

**IN THE COURT OF
SPECIAL JUDGE,
PROTECTION OF CHILDREN FROM
SEXUAL OFFENCE ACT (POCSO)
MIZORAM, AIZAWL**

BEFORE

**Mrs. Lucy Lalrinthari
Special Judge, POCSO Act
Aizawl Judicial District, Aizawl**

**SC. No.67 of 2014
Criminal Trial No.1015/2014
u/s6 of POCSO Act,2012
Ref: BawngkawnPS C/No.102/14 dt.30-5-2014**

**State of Mizoram
Vrs
LalfakpuiaS/o Chhawnthanga(L) of Zuangtui - Accused**

PRESENT

For the Prosecution : Mrs.K.Lalremruati,Ld.Spl.P.P.

For the Accused : Mr.HranghmingthangaRalte,Ld.Counsel.

Date of Hearing : 29.3.2016

Date of Judgment : 19.4.2016

JUDGMENT & ORDER

1. The prosecution story of the case in brief is that on 30.5.2014 a written FIR was submitted by Lalmuanpuui D/o Lalvuana (L) of Zuangtui stating that her daughter X (13 yrs) was raped/sexually assaulted by her owned father Lalfakpuia S/o Chhawnthanga (L) of

Zuangtui several times in their house since January'14 and the last raped took place the previous week and the fact came to her knowledge on 30.5.2014. Hence, Bawngkawn PS C.No.102/2014 dt.30.5.2014 u/s 376 (2)(I) IPC r/w 6 of POCSO Act was registered and duly investigated into.

2. During the course of investigation, victim X (13 yrs) D/o Lalmuanpuii of Zuangtui was forwarded to Civil Hospital, Aizawl for medical examination and the medical report so received indicated rupture of hymen and admitted 2 fingers freely. Complainant Lalmuanpuii and her daughter X(victim) were examined. The victim stated that her parents separated since May 2014, she and two of her brother stayed back with her father whereas another two of them stayed with her mother. She disclosed about being raped by her father to her mother as her mother enquired of her on 30/5/2014. So far as her knowledge was concerned, her father had raped her 5 times, but she could not recollect the date and time of the previous raped, the last time of rape was Wednesday night 21.5.2014.

3. Accused Lalfakpuia (37) S/o Chhawnthanga (L) of Zuangtui, KualmawiVengthlang was arrested and thoroughly interrogated stating that he and his wife separated since May 2014. It was in January 2014, before their separation, he had raped his daughter X at mid-night. He again raped his daughter in May'14 after his wife had separated from him. He could not remember how many times he had sex with her daughter for the fact that he used to be under the influence of liquors.

4. Accused Lalfakpuia was forwarded to Civil Hospital (Aizawl) for medical examination and the medical report received revealed that the accused can perform sexual activities/fitness. Accused was forwarded to court for judicial remand on 31.5.2014.

5. PO was visited and drew a sketch map of the PO and seized Birth Certificate of the victim. According to which the date of birth of the victim was 20.2.2001. Two witnesses i.e, Hmingthanpuii (34) and Lalsawmzeli (28) both D/o Lalmangaihi of Zuangtui, KualmawiVengthlang were examined and their statement were recorded.

6. Victim was forwarded to Aizawl Court to record judicial statement which judicial statement was also received enclosed in original charge sheet. Hence, having found a prima facie case u/s 376 (2)(I) IPC r/w 6 of POCSO Act well established against accused

Lalfakpuia(37) S/o Chhawnthanga (L) of Zuangtui, KualmawiVengthlang, the case I/O submitted charge-sheet against him.

7. As per section 207/208 of Cr.P.C, all police reports and its connected papers were furnished to the accused Lalfakpuia. The accused informed the court that he is unable to engage lawyer at his own expense. Hence, advocate Mr. R.Thangkanglova was appointed to defend the accused u/s 304 Cr.P.C. at the States' expense.

8. The Ld. Spl P.P MrsK.Lalremruati opened her case and submitted that the prosecution has evidence to prove the guilt of the accused u/s 6 of POCSO act 2012 and hence prayed for framing of charge under the said section. The Ld. Defence counsel Mr. HranghmingthangaRalte agrees. Hence, charge u/s 6 of POCSO Act 2012 was framed, read over and explained to the accused in his own mother tongue to which the accused pleaded not guilty and claims for trial.

9. Hence, trial proceeds. In a case u/s 6 of POCSO Act 2012, the accused has to prove that he is innocent. In other cases of rape under IPC, the prosecution has to prove beyond reasonable doubt that the accused committed offence under the charged section. POCSO is different than IPC as the accused had to prove his innocence. As per section 29 of POCSO Act below:-

[Section 29 of the Act states that [29. Presumption as to certain offence.- Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7, and section 9 of this Act, the special court shall presumed, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.]In the instant case the accused is charged u/s 6 of POCSO Act for commission of offence u/s 5 of the said Act.

Let us have a quick look at the charged section. [6. Punishment for aggravated penetrative sexual assault - whoever commits aggravated sexual penetrative assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.] In order to receive punishment under section 6 of POCSO /act, the accused should have committed offence u/s 5 of the Act. Here is section 5 of POCSO ACT 2012 [5. Aggravated penetrative sexual assault.-(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or

who is living in the same or shared household with the child, commits penetrative sexual assault on such child, or....]

10. In order to bring home the charge against the accused, the prosecution has examined the following witnesses.

PW No.1 Lalmuanpui identified the accused person present in the Court, and stated that the accused is her ex-husband, they had separated/divorced before the incident occurred. With the accused person, they had five issues from their marriage/wedlock. The victim X is their eldest issue. She was born on 20.2.2001. She divorced from her husband, the accused from the month of April, 2014. When she separated she took two of the youngest issues along with her. The rest three elder issues stayed back with their father, the accused. She came to know of the incident from the landlord of the house where they were tenant together. When she approached the owner/landlord of the house, she was informed that there were disturbing noises from the victim at night and requested her to verify the matter. This occurred on 30.5.2014. On this day after she came to know of the incident she took her daughter X from her school and enquired about the incident. She was told that the accused sexually assaulted her and if she resisted her younger siblings would be intimidated by the father and therefore she was scared to inform/report about the matter. She was informed by the victim that she had been sexually assaulted several times by her father. She was also informed by the immediate neighbor Nu Hma-i that there were disturbing noises from the house occupied by the accused and when she was worried she had peeped through a hole on the wall and observed that the accused was sexually assaulting the victim. As soon as she learnt about the incident from the victim and neighbor she immediately filed an FIR with the police at Bawngkawn PS. She exhibited Exbt-P-1 as the FIR submitted by her and Exbt-P-1-A as her signature.

On Cross-examination PW No.1 had stated that before she divorced her husband, she had returned to her family on about three occasions due to the drunken behavior and physical assault by the accused, her husband.

It is not a fact that she run away from her husband and family as she did not love them. The owner of the house is very closely acquainted with them and therefore should be able to differentiate the voices of their children. The behavior of the victim when she took her out from their school was slightly different. She personally did not physically check the victim as she was very disturbed. She is not aware whether the father/accused had any intention against the victim while they were living together. The accused is physically well

however he has some nerve problems. He is sometimes not satisfied with their marriage since she is unwell sometimes. She had some uterus problems and therefore was physically weak at that time and may be not satisfied the sexual desire of her husband. She did not have any suspicion against her husband in sexual matters.

It is a fact that she did not personally have any suspicions against her husband/accused regarding the present incident.

It is not a fact that the accused did not commit the offences against his own daughter.

It is a fact that she did not have any suspicions against the accused/father earlier.

It is not a fact that she falsely accused her husband today due to marital misunderstanding.

It is not a fact that the victim is not mentally disturbed due to the incident.

11. PW No.2 is the victim and she identified the accused saying the accused is her own biological father. After her mother left her father due to marital problems the accused had sexually assaulted her first sometimes in the month of May, 2014. On the first occasion of sexual assault it was about midnight and the accused had attempted to rape her. She kicked him however; he forcibly assaulted her again and raped her on the bed. During this time she resisted and cried out. However, the accused overpowered her and raped her. The younger brothers did not cry loudly due to fear of their father. Her father was in a drunken state almost daily. When he sexually assaulted her he was also in a drunken state but conscious. The other incident occurred again the night after. After this the accused would sexually assault her frequently. The number of times the accused sexually assaulted her was five times and the last incident occurred on 21.5.2014. The assaults were all successful sexually. She did not report any of the incidences to anybody since she was extremely frightened of the accused. The accused would also intimidate her younger brothers while he was in a drunken stage and therefore she suffered this physical sexual assault without informing anyone.

The owner of the house would frequently visit them to see their welfare, however he did not pointedly enquire about the incident and she was also frightened to report the matter to him. When she was first sexually assaulted by the accused, she felt pain and there was blood oozing out from her private parts. On the second occasion she felt pain and there was also some blood oozing out from her private parts. Before this incident she never indulged in any sexual activities with anybody.

Her father had started consuming liquor somewhere around 2008 as far as she knows. He would frequently cause disturbance in the family when he was drunk.

On Cross-examination PW No.2 had stated that she is afraid of her father because he is frequently drunk and would physically assault her and younger sibling with beating by a stick. These assaults were also occurring before when her mother was with them together. Her father would take care of them and shown fatherly love only when he is not drunk. She still loved her father since he is her biological father.

12. PW No.3 Hmingthangpui identified the accused person produced in Court this day. She is a tenant of PuHranghminga at Zuangtui. The accused and his family were occupying the room next to where she is residing. There is a GCI sheet partition wall only between their rooms. The accused was residing with his wife and five children. The accused and his wife separated sometime in the month of May, 2014. The accused was living with his three elder children and the wife had taken the two younger children with her. The eldest daughter (victim) was residing with his father after they separated. After they separated, she did not recall the exact date, the daughter victim was heard to be crying out in pain at about 7:00 PM. Since she was worried she peeped through the hole on the partition wall between their rooms. She observed that the father was sexually assaulting the victim on their bed. Her mother who is also living with them peeped through the hole and observed the same incident. Her mother informed the owner of the house PuHranghminga who in turn reported the matter to the mother of the victim.

On Cross-examination PW No.3 had stated that she know the accused person only by his nick name Sena. She is conversant with Mizo language both written and oral. As far as she know the victim is normal both mentally and physically. She did not remember the exact date of incident but she believes it occurred sometime in the month of May, 2014. Her mother was a tenant of PuHranghminga for about 4 years prior to incident. She joined her mother and resided with her since the beginning of May 2014. On the night of incident she along with other family members heard the cry of distress. It is a fact that she saw the accused sexually assaulting the victim. She was not able to observe whether the private part of the accused in fact entered/penetrated the private part of the victim. The accused was unclothed from the waist below but she believed he had not fully undressed his pants. The victim was suppressing her cry of distress while she had observed through the hole in the partition wall. She did not know the mental condition of the victim while she was giving her statement before the Court. She believed the victim would not depose falsely before the

Court. She did not have any ill feeling against the accused. She personally heard the cry of distress only on the night of incident as she described above.

13. PW No.4 Lalsawmzeli identified the accused present in the court this day. They resided at the same house and their house was separated by GI sheet only. The accused was living with his three children. He and his wife got separated during the year 2014. During the month of May 2015, she did not remember the exact date, she heard the sound of a cry of a child at around 7:00 pm. She was worried and knocked at their door but there is no response and she went back to their house and she peeped through the hole in the partitions wall between their house and she saw the accused sexually assaulted the victim on their bed. They then decided to inform the owner of their house, PuHranghminga and later, PuHranghminga informed the mother of the victim about the incident.

On Cross-examination PW No.4 had stated that she did not know the exact hour and date of the incident. It is not a fact that there was no light inside the room of the accused and she could not see exactly the action of the accused against the victim. It is a fact that she could not see the private part of the victim and the accused she can say that the accused had sexually assaulted the victim from their position.

14. PW No.5 Dr. Lalbiakdiki had stated that during the year 2014 she was posted at Civil Hospital, Aizawl as Gynecologist. On 30.5.2014 she received requisition from CAW Cell to conduct examination on the minor girl aged about 10 years old. Accordingly she conducted medical examination on the victim. She had recorded all her finding at her medical examination report. Exbt. P-2 is her medical examination and Exbt. P-2(A) is her signature.

15. PW No.6 SI Lalpianpuii had stated that she know the accused present in the court this day. During the year 2014, she was posted at CAW Cell, Aizawl as Investigating Officer. On 30.5.2014 FIR was received from Lalmuanpuii to the effect that her daughter victim (13 yrs old) was sexually assaulted by her own father. Hence, Bawngkawn PS C.No.102/14 dt.30.5.2014 u/s 376 (2)(I) IPC r/w 6 of POCSO Act was registered against the accused. Case was referred to CAW Cell, Aizawl and O/C CAW Cell endorsed the case to her for investigation. During the course of her investigation she visited the PO she examined the complainant and the victim and recorded their statement. She also recorded the statement of the two civilian witnesses and recorded their statement. She sent the victim to Civil Hospital, Aizawl for medical examination. The medical report was received and indicates that the hymen of the victim was ruptured and admitted two fingers. She arrested the accused

and interrogated him and he admitted his guilt before her. She also seized the Birth Certificate of the victim and also sent the victim to Judicial Magistrate for recording judicial statement.

Before completion of her investigation, she handed over the case to O/C, CAW Cell for further proceeding. Exbt. P-3 is the seizure memo. Exbt. P-3(A) is her signature. Exbt. M-1 is the seized Birth Certificate.

On Cross-examination PW No.6 had stated she did not personally examine the victim. But examined the witnesses. She saw the original Birth Certificate of the victim. She personally examined the complainant.

16. PW No.7 SI Lallawmpuii had stated that she know the accused person produced in Court this day. During the year 2014 she was posted at CAW Cell, Aizawl as Sub-Inspector of Police. On 30.5.2014 a written FIR was submitted by Lalmuanpuii of Zuangtui stating that her daughter X aged about 13 yrs was sexually assaulted by her own father Lalfakpuia. Hence Bawngkawn PS Case No.102/2014 dt.30.5.2014 u/s 376 (2)(i) IPC r/w 6 of POCSO Act was registered against the accused. The case was endorsed to ASI Lalpianpuii for investigation. The case IO investigated the case visited the PO, examined witnesses and sent the victim to medical officer for medical examination. She also seized the Birth Certificate of the victim. The previous case IO also sent the victim to Judicial Officer for recording her judicial statement. Before submitting the charge sheet the ASI Lalpianpuii handed over the case to Bawngkawn PS as she is not competent to submit charge sheet before the court. The case was again endorsed to her by the OC Bawngkawn PS. She received the case record and its connected papers peruse the case and found no need to further investigate the case. Found prima facie case u/s 376 (2)(i) IPC r/w 6 of POCSO Act and submitted charge sheet before the court. Exbt. P-4 is the charge sheet submitted by her and Exbt. P-4-A is her signature.

On Cross-examination PW No.7 had stated that it is a fact that there was no confessional statement of the accused person in connection with the present case, the investigation was taken up by ASI Lalpianpuii, she herself did not interrogate the witnesses in connection with the case. She did not visit the PO, and did not seize any article after the case was endorsed to her by the OC, Bawngkawn PS.

17. After the prosecution evidences is closed, accused person is examined u/s 313 of Cr.P.C.

Examination of Accused u/s 313 Cr.P.C:

Q.1. The evidence against you is that you had sexual intercourse with your own daughter who is a minor of 13 yrs around the year in 2014 and many times afterwards. What do you say?

Ans : As I was drinking liquor and was drunk and my wife was not present, **I have sexual intercourse with her, I do not exactly recalled how many but it would not be less than three times .**

Q.2. Your wife leaved you due to your drinking. What do you say?

Ans : Yes, I used to drink liquor and due to this my wife often leave my house (tlan).

Q.3. You have five children with your wife, two sons and three daughters. What do you say?

Ans : Yes, we have.

Q.4. The victim is your eldest child. What do you say?

Ans : Yes, she is 13 yrs at the time of the incident.

Q.7. Do you want to adduce defence evidence?

Ans : No.

Q.8. Do you have any other thing to say before the court?

Ans : I have nothing to say before the court.

DECISIONS AND REASONS THEREOF.

As the accused himself did not deny his guilt and frankly admitted that he had committed penetrative sexual assault with her daughter 13 yrs not less than three times but could not remember the exact times as he was always too much drunk at the time he assaulted her daughter, in his examination under section 313 of Cr.P.C, the Id. Counsel for the accused did not submit any point in support of the accused. The Id. Spl. P.P. M/s K. Lalremruati submitted that the prosecution witnesses have proved beyond reasonable doubt the guilt of the accused. The victim PW 2 testifies that her own biological father had sexually assaulted her about five times at night. The Medical Officer corroborates the victim statement and certified that the victim (13) years private part admitted two fingers easily. PW No 3 and 4 are eye witnesses. While peeping on the hole of the partition wall they saw the accused

having sexual intercourse with the victim. PW 1 also heard from PW 2 that the accused sexually assaulted PW 2 many times.

Hence, in the instant case, there is no opposition of the testimony of the victim girl. The accused being the father of victim did not deny he had penetrative sexual assault with her daughter, all the PWs corroborated the statement of the victim. From the testimony of PW 1 wife of the accused, it seems that due to health problem and particularly due to weakness of uterus, she could not satisfy the sexual desire of the accused, her husband. Her husband drunk and always disturb family peace and physically attack her many times. Therefore, she divorced her husband leaving the older three children with her husband and taking the younger two children with her. During her absence, the accused her husband satisfied his lust against their eldest daughter victim.

"In the case of **State of Punjab vs. Gurmit Singhand others** reported in **AIR 1996 SC 1393**, the Hon'ble Supreme Court held that testimony of the victim in rape case is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the court should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable."

Medical evidence cannot displace the evidence of the victim. It was held that "If the girl was Virgo intact before rape and if so the rapture of her hymen is a sure indication of rape having been committed. Absence of injuries on the person of the accused or the prosecutrix is not a sure indication as to whether rape had or had not been committed as in the case of helpless resignation injuries might not have been caused on the accused (aggressor) or the prosecutrix (aggrieved) owing to want of resistance. In RoaHarnanian 1958 Cr.L.J. 563 (Punjab) In re: it was held that a helpless resignation in the face of inevitable compulsion or passive giving is no consent.

The only witnesses who can prove that is the prosecutrix. A conviction for rape depends almost entirely on the evidence of the prosecutrix, so far as essential ingredients of offence of rape are concerned, the other evidence being only corroborative.

In the instant case, the accused himself did not deny he had sexual intercourse with his own daughter victim at least three times but could not counted more as he was always too much drunk at that time. PW 3 and 4 are eyewitnesses as they peep from the hole and found the accused sexually assaulting his daughter. The residence between pw 3and 4 and that of the accused is petitioned by G.I.Sheet only, and from the hole in the G.I.sheet they saw the accused assaulting his daughter. They peep in the hole because they heard a

strange noise from the other side and they heard the crying and distress sound of the victim.

Such being the evidence adduced in the court and the evidence of PW 3 and 4 not shaken by the cross-examination, coupled with the evidence of PW 2 victim and the admission of his guilt by the accused, the prosecution proves beyond reasonable doubt the guilt of the accused Lalfakpuia u/s 6 of POCSO Act. The prosecution witnesses speak the truth and they are reliable, their testimony corroborated each other. The accused being biological father of the victim and living under the same roof and in the same household, and committing penetrative aggravated sexual assault on his daughter has committed offence prescribed u/s 6 of POCSO Act 2012.

Aggravated penetrative sexual assault is described in section 5 of POCSO Act 2012 as "5. Aggravated penetrative sexual assault.-(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child, or....]. And the punishment for offences of aggravated penetrative sexual assault is mentioned in section 6 of the same Act. "6. Punishment for aggravated penetrative sexual assault.- whoever commits aggravated sexual penetrative assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.]

Hence, I am convinced that the accused Lalfakpuia committed penetrative sexual assault on her own daughter the victim, which is punishable u/s 6 of POCSO ACT 2012. And I convict him accordingly.

On the point of sentence I heard the accused, the Id. Counsel for the accused as well as the Id. Spl. P.P. as per section 235(2) of Cr.P.C.

The accused stated that he had been in prison the whole time without enlargement on bail. He had been suffering from kidney problem, vision blurred and had ailments in the abdomen and side, and He may be shown leniency.

On the other hand, the Id. Spl. P.P. submitted that the offence committed by the accused is serious and had far reaching consequences on the society, that father sexually assaulting her own father, there is no medical certificate to prove his ailments, hence deterrent punishment may be given and the accused deserve maximum punishment.

On hearing both parties I am convinced that the accused deserved no leniency. However, the accused being first offender minimum punishment may be given. Accordingly, I sentence the accused Lalfakpuia S/o Chhawnthanga (L) to 10 yrs R.I. accordingly.

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

Seized article of Birth Certificate of victim be return to the rightful owner.

Given under my hand and seal of this court today the 19th of April 2016.

18. Give copy of this order to all concern.

Sd/-LUCY LALRINTHARI

Special Judge, POCSO Act

Aizawl Judicial District,

Aizawl, Mizoram.

Memo No

Dated Aizawl the 19th April 2016.

Copy to:-

- 1) Lalfakpuia C/o Mr.HranghmingthangaRalte, Advocate.
- 2) Mrs.K.Lalremruati, Ld.Spl.P.P, POCSO Act.
- 3) DSP Prosecution.
- 4) O/C Bawngkawn P/S.
- 5) Special Superintendent, Central Jail Aizawl.
- 6) In charge, Judicial Section.
- 7) Case record.
- 8) Guard file.

PESHKAR

APPENDIX

A. PROSECUTION EXHIBIT

- Exbt. P-1 – FIR.
- Exbt. P-1-A - Signature of PW No.1.
- Exbt. P-2 –Medical examination.
- Exbt. P-2(A) - Signature of PW No.5.
- Exbt.P-3 – Seizure memo.
- Exbt. P-3(A) - Signature of PW No.6.
- Exbt. M-1 – Seized Birth Certificate.
- Exbt. P-4 – Charge sheet.
- Exbt. P-4-A - Signature of PW No.7.

DEFENCE EXHIBIT- None

B. Exhibit produced by witnesses - None

C. Court Exhibit - None

D. Prosecution witnesses :

- PW No.1 is Lalmuanpuii.
- PW No.2 is Laldusaki.
- PW No.3 is Hmingthangpuii.
- PW No.4 is Lalsawmzeli.
- PW No.5 is Dr.Lalbiakdiki.
- PW No.6 is SI Lallianpuii.
- PW No.7 is SI Lallawmpuii.

E. DEFENCE WITNESSES - None

F. COURT WITNESSES - None

PESHKAR