

Sessions No. **86** of **2019**

Present : Shah Syed Ahadur Rahman, AJS

JUDGMENT & ORDER (ORAL)

10-12-21 The prosecution story is in brief is that the complainant namely Ranjit Kalita of Udalguri Police Station lodged an ejahar at Udalguri Police Station on 07-07-2017, in which it has been stated that on 07-07-2017, at about 12.30 am at night when he went to the residence of accused in order to execute the warrant of arrest issued by the District & Sessions Judge, Nalbari Court and when he searched about the accused, though accused was not found out at his residence but one 12 Bore SBBL gun, factory made pistol was recovered from his residence and the said pistol was seized in presence of the witnesses and brought to the police station. Hence this case.

After receipt of the ejahar, police registered a case vide Udalguri P.S. Case No. 128/2017 under Section 25 (1-A) Arms Act. After completion of investigation, police submitted charge sheet under Section 25(1-A) Arms Act against the accused Bakul Boro.

On 18-11-2019, the committal Magistrate after complying the provision of Section 207

Cr.P.C., committed the case record to the Court of Sessions as charge sheeted Section is exclusively triable by the Court of Sessions.

Thereafter, the Hon'ble Court of Sessions transferred the case record to this Court on 29-11-2019 for disposal.

After hearing both the parties, the then Asst. Sessions Judge, Udalguri vide order dated 05-03-2020 after going through the relevant materials and upon hearing both the parties found a prima facie case, framed charge under Section 25(1-A) Arms Act, to which the accused person pleaded not guilty and claimed to stand trial.

For just decision of the case, it would be appropriate to discuss the evidence on record in its entirety.

From the evidence of PW1, Ranjit Kalita, it appears that on 07-07-2017, he was posted as SI at Udalguri, Police station and was on duty on 07-07-2017. On that day he went to the residence of the accused in order to execute P&A in connection with Nalbari Sessions Case No. 03/14 but he did not find accused Bakul Boro at his residence and when searched was made one factory made 12

bore SBBL pistol was found and he seized the pistol and prepared the seizure list in presence of the witnesses. After that he filed the ejahar vide Ext.1 and Ext.1(1) is his signature thereon. Ext.2 is the seizure list and Ext.2(1) is his signature. In connection with execution of P&A when he proceeded to the residence of the accused he made a GD entry being numbered as GDE no. 158 dated 07-07-2017.

In cross-examination PW1 has stated that when he went to execute P&A there was one constable and five personnel of Cr.P.F and they went at about 12.30 am at night, and when they went to the residence of accused he met the wife of the accused and alongwith him one person by name Nabin Basumatary of the said village went with him. The pistol was found in the bedroom of the accused and it was pasted nearby the bed. When the pistol was seized he took the signature of Nabin Basumatary and also the wife of the accused on the seizure list. He denied the suggestion that no any pistol was recovered from the residence of the accused and he lodged this case falsely.

PW2 is Anurama Basumatary. In her evidence she has deposed that she knew the complainant. She also knew the accused Bakul Boro. Accused is her husband. She did not know the exact date but the incident had happened about 2-3 years back. They have got two houses. One is under construction in which doors were not fitted. On the happening of the incident at about 01:30 AM at night, they were sleeping at the old house which was nearby the new constructed house. Her husband/accused was at Guwahati at that time. When police visited her residence and called her out, she then opened the door. Then 6-7 police personnel entered into her residence and asked her the whereabouts of her husband. She then replied that her husband was in Guwahati. Then the police searched her residence and showed her a pistol. She did not know wherefrom the pistol was recovered. The police asked her to put her signature. Then she put her signature. Ext-2 is the seizure-list and Ext-2(2) is her signature thereon. When she reported to the police personnel that she will call lady members, they pointed pistol towards her and then they left. In the morning, she reported the whole incident

to nearby people. All the police personnel were under the influence of liquor.

In her cross-examination, PW2 has stated that before entering her residence, police enquired about the whereabouts of her husband. When she answered that her husband was not at home, the police personnel entered into her residence. The police did not show her any search warrant issued by any competent authority. At first she was reluctant, but the police forcefully entered into her residence. There were no lady police with them. The police searched her house and also threatened her. And for this reason also she could not call the nearby people to her residence. Police took her signature on the seizure-list vide Ext-2 which was a blank paper at that time. They did not even explain to her the reason for taking her signature. Verbal spat took place between her and the police personnel. They did not allow her to call the nearby people. The police showed her a pistol, but wherefrom it was recovered and wherefrom it was brought she did not know.

PW3 is Nabin Basumatary. In his evidence he has deposed that he did not know the

complainant. He knew the accused Bakul Boro. Accused is his son-in-law. As PW3 is an old man aged 75 years, he did not know about the happening of the incident and also he did not know why the police went to the residence of his son-in-law. In the morning at about 8 AM, his grandson Aryan Boro aged about 8 years came to his house and told him that yesterday night, police personnel came to their house and brought pistols along with them. As his house was situated at a long distance from the house of the accused, he did not think of visiting his daughter's house. He also did not enquire about the happening of the incident. He did not put any thumb impression in the seizure-list vide Ext-2.

At this stage PW3 was declared hostile by the prosecution and cross-examined PW3. PW3 denied the suggestion put to him that "When police recorded his statement he stated that he did cultivation and also told them that on 7-7-2017 at night when police came to arrest his son-in-law to his residence and his son-in-law was not found at his residence and then on search warrant one factory made 12 bore SBBL gun was recovered and as such he put his signature on the seizure-list as a witness".

In his cross-examination by defence, PW3 has stated that when his grandson visited him, he told him that police personnel came to their house by taking pistols and guns. The distance between his house and his son-in-law's house was about 300 meters. Police never took his signature in any paper.

PW4 is Kishori Kalita. In his evidence PW4 has deposed that he knew the accused. Previously he did not know the complainant but the complainant went with the accused and from then she came to know the complainant. About two and half years ago police went to the residence of the accused. At that time he was working as a carpenter at the house of the accused. Police asked him about the happening of the incident. Police also asked him as to what he knew about the incident. He replied that he has not heard anything about the incident. He did not know about the happening of the incident. Police asked him for how long he has been working at the house of the accused. He replied that he has been working there for 12-14 days.

In his cross-examination, PW4 has stated that from the police he came to know that some

materials have been found from the residence of the accused. The accused was not at his residence since three days before the happening of the incident. He was at Guwahati.

PW5 is Sombeswar Rabha, has deposed that he knew the accused as he was working at the residence of the accused. The incident has happened about one and half year ago. He did not know anything about the incident. Police asked their names. He even did not know the name of the owner of the residence.

In his cross-examination, PW5 has stated that police went to the residence of the accused at about 09-10 am in the morning.

Thus on appraisal and appreciation of evidence, it appears from the evidence of PW4 and PW5 that at the relevant time and period they were working as carpenter at the house of the accused and they have clearly stated that they do not know anything about the incident. These witnesses have not implicated the accused in the involvement of the commission of this offence.

On the other hand, PW3 Sri Nabin Basumatary who happens to be the father-in-law

of the accused has stated in evidence that he does not know anything about the happening of the incident and also does not know as to why the police went to the residence of his son-in-law (accused). Though PW3 was declared hostile by the prosecution only because PW3 has stated that he did not put any thumb impression in the seizure list. Though in the seizure list it has been shown the thumb impression of PW3 was taken by the police but the prosecution did not sent the thumb impression of PW3 to any authority for examination and therefore declaring PW3 has hostile does not led any credence.

On the other hand, PW2 Anurama Basumatary, she has stated in evidence that on the relevant time and period accused was at Guwahati and when police personnel visited the residence of PW2 and asked about whereabouts of her husband she replied that her husband was in Guwahati. She has specifically stated that she does not know wherefrom the pistol was recovered and police asked her to put her signature. She only put her signature on Ext.2 and when she reported to the police personnel that she would call lady members, then they pointed pistol towards her and after that the police

personnel left and all the police personnel were under the influence of liquor. In her cross-examination, she has also specifically stated that there were no lady police with them and police did not show any search warrant issued by any competent authority. It appears from her evidence that the police did not allow her to call the nearby people and as such she could not call the nearby people and though the police showed her a pistol but wherefrom the pistol was recovered and wherefrom it was brought, the evidence is silent on this. Though PW1 Sri Ranjit Kalita who is the complainant in this case has stated in evidence that he went to the residence of the accused in order to execute P&A in connection with Nalbari Sessions Case No. 03/14 issued by the Court of Sessions, Nalbari and he found one factory made 12 Bore SBBL pistol and seized the said pistol but it is quite unbelievable that any men of prudence will never place the pistol and will paste it on a wall and as such this evidence cannot be believed.

Above being the discussion it has been decided that prosecution has failed to bring the ingredients of offence U/S- 25(1-A) Arms Act

against the accused person beyond all reasonable doubt and accordingly the accused is acquitted.

In the result, accused Bakul Boro is found not guilty under Section 25(1-A) Arms Act and acquitted of charge from the aforesaid section, and set at liberty forthwith.

(S.S.A. Rahman)
Asst. Sessions Judge
Udalguri.