

IN THE COURT OF ADDL. DISTRICT & SESSION JUDGE, AIZAWL

Crl. Rev. No. 14/2014 A/o Crl. Tr. No. 1586/2013 u/s 380 IPC

Jonathan Lalbiakmawia : Petitioner

Versus

State of Mizoram : Respondent

Date of Order : 06.05.2014

PRESENT

Smt. Helen Dawngliani, AD& SJ

For the Petitioner : Mr. T.J. Lalnuntluanga, Advocate

For the State : Mrs. Rose Mary, Addl. PP

Ms. Rosy Lalnuntluangi, APP

ORDER

1. This revision petition u/s 397 Cr.P.C have been filed against the Order dt.20/9/2013 wherein the revision petition has been convicted of the offence punishable u/s 380 IPC and sentenced to under go simple imprisonment for a period of 2 years and to pay a fine of Rs.1000/- and in default to further undergo simple imprisonment for 30 days.

2. The brief facts of the case is that on 29.8.2013 Lalthanchhunga of Tlangnuam lodged written FIR at Kulikawn Police Station to the effect that on 29.8.2013 his son Jonathan Lalbiakmawia stole their CD player alongwith cash amounting to Rs.500/-. On the basis of the said FIR Kulikawn PS Case no.107/2013 dt.29.8.2013 u/s 380 IPC have been registered. On completion of investigation charge sheet was laid against the said Jonathan Lalbiakmawia for the offence punishable u/s 380 IPC. Trial was taken up by the Ld. Chief Judicial Magistrate, Aizawl. Vide the impugned Order dt.20.9.2013 the accused was convicted and sentenced as aforesaid on his plea of guilt.

3. Heard the Ld. Counsels.

Mr. T.J. Lalnuntluanga, Ld. Counsel for the revision petitioner submitted that the petitioner was convicted on his alleged plea of guilt. The Ld. Counsel argued that the offence u/s 380 IPC is a warrant case and that it is not proper to convict a person on an alleged plea of guilt in a warrant procedure case. The Ld. Counsel also submitted that the stolen property has been fully recovered and that the father of the petitioner who is also the complainant has fully forgiven the petitioner and has executed letter "inngaihdamna". The Ld. Counsel submitted that though the offence is a on-compoundable offence, it is a fit case where the letter executed by the father/complainant should be taken into consideration. The Ld. Counsel also submitted that as per the seizure memo the estimated value of the CD player is about Rs1300/-. The Ld. Counsel also submittd that the petitioner is 22 years and does not have any criminal antecedents. The d. Counsel therefore prays to set aside and quash the conviction order or in the alternative reduce

the sentence to the period already undergone by the petitioner. In this regard the Ld. Counsel submitted that the petitioner was arrested on 29.8.2013 itself and since then he has been in judicial custody.

On the other hand, Mrs. Rose Mary, the Ld. Addl. PP submitted that the offence is against the State and is a non-compundable offence. The Ld. Counsel argued that from the record of the Ld. Trial Court it is clear that copy of the charge sheet was delivered to the accused and he was also given an opportunity to engage a Counsel. The Ld. Counsel submitted that the Ld. Trial Court did not commit any illegality in convicting the accused on his own plea of guilt and it is not the case of the petitioner that he did not plead guilty to the charge. The Ld. Counsel therefore submitted that no reasonable ground has been made for interference and thus pray to uphold the impugned Judgment & Order.

4. Perused the record.

Since challenge has been made in the manner of convicting the petitioner on her plea of guilty, I have examined the record in the procedure adopted by the Ld. Lower Court on this issue. It appears from the record that on 20.9.2013 charge u/s 380 Act was framed against the accused in a form made for framing of charge u/s 211/212/213 Cr.P.C and the Trial Magistrate has subscribed his signature thereon. The charge has clearly spelt out the ingredient of the offence U/s 380 Act. However, the charge does not contain the plea of the petitioner and neither is the plea recorded in the daily order sheet on 20.9.2013. Though from the record, it appears that charge was framed on 20.9.2013, the alleged plea, as guilty was reflected in the impugned Order on 29/9/2011 without recording the plea of the petitioner. The record does not contain any explanation as to why the plea of the petitioner could not be recorded at the time of framing charge. The provision of section 246(3) Cr.P.C clearly mandates recording of the plea when the accused pleads guilty. It would not suffice to record a narrative of the statements made by the accused and the record of the plea must be in the language of the accused, unless when it is a foreign language, for which the plea may be recorded in the language in which it is interpreted. The only statements of the accused recorded is u/s 313 Cr.P.C and not under section 246 Cr.P.C.

It is also noticed that on 12.9.2013 the accused was informed of his right to engage a counsel of his choice. The next court date fixed was 16.9.2013. On 16.9.2013, no effective order was passed and it is only reflected that the accused was produced and that 20.9.2013 was fixed for consideration of Charge. Thereafter, on 20.9.2013 charge was framed and the accused was convicted as aforesaid.

5. An accused being defended by a Counsel is the right of every accused and denial of the same is flagrant violation of the constitutional right as well as principle of natural justice.

The primary object of framing charge is to give notice of the matter to the person who is charged about. With regard to framing of charge, I may place reliance in the decision of the hon'ble Gauhati High court in the case of *D.N.yadav(No.4205277p ex sepoy versus CO. Pratham, Bihar* reported in 2010(1)GLT 30 wherein it has been held as follows :-

“27. In the light of the law, laid down in Ramengmawia(supra), it becomes clear, and we agree, that there is no absolute bar, in the law, on the part of a court, to convict an accused on his plea of guilty; but before the conviction of an accused is based entirely on his plea of guilty, the court must take care to ensure that the plea of the accused is voluntary, clear, unambiguous and unqualified, that the accused understands the nature of the allegation made against him and admits them and that the accused admits all such facts, which are necessary and essential to constitute the offence. The court must also be satisfied that the facts placed before it, in support of the plea of guilt, are in themselves sufficient to sustain the offence charged with. In other words, the court must have before it all such facts, which are essential to constitute the offence charged with and such facts must be admitted by the accused before the plea of guilt of the accused is acted upon or conviction is based thereon”

6. For the irregularities stated above, I find that the Ld. Lower Court has failed to take into account the law relevant to such a proceeding/trial. However, since it is not the case of the petitioner that charge was not properly read out and explained or that he did not plead guilty to the charge, in spite of the irregularities as highlighted above, upon the attending facts and circumstances of the case, I do not wish to set aside the impugned Judgment & Order Dt.20.9.2013. However, the sentence shall be set off to the period already undergone by the petitioner in view of the fact that the petitioner has been detained in custody since 29.8.2013

The petitioner/Jonathan Lalbiakmawia shall forthwith be released from judicial custody if he is not wanted in any other case.

With the above Order the revision petition is partly allowed to the extent indicated above.

Sent back the case record of the lower Court.

Given under my hand and the seal of this court on this the 6th May 2014.

Sd/- HELEN DAWNGLIANI
Addl. Dist & Sessions Judge,
Aizawl Judicial District, Aizawl.

Memo No.:...../AD & SJ/2014 :

Dated Aizawl, the 6th May, 2014

Copy to :

1. Jonathan Lalbiakmawia through Counsel Mr. T.J. Lalnuntluanga, Advocate.
2. Superintendent, District Jail, Aizawl.
3. Chief Judicial Magistrate, Aizawl District, Aizawl.
4. Registration Section.
5. Guard File.
6. Case Record.
7. Calendar Judgment.

P E S H K A R