

**IN THE COURT OF SMT. SYLVIE Z.RALTE, MJS
CHIEF JUDICIAL MAGISTRATE, AIZAWL DISTRICT, AIZAWL**

Excise Case No.A-476/2012
CRL TR (EX) No. 1160/2012
Under Section: 8(1) MLTP Act.

IN THE MATTER OF:

State of Mizoram Prosecution

-Vrs-

1. Vanlalhruaii
D/o Malsawma Sailo (L)
Rangvamual, Mel 4
2. Lalruatpuia
S/o Chalngurha (L)
Rangvamual, Mel Accused/Defendants

Present: -

Sylvie Z. Ralte, Chief Judicial Magistrate

For the Prosecution : C.Lalremruati, APP
H.Lalremthangi, APP

For Defendants : Neih Chunga, Darlong, Advocate

Evidence recorded on : 22/10/2012, 23/1/2013, 18/4/13, 14/5/13 & 15/10/2013

Arguments heard on : 30/5/14

Judgment delivered on : 17/6/2014.

JUDGMENT AND ORDER

1. Accused Lalruatpuia and Vanlalhruaii have been arraigned for committing an offence u/s 8(1) MLTP Act and 8(1) r/w sec 45 of MLTP Act '95.

2. The Prosecution story of the case in brief is that on 17.5.2012 at 12:30 pm S.I C.Lalbiaktluanga seized about 27 litres of 'Rakzu' and arrested Vanlalhruaii of Rangvamual, Mel 4 in connection with the seized articles. After submitting report of seizure and arrest by the Seizing Officer a case was registered and the O/C Aizawl Excise Station endorsed the case to S.I C.Lianchungnunga for investigation.

The Investigating Officer investigated into the case and during investigation the case I.O examined accused person and recorded her statements. The accused Vanlalhruaii

stated that the seized 'Rakzu' belongs to one Lalruatpuia who is the husband of her sister Zosangliani. She further stated that accused Lalruatpuia requested her to sell the same during his absence as he was going to Aizawl. In the light of her statement accused Lalruatpuia was arrested on 25. 5.2012 at 10:00 am in connection with the seized 'Rakzu'. Accused Lalruatpuia claimed the ownership of the seized 'Rakzu' and further stated that on 17.5.2012 at around 9:00 am he had purchased 20 litres of 'Rakzu' at the rate of Rs.1200/- in order to resell in retail price after adding some water to it and admitted that he had requested accused Vanlalhruii to sell the seized 'Rakzu' during his absence. His investigation reveals that the seized article belonged to accused Lalruatpuia and accused Vanlalhruii had abetted accused Lalruatpuia. The case I.O finds a prima facie case u/s 8(1) of Mizoram Liquor Total Prohibition Act 1995 well established against accused Lalruatpuia and charged him accordingly for violating Sec.7(a)(i)&(ii) of the said Act. Accused Vanlalhruii admitted that she had agreed to sell the seized Rakzu for accused Lalruatpuia during his absence. The case I.O therefore finds a prima facie case u/s 8(1) r/w section 45 of MLTP Act '95 against her and also charged her accordingly for violation of section 45 of the said Act.

3. The Court proceeded to hear the Prosecution and to take such evidences as may be produced in support of the Prosecution. Accordingly before framing of charge, P.W-8, the Case I.O in the instant case was examined by the Court as per the provision of section 244 Cr.P.C. After examination of this witness of the Prosecution, the Court finds a prima facie case against the accused persons. Therefore as per section 240 Cr.P.C the charge u/s 8(1) of MLTP Act '95 and also u/s 8(1) r/w 45 of MLTP Act was framed against both the accused persons read over and explained in the language known to them to which they pleaded 'not guilty' and claims for trial.

4. On 22.10.12 PW-8, S.I C.Lalchungnunga, the case I.O was examined and discharged. PW-1 Zoremsiami and PW-3 Jimmy Laltlansanga, Civilian witnesses were examined and discharged on 23.1.2013. PW-5 Zosangliani a Civilian witness was examined and discharged on 18.4.13. PW-7 C.Lalbiakluanga, Seizing Officer was examined and discharged on 14.5.13. PW-4 Lalneihzuali, another Civilian witness was also examined and discharged on 15.10.13.

Out of the 8- charge-sheet cited witnesses of the Prosecution 6 were examined as stated above. Out of the 6 civilian witnesses PW-2 and 6 were dropped from list of Prosecution witnesses since they could not be located at the given addresses. The depositions of the witnesses examined are briefly mentioned below:-

5. PW-7, S.I C. Lalbiakluanga deposed before the Court that on 17.5.2012 while they were on duty at Rangvamual, Mel 4 he spotted accused Vanlalhruii who hurriedly locked/bolted the house of her sister in which she also resides and from her action doubted that some 'rakzu' might be concealed inside the said house. After recording his Grounds of Belief in the presence of witnesses he requested accused Vanlalhruii to open the house. Inside the residence they recovered about 27 litres of 'rakzu' kept inside 4 plastic containers. P.W-7 seized the said 'rakzu' and in connection with this arrested accused Vanlalhruii .The seizure and arrest were being done in the presence of witnesses. P.W-7 further stated that he prepared seizure and arrest memo at 12:15 pm and submitted a report to the O/C.

On cross-examination PW-7 stated that he had recovered the seized article from inside the house. Even though the seized article was not recovered from the hands of accused Vanlalhruii, the same was under her possession. He also stated that he had arrested the accused at Rangvamual and prepared seizure memo on the spot. He further

stated in his cross-examination that the seized 'rakzu' is about 27 litres and the same was randomly checked and put together.

6. PW-8 S.I .C Lianchungnunga deposed that on 17.5.2012 at 12:15 pm S.I C.Lalbiaktluanga seized 27 litres of Rakzu kept inside 4 plastic containers and in connection with this arrested Vanlalhruaii. After he submitted a report to the O/C, the case was registered and he was endorsed to investigate in to the case. That during his investigation he examined the accused person who stated that the seized 'rakzu' belonged to Lalruatpuia the husband of her sister Zosangliani and he had requested her to sell the same while he was away at Aizawl and which she had intended to do so. PW-8 then stated that on 27.5.12 he arrested accused Lalruatpuia at 10:00 am and impleaded him in the case. He further deposed that accused Lalruatpuia confessed that the seized 'rakzu' belonged to him. On 17.5.2012 at 9:00 a.m accused Lalruatpuia purchased 20 litres of 'rakzu' at the rate of Rs.1200/- and after mixing some water he planned to resell it and while he was away at Aizawl he had asked accused Vanlalhruaii to sell it for him. During investigation the seizure witnesses had told him that the seized 'rakzu' were seized from the residence of accused Lalruatpuia in the presence of accused Vanlalhruaii. Thus from the outcome of his investigation he found a prima facie case u/s 8(1) of MLTP Act '95 against accused Lalruatpuia for illegal possession of the seized liquor which violates sec.7(a)(i)&(ii) of the same Act and also found a prima facie case u/s 8(1) r/w sec 45 of MLTP Act '95 against accused Vanlalhruaii for abetting to the commission of an offence and also charged her for violation of section 45 of the said Act. He also stated that his investigation also revealed that accused Vanlalhruaii has previous conviction record in connection with Case No. AENS-830/11 dated 28.8.2011 and therefore prayed for enhancement punishment against her.

In his cross-examination he stated that he was not present at the place of occurrence when accused Vanlalhruaii was arrested. He also stated that he had arrested accused No.2 since he was involved in the instant case however he recovered nothing from his possession.

7. PW-1, Zoremsiami a civilian witness deposed that on 17.5.2012 at around 12:00 a.m, while they were drinking liquor, Excise duty came and Vanlalhruaii hurriedly locked the house. Since Excise duty saw them they came to check the house of Vanlalhruaii and she was asked to be a witness. Inside the house, under the wash basin there was around 27 litres of Rakzu kept and it was seized by the Excise and in connection with this Vanlalhruaii was also arrested. PW-1 further deposed that since she had witness the seizure with her own eyes she was made one of the seizure witnesses.

In her cross examination PW-1 deposed that she did not see and did not know when and what the Excise personnel recovered from accused Vanlalhruaii.

8. PW-3 Jimmy Laltlansanga, a civilian witness stated that on 27.5.2012 when he was present at Excise office, one Lalruatpuui who was the owner of previously seized 27 litres of 'rakzu' was arrested. He also stated that he was present at the time of arrest and accused confessed that the seized article belonged to him.

In his cross-examination he stated that he was not present at the place of occurrence and at the time when both accuseds were arrested. He also stated that he did not see the seized article when both accuseds were arrested by Excise personnel. He further stated that he did not know whether the seized article belongs to the accuseds.

9. PW-5 Zosangliani, a civilian witness stated that on 27.5.2012 at around 10:00 a.m Excise personnel arrested accused Lalruatpuia in connection with the previous seizure of 'rakzu' since they believed that he was involved. She stated that she was present at the time of arrest, so she was made to be a witness and she had signed her name for the same.

On cross examination she deposed that she had signed her name in the Office of the Excise and not at the place arrest was made. She further deposed that she did not see anything being recovered from the possession of the accused.

10. PW-4 Lalneihzuali deposed that on 17.5.2012, S.I Lalbiaktluanga seized 27 litres of Rakzu from the possession of Vanlalhruii and Lalruatpuia and that she was present at the time of seizure and arrest.

In her cross-examination she deposed that she is presently residing at Mamit and that she does not know both the accused persons. She also stated that she did not know the exact time of the incident.

11. I have also examined the accuseds Vanlalhruii and Lalruatpuia u/s 313 Cr.P.C 1974 and their statements are recorded separately.

12. The main points to consider in the instant case is whether the seized article belonged to accused Lalruatpuia and whether accused Vanlalhruii abetted the offence by trying to sell the seized article for accused Lalruatpuia.

13. Ld. APPs has prayed for conviction of the accused Lalruatpuia u/s 8(1) of MLTP Act '95 and accused Vanlalhruii u/s 8(1) r/w sec 45 of the same Act and submitted that the witnesses produced by the Prosecution were sufficient in number and the quality of their evidence formed concrete evidence upon which conviction can be based. The most important evidence in sec. 8(1) of MLTP Act '95 is 'possession' of the seized article which is proved beyond doubt by all the witnesses in their examination-in-chief. Ld. APPs submitted that even the sole statement of PW-1 proved the guilt of the accuseds and as per the provision of Section 59 and 60 of Indian Evidence Act, 1872 the guilt of the accuseds has already been proved. Ld. APPs further submitted that regards to the time and year of commission of the offence, no FSL was required and Liquor Certificate issued by the concerned authority was enough to proof the contents of alcohol in the seized article. They therefore prayed to convict accused Vanlalhruii and Lalruatpuia u/s 8(1) of MLTP Act, 95

14. The Ld. Counsel for the accused persons prayed for acquitting the accused persons from the liability of the charge leveled against them and to set them free at liberty. Ld. D/L argued that there was no FSL report to consider that the seized article was within the definition of section 2 (j) of MLTP Act.95. He cited the case of Lalmuanzuala & Ors vrs State of Mizoram in Crl. Rev Pet No.3/2012 wherein the prosecution have to prove beyond reasonable doubt that the seized article contains liquor. He also argued that the Liquor Certificate issued by C.Chawngnuna who himself was interesting party cannot be taken into consideration. He further argued that the evidence of all the witnesses were shaken at the time of cross-examination. The Prosecution could not prove the guilt of both the accused beyond all reasonable doubt and hence argued that the accused persons are entitled to be acquitted from the criminal liability charged against them.

15. I have heard the Ld. APPS and Ld. D/L and have gone through the evidence led by the Prosecution in the case.

16. From the evidence recorded the evidence of PW-1, 7 & 8 are vital. The evidence of PW-7 & 8 is concrete and not shaken even at the time of cross-examination. PW-1

clearly stated that she was an eye witness to the arrest and seizure. As such with this evidence the Court can come to the conclusion that the accused persons were involved in possessing the seized articles and abetting for the same

17. In view of the facts, evidence and circumstances of the case discussed above, in my opinion the Prosecution has succeeded in establishing its case against the accused persons beyond reasonable doubt. Since accused Lalruatpuia is found to be in possession of the seized article he is liable to be convicted u/s 8(1) of MLTP Act '95 and since accused Vanlalhruaii is found to be abetting with accused Lalruatpuia by trying to sell the seized article and also concealing the same by locking the door when she saw the Excise Duty she is liable to be convicted u/s 8(1) r/w sec 45 of MLTP Act '95. The accused Vanlalhruaii is on bail, her bail bond stands cancelled and surety discharged.

ORDER

The accused Lalruatpuia is found guilty under section 8(1) of MLTP Act '95. He is therefore convicted and sentenced to undergo S.I for a period of 3 months and to pay a fine of Rs. 1000/-each and in default of payment S.I for 1 month. The accused person Vanlalhruaii is found guilty under section 8(1) r/w section 45 of MLTP Act. Even though the case I.O has prayed for enhancement punishment against her there is no record to show that the accused had previous conviction. She is therefore convicted and sentenced to undergo S.I for 3 months and to pay a fine of Rs.1000/- in default of payment S.I for 1 month The accused persons shall serve out the imprisonment awarded to them.

Detention period already undergone shall be set off.

Judgment signed, dated and pronounced in the open Court today the 17 day of June 2014.

(SYLVIE Z. RALTE)

Chief Judicial Magistrate,
Aizawl District : Aizawl.

Memo No.: _____/2014- CJM(Azl)/ : Dated Aizawl, the 17th June, 2014.

Copy to:

1. Vanlalhruaii D/o Malsawma Sailo (L) through his Counsel Shri Neihchungga Darlong, Advocate.
2. Lalruatpuia S/o Chalngura (L) Rangvamual Mel-4
3. APP.
4. Spl. Supdt. Central Jail, Aizawl.
5. Superintendant of Excise & Narcotics, (Pros), Aizawl.
6. O/C, Excise & Narcotics, Aizawl District, Aizawl.
7. Case I/O., C.Lianchungnunga, S.I, Excise & Narcotic.
8. G.R. Branch, Excise & Narcotics.
9. i/c Registration, Judicial Section, Aizawl.
10. Case record.

PESHKAR

