

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

C.R.A 268 of 2018

In

I.A No. CRAN 1 of 2019 (Old No. CRAN 2513 of 2019)

In

I.A. No. CRAN 2 of 2020 (Old No. CRAN 1399 of 2020)

Shadab Siddiqui

Vs

The State of West Bengal

With

C.R.A 331 of 2018

In

I.A No. CRAN 2 of 2018 (Old No. CRAN 2285 of 2018)

In

I.A No. CRAN 3 of 2020 (Old No. CRAN 1788 of 2020)

In

I.A No. CRAN 4 of 2020 (Old No. CRAN 1789 of 2020)

Kamran Akhtar

Vs

The State of West Bengal

With

C.R.A 341 of 2018

In

I.A No. CRAN 1 of 2018 (Old No. CRAN 1762 of 2018)

In

I.A No. CRAN 2 of 2018 (Old No. CRAN 3033 of 2018)

In

I.A No. CRAN 5 of 2022

Khalid Khan

Vs

The State of West Bengal

For the Appellant in CRA 268 of 2018 & CRA 331 of 2018	: Mr. Amarta Ghosh, Adv. Ms. Rituparna De Ghosh, Adv. Ms. Debapriya Mukherjee, Adv.
For the Appellant in CRA 341 of 2018	: Mr. Ayan Bhattacharya, Adv. Ms. Debapriya Mukherjee, Adv. Mr. Apalak Basu, Adv.
For the State	: Mr. Saswata Gopal Mukherjee, Ld. PP Mr. Ranabir Ray Chowdhury, Adv. Mr. Mainak Gupta, Adv.
Heard on	: May 13, 2022
Judgment on	: May 20, 2022

Bibhas Ranjan De, J.:-

1. Being aggrieved by and dissatisfied with the judgment an order dated 12.04.2018 and 13.04.2018 pronounced by the Ld. Chief Judge, City Sessions Court, Calcutta, all three appeals are

filed. The Ld. Judge convicted all three appellants for the offence under Section 364A/34 of the Indian Penal Code and sentenced to suffer imprisonment for life and also to pay a fine of Rs. 20,000/- each in default to suffer simple imprisonment for ten (10) months each. Ld. Judge also set of the period of detention undergone by the appellants during investigation and trial under Section 428 Cr.P.C.

2. Briefly stated, the facts of the case, as culled out from the case of the prosecution, are as under:

On 08.03.2008 at about 3 P.M. to 3.30 P.M, appellant Sahadab Siddiqui @ Aman (hereinafter refer to as appellant no.1) called the victim Sree Ram Buchasia (hereinafter refer to as victim) over telephone requesting him to come to city centre at Salt Lake on the plea of moving around Calcutta with his girlfriend. Initially, victim Sree Ram Buchasia did not agree but later on agreed on request of girlfriend of the appellant no. 1 over phone. At 6.30 P.M.

Sree Ram Buchasia reached at City Centre, Salt Lake but appellant No.1 was not found there. Then victim contacted said appellant no. 1 over phone and came to know that due to traffic jam appellant no. 1 stranded near HSBC Bank. Victim, then, reached at the place near HSBC Bank and found appellant no.1 with one cream color Honda City car but no girlfriend was found. However, victim entered into the car and immediately thereafter two unknown persons entered into the car from two opposite side of the car and pointed fire arm at the victim and asked him not to shout. Thereafter victim was taken to a deserted place and closed his eyes and mouth with luco plast. All of his belongings were snatched away and tied with a chair. One borqua was put on him. Thereafter, appellant asked the victim to call her wife to bring cash of Rs. 1.5 crore and victim will be released thereafter. Accordingly, victim informed his wife over telephone. Appellant no. 1 left the place and appellant

Khalid Khan and Kamran Akhtar (hereinafter referred to as appellant no. 2 & 3 respectively), remained there.

- 3.** On the next day again appellant no. 1 came over there and asked the victim to call his wife again otherwise victim will be killed. Thereafter, appellant no. 1 took the telephone numbers of the wife and brother of the victim.
- 4.** After 1 or 2 days again appellant came over there along with some blank stamp papers and got those papers signed by the victim. After some days appellant no. 1 settled the demand at Rs. 40 lac and on that night victim was put in a vehicle and after one and half hours victim was thrown away from the car near Dum Dum Airport.
- 5.** Then, victim hired a taxi and came to the residence of his brother at Phool Bagan. Victim was admitted in Rameswaram Nursing Home at Ultadanga, on 18.03.2008 and remained there till 20.03.2018.

6. On 10.03.2018 Sarad Kumar Buchasia, brother of the victim, already lodged a written complaint addressed to Special I.G, CID, west Bengal, which was forwarded to Superintendent of Police, Howrah. Then Shibpur Police Station Case No. 83 dated 17.03.2008 was started Mr. Amit Ray, S.I. of Police took up investigation on 18.03.2008 Additional Director General of Police ordered for taking up investigation of this case by the C.I.D. Then on 19.03.2008 this case was endorsed to one Pallav Kanti Ganguly, Sub Inspector attached to Special Operation Group, C.I.D, West Bengal, for investigation.

7. During investigation, Investigation Officer Pallav Kanti Ganguly visited several places including the place alleged to have been used for the purpose of confinement of victim. He seized currency notes and seized the car alleged to have been used for abduction. He recorded statement of witnesses under Section 161 Cr.P.C. On 16.06.2008 after completion of investigation he submitted charge sheet against six (6) accused persons

including the appellants under Section 363/364A/120B of Indian Penal Code.

- 8.** To prove the guilt of the accused/ appellants, prosecution examined as many as 33 witnesses in support of its case. In course of evidence several documents were admitted in evidence as Exhibit 1 to 52 that apart several material were marked as Mat Exhibit I to XXV.
- 9.** On completion of evidence all three appellants/accused were examined under Section 313 Criminal Procedure Code. As they have pleaded that they were innocent and they have been falsely implicated, they were tried for the aforesaid offences in the Court of Chief Judge, City Sessions Court, Calcutta, in Sessions Trial No. 01 (08) of 2013 arising out of Sessions Case No. 35 of 2011 the Ld. Chief Judge by Judgment dated 13.04.2018 held only three accused i.e. all three appellants of this appeal for Commission of offences punishable under

Section 364A/34 Indian Penal Code but acquitted rest accused person of this case.

10. It is pertinent to mention here that on behalf of accused/appellants one (1) defence witness has been examined and some documents have been admitted in evidence as Exhibit A to G.

11. In terms of submissions made by the Ld. Advocates for the parties to this appeal as well as materials on record following questions arise for consideration and are to be determined in this appeal :-

11.1 What are the essential ingredient of Section 364A to be proved beyond reasonable doubt by the prosecution for securing the conviction under Section 364A IPC?

11.2 Whether each and every ingredient as mentioned in Section 364A required to be proved for securing conviction under Section 364A have been proved.

11.3 Whether there was any evidence or findings by the Ld.

Trial Judge that the accused had committed any offence within the meaning of offence punishable under Section 364A IPC.

12. The appeal having arisen out of order of conviction under section 364A of IPC, we need to focus on the provisions of Section 364A IPC before proceeding further to consider the evidence in terms of arguments advanced in this appeal.

13. The essential ingredients to convict an accused under Section 364A IPC which are required to be proved by the prosecution are as follows:

13.1 Kidnapping of abduction of any person or keeping a person in detention after such kidnapping or abduction ; and

13.2 Threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;

13.3 Causes hurt or death to such person in order to compel the Government or any Foreign State or Governmental Organization or any other person to do or abstain from doing any act or to pay a ransom.

14. Therefore, after establishing the first condition, one more condition has to be fulfilled since after first condition, word used is “and”. So, in addition to first condition either condition (13.2 or 13.3) has to be proved, failing which conviction under Section 364A cannot be sustained.

15. Ld. Advocate Mr. Amarta Ghosh, appearing on behalf of appellants Sahabad Siddique and Kamran Akhtar, submits that there is material contradiction regarding bar alleged to have been used for abduction. He submitted that the victim himself stated about one ambassador Car before the Ld. Magistrate holding Test Identification Parade contrary to prosecution case. That apart Investigating Officer did not verify the owners of the alleged Honda City car.

16. Mr. Ghosh, further submits that the victim stated before police about his abduction from Shibpur area on 10.03.2008 as it appears from Exhibit D, falsifying entire prosecution case in our hand. He also pointed out contradictions amongst the witnesses regarding demand and recovery of ransom. Mr. Ghosh has further pointed out Exhibit-38 and submitted that there is nothing mentioned in the memo of Test Identification Parade as to formal identification.

17. Mr. Ghosh has further contended that Investigating Officer never placed the seized Honda City car for Test Identification Parade. It has been further referred to the evidence of the Investigating Officer (PW-32) who deposed in his cross examination that the bag containing currency notes had been found lying at Santragachi Station contrary to the seizure of ransom.

18. Mr. Ghosh, in support of his contention , has placed reliance on the following judgments:-

A) ***Mohd. Faizan Ahmed Vs. State of Bihar (2013) 2***

Supreme Court Cases 131.

B) ***State of U.P Vs. Arun Kumar Gupta (2003) 2***

Supreme Court Cases 202.

C) ***Laxmi Singh & Others Vs. State Of Bihar 1976 SCC***

(Crl) 671.

D) ***Namwar Dubey & Ors. Vs. State of U.P. JT 1995(6)***

SCC 222.

E) ***Shingara Singh Vs. State of Haryana AIR 2004 SC***

124.

19. Ld. Advocate, Mr. Ayan Bhattacharya, appearing on behalf of the appellant Kahalid Khan, advanced argument in the same tune of Mr. Ghosh. And to add to that, Mr. Bhattacharya submitted that the statements alleged to have been made under Section 27 of the Evidence Act were retracted by the accused in course of their examination under Section 313 Cr.P.C.

20. Mr. Bhattacharya has further submitted that accused Khalid Khan was never placed in Test Identification Parade for identification by the witnesses.

21. In support of his argument Mr. Bhattacharya has relied on following reported judgments:-

A) ***State of H.P. Vs. Lekh Raj (2000) 1 SCC 247.***

B) ***Rajesh Govind Jagesha Vs. State of Maharashtra (1999) 8 SCC 428.***

C) ***Ganpat Singh Vs. State of Rajasthan (1997) 11 SCC 565.***

D) ***Nathu Vs. State of U.P AIR 1956 S.C. 56.***

E) ***Satbir Singh Vs. State of Punjab (1977) 2 SCC 263.***

F) ***Dara Singh Vs. Republic of India (2011) 2 SCC 490.***

G) ***Juwar Singh Vs. State of M.P. 1980 (Supp) SCC 417.***

22. Per Contra, Ld. Public Prosecutor, Mr. Saswata Gopal Mukherjee, has referred to the evidence on record and tried to make this Court understand that in spite of some minor

discrepancies in the evidence and lapses on the part of Investigating Officer prosecution has been able to establish the commission of offence beyond reasonable doubt.

23. Ld. Public Prosecutor in support of his contentions has relied on the following judgements:-

A). ***Malleshi Vs. State of Karnataka (2004) 8 Supreme Court Cases 95.***

B). ***Akram Khan Vs. State of West Bengal (2012) 1 Supreme Court Cases 406.***

C). ***Abdul Rahaman Kuji Vs. The State of West Bengal 2014 SCC online Cal 18816.***

D). ***Munshi Singh Gautam and others Vs. State of M.P. (2005) 9 Supreme Court Cases 631.***

24. Having heard the Ld. Advocates on either side, we have given our thoughtful consideration to the facts and circumstances of the case and materials place on record.

25. Ld. Judge after examining all available evidence on record returned the findings as follows:-

“When the evidence on record is analyzed in the background of 364A of the I.P.C inevitable conclusion is that the prosecution has clearly established commission of the said offence.

Oral and documentary evidences adduced and admitted into evidence on behalf of defence have not come to prove their defence case and there is no material in their evidences to discard the evidences of PW (s) in the matter of involvement of accused Sahadab Siddique @ Aman, Khalid Khan and Kamran Akhtar for committing the said offence.

Several decisions have been referred by the Ld. Counsel for the Advocate for the defense which are not lending much support of their defence and as such I am refraining myself from discussing the same.

There is sufficient, valid and credible evidence leading to the irresistible conclusion of the involvement of the accused persons namely Sahadab Siddique @ Aman, Khalid Khan and Kamran Akhtar in the commission of this crime.

After scanning by separating chaffs from the grains of the entire case and in view of above facts

and circumstances and discussion made above and after perusing the exhibited documents and in view of manifold observations in pursuance of material facts and evidence on record with careful and anxious consideration to each and every facts and circumstances in proper scanning as mentioned above, I am inclined to hold that the prosecution has been able to prove the charge U/s 364A/34 of the I.P.C against Sahadab Siddique @ Aman, Khalid Khan and Kamran Akhtar beyond all reasonable shadow of doubts.

I find no complaint has been lodged by landlord PW 19 Moni Sankar Sardar from whom accused Sahadab Siddique @ Aman, Khalid Khan took his house on rent by giving fabricated, forged epic in the name of Rupesh Singh and Nilesh Singh.

So, the prosecution has not been able to prove the commission of offence punishable under Section 419/471 of the I.P.C against the accused persons namely Sahadab Siddique @ Aman, Khalid Khan and Kamran Akhtar.

On perusal of the evidence of P.Ws and materials on record I find that there is no iota of evidence about the involvement of accused Avishek Singh in the commission of offence.

So, accused Avishek Singh is liable to be acquitted from all the charges framed against him.

That all the three accused persons namely Sahadab Siddique @ Aman, Khalid Khan and Kamran Akhtar are found guilty for committing the offence punishable under Sections 364A/34 of the I.P.C and accordingly they are convicted but the accused persons namely Sahadab Siddique @ Aman, Khalid Khan and Kamran Akhtar are not held guilty for committing the offence punishable u/s 419/471 of the I.P.C and they are acquitted from the charge of offence punishable u/s 419/471 of the I.P.C.”

26. In this case, prosecution has alleged one incident abduction of the victim, Sree Ram Buchasia (PW-1) on demand of ransom on 08.03.2008. PW-1 in his examination in Chief stated that accused Sahadab Siddiqui @ Aman, known to him, called him over telephone in City Centre Salt Lake to move around Kolkata with his girlfriend. But, initially PW-1 did not agree to come out than accused Sahadab Siddiqui handed over said telephone to his girlfriend to talk with Sree Ram Buchasia (PW 1). On her request Sree Ram Buchia (PW-1) came out of his house and reached near City Centre at Salt Lake but accused Sahadab was

not found there. Thus, on telephonic conversation victim Sree Ram Buchia Came to know that Sahadab Siddiqui was waiting near HSBC Bank at Salt Lake due to traffic jam. Thereafter, PW-1, Sree Ram Buchia reached that place and found accused Sahadab Siddiqui sitting in a Cream Colour Honda City Car but that girlfriend was not found there. Accused Sahadab Siddiqui requested PW-1 Sree Ram Buchia to enter into the car. Accordingly, Sree Ram Buchasia entered and immediately thereafter two unknown persons entered into the Car from two opposite sides of the Car and put fire arms and asked him not to make any noise. Sree Ram Buchasia (PW-1) was taken to a deserted place in a clandestine manner after putting leucoplast on his mouth and eyes and a "Borqua" on his person. He was kept in a room under custody of those two unknown person. On the next day, putting Sree Ram Buchasia, PW-1 in fear of injury and death accused Sree Ram Buchasia asked PW-1 to make a call to his residence to bring a cash of Rs. 1.5 crores, otherwise

he (PW-1) would be killed. Thereafter, Sahadab Siddiqui collected phone number from PW-1 and called. Then phone was handed over to PW-1 to talk about demand. Accused Sahadab Siddiqui also made a call to brother of PW-1. However, demand was settled at Rs. 40 lakh and victim, Sree Ram Buchasia was released on 17/18 in 2008 at 1/1:30 A.M.

27. During cross examination of victim one specific suggestion was made to the PW-1 on behalf of the defence and PW-1 replied as follows:

“It is not a fact that in order to avoid repayment of loan amount of Rs. 50 lakhs to the accused Sahadab Siddiqui I have made a concocted and false story.”

28. In cross examination PW-1 has further replied to a question as follows:

“I lodged the complaint at Jagacha Police Station after receipt the notice from the advocate of accused Sahadab Siddiqui demanding refund of a sum of Rs. 50 lakh from me.”

29. PW-2 Sarad Kumar Buchasia brother of the PW-1, has corroborated the fact of missing of PW-1 since 09.03.2008 till he came back on 17/18.03.2008. He corroborated the demand of ransom by the accused and about settlement of ransom at Rs. 40 lac. He had made arrangement of Rs. 40 lac from REI AGRO Limited Company where PW-2 is an employee. PW-2 has stated in his evidence that on 14.03.2008 as mistrusted by the accused Sahadab Siddiqui he went to the place near ITC Sonar Bangla along with a blue and black colour bag with logo “MARL BORO” and thereafter he went to Howrah Railway Station as per further instruction, and purchased a ticket of Midnapore local. He had boarded on the train and threw away that bag near Santragachi Railway Station. On 17/18.03.2008 his brother (PW-1) had returned to his residence.

30. PW-3 Bela Buchasia, wife of PW-1, also corroborated the incident of abduction and payment of ransom of Rs. 40 lac arranged by her brother-in-law i.e. PW-2. She has corroborated

the fact of missing of her husband (PW-1) on 08.03.2008 till he returned on 17/18.03.2008.

31. PW-24, Pinki Buchasia, wife of PW-2, has also corroborated about phone call of the abductor received on 09.03.2008 whereby abductor demanded ransom. She has also stated about payment of ransom by her husband (PW-2.)

32. PW-4 Pradip Ray, Constable attached to C.I.D, PW-7, Naru Ghosh, Constable attached to C.I.D, PW-10, Raju Kumar, Constable attached to C.I.D, PW-23, Jay Roy Chowdhury, Sub-Inspector attached to Special Operation Group, C.I.D, PW-25 Nilkamal Mandal, Assistant Sub- Inspector attached to Special Operation Group, C.I.D, PW-26, Swapan Sarkar, Constable attached to Special Operation Group, C.I.D and Investigating Officer, Pallab Kumar Gangully, Sub-Inspector attached to Special Operation Group, C.I.D, were members of raid party. Their evidences show that on being informed by the source they visited Dum Dum Airport and arrested accused Sahadab Siddiqui

and Khalid Khan and they were taken to Bhawani Bhawan where accused Sahadab Siddiqui made statement leading to recovery of money and Honda City Car.

33. Investigating Officer, PW-32, stated in his evidence that assuming investigation of this case on 19.03.2008 he along with aforesaid witnesses conducted raid in Dum Dum Airport to follow up source information and arrested accused Sahadab Siddiqui and accused Khalid Kahn. Arrest memos were prepared as it appears from Exhibit 42 and 43 bearing signatures of the accused duly corroborated by other witnesses to the raid.

34. Investigation Officer, PW-32, further stated that accused Sahadab Siddiqui made statements (Exhibit- 52 & Exhibit-44) leading to discovery of money (portion of alleged ransom) and Honda City Car (alleged to have been used in kidnapping the victim, PW-1) and consequently money was recovered by a seizure list (Exhibit-44) prepared in presence of PW-4, PW-5 (independent witness), PW-7, PW-27, PW-25, PW-23 PW-6 (independent

witness), PW-9 (independent witness) as also in presence of accused the witness in whose presence money was recovered corroborated the same. Besides, Honda City Car was recovered by preparing seizure list (Exhibit-27) in presence of Debasish Sarkar (employee of Biswakarma Garaze), Amit Singh (employee of Biswakarma Garaze), PW-22 as well as accused Sahadab Siddiqui.

35. Investigations Officer (PW-32) further stated in his evidence that following a statement (Exhibit-44) of Sahadab Siddiqui he visited Jagacha Sundarpara i.e house of Mani Sankar Sawan where victim was alleged to have been confined and recovered some articles viz Plastic mat, wrapper, Plastic bottle, leucoplast etc. by a seizure list (Exhibit-20) in presence of PW-19 (owner of the house and PW-20 (a residence of Jagachha).

36. PW-5, PW-6 and PW-9 were declared hostile by the prosecution. But, they stated in their examination in Chief that currency notes were recovered in their presence.

37. Mr. Ghosh and Mr. Bhattacharya harped almost on the same string of argument as follows:-

37. 1. In the memo of Test Identification Parade (Exhibit-38) victim, PW-1, stated about one ambassador Car by which victim was alleged to have been abducted,

37.2. owner of the alleged Honda City Car has not been verified,

37.3. In an earlier statement under Section 161 (Exhibit D) Police victim stated that he was abducted from Shibpur area on 10.03.2008 by the accused of this case.

37.4 There are contradictions among the witness regarding demand and recovered of ransom,

37.5. The confessional statements under Section 27 of the Evidence Act was retracted by the accused in course of their examination under Section 313 Cr.P.C.

37.6 There are contradictions among the witness regarding the amount of money recovered,

37.7. Investigating Officer did not make any prayer for Test Identification Parade in accused Khalid Khan. No formal identification is mentioned in the memo of Test Identification parade (Exhibit-38). That apart Investigating Officer did not take any effort for Test Identification Parade of the alleged Car.

37.8. Though currency notes alleged to have been recovered from a fact at Bangur Avenue, but investigating Officer (PW- 32) deposed in his cross-examination that bag containing currency notes was found lying at Santra Gachhi Station.

38. In appreciating evidence we should bear in mind that evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of the Court to accept the evidence. There would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment.

Sometimes there is deliberate attempt to offer the exaggerated evidence and sometimes the witnesses in their over anxiety to do better from the witness box detail out an exaggerated account.

39. The evidence of identification of an accused in Court by a witness is substantive evidence, whereas that of identification in Test Identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of the accused by a witness in Court.

40. In our case, no question was put to the victim (PW-1) in cross-examination regarding ambassador car to corroborate the statement made before the Magistrate in course of Test Identification Parade. Therefore, the statement being not an substantive piece of evidence remained uncorroborated only investigating officer (PW-32) in his cross-examination stated that he did not enquire about any ambassador Car.

41. Admittedly, Investigating Officer did not verify about owner of the seized Honda City Car and thereby no prejudice was

caused to the accused. Although there are lapses in the case, but the issue has to be considered from the point of view of the prejudice to the accused. If in any case prejudice can be said to have been caused to the accused, the question of trial being vitiated on the ground of lapses would not arise at all.

42. The Exhibit – D shows that the victim (PW- 1) of this case gave a statement before police under Section 161 Cr.P.C. in connection with other case Jagachha Police Station Case no 151/11 dated 25.03.2011 and he stated there that he was abducted from Shibpur area on 10.03.2008 though Exhibit-E clearly shows that he stated in his evidence before the Court that he was abducted on 08.03.2008 from Salt Lake City. That apart, no evidence was brought on record showing use of the statement (Exhibit D) for contradiction as statement recorded under Section 161 of Cr.P.C. shall not be used for any purpose except to contradict a witness in the manner prescribed in the proviso to Section 161 (1) Cr.P.C.

43. Regarding contradiction, we are of the view that all omissions /contradictions pointed out by the appellants' Advocate are trivial in nature, which do not go to the root of the case. It is settled legal proposition that while appreciating the evidence, the Court has to take into consideration whether the contradictions/omissions/improvements/embellishments etc. had been of such magnitude that they materially affect the trial. Minor contradictions, inconsistencies, omissions of improvements on trivial matters without affecting the case of the prosecution should not make the Court to reject the evidence in its entirety. The Court after going through the entire evidence must form an opinion about the credibility of the witnesses and he being the appellant would in natural course would not be justified in reviewing the same again without justifiable reasons.

44. The object of incorporating Section 27 in the Indian Evidence Act, 1872 is to provide for the admission of evidence which could not have been admitted in evidence due to specific

bar of Section 25 to 26 of the said Act. The fact will be admissible in evidence under Section 27 of the Evidence Act where the information comes from any accused in the Custody of the Police. The exact information given by the accused who is in custody which led to recovery of the articles, is to be proved. In our case the only relevant portion of the statements leading recovery made by the accused Sahadab Siddiqui mere admitted in evidence as Exhibit – 44 and 52, that too while he was in police Custody.

45. Contradictions relating to recovery of amount of ransom do not make any defame to the prosecution case while prosecution led sufficient evidence to prove the fact of abduction of the victim and put him in fear of death or injury on demand of ransom to constitute an offence under Section 364A of the Indian Penal Code. In spite of that prosecution led further evidence to prove giving of ransom and recovery of a portion of said ransom by a seizure list (exhibit 14) following leading statement of accused

Sahadab Siddiqui (exhibit – 44), which is admissible as subsequent conduct under Section 8 of the Evidence Act, 1872.

46. Failure to hold Test Identification Parade does not made the evidence of identification in Court inadmissible, rather the same is very much ordinarily in law, but ordinarily identification of an accused by a witness for the first time in Court should not form the basis of conviction. The same being from its very nature inherently of a weak character unless it is corroborated by its previous identification in the Test Identification Parade. But, in this case victim was alleged to have been abducted and confined for some days. Therefore, victim had enough opportunity to know the face of all accused in the circumstances identification of the accused In the Court by the victim cannot be doubted even if Test Identification Parade was not held. That apart, one of the accused namely Sahadab Siddiqui was known to the victim prior to the Commission of the offence. In this case, sequence of evidence clearly reveals that victim was abducted by one cream

color Honda City Car which was recovered and seized following a leading statement (exhibit -27) of accused Sahadab Siddiqui. Therefore, identification of Honda City Car by the victim in Court cannot be said to be stated to the prosecution case in absence of any Test Identification Parade of the said Car.

47. We have already discussed that the currency notes were recovered from the place at Bangan Avenue under a seizure list (exhibit 14) following leading statement (exhibit 44) of accused Sahadab Siddiqui. Therefore, an unexplained statement of investigations Officer in cross-examination, cannot falsify the entire evidence of seizure of currency notes under a seizure list in presence of witnesses.

48. In ***Mohd. Faizan Ahmed*** (supra), the Hon'ble Apex Court dealt with an incident, where a child was abducted, after a per-conceived plan, due to enmity. The case is clearly distinguishable and not applicable in the facts of our case. In our case, the prosecution case is for an incident of an abduction, of a known person and on demand of ransom. The Hon'ble Apex Court

applied the principle of criminal jurisprudence that suspicion, however grave, cannot take the place of proof. In our case, we have already evaluated the evidence in terms of argument advanced.

49. In ***Arun Kumar Gupta's case*** (supra), the Hon'ble Supreme Court, dealt with a case under Section 302 of Indian Penal Code and during investigation, blood stained earth was not sent to the serologist, culminating to reasonable doubt in the prosecution case. That apart, prosecution could not adduce sufficient evidence in proving the offence. Therefore, facts and circumstances, of our case is totally different and naturally the aforesaid observations of the Hon'ble Apex Court is not applicable to our case.

50. In ***Laxmi Singh*** (supra), the Hon'ble Apex Court, came across a case of murder of two persons and prosecution did not come out with true version and the result was that, murder of two persons has to go unpunished unlike the facts and circumstances of the case in our hand.

51. In ***Namwar Dubey*** (supra), the Hon'ble Apex Court took up the evidence of sole witness of the PW2, who made different versions as to place of occurrence and he was also confronted

with different portions of his earlier statements, in accordance with the Section. 145 of the Evidence Act. The principle of this case is also not applicable to that of ours.

52. *Shingara Singh* (supra), held that in an appeal against acquittal the High Court is entitled to re-appreciate the entire evidence on record, but having done so, if it finds, that the view taken by the trial court is a possible reasonable view of the evidence on record, it will not substitute its opinion for that of the trial Court.

53. *Lekh Raj* (supra) held, in a case for offence under Section 376(2)(g) / 323 of Indian Penal Code, that though the holding of the identification proceeding are not substantive evidence, yet they are used for corroboration purposes, for believing that the person brought before the Court was the real person involved in the commission of the crime. The identification parade even if held cannot in all cases, be considered as safe, sole and trustworthy evidence on which the conviction of the accused could be sustained. It is a rule of prudence which is required to be followed, in cases, where the accused is not known to the witness or the complainant. In our case, one of the accused is well-known to the victim and the other unknown accuseds were

identified by the victim on dock, as the victim had the opportunity to know those unknown persons during his confinement.

54. In **Rajesh Govind Jagesha** (supra) and in **Ganpat Singh** (supra), the Hon'ble Apex Court observed that, if test identification parade regarding the accused is not conducted properly and suffered from unexplained delay, he is entitled to the benefit of doubt. In our case, the victim was known to the one of the accused and having opportunity to know other two accused during his confinement, therefore, even if T.I. parade was not held, identification of the accused on dock by the victim on dock cannot be disbelieved.

55. In **Nathu's** case (supra), it was held by the Hon'ble Apex Court that, the confessional statement of the accused is not at all a substantive or independent evidence, on which a conviction could be based. In our case, the Ld. Trial Court did not return his finding on the basis of confession of the accused.

56. Satbir Singh (supra), observed as follows :-

“ 28. In deciding whether a particular confession attracts the frown of the sec. 24 of the Indian Evidence Act, the question has to be considered from the point of view of the confessing accused as

to how the inducement, threat or promise proceeding from a person from authority would operate in his mind.”

57. In the case of **Dara Singh** (supra), the Hon’ble Apex Court laid down guidelines for consideration of statement under section 164 of Cr.P.C. In our case, only accused, namely Khalid Khan made a confession before the Ld. Magistrate and subsequently he retracted during the examination under Section 313 of Cr.P.C. Ld. Trial Court, returned its findings on the basis of materials available on record independent of that confession.

58. In **Juwar Singh** (supra), the Hon’ble Apex Court observed as follows :-

“ 5.....that DW.s.1, 2 & 3 were not subjected to any cross-examination and therefore their evidence should be unhesitatingly accepted. We do not agree with the submission of Sri Mulla. Cross examination is not the only method of discrediting a witness. If the oral testimony of certain witnesses is contrary to proved facts, their evidence might well be discarded on that ground. If their testimony is on the face of it unacceptable, Courts are not bound to accept their testimony merely because, there was no cross-examination. In our case, no such occasion arose.”

59. The Hon'ble Supreme Court in ***Malleshi*** (supra), held that there cannot be any straight jacket formula that the demand for payments has to be made to a person who ultimately pays. After making the demand to the kidnapped or abducted person merely because the demand could not be conveyed to some other person, as the accused is arrested in the mean time, does not take away the offence out of the purview of section 364(A) of the Indian Penal Code.

60. In ***Akram Khan's case*** (supra) laid down the parameters for attracting the offence under Section 364(A) of Indian Penal Code.

61. In ***Abdul Rahaman Kuji*** (supra), this Hon'ble Apex Court observed relying on the judgments of the Hon'ble Supreme Court's as follows:-

“ 86. the judgments of the Supreme Court, which has been cited before us elucidate that the evidence with regard a conspiracy may be direct or circumstantial. The Court has observed that it is generally difficult to find direct evidence given the nature of the crime. The participants in the conspiracy must have a common object even though each of them may not know the role of ascribed to the others for furtherance of the plot.

Indeed, the conspirators need not physically meet in order to chalk out the plan. The meeting of the minds of the conspirators to execute their ultimate goal must be reflected from the evidence of record.”

62. In ***Munshi Singh Gautam*** (supra), the Hon’ble Apex Court laid down the principle of probative value of the test identification parade. It has laid down that the necessity of holding an identification parade can arise only when, the accuseds are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claimed to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity.

63. Keeping an eye to the principles elucidated in the judgements cited on behalf of the appellants and prosecution it appears that the factual position found by the trial Court goes to show that object of abduction was for ransom. This was clearly conveyed to the victim (PW-1) who even conveyed his brother (PW-2) the amount to be paid. Though factual position of this case is that the demand was settled and paid, but offence within the perview

of Section 364A of Indian Penal Code stood completed immediately after abduction of the victim (PW-1), his confinement in isolation and a demand for ransom being made to him. Payment of ransom is not *sine qua non* to constitute an offence under Section 364A I.P.C.

64. In the aforesaid view of the matter, there is no infirmity in the judgment impugned to warrant any interference.

65. All three appeals being dealt with by the this common judgment, and consequently, the judgement and dismissed order dated 12.04.2018 and 13.04.2018 passed by the Ld. Chief Judge, City Sessions Court, Calcutta, is upheld.

66. All three appellants, if on bail, are directed to surrender before the Trial Court to serve sentence.

67. The Lower Court record be sent to the Trial Court, i.e. the Court of Ld. Chief Judge, City Sessions Court, Calcutta, forthwith.

68. All pending applications stand disposed off.

69. Urgent certified photocopies of this judgment, if applied for,

be supplied to the Ld. Advocates for the parties upon compliance of all formalities.

[BIBHAS RANJAN DE, J.]

70. I Agree.

[DEBANGSU BASAK, J.]