

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. 37 of 2016

State of MizoramComplainant

-Versus-

Shri Liansua (78)
S/o Sangpara (L),
R/o New Eden, Sialsuk, Aizawl District. Accused person

APPEARANCE

For the State : Smt. Lalremthangi, Addl. P.P.
For the accused : Shri W. Sam Joseph, Advocate.

Hearing : 1.4.2016
Order : 4.4.2016

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

The accused has been prosecuted in connection with the offence punishable under Section 304 of IPC.

2. The story of prosecution in brief is that on 20.10.2015 at around 10:45 Pm, information was received from one Shri Muanchhana (27) S/o Lalsawmliana of Kawn Veng, Sialsuk to the effect that one Thanzova S/o Liansua of New Eden, Sialsuk was causing trouble in his residence and requested the Sialsuk Police to take necessary action. Hence, ASI P.L. Zodinpuui of Sialsuk Police Station rushed to the spot.

In the enquiry, ASI P.L. Zodinpuui found that on 20.10.2015 at around 10.30 Pm, Thanzova came to his residence in a state of intoxication. At once, Thanzova held his elder sister Lalengmawii who was asleep and forcefully threw her on the floor. While trying to stop him by the accused, Thanzova gave a punch on his nose. The accused then took a dao which he had kept under his pillow and slashed him on his neck who later succumbed to his injuries. A sou moto FIR was submitted by ASI P.L. Zodinpuui of Sialsuk Police Station and Sialsuk PS Case No. 7/2015 dated 21.10.2015 u/s 304 of IPC was registered, and SI T. Thuamchungnunga investigated the case.

In the course of investigation, inquest over the dead body of Thanzova was conducted. A serious cut injury mark was found on the neck of Thanzova which resulted to his death. Other injuries were also found on his left elbow, right chest as well as right shoulder. The Dao, a T-Shirt, long sleeve (black colour) worn by the victim and a T-Shirt (blue and white stripe), short sleeve worn by the accused at the time of incident were seized and sent to FSL, Aizawl. The FSL Report revealed that the blood stains found in the T-Shirts worn by the victim and the accused belonged to blood group 'AB'. After observing the necessary formalities, the Case IO arrested the accused and forwarded him to the learned CJM, Aizawl District Court for remanding him to judicial custody on 22.10.2015.

In the course of investigation, the wife of the accused Kapchhingi and his daughter Lalengmawii were examined, and their statements were recorded. The wife of the accused stated that Thanzova mercilessly assaulted her elder sister Lalengmawii as well as her husband Liansua under the influence of alcohol. The act of the victim caused provocation to her husband who so fought back and in the heat of anger caused serious injuries to their drunken son by using a dao which resulted to his demise. The daughter of the accused also stated that she was assaulted by her brother on the night of 20.10.2015 @ 10:15 Pm by pulling her hair from the bed and threatened them that he was going to kill everyone on that night. The daughter of the accused further deposed that her brother had given a punch to her father and forcefully pulled him by the arm while trying to intervene by her father. As a result, her father caused serious injury to her brother Thanzova resulting to his death. A

prima facie case u/s 304 IPC being found well established against the accused, the Case IO submitted Charge Sheet.

3. Upon committal, copy of the charge sheet was delivered to the accused. Shri W. Sam Joseph was appointed to defend the case of the accused at the expense of State.

4. I heard the rival parties, learned Addl. P.P. Smt. Lalremthangi and the learned Defence Counsel Shri W. Sam Joseph.

5. According to the learned Addl. P.P., there is a prima facie case under Section 304 of IPC. In the result, she made a prayer to frame charge against the accused under the said section of law. On the other hand, the learned Defence Counsel made a prayer to discharge the accused. According to the learned Defence Counsel, the accused had no intention to cause the death of his son Thanzova, but the act was done to defend his own body which is in exercise of the right of private defence.

6. After hearing the rival parties and careful perusing the charge sheet and the documents annexed therewith, I found prima facie case against the accused under Section 304 Part-II of IPC. Hence, the charge u/S 304 Part II of I.P.C. was framed, read over and explained in the language known to him, to which he voluntarily pleaded guilty and did not claim to proceed for trial in the presence of the Id. Addl. PP and the Id. Defence Counsel. A careful analysis of the provision of Section 229 of Cr PC makes it clear that the Court of Sessions has discretion to convict an accused based on his plea of guilt. The guilty plea of the accused was, "**Ni 20.10.2015 zan hian ka fapa Thanzova chu a rawn haw a, a u Engmawii chu a muhil lai a awma rawn tham thoin chhuat vawm nan a hmang a, thelh ka tum lain ka hnara min rawn hnek nghal a. Hetia min hnek veleh inven nana chem ka lukham hnuaia ka dah thin chu ka lo la chhuak a, eng tiangin nge ka fapa ka vai palh pawh ka hre lo. Ka chema ka vai palh avang hian ka fapa hi hemi zan hian a thi a ni. Ka inven nan chem hian vai palh lo ila chu ka fapa zawk hian hemi zan hian min thah ka ring.**" The English translation is, on the night of 20.10.2015 my son Thanzova returned home. At once, he held his elder sister Lalengmawii who was asleep and forcefully threw her on the

floor. While trying to stop him from further act, he gave me a punch on my nose. I then took a dao which I had kept it under my pillow, but I did not know how I accidentally caused the death of my son with the dao. If I had not caused the death of my son, I think he would have killed me on that night.

7. The accused was also examined under Section 313 read with 281 of Cr PC.

8. On his plea of guilt, the accused was convicted under Section 304 Part II of IPC for committing culpable homicide not amounting to murder inasmuch as the act of the accused was done with the knowledge that it was likely to cause death of Thanzova, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

9. As both the parties are ready to have hearing on sentence, heard them.

10. I heard the learned Addl. P.P. Smt. Lalremthangi appearing for the State. I also heard the learned Legal Defence Counsel Shri W. Sam Joseph and the convict Liansua.

11. The convict submitted that he is 81 years old. He had undergone surgery due to cancer in his abdomen. He also submitted that he had caused the death of his son due to fear of death. Hence, he prayed for leniency of sentence.

12. On hearing the submission of the convict, I find that he is a very old man having undergone surgery due to cancer deserves leniency in sentence. Hence, justice will be met if he is sentenced to the period undergone by him in custody and to pay a fine of Rs. 3,000/- in default of fine, SI for 30 days. Accordingly, it is ordered.

13. Seized material, if any, shall be destroyed in due course of law.

Judgment prepared and delivered in open court on this 4th day of April, 2016 under my hand and seal.

Sd/- VANLAENMAWIA
Addl. Sessions Judge
Aizawl Judicial District

Memo No._____/ASJ(A)/2016 : Dated Aizawl, the 4th April, 2016

Copy to: -

1. Shri Liansua through Counsel Shri W. Sam Joseph, Advocate.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. District Magistrate, Aizawl District.
4. Addl. PP, Aizawl.
5. DSP (Prosecution), District Court, Aizawl.
6. Officer-in-Charge, Sialsuk Police Station.
7. G.R. Branch, District Court, Aizawl.
8. Registration Section.
9. Guard File.
10. Case Record.
11. Calendar Judgment.

P E S H K A R