

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

*Sc No 112 /2013
Crl.Tr.No. 243/2013,U/S 307/448/328/427 IPC,
Champhai P.S Case No.150/2013*

State of Mizoram : Complainant

Vrs

Lalngurliana : Accused.

BEFORE

Vanlalmawia
Addl District & Sessions Judge,
Aizawl Judicial District, Aizawl.

PRESENT

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

For the Accused : C.Lalramzauva, Advocate.

Date of Order : 20.4.2016

ORDER

The prosecution story of the case in brief is that on 24.10.2013, a written FIR was submitted by Lalruatpuia (25yrs) S/o Kapchungnunga of North Khawbung stating that on the night of dt.19.10.2013 @ around 7:30 pm while he was attending the Church Service one person named Lalngurliana S/o Hrangchuanga of North Khawbung had sent message three time through Rimawia's mobile phone and challenged him to come out from the Church and fight with him and as soon as he received the message Lalruatpuia went out from the Church and they fight at Paihte Veng North Khawbung. Later Lalngurliana went home and took one knife with an intention to kill him and fortunately some of his friends come and took off Lalngurliana's knife. Hence

Champhai P.S Case No. 150/2013 dt.24.10.2013 u/s 307/448/323/427 I*PC was registered and duly investigated into.

During the course of investigation, the P.O was physically visited and seized broken glass and knife by preparing proper seizure memo in the presence of reliable witnesses and recorded their statement. Kept the seized broken glass and knife in P.S Malkhana vide PS MR No.125/2013. Eye witnesses including the complainant and the victim was carefully examined and even recorded their statements. The victim named Lalruatpuia(24) S/o Kapchungnunga of North Khawbung was forwarded to the Medical Officer District Hospital, Champhai on the same day for medical examination in which the medical examination shows that Lalruatpuia had sustained simple injury. The accused Lalngurliana was thoroughly examined, from examination it was found that he admitted his guilt by saying that he had assaulted and attempt to kill Lalruatpuia without no reason. The accused Lalngurliana was arrested by preparing proper arrest memo and recorded his statement. The accused stated that on the night of dt.21.10.2013 @ 9:45 pm Lalngurliana and his friends (Zohmangaiha and Vanrammawia) went again to Lalruatpuia's house and entered to his house and assaulted him and then Lalruatpuia went to his father house due to afraid of Lalngurliana. While he was absence from his the accused Lalngurliana broke his window glass and the main door was broken he also stated that on the night of dt.22.10.2013 Lalngurliana search again to meet and challenged, took Sawmliani's knife but he could not found him. Thus, the accused was forwarded to Chief Judicial Magistrate for Judicial remand.

Hence, form the statement of accused and evidence collected during investigation, a prima facie case u.s 307/448/323/427 IPC is found well established against the accused Lalngurliana(25) S/o Hrangchuanga of North Khawbung.

Charge u/s 307/448/427/323 IPC are framed, explained in the language known to him to which he pleaded not guilty stating that they had fighting with the victim for three times, one at the residence of victim and broken the glass of victim's house during the fighting, the fighting took place while he was under the influence of liquor and the victim is also his closed friend, and claims for trial.

During the trial, the prosecution examined as many of 9(nine) witnesses.

P.W No.1. Lalruatpuia victim stated that :

On the night of 19.10.2013 at around 8 pm while I was attending the church service, the accused had send messages through Rimawia's mobile phone for three times and challenged me to come out from the church and fight me. Accordingly I went out from the church and we fight at Paihte veng, N.Khawbung. after that we went home and while I was at my neighbors house the accused came to me and bring a knife with him, he then took his knife and tried to kill me. The day after the incident on 20.10.2013 he again entered in to our house and assaulted me. Hence I went home to my father's house due to afraid of accused Lalngurliana however the accused threatened to kill me by shouting to me and to our families. The accused again entered into my house in my absence and broke my window glass. Thus I lodge FIR at Champhai Police Station requesting them to take necessary action against the accused Lalngurliana.

Exbt P 2 is FIR submitted by me. P 2 (a) is my signature.

Exbt P 3 is FIR U/S 154 CrPc, P 3(a) is my signature.

Cross examination by the Defence counsel:

I never know that the accused was having any grievance against me.

I received SMS from the mobile phone of Rimawia.

The accused is my friend and we used to be friends right from our childhood till date.

It is a fact that I never had any intention to cause him any injury of any kind and I never have any ill- will against the accused.

Similarly I believed that the accused did not have any ill-will against me or any intention to cause any injury to me.

It is a fact that the fight which we fought on the said night was due to the drunkenness of the accused.

Since the accused was under the influence of liquor and since I was not under such influence of liquor I felt at one point of time that I should not have acted in the manner I had acted on the said night.

It is a fact that when he was not under the influence of liquor, he came forward and asked for pardon/forgiveness for what he had done to me and I readily accepted him as my friend.

In my heart of hearts I feel that this case should no longer proceed against the accused and that the accused has suffered enough for the unwanted incident that occurred on the night of 19.10.2013. In fact, the ties of friendship has been developed all the more now than in the past between me and the accused.

P.W No.2 Kapchungnunga is seizure witness of knife and broken glass which were used for attracting the victim by the accused. In his cross examination, P.W No. stated that the cause of dispute between the complainant and the accused was due to drunkenness of accused and they are good friend to each other, and the accused is his nephew. It is not a fact that the accused was having an intention to killing the complainant on the said night and is a fact that the accused though had come with knife did not used the said knife in any manner on the said night.

P.W No.3 C.Lalthangmawia of N.Khawbung also stated that he could hear entering the house of his neighbor Lalruatpuia, and while he was rushing to Lalruatpuia's place on the relevant date and night both the accused and complainant came out and started fighting and watched them for a while and stop the fighting and took accused to his uncle's house. At around 12 am accused came back to Rempuia's house and broke his window glasses. In his cross examination C.L.Thangmawia stated that non of accused and victim were

having any other instrument like knife and Dao etc. the accused Lalngurliana and Lalruatpuia were good friend and they continue to be good friend till date as they are "Thian Sabeng".

P.W No.4 Hmingthanzama is also seizure witness who witness the seizure of knife was for attempting murder to Lalruatpuia, and did not remember when did he signed in the seizure memo.

P.W No.5 T.lalsangliana of North Khawbung stated that :

The victim Lalruatpuia is my youngest brother and he was staying very close to our house. On 21.10.2013 after the accused entered the house of the victim, the victim as I told him left his house to stay in my house the night. At around mid night(one O'clock) the accused tried to enter my house, pulling and shaking the door to open, calling my brother Lalruatpuia and challenging him. He then went to my brother's house and started breaking window glasses and destroying the door. He later came towards our house and shouted that he would kill the victim at some point of time.

Cross examination by the Defence counsel:

It is a fact that I do not see the accused assaulting the victim at any point of time. We have already pardon the accused and we wish him to be free from the liability of this charge .

It is a fact that I do not see the accused shouting that he would kill that the victim on some point of time.

Being a friend and relative, we have no further disputes between the accused and the victim as well as our family.

P.W No.6 Lalrimawia stated that :

The accused and the victim are closed friends. On 19.10.2013 evening at around 6:30 pm the accused approached me on my way to the Church and

started quarrelling with me. He told me to call Lalruatpuia victim by sending message through my phone, telling him that the accused wanted to fight with him. Lalruatpuia came out of the Church and we three of us went to uphill to fight. The victim told me not to go with them so that they could have a fair fight. Later on the victim called me and I along with Lianthuama who joined me went to the said uphill and we saw the accused lying. We then came down leaving the accused. On some other night when I was at the house of the victim, the accused entered the house of the victim along with his younger brother and his first cousin and the accused punched the victim while he was laying in the couch.

Cross examination by the Defence counsel:

It is a fact that I do not see the accused and the victim fighting in the uphill on the night of 19.10.2013.

It is a fact that the accused did not exactly punched the head of the victim on one night while the victim was lying in the couch.

I do not know any other thing regarding the commission of offence by the accused on the victim.

P.W No.7 T. Lalruatsanga stated that on 19.10.2013 at around 8:00pm. He, and Lalruatpuia and Rimawia were together in the house of Rimawia's accused Lalngurliana came with knife and intended to beat Lalruatpuia with knife but Lalruatpuia caught in his hand and simply line on the stomach of Lalrinpuia, they took the knife from Lalngurliana, and gave back to Lalngurliana when there was no intention to use the knife, and he left the house, and accused Lalngurliana was drunk. In his cross examination accused Lalngurliana did not beat Lalruatpuia with knife, as they have chance to take the knife from Lalngurliana, there was no any hatred between the accused and the victim and they are living as friend till the date.

P.W No.10 Dr.C.Vanlalhlua, Falkawn stated that :

I am working as Medical Officer Referral Hospital Falkawn, prior to this I was posted at Champhai District Hospital. While I was on duty at Champhai District Hospital on 24.10.2013 at around 4:30pm, one person name Lalruatpuia was produced at the Hospital for medical attention and accordingly I examined the said person and followings are my findings :

He is fully conscious, he has abrasion (old) in his forehead on the right side and in his right arm and there is no sign of fracture bone, and the nature of injury is simple.

Exbt P-7 is a medical report P-7(a) is my signature.

Cross examination by the Defence counsel:

By saying the victim has abrasion (old) in my examination, the same could have happened five to ten days prior to my examination.

P.W No.11 Bronson Zodinpuia stated that :

I am working as ASI and I was posted at Champhai P/S and presently I am at Sakawrdai P/S. on duty at Champhai P/S we received an FIR on 24.10.2013 submitted by Lalruatpuia of North Khawbung stating that Lalngurliana of N.Khawbung challenged him for a fight and Lalngurliana went to his house, broke the door and window glassed and tried to kill him with a knife on the night of 19.10.2013. I then visited the P.O, arrested the accused Lalngurliana, seized his knife and pieces of broken glass in the presence of witnesses, interrogated the accused who admitted his guilt, examined the witnesses and eye witnesses, the victim or the complainant Lalruatpuia was examined at Champhai Civil Hospital. I then found a prima facie case u/s 307/448/323/427 IPC well established against the accused and I sent the accused for trial.

Exbt : P-5 is charge sheet including seizure memo arrest memo and statement of complainant, accused witnesses and medical report.

Exhibit P-5(a) is my signature.

Exbt : P-6 is arrest memo, P-6(a) is my signature.

Exbt : P-1©, P-4(b) are my signature

Exbt : P-7 is the medical report.

Cross examination by the defence counsel :

It is correct to suggest that the alleged victim Lalruatpuia suffered simple injury as per the medical report.

It is correct to suggest that the accused did not cause any injury to the alleged victim Lalruatpuia with a knife seized in connection with the case.

I know that the accused and the alleged victim are friends.

It is correct to suggest that it is unlikely that the alleged victim Lalruatpuia will die of the injury sustained by him.

The accused Lalngurliana was examined u/s 313 Cr PC and answer the question put to him are follow :

Q.1. On 19.10.2013 @ 7:30 pm at North Khawbung, you sent a message to Lalruatpuia of North Khawbung who was inside the Church challenging him to come out of the Church and fight with him. What do you say ?

Ans : I do not sent message, but Rimawia who is my friend sent message in his mobile phone.

Q.2. It is from the evidence that when Lalruatpuia came out of the Church you fought with him at Paihte veng, North Khawbung. What do you have to say ?

Ans :Yes, it is a fact, but I am not sure as I was fully intoxicated of liquor.

Q.3. It is from the evidence that after you lost the fight with Lalruatpuia both of you went home but then you took a knife and tried to stab Lalruatpuia while he was at his neighbour's house the same right i.,e 19.10.2013. What do you say ?

Ans : I took the knife, but not for stabbing Ruatpuia, but to give back to my father.

Q.4. It is from the evidence that you entered the house of Lalruatpuia and punched him on the head while he was lying on the couch on 21.10.2013 @ 5:45 pm along with two others. What do you say ?

Ans : I do not entered in the house of Ruatpuia, but entered in the housr of Rimawia, and Ruatpuia was also there at Rimawia's house.

Q.5. It is from the evidence that you again threatened to kill Lalruatpuia by shouting 'I will kill you' broke open the door and window glass of Lalruatpuia on 21.10.2013 midnight believing that Lalruatpuia was at his house in order to kill/murder him. What do you say ?

Ans :I entered in the house of Lalruatpuia and have second fight, and some glass might have broken due to the fight, and do not said that I will kill you, but I said do you challenged me to fight.

Q.6. It is from the evidence that after knowing Lalruatpuia was not at his house, you approached the house of T.Lalsangliana brother of Lalruatpuia, and shouted that you would kill/murder him later on. What do you say ?

Ans : I do not know whether I went to the house of T.Lalsangliana.

The Id. Addl. Public Prosecutor submitted his argument that :

All available witnesses were examined and recorded their statement. All the evidences collected reveals that the Lalngurliana S/o Hrangchuanga has actually

committed an offence of house trespass, mischief causing damage, voluntarily causing hurt, and attempt to murder by inflicting injury to Lalruatpuia and found a prima facie case u/s 307/448/427/323 IPC well established against the accused Lalngurliana S/o Hrangchuanga and submitted charge sheet before this Hon'ble Court.

The court on receiving the charge sheet took cognizance of the offence. The charge u/s 307/448/427/323 IPC was framed and considered against the accused to which the accused pleaded not guilty. The prosecution produced as many as nine (9) witnesses to corroborate the plea of the accused.

The court closes the Prosecution evidence and the accused was examined u/s 313 Crpc to which the accused stated before the court that he had fight with the Victim two times and that he was fully intoxicated with liquor and also admitted that he took a knife at Rinmawia's house when the complainant was also there on the night of 19/10/2013. The court give the accused an opportunity to have his defense evidence to which he declined and hence, this argument.

Summing up the prosecution evidence it is hereby argue and submitted that the fact about the accused Lalngurliana S/o Hrangchuanga has actually committed an offence of house trespass, mischief causing damage, voluntarily causing hurt, and attempt to murder by inflicting injury to Lalruatpuia and found a prima facie case u/s 307/448/427/323 IPC, and was proved beyond doubt by the prosecution. The evidence given by the prosecution witnesses corroborated the accused plea of his guilt during the framing of the charged. The evidence adduced by the prosecution witnesses lead to the guilt of the accused and corroborate each other. The seizure witnesses and the case I/O proved the seized article beyond reasonable doubt. The medical officer who conducted the Medical Examination on the body of Lalruatpuia proved the medical evidence beyond doubt. The case I/O conducts investigations inconformity with law, he visited the PO examined witnesses and recorded their statement and also arrested the accused, and there is no doubt about the investigation. The circumstantial evidence adduced by the witnesses corroborated to the plea of

guilt by the accused and there is no doubt about the fact that the accused Lalngurliana S/o Hrangchuanga. Each and every evidences of the prosecution corroborates each other and formed concrete evidence which established and proved to the fact that the accused Lalngurliana S/o Hrangchuanga had actually committed the aforesaid crime.

The quantity of witnesses produced by the prosecution were sufficient enough and able to earn conviction and the quality of their evidence formed a concrete evidence which established and constituted that the accused Lalngurliana S/o Hrangchuanga had actually committed an offence of house trespass, mischief causing damage, voluntarily causing hurt, and attempt to murder by inflicting injury to Lalruatpuia . The evidence adduce by the prosecution witnesses corroborate each other and they are also corroborated to the plea of guilt by the accused. The prosecution evidence brings home and established the guilt of the accused beyond doubt U/S 307/448/427/323 IPC. In view of the argument advanced by the prosecution and the point raised and also on perusal of the case record and the document which the prosecution proposed to rely, there can be no other conclusions contrary except to this conclusions that the prosecution brought home and proved the guilt of the accused Lalngurliana S/o Hrangchuanga beyond all reasonable doubt and found the accused guilty of the offence 307/448/427/323 IPC and found him liable to be convicted for the offence. On conviction the prosecution also found him guilty to suffer maximum punishment provided by the aforesaid section of law.

Mt. C.Lalramzauva Sr. Advocate assisted by C.Vanlalruata Advocate also submitted his argument that :

That the case of the prosecution is based upon First Information Report submitted to Champhai Police Station on 24/10/13 by P/W No.1 namely Lalruatpuia. Comparing P/W No.1 namely Lalruatpuia's deposition and his FIR, it appears that the said FIR is a wish and improved version made out to the police. In order to establish the case of the prosecution, the duty of the prosecution is, first of all, to establish the accused had committed an offence of attempt to

murder u/s 307 IPC. Section 307 IPC requires that the doer of an act should have intention or knowledge that if by that act cause death. The intention or knowledge of a man can often be understood from his action and the result thereof. In the present case, the accused

did not blow the knife toward the informant/victim on the night of 19/10/13 with intention to cause the death of the informant/Victim. In this connection it may be stated that under Criminal Jurisprudence there are four stages in the commission of a crime/offence. Intention is the first stage followed by preparation and thereafter the stage of attempt. Section 307 IPC runs as under:

*"307 **Attempt to murder** – Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extent to 10 years, and shall be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or to such punishment as is herein before mentioned."*

Thus, in order to bring home the charge of 307 IPC against the accused, the prosecution has to prove that the accused with intention or knowledge had done the act which had caused death or hurt for which the accused would be liable to imprisonment which may extent to 10 years or for life with or without fine. The prosecution witnesses have clearly deposed that no such injury/hurt was caused upon the informant. The informant who was examined in the Court had also clearly stated that in view of his long standing friendship with the accused, the accused could not have intended to cause his death. His statement during his cross examination may be quoted hereunder:

"The accused is my friend and we used to be friends right from our child hood till date

It is a fact that I never had any intention to cause him any injury of any kind and I never have any ill- will against the accused.

Similarly I believed that the accused did not have any ill-will against me or any intention to cause any injury to me.

It is a fact that the fight which we fought on the said night was due to the drunkenness of the accused.

Since the accused was under the influence of liquor and since I was not under such influence of liquor I felt at one point of time that I should not have acted in the manner I had acted on the said night.

It is a fact that when he was not under the influence of liquor, he came forward and asked for pardon/forgiveness for what he had done to me and I readily accepted him as my friend."

P/W No.9 C.Lalthangmawia in his cross examination also stated as follows:

"I do not know why the accused and Lalruatpuia were fighting on the said night.

It is a fact that at that time when they were fighting none of them were having any other instrument such as knife/Dao etc,

It is a fact that I did not see the accused coming again after I saw them fighting to the house of Lalruatpuia or that I cannot say exactly when I heard the sound of the window glasses being broken by accused.

It is a fact that both the accused and Lalruatpuia were good friends and they continue to be good friends till date as they are 'Thian sabeng'.

It is a fact that the incident that took place on the said night appears to be due to the drunkenness of accused and not due to any other reason."

P/W No.5 Shri. T.Lalsangliana who is the elder brother of the informant had stated in his cross examination as follows:

"It is a fact that I do not see the accused assaulting the victim at any point of time. We have already pardoned the accused and we wish him to be free from the liability of this charge.

It is a fact that I do not see the accused shouting that he would kill that the victim on some point of time.

Being a friend and relative, we have no further disputes between the accused and the victim as well as our family."

That the prosecution also failed to prove seizure of broken glass and a knife. During the course of trial two seizure witnesses and seizing officer who were interested witnesses and were produced in order to prove the said seizure. One of the seizure witnesses namely Kapchungnunga exhibit two seized articles i.e. M 1 (knife) and M 2 (broken glass) and the other seizure witness namely Hmingthanzama exhibit M 1 (knife) only. One of the seizure witnesses namely Hmingthanzama deposed before the Court that he did not present at the time when the alleged seized material (M 1 a knife) was seized and he was arrayed as one of the seizure witnesses and therefore he put his signature. Moreover, the seizing officer failed to seize the broken door which was allegedly broken by the accused. From the evidence available before the court, it is crystal clear that the prosecution failed to prove seizure of exhibit M 1 (knife) and M 2 (broken glass) so as to establish the guilt of the accused.

That the evidence of the P/W No.11 namely Bronson Zodinpuia who is the case IO has no credit and trustworthiness since he deposed before the Court that all the incident had occurred on the night of 19/10/13 and none of the evidence of other prosecution witnesses corroborates except the incident on the night of 19/10/13 and it is not sustainable for convicting the accused. His evidence has no much value to establish the prosecution case against the accused.

That being a friend from their childhood, the informant/victim deposed before the court that they had reached at compromise/settlement with the accused. He feels sympathy for the accused stating that the accused has suffered enough for the unwanted incident that occurred on the night of 19.10.2013. There is no further enmity between the parties. In fact, the ties of friendship have been developed all the more now than in the past between the informant/victim and the accused. The deposition of P/W No.2 clearly reveals that the informant/victim and the accused have blood relation. In *Gulab Das and others –Vrs- State of Madhya Pradesh [(2011) 10 SCC 765]*, the case registered against the Appellants were for offences punishable u/s 307, 325, 323 r/w 34 IPC. Being relatives, the Appellants and the victim arrived at settlement outside the Court. In pursuance of the settlement the Apex Court held, and the operative portion of the Supreme Court's Order was in the following words:

"9. In totality of the circumstances we are of the view that the settlement arrived at between the parties is sensible step that will benefit the parties, give quietus to the controversy and rehabilitate and normalize the relationship between them."

The Apex Court had taken the settlement/compromise arrived at between the parties into consideration for the purpose of determining the quantum of sentence

awarded to the Appellants and the Apex Court set the Appellants free. Though the provisions of Section 307 IPC has not been mentioned in Section 320 Cr.PC, in the light of what has been mentioned above, the settlement/compromise arrived at between the parties should be given some effect.

Moreover, it is the duty of the prosecution to establish their case beyond all reasonable doubt against the accused and the number of witnesses produced before the court is much less considering the witnesses cited in the charge sheet and their quality of evidence are not reliable to establish the guilt of the accused

beyond all reasonable doubt. Hence the accused is liable to be acquitted from his liability of the charge u/s 307/448/323/427 IPC and set at liberty forthwith.

The defense counsel also submitted criminal appeal No 2126 of 2011 Gulab Das & Other Vrs State of Madhya Pradesh to which the same charge section have been settled by the Hon'ble Apex Court.

In the instance case, the charge section of 448 IPC cannot be taken into account as accused and the victim are entering together, and a case of house trespass is hardly prosecuted among the Mizo Society.

In respect of section 427 IPC, the amount of broken glass is not mention in the FIR and as well as in the case record.

The medical officer stated his finding that the victim is fully conscious, and he has abrasion(old) in his forehead on the right side and his right arm and there is no sign of fracture bone and the nature of injury is simple in his cross examination, the Medical Officer stated that the said abrasion could happened five to ten days prior to his examination, and nature of injury is simple.

P.W No.7 T.Lalruatsanga stated that the knife of accused had make simple line in the stomach of victim, but the Medical report stated that abrasion is found in his fore head, and report of injury at his stomach of the victim. So it can be presumed that there is no injury to the victim's body due to the attract of accused Lalngurliana, as the statement of PW's are contradicted. The main charge section is 307 IPC, attempt to murder, there was no hatred between the accused and the victim instead they were good friend to each other maintaining "Thian Sabeng" which mean good friendship to hand over/give meat to each other whenever one has to offer. I find no intention to kill the victim by the accused, the simple injury does not amount to attempt to murder. Had the accused have clear intention to kill the victim there will be a better chance to do so, and his action of fighting will show his intention, while they were fighting,

none of the accused and victim has no instrument as stated PW No.3 C.Lalthangmawia.

So, the action taken by the accused Lalngurliana against the complainant does not amount to the charges leveled against him.

With these observation, I therefore acquitted Lalngurliana from the charges leveled against him u/s 307/323/448/427 IPC and set him at liberty.

Seized knife shall be destroyed.

Announce in open on this dated of 20.April 2016.

Give copy of this order to all concern.

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

Memo No _____AD & SJ-I/2016: Dated Aizawl the,20th April 2016
Copy to :

1. District & Sessions Judge, Aizawl District, Aizawl.
2. Accused Lalngurliana S/o Hrangchuanga North Khawbung
C/o C.Lalramzauva Advocate.
3. Addl. PP
4. Deputy Superintendent of Police (Prosecution).
5. Judicial Branch.
6. Case Record.
7. Guard File.

PESHKAR