

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

BEFORE

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

SR No.17 of 2013
Criminal Trial No.287/2012
u/s 376(1); 323; 354 IPC
Ref: Champhai PS C/No.189/12 dt.1-12-2012

State of Mizoram
Vrs
Laltanzuala, s/o F.Lalhlua, of Vaphai ~ Accused

PRESENT

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

For the Accused : Mr.R.Lalhmingmawia, Ld. Advocate

Date of Hearing : 16-04-2014

Date of Judgment : 01-05-2014

JUDGMENT AND ORDER

1. The story of prosecution in brief is that on 01-12-2012, one Lalhmingmawia, aged about 63 years of age, resident of Vaphai village lodged a written complaint with the Champhai PS, about 82 kms from Vaphai village, to the effect that one Laltanzuala s/o Lalhlua of Vaphai village had forcibly dragged his wife up to Vaphai field and committed rape and further assaulted his wife's sister, Lalrithangi, who had come to her aid with a firewood. Accordingly, Champhai PS Case No. 189/12 dt.1-12-2012 was registered and investigation carried out by Ms. Lucy Zosangzuali, SI. No.3013. Prima facie case was found and Charges under sections 376(1); 342; 323; 354 IPC were registered against the accused Laltanzuala, s/o Lalhlua of Vaphai village and committed for Trial.

2. Relevant copies of the documents were handed over to the accused and Mr. R.Lalhmingmawia, Ld. Advocate appointed as defense counsel since the accused did not have means to engage counsel. Accordingly, charges under sections 376(1)/323/354 IPC were framed against the accused and explained to him in the language known to him, to which he pleaded not guilty and hence, trial commenced.
3. The prosecution produced and examined 8 Nos. of witnesses in order to prove their case. The accused was also examined by the trial judge under section 313 Cr.P.C. The accused also put forward one Laldingliana as his lone defense witness. However, in spite of repeated summons, the said defense witness was not able to be produced and accordingly, vide Court's Order dt.29.11.2013, the ld. Counsel for the accused/defense prayed for dropping of the lone defense witness.
4. P.W. No.1, Lalhmingmawia, complainant, who is the husband of the victim had stated in his examination that on 27.11.2012 at about 7:00 pm, the accused had come to their house to drink liquor which they refused. Since the accused was reluctant to go away, he pushed him out of the house. The accused then forcibly grabbed the victim and although she struggled and despite his intervention, he could not stop him. Thereafter, the accused threatened him with a wooden stick and a Dao carried in his bag and told not to interfere. Thereafter, the victim was dragged towards the playground / Vaphai field where the accused allegedly committed rape. The statement of P.W.No.1, Lalhmingmawia, husband of the victim states that he was present on the day of occurrence along with the victim, accused and sister-in-law, Lalrithangi. He was also present when the accused after altercation forcibly pulled his wife/victim and took her towards the playground. The victim had to spend a few nights at her parent's house due to the multiple injuries sustained by her which were inflicted by the accused. He

also stated that on meeting his wife after several days, the victim informed about the incident of rape.

5. The statement of P.W.No.2, Zoliani/victim states that the accused was carrying Dao in his bag and also holding a wooden stick. After altercation with her husband, Lalhmingmawia and her sister Lalrithangi, the accused forcibly dragged her towards the playground. The accused struck her husband when he tried to resist. The victim/prosecutrix, as PW No.2, states that she was dragged forcibly by the accused towards Vaphai field where the accused committed the offense of rape and forcibly had sexual intercourse after beating her with the stick. She also stated that the accused had struck her sister, Lalrithangi, who came to her aid, with a log of firewood. Thereafter, her sister reported the matter to her relatives and the accused fled on the arrival of the relatives. She was then taken to the house of her parents where she spent four days and nights tending to the injuries she sustained caused by the assault of the accused.
6. The P.W.No.3, Lalrithangi stated in her deposition that on the date of occurrence, she was present in the house of her sister (victim) and observed that there was altercation between the husband of victim, victim and accused. Despite their intervention, the accused forcibly dragged the victim towards Vaphai field, where the accused attacked and struck her on the back with a log of firewood. Thereafter, she was unable to help the victim and reported the matter to her relatives. The statement of P.W.No.3, Lalrithangi, sister of the victim states that the accused had forcibly dragged her sister towards playground and that he had threatened her brother-in-law with the stick he was holding. She also stated that the accused had struck her on the back when she had gone to the aid of her sister.
7. The statement of P.W.No.4, Dr.Vanlalrengpuia states that the victim was examined on 1.12.2012 and found the following injuries on the victim:

- 1) Laceration 2x.05 cm over right aspect of forehead.
 - 2) Bruised 2 x 0.3 cm over right aspect of neck.
 - 3) Multiple small bruised and scratch marks over left forearm.
 - 4) Blackish blue coloration over left forearm which is tender.
 - 5) Blackish blue discoloration with tenderness swelling 11.5x20 cm over chest behind left posterior auxiliary line.
 - 6) Multiple small and large bruises and scratch mark over left lower back buttock
 - 7) Bruise mark 1.5 x .5 cm over left dorsum of foot and over right lateral calf.
8. Arguments were heard on behalf of both the parties. The prosecution has also produced copy of Judgment & Order in SR No.182/2011 in CrI. Tr. No.162/2011 u/s 376/511 IPC wherein the same accused was charged u/s 376/511 IPC and found guilty for the offence u/s 354 IPC as provided for u/s 222(2) CrPC.
9. The said Judgment & Order also mentions the fact of the accused being tried in the instant case i.e SR No.17/2013 u/s 376(1)/342/323/354 IPC. The prosecution also submits that on consideration of the evidence adduced against the accused it is proved beyond reasonable doubt that the accused is guilty of the charges leveled against him.
10. The defense counsel has stated that the accused and victim had illicit relationship as the husband of the victim is about 60 years of age and the victim is about 30 years of age and was not satisfied with the husband. Further that the accused had sexual intercourse with the victim on earlier occasions. Further there is no examination of the accused on record. Also that there is no fingerprint test conducted on the log of firewood.

11. The examination of the accused u/s 313 CrPC mentions that on earlier occasion he had sexual intercourse with the victim may only be used corollary to his defense and benefit the Court in reaching its final conclusion.
12. The plea that the accused was not examined as witness by the defense counsel holds no ground as section 315 CrPC which provides for accused person as competent witness is only allowed on his own request in writing. There is no such application of the accused on record for such examination as witness.
13. The accused is charged under sections 376 (1), 323 and 354 which may now be discussed in light of the evidences presented before this Court.
14. Sec. 323 IPC provides for punishment for voluntarily causing hurt. The essential ingredients of offence are (1) Accused voluntarily caused bodily pain, deceased or infirmity to the victim (2) The accused did so with intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim.
15. In considering the evidence adduced, it is seen that the accused has voluntarily and with intent caused hurt upon not only the victim but also on another person in order to complete the premeditated intent of rape. All the statements of the prosecution witnesses were eye witnesses to the offence of hurt committed by the accused. Their statements are collaborated and do not vary. The defense argument that there was no fingerprint test conducted is also vitiated as it is doubtful that any fingerprint would have been detectable on a log of firewood.
16. The accused is also charged u/s 354 IPC which provides for assault or criminal force to woman with intent to outrage her modesty. The ingredient of outrage of modesty is whether a reasonable man would find the act of the offender likely to outrage the modesty of the woman. Intent and knowledge are the essential ingredients to the offence.

17. In considering the evidence adduced, it is seen that the accused has committed the offence with intention and knowledge outraged the modesty of the woman and not only that but further taken the offence to the act/commission of rape.
18. The accused is finally charged u/s 376 (1) which provides for punishment for rape.
19. The charge under section 376(1) is also proven by the fact that the prosecutrix had of her own free will deposed to the fact that the accused had in fact committed the offence of rape. A victim of rape is not an accomplice requiring corroboration and is not a *sine qua non* for conviction in rape case. It may also be noted that the trauma of the incident is evident as noted by the Trial Judge that the victim was in tears while narrating the incident. Rape not only violates the victim's privacy and personal integrity but inevitably causes serious psychological and physical harm. The objection of the defense counsel regarding the late report of the incident may be considered in the light of the sense of shame of the victim, trauma and distance of the place of occurrence from the nearest Police Station, which is about 82 km and further that the prosecutrix had in fact sustained injuries on her body as is evident from the medical examination.
20. The argument of the defense counsel that the accused and prosecutrix had illicit relationship is doubtful considering the extent of injuries inflicted upon the victim and is of no consequence. It is for the accused to place materials to show that there was consent. In the present case the defense has not been able to adduce any evidence to this effect. Even if consent was present on earlier occasions, the consent on the instant case needs to be established.
21. In light of the circumstances and above discussions, it is apparent that the accused had intent to commit the offence and had completed such intent by its commission and also further caused hurt and outraged the modesty of the

woman in completion of the act of rape and is found guilty and liable for punishment u/s 376(1), 323 and 354 IPC.

22.Hearing for quantum of punishment to be inflicted upon the accused was held.

The Ld. Defense Counsel prayed for leniency. The age, social status and family life of the accused was also considered. The accused is having three issues however had already been divorced and the children are not be looked after by him. Considering all the materials placed before the Court the punishment as stated below is awarded to the accused person Laltanzuala S/o F.Lalhlua.

23.It is therefore ordered that the accused is accordingly found guilty on the aforementioned charges and is therefore (i) sentenced with R.I for a period of 7 years and is also liable for fine of Rs.1,000/-i.d. simple imprisonment for -10 days u/s 376 (1) IPC; (ii) sentenced with Simple Imprisonment for a period of 6 months u/s 323 IPC & (iii) sentenced with Simple Imprisonment for a period of 12 months u/s 354 IPC. All sentences will run concurrently. Period of detention will be set off.

Sd/-R.THANGA

District & Sessions Judge
Aizawl

Memo No. 129 DSJ/A/ 2014 : Dated Aizawl, the 1st May, 2014.
Copy to :-

1. Accused Laltanzuala S/o F.Lalhlua, Vaphai C/o Mr. R.Lalhmingmawia Advocate.
2. Special Superintendant, Central Jail, Aizawl.
3. Mr. H.Lalmuankima and Ms. K.Lalremruati, Ld.Public Prosecutors, Aizawl.
4. DSP, Prosecution.
5. O/C, Champhai P.S.
6. i/c Judicial Section.
7. Case record.
8. Guard file.

PESHKAR