

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. 54 of 2014

Crl Tr. No. 878 of 2014

State of MizoramComplainant

-Versus-

Shri Lalremsiama (24)
S/o Lalngaihawma,
R/o Hliappui,
Champhai District, Mizoram Accused person.

APPEARANCE

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

For the accused person : Shri S.L. Thansanga, Advocate.

Hearing : 25.5.2016 & 10.6.2016

Judgment delivered on : 24.6.2016

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

The above named accused had been charge-sheeted by the police for having committed the offences punishable u/s 302 of IPC.

2. The prosecution story of the case in brief is that on 11.5.2014 at around 8:05 AM, FIR was received from Lalthaliana S/o Darchhana (L) of Hliappui village to the effect that on the morning of 11.5.2014 at around 6:00 AM, one suspected Remsiana had cut the throat of John Horo who was looking after coffee garden near Hliappui village. The victim John Horo succumbed to his injury while proceeding towards Primary Health Centre (PHC), Kawlkulh. Hence, Ngopa PS Case No. 8 of 2014 dated 11.5.2014 u/s 302 of IPC was registered and investigated into.

In the course of investigation, the complainant was examined and his statement was recorded. The place of occurrence is about 3 kms from Hliappui village between Hliappui and Pawlrang village down the roadside inside the hut was visited and rough sketch map of the PO was drawn. The dead body of John Horo was brought to Hliappui Sub-Centre and inquest was conducted. Cut mark injury about 4 inches was found on his neck and were also found laceration marks on his forehead and stabbed wound on his right thigh. The dead body was forwarded to Medical Officer, Community Health Centre (CHC), Ngopa for holding Post-mortem Examination (PME). After PME is conducted, the dead body of John Horo was handed over to Shri F. Lalrinnggheta, President, Hliappui Branch YMA for funeral by preparing receipt. The accused R. Lalremsiama of Hmar Veng, Hliappui reported himself at the Police Station for his safety. He was thoroughly and carefully interrogated. On interrogation, the accused confessed his guilt by stating that he was addicted to drugs and alcohol. On 10.5.2014 at around 9:30 PM, he along with Lalhmaa went to Pawlrang village from Hliappui village, he exchanged his watch with liquor at Pawlrang village and consumed liquor with Lalhmaa. At around 11:00 PM on the same night, he visited Pa Tluanga of Pawlrang village asking for Rs. 100/- but Pa Tluanga did not give him money and the accused left the house. The accused again went to Pa Tluanga's house at around 12:00 mid-night asking for Rs. 50/- but Pa Tluanga again did not give him money. The accused took one Mizo dao from the house of Pa Tluanga and proceeded towards the coffee garden where the victim John Horo was living. The accused further stated that he asked John Horo to give him money but John Horo did not give him money. The accused caught hold of John Horo and cut his neck with the Mizo dao, which he had taken from Pa Tluanga of Pawlrang village. The accused left John Horo believing that he would succumb to his injury and he then hid in the jungle and went home. When the accused reached Hliappui village, all the villagers knew that John Horo was killed by the accused. Then the accused surrendered himself to Ngopa Police Station for his safety. Since the accused person admitted his guilt and confessed before the Police, he was arrested in connection with this case and his statement was recorded. The accused willfully stated before the Police and in the presence of witnesses that he had kept the weapon. Seizure of the weapon i.e. Mizo dao which was kept by the accused on the almirah inside the kitchen of their house just before he surrendered himself at Ngopa Police Station. The Mizo dao was recovered on being led by the accused.

Seizure witnesses and other available witnesses were examined and their statements were recorded.

In the course of investigation, a prima facie case was found against the accused u/s 302 of IPC. Hence, the Case IO submitted charge sheet.

3. Upon committal, my predecessor heard the Id. Addl. PP for the State and the Id. Counsel appearing for accused Lalremsiama. Thereafter, charge u/s 302 of IPC was framed against accused Lalremsiama by my predecessor 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.

4. In the course of trial, the prosecution produced and examined twelve 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, but he denied the suggestion that he had committed murder upon John Horo. However, accused Lalremsiama could not produce defence witnesses when chance was offered to him.

5. **Points For Determination:**

- a. Whether the victim died as a result of the injuries sustained by him?
- b. Whether the accused person caused death of John Horo by cutting his throat with a knife on the morning of 11.5.2014?
- c. If so, whether such act of the accused was with the requisite intention or knowledge as required under Section 300 Cr PC?

6. I heard the learned Addl. P.P. Smt. Lalremthangi as well as the learned Defence Counsel Shri S.L. Thansanga.

Decision And Reasons Thereof :

Point No. 1:

7. P.W.12 Dr. Lalramsanga, the Medical Officer deposed that on 11.5.2014 at around 2:Pm, he conducted post-mortem examination on the dead body of John Horo of Hliappui Village on police requisition and found the following injuries: Injuries:- 1. Cut injury on the front neck of deceased John Horo cutting both

trachea and esophagus at the level of thyroid cartilage (4 inches length). 2. Cut injury on the right thigh of the deceased, on the lateral aspect (4 inches) skin deep. In his opinion, the cause of death of the deceased was due to Hypovolenic shock and neurogenic shock. He proved the P.M.E. and his signature at Ext. P-8 and Ext. P-8 (a) respectively. He also proved the requisition made by the police at Ext. P-6.

8. From the above, it is established that the deceased died as a result of the cut injury sustained by him on his front neck.

Point No. 2 :

9. P.W.1 Shri Lalthaliana who lodged the FIR deposed that he had mentioned the name of the accused in the FIR since the victim told P.W.7 Shri K.Rosiana in sign language to stop the vehicle in front of the house of the accused and in sign language indicating that the accused had caused his injury. In the cross examination, he stated that he had derived information from P.W.7 Shri K. Rosiana, but did not tell him the culprit.

10. P.W. 7 Shri K.Rosiana deposed that on the way to Sub Centre of Hliappui Village P.W. 9 Maila and Sammara asked the victim who had cut his throat. The victim pointed at the house of the accused. In the cross examination, he stated that he was driving his car and his four passengers, namely, P.W.8 Kajia, P.W.9 Maila Samar-a and Vanlalnghaka were sitting at the back seat with the victim, and Hmunzauva sat on the front seat. He did not know the one who had asked the victim. He heard them saying that the victim pointed at the house of the accused.

11. P.W. 8 Shri Kajia and P.W.9 Maila deposed that on the way to PHC when they asked the victim who had injured him, the victim pointed at the residence of the accused. Therefore, they thought that the accused had injured the victim. In the cross examination, they admitted that they did not know whether the victim had wanted to get water from the residence of the accused. They also admitted that the opinion formed by them that the accused had injured the victim was merely their suspicion since the victim pointed towards the residence of the accused.

12. As is evident from the testimonies of the prosecution witnesses, none of the witnesses came to conclusion that the accused had cut the throat of the victim

with a knife. The witnesses thought that the accused had injured the victim was merely their suspicion. In fact, P.W. 8 Shri Kajia and P.W.9 Shri Maila also admitted that they did not know whether the victim had wanted to get water from the residence of the accused. Just pointing towards the residence of the accused by the victim cannot be basis of conviction.

13. It is well settled law that there may be suspicion against the accused, but suspicion, however strong, cannot take the place of proof. There is a long distance between 'may be proved' and must be proved' and this long distance has to be covered by the prosecution alone to prove the guilt of the accused.

14. The Apex Court in Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622 observes;

'162. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In Kali Ram v. [State of Himachal Pradesh MANU/SC/0121/1973](#) : 1974 Cri LJ 1 , this Court made the following observations:

Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.'

15. P.W.10 Inspector R.Lalzarliana deposed that he had recorded a disclosure statement of the accused in the presence of witnesses. In the disclosure statement, the accused stated the place where he had kept the dao which he used for cutting the throat of the victim. He also deposed that the witnesses had also accompanied the accused. Finally, the accused led them to the residence of his elder brother and showed them the dao which he had used for cutting the throat of the victim. On the other hand, P.W.2 Lalrohluia and P.W.3 R. Lalpuia admitted in their cross examination that they could not be present at the time when the police had interrogated the accused at the police station while disclosing the whereabouts of the knife. Hence, the disclosure statement made by the accused before P.W. 10 Inspector R. Lalzarliana and in the presence of the witnesses appears to be doubtful.

16. The Hon'ble Gauhati high Court in Gurnam Singh & Ors v. State of Assam, 1996 (1) GLT 476 observes;

'24. For applicability of Section 27, two conditions are pre-requisite (i) the information given or disclosure made by the accused while in police custody must be such as has caused discovery of the fact that and (ii) the information must 'relate distinctly' to the fact discovered. Take for example, a statement made by the accused that he would show the 'Dao' (or any other weapon) with which he killed 'S', is not wholly admissible if the statement that he killed 'S', is not discovered in pursuance to the information given by the accused. Moreover, it would be a confessional statement directly hit by Section 25 of the Evidence Act. It is therefore obligatory on the investigating officer, to prove the statement made by the accused. It is this reason that generally a memorandum of information given by the accused is prepared in presence of independent witnesses, so that when it comes to the proof of such statement, the independent witnesses are examined, in support of the evidence of

the investigating officer. Although it is not the requirement of law that such statement must be reduced to writing, but it is almost an established practice, the examination of independent witnesses, is a matter of credibility, depending on the reliability of evidence of the I.O, which may vary from case to case. It is all the more necessary when the investigating officer has to deal with more than one accused, as in the instant case.'

17. It is pertinent to mention here that P.W. 2 Lalrohlua and P.W. 3 R. Lalpuia were examined on 12.11.2014 as seizure witnesses of the seized Dao and on 1.3.2016 as witnesses of the disclosure statement of the accused on the prayer made by the learned Addl. P.P. under Section 311 of Cr PC. On cross examination, P.W. 2 Lalrohlua and P.W. 3 R.Lalpuia stated that when they had seen the seized dao, it was wrapped with paper and brought by the police. Both of them did not have a close look. It is also pertinent to mention here that P.W.3 R.Lalpuia stated that on that day he was on his way back from Aizawl and while passing through the house of the accused, the police asked him to stand as seizure witness, which is a material contradiction with his statement on 1.3.2016.

18. In any case, finding a dao in the house of the accused or his elder brother is by itself not of much significance unless it is used for commission of murder.

19. From the evidence discussed above, the prosecution cannot establish with any degree of certainty whether the accused cut throat of the victim. A great degree of doubt has been cast upon the prosecution case; I therefore do not find sufficient evidence to implicate the accused in the offence which he has been charged with.

20. In the result, I hold that the prosecution has failed to establish its case beyond reasonable doubt and consequently, the accused person is acquitted of the offence under Section 302 IPC and he shall be released from judicial custody forthwith.

21 The seized article shall be destroyed in due course of law.

Judgment and Order is given under my hand and seal of this Court on
this day the 24th day of June, 2016.

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

Memo No. _____/ASJ(A)/2016 : Dated Aizawl, the 24th June, 2016

Copy to: -

1. Accused Lalremsiama through Counsel Shri S.L. Thansanga, Advocate.
2. The Sessions Judge, Aizawl Judicial District, Aizawl.
3. The District Magistrate, Aizawl District.
4. The Superintendent of Police, Aizawl District.
5. The Addl. PP, Aizawl.
6. Special Superintendent, Central Jail, Aizawl.
7. The DSP (Prosecution), District Court, Aizawl.
8. The Officer-in-Charge, Ngopa 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