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

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Date of Judgment: 4th May, 2017

+ **CRL. A. No.1490/2014 & CRL. M. (BAIL) No.361/2017**

SANJAY KUMAR

..... Appellant

Through: Mr. K. Singhal and Mr. Prasanna,
Advocates

Versus

STATE

..... Respondent

Through: Ms. Radhika Kolluru, APP for the
State along with SI Karamvir, P.S.
Narela

CORAM:

**HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MR. JUSTICE VINOD GOEL**

G.S.SISTANI, J. (ORAL)

1. With the consent of the parties, the present appeal is set down for final hearing and disposal.
2. Present appeal is directed against the judgment dated 17.05.2014 and the order on sentence dated 26.05.2014 passed by the learned Trial Court in Sessions Case No.128/2010, FIR No.197/2010, Police Station Narela, by which the appellant was convicted under Sections 302 and 364A of the Indian Penal Code (hereinafter referred to as 'IPC') and sentenced to undergo imprisonment for life along with a fine of Rs.5,000/- and, in default of payment of fine, to further undergo two years simple imprisonment for the offence punishable under Section

302 of IPC. The appellant has also been sentenced to imprisonment for life along with a fine of Rs.5,000/- and in default of payment of fine, to further undergo two years simple imprisonment for the offence punishable under Section 364A of IPC. Both the sentences were ordered to run concurrently.

3. Before the rival submissions of learned counsel for the parties can be considered, we may notice in short the case of the prosecution. Six years old daughter of the complainant had gone to the house of the complainant's brother in the same locality on 23.05.2010 at 7:30 P.M. His brother along with his two sons had gone to fetch water at 7:45 P.M. and on return did not find their niece. All efforts to search her were in vain. The complainant received a call on his Mobile no.9899248061 from Mobile no.9654962866 on 24.05.2010 at 1:00 P.M. for ransom. A demand of Rs.3.0 lakhs was made. On the matter being reported to the Police, an FIR was registered. When the ransom call was again received, the complainant along with his brother were present in the police station but there was no facility of voice recording in the phone of the complainant and thus, the SHO Satish Kumar provided his phone to the complainant who inserted his SIM in that phone and talked with the caller who was ultimately identified as the appellant Sanjay who was the previous neighbour of the complainant. The conversation recorded was sent to FSL after obtaining the voice sample of the appellant and the laboratory came to the conclusion that the voice contained in the CD was of the same

person whose sample voice was sent for examination. The appellant got recovered the dead body from the rented house of his father.

4. To bring home the guilt of the appellant, the prosecution examined 28 witnesses in all. No evidence was led by the appellant in his defence. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure.
5. Mr. Singhal, learned counsel appearing for the appellant contends that the judgment and order on sentence are illegal as the prosecution has failed to prove its case beyond reasonable doubt. Counsel contends that there is no evidence to show that the victim was kidnapped by the appellant. Counsel contends that there is no evidence on record to substantiate the claim of the prosecution that the appellant was facing financial crunch during the days of the alleged incident. Counsel contends that post-recovery of the dead body, the entire story was cooked up to falsely implicate the appellant. Additionally, it is contended that there is no evidence to show that the SIM card of PW-10 Rekha which was used in the commission of the offence to make ransom was in the possession of the appellant and used by the appellant. Mr. Singhal submits that in the absence thereof, the appellant herein cannot be linked to the offence.
6. Per contra, Ms. Radhika, learned counsel for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt. The counsel submits that as per the testimony of PW-6 Gaurav Bansal and PW-7 Pawan Kumar, the appellant had purchased goods from their shop and did not make the payment. PW-6 had contacted

the landlord of the appellant who informed PW-6 that appellant had borrowed money from him as well. PW-11 Vijay also testified that appellant had borrowed Rs.1200/- from him five-six months prior to the date of the incident which was not paid. Reliance is placed on the testimonies of PW-5 Dharambir and his cousin brother PW-17 Bharat Kumar to show that the appellant was residing earlier in the vicinity of the complainant. He had vacated the house only a month and a half or two months prior to the kidnapping. No suggestion was given by the counsel for the appellant to challenge the testimonies of these witnesses that the appellant was not the previous neighbour of PW-5. She further submits that this fact was admitted by the appellant in his statement recorded under Section 313 of the Code of Criminal Procedure. It is further submitted by the counsel for the State that in response to another question in the statement under Section 313 of the Code of Criminal Procedure, the appellant had admitted that he used to visit the house of the complainant. Counsel submits that it stands duly proved that the mobile phone was given to the appellant by PW-8 Chandan and it has been proved by the prosecution that the mobile phone was used by the appellant to make the ransom call. Learned counsel further submits that the conversation between the appellant and the complainant was recorded in the handset Exhibit P-7 of PW-26, Inspector Satish Kumar. She submits that the complainant had recognized the voice of the appellant. The counsel submits that the dead body was recovered at the instance of the appellant from the house of his father. The house was lying locked and the keys were with the appellant. She submits that it is also admitted by the

appellant that he had taken phone of Chandan in response to Q.No.49. Reliance is also placed on the FSL report which was proved as Ex.PX-1 and Ex.PX-2.

7. We have heard the learned counsel for the parties and given our thoughtful consideration to the matter. In this case, on consideration of evidence and material on record and after considering the arguments advanced, we have found that the following circumstances were relied upon by the trial Court to convict the appellant:

- i) The appellant was in financial crunch before the incident which was duly proved from the testimonies of PW6 Gaurav, PW7 Pawan Kumar and PW11 Vijay;
- ii) Testimonies of PW5 Dharambir and PW17 Bharat Kumar were relied upon to show that the appellant Sanjay was residing earlier in the vicinity of the complainant and was well aware about the financial status of the appellant;
- iii) Mobile set bearing IMEI No. 35462303023545 was used by the appellant while making the ransom demand on 24.05.2010;
- iv) Transcript Ex.PW20/B on record proves the conversation between the appellant and the complainant wherein the demand of ransom was recorded;
- v) Dead body of the deceased was recovered at the instance of the appellant from his father's tenanted house.

8. In order to deal with the contentions of both the parties, it would be appropriate to examine the testimonies of material witnesses including PW5 Dharambir (complainant), PW4 Kishan (real brother of complainant) and PW17 Bharat Kumar (cousin brother of complainant).
9. PW5 Dharambir (complainant in the present case) deposed in his examination-in-chief that on the fateful day when his daughter Rakhi did not return from the home of his brother Kishan (PW4), they searched for her till the noon of 24.05.2010 but she could not be traced. On 24.05.2010 at 12.30/1.00 PM, he received a call on his mobile number 9899248061 and was informed that his daughter was kidnapped and a demand for Rs. 3 lakhs was made for her release. On inquiry about the place of delivery of the said money, the caller informed that the same shall be told later. Immediately thereafter, he alongwith his brother went to police station where his statement Ex.PW5/A was recorded. The next ransom call was received at 5.00 PM when both of them were present in the police station. The kidnapper asked if he had arranged money or not but PW5 sought time for the arrangement of money. Another call was received by him when he left for his house. Thereafter, he rushed to the police station where SHO gave his mobile phone in which he inserted his own SIM card as there was no facility of voice recording in his mobile phone. Finally, the ransom money was settled at Rs. 1.5 lakhs and the kidnapper assured that her daughter would be released next day after the payment of the ransom amount. On his insistence, he was made to talk

to her daughter. However, he immediately identified the voice and realised that the said voice was not of her daughter. The kidnapper insisted for the payment of the ransom amount on the night itself. When PW5 expressed his inability, the kidnapper assured him that the money would be collected from the place near to him. The kidnapper asked PW5 to come alone. PW5 recognised the voice of the kidnapper and identified him as Sanjay Bihari mason (the appellant herein). The conversation between the appellant and PW5 was recorded in the presence of his cousin brother Bharat Kumar (PW17). The appellant used to reside in his locality one and a half months prior to the incident. PW5 further deposed that they were called in the police station on the same night; a raiding team was left to raid the house of the appellant. On reaching, the appellant was found sleeping on the roof of his house. Initially, the appellant told them that his daughter was with his brother Chandan but later he broke down at 6.00 AM and confessed that he had kidnapped and murdered his daughter. The dead body of victim Rakhi was recovered at the instance of the appellant from a house where he earlier used to reside and opened the gate of the room with the keys in his possession. The dead body was seized vide seizure memo Ex.PW5/B. Other articles like *dari*, lock and keys were also seized. PW5 identified the clothes of the deceased including T-shirt and *pyjama*.

10. PW4 Kishan (real brother of complainant) deposed that Dharambir alongwith his family including his daughter (since deceased) was residing in his neighbourhood. The deceased came to his house on

23.05.2010 at 7.30 PM. At about 7.45 PM, he alongwith his sons went to nearby tubewell to fetch water after leaving deceased at his home. After return, they did not find the deceased and searched for her till late night. But despite all the efforts, she was not found.

11. PW17 Bharat Kumar (cousin brother of the complainant) deposed in his examination-in-chief that on 23.05.2010 Rakhi (deceased) went missing and was not found. On 24.05.2010, when he returned from his work, he came to know that Dharambir (PW5) received a call of ransom. He accompanied Dharambir to the police station. At 6.00 PM, when they were present in the police station, they received a call from the kidnapper which was disconnected midway. SHO gave his mobile to Dharambir as there was no recording facility in his phone. Dharambir again received a call at 8.45 PM and the conversation between the appellant and Dharambir was recorded however call was again dropped. Thereafter, Dharambir called the appellant and after conversation with the appellant, they recognised the voice of the caller and realised that it was Sanjay (the appellant herein).
12. Besides the above public witnesses, PW20 SI Narender Singh was the first Investigating Officer of the present case. On the basis of the complaint made by the complainant Dharambir, he made the *rukka*, Ex.PW20/A which led to the registration of FIR by PW-1 HC Sneha Lata and proved the same as Ex.PW1/A. Transcript of the conversation between the appellant and the complainant was proved as Ex.PW20/B. PW28 Insp. Narender Singh was the second Investigating Officer in the present case to whom the investigation

was assigned after registration of FIR. PW12 Insp. Sanjay Gade visited the spot from where the dead body of the deceased was recovered. He prepared the crime team report which was proved as Ex.PW12/A. PW27 SI Manohar Lal (draftsman) prepared the scaled site plan of the spot which was proved as Ex.PW27/A.

13. Since the case of the prosecution was based on circumstantial evidence, we deem it appropriate to deal with the circumstances against the appellant and the submissions of the learned counsel for the appellant under separate heads.

Medical Evidence

14. We have examined the post-mortem examination of the deceased. On 25.05.2010, PW18 Dr. V. K. Jha conducted post-mortem of the deceased, his detailed report is Ex.PW18/A. The following injuries were found on the body of the deceased:

External Injuries:

- i) There was peeling of skin all over the body and gaseous distension of abdomen;
- ii) Pressure abrasion mark on left submandibular region 3 cm x 2 cm;
- iii) Scratch abrasions on right side of neck multiple of size varying from 0.5 cm to 1 cm.

Internal Examination:

Bruising on both sides of the neck.

15. After post-mortem examination, PW18 Dr. V. K. Jha opined the cause of death as asphyxia due to manual strangulation. All the injuries were ante-mortem in nature and injury No.2 was sufficient to cause death in the ordinary course of nature. Time since death was about 39 hours prior to post-mortem examination.

FSL RESULTS:

16. We may note that the matching of the voice sample of the appellant, Ex.PX-1 is the most important and fatal circumstance against the appellant Sanjay. The results of CFSL report reads as under:

“RESULTS OF EXAMINATION/OPINION:

The auditory analysis of recorded speech samples of speakers marked ‘Exhibit-Q1’ and ‘Exhibit-S1’ and subsequent acoustic analysis of speech samples by using Computerize Speech Lab (CSL) revealed that the voice exhibits of speaker marked ‘Exhibit-Q1’ are similar to the voice exhibits of speaker marked ‘Exhibit-S1’ in respect of their acoustic cues and other linguistic and phonetic features.

Hence, the voice exhibit of speakers marked ‘Exhibit-Q1’ and ‘Exhibit-S1’ are the voice of the same person i.e. (Sh. Sanjay Kumar).”

Statement under Section 313 of the Code of Criminal Procedure:

17. We may also note the statement made by the appellant Sanjay under Section 313 of the Code of Criminal Procedure, more particularly;

answer to questions No. 3, 17, 24 and 49 to conclude that the appellant admitted the incriminating circumstances against him. The questions reads as under:

“Que.3 It is in evidence against you that 2-3 months prior to the month of July, 2010, you accused used to reside as a tenant in the house i.e. H.No. 210, Nai Basti, Village Singhu of PW13 Manjay alongwith his family and used to work as a mistri. What have you to say?”

Ans. It is correct.

Que. 17 It is in evidence against you that on the same night PW26 inspt. Satish Kumar again called PW4 Kishan and PW5 Dharambir but PW5 and PW17 Bharat Kumar went to PS. PW5 Dharambir then told PW26 that he was able to find out your address from his own circle and sources. PW26 inspt. Satish prepared a team and sent some police officials with PW5 and PW17 to your house at Singhu border and they reached your house and you were found sleeping on the roof of your house. Initially you did not admit your involvement and you claimed that Rakhi was with Chandan, brother of you accused. What have you to say?”

Ans. It is correct.

Q.24 It is in evidence against you that you used to come to the house of PW5 Dharambir for taking tea etc. and used to cross from outside of the house of PW5 and daughter of PW5 Rakhi also knew you. What have you to say?”

Ans. It is correct.

Q.49 It is in evidence against you that on 24-05-2010 it was Monday when you reached the house of PW8 Chandan at 11.30 AM at Narela and demanded his mobile phone for use. You removed his SIM No.

99102787452 (in his father's name Ram Sagar) from the phone and gave it to him but you retained the handset Ex.P3. It is further in evidence that you returned PW8 Chandan his mobile handset at 5.00 PM on the same day but again took the same set from him on the same day at 6.30 PM. What have you to say?

Ans. *It is correct.*”

18. Undoubtedly the present case is based on circumstantial evidence. The law with regard to circumstantial evidence is well settled. A coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in **Prem Singh v. State** MANU/DE/1341/2016 has observed as under:

“46. The case of the prosecution is entirely based on circumstantial evidence. It is settled law that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete, forming a chain and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally inconsistent with his innocence.

47. The principle of circumstantial evidence has been reiterated by the Hon'ble Apex Court in plethora of cases. In Bodhraj @ Bodha and Ors. v. State of Jammu & Kashmir, (2002) 8 SCC 45, the Hon'ble Apex Court quoted number of judgments and held as under:

“10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt

of any other person. (See Hukam Singh v. State of Rajasthan : (1977) 2 SCC 99, Eradu v. State of Hyderabad : AIR 1956 SC 316, Earabhadrapa v. State of Karnataka : (1983) 2 SCC 330, State of U.P. v. Sukhbasi (1985) Suppl. SCC 79, Balwinder Singh v. State of Punjab : (1987) 1 SCC 1 and Ashok Kumar Chatterjee v. State of M.P. 1989 Suppl. (1) SCC 560). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab : AIR 1954 SC 621, it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt. 11. We may also make a reference to a decision of this Court in C. Chenga Reddy v. State of A.P., (1996) 10 SCC 193, wherein it has been observed thus: (SCC pp. 206-07, para 21)

21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

48. In Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681, the Hon'ble Supreme Court held as under:

“12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances

should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.”

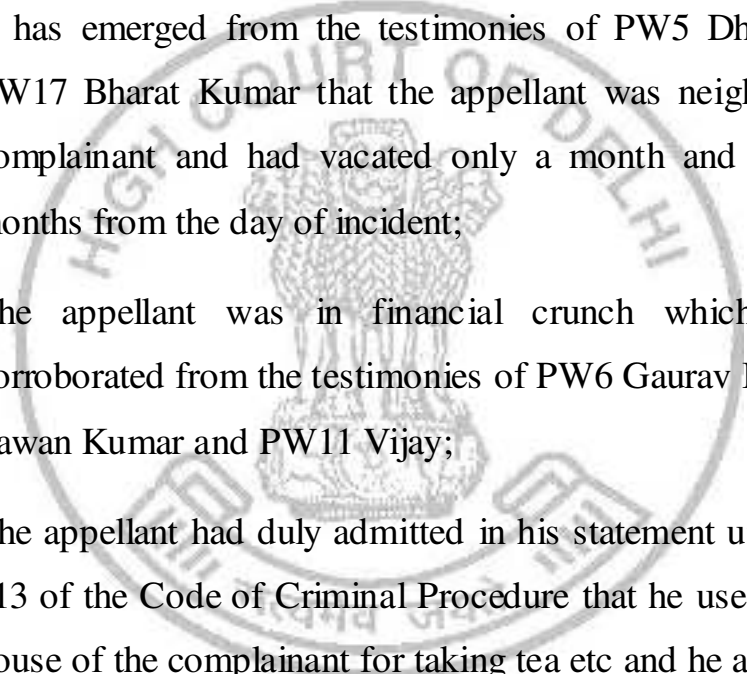
49. The same principles were reiterated in *Sunil Clifford Daniel v. State of Punjab*, (2012) 11 SCC 205, *Sampath Kumar v. Inspector of Police, Krishnagiri*, (2012) 4 SCC 124 and *Mohd. Arif @ Ashfaq v. State (NCT of Delhi)*: (2011) 13 SCC 621.

50. In case of circumstantial evidence, the Court has to examine the entire evidence in its entirety and ensure that the only inference that can be drawn from the evidence is the guilt of the accused. For establishing the guilt on the basis of the circumstantial evidence, the circumstances must be firmly established and the chain of circumstances must be completed from the facts.”

(Emphasis Supplied)

[Also see *Kamaljeet v. State*, in Criminal Appeal No. 453/2013, decided on 23.05.2017 and *Ravinder v. State of NCT of Delhi*, in Criminal Appeal No. 1075/2016, decided on 08.05.2017.]

19. Coming to the case in hand, the prosecution has been able to establish the following circumstances which form a complete chain of events and the interference as to the guilt of the appellant stands fully established beyond any shadow of doubt:

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- i) On 24.05.2010 at 12.30 or 01:00 PM, the first ransom call was received by PW5 Dharambir whereby the appellant had made a demand of Rs. 3 lakhs for the release of victim Rakhi;
 - ii) As per the results of FSL (Ex.PWX-1) the voice of the appellant Sanjay matched with the transcript (Ex.PW20/B) available on record. This proved that the victim was with the appellant and the appellant made a demand of ransom for her release;
 - iii) It has emerged from the testimonies of PW5 Dharambir and PW17 Bharat Kumar that the appellant was neighbour of the complainant and had vacated only a month and half or two months from the day of incident;
 - iv) The appellant was in financial crunch which was duly corroborated from the testimonies of PW6 Gaurav Bansal, PW7 Pawan Kumar and PW11 Vijay;
 - v) The appellant had duly admitted in his statement under Section 313 of the Code of Criminal Procedure that he used to visit the house of the complainant for taking tea etc and he also knew the victim Rakhi. The appellant further admitted that on the fateful day he borrowed mobile phone of one PW8 Chandan on two occasions;
 - vi) Recovery of mobile set bearing IMEI No. 35462303023545 which belonged to PW8 Chandan but on the fateful day of 24.05.2010, the mobile phone was borrowed by him twice and was used by the appellant while making the ransom demand.

The same was proved from the CDR's of mobile phones of PW5, PW8 and the appellant herein;

- vii) The deceased died due to asphyxia as a result of manual strangulation. As per the post-mortem report time between death and post-mortem examination was about 39 hours. Therefore, the time of death can be estimated to the intervening night of 24-25.05.2010 between 2.00 AM to 6.00 AM. Furthermore, the dead body of the victim was recovered in the late hours of 25.05.2010 i.e. after 24 hours of murder;
- viii) Lastly, the dead body of the deceased was recovered at the instance of the appellant from the tenanted premises of his father. The possession of keys to the said premises further strengthens the culpability of the appellant.

- 20. Having regard to the entire evidence available on record and the circumstances proved by the prosecution, mentioned in paragraph 20 aforegoing, conclusively point towards the guilt of the appellant Sanjay and no other inference can be drawn. There is no break in the chain of circumstances established by the prosecution. We find no infirmity in the judgment and order on sentence passed by the trial Court which would require interference by this Court. Accordingly, we uphold the conviction and sentence awarded by the trial Court.
- 21. The appeal is dismissed.
- 22. The trial Court record be sent back along with a copy of this judgment.

23. Copy of this judgment also be sent to the Superintendent-Central Jail, Tihar for updating the jail record.

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24. In view of the above, the application stands infructuous.

G. S. SISTANI, J.

VINOD GOEL, J.

MAY 04, 2017
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