

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. 17 of 2014

State of MizoramComplainant

-Versus-

Shri Vanlalnghaka (40)
S/o Lalengmawia,
R/o Champhai Venglai,
Champhai District, Mizoram. Accused person

APPEARANCE

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

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

Hearing : 8.4.2015 & 28.5.2015

Judgment delivered on : 10.6.2015

Sentence Hearing : 12.6.2015

Order delivered on : 12.6.2015

J U D G M E N T

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

2. The prosecution case is that on 12.11.2013 at about 2:30 Pm the prosecutrix lodged a written First Information Report to the effect that on the night of 11.11.2013 at around 8:00 Pm, one Taxi Driver who was known as Nghaka had

taken her at Mualbuhvum, Champhai and forcibly raped her in his vehicle. Hence, CPI P.S. Case No. 171 of 2013 dated 12.11.2013 under Section 376 (1) of IPC was registered against the accused and duly investigated into.

In the course of investigation, the P.O. was visited but no clue was found at the P.O. The prosecutrix was thoroughly examined and her statement was recorded. It was stated by the prosecutrix that she had saved the name of the Taxi driver as Ngkaka in her Mobile Phone. The Taxi drivers of Champhai Town were contacted and examined over telephone. On examining them, they came to know that the Taxi driver who had raped on the night of 11.11.2013 was Vanlalnghaka s/o Lalengmawia of Venglai, Champhai. One under-pant worn by the prosecutrix at the time of incident was seized in the presence of reliable witnesses and their statements were recorded. The seized article was kept at Champhai PS Malkhana vide MR No. 142 of 2013 and sent to Court. The prosecutrix with the seized under-pant was forwarded to the Medical Officer of District Hospital, Champhai for medical examination. On the Medical Examination report, the hymen of the prosecutrix was absent/rapture and no injury mark was found on her external genitalia and no spermatozoa were seen under microscopic examination. The police got information from the prosecutrix that she had washed her private part just after she was raped. According to the police, this might be the reason why spermatozoa were not seen in the laboratory examination. The accused was arrested on 12.11.2013 and he was thoroughly interrogated. On interrogation, the accused admitted his guilt before the police stating that on the night of 11.11.2013 at around 7:00 Pm, when the prosecutrix had wanted to go to Khawzawl, he told that he would drop her at Khankawn Police Check Gate so that she could get vehicle to go to Khawzawl. But, the accused took the prosecutrix towards Mualbuhvum, Champhai by his vehicle (Taxi bearing registration No. MZ-04/4595) and forcibly raped her in his Taxi. The statement of the Taxi driver was recorded. The vehicle of the accused was checked but no clue was found since the accused had already cleaned the vehicle. A prima facie case under Section 376 (1) 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, Champhai 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 J.N.Bualteng, 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 (1) 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 five out of six witnesses to prove that the accused had committed offence punishable under Section 376 (1) of I.P.C. The plea of defence is of total denial except that the victim boarded in his Taxi on that night. After closure of the prosecution evidence, the accused was examined under Section 313 of Cr PC. The accused produced two defence witnesses.

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 J.N.Bualteng 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 (1) 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 J.N. Bualteng contended that the testimony of the prosecutrix is not trustworthy and cannot be relied upon for recording conviction against the accused under Section 376 (1) of IPC. In his view, the prosecution failed to disclose that the place of incident is a secluded area. It is also his view that the victim was not threatened by the accused since no weapon was not recovered and since the victim did not disclose anything about the incident

to a person whom she first met at the auto-stand. According to the learned Counsel, the prosecution story is a concocted one. The learned Counsel submitted that the expert witness had not found any injury after thorough examination on the victim's body except the tender scar due to her earlier operation. He cited the decision the Hon'ble Rajasthan High Court in Jogi Dan v. State of Rajasthan, 2004 Cri 1726 at 1731 (Raj) which held, Ordinarily, where forcibly sexual intercourse is committed there would be injury on the person of the victim. Absence of any injury on the person of a woman alleged to have been raped may go a long way to indicate that the alleged intercourse was a peaceful affair and the story of a stiff resistance put by the prosecutrix is false or an afterthought. He further cited the decision of the Apex Court in Sharad Birdchand Sarda v. State of Maharashtra 1984 (4) SCC 116 which held that ".....it is a well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view..." He also cited the decisions in Narendra Kumar v. State (NCT of Delhi) Criminal Appeal Nos. 2066-67 of 2009 and in Bhagwan Singh v. State of M.P. (2002) 4 SCC 85.

POINTS FOR DETERMINATION:

10. a) Whether the prosecution proves that accused Vanlalnghaka committed rape upon the victim on the night of 11.11.2013 in a vehicle (Taxi) bearing Registration No. MZ-04/4595 driven by him?
- b) Whether the accused can be convicted under Section 376 (1) of IPC?

11. Discussion, Decision & Reasons Thereof :

P.W. 1, who is the victim and the complainant, identified the accused. She was dealing in herbal cosmetics and medicine and sold to different places, such as Chawngte, Tlabung and Khawzawl, etc.

The time of occurrence happened during the general State Assembly Election. She went to Champhai from Khawwzawl for her business. One friend namely Lalbawihl accompanied her participated in election campaign. Both the friends went to Champhai and to return on that night by the vehicle engaged on election

campaign. They missed the vehicle, as it left earlier at around 3:00 Pm than the time of departure, which they were told to leave by 4:00 Pm. Her friend invited to meet her boy friend and met him at around 7:00 Pm. As the boyfriend requested her to give them a chance, she thought of leaving her friend for Khawzawl and stood in front of a Sumo counter. After sometime, the accused came by his taxi asking her where she would go, to which she replied that she was waiting for a vehicle (Sumo) for Khawzawl. The accused told her that she would not find the vehicle at that place, but he would take her to the place where she would get a vehicle for Khawzawl. The victim was ready to pay the Taxi fare for Rs.100/-, which the accused also accepted. The accused began to drive in a direction different from that. She asked him where he was heading to which he stated that he was taking her through a short cut route. The accused then drove his Taxi towards Mualbuhvum. He stopped his vehicle below Mualbuhvum on the road side and tried to sexually assault her inside the taxi and said "Tlan chhuah i tum chuan ka that ang che" (meaning if you try to escape I will kill you). She saw one vehicle passing by. At that time, she made an excuse to the accused that she wanted to go for urine and went out from the vehicle. She shouted, but the persons boarded in the vehicle which passed by did not hear her and the vehicle had already moved towards the hill top whereas the taxi was below the hill (Tlang pawng thlang). At that time the accused came out and pulled her into the taxi, the accused reversed his taxi and took her at a further distance which was not known to her. At that time, he once again told her that he was going to have sexual intercourse with her. But, she could not recollect everything what was told by the accused since she was very scared of him and she was severing. Ultimately, the accused sexually assaulted her inside the taxi by reclining the seat. While committing the act upon her, she did not shout but she was crying. Au vak vak mahila tumah an awm chuang lo a, ka hlau lutuk a ka dawh tawp (meaning even if I shouted there was no one around and I simple submitted myself as I was very scared). Thereafter, the accused took her inside Champhai town and she saw some three or four auto-rickshaws and she got down at the place. She also asked the accused to give her his mobile phone number and he gave it her. She asked auto driver how to go to Kahrawt veng Champhai and also asked them to use their mobile phone. At that time, she made a phone call over to her friend Labawihi but she could not tell her friend the place where she was, so the auto driver spoke to her friend. She waited her friend and she was picked up by Labawihi's brother-in-law. Mapuia (the brother-in-

law of Labawihi) was the first person whom she informed about the incident. She told him that she wanted to lodge FIR. She spent the night with Labawihi in the house of Mapuia. On the next day, after morning meal she lodged FIR to Champhai Police Station. Her verbal information was reduced to writing. she was taken to the Hospital after she had lodged the FIR. The doctor who examined did not ask her many question. The Police recorded her statement. The Police seized her underwear and a small piece of cloth which she used to wipe her private part. After the incident, the accused told her to wash and thereafter that she wiped her private part with the said cloth. Ext. P-1 is the FIR submitted by her and Ext. P-1(a) is her signature. Ext. M-1 containing red underwear is the underwear worn by her at the time of the incident. On cross-examination, she stated that did not know how to write the FIR and it was written by police personnel at Champhai, but she did not remember whether the content of the FIR was read out to her. At the time of the incident, the accused was wearing black sweater and black pant. The accused was wearing T-shirt beneath the sweater but she could not recollect the exact colour. She did not consume liquor on that day but she saw the accused consuming liquor. She did not remember the date of the incident. However, she denied that the accused had love affair. She further denied that even after the incident she used to call the accused. She also denied that the accused had sexual intercourse with her consent. She stated that she had not put any identification mark on her underwear seized by the police. She finally denied that she was not sure whether the underwear produced in the court that day was belonging to her.

P.W.2 **K.C. Lalthangchhunga** is the father of the victim. He was a seizure witness of the prosecutrix's underwear. The prosecutrix informed him over mobile phone of C.Mankunga about the incident and to come soon to Champhai Police Station. Ext. P- 2 is the seizure memo and Ext. P-2(a) is his signature. Ext. M-1 contains red underwear which was seized by the Police in his presence. On cross-examination, he admitted that he had seen the Police seizing the underwear of his daughter which was available with the lady police and he was told. He did not put any identification mark on the victim's underwear and did not know whether it belonged to her daughter since she herself used to buy her underwear. But, it was denied by him that the underwear shown to him by the police belonged to some else.

P.W.3 **Lalthasanga** did not identify accused Vanlalnghaka. On hearing the incident, the father of the prosecutrix hired his taxi from Khawzawl to Champhai. The father of the prosecutrix requested him to be seizure witness of the underwear of the prosecutrix. Ext. P- 2 is the seizure memo and Ext. P-2(b) is his signature. On cross examination, he stated that he had no acquaintance with the accused. The victim's father hired his taxi from Khawzawl and they had left after lunch, and reached Champhai at around 11:00 Am. On arrival at Champhai, they first picked up the prosecutrix from the place nearby to the police station and went there. On cross-examination, he stated that he had seen the prosecutrix taking out the underwear from her bag. He did not know whether Ext. M-1 had been worn by the prosecutrix, but the latter stated before the police that she had worn it at the time of incident. But, he could not recollect whether the prosecutrix had also taken out comb from her bag at the time of taking out her underwear. He did not put any mark on the underwear to identify the same as belonging to the prosecutrix. However, he denied that the underwear which was shown to him in the court had not been worn by the prosecutrix at the time of the incident.

P.W.4 **Dr. F. Lalnundanga** was posted as Medical Officer, District Hospital, Champhai at the relevant time of incident. On 12.11.13, he received requisition from Police for medical examination of the victim, aged about 20 years. On the same day @ 1:45 PM, he conducted medical examination. Upon examination, her findings were as follows: -

- 1) She was found physically and mentally normal. At the time of examination, she was not under the influence of alcohol and there was no injury or mark of violence on her body.
- 2) On her genital examination, he found that her secondary sexual characters had fully developed. Her hymen was absent. He did not find any injury or infection in her genital organ.

As per the information received from the victim, the victim was married and had undergone premature abortion. She was also operated for ovarian cyst earlier at Aizawl. By the time she was brought for medical examination she had changed her clothes. But, she did not tell him whether she had taken bath. During examination he was assisted by one Staff Nurse. The prosecutrix informed him that

she was subjected to forcible sexual intercourse by the accused on the previous night in his Taxi at Mualbuhvum, Champhai. Ext. P-3 is the medical examination report of the victim and Ext. P-3(a) is his signature. Ext. P-4 is the requisition for medical examination. On cross-examination, at the time of examination, the prosecutrix was accompanied by lady Constable and one civilian who had put her signature as a witness. He took the vaginal swab for laboratory examination for presence of spermatozoa. But, the laboratory report was negative for spermatozoa. He did not examine the accused. He did not find any recent injury on body of the victim except that tender scar due to her earlier operation.

P.W.5 SI Lucy Zosangzuali was posted at Champhai PS at the relevant time of incident. She identified the accused. The FIR was lodged by the prosecutrix on 12.11.2013. The content of the FIR was that the prosecutrix was sexually assaulted by the accused in his Taxi on the night of 11.11.2013 @ 8 PM. Accordingly, Champhai PS Case No. 171 of 2013 dated 12.11.2013 under Section 376(1) IPC was registered. On being endorsed by the Officer-in-Charge, Champhai PS, she investigated the case

In the course of investigation, she went to the place of occurrence but unable to find any clue. She recorded the statement of the prosecutrix and also asked her about the accused. She stated that it was her first visit to Champhai and also stated that the accused had told her that he would force her to sexual intercourse even if she offered resistance to death. She further stated that she had the number of the accused on her phone which she recorded the contact name as Nghaka. Thereafter the matter was enquired through the Champhai Taxi Driver's Association. The association members informed her that Nghaka was once their member but that they had suspended his membership (an ban) since he used to carry liquor in his Taxi. They were informed that Nghaka was a resident of Champhai Venglai and thereafter she arrested him at his residence. He was arrested on 12.11.2013. She recorded the statement of the accused. During interrogation, the accused admitted that he had sexually assaulted the victim (objected by the learned Defence Counsel on the ground that statement before the Police is not admissible). She seized the underwear of the victim which the latter had worn on the night of incident. She forwarded the victim for medical examination and also the seized underwear. She received the medical examination report wherein it was found that her hymen was

ruptured, but there was no sign of injury. The Taxi was checked but it was already washed in the morning. She also recorded the statement of V. Vanlalruata in whose house the victim had put up on that night after the incident, and he was the one who picked her. From her investigation, she found a prima facie case against the accused under Section 376(1) IPC and submitted the Charge Sheet accordingly. Ext. P-5 is the Charge Sheet submitted by her and Ext. P-5(a) is her signature. Ext. P-2 is the Seizure Memo and Ext. P-2(c) is her signature. On her cross-examination, she was posted at Champhai PS for 4 years. During the period, she had conducted investigation more than 200 cases. She seized the underwear of the victim. The victim was present when she seized the underwear but the victim did not put her signature on the Seizure Memo of Ext. P-2. She did not check the body of the prosecutrix and she did not notice any visible injury. The victim's hymen was ruptured but not recent. The victim stated that she got married earlier. However, she stated that she had not seen the accused carrying liquor in his Taxi. She recorded the statements of other witnesses in the Police Station. She was of the opinion that sexual assault could be committed on a woman who is major and who is also a divorcee. She did not see the underwear in the court which she had seized. She did not see the accused washing his Taxi. She only heard from the accused that he had washed it in the morning. The laboratory examination report of the underwear of the victim is negative for spermatozoa.

12. During the course of his examination under Section 313 Cr. P.C., the accused denied all the incriminating evidence appeared against him. But, the accused stated that in the examination, the prosecutrix had boarded in his taxi.

13. D.W. 1 Lavensanga who is a neighbor of the accused stated he had known the accused since childhood days. According to him, the accused had good character, but the prosecutrix, a heavy liquor drinker and they used to see her in liquor shop. He stated that the prosecutrix is a divorcee. He also stated that false allegation had been implicated upon the accused. On cross-examination, he did not know the name of the prosecutrix's father and also did not know the place of birth of the prosecutrix, but he used to see her about ten times without knowing where she was residing. He stated that he is driver by profession and he saw the prosecutrix in the year of 2013, but he did not know the prosecutrix properly as she was not his friend. According to him, the character of the prosecutrix which he mentioned was his

opinion, and he did not see the accused carrying the prosecutrix in his taxi. He admitted that what he knew about the incident was hearsay and did not know the year of the incident. He also stated that when the alleged incident had taken place, he was in his residence.

D.W. 2 Vanlalnghaka is the accused. He has been residing at Champhai Venglai for more than 20 years. He is a driver by profession. In his deposition before the court, on 11.11.2013 at about 7:00 Pm, he saw the victim near taxi stand at Champhai Vengthlang. He thought the victim, a drug addict. When he asked her whether she had taken drugs, she replied him that she had drunk liquor with her friend. The victim told him that they had followed a campaign party from Khawzawl, but on the way the vehicle which they boarded had left them since they spent time for drinking liquor. The victim told her that she was a resident of Khawzawl. He asked her to hire his Taxi if she wanted to proceed to Khawzawl. When she refused to hire his taxi for Khawzawl, he took her back to Champhai Vengthlang taxi stand near Chhaktiang Hotel. The allegation made against him that he had raped her is false. He came to know that the victim had a bad character. He did not bring any weapon to intimidate her. On cross-examination, the accused stated he neither saw the victim nor visited the residence of the victim. The accused was not a friend of the victim before the incident. He admitted that they had exchanged their mobile number when the victim began to sit in his Taxi on the night of the incident. The accused denied that the victim had boarded in his Taxi due to his invitation, but she told him that she wanted to go to Khawzawl. He further denied that he had taken the victim to Mualvuhvum by his Taxi, threatened and raped her in his Taxi. He also denied that he had raped her since she was drunk.

14. The first point of determination is, whether the prosecution proves that accused Vanlalnghaka had sexual intercourse with the victim against her will or consent on the night of 11.11.2013 at around 8:00 Pm at Mualbuhvum, Champhai.

14.a A close and careful scrutiny of documentary evidence at Ext. P-1 (F.I.R.), Ext. P-3 (Medical Examination Report) and Ext. P-5 (Charge sheet, particularly in the list of witnesses) shows that the prosecutrix is a resident of North East Khawdungsei. On the other hand, the accused while taking defence before the court stated that the victim is a resident of Khawzawl which he had derived from her;

she had bad character and heavy drinker of liquor. It appears to me that the accused made a concocted story against the prosecutrix.

14.b In the documentary evidence at Ext. P-1 as well as the oral testimony of the prosecutrix corroborated by the deposition of the Case I.O., I find that the accused had taken the prosecutrix to Mualbuhvum against her will or consent which was also not challenged at any point of time during the trial, particularly when they were cross-examined by the accused. On the other hand, even during examination of the accused under Section 313 of Cr PC, the accused did not explain the incriminating evidence appearing against him that he had taken the prosecutrix to Mualbuhvum which is clear that he admitted the fact. I am holding that the fact is proved by the prosecution even it was denied by the accused in his defence. Simple denial without evidence has no weight.

14.c. It also appears from the documentary evidence at Ext. P-1 and Ext. P-5 as well as the testimony of the prosecutrix that the accused had sexual intercourse with the victim against her will or consent. A close and careful analysis of the testimony of the prosecutrix reveals that she tried to seek help by saying that she would go out for urine when she saw a vehicle passed by but occupants of the vehicle did not hear when she shouted for help. As the prosecutrix was pulled by the accused in the Taxi and as the accused threatened to kill her if she resisted having sexual intercourse, ultimately she submitted herself for sexual intercourse. As soon as she landed, she first informed the brother-in-law of her friend Lalbawhi, who is also cited as witness by the case I.O., but appearance of the witness, was dispensed with since the Court did not receive returnable summons for three consecutive times. Even the prosecutrix's father immediately came as soon as he came to know about the incident from the prosecutrix over mobile phone. In fact, there was no delay of lodging the F.I.R. At the time of cross-examination, the accused even stated, "It is not a fact that I raped her since she was drunk". In the circumstances, I find that the evidence of the prosecutrix inspires confidence.

14.d 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 satiny 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.e. It was contended by the learned Counsel appearing for the accused that there was no sign of injury on the external part of the prosecutrix's body or in her part. I agree with his contention, but I do not agree that the accused had no forcible sexual intercourse with the prosecutrix. Moreover, the counsel for the accused could not discredit the testimony of the prosecutrix during his cross examination and she stood by what she had stated in her examination in chief. Since, the Apex Court observes in *State of Punjab v. Gurmit Singh and others* (supra) that the testimony of the victim in a rape case 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. Hence, I do not find any compelling reason which necessitate for corroboration of the statement of the prosecutrix.

14.f. On examination of the accused under Section 313 of Cr PC, the accused stated that the allegation made against him that she would go to Khawzawl is false. But in his defence, particularly in his cross examination he stated that when the victim came in his taxi she told him she wanted to go to Khawzawl.

14.g. The Apex Court has observed regarding the duty of the Court while trying a case of rape.

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 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.”

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.h In the circumstances, I hold that the prosecution proves that accused Vanlalnghaka had sexual intercourse with the prosecutrix against her will or consent on the night of 11.11.2013 at around 8:00 Pm at Mualbuhvum in his taxi.

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

(a) 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

(b) 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

(c) 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.

15. The second point of determination is whether the accused can be convicted under Section 376 (2) (i) of IPC?

15.a Since the prosecution proves that accused Vanlalnghaka had sexual intercourse with the prosecutrix against her will or consent, the accused can be convicted under Section 376 (1) of IPC.

16. 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 11.11.2013 at about 8:00 Pm. 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

(d) 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

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

- (f) 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
- (g) commits rape during communal or sectarian violence; or
- (h) commits rape on a woman knowing her to be pregnant; or
- (i) commits rape on a woman when she is under sixteen years of age; or
- (j) commits rape, on a woman incapable of giving consent; or
- (k) being in a position of control of dominance over a woman, commits rape on such woman; or
- (l) commits rape on a woman suffering mental or physical disability; or
- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (n) 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.

In the light of the above discussion and reasons thereof, I conclude that the prosecution successfully proves the charge against accused Vanlalnghaka under Section 376 (1) of I.P.C beyond reasonable doubt. Hence, I find guilty against him. Accordingly, the accused is convicted under the said section of law.

17. Fixed 12.6.2015 for Sentence Hearing.

Judgment prepared and delivered in the open court on this 10th day of June, 2015 under my hand and seal.

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

ORDER

Dt. 12.06.2015 - The convict Vanlalnghaka is produced from judicial custody. Learned Addl. Public Prosecutor assisted by the Learned Assistant Public Prosecutor is present. Learned Defence Counsel is also present.

I have heard the learned Addl. Public Prosecutor, Shri Joseph Lalfakawma and the learned Defence Counsel, Shri J.N. Bualteng. Convict Vanlalnghaka is also heard.

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

Per contra, 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.

The convict submits that he has one child and his old aged father is suffering from cancer. Besides that, recently he has been taking treatment from Medicine Specialist.

The submission of the rival parties is considered.

On considering the factual circumstances submitted by the learned Defence Counsel and the convict Vanlalnghaka, I find that a lenient punishment shall be given to him. Hence, the **convict Vanlalnghaka** is sentenced to undergo **Rigorous Imprisonment** for **7 (seven) years** and to pay a **fine of Rs. 1,000/- (Rupees five thousand)** only in default of fine, Simple Imprisonment for another 10 (ten) days.

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 10.6.2015 and is to be attached accordingly.

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

Memo No._____/AD&SJ(A)/2015 : Dated Aizawl, the 12th June, 2015

Copy to: -

1. Accused Vanlalnghaka through Counsel Sh. J.N. Bualteng, Advocate.
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, Champhai 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