

IN THE HIGH COURT AT CALCUTTA

Criminal Appeal

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA DB 46 of 2022

CRA DB 67 of 2022

CRA DB 73 of 2022

CRA DB 81 of 2022

Monika Bagchi

Versus

The State of West Bengal

For the appellant : Mr. Prasenjit Debnath, Adv.

: Mr. Punam Basu, Adv.

in CRA (DB) 46 of 2022

: Mr. Anindya Lahiri, Adv.

: Mr. Argha Chowdhury, Adv.

in CRA (DB) 67 OF 2022

: Mr. Y.J. Dastoor, Sr. Adv.

: Mr. Prabir Majumder, Adv.

: Mr. Snhansu Majumder, Adv.

in CRA (DB) 73 of 2022

: Ms. Sananda Bhattacharyya, Adv.

: Ms. Kaberi Mukherjee, Adv.

in CRA (DB) 81 of 2022

For the State : Mr. Madhusudan Sur, Id. APP

: Mr. Dipankar Paramanick, Adv.

For the de facto complainant/respondent no. 2.

: Mr. Apalak Basu, Adv.

: Mr. Tirthankar Dey, Adv.

Heard on : September 09, 2022

Judgement on : September 21, 2022

Md. Shabbar Rashidi, J.:

1. All these appeals are taken up for disposal by a common judgment, as they emanate from a common Judgment of conviction and consequential order of sentence passed on 31.01.2022 and 01.02.2022 by Learned Additional Sessions Judge, Ranaghat, Nadia, in connection with Sessions Trial No. 03 (04) of 2015, arising out of, Sessions Case No. 16 (11) of 2014.

2. Shorn of unnecessary details, the case of the prosecution is that on 04.08.2014 at about 4.30 p.m. son of the de-facto complainant namely, Rajat Biswas aged about 8 years, went out of his house for playing. When the brother of the de-facto complainant, namely, Gobinda Biswas, came back from office and called upon his nephew Rajat Biswas at

about 5.30 p.m. but he could not be found. At about 7.00 p.m. a phone call was received in the mobile phone of another brother of de-facto complainant, namely Bijan Biswas from an unknown mobile bearing number 7029082410. The caller asked for a ransom of Rs. 10,000/- for returning the son of de-facto complainant. There was a search organized for Rajat but he could not be found.

3. Accordingly, Milan Biswas, the father of the missing boy lodged a written complaint with Hanskhali Police Station at 20.35 hrs. over missing of Rajat Biswas. On the basis of such written complaint, Hanskhali P.S. Case No. 477 of 2014 dated 04.08.2014 under section 364A of the Indian Penal Code was started against unknown miscreants having mobile number 7029082410 and the police took up investigation of the case.

4. Subsequently, on 07.08.2014 the dead body of the victim boy Rajat Biswas was discovered by the complainant party from near the 'Southern Bil' at Garapota, Kalatala Bazar in a decomposed condition. The police moved in and conducted inquest on the dead body and started Hanskhali P.S. U/D Case No. 41 date 07.08.2014. Thereafter, the body

was removed for post mortem examination to Saktinagar Hospital Police Morgue. In course of investigation, police visited the place of occurrence, recorded the statement of available witnesses and on completion of investigation, submitted charge sheet against 5 accused persons including a juvenile under section 364A/302/120B of Indian Penal Code. Later on the police further submitted a supplementary charge sheet against another juvenile Akash Bhakta under section 364A/302/120B/201 of the Indian penal Code.

5. Upon appearance/production of the accused persons and after observing compliance of the provision contained in section 207 of the Code of Criminal Procedure, the case was committed to the Court of Sessions for trial. The two juvenile accused persons were sent to Juvenile Justice Board for their trial in accordance with Juvenile Justice Act.

6. On the basis of materials in the Case Diary and upon hearing the accused persons i.e. the present appellants in all the four appeals, charges under section 364A/302/120B/201 of the Indian Penal Code were framed against the four appellants/accused persons namely 1) Sanjoy Das, 2) Chaitali Pal, 3) Hardas Biswas and 4) Monika

Bagchi. Charges were duly read over and explained to the aforesaid accused persons, to which they pleaded not guilty and claimed to be tried for the charged offences.

7. In course of trial, the prosecution examined 13 witnesses in all.

8. Upon conclusion of trial, in consideration of the evidence on record and examining the accused persons under section 313 of the Code of Criminal Procedure, all the appellants namely, 1) Haridas Biswas, 2) Sanjoy Das, 3)Chaitali Pal and 4)Monika Bagchi, were found guilty and were convicted of the offences punishable under sections 354A/302/201/120B of the Indian Penal code by the impugned judgment. Consequently, by the impugned order, accused Haridas was sentenced to undergo Rigorous life imprisonment and to pay a fine of Rs 20,000/- and in default of payment of fine to undergo rigorous imprisonment 2 years. The other three accused persons were sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 10,000/- in default to undergo RI for another one year, for the offence punishable under section 364A of the Indian Penal Code.

9. Accused Haridas was sentenced to undergo Rigorous life imprisonment and to pay a fine of Rs 20,000/- and in default of payment of fine to undergo rigorous imprisonment 2 years. The other three accused persons Sanjoy Das, Chaitali Pal and Monika Bagchi were further sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 10,000/- in default to undergo RI for another one year, for the offence punishable under section 302 of the Indian Penal Code.

10. All the four appellants were sentenced to undergo Rigorous imprisonment for seven years and to pay a fine of Rs 20,000/- and in default of payment of fine to undergo rigorous imprisonment 2 years. The other three accused persons were sentenced to suffer rigorous imprisonment seven years and to pay a fine of Rs. 10,000/- in default to undergo RI for another one year, for the offence punishable under section 201 of the Indian Penal Code.

11. Accused Haridas was also sentenced to undergo Rigorous life imprisonment and to pay a fine of Rs 20,000/- and in default of payment of fine, to undergo rigorous imprisonment 2 years. Whereas, the other three accused

persons were sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 10,000/- in default to undergo RI for another one year, for the offence punishable under section 120B of the Indian Penal Code.

12. The de-facto complainant was examined as PW1. PW 1 has stated that on 04.08.2014 at about 4.30 pm his son Rajat aged about 8 years went to play. His brother Gobindo Biswas came back from office at 5.00/5.30 pm and looked for Rajat but he could not be found after search. This witness has also stated that at about 7 pm a phone call was received in the mobile of his another brother Bijan Biswas demanding a ransom of Rs. 10 lakhs. PW 1 has also stated that his son was kidnapped and murdered by the accused persons. The dead body of the boy was recovered on 07.08.2014 in a ditch in front of his house, the hands and legs being tied with wire.

13. PW1 has also stated that the accused Haridas happened to be the brother-in-law of the second brother of PW1. He had a land at Haskhali Potapara which was sold for Rs. 10 lacks. A dispute arose between Haridas and his father concerning the said money. Haridas came to know that he

was the step son of his father. There was a compromise meeting over the issue but no settlement was arrived at. PW1 has also stated that Haridas had threatened him.

14. PW1 further stated that the said Haridas was arrested a few days after, one Raktim was apprehended. PW1 came to know everything about the occurrence from the said Raktim. It was stated by PW1 that Akash Bhakta and Prasenjit Biswas asked Raktim to kidnap Rajat and hand over to them. The said Akash Bhakta and Prasenjit Biswas were conspiring together under a plum(kool) tree near the house of Akash. It was further stated that initially Raktim refused to the proposal but later on, he agreed to kidnap the boy out of his greed for Rs. 5,000/- offered by Haridas, Akash Bhakta and Prasenjit Biswas. Accordingly, Raktim lifted Rajat on 04.08.2014 from near the house of PW1 and handed him over to the three accused persons. It was further stated that Rajat was fond of playing mobile games. Being lifted, he was given mobile phone and while playing, he was taken to bathroom of Prasenjit's house while Raktim was giving guard outside. PW1 has stated that Haridas pressed his mouth and controlled his legs whereas Akash clutched

his hands. Prasenjit tied wire around the neck of Rajat and killed him. In answer to a question by the Court, PW1 stated that the female accused persons communicated with the persons over phone and they were with the accused persons. Thereafter, PW1 lodged a written complaint scribed by one Jayanata Biswas as per his instructions. He has proved his signature on the written complaint (Exhibit 1). PW1 also proved his signature on the inquest report (Exhibit 2) and that on the application for return of the dead body (Exhibit 3). The accused persons namely Haridas Biswas, Sanjay Biswas, Chatali Pal and Manika Bagchi were identified by PW1. In his cross-examination, PW1 has stated that it was stated in his written complaint that he came to know from Raktim that Haridas, Akash and Prasenjit committed murder of his son, though, his written complaint did not contain statement that Raktim, Haridas, Akash and Prasenjit conspired under a plum(kool) tree to kidnap and kill his son. He has admitted that he did not state in his written complaint that Raktim initially refused and later on agreed to kidnap his son for Rs. 5,000/- offered by Prasenjit, Haridas and Akash. PW1 also admitted that his written statement did

not contain the detailed description of the manner and means of the occurrence committed by Haridas, Akash, Prasenjit and Raktim and about the conspiracy by the female accused persons as stated by him in his examination-in-chief. He admitted that his statement about the kidnapping and murder of his son were based on what he heard later on. He further admitted that he had no personal knowledge about the conspiracy by the female accused persons. This, he came to know from Raktim. PW1 also admitted in his cross-examination that he lodged the written complaint before the phone call in the mobile of his brother Bijan was received and that he did not mention the call regarding demand of ransom of Rs. 10 lacs in his written complaint. PW1 has also stated in his cross-examination that there was a compromise meeting at the house of the accused Haridas regarding the sale profits of a land belonging to his father Gopal. It has been stated that the money was kept with the brother of PW1 Bijan whereupon he was threatened by Haridas. PW1 has also admitted that he heard everything about the incident from Raktim after one and half months of the incident at Raktim's house at around 12/12.30 p.m. which continued

up to 02.30/03.00 pm in presence of hundreds of villagers. The narration continued up to 02.30/03.00 pm. Pw1 has also admitted his brother Bijan could not identify the ransom caller.

15. PW2, brother of PW1 who received the ransom call i.e. Bijan Biswas deposed PW1. He stated in his deposition that the accused persons planfully kidnapped his nephew Rajat Biswas and killed him. He has further stated that a few months prior to the incident, he had a quarrel with his brother-in-law Haridas Biswas. The sale proceeds of a land belonging at Haskhali and Popapara amounting to Rs. 10 lakhs was kept with him. Later on, Haidas came to know that he was not the own son of the father-in-law PW2. A dispute cropped up and a Salisi took place over the issue, however, they did not abide the Salisi, rather threatened him. PW2 has further stated that on 04.08.2014, his nephew Rajat went missing. A search was conducted but he could not be found. PW2 received call in his mobile from a number which he did not remember having such three digits as 410. A sum of Rs. 10 lacs was demanded as ransom for release of his nephew. After three days, the decomposed dead body of his nephew

was recovered from the fields having wire tied around his neck. Haridas was later arrested. PW2 has also stated that after a few days, one Raktim Baman confessed everything under pressure from the local people. From his confessional statement it was learned that Haridas Biswas, Akash Vakta and Prasenjit Biswas jointly took Rajat to bathroom of Rajat offering a mobile game and he was strangulated by wire around his neck. PW2 has also stated that he came to know from Raktim that the telephone number by which the ransom call was made was owned by one Sanjay Das of Nabadwip and Chaitali. In his cross-examination PW1 has stated that he and his four brothers lived in separate mess and he had a son aged about 11 years and a daughter aged about 16 years. He has further stated that besides PW2, his brothers Milan and Gobindo and father-in-law (kaka sasur) of Haridas attended the Salisi meeting. There were differences of opinion between PW2 and Haridas in the said meeting for which PW2 was threatened by Haridas. However, PW2 did not lodge any GDE with the police in this regard. PW2 alleged to have made such a statement before the I.O. In his In his cross-examination, PW2 admitted that he knew the voice of

Haridas from before and that the ransom call was not in his voice, though, he cannot be identify the caller. It was further stated that Haridas himself actively participated in this search of missing Rajat Biswas, PW1 had no idea of any nexus between the ransom demand of Rs. 10 lakhs and his disputes with Haridas over Rs. 10 lakhs. According to PW2 the ransom call was received at 7.00 pm and thereafter he accompanied his brother Gobinda Biswas for lodging the complaint. In his cross-examination, PW2 also admitted that he did not make any statement before the police and the investigating officer when his statement was recorded that he suspected Gobinda Biswas being involved in the kidnapping and murder of his nephew Rajat due to his disputes with PW2 over Rs. 10 lakhs. In his cross-examination, PW2 has also stated that disputes besides himself his brothers and 100/150 villagers, police was also present when Raktim made the confessional statement and this was after fifteen days of the incident.

16. PW3 is the grandmother of the victim. This witness has also stated that her grandson Rajat went missing from the house at about 4.30 pm. A search was made and

thereafter a ransom call was received on the mobile of her son Bijan Biswas demanding Rs. 10 lakhs. She further stated that later on Raktim was arrested and he confessed that Haridas, Akash and Prasenjit had kidnapped and killed Rajat. This witness also stated that Raktim had told that Haridas was the main culprit who called Rajat and killed him by his own hand. In her cross-examination PW3 stated that she knew the accused Haridas for four years being intervened by two houses. And that her son Bijan Biswas was married to Sikha Biswas. This witness has also stated that Bijan Biswas had son and a daughter aged about 11 years and 16 years respectively. She also knew Gopal Biswas father of Haridas Biswas for over four years and was at talking terms with him. This witness has denied her knowledge regarding any dispute over the sale of landed property or Salisi in this regard.

17. PW4 is another brother of the de-facto complainant. He has stated that on 04.08.2014 when he came back from office and called upon his nephew Rajat, he was not found and could not be traced even after conducting a search. This witness also testified that his brother Bijan (PW2) received a

phone call at about 6.00/6.30 p.m. from a phone bearing last three numbers 410. The caller demanded Rs. 10,000/- from his brother and thereafter, the mobile went switched off. PW4 has also stated that the decomposed dead body of Rajat was found in the jute fields on 07.08.14, neck twined with wire.

18. It was further stated by PW4 that accused Haripada, who was brother-in-law of his brother Bijan had some disputes with Bijan's father-in-law over the sale proceeds of landed properties at Muchipara, Hanskhali, which was kept with Bijan. Accused Haridas demanded the money from Bijan which he refused, whereupon, Haripada threatened Bijan of dire consequences and thereafter, the incident of 04.08.14 took place. PW4 has made a candid statement to the effect that after recovery of the dead body of his nephew, he enquired from his neighbor Raktim. Upon giving some slaps, the said Raktim, admitted that accused Haripada offered him Rs. 10,000/- for which he called Rajat to play with him as also with Akash and Prosenjit. Rajat was taken to the house of Prosenjit and confined in the bathroom. Ha also stated that the three accused persons threatened Raktim to kill his younger brother. PW4 has stated that it

was his belief that Prosenjit, Haridas and Akash have murdered Rajat in the bathroom of Prosenjit's house by twining wire round his neck. He further stated that he thought that accused Sanjay and Chaitali were also connected with the offence, though, he did not know them. The police is said to have seized his mobile phone. He proved his signature on the seizure list (Ext.4).

19. PW4 also stated that on 6th instant he received a phone call over his mobile allegedly from an unknown caller of Bongaon. The caller was a Hindi speaking lady and was in the know the profession of PW4. Though, the caller did not disclose her identity but thereafter, a message demanding Rs. 60, 000/- for disclosing the identity was received in his mobile. PW4 suspected the lady to be accused Monika as the witness was acquainted with her as prospective bride of his brother. In his cross examination, PW4 stated that his brothers Milan and Bijan had children of different ages. He has admitted that he never lodged any complaint regarding the threat given by Haridas.

20. PW5 has not stated anything regarding the occurrence. She stated that at the time of incident, she

received a call in her mobile which was attended by her elder sister but none responded. Thereafter, a sms stating Akas A+B was received. In her cross examination, PW5 stated that she was interrogated by police but she did not state before police that the number from which the call was received was that of Akash. She also stated that she stated before police the few days back she received phone call from mobile number 7029082410 which was the number of Akash. She denied her knowledge that Mukunda Biswas, husband of her masi Sabita Biswas, was relative of Milan Biswas.

21. PW6 stated that having received an information of the murder of Rajat, he went and found the dead body of Rajat lying in the fields adjacent south to his house. After 15/16 days, Raktim told PW6 that he called Rajat for playing and Akash, Prosenjit and Haripada were also with him. In his cross examination, PW6 stated that he receive the information of death on 05.08.14 and saw the dead body after 2/3 days. This witness could not remember making a statement before police what he stated in his examination-in-chief and that he had no knowledge of the incident except what he heard from Raktim.

22. The wife of Bijan Biswas deposed as PW7. She happens to be sister of accused Haridas Biswas. She has stated that Rajat was murdered by Haridas and Sanjoy. Raktim, a friend of Rajat called and took him to Haridas. In her cross examination, she denied any knowledge regarding the disputes over the sale proceeds of the landed properties belonging to her father amounting to Rs. 10,00,000/-. She has stated the Haridas was in the search group to trace out Rajat. She however, could not remember if Haridas was present when ransom call was received.

23. Kartick Biswas, one of the neighbors of Milan Biswas was examined by the prosecution as PW8. He also has stated that on 04.08.14, Rajat went missing and after two days, his dead body was recovered from jute field. He stated that Rajat was murdered by Haridas, prosenjit and Akash on 04.08.14.

24. He has also stated that he came to know about the incident from interrogation of Raktim under instruction of Akash and Prasenjit. Raktim is also alleged to have been threatened by the said persons. It is also stated that Haridas Biswas and Akash claimed money from Milan and his family.

In his cross-examination, PW8 stated that he talked with Raktim late in the evening in presence of somany persons.

25. The wife of Milan Biswas has deposed as PW9. She identified the accused persons in the Court and stated that they have kidnapped and killed her son out of greed for money on 04.08.2014. On 07.08.2014, the dead body of her son was recovered from jute field, neck tied up with wire. She has also stated that there were disputes between Haridas Biswas and his father Gopal over the sale proceeds of some lands. There was a Salisi meeting and husband of PW9 was threatened by Haridas in the said meeting. She has also stated that on 04.08.2014 Bijan received a ransom call for Rs. 10 lacs. PW9 also stated that Raktim took away Rajat from in front of her house. He was instructed a few days ago to call Rajat and hand him over to them. Initially, Raktim refused that when he handed over the boy to Akash and Rajat, Haridas was in the house of Prasenjit. All the three accused persons chalked out a plan to kill Rajat sitting under a plum tree. Thereafter, Akash provided a mobile phone to Rajat and took him to the bath room and caught hold of Rajat. Raktim was guarding outside. This witness (PW9) has

stated that Akash caught the legs of Rajat, Haridas pressed his hands and mouth and Prsenjit tied wire on the neck and killed. The dead body was kept inside the bathroom. Raktim fled away out of fear. Thereafter, a phone call was received by Bijan from mobile no. 7029082410 claiming Rs. 10 lacs. Raktim also reported that in order to avoid suspicion to the accused persons participated in the search of the victim boy. She has further stated that Akash used to talk to Chaitali Pal and Sanjay Das over telephone. PW9 has also stated that Akash, Prasenjit, Haridas, Sanjay Das, Chaitali pal and Monika Bagchi together kidnapped her son and committed murder out of greed of money. In her cross-examination, PW9 has testified having her about the disputes and Salisi meeting at the house of Haridas but she could not give any detail thereof. She also stated to have informed the police regarding threat given by Haridas. She admitted in her cross-examination that she did not see occurrence rather it was reported to her by Raktim after a month of the incident at about 8 a.m. in her house in presence of somany villagers. Raktim took one/ one and half hours to narrate the incident. PW9 further admitted in her cross-examination that she had

no previous acquaintance with Sanjay and Monika, she even did not see them earlier.

26. PW10 is the recording officer. He has proved his endorsement of receipt of the written complaint (Ext.1/1) and the formal FIR drawn by him (Ext. 5).

27. The autopsy surgeon deposed as PW11. He conducted post mortem on the dead body and prepared the post mortem report which he proved (Ext. 6). He stated that upon post-mortem examination, the cause of death was found to be asphyxia resulting from throttling.

28. The investigating officer has deposed as PW12. He has stated that being endorsed with the investigation of the case, he visited P.O. and prepared draft sketch map with index (Exhibit 7 collectively). He also examined available witnesses and recorded their statement under Section 161 Cr. PC and collected call detail report of mobile nos. bearing 7029082410 and 83911011433 (Exhibit 8 collectively). He also arrested the accused Chaitali Pal and seized one Nokia Mobile with sim card no. 8391011433 from her possession under a seizure list (Exhibit 9). PW12 has also proved the

inquest report in connection with Hanskhali P.S. UD case no. 41 of 2014 (Ext. 2). He also seized the wearing apparels black wear chain etc. under a seizure list (Exhibit 10). The investigation officer also seized a Samsung Mobile Phone from the possession of Gobindo Biswas under a seizure list (Exhibit 11) together with another mobile phone with a SIM from the possession of Monika Biswas by a separate seizure list dated 09.08. 2014 (Exhibit 12). On completion of investigation PW 12 submitted charge-sheet under section 364A/302/120B of the Indian Penal Code against five accused persons with a juvenile.

29. The investigation officer took up further investigation and arrested Akash Vakta. He visited the second P.O. and prepared a draft sketch map with index (Exhibit 13). After interrogating the accused Haridas Biswas, PW13 submitted supplementary charge-sheet under section 364A/302/120B/201 of the Indian Penal Code. PW12 identified the black wear tied around neck of the victim (MAT Exhibit I), Puthi Neck Chain, (MAT Exhibit 11), yellow color half pant (MAT Exhibit III), black color half shirt (MAT Exhibit IV). PW12 was further examined on recall and he

proved the inquest report (Exhibit 1 / 2) and an application by Milan Biswas for conducting postmortem on the dead body of his son (Exhibit 3).

30. PW13 is the scribe of the written complaint. He proved the written complaint (Exhibit 1/3)

31. Thus, from the evidence led on behalf of the prosecution, it transpires that the prosecution has a twofold story. First, the victim boy went missing on a certain day. Thereafter, an alleged ransom call was received, search for the boy was conducted and then a police complaint was lodge over the incident of missing culminating into a first information report under section 364A of the Indian Penal Code.

32. Secondly, the dead body of the victim boy was recovered after 3 days in a decomposed condition with wire yarned around neck, apparently giving rise to an impression that the boy might have been killed by strangulation with the wire. This led to addition of offence under section 302 of the Indian Penal Code, in the case.

33. The appellants have sought to assail their conviction in all these appeals primarily on two common grounds.

34. Firstly, that the prosecution has not been able to prove the presence and involvement of the appellants in and the scene of crime and the circumstances leading to the commission of such crime. In fact, it has been pleaded that the prosecution has failed to prove any nexus of the appellants with the alleged offence in any manner, whatsoever.

35. Secondly, it is common argument on behalf of all the appellants in these appeals, that their conviction has been recorded by the learned trial court, mainly on the basis of an extra judicial confession alleged to be made by one of the co-accused Raktim. It has been asserted that such extra judicial confession is not at all creditworthy and has also not been proved by the prosecution beyond all reasonable doubts, sufficient enough to record a conviction. The alleged extra judicial confession, as it emanates from the evidence, was not voluntary. There are also material contradictions in the testimonial account of such confession by the

prosecution witnesses. The prosecution never cared to get the confession of the accused recorded under section 164 of the Code of Criminal Procedure. It was also alleged that the theory of last seen together is also not applicable in this case. There is no evidence whatsoever, that any of the accused persons, was seen with or around the victim boy within a reasonable extent of time prior to the incident.

36. On the contrary, it is the contention of the respondents that prosecution has been able to bring home the charges leveled against the accused persons and the conviction of the appellants is based on well founded both in facts and on law and as such, the same is liable to be upheld.

37. So far as the prosecution case is concerned, the victim boy Rajat, went missing from his house at around 4.30 p.m. The testimony of the prosecution witnesses comes out that the boy went missing while playing. It is explicitly stated by the witnesses that the brother of victim's father, when came back from office and called upon the victim, it was first noticed that the boy was not there. None of the witnesses have testified involvement of any of accused person

in the abduction of the victim at that point of time. It is when the alleged ransom call was received, search for the boy was organized and he was found to be missing. Neither of the accused was seen by any of the witness playing or calling and taking away the victim. Moreover, the first information report which was lodged with the police after sometime after the search operation, at about 7.30 p.m. also does not disclose that the boy was called by any of the accused and he left with him. Therefore, the story of last seen together, does not stand supported against any of the appellant. In this regard, learned counsel for the appellant cited the decision in the case of **Chatter Singh and Anr. Vs. State of Haryana (2009 Cri. L. J. 319)**. The Hon'ble Court, in the aforesaid judgment, observed, quoting the case of Ramreddy Rajeshkhanna Reddy v. State of A.P. [2006 (10) SCC 172] that,:

"27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and 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. Even in such a case the courts should look for some corroboration".

38. Furthermore, the FIR was lodged with an information that the uncle of the victim received a ransom call demanding Rs. 10,000/- (Ten Thousand) for the return of the victim. The caller was not identified. However, the written complaint did not contain any statement implicating any of the accused/appellant even on the ground of suspicion. Even, after three days, when the dead body of the victim boy was recovered, no statement appears to have been recorded indicating association of any of the appellant in the commission of the alleged crime. On the contrary, it transpires from the statement of the PW2 that accused Haridas actively participated in the search operation. At that time no body appears to have held accused Haridas, responsible for the missing of the boy.

39. The prosecution has come up with the story of previous disputes between accused Haridas Biswas, the appellant in CRA 67 of 2022 and his brother-in-law Bijan Biswas PW2, over payment of the sale proceeds of landed properties belonging to Gopal father of Haridas. The payment was allegedly denied on the ground that Haridas was not the biological son of Gopal and the money was kept in the

custody of PW2, son-in-law of Gopal. Such enmity existed from much prior to the date of alleged incident. Nevertheless, inspite of such pre existing disputes, no suspicion whatsoever, was accredited against Haridas in the first information report. Omission on the part of prosecution to divulge the story of previous enmity as a possible motive behind the commission of the offence gives rise to a reasonable doubt regarding the complicity of the appellants in the crime, they are charged with.

40. Furthermore, the first information report (Exhibit 1/3) reveals that just after the boy went missing, the ransom caller demanded Rs. 10,000/- (Ten Thousand) for his release. Such statement was improved during the trial when prosecution witnesses (PW1, 2 and others) stated to the effect that the demand was made for Rs. 10,000 00/- (Ten Lac) instead of Rs. 10,000/-(Ten Thousand). There appears no explanation in the prosecution evidence regarding such improvement in the statement. This was probably to rationalize that the accused had previous disputes with the family of the complainant over such amount of money and for similar reasons, the accused Haridas was the real culprit.

This renders the prosecution case further wary. There is a serious doubt as to what prompted the other appellants to engage in the commission of the offence when Haridas alone shared enmity with victim's family over property disputes. No case has been brought forth that other accused persons were set up by the said Haridas. In these view of the facts, we find ourselves in total agreement with the contention of the appellant in CRA 67 of 2022 that if the alleged crime is actually committed out of the previous disputes over the property, then children of Bijan Biswas, with whom the alleged perpetrator shared enmity, ought to have been the target instead the children of Milan Biswas. Both the brothers Milan (PW1) and Bijan (PW2) had children in similar age group.

41. The appellant in CRA 67 of 2022, has cited the decision in the case of Balwinder Singh Vs. State of Punjab (1995 Supp) 4 SCC 259. The Hon'ble Supreme Court observed in the aforementioned decision that

11 "An extrajudicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its

credibility becomes doubtful and it loses its importance. The courts generally look for independent reliable corroboration before placing any reliance upon an extrajudicial confession.”

42. This appellant also relied upon the case of **Sahadevan & Anr. Vs. State of Tamil Nadu reported in AIR 2012 Supreme Court 2435.** In the said case the Hon’ble supreme court laid down in following terms that

12. “There is no doubt..... It is settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.”

43. The Hon’ble Court in the aforesaid judgment also laid down certain guidelines governing appreciation of evidence in reference to extra-judicial confessions to the following effect, that’s to say: -

22. Upon a proper analysis of the above-referred judgments of this court, it will be appropriate to

state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

The principles

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.***
- (ii) It should be made voluntarily and should be truthful.***
- (iii) It should inspire confidence.***
- (iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.***
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.***
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law.”***

44. The story put forward by the prosecution, later on, details that one of the co-accused Raktim made an extra judicial confession in front of hundreds of villagers regarding the particulars of the occurrence and specific part performed therein by each of the perpetrator. All the witnesses for the prosecution have owed their knowledge of the incident on the

basis of confession allegedly made by one of the accused, Raktim.

45. However, there appear to be material contradiction in the testimony of different prosecution witness on the point of timings of knowledge and details of the incident so narrated. PW1 stated that the he came to know everything from Raktim that Raktim was asked by Haridas, Akash Bhakta and Prosenjit to kidnap Rajat which he initially refused but later on agreed to on the promise of Rs.5000/-. They were allegedly conspiring together under the plum tree to murder him. The said facts, according to PW1 were told by Raktim after 1 ½ months of the incident at the house of said Raktim between 12.00/12.30 and 2.30/3.00 p.m. At variance with the narration to PW1, PW2 stated that he came to know from Raktim that Haridas, Akash Bhakta and Prosenjit took Rajat to the bathroom in the house of Prosenjit and murdered him by tying wire around his neck. PW2 also heard from Raktim that the mobile phone from which he received the ransom call belonged to Sanjay Das of Nabadwip and Chaitali Pal. PW2 stated in his cross examination that Raktim made the confessional statement 15 days after the

incident. PW3 has stated that she heard from Raktim that Haridas was the main culprit and he called Rajat and killed him with his own hands. Contradictory to the other witnesses, PW3 stated that Raktim confessed that an amount of Rs. 10,000/- was offered to Raktim for luring Rajat, instead of Rs. 5,000/- stated by other witnesses. PW1 & 2 stated that Raktim made the statement in the afternoon (12.00/12.30 to 2.30/3.00 p.m.), whereas, PW8 stated that it was in the late evening. PW9, the mother of victim stated at a detail that Akash provided mobile phone to the victim and took him to bathroom of Prosenjit's house while Raktim took guard outside. Thereafter, Akash caught the legs of victim, Haridas caught his hands and pressed his mouth, whereas, Prosenjit killed Rajat, tying wire around his neck. She categorically stated in her cross examination that she heard narration by Raktim about a month of the incident in the morning at 8.00 a.m. None other witness has claimed such detailed narration of part performed by each accused in the alleged confessional statement by Raktim.

46. Besides contradictions amongst the prosecution witnesses with regard to alleged confessional statement by

Raktim, in reference to its details, timings etc. the appellants in all these appeals, also challenged the veracity and trustworthiness of such statement on the ground that same was not voluntary.

47. Nothing appears to have been brought forth to justify the necessity which prompted Raktim to make a confessional statement after 15 days or 1 ½ months of the incident. Coupled with it the statement of PW4 stated in his cross examination that Raktim admitted the involvement of the appellants in the incident after giving some slaps. PW2 also stated that Raktim Baman confessed everything under pressure from the local people. It has also come out from the prosecution witnesses that police was also present when Raktim was making the statement. All these circumstances render the story of alleged confessional statement highly doubtful and unreliable. For the aforesaid circumstances, conviction of the appellants, solely recorded on the basis of alleged confessional statement of one of the accused persons i.e. Raktim seems to be quite perilous.

48. Dealing with the similar principles, the appellant Chaitali Pal in CRA 46 of 2022, has relied upon the judgment

in the case of **State of Rajasthan Vs. Rajaram** reported in **AIR 2003 Supreme Court 3601** wherein, it was laid down by the Hon'ble Court that, **"An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made."** This appellant has also relied upon Sahadevan's case relied by appellant Haridas in CRA 67 of 2022 (Supra).

49. This appellant also relied upon the case of Chattar Singh and Anr. Vs. State of Haryana dealing with the appreciation of evidence in cases based on circumstantial evidence. The Hon'ble Court held that,

"The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

(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.

50. In the case of Kishore Chand Vs. State of H.P. cited by the appellant also dealing with the appreciation of circumstantial evidence, the Hon'ble Apex Court held that,

1. "In assessing the evidence.....The prosecution has to travel all the way to establish fully all the chain of events which should be consistent only with hypothesis of the guilt of the accuse and those circumstances should be of conclusive nature and tendency and they should be such as to exclude all hypothesis but the one proposed to be proved by the prosecution. In other words, there must be a chain of evidence so far consistent and complete as not to leave any reasonable ground for a conclusion consistent with innocence of the accused and it must be such as to show that within all probability the act must have been done by the accused and the accused alone."

51. In the instant case, the prosecution has come up with a story that the accused persons committed murder of the victim at the behest of accused Haridas who allegedly,

had disputes with the victim's family over the issue of sale proceeds of some lands. We are afraid, the prosecution has not been able to prove the very existence of alleged disputes, with the help of convincing evidence. We have carefully examined the evidence adduced on behalf of the prosecution. Prosecution does not appear to be able to prove that accused Haridas and other accused persons made accused Raktim to entice the victim to the house of accused Prosenjit where the crime was committed. We have already held that nobody has come forward to testify that accused Raktim or any other accused was ever seen with the victim just prior to the occurrence. No witness has claimed the accused persons conspiring together under a plum tree in front of the house of accused Prosenjit. The very existence of any plum tree near the house of accused Prosenjit is also not proved from Ext. 7 and Ext. 13 (sketch maps with indices of the place of occurrence). On the contrary, there is evidence that accused Haridas actively participated in the search operation for the victim boy. There is no evidence altogether that the victim was ever taken to the house or bathroom in the house of accused Prosenjit which is situated in the vicinity of the

house of the complainant party. There appear material contradictions amongst the prosecution witnesses with regard to the account of the alleged confessional statement by accused Raktim. In fact, there is reasonable proof, rather admission, that such statement, if at all made, was given under duress and was not a voluntary one, leaving it too incredible to base a conviction thereupon.

52. So far as the involvement of the appellant Akash Bahkta as regards his mobile number is concerned, the written complaint (Ext. 1/3) discloses that the ransom call was received from a mobile number 7029082410. The prosecution has tried to establish that the said number belonged to accused Akash Bhakta. However, there appears no endeavor on the part of prosecution to specifically prove the ownership of the mobile in order to establish the nexus of the appellant in the commission of the crime. This also leaves serious doubts regarding the veracity of prosecution case.

53. The prosecution evidence exhibits that the investigating officer seized the call detail reports (Ext.8) of the mobile numbers 7029082410 and another mobile number 8391011433 which was seized from accused Chaitali Pal.

Such report related to the call details which did not contain the details of the call made on the date of occurrence i.e. 04.08.14. Even if Ext. 8 contains some calls made between the two numbers prior to the date of incident, it cannot be considered a material enough to implicate either of the appellants in reference to commission of a crime. At best, it can prove previous acquaintance of the two. Curiously, prosecution endeavored to unearth the mobile number of Bijan Biswas in which the ransom call was received. Prosecution also did not care to unearth the fact whether any call from the number disclosed in the written complaint, was at all received in the mobile phone of Bijan (PW2). Such an omission on the part of prosecution also casts reasonable doubts.

54. Furthermore, the investigating officer (PW12) has proved the call detail report having collected it. However, he has not disclosed the source from where or which authority, it was collected. No requisition, made in this regard was proved. Learned counsel for the appellants, have contended that the call detail report (CDR) was not collected by the I.O. in accordance with established law. In this respect learned

counsel for the appellant has cited the judgment in the case of **Ravinder Singh @ Kaku Vs. State of Punjab reported in (2022)7 SCC 581**.in the aforesaid case, Hon'ble Supreme Court have held that,

“22. In light of the above, the electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the court of law. As rightly stated above, oral evidence in the place of such certificate, as is the case in the present matter, cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law.”

55. In the case at hand, no endeavor appears to have been made on behalf of the prosecution to obtain the mandatory certification for the CDR alleged to be collected by the investigating officer. In that view of the facts, admissibility of Ext.8 becomes highly doubtful to bank upon a conviction.

56. So far as the involvement of female appellants (CRA 46 of 2022 and CRA 81 of 2022) in the crime is concerned, as per the statement of I.O. (PW12), he arrested Chaitali Pal, seized a mobile phone bearing number 8391011433 from her possession. He is also said to have arrested Monika Bagchi and seized a 'Tintele' mobile phone with SIM from her

custody, the number of which was not disclosed. One of the phones was sent for forensic examination, the report of which was never received. The other, was not even sent for such examination. PW1 stated that he had no personal knowledge about the involvement of female accused persons in the conspiracy. He did neither hear anything about the female accused persons from Raktim nor did he (PW1) state anything about them to the police. In fact, upon careful scrutiny of the of the prosecution evidence nothing incriminating transpired against the female appellants Chaitali Pal and Monika Bagchi, though, there are unfounded averments that the two were involved in the conspiracy. The case of **Saju Vs. State of Kerala reported in AIR2001 Supreme Court 175** has been relied wherein it was held that,

“9. It has thus to be established that the accused charged with criminal conspiracy had agreed to pursue a course of conduct which he knew leading to the commission of a crime by one or more persons to the agreement, of that offence. Besides the fact of agreement the necessary men rea of the crime is also required to be established.”

57. Similar proposition regarding proof culpability on the basis of criminal conspiracy was postulated by the Hon'ble Supreme Court in the case of Bhagwan **Swarup Lal**, **reported in AIR 1965 Supreme Court 682**. There appears to be no iota of proof of criminal conspiracy against any of the accused persons, not to talk of the female accused persons alone, specifically, in conformity with the principles laid down in the aforementioned judgments.

58. Therefore, in view of the aforesaid discussion we do consider that prosecution has failed to complete the chain of evidence establishing the circumstances beyond all reasonable doubts to conclusively incriminate the appellants. Hence, the appellants are entitled to the benefit of doubt. For the aforesaid reasons the impugned judgment of conviction and subsequent order of sentence dated 31.01.2022 and 01.02.2022 passed by Learned Additional Sessions Judge, Ranaghat, Nadia, in connection with Sessions Trial No. 03 (04) of 2015, arising out of, Sessions Case No. 16 (11) of 2014, are liable to be set aside and are set aside accordingly.

59. Accordingly, all the four appeals being CRA Nos. 46 of 2022, 67 of 2022, 73 of 2022 and 81 of 2022 are allowed.

The appellants shall be released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the trial Court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure.

60. Trial court records along with a copy of this judgment; be sent down at once to the learned trial court for necessary action.

61. Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

62. I agree.

[DEBANGSU BASAK, J.]