

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

**PRESENT**

Smt.Helen Dawngliani  
Addl. District & Sessions Judge

SR No.95/2011  
In CrI. Tr. No.1864/2010  
U/s 376(1) IPC

Ref:- Vaivakawn PS Case No.165/2010 dt.21.7.2010 u/s 376(2)(f) IPC

State of Mizoram

Versus

Lalrempuia	.....	Accused
Date of Hearing	.....	24.06.2014
Date of Judgment	.....	08.07.2014

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

For the Prosecution	.....	Mrs. Rose Mary, Addl. PP Ms. Rosy, Asst. PP
For the Accused	.....	Mr. SL Thansanga, 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 21.7.2010 one Hranglianhmuaka S/o Robawiha R/o Chhinga Veng, Aizawl lodged a written FIR at Vaivakawn Police Station to the effect that his daughter “X”, 12 years was raped by her step father Lalrempuia S/o F.Lalrinliana R/o West Phaileng P/a Hunthar, Aizawl in the house of her maternal aunt Lalparmawii (her mother’s younger sister) while she was baby-sitting her younger siblings. The informant also mentioned that he came to learn about the incident from Lalsangpuii, mother of X.

On the basis of the said information, Vaivakawn PS Case No.165/10 dt.21.7.2010 u/s 376(2)(i) IPC was registered and investigated into. Upon completion of investigation, having found prima facie case against the accused Lalrempuia for the offence punishable u/s 376(2)(f) IPC Charge sheet was laid against them and committed for trial.

2. Copy of the Police Report and all connected documents were delivered to the accused.

3. Charge u/s 376(1) IPC was framed against the accused. The charge was 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 the prosecution examined 5 witnesses. The accused was examined u/s 313 CrPC and two witnesses for the defence were examined. The accused examined two defence witnesses. The Ld. Counsels were heard.

Mrs. Rose Mary, the Id. Addl. PP submitted that the prosecution has been able to prove by clear and cogent evidence that X was above 12 years but below 16 years at the time of the incident. The Ld. Counsel further submitted that though there is no evidence of maltreatment of X from her stepfather, the accused, it is clear that the accused acted in revenge against the mother of x with whom he had a quarrel. There were no eye witness to the incident and the only person present was a child in another room. According to the Ld. Counsel there was no reason for the prosecutrix to falsely implicate the accused. The Ld. Addl. PP also submitted that it was only after a number of attempts that they could locate X and by such time the evidence of her mother Lalsangpuii was already dispensed. In this regard, the Ld. Addl. PP submitted that when X was examined in the Court her mother Lalsangpuii also came and according to her they have been living in the same locality and this was clearly known to the accused. But knowing fully well the whereabouts of X and her mother the accused fained ignorance in order to avoid them from appearing in the court. The Ld. Counsel submitted that the statement of the prosecutrix is reliable and considering her history, the finding of old hymen tear was also reasonable and that the absence of injury would not shake the credibility of the prosecutrix. The Ld. Counsel therefore prays to convict the accused u/s 376(1) IPC

On the other hand, Mr. S.L. Thansanga, the Ld. Stated defence counsel argued that the statement of the prosecutrix is not reliable and though on a cursory reading the deposition of the witness appears to be convincing but on a closer look there are many loopholes and doubts. Though it is by now an established principle of law that conviction can be based on the sole testimony of the prosecutrix, the Ld. Counsel submitted that it is not safe to rely on the statement of the prosecutrix for the following reasons :-

- a) the offence allegedly took place between 1 to 2pm of 21.7.2010 and it took place not once but twice.
- b) the prosecutrix was gripped on the throat by the accused and she could not make any sound
- c) the victim's hands were tied by the accused with his belt
- d) the victim was examined at 5:20pm on 21.7.2010 barely 3 hours after the incident but no marks of violence or injuries were found on her body.

e) The cause of the reddish stain found on the underwear of the prosecutrix was not found.

f) the examining Doctor should have found atleast some sort of ligature marks either on the throat produced by the gripping or on the wrist due to the tying with belt

g) the accused is a tall man of 5.9 feet and there should have been some fresh marks either on the body or on the private parts of the prosecutrix

h) the molestation experienced by the prosecutrix was in the year 2008 at West Phaileng and the molestation could be termed as 'fingering'. As such there should have been fresh marks if the story stated by the prosecutrix is true.

The Ld. Counsel therefore submitted that the story could have been concocted by the mother of the prosecutrix in collusion with the prosecutrix as her mother desired to marry another person. The Ld. Counsel therefore submitted that as reasonable doubt exist the benefit of doubt should be given to the accused.

5. POINT(S) FOR CONSIDERATION:-

1. 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(2)(f) IPC ?

6. DISCUSSION, DECISION AND REASONS THEREOF:-

The evidence adduced by the prosecution is highlighted as follows:-

PW No.1/Hranglianhmuaka is the father of X and the informant. He stated that his said daughter was born on 22.8.1997. The accused is the 2<sup>nd</sup> husband of his wife Lalsangpuii with whom he divorced in the year 1999 and from the time of divorce his said daughter was living with her mother. He received a phone call from Lalsangpuii to the effect that X was raped by her step father and that they should go to Vaivakawn PS immediately. So he along with her mother went to Vaivakawn PS and gave verbal information at the PS and the same was reduced to writing by some other person at the PS and he subscribed his signature at the bottom of the said FIR. He exhibited the FIR as Ext.P-1 and his signature as Ext P-1 (a), photocopy of the birth certificate of my daughter made from the original as Ext.P-2. In his cross examination he admitted that at the time of incident his daughter was above 13 years. He does not know the person who wrote the FIR but knew that the same was written on the basis of his information. He does not know whether his ex-wife Lalsangpuii divorced with the accused after the present incident. Apart from lodging the FIR he has no further knowledge. He derived

knowledge of the incident from his ex-wife Lalsangpuii and he did not personally ask his daughter about it.

PW No.2/ X is the prosecutrix. She stated that the accused was married to her mother but they divorced after the present incident. Her mother has two other children with the accused Lalrempuia. She is the only one among her own siblings who lived with her mother after she married the accused. Her mother married the accused while she was studying in class-2 and she started living with them when she was in class-3. During the year 2010 she was reading in class-6. She stated as follows:-

*“On 19.6.2010 my mother and the accused went out together from the house to collect money borrowed from them. But they had a quarrel and my mother did not dare return home but the accused came home and he told me that he had a quarrel with my mother and said ‘I nu a tlan bo leh tawh a nia’. My step-father/accused used to physically assault my mother and on such occasions my mother used to leave the house. On that day the accused came home drunk and knowing that he is very violent when he is drunk, I was very scared of him. So I took my younger siblings (children of my mother and accused) to the house of U Parmawii who is my mother’s younger sister. My paternal aunt Lalmangaihzuili came to the house of U Parmawii and took a jacket and left the house. After she left the house the accused came to the said house. At that time I was watching a TV and U Parmawii was not at home. Apart from the two children I took with me there was a small boy of about 2 years in the said house. U Parmawii left the boy to my care as she needed to briefly visit her parents. When the accused came, he took his two children with him out from the house of U Parmawii and said that they are not my real siblings. But I remained in the house of U Parmawii. Later the accused returned alone and he entered the bedroom of U Parmawii and called me to the said room. So I went to the bedroom. He told me that he has separated from my mother and because of their separation he want to cause her as much hurt as he can. Then he gripped my throat though I tried to shout because of the force of the gripping I could not make any sound. He gripped my throat with one hand and with the other hand, he remove my pant and underpant. Then he removed his own pant and underpant. Then he tried to penetrate his male organ into my private part but since I struggled as much as I could he could not fully penetrate though he penetrated. All these time he made me lie down on the floor and he was kneeling. I saw some white discharge from his male organ then he left the room. I remained in the room since I was shivering in fear and could not move. Then I tried to jump out from the window but the accused saw me and ordered that I should not touch the*

window being afraid I obeyed him. Then he tied my hands with his belt and stuffed his handkerchief in my mouth. Thereafter, he removed the belt and handkerchief and once again sexually assaulted me. This time I know that the accused penetrated and he said he could fully penetrate. After this, he took a knife from the table inside the room itself and threatened me but I got hold of a book and hit at his knife with the book. His knife fell down and taking the opportunity I ran out from the door to the house of my paternal aunt Lalmangaihzuali (Angaihi). I told the incident to Angaihi and she said she was very sorry and made a phone call to my mother. I know that my biological father has also informed of the incident. I was taken for medical examination. My statement was recorded by one Judicial Magistrate. The Police also recorded my statement.

The accused is briefly made to appear in the Chamber and the prosecutrix identified him.

Earlier I was sexually assaulted by Liansanga at West Phaileng. FIR was lodged against him but he was in the Police Lock Up only for one night. I do not know of if there is any criminal case. The earlier incident occurred when I was around class-5.

Cross examination by D/L:

1. The accused gripped my throat soon after he said he would hurt my mother as much as she can since they have separated.

2. Prior to the present incident, I did not have any suspicion on the behaviour of the accused towards me.

3. At the time of the incident I was 11 years old.

4. I do not remember in which side of his hands, left or right, he removed my pant and underpant as well as his own pant and underpant.

5. He gripped my throat and made me lie down on the floor.

6. He was kneeling while he removed his pant and underpant but he did not stop gripping my throat.

7. It is not as fact that since the accused ejaculated it is not humanly possible to perform another sexual intercourse within a short span of time.

8. Angaihi was the first person I informed about the incident.

9. Liansanga of West Phaileng inserted his hands into my private part. He did not penetrate his male organ. I do not know how many fingers he penetrated. I must be about 9 years old at the time of the incident at West Phaileng and I repeat class-5 once.

10. It is not correct to suggest that the accused did not sexually assault me at all.

11. *It is correct to suggest that my step father cares for me. (voluntarily but when he has a quarrel with my mother he is rude and violent with all of us).*

12. *It is not a fact that I am deposing falsely in the court today."*

P.W. NO. 3/Dr. Vanlalruati examined the accused at Civil Hospital Aizawl on 21.7.2010 at about 5:15pm. She filled up Sl. No. 9 of the Medical Examination Report (i.e. Ext.P-3) on the basis of information of accused. Upon examination, he was found to be physically and mentally sound. At the time of examination, he was smelling of alcohol. There was stain on his shorts and since she could not ascertain what the stain was, she had taken slide. The shorts and underpant of the accused were send for Laboratory Examination. His secondary sexual organs were fully developed. Since no deformity was found in the genetal organs of the accused it is presumed that he would be able to have erection. She exhibited the medical examination report of the accused as Ext. P-3 and her signature as Ext. P-3(a). In her cross examination she stated that there was no stain on the underwear but there was stain on the shorts which he was wearing. As she did not receive back the Laboratory Report, she does not know what the stain was. It can even be oil, no separate test was conducted so as to ascertain whether he can have erection or not. There was slight swelling on the right hand of the accused. No smegma was present around the corona glands and that was one of the reasons she send the underwear and shorts for Laboratory Examination. Though the accused was smelling alcohol at the time of examination, he was not drunk.

PW No.4/ Dr. Ngurnunzami Sailo examined X at Civil Hospital Aizawl on 21.7.2010 @ 5:30pm. Her findings on examination were as follows:-

1. Her physical and mental health are normal.
2. She was not under the influence of alchohol or drugs at the time of examination.
3. Reddish stain was present on her underwear.
4. There was no marks of violence on her body.
5. On genital examination, her pubic hair was present, no bruising or laceration was found. There was an old tear of hymen.
6. Three vaginal smear and underpent were sent for laboratory examination to see the presence of spermatozoa or not.

Since there was fresh stain on the underpent, the medical officer formed an opinion that the victim was sexually assaulted. The witness exhibited the Medical Examination Report of X as Ext.P-4 and her signature as Ext.P-4(a). In her cross examination she stated that she did not receive back the laboratory examination report of the vaginal smear and stained underwear. She denied the suggestion that

since she has not made a written record of the statement regarding the history of the incident she fabricated the history in the court. She does not know the age of the tear of the hymen. She denied the suggestion that reddish stain on the underwear can be caused by spilling coffee or tea. She is about 5 ft tall and the victim at the time of examination was shorter than her. She did not conduct any test to determine the age of the victim. The victim at the time of examination could not have been 16 yrs or above. She did not ask the date of birth of the victim but the victim stated that she was 12 yrs and 11 months.

PW No.5/ H.Lalhmingthangi is the Investigating officer, Sub. Inspector of Police and posted in the Crime Against Women Cell. She stated that on 21.07.2010, one Hranglianhmuaka of Chhinga veng lodged a written FIR at Vaivakawn Police Station regarding the instant case. The case was registered at Vaivakawn P.S. and as the complaint pertains to an offence against woman the O.C of Vaivakawn P.S. endorsed the case to her for investigation. During investigation, she visited the place of occurrence which is at Hunthar Veng, arrested the accused on 21.07.2010 itself, she also recorded the statements of the accused, complainant, victim and other witnesses. She obtained the birth certificate of the victim from her mother and after making a photo copy from the original returned the original to her mother. She forwarded both the accused and the prosecutrix for medical examination on 21.07.2010. The victim also made a statement u/s 164(5) CrPC. before a Judicial Magistrate. Having found a prima facie case I laid charge sheet against the accused for the offence punishable u/s 376(2) (f) IPC. She exhibited the Charge Sheet as Ext.P-5 and her signature as Ext.P-5(a). In her cross examination, she stated that some parts of Ext. P.5 were written down by literate constable Zorampari on her dictation. She does not know the result of the laboratory examination to find out the presence of spermatozoa. She admitted that there was no fresh tearing of the hymen. The information was lodged on the same day of the incidence. This is the first case she has taken up as investigating officer on being appointed to Sub-inspector of Police. When she recorded the statement of the prosecutrix she stated that in the year 2008 she indulged in sexual intercourse. She admitted the suggestion that in Ext. P.3 there is no clear record of the finding of potency of the accused. She did not take any step to find out whether the birth certificate of the victim produced as original was really genuine or not. When she forwarded the victim to the Judicial Magistrate for recording of her statement she has used the term confession.

7. Examination of the accused u/s 313 CrPC is one of denial. However he stated that he had gone out with his wife (mother of X) to visit her parents. There was a

quarrel between them, so he left the house of his in-laws alone and went home. When he reached home there was no one. According to the accused even if he had a quarrel with the mother of X there was no reason for him to act in revenge upon X.

8. At this stage the evidence adduced by the lone defence witness may be highlighted:-

DW No.1/ Hmartawnliana stated that he does not believe that the accused could have sexually assaulted the victim as alleged. He stated that they were his tenant and they were living on the floor below him. According to this witness, if the accused had the intention to sexually exploit X, he had ample of opportunities and such, he does not believe that the accused could have committed the offence of rape in the house of another person. During the time of the incident, the mother of the victim was not at home. At that time, the wife of the accused left him as well as their 2 minor children. He made a phone call to her but she could not be contacted. The accused has 2 children with the mother of the victim. The victim is the step daughter of the accused. Soon after he left the accused she married another man leaving behind her 2 minor children with the accused. When he suggested to the mother of the victim that they should report to MHIP Hunthar Branch if her daughter was sexually assaulted by the accused she declined saying that it was humiliating. In his cross examination, he stated that while the family of the accused were renting his house, the family of the accused consisted of him, his wife, their 2 minor children and the daughter of the accused's wife/victim. He does not know of any disturbance or problem within their family. At the time of the present incident, the wife of the accused was not in the house, she did not return at night but the accused and the 3 children were present. He never mixes around with the accused. However since they were living downstairs sometimes he visited them to collect house rent. He hardly visited them for other purpose. He was present in his house when the Police came for investigation. The Police did not record his statement. At present, the accused is living with his mother and his 2 children are living with their mother. Though the victim was a minor she could have shouted. He denied the suggestion that the victim did not shout because she was threatened.

DW No.2/ F.Ngurnunsanga deposed in similar line with DW No.1. He stated that he does not believe that the accused could have committed the offence cause the accused looked after the prosecutrix as his own daughter and if he had the intention to do such things to her he had ample of opportunities to do the same in his own house. He also stated that when the accused separated with his wife Sangpuii he evicted his children including the prosecutrix from his house, if the accused had the intention to sexually assault the prosecutrix he could have held



them back. In his cross examination he stated that the accused is his cousin brother being the son of the eldest brother of his father. He also stated that DW Hmartawnliana is his elder brother and that the family of the accused was his tenant. He does not know the name of the prosecutrix. He admitted that he was not present at the time and place of the incident, he does not know the whereabouts of the accused on that day, he does not know Parmawii who is the younger sister of Sangpuui(wife of the accused).

9. In the instant case, though charge sheet was laid against the accused for the offence punishable u/s 376(2)(f) IPC, charge was framed u/s 376(1) IPC and the accused having pleaded not guilty is facing trial for the said offence punishable u/s 376(1) IPC.

10. In practice a conviction for rape almost entirely depends upon the credibility of the woman, so far as the essential ingredients are concerned, the other evidence being merely corroborative. It is not necessary that there should be corroboration of every material circumstance. All that is required is that there should be some additional evidence rendering it probable that the story of the complainant is true and that it is reasonably safe to act upon it. 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. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court of facts may find it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. Assurance, short of corroboration, as understood in the context of an accomplice would do. In this regard, the hon'ble Apex Court in the case of *Bharwada Bhoginbhai Hirijbhai versus State of Gujarat* reported in (1983)3 SCC 217 wherein it has been held as follows :-

*“9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury. Why should the evidence of the girl or woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society..... Corroboration may be considered essential to establish a sexual offence in the back drop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and*

*to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society and its profile.....”*

11. Dealing first with the age of X, it may be noted that charge was framed u/s 376(10) IPC though charge sheet was laid against the accused for the offence punishable u/s 376(2)(f) IPC. PW No.1/Hranglianhmuaka, the father of X stated that X was born on 22.8.1997 and he admitted in his cross examination that at the time of the incident X was above 13 years. He was not questioned on X being above 16 years. X was examined on 6.6.2013 as PW No.2 and she stated her age as 14 years. She was not cross examined on her age. As per the Medical Examination Report of x at Ext.P-4, it is seen that her pubic hair has not developed. None of the prosecution witnesses were cross examined on the age of X that she was above 16 years at the time of the incident. The accused in his examination u/s 313 CrPC stated that he does not know the exact age of X. PW No.4/Dr. Ngurnunzami Sailo who examined the prosecutrix stated that though she did not conduct any test to determine the age of X, X could not have been 16 years or above. Photocopy of the Birth Certificate of X have been exhibited as Ext.P-2. In the said exhibit, the date of birth of X have been recorded as 22.8.1997. The said document cannot be regarded as primary evidence. But considering the other evidence on record, I find that it is a corroborative evidence of PW No.1 to the effect that X was born on 22.8.1997. In the absence of any evidence to the contrary, the date of birth of X is accepted as 22.8.1997 and as such on the date of the incident i.e. 21.7.2010 she was about 13 years and one month.

12. Relevant portion of the statement of the prosecutrix is reproduced below:-

*But I remained in the house of U Parmawii. Later the accused returned alone and he entered the bedroom of U Parmawii and called me to the said room. So I went to the bedroom. He told me that he has separated from my mother and because of their separation he want to cause her as much hurt as he can. Then he gripped my throat though I tried to shout because of the force of the gripping I could not make any sound. He gripped my throat with one hand and with the other hand, he remove my pant and underpant. Then he removed his own pant and underpant. Then he tried to penetrate his male organ into my private part but since I struggled as much as I could he could not fully penetrate though he penetrated. All these time he made me lie down on the floor and he was kneeling. I saw some white discharge from his male organ then he left the room. I remained in the room since I was shivering in fear and could not move. Then I tried to jump out from the window but the accused saw me and ordered that I should not touch the window*

*being afraid I obeyed him. Then he tied my hands with his belt and stuffed his handkerchief in my mouth. Thereafter, he removed the belt and handkerchief and once again sexually assaulted me. This time I know that the accused penetrated and he said he could fully penetrate. After this, he took a knife from the table inside the room itself and threatened me but I got hold of a book and hit at his knife with the book. His knife fell down and taking the opportunity I ran out from the door to the house of my paternal aunt Lalmangaihzuali (Angaihi).*

13. In the instant case, according to the statement of the prosecutrix the sexual assault was twice. From the evidence adduced by the prosecution witnesses particularly the Prosecutrix (PW No.2) it is clear that the incident occurred inside a house on the floor of a bedroom. According to the prosecutrix, in the first incident the accused made her lie down on the floor and he was kneeling. She also stated due to the resistance put up by her the accused could only partially penetrate. As such, considering the place in which the offence was committed, the manner it was committed and the fact that there was only partial penetration, I am of the considered view that it would not be reasonable to insist that the prosecutrix would sustain injuries.

With regard to the second incident, the prosecutrix stated that the accused tied her hands with his belt and stuffed his handkerchief into her mouth. He removed them and then sexually assaulted her again. This time she knew that the accused penetrated and the accused also stated that he could fully penetrate. This time the prosecutrix did not say that she resisted.

It may be noted that the prosecutrix was below 16 years at the time of the incident. As such she had not attained the age to exercise her discretion. At the same time she was not so tender an age not to understand the conduct of the accused upon her person. For this it would be necessary to examine the sequence of events after the first incident to the second incident. In this regard X stated “*I remained in the room since I was shivering in fear and could not move. Then I tried to jump out from the window but the accused saw me and ordered that I should not touch the window being afraid I obeyed him. Then he tied my hands with his belt and stuffed his handkerchief in my mouth. Thereafter, he removed the belt and handkerchief and once again sexually assaulted me. This time I know that the accused penetrated and he said he could fully penetrate.*”

From the manner the sequence was narrated, and no specific time was given with regard to the duration from the time of first incident to the time X was tied with a belt. From the manner of deposition, it appears that it was not for a long time that the accused tied her hands with belt and stuffed his handkerchief inside her mouth.

Though as argued by the Id. Defence Counsel, ordinarily it would be reasonable to expect atleast some ligature due to tying with the belt, the question is whether its absence would shake the credibility of the prosecutrix or in other words whether the absence of any injury or marks of violence on the body of the prosecutrix render the prosecutrix unreliable and her evidence liable to be thrown overboard?

14. In order to decide on the above, it may be noted that the incident complained off occurred on 21.7.2010 and FIR was lodged on the same day itself. According to the prosecutrix she ran out of the house and informed the matter to her paternal aunt Lalmangaihi (Angaihi) who made a phone call to her mother. According to PW No.1/Hranglianhmuaka, the biological father of X, the incident was informed to him by his ex-wife Lalsangpuii, mother of X. There is no evidence to the effect that at the time/around the time of the incident, the mother of X and her husband, accused were separated. On the contrary, PW No.2/X stated that even on the date of the incident her mother and the accused went out together to collect money borrowed from them but they had a quarrel and the accused returned home alone. PW No.2/X also stated that her mother married the accused when she was reading in Class-2 and that she started living with her mother she was in Class-3. She also stated in her cross examination that the accused used to take care of her but that he is rude and violent with all of them whenever he has a quarrel with her mother. DW No.2/Ngurnunsanga stated that he does not believe that the accused could have committed rape upon X because he looked after X as his own daughter.

15. Further, the prosecutrix inspite of being the step daughter of the accused did not hesitate to inform the incident to her paternal aunt (sister of accused). The said paternal aunt of X is the first person X informed about the incident soon after she ran out of the house of Parmawii. This conduct of the prosecutrix in immediately informing the incident to her relative even though the relation is through her step father who himself is the accused depicts her innocence and the same has lend credibility to her statement.

16. It may also be noted that the defence witness DW No.1/Hmartawnliana stated that the mother of X did not return home on the night of the incident but the accused was at home with the three children. PW No.2/X and DW No.1/Hmartawnliana stated that the accused and his wife (mother of X) had two children. DW No.1 also stated that the family of the accused consisted of him, his wife, their two minor children and daughter of accused's wife/victim. There is no evidence of any misunderstanding between the accused and his wife at the time when they went out together to collect money borrowed from them. In fact, the

accused in his examination u/s 313 CrPC stated *“I went out together with my wife (mother of prosecutrix) to visit her parents. There was an argument between us. So I left the house of my in-laws alone and went home. When I reach(ed) home there was no one in my house”*. Accordingly, it transpired from the evidence as well as the statement of the accused u/s 313 CrPC that on the date of the incident when accused and his wife left the house together there was no misunderstanding or quarrel, the quarrel was after they left the house. The wife of accused did not return home at night. The incident complained off occurred in the afternoon when the accused returned home alone. Hence, considering the sequence of events, it is very unlikely that in the meantime the mother and daughter could have conspired against the accused to falsely implicate him in an offence of this nature. Considering the age of the prosecutrix, and keeping in mind the innocence of a child, it would be against the ordinary course of human nature of a child like the prosecutrix to falsely frame the accused.

It therefore appears that there was no environment within the family or between the accused and mother of X so as to falsely implicate the accused, that too, in an offence which would equally damage the life, reputation, dignity and honour of her daughter as well as the entire family.

17. As stated above, the medical evidence shows that the hymen of the prosecutrix has ruptured but it was an old tear. PW No.2/X stated that prior to the present case, she was sexually assaulted by another person. In her cross examination, she stated that in the previous incident the culprit touched her private part with his fingers. This statement of the prosecutrix have not been demolished during cross examination. There is also no evidence or any material to suggest that the rupture of hymen was due to reasons other than sexual assault/molestation. Considering the history of the prosecutrix as stated by herself, the medical finding of old hymenal rupture lends credibility to the statement of the prosecutrix and in her condition no fresh tear of hymen can be expected to be forthcoming from the medical evidence.

**Modi** in his well known work **“Medical Jurisprudence and Toxicology”**, 21<sup>st</sup> Edn. Pg.369 states that rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the Medical Officer is that there is evidence of recent sexual activity. Whether rape has occurred or not is a legal conclusion, not a medical one.

PW No.3/Dr.Vanlalruati examined the accused on 21.7.2010 itself and found a stain on his shorts. She sent the underpant and shorts of the accused for

examination. The medical officer further stated that no smegma was present around the corona glands and that was one of the reasons she send the underwear and shorts for Laboratory Examination as smegma is rubbed off by intercourse.

PW No.4/Dr.Ngurnunzami Sailo who examined X on 21.7.2010 stated that there was reddish stain on the underwear of X. The medical officer also stated that three vaginal smear and the underpent were sent for laboratory examination to see the presence of spermatozoa.

From the statements of the two medical officers who examined the accused and X respectively, it is clear that they have reasons to suspect recent sexual intercourse for which samples/materials were sent to the laboratory in order to reach a conclusion.

The laboratory examination is not available on record. However, I am of the considered opinion that justice delivery system should not be a casualty of such lapses.

18. From the above discussions and keeping in mind the place of occurrence and the manner the offence was committed, I am of the considered opinion that the absence of any injury on the body or genitalia of the prosecutrix by itself would not casts doubt on the credibility of the prosecutrix.

19. I am unable to find any evidence with regard to the argument of the Id. Defence Counsel that the incident occurred on 21.7.2010 in between 1-2 PM. There is no evidence regarding the exact time of the day and the duration of such assault (twice). What transpired from the evidence is that the incident occurred in the afternoon of the same day. Since there is no evidence of the specific time spent, it cannot be concluded that it was between 1-2 PM or in other words, X was sexually assaulted twice in one hour.

20. The two defence witnesses are both related to the accused. Though they being the relative of the accused would not by itself casts doubt on their credibility, upon appreciation of the evidence adduced by the two defence witnesses, it is noticed that it is their opinion that they cannot believe the allegation made against the accused. The statement of DW No.1 to the effect that at the time of the incident the mother of the prosecutrix was not at home and that during that time the wife of the accused had left him also leaving behind their two minor children have been falsified by PW No.2/X and the accused himself in his statement u/s 313 CrPC. This witness also stated that he does not mix around with the accused and that he only visited them to collect rent. DW No.2 stated that he does not know the name of X, on the date of the incident he was at home at Hunthar veng and he does not

know the whereabouts of the accused and admitted that his disbelief of the accused having committed sexual offence is his opinion.

21. In the **State of Rajasthan versus Om Prakash** reported in (2002)5SCC 745 the honb'le Apex Court has held as follows:-

*“12. Child rape cases are cases of perverse lust for sex where even innocent are not spared in pursuit of sexual pleasure. There cannot be anything more obscure than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide legal protection to these children. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse these factors point towards a different approach required to be adopted.”*

22. 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 CrPC., the defence evidence 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 376(1) IPC against the accused **Lalrempuia** beyond reasonable doubt.

23. Accused **Lalrempuia** is accordingly convicted of the offence punishable u/s 376(1) IPC.

24. Sentence will be passed on 10.7.2014 after hearing the parties. Bail bond stands cancelled. Accused is remanded to judicial custody.

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

26. Pronounced in open court and given under my hand and the seal of this court on this the 8<sup>th</sup> day of July, 2014.

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

## **ORDER**

**11.07.2014**

Accused Lalrempuia is produced from judicial custody. Ld. Defence Counsel and Addl. PP are present.

1. Heard the parties on the question of sentence.

Accused Lalrempuia prays for leniency by submitting that he has no previous criminal antecedents. He stated that he is now 34 years old and that his children with Lalsangpuui (mother of X) are living with their mother and he presume that the prosecutrix is also living with her mother or her grandparents. He stated that after the incident he separated with Lalsangpuui (mother of X) and thereafter they re-married but subsequently divorce again till date. He also stated that his parents are not living together and that he is living with his uncle Hmartawnliana at Hunthar, Aizawl. He also stated that he is not keeping good health and that the prosecutrix was living with them since childhood and till the time of the incident she attended school. The accused also submitted that he was released on bail in the instant case on medical ground.

Mr. S.L. Thansanga, the Ld. State Defence Counsel adopted the submission of the accused and further submitted that due to serious ailment, the accused was hospitalized last month and put in the ICU at Synod Hospital, Durtlang.

On the other hand, Mrs. Rose Mary, the Ld. Addl. PP submitted that no sufficient ground have been made out to show leniency to the accused. She further submitted that from the submission of the accused himself to appears that he is not responsible person who shoulders the responsibility of looking after his family and children. The ld. Counsel also submitted that on the date when Judgment was pronounced the accused was clearly explained that he could contact his family and his Counsel so that they can prepare themselves on hearing on the sentence. On the prayer of the State Defence Counsel, hearing on sentence was adjourned on a day but inspite of that they could not substantiate their submission of the accused being sick by producing any medical certificate. In this regard, the ld. Counsel further submitted that throughout the trial it has never been known to the Court that the accused is having some ailment. According to the ld. Counsel, leniency was already shown to the accused when charge was framed u/s 376(1) IPC though Charge Sheet was laid against him for the offence u/s 376(2)(f) IPC.



2. The criminal law in general adheres to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant.

3. There is no straitjacket formula for awarding punishment/sentence. Each case depends on its own facts. Therefore, a certain element of guess work is involved. In the case at hand, while considering the nature of the offence and the right of the prosecutrix, it is needless to say that sexual violence is not only a crime to the victim but to the entire society, it affects the very soul of the victim, the accused here is none other than the step father of X with whom she has been living for a number of years. On the other hand, while considering the mitigating factors, it is noticed that the prosecutrix did not sustain any injuries, there is no evidence of she being unable to lead a normal life after the incident, the accused for a number of years looked after her as his daughter and the prosecutrix herself stated that she had no complaints except at those times when the accused was drunk during which time he was violent with all the family members, she did not complain of maltreatment from the accused, she has no hatred for the accused, there is no material to show criminal antecedents of the accused and it appears that in the instant case the accused acted in anger due to a quarrel with the mother of X who was his wife and that he acted in the heat of the moment.

4. Upon balancing the aggravating and mitigating factors, I am of the considered view that sufficient ground exist to show leniency to the accused and that in the given facts of the case, "special and adequate" reasons exist to sentence the accused below the minimum prescribed by law.

5. Accordingly accused **Lalrempuia** is sentenced to undergo Rigorous imprisonment for 4 years ( 3 years and 6 months) and to pay a fine of Rs. 20,000/- (Rupees twenty thousand) only and in default to further undergo Rigorous Imprisonment for 4 (four) months.

6. Detention period already undergone by the accused during investigation and trial shall be set off from the sentence.

7. Accused is remanded back to judicial custody to serve the remaining sentence. Commitment warrant be prepared accordingly.

8. This Order shall form part of the Judgment dt.8.7.2014.

9. Give copy of the Judgment & Order, free of cost to the accused.
10. With the above Order, the case stands disposed off.
11. Case record shall be consigned to the Record room.

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

**Memo No.:**\_\_\_\_\_/AD&SJ(A)/2014 : Dated Aizawl, the 11<sup>th</sup> July, 2014

**Copy to: -**

1. Accused Lalrempuia through Counsel Mr. S.L. Thansanga, Advocate.
2. Special Superintendent, Central Jail, Aizawl.
3. District & Sessions Judge, Aizawl Judicial District, Aizawl.
4. District Magistrate, Aizawl District, Aizawl.
5. PP / Addl. PP, Aizawl.
6. DSP (Prosecution), District Court, Aizawl.
7. G.R. Branch.
8. Registration Section.
9. Guard File.
10. Case Record.
11. Calendar Judgment.

**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    Photo copy of Birth Certificate of prosecutrix

Ext. P-3    Medical Examination Report of accused

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

Ext. P-4    Medical Examination Report of prosecutrix

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

Ext. P-5    Charge Sheet

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

**B. DEFENCE EXHIBITS-**            None

**C. EXHIBITS PRODUCED BY WITNESSES -**        None

**D. COURT EXHIBITS-**        None

**E. PROSECUTION WITNESSES:**

P.W. No. 1 -        Hranglianhmuaka

P.W. No. 2 -        Prosecutrix

P.W. No. 3 -        Dr. Vanlalruati

P.W. No. 4 -        Dr. Ngurnunzami Sailo

P.W. No. 5 -        SI H. Lalhmingthangi

**F. DEFENCE WITNESSES - :**

D.W. No. 1 -        Hmartawnliana

D.W. No. 2 -        F. Ngurnunsanga