

IN THE COURT OF ASSISTANT SESSIONS JUDGE:: UDALGURI, ASSAM

SESSIONS-162/2018

u/s- 25(1-A) Arms Act, Section-5 of Explosive Substance Act

THE STATE OF ASSAM ----- Sri Kishor Das (Informant).

-Vs-

ACCUSED PERSONS ----- i) Geolang Basumatary
ii) Bishnu Daimary
iii) Ratan Daimary
iv) Aroliya Basumatary
v) Moon Basumatary
vi) Manak Swargiary

PRESENT: NILAKSHI LAHKAR, (L.L.M., A.J.S)

Asstt. Sessions Judge, Udalguri, Assam

APPEARANCE:

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

(2) Mr M. Deka, Mr. M. C. Narzary : Ld Defence Counsel
Mr. R. Khakhlari, Mr. T. Boro

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ARGUMENTS HEARD ON : 27.02.2020.

JUDGMENT DELIVERED ON : 12.03.2020.

J U D G E M E N T

1. The prosecution case in brief is that informant Kishor Das, an employee of SBI Rowta branch have lodged an F.I.R. before the Udalguri police station by stating inter alia that on 24/11/17 while they were returning to Rowta after taking a cash amount of

Rs. 20 lakh from SBI Udalguri some unknown miscreants of around 8/10 persons with arms stopped them at Goraimari at around 1:50 PM. The miscreants surrounded them and snatched away all of their mobile handsets and a box containing an amount of Rs. 20 lakh by pointing gun at them and fled away with the truck. Hence this case.

2. On receipt of the FIR, Udalguri PS Case No. 238/17, u/s- 395 IPC R/W Section 25(1-A) Arms Act R/W Section-5 Explosive Substance Act were registered against the accused persons namely Geolang Basumatary, Bishnu Daimary, Ratan Daimary, Aroliya Basumatary, Moon Basumatary and Manak Swargiary. Investigation into the case was commenced and after completion of investigation, charge-sheet u/s- 25(1-A) Arms Act R/W Section-5 Explosive Substance Act was submitted against the accused persons, to face the trial.

3. In due course, the case 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 persons namely Geolang Basumatary, Bishnu Daimary, Ratan Daimary, Aroliya Basumatary, Moon Basumatary and Manak Swargiary appeared before the Court to face the trial. After hearing both the sides and perusing the case record, charges in writing u/s 25(1-A) Arms Act, R/W Section-5 Explosive Substance Act were framed against the aforesaid accused persons. On being read over and explained the content of charges u/s- 25(1-A) Arms Act, R/W Section-5 Explosive Substance Act, the accused persons pleaded not guilty and claimed to face the trial.

5. **Points for Determination**:- Having considered the materials on record I have found the following points for determination:

I. Whether on 24/11/17 at about 1:50 PM the accused persons committed dacoity of Rs. 20 lakh from the van of SBI Rowta along with the gun and 7 bullets of the security guard on gun point when the informant along with his staff were returning to Rowta from SBI Udalguri?

II. Whether on 28/11/17 at about 3:30 PM the accused persons were apprehended by police officials of Majbat PS and recovered 29 rounds of AK-47 live

ammunitions, 1 magazine of M-20 pistol with 7 rounds of live ammunitions and 2 grenade no.36 from their possession?

III. Whether on the same date and time accused persons were found in possession of 2 grenade no.36 which are explosive device by the police officials of Majbat PS during search operation, under such circumstances as to give rise of reasonable suspicion that accused persons were in possession or control of the same not for a lawful object?

6. During the trial, the prosecution side examined as many as twenty-one (21) witness namely, Sri Kishor Das (informant) as PW-1, Sri Prasanna Swargiary as PW-2, Sri Nayanjyoti Rajbongshi as PW-3, Sri Trilokya Kalita as PW-4, Sri Bikram Basumatary as PW-5, Sri Kusho Basumatary as PW-6, Sri Madhu Ram Nath as PW-7, Sri Bapan Chandra Ghosh as PW-8, Sri Rahul Kalowar as PW-9, Sri Jintumoni Das as PW-10, Md. Unis Ali as PW-11, Sri Biswajit Sutradhar as PW-12, Sri Sib Nandan as PW-13, Akhtar Hussain Chowdhury as PW-14, Sri Gulsan Patel as PW-15, Sri Sachin Kumar Singh as PW-16, Sri Gorakh Nath Gurav as PW-17, Sri Ajoy Boro as PW-18, Sri Naren Basumatary, Sri Sailendra Nath Barman as PW-20 and IO Sri Dimple Gayari as PW-21. The prosecution side exhibited the FIR as Ext-1, Seizure Lists as Ext-2, Ext-3, Ext-4, Ext-5, Ext-6 and Ext-7, Prosecution Sanction u/s 25(1-A) Arms Act as Ext-8, Prosecution Sanction under Section-5 Explosive Substances Act as Ext-9, Charge-sheet as Ext-10 and sketch-map of the PO as Ext-3. The accused persons were examined u/s 313 Cr.P.C, wherein their stand was of total denial. The accused persons declined to adduce defence evidence. I have also heard the arguments of both sides.

Decision, Discussion and Reasons for the Decision

7. To determine the above mentioned points and to reach a judicial decision on the same let me now elaborate the evidence available in this case record.

8. **PW-1** Sri Kishor Das, who is the informant, stated in his deposition that he did not know the accused persons. He stated that on 24.11.2017 he along with bank security guard and driver were taking a cash amount of Rs. 20,00,000/- (twenty lakh) from SBI Udalguri for ATM of Rowta in a van. At about 1:50 PM when they reached Goroimari, a biker trying to stage a fake accident, intentionally fell in front of their van. And when the

driver of the van slowed down, 8/10 boys surrounded their van and took away the gun and mobile handset of the bank security guard and the key of the van from the driver. Then those people unlocked the "diggy" of their van by pointing gun at them, took the trunk containing the cash of Rs. 20 lakh and fled away towards Rowta.

During his cross-examination he has stated that he could not recognize the miscreants as they covered their faces with cloth.

9. **PW-2** Sri Prasanna Swargiary, who is the driver of the van, stated in his deposition that he did not know the accused persons. He stated that about a year ago, he along with the informant was travelling from Udalguri to Rowta in a Wagon-R vehicle, carrying a cash amount of Rs. 20,00,000/- for SBI Rowta from Udalguri SBI. When they reached Goroimari, 4/5 persons in two bikes stopped them by pretending to fake an accident and snatched the key of the trunk from the guard by pointing gun at him and took the cash from the trunk. Then they came to Udalguri police station and informed the bank.

During his cross-examination PW-2 has stated that he could not recognize the miscreants as they covered their face with cloth and helmet.

10. **PW-3** Sri Nayanjyoti Rajbongshi, who is a constable, stated in his deposition that he knew the informant and one (Moon Basumatary) of the accused persons. He also stated that in the year 2017, he was posted at Majbat PS. On that day the OC got information that some persons snatched away cash money from a vehicle of SBI while they were carrying the same for SBI Rowta from Udalguri SBI and then he accompanied the OC to Udalguri PS. Later he came to know that some amount of the stolen money was recovered. His signature was taken by the OC, Udalguri PS on a seizure list. Prosecution side exhibited the seizure list as Ext-2 and the signature of PW-3 as Ext-2(1).

During cross-examination PW-3 stated that he put his signature in Ext-2. He did not go through the contents of Ext-2. He further stated that he did not know as to wherefrom the money was recovered and he did not witness its recovery. He also stated that saw Moon Basumatary for the first time in Udalguri PS.

11. **PW-4** Sri Trilokya Kalita, who is a constable, stated in his deposition that he did not know the informant or the accused persons. He stated that he was posted at Majbat PS in the year 2017. During that period he heard that dacoity took place in a cash carrying vehicle of Rowta bank while the car was carrying cash from Udalguri to Rowta. Later he came to know that some amount of the looted money was recovered by police but he did not know from where the money was recovered.

The cross-examination of PW-4 was declined by the Learned Defence Counsel.

12. **PW-5** Sri Bikram Basumatary, stated in his deposition that he did not know the informant or the accused persons apart from the accused Moon Basumatary who is his brother. He stated that one day in the year 2017 at about 10 PM police went to his house and arrested his brother Moon Basumatary without any reason. Then he along with his neighbor Kusho Basumatary went to Dhekiajuli PS to inquire as to why his brother was brought to the police station. PW-5 stated that police took their signature on a paper without stating the reason for taking the signatures. Prosecution side exhibited the seizure list as Ext-3 and the signature of PW-5 as Ext-3(1).

During cross-examination PW-5 stated that he did not know as to why his signature was taken in Ext-3. He also stated that he put his signature in Ext-3 at Dhekiajuli PS without going through its contents.

13. **PW-6** Sri Kusho Basumatary, stated in his deposition that he did not know the informant but knew one of the accused, Moon Basumatary. He stated that one day in the year 2017 at about 10 PM police went to the house of Bikram Basumatary and arrested Moon Basumatary. PW-6 then accompanied Bikram Basumatary to Dhekiajuli PS to inquire as to why he was arrested. He further stated that their signature was taken on a paper (seizure list). Prosecution side exhibited the seizure list as Ext-3 and the signature of PW-6 as Ext-3(2).

During cross-examination, PW-6 stated that he did not know as to why his signature was taken in Ext-3. He also stated that he put his signature in Ext-3 at Dhekiajuli PS without going through its contents.

14. **PW-7** Sri Madhu Ram Nath, who is the bank guard at Rowta branch of SBI, stated in his deposition that he knew the informant as he is the clerk of Rowta SBI branch but he did not know the accused persons. He stated that on 24/11/2017 while he along with the informant was returning to Rowta along with a cash of Rs. 20,00,000/- from SBI Udalguri, one bike suddenly knocked their van at Goroimari area. When the driver of the van stopped the van, some boys surrounded them and snatched away his gun and mobile handset and took the key of the van from the driver at gun point. Then those people unlocked the "diggy" of the van by pointing gun at them and fled away towards Rowta side with the trunk containing the cash amount of Rs. 20,00,000.

15. **PW-8** Sri Bapan Chandra Ghosh, stated in his deposition that he knew the informant but could not recognize the accused persons. He also stated that about 2 years ago while he was posted at Majbat PS he heard that the cash of SBI Rowta was looted from Rowta from a van of the bank. PW-8 further stated that his signature was taken a seizure list but he did not know as to why his signature was taken (on being shown the seizure list. Prosecution side exhibited the seizure list as Ext-4 and the signature of PW-8 as Ext-4(1).

16. **PW-9** Sri Rahul Kalowar, stated in his deposition that he knows the informant but he could not recognize the accuse persons. He also stated that he accompanied his senior officer to Dolapar on being led by one Geolang Basumatary and recovered one trunk on being shown by the accused Geolang Basumatary. PW-9 stated that the trunk contained nothing but he came to know that the Rowta Branch was carrying the currency notes of SBI Rowta in that trunk but dacoity was committed. After that the IO seized the trunk. Prosecution side exhibited the seizure list as Ext-5, the signature of PW-9 as Ext-5(1) and the trunk as Material Ext-1.

During cross-examination, PW-9 sated that he does not remember the date and time of putting his signature in Ext-5. He also stated that he does not remember any identification marks of the trunk as such trunks are available in the market easily. PW-9 further stated that there are many houses in the vicinity of the place wherefrom the trunk was recovered and also stated that it was not a fact that Geolang Basumatary did not lead them and showed the trunk.

17. **PW-10** Sri Jintumoni Das, stated in his deposition that he does not know the informant in this case. He could not even recognize the accused persons. He also stated that in the year 2017, while he was posted at Majbat police station, he heard about the dacoity of currency of Rowta SBI. PW-10 further stated that his signature was taken on a paper but he was not told the reason for taking his signature. Prosecution side exhibited the paper as Ext-4 and the signature of PW-10 as Ext-4(2).

18. **PW-11** Md. Unis Ali stated in his deposition that he does not know the informant but he could recognize the accused persons. He stated that he knew Geolang Basumatary and Monak Basumatary by name and the others by their face. In the year 2017 while he was posted at Majbat PS, one day he with a senior officer proceeded to Chariduar in connection with the bank dacoity of SBI Rowta. PW-11 further stated that they found one bike, mobile and a cash of Rs.1,00,000/- from Geolang Basumatary and they seized the same. Then his signature was taken in the seizure list. Prosecution side exhibited the seizure list as Ext-3 and the signature of PW-11 as Ext-3(3).

During cross-examination PW-11 stated that he put his signature in Ext-3 in Majbat PS and that the IO recorded his statement. He further stated that he did not state before the IO that the currency notes were seized by the IO. It is not a fact that no money was recovered from the accused Geolang Basumatary.

19. **PW-12** Sri Biswajit Sutradhar stated in his deposition that he knew the informant of this case and he could recognize only one of the accused persons (Geolang). He stated that about one and half years ago he heard that dacoity took place in SBI but did not know the branch in which such incident took place. He with the IO recovered 5 rounds of ammunitions from a jungle at Rowta. PW-12 also stated that his signature was taken in the seizure list. Prosecution side exhibited the seizure list as Ext-6 and the signature of PW-12 as Ext-6(1).

During cross-examination PW-12 stated that the place wherefrom the ammunitions were recovered is frequented by people and it was near the road.

20. **PW-13** Sri Sib Nandan stated in his deposition that he did not know the informant of this case or the accused persons. He stated that in the year 2017 while he was posted at Majbat at 210 COBRA one day they got information that after a bank

recovery some weapons were left near a bridge at Udalguri-Rowta road but after search they found no weapon.

21. **PW-14** Akhtar Hussain Chowdhury stated in his deposition that he did not know the informant of this case but could recognize the accused persons. He stated that in the year 2017 while he was posted at Majbat at 210 COBRA, one day they got information that some people had committed dacoity in a van carrying money. During patrolling they found 3 persons in a bike and cash of more than 8 lakh, M-20 pistol, live rounds, mobile handsets and ATM cards were recovered from them on search. PW-14 further stated that those three persons were Bishnu Daimary, Ratan Daimary (as identified from the photograph attached with the CS) but could not recognize the third one. Later, police seized the recovered items and took his signature in the seizure list. Prosecution side exhibited the seizure list as Ext-2 and the signature of PW-14 as Ext-2(2).

During cross-examination PW-14 stated that he forgot as to what was recovered from whom. He also stated that he remembered those notes were of denominations of Rs. 500/-. He did not remember the serial number/make number of the pistol and live rounds. He further stated that he put his signature in Ext-2 in Majbat police station and that the seized items are not seen in the court that day. It is not a fact that nothing was recovered from the possession of the aforementioned persons. He also stated that the area wherefrom the aforesaid persons were apprehended is not completely residential area but there were some houses at some distance and people were going through the road wherefrom the recovery was made.

22. **PW-15** Sri Gulsan Patel stated in his deposition that he did not know the informant in this case and that he could recognize only one of the accused persons, that being the accused Monak Swargiary. He stated that about one and half years ago, while he was posted at Majbat at 210 COBRA, they received some information and on the basis of that conducted search in the house of Monak Swargiary and recovered 29 rounds of AK-47 ammunitions. He further stated that police seized the recovered 29 rounds and took his signature in the seizure list. Prosecution side exhibited the seizure list as Ext-7 and the signature of PW-15 as Ext-7(1).

During cross-examination, PW-15 stated that their team consisted of one Commander, one SI Satish Kumar Singh and 8/10 other constables. He stated that he did not remember the serial number/ make number of the recovered 29 rounds of AK-47. He put his signature in Ext-7 in Majbat police station. The seized rounds were not seen in the court that day. He further stated that there were houses of other people in and around wherefrom the rounds were recovered. No civilians were with them at the time of the search and seizure. It is not a fact that nothing was recovered from the house of the accused Monak Swargiary.

23. **PW-16** Sri Sachin Kumar Singh in his deposition stated that he did not know the informant of this case but could recognize two of the accused persons, Aroli Basumatary and Bishnu Daimary. He stated that about one and half years ago, while he was posted at Majbat at 210 COBRA, they got information that some people had committed dacoity in a van carrying money. PW-16 also stated that during patrolling they found three persons in a bike and cash more than 8 lakh, M-20 pistol, live rounds, mobile handsets and ATM cards were recovered from them on search. Later police seized the recovered items and took his signature in the seizure list. Prosecution side exhibited the seizure list as Ext-2 and the signature of PW-16 as Ext-2(3).

During cross-examination, PW-16 stated that in their team, along with the Commander and SI Satish Kumar Singh and CT Akhtar Hussain Choudhury, others were also present. He stated that he did not remember as to what were seized from whom. He also stated that there were other houses in and around the place wherefrom the aforesaid items were recovered. No civilians were with them at the time of the search and seizure but few people were moving through the road. PW-16 also stated that police officials from Majbat PS were with them and that he put his signature in Ext-2 in Majbat police station.

24. **PW-17** Gorakh Nath Gurav stated in his deposition that he did not know the informant but could recognize the accused persons. He stated that on 24/11/2017, while he was posted at Majbat at 210 COBRA, they got information that some people had committed dacoity in a van carrying currency notes of SBI ATM. When they launched an operation they recovered 29 rounds of ammunitions of AK-47 in a plastic bag and one Samsung mobile handset from some persons he could not recognize. PW-17 also stated

that later police seized the recovered items and took his signature in the seizure list. Prosecution side examined the seizure list as Ext-7 and the signature of PW-17 as Ext-7(2).

25. **PW-18** Sri Ajoy Boro stated in his deposition that he did not know the informant or the accused persons. He stated that one day in the year 2017 while he was travelling to Udalguri from Rowta in a public vehicle, the OC of Udalguri, stopped the vehicle and took his name and address. Later, he came to know that dacoity took place in a vehicle carrying cash of bank. He also stated that he did not know who committed the dacoity.

26. **PW-19** Sri Naren Basumatary stated in his deposition that he did not know the informant or the accused persons. He stated that one day in the year 2017 while he was watching TV in his room, he heard that police came to their village. When he came out, he came to know that a van carrying cash of bank has been looted. PW-19 also stated that police took his name and address. He did not know who had looted the cash.

27. **PW-20** Sailendra Nath Barman stated in his deposition that on 24/11/2017 he was posted at Udalguri PS as Attached Officer. On that day one Sri Kishore Das lodged an FIR regarding robbery of cash from a van carrying cash of SBI Rowta near Goroibari. On receipt of the FIR, the OC registered a case u/s 395 IPC R/W Section 25(1-A) Arms Act bearing Udalguri PS No.- 238/2017 and entrusted him with the task of investigation of the case.

PW-20 stated that upon taking up the task of investigation, he along with the staff conducted search in the area but could found no clue. On that day itself he recorded the statement of the informant, the security guard and the driver of the van. On the next day, he visited the place of occurrence and drew rough sketch map of the place of occurrence. Ext-3 is the rough sketch map and Ext-3(1) is his signature. He also stated that after that, on being ordered by the SP, Udalguri, the case was transferred to the Majbat PS and then the SI Dimple Gayari, the then OC, Majbat PS conducted the further investigation in this case.

During cross-examination, PW-20 stated that he recorded the statement of the informant Kishor Das, security guard Sri Madhuram Nath and the driver Sri Prasanna Swargiary. Apart from recording the statements of the aforesaid witnesses and drawing

of sketch map of place of occurrence, he did not conduct any further investigation in this case.

28. **PW-21** Sri Dimple Gayari stated in her deposition that on 26/11/2017 she was posted at Majbat PS as OC. On that day the SP, Udalguri entrusted her to investigate the case of Udalguri PS Case No- 238/2017. She stated that on 28/11/2017 she accompanied the SDPO, Bhergaon, along with COBRA party, conducted a during Naka cheaking at Sikaridinga near Assam-Arunachal Border and stopped three persons who were found moving suspiciously and during checking, a cash of Rs. 8,90,500/- in 18 bundles of denominations of Rs. 500/- and another amount of Rs.4020/-, one M-20 pistol, one magazine of M-20 pistol, 2 nos. of 36 hand grenade, 8 nos. of mobile handsets, one motorcycle along with some other articles were recovered from the possession of those persons namely, Bishnu Daimary, Geolang Basumatary and Ratan Daimari. Then she seized those articles in presence of the witnesses. Prosecution side exhibited the seizure list as Ext-2 and the signature of PW-21 as Ext-2(4). PW-21 further stated that after interrogating the aforesaid accused persons, the involvement of the accused persons in the dacoity of cash from the van of SBI was found and as such she arrested them and forwarded them to court with a prayer for police custody. Police custody was granted and after the expiry of the police custody period, she sent back the accused persons to court seeking their judicial custody.

PW-21 further stated that on 29/11/2017 she got information that another accused Aroliya Basumatary was roaming around at Chariduar and accordingly she along with the local police apprehended him and recovered a cash of Rs. 48,000/- along with other articles from his possession and seized the same. Prosecution side exhibited the seizure list as Ext-4 and the signature of PW-21 as Ext-4(3). Having found the role of the aforesaid accused, PW-21 arrested him and forwarded him to court with a prayer for police custody. Police custody was granted and after the expiry of the police custody period, she again forwarded back the accused to court seeking his judicial custody.

Then on 30/11/2017 PW-21 got a secret report that another accused Moon Basumatary was in Sonitpur and as such she proceeded to the area where he was roaming and apprehended him and seized a cash of Rs. 1 lakh along with a bike and mobile handset. Prosecution side examined the seizure list as Ext-3 and the signature of

PW-21 as Ext-3(3). Having found the role of the aforesaid accused, PW-21 arrested him and forwarded him to court with a prayer for police custody. Police custody was granted and after the expiry of the police custody period, she again forwarded the accused to court seeking judicial custody. PW-21 also stated that on that day itself she also seized five rounds of bullets of double barrel gun in a cover from the place of occurrence and seized the same in presence of the witnesses. Prosecution side exhibited the seizure list as Ext-6 and the signature of PW-21 as Ext-6(2). Again on 01/12/2017 PW-21 recovered a trunk of SBI, Rouwta branch from the house of Smti Meena Daimary on being led by the accused Sri Geolang Basumatary and seized the same in presence of the witnesses. Prosecution side exhibited this seizure list as Ext-5 and the signature of PW-21 as Ext-5(2).

PW-21 further stated that again on 18/12/2017 she got information about the movement of one of the accused Manak Swargiary at Dhekiajuli and found him in his house and on being led by him, recovered 29 rounds of live ammunition of AK-47 in a plastic container along with one mobile handset and then seized the same. Prosecution side exhibited the seizure list as Ext-7 and the signature of PW-21 as Ext-7(3). Having found the role of the aforesaid accused, PW-21 arrested him and forwarded him to court with a prayer for police custody. Police custody was granted and after the expiry of the police custody period, she again forwarded back the accused to court seeking his judicial custody.

During the investigation, PW-21 prayed for prosecution sanctions and the same was duly granted. Ext-8 is the prosecution sanction for the Arms Act and Ext-9 is the prosecution sanction under Explosive Substance Act.

Since the investigation was otherwise complete, PW-21 perused the CD and found that there are *prima facie* materials u/s 395 IPC R/W Section 25(1-A) Arms Act and Section-5 of the Explosive Substance Act against the accused persons namely, Bishnu Daimary, Geolang Basumatay, Ratan Daimary, Aroliya Basumatary, Moon Basumatary and Manak Swargiary and accordingly PW-21 submitted charge-sheet against them under the aforesaid provisions. Prosecution side exhibited the charge-sheet as Ext-10 and the signature of PW-21 as Ext-10(1). The seized materials are shown in court.

During cross-examination, PW-21 stated that she did not record the statements of all the witnesses. The incident took place on 25/11/2017 and the cash amount of Rs. 8,90,000/- was seized from the possession of Bishnu Daimary, Geolang Basumatary and Ratan Daimary at Chikaridanga on the road but she did not mention the exact amount recovered from each of the accused persons. She further stated that there was no human inhabitant in the vicinity of the place wherefrom the amount was recovered from the aforesaid accused persons. There was no eye-witness to the recovery of the aforesaid amount. Eighteen bundles of Rs.500/- were recovered and another amount of Rs. 4020/- was recovered as their personal money. PW-21 also stated that the FIR does not mention the serial number of the stolen notes of the bank. Two grenades and one pistol were found from the possession of the aforesaid accused persons but the seizure list does not specify the name of the particular person from whom it was recovered. Serial numbers of notes as shown to be recovered from Aroliya Basumatary is not mentioned in the seizure list (Ext-4). No civilian's signature is present in Ext-4. No local civilians accompanied PW-21 at the time of house search of accused Moon Basumatary.

PW-21 further stated that accused Geolang Basumatary told her that he had left the arms in a jungle nearby the place of occurrence but she did not send him to court to get his confessional statement recorded u/s- 164 CrPC. It is not a fact that Geolang Basumatary did not confess before PW-21 that he had left the arms in a jungle nearby the PO. Apart from Meena Daimary no civilians were with her at the time of recovery of SBI cash carrying trunk. It is not a fact that the accused persons were falsely implicated in this case. It is not a fact that no cash of SBI Rowta branch was recovered from the possession of the accused persons. PW-21 also stated that she did not submit prayer for prosecution sanction from Home Department for prosecuting the accused persons under Explosive Substance Act as it was not a case of 10/13 UA(P) Act.

In further cross-examination PW-21 stated that on 15/10/2019 she had already adduced evidence in this case and did not have anything further to say.

PW-21 stated that Ext-3 (sketch-map) related to the place where the alleged robbery took place near Udalguri PS. She further stated that she did not draw any sketch-map of the place from where the cash amounts were recovered and seized by her vide Ext-2. On 18/12/2017 PW-21 seized 29 rounds of AK-47 from Sirajuli under

Dhekiajuli PS vide Ext-7 but no separate FIR was lodged after the recovery of the aforesaid rounds of AK-47.

29. To start with the evidence of the PWs let me refer to the arguments advanced by both the parties. The Learned Counsel for the accused persons submitted that the prosecution has failed to prove the case against the accused persons beyond all reasonable doubt. The evidence of the prosecution witnesses is contradictory to each other and not believable. Prosecution has also failed to prove that the seized arms and the other articles were recovered from the possession of the accused persons. During the course of argument, the Learned Defence Counsel has submitted the following case laws, the citations of which are-

- I. **2006(1) GLT 267, Pandav Koya vs. State of Assam-** In which Hon'ble Gauhati High Court has held that "the statement of the accused leading to discovery has to be recorded -- unless such statement is reduced in writing, it is unsafe to believe and rely upon. The exact statement is needed to make it admissible u/s 27".
- II. **1996(II) GLT, 288, Dilip Das vs. State of Assam in which Hon'ble Gauhati High Court** has held that "the statement by accused leading to discovery of article should be in writing, and oral evidence of the accused is unsafe to rely upon". Per contra, the Learned Additional PP submitted that the prosecution has proved its case by adducing evidence of reliable witnesses.

30. Having perusal of the evidence available in this case record, this court finds that the evidence of all the PWs is contradictory to each other. The evidences of all the PWs are of utmost deviation. In this case at hand PW-1 to PW-8 did not disclose anything about the offence alleged against the accused persons. They even could not identify the accused persons during the course of their evidence. No single implicating material has been found in their evidence against the accused persons.

31. From the evidences of the prosecution witnesses i.e. PW-1 to PW-8, it is found that no articles were recovered from the possession of the accused persons. Though PW-11, Md. Unis Ali had stated during his evidence that Rs. 1 Lakh was recovered from the possession of the accused Geolang Basumatary. The same has not been corroborated by

the evidence of the other PWs. Further PW-14 Akhtar Hussain Chowdhury had made a different version stating thereby that during operation they could find a cash amount of more than Rs. 8 Lakh, M-20 pistol, live rounds, mobile handsets and ATM cards from the possession of accused namely Bishnu Daimary and Ratan Daimary. Likewise, PW-15 Sri Gulsan Patel also had made a deviated version from the above PWs by stating that during the operation they recovered 20 rounds of AK-47 ammunitions from the house of Monak Swargiary. The evidence of PW-16 i.e. Sachin Kumar Singh is also found to be contradictory wherein he has stated that during operation they recovered a cash amount of more than Rs. 8 Lakh, M-20 pistol, live rounds, mobile handsets and ATM cards from the accused persons namely Aroliya Basumatary and Bishnu Daimary. Thus, having perusal of the evidences of the above PWs, their evidences are found to be contradictory regarding recovery of the arms and ammunitions and the cash amount from the possession of the accused persons. The evidences of other PWs also did not disclose anything material to the incident.

32. The arms and ammunitions and the cash amount of more than Rs. 8 Lakh which was seized by the IO during investigation was shown in Ext-2 i.e. the seizure list. But the evidence of the seizure witness i.e. Akhtar Hussain Chowdhury who was examined as PW-14 here in this case, is found to be contradictory to the evidences of the other PWs. Thus, the evidence of PW-14 i.e. the seizure witness is found to be unbelievable and unworthy of credit. The other seizure witnesses are not cited as PWs in this case, which also makes this prosecution case doubtful.

33. It would be worthy to be mentioned here that no independent witnesses are made as witness in the seizure list as well as in the charge-sheet by the IO in this case. On the aforesaid background, the examination of independent witness by the IO, who was also member of the operation, was very important in this case. IO as PW-21 and other PWs also had admitted that there were inhabitants of people at some distance from the area of the operation. But no civilian or gaonburha were made as witness in this case. However, there is no evidence from the prosecution side to show that there was any effort from their side to call public witness at the time of alleged recovery of arms, ammunitions and the cash amount. So in my opinion a non-joining of public witness is fatal to the prosecution witnesses, particularly when no reasonable explanation has been

given by prosecution for not calling independent witnesses during the alleged recovery. In this regard I may here refer to some decisions of Higher Courts.

I. In the case of **Sahib Singh-vs- State of Punjab [AIR 1997 SC 2417]**, it has been held by the Apex Court as under:-

“Having gone through the record we find much substance in each of the above contentions. Before conducting a search the concerned police officer is required to call upon some independent and respectable people of the locality to witness the search. In a given case it may so happen that no such person is available or, even if available, is not willing to be a party to such search. It may also be that after joining the search, such persons later on turn hostile. In any of these eventualities the evidence of the police officers who conducted the search cannot be disbelieved solely on the ground that no independent and respectable witness was examined to prove the search but if it is found, as in the present case, that no attempt was made by the concerned police officer to join with him some persons of the locality who were admittedly available to witness the recovery, it would affect the weight of the evidence of the police officer, though not its admissibility.”

II. **In State of Haryana-vs-Ram Singh [2002 SCC (CRL) 351] Hon'ble Apex Court** had observed that when disclosure, discoveries and arrest are made in the absence of the independent witness, it creates a doubt or suspicion which must go to the benefit to the accused. That if there are material contradictions in the statements of the witnesses and no documentary proof of DD entry, then the prosecution case is not free from shadow of the doubts and failed to prove its case beyond any reasonable doubts then prosecution had failed.

III. **In Prithvi Pal Singh @ Munna-vs- State of Delhi [2000 Law Suit (Delhi) 197]** it was held in Para 6 that: “the provision of the Code of Criminal Procedure relating to search, seizure or arrest apply to search, seizure and arrest under the act also to the extent they are not inconsistent with the provisions of the act. Thus while conducting search and seizure, in addition to the safeguard provided under Cr.P.C, the safeguard provided under the act also required to be

followed. It is well settled that failure to comply with the provisions of the Code of Criminal Procedure in respect of search and seizure and particularly those of sections 100, 102, 103, 164 per se does not vitiate the trial under the Act. But it has to be borne in mind that conducting a search and seizure in violation of statutory safeguard would be violative of the reasonable fair and just procedure.....”

34. In this case the accused persons were alleged for commission of dacoity of Rs. 20 Lakh from a van while carrying the amount from Udalguri SBI to Rowta ATM. But surprisingly no denominations of the amount were specified in the FIR itself. Furthermore the cash amount of Rs. 8 Lakh which was alleged to be found in possession of the accused persons Geolang Basumatary and Bishnu Daimary, the denominations were not proved, which makes it doubtful that the amount of Rs. 8 Lakh found in possession of the accused persons Geolang Basumatary and Bishnu Daimary were a part of the stolen amount of Rs. 20 Lakh.

35. 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 given to the accused persons. On the aforesaid adumbration and appreciation of evidence vis-a-vis the facts in hand create doubt on the veracity of the prosecution case and in such situation the penal liability given by fastened upon the case. Hence, it can be said that the prosecution failed to prove beyond reasonable doubt that the accused persons namely Geolang Basumatary, Bishnu Daimary, Ratan Daimary, Aroliya Basumatary, Moon Basumatary and Manak Swargiary had committed dacoity of Rs. 20 Lakh and they were also found in possession of 29 rounds of live ammunitions of AK-47, 2 nos. of 36 grenade, 1 M-20 pistol, 1 magazine of M-20 pistol etc. Hence, all the points are decided against the prosecution.

36. On the basis of the above adumbration and appreciation of evidence thereof, it can be safely concluded that the prosecution has failed to prove its case against the accused persons beyond reasonable doubt. As such the accused persons Geolang Basumatary, Bishnu Daimary, Ratan Daimary, Aroliya Basumatary, Moon Basumatary and Manak Swargiary are acquitted of the charges labeled against them. So the accused persons be set at liberty forthwith.

36. The bail-bond for the accused persons would remain in force for six(6) months in view of Section 437(A) CrPC.
37. The seized arms and ammunitions be disposed of as per law.
38. Given, under my hand and seal of this court on this 12th day of March, 2020.

(NILAKSHI LAHKAR)

Asstt. Sessions Judge, Udalguri, Assam

APPENDIX

1. PROSECUTION WITNESSES –

- i) PW-1: Sri Kishor Das
- ii) PW-2: Sri Prasanna Swargiary
- iii) PW-3: Sri Nayanjyoti Rajbongshi
- iv) PW-4: Sri Trilokya Kalita
- v) PW-5: Sri Bikram Basumatary
- vi) PW-6: Sri Kusho Basumatary
- vii) PW-7: Sri Madhu Ram Nath
- viii) PW-8: Sri Bapan Chandra Ghosh
- ix) PW-9: Sri Rahul Kalowar
- x) PW-10: Sri Jintumoni Das
- xi) PW-11: Md. Unis Ali
- xii) PW-12: Sri Biswajit Sutradhar
- xiii) PW-13: Sri Sib Nandan
- xiv) PW-14: Akhtar Hussain Chowdhury
- xv) PW-15: Sri Gulsan Patel
- xvi) PW-16: Sri Sachin Kumar Singh
- xvii) PW-17: Sri Gorakh Nath Gurav
- xviii) PW-18: Sri Ajoy Boro
- xix) PW-19: Sri Naren Basumatary
- xx) PW-20: Sri Sailendra Nath Barman
- xxi) PW-21: Sri Dimple Gayari

2. PROSECUTION EXHIBITS –

- i) Ext.1: FIR
- ii) Ext.2, Ext.3, Ext.4, Ext.5, Ext.6 & Ext.7 : Seizure lists

- iii) Ext.3: Sketch-map of PO
 - iv) Ext.8 & Ext.9: Prosecution Sanctions
 - v) Ext.10: Charge-sheet
3. DEFENCE WITNESSES: Nil
4. COURT WITNESSED: Nil

(NILAKSHI LAHKAR)

Asstt. Sessions Judge, Udalguri, Assam