

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS - 1
AIZAWL JUDICIAL DISTRICT : AIZAWL**

Crl. Tr. No. 769/2010
(A/o Bawngkawn P.S Case No. 271/2010 U/S 380 IPC)

State of Mizoram	-----	Complainant
-Versus-		
Deepika Sharma		
W/o Pradeep Kumar Sharma		
Durtlang Vengthar, Aizawl.	Accused

BEFORE

T. Lalhmachhuana, Judicial Magistrate First Class - 1.

For the Prosecution	:	Ms. Venus H. Zomuankimi, APP. Mr. W. Sam Joseph, Advocate.
For the accused	:	Mr. P.C. Prusty, Advocate.
Date of Hearing	:	05.12.2011.
Date of Judgment	:	27.05.2016.

JUDGMENT AND ORDER

Dated Aizawl, the 27th May, 2016

The prosecution story of the case in brief is that on 12.7.2010 @ 7:10 Pm, Mr. Pradeep Kumar Sharma S/o Puran Chand Sharma, Second-in-Command (I) PS, SHS BSF, Durtlang submitted an FIR at Bawngkawn P.S. stating that on 21st June, 2010 his wife Smt. Deepika Sharma D/o K.L. Juneja had stolen his wallet from the pocket of his trouser uniform hanging in his wardrobe at his house and the following items were in his wallet:-

1. Saving Bank Account ATM Card No. 6220180387700055529.
2. Saving Bank Account ATM Card of SBI Number not known 1.
3. Pan Card No. ADSPS 6325D.
4. Driving license number not known 1.
5. Service Identity Card No. 313431.

6. Cash Rupees 2,000/- and
7. Some other important papers containing phone numbers etc.

The complainant stated that when he checked his Pass Book of Saving account updated on 6th July, 2010, he came to know that someone had fraudulently withdrawn Rs. 110,000/- (Rupees one lakh and ten thousand) only on various dates from different ATM's. Hence, Bawngkawn P.S C/No. 271/10 Dt. 12.7.2010 u/s 380 IPC has been registered and duly investigated into.

During the course of investigation, the accused Deepika Sharma was arrested after informing her legal rights and interrogated her in which she admitted her guilt saying that she took her husband's wallet from the floor and withdrawn Rs.110,000/- (Rupees one lakh and ten thousand) on various dates and from ATM's. One ATM Card No. 6220180387700055529 was duly seized on being produced by the accused person in the presence of witnesses from their residence at Durtlang Vengthar, H/No. A-73/B.

On further interrogation, the accused person stated that she had concealed all her withdrawn money amounting to Rs. 110,000/- (Rupees one lakh and ten thousand) only and other valuable document in her locker at State Bank of India, Dawrpui Branch. Hence, on being led and by produced by the accused person the following valuable items were seized in the presence of witnesses at SBI, Dawrpui Branch – Rs. 110,000/- (Rupees one lakh and ten thousand) Service Identity Card No. 313431, ATM Card No. 9622018017066264742, Pan Card No. ADSPS 6325 D and Driving license No. R-15/DL/2006/10018 Dt. 27.7.2006. After observing all formalities the accused person was produced before the Court on 15.7.2010 with a prayer to remand her into Judicial Custody. But however, she was released on bail with a bond of Rs. 10,000/- on 16.7.2010 and her husband, herein the complainant Mr. Pradeep Kumar Sharma stand as surety and he was replaced with other surety on 20.1.2011.

On 28.1.2011 copy of charge-sheet with other connected papers were furnished to the accused and she had already engaged defence counsel of her choice. On hearing of both parties and on perusal of the materials on records,

charged was framed on 29.4.2011 U/S 380/417/419 IPC, read over and explained to the accused to which she pleaded not guilty and claimed for trial.

Accordingly one point of determination is framed by my Ld. Predecessor that - Whether the accused person Deepika Sharma is guilty of the charge U/S 380/417/419 IPC levelled against her. If so, what should be the quantum of punishment?

In order to establish their case, the prosecution examined as much as six (6) witnesses including the complainant and the Case I.O. whereas the accused person in her statement U/S 313 Cr.PC strongly denied about the allegation of stealing her husband's wallet but claimed that the ATM Card was given to her by her husband and she withdrawn money with his permission. The accused person also examined two witnesses including herself and her son in support of her case. Thereafter, both parties submitted their respective written argument on 5.12.2011 and next court date was fixed on 15.12.2011 for Judgment and Order. But due to transfer petition of this instant case filed by the accused person before the Hon'ble Supreme Court of India and maternity leave of the then Trying Magistrate this instant case have been pending for such a long period and thereafter repeated summons to accused had been issued finally non-bailable Warrant of Arrest has been issued against the accused on 9.11.2012, but the same was no executed till date. Hence, this judgment and order.

Findings and reason thereof:-

For determination as to whether the accused person Deepika Sharma is guilty of the charge U/S 380/417/419 IPC levelled against her or not the prosecution examined the complainant Mr. Pradeep Kumar Sharma as PW-No.5 wherein he had re-affirmed his FIR and disposed that on 21st June, 2010 his wife, herein the accused person took out the wallet from his trouser's pocket which was hanged inside the wardrobe. His wallet contained Saving Bank Account, ATM Cards 2 nos., Service Identity Card, PAN Card, Driving license and some other papers along with Rs. 2,000/- cash including PIN nos. of ATM Card. Since he has two ATM PIN nos. one net Banking Code, e-mail I.D. Card, certain other Code nos. including Official Codes, to rule out the possibilities of forgetting the Code nos. he used to keep ATM Codes (PIN nos.) along with his ATM Cards

in his wallet. He further deposed that on 6th July, 2010 when he got his Pass Book updated, he came to know the withdrawal of Rs. 1 Lakh and Ten Thousand on different dates but due to his official duties he could not file formal complaint at Bawngkawn P.S. on 12th July, 2010.

PW-5 further deposed that the ATM-cum-Debit Card No 6220180387700055529 was recovered from behind the photograph of god idol inside their house at the instance of the accused. Other Seized Articles i.e. Rs.110,000/- (1000X75=75,000 and 70X500=35,000) Identity Card No. 313431, ATM Card No.6220180170600264742, PAN Card ADSPS 6325 D and Driving license No. RJ 15/DLC/2006/10018 dated 27.7.2006 were recovered from the Bank locker maintained by the accused at SBI, Dawrpui Branch at the instance of the accused person. On cross-examination by the Id. Defence Counsel, PW-5 stated that the FIR was not typed by him and he did not witness the accused taking the wallet out of his pockets. On re-examination by the Id. APP, he further stated that he came to know that the accused was in possession of a locker at the SBI, Dawrpui Branch when she led the Police party along with him to the Bank and opened the locker with her own key and there was an entry to this effect in the locker opening register maintained by the Bank. PW-5 exhibited Ext. P-1 as FIR and Ext. P-1(a) as his signature Ext. P-II as Zimmanama, Ext. P-II(a) as his signature.

Both V.L. Hruaia Ralte and his wife Lalrinchhani were examined as PW-1 and 2 respectively and they had deposed similar evidence that on 16.7.2010 at around 11:00 Am, they were present and eye witnesses when Police Personnel came to the residence of the accused and recovered ATM Card under the Idol at the instance of the accused person.

Shri Bharat Chandra Sarkar, Deputy Manager (Account), SBI, Dawrpui Branch is examined as PW-3 and deposed before the Court that the accused Deepika Sharma is having SBI account at Bawngkawn Branch No. 10973640020. In Aizawl, only Dawrpui Branch of SBI has got the locker facility. If a person has an account in any of the Branches of SBI within Aizawl City, that person is allowed to open the locker facility. In locker facility, there is a master key and that master key is kept by him and nobody can open the locker without his

knowledge. Apart from the master key kept by him there is one other key for the locker which is given to the customer when the customer avails the locker facility. At the time of opening the locker, the master key as well as the customer key is to be put together. However, while closing the locker it can be closed with the customer key alone.

PW-3 further deposed that as far as his knowledge goes the accused opened the locker on 2nd July, 2010 at about 12:30 Pm. As per the records maintained in the Bank, the accused had opened the locker six times from the date on which the locker became operative. On 16.7.2010 while he was sitting in his office, the accused was brought to the Bank by few Police Personnel and requested him to open the locker. He, along with the accused and other Police Personnel and Saidingpuii entered the locker room and he put his master key into the key hole, simultaneously the accused also put locker key in a key hole and the locker was opened and the following items were found inside the locker:

1. Thousand Rupees note – 75X1000=75,000/-
2. Five hundred Rupee note – 500X70=35,000/-
3. Identity Card No. 313431
4. ATM Card No. 6220180170660264742
5. PAN Card ADSP 6325 D
6. Driving license RJ-15/DL/226/10018 dated 27.7.2006.

He had exhibited Ext.P-4 as seizure list and Ext. P-4(a) as his signature.

Smt. Saidingpuii Sailo deposed as PW-4 that on 16.7.2010, she had accompanied the Case I.O. to the Dawrpui Branch SBI wherein she had eye witnesses the case I.O. seized the seized articles from the locker in the presence of the accused and Shri B.C. Sarkar, Deputy Manager, she had exhibited Ext. P-4 as seizure list and Ext. P-4(b) as her signature.

Shri Zirtluanga, the Case I.O. is examined as PW-6 and deposed that on 16.7.2010 he had arrested the accused person and she led him to their house and took out the ATM Card from behind the idol kept inside their house. After seeing the ATM Card being produced by the accused, he had prepared the seizure list (Ext.P-III) in the presence of two seizure witnesses i.e. PW 1 and 2. Thereafter, at the instance of the accused person he had recovered different

kinds of articles like wallet along with I.D. Card, ATM Card, PAN Card, Driving license, currency notes amounting to Rs. 1,10,000/- from the locker of the accused person at SBI, Dawrpui Branch, Aizawl and the same were seized by him in the witness of PW 3 & 4. He further deposed that there were some more money inside the locker which seems to belongs to the accused person but he did not seize because that was not part of the complaint.

On XXX examined by the Ld. Defence Counsel PW-6 stated that he did not know the number of ATM Card, PAN Card, Driving license and Service Identity Card and he had never produced the Seize Article before the court and did not know he is legally empowered to release the Seized Article to the complainant on Zimmanama or not, and also did not have any materials document to show that the said locker belongs to the accused.

Whereas the accused person strongly denied of stealing the wallet of her husband, herein the complainant, but claimed that the ATM Card along with its PIN number was given to her by her husband during the month of June, 2010 and the withdrawal of money was known by her husband.

It may be pertinent to extract the relevant points from examination of accused U/S 313 Cr.PC.

Q. It is in evidence against you that as deposed by PW-5 that on 21st June, 2010 you had stolen the wallet of the complainant P.K. Sharma from his trouser pocket containing ATM Cards, Service Identity Card, PAN Card, Driving License and other papers alongwith cash of Rs.2,000/- including Pin number of the ATM cards. What do you have to say in your defence?

Ans: It is incorrect. I had not stolen the complainant's wallet. He had given me the ATM cards alongwith the Pin number during the month of June, 2010.

Q. It is in evidence that after taking the ATM card of the complainant you had fraudulently made 11 transactions and withdrew cash total withdrawal amounting to Rs.1,10,000/- (Rs. One lakh ten thousand only) from different ATM counters without the complainant's permission and knowledge and from the complainant's ATM cards.

Four transaction of Rs.10000 each on 23.6.2010 from ATM Counter of SBI Main Branch, SBI Zarkawt and twice from ATM counter Bawngkawn Branch. Two transactions of Rs.10,000/- each on 24.6.2010 from ATM counter Bawngkawn Branch. One transaction of Rs.10,000/- on 25.6.2010 from Axis Bank, ATM. Two transactions of Rs.10,000/- each on 28.6.2010 from ATM counter Ramhlun Branch. Two transactions of Rs.10,000/- each 1.7.2010 from ATM counter Ramhlun Branch. What do you have to say in your defence?

Ans: Yes, it is a fact that I have withdrawn Rs.1,10,000/- from different ATM counter with the complainant's ATM Card. The complainant was aware of all the cash withdrawal that I made and it was done with his permission.

Q. It is evidence against you as deposed by PW-1,2,5,6 that on 16.7.2001 one ATM card cum debit card 6220180387700055529 which was recovered by the police in the presence of two reliable witness (PW/1 and PW/2) from behind the idol in your house after you confessed/admitted and also led the police to the place where you had hidden the ATM card. What do you have to say in your defence?

Ans: Yes, it is incorrect that I had kept the ATM card under the idol in my house. I myself handed the ATM to the Case I.O.(P/W-6). PW-1 and PW-2 were also present.

Q. The evidence against you is that you have taken a locker at the SBI, Dawrpui Branch with your husband's/complainant's knowledge? What do you have to say in your defence?

Ans: Yes, I have a locker at the SBI, Dawrpui Branch. The complainant was aware that I own a locker.

Q. Is there anything you want to say in your defence?

Ans: The complainant has made false allegation against me as just to humiliate me as I had filed Domestic Violence Case against him which I later withdrew. The complainant has also filed this case against me as I am not fulfilling his desire (unnatural).

In her examination-in-chief as DW-1, the accused person re-affirmed her statement U/S 313 Cr.PC that her husband P.K. Sharma gave her two ATM Cards and his Driving license, PAN Card and some other important documents to kept

in her custody and while giving the ATM Card he also told her the ATM Pin number of 2527 and to withdraw money from his account. She further deposed that while giving his ATM Card with its Pin number, her husband also told her to withdraw the Domestic Violence case i.e. CrI. Complt. C/No.60/10 filed by her in the Court of Judicial Magistrate First Class, Aizawl and accordingly, she had withdrawn the same on 14.7.2010(Ext. D). On XXX by prosecution counsel, the accused person admitted that she had led the Police to recover one ATM Card with money (cash) amounting to Rupees one lakh and ten thousand, Identity Card, PAN Card, Driving license, from her locker at SBI, Dawrpui Branch. She had also admitted that one ATM Card which she had used for drawing money was recovered at her instance from behind their puja house near the idol.

Pushkar Sharma, son of the complainant with the accused person deposed as DW-2 that when they were staying together during 2010 his mother told him that his father gave some documents to her but did not see him giving the documents. His mother also told him that his father allowed her to take money from the Bank whenever she wants.

Arguments advanced, the Ld. APP argued that on the basis of evidence adduced by prosecution, it is clear that the accused had stolen the ATM Card along with other important documents and hid it in her locker opened by her without the knowledge of the complaint and all the lost items were recovered by the police being led by the accused. Hence, the prosecution has proved its case beyond all reasonable doubt that the accused is guilty of the offence U/S 380/417/419 IPC and prayed to convict the accused under the said Sections of law.

Whereas the Ld. Defence Counsel strongly argued that the alleged occurrence took place on 21.6.2010 but the FIR was submitted after a gap of 21 days on 12.7.2010 and this gap of 21 days is fatal. Further the alleged missing wallet has not been seized by the police in the whole process of their investigation nor the same was brought or produced before the court during trial. The Ld. Defence Counsel further argued that the document where the pin number of the ATM was written by the complainant as stated by him was neither seized by the police nor the same was produced in the course of trial against the accused person.

For correct findings and just decisions of the case let us go to the relevant Section of law under the Indian Penal Code :

The offence of theft has been defined in **Section 378 IPC** and it runs thus :-

378... Theft – *Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.*

The offence of cheating has been defined in **Section 415 IPC** and it runs thus:-

415...Cheating – *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

The offence of cheating by personation has been defined in Section 416 and it runs thus:-

416...Cheating by personation – *A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.*

Considered both submissions, perused available evidences on records. On plain reading of evidences adduced by both the parties with statements of the accused person U/S 313 Cr.P.C, it is not disputed by both parties that the accused person led the Police party not only for recovery of an ATM Card near the idol of god inside their house at Durtlang but also for recoveries of different articles from her personal locker at SBI, Dawrpui Branch. But the accused person strongly claimed that the ATM Card was given to her by her husband herein the complainant in exchange of withdrawing her Crl. Complt. about Domestic Violence Case No.60/2010 in the Court of Judicial Magistrate 1st Class, Aizawl. (Ext. D) which clearly shows that all was not well between husband and wife and

the possibilities of the principle that an eye for an eye, and a tooth for a tooth may not be ruled out.

As rightly argued by the Ld. Defence Counsel not only the missing wallet has not been seized and produced before the Court even though it was allegedly found at the locker of accused person but also all the seized articles were not produced before the Court during the whole process of trial. This is corroborated by the deposition of the Case I.O. stating that he had never produced the Seize Article before the Court and does not know he is legally empowered to release the Seize Article to the complainant on Zimmanama or not.

The Hon'ble Gauhati High Court in the case of Assistant Collector of Central Excise Vrs Sayed Mohammed as reported in 2008(I) GLT 1079 observed that:-

"The doubt intensified when the prosecution failed to produced the seized articles before the Court during trial. In such a case, doctrine of benefit of doubt would come to operate and the accused would be entitled to acquittal".

Also in the case of **K.P. Thiammappa Gowda Vs State of Karnataka** decided on 4th April, 2011 in connection with Criminal Appeal No. 1499 of 2004, the **Hon'ble Supreme Court** observed thus :-

"12 In Criminal cases, the rule is that the accused is entitled to the benefit of doubt, if the Court is of the opinion that on the evidence two views are reasonable possible, one that the accused is guilty, and the other that he is innocent then the benefit of doubt goes in favour of the accused".

Hence, on the basis of the above Hon'ble Supreme Court and Gauhati High Court decisions with facts and circumstances in the evidences adduced by both the parties, this Court is of the considered opinion that the prosecution fails to established their case beyond all reasonable doubt against the accused Deepika Sharma and she is entitled to be acquitted.

ORDER

Hence, by virtue of Section 248(I) of Cr.PC the accused Deepika Sharma W/o Pradeep Kumar Sharma is acquitted on benefit of doubt, from the liability of this instant CrI.Tr.No.769/2010 arising out of Bawngkawn P.S. C/No.271/2010 Dt.12.7.2010 U/S 380 IPC and she is set at liberty forthwith.

Seized Articles released on Zimmanama Vide Zimma No.129/2010 Dt. 17.7.2010 shall be deemed to return to the rightful owner.

Bail and bond stand cancelled by discharging liabilities of surety.

Given under my hand and seal of the Court on this 27th May, 2016.

(T. LALHMACHHUANA)

Judicial Magistrate 1st Class -1
Aizawl Judicial District, Aizawl

Memo No.____JMFC-1(A)/2016 : Dated Aizawl, the 27th May, 2016

Copy to:-

- 1) Accused Deepika Sharma D/o K.L. Juneja, Durtlang, Mizoram.
- 2) District & Sessions Judge, Aizawl for information.
- 3) Superintendent of Police, Aizawl, Mizoram for information.
- 4) SDPO, Aizawl North for information
- 5) O.C. Aizawl P.S. for information.
- 6) Assistant Public Prosecutor.
- 7) Registration Section.
- 8) Guard File.
- 9) Case Record.

P E S H K A R