

GAHC030004172020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./22/2020

Vanramthanga
Tlabung
Lunglei Mizoram

VERSUS

State of Mizoram and Anr.
Aizawl Mizoram

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : Mrs. Linda L Fambawl (Addl.PP, Mizoram) for R1

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 16-10-2023

Heard Mr. B. Lalramenga, learned counsel for the appellant along with Mrs. Linda L. Fambawl, learned Additional Public Prosecutor appearing for the State respondents.

2. This is an appeal under Section 374(2) Cr.P.C., 1973 against the Judgment dated 15.10.2020 passed by the learned Additional District & Sessions Judge, Aizawl in SC No. 22/2019 in Criminal Trial No. 242/2019 arising out of West

Phaileng P.S. Case No. 6/2018 dated 26.03.2018, wherein the appellant was convicted under Section 25 (1AA) of Arms Act, 1959 r/w Section 34 of IPC and sentenced vide order dated 16.10.2020 to undergo Simple Imprisonment for 7 (seven) years with a fine of Rs. 10,000/- and in default another Simple Imprisonment for 1 (one) month.

3. Brief facts of the case is that, on the night of 25.03.2018 on an information received, the police force intercepted a motor cycle B/R No. MZ-01/P-9795 in the outskirts of Dapchhuah village which was proceeding from Aizawl towards West Phaileng. On interception, 2060 rounds suspected to be live rounds of AK-47 (7.62 mm) ammunitions were recovered and seized from the possession of the 2 persons travelling in the said motor cycle namely- Mr. D. Lallianzauva and Mr. Vanramthanga (appellant). Both the accused persons were arrested and in the course of investigation a *prima facie* case was found against both the accused persons under section 25 (IAA) Of Arms Act, 1959 r/w Section 34 of IPC.

4. On framing charge against the appellant under Section 25 (1AA) of Arms Act, 1959 r/w Section 34 of IPC, for violation of section 7 of the Arms Act, the charge was read out and explained to the appellant, to which he pleaded not guilty. During Trial, as many as 10 prosecution witnesses were examined. The appellant, on examination under Section 313 Cr.P.C. had denied the evidence made out against him by the prosecution witnesses for being caught in possession of 2060 grams suspected to be live rounds of AK-47 (7.62 mm) ammunitions. The learned Trial Court thereafter convicted the appellant under Section 25 (1AA) of Arms Act, 1959 r/w Section 34 of IPC and vide its Order dated 16.10.2020 sentenced the appellant to undergo Simple Imprisonment for

7 (seven) years with a fine of Rs. 10,000/- and in default another Simple Imprisonment for 1 (one) month.

5. Aggrieved with the above conviction and sentence order, the appellant has approached this Court.

6. Mr. B. Lalramenga, learned counsel for the appellant submits that the prosecution has failed to prove beyond reasonable doubt the guilt of the accused under Section 25 (1AA) of Arms Act, 1959 r/w Section 34 of IPC. He submits that from the evidence adduced by the prosecution witnesses, it can be seen that the seized articles was not produced before the Court during Trial since it was not identified by any of the prosecution witnesses. The learned counsel led this Court to the evidence adduced by the prosecution witnesses, wherein the prosecution witnesses in their cross examination have also admitted that the outer bag/rucksack in which the seized articles, packed in three small bags was not produced in the Court. The learned counsel also submits that the three small bags were also not produced in the Court and therefore, the prosecution has failed to prove and link that the seized articles were seized from the accused/ appellant. The learned counsel also led this Court to the defects in Forensic Science report, wherein PW-8 mentions that he has sent 20 rounds of the ammunitions which he marked as Exhibit 'A'. However in the receipt of the said exhibit, Exhibit 'A' has not been mentioned and the report of the FSL also talks about Exhibit 'I' and not 'A' and therefore, the exhibits examined cannot be said to be the articles alleged to be seized from the appellant. The appellant has also clearly denied the recovery of the said ammunitions from his bag in his examination under Section 313 Cr.P.C. For the above reasons, the learned counsel for the appellant submits that since the seized articles were not

identified in the Court, they have not been proved.

7. The learned counsel submits that in the instant case even though presuming that the seized articles were seized from the possession of the appellant, the prosecution has failed to prove that the seized articles belonged to the appellant since the seized articles were not produced in the Court nor identified in the Court and there is doubt whether they were examined by the FSL since the seized articles were clearly marked as Exhibit 'A' but the articles that was examined by the FSL was marked as Exhibit 'I'. The learned counsel has cited *State of Rajasthan Vs. Gurmail Singh*, reported in (2005) 3 SCC 59, wherein the Apex Court found that the link evidence adduced by the prosecution was not at all satisfactory and due to the loopholes found, the Apex Court did not interfere with the acquitted of the respondents by the High Court.

8. The learned counsel for the appellant submits that if the Court is of the opinion that on evidence two views are reasonably possible, one that the appellant is guilty, and the other that he is innocent, then the benefit of doubt goes in favour of the accused. He has cited the decision of the Apex court in *K.P. Thimmappa Gowda Vs. State of Karnataka*, reported in (2011) 14 SCC 475 (Para 5),

The learned counsel has also cited the decision of this Court in *Depak Pal Vs. State of Tripura*, reported in 2008 (1) GLT 1079 (Para 16) mentioning that the prosecution have failed to establish the charge against the appellant and did not prove that the appellant is guilty since the prosecution failed to produced the seized articles before the Court during Trial. In such a case, the doctrine of benefit of doubt would come to operate in favour of the appellant.

9. Mrs. Linda L. Fambawl, learned Additional Public Prosecutor, on the other hand submits that from the evidence of the prosecution witnesses, it is seen that based on the information received by them on 25.03.2018, two teams were formed to investigate into the information received, PW-1 had led one team and had gone to another point while PW-5 and his team apprehended the accused persons/ the appellant and the co. accused. Since the incident took place late at night at around 11pm to 12 midnight, they did not conduct the search of the appellant and the co-accused on the spot, but had taken them to the Dapchhuah village. Thereafter, in the presence of YMA President, VCP and MHIP President, search was conducted which is seen from the deposition of PW-1, who joined them at this stage, PW-5, PW-2, PW-6 and PW-3 all these prosecution witnesses have mentioned that the rucksack of the appellant and co-accused were opened and the seized articles were found packed in three small bags.

10. The learned Additional Public Prosecutor has pointed out that in the cross examination of the witnesses, they have admitted that the rucksack was not found in the Court since the rucksack where the three small bags were kept was not seized. The learned Additional Public Prosecutor, in all fairness, has however admitted that in the examination-in-chief of the independent prosecution witnesses, the prosecution witnesses were not made to identify the three small bags in the Court. She however submits that it may be presumed that they were produced in the Court since it was identified by a MO. She submits that the seized articles were therefore identified by PW-.. and was produced in the Court. The learned Additional Public Prosecutor also submits that there appears to have been some clerical mistake in marking the Exhibit as 'A' and later when seized articles were examined by the Forensic Science Laboratory it was marked

as Exhibit 'I'. She however submits that since both the materials are rounds of ammunitions, it can be presumed that they are the same rounds/ammunitions seized from the appellant.

11. Having heard the submissions made by both the parties, the evidence adduce by prosecution witnesses and the documents on record are briefly reproduced for examination and analysis as below:

PW-1, Mr. Zarzoliana deposed that on the night of 25.03.2018 at around 8:30 PM, telephonic information was received that some persons transported ammunitions from Aizawl via West Phaileng to supply the same to militants in Bangladesh. He instructed the O/C of West Phaileng P/S to immediately take necessary action while he along with a team of West Phaileng P/S proceeded towards Dapchhuah village. The O/C of West Phaileng apprehended the accused along with the seized articles at National Highway, which is about 5 kms from Dapchhuah village. Pw-1 immediately proceeded to the PO where they got to know that the accused persons came to the PO by motor cycle bearing registration No. MZ-01/B-9795, the accused D. Lallaizauva was a rider and the appellant/ co-accused Vanramthanga was a pillion rider. On apprehending both the accused persons along with the rucksacks used for transporting the seized ammunitions, they were brought to YMA Hall Dapchhuah village, by then it was around midnight, 11-12PM. The seized articles were 2060 ammunitions suspected to be AK-47 (7.62 mm) ammunitions which were seized from the suspected bags in the presence of local leaders of YMA, MHIP and Village Council.

Pw-1 also deposed that they repacked 20 nos. of the seized ammunitions for examination in the FSL, Aizawl, in the presence of reliable witnesses. Both the

accused were also arrested. On cross examination Pw-1 admitted that he was not present in the initial interception and therefore he did not know in whose possession the bags were recovered from, at the time of initial interception. He admitted that he did not know whether there were any civilian witnesses or not at the time of packing and sealing of the sealed sample ammunitions sent to FSL. He admitted that he had seen the 3 nylon bags containing the seized ammunitions, they were marked as 2 CMR numbers 45/18 and 39/19.

PW-2, Lalthantluanga is the civilian witness and a member of Dapchhuah Branch YMA. He deposed that when arriving at YMA Hall, he saw both the accused and the police personnel with seized articles. They called Smt. Tanpuii, President of local MHIP and Mr. R. Sangbera, VCP of Dapchhuah while making seizure of 2060 rounds of ammunitions, the seized ammunitions was packed in 3 small packets and later kept in one rucksack. During cross examination, he admitted that when he arrived at YMA Hall at Dapchhuah, the police had already prepared the seized ammunitions just for counting of its numbers. He admitted that the 3 small bags contained seized ammunitions, which were white in colour which were kept in black colour rucksack. He admitted that he did not see the black colour rucksack in the court. He also admitted that he did not see the repacking of seized ammunitions by the police. He identified his signature on the seizure memo as Ext-P-2(c).

PW-3, R. Sangbera is VCP of Dapchhuah, he deposed that he was called by the police to the YMA Hall at Dapchhuah to witnesses their seizure. He deposed that Miss Tanpuii, President, MHIP, President of YMA and himself were present when making seizure of ammunitions which was 2060 rounds, the ammunitions were packed in 3 smaller packets and later taken/kept in an Arham

bag. During cross examination, he admitted that he was not present at the time of recovery of the seized ammunitions and when he arrived at YMA Hall, Dapchhuah, the police had already prepared seizure ammunitions for counting of its numbers. That he believed that the seizure witness Lalthantluanga also did not see the recovery of the ammunitions as he was also awakened by the police. He admitted that 3 small bags containing seized ammunitions were white in colour and he did not see the repacking of the seized ammunitions by the police. He identified his signature on the seizure memo as Ext-P-2(a).

PW-4, Rohmingliana deposed that during the time of the incident they were not at home but had gone to Bangladesh for business purposes.

PW-5, David Lalzirliana deposed that he was the 2nd O.C at West Phaileng. On 25.03.2018 they received information that some suspected persons transported ammunitions towards Phaileng village, he and his team were stationed in between Dapchhuah and Rawpuichhip village while another team headed by SDPO also proceeded from West Phaileng to Dapchhuah. At around 9:30 PM they apprehended the accused Lallaizauva and the appellant /co-accused Mr. Vanramthanga, since it was at an isolated jungle area and late night no local residents to witness were available. Therefore, they decided to take the accused to Dapchhuah village. At Dapchhuah village they requested the VCP, President YMA and MHIP President to witness their search and seizure. The suspected bag carried by the appellant Vanramthanga was opened, where they found 3 small packets containing 2060 ammunitions of AK 47 (7.62 mm). He deposed that the counting was made in the presence of civilian witnesses. During cross examination, he admitted that he did not see the rucksack mentioned, in the court and also admitted that the bag which contain 3 nylon

bags produced and exhibited in the court is not the 2 original bags which contain 3 nylon bags, he admitted that the repacked the 3 nylon bags were not sealed at the time of repacking. He admitted that he did not know whether they were any civilian witnesses or not at the time of packing and sealing of the seized sample ammunitions sent to FSL as the case I/O took up the matter in his absence.

PW-6, Laltanpuui is MHIP President who deposed that she was awakened by the police and she followed the police to Dapchhuah Community Hall at around 2 AM on 26.03.2018. She found 3 well packed bags which were opened in her presence which contained 2060 rounds of ammunitions. The VCP and President, YMA of Dapchhuah were also present at that time. In her cross examination she stated that the 3 bags containing the seized ammunitions were repacked and kept in Arham bag. She also stated that both the VCP and YMA, President, the accused persons and the police were already present. The VCP and YMA President gave their respective signatures in her presence, but she did not know whether it was seizure memo or not. She also admitted that she does not know whether repacking of seized articles was made under sealing or not. She also admitted that she did not see the seized articles or the Arham bag in the court.

PW-7, MC Richard Vanlalhnehzova deposed that on 03.04.2018, a requisition was received by the Office from SDPO, West Phaileng, requesting to examine 20 exhibits. On examination, it was observed that the exhibits were 20 numbers of 7.62 x 39 mm live cartridges.

PW-8, Lalsangbera Sailo deposed that, on making recovery of the seized ammunitions on 25.03.2018, he investigated the matter and interrogated both

the accused, he also recorded the statement of the seizure witnesses and sent 20 rounds of the seized ammunitions to FSL for their examination. On cross examination, he admitted that he was not physically present to witness the mode of recovery of the seized articles and the nature of making seizure. He admitted that he did not give his signature as a recipient of the seizure memo. He also admitted that the sample of seized ammunitions were already extracted and packed before he took the case for FSL examination.

PW-9, Mr. Rohmingthanga Jongte deposed that Pw-8 Lalsangbera Sailo was the initial case I/O but later it was found that he was related to the accused D. Lallaizauva and therefore the case was re-endorsed to him for investigation. On cross examination he admitted that SI Lalsangbera, PW-8 had sent 20 rounds of ammunitions to FSL by marking it as Exhibit 'A'. He admitted that the acknowledgement receipt made by FSL Office did not bear marking of Exhibit 'A', he further admitted that he forwarded FSL report dated 23.05.2018 to SDPO, West Phaileng stated that the Exhibit examined was marked as Exhibit 'I'.

PW-10, K. Lalruatdiki deposed that she was the case I/O at a latest stage when she received the FSL report and prepared the chargesheet, where she found *prima facie* case against the accused person under section 25 (IAA) of Arms Act r/w Section 34 IPC. On cross examination, she admitted that SI Lalsangbera, who was the previous case I/O, sent 20 rounds of ammunitions to FSL by marking it as Exhibit 'A'. She also admitted that the acknowledge when received by FSL Office did not bear marking of mentioned exhibit 'A'. She also admitted the forwarded of FSL report dated 23.05.2018 stated that the exhibit examined was marked as Exhibit 'I'.

12. On examination of the accused/appellant under section 313 Cr.P.C, the appellant denied the allegation of illegal transportation and possession of ammunitions. He admitted that before reaching Dapchhuah village, the police apprehended them on 25.03.2018 night. He denied that any ammunitions were recovered from their rucksacks and that it contained their clothes. He stated that although their bags were opened at the Dapchhuah YMA Hall in the presence of VCP, President of YMA and President of MHIP, Dapchhuah, no recovery and seizure of seized ammunitions were made from them. He denied the allegation of supplying seized ammunition to some militants at Bangladesh, he also denied being related to Mr. Lalsangbera Sailo, the previous case I/O.

13. On the examination and analysis of the depositions of the prosecution witnesses, this court finds that, the appellant along with the co. accused, Mr.D. Lallaizauva on 25.03.2018 night were apprehended at around 11 to 12 midnight, they were taken to the YMA Hall at Dapchhuah village. Though PW1 and Pw-5, deposed that the suspected bag carried by the appellant/Vanramthanga was opened at the YMA Hall, where they found 3 small packets containing 2060 ammunitions of AK 47 (7.62 mm), the seizure witness PW1 and PW-2 on cross examination, have both admitted that they were not present at the time of recovery of the seized ammunitions. Both of them stated that when they arrived at YMA Hall, Dapchhuah, the police had already prepared seizure ammunitions for counting of its numbers. It is seen that the appellant on his examination under Section 313 Cr.P.C has denied the recovery of the said ammunitions from his bag and stated that only his clothes were kept in the rucksack. It is also found that PW-8 who was the initial Case I.O, had deposed that he has sent 20 rounds of the ammunitions which he marked as Exhibit 'A' to FSL for examination. However on scrutiny of the FSL report, the seized articles

examined are mentioned as Exhibit 'I' and not 'A'. The discrepancy in the exhibits markings have not been explained by PW-8 or PW-9, who is the case I.O who filed the charge sheet. From the deposition of the prosecution witnesses it is also found that only the PW-1, who is the seizing officer, has identified the seized articles packed in three small bags, exhibited as Ext- MO in trial court. The seizure witnesses PW No. 2 and PW No. 3, have only identified their signatures on the seizure memo. The other prosecution witnesses in their depositions have also not identified the seized articles before the trial court.

14. The Apex court in *State of Rajasthan Vs. Gurmail Singh* (supra) had upheld the acquittal of the respondent on the grounds that the link evidence adduced by the prosecution was not at all satisfactory. In the instant case, a shadow of doubt is created on the prosecution story, when the seized articles were not produced for identification by the seizure witnesses before the trial court and also when the seized article was marked as exhibit –'A' was sent to FSL for examination but the report mentions that exhibit –'I' was examined. On examination of exhibit –'I' and **not** exhibit –'A', it was observed that the exhibits were 20 numbers of 7.62 x 39 mm live cartridges.

15. The Apex Court in **Sharad Birdhichand Sarda v. State of Maharashtra**, reported in (1984) 4 SCC 116 held that

“163. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In Kali Ram v. State of Himachal Pradesh [(1973) 2 SCC 808 : 1973 SCC (Cri) 1048 : AIR 1973 SC 2773 : (1974) 1 SCR 722 : 1974 Cri LJ 1] this Court

made the following observations: [SCC para 25, p. 820: SCC (Cri) p. 1060]

“Another golden thread which runs through the web of the administration of justice in criminal cases, is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.”

16. Thus, from the above findings and on consideration of the decisions of the Hon’ble Apex court, this court is constrained to hold that the appellant prosecution has failed to prove beyond any reasonable doubt that the seized articles of 2060 ammunitions of AK 47 were 7.62 x 39 mm live cartridges was seized from the possession of the appellant and thus entitled to the benefit of doubt.

17. For the above reasons, the Judgment dated 15.10.2020 and the sentence order dated 16.10.2020 passed by the learned Additional District & Sessions Judge, Aizawl in SC No. 22/2019 in Criminal Trial No. 242/2019 arising out of West Phaileng P.S. Case No. 6/2018 is set aside and quashed.

18. The appellant Vanramthanga is set at liberty unless wanted in some other case.

19. Criminal Appeal No.22 of 2020 is thus allowed and stands disposed of.

JUDGE

Comparing Assistant