

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. 33 of 2014

Crl Tr. No.1247 of 2013

State of Mizoram

.....Complainant

-Versus-

Lalthanmawia (30)
S/o Chawngkunga (L),
R/o Chhim Veng, Vairengte,
Kolasib District.

..... Accused person.

APPEARANCE

For the State : Smt. Lalremthangi, Addl. P.P.

For the accused person : Shri W. Sam Joseph, Advocate.

Hearing : 8.3.2016 & 29.3.2016

Judgment & Order delivered on : 8.4.2016

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

The accused has been tried for alleged commission of offence punishable u/s 302 of IPC.

2. The prosecution story in brief is that on 16.12.2013 at around 11.00 Am, one Lalawmeka of Chhim Veng, Vairengte submitted a written FIR at Vairengte Police Station to the effect that on 15.12.2013 at around 11:00 Pm, the accused had stabbed his son Vanlalthuma with a knife who was immediately evacuated to Community Health Centre, Vairengte and succumbed to his injury on the same night at around 11:15 Pm, and requested the police to take necessary action. Hence,

Vairengte Police Station Case No. 63 of 2013 under Section 302 of IPC was registered the Officer-in-Charge and investigated by S.I. Ramtharngaka. Accordingly, the Case I.O. investigated the case, arrested the accused and produced before the learned CJM, Aizawl. The Case I.O. after recording the statements of the prosecution witnesses submitted the charge sheet under Section 302 of IPC against the accused.

3. Upon committal, charge under Section 302 of IPC was framed against the accused. The charge was read over and explained in the language known to him, to which he pleaded not guilty and claimed to be tried.

4. In the course of trial, the prosecution produced and examined as many as thirteen out of fifteen witnesses to prove that the accused had committed the offence punishable under Section 302 of IPC. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC in which he denied that he had intention to kill the victim. But, the accused admitted that he had taken a knife from the wall and stabbed the victim due to fear of being attacked.

5. I heard Smt. Lalremthangi, learned Addl. PP for the State as well as Shri W.Sam Joseph, learned Counsel for the defence.

Points of determination:

- a) What was the cause of death of Vanlalhuma?
- b) Whether the accused caused the death of the victim?
- c) If so, whether such death was caused with intention or knowledge so as to amount to murder?

DECISION AND REASONS THEREOF

Point No. a

I heard the learned Addl. P.P. Smt. Lalremthangi appearing for the State. She submits that the prosecution has proved its case beyond reasonable doubt that the cause of death of Vanlalhuma was the pocket knife.

6. P.W. 10 Dr. C.Lalrinchhana deposed that on 16.12.2013 he performed post mortem examination over the dead body of Vanlalhuma S/o Lalawmmeka of Chhim Veng, Vairengte on receiving a requisition from the police and found the following-

There was an incised wound (1 inch approx.) at the level of 2nd intercostals region of the chest penetrating the aorta and pulmonary artery. The aorta was cut about 1 inch wide and pulmonary artery was cut 1/2 inch wide

There was small abrasion at two places on the back and abrasion of 2 inches approx. on the right side of the neck.

In the opinion of Dr. C.Lalrinchhana, the cause of death of Vanlalhuma was due to penetrating wound on chest piercing the aorta and pulmonary artery leading to sudden loss of blood supply to other vital organs which led to multiple organ failure which all was caused by the incised wound on chest. Hence, it established that the death of Vanlalhuma was caused due to incised wound. In connection with the present case, pocket knife was also seized by P.W. 13 S.I. Ramtharngkhaka in the presence of P.W. 8 Shri Hmingdailova and P.W. 9 Shri Jerry Lalawmpuia. It is pertinent to mention here that as the accused did insist the appearance to give evidence by FSL experts at Ext. P-10, there is no doubt that the accused caused the death of Vanlalhuma inasmuch as the stains on the seized knife and the seized boxer short of the victim are same with the blood samples drawn from the deceased Vanlalhuma. Therefore, the point of determination relating to the death of the victim was due to the incised injury caused by the seized pocket knife.

Point No. b

According to the learned Addl. P.P., that the prosecution has proved its case beyond reasonable doubt that accused Lalthanmawia caused the death of

Vanlalhuma. She submits that the accused confessed before P.W. 9 Hmingdailova. She also submits that the accused admitted in his examination under Section 313 of Cr PC.

On the other hand, the learned Defence Counsel tries to convince me that the accused might not have caused the death of Vanlalhuma inasmuch as there was no witness who saw the victim stabbed with the pocket knife. According to the learned Defence Counsel, the prosecution has to prove its case beyond reasonable doubt by referring the case of Rabindra Kumar Dey v. State of Oriss (1976) 4 SCC 233.

7. P.W. 1 Shri Lalawmmeka, the father of deceased Vanlalhuma deposed that on the night of 15.12.2013 at around 11:00 Pm, his daughter-in-law woke him and told that Vanlalhuma had been stabbed by accused Lalthanmawia and had succumbed to his injury. He saw stabbed injury on the left chest of his son's dead body. He submitted FIR on 16.12.2013. He proved the FIR. On cross examination, he did not depose anything to contradict his statement.

8. P.W. 2 Shri Lalrinsanga deposed that on the night of 15.12.2013, he played carom board with his friend Hmangaihzualla in the residence of Shri Lalamliana. While playing carom board, the victim and the accused had a heat argument about their earlier fight. Both the victim and the accused went out and fought each other. As soon as they came to know about the fight between the victim and the accused, they went out and stopped the fight. After awhile, they all came inside and he continued to play carom board with his friend Hmangaihzualla. Again, while playing the carom board, the victim and the accused had heat argument again. The accused suddenly got up and fought again with Vanlalhuma. They came to know from the victim that he was stabbed. When he turned around, he saw the victim stabbed on his left chest with a pocket knife. Immediately, Hmangaihzualla held the accused, and the victim stumbled outside the house and he ran after him. Thereafter, he brought the victim to his house which is opposite from the house of Shri Lalamliana and laid him on the floor and called for help. The victim was later evacuated to CHC, Vairengte by an Auto rickshaw. Thereafter, he came to know that the victim had succumbed to his injury.

9. P.W.4 deposed that on the night of 15.12.13, while playing carom board in the residence of Shri Zamliana with his friend P.W.2 Lalrinsanga, both Vanlalhuma and Lalthanmawia had altercation, but he did not clearly know what the cause of altercation was since he concentrated on carom board game. He also knew that when both Vanlalhuma and Lalthanmawia fought outside the residence of Shri Lalzamliana, they stopped them from further fight. They then entered into the residence of Shri Zamliana and continued to play carom board. After a while, Vanlalhuma and the accused Lalthanmawia had argument. He heard Vanlalhuma shouting, "Min vit a nia" (which means I am stabbed). Suddenly, his friend Lalrinsanga got up and attended Vanlalhuma. He held the accused Lalthanmawia. His friend Lalrinsanga asked him to get Auto Rickshaw, and thereafter they took the accused Lalthanmawia to Auto Rickshaw. He found blood outside the residence of Shri Zamliana. He came to know that the victim died thereafter.

10. P.W.3 Lalremruata deposed that on 15.12.13 at about 11 Pm P.W. 4 Hmangaihzuala had come and woke him up as he wanted to hire his Auto Rickshaw to take Vanlalhuma to Community Health Centre (CHC), Vairengte due to stabbed injury of the victim. Accordingly, he took the victim to the CHC. After reaching the CHC, the victim succumbed to his injury at the CHC after about 15 minutes approx. The bearing Registration of his Auto Rickshaw is MZ-05/9074.

11. P.W. 5 Lalrinawmi, the victim's wife deposed that on the night of 15.12.2013 at around 11:00 PM she was woke by aunt of the accused informing her that the accused had stabbed her husband. She saw her husband in Auto Rickshaw attended by his brothers. Her husband was brought to Vairengte Hospital. Before proceeding to the Hospital, she informed about the incident to her mother-in-law.

12. P.W. 6 Lalhmingthanga and P.W. 7 Sangliana are witnesses to the disclosure statement of the accused that he stabbed the victim with the knife.

13. P.W. 8 Shri Hmingdailova deposed that on 15.12.2013, at around 11 PM the accused woke him and informed that he had a fight with Vanlalhuma in Shri Lalzamliana's house. In the course of fighting, he stabbed Vanlalhuma with knife. The

accused wanted to surrender himself before the Police and asked him to call Police. He then called the police and the police came and arrested him. The Police asked the accused where he had kept the said knife, to which the accused informed them that he had left at the P.O. Thereafter, he accompanied the police and the accused to Shri Lalzamlia's house and the police seized the knife and he stood as seizure witness. He proved the seizure memo at Ext. P-3 and Ext. M-1 which is the seized pocket knife. On cross examination, he deposed that the knife was small having its blade length of about 2 ½ inches and the police picked up from the floor of Shri Zamliana's house, but he did not know who the knife owner was. He could not say how the incident had taken place.

14. P.W. 9 Jerry Lalawmpuia of Chhim Veng, Vairengte deposed that on 15.12.2013, at around 9 Pm he had returned from Church Service and slept. At around 11:00 Pm, he heard commotion in their house. He woke and went out from the bed room. The police personnel who stood outside also entered into their house and picked up one small knife lying on the floor. Thereafter, the police prepared the seizure memo and he stood as seizure witness. He proved the seizure memo at Ext. P-3 and Ext. M-1 which is the seized pocket knife.

15. P.Ws. 11 & 12 Shri Lalhmingliana and Shri Pradeeran deposed that at midnight they were present at C.H.C., Vairengte when the police seized Boxer short (short pant) with blood stain belonging to Vanlalhuma. They stood as seizure witnesses and proved the seizure memo at Ext. P-7 and Ext. M-2 which is the seized Boxer short with blood stain of the victim.

16. P.W. 13 S.I. Ramtharngkhaka deposed that on 16.12.2013 at around 11 AM, a written FIR was submitted at Vairengte Police Station by P.W. 1 Shri Lalawmmeka to the effect that on 15.12.2013 at around 11 PM, his son Vanlalhuma had been stabbed with a knife by the accused in the residence of Lalzamlia of Chhim Veng, Vairengte. He further stated that P.W. 1 Shri Lalawmmeka's son Vanlalhuma had been evacuated to Community Health Centre, Vairengte but, the latter succumbed to his injury at CHC Vairengte on the same night at around 11:15 Pm. Hence, Vairengte Police Station Case No. 63 of 2013 dated 16.12.2013 under Section 302 of IPC was registered and the case was endorsed to him for investigation. In the course of investigation, he visited the PO and a rough sketch map was drawn by him. He held inquest over the dead body of

Vanlalhuma and sent the dead body to the Medical Officer, CHC Vairengte for Post Mortem Examination along with a requisition to draw a blood sample from the deceased for comparison examination with the blood stain on the offensive weapon which was seized from the PO. He seized one pocket knife and one boxer short stained with blood in the presence of reliable witnesses. He sent blood sample of the deceased Vanlalhuma along with his boxer short and the offensive weapon stained with blood to Forensic Science Laboratory, Aizawl for examination. He examined all the available witnesses and recorded their statements. He recorded the disclosure statement of the accused in the presence of reliable witnesses. He arrested the accused, examined and recorded his statement. He received Report from FSL, Aizawl and the report shows that the blood sample drawn from the deceased Vanlalhuma belongs to blood group 'O' and the stain on the pocket knife seized from the accused and the stain on the boxer short of the victim were human blood belonging to blood group 'O'. Hence, a prima facie case u/s 302 of IPC was found well established against the accused. Accordingly, He submitted the Charge Sheet. Ext. P-1 is the FIR and Ext. P-2 is the Disclosure Statement (objected by the Id. Defence Counsel on the ground that the full statement was not recorded). Ext. P-3 is the Seizure Memo of pocket knife and Ext. P-3(c) is his signature. Ext. P-4 is the requisition for PME. Ext. P-5 is the PME Report. Ext. P-6 is the Medical Examination Report for alcohol intoxication. Ext. P-7 is the Seizure Memo of boxer short and Ext. P-7(c) is his signature. Ext. P-8 is the Form of FIR. Ext. P-9 is the sketch map of the PO and Ext. P-9(a) is his signature. Ext. P-10 is the FSL Report. Ext. P-11 is the Arrest Memo and Ext. P-11(a) is his signature. Ext. P-12 is the Inquest Report and Ext. P-12(a) is his signature. Ext. P-13 is the Charge Sheet and Ext. P-13(a) is his signature. Ext. M-1 is the seize article containing one pocket knife. Ext. M-2 is the seized article containing one stripe boxer short.

Though the learned Defence Counsel Shri W.Sam Joseph pointed out that there was no eye witness who clearly saw the accused hitting with knife, but the circumstances as it is evident from the depositions of the prosecution witnesses can be concluded that the accused had hit the victim with knife. There is no doubt in the prosecution case that the accused caused the death of the victim on 15.12.2013 at around 11 Pm in the house of Shri Lalzamliaana at Chhim Veng, Vairengte.

The Apex Court in series of cases lays down the principles on which courts can convict an accused based on circumstantial evidence. Reference may be made to two of the judgments of the Apex Court in Sharad Birdhichand Sada v. State of Maharashtra [1984] 4 SCC 116 and in Padala Veera v. State of Andhra Pradesh [1989] Supp (2) SCC 706.

In the case of Sharad Birdhichand Sada v. State of Maharashtra, the Apex Court discussed the conditions which must be fully established before conviction can be based on circumstantial evidence. These are :

1. *the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may' be established;*
2. *the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
3. *the circumstances should be of a conclusive nature and tendency;*
4. *they should exclude every possible hypothesis except the one to be proved; and*
5. *there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

In Padala Veera Reddy v. State of Andhra Pradesh [1989] Supp (2) SCC 706, the Apex Court again held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

1. *the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; those circumstances*

should be of a definite tendency unerringly pointing towards guilt of the accused;

2. *the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*
3. *the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.'*

From the evidence on record, there is one witness P.W. 8 Shri Hmingdailova saying that the accused confessed before him that the accused had hit the victim with knife on that night of incident. There is nothing to suggest that the said confession was not voluntary or willful and the said extra judicial confession of the accused stands established beyond reasonable doubt. Even in his examination u/s 313 of Cr PC, the accused did not deny that he stabbed the victim with knife.

In Alope Nath Dutta and Ors. Vs. State of West Bengal [2006] Supp (10) SCR 662, the Apex Court observed thus:-

'29. If the prosecution witnesses are to be believed that Alope Nath made an extra judicial confession and furthermore in view of the evidences on record, it has to held that the same was voluntary in nature. The same having been spontaneous in the form of natural response to a stressful stimulus made at the spur of the moment, we, for the reasons stated hereinafter, do not see as to why the same should be discarded. He was understandably reeling under a great mental strain. He might have killed his own brother, with a view to satisfy his greed of money, but the circumstances

clearly demonstrate that he had been pushed to the wall. He knew that his brothers and sister would definitely ask for an explanation as to why without consulting them he tried to sell the house. A 'bedi' was constructed in his own bedroom which one day or the other, was bound to be dismantled and the fact that a dead body buried therein would come out. He had delivered possession of bedroom which was occupied by his brother Biswanath, as also the premises which was in his occupation. He, therefore, was not in a position to dismantle the bedi and remove the dead body clandestinely. It is not that he was under any threat even by his brothers. He was required to give a satisfactory explanation and he made a false statement on the morning of 06.03.1994 as regards the address of Biswanath. He was caught on the wrong foot. Events which took place immediately thereafter also assume great significance. His confession was made before a large number of persons. Each one of them would not have been able to remember the words used by him in his confession. But then there was absolutely no reason as to why the tenants of the premises would tell a lie. PW-18 and PW-19, were tenants of the premises. It had not been suggested, that they were in any way inimically disposed towards him.

Aloke Nath made extra judicial confession not only in presence of his own elder brothers PW-3 and PW-4 but also in the presence of his nephew (PW-6), the intending purchaser of the house (PW-15) as also the two tenants of the premises PW-18 and PW-19. The evidences of these witnesses are consistent and we do not see any reason as to why we should disagree with findings of the courts below in this behalf.

*30. Our attention has been drawn to a decision of this Court on **Heramba Brahma and Anr. v. State of Assam** MANU/SC/0074/1982 : 1983 Cri LJ149, wherein this Court opined:*

18. We are at a loss to understand how the High Court accepted the evidence of this extra-judicial confession without examining the credentials of PW 2 Bistiram; without ascertaining the words used; without referring to the decision of this Court to be presently mentioned wherein it is succinctly stated that extra-judicial confession to afford a piece of reliable evidence must pass the test of reproduction of exact words, the reason or motive for confession and person selected in whom confidence is reposed.

The said decision was rendered on its own facts. A purported confession was made by the Appellant therein to another undertrial prisoner in jail. They were not known to each other. There had been no previous association between the witness and the other accused person. The court in the said factual backdrop, opined that it was highly improbable that such confession would be made. Heramba Brahma (supra) is not an authority for the proposition that extra judicial confession must pass the test of reproduction of the exact words (Emphasis supplied). The tests laid therein are cumulative in nature. What is necessary for the court is to arrive at the conclusion as to whether such confession has been retracted or not. No suggestion had been given to the witnesses that confession had not been made. No circumstances had been brought out in cross-examination or by examination of independent witnesses that the statements of witnesses proving such confession are not correct.

31. In State of Rajasthan v. Raja Ram MANU/SC/0595/2003: 2003 Cri LJ3901, it was held:

19. An extra-judicial confession, if voluntary and true and made in a fir state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any

other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession (Emphasis supplied). Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of 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 of 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 militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

It was further observed:

20. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration as rightly submitted by the learned Counsel for the respondent-accused, is a matter of prudence and not an invariable rule of law.

32. In the case of **Gagan Kanijia and Anr. v. State of Punjab** [Criminal Appeal Nos. 561-62 and 563 of 2005], decided on 24.11.2006, this Court opined:

Extra-judicial confession, as is well-known, can form the basis of a conviction. By way of abundant caution, however, the court may look for some corroboration. Extra-judicial confession cannot ipso facto be termed to be tainted. An extra-judicial confession, if made voluntarily and proved can be relied upon by the courts.

33. In **Nazir Khan and Ors. v. State of Delhi** **MANU/SC/0622/2003**: 2003 Cri LJ5021, this Court held:

A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilty.

It will also be relevant to consider State of Rajasthan v. Kashi Ra, MANU/SC/8632/2006: AIR 2007 SC 144, wherein this Court observed:

There was nothing to show that he had reasons to confide in them. The evidence appeared to be unnatural and unbelievable. The High Court observed that evidence of extra-judicial confession is a weak piece of evidence and though it is possible to base a conviction on the basis of an extra-judicial confession, the confessional evidence must be proved like any other fact and the value thereof depended upon the veracity of the witnesses to whom it was made.

34. Recently, this Court held in the case of **Kulwinder Singh v. State of Punjab** [Criminal Appeal No. 675 of 2006], decided on 05.12.2006:

The evidentiary value of an extra-judicial confession must be judged in the fact situation obtaining in each case. It would depend not only on the nature of the circumstances

but also the time when the confession had been made and the credibility of the witness who testifies thereto.'

The accused admitted that he had caused the death of Vanlalhuma on the night of 15.12.2013 in the house of Shri Lalamliana at around 11 Pm when he was examined under Section 313 of Cr PC.

Though statements recorded under section 313 Cr. P.C., are not statements, made on oath and are not, strictly speaking, evidence, yet the statement, so made, can, indeed, be taken into consideration at the trial against the accused persons for the purpose of arriving at the guilt or otherwise of the accused persons.

The Apex Court made clear this position of law **in State of Maharashtra v. Sukhdev Singh & another**, reported in (1992)3 SCC 700. The relevant paragraph of the judgment is as follows:

"That brings us to the question whether such a statement recorded under section 313 Cr P C can constitute the sole basis for conviction. Since no oath is administered to the accused, the statement made by the accused will not be evidence strict sense. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he give false answer. Then comes sub-section (4) which reads :

Section 313(4) of Cr PC.

The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him to any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed."

Thus the answers given by the accused persons in response to their examination under Section 313 Cr P C can be taken into consideration in such inquiry or trial. This is clear on a plain reading of the above sub-section. Therefore, though

not strictly evidence, sub-section (4) permits that answers given in 313 Cr PC by the accused may be taken into consideration in the said inquiry or trial.

In the case of **Mithu Kalita @ Mitu Kalita – versus- State of Assam**, reported in 2006(1) GLT 393, it has been held by the Hon'ble Gauhati High Court in Para No-12 as follows:

'12. From what has been observed and laid down in Sukhdev Singh [supra], it also becomes transparent that if an accused person, in his examination U/S 313 Cr PC, confesses to the commission of the offence (s) charged with, the Court may, relying upon such confession, proceed to convict the accused and that it is only if the accused does not confess and/or choose to explain the circumstances appearing in the evidence against him or sets up his own version of the occurrence claiming to the effect that he had committed no offence, the statement of the accused, made during the course of examination u/S 313 Cr PC can be considered in its entirety along with other pieces of evidence on record. To put it differently, there is no impediment in law for a Court to found conviction of an accused on his confession made by him during his examination U/S 313 Cr P C.'

In view of the provision of Section 313 of Cr PC and the law laid down by the Hon'ble Apex Court, the answers given by the accused are also relied upon to conclude that the accused caused the death of the victim Vanlalhuma on the night of 15.12.2013 in the house of Shri Lalzamliaana at around 11 Pm at Vairengte.

On the basis of the disclosure statement made by the accused in the presence of P.W. P.W. 7 Shri Sangliana and P.W. 8 Shri Hmingdailova, the seized knife was recovered from the residence of Shri Lalzamliaana on being led by the accused and accompanied by the witnesses. Hence, the compliance of Section 27 of the Evidence Act while recovering the seized pocket has also great weightage in evidence.

Taken together, the deposition of the prosecution witnesses and the laws shown above, the death of the victim was caused by the accused with the pocket knife is proved by the prosecution beyond reasonable doubt.

Point No. c

The next point for determination is whether the accused person caused the death of victim Vanlalhuma with intention or knowledge so as to amount of murder.

According to the Id. Defence Counsel Shri W. Sam Joseph, the prosecution could not establish as to what circumstances he caused injury on the body of the victim. The Id. Counsel submits that the evidence on record does not show that the accused had intention to murder the victim. He submits that it all happened on a sudden and the accused's version that he was afraid of the victim and took the pen knife which he found on the wall and stabbed him. He further submits that on perusal of the said material Ext. M-1, it is clear that it is pen knife with blade length of about 2 ½ inches and it is also clear that if he had not seen the said knife on the wall, the accused would have also sustained grievous hurt or even died, and it is clear that the accused acted on private defence. He also submits that in the evidence on record, the accused has not committed the offence of murder as the offence charged against do not fall within Section 300 of IPC.

17. Relevant laws-

- i) **300. Murder**-*Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-*

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly,- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is laboring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is laboring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1-*When culpable homicide is not murder- Culpable homicide is not murder if the offender, whilst deprived of the power of*

self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First- *That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.*

Secondly- *That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.*

Thirdly- *That the provocation is not given by anything done in the lawful exercise of the right of private defense.*

Explanation- *Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.*

Illustrations

(a) *A, under the influence of passion excited by a provocation given by Z, intentionally kills. Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.*

(b) *Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.*

(c) *A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the*

provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defense, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defense.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2- *Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defense of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defense without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defense.*

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3- *Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.*

Exception 4.- *Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.*

Explanation- *It is immaterial in such cases which party offers the provocation or commits the first assault.*

Exception 5- *Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.*

Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

In order to convict accused person guilty u/s 302 of IPC, the prosecution has to prove beyond reasonable doubt the ingredients of Section 300 of IPC.

In the instant case, there is no witness deposing that the death of the victim was caused with the intention of causing death. The seized knife used for stabbing the victim was also a pocket knife (small knife) and the injury sustained by the victim was also for one time, which the accused is not supposed to know the injury portion which can cause the death of the victim. Furthermore, there was a

fight between the accused and the victim which the death of the victim caused by the accused with knife. Hence, it can be gathered from the injury portion that the accused intentionally did not cause the death of the victim. However, I do not accept the submission that the accused acted on self defence. Hence, I am of the opinion that the prosecution has not proved beyond reasonable doubt that the ingredients of Section 300 of IPC. However, the commission of offence by the accused comes under Exception 4 of 300 of IPC which is culpable homicide not amounting to murder for the reasons discussed above.

18. Considering the evidence of the prosecution, I find that the offence committed by the accused is culpable homicide not amounting to murder.

19. In the result, I hold that the prosecution has proved its case u/s 304 Part-II of IPC beyond reasonable doubt. Accordingly, the accused Lalthanmawia is convicted u/s 304 Part-II of IPC.

20. Fix 8.4.2016 for Sentence Hearing.

SENTENCE

8.4.2016 As hearing on sentence is fixed, I have heard the rival parties.

The learned Addl. PP for the State as well as the learned Counsel for the convict is heard.

I have also heard the convict Lalthanmawia.

The learned Addl. PP Smt. Lalremthangi has made a prayer to pass maximum sentence against the convict u/s 304 Part-II of IPC. Per Contra, the Learned Defence Counsel Shri W. Sam Joseph has strongly made a prayer to show leniency to the convict.

The submission made by the convict is that his wife and child expired during the pendency of this case. He also submits that his uncle is having cancer and he is looking after him as his uncle has nobody to look after him.

On hearing the submission made by the learned Counsels as well as the convict, I find justified to sentence the convict to undergo R.I. for 8 months and to pay a fine of Rs. 3,000/- in default of fine S.I. for 30 days.

The leniency of sentence shown to the convict is due to the submission made by the learned Counsel and the convict.

The period of detention spent by the convict in judicial custody is hereby set off.

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

Judgment prepared and delivered in open court on this 8th day of April, 2016 under my hand and seal

The case is disposed off.

Sd/- VANLALENMAWIA

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

Memo No. _____/AD&SJ(A)/2016 : Dated Aizawl, the 8th April, 2016

Copy to: -

1. Accused Lalthanmawia through Counsel Shri W. Sam Joseph, Advocate.
2. The Special Superintendent, Central Jail, Aizawl.
3. The Sessions Judge, Aizawl Judicial District, Aizawl.
4. The District Magistrate, Kolasib District.
5. The DSP (Prosecution), District Court, Aizawl.
6. The Officer-in-Charge, Vairengte Police Station.
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