

IN THE COURT OF
THE JUDICIAL MAGISTRATE OF THE FIRST CLASS – II
AIZAWL, MIZORAM
Crl.Tr. No 368/2016
Vide. AIZAWL PS C. No 462/2015 Dt. 06.1.2015
U/S 356/379/34 IPC

The State of Mizoram	:	Prosecution
	Versus	
Shri Billy Malsawmtluanga (23) S/o Lalnunpeka R/o Salem Veng, Aizawl		Accused
Shri Edentharnghaka (38) S/o KT Thanga R/o Salem Veng, Aizawl		Accused

INDEX

PROSECUTION WITNESSES

PW 1	:	Shri. R Lalramngaia, complainant.
PW 2	:	SI Dian Singh Minhas, Case I/O

PROSECUTION EXHIBITS

Exhibit P - I	:	Charge-sheet
Exhibit P – I (a)	:	Signature of Case I/O
Exhibit P – II	:	Arrest Memo
Exhibit P – II (a)	:	Signature of Case I/O
Exhibit P – III	:	Arrest Memo
Exhibit P – III (a)	:	Signature of Case I/O

DEFENCE WITNESS

DW 1	:	Shri Billy Malsawmtluanga
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LIST OF ENCLOSURE

Arrest memo 2) Statement of accused 3) Statement of complainant

PRESENT

H. LALDUHSANGA, Judicial Magistrate First Class

For the Prosecution	:	Smt Lalthazuali Renthlei, APP
For the Accused	:	Shri VL Nghata Keivom & ors, Advocate
Judgment pronounced on	:	03.11.2017
Sentence heard on	:	16.11.2017
Judgment & Order delivered on	:	16.11.2017

No of Total Pages of Judgment & Order: 7 (seven)

INTRODUCTION OF THE CASE

1. Accused Shri Billy Malsawmtluanga (23) S/o Lalnunpeka R/o Salem Veng, Aizawl and accused Shri Edentharnghaka (38) S/o KT Thanga R/o Salem Veng, Aizawl were arrested as they were alleged to have committed offences U/S 356/379/34 IPC. *By invoking Sec 241 Cr.PC, accused Edentharnghaka had been convicted U/S 356/379 IPC on 29.03.2016 and sentenced to undergo SI for 6 (six) months each and pay a fine of Rs 1,000/- each. IDSI for 10 (ten) days each.* As accused Billy Malsawmtluanga pleaded not guilty, the Court entered into evidence.

PROSECUTION STORY

2. The Prosecution story of the case in brief is that on 06.10.2015, a written FIR was lodged at Aizawl PS by Shri R Lalramngaia, JC Security S/o R Malsawma R/o Ramhlun Vengthar, Aizawl to the effect that on 06.10.2015 at around 3:00 AM whilst performing his duty at Canteen Kual, Aizawl, two drunken boys attacked him and stole away his Mobile Handset HTC 526 v/o Rs 12,000/- and cash Rs 750/-. Hence, Aizawl PS C/No. 462/2015 U/S 356/379/34 IPC was registered and SI Dian Singh Minhas, Aizawl PS investigated into the case. During the course of investigation, the Case I/O visited the place of occurrence and arrested the alleged accused Shri Billy Malsawmtluanga (23) S/o Lalnunpeka R/o Salem Veng, Aizawl and accused Shri Edentharnghaka (38) S/o KT Thanga R/o Salem Veng, Aizawl. Hence, as the Case I/O found Prima – facie case well established against the accused U/S 356/379/34 IPC, he sent the case for trial to the Court.

DELIVERY OF DOCUMENTS

3. A copy of chargesheet and other relevant documents were delivered to the accused. They were also informed of their right to engage a lawyer of their own choice or to avail free legal aid.

CHARGE CONSIDERATION

4. The charges U/S 356/379/34 IPC were framed against the accused, read over and explained to them in the language known to them to which accused Billy Malsawmtluanga pleaded not guilty and claimed to be tried. At the sametime, co-accused Edentharnghaka (38) pleaded guilty by saying, "Min puhna hi a dik a ni. JC Security pakhat lo ding chu zingkarah ka hmu a. A phone hmanlai ka chhuhsaka ka

tlanchhe ta daih a ni". Accordingly, by invoking Sec 241 Cr.PC, accused Edentharnghaka had been convicted U/S 356/379 IPC and sentenced to undergo SI for 6 (six) months each and pay a fine of Rs 1,000/- each. IDSI for 10 (ten) days each. As accused Billy Malsawmtluanga pleaded not guilty, the Court entered into evidence.

The point for determination

Whether accused Billy Malsawmtluanga with accused Edentharnghaka with having common intention assaulted and used force to dishonestly remove on 06.10.2015 at around 3:00 at Canteen Kual, Aizawl a Mobile Handset HTC 526 v/o Rs 12,000/- and cash Rs 750/- belonged to complainant Shri R Lalramngaia.

DECISIONS AND REASONS FOR DECISIONS

5. No doubt, there were only two prosecution witnesses in the present case. Accused Billy Malsawmtluanga stood as Defence witness. 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. No written argument was received. In this case, we have to determine as to whether accused Billy Malsawmtluanga with accused Edentharnghaka with having common intention assaulted and used force to dishonestly remove on 06.10.2015 at around 3:00 at Canteen Kual, Aizawl a Mobile Handset HTC 526 v/o Rs 12,000/- and cash Rs 750/- belonged to complainant Shri R Lalramngaia. It would before moving further be repeated that accused Edentharnghaka had pleaded guilty by saying, "Min puhna hi a dik a ni. JC Security pakhat lo ding chu zingkarah ka hmu a. A phone hmanlai ka chhuhsaka ka tlanchhe ta daih a ni".
6. DW 1, accused Billy Malsawmtluanga deposed that he had no involvement in the present case. He saw accused Edentharnghaka asking the complainant's phone for use. As soon as the complainant gave it to him, he ran away. The complainant then suddenly apprehended him as he thought that they had common intention. Despite telling him that he had no involvement, the Complainant through other's cell phone called a Police station. The Police on arriving the spot, arrested him. In the meantime, PW 1, complainant Lalramngaia deposed that on 06.10.2015 at around 3:00 AM whilst performing his duty at Canteen Kual, Aizawl two drunken boys attacked him and stole away his Mobile Handset HTC 526 v/o Rs 12,000/- and cash Rs 750/-. Hence, he submitted an FIR at Aizawl PS. He identified Exhibit P IV as an

FIR submitted by him and Exhibit P IV (a) as his true signature. During cross-examination, he deposed that his phone and Rs 750 were not recovered. He deposed that he did not know as to whether the accused persons were the one who had stolen away his phone and money. The Case I/O (PW 2) deposed that he investigated into the case and found prima-facie case U/S 356/379/34 IPC against the accused persons. The Case I/O further deposed that whilst on duty at Aizawl PS on 06.10.2015 at around 04:00 AM, they received a telephonic information from the complainant stating that he was attacked by two drunken boys whilst performing his duty at Canteen Kual, Aizawl and his mobile handset HTC 526 and Rs 750 were stolen away by them. He then rushed to the spot and apprehended accused Billy Malsawmtluanga who was being caught by the complainant. Both the accused persons during interrogation confessed that they did attack the complainant and stole away his mobile handset and cash. Therefore, the Case I/O in the light of his investigation found that both the accused persons attacked the complainant on duty and accused Edentharnghaka ran away with the complainant's handset and Rs 750/-. However, before running away, co-accused Billy Malsawmtluang was caught by the complainant. Accused Billy Malsawmtluanga was formally arrested at Aizawl Police Station. Later, on being led by accused Billy Malsawmtluanga, accused Edentharnghaka was located and arrested on 09.10.2015. Accused Edentharnghaka lead them to the place where he had concealed his stolen mobile handset. However, it was not recovered as the place was road side. It might be that somebody had taken away.

7. From the evidence, there was neither doubt nor suspicion that the complainant was attacked by the two accused persons. The complainant deposed that he was attacked by the two drunken boys whilst on duty. Although accused Billy Malsawmtluanga vehemently argued that he had no involvement in the present case, it appeared that accused Billy Malsawmtluanga was on the spot at the time and place of incident. He was caught by the complainant on the spot. Accused Billy Malsawmtluanga himself during his cross-examination and U/S 313 Cr.PC admitted that he was caught by the complainant on the spot. On reaching the spot, the Case I/O also saw the complainant catching accused Billy Malsawmtluanga. Although accused Billy Malsawmtluanga vehemently argued that he had no involvement in the present case, on being led by him co-accused Edentharnghaka who had pleaded guilty of the offence was located and arrested. Hence, it appeared that accused

Malsawmtluanga was not the one who actually stole away the said mobile handset and Rs 750/-. It could however safely be presumed that the two accused persons had common intention in commission of the offences. *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"*. The criminal act, the common intention of the two accused persons and the participation of accused Billy Malsawmtluanga in the commission of the offence was found in the present case.

Sec 34 IPC Acts done by several persons in furtherance of common intention. – When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if were done by him alone.

8. As stated, there are only two prosecution witnesses in the present case i.e the Complainant and the Case I/O. The Complainant had deposed that he was assaulted by the two drunken boys and he caught accused Billy Malsawmtluanga when co-accused Edentharnghaka ran away. In corroboration, the Case I/O deposed that he rushed to the spot and saw the complainant catching accused Billy Malsawmtluanga. Again, the Case I/O whilst giving evidence in the Court identified that the accused was accused Billy Malsawmtluanga who was apprehended by the Complainant and taken to the Police Station by him. On considering the time and place of occurrence i.e around 3:00 AM, canteen Kual, Aizawl, a number of prosecution witnesses could not be expected. **The Supreme Court in Veer Singh & ors Vs State of UP (Criminal Appeal No (s) 256-257 of 2009 decided on 10.12.2013 Para 17)** *held that legal system has laid emphasis on value, weight and quantity of evidence rather than on quantity, multiplicity or plurality of witnesses. It is not the number of witnesses but quality of their evidence which is important as there is no requirement under the Law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighted and not counted. Its quality and not quantity which determines the adequacy of evidence as has been provided under Sec 134 of the Evidence Act. As a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable.*

The Supreme Court in Baldev Singh Vs State of Haryana (Criminal Appeal No. 167 of 2006 decided on 04.11.2015) held that evidence of Police witnesses cannot be discarded merely on the ground that they belong to Police force.

The Supreme Court has ruled that evidence given by the Investigating Officer, even when most witnesses turn hostile, could be relied upon by the trial Court to fasten guilt on accused. In Rameshbhai Mohanbhai Koli & ors Vs State of Gujarat (Criminal Appeal No 1146 of 2008 decided on 20.10.2010 Para 25), the Supreme Court says, "The Court has held in large number of cases that merely because the panch-witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the Investigating officer alone".

ORDER

9. Accused Billy Malsawmtluanga (23) S/o Lalnunpeka R/o Salem Veng, Aizawl is hereby convicted U/S 356/379/34 IPC.

10. Fix: 16.11.2017 for sentence hearing

Sd/-
(H. LALDUHSANGA)
Magistrate 1st Class,
Aizawl, Mizoram.

Dated 3rd November, 2017

11. 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. I have given my anxious consideration on this quantum of sentence. I have heard the convict as well. Hence, Convict Shri. Billy Malsawmtluanga (23) S/o Lalnunpeka R/o Salem Veng, Aizawl is hereby sentenced U/S 356/379/34 IPC to undergo Simple Imprisonment for a period of 6 (six) months each and pay a fine of Rs 1,000/- (one thousand) each. Failure to pay a fine would attract another Simple Imprisonment for a period of 10 (ten) days each. The medical certificate submitted showed that the convict was recently diagnosed with a serious disease requiring proper treatment. Hence, he is awarded lesser punishment.

12. The sentence of Simple Imprisonment U/S 356/379 IPC shall run concurrently.

13. The period of detention already undergone by the accused shall be set-off.

14. With the above order, the present case stands disposed of.

**Given under my hand and Seal of this Court on this day of the 16th
November, 2017 Anno Domini.**

(H. LALDUHSANGA)

Magistrate 1st Class,
Aizawl, Mizoram.

Memo No.:

Dated Aizawl, the 16th November,

2017

Copy to:-

1. Shri. Billy Malsawmtluanga (23) S/o Lalnunpeka R/o Salem Veng, Aizawl
C/o the Special Superintendent, Central Jail, Aizawl
2. Shri Edentharnghaka (38) S/o KT Thanga R/o Salem Veng, Aizawl
3. The District & Sessions Judge, Aizawl.
4. The Special Superintendent, Central Jail, Aizawl.
5. The Superintendent of Police, Aizawl: Aizawl District.
6. The DSP (Prosecution), Aizawl.
7. Smt Lalthazuali Renthlei, Asst Public Prosecutor, District Court, Aizawl.
8. Case I/O SI Dian Singh Minhas, Aizawl PS.
9. The Officer-in-charge, Aizawl PS.
10. i/c Judicial Section.
11. Case record.
12. Guard file

PESHKAR