

HIGH COURT OF TRIPURA
AGARTALA
Crl. A.J 39/2022

Sri Sambhuram Debbarma

son of late Shilanga Debbarma, resident of Ratanpur Jumia Colony,
P.S. Khowai, District- Khowai, Tripura

----Appellant

Versus

1. The State of Tripura

----Respondent

For Appellant(s)	:	Mr. Somik Deb, Sr. Advocate Mr. A. Baran, Advocate
For Respondent(s)	:	Mr. S. Ghosh, Addl. PP
Date of hearing	:	13.09.2023
Date of delivery of judgment & Order	:	20.09.2023
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT

(Amarnath Goud, J)

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. A. Baran, learned counsel appearing for the appellant as well as Mr. S. Ghosh, learned Additional PP appearing on behalf of the respondent-State.

2. This appeal has been preferred by the appellant challenging the judgment and order of conviction and sentence dated 10.06.2022 passed by the learned Sessions Judge, Khowai Judicial District, Khowai, in case No. S.T. (Type-1) 30 of 2010, whereby the appellant was convicted under Sections 451/364/302 of the IPC and was sentenced to suffer rigorous imprisonment for five months for commission of offence punishable under Section 451 IPC; and was also sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 10,000/- for commission of offence punishable under Section 364 IPC with default stipulation; and further sentenced to suffer rigorous imprisonment for life for commission of offence punishable under Section 302 IPC, with a finding that the appellant will not get set-off for the period of his detention during the period of investigation, inquiry and trial.

3. The fact leading to filing of the present appeal, is that, the complainant (PW-2) lodged a complaint with the Officer-in-Charge of Khowai police station on 04.09.2005 alleging *inter alia* that on 06.12.2004 at about 9.00 a.m., ATTF extremists, namely, Bhulu Munda, Sambhuran Debbarma (present appellant) alongwith three other unknown ATTF extremists forcibly abducted his son, Mantu Debbarma, his elder brother in law and his younger brother-in-law at gun point from his house and while leaving, those extremists threatened him not to inform the police or they will shoot them. It was further alleged that till the date of lodging of the complaint, neither his son, nor his brothers-in law had returned home, and it is his strong belief that the extremists have killed his son and his brothers-in-law.

4. The said complaint was registered as Khowai PS case no. 45 of 2005 under Sections 448/364/34 of the IPC and under Section 27 of the Arms Act. The matter was investigated, and after completion of investigation the I.O. of the case submitted charge-sheet under Sections 364/34 of the IPC and under Section 27 of the Arms Act showing the accused-appellant as an absconder. Trial had commenced and accordingly 9 witnesses were examined and cross-examined and the case was disposed of in respect of 3 accused persons except the present appellant. On 19.11.2021, the accused-appellant had surrendered before the learned trial court and he was taken into custody. Charge under Sections 451/364/302 of the IPC was framed against the accused-appellant, to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution to establish the charges had adduced 9 witnesses and exhibited some documents. After closure of recording evidences, the accused-appellant was examined under Section 313 Cr.P.C. wherein he denied all the allegations leveled against him by the prosecution

witnesses. After hearing arguments and on examining the evidences and materials on record, the learned Sessions Judge had convicted the accused-appellant, as aforestated. Being aggrieved, the present appeal is preferred by the appellant.

6. Mr. Deb, learned senior counsel for the appellant has submitted that without properly appreciating the evidences on record, the learned trial court has convicted the accused-appellant, hence, he has prayed for quashing the said order of conviction and sentence. Mr. Deb, learned senior counsel has further submitted that there are many discrepancies in the depositions of the witnesses and the learned trial court while awarding sentence, did not appreciate the said discrepancies. Learned counsel has also submitted that the FIR has been lodged after much delay without proper explanation. Learned senior counsel also has argued that the provision of section 299 CrPC has been grossly violated. Mr. Deb, learned senior counsel has placed reliance upon *Atma Ram and others vs. State of Rajasthan*, reported in (2019) 20 SCC 481 [paras 17, 18, 19, 20, 24 to 26] and *Jayendra Vishnu Thakur vs. State of Maharashtra and anr.*, reported in (2009) 7 SCC 104 [14,25,28,29,35,44, 45,52]. Learned senior counsel has urged to set-aside the order of conviction and sentence as passed by the learned trial court.

7. On the other hand, learned counsel appearing for the respondent has urged to maintain the findings of the learned trial court since there is no infirmity or illegality in the findings of the learned trial court. Learned Additional PP has also submitted that the accused-appellant alongwith another accused Kusum Tripura have absconded and evaded the trial for which trial against them was adjourned *sine die*.

8. We have considered the submissions for learned counsel appearing for the parties. We have perused the evidences and materials on record and the

judgment passed by the learned Sessions Judge. We have also perused the authorities as placed by learned senior counsel. To substantiate the findings of the learned trial court, this court has perused the deposition of the prosecution witnesses.

9. PW-1, is the S.I. of Khowai P.S. who registered the instant case on the basis of written complaint of the complainant.

PW-2, is the complainant, who deposed that on 06.12.2004 the appellant alongwith other ATTF extremists came to his house and searched for him and since they did not find him, they had forcefully abducted his son, Mantu Debbarma and his brothers-in-law on the point of pistol. He also stated that the accused persons also threatened him that they would kill the victims if the matter is reported to police. This witness further deposed that the appellant, Sambhuraam Debbarma surrendered to the Government and was in the custody of Assam Rifles where the accused person informed him that they have murdered all the abducted persons. Nothing material could have been elucidated from the second round of deposition of this witness.

PW-3, wife of the victim Mantu Debbarma deposed that 5-6 years back oneday at about 9.00 a.m. when she was at house, 5-6 extremists armed with pistol came to their house and forcefully abducted her husband Mantu Debbarma and two other relatives. PW-2 has also deposed that she could identify Bhulu Munda and Sambhuraam Debbarma shince she noticed them to move in their locality. She has further deposed that since her husband was murdered by the extremists, she used to wear white dresses like Hindu widow. In her second round of deposition, she deposed that her husband was murdered by Sambhuraam Debbarma and his gang in 2004 and she could identify the accused in the dock.

PW-4, mother the victim, Mantu Debbarma in her deposition stated that about 7 years back oneday at about 9.00 a.m. in the morning 5 extremists, namely, Bhulu, Khuda, Kishore, Sambhuraam and Sujit Debbarma came to their house and abducted her son Mantu Debbarma and her brothers on the point of gun. She also deposed that when she resisted the extremists, Sambhuraam Debbarma caused hurt to her at her back by a stick. She also deposed that subsequently she came to know that her son and brothers were killed by the extremists. In her second round of deposition, she stated that her son Mantu Debbarma was kidnapped and killed by the extremists in 2003. She also deposed that Sambhuraam Debbarma and Koda Debbarma killed her son and she could identify Sambhuraam Debbarma.

PW-5 and 7, have deposed to the same tune to that of *PW-4*. Nothing could have been elucidated from their second round of deposition.

PW-8, a neighbour of the complainant deposed that about 8/9 years ago in the morning at about 9.00 a.m. a group of extremists came to the house of the complainant and abducted his son and brothers-in-law. This witness had identified Sambhuraam Debbarma, the appellant herein as one of the extremists.

PW-9, is the second I.O. of the case who after investigation submitted charge-sheet against the accused-appellant and others.

10. On appreciation of the evidences on record, it is evident that *PWs* 2, 3, 4, 5, 7 and 8 had corroborated their statements to each other and all of them had named the present appellant as one of the extremists who had kidnapped the victims. *PW-2*, had stated that the present appellant had disclosed to him the fact that the victims were being killed by them after abduction. It is evident that the incident took place in the year 2004 and since the lodging of the FIR, none of the victims could have been traced which ensures that the victims were killed by the extremists during their captivity. The

witnesses have categorically mentioned the name of the present appellant as Sambhuraam Debbarma as one of the extremists who had kidnapped the victims and threatened for not approaching the police, and he was also identified by the witnesses in course of trial. Since, the accused-appellant has made himself inaccessible, the court cannot pause the proceeding and accordingly, the trial was adjourned *sine die* against the accused appellant.

11. Admittedly, the appellant is the accused person and he has been identified and has been named by the eye witnesses (PWs 2, 3, 4, 5, 7 and 8) who happened to be examined by the learned court below. Now, it is not upon the appellant to raise a voice that the court below has not following the provisions of Sections 299 and 273 CrPC and also Section 33 of the Evidence Act. The appellant was himself absconding for a long time and nothing has prevented him from approaching the court below at appropriate time to take legal recourse. This kind of action of the appellant trying to escape the legal clutches will not come to his rescue. The appellant ought to have approach the court with clean hand and at appropriate time. The Code of Criminal procedure provides all opportunities to the accused person and if the accused person fails to avail the same and abscond denying to face the criminal proceeding, at this juncture, it is not open for him to seek any redressal for remanding the matter or re-examine the witnesses or to find fault in the findings of the court below in conducting the proceeding as contemplated under Section 299 and 273 of the CrPC. Accordingly, the argument of learned senior counsel on this line is rejected. In so far as the merit of the case is concerned, the appellant alongwith other accused persons were identified by name and face by the eye witnesses (PWs 2, 3, 4, 5, 7 and 8) who had trespassed and the witnesses have categorically stated that all the accused persons have kidnapped those persons (victims) on gun-point, and accordingly it has to be construed that the victims

are dead and have been killed by the accused persons which attracts section 302 IPC into the matter.

12. From the context, it is clear that the accused-appellant had absconded himself and intentionally made himself inaccessible to the processes of law. Further, the I.O. (PW-9) asserted that there is no immediate prospect of arresting the accused since he had been absconding. Similarly, the learned trial court had also taken the recourse to cause arrest of the accused through issuing notice to the Government of Tripura, but the accused-appellant had again absconded and the learned trial court had proceeded to record the evidence behind the absconding accused. After conclusion of trial, judgment was passed subsequent to which, the accused-appellant had surrendered before the learned trial court after which he was taken into custody. Accordingly, the witnesses were re-examined and re-cross-examined when the accused-appellant was present before the court. Section 299 (1) CrPC empowers the trial court to record evidence in absence of accused, provided it is proved that an accused person has absconded and there is no immediate prospect of his arrest. The deposition recorded in the absence of the absconder, after arrest of the absconder be taken in evidence against the absconder in the trial provided the witness whose evidence has been recorded in the absence of the absconder is dead or incapable of giving evidence or his attendance cannot be secured without an amount of delay, expense or inconvenience, which under the circumstances of the case is unreasonable. Section 299 (1) Cr.P.C. reads as follows:

“299. Record of evidence in absence of accused.-(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try [or commit for trial,] such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot

be procured without an amount of- delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.”

Section 273 Cr.P.C. reads as follows:

“273. Evidence to be taken in presence of accused: Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.

[Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused].

Explanation — In this section “accused” includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.”

13. The materials on record leave no doubt that the accused-appellant had absconded and there was no imminent possibility of his arrest. Even the trial Court framed charge against the co-accused persons who were facing trial described the appellant as an absconder. Hence, the preliminary fact that the appellant had absconded and there was no imminent prospect of his arrest during the trial of other accused persons has been duly established. Nothing has been placed on record on behalf of the appellant to show that he was available to investigating agency during the earlier trial but had not been arrested. The other condition that the victim persons had been killed during their abduction by the appellant and other extremist is undisputed. Thus, the condition to invoke section 299(1) Cr.P.C. is satisfied. The appellant had the opportunity to show that prosecution had failed to prove that he had absconded and could have been brought on trial but has failed to do so. Thus, there is no infirmity with the said conclusion of the learned trial court and we are, therefore, not in a position to sustain the argument of Mr. Somik Deb, learned senior counsel, appearing for the appellant that pre-conditions of Section 299(1) CrPC have not been complied with.

14. Admittedly, the prosecution witnesses (PWs 2, 3, 4, 5, 7 and 8) had been able to identify the accused-appellant in course of trial by name and face. They had categorically deposed that the accused-appellant alongwith

other extremists entered into their house and had abducted Mantu Debbarma, Tikendra Debbarma and Girendra Debbarma on the point of pistol. As per the prosecution story, the incident took place in the year 2004 and till lodging of FIR, the abducted persons did not return, from which it can be presumed that the abducted persons were killed by the extremists during their captivity. Further, PW-2 stated that when he met with the accused-appellant in the custody of Assam Rifles, the accused-appellant informed him that they had murdered all the abducted persons. Thus, there is no infirmity in the judgment requiring our interference with the conviction and sentence recorded by the learned trial court.

15. In the aforesaid circumstances, it is held that the prosecution case has been proved beyond reasonable doubt. Accordingly, we are not inclined to interfere with the conviction and sentence passed by the learned trial court vide judgment dated 10.06.2022. Consequently, the judgment dated 10.06.2022 is affirmed and upheld, and the appeal thus stands dismissed.

Send down the LCRs.

JUDGE

JUDGE

HIGH COURT OF TRIPURA



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