

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,  
BONGAIGAON.**

***PRESENT: SYEDA FARIDA AFZAL ZINNAT, AJS***

**G.R CASE NO: 530/2008**

**STATE OF ASSAM VERSUS SUKUR SINGH BASUMATARY**

**U/S 25(1) (a) of THE ARMS ACT, 1959**

**FOR THE PROSECUTION: MR. R.C.MAHATO, ASST. PP**

**FOR THE DEFENCE: MR. N.K. BASUMATARY, ADVOCATE**

**EVIDENCE RECORDED ON: 23/12/2013, 22/1/2014, 2/4/2014,  
24/6/2014**

**ARGUMENTS HEARD ON: 14/11/2014**

**JUDGMENT DELIVERED ON: 18/11/2014**

**JUDGMENT**

1. IC 69566-Y, Captain Amol Amrutkar, C/o 99 APO, lodged an F.I.R with Sidli P.S stating that on 13<sup>th</sup> September 2008 a search operation was launched in Chapaguri at 1200 hours based on an information received from 2/5 det ELCU regarding presence of ULFA linkmen and one ULFA linkmen namely Sukur Singh Basumatary S/o Late Bugla Basumatary of Domgaon was apprehended at 1630 hours on 13<sup>th</sup> September, 2008 from Samthaibari and one 9 mm pistol (No. 107) along with one magazine was found on him. The F.I.R was received and registered as Sidli P.S Case No. 38/2008 under

section 25 (1) (a) of the Arms Act, 1959 read with section 10/13 Unlawful Activities (Prevention) Act. Police arrested the accused and seized the arm and ammunition above mentioned. Investigation was carried on and expert opinion was obtained and finally Charge Sheet was submitted against the above named accused person under section 25(1) (a) of the Arms Act, 1959.

2. After receipt of Charge Sheet, the Learned Chief Judicial Magistrate, Bongaigaon transferred the case to my file for disposal. Upon appearance of the accused person the copies of the relevant documents of the case were furnished to the accused person in accordance with section 207 Cr.P.C and vide order dated 16/3/2013 charge under section 25(1) (a) of Arms Act, 1959 was framed against the accused which was then read over to him. He pleaded not guilty and claimed to be tried.
3. During the course of trial six witnesses were examined by the Prosecution. The attendance of the other accused persons could not be secured despite repeated attempts by the prosecution and as such prosecution closed its evidence.
4. The accused was examined under section 313 Cr.P.C. He denied all the allegations levelled against him but declined to adduce evidence.
5. In order to determine whether the accused is liable as charged I framed the following point for determination:
  1. Whether the accused person on 13/9/2008 at village Samthaibari, had in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of the provisions of the Arms Act, 1959 and thereby committed an offence punishable U/s 25 (1) (a) of the Arms Act, 1959?

**Discussion on Evidence, Decision and Reasons thereof:**

6. PW1 Atul Hazarika stated that on 14/9/2008 he was the officer-in-Charge of Sidli P.S. On that day Captain Amol of 21 Jat Regiment lodged a written F.I.R and handed over the accused Sukur Singh Basumatary and one 9 mm pistol and an empty magazine. As the O/C of the station he registered the case and entrusted S.I Binod Boro with the investigation of the case who seized the arm and ammunition.

7. During cross examination PW1 stated that on the date of occurrence army handed over one man at the Police Station.
8. PW2 Kamruz Zaman stated that on 23/9/2008 he was at Bongaigaon P.S. he again stated that on 13/9/2008, 21 Jat Regiment took him with them to Samthaibari. That, he was waiting inside the vehicle at a place one kilometre to the east of Samthaibari. That, the accused present in the Court i.e. Sukur Singh Basumatary and two others were coming and they ran away when they saw army. That, he and 6/7 army men chased them and the accused and the two other men threw a pistol towards the jungle. That, they apprehended them and recovered the pistol and then handed over the three men and the pistol at Sidli P.S. where police seized the pistol. He identified the pistol as M. Exhibit I, the empty magazine as M. Exhibit II and the seizure list as Exhibit 1 and his signature as Exhibit 1(1).
9. PW3 Aleswari Wary stated that about 5/6 years ago one day at about 2.30 p.m. when she was at her home a man ran away through her courtyard and army men chased him and that the man was caught by army but she cannot recognise him now.
10. PW4 Indra Wary stated that he does not know anything and that one day police came and took his signature but he does not know why police took his signature.
11. PW5 Bipin Wary stated that on the date of occurrence he went to Guwahati. After returning from Guwahati his wife told him that a man ran through their courtyard and he was chased and captured by the army. He stated that he does not know anything else.
12. PW6 L. Rajkumar Singh stated that on 14<sup>th</sup> June 2010 the Commander of 8<sup>th</sup> APBn gave him a sealed packet and asked him to examine whether it was a firearm or not. That, he found a 9 mm Factory made Pistol along with one magazine on opening the sealed packet. That, upon examination he found that the Pistol is a firearm of workable condition and can be used as firearm. Exhibit 2 is the report and 2 (1) is his signature.
13. Learned defence counsel relied mainly on the evidence of PW2 Kamruz Zaman while arguing his case. According to learned defence counsel the PW2 has stated that three men were handed over to police and that as the PW2 said that the three men threw a pistol to the jungle and as the pistol was recovered from the jungle so it cannot be said that the pistol was recovered from the possession of the accused.

14. On the other hand learned Asst. P.P argued that the expert opinion is available on record and it shows that the pistol found on the accused is a firearm and as such the accused is guilty as charged.
15. I have perused the F.I.R meticulously. Nowhere in the F.I.R was it written that three men were apprehended. The F.I.R contains only the name of accused Sukur Singh Basumatary. PW1, who is the O/C, Sidli P.S at the relevant time, supported the prosecution case and stated that army handed him over one accused with the arm and ammunition.
16. Although she declined to recognise the accused, but PW3, Aleswari Wary also supported the prosecution case in as much as she stated that army chased one man who ran through her courtyard and apprehended the man. Therefore, in comparison to PW2 who fumbled at the very of the evidence-in-chief, I find that PW1, who registered the case and was present at the time of handing over the accused and arms and ammunition, is a more reliable witness. Also, in the same spirit, I decline to rely on the argument put forward by the learned defence counsel which was based solely on the evidence –in-chief of PW2, who in my considered opinion is not a trustworthy witness.
17. PW6 is the expert who examined the firearm and gave his expert opinion on the basis of which sanction was given by the District Magistrate to prosecute the accused. According to him the pistol sent to him for examination is a firearm and serviceable which the defence also confirmed during cross examination.
18. From the above discussion on the available evidence on record it has come to unfold that on 13/9/2008 accused Sukur Singh Basumatary was apprehended in a joint search operation conducted in collaboration of Assam Police and Army and arm being a 9 mm pistol and an empty magazine was found on him. The expert has opined that the 9 mm pistol is a firearm and the District Magistrate has sanctioned the prosecution on the basis of the report of the expert. Although the sanction letter is not exhibited during evidence but it is very much available with the record and the defence has not raised any objection or question regarding the sanction of prosecution.
19. Now let us see whether the accused can be held guilty under section 25 (1) (a) of the Arms Act under the facts and circumstances that has unfolded from the discussions on evidence. Section 25 (1) (a) of the Arms Act reads as follows:

Whoever, 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; shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Again section 5 of the Arms Act, 1959 states that no person shall (q) use, manufacture, sell, transfer, convert, repair, test or prove or (b) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any firearms or any other arms of such class or description as may be prescribed or any ammunition unless he holds in this behalf a license issued in accordance with the provisions of this Act and the rules made there under.

20. In the present case the accused failed to prove that he had a valid license for possessing the firearm and ammunition. A person who is found to be in possession of a 9 mm factory made pistol with one magazine without licence, must in the absence of proof to the contrary be presumed to be carrying it with the intention of using it when an opportunity arise which would be detrimental to the people at large.
21. Therefore, in my considered opinion, prosecution has established its case beyond all reasonable doubt. Hence, I find that the accused is guilty and thus I convict him U/S 25(1) (a) of The Arms Act, 1959.
22. I have considered the provision of section 4 of the Probation of Offenders' Act, 1958. A person who has in his possession a firearm or ammunition without license has to be considered detrimental to national interest and security and the safety of the fellow citizens. The Legislature in its wisdom has prescribed a minimum mandatory sentence for this offence. Therefore, I am not inclined to extend the benefit of Probation of Offenders' Act to the accused.

## 23. SENTENCE HEARING:

I have heard the accused on the point of sentence. He stated that he has nothing to say regarding the sentence.

Considering all aspects I sentence the accused to undergo imprisonment for a period of three years and to pay fine of Rs. 5000/- . In default of payment of fine the accused shall undergo imprisonment for a further period of three months. The period of imprisonment is to be set aside against any period already undergone.

## ORDER

The accused Sukur Singh Basumatary is hereby convicted of the offence u/s 25 (1) (a) of the Arms Act, 1959 and sentenced to undergo imprisonment for a period of three years and to pay fine of Rs. 5,000/- In default of payment of fine the accused shall undergo imprisonment for a further period of three months. The period of imprisonment is to be set aside against any period previously undergone by the accused. Bail Bond stands cancelled. Given under the hand and seal of this Court on this the 18<sup>th</sup> day of November, 2014.

SYEDA FARIDA AFZAL ZINNAT

JMFC, BONGAIGAON

## APPENDIX:

## List of Exhibits:

1. Exhibit 1: Seizure list
2. Exhibit 1(1): Signature of PW2
3. Exhibit 2: Report of Expert
4. Exhibit 2(1): Signature of PW6
5. M. Ext 1: Pistol 9 mm
6. M. Ext. 2: Magazine

## List of PWs:

1. PW1: Atul Hazarika
2. PW2: Kamruz Zaman
3. PW3: Aleswari Wary
4. PW4: Indra Wary

5. PW5: Bipin Wary
6. PW6: L. Rajkumar Singh