

Raj Kumar Vs. State

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Court : Delhi

Decided On : Apr-20-2015

Judge : G. S. Sistani

Appellant : Raj Kumar

Respondent : State

Advocate for Def. : Ms. Nitika Sharma

Advocate for Pet/Ap. : Mr. K. Sunil

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on 28th January, 2015 Judgment delivered on 20th April, 2015 % + CRIMINAL APPEAL No.366/2011 RAM KISHAN . APPELLANT Through : Mr. K. Sunil, Advocate and Mr. Satya Narayan, Advocate Versus STATE & ORS RAJ KUMAR ...RESPONDENTS Through : Mr. Feroz Khan Ghazi, APP for the State. Mr. Sumeet Verma, Advocate and Mr. Amit Kala, Advocate for respondent No.2. Ms. Nitika Sharma, Advocate for respondent Nos. 3, 4 and 5. + CRIMINAL APPEAL No.582/2012 .. APPELLANT Through : Mr. Sumeet Verma, Advocate and Mr. Amit Kala, Advocate for appellant. Versus STATE RESPONDENT Through : Mr. Feroz Khan Ghazi, APP for the State. CORAM : HONBLE MR. JUSTICE G. S. SISTANI HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL JUSTICE SANGITA DHINGRA SEHGAL, J.

1. These appeals arise out of a judgment dated 14.01.2011 passed by the learned Additional Sessions Judge acquitting the respondent No.4 Mohan and respondent No.5 Neetu (in Crl. A. 366/2011) and on Crl. Appeal No.366/2011 orders on quantum dated 19.01.2011 whereby respondent No.3/Rakesh (in Crl. A. 366/2011) was sentenced for a period of imprisonment already undergone i.e. five years for committing the offence under Section 387 of the Indian Penal Code and sentencing respondent No.2/Raj Kumar @ Bhola (Appellant in Crl. A. 582/2011) to undergo life imprisonment and a fine of Rs.2,000/- each for committing the offences punishable under Section 364A of the Indian Penal Code read with Section 120B of the Indian Penal Code and Section 302 of the Indian Penal Code read with Section 120B of the Indian Penal Code and in default of payment of fine to undergo simple imprisonment for three months and further to undergo rigorous imprisonment for five years and a fine of Rs.1,000/- for committing the offence under Section 201 of the Indian Penal Code read with Section 120B of the Indian Penal Code and in default of payment of fine to undergo simple imprisonment for one and half months. All sentences are to run concurrently. Appellant Raj Kumar @ Bhola (Respondent No.2 in Crl. A. No.366/2011) also preferred an appeal No.Crl. A. No.582/2011 against the aforesaid conviction and sentence passed by the learned Trial Court.

2. Briefly stated, the incident that eventually culminated into the death of the Ashok @ Bunty, son of Ram Kishan, appellant in Crl. A. No.366/2011 and the consequent prosecution of the appellant/father are that on 06.12.2005, Ashok @ Bunty went missing and did not return home; that his family members made every efforts to trace him but all in vain; that on 07.12.2005, they made a call at 100 number about the Crl. Appeal No.366/2011 same; that on 08.12.2005, appellant lodged a complaint with Police Station - Kalyan Puri, Delhi with respect to his missing son; that on 08.09.2005, his younger son gave him a jacket of his missing son which contained a ransom letter pasted with a tape on the pocket of the jacket demanding Rs.10 Lacs for release of his missing son; that he along with his brother went to the police station and narrated the entire incident which was reproduced in writing and an FIR under Section 364A Indian Penal Code was registered; that on 12.12.2005, appellant received the shirt of his missing son containing another ransom letter threatening to kill his son in case the police was

informed; that the second letter was also brought to the notice of the police and appellant reached the place mentioned in the ransom letter but none turned up at the spot; that on 16.12.2005, police recovered a dead body in the drain near Sabzi Mandi, Ghazipur in a decomposed condition which the appellant could not identify as that of Ashok @ Bunty; that on 15.01.2006, Jai Prakash, brother of the appellant apprehended accused Rakesh when he threw the third ransom letter at his door; that accused Rakesh was handed over to the police along with the third ransom letter wherein a demand of Rs.15 Lacs was made; that on interrogation by the police, accused Rakesh disclosed that he had thrown the ransom letter on the asking of accused Raj Kumar @ Bhola; that accused Rakesh led the police to Village Bhouvapur, District Ghaziabad to the house of Mohan; that on pointing of accused Rakesh, accused Raj Kumar @ Bhola was apprehended and on his pointing out a dairy with some missing papers CrI. Appeal No.366/2011 was recovered; that on interrogation, accused Raj Kumar @ Bhola disclosed that he along with accused Neetu and Mohan kidnapped and killed Ashok @ Bunty; that they took Ashok @ Bunty to Subzi Mandi, T-Point, NH-24 and killed him and threw his body in the drain; that accused Raj Kumar led the police to the spot and got recovered two stones with bloodstains on it along with chappal and pant of the deceased; that on 07.01.2006, both accused Neetu and Mohan were apprehended from Village Nand Gram, District Ghaziabad; that all articles of his missing son were identified by the appellant during the Test Identification Parade; that DNA report established the identity of dead body as of Ashok @ Bunty; that after investigation, charge sheet under Section 364A/302/201/120B of Indian Penal Code was filed in court.

3. To bring home the guilt against the accused persons, prosecution examined 23 witnesses in all. All the incriminating evidence was put to the accused persons while recording their statement under Section 313 of Code of Criminal Procedure wherein they denied all the allegations and alleged false implication and claimed to be tried. CrI. A. No.366/2011 Respondent No.3/Rakesh 4. Appellant/Ram Kishan, father of the deceased is represented by Mr. K. Sunil, Advocate and respondent Nos. 3/Rakesh, respondent No.4/Mohan and respondent No.5/Neetu are represented by Ms. Nitika Sharma, Advocate. CrI. Appeal No.366/2011 5. Mr. K. Sunil, Learned counsel for the appellant/Ram Kishan while arguing against

respondent No.3/Rakesh submitted that respondent No.3/Rakesh entered into criminal conspiracy with respondent No.2/Raj Kumar @ Bhola, respondent No.4/Mohan and respondent No.5/Neetu and played a major role in the kidnapping and killing of the deceased and is liable to be convicted under Section 364A/302/201/120B of Indian Penal Code whereas as he has only been convicted under Section 387 of Indian Penal Code.

6. Mr. K. Sunil, learned counsel for the appellant leading us through the evidence pointed out that on 15.01.2005, respondent No.3/Rakesh was apprehended by PW2 Jai Prakash, uncle of deceased at the gate of his house when he was dropping the third ransom letter Ex.P1. Respondent No.3/Rakesh made a disclosure statement Ex.PW2/B and led the police party to Village Bhouvapur, District Ghaziabad, UP and got arrested respondent No.2/Raj Kumar @ Bhola. On the basis of disclosure statement Ex.PW2/B made by respondent No.3/Rakesh, a diary was recovered from which accused Raj Kumar @Bhola had torn pages and wrote the ransom letter Ex.P1. In this background, it is contended that respondent No.3/Rakesh had conspired with respondent No.2 Raj Kumar @ Bhola to kidnap Ashok @ Bunty and was fully aware of the fact that Ashok @ Bunty had already been murdered on 06.12.2005. Moreso, ransom letter Ex.P1 was written in his presence by respondent No.2/Raj Kumar @ Bhola on the dictation of respondent No.4/Mohan and respondent No.5/Neetu and the handwriting of respondent No.2/Raj Kumar on the ransom letters CrI. Appeal No.366/2011 including the third ransom letter when compared with the specimen handwriting of respondent No.2/Raj Kumar @ Bhola was proved by the handwriting expert PW20 Devak Ram. It is contended that close examination of testimonies of PW2 Jai Prakash, PW15 SI Sansar Singh, PW14 Jagbir Singh speaks volumes against the respondent No.3/Rakesh and the role played by him in kidnapping and killing of the deceased. The three witnesses have stood the test of cross examination and the credibility of these witnesses remained unshaken.

7. On the other hand, Ms. Nitika Sharma, learned counsel for the respondent No.3/Rakesh argued that respondent No.3/Rakesh was not part of any criminal conspiracy to kidnap and kill the deceased with respondent No.2/Raj Kumar @ Bhola, respondent No.4/Mohan and respondent No.5/Neetu and he was lured by

respondent No.2/Raj Kumar @ Bhola to deliver the ransom letter against payment of Rs.15,000/- and was apprehended PW2 Jai Prakash at the gate of his house while throwing the third ransom letter Ex.P1. It is further contended that except the offence under 387 of the Indian Penal Code, no other offence is made out against him for which respondent No.3/Rakesh has already spent five years and sentenced to the period of imprisonment already undergone by him. Respondent No.4/Mohan and Respondent No.5/Neetu 8. Mr. K. Sunil, learned counsel for the appellant/Ram Kishan further argued that learned Trial Court had erred in acquitting respondent No.4/Mohan and respondent No.5/Neetu as there is enough material on record to show that both were part of the criminal conspiracy to Crl. Appeal No.366/2011 kidnap and kill the deceased. It is submitted that respondent No.2/Raj Kumar @ Bhola disclosed details of the conspiracy hatched by them and how the deceased Ashok @ Bunty was put to death by giving blows with stones on his head. It is further contended that disclosure statement Ex.PW2/C made by respondent No.2/Raj Kumar @ Bhola describes the role of respondent No.5/Neetu that when he was taking deceased towards a desolate place near the Subzi Mandi, Ghazipur respondent No.5/Neetu joined him and at first gave a stone blow on the head of deceased and when deceased fell down on the ground, he tendered the second blow with a stone which resulted in the death of the deceased. It is further contended that from joint reading of the disclosure statements Ex.PW2/C and Ex.PW8/B of respondent No.2/Raj Kumar @ Bhola and respondent No.5/Neetu respectively, it has been established that respondent No.2/Raj Kumar @ Bhola along with respondent No.5/Neetu in furtherance of their common intention had committed the murder of deceased which is further confirmed from the pointing out memo Ex.PW8/G prepared at the instance of respondent No.5/Neetu. It is further contended that prosecution has been able to prove the role of respondent No.5/Neetu in the kidnapping and murder of deceased through disclosure statement Ex.PW2/C.

9. As far as role of respondent No.4/Mohan is concerned, learned counsel for the appellant contended that the third ransom letter Ex.P1 was written by respondent No.2/ Raj Kumar @ Bhola on the dictation of the respondent No.4/Mohan and delivered by respondent Crl. Appeal No.366/2011 No.3/Rakesh at the residence of the uncle of the deceased, which is supported from the disclosure statements

Ex.2/C and Ex.8/B of respondent No.2/Raj Kumar @ Bhola and respondent No.5/Neetu respectively.

10. In support of his contention, learned counsel for the appellant has relied upon Balbir Singh Vs. State of Punjab AIR 1957 SC216 Vishnu Prasad Singh & Anr. Vs. State of Asam, 2007 AIR (SC) 848 and also Mohd. Khalid Vs. State of West Bengal 2002 (7) SCC334 Learned counsel for the appellant further relied upon Mohd. Khalid Vs. State of West Bengal 2002 (7) SCC334 wherein it has been held:

Where trustworthy evidence establishing all links of circumstantial evidence is available the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration.

11. On the other hand, learned counsel for respondent Nos. 4/Mohan and respondent No.5/Neetu argued that learned Trial Court has rightly acquitted the respondent Nos. 4/Mohan and respondent No.5/Neetu as no evidence except disclosure statements has emerged on record, which are inadmissible in law and hit by Section 27 of Indian Evidence Act. It is further contended that at no point of time respondent Nos. 4 and 5 hatched any conspiracy and committed the alleged offence. Crl. Appeal No.366/2011 Crl. A. No.582/2011 Appellant/Raj Kumar @ Bhola (Respondent No.2 in Crl. A. No.366/2011) 12. Appellant/Raj Kumar @ Bhola (Respondent No.2 in Crl. A. No.366/2011) is represented by Mr. Sumeet Verma, Advocate, who has vehemently argued that appellant/Raj Kumar @ Bhola has been wrongly convicted under Section 120-B of the Indian Penal Code which is not permissible under law as no person alone can conspire with himself. The other co-accused persons have been acquitted under Section 120B of Indian Penal Code. In support thereof reliance has been placed upon Vinayak Vs. State of Maharashtra (1984) 4 SCC441 wherein it has been held :

In view of the acquittal of all the seven accused by the trial court of charge No.1 framed under s. 302 read with s. 120B I.P.C. and the High Court's dismissal of Criminal Appeal No.605 of 1978 filed against that acquittal which, as stated earlier, was filed only against accused 2,3,4 and 7 not against accused 1 and 6, in so far as it related to accused 2, 3, 4 and 7, Mr. V. S. Desai, learned senior counsel

appearing for Prakash, accused 5, contended in his arguments that the conviction of that accused alone for conspiracy under s. 302 read with s. 120B I.P.C. is unsustainable in law as at least two persons are required for an offence of conspiracy under s. 120A I.P.C. and he relied upon a decision of this Court in *Topandas v. State of Bombay*(1) in support of his contention. In 784 that case the charge under s. 120B I.P.C. was framed against four named persons who had been arrayed as accused 1 to 4. Crl. Appeal No.366/2011 The High Court acquitted accused 2 to 4 and convicted accused 1 alone of that charge and sentenced him, holding that he and some others had conspired together and fabricated the deed of assignment put forward by accused 1 and that accused 1 alone could not have fabricated that document. This Court allowed the appeal of accused 1 and set aside his conviction under 120B I.P.C. holding that the conviction of one of the accused alone was unsustainable in law having regard to the requirement of s.120A I.P.C. Mr. O. P. Rana learned senior counsel appearing for the state of Maharashtra sought to support the judgment of the High Court in this case against accused 5 in view of the conviction of accused 1 and 6 for the murder of Malan under s, 302 read with s. 34 I.P.C. We repelled that submission of Mr. Rana, in view of the fact that those two accused 1 and 6 had been acquitted by the trial court of charge No.1 framed against them under s. 302 read with s. 120B I.P.C. and no appeal against their acquittal had been filed in the High Court and also the fact that accused 5 was not a party to charge No.4 which was framed only against accused 1, 6 and 7. It was in view of this technical flaw that we allowed the appeal of accused 5 without going into the evidence regarding the merits of the case against him. Mr. Rana did not draw our attention in the course of his arguments to the fact that in charge No.1 even the approver P.W. 1 is alleged to have conspired with the seven accused to commit these three murders or contend that in view of that circumstance and the finding of the High Court that the approver P.W. 1 also was a party to the conspiracy the conviction of accused 5 alone of the charge of conspiracy under s. 302 read with s. 120B I.P.C. could be sustained. We were, therefore, not called upon to consider any such question.

Crl. Appeal No.366/2011 He further relied upon *Topandas Vs. State of Bombay*, A.I.R. 1956 S.C. 33 (V. 43 C. 9 Jan), it has been held:

6. Criminal conspiracy has been defined in section 120-A of the Indian Penal Code:-"When two or more persons agree to do or cause to be done (i) an illegal act, or (ii) an act which is, not illegal by illegal means, such an agreement is designated a criminal conspiracy". By the terms of the definition itself there ought to be two or more persons who must be parties to such an agreement and it is trite to say that one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself. If, therefore, 4 named individuals were charged with having committed the offence under section 120- B of the Indian Penal Code, and if three out of these 4 were acquitted of the charge, the remaining accused, who was the accused No.1 in the case before us, could never be held guilty of the offence of criminal conspiracy.

13. It is further contended that appellant has been falsely implicated by the investigating agency as specimen handwriting of an unknown person which matched with the handwriting on the ransom notes as the handwriting of appellant/Raj Kumar which was obtained second time under the supervision of the learned Trial Court did not match with the handwriting on the ransom notes as opined by CFSL, Shimla. He further added that prosecution failed to prove the owner of the diary and scribe of the ransom letters and pages of the diary.

14. Learned counsel for the appellant/ Raj Kumar @ Bhola argued that strangely enough that had the deceased being hit with a stone the Crl. Appeal No.366/2011 clothes of the deceased would have been stained with blood. To the contrary the recovery of the pant and chappal of the deceased were not blood stained. It is further contended that the mere production of the blood stained slab and recovery of other articles of the deceased do not lead to the conclusion that the appellant/Raj Kumar @ Bhola committed the murder of the deceased as the chain of circumstantial evidence has to be complete and lead to a conclusion that the accused is guilty and no missing link should be left and reliance has been placed upon Prabhoo Vs. State of UP, AIR1963 Supreme Court 113 (V50C167, it has been held :

10. Therefore, the question before us is this. Is the production of the blood stained axe and clothes read in the light of the evidence regarding motive sufficient to lead

to the conclusion that the appellant must be the murderer?. It is well-settled that circumstantial evidence must be much as to lead to a conclusion which on any reasonable hypothesis is consistent only with the guilt of the accused person and not with his innocence. The motive alleged in this case would operate not only on the appellant but on his father as well. From the mere production of the blood stained articles by the appellant one cannot come to the conclusion that the appellant committed the murder. Even if somebody else had committed the murder and the blood stained articles had been kept in the house, the appellant might produce the blood stained articles when interrogated by the Sub- Inspector of Police. It cannot be said that the fact of production is consistent only with the guilt of the appellant and inconsistent with his innocence. We are of the opinion that the chain of circumstantial evidence is not CrI. Appeal No.366/2011 complete in this case and the prosecution has unfortunately left missing links, probably because the prosecution adopted the shortcut of ascribing certain statements to the appellant which were clearly inadmissible.

He further relied upon *Deepak Chadha Vs. State*, 2012 [1]. JCC540 it has been held that:

18. We do not propose to deal with the purity of the evidence relating to the two recoveries i.e. the recovery of the shirt and the knife at the instance of the appellant, for the reason, in the decisions reported as *Kaloo Passi vs. State*, 2009 (2) JCC1206 *Narsinbhai Haribhai Prajapati vs. Chhatrasinh & Ors.*, AIR 1977 SC1753 *Surjit Singh vs. State of Punjab*, AIR 1994 SC110 *Deva Singh vs. State of Rajasthan*, 1999 CriLJ265 & *Prabhoo vs. State of UP*, AIR 1963 SC1113 the Supreme Court held that in the absence of other incriminating evidence, the circumstances of seizure of blood stained clothes at the instance of the accused as also the recovery of a possible weapon of offence at the instance of the accused are wholly insufficient to sustain the charge of murder against the accused.

15. Mr. Ghazi, learned counsel for the State contended that appellant/Raj Kumar @ Bhola was the mastermind behind scene of crime and in order to make quick money conspired with other accused persons to kidnap the deceased in a planned

manner and led him to a desolate and deserted place wherein accused Neetu joined him and accused Neetu gave him two blows one after the other with stones on his head and put him to death. Learned counsel for the State further contended CrI. Appeal No.366/2011 that appellant/Raj Kumar @ Bhola was apprehended on 15.01.2006 on disclosure of respondent No.3/Rakesh (in CrI. A. No.366/2011) and appellant/Raj Kumar @ Bhola made a disclosure Ex.PW2/C before PW2 Jai Prakash and PW15 SI Sansar Singh which has been duly proved by the prosecution. Learned counsel for the State further contended that prosecution has been able to prove its case against appellant as his handwriting has been confirmed on all three ransom letters through Ex.PW16/O. It is further contended that the specimen handwriting of appellant obtained second time before the learned Trial Court did not match with the handwriting on the ransom letters. This is of no consequence as the handwriting of the appellant when matched with the handwriting on the three ransom letters has already been proved vide FSL report Ex.PW16/O. It is further contended that dead body, blood stained clothes and other articles of the deceased were recovered at the instance of appellant/Raj Kumar @ Bhola and the postmortem report Ex.PW6/A and DNA report Ex.PW19/A to Ex.PW19/D connect that the dead body recovered at the instance of the appellant/Raj Kumar is of Ashok @ Bunty, missing son of appellant.

16. We have heard rival contentions of both the parties and perused the entire record.

17. Ashok @ Bunty was missing since 06.12.2005. His family members tried to trace him but all in vain. Finally, on 08.12.2005, PW5 Ram Kishan, father of Ashok @ Bunty reported the matter of his missing son in the police station Kalyanpuri. On 09.12.2005, first ransom CrI. Appeal No.366/2011 letter pasted on the jacket of deceased was received by PW5 Ram Kishan, who further reported the matter to the Police Station Kalyanpuri and the present case was registered. On 10.12.2005, PW5 Ram Kishan along with some other person reached the spot mentioned at the ransom letter but none turned there and they returned back and tried to search Ashok @ Bunty but failed to trace him. On 12.12.2005, PW5 Ram Kishan received the shirt of his son Ashok @ Bunty containing another ransom letter demanding Rs.10 Lacs with threat to kill Ashok @ Bunty if ransom amount not paid. PW5 Ram

Kishan again brought this ransom letter to the notice of the police. On 13.12.2005, eldest son of PW5 Ram Kishan along with some police official went to the place of delivery of ransom money but this time also nobody came there and they returned back. On 16.12.2005, an information was received that a dead body was lying near Subzi Mandi, Ghazipur. The dead body could not be identified as it was in a decomposed condition. On 15.01.2006, respondent No.3/Rakesh was apprehended at the spot while throwing the third ransom letter and handed over to the police. Respondent No.3/Rakesh made a disclosure statement Ex.PW2/B and led the police to Bodhan at Village Bhouvapur and on his pointing out respondent No.2/Raj Kumar was apprehended. His disclosure statement Ex.PW2/C was also recorded. Respondent No.2/Raj Kumar led the police party to the place of occurrence and got recovered the belongings of deceased Ashok @ Bunty. On secret information, respondent No.4/Mohan and respondent No.5/Neetu were apprehended. Crl. Appeal No.366/2011 18. PW6A Dr. Mukta Rani, Assistant Professor (Forensic Medicine) proved the postmortem report Ex.PW6A/A and opined that cause of death is Cranio Cerebral Damage consequent upon blunt force/surface impact to head. The height of Ashok @ Bunty mentioned in the complaint Ex.PW5/A matches with the height mentioned in postmortem report Ex.PW6A/A.

19. PW19 Dr. A. K. Srivastava, Assistant Director (Biology) DNA Unit FSL, Rohini, appeared in the witness box and proved DNA report Ex.PW19/A, identification forms Ex.PW19/B and Ex.PW19/C and allelic data of source of Ex. 1,2 and 3 are Ex.PW19/D and deposed that On conclusion it was found that the DNA profiling STR (Analysis) performed on the exhibits provided is sufficient to conclude that Ex.1 i.e. Sh. Ram Kishan and Ex.2 smt. Rakesh Devi cannot be excluded from being the biological relation with Ex.3 i.e. blood stained gauze piece of deceased said to be of Ashok @ Bunty. In cross examination, this witness stated that STR (Short Tandem Repeat) (analysis) was used to prepare the DNA report. This test gives 100% authentic result.

20. PW5 Ram Kishan identified belongings as of the deceased, recovered at the instance of respondent No.2/Raj Kumar, in TIP Ex.PW18/C conducted by PW18 Ajay Gupta, Addl. Senior Civil Judge. From the analysis of testimonies of these

witnesses, there is no doubt that the dead body found in Ghazipur Subzi Mandi was of Ashok @ Bunty.

21. All three ransom letters Ex.P1, Ex.PW5/H, Ex.PW/I along with specimen signatures and writing Ex.PW16/H-1 to Ex.PW16/H-3 of CrI. Appeal No.366/2011 respondent No.2/Raj Kumar were sent for comparison to the Forensic Science Laboratory and the writings on the ransom letters matched with the writings of respondent No.2/Raj Kumar. Ex.PW16/J.

The report is PW20 Devak Ram, who prepared report Ex.PW16/J stated therein that The pages bearing questioned writings marked Q1, Q2, Q3, Q4 and Q5 to Q7 match with supplied diary marked P1 in size of paper, line of paper, glow of the paper and continuity of the dated of paper as well as location of thread hole/torn portion also match with the corresponding holes of the diary marked P1 which indicate that the paper bearing questioned writings marked Q1, Q2, Q3, Q4 and Q5 to Q7 have been removed from the same (supplied) diary marked P1.

Respondent No.3/Rakesh in CrI. A. No.366/2011 22. Learned Trial Court has observed in its judgment Prosecution has failed to bring any circumstantial evidence on record to establish that this accused acted in conspiracy and was in agreement with accused Raj Kumar @ Bhola and his associates prior to 06.12.2005 when deceased Ashok @ Bunty was kidnapped.

and convicted respondent No.3/Rakesh for the offence punishable under Section 387 of Indian Penal Code.

23. To bring an offence under criminal conspiracy, the prosecution is required to prove that two or more persons had agreed to do or caused to be done an illegal act or an act which is not legal by illegal means. It is immaterial whether the illegal act is the ultimate object of such CrI. Appeal No.366/2011 crime or is merely incidental to that the illegal act is the ultimate object. To attract the applicability of Section 120B of Indian Penal Code, it has to be proved that all the accused had the intention and they had agreed to commit the crime.

24. On examining the evidence against respondent No.3/Rakesh, it emerges that the case of the prosecution was unfolded after respondent No.3/Rakesh was apprehended at the instance of PW2 Jai Prakash, uncle of the deceased when he came to throw the third ransom letter Ex.P1. Thereafter, he was handed over to the police and he disclosed that he had been asked by respondent No.2/Raj Kumar @ Bhola to deliver the ransom letter Ex.P1 and diary from which page had been taken out, the same could be got recovered. Respondent No.3/Rakesh led the police party to the village of respondent No.2/Raj Kumar @ Bhola, who was apprehended and the diary was recovered from his possession. Ex.PW2/B is the disclosure statement of respondent No.3/Rakesh which led the arrest of respondent No.2/Raj Kumar and as per which respondent No.2/Raj Kumar was his friend and was given the third ransom letter Ex.P1 to be thrown at the house of deceased for a consideration of Rs.15,000/- . Ex.PW2/C is the disclosure statement of appellant No.2/Raj Kumar @ Bhola. Except this there is no other evidence against respondent No.3/Rakesh and when he joined Raj Kumar @ Bhola Ashok Bunty had already been kidnapped and body thrown in Subzi Mandi, Ghazipur. Ex.PW2/B disclosure statement of respondent No.3/Rakesh is inadmissible in evidence. CrI. Appeal No.366/2011 CrI. Appeal No.582/2012 No evidence has come forth about the role played by Page 18 of 28 respondent No.3/Rakesh when ransom letters Nos. 1 & 2 were delivered at the residence of deceased.

25. Since, the only evidence against the accused is that he had thrown the ransom letter Ex.P1 contents of which are Tune Jo Humse Hoshiyari Dikhai Hai Aur Itne Samay Ke Karan Ab Hume Dus Lakh Ki Jagah 15,00,000/- (Pandrah Lakh) Rupay Chahiye. Ise Dhamki Nahi Samajhana Abki Baar Hum Majak Nahi Kar Rahe Hain. Abke Paisa Ya Apne Bete Ki Laas Aur Paisa Kab Aur Kanha Lana Hai Dhayan Se Padna xxxxxxxx. Perusal of the third ransom letter Ex.P1 delivered by respondent No.3/Rakesh is covered under Section 387 of Indian Penal Code for extortion by putting a person in fear of death and grievous hurt.

26. The evidence on record amply establishes that the threat contained in the ransom letter Ex.P1 in all probability emanated from respondent No.2/Raj Kumar @ Bhola and the role assigned to the respondent No.3/Rakesh was limited that to

deliver the ransom letter Ex.P1. In the present case, there is no evidence on record which proves that there was a meeting of mind of respondent No.3/Rakesh to commit the offence. Mere meeting would by itself not be sufficient to infer the existence of a criminal conspiracy. Merely respondent No.3/Rakesh was hired would not necessarily lead to the conclusion that there was conspiracy between them to kidnap and murder the deceased. We are of the opinion that the prosecution has succeeded in proving the conviction of respondent No.3/Rakesh for the offence CrI. Appeal No.366/2011 under Section 387 of the Indian Penal Code is well founded and justified. Respondent No.4-Mohan / Respondent No.5-Neetu 27. The prosecution chargesheeted respondent Nos.4 and 5 on the basis of self inculpatory statements made in their disclosure statements.

28. Confession made to a police officer cannot be proved and as such excluded as against a person accused of any offence in view of the prohibition enacted by Section 25 of Indian Evidence Act. An exception to this is however contained in Section 27 of Indian Evidence Act which makes a confessional statement made before a magistrate admissible in evidence against an accused notwithstanding with the fact that he was in the custody of the police when he made the incriminating evidence. Section 27 is proviso of Section 26 and makes admissible so much of the statement of accused which leads to the discovery of the fact deposed to by him and connected with the crime irrespective to the question whether is confessional or otherwise. The essential ingredient of this Section is that the information given by the accused must lead to the discovery of a fact which is the direct outcome of such information. Disclosure statement of the accused can not be relied upon where no recovery has been made pursuant to the said disclosure statement under Section 25 read with Section 27 of the Indian Evidence act. There being CrI. Appeal No.366/2011 CrI. Appeal No.582/2012 no incriminating evidence against No.4/Mohan and respondent No.5/Neetu, the learned trial court has rightly observed that there is no substantive evidence on the strength of which appellant Nos. 4 & 5 can be held guilty for the offences charged and acquitted them. Appellant-Raj Kumar @ Bhola (Respondent No.2 in CrI. A. No.366/2011) 29. Appellant/Raj Kumar @ Bhola has been convicted under Section 364-A/302/201/120B of Indian Penal Code. The case against the appellant is that he entered into a criminal conspiracy with accused Rakesh, accused Neetu

and accused Mohan to kidnap and murder Ashok @ Buntty and on 06.12.2005, he took Ashok @ Buntty to Subzi Mandi, Ghazipur, UP and in furtherance thereof accused Neetu met him there and gave first blow with stone on the head of Ashok @ Buntty as a result of which he fell down and hit him for second time with a stone on his head as a result he had died and both took his dead body to a nearby heap of earth and removed his clothes except undergarments and threw his body in the drain and wrote two letters of ransom dated 09.12.2005 and 12.12.2005 and accused Mohan kept on guiding them in between. Appellant was apprehended on the disclosure statement made by accused Rakesh that he had thrown the ransom letter Ex.P1 on the gate of PW2 Jai Prakash, uncle of deceased and further he could get the diary recovered. Accused Rakesh led the police to Village Bhovapur, District Ghaziabad, to the house of accused Mohan whereafter accused Raj Kumar disclosed how he had killed deceased and his body was thrown in the drain. He led the Crl. Appeal No.366/2011 police to the Subzi Mandi, Ghazipur and pointed out the place where the dead body of deceased had been dumped. He got recovered blood stained articles of deceased which were identified by the father of the deceased in judicial TIP vide Ex.PW18/C. The blood of the deceased was also taken from the spot and sent for analysis. All three ransom letters Ex.PW5/H, Ex.PW5/I and Ex.P1 were sent for comparison and on comparison vide Ex.PW16/O, it has been proved that they were in the handwriting of appellant none other than appellant. The diary Ex.P4 recovered from the possession of the appellant is found to be the same from which pages were taken out. The dead body had already been recovered on 16.12.2006 from the spot pointed out by accused Raj Kumar @ Bhola.

30. Learned counsel for the State argued that the entire case was based on circumstantial evidence and all the links in the chain are complete and prosecution has been able to prove its case against Raj Kumar @ Bhola beyond any reasonable doubt.

31. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved facts, each one of

which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts, by itself/themselves, is/are not decisive. *Crl. Appeal No.366/2011* The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. Where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court....

32. The law on the circumstantial evidence is, by now, settled. In *Sharad Birdhichand Sarda v. State of Maharashtra* :

1984. (4) SCC116 this Court drew out the following test for relying upon the circumstantial evidence: (1) (2) (3) (4) *Crl. Appeal No.366/2011* *Crl. Appeal No.582/2012* The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. They should exclude every possible hypothesis except the one to be proved, and (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show Page 23 of 28 33. that in all human probability the act must have been done by the accused. The principle of this judgment was thereafter followed in number of decisions, they being *Tanviben Pankaj Kumar Divetia v. State of Gujarat* 1997 (7) SCC156 *State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru* 2005 (11) SCC600 *Vikram Singh and Ors. v. State of Punjab* 2010 (3) SCC56 *Aftab Ahmad Anasari v. State of Uttaranchal* 2010 (2) SCC583 etc. It is to be noted that in the last

mentioned decision of Aftab Ahmad Anasari v. State of Uttaranchal (cited supra), the observation made is to the following effect:

In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts, by itself/themselves, is/are not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to CrI. Appeal No.366/2011 show that within all human probability, the act must have been done by the accused. Where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court.... (Emphasis supplied).

34. The evidence which has appeared against the accused is that the appellant Raj Kumar @ Bhola was arrested on the disclosure statement Ex.PW2/B made by accused Rakesh after he was apprehended by PW2 outside his gate while throwing a ransom letter Ex.P1 threatening to kill Ashok @ Buntty in case ransom is not paid. Accused Rakesh disclosed that he had come to throw the ransom letter Ex.P1 as he had got lured by appellant that he would be paid Rs.15,000/-; that accused Rakesh also disclosed that he could get diary recovered from which the pages have been torn to write the ransom letters. The disclosure Ex.PW2/C and arrest of appellant led to the recovery of the diary Ex.PW20/A at his instance; that disclosure Ex.PW2/C of appellant further led the police to the place of occurrence and the place where dead body of deceased was thrown by him, which was already got recovered on 16.12.2005; that appellant/Raj Kumar @ Bhola got

recovered the articles of deceased which were seized vide Ex.PW10/A and the same were identified by PW5 Ram Kishan, father of deceased vide TIP Ex.PW8/A; that all three ransom letters Ex.PW5/H, Ex.PW5/I and Ex.P1 along with diary Ex.PW20/A were sent for comparison and on comparison with specimen handwriting of appellant, PW20 Devak Ram, Handwriting Expert proved his report Ex.PW16/O and opined that the person who Crl. Appeal No.366/2011 wrote the Ex.PW5/H, Ex.PW5/I and Ex.P1 also wrote Ex.PW20/A and specimen handwriting and diary Ex.PW20/A; that Dead body recovered from the drain was found in decomposed state and gauze piece of the deceased were preserved. Blood samples of parents of Ashok @ Bunty and gauze piece of deceased were sent for analysis. PW19 Dr. A. K. Sriwastava proved the DNA report Ex.PW19/A and opined that DNA profiling STR (analysis) performed on the exhibits provided is sufficient to conclude that Ex.1 i.e. Sh. Ram Kishan and Ex.2 Smt. Rakesh Devi cannot be excluded from being the biological relation with Ex.3 i.e. blood stained gauze piece of deceased said to be of Ashok @ Bunty.

; that the disclosure of appellant that deceased was hit twice by accused Neetu corroborate the post mortem report Ex.PW6/A proved by PW6A Dr. Mukta Rani, who opined the cause of death is Cranio Cerebral Damage consequent upon blunt force/surface.

35. It is settled law that while appreciating circumstantial evidence, the court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care has to be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt. Crl. Appeal No.366/2011 36. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the

prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.

37. Applying the above principles to the facts and circumstances of the present case and evaluating the circumstantial evidence, we are of the view that the total cumulative effect of the entire evidence reinforces the conclusion of the guilt against the appellant/Raj Kumar @ Bhola. The chain of evidence against appellant/Raj Kumar @ Bhola discussed above, does not lead any scope for doubt and in all human probability, the act of kidnaping, murder and destruction of evidence must have been done by appellant/ Raj Kumar @ Bhola.

38. In order to prove the charge of conspiracy it is necessary that the prosecution should prove the names of the place or places where it was hatched, names of the persons hatching it and how was it hatched. But in the present case, except disclosure statements, nothing has emerged on record to show that any person conspired with the appellant to commit the offence and for the said reason, we do not CrI. Appeal No.366/2011 find any reason to convict appellant/Raj Kumar @ Bhola under Section 120-B of Indian Penal Code. CrI. A. No.366/2011 39. After giving our anxious thought in the instant case, we do not find any infirmity or perversity in the judgment and sentence awarded to respondent Nos. 3 to 5 passed the learned trial court.

40. For the aforesaid reasons, there is no merit in this appeal, which is dismissed, accordingly. CrI. A. No.582/2011 41. For the reasons discussed above, the appeal is partly allowed. Appellant Raj Kumar @ Bhola is thus convicted under Section 364A/302/201 of Indian Penal Code and should be taken into custody forthwith to serve the remaining period of sentence as ordered by learned Trial Court. SANGITA DHINGRA SEHGAL, J.

G. S. SISTANI, J.

th 20 APRIL, 2015 gr CrI. Appeal No.366/2011

