

**IN THE COURT OF ASSISTANT SESSIONS JUDGE:: UDALGURI, ASSAM****SESSIONS- 16/2019**

u/s-387 IPC, R/W Sec- 25 (1-A) Arms Act,  
R/W Section-10/13 UA (P) Act

THE STATE OF ASSAM ----- Sri Bhadra S. Chakma(Informant).

-Vs-

SRI NERSON DAIMARI ----- Accused person.

PRESENT: NUR MUHAMMAD ABDULLAH AHMED, (LL.M, AJS)

Asstt. Sessions Judge, Udalguri, Assam

**APPEARANCE:**

(1) MrB. K Chetry: Ld Addl. PP for the State.

(2)Mr M. P Rabha: LdDefence Counsel.

EVIDENCE RECORDED ON : 06.04.19, 20.06.19, 09.07.19& 29.07.19.

ARGUMENTS HEARD ON : 26.08.2019.

JUDGMENT DELIVERED ON : 30.08.2019.

**J U D G M E N T**

1. The brief facts of the prosecution case is that on 02/05/2014one Sri BhadraSenChakma of C Coy 36<sup>th</sup> Assam Rifles lodged an FIR with the Officer-in-Chargeof MazbatPS stating *inter alia* that on that day on the basis of specific intelligence input regarding fleeing of an NDFB(S) Cadre with a Pistol from Mazbat Town to Lakhribari village wearing a blue T-shirt, they established an MCP in Mazbat Town. At about 9.30 am they stopped an Auto (white) and the accused NersonDaimari was apprehended and during search, one Factory made Pistol, four 9 mm rounds, one mobile Handset, 2 SIM Cards, one NDFB money Collection Receipt and a cash of Rs-3090/- was recovered from his possession. Hence the case.

2. On receipt of the FIR, Mazbat PS Case No-22/2014, u/s-387 IPC, R/W Section-25(1-A)/35 Arms Act,R/W Section-10/13 UA(P) Act were registered against the STATE OF ASSAM -Vs- SRINERSON DAIMARI

accused Sri Nerson Daimari. Investigation into the case was commenced and after the completion of usual investigation, Charge-sheet u/s-387 IPC, R/W Section-25(1-A) Arms Act, R/W Section-10/13 UA (P) Act was submitted against the aforesaid accused, to face the trial.

3. In due course, the case against the aforesaid accused was committed to the Court of Hon'ble Sessions Judge, Udalguri by the CJM, Udalguri and then the case was transferred to this Court for trial.

4. Trial of the case was commenced. The accused Sri Nerson Daimari appeared before the Court to face the trial. After hearing both the sides and perusing the case record, charges in writing u/s-387 IPC, R/W Section-25(1-A) Arms Act, R/W Section-10/13 UA (P) Act were framed against the aforesaid accused. On being read over and explained the content of charges under the aforesaid provisions, the accused pleaded not guilty and claimed to face the trial.

5. **Points for Determination:-** After considering the materials on record, I have found the following points for determination-

I) Whether during the period of 2014 the accused Sri Nerson Daimari was involved in threatening people with fear of death in order to commit extortion of money from people?

II) Whether on or about 02.05.2014 at about 9.30 am at Mazbat Town, the aforesaid accused was found in possession of one Factory made Pistol and four rounds of 9 mm ammunitions by the police personnel of Assam Rifles?

III) Whether the aforesaid accused belonged to banned organization NDFB (S)?

IV) Whether the aforesaid accused advocated and took part in the unlawful activities of banned organization i.e NDFB (S)?

6. During the trial, the prosecution side examined as many as thirteen (13) witnesses namely, Sri Anuj Kr. Mahatoas PW-1, Sri Suraj Choudhury as PW-2, Sri Ram Shankar Mahatoas PW-3, Sri Bhadra Sen Chakma (informant) as PW-4, Sri

Gautam Tanti as PW-5, Sri Wongto Musungas PW-6, Sri Rohit Daimari as PW-7, Smti Pranati Daimari as PW-8, Sri Karlebench Daimari as PW-9, Sri Langkeshwar Daimari as PW-10, Sri Deben Chandra Gohain as PW-11, Sri Dipak Das as PW-12 and Sri Billeshwar Kalita as PW-13. The prosecution side exhibited the FIR as Ext-1, Seizure Lists as Ext-2, Armourer Report as Ext-3, Sketch Map of PO as Ext-4, Prosecution Sanction from Ld D.M, Udalguri as Ext-5, Prosecution Sanction from Home Department, Government of Assam as Ext-6 and Charge-sheet as Ext-7. The accused was examined u/s-313 Cr.P.C, wherein his stand was of total denial. The accused declined to adduce defence evidence. I have also heard the arguments of both the sides.

APPRECIATION OF EVIDENCE, DECISION AND REASONS THEREOF:

7. To determine the above-mentioned points and to reach a judicial decision on the same, let me now peruse the germane evidences on record.

8. To start with the appreciation of evidences of PWs, let me refer to the arguments advanced by both the sides. The Id Counsel for the accused submitted that the accused never collected money from people in the name of NDFB(S) or any other banned organisation. Further the accused was never a member of any banned organization including NDFB(S). It is also submitted that the prosecution has failed to prove the recovery of arms and ammunitions from the possession of the accused by adducing evidence of reliable witnesses. The Id Addl. PP submitted that the prosecution has been able to prove its case against the accused.

**POINT NO-I:**

9. The allegation is that during the period of 2014 the accused Sri Nerson Daimari was involved in threatening people with fear of death in order to commit extortion of money from people.

10. Let me now travel through the evidences of PWs to determine as to whether the accused was in fact involved in extortion activities. PW-1, PW-2, PW-3, PW-7, PW-8, PW-9 and PW-10 stated about their ignorance of this case. Vital witnesses i.e. PW-4 (informant), PW-5 and PW-6 also did not whisper anything about the involvement of the accused in extortion activities. So, it can be said that

the prosecution has miserably failed to prove that the accused was involved in extortion activities as alleged. Hence the point in hand is decided against the prosecution.

**POINT NO-II:**

11. Further allegation of the prosecution is that the accused was found in possession of one Factory made Pistol, and four rounds of 9 mm ammunitions by the police personnel of Assam Rifles on 02.05.2014 at about 9.30 am at Mazbat Town.

12. If we travel through the evidence of the informant (PW-4), it can be seen that the informant (**PW-4**), who was posted in the year 2014 as Havildar with Assam Rifles at Mazbat Camp, stated in his deposition that that day Major Ullash Kumar brought the accused in the Camp and instructed him to hand over the accused along with one 9 mm Pistol (Factory made), one 9 mm Magazine, four rounds of ammunitions of 9 mm Pistol, one Mobile Handset, two SIM Cards, Cash of RS-3000/- and one NDFB Money Receipt allegedly recovered from the accused, to the Mazbat police station. Then he along with two other members of their camp proceeded to the Mazbat PS and handed over the accused along with the aforesaid articles to the OC, Mazbat PS and lodged an FIR (Ext-1). During cross-examination, PW-4 admitted that he was not with the Major at the time of apprehending the accused and as such he did not witness the recovery of anything from the accused. PW-4 also admitted that he did not know wherefrom the accused was caught.

13. **PW-6** Sri WongtoMusung also deposed in the same line as that of PW-4. PW-6 stated that in the year 2014, he was posted at Mazbat Camp. On that day Major Ullash Kumar brought one person in the Camp and instructed the informant to hand over the accused to police station. Then he accompanied the informant to Mazbat PS and the informant handed over the accused and one Pistol to the OC, Mazbat PS. During cross-examination, PW-6 admitted that he did not know as to wherefrom the person was caught and from whom the pistol was recovered. PW-6

also admitted that he had not seen any arms when the Major brought that person in the Camp.

14. **PW-5** Sri Gautam Tanti is a vital witness as he was with the Major Ullash Kumar by his own admission at the time of apprehension of the accused. But the defence has demolished the value of his evidence as he (PW-5) admitted that he did not know as to what was recovered from the accused as he was not involved in searching the accused. PW-5 further admitted that he was not in the vicinity of the Major when he searched the body of the accused.

15. So, PW-4 and PW-6 did not witness the recovery of arms and ammunitions from the accused as they were not party to search operation. PW-5, who was with Major Ullash Kumar during search operation, also did not witness the recovery of arms and ammunitions from the accused. Major Ullash Kumar, who allegedly recovered the arms and ammunitions from the accused, has not been cited as a prosecution witness and no attempt was even made by the prosecution to call him during trial to prove the recovery. Withholding such vital witness has hit hard on the veracity of prosecution case. Remaining witnesses have stated about their ignorance of this case. Under such circumstances, the prosecution case is bound to fail.

16. The principle of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and in case of any doubt, the benefit of doubt has to be given to the accused person. All the aforesaid adumbration and appreciation of evidences *vis a vis* the facts in hand, create doubt on the veracity of prosecution case and in such a situation, the penal liability cannot be fastened upon the accused person. Hence it can be said that the prosecution has failed to prove beyond reasonable doubt that the accused Sri Nerson Daimari was found in possession of one Factory made Pistol with four rounds of 9 mm ammunition. Hence, the point in hand is decided against the prosecution.

**POINT NO-III&IV:**

17. Further allegation of the prosecution is that the accused was a member of banned organization namely, NDFB(S) and that the accused was involved in advocating or in taking part in the unlawful activities of NDFB(S), a banned organization. But the perusal of evidence on record shows that there is no iota of evidence to show that the accused was a member of any banned organization or that the accused was found to be engaged in advocating or taking part in the unlawful activities of banned organization. Though a money collection receipt (Material Ext-4) in the name of NDFB (S) was allegedly recovered from the possession of the accused but the prosecution has failed to prove such recovery as per law in as much as Major Ullash Kumar, who allegedly recovered the said money collection receipt along with arms and ammunitions from the accused, has not been cited as a prosecution witness and no attempt was even made by the prosecution to call him during trial to prove such recovery. Under such circumstances, it can be said that the prosecution has failed to prove the points in hand. Hence, the points in hand are decided against the prosecution.

18. On the basis of the above adumbration and appreciation of evidences thereof, it can be safely concluded that the prosecution has failed to prove its case against the accused beyond reasonable doubt. As such, the accused Sri Nerson Daimari is acquitted of the charges leveled against him. So, the accused be set at liberty forthwith.

19. The bail-bond for the accused would remain in force for the next six (6) months in view of Sec. 437-A Cr.PC.

20. The seized materials be disposed of as per law after the expiry of appeal period.

21. Given under my hand and seal of this Court on this 30<sup>th</sup> day of August, 2019.

(NUR MUHAMMAD ABDULLAH AHMED)

Asstt. Sessions Judge, Udalguri, Assam

**APPENDIX**

1. PROSECUTION WITNESSES--

I) PW-1 : Sri Anuj Kr. Mahato;

II) PW-2 : Sri Suraj Choudhury;

III) PW-3 : Sri Ram Shankar Mahato

IV) PW-4 : Sri Bhadra Sen Chakma;

V) PW-5 : Sri Gautam Tanti;

VI) PW-6 : Sri WongtoMusung

VII) PW-7 : Sri RohitDaimari

VIII) PW-8 :Smti PranatiDaimari;

IX) PW-9 : Sri KarlebenchDaimari;

X) PW-10 : Sri LangkeshwarDaimari;

XI) PW-11 : Sri Deben Chandra Gohain;

XII) PW-12 : Sri Dipak Das &

XIII) PW-13 : Sri Billeshwarkalita.

2. PROSECUTION EXHIBITS-

I) Ext-1 :FIR;

II) Ext-2:Seizure List;

III) Ext-3: Armourer Report;

IV) Ext-4 : Sketch Map of PO;

V)Ext-5 :Prosecution Sanction from Ld D.M, Udalguri

VI) Ext-6 :Prosecution Sanction from Home Deptt. Govt. of Assam &

VII) Ext-7 : Charge-sheet.

3. DEFENCE WITNESSES : Nil.

4. COURT WITNESSES/EXHIBITS : Nil.

(NUR MUHAMMAD ABDULLAH AHMED)

Asstt. Sessions Judge, Udalguri, Assam