

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. 75 of 2014

Crl Tr. No. 1076 of 2014

State of MizoramComplainant

-Versus-

Shri Lalbiaksanga (25)
S/o Lalngheta,
R/o Hunthar Veng, Rengdil,
Mamit District Accused person.

APPEARANCE

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

For the accused persons : Shri S.Pradhan, Advocate.

Hearing : 23.11.2015

Judgment delivered on : 1.12.2015

Sentence Order : 7.12.2015

J U D G M E N T & O R D E R

The accused has been tried in connection with the offences of rape case and criminal intimidation punishable under Sections 376 (1)/506 of IPC.

2. The prosecutrix lodged a complaint with the Officer-in-Charge, Kawrthah Police Station on 21.5.2014 at around 11:30 Am to the effect that the accused who is her nephew knocked at their door around 1:00 Am to 2:00 Am asking to open it,

threatened her with a knife and committed rape upon her outside her residence. Hence, Kawrthah Police Station Case No. 4 of 2014 dated 21.5.2014 under Section 376 (1) of IPC was registered against the accused and investigated by S.I. C.Lalchhuanawma.

In the course of investigation, the place of occurrence was visited, examined and the sketch map was drawn, which is found at Ext P-6. The prosecutrix was examined and her statement was recorded by the Case I.O. The statement recorded by the Case I.O. revealed that on the morning of 21.5.2014 the accused knocked at her door asking her to open it and as soon as the door was opened by her, she was forced to sit beside him. The accused then asked her whether she loved him, but the victim replied him that she loved him as a son. Immediately, the accused grabbed a knife and threatened her to kill if she did obey his command. The accused led the victim outside her residence and told her to remove her clothes. As she refused and told him that she was having menstruation, the accused not believing what he was told by her removed her clothes and raped her. After raping her, the accused threatened her not to disclose about the incident to anyone or else he would kill her. Thereafter, the Case I.O. also examined the prosecutrix's daughter who was 11 years old and her husband, and recorded their statements. The prosecutrix and the accused were sent to the Medical Officer, Community Health Centre, Kawrthah for medical examination.

In the course of further investigation, the Case I.O. interrogated the accused thoroughly and he admitted his guilt before him and the reliable witnesses. The accused stated that on 21.5.2014 in between 1:00 Am to 2:00 Am, he had sex with the prosecutrix without her consent. The statement of the accused was recorded and the arrest memo was prepared. According to the Case I.O., the accused had a loose character and habitual liquor drinker who often created problem in his own house and in public as well. The prosecutrix informed the Case I.O. that the accused had attempted to commit rape upon one widow of her locality, but the offence got compromised. The victim also informed the Case I.O. that the accused had also attempted to commit rape upon another lady at Sihthiang village, but the offence also got compromised. A prima facie case under Section 376 (1) of IPC being found well established against the accused, the Case I.O. submitted charge sheet.

3. Learned Shri S.Pradhan was appointed to defend the accused at the expense of the State.

4. Upon committal, charges u/S 376(2) (i)/ 506 of IPC were framed against the accused by my predecessor and the same was read over and explained in the language known to him, to which he pleaded not guilty and claimed to be tried.

5. In the course of trial, the prosecution produced and examined eight witnesses to prove that the accused had committed the offences punishable under Sections 376 (2) (i)/506 of IPC. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC, but the suggestions were denied by him.

6. I heard the learned Addl. P.P. Shri Joseph Lalfakawma appearing for the State. I also heard the learned Defence Counsel Shri S.Pradhan.

7. **Points For Determination :**

a) Whether the prosecution proves that the accused sexually assaulted the prosecutrix outside her residence at Rengdil Hmuntha Veng?

b) Whether the prosecution proves that the accused threatened the prosecutrix in and outside her house at Rengdil, Hmutha Veng?

c) Whether the accused is liable to be punished under Sections 376 (2) (i) /506 of IPC?

8. **Discussion, Reasons and Decision :**

P.W. 1, the prosecutrix identified the accused as her elder sister's son. She did not remember the actual date of the incident, but knew that it was sometime in the early month of May of 2014 at night at around in between 12:00 – 1:00 Am, the

accused called her for three consecutive times. She responded the third call. The accused asked her to open the door and she opened it. The accused brought liquor and its quantity was less than one glass. He told her that he would drink the liquor, asked her to bring a glass which she gave him. The accused poured liquor in the glass. Without drinking liquor, he asked her to sit beside him and forced her. He told that he loved her and asked her whether she loved him. She told him he is her son, so she loved him as her son. The accused then told her that he did not mean love of such relationship, but love between lovers. She replied to the accused that he did since he was under the influence of liquor. The accused took a knife from the pot-shelf and threatened to kill her if she would not say she loved him. Thereafter, the accused pulled her and told her to take cloth, and led her outside. At outside near the kitchen room, the accused asked her to place the cloth and undressed her. The accused told her to lie down. When she refused, the accused gripped her by the throat and warned her not speak loudly. Thereafter, the accused had sexual intercourse with her. Feeling pain in her private part, she cried and told him that she did not want to continue. The accused then warned her to keep silent and not to tell anybody, and he too would not say. The accused told her that nobody would know if he and she did speak out about the incident. The accused told her that they would do again. As she crying, she was told to put on her cloth and to enter inside the house. At the relevant time, she was having menstrual period and she wore sanitary pad. When the accused allowed her to enter inside the house, he also came in. The accused saw blood stain in his penis and washed it with the water. While the accused was washing his penis, she left him and slept in their bedroom. The accused came in and touched her thigh. She then tried to wake her daughter thrice. At last, her daughter got up. The accused then left them by saying he would go to home.

On that night, the accused got intoxicated and came in. But, the accused was not heavily drunk, he had conscience. On that night, her husband spent in their jhum. She spent the night in their house with her two daughters. When the accused the accused reached their residence they had already slept. She got up since the accused had called him and as she identified him. She did not expect the incident. As soon as the accused left, she made a call to her husband over mobile phone. As she was having less

top-up balance, she told him to come home soon. It was dark when she made a call to her husband over mobile phone. As soon as she ended her mobile call, she came to hear sound of foot walk. The main door was pulled and the accused called her. As she locked the door, the door was not opened. As she got afraid of the accused, she woke her elder daughter and told her not to sleep due to the presence of the accused under the influence of liquor. The accused approached the other window, pulled and opened it. She secretly told her daughter to tell the accused that her mother had already slept. Her daughter told the same to the accused. On this, the accused told her daughter that he wanted to ask question. But, she again secretly told her daughter to tell the accused that she was sleeping so that he could say what he wanted in the morning. Her daughter told the same to the accused. The accused then said he would tell her on the following day. The accused entered from the window and left the house from the main door. Her husband arrived before sunrise and on the same day they reported to Kawrthah Police. His brother Lungmuana made a call to Police, later the police appeared. In her presence, the police arrested the accused. The police asked her about the incident and she also told about the incident to the Magistrate at Mamit too. The police seized her underwear, her cloth and the knife. She proved the FIR submitted by her. She also proved the material exhibits in which pack knife, underwear and cloth seized by the police from her possession. On cross examination, she stated that there is a house in front of their house and steps were there in between. She admitted that she had not shouted for help (she did not shout since had fear). She further admitted that what she deposed before the court that day was what she had told to the police and it was recorded, but she had not read her statement. She also admitted that her statement recorded by the police did not state about the accused gripping her by the throat, threatening her to keep silent and she was having menstrual period. She finally admitted that she had not shouted while the accused holding knife. She denied that the accused had not threatened her and had sexual intercourse with her willingly. She further denied that she had not told the incident to her husband over mobile phone. She also denied that the accused had not threatened her with knife and she falsely implicated the accused out of hatred. Finally, she denied that she had falsely given statement before the Magistrate. She stated that she had not immediately told the incident to her neighbours and nobody saw incident. She further stated that she lodged

FIR on the following morning, but she did not know the date. She also stated that her judicial statement was recorded by Magistrate, but she did not know on what date her judicial statement was taken.

On re-examination, she stated before the police that the accused had gripped her by the throat, threatened her to keep silent and she was having menstrual period. When the O/C asked her where she had kept her pad, then she told the O/C that out ignorance she threw in a toilet, and she was shocked while taking her statement. She did not shout when the accused took a knife since it was beyond her expectation.

P.W. 2, the prosecutrix's husband knew the accused, who is the son of his wife's elder sister. He spent the night of incident in their jhum field. The incident was told to him by his wife over mobile phone that one person had threatened her with knife and sexually assaulted her, without mentioning name of the rapist. His wife told him to return home. When he asked his wife who was the rapist, she told him she would tell him after his arrival. He reached home before 7:00 Am. When he reached home, his wife was crying and she told him the offender was the accused. Thereafter, he informed his brother-in-law Shri Lungmuana, who was working as Teacher in High School in his next locality. Shri Lungmuana then informed Kawrthah Police Station and he also came to his residence. The police also asked him about the incident. On cross examination, he denied that his wife had not called him over mobile phone. He also denied that the accused had been falsely implicated due to hatred with the accused. He stated that he did not know whether his wife had quarrel with the accused, but he himself had no quarrel with the accused.

P.W. 3, the Victim's daughter knew the accused who is her first cousin and the mother of the accused is the elder sister of her mother. On the night of the incident when the accused came to their house she was at home with her mother and her younger sister. On that night her father was away in their jhum field and they began to sleep at around 7:30 Pm as they used to sleep. When the accused came to their house she was already sleeping. When her mother came in she woke her and told her that her elder brother Biaksanga had come and that she was scared of him. Soon thereafter, the accused came back and opened the window forcefully. Then the accused

entered into the house through the window and called her mother as aunty. But, as they were lying on the bed her mother told her to tell the accused that she was already sleeping. Accordingly, she told the accused that her mother was sleeping to which the accused said he had something to tell her mother and asked her to wake her. But, her mother told her to tell the accused that she was sleeping so that he could say what he wanted in the morning. She again told the same to the accused. However, the accused said, as it was very important the accused told her to wake her mother. As her mother told her to tell the accused that he could say what he wanted on the next day. She told the same to the accused, to which the accused told her not wake her mother and then he opened the main door and left the house. When the accused entered their house through the window he did not enter the bedroom where they were sleeping which was locked from inside by her mother. On the following day, her mother told her that on the night before the accused had come and subjected her forceful intercourse. Her mother called her my father soon after the accused left and her father reached home at twilight. The police recorded her statement in their house wherein she made similar statement except the statement that her mother called her father over phone. She did not state to the police because she thought her mother must have already told to the Police and no such question was also asked to her by the Police. On cross examination, she denied that her mother had not called her father over mobile phone. She stated that her mother had not told her the incident on the night and her mother had not shouted for help on that night. She admitted that she had not seen the accused throttling her mother and had not seen the accused assaulting her mother. On the following day, her mother had not told her that the accused sexually assaulted her. After she awoke, the accused did not create trouble in their house.

P.W. 4, Zochhuankima S/o Sangthanmawia of Rengdil Hmuntha Veng knew accused Lalbiaksanga. The accused is his first cousin and the accused's mother is his aunty. According to him, on 21.5.2014, the police seized one cloth and knife from the house of the victim. He then stood as seizure witness. He proved the seizure memo and the material exhibit. On cross-examination, he admitted that no underwear was seized in his presence and he had not put signature on the index of the material exhibit. But, he denied that nothing had been seized in his presence.

P.W. 5 Dawngkima S/o Thansanga (L) of Rengdil Hmuntha Veng knew accused Lalbiaksanga, who belonged to his locality. According to him, on 21.5.2014, the police came and called him to put his signature on the seizure memo in the residence of the victim. He also proved the seizure memo. On cross-examination, however he admitted that he had not witnessed the seizure of the material exhibit.

P.W. 6 Dr. Saitluanga Sailo, MO, CHC, Kawrthah. On 21.5.2014 while performing duty at Community Health Centre, Kawrthah, he received a requisition from the Kawrthah Police Station for medical examination to examine the victim in connection with the alleged rape. Accordingly, he examined the victim at around 1:30 Pm. The findings of the Medical Officer are as follows:

- 1) The victim was physically and mentally healthy;
- 2) No seminal stains or other stains on clothes as she washed her cloth after the incident;
- 3) No external injury seen on her body.
- 4) The victim's hymen was absent.
- 5) During his examination, the victim was having menstrual blood, but no seminal stain was seen on her genital part.
- 6) Swab was taken from posterior fornix showing no sperm or pus.

He proved the requisition for medical examination and the medical examination report. On cross examination, he did not find any incriminating material or any injury on the private part of the victim during his examination. He also could not say whether the accused had sexual intercourse with the victim.

P.W. 7, S.I. C. Lalchhuanawma of Kawrthah_Police Station.

On 21.5.2014 while performing duty at Kawrthah Police Station, he received the FIR submitted by the victim to the effect on that morning at around in between 1:00 Am-2:00 AM the accused who is the nephew (elder sister's son) of the victim knocked at their door. When the victim opened the door the accused forced her to sit beside him, threatened her with a knife and committed rape upon her outside her residence. Hence,

Kawrthah P.S. Case No. 4 of 2014 dated 21.5.2014 u/s 376(1) IPC was registered and the case was endorsed to ASI H. Lalengliana for investigation.

The Case I.O. ASI H. Lalengliana conducted pre-investigation step and handed over him the case. Thereafter, he sent the victim to the Judicial Magistrate First Class for recording her statement. He found a prima facie case u/s 376 (1) of IPC against the accused and submitted charge sheet accordingly. He proved the FIR, the seizure Memo, the requisition for medical examination, the medical examination report, the arrest memo, the sketch map of the P.O., the statement of victim recorded before Magistrate First Class, the form of FIR and the charge sheet. On cross-examination, he recorded the statements of Lalthlamuanpuii, Vanlalrema and Zochhuankima who were cited as prosecution witnesses in the case. He did not record the statements of the other witnesses as well as the accused person. He did not seize anything in the present case. He did not send the accused for recording his confession. He did not prepare the sketch map of the PO and also did not arrest the accused. He admitted that there was no confessional statement of the accused. He further admitted there was no photograph of the PO for examination by the Court. But, he denied that there is no prima facie case against the accused u/s 376(1) of IPC.

P.W. 8 ASI H. Lalengliana of Kawrthah_Police Station. On 21.5.2014 while performing duty at Kawrthah Police Station, they received the FIR submitted by the victim to the effect that on that morning in between 1:00 Am-2:00 Am the accused who is the nephew (elder sister's son) of the victim knocked at their door. When she opened the door, the accused forced her to sit beside him. Later, the accused grabbed a knife and threatened the victim to kill if she would not behave as his wish. He let her go outside the house and forced her to remove all her clothes. But, she refused and informed him that she was on menstruation. The accused removed all the clothes of the victim and committed rape upon her outside her residence. Hence, Kawrthah P.S. Case No. 4 of 2014 dated 21.5.2014 u/s 376(1) IPC was registered and the case was endorsed to him for investigation.

During investigation, he visited the PO and drew sketch map. He examined the victim and recorded her statement. He also made seizure in the presence

of reliable witnesses. He also recorded statements of other witnesses. He arrested the accused, interrogated and recorded his statement. He also sent the victim Lalfakmawii to Medical Officer, CHC Kawrthah for medical examination. Thereafter, he handed over the case to the OC, Kawrthah PS. He proved the seizure memo, the requisition for medical examination, the medical examination report, the arrest memo, the sketch map of the P.O. and the material exhibits. On cross-examination, he admitted that at Ext. P-1, there is no endorsement in his favor to investigate the case and he did not send Ext. M-1 (clothes - yellow, 1 knife - about 9 inch and underwear – dark color) to the FSL for further examination. He further admitted that the victim's marriage with her husband was still subsisting at that time. He also admitted that there was no violent mark found on the body of the victim and the laboratory result had confirmed no sperm and no pus was seen. However, he denied that the Case I.O. SI C. Lalthuanawma had not conducted further investigation.

Discussion, Decisions and Reasons of Decisions: -

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

10. In the case of **Kundula Bala vs. State** reported in **(1993) 2 SCC 684**, the Apex Court has observed thus:

'26.*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."*

11. In the case of **Bodhisattwa Gautam vs. Subhra Chakraborty** reported in **(1996)1 SCC 490**, the Apex Court has observed thus:

'10. Rape is thus 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, the 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.....'

12. In the case of ***Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat***, reported in [MANU/SC/0090/1983](#), the Apex Court has observed thus:

'10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural Society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come 'across an exception or two and that too possibly from amongst the urban elites. Because :(1) 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 ever occurred. (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the Society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) 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. (5) 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. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being over powered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.'

13. In the case of ***State of Punjab vs. Gurmit Singh*** reported in **(1996) 2 SCC 384**, the Apex Court observed thus:

'21. *Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman'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 murderer 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 accused 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.'

14. In the case of ***State of Andhra Pradesh vs. Gangula Satya Murthy***, reported in ***(1997) 1 SCC 272***, the Apex Court has observed thus:

'27.the courts are expected to show great responsibility while trying an accused 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 witnesses which are not of a fatal nature to throw out allegations of rape. This is all the more important because of late crime against women in general and rape in particular is on the increase.....'

15. In the present case, the Criminal Law (Amendment) Act, 2013 applies, as the date of occurrence of the offence took place on the day of 21.5.2014.

16. The learned Addl. P.P. Shri Joseph Lalfakawma appearing for the State submitted that the court can record conviction on the basis of the testimony of the prosecutrix without relying on the medical evidence. According to him, the testimony of

the prosecutrix inspires confidence. Apart from the evidence of the prosecutrix, the evidences of P.W.2 (prosecutrix's husband) and P.W.3 (prosecutrix's daughter) also corroborated the prosecutrix's testimony without any material contradiction. To buttress his stand, the learned Addl. P.P. relied upon the Judgment of Apex Court in **Narendra Kumar v. State (NCT of Delhi)** reported in **2012 7 SCC 171** which at **para 20** states as follows :-

'20. It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.'

17. Per contra, the learned Defence Counsel Shri S. Pradhan vehemently opposed the argument advanced by the learned Addl. P.P. contending that the whole edifice of the prosecution's case rests solely on the statement of the prosecutrix, as all the other witnesses are hearsay witnesses. According to the learned Counsel, the statements of the prosecutrix's husband and the prosecutrix's daughter are of little bit significant apart from the evidence of the prosecutrix. The learned Defence Counsel further submitted that the seizing articles were not proved in due course of law. He also submitted that the medical evidence had not supported the case of the prosecutrix and the prosecutrix's testimony does not inspire confidence inasmuch as she did not shout for help.

18. I meticulously perused the evidence on record. A reading of the deposition of the complainant shows that it has a ring of truth around it. [Section 133](#) of the Indian Evidence Act says that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the

uncorroborated testimony of an accomplice. But the rule of practice is that it is prudent to look for corroboration of the evidence of an accomplice by other independent evidence. This rule of practice is based on human experience and is incorporated in illustration (b) to [section 114](#) of the Indian Evidence Act which says that an accomplice is unworthy of credit unless he is corroborated in material particulars. Even though a victim of rape cannot be treated as an accomplice, on account of a long line of judicial decision rendered in our country over a number of years, the evidence of the victim in a rape case is treated almost like the evidence of an accomplice requiring corroboration. (Vide *Rameshwar v. The State of Rajasthan*,⁽¹⁾ *Gurucharan Singh v. State of Haryana*⁽²⁾ and *Kishan Lal v. State of Haryana*).⁽³⁾ It is accepted by the Indian courts that the rule of corroboration in such cases ought to be as enunciated by Lord Reading C.J. in *King v. Baskerville*.⁽⁴⁾ Where the case is tried with the aid of a jury as in England it is necessary that a Judge should draw the attention of the jury to the above rule of practice regarding corroboration wherever such corroboration is needed. But where a case is tried by a judge alone, as it is now being done in India, there must be an indication in the course of the judgment that the judge had this rule in his mind when he prepared the judgment and if in a given case the judge finds that there is no need for such corroboration he should give reasons for dispensing with the necessity for such corroboration. But if a conviction is based on the evidence of a prosecutrix without any corroboration it will not be illegal on that sole ground. In the case of a grown up and married woman it is always safe to insist on such corroboration. Wherever corroboration is necessary it should be sought from either direct evidence or circumstantial evidence or from both. I find that the evidence of the complainant had been corroborated in material particulars by the evidence of the prosecutrix's husband (P.W. 2), prosecutrix's daughter (P.W. 3). Hence, I have not found any good ground to discard their testimony. The complainant (P.W. 1) has told the court that the complainant had mentioned to her all the details of the incident within a short while after it took place. The statement made by the complainant to her husband immediately after the incident has a corroborative value. After considering carefully the entire material including the evidence of the witnesses examined, I am of the view that the testimony of the prosecutrix is worthy of credence.

19. In so far as the medical evidence, the complainant being a woman who had given birth to two children it was likely that there would not have been any injuries

on her private parts. The complainant and her husband being persons belonging to scheduled tribe like Mizo tribe living in a remote area could not be expected to know that she should keep her sanitary pad for evidence. In fact, the complainant has deposed that she had taken bath and washed her clothes after the incident. The absence of any injuries on the person of the complainant may not by itself discredit the statement of the complainant. Merely because the complainant was a helpless victim who was by force prevented from offering serious physical resistance she cannot be disbelieved. In this situation, the medical report would not be of much consequence if the other evidence on record is believable.

20. It appears from the evidence of the prosecutrix, particularly in her cross-examination; the learned Counsel on behalf the accused put suggestions to the prosecutrix that the accused had sexual intercourse with her willingly to which she denied shows that the accused had sexual intercourse with the prosecutrix. In short, the learned Defence Counsel did not challenge that the accused had no sexual intercourse with the prosecutrix. Hence, I hold that the accused sexually assaulted the prosecutrix outside her residence at Rengdil Hmutha Veng on 21.5.2014 at around 1:00 to 2:00 Am.

21. The seizure of knife which had been used for threatening the prosecutrix in order to commit rape upon her was also produced before the seizure witnesses. The only point raised by the learned Defence Counsel during the course of hearing that the seizure witnesses had not put their signatures on the material exhibits has not discredited their statements since he has not challenged that the seized .

22. As rightly pointed out by the learned Defence Counsel, the testimony of the victim is of 'sterling' quality in view of the Apex Court decision in Rai Sandeep (Supra). The decision of the Apex Court in Narendra Kumar (Supra) is also followed in this case.

23. In the circumstances, the points No. 1 & 2 coming for consideration are answered accordingly.

24. For the reasons discussed above, the prosecution case inspires much confidence. I hold that the prosecution the prosecution has proved beyond reasonable

doubt that the accused had sexual intercourse with the prosecutrix against her will and without her consent and the accused had threatened the prosecutrix.

25. The Investigation Officer charged the accused u/s 376(1) of IPC.

26. I therefore hold that the accused can be convicted under Section 376(1) of the IPC inasmuch as the case is not under section 376(2)(i) of IPC.

27. In the circumstances, the accused cannot be convicted under Sections 376 (2) (i) of IPC. But, he can be convicted under Sections 376 (1)/506 of IPC.

In the result, I hold that the prosecution has established its case under Sections 376 (1)/ 506 of IPC beyond reasonable doubt and consequently, the accused person is convicted of the offences under Sections 376 (1)/ 506 of IPC.

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

7.12.2015

As hearing on sentence is fixed, I have heard the rival parties.

The learned Addl. PP for the State as well as the learned Counsel for the convict is heard.

I have also heard the convict Lalbiaksanga.

I have come to know from the submission of the accused that his parents are old aged and he is the bread winner of his family

Hence, the convict is sentenced to R.I. for 7 years and to pay a fine of Rs. 1,000/- in default of fine of S.I. for another 10 days.

Detention period spent in judicial custody as UTP is set off.

However, the convict is given liberty to prefer appeal/revision, if he desires.

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

Memo No. / AD & SJ (A) /2015 : Dated Aizawl, the 7th December, 2015.

Copy to :-

1. Accused Shri Lalbiaksanga, Central Jail, Aizawl.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. District Magistrate, Mamit.
4. Addl. PP/APP, Aizawl District, Aizawl.
5. Special Superintendent Central Jail, Aizawl District, Aizawl.
6. Investigating Officer through O/C Kulikawn Police Station.
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