



TRHC010003112025

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A. (J) 16/2025

Sri Sukanta Murasing, son of Sri Ratanbasi Murasing, resident of West Patichari, Murasing Para, P.S. Santirbazar, District-South Tripura;

.... Appellant

Versus

The State of Tripura, represented by the Ld. Public Prosecutor, High Court of Tripura, Agartala.

----Respondent

For the Appellant(s) : Mr. K. Nath, Advocate

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

Date of hearing & delivery of Judgment & Order : **13.05.2026**

Whether fit for reporting : **No**

BEFORE

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT(ORAL)

(Dr.T.Amarnath Goud, J)

Heard Mr. K. Nath, learned counsel appearing for the appellant. Also heard Mr. Raju Datta, learned Public Prosecutor appearing for the respondent-State.

2. The appellant, by means of filing the present appeal have challenged the judgment and order of conviction and sentence dated 31.01.2025, passed by the learned Additional Sessions Judge, South Tripura, Belonia, in connection with case No. S.T.(Type-1) 11 of 2023, whereby the appellant had been convicted under Section 376(1) IPC, and sentenced to suffer rigorous imprisonment for 10(ten) years and also to pay a fine of Rs.1,00,000/- with default stipulation under Section 376(1) IPC.

3. The case of prosecution, in brief, is that, the complainant-victim lodged a written complaint with the Officer-in-Charge of Santirbazaar police station on 23.08.2022, alleging *inter alia* that during the year 2013, the complainant-victim became acquainted with the appellant and upon such acquaintance, the appellant on proposal of love brought her to his house in the last part of September, 2017, wherein the appellant after closing the door committed rape upon the complainant-victim against her will, and when she started crying, the appellant promised to marry her and accordingly on 22.01.2018, their marriage was solemnized in the residence of the complainant, following a joint declaration notarized on 31.01.2018. In the written complaint it was further alleged that after the marriage, the appellant left the complainant-victim in her paternal residence with an assurance that he will marry her socially and will take her to his residence after informing the matter to his parents and accordingly after informing their relation to the parents of the appellant, the appellant again visited her house and assured that their re-marriage ceremony will be solemnized in a grand manner by the year 2020 and in the meantime there built a visiting terms in both the houses. It was further alleged that by virtue of that, both the appellant and the complainant-victim started to visit each other's house frequently thereby started to live as husband and wife and taking the advantage of recognition of their social marriage, the appellant had been making physical relationship with the complainant-victim. It was also alleged that after elapse of 2020

when the complainant-victim requested the appellant for social marriage, the appellant assured to conduct the marriage by the month of March, 2022, but in the March, 2022, when the complainant-victim and her parents requested the appellant to marry her, the appellant refused to marry her. Thereafter, the complainant appealed the village elders who also approached the appellant, but the appellant denied marrying the complainant.

4. The complaint thereafter was registered as FIR vide Santirbazaar PS case No. 2022/STB/026 dated 07.10.2022 under Section 376/417/420/34 IPC and the same was endorsed for investigation to PW-14. During the course of investigation, the I.O. visited the PO, recorded statement of the material witnesses, arranged medical examination of the accused-appellant, collected medical evidences, arrested the accused, and upon completion of investigation, submitted charge-sheet against the accused-appellant for commission of offence punishable under Section 376, 417, 420, 34 IPC. On receipt of the charge-sheet, cognizance was taken by the JM, 1st class, Belonia and thereafter committed the case to the court of Sessions. At commencement of trial, charge was framed against the accused under Section 376(1) IPC, to which the appellant pleaded not guilty and claimed to be tried.

5. The prosecution to substantiate the charge adduced as many as 14 witnesses and introduced some documents which were exhibited by the learned trial court. On closure of the prosecution evidence, the accused was examined under Section

313 Cr.P.C. to which he denied all the allegations and declined to adduce evidence on his behalf. After completion of recording of evidences and having heard the learned counsel appearing for the parties, the learned Additional Sessions Judge convicted and sentenced the accused, as stated here-in-above. Hence, this appeal before this court.

6. Mr. K. Nath, learned counsel appearing for the appellant has submitted that there are substantial contradictions in the statement of the prosecution witnesses. Learned counsel has also submitted that long delay in lodging the FIR has not been properly explained. Learned counsel has further submitted that there was love affair between the appellant and the complainant, and the complainant in her evidence has admitted that the appellant had married her and their marriage is subsisting till date. He has further submitted that while deposing before the learned trial Court, the complainant has personified herself as wife of the appellant. Learned Counsel further submitted at no point of time the appellant had committed rape upon the complainant-victim and if there is any co-habitation between them the same is consensual in nature, and on to that aspect, learned counsel has submitted that in all manner Section 376(1) IPC has not been proved. Showing all the discrepancies therein learned counsel has submitted that this is a clear case of acquittal.

7. On the other hand Mr. Raju Datta, learned PP appearing for the State-respondent has submitted that the

conviction returned by the learned trial court is based on a thorough and careful appreciation of the oral and documentary evidences which is well-reasoned and legally sound and the same requires no interference.

8. This court has meticulously gone through the case record and the judgment.

9. The star witness in this case is the complainant-victim herself. From the statement of the complainant-victim recorded under Section 164(5) Cr.P.C. before the Magistrate, it is revealed that the complainant had love affairs with the appellant and out of such love affairs there was physical relation between them. In her statement, the complainant also stated that the appellant by cutting his hand put the blood on her forehead and married her. The complainant also stated in her statement recorded under Section 164(5) of Cr.P.C. that she often used to go to the house of the appellant. Further she has stated that she has aborted once by consuming medicine. The written complaint (Exbt.P-1) and the statement of the complainant-victim before the Court also demonstrates amply that there was love affairs between the complainant and the appellant and whatever physical relation took place between them was absolutely consensual in nature since there was no protest or obstruction or complaint on the part of the complainant at the very initial stage.

10. At the outset, this court is to view the following requirements in deciding the case: (i) *whether the appellant had refused to marry the complainant-victim despite having promised*

to marry her and under the garb of marriage, the appellant had established physical relations with her; (ii) whether the appellant had committed sexual intercourse with the complainant-victim and whether the sexual intercourse was without her consent which is essential to find the appellant to have committed an offence punishable under Section 376(1) of IPC; In this aspect, the court is to look into first on the ingredients of Section 375 IPC. As such, we gainfully refer Section 375 IPC, which reads as follows:

“375. Rape.-- A man is said to commit "rape" if he--

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

First- Against her will.

Secondly- Without her consent.

From the case in hand, it is conclusively seen that there was love affairs between the appellant and the complainant which at certain point turned into physical relation. The complaint in her complaint and evidence stated that the appellant has committed rape upon her in last part of September, 2017, against her will, but nowhere in the record, it is found that she made any complaint to anyone or before the police regarding such conduct of the appellant rather, she continued her sexual relationship with the appellant, on the assurance of marriage extended by the appellant. Thus, it can safely be presumed that the appellant has not cheated the complainant at any point of time on the contrary the same was a result of consent by the

complainant-victim. Further, from the deposition of witnesses and also from the statement of the complainant, commission of rape cannot be established, rather a love bondage/relation between the appellant and the complainant has been well established. Further, the complainant-victim had admitted that there was marriage between her which was followed by notarized declaration and the said marriage is still in subsistence. Moreover, the medical evidence also does not support the commission of rape. It is trite law that consensual relationship within marriage cannot be treated as rape and, hence the case in hand cannot come under the purview of Section 375 IPC.

10. The complainant was in love with the appellant and subsequently there was physical relation between them resulting which she became pregnant and upon being pregnant she also had aborted by consuming medicine and the said facts had been admitted by the complainant during trial. The complainant-victim was matured enough to understand the consequence, but she did not resist the appellant or herself at any point of time or did not raise any alarm. She further had admitted their marriage and living together as husband and wife out of which cohabitation typically took place between them since living together. It was the complainant who ought to have resisted the appellant at the first time when he approached the complainant for having physical relation with him, but she did not resist rather continued with the said act. Thus, it can be assumed that the complainant-victim consented to such sexual intercourse with the appellant voluntarily. Now, the complainant-victim who consented for

sexual intercourse, knowing the consequence, cannot plead she was raped.

11. On over all appreciation of the evidence available on record, this court of the considered view that the prosecution has miserably failed to proved its case beyond any shadow of doubt. As a result, the present criminal appeal is **allowed**. The impugned judgment and order of conviction and sentence dated 31.01.2025, passed by the learned Additional Sessions Judge, South Tripura, Belonia, in connection with case No. S.T.(Type-1) 11 of 2023, **is set aside**. The appellant, is hereby, acquitted of the charge for which he has been tried. Accordingly, the appellant is directed to be set free from incarceration, if not required in any other case.

Pending application(s), if any, also stands disposed.

S.DATTA PURKAYASTHA,J **DR.T. AMARNATH GOUD,J**