

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS
AIZAWL, MIZO

Crl.Tr. No 650/2013
Vide Aizawl P.S C/ No. 123/2013
Dt. 04.04.2013
U/S 342/336 IPC

State of Mizoram : Complainant

Versus

Shri. Hmangaihropuia (27) : Accused
S/o CL Bika
R/o ITI Mualpui Road, Aizawl
Aizawl District

PRESENT

H. LALDUHSANGA, Judicial Magistrate First Class

Counsel for the Prosecution : Smt Lalriansiami & Venus H Zomuankimi APP
Counsels for the Defence : Shri. T Lalnunsiamia, Advocate
Judgment Pronounced on : 03.04.20178
Judgment & Order delivered on : 03.04.2018

INDEX

PROSECUTION WITNESSES

PW 1 : **Smt. Linda Zoremkimi, Victim Complainant.**
PW 2 : ZD Lalremthangi
PW 3 : Hmangaihsangi
PW 4 : Laldinpuia
PW 5 : ASI Rothangliani, Case I/O

PROSECUTION EXHIBITS

1. Exhibit P – I : FIR submitted by the complainant
2. Exhibit P – I (a) : Signature of the complainant
3. Exhibit P – II : Final Report
4. Exhibit P – II (a) : Signature of Case I/O

No. of Total pages of Judgment & Order: 8 (eight)

5. Exhibit P – III : Arrest memo
6. Exhibit P – III (a) : Signature of Case I/O
7. Exhibit P – III (b) : Signature of PW 3
8. Exhibit P IV : Seizure memo
9. Exhibit P IV (a) : Signature of Case I/O
10. Exhibit P IV (b) : Signature of PW 4

LIST OF DEFENCE WITNESS

NIL

LIST OF ENCLOSURES

1. Arrest Memo
2. Seizure Form
3. Statement of witnesses
4. Statement of complainant
5. Statement of accused
6. Medical Examination Report
7. Bail bond
8. Zimmanama

JUDGMENT & ORDER

Dated:03.04.2018

1. The prosecution story of the case in brief is that on 04.04.2013, a written FIR was received at Aizawl PS from Smt. Linda Zoremkimi (about 22 years), Republic Venghlun, Aizawl stating that on 04.04.2013 at around 6:00 to 6:30 PM, she hired one Taxi MZ 01 E 9273 from ITI towards Republic Venghlun, Aizawl. On reaching her destination, the Taxi driver did not want to stop it and proceeded towards isolated area without her consent. She therefore jumped out of the Taxi and escaped. Hence, Aizawl PS Case No. 123/13 Dt 04.04.2013 U/S 342/336 IPC was registered and case I/O ASI Rothangliani investigated into the case. During the course of investigation, the complainant and the accused were examined. The accused was sent to Civil Hospital as he sustained injury caused by the local people on the spot. The involved Taxi was seized but released on zimmanama. Hence, from her investigation, the case I/O found Prima – facie case U/S 342/336 IPC well established against the accused and sent the case for trial to the Court.

2. 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. T. Lalnunsiam, Advocate. 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 342/336 IPC were framed against the accused as *Prima-facie* case was found well established against the accused. 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 Hmangaihropuia acted so rashly or negligently to endanger life and personal safety of the victim and as to whether accused Hmangaihropuia confined the victim wrongfully.

DECISION AND REASONS FOR DECISION

3. We shall now consider as to whether accused Hmangaihropuia acted so rashly or negligently to endanger life and personal safety of the victim and as to whether accused Hmangaihropuia confined the victim wrongfully. The five prosecution witnesses including the victim complainant adduced evidence in the Court. The accused was examined U/S 313 Cr.PC wherein he denied all the allegations. I have heard the Ld APP and the Ld. Counsel for the accused during Oral argument.
4. **PW 1 Smt. Linda Zoremkimi, Victim Complainant (22 yrs)** identified the accused in the Court and deposed that on 04.04.2013, she appeared in Class XII (Open) Examination at Pushpak, Zemabawk. On her way back home, it was raining heavily and so she hired one Taxi from ITI towards Republic Venghlun, Aizawl. She told the Taxi driver that she would get down in front of her residence. However, before reaching destination, the Taxi driver asked her to get down at "Republic Kawipui". As it was raining heavily and she had not yet reached her residence, she refused to get down. The driver then proceeded but when they reached her residence, he did not want to stop the vehicle despite request. The driver told that he would take the vehicle turn at Lungli Tuikhur. However, on reaching Lungli Tuikhur, the driver did not want to stop the vehicle and they reached an isolated place where there was neither house nor man to see. She requested the driver to take her back and she contacted his friend through mobile phone. As the driver did not want to stop the

vehicle, she jumped out of the vehicle and called her mother through telephone. As she had informed the matter, her relatives were waiting for the said taxi that was to come back but the driver did not want to stop it. However, they took the vehicle number and traced it out. Hence, she lodged a written FIR. She identified Exhibit P-I as FIR submitted by her and Exhibit P-I (a) as her true signature. On her cross-examination, she deposed that it was the fact that there was no space for taking turn the vehicle in front of her residence. She had not paid for the fare when she jumped out of the Taxi. Although she jumped out of the said Taxi, she sustained no physical injury. She did not admit that when the accused took her beyond her destination, the accused had no ill intention. PW 2 ZD Lalremthangi deposed that on 04.04.2013 at around 7:00 PM, she knew about the incident. She moved towards YMA Property House where the accused was being detained. She then moved to the house of the victim and the victim told that on that day, she appeared in Class XII Examination at Kendrya Vidyalaya. While going home she found and called out one Taxi driver sitting inside one shop and hired the said Taxi. After reaching Republic Kawipui, as it was raining, she told the driver to take her till her residence and she would pay more for the fare. When they reached her residence, the driver did not want to stop the vehicle. The driver said that he would take the vehicle turn. However, even on reaching Turning Point, the driver did not want to stop the vehicle and proceeded. Hence, they reached an isolated place where there was no more house or man to see. She requested the driver to stop the vehicle but he paid no heed. As he did not want to stop the vehicle, she jumped out of the vehicle. The road condition was bad and even the vehicle could not take high speed and so she could jump out of the vehicle. At night, the Police came to the house of the victim and told to submit a written FIR. Hence, she with the victim and the victim's mother lodged a written FIR at Aizawl PS. On her cross-examination, she deposed that she was not on the spot at the time of incident. What she deposed was what she had known from the victim. She knew nothing from the accused about the incident. No injury or mark was found on the victim and even the victim told that the accused caused her nothing. PW 3 Hmangaihsangi deposed that she knew the accused who was her husband at the time of incident but had got divorced. Due to the incident, the involved motor documents were seized in her presence and she became a seizure witness. She identified that Ext P – 4 (b) and Ext P – 3 (b) were her signatures. On her cross-examination, she deposed that she did not see any documents seized by the Police. She also stood as arrest witness but she just put her signature as requested by the Police. PW 4 Smt

Laldinpuii deposed that the accused was her relative. On 4th April, 2013, the accused was arrested and one Taxi MZ-01-E-9273, Registration Certificate, Taxi Permit, Insurance Policy and Fitness Certificate were seized. Hence, she stood as a seizure witness. She identified Exhibit P-IV as seizure memo and Ext P-IV (a) as her signature. On her cross-examination, she deposed that she knew nothing but put her signature on document. She did not know what were the documents seized but witnessed making seizure of the said vehicle. PW 5 ASI Rothangliani, Case IO deposed that as per a written FIR received, she investigated into the present case. As per a written FIR, the victim on 04.04.2013, hired one Taxi MZ 01 E 9273 from ITI towards Republic Venghlun, Aizawl driven by the accused. The driver did not want to stop the vehicle and took beyond her destination without her consent. She visited the place of occurrence, examined the accused, complainant and other witnesses and recorded their statements. She seized the said vehicle and documents in presence of reliable witnesses. During interrogation, the accused admitted that he took beyond her destination without her consent. As a bailable section of law, she released the accused on bail. She identified Exhibit P-2 as the Final Report submitted by her, Ext P 2 (a) as her signature, Ext P 3 as arrest memo, Ext P 3 (a) as her signature, Ext P 4 as the seizure memo and Ext P 4 (a) as her signature. In the light of her investigation, she found prima-facie case well established U/S 342/336 IPC against the accused. On her cross-examination, she deposed that she did not present at the time of incident. No injury or mark was found on the victim's body. It was the fact that distance between the places where the victim wanted to get down and where she jumped out of the vehicle was about 15 metres. The accused caused no physical assault or injury to the victim.

5. From the evidence, it appeared that the victim told the accused Taxi driver to drop her in front of her residence, but he proceeded and did not want to stop the vehicle. Although she told that she wanted to get down but the accused moved forward by saying that he would take the vehicle turn at Lungli Tuikhur. As the accused did not want to stop the vehicle, she jumped out of the vehicle and called her mother through mobile phone. On his way back, when the victim and her family members were trying to stop the accused, the accused did not want to stop the vehicle and wilfully passed through them. No doubt, there was no ocular witness in the present case. However,

In Om Prakash Vs Dil Bahar (2006) the Hon'ble Supreme Court held that *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.*

6. Furthermore, the Case I/O deposed that during her interrogation, the accused admitted that he took the complainant beyond her destination without her consent. In corroboration of the victim's statement, PW 5 the Case I/O deposed that after being thorough investigation, she found prima-facie case well established U/S 342/336 IPC against the accused.

The Hon'ble Supreme Court in Baldev Singh Vs State of Haryana (Criminal Appeal No. 167 of 2006 decided on 04.11.2015) *held that evidence of Police witnesses cannot be discarded merely on the ground that they belong to Police force. The Hon'ble Supreme Court has ruled that evidence given by the Investigating Officer, even when most witnesses turn hostile, could be relied upon by the trial Court to fasten guilt on accused. In Rameshbhai Mohanbhai Koli & ors Vs State of Gujarat (Criminal Appeal No 1146 of 2008 decided on 20.10.2010 Para 25), the Supreme Court says, "The Court has held in large number of cases that merely because the panch-witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the Investigating officer alone".*

7. It obvious that although the victim had asked the accused to stop his driving vehicle the accused did not stop it and so the victim jumped out of the moving vehicle. Hence, there was a deprivation of the complainant's liberty. The distance between the places where the victim asked the accused to stop the vehicle and where she jumped out of the vehicle might be only about 15 metres. **However, the distance covered is immaterial.** The victim was prevented from moving/going out from the vehicle as the accused did not want to stop the vehicle. Further, the victim jumped out of the moving vehicle and so there was a proof of physical obstruction on the part of the victim as well. The physical restrain of the victim was also found. **The time/period during which the victim was kept against her will in the said vehicle also immaterial.** In fact, the act of the accused was done carelessly, no due care and no attention to the victim's wishes. The act done by the accused endangered the personal safety and liberty of the victim. In fact, maintenance of peace is an essential part of today's society for all human beings to live in peace.

The Supreme Court in Veer Singh & ors Vs State of UP (Criminal Appeal No (s) 256-257 of 2009 decided on 10.12.2013 Para 17) held that legal system has laid emphasis on value, weight and quantity of evidence rather than on quantity, multiplicity or plurality of witnesses. It is not the number of witnesses but quality of their evidence which is important as there is no requirement under the Law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighted and not counted. Its quality and not quantity which determines the adequacy of evidence as has been provided under Sec 134 of the Evidence Act. As a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable.

8. For all the reasons stated in above, the present case is hereby decided in favour of the prosecution.

SENTENCE

9. Heard both side on sentences. The Ld. APP for the state prayed for the maximum punishment while the Ld. Counsel for the accused prayed the Court for the possible minimum punishment. Having heard both side and perused the documents on record, it is found that the accused is a first time offender having no past criminal record. The victim sustained no injury. Neither injury nor mark was found on her body. She was not sent for medical examination as well. Further, it could be said that the charge sections are less serious in nature. Both are bailabe sections of Law. Furthermore, the possible maximum punishment U/S 336 IPC is three months imprisonment or fine upto rupees two hundred and fifty or both and the maximum punishment U/S 342 IPC is imprisonment for a period of one year, or fine which may extend to rupees one thousand or both. Hence, on considering gravity of the offence and the circumstances, although it is not interested in releasing the accused on probation of good conduct as provided U/S 360 IPC, this Court does not hesitate awarding the accused lesser punishment.

ORDER

10. Accused Shri Hmangaihropuia (27) S/o CL Bika R/o ITI Mualpui Road, Aizawl, Aizawl District is hereby convicted and sentenced U/S 336 IPC to pay a fine of Rs 200 (Two

hundred). IDSI for 10 (ten) days and also, sentenced U/S 342 IPC to pay a fine of Rs 1,000/- (One thousand). IDSI for 30 days.

11. The seized vehicle and documents shall be released to the rightful owner.
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 3rd
April, 2018 Anno Domini.**

(H. LALDUHSANGA)

Magistrate 1st Class,

Aizawl, Mizoram.

Memo No.:

Dated Aizawl, the 3rd April, 2018

Copy to:-

1. Shri. Hmangaihropuia S/o CL Bika R/o ITI Mualpui Road, Aizawl through Counsel Shri T Lanunsiana, Advocate.
2. The District & Sessions Judge, Aizawl.
3. The Superintendent, Central Jail, Aizawl.
4. The Superintendent of Police, Aizawl: Aizawl District.
5. Smt. Lalremruati Pachuau, Asst Public Prosecutor, District Court, Aizawl.
6. Case I/O ASI Rothangliani Vaivakawn PS, Aizawl.
7. The DSP (Prosecution), Aizawl.
8. i/c Judicial Section
9. Case record.
10. Guard file

PESHKAR