

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.A. 558 of 2008
Sk. Giasuddin
-Vs-
The State of West Bengal**

For the Appellant : Mr. Subhasis Pachhal
Sk. Abu Jafar
Mr. Masikul Shaik
Mr. Subhendu Bhattacharjee
Mr. N.P. Agarwal
Mr. Pratick Bose

For the State : Ms. Faria Hossain

Heard on : 06.02.2023

Judgment on : 19.04.2023

Ananya Bandyopadhyay, J. :-

1. The instant appeal is preferred against the Judgment and Order of conviction dated 30.07.2008, passed by Learned Additional Sessions Judge, 2nd Fast Track Court, Arambagh, Hooghly in Sessions Trial Case No. 11 of 007 and thereby convicting the appellant under Section 25 (1)(B) (a) of the Arms Act, 1959 and sentencing him to suffer rigorous imprisonment for a period of one year and also to pay a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for a period of three months in respect of the offence under Section 25 of the Arms Act, 1959.
2. A complaint filed by Akhil Chandra Bhowmick S.I. of Police Arambagh P.S. dated 08.09.2002 before the Officer-in-Charge

Arambagh P.S. precisely stated that on 8th Day of September, 2002 at 10:40 hours the appellant along with five or more other persons possessing fire arms were whispering to one another concealing their presence from the public for committing dacoity under a tree behind Girls College, Arambagh, on the side of river embankment of Dwarakeshwar. Receiving such information over telephone the police reached the spot. At the sight of the police the assembled five people escaped. After being chased, one out of five persons could be apprehended by the police in front of the C.T. Nursing Home, Arambagh and on interrogation his identity to be Sk. Giasuddin was revealed. On search of his body a concealed Country made pipe gun loaded with one round ammunition from the right side of the waist beneath his shirt was recovered. Another Country made pipe gun loaded with one round ammunition along with some gold and silver ornaments, a cash of Rs. 1054, clothings, one torch, an umbrella etc. were further recovered from the bag carried by him on his shoulder. The aforesaid articles were seized under a seizure list duly signed by the witnesses to the seizure. The appellant, Sk. Giasuddin was subsequently arrested. Returning to the police station a written complaint was lodged against the appellant and the persons whose names were disclosed by him.

3. Based on the complaint, Arambagh P.S. Case No. 117/2002 against the accused persons investigation was initiated under Sections 399/402 of the Indian Penal Code read with Sections 25

and 35 of the Arms Act which culminated in submission of charge sheet against the accused persons.

4. Charges were framed to which the accused persons pleaded not guilty and claimed to be tried.
5. The prosecution in order to prove its case cited 7 witnesses and exhibited certain documents. viz:-

PW-1	Akhil Chandra Bhowmik
PW-2	Ramananda Midya
PW-3	Amit Banerjee
PW-4	Probhat Banerjee
PW-5	Swapan Kumar Sarkhel
PW-6	Barun Mitra
PW-7	Parth Sarathi Pal

Exhibit-1	Seizure List
Exhibit-2	Written complaint
Exhibit-3	Seizure Label Marks Collectively
Exhibit-1/1	Signature of PW-2 appearing in the Seizure List
Exhibit- 3/1	Signature of PW-2 appearing in the Seizure Label
Exhibit-1/2	Signature of PW-3 appearing in the Seizure List
Exhibit-1/4	Signature of PW-4 appearing in the Seizure List
Exhibit-4	Report of Arms Expert
Exhibit- 3/2	Signature of PW-4 appearing in the Seizure Label
Exhibit-5	Rough Sketch Map
Exhibit-6	Formal F.I.R.
Exhibit-7	District Magistrate Sanction

6. The Learned Advocate Mr. Subhasis Pachhal for the appellant argued the Learned Trial Court did not consider the contradictions and discrepancies in the evidence adduced by the prosecution witnesses.

The framing of charge and the examination of the appellant under Section 313 of the Criminal Procedure Code were not in accordance to law. The appellant was falsely implicated and did not glean the benefit of the provision enumerated in Section 4 of the Probation of Offenders Act. The seized fire arms produced before the Court were not affixed with the label to prove its seizure. Proper sanction was not proved to have been obtained from the District Magistrate for prosecution under the Arms Act. The evidence of PW-1, PW-2, PW-3, PW-4 and PW-5, PW-7 was contrary to each other, worthy to be discredited. No independent witness was cited by the prosecution. There were inconsistencies in the evidence of the witnesses regarding the time of the incident and the complaint to have been lodged. The Learned Trial Court based on false notion indicted the appellant and the appeal shall be allowed.

7. The Learned Advocate Ms. Faria Hossain for the State submitted the appellant was apprehended and the fire arms were recovered from his possession which were proved to have been illegally possessed by him. The prosecution has been successful to prove its case and the appeal shall be dismissed.
8. A circumspection of the evidence adduced by the prosecution witnesses reveal PW-1 to have arrested the appellant and lodged the written complaint. He seized the fire arms from the possession of the appellant which was marked as Exhibit 1 and Exhibit 1/1 respectively.

9. Two empty cartridges recovered from the possession of Giasuddin which were tested by the Arms Expert during test. The packet containing empty cartridge was marked as Material Exhibit 2 collectively. Other articles were recovered from the possession of the accused person during search. These articles contained some silver and gold ornaments, torch light, umbrella etc. Accused Sk. Giasuddin could not account for possession of those silver and gold ornaments and other articles recovered from his possession. These articles were not admitted in evidence in the case because it was learnt from the Case Diary. that these articles were relating to a theft case under Sections 380 and 411 Indian Penal Code in the District of Burdwan and prayer for reseizure of these articles by Investigating Officer of the said case had been allowed. The said seizure list prepared and signed by PW-1 bearing the signature of the witnesses and the LTI of the accused person was marked as Exhibit 1. The written complaint written and signed by PW-1 which was submitted before the P.S. at the time of production of accused and recovered seized articles were marked Exhibit 2. PW-1 labeled the seized fire arms bearing his signature and the signature of the witnesses. Both the fire arms had seizure labels. PW-1 also prepared sample labels bearing his signature and the signature of witnesses which he handed over to the Officer-in-Charge, Arambagh P.S. The sample seizure labels bearing his signature and signature of the witnesses were marked as Exhibit 3 series.
10. PW-2 corroborated the evidence of PW-1.

11. PW-3 and PW-4 were the independent seizure list witnesses and corroborated the evidence of PW-1 and PW-2 in substance. Minor deviations in their evidence with regard to the uniform worn by the police persons or not are negligible, insignificant and immaterial in the presence of strong, credible and trustworthy incriminating material on record.
12. PW-5 the Arms Expert in his evidence stated that he examined some arms in P.S. Case No. 117/2002 dated 08.09.2002 under Sections 399, 402 of the Indian Penal Code and 25, 27, 35 of Arms Act. Materials were marked as Exhibit A were small type improvised fire arms designed to fire .303 inch type ammunition. On examination PW-5 found firing mechanism in working order total length of Exhibit 'A' is 10.(7/16) inches barrel length 4.(3/32) inches, but length is 3.(5/8) inches. PW-5 punched letter 'S' on left side of the Exhibit 'A' for future identification. The said fire arms were examined by him. (mat ext. 1 was identified). He also examined another Country made small fire arm type gun type designed to fire. 3.03 inches ammunition in the same case which was marked as Exhibit 'B' firing mechanism found in working order. There was a punch on the body of the fire arms as made in China, he punched letter 'S' for future identification. The said fire arms were marked as Exhibit B. The said fire arms were examined by him (mat. Ext.1/1 was identified) there were labels on it being Exhibit A and B affixed him with his seal & signature.
13. He also examined Exhibit E. There were 3 live improvised country made .303 inch type ammunitions. Those were test fired by him

through Exhibit A and B and found that Exhibit A and B were in working order and Exhibit E were in live condition. All the empty cases of Exhibit E were enclosed in a sealed packet. In his opinion Exhibits A, B and E may endanger human life if firing was done and fell under the purview of Arms Act. He also affixed label on the packet of Exhibit 'E'. He submitted a detailed report of my examination of Exhibit A, B and E in a sheet. His report was scribed by his official writer under his dictation. He signed on the report bearing his signature was marked as Exhibit 4. He sent the report to the Learned Additional Chief Judicial Magistrate, Arambagh, through O/C, Arambagh P.S.

14. PW-6 and PW-7 conducted the investigation on completion of which the charge sheet was filed.
15. On the basis of corroborative evidence of the prosecution witnesses supported by the expert opinion of PW-5 and the evidence of independent seizure list witnesses PW-3 and PW-4 the prosecution has been able to prove its case and the Learned Trial Judge after proper appreciation of evidence and materials on record rightly convicted the appellant and this Court is not inclined to interfere with the impugned judgment and order.
16. The Criminal Appeal being No. CRA 558 of 2008 is accordingly dismissed and stands disposed of.
17. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

18. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)