

GAHC030005672023



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

Case No. : Crl.A./40/2023

Sh. Tunsianmuanga
S/o Lalthianghlina
R/o Hnahlan, Dam Veng, Champhai District, Mizoram.

VERSUS

The State of Mizoram and Anr.
r/b the Secretary to the Govt. of Mizoram, Home Department, Aizawl, Mizoram.
2:The Officer-in-Charge
Champhai Police Station
Champhai District
Mizoram

Advocate for the Petitioner : Mr C Lalfakzuala
Advocate for the Respondent : P.P./Addl.PP, Mizoram

Linked Case : I.A.(Crl.)/54/2023

Sh. Tunsianmuanga
S/o Lalthianghlina
R/o Hnahlan
Dam Veng
Champhai District
Mizoram.

VERSUS

The State of Mizoram and Anr.
r/b the Secretary to the Govt. of Mizoram
Home Department
Aizawl
Mizoram.

2:The Officer-in-Charge
Champhai Police Station
Champhai District
Mizoram.

Advocate for the Petitioner : Mr C Lalfakzuala
Advocate for the Respondent : P.P./Addl.PP
Mizoram

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT & ORDER (CAV)

21.11.2024

(Marli Vankung, J)

Heard Mr. C. Lalfakzuala, learned counsel for the appellant. Also heard Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor for the State respondent.

2. This is an appeal filed against the Judgment & Order dated 18.07.2023 passed by the learned Court of Additional District & Sessions Judge, Champhai Judicial District, Mizoram in SR No. 53/2021 A/o CrI.Tr. No. 137/2021, wherein the appellant was convicted under Section 302 IPC and sentenced to undergo Rigorous Imprisonment for life with a fine of Rs. 5000/-, i.d. R.I for 1 (one) month.

3. The case of the prosecution in a nutshell is that an FIR was filed by the SI, Champhai Police Station to the effect that on 23.06.2021 at 3:00 PM, a

telephonic information was received from one Lalremruata Cherput, VCP Hnahlan stating that one Hmingthanmawia (38) S/o C. Lalthianghlina of Hnahlan Dam Veng was found lying on the long chair with serious injury (unconscious condition) on his head inside the residence of his elder brother Tunsianmuanga of Hnahlan Dam Veng. He was evacuated to PHC, Hnahlan for medical treatment but he succumbed to his injury on the way. Upon reaching Hnahlan village, he saw that the body of Hmingthanmawia (38), S/o C. Lalthianghlina of Hnahlan Dam Veng was already placed in the coffin, in the residence of his elder brother Tunsianmuanga. Inquest over the death body was conducted in the presence of reliable witnesses and the body was forwarded to M.O., PHC, Hnahlan for PME to ascertain the cause of his death. After all formalities were observed, foul play on the death of the deceased was found due to head injury sustained suggesting signs of being beaten by unknown person by using blunt weapon. On the said receipt of the FIR, the case was registered as CPI-PS Cases No. 53/2021 dated 23.06.2021 under Section 302 IPC.

4. The case was duly investigated into and the witnesses were examined. The Post Mortem Examination report was also received. The case I.O arrested the accused/appellant on 24.06.2021 and from the statement of the

accused/appellant and from the disclosure statement, wherein the murder weapon/tools were seized in the presence of disclosure witness and other witnesses, the case I.O found *prima facie* against the accused/appellant under Section 302 IPC and accordingly, the charge sheet was submitted. The learned Trial Court on 19.08.2021, framed charge under Section 302 IPC, to which the accused/appellant pleaded not guilty and claimed for trial. During trial, as many as 5 (five) prosecution witnesses were examined. The accused/appellant was then examined under 313 Cr.P.C, thereafter, one defence witness was examined. After hearing the submissions made by the learned counsels for the parties, the learned Trial Court convicted the appellant/accused under Section 302 IPC and sentenced him as mentioned above. Hence, the instant appeal.

5. Mr. C. Lalfakzuala, learned counsel for the appellant submitted that that the learned Trial Court had erred in convicting the present appellant under 302 IPC. He submitted that there were no eye witnesses to the incident and the prosecution evidence is all circumstantial evidence, the learned Trial Court had wrongly based its decision on the deposition of PW No. who is a witness to a disclosure statement made by the accused/appellant made before case I.O which resulted in the recovery of the murder weapon (a plough /spade), however no disclosure statement recorded under section 27 of the Indian

Evidence Act was exhibited. The learned counsel further submits that the learned trial court has also mentioned and relied on last seen together theory, based on the statement made by a person named Zohmingliana, however, the statement of said person Zohmingliana, mentioned by the learned Trial Court at para 9 of the impugned Judgment & Order, is not recorded in the court. The learned counsel further submitted that the learned Trial Court had erred in not considering the statement of the accused/appellant made under Section 313 CrPC, wherein the accused/appellant had explained that he was provoked by the actions of the victim, who was his younger brother which resulted and him hitting the deceased victim with a spade. He further submitted that the Defense witness, DW No. 1 had also stated that the deceased victim used to threaten the accused/appellant many times before and the accused/appellant had beaten the deceased victim due to provocation. The learned counsel submits that the accused/appellant was provoked to assault the victim and therefore, the case comes under the first exception of Section 300 IPC. The learned counsel further submits that even though PW-5 said that there are multiple injury as per the Post Mortem Examination report, however, the PME report is not exhibited nor was the Doctor who conducted the Post Mortem Examination examined in the Court.

6. The learned counsel has relied on the judgments of the Apex Court in the case of ***Reena Hazarika Vs. State of Assam***, reported in **(2019) 13 SCC 289** (para 19), ***Budhi Singh Vs. State of Himachal Pradesh***, reported in **(2012) 13 SCC 663** (para 18 to para 20), by submitting that the Apex court has held that if the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) CrPC the Court is duty-bound under Section 313(4) CrPC to consider the same. The learned counsel submitted that as per the statements of the appellant under section 313 Cr.P.C and the deposition of DW-1, the victim being bigger in built used to assault and trouble the appellant. That even on the fateful day, the appellant was provoked to hit the deceased victim with a spade/plough. The learned counsel thus submitted that the first exception of Section 300 IPC is applicable in the instant case and the accused appellant had no pre-planned intention to cause the death of his younger brother. The learned counsel has also relied on the judgment in the case of ***Dauvaram Nirmalkar Vs. State of Chhattisgarh***, reported in **2022 SCC Online SC 955** (para 12 & 13), wherein the Apex Court held that the last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of

provocative conduct, which would satisfy the requirement of sudden or immediate provocation. The learned counsel for the appellant submitted that the deceased victim had been provoking the appellant several times as explained by him in his statement under section 313 Cr.P.C which resulted in his retaliation on the date of the incident on being provoked again. The learned counsel thus submits that the act of the appellant comes under the first exception of section 300 IPC, wherein there was no intention on the part of the appellant to cause the death of the deceased who was his own younger brother but had hit his brother with the plough on being constantly harassed and provoked and that the conviction under Section 302 IPC should be converted to Section 304 Part-II IPC.

7. Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor, on the other hand submitted that, the accused appellant did not deny that the death of the victim, his younger brother, was caused by him in his examination under section 313 Cr.P.C. That no evidence is adduced by the defence witness to prove that there was any grave and sudden provocation. She further submits that the appellant/accused in his explanation under Section 313 Cr.P.C had stated that the victim had threatened him while they were having food, however, no other person who could be present in the room, at the time of the incident, has been

examined in this regard. The defence witness, who is their elder brother did not mention that he was present at the time of the incident and therefore, he did not have any knowledge as to what occurred on that day. The learned Public Prosecutor submitted that it is duly proved that the death of the victim was caused by the appellant and the murder weapon was duly recovered, on the disclosure statement made by the accused/appellant. She thus submitted that there is no ground made out in the appeal, to alter or set aside the Judgment & Order dated 18.07.2023 passed by the learned Court of Additional District & Sessions Judge, Champhai Judicial District, Mizoram in SR No. 53/2021 A/o Crl.Tr. No. 137/2021.

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

9. We find that in order to appreciate the submissions of the learned counsels of both the parties, it is necessary to briefly highlight the evidence adduced before the learned Trial Court .

10. PW No. 1, C. Lalsangliana deposed that he knew the accused Tunsianmuanga. On 23.06.2021 at around 3pm, while he was on duty at Champhai Police Station, he received a telephonic information from Lalremruata Cherput, VCP Hnahlan to the effect that Hmingthanmawia, aged 38 years, s/o

Lalthianghlima, resident of Hnahlan Dam Veng was found lying unconscious on the long chair with serious injury on the head in the residence of Tunsianmuanga of Hnahlan Dam Veng. He and his party proceeded towards the place of occurrence. On reaching the place of occurrence, he saw Hmingthanmawia lying in the coffin, in the residence of his elder brother Tunsianmuanga/appellant. He learnt that Hmingthanmawia was produced to PHC Hnahlan for Medical treatment but he succumbed to his injury on the way of PHC, Hnahlan. He conducted inquest over the dead body of Hmingthanmawia in presence of reliable witnesses. He also forwarded the dead body of Hmingthanmawia to Medical Officer, PHC, Hnahlan for postmortem examination, to ascertain the cause of his death. While conducting inquest over the dead body of Hmingthanmawia, he found head injury with laceration wounds about 5cm length and 3cm wide and about 2cm depth found in the back of his head and there seemed to be fractures of neck-bone. In his opinion, the cause of his death seemed to be head injury.

After completing formalities, he produced the suspected person Tunsianmuanga and all the seized items in connection with the incidence and submitted his FIR to the Officer-in-Charge, Champhai Police Station. Exhibit P1 is his FIR, Exhibit P2 is the Inquest Report and Exhibit P3 is rough sketch map of place of occurrence prepared by

him.

11. PW-2, Lalrindika deposed that on 24.06.2021 at around 12 noon, the Champhai Police requested him to be a witness to the present case of murder. When he reached the Champhai Police Station, accused Tunsianmuanga s/o C. Lalthianghlina of Hnahlan was kept inside Police lock-up. He heard the accused state that he had an altercation with his brother in his house and the accused hit his brother Hmingthanmawia of Hnahlan Dam Veng for five or six times on his head by using a spade (bawngtuthlawh) and he succumbed to his injury. The accused Tunsianmuanga further stated that the spade which was used for committing murder was hidden under the kitchen sink and a short pant worn by the accused, when he committed murder, was also kept inside his wooden trunk (Thingrempui). The disclosure statement made by the accused was recorded by the Police Officer. After recording the disclosure statement, the Police Officer requested him to witness the recovery of items/tools for murder. Under the supervision of Officer-in-Charge, Champhai Police Station, they then proceeded to the place of occurrence. The Police Officer recovered and seized one number of spade and one short pant (green colour) and both of them were stained with blood. He put his signature on the Seizure memo and the Disclosure Statement of the accused.

12. PW-3, Lalremruata Cherput and PW-4 Phairotluanga are the seizure witnesses. Their deposition is to the effect that on 23.06.2021, Champhai Police Officer and his party came to Hnahlan and they seized one pillow case and a long-chair cushion cover, which were stained with the blood of the deceased Hmingthanmawia, from the residence of Tunsianmuanga. They were present at the time of seizure of the said article and they put their signatures as seizure witnesses.

Later, on 24.06.2021, the Champhai Police Officer again came to Hnahlan in connection with the present case. The Police Officer seized a spade (bawngtuthlawh) which was used for committing murder by the accused Tunsianmuanga from under the kitchen sink. The Police personnel also seized one short pant worn by the accused Tunsianmuanga at the time of incident which was kept over the wooden box (Thingrem). They were present when the Police Officer seized the said articles from inside the residence of Tunsianmuanga.

They certified that MR No 53/2021 and 51/2021 were the seized articles which the Police Officer had seized in their presence.

13. PW-5, Robert VanlalremruataFanai is the Investigating Officer and he stated that he had proved the guilt of the accused for the following reasons :-

Firstly, he recorded the statement of the accused and the accused admitted his guilt and confessed before him that on 23.06.2021 at 8 am, the deceased victim Hmingthanmawia under the influence of alcohol came to his residence and as they frequently had an arguments and often quarrelled, the deceased victim, as usual started an argument and threatened him continuously. In retaliation, he took a spade (bawngtuthlawh) and hit the victim who way lying down on his long chair on his head several times.

Secondly, in the light of the confession of the accused, he proceeded to the place of occurrence and recovered the tool (i.e. the spade which was used for commission of the said offence) under the kitchen sink of the accused as the accused himself informed him about the place where he had hidden the tool. He also recovered and seized the short pant which the accused wore during the commission of the offence from his bedroom and which was kept by him on the top of a wooden box (Thingrem) and that too under the information given by the accused. He also recovered and seized a lock of hair of the deceased victim from the place of occurrence.

Thirdly, the PME Report of the deceased victim confirmed that the victim succumbed to his injury due to multiple blows on the head with a blunt instrument. FSL Report also confirms that blood stain recovered from the pillow

cover of the victim and piece of cushion cover of the long chair on which the victim was found belongs to the victim. The FSL Report also confirmed that the blood stain found on the spade of the accused and blood stain on the cushion cover on which the victim was found belongs to the victim. He exhibited the charge sheet, Arrest Memo, seizure memo of the spade and short pant, Lock of hair of the victim, FSL report regarding the examination of the blood stained pillow cover and spade, Exhibited as Ext -8, 9, 5, 6, & 10 respectively .

14. The accused/appellant was examined under section 313 Cr.P.C. He did not deny the incident which happened on 23.06.2021, but had stated that the victim was his younger brother who was physically stronger than him and that he used to threaten to kill him. The victim had come to their house on that day, while they were about to have their meal. He came with a knife and slashed the door with the knife and also threatened him again. On this provocation, he lost his mind and hit him with the plough. He believed he hit him only once. It was due to sudden rage and he even called the VCP, once things cooled down a bit. He further explained that while he went to work in the paddy field and stayed for about a week, the victim had stolen all his properties and belongings including Gas cylinder, solar panel, blankets, clothes and even their piglets. Although the victim was younger, he was stronger physically and was bigger. He was in a state of constant agitation and trauma. He was very sorry for what he had done

and he has lost his younger brother due to this. He further stated that the victim was not dead when the VCP arrived. However, he died on the way to the hospital.

15. DW-1, C. Lalhmangaihzuala deposed that he was the eldest sibling of the accused Tunsianmuanga and the deceased victim Hmingthanmawia, who was the youngest. The deceased Hmingthanmawia moved out from the main house and established a separate establishment. The accused Tunsianmuanga was then the owner of the main house since the youngest Hmingthanmawia (the victim) had left. Before the incident had happened, the deceased Hmingthanmawia threatened the accused Tunsianmuanga many times. On 23.06.2021, at around 8:00 AM, the deceased Hmingthanmawia had entered his elder brother's house with a knife and threatened him. Both had fought many times because the victim used to threaten the accused. In his opinion, the accused had beaten the victim by using a plough/spade caused by the sudden provocation by victim. He was the eldest brother and the relatives of the accused forgave the accused as the offence committed is between a family, and they have executed 'Ngaihdamna Lehkha' which had been submitted before this court. During his cross examination, he admitted that he was not present at the P/O when the incident took place. And he also accepts the fact that victim/deceased succumbed to his injury solely caused by the accused.

16. We have considered the evidence on record and we have also perused the impugned Judgment and order. We find that the learned Trial Court had convicted the appellant on the basis of the statements made by the accused/appellant under Section 313 CrPC, wherein he had stated that he hit the deceased victim due to sudden rage. The learned Trial Court also held that the accused appellant made a disclosure statement under Section 27 of the Evidence Act, which led to the discovery of spade/ plough and the short pant. The learned Trial Court had also relied on the last seen theory, by mentioning a person named Zohmingliana S/o Kapmawia (L), R/o Dam Veng, Hnahlan. However, we find that this Zohmingliana was not a prosecution witness nor was he mentioned by any of the witnesses.

17. We also find that the Post Mortem report was not exhibited in the Court, nor was the Doctor who conducted the Post Mortem Examination examined. However, the learned Trial Court had referred to the Post Mortem report while convicting the appellant under section 302 IPC. We thus find it appropriate to examine the Post Mortem Examination report which is attached to the charge sheet. We find that the cause of death of the deceased victim is recorded as 'head injury due to multiple blows to the head with a blunt instrument.' The nature of injury is described as deep laceration wound on the occipital lobe – Y shaped, length 5 cms., width 3 cms. and Cervical spine fracture at C-6. Thus,

we find that it can be safely concluded that the death of the deceased victim was homicidal death caused by the head injury due to multiple blows to the head with a blunt instrument.

18. On analysis of the evidence adduced by the prosecution witnesses, it is seen that PW-1 saw the body of the deceased victim when it was placed in the coffin. PW-2 only heard the accused/appellant admit, in the police station, that he had hit his brother 5 or 6 times on his head by using a spade/plough. PW-2 had further stated that he heard the accused/appellant saying that he hid the weapon used for murder under the kitchen sink. PW Nos. 3 & 4 are the seizure witnesses in the seizure of a plough and a pair of short pants of the accused/appellant. PW-5 is the case I.O, who based its findings from what was stated by the accused before him, the seizure of the plough, the Post Mortem report and the FSL report which confirmed that the bloodstain recovered from the spade/plough belonging to the accused/appellant and the bloodstain on the cushion belonged to the victim. It is thus seen that though there is no eye witness to the incident and the case of the prosecution rests on circumstantial evidence, however, we find that the accused/appellant in his examination under 313 CrPC admitted that on being provoked, he hit the deceased victim with a spade. He had explained that on 23.06.2021, the deceased victim came to their house with a knife and slashed the door with the knife and also threatened him,

due to which, in a sudden rage, he hit the deceased victim with the plough. He further stated that the victim was not dead when the VCP arrived. However, he died by the time they reached the hospital.

19. In **Reena Hazarika Vs. State of Assam, (Supra)** the Apex court held as follows:-

“19. Section 313 CrPC cannot be seen simply as a part of audialterampartem. 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. The importance of this right has been considered time and again by this Court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) CrPC the Court is duty-bound under Section 313(4) CrPC to consider the same. The mere use of the word “may” cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether

it is compatible or incompatible with the evidence available, is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 CrPC, in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 CrPC and to either accept or reject the same for reasons specified in writing."

20. Thus, this Court on taking due consideration of the fact that the accused appellant in his examination under section 313 Cr.P.C had admitted hitting the victim with a spade and wherein, the said spade was recovered by the case I.O from the 'disclosure' made by the accused appellant, duly heard by PW-2, and wherein, it is also reiterated by the evidence of DW-1, who deposed that in his opinion, the accused/appellant had beaten the victim by using a spade/plough, we find that it is duly proved that the death of the victim was caused by the accused appellant when he hit the victim with a spade on the head on 23.06.2021. We thus find that the sole question which is posed before this Court is, whether, in the facts and circumstances of the case, can it be said that the accused committed the murder of the deceased as defined under [Section 300](#) IPC and therefore, whether court below rightly convicted the accused for the offence under [Section 302](#) IPC or whether the act of the appellant can come

under exception No. 1 of Section 300 IPC and the conviction can be altered to Section 304-I or II of IPC.

21. The learned counsel for the appellant had taken the specific plea that the case comes under Exception - I to Section 300 IPC.

Under Exception 1 to Section 300 of the Indian Penal Code, 'culpable homicide' is not 'murder' if the following conditions are satisfied:

- (i) The deceased must have given provocation to the accused;
- (ii) The provocation must have been grave;
- (iii) The provocation must have been sudden;
- (iv) The offender, by reason of such provocation, shall have been deprived of his power of self-control;
- (v) The offender should have killed the deceased during the period, when he remained deprived of the power of self-control; and
- (vi) The offender must have caused the death of the person, who gave the provocation or that of any other person, by mistake or accident.

22. In **Budhi Singh Vs. State of H.P.**, reported in **(2012) 13 SCC 663**, the Hon'ble Apex court held as follows;

“18. The doctrine of sudden and grave provocation is incapable of rigid

construction leading to or stating any principle of universal application. This will always have to depend on the facts of a given case. While applying this principle, the primary obligation of the court is to examine from the point of view of a person of reasonable prudence if there was such grave and sudden provocation so as to reasonably conclude that it was possible to commit the offence of culpable homicide, and as per the facts, was not a culpable homicide amounting to murder. An offence resulting from grave and sudden provocation would normally mean that a person placed in such circumstances could lose self-control but only temporarily and that too, in proximity to the time of provocation. The provocation could be an act or series of acts done by the deceased to the accused resulting in inflicting of injury.

19. Another test that is applied more often than not is that the behaviour of the assailant was that of a reasonable person. A fine distinction has to be kept in mind between sudden and grave provocation resulting in sudden and temporary loss of self-control and the one which inspires an actual intention to kill. Such act should have been done during the continuation of the state of mind and the time for such person to kill and reasons to regain the dominion over the mind. Once there is premeditated act with the intention to kill, it will obviously fall beyond the scope of culpable homicide not amounting to murder."

23. In **Dauvaram Nirmalkar Vs. State of Chhattisgarh (supra)**, the Apex

court held that *Exception 1 to Section 300 - Sustained provocation principle - The last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self control - The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation - This principle does not do away with the requirement of immediate or the final provocative act, words or gesture. Further, this defence would not be available if there is evidence of reflection or planning as they mirror exercise of calculation and premeditation - The provocation may be an act or series of acts done by the deceased to the accused resulting in inflicting of the injury. The idea behind this exception is to exclude the acts of violence which are premeditated, and not to deny consideration of circumstances such as prior animosity between the deceased and the accused, arising as a result of incidents in the past and subsequently resulting in sudden and grave provocation-Thus, the gravity of the provocation can be assessed by taking into account the history of the abuse and need not be confined to the gravity of the final provocative act in the form of acts, words or gestures.*

To take the plea of Exception 1 to Section 300 - Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great

importance to two things when defence of provocation is taken - First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation. The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation - Here again, the court would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. The burden of prosecution to prove the guilt of the accused should not be mixed with the burden on the accused of proving that the case falls within an exception. However, to discharge this burden the

accused may rely upon the case of the prosecution and the evidence adduced by the prosecution in the court.

24. In the instant case, we find that in the evidence of PW-5, who is the Investigating Officer, he had deposed that the accused/appellant admitted his guilt and confessed before him that on 23.06.2021 at 8 am, the deceased victim Hmingthanmawia under the influence of alcohol came to his residence and as they frequently had an arguments and often quarrelled, the deceased victim, as usual started an argument and threatened him continuously. In retaliation, he took a spade (bawngtuthlawh) and hit the victim, who was lying down on his long chair on his head. This statement of the appellant said to be made before the case I.O is consistent with the explanation of the accused/appellant recorded under section 313 Cr.P.C, wherein he stated that the deceased victim was his younger brother and was physically stronger than him and used to threaten to kill him. On 23.06.2021, he had come to their house with a knife, while they were eating food and threatened him again. On such provocation, he lost his mind and hit him with the plough due to sudden rage. He had further explained how on previous occasions the deceased victim had stolen his properties which caused him to be in a state of constant agitation and trauma. His statement is also again corroborated by the evidence of DW-1, who is the elder brother of the accused/appellant and the deceased victim. It is in the

evidence of DW-1 that the deceased victim used to threaten the accused/appellant and he had also entered the house of the accused/appellant with a knife. This statement was not questioned or crossed during his the cross examination.

25. From the above evidence, we find that there is the presence of sudden provocation, when the victim, who was the younger brother of the appellant, entered their house with a knife and threatened him, which caused the appellant to hit the deceased victim with a spade. We also find that the deceased victim, had entered the house of the accused /appellant, while they were having their food, thus we find that there is lack of possibility of any premeditation on the part of the accused /appellant, and that weapon used by the accused /appellant is a spade, which again is a blunt instrument and not a weapon one would use normally use for committing a pre mediated offence of murder. We are therefore, of the considered opinion that there was no premeditation on the part of the appellant.

26. Thus, from the examination of the evidence on record, we are of the view that the act of appellant falls within Exception I to Section 300 of IPC and can lead to a conviction under Section 304 IPC. We also find that the PW-1 in his deposition had deposed that he received information from the Village Council

President (VCP) to the effect that the victim was found lying on the long chair with serious injury (unconscious condition) on his head, inside the residence of his elder brother Tunsianmuanga of Hnahlan Dam Veng. He was evacuated to PHC, Hnahlan for medical treatment but he succumbed to his injury on the way.

The accused/appellant under Section 313 Cr.P.C had also stated to the effect that he informed the VCP and they had taken the victim to the hospital but he died on the way to the hospital. The post mortem report shows that the cause of death of the victim is '*head injury due to multiple blows to the head with a blunt instrument*'. We, therefore find that the appellant was likely to know that his act of hitting the victim with a spade on the head is likely to cause death, however, the subsequent act of taking the victim to the hospital/PHC, goes to indicate that the act was committed without the intention to cause death. As such, we are of the considered view that the appellant is liable to be convicted under Section 304 Part II of [IPC](#).

27. The present appeal is therefore allowed and the impugned judgment dated 18.07.2023, passed by the learned Court of Additional District & Sessions Judge, Champhai Judicial District, Mizoram in SR No. 53/2021 A/o CrI.Tr. No. 137/2021, convicting the appellant under [Section 302](#) of IPC and sentencing him for Life Imprisonment, is hereby modified to the extent by convicting the appellant Tunsianmuanga, under section 304 [part](#) II of IPC and sentencing him

to undergo rigorous imprisonment for a period of 8 (eight) years. The fine amount and default stipulation, imposed by the trial Court shall remain the same.

28. CrI.A No. 40 of 2023 thus stands disposed of as above.

JUDGE

JUDGE

Comparing Assistant