

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS - 1**  
**AIZAWL JUDICIAL DISTRICT: AIZAWL**  
**Crl. Tr. No. 1857/2013**  
**U/S 435 IPC**  
**(A/o Vaivakawn P.S. C/No. 89/2013)**

State of Mizoram	Versus	Vanlalhruaia S/o Biakthanga (L) Vaivakawn.
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**BEFORE**

**Shri T. Lalhmachhuana**  
**Judicial Magistrate 1<sup>st</sup> Class -1**  
**Aizawl District: Aizawl**

For the State of Mizoram	: Ms. Venus H.Zomuankimi APP.
For the Accused	: Mr. C. Zoramchhana, Legal Aid Counsel

Date of Hearing	: 12.02.2016
Date of Judgment	: 29.02.2016.

**J U D G M E N T & O R D E R**

**Dated Aizawl, the 29<sup>th</sup>, February, 2016**

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1. Brief story of the Case as alleged by the Prosecution is that on 15.10.2014 @ 8:00 AM a written FIR was submitted at Vaivakawn P.S. by Smt. Lalmuankimi W/o C.S. Lalrinzuala of Hunthar Veng, Aizawl stating that on the morning of Dt. 15.10. 2013 @ 2:30 AM, their motor bike CBZ Xtreme B/R No. MZ-01/G-4138 which they parked inside a garage was burnt by some unknown persons and their Bike was badly damaged. The complainant further stated that besides their Bike one Maruti 800 car, one Bolero and one Gypsy which were parked near their Bike were also badly damaged. Hence, Vaivakawn P.S. C/No. 89/13 dt. 15.10.2013 u/s 436 IPC was registered and investigated into.

2. During the course of investigation, P.O. was visited. The Complainant was examined and recorded her statement. The damaged Bike was seized in the presence of witnesses. Thereafter, the accused Vanlalhruaia (29) S/o Biakthanga (L) of Vaivakawn, Aizawl was arrested and he was remanded into Judicial Custody. On finding Prima facie case well established u/s 435 IPC, Charge Section was altered with the permission of CJM, Aizawl District and accordingly submitted Charge Sheet against the accused.

3. At the time of framing of Charge, Charge was framed u/s 435 IPC which was read over and explained to the accused in the language known to him to which he pleaded not guilty and claimed for trial.

4. Hence, in order to establish their case, prosecution examined four witnesses including the complainant and the case I.O. Whereas the defence examined none in support of their case but in his statement u/s 313 Cr.PC the accused person denied his involvements in the alleged offence.

5. **Therefore, points for determination should be:**

1. *Whether the complainants Bike was actually burnt and badly damaged or not? If so*
2. *Whether the accused person Vanlalhruaia actually burnt the said bike or not?*
3. *Whether the accused person is entitled to be acquitted or not?*

**Decision and reason thereof :**

1. For determination of point no.1 as to whether the complainant's Bike was actually burnt and badly damaged or not, the Prosecution examined Smt. Lalmuankimi the complainant as PW-1 wherein she had deposed that on 15.10.2013 at around 2:30 AM their motor Bike CBZ Xtreme which, was parked inside garage was badly burnt by some unknown persons and she had exhibited the original FIR as Ext. P-1 and her signature upon the FIR as Ext. P-1(a). Lalthanfela of Hunthar Veng is examined as PW-2 and he had deposed that he had actually seen the burning of Bike at the Parking space of Hunthar Veng and he was one of the persons who tried to stop the burning. Mr. F. Lalrinsanga, the case I.O. is examined as PW-5 and he had deposed that he was not the person who conducted investigation in this case but conducted by the previous I.O. Mr. Jonathan Lalthansanga. Hence, Jonathan Lalthansanga was examined as PW-6 wherein he had confirmed about the burning and seizure of damaged Bike and exhibited seizure memo of damaged Bike as Ext. P-II and Ext. P-II(a) as his signature on it. Particularly there is no objection from defence side regarding the burning of complainant's Bike.

2. Considering the evidences of the Prosecution as stated above with available documents on records this point is decided that the complainants Bike was actually burnt and badly damaged.

3. For determination of point no.2 as to whether the accused person Vanlalhruaia actually burnt the said Bike or not. The complainant in her deposition as PW-1 deposed that she did not know who had burnt their Bike. On cross examined by the Id. defence Counsel she had stated that she does not know as to whether the accused person who was arrested by Vaivakawn Police in connection with the FIR submitted by herself is the one who had burnt their Bike

or not, and she does not even has any proof against him. PW No. 2 and 5 are silent regarding the alleged offence committed by the accused person. While Jonathan Lalthansanga who had arrested the accused person deposed as PW-6 that he had arrested the accused Vanlalhraia and he admitted to his guilt before him. On cross-examined by Id.Defence Counsel, PW-6 stated that there were two other suspected persons besides the present accused and he had arrested the accused person on the basis of statements given by the witnesses. Whereas, the accused person denied all the allegations against him in his statement u/s 313 Cr.PC.

4. On careful examination of the above prosecution evidences, this Court finds nowhere which would be strong enough against the accused person that neither the complainant nor the case I.O. could establish the involvement of the present accused person in the present case. This Court also taken reliance on the **Hon'ble Supreme Court decision in the case of K.P. Thimmappa Gowda Vs State of Karnataka as decided on 4<sup>th</sup> April, 2011 thus –**

***"In criminal cases, the rule are that the accused is entitled to the benefit of doubt if the Court is of opinion that on the evidence two views are reasonable possible, one that the appellant 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 facts and circumstances of the case as stated above with the Hon'ble Supreme Court observation, this point is decided in favour of the accused.

5. For determination of Point No.4 as to whether the accused person is entitled to be acquitted or not.

On careful analysis of the entire evidence on records, this Court finds that the prosecution has failed to prove the charged of mischief by fire and caused burning and damaged of CBZ Xtreme Bike of the complainant against the accused Vanlalhraia beyond all reasonable doubt. As discussing in the above points, this Court finds material discrepancies, inconsistency in the testimony of prosecution witnesses.

6. **The Hon'ble Supreme Court in the case of Harish J. Mal Vs State 1982 Cr LJ 2123 observed thus –**

***"Prosecution is to prove its case beyond all reasonable doubt. If the data leaves the mind of the Judge in equilibrium, the decision must be against the prosecution and the accused must be acquitted".***

Hence, on the basis of the above Hon'ble Supreme Court observation with circumstances in the Prosecution evidence, there is no reliable and clinching

evidence against the accused and this Court is of the considered opinion that the prosecution fails to establish their case beyond all reasonable doubt against the accused Vanlalhraia, and he is entitled to be acquitted.

**ORDER**

Hence, by virtue of Section 248(1) Cr.PC., the accused Vanlalhraia S/o Biakthanga (L) of Vaivakawn, Aizawl is acquitted on benefit of doubt, from the liability of this instant CrI.Tr.No. 1857/2013 arising out of Vaivakawn P.S. C/No. 89/2013 dt.15.10.2013 u/s 435 IPC and he is set at liberty forthwith.

Seized Article released on Zimma No. 52/2013 dt. 15.10.2013 shall be deemed to be returned to the rightful owner.

Bail and bond stand cancelled by discharging liabilities of Surety.

With this order, this instant CrI.Tr.No. 1857/2013 stand disposed of.

Given under my hand and Seal of the Court on this 29<sup>th</sup> February, 2016.

**Sd/- T. LALHMACHHUANA**

Judicial Magistrate 1<sup>st</sup> Class -1-  
Aizawl Judicial District, Aizawl

**Memo No.\_\_\_\_JMFC-1(A)/2016 : Dated Aizawl, the 29<sup>th</sup> Feb., 2016**

Copy to:-

- 1) Accused Vanlalhraia through Mr. C.Zoramchhana, Advocate.
- 2) District & Sessions Judge, Aizawl for information.
- 3) Superintendent of Police, Aizawl for information.
- 4) SDPO, Aizawl North for information.
- 5) O/C Vaivakawn P.S. for information.
- 6) Mr. C. Zoramchhana, Advocate (Legal Aid Counsel).
- 7) Registration Section.
- 8) Guard File.
- 9) Case Record.

**P E S H K A R**

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**A: List of Exhibits**

**1. For the Prosecution:**

- (a) Ext.P-I FIR submitted by the Complainant.**
- (b) Ext-P-II Property Search & Seizure Form**
- (c) Ext-P-III Final Form/Report u/s 173 Cr.P.C.**
- (d) Ext-P-IV FIR u/s 154 Cr.P.C.**

**2. For the Accused:**

**NIL**

**B: Witnesses examined**

**1. For the Prosecution:**

- (i) Lalmuankimi of Hunthar Veng, Aizawl.**
- (ii) F.Laltlanfela of Hunthar Veng, Aizawl.**
- (iii) F. Lalrinsanga of Lunglei S.P. Office.**
- (iv) Jonathan Lalthansanga of Vaivakawn P.S.**

**2. For the Accused:**

**NIL.**