

IN THE COURT OF ADDITIONAL SESSIONS JUDGE  
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS  
Additional Sessions Judge,  
Aizawl Judicial District, Aizawl.

Sessions Case No. 373 of 2012

Crl Tr. No.1 of 2012

State of Mizoram .....Complainant

-Versus-

1. Shri F.Lalsiamkunga  
S/o F.Roliana,  
R/o Saron Veng, Aizawl.
2. Shri Dr. R.C.Lalmuana  
S/o Ainawna (L),  
R/o Ramhlun North, Aizawl. .... Accused persons.

APPEARANCE

For the State : Shri Joseph Lalfakawma, Addl. P.P.  
Smt. Lalremthangi, Asst. P.P.  
For the accused : Shri A.R. Malhotra, Advocate.  
Shri Haulianthanga, Advocate.

Hearing : 4.8.2015

Judgment delivered on : 17.8.2015

**J U D G M E N T & O R D E R**

The accused person has been tried in connection with the offences punishable under Section 25 (1A)(a)/(1B) of the Arms Act, 1959.

2. The prosecution story is that on 31.12.2011 at about 8:30 Am, S.I. P. Vanlalruata of CID (Special Branch), Mizoram submitted a report to the Officer-in-

Charge, Aizawl Police Station to the effect that he had seized .38 Revolver (Webley & Scotch Ltd. Birmingham No. 35870), .38 Revolver(Mark III Webley & Scotch Ltd. Birmingham), .410 Rifle No. 18035 (Locally modified), 60 live rounds of .38 ammunitions, 4 live rounds of .32 ammunitions, 10 live rounds of .303 ammunitions and 2 live rounds of 12 bore from the residence of accused F.Lalsiamkunga. Hence, Aizawl PS Case No. 689 of 2011 u/S 25(1A)(a)/(1B) of the Arms Act, 1959 was registered by the Officer-in-Charge, Aizawl Police Station and investigated into.

In the course of investigation, a prima facie case being found against the accused u/S 25(1A)(a)/(1B) of the Arms Act, 1959, charge sheet was submitted to the court of CJM, Aizawl.

3. Upon committal, my learned predecessor framed charges u/S 25(1)(1A)(a)/(1B) of the Arms Act against the accused persons and the charges were read over and explained in the language known to them, to which they pleaded not guilty and claimed to be tried.

4. In the course of trial, the prosecution produced and examined as many as 2 out of 6 witnesses to prove that the accused had committed offences punishable under Sections 25(1A)(a)/(1B) of the Arms Act, 1959. After closure of the prosecution evidence, the accused persons were examined under Section 313 of Cr PC. The accused persons were examined as Defence witnesses.

5. I heard the learned Shri Joseph Lalfakawma appearing for the State assisted by the learned A.P.P. Smt. Lalremthangi. I also heard the learned Counsel Shri A.R. Malhotra assisted by the learned Counsel Shri Haulianthanga appearing for accused persons Lalsiamkunga and Dr. R.C.Lalmuana .

6. **Points for Determination :**

- a) Whether the accused persons are liable to be convicted under Section 25 (1A) (a)/(1B) of the Arms Act, 1959?

7. **Discussion, Reasons and Decision :**

I have carefully perused the entire evidence on record and the materials placed before me.

8. The first contention of the learned Counsel Shri A.R.Malhotra is that the prosecution did not prove the search and seizure of the alleged seized firearms and ammunitions. According to him, the procedures relating to search and seizure have to be complied and it shall be proved by the prosecution which is not done in the present case.

9. Section 100 (4) of Cr. P.C. requires that before making a search, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to search, to attend and witness the search and may issue an order in writing to them or any of them so to do. The object of the section is to obtain as reliable an evidence as possible of the search and to exclude the possibility of concoction or malpractice of any kind.

10. In the present case at hand, P.W. S.I. P. Vanlalruata deposed in the trial that he had made a search in the presence of civilian witnesses, namely, Shri K.T.Nghinga and Shri Laithangpuia, both residents of Saron Veng, Aizawl. However, P.W. 2 Shri Laithangpuia who was present in the trial deposed that he was unable to identify the materials at Ext. M-1 which were shown to him in the Court. In his cross-examination, the seizure witness had reached the house of accused F. Lalsiamkunga after recovery of the seized articles which clearly shows that he was not present at the time of the search by the Police. It is pertinent to mention here that another seizure witness Shri K.T. Nghinga did come to give deposition in the Court to corroborate the statement of P.W. S.I. P. Vanlalruata. Hence, the procedure relating to search and seizure was not complied and it was not proved by the prosecution.

11. It was next contended by the learned Counsel Shri A.R.Malhotra that the seized articles were not packed with seal.

12. Having gone through the evidence, I find that the contention raised on behalf of the accused is correct and, therefore deserves to be accepted. In the cross-examination of P.W.1 S.I. P. Vanlalruata, he stated that he had not sealed the seized articles.

13. It was also contended that the non-examination of the Case I.O. is also fatal to the prosecution case. According to the learned Defence Counsel, the accused were deprived of the opportunity to effectively cross-examine the Case I.O. how he had come to conclusion that there was a prima facie case against the accused persons under the charged sections of law.

14. As rightly pointed out by the learned Defence Counsel, the Case I.O. who had investigated the present case was not examined during the trial since he did not appear to adduce evidence. A case of prejudice likely to be suffered by the accused persons depends on the facts of the case. In the case before me, the accused Dr. R.C. Lalmuana claimed that he had not violated offences under the Arms Act, 1959.

15. The learned Defence Counsel appearing for the accused persons finally contended that a copy of the list of seized articles signed by the Seizure Witnesses was not delivered to accused F. Lalsiamkunga.

16. When perusing the records of evidence of PW SI P. Vanlalruata, I find that the witness did not remember whether he had given copy of the seizure memo to accused F. Lalsiamkunga which shows that the witness had not given copy of the seizure memo to accused F. Lalsiamkunga. Hence, the mandatory procedure of law provided u/s 100(6) of Cr. PC is not complied in the present case.

17. The accused persons produced and examined two defence witnesses including accused Dr. R.C. Lalmuana.

18. According to the learned Defence Counsel, D.W.1 Dr. R.C. Lalmuana told accused F.Lalsiamkunga to repair .38 Revolver Mark III (Webley & Scott Ltd. Birmingham) at Ext. D-1, the licence of which was issued by the District Magistrate, Lunglei in favour of Ellis Saidenga vide Licence No. 7412/LLI/85 and he had retainer Licence at Ext. D-2 issued by the District Magistrate, Lunglei in his favour. The learned Defence Counsel further submitted that D.W.1 Dr R.C.Lalmuana had told F.Lalsiamkunga .38 Revolver (Mark III Webley & Scott Ltd. Birmingham) for browning, the same was belonging to Major KM Mishri, which he had given to Dr. R.C. Lalmuana before he was transferred to Kargil in 2002. D.W. 2 Evelyn

Lalengzami W/o Major K.M.Mishri (L) stated that the said revolver belonged to her father Shri Isaac C.Puck (L) who was issued Licence No. 1251/SHA/98 and her late husband Major K.M. Mishri was issued the retainer licence, but she did not know whether retainer licence was issued in favour of accused Dr. R.C.Lalmuana. The learned Defence Counsel also stated that for .410 Rifle No-18035 and .303 ammunition, licence was issued by the District Magistrate, Aizawl in favour of Lalchhuanmawia, and Dr. R.C. Lalmuana had retainer licence issued by the District Magistrate in the order dated 26.4.2011.

19. It is well settled that the prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defence. Nor can the court on its own make out a case for the prosecution and convict the accused on that basis.

20. In the instant case, the prosecution has failed to establish the case that the accused persons offended the provisions of the Arms Act, 1959 u/s 25 (1A)(a)/(1B) of the Act.

21. From the evidence discussed above, there is no evidence whatsoever to implicate the accused persons in the present case. The point, is therefore, answered accordingly.

22. In the light of the above discussion and reasons thereof, I hold that the prosecution has failed to prove its case beyond reasonable doubt. Hence, I do not find guilty against them. Accordingly, accused F. Lalsiamkunga and Dr. R.C.Lalmuana are acquitted of the offences under Sections 25(1A) (a)/(1B) of the Arms Act, 1959 and they be set at liberty forthwith.

23. Seized articles i.e. .38 Revolver (Webley & Scott Ltd. Birmingham, no-35870), .410 Rifle no-18035, 60(sixty) live round of .38 ammunitions shall be released to Dr. R.C. Lalmuana who is having retainer license.

Seized articles i.e. .38 Revolver (Mark III Webley & Scott Ltd. Birmingham, made in England), 4(four) live rounds of .32 ammunitions, 10(ten) live rounds of .303 ammunitions and 2(two) live rounds of 12 Bore shall be returned to the Govt. of Mizoram for confiscation in due process of law.

Judgment and Order prepared and delivered in the open court on this 17<sup>th</sup> day of August, 2015 under my hand and seal.

**Sd/- VANLALENMAWIA**

Addl. Sessions Judge  
Aizawl Judicial District,  
Aizawl, Mizoram.

**Memo No. \_\_\_\_\_/AD&SJ(A)/2015 : Dated Aizawl, the 17<sup>th</sup> August, 2015**

**Copy to: -**

- 1) Accused F. Lalsiamkunga
  - 2) Accused Dr. R.C. Lalmuana
  - 3) Sessions Judge, Aizawl Judicial District, Aizawl.
  - 4) District Magistrate, Aizawl District, Aizawl.
  - 5) PP / Addl. PP, Aizawl.
  - 6) DSP (Prosecution), District Court, Aizawl.
  - 7) Officer-in-Charge, Aizawl PS, Aizawl.
  - 8) i/c G.R. Branch, District Court, Aizawl.
  - 9) Registration Section, District Court, Aizawl.
  - 10) Guard File.
  - 11) Case Record.
  - 12) Calendar Judgment.
- through Counsel,  
Sh. Haulianthanga, Advocate.

**P E S H K A R**