

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

Sc No119 /2013
Crl.Tr.No. 1775/2013,U/S 376 (i) IPC

State of Mizoram : Complainant

Vrs

Lalmuanpuia : Accused.

BEFORE

Vanlalmawia
Addl District & Sessions Judge,

PRESENT

For the Opposite party : R. Lalremruata, Addl. P.P.

For the Accused : R.Thangkanglova, Advocate.

Date of Order : 26.2.2015

ORDER

Accused Lalmuanpuia present, with his Id. Counsel Mr.R.Thangkanglova Advocate. Today is fixed for pronouncement of judgment.

The prosecution story of the case in brief is that on 3.10.2013 a written FIR was lodged by Dr.Lalthankungi of Durtlang North stating that on the same day i.e 3.10.2013 their maid servant Lalbiakkimi 16 yrs was sexually assaulted by Lalmuanpuia who also resides and worked for the complainant in their house. Hence Bawngkawn P.S Case No.171/2013 dt.3.10.2013 u/s 376(i) IPC was registered and duly investigated into.

During the course of investigation the complainant was examined and recorded his statement, victim was medically examined which shows old repture

on hymen but vaginal smear shows no sign of spermatozoa. Statement of witness MS Dawngkimi to whom the victim first disclosed the matter was recorded.

The P.O was visited at Durtlang North and accused Lalmuanpuia Sailo was arrested. Accused was medically examined and shows he can perform sexual activities. His statement was recorded who stated that he had sexual intercourse with the victim on 3.10.2013 and earlier on the week before. He also stated that the victim mentioned of not wanting to have sexual intercourse but ignored her and fulfilled his intention. The next time he had sexual intercourse with her the victim became furious for which did not climax.

Judicial statement of the victim was recorded by Lalramsanga, Judicial Magistrate First class where she stated that Lalmuanpuia sexually assaulted her which she informed one of the family member where she resides on the same day i.e 3.10.2013.

Birth Certificate of the victim was produced by the victim's mother Chingngaihniangi. A copy of the same was made and seized at CAW Cell witnessed by the victim Lalbiakkimi and M.S Dawngkimi. It proves that the victim is an under age of 16 yrs. The accused who stated that he believed the victim to be around 16yrs therefore, committed the offence of sexual assault as she did not attain 18yrs of age, even though he stated the victim did not fully resist. However victim stated she was forced by the accused and was sexually assaulted.

Hence, a prima facie case, u/s 376(i) IPC is found well established against the accused Lalmuanpuia Sailo(19) S/o Thanzamliaana Sailo.

Charge u/s 376(i) IPC is framed, read over and explained to the accused in the language known to him to which he pleaded not guilty and claims for trial. During the trial, the prosecution examined 6(six) witnesses.

Complainant Dr. Lalthankungi who is also P.W No.1 stated that she received a phone call from her sister daughter M.S Dawngkimi stating that the victim was raped by accused Lalmuanpuia, and rushed home, and Lalmuanpuia confessed his guilt before her, and submitted F.I.R to Bawngkawn P.S but personally did not see and heard about the incident except from the statement of accused Lalmuanpuia.

P.W No.2, the victim stated that I know the accuse who is standing in the court today.

I am staying at Dr.Lalthankungi's residence, and the accused Lalmuanpuia was also at the same house.

On 3rd October 2013 around 12:30 noon, when the accused and I were staying together at Dr.Lalthankungi's residence, the accused forcibly pulled down my pants and raped me. During that time no other person was at home. Though I tired my level best to push away the accused while he was trying to rape me, I could not as he over powered me. Even during intercourse, somehow I pushed and kicked him and he got away.

Cross examination.

The time of the incidence is around 12:00 noon.

It is not a fact that I am the consenting party in this case.

Earlier also I used to have sex with other person.

Earlier also the accused used to give me first blow and this was known to my family members.

The accused is a short and small stature.

I am from Mimbung Village(origin) and I do not know the Village of the accused.

Near the P.O there was another house occupied by non-mizo labourers and the distance of the residence is 15 feet away from the house of the P.O, and they are never there at daytime.

I could hardly shout for help but nobody could hear my voice.

P.W No.3 M.S Dawngkimi stated that I know the accused who is standing at the court today.

I am staying at Dr.Lalthankungi's house as she is my mother's younger sister.

At the time of the incidence, I was at Zarkawt I was informed by the victim though SMS that she was raped by the accused I telephoned the victim and she was crying and I told her to lock herself inside my room. On reaching home, the victim

was inside my room as I told her and the accused also cried to me revealing his guilt to me.

Cross examination.

Lalbiakkimi is not my blood relative and she is our domestic helper.

As I have stated in my in chief, I was at Zarkawt at the time of the alleged incident.

I have not seen nor heard anything about this incidence personally and all what I know are desired from the victim.

P.W No.5 Dr.Thiamsanga, Civil Hospital Aizawl stated that

I am working as Gynecologist in Civil Hospital Aizawl. While I was on duty on 3.10.2013 at around 7 pm I conducted Medical Examination of a victim Lalbiakkimi ages 16 years in alleged rape case. It was found that there was old hymen rapture and no marks of violence was found on the body. Vaginal smear was taken and sent to Department of Pathology for examination of presence of sperm.

Exbt P 2 is Medical examination report.

Exbt P 2 (a) is my signature.

Cross examination by the Defence counsel:

I cannot determine the date of this old rapture and she told me that she had a sexual relationship with the other person, as I have not examine the sperm I cannot say whether the sperm inside the vagina was of the present accused, I am an MD Gynecology and I am qualified to conduct examination of the victim.

P.W No.6 Dr.R.Lalchhuanawma, Civil Hospital Aizawl stated that

I am a Medical Doctor presently working at Directorate of Health Services Government of Mizoram. I was posted at Civil Hospital Aizawl, Casualty Department from August 2013 to October 2013. While I was on duty on 3.10.2013 at around 7 pm I conducted Medical Examination of an accused Lalmuanpuia ages 19 years, as per requisition by Police to see whether he can perform sex and whether he sustained any injury. It was found that there was abrasion and swelling

in his right cheek and upper and lower lips and also painful swelling at his left hand and right leg. I did not find any abnormality or illness that would prevent him from performing sexual activity.

Exbt P 3 is Medical report regarding sexual activity.

.Exbt P 3 (a) is my signature.

Exbt P 4 is injury report of the accused.

Exbt P 4(a) is my signature.

Cross examination by the Defence counsel:

The abrasion and swelling in him can be cause by some other substance or incident. I have not personally seen or heard anything about this alleged rape.

P.W No.7, S.I Lalhmachhuani Sailo, C.A.W cell, Aizawl stated that

I know the accused who is standing in the court today.

On 3.10.2013 FIR lodged by Dr. Lalthankungi of Durtlang North at Bawngkawn Police Station that her maid servant Lalbiakkimi 16 yrs was sexually assaulted by Lalmuanpuia who was also working at the complainants residence.

The case was referred at CAW Cell and I took up the case. During investigation statement of the complainant was examined. The victim who was brought to CAW Cell was examined and statement recorded and was forwarded to Civil Hospital for Medical Examination .The P.O was visited and the accused Lalmuanpuia Sailo arrested and interrogated. His statement was recorded where he admitted his guilt. The accused was medically examined which revealed him to be fit and normal. A copy of the victims birth certificate made from the original was seized and statement of witnesses were accordingly recorded. Judicial statement of the victim was recorded by Lalramsanga, Judicial Magistrate First Class.

I therefore found a prima facie case and laid the charge sheet against the accused Lalmuanpuia Sailo.

Exbt P 5 is the final form report, P 5 (a) is my signature.

Exbt P 6 arrest court surrender form, P 6(a) is my signature.

Exbt P 7 property search and seizure , P 7(a) is my signature.

Cross examination by the Defence counsel:

In this rape case I have not seen anything personally but I was told about this case by some other friends.

I have stated that the accused confessed his guilt before the Police.

The age of the prosecutrix is 16 yrs as recorded in their birth certificate. All that I know about the case are derived from the investigation.

After prosecution evidence is closed, the accused Lalmuanpuia is examined u/s 313 Cr.P.C asking the question that the evidence against you is that you sexually assaulted Kimkimi on 30.10.2013 @ 2pm, what do you have to say, and accused answered that not assaulted, but have sex two times.

The accused Lalmuanpuia produce two defence witness namely Lalduhawma of Bawngkawn Chhim veng.

Who stated that I know Lalmuanpuia from his child hood he never drink nor engage himself in love affairs with girl. Prosecutric Kimkimi and the accused Lalmuanpuia were living together in one house. Lalmuanpuia was having a pay and the prosecutric envied him and as such she forcibly accused alleged him to have a sexual intercourse with him forcefully and her allegation has no root at all and she had written that she was having intercourse with the accused earlier in the charge sheet . Because of these I strongly believed that the allege sexually intercourse was done willingly by both the party if any.

Cross examination by the counsel for the Prosecution:

The accused Lalmuanpuia was staying at Durtlang North at the time of the alleged incident. I have been working under Mizoram University since 2002 and I have been staying at Bawngkawn Chhim veng since 2000.

I do not know all the activities of the accused every day.

Though I believe that the alleged sexual intercourse was not rape, but I personally cannot say whether the alleged sex was rape or not.

It is not a fact that I deposed before the court due to the fact that the accused is my relative.

Re examination

Accused is a small, young and weak creature.

And Ramthanmawia of Bawngkawn Bazar veng who stated that I know Lalmuanpuia from his boy hood and he is a very gentle nature and it is likely that he will never do rape on any women. If he committed raped on the victim as it is alleged there are many persons nearby the P.O and this people are always in a shouting distance and as such the cry of that prosecutrix should have been heard by some other persons and even if any sexual intercourse it must have been done with the agreement of both the parties even if he really commit rape on her the medical report also should have stated signed of rape or result of the violence on the wearing apparel on the prosecutrix or on her body and Doctor report is nil in all this. Both of them have sexual intercourse three or four times this sexual intercourse must have been done willingly by both the parties.

Cross examination by the counsel for the Prosecution:

The accused Lalmuanpuia is my relative. Though I stated that the accused had sex with a victim three or four times, I personally cannot know whether they actually had sex or not and the same was only narrated to me by the accused.

It is a fact that I had not visited the accused when he was at Durtlang at the house of Dr.Lalthankungi, as such I do not know the design and structure of the said house. I do not know the exact place or room where the alleged offence was committed. I do not know how far the next house was located to the house of Dr.Lalthankungi, and I don't know the time of the alleged offence. What I have stated in my examination in chief is based on assumption and I personally do not know whether the accused had raped the victim or not.

It is not a fact that I did not read the medical report of the victim.

Both parties submitted written argument, the Id. Addl.Public Prosecutor submitted that

1. The Prosecution story is that on 3.10.2013 written FIR was lodged at Bawngkawn P/S by Dr.Lalthankungi of Durtlang North stating that on 3.10.2013 her maid servant Lalbiakliani 16 yrs was sexually assaulted by Lalmuanpuia. Who also resided in her house.

2. The accused Lalmuanpuia confessed to the Case I/O Lalmachhuani Sailo, S.I of Police that he had sexual intercourse with Lalbiakliana on 3.10.2013 at the residence of Dr.Lalthankungi and had sex with her also a week earlier. The accused also confessed that he had sex with Lalbiakliani against her will. The victim Lalbiakliani was 16 yrs of age at the time of the evidence. Hence, a prima facie case u/s 376(i) IPC was found well established against the accused Lalmuanpuia.

3. The prosecution produced witness.

- a) Dr.Lalthankungi P.W No.1 who filed an FIR deposed before the court that the accused Lalmuanpuia confessed to her that he had sex with the victim against her will.
- b) M.S Dawngkimi, PW No.3 deposed before the court that the victim cried as she informed about the incidence. She also stated that the accused confessed his guilt before her.
- c) Lalbiakkimi, PW No.2 the victim stated that on 3.10.2013 at around 12:30 noon, when she and the accused were at home, the accused forcibly pulled down her pants and raped her by overpowering, she also stated that during intercourse, she somehow pushed and kicked him away. On cross-examination she stated that the accused had punch her on the face earlier, also stated that she had sex with other person earlier and also stated that the next house to the P.O was about 15 feet and no was never there at daytime.
- d) Dr.Thiamsanga, PW No.5 and Dr.R.Lalchhuanawm PW No.6 were also examined Dr.R.Lalchhuanawma deposed that he conducted medical examination of the accused Lalmuanpuia and deposed that the accused could perform sex and the accused sustained abrasion, swelling at his right cheek, upper and lower lips, his left hand and right leg.
- e) S.O Lalmachhuani Sailo, Case I/O deposed that the accused Lalmuanpuia admitted his guilt.

4. The accused Lalmuanpuia produced witnesses.

a) Lalduhawma who deposed that he knew the accused from his childhood and believed that the sexual intercourse was done willfully by both parties. However on cross-examination he stated that he cannot say whether the alleged sex was rape or not.

b) Ramthanmawia also deposed that he believed the alleged sex was not rape. However on cross-examination, he admitted that his deposition was based on his assumption and personally could not say whether the accused raped the victim or not.

c) The accused Lalmuanpuia on cross-examination u/s 313 Cr.P.C stated that he did not sexually assaulted Lalbiakkimi(Kimkimi) but had sex with her two times.

6. On perusal of all materials available on record, it is clear that.

a) the accused Lalmuanpuia and the victim Lalbiakkimi (Kimkimi) were at home, at the house of Dr.Lalthankungi of Durtlang North on 3.10.2013 at daytime. At around noon no other person was there at the said house.

b) At around 12:30pm the accused by overpowering removed that pants of the victim and raped her.

c) The accused admitted that he had sex with the victim.

d) Since the accused got up while having intercourse before his climax, it is clear that the said intercourse was not done willfully by both parties. In fact, the accused got up as the victim somehow pushed and kicked him.

e) That the age of the victim was 16 yrs at the time of the incidence. D.O.B 11.8.1997.

f) The bruise mark and swelling of the accused shows that the victim fought before and while having intercourse which clearly indicates that the sexual intercourse was not done willfully by both parties.

The Id. Counsel Mr.R.Thangkanglova, advocate also submitted MOST RESPECTFULLY SHEWETH :

1. That the prosecution miserably failed to prove that the accused Lalmuanpuia raped the alleged victim Kimkimi (Lalthankimi) on 03.10.2013.
2. That PW 1 Dr.Lalthankungi stated in the cross examination “Personally I have not seen nor heard about the incident (of alleged raped) except from the statement of the accused”. That means her evidence about this case is hearsay. This is not evidence as per evidence Act.
3. That PW 2 Lalbiakkimi prosecutrix stated that she pushed and kicked the accused. In such case if she really did not like to have sex she could have prevented him from intercourse because she was not small stature and as such even if there was any insertion of his penies it is proved that both of them are doing sex at their consent. Not only that even when the accused was examined U/s 313 Cr.P.C the accused stated that he was having sex two times with the prosecutrix.
4. In the cross examination she said that she used to have sex with other person. Besides, the prosecutrix had already left Mizoram from Myanmar for good. And non-Mizo residence was there at about 15 ft away from the P.O. In such case the shout of the alleged victim for help must have been heard by some other persons. This proved she was a willing partner.
5. PW 3 MS Dawngkimi stated that at the time of the incident she was at Zarkawt which was about 7 kms away from the P.O.
6. That in the cross examination she said that all what she knows are derived from the victim. That means her evidences are hearsay evidence that cannot be admitted as evidence.
7. That PW 5 Dr.Thiamsanga stated that there was an old hymen rapture and no mark of violence on the body. That means that the alleged sexual intercourse was done by the willing partners and the alleged victims was a major age. That again means intercourse was done by willing partners.
8. PW 6 Dr.R.Lalchhuanawma stated that there was abrasion and swelling in the right cheek and upper and lower lips etc. In the cross examination he said that he abrasion and swelling can be caused by some other substance or incident and he had not personally seen or heard anything about this alleged rape. Here his evidences does not indicate any sign of rape.
9. Over and above, the findings of Dr.Lalchhuanawma and Dr.Thiamsanga are contradictory and as such it can be savely presumed that both of them are unreliable Doctors and their findings cannot be taken as conclusive evidence and both are to be casted away or can be ignored.
10. That witness No. 7 S.I.Lalhmachhuani Sailo the case I.O stated in the cross examination that all that she knew about the case were from her investigation i.e. hearsay evidence that cannot be admitted as evidence. At the same time confession before the Police is no confession.
11. DW 1 Mr. Lalduhawma stated that the accused never drink nor engaged himself in love affairs with girls and he believed that even if there is any sexual intercourse it must have been done with the consent of both the

- parties. Both the accused and prosecutrix were living together at the house of a doctor and the accused was having pay and the prosecutrix might have envied him and she accused him falsely.
12. DW 2 Ramthanmawia said that he knew the accused from his boyhood and he was a very good nature fellow and he would not commit rape of a girl.
 13. That in this case there is no conclusive evidence to prove the guilt of the accused. Besides, the legal principle is that “it is better to let 99 criminals to go unpunished than to condemn one innocent”.
 14. When the accused was examined U/s 313Cr.P.C he was asked whether he had sexually assaulted Kimkimi on 30.10.2013 while the alleged date of rape was 03.10.2013 and as such the reply of the accused may also be exempted.
 15. That the accused is small and short stature and the alleged victim is an ordinary size of a grown up woman and as such it is not possible for the accused to have sex with her without her consent and above all, the alleged victim has left Mizoram for good.

In view of all the above points it is earnestly prayed to acquit the accused for the end of justice.

In this instance case, the medical report of the victim show that the hymen was old rapture, and there is no marks of violence on the body of victim, and no bruising and laceration in the victim external genitalia, the medical injury report on the body of accused revealed that there was abrasion and swelling in the right cheek painful swelling both lips left hand and right leg.

But in his medical report, the medical officer who examined the accused give comment that “After careful examination, I did not find any illness and condition that would prevent him from sexual activities”.

It is evident that the victim had sex with other boy before the incident took place with the accused, and also that they had sex with the accused once before the reported incidence, in the same place, but did not informed at the time of incidence.

Had the victim tried her level best to escape from such reported rape, there may be a chance as they have had sex with the accused to escape, and the accused is also small boy. She may simply pushed and kick the accused only in order to prevent her honour only but not sexual intercourse.

On perusal of Birth certificate that it is learnt that the victim was born on 11.8.1997, as her Birth Certificate No 27 of 15.8.1997, issued by Registrar of Birth & Death, Mimbung, and she has completed 16yrs, 1(one) months and 22 days at the time of commission of offence i,e 3.10.2013.

Section 375 IPC defines six ingredients to commit rape and the No.6 stated that "With or without her consent, when she is under sixteen years of age".

In this instance case, the victim is not under sixteen years of age, but she is 16 yrs 1(one) month and 22 days at the time of commission of alleged rape (i.e 3.10.2013)

On thorough perusal of the material evidence available on case record, I find that the prosecution fails to prove the guilt of accused Lalmuanpuia beyond doubt and these benefit of doubt shall go on favour of accused as per decision of Apex court.

So, I therefore acquitted accused Lalmuanpuia from the liability of the charge level against him u/s 376(i) IPC, and set him at liberty.

Bail and bond stand cancel.

Give copy of this order to all concern.

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

Memo No ____/AD&SJ-I(A)/2014 :Dated Aizawl the, 26th February 2015.

Copy to :-

1. District & Sessions Judge, Aizawl.
2. Lalmuanpuia C/o R.Thangkanglova Advocate.
3. APP/Addl.PP.
4. Judicial Section
5. Case record.
6. Guard file.

PESHKAR