

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. 77 of 2013

State of MizoramComplainant
-Versus-	
Shri Samuel Haque Laskar (30) S/o damsidi Ali Laskar, R/o East Lalpani, Bilaipur, Hailakandi District, Assam. Accused person

APPEARANCE

For the complainant	:	Smt. Lalremthangi, Addl. P.P.
For the accused	:	Shri R. Thangkanglova, Advocate.

Hearing	:	23.6.2016
Judgment delivered on	:	29.6.2016
Sentence Order delivered on	:	1.7.2016

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

The accused has been prosecuted in connection with the offences punishable under Sections 307/326 of IPC.

2. The prosecution story in brief is that on 13.4.2013 at 9:50 Am, information was received from Shri Khaliur Rakhman Barbhuiya S/o Sunahar Ali Barbhuiya of Joidhanpur Dholai PS, Cachar, Assam to the effect that the accused had with intention to kill his brother Alim Uddin, cut his throat and stabbed on his belly by

using a knife at Bangla Veng, Vairengte behind the residence of Shri R. Dokunga. According to Shri Khaliur Rakhman Barbhuiya, his brother had sustained injuries on his both hands. Hence, Vairengte PS Case No. 21 of 2013 dated 13.4.2013 under Sections 307/326/324 of IPC was registered and investigated by S.I. Lalramnghaka.

In the course of investigation, the P.O. was visited and sketch map was drawn. The accused was arrested with the help of public at the place of occurrence. One knife measuring 15" length (10" length sharp portion and 5" length plastic handle) used by the accused for commission of offence was seized in the presence of reliable witnesses. The victim who was lying semi conscious on the road side of NH-54 near Shri R.Dokunga's building, and he was evacuated to Community Health Centre, Vairengte for medical treatment and examination under police escort. The medical officer examined the victim and gave a report that the victim sustained grievous injury caused by sharp weapon.

It was also in the course of investigation, the complainant, the victim and all available witnesses were examined and their statements were recorded. The accused was interrogated in which he admitted his guilt before the Case I.O. that he had caused injuries on the victim's vital parts of body with intention to kill him. The victim's wearing apparels stained with blood which he had been wearing was also seized in the presence of independent witnesses and their statements were recorded. A prima facie case u/s 307/326/324 of IPC was found against the accused. Hence, the Case I.O. submitted charge sheet.

3. Upon committal, my predecessor framed charges u/s 307/324 of IPC against the accused and the same were 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 seven out of twelve witnesses to prove that the accused had committed the offences punishable under sections 307/324 of IPC. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC, but he denied all the suggestions. However, the accused produced and examined one witness.

5. I heard the learned Addl. PP Smt. Lalremthangi and the learned Defence Counsel Shri R. Thangkanglova.

Points for Determination:

- a) Whether the injuries were inflicted on the victim on 13.4.2013?
- b) Whether the accused attempted to commit murder on the victim on 13.4.2013?
- c) Whether the accused caused hurt by dangerous weapon murder on the victim on 13.4.2013?
- d) Whether the accused is liable to be punished under Sections 307/324 of IPC?

Decision and Reasons Thereof:

Point No. a)

6. P.W. 6 Dr. Lalrinchhana examined the victim on 13.4.2013 at around 10:30 Am at Vairengte Community Health Centre on a requisition made by SI Lalramnghaka. The injury report is as follows: 1. Incised wound upto the depth of cutting trachea on antero (L) lateral neck, which is grievous nature. 2. Penetrating wound piercing abdominal wall on abdomen, which is also grievous nature. 3. Multiple incised wound on right hand and finger, which is simple nature. 4. Incised wound on left hand, which is also simple nature. In his opinion, the weapon used is sharp and the age of injury was about 1 hour back. He proved the Injury Report of the victim at Ext. P-3. On cross examination, he stated that he had no direct knowledge of the incident and had not seen the weapon used upon the victim. He did not examine whether the victim had other sickness. Hence, it is established that the victim Alim Uddin sustained injuries inflicted upon him.

Points No. b), c) & d)

7. P.W. 1 Alim Uddin is the victim in the instant case and who identified accused Samsul Haque. He knew the accused prior to the incident. On the day of incident, the accused told him that his friend had taken pan (betel leaves). But, he told the accused that he had no such knowledge. As a result, he did not give money to the accused. The accused assaulted him with a knife on different parts of his body in front of a Bank at Vairengte at around 8:00-8:30 in the morning. He sustained injuries in his hands/palm, on his abdomen and neck. The accused could have killed him if the two Mizos men did not intervene. The two Mizos took him to Vairengte hospital. He was later referred to Gurgaon Silchar hospital where he remained for 26 days. He cannot perform work due to the injuries sustained by him. The report was lodged by his elder brother since he was unconscious. Ext. M-1 is the shirt and pant belonging to him which was seized by the police. Ext. M-2 is the lungi and shirt belonging to the accused and worn by him at the time of incident. On cross examination, the victim stated that he had forgiven the accused.

8. The essential ingredients of the offence under Section 307 of I.P. C are the following:

- a) That the death of human being was attempted;
- b) That such death was attempted to be caused by, or in consequence of, the act of the accused.
- c) That such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as-
 - i) the accused knew to be likely to cause death; or
 - ii) was sufficient in the ordinary course of nature to cause death; or that the accused attempted to cause such death by doing an act known to him to be so imminently dangerous that it must in all probability cause (1) death, or (2) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

9. The word "intent" is derived from the word archery or aim. The "act" attempted to must be with "intention" of killing a man. Intention, which is a state of mind, can never be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are proved. The intention may be proved by res gestae, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person can't be proved by direct evidence but is to be deduced from the facts and circumstances of a case.

10. Admittedly, altercation took place between the accused and the victim which led the accused to cut the victim's neck and stabbed on his abdomen with a knife. It is also shown very clearly that if the two Mizos had not intervened, the victim would be killed by the accused. If the victim was not taken to Vairengte C.H.C., he would have succumbed to his injuries. The victim was also referred to Gurgaon Hospital where he remained 26 days for treatment which shows that the injuries were sufficient in the ordinary course of nature to cause death.

11. P.W. 2 R. Johnsona who identified that the accused had seen the fight. On the morning of the incident, while sitting in the varandah of his shop, he saw the accused chasing one person with a knife (the knife was bigger than a kitchen knife). The man who was running in front of the accused was shouting in fear. Both of them passed his shop. He thought they would run into a house. At that time, someone came to his shop to buy something. Then, he learned that they had run below the house of Bawihlira and he ran down towards the garden of P. Dokunga. He ran to the garden. When he reached, the accused had already cut the throat of the victim and there was profuse bleeding. Both of them were grappling with the knife, the accused on the handle side and the victim on the blade side and it was bleeding. He told them to release their hands but they did not do. He caught hold of the knife with both his hands and snatched it from them. By then there was a big crowd and he could not recollect to whom he had given the knife. The victim and the accused were taken separately and the victim was taken to the Hospital by Auto Rickshaw. As there was bloodstain on his shirt, he went home and changed. The accused was arrested by the police after being apprehended by the crowd. The accused did not sustain any injury. On cross examination, he did not know the cause of the fight between the accused and the victim as he did not acquaint them. He did not know whether the victim had owed money

from the accused. He did not see the accused inflicting the injury but he saw the injuries. When he saw them they were grappling with the knife. He did not see them fighting but he saw injuries on the victim. He could not give any reply to the suggestion that the accused and the victim had fought. He also did not have any knowledge to the suggestion that the victim had inflicted injury to himself and the accused was trying to get the knife from him.

12. Though the prosecution witness stated in his deposition that he did not know whether the victim had inflicted self injury on his neck, but it can be inferred from the facts that the victim had not inflicted self injury inasmuch he had seen the accused chasing the victim with a knife. The deposition of P.W.2 R. Johnsona corroborates the testimony of the victim.

13. P.W.3 K.Lalmangaihzualla saw the victim being chased by the accused. When he reached the place with Johnsona, the accused had already caused injury to the victim. Many people came to the place. They took them to the roadside and held back the accused. The Police also reached soon after. The victim was found bleeding profusely from his throat cut and he was taken to the hospital by the Police. He saw blood stain on the shirt and lungi worn by the victim. He put his signature on the Seizure Memo in respect of the seizure of the said stained shirt and lungi. He proved the Seizure Memo at Ext. P-1. Ext. M-2 is the seized articles containing blood stained shirt and lungi which he saw worn by the victim. On cross examination, he saw cut injury on the victim's throat. He did not know whether the victim had inflicted self injury on his throat. He did not remember colour of the lungi but he knew that it was stained with blood. He did not have any proof whether the said blood stain on the lungi originated from an animal or human being. He denied that he had not gone to the place of occurrence. The distance between the PS and the PO must be about half kilometer. He could not recollect who had informed the incident to the Police. The Police personnel arrived at the place of occurrence about 20 minutes after the incident.

14. Though the prosecution witness stated in his deposition that he did not know whether the victim had inflicted self injury on his throat, but it can be inferred from the facts that the victim had inflicted self injury inasmuch he had seen the accused chasing the victim with a knife. The deposition of P.W.3 K.Lalmangaihzualla corroborates the

testimonies of the victim and P.W.2 R. Johnsona. However, the deposition of the prosecution witness that the victim had worn blood stained shirt and lungi at Ext. M-2 is minor discrepancy with the testimony of the victim, but the prosecution case cannot be thrown on this ground inasmuch as the incident had occurred two years before.

15. P.W.4 Lalrintluanga Renthlei also saw the accused chasing the victim on the forenoon of 13.4.13 running down in between the house of Pu Bawihhlira and Pu R. Dokunga (closer to the house of Pu Bawihhlira) where the accused caught hold of the victim. On seeing them there was some danger, the people who stood nearby, namely, Pu Johnsona, Pu Hmangaiha and Pu Olivera running after them. By the time they reached, the accused had already caused cut injury on the victim. In his knowledge, the moment they reached below the house of Pu Bawihhlira, the accused had caused cut injury on the throat of the victim with a knife measuring about 15 inches, but he was not present at the time of the incident. He saw the accused person being caught by the persons who chased them. The Police were informed and they later arrived. He was at the place when the Police arrived. The Police seized the said knife in his presence and he put his signature as seizure witness. He proved the seizure memo at Ext. P-1 and also the seized article containing knife at Ext. M-4. On cross examination, he did not know the name of the victim. He did not know the cause of the argument between the accused and the victim but he knew that they were engaged in a business of selling betel leaves. He did not see the accused causing cut injury on the throat of the victim. The victim was initially taken to Vairengte Hospital but he did not know where the victim was subsequently evacuated, but he knew that he was taken outside Mizoram. He knew the name of the accused only as Samsul. He kept the photograph of the accused in his mobile phone which he was still keeping. He denied that he was not present at the PO on the day of the incident.

16. The deposition of P.W.4 Lalrintluanga Renthlei corroborates the testimonies of the victim and P.W.2 R. Johnsona and P.W.3 Lalrintluanga Renthlei.

17. P.W.5 S.I. D.Sharma seized one mix colour stripe shirt containing blood stain and trackpant in brown colour of victim Alim Uddin Borbhuiya at Silchar Medical College Hospital on 13.4.13 at about 11:30 Pm in the presence of Abdul Haque Borbhuiya and Fajur Rahman Laskar in connection with Vairengte P/S Case No. 21 of 2013 dated

13.04.2013 U/S 307/326/324 of IPC. Ext. P-II is the seizure list prepared by him and Ext. P-II (a) is his signature. Ext. M-I is the shirt and the pant containing blood stain of the victim seized by him. On cross examination, it is denied by him that there is no blood stain in the shirt and the pant of the victim. It is further denied that he did not identify the shirt and pant of the victim. It also denied by him that the seized articles were procured from other place.

18. The deposition of P.W.5 S.I. D.Sharma was not shaken by the accused. In this way, this deposition has strengthened the case of the prosecution.

19. P.W. 7 S.I. C. Lalramnghaka identified the accused. On 13.4.2013 @ 9:50 AM a written information was received from Khaliur Rakhman Barbhuiya S/o Sunahar Ali Barbhuiya (L) of Joidhanpur to the effect that at on the same day @ 9:30 AM his brother Alim Uddin S/o Late Sunahar Ali, Jordhanpur, Cachar, Assam had been assaulted by the accused Samsul Hoque Laskar (30) S/o Damsid Ali Laskar, East Lalpani, Bilaipur by cutting his throat and stabbing on his belly by using knife with an intention to kill him at Vairengte Bangla Veng just behind the residence of Mr. R. Dokunga. Hence, Vairengte PS Case No. 21 of 2013 dated 13.4.2013 u/s 307/326/324 IPC was registered and the OC, Vairengte PS endorsed him the case for investigation. During investigation, he visited the PO and drew a sketch map. He arrested the accused and seized the knife at the PO. He evacuated the victim to Vairengte CHC for medical treatment and examination under proper escort of Police. He examined the complainant, eye witnesses and witnesses and recorded their statements. He interrogated the accused to which the latter admitted his guilt before him that he had assaulted the victim by causing injuries on his vital points by using sharp knife with an intention to kill him. He seized the wearing apparels of the accused stained with blood which he had been wearing at the time of committing crime. Hence, he found prima facie case against accused Samsul Hoque Laskar u/s 307/326/324 IPC and submitted Charge Sheet accordingly. He proved the Seizure Memos at Ext. P-1, the Injury Report of the victim at Ext. P-3, the Charge Sheet at Ext. P-4, the Arrest Memo at Ext. P-5, the sketch map of the PO at Ext. P-6, the Form of FIR at Ext. P-7, the original FIR at Ext. P-8 and the articles seized by him at Ext. M-III & IV. On cross examination, he stated that the place between the PS and the PO is a short distance. He recovered the seized knife from the PO

and the accused's lungi and kamis containing blood stain at PS. There were witnesses at the time of seizure of the articles. He denied that the seized knife had been recovered away from the place of occurrence. He admitted that he had not concluded the case merely on the basis of information but from the investigation conducted by him. The evidence which he had is not hearsay evidence. But, he did not know the exact time of incident.

20. The deposition of P.W.7 SI C. Lalramnghaka corroborates the testimony of the victim including the testimonies of other prosecution witnesses.

21. D.W. 1 Mesaka Khawlhing identified the accused Samsul. The accused used to sell betel leave and his customers had debt amounting to Rs. 30,520/- from him for the price of pan. On that day, the accused asked them to pay him the said debt at Vairengte and the debtors told him to go near SBI at Vairengte. When the accused reached near SBI, the debtors asked him again to come down to Bhaga for paying their debt. But the accused did not believe them and refused to go to Bhaga. A quarrel started amongst them. By that time, the accused Samsul was not keeping any knife or weapon, but the debtors were keeping a dao and a knife. (Objected by Id. Addl. PP) Then the accused tried to snatch a dao and a knife from the debtors, and then the victim might get injured while scrambling a dao and a knife. The accused did not cause any injury to the victim. On cross examination, he came to know the accused as the latter used to work in their garden for sometime and the accused informed him that the victim had a debt from him. He admitted that he was present at the time when the accused had quarrel with his debtors near SBI at Vairengte and he did not call any other person to help him when he saw them fighting. However, he admitted that the accused was chasing the victim by carrying a knife on the roadside of National Highway and he did not follow the accused while he was chasing the victim. He further admitted that he had seen injury on the neck of the victim when the accused chased him. He also admitted that the accused and the victim ran down below the house of Pu Bawihlira but he did not see them as he did not go near the house of Pu Bawihlira and 2/3 persons were running after the accused upto the house of Pu Bawihlira when they saw him chasing the victim, but he did not remember who they were. Finally, he admitted that he had not seen the accused and the victim after seeing them running below the house of Pu Bawihlira and he did not know whether the victim had got injury on other parts of

his body except on his neck. But, he later came to know from others that the victim had also got injury on his abdomen when he was brought out from the place near the house of Pu Bawihlira. He thought that the accused had stabbed on the abdomen of the victim accidentally while they were fighting each other.

22. In the examination-in-chief, the defence witness tried to help the accused by concealing the facts. However, on cross examination, he revealed all the facts. In this way, the defence witness also helps the case of the prosecution.

23. The learned Addl. Public Prosecutor, Smt. Lalremthangi submitted that the instant case is covered by Section 307 of IPC but not a case under Section 326 of IPC. According to her, if the two Mizo men who were present had not stopped the accused from continuous act of the accused, the victim would have met death. She also submitted that the accused had attempted to cause death of the victim which is clearly shown from the deposition of the victim.

24. On the other hand, the learned Defence Counsel Shri R. Thangkanglova contended before me that this is not a case covered by Section 307 of IPC inasmuch as the essential constituents or ingredients of the offence are conspicuously absent. Apart from that, he also submitted that as there was no intention on the part of the accused, and the death of the victim was not attempted.

25. There are various relevant circumstances from which the intention can be gathered. Some relevant considerations are the following:

- a. The nature of the weapon used.
- b. The place where the injuries were inflicted.
- c. The nature of the injuries caused.
- d. The opportunity available which the accused gets.

26. In the instant case, it is worthwhile to mention that the evidence of the medical officer clearly shows and indicates that the victim sustained incised wound upto

the depth of cutting trachea on antero (L) lateral neck, which is grievous nature and penetrating wound piercing abdominal wall on abdomen, which is also grievous nature. Apart from that the victim sustained multiple incised wound on right hand and finger, which are simple nature and incised wound on left hand, which is also simple nature. The nature of the injuries is indicative of the fact that sharp weapon was used. Even the medical officer says that sharp weapon was used. It was attempted to be elicited from the expert witness that from the nature of the injuries it could be inferred by him that the injuries were caused by any "dangerous weapon" or that the injuries were such from which the intent of the accused person could be gathered to cause death of the injured. Therefore, it is apparent that the prosecution has clearly succeeded to establish from evidence of the expert witness, namely, Dr. C.Lalrinchhana that the injuries were of grievous nature or that the weapon said to have been used by the accused person was 'dangerous' or that from the injuries itself. The intention could be inferred or gathered that the accused person had the intention of taking the life of the injured person.

27. In the course of hearing, the learned Defence Counsel Shri R. Thangkanglova submitted that as the complainant had not been examined, the accused is entitled to be acquitted.

28. It has been observed by the Apex Court in Krishna Mochi Vs. State of Bihar, 2002(6) SCC 81 that;

'35. It has been further submitted that the informant, Satendra Kumar Sharma has not been examined as such, the first information report cannot be used as substantive piece of evidence inasmuch as on this ground as well the appellants are entitled to an order of acquitted. The submission is totally misconceived. Even if the first information report is not proved, it would not be a ground for acquittal, but the case would depend upon the evidence led by the prosecution. Therefore, non examination of the informant cannot in any manner affect the prosecution case.'

29. In view of the observation made by the Apex Court, the non examination of the complainant cannot be a ground for acquittal. Therefore, non examination of the complainant cannot in any manner affects the prosecution case.

30. In the instant case, the accused chased the victim with a dangerous weapon i.e. a knife bigger than a kitchen knife and inflicted cut injury on his neck and abdomen in a cruel or brutal or merciless manner. The victim would surely meet his death if people had not come to help the victim. Hence, the offences are made out under Sections 307 and 324 of I. P. C.

28. In the light of the above discussion and reasons thereof, I hold that the prosecution succeeds to prove the charges framed against accused Samsul Haque Laskar under Sections 307 and 324 of I.P.C. He is convicted accordingly.

Judgment and Order prepared and delivered in open court on this the 29th day of June, 2016 under my hand and seal.

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

SENTENCE

1.7.2016 The convict Samsul Haque Laskar is produced from judicial custody. Smt. Lalremthangi, learned Addl. Public Prosecutor is present. Shri R. Thangkanglova, learned Defence Counsel is also present.

I heard the learned Addl. Public Prosecutor as well as the learned Defence Counsel. The convict is also heard

According to the learned Addl. PP, the offence committed by the convict is heinous one. Hence, she made a prayer to sentence him Rigorous Imprisonment for life and to pay a fine of Rs. 5,000/-.

Per contra, the learned Defence Counsel made a prayer to show leniency to the convict since he is the sole bread winner of his family and the accused is also forgiven by the victim.

The convict submitted that he is looking after his wife, three daughters, aged about 10 years, 8 years and 6 years respectively. He is also looking after 1 son, aged about 4 years and old aged mother.

The submissions of the rival parties are considered.

After hearing them, I also peruse the records of the evidence and find that the convict deserves leniency due to act of forgiveness on the part of the victim. Hence, convict Samsul Haque Laskar is sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs. 2,000/- in default of fine, Simple Imprisonment for another 10 days under Sec. 307 of IPC. He is also sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs. 1,000/- in default of fine, Simple Imprisonment for another 5 days u/s 324 of IPC

The period of sentences shall run concurrently.

The detention period in judicial custody undergone by the convict shall be set off.

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

This sentence order shall form a part of the Judgment passed on 29.6.2016 and is to be attached accordingly.

Sd/- VANLAENMAWIA

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

Memo No. _____/ASJ(A)/2016 : Dated Aizawl, the 1st July, 2016

Copy to: -

1. Convict Samsul Haque Laskar through Counsel Shri R. Thangkanglova, Advocate.
2. The Sessions Judge, Aizawl Judicial District, Aizawl.
3. The District Magistrate, Kolasib District.
4. The Superintendent of Police, Kolasib District.
5. Special Superintendent, Central Jail, Aizawl.
6. The Addl. PP, Aizawl.
7. The DSP (Prosecution), District Court, Aizawl.
8. The Officer-in-Charge, Vairengte Police Station.
9. i/c G.R. Branch.
10. Registration Section.
11. Guard File.
12. Case Record.
13. Calendar Judgment.

P E S H K A R