

GAHC030002352024



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

Case No. : CrI.A./14/2024

Zodingluaia @Zadingluaia
Chaltlang Venglai, Aizawl, Mizoram

VERSUS

State of Mizoram and Anr.
Aizawl2:Zothantluangi Chenhrang
S.I.
Excise and Narcotics
Aizawl

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : P.P./Addl.PP, Mizoram for R1

Linked Case : I.A.(CrI.)./16/2024

Smt. Zorampari
Bilkhawthlir
Kolasib District

VERSUS

The State of Mizoram and 2 Ors.
Aizawl

Advocate for the Petitioner : Ms. Lalremthangi

Advocate for the Respondent : P.P./Addl.PP
Mizoram

Linked Case : I.A.(Crl.)/14/2024

Samil Ahmed
Kalakhouri
Karimganj District
Assam

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Azad Ahmed
Advocate for the Respondent : P.P./Addl.PP
Mizoram

Linked Case : Crl.A./17/2024

Smt. Zorampari
Bilkhawthlir
Kolasib District
Mizoram

VERSUS

The State of Mizoram and 2 Ors.
Aizawl

Advocate for the Petitioner : Ms. Lalremthangi
Advocate for the Respondent : P.P./Addl.PP
Mizoram

Linked Case : Crl.A./29/2024

Vanlalruati
North Hlimen
Kolasib District

VERSUS

The State of Mizoram r/b the Secretary to the Govt. of Mizoram
Excise and Narcotics Dept. and Anr.
Aizawl

2:The Officer-in-Charge
Special Narcotics Police Station
Aizawl

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei
Advocate for the Respondent : P.P./Addl.PP
Mizoram

Linked Case : CrI.A./15/2024

Samil Ahmed
Kalakhouri
Karimganj District
Assam

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Azad Ahmed
Advocate for the Respondent : P.P./Addl.PP
Mizoram

Linked Case : I.A.(CrI.)/36/2024

Vanlalruati
North Hlimen
Kolasib District

VERSUS

The State of Mizoram r/b the Secretary to Govt. of Mizoram
Excise and Narcotics Dept. and Anr.
Aizawl

2:The Officer-in-Charge
Special Narcotics Police Station
Aizawl

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei
Advocate for the Respondent : P.P./Addl.PP
Mizoram

BEFORE

HON'BLE MRS. JUSTICE MARLI VANKUNG

Date of hearing :18.11.2024

Date of judgment :03.03.2025

JUDGMENT & ORDER (CAV)

Heard Mr. B. Lalramenga, learned counsel for the appellant in Crl.A. No 14/2024 along with Mr. Azad Mehda, learned counsel for the appellant in Crl.A. No. 15/2024, Mr. Joseph Lalchhanhima Renthlei, learned counsel for the appellant in Crl.A. No. 29/2024 and Mr. S. Vanlalhriata, learned counsel for the appellant in Crl.A. No 17/2024. Also heard Mrs. Linda L Fambawl, Learned Addl. Public

Prosecutor for the state respondents, appearing for all the aforesaid Criminal Appeals. This Court finds that all the Criminal Appeals are arising out of the common Judgment & Order dated 09.02.2024 passed by the learned Judge, Special Court, ND&PS Act, Aizawl in SR No. 266 of 2022 arising out of Criminal Trial (Ex.) No. 1837 of 2022 Ref - Excise and Narcotics Case No. N-181 of 2022 dated 29.10.2022 under Section 22(c) of ND&PS Act, 1985. This Court considering the fact that the appeals are arising out of the same judgment and order, finds it fit to dispose of all the criminal appeals by a common judgment and order.

2. The case of the prosecution in a nutshell is that on 26.10.2022, information was received by SI ZothantluangiChenhrang/**PW 5** herein, to the effect that one person named Salim has knowledge about Methamphetamine to be sold at Rs. 35/- per tablet and she recorded such information in writing. Thereafter, she arranged a decoy customer and proceeded to Chaltlang and after recording Grounds of belief, she conducted search inside the residence of Accused Zodingluaia @ Zadingluaia appellant in CrI.A. No. 14 of 2024 at Chaltlang Venglai along with civilian witnesses and recovered 10,000 tablets of methamphetamine weighing 1.004 kgs packed in 50 blue colour plastic sachets. Shri. Zodingluaia, appellant in CrI.A. No. 14 of 2024 along with the other

persons namely, Shri. Salim Ahmed, appellant in Crl.A. No. 15 of 2024, Smt. Zorampari, appellant in Crl.A. No 17 of 2024 & Smt. Vanlalruati, appellant in Crl.A. No. 29 of 2024 who were also present at the place, were arrested at the same time and place. Hence, Excise Case No. EX-N-181/2022 dated 29.10.2022, U/s 22(c) ND&PS Act was registered against all the accused persons. After making report of seizure and arrest to the concerned Officer-In-Charge, SI Rorelkima was authorized to conduct investigation. During his investigation, he prepared inventory of the S/A and also drew one sample (orange & green color) about 5gms from the Seized contraband drugs (Exhibit P-10) before the JMFC (Pw-4) and forwarded the same to the Forensic Science Laboratory (FSL) from where a report (Exhibit P-7) was received which concluded that the sample was found to contain Methamphetamine. Thereafter, on completing his investigation, the Case I.O S.I Rorelkima submitted the Complaint Sheet before the Ld. Special Judge, ND&PS.

3. The Ld. Judge, Special Court, ND&PS Act, Aizawl, Mizoram accordingly framed Charge U/s 22(c) of ND&PS Act, 1985 against the accused person/appellant Shri. Zodingluaia, appellant in Crl.A.No. 14 of 2024. Charges were also framed u/s 22(c) r/w section 29 of the ND&PS Act against the accused persons, Shri. Salim Ahmed, appellant in Crl.A. No. 15 of 2024, Smt.

Zorampari, appellant in Crl.A. No 17 of 2024 and Smt. Vanlalruati, appellant in Crl.A. No. 29 of 2024, to which they all pleaded not guilty and claimed for trial. During the Trial Court, the prosecution examined 6 witnesses and exhibited 12 documents to prove their case. Thereafter, the Ld. Trial Court had examined the accused persons/appellants under Section 313 of Code of criminal Procedure, 1973 wherein all the appellants denied the prosecution allegations made against them but choose not to lead any evidence in defense.

4. The Ld. Trial court after hearing both the parties on 25.01.2024 passed the impugned Judgment & Order dated 09.02.2024 by which the appellant Shri. Zodingluaia in Crl.A. No. 14 of 2024 was convicted under Section 22(c) of the ND&PS Act and sentenced to undergo 10 years R.I with a fine of Rs 1,00,000/- (Rupees One Lakh) and in default to suffer R.I for another period of 4 months. In respect of the appellants Shri.Salim Ahmed in Crl.A.No. 15 of 2024, Smt. Zorampari, appellant in Crl.A. No 17 of 2024 and Smt. Vanlalruati, appellant in Crl.A. No. 29 of 2024, they were all convicted u/s 22(C) of the ND&PS Act and each sentenced to undergo 10 years R.I with a fine of Rs. 1,00,000/- (Rupees One Lakh) and in default to undergo R.I for a period of 2 months. They were also convicted u/s 29 of the ND&PS Act and were each sentenced to undergo R.I for a period of 10 years with a fine of Rs. 1,00,000/- (Rupees One Lakh) and

in default to suffer R.I for another period of 2 months. The terms of imprisonment imposed upon the convicts/appellants Shri. Salim Ahmed, appellant in CrI.A. No. 15 of 2024, Smt. Zorampari, appellant in CrI.A. No 17 of 2024 & Smt. Vanlalruati, appellant in CrI.A. No. 29 of 2024 are to run concurrently.

5. Being highly aggrieved with the impugned Judgment & Order dated 09.02.2024 and the subsequent sentence Order dated 13.02.2024 passed in Criminal Trial No. 1837 of 2022 by the Ld. Trial Court, the appellants herein filed the present criminal appeals.

Evidence adduced before the learned trial court.

The evidence adduced before the learned trial court is briefly highlighted herein under:-

6. PW – 1/Lawrence Zarzokima stated that on 28.10.2022, the Excise personnel informed him through mobile phone that they detained some persons on suspicion of possessing heroin inside the residence of accused Zodingluaia at Chaltlang and invited him to witness their action. Accordingly, he immediately proceeded towards the reported place. When he reached the P.O., he saw the four accused persons along with the Excise personnel. After obtaining all

formalities, the Excise personnel conducted a search inside the residence of accused Zodingluaia and from his bedroom, they recovered 1.004 kgs (10,000 tablets of methamphetamine) kept in 50 blue color plastic sachets which were further kept in a white and black color polythene from a cloth's rack, which was seized by the Excise personnel. The weighing, packing, and sealing of the S/A was also done in his presence at the P.O. The Excise personnel also arrested the four accused persons in his presence, and he put his signature in the seizure and arrest memo. Exbt.P-1 is the seizure and arrest memo.

During cross examination by learned D/L for accused Samil Ahmed, he admitted that the S/A was not recovered from the physical possession of Samil Ahmed. He further admitted that he does not have any document to prove that the S/A belongs to Samil Ahmed. As far as he knew, the accused Samil Ahmed was arrested for trying to buy the S/A. However, he is aware that the Excise personnel did not seize any amount from the accused Samil Ahmed.

During cross examination by learned D/L for accused Zorampari and Vanlalruati, he admitted that the S/A was not recovered from the physical possession of Zorampari and Vanlalruati. He also admitted that he does not have any document to prove that the S/A belongs to Zorampari and Vanlalruati. As far as he knows, accused Zorampari and Vanlalruati were arrested for trying

to buy the S/A, however, he is aware that the Excise personnel did not seize any amount from the accused Zorampari and Vanlalruati. He further admitted that Excise personnel called him through his mobile on 28.10.2022 at about 6:00 PM, and he reached the P.O. at around 6:20 PM. He also admitted that prior to his arrival at the P.O, the Excise personnel already detained the four accused persons.

Exbt.P-1(a) is signed by him inside the residence of Zodingluaia at about 7:00 PM. He admitted that he has put his signature only on Exbt.P-1 at the time when Excise personnel recorded his statement. He also admitted that the seized methamphetamine tablets were not produced before the court that day. He admitted that weighment was done by Excise personnel, and the weighing machine was brought by them and they also checked whether the same was working or not. He admitted that he was not the mechanic for repairing the said weighing machine. He does not remember whether he has put his signature in the seizure index or not. He stated that the S/A was packed into 50 blue color packets, and the said S/A was white in color.

During cross examination by learned D/L for accused Zodingluaia, he admitted that he does not know under which section of ND & PS Act the accused Zodingluaia was charged and as far as he knows, the owner of the S/A was

Zodingluaia. He admitted that the seized methamphetamine tablets were not produced before the court that day.

7. PW – 2/Lalhlimpaia stated that on 28.10.2022, the Excise personnel informed him through mobile phone that they detained some persons on suspicion of possessing heroin inside the residence of accused Zodingluaia at Chaltlang and invited him to witness their action. Accordingly, he immediately proceeded towards the reported place. When he reached the P.O., he saw the four accused persons along with the Excise personnel. After obtaining all formalities, the Excise personnel conducted a search inside the residence of accused Zodingluaia, and from his bedroom, they recovered 1.004 kgs (10,000 tablets of methamphetamine) kept in 50 blue color plastic sachets, which were further kept in a white and black color polythene from a cloth's rack, which was seized by the Excise personnel. The weighment, packing, and sealing of the S/A were also done in his presence at the P.O. The Excise personnel also arrested the four accused persons in his presence, and he put his signature on the seizure and arrest memo. Exbt.P-1 is the seizure and arrest memo.

During cross examination by learned D/L for accused Samil Ahmed, he admitted that the S/A was not recovered from the physical possession of Samil Ahmed. He also admitted that he does not have any document to prove that the S/A

belongs to Samil Ahmed. As far as he knows, accused Samil Ahmed was arrested for trying to buy the S/A. However, he is aware that the Excise personnel did not seize any amount from the accused Samil Ahmed.

During cross examination by Learned D/Ls for accused Zorampari and Vanlalruati, he admitted that the S/A was not recovered from the physical possession of Zorampari and Vanlalruati. He admitted that he does not have any document to prove that the S/A belongs to Zorampari and Vanlalruati. As per the information given to him by the Excise personnel, accused Zorampari and Vanlalruati were arrested for trying to buy the S/A. However, he was aware that the Excise personnel did not seize any amount from the accused Zorampari and Vanlalruati. He admitted that Excise personnel called him through his mobile on 28.10.2022 at about 6:00 PM, and he reached the P.O. at around 6:20 PM. He also admitted that prior to his arrival at the P.O, the Excise personnel already detained the four accused persons. He admitted that Exbt.P-1(a) was signed by him inside the residence of Zodingluaia at about 7:00 PM. He admitted that he has put his signature only on Exbt.P-1 and his statement recorded at the time when Excise personnel recorded his statement. He admitted that the seized methamphetamine tablets were not produced before the court that day. He admitted that weighment was done by Excise personnel, and the same was

brought by them, and they also checked whether the weighing machine was working or not. He admitted that he was not the mechanic for repairing the said weighing machine. He admitted that he did not remember whether he has put his signature in the seizure index or not. He admitted that the S/A was packed into 50 blue color packets, and the said S/A was white in color.

During cross examination by Learned D/L for accused Zodingluaia, he admitted that he witnessed when the S/A was recovered, and he also witnessed the exact amount of the S/A, which is 10,000 tablets of methamphetamine.

8. PW – 3/Lalmuanawma stated that on 1-11-2022, FSL received one parcel consisting of 1 exhibit in connection with Excise and Narcotic Aizawl Case No. EX-N-181/2022 dt.29/10/2022 U/S 22 (c) of NDPS Act. The case was endorsed to him by the Director FSL for Scientific Examination. Accordingly, he and Dr. R. Lawmzuali examined the said exhibit by using various scientific instruments available in the laboratory, and they found the exhibit to be Methamphetamine. Exbt P-7 is his examination report.

During cross examination by Learned D/L, he admitted that the examination of the sample sent to him was done with him and Dr. R. Lawmzuali. He admitted that 1 packet of the sample was sent to him for examination. He admitted that the sample he received from ANS was weighed, and it is about 5.3 grams. He

admitted that he did not count the numbers of tablets in the packet he received for examination. He admitted that he does not remember whether there were markings on the said tablets or not. He admitted that he does not know the chemical formula of Methamphetamine. He admitted that he did not examine the percentage of the methamphetamine in the sample.

9. PW – 4/HT Lalmawizuala/JMFC stated that on 29.10.2022, he received an application from SI Rorelkima, E & N, ANS, Aizawl for certification of correctness of inventory, photographs and drawing of sample. On 29.10.2022, SI Rorelkima made an inventory of the S/A before him and the details are as follows:

- (i) Name of NDPS : Methamphetamine
- (ii) Quantity : 10,000 tablets.
- (iii) Mode of packing : Kept inside a black and white transparent polythene
- (iv) Marks & numbers: END(ANS)RK-1(a), 1(b), RK(R)
- (v) Country of origin : Myanmar.

He compared the inventory and the S/A produced before him and satisfied that the inventory was as per the seizure documents and the consignment of seized

goods and then certified the correctness of the inventory and put his signature. Samples of 5 grams was drawn from the S/A before him. Five photographs of S/A was taken in his presence. He exhibited the following exhibits:

- i. Exbt.P-9 is Application for inventory etc.
- ii. Exbt.P-10 is list of sample drawn.
- iii. Exbt.P-11 is inventory of S/A.
- iv. Exbt.P-12 and P-12A are inventory photographs.

During cross examination by learned D/Ls, he admitted that 5 grams was drawn as representative sample. He did not know the numbers of tablets drawn as a sample. He admitted that weighing of the sample drawn was done in his presence and that no civilian witnesses were present while sample drawn was done before him. The S/A was packed in one package before and after inventory. That the S/A was weighed before sample was drawn and it was 1.004 Kgs in his presence. The remaining S/A was not weighed after sample was drawn. The weighment of the S/A was done before him by the Excise personnel. He further admitted that the weighing machine was brought by the Excise personnel. However, he did not personally test the accuracy of the machine before weighing of the S/A. The Excise personnel did not personally tell him

during inventory, from where they recovered the S/A but it was apparent from the seizure memo that the S/A was recovered and seized from the bedroom of accused Zodingluaia.

10. PW – 5/SI Zothantluangi Chenhrang stated to the effect that on 28.10.2022, at around 1:00 PM, she received information that one person named Salim had knowledge about some methamphetamine to be sold at Rs. 35/- per tablet. The available amount of methamphetamine tablets was known to be 10,000. She reduced the information into writing and submitted it to O/C ANS. After that, she engaged a decoy customer to negotiate with the reported person Salim for the transaction. Her decoy customer contacted Salim, and they made an arrangement to make a transaction of methamphetamine at Chaltlang at the residence of accused Zodingluaia. Accordingly, she and party left for the residence of accused Zodingluaia at Chaltlang. On reaching the P.O., she arranged for civilian witnesses and recorded grounds of belief as per Sec. 42 ND & PS Act. The decoy customer, along with accused Salim Ahmed, and accused persons Zodingluaia, Vanlalruati, and Zorampari were present at the residence of Zodingluaia. In the presence of witnesses, they conducted a search of the residence of accused Zodingluaia and found some articles wrapped in a black and white polythene from a plastic cloth rack kept inside the bedroom. From the

polythene, they recovered another 50 blue sachets. And from each of the sachets, they recovered methamphetamine tablets, and she seized the same.

In the presence of witnesses and accused persons, the methamphetamine tablets were counted, and altogether, it was 10,000 tablets. Weighing of the S/A was taken, and altogether, it was 1.004 kgs. Packing and sealing were done. She arrested accused Zodingluaia and Salim Ahmed and also arrested accused Zorampari and Vanlalruati after obtaining permission of arrest u/s 46(4) CrPC from CJM, Aizawl. In her preliminary enquiry, she came to know that the S/A was brought by one Ruala to the residence of accused Zodingluaia. Accused Samil Ahmed was searching for a buyer of the S/A. Accused Vanlalruati and Zorampari would receive the sale money of the S/A. The accused persons did not know the address of Ruala, whom they mentioned as the owner. From the P.O., she asked the accused persons to contact one Ruala, but they could not trace his location. She then submitted her report of seizure and arrest and S/A to O/C ANS. She exhibited the following:

Exbt.P-1 is the seizure and arrest memo.

Exbt.P-2 is the information report.

Exbt.P-3 is the grounds of belief.

Exbt.P-4 is the report of seizure and arrest.

Exbt.P-5 is the permission of arrest.

Exbt.P-6 is the godown receipt.

During cross examination by learned D/Ls, she admitted that she was the seizing officer in the case. After receiving information, she reduced it in writing. She admitted that the S/A was recovered from the residence of Zodingluaia, who was arrested at 6:30 PM, and accused Salim and all other accused were also arrested at the same time and place. The accused persons were interrogated, and they stated that the S/A belonged to Ruala. She admitted that the S/A was not recovered from the physical possessions of the accused persons. She admitted that in Exbt.P-5, the CJM did not put the date while giving signature, and also admitted that the said permission was obtained by her from the residence of CJM. eHHe

She admitted that the sample was not drawn by her and that the S/A was repacked in one transparent polythene and marked as S-1, and she sealed the S/A at the P.O. She also admitted that from the inventory photograph, the marking of the S/A given by him cannot be seen. After seizing the S/A, she submitted it before the O/C ANS to be put in a designated godown. She

exhibited the godown receipt as Exbt.P-6. She stated that she made the weighment of the S/A before the civilian witnesses Lawrence Zarzokima and V.L. Hlimpuia.

11. PW – 6/SI Rorelkima stated that on 28.10.2022, SI Zothantluangi Chenhrang seized 10,000 tablets of Methamphetamine weighing 1.004 Kgs kept in 50 blue color plastic sachets, wrapped in white and black polythene in the residence of accused Zadingluaia, and in connection with the seizure, she arrested accused Zadingluaia, Samil Ahmed, Vanlalruati, and Zorampari. After she submitted her report of seizure and arrest, the case was registered, and the case was endorsed to him for investigation. During his investigation, he examined the available witnesses and recorded their statements. He also interrogated the accused persons, which revealed that accused Vanlalruati contacted one drug seller Ruala, and they made arrangements for selling and commission of the S/A at the residence of accused Zadingluaia, and the S/A was brought to accused Zadingluaia's house by one Ruala. While Ruala and accused Samil Ahmed were negotiating about the price of the drugs, Ruala received a phone call and then he ran away. Accused Vanlalruati and Zorampari tried to collect the commission money while the Excise personnel were recovering the S/A. Accused Zadingluaia, Vanlalruati, and Zorampari were to earn Rs. 10,000

each for the commission of the S/A. Accused Samil Ahmed confessed to him that after he inspected the drugs, a sample of three capsules were taken in a sheet of paper, and he heated it with a lighter and took a photo and sent it to one Dilwar of Karimganj. On Dilwar's instruction, Samil Ahmed agreed to buy the S/A at the cost of Rs. 3,50,000/-. He further stated that he was planning to send the said S/A to Dilwar for earning Rs. 5000/-. All the four accused persons said that they do not know the residence of Ruala. Efforts were made to contact and arrest the said Ruala and Dilwar, but their addresses were not known, so they could not be arrested in the instant case. During his investigation, on 29.10.2022, he made an application to CJM, Aizawl for certification of correctness of inventory, photographs, and drawing of sample. On 29.10.2022, he made an inventory of the S/A before HT Lalmawizuala, JMFC, and the details are as follows:

- (i) Name of NDPS : Methamphetamine
- (ii) Quantity : 10,000 tablets.
- (iii) Mode of packing : Kept inside a black and white transparent polythene.
- (iv) Marks & numbers : END(ANS)RK-1(a), 1(b), RK(R)
- (v) Country of origin : Myanmar.

The JMFC compared the inventory with the S/A produced before him and was satisfied that his inventory is as per the seizure documents and the consignment of seized goods, and then certified the correctness of his inventory and put his signature. Samples of 5 grams were drawn from the S/A before the JMFC. Five photographs of the S/A were taken in the presence of the JMFC. Sample of the S/A was sent to FSL, and he received a report that revealed the S/A was found to contain Methamphetamine. From his investigation, he found a prima facie case under Section 22(c) of the ND & PS Act against accused Zadingluaia and a prima facie case under Section 22(c) read with Section 29 of the ND & PS Act against Samil Ahmed, Vanlalruati, and Zorampari, and he charged them accordingly for violation of Section 8(c) of the same Act, and he submitted a complaint sheet accordingly. He exhibited the following:

Exbt.P-7 is the FSL report.

Exbt.P-8 is the complaint sheet.

Exbt.P-9 is the application for inventory.

Exbt.P-10 is the list of samples drawn.

Exbt.P-11 is the inventory of S/A.

Exbt.P-12 and P-12A are inventory photographs.

During cross examination by learned D/L for accused Samil Ahmed, he admitted that the S/A was recovered and seized from the bedroom of accused Zadingluaia. That the S/A was not recovered from the physical possession of accused Samil Ahmed. He admitted that one person Ruala, mentioned in the chargesheet, really existed, but he does not know his address and personal details. Therefore, he could not arrest him. That one person Ruala's statement was not recorded by him because he was not arrested in the instant case. The accused Samil Ahmed sent a photograph of the S/A to one Dilwar through a Whats App message. The accused Samil Ahmed's mobile phone number was 7896552410, but he does not know the mobile number of one Dilwar.

During cross examination by learned D/L for accused Zodingluaia, he admitted that when the inventory was done before the JMFC, civilian witnesses were not present and that he did not put his signature on the inventory photographs. He admitted that the accused persons did not put their signatures on the inventory photographs. That there are two seizure witnesses in the instant case.

On the examination of the accused appellants under section 313 Cr.P.C, they denied having knowledge about the seizure of the recovery of 50 blue sachets kept wrapped in white and black polythene bag from the bedroom of the accused/appellant Zodingluaia. They also denied that the appellants

Zodingluaia, Vanlalruati and Zorampari were to earn Rs. 10,000/- as commissioning the S/A.

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12. Mr. B. Lalramenga, learned counsel for the appellant Shri. Zodingluaia submits that the impugned Judgment & Order dated 09.02.2024 is liable to be set aside on the grounds that the prosecution failed to comply with the mandatory provisions made u/s 52 APS Act. He submits that the Trial Court do not taken into consideration regarding the non-compliance of the mandatory rules of the Standing Order No. 1/89 published by the Ministry of Finance (Department of Revenue) on 13th June, 1989 due to which the trial is vitiated. The learned counsel submits that from the evidence adduced by the prosecution witnesses, it is mentioned that the S/A which was seized on 28.10.2022 were kept in 50 Blue color plastic sachets. However, there is nothing that shows that each of the 50 blue plastic sachets seized were serially numbered at the time of the recovery and seizure. He submits that though, 50 packets were seized only 5 grams was taken from 1 packet at the time of drawing of samples. The rest of the packets was not weighed. This is a clear non-compliance of Section 2 sub section 2.3 & 2.4 of the Standing Order No. 1/89. He further submitted that as per the Standing Order at para 2.5, 50 packets should be bunched in 5 small

packets with 10 packets in 1 small packet, he has led this Court to paras 2.5, 2.7, 2.8 & 2.9 of the Standing Order. He further submitted that the Judicial Magistrate First Class had also stated that only 5 grams were drawn as sample which is also the non-compliance of the Standing Orders when 5 grams should be drawn from each packet after repacking as per para 2.5 of the standing order and as such clearly vitiates the trial against the accused. The learned counsel has relied upon the decision of the Apex Court in **Noor Aga -vs- State of Punjab** reported in **2008 16 SCC 417, para 89 & 91** and the decision of the Apex Court in **Mangilal -vs- State of Madhya Pradesh** reported in **2023 SCC Online SC 862**, (para 7 & 8). The learned counsel also pointed out that no Test Memo is been exhibited in the case which is also mandatory in the Standing Order No. 1/89.

13. The learned counsel further submits that there was discrepancy in the colour of the S/A and the sample which was sent to the FSL. He submitted that the civilian witness PW1 had mentioned that the S/A was white in colour, however, in the list of sample drawn it was mentioned that the sample No. 1 weighing 5 grams drawn out from the S/A was orange and green colour and the FSL report mentions that the tablets for examination was orange in colour. The learned counsel submitted that none of the prosecution witnesses have made any attempt to explain the difference in the colour. The learned counsel for the

appellant also submitted that the evidence of the seizure witnesses in their cross examination shows that the S/A was not produced before the Trial Court and under such circumstances due the discrepancies in the colour and the weight of the S/A the prosecution cannot prove that the sample examined by the FSL is the S/A and the prosecution have failed to prove their case since the S/A was not even exhibited in the court. The learned counsel has relied upon the judgment of the Apex court in ***Union of India -vs-Bal Mukund*** reported in ***(2009) 12 SCC 161, para 36 & 37 and Vijay Pandey -vs- State of Uttar Pradesh*** reported in ***(2019) 18 SCC 215, para 8*** where it was held that mere production of the laboratory report by FSL cannot be a conclusive proof itself.

14. The learned counsel submitted that though, the S/A was found in the house of the appellant/Zodingluaia, the prosecution witness failed to show that the accused/appellant was in the house with the knowledge that the S/A was kept in his house. He submitted that the seizing officer PW No.5 and the case I.O had mentioned the name of a person 'Ruala' who is said to be the owner of the S/A however, since, the decoy customer is not produced in the Court as a prosecution witness, it is not known whether the said 'Ruala' is the owner of the S/A or a decoy customer, there is no clarity in the involvement of the present

name 'Ruala'. There is no evidence to show that the accused/appellant was caught while in conscious possession of the S/A while the prosecution evidence shows that the S/A was brought to the house of the appellant/Zodingluaia by the said Ruala. The learned counsel cited the case of ***Kishna Chand –vs- State of Himachal Pradesh*** reported in ***(2018) 1 SCC 222***, (para 23), wherein it was held that the harsher the punishment, the more is the strictness of proof required from the prosecution and the failure to associate independent witnesses at the time of recovery created a dent in the case of the prosecution, thus he submitted that in the present case by not citing the decoy customer as a prosecution witness, a dent has been created in the prosecution evidence.

The learned has relied upon the judgment of the also Apex court in ***State of Punjab –vs- Baldev Singh*** reported in ***1999 6 SCC 172*** (para 28) wherein it was held that the severer the punishment greater is the care taken to see that all the safeguards provided under the statute are scrupulously followed, which was not done in the present case and therefore, the appellant should be acquitted by setting aside the impugned judgment & Order.

Crl.A. No. 15 of 2024

15. Mr. Azad Ahmed, learned counsel for the appellant/Samil Ahmed in Crl.A. No. 15 of 2024 submitted that the evidence of the prosecution does not prove

the guilt of the appellant u/s 22(c) ND & PS Act r/w Section 29 of the ND & PS Act.

The learned counsel submitted that there is a violation of the mandatory rules of the Standing Order No. 1/89 published by the Ministry of Finance (Department of Revenue) on 13th June, 1989 and that he will adopt the submissions made by the learned counsel for the appellant in CrI.Appl No.14/24. He submitted that the repacking of the S/A was not as per the Standing Orders and further in the FSL report, the seized article was weighed and packed in 5.3 grams while it should be not more than 5 grams of the SA and there was also difference in the colour of the S/A seized wherein the seizure witnesses stated that seized article was white in colour but the colour of the S/A sent to the FSL is recorded as orange and green. It is the burden of the prosecution to ensure that there is strict compliance of the Standing Orders.

16. The learned counsel for the appellant further submitted that the seized article was seized from the bedroom of the co-accused Zadingluaia and though the present accused Samil Ahmed was in the house of the said co-accused Zodingluaia, he had no knowledge of the seized article and he was arrested merely for him being present at the time when the seized contraband substance was found in the bedroom of the said co-accused Zodingluaia. The learned

counsel further submits that the presence of the appellant in the house of the co-accused Zodingluaia was explained when questioned u/s 313 CrPC wherein, he had explained that he had gone to the house of the co-accused Zodingluaia to collect Rs. 5000/on behalf of a Mr. Dilwar of Karimganj which was borrowed by Zodingluaia. The prosecution failed to show that he was in the house of the co-accused Zodingluaia with the knowledge that the seized contraband substance was kept in the house of the co-accused.

17. The learned counsel submitted that there are contradictory stories/versions with regards to the involvement of the appellant/Salim Ahmed. The first version is that PW5 who is the seizing officer stated she came to know that the S/A was brought by one Ruala to the residence of accused Zodingluaia and PW No.5 had sent her decoy customer to contacted the appellant/Salim Ahmed and they made arrangement for transaction of the S/A in the residence of the co.accused Zodingluaia at Chaltlang. The second version is that the appellant/Salim Ahmed went to the house of the co.accused Zodingluaia on behalf of a Mr. Dilwar where he had tested and burnt the SA and took a photo of the S/A to the said Mr. Dilwar. No mobile phone was seized to prove this allegation and the phone number of Mr. Dilwar is not known .The third version as deposed by PW No.6/the case I.O, is that the co accused Vanlalruati

contacted one drug seller Ruala, and they made arrangements for selling and commission of the S/A at the residence of accused Zadingluaia, and the S/A was brought to accused Zadingluaia's house by one Ruala, and Ruala and accused Samil Ahmed were negotiating about the price of the drugs. Ruala received a phone call and then he ran away. The learned counsel submitted that this allegation made by PW-6 is not supported by any evidence. The said Mr. Ruala was not arrested and is not made an accused in the case though it was mentioned that he was the owner of the seized article. It is not known whether he was the said decoy customer. There is no material to indicate that the appellant/Salim Ahmed had conspired with the other accused persons regarding the contraband substance found in the bedroom of the co-accused Zadingluaia except from what is stated by the case IO/PW-6.

18. The learned counsel for the appellant further submitted that the appellant was convicted merely due to his presence in the house while the burden is upon the prosecution to prove the guilt of the appellant and it is not for the accused/appellant to prove his innocence and that he has to explain his presence in the house of the co-accused Zadingluaia. He further submitted that there is no material produced to show that the appellant was connected with the seized article and therefore guilty of an offence u/s 29 of the ND & PS Act.

The learned counsel also submitted that the learned Trial Court was erroneous in coming to a finding that the contraband substance was recovered from the possession of the appellant and then convicting him u/s 22(c) of the ND & PS Act when nothing was recovered from the possession of the accused/appellant. The learned counsel submitted that the conviction of the appellant is based only on surmises without any corroboration when no mobile phone was seized to prove the involvement of the appellant/Salim Ahmed wherein the learned trial court had erroneously relied on the statements of the accused persons recorded under section 161Cr.P.C which is not a confession made under section 164 Cr.P.C.

The learned counsel has cited the case of ***Kishna Chand vs. State of Himachal Pradesh*** reported in **(2018) 1 SCC 222**,(para 17), **Gangadhar vs. State of Madhya Pradesh in Criminal Appeal No. 504 of 2020**. The learned counsel also cited the decision of the Apex court in **Union of India vs. Rooparam**, reported in **AIR ONLINE 2018 SC 646 (para 6,10,12)** wherein it was held that the production of the S/A before the court was important to prove their case.

Crl.A. No. 29 of 2024

19. Mr. Joseph L. Renthlei, learned counsel for the appellant/Vanlalruati submitted that there are sufficient grounds for setting aside the impugned Judgment & Order dated 09.02.2024 as well as the Sentence Order dated 13.02.2024. The learned counsel submitted that he will adopt all the grounds raised by the learned counsel in Crl.A. No.14 of 2024 for the non-compliance of the Standing Order No. 1/89 published by the Ministry of Finance (Department of Revenue) which in turn amount to non-compliance of Section 52(A) of the ND & PS Act.

20. The learned counsel submitted that the prosecution has failed to prove or adduce evidence against the appellant/Vanlalruati u/s 29 of the ND & PS Act. There is no evidence to show that the appellant had conspired or taken steps to conceal the seized articles which was seized from the bedroom of the co-accused Zodingluaia. He further submitted that from the content of the charge sheet and when the charge was framed against the appellant, it was only mentioned that the allegation against the appellant was only pertaining to illegal joint possession of the SA. However, in the impugned Judgment & Order dated 09.02.2024, it was mentioned that the charge against the appellant was framed u/s 22(c) of the ND & PS Act, as well as Section 29 of the ND & PS Act. The

learned counsel also submitted that nothing was seized from the possession of the appellant nor was anything recovered from her possession. She has been wrongly convicted and sentenced for her mere presence at the scene of arrest and seizure of the SA. The prosecution has failed to establish either the conscious possession or the involvement of the appellant on the seizure of the seized contraband substance from the house of the co-accused Zodingluaia on 28.10.2022. There is no evidence to show the involvement of the appellant that she had any role or intended to engage in the narcotics trade. No money was seized from the appellant nor was there any seizure of any sort of sale deed. Both the independent civilian witnesses/PW No1 and PW No.2 have stated that nothing was seized from the possession of Co.accused Vanlalruati and Zorampari/appellant, no money or sale deed was seized from them. The learned counsel submitted that it is only the hypothesis of the prosecution that they were trying to buy the seized articles with no evidence to support their claim and there is no chain of evidence to connect the appellant to the seized articles.

21. The learned counsel further submitted that the prosecution never came out with a case that the appellant was in conscious possession of the Methamphetamine tablets or part to a criminal conspiracy or abetted others in the commission of any offence under the charge section as there was no

material evidence found against the appellant to link that she is part of the criminal conspiracy. Therefore, the Prosecution miserably failed to establish the link of evidence connecting the Appellant to the commission of the offence for which she is charged. The learned counsel submitted that section 107 and section 120 A of the Indian Penal Code has defined what constitutes an offence of abatement wherein there should be an instigation or criminal conspiracy in furtherance of a criminal act, or an agreement between persons to commit the offence, which is not found in the present case. The prosecution evidence is only circumstantial and the prosecution is required to prove the guilt of the appellant for abetment. The learned counsel submitted that the involvement of the appellant and co-accused Zorampari depended on the evidence of PW-5 and PW-6 wherein there are discrepancies in their depositions regarding the involvement of the appellant. PW No. 5 had deposed that in her preliminary enquiry, she came to know that the S/A was brought by one Ruala to the residence of accused Zadingluaia. Accused Samil Ahmed was searching for a buyer of the S/A. Accused Vanlalruati and Zorampari would receive the sale money of the S/A. The accused persons did not know the address of Ruala, whom they mentioned as the owner. PW No.6 who is the case I.O however stated that the accused Vanlalruati contacted one drug seller Ruala, and they made arrangements for selling and commission of the S/A at the residence of

accused Zadingluaia, and the S/A was brought to accused Zadingluaia's house by one Ruala. While Ruala and accused Samil Ahmed were negotiating about the price of the drugs, Ruala received a phone call and then he ran away. Accused Vanlalruati and Zorampari tried to collect the commission money while the Excise personnel were recovering the S/A. Accused Zadingluaia, Vanlalruati, and Zorampari were to earn Rs. 10,000 each for the commission of the S/A. The learned counsel has also cited the decision of the Apex Court in ***Kriti Pal Vrs. State of West Bengal*** reported in ***(2015) 11 SCC 178 (para 33)***, wherein the Court held that a case based on circumstantial evidence, the Court must adopt a very cautious approach and should record conviction only if all the links in the chain are complete pointing to the guilt of the accused. Both the independent seizure witnesses in their cross examination have stated that the SA was not seized from the appellant and co. accused Zorampari and no amount was seized from them

22. Mr. Victor L. Ralte, learned counsel relied on the judgment of the Apex Court in Noor ***Mohammad Mohd. Yusuf Momin Vrs. The State of Maharashtra*** reported in ***1970(1) SCC 696 (para 7)***, wherein it was held that there should be evidence to prove the charge of criminal conspiracy. The learned counsel also submitted that the appellant/Vanlalruati along with the

co. accused Zorampari have not been questioned about their involvement in the case u/s 29 of the ND & PS Act on their examination under 313 CrPC and thus, not being given an opportunity to explain of the allegation against them of having committed the offence of abetting or conspiring, they cannot be convicted u/s 29 of the ND & PS Act.

In support of his submissions, the learned counsel has relied on the decisions of the Apex Court in ***Naveen Kumar and Anr. Vrs. Union of India & Anr.*** reported in ***(2024) GLR 691 (para 48)***, wherein it is stated that the appellants got the benefit of the doubt for non-following of the Standing Order 1/1989 nor the procedure u/s 52 (A) of the ND & PS Act.

Crl.A. No. 17 of 2024

23. Mr. S. Vanlalhriata, learned counsel for the appellant/Zorampari submitted that all the submissions made by the learned counsels for the appellants in the connected Crl.A.No.14 of 2024, Crl.A.No.15 of 2024 and Crl.A.No.29 of 2024 will be adopted in the instant case. The learned counsel submitted that the learned trial court erred in convicting the appellant under section 22(c) ND&PS Act when no contraband substance or any connected document or amount was seized from her possession. The learned counsel submitted that the conviction of the appellant/Zorampari was only on surmises with nothing to prove her

involvement except for her presence in the house of the co.accused Zodingluaia.

The learned counsel submitted that the mere presence of the

appellant/Zorampari at the P.O cannot be a ground for her conviction. In

support of his submission he has relied on the judgment of the coordinate

bench in **Onyx Maiphok vs. State of Assam**, reported in **2010 0Supreme**

(Gau) 614 wherein the coordinate bench had observed that in many judicial

pronouncements it has been held that more stringent is the provisions of

conviction more rigorous investigation in the trial is necessary and noted that

mere presence of a person in the place of recovery is not sine qua non of his

involvement in the offence. It is also the settled law that suspicion, however

grave cannot take the place of proof. The learned counsel also pointed out that

after the sample of the S/A was withdrawn in the presence of JMFC on

29.10.2022, the same was received in the FSL only on 01.11.2022 and it is not

known where the sample was kept between the mentioned period.

24. Per contra to the submissions made by the learned counsels for the

appellants in Crl.A. No 14/2024, Crl.A. No. 15/2024, Crl.A.No. 29/2024 and in

Crl.A. No 17/2024, Mrs. Linda L Fambawl, learned Public Prosecutor submitted

that the occurrence of the incident can be seen from the deposition of the

seizing officer, who deposed as PW No.5 and stated that she had received the

information that Salim Ahmed was trying to sell Metamphetamin tablets so she

arranged for a decoy customer who contacted the accused Salim Ahmed and they made arrangement to make transaction of Methamphetamine tablets in the residence of the co. accused Zodingluaia. The decoy customer was made to catch the accused persons and Ruala was not the decoy customer. All the accused persons along with the decoy customer were present in the house when the seizing officer conducted the search in the presence of two civilian witnesses and found some articles wrapped in a black and white polythene from a plastic cloth rack kept inside the bedroom. From the polythene, they recovered another 50 blue sachets. And from each of the sachets, they recovered methamphetamine tablets, and the same was seized from the one polythene bag. The methamphetamine tablets were counted in the presence of witnesses the accused persons and altogether, it was 10,000 tablets. The S/A was then kept in one bag and thus the sample of 5mg was taken from the one polythene bag. It was from the preliminary enquiry, that she came to know that the S/A was brought by one Ruala to the residence of accused Zodingluaia where the transaction for purchase of the S/A was to take place and since all the accused persons were in the house their involvement is clearly shown.

25. The learned Public Prosecutor further submitted that with regards to the difference in the colour of the S/A, wherein the seizure witnesses had stated that it was white in colour and the FSL report mention the S/A to be green and

orange, the change in colour can occur due to the different quality of the S/A. In support of her submissions she has cited the decision of the Apex Court in **Jagdish Budhroji vs. State**, reported in **(1998) 7 SCC 270** (para 8 &9).

26. The learned Public Prosecutor also submitted that the seized S/A was properly packed and sealed in wax seal and was kept in the designated godown which shows that the S/A was not tampered with. The sample which was duly packed and sealed with wax and the same which was sent to FSL thus minor difference in the weight does not matter. In support of her submission, the learned PP has relied on the decision of the Apex Court in **State vs. DilBagh** reported in **(200) 13 SCC 99** (para 8) wherein the Apex Court observed that *in case there is any doubt that what was received by the Chemical Analyser is not the same, then the benefit of that doubt could be given to the accused. But in cases where it is proved that what was sent to the Chemical Analyser is the same as what was recovered, minor differences in weight would not vitiate the trial.*

27. The learned PP further submitted that the S/A has been proved to be methamphetamine and when the S/A is not doubted or disputed, the material need not be produced before the trial court and has relied upon the decision of the Apex Court in **Than Kunwar vs. State**, reported in **(2020) 5 SCC 260**

(para 30) wherein it was held that if seizure is otherwise proved on record and it is not even doubted or disputed, it need not be placed before the Court. The Court further held that if the seizure is otherwise proved what is required to be proved is the fact that samples taken out of a contraband are kept intact.

28. In rebuttal, Mr. Joseph L. Renthlei submitted that the prosecution has not explained the difference in the colour of the S/A wherein the seizure witnesses stated that they were white in colour while the FSL report shows that they were orange and green in colour. The learned counsel also submitted that the sample was drawn on 29.10.2022 and said to be sent to FSL which was received only on 1.11.2022 and there is no explanation given as to where the S/A was kept between the said period. Mr. B. Lalramenga, the learned counsel for the appellant, Zodingluaia pointed out that from the cross examination of PW No.4/JMFC , the manner of packing shows that paragraph 2.5 of the Standing order has not been complied with.

29. I have considered the submissions made by the learned counsels in CrI.A. No 14/2024, CrI.A. No. 15/2024, CrI.A.No. 29/2024 and in CrI.A. No 17/2024 and Mrs. Linda L Fambawl, learned Public Prosecutor. I have also perused the evidence on record.

30. This court finds that from the deposition of the seizure witness PW-5 the

S/A was recovered on 28.10.2022 from the residence of the appellant/Zodingluaia, in the presence of two civilian witnesses PW-1 and PW-2. The S/A was 10,000 tablets of methamphetamine kept in 50 blue color plastic sachets which were further kept in a white and black color polythene and weighed 1.004 kgs. The counting and weighing was done on the spot in the presence of the civilian witnesses. It is seen that when the inventory was made by the case I.O and produced before the JMFC/PW-4, the S/A consisting of 10,000 tablets of methamphetamine which was packed/kept in one a black and white transparent bag. The submissions of the learned counsels for the appellants is that this is repacking of 10,000 tablets of methamphetamine in one bag is in non-compliance of the Standing Order No. 1/89 published by the Ministry of Finance (Department of Revenue) on 13th June, 1989.

31. It is seen that the Standing Order No. 1/89 came to be issued by the Central Government in exercise of the powers conferred by sub-section (1) of Section 52A of the said Act and thus of the Standing Order 1/89 has statutory force and has to be acted upon as the incident occurred on 28.10.2022 .

32. *Clause 2.1 of the said Standing Order No.1 of 1989 stated that all drugs shall be properly classified, carefully weighed and sampled on the spot of seizure. 2.2 All the packages/containers shall be serially numbered and kept in*

lots for sampling. Samples from the narcotic drugs and psychotropic substances seized shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama drawn on the spot.

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams .In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

Para 2.5 provides that when the packages/containers seized together are of identical size and weight, bearing identical markings, and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of ten packages/containers For each such lot of packages/containers, one sample (in duplicate) may be drawn.

33. This court finds that in the present case the S/A was 10,000 tablets of methamphetamine which was kept in 50 blue color plastic sachets which were

further kept in a white and black color polythene. There is no evidence in the deposition of the seizing officer PW N0-5 that the 50 blue color plastic sachets were serially numbered. The prosecution evidence do not show the number of tablets packed in each of the 50 blue color plastic sachets when counting of the 10,000 tablets of methamphetamine. There is no evidence of weighing of the 50 blue color plastic sachets individually to test whether they are identical. The JMFC/PW-4 in his cross examination had stated that the S/A was packed in one package before and after the inventory. He further stated that a sample of 5 grams was drawn from the one package. No mention of the 50 blue color plastic sachets is made by the JMFC/PW-4. It is seen that the seized 10,000 tablets of methamphetamine were counted in the presence of the civilian witnesses and then were packed in one polythene bag when it was taken out from the blue color plastic sachets. This court thus finds that this requirement under the Standing orders have also not been complied with. It is also noted that no Test Memo is been exhibited in the case as per the Standing Order No. 1/89.

It is noted that the Apex Court in ***Noor Aga v. State of Punjab (supra)*** held that:-

“89. Guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in

mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.

90. Recently, this Court in *State of Kerala v. Kurian Abraham (P) Ltd.* [(2008) 3 SCC 582] , following the earlier decision of this Court in *Union of India v. AzadiBachaoAndolan* [(2004) 10 SCC 1] held that statutory instructions are mandatory in nature.

91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance with these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.

34. On scrutiny of the evidence of the prosecution, it is seen that PW No-1 & 2 are the civil seizure witnesses who were present when the Excise personnel conducted a search inside the residence of accused Zodingluaia and from his bedroom, they recovered 1.004 kgs (10,000 tablets of methamphetamine) kept in 50 blue color plastic sachets. The appellants were also present at the time of

recovery of the S/A. However, in the cross examination of the seizure witness they have both stated that the S/A was not recovered from the physical possession of the appellants and that they do not have any document to prove that the S/A belonged to them. They also admitted that when they reached the P.O the Excise personnel already detained the four accused persons. PW No.5 stated that she arranged for the decoy customer who had contacted the appellant Salim Ahmed and she came to know that the appellant Samil Ahmed was searching for a buyer of the S/A and they made arrangement to make transaction at the house of the appellant Zodingluaia. A person named 'Ruala' is said to be the owner of the S/A and he brought the S/A to the residence of accused Zodingluaia. It is however noted that this person 'Ruala' is not made an accused in the case. The said decoy customer is also not a prosecution witness in the case. PW No.5 stated that accused Vanlalruati and Zorampari would receive the sale money of the S/A however, no evidence is adduced to substantiate this. PW No.6/the case I.O, deposed that the appellant Vanlalruati contacted one drug seller Ruala, and they made arrangements for selling and commission of the S/A at the residence of accused Zadingluaia. Accused Samil Ahmed confessed to him that after he inspected the drugs, a sample of three capsules were taken in a sheet of paper, and he heated it with a lighter and took a photo and sent it to one Dilwar of Karimganj. On Dilwar's instruction,

Samil Ahmed agreed to buy the S/A at the cost of Rs. 3,50,000/-. He further stated that he was planning to send the said S/A to Dilwar for earning Rs. 5000/-. It is however seen that the mobile phones of Vanlalruati and Salim Ahmed have not been seized to substantiate their claims. Thus, this court finds that the only case against the appellants is their presence at the P.O when the contraband substance was seized from the residence of the appellant Zodingluaia. It is also noted that PW no.5 and PW no.6 have stated that the S/A belonged to a 'Mr.Ruala' who brought the S/A to the house of the appellant Zodingluaia. In the cross examination of PW No.6 he admitted that one person Ruala, mentioned in the chargesheet, really existed, but he does not know his address and personal details. PWno.5 and PW no.6 have not indicated how the appellant Zodingluaia was involved when the S/A was brought to his house by "Mr. Ruala" and whether he was in conscious possession of the S/A. The case I.O appear to have relied only on the statements recorded under section 161 Cr.P.C, which cannot be taken as the evidence for conviction of the appellants. This Court has also noted the fact that both the independent seizure witnesses had stated in their cross, that, prior to their arrival at the P.O all the appellants were already detained by the Excise personnel and also that the said decoy customer is not made a prosecution witness in the case.

35. It is seen that a Coordinate Bench of this court in **Onyx Maiphok v.**

State of Assam (Supra) had observed as follows, which is also appropriately applicable in this case, considering the facts and circumstances under which the S/A was recovered :

“12. In the case before me, the factual scenario is little better. Not a single appellant was found sitting in the truck that was carrying ganja. In the case of State of Maharashtra v. Sukdeo, (1992) 3 SCC 700 : AIR 1992 SC 2100 and in many other judicial pronouncements it has been held that more stringent is the provision of conviction more rigorous investigation and trial is necessary. Besides this, in the case of IsmailkhanAiyubkhanPathan (supra), it has been held that mere presence of a person at the place of recovery is not sine qua non of his involvement in the offence. It is also the settled law that suspicion, howsoever grave cannot take the place of proof. Even if moment of appellants at the place of recovery in suspicious manner is considered to be an adverse circumstance that is not enough to affirm their conviction in absence of corroborative additional incriminating circumstances.”

36. This Court also finds that there were also differences in the colour of the S/A seized wherein, the seizure witnesses stated that the seized article was white in colour but the sample drawn on 29.10.22(exhibit P-10) indicates that samples collected were orange and green in colour and the sample received and examined (Exhibit P-7) by the FSL on 1.11.22 noted that the tablets was orange

in colour. The prosecution witnesses have not explained the reason for this difference in the colour of the S/A. It is also noted that the sample drawn on 29.10.2022 weighed 5grams while the sample received for examination weighed 5.3 grams. This court has also noted that the S/A was kept in the designated Godown no.1 on 28.10.2022 (Ext-6) but there is no explanation as to where the sample drawn in the presence of the JMFC on 29.10.2022 was kept before it was received by the FSL on 01.11.2022.

37. Thus, keeping in mind the establish principle that the harsher is the punishment, the more is the strictness of proof required from the prosecution, this court finds that on taking into consideration in its totality the findings and observations as discussed in the above paragraphs, this court is constrained to hold that the prosecution have failed to prove their case beyond reasonable doubt and the appellants are entitled to be given the benefit of doubt.

38. For the above reasons, this Court finds it fit to set aside the impugned Judgment & Order dated 09.02.2024 passed by the learned Judge, Special Court, ND&PS Act, Aizawl in SR No. 266 of 2022 arising out of Criminal Trial (Ex) No. 1837 of 2022 Ref - Excise and Narcotics Case No. N-181 of 2022 dated 29.10.2022 and acquit the appellant Mr. Zodingluaia in Crl.A.No. 14 of 2024 of the charge under section 22(c) ND&PS Act and acquit Shri. Salim Ahmed,

appellant in Crl.A. No. 15 of 2024, Smt. Zorampari, appellant in Crl.A. No 17 of 2024 and Smt. Vanlalruati, appellant in Crl.A. No. 29 of 2024 of the charges u/s 22(c) r/w section 29 of the ND&PS Act. Accordingly, the above named appellants are set at liberty unless they are required in any other case.

39. Crl.A. No. 14 of 2024, Crl.A.No. 15 of 2024, Crl.A. No 17 of 2024 and Crl.A. No. 29 of 2024 thus stand allowed and disposed of.

JUDGE

Comparing Assistant