

IN THE COURT OF JUDICIAL MAGISTRATE OF THE 1<sup>ST</sup> CLASS  
AIZAWL, MIZORAM

Crl. Tr. No. 43/2017  
Vide Aizawl PS Case No. 263/2016  
Dt.09.06.2016 U/S 454/380 IPC

State of Mizoram : Complainant

Versus

Shri. Lalhmingliana (36)  
S/o Thanzama (L)  
R/o Bungkawn Vengthar, Aizawl  
Aizawl District

: Accused

**PRESENT**  
**H. LALDUHSANGA**  
**Judicial Magistrate 1<sup>st</sup> Class**

For the Prosecution	: Smt Lalthazuali Renthlei & Venus H Zomuankimi, APP
For accused	: Smt Lalramnghaki, Legal aid Counsel
Judgment pronounced on	: 28.06.2018
Judgment & order delivered on	: 28.06.2018

PROSECUTION WITNESSES

PW 1	:	Smt. Hmingthanpuii, complainant.
PW 2	:	Shri. Tajul Hussein, prosecution witness.
PW 3	:	Shri. SI MS Dawngliana I/O
PW 4	:	Smt. ASI Lalrinpuii Pachuau, Case I/O

LIST OF ENCLOSURES

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

DEFENCE WITNESSES

NIL

JUDGMENT & ORDER

Dated 28.06.2018

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1. The prosecution story of the case in brief is that on 09.06.2016, a written FIR was lodged by Smt Hmingthanpuii of Zarkawt, Aizawl stating that some unknown miscreants had entered into her house by breaking the main door lock and stole away Rupees 50,000/- from Almirah. Case IO ASI Lalrinpuii Pachuau, Aizawl PS investigated into the case and found Prima facie case U/S 454/380 of IPC against accused Lalhmingliana (36) S/o Thanzama (L) R/o Bungkawn Vengthar, Aizawl and sent the case to the Court for trial.

2. As per requirement of Sec 207 Cr.PC, a copy of complaint sheet (charge-sheet) and other relevant documents were at free of cost delivered to the accused. The accused was provided free legal aid counsel.
3. Having heard both side of the case and perused all documents on record, the charge U/S 454/380 IPC was framed against the accused as Prima-facie case was found well established against him. I explained the substance of accusation to the accused in the language known to him. I also explained to the accused that to plead guilty or plead not guilty of the offence was at his choice. There was no compulsion to either plead guilty or plead not guilty of the offence. I also informed him of the possible consequences of plea of guilt and plea of not guilty of the offence. Hence, the accused pleaded not guilty and claimed to be tried.

#### DECISION AND REASONS FOR DECISION

4. In the present case, we shall determine as to whether accused Lalhmingliana by breaking the door lock entered into the complainant's house and dishonestly removed Rupees 50,000/-. In fact, out of four cited prosecution witnesses, only Case I/O deposed evidence in the Court. The Case I/O deposed that she investigated into the case and found Prima-facie case against the accused U/S 454/380 IPC. The Case I/O PW 4 deposed that the previous Case I/O MS Dawngliana had visited the place of occurrence and examined the witnesses. During interrogation, the accused admitted his guilt before the previous Case I/O. At the same time, despite receiving summons for evidence, the three prosecution witnesses (PW 1, 2 and 3) did not appear before the Court for evidence and were dropped from the prosecution witnesses. Perused the case record and found that PW 1 and 2 were summoned for evidence for three times and PW 3 was four times. The accused said that he had nothing to make confession U/S 164 Cr.PC before the First Class Magistrate. He totally denied the allegation U/S 313 Cr.PC as well and said that he was falsely alleged and charged in the instant case. When the above is the matter and when the accused vehemently argued and denied the allegations throughout trial of the case, only the Case I/O (PW 4) evidence was considered not quite strong enough. Accordingly, benefit of doubt is given to the accused and concluded that the Prosecution failed to bring home present case beyond the shadow of all reasonable doubts.

**"13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right.** The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused

under our criminal jurisprudence. **The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court.....** 14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. *(Supreme Court of India In CRIMINAL APPEAL NO. 984 OF 2007 Govindaraju @ Govinda (Appellant) Versus State by Srirampuram P.S. & Anr. (Respondents), Swatanter Kumar, J. March 15, 2012).*

“Prosecution is to prove its case beyond all reasonable doubt, if the data leaves the mind of the Judge in equilibrium, the decision must against the prosecution and the accused must be acquitted”. **Harish J. Mal Vs State 1982 Cr. LJ 2123**

### **ORDER**

5. Accused Lalhmingliana (36) S/o Thanzama (L) R/o Bungkawn Vengthar, Aizawl is hereby acquitted of the offence on benefit of doubt and set at liberty.
6. All the seized articles (if any) shall be released to the rightful owner.
7. Bail bond shall be cancelled and sureties shall also be discharged from all liabilities.
8. With the above order, the instant case stands disposed of.

**Given under my hand and Seal of this Court on this day of the 28<sup>th</sup> June, 2018 Anno Domini.**

**(H. LALDUHSANGA)  
Magistrate 1<sup>st</sup> Class,  
Aizawl: Aizawl, Mizoram**

Memo No.....:Dated Aizawl, the 28<sup>th</sup> June, 2018

Copy to:-

1. Shri Lalhmingliana (36) S/o Thanzama (L) R/o Bungkawn Vengthar, Aizawl C/o The Special Superintendent, Central Jail, Aizawl.
2. The Special Superintendent, Central Jail, Aizawl.
3. The Superintendent of Police, Aizawl.
4. The DSP, Prosecution, Aizawl.
5. Asst. Public Prosecutor, District Court, Aizawl.
6. The Case I/O ASI Lalrinpuii Pachuau through the Officer-in-charge, Aizawl Police Station.
7. The Officer-in-charge, Aizawl PS.
8. Smt. Lalramnghaki, Legal Aid Counsel
9. I/c Judicial Section.
10. Case record.

**PESHKAR**