GAHC030002832025

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

Case No. : CRL.A(J)/24/2025

Sh. Min Aung
S/o Tin Teing
R/o Makui, Myanmar

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Jonathan L Sailo (Amicus Curiae)

Advocate for the Respondent : P.P./Addl.PP, Mizoram

BEFORE

HON'BLE MRS. JUSTICE HELEN DAWNGLIANI

Date on which judgment is reserved : 13.11.2026
Date of pronouncement of judgment : 20.11.2026
Whether the pronouncement is of the operative part of the judgment ? : N/A
Whether the full judgment has been pronounced? : Yes

J U D G M E N T & O R D E R (CAV)

Heard Mr. Jonathan L. Sailo, learned Amicus Curiae appearing for the appellant. Also heard Mrs. Mary L. Khiangte, learned Additional Public Prosecutor for the State respondent.

2. This appeal petition is submitted by the appellant from jail, duly forwarded by the Special Superintendent, Central Jail, Aizawl. The appeal is directed against the judgment and order dated 21.11.2023 passed by the Court of the learned Additional District & Sessions Judge, Champhai in Criminal Trial No. 14 of 2023 wherein the appellant was convicted for the offence punishable under Section 307 IPC and sentenced to undergo simple imprisonment for a period of 7 years and to pay a fine of Rs. 2,000/- and in default to further undergo simple imprisonment for 2 months. The appellant was also convicted for the offence punishable under Section 326 IPC and sentenced to undergo simple imprisonment for 3 years and to pay a fine of Rs. 1,000/- and in default to further undergo simple imprisonment for 1 month. The sentences were directed to run consecutively. And in terms of Section 428 Cr.PC, the period of detention already undergone by the convict was directed to be set off.

2.1 The brief facts of the case as it appears from the charge sheet is that on 4.9.2022, one Robert Zoremtluanga, Chairman, Raltlan Committee, Sub-Headquarters YMA, Champhai lodged an FIR to the Champhai PS stating that on the night of 3.9.2022 at around 11:30 p.m., Min Aung/the appellant, a resident of Makui of Myanmar, had entered inside the residence of Lalmuanpuia and assaulted Lalmuanpuia and his wife Malsawmsangi and attacked Lalmuanpuia and his wife Malsawmsangi on her neck with a Mizo dao. Lalmuanpuia sustained injury on his knees. The couples were evacuated and admitted to District Hospital, Champhai.

2.2 On the basis of the information received, Champhai Police Station Case No. 119/2022 dated 4.9.2022 under Section 307/326 IPC read with 14A(b) Foreigners Act was registered

and investigated into. Upon completion of investigation, prima facie case was found against the appellant for the offence punishable under Section 307/326 IPC read with Section 14A(b) of the Foreigners Act for assaulting Malsawmsangi on her neck by using a sharp weapon i.e., dao, which can cause death and also by hitting Lalmuanpuia on his knees, and that the victims sustained grievous injuries.

Evidence Recorded During Trial

3. PW No. 1/Robert Zoremtluanga is the complainant. He stated that he is the Chairman of Raltlan Committee, Sub-Headquarters YMA Champhai. As per his deposition, on the night of 03.09.2022 at about 11:30 PM, he received a phone call from the camp leader and informed that the instant appellant had entered into the residence of Lalmuanpuia and assaulted Lalmuanpuia and his wife with a Mizo dao. On getting the information, he took the victims to District Hospital, Champhai and submitted FIR on 04.09.2022. By the time he reached the place of occurrence, the accused was not present and as such, he did not see the incident.

3.1 PW No. 3/Lalchhuanawma stated that he is the Treasurer of Sub-Headquarters, YMA Champhai at the time of the incident. He witnessed seizure of Mizo dao of about 18 inches long on 04.09.2022 at around 11:00 AM at Champhai PS. He stated that the weapon was used by the appellant to commit the offence and as he witnessed seizure, he subscribed his signature in the seizure memo. Cross-examination was declined by the learned defence counsel.

3.2 PW No. 5/Malsawmsangi is the victim. She stated that they had come to Mizoram in the month of March, 2022 as refugees because of the civil disturbance in Myanmar. She stated that on 03.09.2022 at around 10:30 PM, the appellant, who is also a refugee from Myanmar, woke them up in the refugee camp at Zote, Champhai. The witness stated that the accused often visited them and they used to give him a warm welcome since he is an elderly person. On that night, her husband opened the door for the accused and when the accused

came inside, he went straight into their bedroom and even though they were putting up a mosquito net at the place where they were sleeping, he came inside and then asked her husband to purchase liquor for him. The accused also asked her husband whether he belonged to PDF and her husband told the accused that he was a member of PDF, to which the appellant stated that if he wanted, he could have killed both of them. At that, she retorted back by saying that they were no longer in Burma territory and that they were inside India. At that time, the accused suddenly attacked her from her back with Mizo dao at the nape of her neck and then the accused also hit her husband with the same dao on his knees and then she was attacked once again on her thigh by the accused with the same weapon and there was profuse bleeding. After the attack, she and her husband went out of their house and went to the house of a fellow refugee, Pu Pianga and later on, when the crowd gathered and began to look for the accused, he had already fled. The learned defence counsel declined cross-examination.

3.3 PW No. 6/V. Zothankhuma stated that on the morning of 04.09.2022 at around 7:00 AM, he received telephonic information from C. Zaikhuma of Hmunhmeltha to the effect that one unknown male person having a Mizo dao entered inside one of the hut and requested YMA Hmunhmeltha to apprehend him. In the meantime, he also received a phone call from one refugee from Zote stating that one refugee had chopped (assaulted) one refugee couple and fled from the refugee camp. Pursuant to the information, some of the leaders of YMA Hmunhmeltha Branch assembled and approached the paddy field of Dum phai near Hmunhmeltha and when they reached the paddy field, they saw the accused inside the paddy hut of C. Zaikhuma and he began to run faster the moment he saw them. However, they could catch him and hand over the accused to Champhai P.S. Cross-examination was declined by the learned defence counsel.

3.4 PW No. 7/Khuaneihpianga stated that he is also staying in the refugee camp at Zote and as the refugees at Zote are from different places of Myanmar, they are unable to communicate in one language, and since he is fluent in Mizo, he is appointed as leader in the refugee camp. On the night of 03.09.2022 at about 11:00 PM, the victim Malsawmsangi

came to his place in the refugee camp, she was badly wounded and she informed him that she and her husband were assaulted/hacked by the accused in their house. So he, along with some of his friends in the refugee camp went to the place of occurrence and saw blood stains and lock of hair at the place of occurrence. He informed the matter to the VCP of Zote and after a few moments, the victim Malsawmsangi and her husband were evacuated to District Hospital, Champhai. In his cross-examination, he admitted that he did not see the incident and he also did not see the offensive weapon.

3.5 PW No. 8/Dr. K. Lalchhanchhuahi is a Medical Officer posted at District Hospital, Champhai during the relevant time. She stated that on 04.09.2022, she examined the victim and her husband. Upon examination of the victim, she found deep cut laceration measuring 10x7x5 cm on the back side of the neck and abrasion on right lateral thigh (small size). The weapon used was sharp and that the age of injury was 4 hours and the nature of injuries were grievous. She also examined Lalmuanpuia, husband of the victim, and on examination found that he sustained deep cut laceration 5x3x3 $^{1/2}$ cm on the right knee (involving) right patellar bone and laceration of left knee measuring 2x1x2 cm. The weapon used was a sharp weapon, age of injury was 4 hours, and the nature of injury was grievous. The learned defence counsel declined cross-examination.

3.6 PW 9/Zabiakchhunga stated that on the morning of 04.09.2022, he was approached by the YMA leaders to interpret and translate the statement of accused as they were unable to communicate with him. He was used as a translator because he can understand both Mizo and Burmese languages and can speak both the languages fluently. He translated the statement of the accused before the police and as per the statement of the accused, he was residing at a refugee camp Zote and that he had joined Myanmar Army in the year 2005 and became a deserter after the insurgency in the country. On 08.08.2022, he joined the Civil Disobedience Movement and took with him MK - 3 rifles and then he left Burma and entered Farkawn and he was kept at Zote Raltlan Camp on 30.08.2022. The accused further stated that on 03.09.2022 between 10:00 PM to 11:00 PM, he went to the house of Lalmuanpuia in the refugee camp and when the door was opened for him, he went inside

the house and that he had brought along with him a Mizo dao (chempui) from his camp as he had the intention of killing them. Inside the house, the wife of Pu Lalmuanpuia was sleeping with their children, and he told Lalmuanpuia to buy liquor for him, to which Lalmuanpuia answered by stating that it was late in the night and moreover, liquor was prohibited in the refugee camp. Thereafter, they started having an argument and the wife of Lalmuanpuia was feeding her children and as she tried to get up, he attacked her from behind with the dao on her neck and as she started screaming, Lalmuanpuia tried to get up and so, he also attacked Lalmuanpuia with the dao on his knees. Thereafter, when they went out and seek for people's help, he ran towards the forest carrying the dao along with him and that on the next day he was apprehended by the people who had seen him in their jhum hut. In his cross-examination, he stated that he does not know the victim or the accused before the incident, the accused does not know Mizo language at all, he saw the offensive weapon i.e., Mizo dao, inside the police station.

3.7 PW 10/SI C. Lalsangliana is the Investigating Officer. He stated that FIR regarding the instant case was received from Robert Zoremtluanga, Chairman, Raltlan Sub-Headquarters YMA Champhai on 04.09.2022. During the course of investigation, he visited the place of occurrence and examined the place carefully, he examined the complainant Robert Zoremtluanga and recorded his statement. He examined and arrested the accused Min Aung and seized one dao from his possession and recorded his statement. The statement was recorded through interpreter Zabiakchhunga. He forwarded the two victims to Medical Officer, District Hospital on the night of 03.09.2022 to ascertain the injury and he received medical examination report from the Medical Officer. He also forwarded the accused Min Aung to District Hospital, Champhai for medical examination and he was found fit to be kept in custody. During investigation, he also examined the victim Lalmuanpuia and recorded his statement and he also recorded the statement of the victim Malsawmsangi. During investigation, he examined all the available witnesses and recorded their statements and from the materials collected and evidence available during the course of investigation, he found prima facie case under Section 307/326 IPC read with Section 14A(b) of the

Foreigners Act against the accused Min Aung for assaulting the victims by using a sharp weapon which can cause death. Thereafter, he submitted chargesheet under Section 173 Cr.PC against the accused for the offence under Section 307/326 IPC read with 14A(b) of the Foreigners Act.

Framing of Charge & Examination Under Section 313 CrPC.

4. Charge was framed against the accused for the offence under Section 307 and 326 IPC for which, the accused pleaded not guilty and claimed for trial. Charge was also framed under Section 14A(b) of the Foreigners Act, to which the accused pleaded guilty. However, from a perusal of the daily order sheet of the learned Trial Court which is dated 27.02.2023, on which date charge was framed against the accused/appellant, it is recorded that charge was framed and kept in separate sheet and the accused did not plead guilty and claimed for trial. However, the charge form indicates otherwise, inasmuch as, in the charge form, the accused is recorded to have pleaded guilty without recording the actual plea. It is also noticed that the charge form wherein charge was framed against the accused and the plea of the accused was recorded does not bear the signature or thumb impression of the accused. However, as the appellant was acquitted by the learned Trial Court for the offence under Section 14A(b) Foreigners Act, 1946 and no challenge is made for the same, this issue would not require further discussion.

4.1 The accused was examined under Section 313 Cr.PC on 13.09.2023. During the course of examination of accused under Section 313 Cr.PC, he admitted that he went into the house of the victim on the night of 03.09.2022 and that he was a bit drunk on that night. He denied that he asked Lalmuanpuia and his wife to buy liquor for him but he did not deny that he assaulted them with Mizo dao which he took from the house of Lalmuanpuia and he admitted that he fled from the scene and he was apprehended from a jungle on the next day by members of YMA Hmunhmeltha Branch.

The daily order sheet dated 13.09.2023 indicates that examination of accused under Section 313 Cr.PC was done with the help of a translator, Zabiakchhunga.

4.2 The examination of accused under Section 313 does not contain any question as to whether the defence would lead evidence. From a perusal of the daily order sheets available in the Trial Court record, it is noticed that the accused was examined under Section 313 Cr.PC on 13.09.2023 and 25.09.2023 was fixed for argument. Therefore, it means that no opportunity was given to the defence to lead their evidence.

4.3 Thereafter, the learned counsels were heard and the impugned judgment was passed convicting the appellant for the offence punishable under Section 307 IPC and 326 IPC but acquitted the accused for the offence punishable under Section 14A(b) Foreigners Act, 1946.

SUBMISSION OF LEARNED AMICUS CURIAE

5. Mr. Jonathan L. Sailo, learned Amicus Curiae submitted that from a perusal of the paper book containing the proceedings before the learned Trial Court, it is noticed that out of the 10 witnesses listed in the chargesheet, 8 witnesses were examined. The learned Amicus Curiae argued that the accused appellant was represented by a counsel assigned by the State as he did not have sufficient means to engage a counsel on his own. It is submitted by the learned counsel for the appellant that from a bare perusal of the evidence adduced during the course of trial, it can be seen that the matter was not being dealt with diligently by the learned counsel who was assigned to defend the accused as most of the vital witnesses were declined cross-examination by the learned counsel. The learned Amicus Curiae further submitted that duty was also cast upon the learned Trial Court to play a proactive role in ensuring that the accused was properly defended and not be a mere spectator.

5.1 In support of his submission, he has placed on record the decision of the Hon'ble High Court in the case of *Shaniah Langstang vs. State of Meghalaya* reported in *2025 SCC OnLine Megh 750*, wherein the Hon'ble High Court of Meghalaya observed that the role played by the Legal Aid Defence Counsel appointed on behalf of the appellant in the trial court was not at all effective or adequate. It was further observed that the lack of effective

legal representation has not only violated the fundamental rights of the appellant under Article 21 of the Constitution, but has also seriously prejudiced his defence case and in the fact situation of the case was of the view that retrial was the only way to rectify the situation and directed a retrial from the stage of the framing of charge.

5.2 The learned Amicus Curiae has also relied on the decision of the Hon'ble Apex Court in the case of *Sovaran Singh Prajapati vs. State of Uttar Pradesh*, reported in *2025 SCC OnLine SC 351*, wherein the Hon'ble Apex Court, by making a reference to the judgment in *Suhas Chakma vs. Union of India*, highlighted the Legal Aid and Defence Counsel System, observing that the objective of the scheme is to provide quality legal aid to all those in need. The learned Amicus Curiae submitted that the right to legal representation sits at the core of not only the right to life and liberty conferred under Article 21 of the Constitution but at the very foundation of the entire justice delivery system. The learned Amicus Curiae therefore submitted that threshold competence was at least that was expected of the defence counsel, who has apparently done more damage to the accused than to defend him, as is the object of the accused being represented to ensure fair trial.

5.3 Coming to the merit of the case, the learned Amicus Curiae submitted that from the framing of charge, the learned Trial Court has dealt with the case in a very casual and haphazard manner and has failed to record the plea of the accused. In fact, as per the record, the accused pleaded guilty to the charge under Section 14A(b) of the Foreigners Act. However, the record does not contain the plea of the accused even though he was ultimately acquitted for the said offence.

5.4 The learned Amicus Curiae further submitted that the defence was not given any opportunity to adduce their evidence, which is clear violation of the principles of natural justice. The learned Amicus Curiae submitted that Section 247 Cr.PC mandates that the accused shall be called to enter upon his defence and produce his evidence. However, in the instant case, the same was denied by the learned Trial Court. It was also submitted by the learned Amicus Curiae that the ingredient of Section 307 IPC is not proved from the

evidence adduced by the prosecution even without the vital witnesses being left un-cross-examined by the learned defence counsel appearing for the accused before the learned Trial Court. The learned Amicus Curiae submitted that the prosecution has to stand on its own feet and cannot depend on the weakness of the defence. In the case at hand, the prosecution has failed to prove the ingredient constituting the offence of attempt to murder punishable under Section 307 IPC and has also failed to prove that the injuries sustained by the victim were grievous in nature in terms of the definition of grievous injury under Section 320 IPC. According to the learned Amicus Curiae, the alleged use of sharp weapon does not necessarily indicate the presence of intention to cause death of a person. The learned Amicus Curiae also submitted that the prosecution has failed to examine the husband of the victim, who was present at the time of the incident and had also suffered injury. The learned Amicus Curiae further submitted that most of the witnesses could adduce only hearsay evidence and the medical finding alone does not prove the offence punishable under Section 307 or 326 IPC. The learned Amicus Curiae therefore submitted that the conviction based on the aforesaid evidence suffers from serious infirmity and that the trial was not fairly conducted and the accused was not properly defended by a counsel during the course of trial, and that trial de novo appears to be the best solution to ensure justice to the accused. However, as the accused have been detained in custody continuously from 05.09.2022, and by now he has undergone detention for nearly 4 years, the trial de novo is not in the interest of the accused and in the interest of justice, and thus prayed that the conviction order be set aside and quashed and the accused be set at liberty forthwith.

SUBMISSION OF LEARNED ADDL. P.P

6. On the other hand, Mrs. Mary L. Khiangte, learned Addl. P.P submitted that without commenting on the conduct of the learned defence counsel who appeared for the accused before the learned Trial Court and without adverting to the evidence of those prosecution witnesses who were declined cross-examination by the learned defence counsel, the learned Addl. P.P submitted that the remaining evidence as well as the statement of accused under Section 313 Cr.PC are enough proof of guilt of the accused. The learned Addl. P.P has

drawn the attention of this Court to the examination of accused under Section 313 Cr.PC, wherein he admitted that he went into the house of the victim on the night of 03.09.2022 at about 11:30 PM. He admitted that he assaulted the victim and her husband with a Mizo dao. He also admitted that he was drunk on that night and further admitted that he fled from the house after committing the offence. The learned Addl. P.P submitted that the statement of the accused himself has clearly corroborated the statement of the prosecution witnesses, particularly the victim Malsawmsangi, PW No. 5, who stated that she and her husband were assaulted in their house in the refugee camp at Zote, Champhai by the accused on the night of 03.09.2022 at 11:30 PM by using a dangerous weapon. The learned Addl. P.P submitted that from the nature of the weapon used, the intention to cause their death is clear and the nature of the weapon used and the part of the body in which the accused hit the victim is a clear explanation of the intention of the accused to cause the death of the victims. The seizure of the dao from the possession of the accused, which is in the prosecution evidence, is further fortified by the statement of the accused under Section 313 when he stated that the weapon of assault was a Mizo dao which was kept in the house of the victims.

6.1 Turning to the nature of injury, the learned Addl. P.P submitted that Exhibit P-3, which is the injury report in respect of Lalmuanpuia, husband of PW No. 5 Malsawmsangi, shows that he sustained deep cut laceration of $5x3x3^{1/2}$ on the right knee, laceration on the left knee measuring 2x1x2 cm and the nature of injury was grievous and caused by sharp weapon within 4 hours of the examination. Exhibit P-4, which is the injury report of Malsawmsangi, also shows that the victim suffered laceration measuring 10x7x5 cm on the back side of her neck and abrasion on the right lateral thigh (small size), which are of grievous nature, caused by sharp weapon within 4 hours from the time of the examination. The learned Addl. P.P therefore submitted that even if the statement of those witnesses who were cross-examined by the learned defence counsel before the learned Trial Court is taken into account, along with the documents that were exhibited without objection and the statement of the accused under Section 313 Cr.PC, it is well established that the offence under 307 and 326 were committed by the accused upon the victims and the oral evidence

as well as the documentary evidence also proved the required intention or knowledge to constitute the offence, more particularly under Section 307.

Analysis

7. The consideration for this Court would be whether the accused caused injuries to the victims, if so, whether the injuries are grievous injury so as to punish the accused for the offence under Section 326 IPC and whether the act was done intentionally or with the knowledge that if the act resulted in the death of the victim, the accused would be guilty of murder so as to be punishable under Section 307 IPC.

7.1 Coming to the offence punishable under Section 326 IPC, the injury sustained must be grievous injury as defined under Section 320 IPC, which is as below:

"***320. Grievous hurt.—The following kinds of hurt only are designated as "grievous":—***

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

7.2 PW-8 Dr. K. Lalchhanchhuahi, who conducted medical examination of victim

Malsawmsangi and her husband Lalmuanpuia, was examined by the prosecution and she exhibited the injury report in respect of the victim and her husband. As per her evidence, the victim sustained laceration of 10x8x5 cm on the back side of her neck and abrasion on the right lateral thigh (small size). The said medical report was reaffirmed by the medical officer in her evidence before the Court, wherein she also affirmed her opinion that the nature of injury is grievous. At this stage, it may be borne in mind that in order to punish an accused for the offence under Section 326, there has to be voluntarily causing of grievous hurt by means of instrument for shooting, stabbing or cutting, or any instrument which is used as a weapon of offence is likely to cause death or by means of fire or any heated substance or by poison or corrosive substance or by explosive substance or any substance which is deleterious to human body to inhale, to swallow, or to receive into the blood or by means of any animal.

7.3 From a reading of the provision of Section 326, the first task for the Court is to ascertain whether there was voluntarily causing of grievous hurt. Grievous hurt is defined under Section 320 IPC, which is already reproduced above and as per Section 322 IPC, in order to constitute voluntarily causing grievous hurt is committed by a person who voluntarily causes hurt and if the hurt which he intends to cause, or knows himself to be likely to cause is grievous hurt and if the hurt which he causes is grievous hurt, he is said to voluntarily cause grievous hurt.

7.4 In the case at hand, from the evidence on record, more particularly the evidence of PW-5 Malsawmsangi, it is seen that the accused had entered into her house in the night and assaulted her and her husband. There is no rebuttal evidence to the effect that the accused was provoked to act in the manner he did. There is also no evidence to show that the hitting of the victim by the accused with a Mizo dao on the nape of her neck was by accident. There is also no evidence to the effect that the striking of the victim's husband Lalmuanpuia on his knees by the same dao by the accused was also accidental and that he intended

otherwise. The accused have also admitted that on the night of the incident he went to the house of the victim, that he was a bit drunk and that he had assaulted the victim and her husband. Therefore, considering the definition of voluntarily causing grievous hurt as reflected in Section 322 IPC, in the given facts and evidence on record, it can be concluded that the act of the accused was voluntary.

7.5 Coming to the question of causing of grievous hurt, the medical evidence, no doubt have stated and established that the injury sustained by the victim and her husband were of grievous nature. However, in order to find a person guilty of committing an offence under Section 326, the grievous hurt has to be interpreted as per the definition contained in Section 320 of IPC. In the case at hand, the medical examination report of the victim states that she suffered laceration and abrasion. The definition of grievous hurt contained in Section 320 IPC does not include laceration or abrasion within the category of grievous hurt. As such, even though the act of assaulting the victim by a sharp weapon i.e., dao, may be voluntary, the resultant injury as per evidence on record does not amount to grievous hurt.

7.6 There can be no doubt that a Mizo dao is a sharp-edged weapon capable of causing serious bodily injury and that the appellant voluntarily used the same in assaulting the victims. Nevertheless, the use of a dangerous weapon, however serious the assault may be, cannot independently sustain a conviction under Section 326 IPC unless the prosecution first establishes the causing of grievous hurt within the meaning of Section 320 IPC.

7.7 Consequently, although the prosecution has established that the appellant voluntarily caused injuries to the victims by using a sharp-edged weapon, it has failed to establish beyond reasonable doubt that the injuries constituted grievous hurt within the statutory meaning of Section 320 IPC. The essential ingredient of the offence under Section 326 IPC is, therefore, not established.

OFFENCE U/S 307 IPC

8. Before proceeding to examine whether the prosecution has established the offence punishable under Section 307 IPC, it is necessary to bear in mind the settled principles governing the determination of intention or knowledge in cases of attempt to murder. The essential ingredients of Section 307 IPC are that the accused must have done an act with such intention or knowledge, and under such circumstances, that if by that act death had been caused, the accused would have been guilty of murder. The provision does not require that the act must necessarily result in an injury sufficient in the ordinary course of nature to cause death. Equally, the mere fact that an injury has been caused on a vital part of the body or by means of a dangerous weapon does not, by itself, conclusively establish the offence.

8.1 In ***State of Madhya Pradesh v. Saleem @ Chamaru***, reported in ***(2005) 5 SCC 554***, the Hon'ble Supreme Court explained that the intention or knowledge contemplated under Section 307 IPC is to be gathered from the circumstances of the case and that the nature of the injury actually sustained by the victim is not necessarily decisive. The relevant consideration is the intention or knowledge with which the act was committed and the circumstances in which it was committed. Even where the injury is simple in nature, an accused may be held guilty under Section 307 IPC if the requisite intention or knowledge is established from the evidence.

8.2 Similarly, in ***Jage Ram v. State of Haryana***, reported in ***(2015) 11 SCC 366***, and ***State of Madhya Pradesh v. Kanha @ Omprakash***, reported in ***(2019) 3 SCC 605***, the Hon'ble Supreme Court reiterated that the intention of the accused is to be determined by considering the totality of the circumstances, including the nature of the weapon used, the manner in which it was used, the part of the body chosen for the assault, the nature and severity of the injury, the number of blows inflicted, the motive, if any, and the events immediately preceding and following the occurrence. No single circumstance can be treated

as conclusive, and the Court must arrive at its conclusion upon an overall appreciation of the evidence.

8.3 It is also pertinent to observe that the distinction between an offence under Section 307 IPC and an offence involving the voluntary causing of hurt or grievous hurt lies substantially in the intention or knowledge accompanying the act. The same act may, depending upon the circumstances and the state of mind of the accused, attract different penal consequences. Consequently, the Court is required to determine not merely whether the accused caused an injury by using a dangerous weapon, but whether the act was accompanied by the particular intention or knowledge contemplated under Section 307 IPC.

8.4 Applying the aforesaid principles to the facts of the present case, the prosecution case is that the appellant inflicted one blow with a Mizo dao on the back of the neck of Malsawmsangi. There can be no dispute that the neck is a vulnerable and sensitive part of the human body and that a sharp-edged weapon such as a Mizo dao is capable of causing serious, even fatal, injuries. The choice of the weapon and the part of the body upon which the blow was inflicted are, therefore, significant circumstances which cannot be overlooked or treated lightly.

8.5 Nevertheless, the use of a dangerous weapon and the infliction of an injury on a vulnerable part of the body, though important circumstances, cannot be considered in isolation. The Court must examine the surrounding circumstances to ascertain whether the appellant intended to cause the death of Malsawmsangi or possessed the knowledge that his act was so imminently dangerous that it would, in all probability, cause death, or whether the evidence establishes only an intention to cause hurt or grievous hurt. The requisite intention or knowledge cannot be presumed merely from the nature of the weapon or the location of the injury.

8.6 In this connection, the evidence of the victim herself assumes importance. Malsawmsangi stated that the appellant was an elderly person who frequently visited their residence and that they had maintained cordial relations with him. The prosecution evidence further indicates that the occurrence was preceded by a verbal exchange between the appellant and the husband of the victim concerning the purchase of liquor and the appellant's query regarding the latter's association with PDF. Thus, the occurrence appears to have arisen in the course of a sudden altercation rather than from any established prior plan or preparation on the part of the appellant to cause the death of either of the victims.

8.7 It is true that the absence of prior enmity or premeditation does not, by itself, exclude the possibility of an offence under Section 307 IPC. An intention to commit murder may also develop at the spur of the moment. However, in the present case, the background of the occurrence, the nature of the disagreement and the sequence of events are relevant circumstances which must be considered together with the actual manner in which the assault was carried out.

8.8. The prosecution evidence establishes that the appellant inflicted one blow on the back of the neck of Malsawmsangi and thereafter assaulted her husband on his knees. There is no evidence that the appellant repeatedly attacked Malsawmsangi on the neck or inflicted successive blows on other vital parts of her body. Nor is there evidence that after the victims went outside seeking assistance, the appellant pursued them or continued the assault with an apparent determination to cause their death. While the number of blows is not determinative of the offence, the fact that only one blow was inflicted and that the assault was not continued is a relevant circumstance in assessing the appellant's intention.

8.9 The subsequent conduct of the appellant, as emerging from the prosecution evidence,

must also be considered in the overall assessment. The evidence does not disclose any further attempt by the appellant to inflict additional injuries upon the victims after the initial assault. Although subsequent conduct cannot independently determine the intention existing at the time of the occurrence, it may provide relevant assistance in appreciating the circumstances in which the incident took place.

8.10 The medical evidence also requires consideration. The prosecution has not brought on record medical evidence establishing that the injury sustained by Malsawmsangi endangered her life or that it was of such a nature and extent as to indicate that the blow was delivered with an intention to cause death. This Court is conscious that the absence of a life-threatening injury is not a legal prerequisite for excluding or establishing an offence under Section 307 IPC. Equally, an injury need not be sufficient in the ordinary course of nature to cause death to attract the provision. Nevertheless, the nature, location and extent of the injury, as reflected in the medical evidence, constitute relevant circumstances for determining the intention or knowledge of the appellant. In the present case, the medical evidence, when considered along with the other circumstances, does not sufficiently establish the particular intention or knowledge required under Section 307 IPC.

8.11 The prosecution has also sought to rely upon the statement attributed to the appellant and translated by PW-9 Zabiakchhunga, according to which the appellant allegedly stated that he had entered the house with the intention of killing the victims. This allegation, if established through legally admissible evidence, would undoubtedly be a circumstance of considerable relevance in determining the intention of the appellant. However, the admissibility of the alleged statement must first be examined before any evidentiary reliance can be placed upon it.

8.12 On a careful consideration of the testimony of PW-9, it is apparent that the alleged

statement was translated before the police. It was not a confession recorded by a Magistrate in accordance with the prescribed procedure. To the extent that the prosecution seeks to rely upon a confession made by the appellant to a police officer, the same is barred by Section 25 of the Indian Evidence Act, 1872. Further, no discovery of any fact has been demonstrated so as to attract the limited exception under Section 27 of the said Act. Therefore, the alleged confessional statement cannot be used as substantive evidence to establish that the appellant entered the house with an intention to commit murder. The prosecution cannot overcome the statutory prohibition merely by relying upon the fact that the statement was translated by a witness in the presence of the police.

8.13 It is necessary, in this regard, to distinguish between the admissibility of the alleged confession and the admissibility of any independently established fact concerning the occurrence. The testimony of PW-9 may be considered for such facts as are otherwise admissible in law, but the alleged confession, being barred by the statutory prohibition, cannot be relied upon to supply the missing element of intention or knowledge under Section 307 IPC. Consequently, this Court is unable to attach evidentiary value to the alleged admission of an intention to kill.

8.14 The statement of the appellant recorded under Section 313 Cr.PC has also been considered. The appellant acknowledged his presence at the residence of the victims and his presence at the refugee camp on the relevant night. However, such answers must be understood in their proper context. An admission of presence at the place of occurrence is not equivalent to an admission of the intention to commit murder. The statement recorded under Section 313 Cr.PC is required to be considered in its entirety and in conjunction with the prosecution evidence. It cannot be construed as an admission of the legal ingredients of an offence merely because the appellant acknowledged certain circumstances surrounding the occurrence.

8.15 It is settled that the statement of an accused under Section 313 Cr.PC may be

taken into consideration along with the other evidence on record. However, the answers given by the accused cannot be isolated from their context or treated as a substitute for proof of the essential ingredients of the offence. In the present case, the appellant's acknowledgment of his presence does not, by itself, establish that he acted with the intention of causing death or with the knowledge contemplated under Section 307 IPC.

8.16 This Court is conscious that the act of inflicting a blow with a Mizo dao on the neck of another person is undoubtedly a serious and reprehensible act. The appellant cannot claim immunity from criminal liability merely because the victim survived or because the injury did not prove fatal. However, the seriousness of the act and the nature of the weapon used must be distinguished from the specific mental element required to constitute an attempt to murder. The Court must be satisfied, on the basis of legally admissible evidence, that the prosecution has established the requisite intention or knowledge beyond reasonable doubt.

8.17 Upon a cumulative assessment of the circumstances, this Court finds that the prosecution has established the occurrence of an assault and the infliction of an injury upon Malsawmsangi by the appellant. However, the prosecution evidence does not satisfactorily establish that the appellant had entered the residence with a pre-existing intention to kill the victims. The alleged statement attributed to the appellant cannot be relied upon as a confession in view of the statutory bar under Section 25 of the Evidence Act. The remaining circumstances, including the prior cordial relationship between the parties, the sudden verbal altercation preceding the incident, the infliction of a single blow, the absence of any continued assault and the medical evidence, do not, when considered together, establish beyond reasonable doubt that the appellant possessed the intention or knowledge contemplated under Section 307 IPC.

8.18 **8.18** The burden of proving the guilt of the accused rests throughout upon the prosecution, and such burden must be discharged by establishing all the essential

ingredients of the offence beyond reasonable doubt. The Court cannot substitute conjecture or suspicion for proof, however grave the suspicion may be. Where the evidence reasonably permits a conclusion that the accused committed an assault without establishing the particular intention or knowledge necessary to constitute an attempt to murder, the accused is entitled to the benefit of that doubt insofar as the charge under Section 307 IPC is concerned.

8.19 Accordingly, this Court holds that the prosecution has failed to establish beyond reasonable doubt that the appellant committed the act with such intention or knowledge and under such circumstances as would render him guilty of murder had death resulted from the act. The essential ingredients of Section 307 IPC have, therefore, not been established.

Effect of the deficiencies in the trial proceedings

9. It necessary to notice certain irregularities in the proceedings before the learned Trial Court. From the record, it appears that the plea of the accused at the stage of framing of charge was not properly recorded. The charge form does not bear the signature or thumb impression of the accused, and there is an apparent discrepancy between the daily order sheet and the charge form regarding the plea entered by him.

9.1 Further, the accused was examined under Section 313 Cr.PC with the assistance of an interpreter. However, the record does not indicate that the accused was thereafter afforded an opportunity to enter upon his defence and adduce evidence, as contemplated under Section 233 Cr.PC in a trial before a Court of Session or the corresponding provision applicable to the nature of the trial. The failure to afford such an opportunity is a serious procedural irregularity.

9.2 The right to effective legal representation is an essential component of a fair trial under Article 21 of the Constitution. The fact that an accused is represented by a counsel appointed through the legal aid mechanism does not relieve the Court of its responsibility to ensure that the accused receives meaningful and effective legal assistance.

9.3 In the present case, the record further indicates that several material prosecution

witnesses were not cross-examined by the defence counsel. Although the absence of cross-examination does not automatically render the testimony inadmissible or unreliable, the Court has a duty to ensure that the accused is afforded a fair opportunity to defend himself, particularly where the consequences of conviction are serious.

9.4 The principles discussed by the Hon'ble High Court in ***Shaniah Langstang v. State of Meghalaya***, reported in ***2025 SCC OnLine Megh 750,*** and by the Hon'ble Supreme Court in ***Sovaran Singh Prajapati v. State of Uttar Pradesh***, reported in ***2025 SCC OnLine SC 351***, concerning the importance of effective legal representation and the responsibility of the Court to ensure a fair trial, are relevant in this context.

9.5 Further in the case of ***Ramanand @ Nandlal Bharti versus State of Uttar Pradesh*** reported in ***2022 SCC OnLine SC 1396*** the Hon'ble Apex Court has held as below :-

> *"120. It is by far now well-settled for a legal proposition that it is the duty of the court to see and ensure that an accused put on a criminal trial is effectively represented by a defence counsel, and in the event on account of indigence, poverty or illiteracy or any other disabling factor, he is not able to engage a counsel of his choice, it becomes the duty of the court to provide him appropriate and meaningful legal aid at the State expense. What is meant by the duty of the State to ensure a fair defence to an accused is not the employment of a defence counsel for namesake. It has to be the provision of a counsel who defends the accused diligently to the best of his abilities. While the quality of the defence or the caliber of the counsel would not militate against the guarantee to a fair trial sanctioned by Articles 21 and 22 resply of the Constitution, a threshold level of competence and due diligence in the discharge of his duties as a defence counsel would certainly be the constitutional guaranteed expectation. The presence of counsel on record means effective, genuine and faithful presence and not a mere farcical, sham or a virtual presence that is illusory, if not fraudulent."*

9.6 As can be seen from this judgment it is the threshold level of competence and due diligence in the discharge of duties of the defence Counsel which would be the constitutional expectation. Unfortunately, in the instant case we seem to find the same

lacking and the duty of the court to proactively make sure that the accused is properly defended is also found wanting.

9.7 Nevertheless, having independently examined the evidence on record, this Court finds that the prosecution has failed to establish the essential ingredients of the offences punishable under Sections 307 and 326 IPC. In view of this finding, and considering the period of detention already undergone by the appellant, directing a retrial would serve no useful purpose in respect of these charges.

CONCLUSION

10. For the discussions and findings recorded above, this court is of the view that there is no sufficient proof of guilt against the accused for the offence punishable u/s 326, 307 IPC.

11. As the accused has been in custody since 05.09.2022 by now he must have already undergone imprisonment for more than 4 years. As such, remanding the matter for fresh adjudication does not seem to be just or in the best interest of the parties.

12. Accordingly, accused/appellant Min Aung is acquitted of the offence punishable u/s 307/326 IPC.

13. Accused/Appellant who is in confinement shall be set at liberty, forthwith, of not required in any other case.

14. Fine amount if already deposited shall be returned to the accused/appellant.

15. This Court expresses appreciation for the valuable service of Mr. Jonathan L. Sailo, learned Amicus Curie. He shall be paid admissible fees according to the extent Rules under the Mizoram State Legal Services Authority.

16. Return the case record of the learned Trial Court.

17. With the above order, the appeal stands disposed of as allowed.

JUDGE

Comparing Assistant