

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

*Sc No 105/2013
Crl.Tr.145/2013
U/S 376(i) IPC, Champhai P.S Case No.86/2013*

State of Mizoram : Complainant

Vrs

Lalnehchhunga : Accused.

BEFORE

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

PRESENT

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

For the Accused : Lalramhluna, Advocate.

Date of Order : 7.3.2017

ORDER

The prosecution story of the case in brief is that , on dt.11.6.2013 at 11:50 am, a written report was received from Lalruatmawia S/o Vanlalngura (L) of Vaphai Village, Champhai District to the effect that on 10.6.2013 at around 11:30 am, his sister Lalsangpuui (38) D/o Vanlalngura (L) of Vaphai Village who was mentally retarded was rape by Lalnehchhunga (32) S/o Thanglianchnuma of Vaphai Village inside the house of his younger brother PC Lalngakliana s/o Vanlalngura(L) of Vaphai Village who was living next door to their house. Hence, CPI PS Case No.86/2013 dt.11.6.2013 u/s 376(1) IPC was registered and duly investigated into.

2. During investigation, the complainant was thoroughly examined and recorded his statement. The PO was visited but no physical clue was found at the

PO. The victim Lalsangpuii (38) D/o Vanlalngura (L) of Vaphai Village was forwarded to the Medical Officer, PHC Khawbung for medical examination by observing all legal formalities,. According to the Medical Examination report, the doctor opined that the victim sustained old torn hymen which may be as a result of previous penetration which does not rule out recent penetration. The victim was thoroughly and carefully examined and recorded her statement. On examining her, she stated that she was allegedly rape by Lalneihchhunga (32) S/o Thanglianchhuma of Vaphai Village inside her brother Lalnithanga's house. The accused Lalneihchhunga (32) S/o Thanglianchhuma of Vaphai Village was arrested and interrogated. On interrogation, he admitted his guilt by stating that on 10.6.2013 at noon time he had rape Lalsangpuii (38) D/o Vanlalngura (L) of Vaphai Village who was mentally abnormal inside the house of her brother Lalnithanga while Lalnithanga went out from the house. Since, the accused person admitted his guilt and confessed before Police, he was formally arrested in connection with this case by preparing proper arrest memo and his statement was also recorded. Two witnesses namely Lalhlimpuii(30) W/o Lalruatmawia and Lalthapuii(23) w/o MS Dawngliana both of Vaphai Village were examined and recorded their statements. All available witnesses were examined and recorded their statements.

The P.O was revisited as the PO mentioned in the FIR was P.C Lalnghakliana's house and the PO mentioned in the statement of the victim, accused, and witnesses was Lalnithanga's house. Thorough investigation reveals that the real PO was Lalnithanga's house not P.C Lalnghakliana's house.

From the statements of complainant, victim, accused, witnesses collected during investigation, a prima facie case u/s 376(2)(i) IPC (as per Criminal Law (Amendment) 2013 was found well established against the accused Lalneihchhunga (32) S/o Thanglianchhuma of Vaphai Village, Champhai District.

3. Charge u/s 376(2) IPC is framed read over, explained to the accused Lalneihchhunga in the language known to him to which he pleaded not guilty and claim for trial. During the trial (6) six prosecution witnesses have been examined P.W No.1 Lalruatmawia of Vaphai stated that the victim is her sister and he is the one who filed FIR against the accused, accused prayed for forgiveness, and as

such both the victim and he himself had forgiven him and prayed the court not to proceed the case further and to set accused at liberty. In his cross examination, PW No.1 submitted that what he have stated in the FIR may be bonafide mistake and he has no knowledge of the allegation made by him.

3. P.W No.4 Lalhlimpuii stated that : I know the accused who is standing before the court today, we live in the same locality at Vaphai Village.

The victim Lalsangpuii is my husband elder sister, and she live with us as she is mentally retarded.

On 10.6.2013 at around 10am the accused Lalneihchhunga came to our house and I told him to go home as he is drunk. My husband brother Lalnithanga who live next door is the friend of accused Lalneihchhunga. After I told him to go home the accused Lalneihchhunga went to Lalnithanga's house. At around 10 – 11am our house was shaking and I thought it was earthquake and me and my husband ran outside from our house. When we were outside our house we learnt that it was not earthquake but the shaking of our house was coming from the house of Lalnithanga, which was locked from inside. And after that me and my husband tried to open the door of Lalnithanga but it was locked from inside, after about three minutes the door of Lalnithanga was opened by the accused Lalneihchhunga, inside the house of Lalnithanga the victim Lalsangpuii was sitting beside the bed and she put on her pants the wrong way, she put the back side of her pants on the front. And after that we tell the accused to go home and as we were suspicious of the accused raping Lalsangpuii my husband submitted FIR to the O/C Champhai P.S.

The Prosecution witness was crossed examined and stated that :

On 10.6.2013 when we went inside the house Lalnithanga the accused Lalneihchhunga the prosecutrix were dressed with their own cloths.

It is not true to suggest that Lalsangpuii was completely insane so as to differentiate whether she had sexual intercourse at any point of time.

It is not true to suggest that our house was not firm and stable enough to be shaken by mere and simple movement inside the house.

It is a fact that when we went inside the house Lalsangpuii does not show any sign of sexual assault and acted normally as she was mentally retarded.

I do not know whether the accused had sexual intercourse with Lalsangpuii and lately I presumed that what have been alleged by me was a bonafide mistake .

4. P.W No.5 Dr.Vanlalrengpuia stated that on being requisition, he examined the victim aged about 38 years old at Khawbung PHC which was alleged rape on 11.6.2013. He submitted his finding to the O/C Champhai and exhibited his finding as exhibit -5 and exhibit P-6 is his examination report. In his cross examination the medical officer stated that he found no evidence of recent sexual intercourse against the victim as their was old torn in the hymen of the victim when he examined the victim on the next day of in incident. He neither receiving requisition for mental examination nor refer the victim to the Psychia to ascertain mental capacity.

P.W No.6 L.T.Fala, Khiangte, Inspector O/C Mamit stated I know the accused who is standing in the court today.

That on June 10th 2013 while I am posted as O/C Champhai P.S, I received telephone call from Dungtlang Police check Post stating that informing me that one Lalsangpuii (38yrs) D/o Vanlalngura (L) of Vaphai Village who was mentally retarded was rape by one Lalneihchhunga (32yrs) S/o Tlanglianchhuma of Vaphai Village. As soon as I received this information I and my staff rush to the P.O i.e Vaphai Village, I also visited the house of complainant Lalruatmawia and I examined and interrogate Lalruatmawia and his wife Lalhlimpuii at their residence on that day. On the same day I also examined Lalthapuii. I forwarded the victim Lalsangpuii to Medical Officer PHC Khawbung for medical examination on that day. I was later informed that since the Medical Officer PHC Khawbung was not there on that particular day, the victim was again forwarded to Medical Officer PHC Khawbung on the next day.

Exbt P-4 is my forwarding letter for Medical examination of the victim Lalsangpuii to the Medical Officer PHC Khawbung.

Exbt P-4(a) is my signature.

The witness was cross examined by defence counsel and stated that

The Village Vaphai is under the jurisdiction of Champhai Police Station. The victim was examined by one Social Worker and also recorded her statement.

It is a fact that I have not made requisition for the mental examination by psychiatrist. Accept what I made orally I have no any document to prove that the victim was mentally retarded on the body of the statement recorded by me during my inquiry I have not put my signature nor written my name and designation. The content of the FIR was written by the complainant himself.

It is a fact that the alleged rape happened at the residence of P.C. Lalnghakliana brother of the complainant and the same has clearly mentioned in the FIR.

It appears from the Medical report that the sexual intercourse has been performed with consent, however if the victim was mentally retarded the case of rape can be made out against the accused.

5. P.W No.7 S.I Lalsangliana, Champhai, M.T Branch stated I know the accused who is standing in the court today.

That on 11.6.2013, while I was on duty we received FIR from Lalruatmawia S/o Vanlalmawia (L) Vaphai stating that on 10.6.2013 at around 11:30am, his sister Lalsangpuii (38yrs) of Vaphai who was mentally retarded was rape by one Lalneihchhunga (32yrs) S/o Thanglianachhuma of Vaphai inside the house of his younger brother P.C.Lalnghakliana of Vaphai. And hence Champhai P.S C/No 86/13 dated 11.6.2013 u/s 376(1) IPC was registered by the O/C Champhai P.S. And I was endorsed to investigate in to the case by the O/C Champhai P.S. During my investigation the O/C Champhai P.S submitted his enquiry report to me, I also visited the P.O, I arrested the accused on 11.6.2013. I also recorded the statement of the accused during my investigation. On interrogation of the accused he admitted his guilt by stating that on 10.6.2013 he have sexual intercourse with the victim Lalsangpuii at the house of the complainant brother. As I was engaged in other official duty at Saikumphai I handed over the case to O/C Champhai P.S for further investigation.

Exbt P-5 is the arrest memo of the accused. Exbt P-5(a) is my signature.

The witness was cross examined by defense counsel and stated that

It is a fact that I have not send the accused for medical examination to ascertain whether we can perform sex or not.

It is a fact that a confession made before the Police Officer in Police custody cannot be proved against himself.

During interrogation the accused stated to me that (kan che sual) and he did not disclosed whether the sexual intercourse was made with consent or without consent. The victim also did not disclosed whether sexual intercourse was made with her consent or without her consent. During my investigation I have not sent the victim to physiatrist for mental examination.

It is a fact that there is no any document or evidence from the record to proof that the victim was mentally retarded.

I cannot give my opinion on the medical report that sexual intercourse if committed as alleged have been performed with consent.

6. P.W No.8, Lucy Zosangzuali, S.I Ngopa P.S stated that initially I was posted at Champhai P.S and have been transferred to Ngopa P.S in 2014. I know the accused Lalneihchhunga.

Initially S.I Lalsangliana was the case I/O of the instant case. Since he was detailed for some other official duty at Saikumphai he handed over the case to O/C Champhai P.S and the O/C in turn endorsed the case to me. When I took over the charge, investigations etc. were completed. On perusal of all materials available on record and after I received medical report, I found a prima facie case U/S 376(2)(1) IPC well established against the accused and I sent the accused up for trial.

Exbt- P- 7 is charge sheet including statement of complainant, accused and witnesses.

Exbt P-7(a) is my signature.

The witness was crossed examined and stated that :

The investigation of the case was supervised by S.D.P.O Champhai. As the filing up for date of dispatch above my signature were done by L.C (literate constable). Therefore I do not know the reason why date were not fill up in the form. The case was taken up first by the then O/C L.T.Fala Inspector of Police there after the same was taken up by Lalsangliana S.I, as Lalsangliana was detailed for other duties I was instructed by the SDPO Champhai to submit the charge sheet.

It is a fact that as I have not examined any one of the witnesses in connection in this case I cannot give direct evidence. What ever I know in connection with this case is derived from case diary.

It is a fact that since I have not examined the witnesses I cannot say whether whatever was recorded by my predecessor was true or not.

It is not a fact that I did not find any prima facie case to file the charge sheet in connection with this case.

It is not a fact that I submitted the charge sheet only because I was directed to do so by SDPO Champhai.

It is a fact that as per the medical report the rapture of the hymen was old.

It is also a fact that there was no recent sign of sexual intercourse.

7. The accused Lalneihchhunga was examined u/s 313 Cr.P.C, and he admitted that they are staying Vaphai with the victim, and on instructed by Lalruatmawia to go home from his house due to drunkenness. He further

admitted that after leaving Lalruatmawia's house, he entered in the house of Lalnithanga together with friend first, and afterward he was together with the victim only but denied to have sex with the victim inside the house of Lalnithanga, but Lalruatmawia suspected him and beat him. He know that the victim is mentally retarded. He denied to have been arrested for committing rape the victim stating that he did not rape nor have sex with the victim, the accused Lalneihchhunga informed the court that he has no defense witness to be produced to the court.

8. At the end of the trial. Pu R.Lalremruata Addl. Public Prosecutor submitted written argument stating that the prosecution story in brief is that accused Lalneihchhunga, S/o Thanglianhhuma, R/o Vaphai was arrested on 11.6.2013 by S.I Lalsangliana on the strength of FIR submitted by Lalruatmawia, S/o Vanlalngura (L) R/o Vaphai stating that on 10.6.2013a @ 11:30 am, his sister Lalsangpuii, mentally retarded was raped by the accused inside the house of his younger brother P.C.Lalngkhakliana, R/o Vaphai.

There are two police officers investigating the instant case S.I Lalsangliana who initially took up the case and later the case was handed over to S.I Lucy Zosangzuali as he was detained for some other official duty at Saikhumphai.

S.I Lalsangliana as prosecution witness deposed that the accused Lalneihchhunga admitted his guilt to him by stating that on 10.6.2013 he had sexual intercourse with the victim Lalsangpuii.

That P.W No.1 Lalruatmawia who is the complainant exhibited the FIR and his signature before the court and deposed that the accused had pardoned the accused and prayed the court not to proceed with the case. However the case is not compoundable one and moreover the pardon by the victim clearly indicates that the accused had sex with the victim.

Though there is no medical certificate to show that the victim is a mentally retarded, the deposition of P.W No. 4, Lalhlimpuii who is a closed relative of the victim (wife of victim's brother), the FIR ext P-2 and medical report exbt P-6 clearly mentioned that she is mentally retarded.

Hence, it is clear that the accused Lalneihchhunga had sexual intercourse with Lalsangpuii a mentally retarded/challenged, and therefore accused Lalneihchhunga is guilty of the charge leveled against him.

This Hon'ble court is earnestly prayed to convict the accused Lalneihchhunga u/s 376(1) IPC.

9. Mr.Lalramhluna, Advocate the Id. counsel for the accused also submitted his written argument stating that

a) 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. Defense Lawyer objected that there is no a prima facie case against the accused and both the accused and the victim had not sexual intercourse in this case. However, the court is satisfied to frame the charge against the accused and the charge U/s 376(1) 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.

b) That during the course of trial 6(Six) prosecution witnesses were examined and cross examined out of 8(Eight) prosecution witnesses cited in the charge sheet. The prosecution failed to examine PW No.2 (victim) and PW No.3 (civil witness). 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.

c) That with regard to the F.I.R which indicated that the victim was raped by the accused, it is therefore strongly argue that the complainant (PW No.1) deposed before the court that the victim is her sister and they already forgave the accused and prayed the court not to proceed the case further and set the accused at liberty and deposed before the Court and on his cross examination that what he have stated in FIR was a bona fide mistake and he has no any knowledge of the allegation made by himself in the FIR. It is cleared from his deposition that the allegation made against the accused was mistaken and on mere ground of suspicion without the knowledge of facts and nature of the incident.

PW No.4 who is the wife of the complainant deposed before the Court and on her cross examination that when they entered inside the house of the alleged incident, the accused and the victim were dressed with their own cloths and acted normally. She further submitted that the victim was not completely insane so as to differentiate whether she had sexual intercourse with the accused or not at any point of time and the house of the incident was firm and stable enough to be shaken by mere simple movement inside the house. And she also clearly submitted to the Court that the allegation made by her against the accused was a bona fide mistake. Hence, from the above facts and circumstances, it is crystal clear that the allegation made against the accused was a bona fide mistake and false information made by the Complainant and his wife.

d) That for the second point of argument with regard to mental retardation of the victim, PW No.6 (inspector) & 7 (previous I.O) deposed before the court

and on their cross examination that neither they have no any document or evidence from the record to prove the victim was mentally retarded nor have sent the victim to psychiatrist for medical examination. As such, there is no evidence to prove that the victim was mentally retarded.

e) That the third point of argument is that the accused did not rape the victim. In this regard, it is strongly submitted that the case I.O sent the victim to the Medical Officer for examination on the next day of the incident and the report revealed that there was no any sign of injury on the victims' body and no recent penetration on her private part. The Medical Officer also deposed before the court that he did not found evidence of recent sexual intercourse against the victim as there was an old torn in the hymen of the victim. It is crystal cleared that the accused and the victim had not sexual intercourse as the allegation made against the accused and the said old torn in the hymen of the victim would be caused by other than the accused. 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 prosecution failed to establish their case beyond all reasonable doubt in this point alone and the benefit of the same must be given to the accused.

In the meantime, it is also clear from the deposition of the Medical Officer that the case I.O failed to make requisition for medical examination of the accused neither before him nor other Medical Officer as mandated by Section 53 'A' of Cr.P.C to ascertain the condition of the accused whether he can perform sex or not.

f) That for the fourth point of argument, it is also further submitted that the prosecution failed to produce the victim before the court to adduce evidence during the course of trial. As such, there is no direct evidence from the victim clearly to establish the case beyond doubt. The previous case I.O submitted to the court and on his cross examination that during the course of interrogation, the victim did not disclose whether sexual intercourse was made with her consent or without her consent. In fact, there was no any complaint arose in the instant incident from the victim against the accused and the

allegation was made by the victims' brother only on the basis of doubt and without having any knowledge of the exact facts of the incident. As such, it is clear from the above facts and circumstances submitted before the Court that the victim was not raped by the accused and the allegation made against the accused was on mere ground of bona fide mistake and without the knowledge of the facts and circumstances of the alleged incident.

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 vague and benefit of the same must be given to the accused. Hence, the accused is liable to be acquitted from the charge section of law and set him at liberty forthwith.

10. On thorough perusal of evidences adduced by the witnesses, it is learnt that P.W No. 1, who is also complainant in this instance case stated in his cross examination that what he have stated in the FIR may be bonafide mistake and have no any knowledge of the allegation of rape made by him. P.W No.4 also stated in her cross examination that when they went inside the house, Lalsangpuii victim does not show any sign of sexual assault and acted normally as she was mentally retarded, and accused Lalneihchhunga and prosecutrix were dress with they own cloths, and it is not true to suggest the victim was completely insane so as to differentiate whether she had sexual intercourse at any point of time. She further stated that she do not know whether accused had sexual intercourse with the victim and lately she presumed that what have been alleged by her was a bonafide mistake.

11. P.W No.5, the medical officer who examined the victim in his medical examination report which is exhibited as exbt P-6 revealed that there is not sign of injury in her body (victim) the victim sustained old torn hymen which may be as a result of previous penetration which does not ruled out re-cent penetration. P.W No.6 also stated in his cross examination that it appear from medical report that the sexual intercourse has been performed with consent, and if the victim

was mentally retarded, the case of rape can be made out against the accused P.W No.7, also submitted that there is no any document or evidence from record to proof that the victim was mentally retarded, and unable to give opinion on the medical report that sexual intercourse if committed as alleged have been done with consent P.W No.8, also stated in her cross examination that as per medical report the rapture of the hymen was old, and there was no recent sign of sexual intercourse.

12. **ORDER**

From the light of above discussion and from the finding of medical officer, in his medical report the victim cannot be treated as sexual assaulted and there is no any documentary evidence to proof that the victim is mentally retarded. The prosecution therefore failed to established a prima facie case u/s 376(2) IPC against accused Lalneihchhunga.

Accused Lalneihchhunga S/o Thanglianhhuma of Vaphai is therefore acquitted from the liabilities of the charge leveled against him u/s 376 IPC due to lack of evidence. He is set him at liberty.

Announce in open court, on this date of 7th March 2017.

The case is disposed.

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

Memo No **62/**AD & SJ-I/2017 : Dated Aizawl the, 7th March 2017

Copy to :

1. District & Sessions Judge, Aizawl District, Aizawl.
2. Lalneihchhunga S/o Thanglianhhuma (L) Vaphai
3. Lalramhluna Advocate
4. Addl. PP
5. Deputy Superintendent of Police (Prosecution).
6. Judicial Branch.
7. Case Record.
8. Guard file.

PESHKAR

Appendix : A

1. Exbt P-1 is the FIR u/s 154 IPC, P-1(a) is complainant signature.
2. Exbt P-2 is FIR, P-2(a) is his signature.
3. Exbt P-3 is inngaihdamna.

Appendix – B

Defence witness - Non.