

(2014) 01 GAU CK 0022

In the Gauhati High Court

Case No : Crl. Appeal Nos. 121 (J) and 182 of 2008

Abdul Kalam @ Gaonburah and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 215, 221, 313

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 109, 120B, 201, 202, 302

Citation : (2014) 1 GLD 459 : (2014) 1 GLT 737

Hon'ble Judges : Tinlianhang Vaiphei, J; Prasanta Kumar Saikia, J

Bench : Division Bench

Advocate : R.K. Dutta, Advocate , Amicus Curie and Mr. Sidartha Burgohain, Advocate for the Appellant; D. Das, Addl. P.P, Advocate for the Respondent

Judgement

Prasanta Kumar Saikia, J.—These appeals are directed against the judgment and order dated 21.07.2008 passed by the learned Session Judge, Morigaon in Sessions Case No. 56/2006 whereby the learned Sessions Judge convicted accused Abdul Jabbar, Atabur Rahman and Abdul Kalam @ Gaonbura of offences u/s 364(A)/302/201/34 IPC and sentenced each of them to imprisonment for life and fine of Rs. 5,000/- each i.d. R.I. for further 6(six) months for offence u/s. 302 IPC and sentenced each of them to imprisonment for life and a fine of Rs. 5,000/- each i.d., imprisonment for further period of 6(six) months for offence u/s 364(A) IPC and sentenced each of them to R.I. for 3 years and a fine of Rs. 500/- i.d imprisonment for further period of 15 days for offence u/s 201 IPC. By the same judgment and order, the learned Session Judge, Morigaon had also convicted accused Jamir Hussain of offence u/s 364A IPC and sentenced him to imprisonment for life and a fine of Rs. 5000/- i.d for R.I. for another 6(six) months for the aforesaid offence.

2. Under the same judgment and order, accused Fazaluddin stood convicted of offence u/s 202/109 read with Section 363 IPC and was sentenced to suffer imprisonment for 5(five) years and fine of Rs. 1000/- i.d., imprisonment for

another 1 (one) month for offence u/s 109 read with 363 IPC and sentenced him to R.I. for 6 (six) months and a fine of Rs. 500/- i.d., R.I. for another 15 days for offence u/s 202 IPC.

3. Being aggrieved by the aforesaid judgment, the appellants namely Md. Abdul Kalam @ Goanbura, Md. Jamir Hussain, Md. Abdul Jabbar and Md. Aatbar Rahman preferred those appeals citing several infirmities in the judgment under challenge.

4. Since both the appeals arose from the common judgment, we propose to dispose of both the appeals by this common judgment

5. We have heard Mr. Sidartha Buragohain, learned counsel for the appellants in Crl. Appeal No. 182 of 2008 as well as Mr. R.K. Dutta, learned Amicus Curiae appearing for the appellants in Crl. Appeal No. 121 of 2008 and Mr. D. Das, learned Additional Public Prosecutor, Assam as well.

6. The facts which have emerged during trial and which are necessary for disposal of the present appeal in brief are that one Prabhat Singh (aged about fourteen years), son of Prabhu Nath Singh, was a student of Jyoti Niwas English Medium School, Jagiroad. On 06.06.2002, in the morning, he went to school but he did not return home in time for which his father and other relatives made a search for him but in vain. The matter was reported to the Principal of the School next day in the morning.

7. On being so informed, the Principal made an enquiry where from it was learnt that on 06.06.2002, after the school hours, Prabhat Singh along with other students of Jyoti Niwas English Medium School was waiting at Siva Mandir bus stand, Jagiroad to board bus bound for places including the place where Prabhat lived. Some of his friend also saw the said boy boarding a car and left such place.

8. On 06.06.2002 at about 8:30 p.m.. an unknown person called Prabhu Nath Singh (father of the ill fated boy and informant) through his residential phone and claimed Rs. 5 lakhs as the price for release of his son. Even thereafter, the unknown caller kept him demanding money. In the mean time, the unknown caller again demanded him Rs. 3,00,000/- over phone asking him to come over to Dhupguri Bus syndicate, a place under Dhing police station.

9. The unknown caller warned him not to divulge such episode to anyone including police and directed him to come over to aforesaid place alone. On 09.06.2002, as per the arrangement made by police, he went to Dhupguri, a place under Dhing police station in the district of Nagaon. He was escorted by police in civil dress and all of them proceeded to aforesaid place in a private vehicle.

10. But before they reached Dhupguri, he was dropped down from the vehicle with instruction to proceed alone to the place on foot where he was to have rendezvous with the captors of his child. Two persons, namely, Haider Ali and Md. Edul Hussain were apprehended by police on that day since they were found

loitering in and around Dhupguri Bus syndicate in a suspicious manner. They were, however, released subsequently since there were found not connected with the crime in question.

11. Next day, he formally lodged the FIR with O/C, Jagiroad Police Station. Though police attempted to find out the culprits who kidnapped his son on 06.06.2002 in the afternoon, it remained clueless till 16.08.2002. On 16.08.2002, at about 7:50 p.m., PW-1 received a phone call in his shop and from the caller, they come to know that one of the kidnapers of his son was apprehended by them and they were requested to go to Haibar Gaon in the District of Nagaon. So requested, one Dinesh Kumar Singh along with other went to Nagaon but the missing boy could not be found.

12. Subsequently, some other culprits involved in the crime aforesaid were also apprehended and on the basis of information furnished by arrested accused persons while in custody, police discovered the skeleton remains of the son of PW-1 and his other belongings from the jungles in the slope of hills at a place in between 9th and 12th mile on Ulukunchi-Nellie Road in the District of Karbi Anglong.

13. On conclusion of the investigation, police concluded that the accused Abdul Jabbar, Atabur Rahman, Abdul Kalam @ Gaonbura, Abdul Latif, Fazaluddin, Jamir Hussain and one Islam Uddin had kidnapped the son of informant for ransom, killed him and then threw his dead body at the place aforementioned in order to screen them from punishment. Police therefore, submitted charge sheet u/s 120B/364A/302/201/34 IPC against those accused persons showing accused Islam Uddin as absconder in the charge-sheet.

14. The Magistrate before whom charge sheet was so laid, committed the case to the Court of Sessions since offences u/s 364A/302 IPC are exclusively triable by the Court of Sessions. On the receipt of the case on commitment and on hearing the learned counsel for the parties, the Sessions Judge, Morigaon, framed charges u/s 120B/364A/302/201/34 IPC against the accused Abdul Jabbar, Atabur Rahman, Abdul Kalam @ Gaonbura, Abdul Latif and Fazaluddin and charges, so framed, on being read over and explained to them, they pleaded not guilty and claimed to be tried.

15. As the trial proceeds, the accused Jamir Hussain was also arrested who was then forwarded to the Sessions Court at Morigaon to face trial. Once again, learned Sessions Judge, Morigaon, framed charges u/s 120B/364A/302/201/34 IPC against Jamir Hussain and charges, so framed, when read over and explained to him, he too pleaded not guilty and claimed to be tried. During trial, the prosecution has examined as many as 29 witnesses besides adducing number of documents to make out the case against the charge sheeted accused persons.

16. The statements of the accused persons were also recorded. All the accused persons except Fazaluddin had pleaded that they were falsely implicated in the

aforementioned case. On the other hand, accused Fazaluddin claims that on the fateful day, accused Abdul Jabbar had hired his vehicle on the plea of attending a marriage ceremony at Telahi in the District of Morigaon. After hiring his car, he allowed 3 other accused persons to board his car and also took the ill fated boy from the Shiva Mandir Bus stand, Jagiroad.

17. However, instead of attending the marriage ceremony at Telahi, the accused persons forced him to take his car through Ulukunchi-Nellie road, killed the boy on the way and then threw his dead body in the jungles on the slope of the hills at a place in between 9th and 12th mile on the Ulukunchi-Nellie road and thereafter, left such place. It was his specific claim that he got associated with the crime under threat.

18. On conclusion of trial and on hearing the arguments, advanced by the parties, learned trial court while acquitting the accused Abdul Latif, convicted other accused/appellants, facing trial, of offences as aforesaid and sentenced them to punishment as stated above. It is that judgment which has been assailed in the present appeal citing several infirmities therein.

19. Mr. Buragohain, learned counsel appearing for accused appellants has submitted that the judgment of the trial court cannot be sustained since it was rendered not on the basis of materials on record, nor on taking into accounts various laws, both procedural and substantive which hold the field in question. A judgment which is rendered in total disregard to the law and facts needs to be set aside and accused/appellants are deserved to be acquitted.

20. Since the learned counsel for the appellants has challenged the judgment on various counts, in order to avoid repetition of the same, we find it necessary to discuss those alleged infirmities in the prosecution case in appropriate place and at appropriate time. Mr. RK Dutta, learned Amicus Curie in Cr. Appeal No. 121 of 2008 subscribes to the argument, so advanced by Mr. Buragohain.

21. On the other hand, Mr. D. Das, learned Addl. P.P., appearing for the State has contended that the learned trial court has rendered the judgment in question on the basis of materials on record and also in accordance with the prescription of various laws. Such a judgment----according to him----does not invites any interference from this Court of appeal and as such, he submits this Court to affirm the judgment of the trial court on dismissing the appeal.

22. Before we could address the rival submissions, advanced by the parties, we propose to have a look at the evidence of PW-26 and PW-27. PW-26 is the Forensic Expert who conducted examination on the skeletal remains, said to be of the ill fated boy whereas, PW-27 is the Doctor who conducted autopsy on the body of the deceased.

23. According to PW-26, on 03.09.2002, he received a sealed wooden box from Director, FSL, Guwahati in connection with Jagiroad P.S. Case No. 95/2002 and on breaking open the box, he found as many as 19 (nineteen) various bony parts

as well as two colored and two negative photographs of a boy. On examination of such bony parts, he identified all those bony parts to be of human origin and they derived from one male individual, aged about thirteen to sixteen years.

24. His further evidence was that the photographically superimposed the anatomical landmarks of skull with lower jaw matched with the photographs sent to him. He, however, did not find any cut marks, fracture marks on any of the bones sent to him. According to him, the chemical analysis, done on the bony parts, gave negative test for presence of common poison. He was cross-examined but nothing did emerge there-from to show that what he has stated before the court should not be relied on for any reason, whatsoever.

25. PW-27 is Dr. Padma Singh Bordoloi. According to him, on 24.08.2002, he was posted at Morigaon Civil Hospital. On that day, he received requisition from police to conduct postmortem examination on some skeleton remains in connection with Jagiroad PS. Case No. 95/2002. Since some skeletal remains were sent to him for examination, he could not conduct any autopsy thereon and as such, he sent those skeleton remains to FSL, Guwahati for necessary examination.

26. We have already found that first breakthrough to the crime in question came with the apprehension of accused Jamir Hussain by PW-7 and PW-8. Being so, let us consider their evidence before we put the other evidence of witnesses on scrutiny. PW-7 Miss. Farhana Ahmed deposes that on 16.08.2002, one boy came to their house and requested them to allow him to make a telephone call from their residential land-line phone. They had a shop attached to their house and an extended telephone line connected the said shop with the phone in their house.

27. With permission from her father, she allowed the boy to make a call from their residential landline phone. The boy told her that he wanted to make some confidential discussion with some person who is the owner of landline bearing number 47017, He also sought for her help in connecting him with the person aforesaid through their landline phone. At that point of time, there was no electricity for which her mother gave her a candle to help the boy aforesaid.

28. The boy gave a slip to her and requested her to connect him with such number. She took the boy to the room where the telephone was installed and connected him with the person whom he wanted to talk to. As soon as she got response from other side, she gave the boy the receiver of the phone. However, the boy insisted her to go out of the room as he wanted to make some confidential discussion with the person on the other end of the phone.

29. The curiosity caused her to overhear the conversation between the boy and the person on the other end of the phone. As requested, she came out of the room but concealed herself at a place very close to such room. Little thereafter, she heard the boy speaking to someone:

Hello! I am speaking from hills, Munna is with us happily. Munna's father has long beard/hair. Ask him to save his son and come with Rs. 3,00,000/- without

informing to CID or anybody.

30. Hearing such conversation, she rushed to the shop to overhear the conversation between the boy and the person aforesaid through tire extended phone in their shop. She again heard him repeating what she heard little before. He immediately reported such episodes to her mother. In the meantime, the boy came out of the room and made necessary arrangement to leave their house. When she enquired the boy as to the subject on which he was having discussion over phone, he gave her a false reply.

31. Soon thereafter, she redialed to the phone and enquired the person on the other end if someone demanded money from him little before. The person at the other end replied in affirmative. They immediately apprehended the boy and confined him. Her sister also joined her. The people from the neighborhood were also called. When she checks the pockets of the boy, he started crying and told her mother "Aunty save me, you are a Muslim, I am also a Muslim, I only kidnapped a Bihari boy".

32. On hearing such plea, her mother became angry and told the boy "I am a mother, I have no caste feeling, I am the mother of everybody". Requesting her mother to take care of the boy, she ranged up in-charged Haibar Gaon Police out-post and reported the incident. Soon, police came to their house and took the boy into its custody. She subsequently learnt that name of the aforesaid boy was Jamir Hussain.

33. During the course of investigation, her statement was recorded by Magistrate which she proved as Ext.-6. In her cross-examination, she admitted that she came to know about the boy only from the date aforesaid. According to her, accused was having conversation over phone for about 20 minutes. In her cross-examination, she also admitted that when the accused was talking to someone over phone her father was a little away from their shop.

34. Smti. Rumija Khatoon was examined as PW-8. She is the mother of PW-7. According to her, on the fateful evening, she was working in her kitchen. At that time, a boy came to their house and wanted to make a telephone call to someone through their landline phone. She told her daughter Farhana Ahmed to help the boy. At that time, due to some technical fault, there was no electricity in their house. Therefore, she gave a burning candle to her daughter so that he could make a call from their house.

35. Thereafter, the boy requested her daughter to connect him with the phone with number 47017. Her daughter did so. However, Farhana overheard the conversation between the boy and the other person on the other end of the phone. She also heard him demanding Rs. 3,00,000/- from such person as a price for releasing a boy supposed to be in their custody. Once the boy wanted to leave their house, Farhana Ahmed captured him and enquired him about the conversations.

36. At first, the boy told her that he was talking to someone at Panigaon. Farhana Ahmed confined the boy and redialed to the phone number, contacted the person on the other end and enquired if someone demanded money from him little before. When she got a positive reply, Farhana immediately reported the matter to the in-charge, Haibar Gaon Police Station. Owing to such development, the boy started crying saying, "I am a Muslim boy and I had killed a Bihari boy only".

37. However, she replied to such comments saying that "she is a mother, caste is immaterial to her." In the meantime, police came and the boy was handed over to the police. During the course of investigation, her statement was also recorded by Magistrate which was proved as Ext. 7. In her cross-examination, she admitted that she did not listen to the conversation between the accused and the person on the other end of their phone on that evening.

38. The other witnesses on which prosecution place enormous reliance to make out the allegations against the accused persons are PW-1, Sri Prabhu Nath Singh and PW-2, Sri Dinesh Kumar Singh. PW-1 deposes that on 06.06.2002, his son Prabhat Kr. Singh went to school. However, he did not return home from his school on that day in time. Since his son did not return home even long after the school hours were over, he requested his nephew Sri Dinesh Kr. Singh to look into the matter. On being so requested, his nephew started searching for the missing boy.

39. On that day, at about 8.30 p.m., while he was in his shop, he received a telephone call from some unknown person who claimed that his son was in their custody and if he wanted his son alive, he had to pay them by the next morning an amount to the tune of Rs. 5,00,000/- as being ransom. He requested the caller to disclose his identity but the caller told him that he made the call from Guwahati and his son was in their custody, hale and hearty. It may stated that 47017.

40. Next day, in the morning at about 8.30 am., he got a call through his land line phone bearing number 47017. The caller enquired him as to whether he could arrange the money required to get his son released. He, however, answered in negative. In the meantime, he went to the school and reported the matter to the father of the school. The father of the school immediately called the friends of his son and enquired them if they knew anything about the boy who went missing since 06.06.2002 afternoon.

41. The friends of his son told the PW-1 and the father of the school that previous day in the afternoon when all of them including the son of the PW-1 were waiting for the bus at the bus stand to make their return journey to their respective house, someone came to the missing boy and talked to him. In the meantime, the school bus came and the friends of the son of the PW-1 then all boarded the bus, left such place and as such, they did not know what had happened to him thereafter.

42. On that day, at about 1:00 p.m.. he got one more call from an unknown number. The caller again enquired him as to whether he could arrange the money. When he replied in negative, the caller told him that he would not get his son alive if he did not pay them money. At about 7:00 p.m. same day, he received another call whereby he was asked to come at Dhupguri Jirani Chara with an amount to the tune of Rs. 3,00,000/-. They also told him to come to such place alone, otherwise, he had to sacrifice his son forever.

43. Next day, at about 8:00 a.m. he was again enquired whether he could arrange the money demanded by him. When he told the unknown caller that he could arrange only Rs. 50,000/- he again ordered him to come to Dhupguri with the money he had demanded from him. Such a call was again repeated at 12:00 noon same day. In the meantime, the matter was reported to the Addl. S.P. over phone and he advised the PW-1 to file an FIR. He, however, pleaded that he may be exonerated from filing the FIR, otherwise, he would lose his son forever.

44. Thereafter, Jagiroad police installed a caller-ID mechanism to his telephone. At about 2:20 p.m., he again received a telephone call and such call was made from the telephone under number 03672-254560. The caller now questioned him as to why he did not come to the place aforesaid with the money they demanded from him. They also told him to treat such telephone call as the last chance given to him to pay the money and thereafter he would not get any call from him.

45. At about 8:30 p.m.. same day, he received another call and caller asked the PW-1 to give the former the money demanded by him by the morning the following day. When the matter was reported to Addl. S.P. Mr. Agarwal, he arranged his travel to the place aforementioned but under the cover, provided by the security personnel in civil dress. Next day, at about 10:00 a.m.. police in civil dress came to him in a vehicle and took him to Dhupguri.

46. Before reaching such place, they dropped him down from the vehicle and asked him to proceed on foot to the place where his attendance was sought for by the miscreants. Being so requested, he went to such place but they did not find anyone there. They, however, returned to Mairabari Police Station. At Mairabari Police Station, two persons were shown to him by police and asked him if he ever knew them.

47. When replied in negative, he was told that they are the owners of the PCO from which the unknown callers demanded him money. Then they returned home. Next day, in the morning, he lodged an FIR with O.C. Jagiroad Police Station. He proved such FIR as Ext.-1. Sometime, thereafter, one day in the evening, while he was in his shop, he got an information over phone that one of the kidnappers were apprehended and they were requested to go such place.

48. Being so requested his nephew Dinesh Kr. Singh along with some other persons went to such place. Police arrested 6 to 7 persons thereafter and on being led by them, mortal remains of his son were recovered from a place called Ulukunchi. He, however, did not go to such place to collect the mortal remains

since he was a heart patient. He gave police some photographs of his son which its seized on the strength of seizure list Ext.- 2.

49. PW-2 Sri Dinesh Kr. Singh is the nephew of the PW-1. According to him, Prabhat Kr. Singh was his cousin. On 06.06.2002, Prabhat Kr. Singh did not return home from his school till 6.30 p.m.. for which his uncle requested him to find out as to why his son did return home although the school hours were over long before. Being so requested, he immediately started searching for the boy and met his friends as well. But he could not get any clue. At about 9.30 p.m., he returned home and reported his uncle that he could not gather any information about the missing boy.

50. In the meanwhile, his uncle told him that he got a call from an unidentified person who told him to pay him Rs. 5,00,000/- as being ransom for the release of his son. Even thereafter, his uncle used to receive calls from unknown callers who demanded money as a price for the release of his son. Next day, he along with his uncle, went to school where the boy was studying during the time under consideration.

51. His uncle then reported the matter to the Head of the school who called the schoolmates of the missing boys and they told them that previous day in the afternoon when they were waiting for bus in the bus stand, some persons in a Maruti vehicle came there, talked to the missing boy, took him to the vehicle and hurriedly, they left such place. Thereafter, as advised by the Principal, they have reported the matter to the Principal in writing. The Principal in turn reported the matter to the police.

52. Later on, on the advice of the police, a caller ID was installed in the phone in the house of the PW-1 for identification of the caller. On 16.08.2002, at about 7:00 p.m. someone again made a telephone call to the house of PW-1 to inform that the son of the PW-1 was still in their custody and they would release him provided they gave the caller Rs. 3,00,000/-. They also promised that they would arrange a conversation between the boy and the father.

53. Soon thereafter, another phone call came from the same phone. Caller identified himself as Kalam Ahmed and enquired from them if someone telephoned them little before from such a phone demanding money. When he answered in affirmative, Kalam Ahmed told that the boy who demanded them ransom little before had been detained and they were requested to go to such place. He immediately reported the matter to the Jagiroad Police Station as well as Nagaon Police Station.

54. Thereafter, they went to Haibar Gaon Police Station and came to know that Jagiroad Police had already taken the boy into their custody. They also went to the house of Kalam Ahmed and came to know how that the caller, who demanded the money from them, had been apprehended and was already handed over to the police. On 22.08.2002, the dead body of Prabhat Singh was found in jungle in the slope of a hill in the district of Karbi Anglong.

55. Accused Abdul Jabbar, Aftab Uddin, Abdul Kalam and Fazaluddin took them to such place and on being lead by them, Police recovered the some skeletal remains which were found scattered all over the ground in the jungles. Some other articles, such as, a torn school bag, uniform, umbrella, some question papers, a geometry box and water bottles etc., were also recovered from such place. All those articles were said to be the articles used by the deceased.

56. A belt with the emblem of Jyoti Niwas School and one cotton thread used in the neck by Prabhat Singh were also found in the place aforesaid. All those articles were seized by police on the strength of Ext. 3. Police also seized two enlarged photograph of deceased on the strength of Ext. 4 (Ext. 2?).

57. The Magistrate too conducted an inquest on the skeletal remains of the deceased. In his cross-examination, he claims that the accused Abdul Jabbar, Atab Uddin, Abdul Kalam and Fazaluddin showed the place where the skeletal remains were found scattered. However, it was accused Abdul Kalam who had first shown the place aforesaid and other accused persons endorsed the same.

58. This brings us to the fourth set of witnesses who are PW-3, PW-4, PW-5, PW-6, PW-9, PW-10, PW-11, PW-12, PW-13, PW-14, PW-15, PW-16, PW-17, PW-18, PW-19, PW-20, PW-21, PW-22, PW-23 and PW-24.

59. PW-3, Sri Lulu Barman is a cultivator. According to him, during the time under consideration, he was working as the Secretary of Dakhin Dharmtul Village Defence Party (VDP). As the Secretary of the VDP, he associated himself with the investigation of the case under consideration. One day, accused Abdul Jabbar, Atabur Rahman, Abdul Kalam and Fazaluddin, who were in police custody, took them to Lumrai Pahar.

60. On reaching such place, they stopped the vehicle, then proceeded to some distance on foot and showed the place where some skeletal remains were lying scattered. Some other articles, such as, school bags, uniforms, umbrella, belt etc. are also found lying in such a place. The police recovered those articles on the strength of seizure list Ext. 3. The Executive Magistrate who accompanied them conducted an inquest on the skeletal remains. A report on the inquest was prepared which he proved as Ext. 4.

61. In his cross-examination, he has stated that accused persons took them to the aforesaid place for 2-3 days and on the last day, they could show the place where the dead body and belongings of the deceased were found lying. He, however, admitted that on the last day, when the skeletal remains were recovered, he did not accompany the police. But in his further cross-examination, he claimed to be present when the skeletal remains were recovered from the place aforementioned.

62. PW-4 Sri Bhelo Singh Das deposes that he knows the deceased whose age was about 12-13 years when incident in question occurred. According to him, on 16.08.2002, one kidnapper was arrested in Nagaon town. In that connection, he

too went to Jagiroad Police Station. During investigation, police arrested accused Jamir Hussain, Abdul Jabbar, Atabur Rahman, Abdul Kalam and Fazaluddin. They admitted before the police that they killed the boy and took his body to the Ulukunchi.

63. Thereafter, they led the police party towards the State of Meghalaya through Ulukunchi-Nellie road. The search was conducted for several days since no recovery could be made for first few days. Subsequently, the recovery was made but he was not with the police party on the day on which recovery was made.

64. Mr. Arbinda Kr. Singh (PW-5) is a business man. According to him, on learning that the kidnappers, who had abducted Prabhat Singh, were arrested, he went to Jagiroad Police Station on 22.08.2008. One Lulu Baruah and Dinesh Singh accompanied him to the police station. At the police station, they met accused Abdul Kalam, Abdul Jabbar, Atabur Rahman, Fazaluddin. On being asked, they confessed to have killed Prabhat Singh and that they threw his dead body to the jungles in the hills. They also expressed their willingness to show the place where they had so thrown away body of the boy.

65. Thereafter, they took the police party to Ulukunchi in a vehicle. Dinesh Singh (PW-2) and Lulu Baruah (PW-4) too accompanied the police party. In between twelve to thirteen mile on Ulukunchi-Nellie Road, the vehicle was stopped by accused persons, took the police party to the slope of the hills and showed the place where skeleton remains and some other articles were found lying.

66. Police seized those articles on the strength of seizure list Ext. 3. According to him, Material Ext. 1, Material Ext.-2, Material Ext.-3, material Ext.- material Ext.-5, material Ext.-6 are the School bag, shirt, umbrella, water bottle, and geometry box respectively which were recovered from the place aforesaid. The accused persons admitted to have kidnapped and killed the son of PW-1.

67. The Magistrate who accompanied them also conducted inquest on the skeletal remains. In his cross-examination, he has stated that both PW-1 and he hails from Bihar but his house is situated at a distance of 10 to 15 km from the house of PW-1. It is also in his evidence which he rendered in his cross-examination that the place where some recovery was made was surrounded by jungles and is situated at a distance of about 100 Ft. from the main road.

68. PW-6 Shri Umesh Prashad Sarma, who is a teacher by profession, deposes that on the fateful night, he was in the pharmacy of Prabhu Nath Singh. On 06.06.2002, in the evening, a call came to Prabhu Nath Singh. From Prabhu Nath Singh, he came to know that an unknown caller demanded him Rs. 5,00,000/- for release of his son from their custody. On 16.08.2002 at about 8:00 p.m.. he learnt that PW-1 received another call from some unknown caller. On that day too, caller demanded Prabhu Nath Singh some money. The caller told that the missing boy would be released next day provided he paid them the money they demanded.

69. Little thereafter, one more call came from the same phone enquiring him if someone demanded PW-1 money. It was also informed by the second caller that the boy who demanded the money little before on that evening was apprehended at Nagaon town and they were asked to go such place. Thereafter, he along with Dinesh Singh went to Lakhi Nagar, Nagaon. However, on reaching such place, they came to know that Jagiroad Police has already taken the apprehended boy and left Nagaon for Jagiroad.

70. PW-9 Biswajit Adhikari deposes that he is a professional photographer. On being summoned by Jagiroad Police, he accompanied the police party to some places in between 9th to 12th mile on Ulukunchi-Nellie road. Accused Atabur Rahman, Abdul Kalam, Abdul Jabbar, Fazlul as well as a Magistrate were also the police party. The search for the missing boy continued for several days but due to inclement weather search could not yield any result initially.

71. However, on the last day, the accused persons led them to the jungle and showed a place where some skeletal remains were seen lying scattered. He took the photograph of the bone and other skeletal remains. Some other articles, such as, one dirty shirt, sky blue belt with emblem Jyoti Niwas English Medium School, one water bottle, one geometry box, one torn handkerchief an umbrella, two pens, one pencil cutter etc. were also found in such a place.

72. The Magistrate accompanying them held an inquest on the skeletal remains and a report was prepared in that connection which is proved as Ext. 4. The photographs which he took at such place were also seized by police on the strength of seizure list which he proved as Ext. 7(1) to 7(17). The negatives of the photographs were seized on the strength of seizure list Ext. 8.

73. PW-10, Sri Anil Prashad Choudhury was a student of Jyoti Nivas English Medium School. According to him, on the fateful day, he along with Prabhat Singh was waiting for bus at Shiva Mandir Bus Stand, Jagiroad. While they were so waiting for bus, a man came to Prabhat Singh and talked with him. As their bus arrived at such place in the meantime, they boarded the bus and left such place.

74. While Prabhat Singh was talking with the aforesaid person, he was in full uniform. After recovery of body of Prabhat Singh, he was summoned to identify his dress. PW-11 Mausumi Dutta, PW-12 Subhajit Dey, PW-13 Ranjit Prashad were the classmates of the deceased. They echoed what was already stated by PW-10. However, PW-11 is also found saying that the person who took Prabhat Singh, came in a white Ambassador car and then left with him to some unknown destination in the car in which they come to such place.

75. PW-14 Saiful Islam, PW-17 Majibur Rahman, PW-18 Amir Khan, PW-21 Smti Bandana Dev Goswami and PW-22 Mustafa Begum were summoned to give evidence about the car used in kidnapping the boy aforementioned. According to PW-14, on the fateful day, he drove the vehicle of one Smti. Bandana Dev Goswami (PW-21). On that day, around noon, he came home to take lunch

leaving his car on the side of the road. However, Fazaluddin met him on the way and requested him to give him his car on rental basis in order to make a trip to Telahi.

76. He accepted such request and handed over the key of his car to Fazaluddin to make a trip to Telahi on hire basis. On that day, in the evening, Fazaluddin gave him Rs. 200 and also returned the key of the car through one Majibur Rahman (PW-17). In his cross-examination, he admitted that Fazaluddin had requested him to take the hirer of his car to Telahi. He, however, declined such a request as he was not in a good health and instead requested accused Fazaluddin to make such trip himself.

77. PW-17 Majibur Rahman deposes that one day, accused Fazaluddin brought a Maruti car bearing registration No. AS-21-3217 to his garage and gave him Rs. 200 as well as the car aforementioned with a request to hand over those things to the PW-14. Thereafter, he sent the key of the car to PW-14 through one Amir Khan (PW-18). He himself paid the amount to PW-14 next day in the morning. After about two and a half month, he came to know that the vehicle was used in committing the crime.

78. PW-18 Amir Khan, Mechanic by profession, deposes that he worked at the garage of one Majibur Rahman of Jagiroad. One day Fazaluddin brought a Maruti car to their garage and kept it there. He noticed Fazaluddin giving the owner of the garage Rs. 200/-. When the work for the day was over, he was requested by owner of the garage to hand over the key of the Maruti car to PW-14.

79. PW-21 Smti Bandana Dev Goswami is an employee in HPC, Jagiroad. According to her, she is the owner of Maruti vehicle bearing registration No. AS-21-3217. She is heard saying that her vehicle is a private vehicle and one Saiful Islam (PW-14) was engaged to drive her car. On 17.08.2002, at about 10 am, she was called to the police station. During the course of investigation, when she was enquired if her car was used in committing any crime to which she replied in negative.

80. PW-22 Mustafa Begum is the wife of Saiful Islam. According to her, during the time under consideration, her husband drove the Maruti car of one Bandana Dev Goswami (PW-21). One day in the afternoon, Fazaluddin took the car from her husband. However, in the same evening, one boy handed over the key of the car to her.

81. PW-15, PW-16, PW-19, PW-23 and PW-24 are the witnesses who are summoned to support certain aspect of the prosecution case. PW-15 Sri Gopal Basfor, is a sweeper by profession. According to him, during the time under consideration, police took him to some places and on the relevant day some skeletal remains were found scattered in the jungles in some hilly terrain. On being directed by police, he collected those skeletal remains.

82. The Magistrate who accompanied them on that day conducted an

examination on those skeletal remains and prepared a report in that connection which he proved as Ext.-4. In his cross-examination, he has stated that the search for the skeletal remains continued for several days. It is also in his evidence that only on the last day, those skeletal remains could be found.

83. One Mr. Nirjanjan Mahati, was examined as PW 16. He deposes that one day, O/C, Jagiroad police station called him and requested him to drive his 407 vehicle to some place in search of a dead body. Police and some other persons also boarded his vehicle. On the day, on which his vehicle was taken to the place, aforementioned in search of dead body, nothing could be recovered.

84. PW-19 Ramendra Mohan Das is a teacher. According to him, he wrote the FIR on being requested by Prabhu Nath Singh. Ext.-1 is the said FIR and Ext.-1 (2) is his signature therein as being the scribe thereof.

85. PW-23, Sri Mun Kr. Pradhan is a teacher of Jyoti Niwas English Medium School. According to him, one day, the Principal of the school deputed him to identify some articles recovered by the police. On seeing those articles, he found them to be the articles which were used by the students of their schools. He proved material Ext.-1, Ext.-2, Ext.-4 and Ext. 8 as the school bag, school belt, umbrella and question papers of their school respectively.

86. PW-24 Mathew Muluwana is the Principal of Jyoti Niwas English Medium School. According to him, one day he received telephone call for Prabhu Nath Singh informing him that his son did not return home from school previous day. Being so informed, he reported the matter to the police station. Ext.-10 is the intimation so given by him to the police.

87. This brings us to the remaining witnesses who are police officers who participated in the investigation of the case under consideration. They are PW-25 and PW-28 and PW-29. PW-25 is Gulak Ch. Baruah, a retired DSR According to him, on 17.8.2002, he was posted as Additional Circle Inspector, Jagiroad Circle. On that day, he received telephonic information that a person who kidnapped the son of PW-1 contacted his family members over phone demanding ransom had been detained.

88. Such information was received by Haibar Gaon Police Station as well. On receiving said information, Haibar Gaon Police sprung into action, arrested the boy and reported the matter to the Jagiroad Police Station, since place of occurrence falls within its jurisdiction. Being so informed he along with O/C, Jagiroad Police station and another staff proceeded to Haibar Gaon Police Station, met one Jamiruddin and brought him to Jagiroad Police Station. On interrogation, he admitted that he was involved in the kidnapping of a boy.

89. According to him, Abdul kalam, Atabur Rahman, Abdul Jabbar @ Gaonburha and Fazaluddin were also with him in kidnapping the aforesaid boy. On the same night, Abdul Jabbar and Atabur Rahman were also arrested and on interrogation, they admitted that they kidnapped the boy using a Maruti car, killed him and

threw his death body in the jungles in the slope of the hills. During the course of investigation, Fazaluddin, Abdul Jabbar, Md. Abdul Kalam and Atabur Rahman led them to the place where dead body was thrown and where some skeletal remains were found strewn all over the ground.

90. Some other articles, such as, school bag, an umbrella, one broken geometry box, one shirt, one mud stained long pant, school uniform, belt with emblem of Jyoti Nivas English Medium School, one empty coca cola bottle and some question papers were also found lying in the same place which were seized on the strength of seizure list Ext. 3. In his cross-examination, he states that the statements of the accused persons were recorded by the I.O. in his presence. The suggestion that none of the accused were confessed their guilt was denied by PW-25.

91. PW-29 is Jayur Rahman, SI of police. According to him, on 07.06.2002 he was posted as ASI at Jagiroad Police Station. On that day, at about 11:00 a.m.. Principal of Jyoti Niwas English Medium School informed him that Prabhat Singh, a student of Class-VIII of his school, did not return home after attending his school previous day. On receipt of such information, he made a GD Entry, vide GD Entry No. 140 dated 07.06.2002 and he himself took up the matter.

92. During the course of investigation, all the Police Stations in the State of Assam were informed about the boy aforesaid being kidnapped, examined the Principal and other students of the school aforesaid and did other things needful. Since there was information that the father of the missing boy received telephone calls demanding money from him time to time, he attached a caller ID to the residential phone of the PW-1. Next day, some unknown person made a call from phone No. 25456 demanding Rs. 3,00,000/- as a price for releasing the son of PW-1.

93. PW-1 was also asked to go to Dhupguri with such money. Accordingly, Prabhu Nath Singh was sent to such place giving him security cover with police in civil dress. On arriving at Dhupguri, the police party accompanying the PW-1 found two persons namely, Haidar Ali and Edul moving there in a suspicious manner. Those two persons were, therefore, arrested. The owner of the PCO bearing No. 25256 was also interrogated. However, Haidar Ali and Edul were found not involved with the crime in question.

94. On 16.08.2002 Dinesh Kr. Singh informed them over phone that Miss Farhana Ahmed of Lakhi Nagar, Nagaon had reported him over phone that one of the kidnappers had been apprehended and was handed over to Haibar Gaon Police. Being so informed, they too went to Haibar Gaon Police Station. In the meantime, on the basis of information, furnished by Md. Jamir Hussain, they apprehended some other persons, namely, Abdul Jabbar, Atabur Rahman, Abdul Kalam @ Gaonbura. One Abdul Latif was also arrested subsequently.

95. During the course of investigation, those arrested accused persons confessed to have kidnapped the son of the informant (PW-1), killed him and thereafter

they threw his dead body in the hills. It is also in his evidence that he recorded the statement of Fazaluddin, Abdul Kalam, Atabur Rahman, Abdul Jabbar, Jamir Hussain on 17.02.2002 and they also made statement that they could lead him to the place where the body of Prabhat Singh was thrown. However, in his cross-examination, he admitted that the statement of the accused persons to the fact that they would be able to lead him to the place where the dead body was thrown was not recorded.

96. PW-28 Sri I.H. Khandakar, Inspector of Police, deposes that on 21.8.2002 he was posted as O/C Jagiroad police Station. On that day he took over the investigation of Jagiroad P.S. Case No. 370/2002 from PW-29. According to him, PW-29 had already recorded the statements of arrested accused persons and on the basis of such statements, they conducted the investigation and visited the place where the body of missing boy was said to have been thrown away.

97. Though search for the missing boy continued for several days, his skeletal remains were recovered only on 22.08.2002 which was found scattered in the jungles on the slope of the hills. Some other articles used by the missing boy as well as his wearing apparels etc., were also found at the place aforementioned. Those skeletal remains as well as articles were seized on the strength of seizure list Ext3.

98. It is also in his evidence that he had recorded the statements of Abdul Jabbar, Abdul Kalam, Atabur Rahman and Fazaluddin which he proved as Ext. 15 to 18 respectively. In his cross-examination, he, however, admitted that he did not record the fact that those accused persons had led him to the place where the skeletal remains and other articles were found.

99. Above being the evidence on record, let us see how far such evidence make out the charges brought against the accused persons. A careful perusal of evidence on record, evidence of PW-1, PW2, PW-4, PW-5, PW-6, PW-10, PW-11, PW-12 PW-13 and PW-24 in particular, shows that Prabhat Singh, son of PW-1 had gone missing from the afternoon of 06.06.2002. This aspect of the prosecution case has not been seriously disputed by the appellants.

100. Further perusal of the record again reveals that on 22.08.2002, skeletal remains as well as some other articles, such as, school bag, uniform, belt, other kits, used in school, such as, geometry box, question papers etc., are also found in the jungles on the slope of the hills at a place in between 9th to 12th mile on the Ulukunchi-Nellie Road. The evidence of PW-26 further establishes that the skeletal remains were of a human being, aged about 13 to 16 years. The appellants did not dispute those aspects of the prosecution case either.

101. Now, the questions are, whom those articles belong to or whose skeletal remains were found scattered at the place aforementioned. PW-10, PW-11, PW-12, PW-13 and PW-23 categorically state that the uniforms, kits, used in school, belonged to a student of their school. However, the final seal approval to their claim that those articles belonged to Jyoti Niwas English Medium School,

Jagiroad, comes from the belt, so recovered from place aforesaid since said belt contained the emblem of Jyoti Nivas English Medium School, Jagiroad.

102. We have already found that when Prabhat Singh had gone missing on 6.6.2002, he was a boy, aged about 14 years. We have also found that he was a student of Jyoti Niwas English Medium School, Jagiroad. When these revelations are considered together with the fact that the skeletal remains were of a human being, aged about 13-16 years and the articles found at the place aforesaid belonged to the student of Jyoti Niwas English Medium School, there cannot be any escape from the conclusion that the skeletal remains were of son of P.W. 1 who remained missing from the afternoon of 06.06.2002 and none else.

103. One more factor lends more and more support to the above conclusion of us. It is the evidence of PW-26 that photographically superimposed of the anatomical landmarks of complete skull with lower jaw matches with the photographs of the boy obtained from his father. This settles once and for all that the skeletal remains found at a place in between 9th mile and 12th mile on the Ulukunchi Nellie road was of the son of PW-1 and none else.

104. So situated, let us see who kidnapped the son of PW-1 from Shiv Mandir bus stand Jagiroad on 02.06.2002 at about 3:16 p.m.. or who took him to a place in between 9th mile and 12th mile in Ulukunchi road or who killed him and threw his dead body in the slope of the hill. The prosecution all along claims that it was the accused persons and no one else, who kidnapped the boy from the place aforesaid, took him to a place in between 9th mile and 12th mile on the Ulukunchi Nellie road and killed him somewhere on way to such place and then threw his dead body in the in an extremely inaccessible slope of the hill in the district of Karbi Anglong.

105. Now, we need to know if the evidence on record corroborates such a stand taken by prosecution. On the perusal of evidences of PW's, PW-7 and PW-8 in particular, it is found that on 16.08.2002 in the evening, accused Jamir Hussain came to their residence, took permission to make a call to someone who owns phone with number 47017 which happens to the phone number of P.W. 1. Their evidence further shows that such request of the accused Jamiruddin was accepted since he was allowed to make a call to such person.

106. The evidence of the these two PWs, particularly the evidence of the PW-7, reveals that due to some suspicion, she started listening the conversation between the boy and the person on the other end of the phone and to her surprise, she found that the boy started demanding money as price for release of a boy. This alerted the girl about the mischievous design of the boy in making such a call from their phone for which she immediately took up the matter with her mother and decided to detain the boy.

107. On coming to know about such demand, PW-7 also contacted the person who was so telephoned from their house in order to ascertain if what she heard little before was correct. On getting positive reply, he told such person about the

detention of the caller and requested him to come over to Nagaon to take further steps against such caller. This evidence of PW 7 finds unfettered support from the evidence of her mother (PW-8). The evidence of PW-7 and PW-8 again reveals that the accused requested them to let him off since he is a Muslim just like them and since he had kidnapped/killed only a Hindu Bihari boy.

108. The evidence of the PW-7 and PW8 was sought to be demolished by the appellants pointing out that in his evidence, PW2 deposes that one boy, by name Abdul Kalam, and not Miss Farhana Ahmed, gave him information that a boy was being detained in their house for demanding ransom for release of a boy. Such evidence of PW-2 not only makes the evidence of the PW-7 and PW-8 totally unreliable but it also shatters beyond measures the evidence of those two very vital witnesses-----argues learned counsel for the appellants.

109. However, such a contention could cut no ice in demolishing the evidence, rendered by the PW-7 and PW-8 nor could it take way the wind out of the sail the prosecution case. This is because of the fact that though PW-7 and PW-8 were cross-examined yet such cross-examination reveals nothing to show that the person who informed the inmates of the house of PW-1 about a boy being detained in the house of PW-7 on the evening of 16.08.2002 was one Abdul Kalam.

110. These apart, the evidence rendered by PW-25 and PW-29 further shows that the person who communicated the inmates of the house of the PW-1 about a boy being detained in the house of PW-7 for his demanding ransom was not Abdul Kalam but PW-7 Miss Farhana Ahmed instead. In the teeth of above revelations, we are to hold that the claim of PW2 that a boy Abdul Kalam by name, and not Miss Farhana Ahmed, had reported the detention of accused Jamir Hussain in their house has no truth therein.

111. It has also been contended that the evidence of PW-7 and 8 cannot be relied on since the behavior of those PWs, PW-7 in particular, runs counter to the normal human behavior. In that connection, it has been pointed out that at the time relevant, the PW-7 was a girl about 14-15 years of age and as such, a girl of 14-15 years could not have enough courage to detain a youth of about 21 -22 years even if he is found committing offence in her own residence. This only shows that the entire evidence of PW-7 or for that matter PW-8 is unsafe for reliance.

112. Nothing is farthest from the truth as above claim is. It is true that during the time under consideration, the PW-7 is hardly a girl of 15 to 16 years of age. It is also true that during such time, accused Jamir Hussain was a youth of about 22 years of age. But then, their age deference is not a certificate to the fact that a girl of about 15 to 16 years of age could never rise to the occasion to do what situations in a particular moments demand.

113. We have also found that there is clear evidence to show that on the evening in question, the accused misused their phone to advance his extremely unlawful

and illegal claim which endangers the standing, status and good name of all the inmates of the house of PW-7. This is because of the reason that the accused had misused their phone to demand ransom from PW-1 as a price for release of the boy who was said to be in custody of the accused Jamir Hussain.

114. Such revelations together with the fact that on the evening in question, the accused committed the offence under consideration in the house of PW-7 inevitably require this Court to hold that by capturing and confining accused Jamir Hussain in their house on the evening of 16.06.2002, PW-7 had done what exactly situation on that particular moment demanded from her. That being so, in our considered opinion, only for PW-7 being inferior in strength or her being junior in age to accused Jamir Hussain, cannot be a reason to overthrow her evidence.

115. We may not here that in her evidence, PW-7 deposes that the accused Jamir Hussain told the man on the other end of the phone that Munna (nick name of the son of PW-1) was with him happily but to save him, they have to pay him Rs. 3,00,000/- without informing the matter to CID or anybody. In this context, it may be stated that under certain situations, a telephonic conversation may be an extra judicial confession. In that regard, we can peruse profitably the decision rendered by Delhi High Court in the case of Kharida Dhar v. State 2002 (Crl LJ NOC 331).

116. In the aforesaid case, the Delhi High Court held that "Telephonic calls made to media owing responsibility of crime amounts to extrajudicial confession." In our instant case too, the accused told over phone to the inmates of house of the PW-1 that the son of PW-1 was in their custody hale and hearty but too release him they had to pay them money. The evidence on record shows that accused Jamir Hussain made such conversation on his own. As stated in Kharida Dhar (supra), telephonic conversation of the accused with the inmate of the house of the PW-1 was nothing but an extra-judicial confession on the part of accused Jamir Hussain.

117. We have already found that there is unquestionable evidence which shows fact that the son of PW-1 was taken away from Shiva Mandir Bus stand, Jagiroad on 06.06.2002 in the afternoon and that his body was found at a far way place in the jungles of Karbi Anglong hill on 22.08.2002. These facts lend more and more credibility to the extrajudicial confession so made by accused Jamir Hussain. Since a confession is found to be voluntary and since it is found truthful as well, it can be relied on at least in respect of accused Jamir Hussain.

118. The evidence of PW-7 and PW-8 further shows that having been so caught, the accused Jamir Hussain implored her mother to spare him since he is a Muslim like him and since they had kidnapped only a Hindu Bihari boy. Such evidence remains unrebutted despite PW-7 and PW-8 being subjected to cross-examinations. The above statement on the part of accused Jamir Hussain become one more piece of extra-judicial confession and it further establishes that

the accused not only participated in the kidnapping of the ill fated boy but he became a privy to his killing on 06.06.2002 as well.

119. The prosecution places enormous reliance on alleged discovery of facts, made on the basis of information, furnished by accused persons, namely Abdul Jabbar, Atabur Rahman, Abdul Kalam @ Gaonbura, and Fazaluddin. In that context, it has been contended out that while in police custody, those accused persons, confessed their guilt and on the basis of such confessions, the I/O discovered some facts, not known to any person/persons, other than the confessing accused persons till the time of making such confessions.

120. Does such a contention stands established in view of materials available on record. To get an answer to this query, we have considered the evidence of PWs very carefully. However, before we proceed further, we need to know whether it is permissible under the law to act upon joint statements (simultaneous statements) made by the accused persons while in custody if such simultaneous statements subsequently lead to discovery of some fact(s) not known to anyone till the time of making such simultaneous statements.

121. This question arises because of the fact that in his evidence, PW-29 did not disclose who, amongst the aforesaid accused persons, first made the confessional statements in question. Rather all the evidence available on record clearly suggest that the accused persons aforementioned made their statements simultaneously on the basis of which the police subsequently recovered the skeletal remains as well as wearing apparels and other things, mentioned in the Ext.-3 from an inaccessible dense forest in the district of Karbi Along on 22.08.2002.

122. The above question has been considered and decided by the Apex Court of the Country in the case of State of (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru reported in 2005 2 SCC (Criminal) 1715. The relevant part is reproduced herein be-low:--

145. Before parting with the discussion on the subject of confessions u/s 27, we may briefly refer to the legal position as regard joint disclosures. This point assumes relevance in the context of such disclosures made by the first two accused vix. Afzal and Shaukat. The admissibility of information said to have been furnished by both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop computer, a mobile phone and cash of Rs. 10 lakhs from the truck in which they were found at Srinagar is in issue. Learned Senior Counsel Mr. Shanti Bhushan and Mr. Sushil Kumar appearing for the accused contend, as was contended before the High Court, that the disclosure and pointing out attributed to both cannot fall within the ken of Section 27, whereas it is the contention of Mr. Gopal Subramaniam that there is no taboo against the admission of such information as incriminating evidence against both the accused informants. Some of the High Courts have taken the view that the wording " a person" excludes the applicability of the section to

more than one person. But, that is too narrow a view to be taken. Joint disclosures to be more accurate, simultaneous disclosures, per se, are not inadmissible u/s 27. "A person accused" need not necessarily be a single person, but it could be plurality of the accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information in to writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break, almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words, the deposition in regard to the information given by the two accused may be exposed to criticism from the standpoint of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr. Gopal Subramaniam. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence. With these prefatory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel.

123. Thus, simultaneous statements, made by the accused persons while they were in custody which subsequently leads to discovery of fact(s) are admissible under the law.

124. Another question that deserves discussion here is whether it is mandatory under the law on the part of the police officer to record the statements made by the accused person while in the custody which ultimately lead to discovery of some facts in terms of section 27 of the Indian Evidence Act. This question too comes up for consideration in the case of *Rajiv Phukan and Another Vs. The State of Assam*, .

125. On considering various authorities on the subject aforesaid, this Court held that though it is wise to record such statement, however, it is not mandatory on the part of police officer to record the statement of accused person while the

police custody which ultimately lead to discovery of facts. The relevant part is reproduced below:--

55. From the emphasized portion of the observations made above, in Bodhraj (supra), it becomes clear that though the information (which the prosecution relies upon to show that the accused gave the information, which led to the discovery of a fact), should be recorded and proved but if it is not so recorded the exact information must be adduced through evidence. Obviously, such evidence would mean oral evidence or some other evidence in the form of audio visuals or tape. Nonetheless, what clearly transpires from the decision, in Bodhraj (supra), is that even when a statement, leading to discovery of fact, has not been reduced into writing, such a statement is still admissible in evidence, though the probative value thereof would depend on the facts and circumstances of a given case.

56. Because of what have been discussed and pointed out above, we conclude that a "disclosure statement", to be admissible u/s 27 of the Evidence Act, is not statutorily required to be reduced into writing, though prudence demands that such an information should be reduced into writing in order to enable the Court to know exactly as to what the accused is allegedly to have stated and the extent to which the information given by him is admissible. The reference shall stand answered accordingly.

126. We may also note here that the learned trial court had convicted the accused Abdur Rahman, Abdul Kalam @ Gaonbura and Abdul Jabbar of offences u/s. 364(A)/302/201 IPC with the aid of section 34 IPC. It may be stated here that in order to convict several accused persons with the aid of Section 34 prosecution needs to prove (a) that the criminal act was done in concert pursuant to a pre-arranged plan and that (b) all the accused persons participated therein some way or other. Such participation may be overt or covert.

127. But then, the courts, in most cases, have to infer the intention from the act or conduct of a particular person or from other relevant circumstances of the case as it is difficult, if not impossible, to procure direct evidence to prove the intention of a person. But it is not necessary to attract section 34 IPC that any overt act must be done by all the entire persons sought to be held liable with the aid of Section 34 IPC. In order to establish joint responsibility u/s 34 IPC, it must of course be established that a criminal act was done by several persons and those persons must participate such crime in furtherance of common intention of all.

128. However, being a mere part of planning of such crime is not-enough to create joint responsibility u/s 34 IPC. In offences involving physical violence, normally presence of the offenders at the scene of offence sought to be rendered liable may be necessary. But such is not the case in respect of some other offences where offence or offences consist of diverse acts which may be done at different places and times as has been held in the case of Jaikrishnadas

129. Coming back to our case in hand, we have found that in his evidence, PW-29 has stated that while in custody, the accused, namely, Abdur Rahman, Abdul Kalam @ Gaonbura, Abdul Jabbar and Fazaluddin confessed to have kidnapped the son of PW-1, took him to the place in between 9th and 12th mile on Ulukunchi-Nellie road, killed him on the way and then deposited his dead body in the aforementioned place. We have found that on the basis of information, so furnished by accused persons, named above, police recovered the skeletal remains of the deceased as well as other articles mentioned in Ext.-3 from the place as shown by those accused persons.

130. The evidence of PW-29 that while in custody, accused persons aforementioned had confessed their guilt admitting that they kidnapped the boy, killed him on way to the place in between 9th and 12th mile on Ulukunchi-Nellie road and threw his dead body in the place aforementioned and on the basis of such information, the skeletal remains of ill-fated boy and other articles used by him on 06.06.2002 were discovered from the dense forest in between 9th and 12th mile on Ulukunchi-Nellie road, find corroboration from the evidence rendered by some other PWs, more particularly, PW-4, PW-5, PW-25 and PW-28.

131. Such evidence therefore unmistakably establishes that the statements of those accused persons which they divulged while they were in custody to the effect that "on killing the boy, they deposited his body in the jungles in the hill of Karbi Anglong at a place in between 9th and 12th mile on Ulukunchi-Nellie road "had actually lead to discovery of skeletal remains of the boy and other articles, he used on 06.06.2002, from the place aforementioned. Since such statement is a discovery statement within the meaning of Section 27 of the Evidence Act, it lends more and more support to the prosecution case that the accused persons, more particularly, accused Abdur Rahman, Abdul Kalam @ Gaonbura, Abdul Jabbar and Jamir Hussain kidnapped the boy, killed him as well and then deposited his body in the place stated above.

132. We may note here that the son of the PW-1 remained missing from the afternoon of 06.06.2002. PW-1 and his family members as well as Police made effort to trace him out but they all remained totally clueless about his where about till 16.08.2002. However, first breakthrough about his mysterious disappearance came with the apprehension of accused Jamir Hussain on the night of 16.08.2002. But, police got to know about the place where his dead body was thrown away only when accused persons confessed their guilt while they were in custody.

133. These are all clear testimonies to the fact that discovery of the fact that skeletal remains of the son of PW-1 and his other belongings were at the place aforementioned was made on the basis of information provided by accused persons namely, Abdul Jabbar, Abdul Kalam @ Gaonburha, Fazaluddin and Atabur Rahman while they are in custody. The discovery of such an important fact on

the basis of information, furnished more credibility to the fact that at least accused Abdul Jabbar, Abdul Kalam @ Gaonbura and Atabur Rahman were the persons responsible for disappearance of the son of the PW-1 on 06.06.2002 and his subsequent killing.

134. However, the credibility of the claim of PW-29 that he had recorded the confessional statement of the accused persons was questioned contending that in his cross-examination, he admitted that he did not record the statement of the accused persons that they would be able to show the place where they had reportedly thrown away the body of the son of PW-1. Similarly, PW-28 too admitted that he did not record the statements of the accused persons that they would be able to show the place where they had reportedly thrown away the body of the boy, named above.

135. Such statements made by the PW-28 and PW-29 in their cross-examinations have now been used to contend that the claim of PW-29 that accused Abdul Jabbar, Abdul Kalam @ Gaonbura and Atabur Rahman and Fazaluddin confessed their guilt while in custody or his claim that he recorded such confessional statements or the claim of PWs that on the basis of such information, some facts were discovered in the terms of section 27 of the Evidence Act cannot be accepted as truthful one. But such a contention is without any merit. It is true that in their cross-examination, the PW-28 and PW-29 did admit that they did not record that the statements of those accused persons to the effect that they would be able to show the place where they had deposited the body of the hapless boy.

136. But then, non-recording such a statements has no effect on the prosecution case. This is because of the fact that the aforesaid statements, not being a part of confessions in question, cannot have any nexus with the discovery statement as contemplated in section 27 of the Evidence Act. This coupled with the testimonies of PW-4 and PW-5 that they heard those accused persons confessing their guilt while in custody only serves to show that accused persons confessed their guilt and I/O too recorded such confessional statements which subsequently led to discovery of the fact as contemplated in section 27 of the Act.

137. Even if we assume for the sake of argument for a moment that I.O. did not record the confessional statements of the accused persons, namely, Md. Atabur Raha-man, Md. Abdul Jabbar, Md. Abdul Kalam and Fazaluddin while they were in custody, in view of decisions, rendered in the case of Rajiv Phukan (Supra), the non-recording of confession would no way affect the persecution case as far the discovery of facts on the basis information furnished by accused persons while in custody is concerned, more so when there is unquestionable evidence to show that those accused person did confess their guilt which subsequently led to discovery of the facts.

138. On considering evidence, rendered by the prosecution, in their totality, we have found that the prosecution has established the following facts and

circumstances beyond any shadow of doubt:--

- (a) On 6.6.2002, after school hours, Prabhat Singh, son of PW-1, was waiting for bus at Shiva Mandir Bus stand, Jagiroad to make a trip to his house,
- (b) While he was so waiting for bus, the miscreants came in a white Maruti car, took the boy into the car and left for unknown destination,.
- (c) Prabhat Singh remained untraced for next two and a half months,
- (d) An unknown caller kept on demanding money in return of the release of the kidnapped boy,
- (e) On 16.08.2002, accused Jamir Hussain went to the house of PW-8 and demanded ransom from the family of PW-1,
- (f) He claimed that the missing boy was in his custody,
- (g) He was apprehended and was handed over to the police.
- (h) On his apprehension, he confessed to have kidnapped/killed a Hindu Bihari boy,
- (i) On the basis of information furnished by the accused Jamir Hussain, other accused persons, namely, Abdul Jabbar, Abdul Kalam @ Gaon Burha, Ataur Rahman and Fazaluddin were arrested,
- (j) More and more information about the missing boy started to emerge with the arrest aforesaid accused persons,
- (k) The accused persons made confessional statements while in custody,
- (l) In their confessional statements, they had confessed to have thrown the body of the boy in the jungles of the hills,
- (m) On the basis of such confessional statements, the skeletal remains of the son of PW-1, his wearing > (n) Neither the police nor any person other than the confessing accused persons aforementioned had apparels and various kits used by him were recovered from a jungles on the slope of the hill in between 9th mile and 12th mile on Ulukunchi-Nellie road,
- (o) A white Maruti car was used in commission of crime,
- (p) Such car belongs to one Smti. Bandana Dev Goswami and it was driven by PW-14,
- (q) On 06.06.2002, the white Maruti car aforesaid was taken on hire by accused Fazaluddin from PW-14,
- (r) Fazaluddin hired the said car from PW-14 to make a trip to Telahi in the district of Morigaon,
- (s) Fazaluddin, at first requested PW-14 to make such a trip to Telahi,

(t) PW-14, however, declined to do so since he was not in good health on that day and instead, asked accused Fazaluddin to make such trip.

139. We have already found that the accused Fazaluddin too has set up a plea that on the eventful day, he got involved in the crime in question by mere twist of events and without his knowledge and intention. Now, we need to know if such claim finds favour from the materials on record. To substantiate such a contention, he examined himself as DW-1. Here, it needs to be stated that the evidence of witnesses from the side of the accused persons are to be treated at par with that of evidence rendered by prosecution witnesses. In this context, it may be noted that Hon"ble Supreme Court in the catena of cases held that the evidence of DWs is to be given treatment similar to the treatment given to the evidence of prosecution witness.

140. Coming back to our case, we have found that Fazaluddin (DW-1) is found saying that on the fateful day, accused Jabbar had hired his car for making a trip to Telahi in order to attend a marriage ceremony at such place. After hiring his car, he allowed three other persons to board his car and then they took his car to Shiv Mandir bus stand, Jagiroad where from they took the ill fated boy into car and took the vehicle to a place in between 9th -12th mile on the Ulukunchi - Nellie road instead of going to Telahi as told earlier.

141. It is also found evident from his evidence on way to the place aforesaid in between 9th -12th mile on the Ulukunchi-Nellie road, the accused Jabbar and Atabur killed the boy. As soon as they reached the place aforesaid, they stopped his car, and then, threw his body in the jungle in the slope of the hill and thereafter they forced him to take his car back to Jagiroad although they got down before reaching Jagiroad town.

142. His claims, particularly his claim that someone took the car bearing AS-21-3217 for make a tour, to Telahi finds support from the PW-14 who was the actual driver of the car which was owned by one Mrs. B. Goswami (PW-21). He even went to the extent of saying that accused Fazaluddin had requested him to make a trip to such place which he declined since he was not in good health on that day.

143. On the other hand, the claim of the accused Fazaluddin (DW-1) that he paid PW-14 (who was the regular driver of the aforesaid car) the charge/fare of the car for making a trip to some place on 06.06.2002 finds support from PW-17 Majibur Rahman, PW-18 Amir Khan and PW-22 Mustafa Begum since these PWs in no uncertain terms depose that on that day in the evening, they noticed accused Fazaluddin (DW-1) paying PW-14 rent for using the car bearing Number AS-21-3217.

144. On reading the evidence of DW-1 in the light of evidence rendered by PWs, PW-14 PW-17, PW-18 and PW-22 in particular, one would find that there is truth in the claim put forward by the accused person inasmuch as the claim which he laid bare before the court during the trial is found to be consistent with the

evidence, rendered by some of the witnesses from the prosecution side itself. The fact that since the beginning of the trial he set up such a plea, as is evident from cross-examination as well as the statements recorded u/s 313 Cr.P.C., lends more and more credence to the plea set up by him as DW-1.

145. Situation being such, we have no hesitation in coming to the conclusion that the evidence laid before the Court by the accused Fazaluddin (DW-1) needs to be accepted which clearly shows that on the fateful day, he got involved in the crime in question by queer of turn of events, and that too, he got entangled with such crime without his knowledge and intention.

146. One may note here that accused Fazaluddin never divulged such an episode to any one, far less his divulging the same to police or other law enforcing agencies. This raises a serious question about the bona fide of his claim that he got involved in the crime under consideration owing to sheer turn of events. We have found that he gave an explanation as to why he did not make known such an episode to anyone. His explanation was that the threat which he was subjected to forced him to keep silent.

147. When one considers such explanation together with evidence on record, more particularly, the evidence rendered by some of the PWs, he would find that the explanation, put forward by the accused Fazaluddin for his not making known such incident to public, has some solid basis and as such, same cannot be brushed aside as an afterthought design aimed at saving himself from his guilt, or, for that matter, from punishment.

148. The prosecution case however, has come under sharp criticism for reasons more than one. It has been contended that the witnesses could not give accurate account of the place from which the skeletal remains and other articles, as mentioned in exhibit-3, were recovered. It has been pointed out that according to some PWs, the skeletal remains were found at Lumrai Pahar. But some other says that those skeletal remains and other things were found at a place in between 9th mile and 12th mile on the Ulukunchi-Nellie road.

149. Still some other deposes that those things were found in some interior place in the district of Karbi Anglong/Meghalaya. Such inconsistencies only serve to show that the very allegation that the skeletal remains and other articles were found at a place in between 9th mile and 12th mile on Ulukunchi-Nellie road was without any basis. We have considered such allegations having regard to the evidence on record. We have already found that the skeletal remains were found in dense forest on the slope of the hills in the district of Karbi Anglong.

150. There is also evidence on record to show that such a place is the part of an enormously difficult hilly terrain about which not only the witnesses who accompanied the party searching the mortal remains of the son of PW-1 had scanty knowledge and idea but accused persons themselves were not well acquainted with the topography of such a place. Well evident fact that the search continued for days together only fortifies such proposition.

151. In the above scenario, it is quite but natural for those witnesses not to have any clear idea regarding the name of such place which, however, caused them to describe such place with the names which they familiar with. But then, the fact remains that skeletal remains as well as personal belongings of the deceased were discovered in dense jungles in the slope of the hills of Kabri Anglong district. Therefore, some variations here and there in describing name of such place where-from the mortal remains of the deceased were recovered no way demolishes the prosecution case.

152. It has also been contended that there was delay in lodging the case in question and such delay remained totally unexplained. Such unexplained delay only shows that the prosecution case is founded not on facts alone but on fabrications and falsehood too. However, such contention is also found to be without any substance. It is true that though the incident in question occurred on 06.06.2002, it was not reported to the police immediately.

153. But then, the reason is not far to find. We have found that on the evening of 06.06.2002 itself, the kidnapper(s) made contact with the father of the boy over phone and demanded him Rs. 5,00,000/- as price for release of the boy. They have also threatened him not to report the same to police or any other person. Otherwise, he would not get back his son alive. In face of the above threat, it is quite but natural for a nervous, panicky and worried father not to report the matter to the police immediately.

154. Such facts have emerged very clearly from the evidence rendered by none other than prosecution witnesses themselves. Being so, in our considered opinion, the charge, mounted on this count is found to be far too in consequential in causing any damage to the prosecution case, more so, when there is reasonable explanation for not reporting the matter to police soon after the incident under consideration.

155. The prosecution case has again been challenged on the ground that though the kidnappers reportedly established contact with the family members of the kidnapped boy right from the day of incident itself and continued to contact with the family members over phone over a long period of time, yet, police installed a caller identity devise several days thereafter. This is nothing but a serious infirmity in the prosecution case which, according to the appellants, while allowing the actual culprits to go scot free put the accused persons in police dragnet who have no connection, whatsoever, with the crime in question.

156. We have considered the above submissions, once again, having regard to the evidence on record. It is true that the appellants did not install caller identity in time. We have also noticed some other infirmities in the investigation. But it is a settled law that infirmity/infirmities in the investigation cannot derail the prosecution case unless such infirmities cause prejudice to the accused persons. In the instant case, the appellants could not show how they got prejudiced for the aforementioned infirmities in the investigation of the case under

consideration. Therefore, this allegation too could cause no harm to the prosecution case.

157. It has also been contended that there are discrepancies in describing the car used in committing the crime in question which, according to the appellants, make the prosecution case doubtful. It is true that there are some discrepancies in describing the car so used in kidnapping the ill fated boy on the afternoon of 06.06.2002 but such discrepancies occurred on peripheral aspects of the prosecution case and same are found far too inconsequential in derailing the prosecution case under consideration.

158. On considering the evidence rendered by the prosecutions, more particularly facts and circumstances, which emerged there-from which we have detailed herein before, in the light of evidence of DW's, it is found that accused Abdul Jabbar, Abdul Kalam @ Gaon Bura, Atabur Rahman and one more person had kidnapped son of the P.W. 1 on 06.06.2002 in the afternoon with a view to realize ransom from the father of ill fated boy, killed him on the way and then deposited the dead body in a place aforementioned in order to screen them from punishment and in doing as above, they used Maruti Car bearing No. AS-21-3 217 owned by Smti. Bandana Goswami (PW-21).

159. We have also found that an unknown caller kept demanding the family members of the ill fated boy the ransom to get back the boy from the clutches of the kidnappers. There is indisputable evidence to show that on the evening of 16.08.2002, accused Jamir Hussain had demanded ransom from the family members of the unfortunate boy stating that the said boy was in his custody hale and hearty although the boy was killed on 06.06.2002 itself. On the same evening, he confessed to have kidnapped and killed the said luckless boy.

160. The evidence on record further demonstrates that on the information furnished by him after his arrest, other accused persons were apprehended and on the basis of information, furnished by them while in police custody, the skeletal remains of the son of the PW-1 and his wearing apparels and other articles, he used on 06.06.2002, were retrieved from a place where his dead-body was deposited. These are all prolific testimonies to the fact that accused Jamir Hussain in league with Abdul Jabbar, Abdul Kalam @ Gaon Bura and Atabur Rahman had committed the offence u/s 364A/302/201/34 IPC.

161. Situations being such, we have no hesitation in coming to the conclusion that accused Jamir Hussain, Abdul Jabbar, Abdul Kalam @ Gaon Bura and Atabur Rahman had committed the offence u/s 364A/302/201/34 IPC and they did so in furtherance of common intention of all. As such, in our considered opinion, the judgment of the trial Court in so far conviction of accused Atabur Rahman, Abdul Kalam @ Gaon Bura, Abdul Jabbar u/s 364A/302/201/34 IPC is concerned invites no interference.

162. However, the acquittal of accused Jamir Hussain u/s 302/201 IPC is found unjustified since he had committed the offence u/s 302/201 IPC in furtherance of

common intention with the other accused persons. However, since the State did not prefer any appeal against such order of acquittal, we refrain ourselves from disturbing the order of acquittal u/s. 302/201 IPC which was recorded in his favour.

163. We have already found that the learned trial court has accepted the evidence, rendered by accused Fazaluddin, holding that he was a victim of treacherous situations. In our considered opinion, such a finding cannot be faulted with. But in spite of accepting his evidence as truthful one, learned trial court convicted him of offence under Sections 202/109 read with Section 363 IPC and punished him as aforesaid. In our considered view, such conviction/sentence under Sections 109 read with Section 363 IPC is unsustainable and is liable to be set aside.

164. We may note here that accused Fazaluddin did not prefer any appeal against the judgment under which he stands convicted of offence u/s 202/109 read with Section 363 IPC and punished as aforesaid. It is a settled law that a non-appealing accused may be given the benefit of appeal.

165. In that context, we may pursue the decision of Hon''ble Supreme Court in the case of Suresh Chaudhary etc. Vs. State of Bihar, . In the aforesaid case several accused persons stand convicted and punished under different provisions of law. On an appeal to the High Court, the High Court affirmed the judgment of the trial court. But all the accused persons except one preferred an appeal against such a judgment before the Apex Court of the Country.

166. However, Hon''ble Supreme Court had found that none of the accused persons who faced trial is liable to be convicted under any of the provisions of law. Therefore, it recorded the verdict of acquittal against all the accused persons including one who did not prefer any appeal.

167. The relevant part is reproduced below:--

The question then arises whether the benefit of the judgment of ours should be extended to the non-appealing accused namely Sona @ Sonwa Choudhury or not. This court in a catena of cases has held where on evaluation of case this court reaches the conclusion that no conviction of any accused is possible, the benefit of doubt must be extended to the co-accused similarly situated though he has not challenged the order of conviction by the way of an appeal.

168. Since in our instant case too, though accused Fazaluddin did not prefer any appeal, we have already found that his conviction u/s 109 read with 363 IPC is not sustainable. Our foregoing discussion has made it more than clear. Same needs no further reiteration here. But then, in view of the decision, rendered in Suresh Choudhury (supra), accused Fazaluddin is required to be acquitted of offence u/s 109 read with 363 IPC.

169. We have also found that according to learned trial Court, by not reporting gruesome crime which was committed in his presence to the law enforcing

authority despite having sufficient time, he has committed offence u/s 202 IPC. Therefore, learned trial Court had convicted him of offence u/s 202 IPC as well taking the aid of section 215/221 Cr.P.C.

170. It is a settled law that an accused, charged with major offence/offences, can be convicted/punished under minor offence(s) constituted by some of the ingredients of major offence without a charge of offence under minor section being framed against him. However, offence u/s 202 IPC, not being minor offence of offence u/s 201 IPC, a person cannot be convicted thereunder without a charge being framed u/s 202 IPC.

171. In that view of the matter, the learned trial Court having convicted the accused Fazaluddin of offence u/s 202 IPC without a charge being framed under that section committed at illegality and it makes such a conviction u/s 202 IPC unsustainable in law. As such, the conviction/sentence imposed on accused Fazaluddin u/s 202 IPC is liable to be interfered with.

172. We have already found that the incident in question took place on 06.06.2002. Record further reveals that accused Fazaluddin got involved in the crime in question due to queer turn of events and without his knowledge and intention. Therefore, though on the materials on record, the case under consideration could have been remanded to the trial Court with directions to frame a charge u/s 202 IPC against accused Fazaluddin and then proceed with the same in accordance with law, we refrain from doing so for the reasons stated above.

173. Thus, while acquitting accused Fazaluddin of offence u/s 202/109 read with 363 IPC on setting aside the conviction/sentence, imposed on him under aforesaid sections of law, the conviction of other accused persons namely Abdul Jabbar, Atabur Rahman, Abdul Kalam @Gaon Bura u/s 364(A)/302/201/34 IPC and conviction of accused Jamir Hussain u/s 364(A)/34 IPC are maintained.

174. We have found that, learned trial Court had adequately punished all those convicted accused persons and as such, sentences, imposed on those accused persons, invites no interference.

175. In the result, the appeal is partly allowed and the judgment of the trial court stands modified as stated above.

176. The accused Fazaluddin be set at liberty forthwith if he is not required in connection with any other case.

177. Before parting with the record, we deeply appreciate the conduct of mother and daughter duo who had done very commendable job by showing extraordinary courage and sense of the duty towards the society by apprehending the culprit on the evening of 16.08.2002 which ultimately provided the great breakthrough in unearthing the dastardly crime committed with enormous brutality. We, therefore, recommend the Government of Assam to give mother and daughter duo an amount to the tune of Rs. 50,000 as being reward

to be paid within a period of 3 months from the date of receipt of certified copy of the judgment. Registry would do the needful. Let LCR be returned.