

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH

CRIMINAL APPEAL NO.20 of 2011(J)

Sh. Lalremruata **Appellant.**

- Vs -

State of Mizoram **Respondent.**

**BEFORE
THE HON'BLE MR. JUSTICE S.R. SEN**

For the appellant : Mr. C.Lalramzauva, Sr.Advocate/
Amicus Curiae

For the respondent : Mr. Lalsawirema, Addl. P.P.
Mizoram

Date of hearing : **27.07.2012**

Date of delivery of
Judgment & order : **27.07.2012**

JUDGMENT & ORDER (Oral)

The instant appeal from jail by the convict is directed against the impugned judgment and order dated 21.1.2010 in Criminal Trial No. 725 of 2008.

2. The brief facts of the case is that an FIR (First Information Report) was submitted to Officer-in-Charge, Vaivakawn Police Out Post by one Alan rai to the effect that on 22.5.2008 at about 11:30 p.m. convict Lalremruata assaulted victim Lalmuana who subsequently succumbed to his injuries at about 2:30 a.m. on the following day.

3. On the basis of the said FIR a case was registered as Vaivakawn Police Station Case No. 275 of 2008 under section 302 IPC and the case was investigated. After completion of the investigation the Incharge-Officer filed charge sheet against the convict under section 302 IPC. From record it appears that on being committal the said case was tried by the Additional District & Sessions Judge, Aizawl District, Aizawl.

4. During trial prosecution examined as many as 4 (four) witnesses and also exhibited 5 documents which are on records and no defence witness was examined as reflected from the Paper book. Hence, after completion of the prosecution evidence, accused was examined under section 313 Cr.P.C. and judgment was delivered and found accused guilty under section 304 Part II IPC and learned Additional

District & Sessions Judge, Aizawl District, Aizawl passed and sentenced awarding 10 years R.I. and also fine of Rs.1,000 in default of payment of the fine and another 3 (three) months S.I.

5. On being aggrieved by the said judgment and order dated 21.1.2010 the convict approached this court by way of a letter which has been registered as Criminal Appeal No.20 of 2011. Since none has appeared for and on behalf of the convict, this court appointed learned senior counsel, Mr. C.Lalramzauva, Sr. counsel, as Amicus Curiae for and on behalf of the convict assisted by Mr. James Thanghmingmawia. Learned senior counsel, as Amicus Curiae, argued for and behalf of the convict and contended from the deposition of different witnesses, it is amply clear that accused has no intention to caused death or injury. It was a sudden fight amongst 2 (two) friends but unfortunately the incident turned to be a fatal and further argued that convict is repentive for his deeds and from the contents of his letter it is clearly understood that he has no intention to kill the victim. And whatever, he has done is to for his private defence. So, according to learned Amicus Curiae, the instant case falls under section 97 of the IPC under the chapter

“General Exception” and not even under section 304 Part II IPC and further argued that the sentence awarded by the learned counsel is too harsh. So, necessary order may be passed to meet the ends of justice. In course of his argument learned senior counsel (Amicus Curiae) relied on *1996 SCC Vol 9 667 para 19 and SCC supplementary (1993) 197 para 10 & 11.*

6. On the other hand, learned Addl. Public Prosecutor, Mr. Lalsawirema who contended that, it is not correct that convict has no intention to kill the victim as it appears from the evidence of the different witnesses that victim has been assaulted mercilessly by the convict even by kicking in chest and head of the victim which gets support from the post mortem report and the said act was not in self-defence. Therefore, there is nothing wrong in the judgment and order dated 21.1.2010 passed by the learned Addl. District Sessions Judge, Aizawl District, Aizawl.

7. In support of his submission by learned Addl. Public Prosecutor also relied on AIR 1986 SCC 147 and 2006 Vol-II SCC 434 and 2000 Vol-7 SCC 249 para 7.

8. Before answering the appeal in question let me examine the evidence recorded by the learned Addl. Session Judge.

9. PW-1, Shri Alan Rai is the complainant in this instant case. From his evidence it appears that on 22.05.2008 at about 11.30 p.m. he showed the convict kicking the victim with his leg on his chest and as a result, at about 2.30 a.m. on the following day victim succumbed to injuries. He filed FIR. In the cross-examination he admitted that convict had no intention or motive to kill the victim. However, his evidence remains constant pertaining to fighting between the convict and the victim.

10. So upon analysis of the evidence of PW-1 it is apparent and understood that convict assaulted the victim by kicking and as a result, victim died. Further, from his evidence it also appears that convict has no intention or motive to kill the victim and victim and the convict were friends.

11. From the evidence of the PW-2 one Nicky. It appears that convict and victim started fighting amongst themselves and convict was kicking the victim with his leg. As a result, victim fell down and blood came out from his mouth and subsequently victim died on the spot. From cross-examination it appears that convict and the victim were a good friends and he further admitted in the cross-examination that after both victim and convict were drunk they started fighting amongst themselves and all of a sudden victim took a dao and tried to attack the convict. But convict kicked the victim. As a result, he fell down on the ground. It also further appears that convict was unharmed. So, from the analysis of PW-2 it is apparent that there was a fair fight between the two friends i.e. victim and the convict, and in between victim tried to attack the convict with a dao and convict in his defence kicked the victim. As a result, he fell down and sustained injury and subsequently died. So, from the evidence of PW-2 nothing came on record that convict had any intention to kill the victim.

12. From the evidence of PW-5 doctor conducted the post-mortem, appears that the cause of death injury has

been produced by blunt force. There is nothing rebuttal in cross-examination.

13. PW-6 is the I.O. who corroborates the evidence given by the witness discussed above. Now, question remain before me is whether it is culpable homicide or a murder.

14. “The academic distinction between the murder and culpable homicide not amounting to murder has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the Legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be keep in focus the keywords used in the various clauses of sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences :

Section 299

Section 300

A person commits culpable homicide if the act by which the death is caused is done.

Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done.

INTENTION

- | | |
|--|--|
| (a) With the intention of causing death; or | (1) With the intention of causing death, or |
| (b) With the intention of causing such bodily injury as is likely to cause death; or | (2) With the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or |
| (c) With the knowledge of that the act is likely to cause death. | (3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or |

KNOWLEDGE

- | | |
|---|---|
| (C) With the knowledge that the act is likely to cause death. | (4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death of such injury as is mentioned above.” |
|---|---|

15. After analysis the evidence of PW-1 it is amply clear that accused and victim had a fight and at one point of time victim took a dao to attack the convict in return convict kicked the victim and he fell down and even after he fell down convict continued to kick him. As a result, he sustained injury and succumbed to injury. So, from the evidence of PW-1 and PW-2 assault is proved but intention or motive to kill victim is not proved against the convict.

Therefore, I do not find anything wrong with conviction of the accused u/s 304 Part-II of the IPC by the learned lower court. After careful reading and scrutiny of the evidence in aforesaid discussion and the guideline framed in **Rajinder** case (*supra*) **AIR 2006 SCW 2987** and **Bhadra Surang Vs. State of Assam GLR (3) 731, 2012** I find that it is a fit case which comes within the purview of section 304 Part-II IPC and in my view prosecution has succeeded to establish the elements of section 304 Part-II IPC against the convict. Hence, I am unable to accept the submission made by the learned Amicus Curiae.

16. However, in my view the punishment or sentence awarded by the learned court below i.e. 10 years R.I., Rs. 1000/- fine in default of fine and another 3 months S.I. is little harsh in comparison with the magnitude of the offence. Section 304 speaks as follows :

“IPC 304. Punishment for culpable homicide not amounting to murder –

Whoever commits culpable homicide not amounting to murder, shall be punished with (imprisonment for life), or imprisonment of either description for a term which may extent to ten years, and shall also be liable to fine, if the act by

which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

17. So, on plain reading of section 304 Part-II IPC it appears that maximum punishment can be extended upto 10 years or with fine or with both. Since in this case intentional motive has not been proved against the convict and beside that he is repenting about his deeds and conduct I am of the considered view that 6 (six) years R.I. will suffice. Accordingly, sentence is reduced to 6 (six) years R.I. and set of the period already undergone by the convict during enquiry, investigation, trial and after pronouncement of sentence.

18. Registry is directed to send the lower court case record to the concerned court.

19. Before parting with this case record I also observe that Government to pay the fees of the Amicus Curiae for assisting the court in this appeal as per rule or in absence of any rule, the remuneration entitled by the Public Prosecutor.

20. With these observations and directions, the instant appeal is admitted, allowed to that extent and answered accordingly.

Case stands disposed of.

JUDGE

Zh