

IN THE COURT OF ADDL. DISTRICT & SESSIONS JUDGE-I
AIZAWL JUDICIAL DISTRICT, AIZAWL.

Sc No.26/2014
A/O CrI.Tr.No.2168/2013, U/S 454/380/307 IPC

State of Mizoram : Complainant

Vrs

Lalfakzuala : Accused.

BEFORE

Vanlalmawia
Addl District & Sessions Judge,

PRESENT

For the Opposite party : R. Lalremruata, Addl. P.P.

For the Accused : Lalremtluanga, Advocate.

Date of Order : 25.3.2015

ORDER

The prosecution story of the case in brief is that on 8.12.2013 @ 1:00pm a written report is received from Lalramchhani (17) D/o R.Lalhlupaia of Ramhlun South Aizawl that 8.12.2013 between 10:30am to 11:30 am one unknown person who covered his face entered into her residence Ramhlun South Aizawl through the window and assaulted her mother Lalsangliani who is bathing inside the bathroom and her mother got severe injury and he stolen away one mobile phone Samsung flip(grey colour) no 9774136520 and cash 4500/-. Hence Bawngkawn P.S Case No.234/2013 dt.8.12.2013 u/s 454/380/307 IPC was registered and the case was duly investigated into.

During the course of investigation promptly visited the place of occurrence Ramhlun South Aizawl and the victim Lalsangliani (38) W/o R.Lalhlupaia of Ramhlun South Aizawl was already send to Civil Hospital Aizawl for medical treatment and examine the place of occurrence and draw rough sketch map of the place of occurrence and examine the complainant Lalramchhani(17) d/o R.L.Lalhlupaia of Ramhlun South Aizawl and recorded her statement. I seized one cap, tester and cutter(kuhva chehna) making seizure form from the possession of the complainant Lalramchhani (17) d/o R.L.Lalhlupaia of Ramhlun Southjwl in

presence of two reliable witnesses Lalengmawii(38) w/o Vanlalmuana of Ramhlun South Aizawl and Zoramliana (45) S/o Mangluaia of Ramhlun south Aizawl left by the unknown culprit after committing the crime and recorded the statement of seizure witnesses. I examine the eye witnesses Lalengmawii(38) w/o Vanlalmuana of Ramhlun South Aizawl and she stated that on 8.12.2013 @ 9:00 am while she was walking on the main road near the house of Pi Lalsangliani of Ramhlun South Aizawl she saw that one person wearing dark green colour jacket, long pant black colour jeans coming down from the roof of Pi Lalsangliani residence to the main road and she asked him why he is doing in the roof and he inform her that he forget his handkerchief and searched on the roof and already found and she left him without any suspicious him and just after short while she came to know that one unknown person entered to the residence of her neighbour Lalsangliani and assaulted her and stolen away mobile phone and cash and her statement is recorded. I submitted requisition of injury report of the victim Lalsangliani (38) w./o R.L.Lahlupaia of Ramhlun South Aizawl to Civil Hospital Aizawl and examine the victim and she stated that on 8.12.2013 @ 10:00 am while she was bathing in the bathroom inside her residence(the bathroom is located in her bedroom) she hear of a sound tried to break steel almerah and open the bathroom door and she shouted for calling to help her and lock the bathroom door inside and the unidentified person break the bathroom door and assaulted with intention to kill her using cutter(kuhva chehna) and tester and she got severe injury and the unidentified culprit stolen away mobile phone and cash 4500/- and her statement is recorded. On 12.12.2013 one Lalfakzuala (30) s/o Lalvena of Bungkawn tuikhur veng Aizawl was apprehended on suspicious ground and thoroughly interrogated and he admitted that on 8.12.2013 he had entered into one house at Ramhlun South Aizawl through the window and stolen away mobile handset, cash Rs. 4000/- and subsequently assaulted the house owner Pi Lalsangliani who was present inside the house with intention to kill her and arrested him making arrest form after informing him the ground of arrest his statement is recorded and on the same day 12.12.2013 he was forwarded to Chief Judicial Magistrate Aizawl for judicial remand for the interest of the case. The injury report of the victim Lalsangliani(38) W/O R.L.Lahlupaia of Ramhlun South Aizawl was received from Dr.K.Vanduhlinga Medical Officer, civil Hospital Aizawl and opined that she sustained grievous injury.

Under the above fact and circumstances a prima facie case u/s 454/380/307 IPC is found well established against the accused Lalfakzuala (30) s/o Lalvena of Bungkawn tuikhur veng, Aizawl.

Charge u/s 454/380/307 IPC was read over, explained in the language known to him to which he pleaded guilty, the prosecution examined six witnesses

P.W No.1 Lalramchhani stated that I do not know the accused who is standing in the court today.

On 8.12.2013 at around 10 : 30 Am(Sunday), while my mother Lalsangliani was taking bath inside the bath room, attached to the bed room, she heard a sound and as she opened the bath room door she saw one person trying to open the steel almirah. My mother instead of stepping out of the bath room, she closed the bath room door. The accused then kicked open the bath room door and assaulted my mother. The accused fled away with a mobile phone(Samsung flip) belonging to my mother and Rs. 4500/- (four thousand five hundred) which was kept inside her bag and which was on the table.

The same day I filed F.I.R at Bawngkawn Police Station.

Exbt P 1 is F.I.R, P 1(a) is my signature.

Exbt P 2 is F.I.R U/S 154 CrPC P 2(a) is my signature.

Cross examination by the Defence counsel:

It is not a fact that the stolen property like the said Samsung Mobile phone and Rs.4500/- were return to us.

It is not a fact that the contents of Exbt P 1 were not read over to me.

It is not a fact that the accused is not the one who enter our house and committed offence mentioned here in before.

It is not a fact that Exbt P 1 (a) is not my signature.

P.W No.2 Lalsangliani (victim) stated that I do not know the accused who is standing in the court today.

On 8.12.2013 (Sunday) I was at home. My husband was out of station and my children had gone to church. My daughter Lalramchhani locked the main door from outside as I told her. While I was taking bath inside the bath room which is attached to the bed room of my daughter, I heard a sound seemed to be a person. I opened the bath room door and I saw one person who covered his face with a cloth opening the steel almirah and looking for something. I was frightened and instead of stepping out the bath room I closed the bath room door and locked. The accused kicked opened the bath room door and started assaulting me. The accused had a screw driver and a betelnut cutter and he poked me on my upper nose in between my eyes and punched me a couple of times of my face and neck. I was semi unconscious then and I was also bleeding from my nose etc. The accused then fled away taking a stair case leading to balcony. The accused took my mobile phone(Sam sung) and money around Rs. 4,500/- . I was admitted to Civil Hospital Aizawl for 4(four) days.

Cross examination by the Defence counsel:

It is not a fact that the accused was not seen and identified by Lalengmawii and Zoramliana when he run away from our residence passing through the road near by their residence.

It is a fact that the accused cover his face with black and red cloth suppose to be bandana.

It is not a fact that I did not suffer any pain due to assault I received from the accused.

It is not a fact that the accused is not the one who had stolen Samsung mobile, Rs.4500/- from our house and assaulted me on the date mentioned before.

It is not a fact that I did not suffer any head problem till date due to assault I received from the accused.

P.W No.3 Lalengmawii stated that I am living at Ramhlun South with my family. I live next door to the victim.

On 8.12.2013 Sunday morning @ 10:30 am to 11:30 am, I went to our neighbors house to buy something. On my way back I saw a man jumping down from the house of the victim. I asked him what he was doing and he told me that he dropped his scarf and was picking it up.

Seen after that the victim Lalsangliani called me and told me their house and assaulted her inside the bathroom which she was taking bath. I rushed to her house and I saw the tester and betelnut cutter which was used by the accused.

We called the police and when the Police came, they seized the betelnut cutter and tester. As I was present during this time, I put my signature on the seizure memo.

Cross examination by D/L :

It is not a fact that I did not see the accused with face mask in our area on the day of the incident.

It is not a fact that one person with face mask enter her house, committed theft, assaulted her.

It is not a fact that I did not see injury mark on the face of the victim.

It is not a fact that the victim did not inform me that she was assaulted by one person with face mask in her residence on that Sunday morning.

P.W No.4 Zoramliana of Ramhlun South seized witness also stated that That on 8.10.2013 at the house of Lalsangliani W/o, Lalhlupua Ramhlun South Aizawl the police personnel seized one cutter (kuhva chehna), one tester(screw driver), and one cap from the possession of Lalramchhani D/o Lalsangliani Ramhlun South Aizawl in connection with Bawngkawn P.S Case No. 234/2013 U/S 454/380/307 IPC. As I was present at the time of the seizure of the above mentioned S/A I appeared as one of Seizure witness and also put my signature in the Property Search and Seizure Form.

Exhibit P-III (b) is my signature on the body of Property Search and Seizure Form.

Exhibit M- 1 are the S/A which were seized in my presence.

Cross examination by the Defence counsel:

It is a fact that I do not know the accused personally.

It is a fact that I was present in the house of Lalsangliani of Ramhlun South Aizawl before the police came on 8.10.2013.

It is a fact that Lalramchhani D/o Lalsangliani Ramhlun South collected the seized properties from within their house.

It is not a fact that I was not present at the house of Lalsangliani Ramhlun South and did not see the Police seize the S/A.

It is not a fact that I only signed on the seizure form because I was compelled by the Police to do so.

P.W No.5 Dr.K.Vanlaldutlinga also submitted that I am a Medical Officer under Government of Mizoram.

On 12.12.2013 while I was on duty at Casualty Aizawl Civil Hospital I examined the victim Lalsangliani W/o R.L.Lahlupaia of Ramhlun South.

My findings are recorded in the injury report.

Exbt P IV is injury report P IV (a) is my signature.

Cross examination by the Defence counsel:

It is not a fact that injuries sustained by the victim were simple.

It is not a fact that the victim did not inform me as to who and when she sustained such injuries.

P.W No.6 H.Lalchawimawia, S.I of Police, also submitted that I know the accused who is standing in the court today.

On 8.12.2013 the Bawngkawn P.S received a written report by Lalramchhani the victim Lalsangliani stating that one unknown person who covered his face entered into her residence at Ramhlun South through window and assaulted her mother Lalsangliani and her mother got severe injury and he stole away mobile phone and cash Rs.4,500/-. The O/C Bawngkawn P.S endorsed to me this case, I rushed to the P.O the same day, I examined the eye witness who saw the accused leaving the house of the victim after assaulting her. The said witness stated that the accused was wearing jacket some kind of polar. We then set out searching for the accused and the accused Lalfakzuala was detained and arrested on 12.12.2013 and he confessed that he assaulted Lalsangliani on 8.12.2013 by hitting with a screwdriver, betelnut cutter and also punched her on the face leaving her unconscious and got away with mobile phone and cash Rs.4,500/-. He also stated that he entered the house by climbing over the wall and through the door at the balcony without the permission of the owner. The victim Lalsangliani was sent for medical examination of Civil Hospital Aizawl. I then found a prima facie case u.s 454/380/307 IPC and sent the accused for trial.

Exbt P-4 is charge sheet including statement of accused, complainant witnesses and victim.

Exbt P-4(a) is my signature, exbt P-3 is seizure memo, P-3 (a) is my signature exbt P-5 is arrest memo, exbt P-5(a) is my signature exbt P-6 is sketch map of P.O.

Cross examination by the Defence counsel.

It is not a fact that the accused is known to me since long time back. It is not a fact that seized material like betelnut cutter, tester and one cap were not seized by me from the P.O.

It is not a fact that the accused was not identified by his dress the eye witnesses at the relevant point of time.

It is a fact that the accused was detained by the Aizawl Police Staff at the Bazar Bungkawn Aizawl after which I arrested him on his production at Aizawl P.S.

It is not a fact that none of the seizure witnesses was present at the time when I seized the seized materials mentioned in the seizure memo.

It is not a fact that I filed charge sheet by the pressure of the higher authority and without finding prima facie case against the accused under the charge section.

Accused Lalfakzuala was examined u/s 313 Cr. P.C and answers the question as followed :

Q.1 It is from the evidence that on 8.12.2013 at 10:30 Am Sunday, you climbed over the wall and entered the house of Pi Lalsangliani Ramhlun South without her permission from the door of the balcony. What do you say ?

Ans : Yes it is a fact.

Q.2 It is from the evidence that you broke open the door of bathroom and assaulted Pi Lalsangliani who was inside the bathroom. It is from the evidence that you punched her on the face and neck many times, poked her with screwdriver on her nose and left her unconscious. What do you say ?

Ans : Yes, I did it under the influence of drug, Alphozolyme.

Q.3 It is from the evidence that as you left you had taken away one mobile phone handset(Samsung) and money/cash Rs.4,500/- What do you say ?

Ans : I do not know whether I have taken Mobile Hnadset and Rs.4500/-

Accused Lalfakzuala informed the court that he has no any defence witness to be produced in the court, and hence evidence of prosecution and defence are closed. The defence council Mr.Lalremtluanga informed the court that he has no any argument to be submitted in writing and the ld Addl.Public Prosecutor Pu R.Lalremruata submitted written argument.

1. The prosecution story is that on 8.12.2013 a written report was submitted by Lalramchhani d/o R.L.Lalhlupua of Ramhlun South, Aizawl stating that on 8./12.2013 between 10:30 am one unknown person covered his face entered into her residence at Ramhlun South and assaulted her mother Lalsangliani who got severe injury and stole away one mobile phone handset Samsung and cash Rs.4500/-. On pursuing, the accused Lalfakzuala S/o Lalvena of Bungkawn tuikhur veng Aizawl was apprehended on 12.12.2013 on suspicious ground and after interrogated he admitted that he had entered the house, assaulted Lalsangliani and stole away a mobile phone and cash.
2. That the charge u/s 454 IPC, 380 IPC and 307 IPC was framed against the accused Lalfakzuala on 16.1.2014 as lurking house trespass, stole away a mobile handset and cash Rs.4500/- and assaulted Lalsangliani who got severe injury out of it respectively on 8.12.2013 that the accused Lalfakzuala pleaded guilty to the charge leveled against him.
3. That the accused Lalfakzuala on 8.12.2013 at around 10:30 am, Sunday climbed over to the balcony of Pu R.L.Lalhlupua's house at Ramhlun South by stepping over a sintex barrel and entered into the house through a window. The victim Lalsangliani who was taking bath inside the bathroom heard some noise and when opened the bathroom door she saw the accused Lalfakzuala while he was trying to open the almirah and the victim screamed and locked herself inside the bathroom. The accused then broke open the bathroom door and assaulted Lalsangliani by poking her with a screw driver (tester) on the nose and by punching her many times. The victim fell down and the accused left the house by taking the same way of his entry. As he jumped down from the sintex barrel one Lalengmawii saw the accused. Later she was called by the victim and entered the house and came to know that the person/accused. He saw jumping down from the sintex barrel assaulted the victim. The accused was wearing a Jacket(polar) and jeans pants as seen by Smt. Lalengmawii. On checking the house, one mobile phone handset and a cash Rs.4500/- were found missing.
4. That the victim Lalsangliani was admitted to Civil Hospital, Aizawl for 4 days due to the assault by the accused. The victim sustained head injury, cut at the nose, eye and cheek bruising and diagnosed fracture at the left cheek.
5. That the accused did not deny the questions put to him such as if he entered the house of the victim on 8.12.2013 without permission, if he broke open the bathroom door and assaulted Pi Lalsangliani by poking her nose with a screw driver and by punching her on the face and neck many times. Though stated that he did not know whether he fled away with a mobile handset and cash Rs.4500/-, it is pretty clear that he was the one who state the same as no one entered the house.

Hence it is pretty clear that the accused Lalfakzuala is found guilty of the offence punishable u/s 454 IPC, 380 IPC and 307 IPC.

The injury report submitted by Medical Officer who examined the victim opined that the injury is grievous injury, but does not amount to grievous hurt as defined in section 320 IPC.

In this instance case, the prosecution proved the charge section of 454 IPC as accused Lalfakzuala climbed over to the balcony of Pu R.L.Lahlupua's house by stepping over a sintex barrel and locking house trespass, and entered into the house through window, at Ramhlun South, to the house of victim Lalsangliani, the victim Lalsangliani, who was taking bath inside the bathroom heard some noise and when she opened the bathroom door she saw the accused Lalfakzuala, while he was trying to open the Almira, and the victim screamed and locked herself inside the bathroom, the accused then broke open the bathroom door and assaulted Lalsangliani by poking her with screw driver (tester) on her nose and by punching her many times, the accused Lalfakzuala also pleaded guilty, and admitted his guilt in his examination u/s 313 Cr.P.C.

Further accused pleaded guilty on the charge u/s 380 by stolen away a mobile handset and cash of Rs.4500/- from the house of victim, and admitted his guilt in his examination u/s 313 stating that he did not know whether he has taken them as he was under the influence of drug, Alphozolyme.

Accused Lalfakzuala is therefore found guilty u/s 380/454 IPC but section 307 IPC is dropped as the offence does not amount to even grievous hurt.

I therefore convicted accused Lalfakzuala, u/s 380/454 IPC for the offence he has committed and sentence him for a period of 3 (three) years S.I and to pay a fine of Rs.1000/- I.D S.I for 10 days. The quantum of punishment is fixed after hearing of both his Id defense counsel and Addl.Public Prosecutor and defense counsel prayed for leniency as accused is HIV positive victim.

The case is disposed. Detention period already undergone shall be set off.

Seized article of mobile handset and cash amounting to Rs.4500/- shall be given back to the rightful owner.

Give copy of this order to all concerned.

Sd/-VANLALMAWIA,
Addl. District & Sessions Judge-I,
Aizawl Judicial District, Aizawl.

Memo No ____/AD&SJ-I(A)/2015 : Dated Aizawl the,25th March 2015.
Copy to :-

1. District & Sessions Judge, Aizawl.
2. Lalfakzuala C/o Lalremtlunga Advocate.
3. APP/Addl.PP.
4. Judicial Section
5. Case record.
6. Guard file.

PESHKAR