

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 304 of 1990

Jogesh Barman @ Doro Barman

-Versus-

The State of West Bengal

For the Appellant : **Ms. Monami Mukherjee.
Ld. Amicus Curiae**

For the State : **Ms. Faria Hossain, Ld. APP
Ms. Mamata Jana.**

Hearing concluded on : **15.01.2026**

Judgment On : **29.01.2026**

Prasenjit Biswas, J:-

- 1.** This appeal is directed against the impugned judgment and order dated 27.06.1990, passed by the learned Additional Sessions Judge, 2nd Court, Jalpaiguri, in Sessions Case No. 117 of 1989 corresponding to Sessions Trial No. 6 of 1990, whereby the appellant was found guilty of offences punishable under Sections 25(1)(a) and 27 of the Arms Act. In the said

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judgment, the appellant was sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 500/-, and in default of payment of fine, to undergo further rigorous imprisonment for three months.

2. Being aggrieved by and dissatisfied with the findings and sentence recorded in the impugned judgment, the appellant has preferred the present appeal.
3. In short compass, the case of the prosecution, as emerging from the materials on record, may be delineated as follows:

"A written complaint was lodged at the police station by the defacto complainant, alleging, interalia, that on 18.01.1983 at about 02:00 hours, upon receipt of secret information, Sub-Inspector Mr. Chhetri, along with other police personnel, proceeded to village Ja-Chandrapur. While approaching the river side of Birkiti, the police party allegedly noticed a group of persons sitting near a bamboo bush. It was alleged that upon noticing the presence of the police personnel, the miscreants suddenly opened fire from their firearms. Thereupon, Sub-Inspector Mr. Chhetri allegedly ordered the police personnel to retaliate, as a result of which about 20 rounds were fired in total. It is further alleged in the written complaint that the miscreants attempted to flee from the spot, but one of them, namely the present appellant-convict, was apprehended. It was claimed that during the

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exchange of fire, the appellant sustained one penetrating wound and one bleeding injury on his knee. Upon interrogation, the arrested accused allegedly disclosed the names of seven other persons who were stated to have assembled at the said place. According to the prosecution, a pipe-gun loaded with one fired 12-bore cartridge, one live cartridge, and a two-cell electric torch were recovered from the possession of the arrested accused. During a search of the adjoining area and the place of occurrence, the police personnel allegedly found another injured person, namely Baktiar Mia, who subsequently succumbed to his injuries at the hospital. It was further alleged that the dead body of another accused was found by the side of the river Birkiti and was identified as Fuleswar Roy. On the basis of the said written complaint, Falakata Police Station Case No. 9 dated 18.01.1983 was registered under Sections 399, 402 and 307 of the Indian Penal Code and Sections 25 and 27 of the Arms Act against the appellant and the other seven persons named in the FIR. Thus, the criminal law was set in motion.”

4. After completion of the investigation charge-sheet was submitted by the prosecuting agency on 01.04.1989 under Sections 399/402/307 of the Indian Penal Code and 25(1)(a) and 27 of the Arms Act was submitted against this appellant and against the deceased accused persons named Baktiar Mia

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and Fuleswar Roy who were, however, shown to be dead in the charge-sheet.

5. In this case, nine witnesses were cited by the side of the prosecution and documents were marked as exhibits on its behalf. Neither any oral nor any documentary evidence was adduced on behalf of the defence.
6. Ms. Monami Mukherjee, learned *Amicus Curiae* appearing on behalf of the appellant, has strenuously contended that the learned Trial Court committed a grave miscarriage of justice in convicting the appellant under Sections 25(1)(a) and 27 of the Arms Act. It is submitted that the conviction rests on a fundamentally flawed appreciation of evidence, particularly in view of the categorical denial by the alleged members of the raiding party regarding their participation in the raid on the relevant date and time.
7. Learned *Amicus Curiae* has drawn the attention of this Court to the evidences of PW2, PW3, PW4 and PW6, who were projected by the prosecution as members of the raiding party. However, in their respective depositions, all the aforesaid witnesses specifically denied being members of the raiding party that allegedly conducted the raid leading to the recovery of arms and ammunition from the appellant. Such categorical denial, it

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is contended, goes to the root of the prosecution case and renders the alleged raid and seizure highly doubtful.

- 8.** It is further contended that PW2 and PW6 unequivocally admitted in their evidence that the seizure list was not prepared in their presence and that they did not see the seized articles at all. In view of such admissions, learned Advocate submits that the seizure list loses its evidentiary value, as the very factum of seizure has not been proved through independent witnesses. Since the alleged seizure was not admitted by PW2 and PW6, no reliance could legally be placed upon the seizure list, and consequently, the conviction and sentence imposed under Sections 25(1)(a) and 27 of the Arms Act are wholly unsustainable in the eye of law.
- 9.** Ms. Mukherjee further submitted that the evidences of police officers alone cannot be implicitly accepted when independent witnesses, who were admittedly associated with the raid and seizure, have failed to support the prosecution version. It is urged that the prosecution case suffers from serious infirmities as all the independent witnesses, namely PW2, PW3, PW4 and PW6, have not corroborated the prosecution story and, in fact, have demolished the same by denying their involvement altogether.

- 10.** The learned Advocate has further drawn the attention of this Court to the evidence of PW5, who deposed that on 17.01.1983 he was not a member of the R.G. Party involved in the alleged raid but was rather a member of the R.G. Party of his village and that he had no knowledge whatsoever about the case. Despite such a clear disassociation from the prosecution case, PW5 was neither declared hostile nor cross-examined by the prosecution. It is submitted that this omission on the part of the prosecution further weakens its case and reflects serious lapses in the conduct of the trial. The contradictions and omissions appearing in the testimonies of the prosecution witnesses, taken cumulatively, render their evidences unreliable and unworthy of credence.
- 11.** On the aforesaid premises, learned *Amicus Curiae* submits that the learned Trial Court erred in law and on facts in relying upon such shaky and inconsistent evidence to convict the appellant, and therefore, the impugned judgment and order of conviction are liable to be set aside. In support of her submissions, learned Advocate for the appellant placed reliance upon the decision of the Hon'ble Supreme Court in ***Sanjeet Kumar Singh vs. State of Chhattisgarh***, reported in **(2022) 16 SCC**

58, as well as in ***Deomuni Sharma vs. State of Jharkhand***, reported in **(2009) 16 SCC 80**.

- 12.** Elaborating upon the ratio laid down in *Sanjeet Kumar Singh* (supra), it is submitted that in the said case the Investigating Officer, examined as PW7, claimed to have conducted the entire investigation in the presence of independent witnesses. However, those independent witnesses not only denied their presence and participation but also furnished explanations as to how their signatures came to appear on the documents prepared by the police. In such circumstances, the Hon'ble Apex Court extended the benefit of doubt to the accused. Relying upon the said principle, learned Advocate submits that the present case stands on an identical footing, as the independent witnesses have not supported the prosecution case and have denied their participation in the raid and seizure.
- 13.** It is, therefore, contended that in the absence of independent corroboration, the conviction of the appellant solely on the basis of police testimony amounts to placing implicit and unquestioned reliance upon an interested version, which is impermissible in law. Such an approach, it is urged, vitiates the impugned judgment and results in a miscarriage of justice, warranting interference by this Court.

- 14.** Ms. Faria Hossain, learned Advocate appearing on behalf of the State, has submitted that there is nothing on record which warrants interference with the findings of the learned Trial Court in the impugned judgment. It is specifically contended that the evidence of PW2 and PW3 clearly establishes their presence at the time of the alleged seizure, and there is nothing in their depositions to suggest that their presence at the place and time of seizure can be disputed.
- 15.** Learned Advocate has drawn the attention of this Court to the testimony of PW2, who admitted putting his signature on the seizure list. PW2 also deposed in his examination-in-chief that the house of the appellant is situated approximately one mile away from his own residence and that he had been acquainted with the accused even prior to the date of the incident. According to the learned Advocate, this familiarity might explain why PW2 did not fully support every aspect of the police version regarding the seizure. However, PW2 has specifically stated that he signed the seizure list at the microwave tower of Ja-Chandrapur, which is the actual place of occurrence. Similarly, PW3 also admitted in his evidence that he put his signature on the seizure list. Learned Advocate submitted that, in view of such admissions, the presence of

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PW2 and PW3 at the time and place of the alleged seizure cannot be doubted.

- 16.** The learned Advocate further referred to the cross-examination of PW4, who had been declared hostile by the prosecution. PW4 deposed that after hearing the sounds of firing, he and others proceeded to the place of occurrence, where they saw the appellant lying injured on the ground with a gunshot wound. PW4 further stated that a pipe-gun was found hanging from the neck of the appellant, and that one cartridge and a cell torch were also recovered. Additionally, PW4 mentioned that an axe and a tin box were found at the place of occurrence. According to his testimony, he and the others then assisted the police, and PW2 signed the seizure list in his presence.
- 17.** On the basis of these evidences, learned Advocate submitted that the search and seizure were conducted strictly in accordance with law. The fact that some independent witnesses later stated that they were not aware of the contents of the seizure list does not vitiate or discredit the lawful recovery made by the police. The learned Trial Court, after appreciating the totality of the evidence, concluded that the appellant had committed the offences under Sections 25(1)(a) and 27 of the Arms Act and imposed an appropriate sentence.

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- 18.** It is therefore submitted by the learned Advocate for the State that the findings recorded by the Trial Court are based on proper appreciation of evidence and are legally sound. In light of this, the impugned judgment and order of conviction do not call for interference. Accordingly, it is urged that the appeal filed by the appellant challenging the conviction and sentence may be dismissed.
- 19.** I have anxiously considered the rival submissions advanced by the learned counsels on behalf of both the parties and have carefully perused and examined all the materials on record.
- 20.** It is the specific and emphatic contention of the appellant that the conviction recorded under Sections 25(1)(a) and 27 of the Arms Act is wholly unsustainable both in law and on facts, inasmuch as the very foundation of the prosecution case namely, the alleged raid and consequential seizure of arms from the possession of the accused stands completely eroded by the evidence on record.
- 21.** At the very outset, it is of crucial significance to note that PW2, PW3, PW4 and PW6, who were projected by the prosecution as members of the raiding party as well as seizure witnesses, did not support the prosecution version during the course of trial. All these witnesses were declared hostile by the prosecution,

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and each of them categorically deposed that they were not members of the raiding team on the alleged date and time of occurrence. Their evidences strike at the root of the prosecution case and clearly demolish the claim that a lawful and duly constituted raid was conducted in the manner alleged. When the very witnesses who were purportedly present at the time of raid deny their presence and participation, the prosecution story regarding the conduct of the raid becomes highly doubtful and unsafe to rely upon.

- 22.** PW2, in his evidence, specifically stated that on 17.01.1983 he was not on duty as a member of the raiding party. He further admitted that he had put his signature on the seizure list only after it had already been written by a police officer and that the Officer-in-Charge had asked him to sign the paper. More importantly, this witness categorically stated that he did not go through the seizure list at the time of signing and did not witness any seizure being effected in his presence.
- 23.** PW3 also deposed in the same line as PW2, stating that although he had been a member of an R.G. Party about seven years earlier, nothing was seized in his presence in connection with the present case. His testimony further weakens the prosecution version regarding the alleged raid and recovery.

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- 24.** PW6, Dinabandhu Barman, stated in his evidence that he did not see the articles mentioned in the seizure list and that he did not witness any recovery of arms as alleged by the prosecution. His testimony unequivocally denies the factum of seizure from the accused.
- 25.** Most significantly, PW2 and PW6, who were cited as seizure witnesses, did not admit that the alleged seizure list was prepared in their presence. They neither acknowledged the recovery of arms from the possession of the accused nor the preparation of the seizure list at the spot. In prosecutions under the Arms Act, proof of conscious, lawful and proved recovery of arms from the accused is the sine qua non for sustaining a conviction. The seizure list constitutes a vital piece of evidence, and its preparation must be established through reliable and cogent testimony, preferably of independent witnesses or at least members of the raiding party. When the seizure witnesses themselves deny the seizure and the preparation of the seizure list, the authenticity and credibility of the alleged recovery becomes extremely doubtful.
- 26.** In the absence of corroboration from the members of the raiding party, the prosecution is left only with the testimony of official witnesses, who are otherwise interested in supporting

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the prosecution case. Though there is no absolute legal bar to base a conviction solely on the testimony of police personnel, such evidence must inspire confidence and be free from serious infirmities. In the present case, the categorical denial by PW2, PW3, PW4 and PW6 regarding their presence at the time of the alleged raid creates a serious dent in the prosecution version and renders the official narrative highly suspect. These contradictions go to the very root of the matter and cannot be brushed aside as minor discrepancies.

- 27.** It is also noteworthy that PW2, PW3, PW4 and PW6 were declared hostile by the prosecution and were cross-examined. When seizure witnesses turn hostile and do not support the factum of recovery, the Court is required to exercise greater caution and seek independent and reliable corroboration before recording a conviction. In the present case, no such corroboration is forthcoming. The prosecution has failed to establish through trustworthy evidence that any arm was, in fact, recovered from the possession of the accused in accordance with law.
- 28.** The prosecution case thus rests substantially on the testimony of police personnel, while all the so-called independent witnesses, namely PW2, PW3, PW4 and PW6, have failed to

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support the prosecution version. In such a situation, acceptance of the evidence of police personnel without independent corroboration would be wholly unsafe and contrary to the settled principles governing appreciation of evidence in a criminal trial. It is not in dispute that PW2, PW3, PW4 and PW6 were cited by the prosecution as independent witnesses to the alleged seizure. These witnesses were expected to lend impartial corroboration to the prosecution case, particularly with regard to recovery of arms and preparation of the seizure list. However, all of them resiled from the prosecution version and were declared hostile. They categorically stated that they did not witness the occurrence in the manner alleged, as would clearly appear from their depositions. Their evidences, therefore, completely belie the prosecution narrative and create serious doubt regarding the truthfulness of the prosecution story, entitling the appellant to the benefit of doubt.

- 29.** It is well settled that the testimony of police personnel cannot be discarded merely on the ground of their official status. The law does not presume that a police witness is untrustworthy solely because of his employment. However, it is equally well settled that where independent witnesses are available, are in fact examined by the prosecution, and yet do not support the

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prosecution case, the evidence of police personnel must be scrutinized with greater caution and circumspection.

30. In the present case, as already discussed, the independent witnesses have not merely failed to corroborate the prosecution version; rather, they have squarely contradicted it by denying their participation in, and knowledge of, the alleged raid and seizure. Such categorical denial strikes at the very root of the prosecution case and renders the version put forward by the police witnesses highly doubtful. The prosecution had specifically asserted the presence of independent witnesses at the time of the alleged seizure. Once those very witnesses disowned the prosecution story and denied their presence and involvement, it becomes wholly unsafe to place reliance on the testimonies of the police personnel, namely PW7, PW8 and PW9. When independent witnesses turn hostile and do not support the prosecution case, it is incumbent upon the prosecution to furnish strong, cogent and convincing corroboration to inspire confidence in the official version.

31. In the absence of such corroboration, reliance on the evidence of PW7 and PW9 alone would amount to placing implicit faith in an interested version, which is impermissible in criminal jurisprudence. The evidence of police personnel, standing alone

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and uncorroborated, does not meet the rigorous standard of proof beyond reasonable doubt, particularly when weighed against the hostile stand uniformly taken by all the independent witnesses.

- 32.** In view of the foregoing reasons, the testimonies of PW7, PW8 and PW9, being police personnel, cannot be accepted in isolation, especially when PW2, PW3, PW4 and PW6, the independent witnesses cited by the prosecution, have failed to support the prosecution case.
- 33.** The evidence of PW5, Dilip Kumar Banik, further exposes the inherent weakness, inconsistency, and lack of fairness in the prosecution case. PW5 was examined as a material witness with the object of supporting the alleged raid and recovery made by the police. However, instead of advancing the prosecution case, his testimony completely undermines it. PW5 categorically stated in his deposition that on 17.01.1983 he was not on duty as a member of the R.G. Party and that he did not know anything about the present case. According to the prosecution, the alleged raid and seizure were conducted on 17.01.1983 by a duly constituted raiding party. If PW5 was cited as a member of such raiding party, his unequivocal denial of being on duty on the relevant date, coupled with his

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professed ignorance about the incident, directly contradicts the prosecution version and casts a serious doubt on the very constitution of the raiding party.

- 34.** What is even more striking is that despite such categorical denial, the prosecution did not declare PW5 hostile. When a prosecution witness resiles from his previous statement or gives evidence contrary to the prosecution case, it is always open to the prosecution to seek permission of the Court to declare the witness hostile and to cross-examine him. The failure of the prosecution to do so in the present case clearly indicates that the testimony of PW5 was accepted by the prosecution as it stood. The non-declaration of PW5 as a hostile witness has serious legal consequences, as his evidence, having remained unchallenged, binds the prosecution and cannot be brushed aside or selectively ignored.
- 35.** Furthermore, the testimony of PW5 assumes greater significance when considered in conjunction with the evidence of PW2, PW3, PW4 and PW6, who also did not support the prosecution case and denied their participation in the alleged raid. The cumulative effect of these testimonies unmistakably establishes that the prosecution has failed to prove the lawful constitution of the raiding party itself, far less the alleged

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recovery of arms from the accused. The prosecution version, therefore, becomes highly doubtful and unworthy of credence.

- 36.** It is also evident from the impugned judgment that the learned Trial Court brushed aside the evidence of PW2, PW3, PW4 and PW6, except for the limited purpose of noting their signatures on the seizure list. Despite the fact that these witnesses were cited as members of the R.G. Party and independent witnesses to the seizure, and despite their failure to support the prosecution case, the learned Trial Judge proceeded to convict the appellant solely on the basis of the testimonies of PW8 and PW9, who are police personnel.
- 37.** In criminal jurisprudence, the burden squarely lies upon the prosecution to establish its case beyond all reasonable doubt. In the present case, however, the prosecution evidence suffers from inherent contradictions and lacks credibility. The failure to prove the constitution of the raiding party, coupled with the denial of participation by all independent witnesses and the unchallenged testimony of PW5, renders the prosecution case wholly unreliable. Consequently, the conviction based on such infirm evidence cannot be sustained in law.
- 38.** In view of the above facts and circumstances and discussion made above I am of the opinion that the prosecution has failed

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to prove its case beyond reasonable shadow of doubt and as such, the impugned judgment and order of conviction passed by the learned Trial Court dated 27.06.1990 is not sustainable under the eye of law.

- 39.** Accordingly, the present appeal, be and the same is hereby **allowed**.
- 40.** The impugned judgment and order of conviction dated June 27, 1990 passed by the learned Trial Court in connection with Sessions Trial No. 6 of 1990 (Sessions Case No.117 of 1989) is hereby set aside.
- 41.** The appellant is on bail. He is discharged from the respective bail bonds and be set at liberty, if he is not wanted in connection with other case.
- 42.** In accordance with the mandate of Section 437A of the Code of Criminal Procedure (corresponding to Section 483 of the *Bharatiya Nagarik Suraksha Sanhita, 2023*), it is incumbent upon the appellant to execute bail bonds, supported by suitable sureties. Such bonds, once duly furnished, shall remain in full force and effect for a period of six months, thereby ensuring the presence of the appellant as required by law and safeguarding the due administration of justice.

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- 43.** This Court places on record its appreciation of Ms. Monami Mukherjee, who was appointed by this Court to assist the appellant in the capacity of amicus curiae.
- 44.** Let a copy of this judgment along with the Trial Court Record be sent down to the Trial Court immediately.
- 45.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)