

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

**PRESENT**

Smt. Helen Dawngliani  
Addl. District & Sessions Judge

SR No.190/2011  
In Crl.Tr. No.2081/2011  
u/s 376(1)/457 IPC

Ref :- Mamit PS Case No. 26 of 2011 dt.14.10.2011 u/s 376(1)/457 IPC

State of Mizoram

Versus

Lalliantluanga	.....	Accused
Date of hearing	.....	4.4.2014 & 16.4.2014
Date of Judgment	.....	30.4.2014

**APPEARANCE**

For the Prosecution	.....	Mrs. Rose Mary, Addl. PP
For the Accused	.....	Mr. Lalramhluna, Advocate

**JUDGMENT & ORDER**

1. The prosecution story of the case in brief is that on 14.9.2011, VL Hriatpuia of Zion Veng, Mamit lodged a written FIR at Mamit Police Station to the effect that on the morning of 14.9.2011 @ 2:00pm he saw that his mother who was sleeping near his bed was trying to get up and that she was naked. He also saw a knife on the wooden trunk near the bed of his mother and the knife did not belong to them. He noticed that the aluminum door of their bathroom was cut open. His mother X is deaf, dumb and lame and he suspected that she was sexually assaulted and his mother identified that their neighbour Lalliantluanga S/o Biakenga was the culprit. The informant also stated that he ascertained through his aunts that the knfe belonged to the accused.

On the basis of the said information, Mamit P.S Case No.26/2011 dt.14.9.2011 u/s 376(1)/457 IPC was registered and investigated into. Upon completion of investigation, having found prima facie case against the accused Lalliantluanga for the offence punishable u/s 376(1)/457 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. Lalramhluna, Advocate was assigned to defend the accused at the State expense u/s 304 Cr.P.C.

4. Charges u/s 376(1)/457 IPC were framed against the accused. The charges were read over and explained to the accused in the Mizo language which is known to him to which he pleaded guilty to the charge u/s 457 IPC and not guilty for the charge u/s 376(1) IPC and claims for trial.

Instead of convicting the accused Lalliantluanga on his plea of guilt for the offence u/s 457 IPC, the matter is proceeded for trial

5. POINT(S) FOR CONSIDERATION:-

(i) Whether the accused had sexual intercourse with X amounting rape as defined u/s 375 IPC and the accused thereby guilty of the offence punishable u/s 376(1) IPC?

(ii) Whether the accused committed house trespass with the intention of committing offence and thereby guilty of the offence punishable u/s 457 IPC?

6. The prosecution examined 7 witnesses. One witness is examined as Court witness. Accused was examined u/s 313 Cr.P.C No defence evidence is adduced. The Ld. Counsels are heard.

Mrs. Rose Mary, the Ld. Addl. PP submitted that since the accused admitted and pleaded guilty to the charge u/s 457 IPC she would not advance argument on the said offence. With regard to the offence of sexual assault, the Ld. Counsel argued that the prosecutrix is deaf, dumb, limping and has severe mental retardation. When she appeared in the Court, from the manner she conducted herself, it can very well be ascertained that she was not in a position to exercise her mental faculty in order to consent or not consent. According to the Ld. Counsel, the informant who is the son of X and who was sleeping near the bed of X saw X naked and this would clearly prove that the prosecutrix was subjected to sexual intercourse.

On the other hand, Mr. Lalramhluna, Ld. State Defence Counsel argued that PW No.1/VL Hriatpuia who is the son of X and who was sleeping near the bed of X stated in his cross examination stated that he did not hear any shout before he got up at 2:00am. Turning to the medical evidence the Ld. Counsel submitted that the medical officer in her cross examination stated that she did not conduct any examination for the mental status of the victim and that she recorded her finding on the physical and mental status of the prosecutrix on the basis of her observation during examination. It is further submitted by the Ld. Counsel that in the charge sheet there is no mention about the accused and X having sexual intercourse. Referring to the cross examination of the Investigating Officer, the Ld. Counsel submitted that the Investigating officer admitted the suggestion

that he has not made any statement about the prosecutrix and the accused having sexual intercourse. The Ld. Counsel submitted that the accused may be convicted for the offence of trespass but there is no evidence of sexual assault for conviction u/s 376(1) IPC.

7. DISCUSSION, DECISION AND REASONS THEREOF

The evidence adduced by the prosecution may be briefly highlighted:-

PW No.1/VL Hriaptuia is the informant and son of X. He stated that on the night of 13.9.2011 @ 7:00pm while he was in the house of his uncle below the one occupied by his family, the accused came and borrowed a DVD player. He stated that he went home at around 9:00pm and slept as soon as he went home. He did not close the curtain, as he wanted to get up early. When he got up, the first thing he did was to look at his mother. He lifted her quilt and found that she was naked. There was no electricity at that time, but he found that his neighbours were having power supply. So he went to his uncle downstairs for help and repaired the cut out. As soon as they had power supply he made his mother wear her clothes and made her sleep. He found a kitchen knife near the bed of his mother and when he checked his house he found that the door of the bathroom was cut/torn and the kitchen window was also opened. When he looked towards the house of the accused he saw the accused walking up and down inside his house. On the next day his two aunts namely Lalchhanchhuahi & Puii went to the house of the accused with the knife found near the bed of his mother and they stated that the knife belonged to them. Thereafter, they lodged the FIR. He further stated that his mother is deaf, dumb and limping and that they have been suspecting the accused for a long time as their power cut out have been removed earlier 3/4 times. When he asked his mother who was the person she pointed at the accused. In his cross examination, he admitted that he does not have any document to show/prove that his mother is mentally challenged, he admitted that he was present in his house on the night of the incident and that he did not hear any shout before he got up at 2:00am. He further stated that he did not see any injury on the body of his mother though she complained of pain on her arm. He admitted that the clothes worn by her mother were not torn. He admitted that the kitchen knife was used to cut open the bathroom door. He admitted that he did not see the accused in and around their house. He admitted that prior to the present incident they have been suspecting the accused of having sexual connection with his mother. He admitted that he did not see the accused entering his house on that night.

PW No.2/Dr.Hrangkapzawna examined the accused in District Hospital Mamit on 15.9.2011. On examination, he did not find any abrasion or laceration on his body including his genitalia, no trace of seminal stain was found. He exhibited the Medical Examination report of the accused as Ext.P-2 and his signature as Ext.P-2(a). In his cross-examination, he stated that from his findings no definite conclusion can be drawn

whether the accused can perform sexual intercourse or not and to his knowledge the requisition does not include determining the potency of the accused.

PW No.3/Dr.Lalhmumawii examined X in District Hospital Mamit on 15.9.2011. During examination, she found that X was deaf, dumb and limping. She did not respond to questions put to her and kept on smiling. On examination, she did not find any trace of recent sexual intercourse because X had already conceived and by the time she was taken for medical examination two days had lapsed. She exhibited the Medical examination Report of X as Ext.P-3 and her signature as Ext.P-3(a). In her cross-examination, she stated that the requisition did not include determining the mental status of X and so she did not conduct test for the same. She stated that the findings recorded by her on the physical and mental health of the prosecutrix was based on the appearance of the prosecutrix and observation made by her during examination.

PW No.4/F.Lalchhanchhuahi identified the accused as her neighbour. She stated that at around 2:30am she was woken up by Lalhriatpuia, son of X informing her that he found a knife near his mother's bed and that he found his mother naked and he clothe her. So she went to their house. The prosecutrix is deaf, dumb and lame. On the morning they went to the house of the accused with the knife and the mother of the accused said it was their knife and the accused also said he was looking for the said knife. But the accused kept silent when asked what had happened. The mother also said that she does not want to pay attention to the deeds of her son who was having a bad character. They were not happy with the manner the mother of X handled the matter as they expected that she will ask for pardon so they decided to lodge the FIR. She also stated that she saw the bathroom door cut open and the bolt was also damaged. She did not communicate with the prosecutrix. In her cross-examination she admitted that they would not have approached the Police had the family of accused asked for pardon since they are neighbours, X is her elder sister. She stated that though X is deaf and dumb she does not have mental incapacity. X has two children from two different men. On the night of the incident the accused gave liquor to X in his house. Her knowledge regarding this case is derived from Lalhriatpuia and that Lalhriatpuia only suspected the accused of having sexual intercourse with his mother. Lalhriatpuia did not see the accused with his mother in their house on that night.

PW No.5/JH Lalthianghlina is a seizure witness. He stated that while he was in the house of X, the Police seized kitchen knife. When he saw the kitchen knife it was in the hands of the Police. He exhibited the seizure memo as Ext.P-2 and his signature as Ext.P-2(a). In his cross-examination he admitted that the seized kitchen knife belonged to X, no seizure was made from the accused by the Police in his presence and he did not see the seized knife in the Court.

PW No.6/F.Lalthanpuii is the elder sister of X. She stated that on the morning Lalchhanhuahi informed her that on the previous night the accused cut open the bathroom door of X and sexually assaulted her said sister who is deaf and dumb. So she went to the house of X and Lalchhanchhuahi showed her the knife which she was holding. In her cross-examination, she denied the suggestion that the kitchen knife belonged to the family of X, she does not know who brought the said knife inside the house of X. She stated that X has two children from two different men.

PW No.7/SI Thangrilia is the Investigating Officer. On 14.9.2011, FIR was lodged by VL Hriatpuia of Zion Veng Mamit to the effect that one unknown miscreant entered their house by cutting open the bathroom door and he found his mother naked and suspected that she was raped. Mamit PS Case No.26/11 dt.14.9.2011 u/s 457/376(1) IPC was registered. The case was endorsed to him by the O/c for investigation. During investigation, he visited the place of occurrence which is the house of the informant and found that the bathroom door made of tinned GI sheet was cut open. In the bedroom he found a kitchen knife near the bed of X and seized the same and the house owner told him that the knife does not belong to them. The victim was deaf and dumb and her sign language was interpreted by her son at the time of recording her statement which was done in their house itself. As the name of the culprit was not mentioned in the FIR, he took the knife to the house of Pu.Biakenga, father of accused, who was a close neighbour of X. The owner of the house, his wife and their daughter were present and they said that the knife belonged to them. At that time the accused was not present in his house and he suspected that he was the culprit. The accused was arrested on 14.9.2011 @ 8:30pm from Zion Veng, Mamit. During interrogation, the accused admitted his guilt. He also stated that during investigation he could make out that the accused was mentally below average apart from being deaf and dumb. He also recorded the statements of the informant and seizure witnesses. Having found prima facie case he laid charge sheet and exhibited the same as Ext.P-4 and his signature as Ext.P-4(a). In his cross-examination, he stated that he did not take steps towards ascertaining the mental disability of the victim. He does not know the paternity of the children of X and did not investigate on that line. He admitted that in his examination-in-Chief he did not make any statement regarding the accused having sexual intercourse with the victim. He also stated that he did not find out during investigation whether the prosecutrix was habituated to sex, however, he denied the suggestion that there is no prima facie case u/s 376(1) IPC and that the sexual intercourse was consensual. He also denied that as the knife is supple and can bent easily it would not be possible to cut the GI sheet door.

8. As the victim was unable to give rational reply, she was referred to the Medical Examination Board to ascertain her mental status. The Medical Examination Board

submitted its report. One of the medical officers who was part of the Board was examined as Court witness. The statement of the said medical officer may be briefly highlighted:-

CW No.1/Dr.Rosangluaia is Physician and specialized in general Medicine. He stated that he is part of the Board of Medical Examination under the Government of Mizoram at Civil Hospital for Aizawl District. The victim X was examined by the said Board on 10.4.2013 and found that she has severe mental retardation and deaf mutism. Explaining Severe Mental Retardation the witness deposed that it is retardation of memory, understanding and communication. Deaf Mutism is a case of being deaf. All of them have sever loss of hearing and many of them are also dumb. It appears that due to severe mental retardation coupled with deaf mutism, the patient (prosecutrix) will have problem in exercising her reasoning. The witness also deposed that there was problem during examination because of the mental retardation, deaf mutism and she being dumb. Due to the said problem, it was not possible to communicate with her, as such, he cannot form a definite opinion that she was completely incapable of exercising her reasoning though he is of the opinion that in her condition there would be problem in exercising her reasoning. After the victim was brought to the Medical Board, as a matter of practice, in order to come to a correct finding, she was examined by a Psychiatrist and ENT Specialist. The findings of the said Specialist were placed before the Board alongwith the patient. Thereafter, the Board re-examined the Victim and then arrived at a finding and issued a certificate which he exhibited as Ext.C-1 and his signature thereon as Ext.C-1(a). On being cross examined by the Ld. State Defence Counsel, the witness stated that the report of Psychiatrist and ENT Specialist are kept on record of the Board but not enclosed to the Report. He stated that the Board did not examine the victim so as to find out whether her mental retardation and deaf mutism affects her sexual desire. Medically he cannot give opinion whether the prosecutrix in her condition would be able to foresee the consequences of sexual intercourse. He further stated that the severe mental retardation and deaf mutism would not incapacitate the victim from performing sexual intercourse.

9. The accused in his examination u/s 313 Cr.P.C stated that at around 9:00pm on the said night, he and X consumed liquor in his house. When she returned home she could not enter her house, he took a knife from his house and both of them broke open the bathroom door and entered her house. The prosecutrix was getting ready to sleep and removed her clothes, she invited him to sleep with her but he declined and left the house from the main door. He stated that the prosecutrix took the knife from him as he declined to sleep with her. The accused denied to have indulged in sexual intercourse with the prosecutrix at any point of time.

10. In the case at hand, according to the medical evidence, X, who is the prosecutrix is suffering from severe mental retardation and deaf mutism. According to the CW No.1/Dr.Rosangluaia, due to severe mental retardation and deaf mutism the prosecutrix will have problem in exercising her reasoning. The medical officer however could not give any opinion as to whether the prosecutrix would be able to foresee the consequences of sexual intercourse due to her mental retardation and deaf mutism.

11. Unlike many other cases of sexual offence, in the instant case, the prosecutrix was found incompetent to testify due to her said mental retardation.

12. The ingredient of the offence of rape is penetration of the male organ into the vulva of the woman. The provision of section 375 IPC makes it clear that the depth of such penetration is not material.

13. In the case at hand, suspicion arose because the prosecutrix was found sleeping naked. The medical evidence does not provide any clue as regard recent sexual activity of the prosecutrix. The accused admitted that he entered the house of X but denied having sexual intercourse with her.

14. The burden of proving the essential ingredient of the offence is on the prosecution. Accordingly, even in the instant case the burden is on the prosecution to prove by cogent and reliable evidence that there was sexual intercourse. Once the same is proved, the burden once again lie on the prosecution that the said sexual intercourse was committed under circumstances provided u/s 375 IPC

15. The incident complained off occurred on the early hour of 14.9.2011 and medical examination was conducted on 15.9.2011. Due to lapse of time and the fact that the prosecutrix has conceived twice, not much can be expected from medical examination. However, it may be worth noting that no injury or mark of violence were found on the body of X including her genitalia.

16. In the absence of any evidence of sexual intercourse or materials suggesting commission of the said act, it would be too far fetched to find the accused guilty of sexual assault only because he entered the house and X was found naked. It may be mentioned at this stage that PW No.4/F.Lalchhanchhuahi who is the younger sister of the prosecutrix stated in her cross-examination *“Though the prosecutrix is deaf and dumb she does not have any mental incapacity”*. The deponent being the sister of the prosecutrix is expected to have enough knowledge on the condition of her sister. Even if sexual intercourse is presumed, in order to commit the offence of rape, keeping in mind the mental condition of the prosecutrix as perceived by her family, she cannot be said to be incapable of giving

consent though the Doctor stated that she will have problem exercising her reasoning. As such I am of the considered view that the prosecution is not absolved from proving the ingredients of sexual assault.

17. Coming to the offence punishable u/s 457 IPC, the accused at the time of framing charge pleaded guilty. However, he pleaded not guilty to the offence punishable u/s 376(1) IPC. In order to find a person guilty for the offence of lurking house trespass or housebreaking by night it has to be proved that the criminal trespass was with the intention of committing an offence.

18. Apart from pleading guilty, the accused further stated in his examination u/s 313 Cr.P.C that he entered into the house of the prosecutrix by cutting open the bathroom door. Intention is a state of mind and it has to be inferred from the facts and circumstances of the case, of words spoken and acts committed. In the case at hand, apart from allegation of sexual assault, no offence is complained against the accused when he broke into the house of the prosecutrix. No harm was caused to the occupants, the property is reported missing or damaged except the bathroom door which the accused stated that he cut open. In order to find a person guilty of the offence punishable u/s 457 IPC the trespass must be with the intention to commit offence punishable with imprisonment. Though the accused entered into the house of X, there is no evidence or materials to draw inference of his intention to commit an offence punishable with imprisonment.

### **ORDER**

19. Accused Lalliantluanga is acquitted of the offence punishable u/s 376(1) IPC by giving him the benefit of doubt.

20. On his own plea, the accused is found guilty of the offence punishable u/s 448 IPC though charge was framed u/s 457 IPC the same can be done in view of section 222(2) Cr.P.C.

21. Heard the accused, Ld. Defence Counsel and Addl.PP on the question of Sentence.

The accused prayed for leniency by submitting that he has no previous case and that he has recently lost his father and shoulder the responsibility of looking after his aged mother.

Ld. State Defence Counsel adopted the submission of the accused and further submitted that the sentence may be reduced to the period of detention already undergone by the accused during investigation and trial.

On the other hand, Mrs. Rose Mary, the Ld. Addl. PP submitted that there is no ground to show leniency to the accused and showing misplaced sympathy would have an



adverse effect on the society as a whole. The Ld. Counsel therefore prays to award maximum sentence with fine.

22. Heard the parties. Perused the record. The record revealed that the accused was born on 28.7.1981 and it also shows that he has no criminal antecedents. It is noticed that while on bail, the accused had not violated the terms and conditions of bail. It is also noticed from the evidence and materials that the accused did not cause harm to the occupants of the house and no property is reported missing even though the bathroom door was cut open. The record shows that the accused was remanded to judicial custody on 17.9.2011 and released on bail on 29.5.2012 i.e about 8 months and 11 days.

23. Considering the age, character and antecedents of the accused and the period of detention already undergone by him during investigation and trial, I am of the view that it is a fit case where leniency should be shown.

24. Accordingly, the sentence is reduced to the period of detention already undergone by the accused during investigation and trial i.e 8 months and 11 days.

25. Bail bond stands cancelled and surety is discharged from the bond.

26. Seized material under CMR No.322/2011 containing one kitchen knife shall be destroyed.

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

28. Pronounced in open court and given under my hand and the seal of this Court on this the 30<sup>th</sup> day of April, 2014.

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

**Memo No.:...../AD&SJ(A)/2014 : Dated Aizawl, the 30<sup>th</sup> April, 2014**

**Copy to: -**

1. Accused Lalliantluanga through Counsel Mr. Lalramhluna, 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.
10. Calendar Judgment.

**P E S H K A R**

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**APPENDIX**

(A) **PROSECUTION EXHIBITS**

Ext. - P-1    FIR

    P-1 (a) Signature of PW.No- 1

Ext. - P-2    Medical Examination Report of accused

    P-2 (a) Signature of PW.No-2

Ext. - P-3    Medical Examination Report of victim

    P-3 (a) Signature of PW.No-3

Ext. - P-2    Seizure Memo

    P-2 (a) Signature of PW.No-5

    P-2 (b) Signature of PW No.-7

Ext. - P-4    Charge Sheet

    P-4 (a) Signature of PW.No-7

Ext. - M-1    Seized Article containing kitchen knife

(B) **DEFENCE EXHIBITS- None**

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

(D) **COURT EXHIBITS- None**

Ext. - C-1    Examination Report of victim

    C-1(a) Signature of CW No.-1

(E) **PROSECUTION WITNESSES:**

PW.-1 – V.L. Hriatpuia

PW.-2 – Dr. C. Hrangkapzawna

PW.-3 – Dr. Lalhmunmawii

PW.-4 – F. Lalchhanchhuahi

PW.-5 – J.H. Lalthianghlina

PW.-6 – F. Lalthanpuui

PW.-7 – SI Thangrilia

PW.-8 – Prosecutrix

(F) **DEFENCE WITNESSES - : None**

(G) **COURT WITNESSES- :**

CW 1 – Dr. Rosangluaia