
(2019) 12 GAU CK 0041
In the Gauhati High Court
Case No : Criminal Appeal No. 117 Of 2018

Md Turab Ali And Anr

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120(B), 364(A), 365, 387
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2019) 12 GAU CK 0041

Hon'ble Judges : Mir Alfaz Ali, J;Nani Tagia, J

Bench : Division Bench

Advocate : S Borthakur

Final Decision : Disposed Off

Judgement

1. Heard Mr. S. Borthakur, learned counsel for the appellants and Ms. S. Jahan, learned Addl. Public Prosecutor, Assam.

2. This appeal is directed against the judgment and order, dated 22.02.2018, passed by the learned Sessions Judge, Bongaigaon, Assam, in Sessions Case No. 85 (BGN)/2015 convicting the 2(two) accused appellants under Sections 364(A)/34 of the IPC and sentencing them to imprisonment for life and fine of Rs. 2,000/-, each, with default stipulation.

1. The case of the prosecution is that on 21.08.2008, at about 11.30AM, the victim Sahidul Islam was abducted by 3(three) accused persons including the present appellants mentioned in the FIR, who kept him in confinement and demanded a ransom of Rs. 50,00,000/-. An FIR was lodged by the PW-1, alleging the above facts, on the basis of which police registered a case under Sections 365/387/34 of the IPC.

2. In the course of investigation, upon advice of the police, the family members of the victim negotiated with the abductors, who agreed to release the victim on payment of a sum of Rs. 1,50,000/-. When they were going to deliver the said

ransom amount alongwith the police in civil dress, the abductors opened fire and in the encounter, 2(two) of the abductors died and the police recovered the victim. Thereafter, statement of the victim was recorded under Section 164 of the Cr.P.C. and on completion of the investigation, police laid charge sheet against the accused persons(appellants, herein) under Sections 364(A)/120(B)/34 IPC.

3. During the course of trial, the learned Sessions Judge framed charge under Sections 364(A)/34 of the IPC against both the accused appellants, to which they pleaded not guilty. As many as 13(thirteen) witnesses were examined by the prosecution to establish the charge and on appreciation of the evidence, the learned Sessions Judge convicted the accused appellants, under Section 364(A)/34 of the IPC and awarded the sentence, as indicated above.

4. We have considered the rival submissions advanced by the leaned counsel appearing on behalf of the appellants as well as the learned Addl. Public Prosecutor, Assam, and also scrutinized the evidence and materials brought on record.

7. Out of the 13 (thirteen) prosecution witnesses, the victim Sahidul Islam was examined as PW 2. The PW-2 Md. Sahidul Islam, in his evidence, deposed, that the appellants Md. Turab Ali and Md. Yasin Ali, were known to him. On 21.07.2008, in between 10AM to 10.30AM, while he was sitting in his shop, he received a phone call from the appellant, Md. Turab Ali, calling him to Albert School and as he went near the Albert School, he found both the appellants, named above, waiting there on a motor bike. On the pretext of some festival in the house of Md. Turab Ali, the appellants took him on their bike. After proceeding some distance, the appellant Md. Turab Ali who was riding the motor bike with PW 2 and Md. Yasin Ali as pillion rider, stopped the bike on the pretext to attend the call of nature. As soon as the bike was stopped, three/four youths of Boro Community appeared there from the nearby jungle and one of them pointed pistol on him and directed him to follow them. When he (PW 2) asked the appellant Md. Turab Ali as to what had happened, he told him not to be worried and also assured him that they would release him (PW 2) after asking few questions. Thereafter, the appellants Md. Turab Ali and Md. Yasin Ali left the place and the said Boro youth took him inside the jungle and kept him confined for 13 days. When PW-2 wanted to talk to his family members over phone, the said abductors allowed him to talk. He further deposed that the abductors informed him about the demand of Rs. 50,00,000/- from his family members and told that unless the said demand is fulfilled, he would not be released. He further stated that he told the abductors that his family members would not be able to pay more than Rs. 1 to 1.5 lakhs. Later on, the family members upon negotiations agreed to pay the abductors a sum of Rs. 1.5 lakh and accordingly, three of the abductors took him to Samthaibari on bicycles, saying that his elder brother would come there with the money for his safe release. On reaching a particular place, one of the youths went near the car in which the elder brother

of the victim came, to fetch the bag containing the money and the other two youths were guarding him. After receiving the money from his elder brother, as soon as the two youths released him and he got into the vehicle, the police surrounded the abductors, who, then fired on the police team and on retaliation, two of the abductors sustained bullet injuries. He further stated that later on, he came to know that 2(two) of the abductors died in the firing.

During cross-examination, it was elucidated that he had acquaintance with the appellant, Md. Turab Ali since one month prior to the incident, as Turab Ali used to visit his tea stall to take tea; but he got acquainted with the appellant, Md. Yasin Ali, on the day of abduction. It was also elucidated during his cross-examination that when he was proceeding with the appellants, Md. Turab Ali had conversation with someone in Bodo language at Kajolgaon, where they took tea and he also made conversation with someone near the jungle, before the Boro youths had taken him away. He also stated that the Bodo youths were armed with guns and he followed the abductors out of fear. He stated that he did not know Boro language. It was also elucidated during cross-examination, that the appellant Md. Turab Ali had conversation in Bodo language with the Bodo youths who took him away. The oral testimony of this vital witness remained undented during cross-examination.

8. PW-6, Md. Nazrul Ali, testified that the day before the abduction, while he was sitting in the shop of the victim Sahidul Islam(PW 2), the appellant Md. Turab Ali took the phone number of Sahidul Islam and also asked him (PW 2) as to whether he would be available in the said phone number. He further stated that after recovery of Sahidul Islam, he came to know from PW-2 about the incident. During cross-examination, he stated, that as Turab Ali had collected the phone number of Sahidul Islam, he, suspected Turab Ali's involvement in the incident. The testimony of this witness that appellant Turab Ali collected the phone number of the victim on the previous day of the occurrence, has not been controverted by the defence, rather, it was confirmed during cross-examination. Thus the evidence of PW 6 regarding, the appellant Turab Ali collecting phone number of the victim on the previous day assumes significance, inasmuch as, it lent support to the version of PW 2.

9. PW-1, Abu Taleb Sheikh, who was the informant as well as elder brother of the victim, had stated, that he lodged the FIR after missing of his younger brother (PW 2) from the shop and when all their endeavour to search the victim failed. He further stated that the abductor demanded ransom of Rs. 50,00,000/- over phone. He deposed that he came to a settlement with the abductors to pay a sum of Rs. 1,20,000/- and five mobile handsets, for release of his younger brother (PW 2). Accordingly, he along with Sahanur (PW 5) and Amzad Ali (PW 4) went to Samthaibari alongwith the money and mobile handsets. He also stated that the police personnel, who were in civil dress, also accompanied them. According to him (PW 1), on reaching a particular place, the abductors signaled them, and they stopped the vehicle. Thereafter, two persons came near their car

alongwith the victim and he handed over them the bag containing the money and the abductors also released the victim. As soon as the police tried to nab the two boys, one of the abductors started firing and in retaliation, the police also started firing. However, the two boys jumped over the drain and police caught one of the boys who had sustained injury. He also stated that two boys who received bullet injuries died.

10. PW-3, Khalilur Rahman, father of the victim, deposed that after abduction of the victim, there was phone call from the abductors demanding money and ultimately, there was a settlement of payment of money upon negation with the abductors. He further deposed that later on, his son was released by the abductors. He also stated that at the time of release of PW 2 in exchange of money, one of the abductors died, whereas others fled away from the scene. He also stated to have learnt from PW 2 that Yasin and Turab handed over him to the persons of Borro community.

11. The evidence of PW-4 and PW-5 was that they had accompanied PW-1, while proceeding with the money for release of the victim. These two witnesses also corroborated the evidence of PW-1 and PW 2 as regard the release of PW 2 by the abductors and that, there was encounter with the abductors and in the process, two of the abductors sustained injuries and died.

12. The demand of ransom money was established beyond doubt by the unshaken evidence of PW-1, PW-2, PW-3, PW-4 and PW-5. In fact defence also did not controverted the evidence regarding demand of ransom. The oral testimony of PW 13, the Investigating Officer, that there was encounter with the abductors at the time of recovery of the victim and two of the abductors sustained injury and died later, also corroborated the evidence of the PW 1, PW 2, PW 3, PW 4 and PW 5.

13. The learned counsel for the appellants submits that the phone used by the abductors was not seized and that there was also no evidence of demand of any ransom by the present appellants and the PW 2 was admittedly abducted by the youths of Boro community and therefore, the present appellants apparently could not be roped in with the commission of the offence of abduction and the demand of ransom. The further submission of the learned counsel for the appellants is that even if, there may be some evidence against the appellant Md. Turab Ali, there is no evidence to implicate the appellant Md. Yasin Ali even with the aid of Section 34 IPC.

14. In order to attract the provision of Section 34 of the IPC, three ingredients are required to be satisfied- first the criminal act is done by several persons, secondly- common intention in the sense of pre arranged plan and prior meeting of mind and thirdly participation of all the persons in some manner. The common intention being a mental faculty, it may not be possible always to have direct evidence of common intention and the same has to be inferred from the conduct and the attending facts and circumstances of the case.

15. In the present case, the un-assailed evidence of PW-2 is that while he was in his shop, accused Turab Ali called him over phone to go near the Albert School. It is also in the evidence of PW-3, that the appellant Turab Ali had collected the phone number of victim Sahidul Islam on the previous days and also took assurance, that he would be available in the said phone, if called. When PW-2 reached near the Albert School, the accused appellants, Turab Ali and Md. Yasin Ali took him on a bike on the pretext of attending a festival in the house of Turab Ali. It is also stated that when they reached a particular place, Turab Ali had discussion with some Boro youths in Boro language. Then after moving some distance, Turab Ali stopped the bike on the pretext, that he had to answer the call of nature. Then all of a sudden, three/four boys of Boro community came and took away the victim Sahidul Islam on gun-point and the present appellant Turab Ali had discussion with those boys in Bodo language. Admittedly, PW 2 did not know Boro language. When the Boro youths took away the PW 2 on gun point, Turab Ali asked PW 2 not to worry and assured that he would be released soon after asking few question. All the above conduct of the appellant Turab Ali speaks loud and clear that the appellant Torab Ali was aware of the entire plan of abduction of the victim Sahidul Islam by the Boro youths on gun-point and he shared common intention with the Boro boys who had taken away the victim on gun point. Conduct of the appellant Torab Ali in taking away the PW 2 from his shop by deceitful means and than leaving him with the other abductors also demonstrates his participation in the commission of the offence.

16. In order to constitute of offence punishable under Section 364-A IPC prosecution needs to establish the following ingredients:-

- (a) Kidnapping or abduction of a person.
- (b) Keeping the person, kidnapped or abducted in custody or detention.
- (c) Kidnapping or abduction must be for ransom.
- (d) The threat to cause death or hurt to the person kidnapped or abducted or the conduct of the accused must be such, so as to raise reasonable apprehension of death or hurt in order compel to do or abstain from doing any act or to extract ransom.

17. Evidently, the victim was kept confined for about 13 days by the abductors and he was released only after the demand of ransom was met by the family members of the victim Sahidul Islam. Even though there was no direct evidence of threat of death to the victim, the conduct of the abductors in confining the victim for long 13 days and demanding a ransom of Rs. 50,00,000/-, in our considered view, was sufficient to raise the apprehension that death of the victim may be the only consequence of not fulfilling the demand of ransom by his family members. Therefore, all the essential ingredients to constitute the offence under Section 364(A) IPC are found present in the instant case against the perpetrator of the offence. As already indicated above, the appellant Turab Ali shared the common intention with the other accused involved in the abduction and the

offence was committed by Turab and his companion in furtherance of their common intention. Thus, the evidence of PW-2, the victim of the incident, coupled with the oral testimonies of PW-1, PW-3, PW-4, PW-5. PW 6 and PW-13, leaves no room for doubt, that appellant Turab Ali in furtherance of common intention with the other abductors, abducted the victim Sahidul Islam for ransom.

18. What we find from the evidence and materials is that though, the accused Yasin Ali was also with the appellant Turab Ali on the day of occurrence, there was no evidence on record to show that accused Yasin Ali had the knowledge of Boro Language or he was aware of the plan of abducting PW 2. Evidently, PW 2 also met the appellant Yasin for the first time on the day of occurrence. We find no other evidence against the appellant Yasin Ali except accompanying the appellant Turab Ali from the Albert School, which alone in our considered view is not sufficient enough to attribute common intention to the appellant Yasin Ali with Turab Ali and other accused to abduct the victim Sahidul Islam. From the evidence brought on record, except accompanying the appellant from Albert School, there was no other material to show that either he (Yasin Ali) shared any common intention with the other accused or had participated in the offence in any manner whatsoever. Therefore, the appellant Yasin Ali is at least entitled to benefit of doubt, inasmuch as the prosecution evidence is grossly inadequate to prove beyond reasonable doubt that the appellant Yasin also shared common intention with Turab Ali and other abductors to commit the offence.

19. In view of the above facts and circumstances, we find no reason to differ with the findings of the learned trial Court so far as the conviction & sentence of the appellant Turab Ali is concerned. Accordingly, we uphold the conviction & sentence of the accused appellant Turab Ali. However, we find the evidence of the prosecution grossly inadequate to sustain the conviction & sentence of the appellant Yasin Ali, and therefore, we acquit the appellant Yasin Ali by giving him the benefit of doubt. Accordingly, the appeal of the appellant Yasin Ali is allowed. The appellant Yasin Ali shall be released forthwith if he not required in connection with any other case. The appeal of the appellant Turab Ali is dismissed. The criminal appeal accordingly stands disposed of.

20. Send down the connected LCRs to the learned Court below, forthwith.