

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. 129 of 2014

Crl Tr. No.1552 of 2014

State of MizoramComplainant

-Versus-

Shri Lalmalsawma (24)
S/o Vanlalchhuanga Khiangte,
R/o Ratu Hall veng. Accused person.

APPEARANCE

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

For the accused persons : Shri R.Thangkanglova, Advocate.

Hearing : 12.11.2015

Judgment delivered on : 23.11.2015

Sentencing Order on : 30.11.2015

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

The offence of rape allegedly committed by the accused upon the victim, who was suffering from mental and physical disability, taking advantage of the victim's disability is the subject matter of this trial.

2. The prosecution story in a nut shell is that a written F.I.R. was received from Vanlaldiki D/o Rochhunga of Ratu Hall veng on 26.6.2014 to the effect that on the day before, at around 2:30 Pm, the accused raped her younger sister who was mentally abnormal and physically handicapped at Community Hall, Ratu. Hence, Darlawn P.S. Case No. 18 of 2014 dated 27.6.2014 under Section 376 (2) (I)

of IPC was registered and investigated by S.I. C.Zonunmawia of Darlawn Police Station.

In the course of investigation, the complainant was examined and her statement recorded. The P.O. was visited and rough sketch map was drawn. The victim was forwarded to the Medical Officer, Primary Health Centre, Darlawn for medical examination. The medical examination report ascertained that the victim's hymen had been ruptured and the vaginal smear was present at the time of examination. The Case I.O. also confirmed mental and physical disability of the victim. As the victim could not be sent to Judicial Magistrate in Aizawl, the Executive Magistrate, Darlawn recorded the statement given by victim's elder sister Lalnunpuii, which the victim affirmed.

The accused was arrested after informing the ground of his arrest in the presence of witnesses. He was thoroughly interrogated and admitted his guilt before the police. According to the accused, he enticed the victim at Community Hall, Ratu and raped her by inserting his forefinger and middle finger inside the vagina of the victim and later inserting his penis (sexual organ) inside her vagina and then ejaculating. A prima facie case under section 376(2) (I) of IPC being made out, the Case I.O. submitted charge sheet.

4. Learned Shri Haulianthanga was initially appointed to defend the accused at the expense of the State, but later, the learned Counsel was changed to learned Shri R.Thangkanglova due to personal difficulty.

5. Upon committal, charge u/S 376(2)(I) of IPC against the accused person was framed, read over and explained in the language known to him, to which he pleaded not guilty and claimed to be tried.

6. In the course of trial, the prosecution produced and examined six out of eight witnesses to prove that the accused had committed the offences punishable under Sections 376(2)(I) of IPC. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC. In his examination, the accused completely denied the suggestion that he had committed rape upon the victim. The accused also produced and examined his witnesses including himself.

I heard the learned Addl. P.P. Shri Joseph Lalfakawma appearing for the State as well as the learned Counsel Shri R.Thangkanglova for the accused person. I also carefully perused the entire evidence on record.

7. **Points For Determination :**

a) Whether the prosecution proves that the accused had sexual intercourse with the victim who could not physically resist to the sexual act on 26.6.2014 at around 2:30 Pm in Community Hall, Ratu?

b) Whether the accused person is liable to be convicted under Sections 376(2)(I) of IPC?

8. **Discussion, Decision and Reasons Thereof:-**

Let me first discuss with the evidence of P.W.4, Dr. Laldinpuii, who deposed that on 27.6.2014 at around 10.10 Pm she had examined the victim on police requisition in connection with the instant case. On examination, she found as follows- (i) The victim was mentally retarded, physically handicapped and could not walk since birth, (ii) When she examined the victim's private part, she found that the victim's hymen was not intact. She proved the requisition for medical examination at P-2 and also proved the medical examination report at Ext. P-3. It is not in dispute before me that the victim was not examined by Dr. Laldinpuii. As the hymen of the victim was found intact, it thereby suggests that the victim got injury in her private part. On cross-examination, the accused tried to discredit the evidence of Dr Laldinpuii that hymen not intact can be caused by taking physical exercise.

In the cross-examination of P.W.4, Dr. Laldinpuii, she stated that hymen not intact can be caused by taking physical exercise. But, it appears to me that the victim could not take such physical exercise which possibly caused injury to her hymen since she was physically handicapped and could not walk since her birth. Anyhow, let me see the evidence of the other prosecution witnesses.

Keeping in view of the above evidence, let me come to the evidence of P.W. 1, **Vanlaldiki D/o K.Rothangpuia of Ratu Hall Veng**, who is the elder

sister of the victim and who lodged F.I.R. with the Officer-in-charge of Darlawn Police Station. According to her, the accused is her neighbor.

On 26.6.2014 at around 2:30 Pm her elder sister K.Lalnunpuui called her over mobile phone informing that her younger sister, who is the victim in the present case was ravished by the accused. At the time of conversation over the mobile phone she was working in their jhum field about 7 Kms from their residence. Immediately, they rushed to their residence and saw the victim. The victim reported to her that Lalmalsawma had committed rape upon her. Thereafter, Lalmalsawma also came to their residence. In their presence, her sister, who is the victim pointed her finger at Lalmalsawma telling them that the person who had raped her was Lalmalsawma. The victim was mentally abnormal and physically handicapped. On the same night, they went to Darlawn for filing FIR. The victim also accompanied them. On the following morning, she lodged FIR to the Officer-in-Charge, Darlawn Police Station. As soon as the case was registered, the victim was sent to Physical Health Centre, Darlawn for medical examination. Thereafter, the police examined her and the victim, and their statements were recorded. She proved the FIR at Ext. P-1 submitted by her.

On cross-examination, the FIR was written by her in her residence in the presence of her family. Her elder sister Lalnunpuui and her younger sister (the victim) accompanied her to the police station at the time of filing the FIR and it was registered by one Police Officer. She stated that there was no enmity between her and the accused. She admitted that she had not seen any sign of assault in her body except in her jean pant. She denied that the victim had weakness in sexual relationship. She further denied that she had not suspected it a case of rape. She also denied that she did not know whether any eye witness was there. The oral testimony and the documentary evidence, in my opinion, are straight forward and trustworthy and the accused has not discredited her evidence.

P.W.2 Zolianthuami W/o H. Kapkima (L) of Ratu Hall Veng deposed that she knew the accused and the victim. They are her close neighbors.

On 26.06.2014, the accused Lalmalsawma committed rape upon the victim. Thereafter, some blood was oozing out from her vagina and the victim later

had convulsion, as a result the victim died on 08.07.2014. In their opinion, the cause of death of the victim was due to commission of rape upon her by the accused. The victim was mentally abnormal and physically disable. The victim could not walk. The victim's father informed her that the accused had committed rape upon his daughter. Thereafter, she went to the residence of the victim. When she asked the victim, she replied her that Lalmaltoma (Lalmalsawma) penetrated her vagina which she felt pain. On cross-examination, she has no blood relationship with the victim, but she is her close neighbor. Since she came to know about the incident, she was listed as witness. But, she did not see the incident. She admitted that she had been told by the victim's father as well as the victim that the victim was sexually assaulted by the accused Lalmalsawma. She did not know the exact cause of death of the victim, but her opinion is that she had died since she was sexually assaulted by the accused Lalmalsawma. She also stated that the victim appeared to be healthy

P.W. 3 K. Lahmachhuani D/o K. Rothangpuia of Ratu Hall Veng knew accused Lalmalsawma, and the victim is her elder sister.

On 27.06.2014 at around 2:30 Pm her elder sister moved in a sitting posture to Community Hall near their residence as she was physically handicapped and could not walk on foot. When they saw the victim moving out from the Community Hall, her pant got wet and some blood was oozing from her vagina. When they asked the victim, she replied them that Lalmaltoma (Lalmalsawma) had penetrated his penis into her vagina which she felt pain. She noticed that the victim had fear of the accused and after a week she died. On cross-examination, they do not have any certificate in respect of the physical handicap of the victim. She was not present in the Community Hall when the accused committed rape upon the victim and she did not see the accused committing rape upon the victim.

P.W. 5 ASI Zasangi of Darlawn PS knew the accused. On 27.6.2014 at around 9:30 PM, written FIR was submitted by one Vanlaldiki D/o Rothangpuia of Ratu Hall Veng to the effect that on the day before at around 2:30 PM, accused Lalmalsawma S/o Vanlalchhuanga of Ratu Hall Veng who is her neighbor committed rape upon her younger sister, aged about 24 years (who was mentally abnormal and physically handicapped who could not walk). Hence, the OC,

Darlawn PS, Aizawl District registered Darlawn PS Case No. 18/2014 dt.27.6.2014 u/s 376(2)(I) of IPC was registered and duly investigated into.

In the course of investigation under the supervision of SI C. Zonunmawia, she examined the complainant and recorded her statement. The PO was visited and a sketch map was drawn by her. The victim was forwarded to the Medical Officer, PHC, Darlawn for medical examination. The medical report stated that the victim's hymen was ruptured and vaginal smear was present at the time of examination. As the victim was mentally abnormal and physically handicapped, she could not be sent to Chief Judicial Magistrate in Aizawl for recording her statement. The situation being so, her statement was recorded by Executive Magistrate, Darlawn with the help of her sister Lalnunpuui.

Thereafter, the accused was arrested on 28.6.2014. While interrogating the accused, he admitted that he had enticed the victim to Community Hall, Ratu and raped her by inserting his forefinger and middle finger inside the vagina of the victim and later inserting his penis inside her vagina and then ejaculating his semen. Hence, a prima facie case u/s 376(2)(I) of IPC was found by her. On 29.6.2014, she handed the charge of investigation to the OC, SI C. Zonunmawia with the Case Diary since she was not competent to submit Charge Sheet. She proved the FIR, the requisition for medical examination of the victim, the medical examination report of the victim, the Form of FIR, the sketch map of the PO, the Arrest Memo and the statement of the victim before the Executive Magistrate, Darlawn.

On cross-examination, the victim could not speak properly, but it could be understood from her gesture with the help of her relatives. As she did not know the medical term, she did not know whether the victim's hymen was ruptured or not. But, she denied that the accused had not penetrated his penis into the vagina of the victim. She also denied that she deposed before the Court on the basis of her speculation since the victim could not speak properly. There was no eye witness of the incident in the present crime.

P.W.6 SI C. Zonunmawia of Darlawn PS knew the accused. He registered the present case and endorsed ASI Zasangi to investigate the case. He

supervised ASI Zasangi during the course of investigation. As ASI Zasangi was not competent to submit Charge Sheet, she handed over him the charge of investigation as well as the Case Diary on 29.6.2014. Before submitting the Charge Sheet, Death Certificate of the victim was produced by her relative. On finding a prima facie case u/s 376(2)(I) of IPC, he submitted Charge Sheet to the CJM, Aizawl. He proved the FIR submitted by him, the requisition for medical examination of the victim, the medical examination report of the victim, the Form of FIR in which he had endorsed the case to ASI Zasangi for investigation, the sketch map of the PO drawn by ASI Zasangi, the Arrest Memo prepared by ASI Zasangi, the statement of the victim before the Executive Magistrate, Darlawn, the Charge Sheet and the Death Certificate of the victim. On cross-examination, he stated that ASI Zasangi had almost completed investigation but he submitted Charge Sheet. He further stated ASI Zasangi had sent the accused to have confession before the Judicial Magistrate. However, the accused did not confess his commission of crime before the Magistrate. The victim could not speak properly, but it could be understood from her gesture with the help of her relatives. She was physically handicapped. The distance between the residence of the victim and the Ratu Hall is about 100 meters. There was no eye witness of the incident in the present crime. He denied that all the evidences adduced by the witnesses are hearsay evidences.

In the opinion of S.I. C. Zonunmawia, the cause of death of the victim was due to frequent epilepsy as a result of torture upon her by the accused which he derived from the examination of witnesses, as the victim used to have epilepsy occasionally before the incident.

Ext. P-7 is the statement recorded by Shri Allan Lalthanzara. As he is Executive Magistrate, he is not competent to record the judicial statements of the victim or any other prosecution witnesses under Section 164 of Cr PC. In my considered view, the record of statement of Lalnunpuii who is the late victim's elder sister is a strong circumstantial evidence inasmuch as the record of statement at Ext. P-7 was not objected by the accused during trial. The statement recorded by the Executive magistrate is as follows;-

**'OFFICE OF THE BLOCK DEVELOPMENT OFFICER
DARLAWN R.D.BLOCK**

No. C.12012/1/07/BDO/

Dated Darlawn 28th June, 2014

RECORD OF STATEMENT OF VICTIM

On 28th June, 2014, 10.00 A.M., police officials from Darlawn Police Station brought before me was allegedly a victim of rape by Lalmalsawma (24), a neighbor. The victim had been a mentally and physically challenged person since birth and has polio and regular epileptic fits/convulsions. It also appears she had a speech impediment. Since she was not in a position to give statement due to the reasons cited above, she was accompanied by her sister Lalnunpuii who gave the victim's statement on her behalf.

Below is the statement given by Lalnunpuii to me:

"Ni 27/6/14 hian ka nauchu Hall atangin a rawn chhuak ka hmu a, ka hruai haw a, a samah te chuan maimawmril akai a. Ka rinhlelh avangin thu ka zawt a, ka nauchuan a serh a kawka a. 'Ana, Lalmalsawma'n a ti alawm' a ti a"

I also asked the victim if the above statements were accurate and she replied in the best manner possible in the affirmative.

**Recorded by:
Sd/-Block Development Officer
Darlawn R.D.Block
&**

**Executive Magistrate
Aizawl District : Mizoram.'**

The above is the evidence adduced by the prosecution witnesses. It is not in dispute from the entire record of evidence of the prosecution and the defence witnesses that the victim is mentally and physically disabled, particularly her speech

impediment and she moved without walking on foot. The victim appears to me, she was sexually assaulted by the accused. There is sufficient material in the evidence.

The offence of rape committed by the accused is proved by circumstantial evidence.

Let me see the defence evidence also-

D.W 1 Lalhunthari W/o Vanlalchhuanga R/o Ratu who is the mother of the accused knew the victim. She is related to the victim by clan. According to her, the accused slept the whole day (but later retracted). The accused went to the victim's residence for pardon at around 6 Pm. But, the accused told her that he had informed to the victim's family about his non involvement in the rape case. On cross-examination, the accused had a murder case earlier. She did not know whether the accused had gone out or not as she was sleeping on that day. She did not know whether the accused had taken drugs or not on that day or he was a drugs addict. She admitted that the confessional statement made before the Magistrate by the accused and her statement is contradictory.

D.W. 2 Lalmalsawma S/o Vanlalchhuanga R/o Ratu, who is the accused stated that the victim was below average, but did not know whether the victim is alive or not. While sleeping in their house, the victim's father came to their house and jokingly asked his mother whether he had committed rape upon her. When awoke, at around 2 Pm, his mother told him about the victim's father coming to their house and queries were made. He then rushed to the house of the victim and asked the victim's father whether he had suspicion upon him. He asked the victim's father to take the victim to Darlawn Hospital to check her. They immediately took the Hospital and examined her, but, he did not know about the report. However, after the Doctor was examined in the Court, he came to learn that the victim's hymen was intact. When he was arrested by the police, he was beaten and for his safety, he told the police that he had committed rape upon the victim. Had he raped the victim, there would be sign of rape in her body and she would not have been virgin. He felt pain due to the false allegation. On cross-examination, he stated that his mother and the victim's father had clan relationship, but he did not know how many brothers and sisters the victim has. He was born on 15.9.1990 the victim

was also born in 1990. He did not know whether the victim understood gesture/sign language or not. He further did not know whether the victim could communicate others and vice versa. He also denied that he was drunk on that day. Last but not the least, he denied that the victim pointed at him and also pointed at her private part murmuring 'Lamaltawma'n he tah ti a' in her residence. Also he denied that he had gone out from his residence at around 2 Pm and committed rape upon the victim.

10. 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."

11. A combined reading of oral testimonies of P.Ws 1, 2, 3, 5 & 6 establish that the accused committed rape upon the victim on 26.6.2014 at around 2:30 Pm at Ratu Community Hall. It is in the evidence of P.W. 3 K.Lalhmachhuani that they saw the late victim moving out from the Ratu Community Hall, her pant got wet and some blood was oozing from her vagina. On asking the victim by PWs 2 & 3, she replied them that the accused had penetrated her vagina which she felt pain. Even P.W. 1 Vanlaldiki stated that the victim reported to her that the accused had committed rape upon her. When the accused appeared in their residence, the victim pointed her finger at the accused telling them that the person who had raped her was the accused. In this way, the testimony of P.W.1 Vanlaldiki corroborates the testimony of P.W.3. P.W. 2 Zolianthuami also asked the victim, and to which replied that Lalmaltoma (Lalmalsawma) penetrated her vagina which felt pain. Hence, the testimony of P.W.2 Zolianthuami also corroborates the testimony of P.W.3. The evidence of the Medical Officer who examined the late victim is also that the late victim's hymen was intact, which is consistent with the evidence of the prosecution witnesses. Even the statements of P.W.5 ASI Zasangi and P.W.6 SI C.Zonunmawia are also corroborating the statements of other prosecution witnesses. In my considered view, the accused could not discredit the evidence of the prosecution witnesses in cross-examination.

12. It is established by the prosecution that the victim was mentally and physically disable and died after a week of the incident of rape due to frequent epilepsy as a result of torture upon her by the accused. There is also some minor omission in the testimonies of the prosecution witnesses but such omission is not significant.

13. The victim did not give evidence due to her death. The evidence of the prosecution witnesses is sufficient to hold that the accused committed rape upon the victim.

14. In the instant case, after anxious consideration of the case, I have no option, but to rely in the oral testimonies and documentary evidences of the prosecution witnesses since their evidences are found trustworthy and the accused has not discredited their evidences at any point of time during trial.

15. On the other hand, I do not find any material to rely on the oral testimonies of the defence. On perusal of the statement of the accused as D.W.2, I find him developing new fact that he was beaten by the police and as a result, he admitted his guilt before them, which appears to me is after thought. He challenged the virginity of the victim which I find contradictory in the statement of the accused and the documentary evidence at Ext. P-7. I do not have any material placed before me by the accused that he was harassed by the police. In the result, I think that the accused gave statement as what every accused used to do. It is not in dispute that D.W.1 Lalhunthari is interested witness. The statement made in support of her son has not discredited the evidence of the prosecution witnesses. Rather, her testimony given in the Court is contradictory. In the result, I do not find worthy of her testimony.

16. In the light of the above discussion and reasons thereof, I find that the prosecution has proved the guilt of accused Lalmalsawma beyond reasonable doubt for commission of offence under Section 376(2)(I) of I.P.C. Accordingly, the accused is convicted under the said section of law.

17. The detention period spent by the accused in judicial custody shall be set off.

18. The seized articles, if any, be destroyed in due process of law.

Judgment prepared and delivered in open court on this 23rd day of November, 2015 under my hand and seal.

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

SENTENCE

30.11.2015 As hearing on sentence is fixed, I have heard the rival parties.

 The learned Addl. PP. for the State as well as the learned Counsel for the convict is heard.

 I have also heard the convict Lalmalsawma.

 I have come to know from the accused that his father may meet his death due to cancer and his mother is also old aged. The accused is also having kidney and heart problem from his say before me.

 Hence, the convict is sentenced to R.I. for 10 years and to pay a fine of Rs. 1,000/- in default of fine of S.I. for another 10 days.

 However, the convict is given liberty to prefer appeal/revision, if he desires.

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

Memo No. ____/AD&SJ(A)/2015 : Dated Aizawl, the 30th November, 2015

Copy to: -

1. Lalmalsawma through Counsel Shri R. Thangkanglova, Advocate.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. District Magistrate, Aizawl District, Aizawl.
4. Special Superintendent, Central Jail, Aizawl.
5. PP / Addl. PP, Aizawl.
6. DSP (Prosecution), District Court, Aizawl.
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