



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 59 of 2024 with
Crl.A. No. 60 of 2024

Date of Decision: 09.06.2026

Crl.A. No. 59 of 2024

Shri. Louis Dohtdong
S/o (L) Teksius Sun
R/o Laitsohum, PS: Mawsynram,
East Khasi Hills District, Meghalaya,
Presently lodge at: District Prisons and
Correctional Home, East Khasi Hills,
Shillong.

.... Appellant

- Vs-

1. The State of Meghalaya,
represented by the Public Prosecutor,
Government of Meghalaya, Shillong.
2. The Investigating Officer of
Sadar PS Case No. 38(3) of 2011
(Sessions Case No. 14(H) of 2013)

.... Respondents

Crl.A. No. 60 of 2024

Shri. Comius Dohtdong,
S/o (L) Teksius Sun,
R/o Laitsohum, PS: Mawsynram,
East Khasi Hills District, Meghalaya,
Presently lodge at: District Prisons and
Correctional Home, East Khasi Hills,
Shillong.

.... Appellant

- Vs-



1. The State of Meghalaya,
represented by the Public Prosecutor,
Government of Meghalaya, Shillong.
2. The Investigating Officer of
Sadar PS Case No. 38(3) of 2011
(Sessions Case No. 14(H) of 2013)

.... Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge.

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

Appearance:

For the Petitioner/Appellant(s) : Mr. P. Yobin, Adv.

For the Respondent(s) : Mr. R. Gurung, GA.

COMMON JUDGMENT AND ORDER

1. These criminal appeals involving similar and identical facts are proposed to be disposed of by this common judgment and order.

2. The brief facts of the case is that, an altercation took place at the parking lot, Sohra Bus Stand, Mawlong Hat, Shillong on 20.03.2011, involving a group of about 6 or 7 persons who allegedly had assaulted the complainant and his brother, Rijied Kurkalang with hammer, stick and knife causing injuries to the two victims, further resulting in the death of the brother of the complainant,



Rijied Kurkalang. An FIR was accordingly lodged with the Officer-in-Charge, Cantonment Beat House.

3. The FIR was then forwarded to the Sadar Police Station and a case was registered as Shillong Sadar P.S. Case No. 38 (03) 2011 under section 302/34 IPC. On investigation completed, the Investigating Officer (IO) has come to the conclusion that the case is not one of pre-planned murder, but was a result of grave and sudden provocation pointing to the involvement of the two accused persons, Louis Dohtdong and Comius Dohtdong who are then sent up to face trial before the court.

4. The matter was then taken up for trial before the Court of the learned Additional Sessions Judge, Shillong in Sessions Case No. 14 of 2013. On 16.01.2024, the court framed common charges against both the accused persons under section 304/34 IPC.

5. Thereafter, when trial commence, 13 prosecution witnesses were examined and about 14 documents/papers were exhibited. At the end of it, the parties were heard and finally, the statement of the accused persons under Section 313 Cr.P.C. was then recorded. Both the two accused persons declined to adduce evidence from their side. After the final argument, the court then passed the impugned Judgment dated 06.11.2024, finding the accused persons guilty for the offence committed under section 304 Part II/34 IPC and the related



sentence dated 11.11.2024, renders the two convicts to serve a five year simple imprisonment sentence with fine of ₹ 30,000/- (Rupees thirty thousand) each, default of the same, carrying a further sentence of three months.

6. Assailing the said judgment and sentence in these appeals, Mr. P. Yobin, learned counsel for the appellants has submitted that the learned Trial Judge has failed to appreciate the evidence in its proper perspective, inasmuch as, reliance was placed on the outcome of the Test Identification Parade (TIP) to convict the appellant Comius Dohtdong and another TIP was conducted on 26.08.2011 in which the accused/appellant Louis Dohtdong was allegedly identified by PW-9, the complainant when such TIP was not even properly conducted. In fact, even the Magistrate who has conducted the said TIP was also not called to the witness stand, as such, the value of such TIP becomes meaningless and without any substantive evidence, this piece of corroborative evidence cannot stand the scrutiny of law, submits the learned counsel. The case of **Umesh Chandra & Ors v State of Uttarakhand, (2021) 17 SCC616**, para 5, 9, 10 & 11 has been referred to in support of this contention.

7. On the evidence of the prosecution witnesses, the learned counsel has submitted that PW-1, Sylvester Khongsit and PW-9, Babiangjied Kurkalang are interested witnesses and their statements suffers from material omissions, delays, and improvements with no independent corroboration from any neutral eye-



witnesses to their testimonies, as such, their evidence cannot be taken as a statement of the truth.

8. It is the further submission of the learned counsel that no specific witness has ever said that the appellants have inflicted the fatal blow upon the deceased victim, mere presence or passive participation at the time when the incident occurred cannot amount to murder. Conviction must be based on credible evidence proving involvement beyond reasonable doubt, not assumption, submits the learned counsel referring to the case of **Kartar Singh v. State of Punjab, (1994) 3 SCC 569**, para 123, wherein this proposition is found.

9. According to the learned counsel, there is no evidence to prove any prior enmity between the appellants and the deceased victim, nor was there any evidence to show that there was any pre-arranged plan among the accused persons to commit the alleged offence, the fact being that there was a sudden fight which took place on a dispute arising out of payment of the parking fee, which act does not attract Section 34 IPC, since no shared intention was evident.

10. Even the medical report concerning the injuries sustained by the deceased victim also does not suggest or attributes the same to the accused persons as the ones who has caused or has inflicted the same, submits the learned counsel.



11. In view of lack of credible evidence and the chain of circumstances not being completed as far as the accusation against the accused/appellants is concerned, therefore, the impugned judgment and sentence being bad in law, the same be set aside and quashed, is the prayer made in these two appeals.

12. Per contra, Mr. R. Gurung, learned GA replying on behalf of the State respondent, has submitted that the impugned judgment and sentence cannot be faulted since the learned Trial Judge has carefully appreciated the evidence and materials on record and has come to the correct conclusion as regard the guilt of the two accused persons, the appellants herein.

13. The learned GA has referred to the evidence of PW-9 and has submitted that he is the most reliable witness who was an eye witness to the incident, he himself being one of those who have been assaulted by the accused persons and their group. This witness has clearly stated that he saw two boys seating in a local taxi consuming beer and when his deceased brother asked for the parking fee, they refused, such refusal leading to a quarrel between the two groups. These two persons left and later returned with a group of people armed with hammer, iron rod and dagger and assaulted him and his deceased brother, resulting in his deceased brother sustaining grievous injuries, eventually leading to his death. This witness has also identified both the appellants herein in



separate TIP conducted on 07.04.2011 and another on 26.08.2011. As such, with direct evidence of this kind, the case of the prosecution has become airtight.

14. The learned GA has also further submitted that the evidence of PW-9 was corroborated by PW-1 who has identified one of the appellants, that is, Louis Dohtdong as one of those among the group who has assaulted the deceased Rijied Kurkalang. The direct ocular evidence being trustworthy and substantive, the contention of the learned counsel for the appellant as regard the TIP, which is considered a part of corroborative evidence, cannot stand in the face of such substantive evidence, further submits the learned GA. The case of **Malkhansingh v. State of M.P, (2003) 5 SCC 746**, para 7 has been relied upon in this regard.

15. As to the argument that the evidence of PW-9 and PW-1 cannot be relied upon since they are interested witnesses, the learned GA has submitted that even, if one of the witnesses or eye witnesses (PW-9) is related to the deceased, even then his evidence cannot be discarded unless it can be proved that there is motive to falsely implicate the accused/appellants. The case of **Harbans Kaur v. State of Haryana, (2005) 9 SCC 195**, para 7 has been referred to support this contention.

16. Coming to the medical and FSL evidence, the learned GA has submitted that the Postmortem report submitted by PW-5 Dr. Rolland Donn has



clearly indicated the manner in which the assault was perpetrated upon the deceased, when in his evidence this witness has stated as follows:

“The body was in rigor mortis, height is 5 ft 3 inches with a tattoo mark on the right upper arm tattoo of a dagger.

Wounds on the body:-

1. There was a bruised on the right eye, there was a punctured stabbed injury wound 2.2x0.8 cm on the back, 12 cm from the neck midline below the scapula and there is another stab injury 4x1cm 4.2 cm above the left nipple with bruise running around the wound. Deep abrasion lateral side of the knee 3x5.1 cm and another injury abrasion 2x1 cm below the knee laterally and another injury laceration 2.5x0.5 cm left parital vision. The wound is already been stitched another injury laceration 1x0.2 cm right cheek side of the nostril.
2. Examination of cranium canal - Skull and vertebrate.
Injury laceration scalp 2.5x0.5, another injury depressed fracture of left parital bone 2.5x1.5 cm.
3. Examination of the brain and spinal cord: hematoma on the left cerebral hemisphere parital region, blood stain cerebo spinal fluid.
In my opinion cause of death was due to head and chest injuries.
Ext 2 is the post mortem report prepared by me and Ext 2/1 is my signature.”

17. Thus, the medical evidence fully corroborates the ocular account as far as the manner in which the deceased was assaulted and eventually died, the finger of guilt pointing to the complicity of the accused/appellants herein, submits the learned GA.

18. The learned GA has however conceded that the incident occurred because of a dispute over payment or non-payment of the parking fee, and due to the assembly of the said group led by the appellants herein who has assaulted



the deceased and his brother, as a result of the sudden provocation and the resultant fight between the groups, the deceased unfortunately became the victim of the same. Therefore, the charges framed under Section 304/34 IPC and the eventual conviction of the accused/appellants under such sections of law is, but, a just and proper adjudication of the matter by the learned Trial Court. The conviction and sentence suffer from no legal infirmity, the same may be upheld and these appeals may be dismissed accordingly, submits the learned GA.

19. In the light of the submission and contention of the learned counsels for the parties, the facts as presented by the prosecution supported by the evidence on record as regard the factum of the incident which occurred on 20.03.2011 at the said bus stand, has not been disputed or controverted by the accused/appellants, as such, there is no denial of the fact that there was an altercation between two groups of people at the said PO, as a result of which, the deceased brother of the complainant (PW-9) was hit by certain objects resulting in his injuries and ultimately, on being carried to Civil Hospital, Shillong, he succumbed to his injuries at the said hospital.

20. From the body of the evidence, what can be seen is that initially, three persons were said to be named as those involved in the assault, namely Louis Dohtdong, Comius Dohtdong and Khrawkupar Wanniang. In fact, it is an evidence that these three persons had approached the Officer-in-Charge,



Cantonment Beat House, Shillong (PW-12, S.I Kamlesh Prasad Singh) and has informed him that their vehicle being TATA Indica ML-04-7493 was damaged by some people and that they were assaulted by many people, they were accordingly sent for medical examination at the Civil Hospital, Shillong and the medical report in this regard, shows simple injuries on their person. An FIR filed by Shri. Khrawkupar Wanniang was also registered vide Shillong Sadar P.S Case No. 37 (03) 2011 under Section 427/323 IPC.

21. However, there is nothing on record to show that, what steps was taken by the police in the said case filed by Shri. Khrawkupar Wanniang, since apparently, as a result of the scuffle that took place between the two groups, complaint and cross complaint have been filed, the FIR filed by Shri. Babiangjied Kurkalang brother of the deceased was also registered as Shillong Sadar P.S Case 38 (03) 2011 under Section 302/34 IPC.

22. The involvement of the accused/appellant Louis Dohtdong was confirmed by PW-1 Shri. Sylverstar Khongsit who has deposed that he had seen 4 or 5 people assaulting the deceased and his brother and one of them could be identified as Louis Dohtdong.

23. PW-9 who also said to be an eye witness has recalled that on the date of the incident, after the initial quarrel between his deceased brother and two boys sitting in the local taxi, these two persons later came back along with other



people arm with hammer, iron rod and dagger, and assaulted them. On being assaulted, this witness fled from the place, and later, he learnt that his brother who was badly injured was shifted to Civil Hospital for treatment, and succumbed to his injuries. This witness was later called to identify the accused person in the Test Identification Parade (TIP) conducted at the jail, where he had identified both the accused/appellants herein.

24. Admittedly, PW-1 and PW-9 were eye witnesses to the assault and they also named the two accused/appellants as those involved in the assault. However, the said eye witnesses have not clearly indicated as to who exactly has caused the fatal blow, that is, who has assaulted the deceased with a hammer and who has equally assaulted the deceased with the knife, the post-mortem report indicating that “the penetrating injuries in the chest may have been caused by a sharp weapon. On the side of the head the injuries was caused by some blunt weapon”. As has been submitted by the learned counsel for the appellants, since no specific overt act has been attributed to the appellant individually, no witness also having specifically stated as to who out of the two appellants have assaulted the deceased with a hammer (blunt weapon) and who has stabbed him with a dagger (sharp weapon), needless to say, it is the evidence of the eye witness that there are more than two persons involved in the assault of the deceased and his brother, but apart from the two accused appellants, others have not been named



or arrested. Hypothetically, it may be the case that either of the other assaulters may have caused the fatal blow.

25. Therefore, in this regard no credible evidence proving involvement of the appellants beyond reasonable doubts is found. The case of **Kartar Singh (supra)** is found relevant, wherein the Hon'ble Supreme Court at para 123 has held as follows:

“123. Generally, it is one of essential principles of criminal jurisprudence that a crime is not committed if the mind of a person doing the act in question, is innocent. Therefore, to constitute a crime, the intent and act must both concur.”

26. Only on this ground alone, this Court is convinced that the benefit of doubt has to be extended to the appellants herein.

27. Accordingly, the judgment of conviction and sentence passed is hereby set aside and quashed. The appellants are to be henceforth released and freed from all liabilities in this case.

28. Appeals disposed of.

29. Let copy of this order be issued upon the Superintendent, District Prisons and Correctional Home, Shillong for compliance.

Judge