

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 31 of 2016

With

CRAN 1 of 2016 (Old CRAN 1039 of 2016)

Asit Biswas

Versus

The State of West Bengal

For the petitioner : Mr. Soubhik Mitter, Adv.
Mr. Biswajit Tiwari, Adv.

For the State : Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Dipankar Paramanick, Adv.

Heard on : 04.04.2023

Judgment on : 25.04.2023

Ajay Kumar Gupta, J:

1. The appellant has assailed a judgment and order of conviction dated 21.12.2015 and 22.12.2015 passed by the learned Additional Sessions Judge, 4th Court, Malda in Sessions Trial No. 44(8)/2014 arising out of Sessions Case No. 264/2014, whereby the learned Judge sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs. 5,000/-, in default, to suffer further rigorous imprisonment for six months for an offence punishable under Section 302 I.P.C. read with Section 120B I.P.C. and further sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 5,000/-, in default, to suffer further rigorous imprisonment for six months for an offence punishable under Section 364A I.P.C. read with Section 120B I.P.C. Both the sentences run concurrently.

2. Sans unnecessary details the fact of the prosecution case is that on 11.02.2014 at about 4 p.m. on Tuesday minor brother-in-law of the de-facto complainant, Tapas Haldar was missing. There was no trace in spite of intense search everywhere till 12.02.2014. The father-in-law of the complainant lodged a missing diary on 13.02.2014 at Bamongola P.S. Elder brother Malay Haldar received a call on 13.02.2014 at about 14:29

hours from an unknown mobile number on his mobile number 9614306890 where unknown person told him in hindi that “*Tomhara bhai lene hai to das lakh rupia le aao nehit to tera bhai ko marke parcel karke veg deunga. Besi seyanagiri ba police leke aya to tera bhai nehi milega*” (Bring Rs. 10,00,000/- in exchange of your brother otherwise body of your brother will be parcelled. If do anything otherwise or inform police or bring them then your brother will not be available). In reply, he asked where the money would have to be paid then he told that Pakua then Habibpur, thereafter he told that Bulbulchandi rail Bridge ka upar rakhke chale jao. Hearing numerous places Malay Haldar told him that he is unable to move many places as such he finally asked Malay to keep money in the bag near a cycle shop beside Kendpukur School. Accordingly, the de-facto complainant, Malay Haldar, Dulal Haldar, Chandi Haldar, Siddhi Haldar, Chanchal Haldar, Dilip Haldar left to Khendpukur by car. After reaching there, they hid themselves nearby place and some of them keep a bag to the place where they have been asked for. After some time, two persons came together to take the bag but they caught red handed when they touched the bag. On interrogation, they disclosed their names as Asit Biswas and Bipin Sikdar. They further disclosed one Sahadeb Haldar of Bamongola and other had kidnapped the brother-in-law of the de-facto complainant for ransom. They further stated as per instruction of Sahadeb

they came to collect the bag. They further disclosed Sahadeb has concealed the dead body of the victim after killing him. On the basis of a written complaint, Bamongola P.S. Case No. 28/2014 dated 13.02.2014 under Section 364A/302/201/120B/34 I.P.C. was registered against the appellant and others. After completion of investigation, the investigating officer submitted charge sheet against the appellant and four others namely, Sahadeb Haldar, Bipin Sikder, Sudip Bose and Puranjoy Biswas @ Pranjay on 12th May, 2014 under Section 364A/302/201/120B/34 I.P.C.

3. Charge was framed under Section 364A/302/120B Indian Penal Code (hereinafter referred to as 'IPC') against the appellant and 2 others on 14.08.2014 since other two accused namely, Sahadeb Haldar and Bipin Sikder were found juvenile. Their case was split from the case record and sent to JJ Board for their trial. Charge so framed was read over and explained to the appellant and 2 others to which they pleaded not guilty and claimed to be tried. During trial, the prosecution has examined 15 witnesses and exhibited number of documents i.e. Exhibit nos. 1 to 22 and further produced several materials as Exhibits I to VI to prove its case against the appellant and others.

4. No evidence was adduced on behalf of the defence. Defence case appears from the trend of cross-examination and replies given by the appellant at the time of examination under Section 313 of the Cr.P.C. is innocence.

5. The learned trial Court, after appreciation of evidence adduced by the prosecution as well as considering the documents and material exhibits, finally came to conclusion that the appellant found guilty under Section 364A/302/120B IPC and thereby convicted and sentenced as aforesaid and other two were found not guilty and acquitted them.

Arguments at Bar:

6. Learned counsel appearing on behalf of the appellant submitted that the appellant is innocent and he has been falsely implicated into this case. He has no role in kidnapping or murder or demanding ransom. He should not be convicted and sentenced under Section 364A/302/120B IPC as the prosecution has miserably failed to prove case against the appellant from any angle. It is the allegation of the prosecution that the appellant was caught red handed on the spot where a bag allegedly dropped near a cycle shop beside Kendpukur School but no cogent evidence transpires to prove he was involved in the offence as alleged.

Neither money nor bag was produced before the learned trial Court to substantiate the version of prosecution. So appellant is no way connected in kidnapping or murder of the victim for ransom. The appellant is innocent and none of the prosecution witnesses proved that the present appellant was involved in the kidnapping and murder on the demand of ransom.

7. It is further strenuously submitted all the prosecution witnesses are close relative and interested witnesses so their evidences are not reliable. Furthermore, no independent witnesses come from the place where the prosecution allegedly claiming the appellant was caught red handed from the place where they had dropped a bag. There are several discrepancies and inconsistencies of the prosecution witnesses regarding the place of apprehension and involvement of the present appellant. No missing diary of the victim, any bag or money was produced before the Court to rely on the version of the prosecution. Accordingly, the present appellant is no way connected in the instant case as such judgment and order dated 21.12.2015 and 22.12.2015 is liable to be set aside.

8. Per contra, learned counsel appearing on behalf of the State vehemently submitted that the prosecution case is crystal and clear. The

victim was kidnapped for ransom and he was murdered later on. The appellant and others had demanded ransom on mobile phone to the tune of Rs. 10 lakhs in Hindi language and they also asked to drop the cash amount firstly at Pakua then Habibpur then railway bridge of Bulbulchandi and finally they instructed to keep the bag near a cycle shop beside Kendpukur High School. The de-facto complainant and others reached the place where they were asked to drop the bag. They went with a bag containing papers in place of money because the amount which was demanded by the appellant and others was huge which was not possible for them to pay as they were not so rich. Accordingly, the de-facto complainant, Malay Haldar, Dulal Haldar, Chandi Haldar, Siddhi Haldar, Chanchal Haldar, Dilip Haldar left to Khendpukur by car along with a bag containing papers and ambushed themselves surrounding the place where they were asked to drop the bag and some of them dropped the bag at the place where they had demanded. After some times, two persons came to the place to take the bag but both of them were immediately caught red handed by the witnesses when they touched the bag. On interrogation they disclosed one Sahadeb Haldar of Bamongola and others planned to kidnap the brother-in-law of the de-facto complainant for ransom. They also disclosed their names as Asit Biswas and Bipin Sikdar. The appellant and Bipin Sikdar also disclosed that Sahadeb has concealed the dead

body of Tapas Haldar after killing him. Sahadeb was arrested and on his leading statement identified the place of occurrence wherefrom dead body of the victim was recovered. As such, the appellant and others had full knowledge about the kidnap and murder and also demand of ransom. Appellant and Bipin Sikdar were caught red handed by the de-facto complainant and others from the spot where they were asked to drop the bag of ransom. Accordingly, the learned trial Court has rightly convicted and sentenced them as they were fully conscious and conspired with other perpetrators. Asit Biswas has full knowledge about the kidnap and murder of the victim, Tapas Haldar for ransom. They came to the spot in a motor cycle to collect the bag of money. The said motor cycle was also seized by the police personnel. Thus, from all angles it is proved about the guilty of the appellant for commission of offence of criminal conspiracy, kidnapping and murder for ransom. Though the case is based on circumstantial evidence, the prosecution has fulfilled all required ingredients and facts to fulfil the chain of the circumstances as such the learned trial Court has declared him guilty. Accordingly, the present appeal has devoid of merit and required to be dismissed.

POINTS FOR CONSIDERATION:

9. From the submissions made by the learned counsels for the parties and materials available on record, following questions emerges before us for consideration in this appeal: -

I. What are the essential ingredients of Section 364A/ 302/120B of the IPC to be proved beyond reasonable doubt by the prosecution for securing the conviction of an appellant under Section 364A/ 302/120B of the IPC?

II. Whether all ingredients as mentioned under Section 364A/302/120B of the IPC needs to be proved for securing conviction and non-establishment of any of the conditions may vitiate the conviction under Section 364A/302/120B IPC?

10. The appeal having arisen out of order of conviction under Sections 364A, 302 and 120B of the Indian Penal code, we need to refer firstly the provisions of Sections 364A, 302 and 120B IPC for ready reference before proceeding further to consider the points for consideration as well as to

assess whether prosecution has proved the guilt of the offence punishable under Sections 364A and 302 read with Section 120B of the IPC.

“S. 364-A. Kidnapping for ransom, etc. - Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and 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 causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

An offence under this section has following essentials:

- (i) That the accused kidnapped or abducted a person;
- or
- (ii) That the accused kept such person under his detention;

- (iii) That the accused threatened to cause death or hurt to such person or caused death or hurt to him;
- (iv) That the accused did commit so to compel,
 - (a) the Government; or
 - (b) any foreign state; or
 - (c) Inter governmental organisation; or
 - (d) any other person.
- (v) That the accused compelled to do or abstain from doing any act or to pay a ransom.

Therefore, according to Section 364A, whoever kidnaps or abducts any person and keeps him in detention and threatens to cause death or hurt to such person and by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, and claims a ransom and if death is caused then in that case the accused can be punished with death or imprisonment for life and also liable to pay fine.

Section 302. Punishment for Murder- Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.

An offence under section 302 has following essential ingredients:

- (1) That the death of some human being was caused;
- (2) That such death was caused by the accused or was the consequence of the act of the accused;
- (3) That the accused did so
 - (a) with the intention of causing death, or
 - (b) That the accused knew that his act was likely to cause death; or
 - (c) The injury (inflicted or caused) by the accused was sufficient in the ordinary course of nature to cause death.

Section 120B--Punishment of Criminal Conspiracy:

- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards,

shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

To establish a charge of criminal conspiracy, the prosecution must prove following:

- (i) an agreement between two or more persons;
- (ii) The agreement should be to do or cause to be done some illegal act or some act which is not illegal, by illegal means, provided that where the agreement is other than one to commit an offence, the prosecution must further prove;
- (iii) That some act besides the agreement was done by or more of the parties in pursuance of it.”

11. It is well settled law that the accused must be presumed to be innocent until the contrary is proved by the prosecution and it is the duty

of the prosecution to fulfil every link of the chain against the appellant for commission of offence when there is no direct evidence.

12. The prosecution case, thus, must be judged in its entirety having regard to the totality of the circumstance. The approach of the learned Court should be an integrated one and not truncated or isolated. The Court should use the yardstick of probability and appreciate the intrinsic value of the evidence brought on record and analyze and assess the same objectively.

13. To determine it, let me dip deep into the evidences of prosecution to see that whether prosecution has successfully satisfied aforesaid ingredients or not?

Appreciation of evidence brought on record:

14. All the PWs have congruently admitted that Tapas Haldar is died. His death is also corroborated by the inquest report from which it appears Riajul Islam conducted the inquest report of dead body of Tapas Haldar on 14.02.2014; Exbt. 14 i.e. Post-mortem report of the dead body of Tapas Haldar, son of Madhai Haldar, male aged about 14 years was examined by Autopsy Doctor, who examined as P.W. 12, stated the death was due to

the combined effect of strangulation by ligature and smothering. P.W. 12 further opined that death was ante mortem and homicidal in nature.

15. On the basis of the above evidence, I do not have any hesitation to hold that Tapas Haldar is died. Thus, first element of the Section 302 has been satisfied by prosecution in this case and is proved beyond doubt.

16. This Court further considers though on the oral evidence of PWs it is proved that Tapas Haldar suffered homicidal death, there is no direct evidence to prove who had Kidnapped and murdered him. Therefore, the crucial question arises for considerations are - Who kidnapped the victim? Who detained him and who made the ransom call for releasing Tapas Haldar? And who had finally murdered him?

17. As per the prosecution case, the entire circumstances could be divided in different parts:-

(1) On 11.02.2014 Tapas Haldar was missing from his house.

(2) Ransom calls were made to his brother Malay Haldar on 13.02.2014 demanding a ransom of Rs. 10 lakh for release of Tapas Haldar.

(3) Appellant and another accused Bipin Sikdar came to the spot where bag was dropped by the complainant party to collect and they were apprehended by them when they touched the bag.

(4) Appellant and said Bipin Sikdar informed them they had come there to collect the bag of ransom as per direction of Sahadeb, who had kidnapped and murdered Tapas Haldar.

(5) Sahadeb was arrested and on his leading statement dead body of the victim, Tapas Haldar was recovered beside Tangan River in between two houses and the body of victim was in a white colour fish net covered with a red colour plastic.

18. To establish its case prosecution has examined 15 witnesses including the police personnel. Out of these witnesses PW-3 is the main and vital witness, as it was he who had received call about kidnapping of

Tapas Haldar and demand of ransom of Rs. 10 lakhs in exchange of Tapas Haldar.

19. P.W. 3, Malay Haldar, has stated that Tapas Haldar is his brother and he died about 8/9 months ago. He has further stated that he studied up to class VIII but he cannot say his actual age at that time. He has also stated that on 11.02.2014 at about 4/4.30 p.m. Tapas was missing and they searched for Tapas on 11.02.2014 and 12.02.2014 but could not trace him out and on 13.02.2014 his father lodged a missing diary at Bamongola P.S. and at about 2.00 p.m. on 13.02.2014 he received a call in his mobile and somebody told in Hindi and Bengali language to bring Rs. 10, 00,000/- at Pakua and they went to Pakua, he again received another phone call at Pakua. Somebody told him to bring the money to Habibpur and then they went to Habibpur and at Habibpur he received another phone call and then somebody told him to bring the money at Bulbulchandi Rail Station. P.W. 3 has further deposed that he told him it is impossible for him to move such different places and then they replied to drop the money in a cycle shop near Kendpukur High School and they went to the area of Kendpukur High School and dropped a bag filled with full of cutting paper near the cycle shop. They also ambushed themselves in a nearby place and then Asit Biswas and Bipin Sikdar came to pick the

bag and when they were trying to pick the bag then his uncle Dilip Haldar and his brother-in-law (Bhagnipati) Sujan caught them. He has also stated they also came to apprehend them and those persons disclosed their names as Asit Biswas and Bipin Sikdar and stated as per instruction of Sahadeb they came to retrieve the bag and then Dilip Haldar and Sujan Saha went to P.S. and police came to the spot and arrested them. P.W. 3 further stated police seized the bag which they dropped in the spot and after taking those persons to P.S., he returned to his home and subsequently came to know police arrested Sahadeb. He has also deposed then he again went to P.S. and in his presence, police asked Sahadeb about his brother and Sahadeb told that the dead body of his brother is lying between two rooms beside Tangan River, and then he along with his relatives accompanied police and Sahadeb Haldar to that spot. He has seen the body of his brother covered with yellow polythene and one net. P.W. 3 has also deposed that police prepared a seizure list of the polythene and the net. He proved his signature appearing in the seizure list which has been marked as Ext. 3/1. He has also deposed police had taken the dead body to P.S. and in P.S. police has seized mobile of three persons and prepared seizure list where he put signature and he proved his signature in the seizure list regarding mobile of Sahadeb which has been marked as Ext. 5 and he proved his signature in another seizure list

regarding mobile of Pran Jay Biswas and Sudip Bose marked as Ext. 6. P.W. 3 has also deposed that in P.S. Sahadeb Haldar produced one nylon rope which was seized by the police and police prepared seizure list where he put his signature and he proved his signature in the seizure list which has been marked as Ext. 7. He has identified the nylon rope which has been marked as MAT Ext. VI. He has further admitted that he gave statement before the Ld. Magistrate u/s 164 Cr.P.C. where he put signature and he proved his signature on the statement u/s 164 Cr.P.C. which has been marked as Ext. 8.

During cross-examination P.W. 3 has stated that till lodging of missing diary he has not received any call or SMS and he cannot recollect when his father went to lodge missing diary and he cannot recollect the time when he first met with police and he has not handed over his mobile to police. He also admitted that he stated before the Ld. Magistrate that subsequently he came to know that his uncle and his brother apprehended two persons but he cannot recollect whether he stated before the Ld. Magistrate that they went to the area of Kendpukur High School and dropped a bag full with cutting paper near the cycle shop or they were hiding themselves near the place or Asit Biswas and Bipin Sikdar came to withdraw the bag or when they were trying to withdraw the bag then his

uncle Dilip Haldar and his brother-in-law (Bhagnipati) Sujan caught them or they also came to apprehend them or those persons disclosed their name as Asit Biswas and Bipin Sikdar or they also disclosed that as per instruction of Sahadeb they came to withdraw the bag or then Dilip Haldar and Sujan Saha went to P.S. or police came to the spot and arrested.

20. P.W. 1, Sujan Saha, complainant of the present case has stated that Tapas Haldar was his brother-in-law who died about 7 months ago. He has further stated that at that time he was about 13 years old. He has further stated on 11.02.2014 at about 4.00 p.m. Tapas Haldar was missing. They searched for Tapas everywhere but in spite of intense search he could not be traced out. Finally, on 13.02.2014 his father-in-law Madhai Haldar lodged a missing diary at Bamongola P.S. at about 10.00 a.m. and on that date at about 2.00/2.30 p.m. his elder brother-in-law Malay Haldar received a mobile call in which somebody told him 'tera bhai ko lena ho to das lakh rupeya lekar pakua aa ja' (if you want to return your brother come Pakua with Rs. 10 lakhs). He has also stated they went to Pakua but found nobody and then after few minutes somebody said to come to Habibpur and then they went to Habibpur but found nobody. He has further deposed that again somebody called him and told him to come

to Bulbuli Railway Station and when they went to Bulbuli Railway Station but found nobody. He has also stated then another call came and Malay told it is not possible to attend so many different places then that person told him to come at Kendpukur High School and to drop the money in a bag nearby cycle shop. Then they came to Kendpukur High School and dropped the bag near the cycle shop at 4.00 p.m. and they hid themselves in nearby place and after few minutes two persons came to the spot and when they touched the bag, they immediately apprehended them. He has also stated that some local people also came to the spot. Those persons who came to collect money disclosed their names as Asit Biswas and Bipin Sikdar and told Sahadeb has kidnapped Tapas and murdered him. As per direction of Sahadeb they came to collect the money bag. He has further stated that they had apprehended those persons on spot. Thereafter they went to Bamongola P.S. and written complaint was lodged. P.W. 1 also stated that the police personnel came to Kendpukur and arrested those two persons and from P.S. police took them in a vacant house near Tangan river at about 11.00 p.m. and at that time Sahadeb Haldar was with them and he identified the spot and they have found the dead body of Tapas between a passage of two houses where the body was packed in an old yellow colour sack and covered with white colour fish net. He also admitted that police examined the body, seized the sack and net. Police

held inquest report which has been marked as Ext. 2. He also proved his signature in the seizure list of sack and net which has been marked as Ext. 3 and sack (plastic sheet) and net has been marked as MAT Exts. I and II respectively.

During cross-examination P.W. 1 has stated that he has not handed over the bag to police or police had not seized it from him. He also admitted that between Kendpukur High School and the cycle shop there is a plain vacant land and he cannot say the name of the owner of cycle shop and on the opposite side of cycle shop there is no house or shop. P.W. 1 has further stated that about eight local people came to the spot but he cannot say their names.

21. Dilip Haldar, P.W. 2 has stated that Madhai Haldar is his cousin and Tapas Haldar was his nephew. He deposed and corroborated the facts stated as similar as P.W. 1. P.W. 2 reiterated that at first Malay thought somebody was teasing him because they are very poor. On 13.02.2014 his elder brother Madhai Haldar lodged a missing diary at Bamongola P.S. at about 10.00 a.m. and on that date at about 2.00/2.30 pm his nephew Malay Haldar got a phone call and somebody told him to come Pakua with Rs. 10,00,000/- in return of his brother. He has also stated that they went

to Pakua but found nobody then after few minutes somebody said to come Habibpur and then they went to Habibpur but found nobody and again somebody called and said to come Bulbulchandi Railway Station and then they went to Bulbuli Railway Station but found nobody and then another call came to Malay. P.W. 2 further stated that Malay told it is not possible to attend different places then the person told to him to come at Kendpukur High School and to drop the money in a nearby cycle shop and then they came to Kendpukur High School and dropped the bag near the cycle shop then it was about 4.00 p.m. He further reiterated they hid themselves in a nearby place and after few minutes' two persons came to spot and when they touched the bag, they apprehended them. P.W. 2 also deposed that those persons disclosed their name as Asit Biswas and Bipin Sikdar and they told Sahadeb has kidnapped Tapas and murdered him and they also said as per direction of Sahadeb they came to collect the money bag. He has further stated that they apprehended those persons on spot and Sujan Saha went to Bamongola PS and the police personnel came to Kendpukur and arrested those two persons. P.W. 2 also deposed those police seized one motor cycle, two mobiles of those persons and also a bag, which was dropped. P.W. 2 proved his signature in seizure list which has been marked as Ext. 4. P.W. 2 also stated that from P.S. police took them in a vacant house near Tangon river at about 11.00 p.m. and at

that time Sahadeb Haldar was with them and he identified the spot and they have found the body of Tapas between a passage of two houses and the body was packed in a red colour plastic and covered with white colour fish net. P.W. 2 further stated that police examined the body, seized the sack and net. Police prepared inquest report and he proved his signature on the inquest report which has been marked as Ext. 2/1. P.W. 2 identified the bag which they dropped on the spot which has been marked as MAT Ext. III. Two mobiles seized by police have been marked as Ext. MAT IV and V.

During cross-examination P.W. 2 has stated that police examined him twice on 13.02.2014 and thereafter those police have not examined him. He has also stated that first Sujana and he had caught those persons and he caught Asit Biswas and before apprehension nobody noticed them and after that 5/6 local people came. He has further stated that he has seen Kendpukur School building but he does not know whether it is X standard or XII standard. P.W. 2 also stated that the school building is surrounded by pucca wall and the school field is within the wall. He has deposed that the cycle shop is about 35/40 ft distance from boundary wall and near the cycle shop there is no other shop. He has also deposed that they apprehended those persons within 20 ft distance on the Western side

of the cycle shop. He has admitted that Malay, Basudeb, Siddhi Haldar were all along with him on that spot and they were waiting on the Northern side of the cycle shop. He has further admitted that the main road is about 10 ft distance from cycle shop and the cycle shop is on the Western side of the main road.

22. P.Ws. 4, 5, 6 & 7 have corroborated P.Ws. 1, 2 & 3.

23. P.W. 8, Basudeb Karmakar, deposed written FIR was drafted and written by him as per word of Sujan Saha and also stated that Sujan Saha at first told him that on 11.02.2014 his brother-in-law was missing. P.W. 8 has also stated that he knows Tapas Haldar but he is no more and he knows the alleged incident. He has further stated that on 13.02.2014 a complaint was lodged with the police station and on 13.02.2014 two persons were apprehended from Kendpukur by local villagers and the two persons were handed over to police after their apprehension and the police interrogated the said two persons when they disclosed the name of another three persons and on 13.02.2014 at 11/11.30 at night the dead body of Tapas Haldar was found on the side of river Tangan from a deserted house and the body was packed in a polythene sheet, covered with fish net. P.W. 8 has admitted that he went to the spot and police

brought the dead body and took his signature on a paper. P.W. 8 proved the written complaint, written by him, marked as Ext. 11 and he also proved his signature on the inquest report, marked as ext. 2/2.

During cross-examination P.W. 8 has admitted that police asked him whether written FIR is written by him or not and apart from those police did not ask him anything. He has further stated that whatever he heard from Sujan Saha he wrote it on the written FIR.

24. P.W. 9, Rita Sarkar, has stated that she has lost her mobile phone on 08.01.2014 and she lodged a GD on 12.01.2014 to that effect. She has also stated that her mobile no. is 9593009210 and she did not inform the customer care after loss of her Sim Card. She has further stated that one police officer of local police station came to her house and asked her regarding her phone number which she was lost and told her that by using her mobile phone Rs. 10,00,000/- has been demanded as ransom and one person has been murdered.

During cross-examination P.W. 9 has stated that she cannot recollect whether police officer seized the above GD which she lodged after missing of her mobile phone and she cannot say the number of GD.

25. P.W. 10, Constable Arun Kumar Das, has stated that on 14.02.2014 he was posted as constable at Bamongola P.S. He has further stated that on that date he brought a dead body at Malda Medical College & Hospital for post-mortem and he signed on the dead body challan which has been marked as Ext. 12. He has also deposed that he also handed over the wearing apparels of the deceased in police station and police seized the wearing apparel from him and he signed as witness in the seizure list which has been marked as Ext. 13. He has also stated that he brought the dead body of Tapas Haldar.

26. P.W. 11, Asit Haldar, has stated that he knows Tapas Haldar but he is no more. He has also stated that he had died before one year back and on 11.02.2014 Malay received one mobile phone call and demanded Rs. 10,00,000/- and on 13.02.2014 the dead body of Tapas Haldar is found on the passage between the house of Ajit Haldar, Padma Rani Haldar and Panchanan Haldar. P.W. 11 has further deposed that Padma Haldar is his mother. Ajit Haldar is his father and Panchanan is his maternal uncle. He has further stated that at the time of incident no one was lived on that house and they left the houses before two years back

and also stated that he heard the news that dead body of Tapas Haldar is found on that place and he does not know how Tapas Haldar had died.

27. P.W. 12, Apurba Biswas has stated that on 14.02.2014 he conducted post-mortem of deceased Tapas Haldar and in his opinion death was due to the combined effect of strangulation by ligature and smothering as noted in his report. P.W. 12 has opined that death was ante mortem and homicidal in nature. P.W. 12 proved the post-mortem report which has been marked as Ext. 14.

28. P.W. 13, Alok Bhowmik, has stated that on 13.02.2014 he received a complaint from Sujan Saha and he endorsed on the written complaint and the endorsement has been marked as Ext. 11/1 and also stated that he drew the formal FIR and he filled up the column of the formal FIR. The formal FIR is marked as Ext. 15. He stated that he entrusted SI Riajul Islam to investigate the case.

During cross-examination he only stated that he did not do anything about the investigation.

29. P.W. 14, SI Kajal Kumar Das, has stated that on 15.02.2014 he received a case docket from OC of Bamongola P.S. due to transfer of former IO of the present case and during his investigation he examined the witnesses u/s 161 Cr.P.C. collected the PM report, collected the phone call details. He has further stated that he took steps for the recording of statement of the witness u/s 164 Cr.P.C. and he collected the birth certificate of the accused Bipin Sikdar, Sahadev Haldar and he seized one coloured photo of deceased Tapas Haldar by preparing seizure list which has been marked as Ext. 16 and he also seized cash memo and Insurance Policy after preparing seizure list which has been marked as Ext. 16/1 and after completion of investigation he submitted charge sheet against the accused persons.

During cross-examination, P.W. 14 has stated that he did not seize any GD from Rita Sarkar regarding loss of her mobile.

30. P.W. 15, Riajul Islam, has stated that on 13.02.2014 OC Alok Bhowmic endorsed him to investigate the present case. He has further stated that during his investigation he perused the FIR, visited the PO, prepared rough sketch along with index which have been marked as Ext. 17 and 17/1, he recorded the statement u/s 161 Cr.P.C. and recorded the

statement of accused u/s 27 Cr.P.C. He has also deposed that after examination he arrested the accused persons namely Bipin Sikdar and Asit Biswas and he seized 3 pieces of mobile phones, one nylon bag, one motorcycle and prepared seizure list which has been marked as Ext. 18. He has also admitted that he seized wearing apparels and prepared 5 seizure lists and he also seized one yellow coloured polythene and one fishing net and prepared seizure list which has been marked as Ext. 19 and also seized one Nokia brand mobile phone 1208 under proper seizure list which has been marked as Ext. 20. He has further stated that he also seized two mobiles being 1208 and 3310 under proper seizure list which has been marked as Ext. 21 and also prepared another seizure list and seized one piece of black nylon thread measuring approx 24" which has been marked as Ext. 22. He has stated that all the seizure lists were prepared by him and those bear his signatures and all the articles are seized in presence of independent witnesses he signed on the seizure lists. He has also stated that he arrested Puronjoy Biswas and Sudip Bose and on the basis of interrogation he arrested Sahadeb Haldar. He has further admitted that on the basis of interrogation Sahadeb Haldar confessed his guilt and P.W. 15 recorded his statement accordingly. He further stated that he went to PO and recovered the dead body and send the same for post-mortem examination and after that he handed over the case docket

to the then OC Bamongola PS due to his transfer. He stated that he submitted call details.

During cross-examination P.W. 15 has stated that he did not seize the missing diary of Tapas Haldar and also, he did not prepare any sketch map where from bag was recovered. He has further stated that there is no local witness where bag was seized and also stated that all the seizure witnesses are the relatives of deceased.

31. From the perusal of the entire evidence of the prosecution witness nos. 1, 2, 3, 4, 5, 6 and 7 it appears they specifically and without inconsistency deposed that Tapas was missing and in spite of intense search everywhere he could not be traced out. During search phone call received by P.W. 3 Malay in his mobile number asking him a ransom of Rs. 10 lakhs stating “Tomhara bhai lene hai to das lakh rupia le aao nehito tera bhai ko marke parcel karke veg deunga. Besi seyanagiri ba police leke aya to tera bhai nehi milega” (Bring Rs. 10,00,000/- in exchange of your brother otherwise body of your brother will be parcelled. If you do anything otherwise or bring police then your brother will not be available) Malay along with others went to the place where they have asked to drop the ransom along with a bag containing the papers and

when they reached, they dropped the bag and ambushed themselves in and around the area. At that point of time two persons i.e. appellant herein namely Asit Biswas and Bipin Sikdar came to the spot to collect the bag and while they were touching the bag immediately apprehended both of them and called the police and handed over them, who disclosed that they are not the actual culprit. The actual culprit is one Sahadeb who had asked them to bring the bag from the place where they have been asked and they only came to the place to collect the ransom amount which is kept in the bag. From the perusal of the entire materials on record and documents brought before the learned trial Court it is crystal clear that there is no eye witness in the alleged offence of murder and no one has seen the alleged offence of kidnap and murder but the appellant was apprehended by the complainant's party and handed over to the police. Witnesses further proved the dead body of Tapas Haldar was recovered beside Tangan River in between two houses and the body of victim was covered in a red colour plastic which was in a white colour fish net.

32. It also stands proved from the testimony of the police officials that dead body of Tapas Haldar was recovered beside Tangan River in between two houses and the body of victim was covered with a red colour plastic in a white colour fish net. Police seized Red colour plastic (Mat Exbt. I), white

colour fish net (Mat Exbt. II), nylon Rope (Mat Exbt. VI), Plastic bag (Mat Exbt. III), mobile phones (Mat Exbts. IV and V); motor cycle etc. Seizure lists were proved by the Prosecution witnesses. Under such circumstances, factum of kidnapping, recovery of the victim's dead body and demand of ransom stand fully established from the evidence led by the prosecution. That being so, prosecution succeeded in establishing that:

- (i) Tapas Haldar was abducted;
- (ii) He was kept under custody/detention;
- (iii) Tapas Haldar was murdered on the demand of ransom;
- (iv) There was a threat to cause death or hurt and reasonable apprehension of such a consequence if no ransom amount of Rs. 10,00,000/- paid or body of Tapas Haldar will be parcelled and If do anything otherwise or bring police then Tapas Haldar will not be available;
- (v) The purpose of the unlawful act was to demand ransom of Rs. 10 lakhs. As such, essential ingredients of Section 364A/302 IPC were also

duly proved. Merely because appellants were arrested before collecting bag of ransom does not take away the offence out of the purview of Section 364A IPC.

33. It was submitted by learned counsel for the appellant that material contradictions and inconsistency have appeared in the statement of the prosecution witnesses regarding the manner in which bag was dropped, the dead body was recovered, non-production of money or papers before the learned Trial Court creates serious doubt of the prosecution case. Therefore, benefit of doubt goes in favour of the appellant.

34. The prosecution evidence no doubt suffers from some inconsistencies here and discrepancies there, but that is a short coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies, etc., go to the root of the matter.

35. Hon'ble Supreme Court in **Gangabhavani v. Rayapati Venkat Reddy and Ors.**¹ held:

¹ **2013 (11) SCALE 132**

“9. In State of U.P. v. Naresh, (2011) 4 SCC 324, this Court after considering a large number of its earlier judgments held: In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e., go to the root of the case/materially affect the trial or core of the prosecution's case render the testimony of the witness liable to be discredited.

A similar view has been reiterated by the Hon'ble Apex Court **in**

- 1) Tehsildar Singh and Anr. v. State of U.P. AIR 1959 SC 1012;**
- 2) Pudhu Raja and Anr. v. State, Rep. by Inspector of Police JT 2012 (9) SC 252; and**
- 3) Lal Bahadur v. State (NCT of Delhi) (2013) 4 SCC 557).**

10. Thus, it is evident that in case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is recorded after an inordinate delay. In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to

form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence”

36. In **Kurai and Anr. v. State of Rajasthan**,² it was observed as under:

“This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancy. Such discrepancies may even in law render credential to the depositions.”

² (2012) 10 SCC 433

37. The principles that can be culled out from the aforesaid decisions are that minor discrepancies and inconsistencies cannot be given undue importance when it does not touch the root of the case. The Court has to see whether inconsistencies go to the root of the matter and affect the truthfulness of the witnesses, while keeping in view that discrepancies are inevitable in the statement of witnesses who speak them after long lapse of time.

38. The minor contradictions cannot be given undue importance. Regarding apprehension of the appellant from the spot where the bag was dropped, the testimony of these witnesses is consistent to the effect that they came to the spot to take the bag of ransom. Motor Bike was seized from the spot where appellant was apprehended. It was for the appellant to explain as to how they came in possession of motor bike to come to spot which they have failed to explain. Evidence of P.Ws. 1, 2, 3, 4, 5, 6, and 7 are consistent and corroborate their versions with each other. On the basis of statement of appellant one Sahadeb was arrested and during investigation on his leading statement dead body of Tapas Haldar was recovered beside Tangan River in between two houses and the body of victim was covered with a red colour plastic in white colour fish net. He confessed to have abducted and committed murder of Tapas Haldar and

concealed beside Tangan River in between two houses. Therefore, his statement recorded under Section 27 of the Indian Evidence Act is admissible in law.

39. Reliance is placed on **State of A.P. v. Gangula Satya Murthy**³, where it was held that:-

“if any accused is within the ken of surveillance of the police during which his movements are restricted then it can be regarded as custodial surveillance.....”.

Consequently, so much information given by the accused in custody, in consequence of which a fact is discovered, is admissible in evidence, whether such information amounts to a confession or not.

40. The issue being raised by the defence that evidence cannot be reliable as most of the witnesses are relative and interested witnesses. But we find prosecution has been able to bring home the charges with the evidence available on record - if the evidence on record is otherwise satisfactory in nature and can be ascribed to be trustworthy, an increase

³ (1997) 1 SCC 272

in number of witnesses from outside cannot be termed to be a requirement for the case. It is the totality of the evidence, which matters and if the same creates a confidence of acceptability of such evidence, question of rejection on being ascribed as interested witness or relative witness would not be justifiable.

41. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.

(Vide: Bhagalool Lodh & Anr. v. State of U.P., AIR 2011 SC 2292; and Dhari & Ors. v. State of U. P., AIR 2013 SC 308).

42. Now another question arises while dealing with the case of present appellant. Whether he was involved in the alleged offence of kidnap and murder for ransom? As per appellant Sahadeb had kidnapped and murdered Tapas Haldar. He came to the spot only to collect the ransom as per the direction of Sahadeb. Fact of collection of ransom is sufficient to

hold him guilty under Section 364A/302/120B of the IPC because in our considered view, he is found guilty of offence as alleged by the prosecution as all essential elements of Criminal Conspiracy is proved beyond reasonable doubt by the prosecution against him.

Proof of Conspiracy

43. The offence of criminal conspiracy can be proved by either direct or circumstantial evidence. A conspiracy is usually hatched in a secret and private setting which is why it is almost impossible to produce any affirmative evidence about the date of the formation of the criminal conspiracy, the persons involved in it or the object of such conspiracy or how such object is to be carried out. All of this is more or less a matter of inference.

It was believed that agreement or meeting of minds is the one of the main evidence to prove the conspiracy under this section and also it is one of the hardest one to prove because as we all known to the fact that offender by himself does not agree to a fact that he is involved with someone it is only matter of circumstances that one can prove that there is a meeting of minds or an agreement between those two. Hence, criminal

conspiracy is based on circumstantial evidence in most of the cases there is no direct evidence to prove the same.

44. Section 10 of the Indian Evidence Act, 1872 contains the principle that once a conspiracy to commit an illegal act is proved, an act of one conspirator becomes the act of another. Section 10 deals with the admissibility of evidence in a conspiracy case. It provides that anything said, done or written by any one of the conspirators in reference to their common intention is admissible against all the conspirators for proving the existence of the conspiracy or that any such person was a party to the conspiracy. However, the following conditions are to be satisfied before such fact can be admitted:

1. There should be reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong.

2. Anything said, done or written by any one of them about their common intention will be evidence against the others provided it is said, done or written after the time when such

intention was first entertained or formed by any one of them.

45. Appellant was arrested while he was collecting bag of ransom from the place, where they were asked to drop the same. He was involved in the offence as alleged by the prosecution consequently act done by all or any one of them, all would be punished in similar manner.

46. In the light of the aforesaid discussions and findings, I hold prosecution case against the appellant has been proved beyond reasonable doubt. Conviction and sentence of the appellant is upheld.

47. Appeal is, thus, dismissed.

48. Consequently, CRAN 1 of 2016 (Old CRAN 1039 of 2016) is also disposed of.

49. Lower Court Records along with copies of this judgment are to be sent down at once to the learned Trial Court.

50. Photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all formalities.

I Agree.

(Joymalya Bagchi, J)

(Ajay Kumar Gupta, J)

P. Adak (P.A.)