

IN THE HIGH COURT OF CALCUTTA
Criminal Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

and

The Hon'ble Justice Md. Shabbar Rashidi

CRA No. 144 of 2018

Noor Mohammed @ Shahbaz @ Sikender & Ors.

Vs.

State of West Bengal

With

CRA No. 143 of 2018

Ishaq Ahmed @ Dilshad @ Jaheer @ Hasan @ Musha & Ors.

Vs.

State of West Bengal

With

CRA No. 476 of 2018

Mujammel Sk. @ Akram @ Akka

Vs.

State of West Bengal

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For the appellant nos. 1& 2
in CRA 144 of 2018

: Mr. Muzahid Ahmed, Adv.

For the appellant
in CRA 476 of 2018

: Mr. Sahid Uddin Ahmed, Adv.

For the appellant no. 4
in CRA 144 of 2018

: Kallol Mondal, Ld. Sr. Adv.,
Amicus Curiae

: Krishan Ray, Adv.

: Souvik Das, Adv.

: Mr. Anamitra Banerjee, Adv.

For the appellant no. 1
in CRA No143 of 2018

: Mr. Masum Ali Sardar, Adv.

For the appellant nos. 2
& 3 in CRA 143 of 2018

: Mr. Krishan Ray, Adv.
Amicus Curiae

: Mr. Sekhar Mukherjee. Adv.

: Mr. Anindya Chowdhury, Adv.

: Mr. Subhajit Mukherjee, Adv.

: Ms. Isita Kundu, Adv.

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For the State : Mr. Saswata Gopal Mukherjee, Ld.
Sr. Advocate, Special P.P.

: Mr. Neguive Ahmed, Adv.

: Mr. Madhusudan Sur, Adv.

: Mr. Dipankar Paramanick, Adv.

Heard on : January 16, 2025

Judgment on : March 27, 2025

Md. Shabbar Rashidi, J.:

1. These three appeals are in assailment of judgment of conviction dated December 8, 2017 and order of sentence dated December 12, 2017 passed in Sessions Trial No. 14 (10) of 2012 corresponding to Sessions Case No. 65 (01) of 2003.
2. By the impugned judgment and order, the appellants were convicted for the offences punishable under Sections 364A/342/120B of the Indian Penal Code, 1860. All the eight appellants were sentenced to undergo imprisonment for life and

fine of ₹. 3, 00, 000/- (Three lakh) each, and in default of payment of fine, the appellants were to undergo simple imprisonment for two years each, for the offence punishable under Section 364A/120B of the Indian Penal Code. The appellants were also sentenced to undergo imprisonment for one year each, for the offence punishable under Section 342/120B of the Indian Penal Code.

- 3.** One Partha Pratim Roy Burman, on July 25, 2001 at 10.00 am, one of the Directors of Khadim Goup of companies, left his house for his factory at Kasba Industrial Estate, by his TATA Safari vehicle bearing Registration No. WB-02K/4706 being driven by the driver Naba Kumar Mondal. After staying there for 15/20 minutes, he left for his godown at 37, Topsia Road. On way to the godown, when the he reached near a mosque at C.N. Roy Road at about 11.30 am, the vehicle of said Partha Pratim Roy Burman was intercepted by a Maruti-800 vehicle. Two armed miscreants accompanied by some 2/3 other miscreants, came out of the said Maruti vehicle and hit on the front and right side window of the TATA Safari. Thereafter, the aforesaid miscreants forcibly dragged Partha Pratim Roy Burman outside his vehicle

and took him in to the Maruti-800 vehicle and fled away taking him along. The miscreants are said to be talking in Hindi.

4. Following the incident, the driver of the vehicle of Partha Pratim Roy Burman, namely Naba Kumar Mondal, first, went to Parama Police Investigation Centre and thereafter went to the house of Partha Pratim Roy Burman. A written complaint was lodge with Tiljala Police Station by Sidhartha Roy Burman, brother of the victim.

5. On the basis of such written complaint, Tiljala Police Station Case No. 223 dated July 25, 2001 under Section 364A/307/341/120B of the Indian Penal Code and 25/27 of the Arms Act was started. The police took up investigation and on completion thereof, submitted chargesheet against 35 accused persons under Section 364A/307/236/379/411/341/120B of the Indian Penal Code. The case was committed to the court of Sessions after taking cognizance of the offences.

6. However, the present appellants absconded the trial for which trial was split up and in the first phase was taken up against 22 accused persons. The present appellants were later brought to book and stood trial. Charges under Section

364A/342/120B of the Indian Penal Code were framed against the appellants herein to which, the appellants pleaded not guilty and claimed to be tried.

7. In order to establish the charges against the present appellants, prosecution examined as many as 68 witnesses in all. In addition, prosecution also relied upon several documentary evidences, which were admitted in evidence at the trial and marked as Exhibits.

8. The owner of the flat being 21/B Gorachand Lane, Kolkata, deposed as PW1. He stated that the building where the said flat was situated belonged to his father who died in 2010. In March 2001 one flat on the top floor was lying vacant. There was advertisement published for letting out the flat. Mahmood Hassan had a talk with PW1 and his father and agreed to take the flat on rent. As agreed he deposited ₹. 50,000/- as security deposit and took possession of the flat. He kept his belongings in the flat; however, he was personally not residing therein. One Bablu and Ansar used to reside there on behalf of Mahmood Hassan. Their guests used to visit the flat. PW1 also stated that in the end of 2001, police brought Mahmood Hassan to the

rented flat. He was not having the keys for which the padlock had to be broken in presence of PW1, his father and other local people. Mahmood Hassan identified the articles kept in the said flat which were seized by the police. PW1 proved his signature and that of his father on the seizure list and labels attached to the seized articles. The amount of security money was also returned to Mahmood Hassan which was also seized. PW1 also identified the seized article. He identified the two accused Bablu and Ansar in dock.

9. A Taxi driver was examined as PW2. He stated that on July 25, 2001, while he was waiting for passengers at the 42/42A bus stand facing bypass, a middle aged man came running to his taxi and asked PW2 to take him to Salt Lake. On his way, the said passenger asked for the nearest police station and asked PW2 to take him to the police station. PW2 took him to Parama police station. He entered the police station and after sometimes he came out and asked PW2 to take him to Salt Lake. The passenger disclosed his name as Naba Kumar Mondal. He told PW2 that he was the driver of Khadim Shoe Company and that some 4-5 persons abducted the owner of Khadim Shoe

Company from his car to another vehicle. Thereafter, PW2 left the said Naba Kumar Mondal at the house of employer.

10. Another taxi driver deposed as PW3. He stated that on August 2, 2001 at about 2 pm, he was standing with his taxi at a tea stall at Nager Bazar, Kazipara. At that time, one person came there by a rickshaw and asked PW3 to take him to his destination. On being agreed, the said person asked for ₹. 2/- to pay to the rickshaw puller. PW3 provided him ₹. 10/- whereupon, the said person paid to the rickshaw puller and boarded the taxi and asked PW3 to take him to salt lake. The said person was tall with fair complexion and was having bandage on his left hand. PW3 left the said person at his house at Salt Lake. He entered into his house. Thereafter, one person came out of the house and paid him the taxi fare. PW3 also stated that there were so many persons assembled at the house of his passenger. From the assembled crowd and the reporters, PW3 came to know that the passenger he left at Salt Lake, was Partha Roy Burman, the proprietor of Khadim shoe company.

11. PW4 is a chance witness. He stated that on July 25, 2001, he was at a tea stall at C. N. Roy Road and saw a Maruti-

800 car standing at such place facing bypass. He however, could not remember the registration number of said vehicle. PW4 further stated that he saw TATA Safari which was coming from by-pass end was blocked in front of Maruti car and some 3-4 persons forcibly dragged a gentleman from TATA Safari and took him into the Maruti car. They fled away towards by-pass. The driver of TATA Safari fled away after the incident, leaving his vehicle. PW4 however, denied knowing Sona, Nausad and Chunu Mian of his locality. The witness was declared hostile and in his cross examination by the prosecution, he denied having made any statement before police to the effect that the 3-4 miscreants who committed the incident were talking to Sona, Nausad and Chunu Mian of his locality and that the miscreants committed the offence at the instigation of said Sona, Nausad and Chunu Mian of his locality. PW4 later came to know that the person, who was abducted, was the proprietor of Khadim Shoe Company. He also stated that he was not able to identify the miscreants.

- 12.** The van-rickshaw puller was examined as PW5. He stated that in the month of Sraban 2001, on a Thursday at about 1.30/2 pm, he was standing near a club at Arjunpur. He saw a

blue colour Maruti Van coming from the side of V.I.P Road. A tall man with fair complexion, wearing white pajama-punjabi and having bandage on his left hand got off the Maruti Van. PW5 left the said person at Nager Bazar, Kazipara more. A yellow color taxi was standing there. The passenger called the taxi driver and asked him to pay off the van-rickshaw fare. He paid ₹. 10/- and PW5 returned the change. Later, he came to know that the person he carried by his van-rickshaw was Partha Roy Burman, the proprietor of Khadim Shoe Company. PW5 however, could not remember the registration number of the blue Maruti Van.

- 13.** A local resident deposed as PW6. He stated that he used to work as a labourer. On November 24, 2001 while he was returning to Kheyada Bazar Road after finishing his job, he saw a vehicle standing at a distance. He went there and found two persons tied with ropes. They got down from the car with other persons. PW6 was informed that there was going to be a search and he was requested to be a witness. The persons tied with the ropes searched out a green color sheet smeared with mud and water. A seizure list was prepared to which PW6 put his signature. PW6 identified his signature on the seizure list as well

as label attached to the seized sheet. He also identified the recovered sheet. He identified the person at whose instance, the sheet was recovered as Arsad Khan.

14. PW7 did not add any value to the prosecution case.

Defense declined to cross examine such witness.

15. PW8 is another seizure list witness. He testified the recovery of two number plates of the vehicle from the canal as shown by two persons tied with ropes. He put his Thumb Impression on the seizure list. He identified the recovered number plates in court.

16. PW9 is an employee of a garment shop. He stated that on July 25, 2001 at about 1.00/1.30 p.m. one person speaking Hindi, came to his shop and purchased a shirt. He also saw a bare bodied person inside a white color car standing near his shop. The person who purchased the shirt, later, drove away the car. PW9 identified the shirt purchased from his shop and the bare bodied person was identified as Arsad Khan in court.

17. A motor mechanic who used to work in Pal Automobiles at 92, Raja S.C. Mallick Road deposed as PW10. He stated that on July 25, 2001 at mid-day, while he was at the garage, one

person came with a Maruti 800 and got a damaged backlight changed. PW10 also saw another person sitting inside the car who gave him ₹. 30/- He identified Noor Mohammed as the person sitting inside the car.

18. A relative of convict Mizanur Rahman was examined as PW11. He stated that he, accompanied by one Ali Hossain introduced Mizanur Rahman to one Rafiquddin who was the owner of a house at village Pakuria. He was told that a businessman from Kolkata wanted to purchase the building for business. However, PW11 later came to know that Mizanur Rahman purchased the said house for business purpose. He identified Mizanur Rahman in court.

19. The said companion of PW 11, namely Ali Hossain deposed as PW12. He however, did not add any value to the case of the prosecution.

20. A resident of Khan para deposed as PW13. He stated that on July 4, 2001 he was called upon by one of his relatives namely Rafiquddin at his house. There he was introduced with two persons namely Mizanur Rahman and Jamil Hassan. He was informed that Rafiquddin was selling his house, which, Jamil

and the boss of Mizanur Rahman named Mehmood Hassan agreed to purchase. Part payment of the consideration was made on that day and PW13 scribed an agreement to such effect in their presence according to the instructions of Rafiquddin and it was signed by him. Mizanur Rahman and Jamil Hassan took the deed to get the signature of Mehmood Hassan thereon. Thereafter, the key of the house was handed over by Rafiquddin to Mizanur Rahman and Jamil Hassan and they took possession of the house. The purchasers carried out certain renovation work in the house after such purchase and at that time, PW13 was introduced by Rafiquddin with Mehmood Hassan.

- 21.** PW13 further stated that on July 25, 2001, while he was standing near a mosque, he saw a white Maruti car bearing Regn. No. 8771 came to the said house and after the afternoon prayers, the said car left the house, Mehmood Hassan and some other persons sitting therein. On November 6, 2001, PW13 found the said house surrounded by police and Mehmood Hassan was arrested. They entered into the house by breaking open the lock. After sometimes police left the house with Mehmood. At the request of police, PW13 and one Julfikar accompanied the police

to the house of Mizanur. He was not present then. Police made a search and found the stamp paper containing the agreement for purchase of the house which was seized by police. PW13 signed on such seizure list. PW13 identified the agreement as well as his signature on the seizure list. He also stated that on November 24, 2001, police recovered some syringe, injection, saline tube and bottles and some hairs, digging earth, as shown by Mehmood Hassan from a portion of the house sold by Rafiquddin. PW13 identified his signatures on the seizure list to that effect. He also accompanied Rafiquddin and Julfikar and one Ruhul Kuddus to Bhawani Bhawan at the time of delivering the deed of the house and the earnest money as well as the money handed for purchase of motorcycle to the police. He proved his signature on the seizure lists and on the labels attached to seized articles. He also identified the seized articles. PW13 identified Mizanur Rahman in court.

22. A teacher and brother-in-law of Mizanur Rahman, was examined as PW14. He stated that in April 2001 he came to know that Mizanur Rahman got a good assignment for which his income increased. Mizanur Rahman purchased a motorcycle

belonging to PW14 for ₹. 28, 000/- in August 2001. Later, PW14 also came to know that Mizanur Rahman was involved in the abduction of the owner of Khadim Company. He also got a boat prepared. In November 2001, PW14 was asked by CID to deposit the money he received from Mizanur Rahman which was seized under a seizure list. He proved his signature on the seizure list.

23. A villager was examined as PW15. He stated that Mizanur Rahman used to run a radio repairing shop. On his query, he was reported by Mizanur Rahman that he had earned an assignment for which his shop used to remain closed. PW15 also stated that he saw Mizanur Rahman getting a boat prepared by engaging persons in September 2001. In November 2001 police conducted raid at the house of Mizanur Rahman. Thereafter, he heard that Mizanur Rahman was an accused in the abduction case of the owner of Khadim Company. He showed the boat to police and identified his signature on the seizure list. He identified Mizanur Rahman in court.

24. A resident of village Pakuria deposed as PW16. He is a seizure list witness. He stated to be witness to the articles seized from the house of Rafiquddin along with other witnesses. He

identified his signatures on the seizure list as well as labels attached to the seized articles.

25. PW 17 is another seizure list witness. He was present when the house of Rafique Khan was searched and several articles were seized by the police. He proved his signature on the seizure list as well as the labels attached to the seized articles.

26. PW 18 did not add any value to the case of the prosecution. He stated that he did not know anybody name Sohail Ahmed.

27. PW 19 stated that in July 2001 at about 10 AM, some persons visited the house of Rafique. Rafique informed PW 19 that he had sold his house to a businessman from Calcutta. He was also informed that one Mizanur Rahman was the mediator. He also stated that in the next week, at the request of Mizanur Rahman, he left him and two other persons to Maltipur by his motor van. At the request of Mizanur Rahman, he again left him along with four unknown persons to the house of Rafique in the evening at about 7 PM. PW 19 also stated that on his way, he became acquainted with the said unknown persons who were Akram, Aslam, Naim, Dilsad, Mahmud Hassan, Zamir Hassan,

Khalid, Akib, Omar Moulana and many others. PW 19 also stated that in November 2001, police conducted raid at the house of Rafique led by Mahmoud Hassan and at the house of Mizanur Rahman. He further stated that he along with others signed on the seizure list through which several articles were seized by police. He also stated that he was informed by Rafique that the persons, whom, PW 19 carried through his motor van, were involved in the abduction of the owner of Khadim Shoe Company. PW 19 also stated to have identified Noor Mohammad @Shahbaz in the TI Parade. He also identified him in court. Besides, he identified Mizanur Rahman, Akram, Naim, Dilsad and Arsad. PW 19 also proved his signature on the seizure list and label attached to the seized articles.

- 28.** Brother-in-law of the victim deposed as PW20. This witness was declared hostile by the prosecution. He stated that his brother-in-law Partha Ray Burman went missing on July 25, 2001. In his cross examination on behalf of the prosecution, PW20 denied having made any statement before police on August 2, 2001. He however, admitted having visited Hyderabad and returned therefrom. He denied having paid any money to hawlah

operator but stated that the victim returned by a taxi on August 2, 2001.

29. One medical officer deposed as PW21. He collected blood samples of the victim Partha Roy Burman in 2002 at the instructions of Chief Medical Officer of Health. He proved the signatures on blood donor card.

30. One nephew of the victim was examined as PW22. He stated that he was an employee of Khadim Shoe Company in the year 2001. The victim Partha Roy Burman and his brother were then directors of the company. The company had its godown at Topsia and the manufacturing unit was situated at Kasba. He also stated to have heard that on July 25, 2001, Partha Roy Burman went missing. This witness was also declared hostile by the prosecution and in his cross examination; he denied having made any statement before the police.

31. The de facto complainant deposed as PW23. He stated that he along with his brother Partha Roy Burman were the directors of Khadim Shoe Company. He however, stated that between July 25, 2001 and August 2, 2001, his brother was missing while he was on his usual visit to the office. He further

stated that he came to know from newspaper reporting that his brother was abducted by some persons. He denied having received any call from Dubai over his residential telephone. This witness as well, was declared hostile by the prosecution. In his cross examination on behalf of the prosecution, he denied having made any statement before police. Having also denied having stated before police that he had talks regarding ransom with a Hindi speaking person at Dubai and that ransom was paid. PW23 proved the written complaint.

32. He however, could not identify the mobile phone alleged to be seized from him or his voice recorded in a cassette. He also failed to identify his conversation recorded in cassettes and played in court. PW23 also stated that he came to know later that his victim brother had bullet injury on his hand and he received such injury when he was taken by some people. He heard that his brother returned home by a taxi.

33. A cousin brother of the victim Partha Roy Burman was examined as PW24. He stated that his cousin brothers Partha Roy Burman and Sidhartha Roy Burman were directors of Khadim Shoe Company in 2001. He used work in the said

company. He also stated that as per his knowledge, Partha Roy Burman went missing on July 25, 2001 while on his way to office and he heard that some persons took away Partha Roy Burman. PW24 was also declared hostile by the prosecution and he denied having made any statement before police on July 31, 2001. He however, could not remember if he stated in his statement recorded in court that he might have stated to police that 4/5 miscreants took away Partha Roy Burman on July 25, 2001 detaining his car at C. N. Roy Road.

- 34.** An employee of Khadim Shoe Company deposed as PW25. He stated that Partha Roy Burman was one of the company's directors. The said Partha Roy Burman went missing on a day in July 2001. He could not identify his signature on the seizure list dated July 31, 2001. He however, could not remember if he made any statement before police to the effect that Partha Roy Burman was kidnapped by some miscreants on July 25, 2001 and that one Raju from Dubai made a ransom call or that a cassette containing recorded voice of Partha Roy Burman was recovered from toilet of Hind Cinema. He failed to

identify his signature on the seizure lists by which the cassettes and mobile phone were seized by police.

- 35.** The victim Partha Roy Burman deposed as PW26. He stated that on July 25, 2001 he was moving to the company's godown at Topsia from factory at Topsia in his car driven by Naba. When he was at C. N. Roy Road near a bus stand, suddenly his way was blocked by a vehicle. Some 2/3 armed persons tried to drag him out of his car. When he instructed his driver to move, the front glass of his car was broken with something thrown. He also heard firing sound and both his hands sustained bleeding injuries. Thereafter, he said that he had injury on his left hand. Soon after, he was dragged out of his car and placed in the rear seat of the vehicle standing in front of his car and black spectacles were placed on his eyes. He was given to drink something and thereafter lost his senses. Regaining senses, PW26 found himself in a dark room. He used to be provided with bottle and pot for urination and latrine. He was under regular medical checkup and provided with saline. He was provided with a helper with the help of whom PW26 changed his wearing apparel as his hand was injured.

36. PW26 also stated that one day he was taken with black spectacles and left at a place wherefrom he took a rickshaw and came to Jessore Road. Therefrom, he took a taxi for Salt Lake. The taxi driver paid the rickshaw fare at his request. After reaching his house, taxi driver was paid with the taxi fare by the gate keeper. He was under treatment at Woodland Nursing Home between August 2, 2001 and August 15, 2001. He however, could not remember if any message was recorded in a cassette during his captivity. PW26 was declared hostile by the prosecution.

37. PW26 though, could not remember if he gave several statements before the police regarding the ransom money and recording of certain private answers to questions in order to confirm his captivity with the convicts but he confirmed making statement before police. He proved his signature on the blood donor card. He failed to identify the water bottle, spectacles etc. PW26 stated that he could not identify the persons involved in his abduction or the persons who were present during his captivity.

38. A medical officer from Woodland Multi Specialty Hospital deposed as PW27. He stated that one Partha Roy Burman was

admitted in the hospital with gunshot injuries on his hands on August 2, 2001 and was discharged on August 15, 2001. He proved the medical treatment documents prepared in his pen.

39. An officer of police deposed as PW28. He stated that on July 26, 2001 he was asked by Inspector of police M. A. Rasid to perform duties with Sub-Inspector Firoz Hossain. He was also provided with eight telephone numbers with a direction to intercept calls and note the conversations with relevant GD entries in this regard. He accordingly performed the duty between July 26, 2001 and July 31, 2001 and recorded GD Entries. He proved the said GDEs. As directed, PW28 also verified the ownership of a vehicle from the motor vehicle department and submitted his report. He also stated that the investigation officer received two cassettes from one Tapan Babu. He proved his signature on such seizure list. Some emails were recovered from a computer as per the user identification and passwords provided by convict Asif Reza Khan and Akib Ali which were also seized under seizure lists. One FAX message received from Central Bureau of Investigation was also seized

under a seizure list. PW28 proved his signature on such seizure lists.

40. Another police officer was examined as PW29. He stated that he was a member of Special Investigation Team in connection with Tiljala Police Station Case No. 223 dated July 25, 2001. As directed by the investigating officer of the case, he started monitoring of five mobile and two landline numbers. He recorded the conversations in cassettes and lodge necessary GDEs in this regard. He proved the seizure lists by which the cassettes and the GDEs were seized. He also sent the cassettes to Forensic Science Laboratory and received the report thereof. PW29 also stated that he recorded statements of several witnesses. He also proved the seizure lists, through which, visiting card and documents from motor vehicles department were seized.

41. A wireless operator Assistant Sub-Inspector of Police deposed as PW30. He stated that in August 2001, he was attached to Computer Section of CID, Bhawani Bhawan. While working as such, at the request of investigating officer of the case, he took out printout of some email messages from the email

id of accused Asif Reza Khan, Akib Ali Khan and Aslam Khan which were seized under proper seizure lists. He proved his signatures in the seizure lists as well as the printout of the email messages and also identified the accused in court.

42. One Noor Ahmad Molla deposed as PW31. He stated that in the year 2000 he was a vegetable seller. One of his neighbours Jalal Molla @ Omar Bhai told him that one of his friends had Shoe Company at Kolkata and he would arrange one job in the said factory. A few days later, Omar Bhai took him to Park Circus and introduced him with one Mirza Bhai who told him that he was not getting a house. PW31 also stated that after 3/4 months, Omar Bhai again took him to Park Circus station. There he went to meet with Mirza Bhai at the top floor of a building at 21 B, Gorachand Lane. There he met one Abdullah. There were shoe boxes on the table. Thereafter, PW31 was engaged by Omar Bhai for cooking for the persons visiting the house at a remuneration of ₹. 1500/- per month. Besides PW31, one Abdus Salam was also kept in the said house for cooking purpose.

43. PW31 also stated that some 20/25 persons used to come into the house, stay there for some time and then used to go

away. They used to talk regarding abduction of proprietor of Khadim Shoe Company and about his release getting ransom. They also talked that for the purpose of abduction, they needed a room, vehicle and arms. PW 31 informed the same to Omar Bhai whereupon, he told him not to divulge it to anyone and to do his job. He identified the persons visiting that house as Asif Reza Khan, Abdullah, Sikandar, Mansur, Shahjahan, Shahbaz, Akram, Naim, Aslam, Dilsad, Abdur Rahman, Akib Ali, Happy Singh, Abdul Khalek and many others.

- 44.** He further stated that on July 23, 2001 at about 9/10 in the morning, there was a large scale meeting in the said room. Asif Reza Khan allotted the duties to everyone. He instructed Akram, Sikandar, Mansur, Shahjahan and Omar Bhai that proprietor of Khadim Shoe Company would be kept in Bhut Bunglow at Haroa. Mirza Bhai instructed Shahbaz, Aslam, Maruf, and Abu Ubaida for abduction of Khadim proprietor from C. N. Road. Thereafter, all the persons left the room. PW31 also stated that on July 24, 2001, few of them and some others again met in the room at 10/11 a.m. and discussed and thereafter left. On July 25, 2001 Abdullah alone came to the room in the night.

On the following day i.e. July 26, 2001 two persons came to the room in search of Abdullah and Mirza Bhai but they were not present. Abdullah alone came back in the night and asked for some food. Thereafter Abdullah told PW31 that since no one was coming, he would return to his house. In the following morning PW31 returned to his house.

45. PW31 further stated that after 8/9 days Omar Bhai came to his house. PW31 asked for some money from him which he promised to give on the following day. They, however, did not meet thereafter. After 9/10 months, police visited the house of PW31 and arrested him. He recorded his statements before police as well as before Magistrate. He proved his signatures thereon. PW31 identified Shahjahan, Shahbaz, Akram, Naim, Dilsad and Aslam who disclosed their names as Mizanur Rahman, Noor Mohammed, Muzammel Sk. Tarique Mahmood, Isaq Ahmed and Arsad Khan respectively. He however, could not identify Akhtar Hossain as the person who was present in the meetings.

46. PW32 is the other person engaged as cooking aid besides PW31. He stated that in 2001 he used to impart private tuition. One Jalal Molla used to teach in Madrasa. In June 2001, Jalal

Molla offered him to work as a cook for a remuneration of ₹. 1500/- p.m. to which PW32 agreed. Jalal Molla took him to the top floor of a five storied building at 21B, Gorachand Lane, Park Circus and introduced him with Mirza Bhai @ Asif Reza Khan. He found another person Noor Ahmed Molla working as cook. He further stated that some 25/30 persons used to come and stay in the flat. The names of such persons, PW32 came to know as Shahbaz, Aslam, Mozammel, Mizanur, Dilsad, Naim, Khalek, Abdullah, Sadakat, Farasat, Safique, Amir Reza and many others.

47. PW32 also stated that the aforesaid persons used to talk regarding abduction of Khadim Karta for ransom. On July 23, 2001 at about 11 a.m. there was a meeting in the said room. Mirza Bhai gave instructions regarding their duties in the abduction of Khadim Karta. He further stated that it was discussed in the meeting that after abduction, Partha Roy Burman would be kept in Bhoot Bunglow guarded by Muzammel, Mizanur, Sekender, Moulana Mansur, Moulana Jalal. Naim and Dilsad were given the duty of collecting people. Aslam, Shahbaz and Marup were directed by Mirza Bhai to abduct Khadim Karta.

Zahid was to perform the duties of driver. Mirza Bhai directed Safiq to keep watch on the road where abduction was to be performed. Akhtar was to supply arms from Haryana through Farasat. PW32 also stated that the persons who were to guard the Bhoot Bunglow left the flat in the same night.

- 48.** PW32 also stated that after the meeting, he along with Abdullah, Noor Ahmed and Mirza Bhai remained in the flat. On the same day at about 7 p.m. Farasat came with the arms and vehicle. PW32 got scared seeing the arms. He reported it to Mirza Bhai whereupon, he was threatened. On July 24, 2001 all the persons except those having duties at Bhoot Bunglow again assembled in the flat. Their duties were reiterated and thereafter they left leaving PW32 and PW31. PW32 then fled away. He further stated that after 15/20 days Abdullah came to his village to meet Jalal. He came to know that the abduction was carried out successfully. Khadim karta was released on payment of 3 Crore 75 Lakh. A sum of 1 Crore 25 Lakh remained due. Jalal threatened PW32 not to discuss the incident with anyone. PW32 also stated that subsequently, he came to know that Noor Ahmed Molla and Jalal Molla were arrested. PW32 approached the police

and thereafter, recorded his statement. He was also called for test identification parade where he identified Shahbaz. PW32 also identified the accused Mizanur, Mozammel, Shahbaz, Dilsad, Naim and Aslam in court, who stated their name as Mizanur Rahman, Mozammel Sk. Noor Mohammed, Isaq Ahmed, Tariq Mehmood and Arsad Khan respectively.

- 49.** One accused Bablu Zafar @ Sekender was examined as PW33. He stated that in the year 2001 he used to reside at 26, Mafizul Islam Lane. Arif Reza Khan was his childhood friend and used to reside at Mafizul Islam Lane. He further stated that Asif Reza Khan proposed him for a big job but he did not agree. After few days PW33 came to know that Asif Reza Khan was arrested and was taken to Delhi. After 5/6 years Asif Reza Khan returned from Delhi and told him for a big job to be performed by both of them. PW33 then was a social worker. Asif Reza Khan used to provide him monetary help. He introduced PW33 with the driver of a Maruti vehicle standing near Hotel Delhi Darbar at Ripon Street namely Azhar Bhai. Later he came to know his name as Aftab Ansari. He directed PW33 to act according to his

instructions and asked to meet later. He came back. Asif Reza Khan used to visit him frequently used to give him money.

- 50.** After sometime, Asif Reza Khan came to PW33 and asked to be ready for the job. He instructed not to disclose anything to his family members. He informed his family that he was going to Allahabad and they would not contact him. He accompanied Asif Reza Khan to the top floor of a building at 21B, Gorachand Lane on July 23, 2001. He found some persons in the room. He was introduced by Asif Reza Khan to Sekender. PW33 resided in the said room for about a month and talked with other persons there regarding abduction of a person. On one day, as per the instructions of Asif Reza Khan, PW33 accompanied by Shahjahan went to Bhoot Bunglow at village Haroah where there were 2/4 persons from before. PW33 also stated that Asraf and Abdus Salam were working as cook at 21B, Gorachand Lane. Besides, Shahbaz, Sahjajan, Akram, Aslam, Naim and others used to reside in the said house. Abdullah, Akram, Moulana Mansur, Sahjajan and PW33 were present at Bhoot Bunglow. Asif told him that he would bring one person to Bhoot Bunglow who would be residing with them.

51. PW33 also stated that in the noon of July 25, 2001, a car entered into Bhoot Bunglow. He saw from upstairs that Asif Reza Khan, Abu Ubaida and Shahbaz were getting down from the car. Being called by Asif Reza Khan, PW33 came down and found a fair complexion person sitting inside the car with bleeding injuries on both his hands wrapped with cloth. Asif Reza Khan identified the said person as Partho Roy Burman, proprietor of Khadim Shoe Company and asked him to take the person upstairs. He then gave money to Sahbaz to bring some medicine as advised by Abu Ubaida who was doctor. The injuries were bandaged by Abu Ubaida. PW33 also stated that since then, he along with Akram, Sehbaz, Mansur and Asif used to stay at Bhoot Bunglow. Asif used to come and go. One day, PW33 heard Asif saying Partho Roy Burman to answer certain questions in order to make his family believe that he was there. Partho Roy Burman accordingly, gave the answers and requested his family members to act according to the directions of the accused persons. Such answers were recorded in a tape recorder. After some days, Asif Reza Khan told the victim that he had talks with

his family members and he would be released soon on payment of money.

52. On August 2, 2001, Asif Reza Khan and Abdullah brought wearing apparel and asked PW33 and others to make the victim wear it. They also told that money was received. Asif Reza Khan put a black goggle on to the victim and someone shaved his beard. On the query of PW33, Asif Reza Khan informed him that a sum of ₹. 3 Crore 75 Lakh was received. The victim Partho Roy Burman was placed in a car and it went away. Asif Reza Khan also asked PW33 and other to leave Bhoot Bunglow. He also stated that after a few days, he was arrested. He was produced before the Magistrate where he recorded his statement. PW33 proved his signatures on such statement. He also identified accused Sahjahan, Akram, Sahbaz who identified themselves as Mizanur Rahman, Muzammel Sk. And Noor Mohammed respectively.

53. A retired official of WEBEL deposed as PW34. He stated that he visited CID office at Bhawani Bhawan on requisition, in connection with Tiljala P.S. Case no. 223 of 2001 on November 14, 2001, November 22, 2001 and on November 27, 2001.

Tanmoy Babu and ASI Pulak Babu were present there with three different accused persons on each occasion whom he could not identify. He further stated that some emails were downloaded and printed by Tanmoy Babu in his presence on which he put his signatures.

54. PW35 is the Judicial Magistrate who conducted the Test identification Parade in connection with Tiljala P.S. Case No. 223 of 2001. Accused Akib @ Farasad Ali Khan and Arsad @ Aslam were put on T.I. Parade. He narrated the manner in which the T.I. Parade was conducted. PW35 also stated that witness Makbul identified accused Arsad @ Aslam but failed to identify the other suspect. Witness Asgar Ali identified Akib @ Farasad Ali Khan but failed to identify the other suspect Arsad @ Aslam. He proved the T.I. Parade report prepared in his pen and signature.

55. A retired ballistic expert was examined as PW36. He stated that he examined an olive green TATA Safari vehicle and certain ballistic exhibits in connection with Tiljala P.S. Case No. 223 dated July 25, 2001 in terms of request of DIG, CID. He proved the reports submitted by him.

56. Another Judicial Magistrate was examined as PW37. He recorded the confessional statement of accused Bablu Zafar @ Sikandar and Noor Ahmed Molla @ Asraf on May 18, 2002, that of accused Abdul Khalek Mondal on May 22, 2002 and that of accused Swati Paul @ Mousumi @ Sana Sk on September 1, 2001. He sent the accused for reconsideration of their decision to give confessional statement and thereafter, recorded their statements under Section 164 of the Code of Criminal Procedure, 1973. PW37 narrated the different steps taken by him in recordings such statements and proved the statements.

57. Accused Swati Paul @ Mousumi @ Sana Sk deposed as PW38. She stated that as her husband used to get her in immoral acts, she married to one of her fellow singer Jamil and that is how, she became Sana Begum. She procured a passport and went to Dubai for singing in hotels with Jamil. Later, Jamil meted the same treatment upon her. She complained such treatment to the floor manager of Grand Hotel, Dubai Abdur Rahman. She later came to know that Jamil was sent to Mumbai by Dubai Police. Abdur Rahman took her to the 2nd floor, Room No. 2077 of a building near Grand Hotel namely Nehar Building

which was under possession of one Raju Bhai @ Farhan Mallik. One day, PW 38 noticed Raju Bhai and Abdur Rahman talking to several persons over telephone regarding extracting money and also threatened them.

58. PW38 also stated that in March 2001 Raju Bhai left for Pakistan. Abdur Rahman used to talk to him over phone. She was informed by Abdur Rahman that he had talks with Raju Bhai regarding abduction of someone. Abdur Rahman also told her that his job was to kidnap people for ransom. He divulged that there were talks to kidnap Khadim Jutawala. PW38 was threatened by Abdur Rahman and was not allowed to contact her family. On her request she was, however, taken to Mumbai on July 6, 2001. On July 19, 2001 Abdur Rahman told PW38 that he was leaving for Kolkata to kidnap Khadim Jutawala. On July 28, 2001 he returned Mumbai and told her that the job was accomplished. He also reported her that it was the plan of his boss Raju Bhai @ Farhan Mallik.

59. On July 31, 2001 Abdur Rahman told her to go to Bangalore for singing. She left with her group on August 2, 2001. On August 3, 2001, Abdur Rahman left Bangalore for collecting

money and returned on August 14, 2001. He then asked PW38 to return to Mumbai. She did not agree for which Abdur Rahman assaulted her with a bottle causing injuries on the fingers of her left hand. She however, started for Mumbai on August 18, 2001 and reached on the following day. She was arrested from Mumbai by CID, West Bengal on August 19, 2001. Mobile cover, chip cards and other articles were seized from her under a seizure list which she signed. She also identified the seized articles in court. After necessary medical checkup she along with Abdur Rahman was taken to Kolkata. She was produced before the Magistrate where she recorded her statement. She proved her signatures on such statement. She also identified the voice recordings of Raju @ Farhan Mallick in court. PW38 also stated that she came to know later that other name of Raju Bhai @ Farhan Mallik was Aftab Ansari.

- 60.** A police photographer deposed as PW39. He stated that as requested by the investigating officer, he accompanied the police party with an accused to village Pakuria as well as 21B, Gorachand Lane and took certain photographs of the buildings there on November 5, 2001. He also accompanied one finger

print expert to 21 B, Gorachand Lane and took photograph of some finger prints. PW39 proved the negatives with photographs developed by him.

61. A local from the scene of occurrence was examined as PW40. He stated that in the year 2001 he had a shoproom cum manufacturing unit at 16/1A, C. N. Roy Road. At about 9.30/10.00 a.m. on the date of incident, while sitting in his shop, he heard a sound. He along with people in the locality came out. He saw a white TATA Safari had hit a lamp post. He also saw a Maruti 800 car there and 3/4 persons took down a person from the TATA Safari and took into the Maruti vehicle. Thereafter, the Maruti vehicle left the place with those persons together with the persons brought down from the other vehicle. Police visited the spot and recovered the vehicle as well as a used cartridge and a hammer. It was seized under a seizure list which PW40 signed. He identified the TATA Safari vehicle and other seized articles in court. He later came to know that the person with beard who was forcibly taken away was Partho Roy Burman. He however was not able to identify the persons whom he saw abducting the victim.

62. Another police photographer was examined as PW41. He accompanied Constable Subhasis Roy and others to C. N. Roy Road on July 26, 2001 and took photographs of a white TATA Safari vehicle bearing Registration No. WB-02/K-4706 and the surrounding places. He identified the negatives and photographs. He stated that there was a mosque and Mazar near the place of occurrence.

63. A local person deposed as PW42. He stated that on July 25, 2001 at about 12.15/12.30 noon, while he was at his business place at 35, Topsia Road he heard that owner of Khadim was abducted. Hearing this he went to C.N. Roy Road known as Sapgachi 1st Lane and saw a white TATA Safari had hit a lamp post. Thereafter, a police officer Manik Babu came there and wanted to have an inspection of the vehicle. In course of such inspection, PW42 saw one of the glasses of the vehicle broken. He also found a hammer without handle on the front seat and bloodstained cloth on the rear seat and a brass made hollow rounded material. Police seized the aforesaid articles under a seizure list. PW42 put his signature on such seizure list.

PW42 proved his signature as well as the seized articles including the vehicle in court.

64. A second hand car dealer deposed as PW43. He stated that in the year 2001, he used to deal in second hand cars under the name and style of Motortech. He further stated that in 2001 he purchased an old Maruti 1000 car from its owner Dr. Ashoke Ganguly who signed on form 29 and 30 and delivered his identity proof. The said car was sold to one purchaser after observing all legal formalities and in September 2001 the purchaser resold the car to the establishment of PW43. In November 2001, PW43 was called upon by police at Bhawani Bhawan when he was informed that the car was required in connection with a case. He brought the car with its papers which were seized in connection with a case of Tiljala police station. PW43 signed on the seizure list. He proved the seizure list and purchase papers of the car.

65. The inspector-in-charge of police was examined as PW44. He stated that on July 25, 2001 at about 11.55 a.m. while he was on duty at Tiljala P.S. he received phone call from Bikash Mondal, ASI of police of Parama investigation centre to the effect that one Naba Kumar Mondal, driver of Partho Roy Burman

came to the centre and reported that Partho Roy Burman was kidnapped by some miscreants on gunpoint at Sapgachi, C.N. Roy Road. Being so informed, PW44 asked the said Bikash Mondal to start checking the vehicles in the area. He also lodged a GDE to that effect. He proved the GDE book. Thereafter, he went to the spot with police force and found a white TATA Safari standing there with broken wind screen and blood stains in the said vehicle. He also found a hammer and a fire bullet cartridge. PW44 also receive an RT message at about 1.05 p.m. that one Sidhartha Roy Burman and Suman Burman Roy had come to Tiljala P.S. to lodge a complaint over the incident. As per the instructions of PW44, a formal First Information Report was drawn up and specific case was started. He proved the formal FIR and his endorsement thereon.

66. An employee of Railway deposed as PW45. He stated that at the request of police, computerized generated reservation chart of Howrah-Jodhpur Exp, S-5 coach for July 25, 2001 was supplied from his office. It was seized by police under a seizure list to which he signed. He proved the chart and his signature

thereon. It contained the names of accused Mujammel Sk. and Rijjanur Rahman.

67. PW46 is an employee of a car dealing company. He did not add any value to the prosecution case. He was not interrogated by police in connection with this case.

68. The erstwhile owner of Maruti vehicle was examined as PW47. He stated that he was a private homeopathy practitioner. He purchased a Maruti 1000 car bearing Regn. No. WB-02/B-8771 in January 1996. He sold the said car to one Soheli Ahmed through a broker Bapi Mondal in January 2001 by signing on necessary documents and forms. He proved the two sets of Form-29 and Form-30 executed by him.

69. An official of Public Vehicles Department was examined as PW 48. He stated that a CID officer visited his office in 2002 and wanted information regarding a vehicle. He could not remember the Regn. No. of said vehicle but it was with WB-02/J. With due permission of his superior, he handed over the documents to the CID officer which was seized under a seizure list. PW48 proved his signature thereon. He also proved the sale certificate in respect of the Maruti vehicle Regn. No. WB-02/J-

9240 together with Form 19, Form 20, Form 21 and other documents issued by Jalan Distributors.

70. A Sub-Inspector of police deposed as PW49. He stated that on July 25, 2001, he was posted at Tiljala P.S. He received a written complaint at about 11.30 a.m. lodged by one Sidhartha Roy Burman and started Tiljala P.S. Case No. 223 dated July 25, 2001 under Sections 364A/307/34 of the Indian Penal Code and 25/27 of Arms Act. He filled up the formal First Information Report. He proved the formal FIR and endorsement of his receipt thereon.

71. Another driver the victim deposed as PW50. He stated that Partho Roy Burman had three cars. He was one of the drivers along with Naba Kumar Mondal. On July 25, 2001 he went on usual duty. Partho Roy Burman asked him to stay at the house and started for his office in TATA Safari vehicle being driven by Naba Kumar Mondal. At about 12.00/12.30 noon Naba Kumar Mondal returned home by a taxi and informed that Partho Roy Burman was kidnapped. PW50 identified the TATA Safari vehicle in court.

72. The first investigating officer of the case was examined as PW51. He stated that he was endorsed with the investigation of Tiljala P.S. Case No. 223 dated July 25, 2001. In course of investigation, he visited the place of occurrence at C.N. Roy Road and found a TATA Safari standing at Sapgachi Lane near a lamp post. The bumper and wind screen of the vehicle bearing Regn. No. WB-02/K-4706 was broken. He prepared rough sketch map with index of the place of occurrence which he proved. On search, he recovered an iron hammer, empty cartridge. He sealed and labeled the said articles and seized the same under proper seizure list. He found bloodstains on the rear seat. He also recorded the statement of witnesses. He proved the seizure list and the seized articles. He also arrested Naba Kumar Mondal, the driver of TATA Safari. Thereafter, he handed over the investigation to CID, West Bengal.

73. An employee of Khadim group of companies deposed as PW52. He took back the TATA Safari vehicle bearing Regn. No. WB-02/K-4706 and documents of the vehicle on Zimmanama. He proved his signature on Zimmanama. He also proved the authorization letter. He produced R.C. book of the vehicle which

was seized. He proved his signature on such seizure list. He also stated that the vehicle was in broken condition which was later on repaired. He also identified the vehicle in court.

74. The car broker was examined as PW53. He stated that in 2001 he introduced Dr. Ashoke Ganguly to a vehicle dealer Mahesh Agarwal for selling the car of Dr. Ashoke Ganguly.

75. PW54 is the senior scientific officer, foot print department of Forensic Science Laboratory, Kolkata. He was specially trained footprint expert. He further stated that in February 2002, his department received 11 parcels in connection with Tiljala P.S. Case No. 223 dated July 25, 2001 for examination. On examination, PW54 opined the matching footprints belonging to accused Arshad @ Aslam Khan, Akib @ Farasad and Asif Reza Khan. He also identified the footprint of Partho Roy Burman. He proved his report in this regard.

76. Another Judicial Magistrate who conducted the Test Identification Parade in respect of accused Noor Mohammed @ Shahbaz @ Imam @ Sikandar @ Ahmed, was examined as PW55. He stated that on August 2, 2001 he conducted TI Parade at Alipur Central Correctional Home. Witness Abdus Salm identified

accused Noor Mohammed @ Shahbaz @ Imam @ Sikandar @ Ahmed by touching his chest. PW55 prepared a report in this regard which he proved. He further stated that he again held another TI Parade on August 24, 2001. Witness Zulfikar Ali identified the accused Noor Mohammed @ Shahbaz @ Imam @ Sikandar @ Ahmed. He proved the report prepared in his pen and signature.

77. A police officer working under CID deposed as PW56. He stated that he used to receive Fax messages and hand it over to Abdur Rashid, the investigating officer of the case. This witness was declared hostile by the prosecution. In his cross examination on behalf of prosecution, PW56 admitted having received fax messages from CBI, Delhi, and other places on different dates which were photocopied, signed and seized by him. He also admitted receipt of audio cassettes which were seized. He proved his signature on such seizure lists.

78. PW57 is the Judicial Magistrate. He stated that on November 26, 2001 he recorded the sample audio voices of accused Asif Reza Khan @ Rajan @ Maharaj @ Ibrahim Sah @ Samar Choudhury, Anita Routh and accused Irsad Khan @

Aslam Khan @ Masub in terms of directions of the Learned Sub-divisional Judicial Magistrate on the prayer of the investigating officer of Tiljala P.S. Case No. 223 dated July 25, 2001. Before recording such voice samples, PW57 observed all legal formalities which he narrated in his deposition. PW57 proved the audio cassettes produced in court and his signature thereon.

79. An employee of Khadim Shoe Company deposed as PW58. He stated that in July, 2001 he was working in the godown of the company, however, did not state anything about the incident.

80. A security guard at the godown of Khadim Shoe Company at Topsia deposed as PW59. He stated that in November 2001 police came to the godown where he was performing duties with the person. The police made a search into the entry register maintained at the gate. He further stated that the said register was seized by police under a seizure list to which he signed. He proved his signature on the seizure list as well as the register seized by police. PW 59 also stated that on November 7, 2001, he was on duty at the main gate and all

persons who entered into the godown put their signatures in the register.

81. A sub- inspector of police deposed as PW 60. He stated that in July 2001, he was instructed by his department to assist Md. Abdur Rashid, the investigating officer of Tiljala P. S. Case No. 223 dated July 25, 2001. He was instructed by the investigating officer to ascertain the ownership of a vehicle bearing Regn. No. WB – 02/B – 8771. As per the direction of investigating officer, PW 60 visited the Public Vehicles department and ascertained the details. He also recorded the statement of Biswanath Mondal, Dr Ashok Ganguly, Sohel Ahmed and others. He maintained a supplementary case diary of what they were he had done as per the instruction of the investigating officer which was later handed over to the investigating officer on November 30, 2001.

82. A witness who signed on the seizure list dated August 8, 2001 was examined as PW 61. He proved his signature on the seizure list dated August 8, 2001.

83. An employee of food and supplies Department was examined as PW 62. He stated that on February 6, 2002, a police

officer came to his office and asked for some documents. PW 62 handed over the required documents to the police officer, which was seized by him under a seizure list. He proved his signature on such seizure list. He although, could not remember the exact nature of the documents which were seized by the police officer.

84. A police officer attached to CID deposed as PW 63. He has stated in his the position that being instructed by his superiors, he went to Mumbai in connection with the investigation of Tiljaila P. S. Case No. 223 dated July 25, 2001. In course of investigation and on the basis of the user of suspected telephone number, PW 63 arrested Swati Pal and Abdul Rahman. He also arrested Jamil Ahmad all from Mumbai. The sites arresting the aforesaid accused persons, PW 63 also recovered and seized several documents like a passport, photographs, mobile phone, SIM cards etc. in respect of the arrested accused persons. He seized several documents under a seizure list. PW 63 proved the seizure list. PW63 also arrested Abdul Rashid from Delhi and his passport was seized.

85. PW 63 also visited Patna, Mumbai and Delhi in course of investigation of the case. He also arrested accused Shahid Azmi

from Mumbai. Accused Amir Reza Khan could not be arrested, however, cash money and mobile phones were recovered from his residence which were seized. PW 63 accompanied the investigating officer of the case to different places of the country like Delhi, Gujarat, Patna, Meerut in connection with the investigation of the case and seized several articles.

86. The then Inspector of Police deposed as PW64. He was a member of Special Investigation Team. On August 3, 2001 at the requisition of the investigating officer M. A. Rashid, PW64 proceeded to Hyderabad for verification of a mobile number which was involved in payment of ransom. Upon investigation, PW64 came to know that Abdul Karim @ Karimuddin, Mahbub Ali @ Kaizer, Khaja Altaf Kureshi @ Mahesh, Mohammed Ishaque, Paban Maheshwari and Paban Kapadia played role in receiving the ransom money and sending the same to Raju at Dubai through Hawala. He submitted his report in this regard to the investigating officer.

87. PW64 also stated that as per requisition of the investigating officer dated August 14, 2001, he along with others again proceeded to Hyderabad to effect arrest of Abdul Karim @

Karimuddin, Mahbub Ali @ Kaizer, Khaja Altaf Kureshi @ Mahesh @ Mukesh, Mohammed Ishaque, Paban Maheshwari. Raids were conducted with the help of STF, Hyderabad and on August 17, 2001 he arrested Abdul Karim @ Karimuddin, Mahbub Ali @ Kaizer. On interrogation Abdul Karim @ Karimuddin disclosed that he received instructions from Raju at Dubai to receive ₹. 3 Crore from the person staying in Room No.666 at Hotel Taj Krishna. Accordingly, the money was received by him through Mahbub Ali @ Kaizer and one Balla and it was transferred to Dubai through Hawala with the help of others namely Altaf Kureshi @ Mahesh @ Mukesh, Mohammed Ishaque, Paban Maheshwari. A sum of ₹. 1.40 Crore as well as mobile phones were also recovered from Abdul Karim which was seized by PW64. He proved the seizure list in this regard. He also identified the bundle of notes and other articles seized.

- 88.** He also arrested Khaja Altaf Qureshi and Md. Ishaq on August 17, 2001 and Pawan Maheshwari on August 21, 2001. A sum of ₹. 2 lakh and mobile phone was also recovered from the possession of Pawan Maheshwari. Seizure list in this regard was

proved by PW64. All such articles were handed over to the investigating officer.

89. The Senior Scientific Officer of Forensic Science Laboratory, Kolkata who examined the painted sun glasses was examined as PW65. He proved the report prepared by him after examination.

90. The then Home Secretary to the Government of West Bengal deposed as PW66. He stated that as per the requests of Inspector General of CID, West Bengal he authorized interception of several phone numbers, for the purpose of investigation of this case, in terms of the provisions of Indian Telegraph Act, 1885. He proved the several office orders issued from his office authorizing such interception.

91. A Senior Scientific Officer of CFSL, CBI, New Delhi deposed as PW67. In such capacity, he examined several audio cassettes sent to his department for such purpose. In his deposition, he narrated the description of the sealed packets received for such purpose and the method applied for examination thereof. Upon examination of the samples, he opined that the voice samples contained in the cassettes matched

with the voices of Aftab Ahmed Ansari, Akib @ Farasat, Arsad @ Aslam Khan, Asif Reza Khan and that of Sidhartha Roy Burman. However, he could not find the voice samples matching with the voices of Abdul Karimuddin, Mahboob Ali @ Kaizer, Babloo @ Anwar Firoz, Khaja Altaf Ahmed Qureshi, Md. Ishaq, Pawan Maheshwari, Usinor Ghosh, Happy Singh and Abdur Rahman. PW67 proved the report prepared in his pen and signature. He also identified and proved the sample cassettes and other articles received by his office for the purpose of examination.

92. The investigating officer deposed as PW68. He narrated the different steps taken by him during investigation. He was endorsed with the investigation of the case. Being so endorsed, he visited the place of occurrence as well as house of the victim. He also interrogated the informant and other family members of victim. The informant confided in PW68 that he received a call from Dubai asking him to buy a new mobile which he did accordingly. Later, on the second visit of PW68 to the house of victim, a phone call was received from Dubai on the newly purchased mobile demanding a ransom of ₹. 20 Lakh.

93. Before endorsement of investigation to PW68, the case was investigated by Tiljala P.S. and several articles including damaged TATA Safari vehicle, hammer, used cartridge etc. were seized which was identified by PW68. He also interrogated several persons in the locality and recorded statement of witnesses under Section 161 of the Code of Criminal Procedure and prepared rough sketch map with index of the place of occurrence. He also applied for phone tapping with the concerned authorities under due permission from superiors. He collected information regarding ownership of the vehicles involved in the incident and received the seized articles. He also took steps for sending relevant materials including recorded telephonic conversations to Forensic Science Laboratory for examination and collected reports thereof. PW68 secured arrest of several accused persons from different places in the country. He procured police custody of some of the accused persons and interrogated them. He also obtained voice samples, footprints etc. of some of the accused persons, sent it for examination and collected reports in this regard from the experts. Later on, the investigation of the case ended in chargesheet.

- 94.** According to the case of the prosecution, on July 25, 2001, the proprietor of Khadim Shoe Compay, Partho Roy Burman was going to his godown from the factory, after starting from his house, by his TATA Safari vehicle being driven by his driver Naba Kumar Mondal. When he was passing through C. N. Roy Road, his vehicle was intercepted by some unknown miscreants. Due to such interception, his vehicle dashed against a lamp post causing damage to the vehicle.
- 95.** Thereafter, the unknown miscreants dragged the said Partho Roy Burman out of his car to which he protested. In the proceeding, the miscreants fired a shot causing bleeding injuries on his hands. Nevertheless, he was dragged out and taken into a Maruti vehicle belonging to the miscreants standing nearby. The miscreants made him to board the Maruti vehicle and fled away with him towards E.M. Bypass.
- 96.** The driver of Partho Roy Burman first reported the matter to Parama investigation centre and thereafter, he went to the house of Partho Roy Burman and reported the incident. Immediately, thereafter, brother of Partho Roy Burman, namely

Sidhartho Roy Burman lodged a complaint with Tiljala Police Station following which investigation started.

97. It was further case of the prosecution that shortly after the incident, the brother of the victim Partho Roy Burman, i.e. Sidhartha Roy Burman received a phone call from Dubai on his landline informing that Partho Roy Burman was abducted for ransom. A sum of ₹. 20 Crore was demanded as ransom. In order to assure the brother of the victim, the miscreants asked for recorded questions which only victim could answer and recorded answers to such questions were sent to the brother of the victim. After the relatives of the victim were assured of victim being in the captivity of the miscreants, there were several telephonic conversations between the relatives of the victim and the kidnappers. Such conversations were intercepted and recordings were preserved, examined and found to be matching with the voice samples of some of the kidnappers.

98. Materials on record also reveal that after execution of the abduction plan, family friend of the victim as well as several miscreants travelled to Hyderabad for delivery of ransom money. The transaction was executed in a hotel there. A sum of ₹. 3.75

Crore was paid to the abductors by the family members of victim. Thereafter, some of the miscreants arranged for transferring the money to Dubai through Hawala. Such miscreants were arrested from Hyderabad, Delhi and other places.

- 99.** Learned advocate for the appellants submitted that some of the appellants were arrested after undue delay on the basis of Test Identification Parade. The TI Parade was also conducted after undue and unexplained delay which gives rise to reasonable suspicion to the credibility of such TI Parade. It was further submitted that some of the accused persons turned approver in the case and deposed for the prosecution. There is no evidence on record to link the present appellants with the instant case except the testimony of the approvers which is a weak piece of evidence without corroboration from independent witnesses. The approvers deposed but did not inculcate themselves in the commission of the crime. As such, evidence of such approvers cannot be relied upon to secure conviction of the appellants. As to the proposition of delay in conducting the TI Parade, learned advocate for the appellants relied upon **(1970) 2 Supreme Court Cases 128 (Budhsen & Anr. v. State of U.P.), (1999) 8**

Supreme Court Cases 428 (Rajesh Govind Jagesha v State of Maharashtra), (2019) 15 Supreme Court Cases 470 (Ankush Maruti Shinde & Ors. V. State of Maharashtra), (2017) 11 Supreme Court Cases 150 (Md. Sajjad @ Raju @ Salim v State of West Bengal) and (2018) 14 SCR 1161 (State of U.P. v Wasif Haider etc.)

100. The learned advocate for the appellants also submitted that the vital witnesses including the brother of the victim turned hostile. Some of the witnesses, who accompanied the victim after his release, made contradictory statements. Some of the material witnesses deposed in the case after an inordinate delay. The appellants have challenged the testimony of the witnesses as incredible, who are said to be working in the alleged house where the plan of abduction was mooted, as unbelievable. The said witnesses identified the appellants for the first time in court and not before. On such proposition, learned advocate for the appellants relied upon **(1979) 3 Supreme Court Cases 319 (Kanan v State of Kerala), (2003) 1 Supreme Court Cases 240 (Sarwan Singh v State of Punjab) and (2014) 12 Supreme Court Cases 133 (Prakash v State of Karnataka).**

101. Learned advocate for the appellants also stated that there was unexplained delay in recording the statement of witnesses under Section 161 of the Code of Criminal Procedure rendering such statement wholly unreliable. In support of his contention, learned advocate placed reliance on **2023 SCC OnLine SC 80 (Munnala v State of U.P.)**, **(1996) 5 Supreme Court Cases 369 (Alil Mollah & Anr. v State of West Bengal)**, **(2016) 4 Supreme Court Cases 96 (Shahid Khan v State of Rajasthan)**. Relying upon **(2016) 16 Supreme Court Cases 418 (Harbeer Singh v Sheeshpal & Ors)** it was contended by learned advocate for the appellants that a chance witness is a very weak evidence and reliance cannot be safely placed on such witness. Learned advocate for the appellants also cited **(1976) 2 SCR 902 (Union of India v M/s Chaturbhai M. Patel & Co.)** and **(2003) 12 Supreme Court Cases 377 (Mousam Singh Roy & Ors v. State of West Bengal)**.

102. Relying upon **(2014) 10 Supreme Court Cases 473 (Anvar P.V. v. P. K. Basheer & Ors)**, learned advocate for the appellants contended that the proof of electronic evidence produced on behalf of the prosecution was not done strictly in

accordance with Section 65 of the Indian Evidence Act, 1872. Learned advocate for the appellants also submitted that improvements of facts made by the witnesses at the time of deposition should be looked into as a contradiction and should not be relied upon to secure conviction of the accused. In support of such contention, learned advocate for the appellants relied upon **2024 INSC 19 (Darshan Singh v State of Punjab)**.

103. Learned advocate for the appellants also submitted that the chain of circumstances leading to the guilt of the appellants was not complete so far as the evidence on behalf of the prosecution is concerned. Mere testimony of approvers could not be the sole basis to prove the veracity of the prosecution case. Moreover, evidence at the trial revealed that there were notable inconsistency between the statements of the witnesses recorded under Section 164 of the Criminal Procedure Code vis-à-vis their statements at the trial.

104. Learned advocate for the State submitted that the prosecution has been able to prove the case of the prosecution to the effect that the victim that is proprietor of Khadim Shoe Company was abducted for ransom by the accused persons

including the present appellants. There is unimpeachable evidence on record that the present appellants were involved in such crime. They have been identified by the witnesses doing several acts in furtherance of the conspiracy. Relying upon **(2010) 2 Supreme Court Cases (CRI) 1385 (Sidhartha Vashisht Vs State (NCT of Delhi)** learned advocate for the state submits that identification of an accused in court should not ordinarily be disbelieved. Learned advocate for the state also relied upon **(2007) 2 Supreme Court Cases (CRI) 637 (Suman Sood alias Kamaljeet Kaur Vs State of Rajasthan)** on the proposition of the extent and degree of proof of conspiracy laid down by the Hon'ble Supreme Court.

105. The present appellants along with many other accused persons hatched up a conspiracy to kidnap the victim i.e. proprietor of Khadim shoe company for ransom. The conspiracy was hatched up at different levels involving several persons and included several different ways like physical meetings as well as by exchanging email messages.

106. In the incident involved in this case, target was set at the victim, arms and ammunition are said to have been arranged for

the purpose. Thereafter, at least two vehicles at the initial level were arranged. One vehicle was used for the purpose of carrying of Arms by some of the conspirators and the other vehicle was used for abduction of the victim. Two houses were arranged, one apparently for the stay of the conspirators and the other house was used for keeping the victim in hiding after his abduction. Another vehicle was arranged and used for the release of the victim after realization of the ransom.

107. PW1 is the owner of the flat 21/B Gorachand Lane, Kolkata. He testified the flat being taken on rent by Mahmood Hassan. He also stated that he did not use the flat personally. He has also stated that Bablu and Ansar used to reside in such flat being authorized by Mahmood Hassan. It was frequently visited by their guests.

108. The convict Mizanur Rahman was identified by PW11 as the person who purchased a house belonging to Rafiquddin at village Pakuria for business purpose. He along with one Ali Hossain, introduced the said Mizanur Rahman to Rafiquddin, the owner of the house. A relative of said Rafiquddin, PW 13 also identified Mizanur Rahman as the purchaser of a house

at village Pakuria, belonging to Rafiquddin. In fact, the said PW13 scribed the purchase agreement on part payment of consideration money being made. The said house was supposed to be purchased by the boss of Mizanur Rahman namely Mehmood Hassan. The agreement deed was taken by Mizanur Rahman and Jamil Hassan for getting it signed by the purchaser. Evidence on record also reveals that on July 25, 2001 afternoon; the purchaser Mehmood Hassan visited the house with some other persons by a Maruti Car. Later, police visited the said house on November 6, 2001, PW13 and Mehmood Hassan was arrested. A search was also conducted. PW13 along with Zulfiqar accompanied police to the house of Mizanur Rahman. He was not present then, however, on search conducted in his house, the deed of agreement was recovered from the house of Mizanur Rahman. On November 24, 2002, police recovered some syringe, injection, saline tube and bottles and some hairs were recovered as shown by Mehmood Hassan. This witness identified Mizanur Rahman in court.

109. PW19 testified that Rafiquddin, the owner of a house in village Pakuria informed him that his house was purchased by a businessman from Calcutta and that Mizanur Rahman was the mediator in such transaction. He also stated that at the request of Mizanur Rahman, he left Mizanur Rahman and some other persons from the said house to Maltipur by his motor van. At the request of Mizanur Rahman, PW19 again left Mizanur Rahman along with four unknown persons to the house of Rafique in the evening at about 7 PM. He identified the said persons as Akram, Aslam, Naim, Dilsad, Mahmud Hassan, Zamir Hassan, Khalid, Akib, Omar Moulana and many others. He identified Mizanur Rahman, Akram, Naim, Dilsad and Arsad in court. He also identified Noor Mohammad @Shahbaz in the TI Parade as well as in court.

110. Such evidence go to show that two houses, one at 21/B Gorachand Lane, Kolkata and another at village Pakuria were arranged by Mehmood Hassan and the other appellants. It also transpires that the two houses were frequented by many of the appellants including Mizanur Rahman and Akram,

Aslam, Naim, Dilsad, Mahmud Hassan, Zamir Hassan, Khalid, Akib, Omar Moulana, Mizanur Rahman and many others.

111. Such evidence go to show that two houses, one at 21/B Gorachand Lane, Kolkata and another at village Pakuria were arranged by Mehmood Hassan. It also transpires that the two houses were frequented by many persons including Mizanur Rahman and Akram, Aslam, Naim, Dilsad, Mahmud Hassan, Zamir Hassan, Khalid, Akib, Omar Moulana, Mizanur Rahman and many others. The said houses evidently, were arranged and utilized for the purpose of execution of the job of abduction of the victim Partho Roy Burman for ransom.

112. A conspiracy for abduction of Partho Roy Burman, the proprietor of Khadim Shoe Company was already hatched up and arrangement and houses and vehicle were part of such conspiracy. PW31 stated that he was introduced by Jalal Molla @ Omar Bhai to one Mirza Bhai. They engaged him as a cook at 21 B, Gorachand Lane. While working as cook at 21 B, Gorachand Lane, he stated that some 20/25 persons used to come into the house, stay there for some time and then used to go away. The aforesaid persons used to talk regarding

abduction of proprietor of Khadim Shoe Company and about his release getting ransom. They also talked that for the purpose of for the purpose of abduction; they needed a room, vehicle and arms. PW31 informed such conversation to Jalal Molla @ Omar Bhai whereupon he was asked not to divulge it to anybody. He identified the persons visiting that house as Asif Reza Khan, Abdullah, Sikandar, Mansur, Shahjahan, Shahbaz, Akram, Naim, Aslam, Dilsad, Abdur Rahman, Akib Ali, Happy Singh, Abdul Khalek and others which include the appellants.

113. PW31 also testified that on July 23, 2001 at about 9/10 in the morning, there was a large scale meeting in the said flat at 21B Gorachand Lane. In such meeting, the appellants were very much present. The accused Asif Reza Khan was allotting duties to different persons in such meeting. He instructed Akram, Sikandar, Mansur, Shahjahan and Omar Bhai that proprietor of Khadim Shoe Company would be kept in Bhut Bunglow at Haroa. Mirza Bhai instructed Shahbaz, Aslam, Maruf, and Abu Ubaida for abduction of Khadim proprietor from C. N. Road. PW31 also stated that on the following day

i.e. July 24, 2001 some of the persons present in previous meeting again met. A few days thereafter, he was arrested. The account of the meeting narrated by PW31 establishes the existence of conspiracy for abduction of the victim.

114. The defense was not able to dislodge the testimony of PW31 either to the effect that he used to work as a cook at 21B Gorachand Lane which was a cause and occasion for him being part of such conspiracy or his engagement as a cook by the appellant Jalal Molla @ Omar Bhai. There were suggestions advanced to such witness to the effect that he was never engaged as and he never worked as a cook but such suggestions remained unsubstantiated.

115. To the contrary, the testimony of PW31 received corroboration from the other person who was also engaged as cook to work in the said house at 21B Gorachand Lane. PW32 was also recruited as cook by the appellant Jalal Molla @ Omar Bhai. Jalal Molla took him to the top floor of a five storied building at 21B, Gorachand Lane, Park Circus and introduced him with Mirza Bhai @ Asif Reza Khan. There he also met with the other person working as cook i.e. PW31. He

also corroborated that some 25/30 persons used to come and stay in the flat whom he identified as Shahbaz, Aslam, Mozammel, Mizanur, Dilsad, Naim, Khalek, Abdullah, Sadakat, Farasat, Safique, Amir Reza and some others. PW32 also stated that the aforesaid persons used to talk regarding abduction of Khadim Karta for ransom.

116. He has corroborated that on July 23, 2001 at about 11 a.m. there was a meeting in the said flat. Mirza Bhai gave instructions regarding their duties in the abduction of Khadim Karta. PW32 corroborated the theory of conspiracy but went into details of the discussion in the said meeting. It was discussed in the meeting that after abduction, Partha Roy Burman would be kept in Bhoot Bunglow guarded by Muzammel, Mizanur, Sekender, Moulana Mansur, Moulana Jalal. Naim and Dilsad were given the duty of collecting people. Aslam, Shahbaz and Marup were directed by Mirza Bhai to abduct Khadim Karta. Zahid was to perform the duties of driver. Mirza Bhai directed Safiq to keep watch on the road where abduction was to be performed. Akhtar was to supply arms from Haryana through Farasat. The persons who were to

guard the Bhoot Bunglow left the flat in the same night, however PW32 along with Abdullah, Noor Ahmed and Mirza Bhai remained in the flat.

117. PW32 also narrated that on the same day at about 7 p.m. Farasat came with the arms and vehicle. The second meeting state by PW31 was also corroborated by PW32. He also stated that on July 24, 2001 all the persons, except those having duties at Bhoot Bunglow i.e. Muzammel, Mizanur, Sekender, Moulana Mansur, Moulana Jalal. Naim and Dilsad, again assembled in the flat. Their duties were reiterated and thereafter they left. Such evidence of PW31 and PW32 shows the involvement of the appellants named by them in hatching out a conspiracy to abduct the proprietor of Khadim Shoe Company namely, Partho Roy Burman. The aforesaid witnesses were very much present in the deliberations and identified the other appellants with the specific roles allotted to them.

118. PW33 was introduced by one of his childhood friend Asif Reza Khan to one Aftab Ansari who instructed him to act in accordance with his directions. He also was taken to 21 B,

Gorachand Lane where he resided for a month with many others. He also stated about the conspiracy hatched up for abduction of Partho Roy Burman. PW33 also testified that under instructions, he went to Bhoot Bunglow. Besides himself, Abdullah, Akram, Moulana Mansur, Sahjajan were also in the said Bunglow. He also stated that the victim was brought to Bhoot Bunglow by a car on July 25, 2001 noon. He found a fair complexion man sitting inside the car with bleeding injuries on his hands, who was identified by Asif Reza Khan as Partho Roy Burman. Asif gave money to Shahbaz to bring some medicine and Abu Ubaida, who was a doctor, provided medical aid to the victim. This witness also testified recording of private answers from Partho Roy Burman at the instruction of Asif Reza Khan. This witness also testified that Asif and Abdullah brought wearing apparel which PW33 and others made the victim to wear. His beard was shaved and was made to wear a black spectacle before the release of the victim upon receipt of ransom money.

119. Upon scrutiny, we find the evidence of PW31, PW32 and PW33 absolutely consistent so far as hatching out of

conspiracy and manner of its execution is concerned. According to the testimony of PW32, the abduction was to be carried out at C. N. Roy Road. A motor mechanic PW10 deposed to the effect that on July 25, 2001 at mid-day, while he was at the garage, one person came with a Maruti 800 and got a damaged backlight changed. PW10 also saw another person sitting inside the car who gave him ₹. 30/- He identified appellant Noor Mohammed as the person sitting inside the car. A medical officer PW27 testified that he treated Partho Roy Burman for gunshot injuries on his hand. PW40 deposed to have seen the incident of abduction at 16/1A, C. N. Roy Road. At about 9.30/10.00 a.m. He heard a sound and saw a TATA Safari hitting a lamp post. Thereafter, some 3/4 persons travelling in a Maruti 800 Car dragged out a person from TATA Safari and forcibly took him into the Maruti car and fled away.

120. The cumulative effect of the aforementioned evidence gives a clear interwoven chain of circumstances that leaves no doubt that the appellants were involved in hatching up a conspiracy of abducting Partho Roy Burman for ransom. They acted in furtherance of such goal, each of the appellant

playing their specific role right from hatching up of the conspiracy to the execution of the plan and even thereafter, unto the release of the victim. To our estimation, the evidence on record displays complete chain of circumstances leading to the only inference that the appellants namely Noor Mohammed @ Shahbaz @ Sikender, Jalal Molla @ Omar @ Babu Bhai, Mizanur Rahman @ Shahjahan, Mujammel Sk. @ Akram @ Akka, Ishaq Ahmed @ Dilshad @ Jaheer @ Hassan @ Musa, Arshad Khan and Tariq Mehmood @ Nayeem @ Ayub @ Hazi herein, were the perpetrators of offence of abduction of Partho Roy Burman for ransom as stipulated under Section 364A of the Indian Penal Code, 1860 in furtherance of a conspiracy devised up in this regard, to the exclusion all others.

121. Undoubtedly, after being abducted, Partho Roy Burman was kept under captivity in Bhoot Bunglow against his will, in furtherance of the conspiracy mooted by the aforesaid appellants i.e. Noor Mohammed @ Shahbaz @ Sikender, Jalal Molla @ Omar @ Babu Bhai, Mizanur Rahman @ Shahjahan, Mujammel Sk. @ Akram @ Akka, Ishaq Ahmed @ Dilshad @

Jaheer @ Hassan @ Musa, Arshad Khan and Tariq Mehmood @ Nayeem @ Ayub @ Hazi, the aforesaid appellants are guilty of the offence punishable under Section 342 read with Section 120 B of the Penal Code of 1860.

122. In **Budhsen (Supra)**, the Hon'ble Supreme Court observed that

“7. Now, facts which establish the identity of an accused person.....

The power to identify, it may be kept in view, varies according to the power of observation and memory of the person identifying and each case depends on its own facts, but there are two factors which seem to be of basic importance in the evaluation of identification. The persons required to identify an accused should have had no opportunity of seeing him after the commission of the crime and before identification and secondly that no mistakes are made by them or the mistakes made are negligible. The identification to be of value should also be held without much delay. The number of persons mixed up with the accused should be reasonably large and their bearing and general appearance not glaringly dissimilar. The evidence as to identification deserves, therefore, to be subjected

to a close and careful scrutiny by the Court. Shri Pratap Singh, Magistrate, who conducted the identification, has appeared at the trial as PW 20. The identification memo in respect of Naubat, appellant, is Ex. Ka-20, dated October 21, 1967 and in respect of Budhsen is Ex. Ka-21, dated October 28, 1967.”

123. In **Rajesh Govind Jagesha (Supra)** as well as in **Ankush Maruti Shinde (Supra)** Hon’ble Supreme Court noted the identification to be doubtful for unexplained delay in conducting the Test Identification Parade.

124. In **Mohd. Sajjad (Supra)**, the Hon’ble Supreme Court observed that where there is an inordinate delay in holding a test identification parade, the court must adopt a cautious approach so as to prevent miscarriage of justice. The Hon’ble Supreme Court considered the decision in the case of Lal Singh vs State of U.P., to the following effect, that’s to say:

“43. It will thus be seen that the evidence of identification has to be considered in the peculiar facts and circumstances of each case. Though it is desirable to hold the test identification parade at the earliest-possible opportunity, no hard-and-fast rule

can be laid down in this regard. If the delay is inordinate and there is evidence probabalising the possibility of the accused having been shown to the witnesses, the court may not act on the basis of such evidence. Moreover, cases where the conviction is based not solely on the basis of identification in court, but on the basis of other corroborative evidence, such as recovery of looted articles, stand on a different footing and the court has to consider the evidence in its entirety.”

125. Similar principles with regard to inordinate delay in conducting the test identification parade were laid down by the Hon’ble Supreme Court in the case of **Wasif Haider (Supra)**.

126. In the instant case, however, there might be a delay in conducting the test identification parade but the identification of the accused has been testified by learned Magistrate conducting such parade. Moreover, no case was made out by the appellants at the trial that the accused put on test identification parade was shown to the witnesses before hand. Not only that, the appellant accused persons were identified by witnesses independent of test identification parade, at the trial as their coconspirators and accomplice. They all worked

together in furtherance of their common object in a conspiracy. That apart, independent witnesses, who saw the appellants arranging for the houses, vehicles and event at the time of occurrence have also identified the appellants. The learned trial court has applied sufficient caution so far as identification of the appellants at the trial is concerned.

127. PW32 identified appellant Shahbaz put on test identification parade. He was not a witness who saw the accused only once. He had actually lived with such accused for days together in the house arranged for shelter of the miscreants. At no stretch of imagination, such witness can be said to have seen the said appellant for a brief period or for the first time in court. In such circumstances, the Hon'ble Supreme Court laid down the necessity of putting such witness to test identification parade. In **Sidhartha Vashisht (Supra)** it was observed by the Hon'ble Supreme Court that,

259. In Mullagiri Vajram v. State of A.P. [1993 Supp (2) SCC 198 : 1993 SCC (Cri) 496] it was held that though the accused was seen by the witness in custody, any infirmity in TIP will not affect the outcome of the case, since the

depositions of the witnesses in court were reliable and could sustain a conviction. The photo identification and TIP are only aides in the investigation and does not form substantive evidence. The substantive evidence is the evidence in the court on oath.”

128. For such reasons the ratio laid down in the case of **Kanan (Supra)**, **Sarwan Singh (Supra)** and **Prakash (Supra)** cannot be made applicable in the facts and circumstances obtaining in the present case.

129. In **Munnalal (Supra)**, the Hon’ble Supreme Court noted that,

“38. First, statement of PW-3 under section 161, Cr. P.C. was recorded nearly 24 days after the incident. Since the Investigating Officer did not enter the witness box, the appellants did not have the occasion to cross-examine him and thereby elicit the reason for such delay. Consequently, the delay in recording the statement of PW-3 in course of investigation, is not referred to and, therefore, remains unjustified. The possibility of PW-3, being fixed up as an eye-witness later during the process of investigation, cannot be totally ruled out.”

130. In the case at hand, however, the investigation officer was extensively cross examined on behalf of the appellants. Moreover, it is to be kept in mind that the present appellants were absconding. Trial for some of the accused persons was conducted and concluded much earlier. It is subsequent to the present appellants brought to books, after much delay, the second phase of trial was taken up. The facts obtaining in the present appeal and corresponding trial are not identical with that in the case of **Munnalal (Supra)**.

131. Alil Mallick (Supra) was rendered in an altogether different perspective where occurrence was reported after an unexplained delay which is not the case in the present set of appeals. For the self-same reasons of delay in recording the statement of witnesses, the ratio in **Shahid Khan (Supra)** and **Harbeer Singh (Supra)** cannot be applied in the present proceeding given the nature of the incident and purport and magnitude of investigation carried out firstly, by the local police station and thereafter by the CID. It is trite law that each case has to be looked into on the basis of facts and circumstances obtaining in such case.

132. In **M/s. Chaturbhai M. Patel & Company (supra)** it was laid down by the Hon'ble Supreme Court that,

“however suspicious may be the circumstances, however strange the coincidences and however grave the doubt, suspicion alone can never take the place of proof. Such observation was laid down by the Hon'ble Supreme Court in the facts of the said case where the father had contracted a second marriage and there was no close affinity between the appellant and his father. The Hon'ble Court also observed that there is absolutely no evidence to show any prior meeting of mind between plaintiff and his father before the consignment was sent either to “Gujarat or Gaya so as to raise an inference that these two persons had hatched up a conspiracy in order to defraud the defendant”.

133. In **Mousam Singha Roy (supra)** the Hon'ble Supreme Court noted that the circumstances relied on by the prosecution were neither fully established nor were inconsistent with the hypothesis of guilt of the accused. Such circumstances did not exclude the hypothesis of innocence of the accused for which the accused persons were found entitled to benefit of doubt. In the case at hand, there are tangible

evidence that a conspiracy was hatched up between the appellants and others for the abduction of the victim. Explicitly, two houses were arranged for that purpose and such arrangement has been proved by the prosecution with the help of more than sufficient evidence. In fact, the evidence laid down at the trial in the instant case, completely excludes the hypothesis of innocence of the appellants.

134. In order to prove the case, certain email messages were proved at the trial. Certain cassettes containing voice samples of some of the appellants were admitted in evidence.

135. The principles laid down in **Anvar PV (supra)** require a certificate as set out under Section 65 B of Indian Evidence Act, 1872 for proof of electronic evidence. It was contended on behalf of the appellants that the electronic evidence collected in course of investigation of the case were produced and proved in the trial court and the appellants were convicted on the basis of such evidence. In absence of a certificate as contemplated under Section 65 B of the Indian Evidence Act, 1872, the learned trial court was not justified in relying upon or taking into consideration of such electronic evidence.

136. It is fact, in the instance case certain electronic materials were collected and proved at the trial. However, besides one cassette, which was alleged to be recorded and sent by the appellants to the relative of the victim, all other electronic evidence that is the phone recording of some of the accused persons were done in course of the investigation case at the behest of the investigating officer duly authorized by the competent authority. The highest authority authorizing the interception of the phone calls, the technical persons who actually assisted in the phone recording were examined at the trial. The persons involved in the execution of the recording of telephone conversation have also deposed at the trial.

137. Besides that certain email messages were retrieved in course of investigation. Such email messages were retrieved under Section 27 of the Indian Evidence Act. The appellants themselves provided credential for access to their email accounts in their presence and print-outs of such email messages were taken in their absence. The concerned appellants had also put such signature on his email messages. The officials who retrieved the email messages deposed to that

effect at the trial which according to us, seems to be substantial compliance of Section 65 B of the Indian Evidence Act.

138. Besides that so far as the present appellants are concerned, evidence on record, leaving aside the electronic evidence, seems to prove the only theory of guilt of such appellants to the execution of all others.

139. Darshan Singh (supra) was rendered in the context that the standard of prove to be met by an accused in support of the defense taken by him under Section 313 of the Code of Criminal Procedure is not beyond all reasonable doubt. The burden lies on the prosecution to prove the charges beyond all reasonable doubt. It was also held that the accused has merely to create doubt and it is for the prosecution then to establish beyond all reasonable doubt that no benefit can flow from the same to the accused.

140. In the instance case the prosecution appears to be able to prove that there was a conspiracy for abduction of Partha Roy Barman for ransom. Prosecution has been able to prove that there were meeting between the conspirators where the details

of the conspiracy were discussed and finalized. Prosecution has been able to prove that the convict Pratha Roy Barman was actually abducted in pursuance of such conspiracy hatched up by the appellants and other accused persons. It has also been proved at the trial that the victim sustained threat injuries in the course of his abduction and he was treated in such injuries on his release. It was also proved at the trial that the victim was released upon receipt of the ransom money. The prosecution has also been able to bring on record which exclusively led to the theory of guilt of the appellants. The appellants have also not been able to create a reasonable doubt as to their involvement in the commission of the offence during the course of cross-examination of the prosecution witnesses or their examination under Section 313 of the Code of Criminal Procedure so as to reap a benefit out of it on the basis of the theory of innocence. In such circumstances the ratio laid down in the Darshan Singh are not attracted in the facts of this case.

141. In the light of discussion made hereinabove, we find no reason to interfere with the impugned judgment and order so

far as the appellants namely: 1) Noor Mohammed @ Sahabaz @ Sikendar, 2) Jalal Molla @ Omar @ Babubhai, 3) Mizanr Rahman @ Shajahan, 4) Mujammel Sk. @ Akram @ Akka, 5) Ishaque Ahmed @ Dilsad @ Jaheer @ Hassan @ Musha, 6) Arshad Khan, 7) Tariq Mehmood @ Nayeem @ Ayub @ Hazi.

142. So far as the role of appellant Akhtar @ Akhtar Hossain @ Paloan @ Moulana Hossain is concerned, the evidence on record does not place him either in Bhoot Bunglow or the flat at 21B, Gorachand Lane at any point of time. None of the prosecution witness has identified this appellant in court. According to the evidence brought on record, he was supposed to supply arms from Haryana for the execution of the plan. PW 32 stated in his deposition that Akhtar was to supply arms from Haryana through Farasat. He also stated that Farasat came with the arms and vehicle. The evidence on record also discloses that arms were actually used in the incident and Partho Roy Burman got injured by gunshot and was also treated for such injuries upon his release. Nevertheless, we could find nothing on record to establish that the arms brought by Farasat were the arms used in the incident. There

is no evidence that the arms brought by Farasat were actually supplied by appellant Akhtar @ Akhtar Hossain @ Paloan @ Moulana Hossain from Haryana. There is absolutely no description of arms, alleged to be supplied by this appellant or that of the arms used in the incident. If that be so, there appears no evidence on record to link up the appellant Akhtar @ Akhtar Hossain @ Paloan @ Moulana Hossain with the incident in this case or the arms used therein. In such view of the facts, we are afraid; we are not in a position to uphold the conviction of the appellant Akhtar @ Akhtar Hossain @ Paloan @ Moulana Hossain for the offences punishable under Section 364A/342/120B of the Indian Penal Code.

143. The three appeals being CRA 143 of 2018, CRA 144 of 2018 and CRA 476 of 2018 are accordingly disposed of in terms of the observations made hereinabove. Consequently, the convict Akhtar @ Akhtar Hossain @ Paloan @ Moulana Hossain be set at liberty forthwith, if not wanted in connection with any other case, subject to execution of a bond to the satisfaction of the learned Trial Court which shall remain in force for a period of six months, in terms of Section 437A of

the Code of Criminal Procedure. Consequently, connected applications, including pending bail applications, if any, shall stand dismissed.

- 144.** Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

- 145.** I agree.

[DEBANGSU BASAK, J.]