

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE 1ST CLASS
AIZAWL, MIZORAM**

Crl. Tr. No. 365/2014

Vide Bawngkawn PS Case No.44/2014 Dt. 12.03.2014

U/S 279/304(A)/337 IPC.

State of Mizoram	:	Complainant
	Versus	
Shri Lalduhawma		
S/o Lalpianthanga		
R/o Mualmam.	:	Accused

PRESENT

H. LALDUHSANGA Judicial Magistrate First Class

For the accused	: Shri F. Lalzuiliana, Legal Aid Counsel
For the Prosecution	: Smt Lalthazuali Renthlei, APP
Judgment pronounced	: 16.11.2018
Sentence	: 19.11.2018

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PROSECUTION WITNESSES

PW 1	:	SI Lalbuatsaiha Complainant.
PW 2	:	SI Lalmuankima Case I/O
PW 3	:	Medical Officer, Thingsulthliah PHC
PW 4	:	Vanlalthnema
PW 5	:	Ngurliankhuma
PW 6	:	Zairemthanga
PW 7	:	LoveJohn
PW 8	:	Ngurrokimi
PW 9	:	Varhlunmawii
PW 10	:	Rothianguhlimi
PW 11	:	Lalhrilkimi
PW 12	:	Laltlanpari
PW 13	:	B Remruata
PW 14	:	Vanlalthara

PROSECUTION EXHIBITS

1. Exhibit P – I : Enquiry Report
2. Exhibit P – I (a) : Signature of Case I/O
3. Exhibit P – II : Seizure Memo
4. Exhibit P – II (a) : Signature of Case I/O
5. Exhibit P – II (b) : Signature of witness
6. Exhibit P – II © : Signature of witness
7. Exhibit P - III : Inquest Report
8. Exhibit P – III (a) : Signature of Case I/O
9. Exhibit P IV : chargesheet
10. Exhibit P IV (a) : Signature of Case I/O
11. Exhibit P V : Arrest Memo
12. Exhibit P V (a) : Signature of Case I/O
13. Exhibit P – VI : Postmortem Report

LIST OF DEFENCE WITNESS

NIL

1. The prosecution story of the case in brief is that on 12.03.2014 a written report was submitted by SI Lalbuatsaiha of Bawngkawn PS stating that on 01.03.2014, one Tata Sumo bearing Registration No. MZ-05-1920 owned by Shri Zothanpuia S/o Lalthansanga (L) of Thingdawl driven by Shri Lalduhawma (24) S/o Lalpianthanga of Mualmam holder of Driving Licence No. MZ05-20100009538 carrying ten passengers met an accident at Seling road just before reaching Tuikhurhlu at around 7:00 PM – 8:00PM while proceeding towards Sesawng/Mualmam. As a result, one of the passengers Smt Lalchhari (61) D/o Thantluanga of Sesawng Vengthar died at the spot and all other occupants including the driver sustained injury and were brought to Civil Hospital, Aizawl and PHC, Thingsulthliah for medical treatment. Hence, Bawngkawn PS Case No.44/14 dt.12.03.2014 U/s 279/304(A)/337 IPC was registered and SI Lalmuankima duly investigated into the case. During investigation, the place of occurrence was visited. An inquest was conducted over the dead body of Smt Lalchhari (61) D/o Thantluanga of Sesawng Vengthar and the dead body was forwarded to Medical Officer, Thingsulthliah PHC. Thereafter, the dead body was handed over to her relatives. The Medical Report of the injured persons were received from Medical Officer. According to Medical Report, all the occupants got simple injury except Smt Lalchhari D/o Thantluanga who died at the spot due to this accident. The PME Report in respect of Smt Lalchhari (61) D/o Thantluanga was also received from Medical Officer according to which the cause of death was due to intracranial Hemorrhage because of head injury leading to shock and death. During investigation, the accident vehicle, documents of the vehicle and driving license of accused Lalduhawma (24) S/o Lalpianthanga were seized in presence of witnesses. The witnesses namely Shri B. Remruata (62) S/o B. Kapthanga, Sesawng Field Veng and Shri Vanlalthara (42) D/o Dokhuma of Sesawng Venglai were carefully examined and recorded their statements. The seized articles were kept at PS Malkhana vide MR No. 70/2014 and left on Zimmanama to the rightful owner. The Requisition of MVI to inspect the accident vehicle at the spot was sent to DTO, Aizawl and the MVI Report was received from DTO (A). According to MVI Report, all the controlling system like brake, steering, accelerator and clutch were serviceable at the time of inspection and all the documents including Driving License in respect of Lalduhawma were valid while the accident occurred. Because of the accident, parts of the vehicle such as wind shield, RHS front and rear doors, LHS front and rear windows, grill parts of the

body and bonnet were damaged. During investigation, the accused person Shri Lalduhawma (24) S/o Lalpianthanga of Mualmam was arrested in presence of witnesses and recorded his statement. The examined witnesses stated that on the night of 01.03.2014 while proceeding towards Sesawng, they met four heavy vehicles not putting the light in a low beam at near Tuikhurhlu which blurred the driver's vision and fell down into a deep ditch around 50 feet. The driver did not stop the vehicle and they ran off the road and fell down into a deep ditch around 50 Feet.

2. As per requirements of Sec 207 and 303 Cr.PC, a copy of charge-sheet and other relevant documents were delivered to the accused. He was also informed his right to engage a lawyer of his own choice or avail free legal aid. Accordingly, the accused was provided Shri F Lalzuiliana, Legal Aid Counsel. The Ld. Predecessor Court has U/S 279/304 A/337 IPC framed the charge against the accused as *Prima-facie* case was found well established against him. The charge was read over and explained to the accused in the language known to him to which he pleaded not guilty and claimed to be tried.
3. *Point for determination:* Whether accused Shri Lalduhawma (24) S/o Lalpianthanga of Mualmam on 01.03.2014 drove the vehicle so rashly or negligently which caused to the death of one of his passengers Smt Lalchhari (61) and injury to other passengers of the vehicle.
4. *Now, to the decision and reasons for decision.* We shall have to look into the three ingredients i.e (i) *As to whether the accident actually took place* (ii) *As to whether the accident took place due to rash and negligent driving* (iii) *As to whether accused Shri Lalduhawma was the person driving the accident vehicle on 01.03.2014.* The accused did not deny that the accident occurred, he was the one driving the accident vehicle on that night and one of his passengers died on the spot and others got injured. Hence, it is only necessary to consider as to whether the accident took place due to rash or negligent driving on the part of the accused. The prosecution examined as many as five witnesses. Under section 313 Cr.PC, the accused denied the entire incriminating evidences. I have heard the Ld APP and the Ld. Counsel for the accused during Oral argument. No written argument was received. None adduced evidence for the accused. The accused himself was not made a Defence witness.

5. PW 1 Enquiry Officer identified the accused in the Court and deposed that he conducted Inquiry. He believed that the accident occurred due to driving the vehicle at high speed by the accused. PW 6 also identified the accused in the Court and deposed that on 01.03.2014, he was travelling in the Sesawng/Mualmam Sumo Service MZ-05-1920 driven by the accused with other passengers. It was already dark and about 07:00 PM when they reached Tuirial village. Just before reaching Tuikhurhlu, the four heavy vehicles were coming from the opposite direction and the accused did not stop his driving vehicle. Just before the accident vehicle driver passed through the last heavy vehicle coming from the opposite direction, the accident occurred. He sustained injury on his left arm and hospitalized for long time. On cross-examination, he deposed that he believed that the accident occurred due to the said four vehicles coming from the opposite direction without putting the light in low beam. PW 7 also deposed that on 01.03.2014 he was travelling in the accident vehicle Sumo Service MZ-05-1920 driven by the accused. It was about 07:00 PM when they reached Tuirial village. Just before reaching Tuikhurhlu, the heavy vehicles were coming from the opposite direction and the accident occurred. They ran off the road and fell down into a deep ditch. He sustained injury on his back. PW 13 and PW 14 deposed that the accident took place in between 07-08 Pm on 01.03.2014 near Tuikhurhlu. One passenger Smt Lalchhari of Sesawng succumbed to her injury on the spot. They were present at the time of making seizure of driving License and other motor documents by the Police and stood as seizure witnesses. On cross-examination, they admitted that they did not know the reasons of the accident.
6. It is well known that evidence is not to be counted but weighted. The Case I/O and some other civilian witnesses adduced no evidence. However, the Case I/O is not as important as an eye-witness. The two eye-witnesses who were the passengers of the accident vehicle adduced evidence in the Court. As the accused did not deny that the accident occurred, he was the one driving the accident vehicle on that night and one of his passengers Smt Lalchhari (61) died on the spot and others got injured, the non-examination of the Medical Doctor conducting Post-Mortem Report is considered to have not caused prejudice to the accused.

The Hon'ble Supreme Court in Ram Swaroop Vs State (Govt of NCT of Delhi), (2013) 14 SCC 235 *has held that there is no reason to hold that non-examination of the independent witness affect the prosecution case and, hence we unhesitatingly repel the submission advanced by the learned counsel for the appellant.*

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.*

7. No doubt, the words "*rash*" and "*negligence*" are not defined in the Indian Penal Code. As per Blacks Law Dictionary, Eight Edition, the word "*negligent*" is *characterized by a person's failure to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstances.* Firstly, it is the considered view of this Court that if the driver of the accident vehicle drove his vehicle so rashly or negligently, he might have collided with the said heavy vehicles coming from the opposite direction. Further, the driver was not found to have driven his vehicle on the wrong side of the road. Also appeared that he did not get drunk. An over-taking which was one of the most common factors of motor road accident was not found on the part of the accused on that night.
8. On the other hand, as the accused had not denied that the accident occurred, he was the one driving the accident vehicle on that night, one of his passengers Smt Lalchhari (61) died on the spot and others injured, it is only necessary to consider as to whether the accident took place due to rash or negligent driving on the part of the accused. The accused defended that there was no foul, negligence, carelessness on his part. He did not get drunk. Due to the light reflection from the four heavy vehicles failing to put the vehicle light in low beam, he could not see clearly and properly the road and the accident occurred. In corroboration, PW 6 who was one of the passengers of the accident vehicle on that night also deposed that the four heavy vehicles came from the opposite direction, just before the accident driver passed through the last vehicle, the accident occurred. He believed that the accident occurred due to the said four heavy vehicles coming from the opposite direction

without putting the vehicle light in low beam. In the meanwhile, PW 1 Enquiry Officer deposed that he inquired into the matter and believed that the accident occurred due to driving the vehicle at high speed by the accused. Meanwhile, the accused contended that he did not drive his vehicle at high speed when the accident took place. *This Court would hold that driving the vehicle at very high speed by itself is not rash or negligent driving. There could be a man driving the vehicle at very low speed but recklessly and negligently which could fall within Sec 279 IPC.* It would be more proper and appropriate to examine the rash and negligent driving in the lights of the facts and the circumstances of the case. ***The Hon'ble Supreme Court in the case of Ravi Kapur Vs State of Rajasthan (2012) 9 SCC 284*** has held that it may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at low speed but recklessly and negligently, it would amount to 'rash and negligent driving'. Recently, ***the Hon'ble Karnataka High Court in Moulasab Vs State of Karnataka on 11th June, 2018*** has said that by the word 'rash driving' it cannot be automatically imagined that the vehicle alleged to be rash in its driving should also necessarily be coupled with high speed. The Hon'ble Karnataka High Court referred to the above cited Hon'ble Apex Court decided case in this case.

9. This Court takes the view that the accused as being a driver carried the precious lives of all his passengers who paid for their travelling fare as well. As such, he should have driven carefully and taken careful precautions. PW 6 an eye-witness who was one of the accident vehicle passengers deposed that just before the accident driver passed through the last vehicle coming from the opposite direction, the accident occurred. The accused also said that the four heavy vehicles came from the opposite direction. If so, under such situation and circumstance, when the accident driver saw the first heavy vehicle coming from the opposite direction without putting the vehicle light in low beam, he should have taken careful precautions and should have stopped his moving vehicle on the road. No doubt, the accused had few seconds to have done the same. In fact, these four heavy vehicles did not hit the accident vehicle. As per Inspection Report, no mechanical failure on the vehicle was found. All motor control system such as clutch, brake, steering, accelerator etc were found serviceable at the time of accident as per Report. If the road was too narrow, the heavy vehicles coming from the opposite direction might have hit the accident vehicle, or all drivers of the four vehicles including the accident driver might have stopped their moving vehicles so as to avoid road accident. It thus appeared that the accused was not careful enough. Being a driver of Public career, he is expected to be

a professional driver and whilst carrying passengers, he must be extra careful. It also appeared that the place of occurrence was not found to be *blind curve*. There was *no sudden appearance* of the four heavy vehicles coming from the opposite direction. As being a driver, one must expect always something unexpected from the opposite direction. On the road, other drivers could do something unexpected and one should prepare to avoid it. It is necessary to anticipate that other drivers might do something stupid.

10. The accused further defended that the road was narrow. He added that as a small portion of *left* side of the road surface was damaged, they ran off the road and fell down into a deep ditch around 50 Feet. However, this Court considers that anything on the road can cause road accident. A pedestrian, animals, logs, stones oil etc can cause motor accident. Some mistakes are also to be expected from others and we should be extra careful. Hence, defensive driving is *sine quo non* for safe driving. It is commonly known that *left* side of the road could not be seen well as *right* for the driver. One must be extra careful on the left side of the road. A gap between the vehicle and the road should always be maintained. Hence, on considering facts and circumstances of the case, it is considered that the accident driver had failed to take careful precautions and in lack of paying attention on/to the road and no due care was found on his part. Again, ***the Hon'ble Karnataka High Court in Moulasab Vs State of Karnataka decided on 11th June, 2018*** further observed that *failure to exercise the required care and caution expected to be taken by a driver in a circumstance would constitute a negligent driving. . Merely because there was said to be few speed breakers on the road and traffic signal near the spot of the accident by itself cannot be deducted that there was no rash and negligent driving on the part of the driver of the offending vehicle.* Likewise, in the present case, one of the stands taken by the accused that as a small portion of left side of the road surface was damaged, they ran off the road and fell down into a deep ditch around 50 Feet would not be sufficient reason to save and protect the accused from the allegation of criminal liability when one precious life was lost and many others got injured due to the accident. In addition to the above, it would be repeated that it appeared that the four heavy vehicles came from the opposite direction without putting the vehicle light in low beam and just before passing the last vehicle the accident vehicle ran off the road and fell down into a deep ditch around 50 feet. In such situation, accident is not completely unavoidable. The accident vehicle driver could have taken careful precautions and could have stopped his moving vehicle. *In the present case, the circumstances demanded the accident vehicle driver to stop his driving vehicle when he saw the first or second*

heavy vehicle coming from the opposite direction without putting the vehicle light in low beam on that narrow road.

The Hon'ble Supreme Court in the case of Ravi Kapur Vs State of Rajasthan (2012) 9 SCC 284 whilst dealing as to what constitutes a negligence relied upon *Halsbury's Laws of England (4th Edition) vol. 34, para 1 (p.3)* and has observed as below:

General Principles of the law of negligence –

Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand.... It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all..... Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property.

11. The *lack of defensive driving* and the *lack of paying attention on/to the road* on the part of the accident driver are *ratio decidendi* in favour of the prosecution in the present case.
12. Heard both side on sentences. The Ld. APP for the state prayed for the maximum punishment while the Ld. Counsel for the accused prayed the Court for the possible minimum punishment. Having heard both side and perused the documents on record, it is found that the accused is a first time offender having no past criminal record. All the charge sections fall within bailable sections of Law and summons case. However, due to the incident one precious life was lost and several passengers got injured. In the meanwhile, it appeared that the accused was the driver and he himself fell down into a deep ditch around 50 Feet but fortunately survived and rescued. Further, he is a driver by profession looking after his family. *Furthermore, moral turpitude on the part of the accused was not found in the present case.* Hence, on considering gravity of the offence and the circumstances, after much thought and careful consideration, despite no interest in releasing the accused on probation of good conduct as provided U/S 360 Cr.PC, this Court does not hesitate awarding the accused lesser punishment and to impose only a punishment of fine as permissible under the charge sections in the present case.

ORDER

13. Accused Shri Lalduhawma (24) S/o Lalpianthanga of Mualmam is hereby convicted and sentenced U/S 279 IPC to pay a fine of Rs 1,000 (one thousand), IDSI for 10 (ten) days, U/S 304 A IPC to pay a fine of Rs 2,500/- (three thousand), IDSI for 30 days, U/S 337 IPC to pay a fine of Rs 500/- (five hundred), IDSI for 5 days.
14. The seized vehicle and documents shall be released to the rightful owner.
15. Bail bond shall be cancelled and surety shall also be discharged from all liabilities.
16. 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, 2018 Anno Domini.**

Sd/-H. LALDUHSANGA
Judicial Magistrate 1st Class
Aizawl District, Aizawl

Memo No. : Dated Aizawl, the 16th Nov, 2018

Copy to:-

1. Shri Lalduhawma D/o Lalpianthanga, Mualmam
2. The District & Sessions Judge, Aizawl.
3. The Superintendent of Police, Aizawl District, Aizawl.
4. The DSP, Prosecution, Aizawl.
5. Ld APP. Smt. Lalthazuali Renthlei, Aizawl.
6. Shri F Lalzuiliana, Legal Aid Counsel
7. Case IO SI Lalmuankima, Bawngkawn PS.
8. The Officer-in-Charge (OC), Bawngkawn PS.
9. i/c Judicial Section.
10. Case record.
11. Guard File

PESHKAR