

**HIGH COURT OF TRIPURA**  
**A\_G\_A\_R\_T\_A\_L\_A**  
**Crl.A(J). No. 32 of 2022**

1. Sri Abhi Ranjan Tripura, son of late Haladhar Tripura @ Faladhar of Hrishyamukh, Malumbari, P.S. Belonia, District: South Tripura.

*.....Appellant*

**-VERSUS-**

1. The State of Tripura.

*..... Respondent.*

**B\_E\_F\_O\_R\_E**  
**HON'BLE THE CHIEF JUSTICE [ACTING]**

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|----------------------------------------------------|---|----------------------------|
| For Appellant(s)                                   | : | Mr. A. Acharjee, Advocate. |
| For Respondent(s)                                  | : | Mr. S. Debnath, Addl. P.P. |
| Date of hearing and delivery of judgment and order | : | <b>16.01.2023</b>          |
| Whether fit for reporting                          | : | <b>NO</b>                  |

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**JUDGMENT & ORDER [ORAL]**

Heard Mr. A. Acharjee, learned counsel appearing for the appellant. Also heard Mr. Sumit Debnath, learned Addl. Public Prosecutor, appearing for the respondent-State.

[2] This criminal appeal has been filed under Section-374 of the Code of Criminal Procedure against the impugned judgment of conviction and sentence dated 12.04.2021 passed by the learned Sessions Judge, South Tripura, Belonia in connection with Case No.ST 51 (Type-1) of 2019 whereby and whereunder, the appellant has been convicted under Section-451 of IPC and sentenced him to suffer RI for two years and to pay a fine of Rs. 5,000/- for the said offence, in default to pay a fine, the appellant shall suffer further SI for 3 months and further the appellant has been convicted under Section-354 of IPC and sentenced to suffer RI for five years and to pay a fine of Rs.10,000/- for the said offence and in default shall suffer further SI for five months. Further, the

appellant has been convicted under Section-354B of IPC and sentenced to suffer RI for seven years and to pay a fine of Rs.10,000/- for the said offence and in default suffer SI for six months. The appellant has further convicted under Section-506 of IPC and sentenced to suffer RI for one year and in default pay a fine of Rs.2,000/- with default stipulation.

[3] The case of the prosecution, in a nutshell, is that on 22.09.2019 at night at about 2330 hours while the victim with her children were sleeping at her dwelling hut, at that time the accused-appellant, namely, Abhi Ranjan Tripura entered into her dwelling hut and tried to open the wearing apparels i.e. the pachra of the victim and suddenly, the victim woke up. The appellant herein, threatened the victim if she raised hue and cry then he will kill her. The appellant disrobed the victim and outraged her modesty. The victim somehow freed herself from the clutches of the appellant and went out of the room in naked condition and concealed herself in a nearby jungle. Hearing hue and cry, the children of the victim and some other local people came at the spot and then the appellant fled away.

[4] Subsequently, the officer in charge of Belonia Women police station received the ejahar and registered Belonia Women P.S. Case No.66 of 2019 under Sections-457/376/511 of the IPC and self took up the task of investigation, the investigating officer submitted charge sheet against the appellant under Sections-457/376/511/506 of IPC. Thereafter, the charges were framed against the appellant. The contents of the charges were read over and explained to the appellant to which he pleaded not guilty and desired to stand the trial.

[5] To substantiate the charge, the prosecution has adduced as many as 10(ten) witnesses. On the closure of prosecution evidence, the appellant was examined under Section-313 of Cr. P.C. for having his response in respect of the incriminating materials those surfaced in the

evidence as adduced by the prosecution, to which he strongly denied the incriminating materials brought against him by the prosecution and claimed to be tried also declined to adduce any witness on his defense.

[6] After hearing the arguments made by both sides and on perusal of the material evidence on record, the learned Court below delivered the judgment and order conviction and sentence dated 12.04.2021 against the accused-person. For the purpose of reference, the operative portion of the impugned judgment and order of conviction may be reproduced hereinbelow:

“17. In the result, I find and hold that the charges under Sections-451/354/354-B and 506 of IPC have been proved by the prosecution against accused Sri Abhi Ranjan Tripura beyond reasonable doubt. Hence, accused Sri Abhi Ranjan Tripura is found guilty and convicted for the offence punishable under Sections-451/354/354-B and 506 of IPC. Accused is already in custody.”

[7] Being aggrieved by and dissatisfied with the judgment and order of conviction, the present appeal has been preferred by the appellant.

[8] Mr. A. Acharjee, learned counsel appearing for the appellant in support of his case has submitted that the learned Court below ought to have held that the alleged presence of the convict appellant at the alleged place of occurrence and participation of the appellant in the commission of the alleged offence is absolutely doubtful and on the basis of such evidence, the appellant could not be legally convicted for the alleged crime.

[9] The learned Court below by way of non-reading, misreading and improper appreciation of evidence on record and the facts and circumstances of the case arrived at absolutely illegal, wrong and unwarranted findings causing grave miscarriage of justice to the appellant. The appellant has been convicted on the basis of no evidence inasmuch as; the evidence on record does not constitute the alleged

offence and in no case implicated the convict appellant in the commission of alleged offence.

[10] He has further submitted that the learned Court below arbitrarily relied on the improved versions of all prosecution witnesses and on the basis of such improved versions, convicted and sentenced the appellant only on surmise and conjecture. The findings of the learned Court below are perverse, illegal, unjustified, unreasonable, arbitrary and liable to be quashed.

[11] Mr. Acharjee, learned counsel has further contended that PW-6 is the victim and PWs-1 and 7 are the child of the victim and all three stated in examination in chief that at the time of incident there was a torch light and victim any how lighted the torch and by the light of torch those witnesses identified the convict appellant. The identification by torch light is always creates serious doubt as because the incident occurred at night. But the learned Court below convicted the appellant under Section-354 and 354B of IPC which is very much illegal and the Court below misconceived and misunderstood the legal position of law and passed a wrong judgment.

[12] PWs2 and 3 also did not see the accused on the spot but they have seen the victim in naked condition and PW3 came near to the victim though they came out after hearing cries of the victim. But the learned Court below failed to appreciate the same and the judgment and findings of the Court below is not tenable in the eye of law.

[13] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt. Suspensions, however, grave in nature, should not amount to prove. The

discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, we find it difficult to arrive at a finding to draw the hypothesis of guilt against the accused-appellant.

[14] In view of above analysis and having regard to the evidences on record, it is crystal clear that there is no doubt that the question of sentence is a matter of discretion and such discretion has to be exercised along with accepted judicial lines. To impose adequate punishment according to law is not only the duty of the Court, but it is social obligation clearly enjoined upon it keeping in mind not only the crime but also the criminal. There is also nothing in the record to suggest any previous crime and also there is nothing that the accused-appellant will be a danger to the society.

[15] In the backdrop of above analysis, this Court is of the view that the prosecution has failed to establish their projected case and consequently the instant appeal is allowed to the extent as he has already undergone 3 years 3 months of conviction and since the minimum punishment is 3 years, the same stands confirmed. Accordingly, the order of conviction and sentence dated 12.04.2021 passed by the learned Sessions Judge, South Tripura, Belonia in connection with ST 51 (Type-1) of 2019, is set aside. The appellant shall be released forthwith, if not wanted in connection with any other case.

[16] With the above observations and direction, the instant appeal stands allowed and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

**CHIEF JUSTICE (ACTING)**

*A.Ghash*