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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1099 of 2013

1. Ramratan, S/o Pardesiram, Aged 33 Years,
2. Premlal S/o Chaituram, Aged 33 Years, both R/o Vi: Patharimuda, P.S. Baghbehra, Civil And Rev. Distt. Mahasamund C.G.

---- Appellants

Versus

State Of Chhattisgarh Through P.S. Baghbehra, Civil And Rev. Distt. Mahasamund C.G.

–----Respondent

For appellants– Shri Anish Tiwari and Shri Atul Kesharwani, Advocates.
For State – Shri Gagan Tiwari, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri &

Hon'ble Shri Justice Sachin Singh Rajput

Judgement on Board

Per Goutam Bhaduri, J.

05/04/2023

Heard.

1. Instant appeal is against the judgement dated 30/08/2012 passed in Sessions Case No.34/2012 by the First Additional Sessions Judge, Mahasamund whereby the appellants have been convicted for offence under sections 364(a)/34, 302/34 and 201/34 of IPC and sentenced them to undergo RI for life; RI for life and RI for 7 years respectively with default stipulations.

2. The brief facts of the prosecution case is that on 27/01/2012 at about 5 pm at a village accused Ramratan and Premlal along with one Hem Prakash Diwan who was minor then, abducted Ku. Manisha Yadav aged about six years for a ransom and in consequence at subsequent stage thereof Manisha Yadav was killed by strangulation. Thereafter, in

order to conceal the crime, they dumped the body in an abandoned car which was stationed at the “badi” of one Hem Prakash and tried to do away with the evidence. Initially a missing report was lodged on 29/01/2012 by one Jeetu Yadav at Police Station, Baghbehara that his daughter who was playing in the open compound of the house in the village was missing from 27/01/2012. He initially did not notice the absence of girl by thinking that the girl must be playing somewhere nearby but when till late night, when the girl did not return, the family members started searching for her. The father tried to contact his friends from his mobile but his mobile was also found to be missing and on 28/01/2012 from his stolen mobile number 8959012406 a call was received by his father Bodhan i.e. grand father of girl and an amount of Rs.3 lakhs ransom was demanded. They were also threatened that they should not report this issue to the police. Thereafter, on 29/01/2012 a report was made and in consequence thereof subsequently the FIR was registered under Section 365 of IPC and the investigation started. During the investigation, Hem Prakash, Ramratan and Premlal were taken in to custody and their memorandum statement were recorded wherein this fact came to fore that they abducted the child Manisha. It was revealed before killing the child her hands and mouth were tied up and was kept in a dilapidated house (kandhar). Subsequently, when the family members started searching, they killed the child by strangulation by a nylon string and concealed the dead body in an abandoned car which was stranded parked in the badi of one Udai Ram Diwan. On the basis of memorandum, the dead body with a nylon string at neck was recovered and offence under Section 302 and 201 of IPC was registered. Subsequently, the mobile and sim were also recovered and after investigation, the charge sheet was filed under

Section 364-A, 302, 201, 34 of IPC before the CJM, Mahasamund. One of the accused Hem Prakash @ Bablu being the minor, his trial was conducted before the Juvenile Court, Mahasamund and for two of the appellants/accused the case was committed to the sessions.

3. During the trial the appellants/accused abjured their guilt and claimed to be tried. On behalf of the prosecution 14 witnesses were examined and the accused did not examine any witness in defence. The learned trial court after trial, convicted the accused under sections 364(a)/34, 302/34 and 201/34 of IPC. Hence this appeal.

4. Shri Anish Tiwari, Advocate appearing on behalf of the appellants would submit that the case is based on circumstantial evidence and the circumstances which would require to complete the chain are missing. The counsel would submit according to the prosecution, the girl was kidnapped to recover a ransom for which different calls were received but call detail report has not been placed by the prosecution. He would submit that in absence of such evidence, the demand of ransom was not established. He would further submit that statement of PW-3 who is said to have last seen the accused with the deceased was recorded after the recovery of dead body made, therefore that evidence is also doubtful. He further submits that recovery of the dead body on the basis of memorandum though made but while the memorandum was recorded there was no iota of any doubt about the present appellants/accused that they were involved in the crime. He refers to **(1998) 3 SCC 523** in between **Manoranjan Singh Vs. State of Delhi** and **1995 Sup (1) SCC 80** in between **Suresh Chandra Bahri Vs. State of Bihar** to submit that in order to make a memorandum and discovery admissible, the accused

needs to be in the custody of the police. He would submit that only on the basis of presumption that the accused were last seen with the deceased, the learned trial court has proceeded but the identity of the girl, the deceased that she was seen in the company of the accused has not been established. He further submits that the FIR when was registered it was full of discrepancies and contradiction, as PW-1 had stated that while FIR was lodged, the lodger was not in know of the fact that the ransom demand has been made and as per the Police Officer, PW-9 no written report was made but the prosecution has proved a written report which has created a doubt in the version of the prosecution. Consequently, the judgement of conviction suffers from illegality and calls for interference by allowing the appeal to acquit the accused.

5. Per contra, learned State counsel would submit that the accused when were taken into custody and memorandum was given, this fact has not been doubted and there is no cross-examination to this issue to the fact when memorandum was recorded they were not in the custody. He would further submit that during the investigation, memorandum statement was made and on the basis of that the recovery of the dead body was made, therefore that part of the recovery would be admissible as the accused alone were in know of the fact about the whereabouts of the dead body. He would further submit that the statement made by one of the accused the memorandum would also be admissible to the extent of involvement of other accused which is not been rebutted by the accused either in the cross-examination or in reply to the accused statement under section 313 of Cr.P.C. since no plausible explanation was given that the conviction on the basis of such memorandum followed by recovery is well

merited which do not call for any interference.

6. We have heard the learned counsel for the parties and perused the evidence.

7. As per the prosecution on 27/01/2012 one girl named Manisha aged about 6 years while was playing out side her house, suddenly she gone missing. When till late night the girl did not return, the family members and the parents started searching and after three days the missing report was made. PW-1 Jeetu Yadav the father of the girl had stated that before the incident, there were two mobiles in their house and he found one of the mobile was missing with the girl. Subsequently, it is stated that on the other mobile three lakhs ransom demand was made from the mobile which was missing. The statement further says that during the investigation when the police caught hold of the accused, they made a memorandum statement that they have abducted the child and thereafter when family members started search they have killed the child and kept the dead body in an abandoned stationery car. There is no cross-examination to the fact that when memorandum statement was recorded the accused were not in the custody of the police. When there is no specific cross-examination on an issue which is tried to be highlighted by the appellants now, the statement made by PW-1 the father that in the custody the memorandum statement was made would be accepted in view of the principle laid down in **(2015) 3 SCC 138** in between **Vinod Kumar Vs. State of Haryana.** It is laid down when cross-examination is not made on a specific point as against the examination in chief that would be deemed to be admitted. Therefore, the submission of the appellants while the appellants made statement under Section 27 were not in custody

cannot be accepted.

8. Similar statement has been made by Bodhanlal Yadav PW-2 who is grand father of the deceased. According to him, he received a phone call on his mobile and an amount of Rs.3 lakhs was demanded. He states on the next day, at about 12 am subsequently he arranged the money, again a phone call was received on 30/01/2012 and an amount was tied into a bundle in a bag and was directed to be thrown on a roof of the house. Having even done so again he received a phone call that they have not received the money. Subsequent thereto at the time when the subsequent phone call came from 7965899431 the police persons were present. Next day the police caught hold of Hem Prakash Diwan and he disclosed that he has thrown the sim used for such call. There is no substantial cross-examination to this statement of this witness. Likewise no explanation was given by the accused in their statement under Section 313 Cr.P.C. Therefore, that part of the statement would be relevant. The statement further says thereafter after the accused were taken into custody the memorandum was recorded and recovery of dead body was made. Therefore, submission of the appellants that they were subsequently arrested would not be a decisive factor as per the time shown in the arrest memo.

9. Memorandum of Ram Ratan is Ex.P-4 and memorandum of Premlal Khadiya is Ex.P-6. As per the memorandum statement, on 25/01/2012 the accused along with one minor hatched a conspiracy to abduct grand daughter of Bodhanlal Yadav PW-2 since he had sold quite an amount of paddy and accused decided to demand Rs.3 lakhs in lieu of abduction. Pursuant thereto on 27/01/2012 at about 4 pm all three met

near a pond, Premlal thereafter went inside the house of Bodhanlal and took away the mobile by which ransom call was made. Subsequent thereto they saw that along with Manisha two other children were playing. After some time, the other child went away to their house and Manisha was playing alone. Manisha thereafter was called, she came to them and she was taken at about 6-6.30 pm towards the pond. Subsequently, at about 11-12 pm the girl was taken to near bada of Udairam and she was kept in a dilapidated house (kotha) by tied up the hand and mouth. Subsequently, Bodhanlal Yadav and his family when started searching the girl, the accused got scared and thereafter strangulated the girl by way of a nylon string and gagged her mouth, when she died, her dead body was concealed in a car stranded at bada of Udairam. The car was closed from all the sides and after concealing the body and wrapped in sheet they went away to their house. Similar memorandum statement was made by another accused Premlal after about 25 minutes of time.

10. On the basis of memorandum, the dead body of girl was recovered by Ex.P-3 from the back seat of the car covered and rapped by a cloth. Similarly the mobile was also recovered from custody of accused. The recovery of the dead body was at the instance of all the accused. Similarly the sim card was recovered at the instance of Ram Ratan by Ex.P-5 and the mobile was recovered from the house of Premlal by Ex.P-7.

11. There is no call detail report or particulars of the evidence with respect to the ownership of mobile which was recovered by prosecution. The prosecution case hinges upon the recovery of the dead body from an abandoned car. The statement of the part of the confession which was

made of killing would be hit by section 25 of the Evidence Act but the remaining part of the evidence and the activity which was prior to the killing would be protected by section 8 of the Evidence Act and consequently the said part of the statement would be fully admissible. This part of story of abduction, calling for a ransom and thereafter killing the girl by strangulation by nylon string and abandoning the body was only in know of the accused. The call for ransom is corroborated by PW-1 and PW-2 i.e. father and grand father and recovery of dead body from a abandoned car, with a nylon string on neck also corroborates the facts revealed by accused in their memorandum.

12. The Supreme Court in the matter of **Sandeep Vs. State of Uttar Pradesh** reported in **(2012) 6 SCC 107** had occasion to deal with such nature of evidence wherein it held that it is quite common that based on admissible portion of the statement of the accused whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the court as to the nature of recoveries and as to how they came into possession or for planting the same at the places from where they were recovered. That part of the statement which does not in any way implicate the accused but is mere statement of facts would only amount to mere admissions which can be relied upon for ascertaining the other facts which are intrinsically connected with the occurrence, while at the same time, the same would not in any way result in implicating the accused in the offence directly.

13. Perusal of the memorandum barring the confession of killing, the state of mind of the accused to plan for a demand for a ransom and

kidnapping would also be relevant as the fact would include the mental state of accused and discovery of such mental status would be a fact and also be relevant and not only the recovery of the physical object.

14. The Supreme Court in the matter of **Mehboob Ali & anr. Vs. State of Rajasthan** reported in **(2016) 14 SCC 640** had occasion to deal such mental state of fact wherein the Court observed that for application of section 27 of the Evidence Act, the admissible portion of confessional statement has to be found as to a fact which were the immediate cause of the recovery, only that would be part of legal evidence and not the rest. Section 27 of the Evidence Act refers to the 'Fact'. 'Fact' has been defined in section 3 of the Evidence Act which is reproduced hereunder:-

> "Fact"—"Fact" means and includes—
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> (1) any thing, state of things, or relation of things, capable of being perceived by the senses;
> (2) any mental condition of which any person is conscious.
>
> Illustrations
>
> (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
> (b) That a man heard or saw something, is a fact.
> (c) That a man said certain words, is a fact.
> (d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
> (e) That a man has a certain reputation, is a fact."

15. When the statement in the memorandum is translated into aforesaid principles, it shows that before the gruesome act was executed, the state of mind of the appellants/accused was to recover a ransom by kidnapping, thereby a child of 6 years was kidnapped. Subsequent thereto certain demand was made, though the prosecution has not been able to support the same by the call records except the oral evidence. The conduct of the accused thereafter having become scared killed the child

by strangulation by nylon strap and dead body was concealed in an abandoned car. All these mental preparation would be a fact and after recovery of body of child with nylon strap her neck proves the fact of killing by strangulation which proved by PM report Ex.P-24.

16. The Supreme Court in the matter of **Mehboob Ali** (supra) has observed that the discovery of facts under Section 27 information regarding other accused persons, to establish charge of conspiracy, in furtherance of common intention would be admissible. The Supreme Court in such case at para 16, 17 & 18 has held as under:-

> "16. This Court in State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600 has considered the question of discovery of a fact referred to in section 27. This Court has considered plethora of decisions and explained the decision in Pulukuri Kottaya V. Emperor AIR 1947 PC 67] and held thus : (Navjot Sandhu (2005) 11 SCC 600, SCC p. 704, paras 125-27)
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> "125. We are of the view that Kottaya case [AIR 1947 PC 67] is an authority for the proposition that "discovery of fact" cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.
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> 126. We now turn our attention to the precedents of this Court which followed the track of Kottaya case. The ratio of the decision in Kottaya case reflected in the underlined passage extracted supra was highlighted in several decisions of this Court.
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> 127. The crux of the ratio in Kottaya case was explained by this Court in State of Maharashtra v. Damu, (2000) 6 SCC 269. Thomas J. observed that: (SCC p. 283, para 35)
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> '35 ...The decision of the Privy Council in Pulukuri Kottaya v. Emperor, AIR 1947 PC 67 is the most quoted authority for

supporting the interpretation that the ‘fact discovered’ envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.'

In Mohd. Inayatullah v. State of Maharashtra [1976 1 SCC 828], Sarkaria, J. while clarifying that the expression “fact discovered” in Section 27 is not restricted to a physical or material fact which can be perceived by the senses, and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in Pulukuri Kottaya case, AIR 1947 PC 67. The learned Judge, speaking for the Bench observed thus: (SCC p. 832, para 13)

'13...Now it is fairly settled that the expression ‘fact discovered’ includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see Pulukuri Kottaya v. Emperor, AIR 1947 PC 67; Udai Bhan v. State of U.P. [1962 Supp (2) SCR 830]).”

17. In State of Maharashtra v. Damu [AIR 2000 SC 1691] the statement made by the accused that the dead body of the child was carried up to a particular spot and a broken glass piece recovered from the spot was found to be part of the tail lamp of the motorcycle of co-accused alleged to be used for the said purpose. The statement leading to the discovery of a fact that accused had carried dead body by a particular motorcycle up to the said spot would be admissible in evidence. This Court has laid down thus : (SCC pp. 282-83, paras 35-38)

“35. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible

portion to the minimum. It is now well settled that recovery of an object is not discovery of a fact as envisaged in the section. The decision of the Privy Council in Pulukuri Kottaya v. Emperor AIR 1947 PC 67 is the most quoted authority for supporting the interpretation that the “fact discovered” envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.

36. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which “distinctly relates to the fact thereby discovered”. But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. In this case, the fact discovered by PW 44 is that A-3 Mukinda Thorat had carried the dead body of Dipak to the spot on the motorcycle.

37. How did the particular information led to the discovery of the fact? No doubt, recovery of dead body of Dipak from the same canal was antecedent to the information which PW 44 obtained. If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all. But when the broken glass piece was recovered from that spot and that piece was found to be part of the tail lamp of the motorcycle of A-2 Guruji, it can safely be held that the Investigating Officer discovered the fact that A-2 Guruji had carried the dead body on that particular motorcycle up to the spot.

38. In view of the said discovery of the fact, we are inclined to hold that the information supplied by A-2 Guruji that the dead body of Dipak was carried on the motorcycle up to the particular spot is admissible in evidence. That information, therefore, proves the prosecution case to the abovementioned extent.”

18. In Ismail v. Emperor [AIR 1946 Sind 43] it was held that where as a result of information given by the accused another co-accused was found by the police the statement by the accused made to the Police

as to the whereabouts of the co-accused was held to be admissible under section 27 as evidence against the accused."

17. Therefore, the fact discovered of state of mind in the memorandum which is confirmed by the recovery of the dead body of the child in an abandoned old car proves the guilt of the accused. The sim was also recovered from a bush it also finds a logical support that the sim which is of tiny nature if is recovered from the bush unless there is a particular knowledge of any person of such place that could not have been recovered. Though the sim has not been proved to which number it belonged to but is only a supportive evidence when the recovery of the dead body was made and prior to that a call was made for ransom.

18. In view of the foregoing discussion, we are of the view that the judgement dated 30/08/2012 passed in Sessions Case No.34/2012 by the First Additional Sessions Judge, Mahasamund do not call for any interference.

19. Accordingly, the appeal is dismissed.

Sd/- Sd/-

(Goutam Bhaduri) (Sachin Singh Rajput)
Judge Judge

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