

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 298 of 2019
CRAN 1 of 2019
CRAN 2 of 2020
CRAN 3 of 2020
CRAN 4 of 2020
CRAN 5 of 2022
CRAN 6 of 2022
CRAN 7 of 2022
CRAN 8 of 2022
CRAN 9 of 2022

BIJAY THAKUR
VS.
ANIL BISWAS & ORS.

For the Appellant : Mr. Bijay Thakur, appearing in person

Mr. Sourav Chatterjee, Adv.
Mr. Pritam Priya Dasgupta, Adv.
(appointed from Legal Aid)

For the State : Mr. Bidyut Ray, Adv.
Ms. Rita Dutta, Adv.

For the Union of India : Mr. Arun Kumar Maity, Adv.
Ms. Sahda Saha, Adv.

Hearing concluded on : 25th August, 2023

Judgement on : 13th October, 2023

Siddhartha Roy Chowdhury, J.:

1. Challenge in this criminal appeal is to the judgement and order of acquittal passed by learned Additional District and Sessions Judge, First Court, Sealdah, South 24 Parganas in Sessions Trial No. 3(4) of 2011.

2. Briefly stated, on 05.10.2007 Sri Bijay Thakur son of Sri Biman Thakur filed a petition of complaint before the learned Chief Judicial Magistrate, Paschim Medinipur stating, *inter alia*, that his father Biman Thakur went to the house of his uncle, younger brother of his father Kalyan Thakur at Nona Chandanpukur, North 24 Parganas on 23rd August, 2006 accompanied by his mother and sister for treatment. The accused persons hatched a conspiracy and on 28th August, 2006 while Biman Thakur left the house for Command hospital at Alipore, he was abducted. The mother and sister of complainant, who were accompanying his father Biman Thakur, failed to find him out, they informed Kalyan Thakur, who took Smt. Manju Thakur and Madhuri Thakur to Naihati G.R.P. On the basis of information given, Naihati G.R.P.S. G.D. No. 1184 dated 29th August, 2006 was registered. Mother and sister of the complaint were told that Biman Thakur fled away on his own. Surprisingly, when the complainant started looking for his father the accused persons demanded ransom. After all his endeavour and endeavour of his mother failed to yield any result, the complainant approached the Court. The petition of complainant was forwarded to the Jurisdictional Police Station for investigation and ultimately Naihati G.R.P. Case No. 04/08 dated 22nd March, 2008 was registered.
3. Police took up investigation which culminated into submission of charge sheet. The case was committed to the Court of learned Additional Sessions Judge, Sealdah for trial.

4. Learned Trial Court after considering the testimony of prosecution witnesses recorded the order of acquittal. Hence this appeal.
5. Mr. Bijay Thakur, who is appearing in person before this Court submits that the investigation was not conducted properly. The accused persons did not disclose the truth either before the police during investigation or before the learned Trial Court. On that score this appeal may be allowed with direction upon the accused persons to tell the truth.
6. The submission of this appellant, made in vernacular unerringly indicates his lack of expertise in criminal law as well as in Evidence Act.
7. Taking into consideration the said fact Mr. Chatterjee, and Mr. Dasgupta, well-known and reputed lawyers of the High Court were engaged to represent the appellant before the Court. Previously, before the appointment of Mr. Chatterjee and Mr. Dasgupta one lawyer was engaged as *amicus curiae* to assist the Court. But the appellant insisted the learned lawyers to make submission which is contrary to the principle of criminal jurisprudence and ultimately both Mr. Chatterjee and Mr. Dasgupta were compelled to seek leave of the Court to retire.
8. When a litigant for some reason or the other wants to steer the course of hearing with little or no knowledge in criminal law, at one point of time he makes the Court feel helpless. There is an old saying 'a horse can be taken near water but cannot be made to drink'. To ensure his right to have justice, advocates were engaged but the

appellant cannot be forced to take their service, at the cost of the dignity of learned lawyers. Be that as it may, I have perused the judgement impugned and the relevant material on record.

9. Investigating officer cited nine persons in the charge-sheet as witness for the prosecution. Out of those nine persons prosecution examined six persons, Bijay Thakur, the de facto complainant, Madhuri Baral, the sister of de facto complainant, Manju Thakur, the mother of the de facto complainant, Putul Thakur, the paternal aunt of the de facto complainant, Anju Biswas, another paternal aunt of de facto complainant and the investigating officer Dinabandhu Roy.
10. Bijay Thakur, the de facto complainant was not present when the alleged incident took place. Therefore, he did not have any direct knowledge about the incident. The persons present with the victim on the date of incident are the daughter of the victim Madhuri and wife of the victim. Madhuri Baral as P.W. 2 stated that her father Biman Krishna Thakur was kidnapped from Palta Station. The accused persons are her maternal uncle (mesomasai) and her paternal uncles (kaka). He was kidnapped from railway station on 28th August, 2006 in between 6.30 A.M. to 7.30 A.M. At that point of time she also noticed Putul Thakur her paternal aunt at the Palta Railway Station. She stated that on 23rd August, 2006 she along with her mother accompanied her father, who came to the house of Kalyan Thakur for the purpose of treatment. On the date of incident she along with her parents came to Palta Railway Station, she went to purchase tickets from the booking counter while her father went to latrine and her

mother was standing outside the latrine at the station premises. Her mother came to her to enquire as to whether she purchased the railways tickets and, thereafter, she purchased the tickets and went towards the latrine only to find that the gate of the latrine was open but his father was not there. They searched for her father till 12.00 noon / 1.00 P.M. Having failed, they went to the house of Kalyan Thakur. Putul Thakur told her that Bablu Thakur kidnapped her father. They stayed in the house of Kalyan Thakur and tried to find out her father but in vain.

11. On 21st September, 2006 her aunt received a phone call. The phone was given to her and the caller told her that the father is in the house of Basudeb Sasmal at Nanda Kumar, Purba Midnapore. She along with Kalyan and her brother went to Nanda Kumar but they did not find her father.
12. Manju Thakur – P.W. 3 is the wife of the victim. She stated that on 28th August, 2006 she along with her daughter and husband went to Palta Railway Station. They were going to Command Hospital at Alipore for treatment of her husband. Her husband went to latrine at Palta Station. She went to the tube well to wash her face. Her daughter went to purchase ticket. When P.W.3 went to latrine she found her husband was not there. Putul was in front of the latrine, who is the sister of her husband. Then she sent her daughter to the house of Kalyan and from there to the house of Bablu Thakur. Thereafter, police of Naihati G.R.P.S. was informed.

13. P.W. 3 further stated that from 23rd August, 2006 till 28th August, 2006 they were in the house of Kalyan. The copy of the information scribed by Kalyan and submitted to Naihati G.R.P.S. was admitted as Exhibit-2.

During cross-examination, she stated that she was outside the latrine from there she went to tube well to wash her face, keeping eye on the latrine.

14. Putul Thakur – P.W. 4 stated that Biman is her brother who came to the house at Kalyan at Palta, Kalyan is also her younger brother. She made a statement before learned Magistrate under Section 164 of Cr.P.C.

15. During cross-examination she stated that Bijay her nephew, took her to Medinipur where she was confined and assaulted by Bijay Thakur.

16. Anju Biswas – P.W. 5 did not have any direct knowledge about the incident.

17. Dinabandhu Roy – P.W. 6 is a retired police officer who took up the investigation and during investigation he perused the F.I.R. and prepared a rough sketch map. He examined the witnesses and also arranged for recording of statement of Putul Thakur under Section 164 of the Code of Criminal Procedure.

18. Upon perusal of evidence on record it appears that Exhibit – 2, the maiden information given to Naihati G.R.P. on the date of incident, is silent about the alleged act of the accused persons.

19. Exhibit-3, the statement made by Putul Thakur before the learned Magistrate, demonstrates that Putul disclosed that her brother Biman Krishna Thakur was not mentally fit and he went missing.
20. Based on such evidence, learned Trial Court could not have recorded the order of conviction. Therefore, the impugned judgement neither merits any criticism nor warrant any interference.
21. Though it is submitted by the appellant, Sri Bijay Thakur that matter should be remitted with the direction upon the Court to insist the accused persons to tell the truth, it is utterly contrary to the well settled principle of criminal jurisprudence. The accused persons have no obligation other than to maintain silence.
22. The alleged incident took place on 28th March, 2006. The impugned judgement was pronounced on 21st March, 2017. Even the accused persons have the right to have speedy justice.
23. There is no merit in the submission of the appellant that the Sessions Case to be remitted to make the accused persons tell the truth.
24. Under such circumstances, I do not find any reason to accept the appeal.
25. The appeal stands dismissed. Pending applications, if any, stand disposed of.
26. Mr. Maiti, learned counsel appearing on behalf of the Union of India submitted under instruction a document which is taken on record.

27. The pension sanctioning authority shall be at liberty to decide the issue of family pension favouring Smt. Manju Thakur as per rule. This proceeding has got nothing to do with family pension.
28. Let a copy of the judgement and the lower court record be sent down to the learned Trial Court for information.
29. Urgent certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)