

**IN THE COURT OF ADDL.DISTRICT & SESSIONS JUDGE-I  
AIZAWL JUDICIAL DISTRICT, AIZAWL**

***Sc No.77/2014,  
A/o Crl.Tr.No.445/2014,Sairang P.S Case No.11/2014  
U/S 307 IPC***

State of Mizoram	:	Complainant
	Vrs	
Lalngaihsaka	:	Accused

**BEFORE  
Vanlalmawia  
Addl.District & Sessions Judge-I  
PRESENT**

For the opposite party	:	R.Lalremruata, Addl.PP Lily Parmawii Hmar, APP
For the Accused	:	C.Zoramchhana
Date of order	:	30.7.2015
Date of Judgment	:	5.8.2015

**ORDER**

The prosecution story of the case is that on 25.3.2014 a written FIR was received from Joybul Hoque Burbuia of Silchar Sonai Assam P/A NEC Mualkhang that on the night of 24.3.2014 at around 8:00pm one Lalngaihsaka of Mualkhang NEC assaulted him using dao as an assaulted weapon and he further stated that Lalngaihsaka intended to kill him, so he requested to take legal action. Hence Sairang P.S Case No.11/2014 dt.25.3.2014 u/s 307 IPC was registered and duly investigated into.

During the course of investigation the complainant/victim was forwarded to Medical Officer with a requisition to exam his whether he sustain simple or

grievous injury, the PO was visited and carefully examined. One eye witness Helen Ramdinliani was examined where she stated that on the night of 24.3.2014 some non-mizo played a card at the house of the victim and they were a bit noisy and as the sound became louder and louder she shouted not to make a noise, at the same time Lalngaihsaka and his wife appeared at PO and asked her if she got a problem or not then she answered that she does not have a problem, at that moment Lalngaihsaka slapped two of the non-mizo's and the non-mizo's fled away in fear of Lalngaihsaka, and Joybul Hoque Burbuia @ Sadama approached Lalngaihsaka and asked him why he slapped the non-mizo's and the two of them started to fight, their fight was stopped/separated by Rinawma of Mualkhang, after Rinawma stopped the fight Sadama tried to fight with Rinawma again but Rinawma does not fight back but went to her house, at her house Sadama again tried to fight Rinawma again by carrying about arm length firewood, but she told Sadama that he mis-understood him, at that time Lalngaihsaka was not present at her house nor at Sadama's house, and Sadama with Rinawma and Rinawma's wife went to Sadama's house, while they were staying at the house of Sadama Rinawma's wife saw Lalngaihsaka carrying a dao(chempui) pacing around back and front the house of Sadama, and Rinawma and his wife went home, and as she heard Rinawma's wife's voice she went to Sadama's house and told him not to go outside as Lalngaihsaka went around with dao and she helped him close windows and the back door of his house. A little bit later while she was standing in front of her house Sadama came out from his house and he was assaulted by Lalngaihsaka using dao, and Sadama rushed to her house and even in her house also Lalngaihsaka tried to assault him but she begged Lalngaihsaka not to assault him at her house and Lalngaihsaka fled away and she doesn't know where Lalngaihsaka went. Witness Nirmol Das was examined where he stated that on the night of 24.3.2014 he heard that Sadama was assaulted using dao and he went to the house of Sadama with his vehicle right cheek and right neck, on his arm and on his back, he further stated that from his right cheek his teeth could be seen and from his neck arm and from his back bones could be seen, and then he asked who had assaulted Sadama and he was told that Lalngaihsaka had assaulted him, as Sadama injured was very serious they took Sadama to Sairang

PHC and as doctor was not available at Sairang PHC they took him at Civil Hospital, Aizawl, and after doing the needful at Civil Hospital, Aizawl he went home at NEC Mualkhang, plus he also added that he does not present at the time of the incident but he knew that Sadama was assaulted by Lalngaihsaka. Other witness Fakor Uddin was also examined where he stated that on the night of 24.3.2014 while he was sleeping he heard the voice of Helen-i and he went to the house of Helen-i, and at the floor of Helen-i he said Sadama lying in the pool of blood, and as Sadama's wound was so serious he cannot bear to look at, and as appear with his vehicle and they took Sadama to Sairang PHC and as doctor was not available at Sairang PHC they took him at Civil Hospital, Aizawl. After doing needful at Civil Hospital, Aizawl they went home at NEC Mualkhang, he also added that he was not present at the time of incident but knew that Sadama was assaulted by Lalngaihsaka using dao as an assaulted weapon. The victim Joybul Hoque Borbuia was examine after he was discharge from the hospital and he stated that on the evening of 24.3.2014 @ 6:00 pm Lalngaihsaka came at his shop/house and scold some of the non mizo and even punch two of the non-mizo's, then he asked Lalngaihsaka why he punch the two non-mizo and fight with Lalngaihsaka and they were stopped/separated by one person of Mualkhang. After their fight was stopped her neighbor Heleni told him not to went outside and Lalngaihsaka was waiting for him carrying dao, so he was helped by her close all the window and the back door of his shop/house, as his front door was not close properly he tried to close the front door he sneak a quick look at the outside and he saw Lalngaihsaka on his front door and Lalngaihsaka went inside his house and again gave a huge swing with his dao and he block the dao with his right arm, and then he get up from the floor, and as there is a big table in his house he run around the table and somehow manage to get out from his house, and he was running towards his neighbor house Lalngaiha again stroke him on his back but could run into the house of his neighbor, after he reaches again stroke him on his back but could run into the house of his neighbor, after he reaches the house of his neighbor he was not assaulted but in fear he ran out from the backdoor of his neighbor and hide near the house of an empty house. After a little while he was taken to Sairang PHC,

then at Civil Hospital. He also added that Lalngaihsaka intended to kill him. The accused Lalngaihsaka (29) S/o Thantluanga (L) of Chhiahtlang, Serchhip District P/A NEC Mualkhang was arrested as per proper arrest memo after inform him the ground of arrest and thoroughly interrogated and he admitted his guilt before the police stating that on 24.3.2014 he was busy the whole day at their house making a rack for their household utensils, and in the evening at around 5:30 pm he went to Thari house their neighbor and drink two cup of Local made liquor and went home and have an evening meal, after having an evening meal he and his wife sat outside their house and heard Heleni's voice, after a little while he and his wife proceeded towards the house of Heleni, and on next house of Heleni some non-mizo were playing card and they were quarreling which was a bit noisy, and then he told them not to make noise and even push one of them on his temple, and at that moment Sadama approach him and yell at him what he was doing there and start to fight with him, and their fight was stopped by one person of Mualkhang, and he thought that things was going to subside but Sadama took a dao and proceeded towards but Sadama took a dao and proceeded towards him but Heleni took the dao from Sadama and Sadama again took a firewood, and told his wife that he wish to killed her husbank, and then he went to their house and took a dao(chempui) from their house and went back again towards the house of Sadama and saw his wife, Heleni and Sadama in front the house of Sadama, and Heleni saw him and told Sadama that he was carried to dao and push him inside his house, and after sometimes Sadama came out from his house and he blow Sadama with his dao on his neck and Sadama fall down on the ground and he again stoke him on his arm and every where he can stroke him, and Sadama somehow rush to Heleni house and Heleni beg him not to assault him in her house, then he proceeded towards their house and on his way to their house he sat behind mount of crushed stone and reaches their house around 1:30 am, in the morning his wife told him that he was look for by police and it is better to report himself before the Police arrest him, and on the morning of 25.3.2014 he report himself at Sairang Police Station, he also added that before this incident happen he and the victim use to have a fight regarding water pipe. The involved weapon i.e dao(chempui) was search near the P.O and

also at the house of the accused but could not be found as the accused believe that after the incident his mind was puzzled and he believe that he had thrown the dao away which he cannot remember where and in which direction he had thrown that dao.

The medical report is also received in which the doctor who examined him opined that the victim/complainant sustained grievous injury and all his injury was cause using a sharp weapon, which proves that the accused attempt to murder the victim, and also if the PO was situated in a isolated place where there are no person to stopped the accused it can be assume that the accused would surely killed the victim, and also from the statement given by the victim, the eye witness and the accused himself that the accused had waited around one hour to assault the victim.

From the above facts and circumstances a prima facie case of U/S 307 IPC is found well established against the accused Lalngaihsaka (20( S/o Thantluanga (L) of Chhiahtlang Serchhip District P/A NEC Mualkhang.

Charge u/s 307 IPC is framed explained in the language known to accused Lalngaihsaka, to which he partly pleaded guilty stating that he beat the victim with dao for two time, the prosecution examined 5(five) witnesses to prove their case.

P.W No.1 Joybul Hoque Barbuia stated that I know the accuse who is standing before the court today.

I live in Mualkhang, and I opened a food shop there at Mualkhang.

That on the evening of 24.3.2014 about 4 non-mizo driver came to my shop to have dinner. After there said dinners finished their dinner, one guy namely Lalngaihsaka came to my shop, drunken and he went to the non-Mizo driver and he slopped two of the non-mizo driver and I went to Lalngaihsaka and asked him about the matter why he slapped them, and he immediately put both his hands at my throat, at that moment the non-mizo drivers plead away as they were afraid of the accused Lalngaihsaka. One of my neighbor Rinawma and Heleni were present at the time of incident and Heleni asked me to close my shop and I locked myself inside my shp as she saw Lalngaihsaka still waiting ro me outside my shop carrying a dao(chempui). On that night while I was trying to

close one of the door of my shop lalngaihsaka forced himself inside my shop Lalngaihsaka and he chopped behind my right ear, and ran around my shop and he ran after me and he again chopped me on my right cheeks, on my right arm, on my back two times with his dao(chempui).

After the incident Heleni and Rinawma brought me to Sairang PHC, as the doctor was not available, they took me to Aizawl civil Hospital, I was hospitalized at the Civil Hospital for three days and after I was discharged from the Civil Hospital, Aizawl I was again hospitalized at Durtlang Presbyterian Hospital for about one month for my Medical treatment.

On the night of the incident the police took me to the doctor for medical examination and I was examined by the doctor and I also submitted FIR to the O/C Sairang Police Station to take necessary legal action against the accused as he tried to kill me by using a dao(chempui).

Exhibit : P-1 is the FIR submitted by me, P-I (a) is my left thumb impression on the FIR.

Cross examination by the Id. D/L :

It is not a fact that none of my customer were fighting outside my shop.

It is not a fact that my neighbor Heleni scolded my customer for making noise in front of his shop.

It is a fact that the accused scolded my customer for making noise and slapped one of my customer.

It is a fact that I was outside my shop and did not see the accused slapping my customer.

It is also a fact that I told the accused not to scold my customer after which my neighbor Heleni and Rinawma appeared and the accused went away.

I do not know whether I went inside my neighbor Heleni's house with a stick in my hand and tried to hit Rinawma who was sitting with Heleni thinking that he was the one with whom I had a fight.

It is not a fact that I was drunk at the time of incident.

It is a fact that I was fighting with the accused earlier two time.

It is not a fact that the accused tried to kill me.

It is not a fact that exhibit P-I is false, exhibit P-I (a) is not my left thumb impression.

P.W No.2 Helen Ramdinliani stated that I know the accused Lalngaihsaka, we stay together at the same locality Mualkhang, I also know the victim Sadama. He was staying next to our house.

On 24.3.2014 at around 8:00 pm there was a fighting among non-mizo's in front of our house. Since it was noisy, I shouted at them to stop the fight and keep calm. Hearing my shout. The accused Lalngaihsaka came and thought that those people were disturbing me and hit two of them on their face. The victim who was running a hotel told the accused not to indulge and to stop hitting them as they were his hotel customers. When the victim asked the accused why he was hitting his customers, the accused Lalngaihsaka got angry with him and they both started fighting. However, Pu Rinawma came and stopped the fight. The accused Lalngaihsaka went away. Pu Rinawma of Mualkhang was in my house and the victim Sadama came to our house having a stick with him and tried to hit Pu Rinawma thinking that he was the one with whom he fought. However, I made the situation calm and they went to the house of the victim. Later on we saw the accused Lalngaihsaka moving around near our house with a dao big knife. After sometime I saw the accused Lalngaihsaka hitting the victim Sadama with a dao with my own eyes on the face, at his arm and on his back, on his neck.

Cross examination by Id. D/L :

It is a fact that I came to learn that the accused and the victim were having an issue earlier at the time when they were playing cards, and they were also fighting each other.

It is a fact that the victim and I were living next to each other with no family of our own respectively. The victim run a hotel and I run a tea stall.

It is also a fact that after he broke up with the accused, the victim fought with Pu Rinawma the person who tried to pull him apart/break them up.

I do not know whether the accused inflicted the said injuries with the intention of killing the victim.

It is a fact that I did not see who first initiated the act of violence between the accused and the victim and I only saw the accused running after the victim. I also did not see the accused inflicting injuries upon the face of the victim.

P.W No.3 Nirmol Das, Mualkhang stated that I know the accused. I am staying at Mualkhang, I am running a tyre repair workshop at Mualkhang, Nazaret Peng. I was not present at the time of the incident. I was informed the incidence and I then rushed to the spot and I found Mr.Sadama lying at the verandah of his house and he was bleeding. I then took him to Sairang Hospital and to Aizawl Civil Hospital on that night it self. I do not remember the date of the incident but it was on 2014 at night. I was informed that the victim Mr.Sadama was assaulted by the accused.

**Cross examination by the Defence counsel:**

It is a fact that I did not know the good name of Mr.Sadam.

It is also a fact that I was not present at the P.O when the incident happen.

It is also a fact that I do not know what had caused the injuries sustain by Mr.Sadam on his body.

It is also a fact that the accused was not present at the P.O when I arrive the P.O.

It is a fact that I myself did not handle the victim at the P.O. I also did not see the injuries allegedly his sustain by the victim Mr.Sadam at the P.O.

P.W No.5 Dr. George Vanlalchhuanga, stated that That on 24<sup>th</sup> March 2014 at 11:50pm while I was on duty at Civil Hospital Casualty Aizawl, I examined Joybul Haque Barbuya on requisition made by the Police, exhibit P-2 is the injury report of Joybul Haque Barbuya. The opinion of the medical examination of the said victim Joybul Haque Barbuya the injuries are of grievous



in nature at the time of my examination as Medical Officer, Civil Hospital Casualty Aizawl.

Exbt : P-2 is the injury report submitted by me.

Exbt : P-2(a) is my signature.

**Cross examination by the Defence counsel:**

From my examination of the injury the victim sustain fresh injury which seem to be inflicted early on the same day and the victim sustain 6 separate injuries on his body right for arm.

It is a fact that I gave my report on 25<sup>th</sup> March 2014.

As far as my examination is concerned the instrument used for inflicting the said injuries was a sharp one without any pointed edge.

It is not a fact that the said injuries could be sustained in an accident.

It is a fact that I did not examine the victim regarding the level of alcohol of in his blood stream.

It is not a fact that exhibit P-2 is false and exhibit P-2(a) is not my signature.

P.W No.6. S.I, C.Liansangzela stated that I was posted at Sairang Police Station when I have been transferred to Aizawl Police Station since December 2014.

I know the accused Lalngaihsaka who is the present today. I was the O/C Sairang Police station. On receiving complaint by telephone on 24.3.2014 that the accused Lalngaihsaka hit one Joibul Haque Burbuiya @ Sadama with a dao.

The 2<sup>nd</sup> O/C and his party rushed to the P.O i.e Mualkhang and I went to the PHC Sairang to see the victim. The accused could not be found on the night of 24.3.2014 but surrendered himself at Sairang P.S the next morning. I interrogated the accused and he confessed that he hit the victim with a dao on the night of 24.3.2014. After examining witnesses and interrogating the accused I found a prima facie case u/s 307 IPC well established against the accused Lalngaihsaka and sent him up for trial.

Exbt : P-3 is charge sheet during statement of witnesses victim and accused, P – 3(a) is my signature.

Exbt : P-4 arrest memo, P-4(a) is my signature.

Exbt : P-5 F.I.R, U/S 154 Cr.P.C P-5(a) is my signature.

**Cross examination by the Defence counsel:**

It is not a fact that I did not visit the P.O. The prima facie in the present case was based on the statement given by witnesses and on the medical report.

It is also a fact that I did not see the actual happening of fight between the accused and the victim.

I denied the suggestion the accused did not inflict the injuries sustained by the victim.

I also denied the suggestion that the accused did not attempt on the life of the victim.

I further denied the suggestion that the accused did not admit his guilt.

It is a fact that I do not enclosed the report of blood sample examination of the victim to ascertain his alcohol content.

I denied the suggestion that the accused inflicted the said injuries in the course of self defense at the time when the victim along with his friends tried to beat him badly.

I admit the suggestion that the accused and the victim earlier had an issue resulting into a fight over water pipe.

I denied that the victim inflicted injuries on the accused on the night before previous night

It is not a fact that I did not find a prima facie case u/s 307 IPC against the accused.

It is not a fact that exbt P 3,4,5 are false and P-3(a) P-4(a), P-5(a) are not my signature.

The accused Lalngaihsaka was examined u/s 313 Cr P.C, and answer the question as follow :

Q.1. It is from the evidence that you were staying at Mualkhang. What do you say ?

Ans : Yes, I stayed at Mualkhang.

Q.2. It is from the evidence that there was a fighting among non Mizo's on the night of 24.3.14 at around 8pm and you thought that they were disturbing Helen Ramgdingliani. What do you have to say ?

Ans : Yes, I thought they are disturbing Heleni.

Q.3. It is from the evidence that you tried to stop the said fighting by hitting/punching two of them. What do you have to say ?

Ans : I beat one them on his cheek.

Q.4. It is from the evidence that the victim Joybul Hoque Burbuya @ Sadama got angry since those you punched them were his customers as he was running a Hotel. What do you have to say ?

Ans : Yes, Sadam got angry.

Q.5. It is from the evidence that you came again after sometime at the P.O with having a Dao(chempui) and hit Sadama with a dao (chempui) on his neck, face, arm and back on that night. What do you have to say ?

Ans : Sadam took dao, and my self also took dao as the P.O is in the nearby and hit Sadam on his neck more than one, but I do not remember how much I hit as was drunk.

Q.6. It is from the evidence that Sadama was taken to Sairang PHC and then to Aizawl Civil Hospital and Durtlang Hospital due to the injury inflicted by you. What do you have to say ?

Ans : I do not know since I left the P.O.

Q.7. It is from the evidence that you were arrested after you surrendered yourself on 25.3.14 morning at Sairang Police Station. What do you have to say ?

Ans : Yes, I surrender to the Police.

The medical report given by Dr. George Vanlalchhuanga, revealed that the victim sustained six point of injury in his body 1) (R) cheek 15X2X4 cms sharp laceration. 2) (R) Cervical area, 9x3x5cms sharp laceration, 3) (R) ear lobule 2x1x1cms sharp laceration, 4) (R) Arm 8x2x4cms, 5) Back (lower) 17x2x4cms sharp laceration. 6) Back (upper) (scapular area) 5x1x1cms sharp

laceration. And in his opinion, the injuries are grievous injury in nature at the time of examination.

Both the public prosecutor and defence counsel submitted written argument.

The Addl. P.P submitted that :

1) The accused Lalngaihsaka S/o Thantluanga (L) of Chhiahtlang was arrested on 25.3.2014 on allegation that he hit one Joybul Haque Burbuia P/A NEC Mualkhang on his face, at his right neck, and his back with a dao on the night of 24.3.2014 at Mualkhang.

2) The victim was taken immediately to PHC, Sairang and later shifted to Aizawl Civil Hospital. He was discharged after 3 days and later admitted to Durtlang Hospital for about one month.

3) The case I/O S/I Liansangzuala after investigation, found a prima facie case u/s 307 IPC against the accused Lalngaihsaka and sent the accused up for trial.

4) That on perusal of all materials available on record, it can be seen

a) That the accused Lalngaihsaka pleaded guilty when charge u/s 307 IPC was framed on 29.9.2014 stating that he beat the victim with a dao for two times.

b) That the victim P.W No.1 Joybul Haque Burbuia deposed before the court that on the night of 24.3.2014 at Mualkhang he was beaten by the accused Lalngaihsaka with a dao on his right cheek, right neck, right arm and on his back two times. He exhibited FIR as exhibit P-I.

c) That P.W No.2 Smt Helen Ramdiniani deposed that she saw the accused Lalngaihsaka hitting the victim with a dao on his face, his arm, neck and at his back with her own eyes on the night of 24.3.2014 @ 8:00pm.

d) That P.W No.3.Nirmol Das, Mualkhang deposed that he saw the victim lying with blood at his verandah after he was assaulted by the accused.

e) That P.W No.5 Dr.George Vanlalchhuanga, who examined the victim at Civil Hospital deposed that the injuries were of grievous in nature and exhibited the injury report as exhibit P-2.

f) That P.W No.6 S.I, C.Liansangzela deposed that after investigation, found a prima facie u/s 307 IPC against the accused Lalngaihsaka. He even stated that the accused surrendered himself on 25.3.2014 which clearly proves that the accused was guilty.

g) That on examining the accused u/s 313 Cr P.C, the accused admitted that he hit the victim with a dao.

5) That from the above points and materials available on record, it is pretty clear that the accused Lalngaihsaka hit the victim with a dao on his right cheek, right neck, right arm and on his back on the night of 24.3.2014 @ 8:00 pm at Mualkhang, infact he was trying to murder Joybul Haque Burbuya @ Sadama.

In the facts and circumstances mentioned above, the Hon'ble court is earnestly prayed to convict the accused Lalngaihsaka S/o Thantluanga (L) of Chhiahtlang, P/O Mualkhang u/s 307 IPC.

The defence counsel Mr C.Zoramchhana also submitted that Brief story of the case is that the accused person was arrested on 25.3.2014 by the Police personnel in connection with the assault and inflicting injuries on Joybul Haque at Mualkhang, on 24.3.2014 @8:00pm and he has been confined in the judicial custody till date. Later on Charge-sheet was submitted against the accused persons by the case I/O finding prima facie case u/s 307 IPC.

That consideration of the case was conducted and charge u/s 307 IPC was framed against the accused person to which he pleaded not guilty and claimed for trial. Thereafter, evidences of the prosecution were taken. The prosecution examined as many as 5 witnesses including the Complainant, the case I/O and the medical expert and hence this argument.

The accused person, therefore, would like to put forward the following *inter alia* points for favour of the kind consideration of Your Hon'ble court and to

honourably acquit him kindly from the charges leveled against him in the instant case after due consideration of the following grounds:-

1. That the statement of the Complainant-victim was not corroborated by the civilian witnesses. One of the civilian witnesses namely, Ms.Helen Ramdinliani stated that it was the victim who started the brawl/fight in as much as his Non-Mizo driver customers were making noisy brawl among themselves and it was the victim himself took up the matter by going after the accused with a stick and even tried to hit Mr.Rinawma who was sitting with Ms.Helen Ramdinliani mistaking him to be the accused Lalngaihsaka when the latter scolded and even slapped two of the victim's Non-Mizo customers in an attempt to settle down the noisy brawl of Non-Mizo drivers thinking that they were wrongly disturbing the said Ms.Helen-i and it was only after this that the accused allegedly chopped the complainant-victim and the latter also retaliated with a knife in his hand. In fact, the scuffle broke out on the invitation of the victim-complainant and it was a one-on-one fight between the victim-complainant and the accused and there was no intention of killing the complainant on the part of the accused as is evident in the statements adduced by the witnesses in the case read together with the statement of the accused in his examination u/s 313 Cr.PC.
2. The complainant-victim (PW-1) himself stated in his cross-examination that he had not seen the accused slapping his Non-Mizo driver customers which is contrary to his statement in examination in chief and hence not reliable. He also stated that he was fighting with the accused two times earlier and as such the complainant-victim himself again started the fight by jumping into the altercation when the accused was scolding the Non-Mizo drivers for making the noisy brawl in the present incident and there was no question of intending to kill the complainant.
3. That the civilian witness (PW-2) Ms.Helen Ramdinliani stated that she was shouting at the Non-Mizo drivers making noisy fightings among themselves outside her shop and on hearing her shout the accused came out

and hit two of the Non-Mizo drivers to stop the fight thinking that they were disturbing her. At this moment the complainant jumped into the scene and fought with the accused who was only trying to stop the Non-Mizo drivers from making the noisy brawl and the complainant himself even went after the accused trying to hit him with a stick after their fight was broken up by Mr.Rinawma and hence the whole ensuing incident was provoked by the complainant himself resulting into he himself sustaining injuries and as such there was no pre-meditated intention or *mens rea* on the part of the accused to attempt on the life of the complainant-victim and as such the accused may rightly be acquitted from the charge leveled against him in the present case forthwith.

4. That another civilian witness(PW-3) Mr.Nirmol Das stated in his cross-examination that he did not know what caused the injuries sustained by the complainant and that he did not see the injuries sustained by the victim Sadam. This witness does not establish or strengthen the case of the prosecution and hence the uncorroborated story of the complainant does not sustain in the eyes of the law and the accused may be acquitted from the charge in the case.

5. That the medical witness(PW-5) Dr.George Vanlalchhuanga stated in his cross-examination that the injuries sustained by the victim-complainant seemed to be sustained early on the day of his examination i.e.25.3.2014 whereas the alleged incident took place on 24.3.2014. Hence, the date of incident did not tally with the findings of the expert examining the injuries and hence fails to corroborate with the prosecution and the accused may accordingly be acquitted on the benefit of doubt.

6. That the case I.O SI C.Liansangzela in his cross-examination stated that he did not visit the P.O and the prima facie in the present case was based on the statements given by the witnesses and medical report whereas the said witnesses' statements and medical report stated otherwise as cited above. There is no clue or indication in the statements either of the civilian witnesses



or the medical report to show that the accused had the necessary *mens rea* or premeditated intention or motive to attempt on the life of the victim-complainant and as such there is no sufficient material on the record to convict the accused under the charge section of law and hence the accused may be acquitted immediately.

7. That all the evidences and materials taken on record in the case are, therefore, pitifully inadequate for conviction of the accused person under the charge section of law in the instant case and since the whole prosecution story is vitiated and not sustainable, the benefit of doubt has to go in favour of the accused person for failure of the prosecution to prove the case beyond all reasonable doubts.

In the premises aforesaid, I humbly submit that since the prosecution has miserably failed to prove their case against the accused person beyond all reasonable doubts, I humbly pray that the accused/petitioner may kindly be acquitted honourably and that he be set at liberty forthwith and for which act of kindness I pray for the ends of justice.

The accused Langaihsaka also pleaded guilty when charge is framed stating that he hit the victim with dao for two times, and the statement of P.W No.(victim) collaborated in his examination in chief P.W No.2, who was eye witness also collaborated stating that the accused was hitting the victim with dao at his arm and his back, and neck, and the victim had fighting with the accused earlier before the instance incident.

There was mis-under standing between the accused and the victim, and had a fighting for two time, before the instance incident. On 24.3.2014, at around 8 pm when there was a fighting among the non-Mizo's drivers who were the customer of victim making noise in the locality accused came out of his house and stabbed some of those driver, the victim therefore tried to prevent his customer, and had a fight with the accused, but one named Rinawma stopped them, and accused left the place, and the victim also tried to hit the accused with

stick thinking that Rinawma as accused. After that accused came home to take dao, and return to the place of occurrence with dao, and while he met the victim, he hit with his dao, in his neck face arm where ever convenience the victim was run to the next house of P.W No.2, and the accused run after him, and P.W No.2 stop him stating not to continue hitting in her house. Had the P.W No.2, not stop the accused, he may continue hitting him with dao, and may kill him in the spot, the injury is also grievous injury.

The accused, in this instance incident try to rescue P.W No.2 from violence of drunken driver, who were the customer of victim, had the accused return to his house after receiving information from the P.W No.2 that she was not disturbed, this incident may not happened, instead he stabbed some driver and chopped even the victim and resulted further violence which led to this incident .

On the other hand, crevious hurt is definid in section 320 IPC, which run as follow :-

*First – Emasculation.*

*Secondly – Permanent privation of the sight of either eye.*

*Thirdly – Permanent privation of the hearing of either ear.*

*Fourthly – Private of any member or joint.*

*Fifthly – Destruction or permanent impairing of the powers of any member of joint.*

*Sixthly – Permanent disfiguration of the head or face.*

*Seventhly – Fracture or dislocation of a bone or tooth.*

*Eightly – Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.*

The injury seen to be grievous injury at the time of medical examination of the victim, but non of grievous hurt was luckily happened as defined in section 320 IPC.

The accused Lalngaihsaka is therefore found guilty u/s 326 IPC by altering the charge section from 307 IPC as per provision of section 216 Cr P.C, as the court did not find any intention to kill the victim, but violence happen due to the fighting between the victim and the accused.

The accused also tried to hit the accused with firewood/stick, and had the victim also have a chance to hit the accused, he may hit the accused with the firewood, which may also cause murder.

With these opinion, accused Lalngaihsaka is convicted u/s 326 IPC.

Next is fixed for hearing over the quantum of sentence.

Announce in open court today 30.7.2015.

5.8.2015.

Accused Lalngaihsaka is produced before me to face his sentence hearing. Accused Lalngaihsaka prayed leniency stating that he had three minor children of age 2 yrs and the eldest one is also only 7 years and his wife Lalvenpuui also had committed adultery during his detention in the Jail and prayed to show leniency, and his Id. counsel Mr.C.Zoramchhana Advocate also submitted that there was no hatred between the accused and the victim, and it is normal fighting and accused is nto habitual offender and prayed to award for the period already undergone, the Id Public Prosecutor prayed to give maximum punishment upon hearing of parties and on thorough perusal of the case record,

accused Lalngaihsaka is convicted and sentence u/s 326 IPC to undergo for a period of 3 years R.I.

Detention period as UTP shall be set off.

The case is disposed.

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

Memo No \_\_\_\_\_/ADJ-I(A)/2015 : Dated Aizawl the,5<sup>th</sup> August 2015

Copy to :-

1. District & Sessions Judge.
2. Spl.Superintendent of Central Jail,Aizawl.
3. Accused Lalngaihsaka C/o C.Zoramchhana Advocate.
4. App. Addl.PP
5. Judicial section
6. Case record.
7. Guard file.

PESHKAR