

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

Crl.Tr.Ex.No.932/2016

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. Lalthapari (50)
 D/o Chhanthanga (L)
 R/o Zokhawthar, vengthar

2. Lalhriatpuii (39)
 D/o Saibuh (L)
 R/o Zokawthar

..... Accused

P R E S E N T

For the Prosecution	.....	C.Lalremruati, Addl.PP Penlui Vanlalchawii, A.P.P.
For the defence	.....	R. Thangkanglova, Advocate
	.....	R. Laltanpuia, Advocate
Date of hearing	....	05.10.2016
Date of Judgment & Order	....	19.10.2016

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

This case pertains to seizure of 28 grams of Heroin. Acting on an information, the Excise conducted a covert operation posing as a civilian. They apprehended two persons in the outskirts of Zemabawk on the way to Lunglei. Proof of such possession. Procedure which may be adopted. Some

inconsistencies in evidences, whether fatal.

THE FACTS

The brief history of the case is that on 21st April 2016 at 6:00 Am Inspector Lalthlamuana seized 28 grms of Heroin from the alleged illegal possession of Lalthapari(50) d/o Chhanthanga (L) of Zokhawthar, vengthar and Lalhriatpuii (39) D/o Saibuh (L) of Zokawthar at Aizawl to Lunglei road highway and he also arrested the said persons on the same date, time and place. He submitted report to O/c Anti- Narcotics Squad, and a case was registered against the accuseds and investigated into. Samples of the seized articles were sent to FSL Aizawl and the examination result shows that the seized articles was Heroin and the percentage are 82 %. A prima facie case U/s 21 (b) of ND & PS Act 85 was found established against the accused persons Lalthapari and Lalhriatpuii for violation of Sec. 8 (c) of the same Act, and they were charged accordingly. The accused persons were then sent to Court to face trial.

PRESENT

The accused Lalthapari(50) d/O Chhanthanga (L) of Zokhawthar, vengthar and Lalhriatpuii (39) D/o Saibuh (L) of Zokawthar 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 is present for accused no 2 Lalhriatpuii and Ld Advocates Lalremruata Chenkual and P C Lalchhunga are also present on behalf of the accused no. 1 Lalthapari.

OPENING OF CASE

The learned Addl. PP open the case stating that 28 grms of Heroin were seized from the illegal possession of the accused persons Lalthapari(50) d/O Chhanthanga (L) of Zokhawthar, vengthar and Lalhriatpuii (39) D/o Saibuh (L) of Zokawthar at Aizawl to Lunglei road highway they were 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 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) of ND & PS Act is framed, read over and explained to the accused persons Lalthanpari (50) and Lalhriatpuii (39) in the language known to them to which they pleaded 'Not Guilty'.

EVIDENCE FOR THE PROSECUTION

The prosecution then led their evidences.

PW No.3 Lalthlamuana, Inspector of Excise identified accused persons and deposed that on 21.4.16 in pursuance of information received, he proceeded to Aizawl-Lunglei road on the outskirts of Zemabawk along with duty party where constable Ngurthansanga had detained two female persons possessing substances suspected to be heroin. When they reached the spot, they recovered and seized suspected heroin kept in two soap cases which accused Lalthanpari took out from the bag carried by accused Lalhriatpuii. Since seizure took place at the remote area of highway, they could not find reliable civilian witnesses even after great attempt, there is no possibility of obtaining civilian witness. Weighment was taken at the spot, it was 28 grams, sample was drawn, sealed and packed at the spot. He also arrested the two possessors Lalthanpari D/O Chhanthanga of Zokhawthar Vengthar and Lalhriatpuii D/o Saibulha (L) of Zokhawthar, after preparing seizure and arrest memo. Thereafter, without delay, he produced the two accused persons along with seized article including sample packed to O/C, ANS Excise & Narcotics, Aizawl and he also submitted report of seizure and arrest with a prayer to register case against them. He exhibited the seizure and arrest memo, report of seizure and arrest and the seized articles (two soap cases containing heroin) and his signatures on them.

On cross examination by Defence Counsel for accused no 1, He admitted that he was the seizing officer in the instant case and he is presently designated as Inspector in Excise Dept. That he, alongwith Ramthansiami and Ngurthansanga arrested the accused persons. That they did not obtain a warrant to arrest both the accused persons. That they arrested the accused persons on the outskirts of Zemabawk. That to his belief, the seized item were recovered from the bag of Lalhriatpuii. As he knew it from the statement of Ngurthansanga to be true but he did physically see the event. That he did not know why his evidence is different from that of the deposition of Ngurthansanga but he is willing to accept whatever deposition that has already been deposed before the court by Ngurthansanga.

On cross examination by Defence Counsel for accused no 2, he admitted that the S/A was recovered from the taxi. That there were three persons inside the taxi including constable Ngurthansanga at the time of recovery of the S/A. That the two seizure witnesses in the present case are Excise personnel. That the S/A was not recovered from the physical possession of the accused persons. That the persons who put the S/A inside the taxi was Lalthapari. That the two persons who were inside the taxi were civilian. That prior information was received by him before effecting search and seizure. That he did not record the information received by him in writing. He denied not making any effort to arrange independent seizure witnesses. He denied deposing falsely.

On Re-examination by the Id.Addl.PP. He explained the reason for a different deposition than that of Ngurthansanga was due to the fact that he did not know the deposition of Ngurthansanga as the contents was not read out to him.

PW No. 5 R.Lalrinsanga SI of Excise identified the accused persons and deposed that on 21.4.16, Inspector Lalthlamuana produced two persons namely Lalthapari and Lalhriatpuii along with seized articles weighing 28 grams of yellowish powder suspected to be heroin kept in 2 soap cases seized from the possession of above accused persons including sample packet, he also submitted a report of seizure and arrest with prayer to register a case. Case was accordingly registered and he took up the investigation. During investigation, he examined the Seizing Officer, accused and witnesses. Sample drawn by seizing

officer was also sent to FSL for scientific examination and he received positive FSL report during the investigation. The accused on interrogation under calm atmosphere admitted that accused Lalthapari personally went to Khawmawi, Myanmar and procured the seized articles, one hawng for herself and one hawng for accused Lalhriatpuii and the same was meant for sale at Aizawl. Hence, from the light of his investigation, he found a prima facie case against both accused u/s 21(b) of ND&PS Act for violation of 8(c) of the same act and he submitted complaint sheet. He exhibited seizure and arrest memo, report of seizure and arrest, FSL report, the complaint sheet and the seized articles (two soap cases containing heroin) and his signatures.

On cross examination by Defence Counsel for accused no 2, he admitted that he forwarded the samples to the O/C, ANS and thereafter he sent it to the FSL. That he did not record the statement of the S/O and seizure witnesses. That the two samples were drawn from the S/A.

On cross examination by Defence Counsel for accused no 1, He admitted that he forwarded the samples to the O/C, ANS and thereafter he sent it to the FSL. That two samples were drawn from the S/A. That he did not know whether the seizing officer in this case acquired warrant to arrest for the accused.

P.W. NO. 1, Ngurthansanga of ANS identified the accused person and stated that on 21-4-16 in pursuance of information received, Inspector Lalthamuana and party including he proceeded to Aizawl to Lunglei road (outskirt of Zemabawk). Some of their companion contacted the suspected person claiming themselves as civilian. The suspected persons namely Lalthapari and Lalhriatpuii told them to proceed to where they were (half kilometer away). Accordingly he hail one taxi. When he reached the place, the accused persons were waiting for him. There were two persons on the road side namely, Lalthapari and Lalhriatpuii. One of the accused namely Lalthapari threw suspected heroin kept in two soap cases inside the said taxi and she demanded the purchase price of the said heroin. While pretending to give the purchase price to Lalthapari he snatched her hand in order to avoid escape. Thereafter, Inspector Lalthlamuana and party reached the spot, they seized and recovered suspected heroin kept in two soap cases in his presence. Since the seizure was taken place at the remote area of highway, there was no possibility of obtaining

civilian witnesses. Weighment was taken and it was 28 gms. Sample was drawn, sealing and packing was also done in his presence. He put his signature on seizure and arrest memo and property seized. He exhibited the seizure and arrest memo, and S/A (Heroin kept in two soap cases) and his signatures.

On cross examination by Defence Counsel for accused no 2, he deposed that he is presently working as constable at Anti- Narcotic –Squad, Excise & Narcotics Aizawl. He stated that the person who put the seized article inside the taxi was Lalthapari. He also admitted that when the Inspector Lalthlamuana and his team arrived at the place of seizure, the seized article was inside the taxi. That the seized article was seized by Inspector Lalthlamuana from the taxi. That there were two persons inside the taxi including the driver and they were not the accused persons. That the seized article was not seized from the possession of the accused person, however the same was seized from the taxi. He denied that the seizing officer had made no attempt to obtain independent seizure witnesses. That he is the seizure witness in the present case. He denied deposing falsely before the court.

On cross examination by Defence Counsel for accused no 1, he admitted that there is no document denoting the name of the owner of the S/A. That the S/A was recovered from the front seat of the S/A. He denied the suggestion that the S/A did not belong to the accused. That the S/A belongs to Lalthapari. He was one of the passenger in the said taxi. The weight of the S/A is 28 gms. He denied the suggestion that the weight of the S/A is not 28 gms. He denied deposing falsely before the court.

PW No. 2 C. Ramthansiami identified the accused person and deposed that on 21-4-16 in pursuance of information received Inspector Lalthlamuana and party including herself proceeded to Aizawl to Lunglei road (Outskirt of Zemabawk). Some of their companion contacted the suspected person claiming themselves as civilian. Accordingly, Ngurthansanga constable, one of their party hailed one taxi and proceeded to the place where the two suspected persons were waiting for him. Not before long, the said Ngurthansanga informed them that he detained the two accused Lalthapari and Lalhriatpuii through telephone. Hence, Inspector Lalthlamuana and his party including herself proceeded towards the PO. When they arrived at the spot they seized and recovered suspected heroin kept in two soap cases in his presence.

Since the seizure took place at a remote area of highway, there is no possibility of obtaining civilian witnesses. Weighment was taken and it was 28 gms. Sample was drawn, sealing and packing was also done in her presence. She put her signature on seizure and arrest memo and property seized. She exhibited the seizure and arrest memo, and S/A (Heroin kept in two soap cases) and her signatures.

On cross examination by Defence Counsel for accused no 2, she stated that she is presently working as constable at Anti- Narcotic –Squad, Excise & Narcotics Aizawl. That when they reached the place of seizure, the seized article was inside the taxi. That the seized article was seized by Inspector Lalthlamuana from the taxi. That there were two persons inside the taxi including the driver and they were not the accused persons. That the seized article was not seized from the possession of the accused person, however the same was seized from the taxi. She denied that the seizing officer had made no attempt to arrange independent seizure witnesses. That she was the seizure witness in the present case. That prior information was received and in pursuance to the said information they proceeded towards Zemabawk. He denied deposing falsely before the court.

Cross examination by Defence Counsel for accused no 1, she stated she was present at the time of examination of witness just before her and she heard the examination of the said witness just before her. That she is also the seizure witness in this case. 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 Heroin was seized by the Excise acting as a a civilian while you were trying to sell it. It was recovered from the Taxi where you kept it?

The accused Lalthapari stated that it was not recovered from her and she has no involvement.

Q. You kept it in a soap case, you threw it into a Taxi, it was seized by PW No. 1 Ngunthansanga? Is this a fact?

=> It is not a fact.

Q. On 21.04.2016, you were waiting for a buyer of drugs at Zemabawk with Lalthapari. Lalthapari put the Heroin in the Taxi to give it to that person. This guy caught hold of her and you were acting in cooperation with her. What do you have to say for yourself?

=> I do not know anything.

DEFENCE EVIDENCE

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

ARGUMENT

Argument was conducted on 05.10.2016.

The Learned Addl. PP submitted that the prosecution had proven that the accused persons were in illegal possession of the seized articles. That 28 grms of Heroin were seized from the illegal possession of the accused persons Lalthapari(50) d/O Chhanthanga (L) of Zokhawthar, vengthar and Lalhriatpuii (39) D/o Saibuh (L) of Zokawthar at Aizawl to Lunglei road highway. The Ld. Addl. PP stated that the seizure was made in a public place which is open for public. Therefore, section 43 is applicable. As such, there is no requirement of written down and Civilian witness was also not a requirement. The accused Lalthapari took the heroin out of the bag of accused Lalhriatpuii and threw it inside the Taxi. The Defence Counsel vehemently argue that the procedure of Section 42 and not Section 43 is invited. There was no written information and independent civilian were not used as witness despite their presence. Seizure witnesses stated that the Heroin were seized from Taxi but the Seizing Officer stated that it was seized from a bag. There was no physical possession proved in the case and the accused are liable to be set free.

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. 4, 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 of the Prosecution Witness can disclose a chain of event leading up to the arrest and seizure and consequently the trial. On 21-4-16 in pursuance to an information, the Excise conducted a covert operation. Posing as a civilian, they contacted the suspected person and took the Aizawl to Lunglei Road. One constable Ngurthansanga went ahead in a taxi and reached the place, the accused persons namely Lalthapari and Lalhriatpuii were waiting for him. One of the accused namely Lalthapari threw the heroin kept in two soap cases inside the said taxi and she demanded the purchase price of the said heroin. He then caught hold of the accused. Thereafter, Inspector Lalthlamuana and party reached the spot, they seized and recovered suspected heroin kept in two soap cases. Weighment was taken and it was 28 gms.

The evidences of the four witnesses are in conformity and they were not successfully rebutted in the cross examination. Although there were some evidences which are circumstantial in nature, they do not contradict one another. They are coherent and unerringly agree on the above points. The only deviation is that the seizure witnesses state that the Heroin was seized from the Taxi and the Seizing Officer stated that it was seized from a bag. However, the Seizing Officer stated that the accused Lalthapari took out the Heroin from the bag of the co accused Lalhriatpuii. The witness Ngurthansanga stated that the accused Lalthapari threw it into the taxi. If the witness already threw the Heroin into the taxi before the arrival of seizing officer, there is no question of seizing the Heroin from the bag. There is therefore, only an instance of unintentional and confused statement which is not sufficiently explained. It does not, in my opinion disrupt the chain of events and destroy the whole case of the Prosecution. Thus, there is no discrepancy in these circumstances. It appears that the accused Lalthapari took out the Heroin from the bag of co-accused Lalhriatpuii and threw it into the taxi and it was then seized by the seizing officer. Since the seizure was made in public place and public convenience, the procedure under section 43 ND & PS Act is applicable in the present case. There

is no requirement to reduce the information in writing under Sec 43 ND & PS Act. The existence of independent civilian witness is also not prescribed unless a search on the body of a person is to be made under urgent circumstances as per Section 50 ND & PS Act. *The judgement and order of the Hon'ble Supreme Court in Karnail Singh Vs State of Haryana [(2009)8 SCC539] and Sukhdev Singh VS State of Haryana [AIR 2013 SC 953]* cited by the Learned Counsels for the accused did not help the case of the Defence as the cited judgement did not deal with search and seizure in public place as contemplated by Section 43 ND & PS Act.

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 that 28 grms of Heroin were seized from the illegal possession of the accused persons Lalthapari(50) d/O Chhanthanga (L) of Zokhawthar, vengthar and Lalhriatpuii (39) D/o Saibuh (L) of Zokawthar at Aizawl to Lunglei road highway. That the Heroin was taken out by the accused Lalthapari from the bag of the accused Lalhriatpuii and thrown into the Taxi. 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 charged on the part of the accused persons. (Section 54 ND & PS ACT).

FINDINGS

From the above discussion, it is clear that 28 grms of Heroin were seized from the illegal possession of the accused persons Lalthapari(50) d/O Chhanthanga (L) of Zokhawthar, vengthar and Lalhriatpuii (39) D/o Saibuh (L) of Zokawthar at Aizawl to Lunglei road highway. They are acting in concert and although the accused Lalthaparai involvement is predominant, the accused Lalhriatpuii cannot evade responsibilities as she was initially carrying the Heroin and intentionally aid the commission of the offence.

As such, I have no difficulty in holding that the accused persons Lalthapari(50) d/O Chhanthanga (L) of Zokhawthar, vengthar and Lalhriatpuii (39) D/o Saibuh (L) of Zokawthar are guilty of the charge beyond doubt. The prosecution has brought home the charge against her under section 21(b) of ND & PS ACT.

ORDER AND SENTENCE

Hence, for all the above reasons, I hereby convict the accused persons Lalthapari(50) d/O Chhanthanga (L) of Zokhawthar, vengthar and Lalhriatpuii (39) D/o Saibuh (L) of Zokawthar under section 21(b) ND & PS ACT.

I conduct hearing on question of sentences. The accused Lalthapari(50) d/O Chhanthanga (L) of Zokhawthar, vengthar and Lalhriatpuii (39) D/o Saibuh (L) of Zokawthar prays for leniency.

I have considered all the matters laid before me. I have perused all the available materials. I pass the following sentence.

For their conviction under section 21(b), I hereby sentence each of the accused persons Lalthapari(50) D/o Chhanthanga (L) of Zokhawthar, vengthar and Lalhriatpuii (39) D/o Saibuh (L) of Zokawthar to undergo Rigorous imprisonment for 6 (six) months and to pay a fine of Rs.5000/- (Rupees Five Thousand only) each. In default of payment, they shall undergo another R.I for 2 (two) 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 19th October, 2016.

Copy to: -

1. Accused Lalthapari C/o R.Thangkanglova, Advocate.
2. Accused Lalhriatpuii C/o R. Laltanpuia, Advocate.
3. Addl.PP.
4. Superintendent, Excise & Narcotics, Aizawl.
5. O/C, Anti Narcotic Squad, Excise & Narcotics, Aizawl.
6. i/c Judicial Section.
7. i/c Malkhana Excise.
8. Guard File.
9. C.R

PESHKAR