

## Shri Surendra Reang and Another Vs State of Tripura

**Court:** Gauhati High Court

**Date of Decision:** Dec. 8, 2008

**Acts Referred:** Arms Act, 1959 " Section 27, 27(1), 5  
Criminal Procedure Code, 1973 (CrPC) " Section 221(1), 221(2), 300, 313, 374(2)  
Penal Code, 1860 (IPC) " Section 149, 307, 364A, 395

**Citation:** (2009) 1 GLD 544

**Hon'ble Judges:** P.K. Musahary, J; Biplab Kumar Sharma, J

**Bench:** Division Bench

**Advocate:** B. Deb Nath, for the Appellant; A. Ghosh, APP, for the Respondent

**Final Decision:** Allowed

### Judgement

B.K. Sharma, J.

1.This Criminal Appeal u/s 374(2) of the Code of Criminal Procedure is against the judgment of conviction and sentence dated 24.6.2008 passed

in S.T. 09/(NT/KMP)/2006 by the learned Addl. Sessions Judge, North Tripura, Kamalpur convicting and sentencing the Appellants to suffer

imprisonment for life and to pay a fine of Rs. 10,000/- in default, to suffer RI for 1 year for committing offence punishable u/s 364(A) of IPC and

also to suffer RI for 10 years and to pay fine of Rs. 5,000/- in default to suffer RI for 6 months for committing offence punishable u/s 395 of IPC.

All the sentences are to be run concurrently.

2. The prosecution case in brief is that one Shri Dulal Deb lodged an FIR to the police contending that on 19.10.2002 when he was sleeping at

home with other family members, his neighbour Shib Narayan Gaur called him at 12 a.m. As he opened the window three miscreants entered

through the window with gun and looted gold and other valuables of the hut. Thereafter, they kidnapped him and his son. After proceeding some

direction he also found Shib Narayan Gaur with tied hand. The miscreants also looted the valuables of said Shib Narayan Gaur and took them to

Bangladesh. There the miscreants issued a letter demanding a sum of Rs. 20 lakh as ransom and a, lowed him to be free. Informant thus came

back and lodged the FIR. On the basis of the said FIR, Kamalpur RS. Case No. 51/02 was registered. The O.C. of the said P.S. took up the

matter himself for investigation. During the course of investigation the, I.O. visited the place of occurrence, examined all available witnesses,

prepared hand sketch map, seized some exhibits. Later on kidnapped persons were recovered from Rajkanti by O/C Kumarghat P.S. and also

caught red handed the kidnappers. Test identification parade was conducted and suspects were duly identified. A prima facie case having been

made out against the accused persons charge-sheet u/s 395/364-A of the IPC and also u/s 27 of the Arms Act was submitted.

3. Charge was duly framed against the accused/Appellants on 29.8.2006 and the same was read over and explained to them to which the

accused/Appellants pleaded no guilty and claimed to be tried.

4. The prosecution examined as many as 12 witnesses. The accused examined none. The accused persons were examined u/s 313, Code of

Criminal Procedure. On the basis of the materials on record, learned trial Court framed the following issues for determination:

(A) Whether the accused persons committed dacoity in the house of the informant and others?

(B) Whether the accused persons kidnapped the informant and others?

(C) Whether the accused persons were in possession of unlawful fire arms?

5. Learned trial Court by the impugned judgment of conviction and sentence dated 24.6.2008 having convicted and sentenced the Appellants for

allegedly committing the offence u/s 395/364(A) of the IPC, the Appellants have preferred this appeal challenging the validity of the finding arrived

at by the trial Court. So far as the charge against the Appellants u/s 27(1) of the Arms Act is concerned, the learned trial Court found that no

unauthorized gun was recovered or seized from the possession of the Appellants and as such it has been held that they could not be held

responsible for the offence u/s 27(1) of the Arms Act.

6. We have heard Mr. B. Deb Nath, learned Counsel for the Appellants as well as Mr. A. Ghosh, learned Addl. PP, Tripura, Mr. Deb Nath has

taken us through the entire evidence so as to contend that the Appellants are the victim of the circumstances. He submitted that there is nothing to

indicate in the evidence that the Appellants are guilty of the offence for which they have been convicted. He also submitted that it is a case of

double jeopardy. In this connection he has referred to the judgment of acquittal dated 21.9.2005 passed by the learned Sessions Judge, North

Tripura, Kailashahar in Session Trial No. 58(NT/K)/2005 involving the same parties relating to the same incident.

7. Mr. Ghosh, learned PP, Tripura on the other hand supporting the impugned judgment of conviction and sentence, submitted that the learned trial

Court in appreciation of the evidence on record having found beyond reasonable doubt that the Appellants were involved in the crime, rightly

convicted them and the offence being a serious one, no leniency should be shown to the Appellants. As regard the plea of the learned Counsel for

the Appellants that the Appellants have already been acquitted by judgment acquittal dated 29.1.2005 in Sessions Trial No. 58(NT/K)/05, they

could not be tried again in the same offence, Mr. Ghosh submitted that the two incidents are distinct and different and thus there was nothing wrong

in passing the impugned judgment of conviction.

8. We have considered the submissions made by the learned Counsel for the parties. We have also carefully scanned the evidence on record. The

incident involved was dacoity, and kidnapping. Dealing with the question as to whether the accused/Appellants were kidnappers or dacoites,

learned trial Court upon reference to the dispositions made by the PWs and on the basis of the identification parade, held the accused/Appellants

guilty of committing the offence u/s 395/364(A) of the IPC. As regards the identification parade, learned trial Court relied on the evidences of PW

1, PW 3, PW 7 and PW 10.

9. We have gone through the depositions made by the PWs. PW 1 stated that he was kidnapped along with two others by the miscreants. He in

his cross-examination categorically stated that on the last day of the period during which they remained in custody of the kidnappers, the

kidnappers compelled the Appellants along with another to guard them. It is the Appellants who in fact informed the police personnel who came to

rescue them. Thus, PW 1 who was one of the three kidnapped persons in his deposition (cross-examination) absolved the Appellants from the

charge of dacoity and kidnapping. He also stated that he had deposed against the accused/Appellants relating to the incident in another case. It is

in this context, learned Counsel for the Appellants referred to the other judgment of acquittal.

10. PW 2 in his cross-examination stated that it was not specifically mentioned in his report that the witnesses were examined by his before

conducting the TI parade. He also stated that he did not know that the suspects were shown to the witnesses at the police station before sending

them to the Court. The kind of deposition made by this witness does not inspire the confidence of this Court so far the identification parade is

concerned.

11. PW 7 in his deposition stated that the accused/Appellants used to bring articles and guard them. If this deposition is tested along with the

deposition of the PW 1, what transpires is that the accused/Appellants were forced to act by the miscreants. It is the accused Appellants who

informed the police who eventually rescued the persons kidnapped.

12. PW 10 in his depositions categorically stated that he could not recognize the miscreants who took him along with others away.

13. Learned trial Court on the basis of such depositions has returned the sudden conclusion that the accused/Appellants were guilty of the offence.

Considering the evidence in its entirety what we find is that no credence could be given to the identification parade towards convicting the

Appellants. As noted above, PW 1 clearly stated in his cross-examination that the persons whom he identified did not kidnap him. Moreover, PW

9, the judicial Magistrate, 1st class who conducted the TI parade and whose report was marked as Exhibit 20, said that the convict Appellants

were brought in original dress without mask. If that be so, little credence could be given to the evidentiary value to such TI parade.

14. PW 1 and PW 7 who were kidnapped, never stated in their depositions that the convict Appellants had kidnapped them and demanded any

ransom from them or from their family. Apart from the aforesaid infirmity in the prosecution case, another important aspect of the matter is that on

the same set of allegations, the convict Appellants had been tried by the learned Session Judge, North Tripura, Kailasahar in Case No. ST

58/(NT/K)/05. In the said case, the Appellants have been acquitted from the charge u/s 307/149, IPC read with Section 5/27(1) of the Arms Act.

Section 300 of the Code of Criminal Procedure provides that a person who has once been tried by a Court of competent jurisdiction for an

offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the

same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under

Sub-section (1) of Section 221, or for which he might have been convicted under Sub-section (2) thereof.

15. In the above context, it will be pertinent to mention here that in the aforesaid case of ST 58(NT/K)/2005 Shri Shib Narayan Gour (PW 1) and

Shri Biplab Deb (PW 7) were examined as PW 2 and PW 3 respectively. In that case during examination in chief, Sri Biplab Deb deposed that

the miscreants detained him alongwith others in a hut for about six days and they were guarded by rotations by armed personnel. It will be

pertinent to mention here that during cross-examination PW 7 also stated in the said case that the Police Officer showed him the accused at

Kumarghat P.S. On the last day of occurrence in the evening, the miscreants brought the convict Appellants and they were also kept in a hut. If

that be so, conducting the TI parade has no evidentiary value.

16. After going through the entire evidence on record, which has been discussed above, we are of the considered opinion that there is no evidence

to convict the accused/Appellants. There is no tangible materials on record. Merely because the accused/Appellants were found to be with the

persons kidnapped, it cannot be held that they were culprits who committed dacoity and kidnapping. Such a finding returned by the learned trial

Court is contrary to the evidences on record about which discussions have been made above.

17. Thus on both counts, merit of the own case of the prosecution as well as the fact that the Appellants having already tried by another competent

Court of jurisdiction, they could not have been tried again by another Court for the same offence and/or incident, the accused/Appellants are

entitled to get acquittal.

18. For the aforesaid reasons, we are inclined to set aside the judgment of conviction and sentence against the accused/Appellants dated

24.6.2008 in S.T. 09(NT/KMP)/2006 passed by the learned Addl. Sessions Judge, North Tripura, Kamalpur. Consequently, the Appellants be

set at liberty forthwith, if not required in other cases.

19. The CrI. Appeal is allowed. Send back the case records immediately along with a copy of this judgment to the Court below.