

**HIGH COURT OF TRIPURA  
AGARTALA**

**Crl. A(J) 4 of 2024**

Md. Ali Hossain @ Ali Hossain

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

**Versus**

State of Tripura

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

For the Appellant(s) : Mr. Ratan Datta, Advocate.  
Mr. S. Debnath, Advocate.

For the Respondent(s) : Mr. R. Saha, Addl. P.P.

Date of hearing & delivery  
of Judgment & order : 12.02.2025.

Whether fit for reporting : Yes/No

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

[T. Amarnath Goud, J]

Heard Mr. Ratan Datta, learned counsel appearing along with Mr. S. Debnath, learned counsel for the appellant. Also heard Mr. R. Saha, learned Addl. PP appearing for the State-respondent.

**[2]** This present appeal is filed under Section 374(2) of Cr.P.C against the impugned Judgment and order of conviction and sentence dated 21.12.2023 passed by the learned Additional Sessions Judge, Sepahijala District, Bishalgarh in Case No. ST (T-I) 10 of 2016 whereby and where-under, the appellant has been convicted under Section 376(1) of IPC and thereby sentenced to

suffer RI for 10 (ten) years and to pay a fine of Rs 1,00,000/- only and in default of payment, to suffer RI for further one year.

**[3]** The prosecution story in brief is that on 26.02.2012 at about 23:00 hours the informant of Pramodnagar Patrompara submitted a written FIR to the effect that on 24.02.2012 his daughter was under treatment at Bishramganj Sen Medical Hall by a private doctor due to her illness. During check up by that doctor, he came to know that his daughter was pregnant for 6 months and upon query, she disclosed her parents that one Md. Ali Hossain of their locality had raped upon her about 8 months back, but due to shame and fear she did not disclose the said fact to them.

**[4]** On the basis of the written FIR of the informant, O/C Bishramganj PS registered the instant case against the accused person namely Md. Ali Hossain and the investigation was endorsed to an SI and on his transfer, the case was re-endorsed to another SI. Thereafter, he was also transferred and on his transfer, the case was again endorsed to a PSI of Bishramganj PS to complete the investigation. After conclusion of investigation, the I/O filed the Charge Sheet vide No. 70 of 2012 dated 30.11.2012 U/S 376 of IPC against the accused person namely, Md. Ali Hossain before the Court. Charge was framed and Prosecution adduced their respective evidences and the accused was examined under Section 313 CrPC and he also adduced oral evidences. After hearing the parties and on the basis of material evidence on record, the learned Trial Court

convicted the appellant U/S 376 (1) of IPC and sentenced him to suffer RI for 10 (ten) years and to pay a fine of Rs 1,00,000/- only and in default of payment of fine he shall suffer RI for further one year.

**[5]** Aggrieved by the aforesaid judgment and order of the learned Court below passed on 21.12.2023, the accused person, appellant herein, has preferred the instant appeal seeking 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 21.12.2023 passed by Ld. Additional Sessions Judge\*\*\*\*, Bishalgarh, Sepahijala, in Case No. S.T. (T-1) 10 OF 2016 whereby and where under the appellant has been convicted Under Section 376(1) of IPC and thereby sentenced him to suffer RI for 10 (ten) years and to pay a fine of Rs 1,00,000/- only, and in default of payment, he shall suffer RI for further one year.....”

**[6]** Mr. Ratan Datta, learned counsel for the accused appellant submits that the FIR was lodged after 8 months of the alleged incident stating inter-alia that on 24.02.2012 daughter of the complainant was under treatment at Bishramganj Sen Medical Hall by a private Doctor due to her illness and during checkup by that Doctor, he came to know that his daughter was pregnant for 6 months. On being asked, the victim girl disclosed her parents that one Md. Ali Hossian had raped upon her about 8 months back, but due to shame and fear she did not disclose the said fact to them. He

further submits that from the said fact, it is clear that the victim was consenting party as she did not disclose the alleged incident till she became pregnant but the learned Court below failed to appreciate the same. Learned counsel, for the purpose of reference, has placed reliance on the judgment of the Hon'ble Supreme Court in **Deepak Gulati v. State of Haryana** reported in **AIR 2013 Supreme Court 2071**. The relevant contents of the said judgment as referred by the learned counsel is quoted herein-below:

".....18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of mis-representation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives....."

**[7]** He further submits that the victim stated at the time of recording her statement by the Ld. Judicial Magistrate, 1 class U/S 164 (5) of Cr.P.C, that she was raped by the accused three times and in the evidence before the Trial Court she deposed that she was raped once by the accused. The victim girl was also examined by the I.O. immediate after registration of the case and she stated that

she was raped three times by the appellant and said contradiction has been proved by the I.O. (PW-13) as Exhibit A and Ld. Judicial Magistrate 1<sup>st</sup> Class, (PW-8). Due to such contradictory statements made by the victim girl, learned counsel for the accused, therefore, prays before this Court that the impugned order dated 21.12.2023 passed by the learned Trial Court be set aside. To support his contention, Mr. Datta, learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in **Manak Chand alias Mani vs. State of Haryana** reported in **2023 SCC OnLine SC 1397**. The relevant contents of the said judgment as referred by the learned counsel for the accused appellant is quoted here-under:

"...10. Does the testimony of the prosecutrix in the present case inspire confidence? We are afraid it does not. Let us appreciate the facts once again. Although, the first incident of rape is alleged to be of 12.09.2000, the prosecutrix does not disclose this to anyone immediately. She then alleges rape again on two or three different occasions later, though no date and time are disclosed. She only discloses it to her mother after one and half months. It has then come in the evidence led by none other but the prosecution (in the school register submitted in the court by PW-2 i.e., Ram Sahay), that the prosecutrix had attended her classes in the school on 12.09.2000 at Dabwali, where she resides with her parents. We must note that she has alleged rape on the same day at village Sanwat Khera, where she was staying at the relevant time with her sister in her matrimonial house. This seems improbable, if not impossible. The other aspect is the admitted position of the prosecution itself that the FIR was ultimately filed as the initial proposal of marriage was then turned down. All these facts do cast a doubt on the story of the prosecution....."

**[8]** On the contrary, Mr. R. Saha, learned Addl. P.P. for the State opposes the above submissions made on behalf of the accused. He contends that due to shame and fear the victim did not disclose the incident of rape committed to her parents and there was no consent from the side of the victim regarding sexual intercourse. He further submits that as per the DNA Test, it is clear

that the accused is the biological father of the baby and as a result of the rape committed by the accused that baby was born by the victim. Learned Addl. P.P., therefore, urges this Court to dismiss the instant appeal filed by the accused appellant.

**[9]** Heard learned counsel for the respective parties. Perused the record.

**[10]** It is seen from record that the victim stated at the time of recording her statement by the learned Judicial Magistrate, 1<sup>st</sup> class under Section 164 (5) of Cr.P.C, that she was raped by the accused three times. Whereas, before the Trial Court, as P.W. 4, the victim deposed that she was raped once by the accused. The Investigating Officer (P.W. 13) and the learned Judicial Magistrate 1<sup>st</sup> Class (P.W. 8) in their respective deposition also stated that at the time of recording her statement, the victim girl stated that she was raped by the accused on three occasions. The way prosecution has projected the case and being found contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond reasonable doubt. In the present case, the statement of the victim recorded by the I.O. and the statement recorded under Section 164 (5) of Cr.P.C by the learned Judicial Magistrate, 1<sup>st</sup> class, show contradictions with the deposition of the victim before

the Trial Court regarding the sexual intercourse. *Prima facie*, this Court feels that the contradictions in the statements of the victim can weaken the prosecution case and it may be difficult to understand whether there was any consent or not as per version of the victim.

**[11]** It is further revealed from record that P.W. 1, the doctor deposed that he had conducted the DNA fingerprint test as per standard protocol and opined that the victim girl is the biological mother of the baby and the accused person is the biological father of that baby.

**[12]** D.W. 2, the Panchayat Pradhan of Pramod Nagar Panchayat deposed before the learned Trial Court in the following manner:

"..... that Ali Hossain Committed an unsocial work with the daughter of \*\*\*\*. The matter was resolve with a written resolution were signatures of both the sides were obtained and I also put my signature...."

The Panchayat Pradhan in her Cross-examination stated that "*.....We had knowledge on the date of resolution that the victim girl gave birth to a male child. It is a fact that Ali Hossain committed rape upon the daughter of \*\*\*\* due to which she became pregnant and gave birth to a child.....*"

**[13]** On perusal of record, this Court finds that it is not fair on the part of the accused since while in his examination under Section 313 of the Cr.P.C., he denied the said fact that he is the biological

father of that baby, but now, it is argued on behalf of him before this Court that the victim is a consenting party in this case. As per the DNA test, it is established that there was sexual intercourse between the accused and the victim girl as they are the biological parents of that child. This sort of act by the accused draws an adverse inference upon him.

**[14]** Since as per FIR dated 26.02.2012, the alleged incident was occurred in the year 2011, for the purpose of reference, the provision of Section 376 (1) before its amendment in the year 2018, is reproduced herein-below:

"376. Punishment for rape.- (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years....."

**[15]** In view of the above discussions, this Court is of the view that though the statements of the victim regarding number of committed rape upon her are contradictory, but, the accused has also failed to prove his case that the victim was a consenting party. From the conduct of the accused, it is clear that he had ill motives only to satisfy his lust, and as a result, the victim and her family had to suffer social and psychological impact. Thus, we are of the considered opinion that ends of justice would be met if the accused

is sentenced under Section 376(1) to suffer Rigorous Imprisonment for 2 (two) years and to pay a fine of Rs.2,00,000/- (Rupees Two Lakhs) only and in default of payment to suffer R.I. for further one year. Accordingly, the same is ordered and the impugned Judgment and order of conviction and sentence dated 21.12.2023 passed by the learned Additional Sessions Judge, Sepahijala District, Bishalgarh in Case No. ST (T-I) 10 of 2016 is modified to the extent as indicated above.

It is needless to observe that the period of detention in custody already undergone, shall be set off.

With the above observations and directions, the instant appeal is partly allowed and thereby, the same is disposed of. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

Send down the LCR.

**B. PALIT, J**

**T. AMARNATH GOUD, J**

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