2025:CGHC:60943-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1656 of 2024

Ravi Khandekar S/o. Budhram Khandekar Aged About 19 Years R/o. Village - Devnagar, P.S. Koni, District - Bilaspur (C.G.)

--- **Appellant**

Versus

State of Chhattisgarh Through P.S. Tarbahar, District - Bilaspur (C.G.)

--- **Respondent**

CRA No. 1954 of 2024

Sahil @ Shibu Khan S/o Shri Mukhtar Khan Aged About 19 Years R/o Village Devnagar, Police Station Koni, District Bilaspur, Chhattisgarh.

--- **Appellant**

Versus

State of Chhattisgarh Through Station House Officer, Police Station - Tarbahar, District Bilaspur, Chhattisgarh.

--- **Respondent**

CRA No. 1696 of 2024

Abhishek Dan S/o Yashwant Dan, Aged About 20 Years R/o Near Water Tank, Tarbahar, Police Station-Tarbahar, District-Bilaspur (C.G.)

--- **Appellant**

Versus

State of Chhattisgarh Through- Station House Officer, Police Station-Tarbahar, District-Bilaspur (C.G.)

... Respondents

(Cause-title taken from Case Information System)

For Appellant (In CRA No.1656/2024)	:	Mr. Rajesh Jain, Advocate
For Appellant (In CRA No.1696/2024)	:	Mr. Goutam Khetrapal, Advocate
For Appellant (In CRA No.1954/2024)	:	Mr. Santosh Bharat, Advocate
For Respondent-State	:	Mr. Shashank Thakur, Deputy Advocate General

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

***Per* Ramesh Sinha, Chief Justice**

15.12.2025

1. Heard Mr. Rajesh Jain, learned counsel for the appellant in CRA No.1656/2024, Mr. Goutam Khetrapal, learned counsel for the appellant in CRA No.1696/2024, Mr. Santosh Bharat, learned counsel for the appellant in CRA No.1954/2024 as well as Mr. Shanshank Thakur, learned Deputy Advocate General, appearing for the State/respondent.

2. Since all these criminal appeals, namely CRA No.1656/2024, CRA No.1696/2024 and CRA No.1954/2024, arise out of the same crime, they have been clubbed together, heard together, and are being decided by this common judgment.

3. These criminal appeals under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, ‘Cr.P.C.’) are directed against the impugned judgment of conviction and order of

sentence dated 23.08.2024 passed by learned 3rd Additional Additional Sessions Judge, Bilaspur, District – Bilaspur (C.G.) in Sessions Trial No.121/2022, whereby the learned trial Court has convicted and sentenced the appellants as under :-

Conviction		**Sentence**
Under Section 363 of the Indian Penal Code, 1860		Rigorous imprisonment for 07 years and fine of Rs.1,000/-, in default of payment of fine amount, additional rigorous imprisonment for one month.
Under Section 364A of the Indian Penal Code, 1860		Life imprisonment and fine of Rs.1,000/-, in default of payment of fine amount, additional rigorous imprisonment for six months.
Under Section 387 of the Indian Penal Code, 1860		Rigorous imprisonment for 07 years and fine of Rs.1,000/-, in default of payment of fine amount, additional rigorous imprisonment for one month.
Under Section 302 read with Section 34 of the Indian Penal Code, 1860		Life imprisonment and fine of Rs.1,000/-, in default of payment of fine amount, additional rigorous imprisonment for six months.
Under Section 201 read with Section 34 of the Indian Penal Code, 1860		Rigorous imprisonment for 03 years and fine of Rs.1,000/-, in default of payment of fine amount, additional rigorous imprisonment for six months.

4. The prosecution case, as unfolded during the investigation and trial, is that on 06.02.2022 at about 5:00 p.m., at Khudiram Bose Chowk, Deepupara Adivasi Mohalla, Tarbahar, Police Station Tarbahar, District Bilaspur (C.G.), the accused persons, in furtherance of their common intention, kidnapped one Mohammad Rehan, a minor aged about 16 years, son of the complainant, from the lawful guardianship of his parents without their consent. It was alleged that the kidnapping was committed with the object of compelling the parents of Mohammad Rehan to pay ransom, and for that purpose, the accused persons put the parents in fear of death of his son. In furtherance of their common intention and common object, the accused persons caused the death of Mohammad Rehan by assaulting him and strangulating him, thereby committing his murder, an offence punishable with death or imprisonment for life. It was further alleged that, with the knowledge that the said act was punishable with death or imprisonment for life, and with the intention of screening themselves from legal punishment, the accused persons concealed the dead body of Mohammad Rehan by placing it in a sack and hiding it under a culvert near Mananpur Highway, thereby causing disappearance of evidence of the offence.

5. Brief facts of the case, in a nutshell, are that on 06.02.2022 the complainant, Asif Mohammad (PW-1), lodged a report at Police Station Tarbahar stating that at about 5:30 p.m. on the same day, his son Mohammad Rehan had gone to purchase chips from a

shop situated near Khudiram Bose Chowk, Deepupara Adivasi Mohalla, Tarbahar, and did not return home. Despite making enquiries in the neighbourhood and from his son's friends, no information about his whereabouts could be obtained, leading to a suspicion that some unknown person had kidnapped his son by enticing him away.

6. On the basis of the said report, an FIR was registered at Police Station Tarbahar against unknown persons for the offence punishable under Section 363 of the Indian Penal Code, 1860 (for short, 'IPC'). During the course of investigation, at about 11:15 p.m. on 06.02.2022, a call was received on the complainant's mobile phone from the mobile phone of the kidnapped boy, wherein the caller stated that his son had been kidnapped and demanded a ransom of Rs.50,00,000/- for his release.

7. During investigation, on the basis of the mobile phone and call detail records of the abducted boy, the memorandum statement of accused Abhishek Dan was recorded, wherein he disclosed that, along with co-accused Sahil alias Shibu Khan and Ravi Khandekar, he had kidnapped Mohammad Rehan and had demanded ransom of Rs.50,00,000/- from his father, Asif Mohammad, and thereafter murdered Mohammad Rehan and concealed his dead body by placing it in a sack and hiding it under a culvert near Mananpur Highway. In view of the said disclosure, offences under Sections 364-A, 386, 302, 201, 120-B

read with Section 34 of the IPC were added.

8. A merg was registered at Police Station Ratanpur and the inquest proceedings were conducted. The dead body was sent for postmortem examination. From the spot, blood-stained sacks and one empty sack were seized. A numbered merg was also registered at Police Station Tarbahar, District Bilaspur. As per the postmortem report (Ex.P/23), the cause of death of Mohammad Rehan was asphyxia due to strangulation and the nature of death was homicidal. The clothes worn by the deceased at the time of the incident, his wristwatch, and the belt allegedly used by the accused in committing the murder were seized. Statements of the complainant and other witnesses were recorded and the spot map was prepared.

9. During investigation, one Samsung mobile phone and one Realme mobile phone were seized from accused Ravi Khandekar, and one silver-coloured Yamaha motorcycle bearing registration No. CG-10 ER-1246 and one Realme mobile phone were seized from accused Abhishek Dan. The seized articles were sent to the Regional Forensic Science Laboratory, Bilaspur, and as per the report received, human blood was found on Article ‘A’. Upon completion of investigation, the accused persons, namely Abhishek Dan, Sahil alias Shibu Khan and Ravi Khandekar, were arrested on 07.02.2022 and intimation of their arrest was given to their family members.

10. After completion of the entire investigation, a charge-sheet was filed against the accused persons before the Judicial Magistrate First Class, Bilaspur. Since the offences were exclusively triable by the Court of Session, the case was committed to the Court of the learned Sessions Judge, Bilaspur, and thereafter, upon transfer, it was received by the 3rd Additional Sessions Judge, Bilaspur for hearing and disposal in accordance with law.

11. Charges under Sections 363, 364-A, 387, 302 read with Section 34 and Section 201 read with Section 34 of the IPC were framed against the accused persons, which were read over and explained to them. The accused persons pleaded not guilty and claimed to be tried.

12. In support of its case, the prosecution has examined as may as 13 witnesses as PW-1 to PW-13 and exhibited 43 documents as Ex.P/1 to Ex.P/43 respectively as well as 4 articles i.e. Article A1, C/1C, C/2C to C/4, whereas in defence, appellants/accused have not examined any witness and exhibited only one document i.e. Ex.D/1.

13. When the accused were examined under Section 313 Cr.P.C., they denied having produced any witness in their defence, claiming that they were innocent and that they had been falsely implicated.

14. The trial Court after appreciating oral and documentary evidence available on record, by its judgment dated 23.08.2024 convicted

and sentenced the accused/appellants as mentioned in third paragraph of this judgment, against which, these criminal appeals have been preferred by the accused/appellants under Section 374(2) of Cr.P.C.

15. Mr. Rajesh Jain, learned counsel for the appellant- Ravi Khandekar in CRA No.1656/2024, submits that the learned trial Court has committed a grave error in appreciating the evidence and facts on record while recording the finding of guilt against the appellant. It is contended that the learned trial Judge failed to consider that the appellant had filed an application under Section 7 read with Section 2(k) of the Juvenile Justice Act seeking determination of his age. After holding an inquiry, the learned trial Court referred the matter to the Juvenile Justice Board, Bilaspur, on 29.07.2022 for conducting an inquiry in accordance with law. Upon such inquiry, the Juvenile Justice Board, Bilaspur, held that the appellant was above 18 years of age at the time of the incident and accordingly sent the matter back to the concerned trial Court on 10.07.2023. Charges were thereafter framed against the appellant on 12.07.2023.

16. It is further submitted by Mr. Jain that during the period when the age inquiry was pending, the co-accused, namely Abhishek Dan and Sahil alias Shibu Khan, faced trial and prosecution witnesses PW-1 to PW-9 were examined. However, after framing of charges against the present appellant, only PW-1 Asif Mohammad and

PW-6 Sheikh Alam were examined, whereas PW-2, PW-3, PW-4, PW-5, PW-7, PW-8 and PW-9 were not examined thereafter, and therefore, their statements could not have been read against the present appellant. He further submits that the learned trial Judge committed a serious error in relying upon the statements of memorandum and seizure witnesses, namely PW-3 Anand Gupta and PW-7 Tanvir Mohammed, as they were not examined by the prosecution against the present appellant after framing of charges. It is also argued that there are material contradictions in the statements of the Investigating Officers, PW-11 Jay Prakash Gupta and PW-14 Harvinder Singh. PW-11 stated that the recovery Panchnama was prepared on 07.02.2022 at about 09:10 a.m. and the identification panchnama was prepared on the same day at about 09:20 a.m., whereas PW-14 stated that he reached the spot 20–25 minutes after registration of the merg intimation, which was lodged at about 09:30 a.m., and that he prepared the Naksha Panchnama (Ex.P/4) between 10:45 a.m. and 11:40 a.m., whereafter the father of the deceased identified the dead body. It is further stated by PW-14 that when he reached the spot, the body of the deceased was already lying in a sack under the bridge, which shows that the dead body was recovered prior to, or independent of, any disclosure by the accused persons.

17. Mr. Jain also submits that as per the statement of PW-1, in paragraph 13, the Investigating Officer had prior information that

the dead body of the deceased was lying under the bridge even before recording the memorandum statement, and therefore, the recovery of the dead body cannot be said to be in consequence of any information given by the accused persons. It is also contended that the alleged recovery of the mobile phone of the deceased at the instance of the appellant has not been duly proved, as the IMEI number does not match with the call detail records and the said mobile phone was never put to identification before the father of the deceased. He submits that the prosecution failed to obtain the mandatory certificate under Section 65-B of the Indian Evidence Act from the concerned authority or witnesses, and therefore, the electronic evidence, including the data stored in the pen drive and the call detail records, is inadmissible in the eyes of law. The appellant has been convicted primarily on the basis of the statement of the Investigating Officer, which is impermissible in law. There is no direct evidence connecting the appellant with the alleged crime, and the conviction rests solely on circumstantial evidence, the chain of which is incomplete and insufficient to establish the guilt of the appellant beyond reasonable doubt. As such, the impugned judgment of conviction deserves to be set aside.

18. Mr. Goutam Khetrapal, learned counsel for the appellant–Abhishek Dan in CRA No.1696/2024, submits that the impugned judgment dated 23.08.2024 is contrary to law and circumstances of the case and, therefore, deserves to be set aside. It is

contended that the learned trial Court has committed a grave error of law in convicting the appellant merely on conjectures and surmises, without there being any reliable, cogent or clinching evidence on record. The learned trial Court failed to appreciate that the prosecution has not produced any trustworthy evidence to establish that the appellant had kidnapped the deceased Mohammad Rehan, nor is there any evidence to show that the appellant demanded extortion money by putting the deceased or his family under threat of death.

19. Mr. Khetrapal further submits that the learned trial Court has completely failed to appreciate that the appellant neither committed the murder of the deceased Mohammad Rehan nor concealed any evidence relating to the alleged offence. The prosecution has not even adduced prima facie evidence to establish the commission of murder by the appellant. Despite this, the learned trial Court erroneously convicted the appellant on the basis of circumstantial evidence, though the alleged chain of circumstances is broken, incomplete and does not unerringly point towards the guilt of the appellant. It is argued that the learned trial Court failed to consider that the prosecution has not led any cogent, convincing or reliable evidence to prove the guilt of the appellant beyond reasonable doubt. Material independent witnesses did not support the prosecution case and turned hostile, yet their evidence was ignored or misappreciated by the learned trial Court. The findings recorded against the appellant

are thus perverse, contrary to the evidence available on record and suffer from non-application of mind. The learned trial Court also failed to properly appreciate the oral and documentary evidence in its correct perspective.

20. Placing reliance upon the judgment of the Hon'ble Supreme Court in ***Ajay Kumar Ghoshal v. State of Bihar, (2017) 12 SCC 699***, Mr. Khetrapal submits that a retrial is warranted only in cases where the trial is conducted by a court lacking jurisdiction or where the trial is vitiated by serious irregularity or illegality resulting in miscarriage of justice. Drawing support from the observations in *Bhooraji v. State*, it is argued that mere errors, omissions or irregularities do not justify sustaining a conviction unless they have occasioned a failure of justice, and that the law discourages sustaining or repeating proceedings that result in such injustice. In the present case, separate convictions of accused persons in the same case, based on indivisible and uniform witnesses and evidence, would inevitably result in failure of justice and infringement of the fundamental rights of the accused.

21. Reliance is also placed on the decision of the Hon'ble Supreme Court in ***Mohd. Hussain @ Julfikar Ali v. State (NCT of Delhi), AIR 2012 SCW 699***, wherein it was held that while expeditious disposal of criminal cases is desirable, the accused facing serious charges cannot be deprived of the valuable right to a fair

and impartial trial. Emphasis is laid on the settled principles that an accused has the right to silence, the right to a fair trial, the presumption of innocence, and that the prosecution must prove its case beyond all reasonable doubt. As such, he submits that the prosecution has miserably failed to prove its case against the appellant beyond reasonable doubt and, consequently, the impugned judgment of conviction and sentence deserves to be set aside.

22. Mr. Santosh Bharat, learned counsel for the appellant–Sahil alias Shibu Khan in CRA No.1954/2024, submits that the judgment of conviction passed by the learned trial Court is bad in law and is liable to be set aside. It is contended that the learned trial Court failed to properly appreciate the documents and evidence placed on record and ought to have considered that the appellant neither committed nor participated in any act which would attract any of the offences alleged against him. The learned trial Court further failed to take into consideration the material contradictions and omissions in the statements of the prosecution witnesses, which render the conviction unsustainable in the eyes of law.

23. Mr. Bharat submits that the evidence of PW-11, the Investigating Officer, has not been appreciated in its proper perspective. According to his deposition, the deceased and the appellant had gone to village Koni and were discussing certain aspects relating to demand of money for release of Mohammad Rehan, during

which a dispute allegedly arose leading to the death of the deceased. It is argued that the deceased and the appellant were known to each other, were residing in the same locality and were friends, and in such circumstances, the prosecution story becomes doubtful so far as the complicity of the present appellant is concerned. It is further submitted that the learned trial Court failed to appreciate that the prosecution has not been able to prove its case against the appellant beyond all reasonable doubt. Although the prosecution claimed that there were eyewitnesses, their statements do not support the prosecution version and are inconsistent and unreliable. Moreover, the incident is alleged to have occurred during the night hours and admittedly no independent witness has seen the occurrence.

24. Mr. Bharat also submits that there was no intention on the part of the appellant to cause the death of the deceased, particularly when it is admitted that the deceased and the appellant were friends. The prosecution evidence suffers from serious infirmities and falls short of establishing the guilt of the appellant beyond reasonable doubt. On these grounds, learned counsel submits that the prosecution has miserably failed to prove its case and the impugned judgment of conviction and sentence deserves to be set aside.

25. On the other hand, Mr. Shashank Thakur, learned Deputy Advocate General appearing for the State, supports the judgment

and order of conviction passed by the learned trial Court. It is submitted that the prosecution has successfully proved its case against all the appellants beyond reasonable doubt by leading cogent, reliable and convincing evidence. The learned trial Court has meticulously examined the oral and documentary evidence available on record and has rightly recorded the finding of guilt against the appellants. He further submits that the evidence of the prosecution witnesses, when read as a whole, clearly establishes the complete chain of circumstances connecting the appellants with the commission of the offence. The circumstances proved on record, including the kidnapping of the deceased, demand of ransom, recovery of the dead body, seizure of incriminating articles and the medical evidence, form an unbroken chain which unerringly points towards the guilt of the appellants and rules out any hypothesis other than their guilt.

26. Mr. Thakur submitted that the contradictions and omissions pointed out by the learned counsel for the appellants are minor in nature and do not go to the root of the prosecution case. Such discrepancies are natural and bound to occur in the testimony of witnesses and cannot be made a ground to discard the otherwise credible and trustworthy evidence led by the prosecution. The learned trial Court has rightly appreciated these aspects and has given cogent reasons for relying upon the prosecution evidence. He further submits that the contention regarding non-examination of certain witnesses after framing of charges against one of the

appellants does not cause any prejudice, as the evidence on record was duly tested during trial and the appellants were afforded full opportunity of cross-examination. The procedural aspects relating to the determination of age of one of the appellants were duly complied with and no illegality or irregularity has occurred so as to vitiate the trial.

27. It is contended by Mr. Thakur that the recoveries effected at the instance of the appellants are duly proved in accordance with law and are corroborated by the medical and forensic evidence. The postmortem report clearly establishes that the death of the deceased was homicidal in nature, and the manner of concealment of the dead body further strengthens the prosecution case. The electronic evidence relied upon by the prosecution has been rightly considered by the learned trial Court in the light of the overall evidence on record. He submits that the conviction of the appellants is not based merely on the statement of the Investigating Officer but is supported by a cumulative appreciation of the entire evidence led by the prosecution. The learned trial Court has applied the settled principles of law relating to appreciation of circumstantial evidence and has rightly concluded that the chain of circumstances is complete and consistent only with the guilt of the appellants.

28. In view of the aforesaid submissions, Mr. Thakur submits that the judgment of conviction and order of sentence passed by the

learned trial Court do not suffer from any illegality, perversity or infirmity warranting interference by this Court, and the appeals deserve to be dismissed.

29. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

30. From perusal of the order sheet dated 27.09.2022, it transpires that an application was filed on behalf of accused Ravi Khandekar seeking determination of his age on the ground that he was a juvenile on the date of the incident (06.02.2022). It was claimed that his date of birth is 12.09.2005, supported by his Class-I marksheet and an affidavit of his father. The prosecution opposed the application, alleging that a false marksheet had been produced and contending that the accused was a major at the time of the incident. Reliance was placed on the judgment in *Shri Ram Rawat v. State of Madhya Pradesh* (Criminal Revision No. 1439/2021, decided on 17.08.2022), wherein it was held that determination of juvenility falls within the exclusive jurisdiction of the Juvenile Justice Board.

31. After hearing both sides and considering the material on record, the Court held that the determination of age of accused Ravi Khandekar should be conducted by the Juvenile Justice Board under the Juvenile Justice (Care and Protection of Children) Act, 2015. Accordingly, the application was allowed, the matter was

referred to the Juvenile Justice Board, Bilaspur for age determination after due verification of documents and evidence, and the accused was directed to be sent to the Child Observation Home instead of jail, with directions to produce him before the Juvenile Justice Board on 29.09.2022.

32. Thereafter, on 10.10.2022, the trial Court heard arguments on the point of charge. Upon perusal of the charge-sheet and the documents annexed thereto, the Court found that a prima facie case was made out against the accused persons for offences punishable under Sections 363, 364-A, 387, 302 read with Section 34 and Section 201 read with Section 34 of the Indian Penal Code. Accordingly, charges under the aforesaid sections were framed, read over and explained to the accused persons, namely Abhishek Dan and Sahil alias Shibu Khan, to which they pleaded not guilty and claimed to be tried.

33. On 12.07.2023, the case against Ravi Khandekar was listed for arguments on the point of charge. The Court observed that a prima facie case was made out against him under Sections 363, 364-A, 387, 302, 201, and 34 of the Indian Penal Code. Charges were framed, read over, and explained to the accused, who denied committing the offences. It was noted that Ravi Khandekar was an adult (18 years old) on the date of the incident (06.02.2022), and the case was returned to this Court for trial. The trial of other co-accused was scheduled for 21.08.2023 and

22.08.2023, with Ravi Khandekar's trial to be conducted along with them. Summons were issued to nine prosecution witnesses. Thereafter, on various dates, summons and bailable warrants were issued to the witnesses, but most did not appear.

34. On 06.04.2024, PW-6 Sheikh Aslam appeared and was examined, and on 29.04.2024, PW-1 Asif Mohammad appeared and was examined. On the same day, Ajeet Pal Singh also appeared but was not examined, claiming his examination was unnecessary, and was discharged. Summons continued to be issued until 28.06.2024 and thereafter, the trial was closed.

35. On 23.08.2024, the case against the accused, including Ravi Khandekar, Abhishek Dan, and Sahil alias Shibu, was listed for judgment. The accused appeared via video conferencing with their respective counsels. After hearing both sides on the question of sentence, the Court convicted the accused for offences under Sections 363, 364-A, 387, 302 read with 34, and 201 read with 34 of the Indian Penal Code, as per the charges framed earlier.

36. Sentences awarded:

1. **Section 363 IPC:** Rigorous imprisonment (RI) for 7 years + fine ₹1,000; in default, 1 month additional RI.
2. **Section 364-A IPC:** Life imprisonment + fine ₹1,000; in default, 6 months additional RI.

3. **Section 387 IPC:** RI for 7 years + fine ₹1,000; in default, 1 month additional RI.

4. **Section 302/34 IPC:** Life imprisonment + fine ₹1,000; in default, 6 months additional RI.

5. **Section 201/34 IPC:** RI for 3 years + fine ₹1,000; in default, 6 months additional RI. All sentences were ordered to run **concurrently**.

The period of judicial custody from 08.02.2022 to 23.08.2024 was adjusted against the sentence under Section 428 CrPC. The judgment copies were provided free of cost to the accused, with information on appeal rights and legal aid. The sentence warrant along with certified copies of judgment were sent to Central Jail, Bilaspur for execution.

37. It is significant to note that even after it was ultimately held that accused Ravi Khandekar was not a juvenile on the date of the incident and the case was lawfully returned to the trial Court for continuation of trial, the prosecution cited nine witnesses to establish the charges against him. Despite this, only two witnesses, namely PW-1 Asif Mohammad and PW-6 Sheikh Aslam, were examined insofar as accused Ravi Khandekar is concerned. The remaining seven material prosecution witnesses failed to appear despite repeated issuance of summons and even bailable warrants. There was no legal bar or constraint preventing the trial Court from invoking its wide powers under Section 311 of

the Cr.P.C. to summon, compel attendance, or examine such witnesses as Court witnesses in order to discover the truth and ensure a fair trial. The trial Court, though fully empowered, chose to close the prosecution evidence without securing the examination of the remaining witnesses. Such abdication of jurisdiction has caused serious prejudice to the accused Ravi Khandekar and renders the trial vulnerable on the anvil of fairness, completeness of evidence, and due process of law.

38. The first question for consideration would be, whether the trial Court is justified in convicting the appellants for offence under Section 363 of the IPC ?

39. The appellants have been convicted for offence under Section 363 of the IPC, which is punishable for kidnapping. Kidnapping has been defined under Section 359 of the IPC. According to Section 359 of the IPC, kidnapping is of two kinds: kidnapping from India and kidnapping from lawful guardianship. Section 361 of the IPC defines kidnapping from lawful guardianship which states as under:-

> *"**361. Kidnapping from lawful guardianship**.- Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such*

guardian, is said to kidnap such minor or person from lawful guardianship."

40. The object of Section 359 of the IPC is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the the protection of the rights of parents and guardians having the lawful charge or custody of minors or insane persons. Section 361 has four ingredients:-

(1) Taking or enticing away a minor or a person of unsound mind.

(2) Such minor must be under sixteen years of age, if a male, or under eighteen years or age, if a female.

(3) The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.

(4) Such taking or enticing must be without the consent of such guardian.

41. So far as kidnapping a minor boy from lawful guardianship is concerned, the ingredients are : (i) that the victim was under 18 years of age; (ii) such minor was in the keeping of a lawful guardian, and (iii) the accused took or induced such person to leave out of such keeping and such taking was done without the consent of the lawful guardian.

42. The Supreme Court while considering the object of Section 361 of the IPC in the matter of ***S.Varadarajan v. State of Madras***[1], took the view that if the prosecution establishes that though

1 AIR 1965 SC 942

immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so and held that if evidence to establish one of those things is lacking, it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian and held as under:-

> *"It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. If evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. But that part falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking"."*

43. Reverting to the facts of the present case, in the light of the essential ingredients of the offence under Section 361 IPC,

punishable under Section 363 IPC, and applying the principles of law laid down by the Hon'ble Supreme Court in ***S. Varadarajan*** (supra), it is evident that the prosecution case is primarily based on the testimony of PW-1 Asif Mohammad, father of the deceased minor Rehan. PW-1 has stated that on the date of incident i.e. 06.02.2022, at about 5:00 PM, his son Rehan received a phone call on his mobile phone. Thereafter, Rehan took Rs.10/- from his mother, stating that he was going to purchase Kurkure, and left the house. Significantly, there is no allegation that any of the accused persons came to the house, persuaded, induced, or forcibly took the minor away from the lawful guardianship of his parents at that time.

44. PW-1 has further stated that when Rehan did not return for a long time, efforts were made to search for him in the nearby area and among relatives, but no information could be gathered. Subsequently, during the night, PW-1 went to the police station and lodged a missing report. It is only thereafter that a ransom call was allegedly received on PW-1's mobile phone from the mobile number of the deceased Rehan, demanding Rs.50,00,000/- and asking him not to inform the police. On receipt of the said call, PW-1 again approached the police and informed them about the ransom demand.

45. On the basis of cyber cell analysis, the mobile number was allegedly traced to accused Abhishek Dan, pursuant to which the police apprehended him near Unity Hospital. During police

interrogation, accused Abhishek Dan allegedly disclosed that he along with co-accused Sahil @ Shibu and Ravi had taken Rehan to a poultry farm at Koni and committed his murder and concealed the dead body near Rani village. The said disclosure statement forms the foundation of the subsequent investigation.

46. From a careful scrutiny of the evidence on record, particularly the testimony of PW-1 and PW-9 (Prafulll Kumar Singh), it is clear that the First Information Report (Ex.P/1) was initially registered under Section 363 IPC on the premise that an unknown person had kidnapped the minor. However, the prosecution has failed to bring on record any cogent evidence to establish that the accused persons had “taken” or “enticed” the minor Rehan out of the lawful guardianship of his parents, which is the sine qua non for constituting an offence under Section 361 IPC.

47. There is no evidence whatsoever that at the time when Rehan left his house, any of the accused were present, or that they exercised any inducement, allurement, coercion, or active role compelling the minor to leave his parental home. On the contrary, as per the prosecution’s own case, the minor voluntarily left the house on the pretext of buying snacks, without any immediate or direct involvement of the accused being established at that stage.

48. In view of the settled legal position laid down by the Hon’ble Supreme Court in ***S. Varadarajan*** (supra), mere subsequent association of the accused with the minor, in the absence of proof

of inducement or active taking from lawful guardianship, does not satisfy the requirement of “taking” or “enticing” under Section 361 IPC. Therefore, even if the prosecution story is taken at its face value, the foundational ingredient necessary to attract Section 363 IPC remains unproved.

49. Consequently, in the considered opinion of this Court, the prosecution has failed to establish beyond reasonable doubt that the accused committed the offence of kidnapping under Section 363 IPC, as the evidence on record does not demonstrate that the accused had either solicited, persuaded, or enticed the minor Rehan to leave the lawful guardianship of his parents. Hence, the conviction recorded by the trial Court for the offence under Section 363 IPC is legally unsustainable and liable to be set aside.

50. Now the appellants have also been convicted for offence under Section 364A of the IPC. Section 364-A of the IPC states as under:-

> *“**364A. Kidnapping for ransom, etc**.-Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or*

any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

51. Section 364-A of the IPC came up for consideration before the Supreme Court in the matter of ***Shaik Ahmed v. State of Telangana***[2]*,* in which Their Lordships have considered the provision contained in Section 364A of the IPC and held as under:-

"12. We may now look into Section 364-A to find out as to what ingredients the Section itself contemplate for the offence. When we paraphrase Section 364-A following is deciphered:-

(i) "Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction"

(ii) "and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt,

(iii) or causes hurt or death to such person in order to compel the Government or any foreign State or international inter- governmental organisation or any other person to do or abstain from doing any act or to pay a ransom"

(iv) "shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

2 (2021) 9 SCC 59

> *The first essential condition as incorporated in Section 364-A is "whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction". The second condition begins with conjunction "and". The second condition has also two parts, i.e., (a) threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. Either part of above condition, if fulfilled, shall fulfil the second condition for offence. The third condition begins with the word "or", i.e. or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom. Third condition begins with the word "or causes hurt or death to such person in order to compel the Government or any foreign state to do or abstain from doing any act or to pay a ransom". Section 364-A contains a heading "Kidnapping for ransom, etc." The kidnapping by a person to demand ransom is fully covered by Section 364-A."*

52. Submission has been made on behalf of the appellants that mandatory certificate under Section 65B(4) of the Indian Evidence Act has not been produced & proved as it was mandatory as held by the Supreme Court in the matter of ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal***[3].

3 (2021) 7 SCC 1

53. At this stage, it would be appropriate to notice the decision rendered by the Supreme Court in ***Arjun Panditrao Khotkar*** (supra) in which their Lordships resolving the dispute and the conflict raised in the matters of ***Shafhi Mohammad v. State of Himachal Pradesh***[4] and ***Anvar P.V. v. P.K. Basheer***[5] have clearly held that production of certificate under Section 65-B of the Evidence Act is mandatory only in case of secondary evidence where primary evidence is not laid or original is not produced. Their Lordships further held that the certificate required under Section 65-B(4) of the Evidence Act is a condition precedent to the admissibility of secondary evidence by way of electronic evidence as laid down in ***Anvar P.V.*** (supra) and incorrectly clarified in ***Shafhi Mohammad*** (supra). It was held as under: -

> *"61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. (supra), and incorrectly "clarified" in Shafhi Mohammed (supra). Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor*[6]*, which has been followed in a number of the judgments of this Court, can also be*

4 (2018) 2 SCC 801

5 (2014) 10 SCC 473

6 (1875) LR 1 Ch D 426

> *applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose."*

Their Lordships also held that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced and this can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and / or operated by him. The reference was answered in paragraphs 73.1., 73.2. and 73.3. as under: -

> *"73.1. Anvar P.V. (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno[7], being per incuriam, does not lay down the law correctly. Also, the judgment in Shafhi Mohammad (supra) and the judgment dated 3-4-2018 reported as Shafhi Mohd. v. State of H.P.[8], do not lay down the law correctly and are therefore overruled.*
>
> *73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where*

7 Tomaso Bruno v. State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54

8 (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704

the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The last sentence in para 24 in Anvar P.V. (supra) which reads as "… if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act …" is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act, …". With this clarification, the law stated in para 24 of Anvar P.V. (supra) does not need to be revisited.

73.3. The general directions issued in para 64 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67-C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers."

54. In the matter of ***Ravinder Singh @ Kaku v. State of Punjab***[9] their Lordships of the Supreme Court while following the decision of ***Arjun Panditrao Khotkar*** (supra) have held that oral evidence in the place of certificate cannot be possibly suffice as Section 65B(4) is a mandatory requirement of law. Their Lordships held that Section 65B(4) is a mandatory requirement of law and held as under:-

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9 2022 LiveLaw (SC) 461

> *"21. In light of the above, the electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the cerification requirement, for it to be admissible in the court of law. As rightly stated above, oral evidence in the place of such certificate, as is the case in the present matter, cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law."*

55. Reverting to the evidence led by the prosecution in the present case, the appellants/accused have been convicted for the offence under Section 364-A of the IPC primarily on the basis of the alleged ransom call made from the mobile phone of the deceased minor Rehan and the subsequent recoveries shown at the instance of the accused persons.

56. The prosecution has relied upon the testimony of PW-1 Asif Mohammad, father of the deceased, and PW-9 Prafull Kumar Singh, whose statements in examination-in-chief have remained substantially unshaken in cross-examination. PW-1 has stated that after his minor son Rehan went missing on 06.02.2022, a ransom call demanding Rs 50,00,000/- was received on his mobile phone bearing number 9827198522, allegedly from the mobile number of the deceased 7869512324, with a threat not to inform the police. It is on this basis that the offence was converted into one involving ransom.

57. On the strength of cyber cell analysis, the police allegedly traced the call details to accused Abhishek Dan, who was apprehended and interrogated. During police interrogation, the accused allegedly disclosed the involvement of co-accused Sahil @ Shibu Khan and Ravi Khandekar, leading to recovery of the dead body of the deceased Rehan from near Ratanpur Road, Rani village, as well as recovery of mobile phones and motorcycles at the instance of the accused persons under memorandums Ex.P/9 to Ex.P/15.

58. Further reliance has been placed on the evidence of PW-11 Jay Prakash Gupta, the then Station House Officer, who has deposed that on 07.02.2022, memorandums of the accused persons were recorded and, pursuant thereto, the dead body of the deceased was recovered and several articles including the mobile phone of the deceased, alleged to have been used for making the ransom call, were seized. The prosecution has also examined PW-13 Harvinder Singh, the then SHO, Police Station Ratanpur, who corroborated the recovery of the dead body within his territorial jurisdiction and the registration of a zero merg under Section 174 Cr.P.C.

59. However, merely on the basis of recovery of a mobile phone and the alleged ransom call, without independent and reliable evidence establishing that the appellant himself had made the ransom demand or was directly responsible for abducting the minor and threatening death, the essential ingredients of Section

364-A IPC are not satisfied. The prosecution evidence shows that the initial missing report was against unknown persons, and father of the deceased PW-1 himself admitted in cross-examination that he had not seen any of the accused taking his son when he left the house. The alleged ransom call, though relied upon, has not been conclusively proved to have been made by the appellants themselves so as to attract the rigours of Section 364-A IPC.

60. Further, the prosecution case is also rendered doubtful on account of the handling of the alleged CCTV footage. It has come on record that the CCTV footage was retrieved on the very next day of the incident from the neighbour of the complainant, yet, the same was seized only after an unexplained delay of about 45 days. Such an inordinate and unexplained delay in seizure of an electronic record seriously affects its credibility and creates a strong doubt about the sanctity, continuity, and authenticity of the alleged footage.

61. More importantly, the prosecution has failed to produce the mandatory certificate under Section 65-B of the Indian Evidence Act, 1872, which is a condition precedent for admissibility of electronic evidence, as categorically held by the Hon'ble Supreme Court in ***Anvar P.V.*** (supra) and reaffirmed in ***Arjun Panditrao Khotkar*** (supra). In the absence of such certificate, the alleged CCTV footage is inadmissible in evidence and cannot be looked into for any purpose whatsoever.

62. Therefore, even assuming that such CCTV footage was retrieved, the same cannot be relied upon to connect the appellants with the alleged offence, and any finding of guilt based directly or indirectly on such electronic evidence is legally unsustainable. This omission further weakens the prosecution case and adds to the cumulative infirmities in the conviction of the appellants.

63. Thus, in the backdrop of the aforesaid factual matrix, it is manifest that the conviction of the appellants under Section 364-A of the IPC rests predominantly on the alleged ransom call purportedly made from the mobile phone of the deceased and the recoveries shown at the instance of the accused. However, the prosecution has failed to establish, by clear, cogent and trustworthy evidence, that the appellants themselves had made the ransom demand or that they had abducted the minor Rehan with a threat to cause death so as to compel payment of ransom.

64. The initial report lodged by PW-1 was against unknown persons, and it is an admitted position that none of the accused were seen taking the deceased from his lawful guardianship. The alleged electronic evidence, namely the CCTV footage, is rendered wholly unreliable due to inordinate delay of 45 days in its seizure and, more importantly, due to the complete absence of a certificate under Section 65-B of the Indian Evidence Act, rendering it inadmissible in law. In such circumstances, the alleged recovery of the mobile phone and the prosecution version of ransom demand, unsupported by legally admissible and

independent evidence, cannot form the basis of conviction under Section 364-A IPC.

65. Accordingly, the conviction of the appellants under Section 364-A IPC suffers from serious legal and evidentiary infirmities and is therefore unsustainable in the eyes of law, warranting interference by this Court.

66. The appellants have also been convicted for offence under Section 387 of the IPC. Section 368 of the IPC states as under:-

> *"**387. Putting person in fear of death or of grievous hurt, in order to commit extortion.** —Whoever, in order to committing of extortion, puts or attempts to put any person in fear of death or of grievance hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

67. From a perusal of the aforesaid provision, it is apparent that for attracting the offence under Section 387 IPC, the prosecution is required to establish, beyond reasonable doubt, the following essential ingredients:

> *(i) that the accused put or attempted to put a person in fear of death or grievous hurt;*
>
> *(ii) that such fear was caused intentionally; and*
>
> *(iii) that the said act was done in order to commit extortion, i.e., with the object of*

dishonestly inducing the victim to deliver property or valuable security.

68. Applying the aforesaid legal requirements to the facts of the present case, it is evident that the prosecution has failed to prove the foundational ingredients of Section 387 IPC. The entire prosecution case rests upon the alleged ransom call said to have been received by PW-1 from the mobile phone of the deceased. However, as already discussed hereinabove, the prosecution has not conclusively proved that the appellants themselves made the said call or that any of them intentionally put PW-1 in fear of death or grievous hurt.

69. Significantly, there is no independent or corroborative evidence on record to demonstrate that any specific threat of death or grievous hurt was extended by the appellants to PW-1 or to the deceased with the intention of extorting money. The alleged threat is vague, uncorroborated, and not supported by any legally admissible electronic evidence. The prosecution has also failed to establish any overt act on the part of the appellants showing a deliberate attempt to cause fear so as to induce delivery of ransom.

70. In the absence of proof of a direct and intentional act of threatening death or grievous hurt, the mere allegation of a ransom demand, which itself is not proved in accordance with law, cannot automatically attract the offence under Section 387

IPC. The conviction under this provision cannot be sustained on presumptions or conjectures, particularly when the primary evidence relied upon by the prosecution suffers from serious legal and evidentiary infirmities.

71. Therefore, in the considered opinion of this Court, the prosecution has failed to establish the essential ingredients of Section 387 IPC against the appellants. Consequently, the conviction of the appellants for the offence under Section 387 IPC is unsustainable in law and is liable to be set aside.

72. The next question for consideration would be, whether death of deceased Mohammad Rehan was homicidal in nature ?

73. The trial Court after appreciating oral as well as documentary evidence available on record, particularly, relying upon the statement of Dr. Avinash Singh (PW-10), who conducted postmortem over the dead body of the deceased and given its report vide Ex.P/23, has opined that on examination, he has found following injuries/symptoms over dead body:-

> *"The deceased was wearing a black jeans green colour sando vest, hair was of normal nature, mouth was half open, both eyes were open, stiffness was found in the hands and legs of the deceased, semen was found flowing, a reddish wound was found on the back below the shoulder, whose length was 1 inch x 2 cm, all the fingers of both the hands were blue.*

A ligature mark was found below the throat below the groin, whose length was 9 inches x 2 cm.

On opening the throat of the deceased, Hyoid Bone was found fractured.

All the injuries were ante mortem in nature, one was torn The wound was found on the occipital head and was 0.5 cm long.

Bleeding and hematoma were not found in the skull and spinal cord.

The thoracic membrane, ribs, and soft tissue were congested. The lungs, larynx, and trachea, right and left lungs, and peri-oncolic membranes were congested. The right chamber of the heart was filled with blood, and the left chamber was empty. The large vessels were normal. abdominal cavity, intestinal lining, mouth, and esophagus were congested. The stomach contained undigested food mixed with blood. The small intestine contained undigested food, and the large intestine contained feces and gas. The liver, spleen, and kidneys were congested. The urinary bladder was normal, and the internal and external genitalia were normal. There was no sign of muscle and bone disease or deformity, bone fractures, or bone dislocations."

As per the postmortem report Ex.P/23, the deceased died due to strangulation. The cause of death was cardiac arrest and respiratory failure and the nature of his death was "homicidal".

74. After hearing learned counsel for the parties and after considering the submissions advanced by learned counsel for the parties, we are of the considered opinion that the finding recorded by the trial Court that death of deceased Mohammad Rehan was homicidal in nature is the finding of fact based on evidence available on record. It is neither perverse nor contrary to record. We hereby affirm that finding.

75. The last question would be whether the trial Court has rightly convicted the appellants for the offence punishable under Sections 302/34 as well as 201/34 of the IPC ?

76. Upon a meticulous examination of the evidence on record, including the testimonies of Asif Mohammad PW-1, Ajeet Pal Singh PW-2, Anand Gupta PW-3, Sheikh Aslam PW-6, and Mohammad Farhad PW-8, it is necessary to determine whether the conviction and sentence imposed by the trial Court under Sections 302/34 IPC and 201/34 IPC are legally sustainable.

77. Examination of witness evidence:

- PW-1 (Mohammad Asif) stated that he knew the accused and saw some of them frequently in the locality. While PW-1's testimony establishes familiarity, it does not provide direct evidence linking the appellants to the abduction or the murder of the deceased. Mere presence in the locality cannot form the basis for conviction under Section 302 IPC.

- PW-2 (Ajeet Pal Singh) traced the deceased Rehan's movements and confirmed that he went missing. However, PW-2 does not give evidence of the appellants' direct involvement in causing death or even participating in the abduction. The evidence is circumstantial and inconclusive, insufficient to establish guilt beyond reasonable doubt.

- PW-3 (Anand Gupta) mentioned the alleged ransom demand of Rs.50 lakh, which is indicative of motive but fails to link the appellants concretely to the murder or the act of abduction. Motive alone cannot sustain a conviction for Section 302 IPC without corroboration from direct or reliable circumstantial evidence.

- PW-6 (Sheikh Aslam) testified about assault on the deceased and use of a belt to strangle Rehan. While the postmortem report confirms ligature marks on the neck, PW-6's evidence does not unequivocally identify which of the accused committed the act. The link between testimony of PW-6 and each appellant is tenuous and not legally conclusive.

- PW-8 (Mohammad Farhad) spoke about the recovery of the belt and mobile phones. The testimony establishes recovery of items from the accused, but it does not conclusively demonstrate that these items were used by the accused in committing the murder or in causing the

disappearance of evidence. There are gaps in the chain of custody and inconsistencies in identifying the accused's actions.

78. Assessment of the trial court's reasoning: The trial Court relied on the above testimonies to convict the appellants under Sections 302/34 and 201/34 IPC. However, a careful analysis reveals:

- There is no direct evidence placing any appellant at the scene of crime at the relevant time, nor is there credible evidence of active participation by all accused in the act of murder.
- The testimonies relied upon by the trial court are inconsistent, largely circumstantial, and do not meet the threshold of proof beyond reasonable doubt required for a conviction under Section 302 IPC.
- As regards Section 201 IPC, there is no conclusive evidence that the appellants acted intentionally to destroy evidence; the mere recovery of a belt or mobile phones does not substantiate an offence under this provision without proof of mens rea specific to concealment of a crime.

79. The evidence of PW-1, PW-2, PW-3, PW-6, and PW-8, when critically evaluated, fails to establish the guilt of the appellants beyond reasonable doubt for either murder under Section 302 IPC or causing disappearance of evidence under Section 201

IPC. The trial court has over-relied on conjectures, surmises, and uncorroborated circumstantial evidence, which is insufficient to sustain a conviction. Accordingly, the conviction and sentence imposed by the trial court under Sections 302/34 and 201/34 IPC are not sustainable in law.

80. Upon careful consideration of the evidence on record, the submissions advanced by learned counsel for the parties, and the legal provisions applicable to the offences under Sections 363, 364-A, 387, 302, and 201 IPC, this Court is of the considered opinion that the conviction and sentences imposed by the learned trial Court are legally unsustainable and liable to be set aside for the reasons enumerated hereunder:

- **Conviction under Section 363 IPC (Kidnapping from Lawful Guardianship):** Section 361 IPC defines kidnapping from lawful guardianship, and its essential ingredients include (i) taking or enticing a minor out of lawful guardianship, (ii) the minor being under sixteen years if male or under eighteen if female, (iii) taking without consent of the guardian, and (iv) inducement or persuasion by the accused. In the present case, the prosecution has failed to establish the first and most critical element—that the accused actively took or enticed the minor Mohammad Rehan from the lawful guardianship of his parents. As per the testimony of PW-

1, the deceased left home voluntarily to purchase snacks, without the accused being present, persuading, or inducing him at that time. The subsequent involvement of the accused, even if accepted, cannot constitute “taking” in the legal sense, as held in ***S. Varadarajan*** (supra) where the Supreme Court emphasized that mere facilitation after the minor has voluntarily left guardianship does not satisfy the requirements of Section 361 IPC. Consequently, the conviction under Section 363 IPC is founded on an incomplete and legally inadequate evidentiary basis and is therefore unsustainable.

- **Conviction under Section 364-A IPC (Kidnapping for Ransom):** Section 364-A IPC requires proof of (i) kidnapping or abducting a person or keeping them in detention, (ii) threatening death or hurt, or giving rise to reasonable apprehension of death or hurt, and (iii) doing so to compel ransom or action. The conviction under Section 364-A IPC relies primarily on the alleged ransom call made from the mobile phone of the deceased and the subsequent recovery of certain articles at the instance of the accused. The prosecution, however, has failed to establish that the appellants themselves made the ransom call or directly threatened PW-1 or the deceased. The initial FIR was against unknown persons, and PW-1 himself did not witness any accused taking his son.

Further, electronic evidence, including the alleged CCTV footage and call records, was produced without the mandatory certificate under Section 65-B of the Indian Evidence Act, rendering it inadmissible in law. The inordinate delay of 45 days in seizure of the CCTV footage further undermines its authenticity and credibility. Therefore, the conviction under Section 364-A IPC rests on legally inadmissible and unreliable evidence and is clearly unsustainable.

- **Conviction under Section 387 IPC (Extortion by Putting in Fear of Death or Grievous Hurt):** To constitute the offence under Section 387 IPC, it must be proved that the accused intentionally put a person in fear of death or grievous hurt with the object of extorting property. In the present case, the prosecution has not produced any independent or direct evidence to establish that the appellants caused intentional fear to PW-1 or the deceased. The alleged threat, inferred from the unproven ransom call, is vague, uncorroborated, and unsupported by admissible electronic evidence. Mere allegations without legal proof cannot form the basis for conviction. The learned trial Court, in ignoring these evidentiary gaps, relied on conjecture and surmise, which is impermissible under settled law.

- **Conviction under Section 302 IPC (Murder) and Section 201 IPC (Concealment of Evidence):** Although the postmortem report establishes that the death of Mohammad Rehan was homicidal in nature, there is no direct or reliable evidence linking any of the appellants to the act of murder or concealment of the body. The prosecution's reliance on confessional statements recorded during police interrogation cannot substitute for direct evidence, particularly when independent witnesses did not corroborate the alleged involvement of the appellants. The chain of circumstantial evidence is incomplete, broken, and fails to point exclusively to the guilt of the accused beyond reasonable doubt. As repeatedly held by the Supreme Court, a conviction based on circumstantial evidence requires an unbroken chain of circumstances that conclusively leads to the guilt of the accused, which is absent in the present case.

- **Procedural and Evidentiary Irregularities:** Several procedural lapses further vitiate the trial: (i) Material witnesses were not examined against all appellants after framing of charges, leading to incomplete evidence, (ii) Contradictions and omissions in the statements of Investigating Officers PW-11 and PW-14 create doubt about the timing and circumstances of recovery of the body, (iii) Electronic evidence, including mobile call

records and CCTV footage, was produced without compliance with Section 65-B of the Indian Evidence Act, rendering it inadmissible, (iv) Delay in seizure of critical electronic evidence undermines its reliability.

These infirmities, collectively, indicate a trial process that did not fully safeguard the rights of the accused, resulting in convictions that cannot be sustained in law.

- **Reliance on Conjecture and Surmise:** The trial Court relied heavily on uncorroborated statements, confessions, and electronic evidence to convict the appellants. As emphasized in ***Mohd. Hussain @ Julfikar Ali*** (supra), no person can be convicted based on conjecture or suspicion; the prosecution must establish guilt beyond reasonable doubt. In the present case, the absence of direct evidence, coupled with infirmities in circumstantial proof, demonstrates that the trial Court's findings are perverse and contrary to settled principles of criminal jurisprudence.

81. At the outset, this Court finds it necessary to record that the prosecution case is vitiated by serious and fundamental lapses, both at the stage of investigation as well as during trial, which strike at the very root of the fairness and legality of the proceedings. The Investigating Agency failed to comply with the mandatory requirement of furnishing a certificate under Section

65-B of the Indian Evidence Act in respect of electronic evidence such as call detail records, mobile data and CCTV footage, rendering such evidence legally inadmissible and incapable of being relied upon. Equally significant is the lapse on the part of the trial Court. Even after it was conclusively held that accused Ravi Khandekar was not a juvenile on the date of the incident and the case was lawfully returned to the trial Court for continuation of trial, the prosecution cited nine witnesses to prove the charges against him; however, only two witnesses, namely PW-1 Asif Mohammad and PW-6 Sheikh Aslam, were examined. The remaining seven material prosecution witnesses failed to appear despite repeated issuance of summons and bailable warrants. There was no legal impediment or statutory restraint preventing the trial Court from exercising its wide and salutary powers under Section 311 of the Cr.P.C. to summon, compel attendance, or examine such witnesses as Court witnesses in order to discover the truth and ensure a fair and complete trial. The trial Court, though fully empowered, chose to close the prosecution evidence without securing the examination of these material witnesses. Such abdication of judicial duty has caused serious prejudice to the accused Ravi Khandekar and renders the trial vulnerable on the touchstone of fairness, completeness of evidence, and due process of law.

82. With a heavy heart, this Court is constrained to allow the present appeals, not on account of the nature of the offence alleged,

which is unquestionably grave, but due to serious procedural and technical infirmities in the prosecution case, leaving this Court with no option, consistent with constitutional safeguards and settled principles of criminal jurisprudence, but to extend the benefit of doubt.

83. Considering the cumulative effect of the aforesaid lapses in investigation and trial, this Court is constrained to hold that the prosecution has not succeeded in establishing the guilt of the appellants beyond reasonable doubt for the offences alleged under Sections 363, 364-A, 387, 302, and 201 read with Section 34 of the IPC. The failure to comply with mandatory statutory requirements, the inadmissibility of crucial electronic evidence, and the non-examination of material witnesses have created serious and insurmountable gaps in the prosecution case. In a prosecution alleging offences of a heinous nature, the standard of proof cannot be diluted, nor can convictions be sustained on conjecture, surmise, or technical irregularities going to the root of the matter. Consequently, and with considerable judicial restraint, this Court holds that the conviction and sentences imposed by the learned trial Court are legally unsustainable and cannot be allowed to stand, thereby necessitating interference in the appeals.

84. Accordingly, the criminal appeals being CRA No.1656/2024, CRA No.1696/2024 and CRA No.1954/2024 are **allowed**. The

impugned judgment of conviction and order of sentence dated 23.08.2024 is set aside. The appellants are acquitted from all the charges leveled against them. It is stated that appellants are in jail. They be released forthwith, if not required in any other case.

85. Keeping in view the provisions of Section 437-A of Cr.P.C. (now Section 481 of BNSS), appellants are directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of sum of Rs. 25,000/- each with two reliable sureties in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

86. The trial Court record alongwith the copy of this judgment be sent back forthwith to the trial Court concerned for compliance and necessary action.

87. Before parting with the case, this Court deems it appropriate to record its serious concern regarding the manner in which the investigation was conducted in the present case. The investigation suffers from glaring lapses and omissions, including non-compliance with mandatory statutory requirements, casual handling and delayed seizure of crucial electronic evidence, contradictions as to the time and manner of recoveries, and

failure to ensure examination of material witnesses in accordance with law. Such deficiencies reflect a lack of due diligence and professional rigor on the part of the Investigating Agency, which has resulted in grave prejudice to the prosecution case and occasioned miscarriage of justice.

88. A copy of this judgment be sent to the Director General of Police, State of Chhattisgarh, for appropriate examination, sensitisation, and issuance of necessary directions to ensure strict adherence to legal procedures and standards in future investigations, particularly, in serious and heinous offences.

89. This Court is also constrained to observe that the learned trial Court adopted a casual and perfunctory approach in appreciating the evidence and recording the conviction, overlooking fundamental principles governing criminal trials, admissibility of evidence, and the standard of proof required for conviction. The failure to scrutinise material contradictions, procedural irregularities, and inadmissible evidence has led to unsustainable findings.

90. In view thereof, a copy of this judgment be also circulated to the District & Sessions Judges throughout the State of Chhattisgarh for information, guidance, and strict compliance, so as to reinforce meticulous appreciation of evidence and faithful application of settled legal principles in criminal adjudication.

91. The Registrar (Judicial) is directed to forthwith transmit certified copies of this judgment to the Director General of Police, State of Chhattisgarh, and to all District & Sessions Courts across the State for necessary information, compliance, and appropriate follow-up action.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Anu

Head Note

Where the prosecution relied upon electronic evidence such as alleged ransom calls, call detail records and CCTV footage to establish kidnapping for ransom and allied offences, but failed to produce the mandatory certificate under Section 65-B(4) of the Evidence Act, such electronic evidence would be inadmissible in law.