

Santosh/Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEALS NO.38, 48, 51, 52 & 64 OF 2014
WITH
CRIMINAL REVISION APPLICATION NO.44 OF 2014
CRIMINAL APPEAL NO.38 OF 2014

Rohan Dhungat
Son of Pradeep R. Pai Dhungat,
26 years old, Indian National,
Resident of House No.129/A,
Lakshadeep Apartments, B2,
Vasco, and presently lodged in
Central Jail, Aguada, Goa.

.... Appellant

Versus

- 1 S T A T E
(Through Police Inspector,
Panaji Police Station)
- 2 Public Prosecutor
High Court of Bombay,
Panaji, Goa.
- 3 Nafiyaz Sheikh,
Son of Naruddin Mamlekar,
26 years old, Indian National,
resident of B5, Third Floor,
Reghunath Apartments,
Opposite to Joshi Auto
Service,
Vasco-da-Gama and presently

lodged in Central Jail,
Aguada, Goa.

- 4 Shankar Tiwari
Son of Lalta Tiwari, 29 years
old, Indian National,
Businessman,
resident of House No.170,
Housing Board Colony,
New Vaddem, Vasco, Goa
and presently lodged in
Central Jail, Aguada, Goa.

- 5 Jovita Ryan Dos Remedios
Pinto
Son of Francisco Pinto, 27
years old, Indian National,
resident of opposite to Post
Office, Naikawada,
Calangute, Bardez, Goa and
near Uccassaim Panchayat,
Bardez, Goa and presently
lodged in Central Jail,
Aguada, Goa.

.... Respondents

Mr. S.G. Desai, Senior Advocate with Mr. Pavithran A.V., Advocate
for the Appellant.

Mr. Shirish Gupte, Special Public Prosecutor for the State.

WITH
CRIMINAL APPEAL NO.48 OF 2014

Nafiyaz Sheikh,

Son of Naruddin Mamlekar,
Aged 19 years, student,
Presently in the judicial custody Appellant
at Sada, Vasco, Goa.

Versus

- 1 STATE OF GOA
Through Police Inspector,
Panaji Police Station,
Panaji-Goa.
- 2 The Public Prosecutor,
Bombay High Court at Goa,
Panaji-Goa. Respondents

Mr. C.A. Ferreira, with Mr. I. Agha and Mr. Ketan Morajkar,
Advocates for the Appellant.

Mr. Shirish Gupte, Special Public Prosecutor for the State.

WITH
CRIMINAL APPEAL NO.51 OF 2014

Jovito Ryan dos Remedies Pinto,
major, Presently lodged in
Central Jail-Aguada, Sinqerim, Appellant
Bardez, Goa.

Versus

- 1 STATE OF GOA
as represented by
Officer-In-charge,

Panaji Police Station,
Panaji, Goa.

- 2 Public Prosecutor,
High Court of Bombay at
Goa, Respondents
Panaji, Goa.

WITH
CRIMINAL APPEAL NO.52 OF 2014

Shankar Tiwari
Presently lodged in
Central Jail – Aguada,
Sinquerim, Bardez, Goa. Appellant

Versus

- 1 STATE OF GOA
as represented by
Officer-In-charge,
Panaji Police Station,
Panaji, Goa.
- 2 Public Prosecutor,
High Court of Bombay at
Goa, Respondents
Panaji-Goa.

Mr. Jos Peter D'Souza, with Mr. S. Pinto and Ms. D. Tulkar,
Advocates for the Appellants.

Mr. Shirish Gupte, Special Public Prosecutor for the State.

***WITH
CRIMINAL APPEAL NO.64 OF 2014***

State of Goa

Through Police Inspector,

(Major),

Panaji Police Station.

.... Appellant

Versus

- 1 Rohan Dhungat,
s.o. Pradeep R. Pai Dhungat,
aged 19 years, student,
r/o. H.No.129/A,
Lakshadeep Apartment,
B-2, Vasco.
- 2 Nafiyaz Sheikh,
S/o. Naruddin Mamlekar,
aged 19 years, student,
r/o. B-5, 3rd floor,
Rachunath apartment,
Opposite to Joshi Auto
Service,
Vasco-da-Gama.
- 3 Shankar Tiwari,
s/o. Lalta Tiwari,
aged 22 years, business,
r/o. H.No.170, Housing
Board Colony, New Vaddem,
Vasco, Goa.
- 4 Jovito Ryan dos Remedios
Pinto,

s/o. Francisco Pinto,
aged 20 years, student,
r/o. Opp. to post office,
Naikawada, Calangute,
Bardez, Goa and near
Ucassaim Panchayat,
Ucassaim, Bardez Goa.

.... Respondents

Mr. S. R. Rivankar, Public Prosecutor for the Appellant-State.

Mr. S.G. Desai, Senior Advocate with Mr. Pavithran A.V., Advocate
for Respondent No.1.

Mr. C.A. Ferreira, with Mr. I. Agha and Mr. Ketan Morajkar,
Advocates for Respondent No.2.

Mr. Jos Peter D'Souza, with Mr. S. Pinto and Ms. D. Tulkar,
Advocates for Respondents No.3 and 4.

WITH
CRIMINAL REVISION APPLICATION NO.44 OF 2014

Deepak Madhav Surlakar,
aged 52 years, Occupation Real
Estate Developer,
R/o. Borges Building at Vasco-da-
Gama.

.... Applicant.

Versus

1 State of Goa
(Through PI Panjim Police
Station), Panjim, Goa.

2 Rohan Dhungat,

s/o. Pradeep R. Pai Dhungat,
aged 19 years, student,
r/o. H.No.129/A,
Lakshadeep Apartment,
B-2, Vasco.

3 Nafiyaz Sheikh,
Son of Naruddin Mamlekar,
19 years old, Occup. Student,
resident of B5, Third Floor,
Reghunath Apartments,
Opposite Joshi Auto
Service, Vasco-da-Gama.

4 Shankar Tiwari
Son of Lalta Tiwari, 22 years
Occup : Business,
resident of House No.170,
Housing Board Colony,
New Vaddem, Vasco, Goa.

5 Jovita Ryan dos Remedios
Pinto,
Son of Francisco Pinto, 20
years, Occup. Student.
Resident of opposite to Post
Office, Naikawada,
Calangute, Bardez, Goa and
near Ucassaim Panchayat,
Ucassaim, Bardez, Goa.

.... Respondents

Mr. Karan Singh Rajput with Mr. Joao Dias, Ms. Shilpa
Khorjuvenkar and Ms. Sujai Joshi, Advocates for the
Applicant.

***Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.***

Reserved on : 14/02/2019.

Pronounced on : 04/03/2019.

JUDGMENT : (Per M.S. Sonak, J.)

In Criminal Appeal Nos. 38/2014, 48/2014, 51/2014 and 52/2014, the challenge is to the Judgment and Order dated 23 June 2014, made by the Children's Court, State of Goa, in Special Case No.28/2006, convicting each of the Appellants for the offences under Sections 201, 302, 364-A read with Section 120-B of the Indian Penal Code (IPC) and Section 8 of the Goa Children's Act 2003 (Children's Act) and sentencing them, *inter alia*, to Life Imprisonment. These Appeals have been instituted by Rohan Dhungat (A.1), Nafiyaz Sheikh (A.2), Shankar Tiwari (A.3) and Jovita Ryan dos Remedios Pinto(Ryan A.4) respectively.

2. Criminal Appeal No.64/2014 is instituted by the State, aggrieved by the portion of the impugned Judgment and Order which directs that the accused persons are entitled for set off under Section 428 of Cr.P.C. for the period already undergone during the trial.

3. Criminal Revision Application No.44/2014, is instituted by Deepak Surlakar, father of Victim Surlakar (Victim) on the point of sentence. The applicant has urged that the sentence of Life Imprisonment may be enhanced to Death Sentence, or in the alternate, the accused persons be directed to undergo Life Imprisonment for the remainder of their natural lives, without any remission.

4. Since, the challenge is to the Judgment and Order dated 23.6.2014 in Special Case No.28/2006, made by the Children's Court, it is only appropriate that all these Appeals and the Criminal Revision Application, are disposed of by a common Judgment and Order. Accordingly, we proceed to dispose of all these matters by the common judgment and order.

5. The case of the Prosecution is that all the accused persons and one Al Saleha Beig, (original Accused No.5 who later turned approver and examined as (P.W.1)), were friends. Rohan (A.1), Nafiyaz (A.2) and Ryan (A.4), all students of Law College, in partnership undertook the business of publication of magazine “*Vox Populi*” from the office premises at Miramar, Panaji, Goa. As the business ran into losses, all the accused persons, initially hatched a conspiracy to kidnap one Xavier from Mapusa for ransom. However,

after they realized that there was some dispute between the parents of Xavier, on account of which the Court had ordered the Bank accounts of Xavier's father to be frozen, they abandoned this plan. Thereafter, in the first week of August, 2006 Rohan (A.1) proposed a plan to kidnap one Victim from Vasco. Rohan (A.1) stated that Victim, who had given an advertisement in their magazine, had rich parents, and therefore, could be kidnapped for ransom. Accordingly, conspiracy was hatched to kidnap Victim, and in furtherance of the same, the accused persons procured ropes, syringes, medical white tapes, two baseball bats, three pairs of hand gloves, and some car number plates. This was on 10.08.2006. Thereafter all the accused persons including Al Saleha Beig, made attempt to kidnap Victim on 11.08.2006, by posing to call from Sea Square Entertainment, an Event Management Firm from Bombay, and stated to Victim that they wanted him as a Disc Jockey (DJ) to organize a show in Goa. The plan failed as Victim expressed inability to come on 11.08.2006. However, Victim agreed to come on 14.08.2006 and accordingly, Rohan (A.1) who was known to Victim, and Nafiyaz (A.2) went to Victim's house on 14.08.2006 at about 8.30 a.m. to pick up Victim. Rohan (A.1), Nafiyaz (A.2) and Shankar (A.3), ultimately brought Victim to Ryan's (A.4) house at Ucassaim, where, Ryan (A.4) and Al Saleha Beig were already present. Here, the accused persons assaulted and tied down Victim with ropes and forced him to record a message for his father to pay ransom, without reporting the matter to the

police. At about 1.15 p.m., on the same day i.e. on 14.08.2006, a demand was made to Victim's father for ransom of ₹ 50 lakhs. Victim's father thereupon, rushed to the Vasco Police. The Vasco Police, summoned Rohan (A-1) and Nafiyaz (A-2), since, Victim had left with these persons on the morning of 14.08.2006. Rohan (A-1) and Nafiyaz (A-2) informed the Vasco Police that they had indeed accompanied Victim upto Cafe Coffee Day, near Sharada Mandir, at Miramar, but thereafter, Victim, was picked up by a silver colour Accent car from Miramar, and that this was the last they saw Victim. The Vasco Police accordingly directed Victim's father to approach the Panaji Police. Rohan (A-1) and Nafiyaz (A-2) were also summoned by the Panaji Police and they maintained their earlier version. On the next day, i.e. on 15.08.2006, the dead body of Victim was discovered at Alra Keri, near Ponda. Rohan (A-1) and Nafiyaz (A-2) were re-summoned to Panaji Police Station and further investigations revealed the involvement of Shankar (A-3), Ryan (A-4) and Al Saleha Beig, who were accordingly placed under arrest. Victim was found to be killed by strangulation and assault with baseball bats on his head. The post-mortem reports confirmed homicidal death. In the course of investigations, Al Saleha Beig turned approver and disclosed details of the conspiracy and its execution, which, ultimately, led to the abduction of Victim for ransom and ultimately his murder, because Victim's father approached the Vasco Police, instead of complying with the demand for ransom.

6. Since, Victim was less than 18 years of age on the date of his abduction and murder, i.e. on 14.08.2006, cognizance of the offence was taken by the Children's Court constituted under the Children's Act. A charge was framed against all the accused persons, including Al Saleha Beig, charging them for offences under Section 364-A r/w Section 120-B of I.P.C., Section 302 r/w Section 120-B of I.P.C., Section 201 r/w Section 120-B of I.P.C. and finally, under Section 8(2) of the Children's Act. A-1 to A-4, upon being explained the charge, admitted that they understood the same but pleaded "*not guilty*". Al Saleha Beig, who was then styled as A-5, however stated that he has given a detailed statement of commission of offence by all the accused persons and urged that such statement be considered.

7. In pursuance of an application made by Al Saleha Beig (then A-5), the Children's Court, initially by Order dated 05.10.2007, declined to tender pardon to A-5. However, this Order dated 05.10.2007 was set aside by this Court by its Judgment and Order dated 24.01.2008 in Criminal Revision Application No. 69/2007 and the matter was remanded to the Children's Court for reconsideration of the application for tender of pardon. Upon reconsideration however, the Children's Court, vide Order dated 22.02.2008, tendered pardon to A-5 under Sections 306 and 307 of Cr.P.C. on condition that A-5 makes a full and true disclosure of the

whole case within his knowledge. A-5 was ultimately examined as P.W.1 on behalf of the Prosecution.

8. In all, the Prosecution examined 57 witnesses in the matter. After the closure of the Prosecution evidence, statements of A.1 to A.4 were recorded under Section 313 of Cr.P.C. A.1, filed a written statement in continuation of his statement under Section 313 Cr.P.C. (Exh. 393). The accused persons claimed that they were falsely implicated in the crime. The accused persons neither examined themselves, nor any defence witnesses. The Children's Court, after taking into consideration the oral arguments as well as the written synopsis, by the impugned Judgment and Order dated 23.6.2014 disposed of Special Case No.28/2006.

9. The operative portion of the impugned Judgment and Order dated 23.6.2014, made by the Children's Court, in Special Case No.28/2006 reads as follows :

“ Accused no.1 is found guilty for the offence punishable under Section 120-B of IPC for committing criminal conspiracy as he was a party to such criminal conspiracy to commit the offence of kidnapping minor Victim for ransom and thus he is sentenced to suffer imprisonment for life and to pay a fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

Accused no.1 is also found guilty for the offence punishable under Section 364-A r/w Section 120-B of IPC r/w Section 8 of the Goa Children's Act, 2003 and thereby sentenced to suffer imprisonment for life and to

pay a fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

Accused no.1 is also found guilty for the offence punishable under Section 302 r/w Section 120-B of IPC and Section 8 of the Goa Children's Act, 2003 and is hereby sentenced to suffer imprisonment for life and shall also be liable to pay fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

Accused no.1 is also found guilty for the offence punishable under Section 201 r/w Section 120-B of IPC and Section 8 of the Goa Children's Act, 2003 and is hereby sentenced to suffer rigorous imprisonment for 5 years and shall also be liable to pay fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

The accused no.2 is found guilty for the offence punishable under Section 120-B of IPC for committing criminal conspiracy as he was a party to such criminal conspiracy to commit the offence of kidnapping minor Victim for ransom and thus he is sentenced to suffer imprisonment for life and to pay a fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

Accused no.2 is also found guilty for the offence punishable under Section 364-A r/w Section 120-B of IPC r/w Section 8 of the Goa Children's Act, 2003 and thereby sentenced to suffer imprisonment for life and to pay a fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

Accused no.2 is also found guilty for the offence punishable under Section 302 r/w Section 120-B of IPC and Section 8 of the Goa Children's Act, 2003 and is hereby sentenced to suffer imprisonment for life and shall also be liable to pay fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

Accused no.2 is also found guilty for the offence punishable under Section 201 r/w Section 120-B of IPC and Section 8 of the Goa Children's Act, 2003 and is hereby sentenced to suffer rigorous imprisonment for 5 years and shall also be liable to pay fine of ₹10,000 and

in default to undergo simple imprisonment for 3 months.

The accused no.3 is found guilty for the offence punishable under Section 120-B of IPC for committing criminal conspiracy as he was party to such criminal conspiracy to commit the offence of kidnapping minor Victim for ransom and thus he is sentenced to suffer imprisonment for life and to pay a fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

Accused no.3 is also found guilty for the offence punishable under Section 364-A r/w Section 120-B of IPC r/w Section 8 of the Goa Children's Act, 2003 and thereby sentenced to suffer imprisonment for life and to pay a fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

Accused no.3 is also found guilty for the offence punishable under Section 302 r/w Section 120-B of IPC and Section 8 of the Goa Children's Act, 2003 and is hereby sentenced to suffer imprisonment for life and shall also be liable to pay fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

Accused no.3 is also found guilty for the offence punishable under Section 201 r/w Section 120-B of IPC and Section 8 of the Goa Children's Act, 2003 and is hereby sentenced to suffer rigorous imprisonment for 5 years and shall also be liable to pay fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

The accused no.4 is found guilty for the offence punishable under Section 120-B of IPC for committing criminal conspiracy as he was a party to such criminal conspiracy to commit the offence of kidnapping minor Victim for ransom and thus he is sentenced to suffer imprisonment for life and to pay a fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

Accused no.4 is also found guilty for the offence punishable under Section 364-A r/w Section 120-B of IPC r/w Section 8 of the Goa Children's Act, 2003 and thereby sentenced to suffer imprisonment for life and to pay a fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

Accused no.4 is also found guilty for the offence punishable under Section 302 r/w Section 120-B of IPC and Section 8 of the Goa Children's Act, 2003 and is hereby sentenced to suffer imprisonment for life and shall also be liable to pay fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

Accused no.4 is also found guilty for the offence punishable under Section 201 r/w Section 120-B of IPC and Section 8 of the Goa Children's Act, 2003 and is hereby sentenced to suffer rigorous imprisonment for 5 years and shall also be liable to pay fine of ₹10,000/- and in default to undergo simple imprisonment for 3 months.

In case the fine amount is paid by the accused persons, an amount of ₹1,00,000/- be given to the parents of the deceased by way of compensation under Section 357 of Cr.P.C.

All the sentences shall run concurrently. The accused are entitled for set-off under Section 428 of Cr.P.C. for the period already undergone during trial.

M.O. no.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 23, 24, 25, 27, 28, 29, 30, 35, 39, 42, 43, 44, 47, 48, 49, 50, 51, 52, 53, 54, 55, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120 to be destroyed after the appeal period is over.

M.O. no.15, 21, 22, 26, 31, 32, 33, 34, 36, 37, 38, 40, 41, 45, 46, 56, 57, 78, 79, 80 to be returned to the concerned parties after the appeal period is over.”

10. The learned Counsel for the Appellants (A.1 to A.4) attacked the charge framed by the Children's Court on 16.3.2007 by contending that the same was framed in total breach of the

provisions of Section 211, 212, 213 and 214 of Cr.P.C.. They pointed out that in so far as inclusion of Section 8(2) of the Children's Court is concerned, the charge was totally vague and bereft of any particulars whatsoever. They submitted that there was in fact, no material whatsoever to frame the charge under Section 8(2) of the Children's Act and the only purpose for framing such a charge was to vest jurisdiction in the Children's Court when, in fact, it lacked the jurisdiction over the subject-matter. They pointed out that the framing of charge is the foundation of a criminal trial and no conviction can be sustained on the basis of such a vague and defective charge. They relied on the decision of the Apex Court in ***Vinubhai Ranchhodbhai Patel vs. Rajivbhai Dudabhai Patel and ors.***,¹

11. The learned Counsel for the Appellants (A.1 to A.4) then contended that the Children's Act was not at all applicable to A.1 to A.4 and consequently, the Children's Court had no jurisdiction to try them. They pointed out that in the first place, there was absolutely no material to frame any charge under Section 8(2) of the Children's Act against any of the accused persons. Secondly, they pointed out that in terms of Section 2(d) of the Children's Act, read with the provisions of Sections 361 and 363-A of IPC, for the offence of kidnapping “*minor*”, means a person under 16 years of age. They pointed out that the Victim, in the present case, was

¹ (2018) 7 SCC 743

admittedly 17 years old at the time of the commission of the alleged offence. Therefore, the Victim was not a “*child*” as defined under Section 2(d) of the Children's Act. Consequently, the Children's Court had no jurisdiction whatsoever to try the accused persons. Thirdly, they contend that the offence of “*child abuse*” as defined under Section 2(m) of the Children's Act, can be committed only on a child who is alive. They submitted that once the child dies, there is no question of any offence of child abuse under Section 2(m) of the Children's Act. Since, it was the case of the Prosecution that the Victim, who was alleged to be a child, ultimately died, there was no basis for framing any charge of “*child abuse*”. Consequently, the Children's Court, in this Case, has usurped the jurisdiction when, in fact, it had none.

12. Mr. Desai, however, relied upon *Ajay Kumar Ghoshal and ors. vs. State of Bihar and anr.*² to contend that even though the entire trial before the Children's Court was without jurisdiction, this is not a fit case to remand the matter to the Court having jurisdiction in the matter, simply because the Appellants (A.1 to A.4) have already suffered incarceration for over 12 years and, therefore, it would cause them very serious prejudice if they are called upon to once again face the trial. He submits that the principle of double jeopardy would be attracted to such a situation.

² 2017 (12) SCC 699

13. The learned Counsel for the Appellants (A.1 to A.4) then attacked the Children's Court's order dated 22.2.2008, by which Al Saleha Beig, original Accused No.5, was granted pardon. They pointed out that A.5 was accorded special treatment, which is evident from the fact that the then Chief Minister actually visited A.5 whilst in Police Custody. They pointed out that A.5 turned approver after he was permitted pardon. They pointed out that A.5 had already confessed to his role in the alleged crime and, therefore, in terms of Section 30 of the Evidence Act, his confession could have been considered not only against himself, but also against other accused persons. They pointed out that there was no explanation for the delay between the date on which A.5 offered to confess and the actual date of recording of confession. They pointed out that for all these reasons, the Children's Court's order dated 22.2.2008, granting pardon to A.5, who was eventually examined as PW.1, is liable to be set aside. They submitted that if this order is set aside, then, the evidence of PW.1 is liable to be struck off the record. They submit that if the evidence of PW.1 is struck off the record, then, there is absolutely no evidence to link any of the accused persons with the alleged crime.

14. The learned Counsel for the Appellants (A.1 to A.4) submitted that the twin tests of reliability and corroboration, as

prescribed in Section 133 and Illustration (b) to Section 114 of the Evidence Act, have not been fulfilled, in case of testimony of the approver-PW.1. They pointed out that several discrepancies in the testimony of PW.1 and urged that these discrepancies establish that PW. 1 was not at all a reliable or trustworthy witness.

15. In the aforesaid regard, the learned Counsel for the Appellants (A.1 to A.4) pointed out that PW.1 has admitted that he did not attend the meeting held on 13 August 2006 to plan the alleged incident of 14 August 2006. Yet, PW. 1 has purported to graphically depose to the hatching of conspiracy to kidnap the Victim for ransom. They pointed out that PW.1 at one place categorically deposed that Nafiyaz (A.2) was driving he car from Vasco to Ucassaim along with the Victim. However, in the course of cross examination, PW.1 admits that he was not aware as to who was driving the car. They pointed out that PW.1 has categorically deposed that the Victim was made to record a message on the mobile phone of Rohan (A.1) stating that he was kidnapped for ransom. However, PW.39, the expert witness examined by the Prosecution has categorically deposed that no such recording was done on the mobile phone. They pointed out that PW.1 has categorically deposed that both Rohan (A.1) and Ryan (A.4) injected Vodka into the body of the Victim. However, Dr. Sapeco (PW.8) in his cross examination has clearly deposed that no prick (injection) marks were noticed on

the Victim's body, nor was there any evidence of thrombosis or necrosis which would result, if alcohol were to be injected in the Victim's body. They pointed out that PW.1 has deposed that Ryan's (A.4's) black Alto car was used for the purpose of kidnapping the Victim on the morning of 14/08/2006. However, PW.36, the worker who was working at the Ucassaim house, has deposed that this Alto Car was parked at the Ucassaim house from 9 a.m. to 3 p.m. They pointed out that PW.1 has purported to recover certain incriminating articles from his own brother-in-law's shop at Ponda. This was on the basis that such articles were kept by PW.1 in the said shop. But, however, PW.1 himself deposed that he was only sitting in the car and it is Ryan (A.4) who kept the incriminating articles in his brother-in-law's shop. They pointed out that there are serious discrepancies as to the timing and the arrest of PW.1. The testimony of PW.1 does not corroborate with the arrest panchanama deposed to by the Panchas. They point out that the call detail record or the CFSL reports also do not corroborate the version deposed to by PW.1. For all these reasons, the learned Counsel submitted that PW.1 was entirely an unreliable and untrustworthy witness and, in any case, the testimony of PW.1 has not been corroborated as to material particulars.

16. The learned Counsel for the Appellants (A.1 to A.4) point out that the so called recoveries under Section 27 of the Evidence Act

were sham recoveries. They point out that PW.1 has claimed to have informed the I.O. the entire story on the date of his arrest i.e. 16/8/2006. Yet, the I.O. staged false recoveries only to seek the benefit of Section 27 of the Evidence Act. They point out that scene of offence was already disturbed on 16.8.2006, which is evident from the deposition of the maid (PW.51) who used to work at Ryan's (A.4's) Ucassaim house. Yet, the I.O. has falsely deposed that he became aware of the scene of offence only on 17.8.2006 and on such basis purported to effect completely fake recovery so as to seek the benefit of Section 27 of the Evidence Act. The learned Counsel submit that the IO's investigation was not at all impartial and the IO was bent upon fabricating the evidence against the accused persons. On these grounds, the learned Counsel submit that the conviction recorded against the accused persons is required to be set side.

17. Mr. Desai, learned Senior Advocate for A.1 went to the extent of submitting that because the accused persons were taken to sites, at which recoveries were made in pursuance of their recorded statements, such recoveries attract the vice of Sections 25 and 26 of the Evidence Act and the statements are inadmissible in evidence. He relies on *Kullukuria Kottaiya vs. Emperor*³; *Pandurang Kalku Patil vs. State of Maharashtra*⁴; and *Anter Singh vs. Sate of*

³ AIR 1947 PC 67

⁴ 2002 (2) SCC 490

*Rajasthan*⁵ in support of this proposition.

18. The learned Counsel for the Appellants (A.1 to A.4) point out that if the testimony of PW.1 is excluded, then, there is no direct evidence to link the accused persons with the alleged crime. They point out that even the tests prescribed by the Apex Court in *Sharad Birdhichand Sarda vs. State of Maharashtra*⁶ and *State of Goa vs. Sanjay Thakran and anr.*⁷ in the matters of appreciation of circumstantial evidence, have not at all been fulfilled in the present matter.

19. Mr. Desai, learned Senior Advocate appearing for A.1, then made certain submissions peculiar to A.1. He submits that even according to the case of the Prosecution, A.1 was not at all present in the Ucassaim house between 12.30 p.m. and 2.30 p.m. when the murder of the Victim is alleged to have taken place. He submits that there is absolutely no evidence as regards the conspiracy to commit murder. He submits that even PW.1 has deposed that the decision to murder the Victim was spontaneous. He submits that accordingly there is absolutely no evidence to link A.1 to the murder of the Victim. On this ground he submits that at least A.1 is entitled to be

⁵ 2004 (10) SCC 657

⁶ 1984 (4) SCC 116

⁷ 2007 (3) SCC 755

acquired of the offences alleged against him.

20. Mr. C.A. Ferreira, learned Counsel appearing for A.2 also submitted that A.2 was never at Ucassaim house at the time of the alleged murder. He points out that there is absolutely no evidence as regards conspiracy for murder. He points out that the Prosecution has gone to unnatural extent in order to rope in A.2. He points out that the recoveries, at the instance of A.2, are inherently improbable and consequently unbelievable. He points out that there was absolutely no reason for the pant of A.2 to be found in the washing machine at the Ucassaim house belonging to A.4. He points out that the Prosecution failed to produce any evidence to demonstrate that the pant, in question, indeed belonged to A.2, except the statement of the I.O. that according to him the size of the pant matches with the size of A.2. Mr. Ferreira points out that the CDR evidence was clearly inadmissible in the absence of certificate under Section 65B of the Evidence Act. In any case, he points out that the call detail records establish nothing incriminating against the accused persons, including, in particular, A.2. He relies on *Anwar P. vs. Bashir*⁸ to urge that the certification under Section 65B of the Evidence Act is mandatory and in absence of the same no such evidence can be relied upon. He refers to the rulings in *Pershadi vs. State of Uttar*

⁸ 2014 (10) SCC 473

*Pradesh*⁹; *Vijay Thakur vs. State of H.P.*¹⁰; *Sarbir Singh vs State of Punjab*¹¹; *Vikram Singh and anr. vs. State of Punjab*¹²; and *Anvar P.V. vs. P.K. Basheer*¹³, in support of the propositions advanced by him. On this basis, he submits that at least A.2 is required to be acquitted of the charges alleged against him.

21. Mr. Jos Peter D'Souza and Mr. S. Pinto, who appeared for A.3 and A.4, whilst adopting the general submissions made by Mr. Desai, and Mr. Ferreira, submitted that there were serious errors in recording the 313 statements of the accused persons. They pointed out that the note appended to the 313 Cr.P.C. statements nowhere states that the answers given by the accused persons may be used against them in the present trial. They submitted that Questions Nos. 168, 254, 321, 322, 323 posed to the accused persons were complex and complicated. They pointed out that the Roznamas on some dates indicated that the matter was taken up before the Sessions Court, which had no jurisdiction in the matter. They refer to some cancellation of dates in the Roznamas and submit that since it is not discernible as to who carried out such cancellation, the conviction against Accused Nos. 3 and 4 is liable to be set aside. They pointed out that C.L. Patil, PI Mapusa Police Station was a

⁹ AIR 1957 SC 211

¹⁰ 2104 (14) SCC 609

¹¹ 1993 (Supp)(3) SCC 41

¹² 2017 (8) SCC 518

¹³ 2014 (10) SCC 473

material witness and since he was not examined by Prosecution, an adverse inference is liable to be drawn against the Prosecution. They pointed out that the Prosecution has failed to explain the injuries on the body of A.3 and A.4 which the Prosecution was bound to. For all these reasons, they submitted that Accused Nos. 3 and 4 are entitled to acquittal of the charges leveled against them.

22. Mr. Desai and Mr. Ferreira submitted that it is not even the case of the Prosecution that Rohan (A.1) and Nafiyaz (A.2) were present at the Ucassaim house between 12 noon to 3 p.m. on 14.8.2006, when the Victim is alleged to have been murdered. They point out that even the conspiracy deposed to by PW.1 relates only to kidnapping of the Victim for ransom and not for murder. They pointed out that even PW.1 has deposed that the plan to murder the Victim was sudden and there was no preplan. For all these reasons, they submit that at least Accused Nos. 1 and 2 are liable to be acquitted of the offences levelled against them.

23. Mr. Shirish Gupe, learned Senior Advocate for the State defended the impugned Judgment and Order made by the Children's Court on the basis of the reasoning reflected therein. He pointed out that there is absolutely no error in framing of the charge and, in any case, none of the accused persons, has established any prejudice or

failure of justice. He relies upon *Kamil vs. State of Uttar Pradesh*¹⁴, in support of his submissions.

24. Mr. Gupte submitted that the Children's Court in the present case clearly had jurisdiction in the matter, since, the Victim was admittedly less than 18 years of age on the date on which he was abducted and murdered by the accused persons. He submits that this was really a case of abduction and not kidnapping as such. He submits that the charge of “*child abuse*” can be framed only if the Victim is alive is too, fantastic, to deserve any serious consideration.

25. Mr. Gupte submits that the Children's Court's order dated 22.2.2008, tendering pardon to PW.1 is absolutely legal and proper. He submits that the pardon was tendered in terms of law summarized by this Court in its order dated 24.1.2008 in Criminal Revision Application 69/2007. He submits that since the Children's Court's order dated 22.2.2008 was never questioned by the accused persons by instituting proceedings before this Court, no contention as regards the order dated 22.2.2008 may be now entertained at this stage. He submits that in matters of tender of pardon, the other accused persons can have no say.

26. Mr. Gupte pointed out that in the present case, the evidence of PW.1 has a ring of truth and was, therefore, rightly relied upon by the Children's Court. He points out that evidence of PW.1 stands corroborated by the other evidence on record. He referred to a number of rulings on the appreciation of the approver's evidence and submitted that the Prosecution, in the present case, has proved the guilt of accused persons to the hilt. He relied on *K. Hashim vs. State of Tamil Nadu*¹⁵; *Willie (William) Slaney vs. The State of Madhya Pradesh*¹⁶; *Haroon Haji Abdulla vs. State of Maharashtra*¹⁷ *Dagdu and ors. vs. State of Maharashtra*¹⁸ to submit that approver's evidence can be acted upon, particularly when the same is corroborated in material particulars.

27. Mr. Gupte pointed out that the so called contradictions or discrepancies pointed out by the learned Counsel for A.1 to A.4 were not at all material. He pointed out that in matters of this nature, it was impossible to expect witnesses to depose with a picture perfect memory. He submits that in fact, such trivial contradictions of discrepancies are hallmarks of credit worthiness. He points out that PW.1 has truthfully and in detail, deposed to the factum and the manner of the commission of the heinous offence. He points out that there are several circumstances which the Prosecution has

15 (2005) 1 SCC 238;

16 AIR 1956 SC 116;

17 AIR 1968 SC 832

18 (1977) 3 SCC 68;

established beyond reasonable doubt which corroborate material particular deposed to by PW. 1. He listed such circumstances and submitted that there is absolutely no case made out to interfere with the impugned judgment and order.

28. Mr. Rivankar, learned Public Prosecution appearing in Cr. Appeal No.64/2014, pointed out that in the present case A.1 to A.4 have been sentenced to Life Imprisonment and not sentenced for a term. He therefore, submits that the provisions of Section 428 of Cr.P.C. were not at all applicable and the learned Children's Court clearly erred in ordering a set off under Section 428 Cr.P.C. Mr. Rivankar relied on the decisions in the cases of *Sangeet vs. State of Haryana*¹⁹; *Duryodhan Rout vs. State of Orissa*²⁰; *Swamy Shraddananda vs. State of Karnataka*²¹; *Kartar Sing & Ors. vs. State of Haryana*²²; *Jagir Singh & Ors. vs. State of Punjab*²³ and *Gopal Vinayak Godse vs. State of Maharashtra*²⁴ in support of his contentions.

29. Mr. Karan Singh Rajput, learned Counsel for the father of the Victim in Criminal Revision Application No.44/2014, on the

19 2013 (2) SCC 452

20 2015 (2) SCC 783

21 2008 (5) Surpeme 482

22 1982 AIR (SC) 1439

23 1981 (1) SCC 107

24 1961 3 SCR 440

basis of instructions, made a statement that the applicant does not press for award of death penalty to A.1 to A.4. He, however, submitted that this is a fit case to issue directions that A.1 to A4 undergo life imprisonment for the remainder of the natural lives, without any remission. He pointed out that the crime committed by A.1 to A.4 was extremely cruel and heinous. He pointed out that A.1 to A.4 were professional criminals, which is evident from the material brought on record by the Prosecution. He pointed out that the Victim was helpless and A.1 to A.4 took every advantage of Victim's helplessness to mercilessly murder the Victim after they realized that the Victim's father had lodged a complaint with the police regards the offence of kidnapping for ransom. He, therefore, submits that necessary directions be issued, so that A.1 to A.4 undergo life imprisonment for the remainder of their natural lives, without any remissions.

30. Mr. S.G. Desai, the learned Senior Advocate for A.1 relied upon *Bhagirath vs. Delhi Administration*²⁵; and *Ranjit Singh vs. State of Punjab*²⁶ to submit that the ruling in *Kartar Sing* (supra) relied upon by Mr. Rivankar, stands expressly overruled. Relying upon these two decisions Mr. Desai contended that there was absolutely no error in extending the benefit of Section 428 of Cr.P.C.

25 (1985) 2 SCC 580

26 (2010) 12 SCC 506

to A.1 to A.4.

31. The learned Counsel for the Appellants (A.1 to A.4) joined issue with the contentions raised by Mr. Rajput and submitted that there was absolutely no merit in such contentions.

32. The rival contentions, now fall for our determination.

33. On the aspect of framing of charge, firstly, we do not think that there were any defects as such in the framing of the charge. The particulars of the offence together with particulars as to time, place and person have been set out. The manner of commission of the offences has also been set out. This is sufficient compliance with the provisions of Section 211, 212, and 213 of Cr.P.C. From the words used in the charge, we are satisfied that there is compliance with section 214 of Cr.P.C. Secondly, A.1 to A.4 were clearly asked whether they understood the charge after the charge was duly explained to them by the Children's Court and A.1 to A.4 responded in the affirmative. Thirdly, in the present case there is evidence that A.1. A.2 and A.4 were in fact law students. Fourthly, throughout the trial, no grievance whatsoever was raised on the aspect of the framing of the charge. In fact, A.1 to A.4 extensively cross examined the Prosecution witnesses. From the tenor of cross examination, it is more than apparent, that A.1 to A.4 understood the charge which

was framed against them entirely. No prejudice whatsoever has been demonstrated by any of the accused persons. Accordingly, it cannot be said that the charge, as framed, was in breach of Sections 211, 212, 213 and 214 of Cr.P.C.

34. Besides Section 215 of Cr.P.C provides that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice. In the present case, apart from there being no error or omission, it is necessary to state that none of the accused persons have made out any case that they were in fact misled by any alleged error or omission or that the same has occasioned failure of justice.

35. Further, Section 464 of Cr.P.C. provides that no finding, sentence, or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge, including any misjoinder of charges, unless in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

36. In *Darbara Singh vs. State of Punjab*²⁷ the Apex Court held that the accused has to satisfy the court that there was any defect in framing the charge which has prejudiced the accused, resulting in failure of justice. It is only in that eventuality that the Court may interfere. In determining whether any error, omission or irregularity in framing the relevant charges, has led to a failure of justice, the court must have regard to whether an objection could have been raised at an earlier stage during the proceedings or not. While judging the question of prejudice, the court must bear in mind that every accused has a right to a fair trial. But where the accused person is aware of what he is being tried for and where the facts sought to be established against him, are explained to him fairly and clearly, and further, where he is given a full and fair chance to defend himself against the said charge(s), it cannot be said that such accused person has suffered any prejudice.

37. In *Darbara Singh* (supra), the Apex Court has held that the expression “*failure of justice*” in Sections 215 and 464 of Cr.P.C., is an extremely pliable or facile expression, which can be made to fit into any situation in any case. The court must endeavour to find the truth. There would be ‘*failure of justice*’; not only by unjust conviction, but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the

²⁷ (2012) 10 SCC 476,

accused have to be kept in mind and also safeguarded, but they should not be overemphasised to the extent of forgetting that the Victims also have rights. It has to be shown that the accused has suffered some disability or detriment in respect of the protections available to him under the Indian criminal jurisprudence. ‘*Prejudice*’ is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial, and not with respect to matters falling outside their scope.

38. In *Willie (William) Slaney vs. the State of Madhya Pradesh*²⁸, the Constitution Bench of the Apex Court explained that the Cr.P.C. is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. He does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself. If there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere

28 (1955) 2 SCR 1140

inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

39. Finally, in *Kamil vs. State of Uttar Pradesh* (supra), the Apex Court, after considering several decisions on the issue of framing of charge, culled out the following principles relating 212, 215 and 464 of Cr.P.C. :

“17. The following principles relating to Sections 212, 215 and 464 of the Code, relevant to this case, become evident from the said enunciations:

(i) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(ii) The accused is entitled to know with certainty and accuracy, the exact nature of the charge against him, and unless he has such knowledge, his defence will be prejudiced. Where an accused is charged with having committed offence against one person but on the evidence led, he is convicted for committing offence against another person, without a charge being framed in respect of it, the accused will be prejudiced, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the

defence, that is, if the defence of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge.

(iii) In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself.”

40. Applying the above principles to the facts of the present case, we are quite satisfied that there was no defect in framing charge against A.1 to A.4. As noted earlier, the charge contains sufficient particulars as prescribed in Sections 212 to 214 of Cr.P.C. The accused persons were explained the charge by the Children's Court and they stated in clear terms that they understood the same. This is not a case where A.1 to A.4 are some lay persons. A.1, A.2 and A.4 were students of Law College. From their defence, it is apparent that they were not at all prejudiced by any alleged vagueness of charge. The charge, except perhaps, to a little extent, when it came to the offence under Section 8(2) of the Children's Act, was not at all vague. Even the charge under Section 8(2) of the Children's Act, if considered along with the voluminous material furnished to the accused persons, no longer remains vague. From the material furnished, the accused persons, at no stage had any doubt that the

Victim, on the date of the offence, was yet to complete 18 years of age, and, therefore, was a child for the purpose of Section 2(d) of the Children's Act. Since this was a case of '*child abuse*' as defined under Section 2(m) of the Children's Act, charge was correctly framed under Section 8(2) of the Children's Act. The accused persons failed to make out any case of either '*prejudice*' or '*failure of justice*' as these expressions came to be explained by the Apex Court in the aforesaid decisions. Accordingly, we see no merit in the contention based upon any alleged defect in the framing of charge.

41. *Vinubhai Ranchhodbhai Patel* (supra), relied upon by the Appellants, proceeds on fact situation, which finds absolutely no parallel to the present case. In the said case, an omnibus charge came to be framed, even though the offences alleged against each of the accused persons were distinct. The Sessions Court had failed to appreciate that Section 307 IPC is a distinct offence specific to a particular Victim. Similarly, the learned Sessions Court had failed to appreciate that Section 147 and 148 IPC were distinct offences in the matter. Prejudice was writ large in the matter. It is in these circumstances that the Apex Court referring to the provisions in Sections 211 to 213 of Cr.P.C. held that the accused persons are entitled to know with precision to what is the charge on which they are put to trial. Accordingly, in the facts of the present case, this decision can be of no assistance to the accused persons.

42. On the issue of jurisdiction of the Children's Court to try the accused persons, in the present case, we note that A.1 had in fact questioned the constitutional validity of the Children's Act by urging that the same is repugnant to the IPC, Cr.P.C. and the Protection of Children from Sexual Offences Act, 2012. By a detailed Judgment and order dated 6.10.2018, this challenge was rejected by a Division Bench of this Court. Mr. Gupte submits that A.1 is bent upon raising similar challenges in the present appeal. However, Mr. Desai submits that the challenge now raised is to the applicability and not to the constitutionality of the Children's Act.

43. Mr. Desai raised three objections in the context of the applicability of the Children's Act :-

- (i) *That there was defect in framing charge under Section 8(2) of the Children's Act and therefore, reference to Section 8(2) of the Children's Act ought to be struck off the charge. Consequently, the Children's Court would cease to have jurisdiction in the matter;*
- (ii) *That no offence of child abuse, as defined under Section 2(m) of the Children's Act, can at all take place in respect of a child who is not living or has died. Consequently, the charge under Section 8(2) is liable to be struck off, thereby ousting the jurisdiction of the Children's Court; and*
- (iii) *That IPC which is "other law in force" for the purpose of*

Section 2(d) of the Children's Act defines a minor to be a person of less than 16 years of age, if male. In the present case, the Victim was 17 years of age, and, therefore, could not be regarded as "child" within meaning of Section 2(d) of the Children's Act. Consequently, the Children's Court lacked jurisdiction in the matter.

44. In order to consider Mr. Desai's aforesaid objections, reference is necessary to some of the provisions of the Children's Act which was enacted to protect, promote and preserve the best interest of the children in Goa and to create a society that is child friendly.

45. Section 2(d) of the Children's Act defines "child" in the following terms :

"(d) "Child" means any person who has not completed eighteen years of age unless any other law in force specifies otherwise or unless otherwise indicated in specific provisions in this Act;

Provided that in so far as a Victim in an offence of rape is concerned, "child" shall mean any person who has not completed sixteen years of age."

Section 2(m), defines the expression "child abuse" thus :

"Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:—

(i) psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(ii) any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child

as a human being;

(iii) unreasonable deprivation of his basic needs for survival such as food and shelter; or failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death;”

46. Section 8(1) of the Children's Act provides that all children should be assured of a safe environment. A safe environment is an environment in which he/she will not be abused in any way and his/her development will be nurtured. Section 8(2) of the Children's Act, reads thus :

“(2) Whosoever commits any child abuse or sexual assault as defined under this Act, shall be punished with imprisonment of either description for a term that may extend to three years and shall also be liable to fine of Rs. 1,00,000/-. Whoever commits any Grave Sexual Assault shall be punished with imprisonment of either description for a term that shall not be less than [ten years, but which may extend to life imprisonment and shall also be liable to a fine of Rs. 2,00,000. Whoever commits incest shall be punished with imprisonment of either description for a term that shall not be less than ten years but which may extend to life imprisonment and also a fine which may extend to Rs.2,00,000/- Statement of the child Victim shall be treated on par with the statement of a child rape Victim] under Section 375 of the IPC, as laid down by the Supreme Court of India.”

47. Section 20 of the Children's Act provides that no

cognizance of any offence under the Children's Act shall be taken, except on a complaint made by the child Victim or his or her parent(s), and in their absence, his or her guardians or close relatives, or police or the Competent Authority or the Director or a Special Officer or Labour Inspector or any authority or Officer authorized in this behalf by the Government; or (b) on a report or charge-sheet made by the police.

48. Section 27 of the Children's Act provides for a constitution of the Children's Court. The State Government with the consultation with the High Court by a notification in the official gazette, has to constitute a Children's Court for the State of Goa. In all aspects of its functioning, the Children's Court shall be guided at all times by the best interests of the child and all its procedures, the office, the dress worn by the Members of the legal profession and all others shall be consciously and deliberately Child friendly. Section 28 of the Children's Court provides that the Children's Court shall consist of a person who is or has been or is qualified to be a District Judge, who shall be its President.

49. Section 30 of the Children's Act is quite important and the same reads thus :

*“ Section 30 Jurisdiction of the Children's Court :- (1)
Subject to the provisions of this Act, the Children's Court*

shall have jurisdiction to try all offences against children whether such offence is specified under this Act or not,

(2) 124[Omitted]

(3) The powers of the Competent Authority and the Special Officers under this Act shall not fall within the jurisdiction of the Children's Court."

50. Section 31, deals with the powers of the Children's Court and provides that the Children's Court shall have all the powers of the Court of Session under the Cr.P.C.

51. Section 34 of the Children's Act provides that no other Court, civil or criminal, shall have jurisdiction to decide or deal with any offence or any question or any dispute or any liability which by or under this Act is to be decided by the Children's Court, except by appeal to the High Court or Supreme Court.

52. Now, in so far as Mr. Desai's first objection is concerned, we find that there is no dispute whatsoever that the Victim in the present case had not completed the age of 18 years, on the date of the offence i.e. 14.8.2006. Therefore, the Victim, subject to consideration of Mr. Desai's other two objections, was a "*child*" as defined under Section 2(d) of the Children's Act. Section 30 of the Children's Act provides that subject to the provisions of the Act, the Children's Court shall have jurisdiction to try all offences against

children whether such offence is specified under this Act or not. We have already noted that there was absolutely no defect in framing of charge under Section 8(2) of the Children's Act. All the accused persons understood the charge and very clearly and even admitted that they understood the same. None of the accused persons have demonstrated either prejudice or failure of justice. Accordingly, there is no merit in Mr. Desai's first objection as to the jurisdiction of the Children's Act.

53. In any case, we note that even if we were to proceed on the basis that there was no material to frame any charge under Section 8(2) of the Children Act, even then, such a finding, would not affect the jurisdiction of the Children's Court to try offences under IPC, taking into consideration the provisions of Section 30 of the Children Act. The jurisdiction of the Children's Court under Section 30 of the Children's Act is quite wide and the Children's Court shall have jurisdiction to try all offences against children, irrespective of whether such offences are specified in the Children's Act or not. This is yet another ground for rejecting the first objection raised by Mr. Desai

54. The second objection, according to us, is clearly misconceived. Acceptance of such an objection would imply that where perpetrators of offences and abuses against children, ultimately

succeed in murdering or killing the children, then such perpetrators, will escape the clutches of the Children's Act. Such an interpretation will frustrate the very object for enacting the Children's Act. As noted earlier, the Children's Act was enacted to protect, promote and preserve the best interest of children in Goa and to create a society that is proud to be child friendly.

55. In the facts of the present case, the allegation against the accused persons was that they abducted the Victim who was less than 18 years of age for ransom. The allegation is that the Victim was strangled by ropes and hit with baseball bats. The allegation is that he was injected with alcohol. All these allegations clearly point out to psychological and physical abuse and maltreatment of the Victim. All these allegations also point out to the debasement, degradation and the demeaning of the intrinsic worth and dignity of the Victim-child as a human being. All this was alleged to be done by the accused persons to the Victim child whilst he was alive. The circumstance that the abuse was of such degree that ultimately the Victim child succumbed to the injuries, is hardly a circumstance to oust the jurisdiction of the Children's Court in a matter of such nature.

56. Incidentally, reference can be made to the provisions in sub-clause (iii) of Section 2(m) of the Children's Act which states that

unreasonable deprivation of his basic needs for survival such as food and shelter; or failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity *or death*. This means that even the definition contemplates that even though the child may have ultimately died, an offence of child abuse is made out.

57. “*Child abuse*” refers to maltreatment, whether habitual or not of a child. In this case, the Victim, who was child, was abducted by the accused persons and detained at A.4's Ucassaim house. In there, he was tied with ropes, physically assaulted and put in the fear of death. Ransom was demanded from his father on the pain of physical harm to the Victim. Ultimately, the Victim was strangled and even assaulted with baseball bats, resulting in his death. Obviously, before the Victim died, he was subjected to child abuse of, perhaps of the worst degree. For all such reasons, we see no merit in the second objection of Mr. Desai.

58. The third objection as to jurisdiction raised by Mr. Desai, according to us to a great extent, is only academic. This is not a case where the accused persons were only charged with commission of offence under Section 364A of IPC. In this case, in addition to the charge under Section 364A IPC., the accused persons alleged to have committed offences under Section 302. 201, read with 120-B of IPC.

Admittedly, in so far as such other offences are concerned, there is no distinction made on the basis of the age of the Victim. Besides, Section 30 of the Children's Act clearly provides that subject to the provisions of the Children's Act, Children's Court have jurisdiction to try all offences against the children thereby meaning a child who has not completed 18 years of age, whether such offence is specified under the Children's Act or not. Therefore, as long as there is no dispute that the Victim in the present case had not completed 18 years of age and the offences alleged against such Victim relate *inter alia* to Sections 302, 201, read with 120B of IPC it cannot be said that the Children's Act lacked jurisdiction over the subject matter or that this is a case where the Children's Court had usurped the jurisdiction, though it had none.

59. In any case, from the particulars of charge, furnished to the accused persons, it is quite clear that though there is a reference to “*kidnapping*”, this is a case of “*abduction*”. All the accused persons have clearly understood this to be a case of abduction and defended themselves accordingly. Significantly, no charge was framed under Section 361 or 363 A of IPC but, the charge framed under Section 364A of IPC. Therefore, the special reference to a “*minor*” under Section 361 IPC or 363A IPC as being a male person below sixteen years of age, will really not apply to the present case. Further, Section 364 A of IPC makes no distinction based upon the age of the Victim.

Therefore, based upon the definition of “*Child*” under Section 2(d) of the Children's Act, read with the special definition of a minor male under Section 361, or 363A of the IPC it is not possible to hold that the children's Court lacked jurisdiction in the matter. Accordingly, we see no merit in the third objection of Mr. Desai, as well.

60. For all the aforesaid reasons, we are satisfied that the Children's Court quite correctly assumed jurisdiction in the matter and the trial and the conviction recorded therein cannot be said to be an exercise without jurisdiction or a nullity as contended by the Appellants (A.1 to A.4).

61. The next contention relates to the Children's Court order dated 22.2.2008 granting pardon to PW.1 Al Saleha Beig. As noted earlier by order dated 5.10.2007 the Children's Court had earlier rejected application made by PW.1 for tender of pardon under Section 307 read with 306 of Cr.P.C. However, by Judgment and Order dated 24.1.2008, in Criminal Revision Application No. 69/2007, this Court set aside the order dated 5.10.2007 and remanded the matter to the Children's Court for considering the application filed by the applicant afresh in the light of the observations made in the said Judgment as expeditiously as possible and preferably within 4 weeks from the date of receipt of the said

order. In pursuance of the remand, the Children's Court Order dated 22.2.2008 tendered pardon to PW.1 under Section 307 read with 306 of Cr.P.C.

62. Mr. Desai and Mr. Ferreira, however, contended that since PW.1 had already confessed to the crime and since such confession could have always been taken into consideration, for convicting the other accused persons, by invoking the provisos of Section 30 of the Evidence Act, provided, of course, that such confession was proved. In such circumstances, there was no necessity of granting any pardon to PW.1. Mr. Ferreira pointed out that at the stage when the Prosecution endorsed the plea of PW.1 for pardon, the Prosecution claimed to have concluded the investigation and therefore, had with them evidence sufficient to convict all the persons. In these circumstances, the learned Counsel urged that there was absolutely no justification for granting any pardon to PW.1. They submitted that the order dated 22.2.2008 granting pardon to PW. 1 was illegal and warrants interference in these appeals.

63. According to us, the fact that the confession was made by PW.1 before Special Executive Magistrate, cannot be regarded as a either a statutory or a circumstantial bar to PW.1 seeking pardon in terms of Section 306 and 307 of Cr.P.C. No provision or decision was brought to our notice to indicate that there was any bar to the

Court granting a pardon to an accused after he has confessed to the crime before the Special Executive Magistrate. Section 30 of the Evidence Act, no doubt, provides that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

64. However, it has been explained time and again that the confession of a co-accused is obviously evidence of a very weak type. In fact, it does not come within the definition of “*evidence*” contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused and it cannot be tested by cross examination. It is much weaker type of evidence, than the evidence of an approver which is not subject to any of those infirmities. Section, 30 however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. Confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence. (see *Bhuboni Sahu vs. R.* AIR 1949 PC 257).

65. Similarly, in *Haricharan Kurni vs. State of Bihar*, (supra), the Constitution Bench has reiterated the aforesaid legal principles. Thus, the established position which gained ground for very long time is that while a confession is substantive evidence, against its maker, it cannot be used as substantive evidence against another, but it can be used as a piece of corroborative material to support other substantive evidence. This was again explained by the Apex Court in *State, through Superintendent of Police, CBI/SIT vs. Nalini and ors.*²⁹. Therefore, it cannot be said that since PW.1 had confessed to his crime and since by virtue of Section 30 of the Evidence Act, such confession could have been taken into consideration against other accused persons provided the confession had been proved, there was no necessity of tender of pardon to PW.1.

66. Section 306 of Cr.P.C. confers power upon the Chief Judicial Magistrate or a Metropolitan Magistrate as well as the Magistrate of the First Class, at any stage of the investigation or the trial, to tender a pardon to any person, with a view to obtaining the evidence of such person supposed to have directly or indirectly concerned in or privy to an offence to which this section applies, on a condition of his making a full and true disclosure of whole of the circumstances within his knowledge relating to the offence. Section

²⁹ (1999) 5 SCC 253

307 also confers similar powers upon the Court to which commitment of a case is made “*on the same condition.*” The expression “*on the same condition*” clearly refers to the conditions of tendering a pardon engrafted in sub-Section (1) of Section 306.

67. In *A Devendram V/s State of Tamil Nadu*³⁰ the Apex Court has held that the perusal of the provisions of Section 306 and 307 of Cr.P.C show that the paramount consideration for tendering pardon to an accomplice is the satisfaction of a Court that he will make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence so also the satisfaction of the Prosecution that the conviction of the other accused is not easy without the approver's testimony.

68. In *Lt. Commander Pascal Fernandes v. State of Maharashtra and ors*³¹, the Special Judge had, *suo motu*, without being invited by the Prosecution to consider the tender of pardon to one of the accused before him, tendered conditional pardon to one of the accused. It was argued that the Special Judge could not have done so. While dealing with this question, the Supreme Court observed that ordinarily it is for the Prosecution to ask that a particular accused, out of several, may be tendered pardon. But even

30 AIR 1998 SC 2821

31 1968 Cri LJ 550

where the accused directly applies to the Special Judge he must first refer the request to the prosecuting agency. It is not for the Special Judge to enter the ring as a veritable director of prosecution. The power which the Special Judge exercises is not on his own behalf but on behalf of the prosecuting agency and must, therefore, be exercised only when the Prosecution joins in the request. The Supreme Court further observed that the State may not desire that any accused be tendered pardon because it does not need approvers' testimony. It may also not like the tender of pardon to the particular accused because he may be the brain behind the crime or the worst offender. The proper course for the Special Judge is to ask for a statement from the Prosecution on the request of the prisoner. If the Prosecution thinks that the tender of pardon will be in the interests of a successful Prosecution of the other offenders whose conviction is not easy without the approver's testimony, it will indubitably agree to the tendering of pardon. The Special Judge or the Magistrate must not take on himself the task of determining the propriety of tendering pardon. In the circumstances of the case, the Supreme Court found fault with the learned Special Judge as he did not bear these considerations in mind and took on himself something from which he should have kept aloof. The Supreme Court observed that all that he should have done was to have asked for the opinion of the public prosecutor on the proposal.

69. Similarly, in *Jasbir Singh vs. Vipin Kumar Jaggi and ors.*³² the Supreme Court reiterated that the Prosecution has to decide the necessity of granting pardon to an accused and if it so decides, the court has to agree to tendering of pardon. The Apex Court in fact relied upon its earlier decision in *Lt. Commander Pascal Fernandes's* case (supra) and observed that the court can have no interest whatsoever in the outcome nor can it decide for the Prosecution whether a particular evidence is required or not to ensure the conviction of the accused. That is the prosecution's job.

70. Taking into consideration the aforesaid rulings, we see no good ground to interfere with the Children's Court order dated 22.2.2006 granting pardon to PW.1. In this case, plea of PW.1 was supported and endorsed by the Prosecution. The Prosecution in fact filed a written application in support of such a plea. The order dated 22.2.2008 is quite consistent with the law laid down by the Apex Court in the decisions referred to above. There was nothing unreasonable in the discretion exercised by the Prosecution. The Children's Court has also applied the correct tests as laid down by the Apex Court in such matters.

71. Mr. Desai and Mr. Ferreira, pointed out that A.3 Shankar had also applied for tender of pardon under Section 306 and 307 of

32 2001 SCC (Cri.) 1525

Cr.P.C. However, that plea was not supported by the Prosecution. Learned Counsel contended that PW.1 was an influential person since C.M. had come to the Police Custody to visit PW.1. Now, there is no clear evidence on record that the C.M. had come to visit PW.1 whilst he was in PC. The Investigating Officer deposed about the C.M. coming to the police custody to visit A.1 and not PW.1. In any case, taking into consideration the fact that PW. 1 was certainly present in the Ucassaim house at the time when the Victim was strangled and hit with baseball bats, we see nothing wrong in the action of the Prosecution in endorsing or supporting the application of PW.1 for tender of pardon, perhaps in preference to the application of A.3 (Shankar). As noted earlier, the power which the Court exercises in such matters, is not on its own behalf, but on behalf of the prosecuting agency and therefore, must be exercised only if the Prosecution joins the request. The opinion of the prosecuting agency, in such matters, may certainly not be final, but is entitled to great weight. This is not a case where the prosecuting agency can be said to have abused a discretion or exercised discretion for any improper or irrelevant purposes.

72. Ultimately, as has been held by the Honorable Apex Court, these are basically matters for the Prosecution to judge. As long as the judgment of the Prosecution is not totally off the mark or actuated by any malice or oblique motives, there is really no scope for

interference. In fact, it is said that in a matter of this nature, the other accused persons have no role to play and it may not even be necessary to hear the other accused person before the Court decides to grant a pardon to one of the accused persons.

73. Thus, for all the aforesaid reason we see no merit in the contention that the Children's Court's order dated 22.2.2008 warrants interference.

74. The next important question which arises for determination is the intrinsic worth of the testimony of the approver (PW.1). Related to this question, is the question of corroboration, if any, to the testimony of PW.1.

75. The statutory regime in such matters is governed by Section 133 of the Evidence Act, which is to be read with illustration (b) to Section 114 of the Evidence Act. Section 133 of the Evidence Act, in terms, provides that an accomplice shall be a competent witness against an accused person; and the conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Section 114 of Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to

the facts of the particular case. Illustration (b) to Section 114 of Evidence Act, which is important for the present purpose, states that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Therefore, before we evaluate the evidence of PW.1, the interplay between the two provisions as also certain settled principles in such matters will have to be adverted to and borne in mind.

76. The testimony of an accomplice is usually admitted from necessity, since, in many cases, without recourse to such testimony, it may be difficult to bring the principal offenders to justice. However, an accomplice, by long tradition, is a notoriously infamous witness, who, after participation in the crime, purchases his immunity by accusing his partners in crime. Broadly, there are at least three reasons as to why the courts do not readily accept the testimony of an accomplice, unless the same is corroborated in material particulars. *Firstly* because, an accomplice may be prone to depose falsely in order to shift the guilt from himself; *secondly* because an accomplice, as a participator in crime, and consequently an immoral person, is likely to disregard the sanctity of an oath; and, *thirdly* because he gives evidence under promise of a pardon, or in the expectation of an implied pardon, this hope may induce to speak in favour of the Prosecution. It is therefore, well settled that the approver's evidence must pass the double test of reliability and corroboration in material

particulars. Therefore, the combined effect of Section 133 and illustration (b) to Section 114 of Evidence Act is that conviction can be based on uncorroborated testimony of an approver, but as a rule of prudence, it is unsafe to place reliance on the uncorroborated testimony of an approver.

77. The law on the subject is very well explained by the Honorable Apex Court in *K. Hashim vs. State of T.N.*³³. The Apex Court has referred to the provision in Section 133 of the Evidence Act which, in positive terms, provides that the conviction based on the evidence of an accomplice is not illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice, because the accomplice is a competent witness. The Apex Court then referred to the ruling of the privy council in *Bhugoni Sahu vs. R.*³⁴ in which it was observed that the rule requiring corroboration for acting upon the evidence of an accomplice is a rule of prudence. But the rule of prudence assumes great significance when its reliability on the touchstone of credibility is examined. If it is found credible and cogent, the court can record a conviction even on the uncorroborated testimony of an accomplice. On the subject of the credibility of the testimony of an accomplice, the proposition that an accomplice must be corroborated does not mean that there must be

³³ 2005 (1) SCC 237

³⁴ AIR 1949 PC 257,

cumulative or independent testimony to the same facts to which he has testified. At the same time, the presumption available under Section 114 of the Evidence Act is of significance. It says that the court may presume that an accomplice is unworthy of credit unless he is corroborated in '*material particulars*'.

78. The approver's evidence, in the first place, must show that he is a reliable witness. This test is common to all witnesses. If this test is fulfilled, his evidence should be corroborated in material particulars to connect each of the accused persons with the commission of the offence. If the testimony of the approver is itself uninspiring and unacceptable, then, it would be futile and unnecessary to look for corroborative evidence. It is only when approver's evidence is found to be otherwise acceptable, that the question of corroboration in material particulars, arises. An approver's evidence is to be corroborated in material particulars, so as to bridge the distance between the crime and the criminal. Certain clinching features of involvement disclosed by the approver pertaining directly to the accused persons, if reliable, by the touchstone of other corroborative evidence, would give the needed assurance for acceptance of his testimony on which the conviction of the accused persons may be ultimately based. The evidence of the approver must be corroborated in material particulars and qua each of the accused persons where there are more than one.

79. There are several decisions which explain the scope of corroboration in such matters, the leading case being **R. Vs. Baskerville**³⁵ in which the rules are lucidly expounded by Lord Reading. Such rules were substantially reiterated by Bose, J. of the the Apex Court in **Rameshwar vs. State of Rajasthan**³⁶ in the following terms :

“It would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should, or would, be regarded as corroboration. In its nature and extent must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offences charged. But to this extent the rules are clear:

Firstly, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Reading says : 'Indeed, if were required that the accomplice should be confirmed in every detail of the crime, if evidence would not be essential to the case, it would be merely confirmatory of another and independent testimony.' All that is required is that there must be 'some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it.'.

35 1916 (2) KB 658

36 AIR 1952 SC 54

Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must, in some way, reasonably connect or tend to connect the accused with it by confirming, in some material particular, the testimony of the accomplice or complainant that the accused committed the crime. This does not mean that the corroboration as to identity must extend to all circumstances necessary to identify the accused with the offence. Again, all that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witness's story that the accused was the one, or among those, who committed the offence. The reason for this part of the rule is that a man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all.... It would not at all tend to show that the party accused participated in it.

Thirdly, the corroboration must come from independent sources, and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course, the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal.

Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient, if it is merely, circumstantial evidence of his connection with the crime. Where it is otherwise, many crimes which are usually committed between accomplices in secret, such as

incest, offences, with females (or unnatural offences) could never be brought to justice.”

80. In ***D.P.P. vs. Hester***³⁷, Lord Moris explained that the word “*corroboration*” means not mere evidence tending to confirm other evidence. The purpose of corroboration is not to give validity or credence to evidence which is deficient or to suspect or incredible, but only to confirm and support that which as evidence is sufficient and satisfactory and credible.

81. In ***DPP vs. Kilbourne***³⁸, it was observed that there is nothing technical in the idea of corroboration. When in the ordinary affairs of life one is doubtful whether or not to believe a particular statement one naturally looks to see whether it fits with other statements or circumstances relating to the particular matter; the better it fits in the more one is inclined to believe it. The doubted statement is corroborated to a greater or lesser extent by the other statements or circumstances with which it fits in.

82. In ***Tribhuvan Nath vs. State of Maharashtra***³⁹ the Apex Court has held that corroboration should be such which lends assurance to the reliability of the story testified by the accomplice.

³⁷ 1972 (3) ALL ER 1056

³⁸ 1973 (1) All ER 440

³⁹ AIR 1973 SC 450

Further, according to Section 133 of Evidence Act, a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The rule of caution and prudence is based on the illustration (b) to Section 114 of Evidence Act. The nature and extent of corroboration required by this rule of caution and prudence must, from the very nature of things, vary from circumstances of each case. What is required is, that some additional evidence must be given, rendering it probable that the story of the approver is true and it is reasonably safe to act upon it. Even circumstantial evidence can be sufficient to satisfy the test of the rule of caution and prudence.

83. In the later case of *Dagdu vs. State Maharashtra*⁴⁰ the Apex Court observed that the need of corroboration which was a rule of prudence, has, by judicial experience been elevated to a rule of law. However, the rule is not that conviction without corroboration is illegal, but the necessity of corroboration should be present in the mind of the judge and must be dispensed with only when the circumstances are such that it can be safely dispensed with. Therefore, ordinarily, the court should require corroboration, and if there is no corroboration it must show why it considered it safe to convict the accused without corroboration in that particular case.

40 AIR 1977 SC 1579

84. Accordingly, the testimony of PW.1 will have to be appreciated by having due regard to all the aforesaid principles emanating from the provisions of Section 133 and illustration (b) to Section 114 of Evidence Act.

85. PW.1 has deposed in great details as to his social and family background. In particular, PW.1 has deposed to the nature of his friends circle which included Rohan (A.1) to Ryan (A.4). PW.1 has deposed in great details as to how he met A.1 to A.4 and became friends. He has deposed that he came to know Rohan (A.1) while he was studying at St. Xavier College at Mapusa in Eleventh Standard and Ryan (A.4) used to coach him to play basketball. He has then deposed as to how he was introduced by Ryan (A.4), Rohan (A.1), Nafiyaz (A.2) and Shankar (A.3). He has deposed that after he completed his Twelfth Standard, joined Salgaonkar Law College at Miramar. PW.1 has deposed that Rohan (A.1) and Nafiyaz (A.2) were also students at Salgaonkar Law College, at Miramar where they befriended Ryan (A.4).

86. There is ample corroboration in so far as the testimony of PW.1 is concerned. There was no serious cross examination on this aspect. In any case, the cross examination has made no dent whatsoever to the detailed testimony of PW.1 on this aspect. In fact, Rohan (A.1), in his 313 Cr.P.C. statement has virtually admitted this

aspect of the deposition. Even in the course of cross examination there was no challenge whatsoever to the fact that PW.1 was a part of the group comprising the accused persons. PW.1 has also deposed to the life style which the accused persons indulged in by admitting that he was himself a part of such life style.

87. PW.1 has then deposed about Ryan (A.4) informing him that Ryan (A.4), along with his new friends (A.1), Nafiyaz (A.2) had started a publishing business. PW.1 then deposed that the accused persons had founded a firm named “MAG” in which the letter M stood for Mussa, (which was the name for Nafiyaz), the letter A stood for Anna, (which was the name for Rohan) and letter G stood for Guru (which was the name for Ryan). PW.1 then deposed that these three accused persons had started a periodical by name “*Vox Populi*” some time in the year 2005. He deposed that after publication of the first issue, they organized a small get together at Miramar and PW.1 was invited at the said gathering. PW.1 has deposed that the accused persons purchased a Maruti Alto car against payment of installments. PW.1 has deposed that many a times, the accused persons were spending time in bars and pubs and at one stage, Ryan (A.4) mentioned to PW. 1 that their business was not doing well and they had no sufficient money to pay for the car installments.

88. According to us, the aforesaid testimony of PW.1 has

suffered no dent whatsoever in the course of cross examination. There is ample and independent evidence to corroborate the aforesaid material particulars deposed to by PW.1. The Prosecution has examined Chaitanya Sode (PW.50), the owner of the premises, who deposed that he entered into an agreement of lease for 11 months with Rohan (A.1) and Ryan (A.4) in respect of the business premises at Miramar from which the periodical was published. PW.50 deposed that the term of such lease was from November 2005 till September 2006 and the rent agreed was Rs.4500/- per month. He also deposed that he had come to Goa, prior to August 2006 to secure payments, since the cheques issued by Rohan (A.1) and Ryan (A.4) towards lease rentals had bounced. Significantly, there was no cross examination of PW.50, at the behest of any of the accused persons.

89. Besides, Rohan (A.1), in his 313 Cr.P.C., statement has also expressly admitted he being in business with Ryan (A.4) and Nafiyaz (A.2) and the publication of the periodical "*Vox Populi*". In his statement, Rohan (A.1) denied that there was any financial crisis, in so far as the business of publication was concerned. However, this statement is belied by the deposition of PW.50, who clearly deposed to dishonour of cheques issued by Rohan (A.1) and Ryan (A.4) of lease rentals of Rs.4500/- per month. Further, Rohan (A.1), in his statement admitted that he knew the Victim since the Victim had

given a small advertisement in “*our periodical Vox Populi*” about his introduction as Disc Jockey (DJ).

90. PW.1 has then deposed in details as regards the conspiracy to kidnap one Xavier from Mapusa. He has deposed that Xavier was basically his friend and PW.1 had once taken Ryan (A.4) to Xavier's place because PW.1 wanted to purchase a motorcycle from Xavier. PW.1 has then deposed to the rift between Ryan (A.4) and Xavier. PW.1 has deposed that Ryan (A.4) stating that he was angry with Xavier and would hit him if he gets a chance. PW.1 has then deposed to the purchase of bike bearing registration No. GA-08-2067 from Xavier and how Ryan (A.4) insisted and accompanied PW.1 to Xavier's place at the time of purchase of the bike.

91. PW.1 has then deposed that after purchase of the bike, Ryan (A.4) and himself went for lunch. PW.1 has deposed that at the lunch, Ryan (PW.4) told PW.1 that he had plan for abducting Xavier, so as to extract some money from Xavier's father. PW.1 as deposed that after few days, Ryan (A.4) told PW.1 that Xavier's father's accounts were frozen as Xavier's mother had filed a Court case against the father. PW.1 has then deposed that Ryan (A.4) then told him that he wanted to kill one boy because that boy had tried to force Ryan's (A.4's) girl friend to have sex with him. Again, apart from the denials, no dent has been made to the testimony of PW.1 in the

course of cross examination. In fact, if the suggestions put to PW.1 are perused, the case which some of the accused persons attempted to put, was not that there was no conspiracy being hatched to abduct Xavier, but that even PW.1 was a part of such conspiracy.

92. PW.1 has then deposed that after about 6 months from starting the periodical, Rohan (A.1), Nafiyaz (A.2), Shankar (A.3) and Ryan (A.4) were trying to start a new finance venture under the name and style "*Dream Wayz*". PW.1 has deposed that he was invited for the inauguration and he even invested Rs.4000/- in this firm, which was functioning from the leased premises at Miramar, from where the periodical was being published.

93. Again, there was no serious challenge to this aspect of the deposition of PW.1. This establishes that the accused persons and PW.1 were part of the same gang and were in close contact with each other during the relevant period. PW.1, through his deposition has, thus, brought on record not only the facts relating to his own background and social circle, but also the facts relating to the background and social circle of other accused persons. The deposition of PW.1 gives an indication regards financial status of the accused persons, their plan to abduct Xavier in order to obtain ransom from Xavier's parents and the reasons which prompted them to abort such plan. All this is relevant and material evidence, taking

into consideration the charge levelled against the accused persons and the manner in which they are alleged to have abducted for ransom and finally killed the Victim on the fateful day of 14 August 2006.

94. PW.1 has then deposed about the discussions of the group regards the financial matters. PW.1 has deposed about the group members discussing their business losses and need to arrange for finance. PW.1 has himself deposed that he was in need of Rs.1.00 lakh to buy additional stock for his shop at Ponda, but, how the Banks were reluctant to grant loan without Income-tax returns or bank statements.

95. PW.1 has then deposed to the meeting held at Ryan's (A.4's) place in Ucassaim in the first week of August 2006. He has deposed that at the said meeting, Rohan (A.1) stated that he had a plan to kidnap the Victim, who was from Vasco and who had given an advertisement in their periodical. Rohan (A.1) and others stated that they were knowing the Victim and *“we could kidnap him and get some money from his father and after kidnapping Victim and getting money from his father, we could give some of the money to Victim and then leave him”*. PW.1 then deposed that they had a similar plan regarding Xavier, however, as they had given a code name to Xavier, he could not understand what they were speaking. PW.1 then deposed *“The plan to kidnap Victim was agreed by all five of*

us. Later on they used to call me to discuss about the plan. I used to be busy in my shop at Ponda and I used to tell them that they should discuss the plan and I would agree to do my part”.

96. Though, PW.1, was extensively cross examined as regards the meeting held in the first week of August 2006 at Ryan's (A.4's) house, where the planning to abduct Victim for ransom took place, we cannot say that any significant dent was made to such clear and categorical deposition by PW.1. Rather, the line of questioning during the course of cross examination, in fact, offers corroboration. Even if such line of questioning is to be ignored, as noted earlier, Rohan (A.1) in his statement under Section 313 Cr.P.C. has clearly stated that he knew Victim, since Victim had given a small advertisement in the periodical *Vox Populi* about his introduction as Disc Jokey (DJ).

97. PW.1, in his deposition, specifically states that Rohan (A.1) came up with a plan of abducting the Victim from Vasco and that the Victim was the boy who had given advertisement in their periodical. PW. 1 has then deposed that the other accused persons stated that they were knowing the Victim and that they could abduct him and they could get some money from his father. There is no evidence on record that PW.1 was familiar with the contents of the periodical “*Vox Populi*” or that he was earlier aware of the fact that

the Victim had given any advertisement in the periodical *Vox Populi*. However, PW.1 has deposed that Rohan (A.1) in the course of the meeting held in first week of August, 2006 at Ryan's (A.4's) house came up with the plan of abducting the Victim for ransom and that the Victim was the boy who had given advertisement in their periodical. To a certain extent, therefore, the very statement of Rohan (A.1) voluntarily made under Section 313 Cr.P.C. corroborates the deposition of PW.1 as to the material aspects of the conspiracy which was hatched by the accused persons and himself in the first week of August 2006 at the house of Ryan (A.4).

98. PW.1 has then deposed that the planning that took place on 10 August 2006 again at Ryan's (A.4's) house at Ucassaim, for which meeting PW.1 was personally present, PW.1 has deposed that when he reached Ucassaim house at about 3 p.m., remaining accused persons, namely Rohan (A.1), Nafiyaz (A.2), Shankar (A.3) and Ryan (A.4) were already present. He deposed that the accused persons had brought something to put their plan into action. He deposed that they had brought 3 to 4 syringes, white medical tape, 3 to 4 cotton ropes, 3 pairs of hand-gloves, some number plates of car, and 2 baseball bats. PW.1 has ultimately deposed that the Victim was strangled by ropes and hit with baseball bat on 14.8.2006. Thus, the things deposed to by PW.1 were incriminating articles, in relation the crime.

99. Now, there is sufficient corroboration in the form of evidence of Anant Satoskar (PW.19), Teja Konkolienkar (PW.22) and Pushkar Kalangutkar (PW.24A). PW.19, who was operating Damodar Medical Stores, at Miramar, Panaji, Goa has deposed that Rohan (A.1) had indeed, on 9.8.2006, purchased 20 disposable syringes and also wanted to purchase white medical tape, but did not purchase the same since only white medical tape of small size was available at the said pharmacy. PW.19 has deposed that he had in fact inquired with Rohan (A.1) as to why he was purchasing so many syringes and Rohan (A.1) told him that this was for street play on AIDS awareness at his college which is incidentally the Salgaokar Law College at Miramar itself.

100. The statement of PW.19 was recorded by the Police on 19.8.2006 i.e. hardly within a period of 10 days from the date of purchase of the 20 syringes and 3 pairs of hand-gloves by Rohan (A.1). PW.19 has withstood the cross examination and there is really no reason to disbelieve this witness, particularly because he was likely to remember the customer who purchased 20 syringes and further informed him that such syringes were for a street play on AIDS awareness in the college.

101. Besides, there is the testimony of Teja Kunkolienkar

(PW.22), a salesgirl at Salcete Pharmacy in Panaji. She has disclosed that on 9.8.2006, she sold to Rohan (A.1) adhesive tapes of Leukoplast of size 7.5 cms. x 5 metres. She has deposed that she even verified the computer record of 9.8.2006 and found her name as the salesgirl who had supplied the adhesive tapes of the same description. This was again verified with the bill voucher record and found to tally. She has deposed that the bill and bill voucher record was handed over by her to P.I. Gaonkar on 19.8.2006, when the said PI along with 4 or 5 other persons came to the Pharmacy on 19.8.2006. In the course of her evidence, she identified the voucher and the sample adhesive tape given to PI Gaonkar on the said date. Again, there was no significant dent made to her testimony in the course of cross examination on behalf of Rohan (A.1). This, further corroborates the testimony PW.1, upon, a material aspect.

102. Pushkar Kalangutkar (PW.24A) has deposed that about 8 days prior to 19.8.2006, when the panchanama was prepared, one boy purchased 2 scout ropes from him at his shop No.81 at Mapusa Municipal Market. This witness deposed that normally school children in uniform come to purchase scout rope and they usually purchase only one rope. He deposed that since this person had purchased two ropes, he will be in a position to identify such person. This witness then identified Rohan (A.1) as the person who had purchased the two scout ropes from the shop. Though, no serious

dent was made to the testimony of PW.24A, in the course of cross examination, the testimony of PW.24A need not be relied upon since on 19.8.2006, the PI had taken Rohan (A.1) to the shop of PW.24A. Even after excluding the testimony of PW.24A, there is sufficient corroborative evidence to the material aspect deposed to by PW.1 as regards the meeting held on 10.8.2006 and the things which he saw on the said date at the meeting in order to plan the abduction of the Victim.

103. PW.1 has then deposed that on 10.8.2006 when he along with all other accused persons were at Ryan's (A.4's) Ucassaim house, Rohan (A.1) put a SIM card in the mobile phone of Ryan (A.4) which he had brought along with him and Ryan (A.4) then made a call to the Victim saying that he was calling from Sea Square Entertainment, a firm in Bombay. PW.1 has deposed to Ryan (A.4) saying to the Victim that they wanted to organize a show in Goa and for that purpose they need to engage a Disc Jockey (DJ) and that the Victim who was a DJ, should come and meet them on the next day morning to discuss the terms and conditions. Rohan (A.1) in his Section 313 Cr.P.C. statement has specifically admitted that he knew the Victim since he had given a small advertisement in their periodical "*Vox Populi*" about his introduction as Disc Jockey. Rohan (A.1) also admitted having told the Victim that he would help him to search venues at Mapusa. In fact, Rohan (A.1) has stated that on the

fateful day of 14.8.2006, he showed the Victim 2-3 sites abutting road. This, to a great extent, corroborates the deposition of PW.1, on this material aspect.

104. PW.1 then deposed that the plan was to abduct the Victim on the next day i.e. 11.8.2006. PW.1 deposed that since 11.8.2006 was a Friday, PW.1 used to keep his shop close and was very much available. He, then deposed that on the morning of 11.8.2006, he along with Ryan (A.4) actually came to Panaji since they were to meet the Victim at Panaji. He deposed that Rohan (A.1), Nafiyaz (A.2), Shankar (A.3) remained at Ryan's (A.4's) house at Ucassaim. He then deposed that on reaching Panaji, Ryan (A.4) called up the Victim, but was informed that he (Victim) was unable to come on the said date. He then deposed that accordingly, the plan for 11.8.2006 was called off.

105. PW.1 then deposed that 12.8.2006, was a Saturday and, therefore, he did not go to his shop at Ponda. He deposed that he and Ryan (A.4) went to a late night party and returned only at 5 a.m. to 6 a.m. on the next day i.e. 13.8.2006, but slept till almost 11 a.m. PW.1 then deposed that he went to Panjim and then returned to Ryan's (A.4') house at Ucassaim at round 7 p.m. on 13.8.2006.

106. PW.1 then deposed that on his return, Ryan (A.4) told

him that between 2 p.m. to 3 p.m., Rohan (A.1) and Shankar (A.3) had come to Ryan's (A.4's) place at Ucassaim in order to discuss the plan to once again ask the Victim to come, so that he could be abducted for ransom. PW.1 deposed that it is at this time Ryan (A.4) told PW.1 to stay with him the entire next day, for which Ryan (A.4) would give him Rs.5.00 lakhs.

107. The learned Counsel for the Appellants (A.1 to A.4) have contended that since PW.1 was not present for the meeting on 13.8.2006, PW.1 was not at all competent to depose to what transpired on that day as between Rohan (A.1), Shankar (A.3) and Ryan (A.4). They submit that since PW.1 has deposed graphically to the alleged conspiracy hatched on the said date, PW.1 is a liar and untrustworthy.

108. According to us, PW.1 has deposed graphically to the conspiracy which was hatched at the meeting on 10.8.2006 and not as to what may have transpired in the meeting held on 13.8.2006. PW.1 has categorically admitted that he was not present in the meeting and whatever he has deposed was on the basis of what was told to him by Ryan (A.4). Accordingly, we see no merit in the criticism. In any case, the testimony of PW.1 as to what transpired on 13.8.2006, i.e. just a day before the date of the offence, has to be construed in the context of the events from 10.8.2006 to 14.8.2006.

PW.1 has deposed, quite precisely, to the events on all these days and, therefore, the testimony of PW.1 has to be considered in its entirety and not by dissecting some stray portions or reading some stray portions out of context.

109. In the cross examination of PW.1 on this aspect, no serious dent can be said to have been made. Crux of the testimony of PW.1 is that there was a conspiracy to abduct the Victim for ransom. PW.1 has deposed in some details as to the preparations made in furtherance of such conspiracy. The fact that PW.1 was not present at the meeting held on 13.8.2006 is really of not much significance. It is well settled that the conspirator is not bound to know each and every aspect of the conspiracy and it is sufficient to prove that the conspirator was a party to the conspiracy in which he played a part which was assigned to him.

110. PW.1 further deposed that early morning on 14.8.2006, Ryan (A.4) called up Rohan (A.1), Nafiyaz (A.2), Shankar (A.3) and informed that each one will get Rs.5.00 lakhs and thereafter, he has deposed that between 9 am. and 9.20 a.m. on the said date, all the three accused persons were in touch with Ryan (A.4) about their travelling along with the Victim in Ryan's (A.4's) Alto Maruti Car from Vasco to Ucassaim.

111. PW.1 then deposed that Rohan (A.1), and Nafiyaz (A.2) got down from the car and Nafiyaz (A.2) proceeded along with the Victim in the Car to Ucassaim. PW.1 then deposed that Rohan (A.1) and Shankar (A.3) followed the Car on Honda Dio Scooter.

112. In cross examination, no doubt, PW.1 admitted that he was not precisely aware as to who was driving the Alto car when the Victim was brought from Vasco to Ucassaim. The learned Counsel for the Appellants (A.1 to A.4) submitted that this is a major contradiction and, therefore, PW.1 must be banded as untrustworthy witness. They also submit that the Honda Dio Scooter, allegedly driven by Shankar (A.3) was never attached and an inference is liable to be drawn against the Prosecution.

113. According to us, the so called contradiction is quite trivial. Substance of the deposition of PW.1 is that whilst PW.1 and Ryan (A.4) were awaiting at Ryan's (A.4's) Ucassaim house, it is the Rohan (A.1), Nafiyaz (A.2) and Shankar (A.3) who brought the Victim from Vasco to Ucassaim. PW.1 also deposed that throughout this journey, three accused persons were in touch with Ryan (A.4), on phone and Ryan (A.4) was at the Ucassaim house along with PW.1. This is the crux of the deposition of PW.1. The minor discrepancy as to who was driving the car or whether Rohan (A.1) shifted to the scooter or not, are really of not any great significance or substance. Similarly, as

explained by Mr. Gupte, since there was nothing incriminating as such to be found on the Honda Dio Scooter, the same was not attached. Again, this is not a ground for drawal of any adverse inference against the Prosecution. Based upon such trivial contradictions, if at all, we do not think that it would be appropriate to discard the testimony of PW.1, which has remained substantially undented.

114. PW.1 then deposed that on instructions of Ryan (A.4) he then opened the door and let the Victim and Nafiyaz (A.2) in the Ucassaim house. PW.1 then deposed that the conversation which he had with the Victim as well as Ryan (A.4). PW.1 then deposed that Rohan (A.1) and Shankar (A.3) also arrived a little later and held conversation with Ryan (A.4).

115. Thereafter, PW.1 deposed that he was called into the bedroom where the accused persons were present and Rohan (A.1) told him that Ryan (A.4) would put a loud music and PW.1 should go outside the room where the Victim was waiting and scare him by slapping the Victim, PW.1 then deposed that Ryan (A.4), put on loud music and PW.1 went out and slapped the Victim *“who bounced back on me. I could not control him and at that time Ryan caught him behind and sat on the sofa. I went to catch the legs of Victim and then he started kicking me. I then called Rohan who*

came in dinning room and Victim asked Rohan what was going on. Rohan told him not to worry and he should do as we say”.

116. The above deposition of PW.1 stands corroborated by the testimony of Dr. Sapeco (PW.8), who examined PW.1 on 17.8.2006 and noticed that the left outer and lower aspect of PW.1's chest had three hard scabbed linear scratch abrasions carried out by blunt force or object or surface impact akin to human nails, which injuries were 2-4 days old. Dr. Sapeco (PW.8) deposed that he had in fact inquired of PW.1 as to how he got these injuries and PW.1 replied that these injuries/scratches were made by the Victim on 14.8.2006. The Children's Court has relied upon the response of PW.1 to Dr. Sapeco (PW.8) as constituting an admission. Even if the reply is to be excluded from consideration, the abrasions/scratch marks arising out of surface impact akin to human nails, is sufficient and material corroboration to the aforesaid deposition of PW.1. Significantly, there was no serious cross examination on this aspect to the deposition of either PW.1 or PW.8 on behalf of the accused persons.

117. PW.1 then deposed that Rohan (A.1) put the tape around the hands and lips of the Victim and pillow cover on the Victim's face. Thereafter, Shankar (A.3) came inside the dinning room and tied the Victim with the ropes, on his hands and legs. PW.1 then deposed that Rohan (A.1) was required the Victim to

record a message to his father stating that he was kidnapped by some people and that the father should give into their demands, without approaching the Police. PW.1 then deposed that the tape from the Victim's lips was removed and the message was recorded on the Sony Erickson mobile phone of Rohan (A.1). PW.1 then deposed to the conversation held between Rohan (A.1) and the Victim.

118. Now the expert witness Krishna (PW.39), who was examined on behalf of the Prosecution, has deposed that no audio files having recorded message of the Victim was found in the active files. To this extent, it is true that there is no corroboration to the deposition of PW.1 on the aspect of recording of message by the Victim. However, according to us, this is not a ground to discard the entire testimony of PW.1 or to brand PW.1 as untrustworthy witness. The alleged recording, according to PW.1, was made on 14 August 2006, when the Victim was at Ucassaim on Rohan's (A.1') Sony Ericsson mobile phone. The case of the Prosecution is that the Victim died on 14.8.2006. This is corroborated by the medical evidence of Dr. Sapeco (PW.8). In fact, there was no serious challenge to the timing of the Victim's death and the fact that such death was clearly homicidal. The Sony Ericsson phone was attached from Rohan (A.1) only on 16.8.2006. PW.39 has deposed that it was not possible for him to retrieve any material, including voice recording, if the same were to be deleted from the phone memory

under the technology available in his laboratory. At the highest, therefore, it can be said that the Prosecution has failed to prove the circumstance relating to recording of the message. But, that by itself, is not sufficient to brand PW.1 as untrustworthy or unreliable witness. As noted earlier, the corroboration which is expected to the testimony of an accomplice, is not in relation to every single circumstance, but in respect of only material particulars.

119. PW.1 then deposed to Rohan (A.1) and later on Ryan (A.4) injecting the Victim by filling two syringes of Vodka. Again, this aspect finds no corroboration in the deposition of Dr. Sapeco (PW.8). However, we do to feel that this is a good enough reason to discard the entire testimony of PW.1 or to brand PW.1 as untrustworthy or unreliable witness. The medical evidence, substantially corroborates the material particulars deposed to by PW.1 particularly on the issue of injuries upon the Victim's body and the circumstance leading to death of the Victim. The medical evidence corroborates the deposition of PW.1 as to the manner in which the Victim was strangled with ropes and thereafter hit with the baseball bat, on his head. According to us, this is sufficient corroboration and the fact that no prick (injection) marks were found on the Victim's body, or that no symptoms of alcohol being injected in his body were found, is not sufficient to reject the testimony of PW.1 or to brand PW.1 as untrustworthy or unreliable.

120. PW.1 then deposed to the violence inflicted upon the Victim and the nature of violent interaction between Ryan (A.4) and the Victim. PW.1 also deposed that after some time Ryan (A.4), told Rohan (A.1) Nafiyaz (A.2) and Shankar (A.3) to go to Panjim and hang around in Panjim so that the people would think that they are spending normal day. Ryan (A.4) also told Shankar (A.3) to call upon the Victim's father and demand ransom. PW.1 deposed that after some time even Ryan (A.4) left the house saying that he was going to Mapusa to tell the maid not to come to work on that date. PW.1 deposed that Ryan (A.4) returned within 20 to 25 minutes with a bottle of Vodka.

121. PW.1 then deposed that in the afternoon of 14 August 2006 when PW.1 was present in the Ucassaim house along with Ryan (A.4) and the Victim, Ryan (A.4) got a call from Rohan (A.1) informing him that Rohan (A.1) and Nafiyaz (A.2) had been called to the Vasco Police Station in connection with disappearance of the Victim. PW.1 also deposed that before that Shankar (A.3) had called up Ryan (A.4) informing him that the Victim's father was contacted on phone, but he refused to pay the money. PW.1 then deposed that there was telephonic conversation between Ryan (A.4) and Rohan (A.1), Nafiyaz (A.2) and Shankar (A.3) as regards course of action to be adopted.

122. PW.1 then deposed that whilst he was waiting for further news of the developments from Rohan (A.1), Nafiyaz (A.2) and Shankar (A.3), he heard some sound and, therefore, went to the dinning room, from where the sound was coming. PW.1 then deposed that he saw Ryan (A.4) hitting the Victim on the head with the baseball bat and that the head was bleeding. PW.1 then deposed that he took the baseball bat from Ryan's (A.4's) hand and threw the same in the kitchen. PW.1 then deposed that after Shankar (A.3) arrived at Ryan's (A.4's) Ucassaim house at around 3 p.m., PW.1 told Shankar (PW.3) that Ryan (PW.4) hit the head of the Victim and that the Victim was bleeding. PW.1 then deposed that he along with Shankar (A.3) entered the dinning room and saw that Ryan (A.4) was standing with one leg on the Victim's face. PW.1 has deposed that Rohan (A.4) was holding over and pulling other end of the rope with both his hands. PW.1 then deposed that Shankar (A.3) shook the Victim, but found no response and it is then that they realised that the Victim was already dead.

123. Now, the evidence of PW.1 about Ryan (A.4) hitting the Victim with the baseball bat or about Ryan (A.4) strangulating the Victim with rope is fully corroborated by the medical evidence on record. Dr. Sapeco (PW.8) who has deposed in the matter stated that there was a white cotton rope akin to the rope used by the scouts and

guides which was seen encircled twice around the neck of the Victim having diameter of one centimeter thickness with a circumference of 51 cms. around the neck. He has deposed that on dissection of the neck there was appreciable extravasation of blood within the underlying neck muscles and tissues underneath the ligature mark along with congestion of the epiglottis and inner mucosa of trachea. PW8 styled this injury as "*injury 1*" and deposed that this was a fresh and ante mortem in nature and was necessarily fatal.

124. PW.8 further deposed that along the front aspects of both lower limbs at the ankle, he saw that there were four circles of white cotton rope associated with a minimum of 3 granny knots tied at the lower third of the lower limbs. He deposed that the tied cotton rope from the lower aspects of both lower limbs was seen traversing along the left knee to the right mid – thigh region by which it had made two circles and had at least one loop knot and another unappreciable knot at outer aspect of right thigh. Thereafter, PW8 has given further details of manner in which the Victim was tied and ligature marks which were found on the body of the Victim. Suffice to note that all this evidence corroborates with what PW.1 has deposed on the aspect of treatment meted out by Ryan (A.4) to the Victim. Since, the testimony of PW.1 is corroborated in material particulars by the medical evidence of PW.8, the same, can be safely relied upon.

125. PW.8 further deposed that a haematoma of 8 cms diameter was seen on right upper and outer aspect of scalp. On cut section, it is 2 cms. deep, with depressed fracture of 4 cms. diameter for both tables of skull at right parietal protuberance of skull. PW.8 then described the other injuries on the body of the Victim and finally stated that such injuries have been caused by blunt force or object or surface impact and were antemortem and fresh at the time of death.

126. PW8, in the course of cross examination at the behest of Rohan (A.1), deposed that injury nos.2 and 3 were possible when a person is immobilized and had a violent fall on his right side. However, PW.8, further deposed that the injuries on the upper portion of the head are due to assault. PW.8 was reexamined, after the skull cap of the Victim, which he had handed over to the police in a sealed condition was produced in evidence. Thereupon, he deposed that depression on the right back portion of the head similar to the depression noticed on the skull could be caused on hitting a baseball bat.

127. PW.8 was shown the baseball bat as M.O. No.61 and noted that the depression noticed on the skull cap could be caused by the same or similar bat. PW8 deposed that the depression on the

skull cap is result of violent impact leaving the signature of the weapon on the skull cap. In answer to the Court questions also, PW8, deposed that the injuries to the skull cap were on account of the assault.

128. According to us, the deposition of PW.1 on the aspect of Ryan (A.4) hitting Victim with the baseball bat on his head is fully corroborated by medical evidence of Dr. Sapeco (PW.8). On this aspect, there is absolutely no dent in the course of cross examination. Such corroboration lends assurance to the deposition of PW.1 and is sufficient to hold that the testimony of PW.1 can be safely relied upon having regard to the provisions in Section 133 and illustration (b) to Section 114 of the Evidence Act.

129. The learned Counsel for the Appellants (A.1 to A.4), however, contended that since no blood was detected on the baseball bats, the version of PW.1 must be discarded. According to us, this is no reason to discard the version of PW.1. The CFSL report, in the present case, was only inconclusive. There is no reason to discard ocular evidence, which stands corroborated in material particulars by the medical evidence of Dr. Sapeco (PW.8). Besides, there is evidence that the accused persons had covered the Victim's head in a pillow case. In such state of facts, circumstance that the CFSL report was inconclusive, is not at all sufficient to discard all other overwhelming

medical evidence on record. As noted earlier, the corroboration which is expected to an approver's testimony, is not in respect of every single particular, but only in regard to material particulars. We, accordingly, see no merit in the contention raised.

130. PW.8 also deposed that the approximate time since death of the Victim was within 48 hours of the preservation of the Victim's body at morgue i.e. from 1.30 a.m. of 16.08.2006. Again, this corroborates with the deposition of PW1 that the Victim was strangled and assaulted with baseball bat some time in the afternoon of 14.08.2006 at Ryan's (A.4) Ucassaim house. PW.8 has further opined that the death of the Victim was due to asphyxia as a result of ligature strangulation, associated with cranio cerebral damage as a result of blunt force impact by object or surface, which were individually and collectively necessarily fatal. Again, this corroborates with the deposition of PW.1 that Ryan (A.4) strangled the Victim and also hit him on the head with the baseball bat. Such corroboration by an expert is sufficient to accept and rely upon the testimony of PW.1. Whilst the witnesses may lie, but circumstances do not. The circumstances, as established through the deposition of PW.8, offer independent corroboration to the details deposed to by PW.1. Therefore, we see no error whatsoever in Children's Court relying upon the testimony of PW.1, now that such testimony is corroborated in its material particulars by the medical

evidence.

131. PW.1 then deposed that on noticing that there were no response from the Victim and the Victim had died as a result of strangulation and assault with baseball bat by Ryan (A.4), PW.1, started shivering and Shankar (A.3) was also shocked. PW1 has deposed that he inquired with Ryan (A.4) as to why he had to kill the Victim to which Ryan (A.4) replied that since the Victim had seen them, in case he was released, the Victim could go to the police and all the accused persons would be arrested and go to jail.

132. PW.1 then deposed that Ryan (A.4) brought bed sheet and wiped the blood on the floor as also on his own shoes. PW1 then deposed that Ryan rolled the Victim's body in the same bed sheet, brought the polythene bag and told PW.1 and Shankar (A.3) to help him to put the body in the bag. PW.1 then deposed that he and Shankar (A.3) did help Ryan (A.4) to put the body in polythene bag and dragged the same to the door of the house, in order to put the same in the car. PW.1 then deposed that there was a worker cutting grass outside and Ryan (A.4) waited for the worker to move away and only thereafter requested PW.1 and Shankar (A.3) to put the body in the car, which they did. The worker Yakub Bepari has been examined as PW.36. He deposed that loud music was being played in the house and this corroborates with the deposition of PW.1 that Ryan

(A.4) did play loud music at the time when PW.1 assaulted/slapped the Victim. PW.36 also deposed that there was a black car and Dio Scooter parked outside the house and on the fateful day of 14.08.2006, some friends had visited Ryan (A.4) while he was working outside. All this is sufficient corroboration to the evidence of PW.1 and lends credibility to the deposition of PW.1.

133. The learned Counsel for the Appellants (A.1 to A.4), however contended that the deposition of PW.1 that Ryan's (A.4's) black Alto Car was used on the morning of 14.8.2006 to abduct the Victim is belied by the deposition of PW.36 that he saw the black Alto Car parked at Ryan's (A.4's) Ucassaim house from 9 a.m. to 3 p.m. while he was working in the garden. According to us, this is not some major contradiction. The evidence of PW.36, a rustic witness, has to be tested by approximations, particularly when it comes to timings. PW.1 has not deposed to the precise time at which the Victim was brought in the black Alto car to the Ucassaim house. However, from the reading of deposition of PW.1 in entirety and in the proper context, it appears that the Victim was brought to the Ucassaim house on 14.8.2006 at around 10 a.m. This aspect stands substantially corroborated not only by the statement of Rohan (A.1), but also from the evidence of Sujit Satoskar (PW.5), the garage owner at Chicalim. PW.5 deposed that on 14.8.2006, little after opening hours of 9 a.m., a black Alto was parked in front of his garage. Soon

thereafter, the Victim arrived in his Tata Safari and parked the same at the garage, for repairs. PW.5 then deposed that the Victim, whom he knew very well, left in the black Alto car towards Cortalim direction. This was all between 9.15 am. to 9.30 a.m. This means that the Alto Car was at the Ucassaim house at approximately 10 to 10.15 am. The testimony of PW.36, has, therefore, to be construed in this context. When scanning the evidence of various witnesses, as reminded by the Apex Court in *Shivaji Sahabrao Bobade & another Vs State of Maharashtra*⁴¹ we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony. Thus construed, this is not a case of any significant contradiction as such.

134. PW.1 has then deposed that the body of the Victim along with the several incriminating articles which were put in the bag were taken in the car from inner road from Ucassaim to Bicholim to Ponda. PW.1 has deposed that during this journey Ryan (A.4) was getting calls after calls from Rohan (A.1) who was inquiring as to what had happened to the Victim and to see that the Victim is dead once for all. PW.1 has then deposed that when he along with Ryan (A.4) reached at some place before Ponda, on Ryan's (A.4) instructions, he stopped the car. Ryan (A.4) removed the pillow cover

⁴¹ (1973) 2 SCC 793

from the Victim's head and put a blue colour T-shirt to cover the Victim's face. Thereafter, Ryan (A.4) asked PW.1 to help him to throw out the Victim's body. The body was then pulled out of the car and threw down the road. Ryan (A.4) then made a call to Rohan (A.1) and told him that the body of the Victim was disposed of.

135. The body of the Victim was discovered at Arla, Keri, near Ponda in the valley of bushes. PW.37, the officer incharge of Ponda Police Station has deposed that face of the body of the Victim was covered with blue T-shirt. The pancha to the spot panchanama (PW.7) has also deposed that the body of the Victim was covered with a blue colour T-shirt. To the same effect is the deposition of PW.46. Even PW.8 Dr. Sapeco has deposed that there was a dark blue banian over face and neck with its collar around neck in a reversed manner placed over the face of the Victim. All this evidence constitutes sufficient corroboration to the deposition of PW.1 as to the manner in which the body of the Victim came to be disposed of.

136. PW.1 then deposed that he along with Ryan (A.4) then proceeded to Ponda, where PW.1 had his shop. PW.1 has deposed that at the shop Ryan (A.4) requested PW.1 to give him pant which PW.1 was wearing and told PW.1 to wear extra pant which was in the shop. This was accordingly done. Ryan (A.4) then put his pant along with some damaged clothes in a polythene bag and thereafter

suggested that these clothes along with incriminating articles like two baseball bats be only kept in Ponda rather than to take them to Mapusa. PW.1 then deposed that he along with Ryan (A.4) went to PW.1's brother in law shop at Ponda. PW.1 has deposed that he sat in the car while Ryan (A.4) kept the things in the brother in law's shop.

137. The Prosecution recovered the articles kept in the brother in law's shop by recording the recovery panchanama. The learned counsel for A1 to A4 contended that this recovery was a sham and in any case not a recovery under Section 27 of the Evidence Act, since, PW.1 had never kept the incriminating articles in the shop but it was Ryan (A.4) who had kept them. According to us, this contention deserves no acceptance. The incriminating articles were kept in the shop of PW.1's brother in law in the presence of PW.1. Besides, this is not a case of mere admission of statement made by PW.1 to the police in evidence relying upon Section 27 of the Evidence Act, but this is a case where PW.1 has himself stepped into the witness box and deposed to the recovery.

138. PW.1 has then deposed to the meeting of all the accused persons on the evening of 15.08.2006 at Vasco. PW.1 has deposed that all the accused persons were present at such meeting and they discussed about the event of 14.08.2006. PW.30, the owner of the grocery shop where Rohan (A.1), Nafiyaz (A.2) and Shankar (A.3) all

from Vasco used to buy cigarettes has deposed to seeing the said accused persons walked up to the dead end on 15.08.2006 and also a black Alto car at the spot along with the friend of A1, A2, A3. According to us, this is also a corroboration as to the material particulars deposed to by PW.1.

139. In the course of cross examination of PW.1, we really cannot say that any serious dent has been made to the deposition of PW.1. In *Chikkarangaiah and others Vs State of Karnataka*⁴², the Apex Court has held that the case of the Prosecution must be judged as a whole having regard to the totality of the evidence. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. According to us on the whole, we are satisfied that there was a ring of truth in the testimony of PW.1. The testimony of PW.1 was sufficiently corroborated in material particulars by independent witnesses.

140. Besides, it is well settled that the corroboration required in such matters, is not in respect of every detail of the crime. If this was the test, then, perhaps evidence of approver would be quite unnecessary. All that the law requires in such matters is that there

⁴² (2009) 17 SCC 497

must be some additional evidence rendering probable that the story of the approver is true and it is reasonably safe to act upon the same.

141. In the present case, independent evidence not only establishes that the crime was committed but also reasonably connects the accused persons with it, by corroborating in several material particulars the testimony of accomplice that the accused persons committed the crime. Again, the corroboration required, need not extend to all circumstances necessary to identify the accused with the offence. What is necessary that there should be evidence which will make it reasonably safe to believe the story of the accomplice that the accused persons or at least some of them were amongst those who committed the offence. Further, in such matters, the law does not require the direct evidence but even circumstantial evidence is sufficient. According to us, all these tests stand fulfilled in the present case rendering it quite safe to act on the basis of the testimony of PW.1. The twin test of reliability and corroboration stands fulfilled in the present case and therefore, there is no good reason to fault the view taken by the Children's Court, in the present matter.

142. The so called contradictions or discrepancies pointed out by the learned counsel for the A1 to A4, in our opinion are not at all of such degree as to make any dent to the crux of the testimony of

PW.1. In this case, merely because certain circumstances deposed to, by PW.1 like injection of alcohol into the body of Victim or recording of message by the Victim on Rohan's (A.1) Sony Ericsson mobile may not have been proved or for which there may be no independent corroboration, it does not mean that PW1 has deposed falsely on this aspect or that PW.1 is generally an unreliable and untrustworthy witness. Some contradictions, inconsistencies, discrepancies, exaggerations or embellishment are not unnatural in such matters. In fact, it is said that some discrepancies, taking into consideration the frailties of memory or observation skills, in fact, lend assurance that the witness was not tutored witness.

143. The learned Counsel for the Appellants (A.1 to A.4), by pointing out to what they described as some major contradictions or discrepancies, contended that the testimony of PW.1, in its entirety, is required to be discarded. Without saying so, in so many words, the learned Counsel sought to import the principle of “*falsus in uno falsus in omnibus*”, when it came to evaluation of the testimony of PW.1.

144. According to us, there are no major contradictions or discrepancies in the testimony of PW.1. In any case, no part of the testimony of PW.1 can be said to be false, as such. At the highest, it can be said that there is no corroboration to certain aspects deposed

to by PW.1. As noted earlier, that by itself, was not sufficient to brand PW.1 as a liar or a false witness. Besides, even the principle of “*falsus in uno falsus in omnibus*”, which the learned Counsel seek to import has not been accepted in India. Therefore, even falsity of a material witness or falsity in a material particular, would not ruin the testimony of such a witness, from beginning to the end so as to brand such a witness as a liar.

145. In *Gangadhar Behera and others Vs State of Orissa*⁴³, the Apex court has clearly held that the doctrine embodied in the maxim “*falsus in uno falsus in omnibus*” is a dangerous one specially in India, for if the whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. The Apex court has held that this maxim has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is certainly not the some mandatory rule of evidence. The Apex court has observed that the witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because

⁴³ (2002) 8 SCC 381

in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well.

146. The Apex Court, in the aforesaid context, has held that even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, the conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that the evidence has been found to be deficient to prove guilt.

147. In the present case, we are satisfied that there is no falsity as such in the testimony of PW.1 though, on certain aspects there may not be corroboration. In any case, this is a matter where grain can be certainly separated from chaff without much difficulty. This is also not a case whether the major portion of the testimony is deficient. In fact, the major portion of the testimony of PW.1 is not only sufficient, but further, such portion stands corroborated in material particulars, by other undented evidence on record. In such circumstances, the Appellants (A.1 to A.4) have not made out any case to import the principle in “*falsus in uno falsus in omnibus*”, even assuming that such import was permissible in the Indian

context.

148. In this case, the Prosecution has examined Deepak Surlakar (PW.2), the father of the Victim. He deposed that the date of birth of the Victim was 6.10.1988 and he even produced the birth certificate of the Victim which was admitted in evidence and marked as Exhibit 68. At no stage was there any challenge that the Victim was less than 18 years of age on the date of offence i.e. 14.08.2006. PW.2 has deposed that he was a real estate developer and had two sons, Kalpesh and the Victim. He has deposed that the Victim was a Disc Jockey (DJ) by profession and he was taking various contracts for different programmes. There is really no challenge in so far as this aspect is concerned. Even Rohan (A.1), in his 313 Cr.P.C. Statement, has admitted that the Victim was a DJ. The evidence on record establishes that the accused persons induced the Victim to come to Ucassaim by telling him that there was to be musical programme for which the Victim was to be the DJ. The Victim was induced to come to Mapusa and Ucassaim on the misrepresentation that he was to be shown sites for holding of musical programme.

149. PW.2 deposed that on 14.08.2006 at about 8.30 a.m., two friends of the Victim Rohan (A.1) and Nafiyaz (A.2), both from Vasco came to their residence to meet the Victim. Thereafter, they left along with the Victim at about 9.00 a.m., and the Victim told PW2,

who was his father that he was going to inspect the some sites for musical programme and that he will return by 12.00 noon. PW.2 has deposed that since there was some problem with Tata Safari the Victim took the said vehicle to keep in one garage i.e. Sai Auto Spares at Chicalim and the Victim also told PW.2 that he would be travelling thereafter with Rohan (A.1) and Nafiyaz (A.2). PW2 identified Rohan (A.1), Nafiyaz (A.2) in the Court. PW2 then deposed that at about 1.15 p.m., he received a call on his mobile phone from the mobile phone of Victim. One male person was speaking in Hindi gave him treats and informed him that his son has been kidnapped and he should come with Rs.50 lakhs near Foodland Hotel at Miramar and that he should not inform either the police or his wife or any other persons about this. PW.2 has deposed that at that time after the threats were given in Hindi the Victim spoke to him stating that he was kidnapped and he was crying and then the phone was switched off.

150. Now, the learned counsel for A-1 to A-4, who have otherwise objected to the call records being read into the evidence for want of Section 65-B of Evidence Act certificate, have urged that this particular call was made from some location near Donapaula. On this basis, they urged that the Victim was at Donapaula and not at Ryan's (A.4's) house at Ucassaim as deposed by PW.1. It is possible to say that there is no satisfactory explanation regards this call, since, it is

the case of the Prosecution that the Victim was at Ucassaim at this point of time. However, this, according to us, does not make any dent to the otherwise cogent deposition of PW.1, which stands corroborated in several material particulars.

151. PW.2 deposed that on receiving the call making demand for ransom of Rs.50.00 lakhs, he along with his wife rushed to Rohan's (A.1's) house, where they met his mother. The mother then called up Rohan (A.1) and asked him where he and Nafiyaz were and Rohan (A.1) claimed that he was at Bambolim and Nafiyaz (A.2) had gone to bring some eatables. She then asked Rohan (A.1), the whereabouts of the Victim, to which Rohan (A.1) replied that he knew nothing about the Victim's whereabouts. PW.2 has deposed that on hearing this he and his wife frightened and straightaway rushed to the police station.

152. PW.2 then deposed that at Vasco Police Station they narrated what had transpired to P.I. Sammy Tavares and P.I. sent P.S.I. Dalvi to Rohan's (A.1's) house, where he was given Rohan's (A.1's) phone number. P.S.I. Dalvi then called Rohan (A.1) to the Vasco Police Station at about 2.00 p.m. PW.2 deposed that Rohan (A.1), Nafiyaz (A.2) came to Vasco Police Station at about 3.00 p.m., on 14.08.2006. PW.2 deposed that at the police station Rohan (A.1) and Nafiyaz (A.2) stated that they were with the Victim at

Miramar near Sharada Mandir School at 10.30 a.m. and one silver colour Accent car came and the Victim went in the same towards Donapaula side. PW.2 has deposed that he got suspicious and phoned his other son Kalpesh who too expressed suspicions on Rohan (A.1) and Nafiyaz (A.2). Accordingly, PW.2 lodged a complaint on 14.08.2006 at Vasco Police station against the occupants of silver colour Accent car for having abducted the Victim.

153. PW.2 deposed that his other son Kalpesh also came to the police station and again expressed suspicions against Rohan (A.1) and Nafiyaz (A.2). He deposed that Rohan (A.1) and Nafiyaz (A.2) were consulting each other and also going out of the police station to call someone else. At about 5.00 p.m., P.I. Sammy Tavares asked them to report to Panaji Police Station since the incident had taken place at Miramar, which was within the jurisdiction of Panaji Police Station. Such complaint was accordingly lodged at Panaji Police Station.

154. PW.2 has deposed that on late night of 15.08.2006 he came to know that the dead body of the Victim was found at Arla Keri at Ponda. PW.2 deposed that his brother identified the body. PW.2 deposed that the clothes worn by the Victim when he left the home on the morning of 14.08.2006 and even identified the clothes in the Court. PW.2 also identified the Sony Ericsson mobile hand set

of the Victim. In the cross examination, absolutely no dent has been made to the deposition of PW.2. In fact, in the cross examination on behalf of Nafiyaz (A.2), PW.2 deposed that from his flat, Rohan (A.1) and Nafiyaz (A.2) had left by one Alto car. He deposed that later the Victim left in their Tata Safari vehicle which he was to keep at garage at Chicalim.

155. There is sufficient corroboration to the evidence of PW.2 particularly on the aspect of Rohan (A.1), Nafiyaz (A.2) being last seen with the Victim. There is also corroboration to the evidence of PW.2 that Rohan (A.1) and Nafiyaz (A.2) had indeed come to the flat of PW.2 and Victim in black Alto car.

156. Sujit Satoskar (PW.5), garage owner of Sai Auto Spares at Chicalim has deposed that on 14.08.2006 within 10 minutes of opening of the garage i.e. 9.00 a.m., one black Alto car came and parked in front of his garage. Thereafter, after 10 or 15 minutes the Victim, who was known to PW.5 came with his Tata Safari vehicle and parked the said vehicle near the garage and told him that he would return by 12.00 noon along with the surveyor. PW.5 has deposed that the Victim handed over the keys of the Tata Safari to PW.5 and thereafter he went inside the Alto car on the front seat and the car then went towards Cortalim side. There was some difficulty on the part of PW.5 in identifying Nafiyaz (A.2). However, the

evidence of PW.5 is quite sufficient to corroborate the version of PW.2 on the aspect of last seen theory.

157. As if, the evidence of PW.2 and PW.5 were not sufficient, there is material in the form of 313 Cr.P.C. statement given by Rohan (A.1), which calls for reference. This statement was voluntarily given by Rohan (A.1) and is styled as “*written submission in continuation to my 313 statement*”.

158. In the aforesaid submission, Rohan (A.1) has made the following statements: (page 1401.)

“7. *It is true that we had formed a Partnership Firm; however, it is false that we were having heavy losses and were in dire need of money. Our firm was doing a good business and were never in any financial crisis.*

8. *I knew deceased Victim Surlekar. He had once given a small advertisement in our periodical 'Vox Populi' about his introduction as a D.J. He wanted to organize programs at various places in Goa, and had requested for my help. I told him that I can help him in searching for venues at Mapusa. Accordingly, we had decided to go to Mapusa on 14th August, 2006. Never before this there was any proposal to visit Mapusa as is alleged by Prosecution.*

9. *On 14th August, as per our schedule, we started from Vasco with our black coloured Wagon R car. I deny that Maruti Alto car owned by accused No.4 Ryan Pinto was with us on 14th*

August and that we came from Vasco by the said car. As Victim had some work, he went ahead. He joined us on the way and came in our Wagon R car. I showed Victim 2-3 sites abutting road. At around 11.00 a.m. we came to Cafe Coffee Day alias CCD. Victim was with us for about half an hour. All three of us had snacks. I paid the bill of Rs. 229 at that time. Thereafter, we all came out, when we were nearby Sharda Mandir School, at around 11.30 a.m., a silver coloured Assent car came and stopped. Victim went near it, which was parked in the direction of Dona Paula, talked with them for a while, and came back to us. He told us that he is going in that car and will return soon. Thereafter, Victim sat in the Assent car and went along with them. We waited for him for about an hour. During that period I got my own mobile hand-set back which I had called for earlier. Afterwards, we went to the Post office, Law College, and then in Panaji city, completed our purchases.

*11. We were at the Panaji Police Station on 14th August till late night and also attended Panaji Police Station next day i.e. on the 15th August as and when we were called by the Police. However, the Police could not trace the real offenders in order and to save their image in sensational and at the instructions and insistence of I.O. Mr. Mahesh Gaonkar, we have been falsely implicated **only because the deceased was in our company in the morning.**"*

(emphasis supplied)

159. Now the aforesaid statements of Rohan (A.1) voluntarily tendered by him to the Children's Court itself constitute

corroboration to the several material particulars deposed to by PW.1. Besides, this statement also corroborates substantially the deposition of the Victim's father PW.2 and the garage owner (PW.5), particularly on the aspect of last seen theory. Rohan (A.1) admits that on 14.08.2006 "*we started from Vasco*". Though, Rohan (A.1), has not specifically referred to the name of Nafiyaz (A.2), he has also not explained what he meant by "*we*" or "*us*" in these statements. Rohan (A.1) has thereafter stated that the Victim had some work. He went ahead but he joined "*us*" on the way, and came in "*our Wagon R car*". Rohan (A.1) has then stated that "*we*", which means Rohan (A.1), and the Victim as well as another persons, which, from the context appears to be Nafiyaz (A.2) came to Cafe Coffee Day (CCD) near Sharada Mandir School at about 11.00 a.m.

160. Thereafter, Rohan's (A.1's) statement says that "*all three of us had snacks*" and thereafter they came out. The statement proceeds to say that when they were near Sharada Mandir School at about 11.30 a.m., one silver colour Accent car came and stopped and the Victim then sat in it and went in a direction of Donapaula. Before going, the statement says that the Victim spoke someone in the silver colour Accent car and thereafter returned to Rohan (A.1) and another person and told them that he is going in that car and will return soon. This statement says that thereafter the Victim sat in the car and went along with the person who was driving the car. The

statement also states that Rohan and another waited for another one hour and thereafter went to post office, Law college and Panaji city to complete the purchases. The statement also says that I.O. Mahesh Gaonkar has falsely implicated them because “ *only because the deceased was in our company in the morning*”

161. Now, there is absolutely no reason not to take into consideration the 313 Cr.P.C. statement voluntarily made by Rohan (A.1) before the Children's Court. Rohan (A.1) has referred to travelling in his “*Maruti black colour Wagon R car*”. On this basis, the learned counsel for A.1 to A.4 contended that there was absolutely no evidence about the user of black colour Maruti Alto car owned by Ryan (A.4). According to us, this is not at all material. The statement of Rohan (A.1) affords more than substantial corroboration to the deposition of PW.1, PW.2 and PW.5 that the Victim was last seen in the company of Rohan (A.1) and Nafiyaz (A.2) on the fateful morning of 14.08.2006.

162. In the police station, Rohan (A.1) is stated to have told the police that the alleged incident of Victim getting into silver Accent car near Sharada Mandir took place at about 10.30 a.m., on the morning of 14.08.2006. In his 313 Cr.P.C. Statement, however, Rohan (A.1) refers to this timing at around 11.30 a.m. From the deposition of PW.1, which is totally corroborated by the medical evidence of Dr. Sapeco (PW.8) it is established by the Prosecution

that the death of the Victim took place between 12.30 to 2.30 p.m., on 14.08.2006. This means that even the time gap between Rohan (A.1), Nafiyaz (A.2) and Victim being last seen together is quite short.

163. Apart from stating to the police at Vasco and Panaji and thereafter in 313 Cr.P.C., statement, there is absolutely no material on record to substantiate the theory that the Victim got into the silver colour Accent car from near Sharada Mandir School at Miramar, Panaji Goa. Rohan (A.1) or Nafiyaz (A.2) made no statement regards the registration number of the said vehicle, which at least Rohan (A.1) claimed was parked in front of them when all three of them were allegedly standing near Sharada Mandir, Miramar, Panaji Goa.

164. The accused persons, undoubtedly, have a right to remain silent and it is not even obligatory on them to raise any defence. However, perhaps realising that the the circumstance that Rohan (A.1) and Nafiyaz (A.2) were last seen with the Victim, only a few hours before the Victim was murdered, at least Rohan (A.1), put-forth a defence about the Victim getting into a silver Accent car near Sharada Mandir School at Miramar. There is evidence on record to suggest that Nafiyaz (A.2) was along with Rohan (A.1). In such circumstances, the provisions of Section 106 of the Evidence Act would come into play and oblige Rohan (A.1) and Nafiyaz (A.2) to

explain what happened to the Victim after he was last seen in their company. No explanation whatsoever is forthcoming from either of the accused persons. Rather, Nafiyaz (A.2) in his 313 Cr.P.C statement does not support the version of Rohan (A.1). In such circumstances, we cannot fault the Children's Court which has observed that Rohan (A.1) and Nafiyaz (A.2) made an attempt to waylay the course of investigation and send the Prosecution on a completely different scent.

165. In the aforesaid regard, reference can be usefully made to the decisions of the Apex Court in *Chaman and another Vs State of Uttarakhand*⁴⁴ and *State of West Bengal Vs Mir Mohammad Omar and others*⁴⁵. The reference to these decisions is not just on account of substantial similarity in the facts situation but reference is necessary to elaborate, how, in such circumstances the provisions in Sections 114, 101 and 106 of the Evidence Act come into play and there is at least shifting of onus upon the accused persons to explain the facts within their special knowledge.

166. In *Chaman Vs State of Uttarakhand* (supra) there was evidence that the accused persons had made successive visits to the house of the deceased Jagram on the turn of 15 days in search of his son Vinod, whom they suspected was involved in the murder of

⁴⁴ (2016) 12 SCC 76

⁴⁵ (2000) 8 SCC 382

appellant Chaman's son. There was evidence that the appellant Chaman, along with others, came to the house of the deceased and forcibly took away the deceased. The Apex Court, did not give much credence to the contention that number of public did not intervene even though, the daughters of the deceased Jagram raised alarm. Ultimately, Jagram was found dead after 4 to 5 days nearby jungle.

167. On facts, the Apex Court held that circumstance proved against the accused persons was that they had visited the house of the deceased Jagram twice within a span of 15 days in search of Jagram's son Vinod and ultimately on the date of the incident they had forcibly taken Jagram away. The Apex court, held that recovery of rope on the basis of statement of appellant Chaman was admissible in evidence under Section 27 of the Evidence Act and the discrepancy about the texture of the rope, was not much significance. The Apex Court also found that there was a motive, in that the accused persons suspected the son of the deceased Vinod for the murder of Chaman's son. On the basis of such proved facts and motive, the Apex Court upheld the conviction of the accused persons under Section 302 and 364 read with 34 of IPC.

168. The Apex Court held that proved abduction of the deceased from his house by the accused persons was *per se* a criminal offence and carries with it a much higher degree of sinister culpability

compared to any phenomenon of “*last seen together*”, simpliciter. Further, the Apex court held that since the deceased was in the custody of accused persons after his abduction on 12.06.1996, special knowledge as to how he had been dealt with by them thereafter before his dead body was found “*in a decomposed state in a nearby jungle. No explanation is forthcoming in any form in this regard from the appellants.*”

169. The Apex Court then referred to its earlier decision in ***Shambhu Nath Mehra vs. State of Ajmer***, AIR 1956 SC 404 and the general rule that *in a criminal case the burden of proof is on the Prosecution and Section 106 of the Evidence Act is certainly not intended to relive 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 Apex Court also held that the proof beyond reasonable doubt, as has been held in a plethora of decisions of this Court, is only a guideline and not a fetish and that someone, who is guilty, cannot get away with impunity only because truth may suffer some infirmity when projected through human processes.*

170. In *Mir Mohammad Omar* (supra) the Victim was a

small businessman who refused to give in to the demand of Rs.50,000/- made by a local goon (7th accused) for allowing him to deal with his business, unobstructed. Accordingly, there was a dig between the two and this episode happened about 10 to 12 days before the death of the Victim. On 4.11.1984, the accused persons led by 7th accused, gate crashed at Victim's apartment where he was staying with his sister (PW.9), in search of the Victim. Having failed to see him there, they issued threats. The Victim upon knowing of this incident got frightened and went to the residence of his friend (PW4) and took asylum therein. However, hardly after an hour, there was knocking at the door and when he opened the door he saw one fruit seller standing at the doorstep conveying a message that one Omar (A1) was outside waiting to see the Victim. Upon the Victim refusing to do so, Omar (A1) forcibly took the Victim in a rickshaw but the Victim managed to escape and ran towards Giri Babu Lane and sought for asylum with Mohamad Sayeed (PW5), who allowed him to sleep in his room. At about 2.30 a.m. the accused persons including A1 and A7 reached the house of PW.5 knocked at the door and finally took the Victim away with them. The dead body of the Victim was found on the next day with his head tonsured.

171. The Sessions Court and the High Court had, in fact, acquitted the accused persons. The Apex Court, however, reversed the acquittal and convicted the accused persons. The Apex court

noted that the accused persons, after abducting the Victim, gave no explanation as to what had happened to the Victim. The Apex court held that *the pristine rule that the burden of proof is on the Prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the Prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.*

172. The Apex Court held that when the Prosecution succeeded in establishing the above narrated circumstances, the Court has to presume the existence of certain facts. *The presumption is a course recognized by the law for the court to rely on in conditions such as this. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section*

114 was incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

173. The Apex Court then observed that when it is proved to the satisfaction of the court that the Victim was abducted by the accused, then, it is only the accused persons who knew what happened to him until he was with them. If he was found murdered within a short time after the abduction, the permitted reasoning process would enable the court to draw the presumption that the accused persons have murdered him. *Such inference can be disrupted if accused would tell the court what else happened to the Victim at least until he was in their custody.*

174. The Apex court, during the course of arguments put a hypothetical question to the learned senior counsel for the accused persons based on a hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the normal inference if the mangled dead body of the boy is recovered within a couple of hours from elsewhere ? The query was made whether upon proof of the above facts an inference could be drawn that the

kidnappers would have killed the boy. The Apex Court recorded that the learned senior counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise.

175. The Apex court also referred to the provisions of Section 106 of the Evidence Act which provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The Apex Court clarified that Section is not intended to relieve the Prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the Prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. *The Apex court held that in the light of the proximity of time within which the Victim sustained fatal injuries and the proximity of the place within which the dead body was found are enough to draw an inference that Victim's death was caused by the same abductors. If any deviation from the aforesaid course would have been factually correct only the abductors would know about it, because such deviation would have been especially within their knowledge. As they refused to state such facts the inference would stand undisturbed.*

176. Finally, the decision in *Mir Mohammad Omar* (supra) is important to answer yet another contention raised by the learned counsel for A-1 to A-4 on the basis of some omissions or lacunae in the investigation. In the said case, the Division Bench of Calcutta High Court in fact castigated the Prosecution for defective investigation. The Apex Court held that in their perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. *The Apex Court has observed that if the offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the Victim. Therefore, effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. The Courts should bear in mind the time constraints of the police officers in the present system, the ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case.*

177. According to us, the principles laid down by the Apex court in the case of *Chaman V/s State of Uttarakhand* (supra) and *Mir Mohammad Omar* (supra), have significant bearing on the present case. There is ample evidence on record, on the basis of

which it can be said that the Prosecution has proved beyond reasonable doubt that the Victim was last seen along with Rohan (A.1) and Nafiyaz (A.2) at least up to about 9.30 a.m. on 14.08.2006. Further, it is the case of Rohan (A.1) that he was along with the Victim at least up to 11.30 a.m on 14.08.2006. The medical evidence conclusively establishes that the Victim died within hardly two to three hours from he being last seen along with Rohan (A.1) and Nafiyaz (A.2). In these circumstances, applying principles in the two Apex Court's decisions as also applying the provisions of Sections 106 and 114 of the Evidence Act, clearly it was for Rohan (A.1) and Nafiyaz (A.2) to explain the fact within their special knowledge as to what happened to the Victim, who was ultimately found dead with several homicidal injuries. All these circumstances have to be evaluated along with the testimony of approver (PW.1), which was corroborated in material particulars by independent evidence, including, but not restricted to medical evidence. According to us, all this is more than sufficient to hold that the guilt of the accused persons has been proved beyond reasonable doubt by the Prosecution, in the present case.

178. Based upon some minor contradictions or discrepancies, the learned counsel for A-1 to A-4 attempted to contend that this is, at the highest, a case where some suspicion may arise, but they forcefully contended that suspicion in a criminal case can never take

the place of proof. They also contended that since there are discrepancies and contradictions coupled with faulty investigations, this is a case where the accused persons are entitled to the benefit of reasonable doubt.

179. There can be no doubt about the proposition that in a criminal trial suspicion, howsoever grave, can never take place of proof. However, in the present case, the Prosecution has proved the guilt of the accused persons, beyond reasonable doubt and, therefore, this is not a case which falls in the realm of mere suspicion as contended by the learned Counsel for A.1 to A.4. Besides, we are also satisfied that this is not a case which calls for the application of doctrine of reasonable doubt based on the so called discrepancies or contradictions pointed out by the learned Counsel for A.1 to A.4.

180. In *Shivaji Sahabrao Bobade* (supra) the Apex Court has observed that the dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the Victim and the community, demand special emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. *The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be*

stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will breakdown and lose credibility with the community.

181. The Apex Court has warned that if unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted persons and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. The miscarriage of justice may arise from the acquittal of the, guilty no less than from the conviction of the innocent. In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. The Apex Court has also held that *variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered.*

182. In the present case, we are also satisfied that the offence of conspiracy has been established by the Prosecution beyond reasonable doubt. From the tenor of cross examination as well as 313 Cr.P.C., statement of Rohan (A.1), it is more than apparent that all the accused persons as well as approver (PW.1) were part of one and the same group or gang. There is detailed evidence as to conspiracy hatched out by the accused persons as well as the approver (PW.1) for the purpose of kidnapping the Victim for ransom. There is no much merit in the contention of the learned counsel for A.1 to A.4 and to some extent A-3 that there was no conspiracy to kill the Victim and the conspiracy if at all was restricted only to kidnapping the Victim for ransom. From the evidence on record, it is quite apparent that the accused persons, upon realising the Victim's father has refused to pay any ransom and has reported the matter to the police, obviously, conspired to eliminate the Victim, so that the investigating agencies would find it extremely difficult to trace the crime to the accused persons.

183. The conspiracy under Section 120A of IPC is an agreement to break law. The parties to such an agreement can be held guilty under Section 120A of IPC even though the illegal act agreed to be done, may have not in fact been done. Further, it is not the ingredients of offence of conspiracy that all the parties should agree to do a single illegal act. They may conspire to commission of

number of acts. Under Section 43 of the IPC, an act would be illegal, if it is an offence or prohibited by law. (see *Major E.G. Barsay Vs State of Bombay*, AIR 1961 SC 1762).

184. The Apex Court in *Yash Pal Mittal v. State of Punjab*⁴⁶ has held that very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes mis-fire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability

46 (1977) 4 SCC 540

of those others when they are associated with the object of the conspiracy.

185. Applying the aforesaid principles to the evidence on record in the present case, we are satisfied that the Children's Court quite correctly convicted the accused persons for the offence of conspiracy under Section 120-B of IPC. Normally, it is difficult for the Prosecution to present direct evidence in support of the charge of conspiracy. However, in the present case, PW.1-the approver has deposed in great detail to the conspiracy hatched by the accused persons, to which, he admitted to being a part. The testimony of PW.1 has a ring of truth and was therefore rightly relied upon by the Children's Court, having regard to the provisions in Section 133 of the Evidence Act. Further, the testimony of PW.1 find corroboration in material particulars in the other evidence on record, including but not restricted to the medical evidence on record.

186. Since, the Prosecution has succeeded in proving that a conspiracy was indeed hatched by all the accused persons, including the approver-PW.1, the contention raised on behalf of Rohan (A.1) and Nafiyaz (A.2) to distance themselves from the offence of murder, by only pointing out that they were not personally present at the Ucassaim house at the time of the murder, cannot be upheld. Once, conspiracy is proved by the Prosecution, there is no question of some

of the conspirators escaping the consequences of the conspiracy. Besides, we find that even for the offence of abduction for ransom under Section 364-A of IPC, the penalty provided is imprisonment for life and, therefore, even the acceptance of the contention, would make no difference to the sentence imposed upon Rohan (A.1) and Nafiyaz (A.2) in the present case.

187. Besides, in the context of the contention raised on behalf of the conspirators Rohan (A.1) and Nafiyaz (A.2), reference to Section 10 of the Evidence Act is also important, as it introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the conspirators. *The Section 10 provides that where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.*

188. In *Sardar Sardul Singh Caveeshar Vs State of*

Maharashtra⁴⁷, the Apex court has analysed Section 10 of the Evidence Act in the following manner :

“In short, the section can be analysed as follows: (1) There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour.”

189. In the *State Vs Nalini* (supra), the Apex Court has explained that it is true that the provision as contained in Section 10 is a departure from the rule of hearsay evidence. But then precisely under Section 10 of the Evidence Act the statement of a conspirator is admissible against co-conspirator on the premise that relationship exists of reasonable ground to believe that two or more persons have conspired to commit an offence and that brings into operation the existence of agency relationship to implicate co-conspirator. The prosecution, no doubt, has to produce independent evidence as to the existence of the conspiracy for Section 10 to operate but it need not

47 AIR 1965 SC 682

prove the same beyond a reasonable doubt.

190. The Apex Court has held that criminal conspiracy is a partnership in agreement and there is in each conspiracy a joint or mutual agency for the execution of a common object which is an offence or an actionable wrong. When two or more persons enter into a conspiracy any act done by any one of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. However, the court has to guard itself against readily accepting the statement of a conspirator against the co-conspirator. This means that the court must look for some corroboration to be on the safe side. It is not a rule of law but a rule of prudence bordering on law. In paragraph 583, the Apex Court has summarised broad principles governing the law of conspiracy by adding that the summary was not exhaustive of the principles.

191. Applying the above principles to the present case, we are satisfied that the Children's Court was quite right in convicting the accused persons for the offence of murder and destruction of evidence, because the evidence on record, very clearly, proves that even these offences were committed in furtherance of the conspiracy. As noted earlier, there is ample evidence on record which establishes beyond reasonable doubt the conspiracy between the accused persons not only abducting the Victim for ransom but also to

eliminate/murder the Victim, in case no ransom is paid and there is a danger of the Victim identifying the accused persons. In the present case, the Victim knew the accused persons or at least knew some of the accused persons. In this case, the Victim was deceitfully induced to go with Rohan (A.1) and Nafiyaz (A.2) from Vasco to Mapusa/Ucassaim on the pretext of being shown sites for the musical programmes. None of the accused persons were in any way concerned with the business of holding of musical programmes or had any intention to show the Victim any sites at Mapusa or any other place on the fateful day of 14.8.2006. The accused persons had, in fact, conspired to abduct the Victim for ransom and failing receipt of any ransom amount, and because the Victim's father approached the police, the accused persons proceeded to eliminate the Victim in a most gruesome manner, as deposed to by PW.1, one of the conspirators who eventually turned an approver.

192. According to us, there is no necessity to go into the issue of recovery under Section 27 of the Evidence Act because we are satisfied that twin tests applicable to appreciation of evidence of an approver are more than fulfilled in the present case. The approver in the present case was found to be reliable and credible witness. There is independent evidence to corroborate the role played by him in the entire incident. His statement inculcates him to a great extent. His testimony has been corroborated in material particulars to other

independent evidence including, but not restricted to medical evidence. In these circumstances, there is really no necessity to seek any further corroboration on the basis of recovery under Section 27 of the Evidence Act.

193. However, we must note that the recoveries at the scene of offence staged on 17.8.2006, leave much to be desired. PW.1 has deposed that he apprised the I.O. (PW.56) with all the facts on the date of his arrest which was 16.8.2006. Yet, the I.O. (PW.56) proceeded to the scene of offence on 17.8.2006, stating that he acquired this knowledge only on 17.8.2006 after a statement was made to this effect by Ryan (A.4). There is evidence on record that Premavati Sawant (PW.51), a maid working at Ryan's (A.4's) house in Ucassaim had visited the Ucassaim house (scene of offence) on 16.8.2006 and at that time found Ryan's (A.4's) uncle along with policemen present in the house. This means that the scene of offence was already disturbed on 16.8.2006. Accordingly, we attach no much importance to the so called recoveries effected from the scene of offence.

194. So also, we do not approve the observations made by the Children's Court in the impugned Judgment and Order that the statement made by PW.1 and Ryan (A.4) to the police with regard to the bag containing incriminatory articles being thrown into the

Banastarim river, could be statements admissible in evidence under Section 27 of the Evidence Act, even though, the bag was not ultimately recovered, despite search. No doubt, some credence could be given to the statement of PW.1, since PW.1, deposed to the same effect on oath before the Children's Court, where, he was examined by the Prosecution as a approver. However, we add that the exclusion of the statements of the accused persons, in pursuance of which, the Prosecution attempted to prove recoveries, makes no serious dent to the case of the Prosecution, since there is ample other evidence on record to prove the guilt of the accused persons beyond reasonable doubt.

195. At this stage, however, we must reject the contention made by Mr. Desai, learned Senior Advocate appearing for Rohan (A.1) to the effect that all the recoveries in the present matter stand vitiated because the accused persons, who had given statements whilst in custody were themselves taken at the spot for effecting recoveries. No decision was cited before us in support of such a proposition. Rather, the decisions which were cited before us, in fact, militated against such a proposition. In most of the decisions relied upon, the discoveries or the recoveries were made by or in presence of the accused persons and, in furtherance their statements, whilst in custody.

196. The same is the position with regard to the call detail records. The learned counsel for A.1 to A.4 have contradicted themselves in their submission on this aspect. On the one hand, they have chosen to rely upon the CDRs when, such CDRs according to them, suit the case of the defence. On the other hand, the learned counsel have urged that such CDRs are not admissible in evidence for want of Section 65B of Evidence Act certification.

197. Since there was extensive cross examination on CDRs, the evidence in regard to the CDRs could have been taken into consideration. Besides, the Nodal Officer has also deposed that much of such evidence was manually extracted, in which case, there may be no necessity of certification under Section 65-B of the Evidence Act. If the evidence in the form of call detail records is analysed, then, such evidence establishes that on the crucial date and at the crucial time i.e. 14.8.2006 the accused persons, were in telephonic contact with one another. In evaluating this evidence, it is not possible to accede to the request of the learned Counsel for A.1 to A.4 that there has to be almost a mathematical correlation between the timings and the locations deposed to by the witnesses and the call record details. The evidence, in such matters, has to be construed as a whole and it is clearly impermissible to tear a sentence or two from the general context. However, we add that even if the evidence in form of the call detail records is completely excluded from consideration for want

of certification under Section 65-B of the Evidence Act, there is no dent whatsoever to the Prosecution case. Even we have not based our conclusions by taking into consideration the evidence relating to call detail records, on account of the objection raised by the learned Counsel for A.1 to A.4 relying upon the decision in *Anwar P. Vs. Bashir* (supra).

198. We note that in the present case, Rohan (A.1), Nafiyaz (A.2) and Ryan (A.4) were students of Salgaonkar College of Law studying in third year. The Principal Mr. Pinheiro (PW.29) has produced the attendance records in relation to these three accused persons which indicate that three accused persons were not even present in the college during the relevant period when the offence of conspiracy, abduction and murder have taken place. There is more than sufficient corroboration to the testimony of PW.1, from the several independent witnesses. PW.50 has deposed to leasing the premises to the accused persons for their business. There is evidence of pharmacy owner and sale girls with regard to the things purchased by Rohan (A.1) and Nafiyaz (A.2) in relation to conspiracy and for the purpose of abduction of Victim. The fact that two baseball bats were also brought by the accused persons establishes that there were every intention to assault and eliminate the Victim, in case demands for ransom were not to be met. There is aspect of last seen theory. There is 313 Cr.P.C., statement given by Rohan (A.1). The testimony

of PW.1, approver is found to be trustworthy. There is ample corroboration to the material particulars deposed to by PW.1. The suggestions in the course of cross examination far from making any dent to any Prosecution case in fact, strengthens the Prosecution case. Therefore, based upon some discrepancies or contradictions here and there or on the basis of faulty investigation, we do not deem it appropriate to upset the view taken by the Children's Court, who had the added advantage of considering the demeanor of the witnesses or at least some of the witnesses.

199. The criticism levelled by Mr. Jos Peter D'Souza and Mr. S. Pinto, learned Counsel for Shankar (A.3) and Ryan (A.4) as to the record of 313 Cr.P.C. statements is not at all justified. The necessary warnings were administered to these accused persons and the accused persons cannot take any advantage of some slight errors. There was nothing complex or complicated about the questions posed these accused persons. These accused persons did not express any difficulties or protest that the questions were complex or complicated. Rather, they chose to answer such questions, without any demur. We have perused the Roznamas and we find no errors therein. Since, the Presiding Officer of the Children's Court was also the Sessions Judge, it is possible that on one or two occasions the matters may have been taken up in the premises at the Sessions Court. However, that does not mean that part of the trial was held in

the Sessions Court, when, in fact, the exclusive jurisdiction in such cases is vested in the Children's Court. The non-examination of C.L. Patil, PI, Mapusa Police Station also, in the circumstances of the present case, calls for no drawing of any adverse inference against the Prosecution. The so called discrepancies in relation to the arrest of Ryan (A.4) and PW.1, also do not, in any manner, detract from the crux of the evidence produced on record by the Prosecution.

200. The rulings on the aspect of circumstantial evidence neither apply in the present case, nor can it be said that the principles in such rulings were not borne in mind by the Children's Court whilst evaluating the evidence which could be said to be circumstantial. The defence, other than pointing out some minor and to a great extent, inconsequential discrepancies in the evidence of the approver (PW.1), have not otherwise succeeded in making any dent to the Prosecution case. The Prosecution, in the present case, has satisfactorily explained the injuries found on the accused persons. The injuries upon the body of the approver (PW.1) bear a direct nexus with the events at the scene of offence. The injuries on the body of Ryan (A.4) are also properly explained by the Prosecution. Dr. Sapeco (PW.8) specifically inquired with Ryan (A.4), the genesis of the injuries on his body, but, Ryan (A.4) refused to respond. Significantly, at that stage, Ryan (A.4) did not tell Dr. Sapeco (PW.8) that the injuries had resulted from assault whilst in police custody,

though, this is what Ryan (A.4) stated in his 313 Cr.P.C. statement. The Children's Court, in the present case, has evaluated the evidence on record by adverting to the correct principles which apply in such matters.

201. Accordingly, we are satisfied that there is no merit in the appeals instituted on behalf of A.1 to A.4 and consequently, Criminal Appeal Nos.38, 48, 51,52 of 2014 are liable to be dismissed.

Criminal Appeal No.64/2014

202. The only issue involved in Criminal Appeal No.64/2014 instituted by the State is, whether the Children's Court, after sentencing the accused persons to life imprisonment, was right in holding that they are entitled for set off under Section 428 of Cr.P.C. for the period already undergone during trial ?

203. Mr. Rivankar, the learned Public Prosecutor submits that the Constitution Bench of the Apex Court in *Gopal Vinayak Godse (supra)*, has held that a sentence for life imprisonment means, a sentence for remainder of the convict's natural life. He submits that Section 428 Cr.P.C. applies only where an accused person has been sentenced “*for a term*” and not otherwise. He submits that a sentence of life imprisonment, being a sentence for an indefinite term, can

never be regarded as a sentence “*for a term*”. Therefore, he submits that the provisions of Section 428 Cr.P.C. cannot apply to a situation of the present kind, where all the accused persons are sentenced to life imprisonment and not “*for a term*”. He relies on decision of the Apex Court in *Sangeet vs. State of Haryana* (supra); *Duryodhan Rout vs. State of Orissa* (supra); ***Swamy Shraddananda*** (supra); *Kartar Singh* (supra); and *Jagir Singh* (supra).

204. On the other hand, Mr. Pavithran, learned Counsel for A.1 submits that the aforesaid contentions raised by Mr. Rivankar are contrary to the law laid down by the Constitution Bench of Apex Court in *Bhagirath* (supra). He submits that Section 428 Cr.P.C. nowhere speaks of “*a fixed term*” and the sentence for life imprisonment, is also a sentence “*for a term*”. On this basis, Mr. Pavithran submits that there is no error on the part of the Children's Court in granting the accused persons benefit of set off under Section 428 Cr.P.C. He points out that *Kartar Singh* (supra), upon which reliance is placed by the State, is specifically overruled in *Bhagirath* (supra). Mr. Pavithran then relies on *Ranjit Singh vs. State of Punjab* (supra) in support of his contentions.

205. According to us, the issue raised in Criminal Appeal No.64/2014, instituted by the State, is no longer *res integra* since the same stands concluded by the decision of the Constitution Bench in

Bhagirath (supra).

206. The precise issue which fell for consideration before the Constitution Bench of the Apex Court in *Bhagirath* (supra) was whether a sentence for life imprisonment is a sentence “*for a term*” ?

207. The Constitution Bench expressly rejected the view that the expression “*for a term*” in Section 428 of Cr.P.C. means “*for a fixed term*” or a term which is definite or ascertainable. The Constitution Bench, in fact, overruled *Kartar Singh* (supra) and held that even a person who is sentenced to life imprisonment is sentenced to imprisonment “*for a term*” and therefore, entitled to the benefit of set off under Section 428 of Cr.P.C.

208. The Constitution Bench in *Bhagirath* (supra) noted that the Constitution Bench in *Gopal Vinayak Godse* (supra) had held that a person sentenced to life imprisonment is bound to serve the remainder of his life in prison, unless the sentence imposed upon him is commuted or remitted by the appropriate authority. The Constitution Bench in *Gopal Vinayak Godse* (supra), further held that since such a sentence could not be equated to any fixed term, the rules framed under the Prisons' Act entitle such a person to earn remission, but that, such remission could be taken into account only towards the end of the term.

209. The Constitution Bench in *Bhagirath* (supra), after due consideration of the aforesaid observations, in *Gopal Vinayak Godse* (supra), reconciled the position by holding that though a sentence for life imprisonment, even as interpreted in *Gopal Vinayak Godse* (supra), was a sentence “*for a term*”, the question of grant of benefit of set off can only arise if an order is passed by the appropriate authority under Section 432 or 433 of Cr.P.C. to commute or to remit such a sentence. Further, the Constitution Bench held that even such a remission or commutation was subject to the provisions contained in Section 433-A Cr.P.C.

210. The aforesaid reasoning is evident from the following discussion in *Bhagirath* (supra) :

“ 5.The neat and, we believe, the simple question for decision is whether imprisonment for life is imprisonment “for a term”. The reason why it is urged that imprisonment for life is not imprisonment for a term is that the latter expression comprehends only imprisonments for a fixed, certain and ascertainable period of time like six months, two years, five years and so on. Since the sentence of life imprisonment, as held by this Court in Gopal Vinayak Godse v. State of Maharashtra (supra) is a sentence for life and nothing less and since, the term of life is itself uncertain, the sentence of life imprisonment is for an uncertain term, that is to say, that it is not imprisonment for a term.

6....The relevant question and, the only one, to ask

under Section 428 is: Has this person been sentenced to imprisonment for a term? For the sake of convenience, the question may be split into two parts. One, has this person been sentenced to imprisonment? And, two, is the imprisonment to which he has been sentenced an imprisonment for a term? There can possibly be no dispute that a person sentenced to life imprisonment is sentenced to imprisonment. Then, what is the term to which he is sentenced? The obvious answer to that question is that the term to which he has been sentenced is the term of his life. Therefore, a person who is sentenced to life imprisonment is sentenced to imprisonment for a term.

7. We see but little warrant for qualifying the word "term" by the adjective "fixed" which is not to be found in Section 428. The assumption that the word "term" implies a concept of ascertainability or conveys a sense of certainty is contrary to the letter of the law, as we find it in that section. Even the marginal note to the section does not bear out that assumption. It rather belies it. And, marginal notes are now legislative and not editorial exercises. The marginalnote of Section 428 shows that the object of the Legislature in enacting the particular provision was to provide that "the period of detention undergone by the accused" should "be set off against the sentence of imprisonment" imposed upon him. There are no words of limitation either in the section or in its marginal note which would justify restricting the plain and natural meaning of the word "term" so as to comprehend only sentences which are imposed for a fixed or ascertainable period.

8. To say that a sentence of life imprisonment imposed upon an accused is a sentence for the term of his life does offence neither to grammar nor to the common understanding of the word "term". To say otherwise would offend not only against the language

of the statute but against the spirit of the law, that is to say the object with which the law was passed. A large number of cases in which the accused suffer long undertrial detentions are cases punishable with imprisonment for life. Usually, those who are liable to be sentenced to imprisonment for life are not enlarged on bail. To deny the benefit of Section 428 to them is to withdraw the application of a benevolent provision from a large majority of cases in which such benefit would be needed and justified.

9. ...

10. *The modalities for working out the provision contained in Section 428 in cases of persons sentenced to imprisonment for life should not present any serious difficulty in practice. In the first place, by reason of Section 433-A of the Code of Criminal Procedure, where a sentence of imprisonment for life is imposed on a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 to one of imprisonment for life, such person cannot be released from prison unless he has served at least fourteen years of imprisonment. The only point to note is that while upholding the constitutional validity of Section 433-A, it was held by this Court in Maru Ram v. Union of India (1981) 1 SCR 1196 that the section is prospective in operation, with the result that it cannot apply to cases which were decided by the trial court before December 18, 1978, being the date on which the section came into force.*

11. *The second aspect of the matter which has to be borne in mind is the one arising out of the judgment of this Court in Gopal Vinayak Godse (supra). It was held by a Constitution Bench in that case that a prisoner sentenced to life imprisonment is bound to serve the*

remainder of his life in prison unless the sentence imposed upon him is commuted or remitted by the appropriate authority. It was further held that since such a sentence could not be equated with any fixed term, the Rules framed under the Prison Act entitled such a person to earn remissions but that, such remissions were to be taken into account only towards the end of the term. Under Section 432 of the Code of Criminal Procedure, the appropriate Government has the power to remit the whole or any part of the punishment to which a person has been sentenced. Under Section 433 of the Code, the appropriate Government has the power, inter alia, to commute the sentence of imprisonment for life to imprisonment for a term not exceeding fourteen years or to fine. The question of setting off the period of detention undergone by an accused as an undertrial prisoner against the sentence of life imprisonment can arise only if an order is passed by the appropriate authority under Section 432 or Section 433 of the Code. In the absence of such order, passed generally or specially, and apart from the provisions, if any, of the relevant Jail Manual, imprisonment for life would mean, according to the rule in Gopal Vinayak Godse (supra) imprisonment for the remainder of life.

12. ...

13. *We have considered with great care the reasoning upon which the decision in Kartar Singh (supra) proceeds. With respect, we are unable to agree with the decision. We have already discussed why, imprisonment for life is imprisonment for a term, within the meaning of Section 428. We would like to add that we find it difficult to agree that the expressions “imprisonment for life” and “imprisonment for a term” are used either in the Penal Code or in the Criminal Procedure Code in contradistinction with each other. Sections 304, 305, 307 and 394 of the Penal Code undoubtedly provide that*

persons guilty of the respective offences, shall be punished with imprisonment for life or with imprisonment for a term not exceeding a certain number of years. But, that is the only manner in which the Legislature could have expressed its intention that persons who are guilty of those offences shall be punished with either of the sentences mentioned in the respective sections. The circumstances on which the learned Judges have placed reliance in Kartar Singh (supra), do not afford any evidence, intrinsic or otherwise, of the use of the two expressions in contradistinction with each other. Two or more expressions are often used in the same section in order to exhaust the alternatives which are available to the Legislature. That does not mean that there is, necessarily, an antithesis between those expressions.

14. ...

15. ...

16.

17. *For these reasons, we allow the appeal and the writ petition and direct that, the period of detention undergone by the two accused before us as undertrial prisoners, shall be set off against the sentence of life imprisonment imposed upon them, subject to the provision contained in Section 433-A and, provided that orders have been passed by the appropriate authority under Section 432 or Section 433 of the Code of Criminal Procedure”.*

(emphasis supplied)

211. The issue as to whether the imprisonment for life means imprisonment till the end of the convict's natural life with or without any scope for remission, came up for consideration before the

Constitution Bench in *Union of India vs. V. Sriharan*⁴⁸. In this decision, the Constitution Bench took note of the decision in *Ashok Kumar vs. Union of India* (1991) 3 SCC 498 in which it was specifically ruled that the decision in *Bhagirath* does not run counter to the decision in *Gopal Vinayak Gosde* (supra) or *Maru Ram vs. Union of India* (1981) 1 SCC 107. Finally, Constitution Bench after analysing several decisions on the subject, ruled that imprisonment for life in terms of Section 53 read with Section 45 of the IPC only means imprisonment for the rest of the life of the prisoner, subject, however, to the right to claim remission etc. as provided under Articles 72, and 161 of the Constitution to be exercisable by the President and the Governor of the State and also as provided under Section 432 of Cr.P.C.

212. Thus, applying the principle in *Bhagirath* (supra), we see no good ground to interfere with the benefit of set off granted by the Children's Court under Section 428 of Cr.P.C. to the accused persons in the present matter. However, the extension of such a benefit shall be subject to the provisions contained in Section 433-A Cr.P.C. and will apply only if the appropriate authority makes orders under Section 432 and 433 Cr.P.C. to remit or commute the sentence. This means that if the appropriate authority in the present case, chooses not to make any orders for remission or commutation under Section

⁴⁸ (2016) 7 SCC 1

432 or 433 Cr.P.C., then, the accused persons, as held in *Gopal Vinayak Godse* (supra) will have to serve the remainder of their natural life in the prison. However, if the appropriate authority does make any order for remission or commutation under Section 433 or 434 of Cr.P.C. (subject to the provisions in Section 433-A Cr.P.C.), then, the accused persons can be granted benefit of set off under Section 428 Cr.P.C. as directed by the Children's Court in the present matter.

213. The Criminal Appeal No.64/2014 can be accordingly disposed of without interfering with the directions issued by the Children's Court, extending the benefit of Section 428 Cr.P.C. to A.1 to A.4, but by clarifying that the benefit of such set off can be availed by A.1 to A.4 only in the event the appropriate authority makes orders for remission or commutation under Section 432 or 433 of Cr.P.C. (subject to the provisions contained in Section 433-A of Cr.P.C.) and not otherwise.

Criminal Revision Application No.44/2014:

214. This criminal revision application has been instituted by the father of the Victim, seeking for enhancement of the sentence to death penalty or in the alternative to the sentence that the accused persons undergo life imprisonment for the remainder of their natural

lives, without seeking the benefit of any remission.

215. At the very outset, Mr. Karan Singh Rajput, the learned Counsel for the Revision Applicant, on the basis of instructions from the Revision Applicant, made a statement that the Revision Applicant does not now press for award of death penalty to A.1 to A.4. Mr. Rajput, however, submitted that looking to the heinousness of the crime committed by the accused persons, and the circumstance that the accused persons were professional or hardened criminals, this is a fit case to issue directions that A.1 to A.4 undergo life imprisonment for the remainder of their natural lives, without any remission.

216. Mr. Rajput pointed out that the Victim, in the present case, was only 17 years of age. He pointed out that A.1 to A.4, deceitfully abducted the Victim and later on mercilessly abused, tortured and murdered him. He submits that there is no possibility of reforming the accused persons and if the accused persons are released in society, they are bound to commit similar such crimes. In any case, Mr. Rajput submits that a completely incorrect message will be sent, in case, perpetrators of such heinous crimes are released in the society.

217. Mr. Rajput submits that powers under Section 432 or 433 of the Cr.P.C. are left to the executive. He submits that very

often on basis of misplaced sympathies or for other irrelevant considerations, remissions or commutations are lightly granted. Mr. Rajput submits that invariably there is no consideration whatsoever to relevant aspects like the nature of the crime, or the manner in which the same was committed. There is no consideration for the sentiments of the family members of the Victim and the impact of the crime on the society. Mr. Rajput, therefore, submits that rather than leaving such decision to the executive, in the facts and circumstances of the present case, it is only appropriate that this Court makes it clear that the accused persons will have to undergo sentence of imprisonment for the remainder of their natural lives, without the benefit of any remission or commutation.

218. The learned Counsel for A.1 to A.4 submitted that no directions, to preempt the executive from considering the case of the accused persons for remission or commutation are liable to be issued in the present matter. Mr. Desai, the learned Counsel for A.1 pointed out that A.1, whilst suffering imprisonment, has completed graduation in Arts (English Literature), Post Graduation Diploma in Labour and Administrative Laws, and Post Graduation Diploma in Journalism and Mass Commutation. He points out that A.1 has completed Diploma Certificate Courses in Computers, has written and published articles and poetry. He pointed out that A.1 has been given numerous certificates in appreciation of his conduct in the

prison. He pointed out that A.1 has also been given the responsibility of a convict warden, in lieu of his good behaviour in the prison. Mr. Desai submits that since reformation is the main objective of sentencing, such object may not be defeated by preempting the right of the accused persons to be considered for grant of remissions or commutation of sentence.

219. Mr. Gupte and Mr. Rivankar, the learned Counsel for the State, have made it clear that the State, in the peculiar facts of the present case, had not pressed for award of death penalty.

220. We have given our anxious consideration to the contentions raised on the aspect of sentencing.

221. The legal position which emanates from the ruling of the Apex Court in *Gopal Vinayak Godse* (supra) and several rulings, is that a sentence for life imprisonment means a sentence for imprisonment for the remainder of the natural lives of the accused persons, subject, however, to their right to claim remission as provided under Articles 172 and 161 of the Constitution, as also as provided under Section 432 of Cr.P.C., subject, no doubt, to the limitations prescribed in Section 433-A of Cr.P.C. Section 433-A of Cr.P.C. provides that notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on

conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison, until he has served *at least 14 years of imprisonment*.

222. In *Swamy Shraddhananda (2) vs. State of Karnataka*⁴⁹, the Apex Court has held that the Court, undoubtedly, has the *power to impose a special category of sentence, instead of death sentence, for a term exceeding 14 years, by putting that category beyond the grant of remission*. The Constitution Bench in *V. Sriharan* (supra) has approved the view taken in *Swamy Shraddhananda* (supra). This means that the Court, in the facts and circumstances of a case, undoubtedly has the power to impose a special category of sentence for a term exceeding 14 years by putting that category, beyond the grant of remission.

223. The question which arises in the present case is whether, in the facts and circumstances of the present case, such a power, which is undoubtedly vested in this Court, is required to be exercised?

224. Mr. Rajput, articulates some questions raised by the

⁴⁹ (2008) 13 SCC 767

Victim's parents. He says that the parents of the Victim wonder as to how the convicts who abducted and killed their unsuspecting son, all of 17 years of age in such a brutal manner can even deserve to dream about liberty ? He says that the parents of the Victim ask why the parents of the convicts should also not suffer just as they now suffer for the loss of their 17 years old son who was deceitfully taken away from their midst and mercilessly murdered ?

225. The difficult questions posed by the parents of the unfortunate Victim are absolutely natural and even completely legitimate. If we had the liberty to answer these questions by keeping in mind only the perspective of the Victim's parents, then, perhaps, we would never hesitate to sentence the convicts to serve the remainder of their natural lives in prison without remission or at least serve sentences far in excess of the statutory minimum without remission. Possibly, that would be the reaction of any one afflicted by the conduct of the convict of such a ghastly crime.

226. However, the role that is entrusted to us, as of necessity, requires us to take into account a host of considerations, not just peculiar to the Victim's parents or to the latent expectations of retribution in a society. The expectations of the Victim's parents or the expectations of the society that a crime of this nature is severely dealt with, are undoubtedly, relevant considerations which no Court

can ignore. The expectations of retribution and deterrence may also be relevant considerations. But these, cannot be the only considerations. The Courts cannot discount the reformatory object of judicial sentencing. Just as every saint as a past, so also, every sinner may have future. The reformatory theory posits that every person is born good, but it is the circumstances that make the person a criminal. Just as we have to take into account considerations such as the nature of the crime, the brutal manner in which it was committed, we also have to take into consideration the background of the convicts, and their proclivity to reformation. By now, it is mostly accepted that reformation is the legitimate goal of prison sentencing. Therefore, in every case, a tooth for a tooth and an eye for an eye may not be the only valid criterion for judicial sentencing.

227. In *Vinter vs. United Kingdom* (Judgment, Grand Chamber dated 9/7/2013), the European Court of Human Rights has declared that providing a whole life sentence, without the prospect of release or review of sentence, would amount to inhumane and degrading punishment hit by Article 3 of ECHR. Though, in terms of the ruling of the Constitution Bench in *V. Shriharan* (supra), that may not be the presently accepted position in our country. Nevertheless, Court, has to endeavour to strike a balance between the expectations of the Victim's parents that the perpetrators of such ghastly crimes are awarded the severest of sentences and the

expectations of the convicts that they too are given a chance to hope, a chance to reform. A convict who is deprived of chance to hope at the stage of judicial sentencing itself may have no incentive whatsoever to reform, to turn a new leaf. As a Court, we have to necessarily balance the demands of retribution and deterrence in one scale with the demands of reformation in the other. Just as the sentence cannot be manifestly inadequate, the same must also not be dispassionately severe. The principle of proportionality in sentencing, is by now, well entrenched in our criminal jurisprudence.

228. The grant of remission is presently a statutory function, vested in the Executive. However, Mr. Rajput is not right in submitting that the discretion which is vested in the Executive is unfettered or untrammelled. There exists inbuilt procedural and substantive checks imposed by the Legislation, which checks have to be scrupulously observed. Besides, the Executive, in such matters, is duty bound to take into account all relevant considerations and to eschew, irrelevant considerations. By the very nature of the subject, it is neither possible, nor advisable to exhaustively list out relevant and irrelevant considerations in such matters. However, considerations like the nature of the crime, the manner of its commission, the age and the position of the Victim, the motive of the crime, the plight of the Victim's parents, the impact of the crime on the society, the tendency or even the possibility of convicts repeating the crime, the

security of the Victims or the Victim's relations, security of the witnesses who may have deposed in the matter, the age and the position of the convicts, their proclivity to reform, their conduct in prison, their repentance are some of the relevant considerations that must inform the decision making process in such matters.

229. For the present, though we are convinced that the convicts have committed a heinous crime and that too in a dastardly manner against a helpless, unsuspecting and an extremely well meaning Victim, nevertheless, we are not convinced that any direction to preempt the Executive from even taking up the case of the convicts for remission is called for. One of the reasons for this is because we do not have before us much material to evaluate several of the relevant considerations, such as the conduct of the convicts in prison, their proclivity at reform, etc. Therefore, in the facts and circumstances of the present case, and for want of adequate material before us to evaluate the several relevant considerations which might arise, we feel that the matter can be best left to the appropriate authority/Executive to decide whether the convicts should serve the remainder of their nature lives in prison, without remission or whether, the convicts should serve sentences far in excess of the statutory minimum, without remission or whether, the convicts should be considered for remission after they complete the statutory minimum sentence prescribed under Section 433-A of Cr.P.C.

Though, we are not inclined to direct that the convicts undergo prison sentences for the remainder of their natural lives without remission, we may not be misunderstood to have observed that the cases of the convicts must be considered for remission, no sooner they complete the statutory minimum sentence. All that we say at this stage is that this is a matter which is best left to the appropriate authority/Executive. We have no doubt that the appropriate authority/Executive will be mindful of the statutory checks applicable to such cases and will further take into account relevant considerations whilst eschewing irrelevant ones, if and when the occasion arises to consider the cases of the convicts for remission. We also clarify that if the parents or the relation's of the Victim are dissatisfied with the orders, if and when, made by the appropriate authority/Executive, they will undoubtedly have the liberty to challenge such orders by taking out appropriate proceedings seeking judicial review on all available grounds, including, but not restricted to the grounds that the statutory checks and relevant considerations have been ignored and irrelevant considerations have been take into account. In order to enable them to to do so, we direct the appropriate authority/Executive to make available copies of such orders to the applicant in Criminal Revision Application No.44/2014 at least 30 days before such orders, if and when made, are actually implemented.

230. Therefore, with directions, observations and liberties, as aforesaid, we dispose of Criminal Revision Application No.44/2014.

231. In the result, we dispose of these criminal appeals, and the Criminal Revision Application by the following order :

(A) Criminal Appeal Nos. 38/2014, 48/2014, 51/2014, and 52/2014 are hereby dismissed. Consequently, the conviction and sentence imposed upon A.1 to A.4 is, hereby, upheld;

(B) Criminal Appeal No.64/2014 is disposed of without interfering with the directions issued by the Children's Court, extending the benefit of Section 428 Cr.P.C. to A.1 to A.4 but by clarifying that the benefit of such set off can be availed by A.1 to A.4 only in the event the appropriate authority makes orders for remission or commutation under Section 432 or 433 of Cr.P.C. (subject to the provisions contained in Section 433-A of Cr.P.C.) and not otherwise.

(C) Criminal Revision Application No.44/2014 is, disposed of with observations, clarifications and liberties as set out in paragraphs 228 and 229 of this Judgment and Order.

(Prithviraj K. Chavan, J.)

(M.S. Sonak, J.)