

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

PRESENT

**Smt.Helen Dawngliani
Addl. District & Sessions Judge**

**SR No. 34/2012
In Crl.Tr. No. 2139/2011
U/s 376(2)(f) IPC**

Ref :- Kawrthah P.S Case No. 10/2011 dt.21/9/2011 u/s 376(2)(f) IPC

State of Mizoram

Versus

Vanlalhlana Accused

Date of hearing 14.03.2014

Date of Judgment 28.03.2014

A P P E A R A N C E

For the Prosecution	Mrs. Rose Mary, Addl. PP
For the Accused	Mr. S.Pradhan, 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 21/9/2011 one Cherhlunchhungia submitted a written FIR at Kawrthah Police Station to the effect that on the said date i.e. 21.9.2011 (Wednesday) @ 12:30 pm his granddaughter X 8years and resident of Kawrthah venghnuai was sexually assaulted by Vanlalhlana S/o Ramchangliana R/o Kawrthah Hmar Veng during her school lunch break.

On the basis of the said information, Kawrthah P.S Case No.10/2011 dt 21.9.2011 u/s 376(2)(f) IPC was registered and investigated into. Upon completion of investigation, having found prima facie case against the accused Vanlalhlana for the offence punishable u/s 376(2)(f) 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.Saurabh Pradhan, Advocate was assigned to defend the accused at the State expense u/s 304 Cr.P.C.

4. Charges u/s 376(2)(f) 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.

5. POINT(S) FOR CONSIDERATION:-

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. The prosecution examined 8 witnesses. Accused was examined u/s 313 Cr.P.C three witnesses for the defence were also examined. The Ld. Counsels are heard.

Mrs. Rose Mary, the Ld. Addl. PP submitted that the prosecution has been able to prove the guilt of the accused beyond a shadow of doubt. In support of her submission, the Ld. Addl. PP submitted that the prosecutrix clearly stated that the accused penetrated his male organ into her private part. The statement of the prosecutrix is corroborated by the medical evidence wherein it was found that the hymen of X was torn and it was a fresh tear and still bleeding. The medical officer also stated that vaginal swab shows presence of spermatozoa. Referring to the evidence of PW No.7, the Ld. Addl.PP submitted that the said expert in the forensic laboratory upon examination of the underwear of the victim shows presence of semen of blood group AB and the blood group of the accused is AB. The Ld. Addl.PP further argued that the defence witnesses are unreliable and that their evidence are contradictory more particularly in the sequence of events of the day of the incident, who all were present in the house at the time of the incident, the whereabouts of the accused etc. The Ld. Counsel argued that the victim being a minor, there is no reason for her to cook up a story against the accused. As such the evidence of the prosecutrix is reliable and sufficient to convict the accused for the offence punishable u/s 376(2)(f) IPC.

On the other hand, Mr. S. Pradhan, Ld. State defence Counsel submitted that the prosecutrix has failed to lead sufficient evidence against the accused. The Ld. Counsel argued that from the cross examination of the medical officer it can be seen that she did not suffer any injuries and no seminal stain was found, the medical officer also could not determine the age of the rupture of the hymen. The medical officer further stated in his cross-examination that there can be rupture of hymen due to reasons other than penetration of male organ. The Ld. Counsel further argued that X was barely 8 years old and if the incident actually occurred she is expected to sustain injuries, the absence of

any physical injuries has created doubt on the prosecution story. Mr. S. Pradhan further argued that it is clear from the defence evidence that from the very next day of the incident the prosecutrix could run and play around. The Ld. Counsel therefore argued that reasonable doubt exist and that it is a fit case where the accused should be acquitted by giving him the benefit of doubt.

7. DISCUSSION, DECISION AND REASONS THEREOF:-

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

PW No.1/Cherhlunchhunga stated that he knows the accused Vanlalhlana since they belong to the same village. The prosecutrix is the daughter of his sister Ramnghinglovi. In the year 2011 his said sister came to his house at about 6-7 PM and told him that her daughter X was raped by the accused on that day. Though he did not ask further question to his sister she continued to tell him that she observed some unusual behavior on her daughter and in the afternoon her said daughter had fever. She felt that there was something wrong. So she went and asked the friends of her daughter who attend the same school with her who informed her that during lunch time in the school Vanlalhlana asked the prosecutrix to buy MIMI (instant noodle) and called her inside his house. On getting the information his sister went back to her daughter and asked her what had happened and she reluctantly disclosed the incident to her. So he decided to approach the police by filing the FIR. During that time the prosecutrix was living with his sister and her step father. The prosecutrix was also taken for medical examination. At the relevant time the prosecutrix was 8 years. He exhibited the FIR as Ext. P-1 and his signature as Ext. P-1 (a). In his cross-examination, he admitted that he did not see the accused committing rape upon the prosecutrix. He also admitted that he did not ask anything to the friends of the prosecutrix with whom she attended the same school. He admitted that his knowledge in this case are all derived from his sister. He denied that they have exaggerated the story and falsely implicated the accused due to enmity.

PW No.2/Ramnghinglovi stated that she knows the accused Vanlalhlana since they belong to the same village and his house is not far from her house. The prosecutrix X is her daughter and she was born on 18-6-2003. During the year 2011 she was reading in class-II at Govt. Primary School -IV, Kawrthah. On the date of the incident she was not at home and she engaged herself in the works undertaken as NREGS. Her daughter attended school on that day. Since it was raining heavily without completing their work she went home at about 5 PM. When she reached home her elder daughter Lalthakimi told her that her younger sister X was raped by the accused Vanlalhlana. She told her to further question her sister and her said daughter when she questioned her told her that

during lunch break on that day the accused told her and her friend to buy MIMI (instant noodles) and cigarettes for him. After buying the same they handed over the purchased items to the accused in his house which was closely located to her school. As she and her friend were about to leave the accused held her back and her friend left the house by offering her the noodle she had purchased for him. She also told her that the accused then asked her whether her private part has developed and told her to pull up her skirt then the accused took her to the bed and made her lie down and penetrated his male organ into her private part to which she expressed that she was feeling pain. At that point she asked her what the accused did after she said that she was feeling pain to which her daughter said that the accused did not remove his male organ. Then she asked her that since the incident occurred during lunch break whether the act was committed during the whole period of the lunch break and she replied in the affirmative and said that on hearing the school bell he released her and told her to go back to him but since she was very afraid of the accused she took a different route on her way home instead of passing through the house of the accused which was the usual route to her house. Thereafter she went to the house of her brother Cherhlunchhunga and informed the matter to him. Since she was very panicky she did not check the private part of her daughter at the time when the disclosure was made but while she was sleeping at night she checked her private part. And she noticed redness around her private part. After she informed her brother, her said brother lodged the FIR on the same night. Her husband is the step-father of the prosecutrix. She married her present husband in the month of December 2010 and since then her children including the prosecutrix were living with her mother whose house is closely located to the house where she live with her husband. On the night of the incident they spend the night in the house of her mother. Her daughter was taken for medical examination on the same night when FIR was lodged. On the night of the incident her daughter was having fever the whole night and when she saw the accused in the custody of the Police on the next day she was shivering with fear. In her cross-examination she admitted that she did not witness the accused committing rape upon her daughter. She checked the private part of her daughter only after she returned from the hospital after medical examination. She does not know the cause of the redness present on the private part of her daughter. Her daughter X neither took bath nor washes her private part after she returned from her school till her medical examination. She denied that her daughter Lalthakimi did not tell her about the incident. She admitted that the original birth certificate of X was not taken by the Police but she handed over a photocopy to them on being instructed by them. She admitted that they went to the doctor twice i.e. night of the incident and on the next day at the instruction of the Police. But they did not consult any doctor for her fever.

P/W No.3/X stated that she knows the accused Vanlalhlana. He lives in her village and his house is not far from her school. She is studying in Govt.Primary School-III and they have lunch break in their school. On that day during lunch break they were looking for 'zawngtah' (tree which bears a fruit eaten as vegetables) and having not found the same they proceeded downward and the accused called them to buy two packets of MIMI and one packet of cigarette and Numami was with her. She went alone to buy the items for the accused to a shop. When she returned she did not find her friend Numami and she gave the purchased items to the accused and he offered her the noodles and gave her one packet of MIMI. She did not go back to her school soon after because the accused asked her if her private part has developed and he looked at it. He removed her underpant in his house on a bed. He made her lie down on the bed and he unzipped his pant and she saw him taking out his male organ and penetrated it into her private part. She felt pain but she kept quiet in the beginning but it was very painful she told him that she was feeling pain. On hearing the school bell he released her and she went back to her school. Before she left his house the accused told her to go back to his house. When she reached her school she informed the incident to her friend Numami. On that day she took a different road to go back home. Lalthakimi is her elder sister and when she reached home she told her about the incident. She was taken to a Doctor on the same night. The Police also asked her some questions. In her cross-examination she stated that the first person she informed regarding the present case is Numami and the next one is Lalthakimi. She denied that she did not disclose anything to Numami and her elder sister Lalthakimi. She also denied that she did not make any disclosure to her mother. She denied that the accused did not remove her underpant and made her lie down on the bed and unzipped his pant. She stated that the accused did not lie on top of her on the bed. She denied that she was tutored by her family to make an allegation against the accused before the police. She further stated that she has also not been tutored by any one. She denied that she has deposed against the accused falsely on being tutored by others. She could not see the accused penetrating the accused into her private part. She denied that the accused did not penetrate his male organ into her private part. She denied that the accused inserted his fingers and not his male organ into her private part. She denied that they have falsely implicated the accused due to personal enmity. On her re-examination she stated that when the accused made her lie down on the bed he stood on the floor beside the bed. On her further cross-examination she denied that when the accused made her lie down on the bed he did not stand on the floor beside the bed.

P/W No.4/Dr. Saitluanga stated on 21.9.11 requisition was received for medical examination of X, 8 years who is an alleged victim of rape. He has recorded her

statement regarding the previous menstrual history and whether she has had previous sexual intercourse. He was also informed that by the time of examination she has taken bath and changed her clothes. Though she was a minor she could reply his questions even though she was accompanied by her parents. Since the victim was still a minor he obtained consent for medical examination from her mother and her aunt. He conducted her examination on the same day at 8 PM and he was assisted by one staff nurse at the time of examination. Upon examination he found the victim physically and mentally healthy. Her secondary sexual characters were not fully developed. He found laceration on her external genitalia, anterior near anal region with which were of 12 and 6 O' clock position. He found her hymen ruptured since there was fresh bleeding from the tearing of her hymen he found that the tearing was recent one. He also sent the vaginal swab for lab examination and found presence of spermatozoa of 0-2. From his findings he is of the opinion that there was penetration and that she was sexual abused. He exhibited the medical examination report of the victim as Ext. P-2 and his signature as Ext. P-2(a).

On 22.9.11, he also received requisition or medical examination of the accused. He examined the accused on the same day at 12 PM. Upon conducting the general examination he found the accused physically and mentally healthy and he did not find any injuries on his body. There was no genital infection. In order to ascertain whether he was potent or not there was erection of his male organ and since his genital organ have been fully developed, normal and healthy he concluded that the accused was potent. He exhibited the injury report of the accused as Ext P-3 and his signature as Ext.P-3(a). On his cross-examination he stated that he did not find any injuries on the body of the victim girl. He did not conduct any scientific test to determine the age of the victim girl. As the victim had already changed her underwear and taken bath he did not find any stain on the body at the time of examination. He denied that the victim had not changed her clothes and had not taken bath at the time of medical examination. He admitted that he rely on the statement of the victim regarding change of clothes and bathing. He stated that there is a chance of recording a wrong statement if the information given by the victim and her family regarding change of clothes and bathing were false. He admitted that spermatozoa was present while on laboratory examination of the vaginal swab taken from the victim. He stated that Generally speaking tearing of hymen and fresh bleeding can be caused by reasons other than penetration of male organ. He stated that he did not see the incident and he personally did not see the accused penetrating his male organ into the private part of the victim. He did not conduct any test to determine the age of the accused. He did not use any specific instrument to determine the mental fitness of the accused but he concluded that he was mentally fit as he could give rational answer to the conversation.

Though he has not specialized in psychiatry he is competent to examine the accused as an expert being an MBBS. Though there is no 100% erection of male organ being potency but in the instant case the accused has already have a child and sperms cannot be deposited without erection of male organ. The accused stated to him that he has a child. He denied that the accused did not tell him that he has a child. He admitted that he did not record the marital status of the accused at Ext.P-3. He denied that he was not informed by the victim that she has taken bath and changed her clothes. He denied that upon examination he did not find the accused physically fit to perform sexual intercourse. Personally he abhor sexual assault abuse. He denied that since he abhor sexual assault he has given exaggerated findings in favour of the victim and against accused. He is not related to the accused and the victim.

P/W No. 5/Chaurinpuii stated that she knows the accused Vanlalhlana. She have known him even prior to the incident as his house was located close to the school where she was working as a teacher under the SSA scheme. At the time of the incident i.e. in the year 2011 the prosecutrix was reading in class- II in the school where she was working as a teacher. On the date of the incident the school was having only half day for working and the school hour got over after lunch was served to the students. On the same day at the night time the mother of the prosecutrix met her on her way to consult MHIP leaders regarding the present incident. On the next day when the prosecutrix came to the school she personally asked her if anything had happened to her on the previous day but she did not want to speak out and after explaining to her and taking her understand that a criminal should not go unpunished., She said the accused took her inside his room and made her remove her underpant and then told her to suck his penis and she declined to do so she further stated that the accused rubbed his male organ around her private part but it did not penetrate inside her private part. She further stated that she was held back by the accused and the school was already over and on that day her friend took her school bag home for her. In her cross-examination she stated that the incident occurred on 21.9.11. She admitted that she did not see the accused committing rape upon the prosecutrix. She has known the accused even prior to the incident. She denied that the prosecutrix and her mother did not make any statements to her. She denied that the story against the accused has been exaggerated and blown out of proportion.

P/W No. 6/Rohungliana stated that he knows the accused Vanlalhlana. He stated that he has known the accused even prior to the present incident as he is a habitual offender and often arrested. He is a constable in the Mizoram Police. From the year 2007 till date he has been posted at Kawrthah Police Station. While he was sitting outside the P/S taking rest in the summer shed he was called inside the P/S by the O.C. When he

entered the P/S he was showed an underpant packed inside the polythene bag and he was told that it belonged to X. The underwear was not taken out from the polythene bag. He exhibited the Seizure Memo as Ext.P-4 and his signature as Ext.P-4(a). He also exhibited the underwear as Ext. M-1 but he could not identify the material due to lapse of time. In his cross-examination he stated that he was not present when seizure of underwear was made. He stated that when he was called inside the P/S he was asked to put his signature as a seizure witness and he saw the underwear packed in a polythene bag on the table. He stated that since the polythene was a bit dirty though translucent he cannot say the colour of the underwear and it was not possible to make out if it was an underwear or something else. The O.C simply told him to put his signature as a seizure witness without explaining what was seized. He denied that the polythene he saw inside the room did not contain an underwear.

P/W No. 6/R. Lalawmpuia stated that during the year 2011 he was posted at Kawrthah PS as 2nd officer in charge. He is ASI of Mizoram Police. On 21.9.11 Cherhlunchhunga, maternal uncle of the prosecutrix lodged a written FIR regarding the present case at Kawrthah PS. The information was registered as Kawrthah PS case No. 10/11 dated 21.9.11 u/s 376(2)(f) IPC. At that time the prosecutrix was brought to the PS and he forwarded her for medical examination at Kawrthah Community Health Center. He along with his colleagues went to the house of the accused on 21.9.11 to arrest him but he was not at home and he was arrested on the next day. He seized the underwear of the victim and sent the same for examination at FSL. As the parents of the prosecutrix could not locate her Birth certificate, the same could not be seized. However, later they produced the original Birth Certificate in the PS and after making a photo copy he returned the original to her parents. He recorded the statements of the victim, witnesses and the accused. He also visited the place of occurrence and drew a sketch map. The FSL report shows presents of semen from the underwear from the victim matching with the blood group of the accused i.e. AB blood group. He could not submit a charge sheet in his capacity as ASI and as such he submitted his investigation report to the OC for his necessary action. He exhibited the Seizure Memo as Ext. P-4 and his signature as Ext P-IV(a). He exhibited the Arrest Memo as Ext P-5. In his cross-examination he stated that he did not seize the underwear of the accused. He stated that he has not brought the original birth certificate of the prosecutrix in the court. He stated that he did not make any requisition for determination of the (age) of prosecutrix when he forwarded her for medical examination. He admitted that he did not seize the underwear from the victim herself but explained that it was handed over to him by her mother. He admitted that he called the seizure witnesses after he had already seized the underwear. He denied that the

statement of the accused was recorded by him under threat and duress. He denied that while recording the statement of the accused he did not admit his guilt before him. He admitted that the forensic report only shows that it was the blood group AB and it does not mention that it belonged to the accused. He investigated about the aspect of any misunderstanding between the two families but did not find such misunderstanding. He admitted the suggestion that the FIR was lodged due to personal enmity. He denied that the accused was tortured in the Police custody.

P/W No. 7/Lalchhanzova stated that he is posted as the Asst. Director, FSL, Aizawl in the Serology Division. In the instant case, requisition was made for comparison of vaginal swab and underpant of the victim so as to ascertain the presence of semen and to ascertain the blood group. The exhibits which were enclosed to the requisition are - vaginal swab marked as Ext.-A, blood sample of the accused marked as Ext.-B, underwear of the victim marked as Ext.-C and blood sample of the victim marked as Ext.-D. By Scientific Examination of the said exhibits, no semen was detected in Ext.-A (vaginal swab), semen was detected in Ext.-C (underwear of the victim), the said semen was of the blood group AB. The blood sample of the accused which was marked as Ext.-B shows that it was also of the blood group AB. Upon examination of Ext.-D (blood sample of the victim), it was found that it belonged to blood group A. From his examination, he found that the blood group of the semen found on the underwear of the victim is of the same blood group with that of the accused. He exhibited the FSL report as Ext. P-5 and his signature as Ext. P-5(a). In his cross-examination he stated that he did not see the blood sample being drawn either from the accused and the prosecutrix. The requisition along with the exhibits were first received in the Establishment of the Office and later forwarded to the Joint Director, FSL. He denied that at the time of receiving the exhibits they will not sealed. He admitted that in Ext. P-5 he has not mentioned that the exhibits were properly sealed when he received. He denied that the examination was done as a matter of routine work and perfunctorily. He admitted that there are many people with blood group AB and A. He admitted that it is not possible from the blood group alone to have a finding that it originated/belonged to the accused. He stated that the underwear of the accused was not sent for examination. He denied that the blood group which were sent for examination were not of the blood group AB and A.

P/W No. 8/SI C. Lalchhuanawma stated that he knows the accused Vanlalhlana. He is SI of Police and posted at Kawrthah PS from the month of July, 2012 till date. He stated that Pre-Investigation of the instant case was done by ASI R. Lalawmpuia, during that time SI Lalsangbera Sailo was the OC. By the time he was transferred out, he handed over the instant case to him and he was then transferred to his said post at Kawrthah. As

ASI R. Lalawmpuia was incompetent to submit the Charge Sheet, he went through the investigation done by R. Lalawmpuia and perused all the relevant documents submitted by him. After finding prima facie against the accused Vanlalhlana, he submitted the Charge Sheet for the offence u/s 376(2)(f) IPC accordingly. He exhibited the Charge Sheet as Ext. P-6 and his signature as Ext. P-6(a). In his cross-examination he stated that he did not conduct further investigation and he also did not recall any of the witnesses already examined for further examination. He also did not visit the place of occurrence nor did he make any seizure. He did not record the statement of ASI R. Lalawmpuia. He denied that he laid the Charge Sheet inspite of not finding prima facie case and after conducting the investigation in a perfunctory manner.

8. Examination of accused u/s 313 Cr.P.C is one of denial. The accused however admitted that on 21.9.2011 he sent X and her friend Numami to buy two packets of Mimi and a packet of cigarette and the X came back alone to deliver the items. He stated that he offered a packet of Mimi to x and at that time his sister-in-law had just gone out to dry clothes and she would not have taken more than 5 minutes to back inside the house.

9. At this stage the evidence adduced by defence witnesses may e briefly highlighted:-

D/W No. 1/Lalvenhima stated that he knows the accused Vanlalhlana. He came to know him as he sometimes mix around him and also sometimes have liquor with him. He believe that the allegation is false and made out of hatred and that the accused is not the type of person to commit an offence of rape. He stated that (on the date of incident) after morning meal, he went to the jungle with the accused. After they had evening meal in their respective houses, both of them went to Tripura side to have liquor. He was with the accused at night and he knows that the accused vpassed out due to intoxication by liquor. He stated that if the accused had actually committed rape upon the victim who is a small girl, there should have been bleeding from her private part. In his cross-examination he stated that he does not know/he is not familiar with the family of the prosecutrix. They belong to the same village but not of the same locality. He does not belong to the same locality with the accused. He admitted that there is a school near the house of the accused at Hmar Veng. He admitted that he was not with the accused throughout the day, they separated for meal, and after they returned from the forest before meal. To his knowledge, it was not raining on the day of the incident. He stated that the incident occurred during monsoon. On the next day of the incident, he checked the private part of the prosecutrix and there was no bleeding and she could climb on the tree. He also did not notice any traces of violence. He denied that it is only his believe/presumption that the accused did not sexually assault the victim and explained himself by stating that he was with the accused on that day and he knows that he did not do it. He knows that the 2 families had

misunderstanding earlier but he do not know the reason of their understanding. He denied that the 2 families has never had any misunderstanding. He denied that he did not see bleeding only at the time when he check the body of the prosecutrix. He denied that he did not check the private part of the prosecutrix on the next day of the incident. He denied that he was not with the accused on the date of the incident.

On a Query from the Court:

1. When did you return from the jungle with the accused?

Ans: Around 3 PM.

2. Did the Police record your statement or were you involve with the investigation of this case?

Ans: No. The Police did not record my statement.

D/W No. 2/Lalrinpuui stated that she knows the accused Vanlalhlana. She knows the accused very well. Though they do not reside in the same locality, their residence are not far off. She think that the allegation made against the accused is due to personal hatred. She remember the date as 21st though she cannot recollect the month and year, on that day she know that the accused and his friend Vena consumed liquor towards Tripura border. She further stated that they came back to the village at about 12:00 noon. When they reached their house in between 12:00 – 1:00 PM she was in the house of the accused and he was very tired. He said that he was hungry but on that day they did not have much left over food. At that time the Prosecutrix who was having a break in school came nearby and the accused asked her to buy some eatables for him. The girl came back with the item she purchased for the accused and at that time the accused was sleeping due to drunkenness. He sent the girl because the accused was living with his aged mother and he could not have sent her to the shop. It was not raining on that day. On that the next night the accused was arrested. He denied the allegation. To her knowledge the Police did not find any trace of sexual activity though the Doctor had some adverse finding. To her knowledge the Police rather found the allegation funny. She stated that if a grown up male like the accused had sexual intercourse with a small girl like the prosecutrix she should have sustained injuries and there should be bleeding. But on the next day when a procession was carried out she (X) was in the front running around. After the accused was arrested and taken to Aizawl while she was in the house of the accused consoling his aged mother, she saw the prosecutix and called her. At that time she checked her private part and there were no visible injury. Accordingly, she feel that the case has been made up due to hatred and because they looked down the accused. In her cross-examination she stated that she is a close friend of the accused though they are not related to each other. She does not have any regular employment and she looked after the house hold chores. She does

not know of any previous enmity between the accused and the family of the prosecutrix so as to falsely implicate the accused. She stated that the accused is implicated due to hatred because the allegation against him is wrong. When she reached the house of the accused on the day of incidence he was at home. She heard from the mother of the accused that he had gone to the border. She left the house of the accused not long after he came back home. The accused was arrested on the night of the incident. Her statement regarding the finding of the police in this case is what she heard from one police personal after she came to Aizawl Court in the month of December, 2013 with Lalvenhima who is also a witness. She was not present at the time of the arrest of the accused. The police did not record her statement and she did not make any statement to the police during investigation. She does not know anything on the finding of medical officer who examined the prosecutrix. She denied that she did not personally check the private part of the prosecutrix. She has not personally seen an injured private part of other children. She admitted that a procession was carried out in protest of the present incidence.

D/W No. 3/Lalnunfeli stated that she knows the accused Vanlalthlana. He is the younger brother of her husband. She lived in the same village with him. On the day of the incident the accused sent the prosecutrix to buy Mimi. Because of that she got late for school. She think that was the reason they accused him of raping her. During the time when the accused sent the prosecutrix to buy Mimi she was drying clothes nearby. On the day of the incident during day time he was sleeping. When the prosecutrix came to the house to give the item she purchased he was already asleep. She believe that the family of the prosecutrix have grudge against the accused as she could not appear for her exam. Though the accused sometimes take liquor she does not consider him to be of a bad character. She heard that there was no finding of sexual activity and since the accused is facing trial she believe that at some point they must have bribed some person against the accused. In her cross-examination she stated that she lived under the same roof with the accused. Their family consisted of her parents in law, the accused, her husband and their children and the daughter of the accused's elder sister. On the day of the incident she was drying clothes in front of their house. Inside the house the accused was sleeping and there were about 3/4 children. When the accused sent the prosecutrix to buy Mimi she was still inside the house washing clothes. She started washing clothes after having morning meal and she had many clothes to wash on that day. She was still washing clothes when the prosecutrix came to the house. At that time she was on her way to school since their house is located on the way to her school. After she purchased Mimi she went to school but she was late. They were having their exams and as she was late she could not sit for her exam. On the same day they learned from her school friends that she could not sit for

her exam. Their house is closely located to her school. She stated that it is only her presumption that the allegation could be an act of revenge as the prosecutrix could not appear for her exam. She heard from Pu Mawitea, a Police personnel that the Doctor did not find traces of sexual activity. Pu Mawitea said he was amongst the Police personnel who accompanied the prosecutrix to the Medical Officer for examination. She heard this from Pu Mawitea when the accused was in judicial custody. She does not know the rank of Pu Mawitea, she only know that he is a Police personnel. She also does not know whether he was part of the investigation team.

10. In the case at hand, the accused has been charged u/s 376(2)(f) IPC. Accordingly, it is necessary to first record a finding on the age of X.

10A. PW No.2/Ramnghinglovi who is the mother of X stated that X was born on 18.6.2003. She also stated that she is studying in Govt. Primary School-III.

PW No.3/X in reply to the preliminary question stated that she was born on 18th June, 2003.

PW No.4/Dr.Saitluanga sailo stated that the secondary sexual character of X was not fully developed.

PW No.5/Chuaaurinpuii who was working as a teacher in the school of X stated that in the year 2011 the prosecutrix was reading in Class-II.

PW No.6/ R.Lalawmpuia stated that as the parents of the prosecutrix could not locate her Birth Certificate the same could not be seized. However, later they produced the original birth certificate of X in the Police Station and after making a photocopy he returned the original to her parents. In his cross-examination, he denied the suggestion that he has never seen the original birth certificate of the prosecutrix.

The accused in his examination u/s 313 Cr.P.C stated that he does not have any knowledge on the age of the prosecutrix.

DW No.1/Lalvenhima while expressing his disbelieve that the accused could have committed the offence stated – *“If the accused had actually committed rape upon the victim who is a small girl, there should have been bleeding from her private part”*. Similar statement is also made by DW No.2/Lalrinpuii

10.B. In the instant case, no document for proof of age of X have been brought on record. According to the oral testimony of X and her mother, X was born on 18th June, 2003. The credibility of the said statement of X and her mother has to be examined and appreciated in the light of other evidence and materials on record. Oral evidence from

which reference can be made regarding the age and physical development of the prosecutrix have been highlighted in the preceding paragraph. According to the prosecutrix and her mother (PW No.2), on the date of the incident i.e 21.9.2011, X was 8 years old. The statement of PW No.5/Chuaaurinpuui, the teacher of X, to the effect that in the year 2011 'X' was reading in Class-II have not been rebutted in her cross examination. Further, the medical evidence show that the secondary sexual characters of X were not developed. Medical Examination Report at Ext.P-2 which was proved by PW No.4/Dr.Saitluanga Sailo shows that X has not attained menarchy and genital examination shows that pubic hair has not developed. It may also be noted that the defence witnesses disbelieved that the accused could have committed the offence because they feel that if the accused had sexual intercourse X would sustain injuries and there would be bleeding since X is a 'small child'. PW No.2/Ramnghinglovi and PW No.3/X have not been cross-examined on the age of X.

11. Considering the evidence in its entirety, the generic development of X, the Class in which she was reading and the absence of any rebuttal from the defence regarding the age of the prosecutrix, I do not find that there is any reasonable ground to disbelieve the prosecutrix and her mother regarding the age of the prosecutrix. Accordingly, the date of birth of X is accepted as 18.6.2003 and on 21.9.2011 she was 8 years and 3 months old. As such, at the time of the incident X was below 12 years and has not attained the age to exercise her discretion.

12. In order to constitute an offence of 'Rape' as envisaged by the first Explanation to s. 375 IPC, while there must be penetration in the technical sence, the slightest penetration would be sufficient and a complete act of sexual intercourse is not at all necessary.

It is also by now a settled position of law that in cases involving sexual offence conviction can be based on the sole testimony of the prosecutrix if it inspire confidence of the Court.

In the case of **Madan Gopal Kakkad versus Naval Dubey & Anr** 1992 SCR (2) 921 the Court has held as follows:-

“Even in cases wherein there is lack of oral corroboration to that of a prosecutrix, a conviction can be safely recorded, provided the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence, and that as a general rule, corroboration cannot be insisted upon, except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming”.

13. In the instant case, few preliminary questions were asked to X by the Court. Having found that she could give rational reply she was found competent to testify. The prosecutrix stated that on that day during lunch break they were looking for 'zawngtah' (tree which bears a fruit eaten as vegetables) and having not found the same they proceeded downward and the accused called them to buy two packets of MIMI and one packet of cigarette and Numami was with her. She went alone to buy the items for the accused to a shop. When she returned she did not find her friend Numami and she gave the purchased items to the accused and he offered her the noodles and gave her one packet of MIMI. She did not go back to her school soon after because the accused asked her if her private part has developed and he looked at it. He removed her underpant in his house on a bed. He made her lie down on the bed and he unzipped his pant and she saw him taking out his male organ and penetrated it into her private part. She felt pain but she kept quiet in the beginning but it was very painful she told him that she was feeling pain. On hearing the school bell he released her and she went back to her school. Before she left his house the accused told her to go back to his house. When she reached her school she informed the incident to her friend Numami. On that day she took a different road to go back home. Lalthakimi is her elder sister and when she reached home she told her about the incident.

14. Upon appreciation of the evidence of the prosecutrix alone, it is noticed that she maintained consistency and she has not been discredited during cross-examination.

15. The credibility of the prosecutrix would also have to be examined in the light of other evidence and materials on record.

16. PW No.1/Cherhlunchhunga who is the maternal uncle of the prosecutrix stated that he learnt about the on the same day @ 6:00 to 7:00pm from the mother of X and that he lodged the FIR on the same day. Similarly, PW No.2/Ramnghinglovi who is the mother of X stated that she informed the matter to her brother and her brother lodged the FIR on the same night. PW No.6/R.Lalawmpuia who conducted the preliminary investigation stated that FIR was received on 21.9.2011 at Kawrthah Police Station from the maternal uncle of X.

17. Accordingly, it is seen from the evidence that the incident complained off occurred on the midday/noon of 21.9.2011 and the matter was brought to the notice of the Police on the same evening. As such there is no delay in filing the FIR which in a way adds credence to the prosecution story because delay in lodging the FIR can prejudice the accused as there is possibility of making false allegation. Further, it has to be kept in mind that in sexual offences, families often take time for deliberation before informing

the Police since such incident spoil the reputation and honour of the entire family. However, in the instant case knowing fully well that victims of sexual assault are often stigmatized, her family did not lose time in approaching the Police.

18. It is also noticed from the deposition of X that the first person she informed about the incident was her friend Numami. When she reached home she also told the incident to her elder sister Lalthakimi. PW No.2/Ramnginglovi mother of X stated that she went home at about 5:00pm and when she reached home her elder daughter Lalthakimi told her that her younger sister X was raped by the accused and also asked her to further question her sister.

From the evidence on record, it is thus clear that the prosecutrix did not keep quiet about the incident and spoke of the incident immediately on reaching her house. Section 8 of the Indian Evidence Act provides that previous and subsequent conduct are relevant. The prosecutrix being a child of barely 8 years cannot be expected to go to the Police and complain the matter. But her conduct in disclosing the incident soon after reached home is relevant and adds her credibility.

19. Turning to the medical evidence, PW No.4/Dr.Saitluanga Sailo who examined X on 21.9.2011 @ 8:00pm stated that there was laceration on the external genitalia anterior near the anal region which were of 12 o'clock and 6 o'clock position. Her hymen has ruptured and as there was fresh bleeding the medical officer found that it was a fresh tear. Vaginal swab was also sent for examination and the report shows presence of spermatozoa 0-2.

No evidence is adduced by the defence about X meeting with any other incident/mishap on the said day from which inference can be drawn as the cause of such genital injuries.

The accused in his examination u/s 313 Cr.P.C stated that X was medically examined again on 22.9.2011. The defence witnesses believed that the accused could not have committed the offence as the prosecutrix did not sustain any injuries and as they saw her playing/running around on the next day of the incident. DW No.2/Lalrinpuii stated that after the accused was arrested and taken to Aizawl, while she was in the house of the accused consoling his mother, she saw the prosecutrix. She called her and checked her private part but did not see any visible injury. Similarly, DW No.1/Lalvenhima stated in his cross-examination that on the next day of the incident he checked the private part of X and there was no bleeding and X could climb on a tree. He also stated that he did not see any traces of violence. What is rather surprising is that DW No.1 & 2 both stated that they checked the private part of X. DW No.1 is a male person. Neither of them are

related to the prosecutrix but strangely they both claimed to have personally checked the private part of X. Presuming that the statements of DW No.1 & 2 are true, even then, considering the nature of injuries sustained by X, the same could have healed particularly since the time they checked her private part was after she was medically examined by the Doctor. The two witnesses does not have any expertise and as such I am of the view that their said evidence is weak and shaky to throw overboard an otherwise reliable medical evidence which is based on expert finding.

The medical officer also stated that the vaginal swab shows presence of spermatozoa. Presence of spermatozoa is clearly suggestive of recent sexual intercourse with ejaculation, thereby, fortifying the statement of the prosecutrix that she was sexually assaulted by the accused.

20. Mr. Lalchhanzova, Asst. Director of Forensic Science Laboratory, Serology Division, Aizawl was examined as PW No.7. According to the said witness, the exhibits which were send for examination were- vaginal swab marked as Ext.A, blood sample of accused marked as Ext-B, underwear of the victim marked as Ext.-C and blood sample of the victim marked as Ext.-D. Upon examination, it was found that vaginal swab (Ext.A) does not contain semen but semen was detected in the underwear of the victim (Ext.C). The semen so found was to be of blood group AB. The blood sample of the accused marked as Ext.B shows that it was of blood group AB. The witness therefore deposed that the blood group of semen found on the underwear of X is of the same blood group with that of the accused (Ext.B).

It is no doubt true that the said finding of forensic expert does not prove that the semen of blood group AB which was found on the underwear of the prosecutrix originated from the accused who was having the same blood group. the probability factors leans in favour of the prosecutrix.

21. It is noticed from the evidence of DW No.2 & 3 that the accused send the victim to the shop as he was living with his aged mother and could'nt possible send his mother. But on the other hand, DW No.3 who is the sister-in-law of the accused stated that at the time of the alleged incident she was drying clothes and there were about 3/4 children inside the house. Another contradiction that may be mentioned is that the accused in his examination u/s 313 Cr.P.C stated that when x came back with the purchased items he gave her one packet of Mimi. On the contrary DW No.2/Lalrinpuui and DW No.3/Lalnunfeli stated that when the girl came back from the shop, the accused was already asleep.

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 Cr.PC. and having regard to the judicial authorities cited above, this court is of the view that the 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(2)(f) IPC against the accused Vanlalhlana beyond reasonable doubt.

23. Accused Vanlalhlana is therefore convicted for the offence punishable u/s 376(2)(f) IPC.

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

25. Bail bond stands cancelled.

26. Sentence will be passed on 1.4.2014 after hearing the parties. Till then the accused will be remanded to judicial custody.

27. Pronounced in open court and given under my hand and the seal of this court on this the 28th day of March, 2014

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

ORDER

Dated 01.04.2014

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

Heard the parties.

Accused Vanlalhlana prays for leniency by submitting that he is living with his aged parents and his father is about 70 years and his mother is about 60 years. The family of his brother who was living with them have established their separate household so presently he is the only one living with his parents. He also submitted that he has 1 minor son with whose mother he has divorced and that his said minor son is in the custody of his mother but would soon be put in his custody. The accused also submitted that he does not have any criminal antecedents and that he is barely 25 years stating that his date of birth is 7.8.1988.

Mr. S. Pradhan, Id. State Defence Counsel adopted the submission of the accused and prays to show leniency by further submitted that the accused is a first time offender and the defence witness clearly deposed that the victim girl could play around on the next day of the incident which means that she did not suffer serious injury. The Id. Counsel also submitted that considering the age of the parents of the accused and considering the act that they are from a rural background earning their livelihood from cultivation it is clear that the accused is the only one who can ear for the family. The Id. Counsel also submitted that while the accused was on bail, he di dnot misbehave or violate any of the bail conditions. The Id. Counsel therefore prays to adopt a corrective method of sentencing with a view to reform the accused.

On the other hand, Mrs. Rose Mary, the Id. Addl. PP submitted that no reasonable ground has been made out to show leniency to the accused. The Id. Counsel submitted that the victim is a child of barely 8 years and she along with the family would suffer mental trauma for he rest of their lives. The Id. Counsel also submitted that though they are from a village, Kawrthah is not a small village and along the National Highway. Referring to the statement of DW No.3/Lalnunfeli who is the sister-in-law of the accused, the Id. Counsel submitted that the said witness was examine sometime in the month of February 2014 and at that time she did not say that her family was moved out from the main house of her husband. The Id. Counsel also submitted that from the record there is no material to show that the accused is the earning member and on the contrary it appears from the record that he does not have any regular job. The Id. Counsel therefore prays to impose sentence as mandated by law.

Heard the parties. While considering the question of sentence, it is the nature and gravity of the crime but not the criminal which are germane for consideration of appropriate sentence. Sentencing is the only weapon which the Court can use to show to the public its abhorrence to such an offence as sexual offence.

In the case at hand, it is seen that the prosecutrix was barely 8 years old at the time of the incident. The medical evidence shows that she suffered genital injury wherein her hymen was found freshly torn and still bleeding at the time of examination with laceration on her external genitalia. Needless to say that apart from the physical injuries, the victim and her family would suffer mental trauma for the rest of their lives because more often than not in a conservative Indian Society, victim of sexual assault are stigmatised and it affects the honour, reputation and dignity of the entire family.

On the other hand while considering the right of the accused, though PW No.6/Rohungliana, a Constable in Kawrthah PS stated that he was familiar with the accused as he was a habitual offender and often arrested, in the Police Report at Ext. P-6 which was duly filled up by the Investigating Officer it is noticed that as per the observational and non-Police records of the accused, the accused is not wanted in any other case, he does not have any past criminal record and is not dangerous or operates with accomplices and that he is unlikely to commit crime or threaten victims or witnesses if released on bail. The record shows that the accused was born on 7.8.1987 and as such by now he is about 27 years though he submitted that he was born on 7.8.1988. Apart from the genital injury, the victim did not sustain any other bodily injury and there is no evidence to the effect that he was armed with any weapon at the time of the incident. The prosecutrix also did not make any statement of she being threatened by the accused nor is there any evidence/materials to suggest that she could not continue her normal activities due to the incident.

Upon weighing the sufferings of the victim and the seriousness of the offence on one hand with the right of the accused on the other hand, from the materials and evidence on record as well as the submissions made by the parties, I am of the considered opinion that that interest of justice as well as the goal of reforming the accused would be achieved by adopting a corrective method of sentencing against the accused. As sentencing has to depend upon the facts and circumstances of each case, there can be no straitjacket formula, hence an element of guess work is necessarily involved.

Keeping in mind the age, character, antecedents of the accused and the hope of reforming the accused, I am of the considered view that special and adequate reason has been made out to pass a sentence lower than the minimum prescribed.

Accordingly, accused **Vanlalhlana** is sentenced to undergo **Rigorous Imprisonment for 8 (eight) years and to pay a fine of Rs. 20,000/- (Rupees twenty thousand)** in default to suffer **another RI for 6 (six) months**.

In terms of Sec. 428 CrPC, detention period already undergone by the accused during investigation and trial shall be set off from the sentence.

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

This Order will form part of the Judgment dt.28.03.2014.

Case stands disposed off.

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

Memo No: _____/AD&SJ/(A) 2014 : Dated Aizawl, the 1st April, 2014
Copy to:-

1. Accused Vanlalhlana through Counsel Mr. S. Pradhan, Advocate.
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. DSP (Prosecution), District Court, Aizawl.
7. i/c G.R. Branch.
8. Registration Section.
9. Guard File.
10. 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 accused

 P-3 (a) Signature of PW.No-4

Ext. - P-4 Seizure Memo

 P-4 (a) Signature of PW.No-6

 P-4 (a) Signature of PW.No-7

Ext. - P-5 Arrest Memo

Ext. - P-5 FSL Report

 P-5 (a) Signature of PW.No-8

Ext. - P-6 Charge Sheet

 P-6 (a) Signature of PW.No-9

(B) **DEFENCE EXHIBITS- None**

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

(D) **COURT EXHIBITS- None**

(E) **PROSECUTION WITNESSES:**

PW.-1 – Cherhlunchhunga

PW.-2 – Ramnghilhlovi

PW.-3 – Prosecutrix

PW.-4 – Dr. Saitluanga Sailo

PW.-5 – Chuaaurinpuii

PW.-6 – Rohungliana

PW.-7 – R. Lalawmpuia

PW.-8 – Lalchhanzova

PW.-9 – SI C. Lalchhuanawma

(F) **DEFENCE WITNESSES - :**

DW-1 – Lalvenhima

DW-2 – Lalrinpuii

DW-3 – Lalnunfeli

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