

GAHC030002782023



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

Case No. : CRL.A(J)/15/2023

Sh. Thomas Lalthlamuana
Lungdai Chhimveng, Aizawl District, Mizoram

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Victor L. Ralte, Amicus Curiae

Advocate for the Respondent : Mrs. Mary L. Khiangte, Addl.PP, Mizoram

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
HONOURABLE MRS. JUSTICE S.P. KHAUND

JUDGEMENT & ORDER (CAV)

Date : 13-11-2024
(*Marli Vankung, J*)

Heard Mr. Victor L Ralte, learned Amicus Curiae for the appellant along with Mrs. Mary L Khiangte, learned Addl. Public Prosecutor for the state respondent.

2. This is a jail appeal filed against the Judgment & Order dated 21.08.2024

passed by the Judge, Fast Track Court-cum-Addl. District & Sessions Judge, Kolasib District, Kolasib, in Sessions Registration No. 39/2020 Kawnpui P.S. No. 09/2020 in Crl. Tr. No. 167/2020, the appellant was convicted under Section 302 IPC and sentence to undergo life imprisonment and to pay a fine of Rs 20,000/- (twenty thousand) in default rigorous imprisonment for another two months. Aggrieved by the above conviction and sentence order, the appellant has filed the instant appeal.

3. Facts of the case in a nut-shell is that on 07.07.2020, a written FIR was received from Rodiat Vanlalpeka of Lungdai, ChhimVeng to the effect that on 06.07.2020 at around 6:30 pm, he found his mother Lalremruati, lying dead in her residence with multiple injuries on her body and that he strongly suspected her live-in partner, Thomas Lalthlamuana. A case under section 302 IPC was registered as KPI case No. 9 of 2020 dated 07.07.2020. During the course of an investigation, the case IO examined the complainant and had visited the place of occurrence. Inquest over the dead body was conducted and found cut mark around 2 inch long from her right ear to temple, cut mark 2 inch long on the head, multiple bruise mark on her abdomen, two small cut mark on her right shin, blacken mark on both eyes, blood oozing from her nose and mouth, multiple bruise mark on her buttock and few stool on her anus. One stick (axe

handle), scissors, victim's T-shirt all stained with blood and blood sample found on the back and the blood stained T-shirt and a short pant of the accused was also found. The case IO examined and recorded the statements of the witnesses and also arrested the accused/appellant Thomas Lalthlamuana. During interrogation, his statement was recorded as 'Disclosure Statement' u/s 27 of the Indian Evidence Act in the presence of two reliable witnesses. The dead body was forwarded to Medical Officer for PME. The PME report revealed that the cause of death appeared to be 'Haemorrhagic shock' due to traumatic brain injury. The seized articles were sent to FSL, Aizawl. On receiving the FSL report which revealed that the suspected blood sample matched the with the deceased's blood, a prima facie case u/s 302 IPC was found established against the accused/appellant and charge sheet was accordingly submitted.

4. The learned Trial Court framed charge under 302 IPC to which the accused/appellant pleaded not guilty and claimed for trial. During trial, as many as 15 (fifteen) prosecution witnesses were examined. Thereafter, the accused/appellant was examined u/s 313 CRPC, wherein he denied all the incriminating evidence against him. No defence witnesses were produced. The learned trial Court, after considering the evidence available on record and on hearing the submissions of both the parties convicted the accused/appellant u/s

302 IPC and sentenced him to undergo imprisonment as mentioned above, and hence the instant appeal.

Submissions made by the learned counsels:

5. Mr. Victor L. Ralte, learned Amicus Curiae for the appellant submits that the commission of the act causing the death of the deceased victim is not denied. However, from the evidence of the prosecution witnesses i.e. PW 8, 11& 12 it is seen that the accused/appellant along with the deceased victim had gone to the house of Khianghnuna/PW-11, where the deceased victim and the accused/appellant had consumed liquor along with PW-11 and PW-12 (wife of PW-11). The victim in her drunken state had to be woken up, wherein the accused/appellant had hit her with his elbow several times and had even threw a bucket of water on her body. Thereafter, the deceased victim was taken to their house by PW-8 and PW-11. The learned counsel submits that it was because of the drunkenness of the deceased victim, that the accused/appellant was provoked to assault the victim which resulted in her death. He submits that the accused/appellant was also in a drunken state and he had no intention to cause the death of the victim and therefore, the exception-I of section 300 IPC may be applied in the instant case whereby the conviction of the appellant under section 302 IPC be converted to section 304 part-I IPC.

7. Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor, on the other hand, submits that from the nature of the injuries found on the dead body of the deceased victim, it is clear that the accused/appellant had intended to cause the death of the deceased victim. PW- Nos. 8, 10,11& 12 had witnessed the accused/appellant, knock the deceased victim several times with his elbow in the house of Khianghnuna/PW-11 and had also pulled her down on the floor and threw a bucket of water on her body in order to wake her from her drunken state. The evidence of the prosecution witnesses show that the victim feeling very cold was made to change her clothes and she wore a green T-shirt belonging to the wife of Khianghnuna. Thereafter, PW-8 stated that the accused had also punched her on her face and PW-8 saw blood coming out of the temple of Lalremruati's face. The accused/appellant had also beaten her with a broom on her face and kicked her while she was on the floor. Thereafter, PW-8 along with Khianghnuna/PW-11, had dropped the deceased victim to her residence and left her lying on the bed, it was around 10:30 am when the accused/appellant had called her/PW-8 through the phone and told her that the victim fell on the ground and that she sustain several bleeding on her head. When she reached their house, the accused/appellant was sleeping on the floor and the victim was found dead with fresh injuries found on her body. The statement of PW-8, 10, 11 & 12 Lalrempuii is corroborated by the statements of

PW-9/Mrs. Mary Thanmawii who is the mother of the accused/appellant who deposed that she saw the deceased victim being brought home in a drunken and injured state and later at around 9:40pm she was found dead.

8. The learned Addl. Public Prosecutor submits that from the inquest report, it is clear that the accused/appellant had called the deceased victim while they were in their house which had caused multiple injuries on her body and the injuries was of such nature that it caused her dead as shown in the PME report. The learned Addl. Public Prosecutor submits that the deceased victim being in a drunken state cannot be deemed to be a provocation, since the prosecution witnesses have not stated that there was any argument or altercation between the accused/appellant and the deceased victim on 06.07.2020 evening/night. She submits that the accused/appellant had admitted his guilt in the 'Disclosure Statement' record under section 27 of Indian Evidence Act and though he denied his involvement in the examination under 313 CrPC, the FSL report clearly showed that the blood on his clothes belong blood the victim. She further submits that from the nature of the weapon which is used, which is the handle of an axe, which the accused/appellant had used to hit the victim, causing multiple injuries on her body, it is clear that the accused/appellant had the intention to cause the death of the deceased victim. Thus, there were no

grounds for converting the conviction under 302 IPC to Section 304 part-I IPC, since the act of the accused/appellant does not come under the exception-I of section 300 IPC.

Evidence adduced before the Trial Court:

9. We have heard the submissions made by the learned counsels for both the parties and perused the documents on record.

10. In order to fully appreciate the submissions made by the learned counsels for both the parties, this Court find it fit to briefly reproduce the relevant depositions made by the prosecution witnesses before this Court.

11. PW – 1/Rodiat Vanlalpeka stated that on 06.07.2020 at @ 6:30 pm, his mother Lalremruati d/o Lalhmingmawia (L) was found lying dead inside the bedroom of their rented house at Lungdai, ChhimVeng. There was sign of injuries on her body at the time when she was found. His said deceased mother was in a live-in relationship with the accused Thomas Lalthlamuana S/o V.A Paul at the time of the occurrence of the incident. As such, he lodged an FIR before the Kawnpui P/S.

Ext P-1 is the FIR.

12. PW – 2/Lalzara Colney and PW-3/K. Lalthanpuia are the Vice-President and

President of Lungdai Village Council in the year 2020 respectively. Their depositions is to the effect that on 06.07.2020 at 10:30 pm, they received verbal information from Lalrempuii informing them that accused Thomas Lalthlamuana had beaten his wife Lalremruati to death. They immediately proceeded towards their house and on their way they met Pu K.Lalthanpuia, Ex-President YMA, Lungdai Branch and they went together towards their house. On reaching the house of deceased Lalremruati, accused Thomas Lalthlamuana and his mother Pi Thanmawii were there. They saw Pi Thanmawii changing the clothes of deceased Lalremruati and on seeing the dead body of Lalremruati they suspected her to have been assaulted by the accused. They also saw the accused Thomas Lalthlamuana wearing a blood stained light blue colour short pant. The police was informed about the matter by the VCP, C. Lianhmingthanga and before their arrival they lock the door from outside and kept the dead body untouched.

When the police arrived, they seized the following articles:-

1. Blood stained axe handle (hrei ha).
2. Blood stained scissors.
3. Dark brown colour T-shirt worn by the victim at the time of her death.
4. Blood stained light grey colour long pant worn by the victim at the time of her death.

5. Blood sample collected from the P.O.
6. Black and pink colour T-shirt worn by the accused at the P.O.
7. Blood stained light blue colour short pant worn by the accused at the time when they reached the P.O.

During cross examination, they admitted that since they were not doctors or medical practitioners, they could not ascertain whether the victim succumbed to her injury or not at that time when they reached the victim's residence.

13. PW – 7/Dr. C. Lalnunpuia is the Doctor who examined the accused/appellant and drew blood sample of the accused/appellant on 07.07.2020.

14. PW – 8/Ms. Lalrempuii stated that on 06.07.2020 at @ 3:00 pm, she saw Lalramsangi in front of her house and she asked her why she was so drunk. She replied saying that they made liquor at Khianghnuna's house and her sister Lalremruati and her husband accused Thomas Lalthlamuana fought each other so she escaped from them.

At @ 4:30 pm she went to Khianghnuna's house and Remruati and her husband accused Thomas Lalthlamuana were also there. Remruati had fallen asleep (Chatthla) on the bench and her husband accused Thomas Lalthlamuana knocked her with his elbow several times to wake her up. As she was unable to awake, the accused pulled her down on the floor and threw a bucket of water

on her body. As she was feeling very cold, they changed her clothes and made her wear green T-shirt belonging to the wife of Khianghnuna. The accused also punched on her face and she saw blood coming out of the temple of Lalremruati's face. The accused also beat her with a broom on her face and also kicked her while she was on the floor. She tried to interpose and tried to stop the accused from beating her. At @ 5:30 pm, they called one Auto Rickshaw and herself and Khianghnuna carried her inside the Auto rickshaw and they dropped her to her house. When they reached their house, they made her sleep on their bed inside the bedroom and she saw a blood coming out of her ear. The deceased victim had asked her to cover her with a blanket and after few minutes she left their house.

At around 10:00 pm, the accused called her through phone and told her that Lalremruati fell on the ground and that she sustained severe bleeding on her head. When she reached their house she saw Lalremruati and her husband accused Thomas Lalthlamuana sleeping on the floor of their bedroom. When she pulled off their blanket a little bit, she could smell blood. When she tried to wake up Lalremruati by pulling up the hand of Lalremruati, she saw fresh injury of cut mark on her left hand stained with blood. She was not wearing any clothes but she did not know whether she was wearing a pant or not. When she

touched her body feeling for her pulses, she realised that she was already dead. When she pointed her light on her face she was pale and she immediately rushed out of their house and informed Mampuii. There was no person other than the accused Thomas Lalthlamuana who could have cause the death of the victim Lalremruati.

During cross examination nothing was asked to discredit the evidence of PW-8, though she admitted that she was not present when the accused/appellant assaulted the deceased victim in their house.

15. PW – 9/Ms. Mary Thanmawii stated that the accused was her son. On 06.07.2020 after having dinner, victim Lalremruati was brought home by her friend Lalrempuii and one unknown person. Initially she did not know who she was but later on she knew that she was Lalremruati, her son's wife. She saw that the unknown person along with Khianghnuna and Lalrempuii were busy helping Lalremruati. At that time she saw injury on the ear of Lalremruati and she was also wearing green colour long sleeve shirt.

At around 9:40 pm, when she was about to sleep Thomas Lalthlamuana called his son Lalchhandama and he also called her. When she went to their house she came to know that Lalremruati had passed away. When she tried to feel the pulse of Lalremruati she saw blood on her hand. She was not wearing

any shirt but she wore a pant. And she also saw a green colour shirt besides her. While she was changing her clothes the VC Vice President Pu Lalzara and YMA President Pu Lalthanpuia also arrived at their house. There was no person other than the accused Thomas Lalthlamuana and his son Lalchhandama at that time when she was changing the victim's clothes.

During cross examination she admitted that she did not see the accused Thomas Lalthlamuana assaulting the victim and that she was called upon by her son the accused and when she went there she realised the victim Lalremruati was unconscious. She admitted that the victim Lalremruati was an alcoholic and drugs addict.

16. PW – 10/Ms. Lalramsangi stated that the accused/appellant was the husband of her elder sister Lalremruati(L). On 06.07.2020, she went to the house of her sister, victim Lalremruati. While she was in their house, Khianghnuna , called the accused Thomas Lalthlamuana through mobile phone that he was having liquor and invited them to have a drink. She along with accused Thomas Lalthlamuana and his wife Lalremruati went together and they all had a couple of cups. After sometimes, the accused started knocking victim Lalremruati on her face with his elbow. She left them and in the evening when she went back to the house of Khianghnuna she saw that they were about to

take victim Lalremruati to the hospital in one auto rickshaw. She also accompanied them up to Thlankawn, but she did not know whether they had actually taken Lalremruati to the hospital or not. At around 10:30 pm, she came to know about the death of her sister.

During cross examination she admitted that the victim Lalremruati was her elder sister. On 06.07.2020 she and her sister Lalremruati along with the accused consumed alcohol, and admitted that victim Lalremruati was not injured when she was present in the place of incident. She also admitted that she did not think the situation to be serious so she left the place of incident.

17. PW No 11/Khianghnuna stated that on July 6, 2020, he prepared local liquor at home and invited the accused Thomas Lalthlamuana and his wife Lalremruati (the victim) to join him for drinks. The couple arrived at his house accompanied by the victim's younger sister Lalremsangi. After consuming several cups of liquor, the victim became excessively intoxicated and lost consciousness, while her husband also became drunk. While they were in his house, he observed the accused repeatedly elbowing the victim in the face and punching her multiple times, resulting in visible injuries and blood coming from her head. In an attempt to revive the victim, the accused poured a bucket of water on her. They later changed the victim's clothes as she was feeling cold

and dressed her in garments belonging to his wife. Subsequently, they took the victim home via auto rickshaw.

During cross examination he confirmed that the accused was hitting the victim because she was so intoxicated that she could not walk and that the victim was conscious when she and the accused left his house.

18. PW No. 12/Sangzuali stated that on July 6, 2020, herself and her husband Khianghnuna prepared local liquor in their house and invited the accused Thomas Lalthlamuana and his wife Lalremruati (the victim) to join them for drinks. The couple arrived with the victim's younger sister Lalremsangi. After consuming a few cups of liquor, the victim became so intoxicated that she lost consciousness. The accused, the victim's sister, and Sangzuali's husband also became drunk, but Sangzuali remained sober and fully aware during the events. While they were in her house, she observed the accused attempting to assault or beat the victim with a stick, which she intervened and prevented. The accused then poured a bucket of water on the victim in an effort to revive her. As the victim was feeling cold, Sangzuali and another individual named Rempuii assisted in changing the victim's clothing, dressing her in a green shirt and long polar pants belonging to Sangzuali. Subsequently, they intended to take the victim to the hospital via auto rickshaw. However, she learned from her husband

that instead of going to the hospital, they returned directly took her to their home.

During cross-examination she admitted that both the accused and the victim were intoxicated that night and she did not witness the accused physically hitting the victim. She admitted that the accused poured water on the victim because she was extremely drunk and nearly unconscious and when leaving PW No. 12's house, the victim was conscious and able to speak. The victim was not in a life-threatening condition when she left.

19. PW No. 14/C. Lalzamlia stated that on July 6, 2020, at 10:00 PM, some children informed him that the victim Lalremruati had passed away. He rushed to the house of the accused Thomas Lalthlamuana and observed the victim's dead body from outside. He also noted the presence of Vice President Pu Lalzara and YMA President Pu Lalthanpuia near the accused's house. When he attempted to enter the house, they were stopped by others present, and subsequently, they locked the door from outside while waiting for the police to arrive.

20. PW No. 15, David Zoramsangliana, who is the brother of the deceased victim, stated that on the evening of July 6, 2020, the accused Thomas Lalthlamuana called and informed him that his sister Lalremruati (the victim)

had accidentally fallen and was bleeding from her ear. At 6 – 7 PM. He went to their house but before reaching the house, he saw the accused carrying an axe towards their bedroom and heard threats directed at his sister, indicating that the accused intended to harm her with the axe. When the accused noticed him approaching, he discarded the axe outside. He also noticed blood stains on the accused's footwear but initially attributed them to the accused assisting his sister. Inside the house, the witness attempted to wake his sister, who remained unresponsive, leading him to believe that her injuries were due to an accident rather than foul play. Despite being aware of prior instances of abuse by the accused against his sister—including a previous incident where the accused broke her arm—the witness expressed disbelief that the accused could have killed her.

During cross-examination he admitted that it was confirmed that the deceased victim had a history of alcohol and drug use but had stopped using drugs after marrying the accused, that he did not directly observe any physical assault by the accused on his sister. He was uncertain whether his sister was alive when he arrived at the scene, and that he did not believe that the accused killed his sister.

21. PW No 17/Ammie Lalnunpuui stated that on July 8, 2020, they received

samples of stick (handle of an axe)-Ext. A, a suspected blood-stained scissor Ext. B, a victim's T-shirt stained with suspected blood (dark brown) Ext. C, and a victim's pant (light grey) stained with suspected blood Ext. D, a dried blood sample Ext. E, accused's T-shirt (black and pink) stained with suspected blood Ext. F, accused's short pant (light blue) stained with suspected blood Ext.G, liquid blood samples from both the victim (Ext. H) and the accused (Ext. I) from the SDPO, Kolasib in connection with Kawnpui P/S case No. 9/20 dt July 7, 2020, u/s 302 of the IPC.The forensic examination was conducted under the supervision of Lalchhanzova, Assistant Director at the Forensic Science Laboratory (FSL).

The examination yielded the following results:

1. Complete female genetic profiles were generated from Exhibits A, B, C, D, E, F, G, and H.
2. A complete male genetic profile was generated from Exhibit I.
3. The genetic profiles obtained from Exhibits A, B, C, D, E, F, and G matched with the genetic profile from Exhibit H (the victim).

Based on these findings, it was concluded that:

1. The blood stains from Exhibits A, B, C, D, and E belonged to the victim (Exhibit H).
2. The blood stains from Exhibits F and G (the T-shirt and short pant of the accused with suspected blood stain) also belonged to the victim (Exhibit H).

Ext. P-IX represents the FSL report.

During cross examination nothing was brought out which cast doubt on the correctness of the FSL report.

22. PW No 18/KC Hmingthanga stated that on July 8, 2020, samples of a stick (the handle of an axe), -Exhibit-A, and a specimen fingerprint of the accused, Exhibit-J, were received in connection with Kawnpui P/S case No. 9/20 u/s 302 IPC from the SDPO, Kolasib. He conducted a scientific examination of Exhibit-A using various light sources and physical and chemical methods to develop any latent prints. However, no prints of comparable quality were found on Exhibit-A.

Consequently, further examination to compare the specimen print (Exhibit-J) with any prints from the handle of the axe (Exhibit-A) could not proceed due to the absence of usable latent prints on Exhibit-A. The FSL report is exhibited as Ext. P-X

23. PW 19/Diana Lalhlupuii stated that on July 7, 2020, at 9:45 AM, the dead body of the victim Lalremruati, who was the wife of the accused Thomas Lalthlamuana, was brought to Lungdai PHC by the Rodiat Vanlalpeka (son of the victim) and a Police constable R.Lalchhanliana for Post Mortem of the dead body. He informed the examining doctor that the victim's death was suspected to have been caused by her husband. During the post-mortem examination,

multiple wounds were identified on the victim's body as herein under:

1. Lacerations:

- Right parietal lobe (4x3x1 cm)
- Across the right ear lobe (2x2 cm)
- Right upper lateral thigh (2x3 cm)
- Right anterior tibial thigh (2x2 cm)
- Left upper anterior lateral thigh (4x5 cm)
- Around epigastrium (4x4 cm)
- Left forearm (2x1 cm)

2. Abrasion:

- Right patella (2x2 cm)
- Left lower gluteal region (7x6 cm)
- Right gluteal region (7x6 cm)

3. Puncture Wounds:

- Forehead (1x1 cm)
- Left medial hand (1x1 cm)

Additionally, there were multiple wounds on the body of the victim.

1. Concussions:

- Periorbital area in the left eye (3x4 cm)

- Left nasal bridge (2x3 cm)
- Left lower lip (2x1 cm)
- Left hypochondrium, left lumbar, and left iliac region (20x15 cm)
- Left flank (5x4 cm)
- Right upper gluteal region (7x7 cm)
- Right flank (5x4 cm)
- Right upper posterior lateral thigh (4x3 cm)

2. **Petechial Hemorrhages:**

- Right lower mandible (1 cm each)

The most severe injury was a deep laceration on the scalp in the right parietal lobe measuring 4x3 cm with a depth of 1 cm and expulsion of brain matter. The examining doctor concluded that such an injury could only have been inflicted by an external weapon or object wielded by another person. The probable cause of death was determined to be haemorrhagic shock resulting from traumatic brain injury. Ext. P-XI. represents the post mortem report.

24. PW No 20/Inspector Zoramhermawia is the case I.O. He stated that on July 7, 2020, an FIR was filed by the victim's son, Rodiat Vanlalpeka, who reported discovering his mother deceased at their residence in Lungdai, ChhimVeng. He suspected her live-in partner, Thomas Lalthlamuana (the

accused), of being responsible for her death. Consequently, a case was registered under Section 302 of the Indian Penal Code (IPC) for murder. He interviewed the complainant and witnesses, collected evidence from the scene, and conducted an inquest on the body. The examination of the victim revealed multiple injuries, including significant cuts on her head and abdomen, bruises, and signs of trauma indicative of physical assault. Items such as a blood-stained axe handle and scissors were seized as evidence. During interrogation, the accused confessed to assaulting the victim with the axe handle, which resulted in her death due to traumatic brain injury, as confirmed by a post-mortem examination.

He arrested the accused and his confession was recorded under Section 27 of the Indian Evidence Act. In his confession, he gave a detailed account of how he struck the victim multiple times, leading to her bleeding and eventual loss of consciousness. Forensic analysis corroborated that blood samples collected from the crime scene matched those of the deceased. Additionally, the officer clarified discrepancies regarding the victim's parentage in court, requesting a correction in official records from his stepfather's name to his biological father's name.

The investigation concluded with sufficient evidence to establish a prima

facie case against the accused under Section 302 IPC. The officer presented several exhibits to support the case:

- Ext P-II: Charge Sheet
- Ext P-III: Arrest Memo
- Ext P-IV: Seizure Memo of Blood Sample
- Ext P-V: Seizure Memo of Accused's Clothing
- Ext P-VI: Disclosure Statement
- Ext P-VII: Inquest Report
- Ext P-VIII: CD containing images and video evidence

During cross-examination, the officer faced questions regarding the accused's plea and knowledge about the quarrel that led to the incident but maintained that all findings were accurately reported based on investigations and medical reports.

25. On examination of the accused/ appellant under section 313 Cr.P.C, he denied the incriminating evidence deposed against him. He asserted that he loved his wife, the deceased victim, deeply and never harmed her. According to him, when he returned home that day, she was already lying on the floor, unconscious and injured. He claimed that his wife struggled with alcoholism and drug use, and was heavily intoxicated that day. Initially, he believed she was losing consciousness due to her intoxication. It was only after discovering her

injuries that he informed his mother. The accused maintained that he had no involvement in the incident and was unaware of how she sustained her injuries, insisting on his innocence.

Decision and reasons thereof:

26. We have considered the submissions made by the learned counsels for both the parties and have also perused the documents on read.

27. From the perusal of the post mortem examination report, the nature of injuries on the body of the deceased victim is that there were **Lacerations** on the right parietal lobe (4x3x1 cm), across the right ear lobe (2x2 cm), right upper lateral thigh (2x3 cm), right anterior tibial thigh (2x2 cm), left upper anterior lateral thigh (4x5 cm), around epigastrium (4x4 cm), left forearm (2x1 cm). **Abrasions** were found on right patella (2x2 cm), left lower gluteal region (7x6 cm), right gluteal region (7x6 cm). **Puncture Wounds** were found on her forehead (1x1 cm), left medial hand (1x1 cm). Additionally, there were multiple wounds on the body of the victim. **Concussions** were found on her Periorbital area in the left eye (3x4 cm), left nasal bridge (2x3 cm), left lower lip (2x1 cm),

left hypochondrium, left lumbar, and left iliac region (20x15 cm), left flank (5x4 cm), right upper gluteal region (7x7 cm), right flank (5x4 cm), right upper posterior lateral thigh (4x3 cm). **Petechial Hemorrhages** were found on her right lower mandible (1 cm each). The most severe injury was a deep laceration on the scalp in the right parietal lobe measuring 4x3 cm with a depth of 1 cm and expulsion of brain matter. The doctor who was examined as PW-19 Diane Lianhlupui opined that the death was caused due to 'Haemorrhagic Shock' resulting in traumatic brain injury.

Thus, from the nature of multiple injuries found on the body of the deceased victim as found in the PME report, it is proved that the death of the deceased victim was homicidal.

28. On perusal of the deposition of the prosecution witnesses, we also find that from the evidence of PW 8, 10, 11& 12, it is proved that the accused/appellant, along with the deceased victim had gone to the house of PW-11 to consume liquor and the deceased victim who was in a drunken state on 6th July, 2020. Later, on the same day in the evening, deceased victim was taken home and left with the accused victim in their residence. Both of them were in a drunken state and the deceased victim, being earlier assaulted by the accused/appellant was also so weak that she had to be taken home by PW8, PW11 and PW 12

and be helped to lie down on her bed by PW-8 & PW-11. Thereafter, at around 10 pm, on receiving the phone call from the accused/appellant, the prosecution witness found the victim dead with multiple injuries on her body. From the evidence adduced there is no mention of any other person except the accused/appellant in their house.

29. We find that though the accused/appellant in his statement recorded u/s 313 Cr.PC had stated that when he returned home she was already lying on the floor dead, however, no defence evidence is adduced to support his claim. It is also seen that the accused/appellant had made a disclosure statement recorded under section 27 of the Indian Evidence Act, exhibited as Ext P-VI, wherein the weapon (Axe handle) was recovered, where he had also admitted his guilt. As deposed by PW No. 14, the FSL report also reveals that the blood stain found on the said weapon, one stick of the axe was stained with blood of the deceased victim and the blood stain on the T-shirt and shorts of the accused/appellant belonged to the deceased victim. We also find that the learned Amicus Curiae has not challenged the findings of the trial court on merits of the case but rather, has submitted the accused/appellant had not committed an offence of murder punishable under 302 IPC because the accused/appellant was provoked due to her drunken state. He had no intention to kill her or cause fatal injuries

on her and the case would fall under the exception – I to section 300 IPC.

Thus, in view of the above, we find that the prosecution evidence has proved that the grievous injuries found on the body of the deceased victim which caused her death was committed by the accused/appellant.

30. In order to see whether the case would fall under exception - I of section 300 where the relevant section is reproduced herein: “**Section 300 in The Indian Penal Code, 1860**

300. Murder:

“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—

(Secondly)— 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—

(Thirdly)— 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—

(Fourthly)— 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.”

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:—

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

We find it appropriate at this stage to also refer to ***KM Nanavati vs. State of Maharashtra reported in 1965 AIR 605***, wherein the Hon'ble Apex court had observed that the defence of provocation is only appropriate under the following circumstances:

- The deceased provoked the accused
- The incitement was severe and abrupt
- The accused had lost control as a result of the provocation
- Whether , in the same circumstances as the accused, a

reasonable man of the same ability and social status would also be provoked in the same way

- The accused was unable to plan for the outcome of his actions in advance.

31. On the scrutiny of the evidence adduced by the prosecution witnesses who were present in the evening of 6th July, 2020 in the house of Khianghnuna, that there was no quarrel or altercation between the deceased victim and the accused/appellant. That the victim was extremely drunk and weak and was assaulted by the accused/appellant briefly in the residence of Mr. Khianghnuna/PW-11, she was also weak needed to be helped to get into her bed. Thus, it cannot be state that the deceased victim could have provoked the accused/appellant wherein the accused had assaulted her repeatedly with the handle of an axe as can be seen from the nature of injuries described in the PME report.

32. Thus, considering the decision of the Apex Court and the circumstances under which the accused/appellant had committed the offence, we find that the plea of the accused/appellant that exception-I of Section 302 IPC should be invoked in the instant case is found unsustainable and the case does not fall under exception I of section 300 IPC. Accordingly, we find no reason to interfere with the Judgment & Order dated 21.02.2023 of the learned Judge, Fast Track

Court – cum – Sessions Judge, Kolasib in convicting the accused/appellant under section 302 IPC and sentencing him to undergo Rigorous Imprisonment for life and pay a fine of Rs. 20,000/- (Rupees Twenty Thousand),i.d. payment of the fine, he shall undergo further Rigorous Imprisonment for a period of 2 (two) months.

32. For the above reasons, Criminal Appeal No. 15/2023(J) stands dismissed and disposed of.

33. In appreciation of the assistance provided by the learned Amicus Curiae, his/her fee is fixed at Rs. 9,500/- (*Rupees nine thousand five hundred*) only to be paid by the Mizoram State Legal Services Authority.

JUDGE

JUDGE

Comparing Assistant