

GAHC030003272022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./11/2022

Mary Zothansangi
D/o R. Zothanthuama
R/o Kulikawn, Aizawl, Mizoram.

VERSUS

State of Mizoram
Aizawl, Mizoram.

Advocate for the Petitioner : Mr. Angshuman Bora, Sr. Adv.
Advocate for the Respondent : P.P./Addl.PP, Mizoram

Linked Case : I.A.(CrI.)/9/2022

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Advocate for the Petitioner : Mr. Angshuman Bora
Sr. Adv.
Advocate for the Respondent :

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT & ORDER (CAV)

Date : 22-09-2023
(*Marli Vankung, J*)

Heard Mr. Angshuman Bora, learned Senior counsel for the appellant along with Ms. Mary L. Khiangte, learned Additional Public Prosecutor for the State respondent.

2. This appeal has been filed challenging the Judgment & Order dated 06.12.2021 passed by the Court of Additional District & Sessions Judge-II, Aizawl in Session Case No. 28/2021, arising out of Criminal Trial No. 301/2021, by which the appellant has been convicted under Section 302 IPC and sentenced to undergo life imprisonment with a fine of Rs. 1 lakh, i.d. imprisonment for 1 (one) year and under Section 6(2) r/w Section 5(2) of MLP Act, 2019 and sentenced to undergo 5 (five) months imprisonment with a fine of Rs. 4000/-, i.d. imprisonment for 2 (two) months, vide Sentence Order dated 09.12.2021.

3. The prosecution case in brief is that an FIR was received on 10.12.2020 to the effect that on 09.12.2020, Dr. Laltanpuia was found on the verge of death at

his Kulikawn resident and was rushed to the Aizawl Hospital, wherein he succumbed to his injuries at around 10:00 PM. They have reason to believe that he died in the hands of his wife/appellant.

4. Pursuant to the FIR, the case was registered as KKK P.S. Case No. 106/0 dated 10.12.2020 under Section 302 IPC. The case I.O. thereafter investigated the case and examined the witnesses, sent the body of the deceased victim for PME and accordingly the case I.O. found *prima facie* case against the appellant under Section 302 IPC and section 6(2) r/w 5(2) of MLP Act and charge sheet submitted. Charge was framed against the accused under Section 302 IPC and under Section 6(2) r/w Section 5(2) of MLP Act, 2019 by the learned Trial Court on 1st December, 2021, wherein the appellant had pleaded not guilty of the charge under Section 302 IPC and claimed to be tried accordingly. The accused however pleaded guilty under Section 6(2) of MLP Act, 2019 admitting that she had consumed two cups of Royal Stag mixed with juice at 5:30 PM in their resident.

5. During trial as many as 27 prosecution witnesses were examined in the Court, the accused/appellant was then examined under Section 313 Cr.P.C, thereafter, one defendant witness was examined. The learned Trial Court came

to a finding that the appellant was guilty of having committed the offence under Section 302 IPC and under Section 6(2) of MLP Act, 2019 and accordingly, sentenced the appellant as stated in the foregoing paragraphs.

6. Mr. Angshuman Bora, learned Senior counsel for the appellant submits that this is a clear case where there was no intention to commit the offence under Section 302 IPC since no *mens-rea* has been proved against the appellant. He submits that on the evening of the incident, the appellant and the deceased, both had consumed liquor and an argument had erupted between them, wherein the appellant on the spur of the moment, being provoked at, unintentionally stabbed the deceased, which unfortunately caused his death.

7. The learned Senior counsel for the appellant led this Court through the evidence of PW-9, PW-29 & DW-1, where it was also stated by the witnesses that the relationship between the deceased and his wife/appellant was not good. That the deceased Dr. Laltanpuia used to be abusive towards his wife. The learned counsel also led this Court to the evidence of PW-13, who is the friend of the deceased wherein, the appellant had made a kind of extra confessional statement before him and she had told him that she had stabbed the deceased due to grave and sudden provocation. The learned senior counsel

submits that from the medical evidence, there was only one single injury which was due to provocation and that she had no intention to cause death.

8. Mr. Angshuman Bora, learned senior counsel submits that there are no eye witnesses to the incident. The only witness who was at the place of occurrence was PW No. 27, Chrystie Malsawmkimi, who was only 5 years of age and not safe to blindly rely on her statement. The prosecution failed to prove and establish, how, why and under what circumstances the incident happened. Therefore, the accused cannot be simply and directly booked and charge sheeted under Section 302 IPC. Rather as per Section 313 statement, the unfortunate incident had taken place due to some carelessness/act of the appellant or both. Even if the prosecution case is assumed to be true, at best, it might be the case of 304 IPC Part II. There has been no pre-plan, no pre-mediation, no pre-intention to cause death. The nature of injury also shows only one injury and had there been a true intention to cause death, the deceased victim could have been assaulted/stabbed two/three/four/ many times with full and hard force and pressure to ensure his death or, had there been truly a pre-plan/pre-meditation or pre intention, one could have chosen a safer place or safer mode rather than to take the risk while the others/ their two children were present in the house. The appellant was doing her cooking, cutting vegetables

and children were at home and were playing. Her husband Dr. Latanpuia returned home, thereafter there was some argument/quarrel/tussle and incident happened suddenly without any premeditation or intention.

9. The learned Senior counsel submits that learned court below committed manifest error in law as well as in facts, while failing to appreciate the deposition of PW No. 12 in its totality. PW No. 12 in his deposition stated that he visited the accused in central jail on 17.12.2022 with his friend and colleague Dr. Zothansanga. In his deposition, he categorically stated that upon being enquired by him, the appellant said that she and her late husband had an argument on the day of incident about some contract, wherein she was invited by her friend to be a part of contract work where she did not have to contribute any money. But her husband objected to it. From the above deposition evidently, there was some heated argument between the accused and the victim and out of sudden provocation, the unfortunate incident occurred, which caused death to the husband of the appellant. As such, there was no intention of causing death and the prosecution has failed to prove that there was any intention of causing death by the appellant. Further, it has already been established that the accused appellant was under influence of alcohol. Due to influence of alcohol and drug, the accused got provoked and out of such provocation this unfortunate accident occurred. Hence, there was no intention on the part of the accused to kill her

husband and as such, the learned Court below has committed manifest error of law as well as in facts while convicting the accused/appellant under Section 302 of the IPC.

10. The learned senior counsel also submits that the prosecution tried to establish that the appellant is of a dangerous character and of past conduct. However, there is no direct evidence on this regard. The maid PW No. 16 also speaks only about statement given by appellant. There is no evidence to proof the same, as neither any complaint nor any case was registered against the appellant. The appellant had denied of making such statement or act U/s 313 CrPC. No one has ever been poisoned and there is no FSL report to show what actually was in the alleged bottle .The deceased victim never made any against the appellant and such allegations of the appellant trying to hurt the deceased victim before are baseless.

11. The learned senior counsel for the appellant submits that there was no intention to cause the death of the deceased Dr. Laltanpuia the charge under Section 302 may be converted into Section 304 Part-II IPC. The appellant was also under the influence of alcohol at the time of the incident and was provoked to stab the deceased victim due to the quarrel that erupted. That the incident is covered by the exception No.1 under section 300 IPC. He further submits that

the appellant is the mother of three minor children and she has no compelling reason to cause the death of her husband/father of the three minor children. He prays that the Court should also consider the future of the minor children who have unfortunately lost their father and now their mother is also behind the bar for causing the death of their father, while she has no intention whatsoever to cause the death of the father of her minor children. He submits that since the appellant has already been punished for the accident that she has caused and is behind the bars for now 32 months, her detention period may be set off and that she may be released to look after her minor children.

12. The appellant has cited the following cases in support of his submissions where the Apex court had altered the conviction under section 302 IPC to section 304 Part I IPC or to section 304 Part II IPC and reduced the term of sentence of the appellant/ accused persons:

1. *Jawahar Sah & Anr vs- State of Bihar*, reported in 1997 SCC (Cri) 841,
2. *Ram krishan & Ors. Vs. State of Rajasthan*, reported in (1997) 7 SCC 518,
3. *Mavila Thamban Nambiar Vs. State of Kerala*, reported in (2009) 17 SCC 441,
4. *Dauvaram Nirmalkar Vs. State of Chhattisgarh*, reported in 2022 SCC Online 955, wherein the Apex court discussed the conditions which have to be satisfied

for Interpreting Exception 1 to the Section 300 IPC.

5. The learned senior counsel also cited *Reena Hazarika Vs- State of Assam*, reported in (2019) 13 SCC 289 where it was held that a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 CrPC and to either accept or reject the same for reasons specified in writing.

13. Ms. Mary L. Khiangte, learned Additional Public Prosecutor submits that there is no evidence on record that the appellant was subject to any torture or continuous abuse as claimed by the learned counsel for the appellant. She submits that only from the statement of the appellant under Section 313 Cr.P.C. is there any hint of abuse. The statement under Section 313 cannot be taken as to be the gospel truth and accepted 100%.

14. The learned Additional Public Prosecutor also submits that even though it was only a single injury/stab on the deceased victim, it has caused precious life of a Doctor. The nature of the stab injury is such that it was deep enough to cause the life of the deceased Dr. Laltanpuia, which indicates that the single injury was intended to cause death. It can also be seen from the evidence of PW-1 that when the deceased Dr. Laltanpuia had fallen on the ground due to his injury, the appellant being his wife did not make any attempt to help her

husband who had fallen on the ground. The evidence of PW 9 shows that she not only did not try to help the deceased Dr. Laltanpuia but she had locked herself in the bathroom. The evidence shows that she was found in the bedroom and smoking a Cigarette. The learned Additional Public Prosecutor also submits that it is only from the statement of the appellant that she was said to be cooking when the deceased Dr. Laltanpuia had come home. Her son PW-9 did not mention that the appellant/his mother was in the kitchen cooking when the deceased Dr. Laltanpuia came home.

15. The learned Additional Public Prosecutor further submits that it is established that she had the intention to cause the death of her husband the deceased Dr. Laltanpuia since the evidence of PW 12, Zothanmawii and PW 16, Lalhriatkimi, also shows that there were previous occasions when she had tried to cause the death of the deceased Dr. Laltanpuia by poisoning and stabbing his neck with a pair of scissors.

16. The learned Additional Public Prosecutor also submits that the appellant is an educated lady and she had the knowledge of law. Because of this, she had stated that she was in the kitchen cooking with a knife in her hand when she was called by the deceased Dr. Laltanpuia. This is because she had pre planned the whole incident and therefore, in her statement under Section 313 Cr.P.C, she

has stated that she was in the kitchen with a knife in her hand. She was called to the bedroom by the deceased Dr. Laltanpuia. The deposition of their son PW-9 who was in the next room does not say anything about the scuffle or a fight between his parents.

17. The learned Additional Public Prosecutor also submits that the height of the appellant is 5 ft 2 inches, while the height of the deceased Dr. Laltanpuia is 5 ft. 8 inches. She stated that she had stabbed him by raising her arms with the intention to cause his death and that the wound was on a vital point. This clearly indicates that it was not an accidental wound. The post mortem report shows that the knife was of **15 cms** long and the stab wound was **14.5cms**, which shows that she had used her full force when she stabbed the deceased Dr. Laltanpuia.

18. The learned Additional Public prosecutor also submits that in the PME report, there is no evidence of any alcohol content and therefore, it cannot be said that she had stabbed the deceased Dr. Laltanpuia who was under the influence of alcohol. The appellant had full intention to kill the deceased and knew who and where and how to make her statement. The whole incident and her statements in the Court are pre meditated and calculated. She further submits that the appellant, though the mother of the minor children, is not fit to

look after the children since the evidence shows that she is in a habit of taking drugs and alcohol. She thus submits that there are no grounds to interfere with the judgment and order of the learned Trial Court. In support of her submissions, she has cited the following cases:-

i) *K. Gopal Reddy Vs. State of Andhra Pradesh*, reported in (1979) 1 SCC 355 (para 9)

ii) *Satpal Vs. State of Haryana*, reported in (2018) 6 SCC 610 (para 6 & 7)

iii) *Ram Gopal s/o Mansharam Vs. State of Madhya Pradesh*, reported in (2023) 5 SCC 534.

19. We have heard the submissions made by both the rival parties and perused the documents on record. We shall examine the evidence adduced before the court in light of the submission made, whether or not the instant case is covered by the exception No. 1 of section 300 IPC. And whether the conviction of the appellant under section 302 of IPC ought to be altered to section 304 Part-II IPC.

20. Pw-1, Mrs. Rozamliani is the mother of the deceased victim Dr. Laltanpuia, she is also the informant. She deposed that on 9.12.2020 at around 6:00 pm she heard a sound of a child crying and also heard a sound of some adult talking. Since she occupied the floor above Dr.Laltanpuia, she went down

and was joined by Mr. Zomuanpuia, the cousin brother of deceased victim, Dr. Laltanpuia. Mr. Zomuanpuia entered the house ahead of her and he immediately came out and told her that there was a severe blood stains of the deceased victim. Being a panicky person, she proceeded to the hospital where the victim Dr. Laltanpuia was then taken and he succumbed to his injuries on the same night. In her cross-examination, she has stated that she did not witness the incident and admitted that the deceased victim and the accused appellant often had marital discord and she felt that the deceased victim was not happy with his married life.

21. Pw-2 and Pw-3, had gone to the P.O on the night of 19.12.2020. They are the seizure witnesses of the stainless steel knife which the appellant took out from the kitchen sink and used to stab the deceased victim. They saw a little blood stain in the bottom of the knife They identified Ext.P-2 as the seizure memo and Ext. MO-1 as the offensive knife

22. Pw-5 is the seizure witness in respect of blood sample and shirt of the deceased victim.

23. Pw-6, 7 & 8 are the witnesses, who saw the victim, Dr. Laltanpuia lying on the floor in the bed room with severe blood stains and they also witnesses him been taken in the Aizawl Hospital.

24. Pw-9 is the son of the deceased victim and the appellant, who was present in the house of the time of the incident. He has deposed that while his mother and father and his younger sister were inside their bed room, he was sitting in their drawing room since he did not want to listen to some quarrelling between his parents. After sometime, he heard his sister cry out and he entered the bed room where he saw his father hardly walking towards him since he could not walk properly and his father bent down by holding the handle the almirah inside the bedroom. He also found that there was some blood on his chest but he did not immediately give a helping hand as he thought that his hand may be cut. During cross-examination, it was clarified that Pw-9 was 9 years old and at the relevant time he was studying in class –III, he admitted that he had no knowledge as to how and why his father had sustained injury.

25. Pw-10, Lalrinmawii is the aunt of the deceased, who deposed that she had rushed to the PO immediately after been informed of the incident on 9.12.2020. She stated that she saw the appellant/accused came out from the bed room and she noticed that there was some blood stains on her face, when the police asked the appellant about the incident, the appellant refused to answer the police and she had looked around and said she will reply only to the police officer upto the rank of Sub-Inspector of Police. She also witnessed the appellant take out the knife from the sink area and placed it on one dining

table. The statement of Pw-11 is Lalnikhumi her statement is similar to that of PW-No. 10.

26. PW-12 is Zothanmawii, she stated that on hearing about the incident she reached the place while the victim Dr. Laltanpuia was still alive. She deposed that Mr. Zomuana had gone towards the bath room and asked the accused/appellant to open the bath room door. When the accused/appellant did not open the door, Mr. Zomuana destroyed the door and the appellant was sitting on the commode, meanwhile, some people had come with the stretcher and took the victim to the hospital. She also deposed that one morning, she had seen the victim Dr. Laltanpuia with a cotton wool plaster on his neck and when she asked the reason, he had replied that the accused/appellant stabbed him with a scissor from behind but he had moved aside at that time. She deposed that since it was a family affair she did not disclose this to others, but she recollects the incident because of the instant incident. She also stated that she was told by Ms. Hriati, who was the house maid of the family that the deceased victim Dr. Laltanpuia had told during 2019 that she saw the appellant trying to poison the drinking water in a reservoir and she had snatched the said box from the accused appellant. Ms. Hriati stated that there was a marking of danger in the box, she did not know what kind of poison it was.

27. PW-13 is Dr. Lalrinawma Hnamte, who is the friend and colleague of the deceased victim, Dr. Laltanpuia. He deposed that he went to visit the appellant at Central Jail on 17.12.2020 and met the appellant in the Jail Warden's room, where he had bought some eatables for her. After a small talk, the appellant asked for forgiveness. Thereafter, when he asked her whether they had an argument or not that evening. The appellant told him that they were arguing about some contract where she was invited by her friend to be a part of the contract work, where she did not even have to contribute any money to which her husband objected. She further stated that she does not want to be a simple housewife for that she had studied to earn her own income. When the PW-12 asked her whether she had gone to the kitchen to get a knife and came back and stabbed her husband, the appellant told him that as she was cooking, she was already holding a knife in her hand, then they had an argument she stabbed him but she did not stab him deep. She stated that he was following her, when she felt him slip on his bed and he fell down upon the knife making it go deeper. While the witness asked her whether the knife was stuck on his chest, the appellant replied that she was smoking ganja and drank alcohol and was confused about the incident. She stated that she even asked her son Mapuia to call for help, when she went inside the bathroom she light the cigarette, she stated that she did not smoke but was just holding a cigarette as

she was in a shock and asked him for forgiveness. He stated that she had also told the Magistrate that she was the one to stab her husband.

28. PW-14 is the driver of the vehicle when the deceased victim taken to the hospital. Pw-15 simply deposed that he was in the house he had gone to the house when the incident occurred and he saw the deceased victim with severe blood stains.

29. PW-16 Lalhriatkimi, stated that during 2019 she worked in the resident of the deceased victim, Dr. Laltanpuia on a daily basis. In the early part of 2019 she saw the accused appellant trying to drop poison in the water reservoir, she asked not to do the same and the label of the box was marked as poison. On another occasion during 2019, the appellant had asked her whether she could provide her pesticides or not and she had dropped pesticides in the rooftop where vegetables were grown. She stated that when the deceased victim Dr. Laltanpuia recovered some illicit drugs from the accused/appellant, she had pointed towards her saying that the illicit drugs belonged to her. During cross examination, she admitted that she did not say before the police about the appellant trying to drop drug poison in the water reservoir and admitted that it was not sent to FSL to verify whether what she saw was actually poison.

30. PW-18 David Lalruattluanga is seizure witness of one pair of chapal with

blood stain belonging to the accused/appellant.

31. PW-19 Lalchhanzova stated that he received 5 biological exhibits from SDPO, Aizawl which contains:

- i) Liquid blood sample of the victim marked as Ext. A
- ii) Liquid blood sample of the accused marked as Ext. B
- iii) Kitchen knife marked as Ext. C
- iv) Long sleeve shirt marked as Ext. D
- v) A pair of slipper teal blue color as marked Ext. E

After examination and comparison of the said exhibits, and the DNA profiles examined it shows that the blood stains found in the said Exhibits belong to the victim. PW-20, T. Lalropuia simply stated that there is no poisonous substances the sample blood received by him for examination. PW-21 & PW-22 are seizure witnesses at the blood samples of the accused during investigation

32. PW-23, Dr. Lalringmaia is the Doctor who performed the post –mortem examination/PME of the death body of Dr. Laltanpuia, he deposed that on 10.12.2020 at about 9:20 AM he received requisition with inquest report his from Kulikawn PS for PME of dead body of Dr. Laltanpuia (43 years). His PME

findings were recorded as follows:

- i) Horizontal sutured wound of 4.5 cms long with 10 stitches present on front of left side of the chest, 3 cms above left nipple.
- ii) Horizontal surgical wound (Thoracotomy incision) of 19 cms long with 44 stitches (Clips) present on front of left side of the chest, 1 cm below the nipple.
- iii) Horizontal surgical wound (Thoracotomy wound) of 17 cms long with 38 stitches (Clips) present on outer aspect of left side of the chest, 14 cms below left axilla (Armpit).
- iv) Three abrasions of 0.5 cm, 1 cm and 1.25 cm present on left wrist.
- v) Perforating wound present on diaphragm.
- vi) Perforating stab wound present on pericardium and left ventricle with entry wound on anterior wall and exit wound on posterior wall.

In his opinion, the cause of death is due to Haemorrhagic shock as a result of perforating wound of left ventricle (Heart) due to stab. Ext. P-19 is the PME report and Ext. P-19 (a) is his signature.

33. PE-24 is Dr. Lalrinmawii, who did the medical examination of the accused/appellant and drawn blood samples from her on 10.12.2020. PW-25 Lalthansiami Hnamte is the Judicial Officer who recorded the confessional

statement of the appellant under Section 164 Cr.P.C. PW-26 Lalhriatpuii is the Judicial Officer, who recorded the judicial statement of the witnesses Smt. Miriam Lalsangzuali and Smt. Zohmingliani under 164 Cr.P.C.

34. PW-27 Mary Rosangpuii stated that on 9.12.2020 @ 6:30 PM while performing night duty in Kulikawn P.S, they were informed about the incident, that the appellant had stabbed her husband Dr. Laltanpuia with a knife. On received the information they immediately proceeded to the P.O. where they found accused/appellant sitting on an European type commode inside their toilet, smoking cigarette, during this time, there was some blood stain on her face and he called her out and the accused appellant came out. The accused/appellant had stated that she was not going to say anything if below the rank of SI. The accused appellant was asked to produce the offensive knife and the accused appellant took a knife from the corner of basin which she found was already cleaned but few blood stains remained in the bottom of the knife. The knife was a Dreamline. She had seized the knife, which was kept in a plastic bag and she was also recorded the statement with the seizure witnesses. On obtaining a permission to arrest the accused appellant was arrested and taken to Kulikawn P.S. for further formalities. During cross examination, she stated that from her knowledge the accused appellant was not sober.

35. PW-28 is the case I.O Lalramlawma Hnamte, who stated that on 10.12.2020, the FIR was received at Bawngkawn P.S and being the O/C to Kulikawn P.S, he had endorsed the matter to himself to investigate into the case, he apprehended the accused appellant who was transferred into the custody of Aizawl P.S. He had forwarded the accused appellant to Civil Hospital for drawing her blood sample on 8:00 AM on 10.12.2020, which was attended by a women police officer. He stated that the accused appellant had confessed before him that when her husband returned to their house in the evening they were in discord in respect of their teak plants at Sairang, her husband therefore told her that if she wishes, she may stab him. The accused appellant therefore stabbed the deceased victim by using a knife which the accused possessed. The accused appellant further told him that since she is educated she was seeking employment and therefore she asked not to prosecute her. He therefore, forwarded her before the Court of CJM for her judicial custody. He visited the P.O. where he prepared rough sketch map, he draw the blood sample (1 vial) of the accused appellant and the victim slipper of the accused, offensive knife, shirt of the victim to FSL. During the cross investigation, he received the PME report and after examining the witnesses he found *prima facie* cases against the accused appellant under Section 302 IPC and accordingly filed his charge-sheet. He identified the charge-sheet submitted by him, the PME report,

the report of the FSL and the FIR. During cross examination, nothing was asked to doubt the statement of the witness.

36. PW-29 is Christy Malsawmkimi, who is the daughter of the deceased victim and the appellant. She was aged about 5 years and she deposed in the court. She simply stated that her father died because her mother stabbed him on his chest which was inside their bedroom in her presence. She therefore, cried out and called her elder brother (Mapuia) and she said that their mother should no longer stay with them but that she should stay at Jail Veng. During cross examination she denied the suggestion that she did not see her mother stab her father.

37. The accused appellant on her examination under section 313 Cr.P.C has given the following explanation:

“No.3 -I say that both of my children were in living room, myself was cooking in the kitchen. At that time, my deceased husband came home. He invited me to enter into the bedroom, as I was busy for cooking. I lately joined him by entering into the bedroom. Since, I was cooking at that time, I remain possessed knife which I used for cooking. My deceased husband was drinking liquor in the bedroom. As he instructed me, I took sit besides him in the bed. My husband never drink liquor in presence of our children. My husband

expressed his willingness to sell teak plantation garden, I told him that as we also have a children, it is not good to sell properties which we already acquired. We thereby discord/disputed on selling teak plantation. I also spoke to him that as my friends also invited me to engage with some contract works, whether he can wait my earnings or not. My deceased husband also told me that he want to purchase TharJeep and pistol, so he want to sell teak plantation. As he was also not sober due the influence of liquor and as I was also not sober due to the influence of liquor and marijuana. We entered into discord by heated exchange.

He firstly slapped on my cheeks. He also assaulted me by hitting in thigh by using his fist. He also often inflicted physical violence upon me even in another days. I told him not to inflict physical violence upon me. I was also afraid of him as he often inflicted physical violence upon me. He snatched a knife which was already placed in a bed (which was also brought to the bedroom by me and which I used for cooking. He challenged me to stab him saying he will not die. He thereby snatched and held my right hand with a knife. I tried to untied my hand with a knife forcefully held by the deceased and from his hand. Meanwhile, without any knowledge or intention, the deceased victim was accidentally stabbed with a knife while he remain held a Knife with my hand, it seems re-bouncing of our movement.

No.18: I denied allegation against me to stab my deceased husband with scissor in his neck. I also denied allegation against me trying to drop poisonous substance in water reservoir during 2019. I also denied allegation against me of spraying pesticides in our plants. Even before marriage, we fell in love for about 5 years and married for about 11 years having three children. I cannot have any intention to murder/kill him. I rather thought him as my patron and protector. "

38. Thereafter DW-1 Lalringngheta, the defence witness deposed that he had known the accused appellant since his childhood and the deceased victim for about 17 years. He has never known the accused appellant of having any other criminal case. He stated that he knew that the appellant accused was very much devoted carrying and loyal to her husband and children and that she spent most for her time for her family. He stated that he has aware that Dr. Laltanpuia, deceased victim had a habit of drinking liquor every night and sometime used to physically abuse the accused appellant while he was present. He stated that he was aware that sometimes the accused appellant and the deceased victim used to bring liquor together inside their bedroom and he used to hear a quarrel between them at night. He stated that while he was staying with the deceased family, he used to wrap empty liquor bottles of Dr. Laltanpuia with newspapers and put them inside black garbage bag and thrown them away at Ngaizel cliff at night. He stated that he was aware that Dr. Laltanpuia was a loving as well as

kind person and very much devoted to his family. However, when he was drunk he was an ill tempered person. He also stated that during his stay with the deceased family, he never heard about the accused appellant trying to poison or assault the deceased victim. He stated that he was of a firm belief and opinion that the accused appellant would never wanted to cause death to Dr. Laltanpuia.

39. The statement of the accused appellant was also recorded under section 164 Cr.P.C is reproduced *"As my husband Dr. Laltanpuia was a doctor, various medicines for sleep and pain killer used to be stocked and available in our house. On the date of the incident I smoked 3/4 (tlawn) numbers of ganja. At around 4:00 I consumed one strip of alpozalam. I was very heavily drunk/intoxicated. Thereafter I consumed alcohol. However as I was very much drunk, I could not recollect how much I drank , In the other days my husband usually use to return home at around 7pm to 8pm, However I cannot remember the time when my husband returned home on the date of the incident. I was doing cooking and was cutting vegetables with knife, we had an argument / quarrel the exact reason I could not remember. I stabbed somewhere at around his chest."*

40. On careful analysis of the evidence adduced, we find that it is an admitted fact that the appellant was under the influence of liquor and drugs at the time

of the incident since she had pleaded guilty of the charge under section 6(2) r/w 5(2) of MLP Act at the time of framing charge and had admitted taking drugs in her statement recorded under section 164 Cr.P.C and under section 313 Cr.P.C. The appellant had also stated before PW13 that she was smoking ganja and drank alcohol and was confused about the incident.

41. We also find from the evidence adduced by PW-1 mother of the deceased victim , who has stated that there was discord between the appellant and the deceased victim, from the evidence of PW-9, who stated that he did not want to listen to the quarrelling between his parents on the night of the incident and from the evidence of PW-13, who has deposed that the appellant had made a confession before him when he went to visit her at Central Jail that the appellant told him that as she was cooking, she was already holding a knife in her hand, then they had an argument she stabbed him but she did not stab him deep. The accused appellant in her statement taken under section 313 Cr.P.C has also reiterated that she and her husband the deceased Dr. Laltanpui had a heated argument on the day of the incident which is also supported by the statement of the accused appellant in her statement recorded under 164 Cr.P.C. We also find that the deposition of DW-1 who has stated that that Dr. Laltanpuia, deceased victim had a habit of drinking liquor every night and sometime used to physically abuse the accused appellant while he was present

and that when he was drunk he was an ill tempered person. On considering the above evidences we are inclined to agree with the submission of the learned counsel for the appellant that a heated argument had erupted between the appellant and the deceased victim Dr. Latanpui, which provoked the appellant to stab her husband with the knife. None of the prosecution witnesses have deposed that there was any pre- meditation on the part of the appellant to cause the death of the deceased victim on the day of the incident. Though the prosecution witnesses Nos. 12 & 16 have implicated the appellant of a previous attempt to poison the deceased victim by using pesticide and also stabbed him with a pair of scissors on his neck, this is denied by the appellant on examination under section 313 Cr.P.C and there is no further evidence to substantiate the deposition of the prosecution witnesses Nos. 12 and 16 on this aspect.

42. The appellant has consistently stated in her statement made under section 313 Cr.P.C, her statement recorded under section 164 Cr.P.C, that she was in the kitchen and was using the knife for cooking on the night of the incident. The evidence of PW-13 also supports this claim. There is no prosecution evidence which contradicts this statement.

43. The Apex court in *Reena Hazarika Vs- State of Assam (supra)* where it was

held that "Section 313 CrPC cannot be seen simply as a part of *audialterampartem*. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2) CrPC. The importance of this right has been considered time and again by this Court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) CrPC the Court is duty-bound under Section 313(4) CrPC to consider the same. The mere use of the word "may" cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available, is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 CrPC, in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 CrPC."

44. In light of the above mentioned decision of the Apex court, we have also considered the reply given by the appellant explaining the evidence adduced against her. The prosecution evidence also supports the statement of the appellant to the certain extent, that there was marital discord between appellant and the deceased victim and that they had quarreled on the night of the incident.

45. For the above reasons, this court finds that the act of the appellant was committed in a sudden heat of passion upon a quarrel where the appellant in her intoxicated state, without premeditation, was provoked by the deceased wherein the appellant had lost her self-control or controlling power and stabbed the deceased victim with the kitchen knife which she was already holding in her hands. We are of the considered view that such an act of the appellant is culpable homicide not amounting to murder and comes within the exception 1 of section 300 IPC.

46. On the issue whether the conviction should be altered to section 304 part II IPC, we have perused the post – mortem examination report which states that *“the cause of death is due to Haemorrhagic shock as a result of perforating wound of left ventricle (Heart) due to stab.”* It is seen that the appellant had caused one stab wound on the chest of the deceased victim

wherein the victim succumbed to the injury on the night of the incident, after being taken to the hospital. Thus from the nature of the injury caused we find that the appellant would have known that a stab on the chest with a knife was likely to cause death. However there is no evidence to prove that the appellant had intended to actually cause the death of the appellant, who was her husband and the father of their three minor children. The evidence of PW-9 show that the deceased victim did not immediately fall on the ground, he stated that he saw his father hardly walking towards him since he could not walk properly and his father bent down by holding the handle the almirah inside the bedroom. If death was the intention of the appellant there was ample opportunity for inflicting more blows.

47. The Apex court in *Ramkrishan & Ors. Vs. State of Rajasthan* (supra) observed that:

“On the basis of the findings of the learned trial court, as noticed above, it is quite obvious that the intention of the appellants could only have been to cause injuries to the deceased by obstructing his bullock cart and they did not share any common intention or object to cause the death of the deceased. Indeed by causing injuries with an axe it could be said that the appellants should have realised that the injuries were likely to cause his death but that would only bring the case of the appellants under Section 304 Part II IPC and not one under

Section 302 IPC."

48. In *Mavila Thamban Nambiar (supra)*, the Apex Court made the following observation that *"Mr Lalit then, seriously challenged the conviction of the appellant under Section 302 of the Penal Code. He urged that the appellant had neither intention nor knowledge that such an injury would result into the death of Madhavan. He, therefore, urged that the appellant at the most could be convicted for any other minor offence. Mr George, appearing for the State of Kerala urged that the appellant was rightly convicted under Section 302 of the Penal Code and no interference was called for. After giving our careful thought to the nature of offence, we are of the considered view that the offence of the appellant would more appropriately fall under Section 304 Part II of the Penal Code. The appellant had given one blow with a pair of scissors on the vital part of the body of Madhavan and, therefore, it would be reasonable to infer that he (appellant) had knowledge that any injury with pair of scissors on the vital part would cause death though he may not have intended to commit the murder. We accordingly alter the conviction of the appellant from Section 302 IPC to one under Section 304 Part II IPC."*

49. In view of the above decisions of the Apex Court and the afore mentioned findings, we are of the considered view that this appeal deserves to succeed to

the extent that the offence committed by the appellant would not fall under Section 302 IPC. We, therefore, set aside the Judgment & Order dated 06.12.2021 passed by the Court of Additional District & Sessions Judge-II, Aizawl in Session Case No. 28/2021, arising out of Criminal Trial No. 301/2021 and the conviction and sentence of the appellant for the offence under Section 302 IPC and instead convict the appellant Smt. Mary Zothansangi for an offence under Section 304 Part- II IPC. On her conviction under section 304 Part- II IPC, we are of the considered view that since the precious life of the deceased victim, who is a doctor by profession and the father of three minor children has been lost, we find it appropriate to sentence the appellant to undergo simple imprisonment for a period of 10 (ten) years.

50. Crl.A. No 11 of 2022 thus stands allowed and disposed of.

JUDGE

JUDGE

Comparing Assistant