

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. 20 of 2014

Crl Tr. No.241 of 2013

State of Mizoram

.....Complainant

-Versus-

Shri Lalchhuanawma (18)  
S/o Hramliana,  
R/o North Khawbung,  
Champhai District.

..... Accused person.

APPEARANCE

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

For the accused persons : Shri J.N. Bualteng, Advocate.

Hearing : 30.11.2015

Judgment delivered on : 14.12.2015

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

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

2. The prosecution case in brief is that on 21.10.2013 a written report was submitted by Shri X of North Khawbung to the effect that on 21.10.2013 at around 4:00 Pm his daughter was forcibly raped by one Biakchungnunga of North Khawbung. Hence, Champhai P.S. Case No. 147 of 2013 dated 21.10.2013 under Section 376(2) (i) of IPC was registered against accused Biakchungnunga and investigated by S.I. Lucy Zosangzuali. In the course of investigation, the victim was forwarded to the District Hospital, Champhai for medical examination. The Medical Officer opined that there was sign of old tear in the hymen of the victim but no active bleeding. On examining the alleged victim, before accused Biakchungnunga

having sexual intercourse with the victim, there was another person who had sexual intercourse with her in the month of July, 2013 and that person is the present accused, namely, Lalchhuanawma. On further examination, the victim stated that she had not revealed the incident to her father due to fear of the accused. Hence, Champhai P.S. Case No. 148 of 2013 dated 22.10.2013 under Section 376 (2) (i) of IPC was registered against accused Lalchhuanawma and investigated by Inspector Lalzarliana.

In the course of investigation, the complainant was examined and the P.O. was visited. The victim was examined in her residence. Thereafter, the accused was arrested, interrogated and his statement was recorded. The accused did not deny having sexual intercourse with the victim from his statement. After forwarding the accused to the Learned C.J.M., Champhai, the victim was forwarded to the District Hospital, Champhai for medical examination.

In the course of further investigation, the accused confessed before the Case I.O. that he had sexual intercourse with the victim for two times.

A prima facie case being found under Section 376 (2) (i) of IPC, the Case I.O. submitted charge sheet.

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 initially produced and examined as many as four witnesses to prove that the accused had committed the offence punishable under Section 376(2)(i) of IPC. On the prayer of the learned Addl. P.P, P.W. 1 S.I. Lucy Zosangzuali was allowed to be reproduced for re-examination. Hence, she was re examined and re cross-examination. P.W.5 Zomuansangi and P.W. 6 V.Vanlalruata who are not cited as prosecution witnesses were also allowed to be produced for examination. They were examined and cross-examined. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC in which he denied the suggestions put before him.

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. S.I. Lucy Zosangzuali** stated that she had submitted Enquiry Report to the Officer-in-Charge, Champhai who is the also the Case I.O. in the instant case to the effect that while examining the victim in Champhai P.S. Case No. 147 of 2013 she had found that Lalchhuanawma had sexually assaulted the victim in the month of July of 2013. According to the witness, the victim had not disclosed the incident since she had been threatened by the accused. She also seized an attested copy Birth Certificate of the victim. Ext. P-1 is the Enquiry Report submitted by her and Ext. P-1 (a) is her signature. Ext. P-2 is the attested copy of the Birth Certificate of the victim. Ext. P-7 is the seizure memo and Ext. P-7 (a) is her signature. On her cross examination, she stated that she had seized the attested copy of the Birth Certificate of the victim from Champhai P.S. Case No. 147 of 2013 and made photo copy of the same.

**P.W.2. the victim** stated before the court that she was born on 12.8.1998 at Hnahlan Hospital. Sometime, in the month of March 2013 while alone and changing her dress in their residence, the accused came in, forcibly caught hold of her, took her to their bed room and laid her on the bed. The accused undressed all her clothes including her underwear and he also undressed his pant and underwear. Thereafter, the accused inserted his penis into her private part and ejaculated his semen in it and on her body. While urinating, she saw blood in her urine. She felt pain in her private part. On second time, when she came home from school, the accused did the same. On third time, while nursing her baby sister, the accused tried to do again, but as her baby sister cried, both of them ran out. Finally, after church service on Sunday, the accused followed her to their residence and did again on the bed, but as her brother saw them, her brother scolded the accused. Her brother informed his father about the incident. On being asked by her father, she narrated the incidents. Thereafter, her father reported the incidents to the police. On her cross-examination, she used to see the accused, but she did not know him properly. She admitted she had not shouted while raping upon her by the accused and the accused had not gagged her mouth. She stated that her nearest neighbor could hear if she had shouted. She resisted and shivered due to fear of the accused

when the latter raped her. Her clothes were not torn by the accused and she did not know the height and weight of the accused. The victim deposed that the accused had threatened her without weapon. She admitted that she would not disclose to her parents if her brother had not seen her with the accused.

**P.W.No.3 Dr. Zodinthara, M.O. of District Hospital, Champhai**

deposed before the court that on 25.10.2013 he had received a requisition from Champhai P.S. to examine the victim aged about 15 years. Accordingly, he examined the body of the victim including her private parts. He found the victim having sound mind and physically normal. There was no mark of violence on her body. When he conducted genital examination of the victim, there was no laceration found on the victim's external genetalia., but the hymen was ruptured. Ext. P-3 is the medical examination report in respect of the victim and Ext. P-3 (a) is his signature. On cross-examination, he stated that he had come to know the age of the victim from the requisition made by the police in which her age was reflected as 15 years. There was no fresh injury in the private part of the victim and her pubic hair was well developed at the relevant time. He further stated that he could not ascertain the age of ruptured hymen. It appeared to him that he had examined the alleged victim after four days of the incident. He could not recollect how old the victim was from her appearance.

**P.W.4 Inspector R.Lalzarliana of Champhai Police Station**

knew the accused. According to him, there was a rape case bearing Champhai P.S. Case No. 147 of 2013 dated 21.10.2013 under Section 376 (2) (i) of IPC in which the accused was Biakchungnunga of North Khawbung and the complainant was the victim's father. The case was investigated by S.I. Lucy Zosangzuali of Champhai Police Station. In the case, the victim was forwarded to the Medical Officer for medical examination in which the report revealing that the hymen was old sign of tear. On examination, the victim stated that the accused Lalchhuanawma had sexual intercourse with the victim for three times and the accused had failed to have sexual intercourse with the victim for one time during the month of July of 2013 before Biakchungnunga had sexual intercourse with the victim. S.I. Lucy Zosangzuali submitted complaint against Lalchhuanawma and the case was registered by him as Champhai PS Case no. 148 of 2013 dated 22.10.2013 under Section 376 (2) (i) of IPC. The case was investigated by him.

In the course of investigation, he examined the complainant. The complainant produced Birth Certificate of the victim in which the victim was born on 12.8.98. On 23.10.2013, the accused was arrested at North Khawbung and he visited the place of occurrence and drew a sketch map of the P.O. He interrogated the accused who admitted his guilt that he was having sexual intercourse with the victim for two times and recorded his statement. He also examined the victim in which she stated that the accused had sexual intercourse with the victim for three times and one time the accused had failed since she was nursing her baby sister and recorded her statement. Thereafter, he sent the accused to the CJM for judicial custody.

He forwarded the victim to the Medical Officer by making a requisition. In the medical report, the Medical Officer stated that there was an old tear in the victim's hymen. He also sent the victim to the CJM Champhai to record her judicial statement.

On finding a prima facie case against the accused under Section 376(2)(i) of IPC, he submitted charge sheet to the court of CJM for further action.

Ext. P-1 is the Complaint and Ext. P-1 (b) is his signature.

Ext. P-2 is the attested copy of the Birth Certificate of the victim.

Ext. P-3 is the Medical Examination Report.

Ext. P-4 is the Charge Sheet and Ext. P-4 (a) is his signature.

Ext. P-5 is the Arrest Memo and Ext. P-5(a) is his signature.

Ext. P-6 is the Crime Detail Form including the sketch map of the P.O. and Ext. P-6(a) is his signature.

On cross examination, he did not know whether the victim had love affair with the accused. The cause of delay of this case was due to threatening of the accused upon the victim. He arrested the accused and investigated the case since the other officers were engaged in other field works. He did not know whether P.W. 1 S.I. Lucy Zosangzuali had seized Birth Certificate of the victim's at his residence or at the Police station.

P.W. 5 Zomuansangi stated that on 22.10.2013 she had stood as seizure witness. Ext. P-2 is the Birth Certificate of the victim seized in her presence. Ext. P-7 is the seizure memo and Ext. P-7(a) is her signature. On cross-examination,

she was present in Champhai PS when the attested Birth Certificate was shown to her. But, she was not present when the original Birth certificate was seized by the seizing officer.

P.W. 6 V. Vanlalruata stated that on 22.10.2013 he had stood as seizure witness. Ext. P-2 is the Birth Certificate of the victim seized in her presence. Ext. P-7 is the seizure memo and Ext. P-7(a) is her signature. On cross-examination, he admitted that he did not from where the seizing officer had seized the Birth Certificate. He stated that he had not read the content of the Birth Certificate, it was shown to him. He denied that the Birth Certificate was not the Birth Certificate of the victim.

The first point for consideration before me is whether the prosecution proves that the victim was less than 18 years of age at the time of the relevant incident of rape. In the oral testimony of the victim, she stated that she was born on 12.8.98. However, the corroborated material i.e. attested copy of the Birth Certificate of the victim at Ext. P-2 was not duly proved by the seizure witnesses in due course of law. The seizure witnesses of the attested copy of the Birth Certificate of the victim are no doubt vital witnesses inasmuch as they are presumed to know whether S.I. Lucy Zosangzuali had obtained the copy of the Birth Certificate of the victim purporting to be signed by the officer from Champhai Case No.147 of 2013. It is pertinent to mention here that there is no ossification test to ascertain the age of the victim. Hence, I cannot hold that the victim was less than 18 years of age at the time of the alleged incident of rape for the aforementioned reasons.

The second point for consideration is that whether the accused had sexual intercourse with the alleged victim. On this, the learned Addl. P.P. Shri Joseph Lalfakawma vehemently argued that the evidence of the victim clearly shows that the accused had sexual intercourse with her for three times. The learned State Counsel cited the decision in **State of Punjab vs. Gurmit Singh : AIR 1996 SC 1393**, wherein the Apex Court held that **if evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars**. On the other hand, the learned Defence Counsel contended that the evidence of the prosecutrix does not inspire confidence and cannot be accepted.

On perusing the record of evidence of the prosecution witnesses, it is very hard to accept the evidence of the alleged victim as gospel truth since she deposed that as her brother had seen her with the accused having sexual intercourse, her brother informed her father about the incident, and her father reported to the police. However, it appears from the evidence of P.W.1 S.I. Lucy Zosangzuali that there was no complaint of the alleged victim's father implicating the accused having sexual intercourse with the victim and the alleged victim's father as well as her brother is not cited as witness. It appears from the evidence that that P.W. 1 S.I. Lucy Zosangzuali came to find the accused having sexual intercourse with the victim when she had examined the victim during the course of investigation in Champhai Case no. 147 of 2013. Hence, I cannot hold that the accused had sexual intercourse with the victim due to the material contradiction.

7. It is also pertinent to mention here that there is no sufficient explanation in respect of the delay of lodging the complaint. The allegation that the accused threatened the accused is not acceptable inasmuch as there is no charge made against the accused under Section 506 of Cr PC.

8. In the light of the above discussion and reasons thereof, I hold that the prosecution fails to prove the charge made against accused Lalchhuanawma 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.

9. Seized article, if any, shall be destroyed.

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

Judgment and Order prepared and delivered in the open court on this 14th 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 14<sup>th</sup> December 2015**

Copy to :-

1. Shri Lalchhuanawma through Counsel Shri J.N. Bualteng, Advocate.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. District Magistrate, Champhai.
4. Superintendent of Police, Champhai District.
5. Addl. PP, Aizawl Judicial District, Aizawl.
6. DSP (Pros), Aizawl Court.
7. i/c G.R. Branch.
8. Registration Section.
9. Guard File.
10. Case Record.
11. Calendar Judgment.