

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.32/2022 with
Crl.A.No.33/2022

Date of order: 28.08.2023

Ajay N. Sangma	Vs.	State of Meghalaya
Acquit R. Marak	Vs.	State of Meghalaya

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellants	: Mr. M. Sharma, Legal Aid Counsel
For the Respondents	: Mr. K. Khan, AAG with Mr. S. Sengupta, Addl.PP Ms. Z.E. Nongkynrih, GA

i) Whether approved for reporting in Law journals etc.:	Yes
ii) Whether approved for publication in press:	Yes/No

ORDER: (per the Hon'ble, the Chief Justice) (Oral)

The two appeals are directed against a judgment and the immediate order of sentencing of November 14, 2019 by which both the appellants have been convicted under Sections 364A and 302 of the Indian Penal Code, 1860 read with Section 34 thereof.

2. Appellant Ajay N. Sangma has been sentenced to rigorous imprisonment for life together with a fine of Rs.1 lakh. In default of

payment of the fine, the convict is to undergo simple imprisonment for a further year running concurrently with the period of conviction.

3. Appellant Acquit R. Marak has also been similarly punished for his role in the matter.

4. On October 23, 2015, the father of a 16-year-old boy lodged a complaint with the Pillangkata Police Outpost in Ri-Bhoi district to the effect that on October 21, 2015 his son went out of their house along with the appellant in the first matter, who was a resident of Chibra village, but did not return. The first information report also narrated that on October 22, 2015 at about 11 am he received a phone call from an unknown number, 7085686169, demanding a ransom of Rs.10 lakh for the release of the complainant's son. The complainant specified that the callers spoke to the complainant in Garo and Assamese languages and warned the complainant against reporting the matter to the police.

5. According to the investigating officer, inquiries revealed that the appellant in the first matter, Ajay, came looking for the victim on October 21, 2015 and after the victim came out of his house and spoke to Ajay for some time, the two of them got into a car and drove away towards Guwahati. The IO also revealed that he visited the village of Ajay but discovered that Ajay had not been in the village for several

days. The IO claimed that he had informed the neighbouring police stations in Assam of the incident so that they could keep a watch out for both the missing boy and for Ajay.

6. According to the IO, he received information on October 29, 2015 that Ajay was in a line hotel within the jurisdiction of Krishnai Police Station in Assam. Upon seeking further information from the officials at the Krishnai Police Station, the IO came to learn that Ajay had been rescued from a nearby jungle and brought to a line hotel in Krishnai on October 27, 2015. Upon the local police personnel questioning Ajay, Ajay revealed that he was in the jungle with the missing boy in the morning of October 27, 2015 when they were attacked by ultras and in their individual bids to escape, they got separated. According to Ajay he was shot at by an AK-47 as a result whereof he sustained a bullet tear on his jacket. Ajay claimed that he pretended to have been hit and lay motionless on the ground, which prompted his assailants into believing that he had been shot dead.

7. Tests conducted on the relevant jacket, however, revealed no residue or trace of any bullet nor was any bullet discovered. The IO narrated that he led Ajay to some place where the other appellant, Acquit Marak, was found accidentally and was arrested since Ajay

informed the IO that Acquit used to cook for them while they were in the jungle with the boy.

8. Acquit Marak apparently told the IO that he was coerced into supplying food to all the persons who had kept the boy confined. He also told the IO that he was subsequently required to stay in the same jungle and move with the rest of the team since they did not stay put in one place, lest they be discovered. Acquit claimed that he had nothing to do with the matter except cooking, though he admitted that he had seen the victim alive.

9. It is the further testimony of the IO at the trial that Ajay and Acquit made contradictory statements as a result whereof both were questioned together and they confessed that the boy had been killed and had indicated that they would lead the police to where the body of the boy was buried. Much emphasis has been laid on the IO's statement to the effect that the then accused had confessed to the IO of having kidnapped the victim and having kept him in solitary confinement for several days. According to the IO, several persons, probably nine in number, were involved in the entire operation of kidnapping the boy for ransom. Of the others, one was arrested for a short while; but he

absconded upon securing bail, while the others could not be apprehended at all.

10. Much of what the IO has asserted from the witness box has to be disregarded in view of Section 25 of the Evidence Act, 1872. Further, as noticed in greater detailed later herein, there is no independent witness account of either convict leading to where the body of the victim was buried. Indeed, the father of the victim contradicted the investigating officer's version as to which convict led the police to the place where the victim's body was buried.

11. The IO described how Ajay led them to where the dead body was buried and how the dead body was exhumed. This was on November 3, 2015 whereupon an inquest was held and the dead body was identified as the victim's by the FIR-maker father of the victim. The body was found in a state of decomposition and the post-mortem report of November 4, 2015 revealed that the death may have taken place some seven or eight days before the post-mortem examination was conducted on the body.

12. According to the State, in view of the extent of the decomposition of the body and the medical evidence in such regard, it can be safely be presumed that the boy was alive till on or about

October 27-28, 2015. The State also refers to Acquit claiming to have seen the boy alive. According to the IO, Ajay claimed that the ransom money had been received but for reasons not understood by Ajay, Ajay was not paid his share of Rs.10,000/-. Ajay claimed that he did not raise a protest at the relevant point of time. However, it is evident that the yarn that Ajay spun of being tracked down by ultras or being shot at was a figment of his imagination since the forensic analysis of Ajay's jacket with the alleged bullet hole therein did not reveal the remains of anything remarkable.

13. Though the body of the victim was exhumed from a forest near Dudhnoi on November 3, 2015, there was neither any recording of any statement by either accused nor any independent witness to demonstrate that one or the other of them had led the police team to where the body of the victim was buried. What appears from the evidence is that both the accused or either of them may have revealed where the group may have kept the young boy in custody and the police scouted the area to ultimately discover the body, but not at the behest of either Ajay or Acquit. Since there is no evidence in such regard, it cannot be accepted that either Ajay or Acquit led the police to the place where the body was interred. In the absence of Ajay being linked to the discovery of the

body or the knowledge that the victim had already expired, no charge of murder can stick against Ajay. Even if it is accepted that Ajay's story that he met with ultras on the morning of October 27, 2015 or that they shot at Ajay during such time is imaginary, it does not necessarily follow that Ajay murdered the boy or that Ajay was involved in the commission of such offence.

14. Indeed, what such dishonest statement of Ajay reveals is that Ajay may have been apprehensive that the victim would be discovered and if the victim had claimed that he had been abducted by Ajay, that would have reflected poorly on Ajay. In such circumstances, Ajay may have made up a story of him and the victim having been kidnapped by extremists, but such false story would not lead to any inference of his involvement in the death of the abducted boy.

15. The father of the victim identified the body but, according to such father, it was Acquit not Ajay who led the police to the body. Apart from such anomaly, since the IO claimed that it was Ajay who led the police team to the body, it is evident that the boy must have died on or about October 27-28, 2015, by which time Ajay had already come away.

16. From the impugned judgment, there does not appear to be any basis for holding Ajay or even Acquit guilty of murder. Indeed, it is evident that neither Ajay nor Acquit may have been a part of the group as of October 27 or October 28 when the boy may have been killed. In the light of Acquit only claiming to have been the cook and Ajay confirming such position, Acquit cannot be seen to have had a big role in the entire operation. On the basis of the material before the trial court, neither Ajay nor Acquit could have been found guilty of having committed murder. At any rate, no motive in such regard has been attributed to either. As to the charge pertaining to kidnapping for ransom, it appears that the same has been made out in view of the FIR-maker's assertion that he had received a phone call and a corroboration of the situation by the accused to the extent, at least that of Ajay having lured the victim from home and Acquit having seen the boy in the company of the group for which Acquit was apparently forced to cook.

17. Even if the charge of murder against both Ajay and Acquit is set aside on the ground of insufficient evidence, the case under Sections 364A and 34 of the Penal Code has been adequately made out. There is evidence of Ajay driving away with the victim, evidence of someone or the other contacting the father for ransom money and the assertion by

Ajay that the money may have been paid though Ajay's share was not made over to him.

18. Whether or not any ransom was actually paid, there is no denying the fact that the victim was kidnapped. In the light of the father's assertion as to the phone call demanding ransom, it further appears that the victim may have been kidnapped for ransom. As such, even though the charge under Section 302 of the Penal Code may not stick in the present case, the punishment awarded to either appellant for kidnapping for ransom would have to be left untouched.

19. Accordingly, CrI.A.No.32 of 2022 and CrI.A.No.33 of 2022 are allowed in part by setting aside the judgment and order dated November 14, 2019 insofar as they convicted Ajay and Acquit for having committed murder, but their conviction under Sections 364A and 34 of the Penal Code for the common motive of kidnapping for ransom is affirmed.

20. Accordingly, the punishment under Section 302 is set aside insofar as it relates to the charge under Section 302 of the Penal Code. The conviction under Section 364A read with Section 34 of the Penal Code is upheld.

21. However, since the sentences in respect of the two distinct offences were to run concurrently, notwithstanding the acquittal in respect of the charge under Section 302 of the Penal Code, the sentence of rigorous imprisonment for life together with fine of Rs.1 lakh under Section 364A is sustained. The additional fine of Rs.1 lakh for murder is set aside.

22. Several judgments have been cited on behalf of the appellants, including the ones reported at AIR 2022 SC 5535 (*S. Kaleeswaran v. State by the Inspector of Police, Pollachi Town East Police Station, Coimbatore*), AIR 2023 SC 634 (*Munna Lal v. State of Uttar Pradesh*) and 2022 LiveLaw (SC) 926 (*Rahul v. State of Delhi Ministry of Home Affairs*) and 2023 SCC OnLine SC 50 (*Boby v. State of Kerala*) to demonstrate the flimsy charge of murder.

23. In view of the facts as they presented themselves and the evidence not sustaining the charge of murder, the law on such aspect of the matter as cited on behalf of the appellants has not been referred to in any great detail.

24. Let copies of this judgment and order be immediately made available to the appellants free of cost.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
28.08.2023
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