

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.2 OF 2024**

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

Sri Mantaj Miah,

Aged about 35 years, son of Abdul Mannan,
Resident of Khupilong, P.O. + P.S.-Killa,
District-Gomati, Tripura.

..... Appellant(s)

Versus

The State of Tripura.

.....Respondent(s)

For the Appellant(s)	: Mr. Sankar Lodh, Advocate. Mr. K. Roy, Advocate. Mr. K. Pandey, Advocate. Mr. S. Majumder, Advocate.
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For the Respondent(s)	: Mr. Raju Datta, PP. Mr. R. Saha, Addl. P.P.
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Date of hearing and delivery of Judgment & Order	: 02.09.2025.
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Whether fit for reporting	: YES/NO.
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J U D G M E N T & O R D E R(ORAL)

T. Amarnath Goud, J

1. This present criminal appeal has been filed against the impugned Judgment of Conviction and Sentence dated 28.11.2023 and 30.11.2023 respectively, passed by the learned Additional Sessions Judge, Gomati Judicial District, Udaipur, Tripura, in Sessions Trial No. 30 of 2021, whereby the learned Additional Sessions Judge, Gomati, Udaipur, convicted the appellant for committing offences punishable under Sections 341, 366,

354-B and 376(2)(n) of the Indian Penal Code, and sentenced him to suffer Simple Imprisonment for 1 (one) month with a fine of Rs. 500/-, and in default of payment of fine, to suffer Simple Imprisonment for 7 days for commission of offence punishable under Section 341 IPC. He was further sentenced to suffer Rigorous Imprisonment for a period of 5 (five) years with a fine of Rs. 5,000/-, and in default of payment of fine to suffer Rigorous Imprisonment for 6 months, for commission of offence punishable under Section 366 IPC; and also sentenced to suffer Rigorous Imprisonment for 3 (three) years with a fine of Rs. 3,000/-, and in default of payment of fine to suffer Rigorous Imprisonment for 3 months, for commission of offence punishable under Section 354-B IPC; and further sentenced to suffer Rigorous Imprisonment for Life, which shall mean imprisonment for the remainder of his natural life, with a fine of Rs. 50,000/-, and in default of payment of fine to suffer Rigorous Imprisonment for 1(one) year, for commission of offence punishable under Section 376(2)(n) IPC. All the sentences shall run concurrently.

2. The brief facts of the case are that the prosecutrix lodged a written ejahar to the O.C. of Killa P.S., alleging *inter alia* that on 03.03.2021 at about 12:30 p.m., while she was returning home from Khupilong market, she was restrained on the way by the accused, Mantaj Miah, in a black Maruti Alto car and was forced to board the said car. Immediately thereafter, the accused rolled up the window glasses of the car. The prosecutrix cried for help but was threatened with death by the accused after showing her a knife. The accused then took her to a house and bolted the door from inside. There, the prosecutrix was undressed and forcefully raped by the accused. At that time, when she shrieked for help, the accused gagged her mouth with a pillow. Thereafter, she was forced to consume Amul milk mixed with a tablet. A few minutes later, the accused again raped her forcefully. During this time, the accused also took some photographs and videos of the prosecutrix on his mobile phone. In the evening, around 6:30

p.m., the prosecutrix was dropped near her house by the accused. After reaching home, she narrated the incident to her mother. The prosecutrix further alleged that accused Mantaj Miah continuously threatened her to indulge again in sexual activities, else he would disseminate the photographs and videos on social media. The ejahar also states that due to trauma and fear of social ostracism, there was delay in lodging the complaint. On 11.03.2021, the prosecutrix lodged the ejahar against accused Mantaj Miah.

3. The O/C of Killa P.S. received the ejahar on 11.03.2021 at about 23:57 hours and registered a case vide Killa P.S. Case No. 2021 KLA 004 under Sections 341/366/354-B/376/506 IPC. The case was endorsed to S.I. Shri Samar Das for investigation.

4. During investigation, the I.O. visited the P.O. and prepared a hand sketch map with a separate index. On 12.03.2021, the I.O. arrested the accused, arranged for his medical test including potency test, and forwarded him before the Court. The I.O. examined available witnesses, including the prosecutrix, and recorded their statements under Section 161 Cr.P.C., collected CDR and SDR of two mobile numbers, seized one mobile phone and sent it to SFSL, prayed before the Court for recording the statement of the prosecutrix under Section 164 Cr.P.C., and also arranged her medical examination. After completion of investigation, the I.O. laid down the charge sheet vide Killa P.S. C/S No. 02 of 2021 dated 20.04.2021 under Sections 341/366/354-B/376(2)(n)/506 IPC against Shri Mantaj Miah, S/o- Sri Abdul Mannan of Khupilong, P.S.-Killa, Gomati District, to face trial.

5. The learned JMFC, Udaipur, Gomati District, received the charge sheet on 30.04.2021, and on 06.05.2021, the learned Chief Judicial Magistrate, Gomati Judicial District, Udaipur, took cognizance of the offences under Sections 341/366/354-B/376(2)(n)/506 IPC and transferred the case record to the Court of JMFC, Court No.2, Udaipur, Gomati District. On 15.05.2021, the case was committed to the Court of the

Sessions Judge, Gomati District, Udaipur, and subsequently transferred to trial Court vide order dated 18.05.2021 for trial according to law.

6. On 06.09.2021, charges for commission of offences punishable under Sections 341/366/354-B/376(2)(n)/506 IPC and under Section 66E of the IT Act, 2000, were framed by this Court against the accused Shri Mantaj Miah, to which he pleaded not guilty.

7. To prove the charges, the prosecution examined as many as 15 witnesses, including the I.O. of this case. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., wherein he claimed innocence and expressed an inclination to adduce defence witnesses. However, no defence witness was produced subsequently. After hearing both sides, the learned Court below passed the impugned Judgment of conviction and sentence dated 28.11.2023 and 30.11.2023 as stated here-in-above.

8. Being aggrieved by the impugned Judgment of Conviction and Sentence dated 28.11.2023 and 30.11.2023, the appellant has preferred the present criminal appeal.

9. Heard Mr. Sankar Lodh, learned counsel for the appellant, and Mr. R. Saha, learned Addl. P.P. for the State-respondent.

10. Mr. Lodh, learned counsel appearing for the appellant, submitted that the learned Court below failed to appreciate that the prosecution had failed to prove the charges. He further submitted that the alleged victim, in her written complaint as well as during deposition, stated that her photographs were taken by the appellant on his mobile phone. Police seized the said mobile phone and sent it to SFSL, but no such photographs were found therein, which shows that the entire story of the prosecution is untrue. Learned counsel also stated that the Court below failed to appreciate that the alleged victim was kidnapped from Khupilong market, which is a thickly populated area, and if she had cried for help, local people should have

come to her aid, but, no such evidence is found on record. Stating thus, learned counsel urged this Court to allow the appeal.

11. On the other hand, Mr. R. Saha, learned Addl. P.P., appearing for the State-respondent, submitted that the Judgment of Conviction and Sentence passed by the learned Court below is just and proper and requires no interference.

12. Heard and perused the evidence on record.

13. Having considered the rival submissions and the evidence, this Court is of the view that the conviction of the appellant under Section 376(2)(n) IPC cannot be sustained. It is well settled that the testimony of the prosecutrix, if cogent and trustworthy, can by itself found form the ground of conviction. However, in the present case, material circumstances relied upon by the prosecution to support the version of repeated sexual assault do not withstand scrutiny. The prosecutrix's specific assertion that the appellant had taken her photographs and videos during the incident remains uncorroborated. The mobile handset seized from the appellant was sent to SFSL, and no such photographs or videos were found. This discrepancy goes to the root of the allegation concerning the nature and manner of the alleged sexual acts.

14. There was also a delay in lodging the FIR (incident took place on 03.03.2021 and ejahar on 11.03.2021), which the prosecutrix attributes to trauma and social ostracism. While such explanation cannot by itself discredit her, the delay, coupled with the absence of corroborative circumstances, renders it unsafe, on the totality of the evidence, to hold that the charge of repeated rape stands proved beyond reasonable doubt. Accordingly, the conviction and sentence under Section 376(2)(n) of IPC is set aside.

15. That said, the materials on record do establish the ingredients of Section 366 of IPC. The consistent core of the prosecution case is that the appellant intercepted the prosecutrix in a car, compelled her to

accompany him by threats (including with a knife), took her to a house, bolted the door from inside, and kept her there until evening which shows that she was taken and wrongfully confined by force and intimidation with the intent that she would be compelled to illicit intercourse. The absence of recovery of the alleged photographs or the failure to prove repeated sexual assault does not nullify the proven acts of forcible taking and detention with such intent. Accordingly, the conviction of the appellant under Section 366 of IPC is, therefore, affirmed.

16. On sentence, Section 366 of IPC prescribes punishment up to ten years but does not mandate a minimum term. The appellant has already undergone substantial custody, *inter alia* from 12.03.2021 to 19.07.2021, from 23.08.2023 to 30.08.2023, and thereafter, cumulatively for about one and a half years. In the facts and circumstances of the case, the substantive sentence under Section 366 of IPC is reduced to the period already undergone. The sentence is accordingly modified to the extent indicated above. The appellant shall be released forthwith, if not wanted in any other case.

17. The present appeal is, therefore, allowed *in part* in the manner indicated above. As a sequel, any stay stands vacated. Pending application(s), if any, also stand(s) closed.

B. PALIT, J

DR. T. AMARNATH GOUD, J

Suhanjit

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GHOSH

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