

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. 25 of 2014

Crl Tr. No.1994 of 2013

State of MizoramComplainant

-Versus-

Shri Rohmingthanga (47)
S/o Lalhualaia,
R/o Kawn Veng, Zemabawk. Accused person.

APPEARANCE

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

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

Hearing : 13.11.2015

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 accused has been tried in connection with the offences of rape and criminal intimidation punishable under Sections 376 (2) (f) & 506 of IPC.

2. The prosecution story in a nut shell is that a written F.I.R. was received from the prosecutrix to the effect that on that day at around 2:30 Am, the accused committed rape upon her who had been staying in his house. Hence, Bawngkawn P.S. Case No. 203 of 2013 dated 8.11.2013 under Section 376 (2) (f)/506 of IPC was registered and investigated by S.I. H.Lalhmingthangi.

In the course of investigation, the P.O. was visited and rough sketch map was drawn. The prosecutrix was examined and her statement was recorded. The prosecutrix was forwarded to Medical Officer and the Case I.O. received the report. The Case I.O. also seized one broken mobile handset (Lemon) black colour Model No. T-39 IMEI No. 1-91120700020640 and IMEI no. 2-911207000206457, one piece of gold colour earring and one black underwear with lace and bowtie on the front. The statements of the seizure witnesses were also recorded. The accused was arrested and interrogated in which he disclosed his commission of offence and his statement was recorded. A prima facie case under section 376(2) (f)/506 of IPC being made out, the Case I.O. submitted charge sheet.

3. Learned Shri R.Thangkanglova was appointed to defend the accused at the expense of the State.

4. Upon committal, charge u/S 376(2)(f)/506 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.

5. In the course of trial, the prosecution produced and examined five out of eight witnesses to prove that the accused had committed the offences punishable under Sections 376(2)(f)/506 of IPC. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC. In his examination, the accused replied that he had sexual intercourse with the consent of the victim and had not intimidated her. The accused also produced and examined his witnesses including himself.

6. I heard the learned Addl. P.P. Shri Joseph Lalfakawma appearing for the State. I also heard the learned Defence Counsel Shri R.Thangkanglova.

7. **Points For Determination :**

a) Whether the prosecution proves that the accused had sexual intercourse with the prosecutrix against her will and without her consent on 8.11.2013 at around 2:30 Am?

b) Whether the prosecution proves that the accused intimidated the prosecutrix on 8.11.2013 at around 2:30 Am?

c) Whether the accused person is liable to be convicted under Sections 376(2)(f)/506 of IPC?

8. Evidence of the Prosecution Witnesses:

P.W. 1 who is the prosecutrix knew accused Rohmingthanga. Her mother thought of the accused as her own brother since they belong to the same clan and thought themselves as siblings since childhood. She came to Aizawl to search work from her village Rawlbuk. In Aizawl, she earned her livelihood by selling Lucky Tickets under Human Development Society. As she could not find a rented house, she started staying with the family of the accused at the end of October 2013 as she thought the accused as her maternal uncle. On 7.11.13 she returned home from her work at around 6 PM. At that time, the accused was lying down on a long chair at down stair and his wife was not at home. She made a call to the wife of the accused over phone. The accused's wife told her that she was fed up with the accused getting drunk and that she had gone out to avoid him and she was told to have her food. After having her evening meal, she washed clothes and was ready to sleep in her room by 9 PM. At around 2:30 AM she found the accused lying down on her bed. She woke not long after the accused came to her bed since he touched her. Her room and kitchen is downstairs. There was no other room on the floor. On that night, the wife of the accused did not come home. The main door of the room was already locked from inside to prevent her from running out of the room, the accused had put a bench across the door. When she woke she told the accused to get up and to leave her bed, but the accused refused. The accused told her that if he did not have sexual intercourse with her he would kill her. He strangled her on her throat and as she tried to get up he pushed her down. She was overpowered by him physically. Then she tried to take her phone from her pillow below, but he threw her mobile phone and it got damaged. Accordingly, the accused succeeded to sexual intercourse with her being overpowered by him. Thereafter, he held her arms and dragged her upstairs. He took a hammer and chisel (thirtieng) and threatened to beat her if she tried to run out. In the up stair, there are shop and the accused's bedroom. He pulled her to their bedroom and made her sitting on a long chair and

she was shivering with fear. Then he gave her a cloth to warm hers but she told him that she was not feeling cold but shivered she was scared of him. Inside their bedroom, the accused once again tried to sexually assault her but in the meantime his wife Pi Maawmi came home. Pi Maawmi pulled open the door as it was not locked from inside. The accused went out of the room and she also went out crying. Pi Maawmi asked her what the matter was and went out of the house. From outside she gave her a signal to go downstairs. So, she went down stair and told her about the incident. The accused did not know what had told to his wife since was still having fear as he had threatened to kill her. She told Pi Maawmi that she wanted to lodge FIR, but she was told to wait younger brother of the accused, namely, Lallungmuana who was almost reaching from Saiha. So, she waited Lallungmuana. She remained in the house of Pi Mapuii, friend of Pi Maawmi. Pi Maawmi spent the night in the house of Pi Mapuii. She made a call to Pu Lallungmuana over mobile phone using mobile phone of Pi Mapuii, but by inserting her Sim Card. Pu Lallungmuana told her to wait him as he was almost reaching. But, as Lallungmuana took long time to reach, she proceeded to Bawngkawn PS at about 6 PM to lodge the FIR. She gave verbal information which was reduced to writing by the Police. The Police seized her mobile handset, her earrings which were damaged and her underwear. She was forwarded for medical examination. The medical officer examined her whole body including her genitals. At the time of the incident, she was a divorcee. Before giving evidence, she saw the accused in the Court premises and he asked her why he came despite she had been told not to come. But, she told him that she should come. The day before giving evidence, she had been told by the accused over phone not to appear before the Court.

The night of incident was the only night Pi Maawmi was not at home. In the presence of his wife, the accused did not show any interest on sex though he sometimes used to consume liquor. She proved the FIR submitted by her, the Seizure Memo and the Ext. M-1 containing underwear, Lemon Mobile and 1 earring which were shown to her in the Court and those materials were seized from her by the Police.

On cross-examination, she denied that she had known Pi Maawmi was not home and took chance with the accused to indulge in sex in the absence of the accused's wife. She further denied that she had lodged the FIR since Pi Maawmi saw

both of them in a suspicious circumstance. She also denied that both of them were drunk and unintentionally indulged in sexual intercourse. The distance between the room, wherein the incident occurred and the closest house would be around 30 meters. Though there is another house at a lesser distance but from there it would not be possible to hear any sound due to its lower location. She stated that she had not shouted since the accused strangled her. She also denied that the finding of the genital examination does not support sexual assault. The contents of the FIR were read by her before putting her signature, but denied she was tutored by the Counsel. Finally, she denied that the accused had sustained injury in an accident and he was not physically fit to commit sexual assault, but to the victim the accused met an accident the day after the incident. Last but not the least, she denied that she had falsely implicated the accused due to having enmity.

P.W. 2 Lilypuii knew accused Rohmingthanga and his wife since they lived in the same locality. On the night before the incident, the accused had two guests and one of them was Partei. While she was in her shop, Partei came and even after closing her shop she followed her down stair in her house. At that time, she received a phone call from Maawmi, wife of the accused. After that, Maawmi also came and stated that she was fed up with her husband getting drunk and asked her if she could have food and stayed in their house. So, Maawmi and Partei stayed the said night in their house. She also knew that around 6 PM on the said night, Maawmi received a phone call from the prosecutrix and she also heard their conversation. Maawmi asked the prosecutrix whether she was afraid of the accused, but the prosecutrix told Pi Maawmi she was not afraid of the accused. So, Maawmi told the victim to cover the accused with a blanket after he fell asleep. Partei who was the guest of the accused said that she was very scared of the accused and asked her to stay in their house requesting to take her bag from the house of the accused. So, she and her husband went to the house of the accused and saw the accused lying down on a long chair. They took the bag of Partei and went home. Around 3 AM, Maawmi received a phone call that the daughter of accused from his previous wife arrived from Myanmar and it was her first visit to Mizoram. So, Maawmi got up and went out to receive her from the Bus Stand. On her way back from the Bus Stand, Maawmi saw that the main door of her house was open which she had locked before leaving her house. Maawmi told her that when she peeped through the door she saw

the prosecutrix crying, and then told her that she had given the prosecutrix a signal to come out. So, the prosecutrix came out and told the incident to Maawmi. The prosecutrix also came to her house at around 10 AM on the same day of the incident being brought by Partei on the instruction of Maawmi. She was in her shop the whole day but she did not know anything about the incident though she knew that the prosecutrix was in her house. However, she could sense that there was something wrong. But, in the afternoon when they came to the shop, she asked the prosecutrix how she was actually assaulted to which she stated that she was sexually assaulted by the accused. At that time, she saw some injuries on her body, the damaged earring and also noticed that she had difficulty in swallowing. She asked her if she could forgive the accused to which she replied in negative. At that time, she told her to go to the Bawngkawn PS. She also gave her phone number if she emergently needed since her Mobile Handset was damaged. She then went to Bawngkawn PS and lodged the FIR. She then received a phone call from Bawngkawn PS who requested her to go to the PS. She went to Bawngkawn PS and from there they were taken to CAW Cell. Her statement was recorded in CAW Cell and thereafter the prosecutrix was taken to Civil Hospital for medical examination. She stood as a seizure witness in respect of the earring, underwear and Mobile phone. She was not sure whether the bangle was included. She saw the accused in the Court premises before giving evidence and she also heard the accused questioning the prosecutrix why she appeared in Court. She then scolded him.

According to the witness, the accused has a violent character and often acted violently to his own wife. After the incident, she came to know that the accused had fractured the arm of his wife. The accused admitted his guilt in her presence at the CAW Cell. She proved the seizure memo and the Ext. M-1 containing underwear, Lemon Mobile and 1 earring which were shown to her in the Court, the materials which she had seen in the CAW Cell. On cross-examination, she admitted that she was not present at the place of incident, but her knowledge was derived from others including the prosecutrix. She further admitted that the accused was not brought to CAW Cell while she was present. She did not have any knowledge whether the prosecutrix was medically examined regarding alcohol consumption. She also denied that the sexual intercourse was consented by the prosecutrix and the accusation was belatedly made to save her reputation and also that the prosecutrix

willingly did not shout and if she had shouted her close neighbours would have heard. She also admitted that she had not seen the Police seizing the Mobile Handset, underwear and earring from the possession of the prosecutrix. When she reached Bawngkawn PS it was already dark. She presumed it to be around 6 PM. By the time she reached the PS, the FIR submitted by the prosecutrix was already registered. She was not present inside the room where the prosecutrix was medically examined but she remained outside the Hospital. Finally, she denied that she in connivance with the prosecutrix falsely implicated the accused of raping the prosecutrix.

P.W. 3 Dr. Lalbiakdiki is a Gynecologist and posted at Civil Hospital, Aizawl from the year 2010 till date. On 8.11.13 at around 10 PM requisition was received from Police for medical examination of Lalthanmawii. She conducted her examination on the same night at 10:25 PM. She stated that the victim was married and had 3 children and she had regular menstrual cycle.

On examination, the victim was found physically and mentally stable with no influence of alcohol or drugs at the time of examination. There was stain on her underwear which she handed over to the Police. On her body there were some few marks of violence such as superficial abrasions of right knuckle of index finger, one linear abrasion about 2.5 cm on the left sub-scapular region and swelling of right elbow. On genital examination there were no visible injuries, hymen was absent and no sign of infection was found. Smear was taken from the vaginal pool and sent for investigation to laboratory for presence of spermatozoa. As per the laboratory report which she found from the record on the day taking evidence, no spermatozoa was seen but the said report was not sent to her before she submitted her medical examination report. As a matter of practice, such reports are directly sent to the Police. She proved the Medical Examination Report of the victim. On cross-examination, she did not know the cause of some few marks of violence which she had stated in her examination-in-chief. She also did not know whether the marks of violence present on the body of the victim were caused by the accused. She stated that the hymen of the victim was absent, the victim being a divorcee and had three children. She had not known the accused and the victim.

P.W. 4 Shri R. Malsawmdawngzuala stated that on 12.11.2013 the victim was brought before him and he recorded her statement on oath. Ext. P-4 is the Judicial Statement of the victim recorded by him in his chamber on 12.11.2013. He proved the judicial statement of the victim recorded by him. On cross-examination, he admitted that he had recorded the judicial statement of the victim not in his Court room. He stated that he recorded the statement of the victim u/s 164(5) of Cr. P.C. He did not remember at what time he had recorded the statement of the victim. He also did not know at what time the victim had reached his chamber. All he remembered is that it was in afternoon. He did not remember at what time the victim had left his chamber. The victim was brought to his chamber by a Police Constable accompanied by her friend and he did not tell anything to the victim. He did not know how long the victim stayed in his chamber. While recording the victim's statement, her friend was also present. He did not record confessional statement of the accused.

P.W. 5 SI H. Lalhmingthangi identified accused Rohmingthanga. On 8.11.2013, at evening, a written FIR was received from Lalthanmawii at Bawngkawn PS to the effect that on 8.11.2013 at around 2:30 AM she was threatened and raped by the accused, the owner of the house where she was staying. Hence, Bawngkawn PS Case No. 203 of 2013 dated 8.11.2013 under Section 376(2)(f)/506 IPC was registered and the case was endorsed to her for investigation.

During her investigation, she visited the PO and also drew the sketch map. She examined the victim and recorded her statement in which she stated that she had 3 children and she got separated from her husband. She came to Aizawl to earn her livelihood and then stayed in the house of the accused. She did not have any blood relation with the accused but the accused's family and her parents had been very close since long time back. She further stated that on the evening of 7.11.2013 when she came back from work, she found the accused sleeping on a bench in a drunken state and none was present at home except the accused. At around 2:30 AM, on 8.11.2013 when the prosecutrix got up, she found accused Rohmingthanga lying on her bed, then the accused tried to have sex with her, but she refused. When the victim tried to make a call for help by trying to use her mobile phone, the accused snatched the mobile phone from her and threw it on the floor.

She tried to evade but failed. The accused then tore her clothes and forcibly had sexual intercourse with her. She sent the victim to Civil Hospital, Aizawl for medical examination and she also received the report of her medical examination.

On 9.11.2013, she seized one Lemon mobile, one piece of gold color earring (broken) and one black underpant with lace and bow tie (on the front) from the possession of the victim. She examined the seizure witnesses and recorded their statements. On 11.11.2013, she could not arrest the accused since he had absconded on the date of incident. She interrogated the accused and recorded his statement in which he admitted his guilt. She also sent the accused for medical examination on 12.11.2013 and received the report. She found a prima facie case against the accused under Section 376(2)(f)/506 of IPC and submitted Charge Sheet. She proved the FIR, the Seizure Memo, the medical examination report of the victim, the judicial statement of the victim, the sketch map of the PO, the medical examination report of the accused, the Arrest Memo, the form of FIR and the Charge Sheet. She also proved Ext. M-1 containing underwear, Lemon Mobile and 1 earring seized by her. On cross-examination, she stated that had not seized the torn clothes of the victim. But, she denied that there were no torn clothes. She also denied that the material exhibits were not belonging to the victim. However, she admitted that at Ext. M-1 there was no document testifying the ownership of the exhibit. She stated that the victim is having 3 children and there was no eye witness in the incident. She further stated she had sent the victim to the Judicial Magistrate to record her judicial statement. She also denied that the victim and the accused used to have sexual relationship with consent.

9. **Evidence of the Defence Witnesses:**

D.W. 1 Rohmingthanga_ knew the victim who is not related to him by blood. The victim used to stay with them for some period. He used to have sexual relationship with her willingly at Lunglei and Aizawl. His wife had some suspicion of their relationship, and she used to check them whether he had sexual relationship with the victim. Wife of the accused told the victim that she would go to the house of bereaved family and would spend the whole night therein. But, she returned at early morning and saw him having sexual relationship with the victim. He stated that the

victim had sexual intercourse with him willingly. On cross-examination, the accused was born at Sangau and the shifted to Zemabawk, Aizawl from Sangau in 2001 and have been staying at Lalnuntluanga's house since then. He used to call the victim's mother as aunty since they are from the same clan. He admitted that the victim had come to stay in their house. But, he denied that he broke the earring and the mobile phone of the victim. He also denied that he had tried to kill the victim after releasing from the jail custody. He stated that he was not immediately arrested by the Police since he took treatment at Greenwood Hospital. He further stated that he had a shop at Lunglei in the year of 2006-07 and the victim stayed with them. He also stated that he had got married to Lalawmpuii on 25.12.1999, but he is now divorced by his wife due to the present incident.

D.W. 2 C. Zodinliana knew the accused as his elder brother. He saw the accused with the victim at his residence. But, he was not informed by the accused that he had sexual intercourse with the victim. On cross-examination, what he stated in the examination in chief that the victim stayed at his residence was during the period between 2006 and 2007. He used to visit the accused during 2010-11, and he saw the victim also at the residence of the accused. But, he did not know when the victim began to stay with the accused in Aizawl and also did not know when the present case was filed against the accused in Bawngkawn Police Station. He also stated that he did not personally know anything in the instant case.

10. **Discussion, Decision and Reasons of Decision.**

In the instant case, there is no dispute from the rival parties that the accused had sexual intercourse with the prosecutrix on 8.11.2013 at around 2:30 Am inasmuch as the accused also accepted in his examination under Section 313 of Cr PC as well as in his evidence.

The first issue in this case is whether the accused had sexual intercourse with the prosecutrix against her will and without her consent.

Section 114A in The Indian Evidence Act, 1872

'114A. Presumption as to absence of consent in certain prosecutions for rape.—In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.'

11. The newly-added S. 114-A deals with cases of prosecution for rape under clauses (a), (b), (c), (d), (e) or (g) of S. 376(2) of the Indian Penal Code, where sexual Intercourse by the accused is proved, and the question before the Court is whether such intercourse was with or without the woman's consent. In such cases, if the woman, in her evidence, states before the Court that she did not consent, the Court must presume that she did not so consent.

12. This new provision (inserted in 1983) has brought about a rather radical change in the Indian Law relating to rape cases. Formerly, the rule was that corroboration of the victim's version was not essential for a conviction, but as a matter of prudence, it would have to be established if the mind of the judge, unless circumstances were strong enough to make it safe to convict the accused without such corroboration. As observed by the Supreme Court, although the victim of a rape cannot be treated as an accomplice, her evidence is to be treated almost like accomplice evidence, requiring corroboration. (Sk. Zakir v. State of Bihar, 1983 Cri. L.J. 1285)

13. Now, of course, the position is different, and S. 114-A raises a presumption in favour of the rape victim.

13. The following three conditions must be satisfied before the presumption contained in S. 114-A can be raised:

(a) It should be proved that there was sexual intercourse.

(b) The question before the court should be whether such intercourse was with or without the consent of the woman.

(c) The woman must have stated, in her evidence before the court that she had not consented to the intercourse.

14. This presumption would apply not only to rape cases, but also to cases of attempted rape, as for instance, when the victim was disrobed and attempts were made to rape her, which, however, could not materialise because of intervening circumstances. (Fagnu Bhai v. State of Orissa, 1992 Cri. L.J. 1808)

15. Dr. Lalbiakdiki, Gynaelogist of Civil Hospital, Aizawl, proved her examination report that violent marks, such as, superficial abrasions of right knuckle of index finger, one linear abrasion around 2.5 cms on her left sub-scapular region and her swelling right elbow. It appears to me that the prosecutrix is the victim of the sexual assault. In my finding, the statements of other prosecution witnesses are fully corroborated.

16. In the testimony of the prosecutrix, on 8.11.2013 at around 2:30 Am, when she awoke due to the harassment of the accused, found him lying on her bed. When she told him to leave her bed, he refused. The accused threatened her telling if he could not have sex with her, he would kill her. He then strangled her on her throat and as she tried to get up, she pushed her down. She was physically overpowered by him, but she tried to get her mobile phone from the pillow below. However, the mobile handset got damaged since the accused threw it. Thereafter, he succeeded having sexual intercourse with her being overpowered by him. The accused held her arms, dragged her towards up stair threatening her by holding hammer and chisel if she were trying to run out. At the up stair also, the accused pulled her to their bedroom and made sitting her on the long chair, as she was shivering in fear. In the bed room, the accused tried to sexually assault her, but his wife came home. The wife of the accused came to know the commission of rape by the accused from the victim as well as from the crime scene. The wife of the accused tried her level best to end the incident by telling the prosecutrix to wait her brother-in-law who was about to reach soon from Saiha. But, as nothing came to effect, the victim having no option lodged FIR with the Officer-in-Charge, Bawngkawn Police Station. It is pertinent to mention here that the prosecutrix had injuries on her body

the time of medical examination, which indicates that the accused had ravished her honour.

17. In the instant case, after anxious consideration of the case, I have no option left, but to rely in the testimony of the prosecutrix since the evidence is trustworthy and the accused has not discredited her evidence at any point of time during trial.

18. However, the prosecution did not succeed to lead evidence to constitute elements of offence under Section 376 (2) (f) of IPC. But, the elements herein before mentioned constitute Section 376 (1) of IPC.

19. The materials used for threatening the prosecutrix to have sexual intercourse, in my opinion, constitute offence under Section 506 of IPC.

20. On the other hand, I do not find any material to consider the case of the defence evidence.

21. From the evidences discussed above, there is no evidence whatsoever to implicate the accused persons in the present case. The points, are therefore, answered accordingly.

22. In the light of the above discussion and reasons thereof, I conclude that the prosecution succeeds to prove the charges framed against accused Rohmingthanga under Sections 376(1) & 506 of I.P.C. Hence, I find guilty against him. Accordingly, the accused is convicted under the said sections of law.

23. The seized articles, if any, be confiscated 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.

30.11.2015 Hearing on sentence is fixed today.

Learned Addl. P.P. and Learned Defence Counsel are present.

The State Counsel made a prayer to pass sentence against the convict in accordance with the provision of law. Per Contra, the Learned Defence Counsel strongly made a prayer to show leniency.

The convict begged to draw my attention on his submission. According to him, he met accident on 12.8.2013 effecting him his shoulder, chest and teeth. Two children of his are not having him. Even his parents being old aged, are in need of him.

After hearing them, I am bound to pass sentence against the convict to suffer R.I. for 7 years and to pay a fine of Rs. 1,000/- in default of fine S.I. for another 10 days.

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. Rohmingthanga through Counsel Shri R. Thangkanglova, Advocate.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. District Magistrate, Aizawl District, Aizawl.
4. PP / Addl. PP, Aizawl.
5. Special Superintendent, Central Jail, Aizawl.
6. DSP (Prosecution), District Court, Aizawl.
7. i/c G.R. Branch, District Court, Aizawl.
8. Office-in-Charge, Bawngkawn Police Station.
9. Registration Section.
10. Guard File.
11. Case Record.
12. Calendar Judgment.

P E S H K A R