

IN THE COURT OF THE SESSIONS JUDGE, CHIRANG,KAJALGAON.

PRESENT : Smti. H. D. Bhuyan,
Sessions Judge,
Chirang

SESSIONS CASE NO. 225(D) OF 2015

Under section 25(1-A) of the Arms Act

G.R. Case No. 385 of 2014.

State of Assam **Complainant**

–Versus –

Raj Kumar Prasad Ahudhya **Accused Person**

[Committing Magistrate: Judicial Magistrate, 1st Class,Chirang,Kajalgaon.]

ADVOCATES WHO APPEARED IN THIS CASE

For the Complainant : Sri K.K.Das,
Public Prosecutor.

For the accused : N.I.Siddique,
Advocate.

Date of evidence : **19.11.15, 3.12.15, 5.1.16,
6.1.16, 1.3.16, 29.3.16,
26.4.16, 21.6.16, 5.7.16 &
28.7.16.**

Date of Argument : **19-9-2016**

Date of Judgment : **27-9-2016**

J U D G M E N T

1. The brief of the prosecution case is that on basis of a prior information, the Inspector and O/C of Dhaligaon P.S., namely, one Rudra Kalita being accompanied with T.S.I. Bhaben Das and one section 156 Battalion of Kukurmari, Chapaguri started checking the four wheelers vehicles at Chapaguri N.H. Way No.31(C) on last 11-5-2014, under the leadership of Addl. S.P. (HQ)CHR from 10 A.M. the day and at about 4.30 p.m., found one Sky blue Wagon-R car bearing Registration No.AS-09-A/7377, while coming from Guwahati towards Srirampur. The police party stopped the vehicle by giving signal and found one Sri Raj Kumar Prasad Ahudhya driving the vehicle and on being interrogated by police, the said driver admitted that he brought some illegal arms and ammunitions in the vehicle to hand over the same to some unknown organization and accordingly, the said vehicle was seized by police at the spot and foreman and mechanic was called from Chirang MTO office and on being shown by the said accused driver, police recovered two numbers of sophisticated arms and four numbers of ammunitions wrapping with black plastic after opening the bumper of the backside of the vehicle. The recovered arms and ammunitions were also seized by police at the spot in presence of witnesses and police seized one M-16 Rifle with silencer and shilling, one M-16 Rifle magazine, one M-16 Rifle extension, body portion of one Rifle, one Rifle magazine, one rifle trigger group, three butt screw, two shilling Corry (front and rare), 11 numbers of ammunition of M-16 rifle, 28 numbers of ammunition of 303 Rifle (lire) and 3 nos. tracer/lighter. Along with the said arms and ammunitions, police also seized one mobile with two sim cards and relevant papers connecting with the said vehicle including driving license etc. from the driver. Subsequently, the driver of the car along with seized articles was brought to the police station and on further interrogation, he confessed that he carried the illegal arms for delivering the same to some unknown organization on receiving Rs.50,000/-. Hence, the F.I.R.

2. On the basis of said FIR, the Dhaligaon P.S. Case No.72/2014 u/s 25(1)(a)/35 of the Arms Act was registered against the accused person and police started usual investigation thereon. Upon completion of the

investigation, police filed charge-sheet U/S. 25(1)(a)/27 of the Arms Act against accused persons, namely, Raj Kumar Prasad Ahudhya and another Belsri Nurzery. Thereafter, the case was transferred to the court of learned Addl. C.J.M. Bongaigaon and after creation of Courts in Chirang District, the same was transferred to the Court of Judicial Magistrate Chirang for disposal.

3. On being produced before the court of the learned Judicial Magistrate 1st Class, Chirang, Kajalgaon, the accused Raj Kumar Prasad Ahudhya was furnished with all the necessary copies as required U/S 207 of Cr.P.C by that court while other accused Belsri Nurzury having not appeared in the Court for a long time, the case of present accused was spitted from the said co accused and trial proceeded against this accused in the Court of Judicial Magistrate 1st class, Chirang. In course of trial a formal charge U/S 25(1-B)/35 of Arms Act was framed against the accused Raj Kumar Prasad Ahudhya by that Court. Subsequently, it was found that the case attracts the provision U/S 25(1-A) of Arms Act. Hence, the case being exclusively triable by the Court of Sessions, the learned Judicial Magistrate 1st Class, Chirang, Kajalgaon committed the case for trial to the Court of Sessions.

4. After receiving the case and production of the accused Raj Kumar Prasad Ahudhya before this court, the then learned Sessions Judge, Chirang framed a formal charge U/S 25(1-A) of the Arms Act against the said accused after perusal of police papers U/s. 173 of Cr.P.C. and also after hearing the learned counsels for both sides. The charge was read over and explained to the accused person and he pleaded not guilty and claimed to be tried.

5. During trial of the case the prosecution side examined altogether 11 PWs while the defence side did not adduce any evidence. Defence plea is only denial of the prosecution case.

6. After hearing arguments for both sides, I hereby proceed to deliver the judgment in this case.

7. Now, the points for decision before this Court is as follows:-

- i) Whether on or about the day of last 11-05-2014 at about 4.30 p.m, at Chapaguri on NH 31, under Dhaligaon Police Station, the accused was found driving a sky blue wagon- R car bearing Registration No.AS-09-A/7377 and was found carrying prohibited arms and ammunitions, namely, one M-16 Rifle with silencer and shilling, one M-16 Rifle magazine, one M-16 Rifle extension, body portion of one Rifle, one Rifle magazine, one rifle trigger group, three butt screw, two shilling Corry (front and rare), 11 numbers of ammunition of M-16 rifle, 28 numbers of ammunition of 303 Rifle (lire) and 3 nos. tracher/lighter in contravention of provision U/S 7 of the Arms Act and thereby committed an offence punishable u/s 25(1-A) of Arms Act.

8. The findings of this Court and reasons thereof are as follows:-

To rope the accused for committing an offence U/S 25(1-A) of the Arms Act, the prosecution side examined 11 PWs in all. Now, let us to consider what are the evidence adduced by these P.Ws.

P.W.1- Rudra Kalita is the informant of this case. He deposed in his evidence that on last 11-5-2014 while he was working as O/C of Dhaligaon P.S. , on that day at about 9-45 a.m., received a phone call from S.P. Chirang that one/two persons were carrying illegal arms from Dimapur side by a vehicle and S.P. instructed him to detect the said vehicle and accordingly, he recorded the Dhaligaon P.S. G.D.Entry No.285, dated 11-5-14 and under command of Addl.S.P. (H.Q.) started Naka Checking duty at Chapaguri Chariali along with T.S.I.-Bhaben Das and at around 4:30 P.M. of the day found one Sky blue Wagon-R bearing Registration No.As-09 7377 stopped at Chapaguri Chariali which was coming from Guwahati side and was going to Srirampur side. Further evidence of this witness is that there was only one person in the

vehicle, namely, Raj Kumar Ahudhya and on being interrogated by the police personals, the said driver confessed before them that he carried some arms and ammunition from Dimapur to handover those to some banned organization at Bongaigaon and accordingly, police immediately gave requisition from M.T.O. Office, Chirang and after their arrival, the bumper of the backside of the vehicle was opened and two numbers of sophisticated arms were recovered there from. This witness again deposed that they found four bundles covered with black colored plastic bag from inner side of the door and they found (1) one M-16 rifle(made in U.S.A.) with silencer and Shilling, (2) one M-16 rifle magazine, (3) one M-16 rifle extension, (4) one Mark 4 body portion rifle, (5) one rifle magazine, (6) one rifle trigger group, (7) three butt screw, (8) hundred ten numbers of M-16 rifle live ammunition, (9) 28 numbers of '303 live ammunitions, (10) three numbers of tracers, (11) one mobile hand set with two sim card and with documents of the vehicle from the possession of the accused which were seized by T.S.I.- Bhaben Das and thereafter, the accused was brought to the police station and this P.W. lodged the F.I.R. against the accused. This witness exhibited the F.I.R. lodged by him as Ext.1 wherein Ext.1(1) is his signature, the extract copy of G.D. Entry No.285 dated 11-05-2014 as Ext.2. He also deposed that T.S.I.- Bhaben Das prepared the seizure list by which the recovered articles were seized and entire episode of recovery was video graphed by their police photographer and Still photographs and Ext.17 is the C.D. disc of said Video graphy and Ext.3 to 10 are the Still photographs. He further identified the seized arms and ammunition in the Court during his evidence in the Court.

P.W.2 is one Gopal Nurzary. This P.W. deposed in the Court that he owns a tea stall at Chapaguri Chariali since 7 years and before 1 ½ years back, on a summer day at about 4.30 p.m., police recovered arms from a Wagon-R car and he saw the driver but could not recognize his face. P.W.2 further deposed in his evidence that police also seized M-16 rifle and some ammunitions and one article like 'durbin' which were exhibited in the Court as material exhibits. He further deposed that he put his signatures in the seizure lists exhibited vide Ext.11 and Ext.12 and Ext.11(1) and Ext.12(1) are his signatures in the seizure lists.

PW 3 is one Jainul Abedin. This PW deposed in the Court that he owns a tea stall at Chapaguri Chariali since 6 years and before 1 ½ years back at about 5 p.m. police were checking vehicles. His further evidence is that at around 5 p.m., a police called him to come near the traffic police shed at Chapaguri Chariali and on arriving there, he saw M-16 type gun and ammunitions. He further deposed that he also saw one Wagon- R car on the front side and one person present there but he could not recognize him and he saw police interrogating that person.

P.W.4- Sri Niranjan Mazumdar deposed that before 1 ½ years back while he was present in his fruit shop, traffic police called on him to their rest camp and when he went there, saw S.P. of Chirang sitting there who showed him arms and by showing one Wagon-R car standing there, S.P. informed him that arms were recovered from the said Wagon-R. car. This PW also deposed that accused standing in the dock was standing there and he told that he drove the said vehicle. He also deposed that police did photography regarding recovery of arms from the vehicle and the photo was shown to him.

P.W.5-Raj Kumar Singha deposed in his evidence that on last 13-05-2014, while he was working as Armor of 8th AP BN, Abhayapuri, on that day, the Commandant of 8th AP BN handed over him one wooden box for examination and the box was wrapped with cloth with seal. His further evidence is that he opened the box and found one M-16 rifle and one Magazine of M-16 rifle which were marked by him as Ext.1 Mark A and Ext.2 Mark B respectively. He again deposed that he found one number of rifle extension marked by him as Ext.3 Mark C, one '303 rifle without butt marked by him as Ext.4 Mark D, one trigger group of '303 rifle marked by him as Ext.5 Mark E, two numbers of butt plate screw of '303 rifle marked by him Ext.6 Mark F, one number of Screw Swivel Corry of '303 rifle, marked by him as Ext.7 Mark G, one number of Shilling Corry marked by him Ext.8 Mark H, 110 numbers of 9.96 live ammunitions marked by him Ext.9 Mark-I, 28 numbers of '303 BDR live ammunitions marked by him as Ext.10 Mark J and 3 rounds of 9

mm live ammunition marked by him as Ext.11 Mark K. He further deposed that on examination he found that-

- (1) Ext.1 Mark A is fire arm, Serviceable, with bore 5.6 mm and factory made,
- (2) Ext.2 Mark B is Magazine of M 16 Rifle,
- (3) Ext.3 Mark C is the extension of Ext. No.1,
- (4) Ext.4 Mark D is not Serviceable, not fire arms, factory made and '303 bore,
- (5) Ext.5, Mark E part of Ext.4 Mark D,
- (6) Ext.6 Mark F are parts of Ext.4 MarkD,
- (7) Ext.7 Mark G is part of Ext.4 mark D,
- (8) Ext.8 Mark H is part of Ext.4 mark D,
- (9) Ext.9, Mark-I are 9.96 mm live ammunitions,
- (10) Ext.10 Mark J are '303 BDR Live ammunitions,
- (11) Ext.11 Mark K are 9 mm live ammunitions.

P.W.5 exhibited his report vide Ext.13 wherein Ext. 13(1) is his signature.

P.W.6- Biju Rabha deposed in his evidence that on last 11-5-2014, while he was working as PSO to the TSI of Dhaligaon P.S., on that day, at about 10.30 a.m., TSI- Bhaben Das went to Chapaguri Chariali. His further evidence is that TSI- Bhaben Das further informed him that some persons were coming by a vehicle from Dimapur carrying arms and they were instructed to check all the vehicles and thereafter, they being accompanied with staff of TSI and O/C started naka checking duty at Chapaguri Chariali near the bridge and at around 4 p.m. one sky blue coloured Wagon-R car was found coming from Rakhaldubi side and hence, they stopped the vehicle by giving signal. His further evidence is that after the vehicle stopped, TSI asked him as to where from he came and then, the driver told them that he was coming from Dimapur and on being asked by TSI, the driver also disclosed his name as Rajkumar Prasad and on being further interrogated by the TSI, the accused first denied of bringing any arms by the vehicle but subsequently, confessed and showed arms under the bumper of the vehicle. This P.W. also deposed that thereafter, on being called by TSI, a mechanic of MTOs' office came to the spot and as shown by driver, the bumper of the vehicle was

opened and two numbers of arms in kept in part part by wrapping with newspaper were recovered from the vehicles. He also deposed that the mechanic also found ammunition from the body of the car which was wrapped in black plastic papers and on being interrogated, the driver revealed that one lady, namely, Daigiry Mahajan of Dimapur sent the said arms and ammunitions to deliver those at Bongaigaon to some persons. This PW further deposed that the recovered arms was M-16 rifle and Mark-4 rifle and still photograph and video photography of the same was done at the time of recovery and the accused present in the dock was the driver of the said Wagon-R car.

P.W.7- Mahim Ch. Roy deposed in his evidence that on last 11.5.14, while he was working as mechanic in M.T. Branch, Chirang, on that day at 4.30 p.m., he was asked by A.S.I. Das over phone instructing him to go to Chapaguri and as directed, when he along with his tools went to Chapaguri, found one sky blue Wagon-R car standing there and he also saw A.S.I.- Das interrogating the driver of the vehicle. This PW also deposed that A.S.I. asked him to check the vehicle and driver asked him to open the bumper of the backside and when he opened the bumper, found one article tightly closed with the body of the vehicle and after opening the same it was found that one M-16 rifle was kept there. He further deposed that after opening the bumper, on being shown by the driver, he again opened the body of the vehicle and found ammunition, silencer etc. tightly closed there and the driver confessed that he brought the said articles from Dimapur for delivering at Bongaigaon. This P.W. further deposed that accused standing in the dock was the driver of the said Wagon-R vehicle and police vide seizure list seized the arms and ammunition recovered from Wagon-R car.

P.W.8- Kailash Muchahary deposed in his evidence that on last 11.5.2014, while he was the Chairman of Chapaguri VCDC, on that day at around 4/4.30 p.m., saw police checking vehicles near Chapaguri Himalaya hotel. His further evidence is that after checking one Wagon-R car, police recovered bundles of ammunitions which were kept concealed in the vehicle and the same were also seized by police in presence of witnesses and this

P.W. put his signature vide Ext.12(4) in the said seizure list Ext.12. He also deposed that, police also seized the Wagon-R car in his presence vide Ext.11 where he put his signature vide Ext.11(2) and he saw the seized articles in the Court which were seized vide Ext.12. This PW further deposed that on being interrogated by police in his presence, the driver confessed that he brought the said arms and ammunitions from Dimapur towards Bongaigaon and the accused who was standing in the dock was the driver of the said Wagon-R vehicle.

P.W.9-Nilkanta Rabha deposed in his evidence that on last 11.5.2014 while he was working as home guard at Dhaligaon P.S., on that day at about 10.30 a.m., the O/C of Dhaligaon P.S., namely, one Rudra Kalita along with other police staffs including this witness went to Chapaguri Chariali who informed them that some persons were carrying illegal arms in a small vehicle and instructed them to do naka checking duty. He also deposed that O/C further informed them that the said vehicle may be from Nagaland, Karbi Anglong or Guwahati and he asked them to check the vehicle. His further evidence is on being accompanied by O/C, TSI, 4/5 police and CRPF personals, while they were checking the vehicles coming from Guwahati towards Srirampur on the Highway, at about 4.30 p.m. of the evening found one Wagon-R car coming from Guwahati side and after the vehicle stopped, the driver was brought down and on asking by O/C, the driver showed the police party the place of the vehicle where the arms were kept. This PW again deposed that they recovered one M-16 rifle and one Mark-4 rifle from the vehicle under the bumper of the back side which were wrapping with clothes and papers and also found the part of M-16 rifle and ammunition in three bundles which were kept in the chamber of the body and TSI seized the said arms and ammunitions and did photography during recovery and the driver also confessed before them that he brought arms and ammunition in the vehicle from Nagaland to deliver the same to some persons at Bongaigaon and subsequently, the driver with the seized arms and ammunitions was brought to the police station and this P.W. had seen the seized arms and ammunitions in the Court on the date of his giving evidence. His further evidence is that

the accused person standing in the dock was the said driver of Wagon-R vehicle.

P.W.10-Jayanta Deori deposed in his evidence that, on last 11.5.2014, while he was working as M.V.I. at Chirang DTO office, on that day received a police requisition in reference to Dhaligaon P.S. Case No.72/2014 under Section 25(1)(a)/35 of Arms Act for examination of the vehicle bearing No. AS-09-A/7377 and accordingly, he came to Dhaligaon P.S. and examined the said vehicle., His further evidence is that on examination, he found the vehicle on running condition, the four tires were also in order, spare tire condition was not in good condition while there were no jack lever, wrench etc in the vehicle and music system was there and accordingly, he submitted his report vide Ext.13 wherein Ext 13(1) is his signature.

P.W.11 is the T.S.I.-Bhaben Das who is the I.O. of this case. This P.W. deposed in his evidence that on last 11-05-2014, while he was working as T.S.I. at Dhaligaon P.S., on that day at 9.45 p.m., the S.P., Chirang informed him at the police station that some illegal arms and ammunitions were carrying on in a vehicle which may be from Nagaland, Karbi Anglong, Guwahati but registered at Guwahati and the said vehicle was coming from Dimapur and accordingly, the police were instructed to check the vehicle. This P.W. further deposed that on receiving the said information, the Dhaligaon P.S. GD Entry number 225 dated 11.5.14 was recorded by him and thereafter he, along with Addl. S.P., O/C of Dhaligaon P.S., other police staffs and CRPF personals went to Chapaguri Chariali and started naka checking duty there and while he was doing naka checking duty at Chapaguri Chariali, at about 4.30 p.m., of the day found one Sky blue colored Wagon-R car bearing registration No.AS-09-A/7377 coming with high speed and then they gave signal to stop the vehicle. His further evidence is that when the driver stopped the vehicle, he was asked by police about his name, address etc. and the driver then disclosed his name as Rajkumar Prasad of permanent address Padumpathar under Merapani P.S. of Golaghat district and present address as Signal Basti Dimapur and on being suspicious, when he was asked by police party as to whether any arms and ammunitions were carried in that vehicle,

the driver at first instant denied but subsequently, admitted that he brought arms and ammunitions in the vehicle and also showed that arms were brought under the bumper of the backside of the both side of the vehicle. This P.W. further deposed that thereafter, Addl.S.P. further instructed them to search the vehicle closely as there may be some more arms in the vehicle and as the police has no instrument to open the vehicle, so, mechanic was called on from the MTO office, Chirang and after mechanic arrived there, the vehicle was opened as shown by the driver and two long piece wrapping with yellow and green coloured clothes were found under the bumper of the vehicle. His further evidence is that when the two sides of the vehicle was opened, four numbers of bundle of black polythene were also found and when the bundles of yellow and green coloured clothes were opened, articles wrapping with paper were found and after opening the paper, one M-16 rifle kept in part part, magazine of the M-16 and one rifle extension and shelling silencer were found in the bundles. He further deposed that body parts of Mark-4 rifle and the magazine of the rifle trigger screw, bolt screw, shelling etc. were found from the four bundles wrapping with black polyethylene while in other three bundles, 110 numbers of ammunitions of M-16 rifle and 24 numbers of 303 rifle were found. This P.W. also deposed that the said arms and ammunitions were also seized by him by preparing seizure list vide Ext.12 wherein Ext.12(3) is his signature and he obtained signature of accused Rajkumar in the seizure list vide Ext.12(4). He also deposed that he also seized the Wagon-R vehicle and the documents relating to the vehicle, the wrapping clothes and papers of the arms and ammunitions and one mobile phone which was recovered from the accused vide Ext.11 wherein Ext.11(3) is his signature and Ext.11(4) is the signature of accused Rajkumar. This PW again deposed that on being asked, the accused admitted that one lady, namely, Dwigiri Mahajani sent the said arms and ammunitions through him for which he received Rs.50,000/- as fare. His further evidence is that in course of investigation, he examined the witnesses in connection with the case and recorded their statements U/S 161 Cr.P.C., drew sketch map of the place of occurrence and also did Still photography and video recording during recovery and Ext.10(2) is the still photography and Mat.Ext.17 is C.D. of the video-graph recovery and he brought the seized article and accused person to the police station and

subsequently, O/C Rudra Kalita lodged the FIR in connection with the case and on basis of said FIR the Dhaligaon P.S Case No.72/2014 under Section 25(1-A)/35 of Arms Act was registered and this PW was entrusted with the investigation of the case. PW-11 again deposed that during investigation, he examined the informant and arrested the accused person and forwarded him the Court and sent the arms and ammunition for armour examination and collected examination report. His further evidence is that subsequently prosecution sanction was accorded from District Magistrate, Chirang for prosecution of accused person under the Arms Act.

9. Now, in the backdrop of above iota of evidence, let me to consider whether the above mentioned iota of evidence is sufficient or not to rope the accused person for committing an offence U/S 25(1-A) of the Arms Act. The learned Public Prosecutor during argument submits that upon the facts and circumstances of the case and evidence adduced by the P.Ws., it is clearly established that the accused Raj Kumar Prasad Ahudhya, on the date of occurrence was apprehended by police personals at Chapaguri Chariali under Dhaligaon P.S. while carrying arms and ammunitions illegally from Dimapur to Bangaigaon by the Wagon-R car bearing registration No.AS-09-A/7377 in contravention of the provisions U/S 7 of the Arms Act which were also seized by police from his conscious possession. According to the learned P.P., this is a clear case to convict the accused person for committing offence u/s 25(1-A) of Arms Act because there are sufficient, cogent and reliable evidence against him to rope for committing offence under that section.

Forcefully resisting the submission of learned Public Prosecutor, the learned Counsel for the accused person submit that there is no iota of evidence at all to see that the accused person has committed the offence U/S 25(1-A) of the Arms Act. According to him, from the analysis of the evidence of P.Ws., the accused person can not be roped with the offence U/S 25(1-A) of the Arms Act as the evidence is not consistent with the guilt of accused in as much as the search and seizure of the arms and ammunitions from the possession of the accused being the pivotal portion in the investigation of an offence under the Arms Act, no reliance can be placed on

the testimony of the police personals as such search and seizure was not conducted as per mandates of law. Learned defense counsel contended further that independent witnesses did not support the version of the police personals that any arms or ammunitions were seized from the possession of the accused person in their presence and hence, evidence of the witnesses who are police personals being interested can sufficiently be impeached and their evidence are not reliable. His further submission is that from the record, it further reveals that prosecution sanction was obtained for prosecuting the accused for committing offence U/S 25(1-a) of the Arms Act and as such, the trial of the accused U/S 25(1-A) of Arms Act is vitiated for want of sanction and he can not be convicted for an offence U/S 25(1-A) of the Act on basis of the evidence adduced in the case. His further submission is that the cumulative value of the evidence in the present case shows that this not a case where the circumstances which were proved by the prosecution unerringly lead to pointing towards the guilt of the accused and the inevitable conclusion, therefore, is that the accused is entitled to benefit of doubt. He, therefore, prays for acquitting the accused from the charge U/S 25(1-A) of the Arms Act and set him at liberty forthwith.

9. It is in the backdrop of the above rival submissions of the learned counsels for the prosecution and the defense, the only question to be decided in the present case is whether the prosecution has proved its case beyond all reasonable doubt giving out the nexus of accused person showing his involvement with the alleged offence or there is probability of defense story that he was falsely implicated being true. The settled position of law is that prosecution has to prove its case beyond all reasonable doubt while defense has to show the reasonableness of its plea by preponderance of evidence.

10. In the back drop of above legal position, a brief analysis of the evidence become necessary to arrive at a finding as to whether the seized arms and ammunitions were found in the possession of the accused person or not. The seizure list by which the alleged arms and ammunitions were seized is marked as Ext.12 and as per said seizure list, the seizure witnesses

were Kailash Mushhary and Gopal Nurzury. In his evidence in the Court Kailash Muchahary as P.W.8 deposed that on 11.5.2014 at around 4/4.30 p.m., he saw police checking vehicles near Chapaguri Himalaya hotel and after checking one Wagon-R car, police recovered bundles of ammunitions which were kept concealed in the vehicle which were also seized by police in his presence and he put his signature in the seizure list. He also deposed that on being interrogated by police in his presence, the driver of the vehicle confesses that he brought the said arms and ammunitions from Dimapur towards Bongaigaon and the accused who was standing in the dock was the driver of the said Wagon-R vehicle. Another seizure witness, namely, Gopal Nurzury on the other hand as P.W.2 stated in his evidence before the Court on the day of occurrence at about 4.30 p.m., he saw police recovering arms from a Wagon-R at Chapaguri Chariali and police also seized M-16 rifle and some ammunitions and one article like 'durbin' and he put his signatures in the seizure lists and he could also identify the seized arms and ammunitions in the Court on his date of deposition. Thus, from evidence of P.W.8-Kailash Mushahary who was also a seizure witness of the alleged arms and ammunitions, it his seen that this witness supported the prosecution version that on the date of occurrence, police seized arms and ammunition from the possession of the accused person in his presence while P.W.2- Gopal Nurzury also supported the prosecution case to the extent that on the date of occurrence, police seized arms and ammunitions in his presence from a Wagon-R at Chapaguri Chariali. The defence in cross examination of these two witnesses. could not demolish their evidence in these material particulars. Another independent witness, namely, Sri Niranjan Mazumdar as P.W.4 also stated that on being called by police when he went to their rest camp, S.P. of Chirang showed him arms and showing one Wagon R car standing nearby, informing him that arms were recovered from the said Wagon-R and he saw the accused standing in the dock was standing there and he told that he drove the said vehicle. The P.W.1, P.W.6, P.W.9 and P.W.11 all being police personals adduced specific evidence that on the date of occurrence, receiving information about carrying illegal arms and ammunition by a vehicle, they started Naka Chequing duty at Chapaguri Chariali and at about 4.30 p.m. found one sky blue Wagon-R car bearing No.AS-09-A/7377 plying on the road

and after stopping the vehicle by giving signal, the driver was interrogated and he disclosed his name as Raj Kumar Prasad Ahudhya and he confessed that he brought some illegal arms and ammunitions by that car from Dimapur to deliver at Bongaigaon and after mechanic from M.T.O. office Chirang came, the bumper of the back side of the vehicle was opened and arms and ammunitions were recovered from the vehicle kept in bundles. The P.W.1, P.W.6, P.W.7, P.W.9 and P.W.11 were also cross examined at length by the learned State defence counsel but nothing reveals in their cross examination that the evidence tendered by these witnesses suffers from infirmity and not legally admissible. Lending support to the evidence of P.W.1, P.W.6, P.W.9 and P.W.11, the P.W.7- Mahim Ch. Roy, the mechanic in M.T. Branch, Chirang stated that on the date of occurrence at 4.30 p.m., on being called by police, he went to Chapaguri with his tools and there he found one sky blue Wagon-R standing there and A.S.I. asked him to check the vehicle and the driver asked him to open the bumper of the backside and when he opened the bumper, found one article tightly closed with the body of the vehicle and after opening the same it was found that one M-16 rifle was kept there. He further deposed that after opening the bumper, on being shown by the driver, he opened the body of the vehicle and found ammunition, silencer etc. tightly closed there and the driver confessed that he brought the said articles from Dimapur for delivering at Bongaigaon and the accused standing in the dock was the driver of the said Wagon-R vehicle.

The learned legal Aid counsel for the accused person criticized that it reveals from the evidence of the witnesses that the alleged search and seizure was not conducted as per mandates of law. From the evidence of P.W.1 as well as P.W.11, it is seen that the said search and seizure was conducted as per prior information and after receiving the specific information, the Dhaligaon P.S. G.D. Entry No.285 dated 11-05-2014 was recorded by police which is also exhibited vide Ext.2 and at the time of seizure of the illegal arms and ammunitions independent witnesses were present who put their signature in the seizure list and hence, I find no force in the submission of the learned Legal Aid counsel for the accused.

Now what is important to note here is that, the I.O. while apprehending the accused also seized the Sky blue coloured Wagon-R vehicle bearing registration No.AS-09-A/7377 which was used for carrying the illegal arms and ammunitions and with the documents connecting to the vehicle and the driving license issued in the name of accused Ram Kumar Parasad Ahudhya. The seizure lists by which those articles were seized is exhibited vide Ext.11. Thus, the seizure of the driving license in the name of the accused person unveils the truth that on the date of occurrence, the accused was apprehended by police while carrying arms and ammunitions illegally by the seized Wagon-R vehicle bearing registration No.AS-09-A/7377 without any authority. The evidence of P.W.10-Jayanta Deori, the M.V.I. that at the time of examination the seized Wagon-R vehicle bearing registration No.AS-09-A/7377 was in running condition. From evidence of P.W.1 and P.W.11 it further reveals that police did photography and video-graph during the said recovery and which shows that police recovered arms and ammunitions from the Wagon-R vehicle bearing registration No.AS-09-A/7377.

The learned legal Aid counsel also argued that the owner of the Wagon-R vehicle bearing registration No.AS-09-A/7377 was not examined by the prosecution and hence, no reliance can be placed on the evidence of the P.Ws., namely, P.W.1, P.W.6, P.W.7, P.W.8, P.W.9 and P.W.11 that on the date of occurrence, accused Ram Prasad Kumar Ahodhya drove the Wagon-R vehicle bearing registration No.AS-09-A/7377. However, I find no force in the submission of the learned Legal aid Counsel as already there is acceptable evidence that the accused had driven the said Wagon-R vehicle bearing registration No.AS-09-A/7377 by which arms and ammunition were carried illegally in contravention of Section 7 of the Arms Act.

Thus, after close and careful scrutiny of evidence of P.W.1, P.W.6, P.W.7, P.W.8, P.W.9 and P.W.11 it is seen that the on the date of police did naka checking duty at Chapaguri Chari ali and during checking of a Sky blue coloured Wagon-R vehicle bearing registration No.AS-09-A/7377, recovered arms and ammunition from the said vehicles which were carried illegally by the accused person in that vehicle from Dimapur for delivering the

same at Bongaigaon. The evidence of P.W.5-Raj Kumar Singha reveals that he was the armor who examined the seized arms and ammunition and found that the seized articles include, fire arm which is Serviceable with bore 5.6 mm and factory made, 9.96 mm live ammunitions, '303 BDR Live ammunitions and 9 mm live ammunitions and thus the seized arms and ammunitions included are prohibited arms and ammunitions. These are all question of facts and also important link.

Learned defence counsel criticized that so far prosecution sanction for prosecuting the accused under the Act is concerned, it appears that sanction was obtained for prosecuting the accused for committing offence U/S 25(1-a) of the Arms Act only and as such, the trial of the accused U/S 25(1-A) of Arms Act is vitiated for want of sanction and he can not be convicted for an offence U/S 25(1-A) of the Act on basis of the evidence adduced in the case. The prosecution sanction was exhibited vide Ext.16 which shows that sanction was accorded to prosecute the accused U/S 25(1)(a)/35 of Arms Act. However, I am not agree with the submission made by learned legal Aid counsel that there was no sanction for an offence U/S 25(1-A) of the Act. Once sanction is obtained there is no need to obtain further sanction if another offence can be made out from the materials available in the record. Hence, the submission of learned legal Aid counsel has no force.

Thus, after considering the cumulative value of the evidence, I find that there is sufficient convincing evidence adduced by the prosecution in the case, which would help this Court to hold it confidently that on the date of occurrence, police of Dhaligaon P.S. recovered arms and ammunitions from the possession of accused person which he carried illegally from Dimapur to deliver at Bongaigaon without any authority by the Wagon-R vehicle bearing registration No.AS-09-A/7377 which were seized by police in presence of witnesses. There is also sufficient evidence to establish the fact that the seized arms and ammunitions include fire arms and live ammunitions which are prohibited arms and ammunitions.

11. Thus, in view of above discussion, it is seen that in the instant case, the prosecution has been able to prove conclusively the guilt of accused Raj Kumar Prasad Ahudhya involving with the offence of possessing illegally prohibited arms and ammunitions in contravention of the provisions of section 7 of the Arms Act. Hence, it is seen that the prosecution has been able to bring home the charge U/S 25(1-A) of the Arms Act against the accused Ram Prasad Kumar Ahodhya beyond all reasonable doubt.

O R D E R.

12. In the result, it is seen that accused Raj Kumar Prasad Ahudhya is found guilty for committing offence U/S25(1-A) of the Arms Act. Hence, he is convicted for his offence.

After considering the facts and circumstances of the case, I am of the opinion that this is not fit case where the provisions of Probation of Offenders Act applicable.

The accused Raj Kumar Prasad Ahudhya is heard on the point of sentence. The hearing of the accused U/s. 235(2) Cr. P. C. on the point of sentence is recorded in a separate sheet in the form of questions and answers and shall form part of the record. The accused person prays for leniency on ground that he has passed a considerable period in jail in connection with the case and he is the sole earning members of the family.

Accordingly, I proceed to pass sentence against the accused Raj Kumar Prasad Ahudhya for his offence. He is sentenced to undergo Rigorous Imprisonment for 7(Seven) years and to pay a fine of Rs.10,000/- (Rupees Ten Thousands)only in default a further term of Simple Imprisonment of 6(Six) months for his offence U/S 25(1-A) of the Arms Act

The fine amount, if can be realized will go to the State.

The accused Raj Kumar Prasad Ahudhya be sent to judicial custody again to serve the sentence passed against him. The period of detention if any, passed by the accused in jail will be set of U/S 428 of I.P.C.

The seized articles shall be confiscated to the State after the period of appeal is over if any.

Furnish a copy of the judgment free of cost to the convicted accused person.

Also send a copy of the judgment to learned District Magistrate, Chirang, Kajalgaon for information.

The Judgment is pronounced in an open court, written on separate sheets and enclosed with the case record.

Given under my dictation and seal of this court, I have signed and delivered this Judgment on this 27th day of September, 2016 at Chirang, Kajalgaon.

Dictated and corrected by me.

(Mrs. H.D.Bhuyan)
Sessions Judge,
Chirang, Kajalgaon

(Mrs. H.D.Bhuyan)
Sessions Judge,
Chirang, Kajalgaon.

Dictation taken and
Transcribed by me

(A. Basumatari)
Stenographer

ANNEXURE

Prosecution Witnesses:-

1. P.W.1 - Rudra Kalita
2. P.W.2 - Gopal Narzary
3. P.W.3 - Jainal Abedin
4. P.W.4 - Niranjan Mazumdar
5. P.W.5 - Raj Kumar Singha
6. P.W.6 - Biju Rabha
7. P.W.7 - Mahen Ch. Ray
8. P.W.8 - Kailash Muchahary
9. P.W.9 - Nilkanta Rabha
10. P.W.10 - Jayanta Deuri
11. P.W.11 - S.I. Bhaben Das

Defence Witness.

Nil.

Prosecution Exhibits:-

1. Ext.1 - F.I.R.
2. Ext.1(1)(2) - Signatures of Rudra Kalita.
3. Ext.2 - Extract copy of Dhaligaon P.S.GDE No.285,dtd.11.5.14.
4. Ext.3 to Ext.10- Steel photographs.
5. Ext.11 - Seizure list.
6. Ext.11(1) - Signature of witness Gopal Narzary.
7. Ext.11(2) - Signature of witness Kailash Narzary.
8. Ext.11(3) - Signature of S.I. Bhaben Das.
9. Ext.11(4) - Signature of accused Raj Kumar Prasad Ahudhya.
10. Ext.12 - Seizure list.
11. Ext.12(1) - Signature of witness Gopal Narzary.
12. Ext.12(2) - Signature of witness Kailash Narzary
13. Ext.12(3) - Signature of S.I. Bhaben Das.
14. Ext.12(4) - Signature of accused Raj Kumar Prasad Ahudhya.
15. Ext.13 - MVI report.
16. Ext.13(1) - Signature of MVI.

- 17. Ext.14 - Sketch map.
- 18. Ext.14(1) - Signature of Bhaben Das.
- 19. Ext.15 - Charge-sheet.
- 20. Ext.15(1) - Signature of Bhaben Das.
- 21.**Ext.16 - Prosecution sanction order.

Material Exhibits.

1. Mat. Ext. 1 -M 16 rifle (made in USA) with silencer and shilling.
2. Mat.Ext.2 - M 16 magazine.
3. Mat.Ext.3 - Extension of M 16 Rifle.
4. Mat.Ext.4 -Mark 4 Rifle Body portion.
5. Mat. Ext.5 - Rifle Magazine.
6. Mat.Ext.6 - Rifle trigger.
7. Mat.Ext.7 - Bult screw.
8. Mat.Ext.8 - Front and rear shilling Corry.
9. Mat. Ext.9 - Ammunitions (live) of M 16 rifle (110 numbers).
10. Mat. Ext.10 - Ammunitions of 303 Rifle (28 numbers).
11. Mat. Ext.11 - Three numbers of tracer/lighter.
12. Mat. Ext.12 - Nokia mobile handset with two SIM card.
13. Mat. Ext.13- Driving license of accused Raj Kumar Prasad.
14. Mat.Ext.14 - Photo copy of the R/C.
15. Mat. Ext.15- Photo copy of the insurance.
16. Mat. Ext.16 - No objection certificate regarding the driving license of Raj Kumar Prasad Ahudhya.
- 17.**Mat. Ext.17 – CD of the videography.

(Mrs. H.D.Bhuyan)
Sessions Judge,
Chirang:: Kajalgaon.