

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. 86 of 2013

State of MizoramComplainant

-Versus-

Shri Rorelliana (36)
S/o Lalmangliana,
R/o Khawrihnim, Mamit District. Accused

APPEARANCE

For the State : Shri Joseph Lalfakawma, Addl. P.P.

For the accused : Shri Joseph L. Renthlei, Advocate.

Hearing : 2.12.2015, 16.12.2015 & 17.12.2015

Judgment delivered on : 12.1.2016

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

By the Judgment & Order dated 10.9.2015 in Criminal Appeal No.19 of 2015 passed by the Hon'ble Mr. Justice Michael Zothankhuma of the Gauhati High Court, Aizawl Bench, the judgment & order dated 20.3.2015 passed in Sessions Case No. 86 of 2013 was set aside and remanded back the case to record the evidence of the Doctor concerned, to examine the accused further under Section 313 of Cr PC and pass

necessary orders as per law preferably within a period of 4 (four months) from the date of receipt of the Court Record.

2. The brief facts of the prosecution story is that on 19.5.13 a written F.I.R. was received from the victim's mother to the effect that on that day at around 10:00-11:00 Am, the accused had committed rape upon her daughter (hereinafter in short the "victim"), who was aged about 11 years. Hence, Kulikawn Police Station Case No. 60 of 2013 dated 19.5.2013 was registered against the accused under Sections 376 (2) (f) and 376 (2) (i) of IPC.

In the course of investigation, the complainant and the victim were examined, and their statements were recorded. In the statement of the victim, on 19.5.2013 (Sunday) she did not attend church service with her friend Dini since they were late. On the way, they met the accused (who was her uncle) at Smt. Dengi's grocery shop who later invited them to watch T.V. in his house. Both the victim and her friend then followed the accused to his house. The accused asked the victim's friend Laldinpuii to buy lawngpar (cloves). As soon as Laldinpuii left them, the accused pulled the victim into the bed room and sexually assaulted her on the bed after undressing her. After the incident, the victim left the accused crying, she proceeded towards her friend Laldinpuii and informed her about the incident. Before the victim leaving him, the accused stated, "**Na ila ti sia, i puitlin hunah kan ti leh dawn nia**" (in English, since you feel pain, we will do again when you grow older). The victim also stated that the accused had touched and poked her private part two or three times in the past. The victim was medically examined and the medical report revealed that her hymen was absent, forefinger admitted and discharge was present. A copy of the birth certificate of the victim made from the original was seized to prove the age of the victim. The statements of witness Laldinpuii and the seizure witnesses were also recorded. The accused was arrested on 19.5.2013 and interrogated. The accused admitted his guilt stating that he had gently penetrated his penis into the victim's vagina, but as the victim felt pain he released her. Since, the statement of the accused was corroborated by the statement of the victim and the other documents collected by her; the accused was forwarded to judicial custody. Hence, S.I. Lalmachhuani Sailo found a prima facie case

against the accused under Sections 376 (2) (f) and 376 (2) (i) of IPC and submitted charge sheet to the Court of the learned Chief Judicial Magistrate, Aizawl.

3. Upon committal, charges under Sections 376 (2) (f) and 376 (2) (i) of I.P.C were framed, read over and explained in the language known to him, and to which he pleaded not guilty and claimed to be tried.

6. In short, as the judgment & order dated 20.3.2015 was set aside and the case was remanded back to record the evidence of the Medical Officer, this Court recorded the evidence of the medical officer concerned, examined the accused and pass the judgment & order.

8. **Points for consideration: -**

a) Whether the prosecution proves that the accused had sexual intercourse with the victim in the bed room of his house on the day of 19.5.2013 between 10:00-11:00 Am at Khawrihnim village?

b) Whether the act of the accused amounts to an offence of rape?

c) Whether the prosecution proves that the victim is a relative of the accused?

d) Whether the prosecution proves that the victim is less than sixteen years old?

e) Whether the accused can be convicted under Sections 376 (2) (f) and 376 (2) (i) of I.P.C?

9. **Evidence of the Prosecution Witnesses: -**

P.W.1, the victim's mother identified the accused. The accused's father is her grandfather's brother. She has three children. Out of them, the victim is the youngest. She stated that the victim was born on 10.8.2001.

In her testimony before the Court, on 19.5.2013 when the victim came home she was at home with her husband. She saw the victim shaking and shivering who told her that she had gone to the house of the accused with her friend Laldinpuii to watch T.V. The accused sent the victim's friend to buy something. After the victim's friend left, the accused took the victim to the bedroom and laid her on the bed. The accused removed the victim's panties, also removed his pants and then inserted his penis into her private part. The victim cried out in pain and the accused covered her mouth with his hand. The victim then started crying and the accused told her he would not hurt her. The victim then went out of the bedroom, but the accused forced her to sit down on a chair. The accused then touched the victim's breast and her private part. The accused then told the victim that she was very young, and he would have sex her again when she would grow older. When the accused let her to leave the house, the victim met her friend near the water point and told the incident that had taken place. Both the victim and her friend came to her home. As the victim narrated about the incident, they informed about the incident to their family members and the NGO members. On the same night itself, they submitted FIR at Kulikawn Police Station. She proved the FIR submitted by her. On cross examination, she admitted that she had not seen the incident and therefore she did not know whether it had actually happened or not. She knew that the victim was examined by the Doctor, but she did not know whether the Doctor's report stated penetration was there or not. She admitted that she came to know about the incident what had been told to her by the victim, but she had not known of the victim ever lied to her before. She denied that the victim neither came to their house nor went to the house of the accused. She did not examine the private part of the victim to know whether it was bleeding or not. She knew that the accused is not small sized person.

P.W.2, the victim identified the accused. Her grandfather and the accused's mother are brother and sister. She is the youngest; she has one elder brother and one elder sister. She stated that she was born on 10.8.2001.

In her deposition before the Court, on 19.5.2013, which was Sunday, she planned to attend church service of Salvation Army with Laldinpuii, but since they were

late for the service, they went to Pi Dengi's shop to buy something. Therein, they found the accused who later invited them to watch television in his house. When Pi Dengi was looking elsewhere, the accused carried her and lifted her skirt and touched her private part. She then went to her friend Laldinpuii and also met her elder sister U Engi who told them to go home, U Engi called her mother over mobile phone who later told her to tell them to come home. They left for home, but the accused also came since his house is on the way. When they reached in front of the house of the accused, the accused invited them to watch T.V. in his house. As soon as they entered his house, the accused switched on the T.V. The accused sat on between her and her friend and began to touch their thighs. Thereafter, the accused sent her friend to get the lawngpar (cloves) which he had purchased and forgotten in the shop. The accused thought that her friend had left for the shop, but before entering to the bedroom she saw her friend still standing close to the window. In the bedroom, the accused laid her on the bed, covered her mouth by his hands, he removed her panty as well as his pant. The accused then inserted his penis into her private part, which she was feeling painful and felt like burning from inside. She struggled much but the accused was very strong. As she felt pain, she shouted, but she was told that he would do gently. The accused did something to his penis and then inserted again his penis to her private part. However, she felt pain. The accused removed his penis and asked her to touch his penis which she refused. Thereafter, the accused told her to put on her panty and both of them went to his sitting room, but forced her to sit on the chair. The accused then told her that since she felt pain, he would do again when she would grow a bit bigger. The victim did want to stay longer with the accused and told him that she wanted to meet her friend Laldinpuii. The accused told her that Laldinpuii would see her crying and so she should not go to meet her and should wait her friend outside the house. The victim took her bible and lip-gloss and went out of the house. Instead of waiting for Laldinpuii she ran towards Pi Dengi's shop and when she reached the water point, she met her friend Laldinpuii who was coming back from Pi Dengi's shop. As she was crying very hard, her friend asked her what had happened, and she told her everything. Her friend suggested that they should first return the cloves to the accused, but she refused, and they went home. At home, both her parents were there, her mother was cutting her father's hair. When she reached home, she was still crying, so her mother asked her the reason. She then told

to her mother what the accused had done on her. She knew that her parents had called their other family members. She also knew that she was examined by the Doctor, but she did not remember the exact date. On cross examination, the victim could not say whether the accused had actually inserted his penis into her private part since she was too scared to look, but she felt burning and it was very painful. She could not remember whether she was medically examined on the same day of the incident or not. The victim denied that they had not gone to the house of the accused on the day of the incident. She further denied that the accused had not taken him to the bedroom on the day of the incident. She also denied that she had already attained the age of 16 years on that Sunday when incident had occurred. She finally denied that the accused had not done anything to her.

P.W.3, Laldinpuii, a friend of the victim identified the accused. She was a student of Class-IV at the relevant time.

In her testimony before the Court, on 19.5.2013, she and the victim planned to attend the church service of Salvation Army, but they did not attend the service. According to her, the time was 9:00 Am. They went to Pi Dengi's shop. In the shop, the accused was also present. The victim wanted to buy Sachin, but the accused lifted her and put her on his lap. Thereafter, they left the shop for U Rinmawii's house. The accused followed and invited them to visit his house. The accused switched on T.V. While watching the T.V., the accused came and sat between them and touched their thighs, saying that he rarely got in touch with young ladies. Thereafter, the accused sent her to buy some cloves. Her friend, who is the victim tried to follow her, but the accused caught hold of her. She then went out slowly. When she saw through the window, the accused led her to their bedroom. She was a bit worried but controlling herself and went to Pi Dengi's shop. She purchased the cloves and was about to return. When she saw the victim crying on the way, she was told that the accused had forcefully got on the top of her on the bed. When the victim could stop crying, she suggested reporting the matter to the victim's mother. The victim told her mother about the incident, but she did not hear the victim telling her mother. On cross examination, she admitted that she had not seen the accused raping the victim, but the victim was

continuously crying but not loudly. She stated that she did not know whether the victim was crying due to the reason that the accused had scolded and slapped her. She denied that they did not go to the house of the accused on that day.

P.W.4, Lalremruati identified the accused. At the relevant time, she worked as a counselor at Aizawl Police Station at the Family Counseling Centre. In her presence at Aizawl Police Station, the victim and her family members came and produced one panty and a Birth Certificate. She was told that it was a case of rape. A seizure memo was prepared at the Police Station and she was asked to stand as seizure witness to the seized articles. She proved the seizure memo. She was shown the original Birth Certificate which was Xeroxed as she was present at that time. She also proved the Xeroxed copy of the Birth Certificate seized on that day. On cross examination, she stated that the panty seized on that day was produced at the Police Station by the victim and her family. She denied that since there was no marking to identify that the panty belonging to the victim, the panty seized on that day did not belong to the victim. She stated that the panty belonged to the victim since they had stated that it belonged to her. Her colleague was also present when she was told that the panty belonged to the victim. Though she did not know the victim personally, but she presumed the victim's statement to be true since she was a child and there appeared no reason to speak untruth. She did not know the exact age of the victim, but she knew that she was below 18 years of age. She denied that she could not determine whether a person a major or not from their physical appearance. She admitted that she had not personally seen the incident.

P.W.5, Lalrinfeli identified the accused. At the relevant time, she also worked as a Counselor at Aizawl Police Station at Family Counseling Centre. In her presence at Aizawl Police Station, the victim and her family members came and produced one panty and a Birth Certificate. She was told that it was a case of rape. A seizure memo was prepared at the Police Station and she was asked to stand as seizure witness to the seized articles. She proved the seizure memo. She was shown the original Birth Certificate which was Xeroxed at the Police Station as she was present at that time. She also proved the Xerox copy of the Birth Certificate seized on that day. On

cross examination, she did not know from where the panty was seized since it was produced at the Police Station by the victim and her family. She admitted that she did not know whether the panty belonging to the victim or not since it was not physically removed from her in her presence and there was no any identification mark on the panty. She denied that she falsely deposed in the Court since the victim is her relative and as a result she deposed in her favour.

P.W.7, ASI Rothangliani identified the accused. She was posted in the CAW Cell w. e. f. 2009 to March 2014. The FIR of the instant case was lodged at Kulikawn PS on 19.5.2013 which was registered as Kulikawn PS Case No. 60 of 2013 dated 19.5.2013 under Section 376 (2) (h) of IPC. She held investigation on the instruction of S.P. Aizawl and under the supervision of S.I. Lalhmachhuani i/c CAW Cell. In the course of investigation, she visited the place of occurrence which is the house of the accused at Khawrihnim village. She examined the complainant, the victim and recorded their statements on 19.5.2013 and forwarded the victim for medical examination on the same day. On 19.5.2013 she arrested the accused and interrogated him and the witnesses. She seized the original Birth Certificate of the victim from her mother, made a photocopy of it and later returned the original to her mother. On 20.5.2013, she made a prayer for judicial remand of the accused. It was from the statements of the victim, the friend of the victim, the accused and the medical examination report, she found a prima facie case under Section 376 (2) (i) of IPC and then handed over the investigation report to S.I. Lalhmachhuani i/c CAW Cell. She proved the arrest memo. She also proved the seizure memo. On cross examination, she stated that she had not personally seen or heard the incident. She admitted that her knowledge was derived from others. She went to Khawrihnim by vehicle from Aizawl. As far as she could remember, she left Aizawl for Khawrihnim along with O/C Kulikawn PS in the morning and reached there at around 9:00-10:00 AM. She denied that the photocopy of the Birth Certificate is neither certified nor attested.

P.W.8, S.I. Lalhmachhuani Sailo deposed before the Court that a written FIR was submitted by the victim's mother at Kulikawn PS to the effect that her daughter who is the victim was raped by the accused. Hence, Kulikawn PS Case No. 60

of 2013 dated 19.5.2013 under Section 376 (2) (i) of IPC was registered as instructed by the SP, Aizawl. ASI Rothangliani was endorsed to investigate the case under her supervision. Accordingly, under her supervision, ASI Rothangliani of CAW Cell held investigation by visiting the PO, examined the complainant, forwarded the victim for medical examination as per her instruction, recorded the statement of the victim, seized the Birth Certificate and recorded the statements of the seizure witnesses. On completion of the investigation under her supervision, the case was handed over to her. After going through the investigation held by ASI Rothangliani and on having satisfied herself, she submitted charge sheet against the accused for the offence punishable under Section 376(2)(i) of IPC. She proved the charge sheet. On cross examination, she had no personal knowledge of the instant case. They proceeded to the PO after the arrest of the accused. She could not recollect the exact date when the place of occurrence was visited, but to her knowledge it was the day after the FIR was lodged. As far as she could recollect, they left Aizawl in the forenoon which should be about 10-11 AM and reached the village in the afternoon. She denied that her information regarding the instant case was derived solely from ASI Rothangliani who had conducted the investigation under her supervision.

P.W. 9 Dr. Zosangpuui, Medical Officer, Civil Hospital, Aizawl. On 19.5.2013 at about 10:55 Pm, she received requisition from CAW Cell to examine the victim, aged about 11 years in connection with the alleged rape. She then examined her and her findings were as follows;

In the genital examination, there was no bruising or laceration of external genitalia. Her hymen was large and hypertrophied admitting one finger. Normal hymen of the victim was absent. Ext. P-6 is the requisition for medical examination. Ext.p-7 is the Medical Examination Report of the victim and Ext. P-7 (a) is her signature.

On cross-examination, she did not know when the incident of rape occurred. The victim replied her that she had neither taken bath nor changed her clothes. There was no stain found from the clothes or on the body of the victim. She sent 3 slides taken from inside vagina and under wear for laboratory examination for

presence of sperm. There was no bleeding in victim's vagina. It appeared to her that there was no forceful entry of any object in the vagina.

11. After closure of the prosecution evidence, the accused was examined under Section 313 of Cr PC. In the examination, he denied all the incriminating evidences appearing against him.

12. **Evidence of the Defence.**

D.W.1, R. Lalthankima. According to him, the allegation made against the accused was Sunday. On that day, he saw the victim and her friend loitering. The alleged incident happened during church service. At afternoon also, he saw the victim. If rape was committed, the victim and her friend would not be seen peacefully. In his opinion, it is a case of defamation. The victim's family regretted since they had received financial benefit from Child Welfare Committee and Education Department. On cross examination, he stated that he had not attended church service on that Sunday. He admitted that he is not active in church activity. He admitted that the accused had not attended church service on that Sunday. He admitted that he had not asked the victim about the incident and what he stated in the examination-in-chief that the victim and her friend were loitering peacefully was just his presumption. He stated that he had not received any information that the victim and her family regretted in filing the case against the accused.

D.W.2, C.S. Hmingthanga did not believe that the accused could have committed rape upon the victim since the accused was a leader of Church Youth Service and also an active member in the society. There was none from his generation who had character to commit sexual assault. The victim's mother intended to withdraw the FIR, but she was not allowed by her relative. He wanted to put an end the case since this kind of incident never happened in the village and made a prayer to the Court. He wanted to take the same step to the victim's mother. On cross examination, he stated that he had no relationship with the accused, but the accused and he are YMA members. He did not believe the accused committing rape upon the victim due to his activity in YMA and Church. He came to know from other persons that the victim is a

normal child. He admitted that he had not come to know the victim having sexually assault before this incident. He also admitted that the family of the victim is above average, but does not have activity in society. He did not ask the victim's family about the withdrawal of the FIR, but he came to know from others.

D.W.3, H. Zahmingthanga did not believe that the accused could have committed rape upon the victim. According to him, the victim was too young to be a victim of such sexual offence. He worked as Headmaster at Khawrihnim for nearly 40 years. At present, he is the Vice President of Khawrihnim Village Council. He came to know the family of the accused from his grandfathers. He did not find any one from his family who had character to commit sexual assault, that on a young girl too. The general public at large also did not believe the allegation made against the accused. The mother of the victim and the mother of the accused are related and he is also related to them through his wife. When he heard about the incident, he went to the family of the prosecutrix. The family said that they had acted on the spur of the moment in anger and they regretted on their action. They expressed their desire to put an end the case, by then the matter was beyond their control and could not put an end as desired by them. He wanted early settlement of the matter since the parties are relative. On cross examination, he stated that it is the desire of the family that the matter should be amicably settled and it is also the desire of the Village Council that this case should come to an end. He further stated that he was not present at the time of the incident since he had attended church service. He also stated that it was his presumption that the accused would not have the character to commit sexual offence since he knew his family very well.

Discussion, Decisions and Reasons of Decisions: -

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

14. 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."*

15. 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.....'*

16. 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.'

17. 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.'

18. 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.....'

19. In the present case, the Criminal Law (Amendment) Act, 2013 applies, as the date of occurrence of the offence took place on the day of 19.5.2013.

20. The learned Addl. P.P. Shri Joseph Lalfakawma appearing for the State submitted that the court can record conviction on the basis of the testimony of the prosecutrix without relying on the medical evidence. According to him, the testimony of the prosecutrix inspires confidence. Apart from the evidence of the victim, the evidences of P.W.1 (complainant) and P.W.2 (victim's friend) also corroborated the victim's testimony without any material contradiction. To buttress his stand, the learned Addl. P.P. relied upon the Judgment of Apex Court in **Narendra Kumar v. State (NCT of Delhi)** reported in **2012 7 SCC 171** which at **para 20** states as follows :-

'20. It is a settled legal proposition that once the statement of the 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.'

21. Per contra, the learned Defence Counsel Shri Joseph L. Renthlai vehemently opposed the argument advanced by the learned Addl. P.P. contending that the whole edifice of the prosecution's case rests solely on the statement of the prosecutrix, as all the other witnesses are hearsay witnesses. According to the learned Counsel, the statement of the victim's friend is of a little bit significant apart from the

evidence of the prosecutrix. The learned Defence Counsel submitted that as far as the testimonies of the victim and her friend concerned, the only degree to which P.W. 3 saw the incident was to the extent that the prosecutrix was led into the room and the only time she saw the prosecutrix again was when she saw the prosecutrix running to her and meeting her beside the water point. He further submitted that the statement of P.W. 3 with regard to the relevant part of the incident apart from this was simply hearsay and the factual incident between these periods have been gathered by the prosecution solely from the testimony of the prosecutrix. It is also submitted by him that at the outset that it is only when her statement is of 'sterling' quality that it can be said that the statement inspires confidence and therefore it can be used as a sole ground for convicting the accused. He cited the Apex Court decision in ***Rai Sandeep v. State (NCT of Delhi)*** reported in **2012 8 SCC 22**, which at paragraph 22 states as follows;

'22. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such a witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be prevarication in the version of such a witness. The witness should be in a position to withstand the cross examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with

'the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.'

22. In the course of hearing, the learned Defence Counsel relying on the oral and documentary evidence of P.W. 9 Dr. Zosangpuui submitted that the medical officer had not found any bleeding in the victim's vagina and also stressed that there was no forceful entry of any object in her vagina.

23. I meticulously perused the evidence on record. It appears from the FIR at Ext. P-1 submitted by P.W. 1 as well as from her testimony that the victim felt pain in her private part while the accused inserting his penis into her vagina, as a result, she could not walk properly. It also appears from the testimony of the victim that she felt pain like burning in her private part at the time when the accused inserted his penis into her vagina. In the first round of trial, the statement of the victim inspired confidence and was accepted by the Court as such, conviction was recorded on the solitary evidence of the victim. However, on the appearance of the medical officer, evidence was taken. It is found that the medical evidence did not corroborate the testimonies of the prosecution witnesses. The alleged incident occurred on 19.5.2013 before 11:00 Am and she was examined by the medical officer on the same day at around 10: 55 Pm. In the evidence of medical office, there was no bruising or laceration in the victim's external

genitalia and there was no bleeding in her private part. It also appeared to the medical officer that there was no forceful entry in the victim's private part. The absence of any recent injury on her person indicates that the case of rape as has been alleged by the victim is hardly believable.

24. As rightly pointed out by the learned Defence Counsel, the testimony of the victim is not of 'sterling' quality in view of the Apex Court decision in Rai Sandeep (Supra). The decision of the Apex Court in Narendra Kumar (Supra) is also followed in this case.

25. It is pertinent to mention here that the evidence adduced by P.W. 3 Laldinpui is hearsay. The witness came to know from the victim that the latter had been raped by the accused. In her evidence, particularly in her cross examination, this witness could not specifically answer why the victim was crying. Hence, I hold that the evidence adduced by the witness has no value at all.

26. Section 164(5A) of Cr PC mandates Judicial Magistrate to record the statement of the person against whom offence of rape has been committed in the manner prescribed in sub-section (5) of 164 of Cr PC, as soon as the commission of the offence is brought to the notice of the police. However, in the present case, the victim was not sent to Judicial Magistrate to record her statement for the reason best known to the police. This non compliance of law leaves sufficient room for doubt.

27. For the reasons discussed above, the prosecution case does not inspire much confidence and leaves sufficient room for doubt. I hold that the prosecution the prosecution has not proved beyond reasonable doubt that the accused had sexual intercourse with the victim in the bed room of his house on day of 19.5.2013 at around 10:-00-11:00 Am at Khawrihnim village. The first point is answered accordingly.

28. As the prosecution case does not inspire much confidence and leaves room for doubt, I do not hold that the act of the accused amounts to rape. The second point is also answered.

29. The prosecution has fully proved that the victim is a relative of the accused. But, the charge of rape case against the accused is not proved by the prosecution.

30. It appears from the oral and documentary evidence on record that the date of birth of the victim is 10.8.2001. In view of the foregoing discussion, the age of the victim that she was less than 16 years at the time of the alleged incident is not material to constitute offence of rape. The fourth point is also answered accordingly.

31. In the circumstances, the accused cannot be convicted under Sections 376 (2) (f) / 376 (2) (i) of IPC.

32. 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 Sections 376 (2) (f)/376 (2) (i) of IPC and he be set at liberty forthwith.

33. The bail bond shall remain in force for a further period of 6 (six) months under Section 437-A CrPC.

Judgment & Order is pronounced in the open court on this 12th day of January, 2016 under my hand and seal.

(VANLALENMAWIA)
Addl. Sessions Judge,
Aizawl Judicial District,
Aizawl, Mizoram.

Memo No._____/AD & SJ (A) /2016:

Dated Aizawl, the 12th January, 2016

Copy to :-

1. Shri Rorelliana, R/o Khawrihnim, Mamit District.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. District Magistrate, Mamit.
4. Superintendent of Police, Mamit District.
5. Addl. PP, Aizawl Judicial District, Aizawl.
6. Special Superintendent Central Jail, Aizawl District, Aizawl.
7. DSP (Pros), Aizawl Court.
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