

IN THE COURT OF THE ADDL. SESSIONS JUDGE-2(FTC),
TINSUKIA.

Present : **Sri B. Sutradhar, (AJS),**
Addl. Sessions Judge-2(FTC),
Tinsukia.

Date of Judgment :- 18.05.2022.

Sessions Case No. 84 (T)/14
(U/s 384/307/34 of the IPC,
R/W Sec. 5 ES Act, R/W 25(1)(A) Arms Act
R/W 10/13 UA(P) Act)

Doomdooma P.S Case No. 75/1999 Dated 29.03.99)

Complainant	State of Assam
Represented by	Learned by Sri R.C Das
Defence Side/Accused	<p>1) Sri Luhit Dowarah, S/o. Lt. Dulen Dowarah, Vill. Miripather, Police Station Dhola, District_Tinsukia, Assam.</p> <p>2) Sri Pradip Hazarika @ Jatin, S/o. Lt. Dimbeswar Hazarika, Village - Rupai, Bijoy Nagar, Police Station Doomdooma District Tinsukia, Assam.</p> <p>3) Sri Babul Hazarika @ Kiron, S/o. Lt. Dimbeswar Hazarika, Vill. Rupai, Bijoy Nagar, Police Station Doomdooma, District - Tinsukia, Assam.</p>
Represented by	Sri S. Buragohain, Advocate for accused Sri Babul Hazarika @ Kiron, & Sri Pradip Hazarika @ Jatin. Sri P. Roy, Advocate for accused Sri Luhit Duwarah.

APPENDIX - 13

Date of Offence	28.03.1999
Date of FIR	29.03.1999
Date of Charge-sheet	30.11.2012
Date of Particulars of the Offences Explanation	31.07.2014
Date of Commencement of evidence	28.08.2014
Date of recording Statement Defence	11.05.2022
Date of Argument	11.05.2022
Date on which Judgment is reserved	NA
Date of Judgment	18.05.2022
Date of Sentencing Order, if any	Nil

Accused details:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences Explained with sections	Whether Acquitted or Convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C.
Accused No. 1	Sri Luhit Dowarah	30.03.99	30.06.99	U/s 384/307/34 of the IPC, R/W Sec. 5 ES Act, R/W 25(1) (A) Arms Act, R/W 10/13 UA(P) Act	Acquitted	NA	3(Three) months
Accused No. 2	Sri Pradip Hazarika @ Jatin,						
Accused No. 3	Sri Babul Hazarika @ Kiron						
		30.03.99	30.06.99		Acquitted	NA	3 months

J U D G M E N T

1. The prosecution case in brief as it transpires from the bare perusal of the FIR is that on 28.03.99 at about 1600 hours, Major M. Anand of 99 APO received an information that some militants (suspected ULFA) are in Rupai town and in possession of weapons. Accordingly, on the same day, at 1900 hours the hideout of the militants were cordoned. The militants were warned to come out and surrender, but instead of doing so, the militants opened fire on the Army personnel and the Army personnel also fired back for self defence. When the exchange of fire came to a halt, the Army personnel searched the house where the militants were hiding and they found two militants lying dead with bullet injuries and another found in seriously injured condition. The house belongs to Mr. Babul Hazarika, S/o. Dimbeswar Hazarika of Amguti.
2. One AK 47 rifle alongwith huge quantity of ammunitions, two Chinese grenades alongwith cash of Rs. 45,060/- and ULFA related documents relating to extortion demands etc. were recovered from their possession. The injured was immediately shifted to hospital. The identity of the killed militants could be found as follows :
 - (a) Mr. Atul Hazarika,
S/o. Dimbeswar Hazarika, @ Amguti.
 - (b) A known NSCN trained hardcore ULFA militant -
Mr. Babul Neog,
S/o. Hemkhanta Neog, R/o. Naharchapori.

(c) The injured identified himself to be Mr. Luhit Dowarah, S/o. Late Dulen Duwarah, R/o. Dhola Tea Estate. He is also known ULFA. The injured alongwith the dead bodies of the two killed ULFA militants were handed over to Doomdooma PS for taking necessary legal action alongwith the seized items.

The above incident took place in the house of Babul Hazarika, S/o. Dimbeswar Hazarika of Amguti.

3. Receiving the FIR, Doomdooma P.S. being no. 75/99 registered a case and investigated the matter and on completion of the investigation, charge sheet was submitted against the accused persons and forwarded to face the trial.
4. On appearance before the Judicial Magistrate, 1st Class, Tinsukia, copies were furnished to the accused person U/S 207 Cr.P.C and committed the case to the Court of Sessions for trial. Accordingly the GR case no. 266/99 registered as Sessions case no. 84(T)/2014 and transferred to this court for trial.
5. Upon receiving the record and appearance of the accused persons in this court and upon hearing both sides and considering the materials on record charges, U/s 384/307/34 of the IPC, R/W Sec. 5ES Act, R/W 25(1)(A) Arms Act, R/W 10/13 UA(P) Act have been framed, particulars of which on being read over and explained, the accused persons pleaded not guilty and claimed to be tried.
6. During trial, prosecution examined ten(10) witnesses. The accused persons are examined u/s 313 Cr.P.C and their pleas are of total denial.

7. I have heard argument put forth by the Id. Counsel for both the sides as well as gone through the entire materials available on record.

8. **POINT FOR DETERMINATION :-**

- (i) Whether the accused in furtherance of their common intention on 28.03.99 at about 5 PM (17 hours) at 3 Rupai Town under Doomdooma P.S in the District of Tinsukia illegally possessed demand notice of ULFA to deliver the same to different persons alongwith Rs. 45,060/- and thereby committed an offence punishable **U/s. 384/34 of the IPC?**
- (ii) Whether the accused in furtherance of their common intention on or about the same time and place opened fire to the army personnel with intention to kill them and thereby committed an offence punishable **U/s. 307/34 of the IPC?**
- (iii) Whether the accused on or about the same time and place, a huge amount of arms and ammunitions, two Chinese grenades were recovered from the possession and thereby committed an offence punishable **u/s. 5 of Explosive Substance Act ?**
- (iv) Whether the accused at the same time and place were found in possession of one A.K. 47 rifle by Army personnel and thereby committed an offence punishable **u/s. 25(1) (a) of the Arms Act ?**
- (v) Whether the accused persons on or about the same time and place being the member of the banned ULFA organization took part in the meeting of such

Organization and thereby committed an offence punishable u/s. **10 UA(P) Act** ?

- (vi)** Whether the accused persons on or about the same time and place being a member of the banned ULFA organization took part, advocated, abetted and advised the commission of unlawful activities and thereby committed an offence punishable u/s. **13 UA(P) Act** ?

DISCUSSION, DECISION AND REASONS THEREOF:

- 9.** PW.1, Robin Hazarika has stated that one of the accused Pradip Hazarika, Babul Hazarika are his brothers. About 14 years back there was firing near their house and thereafter his brothers were arrested . He does not know why they were arrested. He identified the body of Atul Hazarika. Ext. 1 is the Inquest. Ext. 1(1) is his signature. Ext. 2 is the Inquest. Ext. 2(1) is his signature. In the firing two persons were killed.
- 10.** In cross-examination, the PW.1 has stated that he cannot say between whom the firing took place.
- 11.** PW.2, Sri Prafulla Gogoi has stated that he knows the accused persons. He also knows the complainant. 14 years back there was firing near their house (Bajrang Operation). Police seized a seizure memo vide Ext. 3 is the seizure list. Ext. 3(1) is the signature. Witness Ajit Baruah has expired.
- 12.** In cross-examination the PW.2 has stated that he does not remember where he signed Ext. 3. He does

not know the contents of Ext. 3. He does not know if he had seen the seized articles. In cross-examination for Lohit Gohain, the PW.2 has stated that he does not remember if anything was written on Ext. 3.

13. PW.3, Sri Ganga Ram Borbora has stated that he knows the accused who are his neighbours. About 17 years back there was Joymoti Utsav and Army appeared and started chasing people. They ran and took shelter in a house. From there they heard the sound of firing. In the firing many people were killed. Army took away 2 dead bodies.

14. The cross-examination of this witness was declined by the Defence.

15. PW.4, Sri Pradip Borpuzari has stated that the accused persons are his neighbours. About 17 years back there was Joymoti Utsav when Army came and opened fire on the crowd. They all ran and took shelter in a house. There was firing and Army took away 2 bodies.

16. The cross-examination of this witness was declined by the Defence.

17. PW.5, Sri Robindra Kumar Das has deposed that on 28.03.1999 he was at Doomdooma police station and on that day, at about 4 PM, one Army personnel took him to the house of a person at Bijoy Nagar under Doomdooma Police Station for conducting an operation to nab the ULFA activities. Then the Army personnel gheraoed the house and then cross-firing were taken place between the ULFA activities and Army personnel, as a

result two ULFA extremists were killed and one sustained bullet injury, and the name of the said injured ULFA was Luhit Duwarah. Some arms and ammunitions were recovered from the possession of the injured ULFA. 1 AK 47 rifle and 1 Khukri and other arms and ammunitions were also recovered. Later the said articles were seized by police. Police recorded his statement.

18. In cross-examination for accused Luhit Duwarah, the PW.5 has stated that he cannot definitely say from whose possession the arms and ammunitions were seized. He cannot say whether the injured was Luhit Duwarah or not.

19. P.W.6, Sri Ghana Kanta Borah has deposed that on 28.03.1999 he was discharging his duty as Officer in charge at Doomdooma P.S. On that day at 5:45 PM he has received an information from SDC-cum-Executive Magistrate that an encounter took place at Rupai Siding, on getting the information he alongwith staff went to the place of occurrence. There he could learn that two numbers of ULFA militants killed by the Army personnel and one person sustained injuries and shifted to the Army hospital for treatment. On 29.03.1999 he has received an FIR from Major M. Anand of 1872 Light Regiment, C/o. 99 APO. Accordingly, he registered a case at Doomdooma P.S. Ext. 1(1) is his endorsement bearing Doomdooma P.S case no. 75/99 U/s. 384/307/34 IPC r.w sec. 25(1)(a)/27/(1)(2)(3) of Arms Act r.w sec. 10/13 U.A(P) Act r.w sec. 5 of E.S Act. He visited the P.O, prepared a sketch map. Ext. 2 is the sketch map, Ext. 2(1) is his signature on the sketch map. He seized Seizure memo which was prepared by Major K. Sidhu. Ext. 3(2) is his signature on the seizure-list. He examined

witnesses namely, Gangaram Borah, Prafulla Gogoi, Pradip Borpujari, Ajit Kumar Barua, including complainant. He arrested accused Babul Hazarika, Pradip Hazarika, Bikram Konwer, Lohit Duwara and recorded their statements and forwarded them to judicial custody. He also collected Post Mortem Report. The seized arms and ammunitions were sent to FSL for Expert opinion. On 17.07.2001 on his transfer he handed over the C.D to Sri Dipak Tamuli.

20. In Cross-examination for all the accused persons, the PW.6 has stated that though he has entered the information of the incident of 28.03.1999 in the General Diary but he did not find the Extract copy of the information in the C.D. On 29.03.1999 he received the same information which was received by him on 28.03.1999. The information received on 29.03.1999 is the subsequent FIR. The signature of complainant appeared in Ext. 1 is not signed before him. The seized arms and ammunitions was produced by Major K. Sidhu and he has not seized any arms and ammunitions from the possession of the accused persons. Other than the Ext. 1, he has not any official correspondence with Major M. Anand. Thats why he is not in a position to say whether the signature appeared in Ext. 1 is the signature of Major M. Anand or not.

21. He denies the suggestion that he perfunctorily conducted the investigation and without having any prima facie material he falsely arrested all the accused persons and forwarded to judicial custody. He has no personal knowledge regarding the seized articles as referred in Ext. 2 as to from whom those articles have been seized.

22. PW.7, Sri Dipak Tamuli (Inspector) has deposed that

in the last part of 2001, he was working as O.C at Doomdooma Police Station. He was not entrusted with the charge of investigation of the case. His name was erroneously listed as I.O by the previous I.O in this case.

23. The cross-examination of this witness was declined by the defence.

24. PW.8, Sri Khagen Changmai (Retd. Inspector) has deposed that on 25.12.02 he was at Doomdooma Police Station as O.C. He was entrusted with the charge of investigation of the case. On 23.01.2003 he got transfer order. Accordingly, he handed over the case diary to P. Phukan.

25. In cross-examination, the PW.8 stated that he did not conduct any investigation in this case.

26. PW.9, Sri Hasta Bahadur Chetry has deposed that on 26.12.11 he was working at Doomdooma PS as attached Officer. The then OC of Doomdooma PS entrusted the charge of investigation of this case to him. Before doing any investigation of this case, he was transferred from Doomdooma P.S. Accordingly, he handed over the CD to the then OC.

27. The cross-examination of this witness was declined by defence.

28. P.W.10, Sri Babu Singh has deposed that on 12.10.07 he was working at Doom-dooma P.S as attached officer. The then OC of Doomdooma PS entrusted the charge of investigation of this case to him. On perusal of the Case Diary, the seized ammunition were sent to the

2nd APBN for Expert opinion. He collect Expert opinion report from the 2nd APBN. Ext. 5 is the report of Expert Opinion, Ext. 5(1) is the signature of the Examiner. Later the seized ammunition were destroyed after obtaining court order through the Army personnel at Rupai. Ext. 6 is the Disposal certificate. Ext. 6(1) is the signature of captain, Rupai Army Camp. Thereafter he prayed to the Ld. District Magistrate for prosecution sanction against the accused persons. Thereafter he collected report. Ext. 4 is the Sanction report, Ext. 4(1) is the signature of Ld. District Magistrate. Ext. 4(2) is another report of Sanction on arms, Ext. 4(3) is the signature of Ld. District Magistrate. He also prayed for sanction Home(C) Govt. of Assam, Dispur through the SP, Tinsukia. Ext. 7 is the Prosecution sanction report on Unlawful activities against the accused persons Home(C) Govt. of Assam, Dispur. Ext. 7(1) is the signature of Dy. Secretary, Home(C) Govt. of Assam, Dispur.

29. In the meantime as he was transferred from Doomdooma to Langkashi Out post he handed over the C.D to the OC, Doomdooma.

30. In cross-examination, the PW.10 stated that he prayed simply for prosecution sanction against the accused persons.

31. Now, on going through the above evidence on record it appears that PW.1 only stated that accused Pradip Hazarika and Babul Hazarika are his brothers and about 14 years back there was firing near their house and their brothers were arrested but he did not know why they were arrested. He identified the body of Atul Hazarika and in cross-examination, he stated that he cannot say

between whom the firing took place. PW.2, also stated that about 14 years back there was firing near his house. Police seized some articles and took his signature in the seizure-list. In cross-examination he stated that he did not know the contents of Ext. 3. PW.3 has stated that about 17 years back there was Joymoti Utsav and Army appeared and started chasing people. They ran and took shelter in a house. From there they heard the sound of firing. In that firing many people were killed. Army took away 2 dead bodies. PW.4 stated that about 17 years back there was Joymoti Utsav and then Army opened fire on the crowd. They ran and took shelter in a house and there was firing and Army took away 2 bodies. PW.5 stated that on 28.03.1999 he was at Doomdooma police station and on that day, at about 4 PM, one Army personnel took him to the house of a person at Bijoy Nagar under Doomdooma Police Station for conducting an operation to nab the ULFA activist. Army personnel gheraoed the house, cross-fire took place between the ULFA activist and Army personnel, as a result two ULFA extremists were killed and one sustained bullet injury. Name of said injured ULFA was Luhit Duwarah. Some arms and ammunitions were recovered from him. In cross-examination he stated that he cannot say definitely from whose possession the arms and ammunitions were seized and he cannot say whether the injured was Luhit Duwarah or not. P.W.6, stated that on 28.03.1999 he was Officer in charge at Doomdooma P.S and he received information from SDC cum Executive Magistrate that an encounter took place at Rupai Siding. He went to the spot and learn that two numbers of ULFA militants were killed by Army personnel and one sustained injuries and shifted to Army hospital . On 29.03.1999 he

received an FIR from Major M. Anand. He registered the case, visited the P.O, prepared sketch map and seized Seizure memo which was prepared by Major K. Sidhu. He examined witnesses, arrested accused Babul Hazarika, Pradip Hazarika, Bikram Konwer, Lohit Duwara and recorded their statements and forwarded them to judicial custody. In Cross-examination said witness stated that seized arms and ammunitions was produced by Major K. Sidhu and he has not seized any arms and ammunitions from the possession of the accused persons. He has also stated that he has no personal knowledge regarding the seized articles of Ext. 2 as to from whom seized, though the articles were seized. PW.7 stated_ that he has not investigated the case but his name was erroneously listed as I.O by the previous I.O. PW.8 stated that he was entrusted with the charge of investigation and due to his transfer he handed over the case diary to P. Phukan. In cross-examination, he stated that he has not conducted any investigation of this case. PW.9 stated that on 26.12.11 he was attached Officer of Doomdooma P.S. OC entrusted him for investigation. P.W.10 stated that on 12.10.07 he was working as attached officer at Doom-dooma P.S. OC entrusted him for investigation and on perusal of the Case Diary, the seized ammunition were sent for Expert opinion report. He collected the report and later on, the seized ammunition were destroyed after obtaining court order through the Army personnel. He collected Sanction report and in the meantime as he was transferred and handed over the C.D to the OC, Doomdooma. In cross-examination, he stated that he prayed simply for prosecution sanction against the accused persons.

32. Now it appears that Prosecution side has examined total 10 (ten) witnesses. Though the witnesses stated that there was firing between the Army Personnel and ULFA Activists but there is no clear evidence that accused persons are involved with the alleged offence. That the witnesses have failed to adduce evidence that these present accused persons are involved in the alleged incident. Though it appears from the evidence of PW.5 that Luhit Duwarah was arrested being he sustained bullet injuries but in cross-examination said witness clearly stated that he cannot say from whose possession the arms and ammunitions were seized and whether the injured was Luhit Duwarah or not. Other witnesses are totally silent. The entire evidence has failed to depict a clear picture regarding the involvement of the accused persons. In that situation more discussion is not necessary to discuss the matter in hand.

33. Keeping note of the entire evidence on record, I find nothing to discuss more and hold that prosecution has failed to prove the case against the accused persons. Hence, I am of the considered opinion that the Prosecution has failed to prove the material ingredients of U/s 384/307/34 of the IPC, R/W Sec. 5ES Act, R/W 25(1)(A) Arms Act R/W 10/13 UA(P) Act against the accused persons. Hence the accused persons namely, Sri Pradip Hazarika @ Jatin, Sri Babul Hazarika @ Kiron and Luhit Dowarah are acquitted from all charges and set them at liberty forthwith.

34. The bail bonds of the accused persons are extended U/S 437 'A' Cr.P.C.

35. The seized article be confiscated to the State.

36. The case is disposed of on contest.

Given under my hand and seal of this Court on the 18th
day of May, 2022.

Dictated and corrected by me.

(B. Sutradhar)
Addl. Sessions Judge-2(FTC),
Tinsukia.

(B. Sutradhar)
Addl. Sessions Judge-2(FTC),
Tinsukia.

APPENDIX**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****(vii) Prosecution :**

RANK	NAME	NATURE OF EVIDENCE
PW.1		(Eye Witness, Police Witness, Expert Witness, Medical witness, Panch Witness, Other witness) Informant Independent witness Seizure witness)
PW.1	Sri Robin Hazarika	Inquest Witness
PW.2	Sri Prafulla Gogoi	Seizure witness
PW.3	Sri Ganga Ram Barua	
PW.4	Sri Pradip Borpuzari	
PW.5	Sri Robindra Kumar Das	
PW.6	Sri Ghanta Kanta Borah	Police Witness
PW.7	Sri Dipak Tamuli (Inspector)	Police Witness
PW.8	PW.8, Sri Khagen Changmai (Retd. Changmai)	Police Witness
PW.9	PW.9, Sri Hasta Bahadur Chetry	Police Witness
PW.10	PW. 10, Sri Babu Singh.	Police Witness

(viii) Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
DW.1	Nil	(Eye Witness, Police Witness, Expert Witness, Medical witness, Panch Witness, Other witness) Informant Independent witness Seizure witness)

(ix) Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
CW.1	Nil	(Eye Witness, Police Witness, Expert Witness, Medical witness, Panch Witness, Other witness) Informant Independent witness Seizure witness)

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**Prosecution:**

Sr. No.	Exhibit Number	Description
1.	Exhibit 1	The Ejahar
2.	Exhibit 1(A)	Inquest Report
3.	Exhibit 2(A)	Inquest Report
4.	Exhibit 2	Sketch map
5.	Exhibit 3	Seizure-list
6.	Exhibit 4	Sanction Report
7.	Exhibit. 5	Expert Opinion
8.	Exhibit 6	Disposal Certificate
9.	Exhibit 7	Prosecution Sanction Report

Defence :

Sr. No.	Exhibit Number	Description
1.	DW-1	Nil.

Court Exhibits:

Sl. No.	Exhibit Number	Description
1	CW-1	Nil.

37.Material Objects:

Sl. No.	Exhibit Number	Description
1	MO1	Nil.

Dictated

Addl. Sess. Judge-2(FTC),
Tinsukia