

DISTRICT: DHUBRI

IN THE COURT OF THE SESSIONS JUDGE, DHUBRI

PRESENT: - **Shri T. Kalita,**
Sessions Judge, Dhubri

Sessions Case No. 118 OF 2019

U/S 489-C IPC, read with section 25(1-A) of Arms Act

Corresponding to P.R.C. Case No.391/2019

State of Assam

....Complainant

Versus

1. Abdul Hasim

2. Motior Rahman

..... Accused persons

Charge framed on : 09-08-2019

Evidence recorded on : 04-12-2019, 16-03-2020,
08-06-2020

Statement recorded on : 25-06-2019

Argument heard on : 25-06-2020

Judgment delivered on : 25-06-2020

Advocates who appeared in this case

Shri Mirza Khan, Addl. P.P. for the Prosecution

Shri Islam Uddin Ahmed } Advocates for the Defense
Shir Jamsher Talukdar }

J U D G M E N T

1. The story of the prosecution, as unfolded at the trial, may shortly, be stated that one Amar Chand Karupaial has filed an FIR with the Officer-in-charge, Golakganj P.S. on February 21st, 2012 stating that the Army and Agomani Police launched a specific search operation in general area of Baterhut at about 2300 hrs on 20-02-2012 on being received a secret information about presence of MULTA members along with fake currency, arms and ammunitions and accordingly, on being searched the house of one Abdul Haseem, one 9 (nine) mm Revolver, 3 nos. of 9 mm live rds and one mobile (Hi-tech) were seized from his possession. On further interrogation, he revealed that one Mothiyar Rahman was also caught with one 303 Single Shot Pistol (Country made), one 303 live round along with 9 x 500 Fake Indian Currency Notes. They were handed over to Golakganj P.S.

2. Accordingly, police registered the case being Golakganj P.S. Case No. 69/2012 and upon having completed the investigation laid charge-sheet against the accused persons Motiyar Rahman and Abdul Hasim to stand trial u/s 489-B/489-C IPC, read with section 25 (i) (a) of Arms Act.

3. The case was triable by the Court of Session for which learned Addl. Chief Judicial Magistrate, Dhubri committed the case to the Court of Session after having furnished the copies and this Court upon appearance of the accused persons framed charge u/s 489-C of the IPC, read with section 25(1-A) of Arms Act in contravention of section 7 of Arms Act. The offences are taken cognizance by the Court of Session. The accused persons, however, pleaded not guilty and claimed for trial.

4. During trial, the prosecution has examined as many as 5 (five) witnesses. The statement of the accused persons are recorded u/s 313 Cr.P.C. The plea of the accused is however denial, but has not adduced evidence.

5. I have carefully perused the evidences on record and heard learned counsels for both the sides and accordingly proceed to dispose of the case on the following point for determination.

Whether the accused persons were found possessed any Fake Indian Currency Notes along with some prohibited arms within the meaning of Arms Act during a raid conducted by Army and police of Agomani P.S. on the wee hour of 21-02-2012?

DISCUSSION ON THE POINT FOR DETERMINATION AND DECISION
ARRIVED THEREON WITH REASONS

6. In support of the case, the prosecution has examined five witnesses out of which PW-1 is Kamala Bibi. She simply stated that she does not know about the other accused person, but accused Abdul Hasin in her son. She does not know as to why police had lifted him.

7. PW-2 is Hamida Khatun. She is the nephew of accused Abdul Hasin. She also does not know as to why Army had lifted her maternal uncle from his house.

8. PW-3 Lili Bibi also does not know as to why her husband was taken by army. However, she stated that her husband was innocent.

9. PW-4 Jamuna Bewa also does not know as to why his son Motior Rahman was lifted away by the army. She further stated that army threatened them not to make any shout.

10. PW-5 the I.O. in his evidence stated that on 21-02-2012, he was working as In-charge of Chagolia Police Outpost and on that day, the complainant Aman Chand Karupaial of 19 Madras Regiment 99 A.P.O. has filed an FIR before the Officer-In-charge of Golakganj P.S. alleging that army conducted a raid on the basis of information received secretly that some MULTA Cadre has carried out some terrorist activities and accordingly recovered one 9 mm Revolver, 3 nos. of 9 mm live ammunitions, one 303 pistol, one 303 single shot live ammunition, one Hi-tech mobile, 9 nos. of Rs. 500/- fake currency notes. Accordingly, he seized the articles and forwarded the case to Golakganj P.S. for registration of the case. He was entrusted to investigate the case. Accordingly, he visited the place of occurrence, prepared the sketch map, examined the witnesses and however, he had to go on transfer by handing over the case to Jayanta Kumar Das who subsequently completed the investigation and laid charge-sheet against accused persons Motior Rahman and Abdul Hasim vide Ext-3. Ext-3(1) is the signature of I.O. Jayanta Kumar Das. He has prepared the seizure list and sketch map vide Ext-1 and Ext-2. In cross-examination, he stated that there is no any entry in the Thana to show that army has led the operation. He stated that no police personnel were accompanied with the army while conducting the operation. The place of occurrence is within his jurisdiction. Moreover, he had not obtained any sanction for prosecution against the accused persons. He has not seized any articles directly from the accused persons. He does not have any personal knowledge as to whether the articles were seized. He simply seized the list provided by the army.

11. Now, from having perused the evidences of the witnesses together with document so submitted it appears that the prosecution has examined five numbers of witnesses, but no one of the witnesses have been able to show anything implicating the accused persons. The Investigating Officer in his

evidence though stated that he has seized the list prepared by the army, but he does not have any personal knowledge about the seized of the articles. The place of occurrence is within his jurisdiction, but, no police personnel had accompanied with the army personnel while conducting raid either in the house of the accused or anywhere else. Moreover, one of the disturbing features of the case that sanction to prosecute in a case under Arms Act is a sine qua non. But herein in the instant case, it is admitted by the I.O. that he had not obtained sanction to prosecute the offence before the Court of Law particularly under Arms Act. So, the case is not maintainable against the accused persons to prosecute them for want of prosecution sanction. However, the evidences as it appear clearly depicted that army has conducted the operation and alleged to have seized some articles including arms and live ammunitions. But, the seized articles were not produced before the Court. Moreover, the existing witnesses do not have any personnel knowledge as to what articles to be seized by the army and from whom. Army personnel were not here to support the version of the prosecution.

12. So, situated thus, I am of the view that the prosecution has not been able to prove its case beyond all reasonable doubt and situated thus, I have got no alternative, but to acquit the accused persons from the purview of charge under section 489-C IPC, read with 25(1-A) of Arms Act on benefit of doubt by setting them at liberty forthwith.

13. The term of bail bond be expired after six months from today.

14. Let a copy of this order be sent to the Committal Court with the case record as committed.

15. Signed, sealed and delivered in the open Court on this the 25th day of June, 2020, at Dhubri.

(T. Kalita)
Sessions Judge, Dhubri

Dictated & corrected by me.

(T. Kalita)
Sessions judge, Dhubri

APPENDIX

1. PROSECUTION WITNESSES:

PW-1 Kamala Bibi

PW-2 Hamida Khatun

PW-3 Lili Bibi

PW-4 Jamuna Bewa

PW-5 Debajit Sarmah (Investigating Officer)

2. PROSECUTION EXHIBIT:

Exhibit-1 Seizure list

Exhibit-2 Sketch-map

Exhibit-3 Charge-sheet

(T. Kalita)
Sessions Judge, Dhubri