

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

Crl.Tr.No.1205/1994
U/S 420/486/471 IPC
Aizawl P.S Case No.565/1994

State of Mizoram	:	Complainant
	Vrs	
Lalengmawii	:	Accused

BEFORE
Vanlalmawia
Addl.District & Sessions Judge-I
PRESENT

For the opposite party	:	R.Lalremruata, Addl.PP Lily Parmawii Hmar, APP
For the Accused	:	W.Sam Joseph.
Date of hearing	:	31.8.2015
Date of Judgment	:	30.9.2015

ORDER

Received the case record which is endorsed to me by District & Sessions Judge Aizawl for my disposal, the instance case is registered as Crl.Tr.No.1380/1994 and was disposed by my predecessor of Addl. District & Sessions Judge, and it was appeal in the Hon'ble Gauhati High Court by accused/petitioner Lalengmawii and registered as Criminal Appeal No.41 of 2012, the Hon'ble Gauhati High Court remanded back the case for retrial from the stage of closure of prosecution evidence by applying the provision of section 232, 233 and 313 Cr P.C, the prosecution submitted on 5.5.2014 that they do not

have any other witness apart from prosecution witness already examined and closed their evidence.

Accused Lalengmawii was examined u/s 313 Cr.P.C, in the present of her ld. counsel Mr.W.Sam Joseph, and answered question put forward to her.

Q.1 It is from the evidence that Pu Lalpekliana filed on F.I.R against you. What do you say ?

Ans : **Yes.**

Q.2 It is from the evidence that cheques :

a) No B/A 32/100 : 918701 amounting to Rs. 50,000/- for Mizoram Co-operative Apex Bank.

b) No. A 32/100 : 918702 amounting to Rs. 100,000/- for Chhimtuipui District Marketing co-operative Societies and Chakma District Council Area marketing co-operative Societies.

c) No. B/A 32/100 : 918703 amounting to Rs.5,00,000/- for Mizoram Co-operative housing finance Federation were handed over to you by your office cashier Lalramengi which was written on the page 78 note sheets of cash transaction file on 27.6.1994.

What do you have to say ?

Ans : **No. I did not receive the said cheque from the cashier Lalramengi.**

Q.3 The evidence against you is that the said 3 chaques were drawn from S.B.I Main Branch in the name of Engi. What do you have to say ?

Ans : **No.**

Q.4 The evidence against you is that P.W cashier Lalramengi stated that you had instructed her to prepare 3 cheques and accordingly she prepared three cheques No. B/A 32/100, B/A 32/100 and B/A 32/100 on 27.6.94, What do you have to say ?

Ans : **No I did not instruct the cashier to prepare the 3 cheques.**

Q.5. It is from the evidence that on 29.6.94 you enquired to the cashier whether the said three cheques were all signed by the Registrar and Joint Registrar of Mizoram Co-operative Societies. What do you say ?

Ans : **I did not enquire.**

Q.6. It is from the evidence that you received the said three cheques from cashier Lalramengi and you appended you signature at note sheet page 28 in the concerned file. What do you say ?

Ans : **I did not give my signature on the said note sheet.**

Q.7. It is from the evidence that the writings marked as Q 10 in the note sheet No.78 was written by you. What do you say ?

Ans : **It is not written by me.**

Q.8. It is from the evidence that while taking the said 3 three cheques from the cashier you took A.P.R, (Advance Payment Receipt) from the beneficiaries. What do you say ?

Ans : **No I did not take the APR from the beneficiaries.**

Q.9 It is from the evidence that you misappropriated Rs.6,50,000/- by drawing cheques meant for financial assistance to co-operative societies ? What do you say ?

Ans : No, I did not misappropriated Rs. 6,50,000/- by drawing chequess meant for financial assistance as alleged.

Accused Lalengmawii produced herself as defence witness and submitted that :

I have been accused and held responsible for the missing of Rs.6.50 lakhs. This money was sanctioned for District Office. I don't remember the date, District Officer, Saiha came and told me that he had asked Pu Lalpekliana JRCS to release financial assistance. He asked me to put up the relevant file and I put up I mentioned cashier that we asked release of fund. But the file we put up did not come back even after two or three days. The District Officer commented that perhaps it did not come back because the officers were to discuss it again. We passed it off as a usual pending of file. We did not pursue the matter. I am sure that we did not issue release order. I believe that it can be seen from Housing Federation File if necessary. The cashier's accusation that I received the cheque from her and drew the money is a lie. It is a serious breach of rule that she prepared the cheque for issue without release order.

In her cross examination by prosecution, she stated that I do not have any documentary proof in support of my statement today.

I have not filed the F.I.R against the cashier for accusation that I received three cheques from her.

It is a fact that I asked for approval of release order of money amounting to Rs.50,000/-, Rs. 1,00,000/- and Rs. 5,00,000/- for the District Office.

It is not a fact that I received three cheques from the cashier on 29.6.1994.

It is not a fact that while asking for approval of release order of the above said money I also requested to sign the said cheques.

It is not a fact that I withdraw the said amount from the SBI Aizawl on 29.6.1994.

Both the counsel are heard at length and submitted their argument in writing.

Pu R.Lalremruata Addl.Public Prosecutor submitted that :

1. The accd was convicted by the Addl. Judge Fast Tract Court on 30.07.2010 and sentenced her to pay a fine of Rs. 50,000/- I.D.S.I for one year and imprisonment for a period already undergone (i.e. 14 days) in Crl. Tr. No. and in Crl. Tr. No. 1380/94 convicted on 06.08.10 and sentence to pay a fine of Rs. 1,00,000/-.
2. The State of Mizoram filed an appeal of the said judgment and order before the Hon'ble High Court praying for enhancement of the sentence and as per High Court order in Crl. A. No. 16 of 2010 dt. 14.02.12 the Hon'ble High Court allowed the appropriate court to pass appropriate order of sentence.
3. On 22.08.12 the Hon'ble Court passed another order directing the Addl. Sessions Judge-I to proceed with the case.
4. On 30.10.12 the Addl. District & Sessions Judge-I passed an order sentencing the convicted to undergo RI for a period of 2 yrs. Detention period of one month shall be set off.
5. The accd/convicted filed an appeal before the Hon'ble Court and by order dt. 31.01.2014 in Crl. A. No. 41 and 42 of 2012, the Hon'ble High Court set aside the said order and remanded back to the Ld. Trial Court for proceeding afresh from the stage of closure of prosecution witness, by applying provisions of sec. 232, 233 and 313 Cr.P.C.
6. The accd was then examined u/s 313 Cr.P.C. by the Ld. Trial court and the accd put her signature on all the pages.
7. The accd was given a chance to produce her witness and she as her witness deposed before the court.
8. On perusal of all materials available on record, it is pretty clear that the accd is guilty of the charge leveled against her. Infact the Ld. Addl. Judge, Fast

Track Court was right in convicting the accd. This Hon'ble Court is prayed to reply on the judgment dt. 30.07.2010 and dt. 06.08.2010 passed by the said Court.

9. When the accd preferred an appeal before the Hon'ble High Court, even the Hon'ble High Court did not send the case back for retrial right from the beginning, infact only from the stage of closure of prosecution witness and it appears that this is due to the very fact that the accd did not give her signature on all the pages of her examination u/s 313 Cr. P.C. and she was not given a chance to produce her witness.

10. The signing on all the pages of her examination u/s 313 Cr.P.C. and their deposition as defence witness never shake the facts and the trial already conducted or the case and indeed the signing on all the pages of her examination u/s 313 Cr.P.C. and her deposition as defence witness can never be used as a base for acquitting the accd.

11. That on cross-examination she stated that though she was accused of putting her signature on the cheque, she did not file FIR to the Police or make a complaint to the concerned authority, which highlights that she accepted the accusation of putting her signature on the cheque.

She also stated that she gave the locker key to the Superintendent who was a male and accepted that the person who signed on the cheque was Engi who was a female. Hence the Superintendent who was a male was not the one who encashed the cheque. Since it was a female who encashed the cheque, the only female who could have encashed the cheque was the accused person as she was the only female person who had the said cheque.

12. The Ld. Counsel will submit other facts and points at the time of hearing.

In the facts and circumstances mentioned above this Hon'ble Court is earnestly prayed to convict the accused Lalengmawii, U/s 409/420/486/471 IPC.

Mr. W.Sam Joseph also submitted his argument as follow :

1. The prosecution story in brief is that on 28.10.94 complainant Lalpeklana, Joint Registrar, Co-operative Societies lodged a written ejahar before O/C Aizawl, P.S. stating that Rs.6,50,000/- (Six lakhs fifty thousand) was sanctioned by the Government of Mizoram as financial assistance to the following three Co-operative Societies for the year 1993-94.

1) Mizoram Co-operative Apex Bank – Rs.50,000/-

2) Chhimtuipui District Marketing Co-operative Society and Chakma District Council are Marketing co-operative Societies (Rs.50,000/- each) Rs.1,00,000.00

3) Mizoram State Housing finance federation Rs.5,00,000.00

Total Rs.6,50,000.00

The above amount was accordingly drawn by the department and deposited in a current account in State Bank of India (Main branch) Aizawl for release in due course. Accordingly, cashier Pi Lalramengi prepared 3 cheques in the name of Cooperative Societies as below:

1) Cheque No.918701 for Rs.50,000/- to Mizoram Co-operative Apex Bank, Managing Director.

2) Cheque No.918702 for Rs.1,00,000/- Asst. Registrar, Co-operative societies Chhimtuipui District.

3) Cheque No.918703 for Rs.50,000/- Managing Director, Housing federation.

These three cheques were subsequently handed over to accd. Lalengmawii, Asstt, by cashier Lalramengi on 29/6/94 for further delivery to the concerned societies. The signature of the accused Lalengmawii was obtained on note sheet Page No.29 for receipt of

above 3 cheques. However, it was discovered that the amount did not reach the concerned Co-operative Societies. It was drawn on 29/6/94 from Bank by accused Lalengmawii of RCS office and misappropriated. A similar case No.Aizawl PS 565/94 u/s. 420/468/471 IPC was already reported against her and documents etc. were seized by the Police. On receipt of the FIR Aizawl P.S. case No.662/94 u/s. 409 IPC was registered and investigated into. During investigation a Prima Facie case u/s. 420/468 IPC has been found well established against accd Lalengmawii, w/o.C.T.Khuma of Mission Veng, Aizawl and I beg to send her up to face the trial under the aforesaid sections of law.

2. A copy of the charge sheet was given to the accused. On the basis of the charge sheet submitted by the I.O. the Magistrate First Class, Aizawl District took cognizance of the case and framed the charges under S.420/468 IPC on 23rd July 2001. The accused pleaded not guilty and claimed for trial.
3. After the charge was framed against the accused person the prosecution examined the following witnesses namely : -
1.Mr.Lalpekliana, 2.Ms.Lalramengi, 3.Mr.K.Zothankima,
4.Ms.Lalmalsawmi, 5.Ms.Lalpianruali & 6. Mr.R.Lalthlangliana.
4. After the prosecution witnesses were examined the accused was examined and the accused denied the allegations made against her.
5. After the hearing the arguments from the counsels for the prosecution and the me your honour was pleased to direct me and the prosecution counsel to submit our arguments in writing. Hence the written argument.
6. The prosecution has to prove beyond reasonable doubt that the accused committed the offences under S. 420/468 IPC. Hence the provisions of the said sections of law are re-produced here-in-below:

420. Cheating and dishonestly inducing delivery of property.-- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

In the case of cheating and dishonestly inducing delivery of property the prosecution has to prove the following beyond reasonable doubt.

Proof.—The points requiring proof are—

(1) that the accused cheated another person ;

(2) that he thereby induced—

(a) delivery of property to any person, which property did not belong to the accused ; or

(b) to make, alter or destroy the whole or any part of a valuable security ; or

(c) anything which is signed or sealed and capable of being converted into a valuable security ;

(3) that he did so dishonestly.

468. Forgery for purpose of cheating.--Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

In the case of Forgery for purpose of cheating the prosecution has to prove the following beyond reasonable doubt.

Proof.—The points requiring proof are—

- (1) that, the document or electronic record is a forged ;
- (2) that the accused forged the document or electronic record ;
- (3) that he did as above intending that the forged document would be used for the purpose of cheating.

- 7. It is clear that the cheques bearing nos. Cheque No.918701, Cheque No.918702, Cheque No.918703 were drawn by some person and the accused has been implicated in the present case though there is no proof of the allegation.
- 8. The prosecution is relying their case on the FIR which was not proved and the Expert Opinion which was not proved as required by law. At no point of time the accused admitted that the Question writings belongs to her. She categorically denied the allegation that she received the cheques from the cashier. Once the allegations are denied by the accused, it is incumbent on the prosecution to prove beyond doubt that the accused withdrew the money arising out of the said cheques. Though the charge was framed under S.468 IPC the prosecution could not as to which document was forged by the accused and also used the forged documents. The prosecution also cold not prove as to how the accused cheated any one. If the accused had withdrawn the money arising out of the said three cheques the I.O. should have found out the use of such huge amount of money. But the I.O. could not establish that the money went to the hands of the accused at all.
- 9. The complainant stated during cross examination that "I came to know that the said cheques were encashed by someone only on october 28, 94 but I still do not know exactly on which date the cheques were encashed. It is the duty of the cashier to put the date

in the cheque at the place provided for the same before I and Registrar put signatures. Myself and the Registrar put our signatures in the said cheques on the same day but we did not put the date. As per the note sheet myself and the Registrar put our signatures on 28.6.94. In the counterfoil of the cheques mentioned above, date of issuing the cheques was mentioned as 27.6.94." He further stated that "It is a fact that I did not find the original FIR submitted to the Court today in the file." He also stated that as per the current A/C/ Pass Book kept by us, above named cheques were encashed on 29.6.94." He also stated that "I personally do not know who encashed the said 3 cheques.... I do not know whether cashier Lalramengi actually handed over the said cheques to the accd. though it is mentioned in the file that it was handed over to the accd."

10. The complaint / FIR was not proved as the original could not be produced by the prosecution. The entire case is based on suspicion.
11. In the case of AIR 1996 SUPREME COURT 3345 "State of M.P. v. Surbhan" the supreme court has clearly mentioned that "It is contended that the FIR mentions the names of above persons who were specifically mentioned and it lends corroboration to the evidence of P.W. 2. We find no substance in this contention. The FIR cannot be used as substantive evidence or corroborating a statement of third party, i.e., P.W. 2. FIR cannot be used to corroborate the evidence of P.W.2. It can be used either to corroborate or for contradiction of its maker." In the present case the prosecution could not produce the original FIR and even if the original FIR is available it is not a substantive evidence and it can be used for corroborating or contradicting the maker of the FIR.
12. In the case of AIR 1995 SUPREME COURT 1437 "Madhusudan Singh v. State of Bihar the supreme court has given its opinion on the FIR - "FIR - Evidentiary value - Conviction based only on allegations in FIR - Allegations in FIR not proved at trial nor substantiated by oral evidence - Conviction set aside - FIR by itself is not substantive piece

of evidence and it can only be used to either contradict or corroborate the maker thereof.”

13. In the case of AIR 1973 SUPREME COURT 491 "Nanhku Singh v. State of Bihar" it was decided by the Supreme Court that "In the first place it may be noticed that F. I. R. is not a substantive piece of evidence. It is an information of a cognizable offence given under Section 154 of the Criminal Procedure Code and if there is any statement made therein it can only be used for the purposes of contradicting and discrediting a witness under Section 145 of the Evidence Act. In the second place the statement given by the informant need not necessarily be an eye witness account of what he has actually seen."
14. In the present case the original FIR was not available in the record and the FIR was not proved as it should be proved, hence the accused is entitled to the benefit.
15. The expert opinion was also not proved. Handwriting experts opinion cannot be relied as it is not fool proof. In the case of Ishwari Prasad Misra V. Mohammad Isa AIR 1963 SC 1728 it was held by the Supreme court that "Evidence given by experts of handwriting can never be conclusive because it is, after all, opinion evidence."
16. In the Case of Bhagwan Kaur V.Shri Maharaj Krishan Sharma, (1973) 4 SCC 46 it was held by the Supreme Court that "The evidence of handwriting expert, unlike that of a fingerprint, is generally of a frail character and its fallibilities have been quite often noticed. The courts should therefore be wary to give too much weight to the evidence of the handwriting expert.
17. Again in the case of Ram Narain Vs. State of UP.(1973) 2SCC 86: it was held by the Supreme court that "The opinion of a handwriting expert given in evidence is no less fallible than any other expert opinion adduced in evidence with the result that such evidence has to be received with great caution."

18. In the present case the Bank officers and staff examined by the prosecution could not tell that the cheques were encashed by the accused and the money was handed over to the accused.
19. The PW K.Zothankima a Bank officer stated during cross examination that " I personally do not know who presented the Exb-C-1,2,3 and received the payment. I cannot give any evidence as to the contents of Exb.C-1,2,3. I personally do not know what was the problem in paying the ext C-1,2,3. I personally do not have any knowledge as to why the accd. standing on the court is facing trial."
20. The other PW Lalmalsawmi, a bank employee stated during cross examination that " I do not know who withdrawn money in respect of the three cheques mentioned above.
21. PW R.Lalthlanglana, a bank employee stated during cross examination that "I personally do not know who received the cash amounting to Rs.6.5 lakhs from my hand on 29.6.1994." He also clearly stated that "I do not know the accused standing in the court today. I have not seen her prior to today."
22. The accused examined herself as a defence witness and she stated that I have been accused and held responsible for the missing of Rs.6.50 lakhs. This money was sanctioned for District Office. I don't remember the date, District Officer, Saiha came and told me that he had asked Pu Lalpeklana JRCS to release financial assistance. He asked me to put up the relevant file and I put up I mentioned cashier that we asked release of fund. But the file we put up did not come back even after two or three days. The District Officer commented that perhaps it did not come back because the officers were to discuss it again. We passed it off as a usual pending of file. We did not pursue the matter. I am sure that we did not issue release order. I believe that it can be seen from Housing Federation File if necessary. The cashier's accusation that I received the cheque from

her and drew the money is a lie. It is a serious breach of rule that she prepared the cheque for issue without release order.

23. From the evidence given by the cashier who handed over the cash on 29.6.1994 arising out of the three cheque clearly stated that he does not know the accused and he does not know as to who received the cash from him. This fact gives doubt as to the prosecution story. Hence the accused Lalengmawii is entitled to the benefit of doubt.
24. In the case of RABINDRA KUMAR DEY v. STATE OF ORISSA, (1976) 4 SCC 233 it was decided by the Supreme Court that " In order to judge the truth or falsity of the version given by the defence three cardinal principles of criminal jurisprudence are well settled, namely:
 - (1) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case;
 - (2) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty, and
 - (3) that the onus of the prosecution never shifts."
25. From the evidence on record the prosecution had not proved beyond reasonable doubt that the accused forged any document and also cheated any body by withdrawing the money. The prosecution miserably failed to prove their case beyond reasonable doubt, Hence the accused is entitled to be acquitted.
26. The entire case is based on conjectures and surmises and suspicion. In the case of JAHARLAL v. STATE OF ORISSA, (1991) 3 SCC 27 it was decided by the Supreme Court that " Conjectures or suspicions should not be allowed to take place of legal proof."
27. In the case of Kali Ram Vs. State of H.P., (1973) 2 SCC 808 it was held by the Supreme Court that *"If two views are possible on the*

evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."

28. In the case of Basudev Hazra V. Matiar Rahman Mandal, (1971) 1 SCC 433 it was held by the Supreme Court that "*Defence of the accused person can legitimately be taken into consideration while assessing the value of the evidence and judging the guilt or innocence of accused.*"
29. In the case of Aher Raja Khima V. State of Saurashtra, AIR 1956 SC 217 it was held by the Supreme Court that "*When the accused person offers a reasonable explanation of his conduct, then, even though he cannot prove his assertions, they should ordinarily be accepted unless the circumstances indicate that they are false.*"
30. In the case of State of Punjab V. Bhajan Singh (1975) 4 SCC 472 it was held by the Supreme Court that "Suspicion, by itself, however strong it may be cannot take the place of proof and warrant a finding of guilt of the accused."

Therefore, I pray the court to acquit the accused person from the liabilities of the charged under s.420/468IPC.

I have gone through thoroughly all the evidence available on the case record, and also perused the judgment and finding of the Addl. Judge, Fast tract court Aizawl, and my predecessor Addl. District Judge, Aizawl for the brevity of judgment, the examination of accused Lalengmawii u/s 313 Cr P.C, and her defense statement which is submitted as defense witness No.1 does not shake the prosecution evidence. I therefore confirmed the judgment order of Addl. Judge Fast tract court, Aizawl dt.6.8.2010 for a fine of Rs.1,00,000/-. But awarding imprisonment of accused for 2 years as per judgement of Id. Addl.District Judge vide order dt.30.10.2012 accused shall pay another fine of Rs.10,000/- (ten thousand) i.d 10 months S.I)as accused seem to be old ages

women, having retire from the Government Service, and seem to be unfit to be detained in the judicial custody at this belated stage, she can be set at liberty if she pay the fine amount to the court.

The case is disposed.

Announce in open court today i.e 30.9.2015.

Give copy of this order to all concern.

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

Memo No ____/ADJ-I(A)/2015 : Dated Aizawl the,30th September 2015

Copy to :-

1. District & Sessions Judge.
2. Accused Lalengmawii C/o W.Sam Joseph Advocate.
3. Deputy Superintendent of Police (Prosecution) Aizawl.
4. W.Sam. Joseph Advocate.
5. App. Addl.PP
6. Judicial section
7. Case record.
8. Guard file.

PESHKAR