

(1985) 10 GAU CK 0002

In the Gauhati High Court

Case No : Criminal Appeal No. 85 (J) of 1984

Thangruaia Sailo

APPELLANT

Vs

Union Territory of Mizoram

RESPONDENT

Date of Decision : 14-10-1985

Acts Referred:

Arms Act, 1959 — Section 25(1)
Criminal Procedure Code, 1973 (CrPC) — Section 375, 428
Unlawful Activities (Prevention) Act, 1967 — Section 10, 13

Citation : (1986) 1 GLR 172

Hon'ble Judges : K.N. Saikia, J

Bench : Single Bench

Advocate : Rajkumari Rao, for Amicus Curiae, for the Appellant; M.K. Sarma, for the Respondent

Judgement

K.N. Saikia, J.—This appeal is from the judgment of conviction and sentence of the Appellant under Sections 10 and 13 of the Unlawful Activities (Prevention) Act, hereinafter referred to as the "Prevention Act". The facts are simple. On 18.9.82 an F.I.R. was lodged at the Lunglei Police Station, Mizoram, alleging that on 17.1.82 at about 3 P.M. one MNF hostile SS Pvt Lalhma chhuana "K" Bn was arrested at Lunglei near AOC Point and on interrogation he disclosed that his associates SS Capt Thangruaia Lunglei town commander and SS Cpt Zohruaia "Z" Bn who were having one SAR and one G. 3 with heavy ammunition were hiding in Bualte Jhum area, and that at about 9.30 P.M. he agreed to lead the police party to cause the arrest of his associates. Accordingly, the police party went to the place and arrested the Appellant. He was immediately apprehended and his identity was established as SS Capt Thangruaia Sailo (the Appellant). After investigation and submission of charge-sheet he was tried under Sections 25(1)(a) of the Arms Act and 10 and 13 of the Prevention Act. The charges having been read-over to the accused-Appellant, he immediately admitted the allegations/charges under Sections 10 and 13 of the Prevention Act but denied the allegations u/s 25(1)(a) of the Arms Act and claimed to be tried under that

charge. The learned Deputy Commissioner recorded the admission of guilt, accepted it and on the basis thereof held the Appellant guilty under the aforesaid two sections of the Prevention Act, and convicted him under the above sections and sentenced him to undergo imprisonment for one year u/s 10 and three years u/s 13 of the Prevention Act, respectively. Both the sentences were ordered to run concurrently.

2. Dr. M.K. Sarma, learned Standing Counsel, Mizoram states that the Appellant did not obtain any bail. He was arrested as far back as on 18.9.82 and the impugned judgment was passed on 16.5.83. Taking into consideration, the period for setoff, the accused-Appellant has already served out his sentence of three years. Dr. Sarma further states that the trial against the Appellant in respect of some other charges including the one u/s 25(1)(a) of the Arms Act is continuing. Under the above facts and circumstances of the case, the only question that is required to be determined in this appeal is whether the learned Deputy Commissioner acted according to law in recording the admission of guilt by the Appellant and in convicting and sentencing him, as stated above on that basis? u/s 375 of the Code of Criminal Procedure, no appeal lies in certain cases when accused pleads guilty. Where an accused person pleaded guilty and has been convicted on such pleas there shall be no appeal if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence. This appeal, therefore, can be considered only to the extent of legality of the sentence. A plea of guilty is a veritable waiver of the right of appeal against the legality of conviction, but the extent or legality of the sentence can be questioned and the severity or the illegality of the sentence is a question of law. However, to bar an appeal the plea of guilty must of course be of a real plea of guilty properly made and not a plea of guilty under a misapprehension without understanding the charge. It must also be a definite acknowledgement of guilt, and not the Court's own interpretation of what the accused had said. It is open to the Court to accept or not to accept the plea of guilty. While in a capital case, it may be safer not to accept such a plea, the same principle may not apply in case of lesser offence. Where the plea is not acted upon, it is the usual practice to proceed to record evidence and pass an order of conviction or acquittal according to the reliability or unreliability of the offence recorded. However, it is only a rule of prudence and not a rule of law. Where the accused pleads guilty to a charge and the Judge is satisfied that the accused understands fully the implication of his plea then the plea must be recorded and it would be within the jurisdiction of the Judge to convict the accused upon such a plea. Where the plea is not clear or it is doubtful, the Court may not accept such a plea.

3. In the instant case, the charges under Sections 10 and 13 of the Prevention Act were punishable with two years and 7 years respectively. The Appellant appears to have clearly understood the implication of his plea of guilty inasmuch as he clearly admitted the allegations/charges under Sections 10 and 13 of the Prevention Act, but clearly denied the allegations u/s 25(1)(a) of the Arms Act in

respect of which he claimed to be tried. The plea was recorded in the accused's own language. As the accused denied one charge and admitted two charges, there is no room for believing that there was any plea bargaining on his part. In fact, as Dr. Sarma has stated, the trial in respect of the other charge is still continuing. There is, therefore, no illegality in accepting and recording the plea of guilty and convicting the accused-Appellant thereunder. As it appears from the FIR the accused possessed arms and ammunitions without valid licence or documents and he was found involved and associated with the activities of an unlawful organisation associated with unlawful activities. Considering the nature of the offence, it cannot be said that the sentence of one year imprisonment u/s 10 and three years u/s 13 of the Prevention Act were, by any standard, excessive or harsh. The sentences have, therefore, to be upheld which I hereby do. The Appellant has already undergone the full term of his sentences, which were ordered to run concurrently. In the result, this appeal is found to be devoid of any merit and hence it is dismissed.

4. Mrs. R. Rao, learned Counsel appearing as amicus curiae submits that in view of the fact that the Appellant was charged both under the Prevention Act as well as u/s 25(1)(a) of the Arms Act and he having been arrested on 18.9.82 and convicted on 16.5.83 of the charges under Sections 10 and 13 of the Prevention Act, he was in jail as an under-trial prisoner and the said period may also be set-off in the event of his being convicted u/s 25(1)(a) of the Arms Act, the trial wherefor is stated to be continuing. u/s 428 of the Code of Criminal Procedure where an accused person has, on convention, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him. As from the date of his arrest on 18.9.83 an investigation was going on under all the above three charges, it cannot be said that the Appellant shall not get the benefit of set off under this provision if and when he is convicted u/s 25(1)(a) of the Arms Act. However, this point is left open to be decided by the trial Court at the appropriate time.

5. This Court keeps on record the services rendered by Mrs. R. Rao as amicus curiae. She shall be entitled to two days' hearing fee at the rate allowable to the learned Standing Counsel for Mizoram. Send a copy of this order to the Secretary (Law), Union Territory of Mizoram.