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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: September 01, 2023

Decided on: September 19, 2023

+ **CRL.REV.P. 777/2017 & CRL.M(BAIL)1825/2017**

SMT MAYA DEVI

..... Petitioner

**Through: Mr. Ravinder Kumar,
Advocate with petitioner in
person.**

V

STATE

..... Respondent

**Through: Mr. Utkarsh, APP for State
with SI Manish, PS
Welcome.**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present criminal revision petition is filed under section 397 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) read with section 401 of the Code to impugn the judgment dated 13.09.2017 (hereinafter referred to as the “**impugned judgment**”) passed in Criminal Appeal bearing no 24/2017 (56/2017) titled as **Maya Devi & Another V The State GNCT of**



Delhi arising out of FIR bearing no 0242/2004 dated 29.07.2004 passed by the court of Sh. S.K. Malhotra, ASJ/FTC/e-Court, Shahdara, Karkardooma, Delhi (hereinafter referred to as the “appellate court”).

2. In backdrop of case briefly narrating the facts of the case are that PW4 ASI Rajbir Singh along with HC Devender, PW2 Ct. Shiv Dutt and Ct. Arun Kumar on 28.07.2004 were on patrolling duty at 100 *futa* road near Shiv Mandir and at about 9.15 pm received a secret information that one person, namely, Nempal has kept illegal arms and ammunition at his house bearing no E-151, Rajiv Gali, East Babarpur and the said Nempal can be apprehended if the raid is conducted. Accordingly, PW4 ASI Rajbir Singh constituted a raiding party and requested 6-7 passersby to join the investigation but none agreed and left the spot without disclosing their details. Thereafter, PW4 ASI Rajbir Singh along with raiding party went to Yaad Ram Gali and requested 4-5 passersby to join the investigation and PW3 Surender Kumar Parashar has agreed to join investigation. The raiding party reached at Rajiv Gali where they again asked 4-5 passersby to join investigation but the public persons namely,



Ramphere, Jaibir Singh Pal and others did not agree to join the raiding party. The raiding party led by PW4 ASI Rajbir Singh knocked the door of the house at about 10.00 pm which was opened by Maya Devi (hereinafter referred to as the “**petitioner**”) and in the meantime, one person whose name was later on disclosed as Nempal and was husband of the petitioner ran away from the house. The independent witness PW3 Surender Kumar Parashar was asked to take personal search of the police officials and the house was accordingly, searched by the raiding party. The raiding party during the search of the house had seen one iron box which was lying in open space i.e. *angan* (courtyard). The raiding party took the keys of the box from the petitioner and opened said box wherein one printed quilt (*rajai*) was found. One polythene bag was found under the quilt which was found to be containing *desi katta* Ex. P1, one country made pistol Ex. P2, 7 empty cartridges of .315 bore Ex. P4, one brown belt containing 16 live cartridges Ex. P5 and 4 boxes of cartridges each containing 10 cartridges Ex. P6 were found. PW4 ASI Rajbir Singh passed on the information to the senior officers. SHO, PS Welcome, at about 10.40 pm also came at the spot



and interrogated the petitioner who on interrogation disclosed that recovered arms and ammunition belong to her husband namely Nempal. The ACP, PS Shahdara at about 10.55 pm also came at the spot and made enquiries from the petitioner. The photographs of the spot were taken. PW4 ASI Rajbir Singh prepared the sketches of *desi katta* and revolver which are Ex. PW2/A and Ex. PW2/B. The recovered arms and ammunition were seized vide seizure memo (Ex/PW2/C) after converting into *pullandas* which were sealed with the seal of 'RBS'. CFSL form was filled and the seal after use was handed over to PW2 Ct. Shiv Dutt. PW4 ASI Rajbir Singh prepared *rukka* (Ex. P4/A) which was sent to the police station for registration of case through PW2 Ct. Shiv Dutt. FIR bearing no 242/14 (Ex.PW1/B) was got registered. PW9 SI Arvind Sagar conducted the further investigation and during further investigation arrested the petitioner vide arrest and personal search memos Ex. PW2/D and Ex.PW2/E, prepared site plan and recorded the statement of public witness i.e. PW3 Surender Kumar Parashar. PW9 SI Arvind Sagar along with PW2 Ct. Shiv Dutt on 29.07.2004 arrested accused Nempal vide arrest and personal search memos Ex. PW2/F and Ex.



PW2/G and recorded his disclosure statement Ex. PW2/H. The accused Dutta Ram was also arrested on the basis of disclosure statement made by accused Nempal. The case property was sent to FSL for forensic analysis. The charge sheet was filed after conclusion of investigation.

2.1 The court of Sh. Ankur Jain, Metropolitan Magistrate, Karkardooma Courts, Delhi vide order dated 29.01.2010 framed charges for the offences punishable under section 25 of the Arms Act, 1959 against the petitioner and accused Nempal, to which they pleaded not guilty and claimed trial. The accused Dutta Ram was ordered to be discharged as there was no incriminating evidence against him except the disclosure statement of the accused Nempal.

2.2 The prosecution has examined 11 witnesses including ASI Rajbir Singh as PW4 and Ct. Shiv Dutt as PW2 who were the members of the raiding party, Investigating Officer SI Arvind Sagar and DCP Jaspal Singh as PW11 who granted the sanction under section 39 of the Arms Act, 1959. The prosecution evidence also examined other police officials who participated in the investigation. The prosecution evidence was ordered to be closed vide order dated 05.11.2015. The



statement of the petitioner and accused Nempal were recorded under section 313 of the Code vide proceedings dated 20.11.2016 wherein they pleaded false implication and their innocence by stating that the alleged recovery is planted on them but preferred not opt to lead defence evidence.

3. The court of Sh. Pranjali Aneja, Metropolitan Magistrate-01, Shahdara, Karkardooma Courts (hereinafter referred to as “**the trial court**”) vide judgment dated 08.10.2016 convicted the petitioner and Nempal for the offence punishable under section 25 of the Arms Act, 1959 and vide order on sentence dated 18.03.2017 sentenced them to undergo simple imprisonment for a period of one year and to pay fine of Rs.2,000/- each in default of fine to additionally undergo simple imprisonment for 15 days. The relevant portion of the judgment dated 08.10.2016 is reproduced verbatim as under:-

8. From the above appreciation of evidence it is seen that the prosecution has been able to establish its case. It has been duly proved on record that the illegal arms and cartridges have been recovered from the house of the accused and accused no. I Maya Devi was present at that time in her house. The co accused i.e her husband namely Nempal, who absconded at the time of raid, was arrested later on. There is no dispute that the arms and cartridges are illegal and accused persons possess no license for the same. The recovery has been duly proved. In examination



u/s 313 Cr.P.C the accused persons simply stated that the recovery is planted. Accused persons did not opt to lead DE. Thus the prosecution has been able to prove the guilt of both accused Maya Devi and, Nempal beyond reasonable doubt.

9. Both accused persons Maya Devi and Nempal are accordingly convicted under section 25 Arms Act, 1959.

The relevant portion of the order on quantum of sentence dated 18.03.2017 dated is reproduced below:-

In the present case, the accused persons have been convicted for the offence punishable u/s 25 of the Arms Act for unlawfully possessing arms &ammunitions without licence i.e. in violation of Section 3 of the Arms Act, 1959. The punishment provided for the offence u/s 25(1-B) is imprisonment for a term which shall not be less than one year but which may extend to three years and shall be also be liable to fine. There can be no denial to the fact that both the convicts are aged and one of them is a lady. It is further seen that the case is of year 2004 and the trial continued for considerable long period of about 12 years,

Hence, in the overall conspectus of the case and considering the aforesaid circumstances, both convicts are sentenced to undergo simple imprisonment for the minimum period prescribed i.e one year and to pay fine of Rs.2000/- (Two thousand) each. In default of payment of fine, convict to additionally undergo simple imprisonment for fifteen days.

Benefit of Section 428 of Cr.P.C. is given to the convicts for the period already undergone by them which shall be set off from the term of imprisonment as imposed.

4. The petitioner and convict Nempal being aggrieved filed Criminal Appeal bearing no 24/2017 (56/2017) to impugn judgment dated



08.10.2016 and order on sentence dated 18.03.2017 passed by the trial court. The appellate court vide impugn judgment acquitted the convict Nempal and upheld the conviction of the petitioner. The relevant para of the impugn judgment is reproduced verbatim as under:-

10. As per CFSL result, recovered countrymade pistol, revolver and cartridges are arms and ammunitions as defined in the Arms Act, 1959. PW-11 Sh. Jaspal Singh the then DCP granted the sanction u/s.39 Arms Act qua appellant/accused Maya Devi vide Ex. PWII/A. Thus, finding of Ld. Trial Court that illegal arms and ammunitions were recovered at the instance of appellant Maya Devi from H.No.E-51, Rajiv Gali No.4, Yadram Mandir, Babarpur, Delhi are upheld. Ld. Trial Court has already awarded minimum sentence of simple imprisonment for a period of one year to the appellant while keeping in view the fact that she is an old age lady, therefore, no interference in order on sentence is required.

11. Now coming to the role of appellant no.2 Nempal, it is admitted case of the prosecution that at the time of recovery of abovesaid arms and ammunitions, Nempal was not present there. He was arrested later on as co-accused/appellant no.1 Maya Devi informed the police that he is her husband, who ran away at the time of raid. One important aspect, which has been overlooked by Ld. Trial Court is that no sanction u/s. 39 Arms Act was granted by the competent authority to prosecute appellant/accused Nempal. Sanction u/s. 39 Arms Act (Ex.PWI 1/A) is only in respect of appellant Maya Devi. Section 39 of Arms Act provides that no prosecution shall be instituted against any person in respect of any offence without previous sanction of District Magistrate. In the absence of sanction u/s. 39



Arms Act to prosecute appellant no.2 Nempal, his conviction u/s. 25 Arms Act cannot be sustained. Accordingly, he is acquitted of the offence with which he was charged. However, in view of provisions of section 437-A of the Code, accused Nempal is directed to furnish personal bond in the sum of Rs. 10,000/- with one surety in the like amount within one week. Till then his existing bail bond shall be retained for the purpose. The bail bonds shall remain in force for a period of six months.

12. With these observations, appeal is partly allowed qua Appellant/accused Nempal. As the conviction and order on sentence dt. 18.03.2017 as passed by Ld. Trial Court, qua appellant no. 1 Maya Devi is upheld, she be taken into custody to serve the remaining sentence. A copy of this judgment be given to convict/appellant Maya Devi free of cost. Trial Court record alongwith copy of this order be sent back. Appeal file be consigned to record room.

5. The petitioner being aggrieved filed the present petition and challenged the impugned judgment passed by the appellate court; judgment dated 08.10.2016 and order on sentence dated 18.03.2017 passed by the trial court on the grounds that the Investigating Officer did not seize the iron box, which was stated to be lying in the open courtyard (*angan*) from wherein the arms and ammunition were recovered and its lock and key were also not produced in the court. The petitioner who is an illiterate lady and is aged about more than 55 years has nothing to do with the alleged offence. The prosecution has failed to prove its allegations against the petitioner. The petitioner



is not a previous convict and no other case is pending against her. There are contradiction in the respective testimonies of PW3 Surender Kumar Parashar and PW4 ASI Rajbir Singh. PW3 Surender Kumar Parashar who was stated to be the public witness did not identify the petitioner and convict Nempal during deposition. The petitioner was residing in tenanted premises where other three tenants were also residing but none of them has joined the raiding party as public witness.

6. The counsel for the petitioner besides narrating the facts of the case argued that the petitioner being the housewife was not aware about the recovered arms and ammunition and as such was not having conscious knowledge about the recovered fire arms and ammunition. The petitioner was not in physical possession of the fire arms and the secret information was also received against her husband i.e. Nempal. The counsel for the petitioner has relied upon the judgments titled as **Gunvant Lal V State of Madhya Pradesh, 1972 2 SCC 194, Abid Qureshi V State of GNCT Delhi & others, (2021) 29 Del CK 0308, Ravi Inder Singh Johar V State of GNCT Delhi, (202@) 05 Del CK 0114, Ambi Ram V State of**



Uttarakhand, (2019) 17 SCC 396, **Faiyaz Ahmad & Others V State of Bihar**, 1991 Supp(1) SCC 186, **Sattan Sahani V State of Bihar**, (2002) 7 SCC 604 and **Gulab Singh V State of MP**, 1987 J LJ 599.

7. The Additional Public Prosecutor for the State/respondent argued that the petitioner was found in conscious possession of the arms and ammunition i.e. *desi katta* (Ex. P1), one country made pistol (Ex. P2), 7 empty cartridges (Ex. P4), one brown belt containing 16 live cartridges (Ex. P5) and 4 boxes of cartridges each containing 10 cartridges (Ex. P6) which were recovered from the house which was under the occupation of the petitioner. He further argued that the present petition is liable to be dismissed.

8. Section 25 of the Arms Act, 1959 provides punishment for certain offences. As per section 25 (1B) whoever has in his possession or carries any firearm or ammunition in contravention of section 3 shall liable to be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine. However, the Court may for any adequate and



special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.

9. A witness who has to play important role in administration of criminal justice has relevant information about a crime. The witness by giving evidence performs a sacred duty of assisting the court in discovery of the truth and plays an important duty of assisting the court in deciding on the guilt or otherwise of the accused. It is the salutary duty of every witness to assist the State in giving evidence.

The court after considering evidence decides whether the accused is guilty or innocent. The Supreme Court in **Mahender Chawla V Union of India**, Writ Petition (Criminal) No. 156 / 2016 decided on 05th December, 2018 also observed that witnesses are important players in the judicial system, who help the judges in arriving at correct factual findings. The prosecution in support of its case examined PW4 ASI Rajbir Singh and PW2 Ct. Shiv Dutt who were members of the raiding party. It is reflecting from the evidence led by the prosecution that PW4 ASI Rajbir Singh 28.07.2004 received secret information regarding the presence of arms and ammunition in the house bearing no E-151, Rajiv Gali, East Babarpur belonging to



Nempal and a raiding party was constituted comprising PW4 ASI Rajbir Singh, HC Devender, PW2 Ct. Shiv Dutt and Ct. Arun Kumar and was also joined by public person PW3 Surender Kumar Parashar. Thereafter a raid was conducted at House no E-151, Rajiv Gali and the petitioner was found to be present in the said house at that time and on search one polythene bag containing *desi katta* Ex. P1, one country made pistol Ex. P2, 7 empty cartridges of .315 bore Ex. P4, one brown belt containing 16 live cartridges Ex. P5 and 4 boxes of cartridges each containing 10 cartridges Ex. P6. The perusal of respective testimonies of PW4 ASI Rajbir Singh and PW2 Ct. Shiv Dutt reflects they supported case of prosecution and deposed about receipt of secret information on 28.07.2014 regarding presence of illegal arms and ammunition in house which was found to be in occupation of the petitioner and subsequent recovery of *desi katta* Ex. P1, one country made pistol Ex. P2, 7 empty cartridges of .315 bore Ex. P4, one brown belt containing 16 live cartridges Ex. P5 and 4 boxes of cartridges each containing 10 cartridges Ex. P6. The respective testimonies of PW4 ASI Rajbir Singh and PW2 Ct. Shiv are consistent, cogent and narrative of relevant facts. There is nothing



inherent inconsistent in their respective testimonies and can be safely relied on. The prosecution also examined SI Arvind Sagar as PW9 who conducted further investigation and arrested the petitioner, Jaspal Singh, then DCP, North-East who granted permission Ex. PW11/A under section 39 of the Arms Act, 1959 and other police officials who directly indirectly connected with investigation. The prosecution witnesses were cross examined on behalf of the petitioner and there is nothing in their cross examination which can shake credibility of their testimonies. The petitioner did not take substantial defence either in cross examination of witnesses examined by the prosecution or in statement under section 313 of the Code except to deny incriminating evidence and planting of alleged arms and ammunition. It is proved that arms and ammunition as detailed hereinabove were recovered at instance of the petitioner from the quality and quantity of evidence led by the prosecution. The prosecution also proved that case property after recovery and till it was deposited in FSL, Hyderabad was not tampered with. PW4 ASI Rajbir Singh deposed that case property as detailed hereinabove was seized vide seizure memo Ex. PE2/C and converted into *pullandas*



which were sealed with seal of RBS. PW9 SI Arvind Sagar who was entrusted with subsequent investigation also deposed that PW4 ASI Rajbir Singh handed over two *pullanda* containing *katta* and three *pullanda* containing cartridges sealed with seal of RBS. The prosecution also examined MHC(M) ASI Mahender Singh as PW6 who deposed that on 29.07.2004 PW4 ASI Rajbir Singh deposited five *pullanda* sealed with seal of RBS through PW9 SI Arvind Sagar which were deposited in *malkhana* vide Entry 1483 in Register no 19 A Ex. PW6/A. PW6 ASI Mahender Singh also deposed that he handed over *pullanda* along with FSL Form vide RC no 130/21 to Ct. Rishiraj on 23.09.2004 and case property was not tampered with till it remain in his possession.

10. The counsel for the petitioner attacked quality and quantity of the evidence led by the prosecution by arguing that there are material contradictions in the respective testimonies of the prosecution witnesses i.e. PW3 Surender Kumar Parashar and PW4 ASI Rajbir Singh. PW3 Surender Kumar Parashar deposed that Investigating Officer PW4 ASI Rajeev Singh opened the iron box lying in the courtyard and recovered the arms and ammunition from said box



whereas Investigating Officer PW4 ASI Rajbir Singh deposed that obtained the key from the petitioner to open the iron box which was lying in the courtyard (*angan*) and recovered the arms and ammunition.

10.1 Every contradiction, discrepancy or improvement is not fatal for prosecution. Mere marginal variations in the statements of witnesses cannot be dubbed as improvements. It is only major contradiction, discrepancy or improvement on material facts shaking very genesis of prosecution case which matters for creating doubt on prosecution case. The Supreme Court in **Pawan Kumar @ Monu Mittal V State of Uttar Pradesh and Another**, (2015) 7 SCC 48 held that when a witness is examined at length it is quite possible for him to make some discrepancies and no true witness can possibly escape from making some discrepant details. It was further observed that the courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. It was also observed in **Bhagwan Jagannath Markad and Others V State of Maharashtra**, (2016) 10 SCC 537 observed that some



discrepancies not touching the core of the case are not enough to reject the evidence as a whole and no true witness can escape from giving some discrepant details. It was also observed that discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness. The discrepancies as pointed out by the counsel for petitioner are insignificant, immaterial and minor which do not affect case of prosecution and as such argument advanced by the counsel for the petitioner is without any legal force.

11. The counsel for the petitioner also argued that the as per prosecution, public witness PW3 Surender Kumar Parashar was included in investigation but he turned hostile and did not support the case of the prosecution which raises serious doubts as to the prosecution story.

11.1 The Investigating Officer PW4 ASI Rajbir Singh deposed that after receipt of secret information, a raiding party was constituted and reached Yad Ram Gali where PW3 Surender Kumar Parashar had agreed to join investigation. The prosecution has examined Surender



Kumar Parashar as PW3 but PW3 Surender Kumar Parashar in examination-in-chief turned hostile and did not support the case of the prosecution. PW3 Surender Kumar Parashar deposed that he did not remember date, time and place of incident due to lapse of long time and also did not identify the petitioner and Nempal. PW3 Surender Kumar Parashar was cross-examined by the Additional Public Prosecutor and in cross examination he supported the case of the prosecution. PW3 Surender Kumar Parashar in cross examination deposed about receipt of secret information and recovery of arms and ammunition and about subsequent investigation. PW3 Surender Kumar Parashar was not cross-examined on behalf of the petitioner and Nempal. The appellate court in impugned judgment has rightly dealt with this argument regarding testimony of PW3 Surender Kumar Parashar. The relevant portion of the said judgment is reproduced verbatim as under:-

PW-3 Surender Kumar Parashar, who joined the raiding team was declared hostile by Ld. Addl. PP but in cross-examination, he has admitted that he alongwith ASI Rajbir and other police staff went to a house, which was opened by a lady namely Maya Devi. He has also supported the case of prosecution regarding the recovery of arms and ammunitions as per seizure memo and admitted his signatures on the sketch of recovered weapons. Although,



he did not identify accused persons but he was not crossexamined by Ld. Defence Counsel. Even a suggestion was not given to this witness regarding the recovery of arms and ammunition from H.No.E-51, Rajiv Gall No.4, Yadram Mandir, Babarpur, Delhi.

In **Gura Singh Vs. State of Rajasthan**, AIR 2001 SC 330, it was observed as follows:

"There appears to be a misconception regarding the effect on the testimony of a witness declared hostile. It is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration. This court in **Bhagwan Singh Vs. State of Haryana**, AIR 1976 SC 202 held that merely because the Court gave permission to the Public Prosecutor to cross-examine his own witness describing him as hostile witness does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base conviction upon the testimony of such witnesses. "

In **Rabindra Kumar Dey Vs. State of Orissa**, AIR 1977 SC 170, it was observed that "by giving permission to cross-examine nothing adverse to the credit of the witness is decided and the witness does not become unreliable only by his declaration as hostile. Merely on this ground his whole testimony cannot be excluded from consideration. In a criminal trial where a prosecution witness is crossexamined and contradicted with the leave of the Court by the party calling him for evidence cannot, as a matter of general rule, be treated as washed off the record altogether. It is for the Court of fact to consider in each case whether as a result of such cross-examination and contradiction the witness stands discredited or can still be believed in regard to any part of his testimony. In appropriate cases the Court can rely upon the part of testimony of such witness if that part of the deposition is found to be creditworthy. "



11.2 It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. It was observed in **Kuna @ Sanjaya Behera V State of Odisha**, 2017 SCC Online Supreme Court 1336 that it is not the number of witnesses but the quality of evidence that is important. The Supreme Court in **Veer Singh & others V State of UP**, (2014) 2 SCC 455 observed that legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. Evidence must be weighed and not counted. It is quality and not quantity which determines the adequacy of evidence. Regarding testimony of hostile witness, the evidence of the hostile witness cannot be rejected and evidence of such a person does not become effaced from the record. The relevant portions of the evidence of a hostile witness can be used in appropriate situations such as to corroborate the evidence of other independent witnesses in material particulars. The evidence of a hostile witness has to be considered with caution. The Supreme Court in various decisions discussed admissibility of testimony of a hostile witness. The



Supreme Court in **State of U.P. V Ramesh Prasad Misra**, (1996) 10 SCC 360 held that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. The Supreme Court in **C. Muniappan V State of T.N.**, (2010) 9 SCC 567 held that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law can be used by the prosecution or the defence. The Supreme Court in **Shyamal Ghosh V State of West Bengal**, (2012) 7 SCC 646 while discussing the evidentiary value of hostile witness, held that the statement of hostile witness can be relied upon by the Court to the extent it supports the case of prosecution. The Supreme Court in **Arjun V State of C.G.**, 2017 (2) MPLJ (Cri) 305 held that merely because the witnesses have turned hostile in part their evidence cannot be rejected *in toto*. The evidence of such witnesses cannot be treated as effaced altogether but the same can be accepted to the extent that their version is found to be dependable and the court shall examine more



cautiously to find out as to what extent he has supported the case of the prosecution.

11.3 The testimony of a hostile witness cannot be rejected merely on ground that said witness was declared as hostile and appears not to be supporting the case of prosecution. The part of testimony of a hostile witness can be read and relied on if it inspire confidence of the court and appears to be consistent and cogent. PW3 Surender Kumar Parashar although did not support case of prosecution in examination in chief but supported case of the prosecution in cross examination conducted by the Additional Public Prosecutor. If the cross examination of PW3 Surender Kumar Parasher is read in light of testimonies of witnesses who were members of the raiding party then it inspire confidence and can be safely relied on and it is narrative of relevant facts regarding circumstances led to recovery of arms and ammunition from the petitioner. The cross examination of PW3 Surender Kumar Parashar is corroborated by testimonies of prosecution witnesses. The argument advanced by the counsel for the petitioner is without any legal force.



12. The counsel for the petitioner primarily argued that it is not proved that the petitioner was in conscious possession of arms and ammunition as detailed herein above as alleged from evidence led by the prosecution. The counsel in support of arguments cited **Gunwant Lal V State of Madhya Pradesh**, (1972) 2 SCC 194, wherein the Constitution Bench of the Supreme Court has held as under:-

5. ...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 none-the-less 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 (sic) 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.. .

12.1 The testimony of PW4 ASI Rajbir Singh supported by testimony of PW2 Ct. Shiv Dutt and cross examination of PW3 Surender Kumar Parashar proved that arms and ammunition as detailed hereinabove were recovered at instance of the petitioner from house which was under occupation of the petitioner and at instance of the petitioner. It cannot be said that the petitioner was not in conscious possession of arms and ammunition i.e. *desi katta* Ex. P1, one country made pistol Ex. P2, 7 empty cartridges of .315 bore Ex. P4, one brown belt containing 16 live cartridges Ex. P5 and 4 boxes of cartridges each containing 10 cartridges Ex. P6 contained in a polythene bag and recovered from iron box. It was observed by the Supreme Court in **Sanjay Dutt V State through CBI Bombay (II)**, Crimes 1994 (3) 344 (SC) that the word 'possession' is not preceded by any adjective like 'knowingly', yet it is common ground that in the context the word 'possession' must mean possession with the requisite



mental element, that is, conscious possession and not mere custody without the awareness of the nature of such possession and there is a mental element in the concept of possession. It is proved beyond reasonable doubt that the petitioner was in conscious possession of recovered arms and ammunition.

13. The trial court vide judgment dated 20.09.2016 convicted the petitioner and Nempal for offence punishable under section 25 of the Arms Act, 1959 and vide order on sentence dated 18.03.2017 sentenced them to undergo simple imprisonment for the minimum period prescribed i.e. one year and to pay fine of Rs.2000/- and in default of payment of fine to undergo further simple imprisonment for fifteen days. The benefit of section 428 of the Code was extended to the convicts. The appellate court vide impugned judgment acquitted Nempal for offence under section 25 of the Arms Act, 1959.

14. In the adversarial system every person accused of an offence is presumed to be innocent and burden lies upon the prosecution to establish guilt of the accused beyond reasonable doubt. The Doubt must be actual and substantial doubts as to the guilt of accused



arising from the evidence or lack of it, as opposed to mere apprehensions and conjecture and surmises. The Supreme Court in case **Shivani V State of Maharashtra**, AIR 1973 SC 2662 emphasized that jurisprudential enthusiasm for presumed innocent must be moderated by the pragmatic need to make criminal justice potent and realistic. In **Gurbachan Singh V Sat Pal Singh**, AIR 1990 SC 209 it was observed that exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. The prosecution from quality and quantity of evidence led by it proved guilt of the petitioner beyond reasonable doubt. The impugned judgment passed by the appellate court and judgment dated 20.09.2016 and order on sentence dated 18.03.2017 passed by the trial court are well reasoned and no ground is made out to interfere with judicial pronouncements by the courts below.

15. The counsel for the petitioner also prayed for lenient view by arguing that the petitioner is an old aged lady and is suffering from various ailments. The petitioner has already lost her young son. The petitioner has already undergone seven months imprisonment. It is



duty of court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. The undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. The appellate court and trial court has already taken lenient view after considering all facts and circumstances pertaining to the petitioner and has awarded only minimum sentence. Hence, the present criminal revision petition is dismissed along with pending applications. The petitioner is directed to surrender before the concerned trial court on 27.09.2023 at 11:00 AM to serve remaining part of sentence imposed by the trial court vide order on sentence dated 18.03.2017. In case the petitioner fails to surrender before the trial court on the given date and time, the trial court shall initiate appropriate legal proceedings for her arrest.

16. Copy of this judgment be sent to the concerned trial court for information and compliance and be also given to the petitioner free of cost.

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

SEPTEMBER 19, 2023/N/SD