

GAHC030000872023



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

Case No. : CRL.A(J)/4/2023

Sh. Singngaihsuta
Champhai Vengthar, Champhai. Mizoram

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr T Lalzekima (Amicus Curiae)

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

Linked Case : CRL.A(J)/5/2023

Sh. Pausawmthanga
Champhai Vengthar
Champhai
Mizoram

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr F Lalenglina (Amicus Curiae)

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

Mizoram

BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date of hearing : 05.12.2023
Date of Judgment : 30.01.2024

JUDGMENT & ORDER (CAV)

(Marli Vankung, J)

Heard Mr. T. Lalzekima, learned Amicus Curiae for the appellant Singngaihsuta in CrI.A. No. 4/2023(J) and Mr. F. Lalenglina, learned Amicus Curiae for the appellant Pausawmthanga in CrI.A. No. 5/2023(J) along with Mrs. Linda L. Fambawl, learned Additional Public Prosecutor for the State respondent. Both the criminal appeals are for setting aside the Judgment and order dated 16.06.2020 and the sentence order dated 19.06.2020 passed by the learned Addl. Sessions Judge, Champhai in Sessions case No. 88 of 2016 A/o CrI. TR No. 818 of 2016 wherein the appellant Singngaihsuta in CrI.A No. 4/2022(J) was convicted under sections 302/354A/436/506IPC and the appellant Pausawmthanga in CrI.A No.5/2022(J) was convicted under sections 302/436/34 IPC. Both the appellants were sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 800/- each, in default S.I for a period of 7 months. Since both the criminal appeals are arising out of the same Judgment and order they are considered together.

[2.] Brief facts of the case is that on 30.11.2015 at around 6:00 AM, Mrs.

Haulamchingi, resident of Vengthar, Champhai, lodged a written First Information Report (FIR in short) with Champhai Police Station, to the effect that on Dt.29.11.2015at around 1:11 AM, while herself and her family members were asleep, their house was set on fire and engulfed in flames. Her daughter, namely Cindy Lunmuanzovi, aged 2 years, her son Alex Ngozazuan, aged 5 years of and her mother Mrs. Ngongaihluni, aged 65 years were burned to death instantaneously. The house and all their properties were also burnt to ashes. On the submission of the FIR, the Champhai Police registered a case vide CPI-PS Case No.188/2015 dated 30.11.2015 under Sections 302/436 IPC against Mr. Singngaihsuta (57) and his son Mr. Pausawmthanga (28), both residents of Vengthar, Champhai, Champhai District, Mizoram.

[3.] The Case I.O on investigation, found *prima facie* case and submitted the charge sheet against both the accused appellants under Sections 302/436/34 IPC. Thereafter, the learned trial court framed formal charge under Section 302/436/34 IPC against both the accused appellants. The charges were read over and explained to them in Mizo language they both well understood to which they pleaded not guilty and claimed to be tried.

[4.] The prosecution cited as many as 14 witnesses. All the prosecution witnesses were examined, except PW No. 12, the medical doctor who conducted post mortem examination over the dead body of one of the victims/deceased, due his demise before deposing in the court. The case of the accused persons on examination

u/s 313 Cr.P.C is of total denial. Thereafter, two defense witnesses were examined. The learned trial court after considering the evidence adduced and after hearing both the parties convicted the appellant, Mr. Singngaihsuta in CrI.A No. 4/2022(J) under Section 302/354A/436/506/34 IPC and convicted the appellant Mr. Pausawmthanga in CrI.A No. 5/2022(J) under Section 302/436/34 IPC sentencing both of them to undergo Rigorous imprisonment for life and to pay a fine of Rs.8000/- each, in default S.I. for 7 months. Aggrieved, the appellants have approached this court for setting aside the Judgment and order of the learned trial court.

[5.] Mr. T. Lalzekima, learned Amicus Curiae appearing for the appellant Singngaihsuta in CrI. Appl. No.4/2023 (J), submits that at the time of consideration of charge on 26.06.2016, no charge under Section 354A/506 IPC was framed and he was not asked whether or not he pleaded guilty of the above charges and therefore, the learned Trial Court had erred in convicting the appellant under Section 354A/506 IPC when no charge was framed under the said sections of law and there was no such evidence adduced against the appellant .

[6.] The learned Amicus Curiae further submits that when the appellant Singngaihsuta was examined under section 313 Cr.P.C., the appellant had denied his involvement in burning the house of the informant and he also denied that he said that he would inherit all the properties left behind by his deceased son Thangdeihunga and denied making any proposal to the informant as claimed by her. The appellant explained that he had purchased petrol as claimed, but that it was for

his Auto Rickshaw and stated that on that particular night he did not venture out from his house.

[7.] The learned Amicus Curiae also submits that the prosecution witnesses have failed to produce any evidence against the appellant who was innocent of committing the offence under Section 302/436/34 IPC. He submits that PW No. 3, who is the seizure witness in his cross examination, had stated that even though 5 liters of petrol was seized from the shop, it does not show whether or not, the petrol was used for burning the house. The learned counsel also submits that the evidence of PW No. 7 does not in any way connect the petrol bought by the appellant for his Auto Rickshaw, to the burning of house of the informant. He further submits that if 5 litres of petrol was seized and the appellant had purchased 5 litres of petrol as stated by PW No. 7, then this proves that no petrol was used for burning of the house since the seized petrol is found to be intact. The learned counsel submits that the evidence of PW No. 4 shows that he had to pull open the door and therefore the door could not have been locked from outside as claimed by the informant.

[8.] The learned Amicus Curiae for the appellant Singngaihsuta further submits that the informant herself has only stated that she was suspicious of the appellant, however, there is no eye witness who saw the appellant commit the alleged offence. It was also admitted by the case I/O that there is no direct witness in the case. The learned counsel submits that the case of the prosecution is only based on circumstantial evidence and there is no chain of events to show that the offence was

committed by the appellant. In support of his submission, he has cited the following authorities, in the case of **Ghulam Hassan Beigh Vs. Mohammad Magbool Magrey & Ors.**, reported in **(2022) 12 SCC 657 paras 15, 17 & 18**, **Shambu Ram Yadav Vs. Hanuman Das Khatry**, reported in **(2001) 6 SCC 1 paras 38.6, 38.7**, **Gobind Singhal & Ors. Vs. State of Assam & Anr.**, reported in **2022 2 GLT 790 para 2** and **Rajiv Singh Vs. State of Bihar & Anr.**, reported in **(2015) 16 SCC 369 paras 67, 68 and 69.**

[9.] Mr. F. Lalengliana, learned Amicus Curiae appearing for the appellant, Pausawmthanga in Crl.A. No. 5/2023(J) submits that the appellant has been implicated in the case merely on the grounds that the informant was suspicious of him, however, there is no any evidence against the appellant to confirm the suspicion. The learned Amicus Curiae submits that, in the cross examination of PW No. 14 who is the case I.O, he has deposed that no evidence was collected from the appellant Pausawmthanga who was fully intoxicated that night and he hardly knew of the incident. In his cross examination PW No. 14 admitted that he did not find any evidence against the appellant.

[10.] The learned Amicus Curiae also submits that the appellant in his examination under section 313 Cr.P.C has denied any knowledge of the incident and has stated that on the night of the incident, he was in an intoxicated state and had slept-over at PW 9/Khenthangvunga's place, which is confirmed by the deposition of PW 9/Khenthangvunga. He submits that there is no eye witness to the incident and

there is no evidence that leads or connects the appellant Pausawmthanga to the burning of the house. The learned Amicus Curiae thus submits that the conviction the appellant under sections 302/436/34 IPC by the learned trial court cannot be sustained in the absence of any incriminating evidence against the appellant. In support of his submissions, he relied on the decision of the Apex Court in **Mohibur Rahman Vs. State of Assam**, reported in **(2002) 6 SCC 715**.

[11.] Mrs. Linda L. Fambawl, the learned Addl. Public Prosecutor on the other hand, submits that the FIR and the prosecution evidence shows that there is a property dispute in the family. Both the accused/appellants are the in-laws of the informant and both have a motive for burning down the house since the dispute is with regards to the ancestral house and informant had proved that there was a reason to suspect the appellants. The learned Addl. Public Prosecutor submits that the prosecution witnesses have adduced sufficient evidence to prove the guilt of the appellants. She submits that evidence of PW No. 1 shows that the door was locked from outside when the house caught fire, since they could not pull open the door from inside. PW No. 3 is the seizure witness of the seized 5 litres of petrol left in the house of the daughter of the appellant Mr. Singngaihsuta on 28.11.2015. The evidence of PW No. 3 proves that the house was burnt due to petrol. PW No. 7 has clearly stated that 5 litres of petrol was bought by the accused No. 1. PW No. 14 has stated that the accused bought 2 (two) gallons of petrol and he had used 1(one) gallon to burn the house, the accused made a disclosure statement before PW No. 14 which proved the

guilt of the accused.

[12.] The learned Addl. Public Prosecutor further submits that from the evidence of PW No.1, it can be seen that the whole incident was pre-planned and it was the two appellants who informed the others of the fire. The learned Addl. Public Prosecutor submits that even though all the evidence is a circumstantial, a disclosure statement under Section 27 of Indian Evidence Act is made by the appellant Singngaihsuta which led to the discovery of the 5 litres of petrol used to burn the house and the chain of circumstances established is complete to prove the guilt of the accused persons/appellants. In support of her submissions, she has cited **Jafarudheen & Ors. Vs. State of Kerala**, reported in **(2007) 9 SCC 315 paras 12 & 13.**

[13.] We have heard and considered the submissions made by the learned Amicus Curiae for both the appellants and the learned Addl. Public Prosecutor. We have also scrutinized the evidence and documents on record.

[14.] The evidence adduced before the learned trial court in brief is as follows:

PW-No. 1, Haulamchingi is the informant. On 25.07.2018, she deposed that the appellant Singngaihsuta (in CrI.A No. 4/2022(J) is her father-in-law and accused No. 2 the appellant, Pausawmthanga (in CrI.A No. 5/2022(J) is her brother-in-law. PW No. 1 and her husband lived separately at Champhai Vengthar in their own Assam type building. They have six (6) children including her new baby girl. Her husband passed away on 18.10.2015, and she gave birth to their new baby girl on 25.11.2015. On

29.11.2015, she organised a dinner party to name her new born baby and she invited her close relatives. Her father-in-law Singngaihsuta also came over to their house to have dinner but her brother-in-law Pausawmthanga did not come. After her relatives left, they slept at around 1:10 Am, when she was awakened by her mother who told her that the house was on fire. She saw that their house was on fire and there was smoke all over their house, she shouted for help as she rushed towards their main door but their main door was locked from outside. After sometime some people opened the door from outside and they ran out. Her mother Gongngaihluni went inside their burning house again trying to save the children but they were unable to put out the fire till the Fire Department arrived and finally extinguished the fire. Her mother Gongngaihluni (65 years), her daughter Cindy Lunmuanzovi (2 years) and her nephew Alex Ngozuazuan (5 years) died on the spot. Their house and all their belongings were also burnt down. She submitted a written FIR to the O.C Champhai P.S On 30.11.2015, against her father-in-law Singngaihsuta, and her brother-in-law Pausawmthanga, as she was suspicion that they had burnt down their house and she requested the O.C to take necessary action against them. Ext. P-1 is the FIR submitted by her, and Ext.P-1(a) is her signature. On cross-examination, she admitted that she had no other reason to suspect the accused persons except for inheritance of her deceased husband's properties.

[15.] The deposition of PW No. 1 was again taken on 17.05.2019, wherein she deposed that one night while her husband was away from home, she was lying on her

bed inside her bed room. The accused No.1/appellant Singneihsuta, who is the father in law entered her bed room and invited her to have sex with him saying that she should sleep with him at least once as she has no son and that the baby she was carrying would become theirs with all the household goods and the house would also be theirs. On hearing such indecent and vulgar sexual invitation and harassment, she was extremely enraged and lashed out at him saying that she would tell her husband. Because of the blunt refusal, the accused No. 1/appellant got angry and threatened her by saying that she would regret such refusal. PW No. 1, thereafter, deposed that her husband Thangdeih tunga was admitted at Rihkhawdar Hospital on 18.10.2015 and he died due to abdominal pain. She came to know that on the night her husband died her father-in-law Singngaihsuta/accused No.1 declared in front of her visitors that after the death of his son Thangdeih tunga, the house and all the house hold goods including herself belonged to him. She stated that the fact that her father-in-law was claiming all the properties belonging to her late husband was known to many of the visitors. She also deposed that while Pausawmthanga/accused No.2 was living with them, one day he stole one Dekchi and sold it for purchasing addictive drugs since he was addicted to drugs. When they came to know of the stolen Dekchi she had informed her husband, who in turn reported the matter to the Police. Pausawmthanga got infuriated and frustrated and he had told her to get out of the house which did not belong to her, he had in fact assaulted her by giving her a fist blow on her face. She had shouted for help and a family member Pu Zama had intervened. The matter was

reported to Champhai Police who arrested Pausawmthanga. During cross-examination she admitted that neither of the 2 (two) accused persons had ever threatened to burn down the house. She admitted that she did not see anyone or anything suspicious around the time of the fire. However, some of the neighbours later told them that they had seen her father in law in the neighbouring area of their house. She admitted that she did not see Pausawmthanga around at the time of the fire.

[16.] PW No. 3, Lalrongheta deposed that on 02.12.2015 at @ 10:30 AM, while he was at Vengthar, Champhai, the Police personnel called him over to the Tea-Stall which belonged to Ningdeihmani, where the Police personnel had seized 5 litres of petrol kept in white plastic box container. The Police personnel informed him that the said S.A. was the left over, used by Singngaihsuta and his son Pausawmthanga for burning down the house of Haulamchhingi. He put his signature as a seizure witness on the seizure memo. Ext. P-2 is the seizure memo of 5 litres of petrol kept in white plastic box container. Ext. P-2 (a) is his signature. Ext. M-1 is the S.A. i.e., 5 litres of petrol kept in a white plastic box container.

On cross examination he admitted that he did not know for certain that the S.A. is the left over petrol from the petrol used to burn the house of Haulamchhingi. And he also did not know whether petrol was used for burning the house of Haulamchhingi. He admitted that he also do not know who put the petrol in the Tea-Stall as he did not see the same being placed there.

[17.] PW No. 4, Lalrozama Kawlni deposed that he knew the two accused

persons who are his neighbours. On 29.10.2015 night, he could not sleep early and at around 01:10 AM, he heard some sound of dogs barking. When he got up and looked out of the window, he saw the house belonging to Thangdeihitunga(L) which was opposite to his house burning. He ran out of the house and informed his neighbours about the incident. When he reached the house, he heard someone crying inside the house and banging the door from inside. He then pulled open the door. Five people were saved while three people died in the fire. On Cross examination he denied that he was deposing falsely.

[18.] PW-6 is a witness who saw the house of Thangdeihitunga burn down.

[19.] PW No. 7, Lalpanliani, is the shopkeeper who deposed that she knew the accused persons Singngaihsuta & Pausawmthanga, they were from the same locality, Champhai Vengthar. She ran a small shop selling some groceries and petrol. On the evening of 28.11.2015, while she was in her shop, Singngaihsuta came to her shop for the first time carrying an empty 5 litres gallon and he brought 5 liters of petrol that day. His Auto-Rickshaw driver and his son-in-law used to buy 1 to 2 liters for their Auto-Rickshaw. The next day at midnight, she heard from the information microphone that Thangdeihitunga's (late) house was on fire.

During Cross examination she admitted that she could not say for sure that petrol which was bought from her shop was used for setting fire at Thangdeihitunga's house and also did not know, if petrol or any other materials was used for setting fire to Thangdeihitunga's house. She admitted that she did not see both the accused

setting fire at Thangdeihtunga's house.

[20.] PW No. 9, Khenthangvunga, a Casual Labourer deposed that he knew the accused persons Singngaihsuta & Pausawmthanga, they are from the same locality Champhai Vengthar, and Pausawmthanga is one of his friends. Pausawmthanga used to visit him at his house and he also used to sleep once in his house. On 29.11.2015 at @ 3:00 Pm Pausawmthanga came over to his house, he was a little bit drunk and after dinner, Pausawmthanga and PW-9 went towards Roman Pond. He gave Pausawmthanga Rs. 100/- to buy No. 4 (Heroin) for him. That night Pausawmthanga came to his house and slept over at his place. While he was asleep at @ 12:00 to 1:00 Am, Pausawmthanga woke him up and told him that his brother's house was on fire. However, Pausawmthanga did not go over to the house saying that they would suspect him if he went there so it's better not to go. PW-No. 9 also went back to sleep and the next morning, he learnt that the bodies of those who died in the fire were taken to the house of Thangzangova who is the father of the informant/Haulamchhingi, which is not far from his house. During cross examination PW No. 9 stated that the appellant Pausawmthanga came to his house between 8-9 P.M. on 29.11.2015 and slept in his house. He admitted that he did not know whether the appellant had left his house or not on the night of the incident. He admitted that he did not know who had set fire to Thangdeihtunga's house. He admitted that as far as he knows the appellant Pausawmthanga slept in his house for the whole night.

[21.] PW No. 11, Dr. Janet Zoramnghaki is the doctor who conducted the post

mortem of the deceased Agongaihhluni and stated that the cause of death was due to the burns sustained by her.

[22.] PW No. 13, Dr. Lalramengi is the medical officer who conducted post mortem of the burned victim, Cindy Lalmuanzovi, 2 years and confirmed that her death was due to the burns sustained by her.

[23.] PW No. 14, Lalsangliana, S.I. of Police deposed that on 30.11.2015, the informant Haulamchingi R/o Champhai Vengthar submitted First information report to Champhai Police station. The case was endorsed to him for investigation. He visited the place of incident at Vengthar, Champhai. He forwarded the three deceased persons to District Hospital Champhai for post mortem examination. Before sending the dead bodies to District Hospital Champhai, he conducted inquest over the dead bodies. His inquest over the dead bodies of Ngongaihhluni, Cindy Luanmuanzovi and Alex Ngozualzuan revealed that the deceased persons died due to severe burns.

[24.] PW No. 14 deposed that he arrested Pausawmthang on 2.12.2015 and Singneihsuta on 6.12.2015. He interrogated them at the police station. Accused Pausawmthanga stated before him that his brother Thangdeihtunga (late), husband of the present informant died in the month of October 2015. After the death of his brother, his father Singneihsuta instigated him to eliminate his brother's wife and to distribute all the properties between him and his father. All the properties of the deceased Thangdeihtunga were in his name, and as he had died all the properties would go to the hands of his wife Haulangchingi. As a result, they with the help of his

father plotted against the informant to eliminate her and to get all her properties.

[25.] PW No. 14 had also deposed that the accused Singneihsuta also stated to him that his son Thangdeihtunga died in the month of October 2015 and he was the owner of all the properties including the land on which their house was built. That on the death of his son, Thangdeihtunga (Husband of informant) his wife (informant) appeared to be the heir of all the properties left behind by her late husband, therefore he started plotting to eliminate his daughter-in-law (informant), so that all the properties left behind by his late son would come into his hands. He purchased two gallons of petrol and kept them inside residence/shop of his daughter Ningdeihmani who is also residing at the same locality, and on 30.11.2015 night the accused Singneihsuta went to the house of the informant with one gallon of petrol under the cover of darkness. By using the petrol he set the house on fire and as soon as the house was on fire he dashed off from the place. After this, he secretly returned to his residence. Soon a public announcement regarding the incident was made in the locality. On hearing this, he rushed to the place of incident so as to extend some help to the victim family. The accused Singneihsuta in his statement also stated that he used only one of the two gallons of petrol for the offence and he still left another one gallon inside his daughters' residence/shop. This statement gave him (PW14) some clue of evidence and led him to recovery of the remaining petrol gallon from the residence/shop of his daughter Ningdeihmani. So as per his investigation, the unused/remaining petrol gallon was one of the weapons of offence, which he

recovered on the basis of the statement made to him by the accused Singneihsuta. Lalsangliana (PW No. 14) then prepared a discloser statement as per section 27 of Indian Evidence Act and the same was a valuable piece of evidence to show the guilt of the accused. PW No. 14 further deposed that he examined the informant who stated to him that some years back, they were living in a joint family along with the present accused persons. In due course of time, there developed misunderstandings and differences among the family members, as a result of which she and her husband along with her mother and children started living in the separate house. After the death of her husband Thangdeihtunga her family organized a dinner for all the family members on 29.11.2015. Accused Singneihsuta also came to the dinner. However, at the time of his arrival, perhaps he was not cordially welcomed by her and as a result of which, she thought her father-in-law got angry, and caused the burning of their house. The informant had also stated that on the day the dinner was organized, the accused Singneihsuta (her father in law) said to her that he was so happy that his son Thangdeihtunga died, because after his death, he could have all the properties left behind by his late son. For this reason, the informant told him (PW No. 14) that she strongly suspected that Singneihsuta could be the one who set her house on fire and was responsible for death of her mother, daughter and son. Regarding the co- accused Pausawmthanga, Lalsangliana (PW No. 14) deposed that no piece of evidence was collected from Pausawmthanga who was fully in an intoxicated state on that particular night and could hardly know of the incident of the fire and death of the deceased

persons. After collecting whatever the evidences available from the statement of the accused and the informant and with recovery of weapon used for committing the offence, Lalsangliana (PW No. 14) found a case u/s 302/436/34 IPC against both the accused persons. He therefore submitted the chargesheet. PW No. 14 exhibited the arrest and property seizure memo, the disclosure statement and inquest report of the 3 (three) deceased persons.

[26.] During cross examination, PW No. 14 admitted that no finger print was found on the seized petrol gallon of the accused/appellant Singneihsuta, he also admitted that the spot verification did not provide him trail/clue to the case that caused the fired. He admitted that he had no direct witness in the case and that the statement of the accused and witnesses are the evidences, based on which he submitted his chargesheet. He further admitted that he did not find any evidence against the appellant Pausawmthanga. He admitted that at the time of the incident, the appellant Singneihsuta owned a Auto Rickshaw and that he did not know whether the Auto Rickshaw was occasionally placed under the custody of his daughter from where the remaining petrol was recovered as piece of evidence.

[27.] The examination of the appellant Singneihsuta in Crl. Appeal No.4 of 2023 (J) under 313 Cr.P.C.is reproduced herewith:

Q. (i). The evidence against you is that on 19.11.2015, at around 2 PM, you stated to the complainant that you will take over all the properties left behind by your late son namely Mr. Thangdeihtunga, husband of the complainant. Is it correct?

Ans:- I did not say such a thing.

Q.(ii). The evidence against you is that while your son Thangdeihitunga was away from home, you entered into the bedroom of your daughter-in-law/complainant. You invited her to have incestuous sexual intercourse. Is it correct?

Ans:- No. It is not correct.

Q. (iii).The evidence against you is that because of rejection to your sexual invitation, you threatened your daughter-in-law/complainant with dire consequences. Is it correct?

Ans:- No. It is not correct.

Q. (iv). The evidence against you is that you bought 2 gallons of petrol/combustible liquid and hid inside the shop of your daughter at Vengthar, Champhai in preparation to set the house of the complainant on fire. Is it correct?

Ans:- No. It is not correct.

Q. (v). The evidence against you is that with one gallon of petrol, you stealthily went to the house of the complainant and set the house on fire to eliminate all the family members. Is it correct?

Ans:- No. It is not correct.

Q. (vi).Do you have any other thing to tell this court?

Ans:- No. I have nothing more to say.

Examination of the appellant/accused No.2 Pausawmthanga in Criminal Appeal No.5 of 2023(J) is reproduced herewith.

Q. (i).The evidence against you is that while you were staying along with the family of

your sister-in-law/complainant, you had stole one aluminium deckchi/utensil and sold it for purchase of addictive drugs. Is it correct?

Ans:- No. It is not correct.

Q. (ii).The evidence against you is that you had once threatened your sister-in-law/complainant and strike on her forehead. Is it correct?

Ans:- No. It is not correct.

Q. (iii).The evidence against you is that you had helped your father in procuring the petrol in preparation for burning the house of your sister-in-law/complainant. Is it correct?

Ans:- No. It is not correct.

Q. (iv). The evidence against you is that even when you knew that the house of your sister-in-law was burning, you did not come to the place of incident to extend help to the family. Is it correct?

Ans:- No. It is not correct.

Q. (v). The evidence against you is that you were afraid of going to the place of incident because you were behind the incident. Is it correct?

Ans:-No. It is not correct.

Q. (vi). Do you have any other thing to tell this court?

Ans:- I have nothing more to say.

[28.] After the examination of the appellant under section 313 Cr.P.C., two defence witnesses deposed in the Court.

DW No. 1 Ningdeihmani is the daughter of the accused No.1/appellant Singneihsuta who deposed that on 29.01.2015 her elder brother's wife Haulamchingi,

organized a family feast which she had attended with her father and her 5 years old son. They returned home before 6:30 pm, after which she went out to meet her friends. She returned home only after 10 PM. When she reached home, her father and her son had already gone to bed. She stated that her father resided at Tlangnuam, however, he often spent the night with them. She slept on the couch and was awakened when her father woke up to a public announcement and said that the house of Ningdeihmani was on fire. Her father, the accused No.1/appellant Singneihsuta wore his clothes hurriedly and went towards the house that was on fire. She deposed that she did not think her father got up that night before the incident. Her father sells petrol from a shop next to hers and his stock was less. He left his can of about 5 litres of petrol to sell in her shop. She did not think her father had touched them after leaving them. She has the key to her shop and her father did not ask her for the key to open the shop. During cross examination, she admitted that she did not know the exact amount of petrol left by her father inside her shop and that the police seized the petrol that was left by her father. She admitted that she did not know if her father took any of the petrol that he had left in her shop.

[29.] DW No. 2 Khenthangvunga, Casual Labourer had also deposed as PW No. 9 but was not declared a hostile witness.

[30.] On perusal of the evidence adduced in the court, we find it appropriate to first consider the evidence adduced against the accused No.1/Singngaihsuta in CrI. Appl. No. 4/2023(J).

[31.] It is seen that though the appellant was convicted under section 354A/506/439/302/34 IPC, however, no charge was framed against the appellant Singneihsuta under Section 354A/506 IPC as per section 228 of the Criminal Procedure Code and there is no evidence adduced by the other prosecution witnesses to substantiate the allegation of the informant (PW1) against the appellant under sections 354A/506 IPC. The appellant in his examination under section 313 Cr.P.C has also denied the allegations under sections 354A/506 IPC. For the aforesaid reasons, we are of the considered view that the learned Trial Court had erred in convicting the appellant Singneihsuta, under Section 354A/506 IPC.

[32.] With regards to the conviction of the appellant Singneihsuta under Section 302/436/34 IPC, we have perused the prosecution evidence. From the evidence adduce by the prosecution witnesses, this Court finds that there are no eye witnesses in the instant case. The prosecution from the inquest report and the postmortem reports duly exhibited, has established that the death of Cindy Lunmuanzovi, aged 2 years, Alex Ngozazuan, aged 5, Mrs. Ngongaihluni was caused due to the burning down of the house of Mr. Thangdeihtunga (late), which is also an undisputed fact.

[33.] On analysis of the evidence adduce by the prosecution witnesses, we find that the complainant PW No. 1 has simply mentioned that she was suspicious that the house was burnt done by the accused No.1/appellant Singneihsuta and the co-accused Pausawmthanga. She was not an eyewitness nor did she see the appellants acting in a suspicious manner anywhere near the P.O. There can be no case against the accused

persons merely on the grounds of suspicion unless it is further substantiated by the prosecution evidence.

[34.] PW No. 3, who is the seizure witness, only stated that he had signed as his seizure witness when he was called by the police personnel to the Tea Stall belonging to Ningdeihmani, and he witnessed the 5 litres of petrol kept in white plastic container. In his cross examination, he has admitted that he does not know who had put the petrol in the Tea Shop and he does not know if the petrol was used for lighting the house of Haulamchingi. The evidence of PW No.3, does not implicate the instant appellant.

[35.] PW No. 4 does not implicate the appellant, he stated that he heard someone crying inside the house which was on fire and that he had pulled open the door.

[36.] The evidence of PW No. 7 is to the extent that the appellant Singneihsuta had bought 5 litres of petrol from her shop on the eve of 28.11.2015. He does not know whether petrol or any other material was used for setting a fire to the house.

[37.] PW No. 9 evidence is only to the extent that on 29.11.2015, the accused No. 2 Pausawmthanga was in an intoxicating state and he had spent the night in his house. He had also deposed as a defence witness but was not declared a hostile.

[38.] PW No. 14 is the case I/O, who found prima facie case against the accused No.1/appellant Singneihsuta which was however, based on his interrogation and the statement made under Section 161 Cr.P.C. by the appellant Singneihsuta. The law is

very clear with regards to the valued of the statements recorded under Section 161 Cr.P.C and the Apex Court in a number of judgments have reiterated that statements recorded under section 161 Cr.P.C are not evidence for prosecution. They can be used by the defence for contradicting the prosecution witnesses and the prosecution can cross examined the witnesses by using his statements recorded under 161 Cr.P.C. to establish the contradiction.

With regards to the disclosure statement under Section 27 of the Indian Evidence Act, which led PW No. 14 to the seizure of 5 litres of petrol from the shop of D.W. No.1, we find that there is no evidence to link the 5 litres of petrol to the burning of the house by the appellant Singngaihsuta. Moreover, PW No. 7 also stated that the appellant Singngaihsuta owned an auto-rickshaw and he had bought 5 litres of petrol from her shop, and it appears that the 5 litres bought was unused. Thus, we find that the prosecution has failed to substantiate their claim that the seized 5 litres of petrol was used for the burning down of the house.

The Apex Court as recently as on 30th October, 2023, in **Birbal Nath Vs. State of Rajasthan** in CRIMINAL APPEAL NO. 1587 OF 2008, held that *"the statement given to police during investigation under Section 161 cannot be read as an "evidence" as it has a limited applicability in a Court of Law as prescribed under Section 162 of the Code of Criminal Procedure."*

The Apex Court in **Rajiv Singh Vs. State of Bihar & Anr. (supra)** also held that :

“66. It is well-entrenched principle of criminal jurisprudence that a charge can be said to be proved only when there is certain and explicit evidence to warrant legal conviction and that no person can be held guilty on pure moral conviction. Howsoever grave the alleged offence may be, otherwise stirring the conscience of any court, suspicion alone cannot take the place of legal proof. The well-established canon of criminal justice is “fouler the crime higher the proof”. In unmistakable terms, it is the mandate of law that the prosecution in order to succeed in a criminal trial, has to prove the charge(s) beyond all reasonable doubt.

67. The above enunciations resonated umpteen times to be reiterated in Raj Kumar Singh v. State of Rajasthan [Raj Kumar Singh v. State of Rajasthan, (2013) 5 SCC 722: (2013) 4 SCC (Cri) 812] as succinctly summarised in para 21 as hereunder : (SCC pp. 731-32)”21. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that ‘may be’ proved and ‘will be proved’. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between ‘may be’ and ‘must be’ is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between ‘may be’ true and ‘must be’ true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between ‘may be’ true and ‘must be’ true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and

comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.”

The Apex court in **Shailendra Rajdev Pasvan Vs. State of Gujarat**, reported in **(2020) 14 SCC 750** also held that :

“17. It is well settled by now that in a case based on circumstantial evidence the courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.”

[39.] In view of the above decision of the Apex Court and the findings narrated above, we find that prosecution has failed to prove beyond reasonable doubt the guilt of the appellant/Singneihsuta under Section 302/34 IPC for causing the fire which burnt down the house of Thangdeihtunga (late) and which caused the death of the afore mentioned 3 (three) deceased persons.

In Crl. Appl. No. 5/2023(J)

[40.] We have also considered and analyzed the evidence adduced by the prosecution witnesses against the appellant Pausawmthanga, in Crl. Appl. No.

5/2023(J). We find that in the statement adduced by PW No.1, she also suspected the appellant Pausawmthanga's involvement in causing the fire to their house. As already noted, conviction cannot be based merely on suspicion. PW No. 3, who is the seizure witness does not implicate the appellant Pausawmthanga. PW No. 4 has also not made any mention of the appellant Pausawmthanga, PW No. 7 has also not mentioned anything against the appellant Pausawmthanga. PW No. 9 has also deposed as DW No. 2 in favour of the appellant. PW No. 14 is the case I/O, who in his deposition has admitted that he does not have any evidence against the appellant/Pausawmthanga. Thus, there is no incriminating evidence against the appellant Pausawmthanga is deposed by the other prosecution witnesses. The appellant in his examination under Section 313 Cr.P.C has denied his involvement in the burning down of the house.

[41.] For the above reasons, we find that the prosecution has failed to prove beyond any reasonable doubt, the involvement of the appellant Pausawmthanga in burning down of the house which had unfortunately caused the death of 3 (three) persons.

[42.] Thus, in view of the above findings, we find it fit to set aside the Judgment & Order dated 16.06.2020 and the sentence order dated 19.06.2020 passed by the learned Addl. Sessions Judge, Champhai against the appellants Singngaihsuta and Pausawmthanga in Sessions case No. 88 of 2016 arising out of Crl. Tr. No. 818 of 2016. The appellant Singngaihsuta in Crl. Appl. No.4/2023(J) Pausawmthanga in Crl.

Appl. No.5/2023(J) are thus set at liberty forthwith, if not wanted in any other case.

[43.] Crl. Appeal No. 4 of 2023 (J) with Crl. Appeal. No.5 of 2023 (J) stand allowed and disposed of.

JUDGE

JUDGE

Comparing Assistant