

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. A. No.30 of 2011.

Shri Buddhadeb Debnath @ Budha,
son of Shri Dilip Debnath of village-
Madhuban, P.O. Madhuban, P.S.
Bishalgarh, District – West Tripura.

..... Appellant

- V e r s u s -

The State of Tripura

..... Respondent

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Mr. R. Dutta, Advocate.

For the respondent : Mr. A. Ghosh, P.P.

Date of hearing : **03.11.2014**

Delivery of Judgment & Order : **17.01.2015**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

This appeal by the convict, hereafter referred to as the appellant, questions the legality of the judgment of conviction dated 10.08.2011 delivered in case No.S.T 69 of 2010 by the Addl. Sessions Judge, Court No.3, West Tripura, Agartala convicting the appellant for committing offence punishable under Section 448 and 354 of the I.P.C. As consequence of the said conviction, the appellant has been sentenced to suffer rigorous imprisonment for one year for committing offence punishable under Section 448 of

the I.P.C. and rigorous imprisonment for two years for committing offence punishable under Section 354 of the I.P.C. with a direction that the sentence shall run consecutively.

[2] On 15.04.2010 the prosecutrix, the name withheld for protecting her identity by filing a written Ejahar disclosed that the appellant suddenly entering in her room at about 3 O'clock in the evening on 15.04.2010 tried to commit rape by pressing her mouth. On resistance, the appellant scuffled with her and the prosecutrix raised alarm. Even her child started crying. In response to such alarm, her sister-in-law, her husband's elder brother's wife, and mother-in-law rushed to her room when the appellant fled away. She has further disclosed that no male members were available at that hour.

[3] Based on the said written Ejahar, Bishalgarh P.S. case No.54/2010 under Sections 376/511 of the I.P.C. was registered and taken up for investigation. After completion of the investigation, the charge sheet was filed against the appellant and having taken cognizance, the matter was committed to the court of Sessions and finally, the case was transferred to the court of the Addl. Sessions Judge, West Tripura, Court No.3, Agartala, who framed the charge under Section 448 and 376(1) read with Section 511 of the I.P.C., to which the appellant pleaded innocence and claimed to face the trial.

[3]

[4] To substantiate the charge, the prosecution has adduced as many as 8(eight) witnesses. For the appellant one witness was examined to rebut the evidence of the prosecution. After the appellant was examined under Section 313 of the Cr.P.C., the appellant has been convicted by the impugned judgment on observing as under:

In view of the above discussion in the previous paragraph of the judgment I am of the opinion that the prosecution is not successful to prove the charge under Section 376(1) read with Section 511 of Indian Penal Code. On the other hand, the evidence proved by the prosecution is that accused entered into the hut of the prosecutrix, covered her mouth with his hand, started pulling her dress and also struggled with her and this clearly shows that the accused outraged the modesty of the prosecutrix on the date and time of alleged incident and thus the offence under Section 354 of Indian Penal Code can be said to be well proved against the accused. Offence under Section 354 of Indian Penal Code is a minor offence than the offence under Section 376(1) read with Section 511 of India Penal Code. The charge is against the accused for commission of major offence but the facts proved in this case is a minor offence to that of major offence. From the evidence on record I am also of the opinion that the prosecution is successful also to prove the charge under Section 448 of Indian Penal Code. Accordingly, the accused Buddhadeb Debnath is found guilty for commission of offence punishable under Section 448 and 354 of Indian Penal Code for which he is liable to be punished.

[5] Mr. R. Dutta, learned counsel appearing for the appellant has submitted that there is no ingredient of offence punishable under Section 354 of the I.P.C. which essentially requires that there shall be intention to outrage the modesty of the woman by applying criminal force. The culpable intention of the accused is the crux of the offence. The reaction of the woman is

relevant but not always decisive. There is no proof that the woman was assaulted or subjected to criminal force or that the accused had intention to outrage the modesty of the prosecutrix. Mr. Dutta, learned counsel has further submitted with considerable emphasis that initially the charge was framed under Section 376 of the I.P.C. read with Section 511 of the I.P.C. along with Section 448 of the I.P.C. The trial court has in no uncertain terms held that the prosecution has failed to prove the charge under Section 376(1) read with Section 511 of the I.P.C. Having regard to that aspect of the matter Mr. Dutta, learned counsel has contended to submit that the trial court has committed a patent illegality by convicting the appellant under Section 354 of the I.P.C. without framing the fresh charge. Thus, the appellant has been deprived of his right to defend inasmuch as offence punishable under Section 376(1) read with Section 511 of the I.P.C. and offence punishable under Section 354 of the I.P.C. are not cognate to each other and as such, without framing charge, the trial court could not have convicted the appellant in exercise of its power provided under Section 222(2) of the Cr.P.C. In support of his contention, Mr. Dutta, learned counsel has relied a decision of this Court in **Pulin Bihari Roy vs. State of Tripura**, reported in **(2012) 6 GLR 138**, where it has been held that:

The above illustration makes it clear that section 354 cannot be regarded as a minor offence to that of an offence under section 376 of IPC. Where the allegation of rape fails, under the circumstances, on the same bundle of fact, the accused cannot be punished for

outrage of modesty, unless the ingredients thereof as to the commission of assault or use of criminal force, by the accused on the prosecutrix, with the intention of outrage of modesty or knowing it to be that the will thereby outrage her modesty, is established.

The Supreme Court in the case of Shamnasaheb M. Multani v. State of Karnataka, (2001) 2 SCC 577, in paragraph 16 observed, thus:

"16. What is mean by 'a minor offence' for the purpose of section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lessor sentence can be regarded as minor offence vis-à-vis the other offence."

Composition of offence under section 354 of IPC is different from the formation of the offence under section 376 of IPC and hence, the former cannot be regarded as a minor offence vis-à-vis the latter.

[6] Mr. Dutta, learned counsel has further submitted that since the ingredient of Section 354 has not been proved beyond reasonable doubt, the charge under Section 448 of the I.P.C. is bound to fall apart. The offence punishable under Section 448 of the I.P.C. is for house trespass with a view to commit offence as the 'criminal trespass' has been defined in Section 441 of the I.P.C. as under:

"441. Criminal trespass : Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit 'criminal trespass'."

[7] From the other side, Mr. A. Ghosh, learned P.P appearing for the State has contended that from the testimonies of the prosecutrix (PW-3) and Smt. Anjali Debnath (PW-4) it would be abundantly clear that the prosecution has succeeded to the prove the ingredients of the offence punishable under Section 354 of the I.P.C. That apart, the statement of Sri Partha Debbarma (PW-2) is very relevant as he witnessed the appellant fleeing away by a road to jungle at the crucial moment when he heard the alarm from the house of Sujit Debnath, husband of the prosecutrix. As such, there is no infirmity in the finding of the conviction.

[8] For appreciating the rival contentions, this Court may take a short account of the record of evidence.

It appears that the prosecutrix has categorically stated in the trial as under:

"On 15.04.10 at about 3 pm I was in my in-laws house and was trying to get sleep of my child aged about 3 years. At that time accused Buddha Deb, my neighbour came inside the hut of mud wall and covered my mouth with his hand and started struggling with me. I was lying on the floor of the hut with my child but some how I could succed to raise alarm when my sister in law Anjali Debnath and mother in law Milan Debnath came inside the hut and they also started raising alarm. On seeing them

the accused left the place and ran away through a tilla land in the back side of our house. The accused covered my mouth and started struggling to commit rape. My husband and brother in law Ashit Debnath were absent in the house and they were in our shop. My husband, brother in law and others on hearing our alarm came to the house. I narrated the incident to my husband, brother in law, sister/mother in law and others. On that night at about 9/9-30 pm I lodged complaint to Madhupur Outpost. The complaint was written by my brother in law Ashit Debnath as per my statement. Accused Buddha Debnath is present today in the dock and identified by the witness. This is the complaint submitted by me. On identification the signature of the informant is marked as Exhibit-1."

In the cross-examination, she has further stated that the appellant is a close neighbour. He took the advantage of the absence of male members in the house and entered through the door of her room as it was not bolted from inside.

[9] Smt. Anjali Debnath, who was in the next room at the crucial time of the occurrence rushed on hearing the alarm from the prosecutrix. She was examined by the prosecution as PW-4 and she has stated as under:

The incident occurred on 15.04.10 at about 3 pm. Our house is within the same complex. My house is in the eastern viti and the house of(name withheld) is in the western viti. On hearing alarm of(name withheld), myself and my mother in law went to that house and found accused Buddha Debnath inside the hut and on seeing us he fled away. On arrival in the house I saw that the accused was pulling saree of(name withheld). My husband and the husband of(name withheld) were in the shop and they came later. On being asked(name withheld) told me that the accused came inside the hut and started struggling with her with illegal motive and intention. Accused Buddha Debnath is present today in the dock. My husband, brother in law and others namely, Partha, Madhab, Tapan, Bishu Saha came later on hearing our alarm.

In the cross-examination she stood by her statement very firmly.

[10] Smt. Milan Debath, the mother-in-law (PW-5) has stated that she saw the appellant struggling with the prosecutrix when she had rushed in the room of the prosecutrix on hearing her alarm.

[11] Sri Sujit Debnath, the husband of the prosecutrix (PW-6) has narrated that on hearing the alarm he also rushed from his shop and came to learn that the appellant entered in his hut and covered the mouth of his wife and started struggling with her.

[12] Sri Ashit Debnath (PW-7), who is the younger brother of PW-6 has narrated in the trial that on hearing alarm he had also appeared in the house and at the time of coming to their house, he saw the appellant, running away through a tilla land. He has further stated that he had learnt from his wife that the prosecutrix had stated her that the appellant tried to pull the saree (the wearing apparel) of the prosecutrix.

[13] Apart the related witnesses, the prosecution has examined Sri Partha Debbarma (PW-2), who has stated that he has a shop nearby the house of Sujit Debnath, the husband of the prosecutrix. On hearing the alarm, when he rushed to that house, he saw the appellant fleeing away through the jungle. Immediately,

he learnt from the prosecutrix that the appellant taking advantage of absence of the male members entered in the room of the prosecutrix, while she had been trying to sleep along with her child, covered her face with his hand and tried to commit sexual intercourse. He also stood firmly by the statement in the course of the cross-examination.

[14] Sri Madhab Kar (PW-1) has also stated in the line of PW-2.

[15] Sri Manik Debnath (PW-8) is a Sub Inspector of Police, who investigated the case having been so endorsed and he has narrated very briefly how he conducted the investigation. But in the cross-examination, he has categorically affirmed that PW-2 had stated to him that he saw the appellant fleeing away from the road towards jungle. He has also affirmed the statements of the other witnesses stating that those were stated to him at the time of recording statements under Section 161 of the Cr.P.C.

[16] For rebutting the evidence led by the prosecution, the appellant was examined under Section 313 of the Cr.P.C. where he denied the incriminating materials as false and adduced one witness, namely, Tapan Kumar Baishya (DW-1), who has stated nothing which can be of any benefit to the defence case, except that once Sujit Debnath, the husband of the prosecutrix slapped the appellant when Buddha, the appellant entered in the house of

Sujit Debnath. At that time he was there. This witness has been adduced to show that there was previous enmity.

[17] On assessing the evidence as available in the records, this Court finds that all the ingredients of offence punishable under Section 354 of the I.P.C. such as, the criminal force applied on the woman and that force had been used on the woman intending to outrage her modesty or knowing that the act would likely to outrage her modesty are proved beyond reasonable doubt. The apex court in **Mrs. Rupan Deol Bajaj and another vs. Kanwar Pal Singh Gill and another**, reported in **(1995) 6 SCC 194** which having placed reliance on **State of Punjab vs. Major Singh**, reported in **AIR 1967 SC 63** held that the ultimate test for ascertaining whether the modesty has been outraged is the action of the offender as could be perceived as one which is capable shocking the sense of decency of a woman. As such, this Court does not find any infirmity in the finding of the conviction under Section 354 of the I.P.C.

[18] Having found thus, there can be no difficulty to hold that the offence of house trespass as punishable under Section 448 of the I.P.C. has also been established by the prosecution beyond reasonable doubt.

[19] The jurisprudential objection as raised by Mr. Dutta, learned counsel that the offence punishable under Section 354 of

the I.P.C. is not cognate to the offence punishable under Section 376 read with Section 511 of the I.P.C. and as such, by returning the finding of conviction without framing the charge afresh under Section 354 of the I.P.C. is unsustainable in law in view of **Pulin Bihari Roy vs. State of Tripura**. Mr. Dutta, learned counsel has heavily relied on the said decision of this Court for reinforcing his argument. While appreciating the said decision, this Court has come across the decision of the apex court in **Tarkeshwar Sahu vs. State of Bihar**, reported in **(2006) 8 SCC 560** which has not been considered by this Court, may be for the reason that the said decision was not placed at the time of hearing. Be that as it may, the apex court having been circumstanced identically has laid down the law that :

22. In the backdrop of settled legal position, when we examine the instant case, the conclusion becomes irresistible that the conviction of the appellant under Sections 376/511 IPC is wholly unsustainable. What to talk about the penetration, there has not been any attempt of penetration to the slightest degree. The appellant had neither undressed himself nor even asked the prosecutrix to undress so there was no question of penetration. In the absence of any attempt to penetrate, the conviction under Section 376/511 IPC is wholly illegal and unsustainable.

23. In the instant case, the accused has been charged with Sections 376/511 IPC only. In absence of charge under any other section, the question now arises - whether the accused should be acquitted; or whether he should be convicted for committing any other offence pertaining to forcibly outraging the modesty of a girl. In a situation like this, we would like to invoke Section 222 of the Code of Criminal Procedure, which provides that in a case where

the accused is charged with a major offence and the said charge is not proved, the accused may be convicted of the minor offence, though he was not charged with it. Section 222 Cr.P.C. reads as under:

222. When offence proved included in offence charged.-(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

24. In this section, two illustrations have been given which would amply describe that when an accused is charged with major offence and the ingredients of the major offence are missing and ingredients of minor offence are made out then he may be convicted for the minor offence even though he was not charged with it. Both the illustrations given in the said section read as under:

(a) A is charged under Section 407 of the Penal Code (45 of 1860) with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under Section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said Section 406.

(b) A is charged under Section 325 of the Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted

on grave and sudden provocation. He may be convicted under Section 335 of that Code.

25. In *Lakhjit Singh vs. State of Punjab: 1994 Supp (1) SCC 173* this Court had an occasion to examine the similar question of law. In this case, the accused was charged and tried under Section 302 of the Indian Penal Code but ingredients of Section 302 were missing but ingredients of Section 306 were present, therefore, the Court deemed it proper to convert the conviction of the appellant from Section 302 to Section 306 IPC. In this case, it was urged that the accused cannot be tried under Section 306 IPC because the accused were not put to notice to meet a charge under Section 306 IPC and, therefore, they are prejudiced by not framing a charge under Section 306 IPC; therefore, presumption under Section 113A of Indian Evidence Act cannot be drawn and consequently a conviction under Section 306 IPC cannot be awarded. According to this Court, in the facts and circumstances, Section 306 was attracted and the appellants' conviction under Section 302 IPC was set aside and instead they were convicted under Section 306 IPC.

26. A three-Judge Bench of this Court in the case of *Shamnsaheb M. Multtani vs State of Karnataka (2001)2 SCC 577* had an occasion to deal with Section 222 of the Code of Criminal Procedure. The Court came to the conclusion that when an accused is charged with a major offence and if the ingredients of major offence are not proved, the accused can be convicted for minor offence, if ingredients of minor offence are available. The relevant discussion is in paragraphs 16, 17 and 18 of the judgment, which read as under:

"16. What is meant by "a minor offence" for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as a minor offence vis-à-vis the other offence.

17. The composition of the offence under Section 304-B IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis-à-vis the latter. However, the position would be different when the charge also contains the offence under Section 498-A IPC (husband or relative of husband of a woman subjecting her to cruelty). As the word "cruelty" is explained as including, inter alia,

'harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.'

18. So when a person is charged with an offence under Sections 302 and 498-A IPC on the allegation that he caused the death of a bride after subjecting her to harassment with a demand for dowry, within a period of 7 years of marriage, a situation may arise, as in this case, that the offence of murder is not established as against the accused. Nonetheless, all other ingredients necessary for the offence under Section 304-B IPC would stand established. Can the accused be convicted in such a case for the offence under Section 304-B IPC without the said offence forming part of the charge?"

27. On careful analysis of the prosecution evidence and documents on record, the appellant cannot be held guilty for committing an offence punishable under Sections 376/511 IPC. According to the version of the prosecution, the appellant had forcibly taken the prosecutrix to his gumti for committing illicit intercourse with her. But before the appellant could ravish the prosecutrix, she raised an alarm and immediately thereafter, her father PW1 Ram Charan Baitha and other co-villagers residing in the vicinity assembled at the spot and immediately thereafter, the appellant and the prosecutrix came out of the Gumti. In this view of the matter, no offence under Sections 376/511 IPC is made out.

28. In this view of the matter, it has become imperative to examine the legal position

whether the offence of the appellant falls within the four corners of other provisions incorporated in the Indian Penal Code relating to outraging the modesty of a woman/girl under Sections 366 and 354.

29. Section 366 IPC is set out as under:

"366. Kidnapping, abducting or inducing woman to compel her marriage, etc. - Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid."

30. The essential ingredient of the offence punishable under Section 366 IPC is that when a person has forcibly taken a minor girl with the intention as specified in that section, then the offence is clearly made out. In the instant case, the appellant at about 1.30 a.m. has forcibly taken the prosecutrix/victim to his gumti with the intention of committing illicit intercourse then the offence committed by the appellant would fall within the four forecorners of Section 366 IPC. In our considered view, the essential ingredients of the offence punishable under Section 366 IPC are clearly present in this case. We deem it appropriate to briefly reproduce the ratio of some decided cases.

31. In *Khalilur Rahman v. Emperor: AIR 1933 Rang 98* the Full Bench has observed as under:

"The intention of the accused is the basis and the gravamen of an offence under Section 366..... in considering whether an offence has been committed under this section, the volition, the intention and the conduct of the woman are 'nihil ad rem', except insofar as they bear upon the intent with which the accused kidnapped or abducted her. If the

accused kidnapped or abducted the woman with the necessary intent, the offence is complete whether or not the accused succeeded in effecting his purpose, and even if in the event the woman in fact consented to the marriage or the illicit intercourse taking place."

32. This Court in *Rajendra vs. State of Maharashtra*: (1997) SCC (Cri) 840 observed as under:

Where the Courts had given cogent and convincing reasons for recording their finding that the accused had kidnapped the victim girl with intent to seduce her to illicit intercourse, conviction of accused under Section 366 was not interfered with.

33. The High Court of Delhi in *Niranjan Singh v. State* : (1986) 2 Cri 335 (Del) indicated that in what circumstances an offence under Section 366 IPC is made out. In this case, the Court, while dealing with a case under Section 366 IPC, observed as under: (Crimes p.336, para 5).

Where from the statement of prosecutrix, a girl of six years age it was evident that the accused took her on the pretext of getting her some biscuits to public toilets took off her salwar and also his own pant made her to lie on the floor and bent down on her when he was caught hold by a watchman in the locality, the accused would not be guilty of an attempt to rape however he would be guilty of an offence under Section 366 IPC.

34. In *Vishnu v. State of Maharashtra*: (1997) Cri LJ 1724 (Bom) the High Court of Bombay observed as under:

"The accused were alleged to have kidnapped the girl below 16 years of age from the lawful guardianship of her parents and taken her to another city. The co-accused had simply met the girl and had not instigated her to accompany the accused. Hence, her conviction was set aside. So far accused was concerned, his offence of kidnapping was proved beyond all doubt and he was convicted Under Sections 363/366 IPC. Accused was however acquitted of the charge of rape Under Section 375 IPC as hymen of girl was intact and there were no

outward sign of injuries or violence suggesting the sexual intercourse and consequently no rape could be said to have taken place.”

35. In the instant case, the act of the accused proves that during the kidnapping of the prosecutrix or forcibly taking her to the gumti, the accused had intention or knew it likely that the prosecutrix would be forced to have illicit intercourse. Hence, it is not a mere case of kidnapping for indecent assault but the purpose for which kidnapping was done by the accused has been proved. It is a different matter that the accused failed at the stage of preparation of committing the offence itself.

36. In view of the foregoing facts and circumstances of the case, we are of the opinion that the crime committed by the accused was at initial stage of preparation. The offence committed does not come within the purview of offence punishable under Sections 376/511 IPC. The offence committed squarely covers the ingredients of Sections 366 and 354 IPC. The appellant was charged under Sections 376/511 IPC but on invoking the provisions of Section 222 of the Code of Criminal Procedure the accused charged with major offence can always be convicted for the minor offence, if necessary ingredients of minor offence are present.

37. On the basis of evidence and documents on record, in our considered view, the appellant is also guilty under Section 354 IPC because all the ingredients of Section 354 IPC are present in the instant case.

354. Section 354 IPC reads as under:

“354. Assault or criminal force to woman with intent to outrage her modesty.- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

[20] It has been further held that in **Tarkeshwar Sahu vs. State of Bihar** as under:

58. We have carefully analyzed the provisions pertaining to outraging of the modesty of a woman/girl under Sections 376, 366 and 354 of the Indian Penal Code. This exercise was undertaken to clearly spell out ambit and scope of offences under these provisions. On the basis of the evidence and documents on record, we are of the considered opinion that the conviction of the appellant under Sections 376/511 IPC is wholly erroneous and unsustainable and consequently, the judgments of the High Court and the trial court are set aside.

59. On evaluation of the entire evidence and documents on record, in our considered view, the appellant is clearly guilty of the offences under Sections 366 and 354 IPC. In the facts and circumstances of this case, the ends of justice would be subserved by convicting the appellant under Sections 366/354 IPC. The appellant is sentenced to undergo imprisonment for five years under Section 366 IPC. The appellant is also convicted under Section 354 IPC and sentenced to two years rigorous imprisonment. We direct both the sentences to run concurrently.

[Emphasis added]

[21] In **Tarkeshwar Sahu vs. State of Bihar**, the principles of **Raja Vs. State of Rajasthan**, reported in **1998 Cri.LJ. 1608 (Rajasthan)** has been approvingly relied and in **Tarkeshwar Sahu vs. State of Bihar**, the relevant part of **Raja Vs. State of Rajasthan** has been quoted.

"The accused took the minor to a solitary place but could not commit rape. The conviction of accused was altered from Section 376/511 to one Under Section 354."

[22] Having faced with the law as enunciated by **Tarkeshwar Sahu vs. State of Bihar**, this Court cannot binds its decision by the law as enunciated by one of the Hon'ble Judges of this Court even on making a respectful reference. As such, the

jurisprudential objection raised by Mr. R. Dutta, learned counsel has to be answered in the negative.

Accordingly, this appeal fails and hence is dismissed.

[23] Before parting with the record, having regard to the fundamental principles of sentencing, it is directed that the sentence shall run concurrently and if the appellant has suffered imprisonment before or during the trial or thereafter, that imprisonment shall be set off from the sentence.

Send down the LCRs forthwith.

JUDGE