

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

*Sc No 122/2013  
Crl.Tr.1758/2013  
U/S 376(i) IPC, Vaivakawn P.S Case No.78/2013*

State of Mizoram : Complainant

Vrs

Vanlalvena : Accused.

BEFORE

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

PRESENT

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

For the Accused : Lalremtlunga, Advocate.

Date of Order : 17.3.2017

**ORDER**

The prosecution story of the case in brief is that on 30.9.2013, a written FIR was received from Lalthlamuani (42) W/o Lalrinthara of Dawrpui Vengthar stating that on the night of 30.9.2013 @ 6:30 pm, she was sexually assaulted her by Vanlalvena (Mavena) who lodged in the house of Zoramchhingi of Dawrpui Vengthar, Aizawl who was reportedly was capable of healing patients by touching/massaging and whom she did approached for her uterine problem.

2. The said accused Vanlalvena @ Mavena, who unable to speak clearly, in the absence of Thari whom he used as interpreted, started harassing her sexually by founding, prodding and rubbing his penis into hers, she thus made a stand against his in towards intentions and screamed for help. Besides Mavena

pulled her by the hair angrily even after she had mixed with others. Hence, Vaivakawn P.S Case No. 78/2013 dt. 30.9.2013 U/S 376(1) IPC is registered and duly investigated into.

3. During the course of investigation, the P.O was visited and a rough sketch map is drawn. The complainant/victim Lalthlamuani was medically examined in which the report revealed that normal in physical in which the report revealed that normal in physical and mental health, presence of swelling and bruising of upper lip and no spermatozoa seen on laboratory result. She was examined and recorded her statement stating that on 30.9.2013, she went along with some neighbors accompanied by her mother to approach one person who was reportedly able to heal through prayers as she had been coping with the uterine problem since sometime and used to consult specialist from time to time.

4. After waiting for the whole day her turn came in the evening @ 6:30pm, one Mathari was mostly around and act as an interpreter since the supposed healer was unable to speak distinctly she was made to lay on a bed and the healer i.e Mavena laid on top of her to which she reacted. However, Thari who interrupted his speech told her that the healing process would not be accomplished if she put up resistance and went on to assure her that Mavena was unable to perform sexually.

5. After sometime, Mathari left the room which was immediately locked from inside by Mavena who laid on top of her and started to remove her panty. He went to fondle her private part and poked her as well. Besides, he rubbed his private part into hers. As such, the victim pushed him away screaming and unlocked the door letting other people inside the room.

6. She was forwarded to CJM(A) for recording judicial statement in which her statement was recorded judicially u/s 164 Cr.P.C.

The accused person Vanlalvena (42) @ Mavena S/o Biaktluangi of Sihphir Venglai was formally arrested. He was medically examined in which the report revealed that physically fit and mentally held retardation and normal of development of genital organs.

7. He was carefully examined and interrogated in which he disclosed his commission of crime before Police stating that he is a born again Christian after attending Pu Ramtea's gospel camping and that, he received the healing power too. He visited and preached at several villages, laid his hands on a number of persons with stomach disorders, uterine problems, cancers, kidney problems etc.

He was at Aibawk Village when he was approached by Zoramchhingi and her daughter in law of Dawrpui Vengthar, Aizawl on 27.9.2013, lodged at their house and was approached by different people with various ailments.

8. On 30.9.2013, he was approached by a women aged about 40 yrs from Dawrpui Vengthar, Aizawl who was having uterine problems. He undressed her under wears, feel her uterine and deleted 3(three) tumors, Thari, the daughter in law of Pi Zoramchhingi would be present most of the time when the healing process was conducted. However so, the moment Thari left the room to attend for the call of nature, vile and twisted essence took had and prompted him into inserting his penis into her private hers. To which act, she reacted strongly against. And, as she made a move from the room, he caught hold of her, grasped her hair and shaped her.

9. The accused person was forwarded to Department of Psychiatry, Kulikawn Hospital for mental assessment of examination in which the psychiatrist who conducted examination opined that the accused person was having mild mental retardation with organic brain dysfunction and he can exercise his freedom of expressing consent. Judgment within his mental capability no psychopathology was elicited and the patents judgement is found to be intact.

2(two) available witnesses namely Zoramchhingi and her daughter in law Thari of Dawrpui Vengthar were examined and recorded their statements.

Under the above facts and circumstances a prima facie case u/s 376(i) IPC was found registered against the accused person Vanlalvena (42) S/o Biaktluangi of Dawrpui Vengthar.

10. Charge u/s 376(i) IPC is framed read over and explained in the language known to accused Vanlalvena to which he pleaded not guilty claiming for trial stating that "Ka tawngtai ringawt". During the trial 5(five) prosecution witnesses have been examined out of 8(eight) witnesses.

P.W No.1 Lalthlamuani of Dawrpui Vengthar stated that on 30.9.2013 I went to the house of Pi Zoramchhingi where the accused was staying, the accused was said to have healing power. I have to gynea problem. As the accused could not be properly speaking there was one Mathari who could understand the accused. Inside the room he let me sleep on the bed and started touching my abdomen and told me that there was tumour on my abdomen which was cancer. And he came on top of me, soon after that Mathari left the room and the accused locked the door but I asked him to open the lock. When Mathari came back to the room I told her about it and she told me that the accused had done the same thing when they went to him and told me not to be afraid. When Mathari left the room again he started removing my panty and touching my private part he also rubbed his private part to hers and then I started screaming and called for the others who were in the next room.

11. In her cross examination, the victim stated that she went to the house of Zoramchhingi on his own volition and willingness to get healing from the accused and people can hear her hue and her cry. P.W No.5 Dr. Ruth Lalmuanpuii, Kulikawn Hospital stated that I am working as Psychiatrist at Kulikawn Hospital Aizawl. While I was on duty on 21.11.2013, the accused Vanlalvena was brought to the Hospital by the Police for mental assessment examination. The assessment

of intelligence, test for organic brain dysfunction and mental status examination was conducted. Test of intelligence shows an I.Q of 52.38 and S.Q 56.67 i.e mild mental retardation and mild level of socio adaptive functioning. On BGT test result show feature suggestive of organic brain dysfunction, mental status examination shows no psychopathology, judgment was intact (ability to see right and wrong), patient had impaired abstract ability.

Exbt P 3 is report of mental assessment examination. P 3 (a) is my signature.

The P.W No.5 was cross by Defence counsel and stated that the accused Vanlalvena is only having mild level of intelligence and is only below average personality.

It is not correct to suggest that the accused having a tendency of believing himself to be able to heal others amounts to certain degree of delusion.

12. P.W No.6 Dr. Vanlalhruii, Civil Hospital Aizawl stated that I am working as Gynecologist at Civil Hospital Aizawl. While I was on duty 30.9.2013 one woman namely Lalthlamuani aged 42 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. I found that there was swelling/ bruising of upper lip and on her genitals there was sign of previous delivery, and vaginal swab was sent to the laboratory for presence of spermatozoa.

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

The Id. defence counsel cross examined and stated that bruise mark on the upper lip of the victim can also happen due to any other action such as hitting with a pole or wall or fist.

It is also a fact that no spermatozoa was found on the laboratory examination of the vaginal swab sent .

13. P.W No.7 R.Malsawmdawngzuala, Judicial Magistrate First Class stated that on 14.10.2013 the victim Lalthlamuani was brought to him by one lady and recorded her statement in his Chamber in the present of her lady friend. In his cross examination, P.W No.7 stated that the victim inform him that the accuse did not insert his penis inside her vagina and the accused has no sexual intercourse with her.

14. P.W No.8 S.I Lalhmingthangi, Special Narcotic Police CID(Crime) on 30.9.2013 a written FIR was received from Lalthlamuani (42) W/o Lalrinthara of Dawrpui vengthar stating that on the night of 30.9.2013 at 6:30pm she was sexually assaulted by Vanlalvena (Mavena) inside the house of Zoramchhingi of Dawrpui vengthar Aizawl and also stated that Vanlalvena was capable of healing patients by touching or massaging and she stated that approached him for her uterine problem. And Vaivakawn P.S Case No.78/2013 dated 30.9.2013 u/s 376(1) IPC is registered and duly investigated.

15. The O/C Vaivakawn P.S endorsed me to investigate into the case. During my investigation I visited the P.O and draw the sketch map of the P.O. I arrested the accused Vanlalvena and interrogated him and also recorded his statements. I forwarded the accused to the Aizawl Civil Hospital for medical examination and also I forwarded him to the psychiatry Department for mental examination. I also examined the complainant/victim and recorded her statement and I also forwarded the complainant/victim to the Gynecologist Civil Hospital Aizawl for medical examination. And I also examined other witnesses and recorded their statements. During my investigation I received the medical

examination of the complainant/victim from the Medical Officer, Civil Hospital Aizawl, and found swelling/bruising of upper lip from the victim.

As I found a prima facie case u/s 376(1) IPC well established against the accused Vanlalvena I submitted the Final Form Report/Charge Sheet against him.

In her cross examination, S.I Lalhmingthangi stated that the accused Vanlalvena is of unsound mind.

16. Accused Vanlalvena was examined u/s 313 Cr.P.C by the court and answered the question that victim Lalthlamuani of Dawrpui Vengthar came and met at the house of Zoramchhingi to heal her womb problem, and Mathari also present while healing action was done to her, and did not touch (sexual assaulted) her. He further stated that Lalthlamuani remove her petty coat, by herself but not remove her under pant. He simply assault on her back head due to misunderstanding and sustained no injury.

17. After trial is finished, both the prosecution and defence are given chance to submit their argument, and the Id Addl. Public prosecutor denied to submit his argument, except oral argument stating that the accused is found guilty by touching his private part to the private part of victim, and prayed the court to convict him Mr. Lalremtlunga, defence council submitted his argument in writing stating that the prosecution story of the case in brief is that on 30.9.2013 prosecutrix Lalthlamuani aged about 43 years Dawrpui Vengthar Aizawl who is having gynea problem went to the house of Pi Zoramchhingi to have healing from accused Vanlalvena, Vanlalvena was assisted by one Mathari in connection with healing. The accused was said to have raped the said prosecutrix as a result of which FIR was lodged by her resulting registration of Crl.Tr.No.1758/2013 U/S 376(1) IPC.

18. During the course of trial the accused pleaded not guilty and claims for trial and the prosecution has examined the following witnesses.

Lalthlamuani P.W No.1 : She deposed that she is 43 yrs old went to the house of Zoramchhingi to get gynea problem from accused and accused was assisted by one woman Mathari and she deposed that while accused and herself were inside the room the accused locked the door from inside the accused removed her panty, touched her private part, rubbed his private to her private part offered resistance by raising hue and cry.

19. Dr.Ruth Lalmuanpuii Pw No.,5 : She deposed that examination of accused Vanlalvena by BGT shows brain dysfunction, mental status shows no psychopathology, judgment was intact, he had impaired abstract ability. On her cross examination she admitted that accused is having only mild level of intelligence.

20. Dr.Vanlalhruaii Pw No.6 deposed that on 30.9.2013 prosecutrix was examined by her and examination proved among others that she had recent sexual intercourse against her will and on her cross examination she admitted that bruised marked on the upper lip of the prosecutrix can also happened due to any other action such as hitting with pole or wall or fist and no spermatozoa was found on the laboratory examination.

21. R.Malsawmdawngzuala PW No.7 presently posted as JMFC Lawngtlai deposed that the statement of victim was recorded him and on cross-examination he admitted that the victim did not say that accused has inserted his penis inside her vagina and has sexual intercourse with her.

22. H.Lalhmingthangi Sub Inspector of Police, and case I/O was examined by the prosecution but she could not give clear cut evidence to prove that the accused had actually raped the prosecutrix.

Points of acquittal :

- i) No potency test was conducted by the prosecution to prove that the accused has potency to commit rape.



- ii) Victim merely stated in her examination in chief about rubbing of her private part by the penis of accused which is not sufficient ingredient for rape.
- iii) The victim did not state before the JMFC that she was raped by the accused as per evidence of R.Malsawmdawngzuala, JMFC who recorded the statement of the victim.

Due to deficient evidence of the prosecution witnesses accused Vanlalvena entitles benefit of doubt and be acquitted and prayed accordingly.

23. In her examination in chief the victim stated that when Mathari who was also present in the place of occurrence, left the room accused Vanlalvena again started removing her panty and touched her private part and also rubbed his penis to her and then started screaming and called for the other who were in the next room. P.W No.6 Dr.Vanlalhruii who examined the victim stated that on examination of her genital whether she had any recent sexual intercourse and found that there was swelling/bruising of upper lip and on her genital there was sign of previous delivery. In her cross examination, she stated that bruise mark on the upper lip of victim can also happen due to any other action such as hitting with pole or wall or fist and no spermatozoa was found in the vaginal swab on the laboratory examination.

24. In the cross examination of PW No,7 R. Malsawmdawngzuala, Magistrate, he stated that the victim informed him that the accused did not insert his penis inside her vagina and accused has no sexual intercourse with the victim. P.W No.8 SI Lalhmingthangi I/O of the case stated in her examination in chief that during her investigation her received medical examination of victim from Medical Officer and found swelling/bruising of upper lip from victim, and no more report to ascertain that accused inserted his penis in her vagina.

So,

25. Non of witness statement collaborated the FIR and there is no penetration of the penis of accused to victim vagina, mouth, Anus as defined, 'Rape' in section 375 IPC and the victim herself confessed/stated before PW No.7 (Judicial Magistrate 1<sup>st</sup> class) that there was no sexual intercourse with her, it is proved beyond doubt that the alleged offence does not amount to rape. The prosecution therefore failed to establish a prima facie case u/s 376 IPC against accused Vanlalvena.

I therefore acquitted accused Vanlalvena, S/o Biaktluangi of Sihphir Venglai from the liability of the charge u/s 376 IPC and set him at liberty.

The case is disposed .

Announce in open court today ( 17.3.2017).

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

Memo No \_\_\_\_/AD & SJ-I/2017 : Dated Aizawl the, 17<sup>th</sup> March 2017  
Copy to :

1. District & Sessions Judge, Aizawl District, Aizawl.
2. Vanlalvena S/o Biaktluangi Sihphir venglai.
3. Lalremtlunga Advocate
4. Addl. PP
5. Deputy Superintendent of Police (Prosecution).
6. Judicial Branch.
7. Case Record.
8. Guard file.

PESHKAR