

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A(J) 41 of 2023

Sri Rupan Das
S/o Late Sahadeb Das
R/o Bampur, PS: Birganj, Gomati Tripura.

-----Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant (s)	:	Ms. R. Purkayastha, Advocate.
For Respondent(s)	:	Mr. S. Ghosh, Addl. PP.
Date of hearing and date of judgment and order	:	23.07.2024.
Whether fit for reporting	:	No

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order (Oral)

T.Amarnath Goud, J

Heard Ms. R. Purkayastha, learned counsel appearing for the appellant also heard Mr. S. Ghosh, learned Addl. PP appearing for the state-respondent.

[2] This is an appeal under Section 374 of Cr. P.C against the impugned Judgment of conviction and sentence dated 28.06.2023 and 30.06.2023 respectively passed by the Ld. Additional Sessions Judge, Gomati Judicial District, Udaipur in case No. S.T. 36 of 2021 whereby and where under the appellant has been convicted under Sections 376(1)/417 of IPC and has been sentenced to suffer R.I for a period of 10 years with a fine of Rs.25000/- U/S 376(1) of IPC and in default of payment of fine to suffer R.I for 6 months and R.I. for a period of 6 months with fine of Rs.5000/- under Section 417 of IPC and in default of payment of fine to suffer rigorous imprisonment for three months; both the sentences shall run concurrently.

[3] The case of the prosecution is that the prosecutrix lodged a written complaint to the learned Sub- Divisional Judicial Magistrate, Amarpur, then South Tripura now Gomati after alleging inter alia to the facts that a love affair had developed between the prosecutrix and accused Rupan Das since the year 2004. Several times in the evening the accused used to visit the house of prosecutrix in absence of other family members and during this period the accused tried to develop sexual relationship with the prosecutrix on the promise of marriage. On such promise the prosecutrix gave consent for physical relationship with accused and in the meantime she became pregnant. Then prosecutrix informed the matter of pregnancy to the accused to which accused advised her to go for abortion. On 14.06.2016 while the prosecutrix was having 2 & 1/2 months pregnancy, she urged the accused for marriage but accused blatantly refused her to marry. Then the matter was informed to the local Panchayet for settlement but the prosecutrix was advised to take the shelter of law.

[4] The learned Sub-Divisional Judicial Magistrate, Amarpur, then South Tripura now Gomati referred the complaint to the O/C of Birganj PS for registering an FIR who in turn received the same on 24.06.2006 and registered a case vide Birganj PS case No.20 of 2006 under Sections 417/376 of IPC. Then the case was endorsed to the SI of police namely Shri Nirmal Chandra Dey for investigation.

[5] During investigation the IO visited the PO, prepared hand sketch map with separate index, examined available witnesses and recorded their statements u/Sec. 161 of Cr.P.C., collected medical examination report of the prosecutrix, arranged for recording the statement of prosecutrix u/Sec. 164(5) of Cr.P.C. After the completion of investigation the IO has laid down the charge sheet vide Birganj PS C/S No. 35 of 2006 dated 10.11.2006 under Sections 417/376 of IPC against the accused person namely Rupan Das showing him as absconder.

[6] The learned Sub-Divisional Judicial Magistrate, Amarpur, then South Tripura, now Gomati District received the charge sheet on 13.11.2006 and took cognizance of offence under Sections 417/376 of IPC on 16.11.2006. Then on 29.07.2021 the case was committed to the Court of Ld. Sessions Judge, Gomati Judicial District, Udaipur.

[7] To prove the charges prosecution has examined as many as eleven (11) witnesses. After the closure of prosecution evidences the accused person was examined under Section 313 Cr.PC to which he claimed to be innocent and also decline to adduce any DWs on his behalf.

[8] After hearing both sides, the learned Court below delivered the judgment and order of conviction and sentence in the following manner:

“Considering all relevant facts and circumstances bearing on the question of sentence, the convict namely Rupan Das is hereby sentenced to suffer (i) rigorous imprisonment for the period of ten (10) years with fine of ₹25,000/- under section 376(1) of IPC i.d. of payment of fine to suffer rigorous imprisonment for six (6) months only and (ii) rigorous imprisonment for the period of six (6) months with fine of ₹5,000/- under section 417 of IPC i.d. of payment of fine to suffer rigorous imprisonment for three (3) months only. Both the sentences shall run concurrently. The fine money after realisation may be handed over to the victim as compensation.”

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

[10] It is contended by the counsel for the appellant that the prosecutrix i.e. PW-1 in her deposition before the Ld. Trial Court has stated nothing against the appellant except for the statement that there was a love affair between them and a dispute arose for which she had lodged complaint against the appellant. Therefore, it is evidently clear that no ingredient of Sections 417/376(1) has been made out. Moreover, no DNA test of the baby had been done. Therefore, without any minimum iota of evidence, the Ld Trial Court most illegally convicted the appellant. She further prayed that the appellant is

innocent and urges before this court to allow the appeal by setting aside the impugned order.

[11] On the other side, Mr. S. Ghosh, learned Addl. PP appearing for the state-respondent has vehemently opposed such statement and contended before this court that the impugned order as passed by the learned court below is just and proper and further prayed to dismiss the appeal.

[12] On perusal of the record, it appears to this court that there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by the accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Sections 376(1) and 417 of IPC."

[13] Having stated thus, we are of the opinion that the prosecution has failed to make out his case. Hence, the appeal stands allowed setting aside the impugned Judgment of conviction and sentence dated 28.06.2023 and 30.06.2023 respectively

passed by the Ld. Additional Sessions Judge, Gomati Judicial District, Udaipur in case No. S.T. 36 of 2021.

[14] The appellant shall be released from jail henceforth, if not required in any other case.

[15] A copy of this order be marked to Superintendent, Kendriya Sansodhanagar Tripura, Bishalgarh at the earliest.

B.Palit, J

T. Amarnath Goud, J



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