

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.26 OF 2024**

Sri Tapan Dey,
Son, of Lt. Nanigopal Dey,
Resident of Barabhaiya, P.S.- R.K. Pur,
Udaipur, District- Gomati Tripura.

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

Versus

The State of Tripura,
To be represented by the learned Public Prosector,
High Court of Tripura.

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

For the Appellant(s)	: Mr. P. Roy Barman, Sr. Advocate. Mr. S. Bhattacharjee, Advocate. Mr. K. Nath, Advocate. Mr. D. Paul, Advocate. Ms. A. Debbarma, Advocate.
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For the Respondent(s)	: Mr. R. Datta, P.P. Mr. R. Saha, Addl. P.P.
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Date of hearing and delivery of Judgment & Order	: 25/11/2025.
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Whether fit for reporting	: NO.
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**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
J U D G M E N T & O R D E R (O R A L)**

T. AMARNATH GOUD(J)

1. This present appeal has been filed under Section 374(2) of Cr.P.C. against the judgment dated 21.02.2024, passed by the learned Additional Sessions Judge, Gomati Judicial District, Udaipur in Case No. Sessions Trial 10 of 2020, whereby and whereunder the learned Additional

Sessions Judge convicted the appellant for commission of an offence punishable under Section 376(1) of IPC and sentenced him to suffer R.I. for 10 years and also to pay a fine of Rs. 25,000/- (Rupees Twenty-Five Thousand) only, in default, to undergo further R.I. for 6 months; and under Section 417 of IPC and sentenced him to suffer R.I. for 6 months and also to pay a fine of Rs. 5,000/- (Rupees Five Thousand) only, in default, to undergo further R.I. for 3 months.

2. The brief facts of this case are that the prosecution case was instituted based on the written complaint filed by the victim, PW-1, on 16.06.2001 before the Officer-in-Charge, R.K. Pur P.S., Udaipur, wherein the informant alleged *inter alia* that for the last one year from the date of filing the ejahar i.e. on 16.06.2001, she had developed love affairs with accused Tapan Dey, S/o Lt. Nanigopal Dey of Village Barabhaiya, P.S. R.K. Pur, who had a photography studio at Garjanmura market. When the parents of the victim used to be out of their house for collecting wood, the accused used to visit the house of the victim and develop physical relations with her on the promise of marriage. As a result, she became pregnant and then she asked the accused for marriage, but accused Tapan Dey refused to marry her. Then the matter was brought to the notice of the parents of the victim as well as to the village Pradhan / Members, but it was not settled.

3. Based on the aforesaid written complaint, the O.C., R.K. Pur P.S. lodged an FIR vide R.K. Pur P.S. Case No. 93/2001 dated 16.06.2001

under Sections 376/420 of IPC. Thereafter investigation was started by the I.O. and after investigation, the I.O. submitted a charge sheet under Sections 376/420 of IPC. The learned Chief Judicial Magistrate, then South Tripura District, Udaipur (now Gomati District), received the charge sheet on 01.10.2001 and took cognizance of the offence under Sections 376/420 IPC on 04.10.2001. Then the case was adjourned *sine die* vide order dated 23.11.2001 after issuing PWA against accused Sri Tapan Dey. On 06.11.2020, the accused Tapan Dey surrendered before the Court of the learned JMFC, Court No. 2, Udaipur, Gomati, and the case was committed to the Court of the learned Sessions Judge, Gomati District, Udaipur on that date itself. Subsequently, the case was transferred to the Court of the learned Additional Sessions Judge, Gomati Judicial District, Udaipur for trial according to law.

4. After receiving the case record, the learned Sessions Judge, Gomati Judicial District, Udaipur, framed charges on 09.12.2020 against the accused person, punishable under Sections 376(1)/420 of IPC. The accused person pleaded not guilty to the charges. Based on the said charge, the accused person faced trial, and during trial, the prosecution adduced as many as 9 witnesses. Thereafter, the examination of the accused was done under Section 313 of Cr.P.C.

5. Thereafter, the learned Additional Sessions Judge, Gomati Judicial District, Udaipur, vide judgment dated 21.02.2024 passed in Case No. Sessions Trial 10 of 2020, convicted the appellant as stated hereinabove.

6. Being aggrieved and dissatisfied with the aforesaid judgment dated 21.02.2024 passed by the learned Additional Sessions Judge, Gomati Judicial District, Udaipur in Case No. Sessions Trial 10 of 2020, the appellant prefers this appeal to set aside and quash the impugned judgment dated 21.02.2024 passed by the learned Additional Sessions Judge, Gomati District, Udaipur in Case No. Sessions Trial No. 10 of 2020.

7. Heard Mr. K. Nath, learned counsel appearing for the appellant, as well as Mr. R. Saha, learned Addl. P.P. appearing for the State-respondent.

8. Learned counsel appearing for the appellant submits that the prosecution has failed to establish the ingredients of Section 376(1) of IPC beyond reasonable doubt, and the conviction is based on inconsistent, unreliable, and uncorroborated testimony of the prosecutrix. The prosecution failed to support the allegation of rape, and there is no proof of forcible sexual intercourse. The findings of the Trial Court are based on surmises and conjectures, and therefore, the conviction deserves to be set aside or, in the alternative, the sentence deserves to be substantially reduced.

9. On the other hand, learned Addl. P.P. appearing for the respondent submits that the sentence passed by the Court below is just and proper and needs no further interference, and as such, the appeal needs to be dismissed.

10. Heard and perused the evidence on record.

11. Having considered the submissions advanced by the learned counsel for the parties and on re-appreciation of the evidence on record, this Court is of the view that the finding of guilt recorded by the learned Trial Court under Section 376(1) of IPC does not warrant interference in appeal. The testimony of the prosecutrix regarding the physical relationship leading to pregnancy and subsequent childbirth has remained unshaken in material particulars. Therefore, the conviction of the appellant under Sections 376(1) and 417 of IPC is hereby affirmed.

12. However, insofar as the question of sentence is concerned, this Court is of the considered opinion that the sentence imposed by the learned Trial Court requires interference under Section 386(b)(iii) of Cr.P.C. While the offence relates to the year 2000–2001, the appellant surrendered only in 2020 after a long passage of nearly 19 years, during which period the prosecutrix has settled in her life. The occurrence was not accompanied by any allegation of violence apart from the claim of promise of marriage. The circumstances appearing from the record indicate the presence of an element of consensual intimacy between two young persons, though ultimately resulting in pregnancy. This Court also takes note of the fact that the appellant has already undergone a substantial period of incarceration after his conviction by the Trial Court and during the pendency of the present appeal.

13. Considering the age of the incident, the consensual nature of the relationship as emerging from the record, the absence of any allegation of physical force, the fact of childbirth having occurred more than two decades ago, and the period of incarceration already suffered, this Court is persuaded to take a lenient view on the sentence.

14. Accordingly, while maintaining the conviction of the appellant under Section 376(1) of IPC, the sentence of rigorous imprisonment for 10 (ten) years imposed by the learned Trial Court is hereby reduced to the period already undergone. The conviction and sentence under Section 417 of IPC remain unaltered, and both sentences shall continue to run concurrently as directed by the Trial Court.

15. With the above modification in the order of sentence, the appeal stands partly allowed. The appellant shall be released upon completion of all statutory formalities and verification procedures by the Jail Authorities, subject to the condition that he is not required in any other case.

16. As a sequel, stay if any stands vacated. Pending application(s) if any also stands closed.

S. DATTA PURKAYASTHA, J

T. AMARNATH GOUD, J

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