

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) 59 of 2024

Roshan Kumar Debbarma @ Roshan Kumar

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

Versus

State of Tripura

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

For the Appellant(s) : Mr. Arjun Acharjee, Advocate.

For the Respondent(s) : Mr. Raju Datta, P.P.

Date of hearing & delivery
of Judgment & order : 19.05.2025.

Whether fit for reporting : Yes/No

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R (O R A L)**

Heard Mr. A. Acharjee, learned counsel appearing for the appellant. Also heard Mr. Raju Datta, learned Public Prosecutor representing the State.

[2] This present appeal is filed under Section 374 of Cr PC against the impugned judgment of conviction and sentence dated 09.11.2021 passed by the learned Addl. Sessions Judge, Sepahijala District, Bishalgarh in case No. S.T.(T-I)19 of 2016 whereby and

where-under the appellant has been convicted under Section 376(1) of IPC and sentenced to suffer R.I. for 7 (seven) years and to pay a fine of Rs.5,000/-(five thousand) for the said offence, in default to pay fine, to suffer further R.I. for one year.

[3] The prosecution story, in brief, is that the prosecutrix i.e. the victim on 29.03.2015 went to Ramnagar market where on the way to her return she visited to the house of one Uttam Debbarma to take betel leaf and there the accused namely Roshan Debbarma was present. Thereafter, she had been made to take a lift on the motor bike of the accused to drop her at her house. When they reached in front of the house of prosecutrix, the accused did not drop her but moved further to a lonely jungle/ rubber garden at Rangmala at around 6.30 p.m. and the accused forcibly taken her inside the rubber garden and raped her twice and he had abandoned the victim there. Thereafter, the victim could any how managed to reach to a locality following source of light and there she requested the inmates of house to take her to the house of one Sukhiram Debbarma. Accordingly she was taken to the house of Sukhiram Debbarma who is said to be a relative of the victim and she stayed during the night in that house. On the following morning, said Sukhiram Debbarma had informed the relatives of the prosecutrix and accordingly she was taken back from there by her

son, daughter and some others. She told the incident to them and the name and particulars of the accused was then collected from Uttam Debbarma. Thereafter, the prosecutrix went to Bishramganj PS accompanied by her daughters and others and she lodged a verbal complaint/ejahaar which was recorded by Police.

[4] On receipt of such complaint/recorded ejahaar, the BRG PS case no. 21 of 2015 dated 30.03.2015 under Section 376/506 of IPC was registered and the same was endorsed to an SI to complete the investigation. After conclusion of investigation, the I.O. filed charge-sheet in this case vide BRG PS c/s no. 28/15 dated 30.07.2015 against the accused person namely Roshan Kumar Debbarma u/s 376/506 of IPC before the Court below.

[5] After receiving the case record on commitment, the learned Sessions Court, West Tripura, Agartala, took cognizance of the offence and transferred the case to the Court of learned Addl. Sessions Judge, Court No. 5, (Fast Track Court), West Tripura, Agartala for disposal. Accordingly, the charge was framed by the then learned Addl. Sessions Judge, Court No.5, West Tripura, Agartala against the accused u/s 376(1) of IPC to which the accused pleaded not guilty and claimed to be tried. Thereafter, the case was transferred to the Court of Addl. Sessions Judge, Sepahijala District, Bishalbgarh. The Prosecution adduced as many

as 22 witnesses and also exhibited certain documents before the trial Court. After closure of the prosecution evidence, the accused person was examined u/s 313(1)(b) of Cr P.C. on 26.04.2021 wherein, the accused declined to adduce defence witness from his side. The case of the defence before the trial Court was that of total denial of the prosecution case and pleaded to be innocence.

[6] Learned trial Court upon hearing the submissions made by the parties and on perusal of all the material evidence on record, has decided the case by its sentence and order dated 09.11.2021 in case No. S.T.(T-I)19 of 2016, in the following manner:

"....10.

O R D E R

In the result, the convict, namely, Roshan Kumar Debbarma alias Roshan Debbarma is sentenced to suffer RI for 7 (seven) years and a fine of Rs.5000/- in default of payment of fine to suffer further RI of one year u/s 376(1) of IPC.

10.1 The period of custody already undergone, if any, during investigation, inquiry or trial shall be set off u/s 428 of Cr. PC.

10.2. It is also directed that the fine amount if paid by the convict, the same shall be applied to make payment to the victim in view of section 357 of Cr.P.C.

10.3. It is recommended that the victim be adequately awarded for compensation by the District Legal Services Authority, Sepahijala, Sonamura u/s 357 (A) of Cr.P.C. from the Victim Compensation Fund/Scheme.

10.4. A copy of the Judgment shall be supplied to the convict free of cost immediately.

10.5. The convict is also appraised of his right to prefer appeal against the Judgment and order of sentence passed by this Court, if he so advised.

10.6. The surety of the accused/convict who furnished bail bond except one u/s 437 A of Cr.P.C. shall stand discharged.

10.7. The CT.SI, Bishalgarh Police Court is directed to destroy the seized articles if any, on expiry of the appeal period or after the appeal is disposed of, as the case may be.....”

[7] Being aggrieved by the afore-quoted sentence and order dated 09.11.2021, the present appeal has been preferred by the appellant seeking the following reliefs:

i) Admit this appeal,

ii) Call for the record,

iii) Issue notice upon the respondent, and

iv) After hearing the parties be pleased enough to set aside the impugned Judgment of conviction and sentence dated 09.11.2021 passed by *****, Ld. Addl. Sessions Judge, Sepahijala District, Bishalgarh in case No. S.T.(T-1)19 of 2016 and further please to acquit the convict appellant for fair ends of justice.....”

[8] Mr. A. Acharjee, learned counsel appearing for the appellant contends before this Court that the evidences placed before the learned trial Court were absolutely doubtful and on the basis of those evidences, the appellant could not be convicted for the alleged offence. It is further contended that the doctor who conducted the examination of the victim deposed that the report was negative for seminal stain/spermatozoa of human origin in high and low vaginal swab but there was evidence of repeated vaginal penetration by male sex organ like structure and evidence of recent sexual intercourse cannot be ruled out. He also submits that learned Court below did not consider that the victim was 70 years old married woman and it was very natural that vaginal penetration by her husband would have been possible. Learned counsel, therefore,

urges this Court to set aside the impugned Judgment of conviction and sentence dated 09.11.2021 passed by the learned Addl. Sessions Judge, Sepahijala District, Bishlgarh in case No. S.T.(T-I)19 of 2016.

[9] On the contrary, Mr. Raju Datta, learned P.P. opposes the submissions made on behalf of the appellant. He, contends that learned trial Court on perusal of all the material evidence on record, has convicted the accused-appellant by its order dated 09.11.2021 and the same should not be interfered with. He, therefore, requests this Court to dismiss the present appeal.

[10] Heard the submissions made at the Bar. Perused the material evidence on record.

[11] On perusal of record it is seen that the victim being P.W. No.2 in her cross-examination stated before the trial Court that she went at Ramnagar Bazar around 4 pm and she had not visited the house of one Uttam Debbarma while going to Bazar. She further stated that on the way to return, she had taken pan (betel nut) from the house of one Sabitri Debbarma, the wife of Uttam Debbarma. It is also stated that Roshan Debbarma (convict) was not known to her previously. The victim further said "*It is not a fact*

that I was not coming back with Roshan Debbarma on his motor bike."

[12] P.W. No.4, the wife of said Uttam Debbarma, deposed before the trial Court that she knew the victim and about 3 years back one day the victim had taken pan (betel nut) in their house when she visited Dokan (Shop) and Roshan Debbarma was also present there. It was further stated that both Roshan and the victim were to return in their respective houses and they went out from their house at a time.

[13] P.W. No.12, Uttam Debbarma, in his cross-examination stated before the trial Court that the accused Roshan Kumar Debbarma was unknown to the victim. It was also admitted by Uttam Debbarma that he and his wife had insisted the accused Roshan Kumar Debbarma to take the victim with him. He further said that it is not a fact that on the following morning, he did not hear that the accused Roshan Kumar Debbarma had committed rape on the victim.

[14] From the above stated deposition of witnesses i.e. the P.W. No.2, i.e. the victim, P.W. No.4 & P.W. No.12, it clearly indicates that the accused was unknown to the victim woman and she once met with the accused when she visited the house of P.W.

Nos.4 & 12 for taking betel leafs/betel nuts. It is also observed that both the accused and the victim left the house of P.W. Nos. 4 & 12 for their respective houses at a time.

[15] P.W. No.19, who was posted as Medical Officer in Bishramganj PHC had examined the victim woman. He deposed before the trial Court that there was evidence of repeated vaginal penetration by male sex organ. P.W. No.21, who was posted as Deputy Director SFSL, Tripura placed the following observation and opinion before the learned trial Court:

"Observation

The allele of the amplified loci of DNA profile of Exhibit II(blood sample of a/p) matches with the alleles of the amplified loci of DNA profile of Exhibit 05(a) (cloth piece contained semen stain) and Exhibit 06.

Opinion

On the basis of the above observation it is opined that the semen stain detected in the exhibit 05(a) and Exhibit 06 were originated from single source Exhibit II(the blood sample of a/p).

The Inter divisional report was prepared by me in my official computer in 4 sheets and signed on 27.11.15. The report was submitted to Director to forward it to the Forwarding Authority SDPO Bishalgarh. The forwarding letter was signed by the Director on 27.11.15. Witness has identified the report in 4 sheets along his signatures on each of the sheet and is marked as Exhibit 13 as a whole. Witness has also identified the forwarding letter of the Director and it is marked as Exhibit 14."

[16] On perusal of the above stated deposition of witnesses i.e. P.W. Nos. 19 & 21 as well as the exhibits placed on record, it is observed that semen/spermatozoa of the accused person was detected in the torn petticoat of the victim. Learned trial Court

below has rightly pointed out the fact that the accused had been failed to explain how his semen/spermatozoa was found to the undergarment (petticoat) of the victim.

[17] In view of the above discussions, this Court is of the opinion that there is no scope of taking any lenient view in favour of the appellant who committed such a heinous crime like rape upon a 70 year old lady. Hence, the impugned judgment of conviction and sentence dated 09.11.2021 passed by the learned Addl. Sessions Judge, Sepahijala District, Bishlgarh in case No. S.T.(T-I) 19 of 2016 convicting the appellant under Section 376(1) of IPC and sentencing him to suffer R.I. for 7 (seven) years and to pay a fine of Rs.5,000/-(five thousand) for the said offence, in default to pay fine, to suffer further R.I. for one year, is hereby affirmed.

With the above observations, the instant appeal is hereby dismissed. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

Send down the LCR.

T. AMARNATH GOUD, J

Sabyasachi G.

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