

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

BEFORE

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 21ST DAY OF DECEMBER, 2023

CRIMINAL APPEAL No. 3229 of 2020

BETWEEN:-

**AKASH S/O RAJU RATNAKAR
AGED ABOUT 24 YEARS, OCCUPATION: DRIVER
ABOVE JOSHI SWEETS, NAVLAKHA
OPP. ROBIN GYM
INDORE (MADHYA PRADESH)**

.....APPELLANT

(SHRI MANISH KUMAR SHARMA, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER
THROUGH P.S. PARDESHIPURA
INDORE (MADHYA PRADESH)**

.....RESPONDENT/STATE

(MS. BHAGYASHREE GUPTA, GOVERNMENT ADVOCATE)

CRIMINAL APPEAL No. 3259 of 2020

BETWEEN:-

**PIYUSH @ ROHIT S/O SURESH PARETA
AGED ABOUT 23 YEARS, OCCUPATION: LABOUR
35/2 KUSHWAH SHRINAGAR, SHIV MANDIR WALI GALI
BANGANGA
INDORE (MADHYA PRADESH)**

.....APPELLANT

(SHRI GAJENDRA SHARMA, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH P.S. PARDESHIPURA
INDORE (MADHYA PRADESH)**

.....RESPONDENT/STATE

(MS. BHAGYASHREE GUPTA, GOVERNMENT ADVOCATE)

CRIMINAL APPEAL No. 6434 of 2020

BETWEEN:-

**VIJAY S/O SITARAM PARMAR
AGED ABOUT 20 YEARS, OCCUPATION: LIGHT FITTING
GRAM RAJDHARA, COMPEL ROAD
DISTRICT INDORE (MADHYA PRADESH)**

.....APPELLANT

(SHRI MAHENDRA SINGH GURJAR, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER
THR. P.S. PARDESHIPURA
DISTRICT INDORE (MADHYA PRADESH)**

.....RESPONDENT/STATE

(MS. BHAGYASHREE GUPTA, GOVERNMENT ADVOCATE)

Reserved on : 23.11.2023

Pronounced on : 21.12.2023

*These appeals having been heard and reserved for judgement,
coming on for pronouncement this day, **Hon'ble Shri Prakash Chandra
Gupta** pronounced the following:*

J U D G E M E N T

These appeals have been filed by the appellants/accused persons u/S 374 (2) of the Code of Criminal Procedure, 1973, arising out of

common judgement dated 02.03.2020 passed by the Additional Sessions Judge (Special Court, Electricity Act), Indore, in S.T. No.178/2018, whereby the appellants/accused persons have been convicted u/S 364/34, 307/34 and 201/34 of IPC and sentenced each of them to undergo RI for 10 years with fine of Rs.1,000/-, RI for 10 years with fine of Rs.1,000/- and RI for 03 years with fine of Rs.1,000/- respectively with default stipulations.

2. Facts of the prosecution case in brief are that Mohit (PW/1) has two sons, injured Mridul (PW/2) is elder and Gurvinder (PW/3) is the younger. Mridul (PW/2) and Gurvinder (PW/3) used to study and live in 208, Clerk Colony, Indore in a rented room. Their room partner was Sourabh Sen (PW/5). There was friendship between Anjali and injured Mridul (PW/2). Rahul Ratnakar (PW/9) is the elder brother of appellant Akash. Appellant Piyush @ Rohit Pareta is relative and appellant Vijay is friend of appellant Akash. Gurvinder (PW/3) had gone back to his house as his exams were over. On 07.01.2018 at around 11 AM, Mridul told Sourabh Sen (PW/5) that he was going out for breakfast, but he did not return back. His phone could not be reached. Even after searching for a while, he could not be found. Then Mohit (PW/1) filed a written complaint (Ex.P/2) to the SHO Pardeshipura, Indore. On the basis of written complaint (Ex.P/2), a missing person report was lodged by S.I. Kamal Kishore on 09.01.2018. During inquiry, ASI P.S. Bariya (PW/12) checked the CCTV footages of nearby, and recorded statement of Rakesh @ Monu, Sourabh Sen (PW/5) Anjali and Mohit. It was found that Anjali and appellant Akash were already friends and Akash was in love with

Anjali for 03 years and despite of that, Anjali was building friendship with Mridul. Because of the aforesaid, appellant Akash alongwith Vijay and Piyush had kidnapped Mridul in a car bearing registration No.MP-09-CU-5956, which was owned by Rahul Ratnakar (PW/9). Therefore, ASI P.S. Bariya (PW/12) lodged an FIR (Ex.P/18) against the appellants on 11.01.2018.

3. During investigation, SI Kamal Kishore (PW/11) on 12.01.2018, found injured Mridul (PW/2) in 350 feet deep trench, near left side of Sati Gate, Pedmi - Udaipur road, in half-dead state. He was taken forthwith to Index Medical College, Indore for treatment. Dr. Vinod Kumar Sethi (PW/13) on 12.01.2018 at 10:00 AM examined Mridul (PW/2). He gave his report (Ex.P/19). On the same day, he was referred thereafter admitted for further treatment in Bombay Hospital, Indore. He was admitted there till 05.02.2018.

4. On 12.01.2018, SI Kamal Kishore (PW/11) prepared spot map (Ex.P/14) at the instance of Raj Kumar. He seized a lower (Article A-1) of injured Mridul (PW/2), Aadhar Card of accused Akash (Article A-6), blood stained soil (Article A-2), plain soil (Article A-3) and blood stained stone (Article A-4 & A-5), used to inflict injury upon Mridul (PW/2), from the place of incident vide seizure memo (Ex.P/15). He pasted seizure slip on Article A-4 and A-5 (Ex.P/16 & 17 respectively). On 12.01.2018, he arrested the appellants Piyush @ Rohit, Akash and Vijay and prepared arrest memo (Ex.P/4, P/5 & P/6, respectively). During custody, he interrogated the appellant Akash and recorded his

memorandum statements (Ex.P/7) u/S 27 of the Indian Evidence Act, 1872. He seized the aforementioned car and the tape kept inside, at the instance of appellant Akash vide seizure memo (Ex.P/10). On 13.01.2018, during interrogation, appellant Vijay disclosed that he had thrown phone of injured Mridul (PW/2) in a sewer, but the phone could not be found at the place stated, SI Kamal Kishore (PW/11) prepared search memo (Ex.P/9). On 13.01.2018, SI Kamal Kishore (PW/11) seized CCTV footage from Hero Vinayak Motors, clerk colony vide seizure memo (Ex.P/19). On the same day, he also saw CCTV footage of electronics shop of Deepak Vijayavargiya (PW/6) and seized CCTV footage vide seizure memo (Ex.P/12). SI Kamal Kishore (PW/11) prepared certificate (Ex.P/21 – P/23) u/S 65B of the Evidence Act. He sent seized articles to FSL, Rau, Indore for chemical examination, wherefrom receipt of (Ex.P/21) was received. After examination, FSL report (Ex.P/24) was also received. Statement of witnesses u/S 161 of Cr.P.C. was recorded by SI Kamal Kishore (PW/11). The injured Mridul (PW/2) was under treatment for around 70 days. Thereafter on getting well, on 27.03.2018, his case diary statement (Ex.D/2) was recorded. On 03.04.2018, Executive Magistrate/Naib Tehsildar Rahul Gaikwad (PW/14) conducted test identification parade at Central Jail, Indore, wherein, Mridul (PW/2) and Rakesh @ Monu had rightly identified the appellants/accused persons, he prepared TIP memo (Ex.P/3 & D/1). Documents relating to treatment of injured Mridul were taken from concerned hospitals. After completion of investigation, charge-sheet was filed.

5. Learned Trial Court had framed charge against the accused persons. The accused persons abjured their guilt and claimed to be tried. In turn to prove its case, the prosecution examined 15 witnesses. After completion of prosecution evidence, the accused persons were examined u/S 313 of CrPC. The accused persons had taken defence that they are innocent and have been falsely implicated though no witness has been examined by the accused persons in their defence.

6. After considering the evidence available on record, learned Trial Court came to the conclusion that the appellants are guilty for the offences as mentioned above.

7. Learned counsel for the appellants submit that the judgement passed by learned Trial Court is bad in law and contrary to the facts and evidence of the case. The evidence laid by the prosecution witnesses suffer from serious infirmity. No certificate u/S 65B of the Evidence Act was received from competent person who manages computer of CCTV, therefore, CCTV footage is not admissible in evidence. Injured Mridul (PW/2) was discharged from the hospital on 05.02.2018 but his case diary statement was recorded belatedly on 27.03.2018. TIP was also conducted belatedly on 03.04.2018. There is no evidence available on record which shows that before the conduction of TIP, the face of appellants/accused persons were kept covered. There are material contradictions in statement of injured and other witnesses. Therefore, statement of injured and other witnesses is not reliable. There is no reliable evidence in the case against the appellants, but the Trial Court

has not considered it properly and wrongfully passed the impugned judgement. Therefore, the impugned judgement is liable to be set aside.

8. On the other hand, learned counsel for the respondent/State has opposed the submissions made by learned counsel for the appellants, by submitting that the prosecution succeeded to prove its case beyond reasonable doubt. Therefore, the appeal is liable to be dismissed.

9. I have heard learned counsel for the parties and perused the records.

10. Learned Trial Court, for the missing of Mridul (PW/2), has relied upon statement of Mohit (PW/1), Gurvinder (PW/3) and Sourabh Sen (PW/5). Learned Trial Court has relied on the sole testimony of injured Mridul (PW/2) in reference to the alleged offence committed by the accused persons/appellants. It has further been observed that case of the prosecution is partly supported by FSL report (Ex.P/24). It has also been observed that CCTV footage partly supports the case of prosecution, but it has also held that even if it is assumed that CCTV footage (Article A-7 & A-8) does not fully support the case of prosecution, then too, sole statement of injured Mridul (PW/2) fully supports the case of prosecution. Therefore, learned Trial Court has convicted and sentenced the accused persons.

11. Mridul (PW/2) stated that he knows the accused persons Akash, Vijay and Piyush @ Rohit. On 07.01.2018 at around 11:00 AM, when he was in his rented room, appellant Akash had called him and introduced

himself as cousin brother of Anjali. Thereafter, the witness went out of his room. On the other end of the road, appellant Akash was standing. This witness went and talked to him. Accused Akash told him that Anjali's uncle has called him, and he asked Mridul (PW/2) to come alongwith him in his car. The witness stated that he will come after a while. The accused Akash with the help of other two appellants, had forcibly made Mridul (PW/2) sit in their car. One of them started to drive the car. Accused persons started physically assaulting him and asked him that, why does he talk to Anjali? The witness stated that Anjali is his best friend, then accused Akash snatched his mobile phone. The witness started to cry for help. The accused persons then had stuck mouth of this witness by tape and had tied his hands by rope. The accused persons continuously assaulted him by kicks and were saying "Majnu Banega?" and gave him life threat. Thereafter, the accused persons took him in a jungle, got the witness out of their car and battered him by means of fists and kicks. The accused persons had given blows on his face and chest by means of stones. Thereafter, they dragged him and threw him in a deep trench. He got fainted and got conscious in hospital then.

12. Sourabh Sen (PW/5) stated that he lived with Mridul (PW/2) in the same rented room situated at 208, Clerk Colony, Indore. On 07.01.2018, at around 11:00 AM, Mridul (PW/2) had left the rented room but he did not return. This witness called him but his phone was switched off. Thereafter, on the next day of incident, he called Gurvinder (PW/3) but he did not respond. On the next day, he called Gurvinder (PW/3) again and informed about Mridul (PW/2). He also informed Mohit (PW/1).

Mridul (PW/2) could not be traced for 02 days. Therefore, on 09.01.2018, Mohit (PW/1) filed a written complaint (Ex.P/2), on the basis of which, on the same day SI Kamal Kishore (PW/11) lodged a missing person report (Ex.P/1). Statement of this witness is supported by Mohit (PW/1), Gurvinder (PW/3) and Sourabh Sen (PW/5). SI Kamal Kishore (PW/11) also stated that he lodged missing person report (Ex.P/1) on the basis of written complaint (Ex.P/2). Statement of this witness appears to be reliable. Therefore, on the basis of statement, of Mohit (PW/1), Gurvinder (PW/3), Sourabh Sen (PW/5) and SI Kamal Kishore (PW/11), it is clear that Mridul (PW/2) went missing on 07.01.2018 at around 11:00 AM.

13. ASI P.S. Bariya (PW/12) stated that on 11.01.2018 during inquiry of missing person report, he saw CCTV footage of Hero Vinayak Motors, situated near the place of incident and found that the accused persons Akash, Vijay and Piyush @ Rohit had abducted Mridul (PW/2) and were taking him in their car. Therefore, he lodged an FIR (Ex.P/18) against the accused persons. In paragraph 6 of cross-examination, the witness admitted that he did not prepare panchnama of checking, CCTV footage and did not seize CCTV recording. In paragraph 10 of cross-examination, ASI P.S. Bariya (PW/12) also admitted that he did not know accused persons before the incident, but he stated that he also recorded statement of witnesses during missing person inquiry. Therefore, on the basis of aforementioned, statement of this witness cannot be discarded in respect of lodging of FIR.

14. SI Kamal Kishore (PW/11) stated that on 12.01.2018, he visited the spot and found that the injured Mridul (PW/2) was lying in a 350 feet deep trench, near left side of Sati Gate, Pedmi - Udaipur road, in half-dead state. This witness with assistance of villagers got Mridul (PW/2) out of the deep trench. Thereafter, this witness got Mridul (PW/2) admitted in Index Medical College, Indore for treatment.

15. Dr. Vinod Kumar Sethi (PW/13) stated that on 12.01.2018, he was posted at Index Medical College, Indore as CMHO. On the same day, police of Police Station Kudail brought injured Mridul (PW/2) for treatment. He examined the injured and found that he was unconscious, his GCS was 3/15, right eye was not reacting to light. Following injuries were found on his body:-

- i. Ecchymosis over both eyelid.*
- ii. lacerated wound over left zygomatic region. Size 6 x 1 cm.*
- iii. Lacerated wound over left supraorbital region. Size 1 x 1 cm.*
- iv. Lacerated wound over right supraorbital region. Size 1 x 1 cm.*
- v. Lacerated wound over chin. Size 1 x 1 x bone deep.*
- vi. Multiple abrasion over gluteal region.*
- vii. Multiple abrasion over right hand.*
- viii. Lacerated wound over right parietal region. Size 2 x 1 cm.*

ix. Multiple abrasion over left knee joint.

x. Abrasion over left thigh lateral aspect. Size 10 x 10 cm.

xi. Lacerated wound on interior aspect of left thigh.

xii. Multiple abrasion over right leg.

xiii. Abrasion over right coastal region

xiv. Multiple abrasion over left side of neck.

xv. Lacerated wound over left middle finger.

16. The witness has further stated that he had given first aid to Mridul (PW/2) and prepared MLC (Ex.P/19). In cross-examination, the witness stated that all the injuries were simple in nature.

17. Dr. Prashant Newalkar (PW/7) stated that on 12.01.2018, he was posted at Bombay Hospital, Indore as Consultant Neuro surgeon. On the same day, Mridul (PW/2), referred from Index Medical College, was admitted in Bombay Hospital for treatment. The injured was unconscious and was unable to speak. During examination, he found that there were injuries on head, face, chest, spine of the injured. There were fractures also in skull and jaw. Several small clots were present in the brain of Mridul (PW/2). The veins present in brain was found to be choked. Multiple injuries were present on his face. A breathing pipe was installed in the throat of injured. Other doctors as well had examined and operated Mridul (PW/2). On 05.02.2018, the injured was discharged from the

hospital. At the time of discharge, a pipe was installed in mouth of injured, to consume food. Discharge summary is (Ex.P/13).

18. Dr. Alok Madaliya (PW/8) stated that on 12.01.2018, he was posted at Bombay hospital as a Neuro physician. On the same day, injured Mridul (PW/2) was referred from Index Medical College, Indore to Bombay Hospital for further treatment. Injury was found in the veins of brain, which was medicated by him. After the injured Mridul (PW/2) was discharge, on 28.03.2018 this witness had examined him again and prepared OPD slip (Ex.P/14).

19. Though, Dr. Vinod Kumar Sethi (PW/13), who previously examined the injured, found multiple injuries on his body. He admitted in cross-examination that injuries found on the body of the injured were simple in nature, but Dr. Prashant Newalkar (PW/7), who treated the injured from 12.01.2018 – 05.02.2018, has clearly stated that there was fracture in skull and jaw. It also appears from statement of Vinod Kumar Sethi (PW/13) that he had not advised for X-ray of the injuries and has also not stated that he examined X-ray plate. Therefore, his statement is not reliable that nature of injuries were simple in nature. There is nothing to show contrary in statement of Dr. Prashant Newalkar (PW/7). His statement regarding fracture on skull and jaw of injured has not been challenged in cross-examination. Therefore, his statement is credible and it appears that apart from simple injuries, there were also fractures on head and jaw of the injured, which comes under grievous hurt. Therefore, it appears that statement of Mridul (PW/2) is supported by SI

Kamal Kishore (PW/11), Dr. Vinod Kumar Sethi (PW/13), Dr. Prashant Newalkar (PW/7) and Dr. Alok Madaliya (PW/8).

20. Rahul Ratnakar (PW/9), is alleged registered owner of car bearing registration No.MP-09-CU-5956 and elder brother of accused Akash. He stated that he is registered owner of the aforementioned car and he himself uses the car. The prosecution declared him hostile as he did not support the case of prosecution. In paragraph 2 of cross-examination, he admitted suggestion of public prosecutor that on 07.01.2018, his younger brother had taken his car and later he came to know that accused Akash alongwith his friends Vijay and Piyush @ Rohit had abducted one guy. In paragraph 3 of cross-examination, he admitted suggestion of defence counsel that on 07.01.2018 he had not given his car to accused Akash. He further admitted that his car has never been used by accused Akash. As per statement of Mridul (PW/2), accused persons had abducted him by car, which is supported by Rahul Ratnakar (PW/9) in his examination-in-chief, but the same is denied in cross-examination conducted by learned counsel for Akash. This witness is real elder brother of accused Akash. Therefore, denial by Rahul Ratnakar (PW/9) in cross-examination, that he had not given his car to accused Akash, is not reliable.

21. SI Kamal Kishore (PW/11) stated that on 12.01.2018, he visited place of incident and prepared spot map (Ex.P/14) at the instance of Raj Kumar. He seized a lower (Article A-1) of Mridul (PW/2), Aadhar Card of accused Akash (Article A-6), blood stained soil (Article A-2), plain

soil (Article A-3) and blood stained stone (Article A-4 & A-5), used to inflict injury upon Mridul (PW/2), from the place of incident vide seizure memo (Ex.P/15), though prosecution has not examined witnesses Raj Kumar and Akshay in respect of seizure memo (Ex.P/15). As per spot map (Ex.P/14), it appears that the map is related to where the injured was lying on. As per statement of SI Kamal Kishore (PW/11), he visited the spot where injured was lying in half dead state and he took him from there for treatment and aforementioned articles were seized from the spot. Therefore, there is nothing contrary in his cross-examination. Hence, his sole statement appears to be reliable.

22. SI Kamal Kishore (PW/11) stated that on 12.01.2018, he arrested Piyush @ Rohit, Akash and Vijay and prepared arrest memo (Ex.P/4 – P/6, respectively). On the same day, he interrogated accused Akash, wherein he disclosed that he has parked the aforementioned car in front of his house. Cello tape is inside the car. He prepared disclosure statement (Ex.P/7). Thereafter, he seized the aforementioned car and cello tape from inside the car at the instance of accused Akash vide seizure memo (Ex.P/10). Deepesh Jain (PW/4) and Sourabh Sen (PW/5) also stated that police had arrested the accused persons and prepared arrest memo (Ex.P/4 – P/6). Both the witnesses have not supported the disclosure statement of the accused Akash. Therefore, the prosecution declared them hostile and cross examined them. Both the witnesses supported suggestion of public prosecutor that accused Akash had disclosed that he had parked the car in front of his house and cello tape is kept inside it. The same was seized by SI Kamal Kishore (PW/11) at the

instance of accused Akash and he prepared disclosure statement (Ex.P/7) and seizure memo (Ex.P/10).

23. SI Kamal Kishore (PW/11) deposed that on 13.01.2018, he interrogated accused Vijay and he disclosed that he threw mobile phone of Mridul (PW/2) in a sewer. He prepared disclosure memo (Ex.P/8). Thereafter, during search, the mobile phone could not be found. He prepared search memo (Ex.P/9). Statement of this witness is also supported by Deepesh Jain (PW/4) and Sourabh Sen (PW/5) but mobile phone could not be found in furtherance of disclosure statement. Therefore, disclosure statement of accused Vijay does not support the case of prosecution.

24. SI Kamal Kishore (PW/11) stated that he had sent seized articles to FSL, Rau, Indore for chemical examination through letter (Ex.P/20) dated 16/2.2018, from where receipt (Ex.P/21) and FSL report (Ex.P/24) was received. As per FSL report (Ex.P/24), human blood was found on lower (Article A-1) of injured, blood stained soil (Article A-2) and blood stained stones seized from the spot. Therefore, FSL report supports the case of prosecution, that Mridul (PW/2) was lying at the spot. As per seizure memo (Ex.P/15) and statement of SI Kamal Kishore (PW/11), he seized Aadhar Card of accused Akash (Article A-6) from the spot. Though SI Kamal Kishore (PW/11) stated in paragraph 4 of examination-in-chief that, mistakenly he could not file seized original Aadhar Card (Article A-6) alongwith charge-sheet, but was produced later on from case diary. Therefore, it is clear that seized original Aadhar

Card of accused Akash from the spot, the witness produced from the case diary at the time of his examination. Therefore, on the aforementioned ground, seizure of Aadhar Card cannot be discarded. Statement of the witness is reliable and it is clear that original Aadhar Card (Article A-6) was seized by SI Kamal Kishore (PW/11) from the spot but the accused Akash has not given any explanation that how his Aadhar Card reached at spot. Therefore, this circumstance goes against accused Akash.

25. So far as the question of admissibility of CCTV footage in the evidence is concerned, it is apposite to reproduce here Section 65B of the Indian Evidence Act, 1872, which runs as under:-

65B. Admissibility of electronic records. — (1) *Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

(2) *The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: —*

(a) *the computer output containing the information was*

produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period;
or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection

it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) *For the purposes of this section, —*

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]

26. Learned Trial Court has relied upon the case law of ***State (NCT of Delhi) V Navjot Sandhu @ Afsan Guru [(2005) 11 SCC 600]*** and ***Shafi Mohammad V State of H.P. [(2018) 2 SCC 801]*** and observed that

certificate u/S 65B(4) is not mandatory if the parties have received electronic records or secondary evidence of electronic records, he can produce that as evidence without certificate.

27. In the case of *Anvar P.V. V P. K. Basheer & others [(2014) 10 SCC 473]*, the Apex Court has held as under:-

"22. The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

The same principal is followed in the case of ***Arjun Pandit Rao Khotkar vs Kailash Kushan Rao Ganpatyal Gorantyal and ors [(2020)7 SCC 1]***.

28. From the foregoing analysis, it is apparent that certificate u/S 65B is mandatory to prove electronic record and such certificate shall be issued by authorized person, as prescribed u/S 65B(4).

29. In this respect, SI Kamal Kishore (PW/11) stated that on 13.01.2018, he made a copy in DVD (Article A-7) from the CCTV footage at Hero Vinayak Motors, Clerk Colony, Indore vide seizure memo (Ex.P/19). He further stated that, on the same day, he made a copy in DVD (Article A-8) from the CCTV footage at general store of Deepak Vijayvargiya (PW/6) and prepared seizure memo (Ex.P/12). Satya Narayan @ Sattu (PW/15) has not supported the case of prosecution. Though he admitted his signature on seizure memo (Ex.P/19). The prosecution declared him hostile and cross-examined him. In paragraph 2, he admitted suggestion of the public prosecutor that police had seized CCTV footage from Hero Vinayak Motors. Prakash (PW/10) also has not supported the statement of SI Kamal Kishore (PW/11), therefore, the prosecution declared him hostile and cross examined him, then in paragraph 2, he denied that police had seized CCTV footage from Deepak Vijayvargiya's general store. Deepak Vijayvargiya (PW/6) stated that his electronic shop is situated at Kalyan Mill, Indore. Police had come to his shop and watched CCTV footage and it was found that 02 persons purchased a cello tape and bundle of rope and had given Rs.30/-

to him, thereafter, both the persons had gone. He has not supported the case of prosecution. Therefore, the prosecution declared him hostile and cross examined him, then he has admitted in paragraph 3 that police had recorded the CCTV footage in their phone and no DVD/CD copy was made of the actual footage. He admitted his signature on (Ex.P/22). Therefore, these witnesses have not supported the statement of SI Kamal Kishore (PW/11).

30. Apart from that SI Kamal Kishore (PW/11) in paragraph 10 of examination-in-chief deposed that he received customer applications form of accused persons and Mohit (PW/1) from Jio and Idea company and received CDR of mobile phone No.91 7999918396 in 72 pages. In relation to the aforementioned, he had prepared certificate u/S 65B of the Evidence Act. But in the case, CDR of mobile phone has not been proved by this witness and as per statement, he himself prepared certificate u/S 65B of the Evidence Act (Ex.P/21). Further, he stated that he also prepared certificate u/S 65B of the Evidence Act (Ex.P/22 & P/23) in respect of DVD (Article A-7 & A-8) which were prepared from electronic shop of Deepak Vijayvargiya (PW/6) and Hero Vinayak Motors, therefore, it appears that this witness himself prepared the certificates u/S 65B of the Evidence Act, while as per established law, certificate u/S 65B of the Evidence Act can be issued by a responsible official person in relation to the operation of the relevant device or the management of the relevant activities. Therefore, copy of electronic record in form of DVD (Article A-7 & A-8) which are prepared by SI Kamal Kishore (PW11) are not admissible in the evidence.

31. As per prosecution case, before the incident, Mridul (PW/2) did not know accused persons. Therefore, Test Identification Parade (TIP) was conducted by the Executive Magistrate/Naib Tehsildar Rahul Gaikwad (PW/14) to identify the accused persons. Rahul Gaikwad (PW/14) stated that on 03.04.2018, he received a letter from the office of Police Superintendent, Indore. Thereafter, he called Mridul (PW/2) and Rakesh @ Monu, and on the same day, he conducted identification parade in Central Jail, Indore. He further stated that in TIP, Mridul (PW/2) had rightly identified the accused persons, Akash, Piyush @ Rohit and Vijay. He prepared TIP memo (Ex.P/3) and stated that he also prepared another TIP memo (Ex.D/1) in respect of witness Mridul (PW/2) and Rajesh. In paragraph 3, the witness stated that accused persons and others were made stand together in a line, thereafter both the witnesses had identified the accused persons and prepared TIP memo (Ex.D/1). He denied that he has wrongly prepared TIP memo (Ex.P/3). In paragraph 4 & 5 of cross-examination, the witness admitted that no letter or notice is annexed with the case and no seal is marked in memo (Ex.D/1). In paragraph 7 of cross-examination, the witness stated that he cannot state, who were mixed with the accused persons during TIP, without looking at them. He also stated that jail superintendent made other persons available for TIP. Therefore, on the basis of aforementioned, statement of this witness cannot be discarded.

32. Mridul (PW/2) stated that TIP was organized in jail to identify the accused persons. TIP memo (Ex.P/3) was prepared and he had put his signature there A-A. In paragraph 14 of cross-examination, this witness

stated that he did not know Rakesh @ Monu before the incident but in paragraph 11, he admitted that Rakesh @ Monu was there when he reached jail. In paragraph 12, he admitted that he does not know that after TIP, signature of accused persons and others were taken or not. He further stated that the signatures were not taken in front of him. There is nothing contrary in the examination of Mridul (PW/2) despite of being cross examined at length. At the time of the incident, Mridul (PW/2) had enough time with the accused persons because of which he was able to recognize them later. The witness at the examination before the Trial Court has also identified the accused persons. Therefore, identification by this witness to the accused persons appears to be reliable.

33. So far as the question of recording delayed case diary statement of Mridul (PW/2) is concerned, the incident had taken place on 07.01.2018 and case diary statement (Ex.D/2) of Mridul (PW/2) was recorded by the Investigating Officer SI Kamal Kishore (PW/11) on 27.03.2018. The injured was admitted in hospital from 12.01.2018 – 05.02.2018. SI Kamal Kishore (PW/11) in paragraph 25 of cross-examination denied that he had no information about the accused persons because of which his case diary statement was not taken in hospital. He also denied that from 05.02.2018 to 27.03.2018, he did not try to record his case diary statement. Therefore, it appears that though case diary statement of witness has been taken belatedly, but it appears from the statement of Prashant Newalkar (PW/7) that at the time of discharge of Mridul (PW/2) from hospital, a pipe was inserted in his mouth to enable him to eat food. He had fractures in skull and jaw and as per statement of Dr.

Alok Madaliya (PW/8), he had treated Mridul (PW/2) again on 28.03.2018 as outdoor patient. Therefore, it appears that the injured was not well for a long period. Hence, delay in recording case diary statement is not fatal for the prosecution.

34. Though there are some omissions in case diary statement (Ex.D/2) of Mridul (PW/2) but there is no material omission and contradiction in his statement in respect of incident. Even the statement of Mridul (PW/2) has been recorded before the Trial Court after more than 8 months. Therefore, minor omissions and contradictions are natural. Hence, on the basis of minor omission, contradiction and discrepancies, cannot affect credibility of the witness.

35. Consequently, from connecting the dots of the aforementioned facts and circumstances of the case, considering the statement of injured Mridul (PW/2) and other evidences, it is apparent that the accused persons had fulfilled all the essential elements of offences convicted i.e. they formed common intention and abducted injured Mridul (PW/2) from his residence, took him to aforementioned remote location, had beaten him and had thrown his body in deep trench with intent to kill him and hide his body/ disappear the evidence.

36. On the basis of foregoing discussion, it is clear that the prosecution has succeeded to prove its case beyond reasonable doubt against the appellants. Learned Trial Court has rightly appreciated the evidence available on record and has convicted and sentenced the appellants. Learned Trial Court has not committed any error in convicting and

sentencing the appellants for the offence.

37. Consequently, these appeals sans merit and are hereby **dismissed**. The impugned judgement of conviction and sentence, passed by the learned Trial Court is affirmed.

38. Appellant Akash is in custody. Appellants Piyush @ Rohit and Vijay are on bail, they are directed to surrender forthwith before the learned Trial Court to undergo their remaining jail sentence, failing which the Trial Court shall be at liberty to take necessary steps against the appellants. After their surrender before the Trial Court, their bail bonds shall be discharged.

39. Accordingly, these appeals are **disposed of**.

40. A copy of this judgement be supplied to the appellants at the earliest possible. Copy of this judgement alongwith record of the Trial Court be sent back to the Trial Court for necessary compliance.

Certified copy, as per Rules.

(PRAKASH CHANDRA GUPTA)
JUDGE

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