



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 17 of 2024

Date of Decision: 08.08.2025

1. Shri. Protarsius Bula
Son of Shri. Paulus Sangriang
Aged about 33 years
Resident of Porshken Village,
Nongstoin, West Khasi Hills District,
Meghalaya
2. Shri. Rebinus Dkhar
Son of (L) Keren Sohlaman
Aged about 42 years
Resident of Porshken Village
Nongstoin, West Khasi Hills District,
District, Meghalaya
3. Shri. Taxisis Sangriang
Son of (L) R. Nongbak
Aged about 32 years
Resident of Porshken Village
Nongstoin, West Khasi Hills District,
Meghalaya.
4. Shri. Loris Rangmah
Son of (L) Samson Langrin
Aged about 42 years
Resident of Porshken Village
Nongstoin, West Khasi Hills District,
Meghalaya.
5. Shri. Jeremaia Miangiong
Son of (L) Loren Sohshang
Aged about 42 years
Resident of Porshken Village
Nongstoin, West Khasi Hills District,
Meghalaya.



6. Shri. Gines @ Ganesh Sangriang
 Son of (L) Loren Sohshang
 Aged about 42 years
 Resident of Porshken Village
 Nongstoin, West Khasi Hills District,
 Meghalaya.

.....Appellants

-Versus-

1. State of Meghalaya
 Represented by the Ministry of Home,
 Shillong, East Khasi Hills District
 Meghalaya
2. Superintendent of Police,
 West Khasi Hills District,
 Nongstoin, Meghalaya
3. Officer-in-Charge,
 Nongstoin, West Khasi Hills District,
 Meghalaya

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. H.R. Nath, Adv.

For the Respondent(s) : Mr. K. Khan, P.P
 Mr. S. Sengupta, Addl. P.P

- | | | |
|-----|---|--------|
| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
-



JUDGMENT

Per W. Diengdoh, J.

1. Judgment and Order dated 27.02.2024 passed in Sessions Case No. 20 of 2016 by the learned District and Sessions Judge, West Khasi Hills District, Nongstoin by which the appellants herein stood convicted for an offence under section 302 and section 34 of the Indian Penal Code (IPC) and were made to undergo rigorous imprisonment for life with respective fine of ₹ 5000/-, in default thereof, to further undergo simple imprisonment of one month vide sentencing order dated 05.03.2024 is under challenge herein in this appeal filed by all the convicts in the case.

2. The background details of the case is that on 04.10.2011, Shri Ismer Sangriang and Shri Binsen Synshiang lodged an FIR with the Officer Incharge, Riangdo Out Post, West Khasi Hills District informing him that on 02.10.2011, eight persons, whose names were noted in the said FIR had assaulted Nicholas Sangriang out of personal reasons, whereupon he was taken to Sonapahar CHC and from there he was referred to Civil Hospital Shillong, but he succumbed to his injuries on 04.10.2011 at about 12.30 pm.

3. On receipt of the said FIR, a criminal case was registered as Nongstoin P.S. Case No. 127(10) of 2011 under section 302/34 IPC and investigation was duly initiated. The Investigating Officer, on completion of the investigation has then filed the charge sheet dated 09.05.2012 with a finding that the deceased victim Nicholas Sangriang who was the Headman and Chairman, VEC Porshken Village was persuaded to attend a meeting convened by some villagers of Porshken Village, who are workers under the NREGS Scheme of 100 days' work



at the compound of Shri Binsen Synshiang, Secretary, VEC. The meeting was to discuss the allegations made against the deceased victim that he has misappropriated the labour cost of the workers by disbursing only a part of such amount to them. In course of such meeting, there arose a heated altercation between the parties and in the process, some of those present, assaulted and beat up the deceased victim rendering him unconscious until the villagers of Mawsmmai Village intervened. He was then shifted to Civil Hospital, Shillong where he succumbed to his injuries on 04.10.2011 at about 12.30 pm. The IO has then opined that a prima facie case under section 302/34 IPC is made out against those arrested in the case and they are made to stand trial before the competent court of jurisdiction for the same.

4. In course of trial, the learned Sessions Judge, West Khasi Hills District, Nongstoin has examined 8 prosecution witnesses and has caused 4 documents to be exhibited as well as 3 material exhibits produced before the court and after the recording of the evidence of the witnesses etc., the accused persons therein were made to give their statement or reply in terms of the provision of section 313 Cr.P.C. and thereafter, on no witnesses being examined on the part of the said accused persons, the learned Trial Court heard the argument of both sides and has then passed the judgment and order dated 27.02.2024 finding the accused persons guilty of the offences charged and has accordingly, convicted them by imposing a sentence of life imprisonment together with fine of ₹ 5000/- each. Hence this appeal.



5. We have heard the argument of Mr. H.R. Nath, learned counsel for the appellants who has started his submission by detailing the facts of the case as was depicted hereinabove.

6. The first limb of the argument of the learned counsel is that the inquest being considered as preliminary investigation does not reflect the actual cause of death of the victim as to the manner and the weapon or instruments employed for such injuries to be inflicted. The same not being in conformity with the provision of section 174 Cr.P.C, such inquest report cannot be considered as proved by the prosecution. Also the fact that the said inquest was conducted at the morgue of the Civil Hospital, Shillong by one S.I. P. Nongrum who was on duty at the Police Assistance Booth within the Civil Hospital, that too without the presence of any of the police officers from the concerned police station or any Magistrate, except three witnesses, that the said S.I. P. Nongrum was not even cited as a witness in the case to prove such inquest report has also rendered such evidence unreliable, further submits the learned counsel.

7. Continuing on this point, the learned counsel has submitted that the prosecution witnesses has deposed in court that the injured victim was first taken to Sonapahar CHC at about 7:00 pm on 02.10.2011 where he could not be treated and therefore, he was referred to Shillong Civil Hospital and was admitted on the same night where he succumbed to his injuries on 04.10.2011. This too, could not be proved by valid documents such as the admission or discharge slip or even the death certificate which were never produced in evidence. This goes to show that there is doubt if the victim was ever taken to Sonapahar CHC or even to the Civil Hospital, Shillong.



8. The veracity of the FIR was also doubted by the appellants wherein it was pointed out that the written FIR was dated 04.10.2011, GD Entry was made on 05.10.2011 and the same was registered on 07.10.2011 as it was noted that the FIR was received on that date at 2:00 pm. The delay in filing the said FIR was not explained nor was the Officer who has registered the FIR ever examined in Court, submits the learned counsel.

9. As to the seizure of the weapons used for committing the offence, the learned counsel has submitted that the Investigating Officer (IO) in his deposition as PW-8 has stated that on being directed, he has taken up the investigation of the case on 06.10.2011 and the complainant Shri Binsen Synshiang (PW-2) has produced and handed over one bamboo stick, one wooden stick and one shirt reportedly belonging to the deceased victim, which articles were seized in the presence of seizure witnesses.

10. However, it is the submission of the learned counsel that although in evidence, PW-2 has deposed that the police had visited the place of occurrence and had seized some materials in his presence, the same being one wooden log and one wooden stick as well as one black shirt with stripe, on such items being exhibited in court as Material Exhibit-I, II and III respectively, he accordingly identified the same. The IO has also identified the wooden stick and wooden bamboo, but as for the shirt, he said that it was a navy blue and white stripe shirt, therefore there is discrepancy in the evidence of PW-2 and PW-8 in this regard.



11. Further, the learned counsel has submitted that even the second seizure witness who was examined as PW-3, in his deposition has stated that he did not see when the police seized the Material Exhibits I, II and III. The said material exhibits were also not shown to the other prosecution witnesses who are said to be eye witnesses to the incident. Also the fact that there was no FSL report to determine any blood stains etc. in the seized materials as admittedly, the IO has deposed that the same were not sent for forensic examination as many of the witnesses have touched or removed them, the same would only prove that the prosecution has not been able to link the seized materials with the appellants as the cause of the commission of the alleged offence.

12. Coming to the Post Mortem Report, exhibited as Exhibit-4, the learned counsel has submitted that from the evidence of PW-4, the Doctor who has conducted the post mortem, he has deposed that the cause of death was due to shock and internal haemorrhage caused by head injuries inflicted upon by a blunt object, but the seized material in this regard were never shown to this witness to prove the cause of such injuries. Furthermore, the doctor has also given his opinion that the death of the victim might have occurred within 24 hours from the date of post mortem examination, However, this does not prove as to when and where the victim died as the body was found in the morgue of the Civil Hospital Shillong, submits the learned counsel.

13. On the evidentiary value of the evidence of the witnesses produced by the prosecution, the learned counsel has submitted that PW-1 is the maternal uncle of the deceased and he was informed of the



incident by PW-2. He has however admitted that he is not an eye-witness to the incident and he did not say anything as regard the seized materials.

14. On the evidence of PW-2 who was the Secretary of the VEC at that time and who was also alleged to have misappropriated the National Rural Employment Guarantee Scheme (NREGS), the learned counsel has submitted that this witness has handed over the seized materials to the IO from his custody which he kept in his house for four days and as such his evidence in this regard is not trustworthy.

15. As to the evidence of PW-3, the learned counsel has contended that this witness is not an eye-witness to the incident. PW-4 who is the wife of PW-2 also did not say anything about the seized materials. Nothing is required to be said about the evidence of PW-5 who is the doctor who had conducted the post-mortem.

16. On PW-6, it is submitted that he is the brother-in-law of the victim and in his cross examination he has stated that he has mentioned the name of all the accused persons as they are job card holders and further that he has come to depose before the court to help the victim. Even the wife of the victim who was examined as PW-7, in her deposition has admitted that it was the Secretary (PW-2) who has mentioned the names of the accused persons as those persons who have assaulted her husband, as such, her evidence is also hearsay evidence and cannot be relied upon.

17. Another line of argument canvassed by the learned counsel for the appellant is on the applicability of the ingredients of Section 34 IPC when it is submitted that for the application of Section 34 to the case in



hand as far as the appellants/accused persons are concerned common intention to commit the act has to be brought out by evidence. The prosecution has not been able to bring on record that there was a prior meeting of minds and common intention among the appellants for commission of the said offence, as such, they cannot be held guilty of the alleged offence jointly and severally. In this regard, the case of Balu @ Bal Subramaniam & Anr. v. State (U.T. Pondicherry), (2016) 15 SCC 471, para 17 has been relied upon by the learned counsel wherein the Hon'ble Supreme Court has held that for conviction of an offence read with Section 34 IPC it is necessary that there should be finding as to the common intention of the participants.

18. In view of the discrepancies and failure of the prosecution to link the death of the alleged victim with the appellants, the impugned judgment and sentence is liable to be set aside and the appellants be set at liberty submits the learned counsel.

19. Per contra, Mr. K. Khan, learned P.P while defending the order of conviction and the sentence passed thereto has submitted that on the FIR being registered as a police case and the IO after investigation has filed the charge sheet on 09.05.2012, finding a well-established prima facie case against the accused persons therein, out of all the accused persons including the appellants herein, two accused persons namely Balantin Synshiang had expired on 29.01.2018 and Justin Chirang had expired on 13.09.2018 as such, the case against them stands abated.

20. It is also submitted that to prove the charges framed against the appellants/accused persons, the prosecution has relied on the deposition of eight prosecution witnesses and four material exhibits as well as four



documents which includes the FIR, Inquest Report, Seizure List and Post Mortem Report. Of the prosecution witnesses, PW-1, PW-2, PW-4 and PW-6 are eye-witnesses to the incident and the material exhibits have also been proved before the court by PW-2 and PW-8. Such evidence tendered by the prosecution witnesses have remained unshaken and could not be contradicted or disproved, the admissible evidence of the prosecution being true and duly corroborated, the same stood proven beyond reasonable doubt, for which the learned Trial Court is justified in passing the impugned order of conviction and sentence.

21. The learned P.P has submitted that the prosecution's case rests on the strength of the evidence of the eye-witnesses who have in effect, proved the fact that the victim was assaulted by the appellants herein leading to his sustaining severe injuries and on being referred to the Civil Hospital, he succumbed to his injuries therein.

22. It is also the submission of the learned P.P that the evidence of PW-2 in particular has answered all the relevant questions as to the place of occurrence, the motive of the assault, the actual act of assault and the result of the said assault leading to the death of the victim, all being perpetrated by the appellants herein.

23. Taking this Court to the evidence of PW-2, the learned P.P has submitted that in his deposition, this witness has stated that in the month of October, 2011 he was holding the post of Secretary, VEC while the victim was the Chairman. *"...On the day of the incident it was a Sunday the job card holders which included all the accused persons along with three others called for a meeting at my compound without the knowledge of the chairman (victim) and the secretary in connection with the*



NREGS schemes of the job card holders to the effect that they have not received the said money as the chairman had misappropriate.”. A-3, Shri. Justin Chiran forced the Chairman (victim) to attend the said meeting even though it was a Sunday to which he has to comply and accordingly attended the meeting at the compound of the house of this witness. In course of the meeting, the accused persons (appellants) manhandled and assaulted the Chairman and in the melee, they got one stick and bamboo and hit him on the head whereupon he fell down on the ground. This witness tried to help the victim but the accused persons also tried to assault him and he escaped and ran away to Mawsmi Village.

24. The learned P.P has then submitted that thereafter PW-2 informed Shri. Ismer Sangriang (PW-1) about the incident and along with some villagers of Mawsmi Village they proceeded to the place of occurrence where the victim was still found lying on the ground. On the advice of the Sirdar of Nonglang the victim was taken to Riango CHC where they were informed that he could not be treated there and therefore they had to take him to Civil Hospital, Shillong for treatment but on 04.10.2011 he succumbed to his injuries at the said hospital, whereupon the inquest and the post mortem was also conducted at the said hospital.

25. This witness has further stated that it was he and PW-1 (Shri. Ismer Sangriang) who had gone to the Riango Police Outpost to file the complaint following which, the police visited the place of occurrence and seized the weapons used for the murder from his (PW-2) possession.



26. The learned P.P has again submitted that the evidence of PW-2 was further strengthened and corroborated by the deposition of PW-6 who has also witnessed the entire incident where the accused persons were seen to have assaulted the deceased victim with a wooden and bamboo log.

27. PW-4, Smti. Justina Sangriang is the wife of PW-2 and she too, has deposed that on the day of the incident at about 6:30 pm she was in the kitchen when she heard a lot of people shouting and screaming and when she came out of the kitchen, she witnessed the victim being beaten up by the accused persons whom she had identified by their respective names. She had tried to rescue the victim but she was also assaulted on the head. This witness has also stated that her husband PW-2 fled from the scene to Mawsmmai Village and later came back with some villagers where they saw the victim lying on the ground. The weapon of assault which includes the bamboo and wooden log were also at the place of occurrence.

28. To confirm the fact that the victim died as a result of the assault perpetrated by the accused persons/appellants, the learned P.P has referred to the evidence of PW-5 who is the doctor who had conducted the post mortem examination. In his evidence this witness has given a detailed description of the injuries present in the body of the deceased and has also stated that *“Detailed description of injuries are (L) dead body belong to a male adult person in rigor mortis. He sustained injuries on the head caused by blunt object. The injuries are ante mortem in nature.*



In my opinion, the cause of death was due to shock and internal hemorrhage caused head injury.”

29. As to the production of the seized weapon used for the assault on the victim, the learned P.P has submitted that PW-2 in his evidence has stated that *“The police visited the P.O and they seized some articles in front of me. The seized articles are produce in Court today from the Court’s Malkhana....”* *“...Mat- Ext-I is one wooden log, Mat- Ext-II one bamboo log and Mat- Ext-III one black shirt with stripe belonging to the victim... ”*. He further stated that he has appended his signature on the seizure list which was exhibited as Exhibit-P-3. This piece of evidence was corroborated by the IO who has deposed as PW-8 when he said that *“...the complainant Shri Binsen Shynshiang produced and handed over one bamboo stick, one wooden stick and one shirt which was reportedly belong to the deceased late Nikholas Sangriang which was accordingly seized by me in the presence of available witnesses...”*. *“On being shown to me the materials exhibits seized as per exhibit-P-3 I confirmed that Mat-Ext-I is one wooden log/stick, Mat-Ext-II is one bamboo log/stick an Mat-Ext-III is the torn navy blue and white stripe shirt which has come off from the body of the deceased...”*

30. The learned P.P has submitted that though one of the seizure witness PW-3 has stated in court that *“I did not see when the police seized the Mat-Ext-I, Mat-Ext-II and Mat-Ext-III.”*, it is however a settled position of law that if seizure material has been proved by the IO, minor irregularity, if any, by seizure witness will not disprove the case of prosecution as fatal. The case of *Modan Singh v. State of Rajasthan*, (1978) 4 SCC 435, para 9 has been referred to in this regard.



31. The next line of argument advanced by the learned P.P is on the issue of motive when it was submitted that as far as the motive for the murder of the deceased victim is concerned the prosecution through the evidence of PW-1, PW-2, PW-3, PW-4, PW-6 and PW-8 have clearly proved the motive of the accused persons/appellants to kill the deceased. Even otherwise, assuming but not admitting the absence of motive in murder cases, it is a settled position of law that motive is irrelevant where there is direct evidence and eye-witnesses to connect to the accused persons with the commission of murder, submits the learned P.P. The case of Bipin Kumar Mondal v. State of West Bengal, (2010) 12 SCC 91, para 24 was relied upon to prove this point.

32. Upon hearing such submission, it is to be mentioned herein that this is a case where the punishment for an offence under Section 302 IPC entails a sentence of life imprisonment, where, concerning a citizen of this country, who is entitled to certain rights, particularly fundamental rights, for example the right to life and liberty, the same has to be minutely examined to ensure that it has been rendered in accordance with law, applying the principle of criminal jurisprudence judiciously.

33. The facts and circumstances of this case has been brought out in the preceding paragraphs hereinabove and would be referred to only if necessary. Suffice it to say that the case of the prosecution is that an assault has taken place involving a particular individual, the same being perpetrated by the accused persons/appellants herein. The outcome of such an assault was the ultimate demise of the victim. On the police being informed by way of an FIR, after investigation it was found fit to book the appellants under the relevant provision of law. Thereafter, on



conclusion of the trial it was established and proved that the appellants are guilty of the offence alleged and due to the severity of the said offence wherein murder is involved, the appellants were found liable for punishment under section 302 IPC and also jointly liable for such act, thereby, attracting the provision of section 34 IPC.

34. On perusal of the relevant records, the memo of appeal including the impugned judgment and sentence what is significant is that the factum of the occurrence of the incident involving the appellants herein and the deceased victim, Nicholas Sangriang at the PO, which is the compound of the house of PW-2 has not been denied by the appellants in evidence. There is no plea of alibi raised and established in this case.

35. It is also on record that initially, there are 8 accused persons who are brought to trial in this case, however, in the midst thereof, two of the accused persons, Justin Chirang and Balantin Synshiang had expired on 13.09.2013 and 29.01.2018 respectively, thereby necessitating an order of abatement of the case as against such accused persons.

36. From the deposition of PW-2, it is understood that on the day of the incident being a Sunday, the job card holders which included the appellants herein along with three others had called for a meeting at his compound, the purpose of the said meeting was to demand an explanation from the Chairman/deceased victim as regard the allegation of misappropriation of the money due and entitled to the job card holders under the NREGS scheme.

37. Apparently, the deceased victim was forced to attend the meeting by one of the accused persons, Justin Chirang (since deceased). Again,



in the midst of the meeting, there arose heated discussions and deliberations which eventually resulted in a fist fight between the deceased victim and those who are opposing him. In course of the fighting, the deceased victim was hit on the head by one wooden stick and bamboo stick as a consequence of which he fell to the ground severely injured. It was PW-1 and PW-2 along with all the appellants who then took the victim to Riangdo CHC.

38. This vital piece of evidence, that is, that the deceased victim was seriously injured as a result of such assault and that he was taken to the Riangdo CHC by PW-1, PW-2 and others including the accused persons/appellants has not been able to be contradicted or refuted in the cross examination of PW-2. Further, as has been pointed out by the learned P.P, the evidence of PW-6, Shri. Stephan Langsah is also material inasmuch as this witness in his deposition has clearly deposed that “...It is during that time the crowd has tried to pacify both of them and Justin Chirang was following from behind and then he hit the headman Nikholas Sangriang on the head with a bamboo stick and the headman then collapse on the floor and then Protarsius Bula attack the headman with a wooden stick. I can identify accused Protarsius Bula by name and face he is present in the court dock today (witness pointed to accused Protarsius Bula) while Justin Chirang has already expired...” “...The people who were involved in assaulting Nikholas Sangriang are Justin Chirang, Protarsius Bula, Belantin Shynshiang, Rebe Dkhar, Tarsis Sangriang, Genes Sangriang, Loris Rongmah and Jerimaia Miangiong.”. This evidence has not been shaken, when this witness in his cross examination has reiterated “...It is not a fact that I did not witness the persons who hit the victim...”



39. Without going further, only on the basis of such evidence indicated above, the case of the prosecution is deemed to be well founded as to the complicity of the accused persons/appellants in the case and their actual involvement in the assault of the deceased victim.

40. On the objection of the learned counsel for the appellants as to the fact that there was no proper inquest conducted at the place of death, it may be mentioned that faulty or even absence of the inquest report will not be fatal to the prosecution's case if there are other reliable evidence to be considered by the court.

41. The factum of death of the victim having been established, let us now discuss the manner in which such death has occurred. PW-2 and PW-4 saw the deceased victim being beaten up by the accused persons, more particularly when PW-4 has even named all of the appellants herein as the perpetrators of such assault. PW-6 has also deposed that he saw accused Justin Chirang hit the victim on the head with a bamboo stick, while the accused Protarsius Bula hit him with a wooden stick. When confronted in the cross-examination, both PW-4 and PW-6 has stated that it is not a fact that they did not witness the victim being assaulted by the accused persons. The testimonies of the above eye-witnesses are found to be consistent and believable, the degree of probability is very high in this instance, more so when such evidence has not been able to dislodge in cross-examination. Therefore, this Court would hold that the deceased victim was actually assaulted by the appellants herein at the said place of occurrence, that is, the compound of the house of PW-2.



42. The contention of the learned counsel for the appellant that the prosecution's version of the chain of events which took place after the victim was assaulted is not well founded, has also fallen flat in the face of evidence in that regard which has been proven that he was first taken to Riangdo CHC as has been stated by PW-2 in his evidence when he said "*...then he advice us to take the victim to Riangdo CHC and all the accused persons along with us took the victim to the said hospital.*" PW-3, Shri Dinist Dkhar in his deposition has also said "*...and thereafter we along with all the accused persons took the victim to Riangdo CHC.*" In fact, all the accused persons/appellants Rebinus Dkhar, Tarsis Sangriang, Loris Rongmah, Protarsius Bula, Jeremaia Miangiong and Gines @ Genesh Sangriang in their respective statement under section 313 Cr.P.C. when confronted about this fact, has replied in the affirmative. This, therefore, has established the fact that the victim was injured as a result of such assault and that he was immediately taken to Riangdo CHC.

43. Thereafter, he was taken to Civil Hospital Shillong for better treatment. This was confirmed from the evidence of PW-1 who has stated that "*...He was then admitted to Civil Hospital Shillong where he succumbed to his injuries after two days of the incident i.e on 04.10.2011...*". PW-2 has also corroborated this statement when he has also stated "*...We then took the victim to Civil Hospital, Shillong where he succumbed to his injuries on 04-10-2011.*" PW-6 has further strengthened this assertion when he too has stated that "*Thereafter the villagers from Mawsmmai arrived and carried the victim to Riangdo hospital and later to Civil Hospital Shillong...*" This evidence was also not refuted by the defence in the cross-examination of the



abovementioned witnesses and as such, the same being unrebutted, it has passed the scrutiny of law. It can then be said that the victim was first taken to Riango CHC and later to Civil Hospital Shillong where he succumbed to his injuries on 04.10.2011.

44. The post mortem was conducted at the Civil Hospital Shillong by PW-5, Dr R.W. Lyngwa and in his evidence, he has given a detailed account of how the said post mortem was conducted and the findings thereto, mention is required to be made of the findings as regard the examination of the ‘Cranium and Spinal Canal’ which reads as follows:

“2. CRANIUM AND SPINAL CANAL:-

1. Scalp, skull, vertebrae- Depressed wound with laceration over the frontal region on the right side of the scalp, 9 cm above the right eyebrow size 1.5 cm x 0.5 cm. On opening the scalp massive hematoma over the right frontal region extending to the right parietal and right temporal region. Contusion over the temporal is muscle on the right side. Fracture of the frontal bone, right side, extending from the right frontal temporal suture is 4 cm long going left ward then going back at an angle and proceed 2 cm posteriorly. On opening of the skull bone, hematoma over the right frontal parietal region extending to the right temporal region. On opening of the dura mater hematoma on the left frontal-temporal region in the left side.

Membrane – NAD.

Brain and spinal cord – NAD”

The opinion of the Doctor is that the victim sustained injuries on the head caused by blunt object. The injuries are ante mortem in nature. This evidence has also not been able to be disproved by the defence in the cross-examination and as such, the same is also found reliable to be accepted by this Court as to how the deceased victim met his death.



45. Now coming to the issue of motive and intention and also whether there was a common intention on the part of the accused persons/appellants herein to commit the murder of the deceased victim, it may be proper to first understand the meaning and connotation of the two words, “Motive” and “Intention”.

46. In simple language, motive is said to refer to a desire that prompts a person to perform a certain act. Intention, on the other hand, refers to the immediate purpose behind such act, the conscious objective to bring about a specific result. Motive and intention are interlinked inasmuch as it has been said that motive serves as a clue to the intention. For example, in a murder case, the intention to murder someone can be motivated by the fact that there is strong resentment between the parties, or that because of jealousy and a desire for revenge, the perpetrator intends to kill or cause serious bodily injuries to the victim.

47. The Latin phrase "actus non facit reum, nisi mens sit rea" refers to the commission of an act with a guilty mind thus making such act an act of crime. "It means that for an action to be considered a crime, there must accompany it a criminal intent or state of mind (mens rea).

48. However, in all this, though motive is an important link to prove the guilt of an accused, it loses its importance in the face of available direct evidence of eyewitnesses by which such evidence has conclusively proved the guilt of the accused.

49. Coming again to the case in hand, let us revisit the scene of the incident. One of the accused person forcibly compelled the deceased victim to take part in a meeting convened at the compound of the house



of PW-2, who was the Secretary of the VEC at that time, apparently to discuss about his alleged misappropriation of the NREGS fund meant for the accused persons and other villagers who have taken part in the 100 days' work. In the midst of such a heated atmosphere, there was exchange of words which eventually led to a fight between the deceased victim and the accused persons. In course of such fight, one of the accused persons took up a bamboo stick and hit the deceased victim on the head, while yet another accused person then hit him with a wooden stick, resulting in the deceased victim to sustain severe injuries on his person, whereupon he was taken to the hospital and later succumbed to his injuries after two days or so.

50. What can be concluded from this is that the accused persons had assaulted the victim in course of the fight. There is no evidence to show that they have brought along with them the bamboo stick or the wooden stick, it must have been lying within the compound for them to find them easily at the time when there was fierce fighting. As such, it cannot be said that there was any premeditation to commit murder, though it can be infer that the accused persons are aware that such act of assault can lead to infliction of severe injuries or even death.

51. Again, there is nothing in evidence to show that several blows were hit by the accused persons using the bamboo stick and wooden stick, they have not acted in a cruel manner or taken undue advantage as such. In fact, that the accused person have accompanied those who have taken the victim to Riango CHC would prove this point as far as intention is concerned.



52. Section 34 IPC speaks of acts done by several persons in furtherance of common intention stating that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

53. From the evidence on record, the fact that during the fighting, not only the two accused person who has delivered the blow by hitting the victim with the bamboo stick and wooden stick was involved, the other co-accused had also joined in the fight and has equally assaulted the victim. Herein is found the element of shared or common intention in plain sight. Therefore, it cannot be said that there was no common intention of the part of the accused persons to commit the crime or offence of assault upon the victim, though it cannot be proved that the same was for commission of murder.

54. The next question to be answered is the level or extent of culpability of the accused persons for commission of the act of assault. The Hon'ble Supreme Court in the case of Chunni Bai v. State of Chhattisgarh reported in 2025 SCC Online SC 955, at para 17 has observed as follows:

“17. Once homicide is proved being committed by the appellant, the next consideration will be whether such homicide was “culpable homicide” within the meaning of Section 299 IPC. If it is found to be “culpable homicide”, further consideration will be whether it is “culpable homicide not amounting to murder” which is punishable under Section 304 IPC or “murder” as defined under Section 300 IPC, punishable under Section 302 IPC, under which the appellant has been convicted and punished by the Trial Court which was upheld by the High Court.”



55. At para 18 and 19 of the Chunni case(supra), the Hon'ble Supreme Court went on to observe as under:

“18. The difference between “murder” and “culpable homicide not amounting to murder” has been succinctly explained by this Court in State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382 in the following words:

“12. In the scheme of the Penal Code, “culpable homicide” is genus and “murder” its specie. All “murder” is “culpable homicide” but not vice-versa. Speaking generally, “culpable homicide” sans “special characteristics of murder”, is “culpable homicide not amounting to murder”. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, “culpable homicide of the first degree”. This is the greatest form of culpable homicide, which is defined in Section 300 as “murder”. The second may be termed as “culpable homicide of the second degree”. This is punishable under the first part of Section 304. Then, there is “culpable homicide of the third degree”. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.”

19. The difference was further elucidated in Rampal Singh v. State of U.P., (2012) 8 SCC 289 in the following words:

“18. This Court in Vineet Kumar Chauhan v. State of U.P., [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915] noticed that academic distinction between “murder” and “culpable homicide not amounting to murder” had vividly been brought out by this Court in State of A.P. v. Rayavarapu Punnayya, [(1976) 4 SCC 382 : 1976 SCC (Cri) 659] where it was observed as under : (Vineet Kumar case, [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915], SCC pp. 665-66, para 16)

“16. ...that the safest way of approach to the interpretation and application of Sections 299 and 300



IPC is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of Sections 299 and 300 IPC and drawing support from the decisions of this Court in *Virsa Singh v. State of Punjab*, [AIR 1958 SC 465 : 1958 Cri LJ 818] and *Rajwant Singh v. State of Kerala*, [AIR 1966 SC 1874 : 1966 Cri LJ 1509], speaking for the Court, R.S. Sarkaria, J. neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the Court said that wherever the court is confronted with the question whether the offence is ‘murder’ or ‘culpable homicide not amounting to murder’, on the facts of a case, it [would] be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to ‘culpable homicide’ as defined in Section 299. ...If the answer to this question is in the negative the offence would be ‘culpable homicide not amounting to murder’, punishable under the First or the Second Part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be ‘culpable homicide not amounting to murder’, punishable under the First Part of Section 304 IPC. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative.”

56. We will now examine the case of the appellants as to whether such case would fall within Exception 4 to section 300 IPC which provides as follows:



“Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

57. The Hon’ble Supreme Court in the case of Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770, a case of which facts and circumstances are almost similar to the case in hand, has this to say at para 11.1, 11.2., 11.3 and 13 thereof:

“11.1 Firstly, because even according to the prosecution version, there was no premeditation in the commission of the crime. There is not even a suggestion that the appellant had any enmity or motive to commit any offence against the deceased, leave alone a serious offence like murder. The prosecution case, as seen earlier, is that the deceased and his wife were guarding their jaggery crop in their field at around 10 p.m. when their dog started barking at the appellant and his two companions who were walking along a mud path by the side of the field nearby. It was the barking of the dog that provoked the appellant to beat the dog with the rod that he was carrying apparently to protect himself against being harmed by any stray dog or animal. The deceased took objection to the beating of the dog without in the least anticipating that the same would escalate into a serious incident in the heat of the moment. The exchange of hot words in the quarrel over the barking of the dog led to a sudden fight which in turn culminated in the deceased being hit with the rod unfortunately on a vital part like the head.

11.2. Secondly, because the weapon used was not lethal nor was the deceased given a second blow once he had collapsed to the ground. The prosecution case is that no sooner the deceased fell to the ground on account of the blow on the head, the appellant and his companions took to their heels—a circumstance that shows that the appellant had not acted in an unusual or cruel manner in the prevailing situation so as to deprive him of the benefit of Exception 4.

11.3. Thirdly, because during the exchange of hot words between the deceased and the appellant all that was said by the appellant



was that if the deceased did not keep quiet even he would be beaten like a dog. The use of these words also clearly shows that the intention of the appellant and his companions was at best to belabour him and not to kill him as such. The cumulative effect of all these circumstances, in our opinion, should entitle the appellant to the benefit of Exception 4 to Section 300 of the IPC.

13. In *Surinder Kumar v. UT, Chandigarh* [(1989) 2 SCC 217], this Court held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. This Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300 this Court observed: (SCC p. 220, para 7)

“7. ...To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”

58. Accordingly, in the facts and circumstances of this case, we find that the same fits the description of Exception 4 to section 300 IPC.



59. As such, as to the case of the appellants herein, although, we find that this is a fit case for sustaining the finding of guilt by the learned Trial Court, however, we also find it fit to convert the conviction of the appellants from punishment under section 302 IPC to Part II of section 304 IPC and for them to individually undergo sentence of rigorous imprisonment for a period of 5(five) years.

60. The sentence undergone by the appellants, upon calculation, will then be carried out to its complete execution. The imposition of fine of ₹ 5000/- each, in default thereof to undergo simple imprisonment of one month is maintained.

61. This appeal is accordingly disposed of as stipulated hereinabove with the impugned judgment and sentence modified as such.

62. Let copy of this order be forwarded to the Superintendent of District Prisons and Correctional Home, Shillong for information and necessary action.

63. Appeal disposed of.

64. Send back the Trial Court's case record.

(B. Bhattacharjee)
Judge

(W. Diengdoh)
Judge