

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB) 103 of 2022

With

CRAN 1 of 2022

Ashoke Sharma & Others

Vs.

The State of West Bengal

For the Appellants	: Mr. Soubhik Mitter, Adv. Mr. Sanjib Kr. Dan, Adv. Mr. Saryati Dutta, Adv. Mr. Bibaswan Bhattacharya, Adv.
For the de facto complainant	: Mr. Abhratosh Majumder, Ld. Sr. Adv. Mr. Pramod Srivastava, Adv. Mr. Prabhat Srivastava, Adv. Mr. Pratim Dasgupta, Adv. Mr. Arif Ali, Adv.
For the State	: Mr. P. K. Datta Ld. APP Mr. Z. N. Khan, Adv. Mr. Santanu Deb Roy, Adv.
Hearing Concluded on	: April 20, 2023
Judgement on	: August 3, 2023

DEBANGSU BASAK, J.:-

1. The appellants have assailed the judgement of conviction dated May 11, 2022 and the order of sentence dated May 13, 2022 passed by the learned Additional Session Judge, 2nd Court, Tamluk, Purba Medinipur in Sessions Trial No. 1 (9) 16 arising out of Sessions Case No. 10 (8) 14.

2. By the impugned judgement of conviction, the learned Trial Judge has convicted the appellants under Section 364 A/ 302/ 201/ 120B of the Indian Penal Code, 1860 and under Section 25 (1-B) of the Arms Act. By the impugned order of sentence, the learned Trial Judge has sentenced the appellants to suffer rigorous imprisonment for life for commission of offence punishable under Section 364A of the Indian Penal Code, 1860 and to pay a fine Rs. 50,000/- each and in default to suffer rigorous imprisonment for six months and to suffer rigorous imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code, 1860 and to pay a fine of Rs. 50,000/- each and in default to suffer further rigorous imprisonment of six months. He has sentenced the appellants to suffer rigorous imprisonment for 7 years for the offence punishable under Section 201 of the Indian Penal Code, 1860 and to pay a fine of Rs. 10,000/- each and in default to suffer rigorous imprisonment of three months. Learned Trial Judge has awarded a sentence of rigorous imprisonment for three years for the offence punishable under Section 25 (1-B) of the Arms Act and to pay a fine of Rs. 5,000/- and in default to suffer rigorous

imprisonment for one month to the appellant No. 3. All the sentences have been directed to run concurrently.

3. Learned advocate appearing for the appellant has submitted that, the prosecution failed to bring home the charges beyond reasonable doubt. He has referred to the testimonies of various prosecution witnesses. In particular, he has referred to the recovery of documentary evidences which the prosecution claimed are incriminating materials as against the appellants. He has contended that, the learned Trial Judge has misapplied the provisions of Section 27 of the Indian Evidence Act, 1872 in relation to the materials seized by the police. He has contended that, recovery of any article on the leading statement made by an accused in a criminal proceeding *ipso facto* does not mean that the accused was guilty of the offence charged. In support of such contention, learned advocate appearing for the appellants has relied upon ***2017 Volume 11 Supreme Court Cases 160 (Raj Kumar @ Raju vs. State (NCT of Delhi)***, ***2020 Volume 3 Supreme Court Cases 747 (Mohd. Younus Ali Tarafdar vs. State of West Bengal)***, ***2022 Volume 1 Supreme Court Cases 92 (Bijender @ Mandar vs. State of Haryana)***.

4. Learned advocate appearing for the appellants has submitted that, the so-called call record details were without the requisite certificate under Section 65 B of the Indian Evidence Act, 1872 and therefore such part of evidence was inadmissible. According to him, the learned Judge has erred in relying upon such part of the evidence in convicting the appellants. In support of his contention, he has relied upon **2020 Volume 7 Supreme Court Cases 1 (Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Others)**.

5. Learned advocate appearing for the appellants has submitted that, the evidence of PW 3 was unreliable. The delay in PW 3 informing the police about the incident has raised justifiable suspicion of his testimony.

6. Learned advocate appearing for the appellants has contended that, the case of the prosecution is based on circumstantial evidence. The prosecution had failed to produce any eye witnesses in the incident. Since the prosecution has relied upon circumstantial evidence, motive played a crucial factor. The prosecution had failed to establish any motive for the crime claimed to be committed by the appellants.

7. Referring to the relationship between the appellants and the father of the victim and the victim, learned advocate appearing for the appellants has submitted that, appellant No. 1 and the father of the victim were in a business relationship.

8. The father of the victim has a business of building materials. Appellant No. 1 had a business of railway contractor and that appellant No. 1 and the father of the victim knew each other. This relationship between the father of the victim and the appellant No. 1 is not sufficient to accommodate an inference of motive to commit the crimes charged/claimed.

9. Learned advocate appearing for the appellant has submitted that, the prosecution failed to identify the dead body of the victim. In support of such contention, he has drawn the attention of the Court to the oral testimonies of various prosecution witnesses.

10. Learned advocate appearing for the appellants has submitted that, the investigations were conducted in a cursory manner and that the appellants are entitled to the benefits of the faulty investigations. The call record details of the mobile phone of the victim were not obtained by the police.

11. Referring to the deposition of PW 10, learned advocate appearing for the appellants has submitted that, his oral testimony is unreliable. According to him, PW 10 had never spoken to the police authorities with regard to the overwriting on the number plate.

12. Learned advocate appearing for the State has contended that the prosecution was able to establish the charges as against the appellants beyond all reasonable doubt. He has drawn the attention of the Court to the various questions relating to the discovery of the dead body and ultimately in the appellants being accused of the crime. He has submitted that, in terms of the leading statements made by the appellants, various articles used in the crime were recovered. He has contended that, the victim died out of injuries caused by big blunt stone which was used to hit him repeatedly. In this regard he has referred to the oral testimony of the autopsy surgeon, PW 26.

13. Learned advocate appearing for the State has submitted that, the motive of the crime was the demand for ransom and that the same had been established by the prosecution at the trial.

14. Learned Senior Advocate appearing for the de-facto complainant has submitted that, the appellants are guilty of the crime as charged. He has contended that, the prosecution was able to complete the chain of circumstances to bring home the charges as against the appellants. In this regard he has drawn the attention of the Court to the various oral testimonies and the material and documentary evidence marked as Exhibits at the trial.

15. Relying upon **2012 Volume 2 Supreme Court Cases 399 (Madhu vs. State of Kerala)** and **2022 Volume 8 Supreme Court Cases 668 (Veerendra Vs. State of Madhya Pradesh)** learned Senior Advocate appearing for the de-facto complainant has contended that, the evidence, albeit circumstantial in nature, established by the prosecution is sufficient to convict the appellants.

16. Learned Senior Advocate appearing for the de-facto complainant has contended that, solely on account of defects or shortcomings in investigations an accused is not entitled to get acquitted. He has also relied upon **2021 Volume 11 Supreme Court Cases 1 (Arvind Singh vs. State of Maharashtra)** and contended that, ingredients of Section

364-A of Indian Penal Code, 1860 were fulfilled in the facts and circumstances of the present case.

17. The father of the victim had lodged a missing diary on April 25, 2014 with regard to his son, the victim. Thereafter, the father of the victim had lodged a written complaint with the police on April 28, 2014 with regard to abduction of the victim on April 25, 2014. The police had registered a First Information Report bearing No. 70/14 dated April 20, 2014 under Sections 365/367/368 of the Indian Penal Code, 1860 with regard to such a written complaint. Police had added Sections 364/302/201/34 of the Indian Penal Code, 1860, subsequent to the discovery of the dead body of the victim.

18. Police had conducted investigations with regard to the First Information Report and submitted a charge sheet against 5 accused persons under Sections 364/364A/302/201/120 B/379/411 and Sections 25 (1) (B) (a)/35 of the Arms Act. Charges under Sections 364/364A/201/120B of the Indian Penal Code, 1860, had been framed against all the 5 accused persons including the 3 appellants before us, on November 12, 2014. Charges under Section 302 of the Indian Penal Code, 1860, had been framed against the 3 appellants before us. Charges under Section 411 of the Indian Penal Code, 1860,

had been framed against 2 accused persons. Charge under Section 25 (1-B) of the Arms Act had been framed against the appellant No. 3. All the accused persons had pleaded not guilty individually towards their respective charges and claimed to be tried.

19. Prosecution had examined 31 witnesses and relied upon various documentary and material exhibits to establish the charges against the accused beyond all reasonable doubt. On conclusion of the evidence of the prosecution the accused persons had been examined under Section 313 of the Criminal Procedure Code where they claimed that they were falsely implicated and were innocent. They had declined to adduce any defence witness.

20. The father of the victim had deposed as PW 1. He had identified the appellants in court. He had stated that, on April 25, 2014 at about 11/11:30 AM, the victim went out of the house in connection with business and bank matters along with his motorcycle. The victim did not return till afternoon. He had tried to search for the victim but could not find him. Ultimately, at about 7/7:30 PM, he had lodged a missing diary with the Jhargram Police Station, which was tendered in evidence and marked as Exhibit 2. He had stated that, he

could find the motorcycle without the number plate and key line beside the road. He had taken the motorcycle to the police station. The police had seized the motorcycle by a seizure list dated April 25, 2014. He had signed the seizure list which was tendered in evidence and marked as Exhibit 1. He had signed the Jimmanama which was tendered in evidence and marked as Exhibit 3. He had stated that he was accompanied by PW 8 and PW 9. He had also stated that, he was accompanied by many persons including relatives in their attempt to search the victim out. The first appellant had also accompanied him to search the victim from April 25, 2014 to April 28, 2014. He had lodged a First Information Report with the police station on April 28, 2014. He had tendered such a First Information Report in evidence which was marked as Exhibit 4. He had stated that on 2nd/3rd night he received a telephone call and was asked to pay ransom of Rs. 3 crores otherwise the victim would be killed. He had also been threatened not to disclose such fact to the police. He had identified his phone number and the telephone number from which he had received the phone call. He had stated that, on the next morning, he went to the police station at 10 AM and disclosed the incident to the police station. On May 3, 2014 in the noon, he had received

another telephone call from another number asking him to pay ransom and threatening him not to visit the police station and not to allow others to visit his home. He had identified the telephone number from which he received such call. He had stated that at 2 PM he went to the police station and informed the police about the telephone call. On May 4, 2014, he had received a telephone call from a number to his mobile phone asking him to pay ransom. Again he had reported the same to the police station. He had stated that, the person who called him over the phone was the first appellant. The first appellant had threatened him and demanded an amount of Rs. 3 crores ransom for the victim. On May 5, 2014, he had received a speed post with a compact disc cassette and a chip. He had informed the police about the same. Police had come to his house and seized the articles and prepared a seizure list which he had signed. He had identified his signature on the seizure list dated May 5, 2014 which was tendered in evidence and marked as Exhibit 5. He had stated that, he did not have the courage to go through the compact disc, cassette and chip. Police officer had told him that, police had seen the same and found that the victim was blindfolded and a gun was pointed at his temple.

21. PW 1 had stated that, police took him to the house of Dinesh Sharma on May 30, 2014. Dinesh Sharma had been in police custody at that point of time. Dinesh Sharma had brought out a gold ring with red stone which was shown to him and his wife. They had identified the ring as belonging to the victim. Police had seized such ring. He had identified his signature on the seizure list dated May 30, 2014 which was tendered in evidence and marked as Exhibit 6.

22. PW 1 had stated that on July 19, 2014, at the behest of the police, he went to the house of Poonam Sharma along with his wife. Poonam Sharma had been in police custody at that point of time. Poonam Sharma went inside a room and brought out a gold chain. He and his wife had identified that chain to be that of his son. He had identified his signature on the seizure list dated July 19, 2014 which was tendered in evidence and marked as Exhibit 7.

23. PW 1 had given a statement to the police on May 7, 2014 and on June 3, 2014. He had identified the finger ring of the victim as also the gold chain which were tendered in evidence and marked as material exhibits. He had also identified the number plate of the motorcycle belonging to his son.

24. PW 1 had been cross-examined at length on behalf of the defence. The defence could not elicit anything favourable to them despite such detailed cross-examination.

25. The younger brother of PW 1 had deposed as PW 2. He had stated that he met the Investigating Officer for the first time on April 20, 2014. He had told the Investigating Officer that he was present at the office of PW 1, when PW 1 was explaining business and bank matters to the victim on April 25, 2014. The victim had left the office at about 11:30 AM with his friend for bank and business purpose. The victim had gone on his motorcycle. He had corroborated PW 1 with regard to the wearing apparels and the finger ring and the gold chain of the victim as also the mobile phone and the number used by the victim.

26. PW 2 had witnessed the seizures made on April 5, 2014. He had stated that, police informed him to go to the house of Sumit Sharma which he complied with on April 11, 2014. Sumit Sharma had brought out a mobile phone from his house and gave it to the Investigating Officer which was seized by the police. He had identified his signature on the seizure list dated April 11, 2014 which was marked as Exhibit 8. He had identified Sumit Sharma in court. He had stated

that on May 14, 2014, he was informed by the police that he had to go to the house of Sumit Sharma. He had done so. Sumit Sharma had retrieved a revolver and 4 cartridges from the drain in front of his house and gave it over to the police who seized the same. He had identified his signature on the seizure list dated May 14, 2014 which was marked as Exhibit 9. He had identified the appellants in court. He had identified the seized articles in court which were marked as material exhibits.

27. PW 2 had also been cross-examined at length on behalf of the defence. The defence however could not elicit anything favourable to them despite such detailed cross-examination.

28. PW 3 had responded to the summons received from the court. He had stated that he went to the bank for work. He had seen the victim coming on a bike and entering a lane and parking his bike in front of the house of the first appellant and then going inside his house. He had then gone inside the bank for his work and returned to his house in the evening when he learnt that the victim did not return home. On the following day, when he had returned to his house on April 28, 2014, he learnt that the victim was still not found and neither did the

victim come back to his house. On April 28, 2014, he had met the Investigating Officer of the case and disclosed everything to him. He had stated that he knew the first appellant as a businessman and that the house of the first appellant was known to him. He had known the first appellant by face and was familiar with the house in which he lived.

29. A friend of the victim had deposed as PW 4. He had stated that, he met the police about 3 to 4 times during the investigations. The incident had occurred on April 25, 2014 and that he met the police on April 28, 2014 for the first time. He had told the police that on April 25, 2014 at about 10:30/11:30 AM he went to the house of the victim and after having some chat with him, the victim told him that the victim would have to go to the bank for some work and asked him to accompany the victim. As it was very hot on that date he had refused to go with the victim and told the victim to drop him at his house on his bike. He had identified the colour and the police registration number of the bike. The victim had dropped him near Young Eleven Club near his house. The victim had some cash amount with him. PW 4 had corroborated PW 1 and PW 2 with regard to the wearing apparel and the finger ring and the gold chain owned by the victim and that material

point of time. He had also corroborated PW 1 and PW 2 with regard to the mobile phone and the phone number of the victim.

30. PW 4 had stated that, on May 5, 2014 he met the police for the 2nd time. He had stated that, he saw the contents of the compact disc which was delivered to PW 1. He had described the contents of the compact disc. He had stated that, the victim was seen standing in a frightened and scared mood and that a revolver was pointed at the temple of the victim. The victim had been saying in a frightened manner that these people would kill the victim. He had identified his signature on the seizure list dated May 5, 2014 which was tendered in evidence and marked as Exhibit 5/1.

31. PW 4 had stated that, he told the police that he was suspicious about the first appellant and the acquaintance of the victim and his family with the first appellant. He had met the police on May 5, 2014. He had identified his signature on the seizure list dated May 5, 2014 relating to the Nokia Mobile. He had identified the appellants in court. He had identified the material exhibits in court.

32. Another friend of the victim had deposed as PW 5. He had stated that, he met the police 3 to 4 times. For the first

time he had met the police on May 5, 2014. He had identified his signature on the seizure list by which, the compact disc and the chip was seized by the police. He had also witnessed the seizure of the Nokia Mobile. He had identified his signature there on also. He had identified the appellants in court.

33. A cousin of the victim had deposed as PW 6. He had stated that, on May 5, 2014 at about 10:30 PM he was interrogated by the police for the first time in connection with the case. He had stated that on May 5, 2014 he received a phone call from an unknown number in which a male voice demanded Rs 3 crores as ransom for the victim and that if the amount was not paid, the victim would be killed. He had been examined by the police on May 6, 2014 for the 2nd time. On such date, he told the police that he had received another phone call from the same mobile phone number with an unknown voice demanding a sum of Rs. 3 crores as ransom for the victim within 2 days or otherwise they would kill the victim.

34. PW 7 had witnessed various seizures made by the police on May 10, 2014 and May 15, 2014. He had identified

his signatures on the two seizure lists. He had also identified the materials seized on those two dates.

35. PW 8 had also witnessed seizures made on April 25, 2014, May 8, 2014, May 10, 2014 and May 16, 2014. He had identified his signatures on such seizure lists. He had also identified the materials seized through such seizures.

36. PW 9 had witnessed the seizures made on April 24, 2014, May 8, 2014, and May 16, 2014. He had identified his signatures on such seizure lists. He had also identified the material seized by such seizures.

37. P.W 10 had deposed about the seizure of number plate of the motor cycle and a key of the motorcycle, on May 10, 2014. He had identified the signature on the seizure list dated May 5, 2014 which was marked as Exhibit 11/1 . He had identified material Exhibit IV. He had identified his signature on the label as Exhibit 12/1.

38. P.W. 11 had witnessed the seizure of one chocolate colour scorpio car bearing No. WB 20U2829 on being pointed out by Ashok Sharma. He had identified his signature on the seizure list dated May 10, 2014 which was marked as Exhibit 19/1.

39. P.W 12 had witnessed the seizure of a fire arm and four rounds of cartridges on May 14, 2014. He had stated that, he saw the accused Samit Sharma to bring out those articles from a dry culvert situated near his house and handing over the same to the police. He had identified his signature on the seizure list dated May 14, 2014 which was marked as Exhibit 9/1. He had identified the material Exhibit 5 relating thereto.

40. A goldsmith had deposed as P.W. 13. He had stated that, on May 30, 2014, a police personnel came to his shop with a golden finger ring fitted with red stone for the purpose of testing the same. He had tested the golden finger ring and issued a certificate dated May 30, 2014 about the testing report. He had identified the certificate dated May 30, 2014 which was tendered and marked as Exhibit 24. He had stated that, on July 20, 2014 the police came to his shop for the second time with a golden chain for testing. He had tested the golden chain and issued a certificate dated July 20, 2014 which he tendered in evidence and was marked as Exhibit 24.

41. P.W. 14 had been declared hostile by the prosecution. On his cross-examination after being declared as hostile, he had denied the suggestions put to him.

42. P.W. 15 had witnessed the seizure of the gold chain from Purnima Sharma on July 19, 2014. His signature on the seizure list dated July 19, 2014 had been marked as Exhibit 7/1 and the gold chain marked as Material Exhibit II.

43. P.W 16 had deposed as a person knowing the accused Ashok Sharma. He had identified such accused in court. His deposition has not added any value to the case of the prosecution or the defense.

44. A Sub-Inspector of Police had deposed as P.W. 17. He had stated that, on April 28, 2014, Pawan Kumar Agarwal lodged a written complaint with him. He had narrated the steps taken on receipt of the written complaint. He had registered the First Information Report which he tendered in evidence. The written complaint had been marked as Exhibit 4/1. The formal First Information Report has been marked as Exhibit 25. He had stated that, the investigation of the case was endorsed to Sub-Inspector Pradip Rath. He had stated that, the Investigating Officer made a prayer before the Superintendent of Police for searching SDR/CDR/IMEI/CAF of Mobile/ IMEI No. etc. for analysing the phone call data. He had identified the signature on the document containing such prayer which was marked as Exhibit 26. He had stated that

on May 3, 2014 the Investigating Officer had made a prayer for SDR/CDR/IMEI No. of mobile phone no. 9434037729. He had identified the signature and seal on such document containing the prayer which was marked as Exhibit 27. He had stated that such Investigating Officer seized a number plate bearing no. WB 34B 4161 and a key of a motorbike of same number from a jungle of Auspal More. He had identified his signature on the seizure list dated May 10, 2014 which was marked as Exhibit 11/4. He had identified the material exhibits. He had also identified the signature on the seizure list dated May 16, 2014. He had stated that, on May 16, 2014 the Investigating Officer had seized one Nokia Mobile Set Model No. 1600 IMEI No. 353646016042163 from the house of the accused Ashok Sharma.

45. Another Sub-Inspector of Police had deposed as P.W. 18. He had stated that, the Investigating Officer of the case, made a request for searching SDR/CDR/IMEI/CAF of Mobile/IMEI No. for analysing the phone call data and other things in connection with the case. He had stated that, police directed CDR to be provided in respect of Mobile Phone No. 9932216018 for the period from April 15, 2014 to April 30, 2014. To collect the CDR of such mobile, a prayer has been

made before the service provider. Such service provider however supplied data for the period from April 15, 2014 to April 25, 2014 and claimed that they could not provide any data after April 25, 2014 as the SIM had remained switched off after that point of time. He had supplied the CDR to the Investigating Officer . Thereafter, the Investigating Officer had made another prayer for CDR in respect of SIM No. 8158022948. CDR in respect of such SIM number had been collected from the service provider for only one day i.e. May 3, 2014 as required by the Investigating Officer and such data was handed over to the Investigating Officer . Thereafter, the Investigating Officer had made another prayer for CDR of another mobile being 7547931949 for the period from April 1, 2014 to May 4, 2014 which was collected and made over to the Investigating Officer . The Investigating Officer had made a further prayer to search IMEI number of a mobile handset in which two mobile SIM numbers i.e. 8158022948 and 7547931949 were used. Police had searched IMEI number from April 14, 2014 to May 4, 2014 and it was detected that a new SIM number 9002317627 had been used in the same handset of the same IMEI number and that the new sim number was 9002317627 registered in the name of Mrs.

Purnima Sharma C/o Ashok Sharma. He had stated that in course of investigation, the Investigating Officer had made several prayers for providing several CDR of several dates to detect the location of the accused and that he supplied the Investigating Officer the details as required.

46. A police constable had deposed as P.W 19. He had stated that on May 11, 2014 he went to the house of the accused Sumit Sharma who had found out a Samsung Galaxy Mobile Phone and handed over such phone to the Investigating Officer in his presence. He had subsequently came to learn that the Samsung Galaxy mobile phone belonged to the victim. The Investigating Officer had seized such mobile phone from Sumit Sharma in his presence. He had identified his signature on the seizure list dated May 11, 2014 which was marked as Exhibit 8/1.

47. Another police constable had deposed as P.W. 20. He had stated that, he went with other police personnel to an over bridge situated under the Ramba Police Station at Odisha with the Investigating Officer , on May 12, 2014 and the accused Ashok Sharma. On that date, one big stone with blood stains was seized by the Investigating Officer as had been shown by the accused Ashok Sharma. He had identified

his signature on the seizure list dated May 12, 2014 which was marked as Exhibit 28. He had identified the accused Ashok Sharma who was produced through video conference.

48. Another police constable has deposed as P.W. 21. He had witnessed the seizure of one big stone with blood stains on May 12, 2014. He had identified his signature on the seizure list dated May 12, 2014 which was marked as Exhibit 28/1. He had also witnessed the seizure of various other articles on the same day at about 9:30 to 10:00 P.M. He had identified the signature on the seizure list dated May 12, 2014 in respect of such seizures. He had also identified the accused Ashok Sharma who was produced by video conference.

49. A Sub-Inspector of Police had deposed as P.W 22. He had stated that on May 10, 2014, he accompanied the Investigating Officer and went to the house of the accused Ashok Sharma where a Scorpio car was seized in his presence. He had identified his signature on the seizure list dated May 10, 2014 which was marked as Exhibit 19/2. He had stated that, on May 12, 2014 he accompanied the Investigating Officer to the Ramba Police Station where, one blood stained small stone, one big stone, sample earth and one wearing apparel and some other articles had been seized

from the Enquiry Officer of an unnatural death case of the Ramba Police Station after preparing a seizure list. He had identified the signature on such seizure list which was marked as Exhibit 29/1. He had identified the articles seized which was marked as material exhibits.

50. A constable of the police had deposed as P.W. 23. He had stated that on May 30, 2014, he had accompanied the Investigating Officer and the accused Dinesh Sharma to his house. At his house, the accused Dinesh Sharma had brought out one Golden finger ring with one red stone and handed over the same to the Investigating Officer who seized it in his presence. He had identified the signature on the seizure list dated May 30, 2014 which was marked as Exhibit 6/1. He had identified the material exhibit with regard to such seized articles.

51. The mother of the victim had deposed as P.W. 24. She had stated that, on April 25, 2014 the victim was kidnapped and that on May 21, 2014 police personnel of the Jhargram Police Station came to his house and interrogated her. She had stated that when the victim was kidnapped, the victim had a golden chain on his neck and a golden finger ring with red stone on his finger. On May 30, 2014, she along with her

husband went to the house of Dinesh Sharma where the accused Dinesh Sharma had brought out one golden finger ring with one red stone and handed over to the police. She had identified such golden finger ring as that of the victim. Police had seized such golden finger ring with one red stone by preparing the seizure list. She had identified the signature on the seizure list dated May 30, 2014. She had identified the golden ring in court which was already marked as material Exhibit I. She had stated that on July 19, 2014 she along with her husband had gone to the house of Purnima Sharma who brought out one golden chain and handed over the same to the police. She had identified the golden chain as that of the victim. Police had seized golden chain in her presence. She had identified the signature on the seizure list dated July 19, 2014 which was marked as Exhibit 7/2. She had identified the golden chain which was already marked as material Exhibit II. She had stated that, on January 4, 2020, in course of investigation, police seized some documents namely certified copy of inquest report, certified copy of post mortem report, one dead body challan after preparing a seizure list. She had identified the seizure list dated January 4, 2020 which was marked as Exhibit 30. She had identified the

documents seized on such date. She had identified the accused present in court. She had stated that when the victim was kidnapped, he was 26 years of age.

52. A branch manager of State Bank of India had deposed as P.W. 25. He had stated that he was the manager of the SBI Jhargram Branch on June 3, 2014. He had identified the accused Ashok Sharma in Court. He had stated that such accused was a customer of his branch. That apart, he did not add any value to the case of either the prosecution or the defence.

53. The doctor who had conducted the autopsy on the body of the victim had deposed as P.W. 26. He had described his finding on the conduct of the autopsy. He had stated that, the injuries found on the body of the victim were ante mortem and homicidal in nature. He had noted that, the victim had suffered strangulation, injuries caused by hard and blunt trauma. The victim had died due to a combined result of asphyxia and venus congestion due to strangulation compounded with carniocerebral injuries. He had identified the time of death to be within 12 to 24 hours prior to autopsy. He had also opined that the injuries could be caused when a person was hit by a big blunt stone repeatedly. The certified

copy of the post mortem report had been marked as Exhibit 32. The defence did not cross-examine him on his opinion with regard to the cause of death or on any aspect noted in the post mortem report.

54. The scribe of the written complaint dated April 28, 2014 had deposed as P.W. 27. He had stated that he was a lawyer by profession. Pawan Kumar Agarwal had come to his chamber on April 20, 2014 in the evening and requested him to draft a written complaint in respect of the victim. He had identified the written complaint which was marked as Exhibit 4/2.

55. The Investigating Officer had deposed as P.W. 28. He had narrated the course of investigation. He had tendered various documents in evidence which were marked as Exhibits. He had also tendered various articles which he had seized from time to time. He had narrated that he had seized the mobile phone and collected the CDR of various mobiles.

56. He had spoken about seizure of various articles during course of investigation. He had arrested the accused. He had stated that, ten days police remand of three accused was allowed by the learned Magistrate on May 9, 2015. He had examined Toton Rana @ Noton, Sumit Sharma and Ashok

Sharma on May 9, 2014 and recorded their statements under Section 161 of the Criminal Procedure Code. On May 10, 2014 he had examined Toton Rana @ Noton and recorded his statement under Section 161 of the Criminal Procedure Code where Toton Rana @ Noton stated that if he was taken then he would show the number plate and the key of the motorcycle of the victim and that the same could be recovered.

57. In his deposition P.W. 28 has stated that he took the accused Toton Rana@ Noton to the jungle from where he recovered one number plate and one key of the motorcycle on which the word TVS was written. He had prepared the seizure list which was tendered in evidence and marked as Exhibit 11/3. The seized number plate and the key had been collectively marked as material Exhibit IV which he identified in Court. The portion of the statement of Toton Rana @ Noton recorded under Section 161 of the Criminal Procedure Code on May 10, 2014 leading to such recovery had been marked as Exhibit 36.

58. P.W. 28 had stated that on May 10, 2016 he had examined the accused Ashok Sharma and recorded his statement under Section 161 of the Criminal Procedure Code. Accused Ashok Sharma had told him that, if Ashok Sharma

was taken to his house, he would show the Scorpio vehicle and would help the Investigating Officer to recover that. Leading to the statement of the accused Ashok Sharma, the accused was taken to his house and one chocolate colour Scorpio bearing No. WB 20U2829 had been recovered by a seizure list dated May 10, 2014 which was tendered in evidence and marked as Exhibit 19/3. The portion of the statement of the accused Ashok Sharma had been tendered in evidence and marked as Exhibit 37.

59. P.W. 28 had stated that on May 11, 2014 he had examined the accused Sumit Sharma and recorded his statement under Section 161 of the Criminal Procedure Code. Sumit Sharma had stated that, if he was taken to his house, he along with Piku would help in recovering the mobile of the victim. Leading to such statement, Sumit Sharma was taken to his house from where a Samsung Galaxy Mobile phone was recovered and seized under a seizure list dated May 11, 2014 which was tendered in evidence and marked as Exhibit 8/2. The portion of the statement of Sumit Sharma had been tendered in evidence and marked as Exhibit 30.

60. P.W. 28 had stated that, on May 12, 2014 he examined the accused Ashok Sharma and recorded his statement under

Section 161 of the Criminal Procedure Code. Ashok Sharma had made a statement that, he would show the stone which he used to kill the victim on the National Highway within the jurisdiction of the Ramba Police Station. Leading to his statement, Ashok Sharma and accused Toton Rana was taken to Khardha under the Ramba Police Station, Odisha by a police van. On the way to Orissa, accused Ashok Sharma identified a Toll Plaza namely Sergarh Toll Plaza near Baleshwar from which, P.W. 28 collected a copy of the records relating to the passing of the vehicles through such Toll Plaza on May 5, 2014. He had tendered the relevant page of such records from where it appears that, vehicle WB 20U 2829 had crossed the plaza on May 5, 2014 at about 5:26 P.M.

61. P.W. 28 had deposed that on May 12, 2014 at about 6:15 P.M, they had reached Khardah when, the accused Ashok Sharma identified the place of occurrence for committing the murder of the victim which was situated near a railway overbridge. P.W. 28 had prepared a rough sketch map with index of the place. Such rough sketch map with index had been tendered in evidence and marked as Exhibit 39. Leading to the statement of the accused Ashok Sharma, P.W. 28 had recovered one big stone with blood stains said to

be the murder weapon by a seizure list dated May 12, 2014 which was tendered in evidence and marked as Exhibit 28/2. He had also seized one big stone with blood stain which was tendered in evidence and marked as material Exhibit XIV. The portion of the statement of the accused Ashok Sharma recorded under Section 161 of the Criminal Procedure Code on May 12, 2014 leading to the recovery of the big stone had been tendered in evidence and marked as Exhibit 40.

62. P.W. 28 had spoken about his course of investigation and seizure of various articles from the Ramba Police Station. He had spoken about an interrogation of the accused Sumit Sharma and statement made by Sumit Sharma recorded under Section 161 of the Criminal Procedure Code. Accused Sumit Sharma on May 14, 2014 had told P.W. 28 about the firearm. Leading to such statement, accused Sumit Sharma had been taken to the place from where a firearm had been recovered by a seizure list dated May 14, 2014 which was tendered in evidence and marked as Exhibit 9/2. The statement of Sumit Sharma had been tendered in evidence and marked as Exhibit 42.

63. P.W. 28 had stated that Ashok Sharma had made a further statement on May 15, 2014 under Section 161 of the

Criminal Procedure Code which led to the recovery of various articles. The statement of Ashok Sharma had been marked as Exhibit 43.

64. P.W. 28 has spoken about various other statements of accused recorded under Section 161 of the Criminal Procedure Code in the recovery of various article pursuant to such leading statements. He had spoken about the accused Ashok Sharma making a statement on May 16, 2014 which was marked as Exhibit 45 and accused Dinesh Sharma making a statement on May 30, 2014 which was marked as Exhibit 50. Statement of Purnima @ Poonam Sharma made on July 19, 2014 had been tendered in evidence and marked as Exhibit 55.

65. P.W. 28 had been cross-examined at length by the accused persons. He had denied the suggestions with regard to the recording of the statements under Section 161 of the Criminal Procedure Code which ultimately led to recovery of various articles used in the crime.

66. The Judicial Magistrate before whom, Piku @ Dinesh Sharma had been produced for recording his statement under Section 164 of the Criminal Procedure Code had deposed as P.W. 29. The statement made by Piku @ Dinesh Sharma and

recorded under Section 164 of the Criminal Procedure Code had been tendered in evidence and marked as Exhibit 56.

67. A Sub-Inspector of Odisha Police had deposed as P.W. 30. He had spoken about the written complaint relating to the Ramba Police Station Case No. 85 dated May 6, 2014 under Sections 302/201 of the Indian Penal Code, 1860. He had tendered such written complaint along with the formal First Information Report dated May 6, 2014 which were marked as Exhibit 57 collectively. He had investigated such case. He had spoken about the rough sketch map along with index of the place of occurrence (Exhibit 58), photographs taken and the seizures made. He had collected the post mortem report of the victim. He had stated that, the Investigating Officer of the present case came to the Ramba Police Station on May 12, 2014 and pursuant to the representation, he had made over the articles he seized in connection with the Ramba Police Station case.

68. The Sub-Inspector of Police who had filed supplementary charge-sheet on January 5, 2020 had deposed as P.W. 31. He had stated that on December 10, 2019 he collected the forensic science laboratory report dated March 24, 2015 which was tendered in evidence and marked as

Exhibit 62 collectively. He had seized the certified copy of the post mortem report, inquest report and the dead body challan from the mother of the victim by the seizure list dated January 4, 2020 which was marked as Exhibit 30/1. He had filed the supplementary charge-sheet along with the forensic science laboratory report before the trial.

69. All the accused had been examined under Section 313 of the Criminal Procedure Code where they claimed to be innocent and falsely implicated. They had declined to adduce any defence witness.

70. Dead body of the victim had been recovered by Odisha Police within Ramba Police Station on May 6, 2014. Odisha Police had recorded a formal First Information Report dated May 6, 2014 under Sections 302/201 of the Indian Penal Code, 316 in respect of the death of the victim as will appear from Exhibit 57 collectively.

71. P.W. 30, Sub-Inspector of the Odisha Police, had conducted the inquest over the dead body of the victim and prepared the inquest report being Exhibit 31. He had sent the dead body of the victim for post mortem.

72. P.W. 26 had conducted the post mortem on the dead body of the victim on May 6, 2014. The certified copy of the

post mortem report had been tendered in evidence and marked as Exhibit 32.

73. P.W. 26, had deposed that, in his opinion, injuries found on the dead body were ante mortem and homicidal in nature. The death had occurred due to combined result of asphyxia and venous congestion due to strangulation compounded with cardiocerebral injuries. He had opined that, the injuries would have been caused when a person is hit by a big blunt stone repeatedly. He had also opined that the time of death was within 12 to 24 hours prior to the autopsy.

74. The prosecution had therefore established that, the victim was murdered through the post mortem report being Exhibit 32 and deposition of the Doctor conducting the Post Mortem on the dead body of the victim being P.W. 26. The victim had been murdered either on May 6, 2014 or on May 5, 2014 according to P.W. 26. The victim had suffered injuries caused by a big blunt stone repeatedly. The victim had died as a result of strangulation and injuries suffered on the body.

75. Police had filed charge-sheet against five accused namely Sumit Sharma, Piku @ Dinesh Sharma, Purnima @ Poonam Sharma, Ashok Sharma. Out of the five accused, three accused namely, Ashok Sharma, Notun @ Toton Rana

and Sumit Sharma have preferred the present appeal. The learned Trial Judge had convicted Piku @ Dinesh Sharma under Section 201 of the Indian Penal Code, 1860 and Section 25(1B) of the Arms Act, 1959 and sentenced him to suffer rigorous imprisonment for a term of seven years which he had already undergone. Learned Trial Judge had acquitted Purnima @ Poonam Sharma from the charges.

76. Ashok Sharma had made a leading statement under Section 161 of the Criminal Procedure Code on May 10, 2014 being Exhibit 37 pursuant to which, a scorpio vehicle bearing No. WB 20U 2829 had been seized on May 10, 2014 by seizure list being Exhibit 19 in presence of P.W. 8 and 11.

77. Ashok Sharma had also made a leading statement on May 12, 2014 being Exhibit 40 which led to recovery of one big stone with blood stain. The forensic science laboratory report being Exhibit 62 collectively has established that the stains on such big stone was of human blood.

78. Ashok Sharma had made another leading statement on May 15, 2014 being Exhibit 43 pursuant to which, one big blanket and tape used for closing the mouth of the victim had been recovered being material Exhibit VII.

79. Ashok Sharma had made a statement on May 16, 2014 pursuant to which a Nokia 1600 mobile phone had been seized on May 16, 2014 being Material Exhibit X. The leading statement made by Ashok Sharma had been marked as Exhibit 45.

80. Toton Rana alias Noton had made a leading statement on May 10, 2014 which was marked as Exhibit 36 and which led seizure of a number plate bearing WB 34 T 4116 and one key of a motorcycle on which the word TVS was written being Material Exhibit IV on May 10, 2014 in presence of PW 7 and PW 10.

81. Sumit Sharma had made a statement on May 11, 2014 which led to the recovery of a Samsung Galaxy Grand mobile being Material Exhibit XVIII in presence of PW 8 and 9 on May 11, 2014. The leading statement of Sumit Sharma made on May 11, 2014 had been tendered in evidence and marked as Exhibit 38.

82. Sumit Sharma had made a further statement on May 14, 2014 which led to the recovery of .38 revolver and 4 rounds of ammunition in presence of PW 2 and PW 12. The leading statement had been marked as Exhibit 42.

83. Prosecution has relied upon circumstantial evidence to bring home the charges as against the accused. So far as circumstantial evidence is concerned, prosecution has relied upon leading statements which resulted in recovery of various inculpatory materials.

84. In ***Raj Kumar (supra)*** the Supreme Court has held that, recovery of ornaments of deceased from accused or production of same by accused in course of investigation, however suspicious, cannot be conclusive evidence of the accused committing the offence of murder. Recovery of ornaments of the deceased can lead to presumption of commission of robbery or receiving stolen property, unless there are circumstances to show that theft/robbery and murder took place in same transaction, accused will not be liable for an offence of murder.

85. In ***Mohd. Yunus Ali Tarafdar (supra)*** the Supreme Court has reversed a sentence of conviction for murder on the ground that the circumstances establishing the guilt of the accused was not proved beyond reasonable doubt. It has been held that, the accused was not last seen with the deceased.

86. ***Bijender alias Mandar (supra)*** has held that, a court can convict an accused exclusively on the basis of his

disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of the accused, the recovery should be unimpeachable and not be shrouded with elements of doubts. Circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the testing witness before the court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery.

87. In *Madhu (supra)* the Supreme Court has, reversed the conviction of robbery and murder on the ground that, the presence of the accused near the place of occurrence, at or about the time of commission of the crime, was found to be irrelevant. The statements made by the accused cannot be proved against them or to their detriment.

88. In *Veerendra (supra)* the Supreme Court has held that, solely on account of the effects of shortcomings in investigation and accused is not entitled to get an acquittal. Even if a flaw had occurred in the investigation in a given

case, the court has still a duty to consider whether the materials in evidence available on record before it, is enough and cogent to prove the case of the prosecution. Moreover, if a case rests on circumstantial evidence, the court has to consider whether, despite such a lapse, the various links in the chain of circumstances form a complete chain pointing to the guilt of the accused alone in exclusion of all hypothesis of innocence in his favour.

89. *Arvind Singh (supra)* has dwelt on the necessary ingredients of section 364A of the Indian Penal Code, 1860. It has held that, act of kidnapping of a child for ransom has inherent threat to cause death as that alone will force relatives of victims to pay ransom. This view has however been subsequently explained in 2021 Volume 9 Supreme Court Cases 59 (Shaik Ahmed versus State of Telangana) that no presumption in law arises that the kidnapping or abduction was done to cause hurt or death and that each case has to be decided on its facts.

90. *Arjun Panditrao Khotkar (supra)* has held that, production of certificate under section 65 B (4) of the Evidence Act, 1872 was mandatory for admissibility of secondary evidence by way of electronic record. It has noted that, the

original information in the computer was the primary evidence and that copies made therefrom are secondary evidence. Where the information happens to be a part of computer system or a computer network and it is impossible to physically bring a system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with section 65 B (1) together with the requisite certificate under section 65 B (4).

91. Prosecution had failed to produce any certificate under section 65B in respect of the call details regarding. Therefore, prosecution has failed to produce any evidence with regard to the call details which purports to link the claim for ransom being made by the accused to the father of the victim.

92. As has been noted above, the case of the prosecution is based on circumstantial evidence. The victim had been kidnapped on April 25, 2014. A missing dairy had been lodged on April 25, 2014. Thereafter, the father of the victim had lodged a written complaint with the police on April 28, 2014 with regard to abduction of the victim on April 25, 2014. The dead body of the victim had been recovered on May 6, 2014 at Odisha. In between, the father of the victim had received calls for ransom.

93. Prosecution had failed to produce any eyewitness to establish that any of the accused made a demand for ransom or committed the crime of murder. Prosecution has relied upon inculpatory materials recovered on the basis of leading statements made by the accused while in custody. Prosecution has tendered such evidence under section 27 of the Indian Evidence Act, 1872.

94. Prosecution has established that, a Scorpio vehicle bearing registration number WB 20U 2829, one big stone with blood stains, one printed blanket and tapes, and one Nokia mobile phone of model No. 1600 had been recovered on the leading statement made by Ashok Sharma from time to time. The recoveries had been made in presence of independent witnesses. They had been cross-examined at length on behalf of the defence. Nothing had been extracted during such cross examination so as to impinge upon their testimony.

95. From Tonon Rana alias Noton one number plate of a motor cycle bearing number WB 34T 41 61 and one key of a motorcycle on which the word TVS was written had been recovered on his leading statement being Exhibit 36. The recoveries had been made in presence of PW 7 and 10. They had been cross-examined at length on behalf of the defence.

The defence could not extract anything favourable to them from such cross examination.

96. One iron made .38 revolver and 4 rounds of ammunition for such revolver had been recovered on the leading statement made by Sumit Sharma on May 11, 2014 being Exhibit 42 in presence of independent witness. Again the seizure list witness had been cross-examined without any benefit to the defence. The recovery of the firearm had been made from a drain near his house.

97. The manner in which the recoveries had been made and the articles recovered points to the involvement of each of the appellants in the demand for ransom and murder of the victim. All the articles had been used in the commission of the crime. The big stone seized had blood stains on it which forensic laboratory report established to be human blood. The vehicle recovered from the house of Ashok Sharma had crossed the toll plaza on May 5, 2014. Ashok Sharma had failed to advance any cogent reason for the vehicle to cross the toll plaza on such date during his examination under Section 313 of the Criminal Procedure Code. In fact, none of the appellants had offered any explanation far less to speak of

cogent explanation, as to the recoveries made on their leading statements.

98. The prosecution has been able to establish that the victim was abducted on April 25, 2014 and found murdered on May 6, 2014. The father of the victim had received ransom calls. The inculpatory materials that had been recovered on the leading statements of the appellants establishes their complicity in the crimes for which they have been found guilty of by the learned Trial Judge, beyond reasonable doubt.

99. In such circumstances, we are of the view that, the appellants have not been able to establish any ground for the reversal of the judgement of conviction dated May 11, 2012. The learned Judge has rightly exercised his discretion in awarding the sentences and we find no ground to interfere with the order of sentence dated May 13, 2022.

100. In view of the discussions above, CRA (DB) 103 of 2022 is dismissed. Nothing survives in any application and therefore, CRAN 1 of 2022 is also dismissed.

101. All sentences awarded as against all the appellants shall run concurrently. Period of custody undergone shall be set off against the substantive sentences awarded.

102. A copy of this judgement and order along with the trial court records be transmitted to the trial court forth with.

[DEBANGSU BASAK, J.]

103. I agree.

[MD. SHABBAR RASHIDI, J]