

Sessions No. **05** of **2020**

Present : Shah Syed Ahadur Rahman, AJS

JUDGMENT & ORDER (ORAL)

21-12-2021 The prosecution story is in brief is that the complainant namely Ravi Shankar Major Army Camp Borengajuli, 315 Field Regiment (Kargil) C/O 99 APO lodged an ejahar on 05-06-2011, stating that on receipt of a specific information a team of Borengajuli army camp established a MCP at Bhergaon and apprehended a NDFB (anti talk faction) cadre named Mithun Boro, the alleged accused, and also stated he is closely associated with prominent cadre of NDFB. Hence this case.

After receipt of the ejahar, police registered a case vide Tangla P.S. Case No. 49/2011 under Section 384 IPC R/W Section 25 (1-A) Arms Act R/W Section 10/13 UA(P) Act. After completion of investigation, police submitted charge sheet under Section 25(1-A) Arms Act against the accused Mithun Boro.

On 06-02-2020, 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 12-02-2020 for disposal.

After hearing both the parties, the then Asst. Sessions Judge, Udalguri vide order dated 26-02-2020 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.

I have perused the entire relevant documents available on record and upon perusal of the charge sheet, the name of the witnesses are mentioned in the Column-6 of the charge sheet but it appears that witness No. 1 Major Ravi Shankar, 315 Field Regiment, C/O 99 APO, Army camp Borengajuli, witness No. 2 Hav Suresh Kumar 315 Field Regiment, C/O 99 APO, Army camp Borengajuli remained absent on being summoned on various dates i.e. on 06.01.21, 22.01.21, 26.02.21, 25.03.21, 22.07.21, it appears that whereabouts of their posting is not known and therefore they could not be examined as witnesses in this case but at the last one PW turned up.

PW1 is Deben Ch. Gohain who is a retired police officer. From his deposition it comes out that he was posted as Hawildar 12th APBn at Jamugurihat P.S. and on 05.04.2012, he got an order from Commandant 12th APBn vide reference no. UDL/BGN/11/71 dated 22/11/2011 and he was

directed to examine one no. of handmade pistol and 4 rounds of 7.62 mm live ammunition and upon examination he submitted his report vide Ext.1. His opinion on his report is that Ext.A is handmade shot pistol and is found serviceable and dangerous to human being. Ext.B are factory made firearms and live ammunition when examined and dangerous to human being.

In his cross-examination, PW1 has stated that he has not seen the articles that have been examined.

Now coming to other witnesses that is relevant for this case and in this regard, Learned Addl. P.P. for the State has submitted that he has issued many summons from time to time but sometimes the summons are not returned and even sometimes the summons are returned that too without execution and it is beyond his capacity to know the actual address of the said witnesses, their present place of posting.

Now the pertinent point is that the incident took place about 10 years ago. Army personnel may have retired from service. The Additional PP is of the view that even if one Army personnel turns up, it is possible for a human being to remember an incident that took place so long ago and according to the

prosecutor, in all probability, the Army personnel would not be able to identify the accused.

After careful appraisal of the case record it appears that this situation brings me to Article 21 of the Constitution which creates a right in the accused to be tried speedily and this right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry and trial. This right to speedy trial is all the more relevant in cases like the present one. This case has continued for 10 years and the accused was in jail for several months.

In the above background, one material question does crop up before me. The question is as to whose duty primarily it is to bring prosecution witnesses, or for that matter defence witnesses. Is it not the duty upon the prosecution to bring their witness or is the Court saddled with additional responsibility to ensure attendance of witnesses. I have looked into the relevant statute. A careful reading of relevant Sections in the Code leaves no scope for doubt that the prosecution is duty bound to produce the witnesses. The Court may, if prayed for, assist the prosecution in ensuring attendance by issuing summons but the duty is of the prosecution to bring its witnesses.

Equally clear is the law that prosecution cannot be provided endless opportunity and the

statutory courts have no power to infringe the fundamental rights guaranteed by the Hon'ble Apex Court. Speedy trial is not merely an academic concept. It is an essential element of right to life and personal liberty guaranteed under Article 21 of the Constitution of India. This is a Court created under the statute and it cannot infringe the constitutional rights of a citizen of India.

So being the law, after providing more than sufficient opportunity to the prosecution to produce its witnesses, I close the prosecution evidence applying the ratio of **P. Ramchandra Rao vs. State of Karnataka (decided on 16-04-2002)**.

Accused is examined under Section 313 Cr.P.C. and accused denies to adduce defence evidence.

In view of the above I hold that prosecutor has failed to prove the charge against the accused person beyond all reasonable doubt. The accused Mithun Boro is not found guilty and is acquitted and set at liberty forthwith.

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