

GAHC030003222023



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

Case No. : CrI.A./29/2023

Sh. P.C. Lalramnghaka
Armed Veng, T-Section, Mizoram

VERSUS

The State of Mizoram and Anr.
Aizawl, Mizoram 2:Smt. Lalrinchhan

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : P.P./Addl.PP, Mizoram for R1

Linked Case : I.A.(CrI.)/34/2023

Sh. P.C. Lalramnghaka
Armed Veng
T-Section
Aizawl
Mizoram

VERSUS

State of Mizoram and Anr.
Aizawl

2:Smt. Lalrinchhani
H/No.- A-56
Chanmari
Aizawl

Mizoram

Advocate for the Petitioner : Mr B Lalramenga
Advocate for the Respondent : P.P./Addl.PP
Mizoram for R1

BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT & ORDER (CAV)

DATE OF JUDGMENT : 05.07.2024

Heard B. Lalramenga, learned counsel for the appellant along with Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor for the State respondents.

2. This is an appeal filed against the Judgment & Order dated 19.04.2023 passed by the learned Additional Sessions, Judge, Aizawl District, Aizawl in SR No.96 of 2019 arising out of Criminal trial No.1330 of 2019, wherein the appellant was convicted under Section 354C of IPC and sentence to undergo SI for 1 (one) year and to pay a fine of Rs.1,000/- id Simple Imprisonment of another 5 (five) years.

3. Facts of the case in brief is that on 27.03.2019, an FIR was filed by the informant to the effect that she got acquainted with the present appellant, Mr. P.C. Lalramnghaka, who was holding the post of Security at Raj Bhavan from the year 2016. She decided to leave the present appellant on 13.01.2019 as she wanted to move on with her life. However, the preset appellant continued to bother her and threatened to take her life and the life of her family members. She was unable to lead a normal life on his account as he visited her at her office and troubled her. He threatened to expose her and her family and even threatened to kill her. After she decided to leave him permanently, she was

forced to have sexual intercourse with him twice on 6th February, 2019 at Lalat Building as he threatened to expose her family. At present she was about to get married and the bridegroom's have sent emissaries (palai) to her residence, however, he had sent photographs of her to her future husband's family and as a result her marriage has been called off. She prayed that legal action be taken against the present appellant P.C. Lalramnghaka for the wrong he had done to her.

4. The Aizawl P.S. registered Aizawl P.S. Case No. 87/2019 dated 27.03.2019 under Section 354-D/376(1)/506 IPC. On investigation a prima facie case was found against the present appellant under Section 376(1)/354(D)/506 IPC and charge sheet was accordingly submitted.

5. The learned Trial Court on 06.11.2019 framed charge against the present appellant under section 376(1) IPC, 354(D) IPC and 506 part-II of IPC to which the appellant pleaded not guilty and asked for trial.

6. During trial the learned trial court listed the following points for the determination:-

- 1) *whether the accused person P.C. Lalramnghaka committed stalking upon the victim punishable under section 354(S) IPC or not.*
- 2) *whether the accused committed rape upon the victim punishable under section 376(1) IPC or not*
- 3) *whether the accused committed criminal intimidation upon the victim punishable under section 506 part-II IPC or not.*

7. During trial as many as 11 prosecution witnesses were examined and cross examined, the accused/present appellant was examined under section 313

Cr.P.C, no defence witnesses were produced. The learned trial court after considering the evidence adduced by the prosecution witnesses acquitted the accused of the charge under section 376(1) IPC, 354(D) IPC and 506 Part-II IPC but held that as per section 222(2) Cr.P.C, the accused is found guilty under section 354(C) IPC and accordingly convicted under section 354(C) IPC, although he was not charged with the said section.

8. On his conviction under 354 (C) IPC, sentenced hearing was held on 19.04.2023, wherein the learned trial court sentenced the present appellant to undergo Simple Imprisonment for a period of 1 (one) year and also to pay a fine of Rs.1,000/- in default S.I. for another 5 (five) days for committing the offence under section 354(C) IPC. Aggrieved, the appellant has filed the instant appeal.

9. Mr. B. Lalramenga, learned counsel for the appellant submits that the appellant has served his terms of sentence but is still aggrieved by his conviction under section 354C IPC since he is innocent of the said charge,

10. The learned counsel submits that on reading of section 222(2) the prosecution needs to establish that section 506 IPC is cognate with the offence under 354C IPC, however, the ingredients that constitute an offence under section 506 IPC and those under 354C IPC are completely different and do not connect together. In support of his submission he has cited the decision of the Apex Court in **Shamnsaheb M. Multtani v. State of Karnataka** reported in **(2001) 2SCC 577 (paras 14-16)**,

11. The learned counsel for the appellant further submits that on perusal of the evidence adduced by the prosecution witnesses, there is no evidence of an offence committed under Section 354C IPC. He submits that from the deposition of Pw-1, the name of the person to whom the said pictures were disseminated

has not been mentioned. On cross examination of Pw-1, no specific name is mentioned except that the pictures is sent to relative by the accused. He further submits that on the perusal of the evidence of the prosecution witnesses, there is no evidence that the picture is sent from the mobile phone of the accused to the mobile phone of the said sister of the fiancé of the informant.

12. He further submits that the mobile phone of Pw No.7, the sister of the fiancé of the informant, was not seized and therefore the prosecution has failed to prove that the pictures were disseminated. He further submits that on examination of Pw-10 there is no mention of extraction of the pictures from the mobile phone of the accused/appellant and thus the evidence adduced by the prosecution are all primary and secondary evidences under section 65 and there is no direct evidence under section 60 of the Indian Evidence Act.

13. The learned counsel further submits that the mere exhibit of the documents exhibited as Ext. P3, P3A & P3D is not a prove unless they are proved in accordance with law. He further submits that the prosecution has to stand on its own evidence.

14. The learned counsel has relied on the decision of the Apex Court in **Neeraj Dutta v. State (NCT of Delhi)** reported in **2023 4 SCC 731 para 57, Vijay Vs. Union of India & Ors.** reported in **2023 SCC OnLine SC 1585** and **Kamal Vs. State (NCT of Delhi)** reported in **2023 SCC OnLine SC 933**.

15. Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand submitted that on plain reading of section 506-2 IPC, it is seen that the act involved in the impute unchastity of a women which is an offence under 506

IPC, which is cognate with section 354C IPC and the learned Trial Court had rightly invoke section 222(2) Cr.P.C by convicting the accused under section 354C since the ingredients of section 506-part 2 also found in section 354C IPC

16. The learned Addl. P.P submitted that the dissemination of the incriminating photograph having sexual over tone is proved by the deposition of Pw-11, who is the case I/O. The case I/O in his cross-examination has clearly stated that the photographs which were exhibited as Ext. P3, P3A & P3D were sent to the mobile phone of PW-7. She further submits that Pw-7 has also in her examination-in-chief clearly mentioned that the accused had sent the photograph to her mobile phone and she has also identified the photograph as exhibited as Ext. P3, P3A & P3D

17. The learned Addl. P.P also submits that the mobile phone of Pw-7 was not seized, since it was stated that the photograph were deleted by PW-7 as advised by her mother to do so. She further submits that the testimony of the prosecution witnesses has not been taken in the cross-examination and that there is evidence given by the case I/O and the circumstantial evidence points corroborated with the evidence given by the Pw-11 which all point towards the guilt of accused.

18. The learned Addl. Public Prosecutor further submits that even though the name of the accused was not mentioned by the Pw-7. However, she got to know of the identity of the accused from a person named U Kimpuii, who had introduced the brother of Pw-7 to the informant, she thus submits that the evidence adduce by Pw-6, Pw-7 & Pw 11 makes it clear that there was a dissemination of the photographs taken by the accused and disseminated by him. The FIR has also clearly stated the same. In the examination of the accused under 313 Cr.P.C., the ingredients of section 354C IPC have also been

mentioned and questioned to which the accused have however denied the said incriminating the same.

19. I have heard the submissions made by the learned counsels for both the parties and I have also perused the documents on records. It is seen that the accused/appellant was charged under section 506 part II IPC, however on acquittal of the charge, the learned trial court held that the present appellant was committed under section 354(C) IPC by invoking section 222(C) Cr.P.C.

Section 354(C) IPC reads as under :

“Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine”

While the second part of section 506 IPC provides that if a person threatens to cause death, serious harm, or destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment which may extend to seven years, or to impute, unchastity to a women, shall be punished with imprisonment of either description for a term which may extend to seven years or with fine, or with both.

20. This court finds that to impute, unchastity to a women under section 506 part-II is cognate to the offence describe under section 354(C) IPC.

21. This court does not find it necessary to highlight all the evidence adduced by the prosecution witnesses but only highlight the statements/evidence adduced by the prosecution witnesses in connection with the offence under section 354(C) IPC.

22. Pw-1- Lalrinchhani is the informant who has stated that the present appellant was working at Raj Bhawan while she was working as Horticulture Extension Officer. As she was assigned to receive VIP and maintained protocol, she often met the present appellant at Raj Bhawan, she started having an affair with him since 2015. She decided to end their affair on 13.01.2019 however, the present appellant continued to disturb her and also threatened her. She narrated how the present appellant continued to trouble her. On 07.03.2019 there was an arrangement for her marriage, an envoy (Palai) came on 7th March, 2019 and the present appellant again intruded and he sent some screenshot of her pictures from video call record where she appeared in indecent manner, to the younger sister of her fiancé through his Police colleague i.e. Lalrinfela. After that the present appellant himself contacted the youngest sister of her fiancé stating that he was the boyfriend of the informant and that she was pregnant from the accused. Because of the indecent pictures her marriage proposal was subsequently cancelled, an FIR was therefore lodged in the instant case. She stated that her indecent pictures in the charge sheet and some messages "screenshot" in the charge sheet were done before the incident at Lalat building at Dawrpui. In her cross examination, she admitted that she contacted the accused by video call and message as screenshot in the charge sheet. She admitted that she did not produced any messages or other digital evidence

revealing that the accused threatened her to commit sexual intercourse with him during the investigation of the case. She admitted that she did not tried to retrieve the same, she also admitted that the police did not seized her phone for the purpose of the instant case.

23. Pw-2 & Pw-3 are the seizure witnesses in respect of Samsung J600 mobile phone black in colour belonging to the accused, exhibited as exhibit-2.

24. Pw-5, Zorinpuii deposed that on 11.03.2019, she was approached by one person who stated that he had close relationship with their friend Lalrinchhani since the past 4 years and that they had sexual relationship, he stated that he, could no longer contact Ms. Lalrinchhani/informant and asked for her contact number, the person also stated that they were likely to defame Ms. Lalrinchhani, however she did not provide the contact number.

25. Pw-6, is S.I Liansangpuii, she had deposed that she examined Brenda F. Sangdingliani (PW No.7) and recorded her statement. In her cross-examination, she admitted that she did not investigate the case except record the statement of the witnesses Brenda F. Sangdingliani, she admitted that she did not see the nude photos from the Mobile phone of Brenda F. Sangdingliani as it was already deleted, she admitted that she did not sees the Mobile phone of the prosecution witness Brenda F. Sangdingliani, she admitted that the prosecution witness Brenda F. Sangdingliani stated before her that she did not sent the nude photos to her relatives which she allegedly stated to have received from the accused.

26. Pw-7 is Brenda F. Sangdingliani, who is the sister of the fiancé of the informant. She stated that in the month of February, 2019 while she was working in her office, she received a phone call from an unknown person who sent her screenshot photo copies of his chats with the victim/informant and

screenshot photocopies of his video call with the victim showing her private parts. The unknown person further sent messages informing that the woman in the picture was his ex-girl friend and also told her that she was going to be her elder brother Dr. F. John Zirsangzuala's wife. PW.7 however told this unknown person that she did not want to involve herself in other person relationship. She did not know the person in whatsapp D.P. so she sent it to U Kimpuui of Ramhlun Vengchung since she had introduced her elder brother to Lalrinchhani. U Kimpuui later told her that the person used to disturb Lalrinchhani. PW 7 also deposed that she informed about the phone call, messages and screenshot photos to her mother who told her to delete the messages and photos, which she deleted after a week without sending it to anyone. In her cross-examination, she stated that she do not remember the number of mobile phone through which she received the alleged nude photos of the victim. She admitted that she did not sent the alleged nude photos to anyone and deleted them immediately, she admitted that she knows that the alleged nude photos of the victim was not publish in social media.

27. Pw-8, Pw-9, Pw-10 have not deposed anything in connection to section 354C IPC.

28. Pw-11, is the case I.O Inspector Lalrindiki who had found that prima facie case established under section 376(1)/354(D) and 506 IPC. He deposed that the informant had told him that the accused has also sent screenshot photos of her private parts and their conversation to the sister of her fiancé because of which her engagement was cancelled. That he had seized the mobile phone of the accused and the photos and whatsapp messages were extracted in the presence of JMFC, Aizawl.

29. On analysis of the evidence of the prosecution witnesses as highlighted

above it is seen that PW 7 is the person to whom the indecent pictures were said to be sent/ disseminated by the accused/appellant. However it is seen that nothing was recovered from the mobile phone of the said PW No.7 and the mobile phone was also not seized. PW No. 7 has also said that she had deleted the photos as told to do so by her mother, however the mother of PW No.7 is not made a witness to corroborate the statement of PW No. 7. The person named U 'Kimpuii' by PW.No.7 is also not a prosecution witness. The Case I.O has mentioned about recovering the photos exhibited as Ext P-3, but has not stated anything about the dissemination of the indecent photos to PW No.7 . It is also seen that PW.No.7 has admitted that the said photos have not been disseminated to any other person. For the above reasons this court finds that there is no substantial or direct evidence under section 60 of the Indian Evidence Act to show that the said photos were sent from the mobile phone of the accused to PW No.7, to prove beyond any reasonable doubt that the accused/appellant had committed the offence under section 354C IPC. No witnesses were produced to corroborate the statement of PW No.7 with regards to the dissemination of the indecent photos by the accused/appellant.

30. It may be noted that the Apex court in **Neeraj Dutta v. State (NCT of Delhi), (supra)** held that:

“57. Section 60 of the Evidence Act requires that oral evidence must be direct or positive. Direct evidence is when it goes straight to establish the main fact in issue. The word “direct” is used in juxtaposition to derivative or hearsay evidence where a witness gives evidence that he received information from some other person. If that person does not, himself, state such information, such evidence would be inadmissible being hearsay evidence. On the other hand, forensic procedure as circumstantial or inferential evidence or

presumptive evidence (Section 3) is indirect evidence. It means proof of other facts from which the existence of the fact in issue may be logically inferred. In this context, the expression "circumstantial evidence" is used in a loose sense as, sometimes, circumstantial evidence may also be direct."

The Apex court also held in **Vijay Vs. Union of India and Others (Supra)** that :

"33.9 Mere production and marking of a document as an exhibit by the Court cannot be held to be due proof of its contents. It has to be proved in accordance with the law."

31. In view of the above findings, this court is of the considered view that the Judgment & Order dated 19.04.2023 passed by the learned Additional Sessions, Judge, Aizawl District, Aizawl in SR No.96 of 2019 arising out of Criminal trial No.1330 of 2019, wherein the appellant was convicted under Section 354C of IPC is liable to be set aside and quashed. The appeal is thus allowed and the appellant P.C Lalramngaka stands acquitted to the charge under section 354C of the Indian Penal Code.

32. Accordingly, Criminal Appeal No.29 of 2023 stands allowed and disposed of.

JUDGE

Comparing Assistant