

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

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

Crl. Revision Petition No. 25 of 2015

Shri James Lalsiamthara
S/o Vanlalhlana,
R/o Suangpuilawn, Aizawl District.Petitioner.

-Versus-

State of MizoramRespondent.

APPEARANCE

For the petitioner	:	Shri Laltanpuia, Advocate.
For the respondent	:	Shri Joseph Lalfakawma, Addl.PP.
Hearing	:	20.5.2015
Order delivered on	:	22.5.2015

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

1. The criminal revision petition has been filed to revise the impugned judgment and order dated 06.05.2015 passed by the learned Chief Judicial Magistrate, Aizawl in Crl. Tr No. 549 of 2015 arising out of Bawngkawn Police Station Case No.31 of 2015 under Sections 457/380. In the order, the petitioner was convicted under Sections 457/380 of IPC and sentenced to suffer **Simple Imprisonment for 7 months and to pay a fine of Rs. 1,000/- in default of fine another Simple Imprisonment for 10 days.**

2. The prosecution case in brief is that the accused was arrested on 19.02.2015 for alleged commission of offence under Section 457/380 of IPC by breaking the locked window and entered into the house of Lalhmingmawia in order to commit theft and thereby committed theft by stealing gas cylinder.

3. On filing this criminal revision petition, the Lower Court Record was requisitioned for the purpose of disposal of the revision; Lower Court Record was made available to this court while having hearing.

4. The petitioner being aggrieved thereby approached the Court of the learned Sessions Judge, Aizawl by filing this revision petition, but the revision petition was transferred to me for disposal. In exercise of the powers conferred upon me by Section 400 of Cr PC, the revision was heard and disposed off.

5. I heard the learned Counsel Shri Laltanpuia appearing for the petitioner and the learned Addl. Public Prosecutor Joseph Lalfakawma.

6. The learned Counsel Shri Laltanpuia appearing for the petitioner submitted that the conviction and sentencing order passed by the learned Chief Judicial Magistrate, Aizawl is bad and contrary to law inasmuch as the learned Trial Court did not explain to the petitioner the consequence of his admission before consideration of charge. It was also submitted by the learned Counsel that charge was framed against the petitioner without providing legal aid counsel though he was informed of his right to engage a lawyer of his choice or free legal aid. According to the learned counsel, legal aid counsel was not provided to the petitioner at the time when charge was framed against him. Apart from that, the learned Counsel submitted that the learned Trial Court ought to record reason for not invoking Section 360 of Cr PC, and the quantum of sentence is excessive. The learned Counsel contended that it is not proper to convict the petitioner without taking further evidence, by citing the case of **Zohmingthanga v. State of Mizoram; reported in 1998 (1) GLT 124.**

7. In the case of **State of Mizoram v. Ramengmawia; reported in 2006 (1) GLT 762**, a Division of the Gauhati High Court has held that an accused of murder can also be convicted on pleading of guilty under Section 229 of Cr PC. However, the court should ensure that the said plea of the accused is voluntary, clear, unambiguous and unqualified. In view of this decision of the Division Bench, the judgment of the learned Single Judge relied upon by the learned counsel for the petitioner impliedly stands overruled.

8. S. 241 of Cr PC provides, '**If the accused pleads guilty, the Magistrate shall record the plea, and, may, in his discretion, convict him thereon.**' In short, the power has been given to the Magistrate to exercise his discretion.

9. In the case before me, the learned counsel accepted that accused was informed of his right to engage a Defence Lawyer of his own choice or to avail free

legal aid counsel. Hence, I do not agree with the submission of the learned counsel that the petitioner has no means to defend himself.

10. It is also pertinent to mention here that the charges were read out and explained to the accused in his own language. He accepted his guilt. The plea of guilt of the accused was reduced into writing in the local language and put his signature. Hence, I am compelled to take a view that the accused pleaded his guilt without any influence or that he pleaded guilty without understanding the charges.

11. Be that as it may, the petitioner has not taken a plea before this court that the accused did not plead guilty. For the foregoing reasons, the conviction of the accused is hereby affirmed.

12. With regard to the sentence, I do not find any irregularity for not invoking Section 360 of Cr.P.C. However, I have perused the medical records produced by the Id. Counsel. The sentence passed by the Id. Trial Court is hereby modified in view of the sickness of the petitioner. Hence, the petitioner is sentenced to undergo a period of 2 ½ months SI and to pay Rs. 500/- in default of fine SI for 5 days in respect of Section 457 of IPC. He is also sentenced to undergo a period of 2 ½ months SI and to pay Rs. 500/- in default of fine SI for 5 days in respect of Section 380 of IPC. The sentences shall go consecutively.

13. In the result, the criminal revision is partly allowed.

14. The Special Superintendent, Central Jail, Aizawl is directed to take care of the petitioner and he is also advised to do the needful thing if the petitioner has serious illness.

15. No cost.

16. Send back the LCR.

Judgment & Order is pronounced in open Court on this 22nd day of May, 2015 under my hand and seal.

Sd/- VANLALENMAWIA
Addl. Sessions Judge,
Aizawl Judicial District,
Aizawl, Mizoram

Memo No.____/ASJ(A)/2015 : Dated Aizawl, the 22nd May, 2015

Copy to: -

1. Shri James Lalsiamthara through Legal Aid Counsel Shri Laltanpuia, Advocate.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. Smt. Sylvie Z. Ralte, Chief Judicial Magistrate, Aizawl District, Aizawl.
4. Special Superintendent, Central Jail, Aizawl.
5. Addl. PP.
6. Registration Section.
7. Guard File.
8. Case Record.
9. Calendar Judgment.

P E S H K A R