

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. 20 of 2013

State of MizoramComplainant

-Versus-

Shri Zarlina (45)
S/o Nokhuma,
R/o Vaphai, Champhai District. Accused

APPEARANCE

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

For the accused : Shri R.Thangkanglova, Advocate.

Hearing : 18.2.2015 and 3.3.2015

Judgment delivered on : 12.3.2015

J U D G M E N T

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

2. The brief facts of the prosecution story is that one Lalhmingmawii w/o Vanneihkima of Vaphai Vengthar, Champhai District Mizoram lodged a First Information Report (in short "the FIR") to the Officer-in-Charge, Champhai Police Station on 11.8.2012 to the effect that the accused had committed rape upon her daughter aged about 27 years of age at Vaphai village causing her pregnancy which was discovered sometime in the month of July 2012. Hence Champhai Police Station Case No. 119 of 2012 dated 11.8.2012 under Section 376 (1) of IPC was registered by Shri L.T.Fala Khiangte, Officer-in-Charge, Champhai Police Station and it was investigated by S.I. Lucy Zosangzuali.

In the course of investigation, the complainant was examined and her statement was recorded. The PO was visited. A rough sketch map of the P.O. was

drawn by Case I.O. The victim was forwarded to Medical Officer, District Hospital, Champhai. The M.O. opined that the victim was pregnant for 23 weeks and 6 days. The statement of the victim was also recorded. Thereafter, the accused was arrested and interrogated. On the initial stage of interrogation, the accused denied that he had caused pregnancy of the victim and insisted for DNA test. The accused was sent for judicial remand on 17.8.2012, but he was enlarged on bail on 31.8.2012. While on bail, when there was allegation made against the accused that had tried to hamper the investigation, his bail was cancelled. Thereafter, the accused was interrogated again, and he disclosed his guilt before the Case I/O that he had committed rape upon the victim inside his residence on 15.2.2012 and 20.3.2012. Thereafter, the accused was sent for judicial remand. The accused sent an envoy to the victim's family claiming himself as the father of the illegitimate unborn child of the victim and paid Rs. 40/- to the victim's family as per Mizo Customary Law. The available witnesses were also examined and their statements were recorded. SI Lucy Zosangzuali found a prima facie case u/s 376(1) IPC against the accused and submitted charge sheet.

3. Since, the case was triable exclusively by Court of Session, the learned Chief Judicial Magistrate, Champhai committed the case to the learned Sessions Judge, Aizawl Judicial District. Thereafter, the case was transferred to my predecessor for trial and disposal. Hence, the case came to me.

4. Charge sheet and its relevant documents were supplied to the accused. Shri R.Thangkanglova was appointed to defend the case of the accused at the expense of the State.

5. After hearing the rival parties, a prima facie case against the accused was found u/s 376(1) IPC, and charge was therefore framed against him. The charge was read over and explained in the language known to him, and to which he pleaded not guilty and claimed to be tried.

6. In the course of trial, the prosecution produced and examined as many as 8 out of 12 witnesses to prove that the accused had committed offence punishable under Section 376(1) of I.P.C. After closure of the prosecution evidence, the accused was examined under Section 313 of Cr PC.

7. I heard the learned Public Prosecutor Shri Joseph Lalfakawma appearing for the State assisted by the learned A.P.P. Ms Vanneihsiami. I also heard the learned Counsel Shri R. Thangkanglova appearing the accused.

8. **Point for Decision:**

Whether the Prosecution proves that the accused had sexual intercourse with the victim against her will or consent?

9. **Discussion of Evidence, Decision and Reasons of Decision.**

(a) In order to establish the offence of rape u/s 376(1) of IPC, the prosecution has to establish that the sexual intercourse with a woman was against her will or consent. In the case before me, the alleged victim was 27 years of age which we find in the FIR submitted by the alleged victim's mother. We also find from the alleged victim's mother statement that the alleged victim was born in the year of 1984.

(b) The alleged victim was examined as P.W.2. In her testimony before the Court, one day she went to the residence of the accused and watched T.V. While watching the T.V., the accused pulled on her arm and had sexual intercourse with her by making her lying down on their long chair and on their bed, by removing her dress and touching her breast. She further deposed that the accused had penetrated his penis into her vagina. She also deposed that the accused had told her not to tell anything to her parents. But, when her father asked who had impregnated her and threatened to beat her, she told her parents that the accused had told her not to tell anything to her parents. At the time of taking her deposition as on 17.7.2013 she had delivered a boy. In the cross examination, though she stated that she could not resist when the accused had pulled on her arm and when he had removed her clothes. But, her statement in the cross examination that at the relevant time, the wife of the accused was also present in the kitchen, makes the case of the prosecution doubtful that the accused had committed rape upon her. I am agreeing with the submission of the learned Defence Counsel that the prosecution case is not believable since there is a material contradiction in the statement of the alleged victim recorded by the Case I.O.

on 11.8.2012 and in her statement before the Court. In her statement before the police she stated that the wife and the children of the accused were not present in the residence, at the relevant time when the accused had sexual intercourse with her. But, in her statement before the Court the alleged victim stated that the wife of the accused was also present in the kitchen. In my view, the case of the prosecution that the accused had committed rape upon the alleged victim appears to be quite doubtful.

(c) It appears to me that the accused had sexual intercourse with the victim against her will and without her consent is not believable. Apparently, there was consent on the part of the alleged victim since she did not shout for help. The contention of the learned Addl. P.P. that the victim could not shout for help of the wife of the accused since the accused covered her mouth with his hands is also not believable.

(d) In the evidence of the alleged victim, she disclosed to her parents that the accused had sexual intercourse with her only when they suspected her to be pregnant and when her father beat her with stick. There was no mention of the alleged victim in her deposition that the accused had threatened her if she would disclose about the incident to her parents.

(e) The medical examination report though available in the case record, it was not proved.

(f) The prosecution fails to prove with the help of medical evidence that that alleged victim is unsound mind. Without medical proof, one cannot say whether a person is unsound mind.

(g) In *Rajoo and Ors. V. State of Madhya Pradesh AIR 2009 SC 858*, the Apex Court held that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. The court further observed:

.....It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The

accused must also be protected against the possibility of false implication.....there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

(h) It is well settled law that the prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case, the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected.

(i) The instant case is required to be decided in the light of the aforesaid settled legal proposition.

(j) Hence, the given facts and circumstances make it crystal clear that if the evidence of the prosecutrix is read and considered in totality of the circumstances alongwith the other evidence on record, in which the offence is alleged to have been committed, I am of the view that her deposition does not inspire confidence. In such a situation, the accused is entitled to the benefit of doubt.

10. In the light of the above discussion and reasons thereof, I conclude that the prosecution miserably fails to prove the charge against the accused Zarliana under Section 376 (1) of I.P.C beyond reasonable doubt. Hence, I do not find him guilty. Accordingly, the accused is acquitted.

Judgment prepared and delivered in the open court on this 12th day of March, 2015 under my hand and seal.

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

Memo No. / AD & SJ (A) /2015 : Dated Aizawl, the 13th March, 2015.

Copy to :-

1. Shri Zarliana, S/o Nokhuma R/o Vaphai C/o Shri R.Thangkanglova, Advocate.
2. District Magistrate, Champhai.
3. Sessions Judge, Aizawl Judicial District, Aizawl.
4. Chief Judicial Magistrate, Champhai.
5. Addl. PP/APP, Aizawl District, Aizawl.
6. Special Superintendent, Central Jail, Aizawl District, Aizawl.
7. Investigating Officer through O/C Champhai P/S, Champhai District, Champhai.
8. In-Charge, G.R. Branch, Aizawl.
9. Registration Section.
10. Guard File.
11. Case Record.
12. Calendar Judgment.

P E S H K A R