

**IN THE COURT OF SESSIONS JUDGE::::BAKSA::::MUSHALPUR**

Present: Mr. N.U. Ahmed, AJS.

Date of judgment: 22.11.2022.

**SESSIONS CASE NO. 17/18**

**U/S 5 of the E. S. Act R/W section 25(1-B) of the Arms Act.**

FIR No.70/2009 , Goreswar P.S, Baksa

Complainant : **The State of Assam**  
Represented by : Mr. R. Chetry,  
Learned Public Prosecutor, Baksa.

Accused : **Sri Raju Boro**  
Represented by : Mr. Balen Chandra Boro  
Learned Advocate.

Date of offence	28.09.2009
Date of FIR	29.09.2009
Date of charge-sheet	30.10.2015
Date of framing charges	23.09.2016
Date of recording evidence	18.01.2017, 02.03.2017, 17.06.2017, 14.07.2017, 18.08.2017, 09.11.2022
Date of recording S.D.	16.11.2022
Date of argument	16.11.2022
Date of judgment	22.11.2022

**ACCUSED DETAILS**

Rank of accused	Name of accused	Date of arrest	Date of release on bail	Offence charged with	Acquitted or convicted	Sentence imposed	Period of detention undergone during trial
A-1	Raju Boro	30.09.2009	14.11.2009	u/s 5 E. S. Act, R/W section 25(1-B) Arms Act.	Acquitted	Nil	45 days

**JUDGMENT**

1. The instant Sessions case arose out of Goreswar P.S Case No. 70/2009, registered u/s 25(1-a) of the Arms Act R/W Section 10/13 of the UA(P) Act R/W Section 5 of the ES Act.

2. The prosecution case in brief is that on 29.09.2009 at about 2.30 pm, Lieutenant Abhay Pratap Singh of Goreswar Army Camp came to Goreswar police station and lodged an written FIR alleging that on 28.09.2009 at about 8.30 pm, on searching one Raju Boro, he recovered 7.62 mm ammunition 2 round, plastic explosive weighing 125 gm and one Pulsar motorcycle bearing registration No. AS 13 A 9614 and apprehended him to be a member of NDFB cadre. Hence, this case.

3. Based on the FIR, the aforesaid Goreswar P.S case was registered and the criminal investigation was put into motion. During

the course of investigation, the Investigating Police Officer visited the place of occurrence, drew sketch map of the place of occurrence, seized ammunition and also recorded the statement of the witnesses. The Investigating police officer also interrogated accused Raju Boro and recorded his statement and on being found materials against him, he arrested accused Raju Boro in connection with this case. The accused was also produced before the court for sending him to judicial custody and after completion of investigation, S.I Nayanmoni Das laid charge-sheet against the accused u/s 5 E. S. Act R/W section 25(1-B) of the Arms Act.

4. Complying the mandate of Section 207 Cr. P. C, learned SDJM, Rangia committed the case to the court of learned Sessions Judge, Kamrup, Amingaon. Accordingly, upon receipt of GR Case No. 1047/09, Kamrup, Amingaon Sessions Case No. 143/16 was registered. The learned Sessions Judge, Kamrup, Amingaon transferred the case to the court of Addl. Sessions Judge (FTC) Kamrup, Rangia for trial. Upon hearing both sides on the point of charge and also scrutinizing the materials on record, learned Addl. Sessions Judge (FTC) Kamrup, Rangia framed charges u/s 5 of ES Act R/W Section 25 (1)(B) of the Arms Act against the accused which were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. It is worth mentioning that after the creation of Baksa District Judiciary, the case record was transferred during the part-heard stage from the court of learned Addl. Sessions Judge (FTC) Kamrup, Rangia to this court and the present Baksa Sessions Case No. 17/18 was registered.

6. To substantiate the charge against the accused person, prosecution adduced evidence of nine witnesses including the the Investigating Police Officer. Besides, prosecution also relied upon documents such as ejehar (FIR), sketch map, seizure list, charge-sheet, etc.

7. Upon closure of the prosecution evidence, the accused was examined u/s 313 Cr.PC. The defence plea is of total denial of the prosecution allegation and the accused declined to adduce defence evidence.

8. I have heard argument advanced by Mr. R. Chetry learned PP for the State as well as Mr. A. Boro Ld. Counsel for the accused. I have gone through the case record as well as evidence on record.

### **POINT FOR DETERMINATION**

*i) Whether on 28.09.2009 at about 10.30 at village Botiamari under Goreswar P.S, accused Raju Boro was found in possession of 125 grams of plastic explosive without any authority and thereby committed an offence punishable u/s 5 of Explosive Substance Act ?*

*ii) Whether on the same date, time and place, accused Raju Boro had been found in possession of 7.62 mm ammunition 2 round without any valid license and thereby committed an offence punishable u/s 25 (1)(B) of Arms Act ?*

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

9. Now, let us have a glance at the evidence of prosecution witnesses recorded during the trial.

10. PW1 Smt. Malati Devnath in her deposition has deposed that she did not know the informant. She knows the accused person. She further deposed that about seven years back, she heard that accused Raju Boro was apprehended. During cross examination she stated that she did not know anything about the incident.

11. PW2 Sri Dijen Boro in his deposition has deposed that he knows the accused person and he did not know the informant. He further deposed that about seven years ago, he came to know that accused Raju Boro was apprehended by Army personnel and a grenade was recovered from the house of the accused. He further deposed that brother of accused Raju Boro was associated with a terrorist organization. He did not see the seized materials. During cross-examination he stated that Rinku Dutta over telephone informed him about arrest of accused Raju Boro and he did not know why Army personnel apprehended Raju Boro.

12. PW3 Smt. Usha Das in her deposition has deposed that she knows accused Raju Boro. She further deposed that Raju Boro had a grocery shop at Gotiamari and on the relevant day at about 7.30 pm, while she went to the shop of the accused for purchasing pulses, she saw that Army personnel apprehended the accused from his shop.

13. PW4 Smt. Mandira Dekka in his deposition has deposed that she knows the informant and she is the neighbour of accused Raju

Boro. She also deposed that accused had a shop and she used to purchase goods from his shop. She further stated that the accused was apprehended by police and Army personnel but she did not know why the accused was apprehended.

14. PW5 Sri Nabin Das in his deposition has deposed that he knows the informant and accused Raju Boro. He further deposed that at the time of incident, while he was at his home, he was called at the police station. He also deposed that he has not seen anything.

15. PW6 Parashuram Swargiary in his deposition has deposed that he knows accused Raju Boro and he did not know the informant. He further deposed that about four years back, he heard that Army personnel apprehended Raju Boro. He also stated that he has not seen anything.

16. PW7 Hashiram Boro in his deposition has deposed that on the day of incident he was not present as he was at Tezpur. He further deposed that he heard that brother of accused Raju Boro had missing and he also heard that some ammunition were recovered from the house of accused Raju Boro but he was not present.

17. PW8 S.I Nilutpal Bhuyan in his deposition has deposed that on 21.06.2015, while he was working as Police Reserve Officer at Barbari Police Reserve then on that day, the I/O of this case made a prayer before S.P, Baksa for destruction of plastic explosive weighing 125 gm and the S.P, Baksa authorized him to destruct the said explosives. Accordingly, he along with his staff went to the bank of

Pagladia River at Tamulpur and destroyed the said explosives on the side of the river. He further deposed that after destruction, he issued a certificate in this regard. He has confirmed that Exbt.1 is the destruction certificate and Exbt.1(1) is his signature.

18. PW9 Prabin Bharali is the one of the Investigating Police officer of this case. He in his deposition, has deposed that on 29.09.2009, while he was working as Probationary S.I of Police at Goreswar P.S, then on that day, at about 2.30 pm, Lieutenant Abhay Pratap Singh of Goreswar Army Camp came to the police station and lodged an written FIR alleging that on 28.09.2009 at about 8.30 pm, on searching one Raju Boro, he recovered 7.62 mm ammunition 2 round, plastic explosive weighing 125 gm and one Pulsar motorcycle bearing registration No. AS 13 A 9614 and apprehended him to be a member of NDFB cadre. PW9 further deposed that the said Army personnel came to the police station along with accused Raju Boro and the seized articles. Thereafter, the O/C Goreswar P.S registered the same vide Goreswar P.S Case No. 70/09 and entrusted him to investigate the case. Accordingly, he seized the aforesaid articles from the informant and Raju Boro was kept in the police station for interrogation. PW9 further deposed that thereafter he along with his staff and Army personnel proceeded to the place of occurrence and after arriving at the place of occurrence, he visited the place of occurrence, drew the sketch map of the place of occurrence and recorded the statement of witnesses.

19. He in his deposition further deposed that he also interrogated accused Raju Boro and recorded his statement and on being found materials against him, he arrested accused Raju Boro in connection

with this case. The accused was also produced before the court and he took police custody for five days. After expiry of police custody, the accused was produced before the court for sending him to judicial custody. PW9 also deposed that on 16.01.2010, he was transferred and he handed over the case diary to O/C Goreswar P.S. Thereafter, S.I Nayanmoni Das completed the investigation and laid charge-sheet against the accused. PW9 has confirmed that Exbt.5 is the charge-sheet and Exbt.5(1) is the signature of S.I Nayanmoni Das which he knows in his official capacity. Exbt.2 is the FIR and Exbt.2(1) is the signature of informant Abhay Pratap Singh Army personnel which he knows in his official capacity. Exbt.2(2) is the signature of Himangshu Das the then O/C of Goreswar P.S which he knows in his official capacity. He has also proved that Exbt.3 is the seizure list and Exbt.3(1) is his signature and Exbt.4 is the sketch map and Exbt.4(1) is his signature.

20. In this case we should decide whether the prosecution able to prove that explosive substances and ammunition were recovered from the possession of the accused Raju Boro or not. In this case the prosecution altogether examined nine witnesses. PW1 to PW7 are independent witnesses. From their evidence it reveals that they heard that Army personnel apprehended the accused person but they did not know why the Army personnel apprehended the accused person. PW8 only destroyed some explosive substance on the prayer of the Investigating Officer. PW9 is the I. O. of the case and he seized the explosive substances and ammunition on being produce by the Army personnel. So, it appears that at the time of recovery of the explosive substances and ammunition he was not present. The prosecution side failed to examine the informant who



has alleged that he recovered the explosive substances from the possession of the accused person. In a criminal proceeding the burden of prove is on the prosecution. A person can not be held guilty on presumption. In this case there is no iota of evidence to show that from the possession of the accused person explosive substances and ammunition were seized. Therefore, I have nothing to hesitate to hold that prosecution failed to prove the charges against the accused person beyond all reasonable doubt and the accused is entitled to benefit of doubt.

21. From the discussion made above, I find that the prosecution has miserably failed to prove the charges against the accused beyond all reasonable doubt. Hence, accused is found not guilty of the offence u/s 5 of the E. S. Act, R/W section 25(1-B) of the Arms Act and he is acquitted from the charges on benefit of doubt. Accused is set free at his liberty forthwith.

22. The bail bond furnished by the accused shall remain in force for another six months in the spirit of Section 437-A Cr.PC.

23. The seized materials be destroyed in due course of time.

24. Send a copy of the judgment and order to the District Magistrate, Tamulpur as per provision of section 365 of the Cr. P. C.

25. Judgment is declared and delivered in the open court under my hand and seal of this court on this **22<sup>nd</sup>** day of November, **2022**.

Dictated and Corrected by me:

Sessions Judge,  
Baksa, Mushalpur

( N. U. Ahmed)  
Sessions Judge,  
Baksa, Mushalpur

**APPENDIX:**

**LIST OF PROSECUTION / DEFENCE / COURT WITNESSES**

**A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b>
PW1	Smti Maloti Deb Nath	Reported witness
PW2	Shri Dijen Boro	Reported witness
PW3	Smti Usha Das	Reported witness
PW4	Smti Mandira Deka	Reported witness
PW5	Shri Nabin Boro	Reported witness
PW6	Shri Parashuram Swargiary	Reported witness
PW7	Shri Hashiram Boro	Reported witness
PW8	Shri Nilutpal Bhuyan	S. I of police
PW9	Prabin Bharali	Investigating Police Officer

**B. Defence witnesses:**

NIL

**C. Court witnesses:**

NIL

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

**A. Prosecution Exhibits:**

<b>Sl. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Exbt.1	Destruction certificate
2.	Exbt.2	FIR
3.	Exbt.3	Seizer list
4.	Exbt.4	Sketch map
5.	Exbt.5	Charge sheet

**B. Defence Exhibits:**

NIL

**C. Court Exhibits:**

NIL

**D. Material Objects:**

NIL

( N. U. Ahmed)  
Sessions Judge,  
Baksa, Mushalpur