

**IN THE COURT OF ADDL.DISTRICT & SESSIONS JUDGE-I
AIZAWL JUDICIAL DISTRICT, AIZAWL**

***Sc No.114/2013,
A/o Crl.Tr.No.1730/2013,Kulikawn P.S Case No.117/2013
U/S 376(2)(i) IPC***

State of Mizoram : Complainant

Vrs

Lalbiakliana : Accused

BEFORE

Vanlalmawia

Addl.District & Sessions Judge-I

PRESENT

For the opposite party	:	R.Lalremruata, Addl.PP Lily Parmawii Hmar, APP
For the Accused	:	Lalramhluna, Advocate.
Date of order	:	24.8.2015

ORDER

The prosecution story of the case in brief is that on 24.9.2013 written FIR was lodged by Ramheri stating that she learnt the fact that her daughter Miriam Lalmuanawmi 13 yrs was sexually assaulted by their neighbor Lalbiakliana at Aibawk. Hence Kulikawn P.S Case No.117/2013 dt.24.9.2013 u/s 376(2)(i) IPC was registered by the O/C Kulikawn P.S and endorsed me to investigation.

During the course of investigation the P.O was visited and sketch map was drawn. The complainant Ramheri was examined and statement was recorded. Statement of the victim was also recorded when she stated that she often visit the accused Lalbiakliana in his house where they used to have sexual intercourse. On night she escaped from house and spent the night with Lalbiakliana where she was caught the next step by her relatives and thus the matter revealed.

The victim was medically examined which shows presume of old healed tear on hymen. A certificate issued by the church which shows the date of birth of the victim was seized. Judicial statement of the victim was recorded by the Judicial Magistrate First class.

The accused was arrested on 24.9.2013 and statement was recorded who stated that the victim visited him several times in his house and he full for her and had sexual intercourse with her. He stated that he knew the victim was under age.

Hence a prima facie case u/s 376(2)(i) IPC is found well established against the accused Lalbiakliana (40) S/o Thangluaia of Aibawk Salem veng.

Charge u/s 376(2)(i) IPC is framed, read over and clearly explain to the accused and the accused Lalbiakliana pleaded not guilty and claim for trial.

During the trial, the prosecution examined as many as five prosecution witness

P.W No.1 who is also complainant stated I know the accused Lalbiakliana. Miriam Lalmuanawmi the victim is my daughter, and she is 14 years old at present.

The accused Lalbiakliana is our neighbour, he is staying next to our house. On the night of 31.8. 2013 my daughter Miriam Lalmuanawmi stayed at the house of the accused. My mother saw my daughter coming out of the house of the accused the next early morning i.e 1.9.2013. On questioning my

daughter, she told that the accused Lalbiakliana called her and she stayed with him the whole night and she told that the accused had sex with her. We reported the matter to Child Line and later on filed F.I.R to the Police.

Exbt P 1 is F.I.R

Exbt P 1 (a) is my signature.

Cross examination by the Defence counsel:

The F.I.R prepared by my daughter and I put of my signature in the FIR and submitted to the O/C Kulikawn Police Station. My daughter Miriam Lalmuanawmi was born in the year 1999 7th November.

It is a fact that I do not see while having sexual intercourse.

It is a fact that I know about the incident of that night from the victim.

It is a fact that I have six children (5 sister and 1 brother).

P.W No.2, who is also victim stated that I know the accused Lalbiakliana, he stays next to our house, and he is staying alone.

The accused and I fell in love and he asked me to go to his house at night sometime in the month of August 2013 and I went to his house and he got to bed with me. And one morning in the month of September 2013 my grand mother found out that I visited accused the previous night. My mother then filed F.I.R to the Police on 25.9.2013.

Cross examination by the Defence counsel:

The accused did not insert his pennies in my vagina . Earlier I was fall in love with our teacher our teacher had a sexual intercourse two times, at the time of we are having sexual intercourse with our teacher I was feeling pain. As the

accused Lalbiakliana did not insert his pennies in to my vagina I was not feeling pain.

Re examination : The accused did not have sexual intercourse with me whenever I went to his house. I used to go to his house around five times a week in the month of August to September 2013. During those times the accused Lalbiakliana actually put his pennies inside my vagina.

P.W No.3 Dr. Vanlalhruii Civil Hospital stated I am working as Gynecologist at Civil Hospital Aizawl. While I was on duty 25.9.2013 one girl namely Miriam Lalmuanawmi aged 13 years was brought by Police, Aizawl Police Station for Medical Examination. On examination of her genitals whether she had any recent sexual intercourse against her will. I also examined the rest of her body for any sign of injury, and it was found that there was no sign of injury. Since she had changed her clothes and washed herself, vaginal swab was not taken for examination and on the hymen there was sign of old healed tear.

Exbt P 2 is medical report , P 2(a) is my signature.

Cross examination by the Defence counsel:

It is a fact that I have not received a separate medical requisition for age determination. However, I sent the victim girl for age determination to the radiologist at Civil Hospital, Aizawl.

Though the victim stated to me that she was aged about 13 years and 10 months, but there is no evidence to prove the same.

It is a fact that there is no a certificate from the radiologist determining the actual age of the victim. I cannot say how old was the tear present on the hymen of the victim. On my examination of the body of the victim I find no abnormality.

P.W No.6 Thomas Lalrammawia, Judicial Magistrate First Class stated On being assigned me by the CJM, I recorded Judicial statement of victim on 7.10.2013 at my Chamber. The victim stated before me that she had sexual intercourse for three times with the accused. She further stated before me that they also had sexual intercourse on 31.8.2013.

Exbt : P-7 is Judicial Statement of the victim.

Exbt P-7(a) is my signature.

Cross examination by the Defence counsel:

Before I recorded the statement of the victim, she did not take oath before me.

The victim was brought before me on the case being endorsed to me for recording statement by the Chief Judicial Magistrate.

No Police personal was present while recording the statement.

It is not a fact that the victim made a statement before me that she had sexual intercourse with the accused as tutored by the Police in the course of investigation.

From the statement made by the victim before me it appears that the victim and the accused had sexual intercourse with their mutual consent.

P.W No.7 S.I Lalhmachhuani Sailo CAW Cell Aizawl P.S stated that I know the accused who is standing before the court today.

That on 24th September 2013 a written F.I.R was lodged by Ramheri to the O/C Kulikawn P.S stating that her daughter Miriam Lalmuanawmi (13yrs) was sexually assaulted by their neighbor Lalbiakliana at Aibawk, the O/C Kulikawn P.S registered KKK PS Case No. 117/2013 dated 24.9.2013 u/s 376(2)(i) IPC. The O/C Kulikawn P.S endorsed me to investigate into the case.

During the course of my investigation I visited the P.O and drew the sketch map of the P.O, I examined the complainant Ramheri and recorded her statement, I also examined the victim and recorded a statement where she (victim) stated that she often visited the house of the accused where they used to have sexual intercourse and she also stated that one night she escape from home and went to the house of the accused and spent the night with the accused. On the next day after she went home her relatives asked her where she had gone the previous night, she stated to her relatives that she had gone to the house of the accused.

That during the course of my investigation I send the victim to Aizawl Civil Hospital for medical examination and I also received the medical examination report of the victim during my investigation which report that there is a presence of old healed tear on her hymen. On 24.9.2013 I arrested the accused and I also recorded his statement in which he stated that he used to have sexual intercourse with the victim several time at his house and also stated that he knew the victim was under age. I also seized a photo copy of Birth/Nauhlan Certificate of the victim Miriam Lalmuanawmi made from the original from the possession of the complainant Ramheri.

That during my investigation I forwarded the victim to Thomas Lalrammawia JMFC Aizawl to record her Judicial statement on 7.10.2013.

That as I found a prima facie case U/S 376(2)(i) IPC well established against the accused Lalbiakliana I submitted the Final Form Report/Charge sheet.

Exhibit : P-3 is the Final Form Report/Charge sheet submitted by me.

Exhibit P-3(a) is my signature.

Exhibit P-4 is the arrest memo the accused Lalbiakliana,

Exhibit P-4(a) is my signature.

Exhibit P-5 is the Birth/Nauhlanna Certificate of the victim Miriam Lalmuanawmi seized by me.

Exhibit P-6 is the seizure memo of Birth/Nauhlanna Certificate of the victim Miriam Lalmuanawmi seized by me.

Exhibit P-6(a) is my signature.

Cross examination by the Defence counsel:

It is a fact that I did not seized the Birth Certificate of the victim issued by Economic & Statistic Department.

It is also a fact that the official Birth Certificate of a person is maintained and issued by the Economic & Statistic Department, Government of Mizoram and not the church.

It is a fact that there is no fresh injury on the private parts of the victim.

It is a fact that there is no report from the Medical Officer stating that the accused has had a sexual intercourse with the victim except that old healed tear of the hymen was found which could be cause by any other person other than the accused.

It is also a fact that there is nothing abnormal for the victim to visit house of the accused in the Mizo society.

It is a fact that exhibit P-5 was not issued by me.

It is not a fact that P-3, P-4, P-5 and P-6 are false and fabricated and exhibit P-3(a), P-4(a) and P-6(a) are not my signatures.

After prosecution evidence is closed, accused Lalbiakliana was examined u/s 313 Cr P.C, and answer the question put to him

Q.1. It is from the evidence that Miriam Lalmuanawmi was staying next to your house at Aibawk. What do you say ?

Ans : Yes, she is staying next to our house.

Q.2. It is from the evidence that Miriam Lalmuanawmi was 14 years old on 2014 and 13 years old on 2013. What do you say ?

Ans : She might have attend 18 years old.

Q.3. It is from the evidence that Miriam Lalmuanawmi fell in love with you and she was your girlfriend. What do you say ?

Ans : She love me, and I do not love her.

Q.4. It is from the evidence that Miriam Lalmuanawmi stayed at your house on the night of 31.8.2013 and you had sex with her on that night. What do you say ?
Ans : I cannot remember as I was fully drunk, and I do not whether we have sex or not.

Q.5. It is from the evidence that Miriam Lalmuanawmi's grand mother saw her coming out of your house on 1.9.2013 early morning she stayed with him on the night of 31.8.2013. What do you say ?

Ans : I do not know whether her grand mother saw her coming out of my house.

Q.6. It is from the evidence that you had sex with Miriam Lalmuanawmi before 31.8.2013. What do you have to say ?

Ans : Yes we have sex with her before 31.8.2013.

The medical report of the victim girl revealed that there was previous intercourse, but no bruising, laceration of external genitalia, and there was "old healed tear" in the hymen, but mark of violence on the body of the victim the Xerox Birth certificate No 32 dt. 5.12.99 issued by UPC of Mizoram which is called NAUHLANNA revealed that the victim was born on 22.11.1999.

The Id. counsel Mr.Lalramhluna Advocate his written argument :

1. That the story of the case in brief is that on 24.09.2013 an FIR was submitted by Ramheri to the effect that her daughter Miriam Lalmuanawmi 13 years was sexually assaulted by Lalbiakliana at Aibawk and Kulikawn P.S Case No. 117/13 dt. 24.09.13 U/s 376(2)(i) IPC was registered and investigated. After completion of the investigation the case IO found prima facie case against the accused and submitted charge sheet before the court.

2. That on receiving charge sheet the case was endorsed to this court and proceeding was taken up against the accused. Copy of the charge sheet was furnished to the accused and he was informed of his right to defend by the lawyer of his own choice. The accused informed the court that he has no means to engage a lawyer at his own expense and prayed the court to engage a lawyer to defend him at the state expense. Hence, the present counsel was appointed as the defence lawyer at the state expense.

3. That the prosecution open their case by stating that there is a prima facie case against the accused and pray the court to frame the charge and on the other hand the Id. Defence Lawyer objected that there is no a prima facie case against the accused and both the accused and the victim had sexual intercourse with their mutual consent. However, the court is satisfied to frame the charge against the accused and the charge U/s 376(2)(i) IPC was framed against the accused by explaining in the language known to the accused to which he pleaded not guilty to the charge and claimed for trial.

4. That during the course of trial 5(five) prosecution witnesses were examined and cross examined out of 7(seven) prosecution witnesses cited in the charge sheet. For the sake of brevity and to avoid lengthy argument reproduction of the deposition of prosecution witnesses one by one is not found necessary as the same were available on the case record for reference. It is therefore argue that the victim deposed that she had fallen in love with the accused and she used to approach him at his residence and on her cross examination she deposed that the accused did not insert his penis in to her vagina and she was earlier fall in love with her teacher and they have sexual intercourse two times and she later on deposed that the accused put his pennies in her private part.

In this regard it is submitted that the victim is said to have been 13 years and to prove her age, the prosecution produced only Baptismal certificate to prove her age whereas she is supposed to have Birth Certificate. It is further submitted that the Medical Officer who examined the victim stated that she sent the victim to Radiologist for age determination but there is no such radiologist report in the case record to prove the actual age of the victim. The evidence of the case IO also revealed that there is nothing in the record to prove the actual age of the victim and the case IO also stated that the official Birth Certificate of a person is maintained and issued by the Economic & Statistic Department, Govt. of Mizoram and not the church. She also stated that there is no report from the Medical Officer stating that the accused has had a sexual intercourse with the victim except that old healed tear of the hymen found which could be caused by any other persons other than the accused.

In this circumstances Birth Certificate issued by the Economic & Statistic Dept. is not seized by the case IO during investigation and there is no attempt to seize such a document and the prosecution unable to prove the actual age of the victim and the Baptisma Certificate seized by the case IO cannot be accepted as an evidence to prove the actual age of the victim as the same was challenge as invalid by the accused who submitted a letter to the effect that such Baptisma Certificate is not issued by UPC of Mizoram, Aibawk.

5. That the second point of argument is that both the accused and the victim had sexually intercourse with their mutual consent. In this regard the victim deposed before the court in her cross examination that she had earlier sexual intercourse two times with her teacher to whom she had fallen in love and on her examination she revealed that the accused put his pennies in her private part. Here it is pertinent to mention that the teacher who had earlier sexual intercourse is liable to be prosecuted along with the accused as per the provision of section 319 Cr PC and the prosecution remained silent in this regard. The medical report of the victim revealed that there is an old healed tear in her hymen which suggested that she used to have indulged in sexual intercourse on earlier occasion. To strengthen the argument it is submitted that the Magistrate who recorded the statement of the victim deposed before the court that it appears that the victim and the accused had sexual intercourse with their mutual consent.

6. That for the third point of argument it is submitted that none of the prosecution witnesses can say the exact date of incident. It appears that the case has been registered against the accused on 24.09.2013 and the incident appeared to have been happened on the month of August and there was a delay of more than one month in submitting the FIR and the same is neither explained in the FIR itself nor on the charge sheet which creates a room for doubt. The circumstances fully suggested that there was a lot of chance for sexually intercourse by the victim with a man other than the accused. Hence, the case of the prosecution against the accused left a room for doubt coupled with age dispute and the benefit of the same must be given to the accused.

7. That it is therefore argue that the prosecution unable to prove the actual age of the victim and the victim as per medical report revealed to indulge in sexual intercourse and even in the present case no force appeared to have been used while they were having sex. Non explanation of the delay in submitting FIR creates more doubt about the prosecution case as the same is neither explained

in the FIR nor in the charge sheet. Therefore this argument is concluded that the prosecution unable to establish their case beyond all reasonable doubt against the accused and the case of the prosecution left a room for doubt and benefit of the same must be given to the accused. Hence, the accused is liable to be acquitted from the charge and set him at liberty forthwith.

The Id. counsel enclosed which seem to be original one calling CANCELLED – NA, which revealed that the said Nauhlan Certificate No 32 was cancelled, which run as followed : Mizoram UPC Aibawk Kohhranin Nauhlan Certificate No.32-na Miriam Lalmuanawmi D/o Ramheri Aibawk, Nauhlan Certificate a lo pek tlai khawhnu chu File leh thil dang zawng zawngte check vek a ni a. Miriam Lalmuanawmi d/o Ramheri hi Aibawk Mizoram UPC Kohhran hlanna hmuh a ni lova, Certificate a lo pek tawh chu rintlak ni lova hriain Kohhran Committee chuan a cancelled a ni.

(TLANGHMINGTHANGA)

(R.LALRINCHHANA)

In this instance case, there was sexual intercourse between the accused and the victim on mutual consense as stated by the victim, but the vital point is whether the victim is underage or not, the only available certificate to prove the age of victim is Nauhlan certificate Nol.32 dt.5.12.99 issue by Pastor R.Lianzama of Aibawk, U.P.C of Mizoram.

But the said certificate was cancelled by the same U.P.C Church of Aibawk under the signature of Tlanghmingthanga Chairman, U.P.C of Mizoram Aizawl and R.Lalrinchhana Secretary U.P.C of Mizoram, Aibawk, the prosecution cannot produce any other reliable document to prove the age of the victim to ascertain that the victim is underage.

Without reliable certificate, the court cannot declared that the victim is under age.

So, the prosecution fails to prove the case against accused Lalbiakliana u/s 376(2)(i) IPC due to lack of age proof certificate of the victim, I have no

other alternative except to acquit accused from the charges due to lack of evidence.

I therefore acquitted accused Lalbiaklana from the charge leveled against him u/s 376(2)(i) IPC, and set him at liberty.

Bail and bail bond stand cancelled.

Announce in open court on this 24th August 2015.

Give copy of this order to all concerned.

Sd/- VANLALMAWIA
Addl. District & Sessions Judge
Aizawl Judicial District, Aizawl

Memo No _____/ADJ-I(A)/2015 : Dated Aizawl the, 24th August 2015

Copy to :-

1. District & Sessions Judge.
2. Accused Lalbiaklana C/o Lalramhluna Advocate.
3. Deputy Superintendent of Police (Prosecution)
4. App/ Addl. PP
5. Judicial section
6. Case record.
7. Guard file.

PESHKAR