

(2012) 12 DEL CK 0116

In the Delhi High Court

Case No : Criminal A. 744 of 2011, Criminal M.B. 816 of 2012 and Criminal M.A. 7175 of 2012 and Criminal A. 835 of 2011

Manoj Kumar

APPELLANT

Vs

The State
 Chaman Lal @ Kake Vs State (Govt. of N.C.T.)

RESPONDENT

Date of Decision : 10-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 432

Evidence Act, 1872 — Section 106, 114, 27, 65B, 78

Penal Code, 1860 (IPC) — Section 120A, 120B, 201, 302, 364

Citation : (2013) 1 AD 11 : (2013) 196 DLT 243 : (2013) 133 DRJ 686

Hon'ble Judges : Sanjiv Khanna, J;S.P. Garg, J

Bench : Division Bench

Advocate : Rajat Aneja and Ms. Sumati Jumrani, in Criminal A. 744/2011, Criminal M.B. 816/2012 and Criminal M.A. 7175/2012, Mr. Naveen Gaur in Criminal A. 835/2011 and Mr. Siddhartha Singh Ranghuvanshi with Mr. A.P.S. Jadaun in Criminal A. 687/2011 and Criminal M.A. 15630/2012, for the Appellant; Sanjay Lao, APP in all Appeals, for the Respondent

Judgement

S.P. Garg, J.—Manoj Kumar (A-1), Chaman Lal @ Kake (A-2) and Manish Kumar @ Monu (A-3) have preferred the appeals against

the judgment dated 11.03.2011 and order on sentence dated 16.03.2011 of Addl. Sessions Judge in SC No. 21/2009 by which they were

convicted for committing offences punishable under Sections 120-B, Section 364/364A/302/201 IPC read with Section 120-B and sentenced to

undergo imprisonment for life with fine. They were further directed to undergo actual sentence of imprisonment for 40 years before grant of any

remission. On 07.04.2005, Sandeep Kumar @ Sonu left his house at about 5.00 or 6.00 P.M. stating that he would return within ten minutes.

However, he never returned. Efforts were made to trace him but in vain. On 08.04.2005, Balbir Singh lodged missing person report (Ex. PW-1/A) and informed the police that Sandeep had a mobile No. 9868202872 but was switched off. On 11.04.2005, Balbir Singh received ransom calls on his mobile No. 9313944225 and the caller demanded a sum of Rs. 5,00,000/- for the release of his son. He informed the police and handed over invoice of the mobile phone and the insurance papers. SI S.S. Sandhu recorded Balbir Singh's statement (Ex. PW-1/A), prepared rukka (Ex. PW-20/D) and lodged First Information Report. On 13.04.2005 and 14.04.2005, Balbir Singh again received ransom calls from the mobile of his son Sonu. The caller threatened him that if the ransom amount was not paid, kidney of his son would be sold to recover the money. On 15.04.2005, investigation of the case was taken over by Insp. B.R. Mann. SI S.S. Sandhu collected call details of IMEI No. 35252400425395 on 14.04.2005 from the office of ACP Panjabi Bagh. He also collected address of the SIM used in the mobile and found it issued in the name of Rattan Lal R/o D-3, Shiv Ram Park. He provided the call details and the address of SIM to Insp. B.R. Mann. A-3 was arrested from D-3, Shiv Ram Park, Nangloi. He disclosed that SIM No. 9811627626 (HUTCH) used in the mobile instrument of the deceased was in the name of his father Rattan Lal. A purse containing Rs. 800/-, driving licence, SIM No. 9868202872 (Dolphin) and a mobile phone make Nokia-1100 with SIM No. 9811627626 was recovered in his personal search vide seizure memo Ex. PW-19/B. Pursuant to A-3's disclosure statement (Ex. PW-19/D), A-1 was arrested from his house no. 36, Extension-4, Nangloi. He was also interrogated and his disclosure statement (Ex. PW-19/G) was recorded. A-1 informed the police that after kidnapping Sandeep, they had committed his murder and had thrown the body in an abandoned room near police station Dharuhera and could recover it. He also implicated A-2 in the kidnapping and murder of Sandeep. It led to A-2's arrest from his house 34B Extension-4 Nangloi. He also made similar disclosure statement and volunteered to recover the body and clothes of the deceased. The police set out with the accused for the recovery of the body. The accused pointed out an abandoned building of Irrigation Department at NH-8 about 3-4 Kilometres ahead of police station Dharuhera and recovered decomposed body of Sandeep. Inspector B.R.

Mann conducted inquest proceedings after associating the local police and sent the body for post-mortem examination. Dr. S.K. Duttarwal

conducted post-mortem examination of the body. Deceased's clothes were recovered by A-2 from a godown 8/2, Kamruddin Nagar, Nangloi.

A-1 recovered the motorcycle bearing No. DL 4SA U3578 make Karizma (Hero Honda) from the back street of House No. 11, Extension-4,

Nangloi. During the course of investigation, the investigating officer collected call details from various service providers and recorded statements of

the witnesses conversant with facts. Exhibits were sent to Forensic Science Laboratory and reports were collected. After completion of the

investigation, a charge-sheet was submitted against A-1 to A-3 for committing the aforesaid offences. The accused were duly charged and brought

to trial.

2. The prosecution examined twenty-three witness in all to substantiate the charges. A-1 to A-3 were examined u/s 313 Cr. P.C. They pleaded

false implication. The appellants examined DW-1 (HC Surender) and DW-2 (B.K. Sharma) in defence.

3. Learned counsel for the appellants vehemently assailed the findings of the Trial Court and urged that it did not appreciate the evidence in its true

and proper perspective and fell into grave error in relying upon the testimonies of PW-1 (Balbir Singh), PW-7 (Lakhi Ram Verma) and PW-8

(Raghubir Singh) without ensuring their credibility as they were related to the deceased and were interested witnesses. The Trial Court, urged the

counsel, overlooked major discrepancies and inconsistencies in the prosecution's case. The reliance on call details without compliance of Section

65B to procure and prove the electronic record was erroneous. The appellants had no reasons to ask for ransom when Sandeep was no more

alive. A-2's disclosure statement was inadmissible as nothing new was recovered or discovered pursuant to it. Recovery of clothes of the

deceased is doubtful. PW-4 (Sunil Kumar) did not support the prosecution on this aspect. The counsel highlighted contradictions in the testimonies

of the prosecution witnesses to create doubt about the recovery of the dead body at the instance of the accused. The local police was not informed

prior to the recovery of the body.

4. Learned Addl. Public Prosecutor while supporting the judgment urged that it

does not call for interference. Elaborate reasons have been given in the impugned judgment to establish the guilt of the accused. The oral testimony is coupled with electronic evidence of Nodal Officers from various service providers who proved the call records in the court. Minor discrepancies or contradictions are of no consequence to discredit the prosecution case as a whole. The police was able to lay hand upon A-3 when PW-1 (Balbir Singh) received ransom calls from the mobile set of his son. Pursuant to the disclosure statement of the accused, the police was able to recover the body of the deceased from a remote place near police station Dharuhera. Recovery of the body is a strong incriminating circumstance. The recovery of the mobile phone and SIM card of the deceased from the possession of A-3 without any plausible explanation connects him with the crime. Disclosure statement of A-2 was recorded within five minutes after A-1's arrest and is relevant u/s 27 of Evidence Act. The dead body was recovered pursuant to the joint disclosure statements of the accused.

5. We have considered the submissions of the parties and have examined the Trial Court record. At the outset, it may be mentioned that case of the prosecution hinges upon circumstantial evidence alone.

(A) Homicidal death

6. Homicidal death of Sandeep is not under challenge. The dead body was recovered from an abandoned room within the jurisdiction of PS.

Dharuhera. PW-6 (Dr. S.K. Dhattarwal) conducted post-mortem examination of the body on 16.04.2005 and proved post-mortem report (Ex.

PW-6/A). Cause of death was strangulation by ligature. There was a transverse ligature mark on the neck completely encircling it. On 05.07.2005,

after examining the ligature material i.e. white bra he was of the opinion that strangulation was possible with that ligature material vide report Ex.

PW-6/B. Time since death was ascertained about ten days. Undoubtedly, it was a case of culpable homicide.

(B) Recovery of the dead body

7. Sandeep Kumar (since deceased) did not return after he went out on 07.04.2005 at about 5/6.00 P.M. stating that he would return within ten

minutes. He was searched throughout the night but his whereabouts were not known. On 08.04.2005, PW-1 (Balbir Singh), his father lodged

missing person report (Ex. PW-1/A). He attempted to contact Sandeep on mobile No. 9868202872 but it was switched off. He (PW-1-Balbir

Singh) received ransom calls on 11.04.2005, 13.04.2005 and 14.04.2005 on his mobile No. 9313944225 and the caller demanded a sum of Rs.

5,00,000/- for the release of his son. Sandeep's body was recovered on 15.04.2005 from a room situated on the bank of Sadi river pursuant to

the disclosure statements of the accused at their instance. The appellants have vehemently denied the recovery of the body by them. On scrutinizing

the evidence and documents, we are of the firm view that the prosecution has succeeded to establish that deceased's body was recovered from

that room on the disclosure and statement of A-1. On 15.04.2005, A-3 was apprehended from his House No. D-3, Shiv Ram Park and was

found in possession of Hutch sim No. 9811627626 in the name of his father Rattan Lal which was used by him. He was also found in possession

of a purse containing Rs. 800/-, driving licence, sim bearing No. 9868202872 and mobile phone make Nokia-110 of sky blue colour with sim No.

9811627626. He was interrogated and in his disclosure statement (Ex. PW-19/D), A-3 elaborated that A-1 and A-2 were responsible for

kidnapping and murder of Sandeep. He opted to get them arrested. Thereafter, A-1 was arrested from his house and his disclosure statement (Ex.

PW-19/G) was recorded. Consequent to his disclosure statement, the police apprehended A-2 from his house at 34-B Extension, Nangloi and

recorded disclosure statement (Ex. PW-19/J). They confessed that after kidnapping and murder of Sandeep, they had thrown the body in an

abandoned room in the area of police station Dharuhera and could recover it.

8. Further case of the prosecution is that thereafter, the accused (A-1 to A-3) led the police to road No. NH-8 (Jaipur Highways) about 3-4

kilometers ahead of police station Dharuhera. From there, they took the police to an abandoned building of Irrigation Department and pointed out

a room without door where they had thrown Sandeep's body. They entered the room where Sandeep's decomposed body was lying without

clothes except an underwear on it. A bra was found encircled in the deceased's neck. PW-1 (Balbir Singh) identified the body. Thereafter, PW-

22 (Insp. B.R. Mann) went to police station Dharuhera and vide application mark PW-19/K intimated the recovery of the dead body. PW-SI

Anshi Lal and PW-ASI Nand Lal reached the spot. Scene of the crime was photographed. Insp. B.R. Mann prepared pointing out cum recovery

memo of the body. He conducted inquest proceedings and sent the body for post-mortem examination.

9. Recovery of the body from the room of Irrigation Department is not under challenge. The appellants however, emphasized that the recovery

was not done at their instance. Indisputably, A-3 was arrested from his House No. D-3, Shiv Ram Park on 15.04.2005 and his disclosure

statement (Ex. PW-19/D) led to A-1's arrest from his house No. 36, Extension-4, Nangloi. A-3 did not give details of the place/spot from where

dead body of Sandeep could be recovered. A-1 in the confessional statement, gave graphic details as to how and under what circumstances,

Sandeep was kidnapped and murdered. He also disclosed the place where the body was thrown after the murder. A-1 volunteered to point out

the said place and recover the body. Apparently, A-2 was not in the custody of the police at that time. In the disclosure statement of A-1, the

police had discovered the fact that Sandeep's dead body was thrown in a room of Irrigation Department and he (A-1) could recover the same.

The police did not proceed immediately for the recovery of the body. They set out to apprehend A-2 and arrested him from his house at the

instance of A-1 after some time. He in his disclosure statement volunteered to recover deceased's body from the said room. In our view,

recovery/discovery of this fact in the disclosure statement (Ex. PW-19/J) of A-2 is not admissible in evidence as the police already knew and was

aware of A-1's disclosure statement about the "place" where the dead body was thrown and could be recovered. For the "fact" which was

already in the knowledge of the police, the disclosure statement of A-2 was irrelevant. It is not a case of simultaneous disclosure on or about the

same time. The law is fairly well settled that the admissibility of the evidence u/s 27 of the Indian Evidence Act relates to the fact discovered on the

information volunteered by the accused. The authorship of concealment and existence of such concealment within the exclusive knowledge of the

accused is the criteria. If the fact discovered relates to the authorship of concealment and exclusive knowledge of the accused, that would be

relevant and admissible. u/s 27 of the Evidence Act it is only the information which is first given that is admissible and once a fact has been

discovered in consequence of information received from a person accused of an offence, it cannot be said to be rediscovered in consequence of

information received from another accused person. The prosecution is required to adduce evidence to prove as to which of the accused gave the

information first. There must be clear, unimpeachable evidence as to independent and authentic statements of the nature referred to in Section 27,

Evidence Act, having been made by several accused persons, either simultaneously or otherwise. Section 27 has to be strictly construed and it

refers only to a "discovery" that is made as a result of the statement of "one" particular individual and it does not contemplate the proof of

successive recoveries of the same thing being proved as a result of successive statements by different accused persons. In the case of AIR 1945

235 (Oudh) the court held that:-

Section 27 ought to be construed strictly. The use of the word "'a person'" in singular, in Section 27, is somewhat significant. The word was used in

singular designedly because the joint statement of a number of persons, cannot be said to be an information received from any particular one of

them. When a fact is discovered in consequence of information received from one of several persons charged with an offence, and when others

give like information, it is impossible to treat the discovery as having been made from the information received from, each of them.

10. In AIR 1925 407 (Nagpur) it was held as under:-

Once property has been discovered in consequence of information received from a suspected person, it cannot be re-discovered in consequence

of information received from another suspected person. It is only the information that was given by the first person and which led to the actual

discovery which may be proved under the terms of Section 27 of the Evidence Act.

11. A thing cannot be discovered several times. If, in consequence of an information, given by one of the several accused persons, the incriminating

material is discovered, it does not remain to be discovered within the meaning of Section 27, Evidence Act, in consequence of any subsequent

information, given by any other. That would amount to discovery of a thing already "discovered". In the instant case, there is cogent evidence that

in the disclosure statement of A-1 recorded earlier to the disclosure statement of

A-2, the police discovered the fact that the dead body of the deceased was lying in the abandoned room near police station Dharuhera and could be recovered by him (A-1).

12. We are conscious that joint/simultaneous disclosures though improbable, are not per se inadmissible. The Supreme Court in State (N.C.T. of

Delhi) Vs. Navjot Sandhu @ Afsan Guru, , held :

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 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 into 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 stand point 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 preparatory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel.

13. However, in the instant case the prosecution did not assert that A-1 and A-2 made joint/simultaneous disclosure statements. It is accepted

position that when disclosure statement (Ex. PW-19/G) was made by A-1 in police custody, A-2 was not under arrest. After recording A-1's

disclosure statement (Ex. PW-19/G) at the police station, the police set out to apprehend and arrest A-2 from his house. After his arrest from his

house, A-2 was interrogated and confessional statement (Ex. PW-19/J) was made. Apparently, there was time gap between the arrest of A-1 and

A-2. When A-1 furnished the required information in his disclosure statement, A-2 was not in the custody of the police at the police station.

Moreover, we have reasons to note that only A-1 pointed out the place from where the dead body was recovered.

14. The witnesses have given inconsistent version as to at whose instance the body of the deceased was recovered. The scene of incident was

photographed. PW-12 (P.K. Madan) took eight photographs Ex. PW-12/B1 to B8 (Negatives Ex. PW-12/P1 to P8). The photographs reveal

that A-1 alone pointed out the room from where the body was recovered. There is no similar photograph of A-2 and A-3 pointing towards the

said room. The Investigating Officer did not offer any plausible explanation as to why only A-1's photo appears in the photographs pointing

towards the place of recovery. If and in case A-2 and A-3 were with them, the cause and reason for their absence in the photographs is

unfathomable and not expounded. Presence of A-2 and A-3 at the place of recovery therefore is a grave suspect.

15. Seizure memo Ex. PW-1/A (pointing out cum recovery of dead body memo) bears signatures of A-1 alone. It mentions that the place was

pointed out by A-1 and the body was recovered at his instance. There is no averment that A-2 and A-3 were present at the time of recovery and

it was recovered at their instance also. The Investigating Officer did not explain as to why signatures of A-2 and A-3 are missing on the seizure

memo (Ex. PW-1/A). In the application mark PW-19/K to the SHO police station Dharuhera, Distt. Rewari, Insp. B.R. Mann, the Investigating

Officer claimed recovery of body at the instance of A-1 only. Had A-2 and A-3 been present at the time of recovery. PW-22 (Insp. B.R. Mann)

must have mentioned that in the application mark Ex. PW-19/K. PW-1 (Balbir Singh) who accompanied the police implicated only A-1 and A-2

for the recovery of the body. He did not claim A-3's presence there at that time. PW-7 (Lakhi Ram Verma) and PW-8 (Raghubir Singh) were

specific that A-1 pointed out the body. PW-15 (SI Anshi Lal) from police station Dharuhera gave entirely different version and deposed that both

A-1 and A-2 were brought by Delhi police at police station Dharuhera and thereafter, they pointed out the place where the dead body was

thrown. PW-19 (SI Satish Kumar) & PW-22 (Insp. B.R. Mann) deposed that the body was recovered by A-1 to A-3. It transpires that the

witnesses have given inconsistent and contradictory statements as to how many accused led the police team to the place of recovery and at whose

pointing out the body was recovered.

16. The documents/memos prepared at the spot regarding recovery etc. do not bear signatures of A-2 and A-3. They are not visible in the

photographs taken at the spot. The prosecution did not adduce cogent and clinching evidence to establish that the body of Sandeep was recovered

at the instance of A-2 and A-3 pursuant to their disclosure statements. Of course, the police was able to prove beyond doubt that it was

recovered from an abandoned room hitherto unknown to the police at the instance of A-1 when he opted to recover it in his disclosure statement.

17. Recovery of the dead body by A-1 is a vital and material incriminating circumstance against him. Prior to it, the family members of the

deceased and the police were not aware about the fate of kidnapped boy. PW-1 (Balbir Singh) was receiving ransom/threatening calls till

14.04.2005. Only after the arrest and disclosure of A-1, the police discovered that the kidnapped boy was done to death and his body was lying

in a room of Irrigation Department. A-1 led the police and recovered the body from a remote place about 60 kilometers away from Delhi. A-1 did

not explain as to how else he had known that deceased's body was lying in an abandoned and deserted room. The said place was not accessible

to the public at large.

18. The Supreme Court while discussing the law on Section 27, 106 and 114 of

the Evidence Act in State of Maharashtra Vs. Suresh, held as under:-

We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

19. In the case of Suresh Chandra Bahri Vs. State of Bihar with Gurbachan Singh, the Supreme Court while discussing the essentiality of Section 27 of Evidence Act held as under:-

71. The two essential requirements for the application of Section 27 of the Evidence Act are that (1) the person giving information must be an accused of any offence and (2) he must also be in police custody. In the present case it cannot be disputed that although these essential requirements existed on the date when Gurbachan Singh led PW 59 and others to the hillock where according to him he had thrown the dead body of Urshia but instead of the dead body the articles by which her body was wrapped were found. The provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because if such an information is further fortified and confirmed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false. In the present case

as discussed above the confessional statement of the disclosure made by the appellant Gurbachan Singh is confirmed by the recovery of the incriminating articles as said above and, therefore, there is reason to believe that the disclosure statement was true and the evidence led in that behalf is also worthy of credence.

72. In the light of the facts stated above we are afraid the two decisions mentioned above and relied on by the learned counsel for the appellants

have no application to the facts of the present case and do not advance the case of the appellants challenging the discovery and seizure of the

incriminating articles discussed above. In Nari Santa the accused of that case was charged for the theft and it is said that in the course of

investigation the accused produced certain articles and thereafter made a confessional statement and it was in these facts and circumstances it was

held that there was no disclosure statement within the meaning of Section 27 as the confessional statement was made only when the articles were

already discovered having been produced by the accused. Similarly the decision rendered in Abdul Sattar also does not help the appellants in the

present case. In the case of Abdul Sattar recovery of wearing apparels of the deceased is said to have been made at the instance of the accused of

that case more than three weeks after the occurrence from a public place accessible to the people of the locality and, therefore, no reliance was

placed on the disclosure statement and recovery of the wearing apparels of the deceased. But in the present case it was soon after the arrest of

appellant Gurbachan Singh that he took the Police Officer while in custody to the place where according to him he had thrown the dead body of

Urshia wrapped by the incriminating articles. Those articles were not found lying on the surface of the ground but they were found after unearthing

the Khad gaddha dumping ground under the hillock. Those articles were neither visible nor accessible to the people but were hidden under the

ground. They were discovered only after the place was pointed out and it was unearthed by the labourers. No fault therefore could be found with

regard to the discovery and seizure of the incriminating articles.

(C) Recovery of clothes of the deceased

20. It is alleged that A-2 recovered the deceased's clothes from a godown of PW-4 (Sunil Kumar) at 8/2, Kamruddin Nagar, Nangloi. The

prosecution relies on the testimony of PW-4 (Sunil Kumar), who proved seizure memo Ex. PW-1/F but revealed that on 15.04.2005 the godown

was not searched in his presence. On 15.04.2005, his signatures were obtained on blank papers. The key of the godown used to remain with a

shopkeeper in front of his godown. Apparently, PW-4 gave inconsistent and contradictory version. The Addl. Public Prosecutor did not cross-

examine/re-examine him. No document regarding A-1's employment with PW-4 (Sunil Kumar) and the nature of his duty was collected and

proved. It is not clear how A-2 had access to the godown. It is unbelievable that A-2 would carry clothes of insignificant value and conceal them in

PW-4 (Sunil Kumar)'s godown. The body was identifiable even in the absence of these clothes and the assailants had not attempted to completely

disfigure the face of the deceased to conceal his identification. PW-1 (Balbir Singh) identified articles (Ex. P2 to P6) without there been any

specific mark of identification on it. The deceased had left the house in his absence on 07.04.2005. PW-7 (Lakhi Ram Verma) a chance witness

did not elaborate how and under what circumstances, A-2 recovered the articles from the godown. PW-8 (Raghubir Singh) omitted to state that

articles of the deceased were recovered at the instance of A-2. The Investigating Officer did not explain why PW-8 was not joined in the

investigation at that time. No local person was joined in the recovery proceedings. The recovery of clothes by A-2 on 15.04.2005 from the

godown where A-1 was employed with PW-4 (Sunil Kumar) is doubtful. There was no purpose for the articles to be concealed after bringing it

from the place of incident covering a distance of 60 kilometers. The ligature material Ex. P1 was not taken away by the accused. The recovery of

these articles cannot be considered a vital incriminating circumstance against A-2.

(D) Recovery of motorcycle

21. It is alleged that on 16.04.2005, A-1 recovered motorcycle bearing No. DL 4SA U3578 make Karizma (Hero Honda) seized vide seizure

memo Ex. PW-1/G. The motor cycle (Ex. P1) was allegedly used for travelling to Dharuhera. Seizure memo Ex. PW-1/G reveals that the motor

cycle (Ex. P1) was recovered from an open space (back street) accessible to the public at large. No independent public witness was associated at

the time of recovery of the motorcycle. It is not explained as to why the recovery

could not be effected on 15.04.2005 when A-1 was in police custody and the place of recovery was nearby. PW-4 (Sunil Kumar) was categorical to state that the motorcycle used to remain in possession of employees of the godown and he had not seen who had taken the motorcycle and it was in the godown on 15.04.2005. He did not know when the police removed the motorcycle. The Investigating Officer did not explain to whom the motorcycle belonged and how and when it came to the exclusive possession of A-1. PW-1 (Balbir Singh) did not depose if the motorcycle was recovered in the presence of PW-4 (Sunil Kumar) on 16.04.2005. Beside this, recovery of motorcycle (Ex. P1) is not at all incriminating as no evidence was collected to establish that the deceased was seen in possession of the motorcycle. No witness was examined to ascertain if on the day of kidnapping or soon thereafter, the accused or the deceased had travelled on the motorcycle. PW-4 (Sunil Kumar), the owner of the godown did not prove exclusive possession of the motorcycle with A-1. No finger prints of the accused were detected on the motorcycle.

(E) Call details

22. Undoubtedly on 07.04.2005, Sandeep Kumar @ Sonu went missing and PW-1 (Balbir Singh) lodged missing person report (Ex. PW-1/A)

on 08.04.2005. It is also not under challenge that Sandeep had a mobile make Nokia 1100 (IMEI No. 3525240042539505) with SIM No.

9868202872. When PW-1 (Balbir Singh) attempted to contact him on mobile, it was switched off. PW-10 (Rakesh Soni) proved that mobile No.

9868202872 belonged to PW-1 (Balbir Singh), deceased's father. PW-5 (Surat Singh) proved bill (Ex. PW-5/A) by which mobile Nokia 1100,

IMEI No. 352554004253954 was purchased for a sum of Rs. 4,000/- by the deceased. Insurance certificate is Ex. PW-5/B. On 11.04.2005,

13.04.2005 and 14.04.2005, PW-1 (Balbir Singh) received ransom calls and the caller demanded a sum of Rs. 5,00,000/- for the release of his

son Sandeep. The caller did not permit him to have conversation with his son Sandeep on phone. Calls were received from the Sandeep's mobile

number. PW-1 conveyed information to the police and his statement was recorded. He elaborated that on 11.04.2005, during day time, the

ransom call was received before the registration of the FIR. PW-20 (SI S.S. Sandhu) corroborated his version and testified that on 11.04.2005

complainant Balbir Singh came to him and apprised him about the receipt of telephone calls from the mobile of his son. He recorded his statement

(Ex. PW-1/A); prepared rukka (Ex. PW-20/D) and lodged First Information Report. He further deposed that complainant Balbir Singh apprised

him about the ransom calls received on 13.04.2005 and 14.04.2005 also. The ransom calls put the police machinery into motion. PW-20 (SI S.S.

Sandhu) collected call details of IMEI No. 35252400425395 on 14.04.2005 from the office of ACP Punjabi Bagh where internet facility was

available and collected the address of the SIM 9811627626 used in the said instrument. It was found that it was D-3, Shiv Ram Park and the

owner was Rattan Lal. He provided call details (Ex. PW-20/F) and the address to Inspector B.R. Mann. He also moved an application (Ex. PW-

20/G) to MTNL to provide the call details of the mobile bearing IMEI No. 35252400425395.

23. Rattan Lal" house no. D-3, Shiv Ram Park, Nangloi was raided; A-1 came out of the house. On enquiry about Hutch SIM No. 9811627626,

he told that it was in the name of his father but was used by him. Since this SIM was used in the mobile set of the kidnapped child Sandeep, A-3

was apprehended and arrested vide memo Ex. PW-19/K.A. purse containing Rs. 800/-, driving licence, Dolphin SIM bearing No. 9868202872

and mobile phone make Nokia-1100 of sky blue gray colour having SIM No. 9811627626 was recovered. The accused was interrogated and he

made disclosure statement (Ex. PW-19/D).

24. It is not in controversy that Hutch SIM No. 9811627626 was issued to Rattan Lal, A-3's father. PW-17 (Anuj Bhatia) brought computer

generated record of mobile No. 9811627626 and deposed that it was in the name of Rattan Lal, D-3, Shiv Ram Park, Nangloi vide ownership

document Ex. PW-17/A. PW-23 (Ajay Kumar) deposed that A-3 was having mobile No. 9811627626 of Hutch and he used to have

conversation with him on that number. PW-23 (Ajay Kumar) had business and family relations with A-3 and had no ulterior motive to make false

statement. In the statement u/s 313 Cr. P.C., A-3 admitted that mobile number 9811627626 was in the name of his father Rattan Lal. A-3 did not

examine Rattan Lal in defence to explain that this mobile number was not used during the relevant period either by him or A-3.

25. The prosecution examined PW-10 (Rakesh Soni) to prove call details (Ex. PW-10/C) for the period from 30.03.2005 to 14.04.2005

received from mobile number 9868202872. In the cross-examination, he clarified that he handed over Ex. PW-10/A to Ex. PW-10/C to the I.O.

after seeking oral permission from DJM. An e-Mail letter was also sent on the ID of the Police Officer. PW-11 (Col. A.K. Sachdeva), Nodal

Officer, Reliance, produced original record of mobile No. 9313944225. PW-1 (Balbir Singh) was its subscriber. Call details (PW-11/B) for the

period from 06.04.2005 to 16.04.2005 were also proved. Photocopy of the post paid customer application form with its annexure is Ex. PW-

11/A (collectively). The accused did not challenge the testimony regarding the ownership and call details of the mobile phone number. Call details

(Ex. PW-11/B) dated 11.04.2005 show that two calls were received from mobile number 9868202872 that day. On 13.04.2005 and

14.04.2005 also two calls were received by PW-1 (Balbir Singh) on his mobile from the said mobile number of his son. The corresponding call

details (Ex. PW-10/C) corroborate that mobile No. 9868202872 was used to call to PW-1 (Balbir Singh) on 11/13/14.04.2005. Location of the

tower from where the six calls were made was Z-10 and all the calls were made from the same place. It stands established that SIM card in

possession of the deceased was used to make ransom calls to PW-1 (Balbir Singh).

26. PW-17 (Anuj Bhatia) from Hutch brought the computer generated record of mobile No. 9811627626 in the name of Rattan Lal. He also

proved the call details for the period w.e.f. 01.04.2005 to 12.05.2005 (Ex. PW-17/B) and compared it with the original record brought by him.

He deposed that as per the record there was an incoming call on mobile No. 9811627626 from landline No. 01203969321 and it was made at

1901 and its duration was 73 seconds. As per record, the location of the mobile No. 9811627626 was in the area of cell ID 1968 at Karol Bagh,

New Delhi. As per Ex. PW-17/B, the mobile No. 9811627626 remained in operation in mobile set having IMEI No. 3525460076221106 for the

period from A to A in Ex. PW-17/B. On 09.04.2005, this number remained operated in mobile set having IMEI No. 3525240042539405 till

14.04.2005 as per portion B to B in Ex. PW-17/B. It proves beyond doubt that from 09.04.2005 to 14.04.2005 SIM No. 9811627626 was

used in hand set/instrument with IMEI No. 3525240042539505. The mobile make Nokia-1100 Ex. P1 produced before the Court had the said

IMEI number and it belonged to Sandeep Kumar, the victim. The call details Ex. PW-10/C (of deceased Sandeep Kumar), PW-11/B (of

complainant Balbir Singh) and PW-17/B (of A-3/Rattan Lal) establish that during the period from 09.04.2005 to 14.04.2005 these three numbers

remained connected for making and receiving calls. It further stands established that the towers from which the calls were routed were situated at

Nangloi and Karol Bagh area during 09.04.2005 to 14.04.2005 as per Ex. PW-17/B.

27. PW-17 (Anuj Bhatia), Nodal Officer, Vodafone Mobile Services Ltd. brought the original record of mobile No. 9811627626 and call details

for the period from 01.04.2005 to 12.05.2005 (Ex. PW-17/B). He compared the call details with the original record brought by him. He

elaborated after looking at first column (MSISDN) of Ex. PW-20/F, mobile handset was used by two mobile numbers i.e. 9899776612 and

9811627626. First mobile No. 9899776612 was used on 07.03.2005 thereafter, the handset was used by mobile No. 9811627626 from

09.04.2005 onwards up to 13.04.2005. He further clarified that mobile No. 9899776612 was issued in the name of Mr. Dekiom, R/o 18, Daulat

Ram Hostel, Delhi University, second mobile No. 9811627626 was in the name of Rattan Lal, R/o D-3, Shiv Ram Park, Nangloi, Delhi.

28. Learned counsel for the appellants assailed call details of IMEI No. 3525240042539505 (Ex. PW-20/F) and highlighted various

inconsistencies and discrepancies. It was pointed out that there was no call detail for the period from 07.03.2005 to 09.04.2005. The call details

comparison of Ex. PW-20/F and Ex. PW-10/C show that on 30.03.2005, 04.04.2005, 06.04.2005 and 07.04.2005, IMEI No.

3525240042539505 was used by the deceased. They argued that no authenticity can be attached to the computer generated document (Ex. PW-

20/F) and there was possibility of its manipulation. They demonstrated that documents DX1, DX2 and DX3 could be created and generated. They

also pointed out that there are blanks in the call details record (Ex. PW-11/B) from 15.04.2005 to 16.04.2005. They challenged the admissibility

of these call details u/s 65-B of the Indian Evidence Act.

29. We have examined the call details in the light of objections of the appellants to their admissibility but find no merits. The Trial Court has dealt with all these objections minutely in para Nos. 34, 35 and 36 of the impugned judgment and we have no reasons to deviate from it. The prosecution collected call details (Ex. PW-20/F) pertaining to IMEI No. 3525240042539505 at the earliest even prior to the arrest of the accused. The prosecution examined the concerned Nodal Officers to prove the call details provided by them during investigation. The Nodal Officers from various service providers brought original record in the court to prove the computer generated documents made available to the police during investigation. They were cross-examined at length. These service providers had no ulterior motive to manipulate original record to favour the prosecution. Minor difference about the time of call/duration does not affect the authenticity of the call details obtained during investigation. The Trial Court relied upon the judgment State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, .

30. It is established that mobile instrument in possession of deceased Sandeep after his kidnapping was used by A-3 with SIM No. 9811627626 (in the name of his father Rattan Lal). At the time of arrest, A-3 was found in possession of both SIM Nos. 9811627626 and 9868202872 (of the deceased). The ransom calls were made from the mobile/instrument IMEI No. 3525240042539505 of the deceased. It was heavily for A-3 to explain as to how and under what circumstances the mobile make Nokia-1100 having IMEI No. 3525240042539505 and SIM No. 9868202872 of the deceased came in his possession and when. These peculiar facts were in his exclusive knowledge and u/s 106 of the Evidence Act, the burden to prove was upon him. However, A-3 did not explain in his 313 Cr. P.C. statement as to when and how he came into possession of the SIM and mobile/instrument making Nokia-1100 IMEI No. 3525240042539505. He did not come up with any defence as to how SIM No. 9811627626 of his father Rattan Lal was used in the mobile/instrument of deceased Sandeep. A-3 even did not examine Rattan Lal in his defence to demolish the prosecution version.

31. Recovery of the SIM and mobile of the deceased from A-3 and making of calls from that mobile/instrument using SIM of his father Rattan Lal

is a strong incriminating circumstance against A-3 to establish that he conspired with co-accused to plan kidnapping for ransom.

32. Call details of mobile No. 9811627626, reveal that this sim was used in mobile Instrument bearing IMEI No. 35252400425395 from 9th

April, 2005 till 14th April, 2005. No calls were made from Sim for mobile No. 9811627626 between 6th April, 2005 to 9th April, 2005 between

13.18 Hrs to 19.01 Hrs. During the period 2nd April, 2005 till 6th April, 2005, the said sim card was used in mobile phone bearing IMEI No.

35254600762211. As noted above, telephone number 9811627626 was procured by and was allotted to Rattan Lal, father of A-3, by mobile

service provider Hutch. There is incontrovertible evidence on record that the said number was being used by A3. There is also incontrovertible

evidence that the deceased Sandeep Kumar had a mobile instrument by IMEI No. 35252400425395. Sandeep Kumar had been missing since

5.00/6.00 PM on 7th April, 2005 and w.e.f. 9th April, 2005 at 19.01 Hrs. A-3 was using the said instrument with IMEI No. 35252400425395

(See Ex. No. PW17/B). Mobile No. of Sandeep 9868202872 was used between 7th April, 2005 till 14th April, 2005, as per details given

below:-

33. The mobile number 9313944225 belongs to Balbir Singh, father of Sandeep. In the call details provided by MTNL Service provider for

number 9868202872 (Ex. PW10/C), the IMEI No. of 2 phones in question is not indicated. Call details of Instrument having IMEI No.

35252400425395 provided by Hutch Cellular Limited, mark PW20/F for the period between 7th March, 2005 to 13th April, 2005, reveal that

between the period 9th April, 2005 till 13th April, 2005, the said phone was used from time to time.

34. In Saju vs. State of Kerela (Crl. A. No. 699/1998) the Supreme Court held as under:

To prove the charge of criminal conspiracy the prosecution is required to establish that two or more persons had agreed to do or caused to be

done, an illegal act or an act which is not illegal, by illegal means. It is immaterial whether the illegal act is the ultimate object of such crime or is

merely incidental to that object. To attract the applicability of Section 120B it has to be proved that all the accused had the intention and they had

agreed to commit the crime. There is no doubt that conspiracy is hatched in private and in secret for which direct evidence would rarely be available. It is also not necessary that each member to a conspiracy must know all the details of the conspiracy. This Court in *Yash Pal Mittal Vs.*

State of Punjab, held:

The offence of criminal conspiracy u/s 120A is a distinct offence introduced for the first time in 1913 in Chapt. V-A of the Penal Code. The very

agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the

conspiracy as long as they are co-conspirators in the main object of the conspiracy. There may be so many devices and techniques adopted to

achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real

end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but

there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be

committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must

be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the

conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the

culpability of those others when they are associated with the object of the conspiracy. The significance of criminal conspiracy u/s 120A is brought

out pithily by this Court in *Major E.G. Barsay Vs. The State of Bombay*, thus:

The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act

agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may

comprise the commission of a number of acts. u/s 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law.

Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could

not be convicted separately in respect of each of the offences has no relevancy in

considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may be liable.

35. In the present case, specific overt act of A-3 was highlighted and proved whereby he made call to PW-1 (Balbir Singh), father of the victim and threatened him on various dates to pay Rs. 5,00,000/- for the release of the victim or else his kidney would be sold to realize the amount. The ransom calls made by A-3 alerted the police and they were successful to nab him on the basis of the electronic evidence. A-3 was found in possession of mobile set make Nokia 1100 and the Hutch SIM No. 9811627626 of the deceased with him. The mobile set/instrument of the deceased was used in making calls using the SIM number of the deceased and No. 9811627626 of his father. All these facts and circumstances establish beyond doubt that A-3 was aware about the kidnapping and murder of the victim and was in constant touch with co-accused. His disclosure statement led to the arrest of A-1 who recovered the dead body of the victim from a remote place in consequence of his disclosure statement. A-3 actively participated in the commission of the crime.

(F) Recovery of chappal/shoes

36. It is pointed out by the counsel for the appellants that in Ex. PW-20/B (wireless message) flashed on 09.04.2005 it was described that the deceased was wearing blue colour chappals. No such chappals have been recovered. The prosecution has proved the recovery of sports shoes at the instance of A-2. In our view, this minor discrepancy does not cause dent in the prosecution case. PW-1 (Balbir Singh) specifically mentioned in DD No. 9A recorded on 08.04.2005 (Ex. PW-20/A) that Sandeep Kumar @ Sonu was wearing sports shoes. It appears that due to inadvertence the official who flashed the wireless message Ex. PW-20/B erroneously mentioned that the deceased was wearing blue colour chappals. PW-3 (HC Suresh) proved DD entry (Ex. PW-20/A) and was not cross-examined by the accused. As discussed above, the homicidal death of deceased Sandeep is not under challenge. So recovery of the shoes or chappals is of no consequence.

(G) Conclusion

37. In the light of the above discussion we find no merit in the appeals preferred

by A-1 and A-3 and maintain their conviction. The prosecution, however, failed to adduce cogent, reliable and clinching evidence against A-2 for committing the crime in conspiracy with A-1 and A-3. No incriminating material was recovered from A-2's possession or at his instance. He did not make any ransom call to the father of the victim, no article of the deceased was recovered from his possession. The body of the deceased was not found at his behest. The evidence against him is very scanty to record his conviction. He deserves benefit of doubt and is acquitted. Crl. A. 835/2011 is accordingly allowed. A-2 be released forthwith if not required to be detained in other case. Bail bond and surety bond, if any, furnished on behalf of A-2, shall stand discharged.

38. The Trial Court ordered the convicts to undergo actual imprisonment for 40 years before remission could be considered. We find no reasonableness in the said directions. A-1 and A-3 have been sentenced to undergo imprisonment for life. The right to grant remission is governed by the provisions of Section 432 Cr. P.C. which vests the said power with "appropriate government". The power to grant remission is a matter of policy and it is for the executive branch of the government to decide as to when, to what extent and in what manner remission is to be granted. The law governing remission is Statutory. The stage for the exercise of this power is post-judicial. There was no material before the Trial Court to put restrictions upon the "appropriate government" to consider remission on any ground whatsoever before 40 years of actual imprisonment. We accordingly modify the order on sentence and delete the said directions.

39. Crl. A. 744/2011 and Crl. A. 687/2011 stand disposed of in the above terms. Trial Court records be sent back forthwith.

40. Crl. M.B. 816/2012 & Crl. M.A. Crl. M.A. 7175/2012 in Crl. A. 744/2011

In view of the orders passed above, the applications are disposed of as having become infructuous.

Crl. M.A. 15630/2012 in Crl. A. 687/2011

Since the accused is in custody, the FD furnished by the surety before the trial court at the time of his bail/interim bail, if any, be released to the surety as per rules.

Application stands disposed of.