

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
Crl. Rev. P. No.43 of 2022

Sri Suman Das, son of Sri Bishu Das, R/O village-West Pilak, P.S. Baikhora, District, South Tripura.

.....Petitioner

_V_E_R_S_U_S_

The State of Tripura, represented by its Secretary cum Commissioner, Department of Home, Government of Tripura, P.O. Kunjaban, P.O. New Capital Complex, District- West Tripura.

.....Respondent

For Petitioner(s)	:	Mr. D. Sarkar, Advocate.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of hearing and delivery of judgment and order	:	05.07.2023.
Whether fit for reporting	:	YES/NO

BEFORE
HON'BLE MR. JUSTICE T. AMARNATH GOUD

Heard Mr. D. Sarkar, learned counsel appearing for the petitioner. Also heard Mr. S. Ghosh, learned Addl. P.P. appearing for the respondent-State.

[2] The present petition has been filed under Section-397 read with Section-401 of Cr. P.C. challenging the legality, validity and propriety of the judgment and order of conviction dated 06.05.2022 in connection with case No. Crl. Appeal No.15 of 2020 passed by the learned Sessions Judge, South Tripura, Belonia whereby and whereunder, the learned Sessions Judge affirmed the conviction and sentence dated 12.02.2020 passed by the learned Chief Judicial Magistrate, South Tripura, Belonia in case No. PRC (WP) 49 of 2015 whereby the convict petitioner was convicted under Section-448 of IPC sentencing him to suffer RI for six month and also convicted under Section-354 of IPC and also sentencing him to suffer RI for one year. Both the sentences shall run concurrently.

[3] The succinct fact is that on 27.02.2015 at about 1.30pm the informant-victim was sleeping in her dwelling hut along with her minor daughter. Her husband and other family members were not present in the house. At that time, accused petitioner entered into her dwelling hut and pressed her mouth. The petitioner torn her wearing apparels and tried to commit rape on her. The informant cried out, then the petitioner fled away from the place of occurrence.

[4] On the basis of the FIR, police registered Baikhora P.S. Case No.2015/BKR/017 under Sections-448/354B of IPC and after investigation finding

prima facie case, S.I. Litan Bhadra filed charge sheet dated 29.03.2015 vide C/S No.8/15 under Sections-448/354(B)/506 of IPC against the accused petitioner. After taking cognizance and supplying the prosecution copies to the accused person charges under Sections-448, 354(B) and 506 of IPC have been framed against accused person. The petitioner denied the charges framed against him and claimed to be tried.

[5] During trial prosecution examined as many as eight witnesses i.e. PWs.1, 2, 3, 4, 5, 6, 7, and 8. The petitioner was examined under Section-313 Cr. P.C. at which he denied the incriminating materials and also denied to adduce defence witness. Learned Chief Judicial Magistrate, South Tripura Belonia after evaluating the evidence, convicted the petitioner for the offence under Sections-448 and 354 of IPC and sentenced him as aforementioned.

[6] After hearing the parties and having perused the materials on record, the learned Court below has observed as under:

“So, in the totality of the evidence of the witnesses I find no impropriety in the judgment of learned trial Court justifying any interference from this Court. I find no merit in the appeal. Thus, the appeal is dismissed. The convict-appellant is hereby directed to surrender before learned trial Court within one month from today to undergo the sentence.”

[7] Mr. D. Sarkar, learned counsel appearing for the accused-petitioner has submitted that the learned Courts below has misread and misinterpreted the evidences and exhibited documents placed on record resulting into conviction of the accused-petitioner. The Courts below have also misinterpreted the law as well as fact and as such the impugned judgment and order also suffers from error of facts and law.

[8] He has further submitted that some of the material finding and material witness deposed before the trial Court are also wrongly interpreted by the learned Appellate Court and therefore perversely come to a wrong findings. The major contradiction between the prosecution witnesses and statement of victim and therefore the learned trial Court come to a wrong findings and convicted the accused person. Except PW-1 all are the hearsay witness and all the witnesses contradict their version and exaggerated their statement before the trial Court at the time of deposition. Therefore, the prosecution witness cannot be believed in *toto*.

[9] Mr. S. Ghosh, learned Addl. P.P. in support of his case has submitted that the informant has corroborated her FIR and other two witnesses have also seen the petitioner at the spot. Other witnesses have also supported the

case of the prosecution and there is no doubt on the deposition of the witnesses. She he submits that the prosecution has been able to prove the case against the petitioner beyond reasonable doubt and learned trial Court has passed the judgment as per law and there is no ground to entertain this petition.

[10] In view of the above discussions, this Court is of the view that the victim herself is the informant of this case and she was examined as PW-1 and she lodged the FIR against the petitioner. She has also deposed that on 27.02.2015 she was sleeping inside her house along with her 2 and ½ years old child. At that time her neighbour, accused petitioner illegally entered into her house and pressed her mouth. She opened her eyes and saw him. The petitioner embraced her and tried to commit rape on her. She also deposed that the petitioner torn her saree and blouse. Hearing her hue and cry her sister in law, PW-4 and brother in law PW5 came and seeing them the petitioner fled away.

[11] PW-4, Smti. Anita Das has also corroborated the victim's version and stated that the informant of this case is her sister in law. On 27.02.2015 she was in her room. Being heard the hue and cry she went to the house of the victim and saw the saree and blouse of the victim in torn condition. Seeing the condition of the victim she asked the victim about her condition. on being asked the victim stated to her that while she was sleeping at home in the afternoon with her child at that time the petitioner came and pressed her mount and tried to commit rape. PW-5, Sri Litan Das also supported the versions of PW-1 and PW-4.

[12] From the deposition of the above witnesses this Court finds that PW-1, PW-4 and PW-5 are the main witnesses. PW-2 is the husband of PW-1 and he came to spot from his work place and thereafter he came to know about the incident. The deposition of other witnessed cannot be accepted because they are the hearsay witnesses. The informant has fully corroborated in her deposition the facts stated in the FIR. PW-4 has also supported this fact and they also found the victim in a condition when her clothes were found torn. The same torn clothe has been seized by I/O. in presence of PWs-3 and 7.

[13] It has been submitted that there is independent witness in this case but, the circumstances of this case shows that the petitioner entered into the house of the victim secretly. So there is no chance for any independent person to notice the petitioner while he was entering into the room of the victim. But as soon as the victim raised hue and cry PW-4 and PW-5 immediately rushed to the spot and they have also noticed that the accused-person fleeing away from the house of the informant and also the victim with torn clothes.

[14] The accused person at the time of his examination under Section-313 of Cr. P.C. has taken a defence of boundary dispute with the victim, but in the cross examination of the victim, the accused petitioner has taken has taken defence about rubber garden of one Rebati Das. So this Court finds contradiction in the defence taken by the petitioner. So based on the above depositions, this Court finds that learned trial Court has rightly given the judgment and there is no scope for any interference. On perusal of the judgment of the learned trial Court I also find that the learned trial Court has taken lenient view in convicting the petitioner.

[15] Learned counsel appearing for the accused-petitioner has placed judgments of this Court has have no relevance with the facts and circumstances of the present case. Hence, this Court finds no infirmity in the findings arrived at by the Courts below. Since the petitioner herein has failed to make out his case before the Courts below, this Court has no hesitation to say that in the revision, appreciation of the factual issues are not permissible. Accordingly, the instant revision petition stands dismissed confirming the judgment of the learned Courts below. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A. Ghosh

ANJAN GHOSH

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