

GAHC010018122015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./189/2015

SAHAB UDDIN LASKAR
S/O LATE MASADDAR ALI @ PENDUL MIA , R/O VILL. KARKAT BASTI, P.S.
DHOLAI, DIST. CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.
2:RASMAN ALI LASKAR
S/O LATE AKADDAS ALI LASKAR
R/O VILL. ARJANPUR
P.O. DHOLAI BAZAR
P.S. DHOLAI
DIST. CACHAR
ASSAM
PIN 78811

Advocate for the Petitioner : MR.A K AZAD

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MR JUSTICE SONGKHUPCHUNG SERTO

JUDGMENT

28/02/2023

(M.R. Pathak, J)

Heard Dr. B. Ahmed, learned counsel for the accused appellant and Mr. Makhan Phukan, learned Additional Public Prosecutor, Assam for the State.

(2) Learned Additional Sessions Judge, Cachar, Silchar by its judgment and order dated

18.05.2015 passed in Sessions Case No. 73/2012 convicted the accused Sahab Uddin Laskar under Section 364A IPC and sentenced him Imprisonment for Life with a fine of Rs. 5,000/- and in default of payment of fine, further sentenced him Simple Imprisonment for six months. Being aggrieved with said conviction and sentence, the said accused has preferred this appeal.

(3) According to the accused appellant, there was no eye witness to the incident and the learned Trial Court failed to prove the guilt of the accused appellant beyond all reasonable doubt so as to convict him under Section 364A IPC and therefore, the impugned judgment of conviction and sentence dated 18.05.2015 should be set aside and quashed.

(4) The accused appellant further contended that as the learned Trial Court failed to appreciate that in absence of any conclusive evidence against him with regard to committing such crime upon the victim; therefore, the learned Trial Judge committed illegality in convicting him under Section 364-A IPC in absence of any other materials before him. As such, it is submitted that the impugned judgment of conviction and sentence passed by the learned Trial Judge without any reliable evidence needs to be set aside and quashed.

(5) On the other hand, the learned Additional Public Prosecutor, appearing for the State submits that there are sufficient evidence on record proved by the prosecution with regard to the guilt of the accused and that the learned Trial Judge rightly considering the materials on record passed the impugned judgment and order of conviction and sentence against the accused appellant and therefore, the same does not call for any interference.

(6) We have heard the submissions of the learned counsels for the parties.

(7) The prosecution's case is that on 01.10.2006, one Md. Fakaruddin of Kullicherra over telephone informed the Dholai Police Station that on the same day at around 11:00 am, some unknown miscreants kidnapped one Auto rickshaw driver and took him away towards jungle and that said auto rickshaw is lying at the place of occurrence. Getting the said information, it was entered with GD Entry vide Dholai Police Station GDE No. 7 of 01.10.2006. On the following day, i.e., on 02.10.2006 informant Rasman Ali of Arjanpur lodged an *ejahar* at Dholai Police Station to the effect that on 01.10.2006 in the morning, his son Mirajul Hoque Laskar while coming from Natocherra towards Bhaga Bazar side and by the conspiracy of accused persons Safiqur Uddin Laskar, Sahab Uddin Laskar and 2/3 other associates kidnapped his son by stopping his Auto

rickshaw wearing Army coloured dress with deadly weapons. Accordingly, Dholai Police Station Case No.201/2006 was registered under Sections 140/120(B)/364(A)/34 IPC, corresponding to GR No. 3140/2006. During the investigation, a prima facie case under Section 364A/34 was found well-established against the accused persons including Sahab Uddin Laskar who were from Karkat Basti. Charge Sheet in the case was filed on 19.03.2008.

(8) Exhibit-1 is the Seizure List with regard to the Auto rickshaw, Exhibit-2 is the statement of the victim under Section 164 CrPC made before the Magistrate, Exhibit-3 is the FIR of the case, Exhibit-4 is the Extract copy of the GDE No. 7 dated 01.10.2006 of Dholai Police Station, Exhibit-5 is the Sketch Map of the place of occurrence and Exhibit-6 is the charge Sheet in Dholai P.S. Case No. 201/2006.

(9) As Section 364A IPC is triable by the Court of Sessions, learned Sub-Divisional Judicial Magistrate (Sadar) Silchar, Cachar on 15.03.2012 committed the said GR No. 3140/2006 arising out of Dholai P.S. Case No.201/2006. The same was accordingly registered as Sessions Case No. 73 of 2012 in the Court of learned Sessions Judge, Cachar, Silchar. By order dated 04.06.2012, learned Sessions Judge, Cachar, Silchar hand over the said Sessions Case No. 73/2012 to the Court of learned Additional Sessions Judge, Cachar, Silchar for trial and disposal.

(10) Learned Additional Sessions Judge, Cachar, Silchar by order dated 19.09.2012 in said Sessions Case No. 73/2012 framed charge under sections 364A/34 IPC against the accused persons including the accused appellant Sahab Uddin Laskar which were read over and explained, to which the accused persons pleaded not guilty and named to be tried. Accordingly, the trial of the case commenced.

(11) To prove the guilt of the accused prosecution, examined six witnesses and the relevant exhibits. The defence declined to adduce any evidence; however, it cross-examined the prosecution witnesses. Section 313 CrPC statement of the accused Sahab Uddin Laskar was recorded by the Trial Court on 27.04.2015, in which the said accused submitted that he is innocent and falsely implicated in the case.

(12) The Trial Court considering the evidence as recorded as well as the exhibits placed by the prosecution passed the impugned judgment of conviction and sentence dated 18.05.2015.

(13) Let us briefly discuss the evidence adduced by the prosecution witnesses.

(14) PW.1, Chapal Kumar Das is a hearsay witness to the incident. He heard the incident from the informant PW.3. PW.1 is a seizure witness with regard to the stolen auto rickshaw recovered by the police that was identified by the informant PW.3 himself. Said PW.1 identified his signature in the Seizure List Exhibit-1. The defence declined to cross examine him.

(15) PW.2, Md. Mirajul Haque Laskar, an Auto Driver and victim of the case deposed before the Trial Court that occurrence took place at around 09:00 am at Natacherra and at that time, he was carrying passengers from Karkat Basti to Bagha Bazar and after five minutes, the accused Ramij Uddin @Rangum and Sahab Uddin Laskar who were in CRPF dress with arms like gun and dagger etc, signaled him to stop his autorikshaw. The said place was lonely, both the sides of the road are hillock and the road passes through the said hillock. PW.2 deposed that after the said vehicle was stopped at their signal, they kept a pistol on his chest, dragged him out of the said auto rickshaw, forced him to walk towards jungle. There were about ten numbers of passengers in his auto and all of them fled away and that he did not know any of the passengers of his vehicle. His auto rickshaw was left on that place, his hands were tied and forced to walk with them through the jungle and whenever he tried to stop, they kicked him, forced him to walk again and in that way, he was compelled to walk with them till 4/4:30 pm. He deposed that there were only two accused persons when they signaled him and their faces were covered, but in the evening when they stopped walking for the day, they removed their covers and then he could identify them as Sahab Uddin Laskar and Ramij Uddin. PW.2 further stated that he heard them discussing how to release money from his father and where he was to be taken, whether Imphal or Mizoram. He deposed that those accused persons also discussed that if they failed to release money from his father, they shall kill him. He deposed that hearing the same, he took the name of the Almighty and fled away from the scene through the jungle, ran through the jungle for 5/6 hours and reached Athama Basti about 10:00 pm, took shelter in the house of one Riyang person, he reported to the said person about the danger he faced and after hearing it, said Riyang person gave him shelter for the night. Thereafter, two Riyang persons at around 07:00 in the morning handed him over to the Dolakhal Camp and he paid Rs. 800/- to those two Riyang persons. From the said camp, police informed Dholai Police Station about his recovery and then his father along with police personnel from Dholai Police Station reached the Dolakhal Camp around 10:00 am and thereafter, his father brought him back. He deposed that he reported the entire incident to his father and police who brought him to the Court for recording his statement and he stated about

the incident before the Magistrate, Exhibit-2 and identified his signature on it. He also deposed that at the time of occurrence, he was about 26 years old and that his auto rickshaw was also recovered.

(16) During his cross-examination on behalf of the accused Sahab Uddin Laskar, said PW.2 stated that at Karkat Basti there are many houses situated at tila (high land) near the road. There exists a Mosque, a school and 2/3 houses in the plain area and it takes about 10 minutes time to reach Dolakhal Camp from Natacherra and that he picked up the passengers in his auto from Natacherra. He also stated that entire Karkat Basti that situated on the south of said Dolakhal Camp and the occurrence took place about 50 feet away from the house of one Latai Master and that other houses also exist there. He stated that he was taken towards east of the place and he doesn't know the name of the place where he was taken. He also stated that he walked through the jungle to reach at about 10:00 pm and identified the village on seeing light. He further stated that he does not know the name of the person in whose house he took shelter and came walking to the Dolakhal Camp from Atama Basti towards west via Kashia Punji and he talked to Kashia people and that he was not aware of the names. He stated that police did not record his statement. However, he denied the suggestion made on behalf of the accused person.

(17) PW.3, Rasman Ali Laskar, a cultivator by profession, resident of Arjanpur under Dholai Police Station, informant of the case and father of the victim deposed during the trial that his son used to drive auto rickshaw in the Bhaga Bazar – Karkat Basti Route and on the day of the incident, while he was at home at around 11/11:30 in the morning, a phone call came to the house of the Panchayat Member of the village informing that Sahab Uddin and Ragum had kidnapped his son Mirazul Hoque Laskar from a deserted place near Karkot Basti and had taken him to the jungle. He deposed that as he came to know that the auto rickshaw of his son was lying beside the road, he went to the Dhalai Police Station and that said information was already received by the concerned police station. Then he went to the place of occurrence with police personnel of the Dhalai Police Station, saw the auto rickshaw lying there and police seized the said auto rickshaw by preparing a Seizure List, (Exhibit-1), to which he is a signatory. Said PW.3, identified his signature in the Seizure List, (Exhibit-1). PW.3 also deposed that on the following day of the incident, he lodged the *ejahar* of the incident, Exhibit-3, and identified his signature on it. PW.4 further deposed that on the following day, his son escaped from the clutch of the accused persons and went to Dolakhal CRPF Camp and on receiving the information, he went to

the said camp where police personnel from Dholai Police Station also came. He deposed that from his son, he came to know that while he was coming to Bhaga Bazar with passengers in his auto rickshaw, the accused persons Sahab Uddin Laskar and Rangum who were wearing khaki dress stopped his auto rickshaw, kidnapped him, took him to jungle and finding an opportunity, his son escaped. Then he was helped by a person from Riyang community and he reached Dolakhal camp.

(18) During his cross-examination on behalf of the accused Sahab Uddin Laskar, PW.3 stated that his house is about 18 kms. away from Dolakhal camp and about 2.5 kms away from Dholai Police Station and denied all the suggestions made on behalf of the said accused. He deposed that around 10/10:30 in the morning of the following day of the incident, he lodged the *ejahar* and though he had gone to the police station on the day of the incident, but on that day, he did not lodge the *ejahar*. He stated that he doesn't know the contents of the seizure list as he studied up to primary school and that the accused persons were not known to him before the incident. He denied any use of false evidence for the sake of his son and he stated that he did not witness the incident.

(19) PW.4 Fakaruddin Laskar, a shopkeeper by profession, resident of Kulicherra under Dholai Police Station deposed before the Trial Court that he could come to know that an auto rickshaw driver had been kidnapped from the road at Karkat Basti.

(20) During his cross-examination by the defence, said PW.4 stated that his house is at a distance of about 10 Kms. from Karkat Basti and that his statement was not recorded.

(21) PW.5 Makaddas Ali, resident of Islamabad under Dholai Police Station is also a hearsay witness of the incident. The defence declined to cross-examine this witness too.

(22) PW.6, Putul Bharali, Investigating Officer of the case during the trial deposed that on 01.10.2006, he was posted at Dholai Police Station as its Officer-in-Charge and on that day, at around 01:30 pm, he received a telephonic information from one Fakar Uddin of Village Kullicherra (PW.4) informing that one auto driver was kidnapped at about 11:00 am from a road at Karkat Basti by some miscreants and accordingly, he made GD Entry No.7 dated 01.10.2006, Exhibit-4. He also deposed that he went to the place of occurrence, found the auto rickshaw of the victim and seized the same vide Exhibit-1 and also identified his signature therein. PW.6 deposed that he prepared a sketch map of the place of occurrence vide Exhibit-5 in which he

proved his signature. He also deposed that he recorded a statement of the witnesses and that subsequently the victim Riajul Haque Laskar came to the Border Out-Post at Dholakhal with one Nandalal Riyang, and then he took the victim to the police station and produced him before the Magistrate. He further deposed that on the next day, father of the victim lodged the *ejahar* at Dholai Police Station vide Exhibit-3 and he registered the same as Dholai Police Station Case No. 201/2006 under Sections 120(b)/364A/34 IPC and took up the investigation of the case and also proved his endorsement in the said *ejahar*. The said Investigating Officer of the case in his evidence also deposed that in course of investigation of the case, he arrested the accused Sahab Uddin Laskar and three others who were forwarded to custody and on completion of the investigation of the case, he submitted charge sheet against three of the accused persons vide Exhibit-6 and identified his signature on it.

(23) During his cross-examination on behalf of the accused persons, PW.6 stated that in the GD Entry No.7 dated 01.10.2006, (Exhibit-4), he did not mention about the road from where the auto rickshaw was recovered, but he stated that the victim was recovered from the Border Out Post on 02.10.2006 at about 06:00 am, whereas the Exhibit-3 (*ejahar*/FIR) was received at 12:25 pm, where there was no mention about any recovery. Said PW.6 Investigating Officer of the case during his cross-examination also stated that statements of the victim as well as that of Nandalal under Section 161 CrPC were not available in the case diary nor there was any medical report of the victim in his case diary. He stated that he did not produce the victim before the Magistrate so as to record his statement under Section 164 CrPC and that the seized auto rickshaw was not examined by the Motor Vehicle Inspector. He further stated that he did not record the statements of other people available at the Border Out Post and that he also did not record the statement of Fakar Uddin who informed him about the occurrence. However, he denied that he did not investigate the case properly. He denied all the suggestions made on behalf of the accused persons of the case.

(24) Section 364A of the IPC relates to kidnapping for ransom, etc. and it reads as - *Whoever kidnaps or abducts any person or keeps a person in detention after kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign state or international intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be*

punishable with death or imprisonment for life and shall also be liable to fine.

(25) Ingredients of offence of Section 364A of the IPC are –

- (1) The accused must have kidnapped, abducted or detained any person.
- (2) The accused must have kept such a person under custody or detention;
- (3) Kidnapping, abduction or detention must have been for ransom (2007) 5 SCC 634; (2004) 8 SCC 95;
- (4) A threat to the kidnapped abducted that if the demand for ransom is not met then the victim is likely to be put to death and even death is caused;
- (5) Anybody involved in the matters of kidnapping or abduction and collection of ransom;
- (6) Such acts have been done to compel –
 - (a) the Government or any foreign State or international inter-governmental organization; or
 - (b) any other person
 - (i) either to do or abstain from doing any act, or
 - (ii) to pay ransom.

(26) The Hon'ble Apex Court in the case of *Malleshi -Vs- State of Karnataka* reported in (2004) 8 SCC 95 has laid down the ingredients which need to be established for establishing commission of crime under Section 364A IPC, wherein it is held that:

To attract the provision of Section 364A IPC, what is required to be proved is:

- (1) that the accused kidnapped or abducted the person;*
- (2) keep him under detention after such kidnapping and abduction; and*
- (3) that the kidnapping or abduction was for ransom"*

(27) Insofar as the ingredient of kidnapping for ransom is concerned, the Hon'ble Supreme Court laid down the following guidelines:

"..... Ultimately the question to be decided is 'what was the intention? Was it demand or ransom? There can be no definite manner in which demand is to be made. Who pays the ransom is not the determinative fact. (2018) 12 SCC 440.

(28) It is seen that during his cross examination, PW.3, Rasman Ali Laskar, informant of the case stated that accused persons were not acquainted to him prior to the incident. It is also seen

from the evidence of PW.2 Md. Mirajul Haque Laskar, victim of the case that when the accused persons removed their face cover, he could identify them as Sahab Uddin Laskar and Ramij Uddin. But the prosecution did not adduce any evidence that the victim was acquainted with those two persons prior to the incident.

(29) There is no eye witness to the incident of kidnapping of the victim. We have seen that the evidence adduced by the victim has not been corroborated by other witnesses examined by the prosecution as the other prosecution witnesses are hearsay witnesses to the incident.

(30) On perusal of the evidence of the prosecution witnesses, we have seen that the victim reached Athama Basti at night, took shelter in the house of one Riyang person on that night and on the next day, two Riyang persons around 07:00 in the morning handed him over to the Dolakhal Camp for which the victim paid Rs. 800/- to those two Riyang persons. From the said camp, police informed Dholai Police Station about the recovery of the victim. and then his father along with police personnel from Dholai Police Station reached the Dolakhal Camp around 10:00 am and thereafter, his father brought him back.

(31) PW.6, Putul Bharali, Investigating Officer of the case, however deposed that the victim Riazul Haque (PW.2) came to the Border Out Post at Dholakhal with one Nandalal Riyang. But in his cross examination, said PW.6 stated that the statements of the victim (PW.2) and that of said Nandalal under Section 161 CrPC are not available in the case diary and the medical report of the victim is also not available in his case diary. He stated that he did not produce the victim before the Magistrate to record his statement under Section 164 CrPC and that the seized auto rickshaw was not examined by the Motor Vehicle Inspector. He also stated that he neither recorded the statements of people available at the Border Out Post nor recorded the statement of Fakar Uddin PW.4, who informed him about the occurrence.

(32) PW.1, Chapal Kumar Das, PW.3; Rasman Ali Laskar, informant of the case and father of the victim; PW.4 Fakaruddin Laskar, who informed Dholai Police about kidnapping of an auto rickshaw driver and PW.5 Makaddas Ali, are only hearsay prosecution witnesses.

(33) Moreover, the victim in his evidence deposed that he overheard the discussion between the two accused persons as to how they shall release money from his father; where he shall be taken to Imphal or to Mizoram and also heard their discussion that if they failed to release money

from his father they would kill him and hearing that he ran away from the place of occurrence.

(34) Though PW.6, Putul Bharali, Investigating Officer of the case in his cross-examination stated that he did not produce the victim before the Magistrate to record his statement under Section 164 CrPC, but Exhibit-2 is the Section 164 CrPC statement of the victim recorded on 09.10.2006 by the JMFC, Silchar Cachar.

(35) We found that the prosecution did not examine some of the important witnesses and also did not record the statements of witnesses acquainted with the incident of the alleged crime. It is settled that non-examination of the crucial and important witnesses weakens the case of the prosecution. Prosecution cannot rope in an accused merely on assumptions, surmises and conjectures, where such assumptions are not well founded, not corroborated by any reliable evidence. The conclusion of the Courts must be based on legally acceptable evidence.

(36) There are serious lapses on the part of the prosecution and lapses on the part of the prosecution should not lead to unmerited acquittals, and in such a situation, the evidence on record must be clinching so that the lapses of the prosecution could be condoned. In the case in hand, evidence in record is not so clinching that the lapses of the prosecution could be condoned.

(37) From the above, we have seen that the prosecution has failed to prove beyond reasonable doubt about the offence of kidnapping or abduction at first allegedly committed by the accused Sahab Uddin Laskar so as to punish him under Section 364A IPC, i.e., Kidnapping for ransom.

(38) Considering the above, the Court is of the view that the prosecution failed to establish beyond reasonable doubt about the commission of offence of kidnapping the victim for ransom under Section 364A IPC by the accused appellant Sahab Uddin Laskar.

(39) The accused appellant was in Cachar Jail at Silchar since his conviction dated 18.05.2015 and a coordinate Bench of this Court in an Interlocutory Application being I.A.(CrI.) No. 1024 of 2015 filed in this Criminal Appeal, by order dated 01.11.2016 granted bail to said accused Md. Sahab Uddin Laskar, suspending the execution of sentence passed against him by the learned Additional Sessions Judge, Cachar, Silchar in Sessions Case No. 73/2012 by its judgment dated 18.05.2015.

(40) Hence, the impugned judgment of conviction and sentence dated 18.05.2015 passed by learned Additional Sessions Judge, Cachar, Silchar in Sessions Case No. 73/2012 convicting the accused Md. Sahab Uddin Laskar under Section 364A IPC is hereby set aside and quashed.

(41) Consequently, this appeal is allowed and the appellant Md. Sahab Uddin Laskar is acquitted of the charges leveled against him.

(42) Registry shall return the records to the Court concerned along with a copy of this order.

(43) Bail Bond stands discharged.

JUDGE

JUDGE

Comparing Assistant