

Babul Adhikari @ Bablu Adhikari, Vs State Of Assam

Court: Gauhati High Court

Date of Decision: June 1, 2018

Acts Referred: Indian Penal Code, 1860 â€” Section 120(B), 201, 302, 342, 364(A), 365, 385

Code of Criminal Procedure, 1973 â€” Section 164, 313

Indian Evidence Act, 1872 â€” Section 30

Constitution of India 1950 â€” Article 20(3), 21

Hon'ble Judges: UJJAL BHUYAN, J; AJIT BORTHAKUR, J

Bench: Division Bench

Advocate: H R A Choudhury

Final Decision: Allowed

Judgement

Ujjal Bhuyan, J

01.All the three criminal appeals arise out of the same judgment and, therefore, those were heard together and are being disposed of by this common judgment.

02.Ã, Md. Kaser Ali is the appellant in Crl. Appl. No.72/2013; Sri Babul Adhikari @ Bablu Adhikari is the appellant in Crl. Appl. No.73/2013 and Sri

Manik Roy is the appellant in Crl. Appl. No.83/2013.

03.Ã, Appellants have assailed the legality and correctness of the judgment and order dated 17.01.2013, passed by the learned Addl. Sessions Judge

No.2, Kamrup at Guwahati in Sessions Case No.178(K)/2003 convicting the appellants and another accused, namely, Bharat Roy, under Sections

120(B)/364(A)/302/201 of the Indian Penal Code (IPC) and sentencing them to rigorous imprisonment for life and fine of Rs.10,000/- with a default

stipulation for the offence under Sections 120(B), 364(A) and 302 IPC. They were further sentenced to undergo rigorous imprisonment for 5 years

and fine, again with a default clause, for the offence under Section 201 IPC; all the sentences to run concurrently.

04.Ã, Prosecution case started with lodging of first information by Sri Bhabendra Nath Das, PW-1. The first information was lodged on 24.04.2002

before the Officer-in-Charge, Dispur Police Station. Informant, who was serving as Deputy Superintendent of Police in the Assam Police, stated that

his son Pankaj Kumar Das was missing since 13.04.2002. He stated that one Manik Roy, a friend of his son, had hatched a criminal conspiracy with

some other persons at Guwahati, pursuant to which his son was kidnapped for extortion. He further stated that in all probability, Manik Roy and the

other conspirators had confined his son within Guwahati city or outside to realize money by threatening to harm him.

05.Ã, The first information was registered as Dispur PS Case No.437/2002 under Sections 120(B)/365/385/342 of the IPC whereafter, AR Barlaskar,

Sub-Inspector was assigned the case for investigation. Later on, Sections 302/201 IPC were added.

06.Ã, On completion of investigation, police submitted charge sheet. Being a sessions triable case, the case was committed to the Court of Sessions.

On such committal, learned Ad-hoc Addl. Sessions Judge to whom the case was assigned framed charge against five accused, namely, Manik Roy,

Bharat Roy, Kaser Ali, Babul Adhikari and Md. Samsul Hoque under Sections 120(B)/364(A)/385/342/302 IPC.

07.Ã, In the course of the trial, prosecution examined as many as 34 witnesses whereafter, the accused appellants were examined under Section 313

of the Code of Criminal Procedure, 1973 (CrPC). It may be mentioned that in the course of the trial, accused Samsul Hoque absconded whereafter,

he was declared a proclaimed absconder. The trial, however, proceeded against the other accused persons. The trial was conducted by the learned

Addl. Sessions Judge No.2, Kamrup at Guwahati. Though the defence did not adduce any evidence, accused appellants in their statements recorded

under Section 313 CrPC denied committing the offence. Court also recorded the deposition of two Court witnesses. After hearing the matter, learned

Addl. Sessions Judge, vide the impugned judgment and order dated 17.01.2013 convicted and sentenced the four accused persons facing trial as

above.

08.Ã, Hence the appeal. However, convict Bharat Roy is not before us in appeal.

09.Ã, Mr. M Choudhury, learned Senior Counsel appearing for the appellant, Manik Roy strenuously argued that conviction of his client is wholly

untenable. There was no ransom demand to support the story of kidnapping. According to the evidence of the prosecution witnesses, the deceased

was seen roaming around Gauripur town in the company of his client Manik Roy. A person who is in captivity, and who has been kidnapped for

ransom, cannot roam around the streets of Gauripur. If indeed he was kidnapped, he would have raised hue and cry in public or sought the help of the

police if he had faced any threat to his life. His further submission is that no dead body of the victim was recovered. He, therefore, submits that as

corpus delicti was not found, coupled with no evidence of demand for ransom, no conclusion could be reached about the kidnapping and murder of the

victim, that too, implicating his client Manik Roy. There is nothing on record to draw any reasonable conclusion that a criminal conspiracy was hatched

to kidnap the son of the informant and that the accused persons had acted on the basis of such conspiracy. It is a case of clear acquittal, he

submits.Ã,

10.Ã, Submissions made by Sri M Choudhury, learned Senior Counsel have been supported by Mr. A Alam, learned counsel for the appellant in Crl.

Appl. No.73/2013 and by Mr. A Ahmed, learned Amicus Curiae for the appellant in Crl. Appl. No.72/2013.

11.Ã, Submissions made by learned counsel for the appellants have been resisted by Mr. H Sarma, learned Addl. Public Prosecutor, Assam. He has

referred to the confessional statements of the accused appellants and submits that such confessional statements conclusively prove the involvement of

the appellants in the heinous crime. The confessional statements stood reinforced by the statements of the appellants under Section 313 CrPC as well

as recoveries made vide the seizure list Ext-5 i.e., the certificate regarding missing of driving licence of the deceased Pankaj Kr. Das and one blue

green colour shirt worn by the victim Pankaj Kumar Das. He, therefore, submits that conviction of the appellants is fully justified and no interference

is called for.

12.Ã, Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

13.Ã, As noticed above, PW-1 Sri Bhabendra Nath Das had lodged the first information Ext1. As per the FIR, son of PW-1 Pankaj Kumar Das was

missing since 13.04.2002 from about

01.00 pm. After inquiry, PW-1 could come to know that one of the friends of Pankaj Kumar Das had hatched a criminal conspiracy with some other

persons, and pursuant to such conspiracy, had kidnapped his son with intention to extort money.

14.Ã, In his evidence, PW-1 stated that though his son Pankaj Kumar Das had appeared in various competitive examinations, he did not get any job.

Therefore, he started doing petty business. On 13.04.2002, petitioner was on duty at Borjhar Airport since morning. After completing duty, he had

returned home at around 11.00 pm when his wife told him that their son had gone out of the house between 12.00 noon and 01.00 pm but had not

returned home. Between 08.00 to 09.00 pm, he had telephoned her and had told her that he would not return home that night. But before he could

conclude his conversation with his mother, the telephone line got disconnected. As the son did not return home for the next 4/5 days and did not make

any phone calls, the family members became suspicious. Thereafter, inquiries were made at several places. During inquiry, Sri Anup Kr. Mazumdar,

friend of Pankaj Kumar Das, PW-12 stated that he had visited the house of PW-1 on 10.04.2002 and 12.04.2002 when he saw Pankaj sitting in his

room with Manik Roy of Gauripur. He had heard that Manik was persuading Pankaj to go to Gauripur and to start some business there with him.

After receipt of such information, PW-1 informed Dispur Police Station as well as Gauripur Police Station. Gauripur Police informed him that some

people of Gauripur had seen an unknown boy along with Manik Roy. Suspecting involvement of Manik Roy in the kidnapping of his son, PW-1 lodged

first information Ext-1 on 24.04.2002. It was at Dispur Police Station that he could come to know that Manik Roy had taken Pankaj to Gauripur on

13.04.2002 and kept him confined in his house. On 14.04.2002, Manik Roy had taken Pankaj to the house of one Bharat Roy at Belguri village under

Golokganj Police Station. He could further come to know that at around 10.00 pm to 11.00 pm, Kaser Ali, Manik Roy, Bharat Roy, Samsul Hoque @

Chandia, Shahjahan Ali @ Muslim Sheikh and Bablu Adhikari had assaulted Pankaj and strangled him to death. Thereafter, his dead body was carried

to a distance of about 1 kilometer and thrown into the Gangadhar river. From the house of Muslim Ali under Golokganj Police Station, Investigating

Officer had seized a shirt worn by Pankaj and a copy of certificate issued by the Latasil Police Station in connection with loss of driving licence of

Pankaj. He stated that he had seen Manik Roy a couple of times in his house and had identified him from amongst the accused in the dock.

15.~ PW-1 was cross-examined on behalf of Babul Adhikari and two others. In his cross-examination, he stated that he had not seen the other

accused appellants before except Manik Roy. He was not present when the articles were seized. However, he could recognize the seized shirt

because his son used to wear it regularly.

16.~ PW-1 was also subjected to cross-examination by counsel for Manik Roy. He stated that before lodging the missing report, he had

communicated with the Gauripur Police Station over telephone and has stated about his suspicion regarding kidnapping of his son by Manik Roy. He

did not remember as to who from Gauripur Police Station had informed him that an unknown boy had roamed around with Manik Roy in the market

place at Gauripur.

17.~ The accused appellants had made confessional statements which were recorded by the Judicial Magistrate PW-32 under Section 164 CrPC. In

his statement recorded under Section 164 CrPC, Manik Roy stated that he was familiar with Pankaj since 1999 and they became friends. Both used to

visit each other's house. Uncle of Pankaj, Jagadish Nath took Rs.5,000/- from Manik Roy after assuring him that he would be engaged as security

guard in a medicine company but he was not engaged. On 08.04.2002, he had gone to Guwahati from Gauripur with PW-10 Bhuban Biswas to

enquire about his elder sister. On 10.04.2002 both of them had gone to the residence of Pankaj and together with Pankaj they had gone to the house of

Jagadish Nath but he was not available. Manik Roy again went to the house of Jagadish Nath on 12.04.2002 taking Pankaj along with him. Jagadish

Nath told him to come in the month of May when he would provide him a job. On 13.04.2002, Manik Roy came home from Guwahati to Gauripur

along with Pankaj and after spending the night at his residence, the two of them went to the residence of friend Bharat Roy at Belguri village on the

next day i.e., 14.04.2002. As night had fallen, Bharat Roy asked both of them to stay back. He stated that at around 10.30 pm, Samsul @ Chandia,

Kaser Ali and Shahjahan came to the house of Bharat Roy and assaulted both of them. They had tied his arms and eyes with gamocha. The three of

them thereafter assaulted Pankaj who told the assailants that he was the son of Deputy Superintendent of Police (DSP). His uncle Bablu then came

searching for him. Though he told the assailants not to assault Pankaj, they did not pay any heed and continued to assault Pankaj with their hands.

They also threatened Manik Roy to keep quite failing which they threatened to kill him. After the three of them completed their assault on Pankaj and

when his uncle Bablu removed the clothes from his arms and eyes, he saw Pankaj was lying dead. The assailants along with Bharat had told Manik

Roy to throw the dead body into the river Gangadhar. Thereafter, Chandia, Bharat, Kaser, Shahjahan and himself lifted the dead body of Pankaj and

threw it into river Gangadhar. He was threatened by the assailants not to disclose to anybody about the aforesaid incident. When he learnt that police

was searching for him, he surrendered before the Gauripur Police Station on 23.04.2002.

18. A careful reading of the confessional statement as a whole would reveal that according to accused Manik Roy, while he and Pankaj were

sleeping in the residence of Bharat Roy, Samsul @ Chandia, Kaser Ali and Shahjahan came and assaulted both of them i.e., Manik Roy and Pankaj

after blind-folding him. But Bharat Roy was not assaulted. Reason for the assault is also not discernible. Till this stage of the confessional statement, it

was completely exculpatory, putting the blame on the three assailants. As ordered by the assailants, Manik Roy lifted and carried the dead body of

Pankaj along with others and threw it into the river Gangadhar. In so far throwing of the dead body is concerned, he had attributed it to the threat of

the assailants. When he came to know that police was looking for him, he surrendered before the Gauripur Police Station on 23.04.2002. This conduct

of the accused appellant Manik Roy is significant as it is suggestive of the fact that he is a law abiding person. A,

19. Kaser Ali in his statement recorded under Section 164 CrPC stated that at about 10.00 pm one day about two months back he had gone to his

shop after taking his meal. Bablu came and informed him that someone was quarreling with his nephew. On being asked by Bablu, he accompanied

him to the house of Bharat. In the house of Bharat, he found Manik. When Manik was asked by Bablu as to what was the quarrel about, he stated

that two persons had come and had taken his friend outside the house. Thereafter, the three of them i.e., Bablu, Bharat and Kaser followed by Manik

went out looking for the friend of Manik. After proceeding for a while, they saw Samsul coming. When Bablu asked him where he had taken the boy,

he replied that the boy had died. Samsul led Bharat, Bablu, Manik and Kaser and showed the dead body with a person standing nearby. Later on,

Kaser could come to know that the person standing was Shahjahan and the dead body was that of the friend of Manik. Samsul and Shahjahan warned

the remaining persons not to go away; rather to follow their instructions. Samsul and Shahjahan lifted the dead body on their shoulder and asked the

remaining persons to accompany them to the bank of the river. According to Kaser, he and Bharat did not want to go but Manik forced them to

accompany Samsul and Shahjahan. When they reached the river Gangadhar, Samsul, Shahjahan and Manik got down into the river while the others

kept standing on the bank. Thereafter, the dead body was thrown into the river. According to Kaser, he had asked Manik to inform the police but

Manik forbade not to do so. Thereafter all of them left the place; it was about 11.00 pm then.

20.~, ~, ~, ~, ~, From a careful analysis of the above statement made by the accused Kaser Ali what transpires is that he along with Bablu Adhikari

@ Babul had gone to the residence of Bharat i.e., accused No.2 where he found Bharat and Manik who informed them that two persons had come

and had taken away his friend (deceased). From his statement, it is seen that as ordered by Samsul and Shahjahan and upon being forced by Manik,

he and Bharat went to the river where Samsul, Shahjahan and Manik threw the dead body in the river. Again, this statement is completely exculpatory

in so far accused appellant Kaser is concerned. According to him, the murderous assault on the deceased was carried out by Samsul and Shahjahan;

the dead body was thrown into the river by these two and Manik.~, ~,

21.~, We may now proceed to the confessional statement made by accused Bablu Adhikari. He stated that on 14.04.2002 at about 03.00 pm, he

came across his nephew Manik Roy at Bhelguri Road. Manik told him that he had come to the house of Bharat with one of his friends. That evening

at about 8/9 pm, he went to the house of Bharat and on the way, he came across Samsul, Kaser and Shahjahan. All of them had gone to the residence

of Bharat. Shahjahan asked Bharat about the whereabouts of Manik. Bharat showed the house where Manik was. Shahjahan called Manik

whereafter Manik opened the door. Then all of them entered into the house. Shahjahan asked the friend of Manik about his name; he replied that his

name was Pankaj Kumar Das. When Shahjahan asked what his father did, in reply Pankaj told that his father was a DSP (Deputy Superintendent of

Police). Shahjahan then replied that the DSP had tortured them so much that he would finish him off. Shahjahan dealt a blow on the head of Pankaj

with his hand and thereafter tied his face and eyes with gamocha; his arms with an iron chain. While Pankaj pleaded not to assault him, Shahjahan

dragged him outside the house whereafter, he along with Samsul assaulted Pankaj. The two of them further dragged Pankaj to a little distance away

and continued to assault him. After a while, Pankaj fell down on the ground. While Samsul pressed the neck of Pankaj, Shahjahan pressed his mouth.

Manik and Bharat were at a little distance away; Kaser was nearby. Though he repeatedly told them not to assault, no heed was paid. Manik and

Bharat did not prevent the assault on Pankaj. It was around 10.30 pm when Pankaj had died. Samsul ordered them to throw the dead body into the

river Gangadhar. Bharat brought a gunny bag, rope and a piece of bamboo from his house whereafter, they tied the dead body with the gunny bag and

carried it to the bank of the river Gangadhar on a bamboo pole. On the bank of the river, Manik removed the clothes of Pankaj from the dead body

and gave the shirt to Shahjahan. Other wearing apparel and footwear were thrown into the river. Thereafter, Manik again tied the dead body of

Pankaj and threw it into the river Gangadhar whereafter they left for their respective houses. Manik spent the night in the residence of Bablu

Adhikari. Bablu Adhikari had asked Manik as to why he had brought his friend and did these things. Manik told him that he had brought Pankaj to

extract ransom from his father. Thereafter, Manik left in the morning. Bablu Adhikari went to Bongaigaon where police caught him on 06.01.2003. On

19.01.2003, he accompanied the police to the bank of the river Gangadhar and showed the particular place to the police where the dead body was

thrown into the river. He also accompanied the police to the house of Shahjahan but Shahjahan had fled. While searching his house, police found the

shirt of Pankaj in a large basket. From the pocket of the shirt, police recovered certificate of missing driving licence and other papers which were

seized. Bablu Adhikari put his signature to the seizure list. He stated that he had committed the offence and, therefore, he confessed his guilt.

22.Ã, Examination of the above statement of Bablu Adhikari reveals the exculpatory nature of the statement. While absolving himself of any wrong

doing except accompanying the assailants while carrying the dead body to the river, he blamed Manik for bringing Pankaj to Gauripur for ransom and

later for removing the clothes from the body of Pankaj before throwing it into the river.

23.Ã, PW-32 was the Magistrate who had recorded the statements of the accused appellants under Sections 164 CrPC. In her deposition, she stated

that on 22.05.2002, she was working as Judicial Magistrate First Class at Guwahati and was in-charge Chief Judicial Magistrate. Investigating Officer

of Dispur PS Case No.437/2002 made a prayer for recording the statements of witnesses, namely, Bhuban Biswas (PW-10) and Atul Krishna Dutta

(PW-11) under Section 164 CrPC. Their statements were accordingly recorded. On 11.06.2002, she recorded statements of two other witnesses,

namely, Babul Choudhury and Prabin Saha. On 19.06.2002, Sri AR Barlaskar, the Investigating Officer made a prayer before the Chief Judicial

Magistrate for recording the confessional statement of accused Manik Roy. As per order of the Addl. Chief Judicial Magistrate who was in-charge

Chief Judicial Magistrate on that day, PW-32 recorded the confessional statement of Manik Roy. At 01.20 pm, Manik Roy was produced before PW-

32 by Constable Mozibur Rahman. She enquired as to whether he would make a confession or not, to which he stated that he would make a

confession. PW-32 thereafter cautioned him and kept him in her chamber under the care of her peon Buddha Saikia giving him time for reflection. At

04.45 pm accused Manik Roy was produced before PW-32. The accused was again asked by PW-32 as to whether he would make a confessional

statement. At this, he stated that he would confess his guilt. The Magistrate explained to the accused that even if he did not confess, he would not be

sent back to police custody. When the accused repeatedly stated that he was repentant for what he had done and would like to confess, PW-32 was

convinced that the accused was ready to make a confession voluntarily and thereafter recorded his statement which was proved vide Ext-17. She

clarified that no one was allowed to meet the accused when he was in her chamber for reflection. Thereafter, she narrated what accused Manik Roy

stated in Ext-17 confessional statement as recorded above.

24.Ã, Regarding the confessional statement of Kaser Ali, PW-32 stated that on 02.07.2002 Investigating Officer of the case made a prayer before the

Chief Judicial Magistrate for recording the confessional statement of accused Kaser Ali and Bharat Roy whereafter, Chief Judicial Magistrate

granted the said prayer. At about 11.20 pm Constables Jiaur Rahman and Arfan Ali produced accused Kaser Ali before the PW-32. When Kaser Ali

and the other accused were asked as to whether they would make confession or not, both of them stated that they would confess. They were

cautioned and told about the consequences of making a confession. Thereafter, both of them were kept in the chamber of PW-32 under the care of

her Bench Assistant Suren Kalita giving them time for reflection. At 04.00 pm, the above two accused appellants were brought before PW-32 who

again asked them as to whether they would make confession or not; to which they answered in the affirmative. PW-32 cautioned them about the

consequences of making a confession and also explained to them that even if they did not confess, they would not be remanded to police custody.

Even then, both of them said that they would make the confession. According to PW-32, she believed that the two accused appellants had confessed

voluntarily as it appeared to her that they were repentant. She then recorded the confessional statement of accused Kaser Ali Ext-21. Thereafter, she

narrated as to what Kaser Ali said in his confessional statement, which has already been discussed above.~

25.~ Continuing with her deposition, PW-32 stated that on 22.01.2003 while she was working as Judicial Magistrate, 1st Class at Guwahati, the

Investigating Officer made a prayer before the Chief Judicial Magistrate for recording confessional statement of Bablu Adhikari. On permission being

granted, Constable Farjani Ali produced accused Bablu Adhikari before PW-32 at around 01.05 pm. When Bablu Adhikari stated that he would like to

confess his guilt despite being cautioned of the consequences, PW-32 kept him in her chamber under the custody of her peon Chandra Kanta Borah

for reflection. PW-32 again interacted with accused Bablu Adhikari at 04.40 pm. Though he was cautioned about the consequences of making the

confession and was also informed that he was not bound to make a confession and if he did not confess, he would not be remanded to police custody,

still accused Bablu Adhikari expressed the desire to confess his guilt. On being satisfied about the voluntariness of the confession, PW-32 recorded

the confessional statement of accused Bablu Adhikari which was proved as Ext-26. Thereafter PW-32 narrated about the confessional statement

made by accused Bablu Adhikari.

26.~ In her cross-examination, PW-32 admitted that the day in which the confessional statements of the accused appellants were recorded, the

accused appellants were brought from police custody under police escort and produced before her. However, she stated that she had taken due care

and precaution to insulate the accused appellants from police influence while recording their confessional statements. She stated that at the time of

recording their confessional statements, she did not notice any injury on the person of the accused and they had also stated that there were no injuries.

27.~ Having noted the above, we may now examine as to how the accused appellants responded to the above during their examination under Section

313 CrPC.

28.~ A question was put to accused Manik Roy regarding his confessional statement (Question No.21). The question put to Manik Roy was that

PW-32 in her deposition had stated that on 19.06.2002 while she was working as Judicial Magistrate First Class, Kamrup, she had recorded his

confessional statement after complying with all legal requirements. He stated that police had tortured him a lot and had got him treated in hospitals. He

further stated that he forgot what he had stated before the Magistrate. When accused Manik Roy was confronted with the confessional statement of

Kaser Ali (Question No.22) and Bablu Adhikari (Question No.23), he stated that those were false and he knew nothing. Police had tortured him a lot.

29.Ã, In so far evidence of PW-34, Md. Fakaruddin Barbhuyan is concerned, he was the Officer who had completed the investigation after

Investigating Officer AR Barlaskar was transferred. He stated that on 23.11.2002 while he was working as Sub-Inspector of Police in the Dispur

Police Station, Officer-in-Charge of Dispur Police Station had handed over the case diary of Dispur PS Case No.437/2002 to him to complete the

investigation, which was initiated by Sri AR Barlaskar, who subsequently, died. He stated that in the course of investigation on the basis of disclosure

made by accused Bablu Adhikari, he had searched the house of accused Shahjahan. From a large basket used for storing grains in the house of

Shahjahan, PW-34 recovered a shirt and a certificate regarding loss of driving licence belonging to the victim, which were seized vide Ext-5 seizure

list. He stated that on completion of investigation, sufficient evidence were collected against the accused appellants as well as against the absconding

accused whereafter, charge sheet was submitted. However, he stated that he had searched for accused Samsul Hoque and Muslim Ali in connection

with the incident but he could not find them. Then he brought accused Bablu Adhikari to Dispur Police Station. On being interrogated, Bablu Adhikari

confessed his guilt. Thereafter, prayer was made to the Court for recording his confessional statement whereafter, the confessional statement was

recorded.Ã,

30.Ã, In his cross-examination, he admitted that he did not conduct any investigation to determine from where Pankaj Kumar Das made the last phone

call. He admitted that Manik Roy was admitted to hospital but, report of the hospital or the discharge letter were not produced. Manik Roy was

brought to Dispur Police Station at 08.00 pm of 06.05.2002. On 07.05.2002 accused Manik Roy was medically examined but the medical report was

not submitted to the Court. He denied the suggestion that the accused was inhumanely tortured by PW-1, Bhabendra Das and by himself in police

custody whereafter, his confessional statement was recorded. The accused appellants were brought from police custody for recording their

confessional statements. Assistant Sub-Inspector P Sarma took Manik Roy from police custody for recording his confessional statement; similarly, the

other accused appellants were brought from police custody for recording their confessional statements. He admitted that while preparing the seizure

list, neighbouring people were not made witnesses. The seized shirt, as per Ext-5 seizure list, was not sent to the forensic laboratory for identification.

31.Ã, In the course of further cross-examination, he stated that the dead body of Pankaj Das was not recovered. After recording their confessional

statements, the accused were remanded to jail hazot.

32.Ã, We have carefully gone through the evidence of the other witnesses but we feel that the statements made by those witnesses do not in any way

strengthen the prosecution case by way of corroborating the confessional statements made by the accused appellants.

33.Ã, PW-2 Sri Bushan Das, who claimed to be a friend of Pankaj, stated that when he had come to Guwahati on 13.04.2002 to go to the residence

of Pankaj, he saw Pankaj and Manik boarding a bus while he was alighting from bus. According to PW-4 Dhiraj Das, Pankaj had gone to Gauripur

with Manik but in cross-examination he stated that he did not remember the date when Pankaj had gone to Gauripur with Manik. As per version of

PW-5 Sri Kamala Kt. Talukdar, he had gone to Fancy Bazar, Guwahati on 13.04.2002 for Bihu shopping. After returning from shopping, he show

Pankaj talking with a man in front of Paltan Bazar Bus Stand near Janata Hotel whom he identified as Manik Roy standing in the dock.

34.Ã, Sri Safique Alam PW-6 identified himself as a booking assistant of Loknath Travels, Paltan Bazar, Guwahati. He stated that on 13.04.2002, he

had booked three tickets against the name of one P Das in a Dhubri bound bus bearing registration No.AS-17/1967. However, in cross-examination,

he denied whatever he had stated.

35.Ã, PW-11 Sri Atul Krishna Dutta Hazarika stated that on 13.04.2002 he had gone to Gauripur by a bus of Loknath Travels along with his family.

Manik Roy had also boarded that bus. According to PW-14 Sri Anup Kumar Barman who was declared hostile, on 14.04.2002, between 01.00 to

01.30 pm, he had met Manik at Gauripur market with an unknown person whom Manik introduced as his friend Pankaj Das. Thereafter, they had left

the place in a bus towards Boxirhat via Agomoni.

36.Ã, Sri Bimal Adhikari PW-16 who had a tea stall at Bongaigaon Bus Stand and was previously a rickshaw puller stated that he knew accused

Babul @ Bablu. According to him, BabluÃ¢â€,s wife had informed him that Samsul, Shahjahan, Kaser, Bharal, Bablu and BabluÃ¢â€,s nephew Manik

had killed the son of a DSP. When he confronted Bablu, he stated that he did not kill the boy but the others did. In his cross-examination, he stated

that he did not remember when he had gone to the house of Bablu. Further, he admitted that he did not tell the police that Samsul, Shahjahan, Kaser,

Bharal, Bablu and Manik had killed the son of a DSP. Infact, he did not inform anyone about the above.

37. PW-17 is Sri Tarun Ch. Das, Sub-Inspector of Police. On 19.01.2003 while he was working as attached officer at Golokganj Police Station, the

Investigating Officer accompanied by his staff and accused appellant Bablu came to his police station while searching for the residence of accused

Muslim Ali. Bablu told the police that he knew the locations of Shahjahan's house and accordingly, showed them the house of Shahjahan.

However, Shahjahan fled from the house. While searching his house, a shirt (material Ext-1) was found from a large basket used for keeping food

grains and in the shirt pocket a certificate in the name of Pankaj Das regarding loss of driving licence was found (material Ext-2). Momtajuddin

Ahmed, Inspector of Police deposed as PW-29. On 23.04.2002, he was the attached officer at Dhubri Sadar Police Station. On that day, he got

information about involvement of Manik Roy in the kidnapping of Pankaj Das in connection with Dispur Police Station Case No.437/2002. On that

night, his staff went to Gauripur and brought Manik to Dhubri Police Station. While they were interrogating him, he became unconscious at 10.25 pm;

he had to be hospitalized. On the following day, he went to the hospital and interrogated Manik when he admitted about his involvement in the

case.

38. Therefore, what ultimately boils down is that the conviction of the accused appellants was primarily based on their confessional statements.

Section 164 CrPC lays down detailed procedure for recording of confessional statements. Section 30 of the Indian Evidence Act, 1872 also says that

when more than one person are tried jointly for the same offence, and a confession made by one of such persons and some other of such person is

proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

It is also true that the dead body of the victim was not recovered. The law on this point is well settled that conviction for the offence of murder does

not necessarily depend upon the corpus delicti being found. In Ram Chandra Vs. State of UP, reported in AIR 1957 SC 381, Supreme Court held that

in law a conviction for offence does not necessarily depend upon the corpus delicti being found. There may be reliable evidence, direct or

circumstantial, of the commission of the murder though the corpus delicti is not traceable. This position has been consistently followed by the Supreme

Court over the years. In Sevaka Perumal Vs. State of Tamil Nadu, reported in (1991) 3SCC 471, Supreme Court reiterated the position that it is not

essential to establish corpus delicti; the fact of the death of the deceased must be established like any other fact.

39.Ã, Having said that, the moot question is whether the confessional statements were made voluntarily by the accused appellants?

40.Ã, The evidence on record discloses that three accused appellants were brought to the Court of PW-32 straight from the police station though on

different dates under the escort of police personnel. They were produced before PW-32 around 11.30 am and 01.20 pm. After cautioning them about

the consequences of making confessional statement and also telling them that they were not bound to make confessional statements, the accused

appellants were made to sit in the chamber of PW-32 under the custody of a Court employee. Because of shortage of manpower, the Court staff who

were asked to look after the accused appellants had to move out of the chamber of PW-32 of and on for doing other court related duties. Their

confessional statements were recorded around 4.30 pm. In other words, they were given reflection time of about 4 to 3 hours. Question is, was that

enough?

41.Ã, In the facts and circumstances of the case, we feel that it would be difficult to accept the view that adequate time was given to the accused

appellants for reflection. In Sarwan Singh Rattan Singh-Vs-State of Punjab, AIR 1957 SC 637, Supreme Court held as under:-

Ã¢â¬ÅÃ, There can be no doubt that, when as accused person is produced

before the Magistrate by the investigating officer, it is of utmost importance that the mind of the accused person should be completely freed from any

possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give

him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the

time which should be allowed to an accused person in any given case. However, speaking generally, it would, we think, be reasonable to insist upon

giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the

accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded.Ã¢â¬Å

42.Ã, Though there is no hard and fast rule regarding the period of reflection time, Supreme Court has time and again emphasized that the recording

Magistrate must examine all surrounding circumstances. In so far the present case is concerned, accused appellants were brought before PW-32 for

recording confessional statements after long periods of custodial interrogation. In his evidence, PW-34, the Investigating Officer of the case admitted

that accused Manik Roy had to be hospitalized and was also medically examined on 07.05.2002, but this fact was not informed to the Magistrate. PW-

29 Montajuddin Ahmed, Inspector of Police and attached officer at Dhubri Sadar Police Station in his evidence admitted that he had interrogated

Manik Roy at Dhubri Police Station in the evening of 23.04.2002. In the course of interrogation, Manik Roy fainted at 10.25 pm after which he had to

be hospitalized. The interrogation was resumed in the hospital the next day when Manik Roy confessed his guilt. In his statement recorded under

Section 313 CrPC, Manik Roy categorically stated that he was severely tortured by the police while denying that he had committed the offence. Thus

it is quite evident that there was custodial violence which could be the reason for making the confessional statements by the accused appellants.

43.Ã, Victim was the son of a police officer, who was the informant. Considering the circumstances as alluded to hereinabove, we feel that the

reflection time granted to the accused appellants were not at all adequate. When they made their confessional statements, they were still under the

influence of police investigation and the custodial violence they had to face. That apart, there is no direct owning of guilt by the accused appellants

even if the confessional statements are taken at their face value.

44.Ã, The confessional statements of the appellants read as a whole are of exculpatory character. Each of the statements tried to exculpate the

author while trying to implicate the co-accused. In Palvinder Kaur-Vs-State of Punjab, reported in AIR 1952 SC 354, Supreme Court held that a

confession must either admit in terms of the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely

incriminating fact, even a conclusively incriminating fact, is not of itself a confession. A statement that contains self-exculpatory matter cannot amount

to a confession, if the exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed.

45.Ã, In so far Section 30 of the Evidence Act is concerned, a confession can be used against a co-accused only upon satisfaction of certain

conditions, which have been explained by the Supreme Court in Kalpnath Rai-vs-State reported in AIR 1998 SC 201 as under:-

Ã¢â¬ÅÃ, Ã, Ã, Ã, 75. The first condition is that there should be a confession i.e., inculpatory statement. Any exculpatory admission is not usable for any

purpose whatsoever as against a co-accused. The second condition is that the maker of the confession and the co-accused should necessarily have

been tried jointly for the same offence. In other words, if the co-accused is tried for some other offence, though in the same trial, the confession made

by one is not usable against the co-accused. Third condition is that the confession made by one accused should affect himself as well as the co-

accused. In other words, if the confession absolves himself from the offence but only involves the co-accused in the crime, while making the

confession, such a confession cannot be used against the co-accused.Ã¢â¬â¸

46.Ã¢â¬â¸, Again in Alope Nath Dutta-vs-State of West Bengal reported in (2007) 12 SCC 230, Supreme Court sounded a note of caution that law does

not envisage taking on record the entire confession by making it an exhibit incorporating both the admissible and inadmissible part thereof together.

Highlighting the role of the Magistrate in ensuring that a confession is not made under influence, threat or promise, Supreme Court held as under:-

Ã¢â¬â¸Ã¢â¬â¸Ã¢â¬â¸, Ã¢â¬â¸, Ã¢â¬â¸, 104. Section 164, however, makes the confession before a Magistrate admissible in evidence. The manner in which such confession is to

be recorded by the Magistrate is provided under Section 164 of the Code of Criminal Procedure. The said provision, inter alia, seeks to protect an

accused from making a confession, which may include a confession before a Magistrate, still as may be under influence, threat or promise from a

person in authority. It takes into its embrace the right of an accused flowing from Article 20(3) of the Constitution of India as also Article 21 thereof.

Although, Section 164 provides for safeguards, the same cannot be said to be exhaustive in nature. The Magistrate putting the questions to an accused

brought before him from police custody, should sometime, in our opinion, be more intrusive than what is required in law. [See Babubhai Udesinh

Parmar v. State of Gujarat].

106. Judicial confession must be recorded in strict compliance with the provisions of Section 164 of the Code of Criminal Procedure. While doing so,

the court shall not go by the black letter of law as contained in the aforementioned provision; but must make further probe so as to satisfy itself that

the confession is truly voluntary and had not been by reason of any inducement, threat or torture.Ã¢â¬â¸

47.Ã¢â¬â¸, As discussed above, de hors the confessional statements, the other evidence on record are not at all adequate to implicate the accused

appellants in the commission of the offence. It is note worthy to mention that there is no evidence to show any ransom demand being raised. It is not

at all believable that the kidnapped person and the kidnapper will travel together in a bus where there are other passengers and roam around the

streets without the victim raising any hue and cry. Such a narrative is highly improbable and does not stand to reason. There are also no reliable and

admissible evidence on record on the basis of which it would be reasonable to draw an inference that a criminal conspiracy was hatched by the

accused appellants and acting on such conspiracy, the crime was committed. On the same analogy, no definitive conclusion can be reached that the

accused appellants had caused disappearance of evidence of the offence. There was no reason or justification on the part of Manik Roy to retain the

shirt of the victim while throwing away the other wearing apparel alongwith the dead body into the river and then give it to Shahjahan only to be kept

by him in a basket at home to be recovered by the Police alongwith the certificate of missing driving licence of the victim. This narrative is somehow

not convincing. Moreover, from the evidence on record, motive on the part of the appellants to murder the deceased is also not discernible. In

Sakharam-vs-State of Madhya Pradesh reported in (1992) 2 SCC 153, it has been held that absence of motive is a plus point for the accused in a case

where the evidence against him is only circumstantial.

48.Ã, In such circumstances, we do not feel persuaded to accept that the confessional statements were made voluntarily by the accused appellants

and on the strength of these confessional statements, we do not feel that it would be appropriate to convict the accused appellants. No doubt the

accused appellants may not be above suspicion, but in a criminal trial suspicion cannot be the basis of conviction. The guilt of the accused appellants

would have to be proved beyond all reasonable doubt. On the basis of the materials available before us, we feel that no conclusive or definitive finding

of guilt against the accused appellants can be arrived at. Therefore, the accused appellants would be entitled to the benefit of doubt, which we are

inclined to extend.

49.Ã, Consequently, the appeals succeed. Conviction of the accused appellants under Sections 120(B)/364(A)/302/201 IPC is set aside and they are

set at liberty, if not detained in any other case(s).

50.Ã, Criminal appeals are accordingly allowed. Registry to send down the LCR forthwith.Ã, Ã,