

GAHC030000502021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/2/2021

Vanlalvena
Bazaar Veng, Lawngtlai

VERSUS

State of Mizoram
Aizawl, Mizoram

Advocate for the Petitioner : Lalngaihsaki Fanai (Amicus Curiae)

Advocate for the Respondent : Ms Linda L Fambawl (PP/Addl. PP, Mizoram)

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 27-06-2024

Heard Ms. Lalngaihsaki Fanai, learned Amicus Curiae along with Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondent.

2. The instant appeal is filed by the appellant praying for reduction of his terms of sentence since the learned Sessions Judge, Lunglei, Lunglei Judicial District in Criminal Trial No. 590/2021 in its Order dated 22.08.2019 had convicted him under Section 376(1) IPC and sentenced him to undergo Rigorous

Imprisonment for 8 years and to pay a fine of Rs. 1000/-, i.d. to undergo Simple Imprisonment of 1 (one) month. Detention period was to be set off.

3. Ms. Lalngaihsaki Fanai, learned Amicus Curiae submits that the prayer of the appellant may be allowed and the sentence be reduced since the prosecution evidence does not appear to have proved the guilt of the appellant beyond reasonable doubt. She submits that the medical report do not confirm that the injuries found on the victim were caused by the instant appellant since the injuries are not mentioned to be fresh, which can be seen from the cross examination of the Doctor who conducted the medical examination of the alleged victim. She further submits that the deposition of the alleged victim is also not consistent with her statement recorded under Section 164 Cr.P.C. That her statement under Section 164 Cr.P.C. is grossly exaggerated.

4. The learned Amicus Curiae submits that though the victim had stated that the she was wearing lungi which was stained with blood because of the rape committed upon her, no lungi was seized by the prosecution to prove that such incident had occurred. She further submits that the incident as narrated by the alleged victim is not corroborated by the prosecution witnesses to show the chain of events which prove the guilt of the appellant. However, she submits in all fairness that the appellant in its application has not stated that he was innocent but has prayed only for the reduction of his sentence. In view of the above, she submits that this Court may take a lenient view and allow the reduction of the sentence to the minimum sentence prescribed under Section 376 (1) IPC.

5. Mrs. Linda L. Fambawl, learned Public Prosecutor, on the other hand

submits that there are no reasons to interfere with the judgment and order of the learned Trial Court since the medical evidence and the deposition of PW-3, who is the Doctor examine the victim clearly shows that she was still bleeding from her vaginal area and that blood had flown till her ankles when she was brought for medical examination on the same day of the incident. That the medical evidence clearly proves that the appellant had committed the offence of rape on the victim on 19.06.2018. Since medical examination was done on the same day and the evidence of rape was evident on examination of her body, there are no reasons for setting aside the conviction of the appellant under Section 376 (1) IPC. She further submits that in the instant case, there was also an eye witness who deposed as PW-5, who had clearly heard the victim shout for help and though he did not actually witness the incident, he had helped the victim to escape from the house, while the accused was with the victim in the house. The learned Public Prosecutor also submits that in the examination of the accused under Section 313 Cr.P.C., he had also stated that he did not know whether or not, he had sexual intercourse with the victim since he was intoxicated at the time of the incident. The learned Public Prosecutor thus submits that for the above reasons, there is no reason to set aside the conviction of the appellant under Section 376 (1) IPC. She further submits that considering the heinous nature of the offence, there are also no grounds to reduce the terms of sentence, as prayed for by the appellant.

6. I have heard the submissions made by the learned counsels for both the parties and perused the documents on record. This Court on perusal of the nature of the appeal filed by the applicant finds that the applicant/appellant has not claimed his innocence nor challenged his conviction under Section 376 (1) IPC but, has only prayed for the reduction of his terms of sentence, wherein he

was sentenced to undergo Rigorous Imprisonment for a term of 8 years and to pay a fine of Rs. 1000/-, i.d. another Simple Imprisonment for 1 (one) month. This Court has also considered the evidence adduced by the prosecution witnesses before the learned Trial Court and find that the FIR was filed by the daughter of the prosecutrix, since the prosecutrix aged 60 years was said to be having 70% mental disability. It is however seen that her statement could be recorded under Section 164 Cr.P.C., where she has stated how the appellant had committed the offence of rape upon her on 19.06.2018. She had mentioned that because of the rape committed upon her, she was also bleeding from her private parts. The medical examination conducted on the same day shows that there was bleeding from her private parts and there was also injury found on her thigh. The witness PW-5 has also clearly stated how on 19.06.2018, he had heard the prosecutrix shout for help and he had helped her to escape from the room, where he had also seen the appellant in the room with the prosecutrix. It is also seen that on the examination of the accused appellant under Section 313 Cr.P.C., he has not denied committing the offence but had simply explained that he was intoxicated on the that day and he does not know whether he had committed the offence or not.

7. For the above reasons, this Court do not find it necessary to discuss the other prosecution evidences, since it is clear from the evidence discussed above that there are no reasons to interfere with the conviction of the appellant under Section 376 (1) IPC, especially when the appellant himself in his appeal has not challenged his conviction but has only prayed for the reduction of his terms of sentence.

8. On perusal of the appeal application filed by the appellant, he has

mentioned that he was now 52 years. It is seen that the appeal application was filed in 2020 and therefore, he must be now 56 years. The appellant also mentioned that he was suffering from Tuberculosis of lungs and was even hospitalized for 4 (four) months at Aizawl, Zemabawk Hospital. He has also mentioned in his application that his wife and children are also facing much hardship because of his illness. It was also noted by the learned Trial Court during sentence hearing, that there was no previous conviction against the accused/appellant.

9. In view of the above, this Court find it fit to reduce the sentence imposed upon the appellant Shri. Vanlalvena from Rigorous Imprisonment of 8 years to Rigorous Imprisonment of 7 years, fine imposed and default clause imposed by the learned Sessions Judge, Lunglei, Lunglei Judicial District, to remain the same. Accordingly, the instant criminal appeal stands allowed, on the reduction of the terms of sentence, as prayed for.

10. Criminal Appeal No. 2/2021(J) is thus stands disposed of.

11. In appreciation of the assistance provided by the learned Amicus Curiae, his/her fee is fixed at Rs. 7500/- (Rupees seven thousand five hundred) only to be paid by the Mizoram State Legal Services Authority.

JUDGE

Comparing Assistant