

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

Crl. Tr. No. 1593 of 2015

**(A/O Bawngkawn P.S. Case No. 196/2015, dt.19.8.2015, u/s
448/354'C'/511/34 IPC)**

State of Mizoram	...	Complainant
	Vs	
Lalramnghaka(30), S/o Lalzawna, R/o Ramthar North, Aizawl.	...	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	:Mr. C.Malsawmtluanga, Advocate.
Date of hearing/order	:22.06.2018
Date of sentence hearing	:25.06.2018

JUDGEMENT AND ORDER

Dated Aizawl, the 25th June, 2018

1. The prosecution case in brief is that on 19.8.2018, LV Zorintluanga of Bawngkawn Venglai submitted an FIR stating that on the night of 18.8.2015 @ 9:30 pm -10:00pm some unknown miscreants had trespass into their compound by opening the main gate and sneak a look and stare through the glass window

while he and his wife were having sex and captured the scene with their mobile phone camera. Hence, Bawngkawn P.S C/No.196/2015 dt.19.8.2015 u/s 448/354'C/511/34 IPC was registered and duly investigated into.

2. During the course of investigation, the complainant was examined. The alleged accused Lalramnghaka(30) S/o Lalzawna of Ramthar North, Samuel Vanmalsawma(18) S/o K.Laldingluaia of Zemabawk Lungbial Veng and one Juvenile were apprehended and produced at P.S. Their mobile phone was seized in the presence of witnesses. The apprehended Juvenile was handed over to special Juvenile Police unit for further necessary action. The two alleged accused persons were examined and recorded their statements and as both the accused persons admitted their involvements in the alleged offence they were forwarded before the court.
3. On the same date i.e 19.8.2015, both the accused persons were released on bail with a bond of Rs.3000/- each with surety of the like amount.
4. Thereafter, one of the accused persons Samuel Vanlalmalsawma claims that he is a Juvenile and produced his Birth Certificate where in his Date of Birth was recorded as 25.11.1998 and he is only 16 years and 8 months at the time of commission of the alleged offence. And, therefore, he was forwarded to JJB, Aizawl District.
5. On 13.10.2015, copy of charge sheet with connected documents were furnished to the accused person and at the time of framing of charge the accused Lalramnghaka pleaded not guilty of the charged and claims for trial.
6. Therefore, in order to establish their case the prosecution examined two witnesses out of four witnesses listed in the charge sheet including the complainant and the case I.O but fails to examined two seizure witnesses who were dropped from the witness after issue of summons for four times.
7. **Therefore, Points for determination in this case should be-**
 - (i) *Whether the accused person had entered into the compound of the complainant with criminal intention or not?*
 - (ii) *Whether the accused person had peep and captures the image of the complainant and his wife through the window or not?*
 - (iii) *Whether the accused person is entitled to be acquitted or not?*

Findings and reasons thereof:-

8. **For determination as to whether the accused person had entered into the compound of the complainant with criminal intention or not?** The prosecution examined the complainant L.V Zorintluanga as Pw-1 and he had stated that on the night of 18.8.2015 some persons were entered into their compound and peeped through the window while they were making love with his wife and the accused Lalramnghaka was caught inside their compound while his friends were running out of the compound. Pw-1 exhibited the FIR as Ext P-1 and his signature on it as Ext P-1(a).
9. On cross examined by the Ld. Defence counsel Pw-1 stated that when he tries to catch the culprits he saw two persons running out of their compound. Pw-1 does not accept the suggestion that the accused Lalramnghaka was just sitting near the Barrel without knowing what is happening around him.
10. The case I.O K.Laltanpuia is examined as Pw-4 and stated that consequent upon the information received from the complainant he had immediately rushed to the P.O because the P.O is just a walking distance. When he examined the P.O, the accused Lalramnghaka was still hiding behind a Barrel and he had arrested him and seized his mobile phone. Pw-4 further deposed that during his investigation he had arrested the other two accused persons, who are Juveniles first went to the compound of the complainant and peeped through the window while they were having sex. Then they called their friend Lalramnghaka whom they called as u te-a. Then the three of them peeped and captured the images of the complainant and his wife. Pw-4 Exhibited Arrest Memo as Ext P-V, his signature on it as Ext P-V(a).
11. When he is cross examined by the Ld. Defence counsel Pw-4 stated that when he saw the accused person he was sitting behind a barrel and as he think that he could hide undetected behind the barrel he does not tries to run away from the spot.
12. In support of his case, the accused examined Samuel Vanmalsawma, one of the Juvenile who were apprehended in connection of this case as Dw-1 in which he had stated in his examination in chief that when he and his friend Lalremruata

went to visit their friend near the complainants residence, his friend heard a female screaming inside the house and his friend ran towards the accused Lalramnghaka who was present in his vehicle at the main road and asked the accused to borrow his phone without stating any reason. When Lalremruata comes back towards the house the accused also followed him and sat on the step which is nearby the said house.

13. On cross examined by the Ld. APP, Dw-1 admitted that when he called the accused Lalramnghaka, he had informed about what they had seen and also that he along with the accused Lalramnghaka and the other Juvenile do not have any permission to enter into the gate if the complainant.

14. On careful examination of available evidences on records for both the parties that on the night of 18.8.2015 the two Juvenile were entered into the compound of the complainant and when they heard the screaming of a female inside the house both the Juveniles peeped through the window and called the accused person who was sitting inside his vehicle at the main road and the same is firmly corroborated by the statement of accused u/s 313 Cr.PC which reads thus-

Q. It is also evident that while you had entered into the compound of the complainant the two co-accused persons are already inside the compound. Is it correct?

Ans: Yes, they were already there and they had called me through telephone call.

Q. It is also evident that when the complainant comes out of their house you are hiding behind the barrel?

Ans: Yes, I was hiding near the step and actually sitting at the step.

Q. And you are found and arrested inside the compound of the complainant?

Ans: Yes, it is correct.

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."

15. On the basis of Prosecution evidences as well as defence evidence as supported by the statement of the accused u/s 313 Cr.PC this court is of the considered opinion that when the two Juvenile comes to the compound of the complainant and heard the screaming of a female inside the house both the juvenile peeped through the window and when they saw the complainants were having sex they had informed the accused Lalramnghaka whom they called u-tea and the accused knows very well about what they had informed through telephone and he too entered into the compound of the complainant which need to go through the gate and afterwards he was arrested while he was hiding behind a barrel which is inside the compound. And therefore, this point is decided in favour of the prosecution.
16. **For determination of Point no.2 as to whether the accused person had peep and captured the image of the complainant and his wife through the window or not?** The complainant deposed as Pw-1 that while they were having sex with his wife inside their room they were peeped through the window and capture their image by using mobile phone and when they heard about that he tries to catch the culprits at once and arrested the accused who was hiding behind a barrel. When he is cross examined by the Ld. Defence counsel Pw-1 does not accept the suggestion that he does not know about what the other accused persons had done.
17. The case I.O stated in his deposition as Pw-4 that during his investigation the accused Lalramnghaka admitted his guilt and stated that he along with two other Juvenile had peeping through the window of the complainant while they were having sex and they had captures the images on his mobile phone. However, upon examination of the seized mobile phone, the images could not be procured as it was dark and no clear pictures could be seen. Pw-4 exhibited seizure memo as Ext P-IV and his signature on it as Ext P-IV(a). When he is cross examined by the Ld. defence counsel Pw-4 stated that no clear pictures could be seen from the mobile phone of the accused.
18. Before examining the available prosecution evidence let us look into the statement of accused u/s 313 Cr.PC which runs thus-

Q. It is also evident that the two co-accused were sneaking the bed room of the complainant through the window. What do you have to say?

Ans: I don't know.

Q. And when you had entered into the compound they were asking for your mobile phone for recording the scene inside the bed room. What do you have to say?

Ans: They were asking for my phone and I gave them.

Q. So, you had given your mobile phone and recorded the scene. Is it correct?

Ans: I don't know for what they were asking my phone.

19. On careful consideration of the prosecution evidences neither the complainant nor the case I.O deposed the accused person actually peeped and captures the scene by using his mobile phone. More over the I.O deposed that upon examination of the seized mobile phone, the images could not be procured as it was dark and no clear pictures could be seen and as such no images have been exhibited during the whole process of trial. In the meantime, the accused person strongly denied about his involvement in peeping and capturing the images of the complainant and his wife but admitted of giving his phone to the Juveniles for recording the scene.
20. Therefore, on the basis of facts and circumstances of the case as stated above this court comes to the conclusion that the prosecution fails to establish this point and decided in favour of the accused.
21. The determination of Point no.3 as to whether the accused person is entitled to be acquitted or not?
22. While considering about this point this court carefully perused available documents on records with Section 222 of Cr.PC which reads thus-

When offence proved included in offence charged

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorize a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

23. This court also taken reliance on the decision of the Hon'ble Supreme Court in the case of Sunil Kumar Vs State of Govt. of NCT of Delhi(2003(ii) Sec 367) which reads thus," In **Sunil Kumar V. State of Govt of NCT of Delhi (2003 (11) SCC 367)** the Hon'ble Apex Court has held that,"*9. This Court held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honored principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise."*
24. Therefore on the basis findings and reasons in the above Point no.2 the accused person is entitled to be acquitted from the charge u/s 354'C' /511/34 IPC on benefit of doubt and he is acquitted from the liability of the charge u/s 254'C'/511/34 IPC and he is set at liberty forthwith.
25. However, on the basis of finding in the above point no.1 and relevant section of law u/s 222 Cr.PC with the Hon'ble Supreme Court decisions as stated above this court finds the accused Lalramnghaka is guilty of committing criminal trespass u/s 447 of IPC and I hereby convict him.

26. On the basis of findings and reasons as stated above the accused person Lalramnghaka S/o Lalzawna of Ramthar North is acquitted from the liability of charge U/S 354'C/511/34 IPC on benefits of doubts and he is set at liberty forthwith.
27. However, on the basis of findings and reasons in the above point no.1 the accused person Lalramnghaka S/o Lalzawna of Ramthar North is found guilty of committing Criminal trespass U/S 447 IPC and I hereby convict him.
28. On 25.06.2018 the offender Lalramnghaka is produced before the court. The Ld APP and Ld Defence counsel are also present.
29. As already fixed hearing on the quantum of sentence is conducted in which the Ld Defence counsel submit prayer to invoke section 360 Cr.PC in order to release the offender on probation of good conduct on the ground that he is the first time offender. Whereas the Ld APP submit prayer to inflict sentence in accordance with law.
30. Considering the submission of both parties this court is not pleased to invoke 360 Cr.PC on the ground that the offender is 30 years of age at the time of commission of offence and he is deemed to know the consequence of his action. However, while considering the quantum of sentence this court also taken reliance 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 wherein the Hon'ble Supreme Court** has held that-

"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 (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."

31. Considering the nature and circumstances of the case in which the offence was committed with the Hon'ble Supreme Court observation as stated above the offender Lalramnghaka S/o Lalzawna of Ramthar North is sentence to undergo S.I for a period of 2 months and to pay a fine of Rs.200/- I.D/Si 5 days.
32. Bail and bonds stands cancelled by discharging liabilities of sureties.
33. Seized Mobile phone kept in Court Malkhana vide CMR No.212/2015 shall be returned to the rightful owner.
34. With this order the Crl.Tr.No.1593/2015 arising out of Bawngkawn P.S C/No.196/2015 is disposed of.
35. Given under my hand and seal of the court on this 25th June 2018.

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

Memo No. JMFC-1(A)/2018 : Dated Aizawl, the 25th June 2018.

Copy to :

1. District & Sessions Judge, Aizawl.
2. Accused Lalramnghaka S/o Lalzawna of Ramthar North through Mr. C.Malsawmtluanga, 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 Bawngkawn P.S.
8. Mr. C.Malsawmtluanga, Advocate.
9. A.P.P
10. Registration Section.
11. Guard file
12. Case record.

P E S H K E R

INDEX

A. List of Exhibits

1. For the Prosecution:

- (a) Ext. P-1 is the FIR.
- (b) Ext. P-I(a) is signature of PW No.1
- (c) Ext.P-II is the FIR u/s 154 Cr.PC.
- (d) Ext. P-II(a) is signature of PW No.1
- (e) Ext. P-III is the Final Form.
- (f) Ext. P-III(a) is signature of PW No. 4
- (g) Ext. P-IV is the Property Search & Seizure Form.
- (h) Ext. P-IV(a) is signature of PW No. 4
- (i) Ext. P-V is Arrest/Court Surrender Form.
- (j) Ext. P-V(a) is signature of PW No.4
- (k) Ext. P-VI is Arrest/Court Surrender Form.
- (l) Ext. P-VI(a) is signature of PW No.4
- (m) Ext.P-M-I is the Seized Article.

2. For the Accused : Samuel Vanmalsawma.

B. List of Witnesses

1. For the Prosecution

- (a) PW No.1 Zorintluanga, Bawngkawn Venglai, Aizawl.
- (b) PW No.4 K.Laltanpuia , Bawngkawn P.S

2. For the Accused : Samuel Vanmalsawma