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**(2022)06ILR A515**  
**APPELLATE JURISDICTION**  
**CRIMINAL SIDE**  
**DATED: ALLAHABAD 27.05.2022**

**BEFORE**

**THE HON'BLE MANOJ MISRA, J.**  
**THE HON'BLE SAMEER JAIN, J.**

Criminal Appeal No. 1407 of 2007  
with  
Criminal Appeal No. 1069 of 2007  
with  
Criminal Appeal No. 1223 of 2007

**Sanjay Singh @ Bhooray**  
**...Appellant (In Jail)**  
**Versus**  
**State of U.P. ...Respondent**

**Counsel for the Appellant:**

Smt. Shubhra Singh, Sri Abhay Raj Singh, Sri Ashutosh Tewari, Sri Atul Kumar Shahi, Sri Jitendra Pal Singh, Sri Manoj Kumar Singh, Sri Pradeep Kumar Singh, Sri S.K. Singh, Sri S.N.Pandey, Sri S.W. Ali, Sadhna Upadhayay, Sri Vinay Kumar Tripathi

**Counsel for the Respondent:**

G.A.

**(A) Criminal Law - appeal against conviction - No direct evidence of crime - Circumstantial evidence - Indian Penal Code, 1860 - Sections 364, 302 / 34, 201 and 420 - The Code of criminal procedure, 1973 - Section 313,161,437-A - a case based on circumstantial evidence has to face strict scrutiny - Every circumstance from which conclusion of guilt is to be drawn must be fully established - the circumstances should be conclusive in nature and tendency - they must form a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused - and such chain of circumstances must be consistent only with the hypothesis of the guilt of the accused and must exclude every possible**

**hypothesis except the one sought to be proved by the prosecution. (Para -26,)**

Deceased was son of informant (PW-4) - deceased and accused were friends - were on visiting terms with each other - appellant had a widow cousin - deceased resided with his father and other family members in village - falls in territorial jurisdiction - deceased left his home on 03.04.2003 - went missing thereafter - FIR lodged by PW-4( father of deceased) - allegations - deceased has been abducted and secreted by accused - FIR suggests twin motive for crime (a) ransom (b) annoyance on account of relationship of deceased with cousin of appellant - no independent witness of recovery examined by prosecution - body recovered not photographed - extremely doubtful - recovery discarded by court. **(Para - 28,36 )**

**(B) Criminal Law- case based on direct ocular account of the crime - existence of motive is not of much importance - case based on circumstantial evidence - motive assumes importance - at times serves as a vital link to the chain of circumstances because, absence of a motive may serve as a catalyst to strengthen the alternative hypothesis - if there is a room for any, consistent with the innocence of the accused. (Para - 30 )**

**(C) Criminal Law - matters relating to kidnapping or abduction for ransom - victim party awaits return of the kidnaped or abductee for fear or danger to his or her life therefore, in such matters, mere delay in setting the law into motion may not prove fatal to the prosecution story - where hope of return of the abductee disappears, delay in lodging the report would, in absence of plausible explanation, raise suspicion as regards the credibility of the prosecution story - held - inordinate delay in lodging the FIR shrouds the prosecution story with suspicion as regards demand and payment of ransom. **(Para - 32)****

**(D) Criminal Law - prosecution story developed on strong suspicion and guesswork - howsoever strong suspicion might be it cannot take the place of proof - when**

**a reasonable doubt arises with regard to the prosecution story /the prosecution evidence, the benefit doubt would have to be extended to the accused.(Para -36)**

**HELD:-**The prosecution story and the prosecution evidence do not inspire confidence of court . No option but to extend the benefit of doubt to the appellant (Sanjay Singh @ Bhooray). As regards other appellants, there is no worthwhile evidence against them. The evidence of the deceased being last seen with the accused appellants on a Tonga by PW-5 discarded. All the appellants are entitled to be acquitted. **(Para - 36,37)**

**Criminal Appeals allowed. (E-7)**

**List of Cases cited:-**

1. Sharad Birdhichand Sarda Vs St. of Mah., (1984) 4 SCC 116
2. Shatrughna Baban Meshram Vs St. of Mah., (2021) 1 SCC 596
3. Mukesh & anr. Vs St. (NCT of Delhi), (2017) 6 SCC 1

(Delivered by Hon'ble Manoj Misra, J.)

1. These three appeals are against a common judgment and order dated 23.01.2007 passed by the Additional Sessions Judge, Court No.3, Pilibhit in S.T. No.797 of 2003 connected with S.T. No.212 of 2004, arising out of Case Crime No.320 of 2003, P.S. Bilsanda, District Pilibhit, whereby, the appellants Sanjay Singh @ Bhooray (appellant in Criminal appeal No.1407 of 2007), Vipin Singh (appellant in Criminal appeal No.1069 of 2007), Sompal Singh (whose Criminal appeal no.1063 of 2007 was abated by order dated 19.01.2022) and Bare (appellant in Criminal Appeal No.1223 of 2007) were convicted under Sections 364, 302 / 34, 201 and 420 IPC and were sentenced to imprisonment for life and fine

of Rs.2500/- coupled with default sentence of additional six months each under Section 364 IPC and Section 302/34 IPC; three years R.I. and fine of Rs.2,500/- coupled with a default sentence of additional six months under section 201 IPC; and three years R.I. and fine of Rs.2500/- under Section 420 IPC coupled with a default sentence of additional six months. All sentences to run concurrently. It be clarified that in S.T. No.797 of 2003, three accused, namely, Sanjay Singh @ Bhooray (appellant in Criminal Appeal No.1407 of 2007); Vipin Singh (appellant in Criminal Appeal No.1069 of 2007); and Sompal Singh (appellant in Criminal Appeal No.1063 of 2007), were tried; whereas, in S.T. No.212 of 2004, Bare (appellant in Criminal Appeal No.1063 of 2007) was tried. Criminal Appeal No.1063 of 2007 separately filed by Sompal Singh was abated vide order dated 19.01.2022 consequent to his death.

**INTRODUCTORY FACTS**

2. The prosecution story elicited from the written report (Ex. Ka-1) is that on 01.04.2003 Sanjay Singh @ Bhooray, a resident of Village Majhgawa, P.S Bilsanda, District Pilibhit, came to informant's (PW-4's) house at village Jamuniya Jagatpur, P.S. Pooranpur, District Pilibhit and invited informant's son Parminder (the deceased) to Majhgawa. In response to that invite, on 03.04.2003 the deceased went on a cycle to Pooranpur, parked his cycle at the shop of Arvind (PW-1) and told PW-1 that he is going to the house of Bhooray at Majhgawa and would return by evening. But the deceased did not return. On 05.04.2003, at about 1.30 pm, PW-4 (the informant) received a call demanding Rs.2,00,000/- for release of his son. The voice on the phone appeared to

be of Bhooray. After receiving the call, on 05.04.2003 itself, PW-4 with Kashmir Singh (not examined), Sukhvinder Singh (PW-3), Sukhveer Singh (not examined) and Ravi Azad (PW-2) went to Bhooray's house at Majhgawa. There, Bhooray and other villagers admitted that Parminder Singh (the deceased) had come to Majhgawa and on 04.04.2003 he had lunch with Sanjay, Bare, Vipin and Som Pal at Som Pal's house at Rautapur. But Bhooray did not disclose as to where PW-4's son go after having lunch. As a result, information was given to the police of P.S. Bilsanda regarding abduction of informant's son. Upon this information, the police of P.S. Bilsanda neither registered a report nor arrested Bhooray but enquired from Sanjay @ Bhooray. Thereafter, on 16.04.2003, and two days thereafter, Bhooray called (phoned) the informant to bring Rs.50,000/- at Madnapur Chauraha, Jalalabad, at 2 pm, to secure release of his son. On this call, PW-4 and PW-3 along with Kashmir Singh (not examined) and Harjinder Singh (not examined) took the money to the specified place and gave it to Sanjay @ Bhooray. There, with Sanjay there was an unknown person. After receiving the money and extending the promise that informant's son would be released in 20 minutes, Bhooray went away with the money. Informant waited there till evening, but his son was not released. By making these allegations and by adding that Sanjay Singh's cousin Manju Singh (a widow) had close relations with informant's son (the deceased), which was not palatable to Sanjay Singh @ Bhooray and his family members, the written report was got lodged by expressing suspicion that Sanjay Singh @ Bhooray with the help of his associates has abducted informant's son with a view to kill him and in that process, they cheated the informant of Rs.50,000/-. The written report (Ex. Ka-

1) was submitted to the Superintendent of Police, Pilibhit, which, on his direction, was registered as an FIR at P.S. Bilsanda, District Pilibhit on 04.05.2003 at 7.30 hours (i.e. Case Crime No.320 of 2003, under Section 364 IPC).

3. After registration of the FIR, on 06.05.2003, at about 12.05 hours, according to the prosecution, Sanjay Singh @ Bhooray was arrested of which entry was made in the G.D., vide Report No.25 at 12.35 hours. Thereafter, a disclosure statement of Sanjay @ Bhooray was allegedly recorded of which there is a G.D. entry, vide Report No.27 at 12.50 hours, at P.S. Bilsanda (Ex. Ka-12). On the basis of this disclosure, the police team accompanying Sanjay Singh @ Bhooray went to the spot and at about 3 pm, on 06.05.2003 itself, recovered the body of the deceased from the bottom of a canal (Nahar) and prepared a composite recovery as well as confession memo (Ex. Ka-13) including a site plan (Ex. Ka-14). The recovery/confession memo (Ex. Ka-13) was witnessed by Sukhdev Singh (not examined) and Arvind Singh (not examined) and thumb marked by Sanjay Singh @ Bhoorey. The fard/ memo of recovery (Ex. Ka-13) reflects that at the time of the recovery, the informant had arrived at the spot and had identified the body. At the time of the recovery, the body was in a decomposed state and except an underwear there were no clothes on it.

4. Inquest was conducted at the spot of recovery and was completed by 19.00 hours on 06.05.2003. Inquest report (Ex. Ka-2) was prepared by Sub Inspector Virendra Kumar (PW-8), which was witnessed by Sukhdev Singh (not examined), the informant (PW-4), Arvind Singh (not examined), Pradhan Singh (not

examined), Manoj Kumar (not examined) and Sarvender Singh (not examined). Inquest report while describing the body recites that right arm below elbow is missing.

5. Autopsy was conducted on 07.05.2003, at about 2 pm, by Dr. Bhagwan Das (PW-6), who prepared the autopsy report (Ex. Ka-3) on 07.05.2003. The autopsy report in respect of the external examination of the body recites:-

*"A male body of average built and muscularity. Rigor mortis absent. Severe foul smell coming from body. Skin detached at places. Soft tissue as a whole absent on upper part of skull. Bone of skull exposed and seen. Sutures are loose. Soft tissue absent on right lower limb leg and both bone exposed. Same thing is on left side lower limb. Ligament and joints are loose. Soft tissue on left whole upper limb are absent and bones seen. Joints are loose. Soft tissue absent on left shoulder and scapular region. Both side only orbital fossa seen. Soft tissue present only. Orbital bones are seen. Fossa part of nose absent. Both jaws opened widely and teeth are seen. Two teeth right incision missing others are loose in socket. Tongue is putrefied and present in black mass. No skin present on face. Soft tissues are also absent on face. Skin over neck is peeling off. Right hand missing. Abdomen distended and skin peeled off at places. Ante mortem injury not detectable due to decomposition of body. Scrotum shrunken and penis in decomposed state.*

*Internal examination:- Scalp. No fracture noticed. Membranes - putrefied and adherent to inner part of skull bones. Brain- highly liquefied. Pleura- adherent to chest cavity and decomposed state. Larynx-*

*softened congested, hyoid bone intact. Lungs- both lungs shrunken and putrefied congested; (sic) blood stained fluid present in both lungs. Pericardium- adherent to heart. Heart- shrunken, softened. Both chamber empty. Buccal cavity- 14 x 16 loose. Oesophagus- putrefied. Stomach- bursted due to decomposition and empty. Small intestine- shrunken contains fluid and gasses. Large intestine- shrunken softened and contains faeces. Liver- softened shrunken congested weight about 600 gm. Gallbladder- half full adherent to liver. Pancreas. Putrefied. Spleen- Softened shrunken congested weight 160 gm. Urinary bladder- decomposed state.*

*Cause of death due to asphyxia."*

6. After completing the investigation, two separate charge-sheets were submitted. One charge sheet (Ex. Ka-15) was submitted against Sanjay Singh @ Bhooray, Vipin Singh and Sompal Singh and other charge sheet (Ex. Ka-16) was submitted against Bare. After taking cognizance on the two charge sheets, the case was committed to the court of session. In S.T. No.797 of 2003, Sanjay Singh @ Bhooray, Vipin Singh and Sompal Singh were charged for offences punishable under Sections 364, 302 read with Section 34, 201 and 420 IPC, whereas, in S.T. No.212 of 2004, the appellant Bare was separately charged for the same offences. As both sessions trial arose from Case Crime No.320 of 2003, they were connected with each other and on denial of charge framed against the accused, the trial commenced.

### **PROSECUTION EVIDENCE**

7. The prosecution examined as many as nine witnesses. Their testimony, shorn of unnecessary details, is as follows:-

8. **PW-1 (Arvind Kumar)**. He is the cycle shop owner at Pooranpur where the deceased had parked his cycle. According to this witness, Sanjay Singh alias Bhooray was known to him since before the incident. Sanjay Singh was a friend of Parminder Singh (the deceased). PW-1 stated that about a year and a half back (*note: statement of this witness was recorded on 25.09.2004*), while he was at his shop at Pooranpur, the deceased came on a cycle and parked his cycle there and stated that he is going to Majhgawa village to visit Bhooray and would return by evening. After that the deceased went away and did not return back. The cycle remained parked at PW-1's shop for 3-4 days; thereafter, PW-1 took the cycle and delivered it at deceased's house.

**During cross-examination**, he stated that many people come and leave their cycle at his shop but he does not know their name. PW-1 stated that he is well acquainted with deceased's father; that deceased's father had not told him that the deceased is missing; that in ordinary course he would never go to return cycle of his customers; that he went to return the cycle because the deceased as well as his family members were well known to him. In respect of financial status of the deceased, PW-1 stated that the deceased had a tractor and two motorcycles and is a big farmer.

**On further cross-examination**, he stated that his statement about the deceased having parked his cycle at his shop was told by him for the first time in court and that he had not told the I.O. about that cycle. He denied the suggestion that he is telling lies because of his friendship with the deceased and his family. He also denied the suggestion that the deceased never parked his cycle at his shop.

9. **PW-2 (Ravi Azad)**. He is a taxi owner residing at Pooranpur, whose taxi was used by the informant (PW-4) to go to Majhgawa. PW-2 deposed that he knows Sanjay Singh @ Bhooray and the deceased Parminder Singh from before the incident. He stated that on April 3, 2003, while he was going to the bus station, on way, at Arvind's Cycle Shop, he met Arvind (PW-1), who told him that Parminder (the deceased) had come in the morning and had parked his cycle at his shop and had told him that he is going to Bhooray's house at Majhgawa and would return by the evening. He stated that on 05.04.2003, Nirmol Singh (PW-4 - deceased's father), Sukhvinder Singh (PW-3), Kashmir Singh and Sukhvir Singh had come to PW-2's house and had told him that a phone call, which appeared in the voice of Bhooray, was received; as per which, Parminder Singh (the deceased) was in Bhooray's custody and for his release, a ransom of Rs.2,00,000/- has been demanded. PW-2 stated that, after telling all that, PW-4 requested PW-2 to take them to Majhgawa on his taxi. At the request of PW-4, PW-2 took PW-4, Kashmir Singh, Sukhvinder Singh (PW-3) and Sukhvir Singh to Majhgawa. They reached there by 5 pm and went straight to the house of Bhooray, where they met Bhooray. When they asked Bhooray about Parminder, Bhooray admitted that Parminder had come and they had lunch at Rautapur at Sompal's house and, thereafter, Parminder left. When PW-4 questioned Bhooray on that that ransom call, Bhooray denied having made any such call. PW-2 stated that thereafter they made inquiries from the people at Majhgawa. They all confirmed that Parminder (the deceased) had come. Thereafter, they all went to the police station. At the police station, PW-2 stayed outside the police station.

**In his cross-examination**, at the instance of Sompal Singh, PW-2 denied the suggestion that he was making a false statement with regard to having received information that the deceased had lunch at Sompal's house.

**In his cross-examination**, at the instance of Sanjay Singh @ Bhooray, he stated that he knew the deceased since last 10-12 years. Earlier, PW-2 had a fertiliser shop where the deceased used to come. PW-2 stated that his friendship is with the elder brother of the deceased and that he is in visiting terms with him. PW-2 stated that the deceased's elder brother with whom he has friendship has come with him to the court today and had earlier also come with him to the court. PW-2 stated that he has not known Sanjay personally but he knows him through Parminder (the deceased) otherwise, he has no relationship with Sanjay Singh. He also stated that on few occasions when he visited the house of Parminder (the deceased), he saw Bhooray @ Sanjay Singh there. He, however, could not tell the date, month or the year when he last visited the house of the deceased. However, he stated that in the marriage of Gurmeet he had seen Sanjay Singh @ Bhooray. He added that apart from that marriage, he had seen them together in the house of the deceased.

**On further cross-examination**, he stated that he purchased Marshal vehicle about two years before and prior to owning that vehicle, he had a fertiliser shop and before that he had an expeller and was also employed as a private bus stand manager. He admitted that the I.O. had enquired from him but he could not remember the date when he was interrogated by the I.O.

**On further cross-examination**, he stated that the information about the

deceased having gone missing came to him for the first time on 05.04.2003 from the father of the deceased who had told him that a demand call of Rs.2,00,000/- has been received by him (PW-4) for release of Parminder and on his (PW-4's) request, PW-2 had gone to Majhgawa. He further stated that when they reached Sanjay's house and inquired about the deceased, Sanjay Singh stated that the deceased had come a day before.

**On further cross-examination**, PW-2 stated that PW-4 has about 22 acres of agricultural holding and has a tractor trolley as well as motorcycle, though he does not have a jeep. PW-2 stated that the distance between Jamuniya and Ghunghuchihai is about 3 km. Between Ghunghuchihai and Pooranpur, private buses ply regularly. The distance between Ghunghuchihai and Pooranpur is about 12 km and the distance between Pooranpur and Majhgawa is 53-54 km. He stated that if one has to go from Jamuniya Jagatpur to Majhgawa, Pooranpur does not fall in the route. In respect of his presence at the cycle shop of Arvind, PW-2 stated that he went on foot to the cycle shop as he used to go and sit there sometimes and whenever he used to go there, Arvind (PW-1) used to tell him who had visited his cycle shop. PW-2 stated that PW-1 often used to talk about Parminder Singh (the deceased) and his family members. PW-2 stated that earlier also, Arvind had informed him about Parminder (the deceased) coming to his shop. In respect of his return to Pooranpur after visiting Majhgawa, PW-2 stated that he returned back between 8 and 8-30 pm. PW-2 admitted that he had not taken rent for his taxi from the victim's family as they were known to him. PW-2 stated that after visiting Bhooray's house, they went to P.S. Bilsanda but he could not remember

whether they had gone to any other place before visiting the said police station.

On being questioned as to what Sanjay Singh @ Bhooray stated when he was questioned by PW-4 in respect of ransom call made by Sanjay Singh, PW-2 stated that Sanjay Singh stated that he had not made any such ransom call. PW-2 added that at Majhgawa village, he did not know anybody else. PW-2 stated that he had not given any advise to lodge a missing report in respect of Parminder having gone missing. He stated that he had reached Bilsanda Police Station by about 6 pm. They stayed there for 15-20 minutes. PW-2 stayed outside the police station and he does not know whether any written report was given or not. PW-2 stated that after visiting the police, they did not go to Majhgawa again from the police station but he does not know whether the police had gone there or not. He denied the suggestions that he is telling lies; that the deceased had not parked his cycle at Arvind shop; Arvind had not informed him about the deceased parking his cycle there; and that he is telling lies because of his family terms with deceased's family.

10. **PW-3 (Sukhvinder Singh).** He stated that he is a neighbour of PW-4 and is on visiting terms with PW-4 and that he knew Sanjay Singh @ Bhooray since before the incident. He stated that Sanjay Singh had been on visiting terms with PW-4. PW-3 stated that about quarter to two years before, the deceased had left by saying that he is going to Bhooray's house. On 05 April, 2003 PW-4 told him that Bhooray had made a call demanding Rs.2,00,000/- for release of Parminder. On this information, PW-3, PW-4, Kashmir Singh and Sukhveer Singh took PW-2's taxi to go to Majhgawa. When they met Bhooray there, Bhooray's family

members were also there. Bhooray told them that day before yesterday, Parminder (the deceased) had come; yesterday, they had lunch at Rautapur with Bare and Sompal. Bhooray had also told them that the deceased was with them till lunch and, thereafter, where he went, he does not know. After getting this information, PW-4 along with PW-3 and others went to P.S. Bilsanda, where PW-4 informed the Station Officer about his son having gone missing. There, the Station Officer took a note on a plain paper but did not record the information. Station Officer, thereafter, called Bhooray at the police station and assured the complainant party that he would enquire from Bhooray and they may go. Thereafter, the complainant party left the police station. PW-3 stated that PW-4 had informed him regarding receipt of a fresh call on 16.04.2003 from Bhooray for making arrangements of the ransom amount to secure release of his son and, thereafter, again, ransom call was received on 18.04.2003, reducing the ransom amount from Rs.2,00,000/- to Rs.50,000/-. PW-3 stated that upon getting this information from PW-4, after taking Rs.50,000/-, PW-3 and PW-4 along with Kashmir Singh and Harjinder Singh went to Madna Chauraha *(the place where the cash was to be delivered as per the phone call)* and reached there between 4-5 pm; where they met Bhooray and one unknown person, who, according to Bhooray, was Bhooray's maternal uncle. PW-3 stated that Bhooray was delivered Rs.50,000/-, after which, Bhooray requested them to wait for 20 minutes to enable him to come with Parminder but, thereafter, Bhooray did not return even though they waited for two hours; and few days later, Parminder's body was recovered, which he saw.

**During cross-examination, PW-3 stated that PW-4 i.e. deceased's father is**

his real elder brother and that PW-3's house is near PW-4's house. In respect of the time when they left for Majhgawa, PW-3 stated that they left for Majhgawa between 1-1.30 pm and they reached Majhgawa by about 5 pm. Before reaching Jamuniya, they visited Pooranpur. At Pooranpur, they took the vehicle of PW-2 to go to Majhgawa. He denied the suggestion that he has a Maruti car. PW-3 stated that PW-4's elder son did not own a four wheeler at the time of the incident. PW-3 also stated that he left Pooranpur by about 2 pm. On further cross-examination, PW-3 stated that he learnt about Parminder Singh having gone missing for the first time on 05.04.2003 when PW-4 had told him that they had to go to Majhgawa as Parminder was in the custody of Bhooray. He stated that the I.O. had interrogated him about 4-6 days after Parminder had left. Immediately thereafter, he clarified by stating that he is not sure whether his statement was taken after 2 days, or 4 days, or 6 days, but was taken for sure within 10 days. Whereafter, he did not meet the I.O.

In respect of Bhooray, PW-3 stated that Bhooray used to visit Parminder very often and therefore, he knows Bhooray. PW-3 also stated that he knows Bare and Sompal.

In respect of his visit to the house of Bhooray at Majhgawa, PW-3 stated that on their visit there, they enquired from Sanjay for about 20-25 minutes; Bhooray @ Sanjay had told them that till a day before, Parminder was with Bhooray and had had his meal with him. Bhooray, however, claimed that he has no knowledge of Parminder's current whereabouts. PW-3 stated that after visiting Sanjay's house at Majhgawa, they all went straight to the police station at Bilsanda and arrived there

by about 5.30 pm. Except Ravi (PW-2), all had entered the police station and they orally informed the Station House Officer there. Within next 20 minutes, the Station House Officer had called Sanjay at the police station and till arrival of Sanjay at the police station, they were there.

In respect of the incident of 18.04.2003, PW-3 stated that he, Kashmir Singh, Nirmol Singh (PW-4) and Harjinder Singh went to Madnapur on 18.04.2003 in Maruti van of Harjinder Singh. He added that they went to Madnapur via Shahjahanpur; that before going to Madnapur, they had not informed the police; that when they reached there, they asked Bhooray about Parminder; Bhooray told that if the money is delivered, he would ensure the release of Parminder within 20 minutes. PW-3 stated that neither he nor his men insisted for release of Parminder before taking the money. On being questioned as to why they did not capture Bhooray and his companion at that time, PW-3 stated that they had no idea that Bhooray would violate the promise as they believed in Bhooray. PW-3 stated that after delivery of money, they all returned straight from Madnapur to their house and they did not consider it necessary to inform the police. PW-3 also stated that he does not know whether PW-4 had gone in search of Parminder after visiting Madnapur. PW-3 stated that he does not remember whether any information was given on a plain paper about Bhooray at police station Bilsanda, though he remembers that the S.O. had called Bhooray to the police station and had told them that he would inquire from Bhooray.

In respect of Nirmol Singh (PW-4), PW-3 stated that Nirmol Singh had worked in films. PW-3 stated that Sukhvir

Singh and Bunty are sons of Nirmol Singh (PW-4). He stated that he does not know whether those sons of PW-4 are involved in extremist activity. He denied the suggestions that Sukhvinder and Bunty were detained under TADA; that he is telling lies because of his relationship with Nirmol Singh (PW-4); that he did not go to Madnapur and Majhgawa; that no money was paid at Madnapur; that no demand for money was made; and that he and Nirmol Singh have a four wheeler.

PW-3 was also cross-examined on behalf of Bare and Sompal. In his cross examination on their behalf, he stated that the distance between Majhgawa and Bilsanda is of 10 minutes. The I.O. had come to his house to investigate. His statement was recorded at his house by the I.O. He had received knowledge that the body had been hidden in the canal. He denied the suggestion that he is telling lies.

11. **PW-4 (Nirmol Singh).** PW-4 is the father of the deceased. He stated that on 01.04.2003 Sanjay Singh @ Bhooray came to his house and invited Parminder Singh (the deceased) to Majhgawa. On 03.04.2003, the deceased went to Pooranpur on a cycle. He parked his cycle at Arvind Cycle Shop and told Arvind that he is going to Majhgawa to the house of Sanjay Singh @ Bhooray and would return by evening. Parminder Singh, thereafter, did not return. On 05.04.2003, he received a ransom call demanding Rs.2,00,000/- for release of Parminder Singh. The ransom call was in the voice of Sanjay Singh @ Bhooray. Thereafter, PW-4, Sukhvinder, Kashmir Singh and Sukhvinder Singh along with Ravi went to Bhooray's house. There, they met Bhooray and his family. On inquiry about Parminder (the deceased), Bhooray and his family admitted that

Parminder had come and on 04.04.2003 Parminder had lunch with Sompal, Bare, Vipin and Sanjay but they did not disclose his current whereabouts. PW-4 stated that since no useful information was given by Bhooray regarding the whereabouts of Parminder, PW-4 went to P.S. Bilsanda and informed the Station Officer regarding his son having gone missing. But his report was not written. However, the S.O. called Bhooray to inquire from him. Thereafter, on 16.04.2003, he received a call to arrange for Rs.2,00,000/- for release of Parminder. On 18.04.2003, another phone call came to bring Rs.50,000/- for release of Parminder. On this call, PW-4, Sukhvinder Singh, Kashmir Singh and Harjinder Singh went to Madnapur Chauraha with Rs.50,000/-. There they found Sanjay Singh @ Bhooray with his maternal uncle Vijay Kumar Singh alias Chhotey Lalla. When they were inquired about Parminder Singh, they stated that Rs.50,000/- may be given to them and within 20 minutes, they will come with Parminder. PW-4 stated that they gave the money to them and waited, but they did not return and, therefore, PW-4 and others returned back. After stating as above, PW-4 added that Sanjay Singh @ Bhooray's cousin, Manju, widow of Pramod, a resident of Pooranpur, had relations with Parminder (the deceased); Parminder used to visit her house; that Sanjay Singh and his family were not appreciative of that relationship and, therefore, it appears, Parminder was abducted and killed. PW-4 added that Parminder Singh's right arm was amputated from below the elbow joint. PW-4 alleged that after killing Parminder, the accused cheated him of Rs.50,000/-. PW-4 stated that on 02.05.2003 he gave application to the Superintendent of Police. The written report was exhibited as Ex. Ka-1. PW-4 stated that when the body of Parminder was

being dug out by Bhooray and two constables from the canal, then Bhooray had pointed out that this is the body of Parminder. He stated that he recognised the body on the basis of body structure and the amputated hand. PW-4 stated that the inquest was conducted in his presence. The inquest report (Ex. Ka-2) was exhibited. PW-4 stated that he knew all the accused from before as they used to visit his house. He also stated that about 14 months before, he received a phone call. The caller stated that he is elder brother of Sompal and that Sompal wants to meet him in jail. He stated that he went to jail to meet Sompal, where Sompal stated that if he is exonerated, he would be ready to give evidence as a witness. He also stated that Sompal had admitted his guilt.

**During his cross examination at the instance of accused Sompal,** PW-4 stated that he went to jail to meet Sompal after about 14 months of the recovery of his son's body. After stating that, PW-4 stated that it must be 10 months after recovery of the body. He denied the suggestion that he never visited the jail to meet Sompal there.

**In his cross-examination at the instance of accused Sanjay Singh @ Bhooray,** PW-4 stated that he has 22 acres of land. He has a motorcycle but no car. He stated that for going to Pooranpur one has to catch a bus from Ghunghchihai. Ghunghchihai is about 5 km from his house and from Ghunghchihai to Pooranpur it is 12 kms. He stated that if one has no personal conveyance, one can take bus, tempo, etc. There is a short cut route also via Jamuniya Sherpur to go to Pooranpur. The short cut route is 10-11 kms. He denied the suggestion that the short cut route is also 20-22 kms. He also denied the suggestion that in between Jamuniya and

Pooranpur, there is jungle. PW-4 stated that when the deceased had left his house, it must have been 8 or 9 am in the morning. Deceased had left the house after telling PW-4 that he is going to Sanjay Singh @ Bhooray's house at Majhgawa. PW-4 stated that the distance between Pooranpur and Majhgawa is 53 kms and to go to Majhgawa from Pooranpur one has to go first to Ghunghchihai. There is also a straight rasta from Ghunghchihai to Majhgawa which is about 41 kms. PW-4 stated that he did not ask his son to go on a motorcycle. He stated that at that time probably the motorcycle was not there. He stated that when his son went away and did not return that night, or even next night, he did not have any anxiety as earlier also he used to visit Sanjay Singh's house and used to stay there for 3-4 days and Sanjay Singh used to visit his house and used to stay for 3-4 days. He stated that he got disturbed only after receipt of ransom call on the third day. He stated that on receipt of ransom call, he made no attempt to inform the police immediately. Rather, they took the vehicle of Azad to go to Bhooray's house where Bhooray admitted that Parminder had come and that Parminder, Bhooray, Vipin and Sompal all had lunch at Rautapur at Sompal's place.

**On further cross-examination,** he stated that when he had visited Bhooray's house after receipt of ransom call, he saw Bhooray and his family members. He enquired from them but not from the villagers. He also stated that he had not enquired from the family members of Sompal. He stated that he remained at Majhgawa for 15-20 minutes and while they were there, neither Bhooray nor his family members made any attempt to run away but they did not give information regarding the whereabouts of Parminder.

Therefore, he had given information on a plain paper to S.O. Bilsanda with regard to the ransom call and had also orally informed S.O., Bilsanda about that. He then reiterated that he had not given any written application. PW-4, however, clarified that the police had gone to call Bhooray and had brought him to the police station. But, in his presence, Bhooray was not inquired. Rather, S.O. told PW-4 that he will enquire. PW-4 stated that on 08.04.2003 when he visited P.S. Bilsanda again, he did not meet Bhooray there. PW-4 admitted that his visit to P.S. Bilsanda on 08.04.2003 has not been mentioned in his written report addressed to the Superintendent of Police. PW-4 denied the suggestion that this was stated for the first time in court. PW-4 stated that after 05.04.2003 they had visited Bhooray's house 2-3 times. Later, he corrected it by stating that he visited the house two times. PW-4 stated that he had requested Bhooray to search out his son. Bhooray assured that he is searching for Parminder and as soon as he is able to find him, he would give information.

During cross-examination, PW-4 stated that on 16.04.2003 he received ransom call from Bhooray, demanding Rs.2,00,000/- for release of Parminder. PW-4 stated that though this fact was not disclosed by him in his written application but he told it orally to the I.O. but if the I.O. had not noted it, he cannot tell the reason for the same. He denied the suggestion that this statement is made for the first time in court as a result of tutoring. He stated that on receipt of phone call on 16.04.2003, he filed no complaint at the police station. He added that he did not make a complaint because he wanted to have his son back alive and was worried that if he would make a complaint to the police or authorities, the abductors may kill

his son. He stated that he was arranging for the money and when he had given the application, he thought that his son was alive. PW-4 added that on 18.04.2003 Bhooray called him to ask as to how much money PW-4 could arrange. When, PW-4 stated that he could arrange Rs.50,000/- only, Bhooray said that PW-4 should come with Rs.50,000/- at Madanpura Chauraha near Jalalabad. PW-4 stated that Madnapura is about 150 kms away from his house. It would take 4 to 5 hours to reach there on a bus. PW-4, thereafter, quickly corrected himself by stating that he took his own car and it took him 4-5 hours. On a question as to whether in between Shahjahanpur to Madnapur he crossed any police station, he stated that he does not remember clearly but a factory was noticed by him. He stated that the distance between Shahjahanpur and Madnapur was covered in one and a half hour and by the time they could reach there, it was 4-5 pm. PW-4 stated that at Madnapur Chauraha, he saw Sanjay Singh @ Bhooray and Vijay Kumar Singh @ Chootey Lalla standing at the Chauraha. He stated that when he gave the money, he did not insist Bhooray to show his son first, because he believed that on payment of money his son would be released therefore, he did not even request the other person accompanying Sanjay to wait there, till his son was released. PW-4 stated that he himself waited there for about two hours, but when no one returned, as it was getting dark, he returned back. Next day, he did not go to Majhgawa under the belief that Parminder may be released by about night. PW-4 added that he did not go to Majhgawa after 18.04.2003 because he had no hope of help from the Station Officer (S.O.) Bilsanda. He stated that he tried to meet the S.O. two or three times but he could not meet him. He stated that he went to the Superintendent of Police on

22.04.2003 and 28.04.2003 but he did not meet him. He stated that he did not give any written application on either of those two days. He stated that between 23.04.2003 and 28.04.2003 neither he met the commanding officer nor he gave application in his office. He also stated that he did not give any application by registered post to DIG or IG. He clarified that by stating that till 02.05.2003 he met no other officer to lodge complaint. He admitted that in his written application given on 02.05.2003 to the Superintendent of Police, he made no mention that he had visited his office twice but he could not meet him. He admitted that in his application he had not mentioned the phone number on which he received the phone call. He admitted that he disclosed the name of Bhooray's Mama in the court for the first time and that before this he never made any disclosure about Bhooray's Mama.

On further cross-examination in respect of relationship of Manju and Sanjay Singh @ Bhooray, PW-4 stated that Manju is not sister, but a cousin, of Sanjay. PW-4 denied the suggestion that Parminder Singh (the deceased) had no relations with Manju. He added that Bhooray's father Bajrangi Singh had disclosed that Parminder and Manju were in a relationship, which they did not appreciate. He added that father and brothers of Manju did not make any complaint with regard to the relationship between Manju and Parminder. PW-4 also stated that there is no animosity between Manju's father and Bhooray's father. He denied the suggestion that Bhooray's father never objected to the relationship between Manju and Parminder.

On further cross-examination, PW-4 admitted that his son Bunty and Sukhvir Singh were detained under TADA.

He, however, denied the suggestion that on account of extremist activity of his sons the members of locality were against his family. He also denied the suggestion that some unknown person had killed his son.

In respect of recovery of the body of his son, PW-4 stated that his son's body was recovered on 06.05.2003 at about 3 pm from the northern corner of a canal near Bhedan Kanja. He stated that when he reached the police station, he got information that his son's body is being dug out. On receiving this information, within 25 minutes, he had reached the spot from where the body was recovered. He stated that the spot from where the body was recovered is 20-22 kms away from the police station. He stated that at that spot there were number of villagers (agriculturists) present. He stated that he was not told at the police station as to when the investigating officer had left the police station for recovery of the body. He stated that he was a witness to the inquest and at the time of inquest he had told the I.O. that his son has been killed by Bhooray with Sompal and Bare but no other accused was named at that time. He stated that writing of the papers/reports in respect of recovery of the body started at about 3 pm and continued upto 7-7.30 pm. He stated that police jeep was parked 70-80 yards away from the place from where the body was recovered. He denied the suggestion that the body was not recovered in his presence.

In respect of arrangement of Rs.50,000/- to pay as ransom, he stated that the money was borrowed by him from his maternal uncle Gurbax Singh but this fact was not disclosed earlier.

In respect of his earlier statement made on 05.04.2003 that he had received a

ransom call for Rs.2,00,000/- for release of Parminder, he stated that if this was not written in his written application then he cannot tell the reason for the same because he had disclosed it to the I.O.

He denied the suggestions that his statement is an outcome of tutoring; that he had not made any complaint at Bilsanda on 05.04.2003; that Bhooray had not disclosed to him that they had gone to have lunch at Sompal's house; that he received no call from Bhooray; that Sanjay Singh had no animosity because of Parminder's relation with Manju; that no phone call of Sanjay came to him; that Sanjay had not called Parminder to his house; that Sanjay had not received the money; that Sanjay has no hand in the murder of Parminder; that Parminder was killed for some other reason; that the body of the deceased was not recovered in his presence; that the body was not identified; and that whatever he has stated is false.

12. **PW-5 Vikram Singh.** He is a witness who allegedly saw Sompal, Bare and Sanjay Singh @ Bhooray along with one or two others on a Tonga going towards Bhedan Kanja in the evening at around 6.30 to 7 pm. This witness stated that he knows PW-4 and the deceased. He states that Parminder was killed about two and half months prior to 16.08.2003. Immediately thereafter, he corrected himself by stating that about two and a half months prior to 18.06.2003 he saw the deceased on a Tonga near Bilsanda. PW-5 stated that he and Dilbag Singh were talking to each other when he witnessed Rautapur's Sompal, Bhedan Kanja's Bare and Majhgawa's Sanjay @ Bhooray as well as Parminder along with one or two others, whom he does not know, going on a Tonga towards Bhedan Kanja. It must have been

6.30 to 7.00 pm at that time. PW-5 stated that thereafter he had not seen Parminder. He stated that Parminder's body was recovered from a canal at Bhedan Kanja. He stated that the information that he saw the deceased on a Tonga with the accused was given to Parminder's father on 18.06.2003.

**In his cross-examination** at the instance of Sanjay, PW-5 stated that he has come from Central Jail, Bareilly to give his statement. He admitted that he has been convicted in the murder of Dheer Singh. PW-5 stated that he has no relations with the son of Nirmol Singh (PW-4); his village is at a distance of 20 kms from the village of Nirmol Singh, which is at Jamuniya Jagatpur; he has relationship with Kashmir Singh, who is a resident of Jamuniya Jagatpur; he does not know whether Kashmir Singh is a relative of Nirmol Singh; that PW-5 used to visit Kashmir Singh's house; that he does not know any other person in that village; that he does not know where the sons of Nirmol Singh are married; that he does not know as to how many sons Nirmol Singh have; that at the time when the body was recovered, he was not present; that the day when he saw the deceased with the accused on a Tonga, he had gone to purchase his tractor's bearing; that he had gone on a cycle; that he had left his house at about 1 pm; that day he consulted the tractor mechanic and the whole process of purchasing the bearing and consulting the mechanic must have taken him 2-3 hours; that he does not know as to when body of Parminder was recovered after he went missing; that he cannot say as to how many months before, he saw the deceased with the accused; and that he does not remember the day when he saw the deceased with the accused. He, however, added that he saw 6-7 persons on

the Tonga. In respect of dress worn by Parminder, he stated that he was wearing shirt with square. He also stated that he did not ask Parminder as to where he was going. He corrected himself to state that he had wished Sompal. In respect of the date when his statement was recorded by I.O., he stated that the I.O. had questioned him a month and a half after Parminder had gone missing. He stated that he did not tell the I.O. about his meeting with Sompal. He stated that he had informed the I.O. that about two and half months before 18.06.2003, he had seen them on Tonga near Durga Talkies, Bilsanda but if that was not written by the I.O. then he cannot give the reason for that. He further stated that the name of persons whom he saw were given to the I.O. but if there is any difference in those names, he cannot give a reason for it. PW-5 stated that he had named three accused and not four but if the I.O. had written four names then he does not know the reason for that. He further stated that he is not aware of the others who were sitting on that Tonga. He admitted that the I.O. had not required him to identify the accused.

He denied the suggestion that he is telling lies because of tutoring and his relationship. He also denied the suggestion that he had not seen Parminder with three accused together on a Tonga.

In his cross-examination at the instance of Bare and Sompal, he stated that his statement was recorded by I.O. on 18.06.2003 and prior to that he gave information to the police. He admitted that in newspapers, reports were published with regard to Parminder having gone missing but as he was busy in his agricultural work, he gave no information earlier. PW-5 further stated that his father has 60 bigha

land and a tractor but he does not know whether he and his father were challaned under Section 151 Cr.P.C. He denied the suggestion that he and his father were lent Rs.20,000/- by the accused Sompal. PW-5 admitted that Kashmir Singh of Jamuniya Jagatpur is his relative and that he was on visiting terms with Kashmir Singh. He also stated that Kashmir Singh is a neighbour of the informant. PW-5 stated that he does not have any relationship with either Sompal or Bare and is not acquainted to them. He denied the suggestion that he is telling lies on account of pressure from his relatives. He also denied the suggestion that he did not see the deceased with accused Sompal and Bare.

13. **PW-6 Dr. Bhagwan Das.** He is the doctor who carried out autopsy of the cadaver. He stated that on 07.05.2003 he examined the body of the deceased Parminder Singh at 2 pm, who must have been aged between 28-30 years. The body was received by him in a sealed state. He conducted the autopsy after verifying the seal. He proved the autopsy and described the body as well as its condition noticed and mentioned by him. He stated that he could not notice any ante mortem injury because the body was in a decomposed state. He did not notice any fracture. He stated that the hyoid bone was intact. He, however, accepted the possibility of death as a result of strangulation. He stated that the death might have occurred a month before the date of the autopsy. On the basis of his statement, the autopsy report was marked as Ex. Ka-3.

**In his cross-examination,** he stated that the body was not identifiable as it had decomposed. He also stated that if a body is buried in soil and is dug out from it, the body would carry mud on it. On the

body of Parminder Singh there was no mud. He stated that if a body is buried in soil or sand, then it is natural to notice mud inside jaws and the eye orbits. He further stated that if somebody is strangled, there is possibility of a fracture of the hyoid bone. He added that the estimated time of death could have a variation of seven days. He also stated that if the body is thrown in an open area, in hot climate of June or May, decomposition of the body would be quicker.

14. **PW-7 Head Constable Jagat Pal Yadav.** He stated that on 04.05.2003, he received the written report of PW-4, which was marked by the Superintendent of Police, Pilibhit for registration as a first information report and for investigation by SHO, Pooranpur. He stated that under the above direction as also the order of S.O, he registered the case as Case Crime No.Nil under Section 364 IPC against Sanjay Singh @ Bhooray and others. He proved the chik FIR, which was marked Ex. Ka-4 as also its GD entry, made at 7.30 am, which was marked Ex. Ka-5. He proved GD entry No.40, dated 06.05.2003, at 22.20 hours, by which Sections 302, 201 IPC were added. The conversion GD entry was proved and marked as Ex. Ka-6.

**In his cross-examination,** he stated that on the day when this case was registered, no other case was registered. He stated that he was posted between October, 2002 to November, 2004 at P.S. Bilsanda as Head Moharrir and before lodging of this case Nirmol Singh (PW-4) had never come to the police station. He denied the suggestion that the chick FIR and the GD entry were prepared later and were ante-timed.

15. **PW-8 S.I. Virendra Kumar Sharma.** He stated that, on 06.05.2003, he

was posted at P.S. Bilsanda as a Sub-Inspector. The investigation of this case was conducted by Rajan Tyagi, Incharge Inspector, P.S. Pooranpur. He stated that the accused Sanjay Singh @ Bhooray was arrested by the I.O. and was put in the lock up at P.S. Bilsanda. The accused Sanjay made disclosure to the I.O. that he, Vipin, Bare and Sompal had taken the deceased to village Rautapur where he was fed liquor and as he was using abusive language for the cousin (Manju) of Sanjay, Sanjay and Vipin planned to kill the deceased; in furtherance of that plan, they took the deceased to the Jungle of village Bhedan Kanja in the night where they strangled the deceased. After strangulating the deceased, they took his body to a canal at Bhedan Kanja and buried the same, whereas his clothes were thrown in the canal. Sanjay said that he could get the body recovered. On the above statement of Sanjay, after making GD entry No.27, at 12.50 hours, accused Sanjay was taken by S.H.O. Rajan Tyagi and other police personnel on a police vehicle with papers relating to Panchnama, etc including a spade. There, on the pointing out of Sanjay Singh @ Bhooray, the body was recovered from the canal. He added that Sanjay Singh had led the team to the spot, descended into the canal and dug out the body with the help of a spade. He stated that at the nick of time, the father of the deceased, namely, Nirmol Singh, and his other family members arrived and identified the body. There, it was sealed and the I.O. Rajan Tyagi prepared the recovery memo and completed the inquest proceedings, the inquest report and autopsy related papers were prepared by PW-8. He proved the inquest report which was marked as Ex. Ka-2. He also proved preparation of Chalan lash, letter addressed to the CMO, etc., which were all exhibited. He also proved

sealing of the body and maintenance of the seal.

**In his cross-examination at the instance of Sanjay Singh @ Bhooray,** he stated that Manju is Sanjay's cousin; that to recover the body, they had left in two jeeps, one was a government jeep and the other was private; that he does not remember the number of both the jeeps however, one jeep was of P.S. Pooranpur and the other was a private jeep; that he does not remember as to of which company that jeep was and whether that jeep was borrowed or was on rent, though that jeep was procured by the inspector and the inspector must be having knowledge about that jeep; that the inspector had his own force with him whereas, from PW-8's police station there was only one constable; that he does not remember the number of men accompanying the inspector; that in the private jeep, P.S. Pooranpur's force was there and there was no private person.

**On further cross-examination,** he stated that the place from where the body was recovered must be 8 km away from the police station. They all had reached the place of recovery by about 2 pm from there they dispatched the body by about 7 pm. He stated that the body was recovered within half an hour after their arrival at the spot. The pit from where the body was recovered must have been dug 3-4 feet and the spade used in digging out the body was brought from the police station itself. He stated that the place from where the body was dug out must be 150-200 meters away from the village Bhedan Kanja and that place was surrounded by fields of agriculturists of that village. In some of the fields there was standing sugarcane crop though some were lying barren. He stated that when the body was

recovered, neither before, nor after, any villager of Bhedan Kanja was called to be a witness. However, villagers on their own arrived there but he does not remember who all were called to be a witness.

PW-8 stated that the body had decomposed and was emitting foul odour but was recognisable as one hand was cut. He denied the suggestion that the body was identified only because one hand was cut. He stated that at the time of recovery no artificial hand was recovered. The hand was missing below the elbow. He denied the suggestion that the hand of the body was cut from above the elbow. He stated that it was cut from below the elbow. He stated that in the inquest report he wrote that because of decomposition of the body no injury was visible. He stated that the eyes had decomposed and both jaws were visible. He stated that the skin had peeled off and the body was recovered in supine position. He stated that the spot of the recovery was inside the canal and at that time there was no water in the canal, though it was moist and the soil of that canal was wet. He stated that the body was not having clothes, except a neckar. No shoe or clothes were recovered. He stated that the inquest proceeding took about one and half hour to complete.

PW-8 denied the suggestions that Sanjay gave no statement to the I.O.; that no body was recovered on the pointing out of Sanjay Singh @ Bhooray; that the body was recovered from an open place; and that recovery is fabricated. On being questioned whether he noticed mud/sand on the eyes and inside the jaws, ears and mouth of the body, PW-8 stated that he does not remember. He stated that if it had been so, it would have been mentioned in the inquest report. He denied the suggestion

that the entire exercise has been done while sitting at the police station.

**In his cross-examination at the instance of accused Bare, Sompal and Vipin,** he denied the suggestion that he is telling lies and that the entire exercise was not as per law.

16. **PW-9 S.I. Rajan Tyagi (Investigating Officer).** He stated that on 05.05.2003, he was the Incharge Inspector at P.S. Pooranpur. The case was registered on 04.05.2003 at P.S. Bilsanda. The investigation of the case was assigned to him by the order of Superintendent of Police, Pilibhit. On 05.05.2003, he took over the papers with reference to the case; on 06.05.2003 he recorded the statement of Nirmol Singh (PW-4); and raided the house of Sanjay Singh @ Bhooray where Sanjay Singh @ Bhooray was found. He was entered in the lock up at P.S. Bilsanda and was interrogated. His statement was recorded in C.D., entry of which was made vide GD Entry No.27 at 12.50 hours, which was entered on his direction and dictation by S.I. J.N. Tiwari. He proved GD entry No.27, which was marked as Ex. Ka-12. After recording the disclosure statement of accused Sanjay Singh @ Bhooray, PW-9 with fellow police personnel, namely, S.I., J.N. Tiwari, Constable Satyendra Singh, Constable Jeetpal Singh, Head Constable Mohan Lal Saroj, Shyam Sundar Verma, Anil Kumar Mishra, Constable Rajpal in police jeep No. U.P.26 B 4301 along with driver Azmer Ali and S.S.I. Trivedi and others, who arrived in private jeep No. U.P.27 A 2395 with driver Autar Singh and S.I. Virendra Kumar Verma of P.S. Bilsanda and Constable Lajja Ram along with papers and a spade, went to the spot disclosed by the accused. The vehicles were stopped at the instruction of the

accused Sanjay @ Bhoora. The accused alighted from the vehicle and pointed towards the canal where the body of the deceased was buried. There, Sukhdev Singh and Arvind Singh working in the adjoining fields were roped in as witnesses. There also, the accused confessed his guilt and assured recovery of the body. Thereafter, the accused led the team and pointed out the place where the body was buried and descended into the canal and thereafter dug out the body which was taken out of the canal with the help of constable Ram Bahadur Patel, Constable Nawab Singh and Constable Rajendra Singh. During the proceeding of recovery, the informant Nirmol Singh and his family members also arrived and identified the body whereafter the inquest report was prepared by S.I. Virendra Kumar Sharma (PW-8) and the body was sealed.

PW-9 stated that he made an effort to search out the clothes but they could not be found. He also stated that the memorandum of recovery was prepared on his dictation by constable Satyendra Singh and after the memorandum was prepared, the same was got signed and thumb marked by Sanjay Singh and a copy of it was handed over to him. He stated that thereafter he prepared site plan of the place from where the recovery was done. The site plan was proved and marked as Ex. Ka-14. He stated that on 07.05.2003 he recorded the statement of Arvind Kumar. He stated that accused Sompal Singh had surrendered of which entry was made in the GD. He stated that on 22.05.2003, he recorded the statement of Sompal in District Jail, Pilibhit. On 18.06.2003, he recorded the statement of witnesses Vikram Singh and Dilbag Singh and made search for accused Vipin Singh and Bare but they could not be found. On 04.07.2003, he arrested Vipin

and recorded his statement. On 01.08.2003, he recorded the statement of Ravi Azad, Kashmir Singh, Harjinder Singh, Sukhvinder Singh and Sukhvir. Thereafter, he submitted charge sheet against Sanjay Singh @ Bhooray, Vipin and Sompal, which was marked as Ex. Ka-15; whereas, the charge sheet (Ex Ka-16) against the accused Bare was submitted by showing him as an absconder.

**In his cross-examination at the instance of Vipin,** he denied the suggestion that the investigation was not conducted in a lawful manner and that all the material was fabricated to set up a fictitious story.

**In his cross-examination at the instance of Sompal Singh and Bare,** he stated that on 18.06.2003 the informant Nirmol Singh had brought Vikram and Dilbagh Singh to the police station. PW-9 stated that Vikram Singh had not told him that he exchanged greetings with Sompal when he had seen Sompal in the company of the deceased. He also stated that during investigation, the informant had not disclosed to him that the accused had confessed their guilt to him. He stated that he had not enquired from anyone at village Rautapur. He denied the suggestion that he did not conduct the investigation properly and prepared a false case.

**In his cross-examination at the instance of Sanjay Singh @ Bhooray,** he stated that it is correct that on 03.04.2003 the accused Sanjay Singh had not visited the house of Parminder Singh and that the deceased left his house alone on 03.04.2003. He stated that he does not know whether Parminder and his family members were detained under TADA. He stated that Manju is not the real sister of Sanjay Singh and that he did not interrogate

Manju. He stated that he is not aware whether Manju had illicit relations with Parminder Singh. He stated that though the informant had informed him about the ransom call but had not given him the phone number nor he disclosed to him the place from where the phone had come. He also admitted that he had not entered the time when he had recorded the statement of witnesses. He also admitted that in the CD, the signature of the Circle Officer bears no date. He stated that on 06.05.2003, the day Sanjay was arrested, he had left the police station at 8.55 am and had returned next day on 07.05.2003, though he does not remember the time of his return at the police station. He stated that the GD of that police station is not before him therefore he cannot disclose the time of his return. He stated that as many as 8 persons including him had left the police station for investigation on that day. He stated that the day when the accused Sanjay was arrested, they had arrived at Majhgawa via Bisalpur. They arrived there at 12 noon (12 hours). The accused was found in his house. He stated that he had not prepared any arrest memo of Sanjay. He stated that he had not recorded the statement of any villager of that village and that Sanjay did not try to escape when the police had arrived. He stated that Sanjay was arrested at the door of his house and that he is not aware as to who else were present in his house. He stated that Majhgawa must be 50-60 kms away from P.S. Pooranpur. He stated that from Majhgawa they left for P.S. Bilsanda by about 12.15 hours. He stated that from Nirmol Singh's (PW-4's) place of residence, Majhgawa is 40 km away. He stated that the statement of Sanjay Singh was taken at P.S. Bilsanda where he gave information with regard to the body being buried. The spade to dig out the body was picked up from Bilsanda. Whose spade it was, he

does not know. The jeep carrying the accused and the person was stopped 70-80 paces away from the spot from where the body was dug out. He admitted that the statement of the people around from where the body was dug out was not recorded.

PW-9 denied the suggestions that the body was not recovered in the manner stated; that the body was found unattended at some other place; and that it was not identified by family members. He also denied the suggestion that the body was decomposed and was not recognisable; he also denied the suggestion that it was not recovered at the instance of Sanjay Singh.

PW-9 stated that from the place from where the body was recovered neither clothes nor shoes or artificial limb was recovered. He denied the suggestion that some other body was got identified as that of Parminder Singh. He also denied the suggestion that Sanjay Singh was called at the police station and by showing a false arrest, a body was got identified. He admitted that the cycle on which Parminder Singh had left his house was not recovered. He denied the suggestion that Ravi Azad had told him that when Parminder's father had enquired from accused Bhooray, the accused Bhooray had stated that Parminder had left. He admitted that he had not recorded the statement of Sukhvinder Singh prior to 01.08.2003. He admitted that Nirmol Singh had not informed him that Parminder had gone to Majhgawa after informing him. He admitted that no photograph of the body was taken as the body has been identified. He denied the suggestion that he is telling lies and that he had presented a false case by fabricating evidence.

## **STATEMENT OF ACCUSED PERSONS UNDER SECTION 313 CrPC**

17. Before noticing the submissions advanced on behalf of the learned counsel for the appellants, it would be useful to have a glimpse at the statement of the accused-appellants, recorded under Section 313 CrPC.

### **Statement of accused-appellant Sanjay Kumar Singh @ Bhooray.**

Sanjay admitted that Parminder Singh (the deceased) was his friend. He stated that he does not know Arvind Kumar (PW-1). He admitted that Manju is his cousin sister but he denied the relationship of Manju with Parminder. He denied that the deceased had visited Majhgawa and that they all had lunch together. He denied that any ransom call was made by him and that he received any money towards it. He denied having made any confessional disclosure. He denied the recovery at his instance and stated that he was called at the police station and falsely implicated by the police. He denied the other incriminating circumstances appearing against him in the prosecution evidence.

### **Statement of Bare.**

He denied that the deceased had come to Rautapur at lunch and denied the other incriminating circumstances appearing against him in the prosecution evidence and stated that that he does not know the informant, the deceased and the other co-accused and that he has no relationship with them.

### **Statement of Vipin Singh.**

He denied the incriminating circumstances appearing against him. He stated that he has been falsely implicated.

**Statement of Som Pal Singh.**

He denied the incriminating circumstances appearing against him. He stated that the story that the deceased had lunch at his place is absolutely false. He stated that he does not know the informant, the deceased and the other co-accused and that he has been falsely implicated. Interestingly, the incriminating circumstance appearing in the testimony of PW-4 that Sompal had confessed before him was not put to Sompal.

18. The trial court found that the prosecution was successful in proving that the deceased was called by the accused to come over to Majhgawa; the deceased went to Majhgawa; the deceased was killed; despite the deceased being dead, ransom was demanded to cheat PW-4; and the ransom was paid therefore, upon finding the chain of circumstances complete by recovery of the body at the instance of accused Sanjay @ Bhoora, convicted the accused-appellants as above.

19. Having noticed the prosecution case and the entire prosecution evidence as well as the statement of the accused under Section 313 CrPC, we now proceed to notice the submissions of the learned counsel for the parties.

20. We have heard Sri Atul Kumar Shahi, Amicus Curiae, for Sanjay Singh @ Bhooray (the appellant of Criminal Appeal No.1407 of 2007); Sri Abhay Raj Singh for Vipin (the appellant in Criminal Appeal No.1069 of 2007) and Bare (the appellant in Criminal Appeal No.1223 of

2007); and Sri J.K. Upadhyay, learned AGA, along with Sri Gaurav Pratap Singh, Brief Holder, for the State in these three appeals and have perused the record carefully.

**Submissions on behalf of the appellant Sanjay Singh @ Bhooray**

21. Sri Atul Kumar Shahi, learned Amicus Curiae, appearing for the appellant Sanjay, submitted as follows:-

(i) that the first information report is highly belated; that there is no cogent explanation as to why first information report was not lodged when, on 05.04.2003, the informant received a ransom call. Even no missing report was lodged on 05.04.2003 when the accused, as per the own allegation of the informant, had informed the informant that the deceased though had come but had left without leaving any information. Further, there was no reason to wait for lodging the first information report after 18.04.2003 when the ransom of Rs.50,000/- was allegedly paid but the deceased was not returned. The lodging of the first information report on 02.05.2003 i.e. after 15 days of having paid the ransom amount, with no result, clearly suggests that there is no merit in the prosecution story and the same is imaginary and baseless.

(ii) That, admittedly, no witness of village Majhgawa was interrogated to ascertain whether the deceased arrived at Majhgawa and was seen with the accused at Majhgawa.

(iii) That the story that the accused and the deceased had lunch together on 04.04.2003 is not supported by

any evidence except the confessional statement of the accused-appellant, which has no legal value.

(iv) That, admittedly, description of the phone through which, and on which, the ransom call was made and received has not been disclosed either during the course of investigation or in the testimony of PW-4, therefore, the story in respect of receipt of ransom call is rendered unacceptable for withholding best evidence.

(v) That the arrangement of Rs.50,000/- to pay to the accused is stated to have been made by borrowing the amount from another person but that other person has not been examined to prove that any such amount was lent to the informant, which clearly suggests that the story of payment of ransom amount is bogus.

(vi) That the story of payment of ransom amount is also bogus for the reason that if Rs.50,000/- had been paid on the date as alleged by the informant and the deceased was not produced or handed over or released as stated by the informant, there was no occasion to wait for 15 days more to lodge the first information report.

(vii) That the story that an effort was made to lodge the report at P.S. Bilsanda on 05.04.2003 is totally bereft of proof as PW-7 has categorically stated that PW-4 had never come to P.S. Bilsanda to lodge a report prior to the lodging of the first information report, which was lodged on 04.05.2003.

(viii) That the recovery of the body at the pointing out of the appellant is nothing but bogus and it is fabricated. The recovery is totally unreliable and cannot be taken as an incriminating circumstance for the following reasons:

(a) that there is no arrest memo prepared by PW-9 (I.O.) to disclose the date and time of the arrest of the accused-appellant Sanjay;

(b) that no independent witness of the recovery has been examined;

(c) that the presence of the informant at the time and place of recovery makes the recovery doubtful. Notably, the disclosure statement of the accused-appellant Sanjay Singh was recorded at P.S. Bilsanda after his arrest. According to the prosecution, the arrest was made at 12 hours; at 12.15 hours the accused was brought to the lock up at P.S. Bilsanda and, thereafter, his statement was recorded of which GD entry was made at 12.50 hours. Meaning thereby that between 12.50 hours and the time by which the recovery was made, which is stated to be at 3 pm, there was hardly two hours gap and in that short interval the informant, who is stated to be a resident of village Jamuniya Jagatpur under P.S. Pooranpur, had arrived at the spot to witness the recovery. This shows that he had prior information that recovery is to take place. Hence, the recovery in absence of examination of independent witnesses is totally unreliable.

(d) Neither the inquest report nor the autopsy report indicates that the body carried soil/mud/sand on any of its part even though, the body is stated to have been buried 4-5 feet deep beneath the surface of a canal where the mud/soil was wet/moist as per the prosecution evidence. Interestingly, the photograph of the body was also not taken to record its condition under the pretext that the body had been identified. All of this clearly suggests that either the body was not identifiable or the body was not recovered in the manner and

from the spot as alleged. Further, the doctor, who carried out the autopsy, deposed that if the body had been dug out from beneath the surface of a canal, the presence of mud/soil/sand would have been noticed, if present. All of this would suggest that the recovery is nothing but bogus and the entire prosecution case has been developed on suspicion because the informant believed that the deceased had left for Majhgawa and from there he went missing.

(ix) That the motive for the crime is also not substantiated as the crucial witness, namely, Manju, was neither interrogated nor examined. Further, Manju was admittedly a widow and the relationship of the deceased with Manju, according to the own story of PW-4, had been there for quite a while therefore, there was no reason as to why this should trigger emotions of the accused to kill the deceased.

(x) Lastly, it was submitted, the doctor who opined that death could be a consequence of strangulation had found the hyoid bone intact and there were no noticeable ante mortem injury, thus, there was no ground to assume that death was homicidal. Hence, there was no basis to convict the appellant for the offence of murder.

**Submissions on behalf of the appellants Vipin and Bare**

22. Sri Abhay Raj Singh, learned counsel appearing for the appellants, Bare and Vipin, submitted that except for the confessional statement of the co-accused made to the police, there is no worthwhile evidence against them; nothing incriminating has been recovered from

them or at their instance; that, admittedly, the ransom call was not made by them and no ransom money was paid to them and, therefore, their conviction is liable to be set aside.

23. It be noted that the appeal of Som Pal was abated therefore, no submissions were made on his behalf.

**Submissions on behalf of the State**

24. Sri J.K. Upadhyay and Sri Gaurav Pratap Singh, who have appeared for the State, submitted that in matters of abduction where negotiation for ransom takes place, a prompt first information report is rarely made therefore, the prosecution story is not to be doubted merely on the ground that there has been a delay in lodging the first information report. They submitted that this is a case where the prosecution has succeeded in proving that Manju, a widow and cousin of the appellant Sanjay Singh @ Bhooray, who resided at Majhgawa, had relationship with the deceased and that the deceased and Sanjay Singh were close friends; the deceased went on 03.04.2003 from home stating that he is going to Majhgawa; on 05.04.2003 the informant party visited Majhgawa where the accused Sanjay Singh and other villagers admitted that the deceased Parminder Singh had come to Majhgawa and that on 04.04.2003 they all had lunch together at accused Sompal's place at Rautapur and, thereafter, the deceased was not seen alive. They submitted that it is proved by the prosecution that a demand was raised by the accused Sanjay Singh and, pursuant to that demand, Rs.50,000/- was paid to Sanjay Singh yet, after receipt of that amount, Sanjay Singh did not fulfill his promise to return the deceased. The informant is a farmer who under expectation that his son would return alive, kept waiting for his son to return alive

and when his son did not return, he lodged the report giving the details of what had happened. In such circumstances, the prosecution story with regard to murder of the deceased by the accused and thereafter cheating the informant of Rs.50,000/- under false promise of bringing back the deceased, has a ring of truth about it which finds corroboration from the recovery of the dead body at the pointing out of accused appellant Sanjay Singh. They also submitted that since recovery of the dead body has been proved and the body was dug out from a canal, the knowledge of the place from where the body was dug out is a clinching circumstance which no one else than the person who buried the body could have had therefore, the trial court rightly convicted the appellant Sanjay Singh and other accused who had joined hands with accused Sanjay. Learned AGA also submitted that since the doctor had opined that the deceased was strangulated and the body of the deceased was in a decomposed state therefore, absence of noticeable ante-mortem injuries by themselves would not rule out a case of homicide. More so, when the deceased was a young and healthy person. Thus, in absence of any explanation as to in what manner the deceased died, the court was justified in concluding that the deceased was killed and buried by the accused to remove the evidence of murder. Hence, the conviction of the appellants is justified under section 364, 302/34 and 201 IPC and since the informant was duped of Rs.50,000/-, the conviction under Section 420 IPC is also justified. They, accordingly, prayed that all the appeals be dismissed and the conviction recorded by the trial court be upheld.

### ANALYSIS

25. Before proceeding further we must remind ourselves that this a case

where there is no direct evidence of the crime. It is a case based on circumstantial evidence. In a case based on circumstantial evidence as to when conviction can be recorded, law is well settled by the Supreme Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116** where, in paragraph 153, it was observed:-

*"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

*(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*

*It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793 where the following observations were made:*

*"19. ....Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*

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

*(3) the circumstances should be of a conclusive nature and tendency,*

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

26. A three-judge Bench of the Apex Court in the case of **Shatrughna Baban Meshram Vs. State of Maharashtra (2021) 1 SCC 596** reiterating the legal principles set out in the case of **Sharad Birdhichand Sarda (supra)**, in para 42, observed:-

".....42. Before we deal with the second submission on sentence, it must be observed that as laid down by this Court in *Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116]*, a case based on circumstantial evidence has to face strict scrutiny. Every circumstance from which conclusion of guilt is to be drawn must be fully established; the circumstances should be conclusive in nature and tendency; they must form a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused; and such chain of circumstances must be consistent only with the hypothesis of the guilt of the accused and must exclude every possible hypothesis except the one sought to be proved by the prosecution. The decision in *Sharad Birdhichand Sarda V. State of Maharashtra [(1984) 4 SCC 116]* had noted the consistent view on the point including the decision of this Court in *Hanumant v. State of M.P. [1952 SCR 1091]* in which a bench

of three judges of this Court had ruled (AIR pp 345-46, para 10):-

"10. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

27. In light of the legal principles noticed above, we shall now evaluate the prosecution evidence to consider, inter alia, firstly, whether the incriminating circumstances were fully established and, secondly, whether they form a chain so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and whether it shows that in all human probability the act was done by the accused.

28. In the instant case, there are certain circumstances as regards which there is no serious dispute therefore, they may be treated as proved. These are : (i) the deceased Parminder was son of the informant (PW-4); (ii) the deceased and accused Sanjay @ Bhooray were friends and were on visiting terms with each other; (iii) Sanjay @ Bhooray had a widow cousin named Manju; (iv) the deceased resided with his father and

other family members in village Jamunia Jagatpur, which falls in territorial jurisdiction of P.S. Pooranpur whereas the accused: (a) Sanjay and Vipin resided in village Majhgawa, (b) Bare resided in village Bhedan Kanja and (c) Som Pal Singh resided in village Rautapur, all falling under P.S. Bilsanda; (v) the deceased left his home on 03.04.2003 and went missing thereafter; (vi) FIR dated 02.05.2003 was lodged by PW-4, father of the deceased, through a written report addressed to Superintendent of Police Pilibhit, which was registered on 04.05.2003 at P.S. Bilsanda but was marked for investigation by P.S. Pooranpur; (vii) the FIR made allegations that the deceased has been abducted and secreted by the accused; (viii) the FIR suggests twin motive for the crime: (a) ransom; and (b) relationship of Parminder (the deceased) with Manju, a cousin of Sanjay @ Bhooray, which was not palatable to Sanjay @ Bhooray; and (ix) a decomposed body was recovered on 06.05.2003, which was claimed to be of the deceased.

29. Before we proceed to evaluate the prosecution evidence in light of the rival submissions, it would be worthwhile to notice the key features of the prosecution case/evidence with our observations in brief. These are:

(a) The accused Sanjay Singh @ Bhooray and Parminder Singh (the deceased) were friends. Their friendship is admitted by the accused Sanjay Singh in his statement under Section 313 CrPC.

(b) Parminder Singh allegedly went from home on 03.04.2003. When Parminder Singh left his house on 03.04.2003, Sanjay Singh or any of the other accused were not there and they did not accompany him.

(c) The evidence that Parminder Singh, after parking his cycle at the shop of

Arvind (PW-1), went to Majhgawa is not proved by any direct evidence or by call detail records of the deceased. The only evidence in that regard is statement of the deceased to the witnesses that he was going to Majhgawa and the statement of prosecution witnesses that when they visited Majhgawa to inquire about the deceased, on inquiry, on 05.04.2003, the accused had admitted that the deceased had come to Majhgawa and that they all had lunch together at Som Pal's place in village Rautapur on 04.04.2003.

(d) The evidence of the deceased Parminder Singh last seen in the company of the accused is provided by Vikram Singh (PW-5). Vikram Singh (PW-5) admits that his statement was recorded by the I.O. on 18.06.2003. Notably, PW-5 admitted that from newspaper reports he was aware from before that the deceased Parminder Singh had gone missing. Further, Vikram Singh was brought by PW-4 (the informant) to the investigating officer for getting his statement recorded under section 161 CrPC. PW-5 admits that he was on visiting terms with Kashmir Singh who is a neighbour of the informant (PW-4). All of this would suggest that PW-4 and Vikram Singh knew each other from before and if the deceased was actually noticed by him in the company of the accused soon before his disappearance, and there had been newspaper reports of deceased's disappearance, there was no occasion for PW-5 not to report the incriminating circumstance of last seen, earlier, to PW-4 or to the police. Further, PW-5's testimony does not specify the date on which he saw the deceased in the company of the accused appellants on a Tonga and going towards Bhedan Kanja. Thus, in our considered view, the evidence of last seen rendered by PW-5, firstly, is not wholly trustworthy and, secondly, is inconclusive.

(e) The investigation of this case, under the order of the Superintendent of Police, Pilibhit, was carried out by police of police station Pooranpur and not by police of police station Bilsanda where the case was registered. Admittedly, the house of the informant falls in the territorial jurisdiction of police station Pooranpur. Notably, on the date the body of the deceased was allegedly recovered, the I.O. of the case had left police station Pooranpur early morning at 8.50 am to go to Majhgawa i.e. the residence of accused Sanjay. As per evidence, the police team of P.S. Pooranpur arrived in two Jeeps. One was a police Jeep, the other was private. According to the I.O. (PW-9), he arrived there at about 12.00 noon and arrested Sanjay from his house. Admittedly, no arrest memo was prepared. PW-9 states that after his arrest Sanjay was brought to P.S. Bilsanda where he made a confessional disclosure and, thereafter, they left P.S. Bilsanda to effect recovery of the body. The GD entry of P.S. Bilsanda shows that at 12.50 hours, the police team on the disclosure made, left the police station to effect recovery on the basis of the disclosure made by the accused appellant Sanjay Singh. As per the prosecution evidence, the body was dug out by about 3 pm and by that time the informant had arrived there at the spot. The body is stated to have been dug out from the bottom of the canal after digging about four feet. But neither the inquest report nor the post mortem report shows any sign of mud/sand on any of the orifices of the body or in the eye orbits and, admittedly, the photograph of the body has not been taken. No doubt, the defence has sought to challenge the identity of the body by claiming that it was unidentifiable but the defence has not challenged that the deceased was amputated from below elbow joint of right

arm and the body recovered had no right arm from below elbow joint as is recited in the inquest report. Further, suggestions were put to prosecution witnesses that the body could be identified only because of that portion of the arm missing. Thus, in our view, the prosecution was successful in proving that the body was of Parminder Singh (the deceased).

(f) The prosecution failed to examine any independent witness of that recovery. What is also noticeable from the recovery /confession memo (Ex. Ka-13) that minus the confession part it is a replica of the FIR allegations.

30. Ordinarily in a case based on direct ocular account of the crime, the existence of motive is not of much importance but where a case is based on circumstantial evidence, motive assumes importance and at times serves as a vital link to the chain of circumstances because, absence of a motive may serve as a catalyst to strengthen the alternative hypothesis, if there is a room for any, consistent with the innocence of the accused. In the instant case, the prosecution set up twin motive for the crime. One was ransom and the other was annoyance of Sanjay @ Bhooray with the deceased on account of his relationship with Manju i.e. cousin of Sanjay @ Bhooray. In so far as the latter is concerned, admittedly, Manju was a widow and the deceased was unmarried. In such circumstances, if the deceased wanted to marry Manju whether it would be a strong motive for the crime is anybody's guess. Further, from the testimony of PW-4 we have noticed that the brothers and father of Manju raised no objection to this relationship. But, assuming that the accused party was annoyed on that score and this annoyance was known to the informant

then, if the deceased had gone to Sanjay's place after informing the informant and had not returned thereafter, there would have been a prompt report because of the underlying suspicion of an untoward event. But, here, there was no missing report or FIR. It is only after a month of the deceased having gone missing, the report was lodged. To explain this delay, it appears to us, the story was developed that a ransom call was received from Sanjay Singh and negotiations were on to settle for an amount to secure release of the deceased. This story does not appeal to us for the reason that had there been a ransom call by Sanjay, and Sanjay had denied making the ransom call on 05.04.2003, as is alleged by PW-4, there would have been a prompt report as, after denial by Sanjay, the caller's identity became uncertain. PW-4 tries to explain this by saying that he tried to lodge a report but it was not taken. This statement has no basis. In fact, PW-7 has stated that PW-4 never came to the police station Bilsanda to lodge a report. Assuming that PW-4 had gone to P.S. Bilsanda to lodge a report but the same was not taken, why PW-4 made no effort to lodge a report at P.S. Pooranpur, more so when the deceased had gone missing from within its jurisdiction, is inexplicable. Therefore, the delay in lodging the report after 05.04.2003 seems inexplicable. Further, if the ransom amount was resettled and paid on 18.04.2003, yet, the deceased was not returned, there was no occasion to wait till 02.05.2003 to lodge a report.

31. In **Mukesh and another Vs. State (NCT of Delhi) (2017) 6 SCC 1**, a three judges Bench of the Supreme Court, in para 50 of its judgment, observed as under:-

*"50. Delay in setting the law into motion by lodging of complaint in court or*

*FIR at police station is normally viewed by courts with suspicion because there is possibility of concoction of evidence against an accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. Whether the delay is so long as to throw a cloud of suspicion on the case of the prosecution would depend upon a variety of factors. Even a long delay can be condoned if the informant has no motive for implicating the accused."*

32. Ordinarily, in matters relating to kidnapping or abduction for ransom, victim party awaits return of the kidnapee or abductee for fear or danger to his or her life therefore, in such matters, mere delay in setting the law into motion may not prove fatal to the prosecution story. But where hope of return of the abductee disappears, delay in lodging the report would, in absence of plausible explanation, raise suspicion as regards the credibility of the prosecution story. In the instant case, the prosecution story is in three parts, namely, (a) pre receipt of ransom call; (b) post receipt of ransom call; and (c) post payment of ransom. Not lodging the report till receipt of ransom call has explanation to the effect that the deceased often used to be out for days therefore, his not returning back did not raise suspicion. Ransom call was received on 05.04.2003. According to PW-4, the caller for ransom, as per his belief, was Sanjay @ Bhooray therefore, he went to Majhgawa to confirm. Notably, on 05.04.2003 the informant was informed by Sanjay that he never made that ransom call and the informant was also informed that the accused persons were not aware as to where the deceased went after having lunch on 04.04.2003. In such a scenario, the delay in lodging report after 05.04.2003 required a plausible explanation. The explanation

given was that information was given at P.S. Bilsanda in the evening of 05.04.2003, upon which, Sanjay @ Bhooray was called but, after enquiry he was let off. Yet, no formal report was lodged. Interestingly, P.W.-7, constable posted at P.S. Bilsanda, during cross-examination, stated that PW-1 never came to P.S. Bilsanda before registration of the FIR. Notably, PW-4 also states during cross examination that he had not given any written application at P.S. Bilsanda. Even in the written report (Ex. Ka-1) dated 02.05.2003 there is no disclosure about any written information given earlier. This would suggest that the explanation for not lodging the report earlier is not credible. Further, if, allegedly, ransom was paid on 18.04.2003 to Sanjay @ Bhooray on a promise that he would secure the release of the deceased and, after payment of ransom, deceased was not released and no further promise was allegedly extended, there was no plausible reason not to report the matter promptly. The explanation that PW-1 waited thereafter under the expectation that his son might be released does not inspire our confidence. More so, because PW-1 did not disclose the phone number from where the ransom call was made. He also did not disclose the phone number on which the call was made. Most importantly, PW-4 states that ransom money of Rs. 50,000/- was arranged from his maternal uncle Gurbux Singh but that was not disclosed during investigation and, admittedly, Gurbux Singh was not produced as a witness to enable us to be satisfied about the authenticity of the story. Further, there is no corroboratory recovery of the cash. Thus, for all the reasons above, the inordinate delay in lodging the FIR shrouds the prosecution story with suspicion as regards demand and payment of ransom.

33. As we have already discarded PW-5 i.e. the witness of last seen circumstance (vide para 29 (d) above), what remains is the testimony of PW-2, PW-3 and PW-4 in respect of going to Majhgawa to enquire about the deceased. The witnesses do state that the accused party admitted that the deceased had come to Majhgawa and that they had lunch with him on 04.04.2003 at Som Pal's place at Rautapur, but this circumstance is denied by the accused persons in their statement under Section 313 CrPC. No witness of that village has been examined to confirm deceased's presence at Majhgawa. No call detail records are available to show deceased's presence with the accused. Under these circumstances, when the FIR was so delayed, it is difficult for us to hold that the prosecution was successful in proving beyond reasonable doubt that the deceased had come to Majhgawa on 3/4.04.2003. The statement of cycle stand owner (PW-1) that the deceased had parked his cycle with him to go to Majhgawa does not inspire our confidence at all, firstly, because why would the deceased travel to that place (Pooranpur) on a cycle when he had a motorcycle and could go to Majhgawa directly and, secondly, even if he had parked his motorcycle, why would the deceased tell the cycle stand owner as to whose house he had to go. When we notice these circumstances in conjunction with introduction of his name in the FIR lodged on 4.5.2003, when it was not necessary to disclose, it appears to us, that PW-1 is a witness set up on legal advise to provide a link evidence. We, therefore, do not propose to rely on PW-1 to lend credence to the prosecution story of the deceased visiting Majhgawa on 03.04.2003. We may hasten to clarify that we do not rule out the possibility of PW-2, PW-3 and PW-4 visiting Majhgawa to enquire about the

deceased as, admittedly, Sanjay @ Bhooray was friend of the deceased and the deceased and Sanjay were on visiting terms. We also do not rule out the possibility of PW-4 suspecting Sanjay @ Bhooray having a hand in his son's disappearance, perhaps, on information that the deceased had an eye on Sanjay @ Bhooray's cousin. But it is well settled that suspicion cannot take the place of proof. Once this the position, the only worthwhile circumstance that remains is of recovery.

34. In so far as recovery of the body of the deceased at the instance of Sanjay @ Bhooray is concerned, it is stated to have been made by a police team comprising members of two police stations (namely, Pooranpur and Bilsanda), headed by PW-9, the Investigating Officer, who was from P.S. Pooranpur. Notably, the investigation of the case was marked by Superintendent of Police of the district to the police of P.S. Pooranpur. The FIR was registered on 04.05.2003 and two days later, the I.O. (PW-9) comes to Majhgawa and straight away arrests Sanjay @ Bhooray. PW-9 (I.O.) makes no inquiry from the villagers at Majhgawa as to whether they had seen the deceased at Majhgawa or not. PW-9 makes no inquiry from any of the villagers at Rautapur, where the deceased allegedly had his last meal. Yet, PW-9, straightaway arrests the appellant Sanjay and proceeds to record his disclosure statement and effect the recovery. Although we cannot rely on confessional part of the disclosure as contained in Ex. Ka-13 but to understand the story set out by the prosecution we have read it, which reflects the same story as in the FIR. As per that confession, the murder was committed because of abusive expletives used by Parminder for Manju. Confession suggests that ransom call was made to deflect suspicion. What assumes

importance here is that if Sanjay @ Bhooray had been smart enough to bury the deceased to remove the evidence and to have made ransom call to hoodwink the informant with regard to the real motive for the crime, why would he make disclosure/ confession within 15 minutes of interrogation as noted in paragraph 29 (e) above. Notably, in his statement under section 313 CrPC, Sanjay has denied making any disclosure or confessional statement and has challenged the recovery as fabricated and bogus.

35. The prosecution did not examine a single independent witness either of the recovery or of the inquest. The recovery is proved only by police witnesses and the informant whose presence appears questionable at the time of the recovery and, in fact, casts a shadow on the disclosure statement being the basis of the recovery. Because, unless and until the informant was made aware, well in advance, that the body is about to be recovered, he would not have been able to arrive at the spot being resident of another village, which was far away from the spot. Notably, according to the prosecution evidence, the investigating team left early morning at 8.50 am to go to Majhgawa. What is interesting to note is that the informant (PW-4) resides within the jurisdiction of police station Pooranpur and the I.O. was of P.S. Pooranpur even though the case was registered at P.S. Bilsanda therefore, the speed with which arrest was made, followed with the disclosure and the recovery, coupled with presence of informant at the spot, all within a span of couple of hours, creates suspicion regarding the entire exercise being genuine. According to PW-9, police team reached Majhgawa on 6.5.2003 at about 12 noon. They arrested Sanjay @ Bhooray and

brought him to P.S. Bilsanda. Notably, no arrest memorandum was prepared. At P.S. Bilsanda, disclosure statement was made and at 12.50 hours, the police team left the police station Bilsanda with the accused Sanjay to effect recovery. Assuming that the information that the accused has been arrested got percolated to the informant (PW-4) and on that information he arrived at Bhedan Kanja, which is 40 km away from his place, what attracts our attention is the alacrity with which the disclosure was made, as if, the accused was waiting to confess and cooperate. When we see all of this in the context of the fact that the police made no effort to record the statement of villagers of Majhgawa and Rautapur and had straight away proceeded to arrest the accused, record his confession and effect recovery of the body of the deceased, despite the fact that in the preceding one month no lead could be had about the deceased, we get a strong feeling that the entire exercise was stage managed. Our doubt gets fortified by the circumstance that no independent witness of that recovery is examined by the prosecution. This doubt is further fortified by the fact that the body recovered is not photographed. In addition to that, the autopsy surgeon noticed that the body carried no mud/ soil/ sand even though, the body was recovered from about 4 feet below the surface of the bottom of a canal which, in ordinary course, would carry sufficient moisture to make the mud stick around the body. Noticeably, the autopsy surgeon (PW-6) was questioned on this aspect and he had stated that if the body had been dug out from the bottom of a canal, presence of mud would have been noticed but there was no such mud noticed by him. For all the reasons above, the recovery of the body on the disclosure statement of the accused Sanjay @

Bhooray is rendered extremely doubtful and there is a strong probability that information about the body might have been received from some source and its recovery was ascribed to the accused Sanjay @ Bhooray.

36. Once we discard the recovery, nothing much remains in the prosecution evidence. On the analysis above, it appears to be a case where the informant's son went missing. The informant was under the impression that his son had gone to Majhgawa. Informant strongly suspected that Sanjay Singh was involved in his son's disappearance. As the informant had no proof, he kept waiting. It is possible that he might have been given assurances by the accused that they would help him in tracing out his son. But when things did not materialise, it appears the prosecution story was developed on strong suspicion and guess-work. But it is well settled howsoever strong suspicion might be it cannot take the place of proof. It is equally well settled that when a reasonable doubt arises with regard to the prosecution story /the prosecution evidence, the benefit doubt would have to be extended to the accused. In the instant case, for all the reasons recorded above, since the prosecution story and the prosecution evidence do not inspire our confidence, we have no option but to extend the benefit of doubt to the appellant Sanjay Singh @ Bhooray. As regards other appellants, namely, Bare and Vipin, we find that there is no worthwhile evidence against them. Notably, the evidence of the deceased being last seen with the accused appellants on a Tonga by PW-5 has already been discarded by us above (vide para 29 (d)).

37. In view of the discussion above, all the appellants are entitled to be

