

GAHC030002342024



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

Case No. : CRL.A(J)/10/2024

PC Zobiaksanga
Dinthar Veng, Serchhip, Mizoram

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr H Zodinsanga as Amicus Curiae

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

B E F O R E
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date of Hearing : 12.09.2024

Date of Judgment : 13.09.2024

J U D G M E N T & O R D E R (CAV)

(Michael Zothankhuma, J)

Heard Mr. H. Zodinsanga, learned Amicus Curiae for the appellant as well as
Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondent.

2. This appeal has been filed against the impugned Judgment & Order dated 16.08.2023 passed by the Court of Addl. Sessions Judge-I, Aizawl in SR. No. 115/2022 arising out of Criminal Trial No. 137/2022 (Serchhip PS Case No. 46/2022) and the sentence order dated 17.08.2023, by which the appellant has been convicted under Section 302 IPC and sentenced to undergo Rigorous Imprisonment for life and to pay a fine of Rs. 3,000/-, in default, Simple Imprisonment for another 15 days.

3. The prosecution case is to the effect that the informant Sh. Kapliana, who is also the prosecution witness No. 1 (PW-1) submitted an FIR dated 29.05.2022, stating that at around 3 PM of 29.05.2022 his daughter Rosangzuali was found dead in her marital home. There was blood coming from her nose and mouth and her hair was covered with blood. The FIR also stated that the perpetrator of the crime appeared to be her husband, the present appellant. In pursuant to the FIR, Serchhip P.S Case No. 46/2022 under Section 302 IPC was registered on 29.05.2022. After Inquest Report has been made in respect of the dead body, besides a post-mortem examination having been conducted, the case I/O seized a piece of wood/timber, which was about 1 feet 10 inches long and 2x4 inches thick with blood stains, from the place of occurrence. The police also seized swab blood sample on a piece of cotton from the scene of the crime and the wearing apparel of the victim with blood stains. Swab blood stain found on the body of the accused was also taken for comparison. After perusing the report of the Forensic Science Laboratory dated 04.07.2022, the case I/O submitted a charge sheet, having found a prima facie case under Section 302 IPC

against the appellant.

4. Charge was framed against the appellant under Section 302 IPC by the learned Trial Court, to which the appellant pleaded not guilty and claimed to be tried. The learned Trial Court thereafter examined 15 prosecution witnesses (PW) and after examining the appellant under Section 313 Cr.PC, the learned Trial Court came to a finding that the prosecution had established the fact that the appellant had intentionally caused the death of his victim wife. The appellant was accordingly convicted under Section 302 and sentenced to undergo punishment as indicated in the foregoing paragraphs.

5. The learned Amicus Curiae submits that the learned Trial Court erred in coming to a finding that the case was a murder case and was covered within the parameters of Section 300 IPC, which provides that culpable homicide is murder if either of the 4 conditions provided in Section 300 is present and if the 5 Exceptions therein are not attracted. However, in the present case the appellant was deprived of the power of self control by the grave and sudden provocation on the part of his wife and as such, the cause of death of the victim by the appellant, would come under Exception - I of Section 300 IPC.

6. The learned Amicus Curiae submits that on 29.05.2022 the appellant had asked his wife and children to attend church and he had told his wife that in the meantime, he would wash the clothes. However, the appellant had forgotten to wash the clothes.

When his wife and children returned from church, she scolded the appellant and cursed him for not washing the clothes. Thereafter, the appellant went out of his house and returned home in the afternoon. When he reached home, he saw his wife and her boyfriend (Liana) sitting inside the master bedroom touching each other on their breasts and kissing each other. An argument broke out and his wife took a dao (big knife) and tried to strike the appellant. The appellant thereafter picked up an object and threw it at the victim. Meanwhile, the victim's boyfriend ran away. After the victim dropped the dao, the appellant slapped the victim. The victim fell to the floor. The appellant thereafter tried to wake her up, but she had already died. The learned Amicus Curiae submits that the victim had hit some object when she had fallen down on the floor, which appeared to be the cause of death of the victim. The learned Amicus Curiae also submits that though the three (3) children of the appellant and the deceased were in the house at the time of the incident, the eldest son, who was around 8 years old was not made a prosecution witness. The same vitiates the trial proceedings before the learned Trial Court.

7. The learned Amicus Curiae submits that all the ingredients required for finding the appellant guilty under Section 304 Part-II IPC is present, as enumerated in the judgment of the Supreme Court in the case of ***Dauvaram Nirmalkar v. State of Chhatisgarh***, reported in ***2022 SCC OnLine SC 955***. He also submits that as the injury caused to the deceased was apparently done with a piece of wood and not by an axe, the case of the appellant will fall under Section 304 Part-II IPC and not under

Section 302 IPC. He submits that in the case of ***Ramkishan & Ors. v. State of Rajasthan***, reported in ***(1997) 7 SCC 518***, the Supreme Court had declined to bring the case of death under Section 304 Part-II IPC, but under Section 302 IPC, as the weapon used in that case was an axe. In the present case, as the weapon used was allegedly a piece of wood, the punishment would have to be lessened, keeping in view that there was sudden and grave provocation on the part of the wife of the appellant.

8. The learned Amicus Curiae further submits that the death of the deceased occurred while the appellant was drunk and as such, the appellant cannot be convicted for an act during the time the appellant was intoxicated with liquor. As there was no pre-planned intention to kill the victim and the incident occurred due to grave and sudden provocation on the part of his late wife and the boyfriend, the impugned Judgment & Order convicting the appellant under Section 302 IPC should be set aside and the appellant should be convicted under Section 304 Part-II IPC. The learned Amicus Curiae also submits that in the case of ***Mavil Thamban Nambiar v. State of Kerala***, reported in ***(2009) 17 SCC 441***, the conviction under Section 302 IPC was altered to one under Section 304 Part-II IPC, as the accused did not have the intention, but it could be reasonably inferred that the accused therein had the knowledge that the injury with a pair of scissors on a vital part of the body would cause death.

9. The learned Amicus Curiae thus prays that the charge should be altered against

the appellant from Section 302 IPC to Section 304 Part-II IPC.

10. Mrs. Linda L. Fambawl, learned Public Prosecutor, on the other hand, submits that the evidence adduced in the Trial Court, coupled with the submissions made by the learned Amicus Curiae points to the fact that the death of the victim had occurred due to the action of the appellant. She further submits that the weapon used by the appellant on the head of the victim carried blood stains and the same was also seized by the police. Further, the sample of blood collected from the shoulder of the appellant was found to be that of the victim. The bloodied weapon (wood) was used by the appellant to hit the deceased, which resulted in blood coming out from the nose and ear of the victim. She submits that as the cause of death of the victim due to act of the appellant is not disputed, even in terms of the evidence given during the trial and as admitted by the appellant in his appeal petition, the prayer for altering the charge from Section 302 to Section 304 Part-II IPC should be rejected.

11. The learned Public Prosecutor submits that there is no evidence to show that PW-6, who had entered the house of the deceased and PW-7, who is the younger brother of the appellant, had seen Liana in the house of the appellant. No cross-examination to the effect that Liana was in the house of the appellant, just prior to the incident, has been adduced. The appellant also did not cross-examine any of the witnesses with regard to Liana being present in the house of the appellant, just before the incident occurred.

12. The learned Public Prosecutor further submits that even if the prosecution had not made the 8 year old son of the appellant as a prosecution witness, the same did not bar the appellant from making his son as a defense witness, if at all the son had anything to say in defense of the appellant. She submits that no case under Section 304 Part-II IPC has been made out by the appellant and as such, the impugned judgment and order should be upheld.

13. We have heard the learned counsels for the parties

14. The evidence of PW-1, who is the informant and father of the victim is to the effect that he did not see the incident and that he had only received information about the death of his daughter. The evidence of PW-2 & 3 is to the effect that they were witnesses to the seizure of the following articles from the house of the appellant:-

“1. Timber (thingzai bung) about 1 feet 10 inches with blood stains.

2. Swab blood samples in piece of cotton from scene of crimes.

3. Wearing apparels of the victim with blood stains.”

15. The evidence of PW- 4 & 5 is to the effect that they were called to the police station to witness the collection of blood sample from the body of the appellant.

16. The evidence of PW-6 who lived in the same locality as the appellant, is to the fact that while she was watching TV at around 2:30 pm on 29.05.2022, she heard the appellant and the victim arguing. She also heard a loud sound coming from their

house and the baby was crying. When she rushed to the window, she saw the appellant throwing a piece of wood/timber from the window. After sometime, PW-6 and her husband went to the house of the appellant. When they entered the house of the appellant, they saw the deceased lying on the bedroom floor and the blood coming out from the nose and mouth. The head of the deceased was covered with blood. The appellant was also inside the bedroom and many people had gathered in the house. The victim was already dead when PW-6 went to the house.

17. The evidence of PW-7, who is the younger brother of the appellant is that the appellant called him on his mobile on 29.05.2022 at around 2:50 pm. When entering the house of the appellant, he saw the victim lying on the bedroom floor facing upwards. He also stated that he saw blood coming out from her nose and ear and her head was covered with blood. The appellant was inside the bedroom and the children were crying. PW-7 thereafter informed his parents about the incident and when the police arrived, they took away the appellant and conducted inquest over the body of the deceased. In the re-examination of PW-7, PW-7 stated that when he rushed to the appellant's house, the appellant was on the step and they went into the house together. He also admitted to fact that he did not inform the police about the incident, though he was the first one to be present at the place of occurrence.

18. The evidence of PW-8 who is the mother of the appellant is to the effect that she did not see the incident. In her cross-examination, PW-8 admitted to the fact that the appellant used to lose his temper on small things when he was drunk. Further the

accused and the deceased used to argue when the accused was drunk.

19. The evidence of PW-9 is to the effect that they had recovered the assault weapon which was used by the appellant to hit the victim.

20. The evidence of PW-10 is to the effect that he had delivered the sealed packet from the Serchhip Police Station to the Forensic Science Laboratory (FSL), Aizawl for examination.

21. The evidence of PW-11, who is the Junior Scientific Officer, DNA, FSL, Aizawl, is to the following effect:

“ON S/A:

On 1.06.2022 I received five biological exhibits such as

- 1. Timber (2x4 inches) with suspected blood stains.*
- 2. Piece of cotton with suspected blood stains swab from scene of crime.*
- 3. Wearing apparel with suspected blood stain.*
- 4. Piece of cotton with suspected blood stains swab from the accused PC Zobiaksanga body.*
- 5. Liquid blood sample of the victim, Rosangzuali.*

I along with Asst. Director Lalchhanzova examined the above exhibits and following are the results of examination.

- 1. Blood of human origin were detected from the stains of the above mentioned Sl.No 1.4 and were subjected for DNA isolation.*
- 2. Serial No.5 of the above mentioned exhibits was also subjected for DNA isolation.*
- 3. Complete female genetic profiles were generated from the above mentioned Sl.No 1-5.*

4. The female genetic profiles generated from the above Sl.no 1-4 matched with the female genetic profile generated from the above mentioned Sl.no.5.

5. The blood stain from the above mentioned Sl.no 1-4 were that of the victim, Rosangzuali i.e Sl.no 5.

After complete of examination we submitted DNA examination report.

Ext: P-7 is the DNA Examination Report submitted by me and Lalchhanzova, Asst. Director, FSL, Aizawl.

Ext: P-7 (a) is my signature.

Cross-examination declined by the Id. D/L:"

22. The evidence of PW-12 who is the Assistant Director, FSL, Aizawl is similar to the evidence given by PW-11.

23. The evidence of PW-13 who is the Head of Department, Forensic Medicine Department, Civil Hospital, Aizawl is to the effect that he conducted post-mortem examination on the dead body of the deceased and his findings were to the following effect:-

"1. Laceration of 1x0.5 present on left parietal region of scalp.

2. Laceration of 3x0.5 present on left side of occipital region of scalp.

3. Contusion present on back of left hand.

4. Fracture of proximal phalanx of left little finger.

5. Laceration of 1x.05 present on palmer surface of left little finger.

6. Haematoma present on left parieto-temporo-occipital bones.

7. Fracture of left parietal, left temporal and left side of occipital bones present."

The opinion of PW-13 as to the cause of death of the deceased was due to Cranio-Cerebral injuries (head injury) as a result of blunt trauma of the head.

24. The evidence of PW-14 who is an ASI in the Serchhip Police Station, is to the effect that he conducted inquest over the dead body of the deceased and that in his opinion, the cause of death was due to injury on the back of her head.

25. The evidence of PW-15, who is the case I/O, is the effect that he conducted enquiry in the above case and visited the place of occurrence. There was blood being discharged from the nose, mouth and left ear of the deceased. There was cut marks and a broken bone of the little finger on her left hand. There was laceration wound on her occipital bone (left side) and puncture wound was found half inches above the laceration wound. He further stated that he arrested the appellant and on interrogating him, the appellant confessed to killing his wife by hitting her on her head twice, by using a piece of wood about 1 foot 10 inches, inside their bedroom. On examining the prosecution witnesses, the Post Mortem Report (PME) report and the FSL report, he found a prima facie case under Section 302 of the IPC well established against the appellant.

26. The learned Trial Court came to a finding that the evidence adduced by the prosecution witnesses proved that the appellant had murdered his wife, by hitting her with a piece of wood on her head.

27. The examination of the appellant under Section 313 Cr.PC shows that the

appellant has admitted to the fact that PW-6 had seen the appellant throwing out a piece of wood from the window and when PW-6 and her husband entered the house of the appellant, they saw the victim lying on the floor with blood oozing out and that she was already dead. The appellant has also admitted to question No. 9 wherein, PW-9 had deposed that on searching they found a log of wood which was 2x3 inches thick, below the appellant's house, which was used by the appellant for hitting his wife. The appellant had answered that "It is correct that I threw 2x3 wooden log. However, he did not know that they had found it". The appellant also admitted to the fact that when PW-15 (case I/O) had interrogated him, the appellant had admitted that he had hit the deceased two times on her head with wood/timber (2x4 inches, which was about 1.10 feet long) inside their bedroom.

28. The appellant's answer and the question No. 12 put to him in his examination under 313 Cr.PC, is reproduced herein as below:-

"Q. 12. Do you have anything else to say in your evidence?"

Ans: On 29.5.2022 my wife Rosangzuali told me to wash clothes while she was on church service, however, I did not wash the clothes and argument was raise between us and I went to my neighbors house after I return from my neighbors house I saw my wife sitting beside Liana and argument was broke again and my wife took Dao(chempui) and I in order to defense myself took timber 2x3 log and I throw the said timber against my wife and then she fell on the floor. On that day I have no intention to kill my wife Rosangzuali."

29. As can be seen from the examination of the appellant under Section 313 Cr.PC, though the appellant saw his wife and one Liana sitting together, there is no mention of the appellant seeing his wife and Liana inside the appellant's master bedroom and touching each other on their breast and kissing each other. This new allegation has found the light of day only in the appeal petition submitted by the appellant in the year 2024. The extract of paragraph No. 2 (a), (b) and (c) of the appeal petition submitted by the appellant is reproduced herein below as follows:-

“2) It is a fact that the alleged instant incident is as follows:-

a) On 29.05.2022, I asked my wife and children to attend Church meeting and I told to my wife that I will wash the clothes by myself during their attending the Church Meeting. But I forgot to wash the clothes after finishing the dishes are washed. When my wife returned from the Church, she saw that I am not washing the clothes, then she scolded me with a bad words or cursed for I am not washing the clothes. Then I go out of our house and return home in the afternoon. When I reach home I saw my wife and her boyfriend (Liana) sitting inside our master bed room touching each other on their breasts and kissing each other.

b) Then an arguments broke out, but without replying by my wife she took a Dao (Chempui) trying to strike at me. Then I took any object whichever I could find immediately for my defence and throw at her (the alleged victim) without hitting her. Meanwhile, the boy friend of my wife (the alleged victim) was run away from the

spot.

c) After dropping of Dao (Chempui) by my wife (the alleged victim), as I am very much angry and make me provocation first by my wife, the alleged victim, I slapped her. She, the alleged victim, was fallen down on the floor. Immediately, I embrace her, the alleged victim, and try to had wake her up, but it is learnt that she had already died. In my opined that the alleged victim was hit by some other objects while she was fallen down on the very point of deadly. Hence, it is reveals that I have no pre-planned, no intention to kill her, the alleged victim, but this fateful alleged incident was occur due to the provocation made by the alleged victim first without intention or pre-plan. Therefore, the above mentioned Judgment and Order is liable to set aside and quash."

30. The averments made in paragraph No. 2 (a), (b) & (c) of the appeal petition appears to be an afterthought, as no such stand was taken at any time by the appellant during the investigation stage or during trial, that he saw his wife and Liana touching each other's breast and kissing. Further, the appellant had during his examination under Section 313 Cr.PC declined to adduce evidence in his defense.

31. The appellant has no where put any question to any of the prosecution witnesses during cross-examination that Liana was present in his house just prior to the incident. None of the witnesses have also made any such statement during their examination-in-chief. The name 'Liana' has only come into existence during

examination of the appellant under Section 313 Cr.PC. What is clear from the evidence recorded in the Trial Court and as per averments made in the appeal petition, is that the appellant had killed the deceased. In the case of ***Trimukh Maroti Khan v. State of Maharashtra***, reported in ***(2006) 10 SCC 681***, the Supreme Court has held that where murder is committed in secrecy inside a house, the additional burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge, cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of [Section 106](#) of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. It further held that in a case based on circumstantial evidence where no eye- witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

32. In the present case, the fact of the appellant being the cause of the death of the deceased is not in dispute and even if it is assumed the same was in dispute, the

appellant would have to have an explanation as to how the deceased died. With regard to the submission made by the learned Amicus Curiae that the appellant cannot be convicted in relation to the death of the deceased due to the appellant being intoxicated, we are unable to accept the said contention in view of Section 85 of the IPC, which provides as follows:-

“85. Act of a person incapable of judgment by reason of intoxication caused against his will.- Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.”

33. In the present case, there is no whisper made by the appellant during the trial or even before this Court that the thing that intoxicated the appellant, was administered to him without his knowledge or against his will. As such, Section 85 IPC cannot come to the aid of the appellant in support of his stand that he cannot be convicted for the death of his wife, due to intoxication.

34. With regard to the issue whether the appellant has made out a case for altering the charge from Section 302 IPC to 304 Part-II IPC, due to grave and sudden provocation on the part of the deceased, it would be profitable to refer to the decision of the Supreme Court in ***Gurmail Singh & Anr. v. State of Uttar Pradesh & Anr.***

reported in **(2022) 10 SCC 684**, wherein, the Supreme Court has held that in order to make culpable homicide as murder, the act by which death is caused should fall not only under any one or more of clauses Firstly to Fourthly under [Section 300](#), IPC but they should also not fall under any of the Five Exceptions to [Section 300](#), IPC. In the present case, we find that the appellant has failed to bring his actions within Exception 1 of Section 300 IPC, which provides 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.”

35. In the case of **Dauvaram Nirmalkar** (supra), the Supreme Court by referring to **K.M. Nanavati v. State of Maharashtra**, reported in **1962 Supp (1) SCR 567**,

held that for interpreting Exception - I to Section 300, the conditions which have to be satisfied for the exception to be invoked are (a) the deceased must have given provocation to the accused; (b) the provocation must be grave; (c) the provocation must be sudden; (d) the offender, by the reason of the said provocation, should have been deprived of his power of self-control; (e) the offender should have killed the deceased during the continuance of the deprivation of power of self-control; and (f) the offender must have caused the death of the person who gave the provocation or the death of any other person by mistake or accident. For determining whether or not the provocation had temporarily deprived the offender from the power of self-control, the test to be applied is that of a reasonable man and not that of an unusually excitable and pugnacious individual. Further, it must be considered whether there was sufficient interval and time to allow the passion to cool. We are of the view that the above conditions are not satisfied in the present case.

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

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

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."

37. 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 act comes within Section 304 Part-II of the IPC.

38. 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.

39. 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.

40. 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.

41. 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.

42. In the present case, whether the appellant intended to kill the deceased can be

gathered from the nature of weapon used and whether the blow was aimed at a vital part of the body. Further, whether there was any grave and provocation and if so, the cause for such provocation and whether the accused dealt a single or more blows with the dao.

43. In light of the decision of the Supreme Court in ***Pulicherla Nagaraju (supra)***, we are of the view that the use of a thick wooden piece of wood by the appellant for hitting the head of the deceased twice, resulted in the death of the deceased. The injuries sustained by the deceased clearly show that the blows were aimed at a vital part of the body and same amounted to acting in a cruel and unusual manner. The intensity of the blow on a vital part of the body, in our view does not bring the present case within exception 1 to Section 300 IPC. In fact, the first quarrel between the couple had occurred when the deceased and her children had come back to the house from church. After the quarrel, the appellant had gone out of the house and returned later to the house, wherein the argument re-started for reasons not mentioned, though the appellant has taken a stand in his 313 Cr.P.C examination that his wife had taken a dao. However, no evidence to that effect has been adduced by any witness.

44. In the case of ***Reena Hazarika Vs. State of Assam***, reported in ***(2019) 13 SCC 289***, the Supreme Court has held that Section 313 Cr.P.C cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right, as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to

be considered as a piece of substantive evidence, not being on oath under Section 313 (2) CrPC. If the accused takes a defence after the prosecution evidence is closed, under Section 313(a)(b) CrPC, the Court is duty-bound under Section 313(4) CrPC to consider the same. However, in the present case, though the appellant has in his examination under Section 313 CrPC given an answer to question No. 12, to the effect that he saw his wife sitting beside Liana and an argument surface between them, wherein his deceased wife took a dao, the same has not been brought into evidence, inasmuch as, the appellant has declined to adduced evidence in his defence in pursuance of his answer given to question No. 13 in his examination under Section 313 CrPC. Further, the reasons for the second quarrel after the appellant returned home has not been mentioned.

45. We are of the view that the subsequent improvement made by the appellant in his appeal petition to answer given to question No. 12 during his 313 examination before the Trial Court, as an afterthought, which has not been recorded as evidence. There is nothing to show that there was any grave and sudden provocation on the part of the deceased due to which the appellant was deprived of the power of self control.

46. On considering all the above facts, we are not convinced with the stand taken by the appellant in the appeal that he had seen his wife and boyfriend touching each other and kissing, as the appellant has not led any evidence with regard to the above

before the learned Trial Court. The same seems to be an attempt to improve his explanation for causing the death of his wife, besides being an afterthought.

47. Accordingly, in view of the reasons stated above, we do not find any reasons to interfere with the impugned judgment and order passed by the learned Trial Court. The appeal is accordingly dismissed.

48. In appreciation of the assistance provided by the learned Amicus Curiae, his fee is fixed at Rs. 8500/-, to be paid by the Mizoram State Legal Services Authority. Send back the LCR.

JUDGE

Comparing Assistant