

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS-1,

AIZAWL DISTRICT: AIZAWL

Crl. Tr. No. 466 of 2015

(A/O Aizawl P.S. Case No. 40/2015, dt. 20.1.2015, u/s 500 IPC)

State of Mizoram ... Complainant

Vs

C.Lalrinchhana(22),

S/o C.Zadinga,

P/A Zotlang,Lunglei. ... Accused

B E F O R E

Shri T. Lalhmachhuana, Judicial Magistrate First Class-1,

Aizawl District, Aizawl.

P R E S E N T

For the Complainant :Mrs. Penlui Vanlalchawii, Ms. Lalremruati, A.P.P.

For the accused :F.Lalzuiliana. (Legal Aid Counsel)

Date of hearing :14.11.2017.

Date of Judgment & Order :12.12.2017

JUDGMENT AND ORDER

Dated Aizawl, the 12th December, 2017

1. The prosecution of the story of the case in brief is that on 20.1.2015 David L.Sailo, State Secretary, Info & Publicity, Bharatiya Janata Party, Mizoram Pradesh submitted a written FIR stating that one Harry Beth Ce (Profile name) had posted false offensive words ,*"Central ah BJP an sorkar meuh chuan Christian te kan va chep sawt ve...Nimin P.M thusawi BSI ten an Bible chhut thin titawp tura a tih tak mai kha maw. Engtin nge Mizoram BJP khan in tih dawn. Congress dinna bialah pawh kal ngam hlei lo, nep ltk"*through one kind of Social media Facebook group ,*"Zoram Politics"* and requested to trace out the person who transmitted the above offensive words. Hence, Aizawl PS C/No. 40/2015 Dt.20.1.2015 U/S 66A I.T Act R/W 500 IPC has been registered and duly investigated into.
2. During the course of investigation the complainant and other witness were examined and recorded their statements and also the complainant was directed to produce his mobile phone before Court as and when required.

The accused Harry Beth Ce was traced out as C.Lalrinchhana S/o C.Zadinga of Zotlang Lunglei through his mobile phone no. 8415051775 and he was arrested by O.C Lunglei PS but released him on bail after recording his statement. Later charge sheet U/S 66A I.T Act R/W 500 IPC was submitted before the court against the accused.

3. On 20.7.2015 copy of charge sheet with connected documents were furnished to the accused and he was well informed of his right to engage legal counsel of his choice. Later on free legal aid counsel was given through Legal Services Authority. On 4.9.2015 Charge have been considered against the accused and the charge u/s 66A I.T Act was dropped as per the observation of the *Hon'ble Supreme Court* in the case of *Shreya Singhal Vs Union of India* and, therefore, charge was frame u/s 500 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. In order to establish their case the prosecution examined two witnesses the arresting officer and the case I.O but fails to examine the complainant and other witness after issued of summons for nine times against them and returned. In his examination u/s 313 Cr.PC the accused admitted that he had posted the offensive words but claimed that it was not made by himself.
5. ***Therefore, Points for determination in this case should be-***
 6. *1) Whether the accused person actually posted defamatory words through facebook or not?*
 7. *2) Whether the accused person is liable to be convicted or not?*

Findings and reasons there of-

8. ***Point No.1: Whether the accused person actually posted defamatory words through facebook or not?***
9. Pw-3, A. Zatlunga deposed that on 3.2.2015 he had received WT message from O.C , Aizawl PS to arrest the accused Rinchhana @Rca S/o C.Zadinga of Zotlang Lunglei in connection with Aizawl PS C/No.40/2015 Dt.20.1.2015 and he had arrested the accused on 4.2.2015. However, as the case is bailable offence the accused was released on bail. Pw-3 exhibited Arrest memo as Ext P-II and his signature on it as P-II(a). In his cross examination Pw-3 stated that he had arrested the accused as requested by O.C Aizawl P.S without

knowing the reason and he does not even knows the whereabouts of the accused while he was allegedly committing the instant offence.

10. Vanlaltluanga Parte, the case I.O is examined as Pw-4 in which he had re-affirmed his charge sheet against the accused person and also deposed that he had contacted the accused through his mobile phone no.8415051775 and admitted of having posted the said offensive words on Facebook using *Harry Beth Ce* as his profile name. Pw-4 further deposed that upon confirming on Google that the said information was false, the accused immediately removed it in the next morning. Pw-4 Exhibited Final form as Ext P-1, his signature on it as Ext P-1(a) & (b). In his cross-examination Pw-4 stated that the alleged offensive words was not sent along with other documents in the charge sheet and the mobile phone of the accused which was allegedly used for transmitting the alleged offensive words was not seized.
11. In the present case the prosecution fails to examine the complainant and other witness before the court in order to establish the prosecution case. And as addressed by the case I.O as Pw-4 neither the alleged offensive words nor the mobile phone of the accused which was allegedly used for transmitting the alleged offence were exhibited before the court.
12. Although the accused in his statement U/s 313 Cr.PC admitted that he had posted the alleged offensive words on Facebook, ***the Hon'ble Supreme Court*** in the case of ***Raj Kumar Singh Alias Raju Alias BatyaVs State of Rajasthan reported in 2013 SCC 722*** has held that conviction cannot be based upon the statement made under section 313 Cr.PC. thus-
"41... In cases the prosecution evidence is not found sufficient to sustain conviction of the accused, the inculpatory part of his statement cannot be made the sole basis of his conviction. The statement under section 313 Cr.PC is not recorded after administering oath to the accused. Therefore, it cannot be treated as an evidence within the meaning of Section 3 of the evidence Act..."
13. Therefore, on the basis of facts and circumstances of the case with the Hon'ble Supreme Court decision as stated above this point is decided in a negative.
14. ***Point No.2: Whether the accused person is liable to be convicted or not.***

15. On the basis of finding and reason in the above point the prosecution fails to establish their case beyond all reasonable doubt against the accused person. And, therefore, he is not liable to be convicted but entitled to be acquitted.

ORDER

16. Upon careful consideration of available evidences on records with facts and circumstances of the case the prosecution fails to establish their case beyond all reasonable doubt against the accused C.Lalrinchhana S/o C.Zadinga of Zotlang, Lunglei and he is acquitted on benefit of doubt from the liabilities of this instant CrI. Tr.No.446/2015 arising out of Aizawl PS C/No. 40/2015 and he is set at liberty forthwith.
17. Bail and bonds stand cancelled by discharging liabilities of surety.
18. With this order this instant CrI.Tr.No.446/2015 is disposed of.
19. Given under my hand and seal of the court on this 12th December 2017.

(T. LALHMACHHUANA),
Judicial Magistrate 1st Class-1
Aizawl District, Aizawl.

Memo No. JMFC-1(A)/2017 : Dated Aizawl, the 12th December, 2017.

Copy to :

1. Accused C.Lalrinchhana S/o C.Zadinga P/A Zotlang, Lunglei through F.Lalzuiliana, Advocate.
2. District & Sessions Judge, Aizawl.
3. Superintendent of Police, Aizawl.
4. Dy. S.P. (Prosecution).
5. S.D.P.O. Aizawl South.
6. O/C Aizawl P.S.
7. F.Lalzuiliana, Advocate (Legal Aid Counsel).
8. Registration Section.
9. Guard file
10. Case record.

P E S H K E R

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A. LIST OF EXHIBITS

1. For the Prosecution:

- (a) Ext.P-I is Final Form
- (b) Ext.P-I(a)&(b) are signatures of PW No.4
- (c) Ext. P-II is Arrest Memo
- (d) Ext. P-II(a) is signature of PW No.3

2. For the Accused :

NIL

B. LIST OF WITNESSES

1. For the Prosecution

- (a) PW No.3 Inspr. A Zatlunga, Lunglei P.S.
- (b) PW No.4 Inspr. Vanlaltluanga Parte, Aizawl P.S.

2. For the Accused : **NIL**