

Smt.Helen Dawngliani
Addl. District & Sessions Judge

SR No.47/2013
In CrI.Tr. No.5/2013
u/s 376(1) IPC

State of Mizoram

Versus

Lalramlien	Accused
Date of hearing	21.5.2014
Date of Judgment	23.5.2014

For the Prosecution	Mrs. Rose Mary, Addl. PP Ms. Rosy Lalnuntluangi, APP
For the Accused	Ms. N. Lalzawmliani, Advocate

1. The prosecution story of the case in brief is that 2.1.2013 J.Hossana of Phainuam, Phaihna Veng lodged a written FIR at Vairengte Police Station to the effect that on 2.1.2013 @ 2:30pm his sister X, 36 years resident of Phainuam, Phaihna Veng was sexually assaulted in their house by Lalramlien S/o Chalchungnung of Hmarkhawlian who was living with the family of Pu.Siamthanga of Phainuam, while he and the other family members had gone out to take part in the celebration of New year with a feast. The informant also stated that his said sister was mentally below normal person.

On the basis of the said information, Vairengte P.S Case No.2/2013 dt.2.1.2013 u/s 376(1) IPC was registered and investigated into. Upon completion of investigation, having found prima facie case against the accused Lallramlien for the offence punishable u/s 376(1) IPC Charge sheet was laid against him and committed for trial.

The name of the prosecutrix is withheld in the Judgment and she is referred with the letter 'X'.

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

3. As the accused did not have the means to engage a counsel on his own, Ms. N. Lalzawmliani, Advocate was assigned to defend the accused at the State expense u/s 304 Cr.P.C.

4. Charges u/s 376(1) IPC was framed against the accused. The charge was read over and explained to the accused in the Mizo language which is known to him to which he pleaded not guilty and claims for trial.

5. POINT(S) FOR CONSIDERATION:-

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

6. The prosecution examined 6 witnesses. Accused was examined u/s 313 Cr.P.C. The defence declined to adduce evidence. The Ld. Counsels are heard.

Mrs. Rose Mary, the Ld. Addl. PP submitted that the evidence adduced by the prosecutrix is trustworthy and there is no reason to doubt her testimony. The Ld. Counsel argued that in rape cases conviction can be based on the sole testimony of the prosecutrix if it inspire confidence. In the instant case, there is no delay in lodging the FIR and that though the prosecutrix may not have sustained any injuries it is not necessary that each and every rape victim should sustain injuries. According to the Ld. Addl. PP, it is safe to rely upon the statement of X and convict the accused on the basis of the statement of the prosecutrix.

On the other hand, Ms. N. Lalzawmliani, Ld. State Defence Counsel submitted that the prosecution have miserably failed to prove the essential ingredient of the offence. Turning to the evidence of the prosecutrix, the Ld. Counsel submitted that sexual intercourse, if any, between the accused and X was consensual and that the prosecutrix is only cooking up a story of rape for fear of her parents and to save her face. The sequence of events narrated by the prosecutrix herself does not inspire confidence that the prosecutrix was subjected to rape against her will and consent and despite stiff resistance from her. The Ld. Counsel therefore prays to acquit the accused.

7. DISCUSSION, DECISION AND REASONS THEREOF:-

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

PW No.1/X stated that the accused used to go to her village to visit his relatives. On 2.1.2013 the accused came to her house and said that he has not seen their house and would like to visit them. So he came and sat in their house. He called her near him and hugged her. When she protested he forcibly led her to the bedroom, removed her panties and raped her on the bed. The witness further stated that the accused penetrated and ejaculated and that he cleaned himself with a cloak. She told him to go home and he left her house. When her father returned home, she told him about the incident and the matter was reported to the Police. She stated that she has forgiven the accused in the name of God. In her cross-examination, she stated that the accused did not threaten her or hurt her, the accused did not try to stop her from going out of the house. She admitted the suggestion that she had written a letter in the presence of VCP and YMA stating that the accused and she were romantically involved and that she did not want her parents to know about it. That she has forgiven the accused. She admitted the suggestion that after the incident she had gone to attend the feast before telling her parents. She stated that in the beginning she shouted for help but as the accused told her to stop shouting she did not shout further. She admitted that she was not mishandled by the accused in anyway.

PW No.2/J.Hosana is the informant and brother of X. He stated that his sister had ear problem because of which she suffered meningitis and that sometimes she has mental problems which however is not constant. He stated that on 2.1.2013 their mother was away at Jeribam for a funeral service. Their father was attending church service and that he was busy in the feast prepared by the Church. In the evening he received a phone call from his father regarding the present incident. It was getting dark, he looked for the accused and found him in the house where he was staying as a guest. He told the accused that his father wanted to meet him and took him to his house. When the accused was questioned by his father, at first he kept quiet but later admitted that he raped X. They informed the YMA and VC members and reported the matter to the Police. He exhibited the FIR as Ext.P-1 and his signature as Ext.P-1(a). In his cross examination he stated that he did not see marks of injury on his sister. They do not have any mental disability certificate for X as her disability is not constant. He admitted the

suggestion that his sister X is not so mentally retarded so as not to have any sense to have sexual intercourse. He does not want the accused to be his brother-in-law.

PW No.3/K.Kapluaia is a seizure witness. On 2.1.2013 he witnessed the seizure of underpant, shorts, sleeveless top and saree made by the Police from the house of X in his presence. He exhibited the seizure memo as Ext.P-2 and his signature as Ext.P-2(a). In his cross-examination he stated that he does not remember the colour of the seized materials. He did not see any signs of hurt or injury on X when he saw her at the time of seizure. He thinks that the victim is mildly mentally retarded, to him the retardation of X was not to such an extent as to incapacitate her from being romantically involved or incapable of having sexual intercourse.

PW No.4/Dr.C.Laldinpuii examined X and accused at Varenge on 2.1.2013. Upon examination of she was found physically normal but the Doctor noticed that she was mentally retarded. There were no external injuries on her body. Her hymen was torn and there was vaginal discharge. Upon examination of the accused he was found physically and mentally sound. But since he had taken bath nothing else was found on him. He was found capable of performing sexual intercourse. She exhibited the medical examination of X as Ext.B-3 and her signature as Ext.P-3(a), medical examination report of accused as Ext.P-4 and her signature as Ext.P-4(a). In her cross examination, the Doctor stated that she found X mentally retarded because she was told so by her family who was with her, no test was conducted by her to find out whether the prosecutrix was mentally retarded or not, the accused and victim had changed clothes before they were brought to her, no evidence was found on the accused as he had already taken bath but denied the suggestion that from the examination of the accused and prosecutrix there was no finding that the accused committed rape upon the victim.

PW No.5/Lalchhanzova is the Asst. Director of FSL at Aizawl. He examined four exhibits containing Control blood sample (liquid) of accused, control blood sample (dried) of accused, underpant of victim with suspected stain and saree cloth with suspected seminal stain. On examination he found that the blood group of accused belongs to Blood Group B, semen was also detected from the underpant and saree of the victim. The Semen was female origin belonging to blood group B. He exhibited the report as Ext.P-3 and his signature as Ext.P-3(a). Cross-examination was declined.

PW No.6/Lalramnghaka is Sub.Inspector of Police and Investigating Officer. He stated that FIR was received on 2.1.2013 from J.Hosana. During investigation he went to the place of occurrence which is at Phainuam. At the time of his visit, YMA and VC leaders, father of X and X were there. According to X, the accused first tried to rape her by making her lie down on a cane mat but was unsuccessful. Then he carried to the bedroom, made her sit on the edge of the bed and raped her. He wiped his semen with a saree. So he seized the saree in presence of witnesses. He also seized the top and pant worn by the victim at the time of the incident. Thereafter he forwarded the prosecutrix for medical examination at Vairengte CHC. The underpant and saree were sent to FSL for examination and the report shows presence of seminal stain on the underpant and saree. He arrested the accused and during interrogation the accused admitted his guilt. He exhibited the charge sheet as Ext.P-4 and his signature as Ext.P-4(a) his signature in the seizure memo as Ext.P-2(b). In his cross examination, he stated that he did not see marks of injury on the body of the victim, when he asked the victim whether she shouted she stated that she was too angry to shout, the victim did not struggle when the accused carried her to the bedroom and thereafter raped her, it appears that the victim is mentally retarded but he does not know whether her mental disability is to such an extend as to be unable to have a love affair

8. The accused in his examination u/s 313 Cr.P.C stated that he went to the house of X on being invited by her and that she was the one making move for sexual intercourse and she also stated that she wanted to have a child. The accused further stated that at the relevant time he was having an affair with X and also stated that X does not have any mental retardation.

9. The defence declined to adduce evidence. In the case at hand, the prosecutrix is stated to be mentally retarded. No examination regarding her mental status have been done. However, the Ld. Predecessor in court at the time of recording the evidence of X had mentioned –*“It is observed that though the victim is stated to be mentally disturb occasionally she is able to understand the nature of question put forth to her in the court today”*. Upon appreciation of the evidence adduced by the prosecutrix, I also find the same to be rational, her statement shows that she understood the questions put to her and that she could give intelligent reply to such questions.

10. The sine qua non for the offence of rape is penetration of the male organ into the vulva or pudendum of the woman. The extend of penetration is not material for deciding the issue.

11. By now it is also 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.

12. In order to commit the offence of rape, there has to be sexual intercourse and the said sexual intercourse must have been committed under the circumstances falling u/s 375 IPC.

13. Keeping in mind the ingredient of the offence of rape, the evidence is being examined.

According to PW No.1/X the accused came to her house to pay a visit as he had not seen her house. On the other hand, the accused in his statement u/s 313 Cr.P.C stated the he went to the house of X on being invited by her. Further according to the prosecutrix she was raped inside her house by the accused. The accused in his examination u/s 313 Cr.P.C stated that the prosecutrix was the one who made move for sexual intercourse and she said that she wanted to have a child. He also stated that during the relevant time, he and the prosecutrix were having a love affair. The prosecutrix was not cross-examined on the said two points i.e accused going to her house and the act of sexual intercourse. Though statement u/s 313 Cr.P.C is not evidence, in the absence of any rebuttal by cross examination, I am of the view that reasonable ground exist to draw an inference that the prosecution has proved that the accused went to the house of X and that there was sexual intercourse between them.

14. Having come to the said conclusion, the next is whether the sexual intercourse amount to rape?

One of the ingredients of rape is that the sexual intercourse was without the will or consent of the woman.

In the case of State Of U.P. Vs. Chhoteylal decided on 14 January, 2011 in connection with Criminal Appeal No. 769 of 2006, the honb'le Supreme Court observed thus-

“The expressions ‘against her will’ and ‘without her consent’ may overlap sometimes but surely the two expressions in clause First and clause Secondly have

different connotation and dimension. The expression 'against her will' would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition. On the other hand, the expression 'without her consent' would comprehend an act of reason accompanied by deliberation."

15. PW No.1/X thereafter stated that the accused told her to go near him and hugged her. Despite her protest he forcibly carried her to the bedroom, removed her underpant and raped her on the bed. In her cross examination, X stated –*"The accused did not threaten or hurt me", "The accused did not tried to stop me from going out of the house", "It is a fact that I had written a letter in the presence of the VCP and YMA stating that the accused and myself were romantically involved and I did not want my parents to know about this. I however now forgive the accused", " I had shouted for help in the beginning but the accused told me not to keep quiet so I did not shout any further" and " It is a fact that the accused did not mishandled me in anyway".*

16. There is no evidence of the accused being armed with any weapon and it is also clear from the evidence of X herself that she was not threatened by the accused and that she was not stopped by the accused from running out of the house. It is also seen that she stopped shouting because the accused told her to keep quiet. She did not sustain any bodily injury and there were no marks of violence on her body. The fact that she was romantically involved with the accused during the relevant time is a relevant fact as it is a fact showing the existence of a state of mind and feelings/ good will u/ s13 of the Evidence Act. The prosecutrix though stated that she resisted, considering the fact that she was in a relationship with the accused during the relevant time and the manner and extend to which she resisted the accused, the probability factor of she being raped despite resistance appears to go against her. Further it is seen from statement of X herself that she did not resist the accused when he carried her to the bedroom.

17. Upon appreciation of the evidence of the prosecutrix, it appears that she did not put up stiff resistance and despite such resistance she was overpowered by the accused. The medical evidence does not find any injury such as bruising or laceration on the genitalia as well as the body of the prosecutrix though the examination was conducted on the same day of the incident itself.

18. PW No.1/X further stated in her cross-examination that after the offence was committed she went to take part in the new year feast before informing the matter

to her parents. Previous and subsequent conduct is a relevant fact under Section 8 Evidence Act. Offence such as rape defiles the very soul of a woman. Consent as interpreted by the honb'le Apex Court is an act of reason followed by deliberation. If the prosecutrix was not a consenting party to the coitus, taking into account what would be the reaction of a rational normal human being, it is most unlikely that she would leave her house to take part in a feast without first telling the incident to her parents. Further, it appears that there was no attempt on her part to raise alarm or to raise hue and cry when the accused laid hands on her. This conduct of the prosecutrix has created doubt that she was not a consenting party.

19. The initial burden of proving the guilt of the accused is on the prosecution and the said burden never shifts. The standard of proof in a criminal case is higher in criminal case than civil matters. Rule of prudence demand that in a criminal case the proof should be beyond reasonable doubt and the accused is presumed to be innocent until his guilt is proved.

20. Keeping in mind the criminal justice system of the country and applying the same in the instant case, I am unable to convince myself that the deposition of the prosecutrix inspire confidence and constitute the essential ingredient of the offence of rape.

21. PW No.6/ SI Lalramnghaka, the Investigating Officer stated that he seized the saree from the house of the prosecutrix as the prosecutrix stated that the accused wiped his semen which he dropped around her private part. The said saree with suspected seminal stain was send to the FSL. PW No.5/Lalchhanzova who examined the saree stated that there were seminal stain which was of female origin belonging to blood Group B. As such, the FSL report does not support the version of the prosecutrix before the Investigating officer which led to the seizure of the said saree.

22. The honb'le Apex Court in the case of Tameezuddin @ Tammu v. State (NCT of Delhi), (2009) 15 SCC 566, has held as under:

"It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter."

23. For the reasons indicated above, I find that sufficient doubt exist in the prosecution evidence more particularly the evidence of the prosecutrix. The benefit of such doubt has to go in favour of the accused.

ORDER

24. Accordingly, accused Lalramlien is acquitted of the offence of rape punishable u/s 376(1) IPC by giving him the benefit of doubt.

25. In terms of section 437-A Cr.P.C the accused shall continue to be on bail for another period of 6 months.

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

27. Pronounced in open court and given under my hand and the seal of this court on this the 22nd day of May, 2014.

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

Memo No:/AD&SJ(A)/2014 : Dated Aizawl, the 22nd May, 2014
Copy to: -

1. Accused Lalramlien through Counsel Ms. N. Lalzawmliani, Advocate.
2. PP/Addl. PP, Aizawl District, Aizawl.
3. District & Sessions Judge, Aizawl.
4. District Magistrate, Aizawl District, Aizawl.
5. DSP (Prosecution), District Court, Aizawl.
6. i/c G.R.Branch.
7. Registration Section.
8. Guard File.
9. Case Record.

P E S H K A R

APPENDIX

(A) **PROSECUTION EXHIBITS**

Ext. - P-1 FIR

 P-1 (a) Signature of PW.No- 1

Ext. - P-2 Seizure Memo

 P-2 (a) Signature of PW.No-3

 P-2(b)Signature of PW No-6

Ext. - P-3 Examination report of FSL

 P-3(a)Signature of PW No. 5

Ext. - P-3 Medical examination report of victim

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

Ext. - P-4 Medical examination report of accused

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

Ext. - P-4 Charge Sheet

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

(B) **DEFENCE EXHIBITS- None**

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

(D) **COURT EXHIBITS- None**

(E) **PROSECUTION WITNESSES:**

PW.-1 – J. Hosana

PW.-2 – Lalniengpuii

PW.-3 – K. Kapluaia

PW.-4 – Dr. C. Laldinpuii

PW.-5 – Lalchhanzova

PW.-6 – Lalramnghaka

(F) **DEFENCE WITNESSES - : None**

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