
(2011) 03 GAU CK 0044
In the Gauhati High Court
Case No : Criminal Appeal No. 12 of 2006

Sri Amitabha Deb Barma

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 148, 149, 364A

Citation : (2011) CriLJ 2765

Hon'ble Judges : Utpalendu Bikas Saha, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : P.K. Biswas, R. Debnath, T. Debnath and P. Majumdar, for the Appellant; D Sarkar, Public Prosecutor and R.C. Debnath, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—This is an appeal against the judgment and order, dated 20.12.2005, passed, in Case No. ST49(WT/K) 2004, by the learned Additional Sessions Judge, West Tripura, Khowai, convicting the accused-Appellant u/s 364A IPC and sentencing him to suffer imprisonment for life and pay fine of Rs. 1000/- and, in default of payment of fine, undergo simple imprisonment for one month.

2. The prosecution's case, as unfolded at the trial, may, in brief, be described thus:

The informant, Malindra Debbarma (PW2), was polling agent on behalf of CPI(M) candidate in the assembly election. The extremists belonging to National Liberation Front of Tripura (in short, "the NLFT"), a banned organization, had rebuked and threatened the informant's father by saying that they should not involve themselves in the political activities of the CPI(M) party. Thus, the relation between the informant's family and the extremists, belonging to the said banned outfit, was strained. On 02.03.2003, at about 10 AM, 6/7 NLFT extremists came to the house of the informant looking for him, but as the

informant was not present at his house, the said extremists forcibly took away the informant's father, Deb Chandra Barma, and kept him detained in the jungle, but moved him from one place to another, inside the jungle, from time to time. On the following day, i.e., on 03.03.2003, the informant received a letter given to him by an unknown person. The contents of the letter disclosed that a demand for ransom had been made by the said extremists by asking him (informant) to pay Rs. 30,000/- if he were to obtain release of his father. Amongst the extremists, two persons, namely, Amitabha Deb Barma, (i.e., the accused Appellant), and one Mani Ranjan Deb Barma, were recognized by the members of the family of the informant. On receiving a First Information Report, lodged, in this regard, by the informant, on 03.03.2003, Teliamara Police Station Case No. 44/2003 under Sections 148/149/364A IPC read with Section 27 of the Arms Act was registered. After about five days of the said occurrence and while investigation was still pending, the said extremists released the informant's father, Deb Chandra Deb Barma (PW6), on receiving a sum of Rs. 25,000/- from the informant (PW2). During the course of investigation, the two accused aforementioned remained absconding. On completion of investigation, police laid charge-sheet against the two accused persons aforementioned, under Sections 148/149/364A IPC read with Section 27 of the Arms Act, showing them as absconders. In course of time, the Appellant surrendered in the Court of the learned Sub-Divisional Judicial Magistrate, Khowai.

3. At the trial, the accused-Appellant pleaded not guilty to the charge framed against him u/s 364A IPC. In support of their case, prosecution examined as many as ten witnesses. The accused was, then, examined u/s 313 Cr.PC and, in his examination aforementioned, the accused-Appellant denied that he was involved in the alleged occurrence, his case being that of total denial. The defence too, however, adduced evidence by examining two witnesses, their case being that the informant's father had not been abducted by anyone, but that he had voluntarily gone to, and stayed at, the house of one Rabi Charan Deb Barma with the object of concocting a case of his abduction by the present Appellant.

4. Having found the accused-Appellant guilty of the offence charged with, the learned trial Court convicted him accordingly and passed sentences against him as mentioned above. Hence, this appeal.

5. We have heard Mr. PK Biswas, learned Counsel, for the Appellant, and Mr. D. Sarkar, learned Public Prosecutor.

6. While considering the present appeal, it needs to be noted that PW3 (Rajib Deb Barma) was a cousin of the informant (PW2) and he was examined as an eye witness to the alleged occurrence of abduction of the informant's father. The evidence of PW3 is to the effect that on 02.03.2003, at about 10 AM, a group of 6-7 extremists armed with bombs and lathis trespassed into the house of PW2, they dragged PW2's father by force and took him away. Amongst the extremists, who had so taken away PW5, PW3 claims to have recognized two persons, namely, Amitabha Deb Barma (i.e., the accused Appellant) and Mani Ranjan Deb

Barma. It is also in the evidence of PW3 that he went to Chakmaghat and informed his cousin, i.e., PW2, who was busy with the work of the ensuing Assembly elections. It is also in the evidence of PW3 that after about 2-3 days of abduction of his uncle i.e., the informant's father, Deb Chandra Deb Barma (PW6), a letter was sent to his cousin (PW2) by the extremists demanding ransom of Rs. 30,000/- if they were to get informant's father (PW6) released and that after about 8-9 days of abduction, the extremists released PW6 on receiving payment of Rs. 25,000/-. PW3 identified the Appellant in the Court.

7. The fact that the Appellant was known to PW3 was not disputed at the trial. In fact, it was also not disputed, while cross-examining PW3, that the extremists had abducted PW6 from his house and/or had raised a demand for ransom of Rs. 30,000/- and/or that they released the victim on receiving a sum of Rs. 25,000/- as ransom. Thus, on all material aspects of the evidence given by PW3, there was no denial from the end of the defence. What was disputed was that the Appellant was present among those, who had abducted informant's father (PW6). To put it a little differently, it was not disputed at the trial while PW3 was cross-examined by the defence that informant's father, PW6, had been abducted nor was it disputed that a demand for ransom of Rs. 30,000/- was made and that the informant's father, PW6, was released by the abductors on receiving a sum of Rs. 25,000/- as ransom. The only disputed question was whether the Appellant was present amongst the abductors.

8. Close on the heels of the evidence of PW3, PW2 has deposed that on the day of the occurrence, he was informed, in the afternoon, by PW3 about abduction of his (PW2's) father and he (PW2) was also told by PW3 that amongst the extremists, who had kidnapped PW2's father, he (PW3) identified two of the abductors, namely, Amitabha Deb Barma (i.e., accused-Appellant) and Mani Ranjan Deb Barma. It is in the evidence of PW2 that on the day following the day of 6 abduction, PW2 received a letter from the extremists demanding ransom of Rs. 30,000/- in order to release his father from their custody and after about two days of his father's abduction, he (PW2) gave Rs. 25,000/- to the agent of the abductors and after five days, his father was released from captivity. Though the defence cross-examined PW2, nothing could be elicited from his cross-examination to show that his evidence is not trustworthy or reliable. In fact, it remained wholly undisputed at the trial that the informant's father (PW6) had been abducted from his house on 02.03.2003 at about 10 AM. It also remained undisputed at the trial that ransom of a sum of Rs. 30,000/- had been demanded and the informant's father had been released by the extremists on receiving a sum of Rs. 25,000/-. What was intensely disputed and denied by the defence was, however, the evidence given to the effect that the present Appellant was involved in the said abduction.

9. What surfaces from the above discussion is that as far as the evidence given by PW2 and PW3 to the effect that PW6 had been abducted in the manner as deposed to by them, a sum of Rs. 30,000/- was demanded as ransom by those,

who had abducted the informant's father, and that the abductors released the informant's father on receiving a sum of Rs. 25,000/-, as ransom, remained intact and unshaken.

10. Broadly in tune with the evidence of PW2 and PW3, PW5, who is brother of PW6, (i.e., the informant's father) and who, admittedly, resides in the same house, wherein resided PW6, has deposed that on 02.03.2003 at about 10 AM, a group of militants, armed with fire arms, entered into his house and dragged away PW6 by force. In his evidence, PW5 has also stated that he could identify Amitabha Deb Barma (i.e., the accused-Appellant) as he was known to him from before and that after 3-4 days, PW6 was released by the extremists on payment of ransom, the ransom having been paid by PW2. PW5 too identified the Appellant in the Court.

11. We have minutely scrutinized the cross-examination of PW5 at the hands of the defence and we notice that the fact that PW5 was abducted from his house was not even disputed by the defence. What was, however, disputed was the fact that ransom was paid and the fact that the present Appellant was involved inasmuch as it was suggested to PW5 that the Appellant had been falsely implicated out of political rivalry. These aspects of the evidence of PW5 too, however, remained unshaken and intact, particularly, when we notice that nothing could be brought by way of cross-examination of PW5 by the defence to show that his evidence is to the effect that the Appellant was present amongst the extremists is untrue or false.

12. We may, now, turn to the evidence of PW6, who, according to the prosecution, was the one, who had been abducted. His evidence is precise and clear inasmuch as he has deposed that on 02.03.2003, at about 10 AM, a group of extremists entered into his house and called him by name and as soon as he went out of his house, they, by force, dragged him out of the house on the point of the fire arm, they made him walk for about 5-6 hours and, then, kept him in detention inside the jungle. Amongst them, PW6 could identify Amitabha Deb Barma, (i.e., the present Appellant), as he had known the Appellant from before. PW6, in fact, identified the Appellant (Amitabha Deb Barma) as one of the persons, who was present with the group of persons, who had abducted him. It is in the evidence of PW6 that after about five days, he was released, when the militants received a sum of Rs. 25,000/- as ransom, the ransom money having been received by the militants through their agent from his son (PW2). It is also in the evidence of PW6 that on being so released from the captivity of the militants, he and his son left their village for fear of their lives and started living at Chakmaghat. In fact, even PW2, in his cross-examination, has deposed that they left their village due to the threats from NLFT extremists and have started living at Chakmaghat. These assertions, which have remained undisputed, lend credence to the evidence given by PW6 and the members of his family that he was, indeed, abducted as deposed to by him and he was released on receiving ransom from his son and the fear of life and panic, which the abductors had

created in their minds, made PW6 and the members of his family shift from their village.

13. While cross-examining PW6, though the defence denied that PW6 had been abducted by the extremists and, amongst the abductors, the present Appellant was present and/or that Rs. 25,000/- was paid as ransom to the abductors, the fact remains that nothing was specifically elicited from the cross-examination from PW6 to show that his evidence given to the effect that he had been abducted was untrue or false nor was it even suggested to PW6 that he had himself voluntarily gone to the house of one Rabi Charan Deb Barma and falsely alleged that he had been abducted by the extremists and that the present Appellant was present amongst the extremists. This apart, and as already indicated above, the evidence of PW2, PW3 and PW5 clearly show that PW6 had been abducted as deposed to by PW6 and the said members of his family.

14. As far as remaining witnesses including the investigating officer are concerned, we do not find anything material in their evidence to discuss except the fact that it has been pointed out at the time of hearing of this appeal that according to the FIR, the extremists had left a letter, while taking away the informant's father from his house, whereas the informant's evidence is that he had received a letter, as regards ransom, on the following day of the incident. While considering this aspect of the Appellant's case, it needs to be pointed out that the informant is, admittedly, not the author of the FIR inasmuch as the same was written, though according to the instructions of the Appellant, by PW7. What is, however, extremely important to note is that the Appellant was not cross-examined with regard to the contents of the FIR. When the attention of the PW2 had not been drawn to the contents of the FIR and with reference to the contents of the FIR, when PW2 had not been questioned or cross-examined, his evidence cannot be allowed to be impeached, at the appellate stage, by referring to the contents of the FIR, particularly, when, we find that the FIR was, admittedly, lodged on the following day of the occurrence, i.e., on 03.03.2003, when the demand for ransom had allegedly been received by PW2.

15. We need to pause here to point out that while cross-examining the prosecution's witnesses and even while making his statement u/s 313 Cr.PC., the Appellant had, at no stage, given any indication that the version of the prosecution witnesses, as regards abduction of the informant's father, is false and concocted and that the informant had, in fact, voluntarily remained in the house of one Rabi Charan Deb Barma so as to implicate the present Appellant. It is, for the first time, when the defence evidence was adduced that the defence examined two witnesses, who claimed that the informant's father had been staying at the house of Rabi Charan Deb Barma with the object of implicating the present Appellant. Apart from the fact that there was no foundation laid, while cross-examining the prosecution witnesses, that the informant's father (PW6) had not been abducted and that the entire version of the prosecution had been a concocted version inasmuch as informant's father, PW6, had stayed at the house

of Rabi Charan Deb Barma and it had been falsely projected by the prosecution witnesses that he(PW6) had been abducted by the extremists, no credence can be given to the nature of defence, which the Appellant has belatedly taken, particularly, when the defence did not examine Rabi Charan Deb Barma and for his non-examination, no explanation was offered or is discernible from the materials on record. Situated thus, one has no escape from the conclusion that the defence deliberately withheld Rabi Charan Deb Barma from being cross-examined, for, he would not have supported the case of the defence.

16. What crystallizes from the above discussion is that prosecution has successfully proved beyond reasonable doubt that the informant's father (PW6) was abducted by a group of persons amongst whom the Appellant was also present and a demand for payment of ransom of Rs. 30,000/- was raised by the abductors and they released PW6 on receiving payment of Rs. 25,000/- from the informant and that the ransom was paid because of the fear, which the abductors had been able to generate. In such circumstances, an offence u/s 364A IPC is clearly proved to have been committed by the Appellant and his associates. We find no infirmity, legal or factual, in the conclusion of guilt reached by the learned trial Court nor do we find any reason to interfere with the sentence passed against him. This appeal, therefore, fails and the same shall accordingly stand dismissed.

17. Send back the LCR.