

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 394 of 2008

Swapan Ghosh

-Vs-

The State of West Bengal

For the Appellant : Mr. Amartya Ghosh
(*Amicus Curiae*)

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Heard on : 08.09.2023, 06.10.2023, 05.12.2023

Judgment on : 07.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 23.04.2008 and 24.04.2008 respectively passed by the Learned Additional Sessions Judge, 2nd Fast Track Court, Berhampore, Murshidabad in Sessions Serial No. 478 of 2005 whereby the Learned Trial Judge convicted the appellant for the offence punishable under Section 25(1B) of the Arms Act and sentenced him to suffer rigorous imprisonment for a period of 2½ years and to pay a fine of Rs. 2000/- in default to suffer further rigorous imprisonment for 3 months.

2. S.I. Sanjib Kumar Dey when he was the O.C. Hariharpara P.S. conducted raid on 19.09.2002 at Nischintipur More under P.S. Hariharpara in connection with G.R. Case No. 1120/2000 and G.R. 757/96. In course of the raid in between 17:55 to 18:25 hours at Nischintipur More they found the accused Swapan Ghosh tried to flee away on seeing the Police Party. However, they caught hold of him. In course of search a country made pipegun, 12 inch in length and .303 bore and one .303 cartridge were recovered from the waist of the accused Swapan Ghosh. On demand he failed to produce any valid paper in support of possession of the arms and ammunition, then in presence of witness those arms and ammunition were seized and the accused was arrested and then they came back to the P.S. and Hariharpar P.S. Case No. 101/02 dated 19.09.2002 under Section 25(1A,1B)/27 Arms Act was started against the accused Swapan Ghosh.
3. After investigation charge-sheet of the offence punishable under Section 25(1B)/27 Arms Act being Charge-Sheet No. 134/2002 dated 31.11.2002 was submitted against the accused Swapan Ghosh.
4. Charges were framed to which the appellant pleaded not guilty and claimed to be tried.
5. In course of the trial the prosecution examined as many as 9 witnesses to bring home the charge framed against the appellant.
6. Heard the submissions of the Learned Amicus Curiaeb and the Learned Advocate for the State.
7. A circumspection of the prosecution witnesses revealed as follows:-

- i. PW-1 in his deposition stated at the time of deposition he was posted as Inspector of Police in D.I.B., Murshidabad. On 19.09.2002, PW-1 was posted as Officer-in-Charge, Hariharpara Police Station. On that date in pursuance of secret information he conducted raid between 6 p.m. to 7 p.m. at Nischintipur More under Hariharpara Police Station. He was accompanied by A.S.I. Narayan Ch. Sarkar, H.G. Yeasin Mondal and H.G. Noor Islam and Constable Gouranga Majumdar. PW-1 conducted the said raid in order to execute Warrant of Arrest against wanted accused Swapan Ghosh and after arrival at Nischintipur More he found Swapan Ghosh was sitting in a tea stall and on seeing the police he tried to flee. After a hot chase they caught hold of him and then after search they recovered an improvised pipegun loaded with one round of .303 ammunition from the right waist of his lungi covered by shirt. PW-2 demanded the accused to produce document in support of possession of the firearm and ammunition. However, the accused could not produce any licence or any authenticated documents in support of possession of the said firearm and ammunition. PW-2 seized the said firearm and ammunition under proper seizure list in presence of both the witnesses who were called namely, Mainul Mondal and Yeasin Mondal who were called before making search of the body of the accused and in whose presence the said firearm and ammunition were recovered. PW-1 pasted label on the said firearm and ammunition and obtained signature of the accused and also the

signatures of both the witnesses on the label. PW-1 also put his signature thereon. Thereafter, PW-1 arrested the accused Swapan Ghosh and brought him to the police station along with the said firearm and ammunition. PW-1 identified the accused in Court.

After arrival at the police station he lodged FIR suo moto and endorsed the case to S.I. Paswan Bhutia for investigation. PW-1 wrote the complaint on the printed form of the formal FIR. The formal FIR was prepared and signed by him. PW-1 initiated Hariharpara P.S. Case No. 101/02 dated 19.09.2002 under Section 25(1)(a)/27 of the Arms Act against the accused Swapan Ghosh and accordingly prepared the formal FIR and signed on the same. The complaint along with the formal FIR was marked Ext. 1. bearing his signature on the reverse side of the printed form. The seizure list, prepared and signed by PW-1 in presence of witnesses, marked Ext. 2. Arms and ammunition produced in sealed cover. Sealed cover of the arms and ammunition was opened in Court.

The said pipe-gun along with label which he pasted on it with his signature. The label was wrapped by him round the pipe-gun and the label bore the signature of PW-1. The pipe-gun was marked Mat Ext. I. After returning to the police station, he had given the case no. on the label. The said ammunition which was loaded in the pipe-gun and recovered by him from the possession of the accused, was marked Mat. Ext. II.

- ii. During his cross-examination PW-1 stated when they attempted to execute Warrant of Arrest on wanted persons on the basis of Warrant of Arrest at first the wanted person tried to flee. He had been to Nischintipur More pursuance of the source information in order to execute Warrant of Arrest against the accused.
- iii. PW-2 at the time of deposition stated on 19.09.2002 he was posted at Hariharpara Police Station. On that date at about 6 p.m. he accompanied Officer-in-Charge, Hariharpara Police Station/ PW-1 for executing Warrant of Arrest against the accused. At Nischintipur More on seeing the police party, accused was trying to flee. However, they succeeded to catch hold of him after a hot chase. After that, his senior officer recovered a pipe-gun loaded with one round of ammunition from the possession of the accused. Then a seizure list was prepared by his officer/PW-9. PW-2 then said PW-1 prepared the seizure list. After that, they returned to the police station along with the seized firearm and ammunition and the accused. PW-2 identified the accused in Court. He further stated he could identify the seized firearm and the ammunition if the same were produced before him. PW-2 identified the said pipe-gun and the fired cartridge of the said ammunition which was loaded in the said pipe-gun recovered from the possession of the accused.
- iv. During cross-examination PW-2 stated they had been to the place of occurrence in order to arrest the accused on the basis of two Warrant

of Arrests. After arresting the accused on the basis of the said Warrant of Arrests, he was taken to the police station.

- v. PW-3 in his deposition stated on 19.09.2002 he was posted in Hariharpara Police Station. On that date at about 6 p.m. they were told by the Officer-in-Charge, Hariharpara Police Station/PW-1 to accompany him in order to execute Warrant of Arrest against Swapan Ghosh. After that, they went out of the police station to Baruipara by police vehicle. At Nischintipur More they found that the accused was fleeing away. They chased him and caught hold of him. After he was nabbed they detected one pipe-gun was kept concealed inside his lungi. Then public assembled there. The said pipe-gun loaded with one ammunition was recovered and a seizure list was prepared by his officer. Then they came back to the P.S along with the accused and the seized firearms. Swapan Ghosh was present in the Court. The said firearms and ammunition which were recovered from the accused, already marked Mat Exhibits- I and II.
- vi. During cross-examination, PW-3 deposed that in order to go to Baruipara, they must cross Nischintipur More. On the very date, they had been proceeding to Baruipara in order to execute warrant of arrest against Swapan Ghosh but on their way at Nischintipur More, they found Swapan Ghosh fleeing away on seeing them. Then they chased and caught hold of him. Then the pipe-gun loaded with ammunition was recovered from his possession and then the seizure list was

prepared at the place of occurrence. Then they came back to the P.S along with the seized firearms and ammunition and the accused. He could not say whether this type of firearms and ammunition were kept in the 'Thana' Malkhana of Hariharpara P.S.

- vii. PW-4 deposed in his examination-in-chief that Swapan Ghosh was not known to him. PW-4 did not know where the house of Swapan Ghosh was situated. Signature of PW-4 in the seizure list was marked as Exhibit 2/1. PW-4 had been to the police station on his personal work and he was asked to sign on a blank paper by the police officer and accordingly he put his signature on the said blank paper.
- viii. During cross-examination by prosecution, PW-4 stated that he was not examined by the Investigating Officer.
- ix. PW-5 in his deposition identified his signature in seizure list marked as Exhibit 2/2. In pursuance of work of their business organization, they often visited the P.S. In course of his visit at the P.S., police obtained his signature on a paper. He did not know actually on what paper police obtained his signature. He did not know Swapan Ghosh. He was not examined by the Investigating Officer. PW-5 was declared hostile by prosecution.
- x. PW-6 stated in his evidence that on 19.09.02 he was posted in Hariharpara P.S. as Constable being no.332 and on that date in the evening, he was a member of the raiding party under the leadership of O/C Sanjib Kr. De and others. Accordingly, they arrived at

Nischintipur More. At Nischintipur More, a raid was held and O/C arrested one Swapan Ghosh with arms. The said arms was kept concealed inside the fold of the wearing lungi. A revolver was also kept concealed by the said Swapan Ghosh inside his lungi.

- xi. During cross-examination by prosecution, PW-6 stated that he was examined by the Investigating Officer. He stated to the I.O. that O/C Sanjib Kr. De recovered one iron made pipe-gun loaded with one round of ammunition from inside the lungi of Swapan Ghosh.
- xii. During cross-examination by defence, PW-6 deposed that only one person was standing in the dock as an accused.
- xiii. PW-7 deposed in his evidence that on 19.09.02 he was R.I. as well as Arms Expert of Murshidabad district. On that date, he received a sealed packet containing one improvised pistol type pipe-gun Exhibit-A and one round of .303 ammunition, Exhibit B for examination and opinion and accordingly he tested both the arms and ammunition with reference to Hariharpara P.S. Case No. 101/02 dated 19.09.02. After testing both the arms and ammunition, he found that Exhibit A improvised pistol type pipe-gun was in working condition and further that the ammunition Exhibit B was live and endanger to human life. Accordingly, he prepared the report in his hand and signature marked Exhibit 3. Then he re-sealed both the arms and cover of the cartridge of the said ammunition and sent them to Hariharpara P.S. He also sent the report to the concerned P.S. The wrapper of the said seal

cover which bore his signature, date and case number marked as Mat Exhibit-III. The said pistol type pipe-gun already marked Mat Exhibit-I and the empty cartridge which was examined by him in connection with this case, already marked Mat Exhibit-II.

- xiv. During cross-examination PW-7 could not recollect whether the label round the pipe-gun was round the pipe-gun at the time of receiving the same for testing. Pipe-gun, Mat Exhibit-I was in working condition having firing pin. So far as he remembered he tested the pipe-gun in connection with this case. He did not give any identification mark on both the arms and ammunition at or after both were tested by him.
- xv. PW-8 at the time of deposition stated he was posted at C.I.D., Berhampore. On 19.09.2002 he was posted at Hariharpara Police Station as A.S.I. of police. On that day in the afternoon he accompanied the Officer-in-Charge of Hariharpara Police Station to Baruipara Ghoshpara for conducting raid. Accordingly, they went to Baruipara Ghoshpara village and they apprehended one miscreant and one pipe-gun was recovered from his possession. On being asked the miscreant disclosed his name as Swapan Ghosh. After recovery of the said firearm from the possession of the miscreant Swapan Ghosh and recovered firearm. One ammunition loaded in the said firearm was also recovered from the possession of the miscreant Swapan Ghosh. PW-8 identified the accused in Court. A seizure list was prepared in respect of the seizure of said firearm and ammunition at the police station. He

had seen the firearm and ammunition so recovered from the possession of the accused. The said firearm so recovered from the possession of the accused by the Officer-in-Charge, Hariharpara Police Station. The firearm was marked Mat. Ext. I. The cover of the cartridge so recovered from the possession of the accused. The cover of the cartridge was marked Mat. Ext. II.

- xvi. During cross-examination PW-8 stated he was posted at Hariharpara Police Station for two years. He could not recollect how many arms and ammunitions were recovered in different cases during the tenure of his position at Hariharpara Police Station. No special mark of identification was found on the produced firearm and ammunition to ascertain that those firearm and ammunition were recovered from the possession of the accused.
- xvii. PW-9 at the time of deposition stated he was then posted in Kalchini Police Station as S.I. On 19.02.2002 he was posted at Hariharpara Police Station as S.I. of police. On that date he took over investigation of Hariharpara P.S. Case No. 101/02 under Sections 25(1A)/27 of the Arms Act on being endorsed by the Officer-in-Charge, Hariharpara Police Station. In course of investigation, he took charge of one pipe-gun, one round of .303 ammunition, seizure list, FIR and also the accused. He interrogated the accused and afterwards forwarded him to Learned S.D.J.M., Berhampore. Thereafter, he visited the place of occurrence and drew up a sketch map with index of the place of

occurrence. The sketch map with index of the place of occurrence prepared and signed by PW-9 marked Ext. 4. He also examined the local seizure list witnesses and the members of the raiding party and recorded their statements under Section 161 Cr.P.C. and arranged to send the seized firearm and ammunition to the arms expert through Learned S.D.J.M., Berhampore and he also collected the report of the arms expert. He made prayer to the D.M., Murshidabad for sanction to prosecute the accused under the Arms Act. The said sanction order of D.M., Murshidabad, marked as Ext. 5. On being satisfied with the prima facie materials of the offence under Sections 25(1A)/27 of the Arms Act he submitted charge-sheet being No. 134 dated 14.11.2002 against accused Swapan Ghosh. He examined Yeasin Molla who told him that on 19.09.2002 in between 6-6.30 p.m. police officers visited Nischintipur More and recovered one firearm and ammunition from Swapan Ghosh in his presence and thereafter he signed on the seizure list. He examined Mainul Sk. who told him that on 19.09.2002 in the evening the Daroga babu and other police personnel had been to Nischintipur where they caught hold of Swapan Ghosh and recovered one pipe-gun and one round of ammunition from his possession in his presence and then prepared a seizure list. He examined Gour Majumdar who disclosed to him that Sanjib Kr. Dey, Officer-in-Charge of Hariharpara Police Station recovered one iron made pipe-gun loaded with one round of ammunition from inside the lungi of Swapan Ghosh.

xviii. During his cross-examination PW-9 stated he did not reflect anything in the charge-sheet regarding G.R. Case No. 1120/2000 and 757/1996.

8. Section 25(1-B) of the Arms Act, 1959 is given below:-

25. Punishment for certain offences.—

...

(1-B) Whoever—

(a) acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3; or

(b) acquires, has in his possession or carries in any place specified by notification under Section 4 any arms of such class or description as had been specified in that notification in contravention of that section; or

(c) sells or transfers any firearm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of Section 8 or does any act in contravention of sub-section (1) of that section; or

(d) being a person to whom sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (1) of Section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section; or

(e) sells or transfers, or converts, repairs, tests or proves any firearm or ammunition in contravention of clause (b) of sub-section (1) of Section 9; or

(f) brings into, or takes out of, India, any arms or ammunition in contravention of Section 10; or

(g) transports any arms or ammunition in contravention of Section 12; or

(h) fails to deposit arms or ammunition as required by sub-section (2) of Section 3, or sub-section (1) of Section 21; or

(i) being a manufacturer of, or dealer in, arms or ammunition, fails, on being required to do so by rules made under Section 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries therefrom or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals such arms or ammunition or refuses to point out where the same are or is manufactured or kept, shall be punishable with imprisonment for a term which shall not be less than [two years but which may extend to five years and shall also be liable to fine] and shall also be liable to fine:

Provided that 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 [two year]....

9. The following was held in **Samir Ahmed Rafiq Ahmed Ansari v. State of Gujarat**¹, by the Hon'ble Supreme Court:-

“8. The question falling for consideration is that what is the offence for which the appellant is to be convicted—for the possession of the country-made pistol loaded with live cartridges and for possession of two other live cartridges. Section 3 deals with licence for acquisition and possession of firearms and ammunition. As per Section 3(1) no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds a licence issued in accordance with the provisions of the Arms Act and the Rules made thereunder.

¹ (2019) 13 SCC 799

Contravention of Section 3 is punishable under Section 25(1-B)(a) with imprisonment for a term which shall not be less than one year but which may extend to three years and also be liable to fine. Both the courts recorded concurrent findings that the appellant was found in possession of country-made pistol loaded with live cartridges and in possession of two other live cartridges which act is clearly in violation of Section 3 of the Act. It is not the case of the appellant that he has a licence for possession of country-made pistol. The possession of the country-made pistol without licence is punishable under Section 25(1-B)(a) of the Arms Act...”

10. The opinion of the Arms Expert was received in sealed condition which was further resealed. The seizure of the arms cannot be disputed. Proper sanction was accorded for prosecution. The appellant was apprehended and arrested along with the weapon the police officers did not have any animosity with the appellant eradicating the possibility of false indictment. Independent witnesses are generally reluctant and abstain to cite themselves as witnesses where they do not have any personal interest just to relieve themselves from attending court proceedings considering unnecessary harassment the evidence of independent witnesses and the co-villagers turning hostile will not affect the prosecution case. The appellant failed to show valid papers and/or licence for possessing the seized arms.
11. The prosecution has successfully proved its case beyond reasonable doubt.
12. In view of the above discussions, the instant criminal appeal is dismissed.

13. There is no order as to cost.
14. I record my appreciation for the able assistance rendered by Learned Advocate, Mr. Amartya Ghosh, as *Amicus Curiae* in disposing of the appeal.
15. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
16. 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.)