

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. 184 of 2015

Crl Tr. No. 1636 of 2015

State of MizoramComplainant

-Versus-

Shri K. Lalramnghaka
S/o Remthanga (L),
R/o Tualbung,
Aizawl District, Mizoram Accused person.

APPEARANCE

For the State : Smt. Lalremthangi, Addl. P.P.
For the accused person : Shri L.R. Tluanga Sailo, Advocate.

Hearing : 15.7.2016
Judgment delivered on : 20.7.2016

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

The above named accused had been charge-sheeted by the police for having committed the offences punishable u/s 354A/376(n) of IPC.

2. The prosecution story of the case in brief is that on 1.7.2015, FIR was submitted to the Officer-in-Charge, Saitual PS by the prosecutrix of Tualbung to the effect that on the night of 24.7.2015 at around 8 PM, she was sexually harassed by the accused in their house. Apart from that, the accused had sexual intercourse with her for three times against her will in the year of 2013. Hence, Saitual PS Case No. 15 of 2015 dated 1.7.2015 U/s 354A/376(n) of IPC was registered against the accused and duly investigated by SI K. Lalrinpuia.

In the course of investigation, the prosecutrix was examined and her statement was recorded. The prosecutrix's judicial statement U/s 164 of Cr PC was also recorded by Smt. Sylvie Z. Ralte, learned Chief Judicial Magistrate, Aizawl District wherein she narrated that the accused had forced her to have sexual intercourse with her for three times in the year of 2013. According to the Case IO, the statement recorded by the learned CJM corroborated the statement recorded by him. The accused was arrested and interrogated, and his statement was recorded. During interrogation, the accused admitted that he had sexual intercourse with the prosecutrix for three times in 2013 but with the consent of the prosecutrix.

In the course of investigation, one witness was examined and her statement was also recorded. A prima facie case was found against the accused u/s 354A/376(n) of IPC. Hence, the Case IO submitted charge sheet.

3. Upon committal, I heard the Id. Addl. PP for the State and the Id. Counsel appearing for accused K. Lalramnghaka. Thereafter, charge u/s 354A/376(n)/497 of IPC was framed against accused K. Lalramnghaka and the same was read over and explained in the language known to him, to which he pleaded guilty under Section 497 of IPC. However, the accused did not plead guilty u/s 354A/376(n) of IPC and claimed to be tried.

4. In the course of trial, the prosecution produced and examined three out of four witnesses to prove that the accused had committed the offences punishable under section 354A/376(n)/497 of IPC. It is pertinent to mention here that the Medical Officer who examined the prosecutrix was dead. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC, but he denied the suggestion that he had had committed rape upon the prosecutrix. However, accused K. Lalramnghaka produced two witnesses.

5. **Points For Determination:**

- a. Whether the accused had sexual intercourse with the prosecutrix?
- b. Whether such sexual intercourse was had with the prosecutrix against her will?
- c. Whether the prosecutrix was sexually harassed by the accused?

d. Whether the prosecutrix is a married woman with whom the accused had sexual intercourse?

6. I heard the learned Addl. P.P. Smt. Lalremthangi as well as the learned Defence Counsel Shri L.R. Tluanga Sailo.

Decision And Reasons Thereof :

Points No. a, b, c and d:

7. The points of determination can be discussed together in the present case.

8. In the instant case, the medical report is not proved by the Medical Officer who had examined the prosecutrix since he expired before giving evidence. Anyhow, there is no sign of rape committed upon the prosecutrix in the medical examination report. It is therefore very hard to believe that the accused had sexual intercourse without the consent of the prosecutrix and against her will.

9. Let me see what evidences are given by the prosecution witnesses.

10. P.W.1 the prosecutrix is a wife of her husband at Tualbung and with him she has three children. The accused is the President of Tualbung Village Council residing nearby the house of the prosecutrix and he is also the husband of Lalthazovi with whom he has three children. On 8.4.2013, she accompanied the accused and his daughter to Saitual on a motor cycle to have check-up due to her pain in her arms. On returning from Saitual, the accused suggested to take rest in a vacant shed. As soon as they entered into the shed, the accused told her that he wanted to have sexual intercourse with her, but she refused. As the accused overpowered her, she was raped. Around 26.9.2013 the prosecutrix's body got swollen, she went to Aizawl to have medical check-up with the company of accused and his other friends. In Aizawl, the accused invited her to stay in Hotel, but the prosecutrix refused. The prosecutrix stayed in her auntie's house at Ramhlun Vengthar. The accused brought whiskey and drank in the prosecutrix relative's shop. Since the accused did not intend to return, they told him to sleep that night in Sitting Room. On the following morning, the accused accompanied the prosecutrix up to New Life Hospital since she had to examine her blood. She returned to Tualbung with the accused by motor

cycle. On the way, she was sexually harassed by the accused as he told her to finger his penis. At Seling, both the accused and the prosecutrix stayed together in her sister's house. Therein, the accused gagged her mouth and raped her. Sometime in the month of 2013, while the prosecutrix was alone in their jhum hut, the accused came and raped her. Even thereafter, the accused harassed her. On 24.6.2015, at around 8 Pm the accused came to her house and forced her to finger his penis. Out of fear she ran away with her children to the house of her elder brother-in-law. They were followed by the accused, but as they locked the door, the accused could not enter and returned angrily. Thereafter, the accused continued to harass her. She proved the FIR at Ext. P-1 and the judicial statement at Ext. P-2. On cross examination, the prosecutrix stated that she had gone to Seling with the accused to attend the death of her grandmother before having sexual intercourse with the accused (first time of the sexual intercourse with the accused was 8.4.2013). On 8.4.2013, she went to Saitual on her own will and after taking permission from the accused. On 8.4.2013, while having sexual intercourse the daughter of the accused was also present inside the shed but did not awake even when she resisted having sexual intercourse with the accused. She admitted that she willingly and with the consent of her husband had accompanied the accused and his friends to Aizawl for her medical check-up. She further admitted that she had gone to Aizawl since her body got swollen and she did not have further medical check-up after having blood test in New Life Hospital. She also admitted that she was not given any medicine in New Life Hospital. But, she denied that she had gone to Aizawl with the accused to have leisure time with him. She further denied that she had also taken liquor with accused at Ramhlun Vengthar. At Ramhlun Vengthar, as the accused did not want to go back, so she invited him to sleep that night at her auntie's house. The prosecutrix denied that at Seling those persons who slept in the bedroom would know their having sexual intercourse. She further denied that she had willingly fingered penis of the accused. She also denied that the friends of the accused with whom they had tour knew their having sexual intercourse. Finally, the prosecutrix admitted that the wife of the accused had come to know their having sexual intercourse, but denying that she had asked forgiveness to the wife of the accused.

11. What emerges from the testimony of the prosecutrix is that she willingly accompanied the accused and his daughter to Saitual on her own sweet will

on 8.4.2013. It is also difficult to rely on the testimony of the prosecutrix as gospel truth inasmuch as the daughter of the accused should awake if the prosecutrix resisted having sexual intercourse with the accused.

12. It is shown in the evidence of the prosecutrix that she willingly accompanied the accused and his friends from Tualbung to Aizawl. On the way back at Seling, she invited the accused to spend the night in her sister's house in one room which shows that the prosecutrix willingly had sexual intercourse with the accused and the allegation made against the accused that she had been sexually harassed by him on the way to Seling is a concocted story.

13. The testimony of the prosecutrix that rape was committed upon for the third time in their jhum hut at Tualbung in the month of November 2013 appears to be false and concocted story. Admittedly, there is no direct or circumstantial evidence to come to conclusion that rape was committed upon her.

14. In *Tulshidas Kanolkar v. State of Goa* (2003) 8 SCC 590, the Hon'ble Supreme Court observed thus:

'5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the Court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the

delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle.'

15. It is shown from evidence on record of the prosecutrix that the alleged incident of rape committed upon her occurred in 2013 and the alleged incident of alleged last sexual harassment committed upon her occurred on the night of 24.6.2015. However, the FIR was filed on 1.7.2015 at Saitual Police Station. The long delay in lodging the FIR is surely inordinate, inasmuch as, the rape cases usually rest, by and large, on oral testimony. When a prosecution case is based entirely on oral testimony, it is expected that FIR will be lodged at the earliest opportunity before there is time for deliberations and for making suitable embellishment. Apart from that, there is no explanation of the delay in filing the FIR. Hence, the case is quite suspicious and it is unsafe to pass conviction against the accused under rape and sexual harassment cases.

16. P.W.2 Smt. Lalrinawmi has a husband at Tualbung. With him she has two children. On 24.6.2015 at around 8:30 Pm her elder sister-in-law and the daughter of her elder sister-in-law came to her house, and told her to lock her house door. Accordingly, she locked the door. Both the prosecutrix and her daughter came due to fear of the accused. After a while, the accused arrived and shook the door. But, they did not open the door. The accused shouted, "I should not be dealt in this way, we will not visit each other" and returned later. Thereafter, her sister-in-law returned. Her elder sister-in-law used to tell her that she was afraid of the accused. The prosecutrix used to come and she was called by the prosecutrix to her house oftentimes. The accused used to catch hold of her breast. On cross examination, she stated that the prosecutrix uncle is her mother's brother-in-law and the prosecutrix is her close friend. She denied that she knew the prosecutrix having love affair with the accused. She further denied that the prosecutrix used to tell her about love affair with the accused over phone call and message. She admitted that they had not sought help from any other person when the prosecutrix along with daughter came

to her house on the night of 24.6.2015. She further admitted that the prosecutrix and her daughter had left her house at around 10 Pm on that night. She also admitted that she not seen the accused threatening others at Tualbung. She stated that she did not come to depose in favor of the prosecutrix since the prosecutrix is her close friend and relative. She finally admitted that she had not filed FIR against the accused.

17. The deposition of P.W.2 Lalrinawmi does not help the case of the prosecutrix inasmuch as she did not lead evidence that rape was committed upon the prosecutrix and the prosecutrix had been sexually harassed by the accused.

18. P.W.3 S.I. K. Lalrinpuia identified the accused. At the relevant time of incident, he was the Officer-in-Charge of Saitual Police Station. On 1.7.2015, a written FIR was received from the prosecutrix to the effect that on the night of 24.5.2015 at around 8 Pm she had been sexually harassed by the accused in their house. Apart from that, the accused had sexual intercourse with her three times in the year 2013. Hence, Saitual PS case No. 15 of 2015 dated 1.7.2015 under section 354(A)/376 (n) IPC was registered and investigated by him. In the course of investigation, he examined the prosecutrix and recorded her statement. The prosecutrix's judicial statement was recorded by Miss Sylvie Z. Ralte, CJM, Aizawl. The witness visited the PO and also drew the sketch map of the PO. He examined Lalrinawmi of Tualbung and recorded her statement. He sent the prosecutrix for medical examination and received the medical report. He arrested the accused, interrogated and recorded his statement. During interrogation, the accused admitted that he had sexual intercourse with the prosecutrix three times in 2013 with her consent. He found a prima facie case under Section 354/376(n) IPC and submitted charge sheet. He proved the original FIR at Ext. P-1, the judicial statement of the prosecutrix at Ext. P-2, the Form of FIR at Ext. P-3, the Arrest Memo at Ext. P-4, the Sketch Map at Ext. P-5, the Medical Examination Report of the prosecutrix and the Charge Sheet at Ext. P-7. On cross examination, the prosecutrix stated before him that on 24.5.2015 the accused had sexually harassed her, but there is no witness who could confirm her statement.

19. P.W.4 Miss Sylvie Z. Ralte recorded the judicial statement of the victim on the prayer of the Case I.O. on 27.8.2015 in connection with Saitual P.S.

Case No. 15 of 2015 dated 1.7.2015 under section 354A/376 (n) IPC. In the judicial statement recorded by the witness, the victim put her signature. The witness proved the judicial statement at Ext. P-2. On cross examination, the prosecutrix stated before her that there was no witness who could confirm her statement.

20. The deposition of P.W. 3 S.I. K.Lalrinpuia does not help the case of the prosecutrix, rather it shakes the case of the prosecutrix in such a way that the accused made admission before him that the prosecutrix had consented while having sexual intercourse with the accused. It is also pertinent to mention here that there is no witness who could confirm the prosecutrix's statement that she had been sexually harassed. In the evidence of P.W.4 Miss Sylvie Z. Ralte also, there is no witness who could confirm the prosecutrix's statement that she had been sexually harassed.

21. The Apex Court in Narender Kumar Vs. State (NCT of Delhi) (2012) 7 SCC 171 observed:

'16. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree

of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Vide: Vimal Suresh Kamble v. Chaluverapinake Apal S.P. and Anr. : AIR 2003 SC 818; and Vishnu v. State of Maharashtra : AIR 2006 SC 508).

'17. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Vide: Suresh N. Bhusare and Ors. v. State of Maharashtra (1999) 1 SCC 220)

22. D.W.1 Lalthazovi who is the wife of the accused deposed that she had come to know that her husband and the prosecutrix had affairs. She got angry and went to the house of the prosecutrix. She then asked the prosecutrix whether she had affairs with her husband, and the prosecutrix replied her positively. She then requested the prosecutrix to stop having affairs with her husband. The prosecutrix replied her that she would stop having affair with her husband but she requested her not to disclose the prosecutrix affairs to the public as she was afraid that her husband might know. On cross examination, the witness came to know the affairs in the month of December, 2013.

23. From the evidence given by D.W.1, it is very clear that rape was not committed by the accused since it was not disclosed to the wife of the accused.

24. D.W.2 Ramengmawia knew both the accused and the prosecutrix. He came to know from the accused that he had affairs with the prosecutrix. In his opinion, the prosecutrix took first step to have affairs with the accused since the accused and the prosecutrix spent the night together on one bed at Seling. On cross examination, the accused accepted that the accused had committed adultery.

25. The deposition of the defence witness cannot be shaken. It goes in favor of the accused. Hence, the case of the prosecutrix that she was raped and sexually harassed by the accused is not believable.

26. As the evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and as there was also no injury on her person even though her version may be otherwise, reliance cannot be placed upon her evidence.

27. From the evidence discussed above, the prosecution cannot establish that rape was committed upon her by the accused and she was sexually harassed by the accused. A great degree of doubt has been cast upon the prosecution case; I therefore do not find sufficient evidence to implicate the accused in the offence which he has been charged under Section 354A/376(n) of IPC. However, I find the accused guilty in offence of adultery since the accused had sexual intercourse with the prosecutrix who is a married woman.

28. In the result, I hold that the prosecution has failed to establish its case beyond reasonable doubt and consequently, the accused person is acquitted of the offences under Section 354 (A)/376 (n) IPC. However, the prosecution succeeds to prove offence of adultery against the accused under section 497 IPC. He is convicted accordingly.

29. As the parties were ready to have hearing, I heard them.

30. After hearing both the parties, the accused is sentenced to the period undergone by him in judicial custody and to pay a fine of Rs. 5,000/- (Rupees five thousand) only in default of fine, SI for 2 (two) days.

Judgment and Order is given under my hand and seal of this Court on this day the 20th day of July, 2016.

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

Memo No. _____/ASJ(A)/2016 : Dated Aizawl, the 20th July, 2016

Copy to: -

1. Accused K. Lalramnghaka through Counsel Shri L.R. Tluanga Sailo, Advocate.
2. The Sessions Judge, Aizawl Judicial District, Aizawl.
3. The District Magistrate, Aizawl District.
4. The Superintendent of Police, Aizawl District.
5. The Addl. PP, Aizawl.
6. The DSP (Prosecution), District Court, Aizawl.
7. The Officer-in-Charge, Saitual Police Station.
8. i/c G.R. Branch.
9. Registration Section.
10. Guard File.
11. Case Record.
12. Calendar Judgment.

P E S H K A R