

**(2011) 06 GAU CK 0042**

**Gauhati High Court (Agartala Bench)**

**Case No:** Criminal Appeal No. 35 of 2003

Helan Miah

APPELLANT

Vs

The State of Tripura

RESPONDENT

**Date of Decision:** June 6, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 376, 376(I), 417, 493

**Citation:** (2011) 5 GLR 549

**Hon'ble Judges:** P.K. Musahary, J

**Bench:** Single Bench

**Advocate:** A. Das, for the Appellant; P. Bhattacharjee, Addl. P.P., for the Respondent

**Final Decision:** Allowed

### **Judgement**

P.K. Musahary, J.

Heard Mr. A. Das, learned Counsel appearing for the accused/Appellant and Mr. P. Bhattacharjee, learned Addl. P.P. Tripura for the State Respondent.

2. The accused/Appellant was convicted u/s 376(I) IPC and was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 25,000/- in default of payment further to suffer rigorous imprisonment for 6 months vide judgment and order dated 22.03.2003 passed by the learned Additional Sessions Judge, West Tripura, Sonamura. It was further directed that the money, if realized should be paid to the victim by way of compensation. It is against this judgment and order, the present appeal has been filed.

3. The prosecution story is based on the FIR filed by the victim girl. It was alleged in the FIR that when she went to nearby "tilla" for collection of fire woods, the accused/Appellant met and persuaded her to establish relationship with him by assuring and promising her to marry. On being so persuaded and promised she

indulge in sexual act with him at the said "tilla" first. Such sexual acts continued on several occasions at her house. Subsequently, the victim girl realized that she has become pregnant and then she informed the accused/Appellant about her pregnancy. The accused/Appellant asked the victim to proceed to a doctor for causing abortion. It was at that stage, she had to divulge the matter to her parents. The parents of the prosecutrix informed the fact to the father of the accused to settle the matter, but he did nothing in this regard.

4. The aforesaid crime was registered as Kalamchara P.S. Case No. 41/2000 u/s 376/493/417 IPC. On completion of the investigation, the investigating officer submitted charge sheet and the matter was committed to the Court of the learned Sessions Judge, West Tripura, Sonamura for trial. The learned trial court framed charge u/s 376(I)/417 IPC, to which the accused/Appellant pleaded not guilty and claimed to stand the trial.

5. The prosecution examined as many as ten witnesses including the victim girl and a Medical Officer. The accused/Appellant in his statement u/s 313 Code of Criminal Procedure denied the allegation but adduced no evidence in his defense. On consideration of the evidence and materials on record and upon hearing the learned Counsel for the parties, the learned trial court passed the impugned judgment and order convicting and sentencing the accused/Appellant as stated before. As usual, there is no eye witness to the alleged incidents of rape. To decide the charge u/s 376(I) IPC, the court has to attach maximum importance on the evidence of the victim girl. The case u/s 376(I) IPC may stand proved on the sole evidence of the victim girl even without being corroborated by any evidence of a witness or medical evidence, if her evidence is found to be consistent, cogent, trustworthy and believable gaining the confidence of the court. The settled law in this regard need not be reiterated by citing the authorities.

6. In the present case, the victim girl was examined as PW-1. As per her evidence, the first incident of alleged rape took place on 28.4.2000. She narrated how the accused/Appellant made her believe by the promise given by the accused to marry her. The relevant portion of the evidence of the victim is quoted herein below:

...The accused/Appellant went to our house with the plea of taking drinking water and started talking with me and than he raped me. In this way on several occasions till Aswin, 1407 B.S (corresponding to 12.10.2000 AD he raped me, in total 4/5 days and due to sexual intercourse with the accused/Appellant I became pregnant. I informed about my pregnancy to the accused.

7. The age of the victim girl was determined by the medical test. In this regard, Dr. Raichand Saha was examined as PW-8. He deposed that on 28.11.2000 the victim girl was produced by Police Officer before him for determination of age by ossification test taking legal consent of the girl. He (Doctor) conducted some radio tests upon her body and after such medical tests, he found that the age of the victim girl was

between 19 and 20 years as on 28.11.2000. The Medical Officer confirmed that the victim girl was above 16 years of age and she attained the age of consent. In her evidence also, she has never alleged that the accused/Appellant used force or forcibly indulged in sexual acts with the victim girl. Such sexual acts as per the evidence of the victim girl herself continued for quite a long time and on several occasions. She has not deposed that she ever protested the accused/Appellant. On the face of such evidence on record, I find no element or ingredient of offence u/s 376 IPC. The accused/Appellant would have been liable for committing offence u/s 376 IPC, if the victim/prosecutrix was below the age of 16 years at the time of alleged first occurrence and on subsequent occasions.

8. The learned trial court did not apply its judicial mind to the aforesaid evidence on record and the provision of law u/s 376 IPC. I do not agree with the finding of the learned trial court that the accused/Appellant committed offence u/s 376 IPC. On going through the evidence on record, I must say that the prosecutrix was a consenting party and the sexual acts were committed with clear consent of the prosecutrix.

9. As regards the offence u/s 417 IPC, the prosecutrix clearly deposed during the trial that the accused/Appellant made allurement by promising her to marry. There is no specific suggestion put to the victim girl during cross examination that the accused/Appellant did not make any promise to marry her. If such suggestion was not put by the defense, it would mean that the promise for marriage to the victim girl has not been denied. The defense counsel rather put a suggestion that the accused/Appellant did not allure her(victim girl). Such suggestion also reflects the stand of the defense that the allegation of allurement was not denied. There is no other evidence on record that the victim girl was allured and promised for marriage, but the trend of the cross examination and putting of suggestion on her, sufficiently clarifies that the accused/Appellant did make promise to obtain the consent of her for indulging in sexual acts.

10. In view of the above, I find that the accused/Appellant is liable to be convicted u/s 417 IPC and accordingly, I convict the accused/Appellant u/s 417 IPC and with regard to the sentence, I consider that the ends of justice would be served, if the accused/Appellant is directed to pay compensation of Rs. 15,000/- (Fifteen thousand) only instead of sentencing him to undergo imprisonment at this stage. Accordingly, the accused/Appellant stands convicted u/s 417 IPC and fined at Rs. 15,000/- (Fifteen thousand) to be deposited in the Court of the learned Additional Sessions Judge, Sonamura, West Tripura within a period of 3(three) months from the date of receipt of the LCR. On receipt of the said amount, the same shall be paid to the victim, Smti. Sirina Akhtar on proper verification. It is provided that if the accused Appellant fails to deposit the said amount as directed above, he shall have to serve sentence of simple imprisonment for a period of 6(six) months and necessary action would be taken by the learned trial court in such event.

11. The appeal stands partly allowed.

12. Send down the LCR forthwith.