

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

Crl. A(J) No. 38 of 2024

Sri Amit Debnath, Age-37 years, son of Sri Banamali Debnath, resident of Jayantibazar, P.S. Salema, District: Dhalai Tripura.

.....Appellant

-V E R S U S-

The State of Tripura to be represented by the L'd Public Prosecutor, High Court of Tripura, Agartala.

..... Respondent.

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

For Appellant(s)	:	Mr. K. Nath, Advocate.
For Respondent(s)	:	Mr. R. Saha, Addl. P.P.
Date of hearing and delivery of judgment and order	:	02.09.2025
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER [ORAL]

[Dr. T. Amarnath Goud, J]

[1] Heard Mr. K. Nath, 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(2) of Cr. P.C. against the judgment dated 17.01.2024 passed by the learned Addl. Sessions Judge, Kamalpur, Dhalai Judicial District, in connection with case No. ST (T-1) 33 of 2018, whereby and whereunder, the learned Addl. Sessions Judge, convicted the appellant for commission of an offence punishable under Sections-376(2) (1) of IPC and sentenced him to suffer RI for 10 years and also to pay fine of Rs.5,000/- and in default to undergo further SI for 3 months.

[3] The fact of the case in brief is that on 22.04.2018 in the morning at about 0800 hours, the complainant Sri Jati Ranjan Debbarma along with his wife heard shouting from a lunga on the east side of his dwelling house then complainant and his wife went there and found that Amit Debnath, the appellant herein, was forcefully committing rape upon the victim (mentally unsound) after removing her wearing apparel. On hearing hue and cry, the convict appellant fled away from the spot leaving the victim in naked condition.

[4] On receipt of oral ejahar which was reduced into writing by RO and police registered Salema P.S. Case No.014 of 2018, under Section-376 of IPC and the same was investigated and charge sheet was submitted against the convict appellant vide CS No.22 of 2018 dated 31.07.2018 under Section-376(2)(1) of IPC.

[5] On commitment of the case, charges were framed against the appellant under Section-376(1) of IPC by the learned Court. The contents of the charge was read over and explained to the above named accused person in Bengali to which he pleaded not guilty and claimed to be tried in open Court. Thereafter, the appellant was examined under Section-313 Cr. P.C. During examination, the appellant denied all the allegations and pleaded his innocence and also declined to adduce any defence witness.

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

“1. In view of the discussion stated above, I hereby sentenced convict Sri Amit Debnath, S/O-Sri Banamali Debnath to suffer RI for, 10 (Ten) years imprisonment and to pay a fine of Rs. 5,000/- (Rupees five thousand) only for the offence punishable U/S-376 (2) (1) of IPC in default, to suffer S.I. for 3 (Three) months. If the fine money is paid, the same should be handed over to the victim as compensation. The sentence will run consecutively in default of payment of fine.

2. Convict is apprised of the sentence and his right to appeal before the Hon'ble High Court.

3. The period of detention undergone by the convict during investigation, inquiry and trial shall be set off from the sentence period under Section 428 Cr.P.C.

4. Copy of the this Judgment shall be delivered to the convict free of cost as per provision of Section 363 of Cr.P.C. A copy of this judgment shall also be sent to the District Magistrate of Dhalai District as per provision of Section 365 Cr.P.C.

5. In my considered opinion, victim is also entitled to compensation under the scheme of victim compensation. District Secretary, DLSA, Dhalai Judicial District, Ambassa shall also be communicated about the judgment of this court with request to take necessary step to provide appropriate compensation to the victim as per approved scheme.

6. Ld. District Secretary, Dhalai Judicial District, Ambassa is hereby directed to provide Legal Aid to convict for preferring appeal if he wants to prefer appeal before Hon'ble High Court.

7. The case is thus disposed on contest.”

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

[8] Mr. K. Nath, learned counsel appearing for the appellant has submitted that the learned Court below has failed to appreciate the evidence judiciously and in accordance with the well settled principle of criminal jurisprudence as to how the evidence is to be appreciated. The findings of the learned Court below to the effect, that, the appellant committed offence punishable Section 376(2)(1) of IPC is based on surmise and conjecture and inference and as such it is liable to be interfered with by this Court in exercise of appellate power provided under Section-374 of Cr.P.C.

[9] The learned Court below failed to appreciate the fact, that, the examination of the accused person under Section-313 of Cr.P.C was not done in appropriate manner causing serious prejudice to the appellant. The learned Court below failed to appreciate the fact, that, the prosecution has been miserably failed to establish the charge against the appellant beyond reasonable doubt and the benefit of doubt must go in favour of the appellant.

[10] It has been further contended that the learned Court below failed to appreciate the fact, that, PW-6 Dr. Anup Kumar Debnath, in his report opined, that, patient Bijoy Laxmi Debbarma, i.e., the victim is suffering from Schizophrenia. It is necessary to mention here, that,

Schizophrenia is a serious mental disorder in which people interpret reality abnormally. Schizophrenia may result in some combination of hallucinations, delusions, and extremely disordered thinking and behaviour that impairs daily functioning, and can be disabling. PW-9, father of the victim in cross examination stated, that from 2009, his daughter is mentally unsound & what has been generally told by her daughter is not known to her. PW 11, who in his deposition specifically stated that the appellant is his neighbor, but other PWs stated that the appellant is a resident of Jayanti Bazar.

[11] The learned Court below absolutely failed to consider the depositions of PW 18, who is senior scientific officer at SFSL, Narsinghar, West Tripura and done biological examination. PW-18 specifically stated that the seminal stain/spermatozoa of human origin could not be detected in the Exbts. B, C, D, E, F, G, N, and O. PW-18 also stated that saliva stain/hair of human origin could not be detected in the Exbts. F and G.

[12] Having heard the learned counsel appearing for the parties and the observations made by the learned Court below, let us recapitulate the evidence once again.

[13] PW-1 appears to be relative of victim. PW-1 stated in his examination-in-chief that around one year back Amit Debnath committed rape upon victim and the incident was witness by localities. After that the accused was detained by villagers and at that time PW-1 was also present. Subsequently the police seized the wearing apparel of victim as well as the accused in his presence. The police also seized one psychiatric examination report of the victim in presence of PW-1. Witness identified the wearing apparels marked as exhibit M.O-1 and his signature in the seizure list relating to the wearing apparel of accused Amit Debnath marked as Exbt.1. PW-1 identified signature in the seizure list relating to the seized wearing apparel of the victim along with some seized soil, marked as exhibit-2 and GEhis signature in the seizure list relating to psychiatric examination report

of the victim marked as Exbt.3. PW-1 identified the accused Amit Debnath before the Court.

[14] PW-2 Sri Jotiranjana Debbarma, stated in his examination-in-chief that around one year back, on Sunday at 8.30 in the morning he was at his home when his wife informed him that victim is shouting 'baba baba'. PW-2 went out of his home and found that in the eastern part of his home, accused Amit Debnath was raping the victim and the victim was shouting. As PW-2 and his wife shouted, accused ran away. PW-2 further stated that he specifically saw accused was raping the victim. Later on PW-2 informed PW-1, uncle of the victim and PW-2 filed complaint before the police at Salema Police Station.

[15] PW-3, wife of PW-2, stated in her examination-in-chief that the incident took place in last April, in the morning at around 8.30 am when her daughter was getting ready to go to her Art School. At that time she heard a girl shouting loudly and as she tried to find out the source of the sound she found that accused Amit Debnath was raping the mentally unsound girl from her neighborhood. Immediately on seeing the incident of rape, she along with her husband started shouting and accused Amit Debnath ran away. Accused Amit Debnath is present in the Court and identified by PW-3. PW-3 also gave statement before the Magistrate and the signature of PW-3 in the statement given by her before the Magistrate and identified by PW-3 in the court marked as exhibit-7. PW-3 also added that accused Amit Debnath was wearing 'gamcha' at that time and when PW-3 and her husband shouted, he ran away, leaving his 'gamcha' behind.

[16] PW-9 appears to be the father of the victim. PW-9 stated in his examination-in-chief that on 24.04.2018 the day of Sunday at about 08.00 am he heard from PW-2 that the appellant raped his daughter in the eastern part of the home of PW-2 on the same day. PW-9 also added that his daughter is still unmarried and still psychiatric patient.

[17] PW-10 appears to be the brother of the victim. PW-10 stated in his examination-in-chief that on 22.04.2018 the day of Sunday at about 9 am the wife of PW-2 informed him over phone that the appellant raped the victim. Thereafter, PW-10 rushed to the spot, eastern part of the home of PW-2. PW-10 found torn clothes of his sister. Thereafter, PW-10 searched the appellant and after catching hi, handed over to the police personnel.

[18] PW-11 is the cousin sister of the victim and he has deposed that on 22.04.2018 PW-2 informed her over phone that the appellant raped her cousin sister in the eastern part, lunga of his home. Thereafter, PW-11 along with her brothers rushed to the said lunga and they caught the appellant near the house of PW-2 and handed over to Salema P.S. Thereafter, darogababu seized green colour of nighty, one orange printed saree of the victim and soil in her presence.

[19] PW-14 is the elder brother of the victim and he deposed that while he was on REGA duty at Ashapurna Roaja Para, PW-2 called him over phone and informed that his younger sister was raped by the appellant. Thereafter, PW-14 rushed to the house of PW-2. At the house PW-2 and 14 found that the appellant was apprehended by the local people. Thereafter, the local police arrived at the spot. During enquiry police personnel seized one full sleeve shirt and one gamcha of the appellant in presence of PW-14 and took signature of PW-14.

[20] It reveals from the depositions of the eye witnesses that the appellant has committed the offence of rape upon the victim. The evidence of PW-2 and 3 has been well corroborated by PW-5, medical officer who examined the victim on the same day of incident. More so, the appellant did not give any explanation as to the scratch mark on his arm. Further, the victim is unsound mind proved by the evidence of medical officer of Kulai District Hospital, well supported by evidence of other PWs. There is no doubt that the heinous offence of rape has been committed upon a mentally unsound victim.

[21] At the onset, this Court would like to browse the written complaint marked as Exbt.4 as lodged by the de-facto complainant of this case. It is a well settled principle in domain of Criminal Law that FIR is the window to a criminal case and it sets the Criminal Law into motion. FIR is not a substantial piece of evidence by it is used to corroborate or contradict its maker. This principle of law has flown out from a catena of judicial pronouncement of the Hon'ble Apex Court.

[22] The Hon'ble Apex Court held that the direct testimony of witnesses, whose evidence is otherwise consistent, should not ordinarily be rejected on the ground that they are partisan witnesses unless the surrounding circumstances discredit their version. Ordinarily, close relatives of the deceased would not allow the real culprits to escape. The possibility of their implicating others with the real offenders must, however, be kept in mind.

[23] After careful discussion and having gone through the observations of the learned Court below, this Court is of the opinion that the appellant committed rape upon the victim, a mentally unsound person at the lunga of East Dulucharra, near the house of PWs.2 and 3. At the time of committing rape PWs. 2 and 3 witnessed the incident and when they started shouting, the appellant fled away from the place of occurrence. The relatives and the local people rushed to the spot instantly and after thorough search they apprehended the appellant and handed over to the police.

[24] Here in the case at hand, we have discussed the evidence on record of the prosecution in detail. 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 and furthermore, we find that the statement made by the eye witnesses needs no interference. Consequently, we find no reason to interfere with the

observations made by the learned Court below and thus, the same is affirmed.

[25] In the result, the appeal stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

B. PALIT, J

DR. T. AMARNATH GOUD, J

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