

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,  
UDALGURI.

**Present:** Smt. Taslima Firdosa, A.J.S.  
J.M.F.C., Udalguri.

**G.R.NO. 48/2014.**

**U/S 25 (1)(a) of Arms Act.**

STATE OF ASSAM

Vs

1. Sri Iswar Limbu
2. Sri Raju Limbu

.....Accused Persons.

**Advocate Appeared:-**

For Prosecution: Smti. Dipali Deka, A.P.P.

For Defence: Sri B.J. Sarma.

Charge framed on: 23.03.2017.

Evidences recorded on: 29.05.2017, 30.06.2017,  
03.06.2019, 14.06.2019, 18.11.2021.

Arguments heard on: 23.12.2021.

Judgment delivered on: 31.12.2021.

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

1. Prosecution story in brief is that Sri Mangal Chouhan lodged an F.I.R. on 22.01.14 before the Udalguri police station (hereinafter referred to as P.S.) at 9.00 A.M.,

alleging inter-alia that on 21.01.2014 at around 9.00 P.M while V.D.P. party of his Pasarpur village was doing its duty, 5 persons were caught red handed when they came out of the forest. Out of those individuals one hand made gun was found in the hands of one of them. As the villagers informed the police station, the police officials took them in the police station. That the names of the five numbers of persons were 1. Sri Sagar Gaur 2. Sri Raju Limbu 3. Sri Rooky Limbu 4. Sri Iswar Limbu and one Child-in-conflict-with -law.

2. On receipt of the F.I.R., Udalguri P.S. Case No.06/2014 was registered and investigated into. Seizure of 1. One handmade Gun and 2. Powder of crackers- 5 grams approx. vide M.R. No. 1/2014 was made during the investigation. As one of the accused persons was a Child-in-conflict-with-law (hereinafter referred to as C.C.W.L.) he was forwarded to the Juvenile Justice Board (hereinafter referred to as J.J.B.) for further proceedings. On completion of the investigation the Investigating Officer (I.O.) has submitted the Charge sheet U/S- 25 (1-a)/35 of Arms Act against the accused persons 1. Sri Sagar Gaur 2. Sri Raju Limbu 3. Sri Rooky Limbu and 4. Sri Iswar Limbu.

3. On their appearance before the Court copies of relevant documents were furnished to them as per sec 207

of The Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) Upon hearing both the sides and after perusal of the Case Diary, grounds for presuming that the accused persons had committed an offence U/S 25 (1)(a) Arms Act were found. Accordingly, formal charges under the said sections were framed against the accused persons namely 1. Sri Sagar Gaur 2. Sri Raju Limbu 3. Sri Rooky Limbu 4. Sri Iswar Limbu. The particulars of offence U/S- 25 (1)(a) of Arms Act, 1959 were read over and explained to the accused persons to which they had pleaded not guilty and had claimed to be tried.

4. During the trial prosecution side examined 7 prosecution witnesses (hereinafter referred to as P.W.). The case was filed against the accused persons namely 1. Sagar Gaur and 2. Rooky Limbu on 20-05-2019 as both of them had absconded.

I have discussed the depositions of the witnesses as follows.

5. P.W.1, Sri Mangal Chouhan/the informant/the seizure witness deposed that he is the co-informant of this case and that he knows the accused persons. That he had lodged the F.I.R. on the strength as VDP Secretary. That the occurrence took place one night in the year 2014

at about 8.00 P.M. At the relevant time they arranged checking of the village by VDP members because at that time there was communal rioting within Udalguri district. While they were on duty suddenly they saw the accused persons loitering nearby the place where they were. Seeing the accused persons they restrained the accused persons and the police was informed about the matter. After some time police arrived and took the accused persons them to police station. Along with the accused persons a handmade gun was found from the possession of Raju Limbu. Some other materials were also found and the same was seized by the I.O. of this case. Subsequently, P.W.1 had lodged the F.I.R. The F.I.R is exhibited as Ext.1 wherein Ext.1(1) is his signature. The seizure list is exhibited as Ext.2 wherein Ext.2(1) is his signature. Amongst the accused persons P.W.1 personally knew Kishor Limbu and Raju Limbu. P.W.1 could identify the gun seized by the I.O. in connection with this case, if happen to see. Material Ext. A is the said gun seized from the possession of the accused persons.

In his cross-examination P.W.1 has stated that the F.I.R. was lodged on the following day of the incident. That the accused persons were taken away by police from the place of occurrence. That P.W.1 does not know the contents of the F.I.R. That the police did not interrogate P.W.1 in connection with this case. That P.W.1 put his

signature on Ext.2 at the police station. That at the place of occurrence no paper work was done or prepared. That the seized articles were not sealed by any paper or polythene. That they were altogether seven (7) forming a group and guarding the village in that locality. That at the time of apprehension of the accused persons, in addition to the seven (7) of them, other people were also present. That P.W.1 could not recollect then the names of other six (6) persons who were along with P.W.1. That later on P.W.1 stated that Dilip, Chattu Rajbhor, Sankar Rajbhor, Lalong Rajbhor, Siva Saran, Mangal, Lakhison Rajbhor were with him. But, who else were present P.W.1 could not recollect then. That there was dark everywhere at the place of occurrence at the relevant time. That the gun was found from the possession of accused Raju Limbu. That P.W.1 had given evidence in connection with this case before the J.J.B., Udalguri. P.W.1 denied the fact that the accused persons were falsely apprehended in this case and that nothing was seized from their possession. That whatever P.W.1 had stated in examination-in-chief were not stated by him before the police. P.W.1 denied to the fact that he had deposed falsely. That at the time of apprehension of the accused persons the gun was divided into two (2) parts. P.W.1 had not seen the gun powder (cracker) seized from the possession of the accused persons before the Court on that day.

6. P.W.2, Sri Chattu Rajbhor/the seizure witness had deposed that he is one of the informant of this case and that he knows the accused persons. That the occurrence took place in the year, 2014, one evening at about 8.00 P.M. That in that evening P.W.2, Mangal Chauhan and other VDP members were guarding the village, because at that time there was communal rioting within Udalguri district. That at the relevant time they got information that some people were proceeding through the canal of the locality and accordingly they restrained them. That they also found a handmade gun from the possession of Raju Limbu. That accordingly police was informed about the matter. That after some time police arrived and took them to police station. That along with the accused persons the gun and some materials were found and the same was seized by the I.O. The seizure list is exhibited as Ext.2 and Ext.2(2) as his signature. That P.W.2 could identify the gun, if happen to see. That material Ext. A is the said gun seized from the possession of the accused persons.

In P.W.2's cross-examination he has stated that the I.O. recorded his statement. That they were divided in to two (2) groups containing five (5) members each. That in P.W.2's group, in addition to him, the VDP Secretary Mangal Chauhan, Siva Saran Rajbhor, Dilip Chauhan, Rampati Chauhan were present. That P.W.2 put his

signature on the seizure list at police station on the following day. That the contents of Ext.2 were not read over to P.W.2. That police did not seal the articles in any polythene or other bag. That on the day of the occurrence police recorded P.W.2's statement at the place of occurrence. P.W.2 denied to the fact that he did not state to the I.O. that the gun was found in possession of accused Raju Limbu. That the accused persons were apprehended at about 9 to 9.30 PM and at that time the place of occurrence and its surrounding was completely dark. That at the time of occurrence, in addition to five (5) of them, no other persons assembled there. P.W.2 denied to the fact that the accused persons were falsely implicated in this case and no articles were seized from their possession. That the matter was informed to the police by the VDP Secretary. That the accused persons and the articles were brought to the police station by the O/C, Mr. Seal. P.W.2 denied to the fact that he had deposed falsely. That at the time of seizing the gun, it was divided into two (2) parts. P.W.2 had not seen the gun powder (cracker) seized from the possession of the accused persons before the Court on that day. P.W.2 denied the fact that the gun was not seized from the possession of the accused persons.

7. P.W.3, Sri Shivcharan Rajbhor had deposed that he knows the informant and the accused person present in the Court on that day. That other absentee accused persons were also known to P.W.3. That the occurrence took place in the year 2014, during that period communal clash broke out under Udalguri district between the "Bodo" and "Muslim" community. For that they arranged checking of the village by VDP party at the instance of police administration. That at the relevant time P.W.3 was on duty. That the VDP members divided into small groups of six (6) persons each. That at the relevant time P.W.3 was nearby the place of occurrence in another group. P.W.3 came to know that the accused persons were caught by another group along with arms and ammunitions. That at the same time the police party were also patrolling in the area and so they called the police. That on arrival of police they handed over five (5) boys to the police.

In P.W.3's cross-examination he had stated that at the time of apprehension of the accused persons their group was at a distance of 200 mts from the place of the occurrence. That each group consisted six (6) persons. That in P.W.3's group, in addition to him Bijay Rajbhor, Shankar Rajbhor, Lalu Rajbhor, Shankar Chauhan and Ratan Rajbhor were present. That the group which apprehended the accused persons consist of Sataru

Rajbhor, Mangal Chauhan and others. That P.W.3 could recollect the name of other persons of the said group right then. That the arrangement of checking the village was made keeping in view of the communal clash between the "Bodo" and "Muslim" community. That there was dark everywhere at the relevant time at the place of occurrence. That in connection with this case P.W.3 had already deposed before the J.J.B., Udalguri. Police recorded P.W.3's statement on the following day of the occurrence. That their party arrived at the place of occurrence after about ten (10) minutes of apprehension of the boys.

8. P.W.4, Sri Dilip Chauhan had deposed that he knows the informant, he is the VDP Secretary of their village. That he also knows the accused persons. That the occurrence took place about two (2) years ago. That at the relevant time a communal clash broke out under Udalguri district between the "Bodo" and "Muslim" community. That during that period at the instruction of the police administration they arranged checking of the village by VDP Secretary members. That in the relevant night they were on duty. That suddenly, a person on duty saw five (5) boys going through the canal with arms in their hands. That seeing them the nearby party informed the others and the canal was surrounded from all sides.

That thereafter, the accused persons were caught by the villagers and then handed over to police. That amongst the five (5) boys four (4) were Nepali and one was Adibasi. That after about five (5) minutes of the apprehension of the boys P.W.4 arrived at the place of occurrence.

In P.W.4's cross-examination he has stated that he could not say what materials or articles were seized from the boys. That P.W.4 does not know who informed the VDP Secretary about the boys. That due to communal clash village defence parties arranged checking of their respective villages as per instruction of police administration.

9. P.W.5, S.I. Nitai Ch. Ray/the investigating officer of this case had deposed that on the relevant day he was posted at Udalguri P.S. as S.I. One F.I.R. was registered on 22.01.2014 and P.W.5 was given for investigation. That accordingly, P.W.5 proceeded to the place of occurrence and recorded the statement of informant along with witnesses. That thereafter, P.W.5 prepared the sketch map of the place of occurrence. That P.W.5 seized handmade gun and some gun powder about 5 grams. That the accused persons were arrested and released on bail by the concerned Court. That one of the accused was C.C.W.L. who was forwarded to J.J.B. That the seized

materials were forwarded for the test to 12<sup>th</sup> Assam Police Battalion (A.P.B.N.). That thereafter P.W.5 was transferred and handed over the CD to the O/C, Udalguri P.S. The seizure list is exhibited as Ext.2 wherein Ext.2(3) as his signature. The sketch map is exhibited as Ext.5 wherein Ext.5(1) as his signature. The charge sheet is exhibited as Ext.6 wherein Ext.6 (1) as the signature of S.I., Dipankar Gogoi and P.W.5 could identify his signature. Ext. M-1 is handmade gun.

In P.W.5's cross-examination he had stated that before registered the F.I.R. there was G.D. Entry No.520 dated 21.01.2014. P.W.5 seized the material as per G.D. entry. That the sketch map was prepared after three (3) days of the F.I.R. and the F.I.R. was registered on 24.01.2014. That when P.W.5 seized the material it was not seal packed in the box immediately after the seizure. That at the time of seizure P.W.5 did not mention any identification mark on the seized material. That Gun powder which was seized by P.W.5 was not measured at the time of seizure. That the seized material was forwarded for armour test seven (7) days after the seizure. That during the period seized material was kept in Malkhana and Malkhana was maintained by seristar and P.W.5 did not record the statement of seristar who maintained the Malkhana. Malkhana register was not seized by P.W.5. That it is not mentioned in the FIR that

from whose possession the weapon which was seized by P.W.5. That P.W.2 during his statement before P.W.5 did not mention that the gun was found in the possession of accused Raju Limbu. That P.W.5 recorded the statement of Chatur Rajbhor, Sibsaran Rajbhor, Dilip Chouhan and Rampati Chouhan after three (3) days of the occurrence. That the extract copy of the G.D. entry is not enclosed with the charge sheet. That P.W.5 started investigation on the basis of G.D. entry.

10. P.W.6, Sri Rampati Chouhan had deposed that he knows the parties to this case. That the informant is his cousin. That the allegation time of occurrence there were some problem going on in their village for which they were guarding the village. That on the alleged day of occurrence they saw the accused during the night hours while guarding the village. That on being asked the accused told that they were going for hunting. That P.W.6 saw a handmade gun in the hand of the accused but he does not remember in whose hand he saw the said gun. That they then informed the police and police apprehended the accused.

In P.W.6's cross-examination he had stated that there were about 5-6 persons with him when they saw the accused. That at that alleged time of occurrence there were problems of theft in their village for which they were guarding the village. That P.W.6 was informed by one

person named Sadhu that the accused were going by their village. That it was dark when the accused were apprehended. That the gun was inside a bag with the accused. That P.W.6 had seen the same. P.W.6 was not interrogated by the police. That P.W.6 had not stated anything before the police about the facts as stated by him on that day. That P.W.6 does not know if police seized the said gun and seal packed the same. That P.W.6 had not seen if there was any identification mark on the gun.

11. P.W.7, Sri Deben Ch. Gohain/the armourer had deposed that he is the authorized Balistic Expert of this case. On 01/09/2014 P.W.7 was working as Armourer at 12<sup>th</sup> APBN, Kusum Tola. That on the same day the Commandant called P.W.7 to examine a handmade gun. That it was also appended with a document bearing memo no. UDL/CRIME/26/14/3245-46 dated 26/08/2014 sent by S.P., Udalguri. That the description of the handmade gun (M.R. no.01/14) is as follows- 1. One number of single barrel muzzle loading handmade gun which is marked as Ext.A. Measurement –a. Overall length: 103 c.m., b. Butt length: 30.7 c.m. (wooden), c. Barrel length: 58.4 c.m., d. Diameter of muzzle: 1.6 c.m. 2. Opinion–a. Ext.A is handmade firearms. b. Ext.A is found serviceable at the time of examination. c. Ext.A is

dangerous to human being. The report was exhibited as Ext.7 wherein Ext.7(1) as his signature.

In P.W.7's cross-examination he had stated that on 26/08/2014 the Udalguri S.P. had sent the seized M.R. article (handmade gun) to the Commandant which was furnished to P.W.7 for examination. That the fire arm was sent to them through a messenger. That P.W.7 does not know the name of the messenger. That P.W.7 received the fire arm on 01/09/2014 for examination. That on the same day the Commandant had received the fire arm. P.W.7 had examined the said fire arm on 10/09/2014. In that period the fire arm was stored in their 12<sup>th</sup> APBN store room. That P.W.7 used to maintain the store room. That after the examination P.W.7 had stored the firearm in the store room and it was handed over to the S.P. Udalguri Escort party by the Commandant on 19/02/2015. That they had handed over the said fire arm to the S.P. Udalguri Escort party in a wooden box sealed with "La". That there was no identification mark whatsoever on the said fire arm. That P.W.7 had not appended the forwarding sent by the Udalguri S.P. with his report. That P.W.7 did not fire any shot from the said fire arm in order to ascertain whether the fire arm is serviceable or not. That P.W.7 ascertained the serviceability of the fire arm by checking the muzzle and the trigger however he did not shoot from the fire arm in order to ascertain whether

the fire arm was serviceable or not. That however, it is mandatory to shoot from the fire arm in order to ascertain whether the fire arm is serviceable or not. That P.W.7 had not seen the wooden box, the cloth, the seized fire arm and the "La" seal and stamp in this Court on that day. That P.W.7 had not seen the paper that was hanged with the wooden box on that day in this Court.

12. The statement defence of the accused persons U/S 313 Cr.P.C. was recorded where they stated that they are innocent and all the allegations against them are false. The accused person Raju Limbu had stated that he is an innocent person. That he is no way connected with this case. That he has no idea why this case was given against him. He prayed before this Court to acquit him from this case as all the allegations made against him are false. The accused Iswar Limbu had stated that he is an innocent person. He is no way connected with this case. That on the day of occurrence he and Raju went to the tamul bagan to provide security as watchman. That all of a sudden some people came and apprehended them. He has no knowledge as to why this case was filed against him. He prayed before this Court to acquit him from this case as all the allegations made against him are false.

13. I have heard arguments for both the sides. The learned A.P.P. has stated in her submission that the prosecution has been able to extract the ingredients of Sec 25(1)(a) of the Arms Act 1959 as both P.W.1 the informant and P.W.2 has stated in their depositions that they had seen a hand made gun from the possession of the accused person namely Raju Limbu and thus it is a fit case of conviction.

On the other hand the learned defense counsel has put forward in his submission that the F.I.R does not mention exactly from whose possession the alleged gun was recovered. Further he has submitted that the informant/P.W.1 neither mentioned in his F.I.R nor did he mentioned in his statement under Sec. 161 Cr.P.C that he saw the handmade gun in the hands of the accused person Sri Raju Limbu . P.W.1 had mentioned it for the first time in his evidence. Further the learned defense counsel has stated that the seizure of the alleged gun was made in the police station and not at the place of occurrence as the P.W1 had deposed that he had put his signatures on the seizure list at the police station and that no paper work was done in the place of occurrence. He has also submitted that P.W.2 had also not stated in his statement under Sec. 161 Cr.P.C that he saw the handmade gun in the hands of the accused person Sri Raju Limbu. Thus it was a new fact that he mentioned for the first time in his evidence. The

learned defense counsel had further stated that the I.O. seized the alleged handmade gun on the basis of General Diary Entry (G.D.E.) and that it was not submitted with the charge-sheet. The learned defense counsel had also stated that the malkhana register of the police malkhana where the alleged handmade gun was kept before sending it for examination was not seized by the I.O. Further he submitted that P.W 7 the armourer had deposed in his evidence that no identification mark was found on the alleged handmade gun which is indispensable to identify the seized handmade gun.

The learned defense counsel had also referred to the following case laws of the Hon'ble Supreme Court of India-

In the case of Sahib Singh Vs. State of Punjab (13<sup>th</sup> of September 1996). The Hon'ble Supreme Court of India had stated that "*We next find from the record that the arms and ammunitions allegedly recovered from the appellant and seized were not packeted and sealed. In Amarjit Singh Vs. State of Punjab 1995 Supp. (3) SCC 217 this Court has observed that non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. From the record we further find that there is no evidence to indicate with whom the revolver was after its*

*seizure by P.W.3 till it was sent to the Arms Expert for testing through constable Baita Singh".*

In the case of Jasbir Singh Vs. State of Punjab (19<sup>th</sup> of February 1997) A.I.R 1998 SC 1660. The Hon'ble Supreme Court of India had stated that "*appellant is that the prosecution evidence itself shows that the pistol and the cartridges alleged to have been recovered from the appellant did not have any number or some distinctive mark on them and after their seizure by the police they were not sealed. Thus the identity of the weapon and the cartridges seized and the weapon and cartridge produced before the Court was not established by the prosecution. Having gone through the evidence, we find that the contention raised on behalf of the appellant is correct and therefore deserves to be accepted. The pistol and the cartridges did not have any mark or any number on them and after seizing the same police had not thought it fit to wrap them and apply a seal over them. No explanation in that behalf was given by the prosecution witnesses. This aspect was not considered by the trial Court. As the identity of the incriminating articles has not been established by the prosecution, we allow this appeal, set aside the conviction of the appellant both under Section 5 of the TADA Act and 25 of the Arms Act and acquit him of all the charges levelled against him".*

In the case of Prabin Saikia Vs. Central Bureau Of Investigation (Criminal Appeal No.269 of 2001 decided on 20.9.2011) 2012(1) Gauhati Law Journal 374. The Hon'ble Gauhati High Court had held that "*Criminal Proceeding— Recovery memo not prepared at place where it was found but prepared at another place- Evidentiary value of recovery memo gets considerably diminished and cannot be made the basis for sustaining conviction*".

After going through all the evidences on record I have formulated the following points for determination in order to derive an effective conclusion:-

### **POINTS FOR DETERMINATION**

- I. Whether the accused persons namely Sri Iswar Limbu and Sri Raju Limbu on 21.01.2014 at about 9. 00 P.M. were found possessing a handmade gun, contravening the provision of Section-5 of Arms Act, 1959 and thereby committed an offence punishable under section 25 (1)(a) of Arms Act 1959?

### **DISCUSSION, DECISION AND REASONS THEREOF:-**

First of all I would like to begin with highlighting on the point that none of the witnesses have stated any incriminating materials against Sri Iswar Limbu in their

deposition. None of the witnesses have stated in their deposition that they had seen any arms or ammunitions in the possession of the accused Iswar Limbu and so the prosecution failed to prove the charges under Section 25(1)(a) of the Arms Act 1959 against the above-named accused persons beyond reasonable doubt.

14. Now in order to find out whether Sri Raju Limbu had committed any offence U/S 25(1)(a) of the Arms Act 1959 I have minutely perused all the facts and materials on record.

15. P.W.1/the informant/seizure witness and P.W.2/the seizure witness had mentioned in their examination in chief that a handmade gun was found from the possession of Raju Limbu. However P.W.1/ the informant had also deposed in his cross examination that he did not stated before the police whatever he had stated in his examination-in-chief. Also though P.W.2 had denied that he had not said before the police that the handmade gun was found from the possession of Raju Limbu but the I.O/P.W.5 has admitted and cleared in his cross examination that P.W.2 had not stated in his statement U/S 161 Cr.P.C that the handmade gun was found from the possession of Raju Limbu. Further on perusal of Ext.1/F.I.R too it appears that P.W.1/ the informant had

not mentioned the name of the person who was holding the alleged handmade gun in his F.I.R.

16. Moreover P.W.1 has also stated in his cross examination that he does not know the contents of the F.I.R. An informant has the best opportunity to describe his case with mentioning every nitty-gritty details of the occurrence in his F.I.R. because at that moment the memory of the informant remains fresh. However in this case the informant even though knowing the names of each of the accused persons, did not mention in his F.I.R. the name of the person, specifically, that who was holding the alleged handmade gun. When the informant abstained from mentioning his name in the F.I.R. why did he subsequently mention that person's name as Sri Raju Limbu in his deposition? It casts a doubt on the veracity of the witnesses because they subsequently deposed his name after 3 long years. It is therefore clear that it is an after-thought of both the witnesses P.W.1 and P.W.2.

17. Another important point that is to be mentioned here is that even the charge sheet and the seizure list too has not revealed the name of the person who was holding the alleged handmade gun. In the Ext.6/the charge-sheet the P.W.5/I.O. has stated that "when all of the 5 numbers of accused persons suddenly came out from the jungle in order to do some unlawful act, they were caught red handed with one hand made gun in their hands by

the informant and his village V.D.P. Party". In Ext.2/seizure list also the P.W.5/I.O has written "I do hereby seize the below descriptive articles from the joint possession of the accused persons". Thus none of the exhibits mentions from whose specific possession was the gun cracker powder and the handmade gun were recovered.

18. Further P.W.1 and P.W.2 had stated in their depositions that they had put their signatures on the seizure list in the police station. And according to Ext.2/the seizure list the seizures were made on 21/01/2014 itself that means P.W.1 went to the police station on 21/01/2014 itself to put his signatures. Then why did P.W.1 did not lodge the F.I.R. on the day of occurrence itself that is on 21/01/2014? Why he waited for one day and lodged the F.I.R. on the next day that is on 22/01/2014?

19. Most importantly P.W.1 had stated in his cross examination that at the time of apprehension of the accused persons the gun was divided into two (2) parts. Similarly P.W.2 had also stated that during the time of seizing of the gun, it was divided into two (2) parts. However none of the exhibits mentions that significant detail of the gun that the alleged gun was found in two parts. Even P.W.5/the I.O. and P.W.7 the armourer have not stated in their depositions that the alleged gun was

found in two parts which creates a huge doubt in my mind as to whether the gun that was seized and the two parts of the gun that was seen in the hands of the accused Raju Limbu as alleged by P.W.1 and P.W.2 was the same gun or not? Further if the gun was in two parts it is doubtful to say whether that article falls under the definition of arms and ammunitions as incorporated in the Arms Act 1959 or not?

20. Further on appreciating the testimony given by P.W1/the informant and P.W.2 the seizure witness it is found that P.W.1, P.W.2, P.W.3, P.W.4 and P.W.6 were in the same group during their village checking duties. However all of their versions are contradictory to each other.

21. P.W.1 the informant of this case had stated that his group suddenly saw the accused persons loitering nearby the place where they were doing their village checking. However P.W.2 stated that his group got an information that some people were proceeding through the canal of the locality and accordingly P.W.2 s group restrained those people.

22. P.W.1 and P.W.2 had stated that they were in the same group during their checking duties. But both of them said a different number when asked how many members were there in their group. P.W.1 stated that

there were 7 numbers and P.W.2 stated that there were 5 numbers of people. P.W.1 had stated that at the time of apprehension of the accused persons in addition to his group of 7 members there were other people also present. However P.W.2 had stated that at the time of occurrence in addition to his group of 5 members there were no other people assembled. Both of them had stated that P.W.3 and P.W.4 were in their groups. P.W.2 had also stated that P.W.6 was also with him in his group. On the other hand P.W.3, P.W.4 and P.W.6 deposed that they were in different groups and not in the group of P.W.1 and P.W.2. P.W.3 had also stated that there were 6 numbers of people in their group.

23. Further P.W.3 had stated that at the relevant time he was nearby the place of occurrence in another group at a distance of 200 metres and he came to know that another group had caught the accused persons with arms and ammunition. However he had stated in his cross examination that his group arrived at the place of occurrence after about 10 minutes of the apprehension of the boys.

24. P.W.4 had also stated that after five minutes of the apprehension of the boys he had reached the place of occurrence. Further he has stated that he does not have the knowledge on what materials or articles was seized from the boys.

25. P.W.6 in his deposition has delivered a completely different story from the rest of the witnesses. P.W.1-P.W.4 had stated in their evidence that on the day of occurrence they were guarding the village, because at that time there was communal rioting within the Udalguri District. However P.W.6 on the other hand had stated that as there were some problems of theft going on in their village due to which they were guarding their village. P.W.6 also stated that he saw a handmade gun in the hand of the accused but he does-not remember in whose hand he saw the said gun. Later in his cross examination he said that the gun was inside a bag with the accused. He has stated that he has not stated anything before the police as he had stated in his evidence. Thus it is apparent from the above discussions that P.W.3, P.W.4 and P.W.6 have not seen the seized handmade gun in the possession of the accused Raju Limbu.

26. Now if I rely on the deposition of P.W.1 and P.W.2 that P.W.3, P.W.4 and P.W.6 were in the same group of theirs then why all of their versions regarding the recovery of the handmade gun from the possession of Raju Limbu are different from each other? This casts a doubt on the veracity of the witnesses and thus the defence has been successful in shaking the credibility of the witnesses.

27. Further P.W.1 & P.W.2 stated that along with the handmade gun some other materials were also found. But they have not mentioned specifically in their depositions as to what were the other materials and from whom exactly it was found.

28. Section 25(1)(a) of the Arms Act 1959 will be attracted if a person manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of Section 5 i.e. without holding a valid license.

In Md. Amsor Ali VS State of Assam, 2006 3 GLR 843; 2006 0 Supreme(Gau) 580; the Hon'ble Gauhati High Court has held that *"the possession simpliciter of arms or ammunitions or even of a prohibited fire-arm is not an offence under Section 25(1)(a). To put it differently, unless a person manufactures, sells, transfers, etc., arms or ammunitions or has, in his possession, the arms or ammunitions for the purpose of transfer, sale, etc., such an act of possession cannot constitute an offence under Section 25(1)(a) of the Arms Act, 1959"*.

Further it was held that *"when the accusation against the accused-petitioner is that he has been found in possession of the said pistol, which was a*

*prohibited: arm, the burden rested on the prosecution to adduce adequate evidence to prove, beyond reasonable doubt, that the accused-petitioner was in conscious possession of the said pistol. In this regard, however, the evidence of P.W.5, as already indicated hereinabove, gives no indication at all as to where the said pistol was really found. When it is not even known as to where exactly the said pistol was found, it is impossible to confidently hold that the accused-petitioner was found in conscious possession of the said pistol”.*

From the above discussion it is evident that in order to attract Sec 25(1)(a) of the Arms Act 1959 the arms or ammunitions must be recovered from the conscious possession of a person. However in this instant case the prosecution failed to produce any credible evidence to prove beyond reasonable doubt that the alleged handmade gun and the gun cracker powder were found from the conscious possession of the accused person Sri Raju Limbu.

29. P.W.5 the I.O. has stated in his deposition that he had seized the handmade gun and the powder of crackers after the registration of the F.I.R. that is on 22/01/2014. However Ext.2/the seizure list reveals that the above mentioned articles were seized on 21/01/2014. Moreover P.W.5 has himself contradicted his statement in the examination in chief that he had seized the

aforementioned articles after the G.D. Entry. also if P.W.5 the I.O had seized the above mentioned articles on 21/01/2014 that is soon after the registration of the G.D.E then how did Ext.2 the seizure list has the case number of this case written as the case number of a case can be known only after registration of the F.I.R. so all this infirmities creates a doubt whether the seizure was made from the place of occurrence in front of the seizure witnesses/P.W.1 & P.W.2 or not?

30. P.W.1 and P.W.2 had also stated that no paperwork was done or prepared on the place of occurrence. P.W.2 had stated that he put his signatures on the Ext2/seizure list on the following day and that the contents of Ext.2 were not read over to him. Further P.W.5/the I.O had stated that he had not measured the gun powder at the time of its seizure then how-come it is written in Ext. 2 that the weight of the seized gun powder was 5 grams approx. which means he weigh it later on. So it is clear that P.W.5/the I.O did not prepare the seizure list during the time of seizure at the place of occurrence. That means the alleged articles were not properly seized as the prosecution failed to produce any credible evidence to prove that the seizure was made in the presence of the seizure witnesses (P.W.1 and P.W.2) at the place of occurrence.

31. P.W.1, P.W.2 had stated in their depositions that the seized articles were not sealed by any paper or polythene or bag. P.W.5/the I.O had also stated that when he seized the material it was not seal packed in the box immediately after the seizure. Further P.W.5/the I.O had stated in his deposition that he did not mention any identification mark on the seized material.

*In Amarjit Singh V. State of Punjab, 1995 Supp (3) SCC 217 The Hon'ble Supreme Court of India has observed that non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. "*

In this instant case also the seized handmade gun and the gun powder crackers were not properly sealed immediately after the seizure and P.W,5 did not mention any identification mark on the seized articles causing a major lapse in the prosecution case.

32. P.W.7 the armourer had stated that his Commandant of 12<sup>th</sup> APBN, Kusum Tola had received the seized handmade gun on 01/09/2014 which was sent by the concerned S.P. Udalguri on 26/08/2014. And he examined the seized handmade gun on 10/09/2014. On the contrary P.W.5 has stated in his cross examination that he had sent the seized handmade gun after seven days from the date of its seizure (21/01/2014) to the armourer. But on perusal of Ext 7 it appears that the gun

was not send to the armourer after seven days on the other hand it was send after 7 months to the armourer for its examination and the cause of the delay is not mentioned anywhere.

*33. In the case of Md. Moinul Haque VS State of Assam, 2013 1 CCR 21; 2012 0 CrLJ 3996; 2012 6 GauLJ 249; 2012 6 GauLR 447; 2012 3 NEJ 218; 2012 8 RCR(Cri) 1909; 2012 0 Supreme(Gau) 698; The Hon'ble Gauhati High Court had pronounced that "From the above, there is no doubt that the prosecution, and for that matter the police officials concerned, did not take proper care and steps for keeping the seized arm under the safe custody in sealed cover till it was produced before the learned SDJM and even in dispatching the seized arm to the Director of FSL. The callousness of the Investigating Authority, as found above, cast doubt on the entire matter and the credibility of the prosecution. The prosecution has failed to satisfy the Court that there was no chance of manipulation while the seized pipe gun was in the custody of the police for a long period of 125 days, more so when the prosecution offered no explanation for keeping the seized article with the police in a doubtful manner for a long period without the permission of the Magistrate concerned."*

In this instant case too there is no record as to where the seized handmade gun was kept during those seven months. It is not clear whether in that period the seized articles were properly sealed packed or not? These infirmities create a missing link which weakens the prosecution case.

34. This case is also filled with lacunae on the part of the prosecution. Though the seized handmade gun was exhibited as Material Exhibit A during the evidence of P.W.1, P.W.2 and P.W.5 however the prosecution had failed to produce the seized handmade gun and the seized gun cracker powder before those witnesses during their evidence. Thus their identification process of the seized articles during their stage of evidence before the court remained incomplete without which the material Exhibit-A is inadmissible. The whole investigation was initiated on the basis of the G.D.E. but the prosecution failed to produce the extract copy of the G.D. entry before the P.W.5/the I.O. during his evidence. The prosecution also failed to produce any witnesses in regard to the proof of the prosecution sanction order which is required under Sec 39 of the Arms Act 1959 and so both those important documents remained un-exhibited. The prosecution also failed to produce the Malkhana register during the examination of P.W.5/the I.O as well as the

12<sup>th</sup> APBN store room register during the examination of P.W.7/the armourer.

Thus the identity of the handmade gun and the gun cracker powder seized was not established by the prosecution.

35. In this instant case the non-sealing of the fire-arms i.e. the handmade gun and the gun cracker powder at the place of occurrence is a serious infirmity on the part of the prosecution .Moreover, in the present case the seized arms and ammunition were not even produced at the time of examination of P.Ws.-1 to 7 so as to establish the identity of the seized articles. There is an apparent missing link between the seized articles and the articles which were sent for examination by the Investigating Officer/P.W.5 to P.W.7/the armourer on account of non-sealing and non-marking of the seized articles with any identification mark at the place of occurrence. The identity of the handmade gun and the gun cracker powder could not be established by the prosecution. In the aforesaid background, the identity of the incriminating articles was not established by the prosecution beyond reasonable doubt.

36. Furthermore none of the depositions of the witnesses are corroborating to each other. The veracity of

the witnesses is doubtful. The omissions made by P.W.1/the informant and P.W.2 are hit by Section 162 of the Cr.P.C. as they are significant and relevant in regard to the context of this case. Thus the contradictions in the depositions have created such material discrepancies that are fatal to the prosecution case.

37. In the above backdrop I have derived to the conclusion that the prosecution failed to inspire the confidence of this Court beyond reasonable doubt that the accused Raju Limbu was possessing a handmade gun and gun cracker powder at the relevant time. Thus in the absence of any credible evidence the accused Sri Raju Limbu cannot be booked under the Sec 25(1)(a) of the Arms Act 1959 and this court extends the benefit of doubt to the accused person that the accused Raju Limbu was not possessing any arms or ammunitions at the relevant time.

38. In view of the aforesaid discussions, it is hold that the prosecution has failed to prove the charges against the accused persons namely Sri Iswar Limbu and Sri Raju Limbu beyond reasonable doubt and they are acquitted from the charges of this case U/S- 25 (1)(a) of Arms Act, 1959 and are set at liberty forthwith.

39. Let the seized articles the handmade gun and the gun cracker powder (5 grams approx) under M.R.

No.01/2014 be disposed of as per law in due course of time.

**Order**

**40. The accused persons namely Sri Iswar Limbu and Sri Raju Limbu are acquitted from the charges of this case U/S- 25 (1)(a) of Arms Act, 1959 and are set at liberty forthwith.**

41. The bail bonds for the accused persons namely Sri Iswar Limbu and Sri Raju Limbu shall be in force for next six months.

42. Let the seized articles be disposed of as per law in due course of time.

43. Judgment is pronounced in open court. Case is disposed on contest.

Given under my hand and seal of this Court on this the 31<sup>st</sup> day of December, 2021 at Udalguri.

Judicial Magistrate 1<sup>st</sup> Class,  
Udalguri.

## **APPENDIX**

**1. Prosecution Witnesses:-**

- P.W.1: Sri Mangal Chouhan.
- P.W.2: Sri Chattu Rajbhor.
- P.W.3: Sri Shivcharan Rajbhor.
- P.W.4: Sri Dilip Chauhan.
- P.W.5: SI Nitai Ch. Ray.
- P.W.6: Sri Rampati Chouhan.
- P.W.7: Sri Deben Ch. Gohain.

**2. PROSECUTION EXHIBITS:-**

- Exbt.1: FIR.
- Exbt.2: Seizure list.
- Exbt.5: Sketch map.
- Exbt.6: Charge sheet.
- Exbt.7: Report of the armourer.

**3. DEFENCE WITNESSES:-**

NONE

**4. DEFENCE EXHIBITS :-**

NONE.

Judicial Magistrate 1<sup>st</sup> Class,

Udalguri.