

Smt.Helen Dawngliani  
Addl. District & Sessions Judge

Ref :- Mamit PS Case No. 25/2010 dt.17.8.2010 u/s 376(2)(f)/506 (a) IPC

## Versus

Jacoba ..... Accused

Date of hearing	.....	8.5.2014 & 19.5.2014
Date of Judgment	.....	26.5.2014

For the Prosecution	.....	Mrs. Rose Mary, Addl. PP Ms. Rosy, Asst. PP
For the Accused	.....	Mr. Saihmingliana Sailo Mr. H. Vanlallawmzuala, Advocates

1. The prosecution story of the case in brief is that on 17/8/2010 Chungkhawliana of Dapchhuah village lodged a written FIR at Mamit Police Station to the effect that on the night of 16.8.2010 @ 9:00pm his daughter X, 10 years was raped by her stepfather Jacoba in their house. The informant also stated that prior to the said incident, Jacoba sexually assaulted his daughter for about three times and threatened her not to disclose.

On the basis of the said information, Mamit P.S Case No.23/2010 dt.17/8/2010 u/s 376(2)(f)/506(a) IPC was registered and investigated into. Upon completion of investigation, having found prima facie case against the accused Jacoba for the offence punishable u/s 376(2)(f)/506(a) 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(2)(f)/506 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. 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?

2. Whether the accused committed criminal intimidation within the meaning of sec. 503 IPC and thereby guilty of the offence punishable u/s 506 IPC

5. During the course of trial, the prosecution examined 8 witnesses. The accused was examined u/s 313 Cr.P.C and one defence witness was examined. The Ld. Counsels are heard.

Mrs. Rose Mary, the Ld. Addl. PP submitted that the prosecution have sufficiently proved the guilt of the accused. The Ld. Counsel submitted that as the prosecutrix herself stated that she did not suffer maltreatment from the accused due to drunkenness, it is clear that the prosecutrix would not have any grudge against the accused. The Ld. Counsel submitted that though they do not have documentary proof for age of the prosecutrix, there is no reason to doubt the date of birth stated by PW No.2/X, prosecutrix herself. The Ld. Counsel also submitted that the statement of the prosecutrix is reliable and that no woman would falsely implicate a person of sexual assault where the victim is her own daughter. Further, the defence that the case being made up by the prosecutrix's mother with an eye to inherit the properties of the accused is unbelievable because from the statement of PW No.3/Lalneihkimi herself it is clear that even after she heard the incident she did not only lodge the FIR but also did not accompany her ex-husband who lodge the FIR. The Ld. Counsel submitted the seminal stain of blood group 'O' which was found on the quilt cover also support the prosecution case. The Ld. Counsel therefore prays to convict the accused.

Mr. H. Vanlallawmzuala, Ld. Defence Counsel submitted that the present case is a mere allegation on the part of the natural parents of the prosecutrix with an eye to get the immovable/movable properties of the accused who belongs to Matu clan. According to the Ld. Counsel, there is no direct evidence to prove the charged section, the bedsheet which contains sperm is not enough prove of the incident, as the said bed sheet seemed to have been spread on the master bed. The accused never admitted the allegation and made the same deposition when he appeared as his own witness. The Ld. Counsel submitted that there are no eye

witness and that the would not have any intention to commit such sexual offence on the victim as he looked after her with full effort despite she not being his legitimate daughter. But the accused was always drunk and he used to fall asleep on the road due to drunkenness. With regard to the finding of rupture of hymen, the Ld. Counsel further submitted that the prosecutrix was 13 years and she was in the habit of roaming around in the street even at night. As such there may also be possibility of having sexual relation with other men or boyfriends. According to the Ld. Counsel, the evidence reveal possibility of family problems between the wife of the accused and the father of X, which created doubt in the instant case. The Ld. Counsel therefore prays to acquit the accused.

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

At this stage the evidence adduced by the prosecution may be briefly highlighted:-

PW No.1/Chungkhawliana is the father of X and the informant. He and the mother of X divorced and X being the youngest was looked after by his wife. He does not know the date of birth of X. He read upto Class-IV and he could not recollect the date of incident but he was informed about it by his divorced wife. He lodged the FIR after consulting his families. He exhibited the FIR as Ext.P-I and his signature as Ext.P-1(a). In his cross examination he stated that his knowledge is derived from his divorced wife, he was advised by the local NGO's to lodge the FIR. He stated that he has reached a compromise with the accused and submitted the same at W.Phaileng Police Station.

PW No.2/X is prosecutrix. She stated that she was born on 25.11.1998. She was told by her mother that she was about 8 months old when her parents divorced. His step father/accused has the habit of consuming liquor, but she has no complaint of maltreatment from the accused due to drunkenness. She stated that when she was about 11 years old, in the year 2009 during daytime, she was taking a nap she was woken up by the feel of the accused trying to remove her underpant and found him lying on top of her. He threatened her not to shout and inspite of her struggle the accused raped her. She stated on the night of the same day she was again raped by the accused on her bed. She remained silent due to threat from the accused. She further stated that thereafter, whenever her mother was not at home, her step father/accused used to rape her. On 15.8.2010, her stepfather was drunk, he had a quarrel with her mother and she left the house. She was about to leave with her mother but was held back by the accused. She stated that on the said night she was raped twice by the accused. On the next day her mother did not return and she was again raped by the accused. On 17.8.2010 while she was on her way back from

school, her mother called her and they went to the house of her sister with whom her mother was living at that time. When her mother asked her what her father did to her she made a disclosure. She stated that after her stepfather was arrested she continued to live with her mother but when the accused was released on bail she started living with her biological father. In her cross examination, she stated that the accused used to behave very abnormally whenever he was drunk, she did not tell the incident to anyone except her mother when she asked her, she did not tell her mother anything prior to her separation from her step father on 15.8.2010. She also stated that the accused has stopped consuming liquor. She continued to visit her mother but never spend the night with them, on such visits the accused never misbehaved with her but she never goes to their house when only the accused is at home.

PW No.3/Lalneihkimi is the mother of the prosecutrix. She married Chungkhawlina father of X in the year 1981 and have 9 children with him. The prosecutrix is the youngest of them. She divorced with the father of X and married the present accused in the year 1999 with whom she has 3 children. She does not know the date of birth of X but presumed that at the time of the incident she must be around 14 years as she started menstruating in the subsequent year. She was told of the incident by her daughter on her way back from school which was also heard by her elder sister. She asked her daughter whether her statement was true or not which was replied in the affirmative by her daughter. The matter was informed to the biological father of X by her elder sister. On hearing the information, her previous husband consulted her and he said that it would be good to put the accused behind bars for 2/3 months in order to reform him. She did not accompany the father of X at the time of lodging the FIR. She stated that the Birth Certificate of X must be with her father. In her cross examination, she stated that when she married the accused all her children were living with them and it would be only 5/6 years that they have gone back to their father. Prior to the disclosure she did not have any suspicion of such sexual relation. She stated that she left her house for one night and returned the next day and it was on this day that her daughter made the disclosure. She further stated that after the accused is released on bail he has reformed and has given up liquor and takes part in Church activities. She also stated that her daughter continues to visit them and there is no trouble during her visits.

PW No.4/Dr.Hrangkapzawna examined X at District Hospital Mamit on 18.8.2010 @ 5:45pm. She was found physically and mentally sound. Her secondary sexual characters have not developed. Her hymen has ruptured and it

was an old rupture. The Doctor further stated that when there is fresh rupture of hymen there will be ramnance of the tear but not in case of an old rupture. The victim had taken bath before she was taken for medical examination. Vaginal smear was taken for laboratory examination. On the same day he also examined the accused. His physical and mental health were normal. His secondary sexual characters have developed normally as healthy person. As there was no deformity in the development of the sexual organs of the accused he formed an opinion that the accused is potent. He exhibited the medical examination report of the prosecutrix as Ext.P-2 and his signature as Ext.P-2(a), medical examination report of the accused as Ext.P-3 and his signature thereon as Ext.P-3(a). In his cross examination, he stated that he stated that he could not determine the age of rupture of hymen, there were no injuries or marks of violence around the genital organs of the prosecutrix, any trace of sexual intercourse could have been washed out as the prosecutrix had taken bath. He also stated that medically it is not possible to say that it was the accused who had sexual intercourse with the prosecutrix.

PW No.5/R.Vanlalkima, Asst. Director, FSL Aizawl examined four articles such as (i) Controlled blood sample of accused marked as Ext.-A(ii) Controlled blood sample of victim marked as Ext.-B(iii) Quilt cover with suspected stain marked as Ext.-C and (iv) vaginal swab of the prosecutrix marked as Ext.-D. Upon examination, the findings were- Ext.A belongs to blood group 'O', Ext.B belongs to blood group AB, Ext.-C gives positive result for presence of semen belonging to blood group 'O' and Ext.D gives negative result for presence of semen and belongs to blood group AB. He exhibited the report as Ext.P-3 and his signature as Ext.P-3(a). In his cross-examination, he stated that his findings upon examination indicates positive result for presence of semen of the accused which is of identical blood group of the accused. He stated that preservatives have to be used for preservation of blood but such preservatives does not have the effect of changing or altering the blood group. He stated that there was no requisition to examine whether the blood sample of the accused contained alcohol. It is possible that there can be discharge of semen without sexual intercourse.

PW No.6/Chuangliani saw the Police seizing bedsheet of floral print from the house of the accused. She exhibited the seizure memo as Ext.P-4 and her signature as Ext.P-4(a). The material exhibit is marked as Ext.M-1. Her statement have not been shaken in cross-examination.

PW No.7/Lianzuali stated that she was in the house of the MHIP and when the Police returned from the house of the accused they showed her a bedsheet. She does not know why she was shown the bedsheet but she put her signature in the

seizure memo in the house of the accused while the Police were on their way back to West Phaileng. In her cross-examination, she stated that she and Pi.Chuangliani did not see the Police seizing the bedsheet and that both of them waited for the Police in the house of the MHIP President. She does not know from where the bedsheet was seized.

PW No.8/SI Dhian Singh Minhas is the investigating officer. He stated that FIR was received on 17.8.2010 about the instant case. He arrested the accused on 17.8.2010 itself and thoroughly examined the complainant. He examined the prosecutrix and according to her she was sexually assaulted by the accused in the year 2009 and on the nights of 15<sup>th</sup> & 16<sup>th</sup> August 2010. He visited the place of occurrence which is the house of the accused and carefully examined the house. He seized a quilt cover on being shown by the prosecutrix who stated that the accused wiped her private part with the said quilt cover after the incident. He sent the blood sample of accused and victim as well as quilt cover with stain to the FSL. On 25.10.2010 he received the FSL report wherein it was found that the stain on the quilt cover was a seminal stain of the accused. He exhibited the Charge sheet as Ext.P-5 and his signature as Ext.P-5(a). In his cross-examination he stated that he has no knowledge of the accused having criminal antecedents, no FIR was received regarding the previous incident. He visited the place of occurrence on 18.8.2010 and arrested the accused on the same day. After he concluded the investigation he has no further knowledge on the family life of the accused and the victim. He also stated that he could not seize any document for proof of the age of X as her mother did not return to the house of the accused and she did not obey his direction to produce the same.

8. Examination of the accused u/s 313 Cr.P.C is one of denial. He stated that as he was drunk he was separated from his wife. FIR was lodged 2 days after his wife left him. He was fully drunk even at the time of arrest.

9. At this stage the evidence adduced by the defence may also be briefly highlighted:-

DW No.1 Huntharnghaka is the neighbour of the accused. He stated that he was surprised to hear about the incident resulting in the arrest of the accused. During the year 2009, he and the accused sometimes used to consume liquor. At the time of the arrest of the accused his wife separated from him as she had often done. During their separation the accused used to visit them and share his problems. He stated that he has known the accused since 2004 and from his observation on the character of the accused he does not think that the accused

could have committed rape. He stated that the accused has two issues with his wife. The six children of his wife from her previous husband were living with the accused. Presently the prosecutrix is living with the accused and to him the children appear to be more comfortable living with the accused than their biological father. He stated that the accused have reborn in Christ and goes to Church regularly and that the entire family is dependant on the income of the accused. In his cross-examination, he stated that he and the accused are friends but he learnt about the arrest only two days later. He stated that around the time of the incident he did not visit the accused as he has a big jhum field to look after and would leave for work early in the morning, he admitted the suggestions that on 16.8.2010 he was not at home and that on 16.8.2010 he did not hear anything about the incident. On 16.8.2010 he had gone to his jhum field, he did not personally ask anything to the prosecutrix about the incident, he admitted that he does not have any proof in the instant case, he does not know whether the prosecutrix was living with her biological father after the incident.

DW No. 2/ Jacoba is the accused himself. He stated that on one Sunday he was drink from morning. When he reached home, he found that the pork which he purchased was finished by his family. So he became very angry and had altercation with his wife and his wife left him. Two days thereafter, his wife met the prosecutrix on her way to school. At the time of his arrest he was fully drunk. He was arrested around midnight below the house of Pu Zairemthanga. He was very angry and left his children and properties in the hands of his friend. On the next morning, his wife came to the Police Station and told him not to keep the properties in the hands of others and that she will look after the properties. He agreed to it. When he was released on bail the father of X asked pardon from him as the FIR was lodged in his name. He pardoned the complainant on the condition that he should withdraw the FIR. So both of them met the O/C. He stated that he did not call back his wife but she returned. He stated that at the time of seizure of the bedsheet he was not at home. He also stated that he believes he has been falsely implicated by his wife and her family so as to inherit his properties. He stated that prior to filing of the FIR he and Chungkhawliana, biological father of X had misunderstanding as the said Chungkhawliana sold the timber they saw together without his knowledge. In his cross examination, he stated that his wife returned on the night of his arrest, he denied the suggestion that he held back the prosecutrix when she was about to leave with her mother after an altercation, he did not sleep on the same bed with the prosecutrix but there was no partition between the bed where he used to sleep with his wife and the bed where the prosecutrix used to

sleep with her younger brother, he stated that the prosecutrix is not a child of good behavior because she had the habit of going out at night(zan len a hrat).

9. In the case at hand, the accused is being tried for the offence u/s 376(2)(f) IPC and section 506 IPC. We shall first deal with the offence punishable u/s 376(2)(f) IPC.

At the outset it may be pointed out that the prosecutrix, her family and the accused are from a rural background. As such their evidence are to be appreciated keeping in mind their background and lifestyle. Exactitude and precision which can be expected from an educated person cannot be expected from the material witnesses such as prosecutrix and her parents so also the accused himself who is also from a similar background.

10. As charge is framed u/s 376(2)(f) IPC, it is first necessary to record a finding on the age of the prosecutrix.

PW No.1/Chunghawliana who is the father of X stated that he does not remember the date of birth of his said daughter. But stated that he has 7 children with the mother of X with whom he has divorced and that X is the youngest of his 7 children.

PW No.2/X stated that she was born on 25.11.1998. According to her mother she was about 8 months old when her parents divorced.

PW No.3/Lalneihkimi who is the mother of X stated that she married Chunghawliana, father of X in the year 1981 and have 9 children with him and X is their youngest child. She married the accused in the year 1999. All her children lived with her and it was only 5/6 years back that they have gone back to their biological father. She does not know the date of birth of X. She presumed that at the time of the incident X must be about 14 years as she started menstruating from the next year.

From the statement of PW No.8/ SI Dhian Singh Minhas, it is clear that his attempt to get any documents for proof of age of the victim was futile as she did not want to cooperate with him.

The accused in his statement u/s 313 Cr.P.C stated that he does not know the age of X.

11. From the statements of witnesses highlighted above, it is only the prosecutrix herself who stated her date of birth. The prosecutrix, the accused and mother of prosecutrix are all from one family. It appears that this has caused immense problem even at the time of investigation. According to the prosecutrix



she was born on 25.11.1998. Her mother told her that she was about 8 months when her parents divorced. PW No.3/Lalneihkimi who is the mother of X stated that she married the accused in the year 1999. It is not in dispute that X is the daughter of PW No.1/Chungkhawliana and PW No.3/Lalneihkimi. There are no documents to prove the age of the prosecutrix. Considering the statements of the witnesses highlighted in this paragraph, it would be reasonable to conclude the in the absence of any clear/direct proof either by oral or documentary evidence the interpretation has to be for the benefit of the accused. It is not in dispute that the prosecutrix is the youngest child of PW No.1 and PW No.3 and it has come in evidence that PW No.3 married the accused in the year 1999. In the absence of any date of marriage between accused and PW No.3 being given so as to compare with the statement of X that she was told by her mother that she was about 8 months when she married the accused, the benefit of doubt has to go in favour of the accused. It is therefore concluded that the age of X being below 12 years is not proved. However, PW No.4/Dr.Hrangkapzawna also stated that the secondary sexual characters of X have not developed. At the same time, PW No.3/Lalneihkimi stated that at the time of the incident she presumed her daughter was 14 years as she started menstruating from the next year. However, keeping in mind the difference of the physical and generic development of human beings from one person to another as such I am of the considered view that the prosecutrix attaining menarchy on the subsequent year would not cast doubt on the findings of the Medical Officer regarding the absence of secondary sexual characters of the prosecutrix at the time of examination. Though the prosecution have not proved that X was below 12 years at the time of the incident, from the evidence on record, I find that reasonable ground exist to conclude that X was below 16 years at the time of the incident.

12. It is by now a settled position of law that in rape cases conviction can be based solely on the evidence of the prosecutrix if it inspire confidence of the court.

She stated that when she was about 11 years old, in the year 2009 during daytime, she was taking a nap she was woken up by the feel of the accused trying to remove her underpant and found him lying on top of her. He threatened her not to shout and inspite of her struggle the accused raped her. She stated on the night of the same day she was again raped by the accused on her bed. She remained silent due to threat from the accused. She further stated that thereafter, whenever her mother was not at home, her step father/accused used to rape her. On 15.8.2010 her step father was drunk, he had a quarrel with her mother and she left the house. She was about to leave with her mother but was held back by the accused. She

stated that on the said night she was raped twice by the accused. On the next day her mother did not return and she was again raped by the accused. On 17.8.2010 while she was on her way back from school, her mother called her and they went to the house of her sister with whom her mother was living at that time. When her mother asked her what her father did to her she made a disclosure.

13. The credibility of the witness have to be appreciated in the light of the other evidence and materials/circumstances of the case. It is seen from the entire evidence including the accused himself that he was habituated to liquor. PW No.3/Lalneihkimi in her cross-examination stated that whenever her husband was drunk he used to behave in a disorderly manner and he was more like a “bad man”. DW No2/Jacoba himself admitted in his cross-examination that when he was drunk he used to create disturbance in the family. As such, from the evidence of these witnesses it is clear that the accused when drunk used to create disturbance in the family. Keeping such family condition in mind, upon appreciation of the evidence of DW No.1/Huntharlana, the said witness stated *“I know that at the time of arrest of the accused, his wife separated from him (a tlan) and she had often done so even on earlier occasion”*. The said witness also stated that he is a friend of the accused with whom the accused shared his problems. As such, it appears that the prosecutrix was living in such a family environment where the accused, her stepfather, in drunkenness used to create disturbance in the family, where her parents quarrel and her mother often leave the house but would later re-unite with the accused. The evidence shows that the separation during the time of the present incident was not the first separation.

14. Turning to the evidence of the prosecutrix, the first sexual assault committed upon her by the accused was in the year 2009. Thereafter, her stepfather used to rape her whenever he gets the chance. On the night of 15.8.2010 the accused raped her twice and once on the next day. It was thereafter that the matter came to light.

15. According to PW No.2/X her mother left the house on 15.8.2010 and did not return until 17.8.2010 when she was called by her mother on her way back from school and she made the disclosure. DW No.2/Jacoba(accused) stated *“Two days after my wife left, she met the prosecutrix on her way back from school”*, he also stated *“On the next day in the morning, my wife came to the Police Lock up.....”*. Though PW No.3/Lalneihkimi, wife of accused and mother of X in her cross examination stated that she left the accused for one night and returned the next day, the statements of PW No.2/X and DW No.2/accused appears to be more probable

more particularly upon reading of the contents of the FIR at Ext.P-1. It can therefore be safely presumed that from 15.8.2010 PW No.3/Lalneihkimi did not return to the accused till the arrest of the accused. The arrest memo forming part of the charge sheet at Ext.P-5 shows that the accused was arrested on 18.8.2010 @ 1:30 am at Dapchhuah. The contents of the Arrest Memo appears to be correct as the accused himself while appearing as a witness stated *“On that night at around midnight, I was arrested by the Police below the house of Pu.Zairemethanga and I was fully drunk”*.

16. As per the Seizure memo at Ext.P-4, seizure of quilt cover was recovered from the house of the accused on 18.8.2010 @ 1:54 am. According to PW No.8/SI Dhian Singh Minhas, Investigating officer the said seizure was made as the prosecutrix stated that the accused used the said quilt cover to wipe her private part after raping her. The witness also stated that seizure was made from the house of the accused on being identified by the prosecutrix. The FSL report which is proved by PW No.5/R.Vanlalkima shows that stain on the quilt cover was seminal stain and that it belongs to blood group “O”. The FSL report also shows that the blood group of the accused was “O” and that of the victim was “AB”.

17. Turning to the medical evidence, PW No.4/Dr. C. Hrangkapzauva who conducted the medical examination of X on 18.8.2010 proved the medical report. The medical examination found old rupture of hymen of the prosecutrix. The medical officer stated in his cross-examination that the age of rupture of hymen could not be found as the same also depend on the frequency of sexual intercourse.

18. The accused stated that he has been falsely implicated as his wife and her family wanted to inherit his properties, in this regard PW No.3/Lalneihkimi stated *“Then I once again asked her if what she was saying was true and she replied me in the affirmative and on the same day she made a disclosure to her elder sister also who in turn informed her father Chungkhawliana”*. The said witness further stated *“When my previous (husband) got the information he consulted me and he said it would be good if the accused is put behind bars for 2 or 3 months in order to reform him. I did not accompany my previous husband when he lodged the FIR and I also do not know if my daughter was taken for examination and I know that she did not accompany her father at the time of lodging the FIR”*. PW No.8, the Investigating Officer in his cross examination stated that he could not seize any document for proof of the age of x because the mother of X did not obey his request to produce the document and she did not return to the house of the accused.

PW No.3/Lalneihkimi also stated *'The Police did not take any document regarding the date of birth from me. The birth certificate must be with her father'*.

From the statements of the wife of the accused, it is clear that she herself did not take any action even after hearing the incident from her daughter. She did not accompany her daughter for medical examination and she did not put any effort to collect the birth certificate of X despite the same being required for the purpose of investigation. As such from the conduct of the wife of the accused which have not been rebutted during cross-examination, there is no material to infer that she tutored the prosecutrix against the accused. Further, sexual offences casts a stigma not only on the victim but also on the entire family and it is very unlikely that imputation of sexual offence would be made solely to gain some properties at the cost of the whole life of a child of tender years.

The other defence taken is that the accused and Chungkhawliana had misunderstanding as the said Chungkhawliana sold the timber which he saw with the accused without the knowledge of the accused. In this regard, PW No.1/ Chungkhawliana was not cross-examined on this point. PW No.6/Chuangliani a seizure witness in her cross-examination stated that she does not know whether the accused and Chungkhawliana used to saw timber together. Apart from her no other prosecution witnesses were examined/cross examined on this point. The accused did not make such a statement in his examination u/s 313 Cr.P.C and that he has come out for the first time when he was examined as his own witness. Therefore, considering the evidences on record, it appears that the said defence is a belated thought. On the contrary, feelings of the complainant PW No.1/Chungkhawliana towards the accused can be seen from the statement of PW No.3 who stated that PW No.1 stated that it would be good to keep the accused behind bars for 2/3 months in order to reform him. It therefore appears that there was no animosity between the accused and his wife or the accused and Chungkhawliana to the extend of falsely implicating the accused at the cost of their own daughter.

19. This Court is not averse to the parties living in peace, but the offence u/s 376 IPC is a non-compoundable offence. The compromises, if any, between the parties cannot be taken into consideration for adjudging the guilt of the accused.

20. With regard to the offence punishable u/s 506 IPC, PW No.2/X stated that she did not speak out the incident of 2009 because she was threatened by the accused. She was not cross-examined on this point. Further, the conduct of the accused upon the person on X even without any verbal threat would cause fear and alarm to the prosecutrix who is a minor.

21. Therefore, from the above discussion, the fact that the wife of the accused did not return to the accused before his arrest but seminal stain of blood group “O” matching the blood group of the accused being found on the quilt cover, the medical evidence showing rupture of hymen and the prosecutrix being a child of tender years the possibility of her being habituated to sex being ruled out, absence of any animosity between the accused and the informant/his wife, I do not find any reason to doubt the statement of the prosecutrix that she was subjected to sexual assault by the accused who is her stepfather.

22. Accordingly, accused Jacoba is convicted of the offence punishable u/s 376(1)/506(a) IPC.

Though charge was framed u/s 376(2)(f) IPC, the same can be done as per sec. 222(2) CrPC.

23. Bail bond stands cancelled. Surety is set at liberty from the bond.

24. Sentence will be passed on 28.5.2014 after hearing the parties. Till then, 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 the 26<sup>th</sup> May, 2014.

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

**ORDER**

**28.5.2014**

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

1. Heard the parties.

Accused Jacoba submitted that he is the sole bread earner of his family consisting of his wife and their 2 children who are about 12 and 11 years. He also submitted that though the children of his wife from her previous marriage have moved out of his house they often visit them and spent a lot of time in their house. The accused also submitted that his wife is not keeping in good health being a patient of high blood pressure and low blood pressure and that he himself has kidney problem. However, for his ailment till date he has not consulted a Doctor. The accused further submitted that due to the sickness of his wife they have borrowed Rs. 20,000/- to bear her medical expense and that they had not repaid the said loan. He submitted that he built the house which his family is living but the plot does not belong to them. The accused also submitted that after his release on bail he has stopped consuming liquor. He submitted that he is now 43 years old.

Mr. H. Vanlallawmzuala, Ld. Defence Counsel adopted the submission of the accused and further submitted that the accused has reformed himself and takes active part in the church activities as well as in the community. In support of his submission the Ld. Counsel has placed on record a letter from Secretary, Mizoram Presbyterian Church, Dapchhuah dt.28.5.14 wherein it has been certified that the accused is an active member of the said church. The Ld. Counsel has also placed on record letter from the Village Council President, Dapchhuah and President, MHIP Dapchhuah to the effect that the wife of the accused is suffering from hypertension and that it would be difficult for them to live without the accused. On the aforesaid ground, the Ld. Counsel prays to show leniency to the accused.

On the other hand, Mrs. Rose Mary, the Ld. Addl. PP submitted that no reasonable ground exist to show leniency to the accused and that leniency have already been shown by convicting the accused u/s 376(1) IPC while charge was framed u/s 376(2)(f) IPC. The Ld. Counsel argued that the accused is non other than the stepfather of the prosecutrix with whom she was growing up and the accused having committed such heinous crime should not be lightly punished. The Ld. Counsel further submitted that there are no medical documents to substantiate the submission of the illness of the wife of the accused except from the local NGOs who does not have the authority to issue such letters. The Ld. Counsel further submitted that it is clear from the record that the children of the wife of the accused

from her previous marriage have grown up and established a separate household. Accordingly, if the need arises, the wife of the accused can always depend on her children. The Ld. Counsel therefore prays to award maximum sentence with fine for both the convictions u/s 376/506 IPC.

2. There cannot be any formula for awarding sentence. Each case differ and sentences have to be passed depending on the facts and circumstance of each case. Accordingly, some amount of guess work is involved.

3. While balancing the rights of the accused as well as that of the victim, it is seen that the accused does not have criminal antecedents, he did not cause bodily injury to the prosecutrix, the prosecutrix herself deposed that she did not suffer maltreatment from the accused due to drunkenness, it appears from the record that the parties are living in peace and the prosecutrix in her cross-examination stated that she continued to visit her mother in the house of the accused and that she does not have trouble with the accused during such visits, according to the DW No.1 the children of PW No.3 appears to be more comfortable living with the accused (their stepfather) than with their biological father. When the prosecutrix (PW No.2) deposed before the court on 27.3.2012 she stated that the accused has stopped taking liquor. PW No.3/Lalneihkimi wife of the accused and mother of X stated that after the accused was released on bail he has reformed himself and has given up liquor and takes part in Church activities. Similar statement is also made by DW No.1/Huntharngbaka. It also appears from the evidence of PW No.1/Chungkhawliana that the parties are living in peace.

On the other hand, for X this kind of sexual incident would cause permanent scar on her mind. In an Indian society, victims of sexual assault are often stigmatized. The sufferings of victims of sexual assault cannot be compensated with any amount of money. She would have to bear with the humiliation and degradation for the rest of her life. As a result of the incident she is separated from her mother and had to live with her father with whom she did not grow up.

4. Courts have now adopted the reformatory method while passing sentence and that it is only in few cases that deterrent sentences are passed. In the instant case, it is noticed that the accused have reformed himself and given up his habit of consuming liquor. Accordingly, I am of the considered view that corrective method of sentencing has to be adopted towards the accused. But at the same time, it has to be borne in mind that sentence is that only method by which court can show to the society its abhorrence to such a crime. Accordingly, it is also equally the duty of

the court to pass an appropriate sentence. Showing undue sympathy in matter of sentence could have an adverse impact on the society.

5. It is seen from the evidence including the prosecutrix herself that the accused have reformed himself. I am of the view that this would constitute “special and adequate” reason to impose a sentence lower than the minimum prescribed.

6. Accordingly, for the offence punishable u/s 376(1) IPC accused Jacoba is sentenced to undergo Rigorous imprisonment for 5 years and to pay a fine of Rs.10,000/- and in default to further undergo Rigorous imprisonment for another 6 months.

For the offence punishable u/s 506 Part I IPC the accused is sentenced to undergo rigorous imprisonment for 6 months.

7. As per section 428 Cr.P.C, detention period already undergone by the accused during investigation and trial shall be set off from the sentence.

8. Accused is committed to serve the remaining sentence.

9. This Order will form part of the Judgment dt.26.5.2014.

10. Seized materials under CMR No. 45/11 containing quilt cover shall be destroyed.

10. Commitment warrant be issued. Give copy of the Judgment & Order to the accused, free of cost.

11. With the above Order, case stands disposed off.

**Sd/- HELEN DAWNGLIANI**

Addl. District & Sessions Judge

Aizawl Judicial District, Aizawl

**Memo No: ...../AD&SJ(A)/2014 : Dated Aizawl, the 28<sup>th</sup> May, 2014**

**Copy to: -**

1. Accused Jacoba through Counsel Mr. Saihmingliana Sailo, 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.
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 Medical examination report of the victim  
P-2(a) Signature of PW No.4
- Ext. P-3 Medical examination report of the accused  
P-3(a) Signature of PW No.4
- Ext. P-3 FSL Report  
P-3(a) Signature of PW No.5
- Ext. P-4 Seizure Memo  
P-4(a) Signature of PW No.6  
P-4(b) Signature of PW No.7
- Ext. P-5 Charge Sheet  
P-5(a) Signature of PW No.8
- Ext. M-1 Seized Article of purple colour floral print bedsheet

(B) **DEFENCE EXHIBITS- None**

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

(D) **COURT EXHIBITS- None**

(E) **PROSECUTION WITNESSES:**

- PW No.1 - Chungkhawliana
- PW No.2 - Prosecutrix
- PW No.3 - Lalneihkimi
- PW No.4 - Dr. C. Hrangkapzawna
- PW No.5 - R. Vanlalkima
- PW No.6 - Chuangliani
- PW No.7 - Lianzuali
- PW No.8 - SI Dhian Singh Minhas

(F) **DEFENCE WITNESSES - :**

- DW No.1 - Huntharngbaka
- DW No.2 - Jacoba

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