
(2008) 05 GAU CK 0043
In the Gauhati High Court
Case No : Criminal Reference No. 8 of 2006

State of Mizoram

APPELLANT

Vs

SH.Denis Lalnunpuia

RESPONDENT

Date of Decision : 26-05-2008

Acts Referred:

Criminal Procedure Code, 1973 — Section 313

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2008) 5 GLR 535

Hon'ble Judges : B.P.Katakey, J and H.Baruah, J

Bench : Division Bench

Advocate : Helen Dawngliani, A.R.Malhotra, Advocates appearing for Parties

Judgement

B. P. Katakey, J.

1. By this Reference under rule 9 of the Rules for the Regulation of the Procedure of Officers appointed to Administer Justice in the Lushai Hills, 1937, confirmation of the judgment of conviction dated 8.9.2006 passed by the learned Addl. District Magistrate (Judicial), Aizawl in CrI. Tr. No. 363/2006 convicting the respondent under section 302, IPC and sentencing him to undergo R/I for life, is sought for.

2. The prosecution story in brief is that on 23.3.2006, on receipt of a telephonic information from C. Rothuama (PW2) of P&E Veng Serchhip that one Vanlalthuama, son of Sapbela (L) of Vanchengte was assaulted by the accused. Assistant SubInspector of Police, Sapchhawna (PW8) and the party went to Vanchengte and came to know that victim succumbed to the injuries at about 4.15 PM. The villagers thinking that he was the author of the crime kept the accused in confinement. The accused was arrested and the inquest over the body was conducted. During the course of investigation, an axe and a hammer allegedly blood stained were seized and the body was sent for post mortem examination. Thereafter on 23.3.2006, the enquiry report was submitted by PW8 on the basis of which Serchhip PS Case No. 16/2006 was registered and the investigation was set in motion. During the course of investigation, statements of

6 persons, namely, Sh C. Rothuama (PW2), Sh Lalremmawia (PW3), David Lalmunpuia (PW1), Smt. Biakknumi (not examined in trial) and Sh Saitawna (PW4), apart from that of the accused were recorded by the investigating officer. On completion of the investigation, the accused person was chargesheeted under section 302 of the IPC and accordingly the charge under section 302, IPC was framed. The charge was read over and explained to the accused in the language known to him to which he has pleaded guilty. The learned trial court, in spite of such plea of guilt by the accused, has refused to act on such plea and, accordingly, the trial commenced.

3. During the course of trial, the prosecution in order to bring home the charge against the accused, examined 9 witnesses namely Sh David Lamunpuia (PW1), Sh C. Rothuama (PW2), Sh Lalremmawia (PW3), Sh Saitawna (PW4), Sh Zoramsanga (PW5), Sh Lalengliana (PW6), Dr Laldawngliana Sailo (PW7), ASI Sapchhawna (PW8) and Inspector Zoramsanga (PW9). After closure of the recording of the evidence of the PWs, the accused was examined under section 313, Cr.PC on 31.8.2006. Thereafter, by the impugned judgment, the ADM(J) recorded the conviction. Hence, the present Reference before this court seeking confirmation of such conviction and sentence.

4. We have heard Mrs. H. Dawngliani, learned PP as well as Mr. A.R. Malhotra, learned amicus curiae.

5. The learned PP, referring to the judgment of conviction as well as the admission of guilt by the accused while framing the charge and also during the examination under section 313, Cr.PC, has submitted that the conviction of the accused under section 302, IPC is required to be confirmed by this court as the accused has admitted his guilt. On the other hand, Mr. Malhotra has submitted that it is apparent from the deposition of the PWs that the prosecution has miserably failed to bring home the charge framed against the accused inasmuch as none of the witnesses examined were witness to the occurrence and the prosecution story as reflected from the deposition of PW1 Sh David Lalmunpuia that the accused made an extrajudicial confession and was found wearing cloths having human blood stain on it having not been supported by PW2 Sh C. Rothuama and the seized cloths having not been sent for chemical examination to ascertain as to whether the blood was human blood or of birds, as the plea has been taken by the accused that the blood is of chicken, no conviction can be recorded as has been done in the instant case. According to Mr. Malhotra, the learned trial court having not acted on the plea of guilt of the accused and having decided to proceed with the trial, no conviction can be based on the plea of guilt of the accused in the absence of any other evidence on record pointing to the guilt of the accused alone. Mr. Malhotra has further submitted that it is apparent from the statements recorded under section 313, Cr.PC that the same is not in accordance with law as no incriminating circumstances were put to the accused as required under section 313, Cr.PC and the accused on the other hand, as it appears from the statement recorded under section 313, Cr.PC, was

crossexamined by the learned court below. Therefore, it is a fit case where the judgment of conviction is required to be set and the matter may be remitted back to the learned court below for recording the statements under section 313, Cr.PC as required under the law. Replying to the submissions of Mr. Malhotra, the learned PP has submitted that though the learned court below has not recorded the statement of the accused under section 313, Cr.PC properly by not putting all the incriminating materials came out during the course of trial, the judgment of conviction cannot be set aside merely on that ground, the same being irregularity and having not caused any prejudice to the accused.

6. The prosecution in order to prove the homicidal death of Vanlalthuama has examined Dr. Laldawngliana Sailo (PW7) who has proved thereport of the post mortem examination as Ext. P4. The doctor in his evidence has stated that he found multiple cut injuries on the head and there were bruises on the face, chin, nose, cheek and also on the jaw of the deceased. He has further stated that there were 8 clear injuries on the scalp of which 3 were perforating in nature extending upto cranial cavity damaging the brain with heavy extra cranial hemorrhage. According to the doctor, the cause of the death was due to coma as a result of brain damage and heavy intracranial bleeding following multiple perforating injuries of skull by heavy sharp object. This witness though was crossexamined by the accused has not been challenged on the injuries found on the dead body of the deceased. It appears from the post mortem report (Ext.P4) that the following injuries were found on the dead body of Vanlalthuama:

- 1.Condition of subject stout emaciated, decomposed etc.
2. Woundsposition size and character
3. Bruises position, size and nature
4. Mark of ligature on neck, dissection etc.

Stout

Cut injuries of scalf Cut above left Eye 6 cm Cut rt. Forehead 4 cm Cut left forehead 4 cm Cut rt temporal 3cm Cut left temporal 4 cm Cut left occipital Area 3 nos. and 2V2 cm each Cut injuries of Upper third ofRightear 2 1/2 cm.

Bruise, on rt side of lowerlip extending to jow 1/2cm x 4 cm middle of chin 4 cm x 1 cm Bridge of nose 3 cm x 2 cm rt cheek 2 cm x 1/2cm.

NIL

1. Scalp, Skull, Vertebrae
2. Membrane
3. Brain and spinal cord

1. Scalp. There are eight(8) cut injuries as above.

Cut injuries at lower side of left frontal brain lobe 4 cm

Blood stained and frontal lobe of brain at lower side of left lobe

2. Skull Depressed fracture joint above left eye 6cm

at upper side of left frontal lobe of brain 4 cm

upper side of rt lobe special cord is healthy

Depressed fracture at rt forehead (rt front bone 4 cm.

rt side of rt lobe of frontal brain 4 cm

Special cord is healthy

Depressed fracture of left front bone 4 cm

3. vertebrae Healthy.

7. In view of the aforesaid uncontroverted evidence of PW7 supported by the post mortem examination report (Ext.P4), it is therefore evident that the prosecution could prove the homicidal death of Vanlalthuama.

8. It appears from the judgment of conviction passed by the learned trial court that the respondent has mainly been convicted because of his plea of guilt and also his reply to the query made while recording his statement under section 313, Cr.PC.

9. As observed above, the accused though at the time of explaining the charges pleaded guilty, the learned trial court has decided not to act on such plea of guilt and, on the other hand, decided to proceed with the trial. The learned trial court after closure of the evidence of the prosecution witnesses recorded the statement of the accused under section 313, Cr.PC which is quoted below:

"Examination of Accd. Denis Lalnuanpuia, 22 years, son of Rokhuma (L) under section 313, Cr.PC.

Q.1. It is in evident that on 22.3.2006 you killed Vanlalthuama in his residence. .

Ans. Yes.

Q.2. What weapons you used ?

Ans. An axe and a hammer.

Q.3. You chopped him with an axe or hit him with hammer.

Ans. I chopped him for about three times but I could not remember.

Q.4. Did you enter his house with an intention to kill.

Ans. No.

Q. 5. Why did you kill him ?

Ans. When he stole something I suffered and got defamed but not him previously we fought against each other for about three times. It could be because I was intoxicated and smoked ganja.

R.O.& A.C.

Sd/

31.8.2006."

10. The object and purpose of section 313, Cr.PC is to afford an opportunity to the accused person personally to explain any circumstances appearing in the evidence against him at the trial so that the accused may get an opportunity to explain the circumstances appearing against him during such trial. Section 313, Cr.PC incorporates basic procedural jurisprudence that trial Judge shall furnish the opportunity to the accused person to explain the facts and circumstances appearing against him in the evidence and thus the opportunity to him to show his innocence and to tell the court what he may be desirous of stating. However, the statement of the accused under section 313, Cr.PC is not a substantive piece of evidence. It can be used for appreciating evidence laid by the prosecution to accept or reject it. It is also a settled position of law that an inadequate examination or omission under section 313, Cr.PC ipso facto shall not render a trial void unless prejudice is shown to have caused to the accused. In the instant case, no circumstances appearing against the accused was at all put to him giving an opportunity to the accused person to explain and to make his own statement. On the other hand, the accused has mainly been convicted because of his plea of guilt recorded while framing the charges. By not putting the circumstances appearing against him in the evidence of the prosecution witnesses, if any, during the course of trial, prejudice has been caused to the accused as he did not get any opportunity to explain the circumstances appearing against him so also the reason why he has pleaded guilty at the time of framing of charges. Had that opportunity been given, the accused might have explained the circumstances. Hence, non putting the circumstances appearing during the trial to the accused has vitiated the judgment of conviction recorded by the learned trial court, as it has caused prejudice to him.

11. In view of the aforesaid position, we set aside the judgment of conviction dated 8.9.2006 passed in CrI. Tr. No. 363/2006 under section 302, IPC and remit the case to the learned trial court for retrial from the stage of recording the statement of the accused under section 313, Cr.PC as required under the law and in terms of the observations made hereinabove. Accordingly, the judgment of conviction recorded by the learned trial court is set aside. The Reference is answered.

12. Registry is directed to send down the LCR forthwith. The fee of the learned amicus curiae is fixed at Rs. 1,500 to be paid by the State of Mizoram.