

*Before S.S. Saron & S.P. Bangarh, JJ.*

**AMARDEEP S/O. SH. RAM KISHAN—Petitioner**

*versus*

**STATE OF HARYANA—Respondent**

**CRA No. D-49- DB of 2007**

February 22, 2013

*A. Indian Penal Code 1860 - Section 364 A, 302, 34 IPC - Delay in FIR - Kidnapping and murder of 7 year old minor child - DDR recorded a day after the abductee-deceased went missing - Prosecution case against co-accused cannot be doubted only because his name is not mentioned in the DDR.*

*Held*, that PW3, a child of seven years old, at that time, was in the company of the deceased before his missing. She disclosed to her father PW1 that Sumit @ Pona was taken by Ramesh Kumar appellant. Even so, search of Sumit @ Pona had to be continued. PW1, PW2 and others may be under the impression that Sumit @ Pona will come back, but when he did not come back on the next day, PW12 Randhir Singh got lodged report with the police. The case of the prosecution against Ramesh Kumar appellant cannot be doubted only on the ground that his name was not mentioned in the daily diary report No.7 Ex.P6.

(Para 37)

*B. Indian Penal Code 1860 - Conviction - deceased last seen in company of accused- Conviction on that evidence - Held, good - Last-seen accused in company of deceased also got corpse recovered in pursuance to disclosure statement - Conviction for kidnapping for ransom and murder upheld.*

*Held*, that both these judgments are fully applicable to the facts of the present case for upholding the conviction of Ramesh, who was lastly seen in the company of deceased by two witnesses i.e PW3 and PW8, to whom, no motive can be ascribed for deposing falsely against him. Apart from that, the corpse of the deceased, in the case in hand, was got recovered by Ramesh Kumar appellant, pursuant to his disclosure statement Ex.P2,

that was seized vide recovery memo Ex.P4. So, the learned trial Court rightly convicted and sentenced the appellant Ramesh Kumar for commission of murder of Sumit @ Pona deceased after kidnapping him for ransom.

(Para 43)

N.C.Kinra, Advocate for the appellant in CRA No. D-49-DB of 2007 and respondent no.2 in CRA No. D-362-DB of 2007.

Vinod Ghai, Sr. Advocate with Mr. Paras Talwar, Advocate for the appellant in CRA No. D-202-DB of 2007 and respondent no.1 in CRA No.D-362-DB of 2007.

Devinderbir Singh, Advocate, for appellant in CRA No. D-373-DB of 2007 and respondent no.3 in CRA No. D-362-DB of 2007.

G.S.Sandhu, AAG Haryana for appellant in CRA No.D-362-DB of 2007 and respondent in CRA No.D-49-DB of 2007, CRA No. D-202-DB of 2007 and CRA No. D-373-DB of 2007.

### **S.P. BANGARH, J.**

(1) All the appeals i.e CRA No.D-49-DB of 2007, titled Amardeep v. State of Haryana, CRA No.D-202-DB of 2007, titled Karambir v. State of Haryana, CRA No.D-373-DB of 2007, titled Ramesh Kumar v. State of Haryana and CRA No. D-362-DB of 2007, titled State of Haryana v. Karambir, Amardeep and Ramesh Kumar arise from the common impugned judgment and order. These are, therefore, being decided by this common judgment.

(2) The appellants in their respective appeals have assailed the judgment of conviction and order of sentence dated 19.12.2006, passed by the learned Additional Sessions Judge, Jhajjar, in Session Case No.16 of 2005, emanating from FIR No.18 dated 19.01.2005, under Sections 364, 302 read with section 34 of the Indian Penal Code ('IPC' for short) of Police Station, Sadar, Bahadurgarh. The appellants Amardeep, Karambir and Ramesh Kumar ibid have been convicted for commission of offences punishable under Sections 364-A IPC, 302 IPC read with Section 34 IPC and sentenced to undergo imprisonment for life each and to pay a fine of

Rs.15,000/- each and in default, thereof, to undergo rigorous imprisonment for a period of three years each for commission of offence punishable under Section 364-A IPC read with Section 34 IPC. They have also been sentenced to undergo imprisonment for life each and to pay fine of Rs.15,000/- each and in default, thereof, to further undergo imprisonment for a period of three months each for commission of offence punishable under Section 302 IPC read with Section 34 IPC.

(3) Case of the prosecution is that one Sumit @ Pona son of Surender Kumar complainant went missing from his house on 16.01.2005. Albeit search, he could not be found. On 19.01.2005, complainant moved an application before Mam Chand, SI, at bus stand of village Kanoda, where he was present in connection with patrolling. In this application, complainant alleged that he suspected that his son Pona had been kidnapped by Karambir son of Pati (appellant in CRA No. D-202-DB of 2007), Amardeep son of Ram Kishan (appellant in CRA No.D-49-DB of 2007) and Ramesh Kumar (appellant in CRA No.D-373-DB of 2007), who were agricultural labourers in his village, after hatching a conspiracy to commit his murder. On his application, Mam Chand, SI made his endorsement and sent the same to Police Station Bahadurgarh through Rameshwar Constable, where, on the basis, thereof, formal FIR was recorded by Ombir ASI.

(4) During investigation, Ramesh Kumar and Amardeep appellants were arrested on 19.01.2005. During interrogation, they suffered separate disclosure statements. Ramesh Kumar appellant in disclosure statement disclosed that on 16.01.2005, at about 06:30 p.m, he along with Amardeep, his co-appellant and Karambir, another co-appellant, after hatching a conspiracy kidnapped Sumit @ Pona son of Surender Kumar, complainant for ransom and later he caught hold of legs and Amardeep appellant caught hold of hands of Sumit @ Pona and Karambir appellant murdered him by pressing his throat and later threw his corpse in the mustard field and he offered for demarcation of that place. He also disclosed that Karambir appellant, in order to take ransom, had telephoned Surender from Delhi. This disclosure statement was reduced into writing, which was attested by Surender Kumar and Ashok Kumar and appellant Ramesh Kumar also signed it later. Amardeep appellant also made similar disclosure statement, which was reduced into writing and was attested by witnesses supra. Both the appellants led the police party to the disclosed place and got recovered

the corpse of Sumit @ Pona from the mustard field of Dalal Singh. That corpse was seized vide memo and inquest proceedings, thereon, were conducted.

(5) Later, this corpse was sent to the mortuary of Civil Hospital, Bahadurgarh for autopsy. Karambir appellant was arrested on 25.01.2005 and he also made similar disclosure statement admitting his complicity along with other appellants for the commission of the murder of son of the complainant Surender Kumar. He also disclosed that after kidnapping Sumit @ Pona, he had gone to Delhi and telephoned Surender from there demanding ransom. His disclosure statement was also reduced into writing in the presence of Paramjit Singh and he also signed it, which was attested by Mam Chand, SI. Investigating Officer, during the course of investigation, got the place of recovery of corpse of Sumit photographed. He also prepared rough site plan of the place of occurrence.

(6) After completion of investigation, Station House Officer of Police Station Sadar, Bahadurgarh filed the police report under Section 173 of the Code of Criminal Procedure ('Cr.P.C' for short) before the learned Illaqa Magistrate to the effect that it appeared that the appellants had committed offences punishable under Sections 364-A IPC, 302 IPC read with Section 34 IPC.

(7) On presentation of police report, copies of documents, as required under Section 207 Cr.P.C were furnished to the appellants and the case was committed to the Court of Session for trial, which was entrusted to the learned trial Court, where charge under Sections 364-A IPC and 302 IPC read with Section 34 IPC, was framed against all the appellants supra, whereto, they pleaded not guilty and claimed trial. Consequently, prosecution evidence was summoned.

(8) At the trial, prosecution examined Surender Kumar as PW1, Ashok Kumar as PW2, Sheetal as PW3, Rohtash, MIIC as PW4, Jaikaran, Constable as PW5, Ombir Singh, ASI as PW6, Randhir Singh as PW7, Sanjay as PW8, Jagdish Singh, Patwari as PW9, Suraj Bhan as PW10, Dr. Anil Rathee as PW11, Randhir Singh, Inspector as PW12, Anup Kumar, Constable as PW13 and Mam Chand, Inspector as PW14 and, thereafter, the evidence of the prosecution was closed.

(9) After closure of the prosecution evidence, appellants Amardeep, Karambir and Ramesh Kumar were examined under Section 313 Cr.P.C, wherein, they denied the allegations of the prosecution, pleaded innocence and false implication in this case. They gave their own version that they have no concern with the occurrence.

(10) The appellants were called upon to enter in defence, but they closed the same without examining any witness.

(11) After hearing both the sides, the learned trial Court vide impugned judgment and order of sentence, convicted and sentenced the appellants Amardeep, Karámbir and Ramesh Kumar as described in second paragraph of this judgment. Aggrieved, thereagainst, the appellants, who were accused before the learned trial Court, have filed these appeals with a prayer for acceptance, thereof, and for their acquittal from the charge framed against them.

(12) State of Haryana has also assailed the impugned order of sentence by filing separate CRA No. D-362-DB of 2007, titled State of Haryana v. Amardeep, Karambir and Ramesh Kumar and sought enhancement of their sentence to death.

(13) Learned counsel for the appellants Amardeep, Karambir and Ramesh Kumar in CRA No. D-49-DB of 2007, CRA No. D-202-DB of 2007 and CRA No. D-373-DB of 2007 and respondents nos. 1, 2 and 3 in CRA No. D-362-DB of 2007 and learned Asstt. Advocate General for the respondent (appellant in CRA No. D-362-DB of 2007) have been heard and record of the learned trial Court has been perused with their assistance.

(14) PW1 Surender deposed that his son Sumit @ Pona, aged about 7 years on 16.01.2005, at about 06:00 / 06:30 p.m was found missing from in front of his house who albeit search throughout the night, could not be traced. He further deposed that his brother Randhir Singh, on the next morning, reported this matter to the police. On 17.01.2005, Sheetal, his niece of aged about six years disclosed that she along with Sumit @ Pona was playing, where Ramesh Kumar appellant came there and took them with him on the pretext of providing toffee from the shop of one Sanjay and he gave one toffee each to them and after that, he asked both of them

to accompany him to his gher, but Sheetal refused to go with him. However, Sumit @ Pona accompanied him and his brother Ashok also disclosed that Ramesh Kumar appellant was also demanding money from him and he might have taken his son with him. He further deposed that thereafter, Ramesh was not traceable, who was working as a contractor for digging pits along with other appellants (accused) on that day and on 18.01.2005, he (PW1) received a telephone at his house and Karambir appellant was on the phone who told that in case they wanted their son alive, then he should reach H-Block, Jahangirpuri, Delhi near Mahendera Park and then, he along with several other persons went at several places to search his son throughout the night, but none met them there and they were satisfied that his son was with the appellants (accused).

(15) PW1 further deposed that on 19.01.2005, when they were going to police station along with an application Ex.P1 bearing his signature, then police met him at bus stand of their village and application Ex.P1 was produced before Mam Chand, ASI and in the meantime, his younger brother Ashok also came there, who disclosed that Amardeep and Ramesh Kumar appellants were sitting near the pond on the southern side of the village and then police accompanied them to pond where, both Amardeep and Ramesh Kumar appellants were sitting, who, on seeing the police party, tried to flee, but were apprehended by the police. He further deposed that thereafter, police took the appellants (accused) to the police station, he and his brother also accompanied them and in the police station also, police interrogated Ramesh and Amardeep appellants and firstly, Ramesh Kumar appellant was interrogated, who suffered disclosure statement that they (all the three appellants /accused) kidnapped Sumit @ Pona for ransom, but when their demand for ransom was not fulfilled, they killed Sumit @ Pona. He (Ramesh Kumar) caught hold of legs and Amardeep appellant caught hold of hands of Sumit @ Pona and Karambir appellant strangulated Sumit @ Pona and after killing him, he threw his corpse in the mustard field and he could get the same recovered.

(16) PW1 further deposed that they had sent Karambir to Delhi for making telephone call for the purpose of ransom. PW1 further deposed that aforementioned disclosure statement Ex.P2 of Ramesh Kumar was reduced into writing by Mam Chand, ASI, that was attested by him (PW1), who further deposed that Amardeep appellant was also interrogated and

he suffered disclosure statement Ex.P3 on the same line that was suffered by Ramesh appellant and that, too, was signed by him (PW1) and his brother Ashok Kumar and thereafter, both these appellants got recovered the corpse of Sumit, which was taken into possession vide memo Ex.P4 by the police, which bears his signatures. He further deposed that the corpse of Sunil was later taken to Civil Hospital for autopsy and on the next day i.e on 20.01.2005, the same was handed over to him after autopsy.

(17) PW2 Ashok Kumar also deposed that he knows Ramesh Kumar appellant, who met him on 15.01.2005 and asked for ₹76,000/- from him as he was in the need of money for purchasing carrots at village Kultana and he expressed his inability to pay that amount and, thereupon, Ramesh appellant said that either pay him money or face the consequences for refusal and on that day after giving threat to him, he went away. He further deposed that on 16.01.2005, his nephew Sumit @ Pona was found missing at 06:30 p.m but he could not be found, albeit, search and on 17.01.2005, Randhir Singh got lodged report with the police regarding missing of Sumit @ Pona. Thereafter, on 18.01.2005, at about 01:00 p.m, a telephone was received by his brother Surender that Sumit deceased was with Karambir appellant at Jhangirpuri, H Block, Mahendra Park in Delhi and come with the ransom amount.

(18) He further deposed that on receipt of that telephone, he along with his brother Surender and Bhoop Singh went there, but no one met them there and thereafter, on 19.01.2005 he was satisfied that on 15.01.2005 Ramesh Kumar appellant demanded money from him, had criminally intimidated him, when he refused to pay money and consequently on 18.01.2005, after receipt of a telephone and further his daughter Sheetal disclosed that on 16.01.2005 when he alongwith Sumit @ Pona was viewing T.V, the light went off and then they were playing at the side of house and there Ramesh Kumar appellant came and allured both of them that he will give them toffees and he took them to the nearby shop and provided them one toffee and after that he asked them that he will take them to gher, but his daughter did not agree and got herself rescued and ran away, but Sumit @ Pona did not return and was taken away by Ramesh appellant. Then they searched upto 19.01.2005 till 05:00 p.m and when he reached at bus stand, he noticed police coming along with his brother and then his brother Surender was talking with the police and he stated that

Amardeep and Ramesh Kumar appellants were sitting at the pond of the village situated on the southern side of the village and, thereafter, police officials along with them went to the pond, but on seeing the police party, both Amardeep and Ramesh appellants ran away, but were apprehended by the police and then they were taken to police station along with them. In the police station, police interrogated Ramesh appellant in their presence and he suffered disclosure statement Ex.P2 that he along with Amardeep and Karambir appellants kidnaped Sumit @ Pona and took him to fields and since, he did not stop weeping, they murdered him.

(19) PW2 further stated that Amardeep was interrogated who also suffered disclosure statement Ex.P3 on the same lines and pursuant to these disclosure statements, both these appellants got recovered corpse of Sumit @ Pona that was seized vide memo Ex.P4 by the police and the next day corpse was handed over to them after autopsy.

(20) PW3 Sheetal also deposed that she along with his brother Sumit @ Pona was viewing T.V and in the night, light went off and she and her brother Sumit came out of the house and then Ramesh Kumar appellant was standing near the house of Bable and he asked them for providing some toffees from the shop of Sanjay and after providing toffees, he asked them to accompany them to their gher, but she refused to accompany him and said that he can take Sumit with him and then he took Sumit with him and, thereafter, Sumit did not return.

(21) PW4 deposed that on 19.01.2005, he along with Mam Chand, ASI and Rameshwar Dass, Constable was present at bus stand Kanoda in connection with patrolling, where Surender moved application to Mam Chand, ASI and, thereafter, at 07:30 p.m, corpse was handed over to him and Rameshwar Dass, Constable for autopsy and then he along with complainant went to Civil Hospital with corpse and in the night, the same was kept in mortuary and on the next day, autopsy was conducted.

(22) PW5 Jaikaran, Constable proved copy of FIR Ex.P5. PW5 brought the rojnamacha register pertaining to DDR dated 17.01.2005 and proved its photocopy Ex.P6.



(23) PW6 deposed that on 19.01.2005, on the receipt of ruqa Ex.P1/A, he recorded formal FIR Ex.P5.

(24) PW7 Randhir Singh also deposed that on 17.01.2005, he got recorded DDR No. 7 dated 17.01.2005 about missing of his nephew Sumit @ Pona, aged about seven years since 16.01.2005 (evening) and that bears his signature. He also proved its photocopy Ex.P6.

(25) PW8 Sanjay deposed that on 16.01.2005, at 06:30 p.m, Ramesh Kumar appellant came to his shop along with Sumit @ Pona and Sheetal and purchased two Satmola pouches for them and delivered those to them and went back along with both the children and, thereafter, in the morning on 17.01.2005, he learnt that Sumit @ Pona was missing and he narrated the story to the police on 17.01.2005.

(26) PW9 Jagdish Singh deposed that on 17.01.2005, on the pointing of Ashok Kumar, he prepared site plan Ex.P7.

(27) PW10 Suraj Bhan deposed that on 25.01.2005, he along with Paramjit went to Bahadurgarh on motorcycle in connection with some personal work. Since, at that time, market was not open, they went to police station Bahadurgarh to inquire about the present case from Mam Chand, ASI and then the latter called Karambir accused/appellant through two Constables from the police lock up and interrogated him in their presence. He further deposed that Karambir appellant disclosed that he along with Amardeep and Ramesh Kumar appellants conspired that Surender was prosperous person and was having only one son and money could be extracted from him if his son was kidnapped and as per the conspiracy, they all kidnapped Sumit on 16.01.2005 at 06:30 p.m and took the boy in the nearby field of mustard of Dalel and the boy started weeping and when he did not stop, then they planned to finish him and at that time, Amardeep appellant caught the boy from hands, Ramesh Kumar appellant caught his legs and he (Karambir) strangulated him and, thereafter, threw his corpse in the mustard field of Dalel and, thereafter, they returned and again conspired that he (Karambir) will give a telephone call from Delhi near Jhangirpuri Mahendra Park, H Block and in the process, he made telephone call that the boy was with them and he should reach at the above mentioned place with money. He also offered to demarcate the place of occurrence

and his disclosure statement Ex.P8 was recorded, pursuant to which, he got identified the place of occurrence and demarcation memo Ex.P9 was prepared.

(28) PW11 Dr.Anil Rathee conducted autopsy on the corpse of Sumit @ Pona on 20.01.2005 at 09:00 a.m. He further deposed that as per information furnished by the police, cause of death was reported by strangulation. On examination, there were three small abrasions of size 1 cm x 3 cm, thyroid cartilages was fractured. Nail marking was present. A small abrasion 1 cm x 3 cms was present on anterior aspect of neck just to the left of midline at the level of larynx. On opening, there was congestion in sub cutaneous issue around larynx and fracture of thyroid cartilage was present. All the organs were healthy and congested. PW11 further deposed that, in his opinion, cause of death, in this case was, throttling and subsequent asphyxia, nail marking were ante-mortem in nature and signs were sufficient to explain death by manual strangulation in ordinary course of nature.

(29) PW12 Randhir Singh, Inspector deposed that on 24.02.2005, he was posted as Inspector/SHO in Police Station, Sadar, Bahadurgarh and on that day, after completion of necessary formalities, he prepared report under Section 173 Cr.P.C of this case, which was signed by him.

(30) PW13 Anoop Kumar, Constable deposed that on 19.01.2005, at about 06:00 p.m, Ombir Singh, ASI handed over to him one special report of this case Ex.P5 and he handed over the same to Illaqa Magistrate.

(31) PW14 Mam Chand, Inspector deposed on the lines of investigation, which has been reproduced in the earlier parts of this judgment.

(32) Learned senior counsel for Karambir appellant and learned counsel for Amardeep and Ramesh Kumar appellants contended that there was inordinate delay in lodging the FIR. As per prosecution version, Sumit @ Pona (since deceased) was allegedly kidnapped on 16.01.2005 at about 06:30 p.m from village Kanoda, but the FIR was got registered in this case on 19.01.2005, at about 05:00 pm, which makes the case of the prosecution utterly doubtful. It was also contended on behalf of appellants that PW1, PW2 are related witnesses interested in the success of the case and, therefore, their evidence has been wrongly relied upon for holding the appellants-accused guilty for commission of murder of Sumit @ Pona. It

was also contended on behalf of the appellants that PW3 is a child witness and she herself admitted in the cross examination that she was tutored to depose. It was also contended that as per deposition of PW3, she disclosed the occurrence to her father Ashok Kumar on 16.01.2005 itself her grand uncle Rajender and uncle Surender went to the police, but her statement was not recorded on that day.

(33) Learned counsel for the appellants also contended that Sanjay (PW8) made his statement before the police on 17.01.2005, but that was recorded only on 30.01.2005, therefore, evidence of PW8 was not required to be relied upon by the learned trial Court for holding the appellants guilty in this case.

(34) Learned counsel for the appellants also contended that disclosure statements leading to the recovery of corpse of Sumit @ Pona are inadmissible evidence, as Ramesh Kumar appellant was arrested on 19.01.2005 and during interrogation, he confessed his complicity and complicity of other appellants/accused in the commission of the murder of Sumit @ Pona and throwing of his corpse in the mustard field. In this manner, police was aware of the place, where the corpse of Sumit @ Pona was lying. So, the disclosure statements of Amardeep appellant Ex.P3 dated 19.01.2005 and Karambir appellant Ex.P8 dated 25.01.2005 are inadmissible in evidence, as Ramesh Kumar appellant in his disclosure statement dated 19.01.2005 had already disclosed the place where the corpse of Sumit @ Pona was lying. It was also contended that place of recovery of corpse was accessible to general public. Learned counsel for appellants also contended that there are variations in the time of death, as per disclosure statements of the appellants/accused and the medical evidence. So, the learned counsel for the appellants contended that the latter may be acquitted of the charge by according them benefit of doubt.

(35) On the other hand, the learned Advocate General, Haryana for the respondent contended that the case against the appellants was proved before the learned trial Court beyond the shadow of reasonable doubt and, therefore, they were rightly convicted and sentenced by the learned trial court. Since, the State of Haryana has also filed an appeal for enhancement of sentence, it was contended by learned Asstt. Advocate

General for the State of Haryana that his appeal No.D-362-DB of 2007 may be allowed and the appellants may be sentenced to death, as the case against them is rarest of the rare cases.

(36) We have given our thoughtful consideration to the contentions raised by the learned counsel for the parties. One thing is very much certain that Sumit @ Pona went missing from his house on 16.01.2005. There is no gain saying about this fact of his missing from his house. He was searched, but could not be found. It was evening time and by the time, the family members of Sumit @ Pona learnt about his kidnapping, night fell and throughout night, PW5 and PW6 went on searching Sumit @ Pona, but he could not be found. Therefore, on the next day, the matter was reported to the police, who recorded daily diary report No. 7 in this regard, copy, thereof, is Ex.P6, that has been proved by PW5 and PW7.

(37) It was already night. PW3, a child of seven years old, at that time, was in the company of the deceased before his missing. She disclosed to her father PW1 that Sumit @ Pona was taken by Ramesh Kumar appellant. Even so, search of Sumit @ Pona had to be continued. PW1, PW2 and others may be under the impression that Sumit @ Pona will come back, but when he did not come back on the next day, PW12 Randhir Singh got lodged report with the police. The case of the prosecution against Ramesh Kumar appellant cannot be doubted only on the ground that his name was not mentioned in the daily diary report No.7 Ex.P6.

(38) No motive can be ascribed to PW3 to testify falsely in this case. She and Sumit @ Pona deceased were playing when Ramesh Kumar appellant came there and provided toffees to them after purchasing those from the shop of Sanjay PW8. She also deposed that she refused to accompany Ramesh Kumar appellant, but Sumit @ Pona went with him. The evidence of PW3 could not be shattered in the cross examination. One thing is very much certain from her testimony that Sumit @ Pona deceased parted her company at 06:30 p.m on 16.01.2005 and joined the company of Ramesh Kumar appellant. PW3 refused to join the company of the deceased with Ramesh Kumar appellant and she came back to her house. In this manner, Sumit @ Pona (deceased) was seen by PW3 lastly in the company of Ramesh Kumar appellant.

(39) Apart from that, the testimony of PW3 is not the only testimony on the point of Ramesh Kumar appellant and deceased being lastly seen together. Even PW8 Sanjay in candid words deposed that on 16.01.2005 at 06:30 p.m, Ramesh Kumar appellant came to his shop alongwith Sumit @ Pona and Sheetal daughter of Ashok Kumar and purchased two Satmola pouches for them. Evidence of this witness also could not be shattered in the cross examination. He narrated this occurrence regarding purchase of Satmola by Ramesh Kumar appellant for PW3 and deceased from his shop to the complainant party in the morning of 17.01.2005 near Chaupal.

(40) When it is amply established on the record that Ramesh Kumar appellant and deceased were lastly seen together on the evening of 16.01.2005, then it was required of Ramesh Kumar appellant to explain as to when Sumit @ Pona deceased parted his company. No such evidence has come on the record on behalf of Ramesh appellant. After Sumit @ Pona deceased was lastly seen in the company of Ramesh, his unnatural death occurred. It was for the Ramesh Kumar appellant to explain the circumstances, wherein, Sumit @ Pona turned into corpse.

(41) In *Raju versus The State by Inspector of Police (1)*, Hon'ble Supreme Court of India convicted the accused on the basis of last seen evidence. There was no eye witness in the case. Last seen evidence in this case was believed.

(42) In *Deepak Chandrakant Patil versus State of Maharashtra (2)*, Hon'ble Supreme Court of India upheld the conviction by relying upon last seen evidence. In this case, accused and deceased were last seen together by two witnesses. There was no evidence that the accused parted with company. Dead body of the deceased and his motorcycle were recovered at the instance of the accused.

(43) Both these judgments are fully applicable to the facts of the present case for upholding the conviction of Ramesh, who was lastly seen in the company of deceased by two witnesses i.e PW3 and PW8, to whom, no motive can be ascribed for deposing falsely against him. Apart from that,

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(1) 2009(11) SCC 111

(2) 2006(3) All MR (Cr.) 2657

the corpse of the deceased, in the case in hand, was got recovered by Ramesh Kumar appellant, pursuant to his disclosure statement Ex.P2, that was seized vide recovery memo Ex.P4. So, the learned trial Court rightly convicted and sentenced the appellant Ramesh Kumar for commission of murder of Sumit @ Pona deceased after kidnapping him for ransom.

(44) Such, thus, being the circumstance, his (Ramesh Kumar's) appeal No. CRA No.D-373-DB of 2007, shall have to be dismissed, as the impugned judgment and order of sentence qua him do not suffer from any infirmity or illegality.

(45) Now adverting to the appeal of Amardeep appellant. It is no doubt true that in the disclosure statement Ex.P2, Ramesh Kumar appellant named him as a killer, yet that statement cannot bind him. He was not seen in the company of the deceased lastly. His alleged confession vide disclosure statement Ex.P3 to the effect that he caught hold of hands of Sumit @ Pona, Ramesh Kumar appellant caught hold of his legs and Karambir appellant murdered him by pressing his throat, is a confession before the police, that is hit by Section 25 of the Indian Evidence Act, and cannot be relied upon for holding him guilty, as he was not seen in the company of the appellants. There is no evidence against Amardeep appellant except his disclosure statement Ex.P3, which is inadmissible in evidence. He was not seen by anyone in the company of Ramesh Kumar and the deceased at one time. No telephone call for ransom was made by him to PW1 for realizing ransom for the release of Sumit @ Pona deceased. Place of recovery of the dead body was already known to the police through the disclosure statement Ex.P2 of Ramesh Kumar appellant. When he suffered statement Ex.P3, the disclosure statement Ex.P2 on the similar facts had already been suffered by Ramesh Kumar appellant, which is more relevant for holding latter guilty, as he was seen in the company of the deceased by PW3 and PW8.

(46) So is not the case of Amardeep appellant. His case is distinguishable from the case of his alleged accomplice Ramesh Kumar. He could not be held guilty of commission of murder of Sumit @ Pona simply on the basis of his disclosure statement Ex.P3 and recovery memo of corpse of Sumit @ Pona Ex.P4.

(47) As already held, it was required of the prosecution to prove that before the murder of Sumit @ Pona was executed, someone like PW3 and PW8 saw Amardeep appellant in the company of the deceased and Ramesh Kumar appellant. Only then, role of Amardeep appellant in this case could be said to be similar to that of Ramesh Kumar appellant. It is, thus, a case of no evidence against the appellant Amardeep except his disclosure statement Ex.P3. There is no corroborating evidence to this disclosure statement Ex.P3, the police already knew the facts stated therein, through the disclosure statement Ex.P2 of Ramesh Kumar appellant. Police had not been able to collect evidence, as to when Amardeep appellant joined Ramesh Kumar appellant before the commission of murder of Sumit @ Pona.

(48) Even, there is no allegation against him that he made a telephone call for realizing ransom. So, Amardeep appellant was wrongly convicted and sentenced by the learned trial Court vide impugned judgment and order of sentence, which ought to be set aside by allowing his appeal. (CRA No. D-49-DB of 2007).

(49) So far as, Karambir appellant is concerned, he was also not seen in the company of the deceased by any one. He was also not seen in the company of Ramesh after missing of Sumit @ Pona. The allegation against him vide his disclosure statement Ex.P8 is that he made a telephone call from Delhi. Police, indubitably did not visit that place from where the alleged call ascribed to Karambir appellant came to PW1. It was required of the police to locate the place from where the alleged call ascribed to Karambir appellant came from Delhi. Only then, it could be held that on 18.01.2005, Karambir appellant made a telephone call to Surender PW1 for bringing ransom amount. Even, the dead body of Sumit @ Pona had already been recovered on 19.1.2005, when alleged disclosure statement Ex.P8 was suffered by Karambir appellant. Except this disclosure statement Ex.P8, there is no other evidence against him. This disclosure statement does not lead to any discovery of facts, as corpse of Sumit @ Pona had already been recovered. Whatever is stated in the disclosure statement Ex.P8 is, his confession made by him before the police which cannot be

proved because of embargo of Section 25 of the Indian Evidence Act and the same cannot be read against Karambir appellant. There is, thus, no evidence against him.

(50) Learned trial court thus, fell in grave error by convicting and sentencing the appellant Karambir on the basis of his disclosure statement Ex.P8 knowing fully well that he was not seen by any one in the company of the deceased, as also, he was not seen by anyone in the company of other appellants at the time of commission of murder of Sumit @ Pona. It is also not proved that he made a telephone call for ransom from Delhi to PW1 (father of the deceased). Even, the police did not visit Jhangirpuri, Mahendra Park, H Block, Delhi to know that telephone call to PW1 was given by Karambir appellant for realizing ransom.

(51) Even, it has not come in disclosure statement Ex.P8 as to how much money was demanded by him through alleged telephone call which he allegedly made from Delhi at the telephone of PW1.

(52) Learned trial court thus, wrongly convicted and sentenced Karambir appellant vide impugned judgment and order of sentence, which must be set aside by allowing his appeal. (CRA No. D-202-DB of 2007).

(53) State of Haryana has also filed CRA No. D-362-DB of 2007. In view of allowing of appeals of Karambir and Amardeep appellants, the case against Ramesh Kumar appellant cannot be held to be falling within the category of 'rarest of rare cases'. Learned trial Court rightly held so in the impugned order of sentence. So, the case against the appellant Ramesh Kumar cannot be held to be a rarest of rare cases, where sentence of death should be imposed upon him. He is not a previous convict. In our view, imposition of minimum sentence prescribed under Section 302 IPC upon Ramesh Kumar appellant in CRA No. D-373-DB of 2007 is condign punishment and that shall meet the ends of justice. So, the CRA no. D-362-DB of 2007 on behalf of State of Haryana being devoid of merit, must be dismissed.

(54) Resultantly, CRA No.D-373-DB of 2007, titled Ramesh Kumar v. State of Haryana and CRA No. D-362-DB of 2007, titled State of Haryana v.Karambir, Amardeep and Ramesh Kumar appellants are dismissed.



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THROUGH HIS LRS. AND OTHERS

*(Rakesh Kumar Jain, J.)*

(55) Whereas, CRA No.D-202-DB of 2007, titled Karambir v. State of Haryana and CRA No. D-49-DB of 2007, titled Amardeep v. State of Haryana are allowed. The impugned judgment and order of sentence qua these appellants are set aside and they are acquitted of the charge framed against them by learned trial Court by according them benefit of doubt. They are ordered to be set at liberty in this case, if not required in any other case.

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