



<p>In the Court of Judicial Magistrate, 1st Court Raghunathpur, Purulia Present: BASHAR NAWAZ, [J.O Code: WB01449] [On this 07th day of April, 2025] [G.R. Case No. 379 of 2008] <u>CNR No. WBPU060001892008</u> [CIS Registration No. 1381 of 2014] (Arising out of Kashipur P.S. Case No. 60 of 2008 dated 03.10.2008 under section 25(1)(a)/27 of the Arms Act)</p>	
Complainant	STATE OF WEST BENGAL THROUGH O/C Kashipur POLICE STATION
REPRESENTED BY	LD. APP
ACCUSED	Md. Jamal
REPRESENTED BY	Partha Sarathi Mukherjee

Form B

[directed by the Hon'ble Supreme Court in SUO MOTO WRIT (CRL) NO. (S) 1/2017; IN RE: TO ISSUE CERTAIN GUIDELINES REGARDING INADEQUACIES AND DEFICIENCIES IN CRIMINAL TRIALS V. THE STATE OF ANDHRA PRADESH & ORS.]

Date of Offence	03.10.2008
Date of FIR	03.10.2008
Date of Charge-sheet	25.11.2008
Date of Framing of Charges	04.03.2013
Date of commencement of evidence	26.03.2025
Date on which judgment is reserved	07.04.2026
Date of the Judgment	07.04.2026
Date of the Sentencing Order, if any	ACCUSED PERSON HAS BEEN ACQUITTED

Accused details:

Sl.	Name of Accused	Date of Arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during trial for purpose of Section 428 Cr.P.C.
1.	Md. Jamal	04.10.2008 (arrested)	23.10.2008	25(1)(a)/27 of the Arms Act	Acquitted.	NA	NA

Form CList of Prosecution/ Defence/ Court WitnessesA. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES)
PW1	Sunil Kumar Patra	Seizure witness (Police constable)
PW2	ASI Prabodh Kumar Mondal	Seizure witness (Police officer)
PW3	Sunil Kumar Mondal	Arm Expert

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES)
DW	NIL	NIL

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES)
CW	NIL	NIL

List of Prosecution/ Defence/ Court Exhibits• Prosecution:

Sr. No.	Exhibit Number	Description	Date
1	Exhibit P1	Signature of PW1 on seizure list	26.03.2025
2.	Exhibit P2	Signature of PW2 on seizure list	26.03.2025
3.	Exhibit P3	Arm expert report	07.05.2025
4.	Exhibit P3/1	Signature of expert on report	07.05.2025

• Defence:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

• Court Exhibits:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

• Material Objects:

Exhibit Number	Description	Date
Material Exhibit I	Seized firearm (pipe gun)	07.05.2025
Material Exhibit II	Seized ammunition (.303 cartridge)	07.05.2025





J U D G M E N T

Facts of the case:

The prosecution case, in brief, is that on 03.10.2008 at about 22:15 hrs, on receipt of a secret and credible source information, SI Arindam Mukherjee of Adra Investigation Centre made a General Diary entry and proceeded towards SERSA Stadium Ground area within the jurisdiction of Kashipur Police Station along with police personnel including ASI Prabodh Kumar Mondal, Constable Sunil Kumar Patra and others on mobile duty. Upon reaching near the SERSA Ground gate, the police party noticed one person moving in a suspicious manner in the darkness, who, on seeing the police, attempted to flee away from the spot. However, he was chased and apprehended by the police personnel.

Upon interrogation, the said person, namely Md. Jamal, failed to give any satisfactory explanation regarding his presence at the said place at that odd hour. Thereafter, a search of his person was conducted by the police in presence of accompanying personnel, and during such search one improvised country-made firearm (pipe gun) loaded with one live .303 cartridge was allegedly recovered from the right side of his waist. The accused failed to produce any valid licence or document in support of possession of such firearm and ammunition.

Subsequently, the said firearm and ammunition were seized at the spot by preparing a seizure list dated 03.10.2008 in presence of police witnesses, and the accused was arrested after being informed of the grounds of arrest. The seized articles were duly sealed and labeled and later sent through proper channel to the Arm Expert for examination.

On 05.10.2008, the sealed parcel containing the seized firearm and ammunition was received in the office of the Arm Expert with seals found intact and tallying with the specimen seal. Upon examination, the expert opined vide report dated 13.10.2008 that the seized firearm was a country-made improvised pipe gun measuring approximately 11 inches in length, capable of firing .303 calibre ammunition, and that the cartridge was live. The expert further opined that the firearm was in working condition and both the firearm and ammunition were dangerous to human life.

On the basis of the written complaint lodged by SI Arindam Mukherjee, Kashipur P.S. Case No. 60/08 dated 03.10.2008 was registered under Sections 25(1)(a)/27 of the Arms Act against the accused Md. Jamal. During investigation, the Investigating Officer examined witnesses, prepared sketch map, seized the articles, obtained expert opinion, and after completion of investigation, submitted charge sheet being No. 63/08 dated 25.11.2008 against the accused under the aforesaid sections of law.

Accordingly, the accused was sent up for trial to face the charge under Sections 25(1)(a)/27 of the Arms Act.

Evidence adduced

Only three witnesses in this case have been examined and cross examined as



PW01, to PW 03. No other witness has been examined on behalf of the prosecution. Few documents have been marked as Exhibit during trial. Subsequently the Id lawyer for the accused person has prayed for closure of further prosecution evidence on the ground that no incriminating material is forth coming against the accused person and leading of further evidence will not serve any purpose. After considering every possible facet and the quality of the evidences on record, the prayer of the accused person was allowed because production of further witnesses and dragging this case any further in violation to the provisions of section 309 of the Criminal Procedure Code 1973; appeared to be absolutely unnecessary. It is also axiomatic from the case record that even after taking gusto efforts appearance of all the witnesses could not be secured. It is worthwhile to mention here that this case is pending since the year 2008 and as per the mandate of Constitution speedy disposal is the fundamental right of the accused person. Moreover the case come under Track 03 as per the Case Flow Management Rules, High Court Rules 2006. Thus it is the indelible duty of this court to hoist the right of the accused persons and to act in accordance with section 309 of the Criminal Procedure Code 1973 read with the Case Flow Management Rules, High Court Rules 2006 as well as the direction of the Hon'ble Supreme Court given in *Hussain and another versus Union of India, 2017[2] AICLR 362 (SC)*. Hence being pioneered by the decision of the Hon'ble Supreme Court the prosecution evidence was closed and the case was fixed for examination of the accused person under section 313 of the Code of Criminal Procedure, 1973. However In short the sum and substance of the defence is plea of innocence.

After exhausting the above procedures the case was posted for hearing of arguments. On completion of arguments as per requirement of Section 354 of the Cr.P.C it is the incumbent duty of this court formulate the points for determination and assign reasons for harbouring to any conclusion on those points. After considering every possible facet in this case and considering the materials available, the points for determination as formulated are arrayed as under:

Points for determination

- 1) Whether the charges framed against the accused person have been proved or not?
- 2) Whether the accused person is liable to be convicted under section 25(1)(a)/27 of Arms Act?

Decision with reason

Point number 01 and 02:

As because both the above mentioned points for determination are inter related with each other, for the sake of convenience and brevity both the points will be discussed jointly in this judgment. Id lawyer for the accused person during the course of argument submitted that the prosecution has miserably failed to prove the charges framed against the accused person and for that reason the accused person must be acquitted. He further submitted that the witnesses examined in this case have failed to say any thing from which the charges made against the accused person can be said to have been proved and



hence the accused person are liable to be acquitted. Ld A.P.P raised cavil against the prayer of the accused person. To the contrary she submitted that there are not sufficient materials from which it can be said that the case has been proved beyond reasonable doubt.

In order to usher in an apt and sagacious adjudication, the first point that needs discussion is, on whom the burden of proof lies and to what extent that needs to be discharged. In criminal jurisprudence the accused always has a presumption of innocence in his favour and the rule of evidence which has received judicial sanction is; the prosecution must prove the guilt of the accused, i.e., it must establish all the ingredients of the offence with which he is charged. The anvil for testing and interpreting what constitutes 'prove of guilt' in a criminal trial has been formulated by the Honourable Apex Court. While in civil cases facts may be proved by a mere preponderance of evidence, whereas in criminal cases the prosecution must prove the charge beyond reasonable doubt. In AIR 1966 SC 01 it was observed by the Honourable Apex Court on page 3, that:-

"If upon the evidence adduced in the case whether by the prosecution or by the accused a reasonable doubt is created in the mind of the Court as regards one or more of the ingredients of the offence including mens rea of the accused he would be entitled to be acquitted."

Thus from the above discussion and based on the canons of criminal trial that has been formulated by catena of decisions of the Honourable Courts, there is no quandary over the legal proposition that the general burden of proof is always upon the prosecution; and if, on the basis of the evidence adduced by the prosecution or by the accused, there is a reasonable doubt whether the accused committed the offence he is entitled to the benefit of doubt and is liable to be acquitted from the charges. Thus being guided by the above proposition of law; this court must set out a voyage in the evidences available on record to see whether the prosecution has been able to prove the act/ occurrences which constitute the offences and whether it has managed to connect the accused persons with such offences. Therefore it is now necessary to conduct a detailed probe into the evidences available on record.

As already pronounced in this judgment before the felony can be established; the prosecution is vested with the indelible duty to prove beyond reasonable doubt that the accused persons had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. In this case the prosecution has been able to adduce only six witnesses.

PW1 Sunil Kumar Patra during his examination-in-chief stated that on 03.10.2008 he was posted as constable at Adra Investigation Centre and on that day he along with ASI Prabodh Mondal was on mobile duty. They reached SERSA Ground gate where one person, on seeing the police, started running and was caught. SI Arindam



Mukherjee searched his body and recovered one firearm and ammunition, which were seized through a seizure list. He identified his signature on the seizure list marked as Exhibit P1. He further stated that the accused was arrested and the seized articles were shown before the Court. During his cross-examination he stated that he received information from the officer-in-charge, it was a busy place, but he could not say whether any independent person was present. He could not say whether the police personnel were searched prior to the search of the accused. He did not remember the topography of the place of occurrence, did not remember the face of the accused, and also could not say whether the seized articles shown were the same as recovered from the accused. He denied the suggestion that no such recovery was made or that he deposed falsely.

PW2 ASI Prabodh Kumar Mondal during his examination-in-chief stated that on 03.10.2008 he was posted as ASI at Adra Investigation Centre and was on mobile duty along with others. Upon receiving information from SI Arindam Mukherjee, they reached SERSA Ground where the accused was identified and attempted to flee away but was apprehended. SI Arindam Mukherjee searched his body and recovered one pipe gun loaded with ammunition, which was seized. He identified his signature on the seizure list marked as Exhibit P2. He further stated that the accused was arrested and the seized arm and ammunition were produced before the Court. During his cross-examination he stated that he cannot say whether the police personnel were searched prior to the search of the accused and such fact is not mentioned in the seizure list. He further stated that the seized arm and ammunition did not contain any label or identifying mark and that he did not sign on the seized articles. He admitted that no independent person was present at the time of seizure. He denied the suggestion that the case is false or that he signed the seizure list at the instruction of the officer-in-charge.

PW3 Sunil Kumar Mondal during his examination-in-chief stated that on 03.10.2008 he was posted as Reserve Inspector at Purulia and used to act as an Arm Expert. He received one firearm and one cartridge from Kashipur P.S. in connection with the case and examined the same. He opined that the firearm was a country-made improvised pipe gun capable of firing .303 ammunition and that the cartridge was a live one. He further stated that the firearm was in working condition. He proved his report dated 13.10.2008 marked as Exhibit P3 and his signature marked as Exhibit P3/1. He also identified the firearm and ammunition as material exhibits. During his cross-examination he stated that he was trained for a short duration and worked as an arm expert. He admitted that there was no marking on the firearm and that such country-made firearms are commonly available. He further stated that he is not a ballistic expert, no microscopic or chemical examination was conducted, and no chemical report was prepared. He denied the suggestion that the firearm and ammunition were not live.

Upon careful and meticulous appreciation of the entire evidence on record, this Court proceeds to examine whether the prosecution has been able to establish the charge under Sections 25(1)(a)/27 of the Arms Act against the accused beyond reasonable doubt.



At the very outset, it is to be borne in mind that in a criminal trial, the burden lies entirely upon the prosecution to prove its case beyond reasonable doubt and such burden never shifts. The presumption of innocence always operates in favour of the accused unless rebutted by cogent, reliable and trustworthy evidence.

In the present case, the prosecution has examined PW1 and PW2 as seizure witnesses, both of whom are police personnel. No independent witness has been examined to support the alleged recovery, although PW1 in his cross-examination clearly admitted that the place of occurrence was a busy place. This assumes significance because when the alleged search and seizure took place in a public place, the prosecution was expected to associate independent witnesses to lend credibility to the recovery. The failure to do so creates a serious doubt regarding the fairness of the investigation. In this regard, the Hon'ble Supreme Court in *Roop Chand vs. State of Haryana*, (1999) 1 SCC 156, held that non-joining of independent witnesses, when they are available, casts doubt on the prosecution version.

Further, the evidence of PW1 suffers from serious infirmities. PW1 categorically stated during cross-examination that he does not remember the face of the accused and also could not say whether the seized articles shown in Court were the same which were allegedly recovered from the accused. This failure of identification strikes at the root of the prosecution case. Identification of the accused and the case property is a fundamental requirement and when the witness fails to do so, the evidentiary value of such testimony becomes highly doubtful.

Similarly, PW2 admitted that the seized firearm and ammunition did not bear any identifying mark and that there was no mention in the seizure list regarding personal search of the police party prior to search of the accused. This omission assumes importance because conducting prior search of the police party is a safeguard to rule out possibility of planting of incriminating articles. Though the present case is under the Arms Act, the principle of fair and transparent search applies equally. The Hon'ble Supreme Court in *State of Rajasthan vs. Daulat Ram*, (1980) 3 SCC 303, emphasized that where the possibility of tampering or planting cannot be ruled out, the accused is entitled to benefit of doubt.

Moreover, the prosecution has failed to establish a clear and unbroken chain of custody of the seized articles. The witnesses have admitted absence of any marking or label on the seized firearm. In such circumstances, the possibility of tampering cannot be ruled out. The Hon'ble Supreme Court in *Vijay Pandey vs. State of Uttar Pradesh*, (2019) 3 SCC 778, held that where the prosecution fails to prove safe custody and proper identification of seized articles, it creates a serious dent in the prosecution case.

Coming to the evidence of PW3, the Arm Expert, although he opined that the firearm was in working condition and the cartridge was live, his testimony does not conclusively connect the accused with the alleged recovery. He admitted during cross-examination that he is not a ballistic expert, no microscopic or chemical examination was



conducted, and such country-made firearms are commonly available. Thus, his evidence is only of a formal nature and does not cure the inherent defects in the prosecution case regarding recovery and possession.

Another vital aspect is the absence of independent corroboration of the alleged recovery. The entire prosecution case hinges upon official witnesses, whose evidence, though not to be discarded solely on that ground, must be scrutinized with greater caution. In *Kali Ram vs. State of Himachal Pradesh*, (1973) 2 SCC 808, the Hon'ble Supreme Court held that if two views are possible on the evidence adduced, the one favourable to the accused must be adopted and the accused is entitled to benefit of doubt.

In the present case, cumulative effect of the above discrepancies, namely non-examination of independent witnesses, failure of identification by PW1, absence of marking on seized articles, lack of procedural safeguards in search, and doubtful chain of custody, creates a strong and reasonable doubt in the prosecution story. The prosecution has failed to prove conscious and exclusive possession of the firearm and ammunition by the accused beyond reasonable doubt, which is a sine qua non for conviction under the Arms Act.

It is well settled that suspicion, however strong, cannot take the place of proof. The evidence on record falls short of the standard required in a criminal trial. Therefore, extending the benefit of doubt to the accused, this Court holds that the prosecution has failed to bring home the charge.

Accordingly, the accused Md. Jamal is entitled to be acquitted of the charge under Sections 25(1)(a)/27 of the Arms Act.

Hence; it is

ORDERED

that the accused persons, namely Md. Jamal is found to be not guilty of committing the offence under section 25(1)(a)/27 of Arms Act and he is hereby acquitted of the charges framed against him as per section 248 sub-section (1) of the Criminal Procedure Code 1973. He is also discharged from the liability of his respective bail-bond and set at liberty. The surety is also discharged.

Be it also mentioned here that the victim of this case has a right to prefer an appeal against this order before a competent Court u/s 372 CrPC and can also seek legal assistance for such appeal from District Legal Services Authority.

Copy of this judgment of acquittal be forwarded to Secretary, DLSA, Purulia and District Magistrate, Purulia for necessary information.

Dated: 07.04.2026

Judicial Magistrate 1st Court
Raghunathpur, Purulia

Typed and corrected by me;

Judicial Magistrate 1st Court
Raghunathpur, Purulia