

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl. A(J) No. 30 of 2024

Sri Nimai Das, (35 years), son of Sri Jagai Das, resident of South Sonaichari, P.S. Belonia, District: South Tripura.

.....Appellant

-V E R S U S-

The State of Tripura

..... Respondent.

B_E_F_O_R_E
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

For Appellant(s)	:	Mr. Ratan Datta, Advocate. Mr. A. Baidya, Advocate.
For Respondent(s)	:	Mr. R. Saha, Addl. P.P.
Date of hearing and delivery of judgment and order	:	16.09.2025
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER

[Dr. T. Amarnath Goud, J]

[1] Heard Mr. Ratan Datta, learned counsel appearing for the appellant also heard Mr. R. Saha, learned Addl. P.P. appearing for the respondent-State.

[2] This is an appeal filed under Section-374 of Code of Criminal Procedure, 1973, against the impugned judgment and order of conviction and sentence dated 28.03.2024 passed by the learned Sessions Judge, South Tripura, Belonia in connection with case No. ST(Type-I) 28 of 2021, whereby and whereunder, the appellant has been convicted under Section-376(2)(m) of Indian Penal Code and thereby sentenced him to suffer RI for 10 years and to pay a fine of Rs.10,000/- and in default, he shall have to suffer further RI for 1 year and further convicted under Section-341 of IPC and thereby sentenced him to suffer SI for 1 month and also further convicted under Section-325 and thereby sentenced him to suffer RI for 3

years and to pay a fine of Rs.5,000/- and in default, the appellant shall have to suffer further RI for 6 months and all the sentences shall run concurrently.

[3] The brief fact of the prosecution case is that on 30.08.2020 with the allegations that on the same day in the morning at 6 a.m. she went to her paddy field for removing weeds and that after completing her work she was returning to her house and on her way before the house of Arjun Das near a culvert, accused Nimai Das used criminal force and raped her thereafter she disclosed the entire matter to her family members. On the basis of such information (victim) lodged an FIR against the convict appellant Sri Nimai Das at Belonia Women Police Station. That the case was investigated, the prosecutrix as well as the accused were examined and statement of the prosecutrix was recorded by the magistrate, and on completion of investigation charge-sheet was filed. On receipt of charge-sheet, the learned Chief Judicial Magistrate, South Tripura, Belonia took cognizance of offence punishable under Sections-341/376(2)(m)/325/506 IPC against accused Nimai Das and committed the case to this Court for trial.

[4] Considering the materials on record formal charge under Sections-341/376(2)(m)/325/506 IPC was framed against the accused Nimai Das and the contents of the charge were read and explained to him to which he pleaded not guilty and claimed to be tried. After hearing of both the parties learned Court below convicted the appellant under Section-376(2)(m) of IPC and thereby sentenced him to suffer as stated supra.

[5] Having heard both the parties and on perusal of the material evidence on record, the learned Court below has observed as under:

“In the result, the accused Sri Nimai Das is hereby convicted of offence punishable U/S-341/376(2)(m)/325 of Indian Penal Code but he is acquitted of charge for commission of offence punishable U/S-506 of the Indian Penal Code. Consequently, the accused Sri Nimai Das is taken in custody and is remanded to JC till 30.03.2024 for his production on 30.03.2024 so that he may heard on the question of sentence.”

[6] The appellant herein, being aggrieved by and dissatisfied with the same, has preferred this present appeal before this Court for ends of justice.

[7] Mr. R. Datta, learned counsel appearing for the appellant 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 are absolutely doubtful and on the basis of such evidence the appellant could not be legally convicted for the alleged offence. The learned Court below relied on the improved versions of all the PWs illegally and on the basis of such improved versions, sentencing the appellant only on surmise and conjecture.

[8] The learned Court below convicted the appellant without properly examining him under Section-313 of Cr. PC. PW-1 the alleged victim girl stated that she is aged about 40 years and a married lady having her husband and son aged about 18 years (PW5) and a daughter. It is also admitted fact that there was enmity between the accused appellant and the family of the victim girl and also with the victim girl so it cannot be ruled out that the convict has been falsely implicated in the instant case but the court below failed to appreciate the same.

[9] It has been further contended that the victim girl, PW-1 stated in her deposition that she was returning near the house of Arjun Datta and at that time convict appellant came secretly from her behind and pressed her mouth by Gamcha, took her to a teak (Segun) garden and raped her, and due to that blood was oozing out. She informed the matter to her husband and thereafter she was taken to hospitals for treatment. During cross-examination she stated that she has not stated in the FIR that Gamcha was used by the accused appellant for pressing her mouth she further admitted that she use to prepare and sell liquor and the appellant also used to come to her house for consuming of liquor. The story of rape as placed by the PW-1

is not at all believable rather, it is a concocted story due to rivalry but the learned court below failed to appreciate the same.

[10] PW-10, Dr. Bikash Majumder examined the appellant physically. During examination no injury was detected, whereas the case of PW-1 that she was forcefully raped and blood was oozing out. The version of PW-10 namely Dr. Bikash Majumder is not supporting the version of the PW-1. But the learned Court below failed to appreciate the same. The attending doctors of the victim girl did not examine the victim radiologically i.e. x-ray etc. to ascertain the internal injury as alleged by the said attending doctors of the victim girl. So the report of the attending doctors is baseless and it can be treated as a conjecture and surmise but the court below failed to appreciate the same. The entire judgment is perverse, erroneous and not legally tenable. The learned Court below failed to appreciate the evidence in its true perspective.

[11] In support of his case has placed one decision of the Hon'ble Apex Court as well as of the High Court viz. ***Rajoo & Ors v. State of MP***, reported in (2009) SCC 858 and in ***Crl.A (J) No.44 of 2023*** titled as, ***Sri Uttam Kumar Debbarma v. The State of Tripura***. In view of the above submissions, he prayed to allow the appeal and set aside the judgment of the learned Court below.

[12] The sole issue before this Court for determination is as to whether the accused committed rape upon the victim i.e. the PW-1. Before proceeding further, let us go straight way to the evidence of PW-1 and on perusal of the same it appears that she in her evidence specifically stated that on the date of incident she was coming from Rajarambari towards her house after completion of her work and near the house of Arjun Datta, accused came secretly from behind and pressed her mouth by gamchha and took her to shegun garden and raped her there and as a result she became senseless. She also specifically stated that on regaining sense she returned to her house where she found her son and daughter and she asked her son to call his father who came and she informed the incident to her husband. She again

specifically stated that after seeing her health condition as blood was oozing out, her husband took her to Belonia hospital and thereafter, to Tepania District Hospital and again to GBP Hospital as blood was regularly oozing out.

[13] Now let's see whether the aforesaid portion of evidence was corroborated by her husband and son. The husband of the prosecutrix in his evidence as PW-2 stated that when her wife was returning from her work accused by pressing her mouth and tying her hands, raped her in the forest. He also stated that the prosecutrix returned to the house and asked her son to call him (i.e. PW-2) and accordingly his son called him (PW-2) and accordingly he (PW-2) went to the house and came to know the incident from his wife. He again categorically stated that he saw blood was oozing from her private part and that she informed him that she was raped by the accused Nimai Das.

[14] Now coming to the evidence of the son of the prosecutrix i.e. PW-5. PW-5 in his evidence stated that the incident was of 30.08.2020 when his mother asked him at about 7 pm to call his father and accordingly he (PW-2) came and his (PW-5) mother told all the facts to him. He also specifically stated that his mother informed his father that she was raped by Nimal Das in the Shegun garden and his father took his mother to hospital for treatment.

[15] Here the evidence of the prosecutrix that she was forcibly taken to forest by the accused and raped there and that she disclosed such incident to her husband and son, found fully corroborated by the evidence of PW-2 and PW-5 when they stated that the prosecutrix on return in her house asked her son to call PW-2 and accordingly on arrival of PW-2, the prosecutrix disclosed specifically that she was raped by the accused Nimai Das in the forest. The evidence of PW-1, that her husband seeing her health condition as blood was oozing has taken her to the hospital. This portion of evidence is also found corroborated by the evidence of PW-2 when he stated that he saw blood was oozing out from the private part of the prosecutrix. PW-5

also supported such evidence of the prosecutrix by stating that his father took his mother to hospital for treatment.

[16] Now coming to the cross-examination of PW-1, PW-2 and PW-5 by the defence it appears that the defence tried to prove that Kabindra Tripura, Jayanta Mog and Angru Mog were known to PW-1 being her neighbour and those three people attacked the house of the father of the accused on 30.08.2020 and so PW-1 was asked whether she knew that those people attacked the house of the father of the accused, but in answer PW-1 stated about her ignorance. The defence failed to bring any material in the form of evidence in the record that those three people attacked the house of the father of the accused. Defence further asked the question to PW-1 that whether she stated in the FIR that the accused used 'gamchha' or not for pressing her mouth and such question was probably because of the fact that PW-1 in her evidence stated that accused pressed her mouth by 'gamchha', though she admitted in her cross-examination stated that she did not mention in the FIR that 'gamchha' was used by accused for pressing her mouth.

[17] Further it was suggested to PW-1 that she used to take money from the accused and when he demanded his money, she filed the false case. But she denied such suggestion. Moreover, defence also did not bring any material in the form of evidence that PW-1 used to take money from the accused. On a question of defence, the prosecutrix stated that she returned to her house after one hour of incident. But such answer will not go to affect her evidence when she stated in her evidence specifically that after rape she became senseless and on regaining of sense she returned to her house.

[18] In cross-examination of PW-2 the defence asked whether he stated to the I/O that his wife was raped by the accused by tying her hands and by pressing her mouth. But the defence did not confront PW-2 by inviting his attention to his previous statement recorded by the I/O and so the defence will not get any benefit of contradiction, if any. No material affecting the case of the prosecution could be elicited from the cross-

examination of PW-2. The cross-examination of PW-5 also was of not so much help for the defence.

[19] Turning to the evidence of the prosecutrix (PW-1) again it appears that she in her evidence stated she was brought to the court for recording of her statement under Section-164 of Cr.P.C. and she also identified her signature as Exbt. P-3. On perusal of statement of PW-1, as recorded under Section-164, Cr.P.C. it appears that her evidence before the court is found corroborated on material particulars when she stated that, on 30.08.2020 she was returning from her work place and on the mid way accused Nimai Das took her to jungle by tying her band and mouth by a 'gamchha' and raped her and as a result she bled and after sometime she became senseless and on regaining of sense she somehow came to her house and disclosed the incident to her husband. Her evidence before the court and before the learned Magistrate are substantially and materially the same and there is not a single contradiction. The defence did not dispute the statement of PW-1 recorded under Sec. 164 of Cr.P.C.

[20] Now coming to the evidence of PW-3 it appears that she in her evidence stated that the prosecutrix was her elder sister and she was informed by her brother-in-law about the incident at about 7-8 pm and she was informed to come to the house of PW-2 with Auto as her sister was raped by accused Nimai Das and so she along with her husband came to the house of PW-2 and went to Belonia hospital by Auto being driven by her husband Dhanahari Tripura Le. PW-8. She also stated that after returning from hospital her sister informed that she was raped by the accused in the forest where the accused tied her hands and also pressed her mouth. Defence could not elicit any material against such evidence of the prosecution.

[21] PW-4 in his evidence also supported the evidence of the prosecutrix, PW-2 and PW-5 by stating that she knew the prosecutrix and she came to know about the incident on the same day of incident on 30.08.2020 at about 8.30 pm and that prosecutrix informed her to shift to hospital for treatment and on asking about the reason, the prosecutrix replied

that she was raped by the accused Nimai Das and blood was oozing from her private part. In cross-examination nothing material could be elicited.

[22] PW-7 in his evidence also corroborated the evidence of the prosecutrix when he stated that his sister i.e. the prosecutrix filed the case against Nimai Das in respect of incident of 30.08.2020 and on that day at about 7 pm the husband of the prosecutrix called him over mobile and informed him that his wife was raped and so he went to his (PW-2) house and saw that the prosecutrix was unconscious. His cross-examination also is found not supportive to the case of the defence.

[23] PW-8 also supported the evidence of the prosecutrix by stating that he had an Auto rickshaw bearing No. TR-03A-3158 and on 30.08.2020 when he was returning to his house he received a phone call from PW-2 and was asked to go with his auto immediately to the house of PW-2 and when he went there he saw PW-1 in bleeding condition and he took her in her auto to Belonia hospital and thereafter to Tepania District Hospital. He further stated that when PW-1 got her sense she informed him that she was raped when she was returning from her work in the evening by the accused Nimai Das.

[24] The argument of the defence that the evidence of the relative witnesses cannot be relied upon, has no substance simply because of the fact that no witness, even a relative, would go to falsely implicate a person unless there is previous enmity or some cause or interest against that person against whom the witness deposed. The defence failed to prove that there was previous enmity between the accused and the prosecutrix or her family members or relatives.

[25] A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true,

when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

[26] Coming to the plea that though PW-7 in his evidence stated that he informed the Pradhan of his locality, Shyamal Kanti Datta and he also asked Shyamal Kanti Datta to inform the PS but the said pradhan was not cited and examined as witness and so according to the learned counsel for the appellant herein, the same created a doubt about the case of the prosecution, it may be observed here that the said Pradhan of locality i.e; Shyamal Kanti Datta was neither an eye-witness nor had done anything material in connection with this case, except that he informed telephonically about commission of an offence against woman, so far the evidence of the I/O, discloses. This is not the case that the prosecutrix or her husband or son had informed the pradhan about the incident. So the non-examination of the "Pradhan" does not in any way has any effect on the case of the prosecution.

[27] It was the further plea that the first I/O i.e; Rubibala Baidya was not examined. Here it is clear that the WSI Rubibala Baidya did not investigate the case. As per evidence of the I/O, the role of WSI Rubibala Baidya was restricted to her proceeding to South Sonaichari, Harisardar Para and thereafter to Belonia SD hospital where she received the ejahar from the informant and forwarded the same to him for registration of FIR. So non-examination of WSI Rubibala Baidya is of no effect on the case of the prosecution. So, such non-examination of the Gram Pradhan and WSI Rubibala Baidya is not going to affect the case of the prosecution, especially when the said Gram Pradhan was not an eye witness and also when the

evidence of the prosecutrix is found to be trustworthy and her evidence gets corroborated by the other witnesses. Even in the event of examination of Gram Pradhan and WSI, there would not have been any material difference in the case of the prosecution.

[28] It was argued that in the FIR the place of occurrence was stated to be in front of the house of Arjun Datta, but in the evidence the prosecutrix stated the place of occurrence to be in the forest. On perusal of the evidence of the prosecutrix it appears that she in her evidence specifically stated that when she was returning near the house of Arjun Datta, accused came secretly from back side and pressed her mouth by gamchha and took her to shegun garden. So, no material contradiction is found in the evidence of the prosecutrix and in the story of the FIR. Thus, the evidence of the prosecutrix gets fully corroborated by the other non-official witnesses without any contradiction.

[29] It reveals on scrutiny of the evidence of the witnesses that the defence case is nothing but the denial of the entire prosecution evidence. No strong and credible specific case could be made out on behalf of the defence to rebut the prosecution case. Some omissions and exaggerations are found in the evidence of the witnesses but such omissions and exaggerations also failed to shake the credibility of the evidence of the prosecution witnesses and these omissions and inconsistencies are also not material and are incidental. We cannot become oblivious of the fact that capacity of a person to observe a fact and retain the same in his memory and reproduce the same differs from another. In the process of reproducing the facts from memory there may be some incidental variations which do not go to the root of the main fact. The minor omissions and additions which do not change the nature of crime are permissible under criminal jurisprudence.

[30] Having given our anxious consideration to the plea and taken into consideration the nature and gravity of the offence proved, the Court must balance the punishment to accuse and to keep in mind the societal interest as well. The severe crime against society need to be dealt with

severely irrespective of age, the socio-economic status, religion, race, caste or creed and position of the accused. The protection of interest of the society and deterring the criminals from committing crime is the avowed object of law. So, keeping in mind all relevant factors, particularly, the serious dimension, this Court is of considered view that in order to keep the faith of public, in the judiciary intact, accused person needs to be dealt with sternly commensurate with the punishment prescribed under the statute.

[31] Here is the case at hand; we have discussed the evidence on record of the prosecution in detail as well as the discussion of the learned Court below. Now we are to conclude our decision on the basis of material evidence on record. In our ultimate analysis, it is crystal clear that there is no reason as to why the continuity of the chain of circumstances and the complaint made against the appellant to be disbelieved. The witnesses supported the entire case of the prosecution with regard to the commission of offence by the appellant herein, thus, there is no necessary for any interference.

[32] Consequently, we find no reason to interfere with the observation made by the learned Court below and thus, the same is affirmed. However, Mr. R. Datta, learned counsel appearing for the appellant has placed his reliance on some judgments of the Hon'ble Apex Court as well as this Court which are, according to this Court, have no relevance.

[33] In the result, the appeal is liable to be dismissed accordingly, it stands dismissed.

[34] As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

B. PALIT, J

DR. T. AMARNATH GOUD, J

A.Ghash

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