

**IN THE COURT OF
THE JUDICIAL MAGISTRATE OF THE FIRST CLASS – II
AIZAWL, MIZORAM
CrI.Tr. No 1878/2013
Vide. BAWNGKAWN PS C.No 185/2013
U/S 457/380 IPC**

The State of Mizoram : Complainant

Versus

**Mr. Chinsianmuana (24) : Accused
S/o Haumunga (L)
R/o Tuirial, Aizawl**

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PROSECUTION WITNESSES

PW 1	:	Shri. F Lalramchhana, complainant.
PW 2	:	Smt. K Lalthianghlimi, Civilian witness
PW 3	:	Smt. R Lalthanzuali, Civilian witness
PW 4	:	Smt. R Zarzolianana, Civilian witness
PW 5	:	Shri. LR Tluanga, Civilian witness
PW 6	:	Smt. Niangbawihi, Civilian witness
PW 7	:	SI Ramnghahmawia, Case I/O
PW 8	:	SI Lalbuatsaiha, Case I/O
PW 9	:	SI K Lalthatlinga, Case I/O

DEFENCE WITNESS

Nil

LIST OF ENCLOSURE

- 1. Arrest memo**
- 2. Statement of accused**
- 3. Statement of complainant.**
- 4. Statement of witnesses**
- 5. Seizure memo**
- 6. Zimmanama.**

PRESENT

H. LALDUHSANGA, Judicial Magistrate First Class

For the Prosecution : Smt Lalrinsiami & Venus H Zomuankimi APP
For the Accused : Smt. Lalhriatpuui, Legal Aid Counsel
Judgment pronounced on : 22.09.2016
Sentence heard on : 21.10.2016
Judgment & Order delivered on : 04.11.2016

JUDGMENT & ORDER

Dt.04.11.2016

INTRODUCTION OF THE CASE

1. Accused Shri. Chinsianmuana (24) S/o Haumunga (L) R/o Tuirial, Aizawl was arrested on 02.11.2013 as he was alleged to have committed offences U/S 457/380 IPC. As the accused pleaded not guilty, the Court entered into evidence and convicted the accused. We shall now go for more detail here in below.

PROSECUTION STORY

2. The Prosecution story of the case in brief is that on 19.10.2013, a written FIR was lodged at Bawngkawn PS by Shri F Lalramchhana S/o KT Kaia (L) R/o Ramhlun Venglai, Aizawl to the effect that on the night of 19.10.2013 in between 6:10 PM – 8:15 PM, whilst attending to Church service some unknown persons entered into his house by breaking the window with iron grill (fencing) and stole away from steel almirah (1) 2 Nos of Gold necklace (2) 3 Nos of Gold bangle (3) a pair of Gold ear rings (4) Cash i.e Rs 1,500/- and (5) Computer Laptop HCL. The value of the stolen

items was Rs 2,56,500/- Hence, Bawngkawn PS C/No. 185/2013 U/S 457/380 IPC was registered and duly investigated into the case. SI K Lalthatlinga Bawngkawn PS investigated into the case. During the course of investigation, the Case I/O visited the place of occurrence, drew a sketch map and arrested the alleged accused Shri. Chinsianmuana (24) S/o Haumunga (L) R/o Tuirial, Aizawl. The Case I/O recovered 1 No of Gold Necklace and 2 Nos of Gold bangle from wife of the accused. The Case I/O thoroughly examined the accused and all other available witnesses. Hence, as the Case I/O found Prima – facie case well established against the accused U/S 457/380 IPC, he sent the case for trial to the Court.

DELIVERY OF DOCUMENTS

3. On 02.09.2014, a copy of chargesheet and other relevant documents were delivered to the accused. He was also informed of his right to engage a lawyer of his own choice or to avail free legal aid. Accordingly, the accused was provided Smt Lalhriatpuui, Legal Aid Counsel.

CHARGE CONSIDERATION

4. On 27.10.2014, the charges U/S 457/380 IPC were framed against the accused, read over and explained to him in the language known to him to which he pleaded not guilty and claimed to be tried.

The points for determination

1. Whether the accused dishonestly removed (1) 2 Nos of Gold necklace (2) 3 Nos of Gold bangle (3) a pairs of Gold ear rings (4) Cash i.e Rs 1,500/- and (5) Computer Laptop HCL from the house of the Complainant on 19.10.2013.
2. Whether the accused entered into the house of the Complainant by breaking the window with iron grill (fencing) at night.

PROSECUTION EVIDENCE

5. PW 1: F Lalramchhana, complainant deposed that on 19.10.2013, whilst all the family members attending Church Service at night between 6:10 PM to 8:15 PM, some unknown persons entered into their house by breaking the window and stole

away (1) 2 Nos of Gold necklace (2) 3 Nos of Gold bangle (3) a pairs of Gold ear rings (4) Cash i.e Rs 25,500/- and (5) Computer Laptop HCL from Almirah. Hence, he lodged a written FIR at Bawngkawn PS. On cross-examination, he admitted that he did not know that the accused burgled their house before the Police investigation. He came to know that the accused was the actual offender from the Police statements.

6. PW 8 SI Lalbuatsaiha CID (SB), Aizawl deposed that on 19.10.2013, a written FIR was lodged at Bawngkawn PS by one Shri F Lalramchhana of Ramhlun Venglai, Aizawl to the effect that on 19.10.2013, whilst all the family members attending Church Service at night between 6:10 PM to 8:15 PM, some unknown persons entered into their house by breaking the window and stole away (1) 2 Nos of Gold necklace (2) 3 Nos of Gold bangle (3) a pairs of Gold ear rings (4) Cash i.e Rs 1,500/- and (5) Computer Laptop HCL from Almirah. Hence, Bawngkawn PS C/No. 185/2013 Dt.10.10.2013 U/S 457/380 IPC was registered. During the course of investigation, he visited the place of occurrence and examined the Complainant. He also seized Chartin Bung, broken button and 3 Nos of chances punt left at the scene of crime. The accused was arrested and his statement was also recorded. However, before completing the investigation, he was transferred out and SI Lalthantlinga took up the case. He identified Exhibit P-II (a) as seizure memo, P IV as arrest memo and P II (a) and P IV (a) as his signatures. On his Cross-examination, he deposed that he arrested the accused and recovered nothing from the possession of the accused but Smt Niangbawihi, wife of the accused.
7. PW 9: SI K Lalthatlinga, Case I/O deposed that as per a written FIR lodged at Bawngkawn PS by Shri F Lalramchhana, a case U/S 457/380 IPC was registered and he investigated into the case. During the course of investigation, the place of occurrence was visited, the accused and the witnesses were also thoroughly examined. Hence, as he found Prima – facie case well established against the accused U/S 457/380 IPC, he sent the case for trial to the Court. He identified Exhibit P III as a charge-sheet, P III (a) as his signature, Exhibit M-I as the seized article. On his cross- examination he admitted that he did not take part in the present case other than contacting wife of the accused by name Smt Niangbawihi.
8. PW 2: Constable K Lalthianghlimi deposed that on 29.10.2013, while she was on duty, SI Ramnghahmawia and his Party arrested accused Chinsianmuana and his

wife Niangbawii who were produced at Aizawl PS. With R Laltlanzuali she conducted checking on Niangbawii. They recovered and seized 5 Nos of Bangle, 1 No of Necklace, 2 Nos of Finger Ring and an Ear Ring from wife of the accused namely Niangbawii. She identified Exhibit P I as seizure memo and P I (a) as her signature. On Cross-examination she deposed that Niangbawii told her that her accused husband gave her the seized articles.

9. PW 3: Constable R Laltlanzuali deposed that on 29.10.2013, while she was on duty, SI Ramnghahmawia and his Party arrested accused Chinsianmuana and his wife Niangbawii who were produced at Aizawl PS. With K Lalthianghlimi she conducted checking on Niangbawii. They recovered and seized 5 Nos of Bangle, 1 No of Necklace, 2 Nos of Finger Ring and an Ear Ring from wife of the accused namely Niangbawii. She identified Exhibit P I as seizure memo and P I (b) as her signature. On Cross-examination she admitted that no article was seized from the accused.
10. PW 4: Zarzoliana deposed that he was physically present when 'Chartin Bung' was seized by the Police and stood as a seizure witness. He identified Exhibit P II as seizure memo, P II (a) as her signature and M- I as the seized article. On Cross-examination he admitted that he did not know the actual offender in the present case.
11. PW 5: LR Tluanga deposed that he was physically present when 'Chartin Bung' was seized by the Police and stood as a seizure witness. He identified Exhibit P II as seizure memo, P II (b) as her signature and M- I as the seized article. On Cross-examination he admitted that he did not know the actual offender in the present case.
12. PW 6: Niangbawii deposed that she was wife of the accused. Whilst travelling to Champhai from Aizawl by Sumo. The Police stopped them and she was taken to Aizawl PS with the accused. Hence, at the Police Station, the Police recovered and seized 1 No of Gold Necklace, 2 Nos of Gold Bangle from her which were given to her by his accused husband. She did not know from where the accused got the said articles. On cross-examination she deposed that the seized articles were handed over to her by her accused husband while travelling at near Keifang village.

13. PW 7: L Ramnghahmawia deposed that whilst searching for accused Chinsianmuana in connection with another case, he came to know that accused Chinsianmuana was leaving Aizawl for Zokhawthar by Zokhawthar Sumo. Hence, they chased and arrested him. They were taken to Aizawl PS and 5 Nos of Bangle, 1 No of Necklace, 2 Nos of Finger Ring suspected to be Gold were recovered and seized. During interrogation, Smt Niangbawii, wife of the accused stated that all the seized articles except one bangle were handed over to her by her accused husband. Accused Chinsianmuana confessed that he stole away the said articles when he was staying at the house of his relative at Ramhlun Venglai, Aizawl. He then seized the said articles in presence of reliable witnesses. Later, the Complainant appeared and proved that 1 No of Necklace and 2 Nos of Bracelet were the items lost by their daughter. He identified Exhibit P I as seizure memo and P V as his signature.

EXAMINATION OF ACCUSED U/S 313 Cr.PC

14. The accused was examined u/s 313 of Cr.PC wherein he denied all the allegations. The accused produced no witness. The accused declined to enter into defence evidence.

ARGUMENT

15. I have heard the submissions of the Ld. APP for the prosecution and the Ld. Advocate for the accused. I have also perused the entire materials on record including all the depositions recorded in the Court.

16. The Ld. APP submitted *inter alia* the complainant had submitted that the jewellerys were stolen away from his house, recovered and seized from wife of the accused. Despite fair chance, the accused was unable to produce even single witness to prove his innocence. The Prosecution witnesses were acquainted with facts of the case. The evidences of the Prosecution witnesses corroborated the substances of accusation. The Prosecution had proved its case beyond reasonable doubt. It is the fact that there was no hole to escape from it. In fact, convicting the accused U/S 457/380 IPC was inevitable in the instant case.

17. On the other hand, the Ld. Counsel for the accused submitted *inter alia* the prosecution had failed to prove that the articles seized by the Police and the articles which were reported to be stolen away were exactly same. None saw the accused

dishonestly removing the seized articles from the said burgled building. None from the prosecution witnesses was certain about committing an offence of theft in the instant case. There was no direct evidence. There was no eye witness who had seen the accused entering into the said building at night and dishonestly removed the said articles. In fact, the instant case was full of doubt and suspicion when the Prosecution is to prove its case beyond reasonable doubt. Hence, the accused is liable to be acquitted of the offence and set at liberty immediately.

DECISIONS AND REASONS FOR DECISIONS

18. **Point No 1:-**Here, we have to determine as to whether the accused dishonestly removed (1) 2 Nos of Gold necklace (2) 3 Nos of Gold bangle (3) a pair of Gold ear rings (4) Cash i.e Rs 1,500/- and (5) Computer Laptop HCL from the house of the Complainant on 19.10.2013. In fact, there was no eye witness in the instant case. None saw the accused dishonestly removed (1) 2 Nos of Gold necklace (2) 3 Nos of Gold bangle (3) a pair of Gold ear rings (4) Cash i.e Rs 1,500/- and (5) Computer Laptop HCL from the house of the Complainant on 19.10.2013. Meanwhile, **Sec 114 of the Indian Evidence Act, 1872 says, "The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case".**
19. From the Prosecution evidence, it appeared that soon after a written FIR was lodged and the theft was committed, the articles which were same in kind with the reported stolen articles in FIR were recovered and seized from wife of the accused whilst travelling from Aizawl to Champhai. PW 5 Niangbawihl deposed that she was wife of the accused. Whilst travelling to Champhai from Aizawl by Sumo. The Police apprehended them and she was taken to Aizawl PS with the accused. Hence, at the Police Station, the Police recovered and seized 1 No of Gold Necklace, 2 Nos of Gold Bangle from her which were given to her by his accused husband. She did not know from where the accused got the said articles. PW 2 Constable K Lalthinglimi and PW 3 Constable R Lalthingzuali deposed that on 29.10.2013, they were recovered and seized 5 Nos of Bangle, 1 No of Necklace, 2 Nos of Finger Ring and a Ear Ring from wife of the accused namely Smt Niangbawii at Aizawl PS. On their Cross-examination, they deposed that no article was seized from the accused.

20. At the same the Complainant PW 1 F Lalramchhana, complainant deposed that on 19.10.2013, whilst all the family members were attending Church Service at night in between 6:10 PM to 8:15 PM, some unknown persons entered into their house by breaking the window and stole away (1) 2 Nos of Gold necklace (2) 3 Nos of Gold bngle (3) a pairs of Gold ear rings (4) Cash i.e Rs 25,500/- and (5) Computer Laptop HCL from Almirah. Hence, he lodged a written FIR at Bawngkawn PS. In fact, in the instant case, soon after the theft, the articles which were alleged to have been stolen were recovered and seized from wife of the accused. Although the said articles were not seized from the physical possession of the accused, but from his wife when they were together. Hence, it could safely be presumed that the accused was the actual offender in the present case. **In Deivendran A Vrs State of Tamil Nadu, 1998 Cr.LJ 814: AIR 1998 SC 2821 Our Hon'ble Supreme Court has observed that the court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.**

21. The depositions of the two seizure witnesses in respect of seizing the said articles were also not contradictory. There was no contradiction in their evidences. The evidences of seizure witnesses well corroborated the allegation. All other prosecution witnesses were acquainted with the facts of the case. There was no contradiction in the evidences of prosecution witnesses *inter se*. In the meanwhile, the defence had failed to enter into defence evidence even though sufficient opportunity was provided. Further, the accused was unable to prove that he had acquired the seized articles legally. Hence, I hereby decide Point No 1 in favour of the prosecution.

22. **Point No 2:-** In this point, we have to determine as to whether the accused entered into the house of the Complainant by breaking the window with iron grill (fencing). The prosecution had proved beyond reasonable doubt that the accused had stolen 2 Nos of Gold necklace (2) 3 Nos of Gold bngle (3) a pairs of Gold ear rings (4) Cash i.e Rs 1,500/- and (5) Computer Laptop HCL from the house of the Complainant on 19.10.2013. As the prosecution had proved beyond reasonable doubt that the accused had stolen away the said articles from the complainant's house, there was no doubt or suspicion that the accused had entered into the said building. Therefore, it is my considered view that the accused did enter into the building of the

complainant by breaking the window with iron grill (fencing) and committed theft there. Hence, this Point No 2 is also decided in favour of the Prosecution.

ORDER

23. Accused Chinsianmuana (24) S/o Haumunga (L) R/o Tuirial, Aizawl is hereby convicted U/S 457/380 IPC.

24. Fix: 04.11.2016 for sentence hearing

Sd/-

(H. LALDUHSANGA)

Magistrate 1st Class,

Aizawl, Mizoram.

Dated 4th November, 2016

25. As fixed by the Court, hearing on sentence is conducted today. Having heard the Ld APP for the State and the Ld. Counsel for the convict, I found no sufficient reasons to release the convict on Probation of good conduct. The Ld. Counsel for the Prosecution prayed for the maximum punishment whilst the Ld. Counsel for the convict prayed for the possible minimum punishment. **The Hon'ble Supreme Court has observed that –**

Undue sympathy in imposing inadequate sentence, does more harm to the justice system. Punishment should be such as matches social expectations for justice in dealing with criminals (BikramDorjee V State of WB AIR 2009 SC. 2539: (2009) 14 SCC. 233.

Undue leniency may undermine public confidence (State of MP V Sheik Shahid AIR 2009 SC. 2951: (2009) 12 SCC 715.

The punishment to be awarded for a crime must not be irrelevant. It should conform to and be consistent with the atrocity and brutality

with which the crime has been perpetrated and enormity of the crime creating Public abhorrence. It should respond to the Society's cry for justice in dealing with criminals (State of MP V Kashiram, AIR 2009 SC 1642: (2009) 4 SCC 26:2009 CrI. LJ 1530.

26. I have given my anxious consideration on this quantum of sentence. I have heard the convict as well. The accused stated that this Court had convicted him in connection with CrI.Tr. No 1354/2013 Vide. AIZAWL PS C. No 244/2013 U/S 457/380 IPC and he was sentenced U/S 457/380 IPC to undergo SI for 2 (two) years and 3 (three months) each and to pay a fine of Rs 2,000/- (Two thousand) each with IDSI for 30 (thirty) days each. The same is found to be correct. The accused was convicted by this Court on 24.08.16 as stated in the above. Hence, I do not hesitate in awarding lesser punishment as the accused had to undergo Simple Imprisonment consecutively in connection with the present case and the previous conviction.
27. Convict Shri. Chinsianmuana (24) S/o Haumunga (L) R/o Tuirial, Aizawl is hereby sentenced U/S 457/380 IPC to undergo Simple Imprisonment for a period of 6 (six) months each and pay a fine of Rs 2,000/- (two thousand). Failure to pay a fine would attract another Simple Imprisonment for a period of 20 (twenty) days each.
28. The sentence of Simple Imprisonment U/S 457/380 IPC shall run concurrently.
29. The period of detention already undergone by the accused shall be set-off.
30. All the seized articles shall be released to the rightful owner.
31. With the above order, the present case stands disposed of.

Given under my hand and Seal of this Court on this day of the 4th November, 2016 Anno Domini.

(H. LALDUHSANGA)

Magistrate 1st Class,
Aizawl, Mizoram.

Memo No.:

Dated Aizawl, the 4th November, 2016

Copy to:-

1. Shri. Chinsianmuana (24) S/o Haumunga (L) R/o Tuirial, Aizawl C/o the Special Superintendent, Central Jail, Aizawl
2. The District & Sessions Judge, Aizawl.
3. The Special Superintendent, Central Jail, Aizawl.
4. The Superintendent of Police, Aizawl: Aizawl District.
5. Asst Public Prosecutor, District Court, Aizawl.
6. Smt Lalhriatpuii, Advocate, District Court, Aizawl.
7. Case I/O SI K Lalthatlinga, Bawngkawn PS.
8. The Officer-in-charge, Bawngkawn PS.
9. The DSP (Prosecution), Aizawl.
10. i/c Judicial Section.
11. Case record.

PESHKAR