

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on : 14.1.2020

Date of decision : 27.1.2020

- 1. CRA-D No. 1666-DB of 2015 (O&M)**
Prince Appellant
versus
State of Punjab ... Respondent
- 2. CRA-D No. 54-DB of 2016 (O&M)**
Sukhchain Singh alias Mintu Appellant
versus
State of Punjab ... Respondent
- 3. CRA-D No. 66-DB of 2016 (O&M)**
Kulwinder Singh alias Kinder and another Appellants
versus
State of Punjab ... Respondent
- 4. CRA-D No. 782-DB of 2016 (O&M)**
Harpreet Singh alias Happy Appellant
versus
State of Punjab ... Respondent
- 5. CRR No. 53 of 2016 (O&M)**
Sunil Kumar Petitioner
versus
State of Punjab and others ... Respondents

Coram: **Hon'ble Mr. Justice Rajiv Sharma**
Hon'ble Mr. Justice Harinder Singh Sidhu

Present Mr. J. S. Bains, Advocate, for the appellants
CRA-D No. 1666-DB of 2015 and CRA-D No. 66-DB of 2016,

Mr. Baldev Singh Budhram, Advocate, for the appellant
in CRA-D No. 54-DB of 2016,

Mr. S. S. Dhaliwal, Advocate (Legal aid counsel)
for the appellant in CRA-D No. 782-DB of 2016.

Mr. D. S. Kahlon, Advocate, for the petitioner
in CRR No. 53 of 2016.

Mr. H. S. Grewal, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. This judgment will dispose of the aforesaid appeals and revision as the same arise out of a common incident.

2. The aforesaid appeals and revision are instituted against the judgment dated 7.10.2015 and order dated 14.10.2015, rendered by learned Additional Sessions Judge, Amritsar, in Session Case No. 17302 of 2012. Appellants Sukhchain Singh alias Mintu, Kulwinder Singh alias Kinder, Sarabjit Kaur, Prince and Harpreet Singh alias Happy were charged with and tried for the offence punishable under Sections 302, 201, 364-A, 120-B, 506, 148, 149 IPC. They were convicted and sentenced as under:-

Name of the appellant	Under Section	Imprisonment
1. Harpreet Singh @ Happy	302 IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	364-A IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	120-B IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	201 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.
	506 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.
2. Kulwinder Singh @ Kinder	302 IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	364-A IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	120-B IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	201 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.
	506 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.

Name of the appellant	Under Section	Imprisonment
3. Sukhchain Singh @ Mintu	302 IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	364-A IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	120-B IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	201 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.
	506 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.
4. Sarabjit Kaur	302 IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	364-A IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	120-B IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	201 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.
	506 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.
5. Prince	302 IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	364-A IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	120-B IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	201 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.
	506 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.

All the substantive sentences were ordered to run concurrently. Accused Gagandeep Singh alias Johny being minor, his case was referred to Juvenile Justice Board.

3. The case of the prosecution in a nutshell is that complainant Sunil Kumar lodged a report to the effect that on 12.6.2012 at about 11.00 a.m. his elder son Karan @ Sushant aged about 11 years was playing in the street outside his house. He did not come back to his house. His mother Komal thought that he might have gone along with other children to their house. At about 1.45 P.M., the complainant received a call on his mobile phone no. 98550-17279 from mobile no. 81467-26215. The caller told the complainant that his son was in his custody and if he disclosed this fact to the police, he would kill his son Karan and also kill him (complainant). Thereafter, the phone was disconnected. He discussed about the call with his wife and other family members. The complainant did not inform the police out of fear. Thereafter, he went to the police. They met the police on 13.6.2012. The statement of complainant Sunil Kumar was recorded. On 16.6.2012, Sanjiv Kumar brother of complainant Sunil Kumar received a ransom call on his mobile no. 98153-18061 from mobile no. 96466-91879. A sum of ₹ 1 crore was demanded. The tower location was ascertained. On 20.06.2012, the dead-body was noticed by Sarwan Singh. Sarwan Singh informed the police. The dead-body was sent for post-mortem examination. The cause of death was fracture of Hyoid bone and thyroid cartilage, which was found ante-mortem in nature. Investigation was completed and challan was put up after completion of all the codal formalities.

4. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section

313 Cr.P.C. They denied the case of the prosecution. They were convicted and sentenced, as noticed above. They have filed appeals against the judgment and order of the learned Additional Sessions Judge, Amritsar, whereas complainant Sunil Kumar father of the deceased has filed CRR No. 53 of 2016 for awarding death sentence to the accused.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned trial Court, whereas learned counsel for the complainant prays for awarding death sentence to the appellants.

6. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

7. PW1 Sunil Kumar deposed that on 12.6.2012 at about 11.00 A.M. his son Karan went to the street for playing cricket. He did not come back. He received a mobile call on his mobile no. 98154 again said 98550-17279 at about 1.45 P.M. from mobile no. 81467-26215 that his son Karan was in his custody. The caller threatened him not to disclose anybody about it, otherwise he would kill his child. He informed his wife. He also informed other persons in the locality. They did not receive any call even on the next day. He reported the matter to the police vide Ex.PA. On 16.6.2012 at about 1.15 P.M., one mobile call was received by his brother Sanjiv Kumar on his mobile no. 98153-18601 from another mobile number. The person demanded ransom. He requested that person that he was a poor auto rickshaw driver and could not pay a sum of ₹ 1 crore. The phone was disconnected. Another call was received at about 5.15 P.M. The dead-body

was recovered from the canal by the police. He identified chain (Ex.MO1), bat (Ex.MO2) and parcel of shirt (Ex.MO3). In his cross-examination, he has admitted that he had not lodged any report on 12.6.2012. He lodged the report on 13.6.2012. He had not named any person in his statement, Ex.PA. He had not stated to the police in his statement, Ex.PA that his brother Sanjiv Kumar had received a call on his mobile from another mobile number. He had also not recorded in Ex.PA that the person who had called his brother had demanded a sum of ₹ 1 crore.

8. PW2 Sanjiv Kumar deposed that on 12.6.2012, Karan son of his brother Sunil Kumar went missing. On 16.6.2012 at about 1.20 P.M., he received a call on his mobile no. 98153-18601 from a mobile no. 96466-91879 from an unidentified person. He gave mobile phone to his brother. Unidentified person asked for a ransom of ₹ 1 crore. He again received a call in the evening. On 23.6.2012, he was going towards Aman Avenue. When he reached at gate Hakiman Chowk, Manjit Singh SHO along with police party met him. Police party took him with them. The police party went to the house of Gagandeep Singh alias Johny. Johny got recovered one silver chain along with locket. Thereafter, the police party went to the house of accused Sarabjit Kaur. She got recovered one cream coloured *chunni* and red golden colour pillow from backside of almirah, which were taken into possession. Thereafter, the police party went to Bohru *Pull*. Accused Kulwinder Singh alias Kinder got recovered one shirt purple colour on which *Satyam Shivam* was printed in Hindi. Accused Prince was arrested. He also made a disclosure statement. Accused Prince got recovered mobile phone from the disclosed place from his house. It was taken into possession vide memo Ex.PW2/F. In his cross-examination, he admitted that no

independent witness was joined by IO at the time of alleged arrest of accused Prince. He also admitted that house of accused Prince was situated in thickly populated area and many people were present in the locality at the time of alleged recovery. There was no ownership proof of mobile attached with the judicial file. He also admitted that the house of accused Gagandeep Singh was situated in *abadi* and surrounded by so many houses. No witness from the public was joined at the time of recovery. The chain was recovered from the *almirah*. He also admitted that accused Sarabjit Kaur was married and has daughters and one son. She was living in joint family with his father-in-law and mother-in-law and sister-in-law. He also admitted that the house of accused Sarabjit Kaur was surrounded with other houses. He also admitted that accused Kulwinder Singh and Sarabjit Kaur were brother and sister. No respectable person was joined at the time of alleged recovery. When they entered in the house of accused Sarabjit Kaur, the main gate was opened.

9. PW3 Gauri Mehra deposed that he was an electrician. On 16.6.2012, at about 1/1.30 P.M., when he stopped his scooter in *adda* Pandori Waraich for taking water, two boys were talking on a mobile. They were demanding ₹ 1 crore from the other person with whom they were talking. They were Harpreet Singh and Prince. In his cross-examination, he admitted that he had not mentioned the name of Prince in his statement recorded under Section 161 Cr.P.C.

10. PW4 SI Karanjit Singh deposed that on 22.6.2012 he was posted at PS C-Division, Amritsar. On that day, on the instructions of SI Manjit Singh he along with Sunil Kumar @ Sony and Tarsem Kumar went to cremation ground, Patti. He took out the ashes and bones from the

cremation place and taken into possession after preparing the parcel vide recovery memo. Ex.PB.

11. PW5 Vijay Kumar deposed that on 12.6.2012 at about 9.00 P.M. he was going towards Chabal Road. When he reached near Fatehpur, he met Harpreet Singh @ Happy, Kulwinder Singh @ Kinder, Gagandeep Singh @ Johny and Sukhchain Singh @ Mintu. A young boy was sitting between Gagandeep Singh and Kulwinder Singh on their motorcycle. He asked from the accused about that young boy and where they were taking that boy. Accused told him that he was their son and was sick and were taking him for medicine. Thereafter, he went from there and later on reached his house. On the next day, he went out of station for his work and reached back in night. On his return, he came to know that on 12.6.2012 a boy Karan son of Sunil Kumar of their mohalla was kidnapped and still was untraceable. He was sure that accused Gagandeep Singh and Kulwinder Singh along with Harpreet Singh and Sukhchain Singh had kidnapped Karan as he had seen the accused with Sushant @ Karan on 12.6.2012. In his cross-examination, he admitted that the complainant was his nephew. He knew regarding kidnapping of Sushant on 13.6.2012 at 9.30 P.M. He also admitted that he he had not given any information regarding kidnapping by the accused to the police from 13.6.2012 to 21.6.2012. The conversation with the accused on 12.6.2012 for about 8 to 10 minutes. He also admitted that accused Sarabjit Kaur was not present with the accused at that time when the accused met him. He also admitted in his cross-examination that he did not know the accused by their names. He also admitted that accused Harpreet Singh and Sukhchain Singh were not residing in his locality.

12. PW6 Tarsem Kumar deposed that he was auto rickshaw driver.

On 12.6.2012 at about 11/11.30 A.M., he was standing ahead of chowk Gate Hakima. He saw Prince on a motorcycle along with Karan @ Sushant. They were going towards Gate Khazana. He came back to his house on 21.6.2012 and came to know about the kidnapping of Karan. He narrated the whole occurrence which he witnessed to IO. In his cross-examination, he admitted that he and complainant Sunil Kumar were residing in the same locality. He was his relative. He recorded his statement to the police at Police Station C-Division, Amritsar. Except Prince he did not know the other accused earlier. He did not send any written complaint to the police. He admitted that he heard from the other people of the locality about the occurrence. He did not go to the police station on the same date. He also admitted that house of Sunil Kumar was nearer to his house. He did not make any statement before the police after 21.6.2012.

13. PW7 ASI Parduman Kumar deposed that on 21.6.2012 he was incharge of Malkhana, Police Station C-Division, Amritsar. On that day, Inspector Manjit Singh deposited four mobiles of make of different companies. The case property was kept in Malkhana. On 22.6.2012, SI Karanjit Singh deposited one sealed parcel. On 23.6.2012, Inspector Manjit Singh deposited two sealed parcels, an auto rickshaw and mobile phone which were kept in Malkhana and entry was made in record. On 26.6.2012, Inspector Manjit Singh deposited one motorcycle, which was kept in Malkhana. On 9.7.2012, Sunil Kumar and Komal wife of Sunil Kumar along with councilor Ajit Singh Bhatia came to Inspector Manjit Singh. In his cross-examination, he admitted that he did not check as to in whose name the mobiles were registered or the sims were purchased. One Auto

rickshaw was also deposited but there was no proof of ownership.

14. PW8 SI Karanjit Singh deposed that the investigation of the case was entrusted to him. He went to cremation ground Patti. He collected remains of cremation of dead-body including ash and bones from the spot. These were taken into possession. He went to the place of recovery of dead-body and prepared the site plan. Statements of the witnesses were recorded.

15. PW9 Sawinder Kaur deposed that ownership of the motorcycle make Hero Honda Splendor was in the name of Gurpreet Singh son of Dalbir Singh.

16. PW10 Inspector Manjit Singh deposed that he was posted as SHO at Police Station C-Division on 13.6.2012. He was present at chowk Bhagtan wala. Sunil Kumar and his wife came. Sunil Kumar got recorded his statement, Ex.PA. FIR, Ex.PW10/C was recorded. The complainant received a call regarding kidnapping of his son on his mobile phone no. 98550-17279 from mobile no. 81467-26215. The phone was found to be registered in the name of one Ram Kumar, House No. 99, Village Nagoke, District Tarn Taran. The said address was found to be fake. Thereafter, separate FIR was registered against the seller at Police Station, Jandiala. He also called the call details of the mobile numbers and their locations. On verification of the call details, the location of mobile no. 81467-26215 was in the area of Khalsa College, Amritsar, at about 1.45 P.M. On 16.6.2012, Sanjiv Kumar brother of the complainant received a ransom call on his mobile phone no. 98153-18061 from mobile no. 96466-91879 for demand of ₹ 1 crore. He obtained the call details of the numbers. On his verification of call details, the location of the call centre was of village Pandori Waraich. He found that the original buck of sim no. 81467-26215 was removed and

new sim bearing registration no. 96466-91879 was activated on the same mobile set in which the sim no. 81467-26215 was operated and IEMI number was the same. On his further verification, the sim no. 96466-91879 was obtained by the caller from Bittu Telecoms Fatahpur by furnishing fake documents. A separate FIR was also registered against him. He came to know that the said mobile set was stolen by one Gholi son of Jaspal resident of Anngarh. He sold out the said mobile set to one Happy accused, who has given this mobile set to his brother-in-law namely Prince. The said mobile phone was further given by Prince to his brother-in-law namely Sukhchain Singh. A separate FIR was registered in Police Station, Gate Hakima. On 21.6.2012, Vijay Kumar and Tarsem Singh PWs were joined in the investigation. Their statements were recorded under Section 161 Cr.P.C. on the basis of which offences under Section 302/201 IPC were added. A diary was recovered from the possession of Sukhchain Singh. These numbers were mentioned in the diary. He took into possession the diary. On search of accused Sukhchain Singh, one mobile phone make Soni Ericson double sim along with sim no. 98762-27345 and 96530-61033 was recovered. These were taken into possession. He arrested accused Sukhchain Singh and Harpreet Singh. Accused Kulwinder Singh and Gagandeep Singh were also arrested. On the personal search of accused Kulwinder Singh one mobile phone of Beetal of black colour, double sim containing sim no. 98140-79604 and 98727-26481 bearing separate dual IMEI numbers and one diary were recovered. These were taken into possession. Accused Sarabjit Kaur was also arrested. On 23.6.2012 accused Kulwinder Singh, Gagandeep Singh and Sarabjit Kaur were interrogated. Accused Kulwinder Singh revealed that he had kept concealed the shirt of deceased Karan @ Sushant

under the bushes in the area of bank of canal Bohru. Similarly, accused Gagandeep Singh disclosed that he took out a silver chain of deceased Karan at the time of occurrence. It was lying in an almirah in his residence. Accused Sarabjit Kaur also made disclosure statement that she had kept concealed one comfort and one *chunni* used in the commission of crime behind the almirah lying at her residence. Disclosure statements of accused Kulwinder Singh, Gagandeep Singh and Sarabjit Kaur are Ex.PW10/W, Ex.PW10/X and Ex.PW10/Y. Accused Gagandeep Singh got recovered silver chain from his residence. Accused Sarabjit Kaur got recovered *chunni* from her residence. Accused Kulwinder Singh got recovered one shirt of deceased of white and purple colour. Accused Prince was also arrested. Prince revealed that he actively participated in the commission of offence. Auto rickshaw was taken into possession. Accused Harpreet Singh and Sukhchain Singh were interrogated on 24.6.2012. Accused Harpreet Singh revealed that he had kept concealed a cricket bat of deceased at his residence. Accused Sukhchain Singh revealed that he had kept concealed one voile and one syringe used in the commission of offence. Accused Harpreet Singh got recovered cricket bat and accused Sukhchain Singh got recovered one voile and one syringe. Rough site plan was prepared. Accused Harpreet Singh was also interrogated. He made disclosure statement, Ex.PW10/11, on the basis of which motorcycle was got recovered. In his cross-examination, he admitted that there was no mention of any number of auto rickshaw in the FIR. He also admitted that the alleged mobile was stolen mobile. Sahib Singh was found to be the owner of the mobile. He had lodged FIR about the theft of that mobile. He also admitted that the house of Sarabjit Kaur was situated in residential area. No

respectable person of the locality joined the police party at the time when the raid was conducted. Sarabjit Kaur was married and she had children. He also admitted that recovery memo did not bear the signature of Sarabjit Kaur. Recovery memo was not attested by lady Head Constable Paramjit Kaur. Similarly, memo of disclosure statement , Ex.PW10/22 was also not attested by lady Head Constable Paramjit Kaur. He also admitted that place of recovery of shirt, got recovered by Kulwinder Singh, was thoroughfare but recovery was got effected from the bushes. He did not join any independent witness at the time of going to the house of accused Kulwinder Singh.

17. PW12 Sahib Singh identified his mobile phone, Ex.MO16. He deposed that it was stolen during intervening night of 8.6.2012 from his house by his uncle Gholi. He identified the mobile phone in the police station. In his cross-examination, he admitted that he had not brought any document regarding ownership of mobile phone, Ex.MO16. He had not produced any bill regarding purchase of said mobile phone. He did not produce the bill even before the police.

18. PW13 Dr. Ashish Gupta had conducted the post-mortem examination. According to him, it was a dead-body of young male child in advanced stage of putrefaction. Bones of the body were exposed and soft tissues were missing on face, neck region and upper limbs. Skin was peeling off. Nails and hair were loose. The cause of death was due to fracture of Hyoid bone and thyroid cartilage. It was ante-mortem and sufficient to cause death in ordinary course of nature. The probable time between injury and death was about within few minutes and the probable time between death and post-mortem examination was about 5 to 10 days. The police had

sought his opinion by moving an application whether the death had caused due to strangulation by wrapping a *chunni* around the neck of the child and pressing hard. He made endorsement that as per post-mortem findings, there was fracture of Hyoid bone and thyroid cartilage, which injury was consistent with violent compression of neck. He also deposed that possibility of strangulation of deceased by means of *chunni* could not be ruled out. In his cross-examination he admitted that he could not say that the dead-body at the time of post-mortem examination was identifiable or not.

19. PW3 Gauri Mehra has deposed that on 16.6.2012, at about 1/1.30 P.M., he had gone to Majitha for his work. He stopped his scooter in *adda* Pandori Waraich for taking water. He saw two boys talking on a mobile. They were demanding ₹ 1 crore from the other person with whom they were talking. He could identify those persons. He identified those persons as Harpreet Singh and Prince in the Court. However, in his cross-examination he admitted that the house of PW1 Sunil Kumar (complainant) was near to his house. He was sitting with PW1 Sunil Kumar before recording of his evidence. He also admitted that he had not mentioned the name of Prince in his statement recorded under Section 161 Cr.P.C. It is not believable that the accused would demand ₹ 1 crore on mobile phone, which was audible to PW3 Gauri Mehra. Nobody would ask ransom loudly, which could be heard by the people nearby. Though PW3 had stated that he was an electrician. He had not produced any proof with regard to his business of electrician. He was not holder of diploma in electrician trade. He had also not informed the police on 16.6.2012 regarding the occurrence. The conduct of PW3 Gauri Mehra was unusual. If he had heard the person demanding ransom, he would have immediately informed the police.

20. PW5 Vijay Kumar testified that on 12.6.2012 at about 9.00 P.M. he met Harpreet Singh @ Happy, Kulwinder Singh @ Kinder, Gagandeep Singh @ Johny and Sukhchain Singh @ Mintu. A young boy was sitting between Gagandeep Singh and Kulwinder Singh on their motorcycle. He enquired about that young boy. They told that he was their son and was sick. He was being taken for treatment. He came to his house. On the next day, he went out of station. On his return, he came to know that on 12.6.2012 a boy was kidnapped and was untraceable. He had admitted in his cross-examination that the complainant was his nephew. He had also admitted that he had not given information of kidnapping by the accused to the police on 13.6.2012 to 21.6.2012. His conduct was unusual. In case he had seen the accused Harpreet Singh @ Happy, Kulwinder Singh @ Kinder, Gagandeep Singh @ Johny and Sukhchain Singh @ Mintu taking away Karan, he would have definitely told his nephew PW1 Sunil on the same day.

21. PW6 Tarsem Kumar has given new version to the incident. According to him, he was an auto rickshaw driver. On 12.6.2012 at about 11/11.30 A.M., he was standing ahead of chowk Gate Hakima. He saw Prince on a motorcycle. Karan @ Sushant was sitting on the motorcycle as a pillion rider. They were going towards Gate Khazana. He came back to his house on 21.6.2012 and came to know about the kidnapping of Karan. He narrated the whole occurrence to the IO. He admitted in his cross-examination that he and PW1 Sunil Kumar were residing in the same locality. PW1 Sunil Kumar was his relative. He did not send any written complaint to the police before recording of his statement. He did not go to the police station on the same date. He also admitted that house of PW1

Sunil Kumar was nearer to his house.

22. In case PW5 Vijay Kumar and PW6 Tarsem Kumar have last seen the accused taking away Karan, they should have contacted PW1 Sunil Kumar. Their conduct is unusual. PW5 Vijay Kumar had seen Harpreet Singh @ Happy, Kulwinder Singh @ Kinder, Gagandeep Singh @ Johny and Sukhchain Singh @ Mintu taking away Karan on 12.6.2012 at about 9.00 P.M, whereas PW6 Tarsem Kumar had seen only accused Prince taking away Karan on 12.6.2012 at about 11/11.30 A.M. The dead-body was recovered on 20.6.2012 as per inquest report. “*The theory of last seen together*” is applicable when the time of last seen together and death is short.

23. Their Lordships of Hon'ble the Supreme Court in S.K. Yusuf vs State of West Bengal 2011 (11) Supreme Court Cases 754, have held that theory of 'last seen together' comes into play, where time gap between point of time when deceased was last seen alive with accused and when deceased was found dead, is so small that possibility of any person other than accused being author of crime becomes impossible. Para 21 of the judgment is reproduced as under:-

“21. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.”

24. Their Lordships of Hon'ble the Supreme Court in Nizam and another vs State of Rajasthan 2016 (1) Supreme Court Cases 550, have held that “*last seen theory*” is important link in chain of circumstances that would point towards guilt of accused with some certainty. Such theory

permits court to shift burden of proof to accused and he must then offer a reasonable explanation as to cause of death of deceased. However, it is not prudent to base conviction solely on “*last seen together*”. Such theory should be applied, taking into consideration case of prosecution in its entirety and keeping in mind circumstances that precede and follow the point of being so last seen. Where time gap is long, it would be unsafe to base conviction on “*last seen together*”. It is safer to look for corroboration from other circumstances and evidence adduced by prosecution. Paras 14 to 18 of the judgment are extracted below:-

“14. The Courts below convicted the appellants on the evidence of PWs 1 and 2 that deceased was last seen alive with the appellants on 23.01.2001. Undoubtedly, “last seen theory” is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The “last seen theory” holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well-settled by this Court that it is not prudent to base the conviction solely on “last seen theory”. “Last seen theory” should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.

15. Elaborating the principle of “last seen alive” in *State of Rajasthan vs. Kashi Ram* (2006) 12 SCC 254, this Court held as under:-

“23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last

seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in *Naina Mohd., Re.* (AIR 1960 Mad 218)”

The above judgment was relied upon and reiterated in *Kiriti Pal vs. State of West Bengal*, (2015) 5 Scale 319.

16. In the light of the above, it is to be seen whether in the facts and circumstances of this case, whether the courts below were right in invoking the “last seen theory.” From the evidence discussed above, deceased-Manoj allegedly left in the truck DL-1GA-5943 on 23.01.2001. The body of deceased-Manoj was recovered on 26.01.2001. The prosecution has contended the accused persons were last seen with the deceased but the accused have not offered any plausible, cogent explanation as to what has happened to Manoj. Be it noted, that only if the prosecution has succeeded in

proving the facts by definite evidence that the deceased was last seen alive in the company of the accused, a reasonable inference could be drawn against the accused and then only onus can be shifted on the accused under Section 106 of the Evidence Act.

17. During their questioning under Section 313 Cr.P.C., the appellant-accused denied Manoj having travelled in their truck No. DL-1GA-5943. As noticed earlier, body of Manoj was recovered only on 26.01.2001 after three days. The gap between the time when Manoj is alleged to have left in the truck No.DL-1GA-5943 and the recovery of the body is not so small, to draw an inference against the appellants. At this juncture, yet another aspect emerging from the evidence needs to be noted. From the statement made by Shahzad Khan (PW-4) the internal organ (penis) of the deceased was tied with rope and blood was oozing out from his nostrils. Maniya village, the place where the body of Manoj was recovered is alleged to be a notable place for prostitution where people from different areas come for enjoyment.

18. In view of the time gap between Manoj left in the truck and the recovery of the body and also the place and circumstances in which the body was recovered, possibility of others intervening cannot be ruled out. In the absence of definite evidence that appellants and deceased were last seen together and when the time gap is long, it would be dangerous to come to the conclusion that the appellants are responsible for the murder of Manoj and are guilty of committing murder of Manoj. Where time gap is long it would be unsafe to base the conviction on the "last seen theory"; it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution. From the facts and evidence, we find no other corroborative piece of

evidence corroborating the last seen theory.”

25. Their Lordships of Hon'ble the Supreme Court in Anjan Kumar Sarma and others vs State of Assam 2017 (14) Supreme Court Cases 359, have held that only circumstance of “*last seen together*” and absence of satisfactory explanation, cannot be made basis of conviction. Paras 19, 20 and 23 to 25 of the judgment are extracted as under:-

“19. The circumstance of last seen together cannot by itself form the basis of holding the accused guilty of the offence. In Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715, this court held that:

“12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

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15. The theory of last seen—the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in Madho Singh v. State of Rajasthan [(2010) 15 SCC 588]”

20. In Arjun Marik v. State of Bihar, 1994 Supp (2)

SCC 372 this court held that:

“31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.”

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23. It is clear from the above that in a case where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction. The other judgments on this point that are cited by Mr. Venkataramani do not take a different view and, thus, need not be adverted to. He also relied upon the judgment of this Court in State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 in support of his submission that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the

intervening period. It was held in the above judgment as under:

“34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such

accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.”

24. As we have held that the other circumstances relied upon by the prosecution are not proved and that the circumstances of last seen together along with the absence of satisfactory explanation are not sufficient for convicting the accused. Therefore the findings recorded in the above judgment are not applicable to the facts of this case.

25. Due to the lack of chain of circumstances which lead to the only hypothesis of guilt against the accused, we set aside the judgment of the High Court and acquit the Appellants of the charges of Section 302, 201 read with 34 IPC. The Appellants are directed to be set at liberty forthwith, if not required in any other case.”

26. In Anjan Kumar Sarma's case (supra), their Lordships have also held that mere failure of accused to offer any explanation in his statement under Section 313 Cr.P.C. alone is not sufficient to establish charge against the accused. Paras 21 and 25 of the judgment are extracted as under:-

21. This Court in Bharat v. State of M.P., (2003) 3 SCC 106, held that the failure of the accused to offer any explanation in his statement under Section 313, Cr.P.C alone was not sufficient to establish the charge against the accused. In the facts of the present case, the High Court committed an error in holding that in the absence of any satisfactory explanation by the accused the presumption of guilt of the Accused stood un-rebutted and thus the Appellants were liable to be convicted.

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25. Due to the lack of chain of circumstances which lead to the only hypothesis of guilt against the accused, we set aside the judgment of the High Court and acquit the Appellants of the charges of Section 302, 201 read with 34 IPC. The Appellants are directed to be set at liberty forthwith, if not required in any other case.”

27. Their Lordships of Hon'ble the Supreme Court in Baiju Kumar Soni and another vs State of Jharkhand 2019 (7) Supreme Court Cases 773, in a case of kidnapping and murder have held that, in a case based on circumstantial evidence, every circumstance must be fully proved and all the circumstances must form a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused. Paras 15 and 16 of the judgment are extracted as under:-

“15. The law on the point is very well settled that in a case based on circumstantial evidence, every circumstance must be fully proved and all the circumstances must form a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused. It was stated by this Court in Sharad Birdhichand Sarda v. State of Maharashtra :

“153. A close analysis of this decision would

show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793, where the following observations were made:

"19. Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

16. In Nizam and Another v. State of Rajasthan, (2016) 1 SCC 550, the law on the point was reiterated while acquitting the accused of the charges under Section 302 read with 201 IPC. Paragraphs 9 and 10 of the decision were:-

“9. The principle of circumstantial evidence has been reiterated by this Court in a plethora of cases. In Bodhraj v. State of J&K (2002) 8 SCC 45, wherein this Court quoted (2016) 1 SCC 550 a number of judgments and held as under: (SCC pp. 55-56, paras 10-11)

“10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan (1977) 2 SCC 99, Eradu v. State of Hyderabad AIR 1956 SC 316, Earabhadrapa v. State of Karnataka (1983) 2 SCC 330, State of U.P. v. Sukhbasi (1985) Supp SCC 79, Balwinder Singh v. State of Punjab (1987) 1 SCC 1 and Ashok Kumar Chatterjee v. State of M.P. (1989) Supp (1) SCC 560). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab AIR (1954) SC 621, it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the

circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

11. We may also make a reference to a decision of this Court in C. Chenga Reddy v. State of A.P. (1996) 10 SCC 193, wherein it has been observed thus: (SCC pp. 206-07, para 21)

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

10. In Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681, this Court held as under: (SCC p. 689, para 12)

“12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that

there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.”

The same principles were reiterated in Sunil Clifford Daniel v. State of Punjab (2012) 11 SCC 205, Sampath Kumar v. Inspector of Police (2012) 4 SCC 124 and Mohd. Arif v. State (NCT of Delhi) (2011) 13 SCC 621 and a number of other decisions.”

28. The case of the prosecution is that the accused asked for ransom on mobile phone. Firstly, the phone call was made to PW1 Sunil Kumar and thereafter to his brother PW2 Sanjiv Kumar. Though the police has taken the call details but these were not exhibited. These were only marked as Mark-A to Mark-C. It was necessary for the prosecution to prove the call details as per Section 65 of the Evidence Act. Ownership of the mobile has also not been proved in accordance with law.

29. According to PW12 Sahib Singh, his mobile phone was stolen during intervening night of 8.6.2012 from his house by his uncle Gholi. He along with Dilbagh Singh, Municipal Councilor had gone to Police Station C-Division, Amritsar. He identified his mobile phone. In his cross-examination, he admitted that he had not brought any document regarding ownership of mobile phone, Ex.MO16. He had not produced any bill regarding purchase of said mobile phone. He did not produce the bill even before the police.

30. PW10 Inspector Manjit Singh had admitted that the accused were arrested from thickly populated localities and the recoveries also were made from them but no independent witness was associated at the time of

their arrest as well as when the recoveries were made. According to him, some entries were made in the diaries recovered from the accused but he has not got compared the hand writings in the diaries with their admitted hand writings.

31. Accordingly, the appeals are allowed. The appellants are acquitted of the charges framed against them by giving them benefit of doubt. All the appellants, except appellant Sarabjit Kaur, are in jail and they are ordered to be set at liberty forthwith if not required in any other case. Since the appellants are acquitted, the criminal revision filed by the complainant is dismissed.

(Rajiv Sharma)
Judge

27.1.2020
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No