

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

***Sc No.42/2013,
A/o CrI.Tr.No.131/2013,Aizawl P.S Case No.22/2013
U/S 302 IPC, R/W 25(1B)(a) Arms Act.***

State of Mizoram	:	Complainant
	Vrs	
Vanhmingliana	:	Accused

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

For the opposite party	:	R.Lalremruata, Addl.PP Lily Parmawii Hmar, APP
For the Accused	:	W.Sam Joseph
Date of order	:	6.8.2015

ORDER

The prosecution story of the case in is that on dt.19.1.2013 a written FIR was received from Lalhlupuii W/o H.Vanlalliana of Bawngkawn veng, Aizawl stating that on dt.19.1.2013 evening, his brother Vanlalhriata (30) S/o Lalthanmawia (L) f Ramthar veng was shot by Vanhmingliana (39) S/o Vanzika (L) of Ramthar veng in front of their house by using .22 Pistol (local made) on the right side of his chest, as a result of which his brother succumbed to his injury. In this regard, she requested to take necessary action.hence Aizawl P.S Case No.22/2013 dt.19.1.2013 U/S 302 IPC R/W 25(1B)(a) Arms Act was registered and duly investigated into.

During the course of investigation, the complainant Lalhlupuii W/o H.Vanlalliana of Bawngkawn Aizawl was carefully examined and her statement taken the accused Vanhmingliana (39) S/o Vanzika (L) of Ramthar veng was arrested informing his ground of arrest and kept at PS Lock-up and later forwarded to Civil Hospital, Aizawl whether he consumes alcohol or not and the result came bag positive that the accused consumes alcohol, hence was again kept at PS Lock-up. All available witnesses were examined. I also seized 1(one) no of .22 Pistol(local made) in the presence of available witnesses and were examined. The said seized items is kept as PS Malkhana vide MR No,16/13 and later forwarded to Forensic Science Laboratory, New Secretariat Complex to prove that the fire-arm is genuine, serviceable etc. and the result came back positive. A prayer for 72 hrs remand into Police custody was sent to court and 48 hrs remand was allowed. During interrogation, he admitted his guilt and confessed that he shot Vanlalhriata (30) S/o Lalthanmawia (L) of Ramthar veng in his upper right chest. An inquest was conducted over the victim Vanlalhriata (30) S/o Lalthanmawia (L) of Ramthar veng and later forwarded to the medical officer, Civil Hospital, Aizawl for Post-mortem Examination which was done. Prayer for prosecution sanction was also accorded by the honourable magistrate.

From the above facts and circumstances, a *prima facie* case u/s 302 IPC R/W 25(1B)(a) Arms Act is found well established against the accused Vanhmingliana(39) S/o Vanzika (L) of Ramthar veng.

Charge u/s 304 IPC r/w 25(1)(B) of Arms Act was framed, explained in the language known to him by my predecessor, to which accused Vanhmingliana pleaded not guilty and claims for trial. During the trial, the prosecution examined 5(five) prosecution witnesses P.W No. 1 B.Lalmalsawma stated that I know the accused standing before the court today. I am the Chairman of the Local Council, Ramthar veng, Aizawl on 19.1.2013 I received a phone call from YMA leaders that the accused Vanhmingliana had shot Lalhriatpuia. At the time when I was told about the incident I know that Lalhriatpuia had been taken to the hospital. I went to the house of the accused Vanhmingliana and there were a lot of people

in the house. The police arrived at the house after me . I know that the police had seized a gun from a cupboard belonging to Vanhmingliana. The seizure memo was prepared in my presence and I was made a seizure witness being a leader of the locality. Exbt P-1 is the seizure memo, exbt P-1(a) is my signature and I think exbt M is the seized gun.

Cross examination by Id. Amicus curiae Mr. S.L.Thansanga.

1. The cupboard mentioned in the examination in chief is actually a steel almirah. I do not know whether the almirah has any glass.
2. Though I was present in the room at the time the gun was taken out from the steel almirah I did not see the gun while it was taken out from the steel almirah.
3. The gun was not kept in the cardboard box as produced in the court today.
4. I do not know the type of gun seized on that day since I am not familiar with guns.
5. I do not know whether the gun is local made or not.
6. I did not see any bullets of the gun.
7. I also do not know how many bullets can be used by the gun.
8. It is a fact that I did not read and I do not know the contents of the seizure memo.

P.W No.2 C.Thansanga stated I know that accused standing before the court today. I am the Vice President of the Ramthar Branch YMA. On 19.1.2013 I received an information from one lady that an incident of shooting had occurred and the accused Vanhmingliana had shot one person. When I reached the place I got to know that Lalhriatpuia was shot and he was taken to the hospital. The police reached the place of the incident. I know that the police had seized a gun from a steel almirah while we were in the room from where the gun was seized. Being a local leader I was made a seizure witness. The seizure memo was prepared in my presence. Exbt P-1 is the seizure memo. Exbt P-1(b) is my

signature and I think that the gun which is shown to me in the court today as exbt M is the seized gun.

Cross examination by Id. D/L Dr. C.V.L.Auva.

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

It is a fact that I did not know who had shot the deceased victim.

I also do not know anything about the relationship between the accused and the deceased victim. I only know that he is the husband of the deceased's elder sister.

I have not made any special identification on the gun that was seized on that day. I however think that it is the same as the gun which is produced in the court today.

I do not know the contents of the seizure memo.

P.W No.3 Lalhlupuii stated I know the accused standing before the court today. Biakmuana, who is the son of the eldest brother of my mother informed me over the telephone that the accused Vanhmingliana @ Akhenga had shot my younger brother Vanlalhriata. On hearing this I immediately got ready and went to the hospital. I saw my brother briefly in the hospital where he had already died and was kept in a morgue. I was informed that the police wanted to question me so I went to the police station. The police must have been informed about the incident from the place of occurrence. On reaching the police station I submitted the FIR. Exbt P-2 is the FIR submitted by me and exbt P-2(a) is my signature.

Cross examination by Id, D/L Dr. C.V.L.Auva

I am working in the Revenue Secretariat as LDC./

It is a fact that I was told that Akhenga had shot my brother.

I was told that Vanlalhriata was shot by Akhenga in the front yard which is shared by both of them.

I saw the bullet wound of my deceased brother which was on his chest.

I had not written the contents of the FIR but it was written by one of the police personnel on duty at the P.S I however put my signature on the FIR.

I think the incident must have occurred at around 3 PM and thus I had written that the incident occurred in the evening(tlai lam) in my FIR.

I do not know the type of gun used by the accused when he shot my brother.

Re examination by Id Addl. P.P

Though I have not written the FIR, I know the contents which was as per my dictation.

Further cross examination by Id. D/L

It is not a fact that I do not know the contents of the FIR.

P.W No.4 Jonathan Lalthansanga case I/O I know the accused Vanhminglana. I am working as S.I of Police and I was posted at Aizawl P.S and I was transferred to Sakawrdai on February 2014.

On 19.1.2013 (night) while I was on duty at Aizawl P.S I received FIR stating that Vanhminglana the accused shot Vanlalhriata by .22 pistol (Local made) at his right chest. Along with O/C, I rushed to the PO and I found the accused inside his house and he was arrested with the said pistol in the presence of witness. The accused confessed to me that he shot Vanlalhriata. Statement of the accused and the witnesses were recorded and a prima facie case U/S 302 IPC R/W 25(1B)(a) Arms Act was found well established against the accused and I sent him up for trial. I sent the seized article Pistol to FSL to ascertain the condition of the Pistol, whether the same is a country made or not, whether it is a working condition or not. When I reached the PO i.e Ramthar veng, Aizawl the victim was already brought to Civil Hospital Aizawl and when I reached the said Hospital the victim was already dead. Inquest was conducted by me the same night and the dead body was forwarded to M.O for PME.

Exbt P-4 is charge sheet including FSL report, Prosecution sanction, PME report, inquest report, P-4(a) is my signature.

Exbt P-3 is arrest memo, P-3(a) is my signature, P-1(c) is my signature.

Exbt P-5 forwarding letter for PME, P-5(a) is my signature.

Cross examination by the Defence counsel:

It is a fact that they argue on the topic of wine as he as the said wine was already brought by the accused and the deceased person asked more wine to give him by the accused on for which the accused denied and as result shot the victim by the accused. I myself did not see the factual incidence as I was not present at the time of incidence. As per information received by us I along with O/C rush to the P.O. But the victim was already brought to Civil Hospital Aizawl when I reach the said Hospital in the victim was already died when I conducted inquest I found no bullet in the body of the deceased person during inquest I cannot find bullet because I did not open the body where bullet suppose to be present inside the chest. The bullet was not trace by any other person or persons including medical Doctor to proof that whether the bullet was coming from the gun of the accused or not. I also do not know without proving of what type of bullet caused the death of the deceased as to whether the bullet of the gun used by the accused and the bullets found in the body of the deceased person as there can be no comparison between the two bullets. In spite of all affords along with the Medical Doctor the bullet was not found inside the body of the deceased.

It is denied that without finding any bullets inside the body of the deceased did not meant that the deceased was not shot by gun. I did not see the S/A(gun) inside the court today. I do not have any knowledge the relationship between the accused and the deceased Vanlalhriata and I do not know whether they are closed relatives. The FSL report says that the Pistol was not made by country made and the same was made locally and the working condition is good the said pistol was .22 pistol(local made) the said .22 pistol requires valid license issue by the authority but the accused has no such license.

P.W No.5. Dr. C.Lalnunpuia stated my name is Dr.C.Lalnunpuia, I am working as M.O Rabung at present.

I was posted at Civil Hospital, Aizawl as M.O casualty during the period of September 2010 to August 2013.

I know the accused who is standing in the court today.

The accused was brought to Civil Hospital, casualty department by the Aizawl Police for medical examination regarding alcohol consumption. When I examined he had a smell of alcohol by breath and mouth and he had a thick speech and his conjunctive is congested and dilated pupil and person. In my opinion, he was under the influence of alcohol at the time of my examination.

Exbt P-2 is the medical examination of the accused Vanhmingliana regarding alcohol consumption.

Exbt P-2(a) is my signature.

Cross examination by Ld. D/L

I do not have any personal knowledge of the accused in the previous.

It is a fact that the accused was under intoxication of alcohol

It is a fact that at the time of examination it is difficult to mention as to how many liquor was consumed by the accused as well as when the alcohol was consumed without alcohol analyzer.

It is a fact that with alcohol analyzer, it cannot be known as to when the alcohol was consumed as well as the exact amount of alcohol consumed.

It is a fact that under any circumstances the accused can know what he was doing during the influence of alcohol.

It is a fact that in general terms the consumption of liquor can influence the functions of his mental, thoughts, but as my personal opinion the influence of alcohol of the accused cannot disturb the mental and thoughts.

It is a fact that apart from alcohol influence in the body of the accused no other problems were not endorsed to me.

It is a fact that I did not make false statement before this court today.

P.W No.6 Dr. Lalrozama, who did postmortem of deceased Vanlalhriata, was dropped and dispensed due to regular absent for six consecutive times, despite summon being served.

Accused Vanhmingliana was examined u/s 313 Cr PC, and answer the question put forwards as follow.

Q.1 It is from the record that on 19.1.2013 evening you consumed alcohol/liquor with Lalchhuanliana and Vanlalhriata(the victim) at your house Ramthar veng. What do you say ?

Ans : Yes, we consumed liquor in my residence.

Q.2. It is from the record that after you had consumed liquor Lalchhuanliana and Vanlalhriata left your house and sat outside your house. What do you say ?

Ans : Yes, it is a fact.

Q.3 It is from the evidence that on the same evening i.e 19.1.2013, you took your pistol .22 local made which you kept at your almirah and shot Vanlalhriata at his right chest who was sitting outside your house. What do you say ?

Ans : I did not intent to shot, but the pistol was fired during the fighting, and the bullet was entered on his chest, blood may come out, but I do not see the blood it was after 5pm, it was outside the house.

Q.4. It is from the evidence and record that Vanlalhriata died due to your shot by you. What do you say ?

Ans : People gathered in my residence hearing the shooting. I came to know that victim Vanlalhriata was died before reaching Hospital.

Q.5. It is from the evidence that you possessed and used .22 pistol local made without permission from authority. What do you say ?

Ans : I have no Gun license, and the said Pistol was seized by the police.

Since his Id defence counsels Dr. C.V.L Auva, Advocate was unable to attend court, due his physical weakness, Pu W.Sam Joseph was appointed for his defence counsel on the expense of state u/s 304 Cr PC, at the shape of examination of accused U/s 313 Cr PC. Addl Public Prosecutor R.Lalremruata submitted his written argument as follow :

1. That the victim Vanhmingliana (36)_ S/o Vanzika (L) R/o Ramthar, Aizawl was arrested on 19.1.2013 @ 7:30 pm on the strength of an FIR by the complainant Lalhlupuii W/o H.Vanlalliana R/o Bawngkawn stating that on 19.1.2013 evening her brother Vanlalhriata S/o Lalthanmawia of Ramthar veng was shot dead by one Vanhmingliana t his right chest .22 pistol local made.

2. The case I/O S.I JonathanLalthansanga arrested the accused Vanhmingliana seized the .22 pistol local made and I number of .22 empty cartridge in the presence of witnesses. The case I/O interrogated the accused,

examined witnesses, found a prima-facie case u/s 302 IPC and u/s 25(1B)(a) Arms Act, filed a charge sheet and sent the accused to the court for trial.

3. That a copy of charge sheet was given to the accused by the court on 13.5.2013 and appointed Dr.C.V.L.Auva, Advocate for his defense counsel.

4. That charge u/s 304 IPC R/w 25(1B)(a) Arms Act was framed on 1.8.2013 and the accused pleaded not guilty.

5. That five(5) prosecution witnesses were examined before the court.

a) P.W No.1 Shri B.Lalmalsawma deposed that he was present when the local made gun was seized from the cupboard of the accused and exhibited seizure memo P-1, seized gun M1.

b) P.W No.2, Shri C.Thansanga also deposed that he was present when the gun was seized.

c) PW No.3 Smt Lalhlupuii, R/o Bawngkawn the complainant exhibited FIR P-2.

d) Pw No.4 S.I Jonathan Lalthansanga, the case I/O deposed that the accused confessed and shot Vanlalhriata the victim with his .22 pistol (local made) at the right chest and after interrogation of the accused, he found a prima-facie case u/s 302 IPC well established against the accused. He also deposed that the accused did not have a gun license in respect of the said .22 pistol, and also found a prima facie case u/s 25(1B)(a) Arms Act.

e) PW No.5 Dr.C.Lalnunpuia who examined the accused when he was arrested deposed that the accused was under the influence of alcohol, however stated that the influence of alcohol of the accused could not disturb the mental and thoughts and the accused could know what he was doing.

f) That when the accused was examined u/s 313 Cr PC he admitted and stated that though he did not intend to shoot the victim, gun was fired and the bullet entered the chest of the victim and died before reaching hospital. He also admitted that he had no gun license in respect of the said pistol.

g) The prosecution sanction was obtain from District Magistrate for the prosecution of the accused U/s 25(1B)(a) Arms Act.

In the facts and circumstances mentioned above, this Hon'ble court is earnestly prayed to convict the accused Vanhmingliana, R/o Ramthar veng, u/s 302 IPC 25(1B)(a) Arms Act or as your honour may deem fit and proper.

Ld. Counsel Mr.W.Sam Joseph also submitted his W/A as follows :

1. The prosecution case in brief is that on DT 19.01.2013, a W/FIR was received from Lalhlupuii W/o H.Vanlalliana of Bawngkawn Veng, Aizawl stating that on DT 19.01.2013 evening, his brother Vanlalhriata(30) S/o Lalthanmawia(L) of Ramthar Veng was shot by Vanhmingliana (39) S/o Vanzika(L) of Ramthar Veng in front of their house by using .22Pistol(local made) on the right side of his chest, as a result of which his brother succumbed to his injury. In this regard, she requested to take necessary action. Hence, Aizawl PS C/No 22/13 Dt19.01.2012 u/s 302 IPC r/w.25(1B)(a) Arms Act was registered and duly investigated into. During the course of investigation, the complainant Lalhlupuii W/o H.Vanlalliana of Bawngkawn Veng , Aizawl was carefully examined and her statement taken , the accused Vanhmingliana (39) S/o Vanzika (L) of Ramthar Veng was arrested , informing his ground of arrest and kept at PS Lock-up and later forwarded to Civil Hospital, Aizawl whether he consumes alcohol or not and the result came bag positive that the accused consumes alcohol, hence was again kept at PS lock-up. All available witnesses were examined. I also seized 1(one) no. of .22Pistol(Local made) in the presence of available witnesses and were examined. The said seized items is kept at PS Malkhana vide MR No. 16/13 and later forwarded to Forensic Science Laboratory, New Secretariat Complex to prove that the fire-arm is genuine, serviceable etc. and the result came back positive. A prayer for 72hrs remand into Police custody was sent to court and 48hrs remand was allowed. During interrogation, he admitted his guilt and confessed that he shot Vanlalhriata(30) S/o Lalthanmawia(L) of Ramthar Veng in his upper right chest. An inquest was conducted over the victim Vanlalhriata (30) S/o Lalthanmawia(L) of Ramthar Veng and later forwarded to the medical officer, Civil Hospital, Aizawl for Post - Mortem Examination which was done. Prayer for prosecution sanction was also accorded by the honourable magistrate. From the above facts and circumstances, a prima facie case u/s 302 IPC r/w.25(1B)(a) Arms Act is found well established against the accused

Vanhmingliana(39) S/o Vanzika(L) of Ramthar Veng. I, therefore beg to send him up before your Hon'ble Court to face his trial under the aforesaid section of law.

2. After the charge sheet was furnished to the accused, the charge under Section 302 IPC r/w 25 (1B) (a) was read and explained and framed against the accused person to which the accused pleaded not guilty and claimed for trial.

During the trial the prosecution examined as many as five witnesses namely 1. Mr.B.Lalmalsawma, 2. Mr.C.Tlansanga, 3. Ms. Lalhlupuii, 4. Mr. Jonathan Lalthansanga and 5. Dr.C.Lalnunpuia.

Thereafter the accused was examined under S.313 Cr.P.C. The accused during examination to the question put to him by the Court that "It is from the evidence that on the scene evening i.e, 19.01.2013, you took your pistol .22 local made which you kept at your almirah and shot Vanlalhriata at his right chest who was sitting outside your house. What do you say?

Ans: I did not intend to shot. But the pistol was fired during the fighting and the bullet was entered on his chest, blood may come out, but i did not see the blood, it was after 5pm,it was outside the house."

3. From his own statement it is clear that the accused was in possession of the said .22 pistol local made without any license.

From the evidence on record it reveals that the victim Vanlalhriata died due to the gun shot injury. The accused also stated that there was a fight and during the fight the pistol got fired and he did not have any intention to shoot. It happened all of a sudden due to the fight. None of the pws stated that the accused shot at the victim Vanlalhriata with the intention to kill. None of the witnesses have actually seen the incident. I.O of the case also stated that the there was an argument on the topic of wine. Even in the charge sheet the I.O. has not mentioned that the accused shot the victim Vanlalhriata with the

intention to kill. It has come in evidence that the victim Vanlalhriata died due to the gun shot.

To show the accused persons guilty of the offence under S.302 the prosecution has to prove beyond reasonable doubt the ingredients of S.300 IPC and the said provisions runs thus:

300. Murder.--Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

2ndly.-If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused. or-

3rdly.-If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

4thly.-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

The provisions of S.32 of Evidence Act states that "Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.-Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

When it relates to cause of death.-

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

4. The prosecution should prove their case beyond reasonable doubt. In the case of *RABINDRA KUMAR DEY v. STATE OF ORISSA*, (1976) 4 SCC 233 it was decided that "In order to judge the truth or falsity of the version given by the defence three cardinal principles of criminal jurisprudence are well settled, namely:

(1) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case;

(2) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty, and

3) that the onus of the prosecution never shifts."

4) In the case of *Basudev Hazra Vs. Matiar Rahman Mandal*, (1971) 1 SCC 433: it was decided by the Supreme Court that ***"Defence of an accused persons can legitimately be taken into consideration while assessing the value of the evidence and judging the guilt or innocence of the accused."***

5) In the case of *In the case of Sharad Birdhichand Sarda Vs. State of Maharashtra AIR 1984 SC 1622* it was decided by the Supreme Court that **"A moral conviction, however strong or genuine, cannot amount to a legal conviction supportable in law. The well established rule of criminal justice is that 'fouler the crime higher the proof'. Where**

the accused has been given capital sentence and his life and liberty is thus at stake, a very careful, cautious and meticulous approach of the court is necessary."

6) In the case of AIR 1984 SUPREME COURT 1622 "Sharad Biradhichand Sarda v. State of Maharashtra" it was held that "It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt." In Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808: (AIR 1973 SC 2773 at p. 2182), the apex Court made the following observations : **"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."**

7) In the case of Parsuram Pandey v. State of Bihar, 2005 SCC(Cri) 113 it was held by the Supreme Court that **"Under Section 313 the trial court must examine the accused so as to give opportunity to him to personally explain any incriminating circumstances appearing in evidence against him."**

8) In the case of Basavaraj R.Patil V. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87 it was held by the Supreme Court that **"Object of the Section 313(1) (b) is to benefit the accused. The provision is based on the natural justice principle of audi alteram partem**

9) Nowhere in the evidence adduced by the prosecution proves that the accused with the intention to kill had shot him. The prosecution could not produce any eye witness in connection with this case. If that is so, the court is left with no option but to rely on the statement of the accused during cross

examination.

10) From the evidence on record it is clear that the accused and the victim were taking liquor together and it all happened all on a sudden due to sudden fight without any intention from the part of the accused to kill the victim. Regarding the act of shooting, there is no independent evidence to state that the accused shot him with the intention to kill the victim. He clearly stated that he did not have any intention to shot him and it happened due to the fight between him and the victim. Prosecution failed to prove that the accused shot the victim with the intention to kill, hence the offence of murder under s.302 IPC has not been established. However, the offence under S.304 IPC is made out. The offence of S.25(1B) (a) Arms act also made out.

11) Therefore, I pray the court to convict him under S.304 IPC r/w. S.25(1B) (a) Arms Act and sentence him to undergo imprisonment he had already undergone as UTP.

In this case, the beginning of quarrel which led to this case is that the accused and the victim consumed liquor together on 19.1.2013 in the residence of accused, and the victim expected another quantity of liquor from the accused, thinking that he(accused) would hide some quantity of liquor, and asked more liquor(wine) but the accused informed the victim that he has nothing more liquor to be consumed together. But the victim did not believed, and still asked more liquor, and the accused took his .22 pistol from his almira, and shot the victim, on his right upper chest and died on the way to Hospital the statement of accused collaborated this, in his examination u/s 313 Cr.P.C stating that I did not intent to shot, but the pistol was fired during the fighting and the bullet was entered on his chest, blood has to come out, but I do not see the blood, it was after 5 pm outside the house. The post mortem result dt.20.1.2013 by Dr.Lalrozama, also revealed that "*the cause of death in this case is haemor lagic shock as a result of injuries to the chest and abdomen organ produced by high velocity projectile*", but unluckily the case investigating officer submitted in his examination that I cannot find bullet because I do not opened the body where

bullet suppose to be present inside the chest, the bullet was not trace by any other person or person including medical doctor to proof that whether the bullet was coming from the gun of the accused or not. I also do not know without proving of what type of bullet caused the death of deceased as to whether the bullet of the gun used by the accused and the bullet found in the body of the deceased person as there can be no comparison between the two bullets. Inspite of all effort along with the medical doctor the bullet was not found inside the body of deceased.

But in my considered view, non availability of bullet inside the body of victim does not defend the accused. From the material evidence available on record it is clear that the accused has shot the victim, which was collaborated by the examination of accused u/s 313 Cr PC, and medical report, in the post mortem result dt. 20.1.2013 the bullet might have gone through the body of deceased, or the finding of bullet might has been hidden, as the accused and the victim are closed relative(wife of victim is sister of accused).

But on the other hand there was no any hatred between the victim and the accused, as they consumed liquor together as friend, and found no intention to kill the victim. P.W No.5 Dr. C.Lalnunpuia who examined the accused stated in his cross examination that it is a fact in general terms the consumption of liquor can influence the function of his mental, thought, but as my personal opinion the influence of alcohol of the accused cannot disturb the mental and thought, the accused can know what he was doing during the influence of alcohol.

Besides this, the said gun used by the accused has no license. Accused Vanhmingliana himself stated in his examination u/s 313 Cr P.C that he has no gun license, and the said gun/pistol was seized by the Police, the seizure of the said local made .22 pistol was witnessed by P.W No. 1 and 2.

I, therefore find accused Vanhmingliana guilty, u/s 304 IPC for committing culpable homicide and also find him guilty, u/s 251(A) of the Arms Act 1959 for keeping arm without license and I therefore convicted under the said two section of 304 IPC and 25 1(A) of the Arms Act.

The seized .22 Pistol shall be confiscated.

Next is fixed for sentence hearing.

12.8.2015.

Accused Vanhminglana is produced before me, and Public Prosecutor and his defence counsel, W.Sam Joseph present, and heard the Id. counsel, stating that the convicted Vanhminglana is the sole bread earner of his family, and his elder brother was died on 10.8.2015, and his character is now good, and enclosed many recommendation to certify his present character from Ramthar Presbyterian Church, Rev, R.Ramdinthara Local Council, YMA Ramthar and Dr.Lalhriatzuali M.O Central Jail also give medical certificate stating that the patient accused and constant evaluation/prompt treatment, and pray to show leniency to the convicted person, the prosecution prayed to award maximum punishment to the accused.

In view of the submission of both parties, accused Vanhminglana is convicted and sentence for a period of one year R.I and to pay a fine of Rs.1500/- i.d 15 days S.I.

Detention period shall be set off.

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

Memo No ____/ADJ-I(A)/2015 : Dated Aizawl the,12th August 2015

Copy to :-

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

PESHKAR