

**HIGH COURT OF TRIPURA
AGARTALA
Crl.A(J) No.16/2022**

Sri Shib Sankar Debnath, S/O. Sri Biswajit Debnath, resident of Rajapur
(Sachindra Garo para), P.S.-Santirbazar, District-South Tripura.

.....Appellant(s).

V E R S U S

The State of Tripura

.....Respondent(s).

For Appellant(s) : Mr. H.K. Bhowmik,
Legal Aid Counsel.

For Respondent(s) : Mr. Ratan Datta, P.P.

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing and judgment : **06th April, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

Heard Mr. H.K. Bhowmik, learned legal aid counsel appearing
for the convict-appellant. Also heard Mr. Ratan Datta, learned Public
Prosecutor, appearing for respondent-State.

2. By means of this appeal filed under Section 374 of the Code of
Criminal Procedure (Cr.P.C., for short), the appellant has challenged the
judgment dated 12.08.2021 passed by the learned Sessions Judge, South
Tripura, Belonia in case No. ST 27(Type-I) of 2019 whereby the learned

Sessions Judge has convicted the accused-appellant under Sections 376(1) and 392 of Indian Penal Code (IPC, for short) and sentenced him to suffer R.I. for a term of 10(ten) years and to pay a fine of Rs.10,000/-, in default to suffer R.I. for another six months for commission of offence punishable under Section 376(1) of IPC and also to suffer R.I. for a term of 3(three) years and to pay a fine of Rs.5,000/-, in default to suffer R.I. for another three months for commission of offence punishable under Section 392 of IPC.

3. Appellant has prayed for the following reliefs:

"(i) Admit this appeal as it is in time and filed observing all formalities;

(ii) Issue notice upon the respondent state and call for the records;

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(iii) In the meantime, stay the order of conviction and sentence passed by the Ld. Sessions Judge, South Tripura District, Belonia (A. Pandey) on 12/08/2021 in connection with case ST 27 (T-I) of 2019;

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(iv) Also release the present appellant to go on bail till disposal of the instant criminal appeal and after hearing both sides the impugned order of conviction by the Ld. Trial Court on 12/08/2021 may be set aside and may kindly be acquit the appellant from the charges with a kind direction set at liberty."

4. That fact of the case, in brief, is that the victim used to sell garments in various markets and on 24.11.2018 at about 7 a.m. the victim on completion of her business at Patichari Murasingh Para Rash Mela boarded a Maruti Eeco vehicle along with other passengers for returning to her home at Kalshi with her unsold garments. At Manpathar bazaar all the other passengers except the victim got down from the vehicle. Thereafter, the accused driver Shib Sankar Debnath moved the vehicle from National Highway towards an isolated place and there he closed the windows and doors of the vehicle and committed rape upon the victim by removing her wearing apparels and when she resisted by making hue and cry, the accused also threatened her with dire consequences. Subsequently, the accused had thrown out the victim from the vehicle and fled away with all her belongings. Thereafter, the victim lodged an F.I.R. with the Officer-in-Charge of Santirbazar P.S.

5. On the basis of said FIR, Officer-in-Charge of Santirbazar P.S. registered Santirbazar P.S. Case No.2018/STB/088 u/s 376/379 of IPC against the accused-appellant and on completion of the investigation, the Investigating Officer finding *prima facie* case submitted charge sheet against the accused for the commission of offence punishable under Sections 376 and 392 of IPC. After hearing the arguments of both sides, the learned Sessions Judge, South Tripura, Belonia by judgment dated 12.08.2021

convicted the accused-appellant under Sections 376(1)/392 of IPC and sentenced him to suffer R.I. for a term of 10(ten) years and to pay a fine of Rs.10,000/-, in default to suffer R.I. for another six months for commission of offence punishable under Section 376(1) of IPC and also to suffer R.I. for a term of 3(three) years and to pay a fine of Rs.5,000/-, in default to suffer R.I. for another three months for commission of offence punishable under Section 392 of IPC. Aggrieved thereby, the accused has preferred the present appeal for setting aside the judgment dated 12.08.2021 passed by the learned Sessions Judge, South Tripura, Belonia in case No. ST 27 (Type-I) of 2019. Hence, this appeal.

6. During trial before the Court below, prosecution examined as many as 13(thirteen) witnesses. Let us now evaluate the evidence of vital prosecution witnesses.

PW-8, the victim, stated that about two years back she was returning from Rash Mela at Murasingh para, Patichari along with other passengers by a Maruti Eeco vehicle and at Manpathar the other passengers got down from the vehicle. Thereafter, the accused driver while going to Kalshi, suddenly take a turn from National Highway towards an isolated place and there he closed the doors of the vehicle and committed rape upon her by removing her wearing apparels. When she cried out, the accused also threatened her, The victim tried to make a phone call to her family members,

but the accused tried to pacify her stating that he would give money to her. While returning, victim noticed on the highway as also in the isolated place that there were several workers in the rubber garden and also BSF personnel and she sought their help. After the victim was thrown out from the vehicle by the accused, she met one father and daughter on the roadside riding on a two wheeler and disclosed the incident to them. But none came to her rescue and everyone left her. Thereafter, she alone walked to the place of Mela and from there police brought her to Santirbazar P.S. where she filed an ejahar and police recorded her statement.

PW-10, Dr. Pampi Nandi, stated that on 24.11.2018 while she was posted at District Hospital, Santirbazar, she examined the victim and found one scar mark of burnt injury over lower one-third of back and two other scar marks above the right knee. On examination of her clothing, whitish colour stain was found present in her petticoat. There was remnant of hymen present at 7 O'clock position. She opined that as per clinical examination of the victim and based on report of SFSL, there was sign of penetration of vagina and evidence of recent sexual intercourse.

PW-12, Dr. Subhankar Nath, stated that on 10.12.2018 he was posted as Deputy Director of Tripura State Forensic Science Laboratory and on examination of the samples spermatozoa of human origin and blood were detected in the panty of the victim and the semen stained panty of the victim

matches with the blood samples of the accused. He also identified his report bearing his signature as Exhibit-11.

7. Mr. H.K. Bhowmik, learned legal aid counsel appearing for the convict-appellant, contends that the learned trial Judge without appreciating the evidence of the prosecution witnesses has arrived at a wrong conclusion which is perverse, erroneous and based on no evidence. Counsel also contends that the learned trial Judge committed an error in relying on the sole evidence of the victim (PW-8) since there was no other eye witness of the incident to corroborate the version of the victim. Counsel further contends that as per evidence of the victim, the accused proposed to give money to the victim what she would desire, from which it is apparent that victim was a consenting party. From the evidence of PW-10 supported by SFSL report, it is apparent that there was sign of recent sexual intercourse, but the learned trial Judge ignoring the fact that the victim was a married woman and there might have a chance of recent intercourse with her husband, arrived at an erroneous decision. From the evidence of prosecution witnesses, it would clearly show that the accused appellant was never involved in the alleged crime and as such, learned trial Judge has committed a serious error in holding the appellant guilty of committing rape upon the victim as also committing robbery of the belongings of the victim. Accordingly, he prays for setting aside the impugned judgment dated

12.08.2021 passed by the learned Sessions Judge, South Tripura, Belonia in case No. ST 27 (Type-I) of 2019.

8. On the other hand, Mr. Ratan Datta, learned Public Prosecutor, appearing for respondent-State, vehemently objected the submissions advanced by the learned counsel for the appellant contending that there are enough incriminating materials against the accused-appellant establishing his involvement in the alleged crime and the learned Sessions Judge has rightly passed the judgment and order of sentence. Accordingly, he contends that there is no error in the impugned judgment passed by the learned trial Court calling for any interference and prays for dismissal of the present appeal.

9. On appreciation of the evidence of prosecution witnesses as also the submissions of learned counsel for both the parties, it is apparent that learned counsel appearing for the prosecution has categorically stated that in her examination before the Court below, the victim (PW-8) has elaborated the entire circumstantial evidence which was supported by the medical evidence of PW-12 and the evidence of doctor (PW-10). The samples which had been drawn were also tested by the Forensic Science laboratory and there were clear indication with regard to committing intercourse as the semen found in the wearing apparels of the victim

matched with the blood samples collected from the accused. The hymen of the victim was ruptured and found at 7 O'clock position and the biting mark on her hand as complained is also proved and all these facts were corroborated by certain other incriminating materials in support of the prosecution and accordingly, the Court below has rightly appreciated the evidence of the prosecution and the conviction needs to be upheld.

10. Learned counsel appearing for the accused person indicated that the charges are not proved beyond reasonable doubt and contends that it could be a case of consenting intercourse and it is not a case of rape and prayed for indulgence of this Court.

11. It is seen from the record that the medical evidence coupled with the forensic report indicated that intercourse had taken place and the same cannot be ruled out but, however, now the point falls for our consideration is whether the rape was committed or not or was it by way of consenting intercourse. Pursuant to the complaint made, it is categorically stated by the victim/complainant that she was sitting on the front seat of the Maruti Eeco vehicle and the driver of the vehicle committed rape on her. Practically, this Court feels that (i) without consent applying force on woman, that too when she was sitting on the front seat of the Maruti Eeco vehicle is manually and physically not practicable; (ii) when there were

several persons like workers in the rubber garden and the other persons who came for her rescue and also the BSF personnel despite her complaint made before them, no one had taken any steps in this regard in accordance with law. She could have taken the help of BSF personnel and she could have got down from the vehicle and could have taken the driver to the custody of BSF and thereafter to the police, but no such steps had been taken. The so called labourers and the BSF personnel to whom she referred the incident, the prosecution is also silent with regard to their investigation. The doubt of consenting intercourse, in view of the above, cannot be ruled out. The statement of the victim contending that she was raped by the driver by force by removing her wearing apparels when she was on the front seat fails to gain confidence of this Court. In view of the above, we express that insofar as the offence under Section 376(1) is concerned, the prosecution has not proved the charge beyond reasonable doubt under the facts and circumstances of this case. Insofar as the offence of robbery under Section 392 IPC is concerned, the case has not been proved in terms of the recovery of the articles from the accused person and no such inventory has been made in pursuance of the said complaint. Even in the complaint, the detailed particulars of the articles are also not indicated. Hence, benefit of doubt is extended even under Section 392 of IPC also.

12. In view of above, the instant appeal is allowed. The impugned judgment dated 12.08.2021 passed by the learned Sessions Judge, South Tripura, Belonia in case No. ST 27 (Type-I) of 2019 is set aside.

The appellant shall be released forthwith, if he is not wanted in connection with any other criminal case.

13. With the above observations and directions, this criminal appeal stands disposed of.

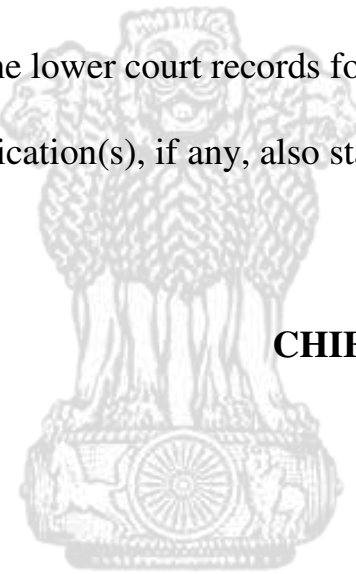
14. Send down the lower court records forthwith.

Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

CHIEF JUSTICE (ACTING)

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