

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS-I, AIZAWL**  
**JUDICIAL DISTRICT: AIZAWL**  
**Crl. Tr. No. 88 of 2015**  
**(A/O Darlawn P.S. Case No. 34/2014, dt. 16.12.2014, U/S 379 IPC)**

State of Mizoram	...	Complainant
Vs		
Vanlalduata (24), S/o Vanlalrova, R/o Khawruhlian.	...	Accused

**B E F O R E**

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

**P R E S E N T**

For the Complainant	: Mrs. Lalrinsiami, A.P.P.
For the accused	: Lalremruati (Legal aid counsel)
Date of order	: 14.8.2018

**JUDGEMENT AND ORDER**

**Dated Aizawl, the 14<sup>th</sup> August, 2018**

1. The story of the Prosecution case in brief is that on Dt.16.12.2014, a written FIR was submitted at Darlawn P.S by Lalngaihzuale S/o Thangzauva of South Hlimen stating that on 14.12.2014 while he was proceeding towards Darlawn with a truck load of 150 quintals of Rice he had halt at Bymore Veng, Khawruhlian as his vehicle had broke down. During his halt an unknown person had stolen 10 bags of rice from his vehicle at around 7:00 Pm to 8:00 Pm. Hence, Darlawn P.S C/No.34/2014 Dt.16.12.2014 U/S 379 IPC was registered and investigated into.

2. During the course of investigation, P.O was visited , the complainant was examined and recorded his statement. The suspected accused person Vanlalduata(25) S/o Vanlalrova of Khawruhlian was apprehended under suspicious ground and from the light of his statement his involvement was found and formally arrested. One bag of rice (30 Kg) was recovered at his instance and seized in the presence of witnesses and latter released on Zimmanama. On finding Prima facie case against the accused charge sheet was submitted before the court.
3. On 19.2.2015 Copy of documents were furnished to the accused person and free legal aid counsel was assigned for his Defence through Legal Services Authority. At the time of consideration of charge, charge was frame U/S 379 IPC which was read over and explained to the accused in his known language and he was asked as to whether he pleaded guilty or not to which the accused pleaded not guilty and claims for trial.
4. Therefore, in order to establish their case the prosecution examined three witnesses out of four witnesses listed in the charge sheet while the accused strongly denied the allegations against him in his statement U/S 313 Cr.P.C and examined one witness in support of his case. It may also be pertinent to mention that Pw-3 had been summoned for twelve (12) times with Bailable Warrant of Arrest but the prosecution fails to produce him before the court and therefore, he was dropped from the prosecution witness.

**Hence, Points for determination in this case should be-**

- (i) Whether the accused person steal ten bags of rice from the vehicle of the complainant at Bymore Veng Khawruhlian on 14.12.2014 or not?*
- (ii) Whether the accused person is liable to be convicted or not?*

**Findings and reason thereof:-**

5. **For determination of Point no.1 as to whether the accused person steal ten bags of rice from the vehicle of the complainant at Bymore Veng, Khawruhlian on 14.12.2014 or not?** The prosecution examined the complainant Lalngaihzuala as Pw-1 and deposed that on 14.12.2014 he had transported 300 bags (150 quintals) of rice by using vehicle no. MZ01/H-1496

but as his vehicle was broke down he was halt at Khawruhlian and 10 bags of rice was stolen from his vehicle. Pw-1 exhibited his FIR as Ext. P-II and his signature on it as Ext. P-II (a). On cross examined by Ld. Defence counsel Pw-1 stated that he does not seen the accused stealing rice bags and also not sure how much he had steal but presumed on the basis of the missing bags.

6. C. Lalpektluanga, the seizure witness is examined as Pw-2 and deposed that on 16.12.2014 @ 8:00Pm when he was present at the Darlawn P.S the complainant Lalngaihzuuala put one bag of rice (30kg) to the P.S and Darlawn Police seized the same. As he was present at the time of seizure he had signed as seizure witness. Pw-2 exhibited seizure memo as Ext. P-1 and his signature on it as Ext. P-I(a). When he is cross examined by the Ld. legal aid counsel Pw-2 stated that the seized article was taken by the complainant to the Police Station and he is not sure that the accused Vanlalduata had actually stolen the rice bag.
7. Lalramnghaka, the case I.O is examined as Pw-4 and deposed that during his investigation he had carefully examined the complainant and recorded his statement to which he stated that he along with the accused and others were drinking alcohol together at Pi Rindiki house, the accused Vanlalduata left them after spending some time with them. When they returned to their truck they found that 10 bags of rice were stolen and that they suspected the accused Vanlalduata. Hence, he arrested the accused on suspicious ground to which he admitted his guilt and told them that he had sold one bag of Rice to Pi Thanliani @ Rs.600/- but denied to have stolen another 9(nine) bags. At the instance of the accused he had recovered one bag of rice and seized in the presence of reliable witnesses. Pw-4 exhibited Final form as Ext. P-III and his signature on it as Ext. P-III(a), Arrest memo as Ext. P-IV and his signature on it as Ext. P-IV(a), Seizure memo as Ext. P-I. On cross examined by the Ld legal aid counsel Pw-4 stated that no one had seen the accused stealing the rice bags and he had recorded all the statements of witness at Police Station.
8. On the other hand, the accused person strongly denied the allegations against him in his statement U/S 313 Cr.P.C and Lalhuzama of Khawruhlian stated in

his deposition as Dw-1 that on the night of 14.12.2014 @ 11:00 Pm when he was returning from Khanpui village to Khawruhlian he had seen the truck driver, herein the complainant and his friends were unloading rice bags at 'Hmunnghak Village' and the same is also seen by one Lalremruata. On cross examined by the Ld APP Dw-1 stated that on the night of 14.12.2014 he was with the accused person up to around 6:00 Pm and does not saw him any more on that night and, therefore, does not sure as to whether he had steal the rice bag or not.

9. On careful examination of available prosecution evidence on records it is the evidence of the complainant as Pw-1 that on the night of 14.12.2014 ten(10) bags of rice were stolen from his truck at Bymore Veng, Khawruhlian and Pw-4, the case I.O deposed that he had arrested the accused on suspicious ground to which he admitted his guilt. At the instance of the accused person he had re-covered one bag of rice and seized in the presence of reliable witnesses. In the meantime, Pw-2 the seizure witnesses deposed that on 16.12.2014 @ 8:00 Pm when he was present at Darlawn P.S the complainant Lalngaihzualla put one bag of rice at the Police Station and Darlawn Police seized the same. At this point, the evidences of the case I.O and the seizure witness contradicted to each other with regards to the circumstances in which recovery and seizure of one rice bag was made.

10. Under **Section 101 of the Evidence Act, the burden of proof lies on the party who asserts the affirmative of the issue**, while section 103 of the Act provides for the proof of a particular fact. Section 27 of the Indian Evidence Act also says:

***"Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police Officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved."***

11. In yet another decision in **State of U.P. V. Ram Veer Singh** and another reported in **2007(6) Supreme 164** the Supreme Court has held as follows:

***"The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not."***

12. Hence, on the basis of contradictory statements of Prosecution witness with relevant section under the Evidence Act and the Hon'ble Supreme Court observation as stated above this point is decided in favour of the accused.
13. **For determination of Point no.2 as to whether the accused person is liable to be convicted or not.** On the basis of finding and reasons in the above point no.1 this court is of the considered opinion that the prosecution failed to establish their case beyond all reasonable doubt against the accused person and he is not liable to be convicted but entitled to be acquitted.

#### **ORDER**

14. On the basis of findings and reasons as stated above the prosecution failed to establish their case beyond all reasonable doubt against the accused Vanlalduata(25) S/o Vanlalrova of Khawruhlian and I hereby acquitted him from the liability of this instant CrI.Tr.No.88/2015 A/o Darlawn P.S C.No.34/2014 U/S 379 IPC on benefit of doubt and he is set at liberty forthwith.
15. Bail and bonds stand cancelled by discharging liabilities of surety.
16. S.A released on Zimmanama vide Zimma No. 14/2014 is deemed to returned to the rightful owner.
17. With this order this instant CrI.Tr.No.88/2015 is disposed of.

18. Given under my hand and seal of the Court on this 14<sup>th</sup> August 2018.

**Sd/-T. LALHMACHHUANA,**

Judicial Magistrate 1<sup>st</sup> Class-I

Aizawl District, Aizawl.

Memo No. JMFC-1(A)/2018 : Dated Aizawl, the 14<sup>th</sup> August, 2018.

Copy to :

1. District & Sessions Judge, Aizawl.
2. Accused Vanlalduata(25) S/o Vanlalrova of Khawruhlian through legal aid counsel Lalremruati, Advocate.
3. Superintendent of Police, Aizawl.
4. Dy. S.P. (Prosecution).
5. S.D.P.O. Aizawl North.
6. Special Superintendent, Central Jail.
7. O/C Darlawn P.S.
8. Lalremruati, Advocate.
9. APP.
10. Registration Section.
11. Guard file.
12. Case record.

P E S H K E R

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**A. List of Exhibits**

**1. For the Prosecution:**

- (a) Ext. P-1 is the search and seizure form.
- (b) Ext. P-I(a) is the signature of PW No.2.
- (c) Ext.P-II is the FIR.
- (d) Ext. P-II (a) is the signature of PW No.1.
- (e) Ext. P-III is the Final Form/Report.
- (f) Ext. P-III(a) is signature of PW No. 4.
- (g) Ext. P-IV is the Arrest/Court & Seizure Form.
- (h) Ext. P-IV(a) is the signature of PW No.4.
- (i) Ext.P-IV (b) is the signature of PW No.4.

**2. For the Accused : Lalhuzama.**

**B. List of Witnesses**

**1. For the Prosecution**

- (a) PW No.1 Lalngaihzualla, Driver South Hlimen.
- (b) PW No.2 C.Lalpektluanga, Driver Sesawng.
- (c) PW No.4 Lalramnghaka, Darlawn P.S.

**2. For the Accused : Lalhuzama.**