

**IN THE COURT OF
DISTRICT & SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT: AIZAWL**

BEFORE

**Mr.R.Thanga
District & Sessions Judge
Aizawl Judicial District, Aizawl**

**SR No.29 of 2012
Criminal Trial No.2831/2012
u/s 376/500 IPC
Ref: Bawngkawn PS C/No.298/2012 dt.26-11-2012**

**State of Mizoram
Vrs
Zothlamuanpuia s/o Zatawna r/o Sihphir, Neihbawih- Accused**

PRESENT

For the Prosecution : Mr. H.Lalmuankima & Mrs. K.Lalremruati, Ld. Addl. P.Ps.

For the Accused : Mr. A.Hussain, Ld. Advocate

Date of Hearing : 20-06-2014

Date of Judgment : 26-06-2014

JUDGMENT & ORDER

1. The story of prosecution in brief is that on 26.11.2012, a written information was received from SI C.Zakhumi of CAW Cell stating that on 22.11.12, one Lalhnehsangi (19) d/o Lalliansanga of Sihphir, Neihbawih had taken Respira (Cough syrup) for intoxication and after a short while she consumed liquor with Zothlamuanpuia s/o Zatawna, Sihphir, Neihbawih who invited her to have sexual intercourse with her. Despite accepted it; she replied that she was fond of having oral sex. He then had oral sex by touching her private parts. Hence, Bawngkawn PS C/No.298 dt.26.11.2012 u/s 376/511 IPC was registered and duly investigated into. Accordingly after the investigation, a prima facie case u/s 376/511 IPC was found established against the accused person Zothlamuanpuia s/o H.Zatawna of Sihphir, Neihbawih.
2. Relevant copies of the documents were handed over to the accused and Mr. A.Hussain, Ld. Advocate appointed as Defense counsel. Accordingly, charge u/s 376/511 IPC was framed against the accused and explained to him in the

language known to him, to which he pleaded not guilty, denied the charge and claimed for trial.

3. The prosecution produced and examined 6 Nos. of witnesses in order to prove their case. The accused was also examined by the Trial Judge u/s 313 Cr.P.C. The Defense produced one defense witness on his behalf.
4. P.W. No.1, Lalliansanga, complainant had stated that on 22.11.12 his daughter Lalhnehsangi went out from his house and that he was also working in his farm. Unfortunately, on the evening his sister Piani called him through telephone and stated that his daughter was lying unconscious near the house of the present accused and that the lower part of the abdomen was swollen. Accordingly, he proceeded towards the residence. When he reached his daughter was brought to his house and she was unconscious and her lower part of her abdomen was swollen. Thereafter, she was brought to the Presbyterian Hospital, Durtlang and admitted in the ICU. On the following day he visited his daughter at the said hospital and the doctor advised him to report the matter to the Police Station and he immediately report the matter to the Bawngkawn PS.

Exbt-P-1 is the FIR and

Exbt.-P-1(a) is his signature.

The complainant in his cross examination stated that the victim, his daughter was habituated to take alcohol and cough syrup. He also stated that the accused and the victim are well known to each other and treated like each other like brother and sister.

5. PW No.2, C.Zakhumi had stated that on 23.11.2012 they received an FIR from Lalliansanga, Sihphir Neihbawih stating that on 22.11.2012 his daughter was invited by the present accused to consume liquor with him. Taking advantage of her intoxication he had committed the offense of rape upon her. The case was endorsed to her for pre-step enquiry. During her investigation, she visited Presbyterian Hospital, Durtlang ICU and the victim stated to her that on 22.11.2012 she went to the residence of the present accused and asked for liquor from him. Thereafter she consumed two glasses and she was also invited by the accused to have sex and she refused and she also stated that she was

forced by the accused to sex for which she fell down on the ground. She further narrated that she took cough syrup 'respira' with her friend before she had liquor. She then became unconscious and she could not remember anything and woke up the next day at ICU, Durtlang. Thereafter the accused was also interrogated who stated that the victim had approached him and asked him for liquor and accordingly he offered her two glasses. He also invited her to have sexual intercourse but she refused and she told him that she was fond of oral sex. Then he had oral sex with her and he touched and poked her private part. Hence, she submitted for registration of the case to the O/C, Bawngkawn PS.

Exbt-P-2 is enquiry report and

Exbt-P-2(a) is her signature.

The officer investigating the case in her cross examination stated that the victim revealed that the accused invited to have oral sex however did not mention whether the actual act of rape was committed. The cause of the victim becoming unconscious was due to intake of alcohol and medicine together.

6. PW No.3 Lalhnehsangi, the victim had stated that on 22.11.2012 at around 11:00AM she proceeded towards Kawn Veng, Sihphir along with Amrama and Tlangkhuma. On the way they met the present accused and Tlangkhuma asked him whether he had a glass of liquor for medicine. The present accused replied him that he might have a glass of liquor. Thereafter, on the evening she asked him again through message and he replied him that he had little bit of liquor then she proceeded towards his residence as he was her relative. After she reached the house of the present accused they went nearby to Pu Hawla's farm hut. As such they consumed one and quarter glass of liquor. Thereafter she was under intoxication because she drank about 5 ml of Respira cough syrup before. The present accused also asked to have sex with her. However, she do not allow to have sexual intercourse with him so he forcefully raped upon her and she also resisted with all her strength and he tried to pull down her boxer shorts and underwear but she resisted again with all her strength. In the meantime, she sustained injury on the back side of her head and she could not resist as a result she was in unconscious state, however, she could feel that she had severe pain

on her private part. When she woke up she was already admitted in the Durtlang Presbyterian hospital.

The victim in her cross examination stated that she was not aware whether the accused had actually committed the offense of rape, only that her private part was paining. The accused had not made any previous attempts on her earlier.

7. PW No.4, Lalpianruali had stated that on 22.11.12 at around 4 to 5 PM elder sister of the victim Lalhriatpuii told her through telephone and stated the victim Lalhnehsangi was lying unconscious near Pu Hawla's farm hut. She immediately proceeded towards the PO on scooty. When she reached the PO she saw the victim lying on the verandah of the said hut and she could smell alcohol on the victim. During this time the accused and his brother were also present nearby. Thereafter, she asked Lalhriatpuii the sister of the victim to bring the dress of the victim from her residence. Thereafter, the victim was brought to her house on tolailir (local vehicle). Unfortunately, she was unconscious and they brought her to Durtlang Presbyterian Hospital. She asked the matter to the accused person and he replied that the victim was rolling down on the terrace. On the following day the doctor advised us to lodge FIR and they lodged FIR accordingly.
8. PW No.5, H.Lalhmingthangi, SI of Police had stated that on 26.11.2012 a written report was submitted by SI C.Zakhumi as per enquiry conducted by her in connection with FIR submitted by Lalliansanga on 23.11.12 the victim Lalhnehsangi had taken Respira, cough syrup for intoxication and after she also consumed liquor with the present accused. Thereafter, the accused invited to have sexual intercourse and despite her objection the accused touched her private part and committed raped on her. The case was registered as BKN C/No.298/12 u/s 376(1)/511 IPC. The case was endorsed to her for further investigation. During her investigation, she visited the PO and she also arrested the present accused. She also recorded statements of the accused, the victim and other reliable witnesses. She also made requisition for medical examination of the victim as the victim was already admitted into the Presbyterian hospital, Durtlang. Thereafter, the victim was medically examined in the Civil Hospital, Aizawl. After sometime she received medical report from the medical officer,

Civil Hospital, Aizawl. Hence, she found prima facie under section 376(1)/511 IPC against the present accused person and she submitted charge sheet accordingly.

Exbt-P-3 is charge sheet submitted by her

Exbt-P-3(a) is her signature.

Exbt-P-4 is the arrest memo and

Exbt-4(a) is her signature.

9. PW No.6, Dr.Vanlalhruaia Fanai, Civil Hospital, Aizawl had stated that on 23.11.2012 at around 3:30PM the victim Lalhnehsangi aged about 19 years was brought before her for further examination. During her examination her physical and mental health was normal. She also found bruising of occiput (on the back of her head) about 2x2 cm. She also sustained laceration at posterior couchette (in between vagina and anus) and hymen at 5 o'clock position.

Exbt-P-5 is her examination report

Exbt-P-5(a) is her signature.

- 10.The Defense submitted to produce one witness on his behalf. This witness is the brother of the accused.

- 11.DW, Thangrodinga had stated that on 22.11.2012 himself and his brother were collecting fodder for cattle and at around 12:00 noon the victim came to them. The victim requested for liquor and his brother offered about one glass of liquor. Thereafter, they went to the shed to milk the cattle. During this time they did not know the where about the victim. The relatives of the victim came looking for her and thereafter they heard the news that she was sexually assaulted. Since, she was drunk and intoxicated with drugs a lot of people gathered and they took her to the hospital at Durtlang on the same day. The victim is their close relative and she frequently visited their house also. On this particular day she mentioned that she was sent by her mother to collect Guava for her sick mother. In fact the mother did not send her for collecting Guava. The victim is habituated to drinks and drugs. On the particular day the accused and he were busy collecting fodder and milking the cows. The accused was with him all of the time. The place of occurrence is in the same compound and not far away.

During his Examination in chief and cross examination the DW stated that after the victim took liquor, he and his brother did not know the whereabouts of the victim since they were busy cutting fodder for the cattle. The victim had come to them asking for liquor at about 12:00 noon and the time they found the victim unconscious was about meal time in the evening. In between the relatives of the victim had also come looking for her.

12.Arguments were heard on behalf of the Prosecution and Defense.

13.The Prosecution has stated that the guilt of the accused is proved beyond reasonable doubt since the accused has admitted to oral sex, that the act of alleged rape on the accused was without consent, medical examination showed evidence of violent act by way of bruises, aberrations etc. on the body of the victim. The lone defense witness is not reliable since he is an interested party being the brother of the accused. That although the victim was intoxicated she could resist the advances of the accused to a certain extent. Therefore in considering all the evidences adduced the guilt of offense u/s 376/511 IPC against the accused was proved beyond reasonable doubt.

14.The Defense counsel had put forth his submission both orally and in writing. The written arguments are placed on record. Amongst others he has submitted there was delay in FIR which has not been explained satisfactorily. The victim in her cross examination is not certain as to whether the act of sexual intercourse was completed. The statement of the accused before the police that he had oral sex with the victim cannot be proved against him. Material witnesses to the alleged offense were omitted namely; Lalrinchhana (Amrama) and Tlangkhuma who were reported present with the victim on the day of incident and were probably eye witnesses. The complainant in his cross examination also stated that the pain in her private part was probably caused due to urinary tract infection of which the victim was suffering. In the above circumstances the Ld. Counsel for the accused submits that he is entitled to the benefit of doubt as observed in Prem Lata; 1987 CrLJ 1539(HP).

15.The evidences adduced before the Court may be considered as below:-

- i) The victim approached the accused asking for liquor.

- ii) The victim had already taken Respira (cough syrup) before meeting with the accused.
- iii) The victim was accompanied between two persons namely Tlangkhuma and Amrama to the house of the accused.
- iv) The whereabouts of these two persons is not known thereafter.
- v) The victim allegedly took liquor with the accused.
- vi) The victim was allegedly invited by the accused to have sex, to which she probably refused but agreed to oral sex which was allegedly performed.
- vii) The accused returned to the running of errands, milking of cow, collection of fodder etc. and did not know the whereabouts of the victim.
- viii) The victim thereafter allegedly became unconscious.
- ix) The victim was discovered in an unconscious state and taken to hospital.
- x) All these events allegedly took place on 22-11-2012.
- xi) FIR was lodged on 26-11-2012 on the advice of the doctor attending the victim.
- xii) The doctor attending the victim at the first instance was not cited as witness. The medical officer to whom requisition was made was examined.

16. Taking into consideration the sequence of events there was delay in filing of FIR which was not explained.

17. The victim is not sure as to whether the actual act of sexual intercourse was performed upon her.

18. The medical examination does not conclusively determine the act of sexual intercourse. There is evidence of urinary tract infection of the victim which was not denied by the complainant, the father, which could have the cause of pain in the private part of the victim.

19. The absence of consent is also submitted to be a determining factor by the prosecution. In examining the evidences adduced it is seen that the only evidence of rape is made out by the victim and that also that she had agreed to oral sex and that she was not aware as to whether the accused had completed the actual act of sexual intercourse. The past character of the victim is also to be

taken into consideration in the determination of reliability of her statement. The factum of consent has to be inferred from the conduct of the victim. It was an admitted fact that the victim was habituated to taking of drugs (abuse of drugs), drinking of liquor and further her general character and conduct in approaching the accused for liquor clearly speaks for itself. Even if consent is said to be absent, there was apparent consent to the act of oral sex and that she could not re-collect any other incident other than waking up in the hospital. The most explicit narration of events is of the mother of the victim which is also from hearsay, and might have had her own reasons for such explicit narration.

20. In light of the above discussions, the benefit of doubt surely goes to the accused.

It is therefore held that the guilt of the accused Zothlamuanpuia s/o Zatawna r/o of Sihphir, Neihbawih has not been established beyond reasonable doubt and is therefore acquitted of charge u/s 376/511 IPC. Bail bond if any stands cancelled. The case is accordingly disposed of.

Sd/-R.THANGA
DISTRICT & SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT
AIZAWL

Memo No. _____DSJ/A/ 2014 : Dated Aizawl, the 26th June, 2014.

Copy to :-

1. Zothlamuanpuia, S/o Zatawna, Sihphir Neihbawih.
2. Mr. H.Lalmuankima and Ms. K.Lalremruati, Ld.Public Prosecutors, Aizawl.
3. Mr. A.Hussain, Ld. Advocate.
4. DSP, Prosecution.
5. O/C, Bawngkawn P.S.
6. i/c Judicial Section.
7. Case record.
8. Guard file.

PESHKAR