

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

Crl.Tr. No. 929/2016

Ref: Spl.Narcotic P/S Case No.7/2016, u/s 21 (b)/29 of ND&PS Act '85

State of Mizoram Complainant.

Vs.

1. Lalronguri (41)
 D/o Lalbiaka
 R/o Kanan Veng, Champhai

2. Lalrinpuui (25)
 D/o Lalawmpuia
 R/o Kanan veng, 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
	.....	F.Lalengliana, Advocate
Date of hearing	....	03.10.2016
Date of Judgment & Order	.....	17.10.2016

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

This case pertains to seizure of 8 grams of Heroin. The indictment of two women to be in possession of the seized articles. Proof of such possession. Procedure which may be adopted. Actual search on person made at the spot.

Search and Seizure Memo prepared at the station. Some inconsistencies in evidences, whether fatal. Right of an individual under Section 50 ND & PS Act vis – a – vis the power of an Officer conducting a search.

THE FACTS

The brief story of the case for prosecution is that, on 6-4-16 @ 10:00 Pm, following an information received that two female persons possessed some quantity of illegal drugs at Hotel Ritz, Dawrpui area. SI. H. Lalhmingthangi of Spl. Narcotic P.S and party proceeded to Dawrpui veng, Aizawl with two local independent witnesses. On reaching Hotel Ritz Room No. 205, SI. H. Lalhmingthangi and party allegedly intercepted the two suspected female persons Lalronguri and Lalrinpuii who occupied the room. On searching, one plastic soap case and one plastic container containing substances (12 gms) suspected to be heroin which were wrapped in a grey coloured Sweater(Jumper) was recovered from under the Pillow. The two accused females, Lalronguri (40) D/o Lalbiaka and Lalrinpuii (25) D/o Lawmpuia both Champhai Kanana veng were also arrested. Spl. Narcotic PS C/No. 7/16 Dt. 6-4-2016 U/s 21(b)/29 ND & PS was registered and duly investigated into.

A prima facie case under section 21 (b)/29 ND & PS Act was found established against the 2(two) accused persons namely 1. Lalronguri (41)D/o Lalbiaka and 2. Lalrinpuii (25) D/o Lawmpuia both of Champhai kanan veng. He therefore sent them to Court to face under the aforesaid section of Law.

PRESENT

The accused Lalronguri (41) D/o Lalbiaka and Lalrinpuii (25) D/o Lawmpuia are produced from J,C. The learned Addl. PP C. Lalremruati assisted by learned APP Penlui Vanlalchawii are present. The learned Defence Counsel R. Laltanpuia and F. Lalengliana are also present.

OPENING OF CASE

The learned Addl. PP open the case stating that the accused Lalronguri (41)D/o Lalbiaka and Lalrinpuii (25) D/o Lawmpuia were arrested for an illegal possession of 12 grms of Heroin kept in one plastic soap case and one plastic container they were charged u/s 21(b)/29 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 were proposed to be taken in evidence in the course of trial.

CONSIDERATION OF CHARGE

Upon considering the case record and after hearing the accused persons and the Id. D/L and the prosecution, there appears reasonable ground for presuming that the accused persons have committed the offence.

The ramification and implications of pleading guilty were explained to both the accused persons.

After the above explanation, charge u/s 21(b)/29 of ND & PS Act are framed, read over and explained to the accused persons Lalronguri and Lalrinpuii in the language known to them to which they pleaded 'Not Guilty'.

EVIDENCE FOR THE PROSECUTION

The prosecution then led their evidences.

PW No. 1 H. Lalhmingthangi SI of police identified the accused persons. He deposed that on 6-4-16 at around 10:00 Pm information was received from source that two female persons were suspected to possess illegal drugs at Dawrpui veng. After obtaining permission u/s 46 (4) Cr.PC from judicial magistrate first class, she, along with party including two local independent witnesses performed confidential duty at Hotel Ritz Dawrpui veng. On reaching room no. 205, Hotel Ritz, they intercepted two suspected female persons, Lalronguri and Lalrinpuii both of Champhai resident. Authorization letter U/s 42 ND & PS brought with her was read over and explained to them in the presence of the said local witnesses. Before searching them she offered herself to be search by them which they declined. On searching their belongings and the said Hotel room no. 205 one plastic soap container (pink in colour) and one plastic container (white in colour) containing suspected heroin wrapped in a grey sweater (Jumper) was recovered which they kept concealed under their pillow. The same were seized in the presence of witnesses. Weighment was taken and it was 12 gms, sample for FSL examination in duplicate were drawn, packed and sealed at the spot. The grey sweater (Jumper) which was used for wrapping the suspected heroin was also seized in the presence of witnesses. She also arrested

the illegal possessor Lalronguri and Lalrinpuui after informing them grounds of arrest, intimation was also given to their relatives. Thereafter, she produced both the accused persons along with all the seized articles including sample packet to O/C Spl. Narcotic Police station Aizawl without delay and she also lodged FIR to that effect with a prayer to register case against both the accused. She exhibited arrest memo of both accused, FIR lodged by her and u/s 154 CrPC and her various signatures and the seized articles (Grey sweater /Jumper, pink soap container and white plastic container containing heroin).

On cross examination, she admit that she did not draw the sample herself, however the drawing of samples was done under her instruction and in her presence. That the seized article was not produced before the court before drawing of samples. She did not know the details of report from the FSL in respect of the present case. That she did not know who is responsible in sending the S/A to FSL for scientific assessment. That the seized article was taken out from under the pillow. That there was only one bed inside the hotel room. That the information received by the O/C Spl. Narcotics P.S was recorded in the GD entry. That she did not see permission U/s 46 (4) Cr.PC issued by the magistrate first class in the case record on the date of examination. That four samples were drawn from the seized article and two samples were sent to the FSL. That the S/A was kept in one pink soap case and one white plastic container. She denied not knowing the exact amount of samples drawn from the seized article.

P.W. No. 4 MS. Dawngliana identified the accused persons. He deposed that on 6-4-16 at around 10;00 pm while he was at his house at Dawrpui Aizawl, the police personnel invited him to witness the search and seizure of illicit drugs from the two suspected persons whom they believed to possess the said illicit drugs. Accordingly, he along with one friend and the police personnel proceeded towards room no. 205 of Hotel Ritz where the two accused stay for the night. When reaching the spot, they intercepted the two suspected female persons Lalronguri and Lalrinpuui. The police personnel asked the two accused as to whether they wanted to be search before a gazetted officer or magistrate to which they both declined. Body search was conducted by the police personnel in his presence. On searching their body nothing was recovered. The police personnel continued searching the room and their belongings they recovered substances suspected to be heroin kept in one pink colour plastic soap container

and one plastic container white colour which were further wrapped with one grey colour jumper/sweater. The same were seized by police personnel in his presence. Weighment was taken and it was 12 gms. Sample was drawn. Sealing and packing were also done in his presence. He put his signature on the body of property search and seizure form and seized property. He exhibited property search and seizure form and his signature, he also exhibited the seized articles (Heroin. Grey sweater /Jumper, pink soap container and white plastic container which were used for keeping and wrapping the aforementioned heroin.) and his signature.

On Cross Examination, he admitted that nothing was recovered from the physical possession of the two accused persons. That the accused persons were arrested at around 10:00 Pm. That he did not know whether the police personnel obtained authorization from the magistrate first class to arrest the two female accused persons during at night. He denied that the police personnel entered the hotel room before they entered. He denied the suggestion that samples were not drawn in his presence. That the quantity of the seized articles are 12 gms which were kept in plastic soap case and one white plastic container. That he did not know how many samples were drawn from the S/A by the police personnel. That the S/A was recovered from the bed which were kept under the pillow. That he did not know who kept the S/A under the pillow. That there were two beds inside the hotel room. That he did not know from whose bed the S/A was recovered.

P.W. NO.3 Lalrammuana identified the accused persons. He deposed that on 6-4-16 at around 10;00 pm while he was at his house at Dawrpui Aizawl, the police personnel invited him to witness the search and seizure of illicit drugs from the two suspected persons whom they believed to be possess the said illicit drugs. Accordingly, he along with one friend and the police personnel proceeded towards room no. 205 of Hotel Ritz where the two accused stay for the night. When reaching the spot, they intercepted the two suspected female persons Lalronguri and Lalrinpuui. The police personnel asked the two accused as to whether they wanted to be search before a gazetted officer or magistrate to which they both declined. Body search was conducted by the police personnel in his presence. On searching their body nothing was recovered. The police personnel continued searching the room and their belongings they recovered substances suspected to be heroin kept in one pink colour plastic soap container

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PW no. 5 K. Lalmawizuala of Police identified both the accused persons. He deposed that on 6-4-16 at around 10;00 pm SI. H. Lalhmingthangi and party recovered and seized suspected heroin kept in one pink colour plastic soap case and one plastic container wrapped with grey colour printed jumper/sweater from the possession of Lalronguri and Lalrinpuui of Champhai locality. The two accused concealed the S/A under their pillow. Weighment, drawing sample, sealing and packing were done at the spot (room no. 205 hotel ritz) in presence of reliable witnesses. SI H. Lalhmingthangi arrested the two accused persons and she forwarded the two accused persons with the S/A to O/c Spl. Narcotics P.S for further investigation. As he was endorsed to investigate the instant case, he examined the two accused persons and all the witnesses including the SO/ complainant. He also record the statements of the two accused persons

Lalronguri and Lalrinpuui and witness Lalmuanawma. he sent exbt sample to FSL Aizawl for chemical examination through O/C. He received the FSL report on 20-4-16 vide FSL /195/C Azl 134/2/16 which shows that the exbt sample C (AZL)-134 (1) and C(AZL)-134 (2) were heroin, the purity of each about 77 % w/w at the time of examination. Hence he found a prima facie case U/s 21 (b) /29 ND & PS Act against the two accused persons for violation of 8 (c) of ND & PS Act and he charged them accordingly.

He exhibited the seizure memo, arrest memo of both accused, FIR lodged by SI H. Lalhmingthangi, FIR U/s 154 Cr.PC, final form/ charge sheet and his signatures. He also exhibited report of seizure and arrest, authorization to search premises, FSL report, acknowledgement receipt and seized articles (grey sweater /Jumper, pink soap container and white plastic container containing heroin).

On Cross Examination, he stated that there is no permission from judicial magistrate first class authorizing the arresting officer to arrest the two female accused persons during the night. That prior information was received by the Spl. Narcotic P.S. That he do not know whether the information received was recorded in writing or not. That the two accused persons were arrested at around 10:00 Pm. That he was not present at the time of drawing samples, weighing of the S/A and sealing of the samples. That he did not sent the samples drawn from the S/A to FSL for scientific examination. That he did not know the police personnel who was entrusted to handover the samples to the FSL.

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 Heroin was seized from its concealment under a pillow from your occupied room at Hotel Ritz Room No. 205. What do you have to say for yourself?

=> Both accused persons stated that they have no knowledge as it did not belong to them.

Q. Do you have anything else you want to say in your defence?

=> Both the pray for release on bail

DEFENCE EVIDENCE

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

ARGUMENT

Argument was conducted on 03.10.2016.

The Learned Addl. PP submitted that the prosecution had proven that the accused was in illegal possession of the seized articles. That the seizure of 12 grms of Heroin was made in the night of 06.04.2016 at 10:00 PM packed in one plastic soap case and one plastic container concealed under a pillow in the presence of witnesses. The Ld. Addl. PP stated that the seizure was made in a public place which is open for public. Therefore, section 43 is applicable. That Ld. Addl PP also clarified the references in evidences of the existence of two beds or one bed and stated that there were two beds which were kept joined together like a single bed. The learned Defence Counsel submitted that search was made without following the procedure laid down in Section 46(4) CrPC. The I.O stated in the chargesheet that there was permission under section 46(4) CrPC. However, there was no such permission. The accused persons are women having medical complications and minor children. These facts may also be considered.

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 evidence of PW No. 2, Lalmuanawma was not taken and he was not called to give evidence as the genuineness of the FSL report was not denied. He was the Scientific Expert at Forensic Science Laboratory who certified that the seized substances were indeed Heroin. Reliance is placed upon the *Judgement and Order of the Hon'ble Gauhati High Court, Aizawl Bench dated 03.03.2016 in Criminal Appeal No. 21 of 2015*.

Careful study of the evidences reveals that the evidences of the Prosecution Witness No 1, 3 & 4 corroborated each other. They are in conformity and they were not successfully rebutted in the cross examination. It can be seen from the evidences two female persons Lalronguri and Lalrinpuui were apprehended by the police personnel on 6-4-16 at around 10:00 pm in presence of witness after making a search and seizure at room no. 205 of Hotel Ritz where

the aforementioned accused persons stayed for the night. The two accused were asked whether they wanted to be search before a gazetted officer or magistrate to which they both declined. The police personnel recovered 12 grms of heroin kept in one pink colour plastic soap container and one plastic container white colour which were further wrapped with one grey colour jumper/sweater. The same were seized by police personnel in his presence. Weightment was taken and sample was drawn. These evidences are further corroborated by evidence of PW No. 5 Lalmawizuala who, besides corroborating the above evidences, stated that he sent sample of the S/A to FSL Aizawl for chemical examination and the report shows that they were heroin, the purity of each about 77 % w/w at the time of examination.

The main points raised by the Defence Counsel was the existence of references of two beds in some evidences and one bed in some other evidences. The infirmity in the procedure of search and absence of permission to arrest women after sunset and before sunrise despite a claim to that effect.

With regard to the beds, I am inclined to accept the submission and clarification offered by the Ld Addl that there were two beds which were joined together.

Futher, an authorization under Section 41 ND & PS Act was obtained and the non existence of permission u/s 46(4) would not by itself vitiate the trial if the guilt of the accused can be otherwise proven. The procedure for arrest, search and seizure as stipulated in the special act did not specifically call for such measure. The provision in CrPC is to apply in so far as it is inconsistent with the special act. Notwithstanding the necessity for safeguarding the dignity of women, it will not serve as a means to destroy the whole case. In this connection, some of the procedures mandated by the special act are infact relaxed by the Judgements of Hon'ble Supreme Court in the interest of justice, practicality and urgency. Reliance is placed on *Karnail Singh Vs State of Haryana dated 29.07.2009, (2009 CrLJ 4299)*.

The mistake of claiming existence of permission in the chargesheet does not prejudice the accused persons. Reliance is placed on *Durgo Bai And Vs State of Punjab dated 10.08.2004, (2004 SC 4170)* which stated at "Mere citation of wrong section in the charge would not cause any prejudice to an accused as punishment prescribe under Section 21 and 22 are the same".

From the above discussions, I am convinced that the procedure followed by the Investigating Agency did not suffer infirmities which is fatal to the case of the Prosecution. I am also convinced 12 grms of heroin kept in one plastic soap container and one plastic container wrapped with one grey colour jumper/sweater were seized from their concealment under the pillow of the bed in a room occupied by both the accused persons. The situation being thus, the accused persons failed to prove anything to the contrary which would have a semblance of the non commission of an offence charged on the part of the accused persons.

FINDINGS

From the above discussion, it is clear that 12 grams of Heroin were seized from the illegal possession of the accused persons Lalronguri (41)D/o Lalbiaka and Lalrinpuui (25) D/o Lawmpuia. They are staying in the same room and either conspire or intentionally aid, by any act or illegal omission, the commission of the offence.

As such, I have no difficulty in holding that the accused Lalronguri (41) and Lalrinpuui are guilty of the charge beyond doubt. The prosecution has brought home the charge against her under section 21(b) and 29 of ND & PS ACT.

ORDER AND SENTENCE

Hence, for all the above reasons, I hereby convict the accused persons Lalronguri (41) D/o Lalbiaka and Lalrinpuui (25) D/o Lawmpuia under section 21(b) and 29 ND & PS ACT.

I conduct hearing on question of sentences. The accused Lalronguri (41) D/o Lalbiaka and Lalrinpuui (25) D/o Lawmpuia prays for leniency. They also prayed for leniency and to set off the period of detention already undergone by the accused in custody. Both the accused stated that they are suffering from medical ailment and gynecological problem and spinal cord problem. The learned Addl. PP on the other hand prayed for the most severe punishment available under the law.

I have considered all the matters laid before me. I have perused all the available materials. I am inclined to give a lenient sentence on health grounds and pass the following sentence.

For their conviction under section 21(b) and 29 ND & PS ACT, I hereby give concurrent sentences, and I sentence each of the accused persons Lalronguri (41) D/o Lalbiaka and Lalrinpuui (25) D/o Lawmpuia to undergo Rigorous imprisonment for 9 (nine) months and to pay a fine of Rs. 9000/- (rupees nine thousand only) each. In default of payment, they shall undergo another R.I for 3 (three) 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 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 17th October, 2016.

Copy to: -

1. Accused, Lalronguri C/o R.Laltanpuia, Advocate.
2. Accused Lalrinpuui C/o F.Lalengliana, Advocate.
3. Addl.PP
4. D.S.P. (Prosecution), Aizawl
5. O/C, Special Narcotic P.S.
6. i/c Judicial Section.
7. i/c Malkhana Police.
8. Guard File.
9. C.R

PESHKAR