

**IN THE SPECIAL COURT OF ND&PS ACT  
CRL.TR. 2359/2011**

Ref: SR No.192/11

Spl. Narcotic PS C/no. 35/11, u/s 21(b) of ND&PS Act 1985

State of Mizoram	.....	Complainant.
	Vs.	
L.K.Paua (54) S/o Pumnanga Zokhawthar	.....	Accused
Date of Judgment and Order	.....	11.7.2014
For the State	.....	Lalchhandama, Addl.PP Lalrinpuui, APP.
For the accused	.....	Lalremtluanga, Advocate.

***BEFORE*  
LUCY LALRINTHARI  
JUDGE  
JUDGMENT AND ORDER**

1. The prosecution of the story of the case in brief is that on 22.10.2011 at 8:30am SI Rita Lalrinmawii of Spl. Narco PS submitted written report to the effect that on 22.10.2011 at 7:30am in pursuance of the information Spl. Narco PS staff and 26th AR performed confidential duty at Zarkawt and detected 40 canes (20 grams) of suspected heroin which were kept inside a bag of the accused L.K.Paua (54) S/o Pumnanga of Zokhawthar. The value of the said heroin was estimated at Rs. 1,60,000/-. Hence, Spl. Narco PS c/no. 35/11 dt.22.10.11 u/a 21(b) of ND&PS Act was registered and duly investigated into.

During investigation, information is received from source that some person was intending to sell heroin at Zarkawt area. The person was coming from Zokhawthar by Zokhawthar Night bus. The suspected person was detained and ground of belief was prepared and read over to him. Then body search was conducted and found 40 canes (20 grams) of heroin inside his hand bag, which was wrapped in white polythene kept inside a doll. Seizure of the same was done at the spot, and drawal of sample of exhibit and weighing was also done in presence of reliable civilian witnesses. The illegal possessor L.K.Paua was arrested, report of seizure and arrest were also submitted to the O/C, Spl. Narcotic PS as required by Sec. 57 of ND&PS Act. Witnesses' statements were recorded. The accused was forwarded to CJM, Aizawl court with a prayer to remand him into judicial custody for completion of his investigation. Sample of the exhibit was also sent to Jt. Director, FSL for laboratory examination and the report indicated that it was found to be heroin of 69.02 % purity. Hence, prima facie case was found well established against the accused L.K.Paua(54) S/o Pumnanga of Zokhawthar and charge sheet was submitted accordingly.

2. As per procedure u/s 207/208 of Cr.P.C., all police reports and documents were furnished to the accused L.K.Pauva. As the accused could not engage lawyer on his own expense, advocate Lalremtluanga was appointed to defend the accused at the expense of the state u/s 304 of Cr.P.C.

3. After hearing the Addl. Public Prosecutor, and the Id. Defence counsel charge u/s 21(b) of ND & PS Act 1985 was framed, read over and explained to the accused in his own language to which the accused pleaded guilty to the charge stating that he carry the seized article as he was promised Rs 2000/- for carrying charge and he was instructed to hand over the seized article to Zovi, but he was arrested and the said heroin was seized from his hand before he delivered to Zovi. However, as the charge was serious trial proceeds in spite of the fact that the accused pleaded guilty to the charge.

#### EVIDENCES ADDUCED.

4. The prosecution examined the following witnesses to bring home the charged against the accused.

Pw.1 Rita Lalrinmawii, SI of Police identified the accused and stated that he knew the accused because he seized the exhibit M-1 from his possession on 22<sup>nd</sup> October 2011 in presence of witnesses mentioned in exhibit P-4. Acting on the tip of from source, she and party rushed towards the PO on 22.10.2011 and having sufficient reason to believe that the accused had violated ND&PS Act she put down in writing grounds of belief as there was no chance for obtaining authorization from competent authority. She and party secretly followed the accused person and on his entering one tea stall belonging to non-Mizo person they entered the said tea stall. Even before he entered the said tea stall the accused had a small hand bag with him made in cotton. As soon as they entered the tea stall they gave introduction for his information and they opened the said bag belonging to accused resulting recovery of one doll made of cotton, and inside the said doll 10 hair dryer container wrapped by a paper further fasten by cello tape in four bundle were found. At that time two civilian witnesses and some other persons were also in the said tea stall. The said container were opened on the spot in the presence of the accused persons, two civilian witnesses and some other persons and they found white powder suspected to be heroin. The weight of the said white powder was taken on the spot in the presence of the accused person, witnesses, and the weight of the said article was 20 grams. She took sample from the said white powder weighing about 0.07254 grams. It was then packed and sealed in the presence of the accused, civilian witnesses and some other persons. In connection with this seizure, weighment, taking of sample, packing and sealing were done by her on the spot in the presence of accused, civilian witnesses and some other customer of the said tea stall. She seized the said contraband article in the presence of civilian witnesses who were available on the spot and she informed the accused person reason of the said seizure and at the same time she arrested the accused for possession of the said contraband article without permit as the accused has no permit for possession of such contraband article. After seizure and arrest were effected she made exhibit P-2 and exhibit P-3 on the spot in the presence of the accused and the said two witnesses. She then brought the accused, S/A, sample and relevant documents to O/C, Narco. PS and she submitted report of seizure and arrest with a request for registration of the case for the accused person. She obtained the signatures of the two seizure witnesses and the accused in the index attached in exbt.M-1. Exbt.P-1 was grounds of belief recorded by her and exbt.P-1(a) and (b) were her signatures. Exbt.P-2 and P-3 were index A in respect of two seizure witnesses namely Lalawmpuia and Lalchhanhima. Exbt.P-4 was seizure memo in respect of seizure of 20 grams of heroin, exbt.P-4(a) was her signature. Exbt.P-5 was arrest memo of accused person, exbt.P-5(a) was her signature. Exbt.P-6 was report of seizure and arrest and exbt.P-6(a) was her signature. Exbt.M-1 was the SA and exbt.M-1(a) and (b) were her signatures.

In her cross examination she stated that it is a fact that recovery was made from the bag being carried by the accused. It is also a fact that exbt.M-1 was hidden inside the doll (baby toys) that was kept inside the said bag. But she did not remember the actual color of the said bag. It is not a fact that the said bag and baby toys were not seized by her at the same time. It is not a fact that they received an information while she was in the office as usual. It is not a fact that she did not enter the said information in the GDE. It is a fact that the said GDE was not included by the case i/o when he filed charge sheet

and as such she did not find the same in the body of the case. It is not a fact that exbt.M-1 was not the one which she seized from the possession of the accused. It is a fact that the statement of the accused was recorded by the case i/o. It is a fact that the statement of the accused was recorded by the case i/o. It is a fact that she asked the accused as to how he possessed the seized article verbally. It is not a fact that she did not know the actual weight of the sample she have drawn.

5. Pw no. 2 Lalawmpuia of Zarkawt identified the accused and stated that on 22.10.2011 Spl. Narcotic PS staff recovered 40 canes of suspected heroin which were kept inside baby toys from the possession of accused LK Pauva in the tea stall near Samsung servicing center at Zarkawt. The said police invited him and Lalchhanhima as they were leaders of YMA Zarkawt branch to witness their seizure and they proceeded towards the PO. When they reached the PO they saw baby toys which the accused hide the illicit articles and yellowish powder as the police already taken out from the baby toys inside the tea stall. The police drew sample from the seized articles and took weight and it was 20 grams of suspected heroin in his presence. The police packed and sealed the said seized articles and its sample. He was stood as one of the witnesses and he put his signature on the body of seizure memo. Lalchhanhima also stood as one of the witnesses and he also put his signature on the body of seizure memo. However, he passed away on 19.3.2013. Exbt.P-4 was the seizure memo, exbt.P-4(b) was his signature. Exbt.M-1 was the seized article.

In his cross examination he stated that it is a fact that someone in their locality informed him through telephone that police had seized contraband article inside one tea stall near Samsung servicing center Zarkawt and being YMA leader he rushed to the said PO. It is a fact that he arrived at the PO after Lalchhanhima had arrived. When he arrived at the PO the said contraband article was already taken out from the baby toy. When he arrived at the PO he saw white powder suspected to be heroin, baby toy, 40 cans and one polythene but he did not remember the color of the said polythene. It is a fact that when he arrived at the PO the said contraband article was already recovered. He cannot say for sure as to whether weight was done first or sample was drawn first. But when weight was to be taken the said contraband article were taken out from all the cans. It is not a fact that neither he nor the accused or Late Lalchhanhima was not present at the time when sample was drawn, weight was taken, packing and sealing. It is not a fact that his statement was not recorded at the PO at the same time. It is a fact that he was not recovery witness as he was not present at the time when recovery was affected by the police. It is a fact that he neither put his signature on the sample nor on the seized article.

6. Pw no. 4 Lalsanga, SI of Police, Spl. Narcotic PS identified the accused and stated that on 22.10.11 SI Rita Lalrinmawii lodged an FIR to effect that on the same day at around 7:30am as per information received by them and joint confidential duty with 26th AR at around Zarkawt detected 40 canes (20 grams) of suspected heroin from the possession of the accused and the case was registered as Spl. Narcotic PS c/no. 35/11 u/s 21(b) of ND&PS Act. The case was endorsed to him for further investigation. During his investigation, he examined the seizing officer and the accused person and he recorded their respective statements. He also prepared test memo for examination of sample of the seized article. Thereafter, he received FSL report from Dy. Director, FSL Mizoram Aizawl and it was found to be heroin of 69.02%. Hence, he found prima facie u/s 21(b) of ND&PS Act against the accused person and he submitted charge sheet accordingly. Exbt.P-8 was charge sheet submitted by him and exbt.P-8(a) was his signature.

In his cross examination he stated that before he forwarded the sample to FSL, he did not send the same to the court along with the main seized article for authentication by the Magistrate. It is a fact that Constable Lalnghinglova brought the sample to FSL but he did not array him as one of the witnesses. It is not a fact that he did not record the statement of the accused.

7. Pw no. 5 T.Lalroipua, Deputy Director, FSL stated that on dt. 24.10.2011

they received from O/C, Spl. Narcotic PS Aizawl in connection with Narco PS c/no. 35/2011 dated 22.10.2011 containing one exhibit suspected to be heroin for scientific examination. The said exhibit, C(A) - 90 was carefully analyzed by qualitative and quantitative methods and was found to be heroin of 69.02% and the report was sent on 4.11.2011 to the forwarding authority. Exbt.P-7 was their examination report, exbt.P-7 (a) was his signature.

In his cross examination he stated that it is a fact that the exhibit was found to contain brown powder weighing about 0.07254 grams. It is also a fact that he has no idea from whose possession the said SA was seized by the Police. What he knows of the SA was that he had examined the said SA and found to be heroin of 69.02%. The examination of the said SA was done by color tests and Chromatographic techniques (TLC method and HPLC method).

8. After the prosecution evidence was closed, the accused was examined u/s 313 Cr.P.C. and was asked the following question:

Q1. The evidence against you is that the police recovered 20 grams of heroin from the bag you carried. What do you have to say?

Ans: One Burmese national asked me to carry his bag, so that he would buy me tea. So we went inside a tea stall and ordered for tea. The bag does not belong to me. I was cheated to carry in lieu of free cup of tea. I do not know what is inside the bag.

Q2. The evidence against you is that you have received the bag containing heroin from Zokhawthar sumo travels. What do you say?

Ans: Yes, I received the bag containing seized article from sumo travels. One Thangkawlha asked me to get delivery of the bag so that the owner would get from me.

Q3. Do you want to adduce defence evidence?

Ans: No.

Q4. Do you have any other thing to say?

Ans: I am suffering from lung TB from 2000 onwards and I could not work any more. The seized article does not belong to me. I was only requested to receive it from the Sumo travel. It belongs to Thangkawlha, Myanmar.

#### **DECISIONS AND REASONS THEREOF:**

9. The accused was given a fair opportunity to explain all the incriminating evidence against him at the time of his examination under section 313 of Cr.P.C.

10. The Id. Addl. PP Mr. Lalchhandama in his argument submitted that the prosecution witnesses have clearly proved the fact that the seized heroine was seized from the bags carried by the accused L.K.Pauva inside one tea stall at Zarkawt area. The investigating agency fully followed the procedure under ND & PS Act 1985. The accused L.K. Pauva also admitted his guilt at the time of framing of charge by saying he carried the seized article as he was promised Rs 2000/- and the seized article was seized from his bag. At the time of his examination u/s 313 of Cr.P.C the accused admitted that he take delivery of the seized article from a sumo (maxi cab) service.

In his submission complainant PW 1.Rita Lalrinmawii S.I. of Police clearly stated that she seized 20grams of suspected Heroin from the hand-bag carried by accused L.K.Pauva. She also stated that she complied with all formalities as laid down in ND & PS Act 1985 at the time of seizure and arrest, she also took weightment of the seized article at the spot. She drew sample of seizure, packs and sealed in the presence of civilian witnesses which is not shaken by cross-examination.

Likewise the statement of PW 2, 4 and five were not shaken by the

cross-examination. The prosecution is able to prove the guilt of the accused beyond doubt, in other words, the accused could not prove his innocence. Hence, he prayed for conviction and sentence of the accused as per law.

11. The Id. Counsel for the accused failed to submit written argument within the time fixed for submission of argument.

12. As rightly submitted by the Id. Addl.P.P, 20 grams of suspected heroin was seized by the Pw 1 S.I Rita Lalrimawii and her party. At the time of arrest and seizure the mandatory provision of ND & PS are followed. The cross-examination of PW 1 did not shake her evidence. The sample drawn from the seized article was sent to FSL, which proved that the seized article was heroin. Pw 2 Shri Lalawmpuia, civilian witness testifies in the court that he had witnessed the seizure and arrest. PW 5 T. Lalropui expert from FSL, who was examined in the court stated that the purity of heroin was 69.02%. PW 4 Inspector Lalsanga who is the case I/O. PW 3 another civilian witnessed unfortunately died before he was examined in the court. PW 4 S.I of Police is Shri Lalsanga case I/O. His statement is not shaken in cross-examination.

13. The accused L.K.Pauva, at the time of consideration of charge admitted that he carry the seized article for a reward of Rs 2000/-. At the time of his examination under section 313 of Cr.P.C, he admitted that he took delivery of the seized article from Sumo travels and it was seized while he carried the seized article. The accused was asked whether he wanted to adduce defence evidence, but he replied that he did not want to adduce defence evidence. When asked if he has anything to say before the court, he did not say his innocence, but said he could no more work as he was a T.B. patient and asked for court's mercy.

14. From all the points stated above, the prosecution is able to prove the guilt of the accused L.K.Pauva, In other words, the accused L.K. Pauva could not prove his innocence as per section 54 of ND & PS Act 1985. The prosecution clearly brings home the charge u/s 21(b) of the ND & PS Act against the accused L.K. Pauva. The prosecution witnesses are trustworthy and they spoke the truth.

15. Having proved the guilt of the accused beyond reasonable doubt by the prosecution, I therefore have no hesitation to convict the accused L.K.Pauva u/s 21 (b) of the ND & PS Act 1985, and I hereby convicted him under the said section.

16. As per procedure u/s 235(2) of Cr.P.C, the accused is heard on the question of sentence. The accused stated that he had been in Judicial Custody about one and half years as UTP without bail, hence, he may kindly be sentence to imprisonment already undergone by him.

17. The Id. Addl.P.P. prayed for sentence according to law.

As per section 21(b) of the ND & PS Act, the punishment prescribed for small quantity ie, less than 5 grams is Rigorous imprisonment which may extend to 6 months or with fine which may extend to Rupees ten thousand. As per the same section (b), if the quantity is more than small quantity but less than commercial quantity i.e 250 grams, the punishment prescribed is R.I which may extend to 10 years and with a fine which may extend to one lakh rupees.

18. In the instant case, the seized article is 20 grams which is 4 times greater than small quantity, in my considered opinion, the punishment shall be correspondingly in consonance with the quantity of heroin seized from the hands of the accused. As the punishment section mentioned above stated that the small quantity shall be punish which may extend to 6 months, and the court usually given about 3 months imprisonment in small quantity, four times of which would comes to 12 months. In the instant case the accused had been in the Judicial Custody w.e.f. 22.10.2011 to 18.4.2012, which is about 6 months. He had to undergo another 6 months in addition to his imprisonment already undergone as UTP.

However, as the accused prayed before the court, he was a T.B patient, and just by looking at him, he has a very weak body and he running his 57<sup>th</sup> year, for this fact alone, the court wanted to bestow lenient view on the accused. Hence, in my considered opinion justice will be met if the accused is sentence to his imprisonment already undergone by him. Accordingly, I sentenced the accused L.K.Pauva, accordingly.

19. Sized article be destroyed immediately in presence of Addl. P.P.
20. Given under my hand and sealed of this court today the 11<sup>th</sup> day of July 2014.
21. Give copy of this order to all concerned.

Sd/- LUCY LALRINTHARI  
Judge,  
Special Court, ND&PS Act.

Memo No. \_\_\_\_\_ND&PS/ : Dated Aizawl, the 11<sup>th</sup> July, 2014.

Copy to: -

1. L.K. Paua C/o Lalremtluanga, Advocate.
2. Public Prosecutor, Aizawl.
3. Dy. SP, Prosecution, Aizawl.
4. O/C, Spl. Narcotic PS, Aizawl.
5. i/c Judicial Section.
6. i/c Malkhana Police.
7. Guard File.
8. C.R

**PESHKAR**