



IN THE COURT OF CHIEF JUDICIAL MAGISTRATE
Howrah

Present : GAIRIK ROY
Chief Judicial Magistrate,
Howrah
(JO Code- WB01022)



Date of Delivery of Judgment:- April 6th, 2026.

GR 3144 of 2015(Reg.2283 of 2018)
CNR NO.WBDD020010192023
TR-330 of 2018

Arising out of Domjur PS Case No. 425 of 2015 dated 02.05.2015 u/s.
25(1-a)/27 of the Arms Act.

Complainant:	State of West Bengal
Represented By:	Tulu Dolui
Accused:	Kutubuddin Gaji @ Kutub
Represented By: S	Shri Dibyajyoti Singha Roy, Ld. Advocate

Date of Offence	02.05.2015
Date of First Information Report	02.05.2015
Date of Charge sheet	30.06.2016
Date of Framing of Charge/Plea	13.11.2018
Date of Commencement of Evidence	11.07.2025
Date on which Judgment is reserved	01.04.2026
Date of Judgment	06.04.2026
Date of Sentencing Order, if any,	06.04.2026

Accused Details:

Rank of Accused	Name of Accused	Date of arrest	Date of release on Bail	Offence changed with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of Section 428 CrPC
A-1	Kutubuddin Gaji @ Kutub	02.05.2015 25.02.2026	30.05.2015 06.04.2026	25(1-a)/27 of the Arms Act	Convicted	NA	NA



List of Prosecution / Defense / Court Witness:

A. Prosecution Witness

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
PW 01	Sirshendu Kundu	Defacto-complainant
PW 02	Rajesh Pramanik	Police witness/ seizure witness
PW 03	Bibhan Mukherjee	Police witness
PW 04	Koushik Das	Police witness/ Arms Expert
PW 05	Munsi Hamidur Rahaman	Police witness (Investigating Officer)

B. Defense Witness, if any,

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
NIL	NIL	NIL

C. Court Witness, if any,

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
NIL	NIL	NIL

List of Prosecution / Defense / Court Exhibits:

A. Prosecution:

Srl. No.	Exhibit Number	Description
1	P-01/PW-01	The seizure list dated 02.05.2015
2	P-01(1)/PW-01	The signature of P.W.01 in the seizure list dated 02.05.2015
3	P-2/PW-01	The carbon copy of label on the alamats
4	P-3/PW-01	Written complain (as a whole)
5	P-4/PW-04	Arms Expert Report/opinion
6.	P-04(1)/PW-04	The signature of PW-04 on Expert Report/opinion
7.	P-03(1)/PW-05	Receiving endorsement on the Written complaint
8.	P-05/PW-05	Formal FIR
9.	P-06/PW-05	The rough sketch map
10.	P-06(01)/PW-05	The Index
11.	P-07/PW-05	Challan for expert opinion
12.	P-08/PW-05	The level on the seized alamat (5 pages)
13.	P-09/PW-05	The sanction prayer dated 10.05.2016
14.	P-09(1)/PW-05	The sanction order of DM, Howrah



B. Defense:

Srl. No.	Exhibit Number	Description
NIL	NIL	NIL

C. Court Exhibit:

Srl. No.	Exhibit Number	Description
NIL	NIL	NIL

D. Material Objects:

Srl. No.	Exhibit Number	Description
1.	MAT-I	One iron made improvised fire arm
2.	MAT-II & II-A	Sealed envelope used for wrapping
3.	MAT-II/1	Signature of PW-04
4.	MAT-II/2	Signature of PW-04

J U D G M E N T

Factual Preface:-

The core issue and the main point in focus in this trial; has been, as to whether the accused person has committed illegal acts which constitute offence punishable under Section 25/27 of the Arms Act.

Before I mention the nuances of the issues those have arisen for consideration, it would be apposite to take a stock of the chronicles of this case, albeit briefly; as the factual canvass would provide clarity of the situation and would provide a better insight.

In order to set the context right for this discussion, let me begin from the beginnings. This instant case has its cradle in the written complaint lodged by the de-facto complainant Sirshendu Kundu, SI Of Police, Bankra Out Post, under Domjur PS under section 154 of the Criminal Procedure Code 1973.

The prosecution story as unveiled from the written complaint filed by the de-facto complainant is that on 02.05.14 at about 00.05 hrs the defacto-complainant received a reliable source information that 03/04 persons were moving suspiciously near Monsadanga Lalbari area under Domjur P.S. beside NH - 6 with a view to commit a heinous crime in a nearby area or factory and they possess fire Arms. After receiving the said information defacto-



complainant noted the information in GDE vide Bankra O.P. under Domjur P.S. GDE No. 12 Dt. 02.05.15 and informed the matter to I/C Domjur PS and as per his direction defacto-complainant himself along with C/1403 Ajoy Ghosh, C/146 Rajesh Pramanik left for the place to work out the information with govt. Motor Cycle bearing No. WB-24 -AB-5701 in plain cloth with torch light and investigation Kit referred to Bankra O.P. under Domjur P.S. GDE No. 13 Dt. 02.05.15.

At about 00.25 hrs. they reached at Monsadanga Lalbari area under Domjur P.S. beside NH-6 and defacto-complainant met with his source there, who corroborated his information again. After that, they proceeded towards the described spot by his source and found that 03 persons duly identified by the source, were moving suspiciously in a lane of NH-6 near Monsadanga Lalbari area. Then they proceed towards them but somehow the accused felt their presence and tried to fled away. After a hot chase they apprehend one of them and other two fled away. On interrogation he disclosed his identity as Kutubuddin Gazi @ Kutub and also stated that he along with two others namely Hanif and Babulal were assembled there being equipped with fire arms for committing a crime after obstructing vehicle at NH - 6 or nearby factory. Then at first defacto-complainant requested him to search persons and he refused, after that defacto-complainant searched the said person. On being searched one-shotter improvised fire arms fitted with trigger, hammer, firing pin was recovered from his possession, and being asked he failed to produce any valid documents or papers in support of the articles. Thereafter, defacto-complainant seized the same under proper seizure list and prepared label and sealed the same. Defacto-complainant supplied a copy of seizure list to the accused. Thereafter on 02.05.15 in between 00.45 hrs to 01.10 hrs after observing all formalities of arrest for possessing illegal fire arms as its liable to be prosecuted under provision of Arms Act illegal possession of fire arms, the accused above named was arrested. Hence this FIR and hence this case.

As the facts has been unveiled and the narration has been unfurled, it can be perceived from the FIR that the de facto complainant and the police force reached near the place of occurrence at about 00.25 hours and stopped the vehicle and then went for the pursuit of the alleged perpetrator and in their way they failed to took any local witnesses, due to night. It has been



alleged in the FIR that sensing the presence of the police, the three accused persons took to their heel and after hot chase the de facto complainant and the police officers were able to apprehend the one of the accused person and on search one improvised iron made fire arms was seized. It is the specific case of the de facto complainant that the accused person failed show any document justifying his possession of such fire arms and also could not to give any reasonable explanation for the illegal possession of the fire arms and hence the de facto complainant seized the fire arms under proper seizure list and also arrested the accused person and brought the seized article and the accused person to the police station. Ventilating these allegations the FIR was lodged and the de facto complainant prayed for investigation. On basis of the aforementioned allegations Domjur Police station started a case being no. 425 of 2015 on 02-05-2015 under section 25/27 of the Arms Act; against the accused person and investigation was conducted by the police.

The probe:-

On lodgement of the FIR investigation followed and the accused person was produced before this court by the investigating officer and he was remanded to J/C. The seized fire arms were sent for verification. Statements of the witnesses were also recorded. Thereafter the process of probe culminated in filing of charge sheet being number 571 of 2016 dated 30.06.2016. The investigating officer after completion of his investigation found prima facie materials against the accused person and submitted the charge sheet against the accused person for prima facie committing offences punishable under section 25/27(1) of the Arms Act.

After submission of the charge sheet as a progressing action, cognizance of the offences was taken on 08.09.2016 by this court and only after exhausting the modalities of section 207 of the Criminal Procedure Code 1973, the case was transferred for reaching its logical conclusion.

The charge:

Subsequently after considering the materials available on record, and the C.D this court framed charges against the accused person under section 240 of the Criminal Procedure Code 1973 and the accused person was indicted for allegedly committing offences punishable under section under



section 25/27(1) of the Arms Act,1959. The substance of accusation were read over and explained to the accused person to which the accused person pleaded to be not guilty of committing those offences and he claimed a fair trial. As the offences charged with was within the jurisdictional domain of this court, the trial of this case was initiated by recording the evidences for the prosecution as per section 242 of the Criminal Procedure Code 1973.

Subsequently, during course of trial the accused missused the liberty of bail which caused delay in trial. It is axiomatic that the accused person was granted bail but has misused the liberty granted to him, which prompted this court to issue W/A against the accused person, moreover, it appears vide order dated 17-01-2026, witness was also present being one public servant but he cannot be examined due to non-appearance of this accused and having no other alternative the warrant of arrest was issued. It is further worthy to mention that the accused moved before the learned Sessions Judge, Howrah against the order of issuing WA dated 17.01.2026 vide Cr. Misc Case No.206 of 2026 under section 482 of *Bhartiya Nagrik Suraksa Sanhita, 2023* but the said Cr. Misc Case was disposed of by the Learned Sessions Judge, Howrah with a direction to the accused to surrender before this court and the same was also not complied by the accused person and ultimately, the accused person is brought under arrest on 25.02.2026. That being case, I think it will not be condign to enlarge the accused person on bail as doing so might thwart the course of trial. **Hence the prayer for bail was rejected at that stage** and the custody trial was conducted. I am also not unmindful regarding the right of the accused person under detation. *It is worthwhile to mention here that as per the mandate of Constitution speedy disposal is the fundamental right of the accused persons. This court must hoist that right and must also act in accordance with section 309 of Code of Criminal Procedure, 1973 read with Case Flow Management Rules, High Court Rules 2006. Hence being pioneered by the above delineations, custody trial proceeded.*

Profile of Prosecution's Evidence:-

Before I note the submissions of learned APP for the State and the proponents in oppugnation by the learned counsel for the accused person, a cursory view of the witnesses examined and documents exhibited is



essential to be noted. In this case the prosecution has managed to examine 5 (five) witnesses arrayed in the charge sheet as follows.

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
PW 01	Sirshendu Kundu	Defacto-complainant
PW 02	Rajesh Pramanik	Police witness/ seizure witness
PW 03	Bibhan Mukherjee	Police witness
PW 04	Koushik Das	Police witness/ Arms Expert
PW 05	Munsi Hamidur Rahaman	Police witness (Investigating Officer)

The credibility and evidentiary value of their evidences would be dealt with and decided later on in this judgment with necessary details. Certain articles have also been marked as Exhibits in this case. The chronology of the material exhibits runs in the following chart.

Prosecution witnesses:-

Srl. No.	Exhibit Number	Description
1	P-01/PW-01	The seizure list dated 02.05.2015
2	P-01(1)/PW-01	The signature of P.W.01 in the seizure list dated 02.05.2015
3	P-2/PW-01	The carbon copy of label on the alams
4	P-3/PW-01	Written complain (as a whole)
5	P-4/PW-04	Arms Expert Report/opinion
6.	P-04(1)/PW-04	The signature of PW-04 on Expert Report/opinion
7.	P-03(1)/PW-05	Receiving endorsement on the Written complaint
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D. Material Objects:

Srl. No.	Exhibit Number	Description
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2.	MAT-II & II-A	Sealed envelope used for wrapping



The prosecution rested the case on these evidences, and as per modalities of law, after closing the prosecution evidence, the accused person was examined under section 313 of Criminal Procedure Code 1973 by putting before him the incriminating materials those have transpired during the trial. During examination the accused person abjured his guilt and inter alia pleaded that he was not present on the date, time, place and in the manner as canvassed by the prosecution. The fact of seizure from the accused person has also been denied by the accused person. In short the sum and substance of the defence case is total denial of the alleged incident and absolute plea of innocence.

-:Points for Ruminaton:-

After exhausting the above formalities of law the case was fixed for hearing of arguments. Elaborate arguments were canvassed and the contesting parties left no stone upturned. On completion of arguments as per requirement of Section 354 of the Criminal Procedure Code 1973, it is the incumbent duty of this court to formulate the points for determination and assign reasons for harbouring to any conclusion on those points. In this case the allegations of possession of illegal fire arms followed by recovery of the same have been attributed against the accused person. After considering every possible facet in this case and considering the ingredients of the offences the points for determination are arrayed as under:

- (i) Whether it has been proved from the evidences on record that an illegal fire arms was seized from the conscious possession of the accused person on the date, time, place and in the manner as described by the prosecution?
- (ii) Whether the accused person is liable to be convicted under section 25/27 of the Arms Act or not?

Before I dwell upon the questions and decided whether the felony of the accused person has been establishment or not, I think it condign to deal with the submission advanced by the ld lawyer for the accused person as well as that of the learned Assistant Public Prosecutor.



Arguments on behalf of the accused person:-

Learned lawyer for the accused person has at the threshold dismissed the case of the prosecution as motivated and canard and to buttress this plea, has argued that there are contradictions in the version of the witnesses examined in this case and the prosecution has attempted to build castles in thin air. Inviting my attention to the evidences on record the ld lawyer for the accused person submitted that PW- 01 himself has admitted that several local persons were present at the spot, but none of the those witnesses have supported the case of the prosecution. It was argued that the alleged place of occurrence is in thickly populated area and as per the prosecution the accused person was roaming around with a fire arms. As per version of the Ld Lawyer for the accused person, this behavior is antagonistic to the conduct of a reasonable person and is highly improbable. It was vehemently argued that if the entire evidence of the prosecution is introspected in its proper perspective then it would be absolutely clear before this court that the chain of incidents as alleged are improbable and as per version of the Ld lawyer for the accused person, improbabilities paves the route for reasonable doubts and putting deep emphasis on this particular aspect, the Ld lawyer for the accused person prayed for acquittal of the accused person after extending the leverage of benefit of doubt.

The Ld lawyer for the accused person astutely expounded that in order to convict the accused person under section 25/27 of the Arms Act the prosecution has to invariably prove that the alleged fire arms was seized from the conscious possession of the accused person and any dereliction on the part of the prosecution to prove this facet will invariably lead to acquittal of the accused person. The chain of custody of the seized arms were put under serious challenge. The receiver of the arms being the malkhana-in-charge was subject to thorough cross-examination, on the ground that on the date of deposition he has not brought the property register on the basis of which he was deposing. The property register was also put under challenge and argued that prosecution was ever proved that the seized article was ever received. The arms expert was cross examined on his expertise of being arms expert. The same was also put in question mark at the time of argument that the arms expert has no valid notification for



being, to act as an arms expert as such the expert opinion has got no value. Maintaining on this the Ld Lawyer for the accused person argued that apart from the police witnesses there is no evidence on record to create even an allusion that there was any actual seizure.

Virulent efforts were made by the Ld lawyer for the accused person to impress upon this Court that the investigation has been conducted in a motivated manner and with the sole object of implicating the accused person. Castigating the role of the Investigating Officer the Ld lawyer for the accused person submitted that allegedly search and seizure was made in a thickly populated area, but neither any NIL seizure list was prepared nor the local witnesses were made witness to the alleged seizure and this omission on the part of the arresting officer clearly indicates that the articles have been planted in order to falsely implicate the accused person. Stiff challenge was canvassed against the version of seizure list witnesses who are police personnel. It was argued that they being a police officers, their evidences cannot be relied upon to prove the alleged seizure and the advantage of these discrepancies must go in favour of the accused person and the case of the prosecution should be disbelieved for this reason. Several technical contradiction was brought into the notice and argued, to impress upon this court.

Referring to various decisions of the Hon'ble Supreme Court, it was argued by the learned lawyer for the accused person that accused person has a right to be presumed as innocent and his right cannot be scuttled or corroded at the instance of the motivated investigating officer. The entire case of the prosecution was labeled as concocted and the evidence of seizure witnesses was also categorized as palpably false and it was adumbrated by the Ld lawyer for the accused person that their version cannot be relied upon. Taking this submission further; it was argued that these omissions create reasonable doubts as regards happening of the alleged incidents and the accused person must be catered with benefit of doubt and must be visited with an order of acquittal.

Arguments on behalf of the Prosecution:-

Criticizing the rhetorical arguments assiduously structured by the learned counsel for the accused person, it is astutely expounded by the Ld



learned Assistant Public Prosecutor that the case of the prosecution has been proved to the hilt. The ld APP has assiduously argued that each and every chain of incident has been sufficiently proved by the prosecution and there is no room to nurture any doubt as to happening of the incident. It was categorically submitted that P.W-01 has deposed about the incident and the fact of seizure has been sufficiently proved by the seizure witnesses and hence there is no escape from the conclusion that illegal fire arms was seized from the possession of the accused person.

As a repartee to the contentions on the point of search and seizure put forth on the side of the accused, the learned APP has contended that the act of seizure has been sufficiently proved by the prosecution and the articles seized have been identified by the de facto complainant and therefore the involvement of the accused person in the alleged crime is irrefutable. In this connection, it was argued that the prosecution must prove the acts constituting the offences, but that responsibility of the prosecution should not be pushed to the extreme verge of impossibility. Relying on this submissions the Ld APP prayed for conviction of the accused person and argued that maximum imprisonment of seven years may be given to the accused person.

∴-Decision With Reasons-∴

Point number 01 [Whether it has been proved from the evidences on record that an illegal fire arms was seized from the conscious possession of the accused person on the date, time, place and in the manner as described by the prosecution?]:

I must start my venture by reminding myself that in this case the accused person has been indicted for allegedly committing offences punishable under Section 25/27 of the Arms Act. Before contemplating the rival submissions made on either side and introspecting the evidences on record, it has become shunless to fumigate my mind with certain sanctified proposition of law. At this stage I must hasten to add that there are certain issues in law which, even though discussed many a times and in myriad forms, but their importance in the decision making process is so compelling that they are constantly argued by the learned lawyers and as such calls for a



revisit. In fact, this exercise would facilitate understanding the precise tenor of the issue that needs to be addressed and answered.

It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts and it has been recognized by the Hon'ble Supreme Court that "A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt." Decisions on this score are legion and it would be futile to survey the entire field of judicial pronouncements. But it has been cautioned by the Hon'ble Supreme Court that the pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine as if it admits of no process of intelligent reasoning. Proof beyond reasonable doubt, as has been held in a plethora of decisions of the Hon'ble Supreme Court, is only a guideline and not a fetish and that someone, who is guilty, cannot get away with impunity only because truth may suffer some infirmity when projected through human processes as has been observed in *Inder Singh and another vs. The State (Delhi Administration) (1978) 4 SCC 161*. Keeping in mind the aforesaid jurisprudential philosophy of criminal law, let me now examine the events and eloquent facts of this case, with a deeper sense. At this stage it would be in the fitness of things to recapitulate some poignant particulars of offence allegedly committed by the accused person. The relevant portion of section 25 of the Arms Act runs in the following lines:

"25. Punishment for certain offences.— (1) 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; or
shortens the barrel of a firearm or converts an imitation
firearm into a firearm in contravention of section 6;
or.....
(1A) Whoever acquires, has in his possession or carries
any prohibited arms or prohibited ammunition in
contravention of section 7 shall be punishable with



imprisonment for a term which shall not be less than five years, but which may extend to ten years and shall also be liable to fine.

(1B) Whoever—

acquires, has in his possession or carries any firearm or ammunition in contravention of section 3; or

acquires, has in his possession or carries in any place specified by notification under section 4 any arms of such class or description as has been specified in that notification in contravention of that section; or

sells or transfers any firearm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of section 8 or does any act in contravention of sub-section (1) of that section; or

being a person to whom sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section; or

sells or transfers, or converts, repairs, tests or proves any firearm or ammunition in contravention of clause (b) of sub-section (1) of section 9; or

brings into, or takes out of, India, any arms or ammunition in contravention of section 10; or

transports any arms or ammunition in contravention of section 12; or

fails to deposit arms or ammunition as required by sub-section (2) of section 3, or sub-section (1) of section 21; or

being a manufacturer of, or dealer in, arms or ammunition, fails, on being required to do so by rules made under section 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries therefrom or



prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals such arms or ammunition or refuses to point out where the same are or is manufactured or kept, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year... ”

From the above enunciation of law the essential ingredients of the offence punishable under section 25 of the Arms Act can be deciphered as under.

- a) Accused must have acquired and/or has in his possession or carries any prohibited arms or illegal fire arms or ammunition,**
- b) Said fire arm or ammunition should have been seized from the possession of the accused person;**

Therefore, it is the indelible duty of prosecution to prove that a country made fire arms as described in the FIR was in the possession of the accused person and those were accordingly seized by the police on the date, time and place as narrated by the prosecution following the modalities of law. Upon proof or disproof of these twofold questions hang the fortunes of this litigation. It would be pertinent to add that each knot of the chain has to be proved by the prosecution yawned all reasonable doubt so as to bring home the charges framed against the accused person. Any crack or loosening in it will take the case of the prosecution to the brink and would sound the death knell.

Now for an apt ascertainment of answers to the above posed questions in the aforementioned yardsticks, it would be in the fitness of



things to peer into and ponder the evidences on record. As many as 10 witnesses were examined on behalf of the prosecution.

PW-01 Sirshendu Kundu, stated in his examination that on that date at around 12.05 pm he got a telephonic information that two/three miscreants were moving suspiciously at NH-6 Mansatala, Lalbari area. To work out the said information PW-01 along with constable Ajoy Ghosh and Rajesh Pramanick moved to the spot on their motor cycle. They reached at the spot at 12.25 pm and their secret source identified the miscreants from a distance and as they proceeded towards the miscreants out of three miscreants two fled away and they could manage to apprehend one miscreant and on interrogation he disclosed his identity as **Kutubuddin Gaji @ Kutub**. On being search they found one fire arms from his possession and on asking he failed to produce any valid license of possession of the said fire arms. Thereafter, PW-01 seized the fire arms from his possession after proper seizure list. The said seizure list was prepared in presence of police witnesses as there was no public witness is available at night. Thereafter, PW-01 sealed and leveled the seized fire arms. The said seizure label prepared by PW-01 and the same also bears the signature of the witnesses along with accused. The witness further identifies this is a one stutter improvised fire arms with trigger, hammer, firing pin butt with measuring approximate 10 inches from barrel to butt. The said fire arm was **marked as MAT Exhibit – I**. The sealed envelope under which the arms was rapped is also **marked as MAT Exhibit –II and II A**. Both the said exhibits and also the PR number are labeled, **Both the MAT exhibit after marking the same as exhibits are handed over the constable No.812 namely, Prabir Adak of Domjur P.S.** As PW-01 have special knowledge with regard to the arms due to course of my service in police and dealing with the same he finds that the seized arms was serviceable. Thereafter, PW-01 arrested the accused. Prepared arrest inspection memo and took the accused person at their P.S. and submitted FIR. While PW-01 left for working out the information PW-01 entered the



same at their GD Book under GDE No.13 dated 02.05.2015 of Bankra outpost. Thereafter, PW-01 lodged the FIR with the OC Domjur P.S.

PW-02, Rajesh Pramanik member of the raiding party during his examination-in-chief stated that on 02.05.2015 he was posted at Bankra outpost as constable of police. On that date at night he along with constable Ajoy Ghosh and O.C Shirshendu Kundu(PW-1) held one raid at Lalbari, Manshatala beside NH-6. They apprehended one person namely Kutubuddin Gaji and upon searching him one one shutter arm was recovered. Thereafter O.C Shirshendu Kundu seized the same under proper seizure list. Thereafter he signed on the said seizure list. The witness is shown Exhibit – P-1 and he identifies his signature. The seized alat under P.R. No.92/15 is produced before this Court by constable No.921 namely, Sanjay Das of Domjur P.S. The said fire arm already marked as MAT Exhibit – I is shown to the witness and the same was identified. He also stated that he knows Ajay Ghosh who was also one of the raiding party member on that day. He knows his signature on the official capacity in course of official business. The signature Ajay Ghosh in the seizure list was also proved by PW-02 as said Ajay Ghosh is suffering from Kidney failure and is undergoing Hemo Dialysis and is unable to appear before this Court.

PW-03 Bibhan Mukherjee proved the received of the seized alat at malkhana as malkhana-in-charge after process of seizure.

PW-04 Inspector Kaushik Das proved the expert opinion as arms expert being his report dated 03.08.2015 and forwarded on 09.08.2015.

PW-05 Munsif Hamidur Rahman investigating officer stated that he received Domjur PS case no.425 of 2015 dated 02.05.2015, under sections, 25/27 of Arms Act for investigation. During investigation he consulted with the de-facto complainant. He sent the seized arms to the expert for opinion. He also received the report of the arms expert. [The witness was shown the arms expert opinion dated 03.08.2015]. The witness admits that the said report of arms expert which he collected



from the arms expert in his official course of action. He sent a prayer to the DM Howrah for sanction and collected the order of sanction of the DM, Howrah and proved the prayer of sanction (Exhibit-P-9/PW-05) and sanction order of DM, Howrah (Exhibit-P-9(1)/PW-05). Thereafter, he submitted the charge-sheet i.e. report as section 173 of the Code of Criminal Procedure, 1973 being No. 571 of 2016 dated 30-06-2016 u/s 25/27 of Arms Act against the accused person. During course of his examination he also proved the seized alamats which was marked as MAT exhibits.

While the evidences stood thus; I must hasten to articulate that the seizure has been vehemently challenged by the learned lawyer for the accused person and the solitary plank on which such challenge has been poised is simple because the witnesses are police personnel their evidence has no value at all. I am not in consonance with the submissions made by Id. defence Counsel on the point of evidentiary value of the witnesses mentioned above. From their version it can be said irrefutably that the date and time has remained constant. No dent has been created to their versions though they were exposed to incisive cross-examination. All of them have identified the accused person while they were examined in open court. Moreover, even after passionate appreciation of the evidences on record I find there are suggestions being given to the witnesses that the accused has falsely implicated, the accused person out of animosity or vengeance or any other reason whatsoever. These witnesses cannot be categorized as interested witnesses simply because they are members of the police force.

A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; or in seeing an accused punished. A witness who is a natural one and is the possible eye witness in the circumstances of a case cannot be said to be 'interested' only on the ground that they are the members of police force. They are doing there job in their official capacity, as such they cannot be



categorized as interested witness. This is the broad perspective which I must adopt and is plain enough in the light of decisions given by the Hon'ble Supreme Court. The law is consistent on the point that if a person is close or known to the complainant does not, *per se*, make him an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. Nothing of this sort has transpired from the evidences of this case. It is also not the case of the accused person that he has been falsely implicated in this case on account of some personal rancour, predilections and past prejudices of the de facto complainant. In **Shama vs. State of Haryana, 2016 (4) Crimes 390** The Hon'ble Supreme Court has in a similar situation has held that where the accused person failed to cite any incident of significance to prove that the police authorities knew the accused person prior to the date of incident or/and that the accused or police authorities had some kind of grudge/animosity due to some prior incident etc. and due to which the police falsely implicated the accused person in this case the plea of false implication of the accused person by the investigating officer cannot be entertained. Following the path, pioneered by the Hon'ble Supreme Court, in my view, there has to be some strong circumstance to prove false implication by the police officials in any serious offence such as the one here and that is not brought on record the plea of false implication has to be rejected holding the same to be a capricious brain child of the accused person to evade his criminal liability. Thus the plea of false implication has appeared to be a stratagem to pave the escape route which cannot be patronized and in the face of the consistent, cogent and coherent evidence on record, this fragile plea taken by the accused person do not commend for acceptance. Thus, an analytical evaluation of the materials on record does not admit of any doubt that the accused person was indeed



present at the place of occurrence on the date, time and place as mentioned by the prosecution.

Now it is necessary to address the celebrated defence of the learned lawyer for the accused person. The learned lawyer for the accused person has in no uncertain terms has challenged the fact of seizure. In this case P.W-01, PW-02 has proved the seizure list. P.W-01 (maker of seizure list) and PW-02 and Ajoy Ghosh (though not deposed but his signature was proved by PW-02) are the witnesses of that seizure and they have proved the fact of seizure being made in their presence. At this juncture the argument challenging the said seizure needs to be addressed.

As a matter of fact all these witnesses are police personnel, two types of ink were used, over writing in dates and the learned lawyer for the accused person has placed his argument on this factual proposition. It was argued that being police witnesses their version cannot be given any credence and absence of any independent witnesses supporting the fact of the seizure, the seizure of the fire arms from the accused person cannot be given any importance. Thus, the contention mooted before me is the entire seizure has to be brushed aside as no independent witnesses to the seizure made on 02-05-2015 has supported the case of the prosecution. This submission is however not acceptable and I am fortified by the observation of the Hon'ble Supreme Court in **Akmal Ahmad vs. State of Delhi, (SC), 1999 (3) SCC 337**. It has been categorically held by the Hon'ble Supreme Court that evidence of search and seizure will not become vitiated solely for the reason that evidence is not supported by independent witness. The Hon'ble Supreme Court in **Girja Prasad vs. State of M.P., (2007) 7 SCC 625** while dealing with the trustworthiness of the testimony of a Police official held as under:

“25. In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on the



touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a court of law may not base conviction solely on the evidence of the complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police officials merely because they belong to police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence."

Thus it is pellucid from above decisions of the Hon'ble Supreme Court that just because the witnesses to the seizure are police personells, they must not be branded as liar. Rather enunciation of law is just the opposite and their evidence cannot be brushed aside on that solitary ground. It has been reiterated by the ld lawyer for the accused person that the alleged search and seizure took place in an open place and in a busy area but still no independent witnesses have supported the case of the prosecution and hence it would not be sagacious to act upon that tainted seizure.

In Appabhai vs. State of Gujarat, (SC) 1988 CriLJ 848, it has been observed in candid terms that merely because of the failure on the part of the prosecution to produce an independent witness to the incident that occurred at a public place like a bus stand where there must have been several of such witnesses, the prosecution cannot be



thrown out or doubted. On methodical scrutiny of the evidence of P.W-01, PW-02, and PW-05, I find that there is a ring of truth in their version and they have spontaneously stated about the fact that a country made illegal fire arm was in fact seized from the possession of the accused person. It might have appeared to the ld lawyer for the accused person that P.W-02 have acted under the instruction of their superior but fact remains, all these witnesses, specifically PW-01 and PW-02, have candidly stated that the illegal fire arms was in fact seized by the P.W-01 in the presence of PW-02 and Ajoy Ghosh in their presence and this rests the case of the defence. The accused person was confronted with this evidences while he was examined under section 313 of the Code of Criminal Procedure 1973 but apart from giving out bald denial nothing was said by the accused person to negate the search and seizure.

The seizure list bears the signature of the accused person and it was neither argued nor suggested that the signature of the accused person was obtained in the seizure list under compelling circumstances or by force but was vehemently argued and suggested that the copy of the seizure list was not handed over to the accused and before searching of the accused no written notice was issued to the accused. It is palpably absurd argument to me, in the circumstances, that when a miscreant was trying to evade arrest, is fleeing from the spot and police is arresting him after an hot chase, then before search he will be served with a written notice. Hence, I do not find any reason to deviate from the irresistible conclusion that the illegal fire arms was in fact seized from the possession of the accused person. Here it would be apposite to add that law does not require a plurality of witnesses. Section 134 of the Indian Evidence Act enshrines the well recognized maxim that "Evidence has to be weighed not counted". It has been made absolutely clear by the Hon'ble Supreme Court in plethora of judicial pronouncement that conviction can be based on the testimony of a single witness, provided the evidence of the witness is



trustworthy. No particular number of witnesses is required to prove a fact. According to Section 134 of the Evidence Act no particular number of witnesses shall in any case be required for the proof of any fact. This position of law has been succinctly discussed by the ***Hon'ble Supreme Court in Sudip Kr. Sen @ Biltu vs. State of West Bengal (SC), 2016 (3) SCC 26. It has been held as under:***

“11. It is well-settled that the court may act on a testimony of a single witness though uncorroborated, provided that the testimony of single witness is found reliable.....

12. Observing that there is no impediment for recording conviction based on the testimony of a single witness provided it is reliable in Prithipal Singh & Ors. vs. State of Punjab & Anr., (2012) 1 SCC 10, it was observed as under:-

“49. This Court has consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.” [See Vadivelu Thevar v. State of Madras, AIR 1957 SC 614, Sunil Kumar v. State (Govt. of NCT of Delhi, (2003) 11 SCC 367, Namdeo v. State of



Maharashtra, (2007) 14 SCC 150 and Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91]”

Thus the test remains in satisfaction of this court that P.W-01, PW-02, PW-04 and PW-05 has given true account of the incident and is a reliable witnesses. In his examination-in-chief P.W-01 has categorically deposed that he seized the illegal fire arms in presence of the available witnesses. Those witnesses have supported the case his version. There is nothing in the cross-examination of these witnesses to render their version nugatory. The argument to the effect that the facts as canvassed by the witnesses is improbable is also not worth a credence. At this stage it demands mentioning here that cautious approach is the order of the Hon'ble Supreme Court while acting on the version of a sole witness. This court has carefully dissected the evidence of P.W-01, PW-02, PW-03, PW-04 and PW-05 and found that they are much consistent to each other and on almost all material parts of the prosecution case. Above all it must be carefully considered that no one keeps a written record in our society of incidents and memory of a person is what is recalled for reproducing the facts of the case. When the human process is there to give evidence in Court, some omissions and aberrations are bound to occur, when a man is narrating a series of an incident to the Court, one may add or omit some fact. As far as the incident of seizure and place of occurrence being Monsadanga, Monsatola, Momadanga are concerned which is the crux of this case, the evidences of P.W-01, PW-02, and PW-05 as adverted to above, chillingly point to the guilt of the accused person. All the witnesses have corroborated the version of other Pws and this aspect persuades me to hold that these witness are wholly reliable.

At this stage it is required to be mentioned that there was a conscious effort on the part of the learned lawyer for the accused person to amplify certain discrepancies which to me are negligibly in nature. On meticulous introspection of the evidences on record I do not find it potential enough to obliterate the entire case of the prosecution, simply because minor deviations are trait of being a human being.



It is also pertinent to mention that the record reveals that no ill-will or animus has been alleged against any of the police officials for which reason they will falsely implicate the accused. No ulterior motive or purpose has been ascribed to P.W-01, PW-02, PW-03, PW-04 and PW-05 for falsely implicating or maligning the accused person. Version of P.W-01, PW-02, PW-04 and PW-05 on oath in court in spite of a long and detailed cross-examination remained clear and cogent.

This court is not unmindful of the decision of the Apex Court as reported in *(2002) 7 SCC 691 (Ruli Ram vs. State of Haryana)* wherein the Hon'ble Supreme Court held that when the plea of false implication is raised then the foundation of it must be proved by the person who is raising the same. Here, a bald allegation by the defence that he has been falsely implicated will not suffice the cause for the accused person and hence there is no circumstances to disbelieve the version of P.Ws.

Now I must roll over to another aspect of this case assiduously raised by the learned lawyer for the prosecution. It was argued that there is no seizure label and hence the act of seizure merits no consideration. The said search and seizure has been castigated by the accused person categorizing the same as manipulative and concocted. But cross-examination of PW-01, PW-04 and PW-05 will reveal the fallacy of this argument. Fact indeed that there are certain deviations in the version of P.W-01 and 05, but it is an important facet which is to be borne in mind that some discrepancies in the ocular account of witnesses cannot destroy the entire prosecution case. Rather such minor contradictions in the prosecution story are bound to occur which are spontaneous, not tutored and natural. The manner of occurrence as stated by the above witnesses are also consistent and maintains a rhythm which must inspire confidence. They might be appearing to the Id. defence Counsel to be damaging the entire prosecution case, but this Court finds them trustworthy witnesses and have proved the happening of the incident. In *Zamir Ahmed Vs. State*, reported in 1996 CrL. Law Journal 2354, the Hon'ble Court has observed that it would be a hard not to find out a case which is bereft of embellishment, exaggeration, contradictions and inconsistencies. The said things are natural. Such contradictions and inconsistencies are bound to creep in with the passage of



time. If the witnesses are not tutored, they would come out with a natural and spontaneous version on their own. The two persons on being asked to reproduce a particular incident which they have witnessed with their own eyes would be unable to do so in like manner. Each one of them will narrate the same in his own words, according to his own perception and in proportion to his intelligence power of observation.

It is worthwhile to mention here that in *Sadre Alam Mullick V. State [1997 Cri.L.J 2441]*, the Honorable Calcutta High Court has held:

"The Court cannot expect computerized precision in the narration of the incident by the witness and as such minor discrepancies and inconsistencies in the evidence of witnesses are neither unnatural nor surprising especially when the evidence of witnesses recorded after gap of long years."

In *Abdul Nawaz vs State Of West Bengal* the Hon'ble Supreme Court has reinforced the dictum of *Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat, (1983) 3 SCC 217*, and has held that minor discrepancies in the depositions of witnesses which did not go to the root of the matter cannot result in the entire prosecution case being thrown out. Pioneered by the above pronouncements and having gone through the evidence of the witnesses, this Court finds a consistency and a ring of truth in the evidence of P.W-01, PW-02, PW-05, and the contradictions as pointed out by the ld defence counsel as regards search and seizure appears to me as natural and part of human frailty. This Court has scrutinized the evidences more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole. Minor discrepancies in trivial matters not touching the core of the case must not find a place while appreciating the evidences and propelling out to any conclusion. Hyper technical and sophisticated approach of the defence counsel by taking sentences torn out of context here or there from the evidence, which has not been done or followed by attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Even honest and truthful witnesses may differ in some details unrelated to the main incident because of power of observation; retention and reproduction



differ with individuals. Fringe variations, discrepancies in details, contradiction in narration, and embellishment in non-essential parts cannot militate against veracity of the core of the testimony if there is impress of truth, and that is exactly what I find in the version of these witnesses. The plea to the contrary taken on behalf of the defence is therefore absurd and unacceptable.

The last issue which remains to be decided is that whether the evidence on record establishes the guilt of the accused person beyond reasonable doubt?

For the learned lawyer for the accused person, it does not. Learned lawyer for the accused person laboured to emphasize that reasonable doubt writ large from the testimony of prosecution witnesses and the accused person must be catered with the benefit of doubt. The learned lawyer for the accused person has strenuously made a very persuasive attempt to canvass for the proposition that the prosecution has failed to prove the charges beyond all reasonable doubt, but I find it difficult to accept the same. It demands mentioning here that on passionate introspection of the version of P.Ws in the lights of the above observation, what I find is sub-stratum of truth, and I feel no reason to harmonize and concur with the version of the ld lawyer for the accused person. The reason being:

No doubt that the old adage judicial doctrine, which is the bedrock of criminal jurisprudence, still holds good, viz., the basic assumption that an accused is innocent till the guilt is proved by cogent evidence. It is also an acceptable principle that guilt of an accused is to be proved beyond reasonable doubt. It has been propounded that reasonable doubt is simply that degree of doubt which would permit a reasonable and a just man to come to a conclusion. Emphasis here is on ensuring that innocent person should not be convicted and conventional criminology has leaned in favour of persons facing trials, with the main objective that innocent persons should not get punished. However, the rule regarding the benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations, as has been held by the Hon'ble Supreme Court in the case of State of ***Punjab vs. Jagir Singh, (1974) 3 SCC 277:***



"A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge, the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures."

Similarly, in *Shivaji Sahebrao Bobade & Anr. vs. State of Maharashtra*, (1973) 2 SCC 793, Honorable V.R. Krishna Iyer, J., stated thus:

"The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community."

The ratio of the aforesaid cases, which is clearly discernible, is that proof beyond reasonable doubt cannot be accentuated to such an extent or elevated to such high pedestal, so as to demand the impossible from the prosecution. The doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter. In *Gurbachan*



Singh vs. Satpal Singh and Ors. [AIR 1990 SC 209] has indicated that the conscious of the Court can never be bound by any rule and criminal justice system does not admit to any attempt of “pigeon holing”.

Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty pave the escape route is not doing justice, according to law. Judged by the above touchstone of reasonableness of doubt in evaluating the facts and circumstances of the present case, I have no dichotomy in my mind that the complicity of the accused person in the offences with which he has been charged, has been convincingly and irrefutably proved as required in law. Thus on overall appreciation it can be said that the illegal fire arms w a s in fact recovered from the conscious possession of the accused person.

Synergy of the above discussions unerringly point to the criminality of the accused person and I must say that prosecution has been successful in proving the felony of the accused person beyond all reasonable doubt. Thus upon appreciating the evidences on record and based on the above ratiocination, this Court has no manner of doubt that the accused person had been the perpetrator in the crime, and the answer to the question posed by this point for determination is an emphatic ‘Yes’.

Point number 02:

Whether the accused person is liable to be convicted under section 25/27 of the Arms Act or not?

This Court has ratiocinated in significant length and detail on the nature of evidence and only after such exercise the Court can unflinchingly come to a conclusion that the burden of proof which was laid on the prosecution has been satisfactorily discharged by the prosecution. Therefore, there is no incertitude in coming to a conclusion that the accused person did indeed possessed illegal fire arms and ammunition. However, the allegations



pertaining to section 27 of the Arms Act have not been substantiated by credible evidence and hence his indictment to that effect cannot be substantiate. The whole arguments of the accused person as regards section 25 of the Arms Act, appear to be farcical and falls apart in the light of what has been deposed by prosecution witnesses and discussed by this court. Following the attributes of the above discussion this Court finds that the prosecution case remains firm as the Rock of Gibraltar. The same could not be shaken even by way of vigorous cross examination. The seizure list is also in consonance with the evidence of the above witnesses, and accordingly involvement of the accused person in the illegal act punishable under section 25 of the Arms Act is indefensible.

Giving a cumulative effect to the above circumstances lead to the irresistible inference that the accused person has committed the alleged offence punishable under section 25 of the Arms Act and based on the materials on record his conviction is indefensible. Therefore this point for determination is answered in affirmative. The accused person is found to be guilty of offence punishable under section 25 of the Arms Act.

Conclusion:-

Hence in view of the above discussion and decision both the points for determination have gone against the accused person and he is found guilty of committing offence punishable under section 25 of the Arms Act and the facts proved before me warrants a punishment of the accused person. However the quantum of punishment must be decided only after hearing the accused person because that entails serious consequence on him as well as on persons related with him. Hence opportunity is being granted to the learned lawyer for the accused person as well as the accused person to ventilate the cause.

Hence, it is

ORDERED

That the accused person namely Kutubuddin Gazi @ Kutub is hereby found guilty and is convicted as per section 248 sub-section (2) of the Criminal Procedure Code 1973 for committing offence punishable under



section 25(1)(a) of the Arms Act, 1959. However, the accused person is *acquitted from the charges punishable under section 27 of the Arms Act.*

As the facts proved before me warrants a punishment of the Convict person Kutubuddin Gazi @ Kutub. The accused is already in judicial Custody since 25.02.2026, as brought under arrest question of cancelling his bail bonds does not require.

Before passing sentence the convict is required to be heard on the question of sentence as per provision of section 248 (2) of Code of Criminal Procedure, 1973 because that entails serious consequence on convict as well as on persons related with him. However the quantum of punishment must be decided only after hearing the accused persons.

Accordingly, the convict Kutubuddin Gazi @ Kutub should be given time for his mental reflection.

Place the record before me at 11:30 AM for hearing on the question of sentence.

Typed and corrected by me;

Chief Judicial Magistrate

Howrah

(GAIRIK ROY)
Chief Judicial Magistrate
Howrah

Later, 06-04-2026:-

The guilt once established, the sentencing dilemma commences. Sentencing the accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. Thus this aspect need to be considered with due care and caution. At this crucial juncture I would for a moment take a pause would like to delineate that though there is no inexorable formula but the paramount principle that should be the guiding laser beam is that the punishment should be proportionate. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil and thereby resist the wrongdoers from creating concavity in the social stem. Though an individual has been found to be guilty but that does not entail that all his rights should be abridged. Thus a balance has to be



struck between victim's right and accused person's rights. That is why is more important that this exercise by this court at this stage must evince the rationalized judicial discretion and not an individual perception or a moral propensity.

The accused person who have already been found to be guilty in this judgment was communicated the substance as above in open Court in presence of his Ld. Counsel. He was also heard on the point of sentence to be awarded. The Ld. Counsel for the convict is also given an opportunity to present his version regarding the quantum of punishment. Availing of the same Ld. Counsel submitted that the entire case is false and frivolous and his client has been falsely implicated and he prayed for mercy of this court.

I have also asked the accused person on the point of sentence who has once again reiterated his plea of innocence but submissions give little improvement to the flavor, and none to the substance and has paled into insignificance when once he has been adjudged guilty by this court. The accused person is not at all repentant for his past activities nor even is he is haunted by any compunction due to his illegal as well as in humanitarian attitude. Individual's right to liberty is of paramount significance, but this does not mean that victims right can be wantonly ignored. Accent on individual liberty cannot be pyramided to any absurd extent, because if so done, a miscarriage of justice inevitably and inexorably ensues. When such a situation occurs, the purpose of the law and justice gets totally atrophied. "Just punishment is the collective cry of the society." To avoid prolixity, I am at this stage refraining from exhaustively discussing the judgments of the Hon'ble Supreme Court on this point, but any deviation from this settled proposition would be paradigm shift. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc." [*State of M.P. v. Saleem (2005) 5 SCC 554 pp. 559-60*].



So any lenient consideration to the accused person would not be prudent and therefore this court does not find it expedient to release the accused on probation as per provisions of Section 360 Criminal Procedure Code 1973, and under section 3 and 4 of the Probation of Offenders Act.

However at the same time this court should not afford to be oblivious of the present prevailing scheme of reformatory justice. Victims' right to justice and accused person right of not to be excessively punished are two sides of the judicial drachma, each being the obverse of the other and hence none can be brushed aside giving undue privilege to the other. In this case on the eve of imposition of sentence, no doubt the accused person craves mercy of the court because of the fact that he is the only earning member in his family. Considering this facet a balance needs to be struck and longtime detention behind the iron bars would not be a sagacious as well as judicious consideration. Moreover detaining the accused person for long would tantamount to punishing his family members also who are dependent on him. Thus considering a wide spectrum of matters and keeping in view the nature and social impact of the offence committed by the accused person, this court is of the opinion that the following incarceration of the convict and compensation would mitigate the ends of justice for such a delinquent.

Hence, it is,

ORDERED:

That the accused person namely Kutubuddin Gazi @ Kutub is hereby convicted as per section 248 sub-section (2) of the Criminal Procedure Code 1973 for committing offence punishable under section 25(1)(a) of the Arms Act, 1959 and he is hereby sentenced to suffer rigorous imprisonment for the period of three years and pay fine of `5,000/- for committing offence punishable under section 25(1)(a) of the Arms Act and in default of payment of fine he is further sentenced to suffer S.I. for 01 month. However, the accused person is *acquitted from the charges punishable under section 27 of the Arms Act.*

The convict was in the custody from 02.05.2015 to 30.05.2015 and 25.02.2026 to 06.04.2026. The period of detention of the convict be set of as



per provision sec 428 of Code of Criminal Procedure, 1973. Warrant of Imprisonment be issued at once.

The judgment is pronounced in the open court in presence of the convict and given under my hand digitally signed and seal of the court today. Following the direction of the Hon'ble High Court in *MALATI SARDAR VERSUS STATE OF WEST BENGAL, C.R.A. 36 OF 2011* the convict was informed in a language which is understandable to him, that he has right to prefer appeal against this judgment. He was also informed that he has a right to avail of legal aid from the appropriate legal services authority if he intends to assail the conviction, but the accused person submitted that he has his ld lawyer and will take the legal recourse by himself.

The Material exhibits be sent down to the police station with the following directions:

a) The seized fire arms be confiscated to the State and destroyed after period of appeal following the modalities of law and intimation to this end.

Let a **digitally signed** copy of this judgment be given free of cost to the convict at once.

Inform Court Inspector, Howrah Sadar for compliance of Rule 445 of the PRB.

The case record be consigned to the DRR following the modalities of law.

A a digitally signed copy of this judgment be forwarded to the District Magistrate, Howrah and Commissioner of Police, Howrah Police Commissionerate, through email only, as per section 365 of the Code of Criminal Procedure, 1973.

Let a digitally signed copy of this judgment be forwarded to the Secretary, DLSA, Howrah.

Typed and corrected by me;

Chief Judicial Magistrate

Howrah

(GAIRIK ROY)
Chief Judicial Magistrate
Howrah