

IN THE COURT OF ADDITIONAL SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional Sessions Judge,
Aizawl Judicial District, Aizawl.

Sessions Case No. 271 of 2012

State of MizoramComplainant

-Versus-

Shri Hmingdailova (34)
S/o J.Sanghleia,
R/o Muthi Village, Aizawl District. Accused person

APPEARANCE

For the State : Shri Joseph Lalfakawma, Addl. P.P.
Ms K. Lalremthangi, Asst. P.P.

For the accused : Shri S.Pradhan, Advocate.

Hearing : 16.2.2015, 2.3.2015 & 17.3.2015

Judgment delivered on : 30.3.2015

Sentence Order delivered on : 1.4.2015

J U D G M E N T

The accused has been prosecuted for committing rape upon his step daughter from the time she was 10 years of age and for causing her miscarriage of child. Hence, he has been charged under Section 376 (2) (f) read with 312 of I.P.C.

2. The story of the prosecution case in brief is that on 24.05.2012 one James Lalthangmawia, Co-ordinator, Child Line lodged First Information Report (hereinafter stated as the FIR) with the Officer-in-Charge, Bawngkawn Police Station to the effect that the accused had committed rape upon his minor step daughter (hereinafter stated as the victim). At the time of lodging the FIR, the victim was about 15 years of age and lived with her maternal grandparents at Muthi Village, Aizawl District. The victim even got pregnant due to the commission of rape upon her and miscarriage her child since she was administered by the accused to take medicine sometime in the month of August, 2008. Hence, Bawngkawn P.S. Case No.

145 of 2012 dated 24.05.2012 under Section 376 (2) (f) read with 312 of IPC was registered against the accused and SI H. Lalhmingthangi was endorsed to investigate the case.

In the course of investigation, the Case I.O. visited the PO, examined the complainant, the victim and recorded their statements. The Case I.O. arrested the accused after informing him his ground of arrest. The accused was medically examined in which the report revealed that the physical and mental health was normal and his genital organ was fully developed. The accused disclosed before the Case I.O. that his first commission of rape upon his step daughter happened at night at Muthi High School Tlang after removing her garments. In his further statement, he remembered that the victim was virgin when he committed rape upon her for the first time. The accused stated before the Case I.O. that he used his mobile phone to send text message to the victim informing her, his desire of having sexual intercourse with her. The accused also stated that once the victim had informed him over mobile phone that her menstrual period was missing after having sex with him. The accused came to realize that he caused her pregnant. The victim was medically examined on 25.5.2012 at Civil Hospital, Aizawl. The examination report reveals that the victim's physical and mental health was normal, and old tear was present in her hymen. The Case I.O. recorded the statement of the victim. In her statement, the victim was taken to Muthi High School Tlang whereat she was raped by the accused for the first time. She also stated that she had missed menstrual period for one month after the accused had sex with her. She was administered to take medicine which caused her miscarriage of child. Birth Certificate of the victim was seized in the presence of two reliable witnesses. Hence, a prima facie case under Section 376 (2) (f) read with 312 of IPC was found against the accused person and S.I. H. Lalhmingthangi submitted charge sheet.

3. The accused person was produced before the learned Chief Judicial Magistrate, Aizawl. The case was committed to the learned Sessions Judge being the offence triable exclusively by Court of Session. Thereafter, the case was transferred to my predecessor for trial and disposal. Hence, the case came to me.

4. Charge sheet and its relevant documents were supplied to the accused. Initially, learned Counsel Shri Rualkhuma Hmar was appointed to defend the case of the accused at the expense of the State. Later, learned Counsel Shri S.

Pradhan was appointed to defend the accused since the learned Counsel was hospitalized.

5. After hearing the rival parties and on finding a prima facie case against the accused, charges were framed against him under Section 376 (2) (f) read with 312 of I.P.C. The charges were read over and explained in the language known to him, and to which he pleaded not guilty and claimed to be tried.

6. In order to bring home the charge, the prosecution produced and examined as many as 4 out of 8 witnesses to prove that the accused had committed offence punishable under Section 376 (2) (f) read with 312 of I.P.C. The plea of defence is of total denial. After closure of the prosecution evidence, when the accused was recorded under Section 313 of Cr PC, he denied the incriminating evidence appeared against him and pleaded that he was innocent. The defence side also produced and examined 4 witnesses.

7. I heard the learned Addl. Public Prosecutor Shri Joseph Lalfakawma appearing for the State assisted by the learned A.P.P. Smt. K. Lalremthangi. I also heard the learned Counsel Shri S. Pradhan.

Points for Decisions :

8.
 - a) Whether the prosecution proves that the accused had sexual intercourse with the victim?
 - b) Whether the prosecution proves that the victim was less than sixteen years of age?
 - c) Whether the accused can be convicted under Section 376 (2) (f) of IPC?
 - d) Whether the prosecution proves that the accused caused miscarriage child of the victim?
 - e) Whether the accused can be convicted under Section 312 of IPC?

9. Discussion, Decision and Reasons Thereof:

P.W.1 James Lalthangmawia who is the complainant worked as a Coordinator at Child Line (hereinafter stated as 'the NGO'), the fund for running the

NGO uses to be received from Ministry of Women and Child Development. The NGO functions under the Integrated Child Protection Scheme, which is a 24-hour telephone helpline having a separate phone number i.e. 1098. Whenever, any call is received the workers pursue the matter through intervention. On 16.5.2012 they received a call from Smt. C. Zodinpuui, Secretary, Child Welfare Committee that one minor child aged about 15 years of age of Muthi village was raped and the latter requested them to take immediate investigation. The caller told them that she had got the information from Mr. Joy who was a TV presenter as well as counselor in gospel camps. On the basis of the information, he called Mr. Joy over phone and through him he came to learn about the incident and got the phone number of the victim. When he made a phone call to the victim, she informed him that she was at home. He and his colleague Cindy Lalhunthari went to the house of the victim. When they reached the house of the victim, they found her with one her relatives but her grandparents were at hospital due to serious illness of her grandmother. He told them that they came to help who were in distress. While talking to the relative of the victim, Cindy Lalhunthari talked to the victim. In the course of their investigation, Cindy Lalhunthari functioned as Case Recorder. They came to find that the victim had been raped by the accused, who is her step-father from the time she was 10 years but she could not say the exact time of the incident. They also found that the victim had been living with her grand-parents since she was 3 years old, the accused and her mother were living in the same locality, and the victim often visited their house to help them in performing domestic chores. They came to learn from the victim that sometime in the month of March/April 2009 her mother and the accused spent some days in their Jhum to work and at that time the victim's mother left a mobile phone, the accused used to call her over mobile phone speaking filthy language to her. When her mother came to learn that, instead of scolding her husband, she scolded the victim. Soon after the incident, the accused and her mother shifted to Kulikawn in Aizawl. The victim also informed them that she had no proper sleep since 2009 due to fear and often fainted. Because of the mental problem of the victim, her grandfather took her to Presbyterian Hospital at Durtlang and from there she was referred to Psychiatrist at different hospitals. When the victim and her grandfather met Dr. Lalhrekima, Psychiatrist the victim was afraid to make a full disclosure as her grandfather sat next to her, so the doctor only prescribed her some medicines. The victim also stated that sometime in month of August 2009, after her mother and the accused shifting to Kulikawn the accused took

her out on the pretext of buying medicines for her grandmother and he took her in a Taxi where he blind folded her and took her to one clinic. She did not know the name of the clinic but stated that she was given some medicines. When the victim and the accused reached home she started taking the medicines and after about 2/3 days, she had profuse bleeding while urinating and from that time she thought that she might have been pregnant. She also stated that after sometime in the month of October 2010 there was an altercation between her uncle David Lalsiammawia and the accused over the illicit relationship, and then she was assaulted by the accused. Even when her relationship with the accused was known, they remained silent for long time as the accused was the son of a church elder receiving respect in the society. According to the victim, dt. 8.5.2012 was the last time; the accused had sexual intercourse with her. She stated that even after her mother and the accused shifting to Kulikawn they often visited each other. When he talked to the victim, her statement was same.

On that day they waited the victim's grandparents, they thought to inform the victim's grandparents their intention to keep the victim in a shelter home. But since the grandparents did not return, they went back telling them that they would be back again. On 18.5.12 they again visited the house of the victim. On their second visit, her grandparents and her aunt were also there. The information which they had gathered was confirmed by the victim and accepted their intention to keep her in shelter home for her rehabilitation. But they did not take her on that day as her grandmother was on the verge of her dead and the victim was the one who looked after her. On 24.5.12 he lodged FIR at Bawngkawn Police Station. The victim and her grandfather were also called to the Police Station and from that day the victim was rescued by keeping her in shelter home. The victim then lived with her relative in a different village. The duration of stay at shelter home depends on each of the victims depending on her status and her requirement for counseling. Ext.P-1 is the FIR submitted by him and Ext.P-1(a) is his signature. On cross-examination, he stated he had contact number of Mr. Joy. They used to take investigation on the basis of information over telephone. He did not know whether the victim was a habitual liar. It is the victim who told him that the last incident had happened on 8.5.12, but he did not ask about the P.O. When they asked the victim why she kept silent relating to the incident that had taken place for the first time, she told them that she had told one person, but that person did pay heed to her grievance. They did not ask the victim about her relationship with other men. He did not persuade the victim to put

her in good school if she wanted to be put in shelter home. He denied having fabricated the statement of the victim. He also denied having used the victim as a means to get more money from the government by exaggerating her story.

P.W. 2 is the victim. She identified the accused, who is the husband of her mother. Her mother married the accused when she was about 3 years old. She used to live with her maternal grandparents. She never lived with her mother and the accused though she often visited them. She was born on 14.12.1996, she studied upto Class IX and left studies thereafter.

In her deposition before the court, when she was about 10 years old, sometime in the month of April, her grandfather sent her to a shop to buy betel nuts. On her way back from the shop, the accused called her. So, she followed the accused who took her to a place behind the school. On that day, she was wearing a short. At the place below the school, the accused removed her shorts and underwear. Although she shouted, she could not shout loudly since the accused covered her mouth, she felt severe pain in her private part and was bleeding. The accused was not naked as he only unzipped his pant. He threatened to kill her if she would disclose about the incident. The accused left the place and thereafter she put on her clothes and went home by herself. When she reached home she did not tell anything to her family due to the threatening of the accused. After the incident, the accused sexually assaulted upon her till the last incident. But, she could not say how many times the accused had sexually assaulted upon her. As she lived with her grandparents, the accused usually had illicit relationship with her when her grandparents spent their nights in the jhum fields and when her grandparents bought medicines. During those times the accused used to have illicit relationship with her in her house. After the accused and her mother shifting to Kulikawn, the accused sexually assaulted her in his house at Kulikawn. She once told the incident to her mother, but she put the blame on her and told her that it was her fault for her being attracted to her husband. She remained silent and the accused continued to have sexually exploited her. When she felt that she was pregnant, she then informed the matter to the accused. The accused gave her 3 capsules of medicine which she consumed at one time. Thereafter, she had bleeding which was not the usual menstruation and she also felt abdominal pain for which she spent sleepless nights.

The victim used to watch health tips on the television. From the telephone number given she called the TV anchor who in turn informed the matter to Child Line and the matter was then reported to CWC by Child Line. The matter was reported to Bawngkawn PS through CWC. Thereafter the Police came to their village looking for the accused but at that time he was living in Dawrpui, Aizawl.

The last incident occurred in the month of June 2012 when the accused came to Muthi to visit her grandmother who was a cancer patient. While staying in shelter home, her grand my mother died of cancer. At the time of giving deposition, she was living with her biological father at Hmar Chaltlang. The Police personnel of CAW Cell recorded her statement. She was also forwarded for medical examination. She knew that the Police had seized her birth certificate from her grandfather. The police continued to retain the original birth certificate. Ext. P-II is a copy of her birth certificate. On cross examination, she stated that the first incident occurred when she was 10 years old. At the time of giving deposition before the court, she would be 17 years of age. No one told her to lodge FIR. She did not tell anything to anyone except the TV anchor. She did not know where the TV anchor resided. She told the TV Anchor about the incident in the same manner as she stated on the day of giving deposition. She did not see the male organ of the accused when he sexually assaulted upon her or at any other time. She told the first incident to her mother 3 days after the incident as she thought that her mother would be the best person to understand her since the accused is her husband. She remained silent for nearly 7 yrs as she was afraid of the accused and she felt that she was not matured. Before institution of the case, she was put in TNT by her mother and her grandparents. After filing FIR she was put in a shelter home. She knew that the CAW Cell wrote what she had stated before them but she cannot say whether any subsequent change was made by them in her absence. The last incident occurred before she was taken to shelter home but she did not remember the exact month. She admitted she had jokingly said that she was carrying the child of Lalramzauva. She admitted that she had gone to LAD Tlang with Lalthanpuia with other's company. She denied that she had stated that Pi Vanramchhuangi (Social Activist) and Child Line were making use of her to get money and whatever they had written in her file were wrong and they had not fulfilled their promise to keep her in good school if remaining in shelter home. She also denied that she never told the incident to her mother, but her mother had chosen to forget what she had told her. She denied that the accused had not given her any medicine when telling him about her pregnancy. She admitted that

she was pulled away by her aunt Pi Tlanchhungi, when the latter found her with Thanpuia who is a married man at LAD Tlang sometime in the month of February 2012, she did not lodge any FIR against Thanpuia since he did not do anything to her and there were other friends also. She had been taking treatment from a psychiatrist even prior to the last incident.

P.W. 3 Dr. Catherine Ngurbiakveli is a gynecologist posted as Consultant at Civil Hospital, Aizawl since 1999. On 25.5.2012, a requisition was received from the Police for medical examination of the victim, aged about 15 years. On the same day, she examined the victim after obtaining her consent. Upon examination, she found the victim physically normal and mentally healthy. On genital examination, she found that her secondary sexual characters were fully developed. There were no sign of bruising or laceration on the victim's external genitalia. There was old hymen tear. She recorded Sl. No. 10 & 11 of the Medical Examination Report as per information given by the victim herself. Ext. P-3 is the Medical Examination Report of the victim prepared by her and Ext. P-3(a) is her signature. As the victim stated before her that she was subjected to sexual intercourse by her stepfather since long time, even if there was recent sexual assault, there could not be any sign of recent sexual intercourse which could be ascertained by medical examination. On cross examination, the old hymen tear means no fresh tear of the hymen of the victim was detected. She admitted that she had not found any sign of infection or discharge or colour at the time of examination of the victim. Laboratory examination was not done as the incident occurred sometime back and no obvious infection was found at the time of examination. She also admitted that she had not found any mark of violence on the body of the victim at the time of examination.

P.W. 4 S.I. H. Lalhmingthangi of Bawngkawn P.S. is the Case I.O. She identified the accused. On 24.5.12, a written FIR was lodged by James Lalthangmawia, Coordinator, Child Line to the effect that the victim, 15 years of age was sexually assaulted by her stepfather in between the years 2009-2012. On the basis of the FIR, Bawngkawn P.S. Case No. 145 of 2012 under Section 376(2)(f)/312 IPC dated 24.5.12 was registered. In the course of investigation, she visited the place of occurrence at Muthi High School premises and the houses of the victim and the accused. She forwarded both the victim and the accused for medical examination. She recorded the statements of the complainant, the victim and the accused. She also arrested the accused on 24.5.12. She seized the photo copy of the Birth Certificate of the victim which was made from the original. On the basis of

the investigation, she found a prima facie case and submitted charge sheet against the accused for the offence punishable under Section 376(2)(f)/312 IPC. Ext. P-4 is the Charge Sheet submitted by her and Ext. P-4(a) is her signature. Ext. P-2 is the photo copy of the Birth Certificate of the victim which was objected by learned Defence Counsel on the ground that the original was not produced and the issuing authority was not examined. On cross examination, she stated that she could not ascertain the exact date or month of the incidents and did not send the victim to a medical officer for determination of her age. She relied on the Birth Certificate which she had seized from the victim, but it was not the original Birth Certificate of the victim and she did not examine the person who had issued the said Birth Certificate in order to ascertain its genuineness. She did not send the victim to a psychiatrist to ascertain her actual mental status. She did not know whether the victim had some mental illness. There was no eye witness to the incident. The medical examination report of the victim did not indicate the age and reason of the old hymen tear. In the FIR at Ext. P-1, there was no explanation of delay in lodging the FIR. However, she denied that she did not find any material against the accused. She further denied that the victim had not produced her original Birth Certificate to her. She also denied that she had conducted the investigation in a casual manner and as a manner of routine work. She finally denied that the victim falsely made an allegation against the accused due to personal enmity and for her personal benefit.

D.W. 1 Laldinthara is the brother-in-law of the accused and his neighbor also. The accused was an active member of the YMA. Till date he had been the committee member of their section in the YMA. In his knowledge, the accused bore a good character and he was not a problem of the society. He also knew the victim. He knew that earlier the victim used to suffer from epileptic fits and she used to take medicines. In his view and in the view of many other people the victim appeared to be mentally below normal healthy person. Since he was also their son-in-law, he took the victim to a Hospital for about 3 times due to her sickness. During such time, the medical officer had applied something on her nose which was having a bad smell. Without saying anything else the medical officer would tell them to go by saying that she was fine. Such kind of comment and treatment was given by the medical officer in his presence for two times. On the third time, when he went with the victim to the Hospital they waited the medical officer for some time and she was attended by nurses. When the medical officer arrived, the medical officer checked the victim's eye and said that there was nothing wrong with her. So, they left the Hospital. The victim often said something which was unbelievable and she was not expected of a normal healthy person. Majority of the villagers of Muthi earns their livelihood as cultivator. During

the month of March/April, all of them were busy on sawing paddy and most of them spent their whole time on their jhum field. During the year 2006 he used to mix around with the accused. During the month of April, they spent the nights in the jhum hut with the accused in connection with their work and the accused enjoyed hunting. He knew that during those days i.e. in the month of April/May, the accused did not go home. He thought that the prosecutrix was making a false allegation against the accused since he knew the character of the accused well and the accused was not the type who could commit such an offence. On cross-examination, the accused was not a permanent resident of Muthi. He started residing in the village from December 1994 and married his wife in the month of July 2002. The accused was also not a permanent resident of Muthi and he started residing in Muthi some time from the beginning of 1994, and married elder sister of the accused's wife sometime in the year 1997/1998. The victim had been staying with her grandparents. He admitted that the accused and his wife shifted to Kulikawn. He did not know whether the prosecutrix used to visit her mother and the accused at Kulikawn. Their jhum fields were closely located. The accused used to work in his jhum field and looked after their jhum field with his wife, spending most of the time thereon together. He denied that they did not come back together most of the time as they used to return depending on their work load. He did not have any personal knowledge of the allegation of sexual assault on the prosecutrix. His statement that the accused could not have committed the offence was based on his opinion on the accused from his character. The prosecutrix was about 14/15 years old though he did not know her exact age. He admitted that he had no serious conversation with the prosecutrix so as to know her actual mental status and so as to find out if she had any problem.

D.W. 2 Lalbiakmawii is the wife of the accused and the victim is her daughter. She had nothing to comment on her husband's character. The accused was actively participating in church and in YMA. The victim is her daughter not with the accused. The victim's father lived at Hmar Chaltlang and she was living with her father. The victim had a mental problem and she was brought to Dr. Lalhrekima, Psychiatrist for several times. The victim used to fall down due to giddiness and while having this problem she used to shout out. She did not receive complaint against the accused from her daughter. She remarried the accused when the victim was three years old and she did not stay with her but she had been with her grandparents. The victim was never becoming pregnant and she had never married. They were agriculture farmers. Her husband used to spend most of his time in jhum field and he rarely stayed at home. Since both the accused and herself were loving

each other, she wanted an end of the present case. Even before submitting FIR, her father requested not to submit FIR, since the accused is his son-in-law and they are depending upon him. If the accused committed the offence also, they had already pardoned him. Her daughter had not told this incident to anyone. On cross examination, the victim used to visit them occasionally. When the victim was brought to psychiatrist, she spent a night with them. In 2012 her parents brought to Dr. Lalhrekima and she took the victim to Synod Hospital. She never heard from the victim any complaint of sexual assault made against anyone except the accused. She admitted that the victim sought help from Helpline and the workers helped her in filing FIR. She admitted that the victim had not stated she ever pardoned the accused but, her parents and herself wanted to pardon the accused since he is the sole bread winner

D.W. 3 Lalhriatkimi stated that the accused is her elder sister's husband and she also knew the victim. She came to know the accused since 1994 and in her knowledge the accused was not having bad character. The accused family was an agricultural farmer by profession. The accused had two children with her elder sister. The accused actively participated in YMA and he was a Section Committee Member. She did not know anything about the present case. She had no knowledge about any enmity between the victim and the accused. The mother of the victim remarried the accused when the victim was very young. Thereafter, they looked after the family of the victim. She did not receive complaint against the accused from the victim. When the victim was 10 years old, she was not staying with them. In that period, she was carrying a child, but they used to spend night time and took dinner in their house for several times. In that period, she did not know anything about illicit relationship. If the victim had any complaint, she used to disclose her problem to her. The victim had mental problem after some years. They brought to psychiatrist and to praying healer and the victim also fell down sometime. She did not know the complainant. She wanted an end of the case. On cross examination, the accused is her elder sister's second husband. The victim is daughter of her elder sister with the former husband. The victim had been staying with her parents. They thought that the accused was having good character. She admitted that the accused was good towards them. She admitted that the victim did not implicate anyone except the accused. She also admitted that her elder sister and the accused shifted to Kulikawn from Muthi Tlang. She did not know whether the victim had intentionally submitted FIR. She admitted that she had not asked the victim about illicit affair. But, she again stated that she asked the victim whether she had boy friend and had sex and the victim replied her that she had no illicit affair with anybody.

D.W. 4 Lalnghinglova is the maternal grandfather of the victim. He stated that the parents of victim had divorced when her mother was pregnant. He looked after the victim from the time she was born. The victim was in his custody until the year 2012. The authorities of CWC advised them that the victim should live with her father since she was not safe with them. Even at that time they parted the victim reluctantly. Thereafter, he approached the CWC to give him the custody of her grand-daughter but they were not allowed and they had to part the victim crying. There was no complaint made from the prosecutrix against the accused as long as she was living under his custody. Though her mother and the accused were living in a separate house, they were more or less living as one family. In the beginning of the year 2011 his wife was having cancer and he had to look after her. He did not make any report against the accused to the police but while looking after his wife the police arrested the accused. At that time, he begged to the police personnel at the Police Station to show mercy and not to disturb them since her wife was seriously ill and all the family were looking after her. While the prosecutrix was living with them, there was nothing suspicious in her behavior. The accused used to take part in the community services and such as activities of YMA. On cross examination, he did not remember the exact year in which the accused had married the mother of the prosecutrix. He did not know the exact date of birth of the prosecutrix without going through the record. According to him, at the time of the deposition, the prosecutrix was about 18/19 years. The incident occurred sometime in the year 2011 and at that time the prosecutrix was living with him, but he spent most of the time away from the house looking after his wife who was a cancer patient and the prosecutrix used to stay at home. The prosecutrix was studying in Class-VIII during that time. During those days, the prosecutrix used to spend some nights in the house of her mother and the accused who were also residing in the same village. The prosecutrix never made any complaint against the accused. He admitted that he had never asked the prosecutrix whether she had complaint against the accused. He came to know about the allegation only at the time when the accused was arrested. He admitted that since the mother of the prosecutrix and they were living in the same village, they had no suspicion when the prosecutrix spent time in the house of her mother. He did not know anything about the findings of medical examination or the investigation in the instant case. Even after coming to know about the incident through the CWC he had no suspicion on the accused. To him, he was the real father of the prosecutrix. He denied that as he was busy in looking after his ailing wife he had not paid attention to the investigation performed in the instant case.

10. **Points No. a, b & c.**

S. 375 of Indian Penal Code. Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

(First) — Against her will.

(Secondly) —Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) —With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age.
Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) —Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

S. 376 of IPC. Punishment for rape.

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and

special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also 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 of either description for a term of less than ten years.

Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be

deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.—“Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected woman or children or a widows’ home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3.—“Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

Let us first see what the Apex Court has observed regarding the duty of the Court while trying a case of rape.

In the case of **Kundula Bala vs. State : 1993 Cri. L.J. 1635 : (1993) 2 SCC 684**, the Apex Court has observed thus:

“The role of courts under the circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacunas in evidence as otherwise the criminals would receive encouragement and the victims of crimes would be totally discouraged by the crimes going unpunished. The courts are expected to be sensitive in the cases involving crimes against woman.”

In the case of **Bodhisattwa Goutam vs. Subhra Chakraborty** reported in **AIR 1996 SC 922**, the Apex Court has observed thus:

“Rape is not only a crime against the person of a woman (victim). It is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, a most hated crime. It is a crime against basic human rights and is violative of the victim’s most

cherished of the Fundamental Rights, namely, the right to life contained in Article 21."

In the case of **Bharwada Bhoginbhai Hirjebhai vs. State of Gujarat**, reported in **AIR 1983 SC 753**, the Apex Court has observed thus:

"A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had even occurred. She would be conscious of the danger being looked down by the society including by her own family members, relatives, friends and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. In view of these and similar factors the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated."

In the case of **State of Punjab vs. Gurmit Singh : AIR 1996 SC 1393**, the Apex Court observed thus:

"Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating Women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murdered destroys the

physical body of the victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accd. on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature to throw out an otherwise reliable prosecution case. **If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars.** If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the back ground of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation.”

In the case of **State of Andhra Pradesh vs. Gangula S. Murthy**, reported in **AIR 1997 SC 1588**, the Apex Court has observed thus:

“Charge of Rape—Duty of court—Court must while trying accd. on charge of rape show great sensitivity—They should examine broader probabilities and not get swayed by minor contradictions or insignificant discrepancies in statement of witnesses which are not of a fatal nature to throw out allegation of rape—This is all the more important as of late there is rise in crime against women in general and rape in particular.”

In the case of **State of Punjab vs. Gurmit Singh and others (1996) 2 SCC 396**, the Apex Court has observed thus:

‘8.The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate

looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty.

Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.'

Keeping in mind the above observations made by the Hon'ble Apex Court and the observations made by this Court in catena of decisions, let us discuss the statement of the victim before the Court.

As already stated, the victim was examined as P.W.2. Let us see into the deposition of the victim;

Let us see whether the statement of the victim that the accused had sexual intercourse with her from the time she was ten years is reliable. The victim in her statement before the court is that the accused is her step father and the wife of the accused is her mother. The victim stated in her deposition that while attaining the age of 10 years, sometime in the month of April, her maternal grandfather had sent her to buy betel nuts, on her way back to home she was told to follow him and the victim innocently followed the accused, but accidentally she got sexually assault at a place near Muthi Tlang High School which the victim did not forget.

The learned Counsel Shri S.Pradhan submits there was no eye witness to the witness in the present case. It is true that there is no eye witness. But, I cannot expect court to conclude while deciding in a rape case that there should be eye witness.

In the evidence of the Medical Officer, there is material corroboration. I find that there is old hymen tear on the victim's private part on the medical examination report of the victim and from which I come to conclude that the victim had intercourse with male person. The victim also told the medical officer that she was subjected to sexual intercourse by her step father since long time. Since there is no implication of any person from the statements of the prosecution witnesses and the defence witnesses that the victim could have sex except with the accused, it is very clear that the accused had sexual intercourse with the victim.

The statement of D.W. 2 Lalbiakmawii who is the victim's mother that they had already pardoned the accused even if he committed sexual offence upon her daughter also makes my mind doubtful.

The statement of the victim that she was frequently sexually assaulted by the accused is also reliable. It may not be possible for a small girl of her age to give all the specific dates of the incidents.

The statement of P.W. 1 James Lalthangmawia also corroborates the statement of the victim. However, there is minor contradiction or insignificant discrepancies and omission in the statements of the witnesses. But, I do not find any reason to discard their evidence.

In the circumstances, the prosecution proves that the accused had sexual intercourse with the accused.

The victim stated that she was born on 14.2.1996 and her birth certificate at Ext. P-2 also reflects that she was born on 14.2.1996. There is no doubt of the victim's certificate. Hence, the prosecution proves that the victim was less than sixteen years of age and cannot give consent. Since the victim was 10 years old when the accused first sexually assaulted upon her, the accused can be convicted under Section 376 (2) (f) of IPC.

11. Points. No. d & e.

While considering the charge against the accused under Section 312 of IPC, I do not find any medical evidence of the medical officer to support that the victim got pregnant and miscarriage child. Even the victim cannot confirm that she was pregnant and miscarriage child. The prosecution has not proved beyond reasonable doubt. Hence, the accused is liable to be acquitted under Section 312 of IPC.

12. In the light of the above discussion and reasons thereof, I conclude that the prosecution successfully proves the charge against the accused Hmingdailova under Section 376 (2) (f) of I.P.C beyond reasonable doubt. Hence, I find guilty against him. Accordingly, the accused is convicted under the said section of law. But, the prosecution fails to prove the charge against the accused Hmingdailova under Section 312 of IPC. Hence, he is acquitted under Section 312 of IPC.

13. The convict Hmingdailova surrenders himself before the court. Hence, he is remanded into judicial custody.

14. The bail bond stands cancelled and the surety is discharged.

15. Fixed 1.4.2015 for Sentence Hearing.

Judgment prepared and delivered in the open court on this 30th day of March, 2015 under my hand and seal.

Sd/-(VANLALENMAWIA)
Addl. Sessions Judge
Aizawl Judicial District,
Aizawl, Mizoram.

ORDER

Dt. 01.04.2015 - The convict Hmingdailova is produced from judicial custody. Learned Addl. Public Prosecutor assisted by the Learned Assistant Public Prosecutor is present. Learned Defence Counsel is also present.

I have heard the learned Public Prosecutor, Shri Joseph Lalfakawma and the learned Defence Counsel, Shri S. Pradhan. Convict Hmingdailova is also heard.

The submission the Ld. Addl. Public Prosecutor is that the commission of rape by the convict upon his minor step-daughter is heinous and as such, the convict deserves life sentence and a fine of Rs. 20,000/-.

Per contra, the Ld. Defence Counsel appearing for the convict submits that the convict deserves to be dealt with leniency since he is the sole bread earner of his family and he has no past criminal record.

The convict submits that he has two minor daughters. He has repented for his past act.

The submission of the rival parties is considered.

On considering the factual circumstances submitted by the learned Defence Counsel and the convict Hmingdailova, I find that a lenient punishment shall be given to him. Hence, the **convict Hmingdailova** is sentenced to undergo **Rigorous Imprisonment for 10 (ten) years** and to pay a **fine of Rs. 5,000/- (Rupees five thousand)** only in default of fine, Simple Imprisonment for another 2 (two) months.

The detention period in judicial custody undergone by the convict shall be set off.

This sentence order shall form a part of the Judgment passed on 30.03.2015 and is to be attached accordingly.

Sd/- VANLALENMAWIA
Addl. Sessions Judge,
Aizawl Judicial District,
Mizoram : Aizawl.

Memo No. / AD & SJ (A) /2015 :

Dated Aizawl, the 1st April, 2015.

Copy to :-

1. Shri Hmingdailova, Central Jail, Aizawl.
2. District Magistrate, Aizawl.
3. Sessions Judge, Aizawl Judicial District, Aizawl.
4. Addl. PP/APP, Aizawl District, Aizawl.
5. Special Superintendent, Central Jail, Aizawl District, Aizawl.
6. Investigating Officer through O/C, C.A.W. Cell, Aizawl.
7. In-Charge, G.R. Branch.
8. Registration Section.
9. Guard File.
10. Case Record.
11. Calendar Judgment.

P E S H K A R