

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. 53 of 2014

Crl Tr. No. 561 of 2014

State of Mizoram .....Complainant

-Versus-

Shri Lalringzauva alias Tawia(23)  
S/o Liandawla,  
R/o Zuangtui, Rengdil,  
Aizawl, Mizoram ..... Accused person.

APPEARANCE

For the State : Smt. Lalremthangi, Addl. P.P.

For the accused person : Shri Laltanpuia, Advocate.

Hearing : 22.4.2016 & 2.5.2016

Judgment delivered on : 12.5.2016

Sentence Order : 16.5.2016

**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 376(1) of IPC.

2. Written information was lodged by the prosecutrix, namely, 'A' (real name withheld in order to protect her identity) on 14.4.2014 at around 9:30 Am to the effect that she had been sexually assaulted on the night of 13.4.2014 while sleeping under the influence of liquor. Hence, Vaivakawn P.S. Case No. 83 of 2014 under Section 376 (1) of IPC was registered and duly investigated into.

Initially, the case was investigated by S.I. Lalsangpuui of Crime Against Women Cell (hereinafter stated as "CAW Cell"). But, she being transferred to another unit, the case was transferred to S.I. Lallawmpuii.

In the course of investigation, the prosecutrix was examined and her statement was recorded. Thereafter, she was sent to Medical Officer, Civil Hospital, Aizawl. The PO was visited and some materials were seized from the PO. The exhibit materials were sent to FSL, Aizawl. Helen Sangneihpari was arrested on 14.4.2014, Vanlalvena @ Laltea on 7.5.2014 and Lalringzauva on 23.5.2014, and their statements were recorded. The judicial statement of the victim was recorded by Shri Lalramsanga, learned Judicial Magistrate First Class, Aizawl. As prima facie case u/s 376(1) of IPC was found against Lalringzauva and section 109 of IPC against Helen Sangneihpari (24) D/o Kulhthanga of Tlangzawl, Myanmar P/A Hunthar Veng, Aizawl and Vanlalvena (29) S/o Tawkhlehsanga of Zokhawthar, Champhai District, the Case IO submitted charge sheet.

3. Upon committal, my predecessor heard the Id. Counsels appearing for accused Helen Sangneihpari and Vanlalvena and the Id. Addl. PP for the State. As a result, the accused persons aforesaid were discharged from the charge booked u/s 109 of IPC. Thereafter, charge u/s 376 (1) of IPC was framed against accused Lalringzauva by my predecessor and the same was read over and explained in the language known to him, to which he pleaded not guilty and claimed to be tried.

4. In the course of trial, the prosecution produced and examined nine witnesses to prove that the accused had committed the offence punishable under section 376 (1) of IPC. 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 sexual intercourse with the prosecutrix against her will or without her consent. However, accused Lalringzauva could not produce defence witnesses when chance was offered to him.

5. **Points For Determination :**

a) Whether the prosecution proves that the accused had sexual intercourse with the prosecutrix on the night of 13.4.2016 in the residence of Helen Sangneihpari?

b) Whether the sexual intercourse with the prosecutrix was against her will or without her consent?

c) Whether the accused is liable to be punished under Sections 376 (1) of IPC?

6. I heard the learned Addl. Public Prosecutor Smt. Lalremthangi as well as the learned Defence Counsel Shri Laltanpuia.

#### **Discussion, Decisions and Reason of the Decisions:-**

7. In cases involving offence of rape, testimony of the prosecutrix is the most crucial and relevant piece of evidence.

8. The statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration and the court may convict the accused on her sole testimony. However, as held by the Supreme Court in *Udai Vs. State of Karnataka* AIR 2003 SC 1639, even in case of rape, onus is always on the prosecution to prove affirmatively, all the ingredients of the offence, which seeks to establish and such onus never shifts. It is not the duty of the defence to explain as to how and why the prosecutrix and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take the support from the weakness of case of the defence. However, great the suspicion against the accused and however strong the moral belief and the conviction of the Court, unless the offence of the accused is established, beyond reasonable doubt on the basis of legally admissible evidence and the material on record, the conviction cannot be ordered. The prosecution has to bring home the offence against the accused by reliable evidence. Otherwise, the accused is entitled to benefit of every reasonable doubt.

9. In the instant case, the prosecutrix is examined as P.W. 3. According to the prosecutrix, on 13.4.2014 at around 4 Pm, she went to the weaving industry at Hunthar Veng, the proprietress was P.W.2. While entering in the house, she found Heleni and her brother Laltea (Vanlalvena) accompanied by Tawia (the accused). After a while, Heleni offered her a cup of liquor and she consumed two sips only as

she had never taken liquor. Thereafter, she slept on a bed. When she got up, she felt thirsty and asked for water. Heleni gave her a steel cup filled with liquor which she did not know the content before drinking. She came to know it was liquor as the taste was bitter. She returned the cup, but Heleni forced her to drink. After that, she could not move and lied on the bed. While lying on the bed, she came to know that a man was trying to embrace her, but she tried to resist. She also knew that Heleni was sitting near the bed and heard sound of weaving. After that, she became unconscious and did not know what had happened to her on that night. When she got up on the following morning, she was at her home and found that she was not wearing her underwear. She felt her whole body paining and she felt pain and found blood was oozing out from her private part while urinating. She then came to know that she had been raped on the night of 13.4.2014. In the result, she submitted FIR at Vaivakawn PS. On 13.6.2014, she went to the Judicial Magistrate First Class, Aizawl. In the chamber of the magistrate, her statement was recorded. She proved the FIR at Ext. P-3 submitted by her and her Judicial Statement at Ext. P-4. On cross examination, she states that she consumed small quantity of liquor which she was offered by Heleni for the first time and started having headache. She further states that she sometime used to take beer when having menstrual period, but she never took liquor in the past. She knew that the accused was sleeping beside her and Laltea (Vanlalvena) was talking to Heleni who was weaving on the other side. She had no stamina to resist the accused from having sexual assault. She neither knew at what time her relative came nor knew she had been brought to medical officer on the night of 13.4.2014, but she came to know from her sister-in-law on the following day. On 14.4.2014, she was brought to Vaivakawn PS and later to medical officer at Civil Hospital, Aizawl who examined her private part on that day. She states that she never had sexual intercourse with any man before the incident. She did not think Laltea (Vanlalvena) had sexual intercourse with her on the night of 13.4.2014 since she knew the accused embracing her.

10. It is manifest beyond doubt that the accused had sexual intercourse with the victim in her state of intoxication. The conduct of the prosecutrix shows that she was not a willing partner of the accused as she tried to resist while the accused was embracing her, but as she had no stamina to fight back and lost her conscience, the accused sexually assaulted her which the prosecutrix came to know on the

following day as she felt pain and blood was oozing out from her private part while urinating. It is also not in dispute from examination of the accused under section 313 of Cr PC that the accused had sexual intercourse with the prosecutrix. As noted above, they were stranger to each other. They were not friends and also not sex partners. Therefore, it can be inferred from the circumstances that the prosecutrix did not give consent to the accused to have sexual intercourse.

11. Now, if the medical evidence is looked at, it also supports the allegation of rape. The prosecutrix was examined in the Civil Hospital, Aizawl on 14.4.2014 by P.W.5. P.W.5 has deposed that she found multiple small lacerations at posterior fourchette and the hymen of the prosecutrix was also found torn approximately .5 Cm at 5 o'clock position. She proves the requisition for medical examination at Ext. P-6 and also proves the medical examination report of the victim at Ext. P-7.

12. The younger brother of the prosecutrix is examined by the prosecution as P.W.1. According to him, on 13.4.2014 at around 9 Pm, as his elder sister (the victim) did not come home from her working place (the residence of Helen Sangneihpari), his mother sent him with his friend Sangtea and his elder brother Lawma. On reaching the house of Helen Sangneihpari, they heard murmuring of male and female. When they knocked at the door, the insiders put the light off and kept silent. He informed his mother. When they again knocked at the door and called his sister, Helen Sangneihpari opened the door and told them not to get angry. On entering the house of Helen Sangneihpari, his sister slept on a bed, on another bed two male persons slept together. He tried to wake his sister, but she was abnormal and could not walk. At that time, his mother, his elder brother with wife also reached. His mother, Helen Sangneihpari and the two men argued. He escorted his elder sister from the house of Helen Sangneihpari and proceeded to Civil Hospital, Aizawl. After reaching Civil Hospital, his sister became a bit normal but she could not walk properly. On the following day, on 14.4.2014, his sister submitted FIR at Vaivakawn Police Station. On 15.4.2014, he and Smt. Rinchhani accompanied by the police went to the house of Helen Sangneihpari and recovered navy blue underwear of his elder sister. The police then seized the underwear in his presence and he stood as seizure witness, and put his signature on the seizure memo. He proves the seizure memo at Ext. P-1 and he also proves the material exhibit at Ext. M-1, which

is the underwear of the victim. On cross examination, he states that on that day his elder sister went to the house of Helen Sangneihpari for weaving being Seventh day Adventist. He admits that they had not informed about the incident to local leaders. He did not see any mark of violence on the body of his elder sister. He knew that the Doctor had checked the private part of his elder sister on the night of 13.4.2014, but he had not seen it. He did not remember whether the Doctor had given them any prescription on that night. They did not file FIR on the night of 13.4.2014. He did not know whether the Doctor had medically examined the victim in order to know whether the victim was raped or not on the night of 13.4.2014. He did not know from where they had recovered the underwear of his elder sister. He did not ask Helen Sangneihpari and Laltea (Vanlalvena) whether the accused had committed rape upon his elder sister or not. He had put his signature on the seizure memo at Vaivakawn Police Station. He did not remember whether her elder sister had a liquor smell since the incident had happened for long. Though there is minor discrepancy or omission in the testimony of P.W.1, his testimony corroborates the case of the prosecutrix.

13. P.W. 2 Smt. Lalduhkimi states that she has a weaving industry at a place near Hunthar Primary School where Heleni was employed by her as weaver. On 15.4.2014 at evening, the police called her to open her weaving industry since it was locked with key. On entering, they found three empty polythene packets, one polythene packet containing local made liquor and two plastic bottles containing little quantity of IMFL. The police seized the articles in her presence. She proves the seizure memo at Ext. P-2. On cross examination, she did not see any seized article in the Court. She did not know the accused. She came to know the incident of rape from the victim when the police brought her. As the genuineness of the recovery of the seized articles is not challenged by the accused, I consider that the accused has admitted the recovery and seizure of three empty polythene packets, one polythene packet containing local made liquor and two plastic bottles containing little quantity of IMFL from the residence of Helen Sangneihpari.

14. P.W. 4 Shri Lalmuanawma, Jr. Scientific Officer, F.S.L., Aizawl. On 17.4.2014, they received a requisition from SDPO, Aizawl South Division to examine

the following exhibits in connection with Vaivakawn Police Station Case No. 83 of 2014 under Section 376 (1) of IPC :-

- (i) Ext.-1 of a polythene packet containing about 20 ml. of a colorless liquid marked as C(AZL)-195(A).
- (ii) Ext.-2 of two plastic bottles, one bottle containing about 10 ml. of orange colored liquid and the other bottle containing about 1 ml. of a red colored liquid marked as C(AZL)-195(B).

The case was endorsed to him by Dy. Director, FSL, Aizawl for examination. After examining the above exhibits, his findings are as follows:-

- (i) Ethyl Alcohol was detected in the exhibits C(AZL)-165(A) and C(AZL)-195(B).
- (ii) No other poisonous substances were detected in the exhibits C(AZL)-165(A) and C(AZL)(B).

He proves the FSL Report. Cross examination was declined by the accused.

Hence, the case of the prosecutrix that liquor was administered to her is corroborated by deposition of P.W.4.

15. P.W. 6 Smt. Lalrinchani w/o Lalruatpuia, Company Peng, Aizawl. On 14.4.2014, she was present when the police seized the underwear of the victim in the house of Lalduhkimi's Waiving Industry at Hunthar Veng, Aizawl. She put her signature as a seizure witness. She proves the seizure memo at Ext. P-1. She also proves the victim's underwear (navy color) at Ext. M-1. On cross-examination, she states that she accompanied the police while searching the underwear of the victim. She also states that she did not take part in the other proceedings conducted by the police except search.

16. P.W. 7 S.I. Lalsangpuui is the Case I.O who initially did investigation. She examined all the witness. On her transfer to Security unit, she handed over the charge to the in-charge of CAW Cell.

17. P.W. 8 SI Lallawmpuii, CAW Cell, Aizawl found prima facie case against the accused under Section 376 (1) of IPC and Section 109 of IPC against Helen Sangneihpari and Vanlalvena. Hence, she submitted charge sheet.

18. P.W. 9 Shri Lalramsanga, Judicial Magistrate First Class, Aizawl. On 13.6.2014, on endorsement made by the CJM, Aizawl, he recorded judicial statement of the prosecutrix as provided under Section 164 of Cr PC and he put her signature. He proves the judicial statement of the victim at Ext. P-4. On cross-examination, he states that he did not mention the section of law while recording the judicial statement of the victim.

19. Let me first see how the Apex Court has observed regarding the duty of the Court while trying a case of rape.

20. In the case of **Kundula Bala vs. State** reported in **(1993) 2 SCC 684**, the Apex Court has observed thus:

*'26. ....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.'*

21. In the case of **Bodhisattwa Gautam vs. Subhra Chakraborty** reported in **(1996)1 SCC 490**, the Apex Court has observed thus:

*'10. Rape is thus 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, the 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.....'*

22. In the case of ***Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat***, reported in [MANU/SC/0090/1983](#), the Apex Court has observed thus:

*'10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural Society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come 'across an exception or two and that too possibly from amongst the urban elites. Because :(1) 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 ever occurred. (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the Society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) 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. (5) 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. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being over powered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into*

*controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.'*

23. In the case of ***State of Punjab vs. Gurmit Singh*** reported in ***(1996) 2 SCC 384***, the Apex Court observed thus:

*'21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman'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 murderer 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 accused 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.'*

24. In the case of ***State of Andhra Pradesh vs. Gangula Satya Murthy***, reported in ***(1997) 1 SCC 272***, the Apex Court has observed thus:

*'27. ....the courts are expected to show great responsibility while trying an accused 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 witnesses which are not of a fatal nature to throw out allegations of rape. This is all the more important because of late crime against women in general and rape in particular is on the increase.....'*

25. For the reasons discussed above, the evidence of the prosecution inspires much confidence to hold that the accused had sexual intercourse with the prosecutrix against her will and without her consent.

26. In the result, I hold that the prosecution has proved its case beyond reasonable doubt. Consequently, the accused person is convicted of the offence under Section 376 (1) of IPC.

27. Fixed 16.5.2016 for sentence hearing.

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

**SENTENCE****16.5.2016**

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 Lalringzauva.

The learned Addl. PP Smt. Lalremthangi has made a prayer to pass maximum sentence against the convict u/s 376(1) of IPC. Per Contra, the Learned Defence Counsel Shri Laltanpuia has strongly made a prayer to show leniency to the convict.

The submission made by the learned Counsel Shri Laltanpuia appearing for the convict is that the accused has no previous conviction or any case pending against him except this offence. The learned Counsel also submits that the convict is a driver maintaining his parents with his source of income.

The convict also prays for leniency.

On hearing the submission made by the learned Counsels as well as the convict, I find justified to sentence the convict to undergo R.I. for 7 years and to pay a fine of Rs. 3,000/- in default of fine S.I. for 10 days.

The leniency of sentence shown to the convict is due to the submission made by the learned Defence Counsel and the convict on humanitarian ground.

The period of detention spent by the convict in judicial custody is hereby set off.

Seized article, if any, shall be destroyed in due course of law.

The case is disposed off.

**Sd/- VANLALENMAWIA**

Addl. Sessions Judge,  
Aizawl Judicial District,  
Aizawl, Mizoram.

**Memo No. \_\_\_\_\_/ASJ(A)/2016 : Dated Aizawl, the 16<sup>th</sup> May, 2016**

**Copy to: -**

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

**P E S H K A R**