

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. 18 of 2014

Crl Tr. No. 261 of 2013

State of MizoramComplainant

-Versus-

Shri Siamhnuna (42)
S/o Kapthianga,
R/o Bethel Vengthar,
Champhai District, Mizoram Accused person.

APPEARANCE

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

For the accused person : Shri W. Sam Joseph, Advocate.

Hearing : 21.4.2016

Judgment delivered on : 2.5.2016

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 (2) (I) of IPC.

2. Written information was lodged by the victim's mother on 8.11.2013 at 2:00 Pm to the effect that her daughter who is unsound mind had been taken out from their residence by the accused on 5.11.2013 around mid day to Keilungliah. Therein, the victim was given liquor and after getting drunk, the accused committed rape upon her and left her the whole night thereat. Hence, Champhai PS Case No. 160 of 2013 dated 8.11.2013 u/s 376 (2) (I) of IPC was registered and duly investigated into.

In the course of investigation, the complainant was examined and her statement was recorded. The PO was visited, but no clue was found at the PO. Thereafter, the victim was sent to Medical Officer, District Hospital, Champhai for medical examination. According to the Medical Officer, hymen of the victim was absent, no spermatozoa seen, no bruising, laceration on her external genitalia was also seen. According to the victim's dental configuration, she was around 25 years of age. The victim's statement could not be recorded properly for her being unsound mind. The accused was arrested on the night of 8.11.2013. According to the Case I.O., the accused admitted his guilt. The available witnesses were also examined and their statements were recorded. Prima facie case u/s 376(I) of IPC was found against the accused and the Case IO submitted charge sheet.

3. Upon committal, charge u/s 376 (I) of IPC was framed against the accused 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 six out of seven witnesses to prove that the accused had committed the offence punishable under Section 376 (1) of IPC. One witness could not be examined as she could not be brought to give evidence. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC, but he denied the suggestions put before him. However, the accused produced defence witness when chance was offered to him.

5. **Points For Determination :**

- a) Whether the prosecution proves that the victim was unsound mind?
- b) Whether the prosecution proves that the victim was in the state of intoxication administered by the accused?
- c) Whether the accused had sexual intercourse with the victim against her will or without her consent?
- d) Whether the accused is liable to be punished under Sections 376 (I) of IPC?

6. I heard the learned Addl. PP Smt. Lalremthangi appearing on behalf of the State and the learned Defence Counsel Shri W. Sam Joseph for the accused.

Discussion, Decisions and Reasons for the Decisions.

7. The first point to be considered is whether the victim suffered from unsoundness of mind at the time of relevant incident. At the time of taking deposition, the victim's mother appearing as P.W.1 and the victim's step father as P.W.2 have not deposed that their daughter had unsound mind. What they have deposed in the court is that the victim used to have occasional epileptic fits and she was never allowed to work any manual work due to her ailment. P.W.4 who is the Case I.O. in her cross-examination states that she did not find any report of victim's mental disorder though she was verbally informed that the victim had occasional attack of elliptic fits. The medical officer appearing as P.W.5 deposes that the victim was physically normal and verbal responsive slow. According to him, the victim was in a position to give rational answers to the questions put to her though she was bit slowly in answering questions. The history of occasional attack of fit was derived from the victim. Hence, the victim cannot be held suffering from mental disability or physical disability.

8. The second point to be considered is whether the victim was in the state of intoxication at the time of relevant incident. The victim states that she was given liquor and the accused while trying to have intercourse with her; she could not fight back due to intoxication. But, there is no such evidence produced in the court to affirm that the victim took liquor administered by the accused.

9. The third point to be considered is whether accused had sexual intercourse with the victim against her will or without her consent. In cases involving offence of rape, the testimony of the victim is the most crucial and relevant piece of evidence.

10. The statement of the victim, 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 victim 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.

11. The victim of rape appearing as P.W.2 has deposed that she knew the accused. She studied upto Class-III. She has been living with her mother since childhood. On a day, the accused called her by waving his hand and she followed him from her house. The accused took her to forest and made her to drink two glasses of liquor. Thereafter, the accused forced her to have sexual intercourse and she did not have strength to fight him back. She stayed the whole night in the forest as the accused told her to remain there. She could not go home as she was not familiar with the place. On the following day, she reached a road where she found a man cutting fodder who in turn made a call over mobile phone and later, her parents arrived. She had not taken food since she left her house. She informed about the incident to her family. She neither knows whether any question was asked by the police nor she was brought to Doctor. She also deposes that she got married to a man for a short time, but she neither married nor eloped with the accused. It is also deposed by her that she did not have love affairs with the accused. On her cross examination, she states that she married the accused for a short time. She was in love with the accused and had sexual intercourse with him. But, she was sent back to her parents at the instance of the accused. Apart from the accused, she got married to Peka and Manuna while she was running 15 years of age. With them she spent one night each having sexual intercourse with them, but she was taken back by her parents.

12. It is manifest beyond doubt from the conduct of the victim that she voluntarily accompanied accused Siamhnuna to the forest of Keifangtlang. There is no allegation that accused Siamhnuna forced her to accompany him to the aforesaid

forest. The victim has deposed that accused forced her to have sexual intercourse. As noted above, they were not stranger to each other. They were friends and also sex partners. Even the victim and the accused married one short time and had sexual intercourse which can be seen her statement in her cross examination. It is pertinent to mention here that the victim loved him. Therefore, it is very difficult to believe that the accused forced the victim to have sexual intercourse.

13. Now, if the medical evidence is looked at, it also does not support the allegation of rape. She was examined by in District Hospital, Champhai on 8.11.2013 by P.W.5, who has deposed that he could not give opinion that the victim was subjected to forcible sexual intercourse. It is opined by P.W.5 that the victim was used to sexual intercourse. It is also apparent from Ext. P-4 that the hymen of the victim was absent and there was no bruising or laceration on her external genitalia.

14. Even if the victim's mother testimony is looked at, though the victim's mother as P.W.1 states that her daughter told her that she was subjected to forcible sexual intercourse, but as the victim's statement that she was subjected to forcible sexual intercourse is not credible and inspiring as discussed above, the testimony of the victim's mother cannot be relied upon. The mother of the victim deposes before the court that the victim studied upto Class-VI which is material contradictory with the statement of the victim. It is pertinent to mention here that P.W.1 also deposes that her neighbor saw her daughter with the accused at Far hmun, but her daughter declined their offer for a lift which also shows that the victim voluntarily accompanied the accused to Keilungliah. It is also pertinent to mention here that the step father of the victim appearing as P.W.3 and the Case I.O. as P.W.4 derived their information from the victim.

15. It is evident from the testimony of D.W.1 that the victim eloped with different men including the accused. The victim parents used to take her back. The victim told her that she loved the accused and would like to marry him.

16. Over analysis of the evidence led by the prosecution and the defence would reveal that the victim's mother has made a false complaint of rape against the accused. In fact, no incident of rape took place. There is absolutely no truth in the allegation of rape raised by the victim and she has manipulated a false story of rape

for some ulterior motive and she was assisted by somebody else in this whole episode.

17. In the result, I hold that that the prosecution has failed to prove its case beyond reasonable doubt. Consequently, the accused is acquitted of the offence u/s 376 (2)(I) of IPC and he be set at liberty forthwith.

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

Order is pronounced in open Court on this 2nd day of May, 2016 under my hand and seal of this Court.

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

Memo No. _____/ASJ(A)/2016 : Dated Aizawl, the 2nd May, 2016

Copy to: -

1. Accused Siamhnuna through Counsel Shri W. Sam Joseph, Advocate.
2. The Sessions Judge, Aizawl Judicial District, Aizawl.
3. The District Magistrate, Champhai District.
4. The Superintendent of Police, Champhai District.
5. The Addl. PP, Aizawl.
6. The DSP (Prosecution), District Court, Aizawl.
7. The Officer-in-Charge, Champhai 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