

IN THE COURT OF MANIPUR

AT IMPHAL

Cril. Appeal No. 1 of 2018

1. Khuraijam Bungbung, aged about 30 years, S/o (L) Kh. Indrajit Singh of Lamlongei, P.O. Mantripukhri & P.S. Heingang, Imphal East.
2. Nongthombam Bocha @ Biren Singh, aged about 43 years, S/o N. Bihari Singh of Lamlongei Mantripukhri Maning Leikai P.O. Mantripukhri & P.S. Heingang, Imphal East.
3. Khuraijam Khamba Singh, aged about 26 years, S/o Kh. Guno Singh of Lamlongei Mantripukhri Maning Leikai P.O. Mantripukhri & P.S. Heingang, Imphal East.

..... Appellants/Accused

-Versus-

The State of Manipur

Represented by Addl. Chief Secretary, Home Manipur.

.....Respondent

BEFORE

HON'BLE THE CHIEF JUSTICE MR.D. KRISHNAKUMAR AND HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Appellants : Mr. Khaidem Mani, Sr.Adv., Mr. A. Gautam Sharma,
Ms. Ibemcha Keisham, Advocates

For the Respondent: Mr. Kh. Athouba PP, assisted by Mr. Phungyo
Zingkhai, Dy. GA

Date of Hearing : 06.03.2025

Date of Order : **20.05.2025**

JUDGEMENT& ORDER

A. GUNESHWAR SHARMA, (J):

1. The Present Cril. Appeal is filed against the Judgement and Order of conviction dated 18/12/2017 and Order of Sentence dated 20/12/2017 passed by the Ld. Addl. Sessions Judge (FTC) Crime Against Women, Manipur in S.T. (CAW) Case No. 3 of 2017 convicting the Appellants under Section 376 -D of the Indian Penal Code and sentencing the 1st Appellant to undergo rigorous imprisonment for life with fine of Rs. 10,000/- (Ten Thousand) only and the rest 2(two) Appellants to undergo rigorous imprisonment for a period of 20 years and a fine of Rs. 5,000/- (Five Thousand) each and in default of payment of fine the accused have to undergo 3(three) months simple imprisonment.

2. The prosecution story is that on 23/01/2014 at about 1pm, the complainant namely Ashang Kasar lodged a written complaint stating that on 22/01/2014 at about 1 or 2 pm, his niece Miss X (name withheld) came from Mantripukhri Bazaar. When she reached at Lamlongei, the three persons came and kidnapped his niece and later raped her in Lamlongei jungle. Accordingly a regular case being F.I.R No. 04(1)2014 HNG-PS, 376/34 IPC was registered and after investigation, charge sheet was submitted.

3. The charges were framed against the accused persons (the present Appellants) under Sections 109/354/376/384 & 34 IPC on 24/07/2017. Later on 08/12/2017, the trial Court altered the charges from Sec 376/34 IPC to 376-D, IPC by invoking the provision u/s 216 CrPC after due consideration of the materials on record and hearing of the Ld. Spl.P.P. as well as Ld. Defence counsels.

4. During the course of the trial, the trial court examined 13 prosecution witnesses and exhibited various documents.

5. Examination of PWs (Extract of few important depositions)

(i) . Md. Allimuddin (Constable No. 10D0688) was examined as P.W1. He has deposed that on 24-01-2014 at about 2:00 PM he along with the police personnel of Hng. P.S. led by SI Ksh. Nareshkumar of Hng. P.S. went to Forensic Medicine science, RIMS. The I.O. of the case SI ksh. Nareshkumar of Hng. P.S. seized (1) One Plastic tube containing vaginal

Swab (2) One plastic tube containing urethral Swab on production by Dr. Kh. Pradipkumar of Forensic Medicine, RIMS by preparing a seizure memo in which he put his signature on the seizure memo as a seizure witness after knowing the contents fully.

The P.W. No. 1 further deposed that on the same day at about 2 PM SI Ksh. Nareshkumar of Hng P.S. seized (1) One plastic tube containing penile swab (2) one plastic tube containing urethral swab (3) one EDTA tube containing sample of blood on production by Dr. Kh. Pradipkumar of Forensic Medicine, RIMS by preparing a seizure memo in which he put his signature on the seizure memo as a seizure witness after knowing the contents fully. The P.W. no. 1 also identified the seized articles.

The cross examination to the P.W. no. 1 are mere denials.

(ii) . Shri Mutum Hemanta Singh was examined as P.W.no. 2. He has deposed that in the year 2014 he was posted at Hng. P.S. as a constable. He knows the accused persons who were sitting in the dock. On 24-01-2014 at about 2 PM he along with the police personnel of Hng. P.S. led by SI Nareshkumar Singh went to Forensic Medicine Dept. RIMS when they reached at FM Dept. RIMS the I.O. of the case SI Naresh Singh seized (1) one plastic tube containing penile swab (2) one plastic tube containing Urethral Swab (3) one EDTA tube containing sample of blood on production by Dr. Kh. Pradipkumar of Forensic Medicine, RIMS by preparing a seizure memo in which he put his signature on the seizure

memo as a seizure witness after knowing the contents fully. The P.W. no. 2 also identified the seizure memo and M.Os.

(iii) . Shri Kshetrimayum Nareshkumar Singh was examined as P.W. no. 5. He is the first I.O. of the case and he deposed that he knows the accused persons who are now sitting in the dock. The P.w. 5's deposition is that on 23-01-2014 at about 1 pm complainant (P.W. no. 6) made a written report to the O.C. Hng: P.S. station stating that on 22-01-2014 in between 1:00 to 2:00 pm one Miss X who came from Mantripukhri Bazar, when she reached at Lamlongei the three persons namely Khuraijam Bungbung, Nongthombam Bocha@Biren and Khuraijam Khamba came out and kidnapped his niece by the accused persons and raped her in the jungle.

The P.W. no. 5 also deposed that the case was registered as FIR No. 4(1)2014 Hng. P.S., U/s 376/34 IPC and the same was endorsed to him for investigation and he started investigation. First of all he examined the complainant and recorded his statement u/s 161 Cr.P.C.

The accused Khuraijam Bungbung [A-1] was arrested on 23-01-2014 and made body search. On his body search found the following items:- (1) one Nokia Mobile phone C2 (MO-6), (2) Lemon Mobile Phone B499 (MO-7), (3) One black underwear having semen stained (MO-8).

The accused was interrogated. On his interrogation had admitted the commission of crime which was committed along with two other accused

persons namely Bocha and Khamba both from Lamlongei, thereafter a prayer had been made to the court for police custody of Bungbung for 9 days i.e till 31-1-2014.

During police custody, the P.W. no. 5 made attempt to cause arrest of other two accused persons but at first no arrest could be made, after that, hectic efforts were made to cause arrest of the two accused persons.

On 24-01-2014 medical examination in respect of victim girl (P.W. no. 7) was done at Forensic Medicine, RIMS. On the same day Medical examination of the accused Bungbung was also done before Forensic Medicine, RIMS.

P.W. no. 5 further deposed that Ext. P/7 is the seizure memo for seizing of one plastic tube containing vaginal swab (MO-1) and one plastic tube containing urethral swab (MO-2) on production by Dr. Kh. Pradipkumar of FM, RIMS in presence of witnesses of Ch. Soreila Devi (Mother of victim P.W. no. 8) and Md. Alimuddin cons/driver of Hng. P.S. (P.W. no. 1) and Ext. P/7/4 is his signature.

Ext. P/8 is the seizure memo dtd. 24-01-2014 at 2pm for seizing of one plastic tube containing penile swab (Mo-3), one plastic tube containing urethral swab (MO-4) and one EDTA tube containing sample of blood (MO-5) on production by Dr. Kh. Pradipkumar of Forensic Medicine, RIMS in presence of witnesses M. Hemanta Singh (P.W. no. 2) constable of Hng.

P.S. and Md. Alimuddin (P.W.no. 1) constable/ driver of Hng. P.S. and Ext. P/8/4 is his signature.

On the same day i.e, on 24-01-2014, he has seized the following items on production by Soreila Devi (P.W. no. 8) at Forensic Medicine, RIMS, i.e. (1) one full shirt, V-shape black dotted by red in colour, (2) one panty red in colour having semen stain and (3) one black colour long pant (stretchable) MO-11 is the one black colour long pant (stretchable) in the presence of the witnesses namely Sarejahan Shiekh (P.W.no. 11) W/Const. of Hng. P.S.

On 24-01-2014 he had examined and recorded the statement of the victim u/s 161 Cr.P.C. On that day i.e. on 24-01-2014 the accused persons Bocha [A-2] and Khamba [A-3] surrendered before the then O.C. Hng.P.S. and then arrested the two accused persons Bocha and Khamba.

On the next day i.e. on 25-01-2014 he made a prayer and taken police custody for 7 days till 31-01-2014 from the court of CJM/IE.

The P.W. no. 5 also deposed that he examined and recorded the statement of the three accused persons u/s 161Cr.P.C. one after another. They had admitted to have committed the crime.

On 27-01-2014 he had seized (Ext. P/13) one scarf striped with white-yellow-pink-orange-and brown some part torn on the middle part and at the end part of the cloth (MO-12), in presence of the witnesses namely Ch. Gourachand Singh (father of the victim) and Khomdrom Shiroy Meitei

Const. Hng. P.S. The P.W. no. 5 identified the signature of Khomdrom Shiroy Meitei Const. Hng, P.S as he was serving with him for a long time in the same P.S. Ext. P/13/3 is the signature of Khomdrom Shiroy Meitei Cons. Hng. P.S. and Ext. P/13/4 is his signature.

(iv) Ashang Kasar the complainant was examined as (P.W. no. 6).

He has deposed that Soreila the mother of the victim (P.W. no. 8) is his cousin sister who is married to one Ch. Priyo Kumar Singh (P.W. no.9) of Kwakeithel. Miss X, the victim of the case, was staying at his residence for helping his family in the house-hold things and sometimes she also did tailoring work at his house at the relevant time. At that time she (P.W. no.7) must be aged about 23 yrs.

On 22-01-2014 in the evening she (P.W. no.7) asked him that she wanted to go to bazar and left his house. In the evening when it was getting late he (P.W. no.6) was worried as she did not return home. Then he tried to contact her with her mobile but her (P.W. no.7) mobile was switch off. In the evening but he could not remember the exact time and when he informed the matter to his cousin sister namely Soreila Devi (P.W. no.8) but she told him that the victim Miss X (P.W. no.7) did not come to her (P.W. no.8) place. They were searching the whereabouts of his niece Miss X to their locality, at the relevant time he was informed by the family member of one Luikham@Golmei namely Mrs. Ashing that his niece was with him and they went for roaming but on the way back home Miss X (P.W. no.7) was brought by some unknown persons and Golmei came back

home. At the relevant time he (P.W. no.6) did not recognize the unknown persons but later he came to know the three persons (who are sitting in the dock) in the Heingang police station. On the day his niece Miss X (P.W. no.7) did not return to his place and she went to her mother's house at Kwakeithel.

The P.W. no.6 further deposed that he lodged a written complaint to the O.C. Hng.P.S, he identified the O.E/complaint and his handwriting.

On the cross examination the P W. No. 6 deposed that the contents of the complaint (Ext. P/10) was not written by his (P.W. no.6) handwriting. He also deposed in the cross examination that at the time of putting his signature (Ext. P/10/1) the contents was not read over to him.

Further, in the cross examination by the Ld. Counsel of accused no. 3, P.W. no.6 stated that he put his signature Ext. P/10/1 on Ext. P/10 in a blank paper, not after writing the contents of the complaint.

During his cross-examination, his evidence could not be shaken except for confronting him with denial suggestions.

(v) . Miss X who is the victim in the case is examined as P.W. no. 7. She has deposed that she has many nick names. She knows the accused persons who are now sitting in the dock.

P.W. no. 7 also deposed that in the year 2014 she was staying at the house of her maternal uncle namely Ashang Kasar (P.W. no. 6).

Her mother's name is Soreila (P.W. no. 8). Her mother was originated from Tangkhul Tribe and married to Meitei who belongs to Hindu religion. After passing class-X standard, she could not complete Class XII and she did not continue her study and started embroidery work.

The P.W. no. 7 further goes to depose that in the last week of October, 2013 she stayed at the house of her maternal uncle whose name is Ashang Kasar (P.W. no. 6) for helping the household works for the ailing aunty Achui at Nagaching. During the time when she was staying at her uncle's house, she came to know one person named Lukham @ Ringsinglun. He was her boyfriend. Sometimes they used to talk over phone. When she returned home, they used to chat over phone frequently. One day in the month of January, 2014, that was in the morning Luikham called her up through mobile phone and asked her (P.W. no. 7) to come and see him at one pan dukan at Mantripukhri. At about 1:00 pm or it was about 2:00 pm she (P.W. no. 7) came out from her house, on reaching main road at Sega Road she caught one Auto rickshaw and reached at Khwairamban Bazar, Samu Makhong and proceeded upto Nagamapal Auto parking on foot. Then she went through one passenger auto rickshaw upto Mantripukhri where Luikham was waiting for her. Lukham proposed to go somewhere for roaming and both of them went to a place which was high lying area and it was not actually hill area. The area was an isolated area, vacant land and clearly visible by someone if they used to go and sit over there. On reaching upto to the high lying area, they were sitting and talking to each other. While they were sitting together some unknown three persons

came near to them. They were asked by the three persons the reason for sitting at that place. They told them that they were just sitting.

The P.W. no. 7 also deposed that out of those three persons, one person had taken her boyfriend namely Luikham and the remaining two persons remained near to her. At the relevant time she (P.W. no. 7) was standing there, out of those two persons one person was holding her right breast. P.W. no. 7 strongly objected and that person slapped on her face due to her objection. Another person asked her to have sexual intercourse and she refused. One person was holding her (P.W. no. 7) hands and another person pushed down her trouser and panty up to knee joint. By that time she was made to lie down on the ground. The witness has identified the person (accused) who committed rape to her (P.W. no. 7) and he is the person accused who is now sitting in the court and his name is Bungbung[A-1]. Bungbung pushed down her (P.W. no. 7) trouser and panty upto knee and then he (Bungbung) raped her. At the relevant time the other person escorting near the incident by holding a stick. After the rape, P.W. no. 7 pulled up her trouser and panty and dressed properly. She (P.W. no. 7) was trying to leave that place but the two restrained her from leaving the place. They demanded money from her, failing which they would disclose to the local Meira Paibis (women vigilantes) about the gathering of her and her boyfriend at that place but she could not remember the exact amount which they demanded from her (P.W. no. 7). Thereafter, she (P.W. no. 7) and the two persons had an exchange of hot words, later she left the place, by saying to the persons that she (P.W. no.

7) would take money from home. When she (P.W. no. 7) came down from the high lying area to the low area she e saw her boyfriend and the other person were standing. At the relevant time the other two persons were also followed her. When she reached near to her boyfriend, she asked them to accompany with her boyfriend to take money from home but they asked them (P.W. no 7 and the boyfriend) one of them should remain there. Her boyfriend proposed to go and herself to remain with them but she refused and then PW no. 7 came alone for taking money from her mother's home at Segga Road, Takkel Leikai. When she reached home at Segga road Takhel leikai it was about to dark. She asked her mother (PW no. 8) to give some money for buying a mobile phone but her mother said she had no money.

The P.W. no. 7 in her evidence further deposed that in the night at about 6:30 pm her uncle namely Ashang Kasar (P.W.6) rang up to her mother (P.W. no. 8) asking about her (P.W. no. 7) and her mother replied her uncle that P.W. no. 7 was with her. On the next day, her uncle Ashang Kasar (P.W. no. 6) rang up again to her mother and told that there was some crisis happened the previous day to P.W. no. 7 and because of that crisis some local Meira Paibis (women vigilantes) assembled at residence of P.W. no. 6 and her uncle asked her mother to come with her (P.W. no. 7). Accordingly, in the same morning she (P.W. no. 7) along with her mother (P.W. no. 8) went to uncle's house (P.W. no. 6). On the way i.e. about to reach uncle's house (P.W. no. 6), they were informed by some local Meira Paibis to come to community hall of Mantripukhri. Her mother

(P.W. no. 8) went to community hall with some Meira Paibis and P.W. no. 7 along with 2/3 Meira Paibis went to one school located at Mantripukhri i.e. the local area of her uncle (P.W. no. 6).

After some time her mother along with some persons including Meira Paibis came to the school where she (P.W. no. 7) was waiting for them. She asked the Meira Paibis to make available the accused persons at the school but she (P.W. no. 7) was informed that the three persons were picked up by the Heingang police personnel. After a while some police personnel came to the school and then she was also picked up by police personnel.

She was examined and her statement U/s 161 Cr.P.C. was recorded by the I.O. of the case in connection with this case. She also appeared before the court of CJM/IW and recorded her statement U/s 164 Cr.P.C. on 17/02/2014. Her statement u/s 164 CrPC is marked as Ext.P-11 where she narrated that she was raped by accused Bungbung by inserting his penis in her private parts while another accused threatened her not to scream. Her statement recorded u/s 164 CrPC is more or less consistent with her deposition before the court.

In the cross examination P.W. no. 7 denied that she was not sexually assaulted by the accused persons but she could not say the colour of t-shirt and the trousers of the respective dress of the three accused persons. Others are mere denial and while cross examination by the Id. counsel of the accused persons to the victim the factum of rape and torture with

common intention committed by the accused Bungbung, Bocha and Khamba could not be shaken. In cross examination of P.W. no. 7, she admitted that the youngest person, later pointed out and identified as accused Khamba [A-3], was not involved in the insult, sexual assault and rape, but he was the person who had taken Luikham (PW no.7's boyfriend) aside.

PW no.7 denied the suggestion that she was not sexually assaulted by the accused persons. On that day at the spot the three accused persons came with their respective dress of shirts and trousers but she cannot say the colour of the shirts and the trousers.

She denied the suggestion that the persons now in the dock are not the persons who came near to her and Luikham while they were sitting together at the spot.

P.W. no.7 was cross-examined on recall on 11th December, 2017. In her further cross examination by the Ld. Counsel of accused no. 1 and 2, she has deposed that "I admit to the suggestion that on the day of occurrence i.e. on 22-01-2014 accused no. 1 (Bungbung) did not rape me". She further stated that all the accused persons had beaten her on that day.

(vi) Soreila the mother of the victim was examined as P.W. No.

8. She has deposed that in the month of January, 2014 at about 10/11 am but she could not say the exact timing, she went to Forensic Medicine, RIMS along with her daughter namely Miss X (victim) in c/w the case as

asked by the IO of the case. When they reached at Forensic Medicine, RIMS with her daughter one doctor namely Dr. Kh. Pradeepkumar Forensic Medicine, RIMS examined her daughter Miss X in c/w this case. After examining her daughter the I.O. of the case seized by preparing a seizure memo for seizing one plastic tube containing vaginal swab and one plastic tube containing urethral swab in their presence. She put her signature on the seizure memo as a seizure witness prepared by the I.O. of the case. She identified the seized items.

6. Confessional statement of accused/appellant no. 1 Khuraijam Bungbung u/s 164 CrPC recorded on 12/02/2014 [Ext.P-20] is reproduced below:

"On 22nd January, 2014 at around 1:30 pm when I was sitting in my pandukan/shop I show a young couple climbing a hill of Lamlongei. In the meantime one Bocha Singh who is my neighbour came to my shop and he also seems to have seen the said couple climbing up the said Lamlongei hill slop, asked me that they should go up and see what the purpose are up to. I along with the said Bocha who leads in the front along with one Khamba went up to the direction of the hill slope where the couple have climb up. On reaching the spot the said Bocha who is also a co-accused in this case said to us that the two couple has sneaked into a thick/dense grass and said that we should go and have a look as to what is happening within the bushes. When I reached along with the other co-accused to the spot of bushes they show the couple in a compromised position. On seeing that Mr. Bocha chastised the couple why they are doing such kind of act in this locality you should have behaved in more descent manner by sitting down at the proper places and Mr. Bocha slapped both the couple once. After

slapping the couple we called the couple to come with us to the local club to talk over about the issue. I along with the male couple and Khamba came out from the spot/bushes and we were walking on the footpath of the hill thinking that Mr. Bocha and female partner are also coming behind us. After walking for about 20 meters away from the spot where we found the couple in the compromised position, I realized that Bocha and the lady were still in the said bushes. Since Bocha and female were not come out, I went back to the same place and I found Bocha and the lady were standing at the distance of one feet between them. There I scolded the lady saying that do you want fun and enjoyment. Saying that I also being a human being I was also over taken by the carnal desire so I touch the bodies of the lady. I leave up her cloths to check any marks or something is there on her body simultaneously I also told the lady since you want enjoyment you have to enjoy with me also while caressing her body and playing with her bodies I ejaculated myself without any penetration into her body as I was mentally restrained to do such acts. As I discharged myself I show her handkerchief lying on the ground and I pick up the said handkerchief to clean myself. Thereafter I myself along with the lady came from the bushes and at that time Bocha and Khamba were found standing nearby.

The male partner was found standing together there I told the male victim that as per the custom you both have to be taken to the local club and you have to do the keina Katpa' and not only that you could be fine even Rs. 40,000/ to 50,000- to us. To these the victim boy requested to me and to my co-accused not to take to the local club and not to take such king of actions and he requested us that he will giving some fine to us (accused person). So we asked how much amount he can pay to us and the boy said that he can give about Rs. 5,000/- to us in the meanwhile the victim girl intervened and said that the boy is a poor person he would not be able to pay the amount so she requested us to send her home to Collect the amount from her house and she will come back and pay the

amount to us. After waiting a while she did not return. Since the girl has not returned we sent back the boy to his house. Before sending him back to his house we seized his I- card and his mobile and earlier before the girl left to her house to collect the money we also seized her mobile phone to ensure that they return with the amount. We told both of them they can collect their mobile phone and other material after the payment is made. After sending away the couple in this manner we also left for our own house and before we reach home I took the two mobile phones from Bocha for safe keeping with me because I could not trust that he is a drug addict so he might sold out the mobile phone. So I took the mobile phone from Bocha and keep with me. On the next day at around 7:30 am I went out from my house to buy some grocery for my shop and upon reaching at the leikai community hall show people gathering including the club member and the victim boy and also Bocha and Khamba. I also went to the community hall when inquire I found that it was regarding yesterday incident/issue. The club member and the meira paibies scolded us why you have not brought them to the local club. I admitted my mistake and beg for forgiveness. The club member demanded a fine of Rs. 50,000-from me for not bringing the matter before the local club. So I along with one uncle of my locality went to my house and informed my mother about the fine but my mother say she does not have that kind of money. So I in turn requested to my accompanying uncle to help me and he say that he can help amount of Rs. 25,000/- and the said amount is handed to me and the remaining amount I was trying to manage the sold forth amount of Rs. 25,000/- by mortgaging my Activa scooter to the said uncle's younger brother. While in the process some two/three women of our locality refused to accept the kind of settlement. At that moment, some policemen were also present at the spot where the two three women of our locality were protesting of the settlement of the local club. At that moment, my accompanying uncle called the police who were stationed nearby to take me away to the police station because here it is

creating lot of commotion. Accordingly, I was taken to the police station and later I was arrested in this case. At present I am in the judicial custody.”

7. On 18/12/2017 the Ld. Addl. Sessions Judge (FTC) Crime Against Women, Manipur convicted the Appellants under Section 376-D of IPC. Vide separate order dated 20/12/2017 on sentence, the First Appellant was sentenced to undergo rigorous imprisonment for life with fine of Rs. 10,000/-. The other two Appellants were sentenced to undergo 20 years rigorous imprisonment with fine of Rs. 5000/- each. In default of payment of fine amount, they should undergo 3 (three) months simple imprisonment further.

8. Hence, the appellants filed this present appeal for setting aside the impugned order of conviction as well as the order on Sentence.

9. Mr. Khaidem Mani, learned senior counsel for the appellants has submitted that there was no reliable evidence to support the charges and the trial court failed to examine crucial contradictions in the victim's and complainant statement. He further argues that the victim's testimony (PW-7) during the cross-examination has contradicted the prosecution's case as she admitted that she was not raped by the 1st Appellant and that the 2nd appellant was not involved. Additionally, the Complainants testimony was inconsistent and key witnesses including the victim's boyfriend were not called to testify before the court.

10. Mr. Khaidem Mani, learned senior counsel for the appellants has also submitted a written submission pointing out some important points for just

determination of the case as the impugned judgment and order of the trial court suffers from certain infirmities in as much as the same is illegal, improper, arbitrary and leading to justice viz,

(i) There are so many procedural lapses: Charge-sheet was submitted without compliance of Sec. 173 of CrPC without forwarding statements of the prosecution witnesses and accused recorded u/s 161 CrPC and also non-compliance of Sec 207, 208, 209 and 157 of CrPC.

(ii) FIR is the foundation of the investigation of a criminal case on the cognizable offence. In the present case FIR (Ext. P/10) is a false and fabricated document and the complainant (PW No.6) has disowned the complaint (Ext. P/10) and it also does not disclose any offence against the Accused/Appellants. There is unexplained delay of 24 hours in reporting and lodging of FIR.

(iii) No place of occurrence disclosed. The prosecution has failed to prove site plan/rough sketch map with index.

(iv) No Test Identification Parade of the accused as they are unknown persons during investigation and trial.

(v) The most important point is that the alleged victim (PW No.7) admitted that no rape was committed by the accused and hence no offence is made out.

In further cross-examination on recall after alteration of charge, victim PW-7 stated that "I admit to the suggestion that on the day of

occurrence i.e. 22-01-2014 the Accused No. I (Bungbung) did not rape me" It is well settled that an admission is substantive evidence of fact as well as it is the best evidence against the makers of the statement.

(vi) No eye witness was produced even though the victim said that her boyfriend was present at the place of occurrence. There is no corroboration to the deposition of the victim.

(vii) There is no biological evidence such as semen, blood vagina secretions, saliva etc may be identity and genetically typed by a crime lab. But in the present case, no Forensic Expert report regarding the clothes worn by the prosecutrix and accused.

(viii) Three different and contradictory statements of the place of occurrence: (a) Lamlongei/Lamlongei jungle as per complainant, PW-6 in the complaint, Ext.P-10; (b) High lying area not actually hilly area as per victim PW-7 in her deposition; (c) Leihaopokpi Hillock, as recorded by Trial Court in para 43 of the judgment.

(ix) Factual inconsistencies and error of facts have occurred in the original charge and altered charge orders. In the original charge order dated 24.07.2017, the place of occurrence was mentioned as 'Lamlongei Jungle' while in the altered charge order dated 08.12.2017, the same is mentioned as 'High Lying Area'. It is also pointed out that the original charge was altered without giving any opportunity to the accused persons thereby causing injustice and prejudice to them.

(x) Non-examination of the accused persons u/s 313 CrPC post charge alteration is a serious lapse in the trial. It is stated that the examination of the accused u/s 313 CrPC was recorded on 29/11/2017 and the charge was altered on 08/12/2017. However, there is no fresh examination of the accused u/s 313 CrPC after alteration of the charge thereby causing prejudice to the accused persons. It is stated that the punishment for gang rape u/s 376-D IPC is harsher than that of rape u/s 376 IPC.

(xi) The statement of the prosecutrix/victim (PW-7) recorded under Section 164(5) CrPC was recorded after 26 days and the same was not on oath and hence not admissible.

(xii) Confessional statement of A-1, Bungbung recorded u/s 164 CrPC was not corroborated and there is no admission of rape.

(xiii) There is no iota of evidence against A-2 & A-3 and they are entitled to be acquitted.

(xiv) Criminal motive or intention cannot be established during the trial and the conviction was based on conjectures and surmises and without any credible evidence.

11. Mr. Kh. Mani, learned senior counsel for the appellants refers to the decision reported as **Sidhartha Vashist v. State (NCT of Delhi): (2010) 6 SCC 1** regarding compliance of Sections 157 and 173 of CrPC. He further relies to another decision in the case of **Gopal Singh v. State of MP: (2010) 6 SCC 407** with respect to the compliance of the provision

of Section 157 CrPC for prompt sending of FIR to the concerned Magistrate and delay in such may draw adverse inference against the prosecution. In the case of **State of MP v. Sheetla Sahai: (2009) 8 SCC 617**, it emphasised for compliance of Section 173(5) CrPC for production of all material documents before the court along with the chargesheet. Learned senior counsel also refers to the decisions reported as **Prithipal Singh v. State of Punjab: (2012) 1 SCC 10** to the point that conviction can be upheld on the basis of sole witness and acquittal may be sustained in spite of several witnesses. When the accused is named for the first time in the court, he is entitled to the benefit of doubt. He further cites the case of **Ram Deo Chauhan v. Bani Kanta Das: (2010) 14 SCC 209** to the point that "if a person is entitled to benefit under a particular law, and the benefits under that law have been denied to him, it will amount to violation of his human rights". The sum and substance of the submission of learned senior counsel for the appellants is that the appellants may be acquitted from the conviction under Section 376-D IPC due to absence of credible evidence and inherent defects in the trial as pointed out above.

12. Mr. Kh. Athouba learned PP has submitted that the victim was raped by the accused Bungbung [A-1] in association with the two accused persons namely Bocha [A-2] and Khamba [A-3] and the statements of PW-6 and PW-7 are fully corroborated, moreover it is supported by the P.W. 10 who examined the victim and the accused Bungbung. The P.W. 10 has clearly stated that after performing the clinical examination the findings are consistent with recent sexual intercourse and there was sign of use of

force. Thus the prosecution has established beyond reasonable doubt that the accused person Bungbung had committed rape and acted in furtherance of common intention with Bocha and Khamba which is punishable u/s 376-D IPC.

13. Mr. Kh. Athouba, learned PP has also submitted that the narration of the incident by the prosecutrix should be considered in entirety and minor contradiction or insignificant discrepancies in the statement of the prosecutrix should not be a ground for disbelieving the prosecution story. The counsel also submitted that in the statement u/s 164(5) Cr.P.C. the victim had narrated the true scene of crime which was recorded on 17-02-2014 i.e. after 25 days of the occurrence and when she gave her evidence in the court during trial she stated that she was forcibly raped by Bungbung and it was escorted by one person and one person took away her boyfriend, the statement given on 11-12-2017 (on recall) was made out of fear and influence from the accused person.

14. Mr. Kh. Athouba Ld. PP also submitted that the occurrence was on 22-01-2014 and after two days i.e. on 24-01-2014 the Medico-legal examination of the victim as well as the accused Bungbung were done. As per finding of the Medico-legal examination of the victim's result was consistent with recent sexual intercourse and there was Sign of use of force and it is corroborated with the statement given by the P.W. no. 7 as well as by her 164 (5) CrPC statement that she was being slapped, beaten by the accused persons, sexually assaulted and raped by the accused

Bungbung with common intention of his associates namely Bocha and Khamba. Moreover, it is corroborated by the Medical examination report of the P.W.10 in respect of the body injuries of the victim as well as Bungbung. As such the commission of the crime is more corroborated by the confessional statement of Bungbung.

15. Learned PP has also submitted written submission and for clarity the same is reproduce below:

- (i)** The present Criminal Appeal has been preferred against the Judgement & Order dated 18-12-2017 and Sentence Order dated 20-12-2017 by the 3(three) Appellants who are the convicts in the Sessions Trial (CAW) Case No. 3 of 2017 (FIR No. 04(1)2014 HNG-PS u/s 376/34 IPC altered to 376-D IPC) passed by the Ld. Addl. Sessions Judge, Fast Track Court, Crime Against Women, Manipur.
- (ii)** The 3(three) convicts have been convicted under Section 376-D of the Indian Penal Code and ordered that the convict Khuraijam Bungbung [A-1] is sentenced to rigorous imprisonment for his life term which shall mean imprisonment for the remainder of the convict natural life and fine of Rs. 10,000/- (Rupees ten thousand) only.

Further, the convicts namely Nongthombam Bocha @ Biren Singh [A-2] and Khuraijam Khamba Singh [A-3] are sentenced to rigorous imprisonment for a period of 20 years each and fine of Rs. 5,000/- (Rupees five thousand only) each and in default of payment of fine the convicts are to undergo 3(three) months simple imprisonment.

(iii) The report/complaint (at page no. **2** of the Memo of Appeal paper book) was lodged by the uncle of the victim on 23-01-2014 before the Officer-in-Charge, Heingang Police Station, Imphal East, Manipur stating that 3(three) men namely (i) Khuraijam Bungbung, aged about 27 years, S/o (L) Indrajit, (ii) Nongthombam Bocha Singh, aged about 40 years, S/o N. Bihari and (iii) Khuraijam Khamba, aged about 23 years, S/o Khuraijam Guno came out and kidnapped his niece namely X when she reached at Lamlongei on 22-01-2014 at around 2:00 pm and also seized the mobile and raped his niece Nanao. Accordingly, FIR (at page No. 1) has been registered by the Heingang Police Station being FIR No. 4(1)2014 u/s 376/34 IPC against the said 3(three) accused persons.

(iv) The Charge Sheet (at page No. **3**) has been submitted before the Addl. Sessions Judge, Fast Track Court, Crime Against Women, Manipur being Charge Sheet No. 6/HNG PS/2014 dated 15-05-2014 under charged sections 376/34 IPC, 384/120-B IPC against the 3(three) accused persons for trial.

(v) The charge was framed on 24-07-2017 (page No. **8**) by the Addl. Sessions Judge, Fast Track Court, Crime Against Women against Khuraijam Bungbung (convict no. 1), aged about 27 years, S/o(L) Indrajit Singh of Lamlongei punishable under section 354 IPC, 376 IPC and 384 IPC. On the same day, charge has been framed against Nongthombam Bocha@ Biren Singh (convict no. 2), aged about 40 years, S/o N. Bihari Singh of Lamlongei Mantripukhri Maning Leikai

punishable under section 109 IPC read with section 376 IPC, section 384 IPC read with 34 IPC. Charge also has been framed on the same day against Khuraijam Khamba Singh (convict no. 3), aged about 23 years, S/o Kh. Guno Singh of Lamlongei Mantripukhri Maning Leikai punishable under section 109 IPC read with section 376 IPC, section 384 IPC read with 34 IPC.

(vi) The 164 confessional statement of Khuraijam Bungbung (convict no. 1) (at page No. **20** of the Memo of Appeal paper book) was taken on 12-02-2014 before the Judicial Magistrate, First Class, Imphal East. The relevant portion at page no. 21 of the Memo of Appeal paper book at question no. V is reproduced as "*V. Why you want to confess? Ans: I want to make this confession to remove my guilty mind to what I have done/committed so that I can live with free mind without any pressure or tension.*"

(vii) The 164 statement of the victim namely X aged about 26 years was taken on 17-02-2014 before the Chief Judicial Magistrate, Imphal West (at page no. **26** of the Memo of Appeal paper book). The victim girl narrated as "*..... I met Lungkham and we walked towards the hill side. The site was looking beautiful and after walking a bit, I got tired. Looking around a suitable place to sit upon, we sat and chatted. While we are enjoying with our chatting, 3(three) unknown persons came towards us and asked us what we were doing. We replied that we were just talking and deciding the date of our elopement etc. However, paying no heed, they started to beat us. The elderly looking and the*

youngest looking men of the three slapped me and they kicked Lungkham. They snatched the Mobile phone of myself and Lungkham. They told us that they would question us separately. They also threatened us that if we shout or gave alarm, we would be killed.

Then, the elderly looking person took me up the place whereas, the other two person took down Lungkham from the place. After a few steps, the person insisted on checking my bag to which I handed it over to him. While opening the bag, he asked me whether I had physical relationship with my friend. I told him that we had no such relationship except love affairs. He then tried to molest me, I slapped his hand away and told him not to do such kinds of things and also to look at me as his sister. He slapped me and tried to hold and molest me again. The youngest looking person then came up and asked as to what was inquired from me by the elderly looking person. I told him that he asked if I had physical relationship Lungkham and that I answered no to him. He told me not to lie. He said he would test if I was not lying. He said it was only natural that he should ask such kind of questions. The elderly person then called the youngest looking person aside by saying Bungbung, I want to talk to you. Thats when I knew he was called Bungbung.

I did not hear what they were talking about. They then came up to me and said they wanted to test whether I was lying or not. I told them that they can test me. Bungbung then told me to take off my pants. I refused and that they can't just allege anything towards me.

They said that I as a woman should not talk so much and that I should not be so stubborn. Bungbung then slapped me on my left cheek. He then told me to lie down. I refused. The elderly person then held me from my back. They slapped me and pushed me to the ground. I screamed and kicked but Bungbung held my legs. The elderly person then held a branch near my mouth and told me that he would hit me on my mouth. They told me not to scream and the elderly person put his hand over my mouth. Bungbung then raped me. He inserted his penis inside my private parts."

The 3(three) convicts also demanded Rs. 50,000/- (Rupees fifty thousand only) from them.

(viii) The Medical examination of the victim was conducted at RIMS on 24-01-2014 after 2(two) days of the occurrence of the incident. Report is available at page no. **170** of the Memo of Appeal paper book. At page no. **171** of the Memo of Appeal paper book, the examination report reflects that Examination of Genital Parts at No. **17** (b) External Genitalia;

(ii) Labia Minora: - *Abraded, red & tender*

(iii) Fourchette (bleeding, tear, etc.): - *Fresh tear on midline, 0.5 cm, red*

No. **20**. Clinical Opinion : (a) *Consistent with recent sexual intercourse/assault* (d) *Sign of use of force present*

- (ix) The Medical examination report of the victim was supported by the evidence of the PW-10 (page No. **66**) namely Dr. Khangembam Pradipkumar Singh who was working as Assistant Professor in the Department of Forensic Medicine, RIMS.
- (x) The relevant portion of deposition of the PW No. 7 (the victim) is found at page No. **58 & 59** of the Memo of Appeal. It is reproduced as "*..... In the last week of October, 2013 I stayed at the house of my maternal uncle whose name is Ashang Kasar for helping the household works for the illing aunty Achui at Nagaching. During the time when I stayed at my uncle's house I know one person whose name is Lukham @ Ringsinglun. He was my boyfriend. Sometimes we used to talk over phone. Thereafter I returned home, we used to chat over phone frequently. One day in the month of January, 2014, that was in the morning Lukham called me up through mobile phone and asked me to come and see him at one pan dukan at Matripukhri. At about 1:00 pm or it was about 2:00 pm I came out from my house, on reaching main road at Saga Road I caught one Auto rickshaw and reach at Khwairamband Bazar, Samu Makhong and proceeded upto Nagamapal Auto parking on foot. Then I went through one passenger auto rickshaw upto Matripukhri were Lukham was waiting for me then we met. Lukham proposed to go somewhere for roaming then we both went to a place that exact location in name I do not know but it was high lying area, it was not actually hill area. The area was an isolated area, vacant land and clearly visible by some one if we used to go and sit over there.*

On reaching upto to the high lying area we were sitting and talked each other. While we were sitting together some unknown three persons came near to us. We were asked by the three persons the reason for sitting at that place. We told them that we were just sitting.

Out of those three persons, one person had taken my boyfriend namely Luikham and the remaining two persons were remanded near to me. At the relevant time I was standing there out of that two persons one person was holding my right breast, I , strongly objected after that the same person slapped on my face due to my objection. Another person asked me to have sexual intercourse, in that I refused. One person was holding my hands and another person pushed down my trouser and panty upto knee jointly. By that time I was made lie down on the ground.

The witness has identified the person (accused) who committed rape to her and he is the person accused who is now sitting in the court and his name is Bungbung. Bungbung pulled down my trouser and panty upto knee and then he raped me, at the relevant time the other person was escorting near the incident by holding a stick. After rape I was pulling up my trouser and panty and dressed properly. I was trying to leave that place but the two restrained me to leave the place. They demanded money to give failing which they will disclose to the local Meira Paibis (Women Folk) about the gathering of me and my boyfriend at that place but I cannot remember the exact amount which they demanded to me.....”

- (xi) The deposition of PW No. 7 who is the victim was again taken on 11-12-2017 (on recall) (at page No. **62**) and stated as "*I admit to the suggestion that on the day of occurrence i.e. on 22-01-2014 accused No. 1(Bungbung) did not rape me.*" In the Judgment & Order dated 18-12-2017 at page No. **120** of the Memo of Appeal at para No. 36, it has been observed by the Hon'ble Trial Court that the statement given on 11-12-2017 (on recall) was made out of fear and influence from the accused person.
- (xii) The examination of accused No. 2 namely Nongthombam Bocha under section 313 of the CrPC was taken on 29-11-2017 and question no. 6 (at page no. **82**) is reproduced as "*Q.No. 6 : It is also in the evidence of Ext. P/20 the confessional statement of accused Bungbung that you along with Bungbung and Khamba went together and on seeing the victim girl and her boyfriend sitting together you slapped, kicked, beaten the victim and her boyfriend. You forcibly took away the boyfriend of the victim from the spot. What have you got to say? Ans: Yes, it is true.*"
- (xiii) The examination of accused No. 3 namely Khuraijam Khamba Singh under section 313 of the CrPC was taken on 29-11-2017 and question no. 6 (at page no. **84**) is reproduced as "*It is also in the evidence of Ext. P/20 the confessional statement of accused Bungbung that you along with Bungbung and Bocha went together and on seeing the victim girl and her boyfriend sitting together you slapped, kicked, beaten the victim and boyfriend. You hold a stick and threatened the victim not to*

scream and escorted Bungbung while committing rape on the victim girl. What have to got to say? Ans: Yes, it is true."

(xiv) In *RAFIQ AHAMAD ALIAS RAFI –Versus- STATE OF UTTAR PRADESH: (2011) 8 SCC 300* at para No. 67 page No. 331, the Hon'ble Supreme Court observed that "*It is true that the statement under Section 313 CrPC cannot be the sole basis for conviction of the accused but certainly it can be a relevant consideration for the courts to examine, particularly when the prosecution has otherwise been able to establish the chain of events.*"

(xv) The statements of the witnesses were recorded under 161 CrPC by the Investigating Officer (I.O).

(xvi) The rough sketch map of the place of occurrence was drawn by the I.O as found at Sl.No. 2 page No. **6** of the Memo of Appeal.

(xvii) The place of occurrence i.e Lamlongei Jungle/ High Lying Area/ Leihaopokpi Hillock mentioned in the deposition/trial of the case is meant to be the same as Leihaopokpi Hillock which is of High Lying Area and within the boundary of Lamlongei area. It is pertinent to mention that the name of "Leihaopokpi Hilllock" was mentioned by the DW No. 1 which is at page No. 73 of the Memo of Appeal paper book.

(xviii) RELEVANT CASE LAWS IN SUPPORT OF THE PROSECUTION ARE AS FOLLOWS:

1. (2003) 6 SCC 175 : Superintendent of Police, CBI & Ors. – Vs- Tapan Kumar Singh : At para 20 page No. 183, the Hon'ble

Supreme Court observed as *“It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An information may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the*

necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or deputy any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

2. (1990) 1 SCC 550 : State of Maharashtra –Vs- Chandraprakash Kewalchand Jain : At para 16 page 559, the Hon'ble Supreme Court observed as "*A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her*

evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more."

"We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness."

"Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity."(at page No. 560)

- 3. (1996) 2 SCC 384 : State of Punjab –Vs- Gurmit Singh & Ors.** : At para No. 8 page No. 396, the Hon'ble Supreme Court observed as *"The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking*

corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances."

- 4. (2011) 2 SCC 550 : State of U.P –Vs- Chhotey Lal** : At para No. 22 page 561, the Hon'ble Supreme Court observed as ".....
The testimony of the prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. In prosecutions of rape, the law does not require corroboration. The evidence of the prosecutrix may sustain a conviction. It is only by way of abundant caution that the court may look for some corroboration so as to satisfy its conscience and rule out any false accusations."
- 5. AIR 1957 SC 614 : Vadivelu Thevar –Vs- State of Madras**
: At para No. 12, the Hon'ble Supreme Court observed as ".....
But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."
- 6. (2008) 17 SCC 587 : State represented by Inspect of Police –Vs- Saravanan & Anr.:** The Hon'ble Supreme Court observed at para No. 18 page No. 593 "..... *Even otherwise, it has been said time and again by this Court that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety.....*

Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the court to reject the evidence on minor variations and discrepancies."

7. (1995) 6 SCC 230 : State of A.P –Vs- Bodem Sundara Rao

: The Hon'ble Supreme Court observed at para No. 9 page No. 232 as *"In recent years, we have noticed that crime against women are on the rise. These crimes are an affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly against the mandate of the legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the court's verdict in the measure of punishment. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 year old girl shakes out judicial conscience. The offence was inhumane."*

8. (2003) 7 SCC 643 : Sucha Singh & Anr. –Vs- State of Punjab: The Hon'ble Supreme Court observed and emphasised

at para No. 20 page No. 653 as "*A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties.*"

16. Mr. Kh. Athouba, learned PP submits that from the above stated facts and circumstances and case laws, it is crystal clear that the 3(three) Appellants/convicts have committed the offence of Gang rape under section 376 D IPC, i.e., raped by one or more persons constituting a group or acting in furtherance of a common intention. The minimum punishment of which is rigorous punishment for a term not less than 20(twenty) years and may extend to life which shall mean imprisonment for the remainder of the person's natural life, and with fine. It is stated that the irregularities as alleged by Mr. Kh. Mani, learned senior counsel for the appellants are insignificant and such will not affect the trial. It is clarified that the initial charge under Section 109/376/34 IPC was rightly altered to Section 376-D IPC, as the accused have common intention. Corroboration is not required in rape case and conviction can be sustained on the basis of sole deposition of the victim and the corroboration, if any, is for abundant caution. It is stated that there is no inconsistency in mentioning the place of occurrence and different names mentioned by various witnesses, would mean the same place.

17. We have perused the materials on records, the pleadings and the written submissions. For better understanding, the provisions of Sections

375 & 376-D of Indian Penal Code and Section 80 of Indian Evidence Act are reproduced as under :-

Section 375 of Indian Penal Code, 1860

375. Rape.—A man is said to commit “rape” if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the

administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Section 376 IPC provides punishment for rape for a rigorous imprisonment not less than 10 years, but may extend to imprisonment for life and with fine.

Section 376D of Indian Penal Code, 1860

376D. Gang rape.—Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Section 80 in The Indian Evidence Act, 1872

80. Presumption as to documents produced as record of evidence.

Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume - that the document is genuine; that any statement as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

18. The first ground of challenge to the judgment of conviction is non-compliance of the provisions of Section 173 CrPC for not forwarding all the statements recorded u/s 161 CrPC and for non-compliance of Sections 207, 208, 209 and 157 CrPC. On perusal of the front page of the chargesheet [Ext.P-16], it is seen that the same consists of 178 sheets including statements recorded u/s 161 CrPC and other relevant documents. There was no protest regarding this allegation during the trial and the said ground seems like an afterthought. We do not find any substance in this allegation.

19. The next ground is regarding FIR and it is alleged that the complainant, PW-6 has disowned the complaint [Ext.P-10] lodged by him during cross-examination and hence the basis of FIR [Ext.P-17] does not exist. It is also stated that the no offence is made out against the accused persons on plain reading of the complaint. There are many contradictions regarding the place of occurrence and other details of the offence.

20. In his deposition, PW-6 did not dispute the contents of the complaint [Ext.P-10] and his signature on it, but in the cross-examination, he stated that the complaint was not in his handwriting and he signed on blank paper. On careful examination of Ext.P-10, it is clear that the handwriting on the complaint and the signature of the complainant are quite different. This leads credence to the fact that someone wrote the complaint on behalf of PW-6 and then he appended his signature upon it. The discrepancy as pointed out by learned senior counsel for the appellants may be due to passage of time (complaint lodged on 23/01/2014 and deposition of PW-6 recorded on 30/08/2017) and the same is not fatal, as its contents are more or less corroborated by the statements of other witnesses. There is no substance in the allegation that the accused persons were subsequently named in the court. On bare perusal of Ext.10, all the three accused persons/appellants have been named in it and in FIR [Ext.P-17].

21. Another major ground for appeal is that the victim (PW-7) herself admitted in her cross examination that the accused Bungbung [A-1] did

not rape her and hence no offence is made out. PW-7 did not mention involvement of A-2 & A-3 in committing the rape. On careful analysis of the deposition of PW-7 (victim) and her statement recorded u/s 164 CrPC [Ext.P-11], she specifically stated that A-1, Bungbung raped her while A-3 kept guarded and threatened her. A-2 took her boyfriend away at that time. The presence of the three accused at the place of occurrence has been established from the confessional statement of A-1 [Ext.P-20]. A-1 also admitted his attempt to commit rape, but ejaculated before penetration. Emphasis is made on the statement in cross-examination of victim (PW-7) on recall that A-1 Bungbung did not rape her in order to discredit the finding of the trial Court.

22. It may be noted that PW-7 was examined on 30/08/2017, 06/09/2017, 14/09/2017 and 25/09/2017 and her statement was consistent with the prosecution story. During the cross-examination, her deposition could not be discredited. However, on recall for cross-examination on 11/12/2017, PW-7 stated that A-1 Bungbung did not rape her. The trial Court observed in para 36 of the judgment that the statement given by the victim on 11/12/2017 (on recall) was made out of fear and influence from the accused person. We also agree with this observation as the victim was recalled for further cross-examination on this point alone after recording of statements of the accused u/s 313 CrPC on 29/11/2017. It may be noted that in the statement u/s 313 of CrPC, A-3 admitted the incident of rape as answer to question No.6. It is seen that the recall on 11/12/2017 might have been resorted to dilute the admission of A-3 and

other materials and 'fear and influence from the accused' as held by the learned trial Court is proper and logical. We are of the view that the prosecution case cannot be discredited by a single statement made by the victim on recall for further cross-examination, that too after completion of recording statements of the accused u/s 313 CrPC.

23. Another ground of appeal is the alteration of charge after completion of deposition of witnesses and recording statements u/s 313 of CrPC. It is stated that the earlier charges framed on 24/07/2017 were u/s 376/109/384/34 IPC and on 08/12/2017 the same were altered to u/s 376-D IPC. It is alleged that no fresh evidence was recorded after alteration of charge and no further statements u/s 313 were also recorded. No opportunity was given to contest the alteration of the charge. Learned PP explains that the alteration in charge is just to rectify the mere error in charge order, in exercise of the power u/s 216 CrPC. By converting a charge u/s 376/34/109 IPC to one u/s 376-D is in essence the same and it does not change the nature of the trial. There is an element of sharing common intention amongst the accused in committing the crime and each of the members of the group shall be deemed to have committed the offence.

24. We are of the view that the alteration of the charge u/s 376/109/34 IPC to the one u/s 376-D IPC does not cause any prejudice to the accused. The prosecution case is that the three accused shared a common intention and A-2 & A-3 assisted A-1 in committing rape on the victim. Every person

forming the group consisting of more than one person will be liable for the same offence, even if he does not actually commit the rape himself. Since the trial has been initiated on this basis, there is no further requirement of producing fresh evidence for the altered charge and hence no requirement of recording fresh statements u/s 313 CrPC of the accused.

25. Another ground of appeal is multiple places of occurrence as mentioned by witnesses and in the judgments such as 'Lamlongei jungle/High Lying Area/Leihaopokpi hillock'. We are of the view that all these would mean the same place and the same does not vitiate the trial. 'Leihaopokpi Hillock' is also a 'High Lying Area' within the boundary of 'Lamlongei area'. Leihaopokpi hillock is mentioned by DW-1 and then mentioned in the judgment.

26. We are not able to agree with the submission of Mr. Kh. Mani, learned senior counsel for the appellants that the allegation of rape is not substantiated by medical report and FSL opinion. Deposition of PW-10, Dr. Pradipkumar who examined the victim and A-1 is very categorical. Medical Examination report of the victim [Ext.P-14] mentioned fresh tear of hymen at 3 & 7 o'clock position and the clinical findings are consistent with recent sexual intercourse/assault and presence of sign of use of force. PW-10 also opined that as per medical examination report of A-1 [Ext.P-15], A-1 is potent. It is held that the allegation of rape is supported by the medical opinion of the treating doctor. In view of the depositions of the victim and

PW-10, we do not find it necessary for corroboration of statement of the victim by FSL report specially in a trial for rape.

27. We do not find much force in the submission of the appellants that the statement of victim u/s 164 CrPC [Ext.P-11] cannot be relied as the same was not recorded under oath. Such a statement is not a substantive piece of evidence, but a previous statement made before the Magistrate who has power to take oath. Statement of minor is usually recorded without oath. Since the statement recorded u/s 164 CrPC is corroborative in nature, the same ought not to be rejected for mere absence of oath.

28. As held in the case of **Gurmit Singh (supra), Vadivelu Thevar (supra)**, the trial cannot be faulted for non-examination of the boyfriend of the victim who was present near the spot before the trial Court. It is the settled principle of law that conviction in a rape case can be sustained on the basis of sole deposition of the prosecutrix, if the same is trustworthy. In such situation, corroboration is a matter of abundant caution and prudence. In the present case, non-examination of the boyfriend is, in fact, a lapse on the part of the prosecution. However, the same does not vitiate the trial as the deposition of the victim, PW-7 is supported by the deposition of PW-10, treating doctor and medical examination report [Ext.P-14]. Absence of Test Identification Parade will not vitiate the trial in view of the consistent deposition of PW-7, PW-10 and medical report, Ext.P-14.

29. In view of the observations and discussions made above, we are of the view that there is no error apparent in the conviction order dated 18/12/2017 passed by the learned Addl. Sessions Judge (FTC) CAW, Manipur in ST(CAW) Case No. 3 of 2017, whereby all the accused persons were convicted u/s 376-D IPC. Accordingly, conviction order is upheld.

30. Vide separate order on sentence dated 18/12/2017, learned trial Court directed A-1, Bungbung to undergo rigorous imprisonment for life (remainder period of natural life) with fine of Rs.10,000/-. A-2, Bocha and A-3, Khamba were directed to undergo rigorous imprisonment for a period of 20 years with fine of Rs.5000/- each, in default of fine all the accused to undergo 3 months simple imprisonment.

31. It is the finding of the trial Court that A-1 committed the actual rape and A-2 & A-3 facilitated A-1 in the crime in furtherance of common intention. Section 376-D IPC provides that all persons forming a group of more than one person, are equally liable for the offence committed by one or some of them. Actual act of committing rape by all the accused is not required to be proved, if such act is done in furtherance of common intention.

32. In the present case, upon found guilty for the offence u/s 376-D IPC, the trial Court awarded life imprisonment to A-1 with fine of Rs.10,000/- and directed A-2 & A-3 to undergo rigorous imprisonment for 20 years with fine of Rs.5,000/- and in default of fine, simple imprisonment for 3 months. However, no reason is given for awarding different sentences to

the accused persons who have been convicted u/s 376-D IPC. It is settled law that different sentences may be given after careful analysis of different roles of the convicts. We are of the view that different sentences may not be proper in absence of any discussion of the respective roles of the convicts. In the circumstances, the sentence awarded to A-1 is reduced to rigorous imprisonment for 20 years with a fine of Rs.5000/- to bring uniformity with other two accused, A-2 & A-3.

33. In terms above, the appeal is partly allowed. Conviction u/s 376-D IPC is upheld and sentence to A-1 is modified to rigorous imprisonment for 20 years with fine of Rs.5000/-. Sentence to A-2 & A-3 as well as default sentence of 3 months simple imprisonment is retained.

34. MC(Crl.A.) No. 7 of 2024 is accordingly disposed of.

35. Send a copy of this order to learned Addl. Sessions Judge (FTC) CAW, Manipur and Superintendent, Manipur Central Jail, Sajiwa for information.

JUDGE

CHIEF JUSTICE

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