



GAHC010032022017

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

**Case No. : CrI.A./282/2017**

**SRI BHARAT ROY**  
**S/O LATE BIPIN CH. ROY, R/O BELGURI, GOLOKGANJ, DIST. DHUBRI.**

**VERSUS**

**STATE OF ASSAM and ANR,**

**2:BHABENDRA NATH DAS**  
**WIERLESS RUKMINI NAGAR**  
**GUWAHATI 78100**

**Advocate for the Petitioner : MS.P SAHA**

**Advocate for the Respondent :**

**BEFORE**

**HON'BLE MR. JUSTICE SUMAN SHYAM**  
**HON'BLE MR. JUSTICE K. SEMA**

**Date of hearing : 18.11.2021.**

**Date of judgment : 18.11.2021.**

### **JUDGMENT AND ORDER (Oral)**

**(Suman Shyam, J)**

Heard Mr. B. K. Bhattacharjee, learned counsel appearing for the sole appellant. We have also heard Ms. S. Jahan, learned Additional Public Prosecutor, Assam, appearing for the State/respondent No.1. None has appeared for the informant/respondent No.2.

2. The appellant herein was one of the four accused persons, who were convicted under Sections 120(B)/364(A)/302/201 of the Indian Penal Code (IPC) by the common judgment and order dated 17.01.2013 passed by the learned Additional Sessions Judge No.2, Kamrup at Guwahati in Sessions Case No.178(K)/2003 and inter-alia sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs.10,000/- with default stipulation.

3. Based on the ejahar dated 25.04.2002 lodged before the Dispur Police Station by the father of the victim reporting that his son Pankaj Kumar Das has been abducted for ransom by Sri Manik Roy and his associates, Dispur P.S. Case No.437/2002 was registered under sections 120(B)/365/385/342 IPC. Later on, Sections 302/201 IPC were added. Upon completion of investigation charge-sheet was submitted against four accused persons viz., Sri Manik Roy, Sri Bharat Roy i.e. the appellant, Md. Kaser Ali and Sri Babul Adhikari. Two other accused persons were shown as absconders. By the impugned judgment all the four accused persons have been convicted. In view of the order that we propose to pass in the present case, it

would not be necessary to record the excruciating details pertaining to the facts and circumstances of the case.

4. Aggrieved by the common judgment and order dated 17.01.2013, the three co-accused persons viz., Md. Kaser Ali, Sri Babul Adhikari alias Bablu Adhikari and Sri Manik Roy had preferred three separate criminal appeals i.e. Crl. Appeal No.72/2013, Crl. Appeal No.73/2013 and Crl. Appeal No.83/2013, respectively. All the three appeals were disposed of by the common judgment and order dated 01.06.2018 whereby a Division Bench of this Court had held that the conviction of the appellants were based on confessional statements of the three co-accused persons viz., Md. Kaser Ali, Sri Babul Adhikari alias Bablu Adhikari and Sri Manik Roy but their confessional statements were not recorded by following the due process of law and after giving them sufficient time for reflection. By observing that save and except the confessional statement of the three accused persons recorded under Section 164 Cr.P.C. there is no other evidence to sustain the conviction of the appellants, the learned Division Bench had set aside their conviction by the judgment 01.06.2018 upon re-evaluation of the evidence available on record. The State of Assam has admittedly not preferred any appeal against the judgment and order dated 01.06.2018.

5. It appears that the instant appeal was preferred at a much belated stage as a result of which, the same was not disposed of by the judgment dated 01.06.2018.

6. By referring to the judgment and order dated 01.06.2018 Mr. Bhattacharjee, learned counsel for the appellant, submits that the conviction of all the four accused

persons including the present appellant by the learned Additional Sessions Judge No.2, Kamrup at Guwahati in connection with Sessions Case No.178(K)/2003 is based on the same set of evidence. Since the learned Division Bench, while disposing of the three appeals preferred by co-accused persons has held that there is no evidence available on record to sustain their conviction, according to the learned counsel for the appellant, the same analogy would extend to the present appeal as well since the appellant herein was also convicted on the basis of the same set of evidence. Mr. Bhattacharjee, therefore, submits that by applying the principle of parity the appellant be also acquitted by setting aside the impugned judgment and order dated 17.01.2013 in so far as his conviction and sentence is concerned.

7. Ms. Jahan, learned Addl. P.P., Assam, has submitted in her usual fairness that it is correct that the evidence available on record for conviction of all the four accused persons is the same and therefore, considering the observations and conclusions recorded in the judgment and order dated 01.06.2018 passed by the learned Division Bench of this Court, the impugned judgment and order dated 17.01.2013, in so far as the present appellant is concerned, would also have to be interfered with.

8. Based on the submissions advanced by learned counsel for both sides, we have carefully gone through the materials on record as well as the judgment and order dated 01.06.2018 passed by the Division Bench and find that the ratio of the said decision would be squarely applicable to the facts and circumstances of the present case as well. The reasons for which the impugned judgment and order dated 17.01.2013 passed by the learned Additional Sessions Judge No.2, Kamrup at



Guwahati was found to be unsustainable in case of the three other accused/appellants, in our view, would be equally applicable in the present case as well.

9. After the decision of **Ram Laxman vs. State of Rajasthan** reported in **(2016)12 SCC 389** law is firmly settled that it would not be permissible for the Court to split the evidence so as to grant benefit to some of the co-accused while maintaining the conviction of another when all of them stand on the same footing on other aspects. From a careful reading of the impugned judgment we find that all the four accused persons stand on equal footing in so far as the evidence is concerned. Therefore, the appellant herein would be entitled to the benefit of the judgment and order dated 01.06.2018.

10. For the reasons stated herein above, this appeal succeeds and the same is hereby allowed. The impugned judgment and order dated 17.01.2013, in so far as the present appellant is concerned, stands set aside and the appellant viz., Bharat Roy, is set at liberty.

Since the appellant is already out on bail, the bail bond of the appellant would stand discharged with immediate effect.

Send back the LCR.

**JUDGE**

**JUDGE**

**Comparing Assistant**