

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

P R E S E N T

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

SR No.290/2012
In CrI.Tr. No.1532/2012
U/s 376(2)(f)

Ref:- Aizawl P.S Case no.300/2012 dt.29.6.2012 u/s 376(2)(f) IPC

State of Mizoram

Versus

Lalroenga Accused

Date of Hearing 24.01.2014

Date of Judgment 05.02.2014

A P P E A R A N C E

For the Prosecution Mrs. Rose Mary, Addl. PP

For the Accused Mr. K. Laldinlana, Advocate

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

1. The case of the prosecution in brief is that 29.6.2012 one Lalmangaihi of College Veng, Aizawl lodged a written FIR at Aizawl Police Station to the effect that her daughter X, 6 years was sexually assaulted on the afternoon of 26.6.2012 by a hosteller namely V.Lalroenga S/o Vanlalruata of Champhai Vengthlang.

On the basis of the FIR, Aizawl PS Case No. 300/2012 dt. 29.6.2012 u/s 376(2)(f) IPC was registered. Investigation was conducted and having found prima facie case Charge sheet was submitted against the accused V.Lalroenga for the offence punishable u/s 376(2)(f) IPC. The case was then 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 charge sheet and all connected documents were delivered to the accused.

3. Charge u/s 376(2)(f) IPC is framed. Charge is read over and explained to the accused in Mizo language which is known to him, to which, he pleaded not guilty and claims for trial.

4. During the course of trial, 4 witnesses were examined for the prosecution out of which PW No. 1 & 2 were declared hostile. The accused was examined u/s 313 Cr.P.C. Two defence witnesses were also examined. The Ld Counsels were heard.

Mrs. Rose Mary, the Ld. Addl. PP submits that their attempt to bring the prosecutrix has failed but from the other evidence and materials on record, there is no doubt that it was the accused who sexually assaulted 'X'. According to the Id. Counsel, from the evidence on record there are enough materials to convict the accused and prays accordingly.

On the other hand Mr. K. Laldinliana, the Ld. State Defence Counsel submitted that the prosecution has failed to prove the essential ingredient of the offence. The Id. Counsel further submitted that though in sexual offence the degree of proof is not as stringent as other offences, yet, the initial burden of proving its own case never shifts from the prosecution. In the instant case there is no direct evidence linking the accuse with the offence and in the absence of any materials, the accused deserve acquitted and prays accordingly.

5. POINT(S) FOR DETERMINATION

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

6. DISCUSSION, DECISION AND REASONS THEREOF:-

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

PW No.1/Lalhmangaihi informant was declared hostile. On being cross-examined by the Ld. Addl. PP she stated that the accused used to stay in the hostel in the same building where her family rented and that she suspected the accused as he used to go to their house and her daughter was familiar with him. She also stated that she lodged the FIR against the accused on the basis of physical description made by her daughter regarding the person who sexually assaulted her. She further stated that she does not have any other suspect apart from the accused. She stated that she checked the private part of her daughter before going to the Doctor and saw some redness and she cleaned her with warm water. She further stated that her daughter does not have the habit of telling lies. On being cross-examined by the Ld. Defence Counsel, the witness deposed that they used to have other visitors in their house and that her daughter could have been sexually assaulted by any person other than the accused

PW No.2/ Lallawmzuali is the sister of X. She stated that her statement was recorded by the Police. After that she once again spoke to her sister x and her sister made a different statement from what she stated earlier.

This witness was also declared hostile by the prosecution and was cross examined by the Ld. Addl.PP

PW No.3/ Dr. Catherine Ngurbiakveli examined X at Civil Hospital on 29.6.2012 on the basis of requisition made by the Police. She stated that x was physically and mentally normal, at the time of examination her underwear was stained with blood, whitish discharge was present in and around the vagina, mild bruise at 3 oClock and 4 o'clock position, there was redness and blood stain on both her labia majora and her hymen was partially torn at 4 o'clock and 3 o'clock position. The underwear was sent for laboratory examination. She further stated that the injuries could have healed within 2/3 days. The witness is of the opinion that medically injuries on the external genetalia could have been caused by diseases. Since the girl was barely 6 years old, from her findings, she is of the opinion that the girl was sexually abused. She exhibited the Medical examination Report as Ext.P-1 and her signature as ext.P-1(a) In her cross examination she stated that the injuries including the tearing of hymen, redness etc could have been caused by reasons other than sexual intercourse. There can also be whitish discharge but for a girl of 6 years it would be very unusual to have such discharge without sexual intercourse.

PW No.4/ SI Lalhmachhuani Sailo stated that FIR was lodged on 29.6.2012 by Lalhmangaihi of College Veng, Aizawl. She conducted the investigation and during investigation she visited the place of occurrence which is a hostel at College Veng, recorded the statement of the informant and forwarded X for medical examination at Civil Hospital, Aizawl. She arrested the accused on 29.6.2012 from college veng, Aizawl and forwarded him for medical examination and also recorded the statements of Thangkhumi and Lallawmzuali. She seized the birth certificate of X and after making a copy returned the original to her family. Having found prima facie case, she laid charge sheet against the accused for the offence punishable u/s 376(2)(f) IPC. In her cross examination, she stated that she does not remember who wrote the FIR, she admitted that the accused sustained some injuries which were inflicted by the family of 'X' before the Police arrived and that was why she immediately forwarded the accused for medical examination. She denied that the accused has been wrongly implicated and voluntarily stated that during interrogation the accused admitted his guilt.

7. Examination of the accused u/s 313 Cr.P.C is one of denial.

8. Upon perusal of the materials on record it is seen that the incident complained off occurred on 26.6.2012 and FIR was lodged on 29.6.2012. In the case at hand, the informant and sister of X have turned hostile. On the prayer of the Ld. Addl. PP the evidence of X and Thangkhumi (grandmother of X) were dispensed with since they shifted their residence and could not be located. Accordingly, attempt made by the Ld. Addl. PP to produce the said two witnesses failed.

9. PW No.3/ Dr. Catherine Ngurbiakveli examined X at Civil Hospital on 29.6.2012 on the basis of requisition made by the Police. She stated that x was physically and mentally normal, at the time of examination her underwear was stained with blood, whitish discharge was present in and around the vagina, mild bruise at 3 O’Clock and 4 O’clock position, there was redness and blood stain on both her labia majora and her hymen was partially torn at 4 o’clock and 3 o’clock position. The underwear was sent for laboratory examination. She further stated that the injuries could have healed within 2/3 days. Her said statements have not been discredited during cross-examination. As such, the finding of medical examination report support the prosecution case of the prosecutrix being sexually assaulted, more so, when the prosecutrix was barely 6 years old. PW No.1/the Investigating officer has no direct evidence against the accused.

10. The sine quo non for the offence of rape is penetration of male organ into the vulva/labia majora of the woman. Explanation to section 375 IPC makes it clear that the extend of such penetration is not material.

11. It is an established principal of criminal jurisprudence that the initial burden of proving the guilt is on the prosecution and the said burden never shifts. As such the burden is on the prosecution to prove that the accused had sexual intercourse with “X” amounting to rape and falling under any of the descriptions to section 375 IPC.

12. But in the instant case, there is no direct evidence. As stated above, the medical examination is suggestive of X being sexually assaulted, there is no direct evidence that it was the accused who sexually assaulted the prosecutrix. In the instant case, it is seen that the description of the culprit was made by the prosecutrix and on that basis the accused have been implicated. The prosecutrix did not know the name of the person who violated her. As such it can be presumed that they were not close acquaintance. Further, there has been delay of about 3 days in

lodging the FIR. Under such a situation, it has become all the more necessary that the accused be properly identified during investigation in a manner that was deemed proper by the Investigating agency and that the same be reaffirmed by dock identification. However, in the instant case, as stated above, attempts made by the prosecution to bring X has proved futile.

13. In the absence of any direct evidence linking the accused to the commission of the offence, the benefit has to go to the accused since an accused is presumed to be innocent until his guilt is proved beyond a shadow of doubt.

14 In the absence of any clear and cogent evidence against the accused, the benefit should be given to the accused.

ORDER

15. Accordingly, accused Lalroenga is acquitted of the offence punishable u/s 376(2)(f) IPC.

16. In terms of sec.437-a Cr.P.c the accused shall continue to be on bail for another period of 6 months.

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

18. Pronounced in open court and given under my hand and the seal of this court on this the 5th day of February, 2014.

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

Memo No:_____AD&SJ/(A)/2013 : Dated Aizawl, the 5th February, 2014
Copy to: -

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

P E S H K A R

APPENDIX

A. PROSECUTION EXHIBITS

- Ext. P-1 Medical Examination Report of prosecutrix
P-1(a) Signature of PW No. 3
- Ext. P-2 Birth Certificate of prosecutrix
- Ext. P-3 Seizure Memo
P-3(a) Signature of PW No. 4
- Ext. P-4 Charge Sheet
P-4(a) Signature of PW No. 4

B. DEFENCE EXHIBITS- None

C. EXHIBITS PRODUCED BY WITNESSES - None

D. COURT EXHIBITS- None

E. PROSECUTION WITNESSES:

- P.W. No. 1 - Lalhmangaihi
- P.W. No. 2 - Lallawmzuali
- P.W. No. 3 - Dr. Catherine Ngurbiakveli
- P.W. No. 4 - SI Lalhmachhuani Sailo

F. DEFENCE WITNESSES - : None