

(2012) 05 GAU CK 0042

Gauhati High Court (Aizawl Bench)

Case No: Criminal A. No. 1 of 2012 (J)

Sh. Lalramsanga

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision: May 2, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 303, 304, 304

Hon'ble Judges: Tinlianthang Vaiphei, J**Bench:** Single Bench**Advocate:** A.R. Malhotra, for the Appellant; Lalsawirema, Addl. P.P., Mizoram, for the Respondent**Final Decision:** Allowed

Judgement

1. Heard Mr. A.R. Malhotra, the learned Amicus Curiae. Also heard Mr. Lalsawirema, learned Addl. Public Prosecutor appearing for the State respondent. The grievance of the appellant, who is now in jail, in this appeal is confined to the quantum of the sentence imposed upon him and not against the judgment of conviction. By the impugned judgment and order dated 9.07.2010, the learned Addl. District & Sessions Judge-I, Aizawl, District in CrI. Tr. No. 676/2002 convicted the appellant u/s 304 Part-I IPC and sentenced him to rigorous imprisonment for 10 years with a fine of Rs. 1000/-, in default thereof, to undergo another 30 days of simple imprisonment. The period of detention already undergone by him in jail was also to be set off against the sentence imposed therein. The learned Addl. Public Prosecutor makes an attempt to question the legality of the conviction of the appellant u/s 304 Part-I IPC instead of 302 IPC. In the absence of cross-appeal, this contention cannot be entertained.

3. Mr. A.R. Malhotra, the learned Amicus Curiae submits that the father of the accused had given a sum of Rs. 20,000/- to the father of the victim, who thereafter

made a request to the court for allowing him to withdraw the case and that this is a case where the appellant/accused has shown a genuine repentance for the crime committed by him and did not even deny the commission of the crime by him but proceeded to explain with candour the manner in which death was caused to the deceased. According to the learned Amicus Curiae, these were the factors which influenced the trial court in awarding only 10 years of imprisonment upon the appellant, but on the facts and circumstances of this case, the sentence is still on the higher side and warrants further reduction of the sentence imposed by the trial court. To fortify his submission, the learned Amicus Curiae takes me to the decision of the Apex Court in *Somon -versus-State of Kerala* wherein the conviction of the appellant was altered from 302 to 304 Part-I IPC and the sentence accordingly reduced to the period of 5 years already undergone by him in jail. At this stage, the observation of the trial court in imposing the sentence of 10 years imprisonment upon the appellant may be reproduced hereunder :

20. After hearing both parties, it is the case record that the accused's father had given Rs. 20,000/-to the victims father and the victims father also prayed the court that this case may be withdrawn as he has no desire to continue the case. But a case as serious as 304 IPC can not be compromised. But the kindly act of the accused's father to the victims father may be taken into consideration and the accused stated that he is very much repented of what he had done, therefore, the severest punishment may not be inflicted upon him i.e. imprisonment for life.

After giving my anxious thoughts on the question of sentence in my considered view justice will be met if the accused is sentence to imprisonment for 10 years. I therefore sentence the accused Lalramsanga to under go Rigorous Imprisonment for 10 years with a fine of Rs. 1000/-in default of payment of fine another 30 days SI.

Detention period as UTP shall be set off from total period of conviction.

Seized articles be destroyed.

4. To counter the submission of the learned Amicus Curiae, Mr. Lalsawirema, learned Addl. Public Prosecutor has cited the decision of the Apex Court in [State of U.P. Vs. Indrajeet @ Sukhatha](#), and forcefully submits that this is not a fit case for further reduction of the sentence already imposed by the trial court. According to the learned Addl. Public Prosecutor, the sentence of 10 years of rigorous imprisonment with a fine of Rs. 1000/-is, on the facts and circumstances of the case, appropriate and proportionate to the crime committed by the appellant.

5. Having given my anxious consideration to the submissions made by the learned Addl. Public Prosecutor and the learned Amicus Curiae, I am of the view that the sentence imposed upon the appellant deserves to be reduced further to 7 years of rigorous imprisonment with a fine of Rs. 1000/-. This, I say so, because the appellant in the accused examination u/s 313 Cr.P.C. has candidly narrated the true facts and circumstances of the case which prompted him to cause death to the deceased. He

was apparently under intoxication and could not control himself when he stabbed the deceased, for which he regretted later. As he did not conceal the true facts and circumstances of the case leading to the death of the deceased, I am of the opinion that the appellant deserves a lesser sentence. It must be noted that the father of the victim, having received a sum of Rs. 20,000/- from the father of the appellant, had made a request to the trial court for allowing him to withdraw the case thereby implying that he had forgiven the appellant for causing the death of his son. In my opinion, the payment by the father of the appellant and the receipt of the amount by the father of the deceased can be a valid consideration for mitigating the sentence even though such payment cannot result in acquittal of the appellant.

6. For the reasons stated in the foregoing, this appeal is allowed. The conviction of the appellant u/s 304 IPC Part-I is sustained. The appellant is, however, sentenced to rigorous imprisonment of 7 years with a fine of Rs. 1000/-, in default thereof, to undergo another simple imprisonment for one month. The impugned judgment and order dated 9.07.2010 is modified in the manner and to the extent indicated above. The appellant shall serve out the remaining period of his sentence. The Mizoram State Legal Service Authority shall pay a sum of Rs. 10000/- as fees for the learned Amicus Curiae.