

**(2004) 12 GAU CK 0043**

**Gauhati High Court**

**Case No:** Criminal Appeal No. 3 of 2002 (J)

Sh. Zosangliana

APPELLANT

Vs

State of Mizoram

RESPONDENT

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**Date of Decision:** Dec. 8, 2004

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 376, 376(2)

**Citation:** (2005) CriLJ 1057 : (2005) GLT 664 Supp

**Hon'ble Judges:** B. Lamare, J; A.B. Pal, J

**Bench:** Division Bench

**Advocate:** George Raju, for the Appellant; N. Sailo, Public Prosecutor, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

B. Lamare, J.

Heard Mr. George Raju, learned counsel for the appellant. Also heard Mr. N. Sailo, learned Public Prosecutor for the State.

2. The brief story of this case is that on 18-2-97, the mother of the victim Pi Zarliani submitted a written report to the Officer-in-Charge (OC) Kawnpui Police Outpost to the effect that her daughter aged about 10 years was raped by the accused Zosangliana inside his house after locking the door. The offence was committed by covering the mouth of the victim and thereafter she was raped. The delay in filing the report to the Police was that her daughter was afraid of the accused and did not disclose the occurrence to the complainant-mother. She came to know the incident when her daughter developed pain in her private parts and had discharged whitish substance. On the basis of the FIR the Kawnpui PS Case No. 15/ 97 u/s 376(2)(f), IPC was registered. After the investigation, the charge-sheet was submitted and on the basis of the evidence on record, the charge was framed against the accused on 20-2-98 u/s 376(f), IPC. The prosecution examined 5 witnesses and the defence

examined one witness. After completion of the evidence the statement of the accused u/s 313, Cr.P.C. was recorded. In the statement u/s 313, Cr. P.C. the accused denied the charges against him. The learned trial Court by impugned judgment and order dated 16-4-02 passed in G. R. No. 1549/ 97 (Kawnpui PS Case No. 15/97) u/s 376(2)(f), IPC convicted the accused and sentenced him to imprisonment for a period of 10 years with a fine of Rs. 2,000/-, in default, further RI for 2 months. The conviction of the accused is challenged in this appeal.

3. The Vice-President of MHIP Pi Lal-thangi was examined as PW-1 in this case. In her statement, she deposed that the victim was about 10 years of age. On the date of occurrence the accused sent his children out of the house while he was playing with the victim. He, however, caught hold of the victim and pushed her inside the house and while she tried to run away, he locked the door and committed rape on her by threatening that he will kill her. Because of fear of the accused, the victim did not inform this witness about the occurrence. However, this was disclosed by the victim to her mother and as soon as they checked the private parts of the victim and found that it was swelling and there was also an injury inside the vagina. They took her to the Police and the Doctor examined her. In the cross-examination she stated that she is not related to the victim and also denied that her statement is false. Her above statement was not challenged.

4. PW-2 Rualthani is the President of MHIP which is a Women Organisation. According to this witness when the matter was reported to their Organisation, they checked the private parts of the victim and found that there was an injury and blood and whitish substance was coming out of her vagina. On enquiry, the victim told them that the accused got his children out of the house and pushed her inside the house and locked the door and committed the offence on her. She felt pain but did not disclose it to her parents until she was threatened by her parents that she should disclose the facts to them. In cross-examination of this witness, there was not a single suggestion to show that the victim did not disclose the facts to this witness. On the other hand, in the cross- , examination, he told that when the victim in presence of her parents and other members of the MHIP was checked by them, they found that she was raped.

5. PW-3 is the Doctor Zothantluanga who examined the victim girl and in his statement he exhibited Ex-C-1 the medical report. In his report he found her hymen torn at 6 and 11 O" clock position and it was also old. In cross-examination, this witness said that he examined the victim after three months of the incident and that the cause of the torn of the hymen was due to penetration by foreign body.

6. Another witness Laldawngliana is the Investigating Officer (IO) of the case. According to him, on 18-2-97 he received the FIR to the effect that on 10-11-96, the accused committed rape on the victim who was about 10 years old. The police case was registered and investigation was conducted by him. On receipt of the FIR, he sent the victim to the Kawnpui Hospital for medical examination and thereafter he

investigated the case and found that the accused threatened the victim that if she disclosed it to anybody, he would kill her and that is why the FIR was submitted after two months. He also found that there was prima facie case against the accused u/s 376(f), IPC. In cross-examination, his statement about threatening the victim girl by the accused was not challenged. There is not even a single suggestion put to this witness that there was no threatening by the accused and for that reason she did not disclose the occurrence to anybody immediately.

7. The first contention raised by the learned counsel for the appellant is that there was a delay in filing the FIR. According to the learned counsel for the appellant, there was no explanation as to why there was a delay in filing the FIR. To answer this question, the FIR is reproduced below :--

"To

The Officer-in-Charge, Kawnpui Police O.P.

Subject : Minor raped report.

Sir,

Please kindly take necessary steps to my letter.

On dt. 10-11-96 at around 11.00 a.m., my daughter Vanlalthlani, 10 (Ten) years of age had been raped by Zosangliana, s/o Duhkimi, resident of Bualpui under coercion inside their locked house. According to my daughter, Zosangliana has covered her mouth, put off her underpant and then raped her.

The cause of delay in report is that Zosangliana threatened her "If you disclose, I will kill you". Because of this my daughter dare not say that had happened to her. We came to know the incidence only after my daughter had a pain in her private part and discharge a whitish fluid came out. Then she discloses the incident to us.

I request you to kindly take necessary action according to law and arrest Sh. Zosangliana, who has raped my minor daughter."

8. From the above statement in FIR, it is seen that victim was threatened by the accused-appellant. The evidence shows that both the accused and the victim belong to the same locality. The PW-1 is also a neighbour of the accused. PW-2 is the President of the MHIP, a Women Organization in that locality. Therefore, both the witness, accused and the victim are from the same locality. The evidence of PW-6, the victim girl shows that the victim was threatened by the accused that he would kill her if she discloses the incident to others. Although it was painful and she cried but she did not report to anyone of this occurrence and not even to her parents as she was afraid of the accused. However, the parents came to know only after they discovered whitish substance coming out from her vagina and then she told them that she was raped by the accused-appellant. Even in the cross-examination, the defence made a suggestion to the victim whether she is afraid of the accused to

which the victim replied that she is still afraid of the accused. This suggestion made by the defence supports the case of the prosecution that even when she deposed in Court, she was still afraid of the accused. Such a threat from the accused remains in her memory at her tender age.

9. As regards the delay in filing the FIR, we may refer to the decision of the Apex Court in the case of [State of Himichal Pradesh Vs. Gian Chand](#), The Apex Court in that judgment in para 12 has held that delay in filing the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.

10. In the said case, the Apex Court was dealing with the case when the victim was raped by one of her relatives and the matter was tried to be settled in the family. The victim was a minor and her mother was a widow and she was helpless and, therefore, she could not approach the Police immediately. She approached only after the attempt of settling the matter in the family had failed. The case in hand is similarly situated with that case. The fact that the victim did not report to her parents of the incident discloses that the fear psychosis was still in her mind even when she deposed in the Court. However, after the complainant-mother came to know of the incident she approached the Women Organization MHIP and the matter was brought to the notice of the Police. In the society, the rape is regarded as loss of sanctity of the innocent girls and in this case, the victim due to fear of exposing in the society did not disclose it to her parents. The parents were also hesitant to approach the Police for the fear of exposing in the society. However, luckily, the Women Organization has come to the rescue and helped the family including the victim to voice the occurrence to the police. Therefore, the contention of the learned counsel for the appellant that the case be thrown out because of delay in filing the FIR holds no field.

11. The next contention of the learned counsel for the appellant is that in the FIR the allegation was made that she was threatened with the consequence of killing, but in the evidence of the victim girl she stated that she feared the accused as he threatened to beat her. The using of the words "killing and beating" are immaterial as the fact remains that the accused had threatened the victim and she was afraid of him, in view of the seriousness of the offence. Therefore, we are not inclined to throw out the prosecution case only on the use of wordings "killing and beating".

12. The next contention of the learned counsel for the appellant is on the medical report and the evidence of the Doctor who examined the victim. The doctor in his statement before the Court has exhibited the medical report Ext. C-1. In the cross-examination he stated that the cause of torn of hymen was due to penetration by a foreign body. The victim was examined after three months. On perusal the medical report shows that there was no previous intercourse with the victim and in the genital examination of the victim it was found as follows ;

"5; Genital Examination.

(a) Pubic hair	: Nil
(b) Seminal stain	: Nil
(c) Bruising/Laceration of external genitalia	: Nil
(d) Hymen	: Hymen is torn at 6 and 11 O' 'clock position"

From the above examination, it is seen that the hymen was torn at 6 and 11 O" clock position. In the cross-examination of the victim girl who was examined as PW-6, there was no suggestion that the hymen was torn for some other reason and not by the action of the accused. The statement of the Doctor also shows that she never had any previous intercourse. Therefore, the tearing of her hymen is conclusively proved that it was due to the rape committed by the accused on the victim girl. Moreover, the medical report also shows that her pubic hair was not even developed. It shows that the girl had not attained her puberty and, therefore, her hymen was not supposed to have torn except by the action of somebody and in this case the evidence of the victim girl pinpointed the accused who had caused the tearing of her hymen.

13. In the case of [State of Rajasthan Vs. Om Prakash](#), the Apex Court in paragraph 19 of the judgment held as follows :--

"19. Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more obscure than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. The overturning of a

well-considered and well-analyzed judgment of the trial Court on grounds like non-examination of other witnesses, when the case against the respondent otherwise stood established beyond any reasonable doubt was not called for. The minor contradiction of recovery of one or two underwears was wholly insignificant.

14. In the instant case, it is admitted that the victim girl was 10/11 years of age at the time of occurrence. Even if there is any difference with regard to her age about 10/11 years, it is an admitted position that the victim girl was between the age group of 10-12 years. When she was examined in the Court a suggestion was put that she deposed falsely. Her reply was in the negative. The reading of the evidence of the victim girl as discussed above supports the prosecution case and conclusively proved that the accused-appellant has committed the offence.

15. In view of the facts and circumstances stated above, we are of the view that there is no infirmity in the impugned judgment and order dated 16-4-02 passed by the learned trial Court in GR No. 1549/97 u/s 376(2)(f), IPC.

13. For the aforesaid reasons, the appeal has no merit and the same is dismissed.