

Crl. Tr. No. 604 of 2015
(A/O Bawngkawn P.S. Case No. 1/15, u/s 353/186 IPC)

James Lalnunzira(20), D/o Zothanpianga, R/o Ramhlun North, Aizawl.	...	Accused
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For the Complainant	:Mrs. Penlui Vanlalchawii, A.P.P. Ms. Lalremruati Pachuau, A.P.P.
For the accused	:Mr. C.Lalfakzuala, Advocate & Ors.
Date of hearing	:18.10.2017
Date of Judgment& Order	:17.11.2017

Dated Aizawl, the 17th November, 2017

1. The prosecution story of the case in brief is that on 1.1.2015 @ 9:15AM, a written FIR was lodged by S.I. Lalramsanga Sailo S/o S.Lianlula of Bawngkawn P.S. stating that on 31.12.2014 while he was on night duty at the Police Station, at around 1:00 AM, he along with others detailed Police personnel proceeded to the place of New Year celebration Concert organized at Ramhlun North, Aizawl by Local NGO to control those who created trouble as reported that there took place some

problem of affray. On reaching, while he had tried to stop the fighting, he was punch on his face by one James Lalnunzira (20) S/o Zothanpianga of Ramhlun North, Aizawl which caused bleeding a lot from his nose. Hence, Bawngkawn P.S. C/No. 1/15dt.1.1.2015 u/s 353/186 IPC was registered and investigated into.

2. During the course of investigation, the accused James Lalnunzira S/o Zothanpianga of Ramhlun North, Aizawl was arrested after informing the grounds of his arrest and the same was intimated to his father. The Complainant was examined and recorded his statement and he was further forwarded to Medical Officer, Civil Hospital, Aizawl for medical examination. The accused was also thoroughly examined and recorded his statement in which he stated that unintentionally he might have strike the victim with his elbow at the time of incident and therefore, charge sheet was submitted before the Court against the accused.

3. On 14.5.2015 copy of charge sheet was furnished to the accused and he was informed of his right to engage legal counsel of his choice. At the time of consideration of charge, charge was framed u/s 353/186 IPC which is read over and explained to the accused in the language known to him to which the accused pleaded not guilty and claims for trial.

4. Therefore, in order to establish their case the prosecution examined all the four witnesses listed in the charge sheet while the accused denied the allegations against him in his statement u/s 313 Cr.P.C. and examined three witnesses in his defence.

5. *Therefore, points for determination shall be –*

- (1) Whether the accused person assault the victim/complainant in order to deter from discharging his duty or not?*
- (2) Whether the accused person is entitled to be acquitted or not?*

Findings and reasons thereof

6. ***For determination of Point No. 1 as to whether the accused person assault the victim/complainant in order to deter from discharging his duty or not,*** the prosecution examined Lalremzanga Sailo as PW-1 and deposed that on the night of 31st December, 2014 he along with other Police personnel were on duty in the New Year celebration concert at Ramhlun North and while he was trying to stop the fighting which was taking place he was punched by the accused

person on his face and he was falling on the street. As a result of the punch his nose was bleeding and he was also unconscious for a short while PW No.1 exhibited his F.I.R. as Ext.P-1 and his signature on it as Ext.P-1(a).

7. In his cross-examination PW No. 1 stated that on that night around five persons were having altercation and out of which two of them were fighting each other. While he was trying to stop the fighting he was knocked down but the accused was not arrested on that night because he was unconscious and could not identify the accused. PW-1 further stated that he had arrested about eight persons on that particular night who were causing trouble but he does not know whether the case has been registered against them or not and also that as far as he could remember, the accused was wearing sweatshirt and he was not sporting a long hair.

8. V.L. Ramchhana is examined as PW No.2 and stated that on the night of 31st December, 2014 he along with other Police personnel were detail to be on duty in and around Ranhlun, Bawngkawn and Thuampui area. While they were at Ramhlun North near Industry Peng they were informed that their friend Lalremsanga Sailo was punched by someone and he immediately rushed to the spot and saw their friend Lalremsanga Sailo was laying on the road unconscious but the person who had punched their friend was fleeing from the scene and could not trace his whereabouts. On the next morning he was told that the accused was arrested from their residence. In his cross examination PW-2 stated that at the time when the concert was going on, there was altercation among the crowd, he immediately rushed to the scene he saw the victim/complainant bleeding from his nose, he, however, do not know how his nose was bleeding and he had personally did not see the accused punching the complainant on that night.

9. Tommy Zonunsanga is examined as PW-3 and deposed that on 31.12.2014 he was detailed for duty at Ramhlun North where a free concert was organized. There were many people as it was the New Year's Eve. There were altercations amongst the crowd in about three different places. However, when Police personnel interfered, they stop and went away but there were two persons who would not stopped and fought with each other even after interference of Police. Then the present complainant tried to stop them but the accused James Lalnunzira hit him on his nose, due to which the victim fell on the floor and his nose was profusely bleeding. The accused fled from the scene and they ran after him but could not

catch him. In his cross examination PW-3 stated that he saw the two persons fought with each other and the accused person was dominating the other person. While the accused is allegedly hitting the victim the accused was not standing face to face with the victim and cannot say that the accused intentionally hit the victim on the nose as alleged by the victim and he cannot say the colour of shirt the accused was wearing on the night of incident.

10. The Case I.O. C.Vanlalnghakmawia is examined as PW No. 4 and re-affirmed his charge sheet and further deposed that during the course of his investigation the accused confessed before him that he had hit the victim with his elbow. PW-4 exhibited final report as Ext.P-II and his signature on it as Ext.P-II(a), Arrest Memo as Ext.P-III and his signature on it as Ext.P-III(a). In his cross examination PW-4 stated that another person was previously arrested as an accused person but was released and the reason is not known to him and his investigation regarding charging of the accused in this case is entirely based on the statement of Tommy Zonunsanga herein PW-3.

11. In his examination u/s 313 Cr.P.C. the accused denied all the allegations against him and stated under question No.2 that he was not involved in the altercation on that night and he was on YMA duty.

12. For his defence the accused examined three witnesses including himself wherein he had deposed as DW-1 that on that night he was present at the New Year celebration Concert with his friend and wearing red T.Shirt and he was one of YMA duty to control the crowd and although he had seen fighting at that place he does not assaulted or punched anyone on that night. In his cross examination DW-1 stated that he does not have any involvement in the altercation on the night of 31.12.2014 and strongly denied about the allegation of confessing his involvement before the case I.O.

13. Lalchhuanawma of Dinthar deposed as DW-2 and deposed that he had known the accused since 2003 and on the relevant night he and the accused person went to New Year celebration concert wherein the accused was one of the YMA duty and both of them were standing together and he does not see the accused assaulting or punching any person. In his cross examination DW-2 stated that himself and the accused person are childhood friends and on that 31.12.14 he was invited by the accused to witness the New Year Celebration concert and his friend

was wearing red- T-Shirt. After the fighting occurred both of them rushed away from the spot and Police were arresting people who were involved in the fight.

14. C.Lalzamlia of Ramhlun North is examined as DW-3 and deposed that on the night of 31.12.2014 he along with his friends were watching New Year Celebration Concert from their veranda. While watching the celebration there is an altercation among the crowd and they saw the accused person and other duty were trying to stop the fighting. After ten(10) minutes Prison Van has come and then Police were chasing people involved in the altercation but the accused was not arrested and his elder brother was taken by Police. In his cross examination DW-3 stated that on the relevant night he along with his friend saw altercation among the crowds but does not know who is responsible for it. DW-3 further stated that although he had seen a Policeman lying on the ground he does not know who had assaulted him.

15. On careful examination of available evidences on records it is evident that in the night of 31st December, 2014 there was New Year celebration concert at Ramhlun North Industry Peng wherein the complainant/victim and other prosecution witnesses were detailed to be on duty from Bawngkawn P.S. and also the accused person as YMA duty. There arose altercation among the crowd and the victim/complainant was also assaulted resulting unconsciousness and bleeding nose and the accused person is alleged to have assaulted the victim but he had strongly denied his involvement.

16. In his examination as PW-4, the case I.O. deposed that his investigation regarding the charging of the accused in this case is entirely based on the statement of Tommy Zonunsanga herein the PW-3. Therefore, the evidence of PW-3 needs a closer look which run as – on 31.12.2014 he was detailed for duty at Ramhlun North where a free concert was organized. There were many people as it was the New Year's Eve. There were altercations amongst the crowd in about three different places. However, when Police personnel interfered, they stop and went away but there were two persons who would not stopped and fought with each other even after interference of Police. Then the present complainant tried to stop them but the accused hit him on his nose. In his cross examination PW-3 stated that he saw the two persons fought with each other and the accused person was dominating the other person. While the accused is allegedly hitting the victim they were not standing face to face and also cannot say that the accused intentionally hit

the victim on the nose as alleged by the victim and he cannot say the colour of shirt the accused was wearing on the night of incident.

17. Therefore, the evidence of the Case I.O. was PW-4 is entirely based on the statements of PW-3 which inspires no confidence on the ground inter alia that in his cross examination PW-3 stated that while the accused is allegedly hitting the victim on the nose as alleged by the victim and he cannot say the colour of shirt the accused was wearing on the night of the incident.

18. While considering about this point let us look into the relevant section of law under the Indian Penal Code which run as follows-

353.Assault or Criminal force to deter Public servant from discharge of his duty – *Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

19. On the basis of the relevant section of law u/s 353 IPC and in order to establish their case the prosecution is mandate to prove that the accused person assaulted or uses criminal force intentionally. But in the present case the prosecution fails to prove that the accused person assaulted the victim intentionally. Therefore, on the basis of evidences adduced before this Court by both sides with statements of accused u/s 313 Cr.P.C. this point is decided in a negative.

20. ***For determination of point No.2 as to whether the accused person is liable to be convicted or not.*** On the basis of findings and reasons in the above point this Court is of the considered opinion that the prosecution fails to prove their case that the accused person intentionally assaulted or deter the victim from discharge of his duty and, therefore, he is not liable to be convicted but entitled to be acquitted.

ORDER

21. Hence, by virtue of Section 248(1) of Cr.PC the accused James Lalnunzira S/o Zothanpianga of Ramhlun North, Aizawl is acquitted on benefit of doubt from

the liability of this instant CrI.Tr.No.604/2015 arising out of Bawngkawn P.S. C/No.1/15 Dt.1.1.2015 u/s 353/186 IPC and he is set at liberty forthwith.

22. Bail and bonds stand cancelled by discharging liabilities of surety.
23. With this order this instant CrI. Tr. No. 604/15 is disposed of.
24. Given under my hand and seal of the Court on this 17th November, 2017.

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

Memo No. _____JMFC-1(A)/2017 : Dated Aizawl, the 17th November, 2017.

Copy to :

1. Accused James Lalnunzira S/o Zothanpianga of Ramhlun North, Aizawl through C.Lalfakzuala, Advocate & Ors.
2. District & Sessions Judge.
3. Superintendent of Police, Aizawl.
4. Dy. S.P. (Prosecution).
5. S.D.P.O. Aizawl North.
6. O/C Bawngkawn P.S.
7. A.P.P.
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 FIR.
- (b) Ext. P-I(a) is signature of PW No.1
- (c) Ext. P-II is Final Form/Report.
- (d) Ext. P-II(a) is signature of PW No.3.
- (e) Ext. P-III is Arrest Memo.
- (f) Ext. P-III(a) is signature of PW No.3

2. For the Accused : NIL

B. LIST OF WITNESSES

1. For the Prosecution

- (a) PW No.1 Lalremsanga Sailo, Bawngkawn P.S.
- (b) PW No.2 V.L. Ramchhana, Bawngkawn P.S.
- (c) PW No.3 Tommy Zonunsanga, Bawngkawn P.S.
- (d) PW No.4 C. Vanlalnghakmawia, Case I.O. Bawngkawn P.S.

2. For the Accused :

- (a) DW No.1 James Lalnunzira, Ramhlun North, Aizawl.
- (b) DW No.2 Lalchhuanawma, Dinthar, Aizawl.
- (c) DW No.3 C. Lalzamlia, Ramhlun North, Aizawl.