

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

*Sc No 82 /2013
Crl.Tr.No. 208/2013,U/S 376 (i) IPC,
Kawnpui P.S Case No.5/2013.*

State of Mizoram : Complainant

Vrs

Lalhlimpaia : Accused.

BEFORE

Vanlalmawia
Addl District & Sessions Judge,
Aizawl Judicial District, Aizawl.

PRESENT

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

: Lily Parmawii Hmar, APP.

For the Accused : Vanlalnghaka, Advocate.

Date of Order : 15.5.2015

ORDER

The prosecution story of the case in brief is that on dt.22.3.2013 @ 11:00 am, one Laldawngliani (45) D/o Pahinga of Khamrang appeared at the P.S and submitted a written FIR stating that on 21.3.2013(Thursday) at around 6:00 pm, while she was sleeping on her bed under the influence of liquor(alcohol) one Lalhlimpaia @ Tea (33) S/o Suren Daran (L) of Khamrang had made entry into her house and raped her forcibly even though she had tried to defend herself from being rape by the culprit with all her might too, the culprit was much more stronger than her. So, was successful in raping the victim. As such was the

unfortunate incidence and by this Laldawngliani approached the police and requested to take necessary action. She further stated that the reason too delay in reporting the complainant to herself being in a state of dilaima and could not come to the conclusion. Accordingly, on received of the above FIR, O/C of the P.S registered a case vide Kawnpui P.S Case No. 5/2013 dt.22.3.2013 u/s 376(1) IPC and endorsed ASI Zorammawii to take up investigation of the case. Hence, the case was duly investigated into.

During the course of investigation, the complainant Laldawngliani was examined carefully and thoroughly and recorded her statement in presence of two reliable witnesses namely Lallungmuana and Lalmuansanga both of Khamrang village under Kawnpui P.S jurisdiction. Then, the victim (complainant) was forwarded to the Medical Officer, District Hospital Kolasib with requisition to medical examination under proper escort of H/C Ramjee Singh of this P.S to Medical Officer, PHC Kawnpui was not available at Kawnpui, as for this reason, Medical requisition to M.O, PHC Kawnpui was enclosed herewith (in CD No.I dt.22.3.2013).

During the course of investigation of the above reference case the case I/O and party visited the P.O at Khamrang with immediate effect by availing P.S ready vehicle to check and verify all that were necessary for the interest of the case investigation and purposefully to nab(arrest) the suspected accused Lalhlimpaia @ Tea of Khamrang. Immediately, on arrest at the P.O careful and thorough examination and checking of the scene was carried met to obtain physical evidence to ascertain the certainly of the above incidence (case).then, rough sketch map of the P.O was drawn and enclosed there in CD No.I dt.22.3.2013 on carefully and thoroughly examination of the P.O No physical evidence was found. However, search was conducted to nab(arrest) the said accused Lalhlimpaia @ Tea of Khamrang but in vain for he was no where to be seen or unavailable and the villager too were adamant of his where about. Therefore, local leaders were requested to send their help to nab the said accused in as much as it could be and give any information leading to the where about of the accused Lalhlimpaia to the Police(Kawnpui-PS) as far as possible by any possible means available therein.

Then, one of the witness named Lallungmuana (48) S/o Ramana (L) of Khamrang field veng was carefully examined and recorded his statement in presence of reliable witnesses and enclosed therein the CD No.-I dt.22.3.201. then the I/O and party left the P.O (Khamrang) for the P.S.

At around 3:50pm, escort party returned from District Hospital, Kolasib at the P.S with medical examination result. This is needed mentioned here that the victim had already washed herself after the incidence, but has not changed her underwear. Medical report of the same was also enclosed herein the CD No.-I dt.22.3.2013. moreover, ladies underpants(black colour) and green colour ladies brasier(both torned) belonging to the victim were seized from the victim in presence of two reliable witnesses namely Lalmuansanga and Lallungmuana both from Khamrang village,. Then, one of the witness Lalmuansanga of Khamrang was carefully and thoroughly examined and recorded his statement in presence of reliable witnesses and the statement is enclosed herewith.

On dated 26.3.2013 instruction from SP(Kolasib) through WT message Vide No..SP(KLB)/CRM/5(KPI-PS)/2013/940 dt.25.3.2013 was received which endorsed that the accused Lalhlimpa @ Tea of Khamrang be arrested without losing/wasting more time and energy. Accordingly, in compliance to S.P Kolasib instruction I/O and party left P.S for Khamrang to conducted search operation to nab accused Lalhlimpa. On reaching Khamrang village, local leaders and various NGO's like YMA, MHIP, VDP was contacted and had interaction with their specifically informing them to keep alert and collect information in order to arrest the said accused sooner many sources were engaged at different places to which they were informed the importance of the matter and finally requested them to render help in detecting the culprit. Meanwhile, the matter of accused was also contacted and informed her about the case. She (accused mother) told that she too was adamant of the where about of his son further relatives of accused living in different of various places were contacted and informed them about the matter(case)informed them to supply any information regarding the where about of

the accused Lalhlimpuia without delay. But this too was not successful for no relatives of the accused Lalhlimpuia was above to give any information regarding his(accused) where about so far. Then, the matter was discussed with O/C of the P.S and the investigation proceedings was being reflected in CD-2. Henceforth information from sources engage in various places were awaited anxiously for arrest nabbing) the culprit in correction with the above reference case.

During the course of investigation SR order/special report No.8/iii(Rape)/2013 dt.1.4.2013 from S.P Kolasib vide memo No.SP(K)/CRM/5(KPI-PS)/2013/981 dt/1/4/2013 was received by I/O ASI Zorammawii of Kawnpui P.S on dt.2.4.2013 at 10:00 am dt.2.4.2013 case I/O ASI Zorammawii with C/52 Zothansanga proceeded to Vaivakawn P.S to take charge of accused Lalhlimpuia @ Tea of Khamrang and to bring him into Kawnpui P.S custody by availing P.S ready vehicle driven by D/G-II K.Lalhmingmawia on around of Vaivakawn P.S all necessary formalities observed and performed them the accused Lalhlimpuia @ Tea was taken out from Vaivakawn P.S lock-up and brought him to Kawnpui P.S by the I/O and party. Meanwhile here in the P.S, the accused Lalhlimpuia @ Tea (33) S/o Suran Daran(L) of Khamrang who was apprehended and kept in Vaivakawn P.S lock-up in connection with the above reference case has been arrested in formal by preparing proper arrest memo in connection with Kawnpui P.S Case No.5/13 dt.22.3.2013 u/s 376(1) IPC, thereby informing him this ground of arrest.

During the course of investigation of the reference case cited above, the arrested accused person was carefully examined and on further thorough interrogation he, the accused person admitted his guilt stating that he had actually raped Laldawngliani d/o Pahinga of Khamrang at her residence at Khamrang on the night of 21.3.2013 (Thursday) @ 6:00 pm. After carefully examined, the statement of accused Lalhlimpuia @ Tea was recorded in presence of reliable witnesses and the said statement is enclosed wherewith in CD No.IV dt.2.4.2013 in connection with the above reference case.

On dt.3.3.2013 the arrested accused person Lalhlimpuia @ Tea(33) S/o Suren Daran(L) of arrested in connection with the above reference case was

forwarded to the Chief Judicial Magistrate, District Court Kolasib with a prayer to remand him in judicial custody under proper escort of C/66 R.K.Lalbiakliana and C/109 P.D Lalrinmawia. Extract copy of forwarding note(report) is as under :-

To,

The Chief Judicial Magistrate,
Kolasib District, Kolasib.

Throu The P.I District Court, Kolasib

Subj : Prayer for Judicial remand.

Ref : KPI-PS C/No. 5/13 dt.22.32013 u/s 376(1) IPC

Sir,

I have the honour to forward herewith the below noted accused person who was arrested on 2.4.2013 in connection with the above reference case.

The arrested accused person was thoroughly interrogated and admitted his guilt that he had raped Laldawngliani at her residence at Khamrang on the night of 21.3.2013.

I, therefore, requested you that he may kkindly be remanded in Judicial Custody for a period of 14 days w.e.f 3.4.2013. So as to enable to complete the investigation of the case and oblige.

Name & Accused person

Yours faithfully

Lalhlimpaia @ Tea (33)

Sd/- 3.4.2013

S/o Suren Daran (L) of

ASI (ZORAMMAWII)

Khamrang

Kawnpui P.S

Since, the I/O of the above reference case is an ASI and there is no authority to finalized the case by an ASI. The case (matter) has been put up took investigation has been discussed with due care, and further seek his instructions and supervision, following O/C of the P.S instruction all original case diaries

alongwith all connected papers were handed over to Kawnpui P.S O/C for further endorsement to other I/o's for submission of charge sheet. This is important to have noted here that all the connected persons(and case diaries) are enclosed with the CD 5 of the above cited case by the previous I/O ASI Zorammawii. It is also needed to mentioned here that on dt.9.4.2013 instruction from Deputy Superintendent of Police (Probationer) Vide No. SDPO(K)/75/2013 which directed the I/O to submit charge sheet immediately since all the investigation has been completed and received by O/C Kawnpui P.S. But the exact State of investigation of the case was of partly completed and not fully completed. So, the I/O could not submit charge sheet as well as the previous I/O was an ASI and had no authority on this behalf.

Since, the above reference case has been treated SR case vide SR order NO.8(III(Rape)/2013 dt.1.4.2013 from SP(K), on dt.27.4.2013. I S.I Zokungliana Kawnpui P.S was endorsed to take up further investigation of the case by O/C of the P.S. accordingly, I took up investigation of the case and with immediate effect started studying the case. Though O/C Kawnpui P.S was directed to submit charge sheet as per order vide No. SDPO(K)/75/2013/32 dt. Kolasib the 9th April 2013, on dt.26.4.2013 SP(K) order vide No. SP(K)/CRM-5(KPI-PS/2013/1276 dt. 25th April 2013 was received by O/C Kawnpui P.S which corrected (i) to send the seized article(under pant) of the victim to FSL Aizawl for medical examination (ii) sent prayer to Chief Judicial Magistrate, District court Kolasib for records of Judicial confessional statement the accused Lalhlimpaia @ Tea of Khamrang under the provision of 164 Cr PC (iii) and to speed up investigation. Accordingly, I prepared all necessary papers and packed seized articles of the victim's and send to FSL, Aizawl and also forwarded prayer for judicial confessional statement and record to the Chief Judicial Magistrate, Kolasib District, Kolasib court.

During the curse of investigation of the case, on dated a copy of order passed by Shri H.Lalduhsanga, Judicial Magistrate Ist class CrI. Tr.No, 208/2013 in connection with KPI-P.S Case No.5/2012 dt.22.3.2013 u/s 376(1) IPC vide

memo No.F.23014/3/2011-Sr,CJ(K) dated Kolasib the 13th May 2013, in responded to requisition forwarded to Chief Judicial Magistrate Kolasib the 30.4.2013 subject prayer for record of Judicial confessional statement of accused Lalhlimpaia under the provision of section 164 Cr PC in connection with the above reference case Vide D.No.211/KPI-PS/13 was received. According to the order mentioned above, when the meaning of section 164 Cr PC was explained to the accused person. The accused declined to make statement u/s 164 Cr PC. Hence, the case record thereby was sent back to Id. Judicial Magistrate for further necessary action. Copy of order is enclosed herewith in separate sheet. I/O, then reported the matter of investigation of the case and intimated receipt of order from Id (Magistrate) Chief Judicial Magistrate to Superior officer and consult guidance and instruction for further necessary action for the interest of the investigation of the case.

On dt.4.7.2013, the result of FSL examination of seized articles. Seized in connection with Kawnpui P.S Case No.5/2013 dt.22.3.2013 u/s 376(1) IPC. Sent to FSL Aizawl on dt.30.5.2013 was received on dt.4.7.2013 Reference Vide No.FSL/194/BIO(KLB-4)/13/446 dt.17.6.2013 through reference vide No.SP(K)/CRM-24/2007/1764 dated, Kolasib the 21st June 2013. As per FSL examination, the following results are undertaken :-

1. Semen was detected on exhibit A. it is of human origin belonging to Group B.
2. Semen was not detected on exhibit B

Copy of order passed by Judicial Magistrate for results are enclosed herewith in separate sheet.

During the course of investigation, the P.O was visited, rough sketch map of the P.O was drawn. All available (reliable) witnesses were examined and recorded their statements victim was carefully examined and sent to M.O, Kolasib for medical examination and observing all available circumstances, the certainly (outcome) led to the involvement of the actual suspect person Lalhlimpaia @ Tea(33) S/o Suren Daran (L) of Khamrang in the commission of the crime in connection with the above reference case.

Thus, from the above mentioned circumstances the actual involvement of the suspected accused Lalhlimpaia @ Tea S/o Suren Daran (L) of Khamrang is ascertained. He was thus arrested and on careful and thorough examination, he pleaded to his guilt by stating that he was the actual person who actually had rape the victim Laldawngliani D/o Pahinga of Khamrang on the night of 21.3.2013 at her residence. His statement was recorded and enclosed herewith in separate sheet. Hence, a prima facie case u/s 376(1) IPC was found well established against the arrested accused person Lalhlimpaia @ Tea (33) S/o Suren Daran of Khamrang.

Charge u/s 376 IPC was framed, explained to the accused Lalhlimpaia on the language known to him to which he pleaded NOT GUILTY claims trial.

During the trial, the case I/O placed 5(five) prosecution witnesses excluding the victim and medical officer, who examine the victim the two another witness are therefore included in the list of prosecution witnesses on the request and petition of Id Addl. Public Prosecutor, and hence 7(seven) prosecution witnesses have been examined to ascertain the charge u/s 376 IPC against accused and the statement of the seven P.W's are as follow :

P.W No.1 Lalmuansanga stating that I know the accused Lalhlimpaia .

On 21.3.2013 at night at around 9 pm the victim Laldawngliani was sleeping on the couch inside her house. The victim is the elder sister of my wife and the accused's wife also. The accused called me on that night to help with him and we went to the victims house and the accused let the victim slept on the bed instead of the couch and I left the house.

I gave my signature as seizure witness of the S/A .

Exbt P 2 (C) is my signature.

Cross examination by the Defence counsel:

I did not see the accused tearing the clothes of the victim.

I did not see the accused raping the victim.

I saw the S/A only at the Thana.

I have no further knowledge in this case beyond what I have stated above.

It is not a fact that I am deposing falsely in the court today.

P.W No.2 Lallungmuana of KHamrang stating that I know the accused Lalhlimpaia .

On 21.3.2013 at night at around 9 pm the victim Laldawngliani was sleeping on the couch inside her house. The victim is the elder sister of my wife and the accused's wife also. The accused called me on that night to help with him and we went to the victims house and the accused let the victim slept on the bed instead of the couch and I left the house.

I gave my signature as seizure witness of the S/A .

Exbt P 2 (C) is my signature.

Cross examination by the Defence counsel:

I did not see the accused tearing the clothes of the victim.

I did not see the accused raping the victim.

I saw the S/A only at the Thana.

I have no further knowledge in this case beyond what I have stated above.

It is not a fact that I am deposing falsely in the court today.

P.W No. 3 Vanthawmliana Kawnpui stating that I know the accused Lalhlimpaia at the time of this arrest for the first time. He was arrested on allegation of raping Laldawngliani of Khamrang by ASI Zorammawii and I gave my signature as arrest witness at the arrest memo.

Exbt P 1(b) is my signature.

Cross examination by the Defence counsel:

I did not see the accused Lalhlimpaia being arrested.

I am a witness only as duly instructed by my superior officers.

I have no further knowledge of this case beyond what I have stated above.

It is not a fact that I am deposing falsely in the court today.

P.W No.4 ASI Zorammawii Kawnpui stating that I know the accused who is standing in the court today.

I am working as ASI Kawnpui Police station since 2010 till date.

While I was on duty one women namely Laldawngliani (45) d/o Pahinga of Khamrang came to the P.S submitted a written F.I.R stating that on 21.3.2013 at around 6 pm while she was sleeping in her house, Lalhlimpaia had made entry into her house and forcibly raped her. The O/C Kawnpui P.S registered the case and the same was endorsed to me. I forwarded the victim Laldawngliani to M.O Kolasib since the M.O Kawnpui was not available for Medical Examination. After returning for Kolasib her torn brazier and underpant was seized by me in the presence of witness.

Since the where about of the accused Lalhlimpaia was not known and on 1.4.2013 we learnt that the accused was at Rangvamual and we informed Vaivakawn P.S and the accused was detained by Vaivakawn P.S on the same day (evening) and we approached Vaivakawn P.S and arrested him on 2.4.2013. I recorded the statement of the victim, and recorded the statement of accused who confessed his guilt.

Exbt P 1 arrest memo, P 1(a) is my signature

Exbt P 2 seizure memo. P 2(a) is my signature.

Exbt P 3 F.I.R,

Exbt P 4 Medical requisition. P 4(a) is my signature.

Exbt P 5 is rough sketch map of the P.O drawn by me , P 5 (a) is my signature.

Exbt M 1 is S/A.

Cross examination by the Defence counsel:

It is a fact that I conducted pre-step investigation in the instant case and the case I/O is L.Zakungliana(SI) .

It is not a fact that Exbt M 1 is not produced before me by the victim.

It is a fact that the incident took place on the night of 21.3.2013 at around 6 pm while FIR was lodged on 22.3.2013.

It is a fact that I did not make any requisition for medical examination of accused Lalhlimpaia to prove his potency.

As soon as I seized exbt Exbt M 1 from the victim I kept the same under malkhana custody.

It is a fact that I submitted CD to SDPO and SP concerned not to the O/C concerned.

It is a fact that I did not arrest any person other than the accused in the instant case.

It is a fact that Exbt P 2 is not countersigned by the O/C concerned.

P.W No.5 S.I L.Zokungliana of Kawnpui stating that :

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

I am working as SI Kawnpui Police station since 2013 till date.

The pre-step investigation was conducted by ASI Zorammawii and after she had done all the investigation the O/C Kawnpui P.S instructed me to submit the charge sheet. Before filing of charge sheet I send the S/A FSL Mizoram Aizawl on 2.5.2013. I received the FSL report on 21.6.2013.

On perusal of the materials available on record I find a prima facie case against accused u/s 376(1) IPC and submitted the charge sheet.

Exbt P 6 is charge sheet.P 6(a) is my signature.

Exbt P 7 is the forwarding note of the S/A, P 7(a) is my signature.

Exbt P 8 report of the FSL.

Exbt P 9 is the Medical examination report of victim.

Cross examination by the Defence counsel:

It is a fact that I did not see the accused when I took over the case as case I/O.

It is also a fact that I did not record the statement of the witnesses and the accused person.

It is a fact that Exbt M 1 was send to FSL Aizawl and I received back the same from the same office.

It is a fact that I did not know the blood group of the accused.

It is a fact that from the investigation I had conducted so far, it is very difficult to find prima facie case against the accused but I found prima facie case in the light of the pre-step investigation conducted by ASI Zorammawii.

It is a fact that when I took of the case, the accused was already under Judicial custody by the order of the Magistrate Kolasib. When I submitted a requisition for recording of confessional statement of the accused, the accused was already remanded to Judicial Custody.

It is a fact that material used for wrapping seized material namely under ware and bra belonging to the victim did not bear the signatures of the O/C, case I/O or any other Police Officers.

It is a fact that I received Exbt M 1 from Pw No.4.

I did not know the past history of the victim as well as the accused except from the record.

The accused and the victim were in the same locality at close door and they will know one another and their relation is however not known by me.

It is not a fact that Exbt M 1 is not the one I received from the FSL Aizawl. It is not a fact that I am deposing falsely in the court today.

P.W No.6 Laldawngliani, Khamrang stating that I know the accused Lalhlimpaia, he is my younger sister's husband.

Ni 21.3.2013 khan NREGS hnuaiah ka inhlawh zo chu ka thian te nen zu kan in a, ka in hnem deuh bawk a, in a ka haw chu thutthlengsei ah ka mu hil a, ka chat thla a ni deuh ber mai. Chutia thutthlengseia ka lo mu ringawt chu Lalhlimpaia leh Lungmuana te chuan khumah min dah sawna, chuan kawngkapui chu pawnlamah an kalha Lalhlimpaia chuan chahbi a kawl a. Hemi

zan zantir lam ah chuan Lalhlimpaia chu kan inchhungah chuan a lo lut leh a, kei khuma mu chu min lo bawh a, ka kekawrte pawhthlak a lo tum lai chuan ka harh a, pawh chhoh ka tum a a thler nghe nghe a, ka kawrhnuai nen. Ka theihtawp in ka tang a amaherawh chu ka lo rui deuh bawk nen ka hneh lova tichuan min pawl lui ta a ni. Chumi zawh chuan amah chu a chhuak ta a. Hetih lai hian keimah choh in in ah ka awm a kan pa nen kan awm hran lai a ni. Tichuan a tuk zingah Kawnpui P.S ah FIR ka theh lut ta a ni.

Exbt P-10 is FIR, P-10 (a) is my signature.

Cross examination by the Defence counsel:

Dar 4 p.m bawr velah zu kan lak belh leh a, ka thian te ho nen kan in ho leh a ni. Hemi ni hian I rui ve hle min tih hi a dik a ni. Hemi ni hian khawtlang in a an sawi dan chuan Accused hian min kuah hawng ni in an sawi a, amah hian min muttir a nih ka ring. Min mutthattir lai hi keimah chuan ka hre lova, mahse Lungmuana sawi dan ah chuan accused hian min pawmthla a min mutthattir.

Chahbi in an kalh hnan leh kalh hnan loh che I hre lo ka tih hi a dik. Chahbi hi kawltu an awm tak leh tak tak loh pawh ka hre lo.

Hemi zana thil thleng hi harh/chiang takin ka hria a ni.

Wawiin ni ah hian ka kekawrte thler ka tih leh ka kawrhnuai thler ka tih te hi a awm lo. Police te chuan an la ngei a ni.

Hemi thil thlen lai hian light a in on lova a thim vek a ni.

Kan pa nena kan inthen chhan hi ngaihzawng dang min neih san vang a ni.

Hemi zana thilthleng hi in pa laka phuba laknan I chevel a ni lo maw I tih hi a dik lo.

I rui chatthla lai thimtham karah mi pakhatin alo bawh che chu I harh thut a ni a, tunge a nih tih hi chiang takin I hre chat thei lo I tih hi a nih pawh a ni mai thei mahse Lalhlimpaia hi chu ka hria.

Ka duh lo tih thu I sawi lo I tih hi a dik a ni. Thorawh ka tih chhungin a lo tlingtla hman der.

Min penetrate lai tak ka hre lo a, min penetrate leh penetrate pawh a chiang lova chuvang chuan ka pasal pawh ka ko a min endik nghe nghe a ni.

A chi hi ka serh chhungah a titla a ni. Accused chi a ni ngei a ni tih kan pa ka hmuh tir duh avangin ka kova ani pawh chuan a ni ngei e a ti.

Kan thenawm te bulah ka pheii a Lalhlimpaia min tih thu ka sawi a phone hman ka dil nghal a, chuan ka pasal ka phone a, chuan in ka thlen rual in a rawn thleng ve nghal.

Police te hi a zanah kan phone nghal a, mahse a tuk zingah keimahni kan va kal choh a ni in ka hria, ka chiang lo. Hemi zan hian ka inbual miah lo.

Ka kekawrte leh ka kawrhnuai kan inchuhna velah hian theih pa tawp in kan tang ve ve a, ka kekawrte leh kawrhnuai pawh a thler ve ve a mahse he kan in beih na ah hian ka taksa ah hliam/hnuhma a awm leh awm loh ka hre lo.

P.W No.7 Dr. Zorinsangi Varte, Kolasib stating that :

On 22.3.2013 at 2:25 pm at District Hospital Kolasib I examined Laldawngliani who was alleged raped by her brother-in-law Lalhlimpaia on requisition made by the Police. When I examined the victim Laldawngliani she had already taken bath and changed her cloths however she has not changed her under ware which she wore at the time of incident and there was no hymen, injury marks on her body, no seminal stain was found on her clothing, she was co-operative, she was physically and mentally fit.

Exhibit P-9(a) is my signature on the Medical Report of victim Laldawngliani submitted by me

Cross examination by the Defence counsel:

It is not a fact that exhibit P-9 (a) is not my signature.

It is a fact that I did not find any mark of violence on the body of the victim.

It is a fact that I did not find any typical marks of rape in the body of the victim including her private parts.

The accused Lalhlimpaia was examined u/s 313 Cr PC, and answered the question put to him as follow

Q.1 It is from the evidence that on 21.3.2013 evening you saw Laldawngliani who was drunk and could not walk properly while coming home and you helped her entry into her house by holding her and made her sleep on the couch inside her house. What do you have to say ?

Ans : Yes, it is a fact.

Q.2 It is from the evidence that after you made her sleep on the couch you helped her sleep on the bed and locked the door from outside. What do you say ?

Ans : Yes, it is a fact.

Q.3. It is from the evidence that on 21.3.2013 you opened the door that you locked and raped Laldawngliani while she was sleeping. What do you say ?

Ans : We have sex, as agreed by both the victim and me.

After prosecution evidence is closed, the accused Lalhlimpaia informed the court that he has no any defence witness to be produced in the court, and both the Id. Addl Public Prosecutor R.Lalremruata, and defence counsel Vanlalnghaka Advocate submitted written argument .

1. Brief fact of the case is that accused Lalhlimpaia R/o Khamrang was arrested on 2.4.2013 by ASI Zorammawii, Kawnpui P.S on the strength of FIR filed by Laldawngliani D/o Pahinga of Khamrang on 29.3.2013. the complainant Laldawngliani stated in the FIR that on 21.3.2013 @ 6:00 pm at her house, Khamrang one Lalhlikmpuaia of Khamrang raped her while she was sleeping.

2. The victim Laldawngliani was very drunk on 21.3.2013 and she could not walk properly as she was going home in the evening, and as such the accused Lalhlimpuii helped her entry into her house. The victim then fell asleep on the couch inside her house and after sometime the accused Lalhlimpaia and one Lungmuana made her sleep on the bed, and the door of the house was locked from outside by them and the accused Lalhlimpaia kept the door key with him. Then at around 6:00pm the accused opened the door, entered the house and raped the victim while she was sleeping.

3. The victim Laldawngliani deposed that on the night of 21.3.2013, she was very drunk and fell asleep inside her house and she was alone and she stated that

when she woke up one man was on her top and was trying to pull down her underpant. The man pulled down the same though resisted and raped her. As she was very drunk she could not fight back much. She recognized the man was the accused as he got up.

4. The accused Lalhlimpaia also stated before the case I/O that he had sex with the victim Laldawngliani against her consent and also that the victim could not fight back much as she was very drunk.

5. The accused on being question by the court stated that the victim was very drunk on the night of 21.3.2013 and accepted that he had sex with her the same night. Since, she was very drunk, even if she gave consent, she was unable to understand the nature and consequence of that to which she gave consent. Moreover, being the husband of the victim's younger sister, the accused knew very well that the victim was married.

Hence it is pretty clear that the accused Lalhlimpaia is found guilty of the offence punishable u/s 376(1) IPC. The Id. Counsel for the SOM will submit other facts and law points at the time of hearing.

In the facts and circumstances mentioned above this Hon'ble court is earnestly prayed to convict the accused Lalhlimpaia, U/S 376(1) IPC.

1. That the brief fact of the case is that the accused Lalhlimpaia, who is the borther-in-law of the alleged victim was charged with raping Laldawngliani D/o Pahinga of Khamrang on 21.3.2013 at around 6:00pm.

2. That the seizure witness stated in the evidence that she did not know from where the seized articles were seized by the seizing Officer.

3. That the alleged victim was consuming liquor on the said date from the afternoon. She took more liquor around 4:00pm with her friends and then she passed out afterwards.

4. That the alleged victim did not even know whether there was any penetration or not. As per her own deposition it was totally dark and she had just woken from passing out due to excessive consumption of liquor and as such the deposition of the alleged victim cannot be relied upon by the court.

5. That there were no marks of injury/physical violence whatsoever on the body of the alleged victim even though she claimed that there was hard fight between the alleged victim and accused where the victim brazier and underpants were torn. The medical expert's evidence also stated that there was no typical marks of rape on the body of the alleged victim and that no seminal stains were found. The medical report also stated that previous intercourse took place more than 1 week ago.

6. That the complainant was not even made a witness by the Prosecution but was called as a Court witness as her evidence was considered necessary. This clearly shows the idle and careless manner of prosecution by the state and should not be condoned.

7. That the prosecution has failed to prove any evidence which would even suggest that a rape occurred much less that the accused is rapist. As such it is humbly prayed that the accused Lalhlimpaia may be acquitted of the charges leveled against him as he is innocent and his guilt has not been proven whatsoever.

It is, therefore, most humbly prayed that the accused Lalhlimpaia may be acquitted of the charges leveled against him.

On perusal of the medical examination report, it is learnt that *"After careful physical and biological examination of the exhibit using scientific instrument available in the Forensic Science Laboratory, Aizawl, the following result are undertaken"*.

- 1) Semen was detected on Exhibit 'A' (underware of the victim with suspected stains) it is human origin belonging to Group 'B'
- 2) Semen was not detected on exhibit 'B' (Brazier of the victim with suspected stain)

Accused Lalhlimpaia also confessed in his examination u/s 313 Cr PC that they have sex as agreed by both the victim and himself the prosecution proved that there was sexual intercourse between the accused and the victim, but the points is whether that sexual intercourse was happen due to rape or willingness of both parties, as the two person are major in age.

It is evidence that the victim was under the influence of liquor as she consumed liquor before the incident, and fully intoxicated and sleeping on the couch inside her

house, and accused with PW No.2, helped the victim slept on bed instead of couch and locked the door from outside and accused opened the door locked with the key he kept and committed sexual intercourse while she was under intoxication, and the victim was unable to defend herself from the accused. The accused stated that the sexual intercourse was done as agreed by the victim and accused.

It can be presumed that had there been mutual consent, or agreed by the victim, the victim will not inform her husband who was staying in another house as incident occurred during separation, the victim therefore approached the accused, with angry, and beat him with some piece of sawn timber, and give verbal report to the Police over phone. But since the police are not coming to her, she herself went to the Kawnpui Police Station and submitted F.I.R to the Police. Had the victim agreed to have sex with the accused she will not inform her divorce husband and her neighbour and Police, instead she will keep silence to conceal the incident as sexual intercourse with a man who is not her husband is shameful for the women. This proved that the sexual intercourse between the accused and the victim is not mutual agreement, and victim is also the elder sister of the wife of accused, the victim may bear bad or loose character who was in habit of drinking liquor and having different concubine, she has the right under the constitution of India, even prostitute can be raped if it happen “*Against her Will*” as defined in section 375 IPC the accused Lalhlimpuia is therefore found committing rape to the victim under the description of Fifthly of section 375 which runs as follows :

“With her consent, when at the time of giving her consent by reason of unsoundness of mind or intoxication, or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent”.

But the prosecution was unable to produce the underwear brazier to the court which was reported torn due to the raping of victim, and the case investigating officer did not include the victim and medical officer who examined the victim in the prosecution witness in his charge sheet, as the two are important persons in the sexual offences, this may decree the Quantum of punishment of offender, the case I/O is

therefore directed to note this for his improvement in his next investigation of sexual offence or any of the same nature of the instance case.

I, however, found accused Lalhlimpaia guilty u/s 375(5) IPC, and convicted him u/s 376 IPC.

Fix : 15.5.2015 sentence hearing.

15.5.2015 : Accused is produced to face sentence hearing, the Id. APP Lily Parmawii Hmar pray to award maximum punishment, and where as the Id. counsel Vanlalnghaka submitted that accused Lalhlimpaia is suffering from Joundice and Liver problem and he has to look after his family who are some of them are six year of age and there was no enmity between the victim and the accused family, and pray to show leniency by setting off the detention period already undergone.

Upon hearing of both parties, I find it fit to show leniency from the nature of the offence committed by the accused, and his health condition as well as his family and therefore find to award less than 7(seven) years.

With these view, accused Lalhlimpaia is convicted and sentence u/s 376 IPC for imprisonment of 2(two) years.

Detention period shall be set off.

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

Memo No _____AD & SJ-I/2015 : Dated Aizawl the,15th May 2015.

Copy to :

1. District & Sessions Judge, Aizawl District, Aizawl.
2. Accused Lalhlimpaia S/o Surendaran(L) Khamrang.
3. APP/Addl. PP
4. Spl.Superintendent of Central Jail.
5. Judicial Branch.
6. Case Record.
7. Guard File.

PESHKAR