

IN THE COURT OF THE SESSION JUDGE, NALBARI

Present: **Smti S. Bhuyan**
Session Judge
Nalbari

Sessions Case No. 81/12

u/s- 121/307 IPC; 25(1-B)/ 27(2) of the Arms Act;

u/s-10/13 of the U.A.(P) Act

(Committed by Learned CJM, Nalbari in GR case No- 722/97

u/s- 121/121(A)/124(A) IPC read with section 25(1-B) of
the Arms Act; section 10/13 of the UA(P) Act)

State of Assam

-Vs-

A-1. Sri Dipak Das @ Mithinga Daimary

S/o- Late Khagen Das

R/o- village Juluki, PS- Barama

Dist- Baksa, Assam

A-2. Sri Dinesh Das

S/o- Nibharka Das

R/o- village Paschim Nakheti, PS- Nalbari

Dist- Nalbari, Assam

.....Accused person

Appearance:

For prosecution : Mr. Dharendra Nath Barman, PP

For defence : Mr. Himan Das, Advocate

Date of offence : 15/07/97

Date of FIR : 15/07/97

Date of committal : 07/06/12
 Date of framing charge : 02/01/14
 Date of evidence : 07/11/16, 17/12/16,
 20/07/17, 20/09/18
 Statement of accused
 recorded on : 07/12/21
 Date of argument : 05/01/22
 Date of Judgment reserved : 20/01/22
 Judgment delivered on : 21/02/22

Accused details

| Rank of accused | Name of accused | Date of arrest | Date of released on bail | Offence charged with | Acquitted or convicted | Sentence imposed | Period of detention undergone during trial |
|-----------------|------------------------------------|----------------|--------------------------|---|------------------------|------------------|--|
| A-1 | Dipak Das @ Mithinga Daimary | 26-12- 2003 | 15-09- 2005 | <u>u/s-</u> <u>121/307I</u> <u>PC;</u> <u>25(1-B)/2</u> <u>7(2) of</u> <u>the Arms</u> <u>Act;</u> <u>section</u> <u>10/13 of</u> <u>the UA(P)</u> <u>Act</u> | Acquitted | NA | 1 year 8 month 19 days |
| A-2 | Dinesh Das | 20-12- 2003 | 05-07- 2007 | <u>u/s-</u> <u>121/307I</u> <u>PC;</u> <u>25(1-B)/2</u> <u>7(2) of</u> <u>the Arms</u> <u>Act;</u> <u>section</u> <u>10/13 of</u> <u>the UA(P)</u> <u>Act</u> | Acquitted | NA | 3 years 6 months 15 days |

J U D G M E N T

Prosecution Case

1. The fact of the case is that on 15/07/97 at about 2 pm getting information of ULFA personal with sophisticated weapons taking shelter at Khat Katara village and on getting the information, police personal launched search operation with the help of CRPF at 3.45 pm at Khat Katara village under Nalbari PS and ULFA personal fired upon the police and police retaliate as a result of cross firing, one ULFA person get injured and police managed to apprehend the said ULFA person and recovered UMG drum magazine with one 14 round live ammunition and on AK magazine with 15 round ammunition from his possession and others ULFA persons were able to escape. The apprehended accused persons identified himself as Tapan Saikia @ Prasanta Saikia. The apprehended ULFA disclosed that he took armed training at Nagaland and during interrogation he disclosed the name Jingo Rava, Senapati, Imka, Manik, Kufu, Kamal, Munna, Bahadur, Babaul Sarma and few others who were with him.

Investigation

2. On the aforesaid incident, Kabindra Mahanta lodged written ejahar before O/C, Nalbari PS. On receipt of the ejahar O/C, Nalbari PS registered Nalbari PS Case No. 152/97 u/s- 121/307 IPC R/W section 25(1-B)/27 Arms Act and R/W section 10/13 of the U.A.(P) Act and started

investigation. After taking charge of investigation, I/O visited place of occurrence, re-seized the item produced by the informant at the time of lodging the ejahar, recorded statement of the witnesses and produced the seized goods before the learned CJM, Nalbari. I/O arrested accused Tapan Deka @ Prasanta Saikia, Dipak Das @ Mithinga Daimary, Indramohan Rai @ Ranadhir, Sukaram Rabha @ Baba and Dinesh Das @ Mobile and finally I/O after completion of investigation submitted charge-sheet u/s-121/121(A)/124(A)/307 IPC r/w section 25(1-B)/27 of the Arms Act and section 10/13 of U.A.(P) Act against accused Tapan Deka @ Prasanta Saikia, Dipak Das @ Mithinga Daimary, Indramohan Rai @ Ranadhir, Sukaram Rabha @ Baba and Dinesh Das @ Mobile.

Committal

3. On receipt of the charge sheet, learned CJM, Nalbari took cognizance and after furnishing necessary copies to accused persons namely Dipak Das @ Mithinga Daimary and Dinesh Das, as per provision of the CrPC, committed the case for trial and disposal. The case against other accused persons namely Tapan Deka @ Prasanta Saikia, Indramohan Rai @ Ranadhir and Sukaram Rabha @ Baba were filed by learned committal court as they are absconding.

Charge

4. After hearing learned counsels for both sides and perusal of entire materials on record my learned

predecessor framed charges against the accused persons namely Dipak Das @ Mithinga Daimary and Dinesh Das u/s- 121/307 IPC; 25(1-B)/27(2) of the Arms Act and 10/13 of the UA(P) Act and when charges are read over and explained to the accused persons, they pleaded not guilty and claimed to be tried.

Trial

5. In order to prove the charge against the accused, prosecution adduces evidence of 4 witnesses and exhibited 2 no's of documents. PW-1 Sri Kabindra Mahanta, PW-2 Sri Sanatan Kalita, PW-3 Sri Prasanna Ch Das and PW-4 Golap Barman. Learned Defence counsel made submission that IO of the case need not to be examined. Accordingly, IO not called for. Prosecution exhibited FIR as Ext-1 and seizure list as Ext-2. After closure of prosecution evidence statements of accused persons were recorded u/s- 313 CrPC. Accused persons plea is of total denial. However, they declined to adduce any defence evidence.

6. **Points For Determination**

- i) Whether the accused persons on 15/07/97 or prior to that period at Khat Katara village under Nalbari PS, being a member of an unlawful association namely ULFA and attempted to wage war against the Government of India?
- ii) Whether the accused on same date, time and place, being a member of an unlawful association namely

ULFA were found in possession of some prohibited arms and ammunition in contravention of Section 3 of the Arms Act and were found in possession of arms in contravention of Section 4 of the Arms Act ?

- iii) Whether the accused on same date, time and place, being a member of an unlawful association namely ULFA used arms and ammunition in contravention of Section 7 of the Arms Act and were found in possession of arms in contravention of Section 4 of the Arms Act ?
- iv) Whether the accused persons on 15/07/97 at the same day, time and place attempted to kill police/ army personnel?
- v) Whether the accused persons on the same date, time and place being a member of an unlawful association namely ULFA contributed or received contribution for the purpose of the said organization?
- vi) Whether the accused persons on the same date, time and place took part in commission of unlawful activities of an unlawful association namely ULFA?

Argument

7. I have heard argument from both side. It has been argued by the learned defence counsel that there is not a single material appearing against the accused and accused entitled acquittal.

DISCUSSION, DECISION AND REASON THEREOF:

8. PW-1 Kabindra Mahanta deposed that on 15/07/97 he was working as O/C, Nalbari PS he get a secret information that some ULFA extremists with some sophisticated weapons were taking shelter at the village of Khat Katara and on getting information he with CRPF personnel proceeded to village Khat Katara and immediately ULFA extremist attacked police party and started firing. In self defence police also fired and as a result one ULFA extremist sustained injuries. He further deposed that police apprehended injured extremist and recovered UMB, one drum magazine, one with 14 rounds live ammunition and one AK magazine with 15 rounds ammunition from the possession of the injured extremist. He further made statement that injured extremist identified him as Tapan Deka @ Prasanta Saikia and also named some ULFA extremist such as Jingo Rava, Senapati, Imka, Manik, Kufu, Kamal, Munna, Bahadur, Babul Sarma and few others. In cross stated he did not mention name of accused Mithinga Daimary in the ejahar.

9. PW-2 Sanatan Kalita deposed that he was a surrendered ULFA and he surrendered in the year 2000 and he did not know the present accused and he has no knowledge regarding operation in the Tamulpur and Bhutan.

10. PW-3 Prasanna Ch Das stated that he knows accused Dinesh Das and did not know accused Mithinga Daimary.

He further stated that he heard that accused Dinesh Das joined ULFA association and later on he surrendered after returning back to home and now Dinesh Das joined in service but in cross stated he has no personal knowledge that Dinesh Das joined ULFA association. He had no knowledge what police has seized by the Ext-2 and he just put his signature in the same.

11. PW-4 Golap Barman deposed he knew informant but did not know the accused persons. He stated 15 years ago informant arrested two persons and brought them to Nalbari PS and O/C, Nalbari PS seized one document from the said persons vide Ext-2 where he put his signature. In cross stated he has no knowledge what was written in the seized document.

12. From the careful reading of the statement of the Pws it revealed accused persons were not arrested from the place of occurrence and the apprehended accused did not take the name of accused Dipak Das @ Mithinga Daimary and Dinesh Das. Seizure witness as well as other witnesses whose evidence adduce by the prosecution did not disclose the fact of recovery of any arms and ammunition from the possession of the accused persons. It is revealed from the evidence on record that some of the PWs knows the accused persons but they had no knowledge regarding the operation made by the police party. From the evidence of PW-3 it is clear that he knows accused Dinesh Das but he

is a hearsay witness and therefore, his statement cannot be reliable. None of the witnesses in the case support the prosecution case and did not take the name of accused in the involvement of offence. The statement of Pws does not led that accused persons are engaged in spreading, propagating, inciting, aiding and promoting any alleged act or activities of banned organization or waging war against the Government of India and Government of Assam. There is no medical report. No evidence on record that accused persons fired to police or CRPF personnel to kill them. The statement of PWs not established beyond all reasonable doubt that accused persons are member of banned organization ULFA.

13. In view of my aforesaid discussion and upon scrutiny of the entire evidence on record, I come to my definite finding that prosecution failed to bring home the charge of section 121/307 IPC; 25(1-B)/27(2) of the Arms Act; u/s-10/13 of the U.A.(P) Act against the accused persons namely Dipak Das @ Mithinga Daimary and Dinesh Das beyond all reasonable doubt and accused entitled benefit of doubt. Accordingly, both the accused persons namely Dipak Das @ Mithinga Daimary and Dinesh Das are acquitted from the charge of section 121/307 IPC; 25(1-B)/27(2) of the Arms Act; u/s-10/13 of the U.A.(P) Act and are set a liberty. However, their bail bonds shall remain stand for next 6 (six) months u/s-437(A) CrPC.

14. Seized arms be handed over to armour and other seized articles be destroyed as per law.

15. Send the G.R.Case record to the learned trial court immediately with copy of this court judgment.

Judgment is given under my hand and seal of this court on this the 21st day of February, 2022.

(Smti S. Bhuyan)
Session Judge, Nalbari

Dictated & corrected by me

(Smti S. Bhuyan)
Session Judge, Nalbari

Typed by:
Biswajit Bhattacharjya,
U.D.Asstt.

APPENDIX

A. Prosecution witnesses

PW-1 Sri Kabindra Mahanta,
PW-2 Sri Sanatan Kalita,
PW-3 Sri Prasanna Ch Das,
PW-4 Golap Barman.

B. Defence witness

NIL

C. Court witness

NIL

D. Prosecution Exhibits

Ext-1 FIR
Ext-2 Seizure list

E. Defence Exhibit

NIL

F. Court Exhibit

NIL

(Smti S. Bhuyan)
Session Judge, Nalbari