

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. 89 of 2014

State of MizoramComplainant

-Versus-

Shri Zachhunga @ Zacheuva(37)
S/o Kapthanga,
R/o Kanan Veng, Thenzawl, Serchhip District. Accused person

APPEARANCE

For the State : Smt. Lilyparmawii Hmar, Addl. P.P.
Miss Venus H. Zomuankimi, Asst. P.P.

For the accused : Shri S.L. Thansanga, Advocate.

Hearing : 14.12.2016, & 30.1.2017

Judgment delivered on : 10.2.2017

Sentence Order delivered on : 13.2.2017

J U D G M E N T

In the instant case, the accused committed rape upon his minor daughter. Upon hearing the rival parties and perusing the evidence on record, the accused is convicted under Section 376 (2) (f) & (i) IPC.

2. The story of the prosecution case in brief is that on 14.06.2013 one Lalramhmangaihsanga of Buangpui, Serchhip District lodged First Information Report (hereinafter stated as the FIR) with the Officer-in-Charge, Thenzawl Police Station to the effect that the accused had frequently committed rape upon his sister's minor daughter (hereinafter stated as the victim), who is also the eldest daughter of the accused. At the time of lodging the FIR, the victim was around 13 years of age.

Hence, Thenzawl P.S. Case No. 10 of 2014 dated 14.6.2014 under Section 376 (2) (f) & (i) IPC was registered against the accused and investigated by S.I. Malsawmtluanga.

In the course of investigation, the Case I.O. visited the PO and drew a sketch map of the P.O. and seized the original birth certificate of the victim in presence of reliable witnesses. The statements of complainant, victim and seizure witnesses were recorded. It was revealed from the victim's statement that her father had frequently raped her in their residence and the last incident took place on 9.6.2014. The victim was forwarded to the Community Health Centre, Thenzawl for medical examination and the medical report reveals that her hymen was ruptured (old). During interrogation, the accused admitted his guilt and his statement was recorded. The accused was arrested on 14.6.2014 at Thenzawl Police Station and he thereafter forwarded to the Chief Judicial Magistrate, Aizawl for judicial remand.

The Case I.O. made a prayer to the CJM, Aizawl to record confessional statement of the accused and judicial statement of the victim. The confessional statement and the judicial statement so recorded were received from the Court. He also carefully examined the victim's mother and other two witnesses and their statements were recorded. Hence, a prima facie case under Section 376 (2) (f) & (i) IPC was found against the accused person and S.I. Malsawmtluanga submitted charge sheet.

3. Upon committal, charge u/s 376 (2)(f) & (i) 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 order to bring home the charge, the prosecution produced and examined as many as 8 out of 10 witnesses to prove that the accused had committed offence punishable under Section 376 (2) (f) & (i) I.P.C. The plea of defence is of total denial. After closure of the prosecution evidence, when the accused was examined under Section 313 of Cr PC, he denied the incriminating evidence appeared against him and pleaded that he was innocent. The defence side also produced and examined 2 witnesses.

5. I heard the learned Addl. Public Prosecutor Smt. Lily Parmawii assisted by the learned A.P.P. Miss Venus Zomuankimi. I also heard the learned Defence Counsel Shri S.L.Thansanga.

Points for Decisions :

6. a) Whether the prosecution proves that the accused had sexual intercourse with his minor daughter from the year of 2011 to 9.6.2014?
- b) Whether the accused can be convicted under Section 376 (2) (f) & (i) IPC?

7. **Discussion, Decision and Reasons Thereof:**

P.W. 2 is the victim in the instant case. She identified the accused who is her father. She read upto Class-VII and left her studies due to financial problem of her family. She was born on 12.1.2001. In the year of 2011, she used to sleep with her father on his bed and her mother used to sleep on a separate bed with her two younger brothers. She could not say the exact month and date when her father first committed rape upon her. She knew that her father had sent her mother with her younger brothers to shop to buy betel nuts and cigarettes (Farstar). The distance between the shop and their residence is about ½ km. Her father used to give her money and touched her breast, but she did not understand the mind of her father. Her father took off her underwear and inserted his male organ into her private part. She felt pain in her private part when her father had sexual intercourse with her. Her father told her not to disclose about the incident since their family would break. She used to complain her waist pain. Thereafter, her father used to have sexual intercourse with her often times in the absence of her mother and younger brothers. Her mother suspected her having illicit relationship with her father and then informed her paternal grandmother. Her paternal grandmother asked her whether her father had illicit relationship with her, but she told to her paternal grandmother that her father did not have illicit relationship with her. When her paternal grandmother called her mother a liar, she felt pain since her mother was not a liar. Thereafter, on the night of 9.6.2014, there was a misunderstanding between her father and her mother, and her mother went out. On that night, her father was sleeping on his bed inviting her to have sexual intercourse. She declined

his invitation and went out. Before going out, she informed her father that she would disclose the incidents to her mother, since her paternal grandparents used to scold her mother. When she went out and reached the residence of Anu Biaksangi (Aunt Biaksangi), she saw her mother therein. Her father followed her and slapped her in the presence of her mother and the family members of Anu Biaksangi. Her father told her to go home. She proceeded to home with her younger brother Lalbiakhlua. Then, her mother followed them. Before informing the incident to her mother, her father came home. On the next morning i.e. 10.6.2014 she informed about the incidents to her mother when she asked her. Thereafter, her mother told to her relatives and divorced her father since then. The elder brother of her mother filed FIR to Thenzawl Police Station. Thereafter, the Police recorded her statement and forwarded her to have medical examination at Thenzawl PHC. Her father was arrested while medical examination was performed by the Medical Officer. Some Staff of Child Welfare Committee (CWC) came and discussed with her whether she wanted to stay in Shelter Home at ITI Veng, Aizawl. She has been staying at the Shelter Home since then.

The sister and the mother of her father (accused) came to the Shelter Home and gave her a chit in which she was asked to depose false statement before the Court (in favor of her father/accused).

Ext. P-2 is the chit given to her by her paternal aunt Lallawmi (Objected by the Defence Counsel on the ground that she did not know the author of the handwriting (chit) without signature). Ext. P-3 is the Medical Examination Report and Ext. P-3(a) is her signature.

On cross-examination, she stated she had attained 14 years on 12.1.2015. When her father used to have sexual intercourse with her, her mother and brothers were sleeping on their bed. She thought, she was about 10 years old when the first incident happened. She knew that her mother had taken steps for releasing her father on bail. Her mother did not like to submit FIR against her father. She did not know whether there was a bitter relationship between her mother and the siblings of her father. Her breast was not developed when her father had sexual intercourse with her for the first time. She admitted that her paternal grandparents used to scold her mother. She also admitted that she was produced to the Court by Miss Catherine, who is a Counselor at Shelter Home at ITI Veng, Aizawl. She denied

that her father had no illicit relationship with her and he did not invite her to have sexual intercourse. She further denied that her father had not slapped her on the night of 9.6.2014. She also denied that her paternal uncle Hrangha had used her to divorce her mother and her father. It was also denied by her she was tutored by either Miss Catherine or her father's relatives. Finally, she stated that she loves her father and mother.

P.W.1 Lalramhmangaihsanga Hnamte of Buangpui identified the accused. The accused is the husband of his sister. The accused and his wife have three children and the victim is the eldest. He does not know the date of birth of the victim but he knows that in 2014 she would complete 13 years of age. The incident came to light after the mother of the victim spoke to her. The disclosure was made sometime in the month of July of 2014. Before submitting the FIR, he told the victim that if FIR is submitted, her father can be sent behind bars. With her consent he submitted FIR. He also asked the victim how many times her father had sexually assaulted (khawih) her to which she stated that it was many times. Initially, when the mother of the victim came to know about such incidents, she made a phone call to his father at Serchhip and he came to know about the incident from his father. There was also deliberation within the family but they did not consult the family members of the accused. However, Lawmi, sister of the accused was aware that he was filing the FIR. He lodged the FIR on the day after coming to know about the incident. He proved the FIR at Ext. P-1. On cross-examination, he stated that the accused and his sister did not divorce as on till date as on 18.11.2014. He obtained consent from the victim before lodging the FIR. It is denied by him he and his family members were put under pressure to lodge the FIR. The FIR was not written by him but he put his signature on it. It was written by U Masanga, police personnel at Thenzawl PS. He denied that U Masanga had written in the FIR whatever he wanted and not exactly as he said. The accused is the biological father of the victim. The victim did not state how many times she was sexually assaulted by the accused. The distance between Thenzawl and Buangpui is 9 kms. As such, Buangpui is not within the locality of Thenzawl Sub-Town. He is a casual laborer. He is a married man and has two children. Though they asked the mother of the victim to divorce from the accused but, she was not able to do the same as this would cause a lot of worries to them. He knew the accused since childhood and to his knowledge he did not have a bad character except that sometimes he was in the habit of consuming liquor. To his knowledge, his sister and the accused had married for about 14 years. He denied that

they wanted the mother of the victim to divorce the accused prior to the incident. He further denied that as they had hatred towards the accused, they falsely implicated him in the instant case and also due to outside pressure. Finally, he admitted that there was no eye-witness including himself who had seen the accused sexually assaulting his daughter.

P.W. 4 Lalrintluangi identified the accused who is her ex-husband. With the accused she has three children. The victim is her only daughter and she is her eldest child with the accused and she was 13 years old in 2014. In the month of June 2014 between 5:30–6:00 Pm, she and her children visited her cousin Biaksangi. After a while, her husband came to the house of Biaksangi and called them to come home. They then left Biaksangi's house. On reaching their house, at around 6:30–7:00 Pm, her daughter wanted to disclose something to her, but she did not disclose anything when she asked her what she had to tell her. She told her that she did not want to disclose anything because her father would come home at any time. Later, her husband came home and they had dinner. On the next morning, her husband went out to carry water and her daughter was weaving. Then, she went to her daughter and asked what she had to tell her, but she kept silent and she told her that she is her mother, so she had to tell her. Then, the victim told her that her father had slept with her and she thought that her father had sexual intercourse with her. Then, she asked her whether she had told her a lie or not, to which she replied her that she had not told lie. Then she asked her daughter to take her to the Doctor for check up and she said yes. After that, they had a morning meal; she and her daughter went to Anganwadi Centre as she used to work in Anganwadi Centre. Before reaching Anganwadi Centre, they went to the house of U Biaki (Biakhmingi), who is younger sister of the accused. She told U Biaki that her daughter told her that her father had slept with her but she did not know whether it was true or false. Then, U Biaki told her to inform U Hrang, who is elder brother of the accused and she called him over mobile phone to come to U Biaki's house. U Hrang came and she told him what her daughter had disclosed her. After that U Hrang told her not to inform her relatives because they did not know whether it was true or false. Then, they left for Anganwadi Centre. After finishing her work, she called her father-in-law to come to U Biaki's house. When her father-in-law reached, she informed him about the incident and her father told her not to disclose anything to her relatives as they did not know whether it was true or false. Then, she went home, but at night she

called her elder sister Lalhriatzuali to come to their house. Later, her aunt Machhani and Madingi, her uncle Malsawmzuala and her sister Lalhriatzuali came to their house but her husband was present. So, they went to U Biaki's house with all her children. From there, they called U Hrang to come, the latter and his wife came. From U Biaki's house, she along with her children and U Hrang with his wife left for their house. After they discussed about the incident, they thought it was better to have medical examination of her daughter. Then, her daughter was brought by U Hrang and his wife, her sister Hriati and her aunt Machhani to the Doctor. They did not allow her to go there. She waited them in the residence of her uncle Malsawmzuala. When they came back from the Doctor, they told her that Doctor's report was fine.

She did not want to submit FIR against the accused. But, her elder brother Lalramhmangaihsanga submitted the FIR. On cross-examination, she did not remember when she had got married to the accused Zachhunga. With the accused she had three children namely, the victim, Lalbiakhlua (10 years) and Vanlalremruata (3 years). She admitted that their two sons Lalbiakhlua and Vanlalremruata were living with the accused. The accused is a cultivator. She tried her best for release of the accused on bail since she did not believe that he had had sexual intercourse with her daughter. She did not remember when she had left the accused and married another person. She did not help her ex-husband in looking after her two sons who were staying with him. The FIR was submitted by Lalramhmangaihsanga, her elder brother without first seeing and talking to her daughter.

P.W. 3 Smt. F. Lalfakzuali of Thenzawl, Serchhip saw Thenzawl Police seizing the Birth Certificate of Lalawmpuii on 17.6.2014. She stood as seizure witness along with Biakhmingliani who died of cancer on 1.6.2015. She proved the photo copy of Birth Certificate attested by SDO, PWD, Thenzawl Sub-Division at Ext. M-1. She also proved the seizure memo at Ext. P-4, her signature at Ext. P-4(a) and the signature of Biakhmingliania at Ext. P-4(b). On cross-examination, she stated that she could not know whether the Birth Certificate was original or not at the time of seizure. She did not know the content of the Birth Certificate of victim since her eyes are weak and it was dark. She did not know who put the signature as the Registrar of Birth & Death and who attested the photo copy of the Birth Certificate. She cannot clearly read the small letters contained in the photo copy of the Birth

Certificate from a distance of 2½ feet. But, she knew that Ext. P-4(b) is the signature of Biakhmingliani.

P.W.5 Hrangbila_identified the accused who is his younger brother. On 11.6.2014, the victim's mother Rintluangi who was also the wife of the accused had called him over mobile phone stating that she wanted him to be present in the meeting held at his younger sister Biakhmingi's residence. When he reached, Rintluangi had told him that the accused used to have sexual intercourse with her daughter. He then personally asked the victim whether she had sexual intercourse with her father and about the time of incident. The victim replied him that she had sexual intercourse with her father on 9.6.2014. As he had some works, he left Biakhmingi's residence. On that night, he also accompanied the victim at Thenzawl CHC for medical examination. When he asked the result of the medical examination, the concerned Doctor replied him that there were signs of sexual intercourse but it was not fresh. On cross-examination, he admitted that the victim's mother had eloped with her present husband. He thought that the victim's mother had a boyfriend, so she accused her husband (Zachhunga) that her daughter had sexual intercourse with him. One of the Village Council Members Vanlalzawna informed him that the victim's mother had tried to mutate the land belonging to the accused to her name. According to him, in the result, the alleged incident happened. As he was informed by the Medical Officer, who examined the victim that he had not found any fresh sign of injury while examining the victim, he thought the victim might be having sexual intercourse with other boyfriends and not with her father since he heard a rumor about the victim having loose character. He thought the victim was about 12 years old at the time of the incident.

P.W. 6 Dr. Lalramhluna_stated that while performing duty at Community Health Centre, Thenzawl on 14.6.2014, he received a requisition for medical examination of the victim in connection with the alleged rape. He examined the victim on the same day @ 4:00 Pm. On examination, she was physically and mentally healthy. On genital examination, her hymen was ruptured (old), white vaginal discharge was present. He proved the Medical Examination Report at Ext. P-3. On cross-examination, he admitted that the alleged rape had taken place on 9.6.2014 and he conducted medical examination on the alleged victim girl on 14.6.2014 @ 4:00 PM, but he could not say the age of rupture of the hymen of the

victim though he had been in the profession for more than 10 years. He further admitted that any trace of semen was not found on her genital. As per his study, pubic hair develops at the age of 11/12 years, but development of pubic hair is different in individual cases. He also admitted that no swab had been taken from the vaginal cavity of the victim.

P.W. 7 SI Malsawmtluanga of Thenzawl PS identified the accused. At the relevant time, he was the OC of Thenzawl PS. On 14.6.2014, while performing his duty at the PS, he received a written FIR from Lalramhmangaihsanga of Buangpui, Serchhip District to the effect that on 9.6.2014 @ 11 Am, his sister's daughter, aged about 13 yrs, had been raped by her father, who is the accused in the instant case. Hence, Thenzawl PS Case No. 10/14 dated 14.6.2014 u/s 376(2)(f)(i) of IPC was registered and investigated by him. In the course of investigation, he went to the PO and drew a sketch map. He arrested the accused on the same day i.e. 14.6.2014 and also seized the Birth Certificate of the victim from her residence in presence of the witnesses. He recorded the statement of the victim, complainant and other witnesses. He sent the victim to Community Health Centre, Thenzawl for medical examination and the report shows that her hymen was ruptured (old). During investigation, he came to learn that the accused had frequently raped the victim and the last incident took place on 9.6.2014. During interrogation of the accused, the latter admitted his guilt before him and he also recorded his statement. In his further investigation, he sent the victim to the CJM Aizawl for recording her judicial statement and the same was received from the Court. He also sent the accused for recording Confessional Statement and the same was received. After completion of his investigation, he found a prima facie u/s 376(2)(f)(i) IPC and submitted the Charge Sheet. He proved the original FIR at Ext. P-1, the Medical Examination Report at Ext. P-3, the Seizure Memo at Ext. P-4, the Arrest Memo at Ext. P-5, the Form of FIR at Ext. P-6, the Crime Detail Form at Ext. P-7, the Judicial Statement of the victim at Ext. P-8, the Charge Sheet at Ext. P-9, the Confessional Statement of the accused at Ext. P-10 and the copy of the Birth Certificate at Ext. M-1. On cross-examination, he admitted that he was the then OC of Thenzawl PS. One ASI was also there in the P.S at that time. When he received the FIR, he conducted the investigation. Initially, he seized the original Birth Certificate of the victim but, he exchanged it with a photo copy duly attested by the SDO (PWD) of Thenzawl. He denied that the accused had not state in his presence

that he committed rape upon the victim for many times. He also denied that he had not found a prima facie case against the accused under Section 376 (2) (f) (i) IPC. It was admitted by him that the Medical Doctor, who had examined the victim, did not find any fresh mark of sexual assault or rape on the body of the alleged victim and on her genitalia. It was also admitted by him that there was no self-incriminating statement in the confession at Ext. P-10.

P.W. 8 Ms Sylvie Z. Ralte, CJM, Kolasib stated that on the prayer of the Case I.O., judicial statement of the victim was recorded by her on 11.9.2014 in connection with Thenzawl PS Case No. 10/2014 dated 14.6.2014 u/s 376(2)(f)(i) IPC. The victim had appended her signature the judicial statement. She proved the judicial statement of the victim at Ext. P-8, her signature at Ext. P-8(a) and the signature of the victim at Ext. P-8(b). On cross examination, she admitted that she had not recorded the victim's statement in question and answers form. She also admitted that the victim was not brought before her by the Police, but by CWC personnel. She denied that she had not recorded the statement of the victim as narrated by her.

D.W. 1 Ronghaka of Thenzawl Kanan Veng is holding the post of President, Mizoram Upa Pawl (MUP) and also the President of BJP Unit at Thenzawl Kanan Veng. He knew accused Zachhunga and his ex-wife Lalrintluangi. He is not related to the accused Zachhunga.

As far as his knowledge is concerned, the ex-wife of accused Zachhunga, namely, Lalrintluangi is a chatter box. When she was about to leave her husband and his family, she boarded in a Taxi even her small son by crying asked not to leave him but, Lalrintluangi told that she was leaving him as she did not want him anymore and left. He found the accused a reticent and as far as his character was concerned, he is humble and non-aggressive. He cannot think of him to have done any criminal act against his own biological daughter. As far as he knew of his character, he did not think he had done any criminal offence upon his daughter as he was being accused of having done so. Lalrintluangi had three male persons with whom she had been living with as wife and husbands, at the first time almost immediately after the release of her husband accused Zachhunga, she eloped with one male from N. Vanlaiphai and after this man, she lived with one man from

Champhai and she was living with a male person at Saitual. However, he did not know the names of these persons. After having learnt, he believed the reason for accusing her own husband to have sex with his daughter was because she wanted to leave her husband so that she could go with some other men leaving her own family. He learnt that with the man she was living with at Saitual, she gave birth to a child. For this reason, he can never believe that accused Zachhunga had done any sexual intercourse with his own daughter. He further knew that Lalrintluangi was in the habit of telling lies while she was living at Thenzawl. On cross-examination, the house of the accused and his house are far distant. He never visited the house of the accused. He never spent even a single night with the accused and his family. The victim never visited his house and they hardly talked to each other. He never knew whether the victim slept with her father since 2011. He did not ask the victim whether his father had raped her or not. He did not believe that the mother of the victim had not wanted to submit FIR against the accused.

D.W. 2 C. Lalremsiama knew accused Zachhunga and his ex-wife Lalrintluangi. He is not related to the accused Zachhunga.

As far as his knowledge is concerned, the ex-wife of accused Zachhunga is a chatter box. He found Zachhunga, a reticent and as far as his character was concerned, he was humble and non-aggressive, and he cannot think of him to have done any criminal act upon his own biological daughter. After having learnt accusing her own husband to have sex with his daughter was because she wanted to leave her husband so that she could after some other men leaving her own family. For this reason, he can never believe that accused Zachhunga had done any sexual intercourse with his own daughter. He further knew that Lalrintluangi was in the habit of telling lies while she was at Thenzawl. He knew that Lalrintluangi eloped with a man from Hualngo village immediately after the release of her husband, and after leaving this man, she again followed a man from Champhai wanting him to be her husband, but she quickly returned. After her return from this man, she again eloped with a man from Saitual with whom she was living as husband and wife and they have one issue. The public at large in his village i.e. Thenzawl characterized Lalrintluangi as a woman of bad character. He even thought that the instant criminal case against the accused was due to instance of Lalrintluangi in order to permanently leave accused husband Zachhunga. On cross-

examination, accused Zachhunga is his close neighbor. He often visited the house of the accused, but never spent even a single night with the accused and his family. He admitted that he had past criminal case related to minor rape case, but he was acquitted. The victim never visited his house and they hardly talked to each other. He never knew whether the victim had slept with her father since 2011. He did not ask the victim whether her father had raped her or not. He did not know that the mother of the victim had not wanted to submit an FIR against the accused.

8. **Point No. a**

(a) Under Section 375 IPC as amended by Act 13 of 2013 (w.e.f. 3.2.2013), — A man is said to commit “rape” if he has sexual intercourse with a woman with or without her consent, when she is under eighteen years of age.

(b) It is in the evidence on record of the victim that her father had sexual intercourse with her oftentimes in the absence of her mother and her younger brothers and sometime on the bed of his father at night since she slept with him. The victim testified that her father used to send her mother and her younger brothers to buy betel nuts and . 2011 to 9.6.2014

(c) The Apex Court has observed regarding the duty of the Court while trying a case of rape.

In the case of **Kundula Bala vs. State : 1993 Cri. L.J. 1635 : (1993) 2 SCC 684**, the Apex Court has observed thus:

“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.”

In the case of **Bodhisattwa Gautam vs. Miss Subhra Chakraborty** reported in **AIR 1996 SC 922**, 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 also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects. "

In the case of **Bharwada Bhoginbhai Hirjebhai vs. State of Gujarat**, reported in **AIR 1983 SC 753**, the Apex Court has observed thus:

"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 even occurred. She would be conscious of the danger being looked down by the society including by her own family members, relatives, friends and neighbours. 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. 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. In view of these and similar factors the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light

there is a built-in assurance that the charge is genuine rather than fabricated."

In the case of **State of Punjab vs. Gurmit Singh & Others: AIR 1996 SC 1393**, the Apex Court has observed thus:

"22. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women'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 background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

In the case of **State of Andhra Pradesh vs. Gangula S. Murthy**, reported in **AIR 1997 SC 1588**, the Apex Court has observed thus:

"Charge of Rape—Duty of court—Court must while trying accd. on charge of rape show great sensitivity—They should examine broader probabilities and not get swayed by minor contradictions or insignificant discrepancies in statement of witnesses which are not of a fatal nature to through out allegation of rape—This is all the more important as of late there is rise in crime against women in general and rape in particular."

In the case of **State of Punjab vs. Gurmit Singh and others** (1996) 2 SCC 396, the Apex Court has observed thus:

'8.The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satiny its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence which is not found to be self inflicted, is

considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.'

Keeping in mind the above observations made by the Hon'ble Apex Court in catena of decisions, let me discuss the statement of the victim before the Court.

Let me see into the deposition of the victim;

Let me see the statement of the victim whether the accused had sexual intercourse with her from the time she was ten years is reliable. The victim in her statement before the court is that the accused is her biological father and the wife of the accused is her mother. The victim stated in her deposition that while attaining the age of 10 years, sometime in the month of April, her maternal grandfather had sent her to buy betel nuts, on her way back to home she was told to follow him and the victim innocently followed the

accused, but accidentally she got sexually assault at a place near Muthi Tlang High School which the victim did not forget.

The learned Counsel Shri S.Pradhan submits there was no eye witness to the witness in the present case. It is true that there is no eye witness. But, I cannot expect court to conclude while deciding in a rape case that there should be eye witness.

In the evidence of the Medical Officer, there is material corroboration. I find that there is old hymen tear on the victim's private part on the medical examination report of the victim and from which I come to conclude that the victim had intercourse with male person. The victim also told the medical officer that she was subjected to sexual intercourse by her step father since long time. Since there is no implication of any person from the statements of the prosecution witnesses and the defence witnesses that the victim could have sex except with the accused, it is very clear that the accused had sexual intercourse with the victim.

The statement of D.W. 2 Lalbiakmawii who is the victim's mother that they had already pardoned the accused even if he committed sexual offence upon her daughter also makes my mind doubtful.

The statement of the victim that she was frequently sexually assaulted by the accused is also reliable. It may not be possible for a small girl of her age to give all the specific dates of the incidents.

The statement of P.W. 1 James Lalthangmawia also corroborates the statement of the victim. However, there is minor contradiction or insignificant discrepancies and omission in the statements of the witnesses. But, I do not find any reason to discard their evidence.

In the circumstances, the prosecution proves that the accused had sexual intercourse with the accused.

The victim stated that she was born on 14.2.1996 and her birth certificate at Ext. P-2 also reflects that she was born on 14.2.1996. There is no doubt of the victim's certificate. Hence, the prosecution proves that the victim was less than sixteen years of age and cannot give consent. Since the victim was 10 years old when the accused first sexually assaulted upon her, the accused can be convicted under Section 376 (2) (f) of IPC.

9. In the light of the above discussion and reasons thereof, I conclude that the prosecution successfully proves the charge against the accused Zachhunga under Section 376 (2) (f) & (i) I.P.C beyond reasonable doubt. Hence, I find guilty against him. Accordingly, the accused is convicted under the said section of law.

10. The convict surrenders himself before the court. Hence, he is remanded into judicial custody.

11. The bail bond stands cancelled and the surety is discharged.

12. Fixed 13.2.2016 for Sentence Hearing.

Judgment prepared and delivered in the open court on this 10th day of February, 2017 under my hand and seal.

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

ORDER

Dt. 13.2.17 The convict Zachhunga is produced from judicial custody. Learned Addl. Public Prosecutor assisted by the Learned Assistant Public Prosecutor is present. Learned Defence Counsel is also present.

I have heard the learned Addl. P.P. Smt. Lilyparmawii Hmar assisted by Ms. Venus H. Zomuankimi and the learned Defence Counsel, Shri S.L. Thansanga. Convict Zachhunga is also heard.

The submission of the State Counsels is that the commission of rape by the convict upon his minor daughter is quite heinous. As such, the convict deserves life sentence and a fine of Rs. 20,000/-.

Per contra, the Ld. Defence Counsel appearing for the convict submits that the convict deserves to be dealt with leniency since he is the sole bread earner of his family and he has no past criminal record. He also submits that his two minor sons will starve if he is given maximum punishment.

The convict submits that he has is looking after two minor sons.

The submission of the rival parties is considered.

On considering the factual circumstances submitted by both the rival parties, I find that a minimum punishment provided by the prevailing law shall be given to the accused. Hence, **convict Zachhunga** is sentenced to undergo **Rigorous Imprisonment for 10 (ten) years** and to pay a **fine of Rs. 5,000/- (Rupees five thousand)** only in default of fine, Simple Imprisonment for another 2 (two) months.

The detention period in judicial custody undergone by the convict shall be set off.

This sentence order shall form a part of the Judgment passed on 10.02.2017 and is to be attached accordingly.

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

Memo No. / AD & SJ (A) /2017 :

Dated Aizawl, the 13th February, 2017

Copy to :-

1. Shri Zachhunga, Central Jail, Aizawl.
2. District Magistrate, Aizawl.
3. Sessions Judge, Aizawl Judicial District, Aizawl.
4. Addl. PP/APP, Aizawl District, Aizawl.
5. Special Superintendent, Central Jail, Aizawl District, Aizawl.
6. Investigating Officer through O/C, Thenzawl Police Station.
7. In-Charge, G.R. Branch.
8. Registration Section.
9. Guard File.
10. Case Record.
11. Calendar Judgment.

P E S H K A R