. Mr. Zoramchhana, also submits that though the arms and ammunitions were not seized and recovered from the physical possession of the respondent, yet, the prosecution side had succeeded in establishing through the evidence of P.W. 6, 7, 8, 12, 16 and 17, who are police personnel and official witnesses, that the arms and ammunitions were recovered and seized from the farmhouse of the respondent and that the other four accused persons were brought to his farmhouse by the respondent along with protected witness 'B' (P.W.18), with a view to sell the arms and ammunitions to them, who were belonging to Parbatya Chattagram Jana Samhati Samiti (PCJSS), an insurgent outfit of Bangladesh and their evidence cannot be disbelieved. In support of his submission the learned Special P.P. has referred the following two decisions of

Hon'ble Supreme Court in **Girija Prasad (Dead) by LRS vs. State of M.P.** reported in (2007) 7 SCC 625 and **Rizwan Khan vs. State of Chhattisgarh** reported in (2020) 9 SCC 627. Mr. Zoramchhana also submits that from the evidence of the protected witnesses, i.e. P.W.14, P.W.18 & P.W. 21, it is apparent that the respondent had both knowledge and intention to sell the arms and ammunitions to the four Bangladeshi nationals and this aspect was not considered by the learned trial court. Referring to another decision of Hon'ble Supreme Court in **Gosu Jayarami Reddy and Another vs. State of Andhra Pradesh**, reported in (2011) 11 SCC 766; Mr. Zoramchhana further submits that the witnesses examined by the respondent in his defence are all interested witnesses and their evidence failed to outweigh the evidence adduced by the prosecution witnesses, rather D.W.1 had supported the prosecution version and this aspect also eschewed consideration of learned trial court. Under these facts and circumstances, Mr. Zoramchhana submits that the impugned judgment and order suffers from manifest illegality and therefore, Mr. Zoramchhana has contended to set aside the same and thereafter, to convict the present respondent, under Section 23(2) of the Unlawful Activities (Prevention) Act, 1967 ('U.A.(P) Act, 1967', for short), read with Section 25(1AA) of the Arms Act, 1959, as the said charges had been established against him beyond all reasonable doubt.

7. Per contra, Mr. B. Lalramenga, learned counsel for the respondent has supported the impugned judgment and order so

passed by the learned trial Court and submits that the learned trial Court had not committed any illegality by recording acquittal of the respondent from the charges framed against him. Mr. Lalramenga also submits that there is no direct evidence in respect of involvement of the respondent with the offence charged and that the witnesses, so examined by the prosecution side are hearsay and as per Section 6 of the Indian Evidence Act, 1872, oral evidence must, in all cases, whatever, be direct. In support of his submission, Mr. Lalramenga has referred to a decision of Hon'ble Supreme Court in **Neeraj Dutta vs. State (Government Of NCT of Delhi)** reported in **(2023) 4 SCC 731**. Referring to the evidence of P.W.3 and P.W.4, Mr. Lalramenga submits that their evidences also not supported the prosecution case and the learned trial Court had succinctly dealt with the same in paragraph Nos. **xv, xix, xx, xxxiv and xxvi** of the impugned judgment and order. Mr. Lalramenga further submits that the Protected Witness-'A' cannot be relied upon as her evidence is basically hearsay, as she heard it from her brother (since deceased), who was an accused herein this case and that whatever she had deposed in her examination-in-chief, the same was demolished in her cross-examination. Referring to a decision of Hon'ble Supreme Court in **Sasi and Another vs. State of Kerala** reported in **(2000) 10 SCC 360**, Mr. Lalramenga also submits that any person can give evidence in court regarding a confession made by accused to him, but the court has to assess the same on the touchstone of his credibility. Mr. Lalramenga further submits that the Protected Witness-'B' also cannot be relied upon and

the learned trial Court had found him not believable and elaborately dealt with the same in paragraph No. **xxii** of the impugned judgment and order and Protected Witness-'E', who is the brother of accused Lalnghakthanga, only came to know from news paper and television about 3/4 years back about arrest of his brother along with some Chakma people for seizure of arms and ammunitions from the farm of Pu Rohmingliana. Mr. Lalramenga further submits that in order to establish a charge under Section 25(1AA) of the Arms Act, 1959, the prosecution side has to prove the possession, but, in the case in hand, the prosecution side had failed to prove the recovery of the seized arms and ammunitions not only from his physical possession but even from the constructive possession of the respondent and in support of his submission, Mr. Lalramenga has referred to a decision of Hon'ble Supreme Court in **Gunwantlal vs. The State of Madhya Pradesh** reported in (1972) 2 SCC 194. Mr. Lalramenga also submits that there was only suspicion about the involvement of the respondent, but, a suspicion cannot take the place of proof. Referring to a decision of Hon'ble Supreme Court in **Ashok Debbarma vs. State of Tripura**, reported in (2014) 4 SCC 747, Mr. Lalramenga submits that Statements made to the police during investigation were not substantive piece of evidence and the statements recorded under Section 161 CrPC can be used only for the purpose of contradiction and not for corroboration. Further Mr. Lalramenga submits that the prosecution has to establish its own case on the basis of evidence adduced by its own witness and it cannot depend upon the evidence of defence witness. Under the

aforementioned facts and circumstances, Mr. Lalramenga submits that the learned trial court had rightly recorded acquittal of the respondent of the charges and there is no substantial and compelling reason to interfere with the impugned judgment and order, so passed by the learned trial Court and therefore, Mr. Lalramenga has contended to dismiss the appeal.

8. Having heard the submission of learned Advocates of both the parties, we have carefully gone through the memo of appeal and the documents placed on record and also perused the impugned judgment and order dated 25.10.2018, passed by the learned Special Judge, NIA, Mizoram, Aizawl and also gone through the case laws referred by learned Advocates of both the parties.

9. Since this appeal is directed against the judgment and order of acquittal, we deemed it apposite to understand the principles governing appeal against acquittal and presently occupying the field, before a discussion is directed to the points raised in this appeal. The principles, governing appeal against acquittal has succinctly been dealt with by Hon'ble Supreme Court in the case of **Chandrappa v. State of Karnataka**, reported in **(2007) 4 SCC 415**. In the said case, the Hon'ble Supreme Court has held as under:-

- 42.** From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
- (1)** An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- (3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
- (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
- (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

10. Again, in a recent case in *Mallappa & Ors vs. State of Karnataka*, Criminal Appeal No. 1162 of 2011, Hon'ble Supreme Court has held as under:-

“36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive - inclusive of all evidence, oral or documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate

an illegality, perversity or error of law or fact in the decision of the Trial Court.”

11. Again in the case of *Upendra Pradhan vs. State of Orissa* reported in (2015) 11 SCC 124, it has been held that -

“15. The decision taken by this Court in the aforementioned case, has been further reiterated in *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180, wherein this Court observed thus:

“7. ... Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. (See *Bhagwan Singh v. State of M.P.* (2002) 4 SCC 85. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.”

(emphasis supplied)

12. Thus, the proposition of law, governing appeal against acquittal, which emerges from the aforesaid two decisions of Hon'ble Supreme Court can be crystallized as under - 'an appellate court has unrestricted power to review, re-appreciate and reconsider the evidence, based on which the order of acquittal is passed and to come to its own conclusion. The presumption of innocence in favour of the accused, in case of acquittal, becomes double; firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law and secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court and in case, two reasonable conclusions are possible, on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. The appellate court must specifically address all the reasons given by the trial court for acquittal and must cover all the facts and in case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the trial court. The appellate court, while dealing with appeal against acquittal, has to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.

13. Having informed ourselves about principles governing an appeal against acquittal, now, an endeavour would be made to adjudge the submissions of learned Advocates of the respective parties, in the light of the given facts and circumstances on the record of the learned trial court.

14. It is to be noted here that the respondent herein this case was charged under Section 23(2) of the Unlawful Activities (Prevention) Act, (UAPA) 1967 and also under Section 25(1AA) of the Arms Act, 1959. Section 23 of the UAPA provides for enhanced penalties, which read as under:-

(1) If any person with intent to aid any terrorist or terrorist organisation or a terrorist gang contravenes any provision of, or any rule made under the Explosives Act, 1884 or the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952 or the Arms Act, 1959, or is in unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance of warfare or high quality counterfeit Indian currency, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made there under, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Any person who with the intent to aid any terrorist, or a terrorist organisation or a terrorist gang, attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in sub-

section (1), shall be deemed to have contravened that provision under sub-section (1) and the provisions of that sub-section in relation to such person, have effect subject to the modification that the reference to “imprisonment for life” therein shall be construed as a reference to “imprisonment for ten years”.

15. Thus, it appears that in sub-section 2 the Acts, Rules have not been mentioned and it merely referred to the Acts and Rules, mentioned in Sub-Section-1. The Acts and Rules mentioned in Sub-Section 1, violation of which entails punishment, are any provision of, or any rule made under the Explosives Act, 1884 or the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952 or the Arms Act, 1959, or is in un-authorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or [chemical substance of warfare or high quality counterfeit Indian currency.]

16. On the other hand, Section 25(1AA) of the Arms Act read as under:-

Whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer or has in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

17. Section 7 of the Arms Act prohibits acquisition or possession, or of manufacture or sale of prohibited arms or prohibited ammunitions. The section read as under:-

-No person shall(a)acquire, have in his possession or carry; or(b) use, manufacture, sell, transfer, convert, repair, test or prove; or(c)expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition unless he has been specially authorised by the Central Government in this behalf.

18. Thus, a careful perusal of the charges, so framed by the learned trial court against the respondent, reveals that both charges are inter-related. It also appears that unless the charge under Section 25(1AA) of the Arms Act is established and proved by the appellant/prosecution side, beyond doubt, the other charge is bound to fail. That, perusal of the charges, so framed against the respondent, reveals that the respondent had, during the month of March 2013, kept 33 Nos. of rifles and 809 live ammunitions (31 numbers of AK series rifles, 01 Browning Automatic rifle, 01 Ultimex 100 Mark iii rifle), 809 live ammunitions, which he received from Myanmar and kept all these rifles and live ammunitions, along with A1 to A3, within the premises of his farmhouse at Lengpui Airport Road, bearing periodic patta No. 43 of 1990, for transporting/transferring to Bangladesh, with the intent to aid A1-A4, who were, allegedly, belongs to a terrorists gang of Parbatya Chhattagram Jana Samhati Samiti (PCJSS) of Bangladesh.

19. That, perusal of the record of the learned trial court and also the impugned judgment and order reveals that the factum of recovery and seizure of 23 Nos. of AK 47 series rifles, 1 No. of C-BAR Rifle, 1 No. of 5.56 LMG Rifle (also known as Ultimax 100 Mark III), 28 magazines of AK 47, 1 No. of C-BAR magazine and 1 No. of 5.56 LMG magazine and 177 rounds of ammunitions of three different kinds i.e., (i) 7.62 X 39 mm - 86 Nos. of live round, (ii) 7.62 X 63 mm - 67 nos. of live round and, (iii) 5.56 X 35 mm - 24 Nos. of live round of ammunition in a big Trunk, from the farmhouse at Lengpui Airport Road, bearing periodic patta No. 43 of 1990, on 07.03.2013 and also recovery of 8 Nos. of AK 47 rifles, 3 Nos. of AK 47 magazines and 632 rounds of C-BAR ammunitions 08.03.2013, from the said farm house of the respondent is not disputed. P.W.17, S.I. Lalsanga has recovered and seized the same preparing seizure lists, Exhibit P-3 and P-5 and P.W.7 -Constable Laldingkima and P.W.6 - Constable Lalnghinglova are the witnesses of seizure of arms and ammunition recovered on 07.03.2013 and P.W.6 - Constable Lalnghinglova and P.W.8 -S.I. Smti. Rita Lalrinmawaii are the witnesses of seizure of arms and ammunitions on 08.03.2013.

20. These arms and ammunitions were sent to Forensic Science Laboratory (FSL), Mizoram by P.W.13, Shri Vanlalfaka Ralte, Addl. S.P., CID Crime Branch. The evidence of P.W.13 reveals that after handing over of the case to him for investigation, he had sent the seized arms and ammunition to the FSL Mizoram and collected the report, Exhibit-P-23. Perusal of the evidence of P.W.13 and the report of FSL, Mizoram indicates that all the weapons and ammunitions falls

under Prohibited Arms and Ammunitions as per Indian Arms Rules. Notably, the evidence of P.W.13 and the report-Exhibit-23 is not disputed by respondent side.

21. Now, what left to be seen is how far the appellant/prosecution side has been able to establish the 'possession' of the seized arms and ammunition by the respondent, which is the basic ingredient of the charge under Section 25(1AA) of the Arms Act. Before delving a discussion into the issue, we deemed it appropriate to understand what 'possession' means for the purpose of aforesaid two Acts and Rules.

22. The issue of 'possession' was elaborately dealt with by, Hon'ble Supreme Court in the case of **Gunwantlal** (supra), wherein, it has been held as under:-

4. The main question in this case is whether on the facts alleged if true and at this stage nothing can be said about the truth or otherwise of that allegation, the appellant can be said to be in possession of the revolver for being charged with an offence under Section 25(a) of the Act. Section 25(a) insofar as it is relevant states:

“whoever acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3... shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both”.

5. What is meant by possession in the context of this section? Is it that the person charged should be shown to be in physical possession or

is it sufficient for the purposes of that provision that he has constructive possession of any firearm or ammunition in contravention of Section 3 which prohibits him to be in such possession without a licence. It may be mentioned that under Section 19 of the Arms Act, 1878, an offence corresponding to Section 25(1)(a) is committed if a person had in his or under his control any arms or ammunition in contravention of Sections 14 and 15 of that Act. The word "control" under Section 25(1)(a) has been omitted. Does this deletion amount to the Legislature confining the offence only to the case of a person who has physical possession or does it mean that a person will be considered to be in possession of a firearm over which he has constructive possession or over which he exercises the power to obtain possession thereof when he so intends? If the meaning to be given to the word "possession" is that it should be a physical possession only, then certainly the charge as framed on the facts of the prosecution case will not be sustainable, but if the meaning to be given to the word "possession" is wider than that of actual or physical possession then it is possible, if the evidence produced by the prosecution is such as would sustain a finding, that he had constructive possession on September 17, 1966, when he handed it over to Miroo and Miroo handed it over to Chhaganlal because if it was not seized from Chhaganlal, the appellant could have at any time got back the physical possession of the revolver through Miroo. The possession of a firearm under the Arms Act in our view must have, firstly the element of consciousness or knowledge of that possession in the person charged with such offence and secondly

where he has not the actual physical possession, he has nonetheless a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else. If this were not so, then an owner of a house who leaves an unlicensed gun in that house but is not present when it was recovered by the police can plead that he was not in possession of it even though he had himself consciously kept it there when he went out. Similarly, if he goes out of the house during the day and in the meantime someone conceals a pistol in his house and during his absence, the police arrives and discovers the pistol, he cannot be charged with the offence unless it can be shown that he had knowledge of the weapon being placed in his house. And yet again if a gun or firearm is given to his servant in the house to clean it, though the physical possession is with him nonetheless possession of it will be that of the owner. The concept of possession is not easy to comprehend as writers of Jurisprudence have had occasions to point out. In some cases under Section 19(1)(f) of the Arms Act, 1878 it has been held that the word "possession" means exclusive possession and the word "control" means effective control but this does not solve the problem. As we said earlier, the first precondition for an offence under Section 25(1)(a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control. In any disputed question of

possession, specific facts admitted or proved will alone establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question. In this view it is difficult at this stage to postulate as to what the evidence will be and we do not therefore venture to speculate thereon. In the view we have taken, if the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when it was recovered, he will nonetheless be deemed to be in possession of that firearm. If so, the charge that he was in possession of the revolver on September 17, 1966, does not suffer from any defect particularly when he is definitely informed in that charge that he had control over that revolver. It is also apparent that the words "on or before" were intended to bring home to the accused that he was not only in constructive possession of it on September 17, 1966, but that he was in actual physical possession of it prior to that date when he gave it to Miroo. It is submitted, however, that the word "on or before" might cause embarrassment and prejudice to the defence of the accused because he will not be in a position to know what the prosecution actually intends to allege. From a reference of Form XXVIII of Schedule 5 of the Code of Criminal Procedure, the mode of charging a person is that he "on or about"... did the act complained of. In view of the forms of the charge given in the Schedule to the Code, we think that it would be fair to the appellant if the charge is amended to

read 'on or about' instead of 'on or before' which we accordingly order.

23. Thereafter, in the case of *State of West Bengal v. Anil Kumar Bhunja*, reported in (1979) 4 SCC 274, Hon'ble Supreme Court has held as under:-

“13. “Possession” is a polymorphous term which may have different meanings in different contexts. It is impossible to work out a completely logical and precise definition of “possession” uniformly applicable to all situations in the contexts of all statutes. Dias and Hughes in their book on *Jurisprudence* say that if a topic ever suffered from too much theorising it is that of “possession”. Much of this difficulty and confusion is (as pointed out in *Salmond's Jurisprudence*, 12th Edn., 1966) caused by the fact that possession is not purely a legal concept. “Possession”, implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. *It involves power of control and intent to control.* (See Dias and Hughes, *ibid.*)

14. According to Pollock and Wright,

“when a person is in such a relation to a thing that, so far as regards the thing, he can assume, exercise or resume manual control of it at pleasure, and so far as regards other persons, the thing is under the protection of his personal presence, or in or on a house or land occupied by him or in any receptacle belonging to him and under his control, he is in physical possession of the thing.”

15. While recognising that “possession” is not a purely legal concept but also a matter of fact, Salmond (12th Edn., p. 52) describes “possession, in fact”, as a relationship between a person and a thing. According to the learned Author the test for determining “whether a person is in possession of anything is whether he is in general control of it”.

16. In *Gunwant Lal* [(1972) 2 SCC 194 : 1972 SCC (Cri) 678 : (1973) 1 SCR 508] this Court while noting that the concept of possession is not easy to comprehend, held that, in the context of Section 25(a) of the Arms Act, 1959, the possession of a firearm must have, firstly, the element of consciousness or knowledge of that possession in the person charged with such offence, and secondly, he has either the actual physical possession of the firearm, or where he has not such physical possession, he has nonetheless a power or control over that weapon. It was further recognised that whether or not the accused had such control or dominion to constitute his possession of the firearm, is a question of fact depending on the facts of each case. In that connection, it was observed:

“In any disputed question of possession, specific facts submitted or proved will alone establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question.”

17. With this guiding criterion in mind, the Magistrate had to see whether the facts alleged and sought to be proved by the prosecution prima

facie disclose the delivery of the firearms by the respondents into the possession of Mrityunjoy Dutta, without previously ascertaining whether the recipient had any licence to retain and repair those firearms within the contemplation of Section 29(b).”

24. Thus, the legal proposition, in respect of the term ‘possession’, which can be crystallized from the illuminating discourse, is that being a polymorphous term, it is not possible to work out a completely logical and precise definition of ‘possession’ so as to uniformly applicable to all situations in the context of all statutes. It may have different meanings in different contexts. It is not a purely legal concept, but also a matter of fact. It is a relationship between a person and a thing. And for an offence under Section 25(1)(a) of the Arms Act the first precondition is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly, that the possession need not be physical possession but can be constructive, having power and control over the arms and ammunitions, while the person, to whom physical possession is given, holds it subject to that power and control. And whether or not the accused had such control or dominion to constitute his possession of the arms and ammunition is a question of fact, depending on the facts of each case.

25. It is to be noted here that though in the instant case the charges is under Section 25 (1AA) of the Arms Act, yet, the element of possession in respect of both the Sections i.e. Section

25(1AA) and 25(1)(a) appears to be the same, though the contravened provisions are different, while one is Section 5 and the other is Section 7 of the Arms Act. Another notable difference is that in respect of the Charge under Section 25(1AA) of the Arms Act, the arm in question is of prohibited bore.

26. Thus, having informed ourselves about the legal proposition in respect of 'possession', now we will made an endeavor to find out, as to how far the appellant/prosecution side has succeeded in establishing the 'possession' of arms and ammunitions by the respondent. In this regard the evidence of P.W.12 Lt. Col. Vidyadharan, P.W.16 -Laljohna Pachuau-O/C of Narcotic P.S., P.W. 17 S.I. Lalsanga of Narcotic P.S., P.W.6 - Constable Lalnghinglova, P.W.7 -Constable Laldingkima and P.W.8 -S.I. Smti. Rita Lalrinmawaii, and Exhibit P-3 and P-5 are relevant.

27. The evidence of P.W.12, Lt. Col. Vidyadharan, reveals that on 07.03.2013, while he was on deputation in 26th Assam Rifles at Aizawl and was working as a Major and was in his office, then his Commanding Officer called him at about 11:30 a.m. to his office and told him that there were arms and ammunitions concealed in Sairang area, in one of the farmhouses of Pu Rohmingliana @ Hmingtea. The said farmhouse was about 4-5 kilometers away from Lengpui Airport towards Aizawl and he also told him that 2/3 numbers of Trucks and a Crane were being parked in the farm land. Then, after discussion with his Commanding Officer, at about 1 p.m., he gave a call to Mr. Lalsanga, SI of Narcotic Police and told him to come to his office and

after 10/15 minutes, SI Lalsanga arrived at his office and then he had shared the information that he had received, with S.I. Lalsanga, about the arms and ammunitions concealed at the farmhouse of Pu Rohmingliana @ Hmingtea. Thereafter, SI Lalsanga and one of his team members (P.W.12) were sent to confirm the location where the alleged arms were being kept.

27.1. His evidence also reveals that then, at about 3 p.m., Lalhmangaiha and SI Lalsanga gave him a call and told him that the location actually exist on the ground as it was described to them earlier. Then, at about 3:30 p.m., he along with team members arrived at the place of occurrence at about 4:30 p.m. and at that time, police team comprising of SI Lalsanga, Inspector Laljohana and two other constables, namely, Lalnghinglova and Laldinkima were there. Then on being lead by Inspector Laljohana they approached the farmhouse and they saw two non-Mizo people working at the farmhouse. Then, Inspector Laljohana spoke to them and they told him that there were three other people inside the house and then SI Lalsanga went inside the room and asked the three people where they came from and what they were doing in the farmhouse and they told him that they came from Bangladesh and they did not disclose anything at that time. Then on suspicion, they conducted search in the house as well as the farm, but initially, they did not find anything and then, on being asked, the Commanding Officer informed him that the arms were concealed a little away from the farmhouse.

27.2. Then, they started searching the farm area again and at about 40/50 feet away from the farmhouse, they found fencing within which there were two iron boxes, blue in colour and he opened the smaller one which was empty, but he could not open the bigger box as it was locked. So, he sent his team members to get the key from the people at the farmhouse so as to open the box, but the people at the farmhouse said that they did not have the key of that box. Then, SI Lalsanga along with other constables took a hammer from the farmhouse and broke open the box. Then, they found 4/5 packets containing arms and ammunitions which included 23 Nos. of AK47 rifle, 1 No. of C BAR rifle, 1 No. 5.56 LMG (Ultimax 100 MK rifle), 30 magazines (28 magazines of AK47, 1 magazine of C BAR rifle and 1 magazine of 5.56 LMG) and 177 rounds of ammunitions. Then, all the 4/5 packets containing arms and ammunitions were loaded in a Gypsy belonging to the police, along with the three Chakma people, coming from Bangladesh. Then, his team members and the police, along with arms and ammunitions and the three Chakma people came back to Aizawl to the Headquarter of 26th Assam Rifles and there, they checked all the recovered articles, counted them and handed over to the police personnel. Then, police made seizure memo and he had seen all the seized articles in the Court. Later on, they came to know that the three people arrested from the farmhouse were Chakmas who came from Bangladesh to the farmhouse to buy arms and ammunitions from Mr. Rohmingliana.

27.3. Further, his evidence reveals that thereafter, on the same evening, his Commanding Officer was again told by the source that

there were some more weapons and ammunitions hidden in the same location and therefore, they kept a surveillance led by him on the Lengpui Airport road leading to the place of occurrence, and on 07.03.2013, i.e. in the same night, they reached the location at 11:30 p.m. and kept surveillance on the road the entire night.

27.4. Then, on 08.03.2013, at about 5/5:30 a.m., they found some suspicious movement around the farmhouse/land and then he called SI Lalsanga and told him to come. Then, they came at about 7 a.m. and later, SI Lalsanga, along with Inspector Laljohana led the team and they carried out the search of the farm area again. Then after sometime, one of their surveillance team members found two bags containing arms and ammunitions, underneath freshly dug sand/mud near the crane and on recovery, they found that there were 8 Nos. of AK47 rifles, 3 Nos. of magazines of AK47 and 632 rounds of C BAR ammunitions. Then, seizure was made by police on the spot and they took the seized articles along with them. His evidence also reveals that the three arrested Chakma people belongs to PCJSS of Bangladesh, which is an underground outfit of Bangladesh and he confirmed all the arms and ammunitions, seized on 08.03.2013.

27.5. The accused/respondent side had cross-examined this witness at length, and it is elicited that except on 07.03.2013, and 08.03.2013, he did not take part in investigation of the case, and that Inspector Laljohana of Mizoram Police led their party on 07.03.2013 and on 08.03.2013. Except this nothing tangible could be elicited to discredit his version.

28. P.W.16, Inspector Laljohana Pachuau was the Officer In-Charge, Special Narcotics Police Station, under CID Crime, Mizoram and P.W.17 is S.I. Lalsanga of Special Narcotics Police Station also dittoed the same facts like P.W. 12. Their evidence also reveals that on counting of recovered arms and ammunitions, it was found that there were 23 Nos. of AK 47 series rifles, 1 No. of C-BAR Rifle, 1 No. of 5.56 LMG Rifle (also known as Ultimex 100 Mark III), 28 magazines of AK 47, 1 No. of C-BAR magazine and 1 No. of 5.56 LMG magazine and 177 rounds of ammunitions of three different kinds i.e, (i) 7.62 X 39 mm - 86 Nos. of live round, (ii) 7.62 X 63 mm - 67 nos. of live round and, (iii) 5.56 X 35 mm - 24 Nos. of live round and then SI Lalsanga, Constable Laldingkima and Constable Lalnghinglova seized the same and prepared seizure list. Their evidence also reveals that they found three accused persons in the farm house and took them along with arms and ammunitions to the Special Narcotics P.S. for interrogation. Further, their evidence reveals that on 08.03.2013, at about 7:00 a.m., they have recovered some packages containing 8 Nos. of AK 47 rifles, 3 Nos. of AK 47 magazines and 632 rounds of C-BAR ammunitions from the same farm house and the same were seized by preparing seizure list.

29. The evidence of P.W.16 also reveals that the three Bangladeshi nationals, namely, Moni Tripuri, Robi Chakma and Sabuj Chakma, who were arrested in connection with the case, during interrogation, revealed that they belonged to Prabatya Chattagram Jana Samhati Samiti (PCJSS), an insurgent outfit from Bangladesh, and they came to collect the said arms and ammunitions through accused

Rohmingliana, also known as Hmingte, owner of the farmhouse, where the arms and ammunitions were concealed.

30. It is elicited in cross-examination of P.W.16 that it was not possible for him to say exactly in whose name the patta of the land was and from where arms and ammunitions were recovered. It is also elicited that the said arms were brought by a Burmese national, namely, Khaia, to be handed over to the Chakma people through accused/respondent Rohmingliana. It is also elicited that he did not apprehend the two non-Mizo persons, who were present at the place of occurrence, when they reached there on 07.03.2013. It is also elicited that on 08.03.2013, they went to the place of occurrence in search of further arms and ammunitions at the instance of the three Chakma people; but, they were not taken with them on 08.03.2013. He denied that Rohmingliana had no knowledge about the seized arms and ammunitions and that Rohmingliana had played no part in the seized arms and ammunitions. It is also elicited that in Ext. P-3, Sl. No. 5, it is clearly mentioned that from whom the arms and ammunitions were seized. Except this nothing tangible could be elicited to discredit their evidence.

31. The evidence of P.W.17 also reveals that he had seized the recovered arms and ammunition on 07.03.2013, vide seizure list Ext. P-3, and that he had seized the arms and ammunition recovered on 08.03.2013, vide seizure list Ext. P-5, and one mobile hand set of respondent vide seizure list Ext.7. Further his evidence reveals that he lodged written complaint Ext. P-34, and he confirmed Ext. P-33,

the integrated FIR submitted by him. His evidence also reveals that from the interrogation, it was revealed that the accused persons Robi Chakma, Moni Tripuri, Sabuj Chakma and Lalnghakthanga had come to Mizoram to procure arms and ammunition from Rohmingliana of Aizawl and the arms were concealed at Rohmingliana's farm. Further, they said that they came through Panisagar Railway Station and Rohmingliana brought them by his private vehicle, before they were arrested by police and kept them at his farm at Lengpui Airport Road.

32. Cross-examination of P.W.17 reveals that he had taken up the steps before registration of the case, and after seizure of the arms and ammunitions, he had examined seizure witnesses and thereafter, handed over the seized arms and ammunitions to Sairang P.S. It is also elicited that they had conducted search in the house of Rohmingliana, but could not recover anything. He denied that the Bangladeshi persons, who were interrogated by him, stated that one Burmese national, namely, Khaia with the help of Lalnghakthanga brought the arms to them and they did not mention the name of Rohmingliana. It is also elicited that the seized articles which are the arms and ammunitions were seized from the possession of Robi Chakma, Moni Tripuri and Sabuj Chakma mentioned in Ext. P-3 Sl. No. 13 Column No. 3. He denied having implicated Rohmingliana falsely in the case.

33. P.W. 6-Constable Langhinglova, P.W. 7 Laldingkima and P.W. 8, S.I. Rita Lalrinmawii all are the witnesses of recovery as well as seizure and they had accompanied P.W. 16 and 17 while the search

and seizure were carried out and made on 08.03.2013. And P.W. 6- Constable Langhinglova and P.W.7 - Laldingkima have accompanied P.W.12, 16 and 17 on 07.03.2013. They have also corroborated the evidence of P.W.12, 16 and 17 and they have confirmed the seizure of arms and ammunitions and identified the same i.e. the arms and ammunitions, Material Exhibits, in the Court.

34. The evidence of P.W.6, however, reveals that the arms and ammunitions were recovered from the possession of accused Robi Chakma, Moni Tripuri and Sabuj Chakma and as stated by two non-Mizo people, who were present at the farmhouse of Rohminglana, told that arms and ammunitions belongs to Rohminglana. In cross-examination he denied the defence suggestion that the seized articles were kept in the place of occurrence by the three said Chakma persons, namely, Moni Tripuri, Robi Chakma and Sabuj Chakma.

35. The evidence of P.W.7, Shri Laldingkima reveals that he is a Constable of Narcotic P.S., Aizawl since March, 2004 and he dittoed the same fact like P.W.6 and he confirmed Ext. P-3, P-4, P-6 and Ext. MO-71 to 76. His evidence also reveals that he identified Ext.-MO-1 to Ext.-MO-23 the AK series rifles, Ext.-MO-24 the Ultimax 100 MK-III Rifle- 1 No., Ext.-MO-25 the BAR Rifle-1 no., Ext.-MO-26 to Ext.-MO-53 the AK 47 magazines, Ext.-MO-54 the BAR Rifle magazine, Ext.-MO-55 the Ultimax 100 MK-III Rifle magazine, Ext.-MO-56 7.62 x 39 mm (86 live rounds), Ext.-MO-57 7.62 x 63 mm (67 live rounds), Ext.-MO-58 5.56 x 45 mm (24 live rounds). He also identified Ext.-MO-71 Nokia 1202 Mobile handset, Ext.-MO-72 Nokia 3110 Mobile

handset, Ext.-MO-73 Nokia 1616 Mobile handset, Ext.-MO-74 Nokia 1280 Mobile handset, Ext.-MO-75 G five-L 228 Mobile handset and Ext.-MO-76 AGTel I Mobile handset. It is elicited in cross-examination of this witness that the two non-Mizo people told them that the boxes containing arms and ammunitions belongs to three Chakma people.

36. P.W.8 is Smti. Rita Lalrinmawii, a Sub-Inspector of Narcotic P.S., Aizawl from 2010-2015. Her evidence reveals that on 08.03.2013, pursuance to the recoveries made previously in the farmhouse of Pu Rohmingliana of Vaivakawn Zohnuai, they went to the said place of occurrence, early in the morning, at about 6 a.m. and recovered two boxes containing 8 Nos. of AK47 series rifles, 632 rounds of live ammunitions and 3 Nos. of AK47 magazines, which were concealed under the sand covered with dry leaves and teak logs near the place where the crane and teak tree were kept. Thereafter, on 09.03.2013, they went to the residence of Pu Rohmingliana of Vaivakawn Zohnuai in connection with seizure of arms and ammunitions from his farm area on the previous two days and they recovered one mobile handset Nokia C2-03 and two SIM cards from his possession, and that she was present there and stood as seizure witness and Ext. P-5 is the property search and seizure form dated 08.03.2013 and Ext. P-7 is the property search and seizure form dated 09.03.2013, and he confirmed Ext. MO-59 to 66 AK47 series rifles, Ext. MO-67 to 69 AK magazines and Ext. MO-70 632 rounds of live ammunitions, and Ext. MO-77 is the Nokia mobile handset seized from the possession of accused Rohmingliana @ Hmingtea. It is elicited in her cross-examination that she was not a party to the

arrest of Chakma persons, namely, Moni Tripuri, Robi Chakma and Sabuj Chakma on 07.03.2013, but, she saw them on 08.03.2013 at the Narcotic P.S., early in the morning, and her colleagues told her that three Chakmas told them that they got some arms and ammunitions hidden in the place of occurrence, and accordingly, the party went and found the same and was seized by SI Lalsanga and she put her signature as one of the witnesses, and that the three accused persons told them that Ext. MO-59 to 70 were kept in the farmhouse of Rohmingliana by them and at the time of recovery, Rohmingliana was not present at the place of occurrence.

37. Thus, there are *inter-se* inconsistencies in the version of P.W.6, 7 & 8 in respect of the person to whom the arms and ammunitions belongs. Besides, the evidence of P.W.6, 7 & 8 in this regard, are hearsay. Also, from a careful perusal of the Exhibit-P-3, we find that at column No. 5 of the said seizure list, it has been mentioned that on 07.03.2013, the arms and ammunitions were seized from the possession of Robi Chakma, son of Kiron Chakma of Tripura. But, at column No. 13 of the Exhibit-P-3, signatures of all the three Chakma people were taken. However, in column No.5 of Exhibit-5, there is no mention about the name of the person as to from whom the arms and ammunitions, on 08.03.2013, were seized. But, according to P.W.8 the same were recovered at the instance of three chakma people. But, both the seizure list indicates that the arms and ammunitions were recovered from the farmhouse of Rohmingliana. Notably, Robi Chakma, is an absconder accused, who, after grant of bail, had fled away from India and never turned up to

stand trial. However, a contention is being made in the memo of appeal that only for formality the names of three Chakma people were mentioned in the Exhibit-P-3 and the same does not reflect the real owner of the seized arms and ammunitions, yet, such a contention appears to be fallacious. Exhibit-P-3 is one of the documents of the prosecution, based upon which the case was registered and investigation was carried out and charge sheet was filed and charges were framed against the accused persons. Raising doubt at this stage, about the authenticity of its own document, i.e. Exhibit-P-3, demonstrate that the case of the prosecution is not based upon true account of the facts and on such count it appears to be not at all reliable.

38. But, from the evidence of the prosecution witnesses, discussed herein above, specially from the evidence of P.W.12, 16, 17, 6, 7 and 8 and also from the Ext.P-3, it appears that the place, from where the arms and ammunition were recovered on 07.03.2013, and 08.03.2013, was the farmhouse of respondent, Rahmingliana. It also appears that at the time of recovery of the arms and ammunitions on 07.03.2013 and on 08.03.2013 accused/respondent Rohmingliana was not present at his farm house. He was apprehended from his house only on 09.03.2013, at about 1.30 am, situated at Vaivakawn Zohnuai, Aizawl.

39. Thus, it appears that seized arms and ammunitions were not found in the physical possession of the respondent/accused Rohmingliana. But, it appears that the farm house, from where the

arms and ammunitions were recovered, is belonging to him. And to establish the same the prosecution/appellant side had examined P.W.3, Shri I. Thuamluaia, the erstwhile owner of the land. His evidence reveals that he had sold his landed property, covered by Patta No. 43/1990 to Mr. Rohmingliana of Vaivakawn in the year 2005 and he had also handed over the documents relating to the said land to him and thereafter, the said land is in possession of Rohmingliana. His evidence also reveals that the land is located at Aizawl-Lengpui Road and the area is locally known as Sairilzo Khamhnuai. Further, his evidence reveals that Rohmingliana personally came to his house and finalized the said sale and handed over the consideration amount to him and Ext. P-1 is the sale deed executed by him to Rohmingliana in respect of the land with Periodic Patta No. 43/1990, and he also confirmed his signature, Ext. P-1(a) and the signature of Rohmingliana as Ext. P-1(b), over Exhibit-P.1. It is elicited in his cross-examination that he had sold the land to Rohmingliana at the cost of Rs. 3,40,000/- and he received the entire amount. Notably, Exhibit.1 was sent to the Government Examiner of documents and P.W.11, Mr. M.C. Joshi is the examiner who had examined the Exhibit.1 and opined that the signatures in the enclosed portions stamp and marked Q1 and S1 to S3 have all been written by one and the same person, after careful and thorough scientific examination and comparison of the questioned signature marked as Ext. P-1, with supplied specimen signatures.

40. P.W.4, Ms. K. Zochhuani is a lady who had also purchased a plot of land from one K. Liansiama of Chawnpui, covered by Patta No.

43/1990. Her evidence reveals that in the year 2014, police personnel came to her residence and asked her whether she knew any seizure of arms and ammunitions from the land covered by Patta No. 43/1990, some portion of which belongs to her. Then on enquiry, she came to know that another portion of the said plot of land covered by original Periodic Patta No. 43/1990, was belonging to accused Rohmingliana and it was his portion of the land from where the arms and ammunitions were recovered and seized by police personnel. She then talked with the accused Rohmingliana through telephone; who had claimed the said landed property and told her to hand over the Patta to him. She then approached the original owner Mr. Thuamluaia, who clarified that the portion of land purchased by her was covered by periodic patta, Allotment No. 884/2011, and handed over the said patta accordingly, and that the Patta No. 43/1990 was belonging to accused Rohmingliana. Her evidence also reveals that by mistake she mutated her name in the Patta No. 43/1990 and that she was ready to hand over the Patta No. 43/1990 to the real owner Rohmingliana, and she confirmed Ext. P-2, a photocopy of Periodic Patta No. 43/1990. Cross-examination of this witness reveals that the Periodic Patta No. 43/1990 was transferred in her name and her name is still in the said Periodic Patta. It is also stated that she had already mutated Periodic Patta No. 884/2011 in her name. Thus, it is well established that the farmhouse, from where the arms and ammunitions were recovered and seized, belongs to accused/respondent Rohmingliana.

41. As discussed in the forgoing para, the seized arms and ammunitions were not recovered from the physical possession of accused/appellant Rohmingliana. But, the same were recovered from the farmhouse belonging to him. Now, what left to be seen is whether the seized arms and ammunitions were in the constructive possession of accused/respondent Rohmingliana.

42. To establish the same the prosecution side had relied upon the evidence of Shri Velkima as P.W.1, P.W.2-H.L. Rinawma and protected witnesses 'A', 'B' & 'E'. The evidence of P.W.1 reveals that in the year 2013, on the request of one Shri Lalnuntlinga, he stood as surety in respect of one accused, namely, Lalnghakthanga, but, neither he knew the permanent address of the accused nor he knew his whereabouts and when asked, the said accused told him that he is a Bangladeshi Mizo, and that he, along with three other friends/associates came to Aizawl for taking arms and ammunitions from one person, namely, Rohmingliana of Aizawl. Cross-examination of this witness indicates that he signed the surety bond for a sum of Rs. 3,000/-, which was paid to him, and that he spoke to Lalnghakthanga only once, and the prosecution counsel had shown Rohmingliana in the Court and while he was talking to Lalnghakthanga, three other persons were also present, but he could not identify them.

43. The evidence of P.W.2, Shri H.L. Rinawma, reveals that he stood as surety to one Robi Chakma. His evidence reveals that one of his friends, namely, Zira told him that there was one accused,

namely, Robi Chakma from Bangladesh and Zira asked him to stand surety for the said accused. He then stood as surety for Robi Chakma. His evidence also reveals that one Advocate, whose name he did not know, told him that the accused Robi Chakma, along with three of his friends/associates came from Bangladesh to Aizawl for taking arms and ammunitions for one terrorist group from one Rohmingliana of Aizawl, whom he casually knew, but did not know the details about him, and that accused Robi Chakma, through interpreter, stated that he came to take the arms and ammunitions from one Rohmingliana of Aizawl and he also stated that the name of the terrorist group which was an abbreviation, but he did not remember it. Cross-examination of this witness reveals that he did not personally meet Rohmingliana and his place of abode, but from the bail paper of Robi Chakma, he came to know that he is from Vaivakawn, and that Robi Chakma did not know Mizo language and through his interpreter, Robi told that he was going to take arms and ammunitions from one Rohmingliana and at that time, he was not aware of the name of Rohmingliana mentioned by Robi Chakma, who was sitting in the Court, and that he did not know whether the interpreter was a Mizo or Non-Mizo, and the interpreter was not very fluent in Mizo. It is also elicited that he did not have any personal knowledge about what kind of arms and ammunitions were seized by NIA in connection with the case and also personally did not know from where the arms and ammunitions were recovered and seized by the NIA in connection with the case.

44. Thus, it appears that the evidence of these two witnesses, are hearsay. P.W.1 heard it from accused Lalnghakthanga that he is a Bangladeshi Mizo, and that he, along with three other friends/associates came to Aizawl for taking arms and ammunitions from one person, namely, Rohmingliana of Aizawl. P.W.2 came to know from one Advocate and also from accused Robi Chakma, that accused Robi Chakma, along with three of his friends/associates came from Bangladesh to Aizawl for taking arms and ammunitions for one terrorist group from one Rohmingliana of Aizawl. The said Advocate is not examined as witness herein this case and accused Robi Chakma also not standing trial here in this case. Being hearsay the evidence of P.W. 1 and 2, thus, cannot be relied upon. Mr. Lalremenga, the learned counsel for the respondent has rightly pointed this out during hearing. We find substance in his submission and the ratio laid down in the case of **Neeraj Dutta** (supra) also strengthened his submission.

45. The evidence of P.W.14, (protected witness 'A') reveals that she met Rohmingliana on several occasions in connection with arms dealing. She came to know Rohmingliana when he was doing border fencing construction work in Tlabung area, where her father used to stay, and she also used to go to do business of buying clothes, like shorts, from Tlabung and Bangladesh and sell it at Aizawl Bazar. Her evidence also reveals that accused Rohmingliana used to buy her merchandise/goods and his wife also used to buy dinner set from her.

45.1. Her evidence also reveals that in August, 2012, when she visited accused Rohmingliana, then he told her that he had got some arms and ammunitions to sell and asked her if she could find a buyer and he promised to pay her Rs. 10,000/- for one arm each. Then, she went back to Chittagong, Bangladesh in connection with her business and also for finding a buyer for the arms, and then she had informed her younger brother, C. Lalnghakthanga, one of the accused in the present case, about the proposal of Rohmingliana. Then, on reaching Chittagong, her younger brother C. Lalnghakthanga met her and asked her the phone number/contact number of the accused Rohmingliana, which she gave him on the spot. Then after two months, when she went home to Aizawl with her goods for business, then after some days, her brother C. Lalnghakthanga came to Aizawl with one Chakma and then her brother C. Lalnghakthanga also told her that Rohmingliana had fixed the cost of one rifle at Rs. 4,00,000/, which was very high and that he would like to see the item first.

45.2. Then, they went out and Rohmingliana did not give her any money as promised as he did not sell the said arms. Later, in the month of December, 2012, Rohmingliana called her to his residence and told her that there were consignments of more than 30 arms, to arrive and she can see the photographs of arms and he had shown the same in the computer. She then informed her younger brother, C. Lalnghakthanga, about what was told to her by accused Rohmingliana and thereafter, she went Guwahati to accompany her daughter, who was delivering a baby.

45.3. Thereafter, in the month of January, 2013, she with her sister, along with other relatives went to Tlabung to attend the wedding ceremony of the daughter of C. Lalnghakthanga and after the wedding, they went straight to Chittagong, Bangladesh accompanying the wedding party, but, her brother C. Lalnghakthanga did not accompany them. Later, her daughter Maruati was told by her friend Mary that her brother C. Lalnghakthanga also went to the house of accused Rohmingliana. Then, in the month of March, 2013, while she was in Guwahati, she came to know through news paper and media that some arms were seized along with Chakma people and she did not know that her brother C. Lalnghakthanga was one of the persons arrested in that incident and she thought that those arms would be the arms which Rohmingliana had told her about earlier and when she came back to Aizawl from Guwahati, she came to know that her brother C. Lalnghakthanga was also arrested in connection with the seizure of arms and she visited him at Aizawl P.S. and subsequently at Central Jail, Aizawl and used to gave him whatever he needed. After her brother C. Lalnghakthanga was released on bail, he told that the seized arms were provided to the accused Rohmingliana by Pu Khaia and they were seized from the farmhouse of the said Rohmingliana.

45.4. It is elicited in her cross-examination that she had not taken any arms from Rohmingliana at any point of time and she had never seen any arms in possession of Rohmingliana, and that whenever she visited Rohmingliana he never told her that he had arms ready in his possession and he had never shown her any arms physically and that

she had seen the arms only in the computer which was downloaded by his grandchildren from the internet, and that her brother had no link with terrorist or organization and her brother told her that the seized arms belongs to Pu Khaia and her brother did not tell her that it belongs to Rohmingliana and she never met Khaia even once. Her evidence also reveals that her brother, C. Lalnghakthanga, was already murdered by some Chakma persons.

45.5. Re-examination of this witness by the prosecution side reveals that her deceased brother C. Lalnghakthanga told her during his life time that the Chakma people requested him to fetch some arms from Mizoram and they in turn would help him in getting elected as member of Up-Ajala, which is a body higher than the Union Parishad. In her re-cross-examination, it is elicited that her brother told her that Khaia had fixed the rate of arms @ Rs. 4,00,000/- and it was too high. Thus, it appears that basically the evidence of this witness is hearsay. She either heard it from the respondent or from the brother about the business of arms and ammunition by the respondent. She had not seen any arms in the possession of Rohmingliana. At best, her evidence only shows that Rohmingliana is involved in the business of arms, but her evidence would be of no assistance to the prosecution side to establish that Rohmingliana had both knowledge and intention or control over the arms and ammunitions recovered and seized from the farmhouse of Rohmingliana on 07.03.2013 and 08.03.2013.

45.6. Thus, it appears that whatever protected witness 'A' had deposed in her evidence-in-chief, stands demolished in her cross-examination, where she admitted having not taken any arms from Rohmingliana at any point of time and she had never seen any arms in possession of Rohmingliana, and that Rohmingliana never told her that he had arms ready in his possession and he had never shown her any arms physically and that she had seen the arms only in the computer which was downloaded by his grandchildren from the internet, and that her brother did not have any link with terrorist or organization and her brother told her that the seized arms belongs to Pu Khaia and her brother did not tell that it belongs to Rohmingliana and she never met Khaia even once. It is to be mentioned here that C. Lalnghakthanga, is no longer alive as he was murdered. Thus, the evidence of this protected witness 'A', being hearsay, also would not help the prosecution/appellant any more, as she had never seen any arms in the possession of Rohmingliana.

46. P.W.18 is another protected witness 'B'. His evidence reveals that he was occasionally engaged by Rohmingliana @ Hmingtea to drive his Bolero vehicle, bearing Registration No. MZ-01-C-6125, since he did not have regular driver. Then on 03.03.2013, accused Rohmingliana asked him to drive his Bolero to see seedlings of rubber plant near Panisagar, Tripura and accordingly, he with Rohmingliana went to Panisagar and then proceeded to Panisagar Railway Station and met four persons and those persons were carrying rucksack bags only. Then, the four persons boarded their vehicle and they went back together towards Aizawl. When they reached the farmhouse of

Rohmingliana at Lengpui, at around 2:30/3:00 a.m., the four persons and Rohmingliana went to the farmhouse while he remained inside the vehicle and he fell asleep as he was tired and after a while, when Rohmingliana came back from the farmhouse, he saw him alone carrying one medium size polythene bag (black colour) in his hand. At about 3:30 a.m. on 04.03.2013, they came back to Aizawl. Then, after some two/three days, he came to know from the local newspaper that the four persons, who were along with them on 03.03.2013, were arrested by police personnel from the farm house of Pu Rohmingliana with arms and ammunitions and he came to know that one of them, who could speak Mizo was from Bangladesh and his name was Nghaka.

46.1. Cross-examination of this witness reveals that he was called by NARCO Office, Mizoram for interrogation and detained in the NARCO Office for one night on the following day. It is elicited that as he was addicted to liquor, he was admitted at Agape Home and he was taken to Court from Agape Home by non-Mizo officer for recording his statement, under Section 164 Cr.P.C. It is elicited that the accused is his first cousin on the paternal side and he used to visit his farmhouse sometimes for the purpose repairing JCB and other equipments. It is also elicited that he did not remember the date when he took Rohmingliana to Panisagar unless he was reminded of it and he did not remember where he was on 02.03.2013 and also he did not remember what he was doing on 01.03.2013 and on 05.03.2013. He denied that on 14.11.2014, he was not in proper sense. It is also elicited that according to him,

there is no reason for implicating Rohmingliana in this case. Thus, it appears from the examination-in-chief of this witness is that he had brought the three Chakma to his farmhouse by the respondent Rohmingliana, but the same stands demolished in his cross-examination.

46.2. Though protected witness 'B', stated that he along with Rohmingliana went to Panisagar and from Panisagar Railway he brought four persons with rucksack bags and he came back with them to Aizawl and they reached the farm of Rohmingliana at Lengpui at around 2:30/3:00 a.m., and the four persons and Rohmingliana went to the farmhouse and after a while, Rohmingliana came back from the farmhouse alone and reached Aizawl at about 3:30 a.m. on 04.03.2013, yet, he clearly admitted that he did not remember the date when he took Rohmingliana to Panisagar unless he was reminded of it and he did not remember where he was on 02.03.2013 and also he did not remember what he was doing on 01.03.2013 and on 05.03.2013, and according to him, there is no reason for implicating Rohmingliana in this case. Admittedly also this witness was addicted to liquor; he was admitted at Agape Home. Thus, the evidence of this witness also appears to be of no assistance to the prosecution, to establish possession of arms and ammunition by accused/respondent Rohmingliana. Though he testified about bringing four persons from Panisagar to the farm house of accused Rohmingliana, yet, in view of his clear admission that he could not state the date of bringing the said four persons to Aizawl, and that where he was on 02.03.2013, and what he was doing on 01.03.2013,

and on 05.03.2013, and the same demolished his version in his examination-in-chief. Of course, his evidence gave some indication about the link of Rohmingliana with the arrested Bangadeshi nationals, but the same appears to be falling far short of to establish the constructive 'possession' of the respondent Rohmingliana over the recovered and seized arms and ammunition from his farmhouse. This witness only came to know from the news paper about recovery of arms and ammunition from the farm house of accused Rohmingliana, which to the considered opinion of this court would be of no help to the prosecution/appellant to establish the charge. He is not firm in his evidence and failed to withstand cross-examination. Thus, we find this witness unworthy of credence for giving different account of the incident on different point of time.

47. P.W.21 is another protected witness-'E'. His evidence reveals that he came to know from newspaper and television, about 3/4 years back, that his brother (since deceased) Mr. Lalnghakthanga was arrested along with some Chakma people for seizure of arms and ammunitions from the farm of Pu Rohmingliana. Then, he, along with two of his younger sisters, namely, Lalparmawii and Zohmingliani met the said accused Lalnghakthanga in the Central Jail, Aizawl. After he was released on bail in the present case, he visited him at his house. It is elicited in his cross-examination that he personally did not know accused Rohmingliana and also, he did not know as to who had kept the arms in the farmhouse of Rohmingliana.

48. Thus, it appears that the evidence of protected witness 'E' also would be of no assistance to the prosecution/appellant side. Though Mr. Zoramchhana, the learned Special Public Prosecutor had contended to place reliance upon the same, yet, in view of his (P.W.21) clear admission that he did not know who kept the arms in the farm of Rohmingliana, we are of the view that the argument so advanced is a misplaced one.

49. So, we find that the evidence of protected witness-'A', 'B' and 'E' i.e. P.W. 14, P.W.18 and P.W.21, are falling far short of to establish that arms and ammunitions, so recovered and seized from the farmhouse of accused/respondent Rohmingliana, on the relevant dates i.e. 07.03.2013 and 08.03.2013, were in his conscious possession.

50. The above, being the factual and legal position, it cannot be said that the appellant/prosecution side had succeeded in establishing the basic ingredients of the charge under Section 25(1AA) of the Arms Act against the accused/respondent.

51. The other prosecution witnesses also would not rescue the prosecution/appellant's case from its inevitable consequence. P.W.5-Shri Rotluangpuia was a driver of accused/respondent Rohmingliana and he came to know from the media about recovery of arms and ammunitions from the area of accused Rahmingliana, but, he do not know exactly from where the arms and ammunitions were recovered. P.W. 9, Shri N.S. Bist is the Under Secretary to Govt. of India, Minsitry of Home Affairs and he got the prosecution sanction, Ext. 8,

accorded from the authority, as per Section 45(1) of the UAPA, to prosecute respondent Rohmingliana, under Section 23(2) of the UAPA. P.W.9 Shri Kanon Gopinathan, is the then District Magistrate of Aizawl, who had accorded prosecution sanction, Ext.-P-10, to prosecute respondent Rohmingliana, under Section 25(1AA) of the Arms Act, as per provision of Section 39 of the Arms Act. P.W.11, Mr. M.C. Joshi, is a Government Examiner of Questions Documents, who had examined the questioned documents Ext. P-1, which is Sale Deed and submitted his report, Ext. P.15.

52. P.W.15, Shri Upen Borah is Forensic Experts who had examined the seized arms and ammunition and submitted report, Ext.P.32. The report indicates that on going through proper mechanical and analytical tests, he arrived at the following conclusions:

- (i) Ex-A1 to A31 are factory 7.62 X 39 mm caliber AK series Assault Rifles. Out of these 31 rifles, one rifle i.e Ex-A19 was not serviceable and the other rifles were serviceable at their present condition.
- (ii) Ex-B is a factory made 5.56 mm caliber rifle. Ex-B is not serviceable in its present condition.
- (iii) Ex-C is a factory made 0.30 inch caliber automatic rifle and it is found serviceable in its present condition.
- (iv) Ex-D are 7.62 mm caliber magazines which can be fitted in Ex-A1 to A31.

- (v) Ex-E is a 0.30 inch caliber magazines which can be fitted in Ex-C.
- (vi) Ex-F is a 5.56 mm caliber rifle magazine which can be fitted in Ex-B.
- (vii) Ex-G are 7.62 X 63 mm caliber live cartridges which can be used to fire through Ex-C.
- (viii) Ex-H are 7.62 X 39 mm caliber live cartridges which can be used to fire through Ex-A1 to A31.
- (ix) Ex-I are 5.56 X 45 mm caliber live cartridges which can be used to fir through Ex-B.

53. P.W.13, Shri Vanlalfaka is the Addl. S.P. of CID, Mizoram who had carried out some part of investigation of the case before being transferred the case to NIA. His evidence reveals that he had seized some articles and also sent the seized arms and ammunitions to FSL for examination. P.W.19 is Shri Lalinghaksanga, who had assisted the I.O. P.W. 22 is Shri T.J. Singh, who had carried out the investigation and submitted charge sheet -Ext.P.38, against accused Rohmingliana. The evidence of theses witnesses also would be of no help to the appellant/prosecution side to establish the ingredients of the charge under Section 25(1AA) of the Arms Act, i.e. constructive possessions of arms and ammunitions recovered from the farmhouse of accused/respondent Rohmingliana.

54. Thus, we find that though prohibited bores of arms and ammunitions were recovered and seized from the farmhouse of the

respondent, yet, admittedly, the same were not found in the physical possession of the respondent. The evidence of the prosecution witnesses, including the protected witnesses are falling short of to establish that respondent Rohmingliana had knowledge, intention or control over the seized prohibited bores of arms and ammunitions. Rather, the seizure list, Exhibit-P-3 reveals that the arms and ammunitions, on 07.03.2013 were recovered from the possession of Robi Chakma, who has since been absconding. Exhibit-P-3 also bears the signature of all the three Chakma people, who were arrested from the farmhouse of the respondent on 07.03.2013. The evidence of P.W.14, protected witness 'A' indicates that the seized arms and ammunitions belongs to one Pu Khaia and the same were not belonging to Rohmingliana as told by her deceased brother. The evidence of P.W.16 also indicates that the seized arms and ammunitions were brought by one Pu Khaia, a Burmese national, to hand over the same to the Chakma people, through Rohmingliana.

55. It also appears that the respondent, in his examination under Section 313 Cr.P.C., had taken a plea that on 02.03.2013, in the evening, he had visited his ailing uncle Pu C Zakhuma at Kolashib, and there he stayed in the house of Pu Lalhlira and came back to Aizawl on 04.03.2013. He had examined three defence witnesses in support of his case. Out of these three witnesses, D.W.2 and 3 were examined to establish his plea that on 02.03.2013 and on 03.03.2013 he was at Kolashib and that he had not visited Panisagar Railway Station to bring three Chakma people to his farmhouse at Lengpui Airport Road, Aizawl.

56. D.W.1, Shri Faizul Hussain, is a mason and he was working in the farmhouse of accused Rohmingliana, under a contractor, beginning from February, 2013. His evidence also reveals that 2/3 days later, one 207 vehicle came with 2/3 people to the site. After 2/3 days later another vehicle, looks like a Jeep, with number plate TR came to the site. In both the vehicles, the accused were not there. According to him, one Nghakha was doing gardening work in the farm house of accused Rohmingliana and that police came to the farmhouse and recovered arms and ammunition and arrested three persons, who had helped Naghakha. Then seeing the movement of police and army he left the site on the following day. He denied in cross-examination that the Trunks, from where the arms and ammunitions were recovered belong to accused Rohmingliana. Thus, it appears that to some extent, this witness supports the case of the respondent.

57. The learned Special P.P., however, submits that D.W.1, in fact supported the prosecution case. But, said submission left this court unimpressed in as much as it is well settled that the prosecution side has to establish its case from the evidence adduced by its own witnesses and as such, his submission got no legs to stand upon, and accordingly, the same stands repudiated.

58. Now, it is to be seen how far the respondent had succeeded in establishing the said plea that he was in Kolasib on 02.03.2013 and on 03.03.2013. The evidence of D.W.2 -Shri Lalfakwama and D.W.3-Shri Vanlalliana, reveals that on 02.03.2013 and on 03.03.2013,

Rohmingliana was at Kolashib. Both of them categorically stated that the respondent had visited one of his uncles, namely C. Zakhuma, who was suffering from illness, at Kolashib. Their categorical version remained un-rebutted in cross-examination.

59. Though the learned Special P.P. referring to a decision of Hon'ble Supreme Court in **Gasu Jayaramani Reddy** (supra), submits that the evidence of the defence witnesses cannot be relied upon because of their affiliation to the respondent, yet, we find that in the said case Hon'ble Supreme Court has disbelieved the evidence of defence witness on account of their close affinity with the party to which they belongs and on account of their involvement in several criminal cases. But, the facts herein this case is clearly distinguishable from the referred decision. In the instant case the defence witnesses have no criminal antecedents. Therefore, we are unable to record concurrence to the submissions of the learned Special P.P.

60. Thus, accepting the evidence of these two defence witnesses at their face value, we find that the same has strengthened the respondent's plea that he was present at the house of his uncle at Kolashib on 02.03.2013 and On 03.03.2013. Thus, the evidence of D.W.2 and 3 also raise serious doubt about the veracity of the evidence of protected witness-'B' (P.W.18), who had testified that he and Rohmingliana had brought four persons from Panisagar Railway Station, Tripura to the farmhouse of respondent Rohmingliana, situated at Aizawl on 03.03.2013, and in fact outweighed the same.

61. Under the given facts and circumstances and also relied upon the ratios, so laid down by Hon'ble Supreme Court in the case of **Gunwantlal** (supra) and in the case of **Anil Kumar Bhunja** (supra) it can safely be concluded that the appellant has failed to establish that the seized arms and ammunitions were recovered from the conscious possession of the respondent Rohmingliana. The evidence, so brought on record are falling far short of, firstly, to establish that the element of intention or consciousness or knowledge of the respondent about the seized arms and ammunitions and secondly, that the respondent had power and control over the same.

62. Though the learned Special P.P., referring to a decision of Hon'ble Supreme Court in **Girija Prasad** (supra), and in **Rizwan Khan** (supra) submits that the evidence of police personnel are clear and cogent and can be based upon for recording conviction and that the testimony of official witnesses cannot be rejected on the ground of non corroboration by independent witnesses yet, the same left this court unimpressed. It is to be noted here that in the case of **Girija Prasad** (supra), Hon'ble Supreme Court has held that if there is ring of truth in the evidence of police witnesses conviction can be based upon such evidence. And in the case of **Rizwan Khan** (supra) Hon'ble Supreme Court has held that the testimony of official witnesses cannot be rejected on the ground of non corroboration by independent witnesses. There is no quarrel at the bar about the propositions of law laid down in the said cases. But, herein this case we find the evidence of P.W. 6, 7, 8, 12, 16 and 17 are not at all

sufficient to establish the constructive possession of the recovered arms and ammunitions by the respondent in his farmhouse, while admittedly the same were not recovered from his physical possession. There is *inter-se* inconsistency in the versions of the prosecution witnesses. According to P.W.16, the arms were brought by one Khaia, a Burmese national to hand over the same to the Chakma people. And according to P.W.6 the arms and ammunitions were recovered from the possession of Chakma people namely, Robi Chakma; Sabuj Chakma; and Moni Tripuri. Whereas, P.W.7 stated that the same belongs to three Chakma people as told by two non-Mizo people. Notably, the said two non-Mizo people were neither cited nor examined as witness in the present case. Even P.W.8 also stated that the arms and ammunitions on 08.03.2013 were recovered at the instance of the three Chakma people. Besides, the contents of Exhibit-P-3, the seizure list, are also being disowned by the prosecution/appellant side itself. Therefore, we are unable to record concurrence with the submission of the learned Special P.P.

63. It is to be noted here that in the back drop of evidence of the prosecution witnesses, as discussed herein above, the learned trial court, in paragraph No.10 (xxv) of the impugned judgment and order had held that –

“There was nothing in the evidence adduced by the prosecution to show that the accused had exercised control over the P.O. through an agent and the only evidence on the accused ever being present at the site was that adduced by protected witness-

‘B’. However, the finding of the as indicated in Paragraph No. 10(xxiii) above, was that the evidence of protected witness-‘B’ was not credible at all and in the event it is held that the prosecution has failed to prove that the accused had either actual or constructive possession over the P.O. or the materials seized in it.”

64. Thereafter, at paragraph No.11 of the impugned judgment the learned trial court had held as under:-

“The finding is accordingly that the prosecution did not establish the charge under section 25(1AA) against the accused, that he had in contravention of Section 7 of the Arms Act, 1959(54 of 1959), sold, transferred, exposed or offered for sale or transfer or had in his possession for sale or transfer any prohibited arms or prohibited ammunition. The finding is also that the prosecution did not establish that accused Rohmingliana, had attempted to contravene or abetted or did any act preparatory to the contravention of any provision of, or an rules made under the Arms Act, 1959(54 of 1959) which was an essential ingredients of the charge under section 23(2) of the UA (P) Act, 1967. In the result, the accused, Rohmingliana is acquitted and set at liberty of the charges framed against him.”

65. In the backdrop of given facts and circumstances on the record, the finding, so recorded by the learned trial court, appears to be justified and based on evidence on the record and backed by cogent reason. We find no substantial and compelling reason to interfere the same. With his acquittal, by the learned trial court, the presumption

of innocence of the accused/respondent becomes double, as at the first instance, the presumption of innocence is available to him, under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Next, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court as held by Hon'ble Supreme Court in the case of **Chandrappa (supra), Mallapa & Ors. (supra)**.

66. As held by Hon'ble Supreme Court in the case of **Ashok Debbarma (supra)**, so referred by Mr. Lalramenga, learned counsel for the respondent, an accused has a profound right not to be convicted of an offence which is not established beyond all reasonable doubt. Since here in this case, the prosecution/appellant side had failed to bring home the charges against the accused/respondent beyond all reasonable doubt, he has the right not to be convicted for the charges. We find substance in the submission of Mr. Lalramenga and we record concurrence to the same. Notably, in the said case it has been held as under:-

"30. An accused has a profound right not to be convicted of an offence which is not established by the evidential standard of proof "beyond reasonable doubt". This Court in *Krishnan v. State* [(2003) 7 SCC 56: 2003 SCC (Cri) 1577], held that the-

"Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite

other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case". (SCC p. 63, para 23)"

In *Ramakant Rai v. Madan Rai* (2003) 12 SCC 395: the above principle has been reiterated.

67. We have considered the submission of the learned Special P.P. for the appellant, NIA and also gone through the case laws referred by him and in view of forgoing discussion and finding we are unable to agree with his submission. There is no quarrel at the bar about the proposition of law so laid down by Hon'ble Supreme Court in the cases referred by him. But, the same, in the given facts and circumstances on the record, would not assist the prosecution in bringing home the charges against the respondent Rohmingliana, beyond all reasonable doubt. Moreover, in order to decide the issues, so raised here in this appeal, detail discussion of the same is found to be not necessary.

68. In the result, we find no substantial and compelling reason, as held by Hon'ble Supreme Court in the case of *Upendra Pradhan* (supra), to interfere with the impugned judgment and order of acquittal, so recorded by the learned trial court. Consequently, the

appeal stands **dismissed**. The parties have to bear their own cost.
Send down the record of the learned trial court with a copy of this
judgment and order.

JUDGE

JUDGE

Comparing Assistant