

GAHC030000632023



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

Case No. : Crl.A./9/2023

Sh. Mandip Chakma
S/o Lokhi Kumar Chakma
R/o Silsury West, Mamit District, Mizoram.

VERSUS

The State of Mizoram and Anr.
Aizawl. 2:The Officer-in-Charg

Advocate for the Petitioner : Mr Lalremtlunga

Advocate for the Respondent : P.P./Addl.PP, Mizoram

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 05-08-2024
(Michael Zothankhuma, J)

Heard Mr. Lalremtlunga, learned counsel for the appellant. Also heard Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondent.

2. The present appeal has been filed against the impugned Judgment and Order dated 11.11.2022 and Sentence Order dated 11.11.2022 passed by the

Addl. District & Session Judge-I, Aizawl in SC No. 27 of 2019, by which the appellant has been convicted under Section 302 IPC and sentenced to undergo life imprisonment with a fine of Rs. 5000/- and in default of payment of fine, the appellant was to suffer imprisonment for a further period of 3 months.

3. The facts of the case in brief is that an FIR dated 01.07.2018 was submitted by the informant (PW-1) to the Officer in Charge, Marpara Police Station, stating that on 01.07.2018 at around 2:30 pm, his father Sh. Sneha Ranjan Chakma was killed by the appellant with a *machete* while he was attending a Village Level Implementing Committee Meeting, in the residence of the Village Council Secretary of Silsury West, Sh. Krishna Kanti Chakma (PW-8). Consequent to the FIR being filed, a case under the Marpara Police Station was registered, bearing Marpara PS Case No. 2/2018 dated 02.07.2018 under Section 302 IPC r/w Section 27 of the Arms Act.

4. After completion of investigation by the Inquiry Officer (I.O), chargesheet was filed, wherein a prima facie case under Section 302 IPC was found against the appellant for having killed the father of the informant.

5. The learned Trial Court framed charge under Section 302 IPC on 23.05.2019, in which the appellant pleaded not guilty and claimed to be tried. Thereafter, 17 prosecution witnesses and 1 defence witness were examined by the Trial Court. The examination of the appellant under Section 313 CrPC was done on 30.03.2020. The learned Trial Court having coming to a finding that the appellant had murdered the deceased, the impugned Judgment and Order convicting and sentencing the appellant under Section 302 IPC was issued by the learned Trial Court on 11.11.2022.

6. Being aggrieved by the conviction and sentence, the appellant has made a challenge to the impugned Judgment and Order in this appeal.

7. The basic ground of challenge by the appellant to his conviction and sentence, is that the death of the deceased had occurred due to a sudden quarrel that had taken place between the appellant and the deceased. As death had occurred due to a grave and sudden provocation, the conviction of the appellant under Section 302 IPC was not sustainable and the appellant should have been convicted under Section 304 Part-II IPC. The appellant's counsel accordingly submits that the conviction and sentence of the appellant should be altered to Section 304 Part-II IPC. In this regard, he relies upon the judgment of the Supreme Court in the case of ***Nawaz Vs. State represented by Inspector of Police***, reported in ***(2019) 3 SCC 517***.

8. On the other hand, the learned Public Prosecutor, Mizoram submits that the appellant had gone to the place of occurrence, i.e. the residence of PW-8, where a Meeting of the Village Level Implementing Committee was being held. The appellant, who was not a member of the Committee had brought a dao into the residence of PW-8 and had subsequently struck the deceased with the dao which led to his death. The appellant thereafter ran away from the place of occurrence and surrendered before the police. The learned PP further submits that the appellant made a confession under Section 164 CrPC before a Judicial Magistrate, admitting the fact that he had killed the deceased.

9. The learned PP also submits that as there were several eye witnesses to the act of the appellant hitting the deceased with a dao and as the deceased had died due to the injury caused by the dao, the fact that the appellant had

killed the deceased was not in dispute. The learned PP also submits that the evidence nowhere shows that there was any grave and sudden provocation on the part of the deceased, to enable the appellant to pray for alteration of the charge from Section 302 IPC to Section 304 Part-II IPC. The learned PP accordingly submits that the appeal should be dismissed.

10. We have heard the learned counsels for the parties.

11. A perusal of the evidence of the eye-witnesses clearly shows that they had seen the act of the appellant having hit the deceased with a dao. The Medical Report, which is exhibited, is to the effect that the base of the skull of the deceased was broken by a sharp and heavy object. Further, the cervical spine alongwith the covering membranes of the deceased were completely cut off by a blunt and sharp object.

12. The detailed description of the injury on the deceased as per the Post Mortem Report is as follows:-

“Grievous injury at the level of just below the left (anterior to posterior) seen which cut all the structures along with the vitals. Namely; common carotid artery, cervical spine (Respiratory centre) and all the structures involved.”

In the opinion of the Medical Officer, the cause of death was due to complete dissection of the cervical spine and left common carotid artery, along with all the structures involved.

13. PW Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 15 have stated that they saw the accused hitting the appellant with a dao from the back. Though the

appellant's counsel has stated that the manner in which the deceased was hit by the appellant was not clear, in as much as, in the cross examination some of the witnesses have said that the appellant had hit the deceased from the front side instead of the back side, the fact that the appellant had killed the deceased with a dao was proved by the eye witnesses mentioned above.

14. In the case of ***Shahaja alias Shahajan Ismail Mohd. Shaikh Vs. State of Maharashtra***, reported in ***2022 SCC OnLine SC 883***, the Supreme Court has held as extracted hereinbelow-

“27. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

- IV. *Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.*
- V. *Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.*
- VI. *By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.*
- VII. *Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.*
- VIII. *The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.*
- IX. *By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.*
- X. *In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.*
- XI. *Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.*

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."

15. On considering the principles that have evolved for appreciation of ocular evidence in a criminal case and which have been cited above, we are of the view that the fact that the appellant had hit the deceased with a dao cannot be denied. The power of observation and accuracy of every small detail might be different and in that view of the matter, just because some of the prosecution witnesses have in their cross-examination stated that the appellant hit the deceased with a dao from the front side does not mean that minor discrepancies with regard to whether the deceased was hit from the front or the back would not change the fact that death was caused due to the deceased being hit by a dao by the appellant.

16. In his examination under Section 313 CrPC, the appellant stated that he did not hit the deceased with a dao, but admitted that he ran away from the place of occurrence due to being afraid, as there was an injury noticed by him on the deceased.

17. It is also admitted by the appellant in his examination under Section 313 CrPC that he approached the police and surrendered before the Police. He had also stated that he had made a confessional statement before the Judicial Officer, Mamit District due to being threatened.

18. In his confessional statement made under Section 164 CrPC, which was exhibited as Exhibit P-10, the appellant had admitted to carrying the dao when he went to the place of occurrence. The reason given by the appellant for carrying a dao to the place of occurrence, was that he had gone to collect bamboo for which a dao was needed to cut the bamboo. He had also admitted to hitting the deceased with a dao once in his confessional statement.

19. As can be seen from the above facts, the appellant was carrying a dao at the place of occurrence and he had struck the deceased with the dao, which was seen by the PWs, as the Village Implementing Committee Meeting comprising of persons was being held at the place. As such, we do not find any ground to interfere with the finding of the learned Trial Court that the appellant had hit the deceased with a dao, which led to the death of the deceased.

20. The only issue left to be decided is whether the appellant has made out a case for altering the charge from Section 302 IPC to Section 304 Part-II IPC, due to any grave and sudden provocation that is alleged to have been made by the deceased against the appellant.

21. Section 300, Section 302 and Section 304 IPC provides as follows :

“Section 302 - *Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.*

Section 300 - *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—

2ndly.—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—

3rdly.—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—

4thly.—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.

Section 304 - *Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;*

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

22. There are two grounds of culpable homicide, (i) culpable homicide amounting to murder, which is covered by Section 300 and 302 of the IPC and culpable homicide not amounting to murder which is covered by Section 300 of IPC, provided they come within the Exceptions provided therein. If the act by which the death is caused with the intention of causing death, the said act would come within Section 304 Part-I of the IPC. However, if the act is done with the knowledge that is likely to cause death, but without any intention to

cause death, or to cause such bodily injury as is likely to cause death, the aid act come within Section 304 Part-II of the IPC.

23. In terms of Section 300 IPC, culpable homicide is not murder if death is caused under 5 Exceptions provided under Section 300 IPC, which are as follows-

*“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 defence.

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

Exception 2.—Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence 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 defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

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's having taken undue advantage or acted in a cruel or unusual manner.

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.”

24. In the case of ***Pulicherla Nagaraju vs. State of A.P.*** reported in ***(2006) 11 SCC 444***, the Supreme Court has held that the intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances :

- (i) nature of the weapon used;
- (ii) whether the weapon was carried by the accused or was picked up from the spot;
- (iii) whether the blow is aimed at a vital part of the body;
- (iv) the amount of force employed in causing injury;
- (v) whether the act was in the course of sudden quarrel or sudden fight or free-for-all fight;
- (vi) whether the incident occurs by chance or whether there was any premeditation;
- (vii) whether there was any prior enmity or whether the deceased was a stranger;
- (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;
- (ix) whether it was in the heat of passion;
- (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;
- (xi) whether the accused dealt a single blow or several blows.

25. The Supreme Court in the above case of ***Pulicherla Nagaraju (supra)*** further held that the Court should proceed to decide the pivotal question of intention, with care and caution as that would decide whether the

case falls under [Section 302](#) or 304 Part I or 304 Part II. It further held that there may be no intention and there may be no pre-meditation and there may not even be criminality. At the other end of the spectrum, the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the Courts to ensure that the cases of murder punishable under [section 302](#), are not converted into offences punishable under [section 304](#) Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under [section 302](#).

26. In the case of ***Singapagu Anjaiah vs. State of A.P.*** reported in ***(2010) 9 SCC 799***, the Supreme Court has held that as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the accused and the nature of the injuries caused.

27. In the case of ***Ashokkumar Magabhai Vankar vs. State of Gujarat*** reported in ***(2011) 10 SCC 604***, the Supreme Court has held that injuries sustained by the deceased not only exhibits intention of the accused in causing death of the victim, but also knowledge of the accused in that regard. In the said case, the accused had used a wooden pestle for hitting the head of the deceased once, which resulted in the head of the deceased being broken into pieces.

28. In the case of ***Nawaz (supra)***, the Supreme Court found that after hearing the deceased call the accused no. 1 and her daughter prostitutes, the accused no.2 suddenly slapped the cheek of the deceased which resulted in the deceased falling down. Thereafter the deceased was throttled to death within a fraction of a minute. The Supreme Court held that the deceased provoked the

accused by uttering the word prostitute and that no lady would like to hear such a word from her husband. More importantly, she would not be ready to hear such a word against her daughter. The Supreme Court thus held that the incident was a result of a sudden and grave provocation by the deceased.

29. In the present case, the appellant was examined as Defence Witness No.1, wherein he stated that as his father-in-law had collected 30 bundles of bamboos at the river bank, he was to carry those bamboos upto the main road. As he was going to do work, he was carrying his dao. Before reaching his place of work, he thought of asking the Village Council President (in short 'VCP') to allow him to withdraw his father's passbook and signature which was with the Village Council, so that he would be able to withdraw the NREGS wages directly in future. This was done to stop the Village Council President from deducting his father's NREGs wages without their consent. He heard the voice of the Village Council President in the house of the Secretary and entered the house. He asked permission to raise some questions about payment of NREGS wages and asked the Village Council President whether it was possible to withdraw his father's passbook and signature, as the same was in the custody of the Village Council. However, the Village Council President told the appellant rudely that though the appellant was an educated man, he could not do anything, as the deceased was a Village Council President and from the ruling party, the appellant could not do anything that he wished. Thereafter, the appellant told the VCP that NREGS money was their family money and they could not deduct wages as they liked. The Village Council President then raised his voice in anger against the appellant. The appellant being angry told the Village Council President that he would slash him. The Village Council President then shouted at the appellant several times, saying that if he wanted to slash him, to slash him.

As the Village Council President could not restrain himself, the appellant approached him with the dao. However before he could hit the deceased somebody snatched the dao from him. The appellant thereafter ran away as he saw the deceased victim with an injury. The appellant was subsequently informed by a Village Council member to surrender before the police and to tell them that he had taken the life of the deceased. The appellant thereafter surrendered before the police and confessed that he had killed the VCP.

30. As can be seen from the evidence given by numerous eye-witness, which has been stated in the foregoing paragraphs, the appellant had apparently struck the deceased from behind with a dao, which resulted in all the structures and vitals along the cervical spine of the deceased being cut with the dao. The appellant had used the dao on a vital part of the body of the deceased with such force that the spinal cord of the deceased had been cut.

31. In view of the intensity of blow and the injury on a vital part of the body, it can be held that there was an intention on the part of the appellant to cause the death of the deceased, as there was a combination of a few circumstances enumerated by the Supreme Court in the case of ***Pulicherla Nagaraju (supra)***. However, to see whether the act of the appellant comes within the Exception No.1 provided under Section 300 IPC, we would have to see whether there was any grave and sudden provocation on the part of the deceased, due to which the appellant lost his power of self control and caused the death of the deceased.

32. The evidence given by the appellant as DW-1, shows the sequence of events which led to the injury caused to the deceased, is similar to what has been stated by the appellant in his confessional statement. The appellant had

wanted the return of his father's passbook, besides requiring the VCP not to withdraw any wages from his father's account. However, the VCP had mocked the appellant saying that the deceased was the VCP of the ruling party and the appellant could not do anything against him. Thereafter there were voices raised in anger which led to the appellant making a threat to the VCP stating that "though you are a VCP, I can slash you off". The VCP then shouted back saying that "if you can slash me, slash me" several times. The appellant then hit the VCP with the dao once from the back, which led to his death.

33. The Exception-I to the Section 300 IPC provides that 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 defence.

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

34. The evidence adduced by the witnesses shows that the appellant was unhappy with the fact that the Village Council President had been deducting the pay of the appellant's father without the consent of the appellant's family. It can also be seen that the VCP was unperturbed by the request of the appellant to return the appellant's father's pass book. The VCP had also mocked the

appellant by stating that as he was the Village Council President belonging to the ruling party, the appellant could not do anything against him. Thus, it can be said that a provocation had initially been made by the VCP with his behavior with the appellant. However, the same does not take away the fact that the appellant had also provoked the deceased VCP by saying "Though you are a VCP, I can slash you off."

35. As can be seen from the Exception 1 to Section 300 IPC, culpable homicide is not murder, if grave and sudden provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. In present case, it appears that though the appellant had provoked the VCP by stating that he could slash him, it cannot be denied that the deceased VCP had mocked and provoked the appellant, by saying that the appellant could not do anything to him, as he was the VCP of the ruling party. The fact that the wages of the appellant's father was being deducted by the VCP and the Passbook of the appellant's father was being kept with the Village Council and not being returned back, despite the request made by the appellant, shows that the actions of the Village Council, especially the Village Council President, was palpably wrong and illegal. It cannot be unexpected of a poor person to be at his wits end when provoked by the nonchalant attitude of the VCP, especially when the VCP was in the wrong. The wrongful act on the part of the Village Council and the VCP, in holding the Passbook of the appellant's father and apparently making deductions from the wages of the appellant's father, without the permission of the family members, is per se illegal and not justifiable. On considering all the above facts, we are of the view that the appellant has made out a case of being deprived of the power of self control, by the grave and sudden provocation on the part of the VCP, in not only

refusing to return the passbook of the appellant's father, but also in mocking him, by saying that the appellant could do nothing to him. We are accordingly of the view that though the case of the appellant comes within one or more of the clauses of Section 300 IPC, but it also falls within Exception-I of Section 300 IPC. We are accordingly of the view that the appellant could not have been convicted for murder under Section 302 IPC, as this case comes within the provisions of Section 304 Part I IPC, as there was an intention to kill on the part of the appellant.

36. In view of the reasons stated above, the charge under Section 302 IPC is altered to Section 304 Part I IPC. The appellant is accordingly convicted under Section 304 Part I IPC and he is sentenced to undergo rigorous imprisonment for a period of 10(ten) years with a fine of Rs.5,000/- and in default of payment of fine, the appellant is to suffer imprisonment for a further period of 3(three) months. The period already undergone by the petitioner as an under trial prisoner and as a convict in terms of the impugned judgment and order dated 11.11.2022 shall be set off. Consequently, the impugned judgment and order dated 11.11.2022 and the sentence awarded by the learned trial Court are accordingly modified to the extent indicated above.

37. The appeal is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant