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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 26th July, 2019

Judgment pronounced on: 20 November, 2019

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CRL.A. 1131/2014 & CRL. M. (Bail) No.5/2017

HOPESON NINGSHEN

..... Appellant

Through: Mr. N.D. Pancholi, Adv. with
Mr. Kahorngam Zimik & Ms. Shallu
Nigam, Advocates.

Versus

C B I

..... Respondent

Through: Mr. Sanjeev Bhandari, SPP CBI with
Mr. Prateek Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J.

1. The present appeal has been filed under Section 374 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') assailing judgment dated 31.05.2014 passed by the Special Judge, Patiala House Courts, Delhi in a Criminal Complaint No. 36/10 arising out of FIR RC No.IMPH-2009-S0002 and IMPH-2009-S0003, registered under Sections 120-B/364/364A/302/392/34/411 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and under Section 16 read with Section 15 of the Unlawful Activities (Prevention) Act (hereinafter referred to as 'UAP' Act) registered at Police Station CBI-ACB, Imphal, whereby the appellant Hopeson Ningshen has been held guilty under Section 120B read with Sections 364A/392/302 of IPC, Section 364A read with Section 120B of IPC, Section 302 read with Section 120B of IPC and Section 392 read with Section 120B of IPC. Challenge is also made to the order on sentence dated 30.06.2014

whereby the following sentences were awarded to the appellant herein:

Sr.No.	Name of the appellant	Sections under which convicted	Period of Sentence
1.	Hopeson Ningshen	120-B of IPC 364A of IPC 302 of IPC 392 of IPC	Imprisonment for life with a fine of Rs. 10,000/-, in the default, RI for 6 months under Section 120-B of IPC. Imprisonment for life with a fine of Rs. 10,000/-, in the default, RI for 6 months under Section 364-A of IPC. Imprisonment for life with a fine of Rs.10,000/-, in the default, RI for 6 months under Section 302 of IPC. RI for 7 years with a fine of Rs.5,000, in the default, RI for 3 months under Section 392 of IPC.

All the sentences mentioned hereinabove were ordered to run concurrently.

2. The case of the prosecution as noticed by the learned Trial Court reads as under:

“1.1 Dr. Th. Kishan Singh, SDO, Kasom Khullen, District Ukhrul, Manipur alongwith five of his subordinate staff members namely, Ramsing Siro, Ramthing Shinglai, Kapangkhui Jajo, Y. Token Singh and A. Rajen Sarma were abducted by NSCN (IM) activists from Ukhrul on 13.02.2009

and were kept under illegal detention at village Langdang and on 14.02.2009, while Ramsing Siro, Ramthing Shinglai and Kapangkhui Jajo were released and sent back to Ukhrul, Dr. Th. Kishan Singh, Y. Token Singh and A. Rajen Sarma were shifted to village Seikhor and kept under the captivity till evening of 16.02.2009 and on 16.02.2009 on the complaint of Sh. Sudhan R., case FIR No. 8(2)/2009 dated 16.02.2009 u/s. 365, 368/34 IPC was registered at Police Station Ukhrul. The three persons in captivity were taken to Senapati and killed in the night intervening 16/17.02.2009 and their dead bodies were thrown on the bank of River Touphu Kuki, Distt. Senapati for which the FIR no. 3(2)/2009 dated 17.02.2009 u/s. 302/400 IPC was registered at PS Senapati.

1.2 The wife and father of the SDO Dr. Th. Kishan Singh, when he did not return home on 14.02.2009, searched for him, met the SP Ukhrul and also the Chief Secretary and the Chief Minister, Manipur and on 17.02.2009 received the information of his being dead alongwith two of his subordinate officials Y. Token Singh and A. Rajen Sarma.

1.3 The investigation was later on transferred to the CBI vide Government of India Notification dated 24.03.2009 and the Imphal branch of CBI registered two FIRs no. RC: IMPH.2009S0002 dated 02.04.2009 on transfer of case FIR no. 8(2)/2009 dated 16.02.2009 of PS Ukhrul and FIR no. RCIMPH.2009S0003 dated 02.04.2009 on transfer of case FIR no. 3(2)/2009 dated 17.02.2009 of PS Senapati.

1.4 Three dead bodies found at the bank River Touphu Kuki, Distt. Senapati, were identified as those of Dr. Th. Kishan Singh and two of his staff members namely, Y. Token Singh and A. Rajen Sarma who were amongst the six persons abducted from Ukhrul on 13.02.2009.

1.5 It is stated in the charge sheet that the investigation revealed that Minister (Works), Govt. of Manipur was scheduled to visit Kasom Khullen on 14.02.2009 and on 12.02.2009 the office of the Deputy Commissioner, Ukhrul sent a message to Dr. Th. Kishan Singh to attend the meeting at Ukhrul on 13.02.2009.

Dr. Th. Kishan Singh is stated to have sent a team of his staff to Kasom Khullen on 13.02.2009 for making arrangements in connection with the visit of Minister (Works) and he himself alongwith his five subordinate staff members came to Ukhrul in the morning of 13.02.2009 in the official Gypsy No. MN-04/5799. Dr. Th. Kishan Singh stated to have attended the meeting with the Dy. Commissioner and was sanctioned Rs.30,000/- for meeting the expenses on the visit of Minister (Works) which he withdrew from the United Bank of India, Ukhrul and proceeded towards Kasom Khullen in his official Gypsy alongwith his five subordinate staff members. Dr. Th. Kishan Singh stated to have been carrying the mobile phone no. 9542010376 with him at that time.

1.6 The investigation stated to have been further revealed that the accused Hopeson Ningshen self styled Lieutenant Colonel in National Socialist Council of Nagaland (NSCN-IM) alongwith Abo Sibö @ Yurhor, Themshang @ Themhorshang @ Ashang and Jonney had planned to abduct Dr. Th. Kishan Singh and for that purpose engaged a Bolero vehicle no. MN-04 A 2645 driven by Shri Puizatleng Kasar @ Mahai as Taxi. It has further been stated in the charge sheet that while Dr. Th. Kishan Singh with his five staff members proceeded to Kasom Khullen in his official Gypsy they were followed by the vehicle driven by Shri Puizatleng Kasar @ Mahai who stopped his vehicle in middle of the road near the Naga Gate and Gypsy was forced to stop near the Naga Gate on Ukhrul Imphal Highway where they forced the SDO Dr. Th. Kishan Singh and his staff members to get down from the Gypsy and snatched the two mobile phones, one of the SDO Dr. Th. Kishan Singh and another of Shri Ramsing Siro and were taken to village Langdang situated at the distance of about 15 kms. from Ukhrul town.

1.7 The charge sheet further states that at Langdang, Abo Sibö alongwith other unknown NSCN(IM) militants joined and a ransom of Rs.20 Lacs was demanded from Dr. Th. Kishan Singh which he refused to pay and after making arrangements for food and night stay of the abducted persons by threatening the ex-headman of village Langdang and the authorities of the village Church, Ashang came back to Ukhrul in the vehicle driven by Shri Puizatleng Kasar @ Mahai.

1.8 The charge sheet further states that on 14.02.2009 Ashang again engaged the same vehicle alongwith one more vehicle driven by Shri Wungmi Raleng came to village Langdang and out of six abducted persons, three namely, Ramsing Siro, Ramthing Shinglai, Kapangkhui Jajo were released from the captivity under order of the accused Hopeson Ningshen and were dropped at Imphal through the vehicle driven by Shri Wungmi Raleng and the remaining three persons namely, Dr. Th. Kishan Singh, Y. Token Singh and A. Rajen Sarma were taken to another village Seikhor in the vehicle driven by Puizatleng Kasar @ Mahai where Ashang again threatened the village Headman and the Secretary and forced them to arrange the stay of the six persons including three abducted persons and thereafter Ashang returned back to Ukhrul in the same vehicle. The three abducted persons were stated to be kept at village Seikhor from 14.02.2009 to the evening of 16.02.2009 and were taken out of village Seikhor in the vehicle driven by Puizatleng Kasar @ Mahai and taken to Senapati.

1.9 Dr. Th. Kishan Singh stated to have not given the contact numbers of his family members despite abductors kept on asking the same on which the accused Hopeson Ningshen directed Abo Sibbo, Ashang and Jonney to physically assault and beat the three and they were beaten to death after tying their hands at back, face covered and their dead bodies dumped on the bank of River Touphe Kuki along NH39 about 2 kms away from Senapati towards Imphal as per the instructions of accused Hopeson Ningshen and went back to Ukhrul in the vehicle driven by Puizatleng Kasar @ Mahai.”

3. It is the case of prosecution that the appellant Hopeson Ningshen alongwith 3 other accused persons namely Abo Sibbo @ Yurhur (self-styled Major and Town Commander of the NSCN-IM, Ukhrul), Themshang @ Themhorshang @ Ashang and Jonney (self-styled Sergeant Major, NSCN-IM) were involved in the commission of the offence. Barring the appellant herein, all the three aforementioned accused persons were absconding from the Trial Court.

4. On 03.11.2009, Charge sheet against the appellant Hopeson Ningshen, accused Abo Sibbo @ Yurhur, accused Themshang @ Themhorshang @ Ashang and accused Jonney for the offences under Sections 120B, 364, 364A, 302, 392, and 411 of IPC read with Section 34 of IPC and under Section 16 read with Section 15 of the UAP Act was filed before the Court of CJM, Ukhrul.
5. On 21.02.2011, charge under Section 120B of IPC read with Sections 392/364A/302 of IPC read with Sections 15/16 of UAP Act and further charge for the offences under Section 392 read with Section 120-B of IPC; Section 364A read with Section 120-B of IPC; Section 302 read with Section 120-B of IPC, Section 16 of UAP Act read with Section 120B of IPC and under Section 411 of IPC were framed against the appellant Hopeson Ningshen. The appellant pleaded not guilty and claimed to be tried.
6. To establish the guilt of the appellant, the prosecution examined as many as 43 witnesses in all. The statement of the appellant Hopeson Ningshen was recorded under Section 313 of Cr.P.C. whereby he pleaded innocence and claimed to be falsely implicated in the present case. The appellant denied all the incriminating material against him. Three witnesses were examined by the appellant in his defence.
7. Mr. N.D. Pancholi, learned counsel appearing on behalf of the appellant submits that the appellant Hopeson Ningshen has been falsely implicated in the present case. The case of the prosecution is primarily based on the confession made by the appellant Hopeson Ningshen. The counsel contends that the said confession is not voluntary and the Court flouted the safeguards enumerated under Section 164 and Section 281 of Cr.P.C. As per the settled law, it is the duty of the Magistrate to inquire and ensure that the accused gets legal

consultation before making any confession. Reliance has been placed on the order dated 14.06.2009 passed by the learned magistrate who was examined as PW37, wherein it was not put to the appellant as to whether the appellant had legal consultation before recording his confession and it was not ensured that the appellant was granted an opportunity for legal consultation prior to recording of his confession. The counsel contended that despite the appellant having orally submitted that he had no legal assistance; the confession of the appellant was recorded by the learned Magistrate. The said confession was challenged on the ground that the learned Magistrate (PW37) did not ask the appellant as to why he wanted to make a statement which would go against his interest in the trial. It was further contended that the learned Magistrate failed to convey to the appellant the consequences of such a statement and also did not take signatures of the appellant on the proceedings dated 12.06.2009, 14.06.2009 and on the first ten pages of the confessional statement of the appellant. Mr. Pancholi also contends that the confession is not voluntary which is also evident from the fact that in the proceedings dated 12.06.2009, when the application for judicial remand was moved by the IO, the accused/appellant herein and his advocate were present before the learned CMM, but the application for recording of confessional statement was filed subsequently in the absence of the appellant and his advocate. In this background, the counsel submits that the confession made by the appellant is bad in law. To fortify his argument, learned counsel has relied upon the case of ***Rabindra Kumar Pal @ Dara Singh vs. Republic of India*** reported at (2011) 2 SCC 490, more particularly para 56 to 58, 60 and 64 wherein the

Hon'ble Supreme Court extensively dealt with the law on confessions.

The relevant paras read as under:

“56. Before analysing the confessional statements of various accused persons and their applicability and the procedure followed by the Magistrate in recording the statement, let us consider various decisions touching these aspects.

57. In Bhagwan Singh v. State of M.P. (2003) 3 SCC 21, while considering these issues, it was held: (SCC pp. 33-35, paras 27-30)

“27. ... The first precaution that a Judicial Magistrate is required to take is to prevent forcible extraction of confession by the prosecuting agency (see State of U.P. v. Singhara Singh AIR 1964 SC 358). It was also held by this Court in Shivappa v. State of Karnataka (1995) 2 SCC 76 that the provisions of Section 164 CrPC must be complied with not only in form, but in essence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.

28. It has also been held that the Magistrate in particular should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial. He should be granted sufficient time for reflection. He should also be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement. Unfortunately, in this case, the evidence of the Judicial Magistrate (PW 1) does not show that any such precaution was taken before recording the judicial confession.

29. The confession is also not recorded in questions-and-answers form which is the manner indicated in the criminal court rules....

30. It has been held that there was custody of the accused Pooran Singh with the police immediately preceding the making of the confession and it is sufficient to stamp the confession as involuntary and hence unreliable. A judicial confession not given voluntarily is unreliable, more so when such a confession is retracted. It is not safe to rely on such judicial confession or even treat it as a corroborative piece of evidence in the case. When a judicial confession is found to be not voluntary and more so when it is retracted, in the absence of other reliable evidence, the conviction cannot be based on such retracted judicial confession. (See *Shankaria v. State of Rajasthan* [(1978) 3 SCC 435] , SCC para 23.)

58. In *Shivappa v. State of Karnataka* [(1995) 2 SCC 76 : 1995 SCC (Cri) 323] , while reiterating the same principle, it was held: (SCC pp. 80-82, paras 6-8)

“6. From the plain language of Section 164 CrPC and the rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under Section 164 CrPC, it is manifest that the said provisions emphasise an inquiry by the Magistrate to ascertain the voluntary nature of the confession. This inquiry appears to be the most significant and an important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 CrPC. The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same. Full and adequate compliance not merely in form but in essence with the provisions of Section 164 CrPC and the rules framed by the High Court is imperative and its non-compliance goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous

influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the Magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession. Besides administering the caution, warning specifically provided for in the first part of sub-section (2) of Section 164 namely, that the accused is not bound to make a statement and that if he makes one it may be used against him as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement and be given the assurance that even if he declined to make the confession, he shall not be remanded to police custody.

7. The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody or jail custody must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement the accused makes is not on account of any extraneous influence on him. That indeed is the essence of a 'voluntary' statement within the meaning of the provisions of Section 164 CrPC and the rules framed by the High Court for the guidance of the subordinate courts. Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, he should also make and leave such material on the record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the court that sits in judgment in the case, that the confessional statement was made by the accused voluntarily and the statutory provisions were strictly complied with.

8. From a perusal of the evidence of PW 17, Shri Shitappa, Additional Munsif Magistrate, we find that though he had administered the caution to the appellant that he was not bound to make a statement and that if he did make a statement that may be used against him as evidence but PW 17 did not disclose to the appellant that he was a Magistrate and that the confession was being recorded by him in that capacity nor made any enquiry to find out whether he had been influenced by anyone to make the confession. PW 17 stated during his deposition in court: 'I have not stated to the accused that I am a Magistrate' and further admitted: 'I have not asked the accused as to whether the police have induced them (Chithavani) to give the statement.' The Magistrate, PW 17 also admitted that 'at the time of recording the statement of the accused no police or police officials were in the open court. I cannot tell as to whether the police or police officials were present in the vicinity of the court'. From the memorandum prepared by the Munsif Magistrate, PW 17 as also from his deposition recorded in court it is further revealed that the Magistrate did not lend any assurance to the appellant that he would not be sent back to the police custody in case he did not make the confessional statement. Circle Police Inspector Shivappa Shanwar, PW 25 admitted that the sub-jail, the Office of the Circle Police Inspector and the police station are situated in the same premises. No contemporaneous record has been placed on the record to show that the appellant had actually been kept in the sub-jail, as ordered by the Magistrate on 21-7-1986 and that he was out of the zone of influence by the police keeping in view the location of the sub-jail and the police station. The prosecution did not lead any evidence to show that any jail authority actually produced the appellant on 22-7-1986 before the Magistrate. That apart, neither on 21-7-1986 nor on 22-7-1986 did the Munsif Magistrate, PW 17 question the appellant as to why he wanted to make the confession or as to what had prompted him to make the confession. It appears to us quite obvious that the Munsif Magistrate, PW 17 did not make any serious attempt to ascertain the voluntary character of the confessional statement. The failure of the Magistrate to make a real endeavour to ascertain the voluntary character of the

confession, impels us to hold that the evidence on the record does not establish that the confessional statement of the appellant recorded under Section 164 CrPC was voluntary. The cryptic manner of holding the enquiry to ascertain the voluntary nature of the confession has left much to be desired and has detracted materially from the evidentiary value of the confessional statement. It would, thus, neither be prudent nor safe to act upon the confessional statement of the appellant.”

....

60. *In Davendra Prasad Tiwari v. State of U.P. (1978) 4 SCC 474 the following conclusion arrived at by this Court is relevant: (SCC p. 479, para 13)*

“13. ... It is also true that before a confessional statement made under Section 164 of the Code of Criminal Procedure can be acted upon, it must be shown to be voluntary and free from police influence and that the confessional statement made by the appellant in the instant case cannot be taken into account, as it suffers from serious infirmities in that (1) there is no contemporaneous record to show that the appellant was actually kept in jail as ordered on 6-9-1974 by Shri R.P. Singh, Judicial Magistrate, Gorakhpur, (2) Shri R.P. Singh who recorded the so-called confessional statement of the appellant did not question him as to why he was making the confession, and (3) there is also nothing in the statement of the said Magistrate to show that he told the appellant that he would not be remanded to the police lock-up even if he did not confess his guilt. It cannot also be gainsaid that the circumstantial evidence relied upon by the prosecution must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused.”

.....

64. *The following principles emerge with regard to Section 164 CrPC:*

(i) The provisions of Section 164 CrPC must be complied with not only in form, but in essence.

(ii) Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.

(iii) A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial.

(iv) The maker should be granted sufficient time for reflection.

(v) He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.

(vi) A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.

(vii) Non-compliance with Section 164 CrPC goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.

(viii) During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.

(ix) At the time of recording the statement of the accused, no police or police official shall be present in the open court.

(x) Confession of a co-accused is a weak type of evidence.

(xi) Usually the court requires some corroboration from the confessional statement before convicting the accused person on such a statement.”

8. Reliance has also been placed on the decisions of the Apex Court passed in the cases of ***Parmananda Pegu vs. State of Assam*** reported at ***AIR 2004 SC 4197*** (para 19 and 23), ***Babubhai Udesinh Parmar vs. State of Gujarat*** reported at ***AIR 2007 SC 420*** (para 9, 12, 15 to 18 and 19), ***Mr. Ram Sakhia vs. Emperor*** reported at ***AIR 1934 Patna 651***, ***Palvinder Kaur vs. The State of Punjab*** reported at ***1953 SCR 94***, ***Sarwan Singh vs. The State of Punjab*** reported at ***1957 SCR 953***, ***Aloke Nath Dutta and Ors. vs. State of West Bengal*** reported at ***(2008) 2 SCC (Cri) 264*** (para 86, 89, 90, 93, 94, 99, 104, 111, 112 and 113), ***State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru*** reported at ***(2005) 11 SCC 600*** and ***Mohd. Ajmal Mohd. Amir Kasab @ Abu Mujahid vs. State of Maharashtra*** reported at ***(2012) 3 SCC (Cri) 481*** (para 9 to 14, 399, 401, 406, 454, 457, 474 and 475).
9. The counsel for the appellant contended that the learned Magistrate erred in not recording the confession of the appellant in an open Court and during Court hours. To support this argument, reliance has been placed on Clause 5 of Chapter 13 of Punjab High Court Rules which deals with Confessions, as per which; unless there are exceptional reasons which are to be recorded in writing, confessions should ordinarily be recorded in an open Court and during Court hours. Mr. Pancholi has also contended that the confessional statement of the appellant is not truthful as the said confession did not contain admission of the charges levelled against him which go counter to the proved facts. Mr. Pancholi also contends that the confessional statement is not believable and is not true as many immaterial facts

stated therein were not verified by the prosecution. The following instances have been relied upon by Mr. Pancholi:

“(i) Accused said in confessional statement that ‘SDO is the authority to issue cheques to Headmen.’ But evidence of PW-12 D.C. and PW-14 Cashier in D.C. Office shows that D.C. was the issuing authority for cheques. There is no verification by the prosecution whether SDO was the authority to issue cheques to Headmen.

(ii) Statement in Confession, “When he was questioned about it by village headmen about how he kept 50% with him, his reply was that 50% should not be given to the villagers because he deducted it to hand it over to militants/UGs.” However there is no verification by prosecution whether there was ever any such talk between Headmen and SHO. None of the Headmen mentioned in the alleged complaints Ex.34-C and 34-D have been produced in evidence. The statement of PW-35 Headmen of village Kangkum is hearsay as he only heard about deduction of wages by Dr. Kishen Singh from one Tonapan. Even he says “I did not make any complaint against Dr. Kishen Singh.” DC PW-12 says in his chief statement “I did not receive any specific complaint against Dr. Kishan Singh pertaining to misappropriation of funds or corruption pertaining to the scheme of NAREGA”. DC PW-12 denies having seen the complaint Ex.PW-34/D addressed to him. It appears that the documents Ex.34/C and 34/D have been fabricated to connect links and the same has been produced by one police official PW-34, not by any complainant.

(iii) Statement in confession, “..That was the case we wanted to question him about and he was previously warned about it..” There is no verification of this statement by prosecution. Neither PW-8 wife of deceased SDO, nor his father PW-7, nor his employees (released by abductors) PW-21 and 22 nor DC PW-12 or any other witness has stated that the Dr. Kishen Singh ever talked about such warnings or received from the accused.

(iv) Statement in confession, “Alongwith Dr. Kishen there were Mr. Token (hand-picked cashier of Dr. Kishen that means he

was not using his actual official who was appointed cashier but was using his own will and discretion some other person who is Mr. Token)". There is no verification by the prosecution whether Mr. Token (deceased) was govt. employee or a handpicked man as said by the accused).

- (v) As per confessional statement, the three Tangkhul Naga employees were released by abductors because they were allegedly not connected with the corruption but other two i.e. Rajen Sharma driver and Token cashier were kept because they were supposedly related with corruption case, then why there was no questioning of the said two employees to extract alleged correct information as to what amount had gone where.*
- (vi) As per confessional statement, the accused directed his subordinates to contact the family members of Dr. Kishen Singh but Dr. Kishen Singh did not cooperate. This is a total concoction and part of tutoring. All the five employees of Dr. Kishen Singh who were in custody of abductors were daily reporting for duty at his residence in Imphal as Dr. Kishen Singh was running his office from his residence at Imphal. (He was SDO of Kesom Khullan division but SDO's office was burnt by the villagers some years back and so Dr. Kishen used to run his office from his residence in Imphal). It is unlikely that none of the said five employees would not be having the phone number of his wife or his other family members and therefore the phone numbers of the family members could have been obtained from the said employees by the abductors. It is strange that the abductors would not try to get the phone numbers of family members of Dr. Kishen Singh from the said five employees. Moreover the mobile phone of Dr. Kishen Singh was in possession of the abductors and it would not have been difficult for them to locate the phone number of his wife or his relatives from the said mobile instrument. And call details of the mobile phone of Dr. Kishen Singh for two crucial days i.e. 12th and 13th Feb.2009 were mysteriously neither investigated nor produced in the court. Further if the abductors wanted to send any demand to the family members, they could have sent by other means also, and certainly through the three employees who were released in the evening of second day and were transported*

upto Imphal where the family of Dr. Kishen Singh was residing.

- (vii) It is unnatural that Dr. Kishen Singh would not like the news of his abduction to be conveyed to his family members, which could have paved the way for his freedom.*
- (viii) It is unbelievable that accused would ask for information of the misappropriated funds when it was already known that the amount of fund misappropriated was 50%. In any case as per confessional statement Dr. Kishen Singh is said to have confessed that the amount of misappropriated funds ranged between Rs.10 lakhs to 20 lakhs and once this figure had come out, any further questioning about the exact amount had become meaningless, as if accused was doing accounting and auditing.*
- (ix) The three employees who were released were with the abductors for two days (13th and 14th Feb, 2009) but none of them were told by or had any information from Dr. Kishen Singh or the abductors that they were being questioned about the misappropriated amount or corruption cases.*
- (x) As per confessional statement, the death of the three employees occurred at Sekhor village in Ukhrul District at about 5-6 PM on 16.02.2009 but as per PW-26 Driver of the Bolero car, the victims were alive till about 12.30 AM or so on the intervening night of 16/17.02.2009 at Senapati district which is about 100 miles away from Sekhor.*
- (xi) As per confessional statement, the abductors were controlling the abducted persons with fire arms and it is highly unlikely that abductors would use a boulder and a spade to control them or kill them.*
- (xii) Accused has never taken such names RL Yurhor, Ashang and Jonney as named as accused in the case.*
- (xiii) Conduct of the abductors do not show that it was abduction for ransom. Abductors never release any abductor until they receive the ransom. Sometimes even after receiving ransom they kill the abducted persons for fear of identification. Here*

abductors release three persons and are not worried about their identification which may be done subsequently. The purpose of abduction appears to be to communalize the situation in Manipur State by promoting rift between Meities and Nagas for some dirty political objectives. The Manipur State authorities have used this incident to fabricate evidence against the NSCN (IM) to tarnish its image in order to damage the peace process. (Please see statement of PW-12 DC in cross:

“...It is correct that Govt. of Manipur was and still against the peace process between Govt. of India and NSCN (IM).”

10. Mr. Pancholi has also challenged Para 37.5 of the impugned judgment dated 31.05.2014 and Para 8 of order on sentence dated 30.06.2014 which read as under:

“37.5 Nothing has been brought on record nor it is the case of the prosecution that despite ceasefire agreement of 1997, the NSCN(IM) people are kidnapping, abducting and killing persons holding high positions in civil administration or habitually indulge in criminal activity frequently so as to create law and order problem every now and then.”

.....

“8. The accused is not a criminal and does not have any track record and is not a menace to the society. He was instrumental in peacefully resolving the issue with Assam Rifles which had surrounded the camp. The accused is aged about 50 years and having wife and two children. The daughter of the accused is stated to be of marriageable age.”

11. Another submission made by Mr. Pancholi is that the appellant accepted moral responsibility for the incident because he was in-charge of the respective area in Manipur State and he felt bad that the incident happened in the area which was under his charge on behalf of his organisation, which created tension in the two communities.

12. The counsel for the appellant also contended that in the absence of any evidence to show that there was threat to the life or body of the persons who claimed to be abducted at the instance of the appellant, Section 364A of IPC would not be attracted. The counsel further contended that in the facts of the given case, the demand of the ransom money was not conveyed to the family members of the abducted persons and thus, Section 364A of IPC would not be attracted. Learned counsel has relied upon the cases of *Jamil Ahmed vs. State (NCT) of Delhi* reported at **203 (2013) DLT 561 (DB)**, (para 28 and 29), *Netra Pal vs. The State (NCT) of Delhi* reported at **2001 Crl. L.J.1669** (para 8 and 12), *Pappu and etc vs. State* reported at **2005 Crl. L.J. 3380** (para 15), *Dharam Vir, Shyam Kumar and Ors. vs. State* reported at **231 (2016) DLT 408 (DB)** (para 12), *Malleshi vs. State of Karnataka* reported at **2004 SCC (Cri) 2115** (para 12 and 15), *Hitendra Vishnu Thakur and Ors. vs. State of Maharashtra and Ors.* reported at **(1994) 4 SCC 602** (para 21), *Gurdev Singh @ Bittu and Anr. vs State of Punjab* reported at **1998 SCC(Cri) 560** (para 7),
13. Lastly, it was contended by Mr. Pancholi that the Trial Court has overlooked the provisions of Section 302, Section 392 and Section 120-B of IPC while recording the conviction of the appellant and sentencing him accordingly as the necessary ingredients of the charged offences do not stand proved beyond reasonable doubt.
14. *Per contra*, Mr. Sanjeev Bhandari, learned counsel appearing on behalf of CBI defended the findings of the learned Trial Court while contending that the evidence produced on record established the guilt of the appellant beyond any shadow of doubt and the Trial Court has rightly convicted the appellant for the offence punishable under Sections 120-B, 364A, 302 and 392 of IPC and thus, the findings

warrant no interference and accordingly prays for dismissal of the present appeal.

15. Mr. Bhandari contends that all the safeguards enumerated under Section 164 of Cr.P.C. were duly complied with by the learned Magistrate before recording the confession of the appellant and thus, the confession made by him is lawful, voluntary and without any fear or coercion. The counsel for the CBI submitted that the said confession is duly corroborated by the evidence of PW5 Ms. Marve Raleng, PW6 Sh. Ningshen Khurye Wungshung and PW19 Sh. Lanuyapang. Reliance has also been placed by the learned counsel for the CBI to the question No's 8, 9, 11, 423, 431, 435 and 436 put to the appellant under Section 313 of Cr.P.C. to corroborate the said confession.
16. It was further submitted by the counsel for CBI that in the instant case, the testimonies of PW21 Kapangkhu and PW22 Ramsing Siro, being the abductees, prove beyond reasonable doubt the question of their abduction for ransom. A reading of their evidence shows that a demand of Rs. 20 lakh had been made to the deceased Th. Kishan Singh. Thus, all the necessary ingredients of Section 364A stand established.
17. The attention of this Court has been drawn to the post-mortem report of the deceased persons to show that the death was caused because of injuries to the brain which resulted from blunt force injuries to the head. The counsel also placed reliance on the CFSL reports (Ex.PW32/A & Ex.PW36/A) as per which the spade and boulder seized by the Police were found to contain human blood. The counsel further submits that a cumulative reading of CFSL reports and the

post-mortem reports would show that the injuries were made by the same spade and boulders on the head of the deceased persons.

18. We have heard learned counsel for the parties and considered their rival submissions, carefully examined the testimonies of the witnesses on record and the impugned judgment rendered by the Trial Court. Learned Trial Court while convicting the appellant examined the following witnesses:

PW's	NAME OF THE WITNESS	DESIGNATION/ RELATION	EVIDENCE LED
PW1	Sh. K Pukeho	SDPO, District Senapati, Manipur	Proved the FIR dated 16.02.2009 as Ex.PW1/A which was registered at Police Station Ukhrul.
PW2	Dr. Pradip Kumar Singh	RIMS Hospital, Imphal	Proved the post mortem reports of the deceased persons i.e. Dr. Th. Kishan Singh, A. Rajen Sarma and Y. Token Singh and proved them as Ex.PW2/A, Ex.PW2/B and Ex. PW2/C respectively.
PW3	Sh. Kachamthai Faiga Gangmei	Sub- Deputy collector, Myang, Imphal.	He met the deceased Dr. Th. Kishan Singh before and after the meeting at DC Office, Ukhrul on the day of occurrence i.e. 13.02.2009.
PW4	Sh. U. Shamu Singh	Sub Inspector, P.S. Senapati, District Senapati, Manipur	Investigating officer of the case registered at P.S. Senapati.
PW5	Ms. Marve Raleng	UDA, Manipur Sectt., Imphal	Her husband Mr. Levi Zimik was a colonel in NSCN (IM) and had deposed that the appellant was holding a rank in NSCN (IM) and also deposed about the disturbances in Imphal on account of murder of the deceased Dr. Th. Kishan Singh.
PW6	Sh. Ningshen Khurye Wungshung (brother of the appellant)	Sr. Bill Clerk in the Office of Chief Engineer (Power-II), Imphal	Proved the mobile number of the appellant and had spoken to the appellant on 13.02.09 on his mobile number.

PW7	Sh. Thingnam Surendra Singh	(father of the deceased Dr. Th. Kishan Singh)	Deposed about the non- return of the deceased Dr. Th. Kishan Singh on 14.02.09 and about the efforts made to trace him till 17.02.09.
PW8	Smt. Thingnam Romita Devi	(wife of the deceased Dr. Th. Kishan Singh)	Deposed about the non-return of the deceased Dr. Th. Kishan Singh on 14.02.09 and also identified the mobile phone of the SDO, carried by him at the time he went to Ukhrul.
PW9	Sh. Thingnam Roshan Singh	(brother of the deceased Dr. Th. Kishan Singh	Also identified the mobile phone of the deceased Dr. Th. Kishan Singh.
PW10	Ms. Ronibala	(wife of the deceased A. Rajen Sarma)	Deposed that her husband went missing on 13.02.2009 alongwith the SDO and non-return of her husband.
PW11	Sh. Bhubaneshwar Singh	Accountant-cum-cashier, office of SDO/BDO, Kasom Khullen, Ukhrul, Manipur	Deposed regarding persons/Staff members who accompanied the SDO from Kasom Khullen to Ukhrul on 13.02.2009; he was also contacted by Ram Singh Siro upon his release; he also met the father of the SDO on 15.02.2009 and 16.02.2009.
PW12	Sh. Pankaj Kumar Pal	who was posted as Dy. Commissioner, District Ukhrul, Manipur at the time of incident	Deposed about the calling of meeting of SDOs on 13.02.2009, issuance of cheque of Rs.30,000 to the SDO and proved the same as Ex. PW12/C.
PW13	Sh. Ningshem Vashum	who was the SDPO, Ukhrul on 16.02.2009	Proved FIR No. 8(2)/09 registered at PS Ukhrul as Ex.PW13/A (which was also proved as Ex.PW1/A) and carried out the necessary investigation till 02.03.2009.
PW14	Ms. Marygrace Luikham	Cashier at DC office (DRDA Section), Ukhrul, Manipur	Prepared the sanction order (Ex.PW12/A), bill (Ex.PW12/B) and cheque (Ex.PW12/C).

PW15	Sh. T. Ngarnmi	Clerk-cum-Cashier, United Bank of India, Ukhrul Branch, Ukhrul, Manipur	Proved encashment of cheque (Ex.PW12/A) and had joined in tracing out the number plate of the vehicle of the SDO. He also proved the spot verification memo as Ex.PW15/A.
PW17	Sh. Sudhan	who was posted as SDO Ukhrul, Manipur at the time of incident	Attended meeting which was called by PW12 on 13.02.09 and lodged a complaint (Ex.PW40/A) regarding missing of the SDO on the basis of which FIR (Ex.PW1/A) was recorded at P.S. Ukhrul.
PW18	Ms. Mercina	SDM Lamphelpat, Distt. Imphal, West Manipur	Witnessed the identification of jeep bearing No.MN-04-A-2645 and proved the identification memo as Ex.PW18/A.
PW19	Sh. Lanuyapang	Sr. Assistant, Govt. of Nagaland, Kohima	Deposed about the cease fire agreement of the year 1997 between GOI and NSCN (IM) and stated to be in existence.
PW20	Mrs. Ch. Sachi	The then Executive Magistrate of the Distt. Magistrate, Imphal	Deposed about the strikes, unrest in Imphal following death of the SDO and two others and imposition of curfew order dated 19.02.09 and proved the same as Ex.PW20/A.
PW21	Sh. Kapangkhuai Jajo	Amongst 6 persons who were abducted on 13.02.2009 and is also amongst 3 persons who were released on 14.02.2009	Deposed about factum of their abduction till their release on 14.02.2009, identified the Bolero Jeep used in their abduction vide identification memo Ex.PW18/A
PW22	Sh. Ramsing Siro	Amongst 6 persons who were abducted on 13.02.2009 and is also amongst 3 persons who were released on 14.02.2009	Deposed about factum of their abduction till their release on 14.02.2009, identified the Bolero Jeep used in their abduction vide identification memo Ex.PW18/1.
PW23	Sh. Wungmi Raleng	Driver of Bolero jeep hired by abductors on 14.02.2009	On 14.02.2009, he Brought three abducted persons from Langdang village to Ukhrul and then left them to bus stand (Khuman Lampak) Imphal.

PW24	Dr. Amod Kumar Singh	Sr. Scientific Officer-II, CFSL, New Delhi	Conducted polygraph test of the appellant and proved his report as Ex.PW24/A and the original file of conducting the polygraph examination as Ex.PW24/B.
PW25	Sh. H. Jagadananda Singh	Scientific Officer, forensic Laboratory, Pangei, Manipur	Examined the exhibits sent to CFSL and proved his report as Ex.PW25/B. He also examined the Bolero Jeep used in the abduction and proved his report as Ex.PW25/E.
PW26	Sh. Puizatlang Kasar Mahai	Driver of the Bolero Jeep used in the abduction.	Deposed all the events between 13.02.09 to 16/17.02.2009.
PW27	Sh. Lenkhomang Chongloi	Headman of the village Taphou Kuki	He went to the Police Station and put the criminal machinery into motion after getting news of the dead bodies lying near Tophou Kuki river. The articles lying at the spot were also seized by the police.
PW29	Ms. Hatlam @ Hatzalam	Resident of the village Tophou Kuki	She was the first person who noticed three dead bodies near the river bank of Tophou Kuki and informed the same to the village headman.
PW30	Sh. Th. Amalkumar Singh	The then Dy. Secretary (Home), Govt. of Manipur	Proved his order as Ex.PW30/A whereby sanction was granted by him under Section 45 of UAP Act.
PW31	Sh. Jojo Robertson	Resident of the village Kasom Khullen	He met the SDO on 12.02.09 regarding the arrangement of the proposed visit of the Works Minister to Kasom Khullen on 14.02.09 and also held protests, rallies and <i>dharna</i> after killing of the SDO and his staff on 18.02.09.
PW32	Dr. B.K. Mohapatra	Sr. Scientific officer, Biology, CFSL, CBI, New Delhi	He deposed about the receipt of two parcels, containing 6 exhibits each and proved his report as Ex.PW32/A.

PW33	Sh. L.Thomas Salu	Inspector, CBI	He was part of the investigation team and recorded the statement of 13 witnesses, seized certain documents and had collected the articles seized by the police officials of PS Senapati. He also seized the mobile phone vide seizure memo Ex.PW33/B.
PW34	Sh. P. Shadang	Inspector, CBI (Member of the investigating team)	He collected the cheque, statement of account from the concerned Bank and other documents.
PW36	Sh. Sudesh Kumar Singla	Sr. Scientific Officer, Grade-I, Serology, CFSL, CBI, New Delhi	He carried out the serological examination of the six exhibits and proved his report as Ex.PW36/A.
PW37	Ms. Shelly Arora	The then Metropolitan Magistrate, Tis Hazari Courts	She recorded the confessional statement of the appellant and proved the same as Ex.PW37/F. She also proved the application for recording of confession as Ex.PW37/B and also proceedings dated 14.06.09 as Ex.PW37/D.
PW38	Sh. A.S. Wungmaso	Headman of the Village Langdang from 1995 to 2007	He deposed about the presence of some persons in his village who were not from his village during 13.2.09 to 14.02.09.
PW39	Sh. L. Hangshing	Inspector, CBI (Member of the investigating team)	He took over the possession of the vehicle used in the abduction from PS Ukhrol and also proved the memo regarding handing over of the vehicle, seized a portion of the seat cover (Ex.PW39/B), identification memo of the vehicle (Ex.PW18/A).
PW40	Ms. Ningshimi Awungshi	Project officer in DRDA, Manipur	He proved the complaint made to P.S. Ukhrol as Ex.PW40/A.

PW41	Sh. L. Ronel Singh	Junior Telecom Officer, BSNL, Manipur, SSA, NE-II Circle	He proved the letter through which call detail records generated by him as Ex.PW41/A; proved the subscriber form as Ex.PW41/B and generation of BTS Tower Address list as Ex.PW41/C and the call details record as Ex.PW41/D.
PW43	Sh. Ganesh Verma	SP, ACB, CBI, Imphal	Investigating officer who proved his endorsement on the notification dated 24.03.2009 as Ex.PW43/A through which the investigation of the instant case was transferred to the CBI; the notification as per which the Govt. of Manipur consented to refer the investigation to CBI and proved the FIR registered at PS Ukhrul as also registered at PS Senapati as Ex.PW43/C. He also proved the FIR which was registered by CBI as Ex.PW43/D; proved the personal search memo as Ex.PW43/G; arrest memo of the appellant as Ex.PW43/H; the request of the appellant showing his willingness to

19. The first argument raised by the counsel for the appellant is that the confession made by the appellant Hopeson Ningshen is not voluntary and the safeguards enumerated under Section 164 and Section 281 of Cr.P.C. were flouted while recording the confession and thus the said confession is bad in law.
20. To deal with this argument, the first set of questions which arises for our consideration is as to whether the confession made by the appellant Hopeson Ningshen is admissible in law, was the confession voluntary and was the confession bad in law on account of apprehended torture?
21. With a view to test as to whether the confessional statement made by the appellant was voluntary or not on account of extraneous influence,

we deem it appropriate to reproduce in detail the orders passed by the learned Magistrate dated 12.06.2009 (Ex.PW37/C), when the application for recording of confession was made, order dated 14.06.2009 (Ex.PW37/D) and the confessional statement made by the appellant (Ex.PW37/F). We also deem it appropriate to reproduce the evidence of the Magistrate/PW37.

22. The order dated 12.06.2009 passed by PW37 Ms.Shelly Arora, (the then Metropolitan Magistrate) records that the appellant was asked by her as to whether he wishes to make any statement and wanted the statement recorded before the Magistrate. In reply, the appellant had answered “Yes off course, but not today”. The Magistrate goes on to observe that the appellant needed sometime for himself to prepare for the eventuality, if any. The Magistrate further noted that as part of the legal mandate and in the very interest of justice and as per the request of the accused person, the matter was adjourned to 14.06.2009. Order dated 12.06.2009 (Ex.PW37/C) reads as under:

“I have received assignment of recording of Confessional Statement of the accused as marked to me by Ld.CMM. It is 2.45 PM by the court clock. On enquiry by the court as to whether he wishes to make any statement and get it recorded before the Magistrate, he answered “Yes, off course, but not today.” He probably needs some time for himself to prepare for the eventuality, if any. As part of the legal mandate and in the very interest of justice, as per the request of the accused person present before the court, list for the purpose of recording such statement on 14.06.09.

Let copy of this order be sent along with the custody warrant of the accused for the perusal of Jail Superintendent. Requisite P/W to secure the presence of accused on 14.06.09 be also sent along with copy of this order.”

23. On 14.06.2009, the appellant was produced before the learned Magistrate from the Jail lockup at 11.20 AM. The order dated 14.06.09 has been proved as Ex.PW37/D, which reads as under:

“Accused has been produced at 11.20 AM before this court despite specific directions to produce the accused person at 10.00 AM before the court. Direction was specifically sent again in the evening yesterday to produce the accused person at 10.00 AM sharp in the court. That shows an apparent non compliance and dis-regard of the order of the court. The Presiding Officer and the Staff was here before 10.00 waiting for the accused person to appear as per the directions given but needless to mention a fatal lapse is there considering that I have to work and discharge my duties as Duty MM also. Jail Superintendent is directed to explain the lapse in writing before the Court.

An application was marked to me on 12.06.09 for recording of Confessional Statement of accused person as mentioned above U/s 164 Cr.PC. He was produced before the court after 14 days police custody remand on that date. He was then sent to J/C by orders of Ld.CMM. He has been produced today from Judicial Custody. Date was given to him as per his own request for recording of statement.

At this moment, accused Hopeson Ningshen along with Ct.Narender Kumar, Naib HC Kirpal Singh, Reader of this Court Sh.Rajesh Kumar, Orderly of this Court Sh.Ankit Gupta, Stenographer Sh.Amit Kumar are present in the court and none other. All others who were present have been asked to move out of the court for the time being.

Accused Hopeson Ningshen is again asked as to whether he wishes/intends to make a Confessional Statement before a Magistrate or not. The response given is “Yes I want to make a statement”.

At this stage he asks as to whether it would be fine without my Advocate or his presence. To this query, I have responded that this is not the stage for requirement of any Advocate. This is only a question of your voluntariness to make a statement without any pressure/coercion whatsoever before a

Magistrate and my duty towards the legal mandate to record the same as per law absolutely in an unbiased manner.

In the circumstances, I move inside the Chamber. I shall be calling the accused along with the IO and my Steno inside the Chamber. The Police Security Arrangement Staff Head HC Tej Singh No.7429 DAP has been called in the court and directed to ensure to be very alert along with his staff members guarding continuously the court and the premises around this court to ward off any possible danger keeping in view the sensitivity of the matter. Anyone wanting to move an application may just pass on the application first to the Naib of the Court who shall then bring the application to the Reader of this Court and adjournment shall be given for tomorrow or as per the request of the applicant for day after tomorrow.

The matter at hand is very sensitive and urgent and any burden on any ones mind can be very troublesome. Any violation on anyone's part shall not be tolerated and shall be viewed very strictly.

At this stage, accused Hopeson Ningshen is asked whether he needs to freshen up or use the Wash Room, then he can be given the facility right now for the same as there is no such facility inside the Chamber. He responds that he is comfortable and does not need to use the Wash Room.

At this stage, I am moving inside the Chamber. The accused along with the IO shall be called inside for further proceedings."

24. The confessional statement made by the appellant (Ex.PW37/F) reads as under:

"Before giving my Confessional Statement I want to give a briefing regarding my Background, my Organizational and Nationality. There has been a Cease Fire between Government of India and NSCN/IM (National Socialist Council of Nagalim (Nagalim means Nagaland)/Government of the Peoples of Nagalim (Nagalim means Nagaland)). The cease fire has been since the year 1997. There have been peace talks for political solution between Government of India and

NSCN/GPRN. It was agreed that the talk should be at the highest level i.e. Prime Minister Level. Secondly, without any pre-condition. Thirdly, at some third country means outside India, the borders of India.

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Under this NSCN/GPRN, we have Army Wing called Naga Army. There, I have been serving as Lieutenant Colonel. Then I was Commandant of Battalion namely Kiusumong Battalion i.e. Naga Army. We have many Battalions as part of Naga Army. Kiusumong Battalion is one of the Battalion under Naga Army. My jurisdiction was the whole District of Ukhrul which is my own native District. There we the Naga Army under my command have dealing with public/civilian freely without any restriction. Dealing means walking together/meeting freely without any restriction i.e. mingling with each other freely. This mingling was possible because of cease fire and peace talks between Government of India and NSCN/GPRN. Even I used to meet DC (Deputy Commissioner) of that District, other Indian Government officials/any Indian Government Official in the District. Though it is used to be informal meetings. Sometimes formal also. Then I used to meet Assam Rifles i.e. Indian Security Forces, 10 Sector Brigade Headquarters located at Somsai, Ukhrul. I used to meet the DIG, the Addl. DIG and under them there is one Battalion also (17th Battalion Assam Rifles). What I mean to mention and state is that there was no distance or enemical distance between the Office Holders of the Indian Army and that of NSCN/GPRN. There was a good conducive atmosphere. But suddenly, on 19th January, 2009 my Battalion Headquarters i.e. Kiusumong Battalion Headquarters was surrounded by 17th Battalion, Assam Rifles under the command of Colonel Dharmesh Yadav and they were about to raid our headquarters without any prior information otherwise it was a Designated Camp. How many Battalions or Headquarters we have to set up was completely known and negotiated with Government of India through Cease Fire Monitoring Group. In that manner, my Kiusumong Battalion was a Designated Camp. So there was a stand off between Kiusumong Battalion and 17th Assam Rifles for 14 days and night. No firing was there but we were surrounded by them and they were trying to force themselves inside our headquarters but we guarded our Headquarters and we prevented our Headquarters from them. Then they had cut out our Water

Supply, Electricity Supply and even Food Supply also. Even the Red Cross Society was not allowed to enter in the Headquarters. That was the situation at that time. Then with the help off/with the initiative of Civil Societies of Tangkhul Naga Long. Long means Union. Tangkhul is my tribe's name. Tangkhul Naga Long formed a Committee with Name "Committee on Shirui Siedge". With the intervention of this "Committee on Shirui Siedge", certain amicable solutions were reached between the Naga Army and the 17th Assam Rifles. Then we shifted our Headquarters to a nearest Designated Camp i.e. at Senapati District of Manipur on 02.02.09 with full understanding and escort with 17th Assam Rifles. So our presence at Ukhrul District Headquarters was restricted by 17th Assam Rifles. This was the background of the situation which was there. Now, I wish to start with my confession.

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At this stage, accused Hopeson was keeping silent for 2-3 minutes. On 13.02.2009, I gave verbal order to my subordinate official Major Abo Sibbo to arrest Dr. Kisan Singh and his Accomplice. Dr. Kisan Singh was Sub Divisional Officer (SDO) of Kasom Khullen Sub-Division of Ukhrul District, Manipur. I gave order of arrest for the purpose of questioning his Corruption Cases. Previously, he was warned about his corruption cases that he forced the village Headmen (Many villagers) to put signature on blank cheques. Actually, the SDO is the authority to issue the cheque to the head men. There is one NREGS Scheme according to which the Indian Government shall issue a Job Card to every house holder, that means 100 days wages in a year.

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Then again there is NREGS fund given to every villager for material component that means to purchase tools etc. Then this money the SDO kept in his hand that means he was not dis-emanating the fund to the villagers which supposedly was to be given to them as per the NREGS Scheme. All the villagers used to get job cards but the money and the material components used to be received only through village Head Men/Secretary (In one village one Headmen and one Secretary). The SDO Dr. Th. Kisan Singh used to handover 50% of the fund amount to the village headmen and the rest of 50% he used to keep in his own hand without disbursing the said amount to the villagers. When he was questioned about it by

village Headmen about how he kept 50% with him then his reply was that this 50% should not be given to the villagers because he deducted it to hand it over to militants/UGs (Under Grounds). That was the case we wanted to question him about and he was previously warned about it also by my Subordinate Officials with my consent and order. Then at that time when warning was given to him, he had assured us that he shall not indulge in any such corruption activity again and that he shall not repeat it again. He did not rectified his mistake despite warning and he kept on indulging in the same activities and did not comply with the warnings issued earlier. For this and therefore, he was arrested alongwith his accomplice on 13.02.2009 from Ukhrul. He was in a meeting with District Commissioner at Ukhrul Headquarters. After conclusion of the meeting while he was returning back to his posting place at Kasom Khullen Sub Division Head Quarters, he was arrested while on way only 1-2 kms. from Ukhrul Headquarters. I was reported that the place of arrest was Naga Gate. Then he was taken away to a nearby village called Langdang village. Alongwith Dr. Kisan, there were Mr. Token (Handpicked Cashier of Dr. Kisan that means he was not using the actual official who was appointed cashier but was using by his own will and discretion some other person who is Mr. Token), and Driver Rajen and other three Tangkhuls (means Tribals) exactly I don't remember the name of those three Tangkhuls. At the same time, these three Tangkhuls were not related with this case. So after identification of these three Tangkhuls, they were released the very next day i.e. 14.02.09 from Langdang village by my Major Abo Sibo with my orders. On 14.02.09, Dr. Kisan and his two staffs i.e. Mr. Token and Driver Rajen were shifted from Langdang village to Seikhor village because some Indian Security Forces were disturbing the situation there. All this was done by my Subordinate Official Major Abo Sibo and his party/group. Sergeant Major Themshang and Corporal Johny were part of Major Abo Sibo's group. They kept Dr. Kisan, Mr. Token and driver Rajen for three days in Seikhor village i.e. 13th to 14th at Langdang and shifted on 14th Evening to Seikhor village and kept there till 16th February, 2009. During 13th to 16th February, 2009 when questioned about mis-appropriation of public funds then Dr. Kisan confessed that 10 to 20 Lakh was the mis-appropriated fund amount of NREGS Scheme collected by him and kept by him and that he said he has handed over that

fund amount to UGs (Under Grounds) but actually he had not handed over the whole amount to UGs and that he had kept some of the amount with himself/used some of the amount by himself. UGs are MNRF (Manipur Naga Revolutionary Front) and UNPC (United Naga Peoples Council) and many others but I remember only these two. So my intention was to make recovery from him of that mis-appropriated fund as to what he has done with that mis-appropriated fund, what amount exactly he has handed over to UGs and what amount he has kept with himself and where is the total amount as the public money must go to the public and not to UGs or anyone else. Dr. Kisan was just telling lie to Major Abo Sibbo and his party. I told Major Abo Sibbo and his party to contact the family members of Dr. Kisan through his own mobile but the number he gave as his own wife's number was not the correct number and that number was not working as he actually gave his own mobile number to my boys inclusive of Major Abo Sibbo so he cheated and acted smart on us. Again he pretended to be sincere and asked Major Abo Sibbo and other of his party/group members to release him so that he can get the mis-appropriated fund amount which he did not keep in his own hand but he had kept within Bank so he submitted that he needed to sign some cheques to draw the money from the Bank. That was a story he made in an attempt to escape from our hands. He said that Mr. Token and driver Rajen can be kept in the custody of Major Abo Sibbo and his group while he can be released/he can go to get the money. He said that he would come back with the money and that after he comes with the money all should be released as per his request made to Major Abo Sibbo and his group. It was revealed to Major Abo Sibbo and his group on 16.02.09 that the mobile number given by Dr.Kisan as his wife's number was actually his own number and that he was actually cheating on them. Major Abo Sibbo had reported to me on 16.02.09 around 11:00 AM to 12:00 Noon about the above mentioned factum of mobile number and the cheating by Dr. Kisan, I then gave verbal order on phone to Major Abo Sibbo that some whipping and beating is required to be given to all of three of them to extract the correct information. In the course of interrogation during the day in peripheral part of village Seikhor, Major Abo Sibbo reported to me that at around 5-6 PM on 16.02.09, the three of them in captivity started fighting and hitting back while they were being whipped and beaten up. They got up while being whipped and

attacked my boys (Major Abo Sibbo and his party as per the report there were only two officials as mentioned above along with Major Abo Sibbo, regarding others there is no report). My boys i.e. Major Abo Sibbo, Sergeant Major Themshang and Corporal Jonney had small arms (9MM Pistol) with them, so with the help of that arm, they could over power Dr. Kisan, driver Rajen and Mr. Token as they got frightened looking at those arms. So in fit of anger, my boys gave beatings in a very severe manner. Because of this severe beatings by Major Abo Sibbo, Sergeant Major Themshang and Corporal Johny to Dr. Kisan, Mr. Token and Driver Rajen, all three of them died as was reported to me by Major Abo Sibbo on 16.02.09 at around 5-6 PM. I, hearing that news myself got very panicky and confused means I could not decide immediately as to what next to do as it was not our intention to kill them but only to threaten them so that correct information about the mis-appropriated funds can be extracted from them and public money be put to the use it is supposed to be put to so that public money can be handed over to the rightful eligible public persons. The situation in Ukhrul Town was very tensed so to divert the attention, I after deliberating upon the issue decided and ordered Major Abo Sibbo and other two party/group members to dump the dead bodies of Dr. Kisan, Mr. Token and Driver Rajen on NH-39 so that the dead bodies can be easily discovered/seen and so that the respective family members can take their dead bodies. I did not tell the exact place on NH-39 where those dead bodies were to be dumped as part of my order. Then as per the orders the dead bodies of Dr. Kisan, Mr. Token and Driver Rajen were dumped on NH-39. The distance between Sheikhor village and NH-39 is around 100 kms. Then on 17th the very next day at around 10-11 AM after Major Abo Sibbo, Sergeant Major Themshang and Corporal Johny came back to Ukhrul Town, I met Major Abo Sibbo and I received a detailed report but it was only verbal. Then just taking those accounts I told Abo Sibbo to be at Ukhrul Town in a secure way and myself also have to report to my higher authorities. Though it was not intentional killing I felt that only because of my order that fateful death of those three persons happened. So I decided myself to own the moral responsibility of the killing. Any necessary legal action by my government i.e. GPRN/NSCN be given to me for the death of those three persons. So I went and reported the whole thing to my Army Authorities at General Headquarters, Naga Army.

It was on 19.02.09 that I reported the matter to my Higher Authorities at GHQ (General Headquarters). Then I was arrested by my Authorities and was kept in custody. Then on 28.05.09 I was handed over to the CBI by my authorities through Naga Hoho (Naga's Apex Body of Civil Society). This Naga Hoho Committee had received my custody from the hands of my Authorities from GHQ. Then they harbored me upto Dimapur Airport which is in Nagaland State and handed over me to CBI. On 28.05.09, that very day itself by a small Aircraft I was taken to Calcutta. Then we halted there for that night in Calcutta Central Lock Up. Then the next day we flied back to Imphall Airport. Two CBI Inspectors were there with me. One was Inspector Khamrang and KR Kabui. Then at Imphall at about 11 AM we reached Imphall Airport and I was produced before Ukhrul District Magistrate (actually he was CJM of Ukhrul but he came down to Imphal and waited for us there at airport only and I was produced before him at the airport only). It was a mobile court or something like that where I was produced. Then this SP Verma was there and one Public Prosecutor (I do not know him but Public Prosecutor was there). At that time, I did not have any legal assistance. Then on 29.05.09 itself with that small Aircraft, Inspector Khamran was there and Inspector KR Kabui was replaced by Inspector Alam Hangsing alongwith SP G.Verma as my Investigating Officer. I was brought to Delhi CBI Headquarters and kept there in the custody for 14 days. Many statements were given as I said here and after that on 12.06.09 I was brought here in Court no. 38 and sent to Judicial Custody. Personally I have not seen anyone being killed but it is only through information that I have come to know about it and whatever I have spoken is truth as reported to me by Major Abo Sibo.”

25. The testimony of PW37 Ms.Shelly Arora, (the then Metropolitan Magistrate, Tis Hazari Courts, West District, Delhi) reads as under:

“04.06.2012 (at 2.25 PM)

On S.A.

Presently I am posted as Metropolitan Magistrate (MM) in Mahila Court, Tis Hazari (West Distt) Delhi. In June 2009 I was posted as Metropolitan Magistrate, (West Distt) Tis Hazari Courts, Delhi. On 12.06.09 an application U/s 164 Cr.P.C for

recording confessional statement of accused Hopeson Ningshen was moved by Sh.G.Verma Superintendent of Police, C.B.I. Imphal before Ld. Chief Metropolitan Magistrate, Delhi which was initially assigned by Ld.CMM to Ms. Jyoti Kler, Ld.MM, Tis Hazari Courts, Delhi. On the request of Ms.Jyoti Kler, Ld.MM matter was again put up before Ld.CMM and vide order dated 12.6.2009 application was put up before me.

At this stage, a sealed envelope bearing seals impressions of "SA" produced and shown to the witness and she confirms that it is the same envelope in which original applications/proceedings of this case an application U/s 164 Cr.P.C was sent from my court to Ld.CMM Delhi which bears my official seal at point A and seal impressions of my official seal at the back of the envelope is Ex.PW37/A.

I have seen application U/s 164 Cr.P.C. which was put up before me by the order of Ld.CMM at point encircled A and bears the signatures of Ld.CMM Ms.Kaveri Baweja at point B on application Ex.PW37/B. Ld.Defence counsel submitted that copy of application Ex.PW37/B was not supplied to accused. Production of copy is not relevant at this stage, however, in interest of justice a copy of application be supplied to accused today itself. Along with application Ex.PW37/B an application annexure A written by the accused to Superintendent of Police, CBI Imphal was also put up before me which is Mark K.

On 12.06.2009 accused Hopeson Ningshen was produced before me in JC by IO Ganesh Verma S.P CBI. I made inquiries from the accused as to whether he wishes to make any statement and get it recorded before the Magistrate. He answered "Yes, "Of Course", "but not today". Accused probably needed some time. Accordingly, I fixed the matter for 14.6.2009 and passed order dated 12.6.2009 which bears my signature at point A and is Ex.PW37/C. Ld.Defence counsel stated that copy of order dated 12.6.2009 has not been supplied to accused. As requested copy be supplied to accused today itself.

On 14.6.2009 accused was produced in my court at about 11.20 AM from the judicial custody. I asked the accused as to whether he wishes/intends to make confessional statement

before a Magistrate or not. Accused stated that he wanted to make a statement and then I gave necessary instructions to my court staff, accused and others and recorded the details in the proceedings which bears my signatures at point A respectively and is Ex.PW37/D.

Thereafter, I retired to my chamber. On my instructions accused was produced in my chamber. IO SP Sh.Ganesh Verma, was also called inside the chamber. He identified the accused as Mr.Hopeson Ningshen and statement of Sh.Ganesh Verma was recorded in his own handwriting in respect of identification of accused which bears my signatures at point X and is Ex.PW37/E. SP Sh.Ganesh Verma was asked to leave the chamber. Thereafter only myself, steno Sh.Amit Kumar and accused remained inside the chamber and I started the proceedings of his statement. I made my inquiries to satisfy myself about the voluntariness of the accused. And after satisfying myself I recorded his statement. In the end of the statement I gave my certificate about the voluntariness of accused and truthfulness of the proceedings. The proceedings and the certificate bears my signatures at point A respectively on each page. I directed that the proceeding sealed in the envelope and be sent to the court concerned and these directions at the end of the proceedings bears my signatures at point A. The proceedings of confessional statement, certificate and above directions are collectively as Ex.PW37/F. The statement and the proceedings were read over and explained to the accused by me and he himself gone through the entire statement after understanding the same, he signed each page of his statement starting from page 10 of the proceedings and I identified the signatures of accused Hopeson Ningshen at point B respectively from page 10 to 20. Accused in his own handwriting made the endorsement at point C on page 20 that he had read the confession and admitted having been reproduced as correct and signed the same in my presence at point B1. I identify the accused Hopeson Ningshen present in the court who made the above mentioned statement before me and was identified by SP Sh.Ganesh Verma.

An application was filed by SP Sh.Ganesh Verma before me to supply a copy of statement recorded U/s 164 Cr.PC of accused Hopeson Ningshen and the said application is seen by

me which is Ex.PW37/G. I considered the application of SP Ganesh Verma and concluded my proceedings at 6.50 PM on 14.6.2009 and the proceedings bears my signature at point A respectively which is Ex.PW37/H. Copy of proceedings/statement was received by SP Ganesh Verma by his endorsement at point X on Ex.PW37/H. In proceedings Ex.PW37/H certain directions were given to Jail Superintendent, Tihar, New Delhi to keep the accused separate from other prisoners in compliance with the legal mandate as far as possible and copy of proceedings Ex.PW37/H was sent to Jail Superintendent for compliance through HC Tej Singh who received the same by way of his endorsement Ex.X1 on proceedings Ex.PW37/H. My statement is correct.

26. PW37 Ms.Shelly Arora was cross-examined by the defence counsel.
Her evidence reads as under:

“It is correct that accused had not requested the particular date i.e. 14.6.2009 but the said date was fixed by me keeping in view the other one already fixed. On 14.6.2009 I was working as Duty MM during summer vacations and it is because of the said reason I deem it proper to fix the matter for 14.6.2009.

At this stage, at 3.30 PM Ld.defence counsel had except the copy of the proceedings U/s 164 Cr.PC. Other applications and orders Exhibited above in the testimony of witnesses has not been supplied today and therefore he needs short adjournment for the preparation of the case. Ld.defence counsel submitted that case is already fixed for 6.6.2012. Ld.defence counsel requested that a copy of the proceedings be supplied to him. Keeping in view the short date and in the interest of justice, let a copy of the proceedings of statement U/s 164 of Cr.PC (except the copies already supplied) be supplied to Ld.defence counsel by Reader of this court today itself.”

27. Further cross-examination of PW37 was deferred for 06.06.2012 for 2.25 PM. The relevant part reads as under:

“I did not enquire from the IO or from the accused whether copy of application Ex.PW37/B had been supplied to the accused. It is wrong to suggest that when accused was produced before me on 12.06.2009 he requested me that the matter may be taken up

in presence of his advocate. It is wrong to suggest that accused requested me on 12.06.2009 that 4-5 days time may be given to him so that he may consult his advocate. I was aware that 13th and 14th June, 2009 were Saturday and Sunday but I was not aware whether Jail Authorities do not permit the under trial prisoners to meet private visitors or the advocates.

It is wrong to suggest that whatever statements were made by accused on 12.06.2009 before me the same were under threats and pressure of CBI. Vol. Accused did not stated anything about the threats or pressure and infact he himself volunteer to make the statement.

On 14.06.2009 I was working as a Duty MM. Accused was produced, there were other litigants, lawyers, court staff and Police Officers were present in the court. I asked everybody other than concerned with the matter of accused to move out from the court for the time being so that I may inquire from the accused about his wishes/intention at all to make a confessional statement. I decided to record the statement of accused inside the chamber so that there may not be any other person present and accused may not feel any pressure or danger from any side. Vol. Otherwise also it is a normal practice in Delhi courts that such statements u/s 164 Cr.PC are recorded inside the chamber to ensure that the proceedings may be conducted without any disturbance. It is wrong to suggest that accused requested that his statement should be recorded in the presence of his advocate. Vol. Infact the accused enquired whether presence of his Advocate was required for making the statement and the request of the accused and my response has been recorded in proceedings Ex.PW37/D from Point P to P-1. It is wrong to suggest that statement of accused U/s 164 Cr.PC was recorded without giving sufficient time to accused to think it over or to consult his advocate. It is wrong to suggest that whatever incriminating facts accused stated before me is stated under the pressure, threats and tutoring of CBI. It is incorrect to suggest that accused did not make his statement voluntarily. Vol. I myself assessed the voluntariness of accused and then only recorded his statement Ex.PW37/F.”

28. Mr. Pancholi, learned counsel appearing for the appellant has placed strong reliance on a decision rendered by the Apex Court in the case

of *Rabindra Kumar Pal @ Dara Singh (supra)* wherein the Supreme Court has extensively dealt with the law relating to confessions and laid down principles in para 64 of the said judgment with respect to Section 164 Cr.P.C.

29. We may note that the learned Trial Court in paragraph 10 of the impugned judgment dated 31.05.2014 observed that the confession Ex.PW37/F made by the appellant does not contain any exculpatory part and first it details about the organization NSCN; the facts as to how and why the abduction was done which were stated by him as arrest; the names of all the persons who were abducted; the place from where they were abducted; the names of his subordinates who had executed the abduction; the abductees who were released; reasons for the release of the abductees; the place at which they were initially taken and the places where they were shifted; direction given by him to his subordinates regarding whipping and severe beatings to the three captives which resulted in their death; dumping of the dead bodies of the captives at Senapati near NH-39 and thereafter meeting with the co-accused Major Abo Sibo at Ukhrul on 17.02.2009 at about 10-11.00 AM and reporting the present matter to his higher authorities at General Headquarter, Naga Army, and finally his own arrest and subsequent custody with the Naga Army.
30. It is evident from the records that the appellant Hopeson Ningshen was produced before the Trial Court on 12.06.2009 for the purpose of recording his confession. The appellant sought time which was granted to him. Thereafter, matter was listed for 14.06.2009 and thus, sufficient time was granted to him to decide as to whether he should make a confession or not. On 14.06.2009, the appellant Hopeson Ningshen was again given time to think by leaving him alone in

the chamber for more than an hour as reflected in the proceedings dated 14.06.2009 which was proved as Ex.PW37/D. Furthermore, the appellant had remained out of sight of any police official for more than three hours before recording his confession which was proved as Ex.PW37/F. In view of ***Rabindra Kumar Pal's*** case (*supra*) we have found that the learned Magistrate had duly cautioned the appellant that if he would make any confession, the same may be used against him as evidence. Also, the appellant was cautioned by PW37 that if he would refuse to make the confessional statement, he would not be remanded to the police custody.

31. To deal with the submission regarding the unwillingness of the appellant to make confessional statement, the attention of this Court has been drawn by the counsel for the CBI to the question Nos. 423, 431 and 435 put to the appellant in his statement under Section 313 of Cr.P.C. whereby the appellant in response to the questions put to him by PW37 (the then Metropolitan Magistrate) and the conduct of the appellant by not informing any of the three Magistrates shows that there was no coercion/force/threat to the appellant. Thus, the question whether the application for recording confessional statement (Ex.PW43/J) was wilful or forced becomes insignificant and meaningless.
32. To test as to whether the statement by the appellant Hopeson Ningshen was voluntary, we deem it appropriate to extract the certificate issued by learned MM (PW37) which reads as under:

"It is certified that I have explained to accused Hopeson Ningshen that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing and was typed as dictated word by word as spoken by accused

Hopeson Ningshen. It was read over to the accused Hopeson Ningshen who has made it and was admitted by him to be correct. It is further certified that it contains a full and true account of the statement made by him as it is without any addition, alteration whatsoever.”

(Emphasis Supplied)

33. The relevant part of the proceedings Ex.PW37/D dated 14.06.2009 reads as under:

“Now, IO SP Sh. Ganesh Verma is asked to leave the chamber.

...

....

There is no place from any influence etc can be made or that anyone can make any gesture or any sound which can be visible or audible to the accused person disturbing him or influencing him on any account.

....

.....

At this stage, I again asked Mr. Hopeson Ningshen whether he is willing or intend to make the confessional statement. He has nodded his head and said “Yes”. He is told that he is not bound to make any confession and that he is absolutely free to refuse to do so, if he wishes to.

....

.....

At this stage, he is also told that once he makes a Confessional Statement, same may be read against him and that he is completely at his will and risk to make any Confessional Statement whatsoever if he voluntarily so wishes to.

....

.....

He has been brought today after 2 days Judicial Custody. He was sent to Judicial Custody on 12.06.09 and has been brought today before the court on 14.06.09 which is a Sunday. He was produced on 12.06.09 after 14 days Police Custody Remand. He is asked whether he is feeling any pressure or any influence from any person specially any Police official. He submits that “there is no influence”. He is now asked whether he is feeling comfortable. He says “Yes he is feeling Comfortable”. Still in view of the above mentioned circumstances, just to avoid any such eventuality or any influence anywhere in his heart, I opine that he needs sometime in isolation to think and ponder over his decision as to whether he is conscious of what he wants to do and say and so that he can make a responsible move completely aware of the consequences or repercussions which may arise

once he make a confessional statement. Inside the chamber he is left alone for half an hour to think again over his decision to make a confessional statement.

At this stage, Steno Sh. Amit Kumar and myself move out of the Chamber to the Open Court leaving the accused Hopeson Ningshen alone in the Chamber to think and act accordingly. Accordingly, he is again told that he is absolutely free not to make any confession and he is like a free bird before a Magistrate out of any Police influence, any local authority influence or any other influence whatsoever. Nothing should weigh on his mind while he makes a decision to make a confession. He is again told that he can refuse to make a confession and that nothing shall be done without his open and conscious consent. He is again told that making a confession by him may be read against him at the later stage and accordingly, unless he is very sure of making a confession, he is free to refuse to do so and that he is not going to do to feel or be pressurise on any account by anyone. He is told that he is sitting before a Magistrate and is beyond any influence whatsoever by anyone inclusive of the police official. It is 12.35 PM by the Court clock. Steno Amit Kumar and myself are leaving the Chamber to move to the open Court which is attached to the Chamber leaving accused Hopeson Ningshen alone in the Chamber for half an hour.

....

....

At this stage, accused Hopeson Ningshen is again cautioned and warned that he is not bound to make any confession and he can refuse to do so at his Will and Volition and if he choses to make a confession, same may be read against him at any later stage. To this he responds that I wish to make a Confessional Statement and I am not feeling any pressure from any side.

...

.....

At this stage, he is again told that he is free to refuse to make a confession and unless he is conscious of everything he is free to refuse to make any confession. He submits that he wishes to make a confession.

By the questions I have asked to the accused Hopeson Ningshen and the responses which I have received by him, I opined that he is not stating anything under any fear, pressure, coercion or

undue influence and that he is conscious of what he is doing or stating and that he is making the confession voluntarily out of his own free will and volition. I further adjudge that he has understood that he is not bound to make a confession and that if he so makes it same may be used against him as an evidence. He also understands that he is making a confession before a Magistrate and that he is sitting in a Court. I further opine that he looks composed and confident. I also opine that he is able to speak his mind out and is grasping properly any questions which have been posed to him. He does not look puzzled or confused. He looks comfortable with himself and the environment around him. Accordingly, I opine that he is very much willing to make a confession voluntarily and that I am unable to adjudge any sort of pressure or undue influence from any quarter on him specifically of the Police Custody or the Police Officials concerned. Now, he has been sitting inside the chamber for the past around 3 hours away from the site of any Police Official whosoever.

At this stage, by the responses I have received from him, I again asked the accused person that "Can I so opine that you are making confession voluntarily without any fear, pressure or undue influence and that you understand that you can refuse to make a confession and that if you so make it same may be read as evidence against you." He responded "Yes I understand and your opinion is correct".

(Emphasis Supplied)

34. Having examined the record and the evidence available on record, we are of the view, the learned Trial Court has rightly held that the appellant has failed to bring on record that he was persuaded or coerced to make a confession and as such the appellant was given sufficient time to think over his decision to make a confession. There is no procedural lapse on the part of PW37 at the time of recording of the confession of the appellant and thus, the procedure enumerated under Section 164 of Cr.P.C. has been duly complied and various cautions required to be given to the accused before recording such confession have been fully adhered to by PW37. As far as the

argument regarding non-signing of the first ten pages of the confession made by the appellant Hopeson Ningshen is concerned, we are of the view that the main part of the confession has started from the 10th page and before that it was a mere introduction regarding the qualification, threat/pressure/coercion/influence if any, need of translator, voluntariness of the appellant and thus, the submission is without any force.

35. As far as the argument related to recording of confession in an open court and during the Court hours is concerned, we deem it proper to extract Clause 5 of Chapter 13 of Punjab High Court Rules which is also applicable to Delhi. The same reads as under:

“5. The following instructions are issued for the guidance of the Magistrates for recording confessions and statements under section 164 of the Code of Criminal Procedure. It is not intended to feter any discretion given by the law to Magistrates as such, but it is only desired to indicate the directions under which such discretion may be exercised:

(a) Unless for exceptional reasons to be recorded in writing, confessions should ordinarily be recorded in open court and during court hours.

(b) The examination of an accused person, immediately after the police brings him into court, is not desirable. Ordinarily, the magistrates should remand the accused to a sub-jail for a period of at least 24 hours before his statement is recorded.”

(Emphasis Supplied)

Reading of the above quoted clause shows that it includes mere instructions and its objective is not to feter any discretion given by the law to the Magistrates. We do not find any force in the argument so raised by the counsel for the appellant for the reason that it is not always possible to record statement of the accused under Section 164 of Cr.P.C. in an open Court. The sensitivity of the matter was duly

considered by the learned MM, we are of the view that the learned MM has rightly recorded the confession in the chamber, to avoid the presence of any other person who might create any pressure or coercion upon the appellant. Mr. Pancholi, learned counsel for the appellant is unable to show that there is any specific prohibition to record the statement under Section 164 of Cr.P.C. of the accused in the chamber. Although, it has been provided in para 64 of the above said judgment that if the statement of the accused is recorded under Section 164 of Cr.P.C. in an open Court, the accused should be beyond the sight of any Police official “(ix) *At the time of recording of the statement of the accused, no police or police official shall be present in the open court.*” Accordingly, we find that there is no lapse on the part of the learned Magistrate in recording the statement of the appellant.

36. The next issue which arises for our consideration is as to whether a case under Section 364A of the Indian Penal Code is made out against the appellant. Section 364A of the Indian Penal Code reads as under:

“364A: Kidnapping for ransom, etc.:

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

37. A plain reading of Section 364A of IPC would show that the necessary ingredients of this Section are as under:

- i) That kidnapping or abduction of a person is caused; or ‘such kidnapped or abducted person’ is kept under detention;

- ii) That the accused threatened to cause death or hurt, to 'such person' or gave rise to a reasonable apprehension that death or hurt may be caused to 'such person', or death or hurt is actually caused;
- iii) The above said is done to compel another person to do or abstain from doing any act or to pay a ransom.

38. It is the case of the prosecution that the appellant Hopeson alongwith three other co-accused abducted six persons. Out of these six persons, three persons i.e. PW21 Kapangkhui Jajo, PW22 Ramsing Siro and Ramthing Shinglai were released. In this backdrop, we deem it appropriate to analyse the testimonies of PW21 Kapangkhui and PW22 Ramsing Siro who were abductees and witnessed the entire incident.

39. PW21 Kapangkhui who was working as a peon in the office of the SDO Kasom Khullen, District Ukhrul, Manipur deposed in his examination-in-chief that on 12.02.2009, at about 7:30 AM, he reported on duty at the residence cum office of the deceased Sh. Th. Kishan Singh (the then SDO of Kasom Khullen) where PW22 Sh. Ramsingh Siro and Sh. Ramthing Singlai were already present. The deceased Th. Kishan Singh told them that on 13.02.2009 they had to visit Ukhrul for an official meeting and instructed them to report on duty early in the morning. The deceased Th. Kishan Singh further instructed them that firstly they would go to Ukhrul for a meeting with DC Ukhrul and thereafter they had to come back at Kasom Khullen as there was a meeting of Ministers at Kasom Khullen on 14.02.2009. On 13.02.2009, at 7:30 AM, he reported at the residence cum office of the deceased Th. Kishan Singh. Apart from him, the deceased A. Rajen Sarma (official driver of the SDO), PW22 Ramsingh Siro,

Ramthing Singlai and the deceased Token Singh also reported at the residence of the SDO. At about 8:00 AM, PW21 alongwith other five persons i.e. the SDO, the deceased A. Rajen Sarma, PW22 Ramsing Siro, Ramthing Shinglai and the deceased Token Singh went to Ukhrul and left the residence of the SDO in his official car i.e. gypsy. At about 10:30 AM, they first reached at DC office situated at Ukhrul and thereafter they all went to the residence of DC Ukhrul. The other two persons of the group remained at DC office. After reaching at the residence of the DC Ukhrul, the SDO Th. Kishan Singh went inside the bungalow alone and the other three remained outside the bungalow. After sometime, all of them went to United Bank of India, Ukhrul. The deceased Th. Kishan Singh introduced PW21 to the Bank Manager and requested him to hand over the cheque money of Rs.30,000/- to him. After the money was collected, PW21 handed over the same to the deceased Y. Token Singh which was further handed over to the deceased Th. Kishan Singh. It was further deposed by PW21 that on the same day at around 1.30 PM-2.00 PM, after leaving the DC office, Ukhrul, they all proceeded for Kasom Khullen alongwith the deceased Th. Kishan Singh in his gypsy which was being driven by the deceased A. Rajen Sarma. Within a span of about 10 minutes, they all reached at Naga Gate, Ukhrul. While crossing the Naga Gate, they saw a black colour Bolero Jeep parked in the middle of the road. After the gypsy was stopped, PW21 saw a person standing near black Bolero jeep who came towards their gypsy and asked them to hand over their mobile phones. The said person again asked hurriedly to hand over the mobile phones. On his demand, the deceased SDO Th. Kishan Singh and PW22 Ramsing Siro handed over their mobile phones to him. The said person was in possession of

a shot gun which he pointed at them at the time of the demand. It was further deposed by PW21 that three more persons came near their gypsy from the black Bolero jeep and directed the persons who were sitting at the back seats of the gypsy that they should come to the black Bolero jeep. On the next day of his examination-in-chief, it was deposed by PW21 that the first person who came towards them commanded in Metiei language, that all the four persons sitting at the back seat of gypsy including himself should sit in the black Bolero jeep. The deceased A. Rajan Sarma who was driving the gypsy car was directed by the said person to sit at the back side of the gypsy. The driver's seat of the gypsy was occupied by one of the persons who came from the Bolero jeep. As per the command, PW22 Ramsing Siro, Ramthing Shinglai, the deceased Y. Token Singh alongwith PW21 shifted to Bolero jeep which was being driven by one of the persons from their group. One more person of their group was sitting in the Bolero jeep and there were in total six persons who were sitting in the Bolero jeep. There were four persons who were sitting in the gypsy including the deceased Th. Kishan Singh, the deceased A Rajen Sharma and two other persons of the said group. Thereafter, the gypsy of the deceased SDO was directed to proceed towards Ukhrul and the black Bolero car followed the said gypsy. After about 30 minutes, they reached at village Langdang where the abductors first removed the number plate and red light from the gypsy of the SDO Th. Kishan Singh. PW21 alongwith other five persons were taken to the house of headman of the village Langdang.

40. PW21 further deposed that one of the abductors came towards them and asked as to who the SDO was. To answer this, PW22 Ramsing Siro pointed towards the deceased Th. Kishan Singh and introduced

him as the SDO. Thereafter, the said abductor took the SDO Th. Kishan Singh outside the house of the headman. After about 5-10 minutes, the SDO Th. Kishan Singh came back alone and the person who took him outside was not with him. Thereafter, one young man came and asked PW21, PW22 Ramsing Siro and Ramthing Shinglai to come with him and took them outside the house of the headman in a *jungle* like place. The said young man asked that the Tangkhul persons should come out with him. On his direction, PW21 alongwith PW22 Ramsing Siro and Ramthing Shinglai went with him being the persons belonging to Tangkhul community.

41. It was next deposed by PW21 that out of all the six persons, three persons including him, Ramthing Shinglai and PW22 Ramsing Siro belonged to the Naga community whereas the deceased Th. Kishan Singh, the deceased Y. Token Singh and the deceased A. Rajen Sharma belonged to the Meitei community. PW21 further deposed that all the six persons including the SDO were taken to the jungle before sunset. As the abductors were having shot gun/pistol, all of them were scared and did not try to overpower the abductors or to run away from their clutches. The abductors asked the SDO to talk to his wife on the mobile phone. The SDO Th. Kishan Singh asked the abductors not to force him to talk to his wife on mobile phone as his wife and his father were heart patients and in case they would come to know about the incident, his wife and father might faint and the neighbours might also assemble there. PW21 further deposed that he did not know as to whether the abductors asked for money from other persons but none of them asked money from him. PW22 Ramsing Siro told him that the SDO had told him that the abductors had asked an amount of Rs.20 lacs from the SDO. In the *jungle*, they all were asked

to sit and the abductors were watching them. The abductors had chained the deceased Y. Token Singh and the deceased A. Rajen Sarma. When they tried to chain the SDO Th. Kishan Singh, PW22 Ramsing Siro asked them not to chain as the SDO was their officer and requested that instead of the SDO he alongwith others might be chained. On his request, the abductors had removed the chains of other two persons i.e. the deceased Y. Token Singh and the deceased A. Rajen Sarma. They all six were taken to Langdang village and the abductors also accompanied them. At the house of the headman of Langdang village, they had their dinner and were taken to sleep in the building of Women Society of the village.

42. In the morning of 14.02.2009, after they woke up, they were served black tea and all the six persons were taken to the house of Headman where they were given food. Thereafter, all six of them were taken to the *jungle* again. PW21 did not hear any conversation between the SDO having spoken to the leader of the abductors or having asked them as to why he had been abducted. The SDO asked the abductors to let him talk to their leader and told them that if the matter was pertaining to the demand of money, he might make an attempt to arrange for the same or if the grievance was pertaining to his administration then he felt sorry and assured them to improve it. They were kept in the *jungle* for the entire day. In the evening, the person who had driven the gypsy from Naga Gate to Langdang village came and directed PW21, PW22 Ramsing Siro and Ramthing Shinglai to come with him and they were again taken to the Langdang village, however, the SDO, the deceased Y. Token Singh and the deceased A. Rajen Sharma were kept in the *jungle*. PW21 also deposed that when they left the jungle, all the three persons i.e. the SDO, Y. Token Singh

and A. Rajen Sharma did not say anything to him and were hale and hearty and nothing had happened to them. In the evening, they all were taken to the village Langdang. All the three persons were asked to tell their names, father's name, villages, addresses, etc which were written on the papers and were asked to sign the same. At about 4-5.00 PM, PW21 alongwith PW22 Ramsing Siro and Ramthing Shinglai were taken in Bolero jeep and thereby left village Langdang. It was the same black Bolero jeep which took them from Naga gate to Langdang village. They were dropped at Khuman Lampak (bus stand), Imphal and were threatened by the abductors that after being dropped they were not to say anything to anyone and were not to go anywhere from their respective houses. The snatched mobile phone which belonged to PW22 Ramsing Siro which was not returned by the abductors. After being dropped at the Bus stand, Imphal, they all three took an auto rickshaw and left for their respective houses. On the night of 17.02.2009, they came to know that the SDO Th. Kishan Singh, the deceased Y. Token Singh and the deceased A. Rajen Sharma passed away and their dead bodies were brought from the place Senapati. From 15.02.2009 to 17.02.2009, they did not inform either the police or to anybody about their abduction or that the life of the SDO and others was in danger due to threats extended by the abductors. On 24.02.2009, PW21 alongwith PW22 Ramsing Siro and Ramthing Shinglai reached at the place of Assam Rifles and remained in the protection of Assam Rifles for about three months.

43. PW21 next deposed that during the period of his abduction i.e. from 13.02.2009 to 14.02.2009, he did not hear any of the abductors calling the other abductors by their names. He also did not hear any of the abductors to whom they were talking. PW21 did not come to know

from anything that who ordered for their abduction and then for their release. When they were in the protection of Assam Rifles i.e. on 23.02.2009, PW22 Ramsing Siro told him that he was suspecting that all six of them were abducted by NSCN (IM) people. On 11.05.2009, PW21 saw the black Bolero jeep at the premises of 2nd MR (Manipur Rifles). PW22 Ramsing Siro and Ramthing Shinglai were also present at that time. PW21 identified the Bolero jeep as the same which was used at the time of their abduction. The identification memo of the Black Bolero jeep was prepared as Ex.PW18/1. PW21 identified the black Bolero jeep as there was a wooden seat near the driver's seat and some wires were taped in the said Bolero jeep.

44. In his cross examination, PW21 stated that after receiving the cash amount of Rs.30,000/- from them, the SDO Th. Kishan Singh went inside the office of DC Ukhrul. PW21 further stated that when they were taken from Naga Gate to village Langdang, they saw an Army vehicle on the way. From Naga Gate to village Langdang, PW21 did not notice any check post and the black bolero jeep and gypsy were not stopped by anyone at any check post.
45. Another abductee who was examined as PW22 Ramsing Siro deposed on similar lines as deposed by PW21 Kapangkhui. He testified in his examination-in-chief that he joined the services of Government of Manipur in the year 1998 as a village level worker. The testimony of PW22 regarding the sequence of events which took place on 12.02.2009 corroborated the version deposed by PW21 including that on 12.02.2009, PW22 reported for duty at the residential office of SDO Th. Kishan Singh at Imphal and in the evening, the SDO instructed that there was a meeting at DC office, Ukhrul on 13.02.2009 and after attending the meeting at DC office, they had to leave for

Kasom Khullen as Works Minister of Manipur Govt. had a meeting on 14.02.2009. On 13.02.2009, at about 7-7.30 AM, they assembled at the residence of the SDO Th. Kishan Singh. Thereafter, PW22 alongwith PW21 Kapangkhui, Ramthing Shinglai, the deceased A. Rajan Sharma (driver of the SDO), the deceased Y. Token Singh and the deceased Th. Kishan Singh (SDO) went to Ukhrul in the official gypsy of the SDO. At around 10-10.30 AM, they reached at Ukhrul. At about 1.30 PM or 2.00 PM, they left Ukhrul for Kusum Khullen. As per the instruction of the SDO Th. Kishan Singh, PW22 alongwith Ramthing Shinglai met Ningkhalem (EO in the DC office) in connection with some official work. At the time of leaving Ukhrul, four persons including PW22 were sitting at the back side of the gypsy however; the SDO Th. Kishan Singh was sitting on the front seat of the gypsy. On 13.02.2009, they could not reach Kasom Khullen. At the time of crossing the Naga Gate at Ukhrul, they found one black Bolero Jeep parked in the middle of the road. Thereafter, one person who was later identified as NSCN came towards their gypsy and directed them to hand over their mobile phones. The said person was carrying a small gun. On his demand, PW22 and the SDO Th. Kishan Singh handed over their mobile phones to him. Since, the said person was having gun, they could not retaliate and handed over their mobile phones. Thereafter, the said person directed PW22, Ramthing Shinglai, PW21 Kapangkhui Jajo and the deceased Y. Token Singh to sit at the back seat of the black Bolero Jeep. The deceased A. Rajan Sharma who was driving the gypsy was asked to leave the driving seat and was directed to sit at the back seat of the gypsy. There were total 4 NSCN persons including the driver of the Bolero Jeep. The person who was having a gun took over the driving seat of gypsy of the SDO.

Out of the three other NSCN persons, one person sat in gypsy and the other two came in Bolero Jeep. Thereafter, the gypsy of the SDO was driven towards Ukhrul and the Bolero jeep followed the same. The incident at the Naga Gate took about 15-20 minutes approximately. After starting from Naga Gate, the gypsy and Bolero jeep stopped at a village. After reaching this village, they came to know that it was Langdang village. Prior to this incident, they had never visited Langdang village. During the journey from Naga Gate to Langdang village, neither had they tried to talk to any NSCN person nor could he notice any firearm with them. Upon reaching Langdang village, they were taken to the house of Ex. Headman of the village and were asked to sit. The number plate and red light of the gypsy were removed by those persons. Thereafter, one of their leaders came and enquired in Tangkhul language regarding the SDO. The same was answered by PW22 and introduced Th. Kishan Singh as the SDO. The SDO was asked to come out of the house of the Headman. After about 5-10 minutes, the SDO returned to the house of the headman. Thereafter, PW22, Ramthing Shinglai and PW21 Kapangkhui Jajo were called by the said leader in the adjacent house and instructed to remain in the house of the headman and not to move here and there. Neither PW22 nor Ramthing Shinglai and Kapangkui Jajo asked the said leader as to why they had been brought to the village. When they returned to the house of the Headman, the SDO Th. Kishan Singh was standing outside the house and enquired as to what the said leader had told them. It was replied by him that he only told them to remain in the house and not to move here and there. PW22 asked the SDO, as to what the said leader asked him. The SDO replied that he had asked for an amount of Rs.20 lacs from him. When PW22 asked the SDO

regarding the identity of these people, the SDO described them as NSCN people. Thereafter, all the six persons were taken to the *jungle* and were accompanied by the two persons. The said two persons did not carry any fire arm with them. On reaching the jungle, the said two persons were met by one more person who had brought three chains with him and asked the deceased Th. Kishan Singh, the deceased Y. Token Singh and the deceased A. Rajen Sharma to be chained.

46. In the *jungle*, the SDO Th.Kishan Singh enquired about the leader of the abductors and told them to telephonically inform him that he wanted to talk to him. The SDO also told them that if the matter was pertaining to money, he would try to arrange it or if the matter was pertaining to the administration, he would request for forgiveness. The abductors tried to contact their leader by mobile phone but since there was no coverage, their leader could not come there. It was further deposed by PW22 that one of the abductors asked the SDO Th.Kishan Singh to talk to his wife on phone and to arrange Rs.20 lacs which were demanded by them. The SDO told abductors that he could not be forced to talk to his wife as his wife and his father were heart patients. The SDO also told them that in case his wife came to know about his abduction, she might faint, and the news of his abduction would reach to the neighbours who might assemble there. The SDO did not contact his wife. During their stay in jungle on 13.02.2009, PW22 informed PW21 Kapangkhui and Ramthing Shinglai that abductors were demanding Rs. 20 lakhs from the SDO. On 14.02.2009, all the six persons were again taken to the same *jungle*. There were three abductors in the *jungle* with them. The SDO again requested three abductors to call their leader so that he might negotiate or so that he would know as to why they were brought there. One of

the abductors had spoken to them in Tangkhul language and it was clear to the abductors that PW22, PW21 Kapangkhui and Ramthing Shinglai belonged to the Naga community. It was apparent to the abductors that the SDO, Token Singh and Rajen Sharma did not belong to Naga community as it was clear by their faces/features.

47. In the evening of 14.02.2009, the two abductors had called PW22, PW21 Kapangkhui and Ramthing Shinglai to the house of the headman and one of the abductors told them to sign on some papers. After signing the papers, they were told to sit in the Bolero car and were taken to Langdang village. All three of them were accompanied by the two abductors and were dropped at Khuman Lampak (Bus stand), Imphal at about 9.00 PM.
48. During the period of abduction, PW22 could not understand their conversation as he did not understand their language/dialect. It was evident from their features and appearance that the abductors belong to Tangkhul (Naga Community) as they were speaking in Nagamese language. The Nagamese language is generally spoken in the area of Nagaland. On 14.02.2009, PW22 saw all the three persons i.e. the SDO, Token Singh and Rajen Sharma alive for the last time.
49. On 15.02.2009, PW22 remained at his residence throughout the day. On 16.02.2009, at about 6:00 AM, PW22 alongwith PW21 Kapangkhui and Ramthing Shinglai went to Phungyar and reached there at about 10.30 AM or 11:00 AM and chose to stay at the house of PW21 Kapangkhui which was also native place of PW21. The following day, all three of them returned to Ukhrul. During their stay at Phungyar, they heard from the people living there that three persons had been killed and their bodies were found at Senapati. All three of them had surrendered before the Assam Rifles and were taken by the

officials to their Headquarter Mantripukhri. On 24.02.2009, their custody was handed over to Manipur Rifles (2nd MR).

50. It was deposed by PW22 that SDO had told him that the abductors had made a demand of Rs.20 lakhs from him and also mentioned these abductors as NSCN. The SDO was asked to talk to his wife on the phone and to arrange a sum of Rs.20 Lakhs. This information was passed by him to PW21 Kapangkhui Jajo and Ramthing Shinglai that the abductors were asking Rs. 20 lakhs from the SDO.
51. In his cross-examination, PW22 stated that after reaching the Village Langdang, they crossed 2-3 houses to reach the house of the headman and on their way he saw some villagers but did not see any villager around the house of the headman. At the time they reached the house of the headman, the wife of the headman was present. In reply to the question put by the learned Trial Court, it was stated by PW22 that it was apparent from the behaviour of the abductors as well as the wife of the headman that the abductors were very close to the family of the headman. PW22 further stated that there was no other reason behind their abduction except that the SDO himself told him that the abductors had made a demand of Rs.20 lacs.
52. It was further stated by PW22 that on 15.02.2009, he met Bhubaneshwar Singh who was working as a cashier at their office. The said cashier had enquired about all six of them and asked as to when they had returned. Initially, it was replied by PW22 that they all had returned but upon his enquiries, he could not resist and narrated the entire incident to him. PW22 requested the said cashier not to disclose about their abduction to anyone. It was also stated by PW22 that he did not disclose the name of any abductor to Bhubaneshwar Singh when he met him on 15.02.2009.

53. On a careful analysis of the testimonies of PW21 and PW22, we have found that PW22 Ramsing Siro had informed PW21 Kapangkhui Jajo that the SDO told him that the abductors had demanded an amount of Rs. 20 lakhs as ransom from the SDO. Furthermore, in the cross-examination of PW21, it was denied by him that he was never told by PW22 Ramsing Siro about the demand of Rs.20 lakhs from the SDO.
54. At this stage, it would be necessary to discuss the medical evidence under separate head.

Medical Evidence:

55. PW2 Dr. Kh. Pradip Kumar Singh who was posted at RIMS Hospital conducted the post-mortem examination on the bodies of the deceased persons namely Dr.Th.Kishan Singh, A. Rajen Sarma and Y. Token Singh. His detailed report was proved as Ex.PW2/A, Ex.PW2/B and Ex.PW2/C respectively. PW2 deposed in his examination-in-chief that on 17.02.2009, at 2.30 PM, he conducted the post-mortem examination on the dead body of Dr.Th.Kishan Singh. PW2 found the following external and internal injuries on the body of the deceased which read as under:

“xxx xxxx xxxx

[H]ead deformed and brain matter coming out. Ligature marks present on both wrists. Lacerated wound on frontal region over an area of 13 cm x 10 cm, red irregular margins, cavity deep situated just above eye brow. Lacerated wound on lateral angle of right eye, 3.5 cm x 2.5 cm, red irregular margin, bone deep. Lacerated wound on left upper lip, 1 cm left to midline, 2cm x 1cm, muscle deep. Abraded contusion on root of the nose, over an area of 5cm x 3cm, red. Lacerated wound on right parieto-temporal region situated 14 cm right to midline and 3cm above right ear, 6 cm x 2 cm red irregular margin, cavity deep with piece of bones and brain matter coming out. Lacerated wound on vertex just left to midline 5 cm x 6 cm, cavity deep with red irregular margins and brain matter coming out.

Beside the above findings, in the internal appearances also; it was found that the scalp haematoma on occipital region was 8cm x 9cm; all skull bones including base on skull were comminuted fractured; meninges and vessels were lacerated; both the cerebral hemispheres in the brain were also lacerated at multiple sides; vertebrae, spinal cord, mouth, tongue, pharynx, larynx and other neck structures were intact and also nasal bones, right maxilla and right orbital bones were comminuted fractured. However, thorax, abdomen, muscles, bones and joints were all intact, Stomach was empty.

(Emphasis Supplied)

56. On the same day, at 3.30 PM, PW2 Dr. Kh. Pradip Kumar Singh also conducted the post-mortem on the dead body of A. Rajen Sharma, aged 36 years and noted the following injuries:

“xxx xxx xxx

[H]ead deformed, Ligature marks present on both wrists. Abraded contusion on left side of the face over an area of 14cm x 12cm, red. Lacertaed wound on left side of parietal region of head, 4 cm from middle and 9 cm above left ear, 4 cm x 1.5 cm, cavity deep with red irregular margins. Lacerated wound on vertex, 2 cm from midline and 14 cm above left ear, 6 cm x 2 cm, cavity deep with red irregular margins.

Beside the above findings, in the internal appearance also; it was found that the scalp haematoma over occipital and both parietal region; all skull bones including base on skull were comminuted fractured; meninges and vessels were lacerated; diffused extradural, subdural and subarachnoid haemorrhages present on both hemispheres, lacerations of both cerebral hemisphere at different sites in the brain; vertebrae, spinal cord, orbital, aural and nasal cavities mouth, tongue, pharynx, larynx and other neck structures were intact. However, thorax, abdomen, muscles, bones and joints were also intact. Stomach contained semi digested food particles around 150 gm.

(Emphasis Supplied)

57. On the same day, at about 4.20 PM, PW2 Dr. Kh. Pradip Kumar Singh conducted post mortem on the dead body of Y. Token Singh, aged 38 years and noted the following injuries:

“xxx xxx xxx

[H]ead deformed, Ligature marks present on both wrists. Multiple abraded contusion on left side of forehead situated just above eye lid, 5 cm from midline, over an area of 8cm x 6cm, red; Lacerated wound on vertex, transversely placed, just on midline measuring 13 cm x 7 cm, with red irregular margins and cavity deep.

Beside the above findings, in the internal appearances also; it was found that the scalp haemotoma on occipital region; all skull bones including base on skull were comminuted fractured; meninges and vessels were lacerated; diffused extradural, subdural and subarachnoid haemorrhages present on both cerebral hemispheres, lacerations of both cerebral hemispheres; vertebrae, spinal cord, orbital, oral and nasal cavities mouth, tongue, pharynx, larynx and other neck structures were intact. However, thorax, abdomen, muscles, bones and joints were also intact. Stomach was empty.

(Emphasis Supplied)

58. PW2 Dr. Kh. Pradip Kumar opined the cause of death of all the three deceased persons as the injury to the brain resulting from the blunt force injury to the head. Time since death was opined as 12-24 hours prior to the post-mortem examination. All the injuries were opined as ante-mortem and homicidal in nature. All the injuries were opined as fresh at the time of their post-mortem examination.
59. A reading of the entire medical evidence shows that all the three deceased persons sustained injuries which read as under:
- i) Their heads were deformed;
 - ii) Ligature marks were present on both the wrists;
 - iii) Abraded contusions on their faces;

- iv) Lacerated wounds on their faces;
- v) Scalp haematoma with comminuted fractures of skull bones;
- vi) meninges and vessels were lacerated with lacerations at different sites in the brain.

60. The evidence would show that all the three deceased persons were beaten so brutally that their heads got deformed. The said finding lends support from the confession made by the appellant that all the abductees were whipped and beaten under his command. And, in a fit of anger the other co-accused of the appellant gave severe beatings to the abductees which resulted in their death. The above finding is further strengthened by the CFSL reports (Ex.PW32/A & Ex.PW36/A), as per which the spade and boulder seized by the Police Officials were found to contain human blood. In this backdrop, we are of the view that the appellant needs no leniency and deserves a stricter punishment.
61. As far as the contention urged by the counsel for the appellant that the appellant accepted moral responsibility for the incident because he was in-charge of the respective area in Manipur State and he felt bad that the incident happened in the area which was under his charge on behalf of his organisation, which created tension in the two communities is concerned, we find no force in the argument raised by Mr. Pancholi for the reason that the same is not borne out from the evidence on record, including the confessional statement.
62. There is no doubt that confession is a weak type of evidence. Applying the law laid down in ***Rabindra Kumar Pal (supra)***, we are of the view that the confession made by the appellant is corroborated with the testimonies of PW21 and PW22 who were none other than the abductees and had witnessed the entire incident. Having regard to the

nature of the offence and the manner in which it was executed, we concur with the findings of the learned Trial Court. Accordingly, we find no infirmity in the judgment of conviction as order on sentence passed by the learned Trial Court. The appeal stands dismissed.

63. Copy of this judgment be sent to the concerned Jail Superintendent for updating the jail records.

64. Trial Court record be sent back along with a copy of this judgment.

CRL.M(Bail) No. 5/2017

65. In view of the judgment passed, the bail application stands dismissed.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

NOVEMBER 20, 2019

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