

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT : AIZAWL**

PRESENT

Smt. Helen Dawngliani
Addl. District & Sessions Judge

SR No.182/2012
In Crl.Tr. No.625/2012
U/s 302/377 IPC

Ref :- N.Vanlaiphai PS Case No. 2 of 2012 dt.4.3.2012 u/s 302/377 IPC

State of Mizoram

Versus

B. Lalrinmawia	.....	Accused
Date of hearing	.....	9.5.2014, 20.5.2014 & 17.6.2014
Date of Judgment	.....	26.6.2014

A P P E A R A N C E

For the Prosecution	.....	Mrs. Rose Mary, Addl. PP
For the Accused	.....	Mr. J.N. Bualteng, Advocate

J U D G M E N T & O R D E R

1. The prosecution story of the case in brief is that on 1.3.2012 Lalengzauva of N. Vanlaiphai reported to the Police that his niece X, 8 years was missing since the said afternoon. Missing report was entered in the General Diary and search was conducted. On 3.3.2012 in the evening the dead body of X was found near the small ravine. ASI Lalnunhlua of N. Vanlaiphai Police Station lodged an FIR on 3.3.2012 @ 8:00pm which was registered as N. Vanlaiphai PS case No.2 of 2012 dt.4.3.2012. The accused was amongst those persons who were initially apprehended by the Police but as nothing was found against him he was released. Thereafter, the Police after getting some clue arrested the accused on 21.3.2012. On completion of investigation, having found prima facie case against the accused B. Lalrinmawia for the offence punishable u/s 302/377 IPC charge sheet is laid against him.

The name of the deceased/prosecutrix is withheld in the Judgment and is referred with the letter 'X'.

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. J.N. Bualteng, Advocate was assigned to defend the accused at the State expense u/s 304 Cr.P.C.

4. Charges u/s 302/377 IPC were framed against the accused. The charges were read over and explained to the accused in the Mizo language which is known to him to which he pleaded not guilty and claims for trial.

5. The prosecution examined 9 witnesses. Accused was examined u/s 313 Cr.P.C. Two witnesses including the accused himself were examined as defence witness. The Ld. Counsels are heard.

Mrs. Rose Mary, the Ld. Addl. PP submitted that in the instant case there is no eye witness to the incident. However, the evidence adduced by the prosecution is clear, cogent and sufficient to prove the guilt of the accused. The Ld. Counsel submitted that for PW No.1/Lalngaizuali there was no reason to act against the accused. From her deposition her character and way of life can be pictured. The witness in clear terms stated that though she may be in the habit of consuming liquor, she is sure that the accused borrowed her hammer and when he returned the hammer it was stained with blood and when she asked him the reason he did not give her reply but simply stated "*chhawlin ka chhilh fel vek*" (meaning *I have covered it with a branch of twigs*). If the said witness is educated and alert she could have preserved the said hammer but instead she very casually threw it on the mud floor of her house. The fact that this witness did not have the sense to speak out about her hammer being borrowed by the accused soon after it was found that the girl was missing shows her innocence and that she does not hold any grudge against the accused. The deposition of PW No.1 inspire confidence and there is no reason to doubt her testimony. According to the Ld. Counsel the statement of the accused to PW No.1 i.e. "*chhawlin ka chhilh fel vek*" (meaning *I have covered it with a branch of twigs*) is extra judicial confession which the accused made soon after committing the crime. The next argument of the Ld. Addl. PP is that the accused was apprehended twice in the instant case. His first apprehension by the Police was soon after the dead body of X was found. At this time he was released because they could not find his involvement. But after some clue was received through PW no.1 the accused was once again arrested. This time the accused in his statement u/s 161 Cr.P.C admitted his guilt. For his own safety he was taken to Serchhip PS and at Serchhip his confession was recorded. From the record it is seen that the accused wanted to confess because he has sinned. It is not that he has all along denied the allegation but from the record it is seen that after he admitted his guilt before the Police his confession was recorded. The accused simply said he did not confess thereby imputing even the recording Magistrate of writing a fabricated confession. This is a serious allegation and that the accused cunningly stated that he had put his signature but denied to confess only because he could not deny the signature put by his own hands but could say whatever he wanted with the record of confession made by the recording magistrate. It is also not the case of the accused that he was not given sufficient time or that the confession was not voluntary or that the confession was made under duress. According to the Ld. Counsel, seeing the conduct of the accused, he would

have made the same statement of retraction even if he was given 24/48 hours reflection time. The Ld. Counsel therefore argued that the Confession recorded u/s 164 Cr.P.C was proper and the same by itself can form the basis of conviction. Turning to the medical evidence, the Ld. Counsel submitted that the medical officer opined that the injury was caused by blunt force impact. The statement of PW No.1 that the accused borrowed the hammer and returned it stained with blood and also stated “*chhawlin ka chhilh fel vek*” (meaning *I have covered it with a branch of twigs*) is much weightier than the simple denial of the accused. The force produced by a hammer can very well be a blunt force object. Further, the finding of the medical officer that there was multiple open tear on the spincter of anus corroborates with the confession of the accused that when he penetrated his male organ into the anus of X she was unconscious but her body was warm, she was not in a position to resist or cry. The open tear of the splinctor shows that the victim had already died when the accused inserted his male organ and she being dead the tear remained open as there would be no elasticity for the dead cells to close even after the male organ was removed. According to the Ld. Counsel, this is a heinous crime where a minor girl of barely 8 years was brutally put to death and even after she was dead she was sexually exploited in a most savage manner. The Ld. Counsel therefore prays to convict the accused.

On the other hand, Mr. JN Bualteng, Ld. State Defence Counsel argued that the statement of PW No.1/Lalngaigzuali is false and concocted and that the hammer allegedly used by the accused which was sent to the FSL shows that there was no blood stain. The said prosecution witness is not trustworthy as she is a habitual drinker and stated that she will speak out the culprit only after she is given Rs.5000 and a government job. The Ld. Counsel next argued that according to the PME Report the cause of death of due to haemorrhagic shock, injuries were ante mortem and caused by forceful blow of heavy object. The dead body was found on the ravine as such it is possible that the deceased sustained injuries due to an accident by falling on the cliff. The next argument is that the alleged judicial confession before the Magistrate First Class at Serchhip cannot form the basis of conviction because in this country the Police often uses third degree method while dealing with criminals. It appears that after the accused was arrested he was immediately taken to Serchhip PS for his own safety, the Investigating officer deposed that the accused was produced before the magistrate for confession as advised by the Addl. SP and furthermore it is quite surprising that the accused who denied each and every allegation before the Police suddenly made a confession immediately after he was transported to Serchhip. The Ld. Counsel also submitted that the plea of alibi is not shaken. According to the Ld. Counsel the guilt of the accused is not proved though the crime committed upon the victim is heinous and thus pray to acquit the accused. The Ld. Counsel has submitted the following authorities – (1) Sattatiya @ Satish Rajanna Kartalla versus State of Maharashtra decided on 16.1.2008 by the hobbles apex Court in Criminal

appeal No,579 of 2005 and (2) Babubhai Udesinh Parmar versus Stated of Gujarat decided on 24. 11.2006 by the hobble apex Court in Criminal appeal No. 1635 of 2005

7. DISCUSSION, DECISION AND REASONS THEREOF:-

The evidence adduced by the prosecution witnesses may be briefly highlighted.

PW No.1/Lalngaihzuai is a resident of N.Vanlaiphai. She stated that on the morning of 1.3.2012 she was taking a nap in the house of the accused as she sometimes consume liquor with him. Her aunt came and told her to collect firewood. So she went home and thereafter set out to collect firewood in the garden of Biakdawna, not far from her house. After she reached home, the accused came and asked her for a hammer. When she asked him for what he wanted the hammer he simply said he had some work nearby. So she gave him the hammer. Thereafter, she also went out to collect firewood again. She returned home between 3:00 to 4:00pm. Thereafter the accused returned the hammer, while taking the hammer from him and throwing it on the ground she asked the accused why there was blood stain to which the accused simply said “*chhawlin ka chhilh fel vek*” (meaning I have covered it with a branch of twigs) and then left her house. About 3 or 4 days later while consuming liquor with Pu. Zohma-a he asked her whether the accused borrowed any article/weapon from her to which she said he borrowed a hammer. About 1 or 2 days later once again she consumed liquor with Zohma-a in her house and Zohma-a once again asked the same question and she made the same reply that he borrowed a hammer from her. So Zohma-a made a phone call to the Police, two Policemen came to her house and took the hammer and Zohma-a went with them. On the instruction of the Police she also went to the PS on the next morning. The Police recorded her statement. She further stated that though she takes liquor very often she is certain that the accused borrowed her hammer and returned the same stained with blood. She identified the hammer produced in the court as the one borrowed by the accused from her and seized by the Police. She exhibited the Seizure Memo as Ext.P-1 and her signature as Ext.P-1(a). In her cross examination she stated that the hammer was already in the Police station and she put her signature in the Police Station and at that time there were no other civilians. She has been consuming liquor for a long time probably since 2000 but she is never unconscious or insensible due to drunkenness but she sometimes have difficulty in indentifying person when she is drunk, she denied the suggestion that it was some other person who borrowed the hammer from her. She stated that the accused borrowed her hammer on the first day of the month and it was around 1:00 to 2:00pm and returned at around 3:00 to 4:00pm. She does not remember the clothes worn by the accused on that day nor noticed any change of clothes before or after he borrowed the hammer from her.

PW No.2/Zomuana is a Driver in the Police Department. He stated that he was taken to the house of Mangaihi by the O/c and from the said place the O.C seized a hammer, the hammer seized was the kind usually used for making stone chips. He also

stated that he did not notice any blood stain on the hammer and the seized material was taken to the Police Station. He exhibited the seizure memo as Ext.P-2 and his signature as Ext.P-2(a) he identified the hammer as Ext.M-1. In his cross examination he stated that he did not go inside the house of Mangihi as such he does not know from where the hammer was taken from the house of Mangaihi. He waited for his superior outside the house. He did not see any other hammer before or after the incident.

PW No.3/Lalchhanzova is the Asst. Director, FSL, Aizawl in the Serology Division. He stated that on 23.3.12 requisition for examination of hammer with suspected blood stain marked as Ext.A and dry leaves with suspected blood stain marked as Ext.B were received for examination. On examination no blood stain was found on Ext.A i.e hammer but on Ext. B i.e dry leaves the stain was a human blood stain of group "O". In his cross examination he stated that the blood sample of the accused was not send for examination.

PW No.4/Lalengzauva is the maternal uncle of X. He stated that his mother was living with the prosecutrix. He stated that on the day of the incident he had gone to the jhum field. At dusk @ 5:00pm his mother came to the house of his father-in-law and his mother told him that X was not at home and had not cooked dinner. So they searched for her. The residents of Venglai where his mother was living also helped them in the search. It was raining heavily and they did not find her. So they informed the matter about the missing girl to the Police and lodged FIR accordingly. On the next day the whole village involved in the search and his niece was not found. On the evening thereafter, they contacted one woman who could help them through prayer and so they went to the direction as told by the said woman through telephone and found the dead body of X. He also stated that the accused was amongst the persons who were initially apprehended. Later during the course of conversation Mamsani (whose full name he does not know) who was living just above the place where the dead body of his niece was found said that the accused had borrowed a hammer from her and when she asked him the reason he did not give a definite reply and when the accused returned the hammer it was stained with blood and when she asked him he said he was repairing his house and also said "chhawlin ka chhilh hmak anih kha" the said Masani also said that the accused threatened her not to speak out anything or else she will have to face the consequences. He stated that when he lodged the FIR the dead body of his niece was not found and the accused was also nit arrested. In his cross examination, he stated that the FIR regarding the missing of his niece was written and signed by him, he has no personal knowledge regarding the accused borrowing hammer from Masani, he did not see blood stain on the hammer, when one of them trampled over the body the leaves also moved and it was around her legs and as such they could make out that it was the victim.

PW No.5/Vanrammawii is the grandmother of the deceased who was living with the deceased. She stated that on the date her granddaughter went missing she was suppose to go to the forest with the victim to make charcoal. But Mathani told her that they will 'inlawm' (to do anything together by term of mutual advantage). So she went to the forest with Mathani and sent her granddaughter back home and it was also very sunny. She returned home at around 3:30pm and X was not at home. She informed her son about the missing of X. The search continued for two days and when her dead body was found it was covered with dry leaves (chhaw), one of the search party stepped on her body and as the leaves moved they saw her body. She saw the dead body of x around 7 to 8pm and saw trace of being hit by an object(chhutna hnuhma) at two places on her forehead and cut injury on her cheek, one of her she heard that Masani said that she will speak out the culprit if she is given Rs.5000/- and Govt. job.

PW No.6/ASI Lalnunhluna stated that on the afternoon of 1.3.2012 Lalengzauva maternal uncle of X and grandmother of X came to his house and reported that X was missing from the said afternoon. They also stated that they informed the YMA and public announcement was also being made about the missing girl. When they came to his house it was before dark and her grandmother stated that X was in the habit of roaming around without having food. They left his house saying that they will make further attempt to find the girl. On 1.3.2012 at night before 8:00pm they again went to him at the Police Station and informed him that they could not find the girl and that they have lost hope. By such time the entire village was involved in the search. He recorded their verbal information in the general diary and he alongwith the other Police personnel left the PS to look for the girl. As far as he can recollect most of the Police personnel on duty took part in the search. The girl was not found despite search being conducted till late night of 1.3.2012. The search continued on 2.3.2012 and the search consisted of the public and police. On the afternoon of 3.3.2012 the dead body of X was found at a distance of about 500 m towards the southwest from N.Vanlaiphai Police Station and at a distance of about 700m southwest from her house. Her dead body was found near a small ravine (kawr te), her body was covered with dry leaves and if not for the flash light carried by the search team it would not be possible to find her body. He conducted inquest over the dead body at the said place. He exhibited the FIR submitted by him as Ext.P-4 and his signature as Ext.P-4(a), Inquest report as Ext.P-5 and his signature as Ext.P-5(a). In his cross examination he stated that the dead body of X was found on the third from the day she was missing, during inquest, he noticed that the victim sustained a lot of injuries on her head, there were injuries on her ears and face. He did not notice any other injuries except laceration on one of her elbow. He denied the suggestion that the injuries sustained by the victim could have been caused by falling from the nearby hill.

PW No.7/Dr.Lalmuanawma Jongte conducted Post Mortem Examination of X at N.Vanlaiphai Primary Health Centre (PHC) on 4.3.12 @ 9:10am. Upon examination his findings were:-

- 1) deep cut injury over the left cheek
- 2) cut injury just above the forehead
- 3) bleeding from left ear
- 4) laceration wound on the right elbow
- 5) bruise on upper and lower eyelid

On examination of cranium and spinal cord the following injuries were found:-

- 1) On her scalp there was lacerated cut injury over the frontal region fracturing the frontal bone and exposing the brain
- 2) On her skull there was fracture of frontal bone and base of skull
- 3) vertebra was healthy
- 4) rupture of membrane over frontal region with laceration
- 5) on the brain, it was congested with blood clot on the frontal lobe
- 6) spinal cord was healthy
- 7) thorax, abdomen, liver, spleen, kidney and bladder were also healthy.

Findings on organs of external and internal genital parts:-

- 1) small rounded bruise inside her vagina
- 2) multiple tear inside the anus and splinter of anus.

The witness stated that generally splinter of anus is closed in dead bodies but in the instant case the splinter was torn and it was open.

More detailed description of the injuries are given in the PME Report. From his findings he formed the opinion that the cause of death was due to haemorrhagic shock and coma as a result of head injury. The injuries were ante mortem in nature and appears to have been caused by forceful blow of heavy object. His findings were accepted and countersigned by the Chief Medical Officer, Serchhip. He exhibited the PME Report as Ext.P-6 and his signature as Ext.P-6(a). In his cross examination, he stated that the cut injury just above the forehead was sufficient to cause death. In his opinion the cause of death was due to haemorrhagic shock and found that the injury was caused by blunt heavy object and not by sharp weapon such as knife.

PW No.8/T.Lalhmachhuana is the Judicial Magistrate First Class, Serchhip who recorded the judicial confession of the accused. He stated that on 21.3.2012 @ 2:30pm the accused was brought to him for recording his confession. He gave the necessary explanations to the accused required u/s 164 Cr.P.C , thereafter he kept the accused in the staff room where there were no Police personnel. Thereafter, when it was passed 4:00pm the accused was brought back to his chamber. As he still wanted to confess he locked the

door of his chamber and started to record his confession. He recorded the confession of the accused in the language used by him and thereafter read out the entire contents of the confession. The accused stated that he did not have any complaints in the confession which he recorded and accordingly both of them subscribed their respective signatures. Thereafter, he made an order for the accused to be produced before the CJM Aizawl as there is not jail in Serchhip. He exhibited the Confession u/s 164 Cr.P.C as Ext.P-7 and his signature as Ext.P-7(a). In his cross examination, he stated that he recorded the confession on 21.3.2012, the accused was brought by Police Personnel of N.Vanlaiphai PS as he was arrested by them, he cannot recollect the exact time the accused was brought to him but as far as he can remember it was around 2:00 to 2:30pm, he started recording the confession at around 4:00pm and spent about 1 ½ hour in recording the confession, after recording the confession the accused left his chamber at about 5:30pm, the accused made his confession voluntarily and he was satisfied that the confession was made voluntarily because when he asked why he wanted to confess the accused replied by saying that he has sinned and that he wanted to make known his family problem, the accused did not make any complaint regarding the content of the confession which he read out to him before the accused subscribed his signature. He denied the suggestion that being a Judicial Magistrate he used his power to extort confession from the accused.

PW No.9/ T.Lalthanmawia is Sub. Inspector of Police and Investigating Officer. He stated that while he was in Champhai verbal information of the grandmother of X was received by ASI/Lalnunhluna and after he returned from Champhai the missing report turned out to be an unnatural death case. The accused was initially apprehended but not finding anything from him he was released. Thereafter they got some clue from Lalngaihi. Accordingly the accused was once again once arrested and in order to avoid angry public the accused was transported to Serchhip early in the morning. At Serchhip he interrogated the accused once again and on the advice of the Addl. PP the confession of the accused was recorded by the Judicial Magistrate First Class at Serchhip. He recorded the statements of the grandmother of X and the friends of the grandmother with whom she went to the jhum field. He seized a hammer and finding prima facie case he laid charge sheet against the accused for the offence punishable u/s 302/377 IPC and he exhibited the Charge sheet as Ext.P-8 and his signature as Ext.P-8(a). In his cross examination, he stated that he stated that he does not remember the date when he arrested the accused, the accused was taken to Serchhip Police Station and as far as he can recollect he was remanded to Police Custody at Serchhip, as he is undergoing treatment for nerve problem he cannot recollect for sure whether the accused was produced before the judicial Magistrate at Serchhip on the day he was taken to Serchhip but as far he can recollect the accused was produced on the same day and police remand was obtained, he stated that he seized the hammer from Lalngaihi which was on the earthen floor of her house, it was rusted at many places and they were not sure whether it was blood stain or

not so that was the reason why they sent it to the FSL, he recorded the statements of witnesses in the PS, he did not use any force upon witnesses to extract their statements according to his desire.

8. Examination of the accused u/s 313 Cr.P.C is that of denial. He stated that he was at home the whole day on 1.3.2012. He denied having borrowed the hammer, he denied making confession but admitted that he had put his signature before the Magistrate at Serchhip.

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

DW No.1/Lalrammawii is the wife of the accused. She stated that her husband did not go out the whole day and that her husband did not go out to borrow the hammer. They have ¾ hammer and that they never borrow the said tools from anyone. Her husband sometimes take liquor but never create trouble in the family or disturb the society. In her cross examination, she stated that they earn their livelihood as casual labourer and that they do not get work everyday. She admitted that her husband sometimes play cards, she also admitted that her husband is acquainted with the woman from whom he is alleged to have borrowed a hammer, she also admitted that the said woman was living alone and that she also sometimes take liquor and as they are neighbours her husband also used to visit her, as far as she can remember her husband was arrested by the Police on the next night after the burial of X.

DW No.2/B.Lalrinmawia is the accused. He also stated that he was at home the whole day. He denied having borrowed the hammer and stated that he possessed weapons/tools of daily need for men such as hammer, dao etc. His family and the family of the deceased never visited each other and that they do not have any misunderstanding. In his cross examination, he denied the suggestion that sometimes he used to consume liquor with Lalnagihzuali and he further stated that she and her husband used to go to his house to consume liquor but he never joined them. He admitted the suggestion that from the evening of 1.3.2012 massive search for the victim girl was conducted by the villagers and he was aware of it, he also admitted that as the public could not find the girl they sought the help of the Police, as he did not take part in the search he does not know whether the dead body was covered with dry leaves, he admitted the suggestion that as he and the family of X does not have any misunderstanding there is no reason for them to falsely implicate him.

9. In the case at hand there is no eye witness to the incident. The weapon was seized on 18.3.2012 which is the 18th day from the day the victim girl was found missing. It is seen from the evidence and materials on record that the accused was earlier apprehended with many other persons but released as his involvement could not be found. It is only after PW No1/Lalnagihzuali spoke out about the accused borrowing her hammer that the accused was arrested. The said witness stated that the accused borrowed her hammer at

around 1:00pm to 2:00pm and that thereafter she went to collect firewood and returned home at around 3:00 to 4:00pm and that it was thereafter that the accused returned the hammer and at that time she saw blood stain on the hammer and when she asked the accused why there was blood stain the accused did not give her direct reply but simply said that “ *chhawlin ka chilh fel vek*” meaning I have covered it with dry leaves.

9.A. PW No.5/Vanrammawii grandmother of the deceased with whom the deceased was living stated that on that day she returned home at 3:30pm and at that time the deceased was not at home. According to this witness on that day she was supposed to go to the forest with the deceased to make firewood but as they set out her neighbour Mathani told her that they will ‘Inlawm’. So she went ahead with Mathani and sent back the deceased home as it was also very sunny. Accordingly, it can be safely presumed that PW No.5/Vanrawmmawii parted ways with the deceased on the forenoon by sending the deceased back home but did not find the accused at home when she returned at around 3:30pm.

9.B. It is also noticed from the evidence of these two witnesses that around the time the accused borrowed the hammer and returned it to PW No.1, the deceased was not in her house.

9.C. DW No.1/Lalrammawii who is the wife of the accused in her cross examination admitted the suggestion that her husband is acquainted with the woman from whom her husband is alleged to have borrowed the hammer. She also admitted the suggestion that the said woman is living alone, she sometimes take liquor and since they were neighbours her husband used to visit her. PW No.4/Lalengzauva the uncle of the deceased stated that later Masani(whose full name he does not know) who lives just above the place where the dead body of his niece was found stated that the accused borrowed a hammer from her and when he returned it was stained with blood. The part of the statement of this witness wherein he stated that the said Masani who lives just below the place where the dead body of X was found is a direct evidence regarding the place where the said Masani was living. Upon perusal of the materials and evidence on record, the said Masani cannot but be PW No.1/Lalngaihzuali who stated that the accused borrowed a hammer from her on the first day of the month.

9.D. From the evidence of DW No.1/Lalrammawii and PW No.4/Lalengzauva it can be safely concluded that the accused and PW No.1/Lalngaihzuali were neighbours and that the said locality was located just above/not far from the place where the dead body was found.

10. Coming to the credibility of the statement of PW No.1/Lalngaihzuali and the value of the statement of the accused to her have to be examined.

10.A. The accused in his examination u/s 313 Cr.P.C as well as in the defence evidence took the plea that he is not involved and that on 1.3.2012 i.e. the date when the deceased was missing he remained at home the whole day. In this regard, strangely none of the prosecution witnesses were examined on this point including PW No.1/Lalngaihzuali. The accused has simply denied the charge by stating that he was at home the whole day but failed to explain himself. On the other hand, upon weighing the evidence of PW No.1/Lalngaizuali and DW No.2/B.Lalrinmawia(accused) it is noticed that PW No.1/Lalngaihzuali in clear terms stated that the accused borrowed the hammer from her and returned it stained with blood. She also stated that the accused said “*chhawlin ka chilh fel vek*” (meaning *I have covered it with dry leaves*). On the other hand, the defence including the accused in his examination u/s 313 Cr.P.C and oral evidence have clearly failed to explain or substantiate their stand so as to outweigh the specific statement made by PW No.1 of what she saw and heard from the accused. The defence and the materials on record failed to provide any clue as to why the said PW No.1/Lalngaizuali could have made such a statement which could be very damaging, there is no material from which inference can be drawn that the said witness acted in revenge against the accused. If the said witness have such a motive against the accused she could have very well preserved the blood stained hammer as a piece of evidence against the accused. But on the contrary it is noticed from the evidence that even though she witnessed blood stain she simply posed a question to the accused while taking the hammer from the accused and threw the same on the floor without doing anything further. Moreover there is no reason for this witness to know the finding of the Post Mortem Examination Report of X wherein it was opined that the injury was caused by forceful blunt object. But she stated that the weapon borrowed by the accused from her was a hammer. It may be noted that the accused as well as this witness are villagers earning their livelihood by doing manual work. As such it is expected that every home will have weapons/tools in connection with their work. As such, if the said witness is lying and fabricated a story against the accused, she could have named any other weapon such as dao/knife etc which is more commonly used than hammer for commission of offence. The fact that PW No.1/Lalngaizuali stated that the accused borrowed the hammer corroborates with the medical finding that the injury was due to forceful impact of blunt object.

10.B. PW No.1/Lalngaizuali also stated that when the accused returned the hammer stained with blood she asked him why to which the accused simply said “*chhawlin ka chilh fel vek*”(meaning *I have covered it with dry leaves*). Such a statement is a direct evidence that the accused made a statement to her . This statement have not been rebutted by the defence apart from simple denial. The hammer being stained with blood have also not been rebutted. Though the accused did not say what he covered with dry leaves, the fact that the hammer was stained with blood suggest that the said thing which was covered with dry leaves was an animal/human being/living being. As stated before, the

accused simply denied having made any statement to the said witness without any explanation. Upon appreciation of the evidence more particularly the defence evidence and documents on record there is no material even to suggest an inference of the accused hunting an animal or killing an animal around that time for which there could possibly be blood stain on the hammer.

10.C. The statement of PW No.1 which was recorded by the Judicial Magistrate u/s 164(5) Cr.P.C is also available on record. Her said statement and her deposition before this Court are substantially the same.

10.D. Upon appreciation of the evidence of PW No.1/Lalngaizuali in particular and the other prosecution evidence more particularly PW No.4/Lalengzauva and PW No.5/Vanrammawii who are the relatives of the deceased and resident of the same village with PW No.1, it appears that PW No.1 is a simple village woman, who occasionally takes liquor and does not appear to have the intelligence/capacity to scheme against anyone or nurture hatred to anyone.

11. The honb'le Tripura High Court in the case of State of Tripura versus Arjun Biswas reported in 2014(1)GLT (TR)215 has held as follows :-

“12.9. Normally in criminal cases, the burden of proof is on the prosecution to prove the ingredients of the offence. But in a case where the accused is found shrouded with suspicion and is enmeshed in an incriminating network of facts, it becomes his duty to explain the circumstances yielding to an adverse inference against him and if he omits to do so or fails in creating a dent in the prosecution story, his omission assumes a sinister significance”

Therefore upon weighing the evidence of PW No.1/Lalngaizuali and the defence more particularly the accused including the statement of the accused u/s 313 Cr.P.C, the evidence adduced by PW No.1/Lalngaizuali appears to have more weight and more probable than the unexplained statements of the defence.

12. From the prosecution evidence it is clear that the second arrest of the accused was because of some clue received from PW No.1/Lalngaizuali. The said witness stated that on the afternoon of 1.2.2012 when the accused returned the hammer to her at around 3:00 to 4:00pm it was stained with blood and when she asked him why the accused did not make any reply but only stated “*Chhawlin ka chhilh fel vek*” meaning *I have covered it with dry leaves*. According to PW No.5/Vanrammawii, when she returned home at 3:30pm her granddaughter X was not at home. From the evidence of PW No.4/Lalengzauva, PW No.5/Vanrammawii, PW No.6/ASI. R.Lalnunhluna it is clear that on the evening of 3.3.2012 when the dead body of X was found near the small ravine it was covered with dry leaves. According to PW No.6, the dead body was recovered at a distance of about 500m towards southwest from N.Vanlaiphai Police Station and about

700m southwest from the house of X. The said statement of the accused before PW No.1 on the afternoon when the girl was missing is not hit by section 24 of the Indian Evidence Act. From the statement of the accused it can be well understood that he covered/buried a living being with dry leaves. In the case of Laxman versus State of Rajasthan reported in AIR 1999 SC 215 the honble Apex Court has held that *An extra-judicial confession, if it is voluntary, truthful, reliable and beyond reproach, is an efficacious piece of evidence to establish the guilt of the accused and it is not necessary that the evidence of extra judicial confession should be corroborated on material facts.*

Further, in State of U.P. versus M.K. Anthony reported in AIR 1985 SC 48 the honb'le Apex Court has held :-

“15. There is neither any rule of law nor of prudence that evidence furnished by extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence. The courts have considered the evidence of extra-judicial confession a weak piece of evidence. In Sahoo versus State of U.P.(1965) 3SCR 86(AIR 1966 SC 40), it was held that an extra-judicial confession may be an expression of conflict of emotion a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime. Before evidence in this behalf is accepted, it must be established by cogent evidence what were the exact words used by the accused. The Court proceeded to state that even if so much was established, prudence demand that such evidence cannot be made the sole ground of conviction. It may be used as corroborative piece of evidence. In that case, the evidence was that after the commission of murder the accused was heard murmuring to himself that he had finished the deceased. The High court did not interfere with the conviction observing that the evidence of extra judicial confession is corroborated by circumstantial evidence. However, in Pyara Singh versus s State of Punjab(1978)1SCR 597, this court observed that the law does not require that evidence of an extra judicial confession should in all cases be corroborated. It thus appears that extra judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extra judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may mitigate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra judicial confession can be accepted and can be the basis of conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra judicial confession is

reliable, trustworthy and beyond reproach the same can be relied upon and conviction can be founded thereon”.

12.A. As stated before, there is no material to suggest that PW No.1 could have acted in revenge against the accused, she has nothing against the accused, keeping in mind the time when such statement was made to her by the accused it can be well inferred that the thing which he covered/buried with dry leaves was none other than the dead body of X. I do not find any reason to disbelieve the said witness and it adds credence to the prosecution case.

13. It may be noted that the statement made by the accused to PW No.1 was made on the afternoon of 1.3.2012. Post Mortem Examination was conducted on 4.3.12 at 9:10 am and according to the Post Mortem examination Report, the injuries were about 60-65 hours old. As noted above, the victim girl was missing from the afternoon of 1.3.2012. Her dead body was found on the night of 3.3.2012. Accordingly, from the finding of the age of injury reflected in the PME Report i.e. 60-65 hours, it can be safely concluded that the victim girl was put to death on the afternoon of 1.3.2012 itself. According to PW No.1, the accused made the statement to her on the same afternoon when the girl was found missing but before she heard about it. As such the accused made the statement *“chhawlin ka chilh fel vek”* (meaning *I have covered it with dry leaves*) to PW No.1 shortly after or around the time it was found that she was missing. Such a statement is relevant u/s 6 of the Indian Evidence Act.

14. PW No.1/Lalngaihzuoli stated that when the hammer was returned to her by the accused it was stained with blood. However, according to the FSL Report which is proved as Ext.P-3 no blood was detected on the hammer whereas on the dry leaves human blood of group “O” was found. The question therefore is whether the said FSL Report would cast doubt on the credibility of PW No.1 or will it vitiate the prosecution case? It is seen that the victim was missing from the afternoon of 1.3.2012. According to the said witness, the accused borrowed her hammer on the afternoon of 1.3.2012 and returned it on the same afternoon. The witness stated *“while taking the hammer from him and throwing the same on the ground, I asked the accused why the hammer was stained with blood. But the accused did not give any reply. He simply said ‘chhawlin ka chilh fel vek’.* She further stated *“I once again told Pu.Zohma-a that the accused borrowed my hammer and pointed at the hammer which was lying on the floor next to my trunk.”* As per the seizure memo, the said hammer was seized on 18.3.2012 @ 8:45pm from the house of PW No.1. A perusal of the Seizure memo which is exhibited as Ext.P-1 simply mentioned the seized property as ‘Hammer’ without any further description. It therefore appears that about 18 days lapsed from the time the hammer was returned to PW No.1 to the time it was seized by the Police. It is also seen from the evidence that it was not kept properly and was lying on the floor. According to PW No.1 the said hammer is the kind

of hammer used to make stone chips/rora. She stated that it was bought by her husband about 2/3 months prior to the incident as she needed the same to cut rocks. It therefore means that it was purchased on need base and as such within the said period of 18 days the same would have been put to use. Therefore considering the time gap between the day blood stain was noticed and the date of seizure, the hammer not being kept properly or preserved, the likelihood of it being put to use during the said period and the seizure memo not describing the same being stained with blood, I am of the considered view that the same by itself would shake the credibility of PW No.1. As stated above, in the seizure memo the seized material is simply described as “hammer” but while sending it was to FSL it was described as “hammer with suspected blood stain”. In this regard PW No.9, Investigating Officer stated that he seized the hammer from the earthen floor of the house of Lalngaihi and that the hammer was rusted at many places and that was why they sent it to the FSL to ascertain the stain/rust.

15. Turning to the confessional statement of the accused, the accused in his examination u/s 313 Cr.P.C stated that he did not make a confession but admitted that he had put his signature before the JMFC at Serchhip. In this regard, the Judicial Magistrate First Class adduced evidence by appearing as PW No.8 and clearly stated the manner in which the confession was recorded. He was also cross examined by the Ld. Defence Counsel. Strangely, during cross examination no question was put to the witness that the accused did not confess at all. In the instant case strangely the defence taken i.e. the accused being at home the whole day on 1.3.2012 and not making any confession before a Judicial Magistrate surfaced only at the stage of examination of the accused u/s 313 Cr.P.C. None of the prosecution witnesses have been cross examined with regard to their defence. The accused did not elaborate what he signed before the said Judicial Magistrate.

At this stage the provision of section 80 Evidence act may be quoted:-

“80. Presumption as to documents produced as record of evidence- Whenever any document is produced before any Court, purporting to be record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the court shall presume-

that the document is genuine, that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.”

The section dispenses with the necessity for formal proof in the case of certain documents taken in accordance with law. The presumption under this provision embrace not only the genuiness of the document, but that it was duly taken and given under circumstances recorded in the document. In the case at hand, it is true that judicial Mgaistrate is competent to record the confession and the same was taken in accordance with law. Confession/statement made under this section is not conclusive proof but can be rebutted.

In the instant case, the Recording Magistrate appeared before the Court and deposed on the manner of recording the confession of the accused.

16. The provision of section 164 Cr.P.C reads as follows:-

“164. Recording of confessions and statements. – (1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

[Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.]

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) It at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect: -

‘I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my

presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

*(Signed) A.B.
Magistrate'."*

16.A. In the case at hand, from the documents on record as well as from the evidence adduced it is proved that the accused was produced before the Judicial Magistrate First Class at Serchhip before whom the accused made a confession. The said Judicial Magistrate is authorized by law to record such confession, the same was signed by the Magistrate, the accused also admitted putting his signature and the recording was done in accordance with law. The accused simply pleaded that he did not confess. In this regard the Id. Defence counsel only argued that the confession cannot form the basis of conviction because the Police often uses third degree method and it appears that the accused after his arrest was immediately rushed to Serchhip PS for safety reasons but the Investigating Officer deposed that the accused was produced before the Magistrate for confession on the advise of the superintendent of Police. The said defence was never put up at any stage and no prosecution witnesses were examined regarding the plea of the accused that he did not make any confession. For the first time the accused raised the said plea only at the time of his examination u/s 313 CrPC and strangely in the argument the said defence has not been set up but only argued that the confession cannot form the basis of conviction. The decision of the honb'le Apex Court in the case of Kehar Singh which was referred in (2005 suppl GLT 539) the extract which may be relevant for this purpose is highlighted below:-

"where the confession was not retracted at the earliest opportunity, but after lapses of several months when the prosecution evidence was closed and the accused for the first time during examination under Section 313 CrPC retracted the confession, the confession could be accepted as voluntary".

16.B. In the instant case, PW No.9, Investigating officer deposed that the accused was transported to Serchhip in the early morning in order to protect him from an angry mob and at Serchhip he interrogated the accused once again and on the advice of the Addl. SP the confession of the accused was recorded. In this regard it is noticed from the Arrest memo the accused was arrested at Serchhip on 21.3.2012 @2:20pm. There appears to be inconsistency between the statement of the Investigating officer and the arrest memo. However, what is clear from the statement of the said witness is that the accused was taken to Serchhip for his own safety and not for the purpose of recording his confession by force. The accused was not interrogated at N.Vanlaiphai after he was apprehended for the second time. At Serchhip the statement of the accused was recorded. In the second statement of the accused he admitted his guilt. It was only thereafter that he was taken to

the Judicial Magistrate to record the confession. Considering the second statement of the accused before the Police/Investigating officer, it is only proper and reasonable that the Addl.SP suggested that the Judicial Confession of the accused be recorded.

16.C. It is also seen from the record that the reason why the accused wanted to confess was because he has sinned and that he wanted to make known his family problem. At no point of time the accused has ever stated that he was under threat or duress to confess. The reason stated by the accused is the sense of guilty feeling and it deals with the morality of the accused. With such state of mind, I find that the Ld. Recording Magistrate was fully justified in satisfying himself that the confession was made voluntarily. The Recording Magistrate has also clearly explained to the accused that even if he does not confess he will not be send back to the Police and the record shows that from 22.3.2012 the accused was in judicial custody. At Serchhip there is no Jail as such time taken for the journey has to be kept in mind. Presuming that there was some mistake in recording the time of arrest, but the arrest memo shows that the accused was arrested on 21.3.2012 and the deposition of PW no.9, I/o shows that the accused was transported to Serchhip in the early morning and that he recorded the statement (second statement) of the accused at Serchhip, it would imply that the accused was in Police Custody only from the morning of 21.3.2012. "Sufficient time" appearing in section 164 Cr.P.C have to be examined in the light of the facts and circumstances of each case and there can be no hard and fast rule of what is sufficient time. In the instant case, considering the reply given by the accused to the recording Magistrate, I find that the recording magistrate is fully justified in satisfying himself that the confession was voluntary, truthful and that the accused was not under the fear of threat or coercion.

Further at no point of time the accused has ever stated that the confession was recorded under duress/coercion or threat. What is surprising is that if the accused deny having made any confession, his confession clearly forms part of the charge sheet which was delivered to him, why are none of the prosecution witnesses more particularly the Investigating Officer and Recording Magistrate cross examined on this point? Secondly, even though the accused denied having made any confession, the Ld. Defence Counsel in his argument never submitted that the accused did not confess but only stressed on the manner of recording the confession. The Honb'le Apex Court in the case of Shivappa versus State of Karnataka reported in AIR 1995 SC 980 may be profitably highlighted as below :- 2007(3)GLT 708

"6. From the plain language of Section 164 CrPC and the Rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under Section 164 CrPC, is manifest that the said provisions emphasize an inquiry by the Magistrate to ascertain the voluntary nature of the confession. This inquiry appears to be the most significant and important part of the duty of the Magistrate

recording the confessional statement of an accused under Section 164 CrPC. The failure of the Magistrate to put such question from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same. Full and adequate compliance not merely in form but in essence with the provisions of S. 164 CrPC and the Rules framed by the High Court is imperative and its non-compliance goes to the root of the Magistrates jurisdiction to record the confession and renders the confession unworthy of credence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the Magistrate discovers on such enquiry that there is ground for non supposition he should give the accused sufficient in time for reflection before he is asked to make his statement and should assure himself that during the time of reflection he is completely out of the police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession. Besides administering the caution warning specifically provided for in the first part of sub-section (2) of Section 164 namely, that the accused is not bound to make a statement and that if he makes one it may be used against him as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement and be given the assurance that even if he declined to make the confession, he shall not be remanded to Police custody.

7. The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody or jail custody must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement the accused makes is not on account of any extraneous influence on him. That indeed is the essence of a 'voluntary' statement within the meaning of the provisions of Section 164 CrPC and the Rules framed by the High Court for the guidance of the subordinate Courts. Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, he should also make and leave such material on the record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the Court that sits in judgment in the case, that the confessional statement was made by the accused voluntarily and the statutory provisions were strictly complied with."

In the backdrop of the facts and circumstances of the case, the sequence of events and the fact that since there is no Jail at Serchhip the recording Magistrate has to keep in

mind the journey to produce the accused to CJM, Aizawl for his judicial remand and the reason stated by the accused for confessing, the manner of recording the confession which is available in the record, I am of the considered view that no prejudice was caused to the accused when his confession was recorded on the same day he was produced to the Judicial Magistrate First Class, Serchhip and I also do not find any reason why the said confession cannot be regarded as truthful and voluntary.

17. Upon perusal of the case record, it is seen that there are two statements of accuseds. In one of the statement the accused denied his involvement in the crime but in the other statement he admitted his involvement in the crime. From the evidence of PW No.4/Lalengzauva and PW No.9/T.Lalthanmawia(Investigating Officer) it is seen that when the dead body of X was recovered some persons including the accused were apprehended and interrogated. But not finding their involvement they were released. From the evidence of PW No.9 it is also seen that the accused was subsequently arrested again after they received some information from Lalngaihi(PW No.1/Lalngaizuali). Therefore, it appears that the two statements are the statements of the accused when he was first apprehended and later apprehended again on getting some clue regarding his involvement from PW No.1. Accordingly, the submission of the Ld. Defence Counsel that it is quite surprising to see that the accused who denied each and every question regarding the murder of X before the police had made a confession immediately after he was transported to Serchhip appears to have been answered. The record revealed that even before the confession was recorded the accused admitted his guilt and it is not all of a sudden he made a confession when he was transported to Serchhip.

18. The Ld. State Defence Counsel also argued that it is a proven fact that PW No.1/Lalngaihzuali is a habitual drinker and claimed that she will name the culprit if she is given Rs.5000/- and a Government job makes her motive clear and that any statement made by her should not be used against the accused. In this regard, upon perusal of the evidence it is seen that same is derived from the deposition of PW No.5/Vanrammawii who is the grandmother of the victim. The said statement may be direct evidence to the effect that Lalngaizuali stated something to her but it is indirect/hearsay in respect of the content of the statement or its veracity which is inadmissible in evidence. Presuming that the said Lalngaizuali actually said such things, in the absence of any prove that she was lying and that she had reasons to act against the accused or reasons to falsely implicate the accused or even remotely inimical to the accused, I fail to find any reasons why her evidence should be regarded not worthy of credence.

19. PW No.9, Investigating Officer stated that at Serchhip he interrogated the accused once again. Thereby meaning that the accused was interrogated for the first time and after he was arrested again for the second time he was interrogated at Serchhip for the second time. It appears that the arrest memo was prepared after they reached Serchhip. From the

record it is seen that the accused was secretly transported to Serchhip early morning in order to avoid an angry mob. It therefore appears that the accused was not brought to Serchhip at the instance of the SP solely to record his confession. And as noted above, the confession was recorded after the second statement of the accused was recorded by the Police. Therefore force being used to extort confession is not probabale. This would also explain the argument of the Ld. Defence Counsel that PW No.9, Investigatong officer deposed that on the advise of the SP confession was recorded.

20. The honb'le Apex Court in the case of State of West Bengal versus Mir Mohammad Omar & Ors reported in (2000) 8SCC 382 has held-

“31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to the burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty”

In the case of Iqbal Moosa Patel versus State of Gujarat reported in (2011)2 SCC 198 the honb'le Apex Court has held as follows :-

“23. It is true that the prosecution is required to establish its case beyond a reasonable doubt, but that does not mean that the degree of proof must be beyond a shadow of doubt. The principle as to what degree of proof is required is stated by Lord Denning in his inimitable style in Miller Vs Minister of Pensions(1947)ALL ER 372:

“..... That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is do strong against a man as to leave only a remote possibility in his favour which can be dismissed with sentence ‘ of course it is possible, but not in least probable,’ the case is proved beyond reasonable doubt....”

“88. It is true that under our existing jurisprudence in criminal matter, we have to proceed with presumption of innocence, but at the same time, that presumption is to be judged on the basis of conception of a reasonable prudent man. Smelling doubts for the sake of giving benefit of doubt is not the law of the land”

24. *Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an*

innocent. Letting the guilty escape is not doing justice according to law.(see Gurbachan Singh versus Satpal Singh:AIR 1990SC 209). The Prosecution is not required to meet any and every hypothesis put forward by the accused.....A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human being as are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish”.

21. Therefore keeping in mind the authorities referred above, upon appreciation of the prosecution evidence in its entirety, the death of X being proved from Inquest Report and Post Mortem Examination report, the accused borrowing hammer from PW no.1 on the afternoon of the incident, the hammer being returned stained with blood, the accused having said “Chhawlin ka chhilh fel vek” on the afternoon when X was missing, the dead body at the time of recovery being covered with dry leaves, the Post Mortem Examination Report corroborating with the confession of the accused, the body being recovered at a distance of about 500m from the house of the accused, the accused and PW/Lalngaizuali being neighbors and acquainted with each other and there being no evidence of enmity between the accused and Lalngaizuali, xtra judicial confession made to PW No.1 and subsequently a judicial confession, I am of the considered view that the probability factor leans in favour of the prosecution than the simple denial of the accused from the stage of examination u/s 313 Cr.P.C without any further explanation.

22. Accordingly, accused B. Lalrinmawia is convicted of the offence punishable u/s 302 /377 IPC.

23. Sentence will be passed on 2.7.2014 after hearing the parties. Till then the accused is remanded back to judicial custody.

24. Pronounced in open Court and given under my hand and the seal of this Court on this the 26th day of June, 2014.

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

ORDER

Dated 2nd July, 2014

Convict B. Lalrinmawia is produced from judicial custody. Ld. Defence Counsel and Addl. PP are present.

The accused submitted that he is ageing and not keeping good health. On the aforesaid ground, he prays for leniency.

The ld. Defence Counsel, Mr. J.N. Bualteng adopted the submission of the accused and prays for leniency keeping in mind the age and health condition of the accused.

Mrs. Rose Mary, the ld. Addl. PP submitted that though the offence is very heinous considering the antecedents of the accused and the age of the accused prays for imposing sentence of imprisonment for life with fine for the offence u/s 302 IPC and for the offence u/s 377 IPC to award maximum sentence with fine.

Heard the parties. Considered the nature of the offence and the manner in which it was committed as well as the character and antecedents of the accused. For the offence punishable u/s 302 IPC, the ld. Addl. PP has prayed for lighter sentence in view of the age of the accused. Considering the nature of the offence, the gravity, the sufferings of the victim's family and the right of the accused, the following sentence is passed.

Accused **B. Lalrinmawia** is sentence to undergo **Rigorous Imprisonment** for **Life** and to pay a fine of **Rs. 5,000/-** and in default to further undergo **RI for 2 months** for the offence u/s 302 IPC.

For the offence u/s 377 IPC, accused **B. Lalrinmawia** is sentence to undergo **Rigorous Imprisonment** for **3 years** and to pay a fine of **Rs. 2,000/-** and in default to further undergo **RI for 1 month**.

Both sentences shall run concurrently.

This Order shall form part of the Judgment dt.26.6.2014.

With the above Order, the case stands disposed off.

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

Memo No.:_____/AD&SJ(A)/2014 : **Dated Aizawl, the 1st July, 2014**

Copy to: -

1. Accused B. Lalrinmawia C/o Spl. Supdt. Central Jail, Aizawl.
2. Special Superintendent, Central Jail, Aizawl.
3. District & Sessions Judge, Aizawl Judicial District, Aizawl.
4. District Magistrate, Aizawl District, Aizawl.
5. PP / Addl. PP, Aizawl.
6. DSP (Prosecution), District Court, Aizawl.
7. G.R. Branch.
8. Registration Section.
9. Guard File.
10. Case Record.
11. Calendar Judgment.

P E S H K A R

APPENDIX

A. PROSECUTION EXHIBITS

- Ext. P-1 Seizure Memo
P-1(a) Signature of PW No. 1
- Ext. P-2 Seizure Memo
P-2(a) Signature of PW No. 2
- Ext. P-3 FSL Report
P-3(a) Signature of PW No. 3
- Ext. P-4 FIR
P-4(a) Signature of PW No. 6
- Ext. P-5 Inquest Report
P-5(a) Signature of PW No. 6
- Ext. P-6 PME Report of victim
P-6(a) Signature of PW No. 7
- Ext. P-7 Confessions Statement of accused
P-7(a) Signature of PW No. 8
- Ext. P-8 Charge Sheet
P-8(a) Signature of PW No.9
- Ext. M-1 Seized Material containing Hammer

B. DEFENCE EXHIBITS- None

C. EXHIBITS PRODUCED BY WITNESSES - None

D. COURT EXHIBITS- None

E. PROSECUTION WITNESSES:

- P.W. No. 1 - Lalngaihzuali
- P.W. No. 2 - Zomuana
- P.W. No. 3 - Lalchhanzova
- P.W. No. 4 - Lalengzauva
- P.W. No. 5 - Vanrammawii
- P.W. No. 6 - ASI R. Lalnunhluna
- P.W. No. 7 - Dr. Lalmuanawma Jongte
- P.W. No. 8 - T. Lalhmachhuana
- P.W. No. 9 - T. Lalthanmawia

F. DEFENCE WITNESSES - :

- D.W. No. 1 - Lalrammawii
- D.W. No. 2 - B. Lalrinmawia