

**IN THE COURT OF
DISTRICT AND SESSIONS JUDGE,
AIZAWL JUDICIAL DISTRICT,
MIZORAM, AIZAWL**

BEFORE

**Mrs. Lucy Lalrinthari
District and Sessions Judge,
Aizawl Judicial District, Aizawl**

**SC. No.28 of 2015
Criminal Trial No.1521/2013
u/s436 IPC
Ref: Bawngkawn PS Case No. 140/2013**

**State of Mizoram
Vrs
Lalhmumawia S/o Pachhunga, Khawruhlian - **Accused****

PRESENT

For the Prosecution : Mr.H.Lalmuankima and Mrs.K.Lalremruati, Addl.PPs

For the Accused : Mr.C.Zoramchhana, Ld. Counsel.

Date of Hearing : 28.10.2015

Date of Judgment : 28.10.2015

JUDGMENT & ORDER

1. The prosecution story of the case in brief that on 18.8.2013 C.Lalsangzuala of SihphirTlangveng submitted a written FIR stating that on the night of 18.8.2013 at around 6:30PM his mother-in-law who reside below the door of their residence Lalhmumawia set a fire at their house, as such some clothes have been burnt, but fortunately they can stop the

fire with the help of their neighbors before it burnt tremendously. Hence Bawngkawn PS Case No.140/2013 dated 18.8.2013 U/s 436 IPC was registered and duly investigated into.

2. During the course of investigation, PO was visited, different witnesses were examined. Involved articles i.e one Gas lighter used by the accused for setting a fire and one burnt cloth was seized in presence of witnesses. Accused Lalhmunmawia (30) S/o Pachhunga, Khawruhlian P/A Sihphir was arrested. He was thoroughly interrogated and pleads guilty stating that he actually set a fire inside their house due to a little quarreling with his wife and burnt a cloth which was put on the sailing. Accused was forwarded to the court for Judicial custody on 19.8.2013 after recorded his statement. Hence, a prima facie case U/s 436 IPC is found well established against the said accused Lalhmunmawia.

3. All the police reports and its connected document were delivered to the accused and the accused being a tribal advocate Mr.C.Zoramchhana was appointed to defend the accused u/s 304 of Cr.P.C at the expense of the state. Thereafter, the Id. Addl. P.Ps. opened their case and the Id. Defense counsel also made his submissions. After hearing both the Id. Addl. P.Ps. and the Id. Defense counsel charge u/s 436 IPC is framed read over and explained to the accused in his own language to which accused pleaded not guilty and claimed for trial.

4. In the instant case, the prosecution has to prove that the accused set a fire with an intention to burn a dwelling house. In order to bring home the charge against the accused, the prosecution examined the following witnesses.

5. PW No.2 identified the accused and stated that on 18.8.2013 at dusk when he was at the house of PuC.Hmingthanga, who is the father in-law of the accused the police personnel seized one gas lighter allegedly used by the accused for setting fire at the residence of his father in-law and one burnt mizo blanket and he became one of the seizure witnesses.

Exbt-P-1 is the seizure memo

Exbt-P-1-A is his signature in the seizure memo and

Exbt-M-1 is the seized articles.

On cross-examination Pw 2 stated that he did not see the accused setting fire to any clothes or parts of the house he was alleged to have set fire on. He also did not see the accused using the seized gas lighter for setting fire. He also did not see the burning of any mizo blanket in the residence of the accused and he also did not see the accused setting fire on the said blanket.

And no part of the house was burnt by the accused at the PO. He also did not see from where the seized gas lighter and the partly burnt mizo blanket were initially recovered by

the police personnel. He only put on the Exbt-P-1-A his signature as was told to him by the seizing officer. He does not remember whether the Exbt-M-1 produced in the Court today is the one seized at the PO on 18.8.2013. He does not know the content of Exbt-P-1 as it is written in English nor was the same explained to him at the PO.

Re-examination by the Prosecution:

At the time of preparation of seizure memo he was sure that he put his signature in the seizure memo however he could not remember cent percent the picture of the seized articles produced before the Court today as the articles were seized long time back in the year 2013.

6. PW No.3 identified the accused and stated that the accused is the husband of his younger sister. They reside at the lower portion of their house. On 18.8.2013 at around 6:30PM the accused and his wife had an argument. He was not present at that time. When he returned home he saw some clothes are burning and some neighbor were also present and they put off the fire by using water. Some persons who are present at the time of the incident informed Bawngkawn police and they immediately rushed to the spot and he submitted FIR to the police. Exbt-P-2 is the FIR submitted by him and Exbt-P-2-A is his signature.

On cross-examination Pw 3 stated that he did not initially intended to file complaint to the police authority. However, some person informed the police who later turned up and he, without having any second thought and also on the pressure of people assembling at the site, filed the Exbt-P-2.

And no part of house was burned and the accused was having no intention of burning the house.

7. **In the instant case, the accused is charges u/s 436 of IPC. Section 436 IPS is as follows:- "Mischief by fire or explosive substance with intent to destroy house, etc.-**Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

8. At this stage, after examination of PW 3 complainant and eye witness in the instant case, the Id. Addl. P.P. realize there would not be evidence against the accused to earn for

his conviction. The complainant PW 3 in no way suggested that the accused had an intention to burn a dwelling house. Instead PW 3 stated that he had no intention to file FIR against the accused but he submitted FIR due to pressure from other people. He saw only some clothes burning which was put off with water. As the charge section is mischief by fire with intent for burning of a dwelling house. PW 3 stated that the accused had no intention to burn a dwelling house, but set fire to one blanket due to argument with his wife. The blanket is also outside of the house. PW 2 also stated that he had not seen any burning but put his signature as told by the police on seizure of lighter. The Id. Addl. PP therefore submitted that prolonging the case is unnecessary waste of time, and therefore suggested closing of the case.

9. In my opinion also, as the two most important witnesses of the prosecution, the complainant and seizure witness evidence does not warrant enough evidence for proving the guilt of the accused u/s 436 IPC. PW 3, complainant in the instant case deposed before the court that he had no personal intention to submit FIR against the accused, but due to pressure from public around him he submitted FIR. Whatever is burnt is a blanket or some clothes outside of the house. Hence, the intention to set fire to a dwelling house would not be proved. The accused is examined by the Court and he stated that he instructed his wife to wash clean the clothes with which they bound the baby as it was smelly and need cleaning. However, his wife is lazy to wash clean the baby clothes. In his anger he burnt the smelly clothes to teach his wife a lesson. As he burnt the clothes, the fire attracted a nearby people and it goes out of proportion. It is between his wife and himself and it is a family matter. And hence, as truly suggested by the Id. P.P. prolonging the case would be a waste of time, there are many criminal cases pending, and when a case which would be known surely to be unfruitful; closing of the case would surely be for the interest of justice.

10. Hence, in the light of the above discussion I am convinced that the prosecution failed to prove the guilt of the accused u/s 436 IPC. Hence, accused Lalhmingmawia is acquitted from the charge section of 436 IPC and he is set at liberty. Bailbond stand liquidated and bailers are free from the bailbond.

11. Seized articles be destroyed.

12. Given under my hand and seal of this court today the 28th of October 2015.

13. Give copy of this order to all concern.

Sd/-LUCY LALRINTHARI

District & Sessions Judge,
Aizawl Judicial District,
Aizawl, Mizoram.

Memo No. DSJ/A/ 2015 : Dated Aizawl, the 28th October 2015

Copy to:-

1. Lalhmunmawia, S/o Pachhunga, KhawruhlianC/oMr.C.Zoramchhana, Ld. Counsel.
2. Mr.H.Lalmuankima and Mrs. K.Lalremruati, Ld. Addl.PPs.
3. Officer-in-Charge, Bawngkawn PS.
4. Mr.C.zoramchhana, Ld. Counsel.
5. i/c Judicial Section.
6. Case record.
7. Guard file

P E S H K A R