

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

PRESENT

Smt.Helen Dawngliani
Addl. District & Sessions Judge-III

**SR No.240/2012
In Crl.Tr. No.1429/2012
U/s 376(1) IPC**

Ref :- Bawngkawn P.S Case No.161/12 dt.15.6.2012 u/s 376(1) IPC

State of Mizoram

Versus

Lianchungnunga	Accused
Date of hearing	21.01.2014
Date of Judgment	04.02.2014

A P P E A R A N C E

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

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

1. The prosecution story of the case in brief is that on 15.6.2012 one Vanlalhuma R/o Thingsulthliah lodged a written FIR at Bawngkawn Police Station to the effect that on 14.6.2012 @ 3:00pm, his mother “X” was sexually assaulted by Lianchungnunga in their house. The informant also stated that his mother was staying at home while he and other family members were working in the jhum field and spending nights there. He also stated that his brother Biakkima was staying with/looking after his mother and while his brother briefly went out Lianchungnunga took the chance and raped his mother. He also stated that two girls saw Lianchungnunga on top (a bawh lai an hmu) and that his mother ‘X’ is 85 years old and having great difficulty in moving by herself.

On the basis of the said information, Bawngkawn P.S Case No.161/2012 dt. 15.6.2012 u/s 376(1) IPC was registered and investigated into. Upon completion of investigation, having found prima facie case against the accused Lianchungnunga for the offence punishable u/s 376(1) 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 .R. Thangkanglova, Advocate was assigned to defend the accused at the State expense u/s 304 Cr.P.C.

4. Charges u/s 323/376(1) 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. POINT(S) FOR CONSIDERATION:-

i) Whether the accused voluntarily caused hurt to X as per sec.321 IPC and the accused thereby guilty of the offence punishable u/s 323 IPC?

ii) 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(1) IPC ?

6. The prosecution examined 7 witnesses. Accused was examined u/s 313 Cr.P.C one witness for the defence was also examined. The Ld. Counsels are heard.

Mrs. Rose Mary, the Ld. Addl. PP submitted that the prosecution has been able to prove by cogent and reliable evidence that the accused committed rape upon X. The Ld.Counsel argued that the prosecutrix who is above 85 years came to the court and identified the accused and clearly stated how the accused violated her person. According to the Ld. Counsel, the prosecutrix due to old age was hardly able to move by herself and in her condition a mere look of her would show that that she would be easily overpowered by the accused. According to the Ld. Addl. PP, X had attained menopause and has delivered 7 children. As such not much assistance can be forthcoming from the genital examination of X. Soft tissue injury of low back was found though lumber spine with osteoporosis and secondary end plate depression of D12 and L1 vertebrae are degenerative. The Ld. Counsel argued that to violate a person of such woman, who due to old age and frailty was unable to even freely move around by herself is not only inhuman but is taking advantage of her helplessness. The Ld. Addl. PP submitted that there is no reason to doubt the testimony of X and that it is within the knowledge of any normal human being what it would be to be a victim of sexual assault at such an age. The ld. Counsel argued that the evidence led by the defence is unreliable and there is no whisper about his presence with the accused and that non of the prosecution witnesses were examined regarding the presence of the said witness, it therefore appears that the story has been cooked up. The Ld. Counsel therefore prays to convict the accused for the offence punishable u/s 376(1) IPC.

On the other hand, Mr. R. Thangkanglova, Ld. State Defence Counsel submitted that the allegation made against the accused is totally false. The Ld. Counsel argued that on that day the accused went inside the house of X to drink water and to pass urine. As he came out of the toilet, the hook of his pant suddenly opened and fell upto his knee. He then pulled up his pant and went out. The Ld. Counsel argued that the two girls might have seen the accused pulling up his pant and presume that she was sexually assaulted. According to the Ld. Counsel, the accused has been falsely implicated and the lone defence witness is reliable and he has clearly explained that in the manner in which the accused spent his time in and around the house of X there was no time to commit such an offence. Accordingly, the Ld.Counsel prays to acquit the accused.

7. DISCUSSION, DECISION AND REASONS THEREOF:-

PW No.1/Vanlalhuma is the informant and son of X. He stated that his mother is 85 years. His mother lives with my family. At the time of the incident he was away in my jhum field with his wife and spend nights in the jhum field. At that time, his mother and his two children remained in the house. On the day of the incident, his two children had gone to school. His son and daughter came to the jhum field to pass inform him about the incident. By that time, it was already dark so they home early in the next morning. During those days, one of their relatives Biakkima was living with them. When he spoke to X she said while she was sitting on the long chair the accused entered the house and pushed her down on the chair and had sexual intercourse with her and that since she was already weak due to old age and having vocal problem she could not resist and struggle against him. She also told him that she felt bad about the incident and immediately washed herself. Though she did not sustain visible physical injuries but she complaint of aching on her body. Not knowing what to do he approached the MHIP and with their help he submitted the FIR. He exhibited the FIR as Ext.P-1 and his signature as Ext.P-1(a). In his cross-examination, he stated that the contents of the FIR was not read out to him. His mother is very old and she has weak eyesight and says that her vision is blur.

PW No.2/Lalbiakkima stated that the prosecutrix X is his maternal Aunt. She was living with the family of her son Vanlalhuma. At the time of the incident all her family members had gone to the jhum and they had spending the night at jhum so he stayed in her house to look after her domestic animals along with X and her grandchildren Lalthlamuanpuui and Lalruata. At the time of the incident the two grandchildren had gone to school and he had also gone out to the market living behind X alone in the house. In his cross-examination, he stated that when he was about to

leave for the market the accused was in the house of the prosecutrix and he gave him money to buy liquor. He spent about 1(one) hour in the market and on his back towards the house of the prosecutrix, at quiet a distance from her house, at Fehkawng peng he met the accused and gave him the liquor which he bought for him. Thereafter both went their separate ways. He denied the suggestion that the accused was not in the house of the prosecutrix at the time when he was about to leave for the market.

PW No.3/ Lalthlamuanpuui is the daughter of PW no.1/ Vanlalthuma. She stated that she lives with her parents, her elder brother and X who is her grandmother. She and her elder brother are school students. Her parents are cultivators. The incident occurred during the time when her parents were in the jhum field and spending the nights in the jhum. Her school gets over at 3:00 PM. On the date of the incident when she returned home from school she did not enter her house from the main door, instead she went through the bathroom door which was located on the side of the house. While they were in school her grandmother remained at home. When she entered her house through the bathroom she changed her school uniform and started playing games on a mobile phone belonging to her mother which she has kept in the house without carrying it to her work place. She changed her uniform and played games on the mobile phone inside the bedroom of her parents. While playing games, she heard my grandmother saying 'Ana ana' meaning it is painful. When she heard her for the first time she did not pay much attention since she did not have any suspicion as she was not aware that the accused was inside the house. Thereafter, Bawih bawih called her and as she was about to go out once again she heard her grandmother saying 'Ana ana'. At that time she went out of the bedroom and saw her grandmother lying down on a long chair with her skirt lifted up, at the same time she also saw the accused putting on his pants. She also saw his underwear and faintly saw his male organ. The main door of the house was opened and Bawih bawih also saw her grandmother and the accused. The accused hurriedly left the house. She and Bawih bawih made her grandmother sit and informed Pa B.Ka who was living with them during the relevant time but at that time he had gone to the market. Pa B.Ka oft and on lived with her family. She and her elder brother went to the jhum field to inform her parents. In her cross-examination she denied the suggestion that she did not faintly see the male organ of the accused. She stated that she cannot describe the belt of the accused and does not know whether it was a leather belt or an ordinary cotton rope for which we can tie a knot. She denied the suggestion that the pant of the accused slipped as his belt opened accidentally. When she saw her grandmother she was still lying on the long chair. She denied the suggestion that his grandmother never shouted and said 'Ana ana'.

PW No.4/ Dr. Ngurnunzami Sailo examined X at Civil Hospital Aizawl on 15.6.2012 @ 5:00pm on requisition made by the Police. Upon examination, the victim was found physically and mentally normal, she was not under the influence of alcohol or drugs at the time of examination though I did not find marks of violence on her body. The victim was complaining of pain over her back. On genital examination it was found that her vaginal area was atrophied (dryness) due to old age because of which no smear could be taken from her vagina. I did not find any injuries on her external genitalia no fresh tear of the hymen. Since the victim was 85 years at the time of examination I.Q assessment was done and found that she was oriented to time, place and person and she was found physically and mentally stable and healthy for her age. Vaginal smear could not be taken due to atrophied. She exhibited the medical examination report of the victim as Ext.P-2 and her signature as Ext.P-2(a). In her cross examination she stated that there was no laceration or bleeding at the time of examination. She denied the suggestion that since there was no laceration or bleeding it would imply that there was no sexual intercourse.

PW No.5/Dr.Lalringmaia examined X on 16.6.2012 @ 11:50 AM on requisition made by the Police with regard to the injuries sustained by X. X-Ray was taken for lumbo-sacral spine. Upon examination, he did not find any evidence of fracture. There was soft tissue injury of low back and the others were mentioned as degenerative process due to old age and not due to injury. In his opinion the injury sustained by her are simple in nature. He exhibited the Injury report of X as Ext.P-3 and his signature as Ext.P-3(a).

On 15.6.12 on the basis of requisition made by the police he examined the accused to see whether he consumed alcohol and whether he was fit to be detained in custody. Upon examination, he found the accused medically fit to be detained in custody and that at the time of examination he consumed alcohol. EXT.P-4 & 5 are the examination reports in respect fo the accused and Ext.P-4(a) and Ext.P-5(a) are his signatures.

PW No.6/X is the prosecutrix. She identified the accused and stated that the accused came inside her house and pushed her down on the long chair and had sexual intercourse with her(a lo lut thut a min nam thlu a thuthleng sei ah min bei zui). She washed herself as she felt something sticky. She stated that her whole body was aching and the pain on her back still subsists. She also stated that none of the other family members were at home when the accused entered her house. She did not make noise or shout for help because she was shocked (ka a vek, ka mawl e alawm). She also stated that Lalthlamuani was the first person to know about the incident. She

came to know that even at the time of the incident lalthlamuanpuui was sitting quietly in the bedroom. When the accused violated her person she said “ana, ana” (it is painful). In her cross examination she stated that she has seven children. She denied the suggestion that she was not sexually assaulted by the accused.

PW No.7/SI.Lalhmachhuani Sailo is the Investigating Officer. She stated that on 15.6.12, a written FIR was submitted by Vanlalhuma of Thingsulthliah stating that his mother X, 85 years was sexually assaulted by Lianchungnunga on 14.6.12 @ 3 PM during their absence. Hence a case was registered at Bawngkawn PS vide Case No. 161/12 dt.15.6.12 u/s 376(1) IPC by the OC, Bawngkawn PS which was endorsed to her for investigation. During investigation, the victim was medically examined which shows that she had pain on her back caused by the accused while pushing her forcefully on the bench. Statement of the complainant and victim were recorded. The complainant came to learn about the fact from his children on 14.6.12. The statements of the accused and the prosecutrix were recorded. The accused was medically examined which reveals that he consumed alcohol for which section 8(3) MLTP Act was added. Statement of witnesses namely Biakkima, Lalthlamuanpuui and Malsawmtluangi were recorded. Having found prima facie case she laid the Charge Sheet against Lianchungnunga S/o Chawngpianga of Thingsulthliah for the offence punishable u/s 376(1) IPC. She exhibited the charge sheet as Ext.P-6 and her signature as Ext.P-6(a).

8. Examination of the accused u/s 313 Cr.P.C is one of denial. He stated that on that day, Lalbiakkima who was inside the house of the prosecutrix asked him to treat him to liquor. So he gave money to Lalbiakkima to buy liquor from a close neighbour. At that time he remained outside and passed urine. He also saw Lalthlamuanpuui and Tluangi at the door, he asked them if he could drink water from their house. One of the two girls who is the daughter of Lalhuma a drunkard like them are in the habit of asking for water whenever they want. But he brushed aside her remark and entered the house. The prosecutrix was lying down on the long chair. He further stated that as he was about to go out of the house the hook of his pant suddenly opened and his pant fell down to his knee. He pulled up his pant and hooked it properly and went out. The moment he reached outside the house Lalbiakkima also returned. He gave Lalbiakkima his share and he went home. He also stated that he does not know of any strained relationship between his family and that of X.

9. At this stage the evidence of the lone defence witness may be briefly highlighted:-

DW No.1/Rozuala stated that on 14.6.2012 he went to visit his maternal uncle and on his way back in the afternoon he met the accused on the road near Thlanmual (cemetery) at around 2:00 to 2:30pm. When they reached a place which was about 3 houses from the cemetery there was one man who is a friend of the accused. The said man asked the accused to buy him a liquor and initially both of them were joking but the accused gave him Rs.100/- which during the relevant time was the cost of one packet of local made liquor. He and the accused waited for that man. In the meantime, the accused wanted to pass urine and went inside the house to pass urine and to drink water. There were two girls of about 13/14 years inside the house. At that time he was using the phone outside the house and the accused came out after about a minute or so. After a short while the man whose name is Biakkima also returned. The man returned the remaining money to the accused and he and the accused left the place. As he and the accused were not living in the same locality, they parted ways. He did not see the accused thereafter on that day. In his cross examination he denied the suggestion that it is only his presumption when he stated that he met the accused @ 2:00 to 2:30pm on that day and voluntarily explained that while walking he was on the internet in his mobile phone. He stated that they waited for Lalbiakkima for about 2 minutes since the house of the liquor seller was nearby. He walked with the accused from the house of Lalbiakkima for about 20 minutes before they parted ways. He came to know that one old woman was also living in the said house but she was not visible from outside.

10. In the instant case, the accused is facing trial for the offence punishable u/s 323/376(1) IPC.

11. We shall first deal with the offence punishable u/s 323 IPC. In order to constitute an offence punishable u/s 323 IPC, it must be proved that the accused committed an act with the intention of causing hurt to X or that he acted with the knowledge that he is likely to cause hurt to X and actually causes hurt. Hurt as per the definition in section 319 IPC is *“Whoever causes bodily pain, diseases or infirmity to any person is said to cause hurt”*.

12. In the case at hand, we are dealing with a victim who is 85 years old. It is normally expected that at such an age she would be suffering from certain old age diseases. X appeared as a witness (PW No.6) and stated that the accused came inside the house, pushed her down and had sexual intercourse with her on the long chair. She further stated that her whole body was aching and the pain on her back was still there. PW No.5/Dr.Lalringmaia, who medically examined X stated that X

suffered soft tissue injury of low back and that the others were symptoms of old age. According to the said medical officer, the injuries sustained were of simple nature.

Considering the age of the prosecutrix, she cannot be expected to have the vigour and strength of a human being in their prime age. Further it may also be borne in mind that the prosecutrix is illiterate with a rural background. The prosecutrix is illiterate and from a rural background. Keeping in mind her age and her background, it is within the knowledge of any normal human being that even a slight use of criminal force upon her could hurt her. Further from the materials on record there is no material from which inference can be drawn that she provoked the accused. According to the definition of *Hurt* u/s 319 IPC, a person is said to cause hurt if he causes bodily pain. PW No5/ Dr.Lalringmaia who examined X for the injury stated that the prosecutrix suffered injury of soft tissue of the low back. He also stated injury were of simple. According to the said medical officer the other ailments were degenerative. PW No.4/Dr.Ngurnunzami sailo stated that even though she did not find injuries/ marks of violence on the body of X, X stated to her that she was complaining of back pain. PW No.6/X appeared before the Court on 3.6.2013 and stated that even to that date the pain on her back still subsist.

Accordingly, even though the injury may be simple and though it may not cause prolonged pain to a youth but in case of X who is in her mid 80's, it is seen that the incident caused prolonged pain on her back. Since there is no evidence of the accused being provoked by X, I am of the view that the conduct of the accused upon the body of X squarely falls within the definition of *Hurt* u/s 321 IPC.

13. Coming to the offence punishable u/s 376(1) IPC, it is 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. In this regard the honb'le Apex Court in the case of **State of U.P. Vs. Pappu @Yunus & Anr. AIR 2005 SC 1248**, has held that it is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her

testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.

14. The prosecutrix appeared as PW No.6. She stated that the accused came to her house and pushed her down on the long chair and had sexual intercourse with her (a lo lu thut a min nam thlu a thuthleng sei ah min bei zui). She also stated that she washed herself as she felt something sticky. She further stated that there were no other family members in her house at that time and that she did not make any noise or shout for help as she was shocked (ka a vek, ka mawl em alawm). She stated that when the accused violated her person, she said “ana, ana” it is painful. Her said statement have not been shaken during cross examination. It is also seen from the cross examination that X has seven children.

15. The delay of one day/night in lodging the FIR have not been questioned by the defence. However, as delay has the effect of putting the courts on guard to seek for an explanation and to see if the explanation is reasonable, the record is examined for the said purpose. From the materials on record, it is seen that the incident complained off occurred on the afternoon of 14.6.2012. PW No.1/Vanlalthuma stated that his son and daughter came to the jhum field and informed him about the incident. He also stated that by the time his children reached the jhum field, it was already dark. So, they spent the night in the jhum hut and went home early next morning. PW No.3/Lalthlamuanpuii also stated that she and her brother went to the jhum field to inform her parents and that they returned with her parents. The FIR at Ext.P-1 shows that the same was lodged on 15.4.2012 after PW No.1 talked to X. Accordingly, considering the sequence of events from the time of the incident to the time of lodging of the FIR no material exist so as to draw an inference that the delay has prejudiced the accused. Therefore, even if a night lapse between the incident to lodging of the FIR I do not find any reason how the said delay would defeat the prosecution case.

16. From the evidence of PW No.2/Lalbiakkima it appeared that on the date of the incident, he was living with X and that at the time of the incident he had gone to the market leaving X behind alone in the house. This statement of PW No.2 is supported by the statement of the accused u/s 313 Cr.P.C when he stated *“On the said date while I was on my way back from the cemetery I walked pass the house of the prosecutrix. Lalbiakkima who was inside the house called me and asked me to treat him to liquor. So I gave him money and he went out to buy liquor from a close neighbour (kawmthlang hnait). At that time I remained outside the house and pass*

urine.....” PW No.2, stated in his cross examination that he spent about one hour in the market and when he was on his way back, at quiet a distance from the house of X, at Fehkawng peng he met the accused and gave the liquor he bought for him, thereafter both of them went separate ways.

What transpired from the evidence of PW No.2 read alongwith the statement of accused u/s 313 Cr.P.C it can be inferred that the two of them met in/around the house of X on the date of the incident. From the evidence of PW No.1/Vanlalhuma and PW No.3/Lalthlamuanpuii, it is seen that during the relevant time, PW No.2/Lalbiakkima was living in the house of the prosecutrix. It can also be inferred that after they met, PW No.2 went to buy liquor. In the meanwhile the accused remained around the house of X.

It is not the case of the defence that when PW No.2 bought the liquor both of them had it together in the house of X. Though the evidence of PW No.2 and the statement of accused differ with regard to the place they met after PW No.2 bought the liquor, the admitted fact is that the two of them did not remain together thereafter.

The lone defence witness Rozuala claimed to be with the accused outside the house of X while waiting for PW no.2 /Lalbiakkima to return with the liquor. But it may be noted that the presence of the said Rozuala has come out for the first time when he appeared as a witness in the Court. The accused did not mention about the presence of any other person with him on that day when he was examined u/s 313 Cr.P.C and none of the prosecution witnesses were cross-examined about the presence of Rozuala on that day. PW No.3/Lalthlamuani stated that she entered her house from the bathroom which was located on the side of her house, she did not make any mention about the accused and the Roazuala standing outside her house when she came home from school. She is barely a child of 11 years and this witness too was not cross examined regarding the presence of the said DW/Rozuala with the accused on that day in/around her house. PW No.2/Lalbiakkima also does not mention about the presence of Rozuala. Examination of the record particularly the Police Report which is Exhibited as Ext. P-6 does not mention anything about DW/Rozuala. Accordingly, it appears that the presence of Rozuala with the accused on that afternoon is a belated thought and that it would not be just and proper to rely on his statement in the presence of evidence which have more weight.

Taking into consideration the evidence in entirety it can be seen that on the day of the incident PW No.2/Lalbiakkima and the accused met in/around the house of X where PW No.2 was living at the relevant time. PW No.2 left the place to buy

liquor, thereby leaving the accused near/in the house where only X was there. As such, the evidence lend credibility to the statement of the prosecutrix that the accused suddenly entered the house.

17. PW No.2/Lalbiakkima further stated in his cross-examination that after he gave the liquor to the accused at Fehkawng Peng, both of them went their separate ways. PW No.3/Lalthlamuanpuii stated that when she came out of the room and saw the accused pulling up his pant, the accused hurriedly went out of their house. She and Bawihbawihi made her grandmother sit and informed P.BKa who was living with them but at that relevant time he had gone to the market. Therefore considering the evidence of PW No.2 & 3 it transpired that the accused entered the house of X while PW No.2 was away in the market and even at the time when he hurriedly left the house of X, PW No.2 had not returned home from the market.

18. PW No.3/Lalthlamuanpuii stated that her school gets over at 3:00pm. On that day, she did not enter her house through the main door but from the bathroom door which was located on the side of the house. She changed her uniform and started playing games in the mobile phone without leaving the room. Though she heard her grandmother saying “an, ana” she did not go out of the room. She heard the call of her friend Bawihbawihi and once again heard her grandmother saying “ana, ana” that she came out of the room. She stated that she saw her grandmother on the long chair with her skirt lifted up and also saw the accused putting on his pants. She also stated that she also faintly saw the male organ of the accused. These statements of the witness have not been shaken during cross-examination. It may be noted that when PW No.3 appeared in the Court on 25.2.2013, her age was recorded as 12 years. Therefore at such an age, she cannot be expected to nurture hatred to anyone. At the time of the incident she was 11 years. Though she was of such a tender age, she could sense that what she saw was something wrong and she and her brother immediately went to the jhum field to report the matter to her parents. Apart from her statement, her subsequent conduct in immediately informing the matter to her parents by going to the jhum field clearly suggest that she was not lying. Further, from the manner PW No.3 conducted herself after she entered the house, it is quiet possible for the prosecutrix, an old woman, not o know that PW No.3 has reached the house.

Presuming that the statement of accused to the effect that the hook of his pant suddenly opened and fell upto his knee to be true, there was no reason for the skirt of the prosecutrix, an old woman of 85 years, to be lifted up while and there was no reason for the accused to stand near the prosecutrix pulling up his pant.

19. In the case at hand, the medical examination of X was done on 15.6.2012 @ 5:00pm. The medical evidence show that she did not sustain any marks of violence on her body. No fresh tear of hymen. She was oriented with time, place and person and was found to be stable and healthy for her age. Ext.P-2 shows that by the time of examination X has washed herself. Considering the fact that the prosecutrix has delivered seven children, fresh tearing of the hymen cannot b expected. Further, the incident complained off occurred inside a house on a settee. Under such circumstance, I do not find that the absence of any physical injury or marks of violence should be a cause to doubt the testimony of X.

20. Therefore, after considering the facts and circumstances of the case, the law involved, evidence adduced by prosecution witnesses, statement of accused recorded u/s 313 Cr.P.C. and having regard to the judicial authorities cited above, this court is of the view that the victim as well as the other prosecution witnesses are able to inspire confidence of the court and there is no reason to disbelieve their evidence. That being the position, it is found that in the course of trial, the prosecution has succeeded in bringing home the charge u/s 323/37(1) IPC against the accused Lianchungnunga beyond reasonable doubt.

21. Accused **Lianchungnunga** is convicted of the offence punishable u/s 323/376(1) IPC.

22. Sentence will be passed on 10 2.2014 after hearing the parties.

23. Bail bond stands cancelled and accused is remanded to judicial custody.

24. Give copy of the Judgment free of cost to the accused.

25. Pronounced in open Court and given under my hand and the seal of this court on this the 4th day of February, 2014.

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

ORDER

10.02.2014:

Convict Lianchungnunga is produced from judicial custody. Ld. State Defence Counsel and the Addl.PP are also present.

Today is fixed for hearing on sentence.

The convict Lianchungnunga submitted that he is now 56 years old with a dependant wife and 5 minor children. He submitted that his youngest child is barely 3 years and though they live in their own house and cultivate their own graden. His detention would cause immense problem to his family. He also submitted that his family belongs to a economically weaker section and that apart from the present case he has no criminal antecedents. On the aforesaid ground, he prays for leniency. The accused also submitted that he has hypertension.

Mr. R. Thangkanglova, the Ld. State Defence Counsel adopting the submission of the accused and further prays for leniency keeping inmind the family condition of the accused.

On the other hand, Mrs.Rose Mary, the Ld. Addl. PP submitted that no reasonable ground has been made to show leniency upon the accused on the question of sentence. The ld. counsel submitted that in the instant case the victim is an old woman and having a lot of ailments and weaknesses associated with old age. Her weakness according to the ld. Counsel is to such an extent that while all the other family members work in the jhum fields she was left to remain at home. If the accused is not punished with adequate sentence it would not be safe for the society as whole and to the womenfolks in particular. The offence becomes more severe due to the age and weakness of the victim. It is further submitted by the ld. Counsel that no human being is free from problems and the problems faced by the accused is a common problem and cannot be regarded as special and adequate reason to sentence him below the minimun prescribed by the law and that if the sentence is reduced to the period already undergone by him it will be detrimental to the society. The Ld. Counsel therefore prays to award maximum sentence with fine for both the offence punishable u/s 323/376 IPC.

Heard the parties and perused the record. In judging the adequacy of sentence, the nature of the offence, the conduct of the accused, the age and stage of the sexually assaulted female, gravity of the offence, an eye to correction and reformation of the offender are some of the many factors which should ordinarily be taken by the court.

In the case at hand, upon appreciation of the evidence on record, it appears that at the time of the incident i.e 14.6.2012, the prosecutrix was 84 years old. The medical record shows that at the time of the incident she has attained menopause. The medical evidence shows that the victim suffers ailments which are degeneratives and due to old age, the vaginal smear of X could not be taken as the vaginal area was atrophied. Considering the fact that the prosecutrix was 85 years at the time of the incident, is illiterate, she has delivered 7 children and being from a rural background, she would not have the strength and vigour as that of a person in the prime of age.

The honb'le Apex Court in the case **Bheru Singh versus State** reported in **(1994) 2 SCC 467** has held :-

“Imposition of appropriate punishment is the manner in which the court respond to the society’s cry for justice against the criminals Justice demands that Courts should impose punishment befitting the crime. The courts must not only keep in view the rights of the criminals but also the right of the victim of crime and the society at large”.

In the instant case, the prosecutrix was already 85 years old at the time of the incident. A murderer destroys the physical frame of his victim but a rapist degrades and defiles the sole of a helpless female. In a case as the present case where the victim due to old age would be in need of an attendant, taking advantage of the physical weakness of such a person is clearly a case of exploitation of her helplessness. Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female.

On the other hand, while considering the right of the accused, it is seen from the evidence that the prosecutrix sustain only simple injuries and the other complaints were attributable to her age. The record shows that the accused has no other criminal antecedents.

Considering the above facts and observations, I am of the view that no special and adequate reason has been made out to sentence the accused lower than the minimum sentence prescribed by law.

Accordingly, the accused **Lianchungnunga** is sentenced to undergo **rigorous imprisonment** for a period of **7 years** and to pay a fine of **Rs. 20,000/-** and in default to further undergo simple imprisonment for **2 months**.

For the offence punishable u/s 323 IPC, the accused **Lianchungnunga** is sentence to undergo **rigorous imprisonment** for **6 months**.

As the accused submitted that he is suffering from hypertension and Ext. P-4 which is his medical examination report also shows that at the time of his examination, the blood pressure of the accused was above normal, it is expected that the Prison Authorities would extent immediate and appropriate medical treatment to the accused whenever required.

Considering the age, character and antecedents of the accused, both the sentence shall run concurrently.

Fine amount, if realised, shall be paid to the prosecutrix as compensation.

In terms of section 428 Cr.P.C detention period already undergone by the accused Lianchungnunga during investigation and trial shall be set off from the sentence.

Accused Lianchungnunga is committed to judicial custody to serve the remaining sentence.

This Order shall form part of the Judgment Dt.04.02.2014.

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

With the above order, case stands disposed off.

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

Memo No: AD&SJ/(A) 2014 : Dated Aizawl, the 10th February, 2014
Copy to:-

1. Accused Lianchungnunga through Counsel.
2. Special Superintendent, Central Jail, Aizawl.
3. PP/Addl. PP, Aizawl District, Aizawl.
4. District & Sessions Judge, Aizawl.
5. District Magistrate, Aizawl District, 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 Medical examination report of the victim

 P-2 (a) Signature of PW.No-4

Ext. - P-3 Injury Report of the victim

 P-3 (a) Signature of PW.No-5

Ext. - P-4 Medical examination report of the accused

 P-4 (a) Signature of PW.No-5

Ext. - P-5 Examination report of consumption of alcohol by accused

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

Ext. - P-6 Charge Sheet

 P-6 (a) Signature of PW.No-7

(B) **DEFENCE EXHIBITS- None**

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

(D) **COURT EXHIBITS- None**

(E) **PROSECUTION WITNESSES:**

PW.-1 – Vanlalthuma

PW.-2 – Lalbiakkima

PW.-3 – Lalthlamuanpuui

PW.-4 – Dr. Ngurnunzami Sailo

PW.-5 – Dr. Lalringmaia

PW.-6 – Vanthangi

PW.-7 – SI Lalhmachhuani Sailo

(F) **DEFENCE WITNESSES - :**

DW-1 – Rozuala

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