

**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. 145 of 2015

Crl Tr. No. 1346 of 2015

State of MizoramComplainant

-Versus-

1. Shri Rohmingliana (50)
S/o C.L. Thuama (L),
R/o Vaivakawn Zohnuai,
Aizawl.
2. Shri Huapzauva (45)
S/o Thangchhunga (L),
R/o Phunchawng,
Aizawl.
3. Shri Lalthanmawia (35)
S/o Nova (L),
R/o Lungverh, Aizawl. Accused persons.

APPEARANCE

For the State : Smt. Lilyparmawii Hmar, Addl. P.P.
Ms Venus H. Zomuankimi, APP.

For Accused No. 1 : Shri W. Sam Joseph, Advocate.

For Accused No. 2 & 3 : Shri C. Lalrinpuia, Advocate.

Hearing : 30.1.2017

Judgment delivered on : 10.2.2017

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

The instant case is disposed off after hearing the rival parties and perusing the evidence on record. As a result, the accused persons are acquitted from the offence punishable u/s 25(1AA) of Arms Act in contravention of Section 7 of the Act read with Section 34 of IPC.

2. The prosecution story starts when Inspector Laljohana, the Officer-in-Charge of Special Narcotic Police Station submitted enquiry report to the Officer-in-Charge of Vaivakawn Police Station on 3.5.2013. It is stated in the enquiry report; the Special Narcotic Police Station staff under his supervision recovered A) AK-47 Assault Rifle No. A03249, B) AK-47 Assault Rifle No. A02548, C) AK-47 Assault Rifle No. A02591 with 10 rounds of ammunition including 5 magazines from the garden of Lalhuapzauva, D) AK-56 Assault Rifle No. M22-5655 with 1 magazine and 19 rounds of ammunition from the garden of Lalthanmawia, and E) US Carbine No. 575195 with 5 magazines (Long magazine of 1 No. & Short magazines of 4 Nos.) from Clandson Firearms Engineering Works. The Officer-in-Charge of Special Narcotic Police Station recorded statements of Rohmingliana, Huapzauva, Lalthanmawia, Hmingthankhuma, Benjamin Lalthanmawia, Samuel Neivanril, C.Lalthlangliana and B.Lalhlimpuia. Hence, Sairang Police Station Case No. 17/2013 dated 30.4.2013 u/s 25(1AA) of Arms Act read with Section 34 IPC was registered and investigated by S.I. Melody Lalmuanpuui.

In the course of investigation, the Enquiry Officer was examined and his statement was recorded. The PO was visited and sketch map of the PO was drawn. The apprehended accused persons were arrested on 3.5.2013. After interrogating the accused persons and their statements were recorded, they were remanded into judicial custody on 6.5.2013. On receipt of the FSL Report, the Case I.O. found a prima facie case u/s 25(1AA) of Arms Act read with Section 34 IPC and she submitted charge sheet.

3. Upon committal, charges under Section 25(1AA) in contravention Section 7 of Arms Act read with Section 34 of IPC were framed against the accused persons, the same 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 six out of eight witnesses to prove that the accused had committed the offences punishable under Section 25 (1AA) in contravention Section 7 of Arms Act read with Section 34 of IPC. They were also cross-examined. P/W B. Lalhlimpua could not be produced due to his death and P/W Samuel Neivanril was also not produced. After closure of the prosecution evidence, the accused persons were examined under Section 313 of Cr PC.

Point of determination:

- a) Whether the accused persons are liable to be convicted u/s 25(1AA) in contravention of Section 7 of the Arms Act?
- b) Whether the accused persons committed criminal act punishable u/s 34 of IPC in furtherance of a common intention to commit offence punishable u/s 25(1AA) in contravention of Section 7 of the Arms Act?

Deposition of the Prosecution Witnesses.

5. **P.W. 1 Inspector Laljohana** identified the accused persons. At the relevant time of incident, he was posted as Office-in-Charge of Special Narcotic PS. On 1.5.2013 at afternoon, he received information from their source that Lalhuapzauva had bought 3 AK Rifles with ammunitions including magazines and Lalthanmawia had bought 1 AK Rifle with ammunitions including magazine. On receipt of information, they proceeded to the residence of Lalhuapzauva at Phunchawng. Lalhuapzauva told them that he had bought the said Rifles from one Khuma at the cost price of Rs. 30,000/-. The said arms and ammunitions were recovered and seized from the garden of Lalhuapzauva on being led and shown by him at around 11:30 Pm in the presence of reliable witnesses. The details of arms and ammunitions seized from accused Lalhuapzauva were—3 Nos. of AK 47 Assault Rifles Nos. A03249, A02548 and A02591 with 5 numbers of magazine and 10 live rounds of ammunition. He recorded the statement of Lalhuapzauva. They also proceeded to the house of Lalthanmawia (LPS Operator) of Lungverh. Lalthanmawia told them that he had received 1(one) AK 56 Assault Rifle No. M22-5655 with 1 magazine and 19 numbers of ammunitions and the same was kept hidden at 10 miles

stream and the same was recovered and seized on being led and shown by him at around 00:30 AM of 2.5.2013 in the presence of reliable witnesses.

During enquiry, it was learnt that the arms and ammunitions originated from Rohmingliana, owner of RHC Farm, Lengpui Airport Road. They came to know from their source that Rohmingliana had kept US Carbine No. 575195 with 5 numbers of magazine (1 long magazine and 4 short magazine) for repairing and browning in Clandsons Firearms Engineering Works and the same was seized in the presence of reliable witnesses. He then submitted the FIR to the OC, Vaivakawn PS. He proved the FIR at Ext. P-1, the Seizure Memo of 3(three) numbers of AK-47 Assault Rifles Nos. A03249, A02584 and A02591 with 5 numbers of magazine and 10 live rounds of ammunition at Ext. P-2, the Seizure Memo of 1 AK-56 Assault Rifle No. M22-5655 with 1 magazine and 19 numbers of ammunitions at Ext. P-3, the Seizure Memo of US Carbine No. 575195 with 5 numbers of magazine (1 long magazine and 4 short magazine) at Ext. P-4(a). He also proved the seized articles containing 3 numbers of AK-47 Assault Rifles Nos. A.03249, A.02584 and A02591 with 5 numbers of magazine and 10 live rounds of ammunition at Ext. M-1, the seized articles containing 1 AK 56 Assault Rifle No. M22-5655 with 1 magazine and 19 numbers of ammunitions at Ext. M-2 and the seized articles containing US Carbine No. 575195 with 5 numbers of magazine (1 long magazine and 4 short magazine) at Ext. M-3. On cross-examination by the learned Defence Lawyer for Rohmingliana, he admitted that the US Carbine shown at Ext. P-4 was seized from Lalhmingthara, who was a casual laborer in Clandsons Firearms Engineering Works, Dawrpui Vengthar and residing at Dawrpui Vengthar. Though the accused persons Huapzauva and Lalthanmawia mentioned the name of Khuma, but he did not apprehend any person by the name Khuma in this case. He further admitted that the seized articles shown at Ext. P-2 & Ext P-3 were not recovered or seized from the hand/body or residence/garden of accused Rohmingliana. He denied that the arms and ammunitions were not originated from accused Rohmingliana, owner of RHC Farm, Lengpui Airport Road. He further denied that the source never stated that Rohmingliana had kept the US Carbine in the Clandsons Firearms Engineering Works, Dawrpui Vengthar for repairing. He also denied that the person who kept the US Carbine with the magazines in the Clandsons Firearms Engineering Works, Dawrpui Vengthar for repairing was one Hmingthankhuma. He also admitted that he was a member in the party recovering 32

numbers of sophisticated arms and ammunitions from the Farm House of Rohmingliana and in that said case there were 4 persons of Bangladesh origin. Out of them one was a Mizo and three were Chakma. It was denied by him that those Chakma persons and a Mizo hailing from Bangladesh hired the Farm House of Rohmingliana situated at Lengpui Road NH 54A. As far as he knew, the case relating to recovery of 32 sophisticated arms and ammunitions was being taken up by National Investigating Agency (NIA). It was finally denied by him that Rohmingliana has no involvement in the seizure of Ext. M-1-3 in this case and he has been wrongly and falsely implicated. On cross examination by learned Defence Counsel for Huapzauva and Lalthanmawia, he admitted that Huapzauva had paid Rs. 30,000/- but could not show receipt or recovery of Rs. 30,000/- in the present case. He could not show any documentary or electronic evidence to show that the garden belongs to accused Huapzauva. There were no civilian witnesses at the time of seizure. But, he denied that the statements of all the accused persons were obtained by means of threat and compulsion. He further denied Lalhuapzauva and Lalthanmawia did not show them the place of recovery of the seized articles. He is the complainant and recorded the statements of seizure witnesses. He also denied that Huapzauva and Lalthanmawia had no involvement in the present case and were arrested merely on the ground of suspicion without any concrete evidence against them.

6. **P.W.2 C.Lalhriatpuia** identified Rohmingliana. He is running Clandsons Fire Arms Engineering Works at Dawrpui Vengthar. On 19.4.2013 at around 6-7 Pm, one Pamawia who is from their locality came to their shop and kept 1 US Carbine and 2 magazines for browning. The witness stated before him that the property belonged to one Hminga. On the following day, Pamawia and one Hminga came again and kept 3 magazines for browning. On 2.5.2013 at around 8 Pm, the police from Narcotic PS came to their shop and seized US Carbine and 5 magazines kept by Pamawia and Hminga. On cross examination, he did not find the person in the Court who had come to his shop to keep the US Carbine and 2 magazines and also subsequently came to keep 3 magazines for browning. Pu Hminga who had come to his shop was not Rohmingliana who was present in the Court. He admitted that he did not find Mawia in the Court today who had come to his shop. He also admitted that the police had not prepared any Seizure List in his presence and also

did not obtain his signature when those arms and ammunitions kept by one Hminga who was not Rohmingliana.

7. **P.W.3 C.Lalthlangliana** was posted at CID (Crime), Aizawl as Driver Grade-I. He knew the accused persons who were present in the Court.

On 1.5.2013, Inspector Laljohana seized 3 AK-47 Rifles, 5 numbers of Magazine and 10 numbers of ammunitions from the possession of accused Huapzauva and 1 AK-47 Rifles from the possession of accused Lalthanmawia in his presence and he stood as Seizure Witness. On 2.5.2013 at around 8 Pm, Inspector Laljohana seized 1 US Carbine and 5 Nos. of Magazine from Clandsons Arms Engineering Work, Dawrpui Vengthar whom they told him it was recovered from the farm of accused Rohmingliana in his presence and he stood as Seizure Witness. He proved the Seizure Memo of 3 AK-47 Assault Rifles Nos. A03249, A02584 and A02591 with 5 numbers of Magazine and 10 rounds of ammunition at Ext. P-2, the Seizure Memo of 1 AK-56 Assault Rifle No. M22-5655 with 1 magazine and 19 numbers of ammunitions at Ext. P-3, the Seizure Memo of US Carbine No. 575195 with 5 numbers of Magazine (1 long magazine and 4 short magazine) at Ext. P-4. He also proved the seized articles containing 3 AK-47 Assault Rifles Nos. A03249, A02584 and A02591 with 5 numbers of Magazine and 10 rounds of ammunition at Ext. M-1, the seized articles containing 1 AK-56 Assault Rifle No. M22-5655 with 1 Magazine and 19 rounds of ammunitions at Ext. M-2 and the seized articles containing US Carbine No. 575195 with 5 numbers of Magazine (1 long magazine and 4 short Magazines). On cross-examination by the learned Defence Counsel for Rohmingliana, he admitted that Inspector Laljohana did not recover or seize any one of the arms/ammunitions as shown in the Seizure Memo at Ext. P-2–3 from the body or residence or from the garden of the accused Rohmingliana. He also admitted that the seized articles in respect of Seizure Memo at Ext. P-4 were recovered from Clandsons Firearms Engineering Works, Dawrpui Vengthar. He denied that nobody told him that the seized articles at Ext. M-3 had been recovered from the farm of accused Rohmingliana. He visited the farm of Rohmingliana, but did not recover anything from his farm in connection with this case. He knew that some Bangladeshi personals hired the farm house of Rohmingliana. He was not a member of the party when the said Bangladeshi were apprehended in other cases. On cross-examination by the learned Defence counsel for Huapzuava and Lalthanmawia, he admitted that nothing was

recovered from the bodies and houses of Huapzauva and Lalthanmawia. They did not see the seized articles concealed by Huapzauva and Lalthanmawia in their garden and did not have any certificate to ascertain the gardens of accuseds Huapzauva and Lalthanmawia. They did not have any photograph of the gardens of accuseds Huapzauva and Lalthanmawia. As a result, the titles of the accused persons in respect of their gardens cannot be produced in the Court. However, it was denied by him that nothing had been recovered from the gardens of Huapzauva and Lalthanmawia.

8. **P.W. 4 Benjamin Lalthanmawia** knew Rohmingliana. Rohmingliana is his first cousin. He did not know the other accused persons. On 19.4.2013 at around 9-10 Am, Rohmingliana called him over mobile phone asking him to repair his JCB at his farm, Lengpui. He then went to the house of Rohmingliana. From the house of Rohmingliana, he drove his Bolero towards Rohmingliana's farm at Lengpui for repairing JCB. Samuel-a who is JCB Operator also accompanied him from the house of accused Rohmingliana. On reaching the farm, Hmingthankhuma who was looking after the farm was also present. After repairing the said JCB, they worked at the farm to widen the road. After finishing their works, he took bath at the farm. After taking bath, while planning to go home, Hmingthankhuma told him that he wanted to visit his relatives at Vaivakawn. Hmingthankhuma accompanied him in the Bolero. Before reaching Vaivakawn, Hmingthankhuma told him that he had to repair a gun. He told him who could repair gun. He took him to the house of Mamatea (C.Lalhriatpuia) at Dawrpui Vengthar who had a shop for repairing gun. Hmingthankhuma took out old and rusted gun from the back side of the Bolero. They kept the gun at Mamatea (C. Lalhriatpuia)'s house for browning. On cross-examination, Rohmingliana is known as Hmingtea whereas Hmingthankhuma is known as Hminga @ Hmingtea. He admitted that Rohmingliana had not known anything about the gun which was taken by Hmingthankhuma and placed in C. Lalhriatpuia's shop. He knew that C. Lalhriatpuia used to repair guns. He did not know why Rohmingliana is facing trial in the instant case. He also did not know anything about the seizure of the gun which was kept by Hmingthankhuma in the shop of C. Lalhriatpuia.

9. **P.W. 5 S.I. Melody Lalmuanpuii** identified the accused persons. At the relevant time of the incident, she was posted at Vaivakawn PS. On 3.5.2013, Inspector Laljohana, OC, Narcotic PS submitted Enquiry Report at Vaivakawn PS. Inspector Laljohana received information from his source. In the Enquiry Report, Inspector Laljohana stated that accused Lalhuapzauva had bought 3 AK Rifles with ammunitions including magazines and accused Lalthanmawia had bought 1 AK Rifle with ammunitions including magazine. As soon as Inspector Laljohana received information, he proceeded to the residence of Lalhuapzauva at Phunchawng. On asking Lalhuapzauva, the latter told them that he had bought the said Rifles from one Khuma at the cost of Rs. 30,000/-. The said arms and ammunitions were recovered and seized from the garden of the accused Lalhuapzauva on being led and shown by him @ 11:30 PM in the presence of reliable witnesses. The details of arms and ammunitions seized from accused Lalhuapzauva are—3 Nos. of AK 47 Assault Rifles Nos. A.03249, A.02584 and 02591 with 5 numbers of magazine and 10 rounds of ammunition. Inspector Laljohana also recorded his statement. Further, Inspector Laljohana proceeded to the house of Lalthanmawia of Lungverh, LPS Operator. Lalthanmawia told them that he had received 1 AK 56 Assault Rifle No. M22-5655 with 1 magazine and 19 rounds of ammunitions. The Rifle and its magazine and ammunitions were hidden at Mel 10 Lui and the same was recovered and seized on being led and shown by him at around 00:30 AM of 2.5.2013 in the presence of reliable witnesses. Enquiry reveals that the arms and ammunitions were recovered from the possession of accused Rohmingliana, owner of RHC Farm, Lengpui Airport Road. They came to know from their source that accused Rohmingliana had kept US Carbine No. 575195 with 5 numbers of magazine (1 long magazine and 4 short magazines) for repairing and browning in Clandsons Firearms Engineering Works and the same was seized in the presence of reliable witnesses. Case was registered and she was endorsed to investigate the case. During investigation, he recorded the statement of the Enquiry Officer, visited the PO and drew the sketch map of the PO. She then arrested Rohmingliana, Huapzauva and Lalthanmawia. She thoroughly interrogated the three accused persons and recorded their statements. She also examined all available witnesses and recorded their statements. She also sent the seized articles to FSL Aizawl for examination and also received the report. In her investigation, Rohmingliana stated that on 18.4.2013, Hmingthankhuma who was his Chowkidar found some arms and ammunitions in his garden at Lengpui.

Hmingthankhuma then informed him. Thereafter, Rohmingliana and his cousin brother Benjamin Lalthanmawia proceeded to the spot on 19.4.2013. After reaching, Hmingthankhuma showed them AK-47 6 Nos. with magazine, about 500 numbers of ammunitions of AK-47, 1 Carbine with 5 nos. of Magazine, 117 numbers of ammunition of Carbine and 3 numbers of Grenade. Rohmingliana then brought the Carbine and its Magazine and ammunition with him as he thought he could have got License. Besides, Rohmingliana told Hmingthankhuma to keep all the AK-47 in the empty Tanker and also to bury the ammunition and grenade. The accused sent his cousin brother Benjamin Lalthanmawia to Clandsons Firearms Engineering Workshop, Dawrpui Vengthar for browning of Carbine and magazine. After that, he gave all the ammunitions (170 Nos.) to Patrick Chakma of Bangladesh. After examining Huapzauva and Lalthanmawia, they admitted their guilt before her that they had bought the seized articles from Hmingthankhuma. Before completion of her investigation, she was transferred to CID (SB). Then, she handed over her Case Diary to the Officer-in-Charge, Vaivakawn PS. She proved the Arrest Memo of Rohmingliana at Ext. P-5, the Arrest Memo of Huapzauva at Ext. P-6 and the Arrest Memo of Lalthanmawia at Ext. P-7. She also proved the sketch map of the PO at Ext. P-8, the FSL Report at Ext. P-9 and the Death Certificate of Hmingthankhuma at Ext. P-10. Finally, she proved the seized articles containing 3 numbers of AK 47 Assault Rifles Nos. A.03249, A.02584 and 02591 with 5 numbers of magazine and 10 rounds of ammunition at M-1, the seized articles containing 1(one) AK 56 Assault Rifle No. M22-5655 with 1 magazine and 19 numbers of ammunitions at Ext. M-2 and the seized articles containing US Carbine No. 575195 with 5 Nos. of magazine (1 long magazine and 4 short magazines) at Ext. M-3.

This Court has also considered the deposition of S.I. Melody Lalmuanpuii(P.W.5) in cross examination, she has stated as under :

'Cross-examination by the Ld. D/L Sh. W. Sam Joseph for Rohmingliana:

- 1. I know that Hmingthankhuma had already died.***
- 2. I also did not apprehend Patrick Chakma.***
- 3. I conducted investigation but the investigation was completed by SI Lalrindiki.***

4. *Inspector Laljohana was the one who had recovered the seized articles.*
5. *It is a fact that arms/ammunitions exhibited at the Ext. 1, 2, 3 were not recovered from the body/hand or residence of accused Rohmingliana.*
6. *It is a fact that US Carbine mentioned in Ext. P-4 was seized from Lalhmingthara.*
7. *I do not know whether Lalhmingthara was the owner of Clansons Firearms Engineering Ltd. or labour.*
8. *It is a fact that even though Huapzauva and Lalthanmawia mentioned the name of Khuma, we did not arrest him since Khuma died.*
9. *It is a fact that the seized articles mentioned in Ext. P-2 and P-3 were not recovered or seized from the hand/body or residence/garden of accused Rohmingliana.*
10. *As I was not party to the recovery and seizure of Ext. M-1, 2 & 3, I cannot say under what circumstances it was recovered and seized apart from what is told by Inspector Laljohana of Special Narcotic PS.*
11. *I did not examine source of Inspector Laljohana in connection with this case.*
12. *It is not a fact that the source never stated the arms and ammunitions originated from accused Rohmingliana and the source never said that Rohmingliana had kept the US Carbine in the Clansons Firearms Engineering Ltd.*
13. *I do not know whether the 4 Chakma persons hired the farm house of Rohmingliana.*
14. *We could not examine Hmingthankhuma as he already died.*
15. *It is not a fact that Rohmingliana did not know anything about the seized articles exhibited as Ext. M-1, 2 & 3.*
16. *It is not a fact that Rohmingliana did not know anything about the arms deal done by Hmingthankhuma.*

17. It is not a fact that Rohmingliana and his brother cousin Benjamin Lalthanmawia did not proceed to the garden on 19.4.2013.

18. It is not a fact that Rohmingliana did not know anything about Ext. M-1, 2 & 3 which was kept by Hmingthankhuma.

19. It is not a fact that Rohmingliana never brought the Carbine and its magazine and ammunition with him.

20. It is also not a fact that Rohmingliana did not lead Hmingthankhuma to keep the AK-47 in the empty tanky and also did not lead Hmingthankhuma to bury ammunition and grenades.

21. It is not a fact that Rohmingliana never sent his brother cousin Benjamin Lalthanmawia to Clansons Firearms Engineering Works.

22. It is not a fact that accused did not give all the ammunitions 170 nos. to Patrick Chakma.

23. It is a fact that no seizure of arms and ammunitions specially exhibited as Ext. M-1, 2 & 3 was led by the accused.

24. It is not a fact that during my entire investigation, I did not find anyone of the witnesses implicating the accused Rohmingliana in connection with the Ext. M-1, 2 & 3.

25. It is not a fact that accused Rohmingliana has no involvement in the seizure of Ext. M-1, 2 & 3.

26. It is not a fact that Rohmingliana never stated on 18.4.2013, one Hmingthankhuma who was Chowkidar in the garden of Rohmingliana at Lengpui road found some arms and ammunitions from the garden. Then he informed the owner of the garden accused Rohmingliana. After that, Rohmingliana and his cousin brother Benjamin Lalthanmawia proceeded to the spot on 19.4.2013. After reaching Hmingthankhuma show them AK-47 6 nos. with magazine, about 500 nos. of ammunitions of AK-47, 1 Carbine with 5 nos. of Magazine, 117

nos. of ammunition of Carbine and 3 nos. of Grenade. Then, Rohmingliana brought the Carbine and its Magazine and ammunition with him as he thought he could have got License. Besides, he led Hmingthankhuma kept all the AK-47 in the empty Tanker and also led him buried the ammunition and grenade. He sent his cousin brother Benjamin Lalthanmawia to Clansons Firearms Engineering Workshop, Dawrpui Vengthar for browning of Carbine and magazine. After that, he gave all the ammunitions (170 nos.) to Patrick Chakma of Bangladesh (Objected by Id. Counsel for Rohmingliana on the ground that statement before Police is not admissible in evidence).

Cross-examination by the Ld. D/L Sh. S. Pradhan for Huapzauva and Lalthanmawia:

- 1. It is a fact that I had not made any requisition for recording the confessional statements of the accused persons during the course of investigation.*
- 2. I did not record the statement of the Seizure Witnesses.*
- 3. It is a fact that nothing was recovered and seized from the residence and physical possession of accused Huapzauva and Lalthanmawia.*
- 4. It is a fact that there are no witnesses who had seen the accused Huapzauva and Lalthanmawia purchasing, selling, carrying or concealing the seized articles.*
- 5. I was not an eye witness to the search and seizure and as such, I did not witness from where the SA were recovered.*
- 6. It is a fact that no photographs of the PO were taken.*
- 7. It is not a fact that I did not record the statement of the accused Huapzauva and Lalthanmawia.*
- 8. It is a fact that I do not submit any documents to show that garden belongs to accused Huapzauva.*
- 9. I did not see the accused persons and Seizing Officers proceeding towards the PO.*

10. I do not know what was stated by the accused Huapzauva and Lalthanmawia before the Seizing Officer.

11. It is a fact that Khuma was not arrested in the present case as he expired.

12. It is a fact that no amount has been seized in connection with the present case.

13. It is not a fact that there is no prima facie case against the accused Huapzauva and Lalthanmawia.

14. It is not a fact that the accused persons were not involved in any manner in connection with the present case.

15. It is not a fact that the accused persons made any leading to the recovery of seized articles.'

10. **P.W. 6 S.I. Lalrindiki** deposed before the Court. On 30.9.2014, she received the Case Diary from the Officer-in-Charge, Vaivakawn PS as the previous IO SI Melody Lalmuanpui had been transferred before submitting Charge Sheet. After perusing the Case Diary and all the connected papers, she found prima facie case against the accused persons u/s 25(1AA) of Arms Act r/w Section 34 of IPC and submitted charge sheet. She proved the FIR at Ext. P-1, the Seizure Memo of 3(three) numbers of AK 47 Assault Rifles Nos. A03249, A02584 and A02591 with 5 magazines and 10 rounds of ammunition at Ext. P-2, the Seizure Memo of 1 AK-56 Assault Rifle No. M22-5655 with 1 magazine and 19 ammunitions at Ext. P-3, the Seizure Memo of US Carbine No. 575195 with 5 magazines (1 long magazine and 4 short magazines) at Ext. P-4, the Arrest Memo of Rohmingliana at Ext. P-5, the Arrest Memo of Huapzauva at Ext. P-6, the Arrest Memo of Lalthanmawia at Ext. P-7, the sketch map of the PO at Ext. P-8, the FSL Report at Ext. P-9, the Death Certificate of Hmingthankhuma at Ext. P-10, the Charge Sheet at Ext. P-11, the seized articles containing 3 AK-47 Assault Rifles Nos. A03249, A02584 and A02591 with 5 magazines and 10 rounds of ammunition at Ext. M-1, the seized articles containing 1 AK-56 Assault Rifle No. M22-5655 with 1 magazine and 19 ammunitions at Ext. M-2 and the seized articles containing US Carbine No. 575195 with 5 magazines (1 long magazine and 4 short magazines) at Ext. M-3. On cross-examination by the learned Defence Counsel for Rohmingliana, she learnt that the firearms and ammunitions had originated from one Hmingthankhuma S/o Lazuia (L) of Kawnpui from the light of

investigation conducted by her, but Hmingthankhuma was not arrested since he had died on 19.5.2013 at Kawnpui as a result of drug overdose. So, the death certificate of Hmingthankhuma was obtained from the Registrar, Births and Deaths, Kawnpui as requested. She did not find accused Rohmingliana leading to the recovery of any of the materials Ext. M-1, 2, 3. She denied that there was no prima facie case against the accused Rohmingliana in connection with the recovery of Ext. M-1, 2, 3. She further admitted that she did not know the accused persons standing in the Court. She denied that all the recovery of the arms and ammunitions in connection with this case was related to the deceased Hmingthankhuma, as the said Hmingthankhuma has already died, accused Rohmingliana was falsely implicated in this case. She admitted that as she did not examine anyone of the accused or the witnesses and as she was not party to the recovery of anyone of the material exhibits, whatever she knew in connection with this case was derived from the Case Diary handed over to her by the OC, Vaivakawn PS. On cross-examination by the learned Defence Counsel for Huapzauva and Lalthanmawia, she admitted that she had not conducted investigation. But, she denied that there was no prima facie case against Huapzauva and Lalthanmawia.

Discussion, Decision and Reasons Thereof.

11. Section 7 of the Arms Act, 1959 provides, '***Prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition.—No person shall—***

(a) acquire, have in his possession or carry; or

(b) use, manufacture, sell, transfer, convert, repair, test or prove; or

(c) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition unless he has been specially authorised by the Central Government in this behalf.'

12. Section 25(1AA) of the Arms Act provides, '***Whoever manufactures, sells, transfers, converts, repairs, tests or proves or offers for sale or***

transfer or has in his possession for sale, transfer, conversion, repair, test or prove any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment life and shall also be liable to fine.'

13. Section 7 of the Act provides, **Prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition.**-No person shall-

- (a) Acquire, have in his possession or carry; or
- (b) Use, manufacture, sell, transfer, convert, repair, test or prove; or
- (c) Expose or offer for sale or transfer or have in his possession for sale, transfer, conversion repair, test or proof,

any prohibited arms or prohibited ammunition unless he has been specially authorized by the Central Government in this behalf.

14. I heard the learned Addl. PP Smt. Lillyparmaawii Hmar assisted by Ms Venus H.Lalmuankimi as well as the learned Defence Counsel Shri W.Sam Joseph.

15. The learned Addl. PP submitted that accused Rohmingliana can be convicted u/s 25(1AA) Arms Act for possessing the prohibited arms. According to the learned Addl. PP, the seized arms and ammunition originated from the accused. On the other hand, the learned Defence Counsel tried to rebut the submission of the learned Addl. PP. by stating that there was no evidence to link the accused with the seized prohibited arms and ammunition.

16. The point under consideration is, whether Rohmingliana is liable to be convicted u/s 25 (1AA) Arms Act in contravention of Section 7 of the Act. It is admitted fact that P.W.1 Inspector Laljohana seized one US Carbine No. 575195 with 5 numbers of magazine (1 long magazine and 4 numbers of short magazines) from one

Lalhmingthara S/o R.Thanhlira at Clandson Firearms Engineering Works, Dawrpui Vengthar, Aizawl and not from Rohmingliana which can be seen at Ext. P-4. Even in the deposition of P.W.1 Laljohana, particularly in the cross-examination, the fact was admitted by him. Though P.W.1 Laljohana deposed that Rohmingliana had kept the prohibited arms at Clandson Firearms Engineering Works, but P.W.2 C.Lalhriatpuia stated in his deposition that Rohmingliana is not the owner of the US Carbine who came to his shop. P.W.4 Benjamin Lalthanmawia stated in his deposition that Hmingthankhma had kept at Clandson Firearms Engineering Works, Dawrpui Vengthar. It is also admitted fact from deposition of P.W.3 C.Lalthlangliana that Inspector Laljohana had not recovered any incriminating materials from Rohmingliana. Hence, the prosecution fails to prove the case against Rohmingliana u/s 25(1AA) Arms Act.

17. I also heard the learned Addl. PP Smt. Lilyparmawii Hmar assisted by Ms Venus H. Lalmuankimi as well as the learned Defence Counsel Shri C.Lalrinpuia for Huapzauva and Lalthanmawia.

18. The learned Defence Counsel also tried to rebut the submission of the learned Addl. PP. by stating that there was no evidence to link the accused persons with the seized prohibited arms and ammunition shown at Ext. P-2 and Ext. P-3. According to the learned Defence Counsel, no prohibited arms and ammunition was seized from their possession.

19. In the evidence of P.W.5 SI Melody Lalmuanpuui, the involvement of Hmingthankhuma came to be revealed during interrogation of the accused persons inasmuch as it was stated by her that Huapzauva and Lalthanmawia had purchased 4 AK-56 Assault Rifles at the price of Rs. 30,000/- from Hmingthankhuma. Even P.W.2 C.Lalhriatpuia and P.W.4 Benjamin Lalthanmawia also highlighted the involvement of Hmingthankhuma in their deposition before the court. P.W.5 SI Melody Lalmuanpuui neither arrested nor recorded the statement of Hmingthankhuma though she had sufficient chance to arrest him or record his statement. Hmingthankhuma died on 19.5.2013. It is also pertinent to mention here that Huapzauva and Lalthanmawia denied that they had bought the Rifles, but were offered at the price of Rs. 30,000/-.

Hence, the case of the prosecution appears to be doubtful inasmuch as Hmingthankhuma was neither arrested nor recorded the statement of Hmingthankhuma. It is also pertinent to mention here that there is no disclosure statement made by the accused persons and there is also no independent witness to the recovery of the seized articles. As there is also no explanation as to why independent witness was not present during the time of alleged recovery, I therefore doubt the recovery of the seized articles due to non compliance of the procedures of law.

20. As discussed above, the prosecution case appears to be extremely doubtful and it cannot be said to have been established that the accused persons had committed Section 25 (1AA) Arms Act, 1959 in contravention of Section 7 of the Act. Therefore, the accused persons cannot also be held guilty under Section 34 IPC inasmuch the prosecution fails to prove alleged commission of offence of the accused persons under Section 25 (1AA) Arms Act, 1959. In short, existence of common intention of the accused persons to commit offence punishable under Section 25 (1AA) Arms Act, 1959 in contravention of Section 7 of the Act is not proved by the prosecution.

21. In the result, I hold that the prosecution has failed to establish its case beyond reasonable doubt. Consequently, the accused persons are acquitted of the offence under Sections 25 (1AA) of the Arms Act, 1959 read with 34 IPC and they be set at liberty.

22. Previous bail bond shall remain in force for a further period of 6 (six) months under Section 437-A Cr PC.

23. Seized materials, if any, shall be confiscated to the State.

Judgment and Order prepared and delivered in open court on this 10th 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.1
- Ext. P-2 Seizure Memo of 3(three) nos. of AK-47 Assault Rifle Nos. A.03249, A.02584 and 02591 with 5(five) nos. of Magazines and 10(ten) rounds Of ammunition
P-2(a) Signature of PW No. 1
P-2(b) Signature of PW No. 3
- Ext. P-3 Seizure Memo of 1(one) AK-56 Assault Rifle No. M22-5655 with 1(one) magazine and 19(nineteen) nos. of ammunition.
P-3(a) Signature of PW No. 1
P-3(b) Signature of PW No. 3
- Ext. P-4 Seizure Memo of US Carbine No. 575195 with 5(five) nos. of magazine (1 no. long magazine and 4 nos. short magazines)
P-4(a) Signature of PW No.1
P-4(b) Signature of PW No. 3
- Ext. P-5 Arrest Memo of Rohmingliana
P-5(a) Signature of PW No. 5
- Ext. P-6 Arrest Memo of Huapzauva
P-6(a) Signature of PW No. 5
- Ext. P-7 Arrest Memo of Lalthanmawia
P-7(a) Signature of PW No. 5
- Ext. P-8(a), (b) & (c) Sketch map of the PO
- Ext. P-9 FSL Report
- Ext. P-10 Death Certificate of Hmingthankhuma
- Ext. P-11 Charge Sheet
P-11(a) Signature of PW No. 6
- Ext. M-1 Seized Articles containing 3(three) AK-47 Assault Rifles Nos. A.03249, A.02584 and 02591 with 5(five) nos. of magazines and 10(ten) rounds of ammunition
- Ext. M-2 Seized Articles containing 1(one) AK-56 Assault Rifle No. M22-5655 with 1(one) magazine and 19(nineteen) nos. of ammunitions.
- Ext. M-3 Seized Articles containing US Carbine No. 575195 with 5(five) nos. of magazine (1 no. long magazine and 4 nos. short magazines).

B. **DEFENCE EXHIBITS-** None

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

D. **COURT EXHIBITS-** None

E. **PROSECUTION WITNESSES:**

P.W. No. 1	-	Inspector Laljohana
P.W. No. 2	-	C. Lalhriatpuia
P.W. No. 3	-	C. Lalthlangliana
P.W. No. 4	-	Benjamin Lalthanmawia
P.W. No. 5	-	SI Melody Lalmuanpuii
P.W. No. 6	-	SI Lalrindiki

F. **DEFENCE WITNESSES** - : None

Memo No. _____/AD & SJ (A) /2017 : Dated Aizawl, the 10th February, 2017

Copy to :-

1. Shri Rohmingliana through Counsel Shri W. Sam Joseph, Advocate.
2. Shri Huapzauva } through Counsel
3. Shri Lalthanmawia } Shri C. Lalrinpuia, Advocate.
4. Sessions Judge, Aizawl Judicial District, Aizawl.
5. District Magistrate, Aizawl.
6. Superintendent of Police, Aizawl District.
7. Addl. PP, Aizawl District, Aizawl.
8. DSP (Prosecution), District Court, Aizawl.
9. Officer-in-Charge, Vaivakawn Police Station.
10. Registration Section.
11. Guard File.
12. Case Record.
13. Calendar Judgment.

P E S H K A R