

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

BEFORE

**Mr.R.Thanga
District & Sessions Judge
Aizawl Judicial District, Aizawl**

**SR No.38 of 20123
Criminal Trial No.270/2013
u/s 302 IPC
Ref: Kawrthah PS C/No.5/2013 dt.6.2.2013**

**State of Mizoram
Vrs
Lalhriatpuia S/o Ngurthanhlira R/o Mamit Lungsir- Accused**

PRESENT

For the Prosecution : Mr.H.Lalmuankima & Mrs.K.Lalremruati, Ld. Addl. P.Ps.

For the Accused : Mr.A.R.Malhotra, Advocate

Date of Hearing : 25-06-2014

Date of Judgment : 03-07-2014

JUDGMENT & ORDER

1. The story of prosecution in brief is that a written FIR was lodge by SI Lalbiakzuala PC 4th IR Sihthiang BOP to the effect that on 5.2.13 @ 7:00 PM, one C/557 Lalhriatpuia 21 years S/o Ngurthanhlira of Lungsir, Mamit who was posted at 4th IR Sihthiang BOP had shot one of the colleagues C/585 Lalramnunmawia 27 years S/o Laizuala (L) of Keitum on his chest by using service SLR at Sihthiang BOP and the said Lalramnunmawia instantly died at the spot. Hence, Kawrthah PS Case No.5/2013 dt.6.2.2013 u/s 302 IPC was registered and investigated into. Thus a prima facie case u/s 302 IPC is found well established against the accused Lalhriatpuia 21 years S/o Ngurthanhlira of Lungsir, Mamit.
2. Relevant copies of documents were handed over to the accused and also submitted vakalatnama duly executed by the accused person in favor of Mr.A.Rinliana Malhotra, Advocate & Ors. Accordingly, charge u/s 302 IPC was framed against the accused and explained to him in the language known to him, to which he pleaded not guilty and claimed for trial and hence, trial commenced.

3. The prosecution produced and examined 9 Nos. of witnesses in order to prove their case. The accused was also examined by the trial judge u/s 313 Cr.P.C.

4. P.W.No.1, SI Lalbiakzuala had stated that on the night of 5.2.2013 at around 7:00PM while he was having dinner in the barrack he heard a sound of bullet shot. He immediately run and proceeded towards the PO and he saw the present accused apprehended by other colleagues and they also took the weapon used for shooting against the victim from the possession of the accused and they stated to him that the present accused shot against the deceased C/No.585 Lalramnunmawia for using SLR rifle. The victim was lying near the duty post and he had already passed away. The victim was lying near the duty post and he was already passed away. At the time of incident the deceased was also detailed on duty on the said post. Thereafter he informed O/C, Kawrthah PS and their higher authority and he lodged FIR accordingly.
Exbt-P-1 was the FIR submitted by him and
Exbt-P-1(a) was his signature.

5. P.W. No.2, Lalrinpuia had stated that on 5.2.2013 he heard a bullet sound within their village. He asked the other why he heard a sound of a gunshot. His son replied him to come to the Police camp and he proceeded immediately to the police camp and they stated to him that the present accused open fire against the deceased. Thereafter, the police conducted investigation and seized one SLR.Butt.No.541 Registration No.H.4694, Cartridge-one no., empty and he put his signature on the body of the seizure memo.
Exbt-P-2 was the seizure memo
Exbt-P-2(a) was his signature and
Exbt-M-1 was the seized article.

6. P.W.No.3 Lalhminganga had stated that on the night 5.2.2013 he heard a sound of a gunshot, they immediately went to the PO. Thereafter, the police conducted investigation and seized one SLR Butt. No.541 Registration No.H.4694, Cartridge – one number, empty cartridge – one number, Magazine-one number in his presence. They also prepared seizure memo and he put his signature on the body of seizure memo.
Exbt-P-2 was the seizure memo
Exbt-P-2(b) was his signature and
Exbt-M-1 was the seized articles.

7. P.W.No.4, Joshua had stated that on the night of 5.2.2013 he heard a sound of a gun shot in the IR camp, Sihthiang they could not know anything happened as civilian could not permitted to enter into the camp. After half an hour he come to know that the present accused opened fire upon the victim Lalramnunmawia by using SLR. He also knew from the public that the accused and the victim consumed liquor and they had quarreled among themselves and the incident happened.

8. P.W.No.5, Vanhnuaithanga had stated that on the night of 5.2.2013 while he was on his bed he heard a sound of gun shot. Thereafter Pu Robert requested him to enquire the matter through telephone then he immediately proceeded towards IR camp. When he entered the camp and they stated to him that the present accused had opened fire upon the victim, the victim was lying on the ground and the dead body was covered with a cloth. Thereafter the dead body was taken to the barrack.
9. P.W.No.6, K.Lalhmingthaa had stated that on 5.2.2013 at around 3:00PM he himself and Lalramnunmawia, Lalhriatpuia and Zoremsiam consume liquor. After sometime Lalramnunmawia the deceased and Zoremsiam were playing as such they have wrestling near the place where their consuming liquor. In the meantime the victim Lalramnunmawia punch against the accused Lalhriatpuia on his nose, thereafter they returned to the Barrack. After some time he heard a sound of gunshot within their Barrack and he immediately proceeded to the place of occurrence, he saw the victim Lalramnunmawia lying on the floor and the present accused was standing near the deceased carrying a gun and he immediately took his gun from his hand and the accused has apprehended by his other colleagues. Thereafter the police seized the gun and arrested the accused person.
10. P.W.No.7, Dr.Lalhmunmawia had stated on 6.2.2013 the dead body of Lalramnunmawia age about 27 years old was brought before him while he was on duty at District Hospital, Mamit. The dead body was also identified by Lalbiakzuala, SI of Post Commander, Sihthiang BOP. On the same day at around 9:30PM he conducted PME over the dead body. On his examination the deceased sustained bullet entry wound on his right forth intercostal space just medial to nipple size about 5-6 ml in diameter. And exit bullet wound on his left side at the back about 6 cm from vertebra at 8 and 9 intercostal space, laceration wound size about 2-3 inches with fracture 9 and 10 ribs. In his opinion the cause of death was profuse bleeding from spleen and surrounding tissues (i.e hemorrhage).
Exbt-P-3 was PME report and
Exbt-P-3 was his signature.
11. P.W.No.8, Zoremsiam had stated that on 5.2.2013 at around 3:00PM they consumed liquor with the present accused, Lalramnunmawia the deceased and K.Lalhmingthaa. In the meantime they are playing with each other with the present accused as such as they played wrestling with him. Unfortunately, the deceased Lalramnunmawia punched the present accused. Thereafter, they returned to the barrack. He also went to the shop nearby. After sometime, he heard a bullet sound from the barrack and he came to know that the present accused opened fire upon the deceased Lalramnunmawia. Then he immediately proceeded towards the PO and he saw the deceased lying on the ground. The present accused was also handcuffed inside the barrack. Thereafter, the police conducted inquest and investigation.
12. P.W.No.9, C.Lalchhuanawma, had stated that on 6.2.2013 a written FIR was lodged by SI Lalbiakzuala in connection with on 5.2.2013 at around 7:00PM the present accused posted at 4th IR, Sihthiang BOP shot dead against his colleagues

Lalramnunmawia on his chest by using service SLR. As such Lalramnunmawia died on the spot. Hence, the case was registered as Kawrthah PS C/No.5/13 u/s 302 IPC. He took up the case for further investigation. During his investigation, he visited the PO and he draw rough sketch map and also conducted inquest over the dead body. He also makes requisition for PME examination. He examined the complainant and other reliable witnesses and he recorded their respective statements. He also seized SLR butt no.541 regd. No.H-4694, one no. of empty cartridge, one no. of cartridge and one no. of magazine. He also arrested the present accused person and he recorded his statement. Therefore, he received PME report from medical officer, Mamit. Hence, he found prima facie case u/s 302 IPC against the accused person and he submitted charge sheet accordingly.

Exbt-P-2 was seizure memo,

Exbt-P-2(a) was his signature

Exbt-P-3 was inquest,

Exbt-P-3(a) was his signature

Exbt-P-4 was arrest memo;

Exbt-P-4(a) was his signature

Exbt-P-5 was charge sheet;

Exbt-P-5(a) was his signature.

13. After completion of the examination of the prosecution witnesses, the accused was duly examined u/s 313 Cr.P.C. on 02.05.2014.
14. The Defense did not produce any witnesses on their behalf and rest their case. Arguments were heard from Ms.K.Lalremruati, Ld. Addl.PP. on behalf of the Prosecution and from Mr.A.Rinliana Malhotra on behalf of the accused.
15. The prosecution counsel submitted that the guilt of the accused has been proved beyond all reasonable doubt from the evidences of the witnesses adduced before the Court. The witnesses although none were eye witnesses were able to build up and prove the case as they were immediately at the PO without any time lapse and had witnessed the accused with the fire arm in his possession which was seized from him along with live and empty cartridges of the fire arm. There were witnesses of the event leading to occurrence of the offense i.e. playful banter and altercation due to the punch on the face of the accused by the victim. FIR and Medical examination were carried out without any undue delay.
16. The defense counsel on the other hand submitted that although the above event leading to the offense and the actions of the concerned authorities immediately thereafter are not disputed has raised objection that no FSL test was conducted in order to link the cause of death to the accused. It is also not disputed by the Prosecution that no FSL test was conducted to determine whether the bullet/cartridge recovered was actually fired from the seized fire arm which was in fact released on zimma nama by the investigating agency. None of the seized articles though exhibited were sent to FSL test to determine and connect the fire arm

with the live and empty cartridges with the accused. In this circumstance there is no conclusive evidence to prove the guilt of the accused beyond reasonable doubt and is therefore liable to be acquitted of the charges against him

17. On hearing both the counsels the Court has specifically questioned the prosecution on the matter of obtaining expert opinion for determination of the commission of the offence by the seized fire arm and the live and empty cartridges to which they have replied in the negative. In the above circumstances I am most sympathetic with the predicament of the Prosecuting counsels who are not provided the means and support from the investigating authorities in order to prosecute their case. I do hope and believe that this state of affairs does not continue and that the processes of all offences are treated with equal zeal and effort from all quarters of the machineries for the effective administration of justice.
18. In light of the above discussions this Court is constrained to acquit of the charge u/s 302 IPC. Bail bonds if any stands cancelled. The instant Criminal Trial is accordingly disposed of.

Sd/-R.THANGA
DISTRICT & SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT
AIZAWL

Memo No. _____DSJ/A/ 2014 : Dated Aizawl, the 8th July, 2014.

Copy to :-

1. Lalhriatpuia S/o Ngurthanhkira, Mamit Lungsir.
2. Mr. H.Lalmuankima and Ms. K.Lalremruati, Ld.Public Prosecutors, Aizawl.
3. Mr. A.R.Malhotra, Ld. Advocate.
4. DSP, Prosecution.
5. O/C, Kawrthah P.S.
6. i/c Judicial Section.
7. Case record.
8. Guard file.

PESHKAR