

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT : AIZAWL**

PRESENT

Smt.Helen Dawngliani
Addl. District & Sessions Judge

SR No.313/2012
In Crl.Tr. No.445/2012
U/s 376(2)(f) IPC

Ref :- Kawnpui P.S Case No. 21/2012 dt.23.6.2012 u/s 376(2)(f) IPC

State of Mizoram

Versus

Laldinthara Accused

Date of hearing 05.03.2014 & 19.03.2014

Date of Judgment 02.04.2014

A P P E A R A N C E

For the Prosecution Mrs. Rose Mary, Addl. PP

For the Accused Mr. W. Sam Joseph, Advocate

J U D G M E N T & O R D E R

1. **BRIEF STORY OF THE PROSECUTION:-**

On 23.6.2012 one Zothanmawii W/o Suakkunga R/o Banglaveng, Kawnpui lodged a written FIR to the Kawnpui Police station where she stated that on 31.5.2012 when her granddaughter, X, 8 years resident of Chhim Veng, Kawnpui returned from school, her parents noticed blood stain on her underwear. She could not sleep that night and they suspected that she was sexually assaulted. But attempts made by her parents to get the name of the culprit from her failed. So on 23.6.2012 she took X to the garden and after pampering her, X named her school cook Laldinthara as the person who ravished her. She also mentioned in the FIR that the reason for delay was because X did not immediately disclose the culprit.

On the basis of the said information, Kawnpui P.S Case No.21/2012 dt. 23.6.2012 u/s 376(2)(f) IPC was registered and investigated into. Upon completion of investigation, having found prima facie case against the accused Laldinthara for the offence punishable u/s 376(2)(f) IPC Charge sheet was laid against him and committed for trial.

The name of the prosecutrix is withheld in the Judgment and she is referred with the letter 'X'.

2. Copy of the Police Report and all connected documents were delivered to the accused.
3. As the accused did not have the means to engage a counsel on his own, Mr. W. Sam Joseph, Advocate was assigned to defend the accused at the State expense u/s 304 Cr.P.C.
4. Charge u/s 376(2)(f) IPC was framed against the accused. The charge was read over and explained to the accused in the Mizo language which is known to him to which he pleaded not guilty and claims for trial.
5. The prosecution examined 9 witnesses. Accused was examined u/s 313 Cr.P.C and two witnesses for the defence were also examined. The Ld. Counsels are heard.

Mrs. Rose Mary, the Ld. Addl. PP submitted that the delay in lodging the FIR have been clearly explained through oral evidence as well as in the FIR itself and that information was immediately given to the Police as soon as the identity of the culprit was known. The Ld.Counsel argued that the statement of the prosecutrix is trustworthy and as considerable time lapse from the date of the incident to the date of medical evidence not much can be expected to be forth coming from the medical examination. The Ld. Counsel further argued that legally the offence of rape can be committed even with the hymen remaining intact and that the said finding does not shake the credibility of X. The Ld. Counsel argued that the evidence adduced by the prosecutrix is trustworthy and that the accused can be convicted on the sole testimony of the prosecutrix. The Ld. Counsel therefore prays to convict the accused for the offence u/s 376(2)(f) IPC.

On the other hand, Mr. W. Sam Joseph, Ld. State Defence Counsel submitted that the allegation made against the accused is totally false. The Ld. Counsel referred to the oral evidence of the prosecution as well as defence witnesses and thereafter submitted that the prosecutrix never mentioned the name of the accused to be the person who allegedly had sexual intercourse with her. The allegation is that the accused penetrated his male organ into her private part but the medical evidence shows that the hymen was intact and in the cross-examination, medical officer admitted the suggestion that from her examination she did not find any traces of sexual intercourse. The witness stated in her examination that while examining the prosecutrix, the prosecutrix stated to her that she was physically/sexually assaulted by one student inside the classroom during lunch break some days back. The witness further stated that the inflammation found on the body was caused within 48 hours of her examination. According to the Ld. Counsel as the alleged incident occurred on 31.5.2012 and medical examination was done on 11.6.2012, keeping in mind the statement of the medical officer, it means that the inflammation on the body of X is not connected with the incident of 31.5.2012. Referring the statement of PW

No.4/.Lalthianghlimi, mother of X, the Ld. Counsel argued that the said witness clearly admitted in her cross examination that she stated before the Police that she was told by her daughter that one bigger student in her school sexually assaulted her. It is further argued by the Ld. Counsel that the defence witness clearly prove that during lunch break of 31.5.2012 the accused was in the company of the other school cook. The Ld. Counsel therefore submitted that the prosecution has failed to prove the case and prays to acquit the accused. In support of his submission the Ld. Counsel placed reliance on the following decisions:

(1) Razik Ram versus Jaswant Singh (1975) 4 SCC 769

(2) Sharad Birdichand Sarda versus State of Maharashtra (1984) 4 SCC 116

(3) Rabindra Kumar Dey versus State of Orissa (1976) 4 SCC 233

6. POINT(S) FOR CONSIDERATION:-

Whether the accused had sexual intercourse with X within the meaning of rape as defined u/s 375 IPC and the accused thereby guilty of the offence punishable u/s 376(2)(f) IPC?

7. DISCUSSION, DECISION AND REASONS THEREOF:-

PW No.1/ Zothanmawii is the grandmother of X and the informant. She stated that she knew the accused and that he used to work as a cook in Primary School III at Kawnpui Chhim veng. The prosecutrix is presently 8 yrs and at the time of the incident, she was reading in Class II and she was residing with her parents. She stated that the mother of X is her daughter. Her mother noticed bloodstain while washing her school uniform skirt and white shirt. Being suspicious she asked the prosecutrix how there was bloodstain. X told her mother that while she was sitting inside the Class II room one man came inside and took her inside the class room of Kg I and that the man removed her underwear. When her mother asked her whether the man penetrated his male organ inside her private part she replied in the affirmative. But despite of being persistently asked by her mother who the man was, she did not take any name. Her daughter then gave her a phone call and asked her to talk to X. She went to their house. Before asking anything from the prosecutrix, she made a phone call to Pi Vanlalthangi, the President of Joint MHIP asking for her help to get the name of the person since they failed to get any name from the prosecutrix. Pi Vani said that she was in the garden nearby (dai hnai) the house of the prosecutrix and asked them if they could go to her. So she took the prosecutrix with her to the said place. She asked Pi Vani to talk to the prosecutrix as they were well acquainted with each other and at that time Pi Vani put questions to the prosecutrix while continuing to work by cleaning the grass so as to make the conversation casual. Pi Vani asked her whether she was sleeping on the same bed with her parents to which she said

she does and then Pi Vani asked her whether her father had sexual intercourse with her at night time on their bed to which she replied in the negative. Then Pi Vani took the name of the Head master of the school as the person who ravished her and this was also replied in the negative. Thereafter Pi Vani took the names of all their teachers and asked her who amongst them has ravished her to which she said 'Sir Dina'. Thereafter they informed the matter to the leaders of MHIP Chhim Veng branch and as decided she lodged the FIR against the accused. The FIR was lodged about 2 weeks after the incident. The mother of X found the bloodstain on her skirt and white shirt about one week after the incident. She approached the school authorities and was informed by them that they will take steps to find the culprit but their attempt failed and no identification was made by the prosecutrix amongst the school children. It was only thereafter that her daughter informed the matter to her. She gave verbal information to the Police which was reduced into writing by the second O/C and she subscribed her signature. She exhibited the FIR as Exbt. P- 1 and her signature as Exbt. P. 1(a). In her cross-examination, she admitted that the prosecutrix did not take any name when family members asked her. She stated that the prosecutrix was wearing her underpant. She still put on her underpant when she reached home on the date of the incident. She washed her underpant herself while taking bath with her elder sister. There was bloodstain on her underpant but she did not see the bloodstain on her underwear, shirt and skirt. The Police did not seize the underwear, white shirt and skirt. She also admitted that there was no scientific prove to the effect that the stain on the underwear white shirt and skirt were bloodstain but denied the suggestion that it was red ink stain and not blood stain. She admitted that apart from the information received regarding the bloodstain she has no personal knowledge. It is not a fact that the stain was red ink and not a bloodstain. She stated that on 31.5.2012 she was in her house and did see the prosecutrix on that day. She also did not see her on the subsequent day. After 31.5.2012 she met the prosecutrix for the first time on 9.6.12. The prosecutrix spent the night of 31.5.12 with her parents. She admitted that she has not heard of any complaint of any kind of pain made by the prosecutrix on 31.5.12 and also that the mother of the prosecutrix did not tell her that on 31.5.12 the prosecutrix complaint of any pain. She also admitted the suggestion that the mother of the prosecutrix did not tell her that on and around 31.5.12, she noticed unusual discharge from the private part of the prosecutrix. On 9.6.2012 when she met X she complaint of pain around her waist (tai). Before this she did not hear any complaint from her. She lodged the FIR on 9.6.12. She admitted that as per the record shown to her, she lodged the FIR on 23.6.12. She further stated that the prosecutrix was taken for medical examination before she lodged the FIR but the Doctor declined to examine her without lodging the FIR. The FIR was earlier lodged by the mother of the prosecutrix without naming the accused in the FIR. Thereafter when the

prosecutrix took the name of the accused she once again lodged the FIR against the accused. Maybe because of this medical examination was done 11.6.12. She admitted that from the record shown to her in the court there is no mention and there is also no material to show that FIR was earlier lodged by the mother of the prosecutrix. She denied that Pi Vani forced the prosecutrix to take the name of the accused as the person who ravished her. She has known the accused from his birth. They used to live as family. There is no misunderstanding between their families. She has no knowledge if there is any personal difference between the accused and Pi Vani. She denied that we have falsely implicated the accused.

PW No.2/X is the prosecutrix. After asking her few preliminary questions, she was found competent to testify. She stated that she knows the accused as Pa Dina. Presently she is attending School V. Earlier she used to go to a different School at School Tlang. Pa Dina used to work in the said School. While she was inside the class I room, he told her to go with him to Kg I room and held her hands. He took her to Kg I room. He locked the door. He removed her underwear. He removed his pant and she saw his male organ. He penetrated his male organ into her private part. She did not immediately tell her parents. Her mother used to wash her school uniform. Her mother asked why there was bloodstain on her school uniform and she told her 'min min ti a' meaning I have been ravished by someone. She told her mother that Pa Dina was the one. Her grand mother and Pi Vani asked her the name of the culprit and she told them it was Padina. She was taken to a Doctor and the Doctor checked her private part. She was not taken to the Police Station. She was not asked by the Police regarding the incident. She also stated that she does not wear the same pair of uniforms everyday and does not take bath daily. In her cross examination, she stated that her mother washes her school uniform and other clothes everyday. She has not been told by her family what to depose in the court. She does not know for what purpose she has come to the court. She did not tell anything to her mother on the date of the incident. She complained of pain on her private part to her mother and on the same day, she took her to a doctor. She was taken once to a Doctor. The Doctor did not prescribe any medicine. She did not attend school on the next day of the incident as her parents told her not to go. She left her school after the incident. She denied the suggestion that she never took the name of the accused when she was asked by her family members including her grand mother. She also denied that as Pi Vani took the name of the accused she simply identified him as the one who ravished her. The incident occurred during lunch time. There were no other children inside KG I Class Room. Other children were playing outside. She came to know the accused from her school. He has never come to her house. She denied the suggestion that the accused removed her underpants. She also

denied the suggestion that the accused did not remove his pant and introduced his male organ into her private part.

PW No.3/Vanlalthangi is the President of Joint MHIP, Kawnpui (MHIP-NGO women's organization), and Headmistress in the Govt.Primary School-IV, Kawnpui. She came to know about the incident through MHIP Kawnpui Chhim veng Branch on 14th June in her capacity as President Joint MHIP since the family of X approached the MHIP Kawnpui Chhim veng Branch. On 15th June she went to the house of the prosecutrix, on that day it was raining very heavily and there were many children in the house. She spoke to the prosecutrix but did not get any information from her maybe because of the presence of many other people in the house. On 23rd June, she received a phone call from Pi Zothanmawii, the maternal grand mother of the prosecutrix, informing her that they are submitting a complaint about the present incident to the Joint MHIP. On that day since she had already prepared myself to go to my garden she told Pi Zothanmawii to come to her with the prosecutrix and suggested that they could go to my garden together since it is difficult to get any information in the presence of many other people. So on that day, she along with Pi Zothanmawii and the prosecutrix went to her garden. As she has met the prosecutrix only once i.e on 14th June, in order to make her feel comfortable, she made her work with her in her garden. While taking a break she offered the food which she had taken with her. Before having food she told X that she has to ask her some question and that as God knows everything she has to tell the truth to her. She also told her that if she lie, God will punish her. She also offered her Rs. 500/- as a reward if she speak the truth. She first took the name of X's father as the man who sexually assaulted her to which the prosecutrix only gave the smile then she took the name of Pu Chhuanmawia the Head Master of her school and then the name of her teacher Sir Puia to which she replied in the negative. Then she took the name of another male teacher namely Sir Puia by describing him as a tall person she gave a negative reply. Then she took the name of Sir Pa Dina (the accused) to which X replied in the affirmative. She knows that the accused was referred as 'Sir' by the students though he was appointed as a cook since he also sometimes take classes. After she gave her reply she once again asked X if she was speaking the truth and she said she spoke the truth and there after we had our food and she gave the money as promised. She did not ask further question to the prosecutrix. The prosecutrix and her mother left her garden and she continued to work in my garden. In her cross examination, she denied the suggestion that she compelled the prosecutrix to take the name of the accused as the one who sexually assaulted her and that by suggesting different names the prosecutrix was made to implicate the accused. She admitted that she gave Rs. 500/- to the prosecutrix as it was a promise. She denied the suggestion that she was told by X that she was physically and sexually assaulted by

another student inside the class room, during lunch break some days back. She did not check the private part of the prosecutrix. As far as she knows the accused has no involvement in any kind of assault on women earlier. She further stated that apart from the affirmative reply made by the prosecutrix she does not have any direct knowledge on the present incident.

PW No.4/Lalthianghlimi is the mother of X. She identified the accused as they live in the same locality and that he was working as a Cook in Govt. English Medium School-III Kawnpui. Her daughter X was born on 17.2.2004. At the time of the incident she was reading in KG-II at Govt. English Medium School-III. She stated that one night her daughter could not sleep and she was crying. When she asked her if she has any pain she told her that she was having a headache so she gave her pain killer. About 3 days thereafter on 7th May 2012 she washed the school uniform of X and while washing she saw blood stain on the edge of her white shirt and on her skirt. The blood stain on the shirt and skirt were found at a place covering her posterior. Having some doubt she woke up her daughter and asked why there was blood stain on her school uniform then she said she was bleeding (amahin arawn thi ve ringawt) then she told her that unless it was touched it was not possible to have a bleeding and asked her if she was touched by anyone. She said yes and then she asked her if she could identify the person if they go to her school with her then she said yes. After her daughter left for school she also went to her school. At that time the headmaster was not there and other lady teacher was available. Her teacher advised me to go back assuring me that they will try to find out the culprit secretly in order to avoid any panic within their students. So she went back home. On the same day their teacher gave her a phone call and she went back to their school and they informed her that they paraded their students but the prosecutrix was not able to identify any of them as the culprit and asked her what she wanted to do about it. She told them that she wanted medical examination done. They were taken to the Doctor by one of the teacher. But the doctor said that without registering FIR medical examination could not be done and so they went back. Thereafter she made a written complaint to the President of MHIP at Kawnpui. She did not tell anything about her suspicion to any of her family except her Aunt Lalnuntluangi and she accompanied her at the time of making a complaint. She informed her parents only after she lodged a complaint to the MHIP. The MHIP convened a meeting and advised her to submit FIR. She could name the accused in the FIR since the President of Joint MHIP and her mother took the prosecutrix to a garden and in that place the accused was identified by her daughter. The FIR was lodged by her mother. She checked the private part of her daughter and asked her if there was any pain to which she said that there was pain inside. At home she once again asked her daughter if it was really the accused who had violated her person and that if she lied

she could be arrested but my daughter said that it was the accused. After my mother lodged the FIR her daughter was medically examined and she accompanied her. She also asked her daughter when and where the offence was committed she told me that while she was sitting in her classroom the accused came and took her out of the room and went inside the classroom of KG-II with her. She did not tell me in which room she was sitting. She stated that the offence was committed only once. In her cross-examination, she stated that at the time of the incident her daughter has completed 8 years. She admitted the suggestion that she stated before the police that her daughter told her that she was sexually assaulted by the bigger student of her school by stating 'School naupang lian tawhin min pawngsual a, khawng I awm ka ti a, kan class ah a hnuah KG-I roomah min kaithla a ti a. ka pawnfen te, ka kekawr (leggings) te a phelh a, a sazu a phawrh a, min pawngsual a min ti' a ti. She did not go back to the school to get her daughter on the day when she was assured by her teacher that they will try to find the culprit. The doctor told her that the hymen was intact though it appeared that there was physical contact. At the time of examination, she was the only one present with her daughter. She even went inside the room where her daughter was medically examined by a doctor. There was no staff nurse/nurse at the time of examination by the doctor. She admitted that earlier she lodged the FIR without naming anyone as the culprit and later her mother lodged the FIR by naming the accused. She admitted that medical examination was done on 11.6.12. Her daughter did not attend school on 11.6.12. Her daughter did not go to school after 11.6.12 for some days but I do not remember the number of days. She went to school on the previous week of 11.6.12 and she attended all the working days from 28.5.12 to 1.6.12. She does not remember when she lodged the FIR. She further stated that the medical examination was done on the basis of FIR submitted by her. She admitted that her daughter did not complain of any pain to her on 31.5.12. She further admitted that X only complaint of abdominal pain on 9.6.12. She does not know if Pi Vani gave Rs.500/- to her daughter in order to make her name the accused. She does not know of the family relation between the accused and Pi Vani. However she denied the suggestion that her daughter named the accused at the instigation of Pi Vani. She does not know whether her daughter identified the accused as the one violated her person only because she wanted Rs. 500/- offered to her by Pi Vani.

PW No.5/Lalngilneii is a seizure witness. She stated that while she was in the house of the prosecutrix the police seized her birth certificate. She saw the birth certificate and as far as she can remember X was born in the year 2004 She put her signature as a seizure witness in the house of the prosecutrix. The police seized the original certificate. She exhibited the seizure memo as Ext.P-2 and her signature as Ext.P-2(a). In her cross-examination, she stated that she is acquainted with accused and does

not have any bad impression about him. She admitted the suggestion that the original birth certificate is not available in the record which is shown to her.

PW No.6/ASI Zorammawii stated that while she was posted at Kawnpui Police Station, on 23.6.2012 at about 4:30 PM one Zothanmawii of Kawnpui Bangla Veng lodged a written FIR regarding the present case wherein it was stated that on 31.5.12 when her grand daughter Lalhriatpuii, 8 years returned from school her parents saw blood stain on the hem of her skirt. They suspected that Lalhriapuiii was sexually assaulted but inspite of their repeated questions as to the cause of bleeding she did not make any disclosure. On 23.6.12, the informant along with the MHIP President Pi Vanlalthangi went to the garden with the prosecutrix and in the said place the prosecutrix said that it was the accused who sexually assaulted her. Accordingly Kawnpui PS Case No. 21/12 Dt.23.6.12 u/s 376(2)(f) IPC was registered. The case was endorsed to her for investigation by the O/C of Kawnpui PS. During investigation, she visited the place of occurrence which is the classroom of KG-I of Govt. Primary School-III, Kawnpui Chhim Veng. She found that during the relevant time the prosecutrix was reading in Class-II in the said School. She recorded the statement of the complainant, victim and other witnesses. She seized the original Birth Certificate from the mother of the prosecutrix and after making a photocopy returned the original to her. Shearrested the accused on 23.6.12 at 6:10 PM at the P.S. since she contacted him over telephone to report to the Police Station as he had gone to Aizawl on that day. She could not file a charge sheet in her capacity as ASI and so she handed over the case diary to the O/C, Kawnpui PS. She exhibited the seizure memo as Ext.P-2, her signature thereon as Ext.P-2(b), arrest memo as Ext.P-3 and her signature as Ext.P-3(a). In her cross-examination, she admitted the suggestion that she did not see the original Birth Certificate of the prosecutrix in the Court. She denied the suggestion that she does not have the power to investigate in her capacity as ASI but explained that she cannot submit charge sheet as ASI. She stated that she did not forward the victim for medical examination and that they were forwarded by other Police Officer namely ASI C. Lalremruata. She admitted the suggestion that as per the said medical report while recording a short history of the incident it has been recorded that the victim stated that she was physically/sexually assaulted by one student inside a class room during lunch break some days back. However she denied the suggestion that the prosecutrix made the same statement to her. From the medical examination report it appears that the hymen of the prosecutrix is intact. She does not know how many days lapse between the incident and the day when FIR was lodged. She knows that the incident complaint of occurred on 31.5.12 and FIR was lodged on 23.6.12.

PW No.7/ Ramtharnghaka stated that he is Sub Inspector of Police and posted as 2nd Officer in Charge at Kawnpui Police Station. He stated that on 23.6.12 FIR was

received at Kawnpui PS regarding the instant case. Investigation was conducted by ASI Zorammawii. As she was not competent in her capacity as ASI to submit the charge sheet, she submitted her investigation report to the O/C who inturn handed over to him for examination. After satisfying himself with the investigation conducted by ASI Zorammawii, and finding prima facie case u/s 376(2)(f) IPC against the accused laid charge sheet accordingly. He exhibited the charge sheet as Ext.P-3 and his signature as Ext.P-3(a). In his cross-examination, he stated that he did not examine any of the prosecution witnesses listed in the charge sheet. There was no Inspector in Kawnpui PS to supervise investigation and the same Inspector also function as O/C of the PS. In the instant case supervision was done by the O/C he does not know whether the O/C consulted the SDPO. He admitted that from the medical report, it is seen that the hymen of the prosecutrix is intact. He stated that FIR was received on 23.6.12, medical Examination of the victim was done on 11.6.12. To his knowledge there was no FIR prior to 23.6.2012 and that while laying the charge sheet he did not find any document/FIR prior to 23.6.12, no requisition for medical examination was also found after 23.6.2012. He denied to have false laid charge sheet against the accused inspite of not finding any prima facie case against him. PW No.8/Dr.Ramdinthari stated that onn 11.6.12, requisition was received from the Police for Medical Examination of Lalhriatpuii, 8 years at Kawnpui Primary Health Centre. She examined her on the same day. Upon examination, she did not find any injuries on her body. On genetel examination, her hymen was intact, there was no bruise or laceration, but there was inflammation on the inner labia minora. She was informed that the victim had taken bath and changed her clothes by the time she was medically examined. As per information given to her by her teachers and her mother who accompanied her, the incident complaint of occurred one week prior to the date of examination. During examination, the victim stated that she was sexually assaulted and when she asked her who the culprit was she stated that it was one student from her school and that the incident occurred in their school during lunch break. She exhibited the medical examination report as Ext P-4 and her signature as Ext P-4(a). In her cross examination she stated that inflammation can be explained as redness with swelling and heat, generally inflammation is fresh. The inflammation which she found upon examination could have been caused within 48 hours prior to examination. Inflammation can be self inflected. It can also be from injury or infection. In the instant case she did not find any infection. She conducted the examination on the basis of requisition made by the Police and that she has never done any examination of victim of sexual assault without requisition from Police. She admitted the suggestion that from her examination she did not find any traces of sexual intercourse and that the contents of Ext. P-4 is correct.

PW No.9/Inspector B.Lalbiakmawia was the Officer-in-Charge of Kawpui Police Station during the period June 2009 to October, 2012. When FIR was received on 23.6.2012 he endorsed the case to ASI/Zorammawii for investigation. As Zorammawii was not competent in her capacity as ASI to file the charge sheet he re-endorsed the case to Si/Ramtharngkhaka. The Investigating Officer found prima facie case for the offence u/s 376(2)(f) IPC against the accused and laid the charge sheet. He forwarded the charge sheet to the Ld. CJM, Kolasib. He exhibited his signature in the charge sheet as Ext.P-3(b). In his cross-examination, he stated that the incident took place on 31.5.2012 and FIR was lodged on 23.6.2012. He stated that he did not make requisition for medical examination and as such he does not know if the prosecutrix was examined on 11.6.2012. He stated that he did not take part in the investigation. He denied that there is no prima facie case against the accused.

8. Examination of the accused u/s 313 Cr.P.C is one of denial. He stated that he believes the prosecutrix named him as the culprit only because she was offered money.

9. At this stage the evidence adduced by the defence may also be briefly highlighted:-

DW No.1/Lalrinzuali stated that the accused is her neighbour and that they used to work together as a cook in Govt. Primary School-3, Kawnpui. She worked in the said school from the year 2010 till August 2013. As far as I can recollect, the accused joined the said school a year after her and has left his employment after his arrest in the instant case. The incident was not known to them on the same day. On the day when the parents of the prosecutrix learnt about the incident they came to the school. The teachers asked the prosecutrix about the person who sexually assaulted her and she said it was a school student wearing green school uniform. The teachers made the prosecutrix identify each of the school boys but she did not accuse any of them. She heard that later the prosecutrix was taken to a garden by her grandmother and Pi Vani and they offered money to her. After offering money they named each of the male teachers one by one and she replied in the negative and she referred the culprit as 'Sir PDA'. She also stated that though the accused was a cook sometimes he used to take class and that is why the students addressed him as 'Sir'. The incident according to the prosecutrix was 31st May and the said day is her birthday. On that day after they served the midday meal, they celebrated her birthday and they were singing together in the kitchen. They remained in the kitchen for about 1 hour and when the school was over they left the school together after closing the school doors and windows. The school has white shirt and green skirt as uniform. The teachers do not wear school uniform. The cooks also do not have any uniform. She further stated that on that day the accused took class in the morning while they were still cooking the meal. He only takes Primary Section. He does not know how many periods

he took. The school shares the same building with a Govt. Middle School which is known as Chanmari UPS. In her cross-examination, she admitted that though the accused was employed as a cook he sometimes used to take class when there were shortage of teachers and that the students used to address the accused as 'Sir PDa'. She and the accused went to the school on 31.5.12 i.e. the day of incident. Usually they start cooking from about 9 AM and start serving midday meal from 11:30 AM starting with KG 1&2 and the remaining classes are served at 12 noon. She stated that on the day of the incident she was cooking and the accused took class. While she was cooking the accused came to the kitchen and he helped her in cleaning the betel leaves since those days she used to earn an extra income by peeling betel nuts and cleaning betel leaves. When they celebrated her birthday by singing together, only the cooks including the accused were there. They celebrated her birthday for about 1 hour and the celebration was after they served all the students and teachers and after they cleaned and cleared the utensils. The school got over at 3 PM and it must be about 15/20 minutes after they celebrated her birthday by singing together. She admitted that on the day when the family learned about the incident they came to the school. She also admitted that as the prosecutrix said to the teachers that the culprit was a school student wearing a green school uniform she was made to identify all the school boys. She admitted the suggestion that on the day when Pi.Vani and the grandmother of X took her (X) to the garden they took the names of all the male teachers including the accused and at that time the prosecutrix named the accused by saying 'Sir Pda'. She admitted that she did not personally speak to the prosecutrix.

DW No.2/Lalbiakkimi is also another cook in the school. She stated that all the cooks has to be in the School by the time the School starts. All of them usually reach the School by 9 AM. On 31.5.2012 as usual, they were cooking for the midday meal. She along with the accused also folded betel leaves for selling. They served lunch for KG-I & KG-II in between 11-11:30 AM. By 12 Noon they served lunch for the Middle Section. During all these time the accused was with them. Around 12:30 they began serving the teachers and had lunch with them. Between 1-1:30 they cleared the utensils. Thereafter they celebrated the Birthday of Lalrinzuali. At that time the accused was still with them. When the School got over all of them including the accused closed the School doors and windows and they all left the School together. Further she stated that she saw Lalhriatpuii on 31.5.2012. As far as she can remember, during that time she was reading in Class-2. I cannot say how I saw the prosecutrix on that day. But she remembered that she came to the kitchen to drink water while she was in the kitchen with the accused. She once again saw X while serving lunch. There were 5 Cooks in the School during the year 2012. Approximately there were about 200 students. The School uniform is red and green t-shirt, skirt for girls and trousers for boys. She stated that she remained with the accused

from the time they reached the School upto the time they left. Since she was with the accused the whole day there was no time for him to go separately to commit the offence. She did not see the accused and the prosecutrix together on that day. She also stated that after the prosecutrix was suspected of being raped and before the culprit was known she spoke to the prosecutrix and she could only say that the culprit was U Lian which I understood as the older school children. She did not take the name of anyone. In her cross-examination, she stated that Chanmari UPS is also known as Govt. Primary School-III. She admitted the suggestion that though the accused was appointed as a Cook sometimes he used to take class in the lower section when there were shortage to Teachers. She stated that the accused did not take class before lunch on 31.5.2012. She stated that before they started cooking for the midday meal they folded betel leaves. They did not peel the betel nuts. She admitted that the accused Laldinthara was also known as Sir PDA by the students. She denied that she did not speak to X regarding the culprit and that the prosecutrix did not say "U Lian". She admitted that the parents of X came to the school regarding the incident and that the school boys were paraded by the Teachers to enable the prosecutrix to identify the culprit.

10. In the case at hand, the incident complained off occurred on 31.5.2012. PW No.1/Zothanmawii the informant stated in her cross-examination that she lodged the FIR on 9.6.12 and stated in her examination-in-chief that the FIR was lodged about 2 weeks after the incident. PW No.4/Lalthianghlimi, mother of X stated that one night her daughter was complaining of headache and she gave her pain killer. About 3 days later which is 7th May 2012 while washing the school uniform of her daughter she noticed bloodstain. As her daughter said that she could identify the culprit in the school she went to her daughter's school. The school boys were paraded but X did not identify any of them. On her desire she took her daughter for medical examination and was accompanied by one of the teachers. But the doctor declined to conduct examination in the absence of FIR. She then approached the MHIP who advised her to lodge the FIR. In her cross examination she stated that earlier she lodged the FIR without naming anyone and later her mother lodged another FIR by naming the accused. She also stated that she does not remember when she lodged the FIR.

However, as per record, the only FIR leading to the instant case was lodged on 23.6.2012. No other FIR is available on record. It is also an indisputable fact that medical examination of X was done at Kawnpui Primary Health Centre on 11.6.2012 on the basis of requisition made by the Police thereby meaning that the matter was made known to the Police.

From the evidence and materials on record there is no clear evidence regarding the date of incident, the date when the family/mother of X began to have doubts, when was

the first FIR lodged by the mother of X and when the FIR was lodged by PW No.1, grandmother of X. But it has to be borne in mind that we have to deal with sexual offences sensitively and that the fact that the prosecutrix and her family are from rural background. Though they may not be able to furnish minute details, what is clear from the evidence is that when the family of X began to have suspicion of X being sexually assaulted they acted in the manner which according to them was proper to address their grievance. It is not in dispute that on the day PW No.4/Lalthianglimi heard that daughter was sexually exploited she went to her school in order to find the culprit and informed her teacher, she demanded for medical examination but was declined by the medical officer for want of FIR then she approached a Women's Organisation on whose advise she lodge the FIR without naming anyone as the culprit. When the name of the culprit was known, they again lodge an FIR. From the conduct of the prosecutrix's family it is clear that they did all they could to bring the culprit to book. It is all together a different matter if their grievance was haphazardly taken up by the investigating agency. Considering the nature of the offence and the fact that in such an offence even the family of the prosecutrix suffer loss of reputation, dignity and honour, I am of the considered view that the inconsistencies as highlighted above should not defeat the purpose of justice. However, the evidence has to be examined with circumspection.

11. Having arrived at the said finding, it is necessary now to examine whether the prosecution has discharged its burden of proving the guilt of the accused beyond reasonable doubt.

12. It is also by now a settled position of law that in cases involving sexual offences, conviction can be based on the sole testimony of the prosecutrix if it inspire confidence of the Court. Nonetheless, this would not absolve the prosecution of the onus of proving atleast the essential ingredient of the offence.

13. In the case at hand, PW No.2/ X who is the prosecutrix stated that while she was inside the class I room, he told her to go with him to Kg I room and held her hands. He took her to Kg I room. He locked the door. He removed her underwear. He removed his pant and she saw his male organ. He penetrated his male organ into her private part. She did not immediately tell her parents. Her mother used to wash her school uniform. Her mother asked why there was bloodstain on her school uniform and she told her 'min min ti a' meaning I have been ravished by someone. She told her mother that Pa Dina was the one. Her grandmother and Pi Vani asked her the name of the culprit and she told them it was Padina. In her cross examination she stated that she did not tell anything to her mother on the date of the incident. She also stated that the incident occurred during lunchtime.

14. According to the prosecutrix, when asked, she told her mother that Pa Dina (Accused) sexually assaulted her. She also stated that she told her grandmother and Pi.Vani that the culprit was Pa Dina. However, upon appreciation of the statement of PW No.4/Lalthianghlimi it is seen that on learning about the matter she went to the school of X. In her absence the school boys were paraded but X could not identify any of them. She further admitted in his cross examination she admitted that she stated before the Police “‘School naupang lian tawh in min pawngsual’ a ti a. Khawng I awm ka ti a, ‘kan class ah a hnu ah KG-I room min kai thla a ti a, ‘ka pawnfte, kekawr (legins) te a phelh a, a sazu a phawrh a, min pawngsual a, min ti a’ a ti a”. Similarly, PW No.1/Zothanmawii stated that her daughter PW No.4 told her about the incident after she approached the school authorities. The medical officer PW No.8/Dr.Ramdinthari stated that she was informed by X during examination that the culprit was a bigger student of the school. Similarly, DW No.2/Lalbiakkimi stated that after X was suspected of being raped and before the culprit was known, she spoke to X regarding who the culprit was and X replied her by saying ‘U Lian’ which she understood to be an older school student. Accordingly, it appears that the prosecutrix made a departure when she stated that she told the name of the culprit to her mother which is clearly contrary to the materials on record.

15. It is noticed from the prosecution evidence as well as from the defence witness that the prosecutrix named the culprit before her grandmother (PW No.1/Zothanmawii) and PW No.3/Vanlalthangi, who was the President of Joint MHIP Kawnpui. It is also not in dispute that the said PW No.3 offered Rs.500/- to X and gave the said money to her after the disclosure was made. From the statement of PW No. 1 & 3 themselves, it is clear that PW No.3 suggested different names of the male teachers working in the school of X including the father of X. According to PW No.3 when she asked X whether it was ‘Sir Pa Dina’(accused) the prosecutrix replied in the affirmative. PW No.3 further stated that she actually gave Rs.500/- to X as it was a promise. In this regard, it may be noticed that the name of accused figured for the first time when PW No.3 took the names of male teachers. The prosecutrix in her cross-examination stated that she knew the accused from school. Accordingly, the accused is not a stranger to her. It appears from the record and particularly from the evidence of PW No.4/Lalthianghlimi that sometime lapsed from the time she began to have suspicion to the time the disclosure was made to the PW No.1& 3. It is rather strange that the prosecutrix did not speak out the name of the culprit inspite of the fact that he is well known to her, instead, the record revealed that she said the culprit was an older student ‘U Lian’. This is created doubt in the credibility of the witness.

16. Further the prosecutrix stated in her cross-examination that the incident occurred during lunch time. It is an admitted fact that the accused was working in the school as a

cook. Midday meal was served to students and teachers. Even though the accused might have taken class prior to lunch time, he being a Cook would be busy serving lunch to students at lunch time. DW No.1 & 2 who were also working as a Cook with the accused stated that accused was serving lunch with them and after they finished their work they celebrated the birthday of DW No.1. The said statements of these two witnesses have not been discredited during cross-examination. There is no reason to doubt the veracity of these witnesses only because they stood as defence witnesses. In any view of the matter, considering the nature of employment of the accused in the said school, his main duty was to cook and serve food to students and teachers. Accordingly, during lunch time he is expected to perform his duty of serving lunch. Further there is no evidence to the effect that he was deployed for any other work by the authority during lunch hour on 31.5.2012. DW No.2 further stated that on 31.5.2012 she saw the prosecutrix while serving lunch. Accordingly, it means that she was around the place where lunch was being served. As such it is not known how X landed in the Class I during lunch time. DW No.2 further stated in her cross-examination that there were about 200 students in the school and 5 cook. Accordingly, during meal time, considering the ratio of students and cook, ordinarily, no cook can be excused from performing their duty. As such, it is very unlikely that the accused could have roamed about in the school during lunch/meal time.

17. PW No.8/Dr.Ramdinthari who examined X on 11/6/2012 stated that she found inflammation on the inner labia majora. In her cross-examination, the witness stated that the inflammation so found could have been caused within 48 hours of the examination. Accordingly, it means that the inflammation could have been caused on 9th or 10th June, 2012. The incident complained off occurred on 31.5.2012. As such, the inflammation found could not have been attributed to the incident. The medical evidence shows that the hymen of X was intact and no bruises or laceration was found. The medical officer further stated that from her examination, she did not find any traces of sexual intercourse. Absence of injuries may not in itself be proof of absence of sexual intercourse but in the instant case the prosecutrix is barely 8 years old. Considering the age of the prosecutrix, it is expected that if there was forced penetration, she would have suffered atleast minor bruises or laceration. Accordingly, the medical evidence does not support the statement of the prosecutrix that the accused penetrated his male organ into her private part.

18. The honb'le Apex Court in the case of Razik Ram versus Jaswant Singh (Supra) has held that *“Proof means the effect of the evidence adduced in the case. Judgment by the standard of proof of prudent man, in the might of the nature of onus cast by law, the probative effect of evidence in civil and criminal proceedings is markedly different. The same evidence which may be sufficient with regard to a fact as proved in civil suit may be*

considered insufficient for conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is a requisite for conviction”.

19. Keeping in mind the evidence and materials on record, the facts and circumstances of the case, the nature of offence involved and the onus of proof required for conviction, I am of the considered view that reasonable doubt exist and that it is a fit case for giving the benefit of doubt to the accused.

ORDER

20. Accused Laldinthara is acquitted of the offence punishable u/s 376(2)(f) IPC by giving him the benefit of doubt.

21. In terms of sec.437-A Cr.P.C the accused shall continue to be on bail for another period of 6 months on the same condition as before.

22. Give copy of the Judgment & Order free of cost to the accused.

23. Pronounced in open court and given under my hand and the seal of this court on this the 2nd day of April, 2014.

Sd/- HELEN DAWNGLIANI
Addl. District & Sessions Judge
Aizawl Judicial District : Aizawl

Memo No:/AD&SJ(A)/2014 : Dated Aizawl, the 2nd April, 2014
Copy to: -

1. Accused Laldinthara through Counsel Mr. W. Sam Joseph, Advocate.
2. PP/Addl. PP, Aizawl District, Aizawl.
3. District & Sessions Judge, Aizawl.
4. District Magistrate, Aizawl District, Aizawl.
5. DSP (Prosecution), District Court, Aizawl.
6. i/c G.R.Branch.
7. Registration Section.
8. Guard File.
9. Case Record.

P E S H K A R

APPENDIX

(A) **PROSECUTION EXHIBITS**

Ext. - P-1 FIR

 P-1 (a) Signature of PW.No- 1

Ext. - P-2 Seizure Memo

 P-2 (a) Signature of PW.No-5

 P-2(b)Signature of PW No-6

Ext. - P-3 Arrest Memo

 P-3 (a) Signature of PW.No-6

Ext. - P-3 Charge Sheet

 P-3 (a) Signature of PW.No-7

 P-3(b)Signature of PW No.-9

Ext. - P-4 Medical Examination Report of victim

 P-4 (a) Signature of PW.No-8

(B) **DEFENCE EXHIBITS- None**

(C) **EXHIBITS PRODUCED BY WITNESSES - None:**

(D) **COURT EXHIBITS- None**

(E) **PROSECUTION WITNESSES:**

PW.-1 – Zothanmawii

PW.-2 – Prosecutrix

PW.-3 – Vanlalthangi

PW.-4 – Lalthianghlimi

PW.-5 – Lalngilneii

PW.-6 – ASI Zorammawii

PW.-7 – Ramtharngbaka

PW.-8 – Dr. Ramdinthari

PW.-9 – B. Lalbiakmawia

(F) **DEFENCE WITNESSES - :**

DW 1 – Lalrinzuali

DW 2 – Lalbiakkimi

(G) **COURT WITNESSES- : None**