

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

AIZAWL BENCH

CRL. A. No. 16 of 2013 (J)

APPELLANT:

Sh. F. Lalhmachhuana.

By Advocate:

Mr. L.H. Lianhrima, Amicus Curiae.

RESPONDENT:

State of Mizoram

By Advocate:

Mr. Lalsawirema, G.A., Mizoram.

BEFORE
HON'BLE MR. JUSTICE L.S. JAMIR

Date of hearing : 06.08.2013

Date of judgment and order : 06.08.2013.

JUDGMENT AND ORDER (ORAL)

Heard Mr. L.H. Lianhrima, learned Amicus Curiae appearing on behalf of the appellant as well as Mr. Lalsawirema, learned Addl. Public Prosecutor appearing on behalf of the State respondent.

2. This appeal is directed against the judgment and order dated 29.11.2012 passed by the learned Addl. District and Sessions Judge-IV, Aizawl Judicial District, Aizawl in Criminal Trial No. 1505/2007 under Section 302 IPC whereby the accused was convicted and sentenced to undergo Rigorous Imprisonment for a period of 5 years under Section 304 Part-II IPC. The case of the prosecution is that the father of the deceased had filed an FIR on 01.11.2007 before the Saitual Police Station stating that on the night of 29.10.2007 his son Lalhmingliana was stabbed on his ribs by his elder brother Lalmachhuana. His son Lalhmingliana was admitted to Saitual CHC on 13.10.2007 and, therefore, was referred to Aizawl. While proceeding to Aizawl Civil Hospital on the night of 31.10.2007, he succumbed to his injuries on the morning of 1.11.2007. He, therefore, requested to take necessary action in connection with the incident.

On the basis of the FIR Saitual Police Station Case No. 45/2007 under Section 302 IPC was registered. On completion of investigation, charge under Section 302 IPC was framed against the accused and

during the course of trial, the prosecution examined 9 (nine) witnesses.

The accused was also examined under Section 313 CrPC and the defence did not lead any evidence.

3. From a perusal of the LCR, the PW3, PW4, PW5, PW6 and PW7 were dropped from the list of prosecution witnesses by orders dated 2.3.2010, 21.4.2010, 18.6.2010 and 4.2.2011 respectively.

4. PW1 was the Medical Officer at Saitual CHC and in his examination-in-chief, his findings are recorded as below:-

“The body was in Rigor Mortis. On external appearance there was a puncture wound (1 cm/ 5 cm) above iliac crest on the left flank. Bruise (3 cm x 3 cm on the (L) iliac crest and 3 cm x 3 cm on the (R) iliac crest. There was wound of 1 cm x 1 cm on the abdomen on the (L) flank. 1 cm x 1 cm sound (clean cut wound) seen on the (L) flank. There was a gangrenous area of 20 cm in length in the transverse colon. .5 cm x .5 cm laceration 2 in number 1 cm apart on the wall of the transverse colon. In my opinion the cause of death is due to Hypovolemic shock due to injury to mesenteric vessels on the transverse colon. Exbt. P-3 is the PME report. Exbt. P-3 (a) is my signature.”

In his opinion the cause of death is due to Hypovolemic shock due to injury to neck on the transverse colon.

In his cross examination PW1 stated that there was only penetrating injury and that the injury which cause the death was the injury which was sustained to the blood vessel of the large intestine.

5. PW2 is the father of the the accused as well as the complainant who filed the FIR. In his examination-in-chief, he stated that the accused lived independently with his wife and children and the PW2 lived separately along because he was fed up of his sons who indulged in liquor. He deposed that on 29.10.2007 at about 9 pm, he was informed that the accused had stabbed the deceased Lalhmingliana. He went to the house of the accused as he was informed that the incident had taken place in the house of the accused. He saw the accused lying on the bed where the deceased was also present. He saw that the deceased had stabbed injuries on his stomach below the left rib and he was bleeding. When he asked the victim/deceased why he was stabbed by his brother, the deceased replied that he had gone to the house of the accused and

asked him why he had eaten the entire curry and both of them got angry after having heated argument. The victim/deceased pushed the accused on the floor and the deceased was on top of him. Thereafter, the accused stabbed the victim on his stomach below his left ribs with an Iron rod (Tulthir). PW2 further deposed that he took the victim/deceased to a hospital at Saitual and they spent one night at the hospital. They are advised to go to Civil Hospital, Aizawl and he died on 01.11.2007 at about 8:00 am.

In his cross examination, he stated that whatever he had deposed about the incident is hearsay and he denied the suggestion that the accused did not indulged liquor or sell liquor. He also stated that there was no intention on the path of the accused to murder the deceased.

6. PW8 was the President of MHIP in the year 2007 and was the seizure witness of the Iron rod (Tulthir).

7. PW9 was the President of Village Council/Court, Tawizo in the year 2007 and he was also a seizure witness of the Iron rod.

8. PW10 is the ex-wife of the accused. In examination-in-chief, she stated that on 29.10.2007 at about 8 to 9 pm she had gone to buy betelnut. On the way she saw the deceased, Lalhmunmawia and Laithanga. They asked her whether her husband was at home to which she replied that the accused was sleeping with the kids. When she returned, the deceased and the accused were quarreling, as the accused had consumed the food kept for the deceased from the house of the deceased. She was stated that she along with Lalhmunmawia and Laithanga stopped them from fighting. The accused suddenly stood up and caught hold of an Iron rod kept in the kitchen and stabbed the deceased below his ribs. The deceased was made to lie down on a bed and blood was not oozing from the injured part of the body. The next day the accused, their father and friends took the deceased to PHC, Saitual where he was admitted for two nights and there after he was referred to Civil Hospital, Aizawl and after spending a night at Civil Hospital, Aizawl, the victim/deceased died.

In cross examination PW10 stated that the deceased and his two friends as well as the accused were drunk and also stated that the accused did not have any intention to kill the victim.

9. PW11 is a co-villager of the accused. In his cross examination he stated that on 29.10.2007 at about 3 pm, he had purchased deer meat. The deceased prepared the meat for dinner. He alongwith the deceased went to his house but he found that the meat prepared by him was not available anymore. While the PW11 along with the deceased and Laithanga had gone to buy bettelnut, the deceased said that he had to go to the house of the accused who was his elder brother. Apprehending that they may have a fight he had followed the deceased. Immediately, the accused and the deceased had altercation and began to fight and he along with Laithanga stopped them from fighting. PW11 also stated that he heard the accused touching the storage above the fire place and when the accused approached towards the victim/deceased he heard the victim/deceased fell down. He also stated that Laithanga felt that the blood was oozing out from the abdomen after touching the

victim/deceased and Laithanga shouted at the accused and asked him why he had stabbed his brother. They let the victim/deceased lie down on the bed and the next morning the victim/deceased was taken to Saitual PHC. He was further referred to Aizawl Civil Hospital where the victim died.

In cross examination PW11 stated that as it was dark he could not see whether the accused and the victim had taken any offensive weapon in their hand and also stated that there was no intention on the part of the accused to commit murder of his own brother i.e. the deceased. It all happened due to the sudden fight over the eating of meat cooked by the deceased. He also deposed that the accused showed remorse and also pleaded for forgiveness from the love ones of the victim/deceased.

10. PW12 is also a co-villager of the accused. In his cross examination he stated that in the afternoon of 29.10.2007, he alongwith the victim/deceased and Lalhmunmawia went to the house of the deceased where he found that his curry for the evening had been consumed and was not available anymore. The deceased suspected that his elder

brother i.e. the accused to be the one who had eaten his curry. He was annoyed and he decided to meet his elder brother to rebuke him. He along with Lalhmunmawia told the deceased not to do so but he replied that this was not the first incident and, therefore, he wants to tell the accused not to continue. PW12 and Lalhmunmawia then followed him and they went to the house of the accused. On arrival the deceased asked the accused why he had eaten the entire curry and they immediately fought with each other. He and Lalhmunmawia stopped them from their fight. In the meantime, the accused moved towards the storage of the fire place. The accused approached the deceased and stabbed him. PW12 saw the accused stabbing the deceased by using Iron rod. He rushed toward the deceased and felt that his abdomen was wet as he was touching him. He found that it was bleeding and his friend made him lie on the bed. The next morning the victim/deceased was taken to Saitual PHC. He also came to know that he was further taken to Aizawl Civil Hospital where he died.

In his cross examination, he stated that it was dark and he could not see whether the accused and the victim had taken any offensive weapon in their hand and it was the fact that there was no intention on the part of the accused to commit murder on his own brother. He also stated that after the incident the accused showed remorse and also pleaded for forgiveness.

11. PW13 was the Magistrate who had recorded the confessional statement of the accused. No cross examination was done by the defence.

12. PW14 is the Sub-Inspector who conducted the investigation. In the examination-in-chief he stated that on the date of the information the victim was not in a position to speak and so he recorded his statement at the Hospital at Saitual on the next date of the information. On 1.11.2007 the complainant lodged a written FIR and the same was registered as Saitual P.S. Case No. 45/2007 under Section 302 IPC. He stated that the OC endorsed the case for investigation and had learned from the FIR that the victim succumbed to his injury at the Civil Hospital, Aizawl on the

night of 31.10.2007. He made a requisition for conducting inquest at Aizawl. However, as the dead body had already been transported back to the village, he conducted inquest at Saitual, CHC. He also stated that on requisition made, Post-mortem investigation was also conducted by Saitual CHC. In his deposition, he stated that as the accused had also accompanied the death body, he arrested him at Keifang kawn and made a seizure of the weapon used i.e. Iron rod (Tulthir) below the house of the accused. He also stated that the accused made a confession before the Judicial Magistrate. On finding a prima facie case against the accused under Section 302 IPC, he filed the chargesheet accordingly.

In cross examination, he stated that it is the fact that the accused was forwarded to Judicial Magistrate for recording of his confessional statement. From the confession of the accused, it appears that after the incident the accused took care of the victim. He also stated that he enclosed the confessional statement of the accused with the chargesheet.

13. Confessional statement of the accused was also recorded before the Magistrate where the accused stated that on 29.10.2007 at around 10 pm, his younger brother along with two friends had woken him while he was asleep on his bed at home. They were all drunk and his younger brother i.e. the deceased asked him why he has eaten his chawhmeh. His younger brother brought along rock and tried to hit him with a rock but his friends had refrained him from doing so. But he was still very angry and was trying to hit him with the rock. At that point of time, he was afraid for his life and the first thing that came to his mind was that he has a family and 6 children and he did not want them to be fatherless. He took a tool from the fireplace and in the process of defending himself he accidentally stabbed him with the weapon. He also stated that he was drinking in the evening but at the time of occurrence of the incident he was no longer under the influence of alcohol. When he stabbed his brother there was no electricity nor candles. He further stated that on the night when the incident took place, he took care of his brother and washed his wound and he slept with him to comfort him.

14. While the accused was examined under Section 313 CrPC, he admitted stabbing the deceased with the sharpened Iron rod. He also admitted that the deceased had got angry with him because he had eaten his entire curry that the deceased had prepared. He stated that it was accidental and he had no intention inflict such serious injuries and that he really regret for what he had done.

15. On consideration of the evidence let by PW11, PW12, who were eye witnesses to the incident it becomes clear that altercation took place before the incident. In the heat of the fight, the accused had taken the Iron rod and stabbed his brother who subsequently succumbed to his injury. From the confessional statement as well as the statement made while examining the accused under Section 313 CrPC, it also becomes clear that the incident took place because of the altercation that has taken place between the two brothers i.e. the accused and the deceased. It becomes clear that there was no intention on the part of the accused to cause the injury upon the deceased.

16. The deposition of PW2 is based purely on hearsay. In his cross examination, he has also stated that there is no intention on the part of the accused to murder the victim. On examination of the medical report as well as the opinion of the Medical Officer, the cause of death is due to the injury who Hypovolemic shock due to injury to mesenteric vessels on the transverse colon. From the evidence that has been laid, it is clear that the accused had stabbed the deceased on the afternoon by using an Iron rod which caused his dead.

17. On consideration of the facts and circumstances of the case as well as on perusal of the lower Court record, this Court is of the opinion that there is no infirmity in the judgment and order dated 29.11.2012 passed by the learned Addl. District and Sessions Judge-IV, Aizawl Judicial District, Aizawl in Criminal Trial No. 1505/2007 convicting and sentencing the accused to undergo 5 (five) years Rigorous Imprisonment under Section 304 Part-II IPC.

18. Accordingly, this criminal appeal is dismissed.

19. The Registry is directed to transmit back the LCR alongwith a copy of this judgment and order forthwith.

20. In appreciation of the services rendered by Mr. L.H. Lianhrima, learned Amicus Curiae, this Court is of the opinion that he is entitled to a hearing fee of Rs. 5000/- (Rupees Five thousand), which shall be borne by the Mizoram State Legal Services Authority on production of a certified true copy of the judgment and order of this Court. The Registry is directed to supply a certified true copy of the judgment and order of this Court to the learned Amicus Curiae free of cost.

21. Criminal Appeal stands disposed of.

JUDGE

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