

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

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

**SR No.210/2012**  
**In Crl.Tr. No.789/2012**  
**U/s 376(1) IPC**

**Ref :- Bawngkawn P.S Case No.103/2013 dt.6.4.2012 u/s 376(1) IPC**

**State of Mizoram**

**Versus**

|                         |              |                  |
|-------------------------|--------------|------------------|
| <b>C.Thanmawia</b>      | <b>.....</b> | <b>Accused</b>   |
| <b>Date of hearing</b>  | <b>.....</b> | <b>13.1.2014</b> |
| <b>Date of Judgment</b> | <b>.....</b> | <b>23.1.2014</b> |

**A P P E A R A N C E**

|                            |              |                                  |
|----------------------------|--------------|----------------------------------|
| <b>For the Prosecution</b> | <b>.....</b> | <b>Mrs. Rose Mary, Addl. PP</b>  |
| <b>For the Accused</b>     | <b>.....</b> | <b>Mr. Lalramhluna, Advocate</b> |

**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 6.4.2012 one X of Sihphir Venghlun lodged a written FIR at Bawngkawn Police Station to the effect that on 2.4.2012@ 3:00pm while she was changing her school uniform in the bed room, one Pu. Mawia, who came to sell vegetables entered the bed room and sexually assaulted her.

On the basis of the said information, Bawngkawn P.S Case No.103/2012 dt.6.4.2012 u/s 376(1) IPC was registered and investigated into. Upon completion of investigation, having found prima facie case against the accused C.Thanmawia 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 are 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. Charge u/s 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. The prosecution examined 5 witnesses. Accused was examined u/s 313 CrPC. The accused was examined as his own witness. The Ld. Counsels are heard.

Mrs. Rose Mary, the Ld. Addl. PP submitted that the prosecutrix on solemn oath stated that she knew the accused as they are from the same locality but she has not spoken to him. On the date of the incident the parents of the prosecutrix had gone to the jhum field and her siblings had gone to school. The accused went to the house of the prosecutrix to sell vegetables while she was changing her school uniform. While she was still in the bed room changing her clothes she told the accused that her parents were not at home. But the accused entered the bedroom and forcefully subjected her to sexual intercourse. The prosecutrix ran out to the house of Nu Remi and told her to come with her to their house. When Nu Remi went to the house of the prosecutrix with her, the accused had already left. The Ld. Counsel argued that the matter was disclosed by the prosecutrix only after 3/4 days due to fear and the prosecutrix also stated that she was referred to a Psychiatrist. The Ld. Counsel argued that the medical finding of old rupture of hymen and old laceration on the anterior fourchette support the prosecution case. The Ld. Counsel further argued that from the statement of the Investigating Officer (PW No.4) it can be seen that the delay in lodging the FIR was due to fear and this fear was also stated by the prosecutrix in her statement u/s 161 Cr.P.C. The Ld. Addl. PP further submitted that the statement of the accused as his own witness support the prosecution case to the extent that he went to the house of the prosecutrix to sell vegetables and that the prosecutrix was alone in her house. The Ld. Counsel further submitted that though there are no documents to prove the exact mental status of X, it appears from the evidence on record that the prosecutrix is not mentally stable. The Ld. Counsel argued that the fact that the accused knew that the prosecutrix was changing her clothes/uniform support the prosecution case that the accused entered the bed room while the prosecutrix was changing her clothes. The Ld. Addl. PP therefore submits that the prosecution has proved the offence of rape as defined u/s 375 IPC beyond a shadow of doubt and therefore prays to convict the accused C. Thanmawia for the offence punishable u/s 376(1) IPC

On the other hand, Mr. Lalramhluna, the Ld. State Defence Counsel submitted that the delay in lodging the FIR have not been explained and this has caused serious prejudice to the accused. The Ld. Counsel argued that if the mother of the prosecutrix had not asked her about what she heard from others, it appears that the prosecutrix would continue to remain silent about the incident. The fact that the prosecutrix did not voluntarily make a disclosure is a clear indicator that she was a consenting party and that she does not have any grievance against the accused. The Ld. Counsel argued that upon appreciation of materials on record more particularly the statement of the accused before the medical officer and the statement of accused u/s 161 Cr.P.C it is clear that whatever happened between the accused and the prosecutrix was consensual. The Ld. Counsel submitted that the evidence adduced by the accused is trustworthy and it is in the same line with his statement before the Police u/s 161 Cr.P.C. The Ld. Counsel therefore submitted that even if there was sexual intercourse between the accused and the prosecutrix the same was consensual and there is no reason to convict the accused. The Ld. Counsel therefore prays to acquit the accused H.Thanmawia.

#### 6. POINT(S) FOR DETERMINATION

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

#### 7. DISCUSSION, DECISION AND REASONS THEREOF:-

In order to bring home the guilt of the accused, the prosecution examined 4 witnesses. The evidence adduced by the prosecution may be briefly highlighted.

PW No.1/ X is the prosecutrix. She identified the accused and stated that she is familiar with the accused as they are from the same locality. She stated that she was born on 11.3.1996 and reading in Class-IX. Sometime in the year 2012, she attended school and was the first one to reach home after school. While she was changing her school uniform, the accused came inside her house to sell vegetables. She was changing her uniform inside the bedroom and the accused stood near the door and asked if they wanted to buy vegetables. She told the accused that her parents were not at home and that they will not buy the vegetables. However, the accused entered the bed room. When the accused entered the bedroom she had not finished changing her school uniform. He pushed her down on the bed and removed her underpant. When she tried to shout, he covered her mouth with his hands. But she resisted him by kicking, however, the accused succeeded in having sexual intercourse. But as she continued to struggle she managed to escape and ran to the

house of Nu Remi without wearing her underpant. She told Nu Remi that she was very scared of the accused and asked her to go with her to her house. When they went to her house, the accused had already left. She did not tell anything to anyone including Nu Remi as she was under fear (ka hlauthawng) and about 3 or 4 days later her mother heard from someone that she slept with the accused and when confronted by her mother she made the disclosure. She stated that her parents lodged the FIR in her name and she put her signature. She exhibited the FIR as Ext.P-1 and her signature as Ext.P-1(a). In her cross-examination she stated that she does not have any mental disability but during investigation she was taken to a Psychiatrist by the Police. She stated that she has completed 16 years of age. She denied that she was a consenting party to the sexual intercourse. She admitted the suggestion that in the FIR at Ext.P-1 she did not mention the reason for delay in lodging the FIR. She admitted the suggestion that when the accused entered the bedroom she did not tell him to leave.

PW No.2/Dr.Lalbiakdiki examined X on 7.4.2012 at Civil Hospital, Aizawl on the basis of requisition made by the Police. Upon examination, X was found physically healthy but as she appeared to be mentally disturbed she was advised to attend the Psychiatry OPD on the same day. Old laceration on the anterior fourchette was found. Old hymenal rupture was also found but there was no sign of recent injury. Vaginal swab was not taken since the incident occurred on 2.4.2012 and examination was done on 7.4.2012. No injuries or marks of violence were found on the other parts of her body. The witness further deposed that depending on the severity of the laceration, the same could have healed by the time of examination. She exhibited the medical examination report as Ext.P-2 and her signature as Ext.P-2(a). In her cross examination, she stated that the old laceration on the anterior fourchette was a superficial laceration, it was not fresh and that she cannot determine the age of laceration. She did not find any trace of recent sexual activity i.e one day prior to the date of examination. She also stated that medically, it is not possible to have any finding of rape after a lapse of more than 5 days from the incident complained off.

PW No.3/Dr.Jeremy V.Pachau examined the accused on 6.4.2011 on the basis of requisition by the Police. He stated that before examining the accused he asked a brief history of the incident to the accused to which the accused stated that with the consent of the prosecutrix he attempted to have sexual intercourse but failed to consummate. On examination he found the accused physically and mentally healthy but partially deaf and can perform normal sex. His secondary sexual characters developed normally. He recorded a finding that the accused can

perform sex normally on the basis of his own statement and that he did not conduct any separate test to find out his potency. The witness further deposed that normally when sexual organs are well developed without any deformity, it can safely be presumed that a person is sexually potent. He exhibited the medical examination report as Ext.P-3 and his signature as ext.P-3(a). In his cross-examination, he stated that about 4 days lapse from the date of the incident to the time of examination. He also stated that normal sexual potency can be affected to a great extent by severe intoxication and consumption of drugs eg.cough syrup containing codain phosphate.

PW/4 SI. H.Lalhmingthangi is the Investigating Officer. She stated that FIR was lodged on 6.4.2012 from X of Sihphir Venghlun. During investigation she visited the place of occurrence which is the house of X at Sihphir Venghlun. She arrested the accused on 6.4.2012 and forwarded both the accused and prosecutrix for medical examination. She recorded the statements of the accused, prosecutrix and one witness. Having found prima facie case, she laid charge sheet against the accused for the offence punishable u/s 376(1) IPC. She exhibited the Charge sheet as Ext.P-4 and her signature as Ext.P-4(a). In her cross examination she stated that the prosecutrix is a normal healthy person and she could record her statement but from the record it is seen that she was referred to a Psychiatrist. She stated that the incident occurred on 2.4.12, medical examination of accused was done on 6.4.12 and the prosecutrix on 7.4.12, FIR was lodged on 6.4.12.

8. The accused in his examination u/s313 Cr.P.C denied to have sexually assaulted/raped the prosecutrix but admitted to have consensual sexual intercourse with X.

9. The accused appeared as his own witness. He stated that from the road he called out if they wanted to buy vegetables. The prosecutrix asked him to enter the house. He entered the house. According to the accused it was the prosecutrix who showed interest in sex and stated that he had sexual intercourse with her own consent on the bed in the bedroom. His statement have not been discredited during cross examination.

10. The sine quo non for the offence of rape is penetration within the labia or pedundum of the woman. The explanation to sec.375 IPC makes it clear that the extend of such penetration is not material.

11. In the case at hand, it is not in dispute that X at the time of the incident was above 16 years. The Investigating Officer (PW No.4) herself stated that she did not

seize the birth certificate of X as she had already completed 16 years of age. It is therefore necessary to examine whether the incident would fall within the definition of rape u/s 375 IPC.

12. Without dealing with the delay in lodging the FIR separately, the same shall be dealt together with the substantive offence since the question whether the delay adversely affects the prosecution case has to be considered in the light of the totality of the evidence on record.

13. In the instant case, the incident complained off occurred on 2.4.2012 and FIR was lodged on 6.4.2012. As such, there is a delay of about four days in lodging the FIR. It is not in dispute that at the time of the incident on 2.4.2012, X has completed 16 years of age. Accordingly, she has attained the age to exercise her discretion.

14. It would not be wrong to state that in cases involving sexual offences, conviction can be based on the sole testimony of the prosecutrix if it inspire confidence of the court since the other evidence are only corroborative.

PW No.1/X stated that she was changing her uniform inside the bedroom and the accused stood near the door asked if they wanted to buy vegetables. She told the accused that her parents were not at home and that they will not buy the vegetables. However, the accused entered the bedroom. When the accused entered the bedroom she had not finished changing her school uniform. He pushed her down on the bed and removed her underpant. When she tried to shout, he covered her mouth with his hands. But she resisted him by kicking, however, the accused succeeded in having sexual intercourse. But as she continued to struggle she managed to escape and ran to the house of Nu Remi without wearing her underpant. She told Nu Remi that she was very scared of the accused and asked her to go with her to her house. When they went to her house, the accused had already left. She did not tell anything to anyone including Nu Remi as she was under fear(ka hlauthawng) and about 3 or 4 days later her mother heard from someone that she slept with the accused and when confronted by her mother she made the disclosure. She stated that her parents lodged the FIR in her name and she put her signature. In her cross-examination she denied the suggestion that she was a consenting party but admitted the suggestion that when the accused entered the bed room she did not tell him to leave. She also admitted the suggestion that her mother heard about the incident for the first time from someone else and not from her.

15. The credibility of the statement of the prosecutrix have to be examined in the light of other evidence, the probability factor has to be considered and other materials on record are to be examined.

Upon appreciation of the evidence of the prosecutrix, it is noticed that she was not verbally threatened by the accused. The accused was also not armed with any weapon. Presuming that the prosecutrix was under fear to immediately tell the incident to Nu Remi due to fear of the conduct of the accused on her person, it is expected of a normal mature person to disclose the incident either to Nu Remi when they found that the accused had left her house or subsequently to her mother/parents. In the absence of any threat from the accused, the prosecutrix remained silent and the evidence give an impression that she would continue to remain silent if not for her mother gaining knowledge through rumour. As per Sec.8 of the Indian Evidence Act, subsequent conduct is a relevant fact. The subsequent conduct of the prosecutrix in remaining silent about the incident has created serious doubt on the credibility of her statement of being sexually assaulted by the accused.

16. It appears from the evidence of the prosecutrix that even after she replied the accused that they do not want to buy the vegetables, the accused entered the bed room where she was changing her uniform and sexually assaulted her. She also stated that as she and the accused were from the same locality, she was familiar with him but have never spoken to him. In this regard, the prosecutrix in her cross examination stated that she did not tell the accused to leave the bedroom/house. Accordingly, it is seen that the accused entered the bed room uninvited and that too at a time when X was changing her uniform. Needless to say, bedroom is not a place to entertain guests, it is expected of a normal human being to sense that something was wrong and to raise an alarm or atleast tell the intruder to leave more so in the instant case where the accused was only a casual acquaintance of the prosecutrix and when she was not properly dressed. Surprisingly, the prosecutrix did not only fail to raise hue and cry when the accused entered the bed room but had even failed to tell the accused to leave the room. It may be noted that X at the time of the incident was 16 years old and mature enough to exercise her discretion.

17. If the person of X have been forcefully violated by the accused as stated by her there ought to be change in her behavior. A woman who is violently ravished undergoes severe mental trauma which invariably changes her normal behavior. However, in the instant case, there is no evidence of any change in her behavior, no evidence of the prosecutrix inability to perform her normal daily activities including

attending school after the incident. It is also not in evidence that the family of the prosecutrix noticed any change in her behavior or the prosecutrix unable to perform her normal daily activities for reasons which are not known to them. It is no doubt true that PW No.2/Dr.Lalbiakdiki noticed some psychological disorder and referred X to a Psychiatrist. But there is no evidence to the effect that such psychological disorder, if any, was before the incident or due to the incident. No evidence is also adduced to indicate the actual mental status/psychological condition of the prosecutrix. On the other hand, the prosecutrix could give rational reply to all the questions while recording her statement and her statement u/s 161 Cr.P.C could also be recorded by the Investigating Officer. Accordingly, presuming but not admitting that the prosecutrix has some mental disorder, either from before the incident or due to the incident, it appears from the materials on record that she has not lost her reasoning and appears to have sufficient IQ to give rational answers to all the questions put to her. Accordingly, I am of the considered opinion that it can be safely presumed that psychological disorder, if any, was not of such an extent so as to incapacitate the prosecutrix from exercising her reasoning or to differentiate right and wrong.

18. Further, non examination of Nu Remi and mother of X has created doubt on the prosecution story since from the evidence adduced by the prosecution it appears that the two of them are vital witnesses.

19. It is also noticed that the prosecutrix did not sustain any injuries and no mark of violence was found on her body. Though the medical officer who examined X on 7.4.12 stated that there was old laceration on the anterior fourchette and that the laceration was superficial, considering the conduct of the prosecutrix and the surrounding facts and circumstances of the case, I am of the view that the same by itself would be inadequate to draw a conclusion that the prosecutrix was subjected to sexual assault by the accused.

20. The hon'ble Apex Court in the case of **Abbas Ahmed Choudhury –Vs- State of Assam: (2010) 12 SCC 115**, has held that *though the statement of prosecutrix must be given prime consideration, at the same time, broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there could be no presumption that a prosecutrix would always tell the entire story truthfully.*



21. For the reasons stated in the foregoing paragraphs, I am of the considered opinion that the prosecution has failed to prove by cogent and reliable evidence that the accused sexually assaulted X within the meaning provided u/s 375 IPC.

## **ORDER**

22. Accordingly, accused C.Thanmawia is acquitted by giving him the benefit of doubt. It may however be noted that this court is not recording any finding to the effect that the sexual intercourse (if any) between the accused and X was consensual.

23. In terms of sec.437-A Cr.P.C, the accused shall continue to be on bail for a period of 6 months from today under the same condition at the time of his release on bail.

24. Give copy of the Judgment & Order, 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 23<sup>rd</sup> day of January, 2014.

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

Memo No:\_\_\_\_\_AD&SJ/(A)/2013 : Dated Aizawl, the 23<sup>rd</sup> January, 2014  
Copy to: -

1. Accused C. Thanmawia through Counsel Mr. Lalramhluna, 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 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. 2

Ext. P-3 Medical Examination Report of the accused

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

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 - Lalnunmawii

P.W. No. 2 - Dr. Lalbiakdiki

P.W. No. 3 - Dr. Jeremy V. Pachuau

P.W. No. 4 - SI H. Lalhmingthangi

### **F. DEFENCE WITNESSES - :**

D.W. No. 1 - C. Thanmawia