

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 363 of 2014**

- Kadar Beg S/o Guljar Beg Aged About 56 Years R/o. Police Chowki Anjora, P.S. Pulgaon, Civil And Rev. Distt. Durg, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer, P.S. Pulgaon, Civil And Rev. Distt. Durg, Chhattisgarh

---- Respondent

For Appellant	:	Mr. Vivek Shrivastava, Advocate.
For State	:	Mr. Ravish Verma, G.A.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment On Board****Per Manindra Mohan Shrivastava, J.****16/06/2021**

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 25.01.2014 passed by the learned Additional Sessions Judge (F.T.C.) Durg, C.G. in Sessions Trial No.21 of 2010, by which, the appellant has been held guilty of commission of offence and sentenced as described below:-

Conviction	Sentence
Under Section 364(a) of IPC	Life imprisonment and fine amount of Rs.20,000/-, and in default of payment of fine amount, further R.I. for 2 years.
Under Section 302 of IPC	Life imprisonment and fine amount of Rs.20,000/-, and in default of payment of fine amount, further R.I. for 2 years.
Under Section 201 of IPC	R.I. for 7 years and fine amount of Rs.10,000/- and in default of payment of fine amount, further R.I. for one year.

2. As per prosecution story, one child namely Gopikishan son of Dileshwar Deshmukh (PW-5) eloped while going to school on 26.11.2009. It is said that while attempts were being made to trace the child, a phone call was received in the mobile phone of Moh. Ismaile (PW-9) and the caller talked to Dileshwar Deshmukh, father of the kidnapped child that the father should come with arrangement of Rs.2,000/- near Mahmara Ghat. Further story of the prosecution is that upon receipt of this information, the matter was informed to the police and thereafter, police along with father of the kidnapped child and other villagers reached Mahmara Ghat where present appellant was found. He demanded money stating that he has kept child with him and at that stage, he was apprehended and taken into custody by police and he was brought to police station where memorandum was recorded, in which, he disclosed that in order to recover money from the father of the kidnapped child Gopikishan, he had kidnapped the child and thereafter, child was kept in the house, tied up, assaulted, murdered and then buried. Further case of the prosecution is that on the basis of memorandum, the police team along with witnesses and villagers went to the house of the appellant and inside the house, dead body was found and exhumed. Along with dead body, other articles like school dress and other articles used for commission of offence were also seized. Along with present appellant/accused two other accused were also put to trial. The prosecution, in order to prove its case, examined as many as 14 number of witnesses, thereafter, present appellant and other co-accused were examined under Section 313 Cr.P.C. They denied having committed offence and stated that they have been falsely implicated. The appellant stated that he is driver by occupation and does not own any house in village. No defence witness was examined. Learned trial Court relied upon the evidence led by the prosecution, particularly evidence with regard to receipt of phone call, meeting of the father of the deceased Dileshwar Deshmukh with accused near Mahmara Ghat and recovery of dead body of Gopikishan in the house of the appellant, convicted the appellant.
3. Assailing the legality and validity of the impugned judgment of conviction and order of sentence learned counsel for the appellant would argue that the mobile phone from which the call is said to have been given

and the mobile phone in which the call is said to have been received were not seized by the prosecution. Only on the basis that the phone call was given by the appellant, the appellant was involved. The person whose mobile phone is said to have been used for establishing communication with the father of the deceased namely Moh. Ismaile (PW-9) has not supported prosecution case because he has said that he did not receive the call and who gave call, he does not know. Next submission is that prosecution came out with the evidence of two child witnesses Omkar (PW-4) and Mantu @ Chumendra Deshmukh (PW-6) to prove that while the children were playing, the appellant had come and he kidnapped the child Gopikishan. These two child witnesses have not supported the case of the prosecution with regard to kidnapping of the deceased child. Further submission is that the witnesses of memorandum particularly Manoj Kumar Deshmukh (PW-1) and Khemlal Deshmukh (PW-3) have not supported the prosecution story with regard to recording of memorandum on the basis of which seizure is alleged to have been made. The prosecution has come out with the evidence of concocted witness Balam Chakradhari (PW-2), who has deposed against the appellant that had an old enmity with the father of the appellant, as stated in Section 313 Cr.P.C. Next submission of learned counsel for the appellant is that the conviction is founded mainly on the incriminating circumstances of recovery of dead body from the house but there is no clinching evidence led by the prosecution that the house was owned, registered and belonged to the appellant and at the time of commission of offence, it was in exclusive and actual use of the appellant. He would submit that Savant Ram Deshmukh (PW-7) has clearly stated that no report has been brought before the Court that house belonged to the appellant, therefore, the oral evidence of all the witnesses that the house, wherefrom dead body was recovered, was that of the appellant becomes highly doubtful and therefore, the entire case of the prosecution becomes highly doubtful with regard to involvement of the present appellant in the alleged commission of offence.

4. Learned State Counsel supporting the judgment of conviction and order of sentence would argue that the prosecution has not only established receipt of call of the appellant by the father of the deceased demanding ransom, but also clinching evidence of the appellant found at Mahmara Ghat and his meeting with the father of the deceased Dileshwar Deshmukh (PW-5) in the presence of many other villagers and that the appellant demanded money

stating that he had kidnapped the child. Learned State Counsel would further submit that as far as recovery of dead body is concerned, it was not only made on the basis of memorandum of the appellant but the house which was residence of appellant as stated by all the witnesses, which part remained uncontroverted. He would submit that even if there is some doubt with regard to testimony of memorandum of Manoj Kumar Deshmukh (PW-1) and Khemlal Deshmukh (PW-3), the evidence of K.C. Das (PW-14) with regard to recording of memorandum is otherwise corroborated from evidence of Balam Chakradhari (PW-2) and Rajeshwar Yadav (PW-10) as also Manoj Kumar Deshmukh (PW-1), therefore, there is no doubt with regard to recording of memorandum. As the death of the deceased is clearly homicidal in nature and dead body was exhumed from the house of the appellant, conviction does not warrant any interference.

5. We have heard learned counsel for the parties and gone through the records of the impugned judgment.
6. At the first place, we find that though the prosecution had come out with the case that the appellant had kidnapped the child when he was playing with other children and for which purpose, the prosecution has also examined two child witnesses Omkar (PW-4) and Mantu @ Chumendra Deshmukh (PW-6), but these two witnesses have turned hostile and not supported prosecution version that in their presence, the appellant had come and had taken Gopikishan along with him. All that has been stated is that when children were playing, the appellant had come near the shop of Natwar and when he called him, these child witnesses ran away but then he says that at that spot Gopikishan was not present. All that can be said that while children were playing, the appellant was seen near the shop of Natwar.
7. Dileshwar Deshmukh (PW-5) father of the deceased has deposed that when he came back to the house in the evening at 6:00 p.m. he was told by his wife- Pemin Bai that Gopikishan went for school in the morning at 10:00 a.m. but has not returned whereafter he searched out but could not find his son and therefore a report was lodged in the night in Anjora outpost. Next day on 27.11.2009 in the morning another villager Moh. Ismaile, who is relative of appellant, had received a call in his mobile phone by someone saying that he was brother-in-law of Bharat and he may be connected with Bharat. On mobile

phone of Ismaile, the caller told Bharat that he wants to talk to the father and mother of Gopikishan and then Dileshwar was called in the shop and talked to the caller in the mobile. He has further deposed that father told on the phone that Gopikishan is with him and he should come to Mahmara Dam with arrangement of Rs.2,000/-. In the cross-examination, it has been elicited that call was not made to him but the call was received by Bharat and he had talked to the caller on that phone.

Moh. Ismaile (PW-9) in his examination-in-chief has said that someone had called him in his mobile phone which he came to know when he returned in the house as was informed to him by family members and except that, he does not know anything. He was declined hostile.

Rajeshwar Yadav (PW-10) has deposed that on 27.11.2009 when Kadar Beg called on the mobile phone of the Ismaile he asked Ismaile to connect Bharat and then Ismaile arranged call between caller and Bharat. This witness says that he was present at that time when appellant was talking on phone. He further states that Kadar Beg, the appellant, asked Bharat to get connected with father or mother of Gopikishan and then Bharat got Pemin Bai connected to Kadar and he has further stated that when Kadar was talking to mother- Pemin Bai, mobile was kept on speaker mode and therefore everyone present there could hear conversation between Kadar and Pemin Bai. He has deposed that in the said conversation, appellant asked mother- Pemin Bai to bring Rs.2,000/- at Mahmara Ghat then he will return her child. In the cross-examination, he affirmed that he heard conversation between mother- Pemin Bai and Kadar.

8. The aforesaid evidence brought by the prosecution proves one thing that a call was received in the mobile phone of Ismaile who disclosed that he is the brother-in-law of Bharat and wanted to talk to Bharat thereafter he talked to Bharat and then on his request, mother of Gopikishan, Pemin Bai was contacted. Further, the evidence of Rajeshwar Yadav (PW-10) regarding hearing the conversation relating to demand of ransom of Rs.2,000/- for releasing Gopikishan is also proved.

However, in the absence of seizure of mobile phone on which call was made on the mobile phone of Ismaile, from the possession of the appellant, it

has been argued that whether call was made by Kadar Beg- the appellant is doubtful. Certainly, if this alone would have been the material with the prosecution, there could be some doubt in the prosecution case. However, clinching evidence has been brought on record by the witnesses of the prosecution including father of deceased Gopikishan that when he along with police and villagers went to Mahmara Ghat, the appellant was present and he demanded money and then police reached at the spot. In this regard, Dileshwar Deshmukh (PW-5) father of Gopikishan clearly deposed that when he reached Mahmara Ghat, as asked by the appellant, he was enquired whether money was brought or not and ensured that boy was safe. At that time, this witness insisted to first bring the kidnapped child and then only money would be given and at that stage, Kadar Beg was apprehended by the police and taken to police station. On this particular evidence of this witness having reached Mahmara Ghat, appellant meeting him and enquired whether money was brought, it has nowhere been controverted in the cross-examination.

Manoj Kumar Deshmukh (PW-1) has deposed that when mother of Gopikishan was taken to Mahmara Nadi road in the vehicle of Khemlal along with Khemlal, appellant father was found present and he asked the mother to bring money and thereafter he was arrested. To corroborate this particular piece of evidence regarding appellant found at Mahmara Ghat and asking for money from the mother of the deceased-boy, Balam Chakradhari (PW-2) has also deposed that when father of the deceased was asked to bring money of Rs.2,000/- at Mahmara Ghat then villagers have gone there and from there, appellant was brought to police Anjora outpost. Khemlal Deshmukh (PW-3) also deposed that after the appellant asked the mother of the deceased to come to Mahmara Ghat, they had gone to Mahmara ghat and from there, accused was arrested by the police. Rajeshwar Yadav (PW-10) has also deposed that when upon being called by the appellant to come with money at Mahmara Ghat, he had also accompanied others and the appellant was found on one side of the Ghat. At that place, he was apprehended by the villagers and police.

9. From the aforesaid evidence, it is proved that when father of the deceased along with other witnesses, referred to above, reached Mahmara Ghat, the appellant was present there and he talked to Dileshwar Deshmukh

(PW-5) whether money was brought stating that the child is with him.

10. The memorandum in Ex. P-1 was recorded by the police which is said to be the basis on which dead body was recovered from the building said to be the residence of the appellant. Manoj Kumar Deshmukh (PW-1) and Khemlal Deshmukh (PW-3) are stated to be witnesses of this memorandum of disclosure said to be given by the appellant with regard to the place where the dead body was buried. Manoj Kumar Deshmukh (PW-1) though admits having signed the memorandum Ex. P-1 but denied that any inquiry was made from the accused in police station in his presence.

Khemlal Deshmukh (PW-3) has also stated that Kadar Beg, the appellant has not disclosed anything to police station in his presence nor he got any seizure effected.

11. The Investigating Officer K.C. Das (PW-14), however, has clearly deposed regarding recording of memorandum statement of the appellant in Ex. P-1, wherein, it is said that the appellant disclosed regarding the place where the dead body was buried apart from the disclosure as to how he committed crime. The part of the statement which led to commission of offence would not be admissible in evidence as it was made before the police officer but as far as disclosure part is concerned, the same is admissible under Section 27 of the Evidence Act. The question, therefore, arises where the memorandum witnesses Manoj Kumar Deshmukh (PW-1) and Khemlal Deshmukh (PW-3) have not supported recording of memorandum in their presence, which shows that in their presence appellant stated regarding burial of dead body after killing, the evidence of Investigating Officer should be relied upon.

12. In our considered opinion, the version of the investigating officer finds corroboration from the evidence of other prosecution witnesses. Manoj Kumar Deshmukh (PW-1) has deposed in para-6 of the evidence by admitting that at Mahmara dam, appellant had disclosed that he had taken Gopikishan to his house and there he had assaulted on the head with the help of stone, due to which Gopikishan became unconscious. According to this witness, incident happened in the house of the appellant. Rejeshwar Yadav (PW-10) has also clearly stated that when the appellant was found in Pushp Vatika and he was

caught hold of and brought by the police and enquired, then in his presence, and presence of others, appellant disclosed regarding he having killed Gopikishan and after tying his hands and legs, body was sealed and buried in his own house. The aforesaid evidence has remained uncontroverted. Therefore, even though the memorandum witnesses Manoj Kumar Deshmukh (PW-1) and Khemlal Deshmukh (PW-3) have not clearly supported the prosecution case with regard to disclosure statement given by the appellant in their presence, the evidence of Investigating Officer (PW-14) regarding he having recorded the disclosure statement is corroborated from the evidence of other witnesses, as considered and discussed hereinabove.

13. It is not a case where the dead body has been recovered from any other place but it is a case where the dead body has been recovered from a house which is said to be that of the appellant. In this regard, there is overwhelming evidence. Even the witnesses of memorandum, who have not supported recording of memorandum statement, but they have clearly stated regarding recovery of dead body of Gopikishan from the house of the appellant. Manoj Kumar Deshmukh (PW-1) has clearly stated that he along with police, Khemlal and Kadar Beg went to the house of Kadar Beg and there one pickaxe, one stone and school bag of Gopikishan was taken out from his house. Balam Chakradhari (PW-2) who is panch witness has stated that the house of the appellant was searched and dead body of Gopikishan which was kept in a bag and buried was exhumed from inside the house of the appellant and blood stained plastic bag, rope, blood stained soil, simple and wet soil were seized and he has proved such seizures. This witness has remained firm on this aspect with regard to recovery of dead body from the house of the appellant and has denied suggestion that no seizure was made by the police in his presence. Khemlal Deshmukh (PW-3) has also emphatically stated regarding recovery of dead body from the house of the appellant and further that a school bag, pickaxe and stone was also seized from the place, though, later on, he states that police had not carried out any proceedings in his presence. Moh. Ismaile (PW-9) has also deposed in his evidence that when police went to the house of Kadar Beg and the soil was removed, dead body was exhumed, at that time, he was present in the house of the appellant. He has further admitted that his house and house of the appellant are near to each other, though, he states that proceedings were not drawn in his presence.

Rajeshwar Yadav (PW-10) has emphatically stated regarding recovery of dead body from the house of the appellant after exhumation. On this evidence, this witness could not be impeached in his cross-examination.

14. From the aforesaid evidence, it is proved beyond doubt that a school bag and stone were recovered from the house of the appellant and dead body was found in a plastic bag, which was buried and it was recovered after exhumation in presence of witnesses.
15. Though learned counsel for the appellant vehemently contended that prosecution has failed to come out with any clinching evidence that the house wherefrom the dead body was recovered belong to the appellant and Patwari Savant Ram Deshmukh (PW-7) stated that no evidence as to ownership of the house has been produced, we are of the view that all the witnesses who have stated regarding recovery of dead body have clearly stated that it was recovered from the house of the appellant. When those witnesses have clearly stated regarding recovery of dead body from the house which is stated to be that of the appellant, this evidence was required to be impeached in their respective cross-examination which has not been done. None of these witnesses has been controverted on the aspect that the house wherefrom dead body was recovered was not of the appellant. No such question has been put to these witnesses. In any case, Moh. Ismaile (PW-9) has clearly stated that the dead body was recovered from the house of the appellant and his house is situated near the house of the appellant.
16. True, it is that the prosecution has failed to lead evidence of actual kidnapping of the child by the appellant witnessed by any of the witnesses, other evidence with regard to receipt of phone call, meeting of the appellant with the father of the deceased and other person at Mahmara Ghat and inquiry of money stating that child is with him followed by recording of memorandum and recovery of dead body of child from the place disclosed in memorandum statement which is said to be the house of the appellant, entire case of the prosecution stands proved beyond reasonable doubt that it was the appellant who kidnapped the child for ransom and later on murdered. Accordingly, we do not find any scope of interference in the impugned judgment of conviction and order of sentence passed by the learned trial Court.

17. The appeal is therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Ravi