

**IN THE COURT OF SHRI VANLALMAWIA, ADDL. DISTRICT & SESSIONS  
JUDGE-1, AIZAWL.**

**Crl.Tr.No.1366/2008**

**U/S 302/304 IPC, R/W 25(1)(1-B)27(1) Arms Act.**

State of Mizoram

..... Complainant

Versus

Lalbiakmawia

Lalramhluna

..... Accused

BEFORE  
Vanlalmawia  
Addl District & Sessions Judge

PRESENT

For the opposite party : Lalremruata Ralte, APP.

For the Accused : Lalramhluna, Advocate.

Date of Order : 28.4.2015.

**ORDER**

The story for prosecution in brief is that, on dt.18.10.2008 and 4:15pm one Saisangpuii 26 yrs D/o Zonunsanga (L) of Darlawn Mel veng submitted a written FIR to the effect that, around 3:45pm of dt.18.10.2008, Pu Lalbiakmawia and his son shot her husband Lalhnehzova inside their house (i.e accused house). Apart from being shot at noted victim was hit with a hammer, as well as a result of the above acts, noted victim succumbed to the injuries inflicted on his person. hence, registered Darlawn P.S Case No.25/2008 dt.18.10.2008 u/s 302/34 IPC, R/W 25(1)(1-B)/27(1) Arms Act and duly investigated into.

During investigation, the P.O was visited and rough sketch map of the same drawn. The complainant Saisangpuii 26 yrs D/o Zonunsanga(L) of Darlawn Mel veng and as many as 12(twelve) witnesses were examined. Inquest over the dead body of deceased Lalhnehzova 35 yrs s/o Laltawia (L) of Darlawn Mel veng is conducted and forwarded to PHC Darlawn performing P.M examination to ascertain the actual caused of death. The M.O PHC Darlawn in her PM report

opined that, death occurred due to resulting from injury of the brain 2(two) local made guns were seized along with 1(one) empty cartridge 1(one) vest (blue colour) blood-stained, 1(one) track pant (green colour) blood stained, 1(one) white linen blackened with dark specks, 1(one) dao @ 16 inches in length along with the handle, 1(one) plastic bottle containing black powder and 1(one) hammer @ 13 inches in length along with the handle. That, noted dao had been purposely wedged within the waist band of the fallen deceaseds' track pant by noted accused persons. Moreover, as mentioned above 2(two) local made guns were seized. The first one reportedly to police as being the incriminating gun. But, thorough interrogation revealed that latter one as the accused actually used for shooting the noted victim. Though further interrogation, their involvements came to be ascertained. They i.e both the noted accused persons are duly forwarded for judicial custody under proper escort, seized exhibits like , 1(one)local made gun, 1(one) linen 7 kerosene bottle like 1(one) local made gun 1(one) linen &1(one) bottle containing black powder were sent in to FSL, Aizawl for examination. The report received from FSL vide report No.FSL/123/BALL'A'-04/08 dt.30.1.2009 is found to be positive, furthermore, a prayer to accord sanction for prosecution u/s 39 If the Arms Act, 1959 have been submitted to D.M 'A' and is duly sanctioned vide Memo No.J.18016/1/2009-DC'A' dt.20 January 2009 .

In course of investigation, a prima facie case U/S 302/34 IPC R/W 25(1)(1-B)/27 Arms Act is found well established against accused Lalbiakmawia 46 yrs Vanramzawna (L) and 2 Lalramhluna 23 yrs S/o Lalbiakmawia both of Darlawn Mel veng.

The charge u/s 302/34 IPC R/W 25(1-B) Arms Act is read over and explain to the accuseds in the language known to accused Lalbiakmawia to which he pleaded not guilty stating that "Ka kap love ka fapa in a kap" and the same charge was framed against accused Lalramhluna to which he pleaded not guilty.

The prosecution examined seven witnesses and the accused produced five defence witnesses.

P.W No.1 Saisangpuui, W/o deceased of Darlawn stated that I know the two accused who are standing in the court today. On 18.10.2008 at around 3 to 4 pm the accused shot my husband with a local made gun and there after hit on his head by using a hammer. Both the accused Lalramhluna and Biakmawia are involved in this case. And the dead body of my husband was lying at the kitchen of the accused. And I have submitted an FIR to Police Darlawn. Exhibit P-1 is the FIR submitted by me and exhibit P-1(a) is my signature.

Cross examination by D/L : I do not know whether my deceased husband used to create trouble in our village.

It is not a fact that my deceased husband used to assault and disturbed the accused.

I do not know what my husband try to do in the house of the accused.

I do not see the accused killing my husband and I also do not present at the time of occurrence and at the P.O.

It is a fact that I do not know whether my deceased husband was carrying any weapons or not and entered the house of the accused.

It is also a fact that I do not know whether the accused are acting against the act of my husband for there private defence.

It is not a fact that my deceased husband was not living in our society in a cruel behavior.

I do not write the contents of the FIR. I read the contents of the FIR before I put my signature.

P.W No.3 V.L.Ringa of Darlawn stated that I know the accused standing in the court today.

On dt.18.10.2008 my wife and myself went to jungle to gather wood and on our way home we heard the sound of gun shot. An reaching our village. I saw many people at the house of the deceased victim Lalhnehzova. I enquired what was the matter and they told me that my younger brother Lalhnehzova was shot by the accused Lalramhluna, but later the co-accused Lalbiakmawia stated before the Police he was the one who had shot the deceased victim Lalhnehzova.

Cross examination by D/L :

It is a fact that when I heard the gun fire I do not know who fire the gun and who was shot at the gun fire.

It is a fact that what I know about the incident were what I derived from others.

One night the decease/victim came to the house of the accused under the influence of liquor and scolded the accused.

It is a fact that I do not personally know the reason why the incident occurred.

It is a fact that I do not know whether the victim acted against the accused before the incident. However, I do not supposed the victim to act first against the accused.

It is not a fact that the accused didn't killed the victim with a gun and a hammer.

P.W No.10 Vanlalhlui Darlawn School veng stated that I know the accused Lalbiakmawia and Lalramhluna of Darlawn who are present in the court today. On dated 18.10.2008 afternoon the victim Lalhnehzova came to my house and told me that I will search for others companion to go to river for catching Crabs. And after a few minutes I came to know that the victim Lalhnehzova was shoot death by the accused Lalramhluna and Lalbiakmawia. The victim was shoot at in front of the resident of the accused person. prior to this incident there was a dispute in between the deceased and the accused, but they are dispute was amicably settled in between them by pardoning each other. The accused Lalbiakmawia also told me that their dispute was already settled and there is nothing to be worried about that. However, I am very surprised after few days of they are compromised why the accused shoot death to the decease victim on dated 18.10.2008 at the afternoon. So far as I know the act of the accused was pre-planned. Though their dispute was settled but the accused person did not actually pardoned to the deceased victim.

Cross examination by D/L :

When the alleged incident happened on 18.10.2008 I was present in my residence. I am not present when the alleged incident happened.

I am the sister of the victim Lalhnehzova.

So far as I know the victim Lalhnehzova when he was drunk used to make and creates trouble in the village.

After an hour when the victim leaved our residence one of my relative told me from outside our house that the victim Lalhnehzova was shot death. At the moment I was not informed who killed the victim. Later on I was informed that the victim was shot death at the residence of the accused. It is a fact that I do not know whether the victim attacked the victim first and entere3d into their residence and I also do not know whether the accused acted against the victim in their defence. I do not know the sound of gun fire at the relevant time. The victim was much bigger and mighty than the accused. Even after the incident I do not visit the house of the accused where the incident said to have taken case.

It is not a fact that the accused did not kill the victim by shooting.

It is not a fact that I deposed before the court as tutored by my other family members.

P.W No.12 Kapropuia of Darlawn stated that I know the accused persons namely Lalbiakmawia & Lalramhluna standing in the court today.

During the year 2008 I was posted at Darlawn P.S as xconstable. On dated 18.10.2008 I was at my home during some household work, at around 3:40 pm I heard the sound of a gun shot and some people in the locality had stated that the accused Lalbiakmawia had shot one Lalhnehzova. I immediately went to the house of the accused and when I reached the house of the accused I saw the two accused persons Lalbiakmawia & Lalramhluna and the accused Lalbiakmawia had stated to me that they have no other option but to kill the victim and I ask him who shot the victim and they have no other option but to kill the victim and I ask him who shot the victim and they stated at it was Lalramhluna who had shot the victim so I handcuffed Lalramhluna. And when I reached the house of the accused I saw the victim lying on the floor with a pool of blood and I also asked the accused persons where they put the Rifles and they gave me one rifle which they put beside the bed. I take the rifles from the hands of the accused and I take the accused to the Police Station along with the rifle. After that I along with the O/C Darlawn P.S again visited the P.O that is the house of the accused and I saw one hammer kept in the kitchen with bloodstain. The O/C seized the said hammer I prepared in seizure memo.

Cross examination by D/L :

When the accused Lalbiakmawia told me at the spot that they have no other option but to kill the victim and it can be presumed from the version of the accused Lalbiakmawia that the accused Lalhnehzova attacked them first and they acted in the exercise of their private defence of their body.

I have not received any direction or order from my superior officer to handcuff the accused and to arrest them.

It is a fact that I do not know from whose house I heard the sound of gun shot and when I heard the sound I supposed it to be the bursting of gas cylinder.

The accused stated to me that he deeply regretted and he has no option except to act against the accused.

As I inquire about the gun used by the accused and I request the accused to produce the gun used by then they produce one gun but I found the gun was very old on it was full of rusting and it appears to me that the gun could not be use for shooting anything.

It is a fact that I am not present at the P.O at the time of alleged incident.

It is also a fact that I do not see the accused shooting the deceased.

It is also not a fact that the accused did not killed the victim in exercise of their right of private defence.

It is not a fact that the accused killed the victim.

P.W No.13 R.Sangzuala stated that during the year 2008 I was posted as FSL Mualpui as Asst. Director. On dated 22.11.2008 I received the following exhibit from the Addl.Superintendent of Police Aizawl 1) 1 SBBL Gun 2) 1 linen cloth, 3) 1 bottle containing black powder for FSL examination. Accordingly I conducted FSL examination into the following exhibit.

Exhibit P-II is my FSL examination record and exhibit P-II(a) is my signature.

Cross examination by D/L :

We are not in separate Directorate of Forensic Science and Laboratory.

We are under the administrative control of the Police.

It is a fact that assistances/benefit we have received by us were derived mainly from Police Department.

It is not a fact that my examination report always revealed positive as instructed by the Police on me.

The gun I have examined was a local made.

The cartridge I have examined in this case was factory made.

The cartridge I have examined in this case was factory made.

Though I had found smell of discharged at the muzzle end I do not know whether the smell have a relation in shooting the gun in this case.

It is a fact that we have undergone the technique of examination in respect of Local made gun.

It is not a fact that the gun I have examined in this case is not in a working condition.

When I received the exhibit for examination, the cartridge was loaded.

The firing pin in the cartridge was different in every case.

I cannot say whether the empty cartridge was loaded in the gun and the cartridge was pressed by the firing pin just to mark the firing pin before the gun was sent for examination.

It is not a fact that the mark of firing pin on the cartridge I have examined and the cartridge used in test firing were not similar.

It is not a fact that my examination report was not reliable as it was in respect of local made gun.

I do not know whether the empty cartridge was full by gun powder which is made in the factory or local.

The black specks are not generally occurred in a gun shot incident.

It is not a fact that the method and techniques used by me in the course of my examination are not sufficient to established the positive result.

My examination revealed the range of fire as within 5 feet.

It is not a fact that the exhibit-II is not due to the presentation of bullet as well as the muzzle blast.

It is not a fact that the gun and the cartridge and the cloth I have examined have no connection with this case.

It is not a fact that the empty cartridge exhibited for examination did not mark the firing pin of the gun I have examined.

It is not a fact that the empty cartridge did not bear the marks of the gun.

It is not a fact that I have conducted examination of the exhibit. Perfunctory

P.W No.14 Dr.Lalparliani also stated that during the year 2008 I was posted at Darlawn PHC as Medical Officer. On 19.10.2008 the death body of Lalhnehzova was brought to Darlawn PHC by Constable Lalhmingmawia and the deceased elder brother Vanlaltlana for Postmortem examination. The death body was identified by the O.C Darlawn P.S. I conducted postmortem examination into the dead body of the deceased Lalhnehzova. According to me the caused of death is due to Coma resulting from injury of the brain. I have recorded all my findings at my postmortem examination report exhibit P-3 is my postmortem examination report and exhibit P-3 is my signature.

Cross examination by D/L :

On my examination I found that the cause of death is due to the injury on the head and I found no deadly injury on his other bodies except head injury. I do

not know which weapons or material that caused injury on his head. It is a fact that the police personal who brought the death body with requisition was not present at the time of post mortem examination. No other persons except IV Grade of the hospital was present at the time of my examination. I have conducted postmortem examination of a dead body around 20 person. I am not a forensic expert in this field. However the medical officers were suppose to be competent to examine and conduct postmortem examination. No police officers came to je in connection with my postmortem examination. It is not a fact that the cause of death is due to injury sustained on the head. it is not a fact that I have not conducted post mortem examination in this case.

P.W No.15 Lalthantluanga case investigating officer stated that I know the two accused persons who are present in this court today. I am case I/O in the instant case. I was posted as O/C Darlawn P.S for the period from 2006 to early part of 2009 and the incident took place in the year 2008. Vide exhibit P-1 the instant case was registered by me. After the said registration I arrested the accused vide arrest memo exhibited herein. I seized one local made gun(imitation SBBL gun and one empty cartridge still lodge in the breach among bushes some distance from accused house at the instance of the accused person namely Lalramhluna on 19.10.2008 at about 11:40 am in the presence of C.Thanthuama and Kapropuia. I also seized one hummer 13 inches in length along with handle, one vest blue colour stained with blood, one lenient white colour blackened with burnt gun powder, one dow 16 inches in length along with handle, one track pant green colour stained with blood from accused I also seized gun powder in the presence of R.Lalpianmawia and Malsawmtluanga on 18.10.2008 at Darlawn Mel veng inside the house of accused. After I arrested the accused persons I forward them to Aizawl under custody of Lalhuapzauva and other police constable for save custody of the said persons in order to avoid infuriated mob. During the course of my investigation I visited the house of the accused persons and the victim conducted inquest on the death body of Lalhnehzova the victim herein. I made the decision of conducting PME on the death body of Lalhnehzova and at the same time I forwarded the death body to PHC and received PMER during my investigation. at the time when I forwarded the accused persons to authority concern Aizawl, I submitted prayer of remanding the 2 accused persons. I recorded the statement of the accused persons and forwarded the accused persons to Aizawl aforementioned. I also recorded the statement of witnesses and at the same time sent the seized gun, one lenient cloth, one bottle containing black powder for forensic examination during the course of my investigation I received FSL report. I sent the said material through superior officer. Finding a prima facie case well established against the accused persons under the charge section I submitted the seized material to the court for putting the 2 accused persons for trial exhibit M-1 is the S/A exhibit P-4



is inquest report exhibit P-4(a) is my signature exhibit P-15 is charge sheet exhibit P-15(a) is my signature exhibit P-14 is death body challan, exhibit P-13 is FIR U/S 154 Cr.P.C and exhibit P-13(a) is my signature exhibit P-12 is arrest memo in respect of Lalbiakmawia and exhibit P-12(a) is my signature. Exhibit P-11 is arrest memo in respect of Lalramhluna and exhibit P-11 (a) is my signature exhibit P-2 is FSL report exhibit P-10 is seizure memo exhibit P-10(a) is my signature exhibit P-8 and exhibit P-9 are prosecution sanction in respect of accused persons exhibit P-7 is my prayer for according prosecution sanction and exhibit P-7(a) is my signature exhibit P-5 is seizure memo in respect of one local made gun and empty cartridge., exhibit P-5(a) is my signature exhibit P-6 is my requisition for PME on the death body of Lalhnezhova and exhibit P-6(a) is my signature.

Cross examination by the Ld. D/L :

1. It is a fact that the deceased was shot by the S/A and after testing the bullet the expert confirmed that the bullet from the said gun killed the deceased.
2. It is denied that the FSL did not confirmed the firing of the said gun caused the death of the deceased.
3. It is further denied that the S/A gun is not the main weapon used by the accused for killing the deceased.
4. I do not have any identification on the S/A produce before the court today.
5. I do not get confessional statement of the accused in this present case because I do not think it is necessary.
6. It is denied that the accused did not killed the deceased, the deceased was killed by others and they were wrongly implicated in this case.
7. I do not remember who submitted the said FIR.
8. It is denied that the S/A was shown to me by the son of the accused namely Lalramhluna.
9. It is denied that the two accused were wrongly implicated in the present case.
10. It is denied that I deposed falsely in the court today.

Re-examination by the prosecution,.

It was Saisangpuui who lodge FIR. Although I did not put specific mark in the seized material, yet I can say for sure that the S/A were seized by me in connection with this case.

The two accused Lalramhluna and Lalbiakmawia were examined U/S 313 Cr.PC to which they answer the question as follow.

Lalramhluna : Q.1 The evidence against you is that on 18.10.2008 at around 3-4 pm, you along with your father Lalbiakmawia assaulted Lalhnezhova

inside your house and you gave hammer blow to the victim Lalhnehzova. What have you to say ?

I do not shot, but when I took the gun, Lalhnehzova, attack me, and he himself shot him dead.

Q.2 The evidence against you is that you and yours father killed Lalhnehzova inside your house with comes intention of killing him. What have you to say ?

There is no intention to kill.

Q.3 The evidence against you is that, the S/A namely the gun and hammer were shown to the Police by you. What have you to say ?

Yes, it is fact.

Accused Lalbiakmawia also answer the question stating that

Q.1.The evidence against you is that on 18.10.2008 at around 3-4 pm you and your son Lalramhluna shot and given hammer blow to Lalhnehzova inside your kitchen by using a local made gun without licence and a hammer inside your kitchen. What have you to say ?

Victim had entered at the relevant time and I then left my kitchen, and I do not know how my son had done to him.

Q.2 The evidence against you is that you informed the Police that you shot the victim Lalhnehzova. What have you to say ?

I do not give report to Police, but Police themselves came to us, on hearing of firing of Gun.

Q.3. The evidence against you is that the dead body of Lalhnehzova was lying on your floor with pool of blood. What have you to say ?

The dead body was lying at our floor.

Q.4. The evidence against you is that you took out one rifle from behind the bed and gave to Police. What have you to say ?

I do not took out Rifles and did not give to Police.

Q.5. The evidence against you is that O/C Darlawn P.S and his party had recovered and seized one hammer with blood stain from your house, which was alleged to have been used by you for commission of offence. What have you to say ?

No hammer is seized from our house, I do not know from where they seized the hammer.

Q.6. The evidence against you is that one rifle which you had given to Kapropuia(on the date of the incident) from behind your bed was in working condition. What have you to say ?

I gave nothing to Kapropuia.

Q.7. The evidence against you is that the gun(rifle) and the cartridge and the cloth seized by the Police and examined in FSL Mualpui have connection one another. What have you to say ?

I know nothing.

Q.8. The evidence against you is that it was you who opened fire at the victim. What have you to say ?

I do not fired the accused.

Q.9. The evidence against you is that bullet from your gun killed the victim. What have you to say ?

I do not fired the gun.

Q.10. Why prosecution witnesses made statements before the court against you ?

To take care of my life, I was directed to that Police Station.

Q.11. The evidence against you is that you shot at the victim at point blank in your house on 18.10.2008. What have you to say ?

I do not shot the victim.

After the prosecution evidence is closed and accused are examined u/s 313 CrPC, the two accused produce 5(five) defence witnesses including themselves.

Dw No.1 Laltanpuia of Bethlehem veng Aizawl stated that I know the accused Lalbiakmawia and Lalramhluna. The accused Lalbiakmawia is my father and the accused Lalramhluna is my elder brother. I know the deceased Lalhnehzova of Darlawn since I live in Darlawn. On 18.10.08 as I was sicked and remained inside our residence and at around 2:45 Pm one Lalhnehzova the victim came to our house and try to assault and threaten my father and my brother who are the accused in this case. When the victim Lalhnehzova entered our house he had strangulated my brother in order to kill him he also said that he may also strangulated to death to my father. As the deceased Lalhnehzova tried to strangulated all of us into death, I am in afraid of him and I ran out of the house to a distant place. Later on when I returned home I came to know that Lalhnehzova was died. While I was living at Darlawn, the victim Lalhnehzova also assaulted me with his hand and beside this he used to assault all of our family male members and he threatened us frequently. Once he also destroyed our house and when we reported the matter to the Police, the Police never take appropriate action and he was soon released. The local people of Darlawn are well known to the misbehavior and misconduct of Lalhnehzova and the local people there not to challenge him and he used to made trouble in the locality. On 18.10.2008 when the victim Lalhnehzova enter our house and

assaulted the accused, I later came to know that the action taken by the accused against the deceased are in the exercise of their private defence.

**Cross examination by the Counsel for the Prosecution( dt.13.12.2013):**

I was not present the time of the incident. As I was not present at the time of the incident I do not know anything about the present case.

DW No.2 Lalremruata of Bethlehem veng also submitted that I know both the accused persons as well as the deceased Lalhnehzova.

On 18.10.2008 I was no present at home at Darlawn since I was going outside the town to fetch some fire wood for the family and therefore I was not present at the time of the alleged incident.

The deceased Lalhnehzova was well known to me because he made so many problems to our family. The two accused namely Lalbiakmawia and Lalramhluna are related to me by blood, the former is my father and the later is my elder brother. The deceased Lalhnehzova was the son of my father's mother's brother's son, that is, he was any relation to our family. He was in the habit of taking liquor and when ever he took liquor he use to come to our house and threaten our family for dire consequences and some times he would bring a samurai(long sword) and would threaten us for killing., he would sometimes would break open our door and would burgle through the wall and, therefore, when ever we heard his voice from outside we would flee our house in fear of him. The neighbors and other people of our town also know aboutthis, we also submitted FIR for a number of times and the Police would take in to the P.S but since one of his brother was a Police man in the said station he would only stay for a night and would be freed the next morning. His physique much bigger than any of us including the two accused persons and we had nothing to do except flee away from him. I went to say in the court that the deceased was having a peculiar character of threatening and disturbing other people especially to our family which includes the present accused persons.

Cross examination by the Defence counsel :

It is not

DW No.3 Lalngilneia of Darlawn stated that a fact that I have come to the court since the accused persons are my relatives.

It is not a fact that I do not know anything about the behavior of the victim.

DW No.3, Lalngilneia of Darlawn stated that Lalhnehzova hi feet 6 vel a ni a, thahrui ah chuan ka khan lo hle a ni, a chhan pawh kan hriat loh in kan chungah thinrim in min rawh luhkhung thin a, kannu leh kei ngei pawh kut min rawn thlak a, vawi sawm vel min rawh luhchilh a kan tlan chhuak thin a ni.

Ni.18.10.2008 hian kan pafa in a kana awm lai chu min rawn luhchilha, kan that law law angche ti in min rawn rek a, a thinrim chhan kan hre lo, hetiang hian a rawn tifo thin a ni, kan pafa in kan that law law ang che u ti chungin min rek a min manbet a, ka tal chhuaka ka tlan chhuak nghal ta a, thih ka hlauh em avangin tanpuitu pawh ka ko ruai ani. Ka tlanchhuah hnu lawkah chuan silai puak ri ka hria a ni. He thilthleng ah hian heibak engmah hriat ka nei lo, a hnudaiha ka han luh chhoh chuan Lalhnehzova ruang chu ka han hmu ve a ni.

**Cross examination by Asst. P.P:**

Hemi ni 18.10.2008 hian in pafa in Lalhnehzova hi nangmahni inchhungah in thurualin in that I tih hi ka pawm lo.

Hemi ni a kan inchhunga Lalhnehzova kahhlum a nih lai hian inchhungah ka awm ve lo.

Hemi ni a Lalhnehzova kahhlumna silai(ulhbun) hi ka fapa Lalramhluna chhar a ni a, silai license a neilo tih ka hriatpui e.

He silai hi ka khawih ve ngai lova mi kahhlum nan ala that leh that loh ka hre lo.

Hemi ni a kan in chung atanga tuboh thisen kai police ten an seized tak kha a kai na chhan ka hre lo a, ka hmu lo bawk.

Lalhnehzova nupui Saisangpuii hnenah hian ngaihdam ka fapa nen hian kan dil lo.

Lalhnehzova kha kan ina a thih khan tu kahhlum nge anih ka hre lo, silai puak ri ka hriat lai khan kan inchhungah Lalhnehzova leh ka fapa Lalramhluna chauh an awm a ni.

Accused Lalbiakmawia submitted to defence himself stating that deceased Lalhnehzova is about 6 fts high, who was more stronger than himself, and deceased hated him for the reason he did not know and had come to his house for about ten times and assaulted him with his wife. In the relevant day of 18.10.2008 the deceased entered his house while he was together with his son and strangled on his next saying he will kill with his son, for the reason he did not know. He then ran out of the house crying for help, and he heard the sound of firing, and found the dead body of deceased Lalhnehzova in his house after returning to his house.

Accused Lalbiakmawia was cross examined by the Id. Addl. P.P and stated that there was no any intention to kill the deceased with his son, and he was out of the house while deceased was shot dead, the weapon Gun, was recovered by his son somewhere, and admitted that there is no license, and did not know whether the gun was fit for shooting dead of humane. He did not know why blood can be visible in the hammer seized by the Police, and did not beg pardon to Saisangpuii W/O deceased.

Accused Lalramhluna also submitted in his defence statement that deceased Lalhnehzova is a big man, and had often disturbed his family, and used to strongly while they were taking food, and used to jump over the window to escape from his torture, and used to stay outside the house for fear of deceased, but deceased used to destroy their utensil even in their absent the deceased used to create trouble even in the society.

The deceased Lalhnehzova, was entered in our house at this relevant day of 18.10.2008 while we were with my father, and strangle my father (accused Lalbiakmawia) while he was at the kitchen. He took the Gun from his bed room to defend his father, and when he reached near the deceased, deceased Lalhnehzova also hold the gun and the gun was fired, and he knew that the gun has no licence, the reason why they beg pardon to Saisangpuii W/o deceased was that Lalhnehzova was died in his house, hoping settlement as the deceased Lalhnehzova

was their relative. He knew that he hold the trigger of the gun while the deceased hold the barrel of the gun while the gun was firing help as he was semi-conscious at the relevant time.

Both the Id Addl.P.P, and Defence council submitted their written argument.

The Id. Addl. P.P R.Lalremruata submitted that the brief story is that on 18.10.2008 @ 4:15 pm one Saisangpuui D/O Zonunsanga, R/o Darlawn submitted a written FIR stating that on 18.10.2008 @ 3:45 pm, Pu Lalbiakmawia and his son shot her husband Lalhnehzova and assaulted with a hammer and as a result her husband succumbed to his injuries.

The accused Lalbiakmawia S/o Vanramzauva (L) R./o Darlawn Mel veng and his son Lalramhluna, S/o Lalbiakmawia were arrested on 18.10.2008 @ 6:20pm by S.I Lalthantluanga. A hammer used by Lalramhluna was seized on 18.10.2008 and a local made gun with empty cartridge still loaded inside the breech of the gun was seized on 19.10.2008 in the presence of witnesses.

The accused Lalbiakmawia confessed and stated/admitted that he shot Lalhnehzova the victim with a local made gun and accused Lalramhluna hit the victim on his head with a hammer a couple of times.

The PW No.1 Saisangpuui and PW No.2 Kapropuia deposed that the victim or the dead body was lying at the kitchen of the accused person.

Pw No.3. V.L.Ringa, PW No.12 Kapropuia heard the sound of a gun shot at the relevant time. PW No.10 Vanlalhlui stated that the accused persons and the victim had dispute before.

The hammer used by the accused Lalramhluna was recovered from the residence of the accused persons and the gun used by the accused Lalbiakmawia was recovered from the place where it was kept by the accused i.e behind the bushes below the Government Middle School, and the S.A were exhibited as M-1 before the court.

The local made gun used by the accused Lalbiakmawia to shoot the victim was tested and examined by the FSL and found that the said gun was in working

condition, the empty cartridge found inside the chamber of the weapon was fired through the weapon itself.

On perusal of all materials available on record it can be said beyond reasonable doubt :

- a) That the victim Lalhnehzova died at the kitchen of the accuse persons.
- b) That the victim had quarreled with the accused persons before.
- c) That there was a gun fire at that time i.e on 18.10.2008 evening which was also heard by prosecution witness No.3 V.L.Ringa and PW No.12 Kapropuia.
- d) That the local made gun was used by the accused Lalbiakmawia to fire/shot the victim.
- e) That the accused person had no valid license for the said gun which is confirmed by the accused Lalbiakmawia and Lalramhluna when they deposed as defense witness.
- f) That since the Medical Doctor Dr. Lalparliani who conducted PME over the deceased as PW No.14 opined that the reason for the death was head injury and that it is pretty clear that the victim died of head injury inflicted by the accused Lalramhluna with a hammer. Both the accused Lalbiakmawia & Lalramhluna are hence, found guilty punishable U.s 302/34 IPC.
- g) Since the accused do not have valid license in respect of the said gun used by both the accused persons and hence they are guilty under section 25(1)(1-B) Arms Act.

Hence it is pretty clear that the accused Lalbiakmawia & Lalramhluna is found guilty of the offence punishable u/s 302/34 IPC, r/w 25(1)(1-B) Arms Act. the ld. counsel for the SOM will submit other facts and law points at the time of hearing.



In the facts and circumstances mentioned above this Hon'ble court is earnestly prayed to convict the accused Lalbiakmawia & Lalramhluna, U/S 302/34 IPC, r/w (1)(1-B) Arms Act.

Mr. Lalramhluna, Ld. counsel for the accused also submitted that

1. That the prosecution story in brief is that on 18.10.08 a written FIR was filed by Saisangpuii to the effect that Pu Lalbiakmawia and his son Lalramhluna shot dead her husband Lalhnehzova. As a result Darlawn P.S Case No.25/08 dt. 18.10.08 u/s 302/34 IPC R/w 25(1) (1-B)/27(1) Arms Act was registered and investigated. After completion of the investigation the case IO submitted the charge sheet to the court and the case was endorsed to this court for trial and disposal.
2. That on received of the charge sheet the court took cognizance of the offence and proceeded trial as per law. Copy of the charge sheet was furnished to the Accused and the accused informed the court that they were unable to engage a lawyer to defend themselves at their own expense. Hence the court assigned the present counsel to defend the accused at the state expense.
3. That the charge u/s 302/34 IPC R/w 25(1) (1-B) Arms Act was framed and considered against the accused to which they pleaded not guilty and claim for trial. During the course of trial the prosecution produced as many as witnesses out of 15 witnesses cited in the charge sheet. In order to avoid lengthy argument reproduction of the deposition of the witnesses in the court are not found necessary as the same were available in the court for ready reference. Hence it is hereby argue under the following manner:-
  - a) That in this particular case there is no direct evidence to prove the case. All the evidence adduced by the prosecution witnesses are hears say and none of them are present at the place of occurrence at the time of incident. Therefore all the evidence adduced by the prosecution witnesses in this case has no credit and trustworthiness to establish the case of murder against the accused beyond all reasonable doubt.
  - b) That the prosecution also failed to prove seizure of country made gun along with one empty cartridge. During the course of trial only one seizure witness and seizing officer who were interested witnesses and were produced in order to prove the said seizure and no seized material was exhibited before the court. No civilian witnesses were produced by the

prosecution to prove seizure and the evidence available before the court were insufficient to prove seizure and the prosecution failed to establish that a country made gun with one empty cartridge were seized from the possession of the accused.

c) That regarding the evidence of expert i.e; Medical officer and FSL, the Medical officer opined that the cause of death is due to the injury on the head and she found no deadly injury on his other bodies except head injury which is contradictory to the whole story of the prosecution case. The forensic expert is also doubtful to the effect that as the FSL is under the administrative control of the police department and all the assistance/benefit were received from police department and their examination report cannot go against the desire of the police. He also stated that he cannot say whether the empty cartridge was loaded in the gun and the cartridge was pressed by the firing pin just to mark the firing pin on the empty cartridge before the gun was send for examination. In view of the above facts and evidence the expert evidence before the court lack credit and trustworthiness and left a room for doubt.

d) That the evidence of the case IO has no credit and trustworthiness and none of the evidence of other prosecution witnesses corroborates and it cannot be sustainable for admission. Besides he was uninterested witness and he is performing his normal duty perfunctorily. His evidence has no much value to establish the prosecution case against the accused.

e) That after closing their evidence the court examined the accused persons u/s 313 Cr.PC and in the course of their examination they made no incriminating statement to explain the circumstance under which the incident happened. In this case the accused took the plea of private defence and they were permitted to stand as a witness to defend themselves and besides they also produced other civilian witness and the evidence of the defence witnesses were available on the record for ready reference and may not be reproduced.

f) That it is evident from the record that the victim Lalhnezhova was a heavy body build person with bad character in the locality. He used to consume liquor and under the influence of liquor used to create trouble in the village. It is also evident that the victim used to create trouble particularly against the family of the accused and sometime he made apology and asked pardon from the accused. The victim used to assault the accused family and warned many times the accused family causing death and they were living under

constant fear of the victim. At the time of the incident it is evident that it was the victim who entered the residence of the accused to create trouble and to assault and disturb them and the accused were in being fear of torture by the victim acted in the exercise of private defence. PW-No.3 who is the sister of the victim also admitted that one night the victim came to the house of the accused under the influence of liquor and scolded the accused and PW-No.10 also admitted that the victim Lalhnehzova when he was drunk used to make and create trouble in the village which on the other hand prove that the victim was bad character in the society. The evidence of PW-No.12 who is a police constable on his cross-examination stated that the accused Lalbiakmawia told him at the spot that they have no other option but to kill the victim and can be presumed that the victim Lalhnehzova attacked them first and the accused acted in the exercise of their private defence of their body.

g) That in this case it is crystal clear that the victim approached the accused and entered the house of the accused and tried to assault the accused Lalbiakmawia on his neck to strangulate and the accused Lalbiakmawia in fear of death run out of the house to save himself and the accused Lalramhluna who is also in fear of further torture of the victim took out a country made gun and the victim tried to snatch the gun and in the course of their fighting the gun was fired. This is the fact of their defence evidence and it was corroborated by some other evidence of the prosecution witnesses. Hence the defence evidence adduced by the accused prevailed over the prosecution evidence and it is therefore evident that the victim first attacked the accused at their residence and the accused acted in the exercise of their right of private defence. Section 96 IPC says that “ Nothing is an offence which is done in the exercise of right of private defence”, and in such circumstances the act of the accused is under the provision of exception clause provided by the penal law.

h) That in this case it is the duty of the prosecution to establish their case beyond all reasonable doubt against the accused and the number of witnesses produced before the court is much less considering the witnesses cited in the charge sheet and their quality of evidence are not reliable to establish the case of murder against the accused beyond all reasonable doubt. At the same time the accused took the plea of private defence and the quality of the defence evidence have credit and trustworthiness and they remain unrebutted during trial. Besides, some of the evidence of the prosecution witnesses support the defence evidence and the present case can be concluded that the defence evidence prevailed over the prosecution

evidence and the accused acted in the exercise of the right of private defence as define u/s 96 IPC of the exception provision under the IPC and the prosecution miserably failed to establish their case beyond all reasonable doubt against the accused. Hence the accused are liable to be acquitted from their liability of the charge u/s 302/34 IPC R/w 25(1) (1-B)/27(1) Arms Act and set at liberty forthwith.

In the premises it is an earnestly pray that your Honour may graciously be pleased to admit this Written Argument and after hearing both sides acquitted the accused from the liability of the charge u/s 302/34 IPC R/w 25(1) (1-B)/27(1) Arms Act and set them at liberty.

In this case, it is learnt from the evidence that the victim Lalhnehzova was big and fall person who more stronger than the two accuseds, and had also blood relationship with the accused on material side, the victim had always created trouble in the accused family without having reasonable cause, and threatened the accused family not only in their house but also outside their house, the accused and their family afraid of victim and there was no man among their family to challenged, counter the victim in time of his angree coming to their family. In order to save their life they have to left their house hoping defence from other family. No appropriate action have ever taken by the Police to stop the cruel activities of the victim even complaint/report is submitted to the Darlawn Police, and the reason is not known, but can be presumed that one of the brother of the victim was posted at Darlawn Police Station as constable. So, no member of the accused cannot live peacefully due to the cruel activity of the victim, and there is no sense of security even in their home.

In this relevant day of 18.10.2008 the victim went to the house of accused, struggled the accused, and nothing good can be expected from the victim for the accused family member, and how much action he would taken against them,. It seem that there two things to be choken either to wait the cruel action of the victim or to defend themselves from his cruelty. Accused Lalbiakmawia has therefore shot him and for fear of his survival accused Lalramhluna beat him with hammer on his head three or four time in order to make the victim unable to take revenge. I understand the condition of accused family, as there may be no other way to escape from the present condition thinking the behaviour of victim in the past except to use any weapon available in their nearby. So, the accused family are doing/taking action to defend themselves and family. So, the charge section 302/34 IPC falls u/s 96 IPC exception which run as follow”.

Nothing is an offence which is done in the exercise of the right of private defence.

The accused are also charge u/s 25(1)(1-B) and 27(1) of Arms Act. The post-mortem report of the Medical Officer, Darlawn, revealed the cause of death with a remarks.

“in my opinion the cause of death is due to coma resulting from injury of the brain”.

This means that the cause of death of the victim is not due to the shooting of Gun by the accused. In this regard, I am more convince by the submission of ld counsel for the accused, and the prosecution fail to establish a prima facie against accused, for the charge levelled u/s 25(1) and 27(1) of Arms Act, beyond doubt, and if there is doubt, benefit of doubt shall go in favour of accused, as decided by Apex court.

The case is non-compoundable eventhough, the complainant Saisangpuii W/o Lalhnehzova(the victim) submitted latter a praying the court to dismiss the case, and letter of Inngaihdamna, which is now exhibited as exhibit D-I and exhibit D-2 .

To whom it may concerned

To,

The magistrate  
Ist Class Mizoram Aizawl court.

Subject : Case titawp tura ngenna., Case No.U/S 302/34 IPC.

Kapu,

Khawngaih takin he kan thu rawn thlen hi min tihhlawhtlin sak turin ka ngen a che.

Lalhnehzova S/o Laltawia (L) thih avanga mawhphurtu a ngaih Biakmawia S/o Vanramzauva leh Lalramhluna S/o Biakmawia te hi Pathian hminga ngaihdam an rawn dil angin Dt.23.01.2014 hian Pathian hmingin ka ngaidam a. Chuvangin an Case hi khawngaih taka lo tih tawp sak turin ka ngen a che.

He kan ngenna hi min tihhlawhtlin sak theih chuan ka lawm hle ang. Ngaihdamna lehkha pawh ka rawn thil tel nghal e.

I Rintlak,  
Sd/-  
( SAISANGPUII )

NGAIHDAM NA LEHKHA

Dated 18.10.2008 inrinni a Lalhnehzova S/o Laltawia (L) thihna avanga mawhphurtu nih a puhte Biakmawia S/o Vanramzauva (L) leh Lalramhluna S/o Biakmawia te hian Pathian hminga ngaihdam an rawn dil angin kei Saisangpuii W/o Lalhnehzova (L) leh Vanlalringa B/o Lalhnehzova tehian Pathian hmingin Biakmawia te pafa hi kan ngaidam a. tuna an thubuai kal lai mek pawh hi tih tawp sak kan remti e.

Hriatpuitute :  
( R. LALCHANGLIANA )  
Bethlehem, veng, Aizawl

Ngaidamtu te :  
( SAISANGPUII )  
W/o Lalhnehzova(L)  
Darlawn, Mel veng.

( UPA LALRINLIANA )  
Darlawn

( VANLALRINGA )  
B/o Lalhnehzova(L)  
Darlawn

( R.K.ZAUVA )  
Darlawn.

In this case, the prosecution fail to prove the case/charge u/s 302 IPC, and 25(1) & 27(1) of Arms Act, beyond doubt. All the action taken against the victim by the accuseds are seem to their private defence.

With these observation, I therefore acquitted accuseds Lalbiakmawia and Lalramhluna from the liabilities of the charge level against them u/s 302 IPC R/W 25(1)(1-B) of Arms Act, and set them at liberty.

Seized articles shall be destroyed.

Bail, and bail bond stand cancelled.

The case disposed.

Give copy to all concern.

Announce in open court on this 28<sup>th</sup> day of April 2015.

Sd/- VANLALMAWIA,  
Addl.District & Sessions Judge-I,  
Aizawl Judicial District, Aizawl.

Memo No \_\_\_\_\_AD & SJ-I/2015 : Dated Aizawl the,28<sup>th</sup> April 2015.

Copy to :

1. District & Sessions Judge, Aizawl District, Aizawl.
2. Accused Lalbiakmawia & Lalramhluna.
3. Addl. PP/APP.
4. Judicial Branch.
5. Case Record.
6. Guard File.

PESHKAR