

**THE HIGH COURT OF TRIPURA
AGARTALA**

Criminal Appeal (J) No.42 of 2010

Sri Padmarai Jamatia,
S/o Sri Dipchandra Jamatia
of Krishnabhaktapara,
P.O & P.S : R K Pur,
Dist : South Tripura.

..... *Appellant.*

-Vs -

State of Tripura.

..... *Respondent.*

BEFORE
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE U B SAHA

For the appellant : Mr. Ratan Datta, Advocate.

For the respondent : Mr. R C Debnath, Addl. P.P.

Date of hearing and
Delivery of judgment : 05.12.2013.

JUDGMENT & ORDER(ORAL)

(*Deepak Gupta, CJ*)

This appeal by the accused is directed against the judgment, dated 24.07.2003, passed by the learned Additional Sessions Judge, South Tripura, Udaipur in case No.ST 170(ST/U) of 2001 whereby the learned trial Court convicted the appellant-Padmarai Jamatia of having committed offences punishable under Sections 302 and 364 of I.P.C. He has been sentenced to undergo Rigorous Imprisonment (RI) for life and to pay a fine of Rs.5,000/- for the offence punishable under Section 302 of I.P.C and in default

thereto to suffer RI for 1(one) year. As far as the offence under Section 364 of I.P.C is concerned the accused was sentenced to undergo RI for 5(five) years and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer further RI for 3(three) months. Both the sentences were ordered to run concurrently.

2. The prosecution story briefly stated is that the deceased Swapan Debnath was given a contract by PW.1, Nepal Ch. Das, who was working as Panchayet Supervisor of the Matabari Block for construction of water storage tank at village Adipur in Gour Prasad Para. According to the prosecution case, as set out in the FIR and in the statement of PW.1, Swapan Debnath had two assistants namely Adhindayal Debbarma and Ketan Noatia. Further, according to PW.1, who also lodged the FIR in the case, on 06.08.2000 Adhindayal Debbarma and Ketan Noatia the aforesaid assistants of Swapan Debnath informed this witness that when they were returning to Garji from Tainani on foot three tribal youths had abducted Swapan Debnath. On the basis of the ejahar Ext.1 the FIR was lodged.

3. The police thereafter swung into action but for about 9 months no progress was made in the case. Thereafter, according to the evidence of PW.12, S.I., Indrajit Sinha, the investigating officer, on 15.05.2001 when he visited Maharani Bazar, he examined PW.14, Shib Sadhan Jamatia, who disclosed that he had seen the present

appellant and one Thumpirai Reang and two others proceeding with one Bengali person whose hands were tied. According to the prosecution, out of fear this witness had not disclosed this fact to the police earlier. Thereafter, the present appellant as well as Thumpirai Reang were arrested. According to the prosecution, during interrogation the appellant stated that he along with Akai Reang and Uttam Reang had abducted Swapan Debnath and thereafter murdered him because despite pressure put for payment of ransom nothing had been paid. After completion of investigation Charge Sheet was filed against the appellant and Thumpirai Reang. The accused pleaded not guilty and claimed trial. After trial Thumpirai Reang was acquitted whereas the appellant was convicted and sentenced as aforesaid. Hence this appeal.

4. We have heard Mr. Ratan Datta, learned counsel for the appellant and Mr. R C Debnath, learned Additional Public Prosecutor for the State.

5. The entire case of the prosecution is based on the recovery of the alleged skeletal remains of Swapan Debnath at the instance of the appellant and the statement of PW.14 Shib Sadhan Jamatia.

6. We shall first deal with the statement of Shib Sadhan Jamatia. According to him, on 07.08.2000 at about 4/5 p.m. when he was taking tea in a tea stall at Taiharchung he noticed the appellant-

Padmarai Jamatia alias Commando and Thumpirai Reang dragging one person whose hands were tied behind his back. The said person was Bengali but was not known to this witness. According to this witness, since both the appellant and Thumpirai Reang were engaged in extremist activities he was scared and therefore, did not report this incident to anybody. He later came to know that one mason Swapan Debnath had been abducted and he suspected that the person he had seen being dragged by the accused and his accomplice was the same. He was confronted with this statement under Section 161 Cr.P.C wherein it is not recorded that he was taking tea in a tea stall when he saw the incident. Other than saying that he was scared he has virtually given no explanation as to why he kept quiet for almost 9 months. Due to fear a person may not go to police but he would mention the happening of such serious occurrence to his friends or some other persons. It is against natural human conduct and no person can keep such a big event as a secret for such a long time. Be that as it may, the statement of this witness even otherwise does not inspire confidence.

7. When we examine the statement of the I.O., PW.12 and this witness PW.14 there is nothing to show how the I.O met this witness and recorded his statement. Who informed the I.O that PW.14 had seen such an event? As far as PW.14 is concerned he does not say a word that he had a change of heart or that for any other reason he lost his fear and, therefore, came to the police of his own

accord. There is no explanation as to how the investigating officer came to record the statement of this witness. Therefore, the statement of this witness does not inspire confidence and cannot be relied upon.

8. Coming to the recovery of the skeletal remains we again find that no statement of the accused has been recorded in writing. This Court has been taken a liberal view of the matter and even when disclosure statements are not recorded in writing, sometimes reliance have been placed on such statements. However, in the case of a disclosure statement which is not taken down in writing the burden of proof is much heavier and it is for the prosecution to discharge its burden in a proper manner. In the present case, there is no doubt that the witnesses PW.10, Haradhan Das and PW.11, Nitai Debnath, brother of the deceased as well as PW.13, Suresh Chandra Das have stated that it was the appellant-accused who led them to the place where the skeletal remains were recovered. As far as the statement of PW.13 is concerned, he states that he was the Sub-Divisional Deputy Collector posted at Udaipur at the relevant time. He received a requisition that he should accompany the S.I of the Police Station for the purpose of disinterment of a dead-body. Therefore, no statement was made in his presence because the statement had already been recorded by then and the police knew that a body was to be recovered at the instance of the appellant. As far as PWs.10 and 11 are concerned,

they give no explanation as to what they were doing at the Police Station at the relevant time. The so called statement was recorded to the Police Station more than 9 months after the occurrence and it cannot be a mere co-incidence that both the Pradhan of the village and the brother of the deceased were sitting in the Police Station. It obviously shows that they had been called by the Police Station and therefore the Police Station already knew that some statement was to be made or was to be recorded. Therefore the alleged disclosure statement was apparently not made in the presence of these witnesses.

9. Assuming for the sake of appreciating the contention of the prosecution that such statement was made and skeletal remains were recovered, then also the prosecution has miserably failed to prove that these skeletal remains were of the deceased-Swapan Debnath. PW.7, Bimla Debnath wife of the deceased has clearly stated that by observing the skeleton she could not identify it to be that of her husband. PW.9, who is the doctor, states that the body was identified by one constable Rabindra Laskar who has not been examined in the case and there is no explanation why this witness was not examined. Even PW.10 does not identify the skeletal remains. Only PW.11 the brother of the deceased states that he identified the skeleton to be that of his brother Swapan Debnath on the basis of the black pant which was lying next to the skeleton remains. Unfortunately, this black pant was neither seized nor

exhibited in Court. This was the most important link evidence and the prosecution has failed to produce this evidence.

10. Another ground to disbelieve the prosecution story is that according to the prosecution witnesses especially the Investigating Officers PW.10 and PW.11, the appellant accused was shown a photograph of Swapan Debnath and asked whether this was the person he had kidnapped and murdered. This photograph has not seen light of day during this trial. If there was such a photograph why was it not produced during the course of the trial?

11. The prosecution made no effort whatsoever to identify the skeletal remains on the basis of the DNA examination or any other scientific test which could have shown that the skeletal remains were of the deceased.

12. Lastly, but most importantly the prosecution story was that Swapan Debnath had been abducted by the extremists in the presence of Adhindayal Debbarma and Ketan Noatia. It is the prosecution story itself that these two persons were accompanying the deceased when he was kidnapped. These two witnesses have also not been examined and their non-examination without any expression is virtually fatal to the prosecution story.

13. In this view of the matter, we are of the considered view that the learned trial Court gravely erred in convicting the accused. We, accordingly, set aside the judgment of conviction and

the sentence passed upon the accused. He is directed to be released forthwith unless wanted in any other case.

JUDGE

CHIEF JUSTICE

Sukhendu