

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

Crl Tr. No.774/2014

(A/o Kulikawn P.S. C/No.72/2014 u/s 326IPC)

State of Mizoram	Complainant
Vs		
Lalkhawngaiha(19)		
S/o Rokima		
Melriat, P/A Kulikawn, Tlangnuam Road.	Accused

BEFORE

T.Lahmachhuana
Judicial Magistrate First Class-1
Aizawl Judicial District, Aizawl.

PRESENT

For the Complainant	:	Mrs. Laldinpuii, A.P.P.
For the accused	:	Mr. Francis Vanlalzuala, Advocate.
Date of hearing	:	07.09.2016
Date of Judgment & Order	:	30.09.2016.

JUDGMENT AND ORDER

Dated Aizawl, the 30th September, 2016

1. Brief story of the case is that on 4.06.2014 a written FIR was submitted at Kulikawn P.S. by Lalhchingpuii of Damveng, Aizawl stating that on the same night at around 11:00 p.m. her son Malsawmkima was stabbed with a sharp pointed object by some unknown person near Venghnuai junction. Hence, Kulikawn P.S. C/No.72/14 326 IPC has been registered and investigated into.
2. During the course of investigation, the complainant and witness were examined and from their statement the accused Lalkhawngaiha(19) s/o Rokima of Melriat, P/A Kulikawn was arrested and at his instance the

alleged weapon used for committing the alleged offence was also seized. The victim was also sent to Aizawl Civil Hospital for medical examination and the nature of injury was reported as simple injury and therefore, the charge Section was altered from Section 326 IPC to 324 IPC and charge-sheet was submitted before the Court.

3. Thereafter, copy of charge-sheet was furnished to the accused free of cost and at the time of framing of charge the accused pleaded not guilty and claimed for trial. Hence, in order to establish their case the prosecution examined four witnesses while the accused in his statement U/S 313 Cr.P.C. fairly admitted the offender allegedly committed by himself but examined none in support of his case.
4. Hence, points for determination in this case should be:-
5. Whether the victim has been voluntarily stabbed by the accused or not?
6. Whether the accused acted upon in his self defence or not?
7. Whether the accused person is entitled to be acquitted or not?

Findings and reason thereof:

8. **For determination of point No.1 as to whether the victim has been voluntarily stabbed by the accused or not.**
9. The prosecution examined the complainant Lalchhingpuii as PW-1 and she had stated that on 4.06.2014 at around 11:00 p.m. her son Malsawmkima was stabbed on his left shoulder by an unknown person and she had submitted an FIR to the Kulikawn P.S. She had exhibited the FIR as Ext.P-1, her signature as Ext.P-1(a). On cross examined by Id. defence Counsel she had further stated that she does not saw the alleged offender and affirmed that her son used to drink liquor.
10. Lalhruaitluanga, an eye witness deposed as PW-2 that on the night of the occurrence they sat at Venghnuai junction and when the accused and his friends were coming, and after stabbing the victim, the accused was run away at once and they had proceeded to the Aizawl Civil Hospital for medical treatment of the victim. On cross examined by Id. defence Counsel PW-2 further stated that on that night the victim asked the accused person for some cigarette and after a heated arguments the accused stabbed the victim.

11. Dr. Elizabeth Zothanmawii deposed as PW-5 that on 4.06.2014, she was on duty at emergency department at Aizawl Civil Hospital and had examined the victim and her findings were reduced into writing in the report form. She had exhibited the Injury report as Ext.P-2 and her signature as Ext.P-2(a). On cross examined by Id. defence Counsel she had stated that at the time of her examination the victim was highly intoxicated with liquor and also the injury on his left shoulder was simple injury.
12. Zodingsanga, the Case I.O. is examined as PW-6 and stated that he had arrested the accused Lalkhawngaiha and he also fairly admitted his guilt. Further, at the instance of the accused the weapon used by the accused for stabbing the victim has been recovered and seized from where he had thrown away i.e. File, 9.5 cms.metal with 3 inches wooden handle. PW-6 also exhibited final form as Ext.P-3, seizure memo as Ext.P-4, arrest memo as Ext.P-5.
13. As the accused Lalkhawngaiha examined none in his defence let us go through relevant points of his statement u/s 313 Cr.P.C.
- Q.1. The evidence against you is that on 4.06.2014@11:00 p.m. you had stabbed one Malsawmkima, what do you have to say?*
- Ans: Yes, it is true.*
- Q.2 And the place of occurrence was stated as Thakthing DamVeng. Is it correct?*
- Ans: Yes.*
- Q.3. The evidence against you is that you had stabbed the victim on his left upper chest, is it true?*
- Ans: I am not sure about that, but it was around his chest.*
- Q.4. Another evidence against you is that you had used File for stabbing the victim and it was recovered at your instance. Is it true?*
- Ans: Yes.*
14. Considering the evidence of the prosecution witnesses it is the evidence of PW-2, an eye witness that on the night of the incidence they were sat at the Venghnuai junction, the accused and his friends were coming and the victim asked for some cigarette and after a heated arguments the accused stabbed

the victim and run away at once. Corroborating the evidence of PW-2, PW-6 also deposed that at the instance of the accused person he had recovered and seized the weapon (i.e. file) used for stabbing the victim but fails to exhibit the alleged seized weapon. However, corroborating the evidences of prosecution witnesses the accused Lalkhawngaiha fairly admitted in his statement U/S 313 Cr.P.C. about the allegation of stabbing the victim. Therefore, this point is decided in a positive.

15. For determination of point No.2 as to whether the accused acted upon in his self defence or not?

16. The complainant in her cross examination as PW-1 stated that she does not know the nature of troubles her son had met but knows that he was stabbed. PW-2 also stated in his cross examination that on that night the victim asked the accused for some cigarette and after a heated argument the accused stabbed the victim.
17. The Case I.O. in his deposition as PW-6 stated that after he had arrested, the accused admitted his guilt and confessed that the victim Malsawmkima and his friend used to disturbed him in a drunken state and on the night of the incidence when they had disturbed him again he had stabbed the victim.
18. Whereas the accused person stated in his statement U/S 313 Cr.P.C. that he was acted upon for his self defence thus:-

Q.5. Do you have anything else to say?

Ans: As they were trying to assault me again I was acted upon for my self defence.

19. It is an admitted facts by both the parties and as decided in the above point that on the night of 4.06.2014 at around 11:00 p.m., the victim Malsawmkima was stabbed on his left chest by the accused Lalkhawngaiha by using file and on the basis of medical examination report the injury was simple injury in which the accused person claimed that he was acted upon in his self defence because the victim and his friend used to disturbed him. Whereas Lalhruaitluanga an eye witness stated in his deposition as PW-2 that on that night, the victim asked the accused for some cigarette and

after a heated arguments the accused stabbed the victim and the evidence of the PW-2 is also corroborated by the evidence of PW-6.

20. On careful examination of available evidences on records this Court finds that neither the accused person nor his two companions sustained any injury but only the victim sustained simple injury inflicted by the accused.
21. **The Hon'ble Apex Court, in the case of Manjeet Singh Vs State of Himachal Pradesh** *as decided on 25.04.2014 re-affirmed its previous decision in connection with the case of George Dominic Verkey Vs State of Kerala that as broadly stated the right of Private Defence rest on three sides – 1. That there must be no more harm inflicted than is necessary for the purpose of defence. 2. That there must be reasonable apprehension of danger to the body from the attempt or threat to commit some offence and 3. The right does not commence until there is a reasonable apprehension.*
22. *In the case of Madan Mohan Pandey V State of Uttar Pradesh (1991) CrLJ 467(SC) the Hon'ble Supreme Court held that in judging whether accused has exceeded his right to Private defence or not the Court has to take into account the weapons used.*
23. *Also in the case of Rasikhai Ram Singh Ram Vs State of Gujarat, 1999(1) Guj CR 179 – the defence version regarding accused acting in self defence was liable to be proved by accused.*
24. In the present case, this Court finds nowhere in the evidences or statements of accused u/s 313 Cr.P.C. that the victim and his friend had neither assaulted the accused person and his companions nor used any weapons but the victim asked for some Cigarette. As such it was the accused who was the aggressor and has acted in excuse of his private defence. Therefore, on the basis of facts and circumstances of the case with the Hon'ble Apex Court decisions as stated above this point is decided in a negative.
25. **For determination of point No.3 as to whether the accused person is entitled to be acquitted or not?**

26. On the basis of findings and reasons thereof in the above two points this Court is of the considered opinion that the accused person is not entitled to be acquitted but liable to be convicted.

ORDER

27. Therefore, on the basis of evidences adduced before this Court with facts and circumstances of the case and the Hon'ble Supreme Court decision as stated above the accused person Lalkhawngaiha(19) s/o Rokima of Melriat, P/A Kulikawn, Aizawl is found guilty of the charged U/S 324 IPC for voluntarily causing hurt by using file upon the victim Malsawmkima and I hereby convict him.
28. However, considering the circumstances in which the offence was committed, regards being had to the age, character or antecedents of the offender that he is first time offender having no previous criminal records against him and was only 19 years of age at the time of commission of the offence this Court finds it is a fit case to invoke Section 360 Cr.P.C.
29. Hence, Section 360 Cr.P.C. is invoked and the offender Lalkhawngaiha(19) s/o Rokima of Melriat, P/A Kulikawn, Aizawl is released, after due admonition, on probation of good conduct for a period of six months.
30. If the offender committed similar offence within this speculated period of six months he will be punished in accordance with law.
31. With this order this instant CrI.Tr.No.774/2014 arising out of Kulikawn P.S. C/No.72/14 is disposed of.
32. Given under my hand and seal of the Court in this 30th September, 2016.

(T. LALHMACHHUANA)

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

Memo_____ JMFC-1(A)/2016: Dated Aizawl, the 30th Sept, 2016

Copy to:

- (1) Accused Lalkhawngaiha S/o Rokima, Melriat, P/A Kulikawn, Tlangnuam Roadthrough Counsel Mr. Francis Vanlalzuala, Advocate.
- (2) District & Sessions Judge, Aizawl.
- (3) Superintendent of Police, Aizawl for information.
- (4) Dy. S.P. (Prosecution) for information.
- (5) S.D.P.O, Aizawl South for information.
- (6) O/C Kulikawn P.S for information.
- (7) Mrs. Laldinpuii, A.P.P.
- (8) Registration Section.
- (9) Guard file.
- (10) Case record.

PESHKAR