

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl. A(J) No. 20 of 2024

Sri Herenta Tripura

.....Appellant

-V E R S U S-

The State of Tripura

..... Respondent.

B_E_F_O_R_E
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

For Appellant(s)	:	Mr. B. Deb, Advocate.
For Respondent(s)	:	Mr. R. Datta, P.P.
Date of hearing and delivery of judgment and order	:	17.06.2025
Whether fit for reporting	:	NO

JUDGMENT & ORDER[ORAL]

[T. Amarnath Goud, J]

Heard Mr. B. Deb, learned counsel appearing for the appellant also heard Mr. R. Datta, learned P.P. appearing for the respondent-State.

[2] This is an appeal filed under Section-374 of Criminal Procedure Code, 1973 against the judgment of conviction and sentence passed by the learned Sessions Judge, South Tripura, Belonia, in connection with case No. ST (T/1) 22 of 2021 vide judgment dated 12.01.2022 in which the learned Court below convicted and sentenced the convict to suffer RI for one month for an offence punishable under Section-341 of IPC and also sentenced to suffer RI for 10 years and to pay a fine of Rs.15,000/- for the offence punishable under Section-376(1) of IPC and in default to suffer RI for two months. The convict is further sentenced to suffer RI for life and to pay a fine of Rs.20,000/- for the offence punishable under Section-302 of IPC and in default to suffer RI for three months. The convict is also sentenced to suffer RI for three years and to pay a fine of Rs.5,000/- for the

offence punishable under Section-201 of IPC and in default to suffer RI for 15 days. All the sentences shall run concurrently.

[3] The fact of the case in a nutshell, is that, on 05.10.2020 at around 10 a.m. the victim-wife of the informant went out of her dwelling hut to collect firewood from the litchi garden of North Hichacharra. But the victim did not return to her dwelling hut till evening, hence the informant with his family members started to search the victim and ultimately found the victim in dead condition under a litchi tree in the litchi garden of North Hichacharra. Thereafter local people informed police, then police came and the informant lodged FIR with the O/C, Baikhora P.S.

[4] O/C, Baikhora P.S. registered Baikhora P.S. Case No. 2020/BKR/073 under Section-302 IPC and the case was endorsed to W.S.I. Ruma Noatia for investigation. The case was investigated and on completion of investigation, W.S.I. Ruma Noatia filed charge sheet against the accused Herenta Tripura for commission of offence punishable under Sections-341, 376, 302 and 201 of IPC. Having received the charge sheet, learned Chief Judicial Magistrate, South Tripura, Belonia took cognizance of offence punishable under sections 341, 376, 302 and 201 of IPC and the case being exclusively triable by the Court of Sessions, committed the case to this court for trial.

[5] On commitment of the case to this Court charges against accused person were framed under Sections-341, 376(1), 302 and 201 of IPC. The contents of the charges were read over and explained to the accused person, to which, he pleaded not guilty and desired to stand the trial. In total seventeen witnesses were examined by the prosecution to prove the charges against the accused person. After the process of recording the evidence of witnesses so adduced from the side of the prosecution was concluded, the accused person was subjected to examination as warranted under Sections-313(1)(b) of Cr.P.C. with respect to the incriminating circumstances that surfaced against him in the evidence on record. His plea is of total denial and false implication. However, he declined to adduce any witness on his defence.

[6] Having heard both the parties and on perusal of the material evidence on record, the learned Court below has observed as under:

“In the result, I find that, the prosecution has successfully proved the charges framed under Sec.341, 376(1), 302 and 201 of IPC against the accused Herenta Tripura. Accordingly, accused Sri Herenta Tripura is hereby convicted for commission of offence punishable under Sec.341, 376(1), 302 and 201 of IPC. He is already in custody. Sentence will be pronounced after the convict on 13.01.2022.”

[7] The appellant herein, being aggrieved by and dissatisfied with the same, has preferred this appeal before this Court for ends of justice.

[8] Mr. B. Deb, learned counsel appearing for the appellant has submitted that PW 1 Sri Dhananjay Tripura stated in his examination in chief that he is the informant of the case. On 05.10.2020 his wife went for collection of wood in the jungle but did not return. He along with local people started to search and his mother-in-law was also with them. On the next day they recovered the body of his wife Thuikraoyo Mog in a litchi garden at Kalshi. They saw the body of his wife and she was dead as well as there was injury mark on her neck and her tongue was out of her mouth. After recovery of the dead body of his wife police was informed by local people and police of Baikhora PS came. Thereafter, he has submitted written ejahar to police and the ejahar was written and signed by him. In the spot police prepared inquest report and the son of informant i.e. PW-I Sanjoy Tripura noticed injury mark on the neck of Herenta Tripura and his son asked that what is the reason of the injury to which Herenta told that said injury happened at the time of fishing. After knowing the aforesaid fact from his son he informed the PS and thereafter, the police arrested the appellant.

[9] PW-3, the son of the informant in his evidence has stated that on that day his father went for his work. His mother after preparing of food went for collection of wood in the forest and after completion of work his father came at 2 pm. It has been stated that she went to forest for collection of wood and when his mother did not return, his father went to the house of grandmother for enquire. His father did not find his mother there and thereafter, his father with the help of the people of the village started to

search his mother. In search, they found the dead body of her mother in the government Litchi garden at Kalshi. He further stated that accused Herenta Tripura met with him and he noticed nail mark on his neck to which he asked him the reason for the nail mark on his neck but he told that at the time of fishing he got this injury. He also informed about this injury of Herenta Tripura to his father thereafter his father informed that matter to police but in his cross-examination he stated that police came at about 6/7 pm on the same day and the house Herenta Tripura is near to his house. He also stated about an incident of peeping by the accused person during the bath of his deceased mother but no specific date and time has been mentioned and he did not state about any meeting or the name of the persons by whom the aforesaid matter was solved in the locality but the learned Court below most erroneously convicted the convict appellant after believing the said portion of evidence on record.

[10] PW 7 Sri. Prachai Mog stated that on 05.10.2020 the wife of Dhananjoy Tripura went for collection of wood and when she did not return, he started to search his wife. They started to search her band dead body of the wife of Dhananjoy Tripura was found in the Government Litchi garden. Police was informed by the local people; police took the dead body to Baikhora Hospital. Later on, police team came to the spot with dog squad and on suspicion police arrested Herenta Tripura and took him to PS and again came in the night along with accused. At that time Dhananjoy Tripura called him and he accompanied them to the bank of Kalshi river. Police team recovered ornaments (golden chain and ring) of the deceased and also one dao of deceased and a gamcha. But in cross examination this witness categorically stated that he has not put his signature on the seized items at the time of seizure which creates a strong doubt about the seizure procedure and that has not been considered by the learned Court below.

[11] PW-16 Sri. Arghya Saha SDM Santirbazar stated in his examination in chief that on 06.10.2020 he was posted as SDM Santirbazar, on that day at 01:30 am SDPO Santirbazar informed him that one murder was taken place and one accused has been arrested. His team going to recover the weapon team as he required his presence during the period of as

Baikhora PS where SDPO, OC and IO along with other police personnel were present accused was also there and the statement of accused was recorded in his presence. He further stated that accused disclosed before him that he committed the homicide and he also disclosed that he can point out the place where the weapon of murder along with other things have been secretly hidden. He also put his signature on the recorded disclosure statement of the accused. This witness again stated that after recording the disclosure statement of the accused person he accompanied police team along with SDPO and IO and went to the house of accused where certain jewellery of the deceased were recovered. They also went to the spot where the gamcha which were used for strangulation of the deceased was recovered is shown to the witness and deposed that when these were recovered it was night but he is not sure that whether this gamcha is same one but the learned Court below without considering all these on fact convicted the convict appellant. Moreover, the learned Court below also did not consider the vital fact that the SDM Santirbazar did not state anything about the independent witness and the procedure adopted during recovery of articles nor about any special identification marks on the recovered articles and the most vital thing which the learned Court below over looked that the SDM has recorded the disclosure statement of the accused at PS and before recovery of articles as well as prior going at place of occurrence. Apart from that, it was recorded by police which is barred by Section-24 of the Evidence Act read with Section-162 of Cr.P.C.

[12] Learned counsel appearing for the appellant has further contended that the FIR was lodged after recovery of the dead body and also after the discussion of the informant with his son. However, the accused has not been named in the FIR. He further submitted that this creates a doubt on the case of the prosecution that why the accused was not named in the FIR and being an innocent person he has been planted at the later stage of investigation in this case. He submits that accused is an innocent person and he has been implicated in this case because of the previous enmity between both the families as the informant has admitted that there was a dispute with this accused earlier on the false ground that accused used to peep the

deceased at the time of her bathing. So, this admission of the informant shows that the informant has some ulterior motive to lodge case against this accused.

[13] The prosecution has examined total seventeen witnesses and maximum witnesses are official witnesses and the witnesses who are independent have not supported the case of the prosecution. He also submits that PW-5, PW-6, PW-7 and PW-9 have not supported the case of the prosecution, rather PW-7 has only suspicion against this accused. The deceased was a married woman, so there was chance that she had sexual intercourse with her husband and only because of this, the doctor has found some material of sexual intercourse. But this does not show that this accused has committed rape upon the deceased. The prosecution has failed to prove the case by examining any direct witness. But in this case, prosecution has failed to prove the case beyond reasonable doubt against the accused person. So, the accused should be acquitted of all the charges framed against him.

[14] Learned Public Prosecutor submits that this case is based on the circumstantial evidence and disclosure made by the accused under Section-27 of the Evidence Act as well as expert opinion in favour of the prosecution case. He also submits that although there is no eye witness of this case but the chain of circumstance which is based upon the disclosure of the accused is completed and there is corroborative evidence given by the expert. So, there is no question of doubt in the case of the prosecution. He further submits that for proving the case the prosecution has examined total seventeen material witnesses and all the witnesses have supported the case as per their knowledge and information. He submits that there is no doubt that the accused person is not the offender of this crime because all the circumstances shows that only this accused has committed this heinous crime. So, the accused should be given maximum punishment for giving a message to the civilized society.

[15] In view of above and having gone through the material evidence and the finding of the learned Court below, to come to a definite conclusion, let us revisit the evidence once again.

[16] PW-7, Sri Prachai Mog has also supported the fact that this is the incident of 05.10.2020. On that day wife of PW-1 went for collection of wood. When the wife of PW-1 did not return, he started to search her. They started to search her and dead body of the wife of PW-1 was found in the Govt. litchi garden. Police was informed by the local people. Police took the dead body to Baikhora hospital. Later on, police team came with dog squad. On suspicion police arrested Herenta Tripura and took him to Baikhora PS. Again police team came in the night along with the accused. At that time, PW-1 called him. He also accompanied them to the bank of Kalshi river. Police team recovered ornaments (golden chain and ring) of the deceased and also one dao of deceased and one gamchha (big size of napkin) on information of accused Herenta Tripura. He was one of the seizure witnesses of seized articles which were seized by police on 06.10.2020. He identified his signature on the seizure list of seizure of ornaments and dao of the deceased as Exbt.P-3/PW-7. He also identified his signature on the seizure list of the seized big napkin (gamchha) as Exbt.P-4/PW-7. He identified ring and chain of the deceased which has been marked as Exbt. MO (1)/PW-7. He also identified the dao which is marked as Exbt. MO (2) / PW-7. He also identified the big napkin (gamchha) of accused which is marked as Exbt.MO(3)/PW-7.

[17] PW-8, Sri Angkeya Mog has also deposed in similar version of PW-7. He deposed that this is the incident of 05.10.2020. On that day, wife of the informant (PW-1) went to forest for collection of wood. When she did not return, he informed them and they all started to search his wife. Her dead body was found in the Govt. litchi garden. Local people informed police and police came and took the dead body to Baikhora hospital. At about 12/12.30 am in the night police came with dog squad at the spot where the dead body was found. Police arrested the accused Herenta Tripura seeing nail injury on his neck and body. On 06.10.2020 in the early morning at about 3 am police came along with accused Herenta Tripura again. Police team came with the accused at the Kalshi river bank near bamboo garden. Police seized golden ear ring and golden chain. Police also came at the place of dead body from where police seized one dao and one gamchha (big

napkin). This witness is also the seizure witness and he identified his signature on the seizure list of ear rings and chain of the deceased and also the dao as Exbt.P-3/1/PW-8. He also identified his signature on the seizure list of the big napkin(gamchha) as Exbt.P-4/1/PW-8. He also identified Exbt. MO (1) to MO(3).

[18] PW-16, Sri Arghya Saha, SDM, Santirbazar also corroborates PW-17, the I/O and deposed that on 06.10.2020 he was posted as SDM Santirbazar. On that day at 1.30 am SDPO. Santirbazar informed him that one murder has taken place and accused has been arrested. His team is going to recover the weapon through accused. He requested him to accompany the team as he required his presence during the period of recovery through the accused. First of all he went to Baikhora PS where SDPO, O/C and IO along with other police personnel were present. Accused was also there and the statement of the accused was recorded in his presence. 10 of the case wrote the statement of the accused so far he recollects. Accused disclosed before him that he committed the homicide and he also disclosed that he can point out the place where the weapon of murder and other things have been secretly hidden. He also put his signature on the recorded disclosure statement of the accused which is marked as Exbt.P-17/PW-16. Then he accompanied the police team along with SDPO and IO and went to the house of the accused where certain jeweleries of the deceased were recovered. They also went to the spot where the gamchha (big napkin) which was used for strangulation of the deceased was recovered. This witness does not confirm Exbt.MO (3), the gmachha, because when it was recovered, it was night. He further deposed that he put his signature on the seizure list prepared by 10 before him. He identified his signature on the seizure list of the jewelery of deceased which is marked as Exbt.P-3/2//PW16. He also confirmed the MO(1). He also identified his signature on the seizure list of gamchha (big napkin) which is marked as Exbt. 4/2/PW-16.

[19] PW-17, the I/O has deposed that on suspicion accused was detained and brought to the P.S. The accused was interrogated by her in presence of O/C PS. The accused disclosed that he strangled the deceased

by gamchha and committed her murder. He disclosed that he took the ornaments of the deceased. Ornaments were two ear rings (gold) and one chain (golden). He disclosed that he can show the place where the gamchha and dao have been hidden. Thereafter, SDM, Santirbazar was called and in presence of SDM, Santirbazar, disclosure statement of the accused was prepared on his disclosure. Thereafter, accused was arrested. The interrogation report of the accused was prepared and signed by PW-17 and the same is marked as Exbt.P-21/PW-17. Then they went to the spots (Exbt.P-20/PW-17) accused they went to the spots (Exbt.P-20/PW-17). They went to the bank of Kalshi river after crossing the river and at the bank, two ear rings (gold) and one chain (golden) were recovered by accused in their presence. On direction of the accused they went to Kalshi litchi garden where accused recovered one gamchha and dao. She prepared the disclosure statement in presence of witnesses and the same is marked as Exbt.P-17/1/PW-17. She also prepared the seizure list of articles recovered by the accused in presence of witnesses. The seizure list is marked as Exbt.P-3/3/PW-17. The seizure list of gamchha and dao is marked as Exbt.P-4/3/PW-17. Both the seizure lists were certified by SDM (PW-16). The SDM also certified the disclosure statement of the accused. Thereafter the team came to the PS along with the accused.

[20] Therefore, by the above depositions of PWs.7, 8, 16 and 17, this Court finds that the accused appellant discovered the material objects which were used in the crime and also the ornaments of the deceased which he kept hidden after the death of the deceased.

[21] PW-14, Dr. Subhankar Nath, Deputy Director, DNA Typing Division, SFSL, Narsingarh, Agartala during his evidence stated that On 21.10.2020 his Director received one sealed parcel in connection with Baikhora PS case No.2020/BKR/073 dated 05.10.2020 under Sec. 302 of IPC which was forwarded by SDPO., Santirbazar, South Tripura. The Director endorsed the exhibits for examination and opinion. The sealed parcel contained the following exhibits:- Exhibit-A was dried blood in gauze, inside which one brown stain gauze piece, contaminate with micro organism, not properly dry preserved, said to be the blood in dry gauze of

the deceased and Exhibit-B in the laboratory, these were marked Exbt.B/1 and B/2. B/1, high vaginal swab of deceased. B/2, low vaginal swab of the deceased. Exhibit-C one green colour chaya having mud like stain at various places, said to be the one deep green colour chaya of the deceased. Exhibit-D one green colour pachra having pink colour border at two edge bearing mud like stain, said to be one pink colour and deep green colour pachra of deceased. Exhibit-P, blood dried gauze with dark brown stain gauze piece, said to the blood of dry gauze of accused Herenta Tripura. Exhibit-Q, prepusal swab and coronal swab and in the laboratory, they were marked as Q1 and Q2 respectively. Q1 penile swab of accused Herenta Tripura which does not bear any blood or semen like visible stain and Q2 coronal swab of accused Herenta Tripura and it does not bear any blood or semen like visible stain. The exhibits marked-A, B1, B2, C, D, P, Q1 and Q2 were examined by visual examination under different light sources, Tetramethyl Benzidine(TMB) test, Phenolphthalein Test and Takayama test for detection of blood. The exhibits B1, B2, C, D, Q1 and Q2 were examined by visual examination under different light sources, Acid phosphate and Microscopic examination for detection of seminal stain/spermatozoa of human origin. Blood stain was not detected in the exhibits marked B1, B2, C, D, Q1 and Q2.

[22] Blood stain was detected in the exhibits marked A and P. Seminal stain/spermatozoa of human original was not detected in the exhibits marked Q1 and Q2. Seminal stain/spermatozoa of human origin were detected in the exhibits marked B1, B2, C and D. A portion of blood stained gauze of Exhibit-A (source: blood in dry gauze of deceased). The semen stained cotton piece of Exhibit-B1 (source: high vaginal swab of deceased), Exhibit-B2(source: low vaginal swab of deceased), semen stained cloth piece of Exhibit-C (source: one deep green colour chaya of V), Exhibit-D (source: pink colour and deep green colour panchra of V) and a portion of blood stain gauze of Exhibit-P (source: blood in dry gauze of accused Herenta Tripura) were subjected for DNA isolation by organic extraction method.

[23] DNA recovered from the above-mentioned exhibits was subjected to multiplex PCR reaction for co-amplification of the 15 STR loci and Amelogenin using AmpF/STR Identifiler Plus™ PCR amplification kit. The amplified products along with controls were run on the Automated DNA Sequencer. The sizing of the fragments was carried out using Gene Mapper ID software V3.2 with respect of Gene Scan 500 LIZ size standard. The resultant allelic distribution for the studied loci in the different exhibits is shown in the table of Annexure-A. No alleles has been amplified for exhibit-A (source: blood in dry gauze of deceased) except amelogenin, indicative of human female origin. (2) Male genetic profile was generated for exhibit-B1 (source: high vaginal swab of deceased). (3) Partial male genetic profile was generated for exhibit-B2 (source: low vaginal swab of deceased). (4) No alleles has been amplified for exhibit-C (source: one deep green colour chaya of deceased) except amelogenin, indicative of human male origin. (5) Only four alleles namely, D21S11, TH01, VWA, TPOX and amelogenin were amplified for exhibit-D (source: pink colour and deep green colour patch of deceased) indicative of human male origin. (6) Male genetic profile was generated for exhibit-P (source: blood in dry gauze of accused Heranta Tripura). (7) The alleles of the amplified loci of DNA profile of exhibit-B1 (source: high vaginal swab of deceased) matches with the alleles of the amplified loci of DNA profile of blood sample of exhibit-P (source: blood in dry gauze of accused Heranta Tripura). On the basis of the above observations he concluded that the semen stain detected in the exhibit-B1 (source: high vaginal swab of deceased) originated from single source of exhibit-P (source: blood in dry gauze of accused Heranta Tripura). He also proved the report along with the forwarding which has been marked as Exhibit-P-15/PW-14 as a whole.

[24] There is evidence of recent vaginal penetration. PW-13 also find recent vaginal penetration in his examination and finally, on the basis of the SFSL report opined that the semen stain detected in Exbt. D/1, source as high vaginal swab of the deceased, originated from the single source of Exbt.P, the source blood in dry gauge of accused Heranta Tripura.

[25] Hence, this Court finds that the accused appellant wrongfully restrained the deceased in the forest when she was collecting firewood and thereafter he committed rape forcefully and murdered her by strangulating using gamchha to screen himself and took her ornaments, gamcha and dao and secretly hidden these articles also to screen himself from legal punishment. But ultimately those articles were recovered as per his disclosure. This Court finds that the prosecution has proved all the charges framed against the accused beyond reasonable doubt. In this case the prosecution has successfully discharged the bounded duty of establishing the fundamental facts against the accused. Learned counsel appearing for the appellant has placed reliance on some decisions of the Hon'ble Apex Court in support of his case but these are irrelevant to the facts and circumstances of the present case.

[26] Here in the case at hand, we have discussed the evidence on record of the prosecution in detail. Now we are to conclude our decision on the basis of material evidence on record. In our ultimate analysis, it is crystal clear that there is no reason as to why the continuity of the chain of circumstances and the complaint made against the appellant to be disbelieved. The witnesses supported the entire case of the prosecution with regard to the commission of offence by the appellant herein. Consequently, we find no reason to interfere with the observation made by the learned Court below and thus, the same is affirmed.

[27] In the result, the appeal stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

B. PALIT, J

T. AMARNATH GOUD, J