

GAHC040005502024

undefined



**IN THE GAUHATI HIGH COURT**  
**(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**  
**ITANAGAR PERMANENT BENCH**  
**Crl.A. 11(AP)/2024**

**Norbu Saidu**

Son of Late Yongden Saidu,  
resident of Khoina Village,  
PO and PS Nafra, West  
Kameng District,  
Arunachal Pradesh 790001

.....**Petitioner**

**-VERSUS-**

The State of AP and Anr.

through the PP of AP

2:Asang Kasidu

Age:

Occupation :

Son of Late Chepa Kasidu

Village Khoina

PO and PS Nafra

West Kameng District

Arunachal Pradesh

.....**Respondents**

**Advocates:**

For the petitioner : Mr. T T Tara,R. Riba, Advocate

For the respondents: Mr. G. Tado for the respondent no.1

Ms. H. Jeram, Legal Aid Counsel,

**:::BEFORE:::**

**HON'BLE MRS. JUSTICE MITALI THAKURIA**

**HON'BLE MR. JUSTICE PRANJAL DAS**

**Date on which judgment is reserved: 06.11.2025**

**Date of pronouncement of judgment: 21.01.2026**

**Whether the pronouncement is of the N/A**

**Operative part of the judgment :**

**Whether the full judgment has been**

**Pronounced :Yes**

**JUDGMENT & ORDER (CAV)**

**(Pranjal Das, J.)**

1. Heard Mr. T. T. Tara, learned counsel for the appellant. Also heard Mr. G.Tado, learned Additional Public Prosecutor for the State/Respondent No. 1 and Ms. H. Jeram, learned Legal Aid Counsel for respondent No. 2 (informant).
2. This appeal has been filed by the appellant under Section 374 of the Code of Criminal Procedure against the Judgment and order dated 23.01.2024, whereby, the learned Sessions Judge for the Districts of East Kameng, West Kameng, Pakke Kesang and Tawang at Bomdilla in Sessions Case No. 08/2021 had convicted the Appellant under Section 302 of the Indian Penal Code, 1860 for life imprisonment and a fine of Rs. 20,000/-; conviction and sentence u/s 27(1) of the Arms Act for 7 years rigorous imprisonment along with a fine of Rs 5,000/-. In default payment of fine, the appellant has directed to undergo 3

months' simple imprisonment each. The sentences passed by the learned Sessions Judge, are to run concurrently.

3. The prosecution case in brief is that on 02/07/2020 at about 9 am, a FIR was received from one Asang Kasidu with allegations that on the intervening nights of 1<sup>st</sup> and 2<sup>nd</sup> July, 2020 at about 9:30 pm, one Sang Norbu Saidu, armed with a gun, came to the entry gate of screening point site and shot dead one Dobo Kasidu. The said victim was found dead on the spot. On the basis of the FIR, NAFRA PS Case No. 01/2020 was registered under Section 302 IPC read with Section 27(1)(3) of the Arms Act, 1959 and investigation started. After completion of extensive investigation, the IO submitted charge sheet against the accused u/s 302 IPC r/w Section 27(1)(3) of the Arms Act, 1959. Subsequently, after committal and compliance with Section 207 Cr.P.C (as it existed then), the learned trial court was pleased to frame charges against the accused under Section 302 IPC read with Section 27 of the Arms Act, 1957. Upon the accused not pleading guilty to the charges, the trial commenced against him.

4. During the trial before the Learned Court below, 16 prosecution witnesses, 1 court witness and 2 defence witnesses were examined.

5. The Learned Counsel for the convict-appellant submits that there are material contradictions in the testimony of the prosecution witnesses and that there is also mis-appreciation of the evidence. It is submitted that the disclosure statement of the accused, regarding recovery has not been taken. Due to the infirmities in the testimony of the prosecution witnesses, the prosecution case has not been proved sufficiently against the accused appellant. Therefore, the impugned judgment and order is not sustainable. It is submitted that there is procedural irregularity with regard to submission of the charge sheet; that, no

bullet was recovered from the place of occurrence, and that there are infirmities in the chain of custody. That, evidence regarding voice identification is inadequate, and the convict-appellant could not have been attributed with guilt on the basis of the same. Summing up of his submissions, the learned counsel for the appellant submits that the impugned judgment and order is not sustainable and should be interfered with, by allowing this appeal.

In support of his contentions, the learned counsel for the convict-appellant cites the following decisions: -

1. ***Mohamed Sameer Khan Vs. State Represented by Inspector of Police*** reported in ***2025 Supreme (SC) 1871***.
2. ***H.N. Rishbud & Anr. Vs. State of Delhi*** reported in ***(1954) 2 SCC 934***.
3. ***Rajiv Phukan and Anr. Vs. State of Assam*** reported in ***2009 (2) GLT 414***.

6. On the other hand, the learned prosecution submits that the impugned judgment does not suffer from any infirmity and does not require to be interfered with in this appeal. It is submitted that it has been proved that the accused fled away and later surrendered before the police. The FSL report indicates a bullet injury. The owner of the gun was arrested, and the possession of the gun is not disputed and has been properly proved. It is submitted by the prosecution that the home quarantine of the accused around the time of the alleged occurrence has been properly proved. The medical report indicates an entry and exit wounds. It is also submitted by the prosecution that the guilt of the accused in killing the victim has been fully proved, and the learned trial court rightly convicted and sentenced the accused.

7. The Learned Legal Aid Counsel appearing for the informant adopts the submissions of the prosecution. It is further submitted that an aspect of

procedural infirmity in the charge-sheet was not taken up and challenged before the learned trial court. It is submitted that motive behind the alleged offence has been proved. The presence of the convict-appellant at the place of occurrence has also been properly proved. The Learned Legal Aid Counsel also prays for dismissing this appeal.

8. We have perused the impugned judgment, the appeal memo, the evidence on record, and other relevant materials. We have considered the submissions of the learned Counsel for the appellant, and the prosecution. We have also considered the submissions of the learned Legal Aid Counsel appearing for the informant.

9. Let us start with the testimony of **PW-3Takar Rongradu. PW-3, Takar Rongradu** testified that on 1-7-2020, he was on duty in connection with Covid at Sidal village gate from 6 am to 4 pm. During the time of the incident, he was present at the camp which is a distance of 10-15 meters from the actual place of occurrence. He further testified that around 8-8.30 pm, after hearing sound of gunfire, they were quiet for few minutes and then they heard voice of the accused stating – *Hum marega bolne se marta hai*. **PW3** testified that though he had not seen the accused but as a fellow villager, he could recognize his voice. Testifying further, **PW-3** stated that after the statement in loud voice, the accused went towards the Jerrigaon side and later upon going to the place of occurrence, the deceased was found dead. In **cross-examination**, he admitted that he had not seen the incident with his own eyes and that the gunshot may have been fired by some other person also, but since there was no other person roaming in the night, therefore he believed that the accused was the person who committed the offence. To a **court question**, **PW-3** stated that since he and the accused belonged to the same village, he was not

mistaken to recognize the voice of the accused.

10. **Jambom Rongradu** is another witness who testified during the trial as **PW-4** and he identified the accused person during the deposition and he testified that one evening, he came across the accused at Sidal side when the witness was coming towards village and the accused was going towards Sidal side. He further deposed that the accused was having a gun in his body and upon asking him as to where he was going, the accused replied that he was going to Sidal side and the accused replied to him asking as to *tum bhichahiye kya?* In other words, do you also need? **PW-4** further testified that in the same evening, he heard that the victim Dobo Kasidu was killed by the accused. He denied the suggestion that he did not hear about the accused causing the death of the deceased. However, he admitted that he did not clearly see the gun as it was dark but clarified that the accused was carrying something like a gun in his hand.

11. **PW-7 Sang Dorjee Kasidu** testified that on the day of the incident, he was on COVID duty at Sidal gate from 6 am to 6 pm with other person and deceased. Subsequently, he slept but suddenly heard a sound of gun firing from the camp where they used to sleep and also heard a shouting voice of the accused just above their camp stating that *marega bola haito marega*. He further testified that after some time, they came to know that the deceased was killed by bullet injury. He further stated that he saw one live cartridge and one empty cartridge at the place of occurrence. During his deposition, he proved as **Exhibit 2** a seizure list and proved his signature on the seizure list as **Exhibit 2(b)**. He also proved **Exhibit 3(b)** as his signature on **Exhibit 3**. He stated that at the place of occurrence, he saw one live cartridge and one empty cartridge. He proved as **Material Exhibit 1**, three live cartridges and two empty

cartridges. In **cross-examination**, he denied the suggestion that the voice that he had heard at the time of the incident did not belong to the accused. To a **court question**, he stated that he is 24 years old and the accused is older than him. He also stated in answer to the court question that he is acquainted with the voice of the accused for the last six years when he came back to village from Nafra.

12. Next, we take up the testimony of the autopsy doctor being **Dr. R. N. Thungon** who testified during the trial as **PW-14**. In his testimony, **PW-14**, the MO testified that on 2-7-2020, while being posted at CHC Nafra as medical officer, he received the requisition from the IO of Nafra BS for conducting post-mortem examination over the dead body of deceased *Dobo Khasidu* and that he started the examination at 10 AM and completed around 12.30 p.m. **PW-14** testified that during examination, he found one entry wound of bullet on the right upper back of the deceased measuring 7x7 cm and there was swelling surrounding the entry wound. He further stated that the bullet entered into the body at 70 degree towards downside and the exit wound was present at the lower part of the midline of the lower chest. He stated that the wound is measuring 3x1.5 cm. **PW-14** further stated that during internal examination, congestion was found on right pleurae/ lungs and there was puncture on the right lung measuring 3x3 cm. He also found bruise over forehead, haematoma below right lower lip, small cut injury on left eye lids and fracture on right scapula i.e., the right bone of upper back.

13. In his **opinion** regarding death, **PW-14** stated that death was homicidal in nature and caused due to puncture of right lung on account of bullet injury. He proved the post-mortem report as **Exhibit** P-9 and his signature there on as P9(A). In **cross-examination**, he stated that the injury was found to be 24

hours old.

14. He also stated in **cross-examination** that during his post-mortem examination, he had not found any pellets inside the dead body and hence he has not mentioned the number of pellets. He also stated that as he had not found any pellets inside the body, it may be possible that the puncture wound is committed by any other weapon.

15. **Lakshman Sharma** is the investigating officer of the case and he has testified as **PW-15**, stating that on 2-7-2020, while being posted at Nafra PS, in the morning hours at 9 am, a FIR was lodged by *Asang Kasidu* alleging that some person has gunned down another person with a .315 rifle at Sidal Junction. On the basis of the FIR, Nafra PS OC SIP Rijiju registered Nafra PS Case No. 1 of 2020 u/s 302 IPC, read with Section 27(1)(3) Arms Act and he was endorsed to investigate the same.

16. **PW-15** has stated about the steps taken by him during the investigation by way of visiting the PO, drawing sketch map, examining the informant and other witnesses, holding inquest over the dead body. He stated that during investigation, he recovered one empty fired cartridge and one live cartridge from the place of occurrence. He also took steps for forwarding the dead body for post-mortem examination. He conducted search in and around the place of occurrence and later on 3-7-2020, the accused Sang Norbu Saidu surrendered before him and he was arrested.

17. **PW-15** further testified that upon being led by the accused, the weapon of offence i.e.315 rifle with 13 round live cartridges were recovered from jungle in between Nafra to Naku Roadside and he seized the same in the presence of witnesses and forwarded the weapon for FSL examination. Subsequently, upon

searching for the owner of the weapon, he found that the weapon belonged to one *Dongrik Miji* and the license of the gun was seized from the said Dongrik Miji who was arrested and forwarded to the Court. Later, upon being transferred, he handed over the case file to the then OC Nafra PS.

18. As part of his testimony, **PW-15** proved the FIR as **Exhibit** P1, the seizure memo of empty cartridge and live cartridge as **Exhibit** P2 and his signature thereon as P2(C). He proved as **Exhibit** P3, the inquest report and P3(C) as his signature. He proved as **Exhibit** P5, the seizure list pertaining to the seizure of the weapon with his signature thereon being **Exhibit** P5(E). He proved the format of the FIR as P6. He proved the seizure of the gun license as **Exhibit** P6(A) and his signature thereon as P6A(C). He also proved as **Exhibit** P11 series as 14 number of photographs of the deceased taken at the place of occurrence. He proved as **Material Exhibit** 1, 3 live cartridges and 2 empty cartridges and he also proved as **Material Exhibit** 2, the weapon of offence.

19. In **cross-examination**, he has reiterated that the accused had surrendered before him. He also stated that he had not prepared disclosure memo though the accused led him to the recovery of the weapon of offence. And there were no independent witnesses during the time of disclosure and no independent persons, except police persons at the time of recovery. It is stated by the IO during **cross-examination** that during investigation, he did not find any motive of the offence and rather, he found that the accused and the deceased were friends and there was no enmity between them. He also found during investigation that there were no eyewitnesses to the alleged act of accused firing upon the deceased.

20. The forensic official who conducted the ballistic examination with regard to the arms and ammunition adduced evidence as **PW-16** being **Arun Kumar**

**Pal.** In his testimony, he stated that in connection with this case, two sealed paper parcel and one sealed cloth parcel were received.

21. Two sealed paper parcel and one sealed cloth parcel were received in Central Forensic Science Laboratory, Kamrup as forwarded by the Superintendent of Police, West Kameng District, Arunachal Pradesh vide **memo no. BDL/CR/FSL-05/2020647** dated 23-09-2020 in connection with Nafra PS case no.1 of 2020. **PW-16** stated that as he was working as Scientist B Ballistic; hence the parcels were allotted to him for forensic examination. It is stated that the parcels were opened on 10-11-2020 and the examinations were completed on 29-12-2020 and report was prepared on 29-12-2020.

22. Elaborating further, **PW-16** testified that during examination in one sealed cloth parcel, he found one .315-inch calibre sporting rifle bearing no. AB-05-14994 made in Indian Ordnance Factory, which was marked by him as **Exhibit A**. He further stated that one sealed paper packet was marked as **Exhibit B**, containing one unsealed paper box, which in turn contained one 315-(8-mm) empty fired cartridge case having head stamp mark 8-MM-KF and which was marked by him as **Exhibit EC-1** in the laboratory. He further stated that another sealed paper packet marked **Exhibit 6** contained one unsealed paper box, which contained in turn five .315-(8-mm) cartridges having head stamp 8-MM-KF on each of the cartridges, which were marked as **Exhibit LR-1, LR-2, LR-3, LR-4 and LR-5**.

23. **PW-16** further stated that during examination, the barrel **Exhibit A** rifle was taken along with control sample, and the same was chemically examined. As a result of the chemical examination, nitride ion, lead ion and copper ion

were found to be positive in the barrel swabs of **Exhibit A**. He also testified that five cartridges were marked as **Exhibit** LR-1, LR-2, LR-3, LR-4 and LR-5, as stated above, and were attempted for firing through the **Exhibit A** rifle. And upon doing so, it was found that cartridges marked as LR-2 and LR-4 were successfully test fired through **Exhibit A**, while cartridges marked as LR-1, LR-3, LR-5 resulted in misfire through **Exhibit A**.

24. **PW-16** further stated that the pertinent characteristic of firing pin and breech face mark present on test fired cartridges marked as LR-2 and LR-4 and on evidence fired cartridge case marked as **Exhibit** EC-1 were examined and compared under a comparison microscope. As a result of the comparison, the pertinent characteristic of firing pin and breech face mark present on **Exhibit** EC-1 and on test fired cartridges marked as LR-2 and LR-4 were found similar.

25. Summarizing his findings, **PW-16** stated that on the basis of the examination, it was opined that **Exhibit A** rifle was used for firing sometime before it was received in the laboratory. **Exhibit A** is a regular 0.315-inch (8mm) calibre sporting rifle manufactured by Indian Ordnance Factory and it is in working condition and test fired conducted successfully. **Exhibit** EC-1 is a 0.315-inch (8mm) calibre empty fired cartridge case and it has been fired through **Exhibit A** rifle. He also opined that **Exhibit A** is a firearm and **Exhibit** EC-1 is part of ammunition and **Exhibit** LR-1 to LR-5 are ammunitions as defined in the Arms Act 1959. He stated about returning the remnants after completion of the ballistic forensic examination.

26. He proved the FSL report as **Exhibit** P-12 and his signatures thereon as **Exhibit** P-12A to P-12C and he proved the official seal of CFSL Guwahati as **Exhibit** P-12D. He proved as **Material Exhibit** 1 the five numbers of ammunition of .315 rifle out of which three cartridges were misfired marked as

LR-1, LR-3, LR-5 and two empty fired cartridges marked as LR-2 and LR-4. He proved as **Material Exhibit 2** the firearm and as **Material Exhibit 2A** his signature over the firearm. He proved as **Material Exhibit 3** the fired cartridges which he marked as EC-1 in the laboratory.

27. In **cross-examination**, **PW-16** stated that he received five unfired ammunitions of .315 inch / 8 mm for examination. He admitted that he had not received the bullet which killed the deceased for examination.

28. Now we go back to the testimony of **PW-1 Tashi Tsering** who is the younger brother of the deceased and during his deposition he stated that he knew the accused and that he is the one who killed his elder brother on 1-7-2028 at 8.30 pm by gun and that at that time **PW-1** was at his home. Testifying further, **PW-1** stated that he heard the voice of the accused saying that he will kill and at that time he was carrying a gun on his shoulder and after a few minutes he heard the firing sound of firing and when he came out his elder brother was killed. In **cross-examination**, **PW-1** admitted that there was no previous enmity between the deceased and the accused. He admitted that he had only heard the sound of gunshot but not the actual person firing the shot. He also admitted that the voice which he heard could be some other person. He also stated that the accused might have carried a piece of stick also instead of gun. He admitted that he has given an opinion rather than witnessing the incident with his own eyes and that some other person also might have fired the shot.

29. **PW-2 Chawang Tashi Matadu** stated that at the time of the incident, he was a student leader and was doing covid duty and he knew the deceased as well as the accused. He stated that incident took place near the gate and at the time of the incident, he along with others were in the camp but the deceased

was near the gate. He stated that he and others heard gun firing and came to the gate after 10-15 minutes and noticed that the deceased was lying on the ground with bullet injury.

30. This witness turned **hostile** during the deposition and he was **cross-examined** by the prosecution in which he stated that on 24-06-2020 around 4 pm, the accused had come from Dirang and entered into his house at Sidal village without notice of anyone in the village and he did not enter through the place of entry gate at Sidal and that he admitted later on that he had come from Dirang after hunting animals and entered the house from the back side considering himself to avoid the rules and regulations pertaining to Covid. **PW-2** admitted that the committee members of the village decided to keep him in home quarantine and explained to him the protocol to be followed.

31. Interestingly, though **PW-2** turned hostile, but in his **cross-examination** by the prosecution - stated that before completion of his home quarantine the accused went to the place of entry gate and gunned down one Dobo Kasidu on 1-07-2020 at around 8-8.30 pm.

32. **PW-2** was also cross-examined by the defence and in such **cross-examination**, he stated that he had not seen the accused near the place of incident and that he had only opined that the accused might have fired the shot killing the deceased person. He clarified that he is not an eyewitness to that incident.

33. **PW-6 Monjen Kasidu** testified that on 1-07-2020 while he was at his home he heard a sound of gun firing from the side of the house of the accused and he heard a second time gun firing from Sidal gate for Covid checking and that he had doubt that the accused Sang Norbu Saidu had fired the gun.

Testifying further, **PW-6** stated that accordingly, he informed the OC Nafra PS and after 10-15 minutes went to the place of occurrence where he saw the dead body of the deceased. **PW-6** testified that he was told by the villagers that the accused was having a gun and went towards the Jerigaon side. He admitted the possibility in **cross-examination** that some other person may have also fired the gun as he had not seen the accused committing the offence.

34. We next take up the testimony of **PW-6AsangKasidu** who is also a younger brother of the deceased and he testified that his brother died of gunshot and that at that time he was about 6 kilometers away from the place of occurrence. He stated that *Sang Dorji Kasidu, Arun Matadu, Takar Rangradu* and *Tashi Tsering Kasidu* along with the deceased were on Covid duty at Sidal gate and that the incident took place between SidalChariali near gate at around 8.30 pm. A call was received by one *Phuntso Yam Sodu* that deceased was killed whereupon **PW-6** reached the place of occurrence and found that the deceased had already died. He lodged a complaint at the police station. During the testimony he stated about recognizing the accused as they are from the same village.

35. He proved the FIR as **Exhibit 1** and his signature as **Exhibit 1(A)**. He proved as **Exhibit 2** a seizure list of one number of empty cartridges of .315 rifle, one live cartridge of .315 rifle and with **Exhibit 2(A)** being his signature. He also proved as **Material Exhibit 1** three live cartridges and two empty cartridges from the place of occurrence in his presence.

36. **PW-6** stated in his examination that he was informed by *Sang Dorji Kasidu, Arun Matadu, Takar Rangradu* and *TashiTseringKasidu* that they heard the voice of the accused and also firing sound. In **cross-examination** he admitted that he did not know the contents of the seizure list and he signed on

the direction of the IO. He also stated that he lodged the FIR on the suggestion of the villagers that nearest relatives of the deceased should lodge the FIR.

37. **Mr. P. Rijju**, a police official at that time, adduced evidence as **PW-8** in which he stated that at the time of the incident he was O.C. Nafra P.S. and at around 9 p.m. on the day of the incident he received information about murder of one person at Sidal and accordingly deputed an A.S.I. L. Sharma to visit the place of occurrence and dead body was brought for post-mortem examination. He stated that the accused was absconding after the incident and after using sources he instructed the family members of the accused to inform him if he comes at Upper Dzang. Subsequently, on 3-7-2020, upon getting information, he apprehended the accused from Aulabari in Lower Dzang and brought him to the police station.

38. That, the accused stated to him about .315 rifle being kept in the jungle and on 8-7-2020, on leading by the accused, the .315 rifle was recovered from the jungle in between Nafra and Nako village and it was recovered in the presence of D.S.P. Bomdila and other police personnel. **PW-8** stated that he recovered the .315 rifle along with 13 live cartridges from a cave. He proved as **Material Exhibit 2**, the recovered .315 rifle and as **Exhibit P-5**, the seizure list pertaining to the same and his signature thereon being **Exhibit P-5(A)**. He proved the FIR format as **Exhibit 6** and his signature thereon as **Exhibit 6A** and 6B.

39. In **cross-examination**, he clarified that he was not the I.O. of the case, but denied that the accused had not disclosed before him about the rifle. However, he admitted that he had not recorded the disclosure statement of the accused. He denied that the accused has been falsely implicated. He also admitted in **cross-examination** that at the time of recovery of the rifle, there

was no civilian present at that time.

40. **PW-10** Constable **B. Nikambi** is a seizure witness and he stated that he accompanied the I.O. along with **PW-8, PW-9**, some IRB personnel and DSP Bomdila regarding the recovery of the rifle **Material Exhibit 2**. He stated that **Material Exhibit 2** rifle and 13 live cartridges were recovered from a jungle which were kept in a cave under rock on leading of the accused. He proved his signature on the seizure list **Exhibit 5** as **Exhibit P-5(C)**. In **cross-examination**, he denied that he had not participated in the recovery of the rifle. He also denied that the accused had not led to the discovery.

41. Another such recovery seizure witness is **Constable I. Lollen** who deposed as **PW-11** stating that he accompanied I.O. along with **PW-8, PW-9, PW-10**, IRB personnel, DSP Bomdila regarding the recovery of **Material Exhibit 2** rifle on 8-7-20 and that the said rifle along with 13 live cartridges were recovered from a jungle which was kept in a cave under rock on leading by the accused. He proved as **Exhibit P-5(D)** his signature on the seizure list **Exhibit P-5**.

42. In **cross-examination**, he denied that he did not participate in the recovery of the rifle. He also denied that the accused did not lead to the discovery.

43. **Dongrik Miji** is stated to be the owner of the rifle and he deposed as **PW-13**. He stated that he had gone to Nafra to purchase cows and bulls along with his relatives and after purchasing was coming on the way back and later upon coming back to Lada realized that his rifle was not brought back. After making enquiry with PW-12, he stated that rifle was in safe custody. Subsequently, he became unwell and nationwide lockdown was also declared.

After a few months, he heard that an offence was committed with this rifle. He proved as **Material Exhibit 2** his rifle and as **Exhibit P-6(B)** his signature on seizure list **Exhibit P-6**. **Cross-examination** was declined.

44. One **Leiki Sange** was examined as **CW-1**. He has stated that he took the gun from **PW-13**, stated to be the owner of the gun and went hunting and during such hunting, upon the asking of the accused, he gave him the gun and in this way the weapon of offence came into the hands of the accused. He confirmed that the gun **Material Exhibit 2** belongs to **PW-13** which he had handed over to the accused for hunting but he does not remember the exact date. In **cross-examination**, he admitted that gun was with him for long time and that the owner **PW-13** forgot to take it back. He denied the suggestion that he had not handed over the gun to the accused. He admitted the possibility that some other person than the accused could have also taken the shot.

45. Two defence witnesses were also examined on behalf of the accused being **Gropode Deru** as **DW-1** and **Paji Deru** as **DW-2**.

46. **DW-1** stated that accused is a related brother and that once when he was staying in his residence for three days, he supplied him rice and other materials and that he also stayed at his residence. He expressed ignorance regarding the facts of the case. **Cross-examination** was declined.

47. Similarly, **DW-2** stated that on the day of the incident, he had met the accused at his residence clarifying that he went to the residence of the accused in June 2020 and on 28<sup>th</sup> June 2020. He expressed ignorance about the involvement of the accused in this case. In **cross-examination**, he stated that he does not know anything about the present case.

48. There are no direct eyewitnesses to the alleged act of the accused in

shooting the victim with a gun and the case is based largely on circumstantial evidence.

49. The law regarding proof by circumstantial evidence is well settled. Starting from the landmark decision of ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*** - wherein the golden principles of proof by circumstantial evidence were laid down. The relevant paragraph can be reproduced herein below.

**153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahab Rao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrLJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

**154.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case

based on circumstantial evidence.

50. Ever since the fundamental principles were laid down in the aforesaid landmark case, there has been a catena of decisions of the Hon'ble Supreme Court in which these principles have been reiterated.

51. Coming back to the facts of the instant case, the testimony of the autopsy doctor who testified as **PW-14** clearly proves that there was a bullet injury on the body of the deceased with entry and exit wounds. And internally, a puncture wound was found around the chest on the right side in the lungs.

52. Though the doctor has stated about not finding pellets inside the body and therefore, indicated the possibility of puncture wound being committed by any other weapon also - however, we are of the considered view that - the same would not dislodge the overwhelming opinion and finding as recorded in the examination in chief that there was specific bullet injury with entry and exit and causing puncture injuries inside the body in the lungs. Moreover, it has been clearly opined that death was homicidal and caused by the puncture of the right lung due to bullet injury. Therefore, there is no room for any doubt that as per the medical finding, the death of the deceased was a homicidal and caused by an injury in the nature of a bullet injury.

53. **PW-6** has clearly testified about three live cartridges and two empty cartridges seized from the place of occurrence in his presence. And he has duly exhibited and proved the seizure list and his signatures thereon. The testimony of **PW-6** has remained unshaken in **cross-examination** regarding the seizure.

54. Similarly, **PW-7 Sang Dorji Kasidu** has also stated about seeing one live cartridge and empty cartridge at the place of occurrence, which were seized and he has proved his signatures on the seizure list in this regard, as already

narrated in the earlier part of the judgment.

55. A .315 rifle, which was supposedly a weapon of offence, was seized by the police upon showing by the accused. However, disclosure statement was not properly recorded. And when the said recovery was made, there were no witnesses other than police witnesses.

56. It is not the law that police witnesses *per se* cannot be disbelieved if otherwise trustworthy; though it is always better - from the point of view of the credibility of the prosecution case and the concerned seizure - that there should be independent witnesses.

57. Nevertheless, **PW-8 P. Rijju** during his testimony, has stated about apprehending the accused and upon his disclosure, rifle was recovered from a jungle in between Nafra and Nako village in the presence of DSP, Bomdila and other police personnel. He has also exhibited and proved the seizure list in this regard, being exhibited as Exhibit P5 and his signature there on as Exhibit P5(a). The said testimony about disclosure by the accused has remained unshaken in **cross-examination** and he has admitted fairly that there was no civilian during the time of recovery.

58. What is important to note is that the said recovery of the rifle at the behest of the accused is supported by two seizure witnesses who are police constables being **PW-10** and **PW-11**. Both of them have stated about the recovery of the rifle and 13 live cartridges upon showing by the accused and they have also proved their signatures on the seizure list **Exhibit P5**.

59. Therefore, the evidence on record regarding the recovery of the empty cartridges from the place of occurrence can be accepted and the testimony of recovery of the rifle, though not procedurally perfect, has also been reasonably

supported by two witnesses, who happen to be police constables.

60. The forensic evidence was adduced by ballistic expert **PW-16**, who had examined the rifle and the cartridges received in the laboratory. And what is important to find from the testimony is that the rifle was found to have been used for firing before being received in the laboratory and the rifle upon being subjected to chemical examination revealed nitrate ion, lead ion and copper ion as positive findings in the barrel swabs of the said rifle marked as **Exhibit A** in the laboratory.

61. The rifle was found to be in working condition. Most importantly, the empty cartridge marked as **Exhibit EC1** in the laboratory was found to be a 0.315-inch empty calibre empty fired cartridge and it was found to have been fired from the **Exhibit A** rifle, which was recovered by the police and in the presence of two constable witnesses and sent to the FSL for examination.

62. Thus, it can be said that the forensic-ballistic evidence also indicated that the rifle was in working condition; the chemical examination indicated its firing from the barrel swabs and most importantly, the empty cartridges were found to have been fired from the said rifle.

63. To the above components of the prosecution evidence may be added the testimony of **PW-3** and **PW-7**. These witnesses can be seen as *Res Gestae* witnesses - as around the time of the time of the incident, they heard the gunshot as well as the voice of the accused stating about the killing.

64. Thus, the testimony of **PW-3** and **PW-7** can be seen as *Res Gestae* evidence. **PW-3** heard the gunshot and heard the voice of the accused saying that that he would kill. The testimony of **PW-3** about recognizing the voice of the accused has been found to be cogent. He has also clarified to a court

question that he belongs to the same village and cannot be mistaken in recognizing the voice of the accused and in **cross-examination** by defence, he stated that there was no other person roaming in the night. After that shout of the accused and the sound of gun firing, they went to the place of occurrence after some time and found the dead body.

65. Similarly, **PW-7** also heard gun firing and voice of the accused saying {marega.....} and later, he came to know about the deceased being killed by bullet injury. The testimony of **PW-7** as *Res Gestae* assumes even more importance because he is also a seizure witness with regard to finding of live cartridges and empty cartridge at the place of occurrence. He has also reiterated about recognizing the voice of the accused.

66. The testimony of **PW-4** though not strictly a *Res Gestae* is also of similar nature and very significant. Just before the incident, he saw the accused with a gun in his body in the evening and later, in the same evening, he heard about the killing of the deceased. Though, he has diluted his testimony in **cross-examination** by saying that, he could not see the gun clearly in the dark, but he also stated that the accused was carrying something like a gun.

67. The testimony of **PW-5** is also significant on similar lines. Though he is a related witness being elder brother of the deceased, but the significance of his testimony is that he heard the gunfire from the side of the Sidal gate and after 10 to 15 minutes upon going there, found the dead body of the deceased. Though **PW-5** has not stated about hearing the voice of the accused, but his evidence about hearing gunshot in the evening from the side of the place of occurrence and soon after finding the dead body of the deceased, lends corroboration to the testimony of **PW-3**, **PW-4** and **PW-7**.

68. **PW-1** is another brother of the deceased. He diluted his testimony in **cross-examination** saying that the voice that he heard could be another person. But in examination in chief, he said that he heard the voice of the accused saying that he will kill and soon after, he heard the sound of fire and upon coming out saw that his brother was killed.

69. **PW-2**, though turned hostile, has stated that the accused went to the place of entry gate and gunned down the victim around 8.30 pm, tallying with the supposed time of occurrence. He has tried to dilute his said testimony in **cross-examination** by defence by saying that he had only given opinion.

70. One important aspect that emerges from the testimony of **PW-6, Asang Kasidu** is that he was informed by – *Asang Dorji Kasidu, Arun Matadu, Takar Rongradu* and *Tashi Tsering Kasidu*- that they heard the voice of the accused and the firing sound. In this regard, **Tashi Tsering** is **PW-1** who stated about hearing the gunshot and also the voice of the accused, which however, he has tried to dilute in **cross-examination** by saying that it could be the voice of some other person also.

71. Similarly, **Takar Rongradu** is **PW-3** who has clearly stated about hearing the gunshot as well as the voice of the accused saying that he will kill.

72. **Asang Dorji Kasidu** is **PW-7** who has also clearly stated about hearing gunshot and shouting of the accused about killing which he is stated to have recognized.

73. One of the submissions of the learned counsel for the Appellant is that there was procedural infirmity in submission of the charge-sheet, in as much as, the signature of the investigating officer on the charge sheet was taken at a time when he had already retired from service. However, on the basis of the

incriminating findings of the investigation and the materials revealed there from, we find no infirmity in the order of the learned trial court framing charges against the accused. Further, in view of the overwhelming incriminating evidence adduced by the prosecution against the accused, as narrated and discussed above - we are the considered view that the said procedural infirmity would not dislodge the prosecution case and would not also cause prejudice to the appellant. Therefore, we are of the view that considering the overall incriminating evidence against the appellant revealed during the trial - the aforementioned procedural infirmity would not fatally damage the prosecution case.

In this regard, a reference may be made to the following lines of para 31 of the judgment of the Hon'ble Supreme Court in ***Sardar Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272 (para 31)***

31.“..... With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. ....”

In ***State of U.P. v. Jagdeo, (2003) 1 SCC 456: AIR 2003 SC 660***, it was held as follows in para 8: -

**8.** Coming to the aspect of the investigation being allegedly faulty, we would like to say that we do not agree with the view taken by the High Court. We would rather like to say that assuming the investigation was faulty, for that reason alone the accused persons cannot be let off or acquitted. For the fault of the prosecution, the perpetrators of such a ghastly crime cannot be allowed to go scot-free. All the accused persons were armed with deadly weapons and they attacked the members of the victims' family who were totally unarmed and

were sleeping at night in the open. The High Court has expressed a doubt about the FIR being lodged at the time alleged by the prosecution and the manner in which it is so stated by the prosecution. The question however is: is it sufficient to acquit all the persons? The trial court had discussed all the elements leading to the brutal murder in this case and found them against the accused persons. Unfortunately, the High Court remained on the periphery and never attempted to grapple with the substance of the evidence on record. This peripheral approach of the High Court led to the impugned judgment of acquittal being passed. In the presence of such a strong evidence on record implicating the accused persons, things like alleged improper recording of time of lodging of FIR are not sufficient to dislodge the verdict of convictions passed by the Sessions Court. In our considered view the evidence of the eyewitnesses in the present case completely proves the prosecution case. The doubt thrown by the High Court on the presence of the eyewitnesses at the time of occurrence is totally unacceptable. The impugned judgment of the High Court whereby all the accused persons have been acquitted is hereby set aside. These appeals are allowed and the judgment of the Sessions Court is hereby restored. The accused persons shall be taken into custody to serve the remaining sentences imposed on each of them by the Sessions Court.

74. Thus, the circumstances which have been proved by the prosecution against the accused may be **summarised** as follows:-

- (i) The medical evidence indicates homicidal death with bullet injury having entry and exit wounds, causing puncture in the lungs – as testified to by **PW-14**.
- (ii) The testimony of **PW-6** and **PW-7** proves the recovery of empty cartridges and live cartridges from the place of occurrence which were duly seized.
- (iii) The testimony of **PW-8** and more importantly, the

supporting evidence of seizure witnesses **PW-9** and **PW-10** proves the recovery of the rifle from the jungle.

(iv) The testimony of the forensic official **PW-16** proves that the rifle was in working condition and the empty fired cartridge was fired from the said rifle and its chemical examination also indicated positive findings in the barrel swabs by way of nitride ion, lead ion and copper ion.

(v) The testimony of the investigating officer **PW-15** has also stated about recovering the rifle and live cartridges at the instance of the accused.

(vi) The testimony of **PW-3** and **PW-7** proved that they heard the gunfire at the time of the incident and also the voice of the accused stating that he would kill. And they have also cogently proved about their recognition of the voice.

(vii) The testimony of **PW-4** proves that he saw the accused going with a gun in his body in the evening in which the incident took place.

(viii) The testimony of **PW-1** proves that he heard the sound of firing at the time of the incident and upon coming out soon after, saw his brother the deceased dead.

(ix) The testimony of **PW-2** also proves about hearing the gunfire.

(x) The testimony of **PW-5** proves about hearing of a gun firing from the side of the place of occurrence and after 10-15 minutes going to the place of occurrence and seeing the dead body of the deceased.

75. Upon analyzing the aforesaid circumstances proved against the accused - we are of the considered view and opinion that all these proved circumstances constitute a complete chain leading to the only inference that - it was the accused appellant who fired the shot at the victim leading to his death by bullet injuries at the time of the incident.

76. We do not find any broken links in this chain of circumstances and we also do not find any alternative possibility of any other person being responsible for causing the death of the deceased.

77. The proved circumstances lead to no other conclusion, but the one that it was the accused appellant who caused the death of the deceased at the time of the incident.

78. Therefore, the finding of the learned trial to that extent is not found to be suffering from any error of law and facts.

79. Now, when it has been proved by the prosecution case during the trial that the accused caused the death of the victim by shooting him with a rifle and the victim dying due to bullet injuries with puncture wound in the lung - it is not possible to come to any other conclusion other than the one that by his criminal act, the accused appellant intended to cause the death of the victim.

80. Therefore, there is no infirmity in the **conviction of the appellant under section 302 IPC** and accordingly, the said conviction is **upheld and confirmed**.

81. The learned trial court also convicted and sentenced the appellant under section 27 of the Arms Act for possessing and using a 0.315 rifle without any arms license.

Section 27 of the Arms Act 1959 provides that - *whosoever uses any arms*

*or ammunition in contravention of section 5 shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.*

Section 5 of the said Act provides that - *no person shall use or obtain any firearms or any other arms of such class or description as may be prescribed or any ammunition, unless he holds in this behalf a license issued in accordance with the provisions of this act and the rules made under it.*

82. We have perused the analysis of evidence of the learned trial court with regard to the said provision of the Arms Act. Clearly, during the investigation and trial, the accused could not produce any license or authorization to use the rifle. From the prosecution evidence as narrated and discussed above, it was also proved that the death of the victim by firing was caused by the said rifle upon being used by the accused and for which no valid papers could be brought on record.

83. Therefore, we do not find any infirmity either, in the conviction of the appellant under section 27 of the Arms Act and the said conviction is **upheld and confirmed**.

84. As regards the sentence vis-à-vis section 302 of the IPC, the learned trial court has imposed the minimum sentence of life imprisonment and imposed a fine of Rs 20,000/-. The appellant has also been imposed with an imprisonment of seven years R.I. and fine of 5,000/- for the offense under section 27 of the Arms Act.

85. We are inclined to reduce the fine amounts, while keeping the prison sentences intact.

86. Thus, for his **conviction under 302 IPC**, the appellant is sentenced to

undergo **life imprisonment and pay a fine of Rs 1,000/-** {*In default, undergo S.I. for one month*}.

87. Similarly, for his **conviction under section 27 Arms Act**, he is sentenced to undergo **7 (seven) years rigorous imprisonment and imposed with a fine of Rs 1,000/-**{*In default, undergo S.I. for one month*}. Both the sentences shall continue to run **concurrently**.

88. The learned trial court has rightly directed cancellation of the arms license in the interest of public safety and for forfeiture of the seized rifle.

89. Thus, the instant **criminal appeal stands dismissed and disposed of** on the aforesaid terms.

**JUDGE**

**JUDGE**

**Comparing Assistant**