

PRESENT
Mrs. Helen Dawngliani
Addl. District & Sessions Judge

Versus

Date of hearing	28.5.2014
Date of judgment	29.5.2014

For the revision petitioner	Mr. H. Lalchhuanawma, Advocate
For the Respondent	Mrs. Rose Mary, Addl. PP
		Ms. Rosy Lalnuntluangi, APP

1. This revision petition have been preferred from jail by the convict petitioner who is convicted by the Ld. Chief Judicial Magistrate, Champhai in GR No. 316/2013 u/s 454/380 IPC sentencing the petitioner “*to undergo simple imprisonment for a period of 10 months each and to pay a fine of Rs. 6000/- and in default of payment of fine, to further undergo simple imprisonment for another period of 50 days*”.

2. Case record of the Ld. Trial Court is received.

3. The brief facts of the case is that on 26.12.2013 @ 12:05PM one F.Darrimawia of Champhai Vengthlang lodged a written FIR at Champhai Police Station to the effect that on 15.12.2013 one unknown miscreant burgled their residence by breaking open the door padlock and also broke open the steel kit box and stole Rs. 16400/- from there. The informant also mentioned in the FIR that after hectic effort to find out the culprit he suspected Lalrambela S/o Ngunbuallinga of Electric Veng, Champhai to be the culprit. Accordingly, Champhai PS Case No.199/2013 dt.26.12.2013 u/s 454/380 IPC was registered.

During investigation the accused/ petitioner Lalrambela was arrested and having found prima facie case against him charge sheet was laid for the offence punishable u/s 454/380 IPC.

4. Heard the Ld. Counsels.

Mr. H. Lalchhuanawma, Ld. Counsel for the revision petitioner appearing under the Legal Aid Scheme submitted that though the limited challenge made in the revision petitioner from jail is on the quantum of sentence he would like to point out certain procedural lapse which affected the right of the accused. The Ld. Counsel submitted that the petitioner was not defended by any Counsel which is clearly violative of the right of the accused. According to the Ld. Counsel, as the accused was not defended by a Counsel he would not know the consequence of pleading guilty and that the materials on record does not show that he was duly explained of the consequences of pleading guilty. The Ld. Counsel further submitted that the manner of passing the sentence and fine are vague, even if the same are upheld, there would be problem carrying out the sentence and as the fine imposed and default of payment of fine does not indicate for which of the offence it is not known how the fraction is to be calculated. Mr. Lalchhuawma further submitted that there is no material on record that the accused has criminal antecedents and is thus entitled to leniency.

On the other hand, Mrs. Rose Mary, the Ld. Addl. PP submitted that the petitioner did not deny that he committed the offences for which he was charged and as such, even if he was not defended by a counsel of his choice or legal aid counsel, no prejudice was caused to the accused. It is the accused and not the counsel who has to make the plea and moreover, charge sheet was duly delivered to the accused. The Ld. Counsel submitted that considering the nature and gravity of the offence, the Ld. CJM Champhai has already shown leniency in imposing sentence and thus submitted that no reasonable ground is made out to interfere with the Order/sentence.

5. Perusal of the record shows that the petitioner was arrested on 26.12.2013. Charge sheet was submitted on 27.12.2013 and copy of the same was delivered to the accused on 7.1.2014 and the said Order also indicated that the provision of section 303 Cr.P.C is complied with. Thereafter on 21.1.2014 at the time of consideration of charge the accused was convicted on his plea of guilt for the offence punishable u/s 454/380 IPC. Sentences aforementioned were passed on 4.2.2014 after hearing the parties.

6. Upon perusal of the record, it is clear that the accused petitioner was not defended by a pleader. The importance of an accused being defended by a Counsel has clearly been emphasized and given importance by the honb'le Gauhati High Court (Aizawl Bench) in its Judgment & Order dt.31.7.2012 in CrI.Pet. No.3/2012(J) Lalchharmawia versus State of Mizoram. In the said judgment, it has been held *“It is a settled principle of law that no man be tried until and unless he is defended by a Counsel appointed by him or a legal aid counsel is appointed”*. Duty is casts upon the court to make the accused aware of right to free legal aid Counsel. The hon'ble Apex Court in the case of *Motilal Padampat Sugar Mills Co.Ltd., versus State of U.P* reported in (1979) 2 SCC 409 has held –

“it must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not the correct statement there is no such maxim known to the law”.

7. Keeping in mind the above principles laid by the hon'ble Apex Court as well as the honb'le Gauhati High court, upon appreciation of the materials on record there is no mention of the accused being defended by a counsel of his choice or legal aid counsel. This lapse is a clear violation of the right of an accused.

8. Turnining to the submission regarding non-explanation of the consequences of pleading guilty. I have carefully checked the record and I am unable to find any mention being made about explaining to the accused the consequences of pleading guilty. In this regard the honb'le Gauhati High Court (Aizawl Bench) in the case of *Lalmuanzuala versus State of Mizoram* on 16.1.13 in CrI.Rev.P No.107/2012 has held :-

“Framing of charge is not an empty formalit. Tthe object behind framing of charge is to make the accused aware of the nature and extent of accusation against him. The accused must be made aware of the consequences of pleading guilty. It is for this reason that providing legal assistance to the accused is of crucial importance, more particularly, in a warrant procedure case. Section 303 mandates that any person accused of an offence before a criminal court or against whom proceedings are instituted under the Cr.P.C may of right be defended by a pleader of his choice.....

14. *In the present case, when the petitioners admitted to the charge, they did not have the benfit of legal assistance. It does not appear from the record that they were also made aware of the consequences of their admission.*

These defects are not minor defect. They go to the root of the matter and are fatal to the prosecution case....”.

Accordingly, it appears that there was irregularity in not explaining the consequences of pleading guilty as well as the freedom of the accused not to plead at all.

9. The Ld.Trial Court passed the sentence as - *“to undergo simple imprisonment for a period of 10 months each and to pay a fine of Rs.6000/- and in default of payment of fine, to further undergo simple imprisonment for another period of 50 days”.*

From a reading of the sentence, though the fraction of sentence of imprisonment passed for the two offences can be calculated, but with regard to fine it is not known how much fine for which offence and the period of detention for default. For the offences punishable u/s 454/380 IPC imposition of fine is mandatory. Even if the sentences imposed along with fine is to be upheld, there will be difficulty in calculating the fraction of fine and default sentence.

10. Accordingly, there appears to be some irregularity in the proceeding adopted by the Ld. Trial Court. However, as the paryer is only for reduction of sentence, I am not inclined to send back the matter for fresh consideration in as much as by now the petitioner has served about 5 months of the sentence.

11. For the aforesaid reason, the sentence is reduced to the period of deteantion already undergone by accused petitioner while not interfering with the Order of Conviction.

12. Release Order will be prepared by the ld. Chief Judicial Magistrate, Champhai upon receipt of the Case Record and this Order. The Petitioner will be set at liberty if not required in any other case.

13. Send back the case record to the Ld. Trial court.

14. With the above order, the application stands disposed off.

Sd/- HELEN DAWNGLIANI
Additional Sessions Judge
Aizawl Judicial District; Aizawl

Memo No:...../AD&SJ(A)/2014 : Dated Aizawl, the 29th May, 2014

Copy to: -

1. Lalrambela S/o Ngunbuallinga, Electric Veng, Champhai through Counsel Mr. H. Lalchhuanawma, Advocate.
2. PP/Addl. PP, Aizawl.
3. Chief Judicial Magistrate, Champhai.
4. Superintendent, District Jail, Champhai.
5. Registration Section.
6. Guard File.
7. Case Record.
8. Calendar Judgment.

P E S H K A R