

IN THE COURT OF  
THE JUDICIAL MAGISTRATE OF THE FIRST CLASS  
AIZAWL, MIZORAM  
Criminal Trial No 786 of 2013  
Vide. VAIVAKAWN PS Case No 35 of 2013  
U/S 379 IPC

The State of Mizoram : Prosecution

Versus

Shri. Henry Laltlanzova (24) : Accused  
S/o Lalhlmliana  
R/o Maubawk Vengthar, Aizawl

PRESENT

H. LALDUHSANGA,  
Judicial Magistrate First Class

For the Prosecution : Smt Lalthazuali Renthlei & Smt Venus Zomuankimi APP  
For the Accused : Shri Ricky Gurung, Advocate  
Judgment : 21.05.2018  
Sentence hearing : 29.05.2018  
Judgment & Order delivered : 30.05.2018

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PROSECUTION WITNESSES

PW 1	:	Shri Pachhunga, Complainant
PW 2	:	Shri Lalhlira, Prosecution witness
PW 3	:	Shri Lalthianghlina Ralte, Seizure witness
PW 4	:	Shri Benjamin Lalremruata, Seizure witness
PW 5	:	SI Shri John Fambawl, Case I/O

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#### PROSECUTION EXHIBITS

1. Exhibit P – I : Final Report
2. Exhibit P – I (a) : Signature of Case I/O (PW 5)
3. Exhibit P – I (b) : Arrest memo
4. Exhibit P – II (a) : Seizure Memo
5. Exhibit P – II (b) : Signature of Case I/O (PW 5)
6. Exhibit P – II (c) : Signature of seizure witness (PW 3)
7. Exhibit P – II (d) : Signature of seizure witness (PW 4)

#### DEFENCE WITNESSES

DW 1 : Shri Lalhlmliana

#### DEFENCE EXHIBITS

NIL

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#### JUDGMENT

**Dt. 30.05.2018**

1. The Prosecution story of the case in brief is that on 23.04.2013, Shri Pachhunga S/o Chalhira (L) R/o Luangmual, Aizawl submitted a written FIR at Zonum Police Out-Post, Aizawl. The informant stated that on 22.04.2013 in between 11:00 AM to 1:00 PM, 7 Nos of 9 MM Sten Gun Ammunition was stolen away from 12 Post Tower, Central Jail, Aizawl. Hence, an FIR was forwarded to Vaivakawn PS and Vaivakawn PS Case No. 35 of 2013 Dt 23.04.2013 U/S 379 IPC was registered. SI John Fambawl investigated into the case. He arrested the accused and recovered 6 Nos of 9 MM Sten Gun Ammunition and left on Zimmanama to the District Commandant, Mizoram Home Guard for safe custody. In the light of his investigation, the Case I/O found Prima-facie case well established against accused Shri. Henry Laltlanzova (24) S/o Lalhlmliana R/o Maubawk Vengthar, Aizawl and sent the case for trial to the Court.
2. A copy of chargesheet and other relevant documents were delivered to the accused. Having heard the Ld APP representing the Prosecution and the Ld. Counsel for the accused and perused all the materials on record, the charge U/S 379 IPC was framed against the accused. Before reading out the charge, I explained to the accused that pleading guilty or pleading not guilty of the offence was at his option. There was no

compulsion to either plead guilty or plead not guilty of the offence. I also informed him of the possible consequences of pleading guilty or pleading not guilty of the offence. Hence, the charge U/S 379 IPC was read over and explained to him in the language known to him to which he pleaded not guilty and claimed to be tried.

Point for determination

Whether the accused dishonestly removed 7 Nos of 9 MM Sten Gun Ammunition from 12 Post Tower, Central Jail, Aizawl on 22.04.2013.

DECISION AND REASONS FOR DECISION

3. In the present case, we shall determine as to whether the accused dishonestly removed 7 Nos of 9 MM Sten Gun Ammunition from 12 Post Tower, Central Jail, Aizawl on 22.04.2013. The Prosecution examined three witnesses and the defence examined one witness. The accused denied all the allegations U/S 313 Cr. PC. Received no written argument. Heard both side on oral argument. I have also perused the entire materials on record including all the depositions recorded in the Court.
4. The Ld. APP submitted *inter alia* the Prosecution witnesses were acquainted with facts of the case. The evidences of the Prosecution witnesses corroborated the substances of accusation. The Prosecution had proved its case beyond reasonable doubt. It was the fact that there was no hole to escape from it. Hence, prayed the Court to convict the accused U/S 379 IPC.
5. On the other hand, the Ld. Counsel for the accused submitted *inter alia* the prosecution had failed to prove that the articles seized by the Police and the articles which were reportedly stolen away were exactly same. None saw the accused dishonestly removing the seized articles from the alleged place of occurrence. None from the prosecution witnesses was certain about committing an offence of theft in the instant case. There was no direct evidence and no eye witness. The complainant adduced no evidence. The instant case was full of doubt when the Prosecution was to prove its case beyond reasonable doubt. Hence, the accused was liable to be acquitted of the offence and set at liberty immediately.
6. I have heard the submissions of the Ld. APP for the prosecution and the Ld. Counsel for the accused. DW 1 Shri Lalhlilmiana standing for Defence witness was the father

of the accused. He deposed that his son was drugs abuser but he did not think that his son would have committed such alleged offence. During cross-examination, he deposed that he did not know as to whether the accused stole away the said ammunitions or not. He did not know the charge levelled against the accused. Hence, it appeared that DW 1 did not know facts of the case and his deposition had no merit in favour of the defence.

7. In the meanwhile, PW 5 SI John Fambawl (Case I/O) deposed that he investigated into the case. During interrogation, the accused admitted his guilt before him. In the light of his investigation, he found that the accused stole away 7 Nos of 9 MM Sten Gun Ammunition from 12 Post Tower, Central Jail, Aizawl. The Central Anti Drugs Squad at Slesih on the night of 22.04.2013 detained the accused and recovered the stolen ammunitions from his possession. They brought the accused to the Central YMA Office. Hence, a formal seizure of the stolen ammunition was made there in presence of the reliable witnesses. This Court found neither shaking nor rebuttal during cross-examination of PW 5. In corroboration of the evidence adduced by the Case I/O, PW 3 Shri Lalthianghlina Ralte (seizure witness) and PW 4 Shri Benjamin Lalremruata (seizure witness) deposed that they were present at the time of making seizure of the stolen 9 MM Sten Gun Ammunitions at Central YMA Office on the night of 22.04.2013 and stood as a seizure witness. They both deposed that the said articles were recovered at Durtlang Road, Aizawl. This Court found neither shaking nor rebuttal during cross-examination of these two seizure witnesses.
8. Appeared from the Prosecution evidence that the Central Anti Drugs Squad at Durtlang Road, Selesih recovered the stolen ammunitions on the night of 22.04.2013 from the possession of the accused. Hence, they reported the matter to the Authority, brought the accused and the stolen articles to Central YMA Office where a formal seizure of the stolen articles was made by the seizing agency. After thoughtful consideration, this Court found no gross violation of the mandatory provision of the Code to have vitiated trial of the whole case.

Sec 37 Cr. PC says, "**Public when to assist Magistrate and Police-**. Every person is bound to assist a Magistrate or Police officer reasonably demanding his aid

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(a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorised to arrest or; or

(b) in the prevention of suppression of a breach of the peace; or.

Sec 43 Cr. PC says, "**Arrest by private person and procedure on such arrest-**. Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, taken such person or cause him to be taken in custody to the nearest police station.

9. From the Prosecution evidence, it appeared that the articles which were same in kind with the reported stolen articles in FIR were recovered and seized from the possession of the accused on the night of 22.04.2013. On that day in between 11:00 AM to 1:00 PM, the seized articles were found to be stolen away. The accused could not establish that he had legally acquired those ammunitions seized from his possession.

**In Deivendran A Vrs State of Tamil Nadu, 1998 Cr.LJ 814: AIR 1998 SC 2821 the Hon'ble Supreme Court** has observed that the court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.

**Sec 114 of the Indian Evidence Act, 1872 says,** "The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case".

10. No doubt, the informant (PW 1) and the PW 2 were dropped from the Prosecution witness due to non-appearance before the Court for evidence despite being provided sufficient opportunity. However, it is considered that the complainant and the Prosecution Witness No 2 are not as important as an eye-witness.

**The Hon'ble Supreme Court in Krishna Mochi & ors vs State of Bihar decided on 15<sup>th</sup> April, 2002** has held that it has been further submitted that the informant has not been examined as such, First Information Report can not be used as substantive piece of evidence inasmuch as on this ground as well the appellants are entitled to an order of acquittal. The submission is totally misconceived. Even if

the First Information Report is not proved, it would not be a ground of acquittal, but the case would depend upon the evidence led by prosecution. The non-examination of the informant cannot in any manner affect the prosecution case..... Now, the maxim "Let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practise changing world over and courts have been compelled to accept that "Society suffers by wrong convictions and it equally suffers by wrong acquittals".

**In Ambika Prasad Vs State (Delhi Admn.) [2000] 2 SCC 646**, it was held that the criminal trial is meant for doing justice not just to the accused but also of the victim and the society so that law and order is maintained. It was held that a Judge does not preside over criminal trial merely to see that no innocent man is punished. It was held that a Judge presides over criminal trial also to see that guilty man does not escape. It was held that both are public duties which the Judge has to perform. It was held that it was unfortunate that the Investigating officer had not stepped into the witness box without any justifiable ground. It was held that this conduct of the Investigating officer and other hostile witnesses could not be a ground for discarding evidence.

The Hon'ble Supreme Court in **Veer Singh & ors Vs State of UP (Criminal Appeal No (s) 256-257 of 2009 decided on 10.12.2013 Para 17)** held that legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is not the number of witnesses but quality of their evidence which is important as there is no requirement under the Law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighted and not counted. Its quality and not quantity which determines the adequacy of evidence as has been provided under Sec 134 of the Evidence Act. As a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable.

11. In the light of the above observation and decided cases, the present case is decided in favour of the Prosecution.
12. Having heard the Ld APP and the Ld. Counsel for the accused and the accused himself during sentence hearing, this Court found no sufficient reasons to release the accused on Probation of good conduct. The Ld. Counsel for the Prosecution prayed for the maximum punishment whilst the Ld. Counsel for the convict prayed for the possible minimum punishment.

**The Hon'ble Supreme Court has observed that –**

Undue sympathy in imposing inadequate sentence, does more harm to the justice system. Punishment should be such as matches social expectations for justice in dealing with criminals **(BikramDorjee V State of WB AIR 2009 SC. 2539: (2009) 14 SCC. 233.**

Undue leniency may undermine public confidence **(State of MP V Sheik Shahid AIR 2009 SC. 2951: (2009) 12 SCC 715.**

The punishment to be awarded for a crime must not be irrelevant. It should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated and enormity of the crime creating Public abhorrence. It should respond to the Society's cry for justice in dealing with criminals **(State of MP V Kashiram, AIR 2009 SC 1642: (2009) 4 SCC 26:2009 Cri. LJ 1530.**

**ORDER**

13. Accused Mr. Henry Laltlanzova (24) S/o Lalhlmliana R/o Maubawk Vengthar, Aizawl is hereby convicted U/S 379 IPC and sentenced to undergo simple imprisonment for a period of 6 (six) months and pay a fine of Rs 1,000/- (One thousand). In default of making payment of fine, he shall undergo simple imprisonment for another period of 1 (one) month.
14. The period of detention already undergone by the accused shall be set-off.
15. All the seized articles shall be released to the rightful owner.
16. With the above order, the present case stands disposed of.

**Given under my hand and seal of this Court on this day of the  
30<sup>th</sup> May, 2018 Anno Domini**

**(H. LALDUHSANGA)**  
Magistrate 1<sup>st</sup> Class,  
Aizawl, Mizoram.

Memo No. ....: Dated Aizawl, the 30<sup>th</sup> May, 2018





Copy to:-

1. Shri. Henry Laltlanzova (24) S/o Lalhlmliana R/o Maubawk Vengthar, Aizawl  
C/o the Special Superintendent, Central Jail, Aizawl.
2. The District & Sessions Judge, Aizawl.
3. The Special Superintendent, Central Jail, Aizawl
4. Asst Public Prosecutor, District Court, Aizawl.
5. The Superintendent of Police, Aizawl District, Aizawl.
6. The DSP, Prosecution, Aizawl.
7. Case IO, SI John Fambawl through the Officer-in-charge Vaivakawn PS,  
Aizawl.
8. The Officer-in-charge Vaivakawn PS, Aizawl.
9. Judicial Section.
10. Case Record.
11. Guard File.

**PESHKAR**