

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. 71 of 2015

Crl Tr. No. 57 of 2015

State of MizoramComplainant

-Versus-

Shri Lalruatdika (33)
S/o V.Lalrohnuna,
R/o North Serzawl, Rengdil,
Aizawl District, Mizoram Accused person.

APPEARANCE

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

For the accused person : Shri H. Laltanpuia, Advocate.

Hearing : 13.5.2016

Judgment delivered on : 23.5.2016

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 offence punishable u/s 376(1) of IPC.

2. Written information was lodged by a brother of victim of North Serzawl on 7.12.2014 to the effect that his sister (real name withheld in order to protect her identity) had been raped by the accused on their way to water point. Hence, Darlawn P.S. Case No. 33 of 2014 dated 7.12.2014 under Section 376 (1) of IPC was registered and duly investigated into.

3. In the course of investigation, the complainant was examined and his statement was recorded. The PO was visited and a sketch map of the P.O. was drawn. The victim was forwarded to the medical officer of Primary Health Centre, Darlawn for medical examination and she was also forwarded to the learned Chief Judicial Magistrate for recording judicial statement. One witness' statement, namely, Laldanmawii was recorded. The accused was interrogated, but he denied of having sexual intercourse with the victim, and his statement was also recorded. As prima facie case u/s 376(1) of IPC was found against the accused in the judicial statement of the victim recorded by the learned Chief Judicial Magistrate, the Case IO submitted charge sheet.

4. Upon committal, charge u/s 376 (1) of IPC was framed against accused Lalruatdika 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.

5. In the course of trial, the prosecution produced and examined seven 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 committed rape upon the victim.

6. **Points For Determination :**

a) Whether the prosecution proves that the accused had sexual intercourse with the victim on 2.12.2014 @ 7 Pm on the way to North Serzawl water point?

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

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

7. I heard the learned Addl. Public Prosecutor for State as well as Shri H. Laltanpuia, the learned Defence Counsel appearing for the accused.

8. Learned Addl. P.P. submitted that even though there are minor discrepancies in the testimony of the victim yet she has broadly supported the case of the prosecution and there is nothing on record to disbelieve her testimony. According to the learned State Counsel, the accused is liable to be convicted of having committed the offence of rape for which he has been charged.

9. Per contra, Shri H.Laltanpuia, learned Defence counsel, submitted that the testimony of the victim (P.w.2) cannot be relied upon inasmuch as material contradictions have been found in her deposition. The learned Defence Counsel also submitted that material contradictions have also found in the depositions of other witnesses. According to him, conviction cannot be recorded against the accused.

Discussion, Reasons and Reasons of Decision.

10. P.w.1 victim's brother identified the accused. On 4.12.2014 at evening, his wife informed him that the accused had committed rape upon his sister on 2.12.2014 at about 7 Pm on the way to well. He did not submit FIR immediately since his mother was in Aizawl due to the death of his father. When his mother came home, he submitted FIR to the Officer-in-Charge, Darlawn PS on 7.12.2014. He proved the FIR at Ext. P-1. On cross examination, he denied that the victim had been divorced by her husband at the relevant time of incident. Initially, the victim disclosed about the incident to his wife. He denied that his wife had not disclosed the incident to him on 4.12.2014. He did not know whether the incident was discussed in MHIP Sub-Headquarters Conference. He submitted the FIR on the basis of the statements of his wife and the victim.

11. P.w.2 Victim identified the accused. At the relevant time of incident, she had a husband and had two sons. Her husband was working as primary school teacher and he was having training at DIET, Chaltlang. Since her husband had training in Aizawl, with her two sons she stayed with her mother at Serzawl. On 25.11.2014, after morning meal, she met the accused and came to know that he would be going to Darlawn. She told the accused to bring tobacco from Darlawn. On the night at about 6-7 PM, she went to the residence of the accused to know that whether he had brought tobacco from Darlawn. On the way, she found a wallet on the side drain. When she counted the money in the wallet, it was about Rs. 14,000

and kept the money in her bag. She reached the residence of the accused and asked him whether he had brought tobacco from Darlawn, to which he replied her that he had not brought tobacco. She returned to her home and slept with her sons. On the following day, she came to know from her brother that the accused had lost his money. She already spent the money which she had found on the way. She intended to ask him to forgive her on 29.11.2014. However, she could not find opportunity to ask him to forgive her since some other persons were present. On the night of 1.12.14, the accused called her over mobile phone informing her to meet him at a place near Church. As both of them were married persons, she was afraid of people watching them and they proceeded to 'Zuala Tuikhur'. She asked him his forgiveness in the name of God as she had already spent the money. The accused forgave her in the name of God and told her not to worry about the money and not to return him. Later, they went home. On the night of 2.12.2014, the accused asked her to meet him at the same place at Zuala Tuikhur. She went there. When she reached Zuala Tuikhur, she did not find the accused. She called him over mobile phone and the accused appeared. As soon as the accused reached the place, he pulled her and tried to rape her. She cried and tried to shout, but the accused pulled her hair and gagged her mouth with his hand and the accused threatened to kill her and thereafter he raped her. After that, she ran home. On the following day, she became sick due to the rape committed upon her and told about the incident to her sister-in-law. On the following Sunday (she did not remember the exact date), her brother submitted FIR to Darlawn PS. She was forwarded to the Medical Officer to examine her and she was also forwarded to the learned Chief Judicial Magistrate, Aizawl for recording her Judicial Statement. She proved her Judicial Statement before CJM Aizawl at Ext. P-2. On cross examination, she spent Rs. 8,000/- for payment of her debt to Shri Biakthanga of N. Serzawl and Rs. 4,000/- for payment of her debt to Ramzauva. But, she did not how she had spent another Rs. 2,000/-. She did not try to find out the owner of the wallet before spending the money. She admitted that she had stayed at N. Serzawl during the training period of her husband since she had been driven out by her father-in-law as they had some misunderstandings. She further admitted that she herself had requested the accused to meet her on the night of 1.12.2014. She also admitted that she had first proposed to discuss some matters with the accused in the absence of the other persons. On the night of 4.12.2014 she disclosed the alleged incident to her sister-in-law in their residence. She denied that people had

felt her divorcee due to the reason that she had been driven out by her father-in-law from her husband's house. She further denied that the accused had not committed rape upon her. She also denied their local Church leader had intended to take disciplinary action against her. She did not pay money to the accused. Finally, she admitted that she had been brought to medical practitioner for examination, but not informing her result of the medical examination.

12. P.w.3 Victim's sister-in-law identified the accused. On the night of 2.12.2014, she knew the victim receiving mobile phone calls and the victim went out. But, she did not know who had called her and for what purpose. On the night of 3.12.2014, she met the accused and asked him whether he knew the victim had found his lost money, but the accused replied her that he had forgiven the victim. She told him that she would scold the victim. On the night of 4.12.2014, the victim informed her that the accused had raped her at a place near Zuala Tuikhur. She did not notice and did not suspect the victim having fear. On the following morning after meal, she informed the alleged incident to her husband, who is the elder brother of the victim.

13. P.w.4 Dr Laldinpuii Ralte, while performing duty at Darlawn PHC. On 12.12.2014, she received a requisition for medical examination of the victim in alleged rape case. At the time of examination, the victim changed her clothes and took bath. She found no positive result in alleged rape. She proved the requisition for medical examination at Ext. P-3 and the Medical Examination report of the victim at Ext. P-4. The accused declined to cross examined her.

14. P.w.5 ASI Lalthazawnga identified the accused. On 7.12.2014, a written FIR was received from P.w.1 Lalhmuchhuaka of North Serzawl that on 2.12.2014 at around 7 Pm, his sister was raped by the accused on the way to their village water point. Hence, Darlawn PS Case No. 33 of 2014 dt. 7.12.2014 u/s 376(1) of IPC was registered and the case was endorsed to him for investigation. In the course of investigation, he examined the complainant and his statement was recorded. He visited the PO, prepared crime detail form and drew a rough sketch map of the P.O. He examined the victim and recorded her statement. He also sent her to the Medical Officer, PHC Darlawn for medical examination. He finally examined the witness and recorded her statement. He arrested accused Lalruatdika and

recorded his statement. He forwarded the victim to the CJM Aizawl for recording her judicial statement. He then handed over the case record and all its connected documents to the OC, Darlawn PS. He proved the original FIR at Ext. P-1, the requisition for medical examination of victim at Ext. P-3, the Form of FIR at Ext. P-5, the Crime Detail Form prepared by him at Ext. P-6, the sketch map of the PO at Ext. P-7 and the Arrest Memo at Ext. P-8. On cross examination, the victim returned to N. Serzawl without her husband at the relevant time and stayed with her natural father. There was no any explanation from the complainant regarding delay of FIR except that they had come to know about the incident only on 4.12.2014. The PO is the outskirts of Serzawl village but not too far from the nearest house. If a person shouts for help, any person from the nearest house may hear it. There is no mark or sign showing the use of physical force upon the body of the victim and the medical report is also silent about this. He perused the medical report and found no positive result.

15. P.w.6 S.I. C. Zonunmawia identified the accused. At the relevant time, he was the OC of Darlawn PS. On 7.12.2014, a written FIR was received by ASI Lalthazawnga as he was the 2nd OC of Darlawn PS. The FIR was received from P.w.1 Victim's brother of North Serzawl stating that on 2.12.2014 @ 7 PM, his sister was raped by the accused on the way to their village water point. Hence, Darlawn PS Case No. 33 of 2014 dt. 7.12.2014 u/s 376(1) of IPC was registered and the case was endorsed to ASI Lalthazawnga for investigation. ASI Lalthazawnga investigated the case under his instruction. During investigation, ASI Lalthazawnga examined the complainant and his statement is recorded. ASI Lalthazawnga visited the PO, prepared crime detail form and drew a rough sketch map. ASI Lalthazawnga examined the victim and recorded her statement. ASI Lalthazawnga also sent her to the Medical Officer, PHC Darlawn for medical examination. ASI Lalthazawnga also examined the witness and recorded her statement. ASI Lalthazawnga arrested the accused and recorded his statement. ASI Lalthazawnga forwarded the victim to the CJM Aizawl for recording her judicial statement. ASI Lalthazawnga then handed over him the case and all its connected documents. After going through the case record and its connected documents, he found a prima facie case u/s 376(1) IPC against the accused and submitted Charge Sheet. He proved the original FIR at Ext. P-1, the judicial statement of the victim at Ext. P-2, the requisition for medical examination of victim at Ext. P-3, the Medical Examination Report of the victim at Ext. P-4, the Form

of FIR at Ext. P-5, the Crime Detail Form at Ext. P-6, the sketch map of the PO at Ext. P-7, the Arrest Memo at Ext. P-8 and the Charge Sheet at Ext. P-9. On cross examination, he admitted that Ext. P-9 submitted by him was based on the investigation of ASI Lalthazawnga and he had not investigated the case by visiting the place of occurrence. As far as he knew, the husband of the victim traveled to Sailutar village at the time of incident. He denied that the accused had not no sexual intercourse with the victim.

16. P.w.7 M/s Sylvie Z.Ralte, learned CJM, recorded the judicial statement of the victim. On 15.12.2014, on the prayer of the Case IO, the judicial statement of the victim was recorded by her in connection with Darlawn PS Case No. 33 of 2014 dated 7.12.2014 u/s 376(1) of IPC. The victim appended her signature recorded in the judicial statement. She proved the judicial statement of the victim. On cross examination, she admitted that the statement recorded by her is not in order.

'JUDICIAL STATEMENT OF VICTIM
.....U/S 164 Cr PC. IN CONNECTION
WITH DARLAWN P.S. C/NO 33/14 DT. 07.12.2014 U/S 376 (1) IPC

PARTICULARS OF THE VICTIM

NAME :
F/NAME :
AGE : 23 YRS
ADDRESS : Sailutar

(English Translation)

On 27.3.2009, I got married to With him we have two male children aged about 4 years and 8 months. At present, I am staying in my husband's residence.

My husband is a Primary School Teacher. We temporarily resided with my mother since last October.

I came to know Lalruatdika

On 25.11.2014 at mid-day, as I came to know that Lalruatdika would go to Darlawn, I told him to bring tobacco. At night, at around 6-7, I went to his residence for tobacco. On the way I found a wallet in the streamlet. In it there was Rs. 14,000/- and I kept it in my bag. On reaching their residence, I enquired from veranda whether he had brought tobacco or not, to which he told me, he had not brought. I then went home and slept. On the following day, I came to know from my elder brother that Lalruatdika had lost money. As I slept early on the night

before, I did not know whether there was any public announcement or not. But, as I spent the money, on Sunday, I went, to ask him to forgive me. As Lalruatdika and his wife were present in their residence, I returned home without asking his forgiveness. On the following morning, I tried to go to meet him. As his younger and my uncle were also with him, I called him to their neighbor shop and said, "Come at day time, I want to inform you something". He came after mid day meal. I met him outside. He told me that he would meet me at day time. He played cards game the whole day in neighbour's house. He did not come on that day.

At night, he called me over phone and asked me, "What happens? I am ready now". I also went out. We being married persons, as other persons might think us in other way, we went up to Zuala Lui. Thereat, I said, "I found your lost money, but I spent it, forgive in the name of God". I asked him, "How much your money is?" He replied me, "around eleven thousands, but I do not know the exact amount". I told him Rs. 14,000/- was in the wallet". I asked him to forgive me, and I told him that I would give him after a week. He told me that he forgave me and also told me not to worry. He also told me not to return him the lost money as he was not worried because I am the person who had found the lost money. But, I made a promise that I would return him the money. But, he told me to give half of the money. However, on the night of 2.12.2014, he called me over phone saying, "Come, we have to settle our dispute". I went to meet him in the place, but he was not there. When I called him over phone he appeared. He embraced me and I struggled. He dragged me to the ground. I said, "You had forgiven me, don't act upon me in the name of God, my husband is also God's man)". He warned me, "Don't mention the name of God, I dare to die". I again asked him to forgive me. I cried and got nervous. As I was scared of him, I had to submit myself due to pressure of his force upon me. He said, "I will bring knife and let us die together." I again told him, "Please, do not act upon me, you tell others about the money". He said, "Understand me, my wife cannot have time". As I struggled, he inserted his fingers in my vagina and I felt pain. As I thought he would not mind to kill me, as his younger brother had also killed a man, he fulfilled his thirst. I prayed to God by putting my hands on his head. Thereafter, I rushed to home. On the following day, I suffered. I told about the incident to my sister-in-law. She later told to her husband (her elder brother). He submitted FIR. The police checked me and the medical officer also checked me.

Sd/- CJM

17. The Apex Court in *Narendra Kumar v. State* (NCT of Delhi) (2012) 7 SCC 171 held as follows;

'23. The courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of witnesses which are not of a substantial character.

However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witness have falsely implicated the accused. Prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide: *Tukaram and Anr. v. The State of Maharashtra* [MANU/SC/0190/1978](#) : AIR 1979 SC 185; and *Uday v. State of Karnataka* [MANU/SC/0162/2003](#) : AIR 2003 SC 1639).

18. There is no evidence to show that the accused had sexual intercourse with the victim from the medical evidence. There is no mark of violence on her body. There is also no bruising or laceration on the victim's external genitalia. The medical officer did not record that the victim had told her about commission of rape. It is very hard to believe that the accused committed rape upon the victim.

19. There is no explanation of delay in the FIR. The previous Case I.O. (P.w.5) stated in his cross examination that there was no explanation from the complainant except that they had come to know about the incident only on 4.12.2014. However, the complainant improved his statement that they waited his

mother who had gone to Aizawl due to the death of his father. It appears to me that the explanation of delay of the complainant is very sketchy.

20. It is surprising to know from the statement of P.w.5 that the place of occurrence is not far from the nearest house. If the victim shouted for help, it could be heard from the nearest house. The victim trying to meet the accused separately for the lost money also cast doubt on her character. The victim stated in her judicial statement under section 164 of Cr PC that she had found wallet on the way to the house of the accused, but she later deposed in the court that she had found wallet on returning to her home. Such deviation from the judicial statement also cast doubt on the testimony of the victim. The victim tried to suppress the fact that she had separated her husband. The non appearance of the victim's husband in the scene can be presumed that she had separated her husband. The testimony of the victim does not inspire confidence. As the whole story of the prosecution is based on the statement of the victim, I do not find any reason to pass conviction against the accused inasmuch as the prosecution fails to bring home the offence against the accused by reliable evidence.

21. In his examination under section 313 of Cr PC, the accused stated that he had not had sexual intercourse with the victim. I also peruse the case diary. The accused also stated before the police that he had not had sexual intercourse with the victim. The police found a rape case against the accused on the basis of the sole judicial statement of the victim recorded by the learned CJM.

22. The Apex Court in the case of Narendra Kumar (Supra) held as follows;

'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. [MANU/SC/0015/2003](#) : AIR 2003 SC 818; and Vishnu v. State of Maharashtra [MANU/SC/2156/2005](#) : 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 [MANU/SC/0529/1998](#) : (1999) 1 SCC 220)'

23. As discussed above, the prosecution case appears to be extremely doubtful and it cannot be said to have been established that the accused person had committed rape upon the alleged victim. The points are answered accordingly.

24. 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 offence under Section 376 (1) of IPC he be set at liberty forthwith.

25. Previous bail bond shall remain in force for a further period of 6 (six) months as provided under Section 437-A Cr PC.

Given under my hand and seal of this Court on this 23rd day of May,
2016.

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

Memo No. _____AD&SJ(A)/2016 : Dated Aizawl, the 23rd May, 2016

Copy to: -

1. Shri Lalruatdika C/o Shri H.Laltanpuia, Advocate
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. District Magistrate, Aizawl.
4. PP / Addl. PP, Aizawl.
5. DSP (Prosecution), District Court, Aizawl.
6. Officer-in-Charge, Darlawn Police Station.
7. Registration Section.
8. Guard File.
9. Case Record.
10. Calendar Judgment.

P E S H K A R