

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

**PRESENT**

Smt.Helen Dawngliani  
Addl. District & Sessions Judge

SR No. 317/2012  
In CrI.Tr. No. 2708/11  
U/s 376(2)(f) IPC

Ref :- Aizawl P.S Case No.17/2011 dt.29.11.2011 u/s 376(2)(f) IPC

State of Mizoram

Versus

Lalhualhima	.....	Accused
Date of hearing	.....	23.04.2014 & 07.05.2014
Date of Judgment	.....	21.05.2014

**APPEARANCE**

For the Prosecution	.....	Mrs. Rose Mary, Addl. PP
For the Accused	.....	Mr. W. Sam Joseph, Advocate

**JUDGMENT & ORDER**

1. The story of the prosecution in brief as it unfolded during the course of trial is that on 29.11.2011 Lalengliani of Darlawn Venghlun to the effect that on 27.11.2011 her daughter X, 5 years was raped by Lalhualhima S/o Hrangthatluanga R/o Darlawn Venghlun in his residence.

On the basis of the said information, Darlawn P.S Case No.17/2011 dt.29.11.2011 u/s 376(2)(f) IPC was registered and investigated into. Upon completion of investigation, having found prima facie case against the accused Lalhualhima 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. W. Sam Joseph, Advocate was assigned to defend the accused at the State expense u/s 304 Cr.P.C.

4. Charge u/s 376(2)(f) IPC was framed. The charge was read over and explained to the accused in the Mizo language which is known to him, to which he pleaded not guilty and claims for trial. Later, charge u/s 377 IPC was also framed which was also denied by the accused. During the course of trial, the prosecution examined 7 witnesses. Accused was examined u/s 313 Cr.P.C and one witness for the defence was also examined. Thereafter, the parties are heard.

Mrs. Rose Mary, the Ld. Addl.PP submitted that the prosecutrix is a child of barely 5 years and she being the neighbour of the accused is well acquainted with the accused. The evidence shows that she was a friend of the accused's daughter and there is no material suggesting any misunderstanding between them. According, the accused being falsely implicated is ruled out. The Ld. Counsel submitted that the evidence adduced by the prosecutrix is reliable. She does not appear to be tutored and as such it is safe to fully believe on her statement without even insisting for corroboration. It is further submitted by the Ld. Counsel that the medical evidence support the prosecution case and there being no delay in lodging the FIR there is no reason to doubt the evidence of the prosecution more particularly the prosecutrix. The Ld. Counsel therefore prays to convict the accused for the offence punishable u/s 376(2)(f)/377 IPC.

On the other hand, Mr. W.Sam Joseph the Ld. State Defence Counsel by first submitting on the ingredients of the offence punishable u/s 376(2)(f)/377 IPC submitted that though additional charge u/s 377 IPC was framed against the accused, the prosecution did not adduce fresh evidence to establish the said offence. In fact the Medical Officer never stated that there was any injury or any sign of insertion of any foreign body into the anus of X, hence the prosecution could not produce any evidence after or before the said charge was framed. The Ld. Counsel argued that the entire case is based on the statement of the prosecutrix who is barely 5 years old and the evidence of all other witnesses are derived from the statement of the said prosecutrix. According to the Ld. State Defence Counsel, the honb'le PAex Court in a number of cases have held that before relying on the evidence of a child witness there should be corroboration. There is possibility of the prosecutrix being tutored and the danger of convicting an innocent person. It is submitted by the Ld. Counsel that no doubt as per the statement of the Medical

officer, the hymen of the victim is not intact, but according to the Doctor the tear could be one or two months old and there is no medical evidence to suggest anal insertion. From the medical evidence it is clear that the prosecutrix was examined on 30.11.2011 and the alleged incident took place on the afternoon of 27.10.2011. However, the Doctor did not find any bruising, laceration on her external genitalia though her hymen was torn and admits one finger. The Ld. Counsel also submitted that ASI Zohmingliana who took up the investigation and examined X was not produced as a witness and the case I/o deposed that he does not know the details of investigation done by the said ASI Zohmingliana. The victim never stated before the Police that there was unnatural offence, as such there is contradiction in the statement of the victim before the Police and before the Court. Turning to the evidence of the mother of the prosecutrix, the Ld. Counsel argued that on the day when the prosecutrix came back from the house of the accused, she did not complain of any pain. But if a grown up man had sexual intercourse with a girl of such tender age, she would certainly suffer pain. According to the Ld. Counsel the fact that the prosecutrix did not complain of pain on her private part and the fact that the Doctor said the rupture of hymen could have been caused one or two months earlier has created doubt on the incident and the benefit of such doubt should be given to the accused. Considering the evidence of record, the Ld. Counsel argued that the prosecution has failed to prove both the charges beyond reasonable doubt and the accused is entitled to be acquitted. In support of his submissions the Ld. Counsel has placed reliance on the following cases:-

- A. (1979) 2 SCC 143 Tukaram versus State of Maharashtra
- B. AIR 2003 SC 1088 Bhagwan Singh versus State of M.P
- C. (1984) 4 SCC 116 Birdhichand Sarda versus State of Maharashtra
- D. (1976) 4 SCC 233 Rabindra Kumar Dey versus State of Orissa
- E. AIR 2001 SC 3049 Dilip versus State of M.P
- F. AIR 2000 SC 3555 State of A.P versus Venkateswarlu
- G. (1971) 1 SCC 433 Basudev Hazra versus matiar Rahman Mandal

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

i. Whether the accused had sexual intercourse with X under the circumstances falling within section 375 IPC and the accused thereby guilty of the offence punishable u/s 376(2)(f) IPC.

ii. Whether accused had carnal intercourse with X against the Order of nature and the accused thereby guilty of the offence punishable u/s 377 IPC?

6. DISCUSSION, DECISION AND REASONS THEREOF:-

The evidence adduced by the prosecution witnesses may be briefly highlighted.

PW No.1/Lalengliani is the informant and mother of X. She is a divorcee and all her five children are living with her. She stated that X was born on 15.7.2006. She stated that on 27.11.2011 which was a Sunday, X and her elder sister went to the house of Pu.Malsawma at about 1:00pm to watch TV and returned home at around 3:00pm. She stated that at night when they were about to sleep, X was very scared and said “*A nu ka hlau a Pa Huala’n min man bet ania*” (meaning- *mummy I scared Pa. Huala is catching hold of me*) she thought that her daughter was talking in her sleep and so she shook her, to which her daughter said “*A nu dawt a ni lo a Pa Huala’n min man bet alawm*” (meaning *it is true a Pa.Huala is grabbing me*). She carried the child on her back and could make out that she was very scared. She stated that her daughter made the said statement late at night and being a single parent she did not know what to do. Next day the prosecutrix went to school with her sister. On the way to school, while passing urine, the prosecutrix felt pain and on being asked by her sister she said that on the previous day the accused sexually assaulted her. So both of them came to her work place. On hearing the story, they all went home. She called Pu.Malsawma, father-in-law of the accused and told him to convey it to the accused. The accused came to their house with his father-in-law and then with mother-in-law Pi.Rami who offered her some money and told her not to take her daughter to a Doctor and also proposed a compromise. She did not give her any reply. She consulted her family on the same night and on the next day thereafter she lodged the FIR. She stated that when the accused came with his mother in law he stated “*A nasat ka ring lo*” he also said “*hetiang lampang hian ka en tawh lo*”. She also stated that on checking the private part of her daughter she saw some redness and that it was only thereafter that she called Pu.Malsawma. She exhibited the FIR as Ext.P-1 and her signature as Ext.P-1(a). In her cross-examination she stated that her daughter did not complain of any pain when she returned at 3:00pm, she did not go out thereafter and they soon had their evening meal. She stated that at the time of the incident, the accused, his daughter and the prosecutrix were in the house, there were two rooms in the house with curtain partition. She stated that if someone shouted from the house of the accused they could hear from their house and that in between 1:00 to 3:00pm she did not hear any cry. She did not take her daughter to

a Doctor on 28.11.2011. She denied that suggestion that when the accused once again came to their house with his mother-in-law he stated that he did not do anything to her daughter. She also denied the suggestion that she has personal differences with the accused.

For better appreciation, the evidence of PW No.2/X is reproduced below:-

*“Preliminary Question:-*

*Q.1 What is your full name?*

*Ans: Hmangaihsangi*

*Q.2 How old are you?*

*Ans: 6 years.*

*Q.3 Do you attend school?*

*Ans: Yes I attend school-I.*

*Q.4 In which class are you reading?*

*Ans: K.G.-I.*

*Q.5 Where do you live?*

*Ans: Darlawn.*

*Q.6 With whom do you live in?*

*Ans: With my mother and my sibblings.*

*Q.7 Do you know that you have to speak the truth today?*

*Ans: Yes.*

*It appears that she can give rational answers and as such I find her competent to testify as a witness.*

**Examination in chief :**

*I know the accused Huala who is present today. He is the father of Remruatkimi. Remruatkimi is my friend. She is smaller than me. She has not started attending school. I attend church on Sundays. On one Sunday I had gone out alone. I met my elder sister in a shop. I had gone out from my house with my elder sister. I do not know the whereabouts of my elder sister when I was with Remruatkimi in her house. when I went to the house of the accused, Remruatkimi, her mother and their baby were at home.*

*Q.1 Where did the accused touch you?*

*Ans: She pointed to her private without making any verbal reply.*

*Q.2 At what place did you touch you?*

*Ans: On the bed.*

*Q.3 With what did he touch?*

*Ans: With his fingers.*

*Q.4 How many times did he touch with his hands?*

*Ans: Once. There was pain.*

*Q.5 Did he say anything?*

*Ans: No.*

*Q.6 Why didn't you tell your mother when you went home?*

*Ans: Pu Huala told me not to say.*

*Q.7 Where were Ruatkimi, her mother and the baby when he touch you?*

*Ans: Remruatkimi was peeling orange, her mother and the baby had gone to her grandparent house.*

*Q.8 On your way to school with your elder sister did you pass urine?*

*Ans: No.*

*Q.9 Where did you pass urine?*

*Ans: At the school*

*Q.10 Was there any pain at that time?*

*Ans: Yes.*

*Q.11 Did you tell about the pain to anyone?*

*Ans: Yes to my elder sister.*

*Q.12 What did you do thereafter?*

*Ans: We went home.*

*Q.13 Did your sister tell anything to your mother?*

*Ans: Yes.*

*Q.14 Did your mother question you about the pain on your private part?*

*Ans: Yes.*

*Q.15 Did your mother and the Doctor check your private part?*

*Ans: Yes.*

*Q.16 Did Ruatkimi see you when the accused touch you?*

*Ans: No.*

*Q.17 Did you see the penis of the accused?*

*Ans: Yes.*

*Q.18 What did he do with his penis?*

*Ans: Ka mawngah a thun (he introduce it in my anus).*

**Cross examination by the Ld. D/L:**

*It is a fact that the accused did not penetrate his penis into my vagina.*

*It is not a fact that the accused did not insert his penis into my anus.*

*It is not a fact that the accused did not fondle my private part with his fingers.*

*It is a fact that whatever I have stated In the court is what I have stated to my mother.*

*It is not a fact that I did not see the penis of the accused*

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

*Sd/- RO & AC*

*Sd/- AD & SJ"*

PW No.3/K.Lalchhungi was informed of the incident in her capacity as President of Joint MHIP Darlawn. She and the other Office Bearers of the said NGO went to the house of accused as well as prosecutrix and advised them to lodge FIR. She stated that she has no reason to falsely implicate the accused. In her cross-examination, she stated that she was informed about the incident on the next day after her mother came to know of it. She denied that the FIR was lodged at the instigation of the MHIP. She denied that the prosecutrix was not crying and that her mother did not tell her that there was laceration and that X was feeling pain. She also denied the suggestion that there was no reason for her to suspect the accused of sexually assaulting the prosecutrix.

PW No.4/R.D. Lawmkima was the President of Darlawn Village Council during the relevant time. He was requested by the leaders of MHIP to make a phone call to the Police. So he made a phone call to the Police and the accused was arrested. He also met the mother of X. In his cross-examination, he admitted that his knowledge about the incident is derived from the mother of X. He has no particular knowledge about the misconduct of the accused in the society. He further stated that he made a phone call to the Police at the instance of MHIP.

PW No.5/Lalfakzuali is the Secretary of Joint MHIP Darlawn and deposed in similar line with PW No.3. In her cross-examination, she stated that she did not check the body of the prosecutrix, denied the suggestion that the FIR was lodged on the instigation of the MHIP. She stated that the VCP during the relevant time was Mr.RD Lawmkima and that they went to his house to inform the matter but he was not at home. They did not take the accused to the house of the VCP.

PW No.6/Dr.Walter L.Sailo examined X at Darlawn PHC on 30.11.2011. He found the prosecutrix physically and mentally sound, her secondary sexual characters have not developed. There was no seminal stain. There was no bruising or laceration on her external genitalia. Hymen was torn and admits one finger at the vaginal orifice. He exhibited the medical examination report of X as Ext.P-2 and his signature as Ext.P-2(a). In his cross-examination, he stated that it is possible that the tearing of hymen which he found in the instant case could have been caused a month or two earlier. He also admitted the suggestion that tearing of hymen can be self-inflicted. The finger which is mentioned in the report is the index finger.

PW No.7/Lalnunmawia is the Investigating Officer. He stated that FIR was received on 29.11.2011. He took over the investigation from ASI/Zohmingliana.

He examined three more witnesses. The previous investigating officer arrested the accused, forwarded accused to the court, examined witnesses including the victim and forwarded the victim for medical examination at PHC Darlawn. He exhibited the charge sheet as Ext.P-3 and his signature as Ext.P-3(a). In his cross-examination, he stated that he does not know the details of investigation done by ASI/Zohmingliana except what he read from the record, he could not recollect at what time of the day the incident occurred.

7. The accused in his examination u/s 313 Cr.P.C admitted that the prosecutrix went to his house and that she was playing with some children including his own children. He denied to have sexually assaulted her and denied that he caused the rupture of her hymen.

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

DW/Zoramchhana stated that the accused is his paternal uncle. He stated that on 27.11.2011 he had gone to the house of Pu.Malsawma, father-in-law of the accused, to watch TV. The accused and some children including the children of the accused were there. He was in the said house from around 12:00noon and that he accused left at around 1:00pm. He alongwith the daughter of the accused followed the accused. The accused went inside the house while his daughter was playing outside. He remained in the house of the accused till 4:00pm and there was no incident. He stated that at 4:00pm the prosecutrix was taken home by her elder sister for meal. In his cross-examination, he admitted that the accused went home with his daughter and prosecutrix but clarified by stating that the prosecutrix and the daughter of the accused were playing outside the house. On the day of the incident there were no other guests in the house of accused except him and there was no one who dropped in. He denied that he left the house of the accused before the prosecutrix. He stated that the family of the accused and the prosecutrix does not have any misunderstanding.

9. In the case at hand, the prosecutrix being a minor below 12 years have not been disputed.

The sine quo none for the offence of rape (as it stood during the time of incident) is penetration of the male organ into the vulva or pudendum of the woman. The explanation to section 375 IPC makes it clear that the depth of such penetration is not material.



10. A rape victim who gives evidence is certainly an injured witness; her mind and psyche are injured. Testimony of any witness who sustained injury in the hands of an assailant cannot be questioned unless the entire prosecution story is cooked up. The honb'le Supreme Court in the case of Aman Kumar versus State of Haryana reported in AIR 2004 SC 1497 explained in what manner weight is to be attached to the evidence of rape victim has held as follows :-

*“It is well settled that the prosecutrix is not an accomplice.....She stands at a higher pedestal than an injured witness.....if the Court of fact finds it difficult to accept the version of prosecutrix on its face value, it may search for evidence, direct or circumstantial, which could lend assurance to her testimony. Assurance short of corroboration as understood in the context of an accomplice would suffice”*

11. Keeping in mind the status of a rape victim and the manner in which their evidence have to be appreciated, the evidence adduced by the prosecutrix is being examined.

In the case at hand, the prosecutrix stated that the accused touched her private part with his fingers. In her cross-examination, she once again admitted the suggestion that the accused did not penetrate his male organ into her private part. Upon appreciation of the evidence of the prosecutrix as a whole, it appears that she understood the questions put to her and that she also gave rational reply to those questions. When the Ld. Addl.PP asked the prosecutrix where the accused touched her, she pointed to her private part without making a verbal reply. When she was asked where the accused introduced his penis, she stated that he introduced it into her anus. She also denied the suggestion that the accused did not fondle her private part with his fingers. From her reply it can be ascertained that knew anus and private part were different.

12. Upon appreciation of the prosecutrix alone, it appears that there was no penetration of the male organ into the vulva or pudendum so as to constitute an offence of rape. It has come out for the first time in evidence that the accused touched the private part of the prosecutrix with his fingers. Considering the innocence of a child and incapacity for partisan motivation, the absence of enmity between the two families which appeared from the evidence, I do not find any reason why the prosecutrix would cook up a story against the accused. Further, it is seen from the evidence that the accused and the prosecutrix were neighbours, that

X was a friend of the accused's children and that they are from a rural background lend credibility the statement of the prosecutrix and adds to the unlikeliness of the prosecutrix being tutored.

13. Now, from the facts and circumstances of the case and from the evidences on record let me consider whether conduct of the accused amount to an offence under section 354 IPC? The law is now well settled that in cases of sexual violence/sexual offence, conviction can be based on the solitary statement of the victim provided that it is fully reliable and trustworthy.

14. In the present case, the victim was cross-examined at length by the defence counsel. Her statement which have not been demolished during cross-examination are that the accused that the accused touched her private part with his fingers. The medical evidence of torn hymen which admit one finger in the vaginal orifice also lend support to the statement of the prosecutrix that the accused touched her private part with his fingers and that she felt pain. Though the Doctor stated that the rupture could have been caused a month or two earlier and that such rupture can be self inflicted, in the instant case the victim is bare 5 years old. As such she being habituated to sex is totally ruled out. There is no other evidence or material to suggest the cause of such rupture of hymen.

For better appreciation of the case, the definition given u/s 350/351/354 IPC are reproduced below:-

*“350. Criminal force – Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.”*

*“351. Assault. – whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault”*

*“354. Assault or criminal force to woman with intent to outrage her modesty. - whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”.*

15. On careful scrutiny of the evidence on record, there may not be an element of assault. However, an element of use of criminal force upon the victim by the accused is clearly present from the evidence.

It is within the knowledge of any normal human being that the act done by the accused upon the body of the victim, a woman, would outrage her modesty. A person is guilty of an indecent assault if he intentionally assaults the victim and intends to commit not just an assault but an indecent assault i.e. an assault which right minded persons would think is indecent. In the instant case, the evidence explaining the conduct of the accused upon the body of the victim, cannot be regarded as decent. 'Woman' as defined in section 10 IPC denotes a female human being of any age. The age of the prosecutrix not being disputed, she has not attained the age to exercise her discretion.

16. At this stage, I may refer to the decision of the hon'ble Apex Court in the case of State versus Major Singh reported in AIR 1967 SC 63 wherein it has been held :-

*"I think that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or asleep, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under section 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is relevant, but its absence is not always decisive, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, nevertheless, the offender is punishable under the section"*

17. 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 victim as well as the other prosecution witnesses are able to inspire confidence of the court and there is no reason to disbelieve their evidence. That being the position, it is found that in the course of trial, the prosecution has succeeded in bringing home the charge u/s 354 IPC against the accused Lalhualhima beyond reasonable doubt.

18. Coming to the offence punishable u/s 377 IPC. Needless to say, the said charge was framed on the basis of the deposition of the prosecutrix. Perused the record, it is noticed that for the first time it has come in evidence that the accused penetrated his male organ into the anus of the prosecutrix. This has not come out during investigation and no requisition was made to examine the prosecutrix in that aspect.

PW No1/Lalengliani stated that on the next day of the incident the prosecutrix went to school with her elder sister Lalhrulaitluangi. While passing urine the prosecutrix told her sister “*A u ka mawng a thip*” (meaning *I am feeling pain in my anus*). When her sister asked her why there was pain X said “*A pa Huala’n pindan ah min hruai a, ka kekawr min phelh saka, min ti*” (meaning *the accused took me in a room, removed my pant and had sex*). So they went to her and that was how the matter came to light.

This witness also stated that on the night of the incident when they were about to sleep her daughter was very scared and said “*A nu ka hlau a Pa Huala’n min manbet ania*”. She thought that her daughter was sleep talking and shook her. At that time X said “*A nu dawt ani lo a Pa Huala’n min manbet alawm*”. So she carried the prosecutrix on her back and she could feel that her daughter was very scared.

19. The statement of PW No.1 with regard to the content of the statement of X to her sister Lalhrulaitluangi on their way to school is hearsay. Hearsay evidence is not admissible. PW No.1/Lalengliani also stated that she checked the private part of her daughter by using a torch light and saw redness. It was only thereafter that she called Pu.Malsawma, father-in-law of the accused. This witness did not check the anus of the prosecutrix. This was after her elder sister narrated to her what she heard from the prosecutrix, thereby meaning that from what she heard she did not have reason to suspect carnal intercourse against the order of nature. According to PW No.2/X at the time of the incident the daughter of the accused was in the house and she was peeling orange. PW No.1/Lalengliani stated in her cross-examination that there are two rooms of curtain partition in the house of the accused. There is no medical evidence to suggest commission of offence falling u/s 377 IPC.

20. The presence of the daughter of the accused in the house and the house having only two rooms of curtain partition creates a surrounding which necessitates corroboration or atleast assurance short of corroboration to the statement of the prosecutrix that the accused introduced his male organ into her

private part. This statement is unlike the statement of the prosecutrix that the accused touched her private part with his fingers because her said statement is supported by medical evidence wherein her hymen was found torn.

The burden of proving the essential ingredient of an offence is always on the prosecution. In the instant case, the prosecutrix is only a child of 5 years. By stating that the accused penetrated his organ into her anus she made a clear departure from her statement u/s 161 CrPC. Evidence of child witness have to be carefully scrutinized as they live in the world of fantasy and make believe. Accordingly, in the instant case also, it is only reasonable to look for corroboration. This corroboration appears to be lacking.

21. Accordingly accused Lalhualhima is convicted of the offence punishable u/s 354 IPC.

Though charge was framed u/s 376(2)(f) IPC, the same can be altered to section 354 IPC in terms of the provision of section 222(2) Cr.P.C

22. Accused Lalhualhima is acquitted for the offence punishable u/s 377 IPC by giving him the benefit of doubt.

23. Hearing on sentence will be conducted on 23.5.2014.

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

25. Pronounced in open court and given under my hand and the seal of this court on this the 21<sup>st</sup> day of May, 2014.

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

## **ORDER**

**Dated 23.05.2014**

Accused Lalhualhima is produce from judicial custody. Id. Defence Counsel and APP are present.

Heard the parties.

Accused Lalhualhima prays for leniency by submitting that he is the sole bread earner of his family and that his wife due to illness is unable to work and his detention will cause a lot of hardship to his family.

Mr. W. Sam Joseph, the Id. State Defence Counsel submitted that the accused was arrested on 29.11.11 and that he was released on bail on 12.6.12 thereby meaning that he had already suffered detention for about 7 months. Considering the punishment provided for the offence, the Id. Counsel submitted that the sentence may be reduced to the period already undergone by the accused.

On the other hand, Mrs. Rose Mary, the Id. Addl. PP who prayed for awarding maximum sentences to the accused by submitting that the conduct of the accused upon a minor girl can by no means be given a lenient view. Further submitted that the prosecutrix is of tender age and the act of the accused is likely to cause mental and physically agony which could affect her future. The Id. counsel prays for awarding sentence for imprisonment as well as fine upon the accused.

Accordingly, after hearing the parties and upon perusal of the record, it appears that the accused Lalhualhima has no criminal antecedents. Apart from the mental scar, there is also nothing on record to show that due to the said incident she has been incapacitated from leading the life which she earlier used to live. But on the other hand, the medical report shows rupture of hymen and the victim was barely 5 years at the time of the incident. The conduct of the accised is nothing but perversity of mind for having acted in the manner he did upon a girl of such a tender age. The punishment provided u/s 354 IPC is imprisonment which may extend to two year, OR with fine, OR with both. Thereby meaning that it can either be imprisonment or fine or both. For the aforesaid reasons, I find that the ends of justice would be met by imposing fine upon the accused.

Accordingly, instead of sentencing the accused Lalhualhima to imprisonment, he is sentenced to pay a fine of Rs. 10,000/-. As the accused is not in a position to deposit the fine forthwith, he is directed to pay the same in two installments. The first installment shall be paid on or before 7<sup>th</sup> June, 2014 and the fine amount shall be paid in full by 23<sup>rd</sup> June, 2014. In default of payment of fine within 23<sup>rd</sup> June, 2014, the accused is sentenced to undergo Simple imprisonment for a term of 1 year 6 months. Detention period, if any, already undergone by the accused during investigation and trial shall be set off.

Sentence of imprisonment is suspended till 23<sup>rd</sup> June, 2014. In the meantime the accused shall be released on bail with the same condition at the time his release during trial.

The fine amount, if realized, shall be paid to the victim as compensation in view of the fact that she can maintain a civil case against the accused for tortuous liability of having caused her mental torture.

Furnish a copy of the judgment free of cost to the accused.

This Order shall form part of the Judgment dt.21.05.2014

Given under my hand and seal of this court on this the 23<sup>rd</sup> day of May, 2014.

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

**Memo No: ...../AD&SJ(A)/2014 : Dated Aizawl, the 23<sup>rd</sup> May, 2014**  
**Copy to: -**

1. Accused Lalhualhima through Counsel Mr. W. Sam Joseph, Advocate.
2. PP/Addl. PP, Aizawl District, Aizawl.
3. District & Sessions Judge, Aizawl.
4. District Magistrate, Aizawl District, Aizawl.
5. Special Superintendent, Central Jail, 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 victim

P-2(a) Signature of PW No.6

Ext. P-3 Charge Sheet

P-3(a) Signature of PW No.7

P-4(a) Signature of PW No.

(B) **DEFENCE EXHIBITS- None**

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

(D) **COURT EXHIBITS- None**

(E) **PROSECUTION WITNESSES:**

PW No.1 - Lalengliani

PW No.2 - Prosecutrix

PW No.3 - K. Lalchhungi

PW No.4 - R.D. Lawmkima

PW No.5 - Lalfakzuali

PW No.6 - Dr. Walter L. Sailo

PW No.7 - SI Lalnunmawia

(F) **DEFENCE WITNESSES - :**

DW No.1 - Zoramchhana

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