

**IN THE GAUHATI HIGH COURT**  
(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)  
AIZAWL BENCH

**Crl. A. No. 38 of 2012 (J)**

APPELLANT :

Sh. R. Lalduatpuia

By Advocate :

Mr. L.H. Lianhrima (Amicus Curiae).

RESPONDENT :

State of Mizoram.

By Advocate:

Mr. Lalsawirema, Addl.P.P, Mizoram.

**BEFORE**  
**HON'BLE MR. JUSTICE UJJAL BHUYAN**

Date of hearing : 17.1.2013

Date of judgment and order : 17.1.2013

**JUDGMENT AND ORDER (ORAL)**

Heard Mr. L.H. Lianhrima, learned Amicus Curiae for the appellant and Mr. Lalsawirema, learned Addl. P.P., Mizoram for the respondent State.

2. This appeal from Jail is directed against judgment and order dated 13.6.2012 passed by the learned Addl. District & Sessions Judge-I, Aizawl in Crl.Tr. No. 132/2010 convicting the appellant under Section 376 (2)(g) IPC and sentencing him to undergo Rigorous Imprisonment (RI) for 10 years with a fine of Rs. 1000/-, in default, to undergo further RI for 1(one) month.

3. Facts of the case may be briefly noted.

4. On 12.3.2010, one C. Rotluanga lodged an information before the Officer-in-Charge, Kawnpui Police Station stating that on 8.3.2010 at about 10:00p.m, his paddy field worker, wife of Nuruddin Ali of Katlichera in the District of Hailakandi, Assam was gang raped by three youths at his paddy field hut. The informant stated that the husband of the victim was tied up with a rope and was threatened with a gun. They also demanded money from her husband. It was stated that the delay in lodging the information was because the victim and her husband were threatened by the accused not to report the matter to the police.

The said information was treated as First Information Report (FIR) and on the basis of the same, Kawnpui P.S. Case No. 8/2010 under Section 376(2)(g) IPC read with Section 25(1-B)(a) Arms Act, 1950 was registered.

5. Police investigated the case and arrested three persons namely, 1) B. Lalremruata, 2) Lalnunmawia and 3) R. Vanlalduatpuia (appellant). After completion of investigation, police submitted charge sheet under Section 376 (2)(g)/506/342/398 IPC read with Section 25(1-B)(a) of the Arms Act, 1950 against the accused persons.

6. One of the accused Lalnunmawia, who was released on bail, died in the meanwhile on 27.5.2010.

7. On 6.12.2010, charge under Section 376 (2)(g)/506/398 IPC read with Section 25 (1-B)(a) of the Arms Act was framed against the accused. When the charge was read over and explained to the accused, both of them pleaded guilty.

8. In the course of the trial, prosecution examined six witnesses. The accused persons did not produce any witness in defense. However, they were

examined under Section 313 CrPC wherein they pleaded guilty. At the end of the trial, the learned Trial Court by the impugned judgment and order convicted the appellant under Section 376 (2)(g) IPC and sentenced him to undergo RI for 10 years with fine of Rs. 1000/-, in default, to undergo further RI for a period of one month. The detention period already undergone was directed to be set off. In so far, the other accused is concerned, he was convicted under Section 376 (2)(g)/506 IPC read with Section 25(1-B) (a) of the Arms Act. He was sentenced to undergo RI for a period of 10 years with fine of Rs. 1000/-, in default, to undergo further RI for a period of one month for the offence committed under Section 376(2)(g) IPC, RI for six months for the offence committed under Section 506 IPC and RI for three years for the offence committed under Section 25 (1-B)(a) of the Arms Act. It was stated that the sentences would run concurrently and that the detention period would be set off.

9. Since this appeal is by the appellant, the deliberation would be kept confined to the case of the appellant only.

10. The appellant had made a confessional statement before the Magistrate 1<sup>st</sup> Class, Kolasib, PW6. In his confessional statement dated 8.4.2010,

he stated that he alongwith the other two accused persons were drinking on that particular night. One of the accused Lalrema quarreled with the husband of the victim asking for money. Thereafter, the husband was tied up with a rope. Lalrema was carrying a gun. Thereafter, all three of them committed rape on the victim. Appellant, however, stated that he did not ejaculate.

11. PW6 in his deposition identified the appellant as the person who had made the confessional statement before him. He stated that before recording the confessional statement, he gave 3 hours time to the appellant for reflection and, thereafter, all necessary formalities were completed. He further stated that at the time of making the confessional statement, the appellant was in judicial custody.

12. PW5 is the doctor who had conducted medical examination of the prosecutrix on 13.3.2010. Though the medical examination was conducted after five days of the incident, and therefore, evidence of any sexual act could not be detected on the prosecutrix, PW5 stated that the three accused persons confessed before her that they had sexual intercourse with the prosecutrix while

they were under the influence of liquor. They admitted that they had raped the victim at her residence.

13.            Though the prosecutrix could not be examined, the absence of the prosecutrix was explained by PW1, who is the informant. He was categorical in his evidence that on the night of 8.3.2010, the prosecutrix who along with her husband were engaged by him to work in his paddy field, was forcibly raped by the accused persons after tying up her husband with a rope outside the hut. He further stated that the accused had threatened the victim and her husband by pointing a gun towards them and demand Rs. 15,000/- from them. In his cross-examination, he stated that the victim and her husband had fled from his employment after the incident and that he did not know about their whereabouts.

14.            The gun used in the commission of the offence was seized by the police and the seizure was proved by PW2, who is the seizure witness.

15. PW3 is the Sub-Inspector of Police who had conducted the investigation of the case. PW4 is the police officer who had filed the charge sheet as PW3 had in the meanwhile got transferred.

16. The appellant in his statement recorded under Section 313 CrPC admitted to committing sexual intercourse with the victim but stated that he did not ejaculate inside her. He admitted about his confession made before the Magistrate and the doctor, which he stated to be true.

17. From a cumulative assessment of the evidence and other materials on record, it is a clear case of admission of guilt by the appellant. He had not only made a confessional statement before the concerned Magistrate, who deposed that all procedural safeguards were followed in the recording of such confessional statement, he also admitted commission of the offence before the doctor during medical examination as well as during recording of his statement under Section 313 CrPC. Therefore, there is no reason to disbelieve the truth or genuineness of the admission of guilt by the appellant. The plea of the appellant that he did not ejaculate inside the victim is of no consequence as the sine qua non for commission of the offence of rape is penetration and not ejaculation.

18. A Division Bench of this Court in the case of Deepak Panyang Vs. State of Arunachal Pradesh reported in 2011(4) GLT 266, after referring to the judgment of the Hon'ble Supreme Court in the case of State of Maharashtra Vs. Sukhdeo Singh reported in AIR 1992 SC 2100, held that if an accused person in his examination under Section 313 CrPC confesses to the commission of the offence charged with, the Court may relying upon such confession proceed to convict the accused. It was clarified that there is no impediment in law for a Court to base conviction of an accused on his confession made by him during his examination under Section 313 CrPC and/or to rely upon an admission of fact made by an accused during his examination under Section 313 CrPC.

19. In view of the discussions made above, the Court is of the view that there is no infirmity in the decision of the learned Trial Court in convicting the appellant under Section 376 (2)(g) IPC.

20. Coming to the question of sentence, the offence under Section 376 (2)(g) IPC relates to commission of gang rape and the punishment prescribed is RI for a term which shall not be less than 10 years but which may be for life and



shall also be liable to fine. As per the proviso, the Court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than 10 years.

21. In this case, the learned Trial Court had imposed the minimum of the punishment prescribed. There appears to be no adequate and special reason to take a lenient view of the matter and to impose a sentence lesser than the minimum sentence prescribed.

22. For the aforesaid reason, this Court finds no good ground to interfere with the sentence imposed by the learned Trial Court.

23. Appeal is dismissed.

24. Before parting with the record, the Court would like to place on record its appreciation of the assistance rendered by Mr. L.H. Lianhrima, learned Amicus Curiae, whose fee is quantified at Rs. 10,000/-(Rupees Ten thousand).

25. Registry to send down the case record.

JUDGE

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