

(2012) 07 MP CK 0078
In the Madhya Pradesh High Court
Case No : Criminal Ref. No. 2 of 2011

In Reference

Date of Decision : 25-07-2012

Acts Referred:

Criminal Law (Amendment) Act, 2005 — Section 8(2)
Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 306, 307, 366
Evidence Act, 1872 — Section 114, 133, 27
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 34, 364

Citation : (2012) ILR (MP) 2034

Hon'ble Judges : T.K. Kaushal, J; Rakesh Saxena, J

Bench : Division Bench

Advocate : Umesh Pandey, G. A. for the State, for the Appellant; Surendra Singh With Ashwani Kumar Dubey, for the complainant, S.C. Datt With Siddharth Datt, R.S. Patel and Alok Vagreacha, for the Accused, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Saxena, J.—Aforesaid criminal reference and appeals arise out of the common impugned judgment, therefore, this judgment shall govern the disposal of all the above cases. Appellants have filed appeals against the judgment dated 30th July 2011, passed by III Additional Sessions Judge (Fast Track Court), Narsinghpur, in Sessions Trial No. 214/2009, convicting them under Sections 364A/ 34, 302/ 34 and 302/ 120B, 201 and 404/ 34 of the Indian Penal Code and sentencing them to death with fine of Rs. 100/-, rigorous imprisonment for seven years with fine of Rs. 1000/- and rigorous imprisonment for three years with fine of Rs. 100/-, on each count respectively. In default of payment of fine, appellants have further been sentenced to rigorous imprisonment for one month, on each count respectively.

2. Learned trial judge has since awarded death sentence to all the appellants, he has made reference to this Court for confirmation of the same.

3. In short, the prosecution case is that on 6.5.2009, at about 10.30 am, Smt. Nidhi Thakur made a telephonic report to police station, Narsinghpur that her

brother Pankaj had gone to Jabalpur in the morning of 5.5.2009 for getting his Wagon R car No. MP-20-CA-6184 serviced. He was with Pradeep Dubey till 4.00 O'clock in the evening, but, thereafter, he could not be contacted. His mobile was also switched off. In the night, at about 12.30 pm, from the mobile of Pankaj some unknown person made a call on the mobile of Krishna Rajput, the mother of Pankaj, that Pankaj had been abducted in Jabalpur and if they wanted him to be released, they will have to pay ransom. He threatened that if information was given to police, Pankaj would be killed. On 6.5.2009, at about 9.00 am, Krishna Rajput again received a call that if she wanted to see her son alive, she will have to manage Rs. 80 lacs as ransom. Ultimately, the deal was struck for Rs. 30 lacs. On the report lodged by Smt. Nidhi Thakur, a case u/s 364 of the Indian Penal Code was registered by ASI Umesh Dubey (PW-22).

4. On the orders of DIG, Anti Terrorist Squad (for short ATS), a team of ATS headed by Sub Inspector Ritesh Sahu (PW-21) was constituted to proceed on the directions of Superintendent of Police, Narsinghpur. Ritesh Sahu, in the morning of 7.5.2009, went at the house of Pankaj Thakur and suggested his family members to negotiate with the abductor. Abductor asked Raghuvir Singh, the father of Pankaj, to bring money to Jabalpur in a car. Raghuvir Singh arranged Rs. 30 lacs and kept them in two bags and left for Jabalpur in a Scorpio jeep with Inspector Ritesh Sahu in the garb of driver. In Jabalpur, on the instructions of abductor, they put the bags of money on a hand cart in the market and kept a vigil from the jeep. After some time, accused Rahul Rajak picked up the aforesaid bags on a motorcycle and went to hotel Blue Moon. Inspector Sahu informed his team and followed the accused. When accused Rahul entered his room of hotel, inspector Sahu with his team made a raid and took control of accused Rahul Rajak, who alone was in room. Inspector Sahu searched Rahul and his room and seized the currency notes of Rs. 30 lacs kept in two bags. He also seized two mobile sets and motorcycle used for carrying money from the possession of accused. Inspector Sahu alongwith accused, Raghuvir Singh and the seized money went back to Police Station, Narsinghpur.

5. At about 9.30 pm, on 7.5.2009, accused Rahul disclosed that he threw dead body of Pankaj in Narmada river at Bhedaghat and left the Wagon R car of Pankaj at Raj Marg near Police Station Suatala. This information was recorded in memorandum (Ex.P/19) and Rahul was arrested vide arrest memo Ex.P/23. Wagon R car of deceased was already seized by police Suatala lying abandoned.

6. On 8.5.2009, Sub Inspector Swarnjeet Singh Dhama (PW-23) was called from Police Station Themi and was handed over the investigation of the case. On the basis of information given by accused, Inspector Dhama alongwith accused and witnesses went to Bhedaghat. The dead body of Pankaj was recovered from Narmada river at Sarawati Ghat. A Murg intimation was recorded and the dead body was identified by Sunil and Hemant Yadav. After recording inquest memorandum (Ex.P/7), body was sent to Medical College, Jabalpur for postmortem examination.

7. Dr. Abhishek Singh (P W-12) conducted postmortem examination of the body of deceased and found injuries including stab injuries on his body. He gave postmortem examination report (Ex.P/16).
8. On 8.5.2009, Sub Inspector Swarnjeet Singh Dhami (PW-23) arrested accused Dolly Ladiya and on her disclosure recovered a Nokia mobile from her kitchen.
9. On the information given by accused Rahul on 10.5.2009 a broken knife and his clothes were seized from his house. On the same day, two gold rings of deceased were recovered and seized from his shop vide seizure memo Ex.P/22. Inspector Dhami obtained the sample of the voice of accused Rahul in CD. He also seized the register of Blue Moon Hotel.
10. On 20.5.2009, Inspector Dhami interrogated accused Ashok Vishwakarma and on his information seized two mobile phones, a gold chain and a motorcycle from his possession. On the same day, on the information of accused Satish Parochi, he seized two mobiles and a broken gold bracelet from his possession vide seizure memo Ex.P/28.
11. On 1.8.2009, test identification parade in respect of seized gold rings, chain and bracelet was conducted by Tehsildar/Executive Magistrate Atul Singh (PW-9). Articles were identified by Raghuvir Singh, the father of deceased.
12. On investigation, it was found that Preeti Katariya (PW-4) introduced accused Rahul Rajak to accused Dolly Ladiya (PW-1). Dolly Ladiya then got acquainted with deceased Pankaj, accused Ashok Vishwakarma and Satish Parochi who were friends. All the accused persons hatched conspiracy to abduct Pankaj for obtaining ransom from his parents and also to commit his murder. To fulfill the said design, on 5.5.2009, at the insistence of accused Rahul, Dolly Ladiya called Pankaj and took him to Bhedaghat, where he was killed.
13. After obtaining call records of various seized mobile phones and completion of the investigation, charge sheet against accused persons including accused Dolly Ladiya was filed in the Court of Chief Judicial Magistrate, Narsinghpur. The case was then committed to the trial court.
14. During trial, on 3.11.2009 accused Dolly Ladiya made an application before the trial court seeking tender of pardon expressing her desire to become a witness in the case. By order dated 20.11.2009, trial court exercising its powers u/s 307 Cr.P.C. allowed that application and tendered pardon to her on the condition of her disclosing full account of the facts known to her in respect of the occurrence.
15. On charges being framed, accused persons abjured their guilt and pleaded false implication.
16. Learned trial judge upon trial, after appreciating the evidence on record, held accused persons guilty and convicted and sentenced them as aforesaid.
17. Aggrieved by their conviction and sentence, accused/appellants have filed

appeals before this Court, and since the sentence of death has been passed, the trial judge has made reference u/s 366 Cr.P.C. for conformation of the death sentence.

18. Learned counsel for the appellants submitted that there is no direct evidence in the case, the conviction of appellants has been based on circumstantial evidence including the evidence of approver Dolly Ladiya (PW-1). He submitted that the trial court misappreciated the evidence of Dolly Ladiya and committed error in placing reliance on it. The investigation in the case was defective. It was not proved that all the accused persons had conspired to abduct deceased for obtaining ransom. The recovery of the dead body and the ornaments of deceased at the instance of accused persons was not reliable. Shri R.S. Patel, learned counsel for accused Rahul Rajak submitted that the recovery of ransom money from the possession of Rahul was suspicious since his arrest was not made at the time of alleged recovery of money. In the alternative, learned counsel submitted that in the facts and circumstances of the case it was not a rarest of rare case calling for award of death penalty. On the other hand, Shri Umesh Pandey, learned Government Advocate and Shri Surendra Singh, learned senior advocate for the complainant, submitted that the evidence adduced by the prosecution was sufficient to bring home the charges against accused persons. Trial court committed no error in relying upon the evidence of approver Dolly Ladiya and on the evidence of recovery of various articles belonging to deceased at the instance of accused persons. They supported and justified the judgment of conviction and sentence of death passed by the trial court.

19. We have heard the submissions made by the learned counsel for the parties, perused the impugned judgment and the evidence on record carefully.

20. It has not been disputed that Pankaj, the deceased, has died and his death was homicidal. Sub Inspector Umesh Dubey (PW-22) stated that he recorded first information report (Ex.P/4) lodged by Smt. Nidhi Thakur, sister of Pankaj, that Pankaj had been abducted. Accused Rahul Rajak was brought to Police Station, Narsinghpur on 7.5.2009 by ATS team in the night At about 9.30 Rahul Rajak made a disclosure statement that he had thrown the dead body of Pankaj in Narmada river at Bhedaghat. He recorded the memorandum of information (Ex.P/19). Sub Inspector Swarnjeet Singh Dhami (PW-23) alongwith accused went to Bhedaghat where, at Saraswati Ghat, Shobharam (PW-5) and Prem Chand (PW-6) took out the dead body. Hemant Yadav (PW-10), a tenant of deceased, and brother-in-law of deceased viz. Sunil identified the said body of Pankaj. A memorandum (Ex.P/14) was drawn in this regard and before witnesses an inquest memorandum (Ex.P/7) was also recorded. Murg intimation reports (Ex.P/8 & P/9) were also recorded. Dead body of deceased was sent to medical college for postmortem examination. Dr. Abhishek Singh (PW-12) conducted the postmortem examination on 8.5.2009 and vide his report Ex.P/16 found his whole body distended having washer man skin over legs and palms. Lips and nostrils were eaten by aquatic animals. Tong and eyes were bulging out. Marbling

was present over the skin. Petrified froth with blood was coming out from nostrils. Following injuries were found on the body:-

1. Contusion over forehead 4" x 2 1/2 ".
2. Contusion irregular on antero lateral and middle part of leg 3"x 2 1/2".
3. Stab wound over right hypochondrium region 7" below from right nipple 3" x 1", elliptical in shape with margins clean cut. This wound had reached the abdomen cavity cutting liver and peritoneum.
4. Stab wound 8 1/2" below the right nipple 3" x 1", 4" lateral to first stab wound, direction lightly lowered down.

In the opinion of doctor, the injuries on the body of deceased were ante-mortem and homicidal in nature. The death of deceased had been caused due to haemorrhagic shock due to knife injuries in the abdomen. His death appeared to have been caused within two days before the postmortem examination.

21. From the above evidence, in our opinion, learned trial judge rightly found that the dead body was of Pankaj, he had died due to injuries, and his death was homicidal.

22. Now the question before this Court is that whether accused appellants abducted Pankaj for ransom, caused his death and with a view to conceal offence destroyed the evidence by throwing the dead body in river.

23. Krishna Thakur (PW-7), mother of deceased, stated that on 5th May 2009 her son Pankaj alongwith his friend Pradeep Dubey had gone to Jabalpur for servicing of his car. Until 4.00 pm he was in contact with her on phone, but he did not return in the evening. In the night, at about 12.00 O'clock, she received a call from some unknown person on her mobile from the mobile of Pankaj that Pankaj had been abducted and if she wanted his release, they will have to pay for it. She wanted to talk to Pankaj, but he informed that he had administered chloroform to him. She informed the above fact to her husband, her daughter Nidhi and son-in-law Abhishek Rajput, who lived in Dhanare Colony. She also asked her daughter not to come to her house as abductor had threatened to kill Pankaj if she informed anybody. Her relatives were informed by Abhishek Rajput. In the morning Abhishek and Nidhi came to her house. Again she received a call from the abductor making demand of Rs. 80 lacs for which she expressed her inability. After talks, deal was finalized for Rs. 30 lacs. Abductor asked her to send money by a train to Jabalpur. When money was arranged and was carried to Jabalpur by Abhishek Rajput, it was not picked up from the appointed place instead it was told by the abductor on phone that he did not take money because she had sent police also. Money was brought back. Thereafter police inspector Ritesh Sahu came to her house and alongwith her husband went to Jabalpur taking money in the jeep. Ritesh Sahu acted as driver of the jeep.

24. The evidence of Krishna Thakur (PW-7) finds corroboration from the evidence

of her husband Raghuvir Singh (PW-8), Ritu Tomar (PW-3) and son-in-law Abhishek Rajput (PW-11).

25. Nidhi Rajput (PW-2) stated that till 4.30 pm she was in contact with her brother on mobile. Thereafter, her mother Krishna Thakur informed her about the occurrence. On next day in the morning she talked to the Superintendent of Police, Narsinghpur on phone and informed about the incident. On his instructions she informed the incident on phone to Sub Inspector Umesh Dubey. On the basis of her information report (Ex.P/4) was recorded. This information was treated as first information report. Learned counsel for the appellants submitted that the information recorded by police officer on telephone could not be taken as first information report. In our opinion, the submission made by the learned counsel for the appellants cannot be accepted as the aforesaid information was not against any particular person and no names of accused persons were disclosed in it, but the investigation started on its basis. Apart from it, Nidhi Rajput stated that because of fear she lodged the report on telephone. In view of the fact that Pankaj was in the clutches of abductor, who had threatened to his mother not to inform the incident to anybody including police, else he would be killed, it was quite natural to inform the police without going to police station.

26. Raghuvir Singh Rajput (PW-8), the father of deceased, corroborated the narration of Krishna Thakur (PW-7) and stated that he had sent Rs. 30 lacs with son-in-law to Jabalpur, but the said money was not picked up by the abductor. Abhishek Singh (PW-11) also stated that he took Rs. 30 lacs to Jabalpur in two bags and on the instructions of abductor put the same near State Bank ATM opposite Railway Platform No. 1. From the evidence of these witnesses it has been established that deceased had been abducted and the abductor had demanded Rs. 30 lacs as ransom for his release.

27. Raghuvir Singh (PW-8) stated that on the demand of abductor he arranged for a scorpio jeep to take ransom money to Jabalpur. Ritesh Sahu (PW-21), sub inspector in ATS, stated that on the orders of senior officers, he contacted Superintendent of Police and Police Inspector of Kotwali, Narsinghpur and in the garb of driver of the scorpio jeep went with Raghuvir Singh to Jabalpur. He kept Rs. 30 lacs arranged by Raghuvir Singh in two bags containing Rs. 22 lacs and Rs. 8 lacs. According to him, on way, when abductor wanted to talk to driver of the jeep, he talked to him. On his instructions, he reached at Teen Patti square and put both the bags containing money on a handcart near the road. When he proceeded ahead, he kept an eye on the bags and informed the events to other members of the ATS team. After some time, a boy (Rahul Rajak) came on a motorcycle and picked up the bags. He followed that boy, who went to Blue Moon Hotel and parked his motorcycle. He carried bags in the hotel. Alongwith other members of team and witness Murad Ali, he raided the room of that boy, who disclosed his name to be Rahul Rajak.

28. Ritesh Sahu (P W-21) took search of Rahul and also the room of hotel. He

seized two bags containing Rs. 30 lacs and two mobile phones from the possession of accused Rahul. He also seized the motorcycle on which Rahul carried money to hotel, vide seizure memo Ex.P/11.

29. The evidence of Inspector Ritesh Sahu (PW-21) stood corroborated by the evidence of Murad Ali (PW-16) and Raghuvir Singh (PW-8).

30. Since accused Rahul gave no satisfactory answer about Pankaj, Ritesh Sahu brought him to Narsinghpur Police Station.

31. Learned counsel for the appellant Rahul contended that the evidence of aforesaid witnesses about the recovery of seizure of Rs. 30 lacs from the possession of accused Rahul was not reliable because the arrest of Rahul was not made then and there. He placed reliance on *Sadaram vs. State of M.P.-AIR 1974 SC 2294* and *Mohanlal Gangaram Gehani vs. State of Maharashtra-AIR 1982 SC 839*.

32. In case of *Sadaram (Supra)*, accused was though named in the first information report as an assailant, but was not arrested by the police till a day after the occurrence and there was no acceptable evidence against him of any eyewitness to the occurrence. Therefore, the Apex Court held that his name was inserted in FIR due to enmity. In the instant case, the situation is different. The accused was not named in the first information report, but the ransom money was recovered from him in the hotel and the seizure memo was prepared in the hotel, therefore, even if the formal arrest of accused Rahul was made subsequently when ATS team handed over his custody to the investigating officer of the case, no infirmity can be held to have been committed. In case of *Mohanlal (Supra)*, similarly, police though came to know the name of assailant, but did not take any step to arrest or to cause the arrest of any of the accused. The facts of instant case are quite different.

33. The evidence of Ritesh Sahu (PW-21) stood further corroborated from the evidence of Ajab Singh (PW-3), the manager of Blue Moon Hotel, who stated that a police inspector seized register of the hotel vide seizure memo Ex.P/18. In this register it was mentioned that on 7.5.2009 at 10.10 am Rahul Lunawat had taken a room. Ajab Singh identified accused Rahul in court as a person who had taken the room No. 304 in his hotel on rent. He also stated that Inspector Ritesh Sahu seized Rs. 30 lacs in two bags from Rahul.

34. Raghuvir Singh (PW-8) and Abhishek Singh (PW-11) further proved that they had kept cash of Rs. 30 lacs for payment as ransom in two bags in the house of Raghuvir Singh. In that regard memorandum (Ex.P/10) was drawn by Inspector Ritesh Sahu. The same cash in bags was taken to Jabalpur and was picked up by accused Rahul and ultimately seized from Rahul. In our opinion, it has been proved beyond doubt that the money arranged by Raghuvir Singh for payment as ransom to abductor was recovered from the possession of accused Rahul.

35. The next question is whether the dead body of Pankaj was recovered at the

instance of accused Rahul. According to Inspector Ritesh Sahu (PW-21), after recovery of money he brought accused Rahul and the bags of money to Police Station, Narsinghpur and handed over money and accused to Sub Inspector Umesh Dubey (PW-22), who was investigating the case. Umesh Dubey in the night of 7.5.2009 at about 9.30 interrogated Rahul whereupon he disclosed that he threw the dead body of Pankaj in Narmada river at Bhedaghat and that the Wagon R car MP-20-C A-6184 in which Pankaj had gone to Jabalpur was left by him on Raj Marg. A disclosure memo (Ex.P/19) was recorded in presence of Dipak Sahu (PW-14). Inspector Swarnjeet Singh Dhami (PW-23) deposed that on the basis of disclosure made by Rahul he went to Bhedaghat taking Rahul with him and got a search made for the body. Dead body of Pankaj was found in the river at Saraswati Ghat (Bhedaghat). A Murg intimation report (Ex.P/9) in that regard was recorded by him. The dead body was identified by Hemant Yadav (PW-10) and a memorandum of identification (Ex.P/14) was recorded. Evidence of Inspector Swarnjeet Singh stood corroborated by the evidence of Shobh Ram (PW-5) and Premchand (PW-6), who, on the requisition of police, took out the body from Narmada river and witnessed inquest. Murg intimation reports (Ex.P/8 and P/9) were signed by Premchand (PW-6).

36. Learned counsel for the appellant Rahul submitted that the recovery of dead body of deceased from Saraswati Ghat cannot be held to have been on the information given by accused Rahul because it was not made in his presence. In this regard, evidence of Inspector Swarnjeet Singh Dhami (PW-23) is significant, who deposed that on the basis of disclosure (Ex.P/19) made by accused Rahul, he went to Bhedaghat taking Rahul with him and got the dead body searched. When the body was found, a Murg (Ex.P/9) was recorded.

37. Even otherwise, the scope of discovery of an article from a river has to be appreciated in a different manner. It is common knowledge that a thing thrown in a river may not be found at the same place, as it might have travelled to some other place with the flow of water. The dead body thrown in the river may not be recovered at the time when it is being searched and it may appear after some more time. In these circumstances, if the body of deceased was recovered by other persons on the disclosure made by accused, it is to be deemed to have been recovered in consequence of the information given by accused. An accused, who made disclosure, cannot be made to sit near the river all the time till the body or article is recovered.

38. Shri R.S. Patel, learned counsel for accused Rahul placing reliance on the case of Bakshish Singh v. The State of Punjab-AIR 1971 SC 2016 submitted that the recovery of body at the instance of accused Rahul is not a conclusive circumstance to indicate that he committed murder of deceased.

39. In case of Bakshish Singh (supra) the only incriminating evidence against the appellant was his pointing the place where the dead body of deceased had been thrown. The Apex Court held it not to be a conclusive circumstance though it raised a strong suspicion against the appellant. It was observed that even if

appellant was not a party to a murder, he could have come to know the place where the dead body of deceased had been thrown. Further, from the fact that at the bank of river, where the dead body was thrown, the broken teeth and parts of human body were lying, therefore, any one, who saw those parts could have inferred that the dead body must have been thrown into the river near about that place. In our opinion, the facts of the instant case are clearly distinguishable.

40. The facts of the case of Jaharlal Das vs. State of Orissa- AIR 1991 SC 1388 cited by learned counsel for accused Rahul are also different wherein Apex Court observed that where the circumstance relied on by the prosecution that the accused and the deceased were last seen together was not proved beyond doubt nor the recovery of dead body at the instance of accused was proved nor it was mentioned in the inquest report as to how the body was recovered and no Panchnama u/s 27 of the Evidence Act of the recovery of the body was made, accused was entitled to acquittal on benefit of doubt.

41. In the present case, before the information given by accused Rahul, it was not in the knowledge of any one that the dead body of Pankaj was to be found in the river at Bhedaghat.

42. From the evidence adduced by the prosecution, we are satisfied that the dead body of Pankaj was recovered at the instance of accused Rahul.

43. Learned counsel for the appellants next submitted that the recovery of the ornaments from accused/appellants allegedly belonging to deceased is doubtful. Learned trial judge committed error in holding that the articles seized from accused persons belonged to deceased.

44. Inspector Swarnjeet Singh Dhami (PW-23) stated that on 10.5.2009 at about 4.00 pm accused Rahul disclosed that the knife used in commission of offence was kept by him in the balcony of his kitchen and two gold rings belonging to deceased were kept by him concealed in drawer of his shop. A memorandum (Ex.P/2) in this regard was recorded by him. On the same day, at about 4.30 pm, a knife was recovered from the house of Rahul and similarly two gold rings were seized from his shop viz. Sharda Jewelers. Memorandum of seizure (Ex.P/22) in respect of rings was drawn in presence of Dipak Sahu and Rakesh. Dipak Sahu (PW-14) supported the evidence of Inspector Swarnjeet Singh.

45. Swarnjeet Singh Dhami (PW-23) further deposed that on 20.5.2009 he interrogated accused Ashok Vishwakarma, who informed that the gold chain of deceased was kept in a box in his house. This information was recorded by him in presence of Rajkumar (PW-17) in memorandum (Ex.P/ 25). In consequence of that information, Ashok Vishwakarma produced the gold chain from his house, which was seized vide memorandum Ex.P/27.

46. According to Inspector Dhami (PW-23), accused Satish Parochi, on 26.5.2009, gave information about a gold bracelet of deceased, which was recovered in consequence of his information from a bag kept in his house. The

said information (Ex.P/26) and recovery/seizure (Ex.P/28) were recorded before witness Rajkumar (PW-17). Rajkumar (PW-17), the attesting witness of aforesaid memoranda (Ex.P/25, P/27, P/26 and Ex.P/28), corroborated the evidence of Inspector Swarnjeet Singh Dhami (PW-23). On examination of the statement of aforesaid witnesses, we find their evidence reliable in respect to recoveries of gold rings, gold chain and bracelet from the possession of accused/appellants.

47. Learned counsel for the appellants vehemently argued that it was not established that the articles seized from the accused persons belonged to deceased. Except Raghuvir Singh Rajput (PW-8), the father of deceased, and approver Dolly Ladiya (PW-1) none else identified the seized articles as the articles of deceased. The evidence of Dolly Ladiya (PW-1) was not reliable since her evidence had no corroboration from any prior test identification evidence.

48. On perusal of the evidence of Dolly Ladiya, we find that in the court she identified rings, bracelet and gold chain and stated that these articles were worn by the deceased. She had seen rings in the hand of deceased while he was driving the car. In cross-examination, she admitted that she had seen these articles in police station while she was in custody. Admittedly, she did not participate in any prior test identification parade. She admitted that she did not disclose to anybody that she could identify the said ornaments of deceased prior to her statement in the court. In the above circumstances, we do not find it safe to place reliance on the evidence of Dolly Ladiya (PW-1) in respect to identification of ornaments.

49. Raghuvir Singh Rajput (PW-8), the father of deceased, identified the aforesaid articles being that of his son. According to him, when Pankaj left his house, he was wearing the said articles. He identified the rings, gold chain and bracelet in test identification parade (Ex.P/13) because Pankaj used to wear these articles on his body and he used to see. Evidence of Raghuvir Singh Rajput (PW-8) finds corroboration from the test identification parade conducted by Tahsildar Atul Singh (PW-9). Atul Singh (PW-9) stated that on 1.8.2009 he conducted test identification parade of the rings, gold chain and bracelet in meeting hall of Tahsil Office. Raghuvir Singh correctly identified these articles.

50. Learned counsel for the appellants submitted that the aforesaid articles were recovered/seized in the month of May 2009, but they were put up for test identification parade on 1.8.2009. In view of the unexplained delay and the fact that the ornaments were of common pattern which were commonly available in the market, the evidence of test identification done by Tahsildar could not be relied upon. He placed reliance on the case of *Bharat vs. State of M.P.* (2003) 3 SCC 106. We are unable to agree with the submission made by the learned counsel for the appellants; firstly for the reason that the defence did not seek any explanation from the investigating officer for the delay and the fact that the circumstances in the case of *Bharat* (supra) were different. In that case the stolen articles put for identification were the ornaments of common pattern like silver ornaments (Toda and Khaghwari) not of any particular design, but were

commonly available in the market and generally worn by village ladies. In that case, some portion of paper was also stuck to the recovered ornaments, which was visible at the time of identification.

51. Learned counsel for the appellants pointed out that the gold chain, which was recovered from accused Ashok contained some white metal also, but this fact was not stated by Raghuvir Singh (PW-8). Merely because no details of the design of chain or other articles were given by this witness, who happened to be the father of deceased, his evidence cannot be discarded. He categorically stated that these articles were identified by him because deceased used to wear these articles. It is true that in his police statement (Ex.D/1) he did not say that he would identify the bracelet, chain and rings of deceased, but on perusal of Ex.D/1 we find that he disclosed that after recovery of the body he came to know that the aforesaid articles were removed from the body of his son. It is also significant to note that initially it was suspected to be a case of abduction for ransom and not of robbery of the articles belonging to deceased. In the fact situation of the instant case, it is quite natural for Raghuvir Singh (PW-8) to have identified the articles belonging to his son. We hold that the finding recorded by the trial court that the articles recovered from the possession of accused/appellants belonged to and were in possession of the deceased is just and proper.

52. Learned counsel for the appellants placing reliance on *Sanwat Khan and Another Vs. State of Rajasthan*, *Hukam Singh Vs. State of Rajasthan*, *Nagappa Dondiba Kalal Vs. State of Karnataka*, and *Joga Gola Vs. State of Gujarat*, submitted that merely on the basis of recovery of articles belonging to deceased it could not be presumed that accused/appellants abducted and committed murder of deceased. The incident is said to have taken place on 6.5.2009, but the articles belonging to deceased were recovered on 10.5.2009, 20.5.2009 and 26.5.2009. Therefore, at the most accused persons could be held liable u/s 411 of the Indian Penal Code.

53. In case of *Sanwat Khan (supra)* the Apex Court held that "No hard and fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murderer." In our opinion, the facts of the instant case are clearly distinguishable. In the present case there appears no room for suspicion that the articles belonging to deceased were stolen either before or after the death of deceased. The articles were on the body of deceased when he was killed.

54. In case of *Hukam Singh (supra)*, the Apex Court observed that something more would be required to connect the accused with the murders than mere possession of ornaments and other articles belonging to deceased because it was quite possible that the accused may have had nothing to do with the murder and he might have merely stolen the ornaments and other articles belonging to

deceased after murders were committed by some others. With due respect, this precedent does not help appellants since murder of deceased was not committed in his residential house as in case of Hakam Singh.

55. In case of Nagappa Dondiba (supra), the conviction of accused rested entirely on the evidence of recovery of some gold ornaments at the instance of accused. Apex Court observed that there was nothing to connect the accused with the murder of deceased. In these circumstances, it was held that accused could be convicted u/s 411 of the Indian Penal Code as a receiver of stolen property on the basis of presumption of Section 114 of the Evidence Act. In the case in hand, the prosecution case is not based only on recovery of the articles belonging to deceased, but also on the evidence of Dolly Ladiya (PW-1), who left the deceased with accused persons soon before he was killed. It is also significant to note that in case of Nagappa Dondiba, the appellant was acquitted by the sessions judge, but in an appeal filed by the State before the High Court, the acquittal was set aside and the appellant was convicted.

56. The facts of the case of Joga Gola (supra) are entirely different. In this case two deceased had gone to the fields with buffaloes and did not return. It was found from the evidence that the buffaloes did not return, but were seized from the possession of the accused. The Apex Court held that since buffaloes belonged to deceased persons, the accused could not escape from conviction u/s 411 IPC though they could not be convicted for murder because it was quite possible that accused may have got hold of the buffaloes from some other fields and tried to steal them away.

57. Learned counsel for the appellants placing reliance on Mustkeem @ Sirajudeen Vs. State of Rajasthan, submitted that disclosure of a fact alone would not automatically lead to conclusion that the offence was committed by accused. Burden lies on the prosecution to establish close link between discovery of material object and its use in commission of offence. We are in no disagreement with the proposition laid down by the Apex Court. The recovery of articles belonging to and in possession of deceased at the time of his murder, at the instance of accused, certainly establishes close link of accused in the commission of offence.

58. Learned counsel for the appellants next contended that the trial court committed serious error in placing reliance on the evidence of approver Dolly Ladiya (PW-1) about the conspiracy, motive and the fact of last seen of deceased with the accused persons. Her evidence was discrepant and contradictory. There was no independent corroboration of her evidence. She made improvements in stating that accused Rahul wanted to obtain Rs. 80 lacs from Pankaj and that she had left Bhedaghat in an auto instead on motorcycle with accused Ashok Vishwakarma. Placing reliance on the decisions rendered by Apex Court in Bhiva Doulu Patil Vs. State of Maharashtra, , Lt. Commander Pascal Fernandes Vs. The State of Maharashtra and Others, , Piara Singh Vs. The State of Punjab, Ram Narain Vs. State of Rajasthan, Ravinder Singh Vs. State of Haryana, and Narayan

Chetanram Chaudhary and Another Vs. State of Maharashtra, learned counsel further submitted that there should be corroboration of the evidence of approver in material particulars for each accused and that the court tendering pardon to any person must know the nature of the evidence of the person seeking conditional pardon.

59. In case of Bhiva Patil (supra), the Apex Court observed that "The combined effect of Sections 133 and 114, Illustration (b) may be as follows: According to the former, which is a rule law, an accomplice is competent to give evidence and according to latter which is rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of accomplice cannot be said to be illegal yet the courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particular. There should be corroboration of the approver in material particulars and qua each accused."

60. In Piara Singh (supra) the Apex Court held that it is well settled that the appreciation of approver's evidence has to satisfy double tests. His evidence must show that he is a reliable witness and that is a test which is common to all the witnesses. If this test is satisfied, the second test which still remains to be applied is that approver's evidence must see sufficient corroboration.

61. In Ram Narain (supra) the Apex Court held that court should evaluate the approver's evidence and if the same is found uninspired and unacceptable then corroboration would be futile.....There is real danger of his telling a story true in general outline, but containing some untruth which he can easily work into the story. It is for this reason that the courts as a matter of prudence and caution anxiously look for some corroboration to satisfy their conscience that the approver's testimony which is clearly admissible is also worthy of belief.

62. In Ravinder Singh (supra) Apex Court observed that approver must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be natural and probable catalogue for events that had taken place and secondly the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt.

63. On perusal of record, we find that Dolly Ladiya (PW-1) was charge sheeted as accused in the crime. After the charge was framed on 5.11.2009, while in jail, she submitted an application in the trial court seeking tender of pardon on the condition of giving evidence in the case. Learned counsel of the accused before the trial court opposed the said application on the ground that the statement of Dolly Ladiya should, first, be recorded u/s 164 Cr.P.C. Learned trial judge in view of no objection of public prosecutor, held that there was no necessity for getting the statement of Dolly Ladiya recorded u/s 164 Cr.P.C. for exercising the powers u/s 307 Cr.P.C. and allowed the application subject to condition that she shall disclose the truth of all the concerned circumstances against herself and all the

persons concerned who were involved in the crime.

64. Learned counsel for the appellant submitted that before the special judge acts to tender pardon, he must know the nature of the evidence the person seeking conditional pardon is likely to give and the nature of his complicity in the crime. In case of Lt. Commander Pascal (*supra*) the Apex Court, with reference to Section 8(2) of the Criminal Law (Amendment) Act, observed that there was nothing in the language of that section to show that the special judge must be moved by the prosecution. He may consider an offer by an accused. Before the special judge acts to tender pardon, he must, of course, know the nature of the evidence the person seeking conditional pardon is likely to give, the nature of his complicity and the degree of his culpability in relation to the offence and in relation to the co-accused. To determine whether accused's testimony as an approver is likely to advance the interest of justice, the special judge must have material before him to show that what nature of that testimony will be. Apex Court further observed that ordinarily it is for the prosecution to ask that a particular accused may be tendered pardon, but even where the accused directly applies to the special judge, he must first refer the request to the prosecuting agency. Since the power which judge exercises is not of his own behalf, but on behalf of prosecuting agency, it must, therefore, be exercised only when the prosecution joins in the request.

65. From the order sheet of the trial court i.e. 20.11.2009 it appears that public prosecutor expressed no objection on the application filed by accused Dolly Ladiya and the learned trial judge after considering it tendered conditional pardon to her. It is also significant to note that this pardon was granted at the stage when charges had already been framed against accused Dolly Ladiya. The provisions of sub-section (4) (a) of Section 306 Cr.P.C. are attracted only at a stage when the case is not committed to the court of session. After commitment, the pardon has to be granted by the trial court subject to the conditions specified in sub-section (1) of Section 306 Cr.P.C., i.e. approver's making full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. Section 307, in its present form, does not contemplate the recording of the statement of approver twice (*Narayan Chetanram Chaudhary and Another Vs. State of Maharashtra*,

66. In the light of above proposition of law, we find that trial judge committed no error in tendering pardon to approver Dolly Ladiya.

67. Dolly Ladiya (PW-1) stated that accused Rahul Rajak introduced her to Satish Parochi and Ashok Vishwakarma. He also introduced her to deceased. On 5.5.2009, Rahul Rajak asked her to bring deceased to Bhedaghat. When she asked about the purpose, he told to her that he will obtain Rs. 80 lacs from his parents out of which he will give Rs. 10 lacs to her. She called deceased, and alongwith him went to New Bhedaghat in his Wagon R. At New Bhedaghat, a lonely place, she found all the three accused persons present in advance. They

called deceased and asked her to go back. According to her, accused Rahul had given her a mobile with sim to talk with deceased. When she was asked to go back, the sim of this mobile was taken out from the mobile by accused Ashok. Later on, she came to know from newspaper that deceased was murdered at the place where she had left him. On 8.5.2009, she was arrested by the police. On interrogation by the police, she disclosed that the mobile set given by Rahul was with her. In this regard, a disclosure memo (Ex.P/1) was recorded and the said mobile was seized from her. This witness though identified the ornaments/articles recovered from the possession of accused persons in the court, but we, for the reasons given in para 48 of this judgment, have already held this part of her evidence unworthy of reliance. Learned counsel for the appellants submitted that it would not be safe to rely on rest of her evidence firstly for the reason that there was no previous statement of this approver witness from which her veracity could have been tested; at least her statement u/s 164 Cr.P.C. ought to have been recorded, and secondly that her evidence suffered with omissions and contradictions on material particulars of the case. Though she stated that she went back home from Bhedaghat by auto, but this fact was found missing in her statement (Ex.P/1) recorded by police by way of disclosure memo u/s 27 of the Evidence Act. Similarly, the fact that accused Rahul Rajak told to her that he will obtain Rs. 80 lacs from the parents of deceased was also not mentioned by her in the said statement. We are not impressed by the submission made by the learned counsel for the appellants. This witness was tendered pardon at the stage when charges had already been framed before the sessions court. There was no occasion for having recorded her statement u/s 161 Cr.P.C. by the police. It was also not possible to have recorded her statement u/s 164 Cr.P.C., since a confession or statement could be recorded by a Magistrate in the course of investigation or at any time afterwards before the commencement of the enquiry or trial. We, however, find substance in the submission made by the learned counsel for the appellants that the statement of disclosure made by approver Dolly Ladiya u/s 27 of the Evidence Act could be treated as a previous statement recorded u/s 161 Cr.P.C., and that the learned trial judge committed error in holding that she could not be confronted with the said statement (Ex.P/1) because it was recorded u/s 27 of the Evidence Act. In Ex.P/1, Dolly Ladiya (PW-1) stated that on 5.5.2009 she went back from Bhedaghat to her home with Ashok Vishwakarma on his motorcycle. Inspector Swarnjeet Singh Dhami (PW-23) proved the statement of Dolly Ladiya (Ex.P/1) recorded u/s 27 of the Evidence Act. He also stated that he verified the fact that accused Ashok Vishwakarma had taken Dolly to her house from Bhedaghat. Learned counsel of Ashok Vishwakarma submitted that by the fact that accused Ashok Vishwakarma went back from Bhedaghat alongwith Dolly Ladiya it became doubtful that he was involved in commission of murder of deceased. We find no substance in the submission because it has not been stated by Dolly Ladiya (P W-1) that after reaching Bhedaghat she went back with Ashok Vishwakarma immediately.

68. It is true that Dolly Ladiya (PW-1) in Ex.P/1 did not say that accused Rahul

told to her about obtaining Rs. 80 lacs from the parents of deceased, but, in our opinion, this omission cannot be held to render her evidence unreliable because the purpose for which this statement was recorded was the disclosure of a mobile set in her possession. It could not be expected to have contained the whole of the prosecution story. Further, the fact that motive of accused Rahul was to obtain ransom from the parents of deceased finds corroboration from the fact that he made a demand of Rs. 80 lacs initially but later obtained Rs. 30 lacs on the pretext of ransom from them. From the evidence of Dolly Ladiya, it is revealed that accused Rahul Rajak used her as a bait for calling deceased to Bhedaghat. All the three accused persons and the deceased were residents of Narsinghpur, but they did not themselves call deceased to Bhedaghat. This clearly indicated their connivance and intention to abduct the deceased. Though Dolly Ladiya stated that her relations with deceased were only professional, but the manner in which she called him and persuaded him to go to Bhedaghat where he ultimately was murdered indicated that her relations with deceased were some what more than mere professional. From the evidence of Dolly Ladiya it is clearly established that the deceased was last seen alive with all the three accused persons.

69. Learned counsel for the appellants submitted that the trial court committed error in holding that the evidence of Dolly Ladiya indicated conspiracy between accused persons to commit murder and obtain ransom from his parents. There is seldom direct evidence of conspiracy. Mostly the conspiracies are proved by the circumstantial evidence. The existence of conspiracy and its objective have to be inferred from the circumstances and the conduct of accused persons. The incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn (Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra,

70. Learned counsel for the appellants reiterated that the evidence of Approver cannot be accepted unless it finds corroboration on material particulars. The Apex Court in case of Sitaram Sao @ Mungeri Vs. State of Jharkhand, observed that "The rule is that the necessity of corroboration is a matter of prudence except when it is subject to dispense with such corroboration. Although S. 114 illustration (b) of Evidence Act provides that the court may presume that the evidence of an accomplice was unworthy of credit unless corroborated, "may" is not "must" and no decision of Court can make it must.....As regards nature of corroborative evidence that is necessary, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent witness in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it. The independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the

testimony of the accomplice or complainant that the accused committed the crime. The corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. The corroboration need not be direct evidence that the accused committed the crime."

71. On a careful examination of the evidence of Dolly Ladiya (PW-1) in the light of above propositions we find that her evidence with respect to the fact that accused Rahul wanted to obtain money from the parents of deceased stands corroborated from the evidence of Inspector of ATS Ritesh Sahu (PW-21), Raghuvir Singh (PW-8) and Murad Ali (PW-16) about the recovery of Rs. 30 lacs delivered to him by way of Ransom. The fact that deceased was last seen by her together with accused persons at Bhedaghat finds corroboration from the fact that his dead body was recovered from Bhedaghat on the information given by accused Rahul Rajak and further from the fact that ornaments/articles which were in the possession of deceased were recovered from the possession of accused persons. In these circumstances, we find the evidence of Approver Dolly Ladiya (PW-1) trustworthy.

72. From the evidence on record, following circumstances stand proved beyond reasonable doubt:

- (1) Accused Rahul gave mobile with sim to Dolly Ladiya (PW-1) to keep contact with deceased.
- (2) On the instructions of accused Rahul Rajak, Dolly Ladiya called the deceased and took him to Bhedaghat.
- (3) Though accused persons were known to deceased and were residents of Narsinghpur where the deceased resided, yet they did not themselves call deceased to join them at Bhedaghat.
- (4) All the three accused persons were present at Bhedaghat when Dolly Ladiya took deceased there.
- (5) Accused Ashok Vishwakarma took back sim of the mobile of Dolly Ladiya at Bhedaghat which was used by her for calling deceased.
- (6) Deceased, who was left in the company of accused persons, was thereafter never seen alive.
- (7) Dead body of deceased was discovered from river at Bhedaghat on the information given by accused Rahul Rajak.
- (8) Gold rings, gold chain and the bracelet of deceased were recovered from the possession of accused persons.
- (9) A demand of ransom was made from the parents of deceased. This demand was made from the mobile of deceased.
- (10) On delivery of Rs. 30 lacs in two bags, the money was picked up by accused

Rahul Rajak.

(11) The ransom money was recovered and seized from the possession of accused Rahul Rajak.

73. In our opinion, on the basis of above circumstances, learned trial judge committed no error in holding that the chain of circumstances proved by the prosecution unerringly indicated that the accused/appellants under a conspiracy by deceitful means induced deceased to go to Bhedaghat and caused his death in order to compel his parents to pay ransom and further that they dishonestly misappropriated the property possessed by deceased at the time of his death and threw his body in river Narmada for causing disappearance of the evidence of offence. We accordingly affirm the conviction of appellants Rahul Rajak, Ashok Vishwakarma and Satish Parochi under Sections 364A/ 34, 302 r/w Section 120B, 201 and 404/ 34 of the Indian Penal Code.

74. As far as the question of death sentence to appellants is concerned, learned counsel for the appellants submitted that in the facts and circumstances of the case it cannot be held to be a rarest of rare case calling for death penalty. Per contra, learned counsel for the State and also the learned counsel for the complainant submitted that the offence committed by accused is so mean and heinous that it falls clearly in the ambit of a rarest of rare case justifying capital punishment.

75. It is true that the accused kidnapped deceased for extracting ransom from his parents in a preplanned manner and even after deceased was murdered, accused Rahul Rajak made them to believe that deceased was alive and would be released if they pay ransom, but, in our opinion in the facts and circumstances of the case it cannot be held to be a rarest of rare case. No doubt the act of accused persons is inhumane, yet there was nothing particularly brutal, grotesque or dastardly in manner of its execution. For judging whether a case falls in the category of "the rarest of rare cases", the Apex Court in case of *Wakkar and Another Vs. The State of U.P.*, observed that the decision of the High Court to award life imprisonment alone and not the death sentence was correct as it considered "For awarding death sentence: There is no direct evidence as to the manner in which the gruesome murder has taken place. It is not possible to discern and arrive at any definite conclusion as to the role played by each of the accused in the commission of dastardly crime. No doubt they committed the crime in cold blood, but did it quite stealthily. The entire case rests on the circumstantial evidence. The High Court having taken all relevant factors rightly came to the conclusion that the case is not the one which falls in the category of "the rarest of rare cases". In the instant case, the age of two accused persons viz. Rahul Rajak and Satish Parochi is about 25, 28 years. Nothing has been brought on record to indicate the probability that the accused would commit criminal acts of violence as would constitute a continuous threat to society and that there is no probability that they cannot be reformed and rehabilitated. It is apparent that accused persons in this materialistic society could not control their

greed for money by indulging in nefarious activities. In the facts and circumstances of the case and particularly in view of the above mitigating circumstances we find that the case is not one which falls in the category of "the rarest of rare cases" calling for death penalty.

76. For the aforesaid reasons:

1) The criminal Reference No.2/2011 made by the trial court for confirmation of death sentence awarded to accused Rahul Rajak, Ashok Vishakarma and Satish Parochi is rejected. Death sentences awarded to them are not confirmed.

2) In Criminal Appeal No. 1780/2011, Criminal Appeal No. 1793/2011 and Criminal Appeal No. 1818/2011 conviction of accused/appellants under Sections 364A/ 34, 302 r/w Section 120B, 201 and 404/ 34 of the Indian Penal Code is affirmed. However, death sentence awarded to aforesaid appellants is reduced to the imprisonment for life. Sentences awarded under Sections 201 and 404/ 34 of the Indian Penal Code are also affirmed.

77. Subject to modification as indicated above, appeals fail and are dismissed. Copy of this Judgment be kept in the records of Criminal Appeal No. 1780/2011, Criminal Appeal No. 1793/2011 and Criminal Appeal No. 1818/2011.