
(2000) 02 GAU CK 0038
In the Gauhati High Court
Case No : Criminal Ref. No. 1 of 1999

State of Mizoram

APPELLANT

Vs

Sri Lalrinawma and Another

RESPONDENT

Date of Decision : 23-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 281, 3, 302, 313
Evidence Act, 1872 — Section 29, 91
Penal Code, 1860 (IPC) — Section 302, 392, 449

Citation : (2000) CriLJ 2358 : (2000) 1 GLT 616

Hon'ble Judges : N.C. Jain, J; M.L. Singhal, J

Bench : Division Bench

Advocate : T. Vaiphei, Public Prosecutor, for the Appellant; H. Lalrinthanga, Amicus Curiae, for the Respondent

Judgement

M.L. Singhal, J.—This is a reference under Rules for the Regulation of the Procedure of Officers Appointed to Administer Justice in the Lushai Hills, 1937 made by Smt. Lucy Lalrinthari, Addl. District Magistrate (J), Lunglei in G.R. No. 149/92 Lunglei P.S. Case No. 111/92. The learned Additional District Magistrate (J) has convicted the two accused persons under Sections 449/392/302, I.P.C. and has sentenced each of the accused for imprisonment for life u/s 302, I.P.C, 10 years R.I. for offence u/s 392, I.P.C. and 10 years for offence u/s 449, I.P.C, the sentences are to run concurrently.

2. We have heard Mr. T. Vaiphei, learned Public Prosecutor for the State of Mizoram and Mr. H. Lalrinthanga, learned Amicus Curiae for both the accused persons.

3. The prosecution story as has emerged from the evidence brought on the record is that on 4-5-1992 at about 9 p.m. the two accused namely Sri Lalrinawma and Sri Lalbiktluanga entered the house of the deceased Miss Thangzuali of Venghlun and committed her murder and also committed robbery of cash and other articles and fled away. During the course of investigation the

two accused were arrested and as per desire expressed by them their confessional statements u/s 164, Cr.P.C. were recorded on 24-6-1992. In the trial both the accused persons pleaded not guilty. However, the learned Additional District Magistrate (J) considering the seriousness of the crime and the punishment which it may command decided to proceed to have full trial of the case. The prosecution examined as many as 23 prosecution witnesses. u/s 313, Cr.P.C. again both the accused persons confessed their guilt and affirmed their confessional statement recorded earlier. The learned Addl. District Magistrate (J) found both the accused persons guilty and sentenced as alluded above.

4. It is relevant to reproduce the confessional statement of the two accused persons recorded u/s 164, Cr.P.C. and the questions put by the learned Magistrate to the accused persons in requirement of the provisions of Section 164, Cr.P.C. They are reproduced as under:

Confessional statement of the accused-Sri Lalrinawma:- "My name is Lalrinawma. I met my friend accused-Lalbiaktluanga in 1990 at Aizawl Central Jail. Prior to coming to Lunglei, we stole a tape-recorder at Khawhai and sold it at Serchhip at Rs. 1000/- (Rupees one thousand). We had balance of about Rs. 300/- (Rupees three hundred) and with that money, I along with Lalbiaktluanga came to Lunglei by Truck on 2-5-1992 and arrived Lunglei and got down at A.O.C. point, Lunglei. It was Sunday (3-5-1992) and the whole day we were roaming here and there feeding ourselves with tea and snacks. On that night we slept in a Swaraj Mazda Truck (parked) near Sobji Bazar. The next day (4-5-1992) also we spent our time in similar way. At about 6.00 p.m. we had drink (liquor) near Sobji Bazar. After drinking we went to Cinema Hall side. We purchased panm cigarette etc. and slowly (we) went towards Venhlun side with intention to stay in the house of Pu. Zama. On the way, we saw a woman standing in front of her house for passing water (urine). It was about 9.00 p.m. I suggested to my friend that we should demand money from her as we were completely bankrupt at that time. Accordingly, we approached her and with a pretext of asking for drinking water we entered her house. Then I demanded money from that woman (whom later on we came to know to be Thangzuali). She replied that she did not have any money. Within seconds (suddenly) I grabbed her legs and my friend grabbed at her hair and we both felled her down on the floor. When we grabbed her, Thangzuali shouted once (not very loudly) saying "Please don't do like that - I don't want." But as soon as we felled her down, Biaktluanga (accused) took out his handkerchief and pushed it inside her mouth, during which I was holding her legs. I found that, the handkerchief was not enough to gag her mouth, so I pulled down one green T-Shirt which was hung nearby and I pushed it inside her mouth. In the meantime, Biaktluanga was stabbing Thangzuali (deceased). Then I took the knife from Biaktluanga and stabbed her several times. I cannot remember how many times I stabbed. We stopped stabbing after sometime and searched for petticoat where I found Rupees 100/- and gave it to Biaktluanga. Then we lifted the deadbody on the bed and searched for more money. I found a bag under her pillow, where there was

Rs. 460/- I gave it to Biaktluanga. Then I took a towel and bound her both hands behind.

Then we both smoked Wills (cigarette) taken from my pocket. In the meantime, I took one scented soap opened it and washed our hands.

I found a pair of lock and key and before leaving the place (house) I locked the door from outside and kept the key fixed on the wall.

We proceeded towards graveyard, crossed it and found a small jhum where we spent the night. There, Biaktluanga threw away the knife with which we stabbed Thangzuali to death. We also washed ourselves at the nearby stream.

(We identified the same knife belonging to Biaktluanga which was used to kill Thangzuali. The handkerchief of Biaktluanga and the green T-shirt which were pushed inside Thangzuali's mouth before Magistrate during investigation). The next early morning at dawn, we went towards Theiriat from where we took a Truck and arrived Aizawl in the evening. We separated at Bawngkawn.

From the date of arrival I started sleeping at various places with my friends. I was arrested on the A.R. Ground (at Aizawl) on 8-5-1992 at about 10 a.m. I have nothing more to say.

Questions put by the recording Magistrate to the accused-Lalrinawma are as follows :

Q. What was your intention or motive to come to Lunglei on 2-5-1992?

Ans. There was not any specific motive or intention.

Q. While Thangzuali said she had no money, why you so suddenly attacked her by grabbing at her legs?

Ans. Earlier, we decided that in case she refused to part with her money, we would assailed her, that is why we attacked so suddenly.

Q. Why did you bind her hands behind, after stabbing her to death?

Ans. I found that her hands were still moving and I thought that she would die slowly so I tied her hands behind her.

Q. Do you repent for committing such crime?

Ans. Yes.

Q. Why did you spend the nights at various places? (after reaching Aizawl).

Ans. I was mentally very upset and moreover, I was trying to avoid arrests.

Q. How did you spend the amount Rs. 500/-.

Ans. We spent on Zu, Pan and Cigarette etc.

Q. How long did it take to kill Thangzuali?

Ans. It will be about 30 minutes.

Q. So you admit that you killed Thangzuali on 4-5-1992 night and took Rs. 500/- from her?

Ans. Yes, I admit.

Confessional statement of accused-Sri Lalbiaktluanga runs as follows :

My name is Lalbiaktluanga and I am from Thingsat (village). I got acquainted with my co-accused-Lalrinawma in Aizawl Central jail during 1990. We both met at Bawngkawn on 2-5-1992 and came to Lunglei. Prior to that we both stole one Tape-recorder and we both sold it at Serchhip and went back to Aizawl on 2-5-1992. We still had a balance amount of about Rs. 300/- with that money we came to Lunglei by Truck on 2-5-1992 from Bawngkawn and got down near AOC Lunglei at dawn on 3-5-1992. Since it was Sunday and we did not have any known friends, we roamed whole day feeding ourselves with tea and snacks. We spent (slept) the night in one Swaraj Mazda Truck at Sobji Bazar. The next day, also we spent our time in the same manner. In the evening, we had drink (liquor) at one house somewhere near Target Bazar. It was at that time we had only Rs. 10/- in our pocket, with that money my friend Lalrinawma purchased pan etc. We thought we would spend the night with one Pu. Zama of Bawngveng. On our way to Pu. Zama's house, we saw one woman (later on we came to know to be Thangzuali) coming out of her house for urinating. My friend Lalrinawma suggested we should demand money from that woman. Accordingly, we approached her on the pretext of asking for drinking water, we entered her house, on entering without taking water Lalrinawma demanded money from that woman (Uthangzuali) to which she replied that, she had no money. At this, my friend Lalrinawma immediately grabbed her legs, I also grabbed her hair and both of us fell her down, on the floor. At this, Thangzuali was protesting saying "Pleas don't do like that, I do not want" and it was followed by a scream. Fearing that she would scream again, I took out my handkerchief and pushed it inside mouth. Then I caught hold of her hands. Lalrinawma pulled down one T-shirt which was hung nearby and pushed it inside her mouth. Then I took out my knife and started stabbing her first at her chest, below her breast. I cannot remember exactly how many times I stabbed her and at what part of her body, but it would be about 3/4 times. During this, Lalrinawman was holding her legs. I cannot recollect how many times Rinawma stabbed her and on what part of her body. All I remember is that, he was stabbing her till she was dead.

After confirming that she was dead, Rinawma took out Rs. 100/- from her person, after pushing his hand below her petticoat and handed it over to me. Then we lifted the deadbody on her bed and searched for money. Rinawma found another Rs. 460/- under her pillow which he again handed over to me and he took a towel and bind her hands behind. After that, Rinawma took out Wills cigarette and we both smoked. In the meantime, Rinawma took out piece of unused cented soap with which we washed our hands. Then we left the house.

Before that, Rinawma locked the door from outside. We proceeded towards graveyard or Bawngveng, crossed it and came across one small jhum hut where we slept. There was a small stream where we again washed ourselves. I threw away the knife with which we killed Thangzuali.

I found and identified the same knife and my handkerchief during investigation by police. That was my knife with which we killed Thangzuali and the identified handkerchief and the T-shirt were the exact one we pushed inside her mouth.

The next morning i.e. 5-5-1992 at dawn, we proceeded towards Theiriat where we boarded a Truck and went to Aizawl. We arrived Aizawl at dark. We separated at Bawngkawn. I stayed at Khtlla with my friend Pachhunga.

I went to Reiek side to work as daily labour under Forest Department on 11-5-1992. The next day police came and arrested me. I have nothing more to say.

The questions put by the recording Magistrate to the accused-Lalbiaktluanga are as follows :

Q. What was the appropriate time when you assaulted and killed Thangzuali on 4-5-1992?

Ans. It could be around 9 p.m.

Q. How long it took to kill her?

Ans. It could be about half an hour.

Q. When your friend Rinawma grabbed the legs of Thangzuali, did you not tell him not to do so?

Ans. No, instead, I joined him in his act as we planned so earlier.

Q. That means your (both of you) intention was to take money by any means?

Ans. Yes.

Q. What was your intention is coming to Lunglei?

Ans. There was no definite intention, we just come without any object or aim.

Q. Where actually you threw away your knife?

Ans. I threw it (away) where we were in the jhum hut.

Q. You took a total of Rs. 560/- from the person of Thangzuali, how did you spend it?

Ans. We spent (the money) the entire amount on Zu, cigarette, pan etc.

Q. Do you repent for committing such crime?

Ans. Yes, I really repented.

The learned Magistrate also recorded the following memorandum towards the end of confessional statement of the accused persons :-

I have explained to accused-Lalrinawma that, he is not bound to confess and that, if he does so, any confession he makes may be used as evidence against him and I believe that his confession was voluntarily made. It was taken in my presence and hearing and was read over to the accused and was admitted by him to be correct and it contains a full true and correct account of statement made by him.

5. Two infirmities have been pointed out by the learned counsel for the accused persons in the Section 164 Cr.P.C. confessional statement of the accused persons. Firstly, the confessional statement has not been recorded by Judicial Magistrate as contemplated u/s 164, Cr.P.C. but by an Executive Magistrate Shri L.V. Malsawma. Secondly, the recording Magistrate before recording confession did not administer the warning to the accused persons that if they make any confession, it may be used as evidence against them as required by Section 164 Cr.P.C. About the first alleged infirmity it may be observed that in Section 3 of the Cr.P.C. there is Arunachal Pradesh and Mizoram State amendment by Notification No. Jud. 25/74, dated 2-4-1974 by which a reference of the First Class Magistrate or Judicial Magistrate of the First Class in the Cr.P.C. has to be construed as "Executive Magistrate." Thus, the Executive Magistrate 1st Class in the State of Mizoram is empowered to record confessional statement u/s 164, Cr.P.C. As to second infirmity the said statutory warning does appear in the memorandum appended in the confessional statement. Further, Section 29 of the Indian Evidence Act, inter alia, provides that if the confession is otherwise relevant it does not become irrelevant merely because the accused was not warned that he was not bound to make such confession and that evidence of it might be given against him. Further, Section 463 of Cr.P.C. provides :

If any Court before which a confession or other statement of an accused person recorded or purporting to be recorded u/s 164 or Section 281, is tendered, or has been received, in evidence finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in Section 91 of the Indian Evidence Act, 1872 (1 of 1872), take evidence in regard to such non-compliance, and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.

6. In the instant case it has not been shown as to in what manner the non-compliance with the provisions of Section 164, Cr.P.C. has injured the accused persons in their defence on merit. The learned recording Magistrate has entered into the witness-box and he has stated before the Court that he proceeded to record the statement of the accused persons after being satisfied about the voluntary nature of the confession and sufficient time was given to the accused for reflection. In the instant case two accused persons were forwarded to judicial

custody on 12-5-1992 and 16-5-1992 and their confessional statements were recorded on 24-6-1992. There was sufficient time for the reflection within the protecting wall of judicial custody. Further, the recording Magistrate also gave three hours reflection time to the accused persons in his chamber under the surveillance of his office peons. We are fully satisfied that the confession of the two accused persons is voluntary, free from any out side pressure. The two accused persons even in the statement u/s 313, Cr.P.C. which was recorded on 15-12-1997 and 26-8-1998 after 6 (six) years of their confession recorded u/s 164 of Cr.P.C. affirmed their confession.

7. It may also be stated that the confessional statement of the two accused persons also finds corroboration from the statement of the prosecution witnesses examined him the case. As per confessional statement of both the accused persons offence weapon knife was thrown away by Sri Lalbiaktluanga at the jhum hut. The said knife was recovered from the said jhum hut. It is true that the recovery witness Sri Lalrinawma P.W. 17 before the Court failed to identify the knife, but Inspector Lalhunliana P.W. 24 identified the offence weapon knife recovered on the pointing out of the accused. Both the accused persons in their confessional statement had stated that after perpetrating the offence they locked the house of the deceased. The prosecution witnesses have stated that when they reached near house of the deceased, the house of the deceased was found locked from out side and doors of the house were broken. The prosecution witness Smt. Lalwawit has testified that on 4-5-1992 (the day of occurrence) the accused-Sri Lalrinawma along with one more person had come to purchase pan from their shop in the village. The prosecution witness Sri Thanglura (P.W. 14) has deposed that on 5-5-1992 at about 6.50 a.m. one truck driver non-Mizo was stopped in front of check post and had found the two accused persons sitting in the driver's cabin. These events deposed by the prosecution witnesses appeared in the confessional statements of the accused persons.

8. In the post-mortem examination of the deceased Miss. Thangzuali multiple stab injuries have been found. It has come in the statements of the both accused persons that they inflicted injuries by knife and as such the presence of the multiple stab injuries also corroborates the confession of the two accused persons. The learned counsel for the accused persons argued that the alleged occurrence is stated to have taken place on 4-5-1992 at about 9 p.m. But the Medical Officer Dr. H.C. Laldina P.W. 19 who conducted the post-mortem examination on the following day i.e. on 5-5-1992 at about 3 p.m. has opined that the age of the injuries could be 24 hours, as such according to the learned counsel the occurrence could have taken place on 4-5-1992 at about 3 p.m. and not 9 p.m. It may be observed that the Medical Officer has given opinion that the age of injuries could be 24 hours. He has not given opinion that the injuries could not have been caused on 4-5-1992 at 9 p.m. Further, it may be stated that the medical opinion cannot be certain about the exact time of the death, it has to be determined on the other evidence in the case also. Further, this inconsistency pointed out by the learned counsel for the accused persons does not have any

significance as there is categorical confession of the accused persons that they committed the offence on 4-5-1992 at about 9 p.m.

9. It has also been argued by the learned counsel for the accused persons that there is no motive for the alleged commission of the murder of the deceased. As is apparent from the confessional statement of the accused persons the motive of the two accused persons was to rob the deceased and they did so after committing her murder. Further, it is settled law that motive, or adequacy/inadequacy of motive has no relevance where there is a clear, cogent, evidence in the case fastening the guilt on the accused person. In that instant case there is a clear confessional statement of the two accused persons u/s 164, Cr.P.C. and Section 313, Cr.P.C., corroborated by the recovery of the offence weapon on the pointing out of the accused persons and the evidence of the prosecution witnesses who had spotted the accused persons in the village on the day of occurrence.

10. Lastly, the learned counsel for the accused persons also urged that the sentence imposed upon the two accused persons by the learned Additional District Magistrate (J) is severe. We are of the considered view that instant case is a case rarest of the rare case, the ghastly murder of a lady alone in the house has been committed by the accused persons, number of wounds have been found on the person of the deceased, which calls for maximum penalty of death. However, the mitigating circumstance in favour of the two accused persons is that they have confessed their guilt and remained firm on their confession till the last stage of the trial. In view of this fact the sentence of life imprisonment for offence u/s 302, Cr.P.C. and 10 years R.I. for other offences on the accused persons have been appropriately awarded by the learned trial Magistrate.

11. In the result, the sentence imposed by the learned Additional District Magistrate (J) Lunglei, is hereby confirmed. Registry is directed to furnish a copy of this order to the learned Additional District Magistrate (J), Lunglei forthwith.