

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. 61 of 2014

State of Mizoram .....Complainant

-Versus-

Shri Lalhmangaihkhumtira  
S/o Laltlanthanga,  
R/o Thenzawl,  
Serchhip District, Mizoram. .... Accused person

**APPEARANCE**

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

For the accused : Shri Albert V.L. Nghaka, Advocate.

Hearing : 21.5.2015

Judgment delivered on : 3.6.2015

Sentence Hearing : 4.6.2015

Order delivered on : 4.6.2015

**J U D G M E N T**

The accused has been prosecuted in connection with the offence of rape punishable under Section 376 (2)(i) of IPC.

2. The prosecution case is that on 23.4.2014 at about 11:10 AM one Kaphrangi of Tualvungi Veng, Thenzawl lodged a written First Information Report to the Thenzawl Police Station to the effect that on the evening of 11.4.2014, her daughter who is the minor victim in this case was raped by the accused while collecting wild cardamom (aidu) at the jungle of Khangpui Ram, Thenzawl. Hence,

Thenzawl Police Station Case No. 6 of 2014 dt.23.4.2014 u/s 376(1) IPC was registered against the accused and duly investigated into.

In the course of investigation, the complainant was examined and her statement was recorded. The minor victim was forwarded to the Medical Officer, CHC, Thenzawl. In the medical report, the Medical Officer opined that the victim's hymen was not intact. The accused was also forwarded to the Medical Officer, CHC, Thenzawl for medical examination. The P.O. was visited as being led and shown by the accused in the presence of one civil witness Zorinsanga of Ramthar Veng, Thanzawl and also recorded his statement. The sketch map of the PO was also drawn preparing the Crime Details Form. The accused was thoroughly interrogated at the P.S. During interrogation, the accused admitted his guilt before the Police and his statement was recorded. In the statement of the accused, he stated that he had sexual intercourse with the minor victim at the jungle. The accused was therefore arrested after informing his ground of arrest and prepared proper arrest memo. After remanding the accused by the SDM, Thenzawl, the accused was forwarded to Chief Judicial Magistrate, Aizawl with a prayer to remand him to judicial custody. The charge section was altered to section 376(2)(i) IPC since the victim was 15 years of age. A prima facie case under Section 376 (2)(i) of IPC was found well established against the accused. Hence, the Case I.O. submitted charge sheet.

3. The accused person was produced before the learned Chief Judicial Magistrate, Thenzawl District. The case was committed to the learned Sessions Judge since it is triable exclusively by Court of Session. Thereafter, the case was transferred to my predecessor for trial and disposal.

4. Charge sheet and its relevant documents were supplied to the accused. Shri Albert V.L. Nghaka, Advocate was appointed to defend the accused at the expense of the State.

5. After hearing the rival parties and on finding a prima facie case against the accused, charge was framed against him under Section 376 (2)(i) of I.P.C. The charge was read over and explained in the language known to him, 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 four out of five witnesses to prove that the accused had committed offence punishable under Section 376 (2)(i) of I.P.C. The plea of defence is of total denial. After closure of the prosecution evidence, the accused was examined under Section 313 of Cr PC. The accused declined to produce defence witness.

7. I heard the learned Addl. Public Prosecutor Shri Joseph Lalfakawma appearing for the State assisted by the learned A.P.P. Ms. K.Lalremthangi. I also heard the learned Counsel Shri Albert V.L. Nghaka appearing for the accused.

8. According to the learned Addl. P.P. Shri Joseph Lalfakawma, the prosecution proved the charge framed against the accused under Section 376 (2)(i) of IPC beyond reasonable doubt. He submitted that the deposition of the prosecution witnesses were trust worthy and their statements formed concrete evidence which proved the charge.

9. On the other hand, the learned Counsel Shri Albert V.L. Nghaka contended that the testimony of the prosecutrix is not trustworthy and cannot be relied upon for recording conviction against the accused under Section 376 (2)(i) of IPC. According to the learned counsel, there was a delay of 12 days in lodging the FIR without any reasonable justifiable explanation. The learned Counsel cited the decisions of Hon'ble Gauhati High Court in Tafiz Ali & Another vs. State of Assam, 2007(3) GLT 481 and Arun Hazarika vs. State of Assam, 2013(4) GLT 682 where in both the cases, the conviction and sentence passed by the learned Trial Court were set aside due to the delay of lodging FIR.

#### **POINTS FOR DETERMINATION:**

10. a) Whether the prosecution proves that accused Lalmangaihkhumtira had sexual intercourse with the minor victim on 11.4.2014?

b) Whether the prosecution proves that the minor victim was 15 years of age on the date of incident?

c) Whether the accused can be convicted under Section 376(2)(i) IPC?

11. **Discussion, Decision & Reasons Thereof :**

P.W. 1, who is the complainant, identified the accused. Both the accused and the complainant's family were neighbors. The victim was born on 4.5.1998. At the relevant time, the complainant stated that the minor victim had studied up to class-VII. The complainant did not know how and when the minor victim had stopped his hard studies, since she was divorced by her husband in 2001. What the complainant remembered was that the minor victim had come to stay with her since 2012.

The complainant could not say the date and month when the minor victim was invited by the accused to search vegetables at jungle. What she remembered was that the minor victim and the accused were about to search mizo vegetables. When they came back her daughter did not tell her. Her daughter had told about the incident to her friend Lawma. After a week, the minor victim requested not to blame her since Lawma told her to inform about having sexual intercourse with the accused while searching vegetables with the victim in jungle. She also took the advice of her father and other relatives and submitted F.I.R. on their advice. The accused did not ask any pardon. But, the relatives of the accused asked her to forgive the accused. They could not pardon the accused for his act. The police recorded the victim's statement. She proved the F.I.R. On cross-examination, the minor victim was born in Thenzawl C.H.C., the minor victim had a birth Certificate, but the father of the minor victim had lost. She admitted that she could not say anything more than what she stated in examination-in-chief. She did not know what is written in the F.I.R. It was the victim's father who had submitted the F.I.R. She could pardon the accused and wanted not to proceed the case. She did not remember the date of submission of the F.I.R.

P.W.2, the minor victim identified the accused. She stated that she was born on 4.5.1998. She studied upto Class-VIII. She stayed with her father while studying in school. Her parents divorced. She left her studies in 2012. At the relevant time of the incident, she stayed with her mother. She did not remember the date and month but confirmed that the incident had happened in the year of her deposition before the Court. She further stated that the accused had invited her to search vegetables. She thought that they would search vegetables near their common well. But, the accused led her to the place where she never went. Even after going a long distance, they did not find wild

cardamom. They reached one jhum field, there from they turned back and the accused led her to another way and told her to wait him thereon, and the accused brought some wild cardamom. Thereafter, they went through ravine and reached a small road. The accused then tried to put his arms on her shoulder, but she took off his arms. She waited him and the accused brought wild cardamom from the place nearby. They went again and the accused told her to wait him again, he brought wild cardamom. He told her both of them will have equal share. The accused then divided. He took her bag, when she tried to take back, he held it. He also took her knife. He held her, kissed her and drooped her. She struggled since she knew he wanted to rape her. He tore her kurta cloth, held her breast and took off her leggings. She struggled much, but the accused told her not to struggle, and ultimately had sexual intercourse with her. She then left him and when the accused reached near her, she ran. The time was about 2:30 Pm, but when she reached home, it was about to 5 Pm. After reaching home, she did not inform the incident to her mother, since the accused had told her that she would be humiliated and not him. She was hurt and did not feel well for long days. She told to her close friend Lawma about the incident. Lawma advised her to inform the incident to her mother. Thereafter, she informed the incident to her mother. Her relatives got angry and lodged FIR. Before lodging FIR, they had meeting, even in that her father participated. She did not stay long with her mother. But, after lodging the FIR, she stayed with her father till the date of giving her deposition before the Court. After lodging FIR, Medical Officer examined her. According to the minor victim, the delay of lodging the FIR might be for a week. The Birth Certificate was lost by her father. The police mentioned about her clothes, but she did not know whether they had taken or not. On cross examination, she was born at Thenzawl. She did not want to submit FIR for fear of humiliation. She was sixteen years of age at the time of incident. The statement she was shown was her statement before the police, but she personally did not know the recorder. She admitted that the accused had not threatened her, but the accused told her that had she been disclosing the incident, she would be humiliated. She further admitted that she had not shouted for help, but, the accused gagged her mouth, held her legs twisted and it was jungle, and she was not in a position to shout. She could pardon him and wanted not to proceed the case. On re-examination, the relatives of the accused came for pardon before and after lodging the FIR and as the representative of church also. Her reply was that she could forgive the accused since it was past incident.

P.W.3 **Dr. Lalramhluna** has been posted as Medical Officer, C.H.C., Thenzawl since the

month of July of 2013. He conducted more than 10 times examination on victim of sexual assault. On 23.4.2014, he received requisition from the police before conducting examination on the minor victim, 15 years of age. On that day, he conducted examination at about 4:05 Pm and filling Sl. No. 7 & 11 of the Medical Examination Report on the basis of the statement made by the victim to him. Upon examination the victim was found physically and mentally healthy. Upon genital examination, her hymen was found not intact. From the history narrated by the victim herself, she was earlier exposed to sexual intercourse. According to victim, the incident complained of occurred on 11.4.14 but she was brought for medical examination only on 23.4.14 and since the rupture of the hymen was not fresh, he did not specify the age of the tear of the hymen. On that reason, no material was sent for laboratory examination. As per the Hospital record, the date of birth of the victim was 4.5.1998 and her birth was still known to many staff of the CHC, and age determination by x-ray was not therefore conducted. He proved the Medical Examination Report of the victim.

He could identify the accused who was present in the Court that day. He also received requisition from the Police on 24.4.14 for his examination. On the same day he conducted his examination at 10:10 AM. The requisition was mainly to find out the sexual maturity of the accused. He filled up Sl. No.9 of the Medical Examination Report of the accused as per his statement before him. Upon examination, he was found physically and mentally healthy. On genital examination, his secondary sexual organ was fully developed and he could have erection. He also proved the Medical Examination Report of the accused.

On cross examination, he stated that at the time of examination he had not found any injury or marks of violence which had connection with sexual assault on the body of the minor victim. He did not find fresh injury in her genital organ. He also did not find any semen in the private part of the minor victim during examination. The Hospital Record was checked under his supervision while locating the date of birth of the victim. While examining the genital organ of the accused medically, the Medical Officer had no finding that he could have indulged in sexual intercourse with the prosecutrix.

P.W.4 SI Malsawmtluanga identified the accused. On 23.4.2014 at about 11:10 AM one Kaphrangi of Tualvungi Veng, Thenzawl lodged FIR to the Officer-in-Charge, Thenzawl PS to the effect that on the evening of 11.4.2014, the accused Lalmangaihkhumtira had committed rape upon her daughter aged about 15 years at

jungle (Khangpui ram). The FIR was registered as Thenzawl PS Case No. 6/2014 dt.23.4.2014 u/s 376(1) IPC and the same was investigated by him.

In the course of investigation, the complainant was examined and her statement was recorded. The victim was also examined and her statement was also recorded. The victim was forwarded to Medical Officer, CHC Thenzawl. In the medical report, it is stated that the hymen of the victim was not intact. Thereafter, he visited the residence of the accused but the latter was not present in his residence. He informed the wife of the accused to inform the latter to surrender himself at the PS and later arrested him at the PS. He interrogated the accused and recorded his statement. He forwarded the accused to the Medical Officer, CHC Thenzawl to examine him. The PO was also visited with the company of the accused and one reliable witness, and a sketch map of the PO was drawn by him. As he found a prima facie case u/s 376(2)(i) IPC, the Charge Section was altered to Section 376(2)(i) IPC and submitted Charge Sheet against the accused. He proved the Charge Sheet, the Sketch Map, the Arrest Memo, and the F.I.R. as well as the medical report of the victim and the medical report of the accused. On cross examination, he admitted that the victim's mother submitted FIR which was written by a Literate Constable as per the dictation of the victim's mother. He further admitted that the accused had not informed her about any warning to the victim. He also admitted that he had forwarded the accused to the Magistrate to record confession, but no confession was recorded by the Magistrate. He finally admitted that he had not seen any mark of injury on the bodies of the victim as well as the accused. Last and not the least, the accused admitted that the Medical Officer had recorded the date of birth of the victim on the basis of the record of the CHC, as such; he had not enclosed any Certificate regarding the date of birth of the victim. He stated that there was a delay of 12 days in lodging the FIR. He further stated that there was no evidence on the place of occurrence to ascertain that the accused had committed rape on the victim. He also stated that they had not seized any article in connection with the case acting as the Officer-in-Charge and the Case IO. In the re-examination, he admitted that the delay of submission of FIR was due to late information received by the victim's mother since the complainant came to know the commission of rape when the victim informed her boyfriend about the commission of rape upon her. The victim's mother then submitted FIR. In the further cross examination, the Case I.O. confirmed the age of the victim as 15 years. The victim did not inform him that the accused had threatened not to disclose about the incident.

**12.** During the course of his examination under Section 313 Cr. P.C., the accused denied all the incriminating evidence appeared against him and took plea of alibi.

13. The first point of determination is, whether the prosecution proves that the accused had sexual intercourse with the minor victim on 11.4.2014?

14.a A combined reading of the documentary evidence at Ext. P-1 (F.I.R), Ext. P-2 (Medical Examination Report) and Ext. P-4 (Charge sheet) as well as the oral testimony of the minor victim and other witnesses shows that the accused had sexual intercourse with the victim against her will or consent while searching vegetables in Khangpui jungle on the day of 11.4.2014. It is apparent from the testimony of the minor victim that the minor victim struggled much when the accused tried to have sexual intercourse with her. The accused could not discredit the testimony of the minor victim in cross examination. The accused also did not adduce any evidence when fair chance was given to him. It is pertinent to mention that the statement of the minor victim is corroborated by the statements of the complainant and the Case I.O. though there are minor contradictions or insignificant discrepancies in the statements. But, minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Hence, I do find any reason to doubt the testimony of the minor victim; rather I find the testimony of the minor victim trustworthy and inspire confidence.

14.b The Apex Court in the case of **State of Punjab vs. Gurmit Singh and others (1996) 2 SCC 396**, 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.'

14.c In the case of Narendra Kumar vs. State (NCT of Delhi), reported in (2012) 7 SCC 171, the Apex Court has held as under :-

" 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."**

14.d           It was contended by the learned Counsel for the accused that there was a delay of 12 days in lodging the F.I.R. which is true. But, the reason of delay was that the minor victim had felt, if she disclosed the incident, she would be humiliated in the society. The accused also told the minor victim after commission of rape upon her. But, the minor victim dared when her close friend had advised her to inform about the incident of rape to her mother. Accordingly, the minor victim informed the incident to her mother. Soon after that, the complainant lodged the FIR. Hence, I find that the delay in lodging the F.I.R. appears reasonable.

14.e.           Regarding the duty of the Court while trying a case of rape, the Apex Court has observed;

In the case of **State of Punjab vs. Gurmit Singh (supra)**, 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 background 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 **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 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 through 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.”**

14.f In the circumstances, I hold that accused Lalhmangaihkhumtira had sexual intercourse with the prosecutrix on the day of 11.4.2014 at Khangpui jungle, Thenzawl.

15 Section 375 of IPC. **S. 375 of Indian Penal Code. Rape.**—A man is said to commit “rape” if he,-

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her who, except in the case hereinafter excepted, has sexual intercourse to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other purpose; or
- (d) Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other purpose,

under circumstances falling under any of the seven 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 eighteen teen years of age.

Seventhly—When she is unable to communicate consent.

Explanation.1—For the purpose of this section, “vagina” shall also include labia majora.

Explanation 2—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. —A medical procedure or intervention shall not constitute rape.

Exception 2. —Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

16. The second point of determination is whether the prosecution proves that the minor victim was less than 18 years of age as on 11.4.2014?

16.a It is apparent from the deposition of the complainant that the minor victim was born in Thenzawl Hospital on 4.5.1998 which is also corroborated by the statement of the minor victim. The Medical Officer also

stated that the minor victim was 15 years of age which he had based from the Hospital records. The accused could not discredit their statements. Hence, it is proved that the prosecution has proved that the minor victim was 15 years of age.

17. The third point of determination is, whether accused can be convicted under Section 376 (2) (i) of IPC?

17.a At paragraph 14, it is stated that the prosecution proves the accused having sexual intercourse with the minor victim. At paragraph 15, it is also stated that the minor victim was 15 years of age. Section 375 of IPC as amended in 2013 provides that a girl less than 18 years of age cannot give consent to have sexual intercourse. Hence, the accused can be convicted under Section 376 (2) (i) of IPC.

18. The Criminal Law (Amendment) Act, 2013 (Act No. 13 of 2013) came into effect from 3.2.2013 which is applicable to the present case since the occurrence of offence took place on the night of 11.4.2014. The relevant portion is given below;-

(i) **Section 376 of I.P.C. Punishment for rape.**—(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may to imprisonment for life, and shall also be liable to fine.

(a) being a police officer commits rape—

- (i) within the limits of the police station to which such police officer is appointed; or
- (ii) in the premises of any station house; or
- (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

- (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
- (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
- (e) 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 being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
- (f) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
- (g) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
- (h) commits rape during communal or sectarian violence; or
- (i) commits rape on a woman knowing her to be pregnant; or
- (j) commits rape on a woman when she is under sixteen years of age; or
- (k) commits rape, on a woman incapable of giving consent; or
- (l) being in a position of control of dominance over a woman, commits rape on such woman; or
- (m) commits rape on a woman suffering mental or physical disability; or
- (n) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (o) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean

imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation— For the purposes of this sub-section,-

(a) "armed forces means the naval, military and air forces and includes any member of the Armed forces constituted under any law for the time being in force, including the paramilitary force and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "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.

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861)

(d) "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

19. In the light of the above discussion and reasons thereof, I conclude that the prosecution successfully proves the charge against accused Lalmangaihkhumtira under Section 376 (2)(i) of I.P.C beyond reasonable doubt. Hence, I find guilty against him. Accordingly, the accused is convicted under the said section of law.

20. Fixed 4.6.2015 for Sentence Hearing.

Judgment prepared and delivered in the open court on this 3rd day of June, 2015 under my hand and seal.

**Sd/- VANLALENMAWIA**

Addl. Sessions Judge  
Aizawl Judicial District,  
Aizawl, Mizoram.

**ORDER**

**Dated 4.6.15** Convict Lalmangaihkhumtira is produced from judicial custody. Ld. Addl. P.P, APP and Ld. Defense Counsel are present.

I have heard the learned Addl. Public Prosecutor, Shri Joseph Lalfakawma and the learned Defence Counsel, Shri Albert V.L.Nghaka. Convict Lalmangaihkhumtira is also heard.

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

On the other hand, 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. He further submits that the wife of the convict is having gynaecological problem. He also submits that the convict is having three minor children.

The convict submits that he has repented for the offence committed by him. He also submits that his youngest daughter got injury due to motor accident today.

The submission of the rival parties is considered.

On considering the factual circumstances submitted by the learned Defence Counsel and the convict Lalmangaihkhumtira, I find that a lenient punishment shall be given to him. Hence, the **convict Lalmangaihkhumtira** is sentenced to undergo **Rigorous Imprisonment for 10 (ten) years** and to pay a **fine of Rs. 10,000/- (Rupees ten 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 3.6.2015 and is to be attached accordingly.

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

**APPENDIX****PROSECUTION WITNESSES**

P.W. 1- Kaphrangi  
P.W. 2- Prosecutrix  
P.W. 3- Dr. Lalramhluna  
P.W. 4- SI Malsawmtluanga  
P.W. 5- SI Lucy Zosangzuali

**PROSECUTION EXHIBITS**

Ext. P-1- First Information Report  
Ext. P-2- Medical Examination Report of the prosecutrix  
Ext. P-3- Medical Examination Report of the accused  
Ext. P-4- Charge Sheet  
Ext. P-5- Sketch Map  
Ext. P-6- Arrest Memo

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

**Memo No.\_\_\_\_\_/AD&SJ(A)/2015 : Dated Aizawl, the 4<sup>th</sup> June, 2015**

**Copy to: -**

- 1) Accused Lalhmangaihkhuntira C/o Special Superintendent, Central Jail, Aizawl.
- 2) Sessions Judge, Aizawl Judicial District, Aizawl.
- 3) Special Superintendent, Central Jail, Aizawl.
- 4) PP / Addl. PP, Aizawl.
- 5) DSP (Prosecution), District Court, Aizawl.
- 6) Officer-in-Charge, Thenzawl Police Station.
- 7) i/c G.R. Branch, District Court, Aizawl.
- 8) Registration Section, District Court, Aizawl.
- 9) Guard File.
- 10) Case Record.
- 11) Calendar Judgment.

**P E S H K A R**