
(2012) 06 GAU CK 0146
In the Gauhati High Court
Case No : Criminal A. (J) No. 92 of 2005

Sri Amitabha Chakma

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 06-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 374
Penal Code, 1860 (IPC) — Section 364

Citation : (2012) 3 GLD 578

Hon'ble Judges : Subhasis Talapatra, J

Bench : Single Bench

Advocate : S. Chakraborty, for the Appellant; A. Ghosh, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra

1. This appeal, filed u/s 374 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of conviction and sentence dated 02.08.2004, passed by the learned Assistant Sessions Judge, South Tripura, Udaipur, in connection with S. T. 43(S T/S)/2004, sentencing the appellant to suffer rigorous imprisonment for 10 years for commission of offence u/s 364 of Indian Penal Code. The prosecution case as transpired from the records is that on 28.05.2003, Ajeet Kumar, Executive Engineer, lodged Ejahar at Shilachari Out Post, stating that his driver Pradip Debnath, S/O Jugal Debnath had been missing from Shilachari since 27.05.2003. In the Ejahar, he stated that he personally searched him along with the BSF personnel at different places but could not find out. He further stated in the Ejahar that villagers of Kongjori Mog Para had stated that the said driver had been kidnapped by the unknown miscreants at about 08.30 pm on 27.05.2003 from the said place. On the basis of that Ejahar, the Sabroom P.S. registered a case being Sabroom P.S. Case No. 14/2003 u/s 364 IPC on 28.05.2003. On completion of the investigation, the charge= sheet was filed

against the appellant and the other accused persons, namely, Barna Kanta Tripura, Dil Mohan Tripura and Adhu Mog u/s 364 IPC. The offence, being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions, and thereafter, the charge was framed against the appellant Amitabha Chakma, Barna Kanta Tripura and Dil Mohan Tripura u/s 364 IPC by the Assistant Sessions Judge, South Tripura, Udaipur, where the case was transferred by the learned Sessions Judge, South Tripura, Udaipur for trial. The appellant and the other accused persons pleaded not guilty to the charge as read over to them and claimed to be tried.

2. It appears from the record that prosecution adduced as many as 7 witnesses and brought into evidence certain documents, which were marked as Exbts.1 to 10 series. But the defence did not adduce any evidence whatsoever. The learned trial Court examined the appellant u/s 313 of the Code of Criminal Procedure, 1973. On appreciating the evidence as led by the prosecution, the finding of the conviction was returned by the learned trial Court u/s 364 IPC and the appellant was sentenced to suffer rigorous imprisonment for 10 years. It was however directed that the period of his detention would be set off from the period of his sentence.

3. Mr. S. Chakraborty, learned counsel appearing for the appellant at the outset submitted with sufficient emphasis that there is no evidence against the appellant and the finding of conviction, having been without any evidence, is palpably wrong and perverse as the said judgment and conviction cannot be sustained in law. Mr. A. Ghosh, learned Addl. P.P. with commendable fairness submitted that there is no legal evidence to return the finding of conviction.

4. For the purpose of appreciation of the contentions as advanced by the counsel of the parties, it is required to re= appreciate the evidence recorded by the learned trial Court. Learned trial court framed the following charge against the appellant:

That all of you on 27.05.2003 at about 2030 hours at Kongjuri para, under P.S.- Sabroom, District-South Tripura, kidnapped Sri Pradip Debnath in order that the said Pradip Debnath might be murdered as to put in a danger of being murder, and you thereby committed an offence punishable u/s- 364 I.P.C. and within my cognizance.

And I thereby directed that you be tried on the said charge by this Court.

5. To establish that charge beyond any reasonable doubt, at the first instance, the informant, namely, Ajeet Kumar was examined as PW.1. Admittedly, Ajeet Kumar is not an eye witness to the incident. However, he deposed in the Court that on 28.05.2003, when he was at Silachari for the border survey work with his survey staff, he went to the guest room of BOP for washing, etc. and for taking some rest. At about 08.00 pm on that day, i.e. 27.05.2003, he took his meal and at about 09.30 pm to 10.00 pm, the BSF personnel knocked the door and enquired the whereabouts of his driver, then, he along with the BSF personnel

and the local police searched for the driver in the forest guest house but he was not found there. The BSF personnel recovered one pair of sandal from the river-bed of Pheni and suspected that the driver might have been kidnapped. On the following day, he signed the seizure list, regarding seizure of those sandals. On 28.05.2003, he lodged a written Ejahar at Silachari Police Out Post. He identified that Ejahar(Exbt.1) and his signature. He also identified his signature in the seizure list (Exbt.3). He also divulged to the Court that his driver namely, Pradip Debnath returned from the custody of the extremists after about a month. There was no cross-examination by the defence.

6. PW.2, namely Swapan Dey stated that the appellant appeared in his house on the night about one year two months back and stated that one driver was kidnapped by the extremists. Then, the PW.2 and the appellant went to Silachari Out Post and narrated the matter to the police. In the cross, no further material of importance was revealed.

7. Santimoy Chakma, who came to depose as PW.3, was tendered by the prosecution and there had been no cross-examination.

8. PW.4 is the kidnapped driver, namely Pradip Debnath, who appeared and deposed in the Court that on 27.05.2003 he was hired as a driver for the vehicle of the CPWD. On that day at about 06.30 pm, he went to the house of Amitabha Chakma, the appellant herein, at Silachari and while he was returning from there, accompanied by Amitabha Chakma, on the way Amitabha Chakma and six others kidnapped him. They crossed the river on that night and they kept him in a house near the jungle. On the nineteenth day of kidnapping, they released him in exchange of ransom of Rs. 1,40,000/- (rupees one lakh forty thousand). He stated in his examination-in-chief that the said amount was arranged by his relatives. In the cross, he categorically stated, "It is not in my 161 Statement that A mitabha Chakma also accompanied the extremists-kidnappers. I did not state to Daragababu that Rs. 1,40,000/- was given to the extremists for my release because at the time of giving 161 Statement to Daraga I was ill and was admitted to hospital. I was in the hospital for about 15 days".

9. The PW.5, namely Ranjit Tripura, as adduced by the prosecution in support of the charge, did not reveal anything in the examination-in-chief and there had been no cross-examination as he did not reveal anything against the appellant or other accused persons.

10. One Jhantu Saha appeared before the Court to depose as PW.6 but he was tendered by the prosecution and no cross-examination was carried out by the defence for obvious reasons.

11. Sri Arup Goswami, the Investigating Officer, appeared in the Court as PW.7 and deposed that at the relevant point of time he was the Officer In-charge of Silachari Out Post. On 27.05.2003 at about 09.15 PM, one Swapan Dey and Amitabha Chakma arrived at the Silachari Out Post and informed that one Pradip Debnath, a driver, was kidnapped. At 09.25 pm he, along with those persons,

went to the place of occurrence and on physical verification of the place of occurrence he was satisfied that the person had been kidnapped by force and taken to Bangladesh by crossing the river Pheni. He informed the BSF and searched the area taking police and BSF personnel at a time and found a pair "hawai" sandals. He seized those sandals by preparing seizure list. He identified that seizure list, marked as Exbt.5. His signature was also identified as Exbt.6. Thereafter, he deposed that he recorded the statements of witnesses and searched the village, and on that night he also visited the place of occurrence, as identified by Amitabha Chakma, and then prepared hand-sketch map with index, which were marked as Exbt.7 series. He further deposed that on 27.05.2003, he recorded the missing information in the Silachari Out Post, which was registered as GD No. 580 dated 27.05.2003, and on 28.05.2003 at 09.30 am he received a written Ejahar from the Executive Engineer, namely Ajeet Kumar. He identified the endorsement of that Ejahar and that was marked as Exbt.8. He deposed that he sent the Ejahar to Sabroom Police Station, and accordingly, Sabroom P.S. Case No. 14/2003 was registered u/s 364 IPC. The Ejahar was marked as Exbt.9 and the FIR was containing the signature of one Alijoy Tripura, marked as Exbt.10. He also deposed that he found incriminating material against Amitabha Chakma, the appellant, in the offence of abduction. After completing the investigation he found that a prima facie case was established and accordingly he submitted the charge sheet against the accused persons as stated above. He further deposed that in the midst of investigation, the abducted person, namely Pradip Debnath, returned and he was admitted in the hospital for a long time. The investigating officer while deposing in the Court stated that "As he was afraid, he disclosed nothing to me as to how he returned". At the time of cross-examination by the defence he stated as follows:

It is not a fact that I got no evidence that Pradip Debnath was kidnapped to Bangladesh. I did not mention in the Charge Sheet that Pradip Debnath being afraid on return did not disclose as to how he returned. I recorded statement of Pradip Debnath u/s 161 Cr.P.C. statement. I got no open evidence that Amitabha Chakma was involved in the alleged incident. It is not a fact that I got no secret information that Amitabha Chakma was involved in the incident. It is not a fact that without investigation I submitted Charge Sheet.

12. It is pertinent to point out that while the accused was examined u/s 313 of Cr.P.C. he categorically denied his involvement and stated that the charge sheet has been filed against him falsely without any evidence. However, he admitted that he, along with PW.2, went to the Silachari Police Out Post and informed the police that the driver was kidnapped by the extremists.

13. Learned trial Court to return the finding of conviction entirely relied on the examination-in-chief of the PW.4, the abducted person. There is no doubt that by the evidence, commission of abduction had been proved but there is no legal evidence against the appellant in the records of his involvement in the offence of abduction. It is well settled that the omission to make some statements to the

investigating officer at the time of recording the statement u/s 161, Cr.P.C. cannot be relied on the face of it unless the said commission gets adequately corroborated by other evidence as this omission cannot be stated to be insignificant one. The Apex Court in Narayan Chetanram Chaudhary and Another Vs. State of Maharashtra, , enunciated the law and observed :

Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW. 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness. In this regard this Court in State of Himachal Pradesh Vs. Lekh Raj and Another, (in which one of us was a party), dealing with discrepancies, contradictions and omissions held: (SCC pp. 258-59, 7-8)

Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in Ousu Varghese Vs. State of Kerala, held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In Jagdish Vs. State of Madhya Pradesh, this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in State of Rajasthan Vs. Smt. Kalki and Another, held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

Referring to and relying upon the earlier judgments of this Court in State of U.P.

Vs. M.K. Anthony, , Tahsildar Singh and Another Vs. The State of Uttar Pradesh, , Mehmood Alam Tariq and Others Vs. State of Rajasthan and Others, and Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh, this court in a recent Leela Ram (Dead) Through Duli Chand Vs. State of Haryana and Another, held:

There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.....

The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.

14. In view of that decision and in consideration of what the PW.4, the abducted, stated in the cross-examination, the omission as appeared in the testimony of PW.4, cannot be stated to be a minor discrepancy or insignificant omission but the omission is of vital nature and it has to be treated to be different in material particulars from the disclosed and also in contradiction to the previous statement as recorded by the PW.7, and as such, on the basis of such testimony, the finding of the conviction cannot be returned. PW.7, the investigating officer, admitted that the PW.4 did not divulge anything about his abduction or his return. What the PW.4 had deposed before the Court is wholly new to the prosecution case, and as such, those materials cannot be used unless and until those are found adequately corroborated by the other witnesses in the proceedings. In this case, no witness, as adduced by the prosecution, did corroborate the said part of the testimony of the PW.4, and as such, solely on the basis of such testimony, this Court is constrained to hold that the judgment of conviction as returned by the learned trial Court cannot be sustained. In view of this, it is held by this Court that the charge as framed against the appellant u/s 364 IPC for abduction in order to murder has not been established without shred of doubt. As a consequence thereof, the impugned judgment of conviction is hereby interfered with and set aside. Hence, the order of sentence is also required to be set aside and quashed. Accordingly, the order of sentence is hereby set aside. The appellant is acquitted from the charge and is set at liberty forthwith. The appeal stands allowed.

The LC records be returned forthwith.