

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

***Sc No.104/2013,
A/o CrI.Tr.No.1412/2013 U/S 302 IPC***

State of Mizoram	:	Complainant
	Vrs	
Lalberema	:	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 hearing	:	21.9.2015
Date of Judgment	:	30.9.2015

ORDER

The prosecution story in brief is that on dt.30.7.2013 at about 10:15 pm a written FIR was submitted by Sangneihkima of Phuldungsei stating that on dt.30.7.2013 @ 4:50 pm, Lalberema(accused) came to their house while his mother and mother-in-law were at home. He told them that he knew where their missing cooker was. He then brought his mother-in-law Vanlalnghaki towards his house to show the missing cooker. After sometime at about 5:00pm some person brought his mother-in-law Vanlalnghaki from the house of Lalberema(accused) of Phuldungsei Phulbial in a state of unconsciousness. The victim Vanlalnghaki sustained serious injury on her head believed to be caused

by blunt weapon. Hence, West Phaileng P.S Case No.13/2013 dt.30.7.2013 u/s 302 IPC has been registered and investigated into

During the course of investigation PO(the house of Lalberema) was visited and sketch map of the PO was drawn. At the sametime the complainant was examined thoroughly and his statement was carefully recorded which revealed that on the evening of dt.30.7.2013, one Lalberema who live alone came to their house while his old mother and mother-in-law Vanlalnghaki were at home. Lalberema brought Vanlalnghaki to his house pretending that he knew where the missing cooker was. After sometime, Vanlalnghaki was brought half dead in a state of unconsciousness by some person from Lalberema residence. She was inflicted with severe injuries on her head which was believed to be caused by blunt weapon. She was then taken to PHC Phuldungsei for medical treatment but unfortunately she succumbed to her injuries soon after. I held inquest over the dead body of Vanlalnghaki and forwarded to MO PHC West Phaileng under proper escort for PME to ascertain the real cause of death. The examination result clearly revealed that the caused of death is usebral injury of blunt weapon hit on her head. Later, the dead body of Vanlalnghaki was handed over to complainant Sangneihkima of Phuldungsei Phulbial for customary funeral. Some reliable witnesses were carefully examined and recorded their statement. Some witnesses like Lalamlova Sailo 48yrs S/o Liandala (L) and Lallawmsanga 20yrs S/o Haukhama both of Phuldungsei Phulbiak entered into the house of Lalherema(accused) and saw Vanlalnghaki lying on the floor in unconscious condition and blood oozing from her head injury and also blood stains on the floor.

The arrested accused person Lalberema of Phuldungsei Phulbial was thoroughly interrogated regarding the death of Vanlalnghaki and he confessed his guilt before police and reliable witnesses that on dt.30.7.2013 at about 4:50pm, accused Lalberema went to the Vanlalnghaki's residence and pretending that he knew the missing cooker was, when they reached to the house of Lalberema he tried to rape her but she refused and the accused became angry and he took stick inside the house and hitting her two or three time on her head by using stick about 6fts and 9inch long.

After the 6fts and 9inch long stick(young tree) was seized in the presence of two independent reliable witnesses after recording disclosure statement of accused Lalberema with his own free will. The two seizure witnesses Lalnunnema 35yrs S/o Lalauva (L) and Lallianzuala 29yrs S/o Zairema both of Phuldungsei were examined and they stated that on dt.30.7.2013 the accused Lalberema confessed before police, local leaders of Phuldungsei and two witnesses stated that the accused tried to rape her but she refused then the accused angry and took the stick and hitting Vanlalnghaki by using stick(young tree) at his residence.

After commission of the crime the accused Lalberema informed one Lallawmsangi to call his neighbour Lalzamlova Sailo to help Vanlalnghaki. Then the weapon stick was seized by police in presence of two witnesses and they put their signature on the body of seizure memo.

Thus prima facie case under section 302/376(1)/511 IPC is found well established against the accused Lalberema 43 yrs S/o Challiana (L) of Phuldungsei Phulbial.

Charge U/S 302/376(1)/511 IPC is framed read over and clearly explained to the accused Lalberema in the language known to him to which he pleaded not guilty and claims for trial. During the trial, 8(eight) Prosecution witnesses have been examined

P.W No.1 Sangneihkima of Phuldungsei stated that : I know the accused Pi Vanlalnghaki victim was my mother's younger sister, she was 65 years old and mentally and physically retarded and she could not speak properly. And she was staying with me in my house. On 30.7.2013 as I, my wife and my elder brother's wife reached home at around 5:30 pm I told my family members to prepare for a dinner and since I did not see the victim I asked her where about and my mother replied that the accused came to our house and said that he knew the whereabouts of our lost pressure cooker and he said that he be followed by the victim and would give her the pressure cooker and that the victim followed the accused towards the house of the victim. After sometime as I stepped out of our house, I saw Pu Zamlova, Tv Lallawmsanga and some other

carrying the victim and coming from the side of the accused house to our house. The victim was unconscious and we took her to the P.H.C (hospital) and she was declared dead at around 8:10 pm. I was told that the victim was found unconscious in the house of the accused, and during this time the accused was not found in and around the spot and he was arrested at some other place. The victim was found unconscious inside the house of the accused and the same was reported by the accused himself. I then filed FIR and the Police Station W.Phaileng P.S.

Exbt P- 2 is F.I.R U/S 154 Cr.Pc, P – 2 (a) is my signature.

Exbt P – 3 is F.I.R, P-3 (a) is my signature.

In his cross examination, he stated that It is not a fact that my mother never replied that the accused came to our house and said that he knew the whereabouts of our lost pressure cooker and he said that he be followed by the victim and would give her the pressure cooker and that the victim followed the accused towards the house of the victim.

Accused is my father's brother's wife's brother.

Accused was a frequent visitor to our house.

The victim never got married and does not have any children.

It is a fact that whatever I know about the alleged incident was from hearsay.

It is a fact that a first persons who saw the victim on 30th July 2013 were Zamlova and Lallawmsanga.

It is a fact that Zamlova and Lallawmsanga also did not see as to how the victim sustained injuries on her body and became unconscious.

It is a fact that when the victim was brought to our house by Zamlova and Lallawmsanga the accused person also accompanied them.

It is a fact that It was reported that the accused had called Lallawmsanga and Zamlova that the victim develop giddiness and fell down.

It is a fact that the victim could help as in carrying water, firewood etc.

It is not a fact that the victim while in our house used to suffer from giddiness.

It is a fact that when asked the accused told that the victim developed giddiness and felt down.

It is a fact that as I have not seen as to how the victim sustained injuries and became unconscious it is not possible for sure that the victim was attacked by the accused.

It is not a fact that the contents of exhibits P-3 are not true and it was all done on suspicion.

P.W No.2 Dr.Zirsangliana stated that : My name is Dr. Zirsangliana Chhangte and I am working as Medical Officer West Phaileng PHC.

On 31st July 2013 while I was on duty I received a Police requisition for P.M.E which was accompanied by inquest report by case I/O and dead body challan. Dead body was received at 10 : 50 Am. I started examination at 11 am, an I finished at 1 : 15 Pm. Findings are as follows :-

- a. Laceration of scalpe over right parietal region, which is approximately 2 cm long.
- b. Abrasion over right knee size 1 X 2 cm.
- c. Bruise around right eye of 5 cm dimeter .

- d. Bruise over palm and thumb of left hand.
- e. Bruise over right post-auricular region size is 2 X 3 cm.
- f. Depressed fracture of skull over right temporo- parietal region size is approx. 5 X 7.5 cm
- g. Laceration of dura over right temporal cortex.
- h. Laceration of brain over right temporal cortex.
- i. Contusions of brain over left temporal cortex.

1. Vaginal smear examination was also done by lab. technician which was normal finding, her blood group O+ve. In my opinion the cause of death is cerebral injury due to blunt head trauma.

Name of the deceased examined Vanlalnghaki (Female) 65 years d/o Saiaithanga (L) resident of Phuldungsei Phulbial.

In his cross examination. He stated that the injury which caused the death of Vanlalnghaki was the injury to the cerebrum.

It is a fact that the said injury which caused the death could be caused by falling on the hard object including hard ground.

According to my examination there was no recent sign of sexual intercourse.

All other injuries I found on the body of Vanlalnghaki were not fatal.

According to me the fatal injury found on the body could have been caused within 20 hrs prior to the time of my examination.

P.W No.3 Lalamlova stated that : My name is Lalamlova Sailo, I know the accused Lalberema who is standing in the court today. I also know the victim Vanlalnghaki.

On 30.July 2013 evening Lallawmsanga called me and he told me that Pi Vanlalnghaki was lying unconscious inside the house of accused Lalberema. Lallawmsanga and I carried Pi Vanlalnghaki to her relative's house but she was already dead at that time.

When he went inside the accused Lalberema's house there was blood on the floor and the victim's head was injured.

In his cross examination, he stated that I have no blood relationship with the accused or the victim. I am staying in the same locality of the accused. On 30th July 2013 before anybody could reach the house of Lalberema, Lallawmsanga was the first to reach the house.

It is a fact that Lallawmsanga did not enter the house of the accused alone.

I along with Lallawmsanga entered the house together.

I along with the accused and Lallawmsanga carried Vanlalnghaki to the house of her relatives.

It is a fact that as I was not present when the victim sustained injuries and I cannot say as to how she sustained injuries on her head.

It is a fact that when we entered the house the accused told me that the victim developed giddiness and fell down.

It is a fact that I have nothing to say regarding the injury sustained by the victim and I also do not know the cause of death of the victim.

P.W No.4 Lallawmsanga stated that : My name is Lallawmsanga, I know the accused Lalberema who is standing in the court today. I also know the victim Vanlalnghaki.

On 30.July 2013 evening I saw the accused Lalberema standing in front of his door and he asked me to call Pu Zamlova and he told me that Pi Vanlalnghaki was lying unconscious inside his house. Pu Zamlova and I carried Pi Vanlalnghaki to her relative's house but she was already dead at that time.

When he went inside the accused Lalberema's house there was blood on the floor and the victim's head was injured.

In his cross examination, he stated that I have no blood relationship with the accused or the victim. I am staying in the same locality of the accused. On 30th July 2013 before anybody could reach the house of Lalberema I was the first to reach the house. However I did not enter the house alone. I called Pu Lalamlova and after he arrived at the spot I along with Zamlova entered the house.

I along with the accused and Zamlova carried Vanlalnghaki to the house of her relatives.

It is a fact that as I was not present when the victim sustained injuries and I cannot say as to how she sustained injuries on her head.

It is a fact that when we entered the house the accused told me that the victim developed giddiness and fell down.

It is a fact that I have nothing to say regarding the injury sustained by the victim and I also do not know the cause of death of the victim.

P.W No.5 Roliana stated that : My name is Roliana, I know the accused Lalberema who is standing in the court today. I also know the victim Vanlalnghaki.

On 30th July 2013, I was at home at around 4 – 5 Pm and I went to my mother's house next to my house and I saw the accused and the victim going together towards north and I asked my mother where was the victim going. My

mother replied that the accused knew the where about of the cooker belong to my mother and the accused was going to tell to the victim the where about of cooker. I returned back to my house and at around 5 pm the victim was brought unconscious to my mother's house where she was also staying. We took her to Civil Hospital Phuldungsei and she died at around 8 pm the same night. As far as I know she the victim had injury on her head.

In his cross examination he stated that I have not seen how and in whose hand the victim sustain injury and succumbed. The victim was staying with my mother. My mother is the eldest amongst her siblings. The victim is my mother's step sister. Father is same and mothers are different. I had already left my mother's family and made my separate establishment adjacent to my mother's house. My father had already expired. In my mother's house my elder brother and his wife and also the victim were staying together. The victim used to collect fire wood. The victim was not married. I know the accused who hails from our village and Berema sister is married to my father's brother. The accused used to visit my house as well as my mother's house. I never went to house of the accused on that day. When I saw the victim in the evening she was being carried towards my mother's house by Lallawmsanga & Zamlova etc. thereafter I along with my brother who is staying in the house of my mother carried towards the Hospital. When I met the victim in the evening she was not in a position to say anything.

It is a fact that my mother's cooker was stolen by someone. Till today the cooker is not traceable.

P.W No.6 Lalnunnema stated that : My name is Lalnunnema, I know the accused Lalberema who is standing in the court today. I also know the victim Vanlalnghaki. I am not related to the accused and the victim by blood. I was a Phuldungsei Joint Y.M.A President in 2013.

On the early morning at about 1 : 30 am on 31st July 2013 I was called by the Police to the house of the accused. As I entered the house of the accused I saw blood on the floor, the accused and the Police were also present.

I was present when the accused confessed to the Police that he rape the victim and hit the victim with a stick on the head.(objected by defence counsel)

Exbt P 1 seizure memo, P 1 (a) is my signature.

In his cross examination he stated that before I saw the accused he will already arrested by Police and he was handcuffed. When the accused was brought under arrest S.I Lalsangbera sailo was accompanied by around 4 others Police persons in uniform.

As I was not present when the victim sustain injuries I cannot say as to how and in whose hand the victim sustained injuries and succumbed. I found one piece of wood kept hanging along the wall of the house.

P.W No.8 S.I Lalsnagbera stated that : I know the accused who is standing before the court today. That on 30th July 2013 a written FIR was submitted by Sangneihkima of Phuldungsei Phulbial veng while I was on duty at W.Phaileng P.S. The complainant stated on his FIR that his aunty namely Vanlalnghaki sustained serious injury on her head which was believed to be caused by blunt weapon hence W.Phaileng P.S Case No. 13/2013 u/s 302 IPC was registered against the accused.

That I investigated into the above mentioned case as I am the O/C of W.Phaileng P.S. That during my investigation I visited the house of victim deceased Pi Vanlalnghaki and I conducted inquest over the dead body of Pi Vanlalnghaki. One of the 4th IR personal informed me that one Lalberema Phuldungsei Phulbial was apprehended by the 4th IR on suspicion and he was detained by them at their camp Phuldungsei. I went to the 4th IR camp Phuldungsei and arrested Lalberema and prepared recorded disclosure statement of the accused. After that I visited the P.O., house of Lalberema Phuldungsei

Phulbial along with witnesses, inside the house of Lalberema I seized one stick 6fts 9 inches long in the presence of reliable witnesses. During my investigation I examined complainant, witnesses and I recorded the statements. I forwarded the dead body of Vanlalnghaki to M.O W.Phaileng PHC for PME report.

I could not complete investigation as I was transferred to Mamit S.P Office and I handed over to S.I C.Lalchhuanawma as per the instruction of O/C W.Phaileng P.S.

Exhibit : P-2 (b) is my signature on the body of property seizure form.

Exhibit : P-4 is the inquest report submitted by me, P-4(a) is my signature.

Exhibit : P-5 is the disclosure statement u/s 27 E Act recorded by me, P-5(a) is my signature.

Exhibit : P-6 is the arrest memo of accused Lalberema, P-6(a) is my signature.

Exhibit : M-1 is the S/A.

In his cross examination, he stated that It is a fact that there was no eye witness to prove how the victim sustained injuries and succumbed.

During my inquest I found one injury just about the ear on the head. the said injury was about 4cm in length and 1cm in width according to my inquest I feel that the injury which caused the death of the victim was the head injury which I have mentioned above. Apart from the said injury I also notice some bruise marks on the hand near the eyes.

It is not a fact that M-1 was not recovered from the house of Lalberema.

When I made requisition for PME I also made a request to the Medical Officer to ascertain as to whether rape was committed upon the victim but I came to know that the doctor opined that there was no rape committed by any one.

The distance between the house of the accused and the immediate neighbor would be about 50fts.

It is not a fact that I did not find any prima facie case against the accused.

It is not a fact that accused is falsely implicated in this case.

P.W No.9. C.Lalchhuanawma stated that : I know the accused standing in the court today. During the year 2013 I was posted at W.Phaileng as 2nd O/C.

On 30.7.2013 FIR was received from Sangneihkima of Phuldingsei to the effect that on dt.30.7.2013 @ 4:50pm the accused Lalberema came to their house while his mother and mother-in-law were at home and search for his missing cooker. The accused then brought his mother-in-law Vanlalnghaki towards his house and after sometimes at @ 5:00pm. Some people brought back Vanlalnghaki in an un-conscious state from the house of the accused she sustained serious injury on her head and succumbed to her injury. Hence case is regarding against the accused u/s 302 IPC.

The case was endorsed to S.I Lalsangbera Sailo. S.I Lalsangbera Sailo investigated the case and before submitting charge sheet he was transferred to Mamit P.S and he handed the case to me.

On perusal of the case record and connected paper I found a prima facie case against the accused u/s 302 IPC R/W 376/511 IPC and submitted charge sheet against the accused Lalberema.

Exhibit : P-6 is the charge sheet submitted by me.

Exhibit : P-6(a) is my signature.

In the cross examination, he stated that I did not examine any one of the witnesses in connection with this case.

I relied on investigation done by my predecessor to submit charge sheet.

I was not part of seizure of any of the articles in connection with this case.

It is a fact that there is no medical examination report in order to corroborate the alleged attempt to rape.

It is a fact that there was no sign of revel sexual intercourse.

It is not a fact that I did not find a prima facie case against the accused u/s 302 /376(1)/511 IPC.

It is not a fact that the accused wan falsely implicated on suspicion.

It is not a fact that there was no prima facie case to charge the accused.

Accused Lalberema was examined u/s 313 Cr.P.C and answer the question put to him as follow :

Q.1. It is from the evidence that on 30.7.2013 evening, you went to the house of the victim Vanlalnghaki of Phuldungsei. What do you say ?

Ans : Yes, I went there.

Q.2. It is from the evidence that on 30.7.2013. When you went to the house of the victim, you told the victim to follow you and you would till her where their lost pressure cooker was. What do you say ?

Ans : Yes, it is correct.

Q.3. It is from the evidence that the victim Vanlalnghaki followed you towards you house. What do you say ?

Ans : Yes, Vanlalnghaki came after me.

Q.4. It is from the evidence that the victim was seen lying unconscious inside your house on 30.7.13 evening. What do you say ?

Ans : Yes, she was unconscious inside my house.

Q.5. It is from the evidence that she cause of the death of the victim is cerebral injury due to blunt head trauma. What do you say ?

Ans : I have nothing to say about her cause of death.

Q.6. It is from the evidence that no other persons presence was mentioned at the time of the incident except you and the victim inside your house. What do you say ?

Ans : Yes, No other person except me and the victim were present at that relevant time.

Q.7. It is from the evidence that you hit the victim on her head with a stick inside your house and she fell unconscious and succumbed to her injury. What do you say ?

Ans : I do not hit her, and she herself was fallen down, and she herself hit the bench.

Since the accused has no defence witness to be produced, in the court, both the Id. Addl. Public Prosecutor and defence counsel submitted their respective written argument.

The Id. Addl. P.P submitted that :

That the prosecution story of the case in brief is that on 30/7/2013 a written FIR was received from Sangneihkima of Phuldungsei, Phulbial to the effect that on the night of 30/7/2013 @ 4:50 pm Lalberema came to their house while his mother and mother in law were at home and told them that he knew where their

missing cooker was. Lalberema brought his mother in law Vanlalnghaki to show the missing cooker and after sometime @ about 5:00 PM some person carry his mother in law Vanlalnghaki from the house of Lalberema in a state of unconsciousness. The victim Vanlalnghaki sustained serious injury on her head which was believed to be caused by blunt weapon. And on receipt of this information West Phaileng P.S Case No. 13/2013 Dt. 30.7.2013 U/S 302 IPC has been registered and duly investigated into.

During the course of investigation Case I.O. visited the P.O and sketch map of the PO was drawn, all amendable evidence was thoroughly examined. The complainant was examined thoroughly and his statement was recorded which revealed that on the evening of dated 30/7/2013 one Lalberema who live alone came to their house pretending that he knew where their missing cooker was. Lalberema brought Vanlalnghaki to show the missing cooker and after sometime @ about 5:00 PM some person carry his mother in law Vanlalnghaki from the house of Lalberema in a state of unconsciousness. The victim Vanlalnghaki sustained serious injury on her head which was believed to be caused by blunt weapon. Vanlalnghaki was taken to PHC Phuldungsei for Medical treatment but unfortunately she succumbed to her injuries. Inquest over the dead body of Vanlalnghaki was done and the dead body was forwarded to MO PHC for Post Mortem examination. The PME result reveals that the cause of death is cerebral injury on her head by using blunt weapon. The police seized from the P.O one piece of 6fts 9 inches long of stick (Thingtuai), which were suspected as a weapon used by the Lalberema to strike the victim on her head. Some reliable witnesses who had gone to the house of Lalberema and their statements revealed that they saw the Victim Vanlalnghaki lying on the floor in unconscious condition and blood oozing from her head injury and also saw blood stains on the floor. And as a result Lalberema S/o Challiana of Phuldungsei, Phulbial was arrested from West Phaileng on 31.7.2013. He was thoroughly interrogated and confessed that he had committed the aforesaid crime.

All available witnesses were examined and recorded their statement. All the evidences collected reveals that the Lalberema S/o Challiana of Phuldungsei, Phulbial has actually committed an offence of murder by using dangerous weapons, and murder Vanlalnghaki by inflicting serious injury on her head which was believed to be caused by blunt weapon which caused the death of the victim Vanlalnghaki and found a prima facie case u/s 302/376 (I)/511 IPC well established against the accused Lalberema S/o Challiana of Phuldungsei, Phulbial and submitted charge sheet before this Hon'ble Court.

The court on receiving the charge sheet took cognizance of the offence. The charge u/s 302/376 (I)/511 IPC were framed and considered against the accused to which the accused pleaded not guilty. The prosecution produced as many as 8 witnesses to corroborate the plea of the accused. The brief summary of the deposition of the prosecution witnesses in the court is reproduced as under.

Deposition of PW No-1. The witness examined by the prosecution was Sangneihkima who stated in the court that he know the accused Lalberema S/o Challiana of Phuldungsei, Phulbial. And deposed that Pi Vanlalnghaki victim was his mother's younger sister, she was 65 years old who is mentally and physically retarded who could not speak properly. And she was staying with him in his house. On 30.7.2013 as he, his wife and his elder brother's wife reached home at around 5:30 pm he told his family members to prepare dinner and since he did not see the victim he asked her where about and his mother replied that the accused came to their house and said that Lalberema knew the whereabouts of our lost pressure cooker and Lalberema said that he be followed by the victim and would give her the pressure cooker and that the victim followed the accused towards the house of the accused. After sometime as he stepped out of their house, he saw Pu Zamlova, Tv Lallawmsanga and some other carrying the victim and coming from the side of the accused house towards their house. The victim was unconscious and we took her to the P.H.C (hospital) and she was declared dead at around 8:10 pm. He deposed that he was told that the victim was found

unconscious in the house of the accused, and during this time the accused was not found in and around the spot and he was arrested at some other place. The victim was found unconscious inside the house of the accused and the same was reported by the accused himself. I then filed FIR at the Police Station W.Phaileng P.S.

Exbt P – 3 is F.I.R, P-3 (a) is his signature.

. He proved Exbt. P-3 is the FIR and Exbt. P-3 (a) his signature, on his cross-examination his evidence remains intact.

Deposition of PW No 2.The witness produced by the prosecution is Dr.Zirsangliana Chhangte who is the Medical Officer West Phaileng PHC. Who conducted PME on the death body of the victim Vanlalnghaki. On his examination he deposed before this Hon'ble Court while he was posted at West Phaileng PHC as the Medical Officer and on 31st July 2013 he conducted a PME and stated that while he was on duty he received a Police requisition for P.M.E which was accompanied by Inquest Report by case I/O and dead body challan. Dead body of Vanlalnghaki was received at 10:50 Am. He started his examination at 11 am, and he finished at 1:15 Pm. Findings are as follows :-

- j. Laceration of scalpe over right parietal region, which is approximately 2 cm long.
- k. Abrasion over right knee size 1 X 2 cm.
- l. Bruise around right eye of 5 cm dimeter .
- m. Bruise over palm and thumb of left hand.
- n. Bruise over right post-auricular region size is 2 X 3 cm.
- o. Depressed fracture of skull over right temporo- parietal region size is approx. 5 X 7.5 cm
- p. Laceration of dura over right temporal cortex.

q. Laceration of brain over right temporal cortex.

r. Contusions of brain over left temporal cortex.

2. Vaginal smear examination was also done by lab. Technician which was normal finding, her blood group O+ve. In his opinion the cause of death is cerebral injury due to blunt head trauma.

Name of the deceased examined Vanlalnghaki (Female) 65 years d/o Saiaithanga (L) resident of Phuldungsei Phulbial. He proved Exbt. P –1 is the Post Mortem Report and Exbt. P-1(a) is his signature. During cross-examination no material questions were given to him to discredit his evidence

Deposition of PW No 3. The witness produced by the prosecution is Lalamlova Sailo who stated before the Court that he know the accused Lalberema who is standing in the court that day and also know the victim Vanlalnghaki.

And stated that on 30th July 2013 evening Lallawmsanga called him and he told him that Pi Vanlalnghaki was lying unconscious inside the house of accused Lalberema. Lallawmsanga and he carried Pi Vanlalnghaki to her relative's house but she was already dead at that time.

When he went inside the accused Lalberema's house there was blood on the floor and the victim's head was injured. During cross-examination by the D/L he made no contradictory statement and no material questions were given to him to discredit his evidence.

Deposition of PW No. 4: - The witness produced by the prosecution is Lallawmsanga who stated in the court that he know the accused Lalberema who is standing in the court that day and also stated that he know the victim Vanlalnghaki.

And also stated that on 30th July 2013 evening he saw the accused Lalberema standing in front of his door and he asked me to call Pu Zamlova and

he told me that Pi Vanlalnghaki was lying unconscious inside his house. Pu Zamlova and he carried Pi Vanlalnghaki to her relative's house but she was already dead at that time.

When he went inside the accused Lalberema's house there was blood on the floor and the victim's head was injured. During cross-examination no material questions were given to him to discredit his evidence.

Deposition of P.W. No. 5: -. The witness produced by the prosecution is Roliana who stated in the court that he know the accused Lalberema who is standing in the court today and also stated that he also know the victim Vanlalnghaki.

And further stated that on 30th July 2013, while he was at home at around 4 – 5 Pm he went to his mother's house next to his house and he saw the accused and the victim going together towards north and he asked his mother where the victim is going. His mother replied that the accused knew where their missing cooker was and the accused was going to show the victim the missing cooker. And stated that when he went back to his house and at around 5 pm the victim was brought unconscious to his mother's house where she the victim was also staying. And he and his brother took the victim to Civil Hospital Phuldungsei and she died at around 8 pm the same night. As far as he knows she the victim had injury on her head. He made no contradictory statement and his evidence remains intact.

Deposition of P.W No. 6: - The witness produced by the prosecution is Lalnunnema who stated in the court that he know the accused Lalberema who is standing in the court that day. And stated that he also know the victim Vanlalnghaki and also stated that he is not related to the accused and the victim by blood. He stated that he is the President of Phuldungsei Joint Y.M.A in the year 2013.

And further stated that on the early morning at about 1:30 am, on the 31st day of July 2013, he was called by the Police to the house of the accused. And stated that as he, the accused and the Police entered the house of the accused he saw blood on the floor.

And further stated that he was present when the accused confessed to the Police that he raped the victim and hit the victim with a stick on her head.

Exbt P 2 is the seizure memo, P 2 (a) is his signature. During cross-examination he stated that he found one piece of wood kept hanging along the wall of the accused house. And also denied the question put by the Id D/L that no piece of wood was recovered from the house of the accused on 31st day of July 2013. And no material questions were given to him to discredit his evidence.

Deposition of P.W No. 8: - On his examination he identified the accused and deposed that he knows the accused who is standing before the court that day. He stated that on 30th July 2013 a written FIR was submitted by Sangneihkima of Phuldungsei Phulbial veng while he was on duty at W.Phaileng P.S. in which the complainant stated on his FIR that his aunty namely Vanlalnghaki sustained serious injury on her head which was believed to be caused by blunt weapon hence W.Phaileng P.S Case No. 13/2013 u/s 302 IPC was registered against the accused Lalberema.

And stated that he investigated into the above mentioned case, as he is the O/C of W.Phaileng P.S. That during his investigation he visited the house of victim deceased Pi Vanlalnghaki and he conducted inquest over the dead body of Pi Vanlalnghaki. And further stated that one of the 4th IR personnel informed him that one Lalberema Phuldungsei Phulbial was apprehended by the 4th IR on suspicion and he was detained by them at their camp Phuldungsei. He went to the 4th IR camp Phuldungsei and arrested Lalberema and prepared recorded Disclosure Statement of the accused. After that he visited the P.O., house of Lalberema Phuldungsei Phulbial alongwith witnesses, inside the house of Lalberema he seized one stick 6fts 9 inches long in the presence of reliable

witnesses. During his investigation he examined complainant, witnesses and he recorded their statements. He forwarded the dead body of Vanlalnghaki to M.O West Phaileng PHC for PME Report.

He could not complete investigation as he was transferred to Mamit S.P Office and he handed over to S.I C.Lalchhuanawma as per the instruction of O/C W.Phaileng P.S.

Exhibit : P-2 (b) is his signature on the body of property seizure form.

Exhibit : P-4 is the Inquest Report submitted by him, P-4(a) is his signature.

Exhibit : P-5 is the Disclosure Statement u/s 27 E Act recorded by him, P-5(a) is his signature.

Exhibit : P-6 is the arrest memo of accused Lalberema, P-6(a) is his signature.

Exhibit : M-1 is the S/A. On cross-examination the D/L put questions to discredit his evidence but his evidence cannot be shaken during cross-examination.

Deposition P.W. No. 9: - On his examination he identified the accused and stated that in the year 2013 he was posted at W.Phaileng PS as second O/C and deposed that on 30/7/2013 a written FIR was received from Sangneihkima of Phuldungsei to the effect that on 30.7.2013 @ 4:50 pm the accused Lalberema came to their house while his mother and mother in law were at home and told them that he knew where their missing cooker was. Lalberema brought his mother in law Vanlalnghaki to show the missing cooker and after sometime @ about 5:00 PM some person carry his mother in law Vanlalnghaki from the house of Lalberema in a state of unconsciousness. The victim Vanlalnghaki sustained serious injury on her head which was believed to be caused by blunt weapon. And on receipt of this information West Phaileng P.S Case No. 13/2013 Dt. 30.7.2013 U/S 302 IPC has been registered and duly investigated into. He stated that the case was endorsed to SI Lalsangbera Sailo and stated that SI Lalsangbera Sailo investigated the case and before submitting charge sheet he was transferred to Mamit P/S and he handed the case to him.

He stated that on perusal of the case record and connected paper he found a prima facie case against the accused Lalberema U/S 302 IPC r/w 376 (1)/511 IPC. He proved Exbt. P-6 is the Final Report prepared and submitted by him and Exbt. P-6 (a) is his signature. On cross-examination the D/L put questions to discredit his evidence but his evidence cannot be shaken during cross-examination.

The court closes the Prosecution evidence and the accused was examined u/s 313 Crpc to which the accused stated before the court that he went to the house of the Victim Vanlalnghaki on 30/7/2013 and told the victim to follow him so that he would tell her where their stolen cooker was. The accused further stated that the victim followed him to his house and admitted that the victim was lying unconscious inside his house on the evening of 30/7/20013 and stated that no other person were present at the time of incident. And the accused stated that he did not hit the victim with stick on that day and stated that she the victim fall down and she hit the bench. The court give the accused an opportunity to have his defense evidence to which he declined and hence, this argument.

Summing up the prosecution evidence it is hereby argue and submitted that the fact about the accused by hitting Vanlalnghaki by using stick 6fts 9 inches (thing tuai) on the evening of 30/7/2013 in order to commit the above mentioned offences U/S 302/376(1)/511 IPC, and was proved beyond doubt by the prosecution. The evidence adduced by the prosecution witnesses lead to the guilt of the accused and corroborate each other. The seizure witnesses and the case I/O proved the seized article beyond reasonable doubt. The medical officer who conducted the PME on the body of Vanlalnghaki proved the medical evidence beyond doubt. The case I/O conducts investigations in conformity with law, he visited the PO examined witnesses and recorded their statement and also arrested the accused, and there is no doubt about the investigation. The circumstantial evidence adduced by the witnesses corroborated that there is no doubt about

the fact that the accused Lalberema in the evening of 30/7/2013 in order to commit rape and murder Vanlalnghaki by using stick 6fts 9 inches (thing tuai). Each and every evidences of the prosecution corroborates each other and formed concrete evidence which established and proved to the fact that the accused Lalberema had actually committed the aforesaid crime on the night of 30/7/2013.

The quantity of witnesses produced by the prosecution were sufficient enough and able to earn conviction and the quality of their evidence formed a concrete evidence which established and constituted that the accused Lalberema had actually committed rape and murder vanlalnghaki by using stick 6fts 9 inches (thing tuai) on the evening of 30/7/2013. The evidence adduce by the prosecution witnesses corroborate each other and they are also corroborated to the guilt of the accused. The prosecution evidence brings home and established the guilt of the accused beyond doubt U/S 302/376(1)/511 IPC. In view of the argument advanced by the prosecution and the point raised and also on perusal of the case record and the document which the prosecution proposed to rely, there can be no other conclusions contrary except to this conclusions that the prosecution brought home and proved the guilt of the accused Lalberema beyond all reasonable doubt and found the accused guilty of the offence U/S 302/376(1)/511 IPC and found him liable to be convicted for the offence. On conviction the prosecution also found him guilty to suffer maximum punishment provided by the aforesaid section of law.

In the Premises aforesaid it is honestly pray that your honor may be graciously please to admit this Written argument and after leaving both sides, to pass a judgment and order in favor of the complainant and to convict the accused U/S 302/376(1)/511 IPC and sentence him to suffer the maximum punishment provided by the aforesaid section of law.

The I.d defence counsel Mr.W.Sam Joseph also submitted his W/A that :

1. The prosecution story in brief is that on dt. 30/7/2013 at about 10:15 pm a written FIR was submitted by Sangneihkima of Phuldungsei Phulbial stating that on 30/7/2013 at 4:50 pm, Lalberema (accused) came to their house while his mother and mother-in-law were at home. He told them that he knew where their missing cooker was. He then brought his mother-in-law Vanlalnghaki towards his house to show the missing cooker. After sometime at about 5:00 pm some person brought his mother-in-law Vanlalnghaki from the house of Lalberema(accuse) of Phuldungsei Phulbial in a state of unconsciousness. The victim Vanlalnghaki sustained serious injury on her head believed to be caused by blunt weapon. Hence, West Phailneg-PS C/No. 13/2013 dt. 30/7/2013 u/s 302 IPC has been registered and investigated into.

During the course of investigation PO(the house of Lalberema) was visited and sketch map of the PO was drawn. At the sametime the complainant was examined thoroughly and his statement was carefully recorded which revealed that on the evening of dt 30/7/2013, one Laberema who live alone came to their house while his mother and mother-in-law Vanlalnghaki were at home. Lalberema brought Vanlalnghaki to his house pretending that he knew where the missing cooker was. After sometime, Vanlalnghaki was brought half dead in a state of unconsciousness by some person from Lalberema residence. She was inflicted with severe injuries on her head which was believed to be caused by blunt weapon. She was then taken to PHC Phuldungsei for medical treatment but unfortunatelt she succumbed to her injuries soon after. I held inquest over the dead body of Vanlalnghaki and formwarded to MO PHC West Phaileng under proper escort for PME to ascertain the real cause of death. The examination result clearly revealed that the cause of death is usebral injury of blunt weapon hit on her head. Later, the dead body of Vanlalnghaki was handed over to complainant Sangneihkima of Phuldungsei Phulbia for customary funeral. Some reliable witnesses were carefully examined and recorded their statement. Some witnesses like Lalzamlova Sailo 48 ys S/O Liandala(L)) and

Lallawmsanga 20 yrs S/o Haukhama both of Phuldungsei Phulbial entered into the house of Lalberema(accused) and saw Vanlalnghaki lying on the floor in unconscious condition and blood oozing from her head injury and also blood stains on the floor.

The arrested accused person Lalberema of Phuldungsei Phulbial was thoroughly interrogated regarding the death of Vanlalnghaki and he confessed his guilt before the police and reliable witnesses that on dt.30/7/2013 at about 4:50 pm, accuse Lalberema went to the Vanlalnghaki's residence and pretending that he knew the missing cooker was when they reached to the house of Lalberema he tried to rape her but she refused and the accused became angry and he took stick inside the house and hitting her two or three times on her head by using stick about 6fts and 9inch long.

After the 6fts and 9inch long of stick (young tree) was seized in the presence of two independent reliable witnesses after recording disclosure statement of accused Lalberema with his own free will. The seizure witnesses Lalnunnema 35yrs S/o Lalauva(L) and Lallianzuala 29 yrs S/o Zairema confessed before police, local leaders of Phuldungsei and two witnesses stated that the accused tried to rape her but she refused then the accused angry and took the stick and hitting Vanlalnghaki by using stick(young tree) at his residence.

After commission of the crime the accused Lalberema informed one Lallawmsanga to call his neighbor Lalamlova Sailo to help Vanlalnghaki. Then the weapon stick was seized by police in presence of two witnesses and they put their signature on the body of seizure memo.

Thus, a prima facie case under section 302/376 (1)/511 IPC is found well established against the accused Lalberema 43yrs S/o Challiana(L) of Phuldungsei Phulbial.

I, therefore beg to sent him up to the Hon'ble Court Aizawl to face his trial under the aforesaid section of law.

Col. 13 will prove the case and summon if and when required.

2. After the charge sheet was submitted by the I.O., as the case was exclusively triable by the Sessions Court, the case was committed to the Sessions Judge. The Sessions Judge in turn endorsed the case to the Additional District and Sessions Judge for disposal.
3. On receipt of the case record the court confirmed the delivery of the charge sheet to the accused. As the accused was not in a position to engage counsel to defend him, this court was pleased to appoint me to defend the accused at state expense.
4. After hearing the prosecution counsel and the defense counsel, the court found prima facie case under Sections 302/376(1)read with 511 IPC. Accordingly, on 2.12.13 the charges under the said sections of law were framed and explained to the accused, to which the accused pleaded not guilty and claimed for trial.
5. During trial the prosecution examined as many as eight witnesses namely; 1.Sangneihkima, 2.Dr.Zirsangliana Chhangte, 3.Lalzamlova Sailo, 4. Roliana, 5.Lalnunnema, 6.Lallawmsanga, 7.Lalsangbera and 8. C.Lalchhuanawma.
6. After the prosecution closed their evidence the accused was examined under S.313 Cr.P.C. on 16.6.2015.

7. After the accused was examined the arguments put forth by the counsels were heard and the court directed the counsels to submit their arguments in writing. Hence this written argument.

8. To show the accused person 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.

Facts to be proved by prosecution—(1) Death of a human being.

(2) Death was caused by the accused.

(3) The act by which the death was caused was :

(a) with intention to cause death ; or

(b) with the intention of causing such bodily injury as the accused knew to be likely to cause death of the victim ; or

(c) with the intention of causing bodily injury to the deceased and the injury intended to be inflicted was sufficient in the ordinary course of nature to cause death ; or

(d) with the knowledge that the act was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and the accused committed such act without any excuse for incurring the risk of causing death or such injury as is aforesaid.

9. Since the main section is S.376 IPC which is the punishment section for the offence of rape and the said section is read with S.511 IPC. It would be appropriate to reproduce the section 376 IPC and S. 511 IPC and it runs thus:

[375. Rape.]—A man is said to commit “rape” who, except in the cases hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions :—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believed that he is another man to whom she is or believed herself to be lawfully married.

Fifthly.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment for any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

10. That prosecution is to prove beyond any doubt that the accused attempted to commit the offence of Rape. As per the provisions of the S.511 IPC the prosecution is to prove the following ingredients:

Proof.—The points requiring proof are—

- (1) the act complained of amounted to an attempt ;
- (2) such attempt was to commit an offence to this object ;
- (3) the offence was punishable with imprisonment ;
- (4) the accused in such attempt did some act towards the commission of that offence.

12. 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: 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; that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty, and that the onus of the prosecution never shifts.”

13. In this case nobody has seen how the victim sustained injuries on her body and succumbed to the said injuries.

14. The Medical Officer, Dr. Zirsangliana Chhangte during cross examination has clearly stated that the injury which caused the death of the victim was the head injury and he also stated that the said injury could be caused by falling on hard surface. The statement as recorded by the court is reproduced here in below and it runs thus”

"The injury which caused the death of Vanlalnghaki was the injury to the cerebrum.

It is a fact that the said injury which caused the death could be caused by falling on the hard object including hard ground.

According to my examination there was no recent sign of sexual intercourse.

All other injuries I found on the body of Vanlalnghaki were not fatal.

According to me the fatal injury found on the body could have been caused within 20 hrs prior to the time of my examination."

15. Even the I.O. stated during cross examination that there was no sign of any sexual intercourse and also there was no evidence to establish that the accused attempted to commit sexual intercourse. As mentioned above the Medical Officer also stated that there is no recent sign of sexual intercourse. The ***I.O. S.I.Lalsangbera*** stated during cross examination that ***"When I made requisition for PME I also made a request to the Medical Officer to ascertain as to whether rape was committed upon the victim but I came to know that the doctor opined that there was no rape committed by any one."*** The Police officer ***C.Lalchhuanawma*** who submitted Charge Sheet stated during cross examination that ***"It is a fact that there is not medical examination report in order to corroborate the alleged attempt to rape. It is a fact that there was no sign of recent sexual intercourse."***

16. From the evidence on record the prosecution failed to produce any evidence to prove that the accused attempted to commit rape, hence the said charge has no merit and he is entitled to be acquitted from the charged under S.376(1)/511 IPC.
17. Now let us see whether the prosecution is in a position to prove beyond doubt that the fatal injury sustained by the victim was caused by the accused. One of the witnesses stated that the accused confessed to the police but the **accused during examination under S.313 Cr.P.C** clearly stated that **"I did not hit her, and she herself was fallen down, and she herself hit the bench."** But the said statement is hit by the S.25 of the Evidence Act and it runs thus **"No confession made to a police officer, shall be proved against a person accused of any offence."**
18. 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."
19. 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."
20. 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."

21. 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."**

22. In the case of **BRIJ BHUSHAN SINGH V. EMPEROR, AIR 1946 PC 38; 1947 Cri LJ 336** it was decided that **"A judge cannot act upon evidence which was not given, however, much he may have felt that it ought to have been given."**

23. In the case of **AIR 1984 SUPREME COURT 1622 "Sharad Biridhichand 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."**

24. As per the expert opinion the injury which caused the death was the head

injury and the expert further stated that the kind of injury sustained by the victim could have been caused due to fall on the hard surface. The accused stated that she fell down by herself. The **Pws namely Lalzamlova** stated during cross examination that **"It is a fact that when we entered the house the accused told me that the victim developed giddiness and fell down."** PW Sangneihkima stated during cross examination that It is a fact that **"It was reported that the accused had called Lallawmsanga and Zamlova that the victim develop giddiness and fell down."** He further stated that **"It is a fact that when asked the accused told that the victim developed giddiness and felt down."** PW Lallawmsanga also stated that **"It is a fact that when we entered the house the accused told me that the victim developed giddiness and fell down."**

25. From the statements of the PWs who entered the house first it is clear that the statement of the accused that the victim felt giddy and fell down was spontaneous and there was no time for him to concoct a story. From the evidence on record it is clear that the prosecution failed to prove their case beyond reasonable doubt. Since no eye witness was present when the victim sustained injuries on her body and succumbed, it is very dangerous to rely on the version of the prosecution that the victim sustained injury in the hands of the accused and died.

26. From the prosecution evidence it is pointing out that the victim fell due to giddiness and sustained the head injury and died.

27. That the prosecution has not proved their case beyond doubt, hence the accused is entitled to the benefit.

28. Therefore, I pray the court to acquit the accused Lalberema from the liabilities of the charges under S.302 IPC /376(1)/ 511 IPC.

29. If your honour requires any clarification on the arguments put forth above, I shall be happy to clarify as and when directed to do so.

In this case, accused Lalberema pretended the victim stating that their missing cooker was available in his house, the victim has then follow her, from her house, the accused might have pre-plan to bring the victim in his house where he stayed alone, hoping chance for committing rape to the victim, the FIR revealed that accused attempted to rape ;the victim and Lalberema angry and took the stick of 6fts and 9inch long and hit by using stick(young tree) at his house and hit in her head, and this made cerebral injury due to head trauma, the accused first telling a lie to the victim in her house that the missing cooker was available in his house, this criminal intention lead to raping of the victim, and refuse of rape cause hitting with blunt stick resulting the dead of the victim blood also can be seen on the floor of the accused as stated by the witnesses the prosecution evidence also revealed that accused raped the victim and hit the victim with a stick on the head, which is objected by defense counsel. Had the victim fallen down due to giddy hitting bench, the accused would have chance to prevent from such injury if accused is normal sense.

On the other hand, there was no eye witness while the accused hitted the victim with stick, and while the accused attempt to rape the accused. In respect of alleged commission of rape, P.W No.2, Medical officer who postmortem the deceased stated that there was no recent sign of sexual intercourse, the charge section of 376(1) IPC shall be dropped due to lack of evidence. On perusal of the material evidence available on record it learnt that accused Lalberema intended to bring the victim in his house for committing rape or to persuade her to have sex, by pretending her to find the missing pressure cooker on 30.7.2013 evening around 4-5pm. After reaching the house, accused Lalberema attempted to rape, but the victim refused to have sex with the accused, and the accused felt angry and beat her in her head for three time with stick(thingtuai) and the victim became unconscious and died while going to Public Health Centre, W.Phaileng

the prosecution evidence also collaborated to each other even there was no eye witness I find this circumstantial evidence proved enough the guilt of accused.

But in view of the relation of accused and the victim, there had never been hatred between the accused and the victim, there was no any intention at first to kill the victim the accused is therefore find guilty u/s 299 IPC, culpable homicide, punishable u/s 304 IPC for causing death by doing an act with the intention of causing death.

I therefore convicted accused Lalberema u/s 304 IPC for causing death by doing an act with the intention of causing death to victim Vanlalnghaki, of Phuldungsei by hitting her on her head with stick.

Fix : 30.9.2015 for sentence hearing.

30.9.2015

Accused Lalberema is produced and today is fixed for sentence hearing Mr.W.Sam Joseph prayed the court to sentence accused for the period already undergone, and the prosecution prayed to award maximum punishment of 10 yrs, and also beard the accused Lalberema in person who prayed the court to award sentence for a period of already undergone.

Upon hearing of both parties, accused Lalberema is convicted u/s 304 IPC for a period of 5(five) years R.I.

Detention period 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,30th September 2015

Copy to :-

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

PESHKAR