

HIGH COURT OF MADHYA PRADESH : JABALPUR.

**(Division Bench: Hon'ble Shri Justice S.K. Seth, &
Hon'ble Shri Justice H.P. Singh, JJ.)**

IN REFERENCE (CRRFC-1 of 2017)

Received from III Addl. Sessions/Special Judge,
Jabalpur
District Jabalpur (MP).

Vs.

Rajesh @ Rakesh and another

CRIMINAL APPEAL No.83/2017

Om Prakash
Vs.
State of Madhya Pradesh.

CRIMINAL APPEAL No.84/2017

Rajesh @ Rakesh and another.
Vs.
State of Madhya Pradesh

Shri Ajay Shukla, learned Govt. Advocate for the respondent/
State.

Shri S.C. Datt, Senior counsel with Ms. Kishwar Khan, learned
counsel for the accused/ respondents.

... in CRRFC No.1/2017

Shri S.C. Datt, Senior counsel with Ms. Kishwar Khan, learned
counsel for the accused/appellants.

Shri Ajay Shukla, learned Govt. Advocate for the respondent/
State.

..... in Cr.A.No.83/2017

Shri S.C. Datt, Senior counsel with Ms. Kishwar Khan, learned
counsel for the accused/appellants.

Shri Ajay Shukla, learned Govt. Advocate for the respondent/
State.

..... in Cr.A.No.84/2017

J U D G M E N T
(10.08.2017)

The Judgment of the Court was delivered by :

Per H.P. Singh, J :-

The instant Criminal reference No.1/2016 has been referred by the learned III Addl. Sessions Judge, Jabalpur, against the same judgment dated 29.12. 2016, passed in Sessions Trial No.560/2013, against which the accused/ Om Prakash Yadav and Rajesh @ Rakesh have preferred Criminal Appeal No.83/2017 and Criminal Appeal No.84/2017, respectively, therefore, all these matters are being decided by this common judgment.

2 : The learned III Addl. Special Judge vide judgment dated 29.12.2016 in S.T.No.560/2013 convicted the accused/appellant Omprakash for offence punishable under Sections 364-A r/w Sec. 120-B of IPC and sentenced to undergo life imprisonment and fine of Rs.2000/- in default R.I. For two months, whereas, appellant Rajesh @ Rakesh and Raja Yadav have been convicted for offences punishable under Sections 364-A r/w 120-B of IPC and they are sentenced to death sentence each, and fine amount of Rs.1000/- each, in default of payment of fine amount, they are sentenced to R.I. for two months each. They have been further convicted for offence punishable under Section 302 r/w 120-B of IPC, and sentenced to undergo death sentence each and fine of Rs.1,000/- each, in default of payment of fine amount, they are sentenced to R.I. for two months each and convicted under Section 201 of IPC, they are sentenced to undergo R.I. for five years each with fine of Rs.500/- each and in default of fine, R.I. for one month each. Since death sentence was passed by the Court below, therefore, the death reference is referred to this Court.

3 : Being aggrieved with the aforesaid judgment, conviction and

sentences, the accused/appellants has preferred Criminal Appeal No.83/2017 and Criminal appeal No.84/2017.

4 : The prosecution case, in short, is that on 26.3.2013 at about 9:00 PM, Ajit Pal @ Bobby, aged about 15 years, had gone to see "Holika" and thereafter he did not return to home. Thereafter, the mother of Ajit Pal @ Bobby, Rajwant Kaur (PW/1), her brother Mitthu @ Amarjeet and neighbourer, accused/appellant Om Prakash Yadav went Gurudwara at Gwarighat and searched about Ajit Pal @ Bobby, but they did not find Ajit Pal @ Bobby. Thereafter, Rajwant Kaur (PW/1) lodged a missing report Ex.P/1 on 27.3.2013, at 16:15 PM about missing of her son Ajit Pal @ Bobby, at Gwarighat outpost of Police Station Gorakhpur, District Jabalpur, which was registered by Head Constable Ganesh Singh (PW/6) vide Missing Person No.46/13.

5 : Further, prosecution story is that on 28.3.2013, Mitthu @ Amarjeet (PW/2) and accused/appellant Om Prakash Yadav were returning and as soon as they reached Gwarighat, then Amarjeet @ Mitthu (PW/2) received a call from mobile phone No.8305620342, on his mobile phone No.9300434520. The caller identified himself as 'Khan' and stated that Bobby is in his custody. The caller demanded a ransom of Rs.50 lacs and also asked him to have a talk with the mother of Bobby. The caller threatened that in case of non-payment of ransom or in case of disclosing the incident to police, he will cut the neck of Ajit Pal @ Bobby. Consequently, the mobile phone was disconnected. When Amarjeet @ Mitthu (PW/2) was receiving call, at that time, accused/appellant Om Prakash was present with him. Thereafter, Amarjeet @ Mitthu (PW/2) went to Rajwant Kaur (PW/1) and stated about that call and when he was stating about said call, again another call came, then the brother of Rajwant Kaur (PW/1), Amarjeet (PW/2) gave his mobile phone to her. When she was talking with that caller, the mobile phone fell down, which was picked up by accused/appellant Om Prakash. Accuased/appellant Om Prakash was talking with that

caller and asked him where the said ransom has to be brought. Thereafter, Monu alias Taranjeet Singh Gujral (PW/10) by his own mobile had taken that mobile phone and started to talk with the said caller, but mobile was disconnected. Monu alias Taranjeet Singh Gujral (PW/10) himself has dialed again and asked the caller and requested to have a talk with the Bobby, then Bobby talked with him and consequently mobile phone was disconnected. Said Monu alias Taranjeet (PW/10) told that Bobby shouted "Mammi Main Bobby Main Bobby" and started weeping. Monu has further stated that the said sound was not that of Bobby and he gave the number of that caller in writing to Rajwant Kaur (PW/1) and suggested her to lodge a report in the police Station. Thereafter, Rajwant Kaur (PW/1) informed the police. After completing inquiry about missing person report, SHO Shri R.S. Parmar (PW/16), of Police Station Gorakhpur, recorded the FIR on 28.3.2013 vide Crime No.273/2013 Ex.P/35 for offence punishable under Sections 364-A & 365 of IPC.

6 : During the course of investigation, SHO Shri R.S. Parmar (PW/16), on the basis of aforesaid facts, appeared from caller of kidnapper of Bobby, demand of ransom from mobile No.8305650342 and on the basis of enquiry report Ex.P/35 submitted by Nodal Officer Bharti Airtel Limited, Indore, Sai Datt Bohre (PW/15) and Santosh Jatav (PW/17), Nodal Officer of Reliance Company, on the basis of call details of said mobile number took appellant Rajesh @ Rakesh into custody and recorded his memorandum statement Ex.P/8. As per memorandum on the denotation of accused/appellant Rajesh @ Rakesh reached along with the witnesses, namely, Jitendra Singh(PW/8) and Malkit Singh, near Khandari Nala and got prepared the spot map vide Ex.P/13. Thereafter, the dead body of Ajit Pal @ Bobby, which was in the well, contained in a plastic bag was got taken out and from the said dead body, certain flock of hair antangle of handful of the deceased, gunny bag and shawl roped in neck, were seized and for that Seizure Panchnama Ex.P/12 was prepared. From the spot, blood stained soil and plain soil, plastic chappal were seized vide seizure memo Ex.P/9. On the same date, i.e. 29.3.2013, on the basis of

memorandum of accused/appellant Rajesh in presence of witnesses near the spot, one empty Macdowel bottle was seized vide Ex.P/10. On the indication of accused/appellant Rajesh in presence of same witnesses, one knife was seized vide seizure memo Ex.P/11. Spot map was prepared as Ex.P/14. During investigation, after giving notice Ex.P/2, inquest memo of dead body of deceased Ajit Pal @ Bobby was prepared by Shri R.S. Parmar (PW/16) in presence of witnesses, as Ex.P/3. Thereafter, the dead body was sent for postmortem examination vide Ex.P/11 through Constable Sushil (PW/12). The postmortem of dead body of deceased Ajit Pal @ Bobby was conducted by Dr. Vivek Shrivastava (PW/7), vide Ex.P/7. On outer examination of dead body of deceased, he found following injuries :-

- (i) incised wound (cut throat wound) measuring 12 cm x 0.2 cm x 4 cm present over front of neck just below thyroid cartilage, cutting the underlying skin. Soft tissues, blood vessels (carotids, veins and arteries), nerves, trachea and oesophagus upto vertebra. Deep infiltration of clotted blood present in the surrounding tissues .
- (ii) superficial cut throat wound (incised) measuring 7 cm x 0.2 cm x 0.3 cm present just below the above injury. The margins of the above two wounds are clear cut. Deep infiltration of clotted blood present.

On interior examination of dead body of deceased, he found following injuries :-

Scalp, cranium & vertebrae are healthy. Lungs, brain and spinal cord were found semi-liquified (half were melted), ribs and pneumonia were healthy, already stated about throat and blood vessels, both lungs were blackish, pericardium and trachea, spleen, gallbladder and kidneys were found melted. There were no blood in big vessels.

He opined that the death of deceased was caused within 3 to 5 days of his examination. The cause of death was haemorrhagic shock which was caused due to cut of neck by sharp cutting object. According to him, the cut wound on the neck was sufficient to cause death in ordinary course of nature and death was likely to be homicidal in nature.

7 : The cloths of deceased Ajit Pal @ Bobby were packed and sealed by Dr. Vivek Shrivastava (PW/7) and handed over the same to the concerned Constable. The seized knife was also examined by doctor Vivek Shrivastava (PW/7) and opined that the knife was stained by some rusty spot and death of deceased can be caused by that knife. After examination, he packed and sealed that knife and handed over to the concerned Constable for its examination by FSL. One mobile (Intex) and one mobile (Micromax) were also seized from the accused/appellant Raja Yadav vide Ex.P/19. All these articles were taken into custody by Investigating Officer R.S. Parmar (PW/16) and handed over to the concerned Constables vide Ex.P/40 and Ex.P/41 Summary report of call details were taken vide Ex.P/42.

8 : Blood samples of accused/appellant Rajesh @ Rakesh Yadav and accused/appellant Raja Yadav were taken, preserved and sealed packets of seized articles were sent to F.S.L. Sagar. As per the report of FSL Sagar Ex.P/44, DNA profile of hair stranded in the finger of right hand of deceased Ajit Pal @ Bobby of male profile i.e. Ex.A(ID 7905) is similar to that of DNA Profile of accused/appellant Rajesh @ Rakesh Yadav i.e. Ex.B(ID-7906) whereas the DNA Profile of accused/appellant Raja Yadav i.e. Ex.C(ID-7907) is different.

9 : After investigation police filed charge sheet before the concerned Judicial Magistrate First Class, who committed the case to the Sessions Judge. A charge was framed against them under Section 302, 364-A, 120-B and 201 of the IPC. The accused/appellants abjured the guilt. they took plea that they have been falsely implicated in the case, they were brought to trial. In their statements under Section 313 of Cr.P.C., the appellants pleaded false implication. Appellant Om Prakash also pleaded an alibi and claimed that he had been admitted at Rohaniya Varansi for treatment. They have also taken defence that police had taken their blood samples by creating pressure and thereafter, false case

has been made against them. In his defence, the appellants examined Dr. Ajay Bhandari(DW/1), Princy Thakur (DW/2) and Dr. Sandeep Kumar (DW/3).

10 : Learned Sessions Judge, after considering the prosecution evidence convicted and sentenced the accused/appellants as mentioned above.

11 : We have considered the rival submissions of learned counsel for the parties and perused the records.

12 : Learned Govt. Advocate appearing on behalf of the respondent/State has submitted that there is enough clinching material evidence to hold guilty the accused/appellants for commission of offence. Learned Govt. Advocate, further submitted that as per the DNA profile test done by FSL Sagar, it is clearly proved that there is cogent evidence against the accused/appellants, and they are found guilty of commission of the offence, because DNA of accused/appellants and DNA profile of the hair stranded in the finger of right hand of deceased Ajit Pal @ Bobby, which clearly indicates that accused/appellants had committed murder of the deceased in brutal manner. The matching of DNA profile with the dead body cannot be termed as a coincidence. This is the important piece of evidence which on meticulous examination are corroborative evidence and cannot be overlooked. The blood samples of accused/appellants have been kept in proper custody and were sent for test without tampering. Therefore, the same cannot be questioned. Hence, it is a rarest of rare case and trial Court has rightly awarded death sentence against the accused/appellants.

13 : Shri Datt, learned counsel for the accused/appellants submits that learned trial Court has failed to appreciate the factual aspects of the case and has wrongly framed charge against them. He further submitted that appellants have been falsely implicated in this case as there are material discrepancies, contradictions, omissions

and improvements in the statements of prosecution witnesses. He further submits that the findings recorded by learned Sessions Judge are erroneous and not based on proper appreciation of evidence available on record. No ingredients are available in the present case, which connect the accused/appellants in the crime. Learned counsel for appellants has drawn our attention to the statements of prosecution witnesses and tried to convince us that the whole case is based on circumstantial evidence and the prosecution has failed to prove its case beyond reasonable doubt. It is contended that the Court below has given its findings on presumptions, surmises and conjectures, therefore, is liable to be set aside. He further contends before us that there is no direct evidence available on record to prove the guilt of the accused/appellants. Learned counsel for the accused/appellants further submits that the circumstantial evidence should be unimpeachable and in the present case no such unimpeachable evidence is available on record, therefore, the learned Court below erred in holding the appellants guilty. He prays for acquittal of the appellants by setting aside the judgment of the lower Court.

14: There is no eye witness of the incident in this case and accordingly, conviction of accused/appellants is based on circumstantial evidence.

15 : Now, the question for our consideration is whether the deceased Ajit Pal @ Bobby had died unnatural death during period of 9:00 PM of 26.3.2013 to 1:45 PM of 29.3.2013? and was his death homicidal ?

16 : Rajwant Kaur (PW/1) mother of the deceased has stated that on 26.3.2013 at about 9:00 PM Ajit Pal @ boby had gone somewhere out of the house to see "Holika" and thereafter he did not return. Rajwant Kaur (PW/1), mother of deceased Ajit Pal @ boby, Amarjeet Singh @ Mitthu (PW/2), who is brother of Rajwant Kaur and maternal uncle of deceased, Pooran Singh (PW/3), who is

father of sister-in-law of Rajwant Kaur (PW/1), Jitendra Singh (PW/8), who is son of brother of mother of deceased, Taranjeet Gujral @ Mullu, who is neighbour of deceased, in a voice and sound have stated that deceased Ajit Pal @ Bobby had died. They had seen the dead body of the deceased. They had stated in one voice and sound that dead body of the deceased was taken out from the well contained in a plastic gunny bag. They have also stated that they had seen cut injury on the neck of dead body of deceased. Certain flock of hair entangled with the finger of deceased, gunny bag, shawl roped in neck were seized and panchnama was prepared. Spot map vide Ex.P/13 was prepared. Investigating Officer, R.S. Parmar (PW/16) has stated that he discovered the dead body of deceased on the basis of memorandum statement of appellant Rajesh @ Rakesh on 29.3.2013 at about 13:45 PM and has prepared inquest memo Ex.P/3 of dead body of deceased in presence of witnesses after giving notice Ex.P/2 to them. Amarjeet Singh @ Mitthu (PW/2) has also supported the statement of R.S. Parmar (PW/16) and stated that proceedings of inquest memo was conducted before him. Above all witnesses have stated that they have seen the cut injury on the neck of the deceased and as per their opinion deceased had died due to that injury and other injuries caused on the neck of deceased. The dead body of deceased was sent to Medical College Jabalpur for postmortem by R.S. Parmar (PW/16). Dr. Vivek Shrivastava (PW/7) had conducted the postmortem examination of the dead body of the deceased on 30.3.2013. He has stated that as per his report Ex.P/7, he found following injuries :-

- (i) incised wound (cut throat wound) measuring 12 cm x 0.2 cm x 4 cm present over front of neck just below thyroid cartilage, cutting the underlying skin. Soft tissues, blood vessels (carotids, veins and arteries), nerves, trachea and oesophagus upto vertebra. Deep infiltration of clotted blood present in the surrounding tissues .
- (ii) superficial cut throat wound (incised) measuring 7 cm x 0.2 cm x 0.3 cm present just below the above injury. The margins of the above two wounds are clear cut. Deep infiltration of clotted blood

present.

On interior examination of dead body of deceased, he found following injuries :-

Scalp, craniel & vertebrae are healthy. Sillo, brain and spinal cord were found semi-liquified (half were melted), ribs and pneumonia were healthy, already stated about throat and breath vessels, both lungs were blackish, perchorium and trachea, spleen, galbladder and kidneys were found melted. There were no blood in big vessels.

He opined that the death was caused within 3 to 5 days of his examination. The cause of death was due to haemorrhagic shock which was caused due to cut of neck by sharp cutting object. According to him, the cut wound on the neck was sufficient to cause death in ordinary course of nature and death was likely to be homicidal in nature.

Accordingly, cause of death of the deceased was haemorrhage and shock due to cut of neck by sharp cutting object. The appellants have shown their ignorance on this point, which does not rebut the prosecution case. Thus, it is well proved that deceased Ajit Pal @ Bobby had died an unnatural death during the period 9:00 PM of 26.3.2013 to 1:45 PM of 29.3.2013 and his death was homicidal.

17 : Now, the questions arise are whether appellants conspired to kidnap the deceased for ransom ? and in compliance of conspiracy whether the appellants had kidnapped the deceased Ajit Pal @ Bobby for alleged ransom and they had killed Ajit Pal @ Bobby for that ransom ?

18 : The mother of deceased, Rajwant Kaur (PW/1) has stated that deceased Ajit Pal @ Bobby was her son, aged about 15 years and he studied upto 5th Class. She has further stated that she had sold her house for a sum of Rs.60 lacs on 22.5.2013 to one Kirti Tiwari. She has further stated that on 26.5.2013, at about 9:00 PM in the night his son, deceased Ajit Pal @ Bobby, had gone

somewhere out of the house to see 'Holika' and thereafter he did not return to home. She thought that he went to the house of his maternal uncle. On the next day, i.e. 27.3.2013, her daughters after enquiring the matter informed her that deceased did not go to the house of his maternal uncle, then she asked about her son from her relatives on phone. She went to Gurudwara, near Gwarighat, and searched about her son, but she could not get him and thereafter lodged missing report of her son in Gwarighat outpost of Police Station Gorakhpur, District Jabalpur vide Ex.P/1, which was duly signed by her.

19 : Rajwant Kaur (PW/1) has further stated that on 28.3.2013, her brother Amarjeet @ Mitthu (PW/2) and her neighbour appellant Om Prakash Yadav went to Gurudwara of Gwarighat to search the deceased, but they could not get her son. When they were returning to home, Amarjeet @ Mitthu (PW/2) received a phone of a person, who was introducing himself as Khan and told that deceased Ajit Pal @ Bobby was in his possession, asked him to send Rs.50 lacs and threatened that if the said money is not sent to him, he will kill Ajit Pal @ Bobby by cutting his neck. On reaching house, when Amarjeet Singh was stating above conversation to her, then again said Khan called him, which was received by Amarjeet Singh in the meantime, he gave the phone to Rajwant Kaur (PW/1). She further stated that at that time, that person was stating as follows:-

4."मैं खान बोल रहा हूँ, तुम्हारा बॉबी मेरे कब्जे में है, मुझे पचास लाख रुपया भिजवाओ और अगर तुमने पुलिस या अन्य किसी व्यक्ति को बताया, तो मैं तुम्हारे बॉबी का गाला काट कर हत्या कर दूंगा। मैंने कहा ऐसा नहीं करना तुम जहाँ कहोगे मैं पैसा भिजवा दूंगी। फिर मैंने उससे कहा मेरे बच्चे को कुछ नहीं करना मेरी बॉबी से बात कराओ। फ़ोन में आवाज आई मम्मी बचा लो मम्मी बचा लो मैं बॉबी बोल रहा हूँ। मैं बॉबी की आवाज सुनकर गिर गई फ़ोन मेरे हाथ से छूट गया था और ओमप्रकाश उसी समय मेरे पीछे खड़ा था वह फ़ोन ओमप्रकाश ने ले लिया ओमप्रकाश उससे बात करने लगा और बोले जल्दी बताओ पैसा कहाँ लेकर आना है मैं दीदी के साथ पैसा लेकर आ रहा हूँ। ओमप्रकाश ने फ़ोन करने वाले को गाली गलोच भी की। फिर वह फ़ोन मोनू गुजराल ने ले लिया जो की मेरा पड़ोसी है जैसे ही मोनू ने फ़ोन लिया तो फ़ोन कट गया। फिर मोनू ने अपने फ़ोन से फ़ोन लगाया और बोले की बॉबी से बात कराओ। जब फ़ोन करने वाले ने बॉबी से मोनू की बात कराई तो मोनू बोले यह बॉबी की आवाज नहीं है तब फ़ोन करने वाले ने कहा की मुझे बॉबी ने बतलाया है की मम्मी के पास तीन लाख रुपये हैं जो उसको अभी दे दें बाकी के बीस लाख रुपये एक महीने में दे दें तब मोनू गुजराल ने बोले की क्या बच्चे को एक महीने तक पल सकते हो।

5. फिर मेरे पीछे वहीं पर ओमप्रकाश खड़ा था उसने बोले दीदी अभी तुम कितने पैसे की व्यवस्था कर सकती हो मैंने ओमप्रकाश से बोला था की मेरे पास अभी घर में एक लाख रुपये हैं और ओमप्रकाश ने बोलै की बाकी का पैसा तो मैंने बोला वह बैंक में है तो ओमप्रकाश टोला तुम

एक लाख मुझे अभी दे दो और बाकी का बीस लाख रुपये बैंक से निकलवा लो पर मेरे घर में रिस्तेदार आये थे तो मैं ओमप्रकाश को एक लाख रुपये नहीं दे पाई तब ओमप्रकाश ने मुझसे कहा कि दीदी क्या आप के पास एटीएम है तो मैंने कहा नहीं। मुझे जिस फ़ोन से धमकी मिल रही थी वह फ़ोन का नंबर मुझे मोनू गुजराल ने लिख कर दिया था वह नंबर मैंने जाकर पुलिस को दे दिया। जब मैं थाने से नंबर देकर वापस आई तो मेरे पास ओमप्रकाश आया था वह मुझसे बोला दीदी पुलिस को कुछ नहीं बताना तुम्हारा बॉबी आज रात को १२ बजे छूट जायेगा।

In her cross-examination, she has stated that she did not state above statements to the police in her statement Ex.D/1. It was not asked that why had she not stated in her statement Ex.D/1. Police had taken her statement on 28.3.2013. Upto that date, it was not known to her that appellant Rajesh was involved in that crime, but appellant-Om Prakash and her son accused Rajesh were pretending to help him and due to that she had not stated the role of appellant Om Prakash and his son. She was understanding them as her aspicious thinker. In this circumstances, her above statement cannot be said to be unreliable. Rajwant Kaur (PW/1) has stated in her cross-examination that appellant Rajesh was his neighbour and she knew him from his childhood. At the time of taking on phone, she had recognized the voice of Rajesh, but she did not disclose his name because the life of her son was in danger. She has not explained why did she not state the above facts in her statement before police, if all these were in her personal knowledge. Perusal of Ex.D/1 also reflects that these statements are not there.

20 : Amarjeet Singh @ Mitthu (PW/2), has stated that on 28.3.2013, he with appellant Om Prakash went to Gurudwara, Gwarighat to search Ajit Pal @ Bobby, but they did not get him. He further stated that at 9:28 AM, he received a call on phone of a person introducing himself as a Khan, who was telling that Ajit Pal @ Bobby was in his possession and asked him to send Rs.50 lacs. He further stated that number of his mobile is **9300434520** and he received the call of number **8305620342** on his above mobile phone number. He has supported the statement of Rajwant Kaur (PW/1) that he went to Rajwant Kaur (PW/1) with appellant Omprakash and at the same time, he received call from same mobile phone. He gave his mobile phone to his sister Rajwant Kaur (PW/1) and at the time of conversation, the mobile phone fell from her hand, thereafter

appellant Omprakash picked up cell phone and started talking and he was asking that where he should come with alleged ransom. Appellant Omprakash was abusing on phone. He further stated that thereafter Taranjeet Gujral @ Monu (PW/10) dialed the same number by his own number and asked to have a talk with Bobby. Thereafter, he heard the a voice and then Taranjeet Gujral @ Monu (PW/10) said that said voice is not that of deceased Ajit Pal @ Bobby. Taranjeet Gujral @ Monu (PW/10) noted down the above mobile phone number and gave the same to Rajwant Kaur (PW/1). Rajwant Kaur (PW/1) has stated that she had given the above mobile number to police. Taranjeet Gujral @ Monu (PW/10) has supported the version of Rajwant Kaur (PW/1) and Amarjeet Singh (PW/2) and stated that on 28.3.2013, when he was going to his dairy farm, then he saw that mother of Bobby was talking on phone and during conversation, she started weeping. Thereafter, appellant Om Prakash took that mobile phone and started conversation with kidnapper and asked where he should bring the money and abused the said kidnapper. He further stated that he took that mobile phone, but the same got disconnected and then he dialed that number by his own mobile phone. As per his statement, he saved the said mobile phone number in his mobile phone and before the trial Court he had shown the saved number as **8305620342**. He has further stated that he does not know the name of holder of sim number **8305620342**. In his statement, Taranjeet Singh @ Monu (PW/10), had stated the above facts to police at the time of recording of his statement under Section 161 of Cr.P.C. and if that version was not written by the police, then he cannot say anything.

21 : Investigating Officer, R.S. Parmar (PW/16) has stated that he had collected the call details of mobile phone number **8305620342** by which ransom was demanded. From cyber cell, he got information that said sim was used from mobile phone of IMIE number **358327028551270** and on that mobile phone, sim number **9993135127** was being used, which was in the name of appellant Om Prakash Yadav.

22 : Santosh Jadhav (PW/17), posted as Assistant Nodal Officer of Reliance Company, at Reliance Communication, Mansarowar Complex, Bhopal, since February 2011, has stated that on asking by Superintendent of Police Jabalpur, he provided call details of mobile number **8305620342** through e-mail taken out by using software of computer of Call Details Company, which is in his possession and control. The user I.D. And password thereof is also with him. The call details Ex.P/35-A, containing two pages and relates to the mobile number **8305620342** for the period w.e.f. 6.3.2013 to 28.3.2013 and produced in the Court. He further states that mobile phone of **IMEI No.358327028551270** is used in the aforesaid call details. The aforesaid call details have been duly signed as per provisions of Section 65-B of the Evidence Act vide certificate Ex.P/36, which was produced in defence and when defence counsel had raised the question in respect of Ex.D/6, then it revealed that mobile phone No.**8305620342** was handed over to Bhuraji, S/o Deepu, R/o House No.433, Gandhi Ward, Tehsil & District Jabalpur.

23 : Amarjeet Singh @ Mitthu (PW/2) has stated that he has received the call on his mobile phone No.**9300434520** from mobile phone No.**8305620342**. During cross-examination, in para 21 he has stated that neither his mobile phone nor sim was seized by the police, but in the cross-examination it was not asked that he was not having mobile phone No.**9300434520**. It is clear from Ex.P35-A that on 28.3.2013 from 9:35 to 9:50 hours, there were calls from mobile phone No.**8305620342** having **IMEI No.358327028551270** on the mobile phone No.**9300434520** which belongs to Amarjeet @ Mitthu.

24 : Sai Datt Bohre (PW/15), posted as Nodal Officer in Bharti Airtel Ltd. Indore, has stated that he is authorised to provide call details of mobile number **9993135127** from 1.3.2013 to 28.3.2013 to Superintendent of Police Jabalpur through E.mail. The aforesaid call details were procured by him by using software through computer provided by the company and he is authorised to do so by

the company. On demand by the police by using I.D. Password, he provided call details IMEI detail to police or other investigating agency through E.mail. He has stated that mobile number **9993135127** was issued in the name of appellant Om Prakash R/o 1200/CH Gwarighat, Jabalpur. During recording of his statement, he has produced application form which was produced by consumer Om Prakash along with his I.D. Call details sent by him to Superintendent of Police Jabalpur is present on record. He further stated that he had appeared along with the record. The certificate of call details of mobile number **9993135127** is Ex.P/33 and certificate of IMEI 358327028551270 is Ex.P/34 and same were duly signed by him. In his cross-examination, he has stated that he does not know the name of holder of sim number **8305620342** and police had not inquired about this number, but inquired about call details and IMEI Number of above sim number.

25 : Investigating Officer, R.S. Parmar (PW/16), has further stated that on this information, he took Rajesh @ Rakesh in his custody and on interrogation before Jitendra Singh alias Sonu (PW/8) and Malkit Singh, he gave information that he will get recovered the dead body of the deceased from the well and knife from the Nala situated behind his house. He wrote down his memorandum statement as Ex.P/8 and took signature and thereafter on his information, he reached at the well from where dead body of deceased Ajit Pal @ Bobby was taken out contained in a plastic gunny bag after cutting the rope by which that gunny bag was tied. After giving notice to the witnesses, he prepared inquest memo of the dead body of the deceased vide Ex.P/12. He further stated that dead body was identified by mother of the deceased, Rajwant Kaur (PW/1) as body of Ajit Pal @ Bobby. Panch witnesses of memorandum and seizure of dead body, namely, Jitendra alias Sonu (PW/8), who has supported the statement of Investigating Officer R.S. Parmar (PW/16) and stated that on 29.3.2013, police has interrogated appellant Rajesh, who has stated that dead body of deceased Ajit Pal @ Bobby was found in the well of Narmada Nagar.

Thereafter, his memorandum was prepared vide Ex.P/8 duly signed by him. It is further stated by Jitendra alias Sonu (PW/8) that they reached near well with appellant Rajesh where appellant Rajesh told about the said well. In the well, dead body wrapped in gunny plastic bag was seen in the water, which was taken out and recovered. The statements of these witnesses cannot be denied.

26 : In support of the prosecution case, Investigating Officer R.S. Parmar (PW/16) has stated that after receiving the information that alleged mobile phone No.8305620342, operated from the mobile phone of appellasnt Om Prakash i.e. 9993135127, he went to Narmada Nagar, Gwarighat to the house of accused/appellants and had taken accused/appellant Rajesh @ Rakesh into custody, taken him to police station, interrogated him before witnesses Jitendra @ Sonu and Malkit Singh on 29.3.2013 at 13:45, then he disclosed about seizure of dead body from the well and knife from Nala. The memorandum of Rajesh @ Rakesh was recorded by this witness vide Ex.P/8 duly signed by him and accused/appellant Rajesh @ Rakesh. Jitendra Singh (PW/8) has also supported the version of R.S. Parmar (PW/16) and stated about his arrest at P.S. Gorakhpur. On interrogation by Town Inspector of Police, he has stated that dead body is in the well at Narmada Nagar, Gwarighat.

27 : R.S. Parmar (PW/16) has stated that he had prepared spot map Ex.P/13 on 29.3.2013 at 15:15 before witnesses Jitendra and Malkit Singh, which was supported by Jitendra Singh (PW/6). R.S. Parmar (PW/16) has deposed in his deposition that on the basis of information given by accused/appellant Rajesh, he gave notice vide Ex.P/2 to Panchas and in presence of panchas, he prepared inquest memo vide Ex.P/3. The dead body was kept in white coloured sack tied from by black coloured rope. The said sack was cut and opened by Dashrath Barman. The neck and face of dead body was wrapped with shawl. Half of the neck was shown to be cut towards right side by sharp edged weapon. In the finger of right hand, some hairs were found and putrid smell was coming out from the dead body. This witness has put his signature on Ex.P/3,

confirmed the stuck hair in the right hands' finger of dead body which were taken out and sealed. Plastic sack and shawl were also sealed vide seizure memo Ex.P/12, duly signed and confirmed the same. The dead body was said to be of Ajit Pal @ Body.

28 : R.S. Parmar (PW/16) has further stated in his statement that on 29.3.2013, on the basis of information given by accused/appellant Rajesh, he has taken bloods from inner and outside of cement vessel, plain soil and blood stained soil, black plastic chappal kept in cement vessel, in presence of witnesses, sealed the same and prepared seizure memo as Ex.P/9. On the basis of information given by appellant Rajesh, one bottle of Mc. Dowell No.1 was also seized vide Ex.P/10, which was duly signed and confirmed. On the same day, on the basis of memorandum statements of appellant Rajesh @ Rakesh Ex.P/8, blood stained knife, which was taken out by appellant Rajesh @ Rakesh from Nala and after production thereof, the same was seized, sealed and signed vide Ex.P/11. Jitendra Singh (PW/8) has also supported the version of R.S.Parmar (PW/16) and stated that he had signed Ex.P/11. On showing the knife mentioned as Article 'A', he said that this is the knife which has been seized by the police. He further stated that on 29.3.2013, on the basis of information of appellant Rajesh, spot map Ex.P/14 was prepared. Jitendra Singh (PW/8) has also stated that arrest memo Ex.P/36A, of accused/appellant Rajesh, was prepared and signed by R.S. Parmar and this fact cannot be denied during cross-examination of Jitendra Singh (PW/8). Jitendra Singh (PW/8) in his deposition has stated that search memo, about sim from the house of accused/appellant, is Ex.P/37. He stated that on 30.3.2013, the sim could not to be traced out by R.S. Parmar (PW/16). Ex.P/38 is also search Panchnama.

29: On the basis of information given by appellant Rajesh, police officials reached Gwarighat and searched about broken sim, which could not be traced out. On 31.3.2013, Jitendra (PW/8), who was on police remand during interrogation at P.S. Gorakhpur, in the

presence of witnesses Bambam and Surjit, has stated in his memorandum statement that said mobile was kept with his brother Brajesh and he shall get it seized. On the same day, at 15 hours, Ex.P/16 was prepared in which appellant Rajesh has said that he shall get seized blood stained cloths which were kept in the dairy under Khali-Chuni in a room. It is also stated by this witness that on the basis of information given by appellant Rajesh vide Ex.P/16, T-shirt, blood stained black colour Jeans were seized vide Ex.P/18 duly stated to be written and signed by said R.S. Parmar. It is also stated to be confirmed that on 31.3.2013, in the presence of witnesses accused/ appellant has been arrested vide Ex.P/20.

30 : Bambam @ Shaiwal (PW/9) is the witness of Ex.P/15, Ex.P/16 and Ex.P/18, and confirmed the contentions made therein in the presence of accused appellant Rajesh @ Rakesh with regard to the fact of concealment of cloths under Khali in the dairy, the seizure thereof by police and arrest of appellant Rajesh @ Rakesh @ Raja by putting his signatures on Ex.P/15, P/16, P/18 and P/20. On 31.3.2013, accused Brajesh was taken into custody by R.S. Parmar (PW/16) for interrogation, who has stated about concealment of mobile of his brother in a room and on the basis of Ex.P/17, intex mobile having duel sim and micromax mobile containing sim No.9993135127, were stated to be seized from the possession of accused Brajesh vide Ex.P/19. Accused Brajesh has been arrested vide Ex.P/21 duly signed and confirmed by R.S. Parmar (PW/16). Bambam @ Shaiwal(PW/9) have supported the statements of R.S. Parmar (PW/16) and signed to be proved the version mentioned in Ex.P/17, Ex.P/19 and Ex.P/21.

31 : Invesigating Officer R.S. Parmar (PW/16) has deposed that he had written a letter Ex.P/39 dt. 2.4.2013, duly signed by him to Chief Medical Officer, Victoria Hospital, Jabalpur for taking the blood samples of accused appellants-Rajesh @ Rakesh and Raja Yadav. Dr. P.K. Sharma (PW/5) has deposed in his deposition that on 2.4.2013, the accused/appellants were brought for the said purpose in the hospital. He further stated that in presence of witnesses

Bambam @ Shaiwal(PW/9) who was of deceased side and Shiv Prakash, who was the witness of accused/appellants side, their blood samples were taken out, sealed and handed over to the police for DNA test. Blood sample of accused/appellant Rakesh @ Rajesh was taken and Panchnama vide Ex.P/5 was prepared and blood sample of accused/appellant Raja was taken and Panchnama vide Ex.P/6 was prepared. Thereafter, Dr. P.K. Sharma (PW/5) has deposed, that he had signed Ex.P/5 and Ex.P/6, which were signed by other witnesses also, clearly show that on 2.4.2013 at 18:55 hours, the blood samples of accused/appellants Rajesh and Raja Yadav were taken on the same day and Panchnama was prepared in presence of witnesses.

32 : It is clear from para 3 of cross-examination of Dr. P.K. Sharma (PW/5) that blood samples of accused/appellants were taken by technician, but who has taken the blood samples, his name is not mentioned in Ex.P/5 and Ex.P/6. This witness has not taken blood samples of accused/ appellants. From para 4 of his cross-examination, it is clear that persons from whom blood samples were taken, their identity has not been mentioned. There is no mention about handing over of blood samples to the police constable and in para 5, name of constable to whom the blood samples were given, has also not been mentioned. This witness could not state in his statement in para 7 that on what time he had come to take blood samples, but he has stated that it is true that blood samples Ex.P/5 & Ex.P/6 were collected by him at about 10-10:30, because on that day police personnel had came to him at 10-10:30 to 11:00 and he had completed the proceedings within half an hour. It is denied by Dr. P.K. Sharma (PW/5) that he did not go to hospital in the evening at 5-6 PM, and also denied that he had not taken any sample and also denied that he had signed Panchnama Ex.P/5 and P/6 at the instance of police, thereby, it is clear that sealed samples were taken and handed over by Dr. P.D. Sharma (PW/5) to constable. It is also denied by Dr. P.K. Sharma (PW/5) that blood samples were not taken by him or before him by the technician. On the basis of not mentioning each and every particulars in Ex.P/5 and Ex.P/6, it

cannot be said that credibility thereof is doubtful.

33 : Shiv Prakash (PW/4) is the brother of accused/appellant Raja Yadav. This witness has not supported the assertion of Dr. P.K. Sharma (PW/5) and signatures put on Ex.P/5 and Ex.P/6. He has been declared hostile and in his cross-examination by prosecution, he denied the suggestion of prosecution that he is not giving true statement with a view to save his brother. Shaiwal @ Bambam (PW/9) had accepted his signatures on Ex.P/5 and Ex.P/6 and stated that on 2.4.2013 at 6:00 PM in the evening at Victoria Hospital Dr. P.K. Sharma (PW/5) had taken blood samples of appellants Raja and Rajesh vide Panchnama Ex.P/5 and Ex.P/6 and at that time, brother of appellant Raja and uncle Shiv Prakash (PW/4) were present. This version is contradictory to his statement mentioned in para 17, wherein he has stated that blood samples of appellant Raja and Rajesh were taken by Dr. Pramod Sharma in a syringe, but this anomaly does not make doubtful about taking of blood samples of appellants Raja and Rajesh.

34 : R.S. Parmar (PW/16) has deposed that he had sent all articles seized during investigation to FSL Sagar through Superintendent of Police Jabalpur. He further deposed that he sent sealed hairs stuck in the finger of right hand of deceased Ajit Pal @ Bobby, blood samples of accused/appellants Rajesh and Raja Yadav to FSL Sagar vide memo Ex.P/40. He also deposed that he sent other seized articles as per draft Ex.P/41. He had also stated about preparation of summary of call details vide Ex.P/42. He further deposed that he had received the report from FSL Sagar as Ex.P/43 and DNA report as Ex.P/44. From perusal of Ex.P/43, it is clear that on 22.4.2013, 10 sealed packets and on 29.3.2013 seized articles A-soil, B-Chappal, C-Chappal, D-Plastic sack, E -Shawl, F-cloth, G-knife from possession of accused appellant Rajesh, T. Shirt of Ajit Pal @ Bobby, Lower, Handkerchief, as Article H1, H2, H3 & Full pant of Raja Yadav, T-Shirt, I-1 and I-2, Lower, T-shirt, underwear of appellant Rajesh @ Rakesh, as Article J1, J2 and J3 were produced and the same were chemically examined. Blood

stained Articles A, C, D, E, F, G, H1, H2, H3, I1, I2, J1 & J2 were also chemically examined. As per report Ex.P/43, human blood was found on Articles G, I1, I2, J1, J2 and J3. Due to decomposition, blood found on Articles A, D, E, F, H1, H2 & H3, their blood group could not be ascertained. No sufficient blood was found on Article C. From above reports it is clear that on Article G-knife seized from accused appellant Rajesh Yadav, his cloths Article I1, I2 and cloths of appellant Rajesh, Article J1, J2 and J3, human blood was found.

35: R.S. Parmar (PW/16) has deposed that he had received the report of DNA finger printing unit of State Forensic Science Laboratory, Sagar as Ex. P/44. It is settled law that the evidence of the experts is admissible in evidence in terms of section 45 of the Evidence Act, 1872. It can be read without proving of its contents. Its truthness has not been challenged. As per report Ex. P/44, on examination of blood of accused/appellant Rajesh @ Rakesh and Raja Yadav and hairs stuck found in the finger of right hand of deceased Ajit Pal @ Bobby, it was found that DNA source found on hair Ex. A (1D-7905), DNA profile of male was found. Male DNA profile found on hair stuck, found in the finger of the deceased Ex. A (1D7905) and DNA found on the blood of appellant Rajesh @ Rakesh Ex. B (ID-7906) are similar but, male DNA profile found on hair stuck, found in the finger of the deceased, Ex. A(1D-7905) and DNA found on the blood of appellant Raja Yadav, Ex.C ID-7907 are not similar. Thus DNA profile of stuck of hairs found in the finger of the deceased was same as the DNA profile of blood of Rajesh @ Rakesh.

36: The DNA test report matching the DNA profile of blood of appellant Rajesh @ Rakesh as well as hair found in the finger of dead body of deceased or the circumstances, which definitely and unerringly indicate towards the guilt of the said appellant/accused. The matching of DNA profile with the dead body or hair found in the finger of the deceased cannot be termed as co-incidence. This is the important piece of evidence, which is on meticulous examination or corroborative evidence and cannot be overlooked.

37: Pooran Singh (PW/3), knowing the identity of appellants on the basis of name and face, has stated that deceased Bobby was the son of his daughter's sister-in-law. Previously the appellants had visited his house. He went to the house of Rajvinder Kaur (PW/1) at Narmada Nagar to give the sweet on Holi Festival in the evening hours after performing his duty at Guru Govind Singh Khalsa School. When he was going to his house and reached near railway crossing at 9:00 PM from her daughter's house, then on way, he met with appellants Raja, Rajesh and deceased Ajit @ Bobby and asked Bobby that it is 9:00 PM and why he did not go to home, then Bobby replied that he is going to see Holika. Thereafter, Pooran Singh (PW/3) went to bus-stand by an auto-rickshaw to go to his house at Saliwada. On 28.3.2013, his daughter had called him alleging that Bobby was kidnapped and ransom of Rs.50 lacs is demanded. On the next day i.e. 29.3.2013, again he received call of his daughter that dead body of Bobby was found in a well; which was being taken out at the instance of appellants Raja and Rajesh. This witness has also attended the cremation of deceased Bobby on 30.3.2013.

38: Further, Pooran Singh (PW/3) has stated that when he went to attend the cremation of deceased Bobby, then near railway crossing he met with Town Inspector and told that on 26.3.2013 deceased was with appellants Rajesh and Raja. In para 3 of his cross-examination, he has stated that his daughter is the aunt (Mami) of deceased Bobby and her house is situated at a distance of 15-20 kms where he went by an autorickshaw along with other passengers. He went alone to his daughter's house. During cross-examination, he has also stated that he received the information about kidnapping of deceased Bobby on 28.3.2013, but at that time, he did not give this information to the police. In para 7, he further stated that deceased Bobby was seen with appellants Raja and Rajesh on 26.3.2013, but he has not stated this fact to anyone except police. Pooran Singh (PW/3), in para 8 of his cross-examination, he deposed that in morning hours at 10:30 AM, he met with Town Inspector and on the same day in the evening at 5:00

PM, his statement was recorded in the police station, but he denied to become a witness in respect of the fact that deceased Bobby was seen by him last time along with appellants Raja and Rajesh. He also denied that he gave the statements as per Town Inspector's version. Thus, looking to the aforesaid aspects, the statement of Pooran Singh (PW/3) is contradictory and, therefore, cannot be believed. Accordingly, prosecution is failed to prove that deceased was lastly seen with appellants-Raja and Rajesh. Thus, there is no evidence of last seen of deceased with appellants-Raja and Rajesh.

39 : The solitary contention advanced by the learned counsel for the accused/appellants on the merits of the case was, that the prosecution had ventured to substantiate the allegations levelled against the appellants only on the basis of circumstantial evidence. It was sought to be pointed out, that in the absence of direct evidence, the slightest of a discrepancy, depicting the possibility of two views would exculpate the accused of guilt, on the basis of benefit of doubt. Before dealing with the circumstantial evidence relied upon against the accused/appellants, learned counsel invited our attention to the legal position declared by the Apex Court, on the standard of proof required for recording of conviction, on the basis of circumstantial evidence.

40 : The Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra [(1984) 4 SCC 116]** has laid down the golden principles of standard of proof, required in a case sought to be established on the basis of circumstantial evidence. In this case Hon'ble Apex Court has observed as follows :-

“152. 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 Sahebrao Bobade V. State of Maharashtra* : **1973 Cr.L.J. 1783** where the following observations were made :

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' '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.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

41 : Further, in the case of **Tanviben Pankajkumar Divetia Vs. State of Gujarat, (1997) 7SCC 156**, the Apex Court in paras 45 &

46 has held thus :-

“45. The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstances must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to make the place of legal proof for some times, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions. (**Jharlal Das Vs. State of Orissa : 1991 3 SCC 27**).

46. We may indicate here that more the suspicious circumstances, more care and caution are required to be taken otherwise the suspicious circumstances may unwittingly enter the adjudicating thought process of the Court even though the suspicious circumstances had not been clearly established by clinching and reliable evidences. It appears to us that in this case, the decision of the Court in convicting the appellant has been the result of the suspicious circumstances entering the adjudicating thought process of the Court.”

42 : It is also the legal position that where there was any vacuum in evidence, the circumstantial evidence could not be relied upon. The Apex Court in the case of **Sucha Singh Vs. State of Punjab [(2001) 4 SCC 375]**, has held that each aspect of the criminal act

alleged against the accused, had to be established on the basis of material of a nature, which would be sufficient to lead to the inference that there could be no other view possible, than the one arrived at on the basis of the said circumstantial evidence. In para 19, it is observed by the Apex Court as under :-

“19. Learned senior counsel contended that Section 106 of the Evidence Act is not intended for the purpose of filling up the vacuum in prosecution evidence. He invited our attention to the observations made by the Privy Council in **Attygalle Vs. R. (AIR 1936 PC 169,** and also in **Stephen Seneviratne Vs. The King : AIR 1936 PC 289.** In fact the observations contained therein were considered by this Court in an early decision authored by **Vivian Bose, J. In Shambhu Nath Mehra Vs. State of Ajmer, AIR 1956 SC 404.** The statement of law made by the learned Judge in the aforesaid decision has been extracted by us in **State of West Bengal Vs. Mir Mohammad Omar, 2000 (8) SCC 382.** It is useful to extract a further portion of the observation made by us in the aforesaid decision :

“33. presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from othr set of proved facts, the court exercises a process of reasoning and reaches of logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the Court to presume the existence of anyfact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. In relation to the facts of the case.”

20. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a difference inference.”

43 : From the aforesaid scenario, it is clear that the prosecution

had placed sufficient material on the record of the case to substantiate the factum of kidnapping and murder of deceased Ajit Pal @ Bobby. Be that as it may, without drawing any such inference, we would still endeavour to determine, whether the prosecution had been successful in establishing the factum of kidnapping and murder of the deceased Ajit Pal @ Bobby, at the hands of the accused/appellants. In so far as the instance aspect of the matter is concerned, reference may be made to the statements of Rajwant Kaur (PW/1), her brother Mitthu @ Amarjeet (PW/2) and Taranjeet Gujral @ Monu (PW/10) wherein they affirmed that on 25.3.2013 at about 9:00 PM deceased Ajit Pal @ Bobby had gone somewhere out of the house to see Holika, but he did not return. Thereafter, during search, when Amarjeet Singh @ Mitthu PW/2 was returning from Gurudwara, then Mitthu received a call on mobile phone. The caller was introducing himself as Khan and he was telling that Ajit Pal @ Bobby was in his possession and he asked him to send Rs.50 lacs towards ransom. The mobile phone number of that caller was **8305620342** and he received that call on his mobile phone number No.**9300434520**. Thereafter, when Amarjeet Singh (PW/2) was stating about conversion to her sister, namely, Rajwant Kaur (PW/1), then again said person introducing himself as Khan, called on mobile No.**9300434520** then he handed over the mobile phone to Rajwant Kaur (PW/1). Thereafter, said Khan had talked to Rajwant Kaur (PW/1) and stated that her son was in his possession and demanded Rs.50 lacs as ransom. During conversation, the mobile phone fell down from her hand, thereafter appellant-Om Prakash picked up that mobile phone and started talking and asked that where he should come with said ransom. Appellant-Om prakash was abusing on phone. Appellant Om Prakash suggested Rajwant Kaur (PW/1) for immediate release of Rs.1 lakh for liberation of Ajit Pal @ Bobby. Thereafter, Taranjeet Gujral @ Monu (PW/10) dialed the same number by his own mobile phone number and then gave that number of said Khan i.e. **8305620342** to Rajwant Kaur (PW/1) with advise to inform the police about mobile phone number **8305620342**. Thereafter, on collecting call details of mobile number

8305620342, by which ransom was demanded from cyber cell, it was found that the said sim was used from phone of IMIE number **358327028551270** and on that mobile phone sim number **9993135127** was being used which was in the name of appellant Om Prakash Yadav. It is also clear from EX.P/35-A that on 28.3.2013 from 9:35 to 9:50 hours, there were calls from mobile phone number **8305620342** having IMEI **No.358327028551270** on mobile No.**9300434520** which belongs to Amarjeet Singh @ Mitthu (PW/2) and by the statement of Sai Datt Bohre (PW/15), Nodal Officer of Bharti Airtel Limited, mobile number **9993135127** was issued in the name of appellant-Om Prakash. Seizure of dead body of deceased Ajit Pal @ Bobby from the well, kept in a plastic sack, murder of the deceased, seizure of knife stained with human blood, on production of appellant-Rajesh Yadav, recovery of cloths of appellants-Raja and Rajesh @ Rakesh Yadav, stained with human blood, which have been established beyond reasonable doubt, itself prove that accused-appellants had committed the offence. Demanding of ransom on phone and informing that deceased was with appellants-Raja and Rajesh @ Rakesh and thereafter finding of dead body of deceased Bobby, in absence of any contrary material evidence produced by appellants, it has to be accepted that deceased Ajit Pal @ Bobby was in the custody of appellants.

44 : Based on the evidence noticed in the aforesaid paragraphs, there can be no doubt whatsoever, that the accused/appellants had kidnapped Ajit Pal @ Bobby and had taken him away, and demanded ransom of Rs.50 lacs, therefore, stands duly established.

45 : The material question to be determined is, whether the aforesaid circumstantial evidence is sufficient to further infer, that the accused/appellants had committed the murder of Ajit Pal @ Bobby. According to the learned counsel for the appellants, there is no evidence whatsoever, on record of the case, showing the accused/ appellants participation of the accused/appellants in any of the acts which led to the death of Ajit Pal @ Bobby. It was, therefore,

the submission of the learned Senior counsel for appellants that even though the accused/appellants may be held guilty of having kidnapped Ajit Pal @ Bobby, since it had not been established that he had committed the murder of Ajit Pal @ Bobby, they cannot be held guilty of murder in the facts of this case.

46 : Having given our thoughtful consideration to the submission advanced at the hands of learned Senior counsel for the appellants, we are of the view that the instant submission is wholly misplaced and fallacious. In so far as the instant aspect of the matter is concerned, reference may be made to the judgment rendered by the Apex Court in **Sucha Singh Vs. State of Punjab, (2001) 4 SCC 375** wherein it was held as under :

“21. We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle is to be laid down that for the murder of such kidnapped, there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders of their activities of killing kidnapped innocents outside the ken of others.”

A perusal of the aforesaid determination would reveal, that having proved the factum of kidnapping, the inference of the consequential murder of the kidnapped person, is liable to be presumed. We are one with the aforesaid conclusion. The logic for the aforesaid inference is simple. Once the person concerned has been shown as having been kidnapped, the onus would shift on the kidnapper to establish how and when the kidnapped individual came to be released from his custody. In the absence of any such proof produced by the kidnapper, it would be natural to infer/presume, that the kidnapped person continued in the kidnapper's custody, till he was eliminated. The instant conclusion would also emerge from Section 106 of the Indian Evidence Act, 1872 which is being extracted hereinunder :

“106. Burden of proving fact especially within knowledge-. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is on him.”

47 : Since in the facts and circumstances of this case, it has been duly established, that Ajit Pal @ boby had been kidnapped by the accused/appellants; the accused/appellants have not been able to produce any material on the record of this case to show the release of Ajit Pal @ Bobby from his custody. Section 106 of the Indian Evidence Act, 1872 places the onus on them. In the absence of any material produced by the accused/appellants, it has to be accepted, that the custody of Ajit Pal @ Bobby had remained with the accused/appellants, till he was murdered. The motive/reason for the accused/appellants, for taking the extreme step was, that ransom as demanded by the accused/appellants, had not been paid. When the accused/appellants Rajesh @ Rakesh was detained on 29.3.2013, he had made a confessional statement in the presence of Jitendra Singh @ Sonu (PW/8) stating that his uncle Raju had caught hold deceased and he committed murder by cutting his neck, whereupon his body was put into gunny bag and thrown into the well and he had hidden the knife near the drain. It was, thereafter, on pointing out of him the dead body of deceased was recovered from the aforesaid well kept in a gunny bag as stated by accused/appellant Rajesh @ Rakesh. Dr. Vivek Shrivastava (PW/7) concluded, after holding the postmortem of the dead body of deceased, that he had died due to haemorrhagic shock, which was caused due to cut of neck by sharp cutting object. On pointing of accused/appellant Rajesh @ Rakesh, blood stained knife was seized. Dr. Vivek Shrivastava (PW/7) opined, on perusal of seized knife that injury found on the neck of dead body of deceased would

be caused by said knife. Accused/appellant Raja was also detained on 31.3.2013 and he had made a confessional statement in presence of witness Bambam @ Shaiwal, stating that he caught hold the hands of deceased Ajit Pal @ Bobby and accused/appellant Rajesh @ Rakesh by cutting his neck, caused murder of deceased and whereupon his body was put into a gunny bag and thrown the same in the well. He further stated that during commission of murder, his cloths were stained with blood of deceased. He further stated that he had concealed that cloths in his dairy under the 'Khali-Chuni'. On the pointing out of him, blood stained cloths were seized. The instant evidence clearly nails all the accused/appellants to be the perpetrator of kidnapping of deceased Ajit Pal @ Bobby for alleged ransom and also nails the accused/appellants Rajesh @ Rakesh and Raja Yadav as perpetrator of murder of deceased Ajit Pal @ Bobby, due to not receiving the alleged ransom. In view of the factual and legal position dealt with herein above, we have no doubt in our mind that the prosecution has produced substantive material to establish not only the kidnapping of deceased Ajit Pal @ Bobby at the hands of all accused/appellants Om Prakash, Rajesh @ Rakesh & Raja Yadav, but also his murder at the hands of accused/appellant Rajesh @ Rakesh and Raja Yadav.

48 : Trial Court convicted the accused/ appellant Om Prakash for offence punishable under Section 364-A r/w Section 120-B of IPC and sentenced to undergo life imprisonment and fine of Rs.2,000/-, in default R.I. for two months whereas appellant Rajesh @ Rakesh and Raja Yadav have been convicted for offence under Section 364-A r/w Section 120-B of IPC and they are sentence to death sentence each and fine amount of Rs.1,000/-, in default R.I. for two months each. They have been further convicted for offence punishable under Section 302 r/w Section 120-B of IPC and sentenced to undergo death sentence each and fine of Rs.1,000/- each and in default of payment, R.I. for two months and they have been also convicted under Section 201 IPC and sentenced to undergo R.I. for five years each, with fine of Rs.500/- each, in default of fine, R.I. for one month each. The punishment of co-accused Om Prakash under

Section 364-A r/w Section 120-B of IPC is not a matter of dispute before us as it has not been contested by the prosecution by preferring any appeal. The minimum sentence for the offence punishable under Section 364-A of IPC is life imprisonment and thus there is no need to consider the quantum of sentence against appellant Om Prakash.

49 : So far sentence of accused/appellants Rajesh @ Rakesh and Raja Yadav is concerned, their learned counsel assailed the death sentence imposed by the trial Court. During the course of hearing, it was the vehement contention of the learned counsel for the accused-appellants, that infliction of life imprisonment, in the facts and circumstances of this case, would have satisfied the ends of justice. It was also the contention of the learned counsel for the accused-appellants, that the facts and circumstances of this case are not sufficient to categorize the present case as a 'rarest of a rare case', wherein only the death penalty would meet the ends of justice. To substantiate the contention of learned counsel for appellants, we may profitably refer to the decision of the Apex Court in the case of **Haresh Mohandas Rajput Vs. State of Maharashtra, (2011) 12 SCC 56**, wherein, having taken into consideration earlier judgments, Apex Court delineated the circumstances in which the death penalty could be imposed. Reliance was placed on the following observations recorded therein:-

"Death Sentence ' When Warranted:

"18. The guidelines laid down in *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684, may be culled out as under:

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty, the circumstances of the 'offender' also require to be taken into consideration alongwith the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the

relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage and just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

19. In *Machhi Singh and Ors. v. State of Punjab*, (1983) 2 SCC 684, this Court expanded the "rarest of rare" formulation beyond the aggravating factors listed in *Bachan Singh* to cases where the "collective conscience" of a community is so shocked that it will expect the holders of the judicial powers centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, such a penalty can be inflicted. But the Bench in this case underlined that full weightage must be accorded to the mitigating circumstances in a case and a just balance had to be struck between aggravating and mitigating circumstances.

20. "The rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful co-existence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would continue to be so, threatening its peaceful and harmonious co-existence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of the society. Where an accused does not act on any spur-of-the-moment provocation and indulges himself in a deliberately planned crime and meticulously executes it, the death sentence may be the most appropriate punishment for such a ghastly crime. The death sentence may be warranted where the victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act affects the entire moral fiber of the society, e.g. crime committed for power or political ambition or indulging in organized criminal activities, death sentence should be

awarded. (See: C. Muniappan and Ors. v. State of Tamil Nadu, AIR 2010 SC 3718; Rabindra Kumar Pal alias Dara Singh v. Republic of India, (2011) 2 SCC 490; Surendra Koli v. State of U.P. and Ors., (2011) 4 SCC 80; Mohd. Mannan (supra); and Sudam v. State of Maharashtra, (2011) 7 SCC 125).

21. Thus, it is evident that for awarding the death sentence, there must be existence of aggravating circumstances and the consequential absence of mitigating circumstances. As to whether death sentence should be awarded, would depend upon the factual scenario of the case in hand.”

50: The Apex Court in **Ramnaresh & Ors. Vs. State of Chhattisgarh, (2012) 4 SCC 257** has laid down the principles about death sentence and life imprisonment as follows :-

“The death sentence and principles governing its conversion to life imprisonment.

56. Despite the transformation of approach and radical changes in principles of sentencing across the world, it has not been possible to put to rest the conflicting views on sentencing policy. The sentencing policy being a significant and inseparable facet of criminal jurisprudence, has been inviting the attention of the Courts for providing certainty and greater clarity to it.

57. Capital punishment has been a subject matter of great social and judicial discussion and catechism. From whatever point of view it is examined, one undisputable statement of law follows that it is neither possible nor prudent to state any universal formula which would be applicable to all the cases of criminology where capital punishment has been prescribed. It shall always depend upon the facts and circumstances of a given case. This Court has stated various legal principles which would be precepts on exercise of judicial discretion in cases where the issue is whether the capital punishment should or should not be awarded.

58. The law requires the Court to record special reasons for awarding such sentence. The Court, therefore, has to consider matters like nature of the offence, how and under what circumstances it was committed, the extent of brutality with which the offence was committed, the motive for the offence, any provocative or aggravating circumstances at the time of commission of the crime, the possibility of the convict being reformed or rehabilitated, adequacy of the sentence of life imprisonment and other attendant circumstances. These factors cannot be similar or

identical in any two given cases.

59. Thus, it is imperative for the Court to examine each case on its own facts, in light of the enunciated principles. It is only upon application of these principles to the facts of a given case that the Court can arrive at a final conclusion whether the case in hand is one of the 'rarest of rare' cases and imposition of death penalty alone shall serve the ends of justice. Further, the Court would also keep in mind that if such a punishment alone would serve the purpose of the judgment, in its being sufficiently punitive and purposefully preventive.

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72. The above judgments provide us with the dicta of the Court relating to imposition of death penalty. Merely because a crime is heinous per se may not be a sufficient reason for the imposition of death penalty without reference to the other factors and attendant circumstances.

73. Most of the heinous crimes under the IPC are punishable by death penalty or life imprisonment. That by itself does not suggest that in all such offences, penalty of death alone should be awarded. We must notice, even at the cost of repetition, that in such cases awarding of life imprisonment would be a rule, while 'death' would be the exception. The term 'rarest of rare' case which is the consistent determinative rule declared by this Court, itself suggests that it has to be an exceptional case.

74. The life of a particular individual cannot be taken away except according to the procedure established by law and that is the constitutional mandate. The law contemplates recording of special reasons and, therefore, the expression 'special' has to be given a definite meaning and connotation. 'Special reasons' in contra-distinction to 'reasons' simpliciter conveys the legislative mandate of putting a restriction on exercise of judicial discretion by placing the requirement of special reasons.

75. Since, the later judgments of this Court have added to the principles stated by this Court in the case of Bachan Singh (supra) and Machhi Singh (supra), it will be useful to restate the stated principles while also bringing them in consonance, with the recent judgments.

76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in the case of Bachan Singh (supra) and thereafter, in the case of Machhi Singh (supra). The aforesaid judgments, primarily dissect

these principles into two different compartments - one being the 'aggravating circumstances' while the other being the 'mitigating circumstances'. The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354(3) Cr.P.C.

Aggravating Circumstances:

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Cr.P.C.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece

staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances:

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.

77. While determining the questions relateable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

Principles:

(1) The Court has to apply the test to determine, if it

was the 'rarest of rare' case for imposition of a death sentence.

(2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

78. Stated broadly, these are the accepted indicators for the exercise of judicial discretion but it is always preferred not to fetter the judicial discretion by attempting to make the excessive enumeration, in one way or another. In other words, these are the considerations which may collectively or otherwise weigh in the mind of the Court, while exercising its jurisdiction. It is difficult to state it as an absolute rule. Every case has to be decided on its own merits. The judicial pronouncements, can only state the precepts that may govern the exercise of judicial discretion to a limited extent. Justice may be done on the facts of each case. These are the factors which the Court may consider in its endeavour to do complete justice between the parties.

79. The Court then would draw a balance-sheet of aggravating and mitigating circumstances. Both aspects have to be given their respective weightage. The Court has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime and the punishment is the principle of 'just deserts' that serves as the foundation of every criminal sentence that is justifiable. In other words, the 'doctrine of proportionality' has a valuable application to the sentencing policy under the Indian criminal jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused deserves keeping in view the impact on the society at large.

80. Every punishment imposed is bound to have its effect not only on the accused alone, but also on the society as a whole. Thus, the Courts should consider retributive and deterrent aspect of punishment while imposing the extreme punishment of death.

81. Wherever, the offence which is committed, manner in which it is committed, its attendant circumstances and the motive and status of the victim, undoubtedly brings the case within the ambit of 'rarest of rare' cases and the Court finds that the imposition of life imprisonment would be inflicting of inadequate punishment, the Court may award death penalty. Wherever, the case falls in any of the exceptions to the 'rarest of rare' cases, the Court may exercise its judicial discretion while imposing life imprisonment in place of death sentence."

51: The Apex Court on a decision in the case of **Brajendra Singh Vs. State of Madhya Pradesh, (2012) 4 SCC 289**, having followed the decision rendered in **Ramnaresh & Ors. Vs. State of Chhattisgarh** (cited supra), further held as under:-

"38. First and the foremost, this Court has not only to examine whether the instant case falls under the category of 'rarest of rare' cases but also whether any other sentence, except death penalty, would be inadequate in the facts and circumstances of the present case.

39. We have already held the Appellant guilty of an offence under Section 302, Indian Penal Code for committing the murder of his three children and the wife. All this happened in the spur of moment, but, of course, the incident must have continued for a while, during which period the deceased Aradhna received burn injuries as well as the fatal injury on the throat. All the three children received injuries with a knife similar to that of the deceased Aradhna. But one circumstance which cannot be ignored by this Court is that the prosecution witnesses have clearly stated that there was a rift between the couple on account of her talking to Liladhar Tiwari, the neighbour, PW10. Even if some credence is given to the statement made by the accused under Section 313 Cr.P.C. wherein he stated that he had seen the deceased and PW10 in a compromising position in the house of PW10, it also supports the allegation of the prosecution that there was rift between the husband and wife on account of PW10. It is also clearly exhibited in the FIR (P-27) that the accused had forbidden his wife from talking to PW10, which despite such warning she persisted with and, therefore, he had committed the murder of her wife along with the children."

52 : The Apex Court in the case of **Mukesh & another Vs. State for NCT of Delhi and others [Criminal Appeal No.607-608 of 2017, arising out of S.L.P. (Cri.) Nos. 3119-3120 of 2014]** with Criminal Appeal No. 609-610 of 2017 arising out of SLP (Criminal) No. 5027-5028 of 2014 referring to pronouncement in the case of Bachan Singh (Supra) Machhi Singh (Supra), Ramnaresh and others vs. State of Chhattisgarh (2012) 4 SCC 257, has also tried to lay down a nearly exhaustive list of aggravating and mitigating circumstances. It would be apposite to refer to the same here :

“Aggravating Circumstances :

- (1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.
- (2) The offence was committed while the offender was engaged in the commission of another serious offence.
- (3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.
- (4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.
- (5) Hired killings.
- (6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.
- (7) The offence was committed by a person while in lawful custody.
- (8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Cr.P.C. When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community. When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.
- (9) When murder is committed for a motive which

evidences total depravity and meanness.

(10) When there is a cold blooded murder without provocation.

(11) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances:

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused."

53: We are one with the learned counsel for the accused-appellants, on the parameters prescribed by the Apex Court, for inflicting the death sentence. Rather than deliberating upon the matter in any further detail, we would venture to apply the parameters laid down in the judgments of Apex Court to determine whether or not life imprisonment or in the alternative the death penalty, would be justified in the facts and circumstances of the

present case. We may first refer to the **aggravating circumstances** as under:-

(i) The accused-appellants have been found guilty of the offence under Section 364A of the Indian Penal Code. Section 364A is being extracted hereunder:-

“364A. Kidnapping for ransom, etc.'Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

A perusal of the aforesaid provision leaves no room for any doubt, that the offence of kidnapping for ransom accompanied by a threat to cause death contemplates punishment with death. Therefore, even without an accused actually having committed the murder of the individual kidnapped for ransom, the provision contemplates the death penalty. Insofar as the present case is concerned, there is no doubt, that the accused-appellants have been found to have kidnapped Ajit Pal @ Bobby for ransom, and accused/appellants, Rajesh @ Rakesh and Raja Yadav have also actually committed his murder. In the instant situation therefore, the guilt of the accused-appellants Om Prakash, Rajesh @ Rakesh and Raja Yadav (under Section 364A of the Indian Penal Code) must be considered to be of the gravest nature, justifying the harshest punishment prescribed for the offence.

(ii) The accused-appellants Rajesh @ Rakesh and Raja Yadav have also been found guilty of the offence of murder under Section 302 of the Indian Penal Code. Section 302 of the Indian Penal Code also contemplates the punishment of death for the offence of murder. It is, therefore apparent, that the accused-appellants Rajesh @ Rakesh and Raja Yadav are guilty of two heinous offences, which independently of one another, provide for the death penalty.

(iii) The accused/appellants Rajesh @ Rakesh and Raja Yadav caused the murder of child of about 15 years. The facts and circumstances of the case do not depict any previous enmity between the parties. There is no grave and sudden provocation, which had compelled the accused to take the life of an innocent

child. The murder of a child, in such circumstances makes this a case of extreme culpability.

(iv) Kidnapping of a child was committed with the motive of carrying home a ransom. On account of the non-payment of ransom, a minor child's murder was committed. This fact demonstrates that the accused had no value for human life. The instant circumstance demonstrates extreme mental perversion not worthy of human condonation.

(v) The manner in which the child was murdered, and the approach and method adopted by the accused, disclose the traits of outrageous criminality in the behaviour of the accused. The child was first murdered by cutting his neck by a sharp edged weapon and the dead body of the child was then tied in a gunny bag, and finally the gunny bag was thrown into a well. All this was done, in a well thought out and planned manner. This approach of the accused reveals a brutal mindset of the highest order.

(vi) All the aforesaid aggravating circumstances are liable to be considered in the background of the fact, that the child was known to the accused-appellants. The child and accused/appellants were same locality. Murder was therefore committed, not of a stranger, but of a child with whom the accused were acquainted. This conduct of the accused-appellants, places the facts of this case in the abnormal and heinous category.

(vii) The choice of kidnapping the particular child for ransom, was well planned and consciously motivated. The parents of the deceased had three children ' two daughters and one son. Kidnapping the only male child was to induce maximum fear in the mind of his parents. Purposefully killing the sole male child, has grave repercussions for the parents of the deceased. Agony for parents for the loss of their only male child, who would have carried further the family lineage, and is expected to see them through their old age, is unfathomable. Extreme misery caused to the aggrieved party, certainly adds to the aggravating circumstances.

54 : As against the aforesaid aggravating circumstances, learned counsel for the accused-appellants has pointed out following **mitigating circumstances** :-

- (i) The chances of the accused/appellants Rajesh @ Rakesh and Raja Yadav of not indulging in commission of the crime again and the probability of the accused/appellants being reformed and

rehabilitated.

- (ii) The age of the accused/appellants Rajesh @ Rakesh is a relevant consideration.

Except aforesaid mitigating circumstances, learned counsel for the accused/appellants could not point out any other mitigating circumstances. So far young age of the appellant Rajesh @ Rakesh is concerned, there is no mitigating circumstance for commutation to life, as has been held in the case of **Bhagwan Swarup Vs. State of U.P.** (1971) 3 SCC 759, **Deepak Rai Vs. State of Bihar** (2013) 10 SCC 421 and **Shabhnam Vs. State of Uttar Pradesh** (2015) 6 SCC 632. So far as the accused/appellants Rajesh @ Rakesh and Raja Yadav of not indulging in commission of the crime again and the probability of the accused/appellants being reformed and rehabilitated is concerned looking to the nature and way of committing above offence, in our considered view, there is no possibility of any reform and rehabilitation.

55 : Thus, viewed on the parameters laid down by Apex Court, in the decisions mentioned above, we have no choice, but to **affirm the death penalty** imposed upon the accused-appellants Rajesh @ Rakesh and Raja Yadav by the trial Court.

56: In view of the above, we find no justification whatsoever, in interfering with the impugned judgment of the trial Court, either on merits or on the quantum of punishment.

57: The property seized be destroyed after the appeal period is over.

58: In view of the foregoing discussions, we confirm the death sentence awarded by the trial Court and dismiss Cr.A.No.83/2017 and Cr.A.No.84/2017.

Ordered accordingly.

(S.K.SETH)
JUDGE

(H.P. SINGH)
JUDGE

A.Praj.