

IN THE COURT OF ADDITIONAL SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional Sessions Judge,
Aizawl Judicial District, Aizawl.

Sessions Case No. 109 of 2013

State of MizoramComplainant

-Versus-

Shri Lawmsangzuala (36)
S/o Thanngchinglova (L),
R/o Tuirial Tlang Veng, Aizawl District. Accused person

APPEARANCE

For the State : Shri Joseph Lalfakawma, Addl. P.P.
Ms K. Lalremthangi, Asst. P.P.

For the accused : Shri H.Lalrinthanga, Advocate.

Hearing : 13.3.2015

Judgment delivered on : 26.3.2015

Sentence Order delivered on : 9.4.2015

J U D G M E N T

The accused has been prosecuted for an offence punishable under Section 302 of I.P.C.

2. The story of the prosecution case in brief is that on 24.04.2012 one Ralliantawna aged about 70 years submitted an FIR to Bawngkawn Police Station to the effect that on that morning at about 4:30 Am his step sister Smt. Lalianchhungi (64) had succumbed to her injuries on head since she was hit by the accused with a hoe. The accused is the son of the victim. Hence, Bawngkawn Police Station Case No. 85 of 2013 dated 24.4.2013 under Section 302 of IPC was registered and duly

investigated first by S.I. Zirtluanga and later took the charge by S.I. Lalramlawma Hnamte.

In the course of investigation, the P.O. was visited. Inquest was held over the dead body of Lallianchhungi. External fracture injury marks on her forehead at the right side and on her nape were found. One large hoe stained with blood and hair was seized on the spot in the presence of seizure witnesses. The dead body was forwarded to the medical officer at Civil Hospital, Aizawl for post mortem examination. The accused was arrested and interrogated by the police. The accused stated before the police that on that early morning of 24.4.2013 thinking her mother a devil spirit he suddenly had taken a hoe from their bedroom and hit her four times on her head. The accused came to realize that the victim was his mother after opening the window. Accused was forwarded to the court for remanding into judicial custody on 27.4.2013. Hair and blood sample of the deceased was drawn by the medical officer which was properly seized and sent the bloodstain and hair found on the hoe seized from crime scene to the FSL, Aizawl for examination and comparison.

The scientific examination report obtained from the FSL revealed that the blood of the deceased was belonging to blood group 'B' and the bloodstain found on the hoe was human blood. Post mortem examination report was also received and the opinion of the medical officer was that the cause of death of the victim was due to head injury (Cranis-cerebral injuries). Hence, a prima facie case under Section 302 of IPC was found against the accused person and the Case I.O. S.I. Lalramlawma Hnamte submitted charge sheet.

3. The accused person was produced before the learned Chief Judicial Magistrate, Aizawl District. Thereafter, the case was committed to the learned Sessions Judge being the offence triable exclusively by Court of Session. Thereafter, the case was transferred to my predecessor for trial and disposal. Hence, the case came to me for disposal.

4. Charge sheet and its relevant documents were supplied to the accused. The learned Counsel Shri H.Lalrinthanga was appointed to defend the case of the accused at the expense of the State.

5. After hearing the rival parties and on finding a prima facie case against the accused, charge was framed against him under Section 304 of I.P.C. The charge was read over and explained in the language known to him and to which he pleaded guilty by stating "a dik e" (which means it is correct). However, the court proceeded to take prosecution evidence.

6. In order to bring home the charge, the prosecution produced and examined as many as ten witnesses to prove that the accused had committed offence punishable under Section 304 of I.P.C. The plea of defence is that the accused had no intention to cause death of his mother. After closure of the prosecution evidence, the accused was examined under Section 313 of Cr PC. The defence side also produced one witness.

7. I heard the learned Addl. Public Prosecutor Shri Joseph Lalfakawma appearing for the State assisted by the learned A.P.P. Smt. K. Lalremthangi. I also heard the learned Counsel Shri H.Lalrinthanga appearing for the accused.

Points for Decisions :

8. a) Whether the death of Lallianchuangi was caused by the accused?
- b) Whether the accused had intention to kill his mother?
- c) Whether he committed offence punishable under Section 304 of IPC?

Discussion, Decision and Reasons Thereof:

P.W. 1 Shri Ralliantawna is the brother of the victim. He saw the dead body of the victim lying on the floor and her head was bandaged. He also saw a pool of blood on the floor near the fire place. He knew that the accused was a heavy liquor drinker. He could not say whether the accused was having mental problem, but he knew that when the accused took alcohol regularly, it affected the accused mentally since he used to run around their house wearing under pant only. In the house of his neighbor, the police took down his statement and he put his signature. Ext. P-1 is the FIR submitted by him and Ext. P-1(a) is his signature. On cross examination, he did not know who had written the FIR at Ext. P-1, but as far as he could recollect, it was written

by a police personnel whom he could name him. He further stated he did not know whether the accused was drunk on that previous night or on that day of incident. According to the witness, he could not say whether the victim had died due to drunkenness of the accused. On analyzing the evidence on the record that I find that the witness could not say the cause of the death of victim. In his opinion, the accused would not have killed his mother if he had not got drunk.

P.W.2 Zabiaka knew the accused staying with his mother. On that morning, Nu Kungi who was the next door neighbor of the accused had told his wife that she was feeling the accused doing something wrong to his mother and said "*Sangtea hian a nu a vel tlatin kan hria*" and asked his wife to wake him and to go to the house of the accused. So, he got up immediately and rushed to the house of the accused. He enquired the accused. When he reached the house of the accused he saw the accused mother lying down on the side of the fire place, but did not see any bleeding from her at that time. The accused was sitting on a bench and he was shivering. Then he put his arms around the mother of the accused and when lifting her she could have seen sustaining serious injuries on her head (a bek a pera a thluak a lang a, a hmai erawh chu a himdam). On seeing the injury, he laid her back on the floor and made a call to the VCP over phone and informed the matter to him. The VCP asked him to apprehend the accused but the accused needed not be arrested since he was there. The Police personnel arrived after the information and the crowd started gathering. On that morning, according to the witness, the accused did not consume liquor and he did not know if he had other criminal antecedents. The witness was a leader of YMA of his locality and his colleagues had stated before that even if the accused was released from judicial custody he would not be allowed to live in their locality. This decision was made since nobody would be allowed killing somebody due to the accused being alcoholic and becoming violent when he was drunk. When he reached the house of the accused on that morning, it might be around 6:30-7:00 AM. On cross examination, he did not smell the accused drinking liquor at the relevant time, but the accused stated before him that he had tried to abstain from dinking liquor before the incident, two or three days back. However, similar to the statement made by the P.W.1 Shri Ralliantawna, he knew the accused exceeding his limit and became senseless.

P.W.3 Lalrinkima knew the accused Lawmsangzuala living in Tuirial Tlang Veng. He heard that the victim was caused dead by her own son. He went to the house of the deceased and saw her dead body lying down on the floor. The police arrived in the house of the deceased in his presence and seized a hoe. He did not notice any blood stain on the hoe but put his signature on the request of the Police personnel that he had seen the weapon used for committing the offence and also seeing it taking from the house of the deceased. He went to the place of occurrence as a leader of YMA but he did not properly look on the weapon seized. Ext. P-2 is the Seizure Memo and Ext. P-2(a) is his signature. Ext. M-1 is the hoe seized by the Police in his presence. On cross examination, he stated that he did not lift the cover of the victim's dead body since were told not to her. He further stated that he was present when the accused stated before the Police that he had caused the death of his mother and that was why he stated that he had heard the death of victim caused by her son. He could not recollect the size of blade of the hoe. The evidence is that he is not only a seizure witness, but is a witness of extra judicial confession of the accused.

P.W.4 C.Lalthamawia knew the accused Lawmsangzuala. At the relevant time, he was the Secretary of Tuirial Branch YMA. As soon as he received the information, he rushed to the house of the accused. When he reached the house there was no police personnel but a crowd of people was present in the house. He knew the name of the deceased as Pi Chhungbawih. They were told not to touch the dead body as they were waiting for the arrival of Police. He saw the injury sustained by the deceased. He also saw a big hoe (bawngtuthlawh). He did not touch the said weapon. The dead body was lying on the floor which was bamboo floor and blood was dripping on the floor from her head. When the Police arrived, they took photographs and the Police told them that they required witness from the YMA. Accordingly, he put his signature as a witness. He did not remain for long in the house after arrival of the Police because he had to take morning meal. He did not know for what purpose he had put his signature. On cross examination, he stated that the injury was on her head (a lu a per). He also stated that the injury did not appear to be caused by a single blow.

P.W.5 Lalchhuana is working in Civil Hospital, Aizawl as IV Grade. His work was assisting while holding Post Mortem Examination. He knew that the Post

Mortem Examination had been held in Civil Hospital, Aizawl on 24.4.13. According to him, at the time of having Post Mortem Examination, the medical officer drew blood sample and few hair strains of the deceased. The Post Mortem Examination Report was prepared by the medical officer. The blood sample drawn and the hair strains were handed over to the Investigating Officer. The cross examination was declined by the learned Defence Counsel.

P.W.6 Johan Lalnghakliana is a constable. On the instruction of his superior, he escorted the Investigating Officer at the time of holding Post Mortem Examination at Civil Hospital, Aizawl. He witnessed the medical officer drawing blood sample and sample of hair of the deceased which was to be sent to the FSL for examination. He did not have further knowledge. He subscribed his signature on the Seizure Memo. Ext. P-3 is the Property Seizure Memo and Ext. P-3(a) is his signature. On cross examination, he stated that the blood sample was drawn from the chest of the dead body. In his knowledge, the hair strains were small bundle, it appeared to be about 4 or 5 strands which were pulled out from the head of the victim.

P.W.7 Dr. Lalingmaia is presently posted as Head of Forensic Department, Civil Hospital, Aizawl. On 24.4.13, a requisition was received from Bawngkawn Police Station for post mortem examination of the dead body of Lallianchhungi, aged about 64 years d/o Kapsavunga (L), Tuirial. Accordingly, he held the PME on 24.4.13 at about 12 Noon. He recorded his detail findings in the PME Report. In his opinion, the cause of death of Lallianchhungi was due to head injury (cranio-cerebral injuries). All injuries were ante mortem in nature. Ext. P-4 is the requisition for PME Examination. Ext. P-5 is the PME Report and Ext. P-5(a) is his signature. On cross examination, he stated that there were multiple injuries on the head of the victim, but no injury on any other part of her body. According to him, the multiple injuries which he found on the head of the victim could have been caused by a single blow depending on the force.

P.W.8 Assistant Director Lalchhanzova of FSL, Aizawl is posted in Serology Division concerning examination of biological exhibits. On 8.5.13, a requisition was received from Bawngkawn Police Station for examination of 3 exhibits, such as, Hoe with

suspected blood stain and hair marked as Ext. A, control blood sample of the victim marked as Ext. B and control hair sample of the victim marked as Ext. C. Upon examination of the said exhibits by using scientific instruments, the findings of the witness are as follows: - Ext. A-the stain on the said Ext. is blood of human origin but the stain was insufficient for blood grouping. Ext. B-belongs to blood group B and Ext. C-the hairs on Ext. A were human hair. The hair at Ext. A could not have come from the same source as Ext. C thereby meaning that the hair at Ext. A and the hair in Ext. C is not same. Ext. P-6 is the Laboratory Examination Report prepared by him. Ext. P-6(a) is his signature. On cross examination, he stated that the stain on Ext. A is human blood but he cannot ascertain whose blood it was. He further stated that the hair strands on Ext. A and C were approximately 5 inches. But, from physical examination of hair, gender cannot be determined unless DNA is done. In the FSL at Aizawl, they have not done DNA examination till date.

P.W.9 S.I. Zirtluanga knew the accused Lawmsangzuala. At the relevant time, he was posted at Bawngkawn PS. According to the witness, on the morning of 24.4.13, information was received over telephone, and thereafter, he and a Constable visited the place of occurrence which was the house of the deceased Lallianchhungi at Tuirial Tlang Veng and held inquest on her dead body inside her house in the presence of witnesses. A big hoe (bawngtuthlawh) was lying near the death body which was seized in the presence of witnesses. While holding the inquest, the head of the dead body was facing north, legs to the south. The victim sustained injury on the right side of her head. From the injury on her head, her brain could be seen. There was also a small injury on the back of her head. But, he did not find any other injury on any other parts of her body. There were blood stain and hair strains found on the big hoe. After holding inquest, the body was forwarded for Post Mortem Examination (PME). He recorded the statements of Seizure Witnesses at the PO itself. Thereafter, he prepared a rough sketch map of the PO. Thereafter, they left the PO for the PS along with the death body of Lallianchhungi and the accused. The accused was formally arrested at Bawngkawn PS. He interrogated the accused and his statement was recorded at the PS. The seized material i.e. big hoe was forwarded to FSL for examination in order to ascertain whether the hair strains and the blood stain matching with that of the deceased. He also received back the PME Report. While holding the PME Report, the blood sample and hair strain of the deceased was taken in presence of witness. The same was sent along with the hoe

to the FSL. Thereafter, as he was transferred to Kulikawn P.S., he handed over the case to OC, Bawngkawn PS which was later handed over to S.I. Lalramlawma Hnamte.

Written FIR was submitted by Ralliantawna S/o Hauliana R/o Tuirial regarding the instant case. Accordingly, Bawngkawn PS Case No. 85/13 dt.24.4.13 u/s 302 IPC was registered. Ext. P-7 is the Arrest Memo and Ext. P-7(a) is his signature. Ext. P-2 is Seizure Memo of hoe and Ext. P-2(b) is his signature. Ext. P-3 is Seizure Memo i.e. blood sample & hair and Ext. P-3(b) is his signature. Ext. P-8 is the sketch map of the PO. Ext. P-9 is the Inquest prepared by him and P-9(a) is his signature. On cross examination, he stated that the victim had got 2 or 3 time blows though not having clear knowledge. He did not smell of liquor of the accused. He did know whether any altercation had taken between the victim and the accused. He further stated that the incident had occurred at dawn. When reaching the P.O., there was no blood stain on cloth. In the course of investigation, the accused stated before him he had hit 2 or 3 times on his mother thinking her supernatural being but came to realize her after opening the door.

P.W.10 S.I. Lalramlawma Hnamte submitted charge sheet on the basis of collection of material by S.I. Zirtluanga. He proved the charge sheet. Cross examination was declined by the learned Defence Counsel.

When the accused was examined under Section 313 of Cr PC, he replied that he had caused the death of his mother thinking her a super natural being since he was abnormal due to stoppage of drinking liquor two or three days before.

D.W. Lawmsangzuala who is the accused in the present case stated that he was in a habit liquor drinker. It was on 24.4.2013 at morning before sunrise and when the place was covered by mist, he killed his mother thinking that she was a ghost, since he was abnormal due to sudden stoppage of drinking liquor. On cross examination, he stated that he had stopped drinking liquor three days before the incident. He further stated that the hoe which he had used for killing his mother was placed near the fireplace of their house. He also stated that when he had come to know the fact that it was his mother's dead body, he shouted for help. He had a case of an attempt to murder which was already disposed by Smt. Helen Dawngliani, Addl. D & SJ.

9. Point No. 1.

According to the learned Addl. P.P. Shri Joseph Lalfakawma, the prosecution has successfully proved the cause of death of the victim which was due to blow of the accused with hoe. On seeing the FIR at Ext. P-I, we can find that the complaint was filed due to the death of the victim caused by the accused with hoe. Even the accused stated P.W.3 Lalrinkima that he had caused the death of her mother which amounts to extra judicial confession. The medical and the forensic evidence also corroborate. At any stage of trial, the learned Counsel did not point out that the accused had not caused the death of the accused. The accused admitted before court in his examination under Section 313 of Cr PC and in his deposition before the Court that he had caused the death of his mother. Hence, I find that the accused caused the death of the victim with a hoe on the early morning of 24.4.2012.

10. Points No. 2, 3 & 4.

I do not find any evidence of the prosecution witness that the accused had intention to kill the victim. The prosecution therefore cannot prove that the accused had intention to kill the victim. There is no evidence of the prosecution witness that the cause of death of the victim falls under the ambit of the Exception under Section 300 IPC. However, the act of the accused was done with the knowledge that his act would likely to cause death of the victim but without any intention to cause death. In the medical evidence, it is stated by P.W.7 Dr. Lalringmaia, Head of Forensic Department, Civil Hospital, Aizawl that the multiple injuries were found on the head of the victim and the injuries could have been caused by a single blow depending on the force. Hence, I find that the accused is liable to be convicted under Section 304 part II of IPC.

11. Accordingly, in the light of the above discussion and reasons thereof, the accused Lawmsangzuala is convicted under Section 304 (Part II) of I.P.C.

12. Fixed 9.4.2015 for Sentence Hearing.

Judgment prepared and delivered in the open court on this 26th day of March, 2015 under my hand and seal.

Sd/- VANLALENMAWIA
Addl. Sessions Judge
Aizawl Judicial District,
Aizawl, Mizoram.

O R D E R

Dt. 9.04.2015 - The convict Lawmsangzuala is produced from judicial custody. Learned Addl. Public Prosecutor assisted by the Learned Assistant Public Prosecutor is present. Learned Defence Counsel is also present.

I have heard the learned Public Prosecutor, Shri Joseph Lalfakawma and the learned Defence Counsel, Shri H.Lalrinthanga. Convict Lawmsangzuala is also heard.

The submission the Ld. Addl. Public Prosecutor is that in view of the offence committed by the convict, he deserves punishment of of ten years.

Per contra, the Ld. Counsel appearing for the convict submits that the convict deserves leniency since he has repented for his past act. Even the convict Lawmsangzuala has made a promise in the court that he will lead a life of good citizen in future if he is shown leniency.

The submission of the rival parties is considered.

On considering the factual circumstances submitted by the learned Defence Counsel, the convict Lawmsangzuala is sentenced to undergo Rigorous Imprisonment for three years.

Seized article if any, shall be destroyed in my presence.

This sentence order shall form a part of the Judgment passed on 26.03.2015 and is to be attached accordingly.

Give copy of this order to all concerned parties.

Sd/- VANLALENMAWIA
Addl. Sessions Judge,
Aizawl Judicial District,
Mizoram : Aizawl.

Memo No. / AD & SJ (A) /2015 :

Dated Aizawl, the 9th April, 2015.

Copy to :-

1. Shri Lawmsangzuala, Central Jail, Aizawl.
2. District Magistrate, Aizawl.
3. District & Sessions Judge, Aizawl Judicial District, Aizawl.
4. Senior PP/Addl. PP/APP, Aizawl District, Aizawl.
5. Special Superintendent Central Jail, Aizawl District, Aizawl.
6. Investigating Officer through O/C Bawngkawn PS, Aizawl.
7. In-Charge, G.R. Branch.
8. Registration Section.
9. Guard File.
10. Case Record.
11. Calendar Judgment.

P E S H K A R