

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS-I, AIZAWL
JUDICIAL DISTRICT : AIZAWL
Crl. Tr. No. 2778 of 2012
(A/O Traffic P.S. Case No. 9/2012, dt. 19.11.2012, u/s 304A/279 IPC R/w
181/196/179/177 MV Act)

State of Mizoram	...	Complainant
Vs		
1. Lalchhawntluanga(27), S/o M.Zoliana, R/o Ramhlun 'S'.		
2. K.Lalnunpuia(36), S/o K.Sangchhina(L), P/A Tuikual 'N'.	...	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	:Ms. Lalrinpuui & Mrs. Lalrinsiami, A.P.P.
For the accused no.1	:Mr. Haulianthanga, Advocate
For the accused no.2	:Mr. C.Zoramchhana, Advocate.
Date of hearing	:15.05.2018.
Date of Judgment	:14.06.2018.
Date of Sentence Hearing	:18.06.2018

JUDGEMENT AND ORDER

Dated Aizawl, the 18th June, 2018

1. The prosecution story of the case in brief is that on 18.11.2012 @ 5:25 pm, Aizawl Traffic Police Station received telephonic information from Bawngkawn P.S stating that one Gypsy forcefully hit one truck which was parked at the roadside of Bawngkawn to Sairang road, Lentawi, Chaltlang Lily Veng area.

As a result of which the Gypsy Driver with the other occupant sustained injury and they were evacuated to Civil Hospital, Aizawl. Two officers of Aizawl Traffic Police Station were detained to conduct enquiry on the spot and to submit their reports. On the basis of their enquiry report Traffic Police case No.09/2012 Dt.19.11.2012 u/s 279/304A IPC R/w 181/196/122/179/17 MV Act was registered against the Gypsy driver Lalchhawntluanga(27) S/o M.Zoliana of Ramhlun South and Truck driver K.Lalnunpuia S/o Sangchhina of Thenzawl.

2. During the course of investigation, P.O was visited, the two accused persons were arrested, examined and recorded their statements and they were released on bail as the nature of offence is bailable. On the basis of his enquiry, the case I.O found that one truck B/R No. MZ01 D-5173 was parked at no parking place in front of Mr. Vanlalbela's residence at Lentawi, Sairang road from the morning of 18.11.2012 and at around 5:25 Pm one Gypsy B/R No. MZ01 B-2721 which was coming from Edenthar towards Bawngkawn in a high speed dashed the said truck which caused damaged to the vehicle and caused death to Mr. T.C Lalromawia(37) @ Davida S/o M.Zoliana of Ramhlun South, Aizawl. Hence, on finding Prima facie case u/s 279/304A IPC R/w 181/196/122/179/17 MV Act against the accused Lalchhawntluanga(27) S/o M.Zoliana of Ramhlun South and u/s 177 of MV Act against the accused K.Lalnunpuia(35) S/o Sangchhina(L) of Thenzawl P/A Tuikual North 'D' Mual the case I.O submit charge sheet against them.
3. Afterwards documents were furnished to the accused persons and they are also informed of their rights to engage legal counsel of their choice and they were given free legal aid through Legal Services Authority.
4. On 28.11.2013 hearing on charge is conducted. The Ld. APP prays for framing of charge against both the accused persons as charged in the final form submitted the I.O as Prima facie case is made out against them during the course of investigation.
5. Whereas the Ld. legal aid counsel for accused no.1 submitted that the Gypsy was uninsured but not known by the driver and that the accident was not caused by his negligence but by accused No.2 and prays for discharge. While Ld. legal aid counsel for accused no.2 submitted that the truck driver by accused no.2 was under repair as is also mentioned in the MV, report and the accident is not caused by his negligence and thus prayed for discharge.

6. Upon hearing of parties and on perusal of case records and S/A left on Zimmanama produced before it the court finds that there is ground for further proceeding into the case. However, with respect to the charged u/s 179 of MV Act against Accused no.2, no wilful disobedience is found and the charge is dropped.
7. Thereafter, charge u/s 304A IPC for causing death by negligence, u/s 279 IPC for rash driving on public way endangering life, u/s 196 MV Act for driving uninsured vehicle, u/s 181 MV Act for driving a vehicle without valid driving license and u/s 177 MV Act for driving vehicle without giving road tax are framed against accused Lalchhawntluanga, while charge u/s 177 MV Act is framed against the accused K.Lalnunpuia for leaving a vehicle in dangerous position, charges are read over and explained to both the accused persons to which they pleaded not guilty and claims for trial.
8. Hence, in order to establish their case the prosecution examined seven witnesses out of nine witnesses listed in the charge sheet whereas accused no.1 examined one witness while accused no.2 examined himself in support of his case.

Therefore, Points for determination in this case should be-

- (i) Whether the accused K.Lalnunpuia left his vehicle B.R No.MZ01 D-5173 dangerously in no parking area due to engine failure or not?*
- (ii) Whether the accused Lalchhawntluanga drives Gypsy BR No. MZ01 B-2721 rashly and negligently on 18.11.2012 and causing the death of T.C Lalromawia or not?*
- (iii) Whether the accused Lalchhawntluanga drives Gypsy without having valid driving license or not?*
- (iv) Whether the accused Lalchhawntluanga drives uninsured BR No. MZ01 B-2721 or not?*
- (v) Whether the accused persons are entitled to be acquitted or not?*

Findings and reasons thereof-

9. **For determination of Point no.1 as to whether the accused K.Lalnunpuia left his vehicle B/R No.MZ01 D-5173 dangerously in no parking area due to engine failure or not?** The prosecution examined Zoramthara Khawlhing as Pw-1 and deposited before the court on Oath that on the basis of his enquiry the truck B.R No. MZ01 D-5173 was dangerously parked at no parking area at Lentawi Sairang Road. On cross examined by Ld

defence counsel for the accused no.1 he had stated that the truck driver was at fault in causing the accident and if the truck was not parked the accident would be avoided. When he is cross examined by Ld defence counsel for accused no.2 Pw-1 further stated that he does not know as to whether the truck was under repair and standing on that place for four days or not because he is not the case I.O who had recorded their statements.

10. Jerome Lalbiakdika, Motor Vehicle Inspector (herein after refer to as MVI) deposed as Pw-6 and stated that on 20.11.2012 he had received requisition from O.C, Traffic P.S Aizawl for inspection of accident vehicles B/R No. MZ01-B-2721(Gypsy) and MZ01 D-5173(Truck). After careful inspection of both the accident vehicles it is found that the truck which was parked at the road side was under repairing. Pw-6 Exhibited his report as Ext P-3 & 4 and Ext P 3(a) & 4(a) as his signatures.
11. On cross-examined by Ld counsel for accused no.2, Pw-6 accepted the suggestion that the reason why the said truck have been parked on that side was engine failure and there is a chance for the Gypsy to run without dashing the standing truck.
12. The case I.O, L.Ramnghahmawia is examined as Pw-9 and he had stated in his cross-examination that the truck driver K.Lalnunpuia parked his truck at no parking area but he is not sure about the conditions of the truck and for that he had called for MVI report.
13. In his statement u/s 313 Cr.Pc the accused K.Lalnunpuia stated that he had parked his truck on the roadside due to engine failure and in his deposition as Dw-2 he had stated that on 14.11.2012 when he is approaching Bawngkawn his truck B/R No. MZ01 D-5173 could not run anymore due to engine failure and as such he had parked on the roadside with due cares and easily accessible by all types of vehicles. In the meantime they were trying to repair the engine with the help of mechanic but could not finish at that time. On cross examined by the Ld. APP Dw-2 stated that the truck was parked on that side from 14.11.2012 to 18.11.2012.
14. On careful consideration of available evidences for both sides the evidence of Defence witnesses no.2 that the truck was standing on that side and could not run any more due to engine failure from 14.11.2012 to 18.11.2012 is firmly corroborated by the evidence of the MVI who was examined as Pw-6 that after careful inspection of both the accident vehicles it is found that the

truck which was parked at the roadside was under repair. Pw-6 further accepted the suggestion that the reason why the said truck have been parked on the road side was engine failure. In the meantime the case I.O is not sure about the condition of the truck and for that he had called for MVI report. Therefore, on the basis of the above discussion this point is decided in favour of accused K.Lalnunpuia that he had left his vehicle B/R No.MZ01 D-5173 in no parking area due to engine failure which is beyond human control.

15. **For determination of Point no.2 as to whether the accused Lalchhawntluanga drives Gypsy B/R No.MZ01 C-2721 rashly and negligently on 18.11.2012 and causing the death of T.C Lalromawia or not?** Pw-1 Zoramthara Khawlhring stated in his cross examination that the cause of accident is due to rash and negligent on the part of both driver and if the gypsy driver had a little bit care the accident would not happen.
16. T.Thankima of Ramhlun South deposed as Pw-4 that on 18.11.2012 his friend Sapthlengliana's Gypsy was driven by the accused Lalchhawntluanga and dashed a truck which was parked on the roadside. As a result of the accident Lalchhawntluanga's elder brother T.C Lalromawia lost his life and the gypsy was badly damaged. As he was present at the time of seizure of documents he had signed in the seizure memo Pw-4 exhibited seizure memo as Ext P-2 and his signature on it as Ext P-2 and his signature on it as Ext P-2(a). When he is cross-examined by the Ld defence counsel Pw-4 stated that in his opinion it was the fault of the Gypsy driver which had hit and collides with the standing truck which was park on the roadside and the road was wide enough even for a big truck to pass through on the side of the offending gypsy.
17. Vanlalhruaia of Electric Veng is examined as Pw-5 and deposed that his friend Sapthlengliana send Lalchhawntluanga to Rawpuichhip for repairing department vehicle and on their way back they met with an accident and Lalchhawntluanga's brother was dead and the Gypsy B/R No. MZ01 B-2721 was badly damaged. As he was present at the time of seizure of Gypsy documents made by Traffic Police he had seized as Seizure witness. Pw-5 exhibited seizure memo as Ext.P-2 and his signature on it as Ext. P-2(b). On cross examined by the Ld defence counsel Pw-5 stated that in his opinion it was the fault of the Gypsy driver which had hit and collides with the standing

truck which was park on the roadside and the road was wide enough even for a big truck to pass through on the side of the offending Gypsy.

18. Jerome Lalbiakdika MVI stated in his cross examination as Pw-6 that he had personally inspect the Gypsy and there was no mechanical failure.
19. Dr.Lalrozama, Medical officer, Civil Hospital Aizawl is examined as Pw-7 and deposed that on 19.11.2012 he had received requisition to conduct PME on the dead body of T.C Lalromawia@Davida. Accordingly, he had conducted Post mortem examination and on the basis of his findings the cause of death in this case is cervical fracture injury produced by blunt force impact. Pw-7 exhibited PME as Ext P-8 and his signature on it as Ext P-8(a). On cross examined by Ld defence counsel Pw-7 stated that he does not know the cause of death was due to a vehicular accident.
20. L.Ramnghahmawia the case I.O deposed as Pw-9 that on 18.11.2012 telephonic information was received from Bawngkawn P.S that one Gypsy forcefully hit one truck which was parked at the road side of Bawngkawn to Sairang road. As a result of which the Gypsy driver with occupant sustained injury and evacuated to Civil Hospital Aizawl. Hence, Traffic Police case no. 09/12 Dt. 19.11.12 u/s 279/304 A IPC was registered and the case was endorsed to him for investigation. During his investigation he had carefully study the case records, arrested the accused persons and also hold inquest over the dead body of T.C Lalromawia of Ramhlun South and the same was forwarded to Civil Hospital, Aizawl for PME. On finding prima facie case well establish against the accused he had submitted charge sheet. Pw-7 exhibited a number of documents in support of his case.
21. Whereas the accused Lalchhawntluanga examined Lalthlamuana of Ramhlun South as Dw-1 and stated in his cross-examination that as soon as he was informed about the accident he had immediately rushed to the P.O and in his opinion the Gypsy driver dashed the truck which was standing. Dw-1 further accepted the suggestion that there was enough space for other vehicle to pass through on the side of the truck.
22. On careful examination of the available evidences on records for both the parties it is the evidence of the enquiry officer as Pw-1 that on the basis of his enquiry the Gypsy had hit the truck and as a result of which the said Gypsy left side was badly damaged and the occupants got injured. When he is cross examined by the Ld defence counsel Pw-1 further stated that the

cause of the accident is due to rash and negligent on the part of both drivers and if the Gypsy driver had a little bit care the accident would not happened. Corroborating the evidence of Pw-1 two civilian witnesses deposed as Pw-4 and Pw-5 and stated similar evidence that the Gypsy driven by the accused person Lalchhawntluanga dashed a truck which was parked on the road side. As a result of the accident the accused elder brother T.C Lalromawia was death and the Gypsy was badly damaged. On cross examined by the Ld defence counsel both witnesses stated that the road was wide enough even for a big truck to pass through on the side of the offending Gypsy.

23. Dr.Lalrozama, medical officer, Civil Hospital Aizawl is examined as Pw-7 and deposed that on 19.11.2012 he had received requisition to conduct PME on the dead body of T.C Lalromawia@Davida. Accordingly, he had conducted Post mortem examination and on the basis of his findings the cause of death in this case is cervical fracture injury produced by blunt force impact. Pw-7 exhibited PME as Ext P-8 and his signature on it as Ext P-8(a). On cross examined by Ld defence counsel Pw-7 stated that he does not know the cause of death was due to a vehicular accident.
24. The above evidences of the prosecution witnesses were also firmly corroborated by the evidence of Dw-1 who had visited the place of occurrence that in his opinion the Gypsy driver dashed the truck which was standing and Dw-1 further accepted the suggestion that there was enough space for other vehicle to pass through on the side of the truck. Dw-2 stated that on 14.11.2012 when he is approaching Bawngkawn his truck B/R No. MZ01 D-5173 could not run anymore due to engine failure and as such he had parked on the roadside with due cares and easily accessible by all types of vehicles. In the meantime they were trying to repair the engine with the help of mechanic but could not finish at that time. On cross examined by the Ld APP Dw-2 stated that the truck was parked on that side from 14.11.2012 to 18.11.2012.
25. For correct findings for this point let us extract statements of accused u/s 313 Cr.PC which reads thus-
Q.1 The evidence against you is that on 18.11.2012 you had driven Gypsy B.R No. MZ01 B-2721. Is it correct?
Ans. Yes, it is correct.

Q.2 Another evidence against you is that you had forcefully dashed one truck B.R MZ01 D-5173 which was parked on the roadside. What do you have to say?

Ans. Yes, it is correct.

Q.3 Another evidence against you is that as a result of the accident one Mr.T.C Lalromawia S/o M.Zoliana was death, what do you have to say?

Ans. Yes, he is my elder brother.

Q.4 And also injured another persons who were on board at your Gypsy?

Ans. Yes.

26. While considering about this point this court also taken reliance from the decision of the Hon'ble Supreme Court of India in the case of **Laxman Alias Laxmaya Gangaram Vs The State of Maharashtra** decided on 9th May,2012 the **Hon'ble Apex Court** observed that:-

"Statement u/s 313 Cr.Pc can constitute the sole basis for conviction and that it would be a salutary amendment of the Indian Law.

If we keep aside the statement u/s 313 Cr.Pc, the evidence on record does not prove the guilt of the appellant beyond reasonable doubt. Now it will be necessary to make a reference to the statement recorded u/s 313 Cr.Pc.

Also in the case of **State of Maharashtra Vs Sukhdev Singh**, the **Hon'ble Apex Court** held that "5. Even on first principle we see no reason why the court could not act on the admission/confession made by the accused in the course of the trial or in his statement recorded u/s 313 Cr.Pc.

It is thus well established in law that admission or confession of the accused in the statement u/s 313 Cr.Pc recorded in the course of trial can be acted upon and the court can rely on these confession to proceed to convict him."

27. In these circumstances, this court is of the considered opinion that on 18.11.2012 the accused Lalchhawntluanga was driving his Gypsy B.R No.MZ01 B-2721 in rash and negligent manner and dashed the standing truck which was parked on that side for four days due to engine failure and caused death of the deceased.
28. Therefore, on the basis of Corroborated prosecution as well as defence evidence on records and statement of accused person u/s 313 Cr.Pc with the Hon'ble Supreme Court decision as stated above this point is decided in favour of the prosecution that the accused Lalchhawntluanga drives Gypsy B

R No.MZ01 B-2721 rashly and negligently on 18.11.2012 and caused the death of T.C Lalromawia.

29. **For determination of Point No.3 as to whether the accused Lalchhawntluanga drives the Gypsy without having valid driving license or not.** In his charge sheet the case I.O stated that the accused Lalchhawntluanga drives the vehicle without having valid driving license which caused damaged to the vehicle and death of Mr. T.C Lalromawia but all the prosecution witnesses including the case I.O does not mention about the driving license of the accused person in their evidences before the court.
30. Meanwhile, Lalthlamuana stated in his deposition as Dw-1 that he had personally knows that the accused posses two driving license professional and private license corroborating the evidence of Dw-1. The accused person stated in his statement u/s 313 Cr.Pc that he has professional and private driving license. During arguments, the Ld defence counsel submit before the court the driving license of the accused person which was issued on 13.3.2007 with validity upto 18.6.2032 for non-transport and validity upto 22.2.2019 for transport. Therefore, this point is decided in favour of the accused that the accused Lalchhawntluanga drives the Gypsy with valid driving license.
31. **For determination of Point No.4 as to whether the accused Lalchhawntluanga drives un-issued Gypsy B/R No. MZ01 B-2721 or not.** Although the case I.O charged the accused person u/s 196 of the motor vehicles Act, 1988 for driving un-insured vehicle in his charge sheet, no prosecution witnesses including the case I.O deposed about the accused as driving un-insured vehicle. Therefore, in the absence of incriminating evidence against the accused person there is no ground to decide this instant point against the accused because the prosecution is supposed to proof its case beyond all reasonable doubt and as such this point is decided in favour of the accused person.
32. **For determination of Point No.5 whether the accused persons are entitled to be acquitted or not.**
33. On the basis of findings and reason in the above point no.1 one of the accused persons K.Lalnunpuia S/o K.Sangchhina is entitled to be acquitted on the ground that he had left his vehicle in no parking area which could not run any further due to engine failure and which is beyond human control.

34. However, on the basis of findings and reasons in Point No.3&4 as stated above the accused Lalchhawntluanga is entitled to be acquitted from the liabilities of the charge sheet u/s 181/196 of MV Act on benefit of doubt but on the basis of findings and reasons in point no.2 he is liable to be convicted from the liabilities of the charged u/s 279/304 'A' of IPC and I hereby convict him.
35. Accused Lalchhawntluanga is produced before the court from J/C. The Ld APP and Ld defence counsels are present.
36. Today is fixed for sentence hearing. Heard both parties wherein the Ld APP submitted prayer to inflict maximum sentences for both section 279 and 304 A of IPC for his reformation whereas the Ld defence counsel prays leniency on the ground that the deceased T.C Lalromawia was the elder brother of the present accused and his wife and two children are looked after by himself till date. I also heard the offender Lalchhawntluanga and submit that he had regretted his guilt very much and if he is imprisoned there is no one else to look after the children of his deceased brother.
37. In consideration of both submission this court also carefully perused available documents on record and finds it is a fit case to invoke section 360 Cr.PC on the ground that the accused is first time offender having no previous criminal records against him and also that he is living and look after the children of his deceased brother.

ORDER

38. Hence, section 360 Cr.PC is invoked and the offender Lalchhawntluanga S/o M.Zoliana R/o Ramhlun South is released, in the spirit of section 360 Cr.PC after due admonition on probation of good conduct for a period of 6 months.
39. If the offender committed similar offence within this speculated period of 6 months he will be punished in accordance with law.
40. Bail and bonds stands cancelled by discharging liabilities of surety.
41. S.A kept on Zimmanama Vide zimma No.13/12 and 12/12 is regularised.
42. With this order this instant CrI.Tr.No.2778/2012 A/o Traffic P.S C/No.9/2012 is disposed of.

Sd/-T. LALHMACHHUANA,
Judicial Magistrate 1st Class-I
Aizawl Judicial District, Aizawl.

Memo No. JMFC-1(A)/2018 : Dated Aizawl, the 18th June, 2018.

Copy to :

1. District & Sessions Judge, Aizawl.
2. Lalchhawntluanga(27) S/o M.Zoliana of Ramhlun South through counsel Mr. Haulianthanga, Advocate.
3. K.Lalnunpuia(35) S/o Sangchhina(L) P/A Tuikual North 'D' Mual.
4. Superintendent of Police, Aizawl.
5. Dy. S.P. (Prosecution).
6. S.D.P.O. Aizawl North.
7. Special Superintendent, Central Jail.
8. O/C Traffic P.S.
9. Mr. C.Zoramchhana, Advocate.
10. Mr. Haulianthanga, Advocate.
11. APP.
12. Registration Section.
13. Guard file.
14. 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 information report.
- (b) Ext. P-I(a) is signature of PW No.1
- (c) Ext.P-II is seizure memos.
- (d) Ext. P-II(a) is signature of PW No.4
- (e) Ext. P-II(b) is the signature of PW No.5
- (f) Ext. P-III & IV are the reports.
- (g) Ext. P-III(a) & IV(a) are the signature of PW No.6.
- (h) Ext. P-VIII is PME.
- (i) Ext. P-VIII(a) is is the signature of PW No.7
- (j) Ext. P-IX & X are the reports.
- (k) Ext. P-IX(a) & X(a) are the signature of PW No.8
- (l) Ext. P-II(c) & P-VIII(a) are the signature of PW No.9
- (m) Ext.P-VII(a) is the signature of PW No.9

For the Accused : Lalthlamuana

B. List of Witnesses

1. For the Prosecution

- (a) PW No.1 Zoramthara Khawlhring.
- (b) PW No.4 T.Thankima.
- (c) PW No.5 Vanlalhruaia.
- (d) PW No.6 Jerome Lalbiakdika.
- (e) PW No.7 Dr.Lalrozama.
- (f) PW No.8 Dr. C.H Laldinpuia.
- (g) PW No.L.Ramnghahmawia.

2. For the Accused : Lalthlamuana