

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. 8 of 2013

Crl Tr. No.507 of 2013

State of MizoramComplainant

-Versus-

Shri Chuauthangpuia (24)
S/o P.C.Lalhuliana(L),
R/o Kawngthar veng, Vairengte. Accused person.

APPEARANCE

For the State : Shri Joseph Lalfakawma, Addl. P.P.

For the accused persons : Shri R. Thangkanglova, Advocate.

Hearing : 1.12.2015

Judgment delivered on : 2.12.2015

J U D G M E N T

The accused has been tried for alleged commission of offence u/s 376(2)(i) of IPC.

2. The prosecution case in brief is that on 26.5.2013 at around 3 Pm a written FIR was submitted by one Lalremruati D/o Remlalthmuaki of Chhimveng, Vairengte to the effect that her former husband, who is the accused in the present case had sexual intercourse with her youngest sister sometime in the month of March 2013, as a result, the victim became pregnant. In the FIR, the complainant mentioned that the alleged victim was mentally retarded and she suspected her to be pregnant. Hence, Vairengte P.S. Case No. 25 of 2013 dated 25.6.2013 u/s

376(2)(i) of IPC was registered against the accused and investigated by S.I. R. Lalvohbiki.

In the course of investigation, the complainant and the other witnesses were examined and their statements were recorded. The P.O. was visited and a rough sketch map was also drawn by the Case I.O. The victim girl was examined and she stated before the Case I.O. that she had fallen in love with the accused, who is the husband of the complainant, and as a result, she became pregnant. The victim was also sent to the Medical Officer Community Health Centre, Vairengte for medical examination. The Medical Officer submitted report which was received by her by the Case I.O. In the report, the victim's hymen was torn and healed at 2 o'clock degree and the victim was physically healthy but slight mentally retarded.

In the course of further investigation, the complainant produced the victim's certificate in which the victim was born on 18.9.1997. Thereafter, the accused was arrested after informing him the ground of arrest. The accused admitted his guilt before the Case I.O., but he did not know the actual time of having sexual intercourse with the victim. The accused further stated that the complainant divorced him due to the incident afore mentioned. The statement of the accused was reduced into writing. Hence, a prima facie being found against the accused under Section 376(2)(i) of IPC, the Case I.O. submitted charge sheet to the learned Chief Judicial Magistrate, Kolasib.

3. Upon committal, charge under Section 376(2)(i) of IPC against the accused person was framed, read over and explained in the language known to him, to which he pleaded not guilty and claimed to be tried.

4. In the course of trial, the prosecution produced and examined as many as 4 out of 5 witnesses to prove that the accused had committed the offence punishable under Sections 376(2)(i) of IPC. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC.

5. **Point of determination:**

(i) Whether the accused is liable to be convicted u/s 376(2)(i) of IPC?.

6. Discussion, Decision and Reason of Decisions:

P.W.1. Esther Lalremruati who is the ex-wife of the accused stated before the court that she did not know whether the accused had raped the victim. According to the witness, the victim was 18 years of age at the time of giving deposition before the Court and she was married that time. She further submitted that the accused having not asked her for forgiveness, the FIR had been lodged by her. She proved the FIR at Ext.P-1. However, cross examination was declined by the accused.

P.W.2., who is the victim, stated before the court that she was running 18 years. She studied up to class II. According to her statement, the incident occurred in the house of her elder sister and at that time, her elder sister was marrying the accused. After the incident, her elder sister divorced her husband. She stated that she became pregnant and continued to live with the accused as wife and husband. She also stated that the FIR was filed by her sister and she was taken to a Doctor for examination. She knew that the Police had not seized her Birth Certificate from her family.

P.W.No.3 Dr. C. Lalrinchhana, M.O. of Vairengte, CHC deposed before the court that on 26.5.2013 S.I. Lalvohbiki made a requisition to examine the alleged victim and he examined her on the same day at around 6:00PM. According to him, the victim fell in love with the accused and had sexual intercourse in the month of March 2013 which he had derived from the victim. He proved the medical examination report of the victim at Ext.P-2. On cross examination, he stated that he had not used ossification test to ascertain age of the victim and he did not know whether she was less than 18 years old.

P.W.4 S.I. Lalvohbiki identified the accused. According to her, on 20.5.2013 at around 3:00Pm, a written FIR was submitted by P.W.No.1 to the effect that sometime in the middle part of 2013 the accused had sexual intercourse with her youngest sister. As the complainant suspected the victim to be pregnant and requesting the O.C. Vairengte P.S. to take action against the accused, Vairengte P.S. Case No. 25 of 2013 dated 26.5.2013 u/s 376(2)(i) of IPC was registered and investigated by her.

In the course of investigation, the witnesses were examined and their statements were recorded by her. The P.O was visited and the draft sketch map was drawn by her. She further deposed before the court that the victim had fallen in love with the accused and had sexual intercourse in the middle part of March 2013; as a result the victim became pregnant. The victim was sent to the Medical Officer, CHC Vairengte for medical examination and the medical report revealed that the victim hymen was torn and healed at 2 o'clock degree and that the victim was below normal.

According to the Case I.O., the complainant produced that the victim's Birth Certificate in which she was born on 18.9.1997. The accused was arrested and interrogated, and the statement was recorded by her. She also deposed that in the statement of the accused, the latter had sexual intercourse with the victim while separated by his wife. Hence, a prima facie case u/s 376(2)(i) of IPC, and she submitted charge sheet. She proved the FIR, the medical examination report of the victim, the Birth Certificate of the victim, the sketch map of the P.O., the arrest memo, the form of FIR and the charge sheet. On cross examination, she stated that what she had deposed in the examination-in-chief is derived from her investigation. She further stated that the reason of delay in submission of the FIR was why the alleged victim had not told her relative about her having sexual intercourse with the accused. However, she relied upon the Birth Certificate but she did not know the exact date of the Birth of the victim. She had also not verified the Birth Certificate of victim and also not citing the name of the Registrar of Birth and Deaths in the list of witnesses.

7. It appears from the alleged Birth Certificate exhibited by P.W. 4 S.I. Lalvohbiki at P-4 that the alleged victim girl was born on 18.9.1997. According the witness aforementioned, the exact date of birth of the victim was not known to her, but relied upon the Birth Certificate. As the witness did not verify the Birth Certificate and also not citing the Registrar of Birth & Deaths as prosecution witness, I cannot hold that the date of birth of the victim shown in the Birth Certificate as evidence of the date of birth of the victim from the testimony of S.I. Lalvohbiki.

8. The alleged victim who is cited as P.W. 2 stated that the alleged Birth Certificate had not been seized from her family. The complainant who is the

elder sister of the alleged victim did not prove the alleged Birth Certificate of the victim. The Medical Officer did not use ossification test to ascertain the age of the alleged victim and he could not say whether the alleged victim was less than 18 years old at the time of the alleged incident.

9. There are also material contradictions of the statements of P.Ws. 1, 2 and 4 on the age of the victim.

10. In view of the circumstances, I hold that the prosecution has not proved that the age of the alleged victim was under 18 years old and could not give consent to have sexual intercourse with the accused. Hence, the first issue is answered.

11. The second point of determination is whether the alleged victim suffered from mental disability. It appears from the oral testimony of the medical officer that there is no proof of mental disability of the alleged victim. The mental disability of the alleged victim was not proved by the complainant in her oral testimony as well as by the alleged victim. Hence, the second issue is also answered.

12. The third point of determination is whether the accused had sexual intercourse with the alleged victim against her will. No doubt, the accused had sexual intercourse with the alleged victim. However, the accused had sexual intercourse with the victim since the latter had fallen in love with the accused from the testimonies of P.W. 3 Dr. C. Lalrinchhana and P.W. 4 S.I. Lalvohbiki. The complainant P.W.1 did not know whether the accused had raped the alleged victim. According to P.W. 1, she submitted FIR since the accused had not asked for forgiveness. The alleged rape upon the victim was not proved by the prosecution.

13. In the light of the above discussion and reasons thereof, I hold that the prosecution fails to prove the charge made against accused Chuauthangpuia under Section 376 (2) (i) of I.P.C beyond reasonable doubt. Hence, I do not find guilty against him. Accordingly, the accused is acquitted under the said section of law.

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

Judgment and Order prepared and delivered in the open court on this
2nd day of December, 2015 under my hand and seal.

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

Memo No. _____/AD&SJ(A)/2015 : Dated Aizawl, the 2nd December, 2015

Copy to: -

1. Accused Chuauthangpuia through Counsel Shri R. Thangkanglova, Advocate.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. District Magistrate, Aizawl District, Aizawl.
4. PP / Addl. PP, Aizawl.
5. DSP (Prosecution), District Court, Aizawl.
6. i/c G.R. Branch.
7. Registration Section.
8. Guard File.
9. Case Record.
10. Calendar Judgment.

P E S H K A R