

GAHC030002322024



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

**Case No. : CRL.A(J)/8/2024**

Zosangliana  
Sawleng Hmuntha, Darlawn, Mizoram

**VERSUS**

State of Mizoram  
Aizawl

**Advocate for the Petitioner** : Mrs. Emily L. Chhangte (Amicus Curiae)

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

B E F O R E

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

**HON'BLE MRS. JUSTICE MARLI VANKUNG**

Advocate for the Appellant : Mrs. Emily L. Chhangte, Amicus Curiae

Advocate for the respondent : Ms. Linda L. Fambawl, PP Mizoram

Date of hearing : **04.12.2024**

Date of Judgment : **06.12.2024**

**JUDGMENT & ORDER**

*(S.K. Medhi, J.)*

The instant appeal has been preferred from jail against a judgment and order dated 28.08.2018 by the learned Additional District and Sessions Judge, Aizawl Judicial District in Crl. Tr. No. 426/2017 (arising out of Darlawn PS Case No. 24/2016). By the impugned judgment, the appellant has been convicted with R.I. for life and a fine of Rs.3,000/- (Rupees Three Thousand) u/s 302 of IPC, in default, R.I. for another 3(three) months.

2. The case involves the death of one Zobela (Kanchha) which has been alleged to be caused by the appellant, who is his son.

3. The criminal law was set into motion by lodging of an FIR on 02.11.2016 by the PW.1, who is the grandfather of the appellant and father of the deceased. It has been stated that on the night of 01.11.2016, between 10:00 to 11:00 PM, the appellant had beaten / tortured the deceased to death. It was further stated that the appellant was an extremely bad person and tends to

create problem in the family as well as in the society. Based on the aforesaid information, the case was registered and investigation was made leading to filing of the Charge Sheet. The charges were accordingly framed against the appellant under Section 302 of the IPC, which he had pleaded not guilty and accordingly the trial had begun. The prosecution had adduced evidence through six nos. of witnesses and there was also a Court witness, who is the mother of the appellant.

4. PW.1, who is the informant, had stated that on 02.11.2016, at about 1:00 AM, he had received telephonic information regarding the incident, which had occurred on 01.11.2016, between 10-11 PM. He had accordingly come to the residence of the deceased in the next morning after sunrise and thereafter had lodged the FIR. In the cross-examination, he had candidly admitted that he was not an eye-witness and that, there was no confession made in his presence by the appellant.

5. PW.2 is a person who stays in the same locality. He had stated that on 01.11.2016, at about 10:00 PM, while he was sleeping, the mother of the appellant had knocked their door and had informed that the deceased was lying on the floor motionless and the appellant was watching television without bothering his father. He had accordingly rushed to the house of the appellant and on opening the main door, he saw the appellant watching television and the deceased on the floor. He had also deposed that on entering the house, he saw blood scattered around and utensils were also scattered. He also deposed that he saw 20 pieces of broken firewood and when he had touched the body of the victim, it was cold and not breathing and he had realized that the deceased had already died. He had also deposed that on being asked, the appellant had held the deceased by his neck, lifted and dropped and the deceased did not move at

all. He also deposed that the appellant had tried to run away but he had grabbed him by his arm. He also states that the appellant had told him that he had ended the life of his father. PW2 was also an inquest report. In his cross-examination, however, he had deposed that the appellant was well known to him and prior to the aforesaid incident, he never knew of any abnormal or barbaric behavior shown by the appellant to anybody with the intention to cause injury.

6. PW.3 is the Doctor who had not only done the post mortem on the body of the deceased but had also examined the appellant so far as his condition to be kept in custody after his arrest was concerned. In the Post Mortem report which has been proved as Exhibit P5, the opinion has been given that the cause of death is due to vertebral (cervical : atlanto-axial) and spinal cord injury caused by sudden hyperextension of the neck leading to sudden death.

7. PW.4 is the ASI of Police who had conducted the inquest. The said Inquest Report was proved as Exhibit P3. In his cross-examination, however, he had brought in the aspect of sudden provocation which may lead to the incident. He had also admitted the suggestion that there was no intention and premeditation on the part of the appellant to commit the offence.

8. PW.5 is the Investigating Officer who had conducted the investigation. He had proved the materials which were prepared and collected in the said investigation. He had also deposed that in the course of the investigation, the appellant had also made confession which was duly recorded before a Magistrate under Section 164 of the CrPC.

9. PW.6 is the learned Magistrate before whom the appellant had made a confession. The said confessional statement was proved as Exhibit P-13. PW.6

had deposed that the appellant was brought before him on 19.01.2017 for recording a confessional statement and he was explained the meaning, purposes and possible consequences. It was further deposed that the appellant was given reflection time from 11:00 AM to 03:00 PM in which period, there was no connection with the Investigating Agency and that the confession was made voluntarily. In the cross examination he had clarified regarding the reflection time. However, he had admitted that in the confessional statement it was written that the appellant was brought before him at 02:00 PM.

10. As indicated above, there was a Court Witness (CW), who is the mother of the appellant. The said CW had stated that the appellant was a habitual drunkard and drug addict and used to terrify the family and at that night, he was intoxicated. She had further deposed that if not intoxicated, the appellant was a very humble and hardworking person who loves his family and parents.

With regard to the incident at hand, she had deposed that the deceased had asked her to sleep in the neighbour's house as the appellant would continue to ask for money and accordingly, she had slept in the neighbour's house. She was however awakened by a loud noise of television coming from their house and rushed to their house and on peeping through the door, she saw that the deceased was kneeling down on the ground and she heard a loud sound of steel almirah shaken by the appellant. She accordingly rushed towards the neighbour's house out of fear and called them and on reaching back along with the neighbors and opening the door of their house, found the appellant sitting on the floor in front of the television and the deceased was lying motionless on the floor. On being asked, the appellant had replied that he did nothing and said that he just pushed the deceased and tried to put his fist towards, but did not touch him. In the cross-examination, however, she clarifies that she is not an

eye-witness.

11. Based on the aforesaid evidence on record, the appellant was examined under Section 313 of the CrPC and after consideration of all the materials, including the response of the appellant, the learned Judge had passed the impugned judgment dated 28.08.2018 which is the subject matter of challenge in the present appeal.

12. We have heard Mrs. Emily L. Chhangte, learned Amicus Curiae appearing for the appellant. We have also heard Ms. Linda L. Fambawl, learned Public Prosecutor, State of Mizoram.

13. The learned Amicus Curiae has submitted that admittedly the present is not a case of direct evidence but circumstantial evidence and therefore, the prosecution was under a bounden duty to prove a chain of circumstances which is unbroken and leads to only one conclusion of the guilt of the appellant and none else. It is submitted that the prosecution had grossly failed to establish the aforesaid link and therefore, the impugned judgment is unsustainable in law and the appellant is liable to be acquitted.

14. Elaborating her submission, the learned Amicus Curiae has submitted that the information which was lodged by the grandfather of the appellant (PW.1) was merely on suspicion. She submits that the said PW.1 had admitted of being informed about the incident by telephone on 2.11.2016 at about 1:00 AM whereafter, he had lodged the FIR on the next morning. As regards the deposition made by the PW.2 regarding a confession allegedly made before him, the learned Amicus has submitted that extra-judicial confession is a weak piece of evidence and unless the same is corroborated by other materials, the same cannot be relied upon. She has also highlighted that the PW.2 had also deposed

that the appellant was not known to be abnormal or having barbaric behavior to anyone. On the deposition of the PW2 that there were 20 pieces of firewood about one feet long, she has submitted that there was no seizure and the only evidence is a Challan annexed to the Inquest Report (Ext. P-3) which cannot be held to be relevant evidence.

15. On the aspect of the confession which has been proved as P-13 by PW.6 - the learned Magistrate, the learned Amicus Curiae has submitted that there are two aspects of a confessional statement which are required to be examined, namely, voluntariness and truthfulness. While the aspect of voluntariness has been sought to be established by the prosecution by producing the learned Magistrate as a witness (PW.6), the aspect of truthfulness has to be examined with the other materials on record. Even on the aspect of voluntariness, she has highlighted that though PW.6 in his deposition has stated that reflection time was given from 11:00 AM to 03:00 PM, the said PW.6 has admitted in his cross-examination that in the recording of the confession the time of producing the appellant before him was stated to be 02:00 PM. On the aspect of truthfulness, she had drawn the attention of this Court to the PM report (Exhibit P-5) read with the evidence of PW3 - the Doctor who had conducted the post-mortem and has submitted that in the so-called confession, the statement recorded is that while the appellant had tried to resist the grasp of his father, he had hit his father's rib cage with his elbow and the father had died on the spot. She submits that in the PM report, the ribs are found to be healthy and the three marks of injuries, were in the left cheek, left side of neck and one laceration on the left eyebrow. She has also submitted that as per the opinion of the Doctor, the vertebral (cervical : atlanto-axial) and spinal cord injury caused by sudden hyperextension of the neck lead to sudden death. She submits that the aspect

of truthfulness of the confession is not at all corroborated with the medical evidence and therefore it would be wholly unreasonable to rely upon the said confession statement. She accordingly submits that the impugned conviction and sentence be interfered with and the appellant be acquitted.

16. *Per contra*, Ms. Linda L. Fambawl, learned Public Prosecutor, has submitted that the prosecution has been successful in establishing an unbroken chain of events leading to the guilt of the appellant. She submits that though the present case is not a case of direct evidence but circumstantial evidence, the prosecution has discharged its burden fully and therefore there is hardly any scope for interference with the impugned judgment.

17. She submits that as per the facts which emerge from the records, on 01.11.2016, it was the appellant alone who was with the deceased father and this has been established by the evidence of PW.3 and the CW. It is submitted that under those circumstances, the deceased was found dead and the appellant was present in the room watching television and in an intoxicated state. She submits that there is no explanation given by the appellant regarding the aforesaid circumstances and the only explanation which appears is from his response in the examination under Section 313 of the CrPC that it was an act of self defense. It is submitted that in the present case, the provisions of Section 106 of the Evidence Act would come into play and the appellant had not discharged the burden cast upon him by the aforesaid provision.

18. She has submitted that though the confession made before PW.2 which is in the nature of extra-judicial confession may not be the evidence which can be solely relied upon, in the instant case, there is the judicial confession made before a Magistrate under Section 164 of the CrPC and the said confession has been proved by the learned Magistrate (PW.6) as Exhibit P-13. She submits that

reading of the said confession statement along with the evidence of PW.6 would reveal that all the safeguards were duly given to the appellant and the appellant had voluntarily confessed his guilt. She has also relied upon the response of the appellant in his examination under Section 313 of the CrPC wherein there was no denial or retraction of the confession made and rather he had stated that it was a case of self defence. She accordingly submits that there is no merit in the appeal and the same be dismissed.

19. The rival submissions have been duly considered and the materials placed before this Court including the LCRs have been carefully perused.

20. The instant case admittedly is one of circumstantial evidence and not of any direct evidence as there is no eye-witness to the occurrence and therefore, it is to be seen whether the prosecution has been successful in discharging its burden of establishing an unbroken chain of circumstance which solely lead to the guilt of the appellant and none else. To examine the aforesaid aspect, it would be beneficial to refer and rely upon the landmark case of ***Sharad Biridhichand Sarda Vs. State of Maharashtra*** reported in ***(1984) 4 SCC 116*** wherein the following has been laid down:

*“7. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :*

*(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.*

*It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction*

*between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 where the following observations were made :*

*"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*

*(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*

*(3) the circumstances should be of a conclusive nature and tendency.*

*(4) they should exclude every possible hypothesis except the one to be proved, and*

*(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

*8. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."*

21. Let us therefore examine the circumstances in the instant case. PW.2 who is from the same locality and CW who is none but the mother of the appellant had deposed that they found the body of the deceased on the floor whereas the

appellant was sitting on the floor and watching television in a loud volume. CW even deposes that when she had first come to her residence from the residence of the neighbour where she was sleeping, she has seen the deceased kneeling on the floor and out of fear, she ran back and called the neighbour whereafter the deceased was found dead and lying on the floor. The aforesaid aspect of the deceased found dead and lying on the floor while the appellant was in the same room watching television are found to be consistent in the evidence of both the aforesaid witnesses. Under such circumstance, the present would be a fit case wherein the provision of Section 106 of the Evidence Act would be applicable. Though it is trite law that to bring in the aspect of 106 of the Evidence Act, the initial burden has to be discharged by the prosecution, in the instant case, we have seen that apart from the extra-judicial confession, there is also a confession made by the appellant before the Magistrate (PW.6). Therefore, the aforesaid provision can be applied and from the records, it is seen that there is no explanation by the appellant towards his innocence. On the contrary, in his reply to the queries under Section 313 of the CrPC he had stated that he had acted in self defence.

22. On the aspect of the confessional statement, apart from the same being proved as Exhibit P-13, the learned Magistrate who had recorded the confession was also examined as PW.6. At this stage, it would be beneficial to refer to the provisions of Section 80 of the Evidence Act on the presumption of veracity of a confession made before the learned Magistrate. As per the same, in a given case, even the witness of the Magistrate before whom a confession is made may not be required. In this connection, one may gainfully refer to the case of ***Madi Ganga v. State of Orissa*** reported in ***(1981) 2 SCC 224*** in which the following has been laid down.

*“5. We desire to express no opinion on the question whether the extra-judicial confession made to PWs 2 to 5 is barred under Section 24 of the Evidence Act. It is unnecessary for us to say anything on this question, since we are satisfied that the learned Sessions Judge was wholly wrong in excluding and the High Court was certainly right in acting upon the confessional statement made to the Magistrate. The learned Magistrate has put to the accused all the necessary questions to satisfy himself that the confession was voluntary. He has also appended the necessary certificate. We do not accept Shri Jain’s submission that the learned Magistrate should have been examined as a witness. Section 80 of the Evidence Act makes the examination of the Magistrate unnecessary. It authorises the court to presume that the document is genuine, that any statements as to the circumstances under which it was taken are true and that such confession was truly taken in accordance with law. Shri Jain submitted that if the Magistrate had been examined as a witness, the accused might have been in a position to show, by cross-examination that the confession recorded by the Magistrate was not voluntary. The Magistrate has appended a certificate that he was satisfied that the confession was voluntary. No circumstance has been brought out in the evidence justifying the calling of the Magistrate as a witness. We do not think that the circumstances of the case justify any comment on the alleged failure of the prosecution to examine the Magistrate as a witness.”*

23. At this stage, it would not be out of place to make a reference to Section 463 of the Cr.P.C. which is in connection with non-compliance of the rigors of Section 164 or Section 281. For ready reference, Sections 463 and 281 are extracted herein below-

***Section 463 – Non-compliance with provisions of section 164 or section 281***

*(1) If any Court before which a confession or other statement of an accused person recorded, or purporting to be recorded under section 164 or section 281, is tendered, or has been received, in evidence finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in section 91 of the Indian Evidence Act, 1872 (1 of 1872), take evidence in regard to such non-compliance, and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.*

*(2) The provisions of this section apply to Courts of appeal, reference and revision.*

***Section 281 – Record of examination of accused.***

*(1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record.*

*(2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the Presiding Judge or Magistrate*

*himself or where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.*

*(3)The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable in the language of the Court.*

*(4)The record shall be shown or read to the accused, or, if he docs not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.*

*(5)It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.*

*(6)Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.*

24. Though, in the cross-examination of PW.6 he was confronted with the timing recorded in Exhibit P-13 – the confessional statement wherein 02:00 PM was recorded and the confession was made at 03:00 PM, however, apart from clarifying the same in his examination as an witness, the Exhibit P-13 itself records towards the later part that the appellant was produced at 11:00 AM and was kept under the supervision of the Court Staff.

25. There is another aspect of the matter which we have examined namely, the nature of injuries vis-à-vis the confessional statement. The appellant had confessed that he had given a blow by his elbow on rib cage of the deceased causing his death. However, we have seen that the PM Report does not indicate any injury on the rib cage. This Court have also taken into aspect that as per the evidence on record, the appellant was totally intoxicated and therefore, the description of the blow inflicted by him may not be accurate. We have also noted that in the examination under Section 313 of the CrPC, a specific question was put to him regarding the confession made which he did not deny. It may be mentioned that while the confession was recorded on 19.01.2017, the statement under Section 313 of the CrPC was recorded on 15.03.2018 and therefore, the appellant had sufficient time to think over and retract which he did not do.

26. From the aforesaid facts and circumstances, it becomes clear regarding the involvement of the appellant in the offence causing the death of his father. Therefore, it would be necessary to examine as to whether the death was caused intentionally or knowingly so as to bring it within the ambit of Section 300 punishable under Section 302 of the Indian Penal Code.

27. The Supreme Court in the case of ***Anda and Others. Vs The State Of Rajasthan*** reported in ***AIR 1966 SC 148*** has laid down as follows:

*“5. Section 300 tells us when the offence is murder and when it is culpable homicide not amounting to murder. Section 300 begins by setting out the circumstance when culpable homicide turns into murder which is punishable under S. 302 and the exceptions in the same section tell us when the offence is not murder but culpable homicide not amounting to murder punishable under S. 304. Murder is an aggravated form of culpable homicide. The existence of one of four*

*conditions turns culpable homicide into murder while the special exceptions reduce the offence of murder again to culpable homicide not amounting to murder. We are not concerned with the exceptions in this case and we need not refer to them.*

...

*7. ...The sufficiency of an intentional injury to cause death in the ordinary way of nature is the gist of the clause irrespective of an intention to cause death. Here again, the exceptions may bring down the offence to culpable homicide not amounting to murder."*

28. Section 300 of the IPC lays down 5 exceptions where culpable homicide would not amount to murder. However, it is settled law that apart from the five exceptions, an offence under Section 299 of the IPC may still not fall within the ambit of Section 300. For a culpable homicide to be murder, it must come within the four provisions of Section 300. Murder is the gravest form of culpable homicide. At this stage it will be beneficial to refer to the principles laid down by the Hon'ble Supreme Court in the case of ***State of AP vs Rayavarapu Punnayya and Anr.*** reported in ***AIR 1977 SC 45*** .

*"21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering*

*whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Sec. 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code."*

29. Further in the case of ***Kishore Singh and Anr. Vs. The State of M.P.*** reported in ***AIR 1977 Sc 2267*** it has been laid down as follows:

*"11. The distinction between culpable homicide (Section 299, I.P.C.) and murder (Section 300, I.P.C.) has always to be carefully borne in mind while dealing with a charge under Section 302, I.P.C. Under the category of unlawful homicides fall both cases of culpable homicide amounting to murder and those not amounting to murder. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300, I.P.C. But even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the*

*four clauses of Section 300. I. P. C. to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300, I. P. C., namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under S. 299, I. P. C."*

30. There is another aspect of the matter regarding the nature of the assault. It is not the case of the prosecution that any weapon, not to talk about sharp weapon was used and there was no seizure of any weapon. The PM report also does not indicate use of any weapon. The confession which was proved as Exhibit P-13 itself indicates that the blow was by the elbow. The PM Report (Exhibit P-12) indicates that there were two nos. of bruises on the left cheek and left side of the neck and one laceration on the left eyebrow. It is also on record that after noticing the deceased lying on the floor by PW.2, the appellant had raised him by holding his neck and again dropped him and prior to that, PW.2 had already found that the deceased was lying dead. Under those circumstances, whether there was an intention to out and out to cause the death of the deceased becomes questionable. Though the fact of intoxication would not come to the rescue of the appellant under Section 85 of the Indian Penal Code, the aspect that even after the death being caused, the appellant was still sitting on the same room and watching television and not trying to flee would also be relevant. Therefore, his intention to cause death cannot be readily inferred. In this connection it would be beneficial to refer to the case of ***Abani K. Debnath and Anr. Vs. State of Tripura*** reported in ***2005 13 SCC 422*** wherein the Hon'ble Supreme Court on noticing that the death was caused by one blow of a *dao* in the spur of the moment which was preceded by a quarrel had converted the punishment from Section 302 of the IPC to 304 Part II.

31. Under the aforesaid facts and circumstances and the discussions made, we are of the view that the conviction is liable to be made under Section 304 Part II of the IPC which is accordingly done. The aforesaid Section prescribes the penalty of rigorous imprisonment which may extend to 10 years. The records reveal that the appellant was arrested on 02.11.2016. Though the aspect as to whether he was on bail during the trial is not clear, the impugned judgment is of 28.08.2018 and therefore, even from the date of the judgment, the appellant is in jail for a period of more than 6 years. Consequently, the sentence is altered to Rigorous Imprisonment for the period undergone with a fine of Rs. 5000/- (Rupees Five Thousand) in default of which Simple Imprisonment for 3 months. The appeal is accordingly disposed of.

32. Let the records of the case be sent back.

33. For the valuable assistance rendered by the learned Amicus Curiae, we record our appreciation and she would be entitled to the prescribed fee.

**JUDGE**

**JUDGE**

**Comparing Assistant**