

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. 94 of 2014

State of MizoramComplainant

-Versus-

Shri Ranju Malakar (54)
S/o Nogendro Malakar,
R/o Tlabirh Veng, Saipum,
Kolasib District, Mizoram. Accused person

APPEARANCE

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

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

Hearing : 20.5.2015, 26.5.2015 & 27.5.2015

Judgment delivered on : 28.5.2015

Sentence Hearing : 29.5.2015

Order delivered on : 29.5.2015

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 case of the prosecution is that on 12.05.2014 a written First Information Report was received from one Zorinsangi w/o Thanglianzama r/o Vengthar, Kolasib to the effect that during the period from January to April, 2014, the accused had sexual intercourse with the victim, aged about 12 years, for several

times. Hence, Vairengte Police Station Case No. 25 of 2014 dated 12.05.2014 under Section 376 (2) (i) of IPC was registered and duly investigated into.

In the course of investigation, the complainant and the victim were examined and their statements were recorded. The victim was forwarded to Medical Officer, Community Health Centre, Vairengte for medical examination. The medical report revealed that the hymen of the victim was torn, discharge was present and the victim was not mentally normal. The accused was arrested and interrogated. During interrogation, the accused admitted his guilt before the police stating that he had sexual intercourse with the victim several times in between January and April 2014, and he was forwarded for judicial custody. 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, Kolasib District. The case was committed to the learned Sessions Judge, the case being exclusively triable 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. Shri Lalramhluna, Advocate was appointed to represent the accused at the time of hearing on sentence.

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 six witnesses to prove that the accused had committed an 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 adduce defence evidence.

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 (2) (i) of IPC beyond reasonable doubt. In his submission before the Court, the voluntary confession of the accused before the Judicial Magistrate First Class, Kolasib District with the evidences of the prosecution witnesses are sufficient for recording conviction of the accused under Section 376 (2) (i) of IPC.

9. On the other hand, the learned Counsel J.N. Bualteng contended that the delay of submitting FIR is a ground of acquittal of the accused. In the submission made by him, there was no sign of rape, or of any injury on the external or private parts of the victim. The learned counsel also submitted that testimony of the prosecutrix was found to be self contradictory and also inconsistent with testimony of the other prosecution witnesses. According to the learned counsel, conviction cannot be recorded against the accused.

POINTS FOR DETERMINATION:

10. a) Whether the prosecution proves that accused Ranju Malakar had sexual intercourse with the victim more than once in between January to the April 2014 in different places?

b) Whether the victim could give consent to the accused to have sexual intercourse with her?

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

11. Discussion, Decision & Reasons Thereof :

P.W.1 Smt. Zorinsangi is the complainant. She identified the accused. The victim is the daughter of her cousin sister Smt. Lalnunmawii. She stated that the victim's father left the victim when the latter was about three months old and the victim did not know him. The victim and her mother lived with her grandparents at

Saipum village. The profession of the victim's family is cultivator and they are illiterate. The entire family of the victim including her mother and her grandparents are mentally below average but they are not physically handicapped. The incident occurred during the time when the victim was living with her mother and grandparents at Saipum village. On 21.4.14, the day was Monday, Smt. Lalnunhlimi, the aunty of the victim came to Kolasib to pay condolence due to the death of the complainant's father on 19.4.14. The accused is the brother-in-law of the victim's grandmother. Smt. Lalnunhlimi had a suspicion on the accused having illicit relationship with the victim since the accused had often asked the victim to accompany him to collect firewood. Smt. Lalnunhlimi also stated that she had asked her mother not to let go the victim with the accused, and from that time she was not allowed to go with the accused. On 21.4.14 the complainant informed the mother of the victim over phone to send her daughter to Kolasib so that she would keep her for admitting in School at Kolasib, but she did not tell what she had heard from Smt. Lalnunhlimi since the mother of the victim was also mentally below normal average. So, the victim was sent to Kolasib and she paid the fare. On the day she bathed the victim, she found the victim's breast very soft, but when she asked her if she had relationship with anyone, but the victim made a negative reply. Thereafter, the victim told her friend Cicy that in her village one person used to touch her breast and had sexual intercourse with her, and the victim's friend told the complainant. The complainant informed the matter to her relatives and they approached the CWC at Kolasib as well as the Police. The CWC made a phone call to Vairengte P.S. since the incident occurred at Saipum which was within the jurisdiction of Vairengte P.S. On the advice of the Police personnel at Vairengte she lodged the FIR which was reduced into writing by the Police. The complainant also brought the victim. The victim was medically examined at Kolasib as well as at Vairengte after the FIR was lodged. Before taking action, when her family members assembled, they put questions to the victim but the victim remained silent. After about three hours the victim stated that the accused would hang her if she made any disclosure. When they pacified and told the victim that there was nothing to fear, the victim stated that in different places such as 'at farm, broom-grass area and bamboo-grass area' which she named seven places. Thereafter, they approached CWC and Police at Kolasib. After lodging the FIR at Vairengte P.S., the Police recorded her statement.

The Police also recorded the statement of the victim. Her statement was also recorded at Kolasib by a Judicial Magistrate.

At the time of giving deposition, the victim was around 12 years of age and in that year she admitted her in Class-1. The victim has a low IQ like her other family members. In the opinion of the complainant, the victim was more affected due to the incident of sexual exploitation. The Police seized the Birth Certificate of the victim. She proved the FIR at Ext. P-1. She also proved the copy of Birth Certificate at Ext. P-2. On cross-examination, she stated that while bathing the victim she had not noticed any injury but found the victim's private part big for her age. She further stated that according to the victim the incidents happened in between January and April 2014 and they came to know about the incident sometime in the month of April 2014. As the family of the victim had no Birth certificate, she made arrangement for the same and it was not solely for this case. She did not know the date of birth of the victim, but the victim's mother had stated the on 2nd October 2014 the victim would be 13 years. She did not know who had written the F.I.R. at Vairengte P.S., but the F.I.R. was read out to her, and she knew its contents.

P.W.2, who is the victim in this case was asked the following preliminary questions and she replied as follows;

Preliminary Questions:

Q1. What is your name?

Ans: Lalremruati

Q2. How old are you?

Ans: 13

Q3. Where do you live?

Ans: Kolasib Vengthar

Q4. With whom are you living at present?

Ans: With my mother.

Q5. Do you go to School? In which class?

Ans: Yes. Class-1.

Q6. Do you know which year is this year?

Ans: I don't know.

Q7. Do you know in which month we are at present?

Ans: I don't know.

Q8. Do you know the meaning of oath?

Ans: No.

Q9. Do you know that you have to speak the truth today?

Ans: Yes.

Q10. What will happen if you lie?

Ans: They are beaten.

According to my predecessor, though the victim had no knowledge of time, but her replies to the questions were found rational. The victim understood the question and she knew her duty to speak the truth and the consequences of lying. Accordingly, she was found competent to testify without administering oath.

Examination-in-Chief:

Qa. With whom you lived at Saipum?

Ans: With my mother.

Qb. Whether your grandfather and grandmother lived in the same house?

Ans: Yes.

Qc. Do you know your father?

Ans: I know his name only, I do not see him.

Qd. Tell me how accused Ranju acted upon you.

At the beginning, the accused came to our residence at night. When the accused asked my grandmother where I was, my grandmother told him that I was sleeping. The accused then came to our bedroom and held my breast; I got up and went to my grandmother. On the following morning, the accused came again

and asked my grandmother to accompany him to collect firewood, and with permission of my grand-mother I went with the accused to his farm to collect firewood. After collecting firewood, the accused called me to come close to him. The accused then held my breast and kissed me, but I stated that I felt bored and left him. I never told about the incidents to my relatives. The accused again came to our residence on that night and tried to hold my breast, but I ran to my grandfather. I did not disclose the incident since the accused stared at me. The accused had sexual intercourse with me. One morning, the accused came again and asked me to accompany him to collect firewood, my grandmother told me to bring firewood since we did not have. The accused told me to come close to him and tried to have sexual intercourse with me, took off my pant, gagged my mouth by his hands and held my breast, but the accused could not have fulfilled his desire. The accused had sexual intercourse with me at broom-grass area on other day. On this day, the accused took permission from my grandmother to accompany him to collect firewood. On that night, the accused did not visit us, but on the following morning the accused came. The accused again invited me to collect firewood saying that Lawmsanga and Lalnunpuia would also come. Lawmsanga and Lalnunpuia also came. On that day, the accused sent Lawmsanga and Lalnunpuia to bait fish, and in their absence the accused held my breast and kissed me. When Lawmsanga and his friend called us, I told the place where we were, the accused did not continue. Lawmsanga and Lalnunpuia were younger to me. Besides the incidents, the accused had sexual intercourse with me at his farm house and garden. But, I never informed my relatives. At Kolasib, my aunty Zorinsangi bathed me; I was also admitted to school. I had a friend, whose name is Cicy. I had other friends also. I told to my friend Cicy how accused Ranju had acted upon me, my friend Cicy later told the incident to my aunty Zorinsangi. I told the incident when my Aunty Zorinsangi and other relatives asked me about the incident with the accused Ranju. I first told the incident to my friend. I was brought to Doctor and Police. I told the incident to the Police when I was asked. On her cross examination, she stated, our school uniform is white shirt and grey skirt. We were 19 students in class-1. Accused Ranju took care of me and with my grandmother's knowledge he bought Rumpum and Papawr for me. I deny that I did not see the private part of accused Ranju. I further deny that accused Ranju did not have sexual intercourse with me.

P.W. 3 Dr. C. Laldinpuii has been posted as Medical Officer at Vairengte CHC since 2009. She conducted few examinations of victims of sexual assault. For such examinations, requisitions use to be received from the Police. In the instant case also, requisition was received on 12.5.2014 for medical examination of the victim, aged about 12 years. On the same day, she conducted examination. Initially, she asked the history of the incident to the victim, but the victim did not give her any reply, but her aunty, who accompanied her stated that the victim is below normal healthy person (a chiang vak lo). From the victim's appearance she could also make out that she was below normal healthy person, so she recorded the statement of her aunty while recording the brief history of the incident. She also made a similar record regarding the finding on physical and mental health. According to the victim's aunty, the incidents occurred in the months between January and April 2014. The examination was held in the month of May 2014. On genital examination, the victim's secondary sexual organs had not developed, hymen was torn. She did not find any fresh tear of the hymen and there was no bleeding in the victim's hymen at the time of examination since the incident complained of occurred sometime back. Ext. P-3 is the Medical Examination Report of the victim and Ext. P-3(a) is her signature. On cross examination, she stated that one nurse accompanied her in the examination room. She further stated that did not find any injury on the body of the victim and also did not find any fresh injury on her genital organ in her examination. She admitted that there can be rupture of hymen due to reasons other than penile penetration such as by accident or in some kind of sports. She also stated that she had never seen the victim prior to her examination and she did not know the victim's character.

P.W. 4 ASI Cindy Vanlalhriatpuii identified the accused. She has been posted at Vairengte Police Station as Asst. Sub-Inspector since the year of 2013. On 12.5.2014, one Zorinsangi W/o Thanglianzama of Vengthar, Kolasib lodged FIR to the effect that the accused had committed rape on the victim aged about 12 years for several times with effect from the month of January to the month of April, 2014. As a result, the Officer-in-Charge, Vairengte Police Station registered a case against the accused bearing Registration No. 25 of 2014 dated 12.5.2014 under Section 376(2)(i) of IPC. The case was endorsed to her for investigation. In the course of investigation, she examined the informant and recorded her statement. Thereafter,

she examined the victim who was produced before her by the informant. During examination, the victim told about the incident how accused Ranju Malakar had sexual intercourse with her for several times with effect from the month of January 2014 (after closure of school) to the month of April 2014. She then made a requisition to the Medical Officer, Vairengte Community Health Centre to examine the victim and also produced her through Constable Zoremsangi. She received the Medical Examination Report of the victim. From the report of the Medical Officer, there was a tear in the hymen of the victim and discharge was present. The report of the Medical Officer also indicated that the victim was mentally retarded. On finding a prima facie case against the accused under the above section of law, she sent Constable No.45 Mickey Lalrohlua to apprehend the accused. When the accused was brought to Vairengte Police Station, she arrested the accused on 13.5.2014. After arrest of the accused, the accused was interrogated by her. The accused admitted that he had sexual intercourse with the victim several times with effect from the month of January to the month of April 2014, which was in consonance with the statement made by the victim before her. Since she was not competent to submit Charge Sheet being ASI, she handed over the Case Diary wherein all the vital documents were available to the Officer-in-Charge of Vairengte Police Station. She proved the requisition for medical examination in respect of the victim at Ext. P-4. She also proved the requisition for medical examination in respect of the accused Ranju Malakar at Ext. P-5. On cross-examination, she stated that she had arrested the accused and had also taken the investigation, but without visiting the place of occurrence. She further stated that she had not seized any material from the accused and the victim was 12 years old when she was brought before her. She also recorded the statements of the informant, the victim and the accused at Vairengte Police Station. She finally stated that she had made a requisition to examine the victim before the Medical Officer and also made a requisition to examine the accused in respect of his fitness for detention.

P.W. 5 Inspector N.R. Nair identified the accused Ranju Malakar. At the relevant time of the incident, he was posted as Officer-in-Charge at Vairengte Police Station. On 12.5.2014, one Zorinsangi W/o Thanglianzama of Vengthar, Kolasib lodged FIR at Vairengte Police Station to the effect that the accused had committed rape upon the victim aged about 12 years for several times with effect

from the month of January to the month of April, 2014. As a result, he registered a case against the accused bearing registration No. 25 of 2014 dated.12.5.2014 under Section 376(2)(i) of IPC. He endorsed the case to A.S.I. Cindy Vanlalhriatpuii for investigation. He stated that A.S.I. Cindy Vanlalhriatpuii had investigated the case. But, since she was only ASI of Police, she was not competent to submit Charge Sheet. Hence, ASI Cindy Vanlalhriatpuii handed over him the Case Diary and vital documents. On checking the Case Diary and the documents, he found a prima facie case under Section 376(2)(i) of IPC. He, therefore, submitted Charge Sheet. He proved the FIR at Ext. P-1 and the FIR Form at Ext. P-7 in which he had endorsed the case to ASI Cindy Vanlalhriatpuii for investigation. The Charge Sheet at Ext. P-6 was also proved. On cross-examination, he stated that he had not visited the place of occurrence since ASI Cindy Vanlalhriatpuii was entrusted by him to take up the case. He further stated that ASI Cindy Vanlalhriatpuii could take pre step investigation, and she was the only one who could take the case of offence against women due to the direction of the Supreme Court. She admitted that she had found a prima facie case against the accused derived from the statements of the witnesses as well as the statement of the accused and the medical report.

P.W. 6 Shri H. Laldusanga, the learned Judicial Magistrate First Class, Kolasib_stated that on 4.8.2014, the victim aged about 12 years was produced in his Court for recording judicial statement. Accordingly, a voluntary judicial statement of the victim was taken by him. On 5.8.2014, the accused Ranju Malakar was produced before him from judicial custody, Kolasib for recording confessional statement. Before taking the confessional statement, he duly explained to the accused the meaning, purposes and possible consequences of recording confessional statement as required by Section 164(4) Cr. P.C. Accordingly, a confessional statement of accused Ranju Malakar was taken which was made by the accused voluntarily. He proved the Judicial Statement of the victim recorded by him at Ext. P-8. He also proved the Confessional Statement of the accused recorded by him at Ext. P-9. On cross-examination, he did not remember which day was the date of 5.8.2014. He stated that one Police Constable in uniform brought the accused into his chamber and recorded his confession, but the Police Constable was not present when the confession was recorded by him. He also stated that he had given time to the accused for about 2 hours before recording his confession. However, it was denied by him he had not given sufficient time to the accused. He also denied that he

had recorded confession of the accused by threatening him. He admitted that the accused had not appeared to be frightening.

11. During his examination under Section 313 Cr. P.C., the accused denied all the incriminating evidence appeared against him. It is pertinent to mention here that in the examination, the accused stated gave voluntary judicial statement before the Judicial Magistrate First Class at Kolasib. But, he also stated that he was assaulted by the police in custody and he was told by the police to inform the Magistrate that he had raped the victim.

12. The first point of determination is, whether the prosecution proves that accused Ranju Malakar had sexual intercourse with the victim more than once in between January and April, 2014 in different places.

12.a Before recording evidence of the victim, my predecessor asked her preliminary questions in order to know whether she was competent to testify. After coming to know that the reply of the victim was rational, she understood the question could and she knew her duty to speak the truth and the consequences of lying, my predecessor recorded the evidence of the victim.

12.b The victim stated that she had accompanied the accused to collect firewood with the permission of her grandmother for several times on different dates. In her testimony, the accused held had her breasts, kissed her and had sexual intercourse at different places for several times. She did not tell about the incidents to her relative at Saipum village due to fear of the accused. However, she told her friend Cicy how accused Ranju acted upon her for the first time at Kolasib. According to the victim, her friend Cicy told the incident to her aunty Zorinsangi. She later told the incident how Ranju acted upon her to her aunty and her other relatives when she was asked by them. She also stated she was bathed by her aunty Zorinsangi and the latter also admitted her in school in which she was a student of Class-1. In the cross-examination, the victim's testimony was not shaken by the learned Counsel appearing for the accused. It is pertinent to mention here that the victim denied in the cross-examination that she had neither seen the private part of the accused nor he had sexual intercourse with her. In the circumstances, I find that the evidence of the victim inspires confidence.

13c In the case of **State of Punjab vs. Gurmit Singh : AIR 1996 SC 1393**, 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."

13.d P.W.1 Smt. Zorinsangi who is the complainant identified the accused. The victim is the daughter of her cousin sister Lalnunmawii. According to her, the incident occurred when the victim was living with her mother and grandparents at Saipum village. In her testimony, on 21.4.2014, the victim's aunty Lalnunhlimi came to Kolasib and told her that she had suspicion on the accused having illicit relationship with victim. On that day itself, she informed over phone to the mother of the victim to send her daughter to Kolasib so that she would keep her for admitting in school. When she bathed the victim, she found her breast very soft. She came to know from the victim's friend that one person had used to touch the victim and had sexual intercourse with her. The victim on being asked finally told them that the accused would hang her if she disclosed the incident. After pacifying the victim, the victim mentioned seven places, such as, lo ah te, di hmunah te, mau hmunah te. Thereafter, they approached CWC and Police at Kolasib. The CWC made a phone call to Vairengte Police Station having its jurisdiction of Saipum village. She then lodged FIR at Vairengte Police Station. She stated that the victim was medically examined by Medical Officer. She also stated that the police recorded her statement. She finally stated that the statement of the victim was recorded by the police, and the victim's statement was also recorded by a Judicial Magistrate at Kolasib. The evidence of the P.W.1 Smt. Zorinsangi also inspires confidence and corroborates the evidence of the victim.

13.d. P.W.3 Dr. C.Laldinpuii, the Medical Officer who examined the victim on requisition of the police stated that the hymen of the victim was torn. In the medical examination report at Ext.P-3, it is also shown that discharge was present. The evidence of the Medical Officer also corroborates the evidence of the P.W.1 Zorinsangi.

13.e P.W.6 Shri H.Lalduhsanga recorded voluntary judicial statement of the victim on 4.8.2014. He also recorded confession of accused Ranju Malakar on 5.8.2014. In his testimony, before recording confession, he explained to the accused the meaning, purposes and possible consequences of recording confession and recorded the confession made by the accused voluntarily. The learned Counsel for the accused could not shake the statements of the prosecution witness.

In the judicial statement of the victim at Ext. P-8, it is shown as follows:-

'I do not remember the date. It was in the month of January, this year, during school holidays, Pu Ranju used to come to our residence and asked me to accompany him to collect firewood. I asked permission my grandmother. My grandmother told me, "Go, we do not have firewood". The, Pu Ranju helped me in collecting firewood. Thereafter, he wanted to have sexual intercourse with me, undressed me, took out his penis and inserted into my private part with his penis. Though I felt pain and shouted, but he continued to do. Pu Raju said, I will hang you to death if you if you disclose". I was scared of him so I never disclosed.

'Pu Ranju had sexual intercourse more than once. Once, he came to our residence. As there was no one, he tied me my hands and legs with rope and had sexual intercourse with me. I cannot say how many times he had sexual course with me, but it was many times. When Pu Ranju had sexual intercourse with me for the first time, my private part was bleeding, there was blood stain in my underwear. I got scared of Pu Ranju, so I did not disclose to anybody. I washed my underwear secretly.'

In the confession of accused Ranju Malakar, it is stated that he had sexual intercourse with the victim for six times in between January to April 2014, and the victim asked him Rs. 20 and sometime Rs 50 which he gave her when he had sexual intercourse.

In the examination of the accused under Section 313 of Cr PC, he stated that he made confession before the Judicial Magistrate First Class, Kolasib due to the threatening from the police, but this is not believable since he had not stated before the Court any point of time before his examination under Section 313 of Cr PC. The Apex Court in the case of Shankaria Vs. State of Rajasthan, AIR 1978 SC 1248 held that where the confession was not retracted at the earliest opportunity but after lapse of months when prosecution evidence is closed and the accused for the first time during examination under Section 313 retracts the confession, the confession could not be accepted as not voluntary.

13.f In the circumstances, I hold that the prosecution proves that accused Ranju Malakar had sexual intercourse with the victim more than once in between January and April, 2014 in different places.

14 The second point of determination is whether the victim could give consent to the accused for sexual intercourse with her at the relevant time of incident?

14.a The Birth Certificate of the victim was produced and proved at Ext.P-2 by the prosecution without objection from the defence. P.W.1 Zorinsangi stated that the mother of the victim had informed her that the victim would attain 13 years on 2nd October 2014. There is no difference on the date of birth of the victim in respect of the statement of P.W.1 Zorinsangi and the Birth Certificate of the victim. At any point of time, the defence had not challenged the authenticity of the Birth Certificate. Hence, I hold that the victim being 12 years old at the time of incident could not give consent to the accused for sexual intercourse with her at the relevant time of incident.

14.b 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 third 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 Ranju Malakar had sexual intercourse with the victim aged about 12 years, the accused can be convicted under Section 376 (2) (i) 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 in 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

- (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 time 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 or 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.

17. It was contended by the learned Counsel for the accused that the delay of lodging the FIR by the complainant makes the case doubtful. It is no doubt that there was delay in the present case, but the delay of lodging the FIR was due to late information received by the complainant since the victim had lately disclosed the incident to her relatives due to fear of the accused.

18. It was also contended by the learned counsel that there was no sign of injury on the external part of the victim's body or in her private part. I agree with the contention of the learned Counsel that there was no sign of injury on the external part of the victim's body, but I do not agree with his contention that there was no injury on her private part since the medical examination report clearly indicates that the hymen of the victim was torn though not fresh one and discharge was present.

19. Finally, I find the testimony of the victim inspiring confidence and consistent with statements of the other witnesses as well as with the medical evidence.

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

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."

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

21. In the light of the above discussion and reasons thereof, I conclude that the prosecution successfully proves the charge against the accused 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.

22. Fixed 29.5.2015 for Sentence Hearing.

Judgment prepared and delivered in the open court on this 28th day of May, 2015 under my hand and seal.

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

ORDER

Dt. 29.05.2015 - The convict Ranju Malakar 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 Lalramhluna. Convict Ranju Malakar 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/-.

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 two minor children and old aged mother.

The submission of the rival parties is considered.

On considering the factual circumstances submitted by the learned Defence Counsel and the convict Ranju Malakar, I find that a lenient punishment shall be given to him. Hence, the **convict Ranju Malakar** is sentenced to undergo **Rigorous Imprisonment for 10 (ten) years** and to pay a **fine of Rs. 5,000/- (Rupees five 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 28.05.2015 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 29th May, 2015.

Copy to :-

1. Shri Ranju Malakar, Central Jail, Aizawl.
2. District Magistrate, Kolasib.
3. Sessions Judge, Aizawl Judicial District, Aizawl.
4. Addl. PP/APP, Aizawl District, Aizawl.
5. Special Superintendent Central Jail, Aizawl District, Aizawl.
6. DSP (Prosecution), District Court, Aizawl.
7. Investigating Officer through O/C C.A.W. Cell, Aizawl.
8. In-Charge, G.R. Branch.
9. Registration Section.
10. Guard File.
11. Case Record.
12. Calendar Judgment.

P E S H K A R