

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.23 OF 2021**

Shri Supriya Nath @ Paplu,

Son of Sri Pradip Kumar Nath aged about 28 years,
Resident of Post Office Road, P.O., P.S. & Sub-Division-
Dharmangar, District North Tripura.

..... **Appellant(s)**

Vs.

The State of Tripura.

..... **Respondent(s)**

CRL.A(J) NO.24 OF 2021

1. Sri Pradip Kumar Nath,

Son of Late Pramod Nath,
Aged about-56 years.

2. Smti Sampa Nath,

Wife of Sri Pradip Nath,
Aged about-48 years.

Both are residents of Post Office Road,
P.O., P.S. & Sub Division-Dharmanagar,
District- North Tripura.

..... **Appellant(s)**

Vs.

The State of Tripura.

..... **Respondent(s)**

For the Petitioner(s) : Mr. S. Lodh, Advocate.
Mr. A. Bhattacharjee, Advocate.

For the Respondent(s) : Mr. R. Datta, P.P.

Date of hearing and delivery of
Judgment & Order : 16.03.2023.

Whether fit for reporting : YES/NO.

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

JUDGMENT AND ORDER(ORAL)

C.J(Acting)

Both these appeals are heard and taken up together for disposal since they arise from a common Judgment and Order dated 16.09.2021 passed by the learned Sessions Judge, North Tripura, Dharmanagar, in ST(Type-1)36 of 2019 and similar question of facts and law are involved.

2. The CrI. A.(J) No.23 of 2021 is filed under Section 374(2) of the Code of Criminal Procedure, 1973, against the impugned judgment of Conviction and Sentence dated 16.09.2021, passed by the learned Sessions Judge, North Tripura Dharmanagar, in ST(Type-1) 36 of 2019, whereby the learned Sessions Judge, convicted the appellant, for committing of offences punishable under Sections 376, 302, 201 and 34 of IPC , and sentences him to suffer R.I. for life and to pay fine of Rs.10,000/- with default stipulation for committing offence punishable under Section 376 of IPC and to suffer further Rigorous Imprisonment of Life, and to pay a fine of Rs.10,000/- with default stipulation for committing offence punishable under

Sections 302/34 of IPC, further sentenced to suffer R.I. for 7(seven) year and to pay a fine of Rs.5,000/- with default stipulation for committing offence under Section 201/34 of IPC.

2.1. The CrI. A.(J) No.24 of 2021 is filed under Section 374(2) of the Code of Criminal Procedure, 1973, against the impugned judgment of Conviction and Sentence dated 16.09.2021, passed by the learned Sessions Judge, North Tripura Dharmanagar, in ST(Type-1) 36 of 2019, whereby the learned Sessions Judge, convicted the appellants, for committing of offences punishable under Sections 302, 201 and 34 of IPC , and sentences him to suffer R.I. for Life, and to pay a fine of Rs.10,000/- with default stipulation for committing offence punishable under Sections 302/34 of IPC, further sentenced to suffer R.I. for 7(seven) year and to pay a fine of Rs.5,000/- with default stipulation for committing offence under Section 201/34 of IPC.

3. The factual backdrop of the case, in a nutshell, is that one Shibani Nath, wife of Sri Bikash Nath of Dighalbak, P.S. Dharmanagar lodged an Ejhar with the Officer-in-charge, Dharmanagar Women Police Station on 21-08-2019 at about 07.00 A.M. that her niece, Prantika Nath informed the complainant over the telephone that her mother i.e. the sister of the complainant could not be traced in the house. Then the

complainant asked Prantika Nath to make a thorough search and about one hour later the complainant started for her sister's house and on the way she found a huge number of people gathered in the playground of BBI School. Thereafter, the complainant went there and saw that the dead body of her sister was lying on the ground and somebody had left the dead body of her sister there after her murder.

4. That based on the aforesaid complaint, Officer-in-Charge, Dharmanagar Women Police Station registered case no. 2019 WDN 026 for the commission of offences punishable under section 302/201 of the Indian Penal Code against unknown miscreants and endorsed the case to Sub-Inspector of police Smt. Bandana Choudhury for investigation.

5. That the Investigating Officer, Sub-Inspector of Police Smt. Bandana Choudhury on 21-08-2019 in the morning at about 08.00 A.M. received an information from an unknown source that a dead body of a woman was lying in the playground of BBI sports complex and the information was entered into GD Book vide GD Entry No. 04 dated 21-08-2019 and at about 09.05 A.M. she along with other PS staff and I/C Officer-in-charge of Dharmanagar Women P.S. Swarna Debbarma went to the playground of BBI sports complex and they could notice that huge number of persons had gathered around the dead body.

They informed the matter immediately to the SDPO, Dharmanagar, and the Superintendent of Police, North Tripura District, Dharmanagar. Officer-in-charge of Dharmanagar Women P.S. Swarna Debbarma also informed the mobile forensic team and dog squad etc. S.D.M. Dharmanagar was also requested to depute a Magistrate on the spot. In the meantime, during their presence in the BBI sports complex, a written complaint was received by Officer-in-charge of Dharmanagar Women P.S. Swarna Debbarma and she returned back to Dharmanagar Women P.S. and the Investigating Officer along with other P.S. staff remained on the spot. At about 10.30 A.M. Officer-in-charge of Dharmanagar Women P.S. Swarna Debbarma informed the Investigating Officer that specific case No. 2019 WDN 026 under section 302/201 of IPC has already been registered based on the written complaint. It was also informed that the investigation was endorsed to her and accordingly she assumed in the investigation of this case. During her presence in the sports complex, she could hear that some of the students of the morning shift of BBI school, witnessed the person who left the dead body in front of the sports complex and thus she met with the Headmaster of the school and requested him to keep the students for some time so that she may talk with them for the purpose of investigation. In the meantime,

DCM, Dharmanagar, and a team of Dog squad reached the spot and in their presence, she prepared an inquest over the dead body in presence of the witnesses. During the inquest, she could find blood in the genital organ of the victim. She also prepared the hand-sketch map and index of the place where the dead body was lying (BBI sports complex). Thereafter, she shifted the dead body to Dharmanagar District Hospital and as per the advice of the Medical officer she shifted the dead body to the morgue and prepared the dead body challan. Thereafter she went to BBI school and talked with the students who witnessed the episode of leaving the dead body in front of the BBI sports complex and recorded their statements under section 161 of Cr.P.C. as per their version. The students who saw the incident stated to her with regard to the identity of the boy that it was a boy of black complexion who was having tattoos over his right hand and beard on his face and he is having a shop behind the school. Thereafter, she went to the house of the deceased which is situated in the back side of the BBI school. After taking entry into the house of the deceased, she could find a red mug, a white plastic bottle, and a black glass made bottle. Accordingly, she seized those items under a proper seizure list in presence of the witnesses. As per the identification of the students of BBI morning shift, she went to the house of the accused-Supriya

Nath, and taking entry into his house she could seize a red sleeveless ganjee and a steel gray half pant under a proper seizure list in presence of the witnesses. Thereafter, at about 07.30 P.M. she arrested accused-Supriya Nath. After post-mortem examination autopsy surgeon, Dr. Chaitanya Reang handed over the viscera of the deceased i.e. stomach contents, liver section, sample of blood from wound, sample of blood from body, vaginal swab along with the wearing apparels i.e. bra, petty coat and nighty of the deceased and she seized the same under a proper seizure list in presence of witnesses. After a post-mortem examination, the dead body of the deceased was handed over to her brother upon proper receipt.

On the next day i.e. on 22-08-2019 she seized one the previous investigation report prepared by Sub-Inspector, Bandana Choudhury and he also verified the statement of the witnesses already recorded by the previous Investigating Officer. On 23-10-2019 he received the post-mortem examination report of the deceased Amita Nath and carefully went through the post-mortem report. On 24-10-2019, 25-10-2019, 27-10-2019, and 29-10-2019 he examined few witnesses and recorded their statements under section 161 of Cr.P.C. in his own handwriting as per their version. On 26-10-2019 he received a forensic analysis report from TSFSL and

perused the same. He produced the forensic analysis report to the Autopsy Surgeon on 27-10-2019 to reconcile the same with the post-mortem report and to give final opinion and obtained the final opinion of the Autopsy Surgeon on the same date.

After completion of the investigation, he being satisfied that the offenses punishable under section 376/302/201/34 of IPC have been well established against the accused Supriya Nath @ Paplu and the offenses punishable under section 302/201/34 of IPC has been well established against accused persons namely Pradip Kr. Nath and Smt. Sampa Nath, he submitted the charge sheet accordingly against them. On 06-11-2019, a blue colour Samsung smartphone and another blue colour Vivo smartphone was recovered from the possession of the accused Supriya Nath. Thereafter, at about 10.35 A.M. she arrested other accused persons namely Pradip Kr. Nath and Smt. Sampa Nath and sent all the accused persons for medical examination to Dharmanagar District Hospital along with a prayer for collection of blood sample of accused Supriya Nath. During examination, blood sample of accused Supriya Nath was collected by Dr. Dipak Kumar Haldar and handed over to her and she seized the blood sample of the accused Supriya Nath as produced by Ratna Deb, Staff Nurse of Dharmanagar District Hospital. The accused persons were forwarded to the

court of Ld. Chief Judicial Magistrate, North Tripura, Dharmanagar. She sent the mobile phones to TSFSL for examination and report and collected report thereof. Thereafter, she examined few available witnesses and also recorded their statements under section 161 of Cr.P.C. On 28-08-2019 she recorded the disclosure statement of accused Supriya Nath in presence of an Executive Magistrate and other independent witnesses at Dharmanagar Women P.S. According to the statement of the accused, she again went to the house of the accused accompanied by him and he produced a blood stained piece of wood from his bed room and she seized the same under a proper seizure list. The entire episode was video graphed and she seized the compact disc. under a proper seizure list in presence of the witnesses. She prepared a hand sketch map of the house of the accused Supriya Nath and the index. The blood sample and the seized piece of wood were sent to the TSFSL for examination and report. She sent the viscera and the wearing apparels of the deceased and of the accused Supriya Nath to TSFSL for examination and report. She interrogated the accused persons on several times. Thereafter, due to her illness, she handed over the case docket to the Officer-in-charge, Dharmanagar Women P.S. Thereafter, the investigation of the instant case was lifted from the previous Investigating Officer by

the Superintendent of Police, North Tripura, Dharmanagar and further investigation was endorsed to Kishore Kumar Das, Inspector of Police. Accordingly, he took up the investigation on 23-10-2019 and after assuming in the investigation he verified the previous investigation report prepared by Sub-Inspector, Bandana Choudhury and he also verified the statement of the witnesses already recorded by the previous Investigating Officer.

On 23-10-2019 he received the post-mortem examination report of the deceased Amita Nath and carefully went through the post-mortem report. On 24-10-2019, 25-10-2019, 27-10-2019 and 29-10-2019 he examined few witnesses and recorded their statement under section 161 of Cr.P.C. in his own handwriting as per their version. On 26-10-2019 he received forensic analysis report from TSFSL and perused the same. He produced the forensic analysis report to the Autopsy Surgeon on 27-10-2019 to reconcile the same with the post-mortem report and to give final opinion and obtained the final opinion of the Autopsy Surgeon on the same date. After completion of the investigation, he being satisfied that the offences punishable under section 376/302/201/34 of IPC has been well established against the accused Supriya Nath @Paplu and the offences punishable under section 302/201/34 of IPC has been well established against accused persons namely

Pradip Kr. Nath and Smt. Sampa Nath, he submitted charge sheet accordingly against them on 06-11-2019.

6. That upon receipt of the aforesaid charge sheet, Ld. Chief Judicial Magistrate, North Tripura, Dharmanagar took cognizance of the offence and the case was transferred to the court of Ld. Judicial Magistrate, First Class, Dharmanagar, North Tripura and thereafter copies of the incriminating documents were supplied to the accused persons in compliance of section 207 of the Code of Criminal Procedure, 1973 and as the case is exclusively triable by the court of sessions, the case record is committed to this court for trial.

7. That subsequently upon hearing both sides on the point of framing of charge, being prima-facie satisfied with regard to the commission of offences, charges under section 376/302/201/34 of the Indian Penal Code were framed against accused Supriya Nath and separately charges under section 302/201/34 of the Indian Penal Code was framed against accused persons namely Pradip Kumar Nath and Smt. Sampa Nath and the contents of the charge was read over and explained to the accused persons in Bengali to which they pleaded not guilty and claimed to be tried and hence, this trial. Charges were framed against the accused persons.

8. During the trial, prosecution examined as many as thirty witnesses which are as follows:-

PW 1- Smt. Shibani Rani Nath.
PW 2- Sri Nabajit Ghosh.
PW 3- Sri Mimo Chakraborty.
PW 4- Sri Pritam Debnath.
PW 5- Sri Bikash Nath.
PW 6- Sri Abhijit Das.
PW 7- Sri Sitangshu Sutradhar.
PW 8- Smt. Smriti Rani Debnath.
PW 9- Sri Tanmoy Debnath.
PW 10- Dr. Subhankar Nath.
PW 11- Smt. Monika Debbarma.
PW 12- Miss. Prantika Nath.
PW 13- Sri Khitesh Nath.
PW 14- Sri Manik Chakraborty.
PW 15- Smt. Ratna Deb.
PW 16- Smt. Ruma Debbarma.
PW 17- Sri Anjan Nath.
PW 18- Sri Rajib Kumar Das.
PW 19- Sri Real Kanti Paul.
PW 20- Sri Subimal Nath.
PW 21- Smt. Bidhu Rani Debbarma.
PW 22- Sri Subrajit Roy.
PW 23- Smt. Babli Nath.
PW 24- Sri Dipak Ch. Halдар.
PW 25- Sri Pantu Shil.
PW 26- Smt. Swarna Debbarma.
PW 27- Dr. Chaitanya Reang.
PW 28- Smt. Rupali Majumder.
PW 29- Sri Kishore Kumar Das.
PW 30- Smt. Bandana Choudhury.

On behalf of the prosecution, some exhibits were also exhibited.

9. After the closure of the prosecution evidence, the accused persons were examined under section 313(1)(b) of the Criminal Procedure Code, 1973 with reference to the

incriminating circumstances which were elicited from the evidence on record and the incriminating evidence were read over and explained to the accused persons in Bengali in open court to which they denied the truth of the same claiming themselves to be innocent. The accused persons also declined to adduce any defence witness, as such, evidence was closed.

10. After hearing both the parties, the learned Sessions Judge, North Tripura, Dharmanagar, vide impugned judgment of conviction and sentence dated 16.09.2021 convicted the appellants for committing offences punishable under Section 302/201/34 of IPC. The learned Sessions Judge vide impugned judgment also convicted the appellant for committing offence punishable under Section 376 of IPC. The learned Court below convicted the appellant-Supriya Nath@ Paplu to suffer Rigorous Imprisonment for life, and to pay a fine of Rs.10,000/- with default stipulation for committing offence punishable under Section 376 of IPC, the appellants were convicted to suffer further R.I. of life, and to pay a fine of Rs.10,000/- with default stipulation for committing offence punishable under Sections 302/34 of IPC and further the appellants were sentenced to suffer R.I. for 7(seven) years and to pay a fine of Rs.5,000/- with default stipulation for committing offence punishable under Section 201/34 of IPC.

11. Aggrieved thereby appellants have filed this instant appeals has been filed for setting aside the impugned judgment of Conviction and Sentence dated 16.09.2021 passed by the learned Session Judge, North Tripura, Dharmanagar, in ST(Type-1)36 of 2019.

12. Heard Mr. S. Lodh, learned counsel along with Mr. A. Bhattacharjee, learned counsel appearing for the appellants as well as Mr. S. Ghosh, Learned Addl. P.P. appearing for the State-respondents.

13. Mr. S. Lodh, learned counsel appearing for the accused-appellants herein submitted that the impugned judgment of the learned Court below is bad on account of misreading and non-reading of the evidence on record. The learned Court below failed to appreciate the contradictions of the depositions of prosecution witnesses. The learned Court below passed the impugned judgment of conviction holding that the instant case is based on circumstantial evidence. The chain of circumstance has not been completed in this instant case and the Court below came to the wrong findings. The learned Court below failed to appreciate the evidence of child witnesses i.e. P.W.2, 3 & 4. On close reading of the depositions of those witnesses, it revealed that they are making contradictory statements. The learned Court below failed to appreciate the

depositions of the doctor i.e. P.W.-27(Dr. Chaitanya Reang). On perusal of the deposition of P.W.27, it is revealed that there is no sign of murder in the instant case. The learned Court below failed to appreciate the evidence of P.W.28, wherein in her deposition she stated that in the piece of wood, the blood stain of human origin was found, but she did not state whether the blood stain is of the deceased or the accused person. P.W.10 after DNA profiling observed that no implication was observed from the swab acquired from the wooden piece. As per the prosecution witnesses, it was revealed that after leaving the dead body on the playground of BBI School, accused Supriya Nath took the photograph of the dead body and another version came that said appellant took the photograph of the children when the mobile phones were seized and sent of SFSL, nothing was found and the same proved that PWs-2, 3 & 4 are telling lie. Stating thus, learned counsel urged to allow this appeal and set aside the impugned judgment and order of conviction of the Court below.

14. Mr. S. Ghosh, learned Addl. P.P. on the strength of the complaint of P.Ws. -1, 2, 3, 4, 20 & 21, on the ground of special knowledge, on the evidence of forensic analysis report which says that the blood stains were found on the genital parts of the deceased women and on the evidence of P.Ws.- 2, 3 & 4

he places his argument to say that Section 201 of IPC and Section 376 of IPC attracts. Relying on the extra-judicial confession made he submits that the rape has taken place and also Section 302 also attracts since there was serious bleeding head injuries. On the strength of the post-mortem report, coupled with the deposition of PWs. 2, 3 & 4 he pressed to dismiss the appeal and confirm the order of the Court below.

15. Heard learned counsel appearing for both parties and perused the evidence on record.

16. It is revealed from the evidence of P.W.-1 (Smt. Shibani Rani Nath) and P.W.- 5 (Sri Bikash Nath) that on 21-08-2019 at about 07.00 am in the morning Prantika Nath (P.W. 12), the daughter of Amita Nath (*now deceased*), enquired about her mother to P.W.-1 (Smt. Shibani Rani Nath) over the telephone and asked her whether her mother i.e. Amita Nath (now deceased) came to their house or not and also stated that her mother could not be traced. It is further revealed from the evidence of P.W.-1 (Smt. Shibani Rani Nath) and P.W.-5 (Sri Bikash Nath) that she further asked the said Prantika Nath (P.W.-12) to find out her mother. After some time Prantika Nath (P.W.- 12) informed her that Amita Nath (now deceased) could not be traced. It further reveals from the evidence of P.W. 1 (Smt. Shibani Rani Nath) that while she went in front of the

Sports Office she also found the dead body of her sister, Amita Nath (now deceased) lying there. It further reveals from the evidence of P.W.- 1 (Smt. Shibani Rani Nath) and P.W.- 5 (Sri Bikash Nath) that subsequently P.W.- 1 lodged a complaint with the police and the complaint was written and prepared by her husband, P.W.- 5 (Sri Bikash Nath). When P.W.- 1 went to the spot where the dead body of the deceased was found, she heard some people and the children of B.B.I school to gossip that the body of her sister was left there by a strong built boy of black complexion with beard face having tattoos on his right hand. She also came to know from the children and the people gathered there that while leaving the dead body accused Supriya Nath took photograph of the dead body of her sister on his mobile. It is further revealed from the evidence of PW 1 that accused Supriya Nath was known to them as he was having a grocery shop near B.B.I school and they used to purchase chocolate etc. from his grocery shop. It is revealed from the evidence of PW 1, PW 5, and PW 13 that accused Sampa Nath and another found an empty bottle of phenol, some kerosene oil in another bottle, and a plastic mug lying in the courtyard of the house of the deceased. But Prantika Nath (PW 12) stated to the accused Sampa Nath that the plastic mug did not belong to them. It is revealed from the evidence of PW 1, PW, and PW 30

that besides them few others were also present at the time of the inquest and they could find several injuries over the dead body of the deceased, especially on her head and eyes. It further reveals from the evidence of PW 1, PW 5, PW 27 (Dr.Chaitanya Reang, autopsy surgeon), and PW 30 (Smt. Bandana Choudhury, the investigating officer) that the witness and others could notice blood on the genital organ of Amita Nath (now deceased). Police recovered a blood-stained piece of wood from the living room of accused Supriya Nath at his instance. It is revealed from the evidence of PW 3 (Sri Mimo Chakraborty) and PW 4 (Sri Pritam Debnath) that after leaving the body of the deceased on the playground accused Supriya Nath accompanied by his father were taking video of the witness and others while they were playing football in the school playground and thereafter both of them ran away from the spot. It further reveals from the evidence of PW 5 that as they failed to trace Amita Nath (now deceased) he along with the accused Sampa Nath went to their house and at the material time accused Pradip Nath, elder brother-in-law of Amita Nath was taking tea in his living room and accused-Supriya Nath was roaming outside the dwelling hut. It further reveals from the evidence of PW 5 that he talked with accused Pradip Nath and consulted with him as to how Amita Nath (now deceased) could be traced and

then accused Supriya Nath also entered into the living room and started to go to the hospital to find out whether his aunt, Amita Nath (now deceased) went to the hospital as an empty bottle of phenol and a mug were found lying in their courtyard. It further reveals from the evidence of PW 5 that he went to Dharmanagar hospital and while he just taking entry into the Emergency ward of the hospital he received a mobile call from the accused-Pradip Nath to return back and met with the accused-Pradip Nath in his grocery shop. It further reveals from the evidence of PW 5 that accused Pradip Nath told him to go in front of the Sports Office to see the dead body of his sister-in-law and then accused Supriya Nath also came there and told him to go in front of the Sports Office and to see the dead body of his sister-in-law who might have been raped and murdered by someone else. It is also revealed from the evidence of PW 5 that he went in front of the Sports Office and found the body of his sister-in-law lying naked in front of the Sports Office and he brought a piece of cloth and covered the body of his sister-in-law. On 22-08-2019 Sub-Inspector, Bandana Choudhury (PW 30) seized two nos of mobile phones i.e. one blue Samsung smart phone and a blue Vivo smart phone from possession of accused Supriya Nath. It further reveals from the evidence of PW 6 (Sri Abhijit Das), PW 14 (Sri Manik Chakraborty), PW 16 (Smt. Ruma Debbarma), PW

21 (Smt. Bidhu Rani Debbarma), PW 22 (Sri Subrajit Roy) and PW 25 (Sri Pantu Shil) that on 21-08- 2019 in the early morning while Amita Nath (now deceased) was going to open the gate of her house accused Supriya Nath went there and proposed her to have sexual intercourse with him. It further reveals from the evidence of PW 6 (Sri Abhijit Das), PW 14 (Sri Manik Chakraborty), PW 16 (Smt. Ruma Debbarma), PW 21 (Smt. Bidhu Rani Debbarma), PW 22 (Sri Subrajit Roy) and PW 25 (Sri Pantu Shil) that Amita Nath (now deceased) being perplexed on such ugly proposal of the accused strike out a slap on his face. It further reveals from the evidence of PW 6 (Sri Abhijit Das), PW 14 (Sri Manik Chakraborty), PW 16 (Smt. Ruma Debbarma), PW 21 (Smt. Bidhu Rani Debbarma), PW 22 (Sri Subrajit Roy) and PW 25 (Sri Pantu Shil) that there was a clutche between accused Supriya Nath and Amita Nath (now deceased) and accused Supriya Nath caught hold of her and gagged her mouth and strike out a blow on her forehead and thereby Amita Nath (now deceased) became senseless. It further reveals from the evidence of PW 6 (Sri Abhijit Das), PW 14 (Sri Manik Chakraborty), PW 16 (Smt. Ruma Debbarma), PW 21 (Smt. Bidhu Rani Debbarma), PW 22 (Sri Subrajit Roy) and PW 25 (Sri Pantu Shil) that accused Supriya Nath forcibly laying her on the ground and tried to cohabit with her, but failed. It further

reveals from the evidence of PW 6 (Sri Abhijit Das), PW 14 (Sri Manik Chakraborty), PW 16 (Smt. Ruma Debbarma), PW 21 (Smt. Bidhu Rani Debbarma), PW 22 (Sri Subrajit Roy) and PW 25 (Sri Pantu Shil) that thereafter accused Supriya Nath removed Amita Nath (now deceased) in injured condition to his house and laying her in the veranda he again tried to cohabit with her, but again he failed. It further reveals from the evidence of PW 6 (Sri Abhijit Das), PW 16 (Smt. Ruma Debbarma), PW 21 (Smt. Bidhu Rani Debbarma), PW 22 (Sri Subrajit Roy) and PW 25 (Sri Pantu Shil) that thereafter accused Supriya Nath started fingering in her genital organ and in the meantime accused Pradip Nath and accused Smt. Sampa Nath came out of their dwelling hut and they saw accused Supriya Nath to do the nuisance with Amita Nath (now deceased). It further reveals from the evidence of PW 6 (Sri Abhijit Das), PW 14 (Sri Manik Chakraborty), PW 16 (Smt. Ruma Debbarma), PW 21 (Smt. Bidhu Rani Debbarma) and PW 25 (Sri Pantu Shil) that accused Sampa Nath brought some phenol and kerosene oil in a plastic mug and accused Supriya Nath forcibly administered the said mixture of phenol and kerosene oil to Amita Nath (now deceased). It further reveals from the evidence of PW 6 (Sri Abhijit Das), PW 16 (Smt. Ruma Debbarma) and PW 25 (Sri Pantu Shil) that accused Sampa Nath kept the empty bottles of

phenol and kerosene oil and the plastic mug in the courtyard of Amita Nath (now deceased). The evidence of Prantika Nath, P.W.-12 revealed that when she went to search his mother, in the house of the accused she found his elder uncle i.e. the accused Pradip Nath, Sampa Nath and Supriya Nath in the house at the material time. It reveals from the evidence of PW 18 (Sri Rajib Kumar Das), PW 19 (Sri Real Kanti Paul) and PW 30 (Smt. Bandana Choudhury) that the Investigating Officer, Sub-Inspector, Bandana Chowdhury (PW 30) seized, one red plastic mug, one empty plastic bottle of phenyl and another black glass made empty bottle of kerosene oil, under a proper seizure list. It further reveals from the evidence of PW 20 (Sri Subimal Nath) that on 21-08-2019 about 06.00 to 6.30 A.M. while he was going to his house at Laxminagar from Algapur and reached in the back side of B.B.I. School, he found accused Supriya Nath along with his parents (*accused Pradip Nath and Sampa Nath*) shifting a woman lifting her on their lap from their house but he did not stop to inquire anything to them. It further reveals from the evidence of PW 20 (Sri Subimal Nath) that subsequently, he came to know that a dead body of a woman was found lying in front of the Sports Complex of B.B.I. School. It is revealed from the evidence of PW 24 (Sri Dipak Ch. Haldar) that after examination he opined that nothing adverse could be suggested

that the accused-Supriya Nath is not able to have sexual intercourse. It reveals from the evidence of PW 27 (Dr. Chaitanya Reang) that during post-mortem multiple abrasions of skin were found on the left leg, on left hand, left thigh, right upper and lower eye lids besides contusion i.e. bruises found on right eye ball with swelling which was ante-mortem injury and it was a homicidal death and mild congestion over the surface of the brain matter was found. It reveals from the evidence of PW 27 (Dr. Chaitanya Reang) that during post-mortem rigor mortis developed all over the body and not yet passed off. It is revealed from the evidence of PW 27 (Dr. Chaitanya Reang) that post-mortem stain found on the back side of the body. It is revealed from the evidence of PW 27 (Dr. Chaitanya Reang) that signs of physical violence was found. It is revealed from the evidence of PW 27 (Dr. Chaitanya Reang) that sign of asphyxia found on physical examination of the body. It is revealed from the evidence of PW 27 (Dr. Chaitanya Reang) that the cause of death was due to asphyxia which was homicidal in nature. It was revealed from the evidence of PW 27 (Dr. Chaitanya Reang) that ante-mortem injuries indicates physical violence before death. It reveals from the evidence of PW 27 (Dr. Chaitanya Reang) that post-mortem injury indicate friction of the parts of injury against rust surface. It reveals from the

evidence of PW 27 (Dr. Chaitanya Reang) that blood stain on pubic hair along with signs of physical violence. It reveals from the evidence of PW 27 (Dr. Chaitanya Reang) that he opined that sexual intercourse cannot be excluded in absence of genital injury. It reveals from the evidence of PW 27 (Dr. Chaitanya Reang) that mild petechial hemorrhage was found in heart of the deceased and petechial hemorrhage with mild edema was found in right lung and post-mortem time since death was 12 to 18 hours. It reveals from the evidence of PW 27 (Dr. Chaitanya Reang) that during autopsy he collected stomach sample, liver sample, blood sample from the injuries, blood sample from body, vaginal swab and handed over the same to the police. It reveals from the evidence of PW 27 (Dr. Chaitanya Reang) that forensic report was received on 27-10-2019 and report shows that seminal stain/ spermatozoa not detected in the exhibits examined. It reveals from the evidence of PW 27 (Dr. Chaitanya Reang) that he finally opined that the cause of death was due to asphyxia which was homicidal in nature. It reveals from the evidence of PW 27 (Dr. Chaitanya Reang) that though seminal stain/ spermatozoa is not detected in the report but he further opined that sexual intercourse cannot be excluded in absence of genital injury and seminal stain. It reveals from the evidence of PW 27 (Dr. Chaitanya Reang) that injury report was enclosed

with the post-mortem report which contain multiple abrasion of skin found on left leg on anterior aspect about 3 inches below the left knee joint which is ante-mortem injury. It reveals from the evidence of PW 27 (Dr. Chaitanya Reang) that injury report was enclosed with the post-mortem report which contain multiple abrasion of skin found on left hand on dorsal aspect on variable sizes which is ante-mortem injury. It is revealed from the evidence of PW 27 (Dr. Chaitanya Reang) that injury report was enclosed with the post-mortem report which contain two nos. of abrasions found on right thigh on anterior aspect measuring 1 cm X 1 cm and ½ cm X ½ cm in diameter. It is revealed from the evidence of PW 27 (Dr.Chaitanya Reang) that injury report was enclosed with the post-mortem reports which contain few small abrasions found on right thigh on posterior aspect just above the right knee joint which is ante-mortem injury. It is revealed from the evidence of PW 27 (Dr.Chaitanya Reang) that injury report was enclosed with the post-mortem report which contain multiple small abrasion found on right upper and lower eye lids with blood clot which is antemortem injury. It reveals from the evidence of PW 27 (Dr. Chaitanya Reang) that injury report was enclosed with the post-mortem report which contain contusion of right eye ball with swelling has been found which is ante-mortem injury. It is revealed from the

evidence of PW 27 (Dr. Chaitanya Reang) that injury report was enclosed with the post-mortem report which contain during post-mortem peeling off of superficial layer of skin found on inner aspect i.e. medial aspect of right thigh measuring 4 cm X 3 cm in diameter 5 cm below the upper end of right thigh which is post-mortem injury and peeling off of skin found on left gluteal region (superficial layer of skin) 10 cm X 7 cm in diameter which is post-mortem injury. It is revealed from the evidence of PW 27 (Dr. Chaitanya Reang) and PW 30 (Smt. Bandana Choudhury) that PW 30 (Smt. Bandana Choudhury) seized viscera, blood sample, vaginal swab and wearing apparels i.e. bra, petty coat and nighty of the deceased on 21-08-2019 after post-mortem as produced by him. It is also revealed from the evidence of PW 27 (Dr. Chaitanya Reang) and PW 30 (Smt. Bandana Choudhury) that the injuries as mentioned in the post-mortem examination report (Exhibit-18) are matched with the inquest report (Exhibit-2/2). It reveals from the evidence of PW 28 (Smt. Rupali Majumder) that on 30-08-2019 she being Scientific Officer-cum-Assistant Chemical Examiner, SFSL examined the exhibits and opined that blood stain of human origin was detected on the seized piece of wood. It is revealed from the evidence of PW 29 (Sri Kishore Kumar Das) that on 23-10-2019 he received the post-mortem examination report of the deceased Amita Nath

and carefully gone through the post-mortem report. It reveals from the evidence of PW 29 (Sri Kishore Kumar Das) that on 26-10-2019 he received forensic analysis report from TSFSL and perused the same and produced the forensic analysis report to the Autopsy Surgeon on 27-10-2019 to reconcile the same with the post-mortem report and to give final opinion and obtained the final opinion of the Autopsy Surgeon on the same date. The Autopsy Surgeon (PW 27) after reconciliation of the post-mortem report with the forensic report finally opined that the cause of death was due to "Asphyxia" which was homicidal in nature and also opined that though seminal stain/ spermatozoa was not detected in the exhibits according to the forensic report but he opined that "sexual intercourse cannot be excluded in absence of genital injury and seminal stain."

CONCLUSION

17. This Case merely runs on the strength of the extra-judicial confession and according to the settled principle of law, extra-judicial confession is a weak piece of evidence. There is no eye witness to the said incident and with regard to circumstantial evidence, there is no chain. The evidence of PWs.-2, 3 & 4 were given by the School children playing on the playground, and though they have stated in one voice that they saw the accused-person herein i.e., Supriya Nath @ Paplu

brought the dead body and had placed the same in the School ground and also took pictures of the dead body in his mobile in the broad daylight between 8.30 A.M. to 9.30 A.M., but the same is hard to believe as there is much contradiction in their statement.

18. Further P.Ws. 21, the police constable who deposed before the Court which also happens to be an extra-judicial confession, that at 4.00 A.M. the accused-person Sri Supriya Nath @ Paplu was waiting for the victim lady to wake up and to open the gate at 5.00 A.M. and there he had an altercation with the victim women in order to have intercourse and as a result, he manhandled her and thereafter committed rape on her which was witnessed by the mother and father of the accused person is hard to believe.

19. The chain of the event is that Prantika Nath i.e. P.W.-12, the daughter of the deceased at 7.00 A.M came to know that her mother is missing and she inquire the same to P.W.1. P.W.-1 then asked her to search for her mother. As such after some time, Prantika again informed P.W.1 that she failed to trace her mother. Prantika Nath then stated that she went to the dwelling hut of her uncle Pradip i.e. one of the accused herein wherein he found the accused-Pradip Kumar Nath and also the accused Supriya Nath@ Paplu who was surfing on his

mobile phone lying over their cot in their dwelling hut. After half an hour, P.W.1 went to the house of Prantika, thereafter she came to know that the dead body of the deceased was found lying in front of the sports office. So, now the question arises how in this small span of time, in broad daylight in a city place, the accused managed to commit the said crime and no one noticed it. Further, the evidence on P.W.12 corroborated by P.W.1 reveals that the accused persons were all well relaxed and were found in the dwelling hut in the early hours of the morning. So the chain of circumstance here is missing with regard to the time span of the murder and depositing of the body and taking photograph of the same by the accused person Sri Supriya Nath.

20. The accused Shri Pradip Kumar Nath and the Smti Sampa Nath i.e the father and mother of the accused- Supriya Nath @ Paplu filed CrI. A(J) No.24 of 2021. But there are no specific allegations against them have been proved, this Court finds that no case has been made out against him, and accordingly, said Shri Pradip Kumar Nath and Smt. Sampa Nath are acquitted and the sentence against them as passed by the Court below is set aside.

21. Further in the medical and forensic evidence, no sign of spermatozoa was found in the body of the deceased lady the examining doctor only opined that sexual intercourse could

not be ruled which is not specific in nature. Further, though the mobile phone of the accused was seized no photograph or video was found relating to the crime though it was stated by P.Ws- 2,3 & 4 that the accused-Supriya Nath took picture of the body of the deceased when he left the same in the playground.

22. So in far as the allegation against accused Supriya Nath under Section 376 of IPC is concerned is not proved as the same is not made out in the strength of the medical and forensic evidence. In so far as the allegation under Section 302 of IPC against the accused-Supriya Nath is concerned, as per the extra-judicial confession made in the police station as per the P.Ws as mentioned above, the mother and father of the accused-Supriya Nath have administered kerosene mixed with phenyl on the victim deceased lady. In the post-mortem and in the forensic evidence and laboratory reports, there is no sign of any phenyl or any kerosene in the stomach of the deceased person. So the allegation under Section 302 against the accused persons is also not proven.

23. Since allegation under Sections 376 and 302 of IPC is not made out, this Court is not in a position to believe the charges under Section 201 of IPC since it appears that in the broad day light, the accused person lifting the dead body of the deceased during the school hours and leaving the body of the

deceased during the school hours in the school ground when children were playing at 8.30 A.M. to 9.30 A.M. and taking photographs is the heights of its imagination. Hence charge under Section 201 of IPC is also set aside.

24. In view of the discussion and observation made herein-above the charges leveled against the accused-Supriya Nath @ Paplu i.e. the appellant of CrI.A.(J) No.23 of 2021 is also not proved and the sentence against them as passed by the Court below is set aside.

25. With the above observation and direction, this present Criminal Jail Appeals stands allowed and the impugned judgment and order passed by the learned Sessions Judge, North Tripura, Dharmanagar, in ST(Type-1) of 36 of 2019 is set aside.

26. Accordingly, stay if any is vacated, pending application if any also stands closed.

JUDGE

CHIEF JUSTICE (ACTING)