

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.203 of 2013****Reserved on 16.01.2018****Pronounced on 31.01.2018**

(Arising out of judgment/order dated 18.02.2013 in Sessions Trial No.227/2010 of the learned 4th Additional Sessions Judge, Raipur, District Raipur)

Sheikh Rahisuddin, s/o Rafiuddin, aged about 25 years, R/o Kamhariya, Motha, District Hamirpur (U.P.) presently R/o House of Mr. Gupta, Deendayal Upadhyay Nagar, Gudhiyari, Raipur, District Raipur (C.G.) **---- Appellant**

Versus

State Of Chhattisgarh, through Districtt Magistrate, Raipur, Distt. - Raipur (CG) **---- Respondent**

For Appellant	:	Shri Pushpendra Kumar Patel, Advocate
For Respondent/State	:	Shri Rahul Tamaskar, Panel Lawyer

**Hon'ble Shri Pritinker Diwaker &
Hon'ble Shri Sanjay Agrawal, JJ**

CAV Judgment / Order**Per Sanjay Agrawal, J.**

- This appeal has been preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973, against the judgment dated 18.02.2013 passed by the learned 4th Additional Sessions Judge, Raipur in Sessions Trial No. 227/2010 whereby he has been convicted and sentenced as under:

Conviction	Sentence
Under Section 120-B of the Indian Penal Code (for short 'the IPC')	Rigorous imprisonment for 3 years with fine of Rs.100/- and, in default of payment of fine amount, further simple Imprisonment for 1 month.
Under Section 302/34 of IPC	Life imprisonment and fine amount of Rs.500/- and, in default of fine amount, further

	Simple Imprisonment for 1 month.
Under Section 201 of IPC	Rigorous Imprisonment for 3 years and fine amount of Rs.100/- and, in default of fine amount, further Simple Imprisonment for 1 month.
Under Section 25 (a) of the Arms Act, 1959	Rigorous Imprisonment for 3 years and fine amount of Rs.100/- and, in default of fine amount, further Simple Imprisonment for 1 month.
Under Section 27 of the Arms Act, 1959	Rigorous Imprisonment for 7 years and fine amount of Rs.100/- and, in default of fine amount, further Simple Imprisonment for 1 month.

2. Briefly stated, the case of prosecution is that on 25.12.2009 at about 11:00 am, two persons came to the shop of one Rajendra Ahuja, situated at Pandri Market, Raipur and proceeded towards first floor where the deceased Amar Ahuja used to run his Office along with his brother-in-law Manish Lutharia. At that relevant time, both Amar Ahuja and Manish Lutharia were present in the Office and after few minutes, Rajendra Ahuja, who was present in the first floor, heard some noise like fire-crack and saw those two persons coming out from his shop. Immediately upon hearing the noise as such, he went towards the first floor and found both Amar Ahuja and Manish Lutharia lying in injured condition due to the gun shot. Further prosecution story is that the appellant Sheikh Rahisuddin was one among those persons, who went to the first floor and shot them to death.
3. Based upon the aforesaid incident, Dehati Nalishi (Ex.P.6) was lodged by the deceased Amar Ahuja's brother Rajendra Ahuja (P.W.1) on 25.12.2009 against unknown persons and based upon which, the

first information report (Ex.P.43) was registered. Pursuant to the said information, the matter has been investigated, "Test Identification Parade" (TIP) (Ex.P.4) was carried out and on the basis of appellant's memorandum (Ex.P.20), as many as six articles were recovered from him vide seizure memo dated 22.07.2010 (Ex.P.21). After investigating the matter, offence punishable under Sections 120-B, 302, in alternative, Section 302/34, 201 of IPC and under Sections 25 (a) and 27 of the Arms Act, 1959 has been registered by the concerned Police Station, Devendra Nagar, Raipur against unknown persons while submitting its final report before the Judicial Magistrate First Class, Raipur. The matter was thereafter committed to the District and Sessions Judge, Raipur.

4. After finding the prima facie materials available on record, charges under Section 120-B, 302 and in alternative Section 302/34, 201 of IPC and under Sections 25 (a) and 27 of the said Arms Act have been framed against the appellant on 15.11.2010.
5. The appellant pleaded not guilty in connection with the aforesaid charges, as framed, and claimed to be tried.
6. In order to prove the guilt of the appellant, the prosecution has examined as many as 32 witnesses, while none was examined by the appellant in his defence.
7. After considering the evidence led by the prosecution, the trial Court, vide its impugned judgment, has convicted the appellant and sentenced him as aforesaid.
8. Being aggrieved, the appellant has preferred this appeal. Shri Pushpendra Kumar Patel, learned counsel for the appellant submits

that the judgment under appeal as passed by the trial Court is perverse and illegal, inasmuch as, it did not appreciate the evidence in its proper perspective. He submits that neither the alleged "Test Identification Parade" (Ex.P.4) has been proved by its witness Rajendra Ahuja (P.W.1) nor the witnesses of seizure memo (Ex.P.21) have proved the same and in absence of its proof, the trial Court has committed an illegality in convicting the appellant as such. He, therefore, submits that the judgment under appeal deserves to be set aside.

9. On the other hand, Shri Rahul Tamaskar, learned Panel Lawyer has supported the judgment impugned by submitting, inter alia, that it has been passed upon due and proper appreciation of the evidence, and therefore, does not require to be interfered.
10. We have heard learned counsel for the parties and perused the entire record carefully.
11. Rajendra Kumar Ahuja (P.W.1) is the brother of deceased Amar Ahuja, who runs a cloth shop at Pandri Cloth Market, Raipur, has stated that they are five brothers in total and Amar Ahuja (deceased) used to sit in his office at the first floor of the said market along with his another brother Suresh and one Manish Lutharia. He has stated that when he was present in his shop, Manish Lutharia came at about 10:00 am while his brother Amar Ahuja came at about 10:30 am and both were present in their office. He has further stated that at about 11:00 am, two persons came, one of them was carrying a bag and both went to the first floor. After sometime, he heard some noise and since it was the day of Christmas Festival, therefore, he thought that it was a sound of fire-crack. He has stated further that he saw the

two boys, who went towards first floor, going out from the shop. This witness, thereafter went to the first floor and found both the deceased persons lying in injured condition. The deceased Amar Ahuja was found in sitting condition on his chair and blood was oozing from his head while the deceased Manish Lutharia was lying on the floor and there was injury on his head. He has put forth further that immediately thereafter he rushed to his brother Ashok Ahuja and informed him that two persons had come. He has further deposed that according to his information, Dehati Nalishi (Ex.P.6) was recorded at his home.

12. The aforesaid witness has stated further in his evidence that "Test Identification Parade" (Ex.P.4) was carried out on 27.07.2010 at Tahsil Office, Raipur, where he has identified the accused Sheikh Rahisuddin. In his cross-examination, this witness has, however, stated that he did not see both the boys carefully as he was performing 'Pooja' at that particular time. He has further stated that prior to conduction of "Test Identification Parade", the accused Sheikh Rahisuddin has admitted his guilt in the Police Station and based upon his admission, he has identified him. He has also stated at para 19 of his statement that he could not have identified the appellant, if he would not have been shown to him in Police Station.
13. A close scrutiny of his aforesaid testimony regarding test identification of the accused Sheikh Rahisuddin, the alleged "Test Identification Parade" (Ex.P.4), based upon which, the conviction of the appellant has been made, cannot be upheld as the entire identification parade vitiates, in view of his aforesaid admission as visualised, particularly, from para 19 of his testimony.

14. Ashok Ahuja (P.W.2) is also the brother of the deceased Amar Ahuja and has deposed in the same manner as narrated by Rajendra Ahuja (P.W.1). Jagdish Ahuja (P.W.3) is the son of Ashok Ahuja (P.W.1) has stated that he has just heard the noise and thus this witness has not supported the prosecution story. Shivam Kesharwani (P.W.4) is the landlord of the appellant Sheikh Rahisuddin and has turned hostile. His mother Smt. Uma Kesharwani examined as P.W.5 has also turned hostile and not supported the prosecution story.
15. Naresh Thakur (P.W.6) is a Patwari, who has prepared the spot map (Nazri Naksha) vide Ex.P.7. Shahnawaj Khan (P.W.7) is the witness of seizure memo (Ex.P.13), by which, bullet and three small pieces of iron particles were recovered from the brain of deceased Manish Lutharia. Om Prakash Chhabdia (P.W.8) is a formal witness and Anil Asrani (P.W.9) is the witness of seizure memo (Ex.P.1), by which, Nokia Mobile phone was recovered from the deceased Manish Lutharia. Thus, these witnesses are also formal in nature and have not supported the prosecution case.
16. Ishwar Das Jagwani (P.W.10) is a shopkeeper and has just heard the noise on the said date. Ramesh Modi is a witness to the seizure memo (Ex.P.2) & (Ex.P.19), whereby a sum of Rs.65,00,000/- (sixty five lakhs only) was recovered from deceased's brother Rajendra Kumar Ahuja.
17. Sudhakar Naidu (P.W.12) and Nand Kishore (P.W.13) are the witnesses to the seizure memo (Ex.P.21), by which, as many as six articles were recovered from the appellant Sheikh Rahisuddin. These witnesses have, however, turned hostile and not supported the prosecution case and denied very specifically that the alleged articles

were recovered from the appellant Sheikh Rahisuddin in their presence.

18. Mohd. Asif (P.W.14) is an auto driver and has turned hostile. Thus, he has not supported the prosecution story in any manner. Likewise, Sanjay Raksel (P.W.15), witness of the seizure memo (Ex.P.25) to (Ex.P.27), has also turned hostile. Ashwini Chandel (P.W.16) is also a formal witness.
19. Dr. Shiv Narayan Manjhi (P.W.18), who has conducted the post-mortem over the body of deceased Amar Ahuja and Manish Lutharia, has submitted his report vide Ex.P.35 and Ex.P.36 and opined about the cause of death as under:

Ex.P.35 (PM report of Amar Ahuja)

- (1) Death was due to haemorrhage & shock as a result of firearm injury of head.
- (2) Duration of injuries are within 12 hours prior to death.
- (3) Duration of death is within 24 hours prior to post-mortem examination.
- (4) Death was homicidal in nature.

Ex.P.36 (PM report of Manish Lutharia)

- (1) Death was due to cardio-respiratory failure as a result of firearm injury over head and their complications.
- (2) Duration of injuries are within 3 to 7 days prior to death.
- (3) Duration of death is within 24 hours prior to post-mortem examination.
- (4) Death was homicidal in nature.

20. The other prosecution witnesses are the formal witnesses and have not supported the prosecution story.
21. After considering the aforesaid evidence, the trial Court has convicted

the appellant by placing its reliance upon the "Test Identification Parade" (Ex.P.4). Admittedly, there is no eye witness in this case and the conviction has been made on the basis of circumstantial evidence.

22. The said "Test Identification Parade" (Ex.P.4) was carried out on 27.07.2010 at Tahsil Office, Raipur, in presence of the deceased Amar Ahuja's brother, namely, Rajendra Kumar Ahuja (P.W.1). In order to ascertain the authenticity of the said "Test Identification Parade", we have examined the evidence of this attesting witness. This attesting witness in his cross-examination has stated that he did not see both the boys carefully as he was performing 'Pooja' at that particular time. He has stated further that the accused Sheikh Rahisuddin has admitted his guilt prior to the initiation of the said identification parade in the Police Station and based upon his admission, he has identified him. Not only this, he has stated categorically at para 19 that he could not have identified the appellant, if he would not have been shown to him in the Police Station. Meaning thereby, this witness, who is the real brother of the deceased Amar Ahuja, has not seen the accused at the time of commission of alleged incident and has utterly failed to identify him.
23. Ex.P.65 is the certificate issued by the finger print expert on 07.08.2010. It is true that by virtue of said report, the left finger of accused Sheikh Rahisuddin was found tallied with the finger print found on the spot, but, merely on the basis of this report, particularly, when it was not corroborated by any evidence like 'Test Identification Parade" (Ex.P.4), as observed herein above, the conviction of the appellant based upon such a weak piece of evidence cannot be

relied upon.

24. Besides, the ballistic report (Ex.P.66), by which, it was found that the live cartridges (bullets) recovered from accused Sheikh Rahisuddin on his date of arrest on 22.07.2010 can be used from his seized weapon, i.e., country made pistol (Desi Katta) and, by virtue of ballistic report (Ex.P.68), the seized cartridges (bullets) recovered from the spot on 25.12.2009 and the bullet, which was recovered from the brain of the deceased Manish Lutharia on 28.12.2009 vide Ex.P.34, were used from some improvised weapon. However, a mere comparison of both these reports (Ex.P.66 & Ex.P.68), it is difficult to hold that the alleged cartridges (bullets) recovered from the spot on 25.12.2009 could be used or fired from the country made pistol (Desi Katta) seized from the accused Sheikh Rahisuddin, so as to hold him guilty in connection with the alleged crime occurred on 25.12.2009.
25. There is no doubt that conviction can be based solely on the circumstantial evidence, but, it should be tested on the touchstone of the law relating to circumstantial evidence. The Supreme Court in the matter of **C. Chenga Reddy and others vs. State of A.P.**, reported in (1996) 10 SCC 193 has observed at para 21 as under:-

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence.”

26. The Supreme Court in the matter of **Shivu and another** vs. **Registrar General, High Court of Karnataka and another**, reported in **(2007) 4 SCC 713**, after referring to a catena of decisions based upon circumstantial evidence, has observed at para 12 as under:-

“12. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan*, (1977) 2 SCC 99, *Eradu v. State of Hyderabad*, AIR 1956 SC 316, *Earabhadrapa v. State of Karnataka*, (1983) 2 SCC 330, *State of U.P. v. Sukhbasi*, 1985 Supp SCC 79, *Balwinder Singh v. State of Punjab*, (1987) 1 SCC 1, and *Ashok Kumar Chatterjee v. State of M.P.*, 1989 Supp (1) SCC 560). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab*, AIR 1954 SC 621 it was laid down that where the case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.”

27. Yet, in another decision in the matter of **Padala Veera Reddy** vs. **State of Andhra Pradesh and others** reported in **1989 Supp (2) SCC 706**, it was laid down by the Supreme Court that in a case of circumstantial evidence, such evidence must satisfy the following tests while observing at para 10:-

10. xxxxx xxxxx xxxxx xxxxx xxxxx

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other

hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir v. State of Maharashtra*, (1982) 2 SCC 351).”

28. Reverting back to the case in hand, it emerges from the evidence available on record that the “Test Identification Parade” is the only circumstantial evidence in order to hold the appellant guilty in connection with the framed offences punishable under the IPC. However, the said identification parade, as observed herein above, cannot be held to be sustainable in the eye of law and based upon such a weak circumstantial evidence and that by applying the aforesaid principles laid down in the above referred cases, it cannot be taken into consideration for holding the appellant guilty in connection with the offences as framed under the IPC. Consequently, the findings of the trial Court in this regard deserve to be and are hereby set aside and the appellant is entitled to be acquitted with regard to the offences punishable under Section 120-B, 302/34 and 201 of IPC.
29. We shall now consider the issues, that arise for determination regarding the involvement of the appellant under the said Arms Act, as framed against him
30. The alleged country made pistol (Desi Katta), the prohibited arm, was seized from the appellant Sheikh Rahisuddin vide seizure memo (Ex.P.21) and in order to ascertain the fact as to whether he has committed any offence, as charged and framed against him under Section 25 (a) and Section 27 of the said Arms Act, it is necessary to examine the relevant provisions as enumerated under Sections 5, 7, 25 and 27 of the said Arms Act, which read as under:-

“5. Licence for manufacture, sale, etc., of arms and ammunition – (1) No person shall—

(a) [use, manufacture], sell, transfer, convert, repair, test or prove, or

(b) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof,

any firearm or any other arms of such class or description as may be prescribed or any ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in sub-section (1), a person may, without holding a licence in this behalf sell or transfer any arms or ammunition which he lawfully possesses for his own private use to another person who is entitled by virtue of this Act, or any other law for the time being in force to have, or is not prohibited by this Act or such other law from having in his possession such arms or ammunition :

Provided that no firearm or ammunition in respect of which a licence is required under section 3 and no arms in respect of which a license is required under section 4 shall be sold or transferred by any person unless –

(a) he has informed in writing the district magistrate having jurisdiction or the officer in charge of the nearest police station of his intention to sell or transfer such firearms, ammunition or other arms and the name and address of the person to whom he intends to sell or transfer such firearms, ammunition or the other arms, and

(b) a period of not less than forty-five days has expired after the giving of such information.]

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7. Prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition.----- No person shall –

(a) acquire, have in his possession or carry ; or

(b) [use, manufacture], sell, transfer, convert, repair, test or prove
; or

(c) expose or offer for sale or transfer, or have in his possession for sale, transfer, conversion, repair, test or proof,

any prohibited arms or prohibited ammunition unless he has been specially authorized by the Central Government in this behalf.

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25. Punishment for certain offences- (1) Whoever-

(a) 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

(b) shortens the barrel of a firearm or converts an imitation firearm into a firearm in contravention of section 6; or

(c) x x x

(d) bring into, or takes out of, India, any arms or ammunition of any class or description in contravention of section 11,

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.

[(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.

[(1AA) 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 prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.]

[(1AAA)] Whoever has in contravention of a notification issued under section 24A in his possession or in contravention of a notification issued under section 24B carries or otherwise has in his possession, any arms or ammunition shall be punishable with imprisonment for a term which shall not be less than [three years, but which may extend to seven years] shall also be liable to fine.

(1B) Whoever-

(a) acquires, has in his possession or carries any firearm or ammunition in contravention of section 3, or

(b) 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

(c) 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

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

(e) 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

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

(g) transports any arms or ammunition in contravention of section 12; or

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

(i) 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]

(IC) Notwithstanding anything contained in sub-section (1B), whoever commits an offence punishable under that sub-section in any disturbed area 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.

Explanation—For the purposes of this sub-section, "disturbed area" means any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order, and includes any areas specified by notification

(3) Whoever sells or transfers any firearm, ammunition or other arms—

(ii) before the expiration of the period of forty-five days from the date of giving such information to such district magistrate or the officer in charge of the police station,

in contravention of the provisions of clause (a) or clause (b) of the proviso to sub-section (2) of section 5, shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both].

(4) Whoever fails to deliver-up a licence when so required by the licensing authority under sub-section (1) of section 17 for the purpose of varying the conditions specified in the licence or fails to surrender a licence to the appropriate authority under sub-section (10) of that section on its suspension or revocation shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both.

(5) Whoever, when required under section 19 to give his name and address, refuses to give such name and address or gives a name or address which subsequently transpires to be false shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to two hundred rupees, or with both.

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27. Punishment for using arms, etc.- (1) Whoever 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.

(2) Whoever uses 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 seven years but which may extend to imprisonment for life and shall also be liable to fine.

31. We are not referring to sub-section (3) of the aforesaid provision as the same has already been declared ultra vires by the Hon'ble Supreme Court vide its decision rendered in the matter of ***State of Punjab vs. Dalbir Singh***, reported in **(2012) 3 SCC 346 : AIR 2012 SC 1040**.
32. A close examination of the prosecution evidence in this aspect would, however, show that the alleged country made pistol (Desi Katta) was recovered from the appellant at his behest, as evidenced by the seizure memo (Ex.P.21) duly established by the Investigating Officer (P.W.32), in contravention of sub-clause (a) of Section 7 of the said Arms Act, as he was not authorised to have the possession of the alleged weapon in absence of any authorisation given to him by the Central Government. Although the alleged prohibited arm was found in his possession as such, but we do not find any evidence on record that he has possessed the same for its sale so as to hold him guilty under Section 25 (1) (a) of the said Arms Act, as held by the trial Court. Nonetheless, the appellant was found in possession of the said prohibited arm unauthorisedly in specific violation of sub-clause (a) of Section 7 of the said Arms Act, therefore, he is liable to be convicted under Section 25 (1A) of the said Arms Act, instead of Section 25 (a), as held by the trial Court.
33. In order to hold the appellant guilty under Section 27 of the said Arms Act, it is necessary to be examined that whether the alleged prohibited seized weapon, i.e., country made pistol (Desi Katta) was used in contravention of sub-section (2) of Section 27 of the said Arms Act. We have examined the evidence of the prosecution adduced in this regard and found that the alleged prohibited weapon

was not used by the appellant in contravention of the said provisions as specified therein so as to hold him guilty for the offence punishable under Section 27 of the said Arms Act. We, therefore, set aside the findings of the trial Court in this regard and acquit the appellant of the charge under Section 27 of the said Arms Act.

34. Consequently, the appeal is allowed in part and the conviction of the appellant under Sections 120-B, 302/34, 201 of IPC and under Sections 25 (a) and 27 of the said Arms Act, and the sentence awarded thereunder vide judgment dated 18.02.2013 passed in Sessions Trial No. 227/2010 is set aside. The appellant is hereby acquitted of the aforesaid charges and, instead the appellant is convicted only under Section 25 (1A) of the Arms Act and is sentenced to undergo RI for 7 years with fine of Rs.100/- and, in default to pay fine amount, he has to suffer additional RI for six months.
35. It is informed that the appellant is in jail since 22.07.2010 and has thus completed more than period of sentence awarded herein above. Therefore, he shall be set at liberty forthwith, if not required in any other case.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE