

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**CRL A (J) 22 OF 2022**

**Md. Hachib Ali,**  
Son of Md. Manjir Ali, resident of Kinairchar,  
P.S. Kailashahar, District-Unakoti Tripura.

.... Appellant

– Vs –

**The State of Tripura,**

....Respondent.

**BEFORE**  
**HON'BLE MR. JUSTICE T. AMARNATH GOUD**  
**HON'BLE MR. JUSTICE ARINDAM LODH**

For the appellant : Mr. Samarjit Bhattacharjee, Advocate.

For the respondent : Mr. S. Ghosh, Addl. Public Prosecutor.

**Date of hearing and** : **17.05.2023**  
**date of delivery of**  
**Judgment & Order**

Whether fit for reporting : No

**Judgment & Order (Oral)**

*(T. Amarnath Goud, J)*

This appeal is directed under Section 374 of CrPC against the judgment and order of conviction and sentence dated 17.06.2022, passed by learned Additional Sessions Judge, Unakoti Judicial District, Kailashahar, in Case No. ST 33(UK) of 2019 whereby and whereunder the appellant has been convicted under Section 376(1) of the Indian Penal Code and sentenced him to suffer R.I. for 10 (ten) years and to pay a fine of Rs.

50,000/- (Rupees fifty thousand) only for the said offence and in default to payment of fine, the appellant shall suffer further R.I. for 6 (six) months.

2. The facts of the prosecution case, in a nutshell, are that on 14.10.2019 the victim of the instant case had lodged a written ejahar with the Officer-in-Charge of Kailashahar Police Station alleging *inter alia* that owing to the matrimonial dispute with her husband, she started living in her parental home and during her stay at parental home, accused Md. Hachib Ali being a relative used to visit her parental house regularly. Around seven months back from the date of lodging of FIR, at night when she was alone in the house, accused came there and proposed her for marriage to which she did not agree with that proposal. Then, the accused forcefully committed sexual intercourse with her against her will. He assured to marry her within next 2/3 months. But ultimately he did not marry and she alleged that due to said sexual intercourse, the victim-informant became pregnant and when she was carrying pregnancy for seven months she disclosed the matter to her parents. On refusal of the assurance made by the accused that he would marry her, she took the help of the village panchayat but in vain. Subsequently, she lodged an ejahar alleging the aforesaid incident to the police station.

**3.** On receipt of the complaint, O.C., Kailashahar Women PS had registered a case vide PS Case No.2019/WKLS/045, dated 14.10.2019 for commission of offence punishable under Sections 376/417 of IPC against accused Md. Hachib Ali and endorsed the case for investigation.

**4.** The investigating officer took up investigation, visited the place of occurrence, prepared hand sketch map with separate index, examined the victim and other witnesses and recorded their statements under Section 161 of CrPC, arranged for medical examination of the victim and forwarded her to Court for recording her statement under Section 164(5) of CrPC. Thereafter, on being satisfied with the prima facie evidence collected during investigation, the WSI, Smt. Shiprabala Chanda being the I.O. submitted charge-sheet against accused Md. Hachib Ali for commission of offence punishable under Section 376/417 of IPC.

**5.** In course of trial, learned Additional Sessions Judge, Unakoti Judicial District, Kailashahar, being prima facie satisfied, framed charges against accused Md. Hachib Ali under Section 376(1)/417 of IPC to which he pleaded not guilty and claimed to be tried.

**6.** In order to prove its case, prosecution examined as many as 15 witnesses; introduced some material documents which were exhibited.

7. After closure of prosecution evidence, the accused was examined under Section 313, CrPC in regard to the incriminating materials as surfaced against him in the evidence of prosecution witnesses when he claimed to be innocent and denied that he was falsely implicated with the case. He also adduced evidence of two witnesses on his behalf as DWs.

8. After hearing the arguments of learned counsel of the parties and considering the materials on record, the learned Addition Sessions Judge convicted and sentenced the accused-appellant as stated above.

9. Being aggrieved by and dissatisfied with the said order of conviction and sentence, the accused-appellant has preferred the instant appeal before this court.

10. We have heard Mr. Samarjit Bhattacharjee, learned counsel for the accused-appellant as well as Mr. S. Ghosh, learned Addl. P.P. for the State-respondent.

11. Mr. Bhattacharjee, learned counsel for the appellant has submitted that the appellant Md. Hachib Ali has been falsely implicated with this case because in the instant case the victim willfully indulged herself for having physical relation knowing the consequences of the affairs and such, the learned court below has committed serious error holding that the appellant had developed sexual relation by giving false assurance of

marriage. Learned counsel has further submitted that the learned court below should have held that the alleged physical relationship developed between the accused and the complainant not because of the assurance of marriage but, they had a deep love affairs and as such, the learned trial court has committed an error in convicting the appellant which is liable to be set aside. Again, he has submitted that soon after the incident the victim could have reported the matter to her parents, but she did not. While she became pregnant for seven months, she informed the matter to her parents. So, the judgment and order of conviction and sentence of the accused was not based on any convincing evidence and accordingly, he prays for acquittal of the accused.

**12.** On the other hand, Mr. S. Ghosh, learned Addl. P.P. supporting the judgment and order of conviction and sentence passed by the learned Special Judge has submitted that the prosecution case is well established on the sole evidence of the victim-complainant. She made a vivid statement as to what was happened to her, before the Magistrate at the time of recording her statement under Section 164(5) of CrPC and even at the time of giving deposition also. While her statement inspires confidence, no other corroboration is required. He has, however, fairly submitted that the trial Court considered the facts and circumstances and rightly arrived at a conclusion that the accused had committed rape upon

the victim on the alleged date, time and place. He further vehemently opposed the grounds of the appeal and contended that the prosecution ought to have filed an appeal against acquittal for the charge under Section 417 of IPC where the charge under Section 376(1) of IPC has been proved by the prosecution. The victim since made a complaint that the accused had promised to get her married if she gets divorced from her earlier husband she refused initially but, later she advanced herself to maintain sexual relationship with the accused, these circumstances attract Section 417 of CrPC and consequent to Section 376(1) of IPC. He prays for upholding the impugned judgment and order of conviction of sentence passed by the learned court below.

**13.** Based on the aforesaid submissions, let us evaluate the evidence of the prosecution witnesses.

**14.** From the evidence of PW-1, the victim herself deposed that on 08.12.2018, the accused came to her parental house at about 8:30 pm and against her will/consent forcefully committed rape upon her. The accused after commission of rape stated to her not to disclose the matter to anyone and he assured to marry her. She became pregnant and when she was seven months carrying, she informed the matter to the mother of the accused in presence of the accused. The mother of the accused abused her after

knowing the incident from her and ousted her from their house. She then lodged a complaint before the police. She further deposed that accused Hachib Ali is her relative i.e. the son of distant sister of her sister-in-law (boudi).

In cross-examination PW-1 deposed that the marriage of her brother was solemnized before her marriage and she knew the accused since her brother's marriage.

**15.** PW-2, being the mother of the victim deposed that due to some matrimonial dispute with the husband of her victim daughter at Silchar, the victim returned to her house at Kailashahar. During her stay at their house, accused used to visit there frequently. One day, the accused in absence of other family members of their house committed rape upon her victim daughter forcefully on false promise of marriage. After seven months, when she saw some physical changes of her daughter, she took her to the doctor and came to know that the victim daughter was pregnant. On query of the matter, her daughter disclosed that due to rape by the accused Hachib Ali she has been facing such situation. Her daughter gave birth to a female baby and the child is at present residing with her daughter.

In cross-examination, except denial, nothing incriminating materials could be brought out.

**16.** PW-3 and PW-4 are the relatives of the victim complainant and deposed in the same tune of PW-1 and PW-2.

**17.** PW-6 is the OC, Kailashahar Women Police Station who on receipt of the complaint registered the case as Kailashahar Women P.S. Case No.45 of 2019, under Sections 376/417 of IPC and endorsed the case for investigation.

PW-7, PW-11 and PW-15 are the investigating officers who have investigated the case after observing the formalities. PW-9 and PW-13 are the women constables of police. They were seizure witnesses and nothing more than that.

PW-8 is the Medical Officer who at the time of deposition identified the medical report of the accused given by him in connection with this case and his signature on it as Exhibit 7 as a whole. He also collected the blood of the accused for DNA profiling. Witness identified the blood sample authentication form of accused Hachib Ali and his signature on it which was marked as Exbt.8 and Exbt.8/1.

PW-10 is the Lab Technician who deposed that he identified his signature on the seizure list as Exbt.11 and he also identified his signature on blood sample authentication form of the victim as Exbt.9/1 and that of female baby as Exbt.10/1.

PW-12 is a Medical Officer who identified the report prepared by him along with signature therein as Exbt.12 as a whole.

PW-14 is the Scientific Officer of State Forensic Science Laboratory (SFSL). He deposed that he examined total three exhibits- Exhibit-A(dried blood on gauze of accused), Exhibit-B (dried blood on gauze of victim) and Exhibit-C (dried blood on gauze of baby of victim) for DNA profile examination. After examination, on the basis of observation, this witness opined that 'X' is the biological mother of the baby Takmina Begam and Md. Hachib Ali is the biological father of the baby Takmina Begam. Witness identified the report as Exhibit 13.

**18.** The accused also adduced two witnesses as DWs in support of its case. DW-1 deposed that he attended the marriage ceremony of Hachib Ali and the victim. Subsequently he heard that they had a child out of their wedlock. Now, that child is no more in the world and died in an accident. Victim left her matrimonial house due to discord with her husband and was staying in her paternal house for some time. He came to know that presently Hachib Ali and the victim are residing together.

In cross-examination, DW-1 admitted that he had a good relation with the family of Hachib Ali and both side attended family programme of each other. He denied that he did not attend the marriage

ceremony of Hachib Ali and the victim and that since he was in a good relation with the family of Hachib Ali, he was deposing falsely favouring the accused.

**19.** DW-2 is the father of the accused. He deposed that there was a love affair in between the accused and the victim. Out of that affair there was some dispute regarding some illicit relationship between them for which the matter was taken to local Panchayat. As per decision of Panchayat, the victim and Hachib Ali married each other as per their custom subsequently. But, there was some dispute regarding 'Kabinnama'(contract of marriage) and for which the victim left their house. They had a child who is no more in the world due to some unfortunate accident. Subsequently, the victim again returned to their house and presently she is residing with his son in his house.

In cross-examination by the State the witness stated that he did not submit any documentary proof regarding the marriage of the victim and Hachib Ali, the accused.

**20.** Now, the only point to be considered in this appeal is that whether the offence under Section 376 of IPC has been made out?

If we go through the evidence given by the victim, we find that the victim clearly stated in her testimony that on the alleged date and

time and the accused-appellant gave a false promise to marry her since she had been residing in her parental home permanently after being deserted by her earlier husband. The accused-appellant often used to visit their house and at one night when she was alone in her house he committed forceful rape upon her. She even stated in her evidence that initially she refused to that proposal, but, later, she advanced herself in doing the sexual act. It is nowhere stated that she resisted to her level best at the time of committing forceful sexual act. So, on perusal of the evidence of PW-1 we are of the opinion that the evidence of PW-1 is natural, cogent and trustworthy and it is reliable.

**21.** It is also evident that PW-2, PW-4 and PW-3 are the parents and sister-in-law (nanad) of the victim. They were deposing about the incident of rape when they came to know from the victim herself after seven months of the incident. Therefore, here a general question comes to our mind that the complainant after such a serious offence committed by the accused-appellant has not made any complaint as soon as the accused-appellant raped her without her consent nor she divulged the said fact to her parents also just after the occurrence when all the members of her parental house returned back to the house. She carried seven months pregnancy and when it was noticed by her mother that there were some changes in her physical appearance, then the victim was compelled to tell the real fact.

22. In such circumstances, we are of the considered view that the fact of forceful rape upon the victim by the accused-appellant against her will cannot be acceptable.

23. At the time of hearing Mr. Bhattacharjee, learned counsel appearing for the appellant has placed reliance on the judgment passed by this Division Bench in ***Crl.A(J) No.02 of 2021 [ titled as Sri Sanjib Paul Vrs. The State of Tripura]*** on 20.07.2022 and the judgment passed by the Hon'ble Apex Court in ***Criminal Appeal No.257 of 2023 [(Arising out of SLP (Crl.) No.8586 of 2017) titled as Naim Ahamed Vrs.State (NCT of Delhi)]***.

24. In **Sanjib Paul** (supra), this court at Para 25 had observed thus:

*“[25] We have no hesitation in concluding that the consent of the prosecutrix was but a conscious and deliberated choice, as distinct from an involuntary action or denial and which opportunity was available to her, because of her deep-seated love for the appellant leading her to willingly permit him liberties with her body, which according to normal human behaviour are permitted only to a person with whom one is deeply in love. The observations in this regard in **Uday v. State of Karnataka**, reported in (2003) 4 SCC 46 are considered relevant:*

*“25...It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the*

*prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent.”*

**25.** Here in the instant case, if we go through the deposition of DW-2 as adduced on behalf of the accused-appellant it is found that the DW-2 is the father of the accused appellant, but, at the time of deposition he specifically stated that there was a love affair between the victim and the accused-appellant and out of that affair there was dispute regarding some illicit relationship between them for which the matter was taken to local Panchayat whereby as per the decision of Panchayat, the victim and Hachib Ali had married each other.

**26.** So, considering the nature of circumstances of the alleged incident, we are of the considered opinion that the victim willingly consented to have sexual intercourse with the accused-appellant with whom she had a love affair, not because he promised to marry her, but because

she also desired it. So, the prosecution case is doubtful and, hence, the accused-appellant is entitled to get the benefit of doubt. Accordingly, the judgment and order of conviction and sentence passed by the court below holding the accused-appellant guilty for committing offence under Section 376(i) of IPC is set aside and quashed.

**27.** The accused-appellant is acquitted of the charge levelled against him on benefit of doubt. It is submitted that the accused-appellant is in custody and suffering the sentence. He shall be set at liberty. Surety is also discharged from the liability of bail bond.

The appeal accordingly is allowed and disposed of.

Send back the LCRs.

**JUDGE**

**JUDGE**