

IN THE SPECIAL COURT (ND&PS ACT): AIZAWL

Crl.Tr.Ex.No.630/2016

Ref: S.R No.60/2016, CPI PS C/No.19/16, u/s 21 (b) of ND&PS Act '85

State of Mizoram Complainant.

Vs.

Lalnunzira (21)

S/o Sainingliana

R/o Zokhawthar, Champhai Accused

P R E S E N T

For the Prosecution	C.Lalremruati, Addl.PP Penlui Vanlalchawii, A.P.P.
For the defence	R. Laltanpuia, Advocate
Date of hearing	06.10.2016
Date of Judgment & Order	20.10.2016

B E F O R E***SHRI. LIANSANGZUALA, JUDGE*****JUDGMENT AND ORDER****INTRODUCTION**

A very peculiar circumstances and incidents brought about this case. This is a case involving a very unusual chanced recovery and consequent seizure and arrest. The happenstances and co-incidences are remarkable, to say the least. The medical attention was necessitated by unconsciousness of the accused due to his accident. Although the search cannot be said to be urgent, but it was necessitated by the health concern for safety of the accused. This must again be weigh with the need to follow the mandated procedure. The case thus.....

THE FACTS

The brief story of the case for prosecution is that, on 3-02-2016 @ 11:30 Am a written FIR was submitted by SI Sanjay thapa (48) S/o D.B Thapa (L) of Champhai PS to the effect that, on dt. 2-2-2016 at around 8:45 Pm, while he was on duty at Champhai Police Station, a telephone information was received from Hospital duty that, one Lalnunzira(21) S/o Saidingliana of Zokhawthar met an accident at Mualkawi village and he was brought by one taxi at District Hospital, Champhai for medical treatment. While giving treatment they recovered one soap case, containing brown powder suspected to be Heroin weighing of about 14 grams worth Rs. 35,000/- (approx) from his belly. The drugs were seized in the presence of witnesses and Lalnunzira (21) S/o Saidingliana of Zokhawthar was arrested. During investigation, the sample of Drugs seized were found to be Heroin by the FSL, New Capital Complex, Aizawl. The purity of each was 77% w/w at the time of examination. A prima facie case U/s 21 (b) ND & PS Act was found established against accused person Lalnunzira (21) S/o Saidingliana of Zokhawthar village, Champhai District. He was charged accordingly and sent to Court to face trial.

PRESENT

The accused Lalnunzira is produced from Judicial Custody. The Learned Addl. PP C. Lalremruati assisted by learned APP Penlui Vanlalchawii are present. The Learned Defence Counsel R. Laltanpuia is also present.

OPENING OF CASE

The learned Addl. PP open the case stating that the accused lalnunzira was arrested on dt. 2-2-2016 for an illegal possession of 14 grms of Heroin, he was charged u/s 21(b) of ND & PS Act for violation of 8(c) of the same Act.

The Id.Addl.PP proposed to prove the case against the accused with the help of the evidence of list of witnesses submitted in the charge sheet and documents submitted in favour of the prosecution which will be taken in evidence in the course of trial.

CONSIDERATION OF CHARGE

Upon considering the case record and after hearing the accused and the Learned Defence Counsel and the Learned Addl. PP, I am of the

opinion that there is ground for presuming that the accused has committed the offence.

The ramification and implications of pleading guilty was explained to the accused.

After the above explanation, charge u/s 21(b) of ND & PS Act was framed, read over and explained to the accused person Lalnunzira in the language known to him to which he pleaded 'Not Guilty'

EVIDENCE FOR PROSECUTION

The prosecution then commenced their evidence.

P.W. NO. 2 Lalengkimhriatpuia of Champhai Vengsang identified the accused person and stated that on 2-2-16, while he was having night duty at Champhai District Hospital. One taxi brought Lalnunzira of Zokhawthar to the Hospital for emergency medication as he met with an accident. While they gave first aid he took off his pant and he found substance suspected to be heroin kept in soap case on his belly. Thereafter, he called police duty. They then seized the suspected heroin from the possession of accused Lalnunzira. Weighting was done and it was 14 gms. Sample was drawn, sealing and packing was also done in his presence at the spot. He put his signature on seizure memo and seized article. He exhibited the seizure memo, the seized articles, and signatures.

On cross examination, he deposed that the accused person was unconscious while he was brought to Champhai, District Hospital. That at the time of arrival of the police personnel, the seized article were put in the table of the Champhai District Hospital. That the seized article was brought out from the body of the accused by him. He denied that the weightment, sealing, packing of the seized article were not conducted in his presence. He denied that he put the seized article on the body of the accused before the police personnel arrived, that the police personnel did not seize the seized article from the possession of the accused person, however the same was seized from the table at Champhai Hospital. That he is presently working as 4th grade at Champhai Hospital. That he did not know the place where the accused person met with an accident. He denied deposing falsely before the court.

P.W. No. 5 JH. Sanghmingthanga of Police identified the

accused person and deposed that on 2-2-16 S.I. Sanjay Thapa produced 14 gms of substances suspected to be heroin kept in one soap case along with sample packet drawn by seizing officer seized from the physical possession of Lalnunzira S/o Saidingliana of Zokhawthar at District Hospital Champhai and also produced the said possessor before O/C Champhai P.S. The said SI. Sanjay Thapa lodged FIR (registration of case) to that effect with a prayer to register case against the said accused as per law. Case was accordingly registered and he took up the investigation. After preparing test memo, sample drawn by SO was sent to FSL for scientific examination and he received positive FSL result with a finding that the sample exhibited was heroin. He examined the complainant. He had gone through the statements of accused and witnesses. From the light of his investigation, he found a prima facie case U/s 21 (b) of ND & PS Act well established against the accused for violation of 8 (c) of the same Act and he submitted charge sheet accordingly. He exhibited the seizure memo, grounds of belief U/s 50 of ND & PS Act, arrest memo, seizure report (form F) issued by seizing officer, registration of case, FIR U/s 154 Cr.PC, his detailment, FSL report, charge sheet, seized articles and his signatures.

On cross examination, he stated that he was not present and had no knowledge of arrest of the accused at Champhai Hospital. That the name of the seizing officer in the grounds of belief recorded U/s 50 ND & PS Act has been over written / corrected. That he did not record the statements of the accused and the civilian witnesses during investigation. That the seizing officer interrogated the accused and recorded the statements of the accused and the civilian witnesses. That there is correction in the particulars of properties in the FIR. He did not know whether the SO told the accused of his rights before his arrest under ND & PS Act. That the accused was arrested by SI. Sanjay Thapa of Champhai police station. He denied deposing falsely before the court.

P.W. NO. 3 Mimi Lalramhluni identified the accused and deposed that on 2-2-16 while she was having night duty in Casualty at Champhai District Hospital, one taxi brought Lalnunzira of Zokhawthar to the Hospital for emergency medication as he met an accident. While they gave him first aid. Lalengkimhriatpuia, who was also on duty took off his pant and they found substance suspected to be heroin kept in soap case on his belly. Thereafter, Lalengkimhriatpuia called police duty. They then seized the suspected heroin

which was recovered from the possession of accused Lalnunzira. Weighment was taken in their presence and it was 14 gms. Sample was drawn, packing and sealing was also done in her presence at the spot. She put her signature on seizure memo and seized article. She exhibited the seizure memo, the seized articles, and her signatures. On cross examination, she stated that the accused person was unconscious while he was brought to the Champhai District Hospital. That at the time of arrival the police personnel, the seized article were kept in the table of the Champhai district hospital. That the seized article was brought out from the body of the accused by Lalengkimhriatpuia. That the weightment, sealing, packing of the seized article was not conducted in her presence. That she put the seized article on the body of the accused before the police personnel arrived. That the police personnel did not seize the seized article from the possession of the accused person, however the same was seized from the table at Champhai Hospital. That she is presently working as staff nurse at Champhai Hospital. That she did know the place where the accused person met with an accident. She denied deposing falsely before the court.

EXAMINATION OF ACCUSED U/S 313 CrPC.

The question and answer given in the examination of accused may be reproduced below:-

Q. It appears from the evidence that 14 grms of Heroin was seized from a soap case concealed in your pants recovered in consequence of your unconsciousness and medical attention due to accident. Is this a fact?

=> This is not true.

Q Do you have anything else to comment?

=> No

DEFENCE EVIDENCE

The Learned Defence Counsel submitted that they have no defence evidence.

ARGUMENT

Argument was conducted on 20.10.2016.

ANALYSIS OF EVIDENCES

I have carefully perused the case record in its entirety. I have examined and considered all the evidences and the arguments advanced from both sides.

The Learned Addl. PP submitted that the prosecution had proven that the accused was in illegal possession of the seized articles. The learned Defence Counsel submitted Heroin could have been planted during his unconsciousness and medical treatment.

This is a case involving a very unusual circumstances and a very chanced recovery and seizure and arrest. The happenstances and coincidences are remarkable to say the least. The medical attention was necessitated by unconsciousness of the accused due to his accident. Although the search cannot be said to be urgent, it was done due to necessity to save the accused. The recovery on the part of the accused and manner in which it was effected cannot, in my opinion, be exactly tested with the rigors of Section 50 ND & PS Act, given the circumstances. Apart from the above, since the seizure was made in a public place, Section 43 and not Section 42 would be applicable. Thus, I am convinced that the procedure followed by the Investigating Agency did not suffer infirmities which is fatal to the case of the Prosecution.

Careful study of the evidences reveals that the evidences of the Prosecution corroborated each other. They agree that on 2-02-2016, one Lalnunzira(21) S/o Saidingliana of Zokhawthar met an accident at Mualkawi village and he was brought to District Hospital, Champhai for medical treatment. While giving treatment, they recovered and seized one soap case, containing Heroin weighing 14 grams from the pants of accused Lalnunzira (21) S/o Saidingliana of Zokhawthar. This fact was not sufficiently rebutted in the cross examination. The situation being thus, the accused persons failed to prove anything to the contrary which would convinced me of the non commission of an offence on the part of the accused person.

FINDINGS

From the above discussion, it is clear that 12 grams of Heroin were seized from the illegal possession of the accused Lalnunzira(21) S/o Saidingliana of Zokhawthar.

As such, I have no difficulty in holding that the accused Lalnunzira is guilty of the charge beyond doubt. The prosecution has brought home the charge against him under section 21(b) ND & PS ACT.

ORDER AND SENTENCE

Hence, for all the above reasons, I hereby convict the accused Lalnunzira(21) S/o Saidinglana of Zokhawthar under section 21(b) ND & PS ACT.

I conduct hearing on question of sentences. The accused Lalnunzira prays for leniency. The learned Addl. PP on the other hand prayed for the most severe punishment available under the law.

I have considered all the matters discussed above. I have perused all the available materials. I pass the following sentence.

For his conviction under section 21(b) ND & PS ACT, I hereby sentence the accused Lalnunzira(21) S/o Saidinglana of Zokhawthar to undergo Rigorous imprisonment for 9 (nine) months days and to pay a fine of Rs.20,000/- (Rupees Twenty Thousand only). In default of payment he shall undergo another R.I for 4 (four) months.

Detention period already undergone is directed to be set off.

The seized articles are allowed to be destroyed. The concerned Officer-in-Charge is directed to take an early action with the Drug Disposal Committee for disposal of the seized articles (Including the samples drawn on finalisation of the case and expiry of the appeal period) according to the provisions of law.

Case is disposed.

Give copy to all concerned.

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

Memo No. _____ND&PS/ : Dated Aizawl, the 20th October, 2016.

Copy to: -

1. Accused Lalnunzira C/o R. Laltanpuia, Advocate.
2. Addl.PP.
3. D.S.P (Prosecution), Aizawl.
4. O/C, Champhai Police Station, Champhai.
6. i/c Judicial Section.
7. i/c Malkhana Police.
8. Guard File.
9. C.R

PESHKAR