

**IN THE COURT OF ADDL.DISTRICT & SESSIONS JUDGE-I
AIZAWL JUDICIAL DISTRICT, AIZAWL**

*Sc No 10 /2014
Crl.Tr.No189/2013,U/S 307 IPC,
R/w 25(1-B)(a) Arms Act
Champhai P.S Case No.114/2013.*

State of Mizoram : Complainant

Vrs

Lalpiana : Accused.

BEFORE

Vanlalmawia
Addl District & Sessions Judge,
Aizawl Judicial District, Aizawl.

PRESENT

For the Opposite party : R. Lalremruata, Addl. P.P.

For the Accused : J.N.Bualteng, Advocate.

Date of hearing : 17.6.2016

Date of Order : 29.6.2016

ORDER

The prosecution story of the case in brief is that on 1st 2.8.2013 at 11:00 Am, a written report was received from H.J.Rodina S/o Vansanga (L), VCP Zote to the effect that on the night of 11.8.2013 at around 8:00 pm, one Lalpiana (35) S/o Lianhnawla of Zote Village had attempted to kill Hualthanhnuna S/o Johana of Zote Village by pointing and pulling the trigger of his muzzle loaded gun which he possessed without arms license but failed due to misfire caused by defect

percussion cap. While he tried to change percussion cap Hualthanhnuna hold him and snapped the gun. Hence, CPI-PS C/No 114/13 dt.12.8.2013, u/s 307 IPC R/W 25(1-B)(a) Arms Act was registered and duly investigated into.

During the course of investigation, the place of occurrence was visited physically,. The complainant was thoroughly and carefully examined and recorded his statement. The accused Vanlalpiana (35) S/o Lianhnawla(L) Zote Village, Champhai District was arrested and remanded into Police custody afor a period of 48 hrs. during remanded period, he was thoroughly and carefully interrogated. On interrogation, he admitted his guilt by stating that on the night of 11.8.2013 at around 8:00pm, he had attempted to kill Hualthanhnuna S/o Johana of Zote Village, Champhai District by pointing and pulling the trigger of his muzzle loaded gun possessing no License but failed due to misfire caused by defect percussion cap. He also stated that while he was trying to reload his gun, Hualthanhnuna hold him and snapped his gun. Since the accused person admitted his guilt and confessed before Police, he was formally arrested in connection with this case by preparing proper arrest memo and his statement was recorded. The weapon used by the accused one muzzle loaded gun and lead ball bullet (hand-made) was seized in presence of two reliable witnesses and their statements were recorded. The seized articles were kept at PS Malkhana vide MR/No 98/2013 and sent to Court. The victim Hualthanhnuna s/o Johana Zote Village was also examined and recorded his statement. Prosecution sanction against the accused person u/s 25(1-B)(a) Arms Act which was accorded to District Magistrate, Champhai was also obtained. All available witnesses were examined and recorded their statements.

Hence, a prima facie case u/s 307 IPC R/w 25(1-B)(a) Arms Act was found well established against the accused Vanlalpiana (35) S/o Lianhnawla (L) of Zote Village, Champhai District.

Charge u/s 307 IPC R/w 25(1-B)(a) Arms Act was read over, explained in the language known to him to which he pleaded not guilty and claims for trial. During the trial, the prosecution examined two prosecution witnesses out of six PW's, PW No 2,3, & 5 are dropped due to regular absent for more than 4 times despite issuance of summon and received, and even the victim Pw No.4 absent

for five time, on the request of his defense counsel Mr. J.N.Bualteng Advocate the two prosecution witness, one is complainant and case I/O are examined.

P.W No.1 H.J Rodina, Champhai Zote state that I know the accused Lalpiana. I am the VCP Champhai Zote.

On 11.8.2013 at around 8 pm the accused Lalpiana S/o Lianhnawla (L) R/o Champhai Zote tried to shoot the victim Hualthanhnuna S/o Johana Zote, R/o Champhai Zote with a gun (Tukuli). The accused pulled the trigger while pointing the gun towards the victim, however the bullet did not come out of the gun. As a VCP the incident was informed to me by Pu H.Remsiana. As far as I know the accused did not have a gun license in respect of the said gun, and it appears that the accused was trying to kill the victim. I then rushed to the P.O and we informed the Police Champhai about the incidence and I filed and FIR.

Exbt P-1 is FIR, P-1(a) is my signature.

Cross examination by the Defence counsel:

It is a fact that I was not present when at the time of incident.

It is a fact that I do not know from where the accused took out the said gun.

It is a fact that I do not know the gun had a bullet at the time of the incident.

It is a fact that I do not know whether the accused having a gun license or not.

It is a fact that I do not know whether the accused actually tried to kill the victim or not.

It is a fact that I was informed by H.Remsiana who is neighbour of the accused after the incident.

It is a fact that I do not believe that the present accused could kill the victim as they are friend.

It is a fact that I prepared FIR inside the house of H.Remsiana and I hand over to Police personnel.

P.W No.6 Lucy Zosangzuali, who is case I/O of the case stated that I know the accused Vanlalpiana. On 12.8.2013at 11:00am H.J.Rodina S/o Vansanga (L) VCP Zote appeared that the P.S while I was on duty and submitted a written FIR to the effect that on 11.8.2013 at around 8:00 pm one Vanlalpiana S/o Lianhnawla (L) of Zote Village attempted to kill Hualthanhnuna S/o Johana of Zote Village by pointing and pulling the trigger of his muzzle loaded gun which he possessed without arm license but failed due to misfire caused by defect percussion cap. Hence Champhai P.S Case No.114/2013 U/S 307 IPC R/W 25(1-B)(a) Arms Act was registered. During investigation P.O was visited, accused was detained and arrested, the gun muzzle loaded used by the accused with one lead ball bullet was recovered from the possession of the accused and seized in the presence of witnesses. Prosecution sanction was obtained from the District Magistrate Champhai District to investigate and prosecute the accused U/S 25(1-B)(a) Arms Act. the complainant was examined, and after examining the accused and the witnesses and the victim, prima facie u/s 307 IPC R/W 25(1-B)(a) Arms Act was found well established against the accused and filed the charge sheet.

Cross examination by the Defence counsel:

I was the Sub-Inspector of Police at the time of incident at Champhai P.S.

It is a fact that I visited the P.O on 12.8.2013.

It is a fact that I recorded the witnesses statement in their respective houses.

It is a fact that I do not see while they are fighting .

It is a fact that I am the seizing officer and arresting officer.

It is a fact that I seized the said gun found inside the house.

It is a fact that I seized one ball bullet from near the gun.

It is a fact that I do not sent to FSL whether the said gun to examined serviceable or unserviceable.

It is a fact that I have not expert opinion from the FSL.

It is a fact that I have not put my signature in the exhibit M-1 and M-2.

The accused Vanlalpiana was examined u/s 313 Cr.P.C and answer the question as follow :

Q.1. It is from the evidence that you and Hualthankhuma are resident of Zote,Champhai. What do you say ?

Ans : Yes, we are from Zote Village Champhai.

Q.2. It is from the evidence that on 11.8.2013 @ 8:00pm you carried a gun(Tukuli) with muzzle loaded and a lead bale bullet loaded. What do you say ?

Ans : Yes, I carried a gun(Tukuli) but without bullet loaded.

Q.3. It is from the evidence that on 11.8.2013 @ 8:00pm, you pointed the said gun at Hualthankhuma S/o Johana at Champhai Zote and pulled the trigger of your gun. What do you say ?

Ans : Hualthankhuma beat me, and I took my gun which was kept in the wall, and left the house before I pointed him.

Q.4. It is from the evidence that you pulled the trigger of the said bullet loaded gun in order to kill Hualthankhuma, however the gun misfired. What do you say ?

Ans : I will not kill him as he is my closed friend, and I do not pulled the trigger of the Gun.

Q.5. It is from the evidence that the gun and bullet were seized from your possession. What do you say ?

Ans: Yes, it is seized from my possession.

Q.6. it is from the evidence that you possessed, and tried to use the gun without a valid gun license. What do you say ?

Ans :I possessed the said Gun without license.

Q.7. It is from the evidence that you were arrested for trying to kill Hualthankhuma and for possession and using a gun without gun license. What do you say?

Ans : I have nothing to say over the arrest and using gun.

Since the accused Vanlalpiana and his defense counsel informed the court that he has no any defense witness, and hence the prosecution and defense counsel are informed to submit written argument if any to the court.

Mr. J.N.Bualteng, Id. counsel for the accused submitted that :

1.That the prosecution story of the case in brief is that on dated 11.8.2013 at 8:00pm the accused person attempted to kill Hualthanhnuna S/o Johana of Champhai Zote by pointing and pulling the trigger of his loaded gun which he possessed without any valid arms license but failed due to misfire caused by the effect percussion cap. Hence Champhai P.S Case No.114/2013 u/s 307 IPC R/w 25(1-B)(A) Arms Act was registered and investigated into and as such the accused was arrested and facing trial before this Hon'ble court till date.

2. That it is pertinent to mentioned that only two(2) prosecution's witnesses were examined and cross examined out of 6 proposed witnesses

wherein it appears without a doubt that none of the P/W's had actually witnessed the commission of the alleged offences and the allegation that the accused person herein had committed the offences is a concocted and after thought action. Needless to mention that the alleged victim himself failed to appeared before the court even after summons was duly issued for several times.

3. That the evidence of the P.W's and D.W's were already recorded and the relevant portion of evidence is hereunder highlight on the basis ofa the ingredients into the defense's case.

GROUND'S FOR ARGUMENT ON MERIT

4. For that the accused is innocent and falsely implicated in this instant case.

5. For the PW No.1 who lodged an FIR before the police deposed in his cross examination that he was not present at the time of the alleged incident. Moreover he also deposed that he do not know that he gun had a bullet at the time of the incident. He further deposed that he do not know that whether the accused tried to kill the alleged victim or not.

6. For that the deposition of PW No.2 who is the seizing officer and investigating office did not disclosed any material facts to convict the accused on the charge leveled against him. It is submitted here that she deposed in her cross examination revealed that. He did not send the alleged gun to any expert for examination to test that the said gun was in a usable condition or not. Moreover, her further examination revealed that she seized one ball bullet from near the gun during her investigation but not inside the gun. Hence, to convict the accused merely on this doubtful ground cannot be stand in the eye of criminal law and the charge leveled against him u/s 307 IPC is bad in law and in fact.

7. It is submitted that the alleged victim was not examined before this Hon'ble Court which created a serious doubt in the prosecution case. Moreover,

the deposition of PW No.1 clearly indicated that one H.Remsiana is the one who informed him the alleged incident. However, he was also not examined during trial of the case needless to mention that one examination of such a vital witnesses were not reflected nor explained by the prosecution during trial of the case. Moreover, careful perusal of the deposition of prosecution witnesses and their cross examination reveals that there was no statement which clearly pointed that the accused actually possessed any firearm at any point of time. Hence, benefit of doubt is in for of the accused under section 26(1-B)(a) of Arms Act.

8. For that the above mentioned facts and circumstances, the accused person is entitled to get the benefit of the doubt of certain loopholes in the prosecution case as per the ruling of the Apex Court in **Bhagwan Singh Vs. State of M.P (2002) 4 SCC 85** observed that the golden thread which runs through the web of administration of justice in a criminal case is that if two view are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted.

It is settled position of law that the paramount consideration of the court is to ensure that no miscarriage of justice is done. Further the defense relying on **Narender Kumar Vs. State (NCT of Delhi) CRIMINAL APPEAL NOs.2066-67 OF 2009**, where it was **Held:-** *"Prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defense. There must be proper legal evidence and material on record to record the conviction of the accused.... The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation".*

9. That as for the charge under section 307 IPC R/w 25(1-B)(a) Arms Act the accused person is innocent which is proved crystal clear from the evidence adduced by the prosecution witness, who had not witnesses the commission of

such offences and had based the allegation against the accused person only on mere assumption.

10. From the façade of the evidence adduced, it is crystal clear that the prosecution case is baseless and could not bring home their case beyond any reasonable doubts. Henceforth, the instant accused is entitled to be acquitted from all the criminal allegations made against him in this instant case.

It is therefore most earnestly prayed that your Honour may graciously be pleased to pass judgment of acquittal to the accused so that justice may be served upon him.

Mr.R.Lalremruata Addl. Public Prosecutor submitted that :

Lalpiana S/o Lianhnawla R/o Champhai Zote was arrested on allegation that on the night of 11.8.2013 at around 8:00pm, he attempted to kill Hualthanhnuna, S/o Johana of Champhai Zote by pointing and pulling the trigger of his muzzle loaded gun which he possessed without arms license but failed due to misfire caused by defect percussion cap. The incident was taken place inside the house of Lalpiana.

That from the evidence and from the answers of the accused u/s 313 Cr.P.C it is clear that the gun local made was seized from the possession of the accused on 12.8.2013 by S.I.Lucy Zosangzuali and the accused does not have a valid gun license in respect of the above said gun and hence without any doubt the accused is guilty of the offence punishable u/s 25(1-B)(a) Arms Act.

That when the accused pulled the trigger of his gun and if it was not misfire, he could have killed Hualthanhnuna as while pulling the trigger he pointed the gun Hualthanhnuna at point blank.

Hence this Hon'ble Court is earnestly prayed to convict the accused Lalpiana U/S 307 IPC, R/W 25(1-B)(a) Arms Act, for the ends of justice and for which act of kindness it is prayed accordingly.

On perusal of the material evidence available on record, it is learnt that the accused and the victim are closed friend and they were quarrel over the mobile while they consumed liquor, and after they are under the influence liquor they discuss the delivery amount of mobile phone and its SIMCARD, the victim beat him (accused) and accused took his local gun to threaten the victim from his action, but unluckily or luckily the gun was misfired, and hence this case. But during the trial four prosecution witnesses including the victim were absent for about 4 (four) times despite regular summons are served to them, and the witnesses were receiving summons by putting signature on the summons return. So, the prosecution could not establish a prima facie case u/s 307 IPC beyond doubt due to lack of evidence. There is no clear intention to kill the victim since there was no hatred between them, the complainant H.J. Rodina and the victim Hualthanhnuna also submits letter stating that they had pardoned the accused Lalpiana. However section 307 IPC is dropped due to lack of evidence.

But in respect of possession of Arm without license, the accused Vanlalpiana himself stated in his examination u/s 313 Cr.P.C that he possessed the said gun without license, the charge section of 25(1-B)(a) Arms Act runs as follows: "*whosoever acquires or has in his possession or carries any fire-arm or ammunition in contravention of section 3 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*".

The prosecution therefore proved beyond doubt that accused Vanlalpiana is possessing gun without license in contravention with section 3 of Arms Act punishable u/s 25(1-B)(a) Arms Act, and I therefore find accused Vanlalpiana guilty u/s 25(1-B)(a) Arms Act.

I therefore convicted accused Vanlalpiana u/s 25(1-B)(a) Arms Act 1959, and the sentence period shall be fixed after hearing with the APP and defense council.

The seized gun shall be destroyed at once.

29.6.2016

Accused Lalpiana, who is already convicted is produced before to face sentence hearing. Both the Addl. P.P and defense counsel are present. The Id. counsel Mr.J.N.Bualteng, Advocate submitted that convicted Lalpiana is suffering from malaria, and he is the main bread-earned of his family, and he has no any previous conviction.

The Addl. Public Prosecutor has submitted to pass sentence of maximum. Accused/convicted Lalpiana also stated that he is living with her mother only, who is about more than 70 years old and prayed the court to show leniency to him.

Upon hearing of both the parties and on perusal of section 25(1-B), proviso, sentence of imprisonment for a term less than 1(one) year, which is also substituted by Arms(Amendment) Act 1985 (39 of 1985) sec 2(b) 28 May 1985) the court is therefore at liberty to show leniency. In view of his health condition and his family condition and nature of crime.

Accused Vanlalpiana is therefore convicted and sentence u/s 25(1-B) (a) of Arms Act 1959, for imprisonment for a period of 5(five) months. Detention period as UTP shall be set off.

Sd/-VANLALMAWIA
Addl.District & Sessions Judge
Aizawl Judicial District,Aizawl

Memo No _____AD & SJ-I/2016: Dated Aizawl the,29th June 2016

Copy to :

1. District & Sessions Judge, Aizawl District, Aizawl.
2. Accused Lalpiana S/o Lianhnawla C/o J.N.Bualteng Advocate.

3. Spl. Superintendent of Central Jail, Aizawl.
4. Deputy Superintendent of Police (Prosecution).
5. Addl. PP
6. I/C Malkhana, GR Branch, Aizawl
7. Judicial Branch.
8. Case Record.
9. Guard File.

PESHKAR