

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 19th October, 2022

Decided on: 23rd December, 2022

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CRL.A. 1162/2019

HARI SINGH

..... Appellant

Represented by: Mr. Adit S. Pujari (DHCLSC) with
Mr.Chaitanya Sundriyal, Mr.Maitreya
Subramanian & Ms. Kajal Dalal,
Advocates.

versus

STATE (NCT OF DELHI

..... Respondent

Represented by: Ms.Shubhi Gupta, APP for the State
with Insp. P.C. Yadav & SI Ram
Kumar.

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CRL.A. 1200/2019

RAHUL GUPTA

..... Appellant

Represented by: Mr. Siddharth Aggarwal, Senior
Advocate with Mr. Arjun Mukherjee,
Mr. S. Khan, Ms. Arshna Ghose and
Mr. Arjun Dewan, Advocates.

versus

STATE

..... Respondent

Represented by: Ms.Shubhi Gupta, APP for the State
with Insp. P.C. Yadav & SI Ram
Kumar.

+

CRL.A. 1226/2019

BHAN PRATAP @ PRATAP BHAN @ BABLU

..... Appellant

Represented by: Mr. Manu Sharma, Mr. Kartik
Khanna, Mr. Abhyuday Sharma &
Mr. Kartikay Masta, Advocates

versus

STATE

..... Respondent

Represented by: Ms.Shubhi Gupta, APP for the State
with Insp. P.C. Yadav & SI Ram
Kumar.

+

CRL.A. 1321/2019

DINESH KUMAR

..... Appellant

Represented by: Mr. Anwesh Madhukar, (DHCLSC)
with Ms. Prachi Nirwan, Mr. Yaseen
Siddiqui & Mr. Pranjal Shekhar,
Advs.

versus

STATE

..... Respondent

Represented by: Ms.Shubhi Gupta, APP for the State
with Insp. P.C. Yadav & SI Ram
Kumar.

+

CRL.A. 346/2020

USMAN KHAN @ BUNTY

..... Appellant

Represented by: Mr. Kanhaiya Singhal, Ms. Priyal
Garg, Mr. Chetan Bhardwaj, Mr. Udit
Bakshi, Ms. Saumya Sharma, Mr.
Ajay Kumar and Mr. Prasanna,
Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Ms.Shubhi Gupta, APP for the State
with Insp. P.C. Yadav & SI Ram
Kumar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

MUKTA GUPTA, J.

1. By these five appeals, all the appellants challenge the common impugned judgment dated 17th July, 2019 convicting five of the eight accused persons for offences of kidnapping with murder of one Nikesh Kumar Singh (“deceased”) punishable under Sections 364A/302/201/120B of the Indian Penal Code, 1860 (“IPC”). The appellants also challenge the order on sentence dated 05th September, 2019 whereby all the five appellants Hari Singh, Dinesh Kumar, Usman Khan @ Bunty, Rahul Gupta and Bhanu Pratap @ Pratap Bhan @ Babloo were directed to undergo imprisonment for life along with fine of ₹50,000/- each for offence punishable under section 302 IPC, the appellants were further directed to undergo imprisonment for life along with fine of ₹50,000/- each for offence punishable under section 364A IPC and rigorous imprisonment of three years along with fine of ₹20,000/- each for offence punishable under section 201 IPC, in default whereof to undergo simple imprisonment for one year each.

2. In nutshell, the facts of the case as per the prosecution are that the complainant Udai Narayan (PW-12), father of the deceased filed a complaint (Ex.PW-12/A) on 04th October, 2010 at about 10.05 a.m. stating that his son Nikesh was missing. He gave the information to SI Kuldeep Singh (PW-15) that his son who was an engineering student at Bhagwan Parshuram Engineering College at Gohana and stayed at the hostel, reached District Centre, Janakpuri at about 8.30 p.m. on 30th September 2010, but did not reach home and his phone no. was switched off, and even after enquiry from his friends and relatives, Nikesh could not be found. Accordingly, FIR no. 256/2010 was registered on the said complaint of PW-12 at PS Vikaspuri (Ex.PW-1/A). On the evening of the same day i.e. 04th October, 2010, father of the deceased revealed to SI Kuldeep (PW-15) that he had received a call

from mobile no. 8923174470 for ransom of ₹10 Lacs for release of his son. Thereafter, as the said mobile phone no. 8923174470 was found to be involved in another FIR No.300/2010 registered at PS Dabri, the investigation in the present case was transferred to Crime Branch, which took over the investigation on 06th October, 2010. The complainant struck a deal of ₹2.5 Lacs with the kidnappers and on 09th October, 2010, the complainant and his brother Shambhu Nath (PW-8) boarded the Garibrath Train from Delhi for Bareilly where he had to hand over the ransom amount of ₹2.5 Lacs to the kidnappers for the release of his son. Inps. PC Yadav (PW-26) convinced the complainant to allow him to accompany him and thus, Insp. PC Yadav along with HC Kuldeep accompanied the complainant and boarded the same train but travelled in different coaches. A team of Police Officers comprising of SI Rajinder, ASI Ravinder, HC Vikal etc. were already stated to be present at Bareilly in connection with investigation of the other FIR No. 300/2010 of PS Dabri. On reaching the railway station at Bareilly, the complainant was directed by the caller to proceed to platform no. 6, and as the complainant was not willing to take IO (PW-26) to platform no. 6, so IO alongwith HC Kuldeep came out of the railway station after giving instruction to his team camping there in civil dress. Thereafter, the caller directed the complainant to different places at the railway station and was finally directed to reach Manpur Nagaria, which was at a distance of a few stations, using another train, but the complainant refused. Thereafter, around midnight, the complainant was contacted by the kidnapper to go back to platform no. 6 and keep the money on the polythene kept by them near the engine on the elevated platform. As directed, the complainant kept the money at the platform and thereafter, the complainant saw three boys taking

away the money. After sometime, at around 4 a.m., the complainant received a call from the kidnapper that they had received the money, and that his son would reach platform no. 6 at about 6 a.m. As his son did not turn up, the complainant called back the kidnapper who told him that his son might have gone to Delhi. Despite this, the complainant stayed at the railway station till 11th October, 2010 after which he returned back to Delhi.

3. Thereafter, on 24th October, 2010, upon secret information, four accused persons namely Hari Singh, Radhey Shyam, Dinesh and Usman were spotted at the 'IN' gate of ISBT, Anand Vihar and about half an hour later accused Rahul Gupta also joined them. The raiding team then apprehended all the five persons. The complainant identified accused Rahul Gupta as a friend of his son Nikesh and two of the other apprehended persons, Dinesh and Bablu were identified as the persons who collected ransom of ₹2.5 Lacs Bareilly Station. Thereafter, these five accused were taken to SOS, Crime Branch where they were arrested and their disclosure statements were recorded. It was disclosed by the accused persons that on 06th October, 2010, they had taken the deceased to an agricultural field at Manpur Nagaria, U.P. where the deceased was confined and then was made to speak first with his father (PW-12) and then with Kanchan Kumari (PW-14) who was the complainant of case FIR No. 300/2010 at PS Dabri. Thereafter, they killed Nikesh by strangulating him with a rope and disposed off his dead body by digging up a pit at the same field. After obtaining their police custody, the police team along with all these five accused persons went to Manpur Nagaria on 25th October, 2010. On 26th October, 2010, they reached the police station Soron, where they were directed to police post Manpur Nagaria. From there, they were accompanied by SI Pritam Singh

(PW-10) who made the arrival and departure entry with him to the place where the dead body was buried, Ct. Megh Nath (PW-11), and public witnesses Masicharan (PW-2), Ram Sewak (PW-3) and Kamal Singh (PW-4), also accompanied to the sugarcane field owned by one Deen Dayal where the dead body was buried. At the said sugarcane field, the accused pointed out the place from where the dead body was exhumed, which was photographed and video-graphed by the police. The dead body was identified by the complainant (PW-12). The body was then sent for post mortem. During investigation, names of three other associates i.e. Bhanu Pratap @ Pratap Bhan @ Bablu, Mukesh and Raghubir @ Bhura were also disclosed by the accused persons. Appellant Bhanu Pratap @ Bablu surrendered himself before Tis Hazari Court on 22nd February 2011 and thereafter he was arrested but no recovery was effected from him. Other two accused persons Mukesh and Raghubir were arrested on 13th and 18th September, 2011 respectively and accused Mukesh got recovered the pant of deceased (seizure memo Ex.PW-26/I) which was correctly identified by the complainant during judicial TIP (Ex.PW-24/A), but no recovery was effected from Raghubir.

4. Dr. Yatindra Bhardwaj, Consultant Surgeon, Malkhan Singh Hospital, Aligarh, UP (PW-25) carried out the post mortem on the dead body on 27th October, 2010 and tendered his report Ex.PW-25/A and opined as under:

I ligature mark in the form of a groove at the lower part of the neck, which was all around the neck with a size of 26 cm x 1.3 cm.

On cutting the neck, there was extra vasion of blood in the sub cutaneous tissue, muscles of neck and great vessels of neck were lacerated.

There was clotted blood in the trachea and larynx.

Tracheal cartilage was found damaged.

Hyoid bone was found fractured. A rope tied at the lower end of the neck was found which was cut and preserved and handed to police, along with the other articles i.e. one shirt, one underwear and 2 sandals.

Cause of death was opined to be Asphyxia.

Time since death was opined to be about 3 weeks.

5. Accused Hari Singh, Radhey Shyam, Dinesh, Usman Khan @ Bunty, Rahul Gupta, Bhan Pratap @ Pratap Bhan, Mukesh and Raghubir were charged for offences punishable under sections 302/363/364A/201/120B IPC for proving which the prosecution examined 27 witnesses. On the other hand, the defence also led its evidence and examined six witnesses to prove its version. Upon completion of trial, accused Mukesh, Raghubir and Radhey Shyam were acquitted while accused Hari Singh, Dinesh, Usman Khan @ Bunty, Rahul Gupta and Bhan Pratap @ Pratap Bhan were found guilty and convicted accordingly.

6. It was contended on behalf of appellant Hari Singh that as per the prosecution version, Hari Singh made the first disclosure statement which led to the recovery of the dead body by exhuming the same, however the videography of the exhumation proceedings cannot be accepted in evidence in the absence of certificate as required under Section 65B of the Indian Evidence Act to prove the said video. It is further contended that even if the video footage is admissible in evidence, there is no evidence to show that the same is not tampered with in view of the abrupt cuts and breaks which create suspicion as to the authenticity of the footage and casts doubt on the 'natural' disclosure. Further, the police seems to be already aware as to where to go for recovery of the body even without any pointing out by the accused

person. The spot is pointed out by all five accused persons including Rahul who was not even alleged to be present at the time of burying the body. Thereafter, digging commences by hand but for some unknown reason, the digging is stopped and the pointing out is re-enacted in the footage, with a fresh pointing out, but without Rahul on this occasion. It was further contended that the identification of body itself is doubtful because as per the PM Report (Ex.PW-25/A), the dead body was in a decomposed state, and no DNA sampling was done despite the hair being preserved. It was further contended that the mobile phone and the mobile no. 8923174470, allegedly used for making ransom calls were never recovered. Even the CDR of the said mobile no. 8923174470 was not exhibited. Cell ID Chart of the mobile no. 9557514138 which was alleged to have been recovered from appellant Hari Singh was also not brought on record, and thus, in the absence of the same, location of the said mobile no. 9557514138 cannot be believed. The comparative location chart prepared by the police of the above-said two mobile nos. was also not exhibited, and even if the said comparative chart is to be looked into, the location of the two mobile nos. 8923174470 and 9557524138 is 300 kms apart and hence, it is unbelievable that the person carrying the mobile no. 8923174470 and the mobile no. 9557524138 is the same person. Furthermore, it was contended that the FSL report (Ex.PW-27/A) pertaining to the voice recording of the ransom caller and the specimen voice sample of Hari Singh was prepared in case FIR No. 300/2010 of PS Dabri, and in the absence of any seizure memo on record, it is unknown how those documents have become a part of the present case record. The voice of the ransom caller was recorded by Kanchan Kumari (PW-14) who was the complainant in case FIR No.300/2010, by recording

the call made to her by appellant Hari Singh on 06th October, 2010 on a CD, but no certificate under section 65B of the Evidence Act was provided by her when the said CD was handed over to the police by her. Therefore, the CD, FSL Report, and the specimen voice sample cannot be read in evidence being inadmissible, as also on the ground of estoppel. Reliance was placed on the decisions cited as AIR 1956 SC 415 Pritam Singh v. State of Punjab and (2013) 9 SCC 245 Ravinder Singh v. Sukhbir Singh.

7. On behalf of appellant Rahul Gupta it was contended that no appeal was preferred by the state against the three acquitted persons. There is no evidence on record to show that the appellant Rahul knew deceased or that the deceased actually went missing on 30th September, 2010 from the District Centre at Janakpuri. FIR was registered after a delay of 4 days i.e. on 04th October, 2010. Despite the delay, all the facts were not disclosed by the complainant (PW-12) as he did not disclose the factum of receipt of any ransom calls either by his younger son Nirbhay Singh or the complainant himself, which shows that either an attempt was made at the first instance to conceal such material information or it was subsequently added as an afterthought. Further, there are material inconsistencies in the depositions made by the complainant (PW-12), his brother Shambhu Nath (PW-8) and the IO Insp. PC Yadav (PW-26) about their visit to Bareilly, handing over of the ransom amount, conversation with the kidnappers and their return from Bareilly to Delhi. To contend that prosecution witnesses whose testimonies suffers from infirmities cannot be believed, reliance was placed on the decision cited as (1976) 4 SCC 288 State of Orissa v. Brahmananda Nanda. It was further contended that the dead body was recovered at the instance of Hari Singh and therefore, appellant Rahul Gupta cannot be incriminated for

the same. Even otherwise, it was an admitted position that appellant Rahul was not present at the time of murder or burial of the deceased, and hence, body could not have been recovered at his instance. Reliance was placed on the decisions cited as (1994) 5 SCC 152 Sukhvinder Singh & Ors. v. State of Punjab and (1969) 2 SCC 872 Jaffar Hussain Dastagir v. State of Maharashtra. It was further contended that as per the post mortem report (Ex.PW-25/A) the dead body was in a highly decomposed state and could not have been identified. Even the underwear and footwear of the deceased could not have been identified by the complainant PW-12 as he himself was not aware what the deceased was wearing at the time of alleged incident. Reliance was placed on the decision cited as CrI.A.1248/2001 (SC) Ravinder Prakash v. State of Haryana. Further, no case property was recovered from or at the instance of the appellant Rahul. No independent witness was made a part of any of the investigation proceedings, despite being carried out in public places. Rather, the complainant (PW-12) was present in each of the proceedings which casts doubt over the veracity of the investigation. Reliance was placed on the decisions cited as (2003) 2 SCC 202 State of UP v. Arun Kumar Gupta and (1995) 34 DRJ 404 Satish Kumar v. State. As per the prosecution, phone no. 7503050250 belonged to the appellant Rahul which as per CAF (Ex.PW20/A) was in the name of his mother Indu Devi. Call detail records of this number (Ex.PW20/B) were brought on record which shows that Rahul never travelled out of Delhi at the time of commission of the alleged crime.

8. It was contended on behalf of appellant Bhanu Pratap @ Pratap Bhan @ Bablu that the role ascribed to him was that on the intervening night of 09-10th October 2010, Bhanu Pratap, Dinesh and Usman collected the

ransom amount at the Bareilly Railway Station from the complainant (PW-12). Version of Shambhu Nath (PW-8) and the complainant (PW-12) visiting Bareilly does not inspire confidence. IO PC Yadav (PW-26) chose to leave the complainant (PW-12) and Shambhu Nath (PW-8) at the crucial juncture of handing over the ransom amount which could have been the best chance to nab the culprits. Further, during trial ASI Rajinder (PW-17) completely denied having camped at the Bareilly in the second week of October 2010. Likewise, HC Vikal (PW-22) also remained completely silent on having camped at Bareilly or Barielly Railway Station, which shows that both PW-17 and PW-22 never visited Bareilly. No CDR of Shambhu Nath (PW-8), the complainant (PW-12) or IO (PW-26) was placed on record to prove that they were at the Bareilly Railway station. Further, as per the information provided under the RTI Act (Ex.DW-5/A) shows that Delhi Police was never issued any pass from the railway department. And since, the visit to Bareilly is not established, therefore, the only connecting chain of identification of Bhanu Pratap by the complainant as the person who collected the ransom amount cannot be established. It was further contended that there is no proof of use of mobile no. 8057361703 by the appellant Bhan Pratap. Further, as per the CAF (Ex.PW-16/A) the said number was issued to one Ompal which was active since 09th July, 2009, which belies the claim of the prosecution that the said mobile no. was activated just one day prior to the commission of offence. Neither any CDR of the said mobile no. was brought on record nor was Ompal examined as a witness by the prosecution to substantiate its claim. Furthermore, as per the seizure memo Ex.PW-12/J, the said mobile no. was seized from appellant Dinesh Kumar and not Bhan Pratap.

9. On behalf of appellant Dinesh Kumar, it was contended that as per the disclosure statement of appellant Hari Singh (Ex.PW-12/A), appellant Dinesh was neither present at time of killing the deceased nor when the dead body was buried. It was further contended that even though the video recording of the recovery of dead body cannot be used in evidence, however even from the said video it can be found that the appellant Dinesh was merely standing along with other co-accused and had not pointed out towards the spot of recovery. Prosecution has failed to prove that the deceased actually boarded and deboarded the bus and got off at Janakpuri. Neither any bus ticket nor any other document nor the driver of the bus from whom enquiries were made by PW-6 and PW-12 was examined to prove the travel of the deceased, on the day of alleged kidnapping. Prosecution further failed to establish if the deceased was in fact kidnapped on 30th September, 2010. As per the attendance register of the college, the deceased had not been attending college three days prior to the date of incident i.e. from 27th September, 2010 and no CDR of the deceased was brought on record to establish the location of the deceased. Further, the prosecution failed to establish the presence of Shambhu Nath (PW-8) and complainant (PW-12) at the Bareilly railway station. The prosecution even failed to establish that the deceased was in fact murdered and that the body recovered was that of the deceased. Since the body was in a decomposed and a non-recognizable state, hence, ordinary identification was not possible and the body should have been identified by DNA examination, which was also not done. Although, the hair of the dead body were preserved, the same were never sent for DNA analysis. It was further contended that the neither the *panch* witnesses nor the videographer i.e. PW-2, PW-3, PW-4 and PW-5 identified the appellants

in the court. Reliance was placed on the decision cited as AIR 1984 SC 1622 Sharad Birdhichand Sharda v. State of Maharashtra to contend that in cases where the chain of circumstances is not complete, the accused deserves to be acquitted. As per prosecution, one phone with two SIMs were seized from appellant Dinesh at the time of his arrest (Ex.PW-12/J), however, neither the CDR nor location chart of the said mobile nos. allegedly recovered from the appellant Dinesh were brought on record to link him with the alleged offence. Even as per the prosecution, the said mobile phone and two SIMs were not used in any manner in the commission of the alleged crime. Further, the said phone recovered from him was not even in the name of Dinesh and the person in whose name it was found to be, was not examined as a witness. Further, the seizure memo Ex.PW-12/J does not mention any mobile number and merely mentions the SIM No. and the IMEI No. of the phone recovered which creates doubt in the prosecution story. It was further contended that neither the phone nor the SIM cards were produced in Court for identification in the court.

10. It was contended on behalf of appellant Usman that the main incriminating circumstance alleged against him was his visit to the Bareilly Railway Station on 09-10th October 2010 to collect the ransom amount. There are material contradictions in the testimonies of Shambhu Nath (PW-8) and complainant (PW-12) which renders the story of prosecution improbable and liable to be discarded. No call recording was brought on record to show if in fact any ransom call was received by the complainant. No sketch of any of the three accused persons who allegedly lifted the ransom amount was prepared and produced. The complainant (PW-12) during his examination and cross examination identified Dinesh and Bablu

and not Usman as one of those who took ₹2.5 Lacs from the complainant at Bareilly station. Even otherwise, the complainant was unable to answer any question pertaining to the railway station and the hotel he stayed at Bareilly and the RTI replies (Ex.DW-3/A, DW-4/A and DW-5/A) received from Bareilly Railway station and police station, which rules out the possibility of any police officer visiting from Delhi to Bareilly on the alleged date of delivery of ransom. Therefore, there is no evidence to establish the presence of Usman at the railway station to collect the ransom amount. It was further contended that the *panchnama* (Ex.PW-2/A) records that the dead body was recovered at the instance of the appellant Hari Singh and even as per the testimony of SI Sukhbir Malik (PW-21), the disclosure statement of Hari Singh was recorded first, and therefore, as the police was already aware about the contents of the disclosure statement by one of the accused, the disclosures subsequently recorded would not be covered by Section 27 of the Indian Evidence Act. Furthermore, it was contended that the non-production of phones, SIMs and of *malkhana* register no. 19 to prove the recoveries also adversely affect the prosecution case. As per the CAF (Ex.PW-19/A), the mobile phone no. 9720178112 allegedly recovered from Usman belongs to one Gyan Pratap who was never examined by the prosecution. Further, the CDR Ex.PW-19/B of the said mobile no. has been produced only upto 17th October, 2010 whereas the mobile was recovered on 24th October, 2010, hence, it cannot be presumed if the said mobile no. was infact recovered from appellant Usman. It was further contended that the exhumation proceedings are in violation of regulation 25.34 of the Punjab Police Rules and Section 176(3) of the Code of Criminal Procedure. Neither any permission was sought nor was any concerned SDM/ Magistrate called at the

spot. As per the version of the IO, the police personnel along with the accused persons had left for Kasganj for recovery of the dead body on 25th October, 2010 in the evening at around 4-5 p.m., and the journey time is about 4 hours. However, the IO failed to account for the time gap between the departure from Delhi and arrival at the place of recovery i.e. between the evening of 25th October, 2010 till the afternoon of 26th October, 2010, when the recovery was effected. Such time gap was sufficient for IO to make the necessary setup and create the false evidence of videography and pointing out. It was further contended on behalf of appellant Usman that in alternative, at best a case under Section 201 IPC is made out against him for having knowledge about the dead body. Reliance was placed on the decisions cited as AIR 1971 SC 2016 Bakshish Singh v. The State of Punjab, 1999 SCC (CrL.) 461 Chhotu Singh v. State of Rajasthan and 2007 SCC OnLine Del 1087 Radhey Shyam v. State.

11. Learned APP for the State submitted that the impugned judgment of the trial court is well reasoned as it is based on cogent evidence all of which point towards the guilt of the appellants and hence the present appeals be dismissed. It was contended that on 06th October 2010, appellant Hari Singh used mobile no. 8923174470 and made deceased Nikesh speak with Kanchan Kumari (PW-14). The said call was recorded by Kanchan (PW-14), the CD of which was handed over to the police, voice in which as per the FSL report, tallied with the voice of appellant Hari Singh, hence the said number was used by Hari Singh to make the ransom call at the relevant time. It was submitted that PW-3 and PW-4 are public witnesses to the digging out of the dead body from the sugarcane field at Gaupura Road. The exhumation proceedings have been video-graphed and DVD containing the same is

Ex.PX which proves that the appellants Hari Singh, Dinesh and Usman had pointed out the place of burial of the dead body from the sugarcane field of Deen Dayal which was within the exclusive knowledge of appellants, hence admissible under section 27 of the Evidence Act. The dead body was identified by the complainant (PW-12). As per the CDR of mobile number 9557524138 (Ex.PW-18/A) seized from the personal search of Hari Singh, Hari Singh was in regular contact with appellants Dinesh, Usman and Rahul. Appellant Rahul Gupta was the friend of the deceased and had studied with the deceased since sixth standard. As per the CDR of the mobile no. 7503050520 (Ex.PW-20/B) seized from the personal search of Rahul, Rahul had last spoken to appellant Usman on 30th September, 2010 after which his mobile phone was switched off and then he spoke with appellant Hari Singh on 05th October, 2010 when he switched on his phone. Appellant Dinesh and Usman were identified by Shambhu Nath (PW-8) as the person who came to collect the ransom amount at Bareilly Railway station. It was further contended that an amount of ₹28,000/- was got recovered by appellant Usman from his house (Ex.PW-17/E). The complainant (PW-12) during his examination had deposed that he had put a tick mark on all the currency notes and had identified the recovered cash during TIP (Ex.PW-12/Y). As regards appellant Bhanu Pratap, it was contended that he surrendered before the Tis Hazari Court on 22nd February 2011 and the appellant was subjected to judicial TIP but he refused to join the proceedings (Ex.PW-26/E). All the appellants were correctly identified by the complainant (PW-12) before the trial court. It was further contended that the complainant had categorically deposed that the body of his son was not totally decomposed and that the body and face of the deceased were identifiable. Even as per the post mortem

report (Ex.PW-25/A), it is nowhere opined that the dead body was in an unidentifiable condition. The post mortem which was conducted on 27th October, 2010, opined the cause of death to be asphyxia and the death was opined to have occurred about three weeks prior, which corresponds to the date when the deceased was murdered. Reliance was placed on the judgment cited as SLP (Crl.) No. 8682 of 2014 Manoj Suryavanshi v. State of Chhattisgarh, (2012) 8 SCC 263 Dayal Singh & Ors. v. State of Uttaranchal, (2012) 9 SCC 532 Gajoo v. State of Uttarakhand, (2004) 3 SCC 654 Dhanaj Singh @ Shera & Ors. v. State of Punjab and (1999) 2 SCC 126 Paras Yadav & Ors. v. State of Bihar.

12. Having heard learned counsel for the parties at length and perusing the record the following evidence led by the prosecution emerges on record.

13. The complainant (PW-12) during his examination in chief stated that the deceased was his son who used to stay at the hostel of his college Bhagwan Parshuram Engineering College at Gohana, Haryana, and that on 30th September, 2010, his son came to Delhi in the bus of his college and deboarded at District Centre, Janakpuri around 8.30 p.m., however, he did not reach home. He and his family kept on searching for the deceased at their own level till 03rd October, 2010, when at around 5.30-6 p.m., a call was received on the mobile phone of his younger son Nirbhay Singh and thereafter on his own mobile no. that the deceased was in the custody of the caller and demanded ₹50,00,000/-. He went to the Police Station Vikapsuri and narrated all the facts. The kidnapper used to call him daily from 04th October to 09th October, 2010 when he also spoke with his son. The ransom amount was also negotiated and fixed at ₹2.5 Lacs. Thereafter, on 09th October, 2010 he went to Bareilly with his elder brother Shambhu Nath

along with two police officials by Garibrath Train without ticket, and reached at platform no. 1 at about 5-6 p.m. On reaching Bareilly, he was directed by the kidnappers to reach platform no. 6. The kidnapper kept on calling him from 6 p.m. till 12 midnight and directed him to go to different places at the railway station. Kidnappers also asked him to come to Manpur Nagaria, which he refused. Lastly, he was directed by the kidnappers to go back to platform no. 6 and keep the money on a polythene kept by them near the engine on an elevated platform. Accordingly, he kept the money there and after some time 3 boys came, folded the polythene and took the money away. Around 4 a.m., he received a call from the kidnapper that they had received the money. He was told by the kidnapper that his son would come back around 6 a.m. at platform no. 6. When his son did not turn up he called the kidnapper back and on which he was told not to worry and that his son might have reached Delhi or at the place of his friend. Thereafter, he went to the crime branch officials who were staying at a nearby hotel and told them everything and stayed at the railway station till 11th October, 2010 but his son did not come. He thereafter returned back to Delhi on 12th October, 2010 in a private vehicle of the crime branch. Thereafter, on 24th October, 2010, he went to ISBT Anand Vihar with Insp. PC Yadav where, at around 3 p.m., four persons came and stood near the pavement of the in-gate and he identified two persons, Dinesh and Bablu, who had taken ₹2.5 Lacs at the Bareilly Railway Station, and after half an hour, one more person Rahul Gupta joined them who was identified as a friend of his deceased son, having studied with his son since sixth standard. At around 10.30-11 p.m. on 25th October, 2010 all the accused were taken to Kasganj, UP where they reached at around 3.30-4 a.m. and stayed at Krishna Lodge. On 26th October, 2010,

they went to Manpur Nagaria Chowki and met SI Pritam Singh. The local police accompanied them to Gaupura Road from where they went to *Chakrod* and the accused pointed towards a sugarcane field where they disposed off the dead body. The accused persons Usman, Dinesh, Radhey Shyam and Hari Singh pointed out the particular place where they had buried the body which was dug up with the help of one local Masi Charan, and then he identified the body of his son. The dead body had a shirt, kachchha and sandals and one nylon rope was found tied around his neck. The police officials also collected the hair of his son from the pit where the dead body was recovered. The exhumation proceedings were video-graphed and the body was sent for post mortem. He received the dead body from Etah, District Hospital. He identified the cash recovered from the possession of the accused Radhey Shyam and Bunty and also the pant of his son.

14. In his cross examination, the complainant (PW-12) stated to have verified from the bus driver that his son got down from the bus at around 8.30 p.m. on 02nd October, 2010. He also stated to have visited the house of Rahul in search of his son, where Rahul's mother informed him that Rahul had gone to his maternal uncle. He also stated to have visited PS Dabri on 01st October 2010 and making an oral complaint there, and when he again went to PS Dabri on 02nd October, 2010, he was told that the matter falls within the jurisdiction of PS Janakpuri. On making an oral complainant at PS Janakpuri on 03rd October, 2010, he was told that the matter pertains to PS Vikaspuri. Thereafter, an officer of PS Janakpuri took him to PS Vikaspuri and on 04th October 2010, he registered his complaint with Kuldeep Singh. He also stated to have marked the currency notes handed over as ransom. He also stated to have stayed at a hotel on 11th October, 2010 but did not

remember the name of the same. No local police or RPF official was involved in the investigation along with crime branch officials on 10th-11th October, 2010. He stated to have travelled in the AC coach of the train. He further stated that the police official wrongly recorded the phone no. of the ransom caller as 8923174270, which he later got corrected as the actual phone no. was 8923174470. He stated that the body was not totally decomposed and that he was able to identify the face and the body of his son. He did not mention to the police about his conversation with his son as the same was got recorded by the police. He further stated that three vehicles were used to reach Manpur Nagaria and all the four accused persons except Rahul pointed towards the place where body was buried, and that pit was dug up using a Phawra. The body was recovered in a sitting posture.

15. Shambhunath Singh (PW-8) deposed that on 9th October, 2010, he started from Delhi for Bareilly with his younger brother Udai Narayan with the ransom amount of ₹2.5 Lacs in Garibnawaj Train and reached Bareilly platform no. 1 at around 5-5/30 p.m. He stated that they received calls from kidnappers and were asked to catch a local train and get down after three railway stations which they refused. As they were threatened by the kidnappers, they did not inform the police, but the police officials also reached Bareilly, but they did not contact the police officials. At about 10-10.30 p.m., Delhi police officials asked them to come out of the railway station but they asked Delhi police to leave. Thereafter they got multiple calls from the kidnappers directing them to go from one place to the other on the railway station. Finally, they received a call from the kidnappers who directed them to go to platform no. 6 and keep the money polythene containing the money beneath a polythene measuring 2 x 2.5 feet.

Thereafter, three persons lifted the amount and went away. Around 4 a.m. they received a call wherein they were informed that the amount was received and that deceased would come to platform 6 at about 6 a.m. They waited for deceased till 2 p.m. after which they informed Delhi police officials about non-arrival of deceased. Thereafter, they all came back to Delhi. In his cross examination, he stated that the police officials travelled in the same train but in another compartment. He stated that they left the railway station on the evening of 10th October, 2010. He stated to have travelled in the general coach of the train and that he purchased the tickets. He stated that no specific mark was put on the currency notes given as the ransom amount and that the currency notes were in ₹100/- denomination notes.

16. Insp. PC Yadav (PW-26) was the investigating officer in the present matter and he deposed that on 8th October, 2010, the complainant informed him that he had finalized the negotiation for a sum of ₹2.5 Lacs which the complainant was willing to pay for which he was asked to come to Bareilly by the kidnappers. His team was already present at Bareilly investigating FIR No.300/2010 wherein the same mobile no. was used by the kidnappers. He instructed his team comprising of SI Rajinder, ASI Ravinder and HC Vikal, etc. to reach Bareilly Railway Station, and he boarded the Garib Rath train alongwith HC Kuldeep by which the complainant and his brother were also travelling. The train reached Bareilly at about 4 p.m. and as the complainant did want him and Kuldeep at the station, he and Kuldeep went out after giving instructions to his team already camping at the station in civil dress. He stated to have been in constant touch with the complainant, and when the complainant told him that the kidnapper had asked him to

come to Manpur Nagaria, he instructed the complainant to ask the kidnapper to come to Bareilly. Around 10-10.30 p.m., as the station was empty, the team was finding it difficult to hide themselves, and therefore, he instructed his team and complainant to come outside the railway station but the complainant did not leave platform no. 6. He again contacted the complainant on the next morning around 6 a.m. when the complainant informed him that he had given the ransom amount to the kidnappers who had assured that his son would come in the morning. As the deceased did not turn up, around 2 p.m., the complainant came outside and he alongwith the complainant and Shambhunath came back to Delhi on 14th October, 2010.

17. Insp. PC Yadav further deposed that on 24th October, 2010, he received a secret information that the accused person would come to ISBT Anand Vihar around 3.30-4 p.m. for which a raiding team was constituted and around 3.15 p.m., four persons were seen coming out of the ISBT Anand Vihar and started waiting for someone, and after sometime, one more person came there and joined them, and as these persons were about to leave, they were apprehended. The complainant identified Dinesh Kumar and Usman Khan as the persons who collected the ransom amount and were taken to SOS crime branch where they were arrested and interrogated, and their disclosure statements were recorded. Thereafter on 25th October, 2010, he alongwith his team and the accused persons left for Kasganj and reached there at about 2-3 a.m., and stayed at a lodge/hotel. On 26th October, 2010, in the morning they reached the local police station at Soron, where they were directed to police post Manpur Nagaria where they met SI Pritam Singh. SI Pritam Singh then took them to PS Soron where he made a departure entry and arranged a videographer and a labourer from the digging spot.

Thereafter, the accused persons led the police team to a sugarcane field via Gaupura road and there the accused pointed out the place where they confined the deceased and killed him. The accused persons pointed out the place where the dead body was buried and the proceedings were video-graphed. The dead body was recovered and was identified by the complainant. He collected the hair, earth control and earth control with body-tissues, and the dead body was sent for post mortem to Etah. Thereafter, on 27th October, 2010, they went to Pilibheet at the house of Hari Singh, where nothing incriminating was found and Hari Singh disclosed to him that the phone used by him to make the ransom calls was destroyed by him and was thrown into a drain. From there, they went to Village Shekhupur, at the house of Radhey Shyam where Radhey Shyam got recovered an amount of ₹15,000/- from an iron box, which were in denomination of ₹500/-. Thereafter they went to the house of Dinesh at Soron and nothing incriminating was recovered. Thereafter, Usman @ Buntly led them to his house at Village Kheria Patikara, UP and he got recovered an amount of ₹28,000/- which were in denomination of ₹500/-. During further investigation, names of three other associates Bhanu Pratap @ Pratap Bhan, Mukesh and Raghubir @ Bhura was disclosed. CDRs of the mobile phones was recovered which revealed that the accused persons were present at all relevant time. The location of mobile phone recovered from Hari Singh and the location of mobile used to demand ransom were same. Accused Bhanu Pratap surrendered himself before Tis Hazari Court and was arrested on 22nd February, 2011, and he refused to join the TIP. Later, he was identified by the complainant as one who collected the ransom money, but no recovery was effected from him. Mukesh was arrested from his native village

Ramchand ka Nagla near Manpur Nagaria and he got recovered a pant of the deceased from an iron box at his house. Raghubir was arrested from Kashganj bus stop but nothing was recovered from him.

18. In his cross examination, IO stated that he travelled to Bareilly with HC Kuldeep on emergency police pass. He further stated that they came back to Delhi on 12th October, 2010 from hotel via Manpur Nagaria by three personal vehicles. He further stated that the disclosure statement of Hari Singh was recorded first and he does not remember the further sequence, and that even during recovery, the accused persons pointed out the place of recovery one by one. He stated that the mobile no. 8923174470 used to make ransom calls was found in the name of one Shamshad, but no statement of Shamshad was recorded. A team of Crime Branch visited the given address of Shamshad, but he was not available.

19. SI Pritam Singh (PW-10) deposed that on 26th October, 2010, Insp. KP Singh of Delhi Police along with his staff and four accused persons came to police post Manpur Nagaria, PS Soron, where he was posted as in-charge. He joined the investigation and the accused led them to Gaupura road, and then on one kachcha road in the sugarcane field and pointed towards the place where they had buried the dead body. He correctly identified the four accused Hari Singh, Radhey Shyam, Dinesh and Rahul in the court. Later he stated that accused were five in number and also identified Usman. In his cross examination, PW-10 stated that Delhi police arrived at his police post around 2.30-3 p.m. and the said officials had made their arrival entry at the police station, and stated that he had not made any departure entry. No arrival entry was made in the police post as no DD register was maintained at the police post. He stated that the accused Hari Singh and Radhey Shyam

dug up the field. He stated to have called four public persons who were the residents of Manpur Nagaria namely Kamal Singh and Girish and he failed to remember names of other two public witnesses. He directed Ct. Meghnath to bring one photographer.

20. Sh. V. Lakshmi Narasimhan (PW-27) conducted the FSL examination of the CD containing the voice recording of accused Hari Singh and an audio cassette containing the original specimen voice of Hari Singh. Both these articles were received in two separate parcels sealed in case FIR No. 300/2010. He tendered his report Ex.PW-27/A and opined that the analysis of the speech samples revealed that the voice exhibits of the speaker contained in CD are similar to the voice exhibits in the audio cassette and thus concluded that the voice in both the exhibits is of the same persons i.e. Hari Singh.

21. Independent witness Mashi Charan (PW-2) deposed that SI Pritam Singh and Delhi police officials asked him to dig up one dead body. He went to sugarcane field at Gaupura and a dead body of a boy about 20 years old was taken out after digging out the field with a spade. There was a *kachchha* and *baniyan* on the dead body and a rope was tied around his neck. In his cross examination he stated that one passage “*Chakrod*” was there and the public persons could come and go from there. He also stated that the earth of the place was of a little upper level from the normal earth level. Another witness Ram Sewak (PW-3) deposed that the dead body was taken out in his presence and that he reached the spot around 4-5 p.m. He also stated distance between *Chakrod* and the spot is about 15 kms.

22. Videographer Bhoop Singh (PW-5) deposed that he was called by SI Pritam Singh and he went to a sugarcane field at Gaupura road. The accused

persons pointed out a place and on their pointing out a dead body of a boy was recovered from the ditch. In his cross examination, PW-5 deposed that photographs were taken by the police officials and he conducted the videography.

23. Govind Yadav (PW-6) who was a classmate of the deceased deposed that on 30th September, 2010, he alongwith the deceased got down at District Centre near a mall. At about 9-10 p.m., he made a call to the deceased, who told him that he was staying with his friends and would go to his house on the next day.

24. The appellant Hari Singh in his statement under section 313 of Code of Criminal Procedure (“CrPC”) denied having made any call to the complainant (PW-12) and he did not instruct the complainant to reach platform no.6. He also denied having made any call to the Kanchan Kumari (PW-14). He refuted that he was arrested from Anand Vihar ISBT, but stated that he was lifted from his house. He denied having done anything wrong and stated that he was innocent and was falsely implicated in the present case as the police officials were under a lot of pressure from the senior officers.

25. In his statement under Section 313 CrPC, appellant Radhey Shyam denied having ever visited Delhi on 30th September, 2010 or any other time before his arrest. He also denied having ever visited Bareilly Railway Station. He also denied that he was picked up police from Anand Vihar ISBT but stated that he was picked up from his residence on 21st October, 2010. He also denied having made any disclosure statement to the police and stated that his signatures were obtained on blank papers. He lastly stated that he was innocent and was falsely implicated in the present case.

26. In his statement under section 313 CrPC, appellant Usman Khan

stated that he never made any call to any person in regard of ransom and that he was not aware about any ransom call. He stated that he never went towards platform no. 6 at Bareilly Railway station. He denied having made any disclosure statement, or that a dead body was recovered on the basis of his disclosure statement. He stated that he was lifted from his house and was taken to crime branch office on 22nd October, 2010. Lastly he stated that he has no concern with the present case and that nothing was recovered at his instance. He also stated that none of the mobile phones used in the alleged offence belongs to him.

27. Appellant Rahul Gupta in his statement under section 313 stated that the complainant (PW-12) and Shambhunath did not go to Bareilly to give the ransom amount to anyone. He stated that no call was made by anyone to PW-12. He further stated that Dinesh, Usman, Bhanu Pratap never went to platform no. 6. He stated that he was not arrested from Anand Vihar, ISBT but was lifted from his tuition class to make some inquiries. He stated that he had not gone to Manpur Nagaria police station or to the sugarcane field. He stated that no dead body was recovered in his presence at the sugarcane field. He did not point out the place from where the dead body was recovered. He also denied having known the complainant (PW-12). Lastly, he stated that he is innocent and was falsely implicated.

28. Appellant Dinesh Kumar in his statement under Section 313 CrPC, Dinesh denied having made any call to the complainant for ransom. He stated that the story of travel by the complainant (PW-12) to Bareilly railway station is false. He stated that he was apprehended by the police on 20th October, 2010 from near his house. The police officers were already aware about the place of burial of the dead body and that he alongwith other

accused persons were taken there by bus. The police officers took them to the place and pointed out that the accused persons had to point at that place for the recovery of the dead body. They were taken back to the bus and were then threatened with dire consequences and were told to follow their instructions. Then the police officers asked the accused persons to point out the place where the dead body was buried and conducted the videography. He stated that he did not point out the place where the body was buried as he was unaware about the same and got to know about it only on 25th October, 2010 at the instance of the police officer. He stated that no recovery memo (Ex.PW-10/C) or pointing out memo (Ex.PW-10/A) were prepared at his instance. He stated that his CDRs were deliberately not placed on record. Lastly he stated that he was falsely implicated in the present case by police in order to solve the blind case of missing deceased in the present case and Yash in case FIR No. 300/2010. He also stated that in similar circumstances, he has been acquitted in case FIR No.300/2010 at PS Dabri. He led defence evidence.

29. Sudhir Kumar (DW-1) deposed that appellant Dinesh was working as a teacher in his school Kamla Inter College at Kasganj from 2002-2007. And on 20th October, 2010, outside his school, he saw Dinesh being taken by few people in plain clothes who claimed themselves to be officials from Delhi police. He failed to identify the officers and stated that the matter is 7-8 years old and hence, he cannot identify those officers. In his cross examination, DW-1 stated that he did not go to the house of Dinesh for intimating the members of his family. He also stated that he and Dinesh's father Chhittar Singh had mobile phones, but he did not make any call to Chhittar Singh as he did not have Chhittar Singh's number.

30. ACP Vijay Kumar Rastogi from Crime Branch HQ (DW-2), SI Supender Malik from office of PIO, Distt. Bareilly (DW-3), Insp. Alok Kumar from office of PIO, RPF at Distt. Bareilly (DW-4), Sh. PS Meena from office of PIO, Rail Bhawan (DW-5) and Anand Kumar from office of PIO, Izzat Nagar Distt. Bareilly (DW-6) all brought RTI replies to the information sought under the RTI Act proving that no departure entry was made or official or emergency pass was issued for travel to Bareilly by train. DW-2 in his cross examination stated that even in case of any emergency, if any official has to go outside Delhi, an entry is required to be made in the *rojnamcha*.

31. Thus as per the case of the prosecution, the events relating to kidnapping and murder of Nikesh commenced on 30th September, 2010 when the deceased boarded the bus from his engineering college located at Gohana, Haryana to come to Delhi and de-boarded at District Centre, Janakpuri at about 7-7:30 p.m. as per Govind Yadav (PW-6), however, the deceased did not reach home. As per the father of the deceased (PW-12), he waited and searched for his son/deceased but could not trace the deceased and his search continued till 3rd October, 2010, when at about 5.30-6.00 p.m., calls were received on the mobile No. 9911423724 of Nirbhay, younger son of PW-12, and PW-12's own number 9310514604. These calls were received from mobile no. 8923174470 and the caller said that the deceased was in their custody and demanded ransom of ₹50 lacs. Thereafter, on the same day, the police was contacted to register a complaint (Ex. PW-12/A) and thus FIR No. 256/2010 (Ex. PW-1/A) was registered on 4th October, 2010. On 5th October, 2010, PW-12 was informed by the police that the investigation had been transferred to Crime Branch.

32. As per Kanchan Kumari (PW-14), her son Yash had also been kidnapped on 10th September, 2010 and on 6th October, 2010, she received a ransom call from the same mobile no. 8923174470 and was made to talk to Nikesh by the caller for assuring her that her son Yash was with Nikesh, but 2-3 days back, they had been separated from each other. FIR No.300/2010 relating to the kidnapping of Yash was also investigated by Crime Branch.

33. As per PW-12, the kidnappers were calling on his mobile till 9th October, 2010 and finally, the ransom amount was negotiated to ₹2.5 lacs, PW-12 and his family members were allowed to talk with the deceased and on 9th October, 2010, PW-12 accompanied by his elder brother (PW-8) left for Bareilly, UP where the rendezvous had been fixed with the kidnappers for delivery of the ransom amount. IO (PW-26), along with PW-8 and PW-12 travelled in the same train but in a different coach. After communication exchanged with the kidnappers all through the evening of 9th October, 2010, and in the early hours of 10th October, 2010, PW-12 received the call from the kidnappers upon which he took out the money hidden underneath his shirt and left the money at platform no. 6 on a polythene spread at the platform. At the time of leaving the money at the said spot, PW-12 and PW-8 noticed three boys standing nearby and they were told to leave the spot by the caller. PW-12 saw the three boys come, folded the polythene and took the ransom money away. PW-12 was assured that the child/deceased would reach platform No.6 by 6:00 a.m. He waited for his son who did not return, and at about 11:00 a.m., the entire sequence was narrated by him to the crime branch officials who were staying in a hotel located near the railway station. On 11th October, 2010, the police team along with PW-12 and PW-8 waited in Bareilly, but no information was received from the kidnappers. Thereafter,

as per PW-12, on 12th October, 2010 the team returned back to Delhi, by private vehicles of the Crime Branch.

34. On 24th October, 2010, the complainant (PW-12) received a call from Crime Branch to reach their office, and was asked to accompany the I.O. and other team members in four private vehicles for bus stand at Anand Vihar along with the secret informer. At about 3:00 p.m., four persons were found standing there, when PW-12 identified two people who had collected the ransom. After half an hour, another person Rahul Gupta came who started talking to the four people standing there. Rahul Gupta was identified by PW-12 as friend of his son. The four persons were later identified as Dinesh, Bablu, Hari Singh and Radhey Shyam. These four persons alongwith Rahul Gupta were apprehended and subsequently arrested. Their disclosure statements were recorded at Crime Branch Office. On 25th October, 2010 at around 7:30-8:00 p.m., PW-12 was again called at Crime Branch Office and at about 10:30-11:00 p.m. all accused persons were taken to Kasganj, U.P. where they arrived in the early hours of 26th October, 2010.

35. On 26th October, 2010, Crime Branch officers along with SI Pritam Singh (PW-10) of Manpur Nagaria Chowki went to Gaupura road and the accused pointed to a sugarcane field where they had disposed of the body of Nikesh. The area was dug up with help of one local person Masi Charan (PW-2) and the body was taken out, which PW-12 identified as that of his son. The dead body had a shirt, *kachha* and sandals on it and a nylon rope was found tied around the neck (Ex. PW-26/L). These proceedings were videographed and the body was sent for *post mortem* to Etah, U.P. Thereafter, on 27th October, 2010 the dead body was handed over to PW-12.

36. PW-12 also identified the case properties and the disclosure statements of Hari Singh, Radhey Shyam, Dinesh, Usman, Rahul Gupta (Ex.PW-12/A to PW-12/E respectively), seizure memos of mobile phones of Rahul Gupta, Hari Singh, Radhey Shyam, Usman, Dinesh (Ex.PW-12/F to PW-12/J respectively), arrest memos of Radhey Shyam, Hari Singh, Usman, Rahul Gupta (Ex.PW-12/L to PW-12/O respectively), personal search memos of Rahul Gupta, Dinesh Kumar, Radhey Shyam, Hari Singh, Usman Khan (Ex.PW-12/P to PW-12/T respectively), receipt of handing over the dead body (Ex.PW-12/U) and TIP proceedings of the currency notes (Ex.PW-12/Y).

37. Further, as per the testimony of ASI Ravinder (PW-17), ₹15,000/- in cash in the denomination of ₹500/- was recovered from Radhey Shyam (Ex.PW-17/D dated 27th October, 2010) and ₹28,000 in cash in the denomination of ₹500/- was recovered from Usman (Ex.PW-17/E dated 28th October, 2010). This amount recovered from the said appellant was identified by the complainant (PW-12) as the ransom given on 10th January 2011 at the Bairelly Railway Station in the judicial TIP (Ex.PW-12/Y). Furthermore, as deposed by Insp. PC Yadav (PW-26), pants of the deceased were also recovered from Mukesh (Ex.PW-26/I dated 13th September, 2011).

38. From the perusal of the details of the mobile phones used/ recovered, following evidence emerges on record:

- a. As per the complainant (PW-12) he was the user of mobile phone no. 9310514604, Nikesh was using mobile phone number 9911674109 and his younger son Nirbhay Singh was using mobile no. 9911423724. As per the Idea Cellular Nodal Officer (PW-16) the mobile number used by Nirbhay was in the name of Negam Devi vide

the CAF Ex.PW-16/C. Further, CDR of mobile number 9911423724 was exhibited vide Ex. PW-16/B.

b. Mobile number 8923174470 was used for making the ransom calls to the complainant (PW-12) and his younger son Nirbhay as also to Kanchan Kumari (PW-14), however, the same was neither recovered nor the CDR of the same was brought on record.

c. CDRs of mobile numbers recovered from the appellants Hari Singh (Ex.PW-18/A), Usman (Ex.PW-19/B) and Rahul Gupta (Ex.PW-20/B) were brought on record, along with requisite certificates under Section 65B of Indian Evidence Act which were proved by the Nodal Officers from Bharati AirTel (PW-18), Vodafone (PW-19) and Aircel Ltd. (PW-20) respectively.

d. Mobile number 8859923709 which was used by the kidnappers when the complainant was at the railway station was not recovered, however, the CDR of the same was brought on record along with the certificate under Section 65B of the Indian Evidence Act vide Ex.PW-19/D and Ex.PW-19/E and was duly proved by Nodal Officer from Vodafone (PW-19).

39. As regards contention of learned counsel for Hari Singh that the video footage of the exhumation proceedings would not be admissible in evidence in view of the absence of certificate under Section 65-B of the Indian Evidence Act, it may be noted that the exhumation proceedings were not only video-graphed but were witnessed by the complainant (PW-12), investigating officers as well as SI Sukhbir Malik (PW-21) from the Crime Branch and also by the independent witness Masi Charan (PW-2). In this regard, evidence of SI (Retd.) Pritam Singh (PW-10) from PS Kotwali,

Manpur Nagaria as noted above is also relevant. Further, Masi Charan (PW-2) who was called to dig the field so as to exhume the body, also deposed that one dead body of a boy aged 20 years approximately was recovered and that the body had only under-clothes on it and a rope was tied around the neck. PW-2 also identified his signatures on the panchnama and stated that he was taken by SI Pritam Singh to the field and it was about 3.00 – 3.30 p.m. The evidence of Masi Charan explains that since it had to be dug deep, after the initial pointing out, Masi Charan was called with a spade and then digging took place. Hence, no error can be attributed to the video-recording on this count. The dead body exhumed was identified by the father of the deceased (PW-12). Thus, even without taking into account the videography, in view of the evidence of these independent witnesses this Court finds no infirmity in the exhumation proceedings and that pursuant to the first disclosure of Hari Singh, on the pointing out of the accused, dead body of Nikesh was recovered. Further, contention regarding no permission having been taken from the SDM for exhumation proceedings also deserves to be rejected for the reason, the proceedings herein were carried out pursuant to the disclosure made by the accused relating to the disposal of the body by digging in the field and was thus, a part of the investigative process and the evidence thereof, admissible under Section 27 of the Indian Evidence Act.

40. Learned counsel for Hari Singh also challenged the identification of the body in the absence of DNA sampling. Although hair of the deceased was collected from the pit, but the same were never sent for DNA examination. However, the same would not be fatal to the case of the prosecution as after being exhumed, the body was identified by the father.

Even in his deposition, the father Udai Narayan Singh (PW-12) stated that he had identified the dead body of his son and in his cross-examination, he clarified that the body was not totally decomposed and so he could easily identify the body and face of his son.

41. Though the prosecution has proved from the testimony of the expert that the voice in the recorded conversation matched with the specimen voice of Hari Singh, however, the CD of recorded voice from the phone of Kanchan Kumari, sent to the FSL and seized, was a part of trial in FIR No. 300/2010 and was neither seized in the present FIR nor exhibited and hence, the evidence of the sample voice of Hari Singh matching to the voice for ransom recorded from the phone of Kanchan Kumari, is required to be ignored in the present appeal.

42. From an analysis of the evidence on record, it is evident that Hari Singh was apprehended at ISBT and was taken to Crime Branch where he was formally arrested by Insp. PC Yadav (PW-26) which was witnessed by SI Sukhbir Malik (PW-21), SI Rajinder Singh and Udai Narayan (PW-12) vide arrest memo Ex.PW-12/M. There was recovery of mobile phone of make Nokia having card of Airtel SIM No. 8991970509087963995 and IMEI No.358961014596945 from his possession (seizure memo Ex.PW-12/G). IMEI as per the seizure memo matches with the IMEI number in the CDR exhibited along with Section 65B certificate for the mobile no. 9557524138. Therefore, this mobile number can be safely attributed to Hari Singh. Hari Singh was further proved to be in touch with Dinesh, Usman and Rahul on their mobile phone nos. 8057361703, 9720178112 and 7503050520 respectively, which mobile phones were duly recovered in the personal search of Dinesh, Usman and Rahul respectively. The other

incriminating evidence against Hari Singh is that after his arrest, he made the first disclosure statement Ex. PW-12/A regarding the burying of the body of deceased Nikesh in a sugarcane field at Manpur Nagaria, Uttar Pradesh whereafter he along with co-accused pointed out the spot Ex. PW-10/A where the deceased was buried and later exhumed vide Ex. PW-10/A dated 28th October, 2010.

43. Claim of learned counsel for Rahul Gupta that there was no evidence on record to show that Rahul Gupta knew the deceased deserves to be rejected in view of the categorical testimony of the father of the deceased (PW-12) who stated he knew the friends of Nikesh and after the deceased did not come home, PW-12 went searching for Nikesh including at the house of Rahul where Rahul's mother met him stating that Rahul had gone to his maternal uncle's house. Further, not only to the house of Rahul, the father of the appellant visited the houses of other friends of Nikesh to trace Nikesh's whereabouts. The delay in registration of FIR has been duly explained by Udai Narayan (PW-12) in his testimony who deposed that his son used to stay in college hostel itself at Gohana, Haryana and on 3^{0th} September, 2010 he came back in the bus and boarded at District Centre, Janakpuri at around 8 – 8.30 p.m. but did not reach the home. This fact is also corroborated from the testimony of Govind Yadav (PW-6), a friend of Nikesh who boarded the bus at Janakpuri with him and Nikesh told Govind that he was going to a friend's house. Father of Nikesh (PW-12) waited till the morning of 1st October, 2010 and searched for Nikesh at their own level at places of near relatives and friends but could not find Nikesh. They kept on searching till 3rd October, 2010 when a ransom call was received at about 5.30-6.00 p.m. at the mobile phone of his younger son

Nirbhay Kumar Singh from mobile No. 8923174470, wherein the caller informed that Nikesh was in their custody and they were to pay ₹50 lakhs and not to report the matter to Police. It was thereafter, that the complainant went to the Police Station. The fact that in the missing report the said ransom call was not informed, would not belie the version of the complainant (PW-12) for the reason, that from the call detail records it is established that from mobile No. 8923174470, a call was made to Nirbhay Kumar Singh on the mobile phone No. 9911423724 and thereafter, on the next day ransom call was made to PW-12 and the caller informed that Nikesh Kumar Singh was in their custody and demanded ransom for the safe return of his son. There are no inconsistencies in the testimonies of Shambhu Nath (PW-8) and IO Insp. PC Yadav (PW-26) for the reason PC Yadav was not at the railway station. In his cross-examination, IO PC Yadav has clearly stated that since there were not many people on the railway station, there were complete chances of their being identified and hence Police Officers did not stand at the railway station.

44. As per the father of deceased, Rahul Gupta was known to Nikesh since 6th standard. Rahul had called Nikesh on mobile No. 9911674909 on a few occasions as evident from the call detail record of Rahul (Ex.PW20/B) of the mobile phone recovered in his personal search vide seizure memo Ex. PW-12/F. The calls made were on 24th September, 2010 at 01:47 p.m. for 151 seconds, and at 08:01 p.m. for 53 seconds and at 11:09 p.m. for 105 seconds. Rahul Gupta was apprehended at ISBT with the co-accused and was taken to Crime Branch where he was formally arrested by Insp. PC Yadav (PW-26) vide arrest memo Ex.PW-12/O dated 24th October, 2010 duly witnessed by SI Sukhbir Malik (PW-21) and Udai Narayan (PW-12).

As per the CAF (Ex.PW-20/A), the mobile number which was recovered from Rahul Gupta i.e. 7503050520, was in the name of his mother Indu Devi. Calls were made to Dinesh, Usman and Hari Singh at various points of time. Further, at the time of arrest, as per the CDR, his cell ID chart shows the cell location of A-Block, Surya Nagar, Ghaziabad, U.P., which is proximate to ISBT Anand Vihar. There is specific evidence as per the CDR, that Rahul's phone was not in use and switched off between 30th September, 2010 and 05th October, 2010 (Ex. PW-20/D). Further, the last two calls made by Rahul on 30th September, 2010 at about 2.00 p.m., before the phone was switched off, were to the mobile phones recovered from Dinesh and Usman at the time of their arrest. On 5th October, 2010 when Rahul switched on the phone, the first few calls are to the number recovered from the personal search of Hari Singh. This proves that Rahul Gupta was in touch with Dinesh, Usman and Hari Singh and his phone was unnaturally not in use from 30th September, 2010 to 05th October, 2010 which were the dates when the deceased was kidnapped and thereafter killed.

45. Statement of complainant (PW-12) to the extent he identifies Bhanu Pratap, Dinesh and Usman as the three persons who collected the ransom amount at Bareilly railway station is sought to be discredited by learned counsel for Bhanu Pratap on the ground that the evidence of IO PC Yadav does not inspire confidence as he left the complainant and ASI Ravinder (PW-17) did not support the prosecution case as he stated that he did not go to Bareilly. It may be noted that PC Yadav clarified that the station being lonely at night they were liable to be identified and the complainant had assured the kidnappers that he had not informed the Police and thus the Police was required to be in the background. Further, currency notes given

by complainant had the identification mark thereon, and he identified the currency notes recovered from the accused Usman and Radhey Shyam during the TIP proceedings vide Ex. PW-12/Y. Minor inconsistencies in the testimonies of the witnesses or that under RTI the accused found that no travel pass was issued to IO P.C. Yadav (PW-26) will not belie the cogent version of the complainant. Undoubtedly, no sketch of the accused who collected the ransom was prepared, however when the accused were apprehended at the ISBT Anand Vihar, the appellant identified Usman and Dinesh who had collected the ransom amount and Rahul as the friend of Nikesh.

46. Bhanu Pratap was arrested later on 22nd February, 2011 by Insp. PC Yadav (PW-26) duly witnessed by HC Ombir Tyagi vide arrest memo Ex. PW-26/C from Central Jail. He was identified as one of the three persons who had collected the ransom by PW-12 and PW-8 after he had refused his TIP (Ex. PW-26/E).

47. As regards Dinesh Kumar, he was apprehended at ISBT and was taken to Crime Branch where he was formally arrested by Insp. PC Yadav (PW-26) duly witnessed by SI Sukhbir Malik (PW-21) and Udai Narayan (PW-12) vide arrest memo Ex. PW-12/K along with other co-accused on 24th October, 2010. The mobile phone recovered from him vide seizure memo Ex. PW-12/J with IMEI No.910040864374801 was connected to Rahul's number as noted above. He pointed out the place where the body was buried vide pointing out memo Ex. PW-10/A jointly with Hari Singh, Usman and Radhey Shyam. Besides being in close contact with Rahul on the mobile phone, Dinesh has been identified as one of the accused who collected the

ransom money at the platform as per the testimony of PW-12 who identified Dinesh at the time of arrest itself and also by PW-8 in Court.

48. Further, in view of the testimony of Govind Yadav (PW-6) who was the classmate of the deceased, it is sufficiently clear that PW-6 and the deceased travelled on 30th September 2010, and that the deceased got down at the District Centre near a Mall at Janakpuri. Thus, the contention on behalf of the appellant Dinesh Kumar that the deceased did not travel on 30th September 2010 or that he was not kidnapped on 30th September 2010 deserves to be rejected.

49. As regards Usman, he was also apprehended at ISBT and was taken to Crime Branch where he was formally arrested by Insp. PC Yadav (PW-26) duly witnessed by SI Sukhbir Malik (PW-21) and Udai Narayan (PW-12) vide arrest memo PW-12/N on 24th October, 2010 along with other co-accused. The mobile recovered from him on personal search as per seizure memo Ex.PW-12/I had a Vodafone Number and IMEI No.9100013331042488 which corresponds to the IMEI No.91001331042480 from the CDR charts which are exhibited along with certificate under Section 65B Evidence Act. Therefore, the mobile no.9720178112 has been proved to have been used by Usman. There is also the recovery of ₹28,000/- from him as per Ex. PW-17/E on 28th October, 2010 duly witnessed by PW-17. TIP relating to this currency was conducted by PW-12 and is exhibited as Ex. PW-12/Y where he identified, the notes recovered to be the ones given by PW-12 for the ransom on the basis of tick marks. Further, Usman was also identified by the complainant at the time of arrest itself as one of the accused who collected the ransom at the Bareilly railway station as also by PW-8 in his deposition before the Court.

50. It is evident from an analysis of the evidence on record that various interconnected elements of evidence inculcate the five appellants. The mobile phones seized from Usman, Hari Singh and Rahul Gupta can be attributed to have been used by them as per exhibited CDRs. It can be seen from CDR of Rahul Gupta that he was in touch with Usman and Hari Singh and that his phone was unnaturally switched off between 30th September, 2010 and 5th October, 2010. Recovery of the body of the deceased was pursuant to the first disclosure by Hari Singh and thereafter on the basis of pointing out by Hari Singh, Dinesh and Usman. The eyewitness account of the collection of ransom money at the Bareilly Railway Station as per PW-8 and PW-12 proves the involvement of Dinesh, Usman and Bhanu Pratap in the offence committed. There is also the recovery of cash given as ransom amount from Dinesh and Usman which notes were duly identified on the basis of the tick marking on the notes by PW-12 in the TIP of the notes carried out before the learned Metropolitan Magistrate as proved by PW-12. At the time of arrest, PW-12, the complainant identified Rahul as the friend of deceased Nikesh and Dinesh and Usman as the accused who collected the ransom amount at Bareilly station. The first disclosure statement was recorded of Hari Singh Ex. PW-12/A as evident from the testimony of PW-21 SI Sukhbir Malik and thereafter disclosure statements of the other accused were recorded one after the other. Thus the recovery of dead body pursuant to the disclosure statement of Hari Singh can safely be used as an incriminating piece of evidence under Section 27 of the Evidence Act qua Hari Singh. Even ignoring the conversation recorded demanding ransom which was found to be in the voice of Hari Singh in the absence of the seizure memo taken on record in this FIR and the certificate under Section

65B of Evidence Act, there is evidence beyond reasonable doubt to show the complicity of Hari Singh in offence of kidnapping and murder of Nikesh. The recovery of the body was made from sugarcane fields completely hidden from the public view, as evident from the site plan Ex. PW-7/A and the testimonies of the witnesses, even ignoring the evidence of videography which was exhibited in the absence of the certificate under Section 65B of the Indian Evidence Act. The body of the deceased was recovered from a sugarcane field at Manpur Nagaria. It has also come in evidence of PW-12 and PW-8 that when they were at Bareilly station, in one call from the kidnappers, they were also called to Manpur, Nagaria to handover the ransom amount.

51. Analysis of the CDRs would further show that there are at least 18 calls between Rahul Gupta and Hari Singh between 16th September, 2010 to 23rd October, 2010. On a few occasions, particularly on 16th September, 2010, 6th October, 2010, 7th October, 2010, 9th October, 2010, 12th October, 2010, 18th October, 2010 and 23rd October, 2010 locations of both Rahul Gupta and Hari Singh are the same. CDR analysis also shows that there are about 99 calls between Usman and Hari Singh exchanged between 18th September, 2010 and 22nd October, 2010 and on multiple occasions, their locations are the same. CDR analysis would also show that there are about 26 calls between Usman and Rahul Gupta exchanged between 29th September, 2010 and 13th October, 2010 despite Rahul's phone being switched off in between from 30th September, 2010 to 5th October, 2010.

52. In view of the evidence led by the prosecution, a continuous chain of circumstances has been established thereby proving the involvement of the five appellants before this Court for entering into a conspiracy for

commission of offence of kidnapping and murder of Nikesh and thereafter disposing the dead body by burying the same deep in the sugarcane field. Hence, this Court finds no error in the impugned judgment of conviction and order on sentence.

53. Appeals are accordingly dismissed.

54. Copy of the judgment be uploaded on the website of this Court and be also sent to the Superintendent Tihar Jail for intimation to the appellants and updation of record.

(MUKTA GUPTA)
JUDGE

(ANISH DAYAL)
JUDGE

DECEMBER 23, 2022/akb