

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

Criminal Appeal No.23 of 2013,
along with Criminal Appeal No.25 of 2013,
along with Criminal Appeal No.05 of 2014.

A) Criminal Appeal No.23 of 2013

Sri Birajit Sinha,
Son of Late Bijoy Sinha
Residet of Paitur Bazar,
P.S. Kailashahar, Unakuti District.

..... *Appellant.*

Advocates : Sri P K Biswas, Sr. Advocate,
Sri H K Bhowmik, Advocate.
Sri P Majumder, Advocate.

– *V e r s u s* –

The State of Tripura.

..... *Respondent.*

Advocates : Sri R C Debnath, Addl. Public Prosecuro,
Sri Debashish Roy, Spl. Public Prosecutor,
Sri D C Kabir, State Counsel.

B) Criminal Appeal No.25 of 2013

The State of Tripura
(Represented by the Home Secretary,
Department of Home, Govt of Tripura).

..... *Appellant.*

Advocates : Sri R C Debnath, Addl. Public Prosecuro,
Sri Debashish Roy, Spl. Public Prosecutor,
Sri D C Kabir, State Counsel.

– *V e r s u s* –

Sri Birajit Sinha,
Son of Late Bijoy Sinha
Residet of Paitur Bazar,
P.S. Kailashahar, Unakuti District.

..... *Respondent.*

Advocates : Sri P K Biswas, Sr. Advocate,
Sri P Majumder, Advocate,
Ms. C Bhowmik, Advocate.

C) Criminal Appeal No.5 of 2014

The State of Tripura

(Represented by the Home Secretary,
Department of Home, Govt of Tripura).

..... **Appellant.**

Advocates : Sri R C Debnath, Addl. Public Prosecuro, Sri Debashish Roy, Spl. Public Prosecutor, Sri D C Kabir, State Counsel.

– Versus –

- 1. Sri Birajit Sinha,**
Son of Late Bijoy Sinha
Residet of Paitur Bazar,
P.S. Kailashahar, Unakuti District.
- 2. Sri Chandra Sekhar Sinha,**
S/o Late Ful Singha of Padmerpar,
P.O & P.S - Kailashahar, District - Unokoti.
- 3. Md. Badrujamman,**
Son of Late Abdul Sattar of Tillabazar,
P.O & P.S. - Kailashahar, District - Unokoti.
- 4. Shri Anil Chandra Das,**
Son of Shri Srinath Das of
North Badarghat, Agartala,
P.S - West Agartala, District - West Tripura.
- 5. Shri Promode Ranjan Majumder,**
Son of Late of Priyanath Majumder,
West Pratapgarh, P.O - A.D. Nagar,
P.S - West Agartala, District - West Tripura.
- 6. Shri Ram Krishna Sinha,**
S/o Late Gour Gopal Sinha of
Padmerpar, P.O & P.S - Kailashahar,
District - Unokoti.

..... **Respondents.**

Advocates : Sri P K Biswas, Sr. Advocate,
Sri H K Bhowmik, Advocate.
Sri P Majumder, Advocate.

_B_E_F_O_R_E_
THE HON'BLE CHIEF JUSTICE MR DEEPAK GUPTA
HON'BLE JUSTICE MR S TALAPATRA

Date of hearing : 12.6.2015.

Date of Judgment : 07.9.2015.

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER

(Deepak Gupta, CJ)

By means of this judgment, the following three appeals
(*Criminal Appeal No.23 of 2013, Criminal Appeal No.25 of 2013 and Criminal Appeal No.5 of 2014*) are being disposed of since they arise out of one incident and one judgment.

2. The prosecution story briefly stated is that on 20th July, 2004 at about 11.35 a.m. accused Birajit Sinha, who is a member of the Tripura Legislative Assembly along with the other co-accused including his security guards provided to Birajit Sinha by the police, reached Babur Bazar tri-junction in Kailashahar town. The accused party was travelling in two vehicles. It is alleged that there was some bye-election to a ward of North Tripura Zilla Parishad being conducted on that day and Birajit Sinha was annoyed that the supporters of his party had been restrained from casting their votes by the complainant Abdul Rahaman. At Babur Bazar tri-junction Birajit Sinha along with the other accused got down from his vehicle and then went to the complainant and accused the complainant of

restraining the supporters from casting their votes. An altercation took place between Birajit Sinha and the informant Abdul Rahaman.

3. The story of the prosecution is that thereafter the accused persons including Birajit Sinha, Chandra Sekhar Sinha and Badrujamman started indiscriminate firing. The police guards also started firing. As a result of which two persons suffered serious injuries and Abdul Hannan son of the informant was shot. Abdul Hannan later died. It has also come in evidence that one police guard namely, Nikhil Chandra Deb, also died later in the occurrence. After recording of the FIR, investigation was conducted. After investigation the accused persons were charged with having formed unlawful assembly at Babur Bazar tri-junction along with the deceased Nikhil Chandra Deb with the common object of causing murder of Abdul Hannan and also causing grievous injuries to Md. Abdul Wahid and Md. Afruj Ali. Therefore, they were charged with having committed offences punishable under Section 148, Section 302 r/w Section 149 and Section 326 r/w Section 149 of I.P.C. As far as Birajit Sinha is concerned, he was also charged with carrying 17 numbers of bullet as against the maximum 12 numbers of bullets permissible under Licence No.602/KAL/92 issued in respect of .38 Revolver body No.852814. Therefore, he was charged with having committed an offence punishable under Section 30 of the Arms Act, 1959. After trial the learned Sessions

Judge, North Tripura District, Kailashahar acquitted all the accused persons of the charges leveled against them under Section 148, Section 302 r/w Section 149 and Section 326 r/w Section 149 of I.P.C. Accused Birajit Sinha was convicted for having committed an offence punishable under Section 30 of the Arms Act, 1959 and has been sentenced to undergo simple imprisonment for 3(three) months and to pay fine Rs.1,000/- and in default of payment of fine to suffer simple imprisonment for 15(fifteen) days.

4. Criminal Appeal No.23 of 2013 has been filed by Sri Birajit Sinha challenging his conviction under Section 30 of the Arms Act, 1959. Criminal Appeal No.25 of 2013 has been filed by the State seeking enhancement of sentence imposed upon the accused Birajit Sinha. Criminal Appeal No.5 of 2014 has been filed by the State challenging the acquittal of all the accused.

5. Sri Debashis Roy learned Special Public Prosecutor, appearing for the State of Tripura, submitted in Criminal Appeal No.5 of 2014 that there are three separate incidents. The first is shooting at Babur Bazar where two persons Afruz Ali and Abdul Wahid were injured. The second incident is at Yubarajnagar where Abdul Hannan was killed. The third incident relates to the death of the Nikhil Chandra Deb due to unexplained firing in the auto rickshaw. His main submission is that though, initially, the appellants may have had the right to private defence but once they

had left Babur Bajar where the mob had collected there was no danger to the life of Birajit Sinha or the persons accompanying him and Abdul Hannan was killed not in exercise of right of private defence but with a view to settle scores with the complainant Abdul Rahaman.

6. He also submits that some shots were fired in the auto rickshaw while Nikhil Chandra Deb was being taken away towards the hospital and these shots were fired from a firearm which had been issued to the police officials and the forensic expert has clearly stated that the death of deceased Nikhil Chandra Deb had been caused due to gunfire from a 9 mm pistol bearing Sl. No.16216543 issued in favour of accused Promode Ranjan Majumder. It has been urged by Sri Roy that the admitted case of the defendants is that an altercation had taken place and the defendants had not denied that they used their firearms and therefore, the accused are guilty of murdering Abdul Hannan and hence the order of acquittal is not justified.

7. On the other hand, Sri P K Biswas learned senior counsel submits that this is a clear case where the prosecution has tried to change the original story. According to him, all the injuries are *part and parcel* of one occurrence. He submits that the accused were surrounded by a mob and in case they had not fired in the air they would have been killed. Therefore, they were entitled to exercise

their right of private defence. He also submits that the prosecution in this case has acted in highly unfair manner. Admittedly, the original G.D. entry book has been torn off and three pages have been replaced. He also submits that the investigation has been conducted in a manner to ensure that Birajit Sinha is convicted. With regard to the conviction of Birajit Sinha the stand of Sri Biswas is that no offence has been committed and even if offence has been committed, since there was no sanction as required under Section 39 of the Arms Act, 1959 the conviction of the accused is totally unjustified. In the alternative he submits that the accused has already spent 21 days behind bars and his sentence should be limited to the period of incarceration already undergone.

8. With regard to the appeal of Birajit Sinha, the stand of Sri Roy is that no prosecution sanction is required. The accused has, admittedly, violated the terms of the licence and, therefore, the offence is one under Section 30 of the Arms Act for which no sanction is required. He also submits that the accused being a member of the Legislative Assembly is required to be aware of the law and he, therefore, submits that the accused should not have been dealt with lightly and the maximum punishment should have been imposed upon him.

9. Before coming to the contentious facts, we may first set out the facts which are admitted and not disputed. It is the

admitted case of the parties that on 20th July, 2004 accused Birajit Sinha along with his co-accused and deceased police guard Nikhil Chandra Deb came to the tri-junction at Babur Bazar in two vehicles. It is also the admitted case of the parties that an altercation took place between Birajit Sinha and the informant Abdul Rahaman. It is also the admitted case that immediately a mob gathered at the spot. It is also not disputed that some members of the party of Sri Birajit Sinha fired from their firearms. It is also not disputed that Abdul Hannan received bullet injuries and was taken to hospital and later expired. It is also not disputed that Abdul Wahid and Afruz Ali sustained injuries as a result of firing.

10. The case of Birajit Sinha is that he was attacked by the mob and to protect himself firing was resorted to. According to him, he did not fire from his revolver. Some of the other co-accused have admitted in their statements under Section 313 of Cr.P.C that when they reached the tri-junction and got down, Birajit Sinha caught hold of Abdul Rahaman by his collar and arguments took place between them. Thereafter some members of the locality rushed to the spot and Birajit Sinha uttered that none of the CPI(M) people would be left alive. However, some of them have denied this allegation. Even before us Sri Roy did not dispute that at the initial stage Birajit Sinha and his other co-accused were

entitled to exercise their right of private defence. His only submission is that there are three separate occurrences, as referred to hereinabove and that after the occurrence at Babur Bazar had finished Birajit Sinha and his party had gone about 150 meters away and there were no threat to their lives and as such, they were not entitled to exercise their right of private defence.

11. To appreciate the rival contentions of the parties we may make reference to certain documents and evidence. The first version of the incident was given by Abdul Rahaman on 20th July, 2004 itself. The occurrence took place on 11.45 a.m. and the FIR was lodged at 3.45 p.m. A complaint in writing has been made by the complainant which reads as follows :

***"To
The O/C
Kailashahar P.S.
North Tripura.***

Subject : Ejahar.

Sir,

My humble submission is that, today dt. 20.7.04 at around 11.45 a.m Birajit Sinha, Chandra Sekhar Sinha, Badarujyaman along with the P.G's of Birajit Sinha namely (1) Nikhil Ch. Deb (2) Anil Chandra Das, (3) Pramod Ranjan Majumder (4) Ramkrishna Sinha and a few unknown persons arrived at Baburbazaar Tri-junction from Arabindanagar colony with his(Birajit Sinha) 2(two) vehicles. On seeing me, they got down from the vehilces and being excited() asked me as to why I restrained their voters in casting their votes. By saying this () caught hold of my shirt and (they) had been trying to put me in their vehicle forcefully and while I had been trying to resist them

at that time my son named Abdul Hannan along with a few other youths of the locality who were found standing at a little distance noticing the aforesaid incident came forward to rescue me therefrom. Then all of a sudden Birajit Sinha, Chandrasekhar Sinha, Badaraujjaman released me and started indiscriminate firing from their pistols (fire-arms) upon my son as well as the youths of the locality. Being directed by Birajit Sinha his 4(four) P.G's also had started indiscriminate firing and resulting of which, Abdul Wahid as well as Afruj Ali of the locality had sustained bullet injuries. Birajit Sinha himself shot my son named Abdul Hannan from the pistol in his hand. At the time of taking my son to Kailashahar hospital he was succumbed. Due their indiscriminate firing one name Nikhil Ch. Deb the P.G. of Birajit Sinha has sustained bullet injuries. At that time, the people of the bazaar (market) were found fleeing away from there out of fear. Then one mobile vehicle of T.S.R came thereon(i.e. place of occurrence) from the side of Irani and Birajit Sinha along with his other assosicates fled away therefrom with an auto rickshaw towards Yubarajnagar leaving their 2(two) vehicles over there. I have witnesses. I seek justice.

*Dt. 20.7.2004
Sd/- Abdul Rahaman
S/o Lt. Ershad Ali
of village Yabarajnagar, P.O Babur Bazar,
P.S. Kailashahar, North Tripura."*

A bare perusal of the FIR clearly shows that the case of the prosecution which is now being set up that there were three separate incidents does not appear to be correct.

12. In the FIR the informant states that Birajit Sinha, Chandra Sekher Sinha and Badrujamman started indiscriminate

firing from their pistols upon his son Abdul Hannan and other youths of the locality. On the direction of Birajit Sinha his four police personnel also started indiscriminate firing with their weapons, as a result of which Abdul Wahid and Afruj Ali sustained bullet injuries. The complainant has categorically stated that his son was shot by Birajit Sinha by the use of his own pistol.

13. While appearing in the witness box as PW.1, the informant Abdul Rahaman has given a totally different version. According to him, after the altercation started between him and Birajit Sinha, Birajit Sinha pulled out his revolver. At that time two persons removed the complainant from the scene of occurrence. It is alleged that Birajit Sinha also threatened that none of the CPI(M) dogs would be left alive and he asked his people to fire. Thereafter the four police guards opened fire and started moving towards the west direction. Then the two vehicles immediately left the spot. According to him, his son Abdul Hannan was coming from the opposite direction, meaning he was coming from the west side towards east. On seeing him accused Chandra Sekhar told the others that Abdul Hannan was the son of the informant Abdul Rahaman and then the accused namely, Ram Krishna Sinha, Anil Chandra Das, Promode Ranjan Majumder and Nikhil Chandra Deb opened fire from their revolvers on his son. This is totally contradictory to the version given by him in the FIR.

14. According to this witness, a Tripura State Rifles(TSR) vehicle came to the spot and his son Abdul Hannan was taken to the hospital. Another person namely, Abdul Wahid who had sustained injuries also entered in the said vehicle and they were taken to the hospital. On reaching the hospital Abdul Hannan was declared dead but Abdul Wahid was admitted and treated in the hospital. The witness states that in the hospital he saw the dead body of Nikhil Chandra Deb also. He also states that on his instructions the complaint was written by one Biswajit Datta and he had put his signature on the written complaint and handed it over to the duty officer of Kailashahar Police Station. At the end of his statement the witness again stated that Birajit Sinha had first started firing. In cross-examination he stated that the distance between the tri-junction of Babur Bazar and the tri-junction of PACS Chowmuhoni is about 50 yards and there are many permanent shops in both the tri-junctions. He was confronted with the statement under Section 161 Cr.P.C in which it was not mentioned that Birajit Sinha brought out his revolver from the side of his belt. There is no mention either in the FIR or in the statement under Section 161 Cr.P.C that Birajit Sinha uttered the words that '*no CPI(M) dogs would be left alive*'. Similarly neither in the FIR nor in the 161 statement is there any mention that Birajit Sinha uttered the word '*fire*' and called upon his co-accused to start firing.

15. The witness was also confronted with his statement recorded under Section 161 Cr.P.C wherein it was not mentioned that his son Abdul Hannan was coming from the westernly direction or that he told his son to go home. Neither in the FIR nor in the statement under Section 161 Cr.P.C it is mentioned that when Chandra Sekhar Sinha saw his son Abdul Hannan he identified him as the son of the complainant and then the other accused persons namely, Ram Krishna Sinha, Anil Chandra Das, Promode Ranjan Majumder and Nikhil Chandra Deb opened fire from their pistols on his son. It is thus obvious that all these are improvements made in the statement. Whereas in the FIR he had stated that it was Birajit Sinha who had fired upon his son, in Court he did not say that. In fact in Court he stated that he did not see any bullet being fired from the revolver of accused Birajit Sinha. Thereafter the Court recorded that hints are being thrown from the side of the prosecution and then the witness stated that once Birajit Sinha opened fired at the tri-junction of Babur Bazar. This witness admitted that he has also been charged in criminal case filed at the instance of Birajit Sinha.

16. PW.2 Afruz Ali states that at the time of occurrence he was at the tri-junction of Babur Bazar in front of a 'pan' shop. He saw two motor vehicles stopping at the Babur Bazar tri-junction and thereafter, Birajit Sinha and some other persons got down from

the vehicles. In the meantime, a large number of persons gathered at that place and he noticed that an altercation took place between the two parties. He also states that in the meantime a *hue and cry* arose and instantly the two vehicles left the spot. The members of the said mob started throwing stones and thereafter he heard the sound of gunfire. He received bullet injury on his left leg but could not say who had fired the bullet. This witness was declared hostile but nothing much has been extracted in his cross-examination. According to him, he is apolitical and is not the supporter either of the Congress(I) party or the CPI(M) party. He also stated in cross-examination that the two vehicles of Birajit Sinha were stopped by the mob assembled at the tri-junction of Babur Bazar. He also stated in cross-examination that after the mob started throwing stones towards Birajit Sinha and his associates then the police guards of Birajit Sinha started firing to save him.

17. PW.3 Abdul Mannan is the brother of deceased Abdul Hannan. In Court he stated that he was also at Babur Bazar at the time of incident and sitting in a tea stall when two vehicles came at the spot. According to him, these vehicles stopped and thereafter Chandra Sekhar Sinha got down from one of the vehicles and called his father. As soon as his father went towards Chandra Sekhar Sinha accused Birajit Sinha asked his father who was preventing the voters from going to the booth at Arabindanagar. His father replied

that nobody was preventing anybody from voting but Birajit Sinha got angry and caught hold of his father by the collar. According to him, he and his associates went to save his father and then Birajit Sinha took out two pistols from his bag and handed over one pistol to Badrujjaman and then Birajit Sinha and the security guards fired from their pistols. Thereafter they went towards the western side. According to the witness, he took shelter in a shop near 'Sonali PACS' and observed that his brother was coming from the westernly direction and he was standing in the 'varandah' of a shed on the opposite side of the road. In the meantime, Birajit Sinha, Chandra Sekhar Sinha and the security guards were proceeding towards southernly direction and again opened fire from their guns. He heard Chandra Sekhar Sinha pointing out his brother Abdul Hannan to Birajit Sinha and then Birajit Sinha gave direction to the police guards to kill his brother Abdul Hannan. Then one police guard opened fire at his brother who received a bullet injury and fell down. Thereafter Badrujamman, Birajit Sinha, Chandra Sekhar Sinha and one police guard boarded one auto rickshaw and the other three police guards boarded another auto rickchaw and proceeded towards Kailashahar. After some time he heard the sound of gunfire from the second auto rickshaw. One vehicle of TSR came to the spot and they shifted his brother Abdul Hannan to the hospital. Abdul Wahid also got into the vehicle. He states that Afruz Ali also sustained bullet injuries in the occurrence. In cross-

examination he states that at the time of firing and other incident he was at Babur Bazar tri-junction and immediately before the occurrence his deceased brother Abdul Hannan was standing in the *varanda* of '*Sonali PACS*'. The accused persons opened fire from their pistols coming from Babur Bazar tri-junction to Yubarajnagar tri-junction. He admits that he was standing next to his father Abdul Rahaman and Chandra Sekhar Sinha also knew him from before. The witness has confronted with his statement under Section 161 Cr.P.C wherein it was not stated that he was with his father or that he had actually witnessed the occurrence.

18. PW.4, Basit Ali, is the driver of one of the Maruti vehicle. According to him, Birajit Sinha along with Chandra Sekhar Sinha and some other persons boarded his vehicle and at Babur Bazar a huge number of persons had gathered in front of the vehicle and he stopped the same. Birajit Sinha got down from the vehicle and then there were some discussions with some unknown persons. A mob collected at the spot and some persons of the mob started shouting and some were saying '*kill*' '*kill*'. Seeing the situation he fled away from the spot in his vehicle. This witness is a prosecution witness and he has not even been declared hostile. It is thus obvious that the prosecution admits that before firing took place a mob had collected and some persons in the mob were shouting '*kill*' '*kill*'. In cross-examination by the defence, he stated

that his vehicle was stopped forcibly by some people at Babur Bazar.

19. PW.5, Sona Miah, also tells a similar story that the vehicle was stopped and when Birajit Sinha asked why his vehicle was stopped Abdul Rahaman replied that he had not asked the vehicles to be stopped. Thereafter some people started brick batting and one of the security persons carrying a rifle in his hand came in front of Birajit Sinha and opened fire towards the air. Thereafter Birajit Sinha and his police guards also opened fire from their pistols. This witness was declared hostile and he denied making any statement to the police officer. He also denied that he was a Congress(I) worker. In cross-examination by the accused he stated that he is a CPI(M) worker.

20. PW.6, Abdul Wahid, is the other injured person. He is a 'teacher' by profession. He also noticed the vehicle of Birajit Sinha being stopped at Babur Bazar. Thereafter there was an altercation between Birajit Sinha and Abdul Rahaman. A large number of people gathered at the spot and there was scuffling between some persons. He states that Abdul Mannan told him to leave the place and therefore, he and Abdul Mannan went towards the shop of Abdul Mannan. In the meantime, he received a bullet injury in his abdomen. He, thereafter, came to the Irani road and within a few minutes a TSR vehicle came at the spot. He boarded

the vehicle and later he came to know that son of Abdul Rahaman had died as a result of bullet injury received at the spot. According to him, he did not see who fired. He was also declared hostile but did not support the prosecution. Therefore, both the injured persons Afruz Ali and Abdul Wahid have not supported the prosecution story at all.

21. PW.7, Shamsheer Khan, allegedly had a shop near Babur Bazar tri-junction. According to him, his shop is on the Yubarajnagar - Babur Bazar road. According to him, from his shop the Babur Bazar tri-junction is visible. His statement is that about 11.30 a.m. Abdul Hannan son of Abdul Rahaman came to his shop from easternly direction which would mean that he came from the Babur Bazar side and told him that there was disturbance in the eastern side of the market. Thereafter they closed the door on the eastern side and came out of the shop towards the southern side. Then he noticed that Birajit Sinha, Chandra Sekhar Sinha and other security personnel moving towards his shop and they were firing at the same time. On seeing them Abdul Hannan crossed the road and took shelter in the *varandah* of *Pacs*. Thereafter Chandra Sekhar Sinha pointed out Abdul Hannan and then Birajit Sinha gave signal to his security personnel to fire on Abdul Hannan. Abdul Hannan received a bullet injury and fell down. Thereafter Birajit Sinha, Chandra Sekhar Sinha, Badrujamman and one other person boarded

one auto rickshaw and other members of the party boarded another auto rickshaw and after some time he heard the sound of firing from the second auto rickshaw. He states that after 10/15 minutes of the incident he went to the hospital and after the incident he did not reopen the shop for that day. He then goes on to state that on the date of occurrence some police personnel came to the place of occurrence and after 10/12 days of the occurrence they came again. He categorically states that from the hospital he did not go back to his shop. He admits that when he saw Birajit Sinha and his party moving from west to east they were moving backwards i.e. they were retreating moving towards the east direction while facing towards the western direction. He denied the suggestion that Abdul Rahaman and other miscreants had brick batted and stoned the party of Birajit Sinha when they were moving backwards.

22. PW.8, Jahur Ali, also states that there was brick batting by the mob and firing by the accused persons but this statement is not very relevant. He is also a witness to the seizure list whereby 8 numbers of empty cartridges were seized by the police. He is also a witness to the handing over a bullet by the medical officer in a bottle to the police officer. In cross-examination, he states that the bullets were not seized in his presence. He also could not say what was inside the bottle Exbt. M.O.1.

23. PW.9 Akkal Ali has also stated that the mob started attacking the accused persons and first they ran towards western direction and then opened fire. According to him, he did not see Birajit Sinha opening fire. He was declared hostile.

24. PW.10, Dilwar Hussain, is an auto rickshaw driver and according to him, a mob gathered and started throwing bricks and stones towards Birajit Sinha and his party. He also heard the sound of gunfire and being afraid took his auto rickshaw towards Yubarajnagar. Thereafter Birajit Sinha and two other persons boarded another auto rickshaw in front of his auto rickshaw and some persons boarded his auto rickshaw with one injured person. Thereafter both the auto rickshaws went towards Kailashahar Hospital. This witness was also declared hostile and denied making statement to the police that after the four persons had boarded his vehicle he heard a sound of gunfire in the back of the autorickshaw but could not make out whether this sound of gunfire was inside his auto or from outside. This witness in cross-examination states that he knows PW.7 Shamsher Khan. According to him, Shamsher Khan has no shop at Yubarajnagar tri-junction. He further stated that Shamsher Khan is an auto rickshaw driver. The prosecution made no attempt to re-cross-examine this witness after he had made the above statement.

25. PW.11, Ataur Rahaman, is a driver of a private car. He was standing at Irani Out Post along with his vehicle. According to him, information was received in the Out Post that some chaotic incident(*Gondogol*) had taken place at Babur Bazar. Thereafter he was asked by the Officer-in-Charge of the Out Post to take his vehicle with 10 TSR personnel to Babur Bazar tri-junction in front of the *PACS* situated on the Yubarajnagar road. After reaching there they found Abdul Hannan was lying in the shed of *PACS* and he was rushed towards the hospital. According to him, Shamsheer Khan owns a shop near the west side of the tri-junction and that Abdul Hannan was lying about 20-25 cubits from the shop of Shamsheer Khan. He further stated that now the '*tong shop*'(tiny shop) of Shamsheer Khan is no longer in existence since a building has been constructed by his brother Kutub Ali. This witness in cross-examination states that before going to the hospital they had come to the Kailashahar Police Station and then went to the hospital. After leaving the hospital they came back to the Kailashahar Hospital. The witness was confronted with his statement made under Section 161 Cr.P.C wherein it was recorded that later he heard that Abdul Hannan had sustained injuries as a result of which he died.

26. PW.12, Biswajit Datta, is the person who scribed the written complaint on the basis of which FIR was lodged. PW.13, Dr.

Keshab Sen Laskar, conducted the post mortem on both the deceased Nikhil Chandra Deb as well as Abdul Hannan.

27. PW.14, Gobinda Bhowmik, is a constable and in his presence S.I., Bahadur Debbarma, seized four numbers of pistol. His attention was drawn to his statement under Section 161 Cr.P.C in which it is mentioned that he had told Daroga Babu that the seized arms had not been separately packed and sealed. PW.15, Md. Usman Ali, is another brother of Abdul Hannan. In cross-examination he states that he is not an eye-witness. However, he accompanied his brother to the hospital and he states that before reaching the hospital they went to the Police Station and informed the Officer-in-Charge about the occurrence.

28. PW.16, Dr. Debabrata Debnath, was the medical officer of R.G.M Hospital, Kailashahar. He has also proved the post mortem reports. He also stated that one bottle bearing metallic substances i.e. pieces of a bullet which were extracted from the body of Nikhil Chandra Deb was handed over to the Officer-in-Charge of the Police Station. In cross-examination, he stated that before handing over the metallic substances it was kept with the doctors in a small vial which was sealed with adhesive plaster. He stated that the metallic substances were handed over to the Officer-in-Charge of the Police Station under sealed cover and bearing the signatures of all of them.

29. PW.18, Dr. Sudip Debnath, was the Sr. Scientific Officer of the State Forensic Science Laboratory at the relevant time. He examined the exhibits and after comparison he found that one firearm was a .38 revolver and 4 firearms were .9 mm. pistols. It is not disputed that the .38 revolver belong to Birajit Sinha and the four .9 mm pistols are of the four security guards. In cross-examination he stated that he received all the exhibits i.e. the pistols, the firearms, the empty cartridges etc. and the ammunition in one wooden box. All the 5 revolvers were kept in one cloth packet prepared by the Investigating Officer(I.O). The muzzle of the barrel of each firearm was not sealed by the I.O. He admitted that if the muzzle of the firearm is not sealed it could happen that the other firearms would be affected and it would not be possible to state which of the firearms was recently fired. He also stated that when he opened the wooden box none of the exhibits bore the signatures of witnesses. The exhibits also did not bear any date of seizure.

30. PW.20, Bahadur Debbarma, prepared the Surathal(inquest) report and he investigated the matter on the first day and according to him, on 21.7.2004 he handed over the Case Diary to I.O., Sri S Basu Roychoudhury. The witness states that after he prepared the inquest report at 3.20 p.m. and seized the firearm belonging to Nikhil Chandra Deb. Later at 3.45 hours he seized the

firearm from the police guard Ramakrishna Sinha. He also seized the firearms of Promode Ranjan Majumder and Birajit Sinha. He also seized the arms licence issued in favour of Birajit Sinha. Shockingly, this police officer states that at the time of preparing the Surathal report of both the deceased, Abdul Hannan and Nikhil Chandra Deb, nobody stated to him about the time, date, place of injury or in fact how the injury was caused and, therefore, he did not mention the same in the inquest report.

31. This statement is totally unbelievable. Admittedly, a large number of people had gathered at the Kailashahar Hospital. Both sides were present in the Kailashahar Hospital. Birajit Sinha and his party could have been asked how Nikhil Chandra Deb died and the complainant could have been asked how Abdul Hannan died. In fact, it is apparent that the complainant and his sons first went to the Police Station at Kailashahar and the version of this officer that he was not told how the two persons died, is totally unbelievable and it cast a doubt with regard to the correctness of the Surathal report and the investigation. Another shocking aspect of the matter is that this witness admits that after seizing the arms and ammunition he did not even take care to seal the arms and ammunition or to keep them in sealed cover or packets. According to him, he did not take the signature of any witness in respect of the seizure of the arms and ammunition. This is extremely shoddy

investigation. Two people had died and the least which was expected of a police officer of the rank of Sub Inspector was to ensure that the seizure is conducted properly and in accordance with law. There were hundreds of people who had collected at the hospital but this police officer did not try to obtain information as to how the occurrence had taken place. This story cannot be believed. It would be pertinent to mention that a suggestion was put to this witness that when the informant Abdul Rahaman and his son Usman Ali came along with the injured Abdul Hannan to the Kailashahar Police Station and reported the matter, they had made no allegation against the accused persons. He denied this suggestion. A suggestion was also made to him that he had made an entry to this effect in the General Diary Register and later on he in connivance with the Officer-in-Charge of the Police Station had removed three pages of the General Diary Register and replaced them with three other pages under political pressure.

32. PW.22, Sri S Basu Roychoudhury, was the Officer-in-Charge of the Kailashahar Police Station on 20th July, 2004. According to him, he was informed by PW.21 about the occurrence and, therefore, he told PW.21 to go to the hospital. According to him, when he returned to the Police Station from law and order duty at 3.55 p.m. he found that the FIR had already been recorded. Thereafter he took over the investigation and went to the hospital

at Kailashahar. He reached the hospital at about 4/4.25 p.m. and came to know that two persons namely, Constable Nikhil Chandra Deb and Abdul Hannan had died. Thereafter he visited the scene of occurrence at 5.40 p.m. According to him, the place of occurrence was identified by the complainant. He then prepared the hand sketch map with index i.e. Exbt.P/27 and 28. He also seized 8 numbers of empty bullet and later arrested the accused persons from the office of the Superintendent of Police. He also states that one FIR No.KLS PS 77/2004 was lodged at the instance of Birajit Sinha and one FIR No.KLS PS 78/2004 was lodged at the instance of the security personnel of Birajit Sinha. This witness also states that he re-seized one bullet head kept in a container which was recovered from the dead body of Abdul Hannan and 5 numbers of pellets which were recovered from the dead body of Nikhil Chandra Deb kept in another container. According to him, both the containers containing the bullet head and pellets and the seized arms and the wearing apparels were sent to the State Forensic Science Laboratory for examination after obtaining orders from the Chief Judicial Magistrate concerned. He states that he reached the Police Station at 3.55 p.m. Thereafter, he went to the R G M Hospital, Kailashahar where he remained till 5.25 p.m. Surprisingly he states that he did not inform PW.21, Bahadur Debbarma, about the lodging of the case against Birajit Sinha and others. He also states that he made no attempt to record the statement of Usman

Ali though he was present at the spot. He admits that in his Case Diary there is no note about any shop owned by Shamsheer Khan and even in his hands sketch map there is no mention of about any shop owned by Shamsheer Khan. He also states that he never recorded the statement of any Shamsheer Khan. He admits that three pages of the G.D. book were torn and replaced. The relevant portion of his statement needs to be extracted :

".....I cannot understand whether separate sheets in the concerned G.D i.e. 20.7.2004 were stitched containing 3 pages with gum/in the G. D Book. On seeing it appears that 3 separate sheets were gummed in the G.D. book of the concerned date and time. There are evidence of tearing last 3 pages of the concerned G.D. Book. In a tearing portion of CD the writing of date is mentioned 20.7.2004. This is not a fact that at the relevant date and time of the incident I was informed by various people that Birajit Sinha and his associates were attacked by Abdul Rahaman and others at Baburbazar with a view to kill him. This is not a fact that the above information was entered into the GD of the concerned date and time....."

.....On 26.7.2004 the seized arms and ammunition were sent to State Forensic Lab. The seized arms and ammunition were kept in separate sealed cover while I received from Bahadur Debbarma. I re-seized those arms and ammunition as it was seized by Bahadur Debbarma. Before re-seizing I inspected all the seized arms and ammunition after opening the sealed cover. Thereafter I kept those arms and ammunition under sealed cover. No

witness were present at the time of re-seizing.....”

According to him, the seized arms and ammunition were kept in a separate sealed cover when he received them from Bahadur Debbarma. This is totally contrary to the statement of Bahadur Debbarma who states that he had never sealed these firearms or kept them in any sealed cover. This witness also states that he re-seized these arms and ammunition and after re-seizing the same he inspected all the seized arms and ammunition after opening the sealed cover and thereafter kept these arms and ammunition again under sealed cover. Shockingly this witness states that no witness was present at the time of re-seizing or re-sealing.

33. PW.23, Nripendra Kr. Debnath, was a Sub Inspector of Police in the CID and he took charge of the investigation of the case and received the case docket from PW.22 on 1st August, 2004. He visited the place of occurrence on 2nd August, 2004 and recorded the statements of certain witnesses. He recorded the statement of Shamsheer Khan for the first time on 3rd August, 2004. This is the entire prosecution evidence.

34. After the statements of the accused were recorded, the defence also examined witnesses to prove that in the disciplinary proceedings it was found that the police guards of

Birajit Sinha were justified in using their firearms with a view to protect Birajit Sinha.

35. We have personally inspected the records of the case including the Case Diary. It is more than apparent that 3 pages of General Diary Register were torn off and have been replaced. This shows that the police investigation was totally unfair. It is indeed shocking that police officials can give no explanation or reason for 3 pages of the G D Register being torn off. If such a situation is permitted to continue there would be no faith left in the police establishment.

36. It has been urged by Sri Roy that merely because the investigation has been faulty is no ground to acquit the accused. There can be no denial to the legal proposition that just because the investigation is shoddy or faulty the accused is not to be acquitted. However, the prosecution also cannot take benefit of shoddy investigation. In this case there are certain circumstances which stand out. Admittedly, immediately after the occurrence, information at the Irani Out Post was received that there was chaos at Babur Bazar. Some entry should have been made there and proved on record. There is sufficient evidence on record to show that when deceased Abdul Hannan was being taken to hospital the complainant and his son Usman Ali were accompanying him and they all went to the Kailashahar Police Station. This has been

stated by some of the witnesses as stated herein above including the informant and his son Usman Ali and also PW.4, Basit Ali, driver of the TSR vehicle. A G.D. entry would have been recorded there and then because by that time it was known that Abdul Hannan was dead or was at least badly injured. The FIR should have been recorded there and then.

37. The matter does not end here. PW.21 the Officer-in-Charge of the Police Station went to the hospital immediately. He prepared the inquest reports but did not tried to find out how the deceased persons had died. This is unbelievable. He seized arms and ammunition and other relevant evidence such as the container containing bullets and pieces of bullet extracted from the bodies of Abdul Hannan and Dulal Chandra Deb but did not care to seal them. No proper procedure of seizure prescribed under Section 100 Cr.P.C was followed. There is no sealing and no independent witnesses have been associated. Admittedly, all these arms and ammunitions were recovered and seized in the hospital where a large number of independent witnesses such as doctors and staff of the hospital would have been available.

38. PW.20 did not even make any effort to send a report to the Police Station and lodge an FIR immediately after he reached the hospital by 12.00 noon. There is unexplained delay of more than 3 hours and 45 minutes in lodging the FIR. The occurrence took

place at 11.45 a.m. By 12.00 noon everybody was in the hospital and 2 persons had been declared dead. PW.20 had reached the hospital after informing PW.22. He carried out the investigation. He seized material. He prepared inquest reports but he did not care to get the FIR lodged. A police investigation starts with the lodging of the FIR. Therefore, there is an unexplained delay in lodging the FIR. Why should the police wait for the injured party to file a written complaint to lodge an FIR? In a case of this nature the FIR should have been lodged immediately on the police coming to know about the occurrence.

39. After PW.22 reached the spot he states that he re-seized all the material which had been seized by PW.20, Bahadur Debbarma, whereas PW.20 has clearly stated that when he seized the material he had not cared to put any seal and did not care to keep the arms and ammunition in sealed cover or packets nor did he take any signatures of witnesses over the seized arms and ammunition. PW.22 also stated that the re-seized material arms and ammunition had been sealed by PW.20 and he had broken open the seals and thereafter re-sealed them. First of all there is a contradiction because PW.20 Bahadur Debbarma did not say that he had sealed these arms and ammunition. Therefore, the question of breaking open the seals did not arise. If Bahadur Debbarma had actually kept these arms and ammunition in a sealed cover then

PW.22 had no business of breaking upon the seals and the packets and that too in the absence of any witnesses. At best he could have re-sealed the same packets by affixing his seal thereon or putting the packets prepared by Bahadur Debbarma in a larger packet and then affixing his seals thereon. The whole purpose of sealing of such vital evidence is that such evidence cannot be tampered with.

40. The statement of this witness is belied by the statement of PW.18, the Sr. Scientific officer, who has clearly stated that all the articles were in one wooden box in open condition. Only the box was sealed. He has clearly stated that all 5 revolvers were kept together in a cloth packet and the muzzle of each firearm had not been sealed separately and therefore, he could not confirm which firearm had been fired recently. He has also stated that when he mentioned in his report that the seals on the parcels are intact and tallied with the specimen seals he meant the seal which was given on the wooden box. He also states that none of the exhibits which were found inside the wooden box were sealed with specimen signature. None of the exhibits were bearing any signature of any witness or any date of seizure. Such type of seizure is no seizure in the eye of law and has no evidentiary value whatsoever.

41. Even more shocking is the fact that PW.22 has admitted that in the GD Book of 20th July, 2004 there is evidence

that three pages were torn off and replaced by three gummed pages of different paper. This clearly shows that probably when the complainant went to the Police Station on the way to the hospital some report was made which was taken down in the diary register but that report was later torn off and a fresh entry made and this fresh entry is against the accused.

42. Defective investigation by itself, delay in lodging the FIR by itself, improper seizure by itself may not be a ground for acquittal but when in one case all the above factors are present and there is the additional very important factor of a GD entry being destroyed and another GD entry being fabricated, benefit will have to go to the accused especially when there are two rival political fractions and the accused belongs to a political party which is opposing the ruling dispensation in the State.

43. From the evidence on record it is apparent that the vehicles of Birajit Sinha and his party were stopped at Babur Bajar. It is also apparent that heated altercations took place between Birajit Sinha and the complainant, PW.1 Abdul Rahaman. It is also established that a mob collected at the spot which started stoning and brickbatting on Birajit Sinha and his party. It is also proved that Birajit Sinha and his party consisted only of 7 people plus the drivers who fled away from the spot. They were being attacked by a huge mob of 100s of people. It is also in evidence that they were

re-treating i.e. moving backwards towards the west while facing eastwards and it is then that they started firing.

44. In circumstances like this golden scales cannot be applied. The firing was an act of pure self-defence on behalf of the accused persons. We would have been inclined to agree with Sri Debasish Roy that the right to exercise such private defence would cease as soon as the danger ended but we are unable to agree with him that there are three separate incidents. His entire argument is based on three separate incidents and heavy reliance is placed by him on the sketch map prepared by Sri S Basu Roychoudhury. Admittedly, this sketch map was prepared later in the evening after 5.20 p.m. The sketch map to say the least is another shoddy piece of investigation. If Abdul Hannan had indeed fallen at place 'A2' which is said to be the place of second occurrence then why was no blood stained earth seized from that place? Who identified the place 'A2' to Sri S Basu Roychoudhury? There is no answer. When we scrutinize the statements of all the witnesses it is apparent that the initial occurrence took place at point 'A1' of the sketch map and that thereafter the accused party was moving towards point 'C' which is about 50-100 yards from point 'A' and there was a mob following them. In the FIR the complainant has stated that his son was killed at point 'A' itself. There is no story of two or three separate incidents in the first FIR or in the first statements made

under Section 161 Cr.P.C. All the stories about their being two or three incidents have come up only after the first G.D entry was destroyed and later in the evening of the next day an entirely new story was cooked up. The only independent witness who supports the prosecution story is PW.7, Shamsheer Khan. From the evidence on record it stands proved that he did not have any permanent shop in the area in question. He is stated to be an auto driver. Later a suggestion was made that he owned a small *tong* shop. That shop has not been identified. It is stated that Abdul Hannan died in the *varanda* of the shop of PACS Chowmuhoni but that shop is not identified in the site map. Therefore, it is impossible to rely upon the site map.

45. There are many contradictions in the statements of the witnesses. We may refer to some major contradictions only. The first is that the informant PW.1 in the FIR had stated that when he was attacked by Birajit Sinha and his accomplices his son Abdul Hannan was present and that Abdul Hannan was shot by Birajit Sinha himself from his pistol. This allegation is totally untrue. While appearing in the witnessbox PW.1 did not state that his son had been shot by Birajit Sinha. Another contradiction is that whereas in the statement made in Court the informant stated that Chandra Sekhar Sinha had identified his son Abdul Hannan and then Birajit Sinha had directed his police guards to fire upon the deceased,

there is no such mention in the FIR or in the statement of this witness recorded under Section 161 Cr.P.C. There is a major contradiction with regard to the spot of occurrence. These contradictions go to the root of the matter and we cannot, therefore, rely upon the prosecution evidence.

46. Learned counsel for the parties have relied upon a large number of judgments which are as follows :

1966 Cri.L.J 483 In re., Lagama Appayya Naik and others; (1995) 5 SCC 518, Karnel Singh vs. State of M.P.; (1997) 6 SCC - 171 Vijender and others vs. State of Delhi; 1997 Cri.L.J 977 Rashid Aziz Vs. State of U.P; 1998 Cri.L.J 1366, Sukhlal and another Vs. State of Madhya Pradesh; (1999) 8 SCC 501, Central Bureau of Investigation Vs. V K Sehgal and another, State of Haryana Vs. V K Sehgal; AIR 2000 SC 1833 Jaswant Singh and others Vs. State of Haryana and others; 2001 Cri.L.J 3505, P K Pradhan vs. The State of Sikkim, represented by the Central Bureau of Investigation; (2001) 7 SCC 679, State of M.P Vs Bhooraji and others; (2004) 3 SCC 654, Dhanaj Singh alias Shera and others Vs. State of Punjab; (2005) 3 SCC 114 State of U.P Vs. Satish; (2005) 10 SCC 404, Babulal Bhagwan Khandare and another Vs. State of Maharashtra; (2007) 14 SCC 783, Paul Varghese Vs. State of Kerala and another, (2009) 17 SCC 208 Abuthagir and others Vs.

State, represented by Inspector of Police, Madurai; (2009) 17 SCC 280 State of Madhya Pradesh Vs. Kedar Yadav; 2012 Cri.L.J 1769, Rattiram & Ors. Vs. State of M.P through Inspector of Police; (2012)9 SCC 685 State(NCT of Delhi) Vs. Ajoy Jumar Tyagi; 2014 Cri.L.J 930, C.B.I Vs Ashok Kumar Aggarwal.

We need not refer to all these judgments because we are of the considered view that these judgments are not applicable and each criminal case has to be decided on its own facts. We have decided the case on merits and therefore do not want to unnecessary burden the record by making reference to all the cases cited before us.

47. Keeping all these factors into consideration, we are clearly of the view that the accused were rightly acquitted and there is no merit in the Criminal Appeal No.5 of 2014 filed by the State which is, accordingly, dismissed.

48. Coming to the appeal of Birajit Sinha(*Criminal Appeal No.23 of 2013*). At the outset, we may state that in his statement recorded under Section 313 Cr.P.C Birajit Sinha has admitted that he was in possession of the excess amount of ammunition. His firearm licence is Exbt.P/22 and this licence is for one .38 revolver/pistol. He is permitted to purchase a maximum 50 numbers of bullets in a year and at any given time he cannot have

more than 12 numbers of bullets. Admittedly, 17 numbers of bullets were recovered from him out of which 5 numbers were loaded in the revolver. Birajit Sinha does not deny the recovery of these bullets but according to him, he had obtained permission of DM, Kamrup to purchase extra 5 rounds of bullet and he had informed his licensing authority about this permission. Not a scrap of paper has been produced by Birajit Sinha to support his statement. Arms and ammunition have to be purchased under the Arms Act and the Arms Act, 1959 lays down the procedure in this regard. In any event even if he could purchase up to 50 rounds in a year he could not carry more than 12 rounds at any given time and therefore, there is violation of the terms of the licence.

49. Faced with the situation Sri P K Biswas submitted that since no sanction has been obtained under Section 39 of the Arms Act the prosecution itself is without any basis.

Section 39 of the Arms Act, 1959 reads as follows :

“39. Previous sanction of the district magistrate necessary in certain cases.—No prosecution shall be instituted against any person in respect of any offence under section 3 without the previous sanction of the district magistrate.”

50. On the other hand, it is contended by Sri M K Roy that no sanction is required in this case because this is a case of an offence under Section 30 and not under Section 3 of the Arms Act. Section 3 of the Arms Act, 1959 reads as follows :

“3. Licence for acquisition and possession of firearms and ammunition.—

(1)] No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder: Provided that a person may, without himself holding a licence, carry any firearms or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

7 [(2) Notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than three firearms: Provided that a person who has in his possession more firearms than three at the commencement* of the Arms (Amendment) Act, 1983, may retain with him any three of such firearms and shall deposit, within ninety days from such commencement*, the remaining firearms with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section.

(3) Nothing contained in sub-section (2) shall apply to any dealer in firearms or to any member of a rifle club or rifle association licensed or recognised by the Central Government using a point 22 bore rifle or an air rifle for target practice.

(4) The provisions of sub-sections (2) to (6) (both inclusive) of section 21 shall apply in relation to any deposit of firearms under the proviso to sub-section (2) as they apply in relation to the deposit of any arm or ammunition under sub-section (1) of that section.]”

A perusal of this Section clearly shows that it prohibits any person to have in his possession or carry any firearm or ammunition unless he holds a valid licence in this behalf.

51. Section 30, on the other hand, reads as follows :

“30. Punishment for contravention of licence or rule.— Whoever contravenes any condition of a licence or any provision of this Act or any rule made thereunder, for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to 6 [six months], or with fine which may extend to 2 [two thousand] rupees, or with both.”

This Section provides that if any person violates any condition of a licence or any rule made thereunder then he is punishable with imprisonment for a term which may extend to six months or a fine which may extend to Rs.2,000/- or both.

52. According to Sri P K Biswas, learned Sr. Counsel for Birajit Sinha appellant in Criminal Appeal No.23 of 2013, he was carrying firearms without a licence and therefore, the offence, if any, is under Section 3. On the other hand, it is contended by Sri Roy that in this case the accused Birajit Sinha had a licence to carry firearm and ammunition and it is not that he did not have a licence but he has violated the terms of licence and therefore, the offence is under Section 30 and no sanction is required.

53. On the issue of sanction reliance has been plaed by Mr. P K Biswas on the judgment of Madras High Court in *AIR 1947(34) Madrass 451 In re A.K.M. Ahmad Naina Maracair* wherein while dealing with the Section 14 of the Arms Act, 1898 the Madras High Court held as follows :

“ Section 14 runs thus :

‘No person shall have in his possession or under his control any cannon or fire-arms, or any ammunition or military stores, except under a license and in the manner and to the extent permitted thereby.’

This has to be read with S.19(f) which is the provision relating to punishment for the infringement of S.14:

‘Whoever commits any of the following offences (namely) :

(f) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of S.14 or S.15, Shall be punished with imprisonment for a term which may extend to three years, or with fine or with both.’

Section 29 provides :

‘Where an offence punishable under S.19, clause(f), has been committed within three months from the date on which this Act comes into force in any province, district or place to which S.32, Clause 2 of the Act[XXXI] of 1860 applies at such date, or where such an offence has been committed in any part of British India not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the

district or, in a presidency-town, of the Commissioner of Police.'

Lastly S.21 is in these terms :

Whoever, in violation of a condition subject to which a licence has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under S.19 or S.20, be punished with imprisonment for a terms which may extend to six months, or with fine which may extend to five hundred rupees, or with both."

In that case the Madras High Court held that sanction was required. However, the language of Section 29 of the Arms Act, 1898 was clear that where an offence under Section 19 clause (f) was committed no proceedings could be instituted without previous sanction of the Magistrate. The said Section clearly covered the offence of violation of the terms of the licence. As held by us above, this is an offence which is covered under Section 30 and not under Section 3 of the Arms Act. Therefore, the judgment of the Madras High Court is not applicable in the present case.

54. The judgment of the Rajasthan High Court in **2001 CRI.L.J.1045, State of Rajasthan V.Ngji** and the judgment of the Madhya Pradesh High Court in **2012 Cri.L.J 1769, Rattiram & Ors. Vs. State of M.P through Inspector of Police** are also not applicable to the facts of the present case.

55. We have perused the licence Exbt.P/22. It permits the holder Birajit Sinha to carry a revolver. It also permits him to purchase up to 50 rounds of ammunition in a year but he can only carry a maximum of 12 rounds of ammunition. Therefore, obviously he cannot carry more than 12 rounds of ammunition at any given time. He had 5 rounds in excess and this, in our opinion, would be a violation of Section 30 because it violates the terms of the licence which was granted in favour of Birajit Sinha. Hence we find no merit in the appeal of Birajit Sinha.

56. Coming to the issue of sentence, we are clearly of the view that Criminal Appeal No.25 of 2013 filed by the State is highly misconceived. In a case where the maximum sentence is 6(six) months and the learned trial Court imposes sentence of 3(three) months, we do not see any reason for the State to waste money and time to file such an appeal. It is not a case of murder or rape where even the minimum sentence is not imposed or the person has been let off very lightly that the State should file an appeal. There is no merit in the appeal of the State and Criminal Appeal No.25 of 2013 is, accordingly, dismissed.

57. At the same time we are clearly of the view when a trial Court who has had the benefit of seeing the demeanour and conduct of the accused imposes certain punishment the same should not be lightly interfered with by this Court. The accused

Birajit Sinha is a member of the legislative assembly. He is a law maker and he is expected to know the law. Therefore, we see no reason to take a more lenient view in the matter and we are not inclined to reduce the sentence at all. In this view of the matter his appeal being Criminal Appeal No.23 of 2013 is also dismissed. In view of the dismissal of the appeal the bail bonds of Sri Birajit Sinha are cancelled and he is directed to surrender within 1(one) month from today failing which the trial Court shall take action in accordance with law.

58. In view of the above discussion all the appeals are dismissed. Send down the LCRs forthwith.

JUDGE

CHIEF JUSTICE

Sukhendu