

IN THE COURT OF
THE JUDICIAL MAGISTRATE OF THE FIRST CLASS
AIZAWL, MIZORAM
CrI.Tr. No 2501/2011
Vide. SAIRANG PS C. No 47/2011
U/S 379 IPC

The State of Mizoram : Prosecution

Versus

Mr. Lalfakawma (24) : Accused
S/o Zahlira
R/o Venglai, Sairang

Mr. Lalmuanawma (23) : Accused
S/o Kaptluanga (L)
R/o NEC Mualkhang

Mr. Laldingliana (20) : Accused
S/o Zahlira
R/o Venglai, Sairang

PRESENT

H. LALDUHSANGA,
Judicial Magistrate First Class

For the Prosecution : Smt Lalthazuali Renthlei & Smt Lalremruati Pachuau APP

For the Accused : Shri F Lalzuiliana, Legal Aid Counsel

Judgment & Order delivered on : 18.05.2018

No. of Total pages of Judgment & Order: 6 (six)

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PROSECUTION WITNESSES

PW 1	:	Smt. Z Laltanpuui, Complainant
PW 2	:	ASI Rohmingthanga, Enquiry Officer
PW 3	:	SI Laldanthanga, previous Case I/O
PW 4	:	SI CB Mishra Case I/O

PROSECUTION EXHIBITS

1. Exhibit P – I : Arrest memo
2. Exhibit P – I (a) : Signature of previous Case I/O (PW 2)
3. Exhibit P – II : Arrest memo
4. Exhibit P – II (a) : Signature of previous Case I/O (PW 2)
5. Exhibit P – III : Arrest memo
6. Exhibit P – III (a) : Signature of previous Case I/O (PW 3)
7. Exhibit P – IV : Enquiry Report
8. Exhibit P – IV (a) : Signature of Enquiry officer (PW 3)

DEFENCE WITNESSES

NIL

DEFENCE EXHIBITS

NIL

JUDGMENT

Dt. 18.05.2018

1. The Prosecution story of the case in brief is that in pursuance of FIR submitted by Smt Z Laltanpuui of Tuikual South, Aizawl, on 05.11.2011 ASI Rohmingthanga, Sairang PS an Enquiry officer submitted an Enquiry Report at Sairang PS. Hence, Case I/O SI CB Sharma investigated into the case and found that Mr. Lalfakawma (24) S/o Zahlira R/o Venglai, Sairang, Mr. Lalmuanawma (23) S/o Kaptluanga (L) R/o NEC Mualkhang and Mr. Laldingliana (20) S/o Zahlira R/o Venglai, Sairang stole away some Teak Timbers from Teak Plantation located at NEC, Kawnpui Road (NH 54) belonged to the informant. Hence, as the Case I/O found Prima – facie case well established against all the accused persons U/S 379/34 IPC, he sent the case for trial to the Court.
2. A copy of chargesheet and other relevant documents were delivered to the accused persons. The charge U/S 379 IPC was framed against the accused, read over and

explained to them in the language known to them to which they pleaded not guilty and claimed to be tried.

The point for determination

1. Whether all the accused persons dishonestly removed some Teak Timbers from Teak Plantation located at NEC, Kawnpui Road NH 54 belonged to the informant.

DECISION AND REASONS FOR DECISIONS

3. **The Hon'ble 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 quality 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.
4. It is well known that admittance of allegation U/S 313 Cr. PC alone is not a ground of conviction. Although the above, it would be stated that when all the accused persons were examined U/S 313 Cr.PC they stated that they felled five Nos of Teak Timbers from Teak Plantation located at NEC, Kawnpui Road (NH 54). PW 3 SI Laldanthlanga deposed that he investigated into the present case at the initial stage, arrested and examined all the accused persons. However, due to transfer of his place of posting, he was unable to complete his investigation and SI CB Mishra continued the investigation. PW 2 ASI Rohmingthanga deposed that he was an Enquiry officer in the present case. All the accused persons during interrogation admitted their guilt. Hence, he submitted an Enquiry Report to the O.C Sairang PS. He did visit the spot. He prepared the seizure list but not available on record.
5. As seen in the above, out of the four Prosecution witnesses, only two witnesses adduced evidence. The complainant Smt Z Laltanpuui (PW 1) unfortunately demised before giving her evidence in the Court. The Case I/O CB Mishra was dropped from the Prosecution witness as he had failed to turn up before the Court despite sufficient opportunity. It is reported that he had been transferred to outside

Mizoram. Despite the above, this Court drew inspiration from the following cases decided by the Hon'ble Supreme Court.

In Ram Gulam Chaudhury and ors Vs State of Bihar on 25th September, 2001, the Hon'ble Supreme Court *decided that the non-examination of the Investigating Officer has not lead to any prejudice to the Appellants. We, therefore, see no substance in this submission.*

In Behari Prasad Vs State of Bihar [1996] 2 SCC 317, the Hon'ble Supreme Court *has held that for non-examination of the Investigating Officer the prosecution case need not fail. This Court has held that it would not be correct to contend that if the Investigating officer is not examined the entire case would fail to the ground as the accused were deprived of the opportunity to effectively cross-examine the witnesses and bring out contradictions. It was held that the case of prejudice likely to be suffered must depend upon facts of each case and no universal strait-jacket formula should be laid down that non-examination of Investigating officer per se vitiate the criminal trial.*

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

In Ambika Prasad Vs State (Delhi Admn.) [2000] 2 SCC 646, *it was held that the criminal trial is meant for doing justice not just to the accused but also of the victim and the society so that law and order is maintained. It was held that a Judge does not preside over criminal trial merely to see that no innocent man is punished. It was held that a Judge presides over criminal trial also to see that guilty man does not escape. It was held that both are public duties which the Judge has to perform. It was held that it was unfortunate that the Investigating officer had not stepped into the witness box without any justifiable ground. It was held that this conduct of the Investigating officer and other hostile witnesses could not be a ground for discarding evidence.*

6. In fact, the complainant had demised before giving her evidence in the Court and the reason for not giving evidence by the Investigation officer is also considered to be reasonable. Furthermore, the complainant and the Investigating officer are not as important as an eye witness. Hence, for all the reasons stated in above and in the

light of the cases decided by the Hon'ble Supreme Court, the present case is decided in favour of the Prosecution.

7. Hearing on sentence is conducted. Having heard the Ld APP for the State and the Ld. Counsel for the convict, this Court 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. However, no past criminal record is found and on considering gravity of the offence, this Court does not hesitate awarding lesser punishment.

ORDER

8. Accused Mr. Lalfakawma (24) S/o Zahlira R/o Venglai, Sairang Mr. Lalmuanawma (23) S/o Kaptluanga (L) R/o NEC Mualkhang and Mr. Laldingliana (20) S/o Zahlira R/o Venglai, Sairang are hereby convicted U/S 379 IPC to pay a fine of Rs 10,000/- (Ten thousand) each. IDSI for 3 (three) months each.
9. All the seized articles shall be released to the rightful owner.
10. With the above order, the present case stands disposed of.

Given under my hand and Seal of this Court on this day of the 18th May, 2018 Anno Domini.

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

Memo No.:

Dated Aizawl, the 18th May, 2018

Copy to:-

1. Shri. Lalfakawma (24) S/o Zahlira R/o Venglai, Sairang
2. Shri Lalmuanawma (23) S/o Kaptluanga (L) R/o NEC Mualkhang
3. Shri Laldingliana (20) S/o Zahlira R/o Venglai, Sairang
4. The District & Sessions Judge, Aizawl.
5. The Superintendent of Police, Aizawl: Aizawl District.
6. The DSP (Prosecution), Aizawl.

7. The Special Superintendent, Central Jail, Aizawl.
8. Asst Public Prosecutor, District Court, Aizawl.
9. Case I/O SI CB Sharma, Sairang PS through the Officer In-Charge, Sairang PS.
10. The Officer-in-charge, Sairang PS.
11. i/c Judicial Section.
12. Case record.
13. Guard file

PESHKAR