

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. 30 of 2014

Crl Tr. No.824 of 2014

State of Mizoram .....Complainant

-Versus-

Shri Kamsiansang (25)  
S/o Hangchinpauva (L),  
R/o Tiddim, Myanmar,  
P/a Vengthar, Champhai. .... Accused person.

APPEARANCE

For the State : Shri Joseph Lalfakawma, Addl. P.P.  
Smt. Lalremthangi, Asst. P.P.  
For the accused persons : Shri Lalramhluna, Advocate.

Hearing : 9.11.2015  
Judgment delivered on : 9.11.2015

**J U D G M E N T & O R D E R (Oral)**

The accused has been tried in connection with the offences of murder punishable under Sections 302 of IPC. He is a sibling of the alleged victim.

2. The prosecution story in a nut shell is that a written report about the missing of Khamkhannanga @ K.K.Nanga of Champhai Vengthar was received on 7.1.2014 from Nemdeichini, who is the widow, now. Hence, enquiry was conducted by ASI R.Lalbiaksanga of Saitual Police Station.

The enquiry revealed that on 17.12.2013 one Truck (1109) bearing Registration No. MZ-04/2317 driven by the alleged victim while running towards Keifang from Champhai stopped due to damage of its injector at the outskirts of Keifang (about 10 Kms from Champhai). The alleged victim had been missing from that place since 20.12.2014 at about 11.00 Pm. The accused was apprehended on suspicious ground and he was also interrogated. It appeared from the interrogation that the accused that he had assaulted the alleged victim and the dead body of the victim was found on the road side cliff (downward) from his alleged confession before the police. After inquest was held, the dead body of the victim was sent to Sub-District Hospital, Saitual for post mortem examination.

The Enquiry Officer submitted suo moto FIR to the Officer-in-Charge. Hence, Saitual PS Case No. 2 of 2014 dated 11.1.2014 under Section 302 of IPC was registered and the case was endorsed to S.I. K. Lalrinpuia for investigation.

In the course of investigation, a prima facie case being found against the accused u/S 302 & 201 of IPC read with 6(a) PP Rule charge sheet was submitted to the court of CJM, Aizawl.

3. Learned Shri Lalramhluna was appointed to defend the accused at the expense of the State.

4. Upon committal, my predecessor framed charge u/S 302 of IPC against the accused person and the same was read over and explained in the language known to him, to which he pleaded not guilty and claimed to be tried.

5. In the course of trial, the prosecution produced and examined ten out of eleven witnesses to prove that the accused had committed the offence punishable under Sections 302 of IPC. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC, but the suggestions were denied by him.

6. I heard the learned Addl. P.P. Shri Joseph Lalfakawma appearing for the State assisted by the learned A.P.P. Smt. Lalremthangi. I also heard the learned Counsel Shri Lalramhluna.

7. **Points For Determination :**

a) Whether the prosecution proves that the accused caused the death of K.K.Nanga on the night of 20.12.2013 at the outskirt of Dulte Village before reaching Tuivawl river from Champahi to Aizawl road?

b) Whether the prosecution proves that the accused knowingly and intentionally caused the death of Khamkhannanga?

c) Whether the accused is liable to be punished under Sections 302 of IPC?

8. **Discussion, Reasons and Decision :**

**P.W. 1 Smt. Nemdeihchin** is the wife of the deceased K.K.Nanga. She knew the accused as younger brother-in-law. On 11.12.2013, her husband and the accused left for Aizawl from Champhai by their vehicle. On the way, she was informed over mobile phone by her husband that his vehicle had stopped. On 24.12.2013 at about 10 Am, she was informed by the accused over mobile phone that her husband had gone to buy vehicle spare parts but did not yet return. She informed him to come back to Champhai and also informed him that she was ready to pay the fare, but the accused did not return home. On 30.12.2013 at about 8 Am, she again received a call from the accused that they had to search his elder brother, also informing her that his elder was not in good mood before leaving for Aizawl, and the reason might be due to existence of misunderstanding between them. After having deliberation with the siblings of her husband, on 31.12.2013, a friend her husband went to the place where the vehicle was standing, but returned since he had not seen anyone. The public started searching her husband from the day of 8.1.14. The search party spent night at Keifang Village. On the following day, the search party accompanied by members of Keifang YMA continued search, but recovered the dead body of her husband on the cliff below the vehicle. When the search party found her husband, her husband was already dead and decomposed.

On the same day, the dead body of her husband was brought to home. She also deposed that she had come to know about the involvement of the accused from the police. But, she did not remember whether the police had met her during investigation. The FIR at Ext. P-1 was proved. On cross-examination, she stated that the accused had been living with them. She also stated that she had not noticed any misunderstanding or any fight between the accused and her husband before the incident.

**P.W. 2 ASI R.Lalbiaksanga** deposed that Smt. Nemdeihchini lodged the FIR on 7.1.2014 at Saitual Police Station to the effect that her husband had been missing since 20.12.2013. Upon receipt of the FIR, initial enquiry was conducted by him. During enquiry, on 9.1.2014, the dead body K.K.Nanga was found on the hill below where his vehicle broken down. The distance between the place and Keifang is about ten kilometers. The dead body of K.K.Nanga was requisitioned to Saitual District Hospital for P.M.E. The accused was apprehended by the police personnel of Bawngkawn Police Station on 6.1.2014 in connection with the incident, but the formal arrest was done by the Case on 11.1.2014. During interrogation on 10.4.2014, the accused admitted his guilt. But, the dead body of K.K.Nanga had been found on 9.4.2014. Thereafter, he submitted his enquiry report to the Officer-in-Charge, Saitual Police Station. Accordingly, Saitual Police Station Case No. 2 of 2014 dated 11.1.2014 u/S 302 of IPC was registered. He proved the Enquiry Report at Ext. P-2, the requisition for PME at Ext. P-3 and the Inquest Report at Ext. P-4. On cross-examination, he stated that no intimation was given to the Executive Magistrate. He admitted that there was no clue from the inquest report that the accused had caused the death of the accused. He denied that the accused had not admitted his guilt.

**P.W. 3 Lalthangkimi** knew the accused. On the night of 19.12.13, she received a mobile phone call from KK Nanga. He informed her that he came to Aizawl to buy motor spare parts as his vehicle had broken down at Keifang Quarry and asked her to come to Keifang Quarry with him and also that the accused was there at Keifang. They hired the Taxi of Lala and both of them went to Keifang Quarry where the vehicle of KK Nanga had broken down. The Taxi was hired for Rs. 3,000/- by her. When they reached Tuirial Airfield, KK Nanga stopped the vehicle as he wanted to buy local made liquor. She also told him she too wanted to buy Beer

and bought the liquor. They proceeded and stopped again at Seling and bought some vegetables. They reached Keifang Quarry at around 11 Pm, the place where the vehicle of KK Nanga broke down. When they reached, the accused and the mechanic were still repairing the vehicle. They called them and went to the nearby jhum hut. The driver Lala also came inside, but he soon left. They consumed liquor and had food. Thereafter, they all slept in the jhum hut. On the next day, they went to the place where the vehicle broke down with the spare parts purchased by KK Nanga. KK Nanga was drunk all the time and he used to consume liquor from morning. While repairing the vehicle he started shouting at the mechanic. The mechanic got angry and left the place. Thereafter, the deceased and the accused continued to repair the vehicle. On that night, both of them came back to a house occupied by some non-mizo couple near the jhum hut where she was there. On that night at about 8 PM the accused and K.K.Nanga unloaded the betel nuts from their vehicle and loaded the same to another vehicle which was passing by. Thereafter, both of them along with one non-mizo whom she presumed to be the driver in whose vehicle the goods were loaded came back to the house where she was there, and K.K.Nanga asked her to lend him Rs. 8,000/- for payment to Custom Tax . She then gave money to KK Nanga and the latter handed over the same to the non-mizo driver. The non-mizo driver soon left them with his vehicle. Earlier also, K.K.Nanga borrowed Rs. 1,500/- from her to buy their daily needs. They spent the night on 20.12.13 in the jhum hut. On the next day i.e. 21.12.13 the accused and K.K.Nanga went back to their vehicle to repair the defect. As they failed to repair without a mechanic K.K.Nanga told the accused to call a mechanic from Aizawl. But, as the accused did not know the vehicle parts, he asked his elder brother to go. She did not remain with them all the time. On the afternoon of 21.12.13 they purchased IMFL from the non-mizo couple and consumed liquor inside the vehicle. On that night, KK Nanga got very drunk using his palm as a phone and murmured. K.K.Nanga told them that he would start running the vehicle. At this, the accused told him that the vehicle would meet accident on the cliff. As she got scared, she got down from the vehicle with the accused. But, K.K.Nanga remained in the vehicle. The accused asked her to snatch the vehicle key from K.K.Nanga since the latter would really do since he was very drunk. If the accused asked K.K.Nanga, the latter would shout at him, but K.K.Nanga would obey her. She went to the vehicle and took the key from the ignition point and handed over the same to the accused. Thereafter, the accused and

she boarded in the vehicle again and they continued to consume liquor and it should be around 8 PM. As she had not worn watch, she did not know the exact time. When they got drunk, K.K.Nanga got down from the vehicle and was staggering. She called and told him to be careful since the cliff was high. Later, after taking one glass each, she and the accused slept in the vehicle that night. As she had sound sleep, she did not know whether the accused got up after she fell asleep. On the next morning i.e. 22.12.13, she did not see KK Nanga. She got up at around 7 AM and as the place was damp, it did not get sunlight. As the accused was still sleeping, she woke him and both of them went to the house of the non-mizo couple. The accused asked the non-mizo wife the where-about of K.K.Nanga, to which she told them that K.K.Nanga went to Aizawl by a Sumo after they slept. So, they thought of K.K.Nanga going to Aizawl to call a mechanic. The whole day on 22.12.13 they waited for return of K.K.Nanga, but he did not come back even at night. So, she and the accused spent the night in the jhum hut on 22.12.13. Even on that day, the non-mizo woman told that there was a vehicular accident near the stone quarry where a man wearing a camouflage dress was ran over by a vehicle and the dead body was carried towards Champhai. But when she asked the vehicles passersby regarding accident, none of them had such knowledge so she thought the non-mizo woman was lying. On 23.12.13 they remained in the same place waiting for K.K.Nanga. On 24.12.13 since it was Christmas Eve, she suggested that they should return thinking the deceased might have returned to his family at Champhai. She and the accused then went to the house at Tuirial Airfield by hiring a Taxi where the accused used to stay. The accused made several phone calls to his family in her presence and enquired about K.K.Nanga. She did not know whether he was actually using a phone call, but he appeared to be talking on the phone. As she was not feeling well and as there was no vehicle, she did not leave the house and stayed in the house on 25.12.13 and went home on 26.12.13.

The house of the said non-mizo couple was adjacent to the main road and the non-mizo woman could have seen K.K.Nanga stopping a Sumo. Around that place there were no other residents except the house of the said non-Mizo couple. The road where the vehicle broke down is a national highway and there were vehicles passing by. While remaining with them at Keifang, they purchased Indian Made Foreign Liquor many times and slept most of the time as it was very cold, and

she slept in the vehicle as well as in the house of the non-Mizo couple. After she went home on 26.12.13, she did not know the exact date when the accused came to her house and told that his family asked him to go home even if he did not find K.K.Nanga and asked her to lend him money for the journey and she then purchased Maxi Cab fare for Rs. 500/- for the accused. She came to know the two brothers as the accused used to stay with the family from where she used to buy liquor at Tuirial Airfield for sale and she came to know K.K.Nanga through the accused as he used to come to Tuirial Airfield and asked his brother for money. On cross-examination, she stated that she had come to know arrest of the accused from the Bus Conductor on the day when she purchased a ticket for journey of the accused to Champhai. As she got surprise, she asked the reason of the arrest. She also stated that she had seen K.K.Nanga very drunk last time and could not even walk properly.

**P.W. 4 Shri Trimash Sangma** who is a mechanic on call knew the accused. On 17.12.2013 at late night, he received a call over mobile phone from Shri Sawma of Bawngkawn (owner of Lunglei Night Bus) to repair the vehicle of K.K.Nanga at Dulte. Thereafter, he boarded in a Zokhawthar Night Bus and reached Dulte at about 11. Pm. On reaching Dulte, he found Truck bearing Registration No. MZ-04/2317 owned by K.K.Nanga, knocked at the door of the vehicle and found K.K.Nanga and accused Kamsiansanga and he also slept with them. On the following morning i.e. 18.12.2013 he repaired the clutch of the vehicle and then proceeded to Champhai. When the vehicle came for Aizawl from Champhai, on the way before arriving at Keifang, the vehicle needed repair again due to disorder of injector. But, he could not repair and told K.K.Nanga to repair the injector in Aizawl or to buy new injector. On the following morning i.e. 19.12.2013 K.K.Nanga went to Aizawl and brought injector (not new one) and one girl on that night. On that night K.K.Nanga slept in the vehicle and they (he slept in a separate bed and accused Kamsiansang and the girl slept on another bed) slept in a farm hut. On 20.12.2013 after lunch, he failed to start the vehicle. Thereafter, he demanded money an amount of Rs. 1,500/- from K.K.Nanga and went to Aizawl by Champhai Sumo promising them that he would come back. On the queries made by the Court, he replied that he had not returned to Keifang since K.K.Nanga got drunk.

**P.W. 5 Shri Lalbiakzauva and P.W. 6 Shri K.Malsawma** knew the accused. They deposed in the Court that the vehicle (Truck) bearing Registration

No. MZ-04/2317 was standing at the place between Keifang village to Dulte Village, 10 Kms far from Keifang village. According to them, they heard that the driver of the vehicle K.K.Nanga of Champhai Vengthar had been missing since 20.12.2013. They searched the missing person with some persons from Champhai and recovered a dead body at a place 54 meters away from the vehicle. After holding inquest by the Police, the PME was conducted over the dead body and it was ten to Champhai.

On 11.1.2014 before noon, S.I. K.Lalrinpuia of Saitual PS called them over mobile phone and requested them to be witnesses. Shri Lalbiakzauva was the then President of Keifang Village Council and Shri K.Malsawma was the then Vice President of Keifang Village Council. They accompanied the police to the place where the vehicle was still standing, wherefrom the accused led them to a place where he had killed K.K.Nanga, 23 meters from the place where the vehicle was standing. According to them, the accused pulled the dead body to a place 31 metres far away to the place they had recovered it. They further stated that the accused had informed them that K.K.Nanga was made to hit the tail board of the vehicle and thereafter pushed him from the roadside towards downwards. The accused also informed them that he had no intention to kill the victim. When Court asked question, they thought that both the accused and the victim were under the influence of liquor and they fought each other for a girl.

**P.W. 7 Sorkar Marandi** knew the accused. On 18.12.2013, the vehicle (Truck) bearing Registration No. MZ-04/2317 broke down near their quarry. There were three persons; one of them was non mizo mechanic. As the mechanic could repair the vehicle in order, he advised the driver of the vehicle to bring motor parts from Aizawl. The driver went to Aizawl and on that night the driver brought one girl. The driver slept in the vehicle on that night and the mechanic, the handyman and the girl slept in their jhum hut. On the following day, the mechanic tried to repair the vehicle, but he could not repair it in order. At evening, the mechanic left for Aizawl. At night at about 7-8 Pm, the driver stood near the vehicle and he tried to halt the vehicles coming from Aizawl and Champhai, but he did not see him boarding in the vehicle. Thereafter, he slept at about 8:00 Pm. After an hour, he saw the handyman and the girl coming to their house and asked them the where-about of the driver. The handyman told him that the driver might have slept in their vehicle. He then slept. The handyman and the girl woke at about 6:00 Am,



he told them to have cup of tea. The handyman told him that he had not seen the driver in the vehicle and could not say where the driver was. But, the handyman and the girl did not search the driver and stayed there for 3 or 4 days drinking liquor. On 24.12.2013, both the handyman and the girl left for Aizawl in a taxi. However, cross-examination was declined by the learned Defence Counsel.

**P.W. 8 Lalhunpuia** deposed in the Court that on 9.1.2014 they searched for the missing person at the place between Keifang to Dulte, ten Kilometers from Keifang. They searched the place below where the truck was standing. He saw the dead body lying at the place about 50 metres from the vehicle. The dead body could not be identified but it was wearing shirt and blue track pant. On cross-examination, he did not know the accused person, who was present in the Court.

**P.W. 9 Laldinsangi** identified the accused. On 24.12.2013 at about 9 Am, accused Kamsiansung and P.W. 3 Makimi of Thuampui entered into her residence at Tuirial Airfield. The accused asked her whether she had seen K.K.Nanga or not. She replied him that she had not seen K.K.Nanga. The accused told her that K.K.Nanga had gone to Aizawl for calling a Mechanic but did not come back. The accused used her mobile phone for calling the wife of K.K.Nanga, namely, Nemi (P.W. 1 Nemdeihchin). At the time of calling to Nemdeihchin, the accused asked whether K.K.Nanga had come home or not. He then went to Tuirial as K.K.Nanga had gone to Aizawl for calling mechanic but did not come back. On 26.12.2013, the accused left her house for Aizawl stating that he had to go to Champhai. On cross-examination, she had nothing to say about the death of the deceased K.K.Nanga.

**P.W. 10 S.I. K.Lalrinpuia** knew the accused. On 7.1.2014 a written missing report was received from Pi Nemdeihchini W/o Khamkhannanga @ KK Nanga of Champhai Vengthar to the effect that her husband who had gone to Aizawl for calling a mechanic for repairing his vehicle had missing been missing since 10.12.2013. Hence, inquiry was conducted by ASI R. Lalbiaksanga of Saitual PS. The inquiry conducted by ASI R. Lalbiaksanga revealed that on 17.12.2013, one Truck (1109) B/R No. MZ-04/2317 driven by KK Nanga of Champhai Vengthar while proceeding towards Keifang from Champhai, the injector of the said vehicle got damaged at the outskirts of Keifang (10 kms. from Keifang). The driver KK Nanga had been missing from that place since

20.12.2013 at around 11 PM. Since the movement of handyman Kamsiansanga (accused) was found suspicious, he was arrested and interrogated thoroughly. The interrogation revealed that KK Nanga had been assaulted by the accused at the outskirt of Keifang. As per revelation of the accused Kamsiansanga, the dead body of KK Nanga was recovered on the cliff of the road side. Inquest was conducted over the dead body of KK Nanga and his dead body was sent to Sub District Hospital, Saitual for Postmortem Examination. Hence, ASI R. Lalbiaksanga submitted suomoto FIR to OC, Saitual PS and the FIR was registered as Saitual PS Case No. 2/2014 dt.11.1.2014 u/s 302/201 of IPC r/w 6(a) PP Rules against accused Kamsiansanga. He being the OC of Saitual P.S., investigated the case.

During investigation, he arrested the accused on 11.1.2014. He interrogated accused Kamsiansanga and recorded his statement. The accused admitted his guilt stating that on the night of 17.12.2013 he along with his elder brother/victim KK Nanga proceeded towards Aizawl from Champhai carrying betel nuts of Pakhupa. Before reaching Tuivawl river, their Truck got damaged and got it repaired by Mechanic called by the driver/victim KK Nanga. Their Truck Injector again got damaged at the outskirt of Keifang (10 kms. from Keifang towards Champhai). KK Nanga was sent to Aizawl by the Mechanic to get the defective Injector repaired at Aizawl while the accused and the Mechanic remained on the spot. KK Nanga returned to the spot on 19.12.2013 with one Makimi whom the accused Kamsiansanga fell in love with her. On that night, KK Nanga slept in the vehicle, but the accused and Makimi with Mechanic slept in a nearby jhum hut. On the following day i.e. 20.12.2013, as the Mechanic failed to repair the defect, he left for Aizawl. On that night at about 6:30 PM after dinner, KK Nanga, accused Kamsiansanga and Makimi consumed liquor inside the front seat of the vehicle. After getting drunk, KK Nanga asked the accused to go to Aizawl for searching Mechanic, but accused refused and told KK Nanga to go to Aizawl. Thereafter, the accused and KK Nanga got down from the vehicle and started grasping upon each other. Then the accused grapped the head of KK Nanga and stuck it against the tail board of the Truck which caused KK Nanga falling down on the road and the accused pushed him down on the road side cliff. On the early morning of 21.12.2013, the accused went to the Truck but did not find his brother. On the same day at about 5 PM, the accused went to look for KK Nanga at the place where he had pushed him down; he found his brother's dead

body at about 23 meters below the road. He then took the dead body downwards about 31 meters.

After interrogating the accused, the accused led them to the PO with the other witnesses. He then drew the rough sketch map of the PO. He also examined the witnesses and recorded their statements. He received Inquest Report and PME Report of the victim KK Nanga. He then found a prima facie case u/S 302/201 of IPC r/w 6(a) PP Rules against the accused and submitted Charge Sheet accordingly. He proved the documentary evidences.

Ext. P-1 is the FIR.

Ext. P-2 is the Inquiry Report submitted by SI R. Lalbiaksanga.

Ext. P-3 is the requisition for PME.

Ext. P-4 is the Inquest Report.

Ext. P-5 is the Arrest Memo and Ext. P-5(a) is my signature.

Ext. P-6 is the PME Report.

Ext. P-7 is the sketch map.

Ext. P-8 is the Charge Sheet and Ext. P-8(a) is my signature.

On cross examination, his interrogation was done at Bawngkawn PS and thereafter at Saitual PS. Before the interrogation at Bawngkawn PS, the accused was detained for around 24 hours with the permission of Magistrate. He denied that any physical force was applied to the accused during his interrogation. He admitted that the accused was arrested on the basis of the alleged confession made before him in the Police Station. He further admitted that no Forensic Examination was done in connection with the present case. He also admitted that no recent sign or trace had been seen on the tail board of the said vehicle i.e. 1109 Truck. Though the dead body of the deceased was sent for medical examination, he could not mention the exact result of the examination. He denied the contention that even for the alleged confession statement of the accused as to how and when the deceased had died could not be identified. Finally, he admitted that the involvement of the accused in the present case could not be established if the accused had not confessed. Last but not least, the present case was based upon the alleged confession made by the accused and also on the basis of a complaint made by the wife of the deceased and that no blood stain was found on the road side when the alleged incident had taken place.

On\_re-examination, he explained his cross-examination on the point that the case was based on the confession made by the accused and also on the basis of a complaint made by the wife of the deceased, but his investigation revealed that the accused was responsible for the death of KK Nanga.

The Apex Court's decision in Rama Nand & Ors v. State of Himachal Pradesh, AIR 738 held, '**It is well settled that where the inference of guilt of an accused person is to be drawn from circumstantial evidence only, those circumstances must, in the first place, be cogently established. Further, those circumstances should be of a definite tendency pointing towards the guilt of the accused, and in their totality, must unerringly lead to the conclusion that within all human probability, the offence was committed by the accused and none else**'. In the instant case, the alleged victim deceased K.K.Nanga and the accused are siblings. The accused is the youngest brother of the deceased. On perusal of the entire evidence on record, the prosecution did not prove that the accused had a motive to murder his elder brother who is the alleged victim in this case.

One of the essential ingredients of offence of murder that is required to be proved by the prosecution is that the accused caused the death of the alleged victim. This means that before seeking to prove that the accused is the preparator of the crime, it must be established homicidal death has been caused. But, in the instant case, there is no evidence to implicate the accused that he caused the death of the alleged victim. The vital witness P.W. 3 Lalhangkimi who was present at the time of incident had no suspicion on the accused from her testimony recorded during the trial that the accused had caused the death of the alleged victim. There was also no suspicion revealed in the testimony of P.W. 7 Sorkar Marandi that the accused had caused death of the alleged victim. In the testimony of P.W. 2 ASI R.Lalbiaksanga, though he stated that the accused had admitted his guilt before him during interrogation, but in the examination of the accused under Section 313 of Cr PC, the accused denied. As confession of accused person before the police is not admissible in evidence, I cannot rely upon the testimony of P.W. 2 that accused admitted his guilt before him.

In the course of hearing, the learned Addl. P.P. submitted that the accused had caused the death of the victim by referring to testimonies of the independent witness, like P.Ws. 5 & 6 Lalbiakzauva and K.Malsawma. The learned Addl. P.P. also submitted that the accused led them to the place where the dead body of the victim had been recovered and he confessed before the witnesses how he had caused the death of the victim and hid the dead body. According to the learned Addl. P.P., such confession amounts to extra-judicial confession and can be basis of conviction.

Per Contra, the learned Defence Counsel contended that the alleged confession made before the Case I.O. cannot amount to extra-judicial confession inasmuch as the accused remained in police custody for a period of 8 days and the alleged extra-judicial confession is the result of inducement which the accused clearly explained in his examination under Section 313 of Cr PC. He also submitted that in the prayer made to the Chief Judicial Magistrate on 25.6.2014, the accused was physically tortured in the Police Custody which is placed in the Case record.

I carefully peruse the records of evidence of P.W. 2 ASI R.Lalbiaksanga and P.W. 10. SI K.Lalrinpuia and the contents of Case Diary sent to this Court. It appears that the accused was apprehended by the Bawngkawn Police personnel on 6.1.2015. On 9.1.2015, the dead body of the victim was recovered and inquest including autopsy was also performed. On 10.1.2015, he was brought to the Saitual Police Station from Bawngkawn Police Station under the escort of H.C. Lalhmingliana on 10.1.2015. While interrogating the accused by ASI R.Lalbiaksanga, the latter admitted his guilt. Thereafter, on 11.1.2015 the accused was taken to the place of occurrence where he confessed in the presence of P.W. 10 S.I. K.Lalrinpuia and P.Ws. 5 & 6 Lalbiakzauva and K.Malsawma. On 11.1.2015, S.I. K.Lalrinpuia made a written prayer to the Chief Judicial Magistrate, Aizawl to discharge the accused under Section 41 of Cr PC and to remand him into judicial custody. Hence, the accused was remanded into judicial custody on 12.1.2015. I also find the application of the accused in the case record also peruse the examination of the accused under section 313 of Cr PC.

After hearing both the rival parties, I am of the considered view, it is not safe to convict the accused person by relying the alleged extra-judicial confession of the accused without corroborative evidence.

Ordinarily, the recovery of the dead body of the victim or vital part of it bearing marks of violence is sufficient proof homicidal death of the victim. In old English Law finding of the body of the victim was thought to be essential before a person was convicted of murder. This was merely a rule of caution and not of law. However, discovery of dead body bearing marks of violence has never been considered as the only mode of proving corpus delicti in murder. Indeed in many cases discovery of dead body is impossible; a cunning murderer successful in destroying or hiding dead-body can otherwise escape justice. Other relevant and satisfactory proof of homicidal death of the victim could be adduced by the prosecution. Such proof may be by the direct ocular account of the eyewitnesses or by circumstantial evidence or both. But where facts of corpus delicti, that is, homicidal death is sought to be established by circumstantial evidence alone circumstances must be of a clinching and definite character unerringly leading to the inference that that the victim met homicidal death. Even so, this principle of caution cannot be pushed to far as requiring absolute proof. Perfect proof is seldom possible in this imperfect world and absolute certainty is a myth. Corpus delicti and the fact of homicidal death can be proved by proving inculpatory circumstances, which definitely lead to the conclusion that in all probability the victim has been killed by the accused.

In the instant case, there is no seized article recovered from the accused person. The dead body of the victim was already decomposed at the time of holding inquest and the post-mortem examination. The inquest report does not reveal any injury over dead body of the victim. Even the Medical Officer cannot be produced by the prosecution to prove his post-mortem examination report due to his death.

9. It is well settled law that the prosecution has to prove the guilt of the accused beyond all reasonable doubt and this burden never shifts. The elementary and cardinal principle of criminal jurisprudence requires the prosecution to stand on its own legs.

10. The Apex Court in the case of Harijana Thirupala & Ors v. Public Prosecutor, High Court of A.P., Hyderabad (2002)6 SCC 470 at Paragraph

**'11. In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of evidence in totality on the prosecution case or innocence of accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case.'**

11. From the evidences discussed above, there is no evidence whatsoever to implicate the accused persons in the present case. The points, are therefore, answered accordingly.

12. In the light of the above discussion and reasons thereof, I conclude that the prosecution fails to prove the charge framed against accused Kamsiansang under Sections 302 of I.P.C. Hence, I do not find guilty against him. Accordingly, the accused is acquitted under the said sections of law.

13. The accused shall be released forthwith.

Judgment prepared and delivered in open court on this 9th day of November, 2015 under my hand and seal.

**Sd/- VANLALENMAWIA**

Addl. Sessions Judge  
Aizawl Judicial District,  
Aizawl, Mizoram.



**Memo No. \_\_\_\_/AD&SJ(A)/2015 : Dated Aizawl, the 9<sup>th</sup> November, 2015**

**Copy to: -**

1. Accused Kamsiansang through Counsel Shri Lalramhluna.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. District Magistrate, Aizawl District, Aizawl.
4. PP / Addl. PP, Aizawl.
5. Special Superintendent, Central Jail, Aizawl.
6. DSP (Prosecution), District Court, Aizawl.
7. i/c G.R. Branch.
8. Registration Section.
9. Guard File.
10. Case Record.
11. Calendar Judgment.

**P E S H K A R**