

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

Crl. Tr. No. 1360 of 2014

(A/O Aizawl P.S. Case No. 265/14 u/s 325/34 IPC)

State of Mizoram	...	Complainant
Vs		
1. Lalnunmawia(26), S/o Zarzoliana, R/o BungkawnVengthar, Aizawl.		
2. Lalruatmawia (29), S/o Lalthanzawna, R/o Chhiahtlang, P/A Venghlui, Aizawl.		
3. T.C. Malsawmkima (30), S/o T.C. Laldingliana, R/o BungkawnVengthar, Aizawl.	...	Accused

B E F O R E

**Shri T. Lalhmachhuana, Judicial Magistrate First Class-1,
Aizawl Judicial District, Aizawl.**

P R E S E N T

For the Complainant	:Ms. PenluiVanlalchawii, A.P.P. Ms. Lalremruati, A.P.P.
For the accused	:Mr. Zoremthuanga, Advocate.
Date of hearing	:11.10.2017.
Date of J.O.	:27.10.2017

J U D G M E N T A N D O R D E R

Dated Aizawl, the 27th October, 2017

1. The Prosecution story of the case in brief is that on 25.8.2014 a written FIR was submitted by Mr. Ngurmuana of Tuikual'A', Aizawl stating that on the night of 24.8.2014 @ 10:30 PM his son Isaac Lalrammawia (20) presently served at 3rd Bn. MAP and posted at House Guard of one of the Ministers, Govt. of Mizoram was

assaulted by (7) seven persons. As a result of which he had sustained grievances injury and evacuated to Civil Hospital, Aizawl. Hence, Aizawl P.S C/No 265/2014 dt 25/8/14, U/s 341/325/34 IPC was registered and duly investigated into.

2. During the course of investigation, Medical requisition for examination of the victim was submitted and from the light of medical examination report the victim Isaac Lalrammawia sustains grievous injury. P.O. was also visited and the accused persons – (1) Lalnunmawia (24), S/o Zarzoliana of BungkawnVengthar, (2) Lalruatmawia (27), S/o Lalthanzama of Venghlui, (3) T.C. Malsawmkima(26), S/o T.C. Laldingliana of BungkawnVengthar and (4) JosiaVanlalruata (17), S/o F. Zoparlina of New Capital Complex were arrested on 25.8.14 and as accused in Sl. No. 4 JosiaVanlalruata was found to be a Juvenile he was forwarded to Principal Magistrate, JJB Aizawl District on 26.8.14. The accused persons as well as the victim and other witnesses were examined and recorded their statements and on finding Prima facie case against three accused persons u/s 325/34 IPC charge sheet was submitted before the Court.

3. On 3.11.2014 copy of Charge sheet was furnished to the accused persons and they were informed of their rights to engage legal counsel of their choice and at the time of consideration of charge, charge was framed u/s 325/34 IPC which was read over and explained to the accused to which the accused persons pleaded not guilty and claimed for trial.

4. In order to establish their case Prosecution examined all the seven (7) witnesses listed in the charge sheet while the accused persons in their statement u/s 313 Cr.PC denied the allegations of causing grievous hurt to the victim but examined none in support of their case.

5. Therefore, Points for determination in this case should be -

- 1. Whether the accused persons causes grievous hurt to the victim in furtherance their common intention or not.*
- 2. Whether the accused persons are entitled to be acquitted or not ?*

Findings and reasons thereof :

6. For determination of Point No. 1 as to whether the accused persons causes grievous hurt to the victim in furtherance of their common intention or not the complainant Ngurmuana is examined as PW-1 and

deposed on oath that on the night of 24.8.14 he was informed by some friends of his son that Isaac Lalrammawia was hospitalized due to assault by some persons. And they had proceeded to the Hospital and when they reach, the Doctors on duty had done all the necessary examination and told them to go home with their son. Thereafter, his son told him that on that night (i.e. 24.8.14) while he is returning back from his duty he met the accused persons at New Capital Complex and without any reason they had forcefully pushed his Bike on the ground and when he had asked for their reason they had assaulted him. And as the accused persons knows that he is a police personnel they said that he is a police man, let us kill him and leave him inside the site drain. And, therefore, he had submitted FIR to the O.C., Aizawl P.S. PW-1 Exhibited the FIR as Ext P-1 and his signature on it as Ext P-1 (a).

7. In his cross-examination PW-1 stated that he does not know all the incident about the alleged offence because he was not present on the spot but informed by his son and also that after his son was medically examined and given first aid at the Hospital they were going home with their son. PW-1 further stated that he does not know how many days his son could not joint his duty and does not even knows the exact place of occurrence.

8. Lalawmpuia is examined as PW-2 and deposed that, on the night of 24.8.14 they went to the New Capital Complex with the victim Isaac and saw the accused persons drinking liquor near State Library and told the accused persons to go home. After the accused persons were going home he (PW-2) and Isaac went to BawngkawnSairang road to eat Pulau and when they reach the accused persons were also there. While they were about to go, one of the accused persons push their Bike (Isaac's Bike) to the ground and said "at the New Capital Complex." PW-2 further stated that he and the victim went to Minister Bungalow at New Capital Complex but as he was very angry for pushing his Bike to the ground the victim alone goes to meet the accused persons to which he was assaulted and after 10 minutes the victim call him for help and when he saw the victim he was very much with blood and they had taken to Civil Hospital and informed the victim parents.

9. In his cross examination PW-2 stated that when they were going home from the Minister's Bungalow of New Capital Complex they the accused persons on the roadside and told them to go home. But when they see each other at

Bawngkawn*Pulaudawr* on the same night @ 12:00 Isaac and one of the accused persons start fighting but he does not know who had assaulted first. PW-2 further stated that after returning back to New Capital Complex, Isaac went alone to meet the accused persons but he does not know as to whether he had taken a wooden stick or not and does not even know who had assaulted first because he was not present on the spot at that time.

10. Lalmuanpuia is examined as PW-3 and deposed that on the night of 25.8.14 when they were sitting near New Capital Library Office with their friends, a Policeman with his friend comes near them and told them that they were on duty and also told them to go home and as such they were going to Bawngkawn*Pulaudawr* but while they were at *Pulaudawr* Police Personnel who had told them to go home from New Capital Complex were coming and argued very much with Nunmawia. Thereafter, they were returned back to New Capital Complex wherein the Police man also comes again with a stick in his hand and asked for who had pushed his Bike into the ground. And PuMavena told him to go home but Nunmawia attack the Police and start fighting each other.

11. In his cross examination PW-3 stated that while they were sitting near *Pulaudawr* Nunmawia was trying to use his Mobile phone but the police man assaulted Nunmawia and when they were returned to New Capital Complex that Police man comes again with a stickk and our friends told him to go home and assaulted each other. PW-3 further stated that as the police man assaulted one of their friends Josia, they were just trying to stop him and no one had assaulted the police man (the victim) and the victim fall inside the site drain and he was drunk very much. When he is re-examined PW-3 further stated that he knows nothing about the alleged offence because he was not present on the spot at the time of occurrence and he does not see the victim falling inside the site drain and does not even knows the reason why he was there.

12. Lalremchhunga is examined as PW-4 and deposed that on the night of 25.8.14 after eating Pulau at Bawngkawn they went to New Capital Complex with Lalruatmawia and they were together with the present accused persons. While they were together with the present accused persons the present victim is coming with a stick and asked them that who had kicked his bike into the ground and he told the victim to go home. Thereafter the victim assaulted Josia with his stick and

they were fighting each other but he (PW-4) run away from the spot and when he had returned his friends were also going home and they told him that the victim was run away.

13. In his cross examination PW-4 stated that he does not know anything about the incident at Pulaudawr and the victim (Isaac) called them while they were sitting inside his car and Isaac assaulted Josia with his stick. PW-4 further stated that he knows nothing about the incident because he was not present on the spot and he does not even knows who had assaulted the victim. And as far as he knows the victim himself assaulted their friends Josia and the victim (Isaac) was run away.

14. Dr. Lalthankimi, who had examined the victim at the Civil Hospital is examined as PW-5 and she had deposed that on 25.8.2014 when the victim was brought for medical examination along with requisition, she, without delay, had examined the victim and doing all required examination and she had opined that the victim had sustained grievous injury and accordingly she had submitted the injury report of the victim. PW-5 Exhibited the injury report as Ext P-II and her signature on it as Ext P-II(a) and Ext P-II(b). In her cross examination PW-5 stated that when the victim was produced at the Hospital they had given him pain relief injection and antibiotics and he was also doing X-ray to ascertain as to whether there is fractured bones or not but as no fractured bone is detected they had release him from the Hospital. And as she had opined that the victim sustained severe bodily pain she had reported the injury as grievous hurt.

15. The victim Isaac Lalrammawia is examined as PW-6 and he deposed that on the night of 25.8.14 after performing his duty at the Minister's Bungalow he along with his friend saw a group of youth at State Library, New Capital Complex and told them to go home and they had obeyed their order. As they were hungry they went to BawngkawnPulaudawr and found the same group of youth and start quarrel with them and while they were trying to leave the place his bike was push down by one of them and said "at the New Capital." And when they had returned to the New Capital they found the same persons were already there and when he tries to talk about his bike that they had damage and leave source sort of marks they accused persons were gathered around him and assaulted him and he took a stick which he had found near him and assaulted him and he took a stick which he had found near him and assaulted one of them. PW-6 further stated that while they were

assaulted him the accused persons said that he is police personnel let us kill him and threw away and he had fallen unconscious.

16. In his cross examination PW-6 stated that they were going to BawngkawnPulaudawr because they were hungry and tries to eat Pulau and does not know the exact time. And where they had returned back to New Capital from Pulaudawr his friend Lalawmpuia was stayed at Minister's bungalow and he alone goes to meet the accused persons and they were together inside a car. PW-6 further stated that he does not know which of them had assaulted him and does not even knows what kind of stick he had taken when they had assaulted him but guess the time of incidence is around midnight.

17. L. Ramnghahmawia the case I.O is examined as PW-7 and he had affirmed his charge sheet against the accused persons. In support of his case, the case I.O Exhibited Final form and Ext. P-III, his signature on it as Ext. P-III(a), Arrest memo as Ext P-IV and his signature on it as Ext P-IV @, Arrest Memo as ext P-V & VI and his signature on it as Ext. P-V@ & VI @. In his cross examination PW-7 stated that on the basis of witness statements the victim attacked the accused persons by using weapon (stick) and assaulted them first and as such the accused persons also assaulted him. Therefore, the victim is responsible for all the incident.

18. On careful examination of the available evidences on records it is evident that on the relevant night the accused persons and the victims were confronted each other for three times.

19. Firstly, near State Library New Capital Complex in which the victims and his friend, herein PW-2 told the accused persons to go home and the accused persons went somewhere else.

20. Secondly at BawngkawnPulaudawr when the victim and his friend, here in PW-2 went to BawngkawnPulaudawr the accused persons were already at that place and when they saw each other the accused persons and the victim argued and start fighting. While the victim and his friend were about to leave Pulaudawr their bike was push down by one of the accused persons and caused slight damage to the Bike.

21. Thirdly at the New Capital Complex at around midnight. After returning from BawngkawnPulaudawr both the victim and the accused persons proceeded

towards New Capital Complex. At this time PW-2 stayed at the Minister's bungalow and the victim alone confronted the accused persons near State Library in which he had taken a stick and assaulted one of them at his arm by using his stick. As a result of this he was assaulted by the accused persons and sustained injury on his head and arms.

22. In their statements u/s 313 Cr.PC the accused persons denied the allegations against them and assaulting the victims but claimed that the victim himself attacked one of them by using a wooden stick of around 1 ½ ft. and they had just defend themselves.

23. When he is cross examined by the Id. defence counsel the victim stated that he does not know which of them had assaulted him. Also the case I.O stated in his cross examination that on the basis of witness statements the victim attacked the accused persons by using a weapon (stick) and assaulted them first and as such the accused persons also assaulted him and the victim is responsible for all the incidents.

24. In the case of Harish J. Mal Vs State, 1982 Cr. LJ 2123, the Apex Court held that –

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

25. Therefore, on the basis of discrepancies in the Prosecution evidence with the above Hon'ble Apex Court's decision. this point is decided in favour of the accused persons.

26. For determination of Point No. 2 as to whether the accused persons are entitled to be acquitted or not.

27. On careful analysis of the entire evidence on records with findings in the above point, this Court is of the considered opinion that the prosecution failed to prove their case beyond all reasonable doubt against the three accused persons and they are entitled to be acquitted.

ORDER

28. Hence, by virtue of section 248 (1) of Cr.PC the three accused persons (1) Lalnunmawia (24), S/o Zarzoliana of BungkawnVengthar, (2) Lalruatmawia (27), S/o Lalthanzama of Venghlui, (3) T.C. Malsawmkima (26), S/o T.C. Laldingliana of BungkawnVengthar are acquitted on benefit of doubt from the liability of this instant CrI. Tr. No. 1360/14 arising out of AZL-PS C/No. 265/14 dt. 25.8.14, u/s 325/34 IPC and they are set at liberty forthwith.

29. Bail and bonds stand cancelled by discharging liabilities of sureties.

30. With this order this instant CrI. Tr. No. 1360/14 stand disposed of.

31. Given under my hand and seal of Court on this 27th October, 2017.

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

Memo No. _____JMFC-1(A)/2017 : Dated Aizawl, the 27th October, 2017.

Copy to :

1. District & Sessions Judge, Aizawl.
2. Accused (1) Lalnunmawia (24), S/o Zarzoliana of BungkawnVengthar, (2) Lalruatmawia (27), S/o Lalthanzama of Venghlui, (3) T.C. Malsawmkima (26), S/o T.C. Laldingliana of BungkawnVengthar through Zoremthuanga, Advocate.
3. Superintendent of Police, Aizawl.
4. Dy. S.P. (Prosecution).
5. S.D.P.O. AizawlSouth.
6. O/C AizawlP.S.
7. A.P.P.
8. Registration Section.
9. Guard file
10. Case record.

P E S H K E R

CRL.TR.NO. 1360/2014

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A. LIST OF EXHIBITS

1. For the Prosecution:

- (a) Ext. P-1 is FIR.
- (b) Ext. P-1(a) is signature of PW No.1
- (c) Ext. P-II is Injury Report
- (d) Ext. P-II(a) is signature of PW No.5.
- (e) Ext. P-III is Final Form/Report.
- (f) Ext. P-III(a) is signature of PW No.7
- (g) Ext. P-III(b) is Signature of PW No.5
- (h) Ext. P-IV is Arrest/Court Surrender Form
- (i) Ext. P-IV(a) is signature of PW-7.
- (j) Ext. P-V is Arrest/Court Surrender Form
- (k) Ext. P-V(a) is signature of PW-7
- (l) Ext. P-VI is Arrest/Court Surrender Form
- (m) Ext. P-VI(a) is signature of PW-7

2. For the Accused : NIL

B. LIST OF WITNESSES

1. For the Prosecution

- (a) PW No.1 Ngurmuana, Tuikual 'A'.
- (b) PW No.2 Lalawmpuia, Khatla East.
- (c) PW No.3 Lalmuanpuia, Bungkawn
- (d) PW No.4 Lalremchhunga, Bungkawn Vengthar
- (e) PW No. 5 Dr. Lalthankimi, Medical Officer, Civil Hospital, Aizawl.
- (f) PW No. 6 Isaac Lalrammawia, Tuikual North, Aizawl.
- (g) PW No.7 S.I. L. Ramnghahmawia, Case I.O.

2. For the Accused :

- (a) NIL.