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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 1st October 2018

Decided on: 31st October 2018

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CRL.A. 218/2018 & CRL.M.(BAIL) 311/2018

JOGINDER @ MINTU

...Appellant

Through: Mr. Hans Raj Singh, Advocate

versus

THE STATE GOVT OF NCT OF DELHI

....Respondent

Through: Mr. Kewal Singh Ahuja, APP with SI Bhagat Singh, PS Ashok Vihar.

Mr. Rajiv Mohan, Mr. Abhimanyu Kampani, Mr. Abhishek Shrivastava, Ms. Priyanka Singh, Mr. Ankur Rai, Mr. M.A. Karthik, Mr. Yuvraj Nain & Mr. Manish Phogat, Advocates for the Complainant.

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CRL.A. 319/2018 & CRL.M.(B) 446/2018

VIKAS CHAUDHARY

...Appellant

Through: Mr. Ajay Burman, Senior Advocate with Mr. Rajesh Harnal, Ms. Tanya Harnal, Mr. Sahil Verma and Ms. Sadhvi Gaur, Advocates.

versus

STATE (NCT OF DELHI)

....Respondent

Through: Mr. Kewal Singh Ahuja, APP with SI Bhagat Singh, PS Ashok Vihar.

Mr. Rajiv Mohan, Mr. Abhimanyu Kampani, Mr. Abhishek Shrivastava, Ms. Priyanka Singh, Mr. Ankur Rai, Mr. M.A. Karthik, Mr. Yuvraj Nain & Mr. Manish Phogat, Advocates for the Complainant.

+ **CRL.A. 360/2018, CRL.M.(B) 502/2018, CRL.M.(B) 1010/2018 & CRL.M.A. 9645/2018**

VIKAS SIDHU

...Appellant

Through: Mr. Ajayinder Sangwan, Mr. Narendra Singh, Ms. Rishina Parashar and Mr. Rohan Sharma, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI

....Respondent

Through: Mr. Kewal Singh Ahuja, APP with SI Bhagat Singh, PS Ashok Vihar.
Mr. Rajiv Mohan, Mr. Abhimanyu Kampani, Mr. Abhishek Shrivastava, Ms. Priyanka Singh, Mr. Ankur Rai, Mr. M.A. Karthik, Mr. Yuvraj Nain & Mr. Manish Phogat, Advocates for the Complainant.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

JUDGMENT

Dr. S. Muralidhar, J.:

1. These three appeals are directed against the judgment dated 13th November 2017 passed by the learned Additional Sessions Judge (Central), Tis Hazari Courts, Delhi ('trial Court') in Sessions Case No.27963/2016 arising out of FIR No.34/2003 registered at PS Ashok Vihar convicting the Appellants, viz. Vikas Sidhu (Accused No.1: 'A-1' who has preferred Crl.A.360/2018), Vikas Chaudhary ('A-2' who has preferred Crl.A.319/2018), and Joginder @ Mintu ('A-3' who has preferred Crl.A.218/2018), for the offences under Sections 120B, 364A, 302, and 201 IPC. Additionally, A-1 and A-2 were held guilty of the offence punishable

under Section 411 IPC. A-1 was also held guilty of the offences punishable under Sections 420, 468, and 471 IPC.

2. These appeals also seek to assail the order on sentence dated 23rd December 2017 whereby A-1 and A-2 were sentenced to undergo life imprisonment for the offences punishable under Sections 364A and 302/120B IPC “which means and implies, throughout their natural life”. The trial Court further directed that they would not be entitled for “any parole, remission or any furlough before 30 years of imprisonment” for the said offences. Each of them was sentenced to pay a fine of Rs. 2 lakhs and in default of payment, to undergo simple imprisonment (‘SI’) for one year. As far as A-3 was concerned, he was sentenced to undergo life imprisonment for the offences punishable under Sections 364A and 302/120B IPC “which means and implies, throughout his natural life”. He too was sentenced to pay a fine of Rs. 2 lakhs and in default of payment, to undergo SI for one year.

3. For the offence under Section 201 IPC, all three Appellants were sentenced to undergo rigorous imprisonment (‘RI’) for three years and payment of a fine of Rs. 10,000/- and in default of payment, to undergo SI for six months. For the offence under Section 411 IPC, A-1 and A-2 were sentenced to undergo RI for two years and payment of a fine for Rs. 10,000/- and in default of payment, to undergo SI for six months.

4. For the offences punishable under Sections 420, 468 and 471 IPC, A-1 was sentenced to undergo RI for three years and payment of fine of Rs. 10,000/- and in default of payment, to undergo SI for six months. Each of the convicts i.e. A-1, A-2 and A-3 were directed to pay compensation of

Rs. 4 lakhs to the family of the deceased.

The charges

5. The charges against the Appellants were initially framed on 4th April 2005 and were thereafter amended on 16th April 2009. The charges against the Appellants were that, first, on or before 18th January 2003, they entered into a conspiracy to kidnap Parakh Chadha (the deceased), aged about 20 years, son of Vimal Chadha (PW-3) for ransom; secondly, at around 7:30 pm on 18th January 2003, they kidnapped the deceased from near H.No.C-2/44, Ashok Vihar, Phase-II, Delhi so that he may be put to death so as to compel his parents to pay a ransom and to this end, they made ransom calls on various dates up to 11th March 2003; thirdly, in furtherance of the aforementioned conspiracy, the three Appellants committed the murder of the deceased on the night of 18th January 2003 by strangulating him; and fourthly, after committing the murder of the deceased, with an intention to screen themselves from prosecution, they burnt the dead body of the deceased with petrol and threw it in a ditch near the Hindon river near Ghaziabad.

6. A-2 was further charged with having been found in possession of one wrist watch belonging to the deceased that he is alleged to have received or retained despite having reason to believe the same to be stolen. A-1 was also charged with having forged a photocopy of his passport and making misrepresentations on a customer application form so as to dishonestly procure a SIM card from which to make ransom calls. He was also charged with having been found in possession of a gold chain belonging to the

deceased that he is alleged to have received or retained despite having reason to believe the same to be stolen.

The deceased goes missing

7. Vimal Chadha (PW-3) and Sunaina Chadha (PW-7) are the parents of the deceased. PW-3 ran a factory at Mayapuri while the family resided at Ashok Vihar, Phase-II. Apparently, the deceased had discontinued his studies and was helping his father (PW-3) in running the family business.

8. PW-7 stated that at around 7:30 pm on 18th January 2003, she was standing on the balcony of the first floor when the bell rang. From the balcony, she noticed a boy aged about 23 years standing at the gate. The deceased went to the gate to answer the bell while two of his friends, viz. Pawan and Bakul, also reached there. PW-7 then states that the deceased was in conversation with the aforementioned friends when the boy who rang the bell whispered something in his ear and then went towards the park in front of the house. She states that she then went into her room. In Court, she identified A-1 as the boy who rang the bell.

9. Ramdeen (PW-2), who worked as domestic help in a neighbouring house, states that at the relevant time, he was standing outside the house where he worked with his friend, Ramdev. He states that he saw a black Yamaha motorcycle with two persons on it make a round of the area. According to him, they spoke to a person who was standing in the park. He deposes that ultimately, one of the two boys came alone on the motorcycle to H.No.C-2/46 and pushed the bell at the gate in response to which, the deceased came out of his house. Thereafter, the person on the motorcycle

started talking to the deceased. In the meantime, two more persons purportedly came on another motorcycle and were told something by the first person who had earlier pushed the bell. Thereafter, the first person left for the park in front of the house and the two persons who had come together also left. Thereafter, the deceased purportedly also went to the park where the aforementioned three persons were already gathered.

10. In Court PW-2 identified A-1 as the person who arrived at the deceased's house first and pushed the bell, A-2 as the person to whom the deceased was talking in the park, and A-3 as the person who was already standing in the park. PW-2 deposed that all of them, including the deceased, then left from the park on their respective motorcycles and headed towards the Central market.

11. The deceased failed to return home till midnight. PW-3 then went to PS Ashok Vihar and gave a statement regarding his son, the deceased, having gone missing after having left with his friends at around 7:30 pm on 18th January 2003. PW-3 disclosed certain material details about his son such as him being 5'4" in height, his wheatish complexion, and having a long face and strong build. He further stated that the deceased was wearing white sports shoes, cream coloured trousers, and high-necked black and red sweater.

Ransom calls made to PW-3

12. Atul Sehgal (PW-1) is the brother-in-law of PW-3. PW-1 stated that at around 9 to 9:15 pm on 18th January 2003 he received a call from PW-3 stating that the deceased had gone missing from home. PW-3 asked PW-1

whether the deceased was at the home of PW-1. Since PW-1 was in Connaught Place, he informed PW-3 that he would return home and check. When PW-1 reached home at around 10:30-10:45 pm, his mother informed him that the deceased had not come there. They went to the house of PW-3 and, after waiting till midnight, returned home.

13. PW-1 stated that he then went to the house of PW-3 at around 1:30 to 2 pm on 19th January 2003. PW-3 had gone in search of his missing son when, at around 2 pm, a phone call was received at the house of PW-3 on the landline which was attended by PW-1. According to PW-1 the caller made a demand of Rs. 35 lakhs in exchange for the release of the deceased. PW-1 stated that before he could make any further enquiries, the caller disconnected the call. PW-1 informed PW-3 about the call. They both then went to PS Ashok Vihar to lodge a complaint (Ex.PW-3/A) about the abduction of the deceased and the subsequent demand of ransom of Rs. 35 lakhs.

14. According to PW-3, he had a voice recording system installed on his landline number ending '9038' on 19th January 2003. On 20th January 2003, PW-3 went to PS Ashok Vihar since he had forgotten to mention in his complaint the previous day that the deceased "was wearing a gold chain with locket of P-Mark with two diamonds inserted in that locket and was also wearing a wrist watch, make Titan, of golden colour".

15. According to PW-3, on 20th January 2003, he received another ransom call, again on the landline. This time the caller claimed that the deceased was with him and asked PW-3 whether the arrangements for the payment of

ransom had been made. The caller refused PW-3's request that he bring the deceased on the line so that PW-3 may talk to him. PW-3 claimed that this conversation was recorded on the voice recording system and a transcript of the same was subsequently handed over to the police.

16. According to PW-3, the next ransom call was received on 1st February 2003 on the landline with the caller asking PW-3 to leave for Agra from his house at 1 pm, the next day. The caller again refused to bring the deceased on the line so as to enable PW-3 to talk to him. He reiterated that PW-3 should leave for Agra with the money in his Opal Astra car. The caller also noted the mobile number of PW-3 (which ended in the digits 7709).

17. According to PW-3, on 2nd February 2003, he again received a call from the caller, this time on his mobile phone. The caller instructed him to start at 3 pm instead of 1 pm. Thereafter, he received another call at 3 pm whereby the caller instructed him to leave for Agra at 5 pm. At 5 pm, PWs 1 and 3 left for Agra with the money and police assistance. While he was on his way, PW-3 received instructions on his mobile phone to go to Ghaziabad instead of Agra. The caller asked him to reach a place at Indrapuram/Indra Vihar which was about 25-30 km away from the Inter State Bus Terminal ('ISBT').

18. According to PW-3, when they reached Indrapuram, nobody came to collect the money. The calls received by PW-3 on his mobile phone on 2nd February 2003 could not be recorded as he did not have the voice recording facility on his mobile phone. However, according to PW-3, these

conversations were being heard by Assistant Commissioner of Police ('ACP'), Mr. Joy Tirkey (PW-33), who was in a different vehicle but had the provision of a parallel line to PW-3's mobile number ending '7709'.

19. On 10th March 2003, PW-3 received another call on his mobile phone from another mobile number. The caller introduced himself as a doctor who was treating the deceased who he said was in the custody of "some bad elements". PW-3 states that this caller, without mentioning anything about the deceased having been kidnapped, asked on his own initiative how much ransom had been demanded. When PW-3 told him that approximately Rs. 25 lakhs had been demanded as ransom, the caller said that he wanted a sum of Rs. 20 lakhs for providing information about the deceased and the whereabouts of his captors. PW-3 agreed to pay the said sum and told the caller that he had already arranged for the money. PW-3 stated that as his mobile phone was not displaying the number of the caller, he asked the caller to tell him the caller's mobile number. The caller gave him the number and warned him that it should not be passed on to the police or else the life of the deceased would be in danger.

20. PW-3 stated that he exchanged 3-4 calls with the caller throughout the day on 10th March 2003. Although PW-3 stated that he did not remember the details of these conversations, he claimed that the transcripts of the same were handed over by him to the police.

21. PW-3 received yet another call on 11th March 2003 on his mobile number. According to PW-3, the caller claimed to be the brother of the doctor who had called him the previous day. The caller purportedly asked

PW-3 to make a payment of Rs. 20 lakhs. During the call, PW-3 asked the caller to confirm that the deceased was in fact present in their custody. In order to verify this, he asked the caller to confirm the name of the mother of the deceased, the names of his siblings, and the registration of PW-3's car. The caller insisted on PW-3 calling him from a Public Call Office ('PCO'). PW-3 then went to the office of his friend, Sardar Inderjeet Singh (PW-38), and made a call from his landline number to the ransom caller's mobile number. The mobile number of the caller was the same on both dates, i.e. 10th and 11th March 2003.

22. According to PW-3, these conversations were also recorded on the voice recording system and transcripts thereof were given to the police. According to PW-3, he made a compilation of these calls in a cassette and deposited the same with the police on 2nd May 2003.

Investigation by police

23. Sub-Inspector (SI) Naresh Kumar (PW-19) was present at PS Ashok Vihar when PW-3 called him to make a complaint about the deceased having gone missing. PW-19 was also present when, in the afternoon of 19th January 2003, PWs 1 and 3 went to PS Ashok Vihar to inform the police that a ransom amount of Rs. 35 lakhs had been demanded for the release of the deceased. PW-19 recorded the statement of PW-3, prepared the *rukka* (Ex.PW-19/A), and sent it for registration of the FIR.

24. PW-19 along with Station House Officer ('SHO'), Inspector Shiv Dayal (PW-37), and senior officers went into the house of PW-3 on 19th January 2003 where they met PW-7 and her daughter. He recorded their statements

and collected recent photographs of the deceased. Thereafter, PW-19 returned to the PS. PW-3 then came there and made a supplementary statement.

25. On 21st January 2003, PW-2 purportedly contacted PW-19 in the PS and stated about what he had seen in the evening of 18th January 2003. PW-19 then shared this information with the SHO and other senior officers. Accompanied by the SHO and officers, PW-19 then went to the spot and recorded the statement of PW-2. PW-19 also recorded the statement of another watchman, viz. Ramdev (not examined). According to PW-19, in his presence, the SHO deputed Constable (Ct.) Pramod to monitor the calls.

26. PW-19 was also present when, on 10th March 2003, PW-3 came to the PS to inform about having received a ransom call on his mobile phone. Thereafter, on 11th March 2003, PW-3 informed PW-19 about having received further calls making demand for ransom to be paid. PW-19 sent the caller details for verification from the mobile agency. He found that the address of the caller was forged. PW-19 then tracked down the IMEI number of the mobile phone used by the caller and conveyed it to the mobile agencies to track down the same. On 2nd May 2003, PW-19 received an audio cassette containing the ransom calls recorded by PW-3 which was seized (Ex.PW-3/B) and the statement of PW-3 in this regard was recorded.

Tracking the callers making ransom calls

27. Mention must also be made about the role of ACP John Tirkey (PW-33). He confirmed that the calls received by PW-3 on his mobile phone were intercepted and also that he had accompanied him on 2nd February 2003 to

Agra albeit in a different car. Despite calling PW-3 to Shyam Lal College and thereafter, to Indranagar, Ghaziabad, the accused did not come forth to collect the ransom amount. He also confirmed the ransom calls made to PW-3 on 10th and 11th March 2003.

28. According to PW-33, the mobile number ending '3554' was found to have been taken on a fake address. The IMEI number of the phone was checked and was found to be working on an Idea Cellular phone number ending '4722'. Upon enquiries from the company, it was found that the number ending '4722' was taken in the name of one Suraj Joshi, resident of Mahindra Park, Adarsh Nagar.

Arrests and seizures

29. On 4th May 2003, ASI Raj Singh (PW-35), after verifying the address of the number ending '4722', went to the aforementioned address along with PW-37, PW-19, Ct. Om Prakash (PW-17), and Ct. Balvinder (PW-15). They met Suraj Joshi (PW-9) there who then led them to the house of Anirudh Saini (PW-8). Upon enquiries being made, PW-8 informed them that the said mobile number was used by him from 2002 to 15th March 2003. When asked specifically about the usage of said number between 10th and 11th March 2003, PW-8 informed the police that A-1, who he referred to as a friend, had taken the said mobile phone from him on 8th March 2003 and had returned it on 13th March 2003. Thus, for the first time in the investigation, a link was established to A-1.

30. After recording the statement of PW-8 and discharging him from the investigation, the police party reached the residence of A-1 at E-167, Ashok

Vihar, Phase-I. He purportedly confessed to his involvement in the crime when interrogated and also disclosed the involvement of his associates, viz. A-2 and A-3. His disclosure statement (Ex.PW-11/A) was recorded.

31. A-1 got recovered a black Yamaha motorcycle bearing registration DL-8SF-5661 on the front and DL-8SF-5561 on the rear. A-1 supposedly further disclosed that this was the same vehicle on which the deceased was taken away. A-1 also allegedly got recovered a gold chain with a locket, which was then seized. A-1 also purportedly got recovered a black muffler from his house by which he along with the other co-accused had allegedly strangled the deceased. This too was seized.

32. A-1 is supposed to have then led the investigating team to E-39, Ashok Vihar, Phase-I from where they got recovered a white Maruti 800 car bearing registration DDC 5401. According to the police, A-1 disclosed that this vehicle was used in the abduction of the deceased and his eventual murder inside the car. The car was seized (Ex.PW-11/F) in the presence of its owner, Harinder Pal Singh (PW-31).

33. The police team then went to 132, Police Colony, Ashok Vihar from where they apprehended A-2 on the pointing out of A-1. A-2 made a disclosure (Ex.PW-11/G) and purportedly got recovered a gold coloured Titan wristwatch. This was kept in a *pulanda* and sealed. Thereafter, on the basis of the disclosures of both A-1 and A-2, the police reached WP-111, Wazirpur and on their pointing out, A-3 was apprehended. According to the police, all of this happened in the presence of a public witness, Shyam Sunder Kohli (PW-11), who happened to have approached them when they

were proceeding towards the house of A-1.

34. According to ASI Raj Singh (PW-35), one Shubhankar Mitra (not examined) produced a mobile phone with the number ending '4722' and informed the police that he had purchased it from PW-9 through PW-8. This too was seized and sealed.

Further steps in investigation

35. On 5th May 2003, all three accused were taken out from lock up and thereafter, A-1 led the police team to his house from where he got recovered his passport and some documents pertaining to the motorcycle which were then taken into possession (Ex.PW-19/H).

36. On the same date, PW-37 directed Inspector Rajbir Singh, the Additional SHO of PS Ashok Vihar, to record the voice samples of A-1 and A-2. This was done in the presence of a public witness, Kanhaiya (PW-10). The cassette marked S-1 is stated to be the voice sample of A-2 and that marked S-2, the voice sample of A-1. These were seized and sealed.

37. Thereafter, according to PW-37, the three accused were produced before the learned Metropolitan Magistrate ('MM') in muffled faces and then sent to judicial custody.

38. On 8th May 2003, the three accused were produced in the Court of learned MM for fixing a date for conduct of a Test Identification Parade ('TIP'). However, all three of them refused to take part.

39. According to PW-37, it was only thereafter that A-1 was identified by

PW-7 as the person who rang the bell at their house on the evening of 18th January 2003 and thereafter, took the deceased away. On 10th May 2003, the other witnesses, viz. PW-2 and Ramdev, identified the three accused and stated that A-2 took the deceased away on his motorcycle.

Identification of the dead body

40. On 9th May 2003, purportedly on the basis of the disclosures by the accused, PW-37 along with PW-19, PW-35 and other team members proceeded to Ghaziabad for further investigation in the case. The three accused as well as PW-3 also accompanied them. The accused purportedly led the police to the Mahamaya Sports Stadium, Ghaziabad, stating that they had thrown the dead body near there. They individually and separately pointed out the *nala* in front of the stadium. No dead body or skeleton was seen in the *nala* which was stated to be 8 to 9 ft deep.

41. PW-37 came to know that the area where they were conducting investigation fell within the purview of PS Kotwali, Ghaziabad. The police team proceeded to that PS and after making enquiries, PW-37 learnt that on 19th January 2003, an unidentified, half/partially burned dead body was found and noted down in Report No.29 of that date.

42. An FIR had been registered in that PS under Sections 301 and 302 IPC and SI Radhey Shyam Sharma had been put in charge of the investigation in that case. He showed the police team led by PW-37 photographs of the dead body. PW-3 identified the body from the photographs to be that of the deceased. The *Malkhana Moharrar* [MCH (M)] of PS Kotwali, HC Satyavir Singh (PW-34), produced the *pulanda* containing the burnt clothes and

shoes of the deceased, which were then identified by PW-3.

Post mortem examination

43. It requires to be noted that the post mortem examination of the dead body was conducted at District Hospital, Ghaziabad by Dr. P.C. Aggarwal (PW-26) at 3:30 pm on 20th January 2003. The following injuries were noted by the doctor:

“The Postmortem Burn over whole of face, neck, chest abdomen and both thighs and right sole. All abdominal organs and perinea area burnt. No line of redness and no blisters present.”

44. The cause of death was opined to be coma as a result of ante-mortem injuries which had been caused for about 1½ days prior to the post mortem examination. The length of the body was measured as 160 cm, scalp hairs were 6 cms, and the black beard and moustache were burnt. The kidney, liver, heart, spleen, and all other organs were found burnt. Burnt cloth pieces, one burnt shoe, and another shoe with burns were also handed over to the police.

Remaining steps in investigation

45. The TIP of the recovered gold chain and wristwatch was conducted in the court of learned MM Raj Rani Mitra (PW-5) on 18th July 2003. The Call Detail Records (‘CDR’) of the relevant mobile numbers were also collected from the respective service providers.

46. At the end of the investigation, a charge sheet was first filed on 27th July 2003. Thereafter, a supplementary charge sheet was filed.

Determination of Age of A-2

47. At this stage, it requires to be noticed that A-2 claimed right throughout that he was a juvenile on 18th January 2003, the date on which the deceased was abducted. A matriculation certificate produced by him showed his date of birth as 20th January 1985. In other words, he claimed that he completed 18 years on 20th January 2003, two days after the date on which the deceased was abducted.

48. The first application filed by A-2 in this regard in the trial Court on 31st May 2005 sought the transfer of his trial to the Juvenile Justice Board ('JJB'). By an order dated 24th August 2005, the trial Court dismissed this application. It noted that the ossification test showed the age of A-2 on the date of the offence to be around 19 years and 5 months. Challenging the said order, A-2 filed Crl. Rev. P. No. 751 of 2005 in this Court. By an order dated 31st August 2006, this Court directed the trial Court to decide the age of A-2 afresh.

49. Thereafter, on 20th January 2007, the trial Court once again turned down the plea of A-2 by holding that he was above 18 years of age on the date of the offence. The trial Court noted that A-2 had failed to produce any birth certificate or other certificate in support of the date of birth appearing in the school leaving certificate. Again, A-2 approached this Court in Crl. Rev. P. No. 156 of 2007. By its decision dated 11th September 2007, this Court declared A-2 to be a juvenile. Consequently, the trial Court by its order dated 18th September 2007 separated the trial of A-2 and sent it to the JJB.

50. The trial against the other accused i.e. A-1 and A-3, meanwhile proceeded with PW-3 being partially examined on 18th September 2007. Thereafter, PWs 4, 5, and 6 were examined consecutively on 27th, 28th and 29th September 2007.

51. Aggrieved by the order dated 11th September 2007 of this Court in Crl. Rev. P. No. 156 of 2007, holding A-2 to be a juvenile on the date of the offence, PW-3 filed an appeal being Crl.A.966 of 2008 in the Supreme Court. By an order dated 2nd November 2007 in the said appeal, the Supreme Court stayed further proceedings in the matter. Subsequently, on 27th May 2008, in *Vimal Chadha v. Vikas Choudhary (2008) 15 SCC 216*, the Supreme Court set aside the order of this Court and directed the trial Court to consider the matter afresh in light of Section 472 Cr PC, which contemplated a 'continuing offence'.

52. Thereafter, for the third time, the trial Court by its decision dated 2nd January 2009, declared A-2 was above 18 years with reference to the date of the last of the ransom calls i.e. 11th March 2003. The trial Court noted that in terms of the case of the prosecution, the offence in the present case under Section 364-A IPC was a continuing one with A-1 and A-2 alleged to have made ransom calls even after the murder of the deceased. The order dated 2nd January 2009 of the trial Court was affirmed by this Court by its order dated 13th March 2009 dismissing Crl. Rev. P. 61/2009 filed by A-2. In that process, this Court also observed:

“... the error in not framing a specific charge by mentioning the ransom calls made on 19th January, 10th and 11th March 2003 is

a curable omission which, in terms of the judgment in ***Vimal Chadha***, should be corrected. The charges require to be corrected by the trial Court itself and it is directed to do so without any further delay.”

53. Consequently, on 16th April 2009, the charges against the three accused were reframed and altered by the trial Court. The net result was that the three Appellants were charged with having committed offences punishable under Sections 120B, 364A, 302, and 201 IPC. Additionally, A-2 was charged under Section 411 IPC; A-1 under Sections 419, 420, 468, 471, and 411 IPC. Two other co-accused who were subsequently discharged, viz. Yogesh Rawat and Amit Pratap, were charged with having committed the offences punishable under Section 120B and Section 364A/120B IPC.

54. The order dated 13th March 2009 of this Court was affirmed by the Supreme Court in its judgment dated 11th August 2010 in ***Vikas Chaudhary v. State (2010) 8 SCC 508***.

55. The thrust, therefore, of the prosecution’s case as far as the charge under Section 364A IPC *qua* A-2 is concerned, is that it was in the nature of a continuing offence as the ransom calls continued to be made even till 11th March 2003. It is further sought to be established that those ransom calls were made not only by A-1, but by A-2 as well.

Applications for re-examination of witnesses

56. As a result of the long drawn proceedings for determining the age of A-2, the trial got delayed. Upon the framing of the amended charges against the accused, PWs 3 to 6, who had been examined in the absence of A-2,

were recalled and re-examined in the presence of A-2. According to the learned counsel for A-2, this resulted in the accused being deprived of their right to cross-examine PWs 1 and 2. Thus, it was argued, the evidence of those two witnesses should be kept out of the Court's reckoning altogether.

57. While PW-3 was being cross-examined by A-1, an application dated 7th March 2011 was filed by A-2 under Section 311 Cr PC praying for the recall of five PWs, including PW-2. This application was dismissed by the trial Court on 30th June 2011 and said order attained finality. Another similar application was filed by A-1 on 9th July 2016 for the recall of two witnesses, including PW-2. The said application was dismissed on the same date by the trial court. That order too attained finality.

Trial

58. This is a case based on circumstantial evidence. The prosecution, in order to prove its case, examined as many as 41 witnesses. As already noticed, the first witness was Atul Sehgal (PW-1), the brother-in-law of PW-3 and uncle of the deceased, whose examination-in-chief commenced on 3rd May 2005. The final PW was Deepa Verma (PW-41), the Deputy Director of FSL (Rohini), whose cross-examination concluded on 4th January 2016. In other words, the process of recording prosecution evidence was stretched over 11 years. On the orders of the trial Court, a transcription of the recorded conversations was prepared and copies of the cassettes were provided to the accused along with the transcription.

Statements of the accused under Section 313 Cr PC

59. The statement of A-1 under Section 313 Cr PC was recorded on

31st May 2014. He denied each of the incriminating circumstances and claimed that he was arrested by the police on the intervening night of 2nd/3rd May 2003. He further stated that he had been falsely implicated. A-1 claimed to have been taken away by the police on the pretext of making enquiries in a rape case.

60. A-1 further stated that on 5th May 2003, the Additional SHO of PS Ashok Vihar had a physical fight with the father of A-1 on account of his unlawful detention, and for that reason, the Additional SHO had implicated A-1 in the case without any material against him. A-1 referred to a telegram sent by his father concerning his unlawful detention. A-1 further stated that his passport was never seized and always remained with the IO in an open condition. A-1 claimed never to have known the deceased or having gone to his house. He stated that he did not know PWs 8 and 9 or any of the other co-accused. He denied having borrowed any mobile phone from PW-8.

61. A further statement of A-1 was recorded on 8th September 2014, regarding his having studied in the same class as PW-8. This was because of the evidence given by Urvashi (PW-39), who brought the records of the Government Model School, Civil Lines, also known as 'Ludlo Castle No.3 School'. A-1 maintained that he had never seen PW-8 prior to the case. He denied that his father has signed as a witness on the arrest memo prepared on 4th May 2003 and maintained that he had been taken to the PS on the intervening night of 2nd/3rd May 2003.

62. On 9th October 2015, another statement of A-1 was recorded after the evidence of Dr. C.P. Singh (PW-40), with respect to the audio cassettes

containing recordings of the alleged ransom calls made to PW-3. A-1 claimed that the cassettes had been tampered with and reiterated his innocence.

63. Another supplementary statement of A-1 was recorded on 4th January 2016, this time to confront him with the evidence of PW-41 who had analysed his handwriting on the customer application form (CAF) for issuance of the SIM card. A-1 denied this evidence as well.

64. The statement of A-2 under Section 313 Cr PC was recorded on 15th July 2014. Thereafter, a supplementary statement was recorded on 4th January 2016. Throughout, A-2 denied the incriminating circumstances put to him and claimed that he had been falsely implicated. A-2 claimed that he was arrested from his house on the night of 2nd May 2003. A-2 stated that he had no friendship with A-1 but merely knew him because A-1's younger brother studied with A-2 at Lions Public School. A-2 stated that he would only occasionally meet A-1 when the latter would come to meet his younger brother at the said school.

65. Turning now to A-3, his statement was first recorded under Section 313 Cr PC on 24th July 2014. He too denied all the incriminating circumstances put to him. He claimed to be innocent. He too stated that he was picked up on 2nd May 2003 and that his father and brother had sent telegrams to the Police Commissioner, the Lieutenant Governor ('LG'), and other authorities.

66. The supplementary statements of A-3 were recorded on 9th October 2015 and 4th January 2016 in which he denied the testimony of PW-40 as to the

contents of the audio cassettes and the testimony of PW-41 as regards the handwriting on the customer application form for issuance of the SIM card used to make the ransom calls.

Defence evidence

67. Raj Kumar (DW-1), the first defence witness, was examined on 31st July 2014. He was the elder brother of A-3. He sought to prove that A-3 was picked up by the policemen in plain clothes on 2nd May 2003. He proved the fax message and telegram sent by his father to the Lieutenant Governor regarding the purported illegal lifting of A-3 in a false case.

68. Mr. Sheshmani Mishra, Sr. TOA (T) Eastern Court, New Delhi was examined as DW-2. He could not produce the original record which would indicate whether the telegram (Ex.DW-1/A-2) was issued from the said office. Mr. Jarnail Singh, UDC, LG Secretariat, Raj Niwas, Delhi was examined as DW-3. He too could not bring the original record of the telegram sent to the LG (Ex.DW-1/A-1).

69. Komal Sidhu, the brother of A-1, was examined as DW-4. He proved that a motorcycle driven by A-1 always had DL8-SF-5661 as the registration number. He claimed that on the intervening night of 2nd/3rd May 2003, some police officers took A-2 to the PS for inquiry in some case, and even on that date, the number plate on the front and rear of the motorcycle carried the same number i.e. DL8-SF-5661. He too claimed that his father had sent a telegram to the Commissioner of Police complaining about the unlawful detention of A-1.

70. In his cross-examination, DW-4 admitted as correct that neither he nor any of the relatives gave any information to any police officials or court about the police having wrongly taken away the motorcycle. He claimed that he did not know whether Anirudh Saini (PW-8) had studied in the same school as A-1.

71. Mr V.K. Saxena, Deputy Advisor/CPIO-LO TRAI, Mahanagar Door Sanchar Bhawan, Old Minto Road, New Delhi was examined as DW-5. He referred to an application sent by A-1 under the RTI Act and the reply given to it by the Department on 29th April, 2014 (Ex.DW-5/1). Questions were asked to him about the incoming calls having been made free by the TRAI with effect from 1st April 2003.

72. SI Devak Ram, DCP Office, Traffic, Todapur, Near Pusa, New Delhi was examined as DW-6. He brought the record containing the notice of *challan* for the motorcycle (Ex.DW-6/1 and DW-4/1 and 2).

73. Head Constable Dhanpat Sharma of the Police HQ also seems to have been examined as DW-6. He brought the original application filed under RTI by A-1 (Ex.DW-6/A) and the reply dated 14th August, 2014 (Ex.DW-6/B). Another application sent on 7th May, 2010 by A-1 was shown to him (Ex.DW-6/C) and he had acknowledged that the same has been received by his department. The photocopies of the same were Ex.DW-6/D. The original letter dated 10th May, 2010 sent by A-1 was acknowledged by him (Ex.DW-6/E).

74. Head Constable Ratan Singh of the North West District, Delhi was

examined as DW-7. He could not produce the original record in respect of Ex.DW-7/A and Ex.DW-7/B since the old records had been destroyed.

Impugned judgment of the trial Court

75. By the impugned judgment dated 13th November, 2017, while convicting the three Appellants for the offences the trial Court first identified the points of determination as under:

- “a) Whether on 18.01.2003 accused persons namely Vikas Siddhu, Vikas Chaudhary and Joginder @ Mintu had hatched a criminal conspiracy with each other to kidnap Parakh Chaddha @ Sunny?
- b) Whether on 18.01.2003 at about 7:30 pm, accused persons namely Vikas Siddhu, Vikas Chaudhary and Joginder @ Mintu had kidnapped Parakh Chaddha @ Sunny in order to make ransom calls and to obtain ransom money and whether they had made ransom calls in furtherance of their criminal conspiracy?
- c) Whether Parakh Chaddha @ Sunny died unnatural death?
- d) Whether accused Vikas Siddhu has forged the photocopy of his passport and application form for cheating the mobile company for procuring the SIM card for making ransom calls, by tampering his name and impersonating as Rajbir and gave false address.
- e) Whether accused Vikas Chaudhary was found in possession of one wrist watch belonging to deceased Parakh Chaddha @ Sunny which was received or retained by him with a reason to believe the same to be a stolen property?
- f) Whether accused Vikas Sidhu was found in possession of one gold chain belonging to deceased Parakh Chaddha @

Sunny which was received or retained by him having reason to believe the same to be a stolen property.

- g) Whether accused persons namely Vikas Siddhu, Vikas Chaudhary and Joginder @ Mintu had committed the murder of Parakh Chaddha @ Sunny and they all also burnt the dead body of Parakh Chaddha @ Sunny with petrol and tried to destroy the evidence of the crime committed by them?"

76. The trial Court first examined whether the deceased had died an unnatural death. The identification of the dead body through the photographs by PW-3 and in light of the articles shown to him, which belonged to the deceased, apart from the testimonies of PWs 23, 26, 34 and 36 enabled the trial Court to reach the conclusion that the deceased had been correctly identified. Although in the inquest report, the height of the deceased was mentioned as 5'9", in the statement of PW-3 (Ex. PW-3/A), it was mentioned as 5'4". The post-mortem report (Ex. PW-26/A) mentioned the height as 160 cm. Further, the non-examination of all the witnesses with regard to the *panchnama* and other witnesses, who were part of the investigation conducted by the Ghaziabad Police, was held by the trial Court to not be fatal, particularly in light of the decisions in ***Vijender Singh v. State of U.P. 2017 (1) ADJ 759***; ***State of Karnataka v. Suwarnamma 2015 1 AKR 2013*** and ***State of Rajasthan v. Smt. Kalki AIR 1981 SC 1390***.

77. The trial Court noted that Dr. P.C. Aggarwal (PW-26) had deposed that the injuries on the body of the deceased were ante mortem as well as post mortem and that the ante mortem injuries were sufficient to cause death. One of these injuries was on the left side skull 3 cm above the external ear

with the underlying bone found fractured. These injuries could not be self inflicted and no such question has been put to any PW during examination. Therefore it could safely be concluded that the deceased died an unnatural death.

78. The trial Court next addressed the question of criminal conspiracy entered into between the accused punishable under Section 120 B IPC. After discussing the evidence of PWs 2, 3 and 7, the trial Court concluded that the essential ingredients of Section 120 B IPC were present.

79. The trial Court next addressed the question whether the accused had kidnapped the deceased for ransom and whether in fact they had made ransom calls. The trial Court discussed the evidence of PW-19, PW-1, and PW-3 and after considering the cassettes and the transcripts of the conversations constituting the ransom calls including the forensic evidence and other witnesses like Kanhaiya Lal (PW-10), Naresh Kumar (PW-19), Madan Lal (PW-24), the trial Court held the following to have been proved:

- “(i) Accused Vikas Siddhu, Vikas Chaudhary and Joginder were known to deceased Parakh Chaddha @ Sunny.
- (ii) Accused Vikas Siddhu had gone to the house of deceased Parakh Chaddha @ Sunny on 18.01.2003 in the evening which is witnessed by PW-7 Sunaina Chaddha, mother of deceased Parakh Chaddha @ Sunny, as well as seen by PW-2 Ramdin. The testimony of PW-3 Vimal Chaddha Is also relevant to the extent that PW-7 Sunaina Chaddha who is wife of PW-3 and mother of deceased Parakh Chaddha @ Sunny, had told this fact that their son had gone with his friends.”

80. The trial Court held that the portion of the statement of PW-3 that PW-7

had stated certain facts to him about the deceased having gone with his friends was relevant.

81. The trial court also held that the following aspects stood proved:

“(iii) Deceased Parakh Chaddha @ Sunny, the son of PW-3 and PW-7,' was found missing since the evening of 18.01.2003 and was not traceable thereafter.

(iv) The murder of deceased Parakh Chaddha @ Sunny was revealed on 04.05.2003.

(v) After 18.01.2003, PW-3 Vimal Chaddha (the complainant) and PW-1 Atul Sehgal (brother-in-law of PW-3) started receiving ransom calls.

(vi) Complaint was made to the police regarding missing of deceased Parakh Chaddha @ Sunny as well as receiving of ransom calls.

(vii) Ransom calls were recorded since the very first day and the relevant permission in this regard was also obtained for which PW-14 is a relevant witness.

(viii) Various ransom calls were recorded and ransom calls for 3 days were sent to FSL along with the sample voice of accused Vikas Siddhu and Vikas Chaudhary for which the relevant witnesses i.e. PW-19, PW-10, PW-3, PW-24 and Dr. C.P. Singh as PW-25 and subsequently again Dr. C.P. Singh as PW-40, who have certified that the ransom calls were recorded, they were sealed and kept intact in Malkhana, were sent to the CFSL, and the report of Expert is EX.PW25/A and again Ex.PW40/A, which say that the impugned voice so recorded of the abductors matches with the sample voice of accused Vikas Siddhu and Vikas Chaudhary.

(ix) The ransom call for 10.03.2003 and 11.03.2003 are said to

have been made from mobile Ex.P-6 along with SIM. card no.9818293554, which is alleged to have been used by accused Vikas Siddhu during this relevant period for which testimony of PW-8 and PW-9 is more than sufficient.

(x) There is another material piece of evidence in the said chain of circumstances which shows that the mobile number 9818293554 was obtained by accused Vikas Siddhu by making manipulation and forgery in his documents for which testimony of PW-12, PW-19, PW-29 and PW-41, is there.”

82. According to the trial Court all of the above points were so grave and the accused persons, particularly A-1, ‘has not been able to show anything to the contrary.’ The trial Court observed that a hyper-technical approach ought not to be adopted in analysing the testimony of witnesses who may have deposed differently due to certain reasons and lapse of time. The trial Court rejected the plea of the accused that on account of the PWs having improved on their versions, their creditworthiness was reduced and therefore their testimonies should not be relied upon.

83. The trial Court further concluded that A-1 and A-2, in association with A-3, allured the deceased; took him away from his house on 18th January 2003 and killed him. The prosecution was held to have proved that A-1 and A-2 had made ransom calls to PW-3. The evidence of PWs 19, 33 & 37 revealed that “not only accused persons had made ransom calls and had misguided police officials for several days.” The evidence of PWs, 1, 3, 25/40 confirmed that it was A-1 and A-2 who had made ransom calls. That the transcript in Hindi was the “exact translation of the audio recorded version in the impugned voice recording of the abductors was held to be a “matter of record”.

84. The trial Court then reconstructed the events, as emerging from the evidence of the prosecution as under:

“(i) Parakh Chaddha @Sunny (since deceased) was kidnapped in the evening of 18.01.2003.

(ii) Accused Vikas Siddhu and Vikas Chaudhary along with accused Joginder had gone to the house of deceased Parakh Chaddha @ Sunny.

(iii) Accused Vikas Siddhu, Vikas Chaudhary and Joginder were seen talking with deceased Parakh Chaddha @ Sunny in the evening of 18.01.2003. PW-2 Ramdin is an eyewitness to this incident.

(iv) PW-2 Ramdin had also seen accused persons namely Vikas Siddhu, Vikas Chaudhary and Joginder taking Parakh Chaddha @Sunny (since deceased) along with them In the evening of 13.01.2003.

(v) Complainant Vimal Chaddha and his family started receiving ransom calls after 18.01.2003 for which PW-1 the brother-in-law of PW-3 and PW-7 the mother of the deceased Parakh Chaddha @ Sunny, along with 10 PW-19, PW-33 and PW-37 along with other police officials are the witness for the same.

(vi) Voice recording of the abductors was obtained and it was sent to FSL and the report of Expert in this regard is Ex.PW-25/A and Ex.PW40/A for which testimony of Dr. C.R Singh is on record.

(vii) As per the reports Ex.PW25/A and Ex.PW-40/A, it is reflected that the sample voice of accused Vikas Siddhu and Vikas Chaudhary is similar to the impugned voice recording of the abductors.

(viii) There is no doubt about the admissibility of the voice recording as the Bar laid down under Section 65-B Indian Evidence Act does not operate against it as it is along with the original voice recording as well as independent oral evidence of PW-1 and PW-3 who have certified and acknowledged the ransom calls of the abductors along with their details which are found corroborated from the transcriptions of the impugned voice recording.

(ix) So far as the conversation, so recorded in the so impugned audio cassettes is concerned, there is no doubt that these calls are in the form of demanding money from the complainant and his family, hence, it cannot be doubted that these calls were ransom calls. The person who was kidnapped / abducted is Parakh Chaddha @ Sunny who was found to be dead by Ghaziabad Police on 19.01.2003 but this fact was not revealed to the complainant PW-3 until 09.05.2003.

(x) There is nothing available on record shown by the accused persons to the contrary by which the onus which has been shifted upon them by the prosecution is said to have been rebutted or they have been successful in pointing out the preponderance of probabilities that any of the accused persons was not involved in kidnapping or abducting or making the ransom calls.”

85. The trial Court next addressed points ‘d’, ‘e’ and ‘f’ and held as under:

“all these chain of circumstances are reflects that the photocopy of the passport of accused Vikas Siddhu was misused and manipulated by him and by tampering the information available therein, he obtained a SIM number 9818293554 which was used in making the ransom calls.”

86. The trial Court found that the gold chain belonging to the deceased and a watch belonging to him were got recovered pursuant to the disclosure statements of A-1 and A-2 respectively. The evidence provided by PWs 19,

29, and 41 was the third aspect in relation to the alleged forgery and manipulation done by A-1 in his passport and other documents and in obtaining a mobile number with which he made ransom calls to PW-3 and his family. Ms Deepa Verma (PW-41) gave her expert opinion regarding the forgery committed in the photocopy of the original passport of A-1. A-1 and A-2 had not been able to point out any lacunae in the testimony of other PWs. PW-12, who was an independent witness, also alleged that the photocopy of the passport was sent to the FSL.

87. The trial Court further held as under:

“150. From the testimonies of the above mentioned witnesses it is, therefore, reflected that prosecution has been able to establish that accused Vikas Siddhu, in order to cheat the mobile company, had manipulated and forged the photocopy of his original passport and further used it for obtaining a mobile SIM no. 9818293554, which is alleged to have been used in making ransom calls. Thus, all the ingredients of Section 420, 468 and 471 IPC stands established against accused Vikas Siddhu that he had cheated the mobile company by manipulating and forging the photocopy of his passport for obtaining a new SIM number.”

88. The trial Court next addressed the offence of murder and the accused trying to destroying the evidence of crime committed by them.

89. The trial Court held that there was nothing to show that A-1 and A-2 were arrested prior to 4th May 2003. The evidence brought on record showed that there was ample evidence to show that ransom calls were made to the complainant and his family members and that those calls were made by A-1 and A-2.

90. The circumstances, which were not disputed by the accused, were as under:

“(i) Parakh Chaddha @ Sunny was known to accused Vikas Siddhu and other accused persons i.e. accused Vikas Chaudhary and Joginder are stated to be friends of accused Vikas Siddhu.

(ii) Accused Vikas Siddhu had gone to the house of Parakh Chaddha @ Sunny in the evening of 18.01.2013 and had rang his door bell and asked for him. It is further established from the record that, after the accused Vikas Siddhu had left, Parakh Chaddha @ Sunny had also gone towards the same direction i.e. Lekhram Park. It is witnessed by PW-7 and PW-2. The testimony of these witnesses, to this extent remained uncontroverted, as per record.

(iii) Parakh Chaddha @ Sunny had gone outside on 18.01.2003 just after accused Vikas Siddhu had left and gone towards the park in front of the house of Parakh Chaddha @ Sunny. PW-2 and PW-7 are the eyewitnesses to this fact.

(iv) PW-2 had seen accused persons namely Vikas Siddhu, Vikas Chaudhary and Joginder, gathering near the park which is in front of the house of Parakh Chaddha @ Sunny and he had also seen the accused persons roaming around there in suspicious circumstances.

(v) PW-2 has further seen the accused persons namely Vikas Siddhu, Vikas Chaudhary and Joginder along with Parakh Chaddha @ Sunny going on motorcycle towards Central Market.

(vi) Parakh Chaddha @ Sunny did not return thereafter to his home, after he had gone with the accused persons. It is a matter of record that murder of Parakh Chaddha @ Sunny had taken place in the intervening night of 18.01.2003 & 19.01.2003.

(vii) Ransom calls were being received by the complainant and his family, after Parakh Chaddha @ Sunny had gone out of his house after 7:30 pm i.e. evening of 18.01.2003. Testimonies of PW-1, PW-3, PW-7, PW-19 (10) and other police officials, in my considered opinion, are sufficient to corroborate this fact.
(viii) Audio recording of ransom calls, is available on record, which is in original as well.

(ix) Voice samples of accused persons i.e. Vikas Siddhu and Vikas Chaudhary were taken by the police on 05.05.2003. Testimony of PW-10, PW-3 and other police officials, in my considered opinion, are sufficient to corroborate this fact.

(x) Voice samples of accused persons namely Vikas Siddhu and Vikas Chaudhary have matched with the impugned audio recording of the ransom calls for which the testimonies of PW Dr. C.P Singh who was examined as PW-25 and PW-40, is sufficient as per record to corroborate the same. It is important to mention here that the testimony of Dr. C.P Singh remained uncontroverted.”

91. Further, the trial Court observed as under:

- (i) The accused had failed to furnish a reasonable explanation for being found in possession of the gold chain and wrist watch worn by the deceased when he had left home on 18th January 2003. The contention that the case property was planted on the accused was rejected. The disclosure statement made in this regard under Section 27 of the IEA was relevant and admissible. It was held that the recovery of mobile set and mobile sim at the instance of A-1 was another substantive piece of evidence. This is corroborated by PWs 8, 9, 19 and 37. There was ample evidence to show that the mobile set with IMEI number and sim bearing number ending in ‘3554’ was used to make the ransom calls. PWs 8 and 9 proved that this mobile phone was in fact

used by A-1. No reasonable explanation was forthcoming from A-1.

- (ii) When a dead body is burnt, any visible marks of evidence pertaining to the cause of death also get wiped out. Merely because the evidence pertaining to strangulation of the deceased was not available, would not make a difference. The ante-mortem injuries were not self-inflicted. The evidence on record indicated that the deceased had been taken by the accused persons from the Central Market, Delhi to Ghaziabad in a Maruti car. In terms of Section 106 of the IEA, no plausible explanation was given by the accused at time of recording their statements under Section 313 Cr PC. The recovery of the belongings of the deceased from and at the instances of A-1 and A-2 “are the most material piece of evidence against which explanation furnished by the accused persons does not seem to be reasonable. The chain of circumstances unmistakably proves that it was only the three accused persons A-1, A-2 and A-3 who have committed the murder.
- (iii) On the question of criminal conspiracy, after a detailed discussion, the trial Court concluded that the charge under Section 120-B IPC also stood established. It further found that the charge under Section 201 IPC was also proved.

92. For the aforementioned reasons, the trial Court proceeded to convict the three accused and sentenced them in the manner indicated hereinbefore.

93. This Court has heard the submissions of Mr. Ajay Burman, learned Senior Counsel appearing for A-2, Mr. Ajay Sangwan, learned counsel appearing for A-1, Mr. Mukesh Kalia, learned counsel appearing for A-3,

Mr. Kewal Singh Ahuja, learned APP appearing for the State, and Mr. Rajiv Mohan, learned counsel for the Complainant.

Law relating to circumstantial evidence

94. This is a case based on circumstantial evidence and the law in that regard is fairly well settled. The Supreme Court, in ***Shankarlal Gyarasilal Dixit v. State of Maharashtra (1981) 2 SCC 35***, explained the law thus:

“Since this is a case of circumstantial evidence, it is necessary to find whether the circumstances on which the prosecution relies are established by satisfactory evidence, often described as 'clear and cogent' and secondly, whether the circumstances are of such a nature as to exclude every other hypothesis save the one that the appellant is guilty of the offences of which he is charged. In other words, the circumstances have to be of such a nature as to be consistent with the sole hypothesis that the accused is guilty of the crime imputed to him.”

95. In ***Tanviben Pankaj Kumar Divetia v. State of Gujarat (1997) 7 SCC 156***, the Supreme Court reiterated the above position and went on to opine:

“The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has

also been indicated that when the important link goes the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between normal certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and must be true" and the same divides conjectures from sure conclusions."

96. Finally, in ***Rajendra Pralhadrao Wasnik v. The State of Maharashtra (2012) 4 SCC 37***, the Supreme Court held:

"12. There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis, i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to leave any substantial doubt in the mind of the Court. Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the accused and the only possibility is that the accused has committed the crime.

13. To put it simply, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, 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."

97. Thus, the following key principles of evaluation of circumstantial

evidence, as enumerated in *Padala Veera Reddy v. State of Andhra Pradesh 1989 Supp (2) SCC 706*, emerge from the decisions discussed hereinabove:

- (1) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
- (2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) 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 none else; and
- (4) The circumstantial evidence, in order to sustain conviction, must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

Last seen

98. The first circumstance put forth by the prosecution is about the deceased last being seen in the company of the accused. The evidence of PW-7, the mother of the deceased, is relevant in this context. She states that she was standing in the balcony of the first floor of their house at around 7:30 pm on 18th January 2003, when the gate bell rang. She peeped from the balcony and noticed a boy aged around 23 years standing at the gate. The deceased then came out of the house. According to PW-7, in the meantime, two other friends of the deceased, Pawan and Bakul, also reached the main gate. As

the deceased was speaking to Pawan and Bakul, the boy who rang the bell whispered something in the ear of the deceased and went towards the park in front of the house. She then came back inside. PW-7 correctly identified the boy who rang the bell as A-1.

99. PW-7 was confronted in her cross-examination with her previous statement to the police under Section 161 Cr PC. The only improvement elicited from her during her cross-examination was about A-1 having whispered something in the ear of the deceased. In other words, the defence was not able to shake the core part of her testimony on the aspect of 'last seen' namely that A-1 had rung the door bell on the evening of 18th January 2003 and that the deceased had opened the door and met him.

100. Then, we have the evidence of Ram Deen (PW-2), working as a domestic helper at H.No.C-2/43, Ashok Vihar, Phase-II, New Delhi in the neighbourhood of the house of the deceased which was at H.No.C-2/46. PW-2 stated that at around 7:15 pm on 18th January 2003, he was standing outside the house where he worked along with his friend Ramdev. He noticed a black Yamaha motorcycle take a round in the area. Two persons were sitting on the motorcycle. He noticed them talking to a person standing in the park. According to him, the two boys were constantly commuting to and from the main gate and were also talking to a boy and therefore, he got suspicious. PW-2 claims to have noted down the partly legible number of the motorcycle as DL8-5561. Finally, one of the two boys came alone on the motorcycle and parked it in front of the house of the deceased.

101. PW-2 noticed that he pressed the bell installed at the gate. He noticed

the deceased come out and the boy who came on the motorcycle talking to him. According to him, thereafter, another two persons came on another motorcycle. After speaking to them, the boy who had come alone left for the park. The two who had come later also left on their motorcycle. He further states that thereafter, the deceased went to the park, where the aforementioned three boys had already gathered.

102. PW-2 identified A-1 as the first person who had come alone on the motorcycle and had rung the bell at the gate. He also identified A-2 as the person with whom the deceased was talking in the park. He identified the person already standing in the park as A-3. According to PW-2, A-2 thereafter left the park and so did the deceased. Both of them went on a motorcycle to Central Market. Thereafter, A-1 and A-3 also proceeded to Central Market on a motorcycle. PW-2 was shown the motorcycle that subsequently was recovered and identified it as the motorcycle he had seen at PS Ashok Vihar.

103. PW-2 was subjected to stringent cross-examination. How PW-2's statement came to be recorded by the police is an issue on which there were extensive arguments made before this Court. His statement was recorded on 21st January 2003. According to PW-2, he went of his own accord to the PS and gave the SHO information which was reduced to writing. PW-2 was asked about the number plate on the rear side of the motorcycle and he said it was 'DL8-5561'. He clearly stated that the deceased sat on the motorcycle "at the instance of the tall boy who started the first motorcycle". The tall boy was correctly identified by him as A-2. PW-2 identified all the three accused

in the trial Court. It was a dock identification.

Consequences of refusing TIP

104. It must be recalled at this stage that all three accused had refused to be identified in the TIP. They, therefore, risked the consequences of dock identification, by both PW-2 and PW-7. The reason given by them for refusing the TIP was that they had been shown already to PW-2 in the PS. However, as pointed out by Mr. Mohan, this appears to be factually incorrect if one carefully goes to the sequence of events as far as the TIP is concerned.

105. The sequence is that on 4th May 2003, the three accused were arrested. They were produced before Ms. Nisha Saxena (PW-30), the learned MM, on 8th May 2003. In her deposition, PW-30 has confirmed that the IO moved an application for the TIP on 5th May 2003 itself before the learned Link MM and it was then marked to her by the Link MM and the TIP was fixed for 8th May 2003. The three accused were produced before her with muffled faces. They, however, refused to participate in the TIP proceedings.

106. A perusal of the order on TIP proceedings (Ex.PW-30/C) shows the order passed by the learned MM to that effect. The statement of A-1 before the MM was to the effect that he did not want to take part as he was kept in the PS for quite some time. He also claims that he was shown to some people and his photographs were taken. Identical statements were made by A-2 and A-3.

107. There is no cross-examination of PW-30 at all. Learned counsel for the

accused sought to draw attention to the appearance noted in the order-sheet of 8th May 2003, which shows that A-1 and A-3 were presented with their faces unmuffled while A-2 was presented with a muffled face. However, with no question being put to the witness in her cross-examination, the statement in her examination-in-chief that all three accused were produced before her in muffled face remains uncontested. In any event, there is nothing to show that the accused were earlier shown to the witnesses. The witnesses who were possibly lined up for the identification were PWs 2 and 7. In this regard, if one carefully peruses the cross-examination of PW-2, it is seen that nothing was asked of him about the accused having been shown to him in the PS prior to their being produced in the Court. Therefore, the argument that they were already shown to PW-2 in the PS prior to their being produced in the Court cannot be accepted.

108. It is then argued that after his arrest, A-1 took the police to the house of the deceased and therefore, at that time, he would have been seen by both PWs 2 and 7. As already noticed, there is no such suggestion put to PW-2 in his cross-examination. For that matter, there is no such suggestion put to PW-7 either. Consequently, even this plea cannot be accepted.

Refusal of applications for recall of PWs 1 and 2

109. It is then vehemently contended on behalf of A-2 that after the charges were amended, he was not permitted to recall PW-2 for further cross-examination.

110. It is required to be noticed that it was not as if PW-2 has not been cross-examined by learned counsel for A-2, or for that matter learned

counsel for A-1. While it is true that on 16th April 2009, the trial Court had directed six witnesses who were already examined to be recalled, the prosecution opted to recall only PWs 3 to 6. Nothing prevented A-1 and A-2 from filing applications for recall of those witnesses instead of waiting until the last moment. It is pointed out that on 7th March 2011, A-2 filed an application which was dismissed by the trial Court on 30th June 2011. This was not challenged. A-1 waited until 9th July 2016 to file an application which was dismissed on the same day. After waiting for two more months, A-2 filed another application under Section 311 Cr PC for recall of PW-2.

111. There were no new facts that emerged concerning PW-2 and, therefore, the trial Court cannot be held to be in error in rejecting those applications. They would have only delayed the conclusion of the trial even further. With PW-2 already having spoken about all the facts that were within his knowledge, and his already having been cross-examined by the counsel for both A-1 and A-2, it cannot be said that any prejudice was caused to either of them on account of the dismissal of their applications for his (PW-2) recall. The change, as far as the amended charge is concerned, was to acknowledge that the offence under Section 364A IPC qua A-2 was a continuing offence, as the ransom calls continued to be made until 11th March 2003. PW-2 had no role to play as far as that aspect of the matter is concerned. In other words, the evidence of PW-2 was not going to materially alter the inference in respect of those ransom calls.

112. The prejudice caused to the accused, therefore, has to be viewed in the context of the purpose for which the recall had been sought. At this stage, it

should also be noticed that the refusal by the trial Court of permission to recall PW-1 did not materially affect or prejudice their case as such because the testimony of PW-1 is relevant only to the first ransom call made on 19th January 2003 and not those made thereafter.

Proximity of time and distance

113. Another point urged is concerning the proximity of time and distance. It is pointed out that the deceased, according to PW-7, was last seen at around 7:30 pm, outside his house, and even if one went by the evidence of PWs 2 and 7 about his going away with the accused, there is a huge gap between that point in time and the dead body being found at around 4:30 pm on 19th January 2003, i.e. more than 24 hours later, near the Mahamaya Stadium in Ghaziabad. It is submitted that the distance between Ashok Vihar and Mahamaya Sports Stadium, Ghaziabad is about 40-45 km. If, according to the prosecution, the deceased had met six persons in a span of only five minutes when he was at home on 18th January 2003, the possibility of him having met many others thereafter could not be ruled out. It is submitted that there is no evidence whatsoever of any witness seeing the deceased in the company of the accused in Central Market, Ashok Vihar or at Ghaziabad. The question, therefore, is how the deceased ended up in Ghaziabad which is around 40-45 km away. It is also pointed out that Harinder Pal Singh (PW-31) has denied that A-1 had taken his car on 18th January 2003, as alleged by the prosecution.

114. The circumstance of last seen is but one link in the chain of circumstances. The prosecution may not be able to come across evidence to

show that the deceased was last seen in the company of the accused, either at Central Market, Ashok Vihar or Ghaziabad. However, the fact remains that there is no evidence to show that after the deceased was seen in the company of the accused at around 7:30 pm, he was seen anywhere else in the company of anyone else until the time his dead body was found the following day at 4:30 pm near the Mahamaya Stadium at Ghaziabad. Each case has to be seen on its own facts. In a given case, the discovery of a dead body long after the deceased was last seen might weaken the prosecution case. In other cases, it might be an important link in the chain of circumstances. It gets strength when seen together with all the other circumstances. Just because there is absence of proximity from the time of 'last seen' and the time of discovery of the dead body will not result in jettisoning the entire circumstance of 'last seen'. It only had to be carefully viewed to see if the chain gets broken because of the time and distance. In the present case, that will become clearer only when the other circumstances are examined and what this Court proposes to do hereafter.

115. The result of the above discussion is that in the considered view of the Court, the prosecution has been able to convincingly show that after the deceased was seen leaving with the accused from the park at around 7:30 pm on 18th January 2003, he was not seen anywhere else in the company of anyone else until the discovery of his dead body at 4:30 pm, the next day, near the Mahamaya Stadium in Ghaziabad.

116. This should also be seen in the context of the answers given under Section 313 Cr PC by the accused, which is one of total denial and,

therefore, not offering any explanation whatsoever as to what happened after the deceased was taken away on the motorcycle by them to Central Market. This is an important factor that has to be kept in view while examining the circumstances as a whole.

The recovery of the motorcycle

117. The next circumstance which has been put forth by the prosecution is the recovery of, on the pointing out by A-1, the motorcycle on which the deceased was seen to have been taken away by him. It will be recalled that PW-2 noticed the deceased going away on the motorcycle in the company of A-1, which bore registration 5561. PW-2 did not note down the entire registration but only part of it which is understandable given that, according to the witnesses, it was a foggy day.

118. At this stage, it is also required to be noticed that one of the submissions by learned counsel for the accused is the fact that the front plate of the motorcycle bore registration DL8-SF-5661 while the rear plate carried registration DL8-SF-5561 was inserted in the seizure memo (Ex.PW-11/E) deliberately so as to create evidence that A-1 had changed the registration plates of the motorcycle in an effort to mislead the police.

119. The Court has perused the deposition of Shyam Sunder Kohli (PW-11), through whom the seizure memo was exhibited because he was a witness to it. No suggestion was given to him about this interpolation. The memo itself was prepared by the SHO Shiv Dayal (PW-37). He too was not questioned on any such interpolation. In his cross-examination, PW-37 denied the suggestion that the theory propounded by the police that the number plate on

the motorcycle bore a different registration on the front as compared to the back was a false story introduced to support the false case and to implicate the accused.

120. Mr. J.S. Deswal (PW-32), who was posted as ACP, Sub-Division, Rohini on 21st January 2003, had gone to the Computer Centre, Teen Murti at the request of the SHO. He collected a list of 43 motorcycles which had the registration number having last four digits '5561'. That list (Ex.PW-32/A), inter alia, contained the details of the motorcycles bearing registration ending '5561'. The deposition of PW-32 further corroborates the testimony of PW-2.

121. Interestingly, the defence examined SI Devak Ram (DW-6) who is with the office of DCP, Traffic. He confirmed that a computer generated *challan* (Ex.DW-4/1) had been issued to A-1 in relation to the traffic violation by the vehicle DL8-SF-5661. It also appears that the ownership documents regarding transfer were placed on record through PW-22. The RC (Ex.PW-22/E-1) revealed the name of the owner as A-1 with his address as E-167, Ashok Vihar. The destruction of the original record was through an instruction and this was placed on record by DW-6 as Ex.DW-6/1. The ownership of the motorcycle in the name of A-1 has, therefore, been sufficiently proved by the prosecution.

122. Nothing much turns on the addition of the fake number plate and the seizure memo (Ex.PW-11/E). The argument that after having been *challaned* on 20th February 2003, with the number plate as DL8-SF-5661, the accused would still have a fake number plate on 4th May 2003 when it was seized,

was improbable, makes no difference to the situation that the said motorcycle was in fact owned by A-1.

123. On a foggy night, when PW-2 noted down the registration as '5561', it could very well have been '5661'. It will be recalled that PW-2 was shown the motorcycle at PS Ashok Vihar with registration '5561' and he identified it to be the same motorcycle that he had seen on the night of 18th January 2003.

124. Interestingly, PW-32 was asked to collect the details of the motorcycle bearing registration ending '5561' and none of them belonged to A-1. This actually corroborates the finding of the motorcycle with the original registration plate of '5661' in the front and the fake registration '5561' on the rear. It probabilises the accused trying to mislead the police and avoid being tracked.

Discovery of the dead body

125. The next important link in the chain of circumstances is the discovery of the dead body of the deceased near the Mahamaya Stadium in Ghaziabad. In this regard, we have the testimony of Sompal Singh (PW-36). He states that on 19th January 2003, he was posted at PS Kotwali, Ghaziabad. At 4 pm, one Ram Bachan Yadav came to the PS and informed him that a dead body was lying in the *nala* near the Mahamaya Stadium in Ghaziabad. PW-36, Ct. Siya Ram (PW-23), SI Bhardwaj, and SI R.K. Sisodia, accompanied by the informant, reached the spot and saw a dead body which was in a burnt condition. They tried in vain to get the dead body identified. A photographer was called and the dead body was photographed. A

panchnama (Ex.PW-34/F) was prepared. PW-36 identified the signatures of SI Bhardwaj who had prepared the *panchnama*. Thereafter, PWs 36 and 23 took the dead body to the mortuary at Hindon, where it was preserved for 72 hours.

126. On 22nd January 2003, the post mortem examination of the dead body was performed by Dr. P.C. Aggarwal (PW-26). In his report (Ex.PW-26/A) dated 20th January 2003, he notes that the body was of an unknown male and was 160 cm in length. His opinion was that the cause of death was “coma as a result of ante mortem injuries” and also noted that the injury was “a diffused traumatic swelling 12 x 8 cm area on left side skull 3 cm above external ear”.

127. After the post mortem examination, the dead body was cremated. The burnt clothes and the shoes of the deceased were handed over by the doctor to the police and this was deposited with the MCH(M) of PS Kotwali, Ghaziabad. The hue and cry notice (Ex.PW-23/A) was identified by him. The confrontation of this witness, i.e PW-23, with his previous statement did not bring out any material aspect to doubt the factum of the discovery of the dead body by him and other policemen of PS Kotwali, Ghaziabad.

128. An attempt has been made to show that the photographs taken of the dead body were not of the dead body of the deceased at all. For this purpose, reliance was placed on the deposition of SI Naresh Kumar (PW-19), who is supposed to have stated that on 9th May 2003, they visited the photographer at Ghaziabad who had taken the photographs of the dead body and recorded his statement. He also stated that “no photographs and negatives were seized

from the photographer”.

129. This, by itself, does not persuade the Court to conclude that the photograph was fabricated or morphed. The dropping of the five *panch* witnesses and two IOs of the Ghaziabad Police cannot be said to have weakened the case of the prosecution. One of the two IOs had apparently expired. Merely because the photograph on record did not bear the signatures of the doctor who conducted the post mortem examination would not make it a fabricated document.

130. It is true that Ct. Siya Ram (PW-23) has not supported the prosecution. He has made all sorts of statements to make it appear that the inquest papers were prepared in May 2003. He did not know who had prepared the inquest papers (Ex.PW-23/B). According to him, he was not one of the *panch* witnesses. In his further deposition on 22nd October 2011, he admitted that his role in connection with the case was only to the effect that he was “handed over a sealed parcel of the dead body for getting the post-mortem done”. Therefore, PW-23 making the statement about the other documents including the ‘*shore goga*’ (hue and cry notice) (Ex.PW-23/A) is to no avail.

131. The Court is not persuaded that the prosecution would go to such great lengths to first fabricate the photographs and also fabricate the hue and cry notice about the dead body found in the canal.

132. The trial Court has observed that the identification by PW-3 of the dead body as being that of the deceased through the photograph taken was believable. Although the dead body was badly burnt, the facial features were

such that the identification as to who it might be was possible. On perusing the photograph, this Court is inclined to agree with the trial Court on this aspect. Indeed, the evidence of the dead body of the deceased from the *nala* near Mahamaya Stadium at Ghaziabad is convincing and believable. This circumstance can certainly be said to have been convincingly proved by the prosecution.

The ransom calls

133. The next important circumstance is the series of ransom calls stated to have been made by A-1 and A-2. The first ransom call was made on the landline of PW-3's home on 19th January 2003 when PW-1 was present. The recording of calls commenced only thereafter when a machine was installed for that purpose by PW-3. There were five ransom calls made with the first one being a demand of Rs.35 lakhs, and this was heard by PW-1. The second and third calls were made on 20th January 2003 and 1st February 2003, again on the landline. The fourth, fifth and sixth calls were made on 2nd February 2003, 10th March 2003, and 11th March 2003 on the mobile phone of PW-3.

134. The prosecution's case is that the two calls on 10th and 11th March 2003 were in fact made from the instrument in which had been inserted the SIM card purchased by A-1 for the purpose of making ransom calls. Purportedly, that SIM card was purchased from the mobile shop of PW-12. A-1 is supposed to have used his own passport and submitted a photocopy thereof while giving his name as one 'Rajbir'. The handwriting of A-1 on the customer application form was compared and confirmed by Deepa Verma

(PW-41) of the FSL, Rohini.

135. The CDRs of both PW-3 and of the number used by the accused and of the mobile number compared with the IMEI number of the instrument used confirmed the making of these calls. The instrument itself was taken by A-1 from his friend Anirudh Saini (PW-8).

136. The chain of circumstances in this regard is that the mobile phone whose IMEI number figures in the CDRs of the calls exchanged between PW-3 and A-1 was shown to have belonged to Suraj Joshi (PW-9). He confirmed that he had sold the phone to Anirudh Saini (PW-8). A-1 borrowed that phone from PW-8 for three days between 10th and 13th March 2003. A-1 inserted the SIM card he had purchased into the phone and he and A-2 made the ransom calls from this phone to the mobile phone of PW-3. A-1 then returned the phone to PW-8. Later, PW-8 sold that mobile phone to Shubhankar Mitra (not examined).

137. The evidence of PWs 8 and 9 confirms the prosecution case. That PW-8 and A-1 were in the same school has been proved by Ms. Urvashi (PW-39) who brought the school records of Ludlo Castle No.3 School. Nothing much has come in the cross-examination of PW-39 to dispute the fact that A-1 was indeed in the same class as PW-8. There is nothing in the evidence of PWs 8 and 9 that persuades the Court to disbelieve them.

138. Likewise, the evidence of PW-12 read with the evidence of PW-41 confirms that it was A-1 who had applied for and purchased the SIM card. With the origin of the mobile instrument and the SIM card used on it having

been established thus, the prosecution has been able to successfully prove that A-1 did use the borrowed mobile instrument and SIM card to make the ransom calls.

139. In fact, the major breakthrough for the police was as a result of keeping a watch on the calls made. To prove that the said ransom calls were made by A-1 and A-2, the police had collected voice samples of A-1 and A-2 and had compared them with the questioned voices on the ransom calls, all of which were recorded and submitted in a cassette to the police by PW-3 on 2nd May 2003.

140. The evidence of ACP Dr. Joy Tirkey (PW-33) is important in this regard. He has explained in detail the procedure followed. In fact, he had himself taken the parallel line and heard some of the ransom call conversations. He has explained in detail as to how the kidnappers sent not only the complainant but also the police on a wild goose chase. All this was happening long after the son of PW-3 had been done to death. Clearly, both A-1 and A-2 were persisting with the idea of making ransom calls to PW-3, despite having killed his son already.

141. Dr. C.P. Singh (PW-25/PW-40) has proved the matching of the specimen voice samples of A-1 and A-2 with the questioned voices. In addition, this Court has been taken through the detailed transcript prepared of these conversations under the orders of the trial Court.

142. Although an argument was advanced that the original of the cassette remained with PW-3 throughout and this was noted by the trial Court at the

stage of final arguments, the fact remains that when the recorded conversations were played in the trial Court, no objection was raised as to their authenticity. In any event, with the forensic expert having successfully proved matching of the specimen voices of A-1 and A-2 with the questioned voices, it stood clearly established that the ransom calls were in fact made by both A-1 and A-2. The fact that PW-7 does not mention the ransom calls does not take away one bit from the credibility of the evidence proved in that regard.

143. It is submitted that PW-19 talks about Ct. Parmod being deputed to the residence of PW-3 to monitor the calls. However, this was not recorded in the case diary. It is also pointed out that the case diaries from 20th January 2003 to 5th February 2003 are silent on the aspect of receipt of any ransom calls. It is further pointed out that PW-3's statement was recorded on 20th January 2003, whereas there is no mention of receiving or recording of phone call as of that date. It is not particularly known when exactly the call was received on 20th January 2003 on the landline. As regards the call of 20th January 2003, reference is made to the deposition of PW-3 who says that while he was proceeding for Agra with PW-1, a ransom call was received at around 5 pm. It is pointed out that PW-1 was silent about that call. Even PW-19 was silent about this call. He also admitted that on 2nd February 2003, no case diary entry was recorded.

144. All of the above were possible lapses in the investigation but, in the considered view of this Court, do not adversely affect the prosecution case, particularly in relation to the making of ransom calls by A-1 and A-2. This is

because the calls made on 10th and 11th March 2003 have been proved conclusively by the prosecution as having been made by A-1 and A-2.

Certificate under Section 65B IEA

145. At this juncture, it is necessary to deal with the submissions of learned counsel for the accused regarding inadmissibility of CDRs for want of certificate under Section 65B IEA. In this context, it requires to be noticed that while the decision of Supreme Court in *P.V. Anwar v. P.K. Bashir (2014) 1 SCC 473*, overruled the earlier Bench of two Judges of the Supreme Court in *State NCT of Delhi v. Navjot Sandhu (2005) 11 SCC 600*, there was no clarity whether the ruling in *P.V. Anwar (supra)* was prospective or retrospective. In *Sonu @ Amar v. State of Haryana (2017) 8 SCC 570*, this very question has been raised. Subsequently, the matter has been placed before a larger Bench by a separate order dated 11th December 2017 in M.A.1563/2017 in C.A.4226/2012 (*P.V. Anwar v. P.K. Bashir*). The said order reads thus:

“In view of the observations in a judgment of this Court in *Sonu alias Amar v. State of Haryana*, reported in (2017) 8 SCC 570, in paragraph 40, place this application before Hon'ble the Chief Justice of India for posting the matter before an appropriate Bench.

Learned senior counsel appearing for the applicant(s) submits that the hearing of the appeal is fixed before the Division Bench of the High Court of Kerala. Learned senior counsel may make a mention before Hon'ble the Chief Justice of India.”

146. Also, in *Sonu v. State of Haryana (supra)*, the Supreme Court has held that the admissibility of a document which is inadmissible can be taken up at the appellate stage, which has been done in the present case. However,

considering that there is no clarity on the retrospectivity of the ruling in *P.V. Anwar (supra)*, this Court is not persuaded to hold that in the present case at the time when the evidence was led [which is prior to the decision in *P.V. Anwar (supra)*], the CDRs produced were inadmissible. The law at that time was governed by the decision of the Supreme Court in *Navjot Sandhu (supra)*.

147. A reference may be made to the evidence of Anuj Bhatia (PW-28) who was working as the Nodal Officer at Vodafone and brought the CDR of PW-3. He stated that Ex.PW-28/A as well as Ex.PW-3/D3 were not signed by any officer of their company. However, he was unable to dispute that they were CDRs of the calls made from and received by the mobile phone used by PW-3. The CDR clearly shows that at least four calls were made during the day to PW-3 on 10th and 11th March 2003. PW-28 clarified that the incoming calls which were not charged were not reflected in the statement of account of the mobile phone of PW-3 which was a temporary statement of account showing the calls for which he was charged.

148. The evidence of Pawan Singh (PW-27) proved the CDR of a mobile number ending '4722' which was used to make the ransom calls. Again, these CDRs did not have the certificate under Section 65B IEA. The above documents do show that calls were made from the mobile number ending '4722' to the mobile number of PW3.

149. As regards the SIM card issued to A-1 for the mobile number ending '3554', it is claimed that Ex.PW-13/A (photocopy of the CAF), Ex.PW-13/B (photocopy of the CDR of the mobile ending '3554') and Ex.PW-12/A1 and

Ex.PW-12/A2 (the photocopy of the passport of Rajbir) were all forged and fabricated documents. It is contended that the cited witness of the prosecution from Bharti Airtel and Vodafone were dropped and not examined since the prosecution knew that the cited witnesses would not be able to produce the original CDRs.

150. The Court is unable to agree with the above submission since the specimen voice samples of the A-1 and A-2 have matched the questioned voices in the ransom call. Consequently, the technical objections to the admissibility of the CDRs require to be rejected as the forensic evidence of voice matching is a clinching piece of evidence which connects both A-1 and A-2 with the crime.

151. PW-13 was the Nodal Officer of Bharti Airtel. He has spoken about the CDR of mobile ending '3554' and has also proved the IMEI number of the SIM card obtained by A-1 in the name of 'Rajbir'. The non-examination of Shubhankar Mitra does not affect the case of the prosecution although PW-37 stated that the mobile phone and SIM card used for making the ransom calls were seized from him on 4th May 2003. The prosecution has also been able to conclusively prove through the above evidence, the guilt of A-1 for the offences punishable under Sections 420, 468 and 471 IPC.

152. The prosecution has also been able to conclusively prove that long after the deceased was killed, A-1 and A-2 continued making ransom calls to PW-3. This also proved the motive for the crime. The prosecution has also proved that after disposing of the dead body of the deceased, A-1 and A-2 were still claiming to PW-3 that the deceased was with them. From the

transcripts, it is clear that they were trying to mislead PW-3 by saying that the deceased was still alive even though they knew full well that he had been done to death on the night of 18th January 2003.

Section 106 IEA is attracted

153. That the death was homicidal has been proved by the medical evidence which could not be seriously questioned by the accused. As far as A-1 and A-2 are concerned, the above chain of circumstances stood complete, with each link having been fully established by the prosecution. Additionally, with the prosecution showing that the deceased was last seen alive in their company, the burden shifted onto A-1 and A-2 to explain how he died an unnatural, homicidal death. Section 106 IEA would certainly get attracted in the facts and circumstances of the case. In ***Shambhu Nath Mehra v. State of Ajmer AIR 1956 SC 404***, the Supreme Court explained that Section 106 IEA was not intended to shift the burden of proof (in respect of a crime) onto the accused but to take care of a situation where a fact is known only to the accused and it is difficult for the prosecution to prove that fact. It was held:

“This Section 101 lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused

to prove that he did not commit the murder because who could know better than he whether he did or did not.”

154. In the present case, however, far from offering any explanation, A-1 and A-2 have totally denied the circumstances put to them. This false denial certainly provides an additional link in the chain of proved circumstances which unmistakably points to their guilt.

Admissibility of disclosures under Section 27 IEA

155. On behalf of A-1 and A-2, it was submitted that their alleged disclosures resulting in the police party from Delhi going to Ghaziabad to the spot near the Mahamaya Stadium where the dead body was thrown were inadmissible under Section 27 IEA since that spot was already known to the police at Ghaziabad. It was likely that the police in Uttar Pradesh shared this information with the Delhi Police long before even the arrest of the accused on the 2nd/3rd May 2003.

156. Linked with this is the submission that the arrests of the accused took place not on 4th May 2003 as shown in the record but on 2nd May 2003 itself. This is further sought to be buttressed by the argument that the case diary as seen by the learned MM had entries only till 27th April 2003 and when the learned MM saw the case diary on 2nd May 2003, it did not contain any further entries. The learned MM is supposed to have signed the case diaries at that stage. It is accordingly submitted that with no entries in the case diary until 5th May 2003, the whole story of the arrest of the accused happening only on 4th May 2003 is a sham. It is submitted that the entire case is cooked up by the police and ought not to be believed by this Court.

157. The law in relation to disclosure leading to the discovery of a fact which is distinct and connects the accused to the crime is well settled. In ***Pulukuri Kottayya v. Emperor AIR 1947 PC 67***, the Privy Council explained the legal position thus:

“10.... In their Lordships view, 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.”

158. The law was further explained by the Supreme Court in ***Mohamed Inayatullah v. The State of Maharashtra (1976) 1 SCC 828*** thus:

“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:

"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. Crown AIR 1929 Lah 344*; *Rex v. Ganee AIR 1932 Bom 286*). 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 Kottayya v. Emperor AIR 1947 PC 67*; *Udai Bhan v. State of Uttar Pradesh AIR 1962 SC 1116*).

159. In ***Ranjit Kumar Ram v. State of Bihar 2015 SCC OnLine SC 500***, the Supreme Court reiterated the legal position as under:

“20. So far as the contention regarding the inadmissibility of the statement recorded from the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3), of course, the statement did not lead to the disclosure of any fact as admissible under Section 27 of the Evidence Act. Ideally based on the statement recorded from the accused, the investigating officer should have taken the accused to the alleged place of occurrence which would have led to the disclosure of place of occurrence and omission to do so, is only a lapse in the investigation. Even if it is accepted that there was deficiency in investigation that cannot be a ground to doubt the prosecution version which is otherwise cogent and credible.”

160. In the present case, there is nothing to show that at any time prior to the arrest of the accused, the Ghaziabad Police in fact informed the Delhi Police about the precise location of the dead body. Even assuming that the Ghaziabad Police did tell the Delhi Police about a dead body having been found, the precise spot where it was thrown would be known only to the accused particularly since they were able to point out the *nala* in which they had dumped the body. This precise location would not have been known to the Delhi Police but for the disclosure statements of the accused. Consequently, the Court is not persuaded that the Delhi Police somehow knew where exactly the dead body had been thrown outside the Mahamaya

Stadium in Ghaziabad even before the accused took them there. This submission is accordingly rejected.

161. On the case diary, learned counsel for the accused may be justified in their submission that it was not maintained in accordance with law. The events that unfolded during the investigation were perhaps not contemporaneously recorded therein as it should have as required by law. While this certainly was a serious lapse on the part of the IO, when the evidence gathered is viewed in a holistic manner, this Court is not persuaded to hold that the case diary was manipulated or fabricated to make it appear that the arrests of the accused took place on 4th May 2003 and not earlier.

162. As regards the recovery of the gold chain and wrist watch belonging to the deceased from A-1 and A-2 respectively, although the TIP of the said articles proved that they did belong to the deceased, in the considered view of the Court, the prosecution cannot be said to have proved this circumstance beyond reasonable doubt. This is particularly since, at the first available opportunity, the fact of the deceased wearing these valuable items was not disclosed to the police by PW-3. The Court therefore keeps out of the reckoning this part of the evidence for which A-1 and A-2 have been held by the trial Court to be guilty of the offence under Section 411 IPC. They are entitled to the benefit of doubt in that regard.

Chain of circumstances complete qua A-1 and A-2

163. However, this by no means dilutes the case of the prosecution *qua* A-1 and A-2 for the substantive offences punishable under Sections 364A, 302, and 201 IPC all read with Section 120B IPC. In other words, that A-1 and

A-2 entered into a criminal conspiracy and, pursuant thereto, abducted the deceased for ransom, murdered him, and concealed the evidence of the crime has been conclusively proved by the prosecution beyond all reasonable doubt.

Role of A-3

164. However, as far as A-3 is concerned, it is seen that the only evidence *qua* him is PW-2 noticing him in the park. Unlike A-1, A-3 is not said to have approached the deceased at all. He was not seen driving any motorcycle. A-3 was also not stated to have driven the deceased away on a motorcycle. His precise role in the abduction and killing of the deceased has been unable to be spelt out by the prosecution.

165. While the involvement of A-1 and A-2 stands conclusively established by the matching of their specimen voices with the questioned voices in the recorded ransom calls, there is no such evidence as far as A-3 is concerned. Therefore, he cannot be said to have been part of any criminal conspiracy or even shared a common intention of first abducting the deceased for ransom and then murdering him. Consequently, this Court is of the view that A-3 is entitled to the benefit of doubt for the offences with which he has been charged.

Conclusion

166. The net result of the above discussion is that as far as A-1 and A-2 are concerned, their guilt for the offences punishable under Sections 364A, 302, and 201 IPC all read with Section 120B IPC stands established by the prosecution beyond reasonable doubt. They are, however, acquitted of the

offence under Section 411 IPC. Further, the conviction of A-1 for the offences under Sections 420, 468, and 471 IPC is upheld.

167. As far as A3 is concerned, he is acquitted of all the offences with which he has been charged.

168. Consequently, the impugned judgment of the trial Court convicting A-1 and A-2 for the offences punishable under Sections 364A, 302, and 201 IPC all read with Section 120B IPC and the corresponding sentences awarded to them for those offences, including the direction for payment of compensation to the family of the victim, hereby stands confirmed. Further, the impugned judgment of the trial Court convicting A-1 for the offences punishable under Sections 420, 468, and 471 IPC and the corresponding sentences awarded to him for those offences also stands confirmed. All sentences shall run concurrently.

169. The impugned judgment of the trial Court convicting A-1 and A-2 for the offence under Section 411 IPC and convicting A-3 for the offences under Sections 364A, 302, and 201 IPC all read with Section 120B IPC and the corresponding sentences awarded to them for those offences are hereby set aside. The direction to A-3 to pay compensation to the family of the victim is also set aside.

170. As a result, CrI.A.218/2018 preferred by Joginder @ Mintu (A-3) stands allowed. Meanwhile, CrI.A.319/2018 preferred by Vikas Chaudhary (A-2) and CrI.A.360/2018 preferred by Vikas Sidhu (A-1) are disposed of in the above terms. All pending applications are disposed of.

171. Joginder @ Mintu (A-3) shall be released forthwith unless wanted in any other case. He shall fulfil the requirements of Section 437A Cr PC to the satisfaction of the trial Court at the earliest.

172. The trial Court record be returned forthwith, together with a certified copy of this judgment.

173. A copy of this judgment, and a soft copy of the paper book, also be sent by the Registry through a Special Messenger forthwith to the Secretary, Delhi State Legal Services Authority ('DSLISA') to inquire into whether and what compensation, the legal representatives ('LRs') of the deceased victim might be entitled to in terms of the Victims' Compensation Scheme framed under Section 357A Cr PC. The amount, if any, found payable should be disbursed to the LR's without delay. This entire exercise be completed by the Secretary, DSLISA preferably within three months from today.

S. MURALIDHAR, J.

VINOD GOEL, J.

OCTOBER 31, 2018

parul/rd