

Smt. Helen Dawngliani  
Addl. District & Sessions Judge

Ref :- Aizawl PS Case No. 234/2011 dt.5.6.2011 u/s 302/34 IPC

## State of Mizoram

## Versus

1. Zirkhawngghaka  
2. Zohmingthangi ..... Accuseds

Date of hearing	.....	18.03.2014 & 01.04.2014
Date of Judgment	.....	29.04.2014

For the Prosecution	.....	Mrs. Rose Mary, Addl. PP
For the Accused	.....	Mr. S.L. Thansanga, Advocate

## JUDGMENT & ORDER

1. The prosecution story of the case in brief is that on 5.6.2011 in the afternoon the two accused persons went to Aizawl Police Station and stated that accused Zirkhawngkhaka was assaulted by Zohmingthanga (deceased) as a result of which he sustained injury on his forehead and that there was a fight and the said Zohmingthanga was in his house. When the Police went to the residence of Zohmingthanga to arrest him, they found that he was badly injured and while the Police evacuated him to the hospital, he succumbed to his injuries. Later on the same day, Linda Chhakchhuak lodged a written FIR at Aizawl Police Station to the effect that her brother Zohmingthanga, 46 years was beaten to death with an iron pipe of about 3 feet @ 3:30pm in his house at Tuikual "S" above the office of Omega travels by Zirkhawngkhaka and his wife Zohmingthangi.

On the basis of the said information, Aizawl P.S Case No.234/2011 dt.5.6.2011 u/s 302/34 IPC was registered and investigated into. Upon completion of investigation, having found prima facie case against the accuseds Zirkhawngkhaka and his wife Zohmingthnagi for the offence punishable u/s 302/34 IPC Charge sheet was laid against them and committed for trial.

2. Copy of the Police Report and all connected documents were delivered to the accused.

3. As the accused did not have the means to engage a counsel on his own, Mr. SL Thansanga Advocate was assigned to defend the accused at the State expense u/s 304 Cr.P.C.

4. Charge u/s 302/34 IPC was framed against the accuseds. The charge was read over and explained to the accused separately in Mizo language which is known to them to which both of them pleaded not guilty and claims for trial.

5. POINT(S) FOR CONSIDERATION :-

1. Whether there was meeting of minds between the two accused persons to cause the death of Zohmingthanga?

2. Whether the death of Zohmingthanga was caused under circumstances falling u/s 300 IPC and the accuseds thereby guilty of murder u/s 302 IPC?

6. During the course of trial, the prosecution examined 7 witnesses. The accuseds persons were examined u/s 313 Cr.P.C. 3 witnesses including accused Zirkhawngghaka were examined as defence witness. Ld. Coounsels are heard.

Mrs. Rose Mary, the Ld. Addl. PP submitted that the deceased sustained multiple injuries throughout his body including his head. PW No.4/K. Laltlankima, witness to the inquest stated that he saw deep cut injuries on the ear, cut injuries above the eyebrow, cut injuries between the thumb and index finger. Dr. Lalrozama who conducted Post Mortem Examination found multiple injuries on the body and all the injuries were ante mortem in nature. The Ld. Addl. PP further submitted that in the weapon of assault i.e iron pipe there was bloodstain of blood group 'B'. The blood group of the deceased was 'B' and thus it is clear that the blood stain on the weapon of assault was the blood of the deceased. The Ld. Counsel submitted that presuming but not admitting that the deceased hit the accused with the same pipe as claimed by the accused, then there should be bloodstain of the accused on the pipe as well. Accordingly, there is every possibility that the accused after assaulting the deceased to death inflicted self injury and ran to the Police Station. The Ld. Counsel further argued that DW No.1/Lalchuangkimi deposed that there was no argument between the deceased and the accused. The accused Zirkhawngghaka himself deposed that he went to sleep and when he woke up, there was bleeding from his forehead. The next argument of the Ld. Addl. PP is that the accused Zirkhawngghaka himself deposed that he has no identification on the taxi hired by them, he does not know the registration number nor the driver. But strangely, the driver of the taxi was produced and examined as defence witness after a lapse of many months. This has created doubt on the reliability of the accused himself. Further, the Ld. Addl. PP

argued that the accused Zirkhawngghaka stated that he hit the deceased only once, but the deceased sustained multiple injuries on his body and no other persons were present in the house except co-accused and wife of the deceased who claimed to be sick at the relevant time. The Ld. Counsel argued that upon appreciation of the evidence it appears that there was no heated argument nor scuffle between the deceased and the accused so as to require self-defence. The Ld. Counsel submitted that in the given circumstances of the case none of the exceptions to section 300 IPC can be availed by the accused. From the nature and number of injuries inflicted by the accused upon the deceased, it is clear that the same was done with pre-meditation, knowingly that such injuries would cause death. Turning to the antecedents of the accused, the Ld. Addl. PP submitted that the accused is a habitual offender and has been convicted for heinous crimes such as rape and culpable homicide not amounting to murder. While the accused was on bail in the instant case, he committed another offence punishable u/s 307 IPC. The same have been clearly admitted by the accused himself during cross-examination. With regard to co-accused Zohmingthangi, the Ld. Counsel fairly admitted that there is no evidence showing meeting of minds between her and accused Zirkhawngghaka to take the life of the deceased. Accordingly, the Ld. Counsel pray to convict the accused Zirkhawngghaka for the offence punishable u/s 302 IPC.

On the other hand, Mr. SL Thansanga, Ld. State Defence Counsel referred to the depositions of the various prosecution witnesses as well as defence witnesses and summarized his argument by submitting that the exchange of the alleged murder weapon with an iron rod (CMR No.292/2011) by the PW No.10 (Investigating Officer) is bizarre incident in a murder trial and is fatal to the prosecution. Secondly, accused Zirkhawngghaka while sleeping was first assaulted by the deceased and the said accused hit him back with the same weapon used by the deceased to hit him first. Thirdly, first attack by the victim could be safely presumed by the fact that Dr. Vanlalruati of Civil Hospital, Aizawl had given Injury Report in respect of the accused Zirkhawngghaka which is part of the record and marked as pg.47. The said Report says "C.T. Scan advised Pt.party has no money at the moment". Fourthly, the players/persons involved are all family members - (A) the deceased was the husband of Smt.Chuangkimi (b) Smt.Chuangkimi is the daughter of co-accused Zohmingthangi and (c) Smt.Zohmingthangi is the wife of the main accused Zirkhawngghaka. As such, there was no premeditation at all. Fifthly, the deceased was a habitual liquor drinker and also an user of ganja and when he took both liquor and ganja together he (according to his own wife DW No.1/Chuangkimi) lost his senses (he was disturbed). The Ld. Counsel therefore submitted that apart from pleading self defence u/s 96 IPC the provision of Exception 4 to sec.300IPC which says "culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden

quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner” is pleaded. To conclude the Ld. Counsel submitted that the deceased and accused Zirkhawngghaka went to Rangvamual together, purchased 5 litres of liquor and drank together, went home together, started to sleep due to drunkenness, and the fatal assault ensued and the fatality occurred without any premeditation and without taking undue advantage on the part of the accused. The Ld. Counsel therefore prays to acquit the accused u/s 96 IPC and Exception 4 of sec.300 IPC. In respect of co-accused Zothingthangi, the Ld. Counsel submitted that there is nothing incriminating in the trial and thus pray for her acquittal.

#### 7. DISCUSSION, DECISION AND REASONS THEREOF:-

The evidence adduced by the prosecution witness may be briefly highlighted:-

PW No.1/Linda Chhakchhuak is the elder sister of the deceased Zohmingthanga and the informant. She stated that her brother had four issues out of his wedlock with Lalmalsawmi. During the temporary separation, in the year 2007 her brother used to consume liquor. At that time he came in contact with, Chuangkimi who is the daughter accused Zohmingthangi and she started living with her deceased brother and the two of them began to live as husband and wife and had one daughter. Accused Zohmingthangi used to visit them and all of them were in the habit of drinking liquor, Chuangkimi would often leave the house of the deceased but would always return to him. The witness stated that she often told accused Zohmingthangi not to visit them or create trouble for them but requested her to help them lead a normal life. She has no clear knowledge of accused Zirkhawngghaka. From what she observed of them, since long, she suspected that accused Zohmingthangi and her associates would bring great problems to her brother. Since she had the responsibility of looking after her brother, she stated that she used to keep track of his whereabouts, what he was doing and with whom he was associated with.

On 5.6.2011 which was a Sunday @ 4:00pm she received a phone call from her staff informing her that her brother sustained serious injury and that he was evacuated to Civil Hospital. On receiving the information, she immediately rushed to Civil Hospital and on reaching the hospital, she found that her brother had already died and kept in the morgue. She then went to Aizawl Police Station and found both the accused persons. By that time many friends and neighbours gathered. She was informed by the Police at the PS that the accused Zirkhawngghaka had gone to the Police station and gave information that her deceased brother assaulted him and asked the Police to arrest her brother. He had the keys to the gate of the house of her brother and locked the gate before he proceeded to the PS. The key was handed over to her by the Police. Before that the Police had gone to the house of her brother to arrest him in the basis of information given by the accused Zirkhawngghaka. But on finding that her brother was seriously injured they evacuated him

to the hospital. From the injuries sustained by her brother she found that it was both the accuseds who inflicted such injuries and lodged the FIR on 5.6.2011 and by the time she lodged the FIR it was already dark. She further stated that her deceased brother was very kind to both the accused persons who lived and eat in his house at his expense inspite of her requests not to be associated with them. She further stated that at the time of the incident, Chuangkimi, wife of deceased and their daughter Zothankimi, 3 years were also present. She further stated that when she asked Chuangkimi why she did not shout for help when she saw the deceased being assaulted by the two accused persons she told her that she was also assaulted. She exhibited the FIR as Ext.P-1 and her signature as Ext.P-1(a).

In her cross-examination, she stated that her deceased brother told her that Chuangkimi is the daughter of accused Zohmingthangi. She stated that she kept track of her brother as he was in the habit of taking liquor. She admitted that both the accused persons were in the PS when she arrived. She further stated that Chuangkimi and Zothankimi were also present in the PS and Zothankimi was crying. As far as she could recollect, when she saw the accused Zirkhawngghaka in the Police station he had a white cloth around his head which appeared to be a bandage. She is living with her family at Tuikhuahtlang. She further stated that she suspected the accused Zirkhawngghaka since the key was with him and they were the last person seen by her deceased brother. She admitted that Chuangkimi and Zothankimi (Minor) were present at the time of the incident. She stated it is possible for her brother to pick up a fight with accused Zirkhawngghaka as he was in the habit of drinking liquor and that it could also be the other way round. She checked the body of her brother and he sustained multiple injuries such as his hands, chest, head and that basically he sustained injuries on his whole body.

PW No.2/R.Vanlalfaka is a seizure witness. Seeing some crowd near the house of the deceased, he went to the said place. Soon the Police personnel arrived with accused Zirkhawngghaka. The Police team and some of them entered the house. Inside the house, they saw a pool of blood on the bed of the deceased. The Police asked accused Zirkhawngghaka what was the weapon used by him. The said accused took out an iron rod from a place near the bed but the witness cannot recollect whether the same was taken from under the bed. In his presence, the accused stated to the Police that he hit the deceased with the said weapon. Since he was present at the time of seizure, he put his signature as seizure witness in the house of the deceased. He exhibited the seizure memo as Ext.P-2 and his signature as Ext.P-2(a). He identified the material exhibits marked as Ext.M-1 i.e iron rod and bunch of keys as the materials seized by the Police in his presence.

In his cross-examination, he stated that since the house did not have a partition, he presumed that the bed with pool of blood was the bed of the deceased. He admitted the

suggestion that in his presence accused Zirkhawngghaka stated to the Police that he was assaulted by the deceased and that he used the same weapon i.e iron rod against him. As far as he can remember, the iron rod was about 2 and ½ feet with slight bent on one end, the other side was blunt/not pointed. The other seizure witness was Jonathan Thangliana. He denied the suggestion that the accused did not say in his presence that he used the iron rod to hit the deceased.

PW No.3/Jonathan Thangliana came to learn about the incident as he was informed about it in his capacity as one of the leaders of YMA Tuikual South Branch. He went towards the house of the deceased and in the meantime, police team arrived with accused Zirkhawngghaka. He entered the house with them alongwith R.Vanlalfaka. Other civilians were denied entry into the house. When they entered the house, he saw a pool of blood in the common room and in the bedroom, the bed of the deceased was in a pool of blood. When the Police asked accused Zirkhawngghaka where he had put the weapon, initially he denied having knowledge but later one iron rod was taken out by the Police from the bedroom and when they asked him if it was the weapon used by him, he replied in the affirmative. He signed the seizure memo in the house of the deceased. He stated that though there was a partition wall to the bedroom, it does not have a door and everything could be seen from the bedroom to the other room. The house was very small. He exhibited his signature as Ext.P-2(b). He identified the material exhibits marked as Ext.M-1 i.e iron rod and bunch of keys as the materials seized by the Police in his presence.

In his cross-examination, he stated that in his presence the accused Zirkhawngghaka stated before the Police that he was first assaulted by the deceased using the same weapon. He admitted that on being gravely provoked by the assault made on him by the deceased he hit back the deceased using the same weapon. When he saw the accused Zirkhawngghaka he sustained head injury and there was bandage on his head. He did not state in his presence that the injuries sustained by him were caused by the deceased. Only he and R.Vanlalfaka were allowed entry by the Police as they wanted them to be seizure witness. He stated that the deceased used to consume liquor but he was not a nuisance to the society.

PW No.4/K.Laltlankima witnessed the inquest on the dead body of Zohmingthanga at Civil Hospital Aizawl morgue conducted by the Police. He saw deep cut injuries on the ear, cut injuries above the eyebrow, deep cut injuries between the thumb and index finger. There were also injuries on his chest, abdomen, thighs, back and arms. He put his signature as a witness in the morgue itself. The other witnesses were Vanlalruata and Lalthakima. He exhibited the Inquest Report as Ext.P-3 and his signature as Ext.P-3(a). In his cross examination, he stated that he does not remember on which side of the hand the deceased sustained cut injuries between his thumb and index finger so is the injury on

his ear, the cut injury on the eyebrow was about 2cm and that the deceased sustained separate injuries of dark blotches on the chest and abdomen.

PW No.5/Lalchhanzova is Asst.Director Forensic Science Laboratory. He examined cast iron of about 3 feet stained with blood and blood sample of deceased. On examination, it was found that bloodstain on the cast iron was human blood of 'B' group and that the blood sample of the deceased was also of blood group 'B'. He exhibited the FSL Report as Ext.P-4 and his signature as Ext.P-4(a). In his cross-examination, he stated that he did not see the cast iron in the court and that the case iron was of round shape with a hole in the middle. The blood sample of the accused was not send for examination. He admitted that blood group 'B' is a common human blood group and that he cannot say whether the bloodstain found on the edge of the cast iron was the blood of the deceased.

PW No.6/Dr.Lalrozama, Consultant, Forensic Department conducted Post Mortem Examination of the deceased Zohmingthanga at Civil Hospital, Aizawl on 6.6.2011. During examination, he noted the following injuries:-

- i). Multiple contusions and abrasions were found on different parts of the body, detailed description of which is given in the PME Report.
- ii). Lacerations on various parts of the body, detailed description of which is given in the PME Report.
- iii). Fracture of ribs (6&7) on left side and sternomanubrium joint.
- iv). Laceration of anterior part of middle of upper lobe of left lung with collection of blood fluid in the chest cavity.

The Doctor opined that from the findings on PME the cause of death was haemorrhagic shock as a result of injury to the chest. All the injuries were ante mortem in nature and produced by blunt force impact. He exhibited the PME Report as Ext.P-5 and his signature as Ext.P-5(a).

In his cross-examination, he stated that there were two injuries on the left ear, contusion on the right thigh and abrasion on the abdomen. The fracture of left ribs (6&7) were not complete fracture and they can be construed as crack, except for injuries caused to the lungs none of the injuries mentioned in Sl.1-28 of the PME Report were sufficient in itself to cause death.

PW No.7/SI. H.Lalnunmawia is the Investigating Officer. He stated that on 5.6.2011 while he was on duty at Aizawl PS both the accused persons, who are husband and wife came to the PS and accused Zirkhawngbaka stated that he had assaulted Zohmingthanga and that he was also assaulted by Zohmingthanga and that they left him in his house. At that time the said accused had a minor injury on his forehead. From the manner the incident was narrated by accused Zohmingthanga the witness stated that he thought no serious injury must have been caused to Zohmingthanga. So he sent some of his subordinates to the house of Zohmingthanga to see his condition and to bring him to

the Police Station. Thereafter, he received a phone call from his subordinate informing him that Zohmingthanga was seriously wounded and it appeared to them that he was not going to survive and so they informed him that they were evacuating him to Civil Hospital, Aizawl. The Doctor at the said hospital declared Zohmingthanga as brought dead. He conducted inquest over the dead body of Zohmingthanga inside the morgue of Civil Hospital. After conducting inquest, accused Zirkhawngghaka stated to him that he hit the deceased with an iron rod, so he took the said accused to the house of the deceased where the incident occurred. From the house of the deceased, accused Zirkhawngghaka took out an iron rod from under the bed. The said rod was stained with blood. He seized the said weapon in the presence of two civilian witnesses. Thereafter, on the same day Pi.Linda Chhakchhuak lodged a written FIR and both the accused persons were arrested on that day. He interrogated both the accuseds and recorded the statements of witnesses. Co-accused Zohmingthangi stated that she saw accused Zirkhawngghaka hitting the deceased with iron rod. On the same day, he forwarded the dead body of Zohmingthanga for Post Mortem Examination. Thereafter he handed over the dead body to Pi.Linda Chhakchhuak. The seized iron rod stained with blood and blood sample of deceased were send to FSL, the blood stain on the iron rod and the blood sample of deceased were found to be of the same blood group. When they visited the place of occurrence accused Zirkhawngghaka could not show them the weapon with which the deceased hit him. Accused Zirkhawngghaka confessed before Judicial Magistrate and as co-accused Zohmingthangi did not confess he found the two to have common intention and laid charge sheet accordingly. The investigating officer further stated that he found the statement of accused Zirkhawngghaka to the effect that the deceased also assaulted him unbelievable because no weapon used by the deceased was found from the place of incident. The investigating officer further stated that the accused Zirkhawngghaka is a habitual offender and has the ability to even cook up stories before a Police officer. He exhibited the Charge Sheet as Ext.P-6 and his signature as Ext.P-6(a), the dead body receipt as Ext.P-7

In his cross-examination, he stated that when accused Zirkhawngghaka went to the Police Station he did not put a bandage around his head. He forwarded accused Zirkhawngghaka for medical examination. He received back the Injury Report of accused Zirkhawngghaka and according to the report the injuries were of simple nature and he did not see the advise for CT Scan appearing in the Injury Report. He stated that the iron rod produced in the court and marked as CMR No.292/2011 as the weapon used by accused Zirkhawngghaka to hit the deceased is not the one seized by him as the weapon used to commit the offence. He admitted the suggestion that the weapon which he seized was an iron pipe with a hole in the middle throughout the length of the pipe. He stated that he knew the accused Zirkhawngghaka and deceased hit each other with the same iron pipe,



but he denied the suggestion that accused Zirkhawngghaka stated to him that he hit the deceased with the same iron pipe. He admitted that it is only his believe that the statement of accused Zirkhawngghaka that he was also hit by the deceased unbelievable. To his knowledge, accused Zirkhawngghaka has one previous case of murder and another case of rape. He is not sure whether the accused Zirkhawngghaka came to the Police Station with a bandage or not. He admitted that from the record shown to him, Inquest Report is carbon copy and his signature thereon in a separate page is a photocopy.

On re-examination he stated that the iron pipe (water pipe usually used by the PHED) which he seized measured about 3 ½ feet and longer than the one produced in the court. He learnt from co-accused Zohmingthangi that the accused Zirkhawngghaka hit the deceased with the iron pipe but she did not say the weapon used by the deceased.

8. Accused Zirkhawngghaka in his examination u/s 313 Cr.P.C stated that he told the Police that he was first assaulted by the deceased, that they were all drunk on that day and that the weapon was recovered on being led by him as he saw the deceased putting the said weapon before he left the house. He further stated that since the deceased and his wife were drunk they were lying down but as there was profuse bleeding from his head he and Co-accused left the house of the deceased. Chuangkimi came with them upto the gate and she handed over the key to him and told him to lock it. So he locked the gate with the key given by Chuangkimi. He further stated that it was the deceased who hit him first while he was lying down on the floor of the common room, they were all drunk but he knew that he took the rod from the deceased. The accused also stated that the deceased might have sustained some injuries but he was not the one who cause all the injuries. He stated that the deceased was in the habit of taking liquor as well as ganja and as such he often meet with accident. He thinks that some of the injuries sustained by the deceased were due to such incidents. He stated that he sustained injury on his head and cheek and stitching was done, he was not admitted to the hospital and was advised to visit them as and when need arises. To his knowledge at the time of the incident, there was no bleeding from the deceased Zohmingthanga and it was him who was bleeding more. The accused reiterated that it was the deceased who hit him first. They did not have any argument and that he is sorry as the injuries which cost the life of Zohmingthanga and further stated that even prior to the incident the deceased sustained some injuries as he had altercation with some local boys and he took the deceased to the hospital.

Accused Zohmingthangi in her examination u/s 313 Cr.P.C stated that she did not have any common intention with the accused Zirkhawngghaka. She stated that all of them were drunk, she was lying on the floor and the accused Zirkhawngghaka was lying next to her. While lying down she heard a sound of thud and when she got up she saw the accused bleeding. The accused Zirkhawngghaka then ran towards the bedroom to hit the

deceased and she ran after him to stop him. She stated that there was no meeting of minds between her and accused to take the life of Zohmingthanga.

9. At this stage the evidence adduced by the defence may be briefly highlighted:-

DW No.1/Chuangkimi identified the two accused persons as her parents and also stated that she is the wife of the deceased Zohmingthanga. She stated that on the date of the incident she was lying on the upper bunk of the bed as she had recently suffered miscarriage. She was not sleeping, to her knowledge, her deceased husband was asking liquor from accused Zirkhawngghaka, her stepfather. The said accused told her husband that he did not have liquor. There was no argument. Thereafter, the deceased came inside the house with a pipe and hit the accused Zirkhawngghaka, the accused fought back and tried to get the pipe from her deceased husband and there was a scuffle. The accused is physically weaker, she saw him biting the ear of her deceased husband, they were pushing each other and moved towards the bedroom, then the accused Zirkhawngghaka began to hit back her deceased husband. Though there was a lot of sound and beating she was scared and not able to look at them further. The accused hit her husband with the same pipe. As she was still very weak due to the recent miscarriage suffered by her she began to lie down again. She was half awake. She knew that later her mother and accused left the house and she started to sleep. When the Police arrived in her house they woke her up. She stated that her husband used to drink liquor and was also in the habit of taking ganja. When he takes the two of them together he was disturbed. When her husband hit the accused Zirkhawngghaka, she could see him bleeding. In her cross-examination she stated that she married the deceased Zohmingthanga in the year 2007, as she used to live with her grandmother she does not know when her mother married the accused Zirkhawngghaka. Her mother has no regular employment and she knows that her stepfather often comes to the court premises but does not know what he is doing. She admitted that on the date of the incident her deceased husband and the accused Zirkhawngghaka consumed liquor together. She did not get up from the bed where she was lying, she did not know the details of the conversation between her husband and the accused. She did not see her husband taking the pipe but only saw him coming inside with the pipe. She stated that after both the accused persons left the house, her husband was lying on the bed, subsequently the Police arrived and they woke her up, no civilians came with the Police personnel and as she was taken to the Police Station no civilians came to her house in her presence.

DW No.2/Kananmawia stated that on 5.6.2011, his taxi was stopped near Temple Square and he took the two accused persons upto Aizawl PS and received a taxi fare of Rs.50/-. There was bleeding from the forehead of the man but he did not ask the reason. In his cross-examination he stated that he does not know all the persons he carried in his

taxi and that he does not maintain a diary on the number of person he carry in a day and his daily income. It was the accused Zirkhawngghaka who stopped the taxi and his wife was with him. His wife did not sustain any injuries.

DW No.3/Zirkhawngghaka is the accused himself. He stated he went to Rangvamual with the deceased to buy liquor and that by the time they reached home both of them were quite drunk. He slept in the common room with his wife and the deceased slept in the bedroom. Chuangkimi, wife of the deceased was sleeping on the upper bunk in a room between the common room and the bedroom. He stated that he knew the deceased was smoking ganja. While he was lying on the bed the deceased asked him where he had kept the four packets of liquor, he told the deceased that he taken all the four packets of liquor with him and does not know where he kept them and then he went back to sleep. Suddenly the deceased Zohmingthanga hit him on his forehead and cheek, as he was bleeding he caught hold of the pipe from the deceased. To his knowledge he hit back the deceased only once. As he was profusely bleeding he and his wife rushed to Civil Hospital however, instead of going to the hospital they first went to Aizawl PS and reported the incident. On the advise of the Police personnel on duty he was taken to Civil Hospital to attend to his injury. Later he learnt about the death of the deceased. He did not have altercation with the deceased. The only conversation was when the deceased asked about the four packets of liquor. In his cross-examination, he stated that he alongwith his wife, the deceased and friend of the deceased went to Rangvamual in the morning before meal. They reached home around 11:00pm and there was altercation at around 1:00pm. When they reached back home, they continued to consume liquor. On that day he and his wife and the deceased and his wife were at home. On the day of the incident the deceased also took ganja apart from liquor. The deceased was quite drunk so was he and after the deceased asked for more liquor from him, he did not go back to sleep and was walking up and down and the deceased continued to disturb him. He does not know for how long the deceased remained that way as he went to sleep. When he woke up there was bleeding from his forehead as he was hit by the deceased with a pipe, the deceased was taller than him and of better physique. The accused stated that he sustained two cut injuries but does not know how many times the deceased hit him. When he got up he caught hold of the pipe from the deceased and there was a scuffle. The accused denied the suggestion that when he got up he was angry because the deceased disturbed him and so he hit the deceased many times with an intention to take his life. He denied the suggestion that he very cunningly went to the Police Station and made a report against the deceased inspite of his knowledge that the injury he inflicted upon him would cost him life. He does not remember the registration number of the taxi as well as the driver of the taxi he and his wife hired to go to the hospital and he will not be able to identify the taxi. He explained that he and his wife took the taxi which was running passed by He

denied the suggestion that even Chuangkimi heard the sound of beating (ri chawrh chawrh). He admitted that he has previous criminal cases and also admitted that during the pendency of this case he is arrested in another case on allegation of stabbing the brother of his wife but denied that he is a man of hot temper. He does not know how many times he hit the deceased but as far as he can recollect he hit the deceased only once. He was not admitted to Civil Hospital for his injuries.

10. In the instant case the accused persons have been charged with murder of Zohmingthanga on 5.6.2011 in furtherance of their common intention.

11. In order that culpable homicide amount to murder, it must be proved that

- i) the act was done with the intention of causing death or
- ii) the act was done with the intention of causing such bodily injury as the offender knows is likely to cause the death of the person to whom harm is caused or
- iii) the act was 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
- iv) the act was done with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such injury as is likely to cause death.

12. In the case at hand, the death of Zohmingthanga on 5.6.2011 have been proved by the prosecution through the inquest report (Ext.P-3) postmortem examination report (Ext.P-5) and dead body receipt (Ext.P-7) which are also duly proved through oral evidence.

13. In the present case the eye witness Chuangkimi who is the daughter of accused Zohmingthangi and wife of deceased Zohmingthanga appeared as defence witness.

14. Intention is a subjective element and in most cases direct proof of intention is not forthcoming. It has been rightly said "*the Devil himself knows not the thought of man*". A man's intention is a question of fact and it can be gathered from his acts. In deciding the intention of the accused, the court may consider the nature of the weapon used, the part of the body of the victim chosen by the accused for attack, the number of blows administered, the force used by the assailant etc. With regard to the intention, the law looks at the result of the man's act and not the condition of his mind.

15. In this case as stated above, the eye witness is the witness for the defence. It appears from evidence that PW No.1/Linda Chhakchhuak who lodged the FIR and sister of the deceased was not present in the house of the deceased at the time of the incident. The said witness i.e PW No.1 stated that on 5.6.2011 which was a Sunday, at about

4:00pm she received a phone call from one of her staff namely Mahmingi to the effect that her brother/the deceased sustained serious injury and that he was evacuated to the hospital. On the basis of the said information, she rushed to Civil Hospital only to find that her brother had already died. She immediately went to Aizawl PS to lodge the FIR and at the PS she saw the two accused persons. She further stated that Chuangkimi and her daughter Zothankimi were also present at the PS.

16. It is the case of the defence that the deceased Zohmingthanga was the first one to assault accused Zirkhawngghaka who was lying down with co-accused in the common room of the house of the deceased. As accused Zirkhawngghaka sustained injuries both of them went towards Civil Hospital Aizawl by hiring a taxi. However, instead of going to the Civil Hospital they went to Aizawl PS and made a report that the deceased assaulted him and that he also assaulted the deceased. On the basis of the said information, Police went to the house of the deceased to bring him to the PS but on reaching the house of the deceased they found him seriously injured and evacuated him to the hospital. The deceased succumbed to his injuries on the way to the hospital.

17. The defence plea is that the act of accused Zirkhawngghaka is covered by exception u/s 96 IPC as well as Exception No.4 to section 300 IPC. Section 96 IPC provides that nothing is an offence which is done in exercise of private defence.

18. When a defence u/s 96 IPC is set up it is for the accused to prove that he would be hurt and particularly in a case where death has been caused whether he was under reasonable apprehension of grievous hurt or death. It is his apprehension that is important and not the actual injuries suffered by him. On the other hand, for an act to be covered by Exception 4 to sec.300 IPC i.e culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Accordingly, in order to avail the said exception it is for the accused to prove that it was a sudden fight, that there was no premeditation, that the act was committed in the heat of passion and that the assailant had not taken undue advantage or acted in a cruel or unusual manner.

19. The ingredients of the two exceptions appear to be contradictory to each other. Exception u/s 96 IPC is purely an act of self-defence without any provocation. On the contrary in order to avail exception 4 to section 300IPC there has to be a fight. It takes two to make a fight. Heat of passion requires that there must have been no time for passions to cool down and that the parties have worked themselves to fury on account of verbal altercation in the beginning. A sudden fight implies mutual provocation and exchange of blows on each side.

20. As stated earlier none of the prosecution witnesses were present at the time of commission of the offence. DW No.1/Lalchuangkimi stated that on the date of the incident she was lying on the upper bunk of the bed as she had recently suffered miscarriage. She was not sleeping, to her knowledge, her deceased husband was asking liquor from accused Zirkhawngghaka, her stepfather. The said accused told her husband that he did not have liquor. There was no argument. Thereafter, the deceased came inside the house with a pipe and hit the accused Zirkhawngghaka, the accused fought back and tried to get the pipe from her deceased husband and there was a scuffle. The accused is physically weaker, she saw him biting the ear of her deceased husband, they were pushing each other and moved towards the bedroom, then the accused Zirkhawngghaka began to hit back her deceased husband. Though there was a lot of sound and beating she was scared and not able to look at them further. The accused hit her husband with the same pipe. As she was still very weak due to the recent miscarriage suffered by her she began to lie down again. She was half awake. She knew that later her mother and accused left the house and she started to sleep. When the Police arrived in her house they woke her up. In her cross-examination, she admitted that on the date of the incident her deceased husband and accused Zirkhawngghaka consumed liquor together. She admitted that she did not see her deceased husband taking the pipe but voluntarily stated that she saw her husband coming inside with the pipe.

21. PW No.7/SI. H.Lalnunmawia the Investigating Officer stated that on 5.6.2011 while he was on duty at Aizawl PS both the accused persons, who are husband and wife came to the PS and accused Zirkhawngghaka stated that he had assaulted Zohmingthanga and that he was also assaulted by Zohmingthanga and that they left him in his house. At that time the said accused had a minor injury on his forehead. The witness further stated that from the manner the incident was narrated by accused Zirkhawngghaka he thought no serious injury must have been caused to Zohmingthanga. So he sent some of his subordinates to the house of Zohmingthanga to see his condition and to bring him to the Police Station. Thereafter, he received a phone call from his subordinate informing him that Zohmingthanga was seriously wounded and it appeared to them that he was not going to survive and so they informed him that they were evacuating him to Civil Hospital, Aizawl.

22. Accordingly, the statement of accused to the effect that there was a fight between him and the deceased appeared to be credible. The sequence of events narrated in the evidence, examination-in-chief and the relationship of the deceased with the two accused persons, it also appears that there was no pre-meditation on the part of the accused persons to take the life of the deceased.

23. In order to invoke exception 4 to sec.300 IPC it must be proved that the death was caused (i) without premeditation (ii) in a sudden fight (iii) the fight is with the deceased and (iv) without the offender taking undue advantage or acted in a cruel or unusual manner.

24. In the case at hand, the Post Mortem Examination report may be reproduced as follows :-

- “1. Abrasion 4 X 3 cm on front of right ankle.*
- 2. Abrasion 0.5 X 0.5 cm on front of upper end of right leg.*
- 3. Abrasion 4 X 3 cm on front of leg 3 cm from knee.*
- 4. Abrasion 0.5 X 0.5 cm on lateral aspect of upper left leg with contusions 11x10 cm around.*
- 5. Contusion 12 X 10 cm lateral left thigh.*
- 6. Laceration 2.5 cm X muscle depth on back of upper 1/3 of left forearm.*
- 7. Laceration 1 cm X muscle depth on back of left forearm 5 cm from elbow.*
- 8. Abrasion 0.5 X 0.25 cm on back of left hand with contusion around.*
- 9. Laceration 2 cm X muscle depth on back of middle 1/3 of right forearm.*
- 10. Contusion 15 X 7 cm just below umbilicus.*
- 11. Multiple linear contusions seven in numbers on front of left chest at precordial area directed upwards and laterally width 1.2 cm length of 10-14 cms.*
- 12. Multiple abrasions on middle of front of chest, front middle of abdomen and lateral aspect of right abdomen; dark brown.*
- 13. Abrasions 1 X 0.5, 0.5 X 0.5 cm on superior aspect of right shoulder.*
- 14. Abrasions 6 X 3 cm on superior surface of left shoulder.*
- 15. Abrasion 3 X 1 cm on back of left chest.*
- 16. Abrasion 7 X 1 cm on lateral left chest.*
- 17. Contusion 7 X 2 cm on left side of chin.*
- 18. Laceration whole thickness upto base of middle of left ear pinna.*
- 19. Laceration 0.75 X S.C depth 3 cm front of left ear.*
- 20. Laceration 2 cm X SC depth on lateral end of left eyebrow and 2 cm X SC on middle (L) eyebrow.*
- 21. Laceration 3 cm X muscle depth on left temporal scalp 3 cm above ear.*
- 22. Laceration 4 cm X S.C depth on (L) parietal scalp.*
- 23. Abrasion on upper right pinna of ear 0.5 X 0.2 cm from middle.*
- 24. Abrasion 2 X 0.5 cm on right upper neck 2 cm from middle.*
- 25. Contusion 2 X 1 cm on front of neck just below thyroid cartilage.*
- 26. Contusion 20 X 7 cm on lateral aspect of middle of right thigh.*

27. *Fractures of ribs 6-7 m on left side lateral and sternomanubrium junction with extravasation of blood in tissues.*

28. *Laceration of left upper lobe of lung middle anteriorly, whole thickness for 4 cm depth.*

*Collection of blood in the thoracic cavity.*

*Skull intact. Brain MAD.*

*Heart healthy. Abdominal organs healthy.*

*Cause of death in this case is haemorrhagic shock as a result of injury to the chest. The injuries are antemortem in nature produced by blunt force impact."*

25. It is noticed from the Post Mortem Examination Report that the deceased sustained abrasion, laceration & contusions basically from head to toe. Apart from this he suffered fracture of rib (6<sup>th</sup> & 7<sup>th</sup>). On the other hand, the injury suffered by the accused was simple injury. It can be made out that his injury was not serious because he could move by himself, he could first go to the Police instead of the Hospital and there was no need for him to be hospitalized. He was found medically fit to be detained in custody.

26. From the story narrated by the prosecution witnesses as well as the defence, it is seen that the fight (according to accused Zirkhawngkhaka) and the Police being sent to the house of the deceased on a complaint made by accused Zirkhawngkhaka was in quick succession. According to the defence only Chuangkimi was with the deceased in the house of the deceased when both the accused had gone to the Police/hospital. Therefore, there was no one who could have inflicted more assault on the deceased during the absence of the accused. Moreover, DW no.1/Lalchuangkimi who is the wife of the deceased and daughter of co-accused Zohmingthangi stated that she was very weak as she recently suffered miscarriage. As such, in the given circumstance, there is no likelihood of the accused being assaulted by any other person after both the accused left his house.

27. As a result of the fight the accused Zirkhawngkhaka sustained some injuries such as laceration of scalp-frontal region and cut injuries on right shoulder and left small finger. He could move out of the house on his own and he had the sense to go to the hospital to attend to his wounds. It appeared that he changed his mind and first reported the matter to the Police as highlighted earlier. Keeping in mind the relationship between the accused persons and the deceased on one hand and the injuries suffered by the deceased in terms of the Post Mortem Examination Report, it is nothing but cruelty to have left behind the deceased in his house and that too by locking the gate and retaining the key with him. The conduct of the accuseds is nothing but leaving the deceased behind to die and this has what exactly happened with the deceased. Further, on comparison of the injuries



sustained by the deceased and accused Zirkhawngghaka, the injuries inflicted upon the deceased is far more severe than the accused Zirkhawngghaka even though according to the defence the deceased was taller and of better physique than the accused Zirkhawngghaka. It may also be noted that the accused as well as the defence did not speak of the deceased hitting the accused Zirkhawngghaka more than once. The Ld. State Defence Counsel argued that the medical officer advised CT Scan but the same was not done by the accused for want of money. In this connection, it may be noted that the accused could face trial throughout without complaining any health problem and without any report of he being under medical treatment due to the injuries sustained by him in the incident. Therefore, it can be safely inferred that the said advise was precautionary measure and not because of any abnormality detected on the accused. In other words, CT Scan not being done on the advise of the Doctor does not result in any ailment on the part of the accused Zirkhawngghaka.

28. As stated by the accused and DW No.1, there was no verbal quarrel between the deceased and accused Zirkhawngghaka. The accused on being hit by the deceased resulted into a fight. Comparing the number of injuries sustained by the deceased and the accused Zirkhawngghaka, it appears that the accused had taken undue advantage and acted cruelly upon the deceased at the time of the fight and thereafter. The number of injuries inflicted upon the deceased by the accused Zirkhawngghaka appears to be all out of proportion.

For the reason indicated above, I am of the considered view that the accused Zirkhawngghaka cannot avail Exception 4 to Section 300 IPC.

29. The right of private defence may be divided into two. As a total defence u/s 96 to 106 IPC and the other is partial defence under Exception 2 to section 300 IPC wherein there can be reduction of an offence of murder into culpable homicide not amounting to murder. In order to avail the right of private defence, the accused must prove that he was free from fault in bringing about the encounter, there must be impending peril to life or great bodily harm, either real or so apparent as to create an honest belief of an existing necessity and there must be necessity for taking life.

29.A. In the case at hand, the accused is claiming right of private defence u/s 96 IPC. Section 99 IPC provide that the right of private defence in no case extends to inflicting more harm than it is necessary to inflict for the purpose of defence. Section 100 IPC enumerate the circumstances under which right of private defence of body extend to causing death.

29.B. Coming to the instant case, even though the Ld. Addl. PP submitted that the injury on the accused must be self inflicted after he assaulted the deceased, presuming the statement of the accused Zirkhawngghaka to be true that while he was sleeping the

deceased hit him with a pipe thereby proving the first ingredient of the offence. The second ingredient is that there must be present impending peril to life or great bodily harm, either real or so apparent so as to create an honest belief of an existing necessity. In this regard, the accused stated that when the deceased hit him, he caught hold of the pipe from the deceased. DW No.1/Lalchuangkimi stated *“the accused fought back and tried to get the pipe from my husband and there was a scuffle. Then they were pushing each other and moved towards the bedroom. Then the accused Zirkhawngghaka began to hit back my husband. Though there was a lot of sound of beating, as I was scared, I could not look at them further.”* Accused Zirkhawngghaka in his cross-examination stated that –*“15. I sustained 2 cut injuries but I do not know how any times I was hit by the deceased”*. As per the Injury report of the accused he sustained laceration of 3x1x1cm on the scalp frontal region, stitching was done on the right shoulder and left small finger. According to the medical officer, all the injuries were of simple nature. On the other hand, the deceased sustained injuries such as laceration, abrasion, bruising and contusions basically from his ankle to head which were listed out into 28 numbers in the Post Mortem Examination Report. Further from the statement of the accused and DW No.1 there is no mention about the deceased giving another blow after the accused caught hold of the weapon i.e pipe from him. There is also no evidence of the deceased using another weapon of assault after the pipe was snatched from him by the accused. Presuming the statement of accused and DW No.1 to be true that the deceased was taller and better physique than the accused, the fact remains that after the weapon was seized from him, he was unarmed whereas the accused continued to have the weapon with him. The number of injuries sustained by the deceased and the accused would clearly suggest who was armed and who was not armed inspite of the fact that the deceased was of better physique. Considering the relationship between the parties including the deceased, there was means for the accused to stop the fight and to hide or throw away the weapon. In view of the circumstances of the case and the evidence on record, I find that the second ingredient have not been satisfied by the accused in order to avail the right of private defence.

29.C. Even if the right of private defence is taken as a partial defence under Exception 2 of Section 300 IPC, the number of injuries sustained by the deceased and the injuries sustained by the accused which are clearly reflected in the PME Report and Injury Report respectively would suggest that the injuries inflicted upon the deceased was all out of proportion for the purpose of self defence. The accused only stated that the deceased hit him on his forehead and cheek. The illustration to the said exception makes the position more clear. But in the instant case, as highlighted in the preceding paragraph, the conduct of the accused does not fall even under this exception. .

30. Though the accused have not taken the defence of Sudden and grave provocation provided under Exception 1 of sec.300 IPC, the same may be looked into for better appreciation of the case and proper adjudication. In order to avail this exception the accused has to show that he lost his self-control. If the story of the accused is to be believed, the act of the deceased in hitting him with a pipe is no doubt provocative. But the same has to grave also, thereby meaning that there was sudden grave provocation so much so that the accused lost his power fo self control. In the instant case, the accused stated that he had no argument with the deceased. There is no evidence that due to the act of the deceased he was so much provoked that he lost self-control and showered blows on the deceased without having time to cool down. On the contrary, the accused pleaded self defence, thereby meaning that he did not loose his cool and that his conduct of purely to defend himself. The accused stated-*“thereafter I went back to sleep and suddenly Zohmingthanga hit me on my forehead and cheek. As I was bleeding, I caught hold of the pipe from him. As far as I can remember, I hit him back only once”*. Further, the accused in his cross-examination stated “17. It is not correct to suggest that when I woke up I was angry because the deceased had disturbed me and hit him many times with the intention to take his life.” The said statement of the accused is also a clear indicator that he did not loose his self-control. Accordingly, Exception No.1 to section 300 IPC does not appear to be applicable in the instant case.

31. The defence also argued that the difference of weapon between the material exhibits and the one actually used in the instant case is fatal in a murder trial.

In this regard, PW No.2/ R.Vanlalfaka and PW No.3/ Jonathan Thangliana, the seizure witnesses stated that seizure was made of iron rod and bunch of keys and they identified the material exhibit Ext.M-1 which is an iron rod as the weapon seized in their presence. PW No.5/Lalchhanzova examined the blood sample of deceased and cast iron of about 3 feet with suspected bloodstain. The said witness stated that the bloodstain on the cast iron and the blood of the deceased were of the same blood group i.e B. In his cross-examination he stated that the cast iron was of round shape with a hole in the middle and he did not see the same in the Court. Demolishing the statement of PW No.2&3, PW No.7/SI H.Lalnunmawia who is the Investigating Officer in his cross examination stated that the weapon he seized was an iron pipe with a hole in the middle throughout the length of the pipe., he further stated that the iron rod produced in he court and marked as CMR No.292/1011 as weapon used by accused Zirkhawngbaka to hit the deceased was not the weapon seized by him in connection with this case. The witness clarified in his re-examination that the pipe he seized was iron pipe commonly used by PHED as water pipe measuring about 31/2 ft and longer than the one produced in the court. DW No.1/Lalchuangkimi stated that her deceased husband came inside the house

with a “pipe” and hit the accused Zirkhawngghaka. She further stated that the accused hit back her husband with the same pipe. DW No.3/Zirkhawngghaka, the accused himself stated that he was hit by the deceased and then he caught hold of the pipe. As far as he could recollect he hit back the deceased only once.

Upon appreciation of the evidence, it is noticed that the same weapon was used by the accused Zirkhawngghaka to hit back the deceased which was used by the deceased. According to the defence and the investigating Officer the said weapon was a pipe, clarified by the I/O that it is water pipe usually used by PHED. The weapon produced in the court was an iron rod. Whether the weapon was a iron/aluminum pipe as stated by the defence and I/o or a n iron rod which was produced in the court and identified by the two seizure witnesses, the fact remains that the nature of the pipe and rod as well as the impact they would have on being used as a weapon of assault would be similar and the absence of any other weapon being used either by the deceased or accused Zirkhawngghaka, I do not find any reason why the difference in the material produced in the court and the one seized during investigation would be fatal to the prosecution. I also do not find any reason how the discrepancy would cause any prejudice to the accused. Though it would no doubt be better if the investigating agency had taken more care in the maintenance and custody of such seized items.

32. Having come to the said conclusion, it is now necessary to examine the instant case in the light of section 300 IPC.

33. In the case at hand, the parties are to some degree related to one another. The deceased is the husband of Lalchuangkimi. Lalchuangkimi is the daughter of accused Zohmingthangi. Zohmingthangi has married accused Zirkawngghaka. It is also seen from the evidence of PW No.1/Linda Chhakchhuak that the two accused persons, though she disapproved them, were often associated with her deceased brother. According to PW No.1, her deceased brother was very kind to them and that they lived and eat with him at his expense. There is no evidence to suggest of any animosity between the deceased and the accused persons so as to have the motive resulting in an intention to take the life of the deceased.

34. At this stage, the decision of the honb’le Apex Court in the case of Virsa Singh versus The State of Punjab reported in AIR 1958 SC 465 may be reproduced as follows:-

*“To put it shortly, the prosecution must prove the following facts before it can bring a case under s.300, “3rdly”.*

22. *First, it must establish, quite objectively, that a bodily injury is present.*

23. *Secondly, the nature of injury must be proved; These are purely objective investigations.*

24. *Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.*

25. *Once these three elements are proved to be present, the enquiry proceeds further and*

26. *Fourthly, it must be proved that the injury of the type just described made up of three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.*

27. *Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under s.300, 3rdly. It does not matter there was no intention to cause death. It does not matter there was no intention to cause an injury of the kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two) It does not even matter there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause bodily injury actually found to be proved, the rest of the inquiry is purely objective, and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has the licence to run around inflicting injuries that are sufficient in the ordinary course of nature to cause death and claim that they are not guilty of murder. If they inflict injury of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional”*

35. *Intention is the expectation of the consequences in question, as such, intention would not necessarily involve premeditation or thinking out the killing beforehand. The presumption of law is that a man intends the natural and inevitable consequences of his own acts. What he intends can only be judged by what he says or does. If he says nothing then the act alone is to guide the decision.*

The honb'le Supreme Court in *Jai Prakash Vs. State (Delhi Administration)* reported in (1991) 2 SCC 32, held that the 'Knowledge' as contrasted with 'intention' signify a state of mental realization with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact. Merely because the injury caused is sufficient in the ordinary course of nature to cause death, does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause death. In such a situation the Court has to ascertain whether the facts and circumstances in the case are such as to rebut the presumption and such facts and circumstances cannot be laid down

*in an abstract rule and they will vary from case to case, as enumerated in Virsa Singh v. State of Punjab - AIR 1958 SC 465. It was reiterated by their Lordships therein that weapon used, the degree of force released in wielding it, the antecedent relation of the parties, the manner in which the attack was made that is to say sudden or premeditated, whether the injury was inflicted during a struggle or grappling, the number of injuries inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors. Their Lordships held that in some cases there may be other explanation as well, where for different considerations may apply requiring the court to decide whether the accused is entitled to benefit of Exceptions to Section [300](#) I.P.C.*

36. Going by the decision of the honb'le Apex Court in the case of Virsa Sing (supra) the Post Mortem Examination Report which have been highlighted in paragraph No. 24 of this judgment shows that the deceased sustained bodily injuries. Broadly speaking, the injuries described in the post mortem examinations are abrasions, laceration and contusions which was basically on the whole body of the deceased. There was also fracture of rib (6<sup>th</sup> and 7<sup>th</sup>). As such the presence bodily injury is proved by the PME Report as well as inquest Report and the nature of injuries is also proved by the Post Mortem Examination.

37. Next, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or some other kind of injury was intended. As such, it has to be deduced from the facts and circumstances of the case as to whether the act was accidental/unintentional or whether some other kind of injury was intended. It has been held in the number of decisions including Virsa Sing (Supra) that in considering whether the intention was to inflict the injury found to have been inflicted the enquiry necessarily proceeds on broad based line such the part of the body where the injury was inflicted and whether sufficient force was used to inflict the kind of injury found to have been inflicted. In Virsa Singh's case (Supra) it was held - *"It is of course, not necessary to enquire into every detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidney or the hear. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is braod based and simple and based on commonsense: the kind that "twelve good man and true" could readily appreciate and understand"*.

37.A. In the instant case It is noticed that the apart from injuries on the other part of the body, the deceased sustained "multiple linear contusions seven in numbers on front of left chest", "multiple abrasions on middle of front of chest, front middle of abdomen and

lateral aspect of right abdomen; dark brown”, “Abrasion 3x1cm on back of the left chest”, “Abrasion 7x1cm on lateral of chest” and ‘laceration 4cmx3cm depth on (l) parietal scalp”. The medical Officer opined that the cause of death was due to *“haemorrhagic shock as a result of injury to the chest”*. Even if the statement of the accused to the effect that he hit the deceased only once is to be believed, keeping in mind the finding on the cause of death, it is clear that the single blow was on the chest because if the injury on the chest was prior to the incident the deceased would not be in pain and unlikely to conduct himself in the manner stated by the accused and his witnesses. It therefore means that the accused hit the deceased hard with a pipe made of iron and solid. There is no evidence to the effect that though the accused intended to hit the deceased on his leg or other part of the body, unintentionally he hit the chest of the deceased. Considering the weapon used and the part of the body it is within the knowledge of a normal human being even without any knowledge of the anatomy that the injury was sufficient to cause death. Further, the PME Report shows that there were multiple injuries on the chest and abdomen alone apart from fracture/crack of rib (6<sup>th</sup> & 7<sup>th</sup>) and injury on the scalp which are all vital part of the body. Further, there is no evidence from which an inference can be drawn that the injuries sustained by the deceased throughout his body were accidentally inflicted by the accused.

38. With regard to the sufficiency of the injury to cause death in the ordinary course of nature, the PME Report clearly mentions the number and nature of injuries inflicted upon the accused. The Medical Officer (PW No.6) deposed that upon examination of the deceased he found that the cause of death was due to *“haemorrhagic shock as a result of injury to the chest. All the injuries were ante mortem and produced by blunt force impact.”* The medical officer further stated in his cross-examination that *“Except the injuries caused to the lungs none of the injuries which I have mentioned from Sl No.1-28 were sufficient to cause death by itself”*. From the number of injuries sustained by the deceased on his chest alone, considering the weapon of assault, it is reasonable to expect dangerous injury i.e injury likely to cause death. Further it is also seen from the PME Report that the deceased sustained injuries on his scalp. Leaving aside the other parts of the body listed from Sl.No.1-28 in the PME Report, it is noticed that a number of injuries were suffered by the deceased on the vital part of his body such as chest and scalp.

The accused Zirkhawngbaka also stated that all the injuries sustained by the deceased were not inflicted by him and that even prior to the incident the deceased fought with local boys and sustained injuries and that as he (deceased) used to take ganja he used to meet with accident. In this regard it is seen that the deceased suffered injuries such as abrasions, lacerations and contusions. The PME Report does not indicate any scab

formation of the injuries specially abrasions. In the absence of scab formation it cannot but be presumed that they were fresh injuries.

39. For the reasons indicated above, I find that the act of the accused Zirkhawngghaka falls within Clause 3rdly of Sec.300 IPC.

40. Before parting, since the Ld. Addl.PP argued on the credibility of the DW No.2 (taxi driver), suffice it to say that the credibility of the said witness have been shaken by the accused himself who deposed that he does not know the registration No. and Driver of the Taxi. He stated that they stopped the Taxi which was running by, and by producing and examining such witness, though his statement may not have much bearing on the decision of the case, casts an adverse inference on the credibility of the accused himself.

41. Upon appreciation of the entire evidence, both prosecution and defence, there is no direct mention of the involvement of co-accused Zohmingthangi. I also do not find any material from which it can be suggested that there was meeting of minds between her and accused Zirkhawngghaka.

42. Accordingly, accused Zirkhawngghaka is convicted of the offence punishable u/s 302 IPC.

43. Accused, Zohmingthangi is acquitted of the charge u/s 302/34.

44. In terms of section 437-A Cr.P.C accused Zohmingthangi shall continue to be on bail, on the same condition, for another period of 6 months.

45. Sentence in respect of accused Zirkhawngghaka will be passed on 5.5.2014 till then the accused is further remanded to judicial custody.

46. Pronounced in open court and given under my hand and the seal of this Court on this the 29<sup>th</sup> day of April, 2014.

**Sd/- HELEN DAWNGLIANI**  
Addl.District & Sessions Judge  
Aizawl Judicial District ; Aizawl.



**ORDER**

**Dated 05.05.2014**

Accused Zirkhawngghaka is produced from judicial custody. Id. Defence Counsel and Addl. PP are present.

Today is fixed for Hearing on Sentence.

The Id. Addl. PP submitted that the accused is a habitual offender with 2 previous conviction of rape and while on bail in the instant case, he committed an offence punishable u/s 307 IPC which is under investigation at present. Inspite of the intecedents of the accused, the Id. Addl. PP submitted that they would prayed imprisonment for life.

The accused submitted that he has nothing to say and that truth will prevail.

Mr. S.L. Thansanga, Id. Defence Counsel submitetd that considering the prayer of the Id. Addl. PP, he has nothing more to say.

Heard the parties. Considering the prayer made by the Id. Addl. PP and the nature of the offence and the manner in which it is committed, considering the punishment for the offence punishable u/s 302 IPC, the following sentence is passed.

The accused Zirkhawngghaka undergo Rigoreous Imprisonment for life with a find of Rs. 10,000/- in default Simple Imprisonment for 6 months.

In terms of Section 428 CrPC, detention period already undergone during investigation and trial shall be set of from the sentence.

This Order shall form part of the Judgment dt.29.4.2014.

Case stands disposed off.

**Sd/- HELEN DAWNGLIANI**

Addl.District & Sessions Judge  
Aizawl Judicial District ; Aizawl.

**Memo No.:...../AD&SJ(A)/2014 : Dated Aizawl, the 5<sup>th</sup> May, 2014**  
**Copy to: -**

1. Accused Zirkhawngghaka } through Counsel
2. Accused Zohmingthangi } Mr. S.L. Thansanga, Advocate.
3. Special Superintendent, Central Jail, Aizawl.
4. PP/Addl. PP, Aizawl District, Aizawl.
5. District & Sessions Judge, Aizawl.
6. District Magistrate, Aizawl District, Aizawl.
7. DSP (Prosecution), District Court, Aizawl.
8. i/c G.R.Branch.
9. Registration Section.
10. Guard File.
11. Case Record.
12. Calendar Judgment.

**P E S H K A R**

**APPENDIX**

(A) **PROSECUTION EXHIBITS**

Ext. - P-1    FIR

        P-1(a) Signature of PW No.1

Ext. - P-2    Seizure Memo

        P-2(a) Signature of PW No.2

        P-2(b) Signature of PW No.3

Ext. - P-3    Inquest Report

        P-3(a) Signature of PW No.4

Ext. - P-4    FSL Report

        P-4(a) Signature of PW No.5

Ext. - P-5    PME Report

        P-5(a) Signature of PW No.6

Ext. - P-6    Charge Sheet

        P-6(a) Signature of PW No.7

Ext. - P-7    Dead Body Receipt

Ext. - M-1    Seized Article containing iron rod and a bunch of key

(B) **DEFENCE EXHIBITS- None**

(C) **EXHIBITS PRODUCED BY WITNESSES - None:**

(D) **COURT EXHIBITS- None**

(E) **PROSECUTION WITNESSES:**

PW.-1 – Linda Chhakchhuak

PW.-2 – R. Vanlalfaka

PW.-3 – Jonathan Thangliana

PW.-4 – K. Laltlankima

PW.-5 – Lalchhanzova

PW.-6 – Dr. Lalrozama

PW.-7 – SI H. Lalnunmawia

(F) **DEFENCE WITNESSES - :**

DW No.1    - Lalchuangkimi

DW No.2    - Kananmawia

DW No.3    - Zirkhawngghaka

(G) **COURT WITNESSES- : None**