

IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS – II

AIZAWL: MIZORAM

Crl. Tr No Ex-408/2015 Vide Ex-A-01 Dt 01.01.2015

U/s 8 (1) MLTP Act, 1995

The State of Mizoram

.....Complainant

Vs

David Lalruatfela

S/o Lalhlupuii

R/o Falkland Veng, Aizawl, Mizoram

.....Accused

PRESENT

H. LALDUHSANGA, Judicial Magistrate First Class

Aizawl

Counsel for the Prosecution : Smt Lalremruati Pachuau, APP

Counsel for the Defence : Shri Laltanpuia, Advocate

Judgment pronounced on : 06.03.2018

Judgment & Order delivered on : 06.03.2018

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LIST OF PROSECUTION WITNESSES

PW 1 : MS Dawngliana, civilian seizure witness
PW 2 : Lalhmangaiha, civilian seizure witness
PW 3 : SI Lalsangzuala Pachuau, E&N, Aizawl, seizing & arresting officer.
PW 4 : Lalhmachhuana Asst Director, FSL, Aizawl
PW 5 : SI Lallawmthanga, Case I/O

LIST OF DEFENCE WITNESSES

NIL

LIST OF ENCLOSURES

01. Forwarding letter of charge-sheet
02. Complaint sheet
03. Seizure and arrest memo
04. Report of seizure & arrest
05. Statement of the accused
06. FSL Report
07. Statement of witnesses
08. Destruction certificate

JUDGMENT & ORDER

Dated: 06.03.2018

1. The Prosecution story of the case in brief is that on 31.12.2014 at 11:20 Pm at Falkland, Aizawl, SI Lalsangzuala Pachuau arrested David Lalruatfela (22) S/o Lalhlupuii of Falkland, Aizawl for alleged illegal possession of Rakzu about 105 liters. A case U/S 8 (1), MLTP Act, 1995 was registered against him. Case I/O SI Lallawmthanga investigated into the case, examined the accused and the witnesses.

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The accused admitted his guilt by making confession that he was the actual possessor of the seized articles. Hence, as he found Prima-facie case well established against the accused U/S 8 (1) of MLTP Act, 1995, the Case I/O sent the case for trial to the Court.

2. As per requirement of Sec 207 Cr.PC, a copy of complaint sheet (charge-sheet) and other relevant documents were at free of cost delivered to the accused. As per Sec 303 Cr.PC, he was informed his right to engage a lawyer of his own choice or avail free legal aid. Having heard both side of the case and perused all documents on record, the charge U/S 8 (1) of MLTP Act, 1995 was framed against the accused. It was read over and explained to the accused in the language known to him to which he pleaded not guilty and claimed to be tried.

POINT FOR DETERMINATION

Whether the accused was the actual possessor of about 105 liters of Rakzu seized in connection with the present case.

DECISION AND REASONS THEREOF

3. Among the five cited witnesses, the three prosecution witnesses such as the Case I/O, the seizing officer and one civilian seizure witness adduced evidence in the Court. The accused was examined U/S 313 of Cr.PC and denied all the allegations. Despite fair chance, none appeared for defence witness. A written argument was received from the Ld. Counsel for the Defence only. PW 5, Case I/O during cross-examination deposed that there were two civilian seizure witnesses in the present case and he examined one seizure witness through telephone. Thus, it was doubtful as to whether the man examined during the course of investigation through telephone was the right person who did witness making seizure of the said alleged liquors in the present case when the prosecution is to prove the case beyond all reasonable doubts. It is also well known that admittance of the allegation by the accused before Police is not sufficient for conviction. PW 3, the seizing officer on his cross-examination deposed that he drew sample from the seized liquor at the house of the accused on that night itself. In fact, the seizing officer had seized the alleged liquor. Hence, drawing sample from the alleged liquor and sending it to the Forensic Laboratory for examination done by himself would cause prejudice to the Defence and the same should have been done by the Case I/O. PW 1, civilian seizure witness

during cross-examination deposed that the Excise & Narcotics personnel had already seized the said alleged liquor when he reached the spot. He did not know the actual place of making seizure also. No Excise & Narcotics personnel examined him. On being requested by the seizing party, he stood as a seizure witness. Furthermore, PW 2, civilian seizure witness was dropped from the prosecution witness on 29.06.2017 due to non-appearance despite issuance of summons to him on 23.06.2016, 10.08.2016, 27.09.2016, 03.11.2016, 14.12.2016, 23.02.2017 and 20.04.2017. For all these reasons, it considered that the prosecution fails to bring home the present case beyond the shadow of all reasonable doubts

ORDER

4. Accused David Lalruatfela (22) S/o Lalhlupuii of Falkland, Aizawl is hereby acquitted of the offence and set at liberty on benefit of doubt.
5. The seized articles shall be destroyed.
6. Bail-bond shall be cancelled and surety shall also be discharged from all liabilities.
7. With the above order, the instant case stands disposed of.

Given under my hand and Seal of this Court on this day of the 6th March, 2018 Anno Domini.

Sd/-H. LALDUHSANGA

Magistrate 1st Class,
Aizawl, Mizoram

Memo No.:

Dated Aizawl, the 6th March, 2018.

Copy to:-

1. Shri David Lalruatfela (22) S/o Lalhlupuii of Falkland, Aizawl through Counsel Shri Laltanpuia, Advocate.
2. The District & Sessions Judge, Aizawl.
3. The Superintendent of Excise & Narcotics, Aizawl.
4. The Superintendent, District Jail, Aizawl.
5. Smt Lalremruati Pachuau, APP, District Court, Aizawl.
6. Case I/O SI Lalsangzuala Ralte, Excise & Narcotics, Aizawl Station.
7. The Officer-in-Charge, Excise and Narcotics, Aizawl Station.
8. The Prosecution Branch (E&N), District Court, Aizawl.
9. i/c Judicial Section.
10. Case record.
11. Guard file

PESHKAR