

**THE HIGH COURT OF TRIPURA
AGARTALA**

Criminal Appeal (I) No.5 of 2010

Sri Sanjit Debbarma,
S/o Sri Kiran Debbarma @ Budda Mani Debbarma,
Village - Ukramani Chowdhury Para
(Bagabil), P.S. Khowai,
West Tripura District.

..... *Appellant.*

-Vs -

State of Tripura.

..... *Respondent.*

BEFORE
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Mr. Ratan Datta, Advocate.

For the respondent : Mr. D Sarkar, Public Prosecutor.

Date of hearing and
pronouncement : 18.04.2013
of judgment

JUDGMENT & ORDER(ORAL)

(*Deepak Gupta, CJ*)

This appeal by the convict is directed against the judgment dated 14.05.2008 whereby the learned Additional Sessions Judge, Khowai, West Tripura in Case No.S.T.20(WT/K) of 2008 has convicted the accused of having committed an offence punishable

under Section 364-A of I.P.C and sentenced him to undergo Rigorous Imprisonment for life and to pay a fine of Rs.10,000/-. In default of payment of fine the accused appellant has been directed to suffer further RI for one year.

2. Briefly stated the facts, shorn of unnecessary details are that PW.6, Sri Utpal Debbarma had gone to his ancestral house at Aidankur under Champahour Police Station to supervise the management of the property. His nephews PW.2, Amit Debbarma and PW.4, Samarjit Debbarma were with him in the house when a group of extremists entered the house and kidnapped Utpal Debbarma. Amit Debbarma and Samarjit Debbarma informed their uncle, Nirmal Debbarma, PW.1 about the incident, who lodged an FIR with the police on 11.06.2009 to the effect that at about 9.00 PM on 10.06.2007 his brother Utpal Debbarma had been abducted from his house at Aidankur in the presence of Amit Debbarma and Samarjit Debbarma. In this FIR it was also stated that Amit Debbarma and Samarjit Debbarma had been able to identify only the leader of the group who was one Rinku Debbarma. On the basis of this FIR the case was registered. The matter was investigated by the police and thereafter the accused were charged for having committed various offences including the offence under section 364-A of the I.P.C. He has been acquitted from all other offences, but has been

convicted for the offence punishable under Section 364-A of I.P.C and sentenced for life as aforesaid. Hence, this appeal.

3. We have heard Mr. Ratan Datta learned counsel for the appellant and Mr. Dilip Sarkar, learned Public Prosecutor on behalf of the State.

4. As far as kidnapping of the PW.6 is concerned we are of the considered view that the learned trial Court was right in coming to the conclusion that he was kidnapped and the appellant was a member of the extremist party, which kidnapped the PW.6. Mr. Datta has laid great emphasis on the fact that in the FIR the name of the present appellant was not mentioned. Mr. Datta also submits that therefore the statements of PW.2 Amit Debbarma and PW.4 Samarjit Debbarma that they had identified the present appellant cannot be believed. We are in agreement with Mr. Datta that to this extent the statements of PWs.2 and 4 do not appear to be correct because if they had identified the appellant they could have mentioned this to PW.1. The name of Rinku Debbarma finds mention in the F.I.R since PWs 2 & 4 had informed PW.1 about his name. They would have also informed PW.1 that they had identified Sanjit Debbarma (the appellant) also in case they had identified him. When they could name Rinku Debbarma as one of the members of the party

which kidnapped PW.6, we see no reason why they would not have named Sanjit Debbarma also.

5. Having held so we cannot brush aside the statement of PW.6. He was the person who was kidnapped. He has made a very candid disclosure that he did not know Sanjit Debbarma from before and obviously could not identify him when the occurrence took place. However when he was kidnapped, taken to Bangladesh and lived with the kidnappers for about 4 days he came to know that one of the accused persons was Sanjit Debbarma and thereafter, the case was instituted against Sanjit Debarma. Though PW.6 has been cross-examined nothing has been brought out as to why he would falsely implicate the appellant Sanjit Debbarma. Therefore, we are of the considered view that the appellant was a member of the extremist group which had kidnapped PW.6.

6. The other argument raised by Sri Datta is that no offence under Section 364-A is made out and the offence made out is punishable under Section 363 of I.P.C.

Section 364-A of I.P.C reads as follows :

"[364A. Kidnapping for ransom, etc. -Whoever kidnaps or abducts any person or keeps a person in detention after such 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 inter-governmental organization 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.]

Recently a Division Bench of this Court in CrI.A.(J)

No.39/2009, decided on 02.04.2013 held as follows :

"A bare perusal of the section clearly shows that the legislature decided to make certain forms of kidnapping a more serious offence. To fall within the ambit of Section 364A not only should it be proved that kidnapping/abduction has taken place but furthermore the prosecution must prove that the person who carried out the kidnapping or abduction had threatened to cause bodily injury or death to the kidnapped or abducted person; or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt shall be caused to him; or has actually caused death or hurt such a person; an offence under Section can also been made out when the abductor tries to compel the government or any governmental organization to do or abstain from doing any act or thing, that it is to say to compel the Government or some person in authority to meet the demands of the kidnapper whether they are in the negative form or positive form. Lastly, an offence under Section 364A of I.P.C. is made out in case there is a demand to pay a ransom. Such an offence of kidnapping/abduction would be punishable with death or imprisonment for life."

The prosecution must lead cogent and reliable evidence to prove the facts which will make the offence of kidnapping not only a simple offence of kidnapping but also a much more heinous offence of kidnapping falling under Section 304-B of I.P.C. The prosecution must prove the ingredients in each case. In the present case, according to the prosecution, ransom was demanded by the

kidnappers and paid by the family of the kidnapped person. In this regard, the evidence led on behalf of the prosecution is not at all satisfactory.

7. PW.1, Nirmal Debbarma is the person who lodged the complaint. He only states as follows :

"On payment of Rs.3 lac. as ransom my brother was released by the extremists after 5 days of the incident."

This statement does not in any way indicate that the demand of ransom was made to PW.1 or that he paid the ransom. It only indicates that some ransom was paid. It was for the prosecution to lead evidence to prove as to from which member of the family the ransom was demanded, what was the amount of ransom and how the ransom amount was raised and in what manner it was paid. True it is, that in every case it may not be possible to prove who demanded the ransom or to whom it was paid because more often than not the demand for ransom is made anonymously and the payment may have to be made in a surreptitious manner and not directly to the persons who have carried out the kidnapping. Once the offence of kidnapping is proved and it is also proved that ransom was paid, the court may draw an inference that the ransom has been paid to the kidnappers. However, there must be proof that the ransom was demanded and also of the ransom having been paid. In the present case, other than

the statement of the PW.1 which we have extracted hereinabove, the other witnesses only states that the kidnapped person was released on payment of ransom, but nobody states who actually paid the ransom or from whom the ransom was demanded. In that view of the matter, we are of the considered view that only an offence punishable under Section 363 is made out.

8. In view of the above discussion, we partly allow the appeal, convert the conviction of the appellant from that under Section 364-A I.P.C to one under Section 363 I.P.C. The sentence is also modified. The accused appellant is directed to undergo rigorous imprisonment for 7(seven) years and to pay fine of Rs.10,000/- (rupees ten thousand) and in default of payment of fine he shall suffer further rigorous imprisonment for one year.

JUDGE

CHIEF JUSTICE