

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl.A. No. 13 of 2022

1. Sri Bikram Roy, son of Sri Brajesh Roy, resident of village-West Mashuli, P.S. Kumarghat, District: Unakoti.

.....Appellant

-VERSUS-

1. The State of Tripura.

..... Respondent.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. S. Saha, Advocate.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of hearing & delivery of judgment and order	:	27.04.2023
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER

Heard Mr. S. Saha, learned counsel appearing for the appellant. Also heard Mr. S. Debnath, learned Addl. P.P. appearing for the respondent-State.

[2] This is an appeal filed under Section-374(2) of Criminal Procedure Code, 1973 against the judgment and order of conviction and sentence passed by the learned Sessions Judge, Dhalai Tripura, Ambassa in connection with S.T. (Type-II) 06 of 2016 dated 02.05.2022 convicting and sentencing the appellant to suffer simple imprisonment for one month for commission of an offence punishable under Section-341 read with Section-34 of IPC and also liable to pay a fine of Rs.500/- only for the said offence and in default of payment of such fine liable to undergo simple imprisonment for a further period of 5 days and RI for 3 years for the commission of offence punishable under Section-366 read with Section-34 of IPC and also liable to pay a fine of Rs.5,000/- only for the said offence and with default stipulations.

[3] The factual backdrop of this case is that one Shri Prabir Ranjan Biswas son of late Chintamani Biswas of lodged an ejahar with the Officer-in-Charge of Nepaltilla police station to the effect that on 05.12.2015, in the morning, the daughter of the complaint, the victim herein, left her house for the house of her tutor to take tuition. When she reached near the house of one Shri Jitendra Malakar of Durbashakala, at that time at about 0700 hours, accused Shri Janardhan Biswas, son of late Dharendra Biswas of the locality of the complaint along with 2/3 other persons abducted her by white Alto car by gagging her mouth and taken away with a view to marry her and they also outrage her modesty while enticing away.

[4] After receiving the complaint the officer in charge Nepaltilla P.S. registered the complaint as Nepaltilla P.S. Case No.2015 NTL 006 under Sections-341/366/34 of IPC and the said case was endorsed to Sri Biswapati Chakraborty for investigation. On 06.12.2015 the victim was recovered.

[5] During investigation the I.O. examined the complainant and other witnesses and also recorded their statements. During investigation I.O. also arrested the appellant Janardhan Biswas, Suman Sen, Arup Adhikari, Litan Ghosh. After investigation the I.O. submitted charge sheet as a prima facie case under Sections-341/366/34 of the IPC was allegedly proved against the accused person namely Janardhan Biswas, Suman Sen and Litan Ghosh alias Santosh and against the accused persons namely Arup Adhikari alias Baptu and Bikram Roy for the commission of offence under Sections-341/366 of IPC read with Sections-192/196/177 of Motor Vehicles Act.

[6] The learned Sub-Divisional Judicial Magistrate, Longtorai Vally having been satisfied to cognizance of the offence punishable under Sections-341/366 read with Section-34 of the IPC against the accused persons namely Janardhan Biswas, Suman Sen and Litan Ghosh@ Santosh and under Section-341/366 of the IPC read with Sections-192/196/177 of the M.V. Act against the accused persons namely, Bikram Roy, the appellant herein, and Arup Adhikari @ Baptu. Since the alleged offence is exclusively triable by the Court of

Sessions, the learned SDJM committed the case for trial before the learned Sessions Judge, Unakoti Tripura.

[7] On perusal of the materials on record the learned trial Court framed the charge under Sections-341/366 read with Section-34 of IPC against the accused persons namely, Janardhan Biswas, Bikram Roy, Litan Ghosh @ Santosh, Arup Adhikari @ Baptu and Suman Sen along with the charges under Sections-177/192/196 of MV Act and charges against the accused person having been explained and the accused person pleaded not guilty and claimed to be tried.

[8] To substantiate the charges against the accused persons, the prosecution has examined as many as 23 witnesses and thereafter the accused persons were examined under Section-313 Cr. P.C. in which they denied all the positive evidence against them.

[9] The learned Court below after hearing the parties and having gone through the material evidence on record has observed as under:

“In the light of the above accused persons namely, Shri Suman Sen, son of Shri Sudhendu Sen, Shri Litan Ghosh alias Santosh, son of Shri Manindra Ghosh, Shri Bikram Roy, son of Shri Brajesh Roy, Shri Arup Adhikari alias Baptu, son of Shri Haribol Adhikari village West Mashuali under Kumarghat police station, District: Unakoti Tripura are hereby found guilty for the commission of offences punishable under Sections-341/366 of the Indian Penal Code read with Section-34 of the Indian Penal Code and accordingly, they are convicted for the said offences and taken into custody”.

[10] Mr. S. Saha, learned counsel appearing for the appellant has submitted that the impugned judgment and order is perverse and unsustainable as the judgment of conviction does not get any support from the evidence rather the impugned judgment and order is a product of surmise. The deposition of the PW-10 does not support the prosecution case as the observation does not relate to the appellant in any manner. The impugned judgment having been passed perversely and without evidence warranting conviction and sentence is liable to be set aside.

[11] He has further contended that the evidence of PW-5 cannot be relied for the reason that it was tutored and during cross examination PW-5 specifically stated that except police she did not disclose the fact to any other person. On the other hand PW-9 in his evidence stated that he was informed by the PW-5 about the alleged incident. There are material contradictions in the depositions of PWs-5 and 9 which are not taken into consideration by the learned Court below.

[12] The appellant is not any way connected with the alleged offence and therefore the judgment and sentence of conviction is liable to be set aside. The complainant did not mention one material fact in his ejahar from whom he came to know that victim was abducted by Janardhan Biswas along with 2-3 persons. The prosecution has failed to establish the case beyond reasonable doubt and therefore the conviction and sentence is liable to be set aside.

[13] Learned counsel appearing for the appellant has further averred that the evidence of PW-18 is taken into consideration then also PW-18 had miserably failed to give proper explanation for delay in lodging the ejahar. Apart from that there is also material contradiction and omission in the FIR but, the learned Court below did not consider the same and as such conviction and sentence is liable to be set aside. The learned Court below heavily relied on the deposition of PW-20 and also opined that PW-20 corroborated the evidence of PW-17 whereas PW-17 for the first time during her evidence disclose that at the time of the alleged incident she was in conversation with PW-20 over her mobile phone.

[14] PW-18 for the first time in his deposition disclosed that he was informed by somebody that while talking to his daughter over phone heard her cry but despite of such information PW-18 did not at once lodge the complaint before the police station and also not mentioned such vital fact neither in his written complaint nor at the time of recording statement under Section-161 Cr. P.C.

[15] PW-18 also not mentioned in his complaint that after the alleged incident Gram Pradhan came to the spot and one girl from their told PW-18

that she saw when miscreants were forcefully putting her daughter into vehicle. On the other hand PW-5 in her evidence specifically stated that except police she did not disclose the alleged incident to any other person and therefore orders of conviction and sentence is liable to be set aside. PW-17 in her statement recorded under Section-164 specifically stated that he informed the alleged incident to her younger daughter and on that day PW-18 was at Khowai which is a material contradiction but the learned Court below failed to consider the same.

[16] The prosecution miserably failed to establish the involvement of the appellant and also failed to conduct any Test Identification Parade and therefore the judgment and order of conviction and sentence liable to be set aside. The contradictions as brought out in the cross-examination were not taken care of by the learned trial Court for purpose of arriving at a just finding and as such the findings are tainted by perversity and therefore, liable to be set aside.

[17] The learned counsel appearing for the appellant has submitted that in the instant case the evidence of the witnesses are not trustworthy as most of the witnesses are relative of the victim and resident of the same locality they are naturally interested witnesses in the given case. the learned counsel further submitted that the identification of the accused persons are also doubtful and thereby the accused persons deserves an order of acquittal on the benefit of doubt.

[18] In view of the above observation, let us examine the evidence of PW-17, the victim girl which is very important for definite conclusion of the present case.

[19] PW-17 in her examination-in-chief has deposed that on 05.12.2015 at about 6.45am the incident occurred while she was going to attend her private tuition in the house of one Bhakta Das, PW-20. At that time, she was talking over phone with her friend Biplab Malakar. The incident occurred while her conversation was going on. She could remember the last two digits of her phone number which is 30. After some time there was one

elevated land and there she found one silver colored car. From that car two persons came down and another came behind her and forcefully they put her in the vehicle. They gagged her mouth and after getting inside, she found two more persons. In total there were five persons including the driver.

[20] She could identify one Suman Sen and Janardharn Biswas out of them. She identified accsued Suman Sen and Janardhan Biswas out of three other accused persons. Thereafter, they proceeded towards Mosawali and Laljuri. After some time they put some liquid substance into her mouth and thereafter she became unconscious. When she gained her sense she noticed hoarding written Khowai. They took her to one house which she could not locate. She heard them calling each other's name and she came to know the other three persons where Litan, Bapto and Bikram.

[21] The Witness identified the remaining three accused persons by face. All of them thereafter, threatened her and frightened her. Thereafter they took her to a jungle near the border fencing. They took her and she walked along with them. In the meantime, she noticed that it is Indo-Bangladesh Border. After few hours police rescued her. During her rescue Janardhan and one Biplab was with her. They fled away while police came. Her father and the Gram Pradhan were also present and they took her to the Nepal Tilla P.S. She was produced before the Court at Chailangta and she gave her statement.

[22] But, in her cross-examination she has stated that she was graduate it means she is major on the date of incident and also could not recollect whether she stated to the I.O. that Suman Sen put her in the vehicle forcefully. She did not state to the I.O. that Suman Sen of her locality during the day of her abduction since morning was following her and when she left her house also came behind her. So there are material contradictions in the statement of the victim girl which cannot safely be taken into account.

[23] The victim girl is a major and this Court is not in a position to accept such statement that in the early morning she was walking on the road and suddenly the accused persons forcefully gheraoed her and made her seat in the car and kidnapped her. It is very difficult to believe that how these persons

know that the victim girl came out in the early morning on that particular road. Hence, this Court feels that it is not a case of kidnap but a case of consent which is subsequently, converted into kidnap. Since, one of the accused persons was in love with the victim girl, they know each other very well, they have exchanged promise for getting married and when it could not be happened, the case has been converted as kidnap.

[24] It is not the case of the victim girl that every day during that particular time she walks on that particular road and the accused persons were already ambuscaded and it is not a case of the victim girl that she has complaint to her parents or to her near and dear one about the intention of the accused-persons whether they are tracking her.

[25] In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt.

[26] PW-9 and PW-16 introduced a new version in their evidence which is contradictory with their statements recorded under Section-161 of Cr. P.C. and therefore evidence of PW-9 & 16 cannot be relied upon. The learned Court below did not consider the cross-examination part of the deposition while weighing and appreciating the evidences.

[27] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt. Suspensions, however, grave in nature, should not amount to prove. The discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, this

Court finds it difficult to arrive at a finding to draw the hypothesis of guilt against the accused-appellant.

[28] In the backdrop of above analysis, we are of the view that the prosecution has failed to establish their projected case and consequently the instant appeal stands allowed. Accordingly, the order of conviction and sentence dated 02.05.2022 passed by the learned Sessions Judge, Dhalai Tripura, Ambassa in S.T. (Type-II) 06 of 2016 is set aside. With the above observations and direction, the instant appeal stands allowed and disposed of. Bail bond, if any, stands discharged.

As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

A.Ghash

JUDGE



सत्यमेव जयते