

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

**BEFORE**

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

SR No.458 of 2012  
Criminal Trial No.2358/2012  
u/s 376(2)(f) IPC  
Ref: Kanhmun PS C/No.16/2012 dt.24-9-2012

State of Mizoram  
Vrs  
**James Isaka s/o Lalrinthanga (L), of KanhmunVengthar, ~ Accused  
Mamit Dist.**

**PRESENT**

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

For the Accused : Mr.Lalramhluna, Ld. Advocate

Date of Hearing : 16-04-2014

Date of Judgment : 06-05-2014

**JUDGMENT & ORDER**

1. The story of prosecution in brief is that on 24.09.2012, one Vanlalhruaia, aged about 35 years of age, resident of KanhmunVengthar of Mamit District lodged a written complaint with the Kanhmun PS, about 1 Km. from Kanhmun Vengthar, to the effect that one James Isaka/o Lalrinthanga (L) of Kanhmun Vengthar had raped his daughter, Rani, 12 years of age, three times during July to September, 2012. Accordingly, Kanhmun PS Case No. 16/2012 dt.24-09-2012 u/s 376 (2)(f) IPC was registered and investigation carried out by Mr. Rajeshwar Singh, S.I. Prima facie case was found and Charges under section 376(2)(f) IPC was registered against the accused James Isaka, s/o Lalrinthanga (L) of Kanhmun Vengthar and committed for Trial.

2. Relevant copies of the documents were handed over to the accused and Mr. Lalramhluna, Ld. Advocate appointed as defense counsel since the accused did not have means to engage counsel. Accordingly, charge under section 376(2)(f) IPC was 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 7 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 Defense did not have any Witnesses to produce on their behalf.
4. P.W. No.1, Vanlalhruaia, complainant, who is the father of the victim had stated in his examination-in-chief that he sensed change in the behavior of his daughter during the month of July 2012 as she lost her appetite and that he had gone to Damcherra to purchase medicine for her. Sometime around September 2012 he learnt from his elder daughter, Mary, that the accused had sexual intercourse with the victim on three occasions at the house of the accused. Thereafter on 24-09-2012 the complainant had lodged FIR with Kanghmun PS and that Ext. P-1 is the FIR and that Ext. P-1 A is his signature on the FIR and that Ext. P-2 is the photo copy of Birth certificate of his daughter taken by the police.
5. The PW No.2, Rani, victim/prosecutrix, stated that sometime during July 2012 the accused had first attempted to have sexual intercourse with her and was not able to penetrate due to pain and her crying out. That, on the second occasion the accused had enticed her with fruits and that on her refusal he had forcibly pulled her out of the house of her friend and took her to his house which was close by and forcibly raped her by inserting his organ and that there was bleeding on her private parts. That, on the third occasion when she had gone to fetch water from the spring, she had to pass the house of the accused and that he had caught hold of her and dragged her into his house and again forcibly had sexual intercourse with her. That, the accused had told her uncle Tatiana and

her sister Mary about his having sexual intercourse with the victim, who in turn informed her parents.

6. P.W.No.3, Arni Mukti, mother of the victim, stated that sometime during the month of July 2012 her daughter, the victim, complained of fever and uneasiness and that they had given her medicine but her condition did not improve. Later, they learnt from her husband's younger brother, Tatiana, that the accused had had sexual intercourse with their daughter. On enquiry from her daughter she had affirmed the act. Their daughter had stated to them that she did not report the matter as she was threatened by the accused. Thereafter they reported the matter to the police.
7. P.W.No.4, Mary, elder sister of victim Rani stated that sometime during the month of July 2012 when she had inquired from the victim the reason for her not eating properly and not attending classes regularly, she was told that the victim was afraid of the accused, that, he would wait for her on the way to school to assault her. Later they learnt from other sources that her sister had been raped by the accused and they had then reported the matter to the police.
8. The P.W.No.5, Dr.R.K.Lalthlamuana, stated that he had medically examined the victim on 24-09-2012. He did not find any signs of injuries nor blood stains as the medical examination was about 2-3 weeks after the incident. He also found that the hymen was absent.
9. The P.W.No.6, S.I.Rajeshwar Singh, the case IO stated that he had received a report from the complainant that his daughter had been raped three times by one James Isaka and filed report u/s 376 (2) (f) IPC. That, he investigated the case, examined the victim, forwarded the victim for Medical examination, interrogated the accused who confessed to the crime, forwarded the accused for Confessional statement u/s 164 CrPC, seized the Baptisma certificate for

ascertaining the age of the victim exhibited at Ext.P-2, and that on finding prima facie case u/s 376 (2) (f) IPC, submitted Charge sheet exhibited at Ext.P-4.

10.The P.W.No.7, Ms. Julie Lalrinzami, JMFC stated that she had taken the Confessional statement of the accused after following all due formalities as required by law which is exhibited at Ext.P-5.

11.After completion of the examination of the prosecution witnesses, the accused was duly examined u/s 313 CrPC on 19-02-2014 and vide Court's order sheet of the said date the defense did not have witnesses to produce in their defense.

12.Arguments were heard on behalf of both the parties.

13.The prosecution has relied on the fact that the prosecutrix was raped by the accused three times on different occasions by the coercion, threat and undue influence. That, the accused had stated in his Confessional statement before the Magistrate of his committing the offence. That, the hymen was absent as reported in the Medical examination. That, the age of the victim was 12 years at the time of occurrence, which is evident from the Baptismal certificate produced and exhibited. Accordingly, it is submitted that on consideration of the above facts and circumstances the offence is proved beyond reasonable doubt and that the accused is liable for punishment u/s 376 (2) (f) IPC.

14.The Ld. Defense counsel has objected to the charge being framed u/s 281 CrPC. Further he has objected to the fact that the FIR was filed after one month and therefore there is every reason to doubt the complaint due to the delay. He has also stated that the Baptismal certificate was not proved before the Court. In the end the defense counsel has submitted a citation of (2006) 5 SCC 736 in the case of State of Chattisgarh Vs Lekhram for setting off the period of detention already undergone in the sentence, if any.

15.The Charge u/s 376 (2)(f) was framed on 14-02-2013 by the Ld. Trial Judge u/s 211/212/213/281 CrPC and also on the same occasion examined the

accused u/s 228/281 CrPC wherein the nature of the offence was clearly explained to the accused in the language known to him. The accused had replied in the affirmative regarding the charge of rape however with the explanation that he did not know it was an offence. On perusal of the records available I do not consider any variation from the law on these counts. The Trial Judge had duly performed the exercise with utmost caution and diligence.

16.The Accused was again examined u/s 313 CrPC on 19-02-2014 by the Ld. Trial Judge and thereafter commenced with the Trial. The accused had therein stated that he had sexual intercourse with the victim on the first occasion (27-07-12) by offering fruits and eatables and attempted sexual intercourse and also gave the victim Rs.10/-. That on the second occasion (17-08-12) he had sexual intercourse with the victim and given her Rs. 20/-. That on the third occasion (18-08-12) he again had sexual intercourse with the victim and told her not to tell anybody.

17.It transpires from the evidence put forward that the accused had opportunity to commit the offence. He also stated in his confessional statement that he had offered the victim material in order to entice her. Here it may also be noted in the Medical report that the victim was mildly retarded. The accused had the intention to cohabit with the victim as evident in his confessional statement. In view of the facts placed before the Court, I considered that this case has to be examined in the context of the mental state of mind of the victim and also the economic conditions of the area in which this offence had taken place.

18.The area where this incident had taken place is one of the remote regions suffering from economic disparities. Further the mental state of the victim had been stated as mildly retarded.

19.The absence of hymen in the medical report also suggests penetration, both evident in the statement of victim and the confessional statement of the accused.

The act of penetration is therefore proved beyond reasonable doubt. Further we may consider the mental state of the victim, which is recorded as mildly retarded in the totality of the offence committed.

20. The doubt as to the age of the victim is only brought out during the confessional statement of the accused wherein he states that age as recorded in the Ration is 18. However this evidence has not been adduced before the Court.

21. The late report of FIR may also be considered in the context of the mental health of the victim as already discussed.

22. In the above circumstances, discussions, age and mental health of the victim, economic conditions of the particular area where the offence had taken place, it is concluded that the accused had intention, opportunity and committed the offence u/s 376 (2) (f) IPC and is therefore found guilty of offence u/s 376 (2) (f) IPC and liable to be punished accordingly.

23. The punishment envisaged u/s 376 (2) (f) IPC is rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment if either description for a term of less than ten years.

24. The Ld. Counsel for the accused, Mr. Lalramhluna had been heard regarding the quantum of punishment. He had prayed for leniency, citing (2006) 5 Supreme Court Cases 736 wherein the Hon'ble Supreme Court had affirmed the order of the Trial Court with the direction that the respondent be sentenced to the period already undergone by him. The circumstances of this case were that it was pending for about 10 years and thereafter SLP was filed after 230 days which was however condoned. The present case is of 2012 and there appears to be no unnecessary delay in disposing of the said case. In light of the above

submissions, discussions and circumstances of the case already discussed, I am of the considered opinion that the accused James Isaka S/o Lalrinthanga (L) of Kanhmun Vengthar, District Mamit is found guilty of the offence u/ 376(2) (f) IPC and do hereby sentence him to undergo RI of 10 years and fine of Rs.2000/- in default SI for 1 month. The period as UTP undergone by the accused shall be set off.

**Sd- R.THANGA**

District & Sessions Judge  
Aizawl

Memo No. \_\_\_\_\_DSJ/A/ 2014 : Dated Aizawl, the 6<sup>th</sup> May, 2014.

Copy to :-

1. Accused James Isaka S/o Lalrinthanga (L) Kanhmun Vengthar, Mamit District.
2. Special Superintendant, Central Jail, Aizawl.
3. Mr. H.Lalmuankima and Ms. K.Lalremruati, Ld.Public Prosecutors, Aizawl.
4. Mr. Lalramhluna, Ld. Advocate.
5. DSP, Prosecution.
6. O/C, Kanhmun P.S.
7. i/c Judicial Section.
7. Case record.
8. Guard file.

**PESHKAR**