

Smt.Helen Dawngliani
Addl. District & Sessions Judge

SR No.407/2012
In CrI.Tr. No.2259/12
u/s 376(2)(f) IPC

Versus

Vanlalhnehzova	Accused
Date of hearing	13.5.2014
Date of Judgment	27.5.2014

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

1. The prosecution story of the case in brief is that on 13.9.2012 one TC Lalmunliana of Bungtlang Veng Sang lodged a written FIR at Serchhip Police station stating that on the afternoon of 28.11.2011 accused Hnehzova of Bungtlang called his daughter X to his house and offerd her vegetables. Inside the house, the accused raped his daughter. As the accused threatened his daughter she kept quiet for a long time. On 11.9.2012, his said daughter attempted to commit suicide because of the said incident and made a disclosure to her teachers.

On the basis of the said information, Serchhip P.S Case No.56/2012 dt.13.9.2012 u/s 376(2)(f) IPC was registered and investigated into. Upon completion of investigation, having found prima facie case against the accused Vanlalhnezhova 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. Lalramhluna, 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 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 7 witnesses. One witness is examined as Court witness. Accused was examined u/s 313 Cr.P.C 2 witnesses were examined for the defence. The Ld. Counsels are heard.

Mrs. Rose Mary, the ld. Addl. PP submitted that there is no question of delay in lodging the FIR as the content of the Chrgsheet and the deposition of the prosecutrix clearly pointed that she was warned and threatened by the accused not to disclose the incident. However, as the prosecutrix could no longer bear the suffering and trauma, she attempted suicide inside her school toilet as she was ashamed of the offence. The Ld. Counsel further submitted that PW No.3 & 5 who are the teachers of X clearly proved that X tried to commit suicide by hanging herself with her school necktie. The Defence on the other hand failed to bring out any cogent evidence of the reason for the prosecutrix to attempt suicide. The teacher deposed that X is of good behaviour and good student, and the defence failed to prove the contrary. With regard to the plea of alibi set up by the defence, the Ld. Counsel argued that the defence failed to prove the authenticity of the Attendance Register and Car Diary which are private documents. In this connection the Ld. Counsle has placed reliance in the case of Tarajia Khumchand & Ors versus yalamartu Satyam & Ors reported in AIR 1971 SC 1865 wherein it was held that mere marking of exhibits cannot be proof of documents. Further in the case of State of Meghalaya versus Joinmanick Noshmel Giri reported in AIR 1995 Gau 23, the honb'le Gauhati High Court has held that exercise book exhibited without objection did not take away the right of the Court to question and scrutinize the evidentiary value of the same. Section 61 of the Evidence Act provides that the content of exhibits are not proved either by secondary or primary evidence, as such, the said exhibits must be set aside. Further, by placing reliance

of the provision of section 67 Evidence Act the Ld. Counsel argued that the handwriting and signatures require proof. In support of the submission the Ld. Counsel has placed reliance in the case of Rajwati Devi versus Joint Director of Consolidation, reported in AIR 1989 Pat 66 it has been held by the honb'le Patna High Court that when a document is not proved by any witness, it is procedural lapse. The Ld. Counsel submitted that the defence have failed to prove the contents of Car Diary and Attendance Register and as provided u/s 103 Evidence Act, the burden of proof of alibi is on the defence. According to the Ld. Counsel, the name of the accused figured in Sl. No.13 as "Nia" whereas the other names in the Register are the actual Mizo names and it is also seen from the defence evidence itself that the accused is commonly called "pazo" or "u Zo". As such, the same appears to be doubtful. According to DW No.2 attendance was not taken. Therefore, it is for the defense to prove the attendance of the said witness which however was not done by the defence. According to the Ld. Counsel, this clearly shows that the accused was not working in the Sunshine Company and the fact that he left the said Company towards the end of November is doubtful as the incident falls on 28.11.2011. The Ld. Counsel argued that the main defence taken is the plea of alibi which have not been proved by the defence. On the other hand, the prosecution has been able to establish a concrete evidence against the accused. The Ld. Counsel therefore prays to convict the accused for the offence of rape punishable u/s 376(2)(f) IPC and to impose maximum sentence.

On the other hand, Mr. Lalramhluna, Ld. State Defence Counsel submitted that the FIR was lodged 10 months after the alleged incident. The delay in lodging the FIR have not been explained in the FIR at Ext.P-1 and the charge sheet which was filed u/s 173 Cr.P.C. The Ld. Counsel submitted in the absence of any cogent explanation, there was sufficient chance for the prosecutrix to indulge in sexual intercourse. Secondly, the Ld. Counsel submitted that the age of the prosecutrix have not been proved. The birth certificate of the prosecutrix which was submitted is a photocopy and it does not satisfy the condition of being accepted as secondary evidence. The Ld. Counsel argued that the certificate itself is doubtful and the same has been casually filled up leaving some portions blank thereby raising doubt on its veracity. Thirdly, the Ld. Counsel argued that the medical examination report does not indicate the age of the rupture of hymen and that no finding can be expected after a gap of 10 months. Fourthly, according to the prosecution, the victim was shown obscene act in the mobile phone of the accused by the accused. But no mobile handset was seized and the Investigating officer stated that when they checked the mobile handset of the accused they did not find such pornography

video. This has created doubt on the statement of X that the accused showed her pornography in his mobile phone. Fifthly, turning to the evidence of the teachers of X, the Ld. Counsel submitted that PW No.3/Zairemmawia stated that he could not say for sure whether X stood on her feet when they entered the toilet but as far as he can recollect the edge of her toe was touching the water tank. PW No.5/J.Lalrintluanga admitted the suggestion that from the commode since only 61/2 feet is left to reach the roof it is not possible for a child of Class-VI to hang herself. The Ld. Counsel argued that from the evidence of the two teachers of the prosecutrix, it is clear that it was only a drama on the part of the prosecutrix and that she actually did not attempt to hang herself to death. The Ld. Counsel argued that as the father of the prosecutrix who sexually exploited her. Mr.Lalramhluna further submitted that if the prosecutrix had actually attempted to commit suicide, there should be injury atleast some redness, swelling or abrasion on her neck. But she did not sustain such injuries and no such finding was recorded by the Doctor who examined her on the same day. The Ld. Counsel submitted that the case is politically motivated as the victim's family and the accused belonged to a different political party. Turning to the defence version, the Ld. Counsel submitted that during the relevant time the accused was employed as a driver under the Sunshine Company who was carrying out construction of road between Serchhip to Keitum. The defence led reliable evidence to prove that on the said date the accused was driving a vehicle and carried three truck trips of water. The Attendance register have been produced and its authenticity have not been challenged during cross-examination. The defence witnesses were not discredited during cross-examination. They are realizable and corroborate with each other and that they have proved that the accused was not in his village on the date of the alleged incident. The Ld. Counsel therefore pray to acquit the accused for the offence of rape punishable u/s 376(2)(f) IPC.

7. DISCUSSION, DECISION AND REASONS THEREOF:-

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

PW No.1/TC Lalhmunliana is the father of X and informant. He stated that his daughter was reading in Class-VI and on 11.9.2012, he was called to the school of his daughter and was informed that his daughter attempted suicide and that she was sexually assaulted. They did not tell him the culprit. He went home with his daughter. As the incident affected his daughter so much so that she attempted suicide they did not talk to her about the incident on that day and the next day. On the next day thereafter on being asked by him his daughter made a disclosure and

when he asked her why she kept quiet the prosecutrix stated that the accused told her that if she makes a disclosure it would affect his reputation as they are living as family. The witness stated that they are not related to the accused either by blood or by marriage. He lodged the FIR on 13.9.2012. The Police seized the Birth Certificate of X from him in his house. He exhibited the FIR as Ext.P-1 and his signature as Ext.P-1(a). In his cross-examination, he stated that he knew the accused was a driver by profession and that he used to drive a tipper under a company. He does not know the whereabouts of the accused on and around the day of the incident i.e. 28.11.2011. He learnt about the incident on 11.9.012 and lodged the FIR on 13.9.2012. He admitted that his daughter did not sustain any injuries or even scratches on her body. He stated that before he lodged the FIR his daughter often complaint of abdominal pain and pain around her waist, but she did not complain of pain on her private part.

PW No.2/X is the prosecutrix stated that he and the accused are from the same locality and he used to call him as “Pa Hnehzo”. When she was small she used to go to his house with her elder brother, the accused has come to her house but he does not visit them often. She stated *“on the afternoon of 28.11.2011 the accused came to my house and said that he will give us some green peas. He said I should go and get the same. I followed him to his house. There was no one in his house. We started peeling the green peas which were lying on the floor then the accused asked me to sit on the chair and I obeyed him. He took out his mobile phone and showed me a pornography movie. Then he held his arms around me and asked if I understood the movie, I replied him in the negative. While switching off his phone he told me that he will carry me, I resisted him but he carried me. Then he started touching my private part with his fingers and said that there was nothing to be afraid of. Then he took me to the bed and made me lied down. It was not a single bed. Then he hanged a piece of cloth around the bed like a mosquito net and he once again said there was nothing to be afraid of and that he was only going to rub around the area. He removed my skirt and panty I resisted him but he was stronger than me. When I turned I saw him removing his pant and I could see his male organ and he introduced his male organ into my private part by first touching my private part with his fingers. He lied on top of me for about 5 minutes then he removed his male organ and I was feeling pain and he hurriedly put on his clothes. I got up and wore my clothes by myself. He pulled down the cloth around the bed and said ‘sawi suh I pa te kanni vesia kan hmingchhia ang. Sawi hlek suh’, then he gave me Rs 10/-. I left his house after he gave the green peas. When I reached in front of Anu Sawmi the accused reached up to me and he walked up to*

my house with me. There was no one in my house and he also came inside my house he again told me not to say anything and then he left my house. I also went out to look for my parents. There was discharge from my private part after the accused removed his male organ and it was a whitish substance which look like a snort. I also felt pain. I did not tell anything to my parents as I was afraid of the accused. Sangkimi, Didiki and Remsiami who were my friends were the first persons I informed of the incident. I told Remsiami because she often go to the house of the accused and was afraid that she may also be victim". She also stated that in the year 2012 the accused showed her picture of a naked women in his mobile phone in his house. She stated that she was under severe mental trauma and tried to commit suicide in the school toilet. She had already tied the knot and hanged herself, but due to suffocation she kicked her legs vigorously and from her noise her teachers pushed open the door which she locked from inside. In her cross-examination, she stated that in the year 2011 she was reading in class-V. She told her friends about the incident not long after the incident. She told her friends and not her parents because they used to confide with each other and keep secrets, and that within her circle of friends they shared their personal life with respect to boyfriends. She denied the suggestion that the reason why she attempted suicide was not what the accused did to her about a year back. She stated that she attempted suicide as she felt that the accused was going to do it again. She stated that the toilet had an RCC wall with tinned roof, the height of the toilet was the same as the toilet used by the teachers. The commode was a bit elevated by one steep step and there was some distance from that place to the bathroom door. There was water tanky near the commode and she climbed on the tanky to hang herself. She denied the suggestion that she did not really attempted suicide and that she only did the same in order to safe her face from her other shameful acts. She denied that the accused did not rape her.

PW No.3/Zairemmawia is a teacher in Bungtlang Govt.School-I where the prosecutrix was a student. He stated that X was a student of Class-VI during the academic session 2012-'13. He stated that on 10.9.2012 during break time in the forenoon, while he was in the teachers room some students shouted and said that the prosecutrix locked up herself in the toilet and it appeared to them that she was attempting to commit suicide. So the teachers ran towards the toilet. He and another teacher J.Lalrintluanga ran ahead of the other teachers. Both of them vigorously pulled the door and could open it. They saw the prosecutrix inside the toilet with her school necktie tied around her neck and tying a knot on the wooden frame of the roof. They immediately caught hold of her and untied the necktie and

carried her to the teachers room where she was made to lie down on the table. Initially X did not give any reply when they asked her why she took such a drastic step. So all the other teachers except he and J.Lalrintluanga left the room. Even then she did not speak for a long time but finally she faintly said she was raped. When they asked her who was the culprit, she remained silent for a long time. After they assured her that they will not speak out, she named the accused. Thereafter, they made a phone call to her parents. When her parents arrived they told them that X attempted to commit suicide but did not tell them about the rape incident. He stated that in the toilet, the commode was placed at an elevation of about 6 inch from the floor. On the said of the commode is the water tank of about 1 feet. When they entered the toilet, the prosecutrix was on the water tank and as far as he can recollect her toe was still touching the edge of the water tank. In his cross-examination, he stated that toilet was separately located from the school building and of a lesser height than the school building. He stated that the toilet must be about 7 feet but the roof was slanting and the commode was placed below the slanted roof and not at its highest point. As far as he can recollect, when they entered the toilet, the edge of X's toe was touching the water tank. He did not observe any injury on the body of X when she was taken to the Staff common room. They took the school necktie inside the teachers common room but he does not know if it was seized by the Police. He does not know the length of the school necktie. They did not take the prosecutrix to the doctor immediately.

PW No.4/ Lalhermawia. He stated that he had gone to Vengchhak to collect fodder. The place where he was working was close to the house of the prosecutrix. He was approached by some Police personnel saying that they were required signature of an adult person. So he followed the Police personnel to the house of the prosecutrix where they seized her birth certificate. The Police seized the original birth certificate. As far as he can remember as per the birth certificate the prosecutrix was born in the year 2001. He exhibited the seizure memo as Ext.P-2 and his signature as Ext.P-2(b). In his cross-examination, he stated that when he entered the house of the prosecutrix the police personnel and her family members were sitting around the table and he was informed that seizure was being made of the birth certificate of the prosecutrix. He had a look at the birth certificate and handed it back to the father of the prosecutrix. He is not related to the prosecutrix.

PW No.5/ J. Lalrintluanga is mathematics teacher in Govt Bungtlang Middle School I. He was posted in the said School since theyear 2010. On 10.9.12 during lunch break when he was in the teachers room some students came and reported that X (prosecutrix) was trying to commit suicide in the school toilet. Immediately

he along with another teacher Zairemmawia so also some other teachers rushed to the toilet. On reaching the toilet they found the door locked from inside. He pulled the door open with Zairemmawia. The moment they went inside the toilet they saw X hanging herself with the School necktie. He immediately caught hold of her and lifted her up. During that time Zairemmawia untied the knot around her throat then they carried her to the teacher's room. When they asked her the reason why she took such drastic step she did not give any reply initially. Thereafter some teachers left the room. He along with Zairemmawia and the prosecutrix were left in the said room. At that time they again asked her the reason. She was very reluctant to speak but on being persistently asked she said she was raped. Then he asked her who was the person who raped her to which she said 'apa Hnehzova'. She did not take the name of any other man. Thereafter they made a phone call to her parents. When her parents arrived they told them that their daughter was sexually assaulted and asked them to question her further and to take further steps as required. Thereafter she was taken home. When he spoke to X she did not say any other thing which disturbed her mind so severely so as to attempt suicide apart from saying that she was raped by the accused. In her cross-examination, he stated that the height of the roof of the toilet must be about 7 feet, the place where the commode was placed was a bit elevated from the floor by about half feet. He admitted the suggestion that from the commode since only 6 ½ feet is left to reach the roof it is not possible for a child of class 6 to hang herself. He could not say where the prosecutrix placed her foot as he was only worried about preventing her death and immediately caught hold of her and lifted her up. He did not take the prosecutrix to a Doctor. He did not notice any injury on her body. He denied the suggestion that the school necktie is not of the length with which the prosecutrix could hang herself standing on the elevated portion of the toilet. He denied the suggestion that the man which the prosecutrix named is another person of the same name with the accused and not the accused. They did not give information to the Police.

PW No.7/ SI Malsawmtluanga is the Investigating Officer. He stated that FIR in the instant case was received on 13.9.2012 from TC Lalhmunliana of Bungtlang Vengsang. The informant stated that the reason for delay in lodging the FIR was due to late disclosure by his daughter though no specific mention was made in the written FIR. The information was registered as Serchhip PS Case NO. 56/12 dt.13.9.12 u/s 376(2)(f) IPC. The OC of Serchhip PS endorsed the case to him for investigation. During investigation he visited the place of occurrence which is the house of the accused. He seized the original Birth Certificate of the prosecutrix and recorded the statement of the 2 Seizure Witnesses in the house of

the prosecutrix itself. He made a photocopy of the Birth Certificate from the original and released the same to her family on Zimanama. Apart from them, he also recorded the statements of the School Teachers of the prosecutrix namely J. Lalrintluanga and Zairemmawia. He recorded the statement of the prosecutrix. The accused was arrested on the night of 13.9.12 and he interrogated him. During interrogation, the accused stated that he did not indulge in sexual intercourse with the prosecutrix but he showed pornography video from his Mobile Handset to the prosecutrix. He forwarded the prosecutrix for medical examination and received back the Medical Examination Report of the prosecutrix. Having found prima facie case against the accused from my investigation such as medical report and statement of witnesses including the statement of the prosecutrix, he laid Charge Sheet against the accused for the offence punishable u/s 376(2)(f) IPC. He exhibited the Charge sheet as Ext.P-4 and his signature as Ext.P-4(a). Photocopy of the birth Certificate of X as Ext.P-5 which was objected by the Id. Defence Counsel on the ground that it is not primary evidence and not in conformity with sec. 63 of the Indian Evidence Act. In his cross examination he stated that during the course of interrogation the accused stated that there was no sexual intercourse between him and the prosecutrix. He admitted the suggestion that in the FIR at Ext. P-1, there is no specific explanation for the delay but he voluntarily clarified by stating that it was verbally explained to him by the informant and also mentioned in the FIR that there was late disclosure of the incident by his daughter. The Medical Officer who examined the prosecutrix did not tell him the age of the rupture of the hymen. He admitted that there is delay of 10 months in filing FIR. He did not look at the pornography from the Mobile Handset of the accused which he stated that he had shown to the prosecutrix. He checked the Mobile Handset of the accused but did not find the pornography video. He admitted that he did not get the photocopy of the Birth Certificate of the prosecutrix attested.

8. Examination of accused u/s 313 Cr.P.C is one of denial. He stated that from 15th April, 2011 he was employed as a driver in the Sunshine Company and that he was not in his village on the alleged date of incident. He stated that he divorced with his wife in the month of September 2011 and his two children are living with their mother. After his divorce he spent most of his time in the work site and even when he goes to his village he used to stay with his father and that he married another wife in the month of April/May, 2012 while still employed under the said Company. The accused also stated that the reason why the prosecutrix attempted

suicide was because she wanted to end an affair between her father and one Thangzuali.

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

DW No.1/Vanlalhnehzova is the accused himself. He stated that he joined Sunshine Company as a Driver on 15.4.2011. On 28.11.11, he was performing his work under the said Company which was undertaking construction of road between Serchhip and Keitum. As he was at the work site the whole day, he was not in his house which is the alleged place of incident. He stated that the Company maintains attendance register of its employees and that he has brought the attendance register in the Court. His employers were non-Mizos and they call him as Pu.Hneha. Accordingly, in the said register his name has been registered as Hneha/Nia. During his employment under the said company, the registration no. of the vehicle he drove were MZ-01/1112 but does not remember the registration no. of other vehicles though he can recollect that he was sometimes made to driver even the Bolero. He also maintained the vehicle/car diary of whichever vehicles he drove. On 28.11.11, he was driving MZ-01/G-6778 which is a 909 (medium goods vehicle). In the attendances register which he produced, his name figure at Sl. No. 13 for the month of November 2011. He does not know why he has been accused of committing rape after nearly a year from the date of the alleged incident. He exhibited the extract of the Employee Attendance Register maintained by Sunshine Company as Ext.D-1 and an extract of Vehicle/Car Dairy maintain by Sunshine Company as Ext.D-2. In his cross examination, he stated that he is from Bungtlang village, he is acquainted with the family of X but they do not visit each other, he denied that the prosecutrix and her mother used to go to his house to attend domestic chores, he has no reason to say that he and the family of X had misunderstanding, he stated that depending on the work load attendance were taken around 6:00 to 7:00 am, he used to drive a water tanker and they used to carry water from Keitum Vanlaiphai road and Sesah at Serchhip. The quantity of water to be carried is not fixed but it depends on work requirement. They sued to have lunch break and he was the only one who carried water. He denied the suggestion that on 28.11.2011 he was in his house, he denied that he invited X to take green peas from his house, he also denied having shown pornography to X, he also denied that he had sex with X threatened her and gave her Rs.10/-, he denied the suggestion that the name "Nia" appearing in Sl.No.13 of the Attendance Register is not him, the other Mizo names appearing in the register are their actual

names and they are called by such names. He stated that he left his job sometime in the month of July, 2012.

DW No.2/Lalmalsawma stated that towards the end of the year 2011 he was working in the Sunshine Company which was undertaking construction of road between Serchhip to Keitum. He was working under the said company as a labourer. On 28.11.2011 he was working under the said company. The accused was also working on the said day. On that day we left for work at about 7:00 AM after having the morning meal and continued to work till about 8:00 P.M. On that day he was with the accused and on the instruction of their superior they carried. On that day they carried 3 trips of water in a vehicle i.e. LPK 909. In his cross examination, he stated that he started working under the Sunshine Company from August, 2011 upto November, 2011, he left the work as he did not find the employment beneficial to his expectation. He was engaged as a labourer. They were involved in the construction of road. He left his job towards the end of November, 2011. He came to know the accused only after he joined the Sunshine Company. The accused used to drive a water tanker of the Company. Accordingly, his main work was to supply water though as a labourer he was involved in the various fields. He denied the suggestion that he was not working as a helper in the water tanker on 28.11.2011. He stated that on 28.11.2011 attendance was not taken. He stated that on that day they carried water from a place below Keitum village which is known as Zawngvadawih which is between Keitum and Khawlailung. He is a resident of Rawpui village. The distance between Bungtlung and Keitum would be about 6 to 7 Kms. He does not know if the accused owned a house at Bungtlung but knows that he is a resident of the said village. He addresses the accused as Pazo or U zo other people also called him by such name including Zoa. In his re-examination, he clarified his statement by stating that Attendances are not taken by calling out their names but when they report themselves to the Office they would marked their presence. Personally he has done like that only during his employment.

7. In the case at hand, the incident complained off occurred on 28.11.2011. The FIR was lodged on 13.9.2012. As such there is delay of nearly one year in lodging the FIR. Needless to say, delay in lodging the FIR in itself is not fatal to the prosecution case, but it has the effect of putting the Courts on guard to see if any explanation is offered. Delay has to be considered in the light of facts and circumstances of the case. It is a matter of appreciation of evidence. However, in

the instant case, without dealing with the issue of delayed FIR separately, the entire evidence is being appreciated.

8. Keeping the above principles in mind the instant case is being examined.

A. As stated above, the incident occurred on 28.11.2011 and the matter came to light on 11.9.2012. As such there is delay of about 10 months. This case have to be dealt with utmost sensitivity in as much as the matter came to light as the prosecutrix attempted suicide in her school toilet. The prosecutrix was a minor.

B. PW No.2/X stated *“As I was under severe mental trauma, I tried to commit suicide in the bath room of my school by hanging myself with the school necktie”*. She also stated *“I did not tell anything to my parents as I was afraid of the accused. Sangkimi, Didiki and Remsiami who were my friends were the first persons I informed of the incident. I told Remsiami because she often go to the house of the accused and was afraid that she may also be a victim”*. During cross-examination she admitted the suggestion that she told her three friends about the incident not long after the incident. But she did not tell anything to her parents. She admitted that she told her friends because she keep secret with her friends and share personal life such as boyfriends with them. The prosecutrix was unable to give any reply to the question why she could tell her friends and not her parents.

C. From the statement of PW No.1/TC Lalmunliana who is the father of X and complainant, it is clear that they came to know about the incident only after his said daughter attempted suicide in her school toilet. He stated in his cross-examination that before lodging the FIR his daughter complained of abdominal pain and pain around her waist. But she did not complain to him of any pain on her private part. What is noticed from the deposition of this witness is that from the time of the incident to the time of their knowledge which was almost 10 months they did not have any reason to suspect such an incident. The witness have not deposed about change in the behavior of his daughter. There is no evidence of the prosecutrix not being her usual self so as to cause worries and concern. They did not notice the prosecutrix seeming to suffer from pain even if she did not disclose anything to them. This witness also stated that he and the accused used to attend the same Church. That the accused is not a regular Church goer but that he is a teacher in the Sunday School and also preaches in the Church. This statement of the father of the prosecutrix gives a picture that their family was leading a normal, decent and respectable life so much so that the Church leaders consider him fit to be a teacher of Sunday School and a preacher. With such family background, it is

expected that the informant and his wife would be looking after their children well and observe their behavior and habits. With such family background and keeping in mind the responsibility bestowed upon the father of the prosecutrix by the Church authorities, it is rather strange and unusual that they did not observe any change on their daughter, either in her daily living or her studies.

D. PW No.3/Zairemmawia the teacher of X stated that during the academic year 2012-'13 X was reading in Class-VI and that at the time of his statement i.e 9.4.2013 she was reading in class-VII. The witness also stated that X is an *"obedient and good student"*. PW No.5/J.Lalrintluanga, Mathematics teacher of X stated in his cross-examination that the accused was reading in Class-VI at the relevant time. PW No.2/X deposed before the Court on 8.3.2013 and she stated that she has just passed Class-VI. The incident according to the prosecutrix occurred on 28.11.11. There is no evidence of the prosecutrix failing her exams during the academic session 2011-2012. There is also no material to suggest such an inference. From the deposition of the prosecutrix herself, it can be safely presumed that examinations are held sometime in February/March. Thereafter, for the academic session 2012-'13 there is no evidence of the prosecutrix being effected in her studies and not faring well as she used to. The absence of any evidence of change of behavior of X in school, she not being affected in her studies are rather strange if her trauma and mental stress was to such an extend so as to attempt suicide nearly a year after the incident.

E. When asked by the State defence Counsel, the prosecutrix stated that she attempted suicide nearly a year after the incident because she felt that the accused was going to do it again. In this regard the prosecutrix in her examination-in-chief stated that sometime in the year 2012 the accused came to her house and offered them firewood. So she and her mother went to his house. The accused asked her mother to allow her to stay back to clean his house and that he will pay her Rs.50/-. Without any suspicion her mother allowed and she carried the firewood. At that time she was very scared of the accused. While her mother was away the accused asked her if she had disclosed the earlier incident which she replied in the affirmative. The accused then showed her photograph of naked women in his mobile phone. As her mother came back to the house of the accused she left with her mother. In this regard, when the accused appeared as his own witness he stated that he left his job in the Sunshine Company sometime in July, 2012. The accused in his examination u/s 313 Cr.P.C also stated that he divorced his wife in the month of September 2011. Thereafter he married another wife in the month of April/May,

2012. He also stated that he spent most of the time in his work site and when he goes to his village he used to stay with his father. Though the statement of accused u/s 313 Cr.P.C is not evidence, in the instant case I do not find any reason to doubt the same in as much as his marriage or remarriage has no direct relevance to the fact in issue, but has become relevant only because the prosecutrix spoke of being in the house of the accused in the year 2012 and mopping his floor at his request without specifying the date and month. As the accused married another wife in the month of April/May, 2012, keeping in mind the ordinary course of human life, there would be no need for the accused to ask the prosecutrix who was barely 10/11 years old to mop his floor as he had a wife during the relevant time to look after the household chores, thereby meaning that if the statement of the prosecutrix is to be believed the incident of 2012 or she and her mother going to the house of the accused would be between January to April/May 2012 before the accused married his second wife. Even if the statement of the prosecutrix is believed, upon appreciation of the other evidence and circumstances on record, it means that the prosecutrix did not immediately react since the attempted suicide was on 10.9.2012. This has also created doubt on the prosecution story.

F. According to the prosecutrix she made the incident known to her friends Sangkimi, Remsiami and Didiki not long after the occurrence. Strangely, these three friends have not been examined as witnesses in the Court and it appears that they were not involved with this case at any stage. Strangely, it appears that these three girls also did not speak out the matter at any point of time. If they are the friends of X, they would be of the same age group with the prosecutrix. It may also be kept in mind that all of them are from a rural background where the society is close knit, with a lot more gossiping and rumours than in urban areas where people are busy with their own self and work. The prosecutrix further deposed that she confided with her friends because they share their personal life in relation to boyfriends. This statement of the prosecutrix shows that she and her friends were already indulging in affairs with the opposite sex. This statement thereby raises doubt as to whether it would be safe to accept the reason given by the prosecutrix for attempting suicide? The prosecutrix could not give any reply when she was asked why she could tell her friends and not her parents. PW No.1/TC Lalmunliana who is the father of X stated that they did not talk and did not ask X the reason she attempted suicide on the afternoon she was taken home from school and they did not ask her anything on the next day also. It was also thereafter that they spoke to her about the incident. This witness stated “*We did not immediately*

talk to her about the incident as she was affected to an extent of attempting suicide and we thought it wise to give her sufficient time to possess cool thinking". Thereby from the statement of the father of X, it is clear that they were caring, they were not harsh on her, they shared her feelings and acted in a way which they thought would not hurt her sentiments. That being the treatment given to her by her parents soon after they came to know of the incident, doubt arises why the prosecutrix did not tell them anything earlier and reposed more trust on her friends? On the other hand, it is also equally strange that a parent could wait for so long to ask a mishap upon their daughter. This has created doubt on the credibility of the statement of X.

G. According to the prosecutrix on 28.11.2011 before the accused sexually assaulted her, he showed her pornography in his mobile phone. She also stated in 2012 the accused showed her photograph of naked women in his mobile phone. Even if the statement is true, by the time FIR was lodged there was ample time for the accused to delete such images from his mobile phone. The late disclosure has wiped out one vital evidence which could have been collected. The Investigating Officer PW No.7 stated that when he checked the mobile phone of the accused he did not find any video clipping of pornography.

H. A girl of barely 11 years attempted suicide in the instant case. As such, there must be something which terribly affected her mind so much that she did not have the desire to live. But it is also equally important that in a criminal trial, the standard of proof is higher than a civil case and it is for the prosecution to prove by cogent evidence that the accused actually committed the offence. In the case at hand, the lapse of time from the incident to the date of disclosure/FIR has created certain doubts in the prosecution case.

9. The hon'ble Apex Court in the case of Jayantibhai Bhenkaarbhal versus State of Gujarat reported in (AIR 20012 SC 3569 has held as follows :-

"19. The plea of alibi flows from Section 11 and is demonstrated by illustration (a). Sarkar on Evidence (Fifteenth Edition, p. 258) states the word 'alibi' is of Latin origin and means "elsewhere". It is a conventional term used for the defence taken by an accused that when the occurrence took place he was so far away from the place of occurrence that it is highly improbable that he would have participated in the crime. Alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognized in Section 11 of the Evidence Act that facts which are inconsistent with the fact in

issue are relevant. The burden of proving commission of offence by the accused so as to fasten the liability of guilt on him remains on the prosecution and would not be lessened by the mere fact that the accused had adopted the defence of alibi. The plea of alibi taken by the accused needs to be considered only when the burden which lies on the prosecution has been discharged satisfactorily. If the prosecution has failed in discharging its burden of proving the commission of crime by the accused beyond any reasonable doubt, it may not be necessary to go into the question whether the accused has succeeded in proving the defence of alibi. But once the prosecution succeeds in discharging its burden then it is incumbent on the accused taking the plea of alibi to prove it with certainty so as to exclude the possibility of his presence at the place and time of occurrence. An obligation is cast on the Court to weigh in scales the evidence adduced by the prosecution in proving of the guilt of the accused and the evidence adduced by the accused in proving his defence of alibi. If the evidence adduced by the accused is of such a quality and of such a standard that the Court may entertain some reasonable doubt regarding his presence at the place and time of occurrence, the Court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the prosecution leaves any slot available to fit therein the defence of alibi. The burden of the accused is undoubtedly heavy. This flows from Section 103 of the Evidence Act which provides that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence. However, while weighing the prosecution case and the defence case, pitted against each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to benefit of that reasonable doubt which would emerge in the mind of the Court.”

10. Keeping in mind the decision of the honb’le Apex Court, the plea of alibi set up by the defence is not discussed.

11. Therefore, considering the evidences and materials on record, I find that reasonable doubt exist and that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt.

ORDER

11. Accused Vanlalhnezhova is acquitted of the offence punishable u/s 376(2)(f) IPC by giving him the benefit of doubt.

12. The Attendance Register & Car Diary submitted by the accused shall be returned to him.
13. Give copy of the Judgment & Order free of cost to the accused.
14. In terms of section 437-A Cr.P.C accused shall continue to be on bail for another period of 6 months.
15. Pronounced in open court and given & under my hand and the seal of this court on this the 27th day of May, 2014

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

Memo No:/AD&SJ(A)/2014 : Dated Aizawl, the 27th May, 2014
Copy to: -

1. Accused Vanllahnehzova through Counsel Mr. Lalramhluna, 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.
10. 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 Seizure Memo
P-2(a) Signature of PW No.1
P-2(b) Signature of PW No.4
- Ext. P-3 Medical examination report of the victim
P-3(a) Signature of PW No.6
- Ext. P-4 Charge Sheet
P-4(a) Signature of PW No.7
- Ext. P-5 Photo copy of Birth Certificate of the prosecutrix

(B) **DEFENCE EXHIBITS-**

- Ext. D-1 Extract of Employee Attendance Register maintained by Sunshine Company
- Ext. D-2 Extract of Vehicle/Car Diary maintained by Sunshine Company

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

(D) **COURT EXHIBITS- None**

(E) **PROSECUTION WITNESSES:**

- PW No.1 - T.C. Lalhmunliana
- PW No.2 - Prosecutrix
- PW No.3 - Zairemmawia
- PW No.4 - Lalhermawia
- PW No.5 - J. Lalrintluanga
- PW No.6 - Dr. Lalrothuama
- PW No.7 - SI Malsawmtluanga

(F) **DEFENCE WITNESSES - :**

- DW No.1 - Vanllahnehzova
- DW No.2 - Lalmalsawma

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