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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 29th January, 2019

Judgement pronounced on: 31st May, 2019

+ CRL.A. 681/2017
BIPLAV BISWAS

.... Appellant

Through: Mr. KTS Tulsi, Senior Advocate with
Mr. A. Faraz Khan, Advocate.

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Radhika Kolluru, APP for State

CRL.A. 705/2017

DEEPAK

.... Appellant

Through: Mr. Chetan Lokur, Advocate

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Radhika Kolluru, APP for State

CRL.A. 1161/2017

DEEPAK

.... Appellant

Through: Mr. SB Dandapani, Advocate

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Radhika Kolluru, APP for State

CRL.A. 6/2018

HARDEEP

.... Appellant

Through: Ms. Swati Rathi, Advocate along with
Mr. Rohit Boora, Advocate.

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Radhika Kolluru, APP for State

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL
SANGITA DHINGRA SEHGAL, J.

1. Present appeals arise out of a common judgment dated 18.05.2017 and order on sentence dated 25.05.2017 passed by the learned Additional Sessions Judge/Pilot Courts, North District, Rohini Courts, Delhi in Sessions case No. 57340/2016 in FIR No. 05/2010, registered under Sections 302/365/364A/392/212/120B/34 of the Indian Penal Code (hereinafter referred to as 'IPC') at Police Station South Rohini, whereby the Learned Sessions Judge has found the appellants guilty and sentenced them as follows:

“Keeping in view all these facts so far as convict Biplav is concerned he is sentenced to Rigorous Imprisonment for Life for the offence u/s 302 r/w 120B IPC along with fine of Rs.1,00,000/-. In default of payment of fine to undergo further Simple Imprisonment for a period of 1 year.

He is also sentenced to 10 years rigorous imprisonment for the offence punishable u/s 392 r/w 120B IPC along with fine of 10,000/-. In default of payment of fine to undergo further SI for period of 6 months.

He is further sentenced to Rigorous Imprisonment for Life for the offence u/s 364A r/w 120B IPC along with fine of Rs.1, 00,000/-. In default of payment of fine to undergo further Simple Imprisonment for period of 1 year.

He is further sentenced to Rigorous Imprisonment for Life for the offence u/s 120B IPC along with fine of Rs.1, 00,000/-. In default of payment of fine to undergo further Simple Imprisonment for period of 1 year.

So far as other three convicts Deepak S/o Sh. Ramphal, Hardeep and Deepak S/o Sh. Rampal are concerned they are sentenced to Rigorous Imprisonment for Life for the offence u/s 302 r/w 120B IPC along with fine of Rs.1,00,000/- each. In default of payment of fine to undergo further Simple Imprisonment for period of 1 year.

They are also sentenced to 10 years rigorous imprisonment for the offence punishable u/s 392 r/w 120B IPC along with fine of 10,000/- each. In default of payment of fine to undergo further SI for period of 6 months.

They are further sentenced to Rigorous Imprisonment for Life for the offence u/s 364A r/w 120B IPC along with fine of Rs.50, 000/-. In default of payment of fine to undergo further Simple Imprisonment for period of 1 year.

They are further sentenced to Rigorous Imprisonment for Life for the offence u/s 120B IPC along with fine of Rs.50,000/-. In default of payment of fine to undergo further Simple Imprisonment for period of 1 year

In this case Life imprisonment shall mean the remainder of their natural life. All the sentences shall run concurrently.”

2. Brief facts of the case are as under: -

(i) On 04.01.2010 at about 11.20pm, information was received from telephone No. 9212588305, with regard to the missing report of Mr. Raju Roy, on the information that Raju Roy has departed in the vehicle No. DL 4C AJ 3632 (white Santro Car) and has not returned to his house. On the aforesaid information, DD No. 51A was registered at PS: South Rohini and the case were assigned to SI Anwar Khan (PW-17).

(ii) Further on 05.01.2010 at 8.30 am. Ms. Sheela Roy W/o Shrimal Roy came to the police station and lodged the report that her son Raju Roy aged about 20 years, height 5'3, round face, thin built, wearing black and white check shirt, blue jeans, sports shoes of white color, black cap, injury mark on the elbow has been missing since 5pm of 04.01.2010 with his Santro Car No. DL 4CAJ 3632.

(iii) Statement of Dr. Shrimal Roy, father of Raju Roy was also recorded, wherein he had mentioned that on 04.01.2010, at about 6.30 PM his son had dropped him at Mangolpur Kalan, Village in Santro Car No. DL 4C AJ 3632 and at 6.45pm he had left without informing anyone. Subsequently, when his son did not return back home, he tried to contact him on his mobile No. 9990515131 but the same was switched off and not reachable.

(iv) On the aforesaid information, DD No. 9A was registered and on recording the above-mentioned statements FIR was registered for the offence punishable U/s 365. Dr. Shrimal Roy had also stated that he had received a ransom call for the release of his son on mobile No. 9313903813 and had also mentioned that his son was having an SBI ATM Card.

(v) On the receipt of the following information inquiry was initiated with the Branch Manager of the State Bank of India (hereinafter referred to as '**SBI**'), wherein it was discovered that cash was withdrawn using the aforesaid ATM Card from ATM SBI, Goshala Mandi Gannaur, Sonapat, Haryana. The CCTV Footage of the ATM and transaction record was collected by SI Anwar Khan. Statement of the ATM guard was recorded who had stated that he had seen two persons withdrawing cash in his presence.

(vi) The hue and cry notice of the deceased and of the suspects (who had withdrawn the amount using ATM card) was prepared and was distributed in

National Capital Territory of Delhi. On 07.01.2010, information regarding recovery of dead body of Raju Roy in Car No. DL 4CAJ 3632, white color Santo was received from PS-Ghraunda, District-Karnal, Haryana. On receipt of the aforesaid information, SI Anwar Khan handed over the case file to Inspector Vijay Kumar (PW-43).

(vii) Further on 10.01.2010, information was received that Deepak, S/o Ram Phal 'WANTED' in this case has been apprehended by PS-Sultan Puri. IO along with staff reached there. Accused Deepak S/o Ram Phal was taken to PS-South Rohini in a muffled face wherein he had confessed about the aforesaid crime.

(viii) During the course of investigation information regarding arrest of Deepak, S/o Rampal, Manish Verma S/o Subhash Verma and Biplav Biswas S/o Vidhan Biswas was received from PS-South Vasant Kunj because they had disclosed about their involvement in the commission of the aforesaid offence.

(ix) After completion of investigation, the charge sheet was filed. Ld. M. M. after complying with provisions of Section 207 Cr. P. C. committed the case to Sessions Court as the offence punishable U/s 302 IPC is exclusively triable by Sessions Court. All the accused were charged for offences punishable U/s, 364A/302/392/201 read with Section 120B IPC to which they pleaded not guilty and claimed trial.

3. To bring home the guilt of the accused persons the prosecution has examined 44 witnesses in all. Statements of all the accused persons were recorded under Section 313 of Code of Criminal Procedure wherein they claimed their innocence and stated that they have been falsely implicated in the present case and examined three witnesses in their defence.

SUBMISSIONS OF THE APPELLANT, BIPLAV BISWAS

4. Mr. KTS Tulsi, learned senior counsel for appellant/Biplav Biswas in Crl.A. 681/2017, opened his submissions by contending that the impugned judgment dated 18.05.2017 is based on conjectures and surmises and the same is against the facts and the settled proposition of law because the learned Trial Court has ignored and omitted the material evidences and has disregarded the cogent evidences in favor of the appellant and has failed to appreciate the basic matter in dispute, as to how come the appellant has been categorized as the actual perpetrator of the crime because there is no evidence on record to establish that the appellant was involved in the commission of the alleged offence.
5. Mr. KTS Tulsi learned Senior Counsel for the appellant, further submitted that the learned Trial Court erred in relying upon the Extra Judicial Confession made by PW-10 (Mr. Rajbir Singh). He further contended that PW-10 is a planted witness and his deposition that he overheard the conversation between the accused persons, 'doctor ke larke ka kaam ho jayega' cannot be believed as apart from Biplav Biswas, he failed to identify the other accused persons. The learned Senior Counsel for the appellant has relied upon the following decisions of the Hon'ble Supreme Court, wherein it has been repeatedly held that Extra Judicial Confession is a weak piece of evidence and it cannot be relied upon without corroboration, [*Jayendra Saraswathi Swamigal v. State Of Tamil Nadu*, (2005) 2 SCC 13, *Kadamanian vs State* (2016) 9 SCC 325; *Kusuma Ankama Rao v.*

State of Andhra Pradesh, (2015) 4 SCC281; Anil Kumar vs. State of Punjab (2008 2 RCR (Criminal)]

6. Mr. KTS Tulsi learned Senior Counsel for the appellant, further submitted that although the appellant is alleged to have made a disclosure statement pointing out the relevant STD/PCO shop, the said pointing out memos do not fall within the purview of Section 27 of the Evidence Act, and are not admissible in evidence in the eyes of law, because the two witnesses Gajender Singh (PW-5) & Shyam Babu (PW-6), who used to run the subject STD/PCO Shops, failed to identify any of the appellants and rather turned hostile. In support of his contention, the learned senior counsel for the appellant relied upon ***[Mehboob Ali &Anr. v. State of Rajasthan, (2016) 14 SCC 640; Indra Dalal v. State of Haryana, (2015) 11 SCC 31; Anter Singh v. State of Rajasthan, (2004) 10 SCC 657.]***
7. Learned Senior Counsel for the appellant further submitted that, the Learned Trial Court committed a grave illegality in holding that, the last Statement/words uttered by the deceased to his father Dr. Shrimal Roy, tantamount to be a dying declaration, because the said statement does not relate to the cause of his death. It was urged that it is a well settled principle that the statement of the deceased, which does not relate to the cause of death, or any circumstance which result in death, is not covered under the provisions of Section 32(1) of the Indian Evidence Act.
8. Mr. KTS Tulsi Learned Senior Counsel for the appellant further submitted that as per the version of the prosecution, appellant/Biplav Biswas was last seen with the deceased, but it is not prudent to base

conviction solely on the basis of last seen evidence because last seen evidence does not necessarily lead to the inference that it was the appellant/Biplav Biswas who had committed the crime. For supporting his contention, the learned senior counsel for the appellant relied upon *ref: Kishore Bhadke V. State of Maharashtra [3 Judges Bench] 2017SCC Online SC 12, Nizam & Anr. (2016) 1 SCC 550, Ashok V. State of Maharashtra (2015) 4SCC 393.*

9. Learned Senior Counsel for the appellant/Biplav Biswas has lastly urged that the trial court failed to correctly appreciate the facts and circumstances of the case; hence the impugned judgment is liable to be set aside.

SUBMISSIONS OF APPELLANT, DEEPAK S/O RAMPAL

10. Mr. Chetan Lokur, learned counsel for the appellant/Deepak in Crl.A. 705/2017 submitted that the impugned judgment is against the settled proposition of law because the entire case is based on circumstantial evidence and there is no direct evidence implicating the appellant/Deepak S/o Rampal in the commission of the alleged offence.
11. Learned counsel for the appellant/Deepak further contended that the Learned Trial Court had relied on the three recoveries effected at the behest of the Appellant/Deepak, however all the three recoveries are having no evidentiary value, for the following reasons:
 - a) The stereo, amplifier with speakers, which were affixed in the Santro Car bearing No. DL4CAJ3632 was found to be recovered at the instance of the Appellant/Deepak, on 11.01.2010 at House No. 906, First Floor, Village Rishalu,

Sector-24, Huda Colony, Panipat; and the prosecution relied on the testimonies of two witnesses, i.e. Pushpender (PW-3) and Balwan Singh (PW-4), who were the witnesses to the said recoveries; however, both these prosecution witnesses failed to identify the Appellant/Deepak, and further categorically denied the suggestion that the said stereo, amplifier and speakers, were recovered in their presence.

- b) Further as per the prosecution the sweater with blood stains (Ex PW26/Z) belonging to Appellant/Deepak was recovered on 16.01.2010 and as per the FSL Report (Ex. PW-41/A, Ex. PW-42/A and Ex. PW-42/ B), it was opined that the Sweater was stained with human blood; however, the same did not match the blood of the deceased. Therefore, no connection was established between the blood-stained Sweater and the incident in question. Further as per the uncontroverted evidence of DW-2(*mother of the Appellant/Deepak*), she had stated that about one week after the arrest of her son, some police officials had visited her house in order to collect a sweater belonging to the Appellant/Deepak, which was duly given to them on their request. Accordingly, the testimony of the DW-2 makes it clear that the said blood-stained sweater was planted in order to falsely implicate Appellant/Deepak in the present case.

- c) The alleged weapon of offence(Ex.PW-26) stained with blood, was recovered at the instance of the Appellant/Hardeep, as the same was pointed out by the Appellant/Deepak; however, the Prosecution failed to connect the said weapon to the present incident because the said Seizure Memo did not disclose the location or time of the alleged recovery.
- d) Further, as per the FSL Reports (Ex. PW-41/A, PW-42/A and PW-42/B), it was opined that the knife which was stained with human blood, did not match with the blood of the deceased and no fingerprints/ chance prints were proved in order to connect the Appellant/Deepak with the said weapon of offence. Therefore, the entire case surrounding the alleged recovery is false and fabricated.
- e) Auxiliary, as per the version of the Prosecution, the Appellant/Deepak, had travelled for long durations in the Santro car with the deceased; however, no fingerprints/chance prints have been proved, to link the Appellant/Deepak to the said car, or to prove that the Appellant had even travelled in the said car. Appellants are also stated to have used certain utensils given to them by Manish; who was acquitted by the learned Trial Court; however, in the same circumstances no fingerprints/chance prints, have been proved to link the Appellant/Deepak to the said utensils, or the spot of the recovery.

f) The Prosecution further stated that the Appellants, including other co-accused had stayed at the ancestral house belonging to appellant/Hardeep and the deceased was murdered at the said spot itself. However, no Fingerprints/chance prints or any forensic or scientific evidence, has been proved to link the Appellant to the said house or the said spot.

12. Mr. Lokur Learned counsel for the appellant/Deepak further contended that the uncontroverted evidence of Phool Singh (DW-1) establishes the fact that the Appellant was employed under him and he was working as an electrician for a period of 2-3 months prior to the alleged date of the incident and had not missed a single day at his work. As per the deposition of the aforesaid defence witness the alibi for appellant/Deepak gets established, however despite leading the credible Defence Evidence, the Learned Trial Court failed to appreciate the material testimony of the Defence Witnesses and convicted the Appellant/Deepak in the present case.
13. He further contended that no other evidence or material is available on record to link the Appellant/Deepak with the incident in question because Rajbir Singh (PW-10) has only identified Appellant/Biplav Biswas and has failed to identify any of the other appellants. In view of the aforesaid facts and circumstances, there is no last seen evidence implicating the appellant/Deepak in the commission of the alleged offence, hence the present appeal deserves to be allowed and the Impugned judgment deserves to be set-aside.

SUBMISSIONS OF APPELLANT, DEEPAK S/o RAMPHAL

14. Mr. S.B. Dandapani learned counsel for the appellant/Deepak S/o Ramphal in Crl.A. 1161/2017 submitted that the present case is based on circumstantial evidence and in such cases it is a well settled law that prosecution must establish a complete chain of evidence which is conclusive in nature and consistent with the hypothesis of guilt of the accused and the prosecution in the present case has not been able to prove the guilt and incriminate appellant/Deepak in the commission of the alleged offence.
15. Learned counsel for the appellant, further contended that the learned Trial Court erred in relying upon the Extra Judicial Confession as Rajbir Singh(PW10), being a complete stranger claimed to have overheard the conversation between three boys that, “*doctor ke larke ka kaam ho jayega*”, although he has claimed that the appellant/Biplav Biswas was present at the spot, but has failed to identify any of the other appellants.
16. He further contended that as per the version of the prosecution the Crime team officials had lifted the finger prints from various parts of the car, but the prosecution has miserably failed to link the Appellant/Deepak with any of the finger prints lifted from the car. Auxiliary with regard to the recovery of jacket and tich button, it was contended that the same were planted with the sole motive of falsely implicating the appellant/Deepak because PW-7, SI Manohar Lal, who had made the site plan had categorically deposed that he did not see any handkerchief, shirt piece, tich button at the spot.

17. Mr. S.B. Dandapani learned counsel for the appellant further contended that as per the version of the prosecution the CCTV footage of ATM of SBI Bank, Goshala Mandi Gannaur, Sonapat, Haryana shows two persons withdrawing cash using Raju Roy's ATM Card. Eventually the CCTV Footage and transaction record does not establish any connection with the appellant/Deepak regarding his involvement in the alleged offence because the ATM Security Guard (PW-11) Manjit Singh had failed to identify the boys and denied that the appellants had arrived at the ATM in a white Santro Car.
18. He further contended that the prosecution failed to prove the element of criminal conspiracy because as per the Call Detail Record placed on record by the Nodal Officers Mr. Rajeev Sharda (PW36), Mr. Rajeev Ranjan (PW37), Sh. Pawan Singh (PW38) and Sh. Ishar Babu (PW39), it nowhere establishes the fact that the Appellant/Deepak was well acquainted with the deceased or with any of the appellants.
19. Lastly, it was urged by the learned counsel for the appellant that in view of the aforesaid facts and circumstances, the prosecution has failed to prove the case against the appellant/Deepak. Therefore, it is respectfully prayed that the impugned judgment be set aside.

SUBMISSIONS OF APPELLANT, HARDEEP

20. Ms. Swati Rathi, learned counsel for the appellant/Hardeep in Crl.A. 6/2018 contended that the impugned judgment passed by the learned Trial Court is based on conjectures and surmises and the same is against the facts and the settled proposition of law because the learned trial court has not appreciated the cogent evidence in favor of the appellant/Hardeep.

21. Learned counsel for the appellant further contended that the learned Trial Court ignored the fact that the appellant/Hardeep was arrested on the basis of disclosure statements of the other co-accused which in turn is inadmissible in the eye of law because the prosecution failed to bring on record any credible incriminating evidence against the appellant/Hardeep. She further contended that the learned Trial Court has erred in holding that the contradictions in the testimonies of the prosecution witnesses are minor in nature because the same are full of inherent infirmities and discrepancies, which demolish its version in its totality.
22. Learned counsel for the appellant/Hardeep further contended that as per the version of the prosecution Dr. Shrimal Roy/PW21 claimed that he had received a ransom call from the mobile number of his son, on which the caller demanded a ransom of Rs. 20 lacs for entrusting the safe custody of his son and he had identified the voice of appellant/Hardeep as the voice of the ransom caller. She further contended that the appellant/Hardeep has been falsely implicated in the present case because PW-21 had himself stated that he had no facility of voice recording in his mobile phone.
23. Ms. Swati Rathi, learned counsel for the appellant further contended that the version of the prosecution is not corroborated with the medical evidence and the learned trial court has erred in convicting the appellant/Hardeep on the basis of uncorroborated seized blood-stained lotus. Counsel for the appellant has lastly urged that the trial court has not correctly appreciated the facts and circumstances of the case; hence, the impugned judgment is liable to be set aside.

SUBMISSIONS ON BEHALF OF THE STATE

24. Ms. Radhika Kolluru, learned APP for State, on the other hand, strongly refuted the submissions made by the counsel for the appellants and submitted that the impugned judgment is based on proper appreciation of facts and evidence and no interference in the impugned judgment is called for by this court; that the statements of prosecution witnesses and medical/scientific evidence are corroborative in nature and the prosecution has been able to prove its case beyond reasonable doubt.
25. Learned APP for State further submitted that the statements of prosecution witnesses and Medical/ scientific evidence are corroborative in nature and the prosecution has been able to prove its case beyond reasonable doubt.
26. Ms. Kolluru, learned APP for State further submitted that appellant/Biplav Biswas being the Master-mind of the conspiracy was the family friend and was known to the deceased Raju Roy and his father Dr. Shrimal Roy (PW-21). She further submitted that the calls which were made by Hardeep were not narrated by his father in his statements recorded U/s 161 Cr.P.C to the police and the DD entries related to missing report because Biplav being a family friend was not suspected by the family of the deceased.
27. Learned APP for State further submitted that the father of Biplav Biswas i.e. Mr. Vidhan Biswas(PW-40) had deposed that the phone no. 99990-92082 was with him in Kolkata between 04.01.10 to 06.01.2010 which is belied by the CDRs on record (Ex.PW-38/B) because the CDRs evidently proves that the sim was active in Delhi.

Therefore, such false depositions create a dent in the version of the appellants.

28. The learned counsel for the state further submitted that PW-10 Mr. Rajbir Singh (eye witness) has stated that on 04.01.2010 at around 6:30 pm, he had seen 3-4 boys, including Appellant/Biplav Biswas at Mangolpuri D block bus stand and had overheard part of their conversation, wherein one boy had said “*doctor ke larke ka kaam ho jayega*” and the others responded “*hamara bhi kaam ho jayega*”. Thereafter the testimony of PW-10 was relied upon to prove the conspiracy in question and establishing the last seen evidence. Therefore, the same is relevant and is admissible under the provisions of Section 10 and Section 14 of the Indian Evidence Act. [*ref: Umar Abdul Sakoor Sorathia V. Intelligence Officer, Narcotic Control Bureau (2000) 1SCC 138*].
29. Ms. Kolluru, learned APP for State further submitted that the prosecution had placed on the record the CCTV footage of ATM of SBI Bank, Goshala Mandi Gannaur, Sonapat, Haryana which clearly indicates that appellant/Deepak S/o Ramphal and appellant/Hardeep had withdrawn money from the aforesaid ATM using Raju Roy’s ATM Card and the said fact is also corroborated with the testimony of the ATM security guard PW-11(Manjit Singh). Subsequently no objection has been raised to prove the CCTV footage at any stage of trial neither at the time of exhibiting the CDs or at any other stage prior to the pronouncement of judgment of the Trial Court. As such, the appellants may not raise an objection to the mode of proof of the CCTV footage at the stage of appeal because the CCTV footage is

admissible. Even the learned Trial Court after pursuing the contents of the exhibited CD found that the appellant/Deepak S/o Ramphal and appellant/Hardeep were the persons who withdrew the cash from the SBI, ATM. In support of his contention, the counsel for the state has placed her reliance on *Sonu @ Amar v. State of Haryana, (2017) 8 SCC 570*.

30. Further the counsel for the state referred to the evidence with regard to the recovery of car accessories (stereo system, amplifier, speakers etc.) as the same was recovered from the appellant/Hardeep relative's house. The counsel for state has further referred to the disclosure statement of Appellant/Deepak S/o Rampal (Ex PW26/S) wherein he had made the disclosure with regard to the blood-stained sweater and pointed out the site of murder, recovery of knife and recovery of blood-stained handkerchief. The disclosure statement is supported with site plan Ex.PW 26/30A which clearly illustrates the place where murder took place, where the titch button, blood stained handkerchief, blood stained Sweater, blood stained shirt's piece was found and where the Santro car No. DL4CAJ3632 was parked.
31. Learned counsel for the state further submitted that as per the FSL report it was established that human blood stains present on the sweater, handkerchief, knife were matched with the blood seized from the spot and it was further opined that the Soil on the handkerchief, knife was matched with the earth control sample (Ex.PW41/A) and were discovered to be of blood group A+, wherein it is relevant to highlight that the deceased was also having the same blood group.

32. Learned counsel for the state has further submitted that the above alleged recoveries and the circumstances clearly establish the conspiracy between the appellants and their involvement in the kidnapping and murder of the deceased Raju Roy. Counsel for the state lastly urged that the evidence produced on record as well as the circumstances proved by the prosecution, form a complete chain pointing unequivocally towards establishing the guilt of the accused. Based on this submissions counsel for the State urged that this Court may not interfere with the well-reasoned order passed by the learned trial court convicting the appellants for the alleged offence.
33. We have heard learned counsel for the parties at considerable length and have also perused the entire material placed on record including the record of the Trial Court.
34. The present case is based on circumstantial evidence; it is essential for us to determine whether or not a complete chain of events stand established from the evidence produced by the prosecution. What, therefore, needs to be seen is whether the prosecution has established the incriminating circumstances upon which it places reliance and whether those circumstances constitute a chain so complete as not to leave any reasonable ground for the appellants to be found innocent.

Kidnapping for Ransom

35. Before delving into the merits of the case, we deem it appropriate to discuss the relevant provisions which are involved in the present case, Section 364A of the IPC reads as under:

“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 organisation 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.”

36. Section 364A has the following ingredients:

- i. That kidnapping or abduction of a person is caused; or “such kidnapped or abducted person” is kept under detention;
- ii. That the accused threatened to cause death or hurt, to “such person” or gave rise to a reasonable apprehension that death or hurt may be caused to “such person”, or death or hurt is actually caused;
- iii. The above said is done to compel another person to do or abstain from doing any act or to pay a ransom.

37. In ***Vishwanath Gupta v. State of Uttaranchal***, reported at **2007(11) SCC 633**, the Supreme Court observed that to prove the offence under Section 364A, three facts are required to be established. The Supreme Court held that:

“5. According to Section 364A, whoever kidnaps or abducts any person and keeps him in detention and threatens to cause death or hurt to such person and by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, and claims a ransom and if death is caused then in that case the accused can be punished with death or imprisonment for life and also liable to pay fine.

6. The important ingredient of Section 364A is the abduction or kidnapping, as the case may be. Thereafter, a threat to the kidnapped/abducted that if the demand for ransom is not made then the victim is likely to be put to death and in the event death is caused, the offence of Section 364A is complete. There are three stages in this Section, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not made, then causing death. If the three ingredients are available, that will constitute the offence under Section 364A of the Indian Penal Code...”

38. Accordingly, it is relevant to take into consideration whether the ingredients of Section 364A are answered or not. Hence, we deem it appropriate to reproduce the deposition of Dr. Shrimal Roy (*father of the deceased*) who stepped into the witness box as PW-21 and deposed that:

“At about 4.00 PM I alongwith my son Raju Roy in my Santro Car No.DL4CAG3632 of white colour had started for Nangloi. One of my friend Brojan Mundal who used to reside in Sultanpuri was also with us and he boarded our car from Sultanpuri. My son Raju Roy was carrying his mobile No. 9990515131 of Idea Company and he used to use aforesaid mobile number. At about 5:00PM or thereafter when we were returning from Nangloi accused Biplav present in the court, correctly identified had made two continuous phone calls to my son Raju on his mobile no. 9990515131 and both the calls were attended by me son. When I inquired from my son as to who was calling then Raju told me that those were the calls of Biplav Biswas. I know

accused Biplav as he is my distant relative as my mausi was married to the family of accused Biplav. My son Raju Roy was cousin of accused Biplav in relation and my son was also friendly with accused Biplav. Accused Biplav used to visit my house to meet my son. Accused Biplav also used to come to my house on the functions and family members of accused Biplav also used to visit our house. Father of accused Biplav, Vidhan Vishwas @ Pikul Vishwas used to work as helper in my shop. He was also RMP. Accused Biplav and his family knew about my earning and status of my family. I used to pay salary to the father of accused Biplav and he used to keep the accounts of my shop. I enquired from my son Raju as to why Biplav was calling him again and again. Raju replied me that accused Biplav wanted Raju to come to him. At that time Brojan Mandal was also with me. We had dropped him at Sultanpuri. My son Raju in the evening around 5.45 or 6.00PM dropped me at my clinic at Pathar Market, Mangolpur Kalan and after dropping me Raju in his Santro car had left from there to meet Biplav at that time my son Raju was carrying his mobile phone with him. I told my son to return early. After closing my clinic I returned to my house and at that time my wife was standing in the balcony and she inquired from me as to where was Raju as he was gone with me. I told her that he had gone to meet Biplav as he not returned till that time. At that time it was after 10.00 PM when I returned home.

xxxxx xxxxxx xxxxxxxx

On 05.01.2010 during afternoon at about 12.45 PM noon on my mobile phone No.9313903813 I received

a phone call from the mobile phone No.9990515131 of my son Raju and the caller was talking to me in Hindi and Haryana language and asked me as to who was calling as the caller wanted to speak to Rai Sahab. And I told him that I was Rai speaking and then caller told me that my son Raju Roy was kidnapped by them and he also told me that police was informed and if I wanted my son alive then I must arrange for Rs.20 lacs for the release of my son Raju Roy immediately. I could hear the drowned voice of my son through that mobile call. I requested the caller to let me speak to my son and on which caller replied me that if I wanted my son alive I should come with Rs.20 lacs and I told him that do not harm my son and I will give the money and I asked him where I should come with the money and then he had disconnected the phone saying that 'bad me phone karenge'.

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The Santro car No.DL4CAJ3632 white colour was registered in my son and in my aforesaid Santro Car Amplifire with the speaker music box was got installed from Shriram Car accessories Rohini from Mukesh and I paid around Rs.4000/- and did not obtain the copy of the bill. I was having warranty card of sound barrier. In my that Santro Car stereo of pioneer company with dual speaker pioneer in tray was also fixed. The speaker and stereo was got installed from the shop of Divesh from Rohini, Durga Car Accessories, sector-7 and paid Rs.3200/-. My son Raju Roy was also carrying his ATM bank card of SBI and he used to carry that car in his valet. My son was having his bank account

with the Rohini Branch of State Bank of India and I used to deposit money in that bank account of my son. My son was kidnapped for the sake of ransom and he was killed. When I was alarmed by friend of my son Raju about ATM carried by him I went to Rohini, SBI Branch and came to know that from the Gannaur Branch, ATM money was withdrawn from the account of my son. At the time of incident father of Biplav at Calcutta and when my son was not traceable I called him and informed him about the missing of my son. Then he told me how he could come early and he asked me to send the air ticket, so that he could reach Delhi at the earliest. I had sent him Air Ticket and on which father of accused Biplav travelled and returned to Delhi. All the time accused Biplav remained with me and my relatives since 11.00 AM 05.01.2010 and he knew as to what was the progress of the case. Case of my son was also published in Newspaper and T.V. When Biplav was in police custody father of Biplav was called in sector-1 PS Rohini with me in the office of Crime Branch and he was shown photographs of the CCTV footage of Gannaur ATM but father of Biplav refused to identify any of the boys seen in the CCTV footage of Gannaur ATM.”

39. Accordingly, as per the testimony of Dr. Shrimal Roy it is relevant to emphasize that the deceased Raju Roy went missing after receiving two calls from the appellant/Biplav Biswas. The same fact is also evidently corroborated with the Call Detail Record's wherein it is evidently established that on 04.01.2010 at 16:54:41-16:56:11 pm and again at 18:08-18:12 pm appellant/Bipav Biswas from his mobile

phone (99990-92082) had called the deceased on his mobile phone (99905-15131).

40. PW-21 further deposed that on 05.01.2010 at about 12.45 pm he had received a ransom call on his mobile No. 9313903813, wherein the caller was speaking in Haryanvi and demanded a ransom of Rs.20 lakhs for release of his son Raju Roy. The aforesaid fact is also corroborated with the Call Detail Record of 9990515131, wherein it has been established that on 05.01.2010 at about 12:44 pm a call was received on the mobile No.9313903813.
41. The version of the prosecution with regard to the ransom call further finds corroboration with the testimony of Mr. Ujjwal Rai (*compounder in the clinic of Dr. Shrimal Roy*) and Mr. Govinda Bhumiki (*brother-in-law of Dr. Shrimal Roy*). Mr. Ujjwal Rai stepped into the witness box as PW-20 and deposed that:

“On 6-01-10 when I along with Shrimal Roy, Govinda were present in the PS South Rohini and I was at a little distance from them, Dr. Shrimal Roy had received a phone call on which kidnapper of Raju Roy were demanding Rs. 20 lacs for the release of Raju Roy”

42. Mr. Govinda Bhumiki stepped into the witness box as PW-24 and deposed that:

“I was with Dr. Shrimal Roy and he received a phone call on his mobile and kidnapper of Raju Roy were demanding Rs.20 lacs for the release of Raju Roy. I was hearing the conversation of Shrimal Roy and caller. At that time Ujjawal was at little distance from us.”

43. Accordingly, it is relevant to highlight that the aforesaid testimonies of the prosecution witnesses and the call detail records support the version of Dr. Shrimal Roy(PW-21) with regard to establishing the ingredients of kidnapping for ransom.

Electronic Evidence: ATM CCTV Footage

44. During the course of argument, an apprehension was expressed by the learned counsel for the appellants, that the Electronic Evidence on record (Compact Disc) is not admissible in the eyes of law because the same was not supported by a certificate under Section 65B of the Indian Evidence Act.
45. Section 65-B of the Indian Evidence Act being an important aspect, deals with the admissibility of the electronic record and the purpose of these provisions is to sanctify the source and authenticity of the secondary evidence, generated by a computer; which in the present case is not produced by the prosecution.
46. Herein, it is relevant to highlight that the prosecution had placed on record the CCTV footage (Ex.PW/1A) of the ATM of SBI Bank, Goshala Mandi Gannaur, Sonapat, Haryana wherein the CCTV footage of the aforesaid ATM(*ID number 0432301*) shows Appellant No. 4/Hardeep and Appellant No. 3/Deepak S/o Ramphal withdrawing cash using the ATM card of the deceased Raju Roy. Accordingly, as per the version of the prosecution, inquiry was made from Mr. Rajender Kumar (PW-1), Branch Manager of SBI Bank who informed that cash had been withdrawn from Raju Roy Account No.30779476774.

47. Further, while discussing the credibility of electronic evidence and the relevance of producing the certificate under Section 65B of the Indian Evidence Act, our view is fortified by the recent judgment of the Hon'ble Apex Court, in the case of *Shafhi Mohammad V. The State of Himachal Pradesh* reported at (2018) 2 SCC 801. The germane portion of the judgment is extracted below:

*“(7) Though in view of Three-Judge Bench judgments in **Tomaso Bruno and Ram Singh (supra)**, it can be safely held that electronic evidence is admissible and provisions under Sections 65A and 65B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65B(h).*

*(8) Sections 65A and 65B of the Evidence Act, 1872 cannot be held to be a complete code on the subject. In **Anvar P.V. (supra)**, this Court in para 24 clarified that primary evidence of electronic record was not covered under Sections 65A and 65B of the Evidence Act. Primary evidence is the document produced before Court and the expression “document” is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.*

(9). The term “electronic record” is defined in Section 2(t) of the Information Technology Act, 2000 as follows:

‘Electronic record’ means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.’

(10). Expression “data” is defined in **Section 2(o) of the Information Technology Act** as follows.

“Data” means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer’

(11). The applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65B(h) is not always mandatory.

*12. Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B (4) of the Evidence Act. **The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies.**"*

48. From the above extracted portion from the judgment of the Hon'ble Supreme Court, it is evidently established that the requirement of producing the certificate under Section 65B of the Indian Evidence Act is a procedural aspect and the requirement of its production can be relaxed whenever required and justified, in the interest of justice. Therefore, the argument raised by Learned Counsel for the appellant that the aforesaid CD is not admissible as the same was not supported by a certificate under Section 65B of the Indian Evidence Act, holds no ground.
49. Keeping in view the facts of the present case and applying the principles laid down by the Hon'ble Apex Court, the Compact Disc(CD) exhibited by the prosecution was perused in the court room and as per the footage the faces of Appellant/Hardeep & Appellant/Deepak were clearly visible in Ex.P2.

Extra Judicial Confession

50. While discussing the credibility of an Extra Judicial Confession, the learned Senior Counsel for the appellant had contended that the learned Trial Court had erred in relying upon the Extra Judicial Confession of the appellants heard by Rajbir Singh (PW-10) because

the same is a weak piece of evidence and it cannot be relied upon without corroboration. In support of his contention, the learned Senior Counsel for the appellant has relied upon *Jayendra Saraswathi Swamigal v. State Of Tamil Nadu*, (2005) 2 SCC 13, *Kadamanian vs State* (2016) 9 SCC 325; *Kusuma Ankama Rao v. State of Andhra Pradesh*, (2015) 4 SCC 281; *Anil Kumar vs. State of Punjab* (2008 2 RCR (Criminal)).

51. As per the version of the prosecution Rajbir Singh had “last seen” three-four boys, including the Appellant/Biplav Biswas on 04.01.2010 at Mangolpuri D Block Bus Stand at about 06:30pm and had overheard their conversation, wherein one boy had said “*doctor ke larke ka kaam ho jayega*” to which the others responded “*hamara bhi kaam ho jayega*”. Mr. Rajbir Singh stepped into the witness box as PW-10 and deposed that:

“Earlier I was employed in DTC. I had gone to D-Block, Mangol Puri to meet someone on 04.01.2010. The person to whom I had come to meet, was not available and then I planned to go for peeragarhi. I reached at DTC bus Stop of D-Block Mangol Puri at 6:00-6:15PM. There I saw three-four boys already sitting at the bus stand. Two such boys were carrying mobile phones and they were conversing with someone on such mobile phone. I can identify only one out of those three-four boys and no others (Witness has indicated towards accused Biplav as one of those persons and has also stated that he was not the one who was conversing on mobile).

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All those four boys were conversing with one another and I overheard them saying “doctor ke larke ka kaam ho jayega”. These words were spoken by accused Biplav present in Court. The other three boys then responded by saying that “hamara bhi kaam ho jayega”. I cannot identify those other three persons and also cannot tell their names. Biplav was not addressing them by names.

Then a white color santro car came there but on the opposite side of the road. Three boys out of those four boys sat in the Santro car and left. Biplav, however, did not board that santro car but accompanied them up to that santro car. That person who had come driving Santro car had rolled down his window and talked something to accused Biplav. I can identify that driver of santro car as I had seen him. However, he is not present in court today (Witness has answered after seeing all the accused persons). I do not know what happened thereafter that day.

On 19.01.2010 I had seen a poster at the bus stand of Pitampura. That poster contained one photo and I felt that photo might be of one of those four boys whom I had seen at bus stop that day and, therefore, I wanted to help police. I can identify such poster if shown to me (At this stage witness has been shown one poster from judicial file has been shown and witness identifies that such poster was similar to the one which he had seen.) Poster is now exhibited as Ex.PW10/A)

Then I went to PS situated opposite Nahar Pur at Sector-3. I made enquires as to who was investigating the case related to said poster. I then was directed to go to inspector whose name I do not remember. I met

him and he was seeing one file and in that file I had seen photographs of accused Biplav and also of the driver of said Santro car. I identified those photographs. I told inspector about the facts which I already knew i.e. regarding those four boys and Santro Car. Then I was told by the inspector that Santro car driver have been murdered. (At this stage witness has been shown copy of missing report of deceased Raju Rai which contain his photo also and witness has identified that he was shown photo of boy and he had identified that boy as the driver of the santro car). (photo appearing on copy of missing report is exhibited as Ex.PW10/B).”

52. From the perusal of the record, it transpires that the testimony of PW-10 (Rajbir Singh) is corroborated with the Call Detail Records (Mobile No. 99990-92082) and the Cell ID Chart, which clearly illustrates that the mobile phone No. 99990-92082 was within the range of the cellular tower installed in Rohini, Delhi. Contradicting the version of the prosecution, Mr. Vidhan Biswas (father of the appellant/Biplav Biswas) had deposed that the phone no. 99990-92082 was with him in Kolkata from 04.01.10 to 06.01.2010. Mr. Vidhan Biswas had stepped into the witness box as PW-40 and deposed that:

“I was present at Kolkata on 04-01-2010. Vol. I returned Delhi by Air on 06-01-2010. I do not remember the flight number but flight was of Kingfisher. I can produce the air ticket but I do not have boarding pass. The mobile phone was with me in Kolkata from 04-01-2010 to 06-01-2010. It is wrong to suggest that the location of that mobile phone on 04-01-2010 and 05-01-2010 was in Delhi. I arrived at Delhi on 06-01-2010 at 5.00-6.00PM.”

53. After examining the testimony of PW-40, it is observed that his version has a lot of astonishing defects from its inception and such false defence creates a dent in the version of the appellants. There is no iota of doubt that an Extra-judicial confession is a weak piece of evidence and the court while deciding its credibility must be satisfied that the same inspires confidence and passes the test of credibility.
54. Hence, it is to be tested whether Extra Judicial Confession can form the basis of conviction. In the present case, the witness PW-10 (Rajbir Singh) overheard the conversion of the accused person that “*doctor ke larke ka kaam ho jayega*”. He was cross examined in detail by counsel for the accused persons but the witness stood the test of cross examination and corroborated his testimonies recorded at various levels, as the testimony inspires confidence, he correctly, identified the appellant/Biplav Biswas and another person i.e. the deceased. His testimony also inspire confidence and clearly narrates the chain of events as he after coming to know through posters published by the Delhi Police that one of the persons whom he heard of eliminating a person i.e. Biplav Biswas is wanted in a case of murder and dacoity thereafter, he approached the police station for informing the Investigating Officer about the identity of the accused persons. The testimony of Rajbir Singh (PW-10) is also corroborated with the testimony of Investigating Officer (PW-32) and established the recording of the statement of PW-10 (Rajbir Singh).
55. Considering the admissibility and evidentiary value of extra-judicial confession, the Hon’ble Supreme Court in *Sahadevan and Another v. State of Tamil Nadu* reported at (2012) 6 SCC 403, held that:-

“15.1. In *Balwinder Singh v. State of Punjab* 1995 Supp (4) SCC 259 this Court stated the principle that:

“10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility become doubtful and it loses its importance.”

15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in *State of Rajasthan v. Raja Ram* (2003) 8 SCC 180 stated the principle that:

“19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.”

The Court further expressed the view that:

“19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused....”

15.6. Accepting the admissibility of the extra-judicial confession, the Court in ***Sansar Chand v. State of Rajasthan (2010) 10 SCC 604*** held that:

“29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore (1970) 2 SCC 105, Mulk Raj v. State of U.P. AIR 1959 SC 902, Sivakumar v. State By Inspector of Police (2006) 1 SCC 714 (SCC paras 40 and 41; AIR paras 41 and 42), Shiva Karam Payaswami Tewari v. State of Maharashtra (2009) 11 SCC 262 and Mohd. Azad alias Shaman v. State of W.B. (2008) 15 SCC 449]

56. Further recently the Hon'ble Apex Court, in ***Ram Lal Vs State of Himachal Pradesh*** reported at ***AIR 2018 SC 4616*** while discussing the credibility of an Extra Judicial Confession, had stated that conviction can be based on a voluntarily Extra Judicial Confession and the same can be relied upon without corroboration. Germane portion from the judgment is reproduced below:

*“14. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. **Extra-judicial confession of accused need not in all cases be corroborated.** In *Madan Gopal Kakkad v. Naval Dubey and Another* (1992) 3 SCC 204, this court after referring to *Piara Singh and Others v. State of Punjab* (1977) 4 SCC 452 held that the **law does not require***

that the evidence of an extra-judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.”

57. Keeping in view the facts of the present case and applying the principles laid down by the Hon'ble Apex Court, the contention raised by learned Senior Counsel for the appellant that an extra judicial confession cannot be relied upon without corroboration holds no ground.

Dying Declaration

58. Since the main thrust of the arguments of Learned Senior Counsel for the appellant is that the Learned Trial Court committed a grave illegality in holding the last words of the deceased to his father Dr. Shrimal Roy tantamounted to be a dying declaration because the said statement did not relate to the cause of his death.
59. Before we analyse the case at hand, it would be pertinent to note the certain aspects of dying declaration. Section 32 of the Evidence Act deals with cases in which statement regarding a relevant fact by a person who is dead or cannot be found is relevant. Section 32 of the Evidence Act is reproduced below: -

Section.32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.—

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the

Court unreasonable, are themselves relevant facts in the following cases: —

(1) When it relates to cause of death—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

60. A bare perusal of the section shows:

(i) Statement should be of a person who **is dead/cannot be found**/has become incapable of giving evidence etc.

(ii) It should relate to the relevant facts; and

(iii) It should relate to cause of **'his death'** or **circumstances of the transaction** which resulted in **'his death'**, in cases in which the cause of that person's death comes into question.

61. The Hon'ble Supreme Court in *Madan @ Madhu Patekar Vs the State of Maharashtra* reported at *AIR 2018 SC 2007* had laid down that a dying declaration made by a person relating to the cause of his/her death or to any of the circumstances which resulted in his/her death, can be relied upon and is relevant under the provision of Section 32 of the Indian Evidence Act. The germane portion of the judgment is extracted below:

“10. The rule of admissibility of dying declaration is no more res Integra. In the adjudication of a criminal case, dying declaration plays a crucial role. A dying declaration made by a person as to cause of

his/her death or as to any of the circumstances which resulted in his/her death, in cases in which cause of death comes in question, is relevant under Section 32 of the Evidence Act. It has been emphasized number of times that dying declaration is an exception to the rule against admissibility of hearsay evidence. The whole development of the notion that the dying declaration, as an exception to the hearsay rule, is based on the formalistic view that the determination of certain classes of evidence as admissible or inadmissible and not on the apparent credibility of particular evidence tendered.

11. In order to ameliorate such concerns, this court has cautioned in umpteen number of cases to have a cautious approach when considering a conviction based on dying declaration. Although there is no absolute rule of law that the dying declaration cannot form the sole basis for conviction unless it is corroborated, the courts must be cautious and must rely on the same if it inspires confidence in the mind of the Court [See: **Ram Bihari Yadav Vs. State of Bihar & Ors.** (1998) 4 SCC 517 and **Suresh Chandra Jana & Ors. Vs. State of West Bengal & Ors.**, 2017 (8) SCALE 697].

12. Moreover, this court has consistently laid down that a dying declaration can form basis of conviction, if in the opinion of the Court, it inspires confidence that the deceased at the time of making such declaration, was in a fit state of mind and there was no tutoring or prompting. If the dying declaration creates any suspicion in the mind of Court as to its correctness and genuineness, it should not be acted upon without corroborative evidence [See Also: **Atbir**

Vs. Government of NCT of Delhi, 2010 (9) SCC 1, Paniben Vs. State of Gujarat, 1992 (2) SCC 474 and Panneer Selvam Vs. State of Tamil nadu, 2008 (17) SCC 190J”

62. Keeping in view the facts of the present case and applying the principles laid down by the Hon’ble Apex Court it is evidently established that the last words of the deceased squarely falls within the ambit of a dying declaration because the aforesaid fact and circumstance resulted in his death.

Recovery of Material Objects

63. The prosecution in the present case has relied upon various recoveries which were pointed out at the instance of the appellants. The version of the prosecution is also corroborated with the testimony of police witnesses, HC Ram Narayan and Insp Vijay Kumar. HC Ram Narayan stepped into the witness box as PW-26 and deposed that:

“On 10.01.2010 I was posted at PS South Rohini. On that day as per instructions of Inspector Vijay Kumar, I alongwith HC Balkishan of Special Staff went in search of accused wanted in present case and reached at Pooth Kala Bus stand and reached at H.No.306, Manihari Gali, Village Pooth Kala, where we found that there was a crowd gathered. ASI Mahender Singh with Ct. from PS Sultanpuri was already present there and were apprehending one person and they were surrounded by the crowd. At the spot we had learnt that thief was apprehended and that thief had trespassed into the house of caller and PCR call was made to that effect. On interrogation that boy who was apprehended revealed his name as Deepak, s/o

Ramphal, r/o D-331, Mangolpuri, accused is present in court, correctly identified. Inquiries were made from the accused Deepak and accused revealed that due to the fear of police he had entered that house with intention to hide himself and not with the intention to commit theft. Accused had also accepted his involvement in the kidnapping, ransom, murder and dumping dead body of Raju Roy, s/o Shrimal Roy, Sector-II, Rohini at Haryana and for that reason he was escaping from the police. HC Balkishan had given telephonic information to inspt. Vijay of PS South Rohini. Inspt. Vijay reached at the spot i.e. H. No.306, Manihari Gali, Poothkala Village. IO made inquiries from accused Deepak and accused Deepak confessed his involvement in the present FIR.

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After obtaining permission from the ld. MM and after the interrogation of all the accused and they admitted their involvements in the present FIR.

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Same place of where Santro car was parked after kidnapping Raju Roy was pointed out by accused Deepak, s/o Rampal. Pointing out memo is already Ex.PW2/B. Thereafter, accused Deepak led the police party to Idgaha Road, Harijan Basti, Gannor at vacant plot where one small Mandir was constructed and pointed out one place where they had detained deceased Raju Roy on the night of 04/05.01.2010 under their control and also pointed out the place where during that period Santro car was remained parked.

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Accused Deepak s/o Rampal led the police party to the house of Ram Kumar, s/o Dharam chand, H. No.906, Bijol Panna, Risalu Village, Sector-24, Panipat, Haryana and pointed out the big room on the first floor of that house and claimed that the stereo, amplifier with speaker, toll tray of speaker which was taken out from the Santro car to keep the dead body of Raju Roy in that car were kept by the accused persons in that room of H.No.906 through Jija Sh. Arminster of accused Hardeep. That house was of the Jija of accused Hardeep. Pointing out memo of that place where articles removed from Santro car were kept, was prepared. Public witness Pushpender, s/o Ram Kumar had also joined the investigation. Lock of that house was got opened from public witness Pushpender and that room was checked. From the room near the gate on the table one stereo pioneer manufactured 2008 and sound barrier 5400 volt, coloured black, rectangular box (toll tray) and amplifier black and silver were recovered.

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On 12.01.2010 accused Deepak who was in my custody had led the police party to H. No.1, Araipura Road near GTK Road, Gharonda, Karnal, Haryana at the house of Raghuvir Sandhu and pointed out the place near the wall where they had parked the Santro car with dead body after the murder of Raju Roy on the night of 05.01.2010 and left. One public witness Sanjay Arora had also joined the investigation at that time and pointing out memo already Ex.PW9/B.

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Thereafter, Deepak, s/o Rampal pointed out the place on the open road of Fish Market where as per plan Raju Roy was asked to stop the car and accused Deepak, s/o Rampal got down on the pretext of urination and Raju Roy was kidnapped and stabbed. Pointing out memo was prepared, same is now Ex.PW26/V. Thereafter, accused Deepak, s/o Rampal led the police party under the railway track of Peeragarhi Bridge, pillar No.13/7 near bushes and pointed out the place where he had dumped his blood stained sweater after the murder of Raju Roy.

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Accused Deepak son of Ramphal had led the police party to the track of rail going from Rohtak Road to under bridge Peera Garhi and led us to right side pillar No.13/5 towards 3-4 kms. Towards Delhi and pointed out the place under the bushes where accused he had thrown his jacket which he was wearing at the time of kidnapping and murder of Raju Rai and was stained with blood and button of which was dropped at tubewell where before murder of Raju Rai, they were entangling with him.

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On 20.01.2010, I again joined the investigation of the present case with Ct. Biri Singh, Ct. Manoj, Ct. Pramod along with IO. We had taken out accused Hardeep and Deepak son of Ramphal from the hawalat. Accused Deepak son of Rampal was also with us who was also on PC. All the three accused led the police party to the place after crossing Biholi village, Jatipura Village on the pucca road near electric Pole No.SP-33 towards right side on

the kacha road at 5-6 mtrs. Walking distance and pointed out the tubewell (Hauj) and claimed that at that place, Raju Rai was murdered and they had also claimed that that place also belonged to the family of accused Hardeep.

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Accused Hardeep took us to the East side of the Hauj of the tubewell and from the distance 5-7 steps, near the plant of Gajda flower, he had picked up one piece i.e. pocket of the left side of the shirt colour green and white stained with mud. Accused Hardeep had claimed that at the time of murder of Raju Rai, that piece was torn during scuffle and had dropped there.

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Accused Deepak son of Rampal had also produced from there one hankey stained with blood and claimed that he had left that hankey after wiping out his hands after the murder of Raju Rai with his blood. Pointing out memo of recovery of place of hankey was prepared and same is now Ex.PW26/29. Cloth pullanda of recovered hankey was prepared and No.6 was given and sealed with the seal of VKR and was taken into possession vide memo now Ex.PW26/30. Site plan of place of that recovery was also prepared and same is now Ex.PW26/30A. Photograph was also taken and same is now Mark PW26/C-1. Accused Deepak son of Ramphal had also picked up from there one button of right arm of his jacket and claimed that he had dropped that button of his jacket while scuffling with Raju Rai at the time of murder of Raju Rai. Cloth pullanda of recovered button of jacket was prepared and No.7

was given and sealed with the seal of VKR and was taken into possession vide memo now Ex.PW26/31. Sketch of place of recovery was prepared, same is Ex.PW26/31A. Pointing out memo is now Ex.PW26/31B.

In presence all three accused Hardeep, Deepak son of Ramphal and Deepak son of Rampal, IO had lifted blood stained soil from the spot i.e. place near the tubewell which was pointed out by accused persons as the place of incident where Raju Rai was killed. Soil was kept in a plastic panni and then cloth pullanda was prepared and was given serial No.8 and sealed with the seal of VKR and seal after use was handed over to me. It was taken into possession vide memo now Ex.PW26/32.

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Accused Hardeep pointed out the place where they had thrown the knife which was used in the murder of Raju Rai, after his murder. Pointing out memo of that place was prepared and is now Ex.PW26/34. Accused Hardeep had picked up knife from that place and produced before the IO. That knife was stained with the soil. Length of that knife was measured, sketch of the knife was prepared, same is now Ex.PW26/35. Site plan of that place of recovery of knife was also prepared and same is now Ex.PW26/36”

64. While discussing the admissibility of the aforesaid pointing out memos, the Learned senior counsel for the appellant contended that the pointing out memos cannot fall under the category of Section 27 of the Evidence Act and in support of his contention relied upon **[ref:**

Mehboob Ali &Anr v. State of Rajasthan, (2016) 14 SCC 640; IndraDall v. State of Haryana, (2015) 11 SCC 31; Anter Singh v. State of Rajasthan, (2004) 10 SCC 657].

65. Whereas the Hon'ble Supreme Court of India in *Debapriya Pal vs. State of West Bengal* reported at (2017) 11 SCC 31 stated that the recovery and the pointing out memo which directly link with the commission of the alleged offence is relevant and are admissible in the eyes of law. The germane portion of the judgment is extracted below:

“7. ...Under Section 27 of the Evidence Act only so much of recovery, as a result of the disclosure statement, which directly pertains to the commission of crime is relevant. Otherwise, such an evidence is barred Under Section 25 of the Evidence Act. Recovery of laptop does not have any bearing. It is neither the weapon of crime nor it has any cause of connection with the commission of crime. The law on this aspect is succinctly said in the case "Jaffar Hussain Dastagir v. State of Maharashtra MANU/SC/0106/1969: (1969) 2 SCC 872 in the following manner:

5. Under Section 25 of the Evidence Act no confession made by an Accused to a police officer can be admitted in evidence against him. An exception to this is however provided by Section 26 which makes a confessional statement made before a Magistrate admissible in evidence against an Accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 is a proviso to Section 26 and makes admissible so much of the

statement of the Accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the Section is that the information given by the Accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence.”

66. Further the Apex Court in *Asar Mohammad and Ors vs The State of U.P.* reported at AIR 2018 SC 5264, while discussing the admissibility of the discovery of a fact under Section 27 of the Evidence Act, 1872 had stated that the word “fact” as contemplated in Section 27 of the Indian Evidence Act is not limited to the “actual physical possession of material object”, wherein the same also includes the ‘mental awareness and the knowledge’ of the accused persons. The germane portion of the judgment is extracted below:

“14. It is a settled legal position that the facts need not be self-probatory and the word “fact” as contemplated in Section 27 of the Evidence Act is not limited to “actual physical material object”. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place. It includes a discovery of an object, the place from which it is produced and the

knowledge of the accused as to its existence. It will be useful to advert to the exposition in the case of Vasanta Sampat Dupare v. State of Maharashtra²², in particular, paragraphs 23 to 29 thereof. The same read thus:

“23. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in Pulukuri Kotayya v. King Emperor²³ has held thus: (IA p. 77)

“... it is fallacious to treat the ‘fact discovered’ within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that ‘I will produce a knife concealed in the roof of my house’ does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added ‘with which I stabbed A’, these words are inadmissible since they do not relate

to the discovery of the knife in the house of the informant.”

24. In *Mohd. Inayatullah v. State of Maharashtra*²⁴, while dealing with the ambit and scope of Section 27 of the Evidence Act, the Court held that: (SCC pp. 831-32, paras 11-13)

“11. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at the section and be reminded of its requirements. The section says:

*‘27. **How much of information received from accused may be proved.**—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.’*

12. The expression ‘provided that’ together with the phrase ‘whether it amounts to a confession or not’ show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. ***It will be seen that the first***

condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only 'so much of the information' as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word 'distinctly' means 'directly', 'indubitably', 'strictly', 'unmistakably'. The word has been advisedly used to limit and define the scope of the provable information. The phrase 'distinctly relates to the fact thereby discovered' is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the

statement which may be indirectly or remotely related to the fact discovered.

13. At one time it was held that the expression 'fact discovered' in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see Sukhan v. Emperor²⁵; Ganu Chandra Kashid v. Emperor²⁶). Now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see Pulukuri Kotayya v. King Emperor²⁷; Udai Bhan v. State of U.P.²⁸).”(emphasis in original)

25. In Aftab Ahmad Anasari v. State of Uttaranchal²⁹ after referring to the decision in Pulukuri Kotayya³⁰, the Court adverted to seizure of clothes of the deceased which were concealed by the accused. In that context, the Court opined that (Aftab Ahmad Anasari case, SCC p. 596, para 40)

“40. ... the part of the disclosure statement, namely, that the appellant was ready to show the place where he had concealed the clothes of the deceased is clearly admissible under Section 27 of the Evidence Act because the same relates distinctly to the discovery of the clothes of the deceased from that very place. The contention that even if it is assumed for the sake of argument that the clothes of the deceased were recovered from the house of the sister of the

appellant pursuant to the voluntary disclosure statement made by the appellant, the prosecution has failed to prove that the clothes so recovered belonged to the deceased and therefore, the recovery of the clothes should not be treated as an incriminating circumstance, is devoid of merits.”

26. *In State of Maharashtra v. Damu*³¹ it has been held as follows: (SCC p.283, para 35)

“35. ... It is now well settled that recovery of an object is not discovery of a fact as envisaged in [Section 27 of the Evidence Act, 1872]. The decision of the Privy Council in Pulukuri Kotayya v. King Emperor³² is the most quoted authority for supporting the interpretation that the ‘fact discovered’ envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.”

The similar principle has been laid down in State of Maharashtra v. Suresh³³, State of Punjab v. Gurnam Kaur³⁴, Aftab Ahmad Anasari v. State of Uttaranchal³⁵, Bhagwan Dass v. State (NCT of Delhi)³⁶, Manu Sharma v. State (NCT of Delhi)³⁷ and Rumi Bora Dutta v. State of Assam³⁸.

27. In the case at hand, as is perceptible, the recovery had taken place when the appellant was accused of an offence, he was in custody of a police officer, the recovery had taken place in consequence of information furnished by him and the panch witnesses have supported the seizure

and nothing has been brought on record to discredit their testimony.

28. Additionally, another aspect can also be taken note of. The fact that the appellant had led the police officer to find out the spot where the crime was committed, and the tap where he washed the clothes eloquently speak of his conduct as the same is admissible in evidence to establish his conduct. In this context we may refer with profit to the authority in *Prakash Chand v. State (Delhi Admn.)*³⁹ wherein the Court after referring to the decision in *H.P. Admn. v. Om Prakash*⁴⁰ held thus: (*Prakash Chand case*, SCC p.95, para 8)

“8. ... There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a police officer in the course of an investigation which is hit by Section 162 of the Criminal Procedure Code. What is excluded by Section 162 of the Criminal Procedure Code is the statement made to a police officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a police officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found

hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act.”

29. In *A.N. Venkatesh v. State of Karnataka*⁴¹ it has been ruled that: (SCC p.721, para 9)

*“9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in *Prakash Chand v. State (Delhi Admn.)*. Even if we hold that the disclosure statement made by the appellants-accused (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW 4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a*

place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act.” (emphasis supplied)

*15. Applying the principle expounded by this Court, we have **no hesitation in affirming the finding of guilt recorded** against appellant No. 1 - Asar Mohammed.”*

67. Keeping in view the facts of the present case, various material objects(*Pioneer stereo, amplifier with speakers of sound barrier of 5400 watts*) which were affixed in the Santro Car bearing No. DL4CAJ3632, were recovered from the residence(*H No. 906, First Floor, Village Rishalu, Sector-24, Huda Colony, Panipat*) of Amrinder (*Brother-in-Law of appellant/Hardeep*). Further a jacket, tich button, blood stained handkerchief, blood stained shirt's piece, blood-stained Sweater and the weapon of offence(*knife*) stained with human blood were recovered at the instance of the Appellant/Deepak S/o Ramphal, Appellant/Deepak S/o Rampal and Appellant/ Hardeep. The version of the prosecution is also supported with the testimony of Insp Vijay Kumar(PW-43) because both the recovery witnesses HC Ram Narayan (PW26) and Insp Vijay Kumar(PW43) have deposed consistently on the same lines and stood through the test of cross examination.
68. Hence, applying the principles laid down by the Hon'ble Apex Court we are of the view that all the circumstances are hereby established and there is no cogent reason to doubt the aforementioned recoveries

made at the instance of the appellants because the recoveries and the evidence on record establish the fact that all the appellants had the common intention for committing the offence of kidnapping and murder of the deceased Raju Roy.

Medical & Scientific Evidence

69. Dr. Amrit Pal Kaur (PW-35) MO, CHC Raipur Rani, District Panchkula, Haryana, conducted the post-mortem of the deceased Raju Roy and proved the report as Ex.PW33/G wherein he opined that *“the cause of death in this case is due to haemorrhage and shock due to injury of vital organs, which is relevant enough to cause death in normal course of life. All injuries are antemortem in nature”*. The relevant portion from his statement recorded on 29.10.2013 is reproduced below-

“Length of the body was 5’ 1”. There was no ligature mark on the neck. A dead body of a male age approx. 20, wearing black and white check shirt, white baniyan, blood stained full sleeves white and red sleeveless baniyan blood stained, blue underwear, blue jeans, blue socks, white shoes, eyes closed, mouth open both hands tied with rassi and both feet tied with white rassi, cut open and handed over to police. Mouth gaged with white handkerchief, ragormortius present on all the four limbs. Postmortem staining absent on dependent parts, washerman sign present on both the feet. Skull, scalp and vertebrae and membrane, brain, spinal cord, no abnormality was detected.

Injuries

- 1. Incised wound 1.3 x 2.5 cm on the right side vertically present 20 cm. Above upper gluteal cleft.*
- 2. Incised wound 1.3 x .5 cm on right back three cm. Above and lateral to injury no.1.*

3. *Incised wound 1.3 x .5 cm. Lateral to wound no.2 on right side.*
4. *Incised wound 1.3 x .5 cm two cm. below and lateral to injury no.1 on right side.*
5. *Incised wound 1cm x .3 cm on right side of mid line 10 cm above gluteal cleft.*
6. *Incised wound 1.3 x 1 cm on left lateral thigh.*
7. *Incised wound 1.5 x 1 cm 2 cm on posterior lateral aspect of injury no.6 on right thigh.*
8. *Incised wound 1.5 x 0.6 cm on mid thigh on left lateral aspect.*
9. *Incised wound 1.5 x 0.5 cm on left lateral aspect of chest on posterior axillary line 10.cm below the axilla. On further dissection going downwards medially piercing pleura and left lung is ruptured.*
10. *Incised wound 1.3 x 0.5 cm on right lower back just below posterior illac crest, bone deep.*
11. *Incised wound measuring 1.5 x 0.5 cm on right illac crest 10cm from midline on further dissection right illac veins are ruptured.*
12. *Incised wound measuring 1.3 x 0.5 cm 2 cm above the injury no.11.*
13. *Incised wound measuring 1.5 x 0.5 cm on the right back 8 cm from midline.*
14. *Incised wound 2.6 cm x .05 cm above and lateral to injury 13.*
15. *Incised wound 1.5 cm x 0.8. c.m 1.5 above the injury no.13.*
16. *Incised wound measuring 0.1x0.8 cm on right posterior or lower costal margin 10cm from midline. On further dissection going deep and lever is ruptured.*
17. *Incised wound 1.5 cm x 0.5 cm on the right back muscle deep on lower scapular region.*
18. *Incised wound measuring 1.5cm x 1 cm on the right side of back 11 cm above illac crest. On further dissection right kidney is ruptured.*

19. Incised wound 1.5 cm x 1 cm 2 cm below illac crest bone deep.

20. Incised wound 1.3 cm x 1 cm post axillary line below illac crest on the right side.

21. Incised wound measuring 1.3 x 0.5 cm on right side of abdomen and post axillary line 6 cm above illac crest. On further dissection peritoneal cavity is full of blood.

22. Two incised wounds 1.3 x 0.5 cm on right lateral aspect of abdomen, 4 cm x 3 cm above illac crest.

23. Incised wound measuring 1.3 x 0.5 cm in mid axillary region above illac crest muscle deep on right side.

24. Incised wound 1 cm x 0.5 cm below a medical to injury no. 23.

25. Incised wound 0.5 cm x 0.2 cm on the right chest on post axillary region 11 cm below the axilla. On further dissection right pleural ruptured and right lung is ruptured.

26. Two incised wounds 1.5 cm x 0.5 cm each on right forearm on midline lateral aspect.

27. Peritoneal cavity full of blood.

28. Incised wound 1.3 x 0.5 cm on lateral aspect of lower end of costal margins rupturing spleen.

Walls ribs cartilages, larynx, trachea, pericardium, no abnormality detected, pleural cavity full of blood. Right and left lung ruptured.

Heart left chamber empty, right chamber contained clot and blood.

Abdominal wall as described, peritoneal cavity full of blood, mouth pharynx and esophagus as described stomach containing small amount of liquid. Small intestine contained chymes and gases. Large intestine contains faecal matter and gases. Liver, spleen right kidney ruptured, bladder empty, organ of generation healthy.

In our opinion the cause of death in this case is due to hemorrhage and shock due to injury to vital

organs which is sufficient enough to cause death in normal course of life. All injuries are antemortem in nature.

xxxxxx xxxxxxxx xxxxxxxx

After going through the postmortem report and inspecting the knife, I opined that the possibility of injuries mentioned in PMR being caused by that knife cannot be ruled out.

I further opined that variable forces were used to cause those injuries.

I further opined that possibility of single weapon used in causing all injuries cannot be ruled out. I further opined that the cut marks on the clothes of the deceased being caused by that knife cannot be ruled out. My opinion is now Ex.PW35/A, bears my signatures at point A & B.”

70. Further as per the FSL report it was established that human blood stains which were present on the handkerchief and knife matched with the blood samples collected from the spot and it was further opined that the Soil on the handkerchief, tich button andknife matched with the earth control sample lifted from the spot and during the serological examination blood of human origin of group ‘A’ was detected on the handkerchief and on the jacket of the appellants, which evidently proves that they all were together at the place of the incident.
71. In view of the above reports of the doctors, who had conducted the postmortem of the deceased and the FSL report, corroborate with the version of the prosecution and establish the fact that all the appellants have conspired together for the commission of the offence.

Conclusion

72. In our view, the chain of circumstances as recited above coupled with the law laid down by the Apex Court unerringly lead to one

conclusion and that is the guilt of the appellants. Accordingly, in the background of such a scenario, we are of the view that the prosecution has succeeded in establishing its case against the appellants because the evidence adduced by the prosecution is sufficient, cogent and credible to establish that the appellants were the perpetrators of crime.

73. Hence, we find no infirmity in the judgment passed by the learned Trial Court and we see no cogent reason to interfere with the same. The conviction of the appellants U/s 302/365/364A/392/212/120B and Section 34 of the Indian Penal Code is upheld.
74. Accordingly, the appeal are dismissed
75. Trial Court Record be sent back along with a copy of this order.
76. A copy of this order be also sent to Superintendent of Jail, Tihar Jail Delhi.

SANGITA DHINGRA SEHGAL, J.

SIDDHARTH MRIDUL, J.

MAY 31, 2019
da/afa