
(2016) 11 GAU CK 0083
In the Gauhati High Court
Case No : Criminal Appeal No. 14 of 2016 (J)

Sh. Lalbiaksanga

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 30-11-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2017) 2 GauLR 53 : (2017) 1 GauLT 37

Hon'ble Judges : S. Serto, J.

Bench : Single Bench

Advocate : Mr. A.R. Malhotra, Amicus Curiae, for the Appellant; Mr. A.K. Rokhum, Public Prosecutor, for the Respondents

Final Decision : Dismissed

Judgement

S. Serto, J.(CAV) - This is a Jail appeal of the person named above who had been convicted under Section 376 (1) and Section 506 of IPC by the Judgment dated 01.12.2015 of the learned Addl. Session Judge, Aizawl Judicial District passed in Session Case No. 75/2014 Criminal Trial No. 1076/2014.

2. The brief facts of the case leading to the trial and conviction of the appellant is as follows:-

That on 21.05.2014, a complaint was lodged to the Officer-in-Charge of Kawrthah Police Station by the prosecutrix stating that at around 1:00 a.m. to 2:00 am of 21.05.2014, her nephew Mr. Lalbiaksanga (the appellant/convict) came to her residence and woke her up, and when she opened the door for him, he pulled her down to sit next to him and thereafter grabbed a kitchen knife and threatened her and raped her outside her house. Following the complaint, the FIR, Kawrthah P.S. Case No. 4 of 2014 was registered against the appellant under Section 376 (1) IPC and the accused was arrested on the same day. In the process of the investigation, the appellant/convict and the prosecutrix were medically examined. And on completion of the investigation, charge sheet was

filed and the learned Additional Sessions Judge framed the charge on 21.10.2014 under Section 376 (2) (1) of IPC and Section 506 of the same Code. In the trial, prosecution examined as many as 8 witnesses. But the appellant/convict did not produce and examine any defense witness. Since the appellant/convict could not afford to hire the service of a lawyer, Mr. S. Pradhan, an Advocate was appointed to defend him at the expense of the State. The learned Trial Court after hearing the parties and having appreciated the evidence given by the witnesses, found the appellant/convict guilty of having committed the offence punishable under Section 376(1) of IPC and the offence punishable under Section 506 of the same Code. Therefore, sentenced him to undergo 7 years Rigorous Imprisonment and a fine of Rs. 1000/-, and in the event of default in making payment of the same, to a further imprisonment for a period of 10 days.

3. Being aggrieved, the appellant has filed this appeal from jail which is forwarded by the Jail Authorities. The main ground of the appeal is that the sexual intercourse the appellant had with the prosecutrix was consensual and there was no evidence which proved that it was forced upon the prosecutrix or it was without her consent and against her will. It is also stated in the appeal petition that the knife which was alleged to have been used by the appellant in threatening the victim and forcing her to have sex with him was seized without following seizure procedure and it was not even sent to the FSL to make out or prove whether his finger prints were present on it or not. Further, the appellant stated that since he was young and inexperienced, he could not satisfy the prosecutrix while having sex with her, therefore, she was not satisfied and that made her angry and led her to accuse him of committing rape upon her. He also mentioned that the prosecutrix is of loose character and used to have other boyfriends also though she is married. Lastly, the appellant prayed for his acquittal as he is the only bread earner for his parents who are already aged.

4. I have heard Mr. A.R. Malhotra, learned Amicus Curiae appearing on behalf of the appellant and also Mr. A.K Rokhum, learned Public Prosecutor, Mizoram appearing on behalf of the respondents.

The learned Amicus Curiae at the very outset submitted that though the accused was charged under Section 376 (2) (i) of the IPC, he was convicted under Section 376 (1) IPC and section 350 of the same Code without altering the charge. The Court under Section 216 of Cr.P.C has the power to alter the charge but instead of exercising such power went ahead with the trial and convicted the appellant under the other provision of IPC mentioned above. Therefore, the trial has been vitiated, as such, the case has to be remanded to the trial Court for fresh trial.

The learned Amicus Curiae in support of the submission cited paragraphs 14 and 15 of the Judgment of the Hon'ble Supreme Court in the case of CBI v. Karimullah Osan Khan reported in (2014) 11 SCC 538/Criminal Appeal No. 1127/2009 the same are reproduced below:

"14. Section 216 Cr.P.C gives considerable powers to the Trial Court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add any charge, subject to the conditions mentioned therein. The expressions "at any time" and before the "judgment is pronounce" would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the Courts should also see that its orders would not cause any prejudice to the accused.

15. Section 216 Cr.P.C confers jurisdiction on all Courts, including the designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and Sub-Sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the Courts can exercise the power of addition or modification of charges under Section 216 Cr.P.C, only when there exists some material before the Court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the Court. (See Harihar Chakravarty v. State of West Bengal AIR 1954 SC 266). Merely because the charges are altered after conclusion of the trial, that itself will not lead to the conclusion that it has resulted in prejudice to the accused because sufficient safeguards have been built in Section 216 Cr.P.C and other related provisions".

5. I am unable to agree with the learned Amicus Curiae because the law is settled on this point. Courts can convict an accused on some other provisions of law as per the evidence found in the case even though the accused may not have been charged under that provision of law. On this, the judgment passed by the Hon"ble Supreme Court in the case of Dalbir Singh v. State of U.P reported in (2004) 5 SCC 334 is a pointer and definitely a guide. The relevant portions are reproduced below:-

"12. The main question which requires consideration is whether in a given case it is possible to convict the accused under Section 306 IPC if a charge for the said offence has not been framed against him. In Lakhjit Singh v. State of Punjab the accused were charged under Section 302 IPC and were convicted and sentenced for the said offence both the trial Court and also by the High Court. This Court in appeal came to the conclusion that the charge under Section 302 IPC was not established. The Court then examined the question whether the accused could be convicted under Section 306 IPC and in that connection considered the effect of non-framing of charge for the said offence. It was held that having regard to the evidence adduced by the prosecution, the cross-examination of the witnesses as well as the answers given under Section 313 Cr.P.C, it was established that the accused had enough notice of the allegations which could form the basis for conviction under Section 306 IPC. The relevant part of the observation made in para 9 of the Report reads as under:

"9. The learned counsel, however, submits that since the charge was for the

offence punishable under Section 302 Indian Penal Code, the accused were not put to notice to meet a charge also made against them under Section 306 IPC and, therefore, they are prejudiced by not framing a charge under Section 306 Indian Penal Code and; therefore, presumption under Section 113-A of Indian Evidence Act cannot be drawn and consequently a conviction under Section 306 cannot be awarded. We are unable to agree. The facts and circumstances of the case have been put forward against the accused under Section 313 Cr.P.C and when there was a demand for dowry it cannot be said that the accused are prejudiced because the cross-examination of the witnesses, as well as the answers given under Section 313 Cr.P.C would show that they had enough of notice of the allegations which attract Section 306 Indian Penal Code also."

13. In *Sangaraboina Sreenu v. State of A.P*, the judgment is a very short one, of just two paragraphs. In the first paragraph it is mentioned that the trial court convicted the accused under Section 302 IPC on the charge that he poured kerosene on the body of his wife and set her on fire but the High Court set aside the said conviction and convicted the accused under Section 306 IPC. Para 2 of the judgment which contains the whole reasoning for allowing the appeal reads as under:

"2. This appeal must succeed for the simple reason that having acquitted the appellant of the charge under Section 302 IPC ? which was the only charge framed against him - the High Court could not have convicted him of the offence under Section 306 IPC. It is true that Section 222 Cr.P.C entitles a Court to convict a person of an offence which is minor in comparison to the one for which he is tried but Section 306 IPC cannot be said to be a minor offence in relation to an offence under Section 302 IPC within the meaning of Section 222 Cr.P.C for the two offences are of distinct and different categories. While the basic constituent of an offence under Section 302 IPC is homicidal death, those of Section 306 IPC are suicidal death and abetment thereof."

14. Here the Court proceeded to examine the question that if the accused has been charged under Section 302 IPC and the said charge is not established by evidence, would it be possible to convict him under Section 306 IPC having regard to Section 222 Cr.P.C? Sub-section (1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of the same section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 Cr.P.C is in the nature of a general provision which empowers the court to convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said section also make the position clear. However, there is a separate chapter in the Code of Criminal Procedure, namely, Chapter

XXXV which deals with irregular proceedings and their effect. This chapter enumerates various kinds of irregularities which have the effect of either vitiating or not vitiating the proceedings. Section 464 of the Code deals with the effect of omission to frame, or absence of, or error in, charge. Sub-section (1) of this section provides that no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. This clearly shows that any error, omission or irregularity in the charge including any misjoinder of charges shall not result in invalidating the conviction or order of a competent court unless the appellate or revisional court comes to the conclusion that a failure of justice has in fact been occasioned thereby. In *Lakhjit Singh* though Section 464 Cr.P.C has not been specifically referred to but the Court altered the conviction from Section 302 to Section 306 IPC having regard to the principles underlying in the said section. In *Sangaraboina Sreenu* the Court completely ignored to consider the provision of Section 464 Cr.P.C and keeping in view Section 222 Cr.P.C alone, the conviction of the appellant therein under Section 306 IPC was set aside.

15. In *Willie (William) Slaney v. State of M.P.*, a Constitution Bench examined the question of absence of charge in considerable detail. The observations made in paras 6 and 7, which are of general application, are being reproduced below:

"6. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice.

If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is "substantial" compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venial by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

7. Now here, as in all procedural laws, certain things are regarded as vital. Disregard of a provision of that nature is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the Court is satisfied that there was prejudice. Some of these matters are dealt with by the Code and

wherever that is the case full effect must be given to its provisions."

15.1. After analyzing the provisions of Sections 225, 232, 535 and 537 of the Code of Criminal Procedure, 1898 which correspond to Sections 215, 464(2), 464 and 465 of the 1973 Code, the Court held as under in para 44 of the Report:

"44. Now, as we have said, Sections 225, 232, 535 and 537 (a) between them, cover every conceivable type of error and irregularity referable to a charge that can possibly arise, ranging from cases in which there is a conviction with no charge at all from start to finish down to cases in which there is a charge but with errors, irregularities and omissions in it. The Code is emphatic that "whatever" the irregularity it is not to be regarded as fatal unless there is prejudice.

It is the substance that we must seek. Courts have to administer justice and justice includes the punishment of guilt just as much as the protection of innocence. Neither can be done if the shadow is mistaken for the substance and the goal is lost in a labyrinth of unsubstantial technicalities. Broad vision is required, a nice balancing of the rights of the State and the protection of society in general against protection from harassment to the individual and the risks of unjust conviction.

Every reasonable presumption must be made in favour of an accused person; he must be given the benefit of every reasonable doubt. The same broad principle of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done what we are concerned to see is whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.

If all these elements are there and no prejudice is shown the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one."

16. This question was again examined by a three-Judge Bench in *Gurbachan Singh v. State of Punjab* in which it was held as under:

"In judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself."

17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 Cr.P.C, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was

framed unless the court is of the opinion that a failure of justice would in fact occasioned. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that Sangaraboina Sreenu was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC."

6. In the instant case, the accused was charged under Section 376 (2) (i) of IPC and Section 506 of IPC but as per the evidence he was found guilty under Section 376(1) and Section 506 of IPC therefore convicted and sentenced under the same provision of the law. The ingredient of the offence under Section 376(1) and clause (2) of the same section are all the same except that in clause (2) the punishment is attracted when it is committed by people in authority and when the crime is committed under certain circumstances. The basic evidence that is required for convicting a person in both the sub-sections are the same as the major constituents of the offence are the same. Therefore, even though charge was not framed against the accused under Section 376(1) of the IPC, no prejudice has been caused to him. In fact, in his examination under Section 313 Cr.P.C, it was made known to him that he was being tried for the charge of having committed rape on the prosecutrix. In the light of the various judgments of the Hon"ble Supreme Court mentioned above and on the facts of the case I am of the opinion that no prejudice have been caused to the appellant in the trial and in having convicted him under Section 376 (1) IPC for which no charge was framed.

7. The second point raised by the learned Amicus Curiae is that of all the witnesses examined there was no single eyewitness. Therefore, the Trial Court having no confidence on the sole evidence of the prosecutrix sought to corroborate her evidence with the evidence given by her husband i.e. PW-2 and her daughter PW-3. But the evidence given by PW-2 and PW-3 did not corroborate the evidence given by PW-1 i.e. the prosecutrix. In support of his submission, the learned Amicus Curiae drew my attention to the last part of para 18 of the impugned Judgment which is at page 15 of the same. The words are as follows:

"I find that the evidence of the complainant had been corroborated in material particulars by the evidence of the prosecutrix"s husband (PW-2), prosecutrix"s daughter (PW-3). Hence, I have not found any good ground to discard their testimony. The complainant (PW-1) has told the court that the complainant had mentioned to her all the details of the incident within a short while after it took place. The statement made by the complainant to her husband immediately after the incident has a corroborative value. After considering carefully the entire material including the evidence of the witnesses examined, I am of the view that

the testimony of the prosecutrix is worthy of credence."

Thereafter, the learned Amicus Curiae drew my attention to the statement of PW-3 on her cross-examination at para 6 wherein, it is stated as follows:

"My mother did not tell me on the next day that the accused sexually assaulted her."

8. The learned Amicus Curiae submitted that this shows that the evidence given by PW-3 did not corroborate the evidence given by the prosecutrix therefore, the learned Trial Court had erred in assuming that the evidence of the prosecutrix is corroborated by the statement of PW-3. The learned Amicus Curiae also pointed out that the prosecutrix in her examination-in-chief as PW-1 had stated that since she did not have sufficient balance in her phone when she called up her husband she only asked him to come home soon. But, her husband as PW-2 stated that his wife i.e. the prosecutrix told him that someone had threaten her with a knife and then raped her and she asked him to return home. She however, did not disclose the name of the culprit saying that she will tell him the details when he reach home. The learned Amicus Curiae submits that all these contradictions makes the evidence of the prosecutrix not worthy of trust, therefore, based on her evidence alone, it would be wrong to conclude that she had been raped by the appellant.

9. The learned Amicus Curiae further submitted that the place where the prosecutrix and the accused had sex was near their kitchen and there were other houses very near to it, therefore, if she had not consented to the sexual intercourse, she could have shouted or make some noise and her neighbours could have come to her rescue. As such, the charge that she was forced by the appellant to have sex with him is not worthy of trust. The learned Amicus Curiae went on to submit that according to the prosecutrix while the appellant was washing his private parts, she went straight to her bedroom and slept. This is not normal behaviour of a rape victim therefore, her evidence does not inspire confidence.

10. The learned Amicus Curiae again drew my attention to the statement of the prosecutrix under cross-examination (para-7) wherein, she stated that she was throttled and threatened not to speak or shout and she had her menstrual period, and submitted that the police did not record this statement of hers since she did not make the same before them but in order to improve her case she had stated the same in the court only. Therefore, the case of the prosecutrix is full of contradictions and is not reliable.

11. Mr. A.R. Malhotra, learned Amicus Curiae also submitted that though in the F.I.R no mention is made about the appellant being drunk but the prosecutrix in her statement given under 164(i) of Cr.P.C had mentioned that he was intoxicated/drunk. He also pointed out that though the prosecutrix mentioned both in her evidence given as PW-1 and in her statement under 164 that she had pain in her private part because of the sexual assault by the appellant but

Medical Examination did not show any sort of injury on her private part which would justify her statement, this goes to prove that the appellant did not have sex with her against her will or consent.

12. Lastly, the learned Amicus Curiae submitted that according to the prosecutrix, she informed her husband right after the incident of rape but her husband reached home only in the morning. This is not a normal reaction expected of a husband who is informed of rape having been committed upon his wife. If the statement of the prosecutrix and her husband were true, the moment the news was conveyed to him, the husband would have come straight and reached his house that night itself. Therefore, both the statement of the prosecutrix and her husband does not inspire confidence.

13. In reply, the learned Public Prosecutor, Mizoram submitted that admitting his guilt, the appellant did not even produce any witness defense. Referring to the submission of the learned Amicus Curiae on the F.I.R, the learned Public Prosecutor submitted that an F.I.R is only a report and one cannot explain all the details of the crime. The learned Public Prosecutor concluded his submission by saying that there may have been minor contradictions in the statements given by the prosecutrix but these minor discrepancies cannot be the ground for saying that the appellant is innocent. In support of his submission, the learned Public Prosecutor cited the Judgment of the Hon"ble Supreme Court in the case of Narendra Kumar v. State (NCT of Delhi) reported in (2012) 7 SCC 171 particularly para 20. The same is given here below:-

"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."

14. Mr. A.R. Malhotra, learned Amicus Curiae submitted in reply that the discrepancies are not minor but they are major ones that can change the fate of the case, therefore, cannot be ignored.

15. I have gone through the evidence given by all the 8 PWs and also the Judgment & Order of the Trial Court. I have also gone through the statement of the prosecutrix recorded under 164 Cr.P.C.

The statement of the prosecutrix given under oath as PW-1 and her statement given under 164 Cr.P.C do not contradict each other though they were recorded at different times, places and under different circumstances. That shows that the evidence given by the prosecutrix are not based on false or fabricated stories. The narration of the prosecutrix regarding the incident appears to be quite

natural and there is nothing in it which would or can raised suspicion of a reasonable man that it could have been a made up or concocted story. As it appears from the evidence, the relationship between the prosecutrix and the appellant is that of an aunt and a nephew (the prosecutrix is sister of the appellant's mother). In that kind of relationship in a tribal society, no other reason or motive could have been attributed to the prosecutrix in the absence of evidence for charging the accused of having committed rape on her except the desire to see the law of the land run its course on the appellant for the inhumane act committed on her. In a closely knitted small society of tribals living in village, like in the case of the appellant and the prosecutrix, it is most improbable that an aunt would accused her nephew of having even misbehaved with her not to talk of rape unless compelled by true facts and circumstances. For that matter, no Indian women would have volunteered to put the son of her own sister into imprisonment that too by making false allegation of committing rape upon her. In the conversation that took place between the 2 (two) before the incident of rape, there was nothing or any sign to show that there was enmity between them (prosecutrix and the appellant). It only shows the attitude of the prosecutrix towards the appellant was as would have been of an aunt to a nephew. The conversation also shows, even when the appellant was trying to show some kind of indiscreet behaviour, the prosecutrix chided him by saying.

"You are like my son and I love you like my own child".

Further, it is most improbable for a woman to have disclosed to her daughter and her husband if at all she had consensual sex with her own nephew, that too, in such promptitude as it was done in this case. In other words, there is no imaginable reason why the prosecutrix would have disclose to her daughter and her husband if at all sex between her and her nephew was consensual. By doing that, she would have known fully well that she could be putting her marriage on the rock and there was nothing she would gain out of it except social stigma and shame for all her life that too in a small village society. Assuming that she was a person of low moral character there was no reason for her to disclose it at all, especially when there was no danger of anybody ever discovering it. In fact, there is in evidence that the appellant had threatened her not to disclose it to anybody and he also will not do the same. On the other hand, the incident took place in the dead of the night, therefore, with a person who is stronger and was drunk that too with a knife in his hand, it is unlikely that the prosecutrix would have the courage and strength to resist him. In fact not to yield to him could have invited a more disastrous consequences. Therefore, the submission of the learned Amicus Curiae that since the place where the prosecutrix and the appellant had sex was just near the kitchen and other houses she would have shouted or make some noise, if it were not consensual does not appear to be reasonable at all. As such, this submission of the Ld Amicus Curiae, I am afraid, cannot be accepted.

The fact that the prosecutrix rang up her husband immediately is an instinctive

act of a woman in distress wanting to lean on the protective and comforting arms of her husband. Being distraught and in distress, she informed her daughter and husband. It was a natural and spontaneous behaviour of a woman in distress. All these only add credence to the evidence of the prosecutrix that she had been forced by the appellant to have sex against her will. Besides, as stated above the prosecutrix and her family live in a small village and it would have occurred to her that once people come to know about the incident she will suffer from social stigma for the rest of her life. But, the fact that in spite of all that she gathered her strength not only to tell her husband but reported to the police and went through all the process of trial shows that she was not following a make up story against her own nephew. The picture of the prosecutrix, in my view, is a woman in distress with a deep sense of anger and frustration for having been deprived of her chastity, dignity, privacy and self respect. All these can only be the reasons which had driven her to take such actions that are responsible for sending the appellant in to jail. She is far from the character the appellant has been trying to paint of her. Hon'ble Supreme Court of India in the case of *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, had described women who have been in such situations. The same is enlightening and at the same time instructive. Therefore, the relevant portion of the judgment is given here below:-

"10. By and large factors are not relevant to India, and the Indian conditions. Without the fears 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 and 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 ostracized 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 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 up bringing 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."

No better description of a woman facing such situation could have been given than what has been given in the above case by the Hon'ble Supreme Court.

16. The prosecutrix is mother of 2 (two) children, therefore, presence of hymen is least expected. Further, when she was medically examined she had already washed herself and her clothes, therefore, there was no chance of finding seminal fluid or sperm on her clothes. Since there is no denial that the appellant had sex with the prosecutrix I see no relevancy of these facts.

That apart, just because no injury marks were found on her body (prosecutrix) and her private part to say that her evidence that she was raped by the appellant cannot be trusted is unreasonable and it cannot be accepted because of the simple reason that every pain one feels may not result into external injury. The fact that she was forced to have sex with the appellant under threat would mean that she did not struggle or resist the sexual assault. In such circumstances, she was not likely to have any mark or marks of injury in any part of her body or her private part.

Further there were two witnesses for the seizure of the crime weapon-knife therefore, it is not true that there is no evidence for seizure of the same.

17. I shall now revert back to the evidence given by the prosecutrix as PW1 so that the same may be put on record for appreciation. The same is as follows:-

I personally know Lalbiaksanga as he is the son of my elder sister Biakhmingthangi. I cannot recollect the exact date however it was in the month of May, during rice planting season this year (2014) between 12 to 1 a.m., the accused called out for me three times. I responded to the third call and as requested, I opened the door for him. He carried alcohol that would have been lesser than a cup. He asked me if he could drink up the alcohol that he carried with him and I gave him the permission to do so. I also handed over the cup to him as per his request. He poured his alcohol however pulled me down to sit beside him and said "I love you, do you love me too?" I replied, "You are my son and I love you like my own child." The accused then said, "I do not mean that kind of love. I mean the type between lovers." At that moment, I immediately said, "Lalbiaksang, you are such a fool and you are drunk." He then grab the knife from our shelf and said, "I will kill you if you do not say that you love me." He pulled me up and ask me to carry a cloth that was hanging on the peg and took me outside. He then asked me to spread the cloth outside, near the kitchen wall. He took off all my clothes and ask me to lie down. As I hesitated, he forced

me by throttling me and he did not allow me to talk loudly. He threatened me saying that it would be bad for me if I make a noise. He then had sex with me as and how he pleases. As my private part hurt, I cried out in pain. He then said, "Do not talk loudly, keep quiet. Do not tell anyone about this incident. I will also not reveal it to anyone. I will often come to visit you and we will do this again." I cried and as I continue to cry, I believe that he pitied me to a certain extent. He asked me to get dressed and go inside the house. During this incident, I had my monthly period and I therefore used a sanitary napkin too. After he allowed me to enter our home, the accused shortly followed me in. He looked at his private part and as it was stained with blood, he went to wash it with water stored in our bucket. While he wash himself up, I entered our bedroom to sleep. He again followed me and started touching my thigh. I tried waking my daughter using my leg around 3 times and my daughter fortunately sat up on the bed half asleep. With this act of my daughter he decided to leave for home. That night, he came in drunk however he knows his every act and he was not that intoxicated.

That night, my husband spent the night in the forest and I was at home with my two daughters. When the accused visited us, we were already asleep. As I know the accused well and as I heard him call out my name, I went to open the door not knowing that such an incident would happen. While the accused returned home, I called up my husband on the phone and as I did not have sufficient balance, I only asked him to come home soon. While I called up my husband, it was still dark and the moment I kept the phone, I heard footsteps outside. He again pulled our main door and called out my name however as I have already locked the main door, he did not pull it open. As I was extremely scared, I woke my elder daughter up and said to her, "Do not sleep, your elder cousin Biaksanga in a drunken state has come."

The accused then approach our window with a broken latch and on pulling it, he was able to open it. He again called out my name. I whispered to my daughter and as instructed by me, she said "Biaksang, what is it? My mother is asleep." My daughter responded as instructed by me and Lalbiaksanga again said, "I have a quick question for her." My daughter again said, "Mom is asleep, say what you want and I will deliver the message to her tomorrow." Lalbiaksanga then responded "No need, I will tell her tomorrow" and decided to leave from the main door. My husband started for home at dawn and reached just before sun rise and we reported the matter to Kawrthah Police Station that very day. My brother Lungmuana called the Police and they came that same day. The Police apprehended the accused in my presence. The police further asked me about the incident and I depose before the Magistrate at Mamit. The police seized my underwear, my cloth and my knife as well.

Ext P ? 1 is the FIR submitted by me, Ext P ? 1(A) is my signature.

All items seized by the Police Personnel from me such as knife, underwear and cloth are inside the package labeled as Ext. M ? 1."

18. This statement of the prosecutrix given above is more or less the same with the statement she gave before the Magistrate under Section 164 Cr.P.C. It appears to be nothing more than a plain narration by a simple and rustic woman of her unfortunate fait accompli. There is nothing more to read in it than plain truth of an unfortunate, brutal and inhuman act of a man depraved of basic sense of a human being. In her cross examination, there is nothing which would discredit her statement given in the examination in chief. Therefore, the learned Trial Court was right in having relied on the same. In the judgment cited by the learned Public Prosecutor it has been stated that 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.

19. In view of all that have been stated above, I find no infirmity in the judgment of the learned Trial Court convicting the appellant under Section 376 (1) of IPC and Section 506 of IPC. Therefore, the appeal is dismissed.

Before parting with this judgment, I must record appreciation of this Court on the assistance rendered by Mr. A.R. Malhotra, learned Amicus Curiae. The Mizoram State Legal Services Authority as per rules and practice applicable, shall pay to him the appropriate fee .