

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS

AIZAWL, MIZORAM

Crl.Tr. No 2143/2013

Vide Darlawn P.S C/ No. 14/2013

Dt. 04.12.2013

U/S 354 A (2) IPC

State of Mizoram : Complainant

Versus

Shri. Lalchama (58) : Accused

S/o Biakliana

R/o Hmunnghak

PRESENT

H. LALDUHSANGA, Judicial Magistrate First Class - II

Counsel for the Prosecution : Smt Lalrinsiami APP

Counsels for the Defence : Shri. C Lalrinchhunga, Advocate & ors

Judgment Pronounced on : 25.10.2016

Sentence heard on : 02.11.2016

Judgment & Order delivered on : 02.11.2016

No. of Total pages of Judgment & Order: 6 (Six)

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PROSECUTION WITNESSES

PW 1 : Smt. T Laltlankima, Complainant.
PW 2 : Ms. X (victim minor girl)
PW 3 : Upa Lalhmingmawia Ralte, Civilian witness
PW 4 : Lalremruati, Civilian witness
PW 5 : ASI Lalthazawnga, Case I/O

LIST OF DEFENCE WITNESS

NIL

LIST OF ENCLOSURES

- 1. Arrest Memo**
- 2. Statement of witnesses**
- 3. Statement of complainant**
- 4. Statement of accused**
- 5. Statement of victim**
- 6. Judicial Statement**

JUDGMENT & ORDER

Dated:02.11.2016

INTRODUCTION OF THE CASE

1. Accused Lalchama (58) S/o Biakliana R/o Hmunghak was arrested on 04.12.2013 as he was alleged to have committed an offence punishable U/S 354 A (2) IPC. The accused was charged accordingly but he pleaded not guilty and claimed to be tried. The Court entered into evidence. The Prosecution examined five witnesses while the accused produced no witness. Judgment is pronounced today and the accused is convicted. We shall now go for more details below.

PROSECUTION STORY

2. The prosecution story of the case in brief is that on 04.12.2013 @ 1:50 PM, a written FIR was received at Darlawn PS from Shri TC Laltlankima of Hmunghak stating that on 03.12.2013 @ 6:00 PM, one person Lalchama (55) of Hmunghak had entered into the residence of the complainant TC Laltlankima (but the complainant and his wife were not available at their residence) and molested his minor daughter 'X' (4yrs). by touching her private part and he requested to take legal action. Hence, Darlawn PS Case No.14 Dt 04.12.2013 U/S 354 A (2) IPC was registered and Case IO ASI Lalthazawnga duly investigated into the case. During the course of investigation, the complainant was examined carefully at the PS. The place of occurrence was visited and carefully examined. The said 'X' was also examined. The Case I/O examined two witnesses and recorded their statements. During interrogation, the accused admitted his guilt before Police stating that he had molested the said 'X' with having a mind of sexual intercourse.

and kissed her cheek and touched her private part inside her (victim) residence on 03.12.2016. Hence, from his investigation, the case I/O found Prima – facie case U/S 354 A (2) IPC well established against the accused and sent the case for trial to the Court.

DELIVERY OF DOCUMENTS

3. On 02.07.2014, as per requirements of Sec 207 and 303 Cr.PC, a copy of charge-sheet and other relevant documents were delivered to the accused. He was also informed his right to engage a lawyer of his own choice or avail free legal aid. Accordingly, the accused engaged Shri. C Lalrinchhunga, Advocate.

CHARGE

4. On 06.08.2014, having heard the Ld. APP for the state and the Ld. Counsel for the accused and perused all the materials on record, the charge U/S 354 'A' (2) IPC was framed against the accused as ***Prima-facie*** case was found well established against him. The charge was read over and explained to the accused in the language known to him to which he pleaded not guilty and claimed to be tried.

Point for determination

Whether accused Lalchama (58) outraged modesty of the said 'X'. If yes, to what extent.

ARGUMENT

5. Written argument was received neither from the Prosecution nor the Defence. Oral argument was conducted. The Ld. APP for the Prosecution during oral argument submitted **inter alia** the prosecution proved the present case beyond the shadow of all reasonable doubts. The Case I/O duly investigated into the case in conformity with Law. No violation of mandatory provisions of the Code was found. The examination of the prosecution witnesses clearly revealed that the accused had outraged modesty of 'X'. The evidences adduced by the Complainant and the Medical Practitioner revealed guilt of the accused. Hence, prayed the Court to convict the accused and sentence him with the maximum punishment.
6. The Ld. Counsel for the accused on the other hand submitted **inter alia** the Prosecution totally failed to prove guilt of the case beyond reasonable doubt. The Case I/O was uncertain as to whether the accused in the present had outraged modesty of the said minor victim 'X'. No prosecution witness could prove the accused in the present case was

the actual offender. It was rather false accusation. For all these reasons, the present case was full of doubt and suspicion and hence, strongly prayed the Court to acquit the accused immediately.

DECISION AND REASONS FOR DECISION

7. Here, we shall determine as to whether accused Lalchama (58) outraged modesty of the said 'X'. PW 1 TC Laltlankima deposed that on 03.12.2013, the accused touched the private part of his daughter 'X' (4 years). Hence, he lodged a written FIR. PW 2 'X' (the minor victim) deposed that when her parents were away at Aizawl for the funeral process of her Grandmother on 03.12.2013, the accused entered into their house at night in between 6:00 PM to 7:00 PM. The accused sent out her aunty to buy 'Rum Pum' (Noodles) and her sister went to the Bath room. Later, her aunty and her sister left the house without her knowledge. Thereafter, the accused approached, touched her private parts and kissed on her cheeks. However, as she was wearing panty, the accused did not touch beneath. The accused said that he would buy a Biscuit for her. When the accused left the house, she also went to the house of their neighbour where her sister and her aunty were also there till her parents came back from Aizawl. On cross-examination, she deposed that only the accused kissed on her cheeks. Hence, no other person kissed her.

In Om Prakash Vs Dil Bahar (2006) decided by the Hon'ble Supreme Court, A statement from the Court read, "*it is settled law that the victim of sexual assault is not treated as accomplice and such, her evidence does not require corroboration from any other evidence including the evidence of a doctor*".

In **Golla Yeluga Govindu Vs State of AP, AIR 2008 SC 1842 : (2008) 16 SCC769**, the Supreme Court *explained points about determining the value of testimony of children..... The evidence of children was admitted, there was corroboration conviction.*

With respect to children, no precise age is fixed by law within which they are absolutely excluded from giving evidence on the presumption that they have not sufficient understanding. Neither can any precise rule be laid down respecting the degree of intelligence and knowledge which will render a child a competent witness. The intellectual capacity of a child to understand questions and to give rational answers thereto is, the sole test of his testimonial competency and not a particular age (Santosh Roy Vs State of WB., 1992 Cr LJ 2493 (Cal)).

8. In corroboration of the victim's evidence, PW 3 Lalhmingmawia Ralte deposed that on 03.12.2013 at around 6:00 PM, one Lalremruati living in the neighbour rushed to his house and said that the accused entered into their house and she was frightened by him. They suddenly rushed to the house and found the accused standing and the victim (X) sitting on the floor. PW 4 Lalremruati deposed that on 03.12.2013 at night in between 6:00 to 7:00 PM, when she was in the house with the victim, the accused entered into it. The accused sent out to buy 'Rum Pum' (Noodles). When she returned, the accused closed the door and she was a bit nervous at the act of the accused. As the accused started holding her hand and she opened the door and ran out. The accused chased him and held on her hand. She then fled away and rushed to their neighbour's house. Later, the victim (X) followed her. They asked about the incident and the victim told that the accused touched her private parts and face. PW 5 Case I/O SI Lalthazawnga deposed that as per a written FIR lodged by Shri TC Laltlankima (PW 5), a case was registered against the accused and he investigated into the case. During the course of his investigation, he examined the complainant and the victim and recorded their statements. He also examined the accused and the accused admitted during the course of his investigation. For all these reasons, the present case is decided in favour of the Prosecution.

ORDER

9. Accused Shri Lalchama (58) of Hmunghak is hereby convicted U/S 354 'A' (2) IPC.

Sd/-

(H. LALDUHSANGA)

Magistrate 1st Class,

Aizawl, Mizoram.

Dated 2nd November, 2016

10. As fixed by the Court, hearing on sentence is conducted today. Having heard the Ld APP for the State, the convict and his Counsel, I am not interested in releasing the convict on Probation of good conduct. The Ld. Counsel for the Prosecution prayed for the maximum punishment whilst the Ld. Counsel for the convict prayed for the possible minimum punishment. It is found that the convict is a first time offender with having no past criminal record. Further he is running for 59 years of age. Furthermore, I considered gravity of the offence i.e touching some parts of the minor

victim's body including her private part from outside underwear with no penetration.
For all these reasons, I do not hesitate in awarding lesser punishment.

11. Accused Shri Lalchama (58) of Hmunngahak is hereby convicted U/S 354 'A' (2) IPC is hereby sentenced U/S 354 'A' (2) IPC to pay a fine of Rs 6,000/- (six thousand). Failure to pay a fine would attract Simple Imprisonment for a period of 30 (thirty) days.

12. Bail bond shall be cancelled and surety shall also be discharged from all liabilities.

13. With the above order, the present case stands disposed of.

Given under my hand and Seal of this Court on this day of the 2nd November, 2016 Anno Domini.

(H. LALDUHSANGA)

Magistrate 1st Class,

Aizawl, Mizoram.

Memo No.:

Dated Aizawl, the 2nd November, 2016

Copy to:-

1. Shri. Lalchama (58) of Hmunghak C/o the Special Superintendent, Central Jail, Aizawl
2. The District & Sessions Judge, Aizawl.
3. The Special Superintendent, Central Jail, Aizawl.
4. i/c Judicial Section.
5. The Superintendent of Police, Aizawl: Aizawl District.
6. Asst Public Prosecutor, District Court, Aizawl.
7. Shri. C Lalrinchunga, Advocate, District Court, Aizawl.
8. Case I/O ASI Lalthazawnga Darlawn PS.
9. The DSP (Prosecution), Aizawl.
10. i/c Judicial Section.
11. Case record.

PESHKAR