

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. 69 of 2015

Crl Tr. No. 569 of 2015

State of MizoramComplainant

-Versus-

1. Dhaniram Reang @ Lalduhawma (42)
S/o Durbongsho,
2. Endromsha @ Flowera (22)
S/o Distirai,
3. Zorama @John (21)
S/o Kurnojoy,
4. Rotan Reang @ Mawia
S/o Adirai,
5. Chhandama (18)
S/o Odirai,
All residents of Naisingpara, North Tripura.... Accused persons.

APPEARANCE

For the State : Smt. Lilyparmawii Hmar, Addl. P.P.
Ms. Venus. H. Lalmuankimi, A.P.P.

For Accused Dhaniram Reang: Shri S.L. Thansanga, Advocate.

For Accused Endromsha : Shri R. Thangkanglova, Advocate.

For Accused Zorama : Shri Albert V.L. Nghaka, Advocate.

For Accused Rotan Reang : Shri Lalramhluna, Advocate.

For Accused Chhandama : Shri J.N. Bualteng, Advocate.

Judgment delivered on : 22.2.2017

Sentence Order on : 22.2.2017

J U D G M E N T

The accused persons have been tried for alleged commission of offences u/s 364 (A)/34 IPC r/w 25(1A) Arms Act.

2. The prosecution case in brief is that on 6.6.2013 one Gunumanai Singh, a Supervisor of Gautam Construction Company of Amchirimukh Camp, Rajiv Nagar submitted FIR to the effect that on the day before at around 8 Am the company Tripper bearing Registration No. AS 11C-7414 driven by Bijoy Chakma while returning from the work side (Border fencing) to drop company labourers was intercepted by some unknown miscreants at Badalsuri at around 9:00 Am to 10:00 Am and kidnapped them to Bangladesh. The kidnapped persons were a) Bijoy Chakma (driver), b) Mithun of Assam (handle man) and c) Nizam Uddin of Assam (Cement Mistiri). One empty cartridge of 7.62 MM round of AK-47 suspected to be fired by the accused persons was found in the place of occurrence. Hence, West, West Phaileng PS Case No. 10 of 2013 dated 6.6.2013 u/s 364 (A)/ 34 IPC r/w 25 (1A) Arms Act was registered and the case was first investigated by S.I. Lalsangbera Sailo and later by Inspector L.T.Fala.

In the course of investigation, S.I. Lalsangbera Sailo visited the place of occurrence i.e. Badalsuri and examined several witnesses. On examination, he found that the kidnapped persons had been attacked by the militants at around 9:30 Pm and one empty cartridge of AK-47 Rifle was also recovered in the P.O. by the BSF. He also found that the militants had kidnapped the kidnapped persons to Bangladesh by breaking the border fencing. He also examined the employees, namely, Lobhidon of Rajiv Nagar, Pandit Chakma and Muna Robi Das of Karimganj and the complainant.

During investigation, the BSF personnel produced two empty cartridges to S.I. Lalsangbera on 15.6.2015 and he seized in the presence of witnesses and also recorded their statements. S.I. Lalsangbera contacted Sandeep Bagradia, Manager, Gautam Construction Company Ltd. The manager sated that he had conversed with the militants identifying themselves as members of NLFT, demanded one crore rupees for ransom from them. On 24.8.2013, Bijoy Chakma was released and on 10.11.2013, Nizam Uddin and Midul Das were also released.

On 1.7.2014, SI L.T. Fala Khiangte arrested accused Daniram Reang and Roton Reang from Kanchandpur, Tripura. During his further investigation, on 13.7.2014, he arrested accused Thlamuana, Endromsa, Chhandama and Zorama. He interrogated the accused persons and recorded their statements in which they stated they had involvement in kidnapping the said two drivers and one non-mizo passenger. After interrogation and recording the statements of all accused persons and witnesses, he found a prima facie case under Sections 364(A)/34 IPC read with 25(1A) Arms Act against accused persons, namely, Dhaniram Reang, Thlamuana, Endromsha, Zorama, Roton Reang, Chhandama, Dalipha Dogla (NLFT), Service Popdampha (NLFT), Thikri (NLFT), Warriet (NLFT), Reikesat (NLFT) and Dunia (NLFT). He then submitted charge sheet to the learned Chief Judicial Magistrate, Mamit District.

3. Upon committal, charges under Sections 364(A)/34 IPC read with 25(1A) Arms Act were framed against the accused persons. The charges were read over and explained in the language known to them, to which they pleaded not guilty and claimed to be tried. It is pertinent to mention here that charges were not framed against accused Thlamuana on bail since he did not attend Court.

4. In the course of trial, the prosecution produced and examined as many as 5 out of 15 witnesses to prove that the accused had committed the offences punishable under Sections 364(A)/34 IPC read with 25(1A) Arms Act. After closure of the prosecution evidence, the accused persons were examined under Section 313 of Cr PC in which they denied.

Point of determination:

- (i) Whether the accused persons are liable to be convicted under Sections 364-A/34 IPC?
- (ii) Whether accused persons are liable to be convicted under Section 25(1A) Arms Act.?

Discussion, Decision and Reason of Decisions:

5. **P.W.5 Gunumanai Singh** who worked as Supervisor at Gautam Construction Company Ltd. submitted FIR to Officer-in-Charge, West Phaileng PS on the basis of information received from BSF to the effect their Company Tripper bearing Regn. No. AS-11/C-7414 was found at the border fencing without any person present in the vehicle. On reaching the spot, they came to know that some miscreants had shot their Company Tripper and also kidnapped Bijoy Chakma (driver), Mithun (Handle man) and Nizam Uddin (Cement Mistiri). One empty cartridge of 7.62 was already found by BSF. He proved the FIR at Ext. P-1.

6. **P.W.2 Lalthuamluaia and P.W.3 Lalfakkimi** are seizure witnesses. They saw BSF personnel producing 2 empty cartridges around 7.62 mm of AK-47 Rifle at W.Phaileng PS on 15.6.2013 and the Officer-in-Charge seized the articles in their presence. They proved the seizure memo at Ext. P-8 and also proved the empty cartridges at Ext. M-1. On cross examination, they stated that they had not seen the BSF recovering seized articles, but they were told by the seizing officer that the BSF had recovered the seized articles from the place of occurrence.

7. **P.W.4 SI Lalsangbera Sailo** registered West Phaileng PS Case No. 10 of 2013 dated 6.6.2013 u/s 364A/34 IPC r/w 25 (1A) Arms Act after receiving the FIR submitted by P.W.1 and he investigated the case. In the course of investigation, he examined the complainant and one of the victims, namely, Bijoy Chakma, and recorded their statements. He visited the PO i.e. Badalsuri (Indo-Bangladesh Border Fencing). The investigation conducted by him revealed that the Tripper owned by the Company had been attacked by the militants while returning from Silsora. According to him, the militants shot the Tripper's fender and two empty cartridges were recovered by BSF party, and he seized the articles in the presence of witnesses. He came to know from the complainant and other witnesses that the militants had kidnapped Bijoy Chakma, Mithun and Nizam Uddin who boarded in the Tripper. He handed over all the documents to OC, W.Phaileng PS before completion of his investigation since he was transferred. He proved the FIR at Ext. P-1, the Seizure Memo at Ext. P-8, the Form of FIR at Ext. P-10 and the two Empty Cartridges at Ext. M-1. On cross- examination, he admitted that he did arrest the accused person due to his transfer. He found one hole on the Tripper's fender.

8. **P.W.1 Inspector L.T.Fala Khiangte** completed the investigation and submitted charge sheet. On 10.11.2013, two victims Nizam Uddin and Midul Das

were released by the kidnappers. He sent them to have general medical examination. After medical examination, the victims' statements were recorded. On 14.11.2013, the statements of Babul Ali and Suba Ranjan Chakma were recorded. He arrested Dhaniram Reang and Roton Reang at Kanchanpur on 16.4.2014 and also arrested Thlamuana, Endromsha, Zorama and Chhandama on 13.7.2014, and recorded their statements. A prima facie case u/s 364A/34 IPC r/w 25(1A) Arms Act being against the accused persons, he submitted Charge-Sheet. He proved the FIR at Ext. P-1, the Arrest Memo of Dhaniram Reang at Ext. P-2, the Arrest Memo of Roton Reang at Ext. P-3, the Arrest Memo of Thlamuana at Ext. P-4, the Arrest Memo of Endromsha at Ext. P-5, the Arrest Memo of Zorama at Ext. P-6, the Arrest Memo of Chhandama at Ext. P-7, the Seizure Memo at Ext. P-8, the Charge Sheet at Ext. P-9, the Form of FIR at Ext. P-10 and the two Empty Cartridges at Ext. M-1.

9. The first contention of the learned Defence counsel is that the offence under Section 364-A IPC is not made out.

10. Section 364-A IPC reads as under:-

"364-A.Kidnapping for ransom, etc.- Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter- governmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

11. Section 364-A IPC was inserted by Section 2 of the Criminal Law (Amendment) Act, 1993 (Act No.42 of 1993) with effect from 22.5.1993. The said Section was further amended by the Indian Penal Code (Amendment) Act, 1995 (Act No.24 of 1995) with effect from 26.5.1995. Section 2 thereof relates to amendment of Section 364-A IPC to the effect that in Section 364-A IPC, for the words "any other persons", the words "any foreign state or international inter-governmental organization or any other person" shall be substituted.

12. The Hon'ble Supreme Court in *Malleshi v. State of Karnataka*, 2004 (4) RCR (Crl.) 391 held that to attract the provisions of Section 364-A IPC what is required to be proved was; (1) that the accused kidnapped or abducted the person; and (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom.

13. In the present case, none of the alleged victims of kidnapping for ransom could be produced by the prosecution during the course of trial despite summons issued upon them. There is no eye witness who could give evidence in the court. Hence, the evidence on record is not sufficient to record conviction against the accused persons under Section 364-A IPC. It is also pertinent to mention here that there was also no conduct of Test Identification Parade.

14. Admittedly, empty cartridges were seized. But, the BSF personnel who recovered the cartridges at the place of occurrence were not examined. Hence, it is hard to connect with the charge of offence against the accused persons punishable under section 25 (1A) Arms Act. Hence, I find that the accused persons are not liable to be convicted under section 25 (1A) Arms Act.

15. In the light of the above discussion and reasons thereof, I hold that the prosecution fails to prove the charges framed against the accused persons under Sections 364 (A)/34 I.P.C read with 25 (1A) Arms Act. Accordingly, the accused persons are not found guilty under said sections of law. Hence, they are acquitted.

16. The accused persons shall be released forthwith if they are wanted in other cases.

17. Seized articles shall be destroyed in due course of law.

Judgment and Order prepared and delivered in the open court on this 22th day of February, 2017 under my hand and seal.

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

APPENDIX

A. PROSECUTION EXHIBITS

- Ext. P-1 FIR
 - P-1(a) Signature of PW No. 4
 - P-1(b) Signature of PW No. 5
- Ext. P-2 Arrest Memo of Dhaniram Reang
- Ext. P-2(a) Signature of PW No. 1
- Ext. P-3 Arrest Memo of Roton Reang
- Ext. P-3(a) Signature of PW No. 1
- Ext. P-4 Arrest Memo of Thlamuana
- Ext. P-4(a) Signature of PW No. 1
- Ext. P-5 Arrest Memo of Endromsha
- Ext. P-5(a) Signature of PW No. 1
- Ext. P-6 Arrest Memo of Zorama
- Ext. P-6(a) Signature of PW No. 1
- Ext. P-7 Arrest Memo of Chhandama
- Ext. P-7(a) Signature of PW No. 1
- Ext. P-8 Seizure Memo
 - P-8(a) Signature of PW No. 2
 - P-8(b) Signature of PW No. 3
 - P-8(c) Signature of PW No. 4
- Ext. P-9 Charge Sheet
- Ext. P-9(a) Signature of PW No. 1
- Ext. P-10 Form of FIR
 - P-10(a) Signature of PW No. 4
- Ext. M-1 Empty Cartridge of 7.82 mm (AK-47) 2 nos.

B. **DEFENCE EXHIBITS-** None

C. **EXHIBITS PRODUCED BY WITNESSES -** None

D. **COURT EXHIBITS-** None

E. PROSECUTION WITNESSES:

- P.W. No. 1 - Inspector L.T. Fala Khiangte
- P.W. No. 2 - Lalthuamluaia
- P.W. No. 3 - Lalfakkimi
- P.W. No. 4 - SI Lalsangbera
- P.W. No. 5 - Gunumanai Singh

F. **DEFENCE WITNESSES - :** None

Memo No. _____/ASJ(A)-II/2017 : Dated Aizawl, the 22nd February, 2017

Copy to: -

1. Accused Dhaniram Reang through Counsel Shri S.L. Thansanga, Advocate.
2. Accused Endromsha through Counsel Shri R. Thangkanglova, Advocate.
3. Accused Zorama through Counsel Shri Albert V.L. Nghaka, Advocate.
4. Accused Roton Reang through Counsel Shri Lalramhluna, Advocate.
5. Accused Chhandama through Counsel Shri J.N. Bualteng, Advocate.
6. Sessions Judge, Aizawl Judicial District, Aizawl.
7. Special Superintendent, Central Jail, Aizawl.
8. District Magistrate, Mamit District, Mamit.
9. Addl. PP, Aizawl.
10. Superintendent of Police, Mamit District, Mamit.
11. DSP (Prosecution), District Court, Aizawl.
12. Officer-in-Charge, West Phaileng Police Station.
13. Registration Section.
14. Guard File.
15. Calendar Judgment.
16. Case Record.

P E S H K A R