

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. 107 of 2013
Crl. Tr. No. 114 of 2013

State of Mizoram

.....Complainant

-Versus-

1. Smt. Lalnuntluangi (38)
D/o Hrangliana,
R/o Tahan, Myanmar.

2. Smt. Lalengkimi (32)
D/o Biakngura,
R/o Vaphail,
Champhai District, Mizoram.

3. Shri Thangkhenmang (40)
S/o Ginkhanthang,
R/o Bethel Veng, Champhai,
Champhai District, Mizoram.

4. Shri L.H.Nanglama (50)
S/o Sawngnanga (L),
R/o Champhai Vengthar,
Champhai District, Mizoram.

. Accused persons

APPEARANCE

For the State : Shri Joseph Lalfakawma, Addl. P.P.
Ms Lalremthangi, Asst. P.P.

For the accused persons : 1. Shri H.Laltanpuia, Advocate.
: 2. Ms Rashila Thapa, Advocate.

Hearing : 14.9.2015 & 16.9.2015.

Judgment delivered on : 14.10.2015

J U D G M E N T

The accused persons have been tried under Sections 25 (1)(d)/(1A)/(1AA) of the Arms Act read with Section 120B/34 of the IPC.

2. The story of the prosecution case in brief is that on 14.5.2013, Sub. P.B. Gurung and his party of 14 Assam Rifle, Champhai Camp produced Smt. Lalnuntluangi at Champhai Police Station with one rifle grenade allegedly recovered from her possession at Hotel Holiday Home, Champhai Vengthlang. The rifle grenade was seized in the presence of Shri Lalchantira and Shri Lalramlawma, both residents of Champhai Vengthar. The accused stated that she was apprehended for recovery of the seized article, which according to her, the rifle grenade was handed to her by her accomplices, namely, Shri Thangkhenmang and Smt. Lalengkimi. Thereafter, all the three accused persons were apprehended. During interrogation, the accused persons stated that Shri L.H.Nanglama was the owner of the recovered rifle grenade and the unrecovered four rifle grenades. On the morning of 15.5.2013, the police arrested all the accused L.H.Nanglama persons and interrogated them. The accused L.H.Nanglama admitted that one Lianchinkhupa of Heilei, Myanmar had handed over him the five (5) Rifle Grenades, which he hid the rest four (4) Rifles Grenade at a place under the garbage near Community hall at Champhai Vengthar. The four (4) Rifle Grenades were seized in the presence of Shri L.P. Khama and Shri Samuel Lalremruata which he had tried to sell on the day before. As a result, Shri B.Gurung lodged Ejahar. Hence, Champhai Police Station Case No. 65 of 2013 dated 15.5.2013 under Section 25(1)(d0(1A/1AA) of the Arms Act read with 120 B/34 and 6(a) of the P.P. (Entry into India) Rules, 1950 was registered and investigated by S.I. R.L.H.Dingzela.

In the course of investigation, the complainant was examined and his statement was recorded. The accused persons were arrested and interrogated by the Case I.O. It was revealed from the interrogation of the Case I.O. that accused Lalnuntluangi had a friend named Uddin who had promised to pay handsome money if she could have collected smuggled arms and ammunition. As a result, accused Lalnuntluangi contacted accused Lalengkimi. Accused Lalengkimi then contacted

accused Thangkhenmang. Thereafter, accused Thangkhenmang contacted accused L.H.Nanglama for procuring the smuggled arms and ammunition. All the accused persons jointly procured the smuggled arms and ammunition. As a result, the so called Uddin made arrangement with accused Lalnuntluangi for purchase of the Rifle Grenades. Accused Lalnuntluangi was apprehended with one Rifle Grenade by the Assam Rifle at Hotel Holiday Home, Champhai. Finally, the other four Rifle Grenades were recovered and seized from the possession of accused L.H.Nanglama in the presence of reliable witnesses at a place near Vengthar Community Hall, Champhai. The persons named by the accused persons, namely, Uddin and Lianchinkhupa could not be arrested. The seized articles were sent to FSL for examination and the result was positive. Prosecution sanction was obtained from the District Magistrate, Champhai. Hence, a prima facie case being found under the registered sections, charge-sheet was submitted to the learned CJM, Champhai.

3. The accused persons were produced before the learned Chief Judicial Magistrate, Champhai District. The case was committed to the learned Sessions Judge being the offence exclusively triable by Court of Session. Thereafter, the case was transferred to my predecessor for trial and disposal. Hence, the case came to me.

4. Charge sheet and its relevant documents were supplied to the accused persons in the presence of their learned Counsels.

5. After hearing the rival parties and on finding a prima facie case against the accused persons, charges were framed against them under Sections 25(1)(d)/(1A)/(1AA) of the Arms Act read with 120B/34 of IPC of I.P.C. The charges were read over and explained in the language known to them, and to which they pleaded not guilty and claimed to be tried.

6. In order to bring home the charge, the prosecution produced and examined as many as three (3) out of seven (7) witnesses to prove that the accused persons had committed offences punishable under Sections 25 (1)(d)/(1A)/(1AA) of the Arms Act read with Section 120B/34 of the IPC. The plea of defence is of total denial. After closure of the prosecution evidence, the accused persons were examined under Section 313 of Cr PC.

7. I heard the learned Addl. Public Prosecutor Shri Joseph Lalfakawma assisted by the learned A.P.P. Smt. Lalremthangi. I also heard the learned Counsel Shri H.Laltanpuia appearing for the accused persons.

8. According to the learned Addl. P.P. Shri Joseph Lalfakawma, the prosecution proved the charges framed against the accused under Sections 25 (1)(d)/(1A)/(1AA) of the Arms Act read with Section 120B/34 of the IPC beyond reasonable doubt.

9. On the other hand, the learned Counsel Shri H.Laltanpuia contended that there is no case against the accused persons inasmuch as the evidences are contradictory and not believable.

POINTS FOR DETERMINATION:

10. a) Whether the prosecution proves that accused persons possessed five (5) Rifle Grenades punishable under Sections 25 (1)(d)/(1A)/(1AA) of the Arms Act?

b) Whether there was a conspiracy among the accused persons with common object of illegal transaction of arms and ammunitions punishable under Sections 120B/34 of IPC?

11. Discussion, Decision & Reasons Thereof:

P.W.1 Shri L.P. Khama and P.W.2 Shri Samuel Lalremruata are seizure witnesses. On the morning of 15.5.2013 after 6 AM, the police accompanied by SIB requested their presence to the place where they had to seize offensive articles. Thereafter, they proceeded to a place (back side of Champhai Vengthar Community Hall) and saw accused L.H.Nanglama under escort by the police. The police asked the accused to produce the offensive article. Accordingly, the accused produced four (4) Rifle Grenades. They saw the Seizing Officer seizing the offensive articles and stood as seizure witnesses. They proved the seizure memo at Ext P-1 and their signatures at Ext. P-1 (a) & (b) respectively. On cross-examination, they admitted that the seized articles produced before the Court, were not the seized articles seized in their presence behind Champhai Vengthar Community Hall.

However, an application for recalling the witnesses filed by the learned Addl. P.P. was heard and allowed. When the witnesses were re-examined, they stated the Rifle Grenades had not been shown to them.

P.W.3 S.I. R. L.H.Dingzela knew the accused persons. According to him, on 14.5.2013, one Sub. P.B. Gurung and his party of 14 Assam Rifle, Champhai Camp produced accused Lalnuntluangi at Champhai police Station in connection with one prohibited Rifle Grenade recovered from her possession. At the time of production, he was present at the Police Station. He examined accused Lalnuntluangi. It was revealed from the statement of the accused that she had worked with the other two accused persons to sell the prohibited Rifle Grenade at Champhai and she was apprehended while contacting customer at Hotel Holiday Home. Thereafter, they apprehended accused Thangkhenmang and accused Lalengkimi. It was from the statements of accused Thangkhenmang and accused Lalengkimi that they had come to know that the main accused L.H.Nanglama was possessing four (4) numbers of Grenades and apprehended him at Champhai Vengthar, and recovered the Rifle Grenades from the latter. The FIR submitted by Sub. P.B. Gurung of 14 Assam Rifle, Champhai Camp was registered against the accused persons vide Champhai PS Case No. 65 of 2013 dated 15.5.2013 under Sections 25 (1)(d)/(1A/(1AA) of the Arms Act read with 120 B/34 and 6 (a) P.P. (Entry into India) Rules and he was endorsed to investigate the case.

In the course of investigation, he arrested the accused persons and recorded their statements. He also seized 1 Rifle Grenades from accused Lalnuntluangi and 4 Rifle grenades from accused L.H. Nanglama in the presence of the reliable witnesses. He received prosecution sanction against the accused persons from District Magistrate, Champhai. The seized articles were sent to FSL, Aizawl. The FSL Report was later received by him. The FSL Expert opined that the seized articles were all serviceable.

He found a prima facie case against the accused persons for the offences punishable under Sections 25 (1)(d)/(1A/(1AA) of the Arms Act read with 120 B/34 and 6 (a) P.P. (Entry into India) Rules. He submitted charge sheet against the accused persons on 19.8.2013. Ext. P-1 is the seizure memo of 4 Rifle Grenades

and Ext. P-1(c) is his signature. Ext. P-2 is the charge sheet and Ext. P-2(a) is his signature. Ext. P-3 is the arrest memo of Lalnuntluangi and Ext. P-3(a) is his signature. Ext. P-4 is the arrest memo of Lalengkimi and Ext. P-4(a) is his signature. Ext. P-5 is the arrest memo of Thangkhenmanga and Ext. P-5(a) is his signature. Ext. P-6 is the arrest memo of L.H.Nanglama and Ext. P-6(a) is his signature. Ext. P-7 is the seizure memo of 1 Rifle Grenade and Ext. P-7(a) is his signature. Ext. P-8 is the FIR Form. Ext. P-9 is the Prosecution Sanction. Ext. P-10 is the FSL Report. Ext. P-11 is the original FIR submitted by Sub. P.B.Gurung of 14 Assam Rifle, Champhai Camp. Ext. M-1 is the seized articles containing 4 Rifle Grenades produced before the Court.

On cross-examination, he stated that he had sent all the seized articles to the FSL. However, one seized article was used for testing and examination and he admitted that there is no seizure memo in a record today in respect of the seized article bearing registration No. 40 MM Rifle Grenade MG/2 LOT No. 14/2012 though he had seized the same. He denied that he had not obtained prosecution in respect of the instant case. He further stated that when he had seized the article from the possession of accused Lalnuntluangi, who was under the custody and control of the Assam Rifle, and the latter had brought her in the PS. He also stated that his information originated from the statement of accused Lalnuntluangi and the statements of the accused persons, namely, Lalengkimi and Thangkhenmanga were his basis of information to implicate another accused L.H.Nanglama.

12. In the course of hearing, the learned Defence Counsel Shri H.Laltanpuia appearing for the accused persons first challenged the validity of the FIR inasmuch as the author of the FIR had not put his signature. However, it is true that the FIR was not signed by the author. But, it is also true that the learned Defence Counsel appearing on behalf of the accused persons did object that the FIR had been submitted to the Officer-in-Charge, Champhai Police Station. Hence, so far the validity of the FIR was not challenged by the learned Defence Counsel, I do not find that the prosecution case is vitiated.

13. It was next contended by the learned Defence Counsel that the alleged seizure of the rifle grenade from the possession of accused Lalnuntluangi was not proved by producing the alleged seizure witnesses, namely, Shri Lalchantira, a

resident of Electric Veng, Champhai and Shri Lalramlawma Colney, a resident of Bethel Veng, Champhai. According to the learned Defence Counsel, the alleged material was also not exhibited. In my view, the allegation made against accused Lalnuntluangi that the one rifle grenade was seized from her possession is not proved. In the testimony of the Case I.O., S.I. L.H. Dingzela, he was not present when accused Lalnuntluangi was apprehended with one rifle grenade at Hotel Holiday Home at Champhai Vengthang by one Sub. P.B.Gurung of 14 Assam Riffle. As there is no evidence of Subedar P.B.Gurung and the witnesses present at the time of the alleged recovery of the rifle grenade from the possession of accused Lalnuntluangi, I do not find that the prosecution has proved the charge framed against accused Lalnuntluangi under Section 25(1)(d)/(1A)(1-AA) of Arms Act. I also do not find that the prosecution has proved the charges against accused Lalengkimi and Thangkhenmang under Section 25(1)(d)/(1A)(1-AA) of Arms Act since no material was seized from them.

14. It was also contended by the learned Defence Counsel that the seizure witnesses, namely, Shri L.P.Khama and Shri Samuel Lalremruata did not prove that the materials were seized from the possession of accused L.H.Nanglama. As rightly pointed out by the learned Defence Counsel, the seized materials at Ext. M-1 shown to the seizure witnesses on 23.2.2015 were not the materials seized in their presence behind Champhai Vengthar Community Hall. However, on re-examination on 21.7.2015, the seizure witnesses stated that they had not seen the rifle grenades shown in the Court. Hence, I have come to the conclusion that the seized materials without any proof by the witnesses in accordance with procedure of the law in force cannot be treated as evidence in accordance with the Evidence Act.

15. It is well settled law that the Prosecution has to prove the guilt of the Accused beyond all reasonable doubt and this burden never shifts. The elementary and cardinal principle of criminal jurisprudence requires the Prosecution to stand on its own legs.

16. The Apex Court in the case of Harijana Thirupala & Ors v. Public Prosecutor, High Court of A.P., Hyderabad (2002)6 SCC 470 at Paragraph

'11. In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of evidence in totality on the prosecution case or innocence of accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be

added that ultimately and finally the decision in every case depends upon the facts of each case.'

17. The contention of the learned Counsel that there is no proof of the criminal conspiracy against the accused persons is also acceptable to me. The solitary testimony of the Case I.O. that the accused persons admitted before him that they had conspired with common object of illegal transaction of arms and ammunitions is not admissible in evidence without any corroboration of independent witnesses.

18. The incriminating evidences were denied by the accused persons in their examination under Section 313 of Cr PC.

19. From the evidences discussed above, there is no evidence whatsoever to implicate the accused persons in the present case. The points, are therefore, answered accordingly.

20. 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, the accused persons are hereby acquitted of the offences punishable under Sections 25(1)(d)/(1A)/(1AA) of the Arms Act r/w 120B/34 of IPC. They are set at liberty forthwith.

21. The bail bond shall remain in force for a further period of six months from today in view of Section 437A Cr.P.C.

22. Seized articles, if any, shall be returned to the Govt. of Mizoram for confiscation in due process of law.

23. The case is therefore disposed off.

Judgment and Order prepared and delivered in the open court on this
14th day of October, 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 14th October, 2015

Copy to: -

- 1) Smt. Lalnuntluangi & Ors. through Counsel Sh. H. Laltanpuia, Advocate.
- 2) Sessions Judge, Aizawl Judicial District, Aizawl.
- 3) District Magistrate, Champhai.
- 4) PP / Addl. PP, Aizawl.
- 5) Superintendent of Police, Champhai District, Champhai.
- 6) Officer-in-Charge, Champhai PS.
- 7) i/c G.R. Branch, District Court, Aizawl.
- 8) Registration Section, District Court, Aizawl.
- 9) Guard File.
- 10) Case Record.
- 11) Calendar Judgment.

P E S H K A R