

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. 6 of 2013

Crl Tr. No.979 of 2013

State of MizoramComplainant

-Versus-

Shri Lalnghinglova (46)
S/o Denghlira (L),
R/o Kawn Veng, Zanlawn,
Aizawl District. Accused person.

APPEARANCE

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

For the accused person : Shri S.L.Thansanga, Advocate.

Hearing : 15.12.2015

Judgment delivered on : 17.12.2015

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

The accused has been tried in connection with the offence of rape punishable under Section 376 (1) of IPC.

2. The prosecution story in a nut shell is that on 16.10.2013 Shri X of Kawn Veng of Zanlawn submitted a written report to the effect that the accused had impregnated his daughter about 16 years. The case was registered by S.I. Lalmalsawma, the Officer-in-Charge, Kawnpui Police Station and also investigated by him.

In the course of investigation, the place of occurrence was visited and the sketch map of the place of occurrence was drawn by the Case I.O. The victim

was examined and her statement was recorded. Thereafter, the victim was medically examined by the Medical Officer. The victim was found to be pregnant of 36-37 weeks from the report of the Medical Officer and her birth certificate was also obtained.

The accused was arrested and interrogated. The accused stated that in the month of February of 2013, he had committed rape upon the victim when she was found alone in her residence. He then continued to have sexual intercourse with her since then.

All the vital witnesses were examined by the Case I.O. and their statement were recorded. A prima facie case being found against the accused u/S 376 (1) of IPC, he submitted charge sheet to the Court of CJM, Kolasib.

3. Learned Shri S.L. Thansanga was appointed to defend the accused at the expense of the State. The copy of the police report was given to the learned counsel in the presence of the accused.

4. Upon committal, my predecessor framed charge u/S 376(1) of IPC against the accused person 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 six witnesses to prove that the accused had committed the offence punishable under Section 376 (1) of IPC. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC.

6. I heard the learned Addl. P.P. Shri Joseph Lalfakawma appearing for the State as well the learned Counsel Shri S.L. Thansanga.

7. **Points For Determination :**

a) Whether the prosecution proves that the alleged victim was less than 18 years old at the time of the alleged incident?

b) Whether the accused had sexual intercourse with the alleged victim without her consent and against her will?

c) Whether the accused is liable to be punished under Section 376 (1) of IPC?

8. Discussion, Reasons and Decision :

In the present case, the first material point first appearing for consideration is the date of birth of the alleged victim. In the course of hearing, the learned Addl. P.P. submitted that the date of birth of the alleged victim was 17.9.97 from the document shown at Ext.P-4. According to the learned State Counsel, in the Criminal Law (Amendment) Act, 2013, which came to effective from 3.2.2013, it amounts to rape if a man has sexual intercourse with any woman who is less than eighteen years of age even the sexual intercourse is had with her consent. On the other hand, the learned Defence Counsel contended that the prosecution had not proved the date of birth of the victim.

I have carefully perused the evidence on record of the prosecution witnesses. The father of the alleged victim did not prove that her daughter was born on 17.9.97 inasmuch as he did not know the date of birth of her daughter. According to the alleged victim, her date of birth was 9.8.97 which is found contradictory with her birth certificate at Ext. P-4. Even the seizure witness of the alleged birth certificate of the alleged victim who was examined by the prosecution did not know whether the birth certificate had been fabricated or not and he had not put signature on the seizure memo at Ext. P-5. It also appears to me that the Medical Officer had no ossification test to ascertain the age of the alleged victim. In the circumstances, I cannot hold that the alleged victim was less than eighteen years at the time of the incident.

The next material point came for my consideration is that whether the accused had sexual intercourse with the alleged victim against her will or without her consent. After perusing the records of evidence, the father of the alleged victim and the alleged victim herself did not bring in the evidence that the accused had sexual intercourse with the alleged victim against her will and without her consent. Hence, I hold that the accused had sexual intercourse with the alleged victim willingly and with her consent.

In view of the discussion and decisions, I hold that the prosecution fails to prove the charge against accused Lalnghinglova under Section 376 (1) of IPC. Hence, I do not find guilty against the accused. Accordingly, the accused is acquitted.

The bail bond stands cancelled and the surety is discharged.

The seized article, if any, shall be destroyed.

Judgment and Order prepared and delivered in the open court on this 17th 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 17th December, 2015

Copy to: -

1. Accused Lalnghinglova through Counsel Shri S.L. Thansanga, 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.