

**HIGH COURT OF TRIPURA
AGARTALA
CRIMINAL APPEAL (J) 05 OF 2023**

**Sri Sudesh Tripura,
S/o Late Jatindra Tripura of Vill-Gobodhepa,
P.S.-P.R.Bari, Dist-South Tripura.**

----Appellant

Versus

The State of Tripura.

----Respondent

For Appellant	: Mr. Arjun Acharjee, Advocate. Mr. P.J. Ghosh, Advocate. Ms. Shreya Sarkar, Advocate.
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For Respondent(s)	: Mr. Sumit Debnath, Addl. P.P.
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Date of hearing	:	06.07.2023
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Date of Judgment & Order	:	27.07.2023
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Whether fit for reporting	:	Yes
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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR.JUSTICE ARINDAM LODH**

Judgment & Order

(Arindam Lodh, J)

This appeal is directed against the impugned judgment and order of conviction and sentence dated 29.11.2022 and 30.11.2022 respectively, passed by the learned Sessions Judge, South Tripura, Belonia in connection with case No. ST 30(Type-I) of 2019 whereby and whereunder the appellant, namely, Sri Sudesh Tripura has been convicted under Section 376(2)(I) of IPC and sentenced to suffer rigorous imprisonment for 10(ten) years along with fine of Rs.10,000/- (Rupees ten thousand) with default stipulation.

2. The prosecution case as projected by the learned Sessions Judge, may be reproduced here-in-below, in verbatim, for convenience:

“The fact of the case in a nutshell, is that, about 4/5 months ago from the date of lodging of FIR on 04.07.2018, accused Sudesh Tripura frequently visited to the house of the informant in her absence and talk to the victim daughter of the informant. After few days victim girl went to a nearby tube-well for fetching water and at that time accused Sudesh Tripura taken her to the house of one Suman Debi Tripura and forcefully committed rape upon the victim girl against her will, as a result of which the victim became pregnant. As and when the informant came to know this fact, she lodged this case against the accused person with the O/C, Belonia Women PS.”

3. On receipt of the complaint, O.C., Belonia Women PS entered the said information in Belonia Women PS GDE No.06, dated 04.07.2018, registering it as zero FIR and forwarded the same to the O.C. P.R.Bari PS as the place of occurrence falls under the jurisdiction of P.R. Bari PS. Subsequently, O.C., P.R. Bari PS registered a case as P.R. Bari P.S. Case No. 2018/PRB/103 under Section 376(2)(I) IPC and the same was endorsed to S.I. Pankaj Biswas for investigation and after completion of investigation, the I.O. has submitted charge-sheet against the accused Sudesh Tripura for commission of offence punishable under Sections 341/342/376(2)(I) of IPC.

4. On commitment of the case, learned Sessions Judge took cognizance of offences under the aforesaid sections and charge against accused Sudesh Tripura was framed under Section 376(2)(I) of IPC. The contents of the charge were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution had examined as many as 18 witnesses and introduced the exhibited documents.

6. On closure of recording prosecution evidence, the accused was examined under Section 313 CrPC when he denied all the allegations brought against him and claimed that he was falsely implicated with the instant case.

7. Thereafter, considering the submissions of the learned counsels appearing for the prosecution and the accused person, learned Sessions Judge, South Tripura, Belonia had passed the impugned judgment and order of conviction and sentence against the present accused-appellant as aforestated.

8. Being aggrieved by and dissatisfied with the findings arrived at by the learned Sessions Judge, the present appellant has preferred this appeal.

9. Heard Mr. Arjun Acharjee, learned counsel for the accused-appellant namely, Sudesh Tripura. Also heard Mr. Sumit Debnath, learned Additional P.P. for the State-respondent.

10. Mr. Acharjee, learned counsel appearing for the appellant has submitted that the prosecution has failed to prove the case beyond reasonable doubt that the appellant had committed the said offence. He has drawn our attention to the evidence of PW-18, i.e the I.O. of the case where the I.O. in the cross-examination deposed that he did not come to know from the doctor about any other method to determine the paternity of the

baby in womb of the victim; did not arrange for psychiatry test and IQ test of the victim; not even tried to record her 161 statement with the help of her mother though she was a deaf and dumb. Only relying upon the evidence of PW-12 and PW-3, i.e. the victim and the mother of the victim learned Sessions Judge came to a conclusion that the accused had committed the offence and accordingly, he was convicted and sentenced which is very unjust and unreasonable in the eye of law. Mr. Acharjee, learned counsel for the appellant has further submitted that mere statement of the victim always should not be treated as gospel truth. Accordingly, he prays for setting aside the impugned judgment and order of conviction and sentence passed against the present appellant.

11. Mr. Sumit Debnath learned Addl. P.P. appearing on behalf of the State-respondent, vehemently argued that the prosecution had successfully proved its case. According to Mr. Datta, learned P.P., the sole testimony of the prosecutrix can be the basis for convicting the accused-appellant and the learned Sessions Judge has correctly come to the conclusion of the case. Learned P.P. further argued that here in this case, the PW-3 i.e. the mother of the victim is also a vital witness and as such their evidence completely inspire confidence that the appellant himself had committed the offence of rape upon the victim. Therefore, learned P.P. strenuously argued that the learned Sessions Judge has rightly passed the impugned judgment and order of conviction and sentence and accordingly, he prayed for upholding the same.

12. Now, let us go through the evidence as adduced by the prosecution to evaluate the findings returned by the learned Sessions Judge.

12.1 PW-3 being the informant and mother of the victim deposed that her victim daughter was deaf and dumb and suffering from mental retardness. About one and half years back from the date of her deposition, one day, at about 2/3 pm her daughter went to the tube-well of father-in-law of Sudesh Tripura wherefrom, Sudesh Tripura took her to the house of Sunandi Tripura situated nearby and forcefully raped her. Consequently, she was pregnant. When the victim was carrying five months, on seeing symptom, she realized that she was pregnant, then on being asked by her, the victim disclosed that she was raped by one and thereafter, she also pointed by finger to the accused. PW-3 further deposed that then, they realized that the accused Sudesh Tripura committed rape on her and subsequently she lodged ejahar. She again deposed that Sudesh Tripura is the husband of the daughter of my brother-in-law. He used to reside in their house. His father-in-law is her brother-in-law being brother of her husband. PW-3 reiterated that at the time of delivery, the child of the victim expired at GB Hospital, Agartala and when the child expired, immediately she did not inform police. After one day, she reported the incident to P.R. Bari PS regarding death of the child.

PW-3 in her cross-examination specifically deposed that her daughter had only indicated the accused to identify him. Victim first identified the accused giving indication to me and she reported other persons. She informed everybody of their house regarding that aspect.

Police arrested the accused after lodging the FIR and during that period she did not inform anybody or did not identify the accused to anybody.

12.2 PW-1, 7 & 9 are the seizure witnesses of dry blood sample in gauze cloth, vaginal swab and sample of pubic hair of the victim. They identified their signatures on the seizure list.

12.3 PW-2 is the O.C. of P.R.Bari PS who received the complaint and after registration of the same, he endorsed SI Pankaj Biswas for investigation of the case.

12.4 PW-4 is the husband of another daughter of the informant i.e. PW-3. He deposed that after the incident, he spent 3/4 months in his in-law's house. He knew the accused who is his brother-in-law by relation. He got information about the incident from his mother-in-law i.e. PW-3 that the victim was pregnant and accused Sudesh Tripura was responsible for her impregnation.

12.5 PW-5 is a women SI who received the first information of the incident at Belonia PS and thereafter she forwarded the same to the O.C. P.R. Bari PS for registration as the offence falls under the jurisdiction of P.R. Bari PS.

12.6 PW-10 is the medical officer who examined the victim and after examination he found that the victim was carrying single life intra-uterine pregnancy corresponding to 24 week 3 days of gestational age.

12.7 PW-11 is the interpreter who interpreted the statement of the victim at the time of recording of her statement under Section 164(5) of CrPC before judicial Magistrate, 1st Class. After recording her statement PW-11 took her RTI and she put her signature which was being identified at the time of deposition. In cross-examination, she deposed that she took training from Banhoogly, Kolkata and she has got experience of teaching and giving training to a deaf and dumb.

12.8 PW-12 is the victim. Her deposition as recorded by learned trial court is reproduced here-in-below, as verbatim, for convenience:

“Examination-in-chief:

1. Name of the victim was asked by the interpreter and the victim told her name as ‘X’, but in general listen, it was like Apu. ‘X’ is her calling name.

2. As per the indication it shows that she recalled that she appeared before a court and at that time also she gave a similar indication.

3. To Court: Today she gave indication that her breast was pressed and she indicated by her hand to her private parts that she was raped.

4. The victim identifies the accused and on indicating him, she indicated that this person pressed her breast and also raped her.

Cross-examination by defence:

1. The question is asked through interpreter, whether she earlier identified the accused before the police.”

2. The victim by her indication admits that she identified the accused earlier also before the police. She is indicating the name of the accused as ‘Fuluchai’. In Kokborok language, ‘chai’ means husband of Fulu.

3. I met with the police. I indicated to the police also about the act of the accused.

4. How many days back from 25.07.18, victim was raped. The question is declined by the court not to ask as nowhere it has been mentioned the exact date and time when she was raped.

5. Q. Whether she told this incident to anyone?

Ans. She by indication states that this incident is known to the accused. I also shared with my mother.

6. By indication, she denied the suggestion that, she was not raped by the accused and nothing such incident happened.

7. I have six sisters. She told the name of all her sisters in her own tune. She admits that all reside together. She admits the question of defence that Mallika Tripura (her sister) expired. The husband of Mallika Tripura has also expired.

8.Q. Whether husband of Mallika Tripura was residing in her house before her death?

Ans. Witness denies by her indication.

9. It is not a fact that husband of Mallika Tripura used to stay in my house.”

12.9 PW-13 is the seizure witness of samples taken from the accused.

12.10 PW-14, the medical officer who deposed that he examined the victim and on examination of the private parts of the victim, he found no injury was there. Her hymen was found old tear.

12.11 PW-15 is the scribe of the ejahar. PW-16, being a medical officer examined the accused about his capability of performing sexual intercourse. He opined that possibility of sexual intercourse by the accused cannot be ruled out.

12.12 PW-17 is another medical officer who after seeing the USG report of the victim confirmed that she was pregnant of around six months.

12.13 PW-18, the I.O. of the case deposed that during investigation he visited the place of occurrence, prepared hand sketch map with separate index, examined available witnesses and recorded their statements under

Section 161 of CrPC and after completion of investigation observing all legal formalities, he submitted charge-sheet against the accused.

13. After going through the facts and evidence on record, it is seen that the victim is a deaf and dumb lady aged about 26 years at the time of alleged offence of rape. Her mother after seeing her physical appearance had suspected that something wrong was done with her and on her query the victim disclosed that accused Sudesh Tripura committed rape upon her one day, about one and half years back from the date of her deposition and he was responsible for getting her impregnation. In our opinion, here, the victim was not an accomplice. She went for fetching water from a tube-well of father-in-law of the accused Sudesh Tripura. From there, the accused took her to the house of one Sunandi Tripura situated nearby and forcefully committed rape upon her. Her evidence is to be considered at par as an injured witness of an occurrence. There is no quarrel to the well-settled proposition of law that if the sole evidence of the prosecutrix inspires confidence, the Court is not required to seek corroboration for recording a conviction.

14. At the time of hearing, Mr. Acharjee, learned counsel for the appellant has relied upon a decision in the case of ***Raju & Ors. Vrs. State of Madhya Pradesh***, reported in (2008) 15 SCC 133 wherein, the apex court at Para 9, 10, 11 and 12 has observed thus:

“9. The observations in Gurmit Singh case [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] were reiterated in Ranjit Hazarika v. State of Assam [(1998) 8 SCC 635 : 1998 SCC (Cri) 1725] in the following terms

: (*Gurmit Singh case [(1996) 2 SCC 384 : 1996 SCC (Cri) 316]* , SCC pp. 395-96, para 8)

“8. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. 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. (emphasis supplied) Corroborative evidence is not an imperative component of 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. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even

if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.”

(emphasis in original)

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. 11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh's case to the amendments in 1983 to Sections 375 and 376 of the India Penal Code making the penal provisions relating to rape more stringent, and also to Section 114A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two Sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualized as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that in so far as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally her statement can, at

best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”

15. In the instant case, we find that the victim by pointing finger to the accused stated to her mother that accused Sudesh Tripura had committed rape upon her and even, if we revisit the deposition of the victim it has come to light that the victim identified the accused and while pointing fingers towards the accused-appellant, she indicated that the accused had pressed her breast and also raped her. By her indication she had admitted that she identified the accused earlier also before the police and the name of accused was indicated as ‘Fulchai’ i.e. in Kokborok language, ‘chai’ means husband of Fulu which means that the accused was a relative of the victim. It is very much significant that the prosecutrix, her mother and the accused were close relatives to each other and as per the testimonies of PW-12, the victim, she was well aware of the identity of the accused whom she had indicated by pointing finger towards the accused since she was a deaf and dumb lady. If such kind of offence like commission of rape had not been occurred, a deaf and dumb lady of growing age would not have come forward to tell a lie against her close relative which has been substantially corroborated by the mother of the victim, i.e. PW-3 and inspires confidence and is true being spontaneous and natural.

16. It is no more *res integra* that conviction can be based upon the testimony of a solitary witness, if it is found to be trustworthy, without any blemish and inspires the confidence of the court.

17. The submission of learned counsel appearing on behalf of the appellant that the present case is a pure case where conviction recorded by trial court is only based upon suspicion, and suspicion however strong, cannot form the basis of conviction, do not deserve acceptance from us considering the facts and evidence let in by the victim in the present case. Since her initial statement under Section 164(5) CrPC till her testimony during the course of trial, she was demonstrably found to be very consistent. The defence failed to record any contradictions in the testimony of the victim. More so, the investigating officer confirmed the versions of the victim.

18. Furthermore, the argument advanced by learned counsel for the appellant that identification of the accused-appellant was extremely doubtful due to non-performance of Test Identification Parade could not at all attract us since we do not find any discrepancy in the testimony of the prosecutrix. T.I. Parade is necessary when the evidence as regards the identification of the accused suffers from discrepancies. In the case of **Raju** (*supra*) to which Mr. Acharjee, learned counsel for the appellant placed heavy reliance is a case where the Hon'ble Supreme Court found that T.I. parade conducted was farcical and identification of 13 accused persons alleged to have committed rape upon the prosecutrix was evidently found to be doubtful since there were discrepancies in the evidence against them. But, in the instant case, we have already said and discussed that the evidence of the victim is reliable and convincing, which unerringly pointing towards the guilt of the appellant only, shutting out every other possibility and other hypothesis.

19. In the factual background of the case on hand and as observed hereinabove, we find no reason to disbelieve the credibility and/or trustworthiness of the prosecutrix and her mother being PW-3. They are found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the prosecutrix and PW-3 can be sustained.

20. For the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. The conviction and sentence awarded to the accused-appellant by the learned Sessions Judge, South Tripura, Belonia in connection with case No. ST 30(Type-I) of 2019 for the offence under Section 376(2)(I) IPC is hereby confirmed.

21. Accordingly, the instant appeal stands disposed. Send back the LCRs along with a copy of this judgment forthwith.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ