

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) 13 of 2023

Karam Ali @ Maharam Ali

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

Versus

State of Tripura

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

For the Appellant(s) : Mr. Subrata Sarkar, Sr. Advocate.
Ms. V. Poddar, Advocate.

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

Date of hearing & delivery
of Judgment & order : 30.07.2024.

Whether fit for reporting : 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. S. Sarkar, learned senior counsel assisted by
Ms. V. Poddar, learned counsel for the appellant. Also heard Mr. R.
Datta, learned PP appearing for the State-respondent.

[2] This present appeal is filed under Section 374 of the
Code of Criminal Procedure, 1973 against the judgment and order
of conviction dated 19.07.2022 and sentence dated 21.07.2022
passed by the learned Addl. Sessions Judge, Gomati Judicial
District, Udaipur in connection with case No. Sessions Trial 04 of
2020 convicting the appellant to suffer rigorous imprisonment for

life and to pay a fine of Rs. 20,000/- only in default to suffer rigorous imprisonment for one year for the commission of the offence punishable under Section 376(1) of Indian Penal Code, 1860.

[3] The prosecution story in brief is that the prosecutrix lodged a written ejahar to the O.C. of R.K. Pur Women PS alleging that on 09.08.2019 at around 9 AM morning time she had gone to nearby Tepania forest to collect firewood. At around 3 PM, while she was preparing to return, at that time, accused Karam Ali alias Maharam Ali (appellant herein) suddenly came there and taken her towards the deep of the jungle forcefully. It was also alleged that the accused Karam Ali alias Maram Ali committed rape upon the prosecutrix there forcefully. Returning back to the house, the prosecutrix informed the matter to her son and nearby people and decided to take the shelter of law. The ejahar was received on 09.08.2019 at around 21:05 hours and a case was registered vide No. 2019 WRP 042 under Sections 376 of IPC then the case was endorsed to the WSI of police for its investigation.

[4] During investigation, the IO visited the POs, prepared hand sketch maps with separate indexes, prepared seizure memos after the collection of swabs, petticoat etc., arranged for medical examination of victim and sent swabs for forensic examination, examined available witnesses and recorded their statements u/sec. 161 of Cr.P.C. On completion of the investigation, the IO has laid

down the charge sheet vide R.K. Pur Women PS C/S No.01/2020 dated 14.01.2020 under Section 376 of IPC against accused Karam Ali @ Maharam Ali to face the trial.

[5] Learned Judicial Magistrate First Class, Udaipur, Gomati Judicial District received the charge sheet on 17.01.2020 and thereafter, on 24.01.2020, the learned Chief Judicial Magistrate, Gomati Judicial District, Udaipur on perusal of the same, took cognizance of offence under section 376 of IPC. The case record was transferred then to the Court of learned JMFC, Court No.03, Udaipur, Gomati Judicial District. On 17.02.2020, the case has been committed to the Court of learned Sessions Judge, Gomati Judicial District, Udaipur and subsequently, the same has been transferred to Addl. Sessions Judge, Gomati Judicial District, Udaipur vide order dated 19.02.2020 for trial in according to law.

[6] On received of the case record, the Court of the learned Addl. Sessions Judge, Gomati Judicial District, Udaipur framed charge on 11.03.2020 for commission of offences punishable under Section 376 of IPC against the accused person namely Karam Ali to which he pleads not guilty. Thereafter, to prove the charge, prosecution has examined as many as 12 witnesses including the IO of the case. After the closure of prosecution evidences, the accused person was examined under Section 313 Cr.P.C to which he claimed to be innocent and also declined to adduce any DWs on his behalf.

[7] Learned Court below, upon hearing both the parties and observing all the factual evidence on record, by order dated 19.07.2022, held the accused person, appellant herein guilty under Section 376(1) of the IPC and convicted to suffer the sentence under the said Section. Thereafter, on 21.07.2022, learned Court below sentenced the accused to suffer rigorous imprisonment for life with fine of Rs.20,000/- under Section 376(1) of the IPC in default of payment of fine, to suffer rigorous imprisonment for one(1) year. Hence, the present appeal is preferred by the accused person, appellant herein.

[8] Mr. S. Sarkar, learned senior counsel assisted by Ms. V. Poddar, learned counsel for the appellant contends that the learned trial Court below convicted the appellant merely on conjectures and surmises. There are material discrepancies between the statements of the witnesses and this fact was not at all considered by the learned trial Court below. He submits that the complainant in the ejahar contended that on 09.08.2019 at about 3 P.M., when she was preparing to bring the firewood home, the accused dragged away her into the depth of jungle. But, in her deposition the complainant i.e. P.W.1 deposed that the incident was taken place at around 12 hours. It is contended that prosecution could not prove its case beyond reasonable doubt. He, therefore, urges this Court to set aside the impugned order and sentence passed by the learned Court below.

[9] On the contrary, Mr. R. Datta, learned PP appearing for the State submits that prosecution has successfully proved the charge levelled against the accused person before the Court below. For the purpose of same, prosecution relied on the versions of victim and other prosecution witnesses supported by the medical evidence as well forensic expert evidence. It is further contended that the victim categorically stated that on the alleged date of incident, accused taken her forcefully towards deep jungle by holding her legs and there committed sexual assault upon her. He, submits that in the offence of rape, statement of the victim is of utmost importance and law in this regard is settled that on the sole statement of the victim, the accused can be convicted. However, in the case in hand, P.W.2, P.W. 4, P.W.5, P.W.9 (Medical Officer) and P.W. 11 (Forensic Expert) corroborated the version of victim and defence side failed to counter them.

[10] During the course of argument, learned PP, to oppose the submission made by the learned senior counsel for the appellant, has placed reliance on the judgment of Hon'ble Supreme Court passed in **Birbal Nath v. State of Rajasthan and others** reported in **2023 SCC OnLine SC 1396**. The contents of the said judgment as referred by the learned PP, read as follows:

"....20. No doubt statement given before police during investigation under Section 161 are "previous statements" under Section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this is only for a limited purpose, to "contradict" such a witness. Even if the defence is successful in contradicting a witness, it would not

always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned judges of the High Court have gone wrong.

21. The contractions in the two statements may or may not be sufficient to discredit a witness. Section 145 read with Section 155 of the Evidence Act, have to be carefully applied in a given case. One cannot lose sight of the fact that PW-2 Rami is an injured eye witness, and being the wife of the deceased her presence in their agricultural field on the fateful day is natural. Her statement in her examination in chief gives detail of the incident and the precise role assigned to each of the assailants. This witness was put to a lengthy cross examination by the defence. Some discrepancies invariably occur in such cases when we take into account the fact that this witness is a woman who resides in a village and is the wife of a farmer who tills his land and raises crops by his own hands. In other words, they are not big farmers. The rural setting, the degree of articulation of such a witness in a Court of Law are relevant considerations while evaluating the credibility of such a witness. Moreover, the lengthy cross examination of a witness may invariably result in contradictions. But these contradictions are not always sufficient to discredit a witness may invariably result in contradictions. But these contradictions are not always sufficient to discredit a witness. In *Rammi v. State of M.P.*, (1999) 8 SCC 649, this Court had held as under:

"24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non- discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."....."

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

[12] On perusal of record and upon hearing the submissions made by both the parties, this Court is of the view that the

impugned order dated 19.07.2022 passed by the Court below convicting the accused under Section 376(1) of the IPC needs no interference. However, in so far as the sentence of the Court below dated 21.07.2022 awarded to the accused appellant herein to suffer rigorous imprisonment for life is concerned, the same is on the higher side. This Court is of the considered opinion that the same should be reduced to ten years rigorous imprisonment under Section 376(1) of the IPC instead of rigorous imprisonment for life. Accordingly, the impugned sentence dated 21.07.2022 awarded by the Court below is modified to the extent as indicated above. It is needless to mention that the period of detention already undergone by the convict shall be set off.

In view of the above, 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.

B. PALIT, J

T. AMARNATH GOUD, J

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RAJKUMAR
SUHANJIT SINGHA

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