

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

CRIMINAL APPEAL No. 965 of 2013

Dinesh & Anr.

Versus

STATE OF M.P.

Appearance:

*Shri A.K.Jain & Ms. Nikita Jain – Advocates for the appellants.
Smt. Anjali Gyanani - Public Prosecutor for the State.
Shri Atul Gupta – Advocate for the complainant.*

WITH

CRIMINAL APPEAL No. 591 of 2014

Pankaj

Versus

State of M.P.

Appearance:

*Shri Radha Mohan Tiwari – Advocate for the appellant.
Smt. Anjali Gyanani - Public Prosecutor for the State.
Shri Atul Gupta – Advocate for the complainant.*

WITH

CRIMINAL APPEAL No. 1167 of 2014

Rahul Dubey

Versus
State of M.P.

Appearance:

Shri R.K.Sharma – Senior Advocate with Ms. Bhavya Sharma & Shri Abhijeet Singh Tomar – Advocates for the appellant.

Smt. Anjali Gyanani - Public Prosecutor for the State.

Shri Atul Gupta – Advocate for the complainant.

Reserved on : 14/08/2024
Delivered on : 04/09/2024

JUDGMENT

Per: Rajendra Kumar Vani, J.

This judgment shall govern the disposal of all the three appeals.

2. These appeals have been preferred by the appellants against the judgment dated 24.09.2013 passed by the 7th Additional Sessions Judge, Gwalior (M.P.) in S.T.No.18/2012, whereby the appellants have been convicted under Sections 364-A/34, 302/34 and 201/34 read with Section 13 of the MPDVPK Act and sentenced to undergo life imprisonment with fine of Rs.2,000/- each under Sections 364-A/34 and 302/34 of IPC and 3 years RI with fine of Rs.1,000/- under Section 201/34 read with Section 13 of the MPDVPK Act with default stipulations.

3. Prosecution case, in brief, is that deceased Rohit was the son of Dharmendra Singh (PW-1) and was residing at Shatabdipuram, Gwalior along with his parents. On 19.3.2012 at about 6 pm he was playing in the park and thereafter he went missing and could not be

traced. On 20.3.2012 at police Station Maharajpura his missing person report was recorded. On 27.3.2012 on the mobile number of father of the deceased 9893139206 one call was received from mobile number 07566602381 and the caller said that Rohit is in his possession and demanded Rs.20,00,000/- in lieu of his release. On 30.3.2012 also father of the deceased received the ransom call. During investigation, police arrested accused Devendra on 1.4.2012 and recorded his memorandum statement under Section 27 of the Evidence Act in which he disclosed that he along with his son Dinesh and Pankaj Sharma and Rahul after abduction of Rohit committed his murder and buried his body in the forest of Raun. At his instance, on 1.4.2012 from the rugged in between Mangarh Mehra Khurd 32 pieces of bones, hair, torn pant, shirt, undergarment, towel, shoe, blood stained soil were seized vide seizure memo Ex.P/19. The father of the deceased identified the pant & shirt of the deceased. Remaining accused persons were arrested and vide seizure memo Ex.P/8, Ex.P/10 and Ex.P/12 mobile has been seized from their possession. Blade of iron by which deceased Rohit was killed was seized vide Ex.P/17 from accused Devendra.

4. After completion of investigation, charge-sheet was filed. Charges were framed against the accused persons, which they denied pleading false implication and claimed for trial.

5. In order to prove the charges, prosecution examined as many as 20 witnesses and placed 42 documents on record. The accused persons in their defence chose not to examine any witness.

6. The learned trial Court after appreciating the evidence available on record, convicted and sentenced the present appellants,

as mentioned above by the impugned judgment.

7. It is submitted by learned counsel for the appellants that learned trial Court has not appreciated the evidence on record in correct perspective. The case is based on circumstantial evidence and the chain of circumstances must be connected with each other unerringly pointing towards the guilt of the accused, however, the prosecution has failed to connect the chain of circumstances. The mobile phones were recovered from some shop, but name of that shop has not been disclosed. There was an inordinate delay in the conduction of identification parade and Gaurishankar (PW-9), who was the witness of the test identification parade, is a police personnel and he had an opportunity to see the accused persons before such parade as the accused persons were not kept under cover before conduction of TIP and by their photographs affixed on remand form. Photographs of accused persons are also affixed on the counter copy thereof annexed with the case diary. The bones, other body parts and clothes of the deceased were scattered in an area of around 100 Gaj, hence, the place of such seizure cannot be said to be within the exclusive knowledge of the accused. The learned trial Court has erred in convicting the appellants. Therefore, prayed for allowing the appeal by setting aside the impugned judgment of conviction and order of sentence.

8. Learned counsel for the respondent/State as well as learned counsel for the complainant supported the impugned judgment by submitting that there is no ground for interference in the impugned judgment.

9. As per the statement of Dr. J.N.Soni (PW-8), who conducted postmortem on various bones/parts of the body recovered by the

police, on examination observed that :-

“1. Fracture of skull bone was present on right temporal bone 4 cm above the lower end of right mastoid bone, 5 x 1 cm fracture, chipping effect present inside & part of broken chip present inside the skull bone.

2. A cut present on skull bone right side 3 cm posterior to posterior end of the previous fracture 3.5 cm vertical and 2 mm wide obliquely upto cavity of cranium, chipping fracture present posteriorly/medially on upper border for 1.5 cm and from lower 0.8 cm respectively the area around the fracture and cut is bluish in colour.”

As per the opinion of the doctor, the bones produced for examination were of a male aged 9-10 years. There were two fractures on head, one by hard and blunt object and another by sharp cutting object. These injuries were sufficient for causing death of the deceased in ordinary course of nature. The death was caused within 1-2 weeks from the date of the postmortem. It is also stated that the bones were in the approach of animals. He in cross-examination has admitted that time of 1-2 weeks has been stated approximately. It may be within one week of the examination. The deceased died first and thereafter dead body was eaten by the animals.

10. In this case, the prosecution has sent skull, hair, jaw, soil taken out from the skull of the deceased, plain soil and blood samples of the father and mother of the deceased, namely Dharmendra and Meera, for DNA analysis. On analysis, Ex.P/39 was issued by FSL, Sagar and as per the report it is opined that the unknown skeleton was of biological son of complainant Dharmendra and Meera.

11. During arguments, learned counsel for the appellants did not challenge this FSL report as well as the factum of the death of the

deceased. In the light of statement of Dr. J.N.Soni (PW-8) and DNA report, it is found proved that deceased, who was the son of complainant Dharmendra (PW-1) and Meera, died due to the injuries sustained by him on head. Now it is to be ascertained whether the homicidal death of the deceased was caused by appellants in furtherance of their common intention to murder the deceased and whether after the commission of said offence they caused disappearance of evidence of the offence and also whether they have kidnapped the deceased for ransom. The trial Court has based the judgment of conviction on the basis of the following circumstances which were found to prove against present appellants:-

1. The deceased Rohit was last seen alive on 19.3.2012 in the night along with accused Dinesh, Devedra and Pankaj Sharma in Bolero Jeep at Mangarh Bamba, police Station Raun, Distt. Bhind.
2. At the instance of accused Devendra, in between Mangarh Mehra Khurd from the rugged on 1.04.2012 the dead-body of deceased Rohit in the form of bones, his clothes and shoe were seized.
3. Bolero Jeep No.M.P.43 C-2083 was used in committing abduction of Rohit.
5. The accused persons during this period talked with each other by their mobile phones.
6. Whether register of temple has been seized from accused Rahul in which there is mention of names of accused Rahul and Dinesh.
7. The accused persons committed abduction of Rohit

for ransom.

12. As far as first circumstance is concerned, the evidence of Gaurishankar (PW-9) and Sobaran Singh (PW10) is material. Gaurishankar (PW-9) stated that he along with Constables Radhamohan and Laljeet and Head Constable Sobran (PW-10) on 19.3.2012 was on patrolling by government vehicle bearing registration No.MP03 5646. On the date of incident, at around 9.45 to 10 pm during patrolling they went towards Mangarh where two empty trucks came and it was informed to him that 3-4 persons were standing with arms at *Bamba*, and therefore, there was a jam. Suddenly one bolero of a slaty colour came from Bhind side and stopped near them. When they checked the vehicle, they found that four persons were sitting in the vehicle, one driver and two other persons with small kid of around 9-10 years. The driver was around 20-22 years old. On asking, the kid replied that he is studying in Dadraua Dham, Gwalior. The other person sitting beside this child was referred as priest of Dadraua Dham having age of 18-20 years. The kid further stated that they are going to maternal uncle's home at Mangarh. The other persons sitting in the vehicle also stated that they are going towards Mangarh. Thereafter, they permitted the said vehicle to go ahead. This statement is also supported by Sobran Singh (PW-10) who was driving the Government vehicle.

13. Gaurishankar (PW-9) further stated in his statement that he also went to Central Jail Gwalior to identify three persons sitting in the said Bolreo vehicle and he identified them in Test Identification Parade. In this regard, learned counsel for the appellants has submitted that identification by these two witnesses is highly doubtful. Moreover, the identification of the child was not

established. The identification parade was also conducted on 22.06.2012 almost three months after the incident but no explanation has been offered by the prosecution for such a long and inordinate delay in conducting the identification parade.

14. When we travel through the testimony of Gaurishankar (PW-9), he stated that the log book is maintained for Government vehicles as well as while patrolling, arms were issued and in this regard, a register is maintained but these documents have not been produced during the course of evidence. He further admitted in cross-examination para 10 that on 19.3.2012 he checked 3-4 jeeps but he is not in a position to depose their registration number, model and colour. He did not note the registration number of bolero vehicle. He is also not able to depose the colour and type of clothes which the persons sitting in the bolero vehicle were wearing.

15. Gaurishankar (PW-9) further stated that his police statement (Ex.D/6) does not contain that he would identify the persons sitting in the bolero vehicle on their production. He also reiterated that the kid sitting in the vehicle stated that he is studying in Dandraua Dham Gwalior and that they are going to Mangarh to his maternal uncle's home, but these facts also did not find place in the police statement of this witness. Moreover, as per the statement of Nishu Kushwaha (PW-3) deceased Rohit was studying in Green Wood School Adityapuram and it is nowhere revealed from the statement of the witnesses that any maternal uncle of the deceased was living in Mangarh at that time. The prosecution has stressed on identification of three persons sitting in the bolero vehicle along with the kid, but no attempt has been made for identification of the kid sitting in the said vehicle. Since there was no identification of

the kid by the aforesaid witnesses, therefore, the identity of the kid sitting in the vehicle as Rohit (deceased) is not established beyond doubt. Even otherwise the child was sitting freely in the vehicle and no sign of kidnapping was noticed by these two constables.

16. Arvind Singh Rajawat (PW-6) stated in his cross-examination that just after the incident, a photograph of Rohit was published in the newspaper continuously for two days, but no one has informed them/police that anyone had seen the deceased anywhere. Gaurishankar (PW-9) has also admitted this fact that he had seen the photograph in the newspaper, but despite that, he has not intimated anyone including the police as regards the incident of 19.3.2012. The police statement (Ex.D/6) of this witness Gaurishankar has been recorded by the police, not before 26th April, 2012. Why there is such inordinate delay in recording the police statement of this witness, has not been answered by the prosecution.

17. As far as the identification of the accused persons sitting in the vehicle is concerned, as per the story of the prosecution they were Pankaj, Devendra and Dinesh. Admittedly, that vehicle was checked at around 10 O'Clock in the night. These witnesses must have checked number of vehicles, but no registration number and their description could be stated by these witnesses. The registration number of vehicle in question was not noted by these witnesses. He did not explain about the colour and type of the clothes which the persons sitting in the vehicles were wearing. Therefore, the statements of this witness Gaurishankar (PW-9) as regards the identification of appellants becomes doubtful and in such circumstances, mere dock identification is not sufficient to prove the identity of present appellants beyond doubt.

18. Gaurishankar (PW-9) also stated that he received a letter from police Station Maharajpura for identification of the accused persons, but that letter has not been adduced in evidence. Moreover, this witness stated that when he reached Central Jail, Gwalior, at 12 O' Clock, Naib Tahsildar, who conducted the test identification parade, was already present there while Naib Tahsildar Bhumika Saxena (PW-7) stated that Gaurishankar reached Central Jail, Gwalior, before her reaching there. There are lots of contradictions in the statement of this witness.

19. The other witness Sobran Singh (PW-10) was also present at the time of checking of bolero vehicle, but this witness along with other Constables Radhamohan and Laljit were not called for identification of the accused persons for the reasons best known to the prosecution. This witness also admits that no sketch was prepared by the police after the discovery of offence. He also admits in his cross-examination that he along with Gaurishankar, Radhamohan and Laljit identified the accused persons for the first time in the Court. He also could not state about the colour and type of clothes of the accused persons sitting in bolero vehicle. This witness (PW-10) admitted that he had an opportunity to see the accused persons in the lock up before identification in the Court. It is also admitted by G.D.Vimal (PW-16) that Ex.D/7 is the remand form having photographs of all the accused persons. He admits that all accused persons were not kept under cover. He again categorically admitted that until he filled remand form (Ex.D/7) no accused persons were kept under cover. He also admits that the accused persons could be identified clearly in photographs and counter copy of that remand form having affixed photographs of

appellants is also annexed with the case diary.

20. Gaurishankar (PW-9) being police personnel had ample opportunity to see the accused persons, who were not kept under cover, as well as the photographs, affixed on the remand form (Ex.D/7) and its counter copy filed in the case diary were within the approach of Gaurishankar (PW-9) and as stated earlier that the identification parade is also held with an inordinate delay which has not been satisfactorily explained.

21. G.D.Vimal (PW-16) also admits that missing person report did not raise doubt on any person, rather it was against unknown person. He has not recorded the statements of Mohan Singh Jadaun and Ravi Prakash Mathur etc. who were the relative and neighbour of the deceased to whom houses the deceased might have visited.

22. Bhumika Saxena (PW-7) has conducted the test identification parade with the help of personnel of Central Jail, Gwalior. She admits that she wrote a letter to the Superintendent, of Central Jail, Gwalior for conducting an identification parade. She also received a letter from the concerned police Station for conducting such a parade, but no such letters have been produced by the witness. On a conjoint reading of the evidence of this witness and the evidence of Gaurishankar (PW-9) and Sobran Singh (PW-10), the identification of the appellants is not found beyond a scintilla of doubt.

23. So far as circumstance No.2 is concerned, in this regard seizure memo (Ex.P/19) and memorandum under Section 27 of the Evidence Act (Ex.P/20) are relevant. The perusal of Ex.P/20 reveals that dead-body of the deceased was put in a pit while there is no such mention on seizure memo (Ex.P/19) that the bones were recovered from a pit. Even G.D.Vimal (PW-16), who has prepared

these documents, stated in his statement that when he reached in between Mangarh-Mehru Khurd in the rugged of Mangarh he saw that human bones were scattered alongwith clothes and shoes of the deceased which were identified by the father of the deceased. It is nowhere stated by this witness that the human bones and clothes were found in a pit which was covered by soil. It is also not stated by this witness that the place from where the bones and clothes of the deceased were found was indicated by accused Devendra and at his instance this seizure was made, whereas such specific evidence was necessary to be brought on record.

24. Akhilesh Bhargava (PW12), who is a Senior Scientist of FSL, visited the place from where such bones and clothes were recovered. He stated that there was a 5'1" depth pit found near the place of seizure. He also stated that as informed by the accused persons the said pit was covered after putting the dead-body of the deceased, but this witness has not stated on what ground he mentioned these facts because, at the time of inspection of this witness, no accused persons remained present with him. The documents prepared during the investigation also do not reveal that the accused persons informed the police that they had put the dead body in a pit having a depth of 5'1" and thereafter covered it with soil. Therefore, the statement of this witness as aforesaid is based on surmises and conjectures. Moreso, this witness inspected the place after four days after the incident on 4.4.2012.

25. It is also worthy to mention here that Upendra Singh Rathore (PW-5) stated in his cross-examination that photographs of the skeleton and clothes of the deceased were taken, but no such photographs etc. are on record. This witness also in clear terms

stated that the bones, and clothes were scattered in the area of around 100 Gaj. If the bones and other materials were scattered in the area of 100 Gaj, then how it can be said to be a place exclusively within the knowledge of accused Devendra? It is also revealed from the evidence that wild animals had eaten the dead body which was possible only when the dead body was placed openly in the forest. Therefore, the story as regards discovery at the instance of accused Devendra and also the fact that the skeleton and other material seized were in the exclusive knowledge of accused Devendra is not found to be believable.

26. The Investigating Officer G.D. Vimal (PW-16) also admits in his evidence that he has not prepared a spot map of the place from where the seizure was made. He also admits that he has not mentioned regards design of the white shirt seized vide memo (Ex.P/2). He also did not mention the place in this seizure memo where it has been prepared. No explanation has been offered by this witness for such omission.

27. In this regard, Dharmendra Singh (PW-1) stated that his son was wearing a T-shirt just before the incident, but vide seizure memo (Ex.P/2) seizure of a white shirt has been made. On a similar point, Nishu Kushwaha (PW-3) stated that just before the incident his brother, the deceased, was wearing black jeans and half a T-shirt of white colour and Meera (PW-4), the mother of the deceased, stated in similar line, moreso she stated that the deceased was wearing slippers while Dharmendra (PW-1) and Nishu Kushwaha (PW-3) stated that he was wearing black shoe. Therefore, there is a contradiction on the point of what the deceased was wearing just before the incident.

28. Nishu Kushwaha (PW-3) stated that her younger brother's friend Kukki came to see the result of her brother (the deceased). Thereafter, Kukki told his brother to come to his house to see the result. The deceased went with him by saying that he was going to the house of Kukki and thereafter he did not return. In light of the statement of this witness, Kukki was a material witness who was last seen with the deceased just before the incident, but the prosecution has not taken pain to examine this witness for the reasons best known to it.

29. So far as the alleged recovery of the mobile phone at the instance of accused Pankaj vide Ex.P/8 and at the instance of accused Rahul vide (Ex.P/10) is concerned, it was made from a shop situated near Gohad Square, Tevra Road, Bhind, but it is not clarified in these documents that what was the name of that shop, who was the owner of that shop. As per the seizure memo, mobile phones were put on charging, but that charger belongs to whom, which is also not clarified. The story seems to be unnatural that these accused persons put their mobile phones for charging in a particular shop while usually such charging is done at one's own house.

30. As per Ex.P/12 a mobile phone was recovered at the instance of accused Dinesh. As per Ex.P/14 at the instance of the accused Devendra one iron blade was recovered from the second floor of the house of Ramautar. However, the fact that the accused Dinesh was the tenant of Ramautar and was residing on the second floor of the house was to be established satisfactorily by the prosecution. In this regard, neither any documentary evidence in the form of a rent note has been adduced nor the landlord Ramautar has been examined as

a witness to establish the fact. A mere statement in this regard is not sufficient to hold that the house belonged to Ramautar and that the accused Dinesh was a tenant in the house on the second floor. In this regard, Arvind Singh Rajawat (PW-6) admits that the police have not gathered information as regards ownership of the house with Ramautar. Arvind Singh further stated that persons standing nearby had intimidated the police personnel as regards the house of Ramautar. It is not stated by the witnesses who were the persons who informed the police personnel as regards ownership of the house. In the absence of such names of the persons and their evidence, it cannot be held safely that the house was owned or possessed by Ramautar.

31. G.D. Vimal (PW-16) admits in his cross-examination that he has not taken the statement of the person who has informed him as regards the residence of the accused Devendra in Gohad.

32. Yogendra Singh (PW-2), Upendra Singh Rathore (PW-5) and Arvind Singh Rajawat (PW-6) are the witnesses of the memo of arrest, seizure memo and memorandum under Section 27 of the Evidence Act. All these witnesses are admittedly relatives of the father of the deceased namely Dharmendra and it is revealed from the statements of these witnesses as well as the Investigating Officer that no endeavour has been made for calling any independent witness. Why no independent witness has been called or tried to be called is not satisfactorily explained by the prosecution. Seizure of mobile phones was made from the shop situated in a public place where independent witnesses might easily be available. It is discernible from the evidence that despite the availability of independent witnesses, the police resorted to making

the witnesses of such important documents only those witnesses who are the relatives of the family of the deceased. Despite the availability of independent witnesses only interested witnesses have been examined as Panch witnesses which renders the entire proceedings in this regard doubtful.

33. The Hon'ble Apex Court in the case of **State of U.P. v. Arun Kumar Gupta, (2003) 2 SCC 202** in para 16 has held as under :

“16. In this regard, the prosecution relies on the evidence of PW 4. We have earlier noticed that PW 4 is not a resident in the immediate proximity of the house of the respondent. He belongs to the same *biradari* as the complainant and lives behind the house of the investigating officer, PW 9. We find no reasonable explanation, why such a person was called to be a witness to the recovery when there were any number of people available and who are residents of the houses in the immediate proximity of the house of the respondent. We also notice from the records that a large number of people were present at the time of the recovery, therefore, the prosecution should have come forward with some explanation as, to why PW 4 was so selectively chosen to be the witness for the recoveries. We also notice though the preparation of memos of the recoveries took a long time, still for all the recoveries PW 4 is a common witness. There is also considerable discrepancy regarding the manner in which PW 4 came to be a witness to the recoveries. From the evidence on record, it is seen that at one place it is stated that PW 4 had come to the house of the respondent on hearing the commotion that took place because of the breaking open of the lock of the house. At another place, we find that the IO, PW 9 had summoned PW 4 from his house to be a witness for the recovery. This discrepancy also adds to the doubt regarding the evidence of PW 4. Therefore, in our opinion as held by the High Court, it is not safe to rely on the evidence of this witness...”

34. It also revealed from the statements of Yogendra Singh (PW-

2), Upendra Singh Rathore (PW-5) and Arvind Singh Rajawat (PW-6) and evidence of Dharmendra (PW-1) that a call from mobile number 07566602381 to the mobile number of Dharmendra 9893139206 was received on 27.03.2012 for demand of Rs.20 lacs as ransom for releasing the abducted child (the deceased) and after bargaining the caller was agreed to receive Rs.15 lacs within 3 days. On 30.3.2012 at around 2.30 pm, he again received a call from the same number as regards arrangements for money, but when Dharmendra said that he wanted to first talk to the kid (deceased), then the caller denied it on the pretext that the kid was not near. Thereafter no call was received. Arvind Singh (PW-6) has stated in para 15 of his statement that police have taken his statement continuously from 1.4.2012 to 11.4.2012, but this fact is also not supported by the record. Arvind Singh also stated that the caller demanded Rs.20 lacs and again he called on 30.3.2012 and when his brother Dharmendra stated that he could not arrange so much amount, the caller agreed on Rs.15 lacs as ransom. Here the statement of this witness is at variance with the statement of Dharmendra (PW-1).

35. Dharmendra (PW-1) admitted that the person who called him had not revealed his name. As regards the amount of ransom there is a material contradiction in the statement of Dharmendra (PW-1) vis-a-vis his supplementary statement (Ex.D/1). The aforesaid incident of receiving call from an unknown person has also been stated by Yogendra Singh (PW-2) who had no other source of information in this regard. The identity of the caller is not established beyond doubt by the prosecution, therefore, so far as the ransom demand is concerned, no reliable and convincing evidence

has been brought on record.

36. The prosecution also collected call details and submitted them as Ex.P/33 and in that regard, Nodal Officer of Idea Cellular Udayveer Singh (PW-19) has been examined. This witness stated that after receiving a letter (Ex.P/37) from S.P. Gwalior, he collected call details in 37 pages and sent them to the police. He stated that call details of mobile number 7697011834 of accused Devendra, 9669948299 of accused Pankaj and 8435369720 of accused Ramdatt s/o Shankar have been handed over vide Ex.P/38 to S.P., Gwalior. In cross-examination, he admitted that he had not collected any call details as regards mobile No.7566602381. That apart, he admits that no complaint has been made by Ramdatt to the company that this number has not been obtained by him and/or some other person using his paper has obtained and used this number. Ramdatt s/o Shankar is not accused in this case and he has not been examined on behalf of the prosecution in support of the allegation that the aforesaid mobile number was being used by accused Rahul.

37. SHO of police Station Maharajpura B.S.Parihar (PW-18) admits that the alleged SIM was not issued to the accused Rahul but it was registered in the name Ramhet having his address of Gwalior. He has not gathered information by whom this SIM was being used during the relevant period. He has also not taken the statement of Ramhet. therefore, this fact is not established beyond doubt that the number 8435369720 was being used by accused Rahul at the time of the incident. G.D. Vimal (PW-16) admits that no arm or other material has been seized from the accused Rahul.

38. For the sake of argument on such call details if it is assumed

that conversation was made between the accused persons more than once before and after the incident, in the aforesaid situation, that alone cannot be a ground to find the appellants guilty in this case.

39. G.D. Vimal (PW-16) also admits that in the register (Article A) there is no mention of the name of any accused or their mobile number or facts as regards conspiracy of committing the offence. Though he stated that the name of Dinesh is mentioned on pages No.2 and 8 and the name of Rahul Pujari is stated on pages No.9 and 10, he admits that the full name of Dinesh, his address and the name of his father is not mentioned. Who has written the register (Article A) is also not stated therein and no matching of handwriting was done. He admits that no seizure has been made in accordance with memorandum Ex.P/30. He has seized a bolero vehicle from Gola Ka Mandir from an open place and he did not enquire as to when this bolero vehicle was standing there. He deposes that no key of the vehicle was seized and he has not tried to search the keys. The vehicle was standing there with all four gates opened, but it did not appear that any material had been stolen from the vehicle. He also admits categorically that after the seizure of the vehicle he did not take fingerprints from the steering and other parts of the vehicle and did not send it for examination by FSL. He revealed no reason for such omission while for an ensuring impartial investigation, such acts ought to be done by this witness, the omission of which raises doubt as to the veracity of the entire investigation process.

40. From the police statement (Ex.D/1) of Dharmendra (PW-1) it reveals that as per the information given by the accused persons, accused Devendra killed deceased Rohit immediately on the second

night after the abduction. Had there been a case of demand of ransom, the demand as a matter of fact would have been made immediately after abduction and until the demand would be fulfilled the abductee would be as per the prosecution story kept alive, but immediately after abduction, in second night the deceased was killed by accused Devendra while so-called demand of ransom was made not before 27.03.2012.

41. As per the letter (Ex.P/32) the call details of mobile No.7566602381 were requested for the period from 27.3.2012 to 31.3.2012 and this is admitted by Investigating Officer G.D.Vimal (PW-16) in para 11 and 12 of his statement that he did not call any information as regards tower location of aforesaid phone number for 1.4.2012 and onwards. He has also not obtained call details of other phone numbers. This witness however has not shown any reason for such omission.

42. There are omissions and variations in the statements of the prosecution witnesses especially Dharmendra (PW-1), Yogendra Singh (PW-2), Upendra Singh Rathore (PW-5) and Arvind Singh Rajawat (PW-6) and in the above facts and circumstances of the case, they assume importance.

43. The Hon'ble Apex Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116** in para 153 has held that the following conditions must be fulfilled before a case against an accused can be said to be fully established in case of circumstantial evidence:

- “(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
- (2) 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,

(3) the circumstances should be conclusive and tendency,

(4) 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 that in all human probability, the act must have been done by the accused.”

44. The Division Bench of High Court of Uttarakhand in the case of **State of Uttarakhand vs. Satyesh Kumar and Anr., 2024 SCC OnLine Utt 2266** in para 29 to 31 has held as under :-

29. It is a well established law that in cases of the circumstantial evidence, all circumstances relied upon by the prosecution must be established by cogent and reliable evidence and all the proved circumstances must provide a complete chain. The chain of evidence should be complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

30.In *Sharad Birdhi Chand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, the Hon'ble Supreme Court held that when a case rests on circumstantial evidence, such evidence must satisfy these tests:—

(i) The circumstances from which the conclusion of guilt is to be drawn, should be fully established.

(ii) The facts so established should be consisted only with the hypothesis of the guilt of the accused, that it is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(iii) The circumstances should be of a conclusive nature and tendency.

(iv) They should exclude every possible hypothesis except the one to be proved.

(v) There must be a chain of evidence to show complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities, the act must have been done by the accused.

31.The principle of circumstantial evidence has been reiterated by the Hon'ble Supreme Court in a plethora of cases. In *C. Chenga Reddy v. State of A.P.*, (1996) 10 SCC 193, the Hon'ble Supreme Court observed, "In a case base on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances, must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence." The same principles were reiterated by the Hon'ble Supreme Court in *Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681, *Mohd. Arif alias Ashfaq v. State (N.C.T. of Delhi)*, (2011) 13 SCC 621, *Sunil Clifford Daniel v. State of Punjab*, (2012) 11 SCC 205 and a number of other decisions."

45. In the backdrop of above discussion and having regard to the ratio of law laid down in aforesaid cases, when we examine the evidence on record, it is found that that the circumstances as indicated by the learned trial Court in para 129 of the impugned judgment are not established beyond doubt. From the evidence on

record, it cannot be said that the facts so established are consistent only with the hypothesis of guilt of the accused and that the circumstances are of conclusive nature and tendency and it excludes every possible hypothesis except the guilt of the accused. The chain of circumstances is not found complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused. Therefore, the findings and conclusion of the trial Court finding these circumstances proved against the appellants are erroneous and perverse.

46. Resultantly, all the appeals are allowed. The appellants are acquitted of the charges under Sections 364-A/34, 302/34 and 201/34 of IPC read with Section 13 of the MPDVPK Act by giving benefit of doubt. Appellant – Rahul Dubey is on bail, his bail bonds are discharged. Appellants- Dinesh, Devendra and Pankaj are in jail, they be released forthwith if not required in any other case. Amount of fine, if any deposited be refunded to them. The order of the trial Court as regards disposal of seized property is affirmed.

(VIVEK RUSIA)
JUDGE

(RAJENDRA KUMAR VANI)
JUDGE