

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

Crl. Tr. No. 981 of 2015

(A/O Vaivakawn P.S. Case No. 53/15, dt. 28.5.15, u/s 454/380 IPC)

State of Mizoram ... Complainant

Vs

Lallawmzuala (41),
S/o Tlanglawma (L),
R/O Luangmual, 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	:Mrs. PenluiVanlalchawii, A.P.P.
For the accused	:Mr. Zoremthuanga, Advocate. Mr. LalbiaknungaHnamte, Advocate.
Date of hearing	:22.08.2017
Date of Judgment & Order	:20.09.2017
Date of Sentence hearing	:18.10.2017

JUDGMENT AND ORDER

Dated Aizawl, the 18th October, 2017

1. The Prosecution story of the case in brief is that on 28.05.2015 LalrokimiRalte, D/o R. Vankhuma of Vaivakawn submit FIR at Vaivakawn P.S and stating that during the first part of May, 2015 the first floor of their house located at LuangmualVenglai near ChawlhmunKawn was burgled by unknown miscreant by breaking its wall and stolen Portable Swing machine, Puannuam, Ring (Gold plated), Gold necklace and three pairs of ear ring. Hence, Vaivakawn P.S. C/No. 53/15, Dt 28.5.2015, u/s 454/380 IPC was registered and investigated into.

2. During the course of investigation, P.O was visited, drawn sketch map of the P.O. The complainant was examined and also recorded her statement. It was

also found that some items which were not included in the FIR were also stolen. On the same night one suspected person Lallawmzuala (41), S/o Tlanglawma of LuangmualVenglai was arrested and confessed his guilt before the I.O. At the instance of the accused persons the stolen properties like Portable Sweing Machine, three pairs of ear rings (Gold) Ring (Gold plated) and Puannuam were recovered inside his residence and seized in the presence of witnesses. Hence, on finding Prima facie case against the accused person charge sheet was submitted before the court.

3. On 11.9.2015 copy of charge sheet with connected documents were furnished to the accused and at the time of consideration of charge, charge was framed u/s 454/380 IPC which were read over and explained to the accused person pleaded not guilty and claimed for trial.

4. Therefore, in order to establish their case the prosecution examined all the four witnesses listed in the charge sheet whereas the defence examined none in support of their case but in his statements u/s 313 Cr.PC the accused person denied all the allegations against him.

5. Therefore, point for determination in this case should be –

(1) Whether the stolen properties were recovered from the residence of the accused at his instance 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 stolen properties were recovered from the residence of the accused at his instance or not*** the Prosecution examined the complainant LalrokimiRalte as PW-1 and she had deposed on oath that they had found their house at LuangmualVenglai was burgled and different kinds of properties like Blanket (Puannuam), Gold plated ring, 3 pairs of earring (Gold) and sewing machines were stolen and on 28.5.2015 she had submitted FIR to the Zonuaam Police out post and the same stolen properties were recovered by Police from the residence of their neighbour Lallawmzuala. PW-1 Exhibited the FIR as Ext P-II and her signature on it as Ext P-II (a)& (b). When she is cross examined by the Ld. defence Counsel PW-1 stated that she was present at the time of recovery of her

properties and also that the stolen Gold plated ring and earring were purchased by herself during the time of their marriage with her husband the rounded earring was the birth day present of their daughter. PW-1 further stated that she does not eye witness the offence committed by the accused.

7. Lalthuamluaia of Luangmual is examined as PW-2 and he had deposed on oath that on the night of 28.5.2015 Zonuam Police requested him to witness the seizure of properties at the residence of their neighbour Lallawmzuala in connection with the burgled of their other neighbour Lalrokimi Ralte's house and he went to the residence of the accused. When the police told the accused person to take his stolen properties, the accused went to their bed room and took portable sewing machine, 3 pairs of earring (Gold), Gold plated ring and *puannuam*. The same were identified by the complainant as her properties and the police seized them in his presence and appended his signatures in the seizure memo. PW-2 Exhibited the property search & seizure form as Ext. P-1 and his signature on it as Ext P-1(a). On cross examined by the Id. defence Counsel PW-2 stated that he does not eye witness the accused stealing the stolen properties and when he went to the residence of the accused, the police were already there but did not recovered the stolen properties.

8. Malsawmi of Luangmual Venglai deposed on oath as PW-3 that on 28.5.2015 she was present when Zonuam Police seized (1) Portable Sewing Machine, (2) God earring (3 pairs), (3) Gold plated ring and (4) Blanket (*puannuam*) from the accused Lallawmzuala. Hence, she became the seizure witness. PW-3 Exhibited search & seizure form and Ext P-1 and her signature as Ext P-V@. When she is cross examined by the Id. defence counsel PW-3 stated that she does not eye witness the offence committed by the accused and when she went to the residence of the accused Police are already there. PW-3 further stated that she had never saw the alleged stolen properties before but as the complainant claimed that it belongs to her she believed her so.

9. R. Lalbiaksanga, the case I.O is examined as PW-4 and he had deposed on oath that after receiving FIR from Lalrokimi Ralte the case was endorsed to him for investigation and he visited the P.O., examined available witnesses and from the light of their statements the accused Lallawmzuala, S/o Tlanglawma (L) was interrogated on suspicious grounds wherein the accused admitted his guilt

and he had personally delivered the stolen items to them at his residence except one gold necklace. PW-4 further deposed that after preparing proper seizure memo, he had seized the stolen articles in the presence of witnesses. PW-4 Exhibited Final Report/form as Ext P-III and his signatures on it as Ext P-III(a), Property search and seizure form as Ext P-1 and his signature on it as Ext P-IV, Arrest/Court summon form as Ext P-IV(a) and his signature as Ext P-V. On cross examined by the Id. defence Counsel, PW-4 stated that he does not eye witness the accused breaking the skirting and loosing the door locks screw and stealing the alleged stolen properties. PW-4 further stated that he does not have any proof that the stolen properties were actually belongs to the complaint but he was told by the complainant that it was hers.

10. As the accused person examined none in support of his case let us examined his statement u/s 313Cr.PC which runs as follows –

Q. 1. The evidence against you is that in the month of May, 2015 you had entered into the residence of your neighbor LalrokimiRalte. What do you have to say?

Ans. I did not enter into the said house.

Q.2. Another evidence against you is that you had stolen Portable Dewing machine, Gold earring, Gold plated ring, puannuam etc. Is it correct?

Ans. We also have these kinds of properties.

Q.3. It is also evident that the same stolen/missing properties were recovered by police from you. What do you have to say?

Ans. Police seized our own properties.

Q.4. It is also evident that while recovering the S/A from your other witness are also inside your residence. Is it correct?

Ans. I was not at House when recovery was made.

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

Ans. No.

11. Considering the available evidences on records it is the evidence of the complainant as PW-1 that their house at LuangmualVenglai was burgled and different kinds of properties were stolen like (1) Blanket (puannuam), (2) Gold

plated ring, (3) 3 pairs of earring Gold and (4) Sewing machine and as a result of her FIR to the Zonuam Out Post, Zonuam Police had recovered the same properties on the night of 28.5.2015 from the residence of their neighbour Lallawmzuala. Corroborating the evidences of PW-1, PW-4 adduced before the Court that the accused Lallawmzuala was interrogated on suspicious ground and he admitted his guilt and personally delivered the stolen items to the police at his residence. According to PW-2 and PW-3, who are Civilian witnesses that they were personally present at the residence of the accused person while police made seizure of the stolen properties.

12. Although the accused person claimed in his statement u/s 313 Cr.P.C. that the seized properties were their own properties and that he was not at home when recovery was made by Police, PW-1, the complainant stated in her cross examination that the stolen Gold plated ring and Gold earrings were purchased by herself during the time of their marriage with her husband and the rounded earring was Birth day present of their daughter whereas the accused person does not explain from where he has got all that properties.

13. With regards to the claimed of the accused person that he was not at home when recovery was made by Police, the case I.O. deposed as PW-4 that the accused admitted his guilt and he had personally delivered the stolen items to them at his residence. While PW-2, Civilian witness adduced that when police told the accused person to take his stolen properties, the accused went to their bed room and took the properties. PW-3, another Civilian Witness also deposed that she was present when Zonuam Police seized the stolen properties from the accused Lalawmzuala and she became the seizure witness. Therefore, considering the evidence of the prosecution witnesses as stated above there is no doubt that seizure of the stolen properties have been seizure of the stolen properties have been made by Zonuam Police from the accused Lallawmzuala at his residence.

14. **The Hon'ble Supreme Court of India in the case of Pawan Kumar @ Monu Mittal Vs State of UP &Anr.** as decided on 11th March, 2013 observed that –

"The Principal fact or factum Probandum may be proved indirectly by means of certain inferences drawn from factual probans, that is, the evidentiary facts. To put it differently, circumstantial evidences is not direct to the point in issue but consist of evidence of various other facts which are so closely associated with the facts in issues that taken together they form or issues that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presences."

15. In the present case, although all the prosecution witnesses does not eye witness the accused person committing the offence, their corroborated evidences, which were not shaken by the cross examination by the Id. defence counsel leads to the conclusion that the stolen properties were recovered from the residence of the accused person at his instant.

16. **For determination of Point No. 2 as to whether the accused person is entitled to be acquitted or not.** On the basis of findings in the above point the prosecution is succeeded in establishing their case beyond reasonable doubt against the accused Lallawmzuala and, therefore, he is not entitled to be acquitted but liable to be convicted.

17. On the basis of facts and circumstances of the case with corroborated evidences of the prosecution with the observation of the Hon'ble Supreme Court of India as Stated above the accused person Lallawmzuala (41), s/o Tlanglawma (L) of LuangmualVenglai is found guilty of the charged u/s 454/380 IPC for breaking the house of the complaint and stealing different kinds of properties and by virtue of Section 248 (2) of Cr.PC. I hereby convict him.

18. On 18.10.2017 hearing of the quantum of sentence is conducted in which Id. APP submitted prayer to inflict sentence at least five months S.I. with fine for both conviction because the prosecution proved his guilt beyond all reasonable doubt in which this Court convicted him u/s 454/380 IPC. Whereas, Mr. LalbiaknungaHnamte, Ld. Defence Counsel prays to invoke Sect. 360 Cr.P.C. in order to release the offender on probation of good conduct because the accused attended this Court regularly while on bail and also that he is involved very much in the activities of *Pavalain* their local church.

19. Considered the submissions of both parties and also carefully perused available documents on records and this Court finds no reason to invoke 360 Cr.P.C. on the ground that the offender is forty one (41), years of age and supposed to understand the nature of his offence and understand the consequence but instead of acting like a good citizen he had committed the offence of burglary upon his next door neighbour.

20. While considering the quantum of sentence, this Court had also going through the Hon'ble Supreme Court's decision in the case of **Sevaka Perumal, Etc vs State Of Tamil Nadu as decided on 7 May, 1991 reported in 1991 AIR 1463, 1991 SCR (2) 711** thus-

"It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justice system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon'.

Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine to public confidence in the efficacy of law and society could not long endure under serious threats. If the courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc"

Also In the case of **Md. Abdul Sufan Lasker & Ors Vs State of Assam, 2008 (12) SCR 561: 2008 (9) SCC 333: 2008 (11) SCALE 620** The Hon'ble Supreme Court observed thus-

"Now it is no doubt true that every crime is considered to be an offence against the society as a whole and not only against an individual even though an individual might have suffered thereby. It is therefore, the duty of the State to take appropriate action against the offender. It is equally the duty of a Court of Law administering criminal justice to punish a criminal"

21. Hence, considering the submission of both parties with the nature and circumstances of the case in which the offence had been committed with the Hon'ble Supreme Court decision as stated above, the offender Lallawmzuala (41)

S/o Tlanglawma of Luangmual, Aizawl is sentence to undergo S.I. for a period of three (3) months and to pay a fine of Rs. 1000/- I.D. S.I. for another 10 days for conviction u/s 454 IPC and also S.I. for a period of three (3) months and to pay a fine of Rs. 1000/- I.D. S.I. for another 10 days for conviction u/s 380 IPC and the sentences shall run consecutively.

22. Detention period already undergone shall be set of under the provision of 428 Cr.P.C.

26. Bail and bonds stands cancelled by discharging liabilities of surety.

27. S/A release on Zimmanama vide Zimma No. 30/15 is regularised.

23. With this order CrI.Tr.No.981/15 A/o Vaivakawn P.S C/No. 53/15 is disposed of.

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

Memo No. JMFC-1(A)/2017 : Dated Aizawl, the 18th October, 2017.

Copy to :

1. Accused Lallawmzuala, S/o Tlanglawma (L), R/o Luangmual through Mr. LalbiaknungaHnamte, Advocate.
2. District & Sessions Judge, Aizawl.
3. Superintendent of Police, Aizawl.
4. Dy. S.P. (Prosecution).
5. S.D.P.O. Aizawl North.
6. O/C Vaivakawn P.S.
7. Registration Section.
8. Guard file
9. Case record.

PESHKAR

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A. List of Exhibits

1. For the Prosecution :

- (a) Ext. P-I is Property Search & Seizure Form
- (b) Ext. P-I(a) is signature of PW No. 2.
- (c) Ext.P-II is F.I.R.
- (d) Ext.P-II(a) & (b) are signature of PW No. 1.
- (e) Ext.P-III is Final Form/Report.
- (f) Ext.P-III(a) is signature of PW No.4.
- (g) Ext.P-IV is signature of PW No.4.
- (h) Ext.P-IV(a) is Arrest/Court Surrender Form
- (i) Ext.P-V is signature of PW No.4.
- (j) Ext.P-V(a) is signature of PW No.3.

2. For the Accused : NIL

B. List of Witnesses

1. For the Plaintiff

- (a) PW-No.1 Smt. Lalrokimi Ralte R/o Vaivakawn, Aizawl.
- (b) PW-No.2 Shri Lalthuamluaia R/o Vaivakawn, Aizawl.
- (c) PW-No.3 Smt. Malsawmi R/o Vaivakawn, Aizawl.
- (d) PW-No. 4 R.Lalbiaksanga, A.S.I. (Case I.O.)

2. For the Defendant : NIL