GAHC010228972016

2025:GAU-AS:8284-

DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./245/2016

MD JAMALUDDIN MAJUMDAR @ BUDUL MIAN
S/O HAJI SARAAFAT ALI, R/O VILL. KILLERBAK, P.S. KATILCHERRA, DIST. HAILAKANDI, PIN 788161, ASSAM.

VERSUS

THE C.B.I. and ANR
REPRESENTED BY THE STANDING COUNSEL

2:ANIL DEV
S/O LT. GURU PRASAD DEV
R/O RANGAPAR PART-I
P.S. KATLICHERRA
DIST. HAILAKANDI
PIN 788161
ASSAM

Advocate for the Petitioner : MR.S ISLAM, MR.A CHOUDHURY,MR.J U N M LASKAR,MR.A M BARBHUIYA,MS.M MEDHI,MS.F BEGUM,MR.P KATAKEY,MS.M KONCH

Advocate for the Respondent : MR.P N CHOUDHURY, ,,,,,SC, CBI,

CRL.A(J)/50/2017

RUPDHAN CHAKMA

VERSUS

C. B. I.

Advocate for : AMICUS CURIAE
Advocate for : appearing for C. B. I.

Crl.A./266/2016

SRI SAHADEB CHAKMA @ HURRHABA
S/O RAJENDRA
R/O VILL. MAHOBIL
P.S. MANU
DIST. DHALAI
STATE OF TRIPURA

VERSUS

THE C.B.I and ANR
REPRESENTED BY THE STANDING COUNSEL

2:ANIL DEV

S/O LT. GURU PRASAD DEV
R/O RANGAPAR
PART-I
P.S. KATLICHERRA
DIST. HAILAKANDI
ASSAM.

Advocate for : MS.M KONCH
Advocate for : MR.P N CHOUDHURY appearing for THE C.B.I and ANR

Crl.A./95/2017

SRI KHAGENDRA CHAKMA @ KHAGEN
S/O DEVRAJ CHAKMA
R/O VILL. BAICHERRA
P.S.KATLICHERRA
DIST. HAILAKANDI
ASSAM.

VERSUS

CENTRAL BUREAU OF INVESTIGATION and ANR

2:ANIL CH. DEB
S/O LT. GURU PRASAD DEV
R/O VILL. KATLICHERA
P.S. KATLICHERA
DIST. HAILAKANDI
ASSAM
PIN 788161

Advocate for : MR.G GORLOSA
Advocate for : MS. P DAS appearing for CENTRAL BUREAU OF INVESTIGATION and ANR

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MR. JUSTICE KAKHETO SEMA

For the Appellants : Shri P Katakey, Advocate
(Crl.A./245/2016);
Shri P Dutta, Advocate
(Crl.A./266/2016);
Shri D Nandi, Advocate
(Crl.A.(J)/50/2017) &
Shri S Borgohain, Advocate
(Crl.A./95/2017).

For the Respondent : Shri M Haloi, Special PP, CBI.

Dates of Hearing : 10.03.2025, 11.03.2025 &13.03.2025.

Date of Judgment : 20.06.2025.

Judgment & Order

SK Medhi, J.

All the four appeals arise from a common judgment and order dated 04.08.2016 passed in Sessions Case No. 227(K)/2006 by the learned Addl. Sessions Judge No. 1, Kamrup (M) at Guwahati. Since these appeals were heard together, those are being disposed of by this common judgment and order. The appeals have been preferred under Section 374 of the Cr.PC and by the impugned judgment, the appellants were convicted and sentenced to undergo life imprisonment for under Section 120(B) read with Section 364A of the IPC and also directed to pay a fine of Rs. 5000/-; to undergo life imprisonment under Sections 302/34 of the IPC, 8 years RI and a fine of Rs.5000/- for conviction under Sections 395/397 of the IPC, 7 years RI and a fine of Rs.5000/- for conviction under Sections 201/34 of the IPC and RI for 4 years and a fine of Rs. 5000/- for conviction under Sections 365/34 of the IPC.

2. The allegation involves kidnapping for ransom and causing the death of the one Pratul Chandra Dev.

3. The criminal law was set into motion by lodging of an *Ejahar* on 18.03.2004 by Anil Ch. Dev (PW2), brother of the deceased alleging *inter alia* that on the previous day at about 9 a.m., his elder brother Pratul Chandra Dev (deceased) along with his driver and clerk had left for Bhairavi in his vehicle and in between 11.30 a.m. to 12.00 noon, some Riang militants abducted them and left the vehicle by the side of the road. The case was, accordingly registered as Katlicherra PS Case No. 19/2004. However, as there was no substantial progress made in the investigation, a Public Interest Litigation (PIL) was filed by an NGO-Assam Enviro-Legal Protection Society for a direction for an investigation by the Central Bureau of Investigation (hereinafter CBI) in the aforesaid case. This Court had passed an order dated 12.04.2005 allowing such

CBI investigation and accordingly, the investigation was taken over by the CBI vide RC.3/S/05-Kol. The investigation was, accordingly made leading to laying of the charge sheet. It may be mentioned that so far as the appellant-Jamaluddin @ Budul Mian is concerned, he was not charged in the initial Charge Sheet which was filed on 24.11.2005. However, in the Supplementary Charge Sheet filed, his name was included. The learned Addl. Sessions Judge, Kamrup, accordingly framed the charges under Sections 120B, 364A and 302 of the IPC and the trial had commenced. The charges being denied, the trial has started in which, 37 nos. of PWs were examined.

4. PW1 is one Jalal Uddin Mazumdar, who was a member of a political party, Bharatiya Janata Party (BJP) and also of the Gaon Panchayat. He deposed that the deceased had returned from London and expressed his desire to join BJP in the year 2000 and hence came in contact with him. He had also contested election as a BJP candidate in 2001 which he lost and thereafter, started bamboo business in Mizoram. PW1 was also associated with the deceased in the said business. On 17.03.2004, the deceased, accompanied by PW1, had gone to Bhairavi. While crossing Ramnathpur, the vehicle was intercepted by two gunmen. Shortly afterward, some more individuals came and surrounded the vehicle, and two youths in a motor cycle were instructed to sit in the vehicle. The vehicle was taken by a kutcha road and after travelling about 3 kilometres, they stopped it. The passengers were forced to alight and were made to move towards the jungle. The deceased had become senseless and after regaining sense was again compelled to move ahead. However, the deceased being unable to proceed further was asked by the gunmen to remove his gold ornaments. They were made to sit there for the rest of the day and a sum of Rs. 50 lakhs was demanded from the deceased for his release which came down to Rs. 40 lakhs and the deceased had agreed to pay Rs. 2 lakhs. The miscreants took away gold ring, gold chain and cash from the deceased. PW1 and the driver (Munia Lohar) were allowed to leave and the matter was informed to Shri Sushil Dev, brother of the deceased and thereafter, to

the Jamila Police Station. After a few days, the wife and daughter of the deceased came from London. In the meantime, connection was tried to be made for payment of the ransom. In one such visit, PW1 could recognize the *chappal* imprint of the deceased. Ultimately, the ransom was informed to be collected from Devdoot Cinema Hall and at this point, PW1 could identify two boys and the ransom was settled at Rs. 5 lakhs. The first installment was paid, followed by the second installment, after which the deceased was supposed to be released near the railway line on the following date. However, he was not released and no further information was received. Thereafter, the matter was taken over by the CBI and PW1 was asked to identify the miscreants and he could identify five of the accused who took part in the kidnapping who are – i) Shri Krishna Madhab Chakma, ii) Shri Sahadev Chakma @ Hurhaba, iii) Shri Sahadev Chakma @ Master, iv) Shri Kalapuna Chakma, v) Shri Rupdhan Chakma. He also identified the accused Sahadev Chakma @ Hurhaba and Krishna Madhab Chakma, who had collected money at the Cinema Hall. He had also identified two gold rings with red stones, one gold ring with off-white stone and one gold ring with a bigger red stone surrounded by smaller white stones of the deceased which were exhibited as Mat. Exts.-1, 2, 3 and 4. The identification memos were proved as Exts.-1 and 2.

This witness was cross-examined and he had identified accused Krishna Madhab Chakma and Sahadev @ Hurhaba Chakma in the dock. He, however, clarified that he did not have any talk with the miscreants over phone.

5. PW2-Anil Dev is the younger brother of the deceased who had deposed that the deceased was settled in London and used to visit his native town every two to three years. His last visit before the incident was in the year 2000 during which, he had joined a political party and contested the Assembly Election from Katlicherra Constituency but had lost. Thereafter, he returned from London in the year 2002 and started bamboo business and acquired 6 nos. of Bamboo Mahals at Mizoram in which, he had incurred losses. Thereafter, he again worked in two Bamboo Mahals and on

this occasion, his businesses were running well. On 17.03.2004, he saw the deceased leaving the house accompanied by Munia Lohar and Manager, Jalal Uddin and they were leaving for Bhairavi. On that evening, he got the information from the police to attend the police station and on going there, Sattar Ali, a clerk had given him the news of the abduction of the deceased. The vehicle was found abandoned and a search was made. On the next day, Jalal Uddin informed that there was a demand of Rs.50 lakhs. The amount was negotiated and reduced to Rs. 5 lakhs which was to be given in two installments. The first installment of Rs. 2.5 lakhs was paid by Sudip and the abductors had assured that after payment of the balance amount, the deceased would be released. However, the balance amount could not be paid due to certain communication gap. On 18.03.2004, he had lodged the FIR which was proved as Ext.-3. The said witness had also proved certain material exhibits, including golden colour rings, blue colour ball pen and certain apparels etc. The said PW2 was cross-examined.

6. PW3, Shri Sudip Dev, is a nephew of the deceased. He narrated that on hearing the news of the abduction of his uncle, he along with few others had gone to the Katlicherra PS and gave the information. On the next day, he received a phone call from Jalal Uddin (PW1) regarding the release of himself and Munia Lohar. Later, they had narrated the entire event of the abduction. He, however, stated that the there was a demand of Rs. 40 lakhs out of which, Rs. 2 lakhs was arranged for payment. PW3 subsequently narrated that the demand was Rs. 5 lakhs out of which, Rs. 2.5 lakhs was paid and the balance was to be paid after release of his uncle. He had identified the appellant Sahadev Chakma @ Hurhaba and Krishna Madhav Chakma, whom the said amount was paid. He had also narrated of joining the CBI investigation from time to time in which, he was a witness to the inquest of the skeleton remains and other articles which were proved. He also claims that recovery memos were prepared at the instance of the accused persons which he had proved. He had also identified the

material exhibits, including the golden rings, and wearing apparels. In the cross-examination, he had reiterated that he could identify the rings belonging to his uncle.

7. PW4-Santosh Lohar @ Munia Lohar had deposed that at the relevant time, he was working as a Driver of the deceased who had bamboo business and in connection thereof, he used to go to Bhairavi and Aizawl. On 17.03.2004, when they were going towards Bhairavi, they were intercepted by 2 persons with guns whereafter, 5 to 6 other persons had surrounded the vehicle and also assaulted him. Thereafter, they had moved about 2-2½ kms and thereafter were made to alight from the vehicle and taken on foot towards the hill side wherein they were made to wait till night. The miscreants had demanded an amount of Rs. 50 lakhs which was conveyed to PW1. They also assaulted the deceased and thereafter had released PW4 and PW1 along with two other boys who had come in a motorcycle. However, they had also taken away the deceased. On his return, PW4 narrated the incident to the staff of the deceased and later, had gone to the Jamila Police Post where Sushil Dev, Sudip Dev and Anil Dev and other persons were already there. Thereafter, he was involved in the process of arrangement of money which was to be paid to the abductors. He had also identified the two persons who were to collect the money near Devdoot Cinema Hall as being those persons who had taken them to the jungle. Thereafter, PW3 had handed over a bundle containing Rs.2.5 lakhs which was the first installment. He had also stated about the payment of the second installment and on the next date, the deceased was to be released which was not done and the deceased could not be traced out. He had come to know from CBI later that the deceased was killed, and was called by the CBI to record his statement. He had identified Sahadev Chakma @ Master, Sahadev Chakma @ Hurhaba, Kalapuna Chakma, Rupdhan Chakma and Krishna Madhav Chakma in the dock. He had also identified two accused, namely, Krishna Madhav Chakma and Sahadev Chakma @ Hurhaba being the boys who had come to Devdoot Cinema to collect the first installment whom he did not see prior to

the abduction.

8. PW4 was cross-examined wherein, he was asked about the colour of the T-shirt worn by the deceased. He had, however, admitted that his statement recorded by the CBI was not read over to him. He further stated that he did not remember the date when the first installment was made and though policemen were present in plain clothes, no attempt was made to nab them. He had also stated that he did not remember whether he had put his signature in the Test Investigation Parade (hereinafter TIP) report for which, he was called for and 40-50 persons were lined up.

9. PW5-Md. Ataur Rahman Laskar is the person who was coming in the motorcycle with a pillion rider on the fateful day i.e. 17.03.2004 and had met the accused and his companions who were accosted. He had deposed that when they had reached near Bhaichera, they saw a Jeep and some persons in Army uniforms, leading them to believe a routine check was being conducted. They were forced to enter the vehicle in which, there were three persons and he could identify the deceased and Jalal Uddin. They were taken by the Jeep towards the jungle whereafter, they were taken on foot as the vehicle could not move further. He had identified Sahadev Chakma @ Master, Krishna Madhav Chakma, Kalapuna Chakma and Rupdhan Chakma in the dock by stating that they had done the abduction. He was having doubt with regard to Khagen Chakma. He also narrated about demand of ransom of Rs. 40 lakhs for release. The accused had also demanded money from them and he had given Rs. 1000/-. Later, he along with three others was released near the railway line. He had stated that about 1 to 1½ years back, he had identified the accused persons in the TIP.

The said PW5 was cross-examined wherein, he had reiterated that prior to the identification of the accused persons in jail, he had no occasion to see them. However, he was not served with any summons to attend the jail for identification in which, there were 30 to 40 people.

10. PW6, Ajal Dutta, is a mechanic in the Telephone Exchange at Hailakandi. He was witness to the disclosure memos *qua* Sahadev Chakma, which he had proved. He was also witness to various seizures. In his cross-examination, however, he had stated that he never knew the deceased and never seen him. He stood by his version regarding he being a witness to the seizures.

11. PW7, Shri Laxman Malakar, is also an employee of the Telephone Exchange at Hailakandi. Like PW6, PW7 was also witness to the disclosure memos, seizure list etc. In the cross-examination, he had, however deposed of not remembering in detail the description of the golden rings and regarding its recovery.

12. PW8, Ramen Chandra Malakar, was an Election Officer and at the time of the investigation, was working as Block Development Officer, Lala Development Block. He had deposed of accompanying the CBI officials during the recovery of various items, including bones, skulls, chappals, wearing apparels, and a pacemaker. He prepared the Inquest Report. The chappals and pant were identified by Sudip Dev (PW3). In his cross-examination, he had stated that the human remains were found scattered across an area of approximately hundred metres.

13. PW9, Mahmud Ahmed, was the Addl. Chief Judicial Magistrate, Hailakandi, who had recorded the confessional statements of Krishna Madhav Chakma and Sahadev Chakma @ Hurhaba. He deposed about giving them adequate time for reflection and had cautioned them. He had proved the confessions. Thereafter, the Chief Judicial Magistrate had passed the order dated 25.10.2005 for recording the confessional statements of Khagendra Chakma @ Khagen and Ranjit Chakma, who were produced on the same date. The said two accused were produced at 10 a.m. on 26.10.2005 by one AB Constable and the same procedure was adopted. He had also narrated about

conducting TIP on 09.10.2005 and deposed that the same was held in accordance with law. The memorandum of TIP was proved.

14. PW10 is Shri Deepak Bhuyan, who was, at the relevant time, Extra Assistant Commissioner (EAC), Hailakandi. He was involved in conducting the identification proceeding of the articles seized by the CBI and had proved the seizures. The said identification was, however done in the CBI camp.

15. PW11 is Jyanta Kumar Das, who, at the relevant time, was posted as Munsiff No. 1. He had recorded the confessional statements of Rupdhan Chakma and Batibura Chakma by following the due procedure. The confessional statements have been proved by him.

16. PW12 is Neelam Prasad Yadav, who was working in the DC Office, Cachar. On the instruction of Deputy Commissioner, he had attended the temporary camp of the CBI at Hailakandi and had proved the disclosure statements of Sahadev Chakma @ Hurhaba and Krishna Madhab Chakma. He had also accompanied the team which had recovered the remains of the skeleton belong to the deceased. In his cross-examination, he had, however stated that two skulls were recovered and all the articles were found within a radius of 3 feet.

17. PW13 is one Ashit Dev, who was working as a Patowari in the Circle Office, Katlicherra. He had deposed that on the instruction of the Deputy Commissioner, he along with Neelam Prasad Yadav (PW12) had gone to the CBI camp on 03.09.2005. He had proved the disclosure statement of Sahadev Chakma @ Hurhaba and Krishna Madhav Chakma. Thereafter, he had accompanied the team to the jungle when the recovery was made and he is witness to the recovery memo. Later, on 11.09.2005, as per the direction of the Deputy Commissioner, he had gone to the CBI camp wherein,

two persons were present with their face muffled. He could know their names to be Kalapuna Chakma and Sahadev Chakma @ Master and at their instance, two rifles were recovered by digging on a particular location and one rifle was in a broken condition. In his cross-examination, he had, however stated that he did not know whether the bones recovered were human bones and it is the CBI official who had told him that the machine found was a pacemaker.

18. PW14 is Md. Sarif Ali Laskar, who had worked with the deceased for two months and used to keep accounts of the bamboo business. He deposed that though the CBI had recorded his statement, he did not remember the same. At that stage, he was declared hostile and was cross-examined by the prosecution. He had denied of stating before the CBI that the deceased had told him that accused Budul Mian is a man of low grade. It may be mentioned that while recording the deposition, the learned Trial Court had also indicated that such a statement was also made under Section 164 of the Cr.PC. He had also denied that any quarrel had taken place between Budul Mian and the deceased regarding bamboo business.

19. PW15 is one Akbar Hussain, who had worked under Budul Mian. He had deposed that on the instruction of the deceased, his Munib had stopped the bamboo to take royalty and had explained that if the bamboos are from Mizoram, royalty is to be paid. This witness was also declared hostile and was cross-examined by the prosecution. He had, however, denied a suggestion that there was a quarrel between Budul Mian and the deceased.

20. PW16 is Dr. Subrata Dey, who was posted as Medical & Health Officer at Katlicherra and is a witness to the recovery memorandum under Section 27 of the Indian Evidence Act. He has described the journey to the place where two different skeletons and other materials were discovered. He had also verified the packets and

seals which were shown to him. In his cross-examination, he had denied the suggestion that he was not present at the spot at the time of preparation of the recovery memo.

21. PW17 is Smt. Sukhla Rani Nath who is the younger sister of Sadhan Nath, who deposed that he had disappeared 3 to 4 years earlier when he had gone for work. Later, she was called by the CBI and were shown some articles, out of which, she could identify Ext.-16 being the shirt of Sadhan Nath, Ext.-17 – pant, one pocket comb, shoes and socks. Such identification was also done by her mother. In her cross-examination, she has stated that she did not know whether her brother was accompanied by any other person.

22. PW18 is one Monilal Rai who used to work under the deceased as receiver of bamboos for about a year at a monthly salary. He was informed about the abduction of the deceased by miscreants. He had implicated accused Batibura having called him to the other side of the river and on going there on a boat, he had seen some armed man. He had pointed out to Batibura in the dock. He had come to know after a year that CBI had taken over the inquiry and skeleton was recovered. In his cross-examination, he had stated that Jasim used to know Batibura.

23. PW19 is one Chandan Nath, who was working as Branch Postmaster and was a cousin of deceased Sadhan Nath. He was present when one doctor took blood sample from Smt. Santibala Nath, who was the mother of the deceased, Sadhan Nath.

24. PW20 is one Swapan Kumar Baruah, who was doing hardware business at Sellenga Bazar and had purchased one golden ring from Kalijoy Chakma at Rs. 1000/- which was recorded in his accounts book and the same was proved as Ext.-11. He had also purchased one golden ring from Guraband Chakma at Rs.600/- which was also

recorded in the account book. The rings were seized by the CBI on 09.09.2005. As regards to the golden chain sold to him by Sahadev Chakma, the same was taken back by his wife. He had identified Sahadev Chakma and is a witness to the seizure memo, as well as the material exhibits.

In his cross-examination, he had admitted that he did not put his signatures on the accounts book on the date of seizure and at that time, 10 to 12 persons were present. On re-examination, he had identified Gunaband @ Kalapuna Chakma. In the cross-examination, however, he had stated that he had never seen the accused before and after the date of purchase and had seen them for the first time in the Court.

25. PW21 is Smt. Razkumari Chakma who had deposed that Rupdhan Chakma had sold her a gold ring with white stone at Rs. 1000/- which was seized by the CBI, and she is a witness. She had, however, stated that Mat. Ext.-1 is the golden ring with red stone which she had earlier stated to be white. She identified accused Rupdhan Chakma. In her cross-examination, however, she had stated that she had never seen the accused Rupdhan Chakma before and after the date of purchase and had seen them for the first time in the Court.

26. PW22 is one Abhijit Dey, who was serving as Senior Scientific Officer of Central Forensic Scientific Laboratory, CBI, New Delhi and had examined two sealed parcels with a questionnaire. He found one wooden made toy gun in parcel one and wooden made body portion, hollow pipe pieces, wooden magazine of the toy gun and one small metallic stick. He had opined that none of the material exhibits qualified as firearms under the provisions of the Arms Act, 1959.

27. PW23 is Dr. BK Mahapatra, who was serving as Senior Scientific Officer of Central Forensic Scientific Laboratory, CBI, New Delhi. He had come to Hailakandi for the purpose of collecting evidence and had accompanied the CBI personnel and others

to the location in the hills and proceeded some part of the journey on foot. They were also accompanied by two accused whose faces were covered. They found scattered bones and wearing apparels which were subsequently seized and he is a witness to this. Later, on 08.09.2005, one Detective Superintendent from the United Kingdom had produced blood sample of Smt. Shibani Deb.

28. PW24 is one Sumanta Das, who was taken by the CBI personnel to Bharabi to carry their luggage and with them, two muffled face Chakma people went with them and led them to the deep forest. They have dug and recovered two rifles, one long and one short and PW24 was a witness to the seizure as well as the disclosure memos. In his cross-examination, however he clarified that he could not say whether the muffled men were Chakma people. He has also submitted that the picture of the rifle was not drawn in his presence.

29. PW25 is Lalkhamuna Pachowa, who was serving as a Forest Officer and the CBI had made certain queries to him regarding tenders of bamboo. He had stated that the deceased was settled with bamboo Mahal. It may be mentioned that his evidence was deferred due to non-availability of documents. In any case, the said witness does not appear to be of much relevance.

30. PW26 is Dr. TD Dogra, who was posted as Head of Forensic Science, AIIMS and had done the autopsy on the skeletal remains. He had received an inventory consisting of 12 exhibits. He had also taken the blood sample of Ms. Shibani Deb and had deposed that he had received a letter from the CBI to collect the Blood sample of Ms. Sipra Deb. He had deposed that the details of the Pacemaker of the deceased dated 06.09.2005 provided by the CBI matched with the number of the Pacemaker submitted.

31. PW27 is Dr. Jatin Kalga, who was working as a Senior Consultant in the Department of Dental Surgery, AIIMS and was a member of the autopsy team. The dental record of the deceased was proved by him and the comparative test reports were provided which was said to be belonging to the deceased.

32. PW28 is Dr. Kamal Chouhan, who was working as a Laboratory Assistant, CFSL, CBI, Delhi, who had accompanied the CBI personnel and two accused persons, namely, Sahadev Chakma and Krishna Madhab Chakma with some porters. They had recovered some human remain of bones, clothing, pacemaker etc. and the disclosure memo was proved. In the cross-examination, he had, however stated that the recovered items were packed and sealed in his presence and he reiterated his stand taken in the chief examination.

33. PW29 is one Suker Ali Laskar, a daily wager, who used to work with accused Khagendra Chakma for some time and after a quarrel had discontinued. He deposed that appellants, Budul and Khagendra knew each other as they were in the same line of business. No other substantial implications were made and this witness was also declared hostile. In the cross-examination, he had denied of making any statement to the CBI and had further stated that during that time, he was beaten up. The said witness was also re-examined where, he had stated that regarding his beating up by police, he did not file any complaint.

34. PW30 is one Kevin Morton, who was posted as a Scientific Support Manager, South Yorkshire Police and was forwarded one femur bone and three teeth sample said to be of the deceased by the CBI. However, one femur bone said to be of Sadhan Nath was packed and sealed along with an envelope containing blood sample of Santibala Nath, mother of Sadhan Nath. He was also asked to arrange DNA extraction to be analysed and be sent to CBI. He had accordingly handed over the items which

were proved. The blood samples were, however said to be collected from Shibani Deb and another sample of Smti. Santibala Nath. After cross-examination of the said witness, he was re-examined wherein the aspect of entry in the pocket book was proved.

35. PW31 is one Bobby Deb, who was the Police Liaison Officer, South Yorkshire Police and was associated in the investigation of the present case. He had knowledge about the DNA analysis done by Dr. Timothy and had proved the statement made in that regard.

36. PW32 is one Dr. Timothy Marc Cleton who was a Senior Forensic Scientist in the Wellesley Laboratory. He was handed over certain items by Detective Kevin Morton for DNA profiling which was accordingly done. In the cross-examination, he had stated that he was told that the bones belonged to Pratul Deb and Sadhan Nath. He stated that the DNA collected was low in quantity and in poor condition.

37. PW33 was working as a Deputy Superintendent, CBI-ACB, Guwahati, who had deposed that while he was working at Delhi, on 16.09.2005, on the request of the wife and daughter of the deceased, he had handed over four packets of human skeletal remains which were subjected to autopsy examination by the AIIMS. The said packets were sealed. He had proved the document of handing over. In his cross-examination, however, he had admitted that there was no order of the Court for handing over the skeletal remains. The written request made for the same was not seen in the Court.

38. PW34-Bidhan Chandra Roy was working as a phone mechanic in the BSNL, Hailakandi and he is a witness in the identification memo pertaining to a gold ring belonging to the deceased. The identification was done by Anil Deb, Jalal Uddin

Mazumdar and Sudip Deb and those were recovered at the instance of Sahadev Chakma @ Master and Kalapuna Chakma @ Gunaband. He is also a witness to the identification of Mat. Ext.-6, pertaining to a blue colour dot pen; Mat. Ext.-7, pertaining to a brown colour leather purse; Mat. Ext.-8, a T-shirt; Mat. Ext.-9, black trouser and black belt; Mat. Ext.-18, light brown colour socks; Mat. Ext.-10, black socks which were identified by Anil Deb and Sudip Deb. He is also a witness to few other materials which were identified. He had also deposed of being a witness to the disclosure made by Sahadev Chakma @ Master regarding the recovery of the rings as well as such disclosure statement of Kalapuna Chakma @ Gunaband. In his cross-examination, PW34 stated that he did not remember the date when he had accompanied the CBI team which included two persons with their faces covered. He had, however stated he could not identify Kalapuna Chakma and Sahadev Chakma @ Master.

39. PW35 is one Shiva Kumar Mishra, who was posted as Inspector, CBI, Special Crime. He was entrusted with the investigation of this case. He had deposed that initially, the FIR was registered as SCB, Kolkata. Prior to that, FIR No. 19/2004 was registered in the Katlicherra PS and the matter was entrusted to the CBI in accordance with the direction of the Gauhati High Court in PIL/48/2004. He had, accordingly done the investigation wherein, he had recovered the dead body of Pratul Chandra Deb and one Sadhan Nath and had prepared an inventory. He had recorded disclosure statements of Sahadev Chakma and recovered the golden ring and golden chain worn by the deceased. He had also recorded the disclosure statement of Krishna Madhab Sarma (*sic*) and made further recovery of one more gold ring. He had also collected blood sample of Smti. Santibala Nath, mother of Sadhan Nath and took the assistance of Dr. TD Dogra, AIIMS and of the South Yorkshire Forensic Service. He had also conducted TIP parade and accordingly, charge sheet was laid which was proved as Ext.-168. He had stated that there were two deceased in this case and both were killed by way of strangulation by bamboo rope and the same was done by eight

accused persons who were charge sheeted. He had also deposed that all the accused persons had confessed their guilt before the Judicial Magistrate, Hailakandi. In his cross-examination, he had stated that the skeletal and other articles were recovered in his presence and recovery memo was prepared at the spot and thereafter, those were handed over to the CFSL/CBI Officers, who had accompanied. He had, however stated that Sipra Deb did not implicate the present accused persons and made allegation against some other persons. He had further stated that he did not get any information regarding business rivalry and therefore, did not investigate in that aspect and further stated that the accused did not have any rivalry with the deceased.

40. PW36-Md. Abdul Motib Talukdar is a police personnel who was at the relevant time, posted at Jamila Police Petrol Post and had received a telephonic information that a motor cycle was lying by the side of NH-45. He had accordingly made a GD entry and met the informant who was the Village Headman. He had recorded statements of certain persons who testified noticing the Jeep of the deceased lying stranded inside the jungle. He had accordingly gone to the place of occurrence with other police men and found the Jeep in the jungle with two bags. Subsequently, Anil Chandra Deb had lodged the *Ejahar* and he was entrusted to do the investigation which he had done till 06.08.2004 and thereafter handed over to another SI, Rabindra Sinha. Thereafter, the investigation was handed over to the CBI.

41. PW37 is one Vijay Kumar, who was a retired CBI personnel and at the relevant time, was posted in the Crime Branch, New Delhi. He was associated with the investigation with the case along with Shri SK Mishra (PW35). He had identified the signatures of SK Mishra and was associated with filing of the supplementary charge sheet on 20.01.2006 against Jamaluddin Mazumdar @ Budul Mian.

42. The accusations made against the appellants by the aforesaid PWs were put to

the appellants in their examination under Section 313 of the Cr.PC which, they had denied. The disclosure statements as well as the confessional statements were retracted. No defence witness was, however opted to be produced.

43. Based on the aforesaid materials, the impugned judgment has been passed which is the subject matter of challenge in these appeals.

44. We have heard Shri P Katakey, Shri P Dutta, Shri D Nandi and Shri S Borgohain, learned counsel for the appellants in these four appeals. We have also heard Shri M Haloi, learned Special Public Prosecutor, CBI.

Contentions advanced on behalf of appellant in Crl.A./245/2016.

45. Shri P Kataki, learned counsel for the appellant, Md. Jamaluddin Mazumdar @ Budul Mian has submitted that in the initial charge sheet dated 24.11.2005, the appellant was not even named. Later on, supplementary charge sheet was filed leading to framing of charges on 21.05.2007. He has also submitted that subsequently, another order was passed on 03.12.2015 for framing of charges as the earlier charges were not found in the records.

46. He has submitted that so far as the witnesses, PW14, PW15 and PW29 are concerned, they were declared to be hostile. As regards the accused appellant-Khagendra Chakma (A-7) and Ranjit Chakma (A-8) are concerned, both the aforesaid accused persons had retracted such confession in their statements made under Section 313 of the Cr.PC. He has also drawn the attention of this Court to page 479 of Part-I, Vol.II of the Paper Book to contend that accused Ranjit Chakma was severely beaten by the CBI officials. He has also drawn the attention of the relevant questions put to the aforesaid two accused persons.

47. Shri Kataki, learned counsel has submitted that apart from the confessional statement of the co-accused, Khagendra Chakma (A-7) and Ranjit Chakma (A-8), there is no other material on record to establish any complicity of his client with the offence involved. He has submitted that the evidence of an accomplice would be relevant only when the same is corroborated by other evidence on record. In this connection, he has placed reliance upon the case of ***Haricharan Kurmi & Anr. Vs. State of Bihar***, reported in **AIR 1964 SC 1184**. He accordingly submits that the impugned judgment *qua* his client is unsustainable in law and liable to be set aside. He further informs that his client is on bail which was granted by this Court.

Contentions advanced on behalf of appellant in Crl.A./266/2016.

48. Shri P Dutta, learned counsel for the appellant, Sahadev Chakma @ Hurrhaba has submitted, at the outset that his client was arrested on 29.08.2005 and has been in custody since the last 19 years. He has further submitted that his client has been implicated mainly on the basis of recovery of certain articles and disclosure statement allegedly made by him. He submits that as per the version of PW7, who is an employee of the telephone exchange, he had accompanied the CBI team and had proved the disclosure statement of his client as Ext.-8 and of accused Krishna Madhab Chakma as Ext.15. He has, however submitted that no golden articles were recovered and only one register "*Bohikhata*" was recovered and from certain entries made in the same, his client has been convicted.

49. He has also submitted that certain inference has been made from the TIP held on 09.10.2005. He submits that such identification would be wholly irrelevant, inasmuch as his client was regularly appearing in the Court and therefore, the TIP memo is required to be discarded.

50. He has also questioned the very foundation of the proceedings by submitting that there exists no credible material to establish a connection between the recovered skeletal remains and Ms. Sipra Deb's claim that those belong to her deceased father. In this connection, he has drawn the attention of this Court to the deposition of PW23, Dr. BK Mahapatra, Senior Scientific Officer, CBI, who had narrated that he had taken the blood samples of the wife of the deceased. He has drawn the attention of this Court to pages 346 and 354 of the Paper Book and has submitted that though a request was made by the CBI to collect blood samples from both Ms. Sipra Deb (daughter) and Ms. Shibani Deb (wife), it was only the wife, Shibani Dev, who had given the blood samples. However, the Forensic Science Service, UK had given a report to show a connection with Sipra Deb which is a perverse in its nature. He has submitted that there are no materials to show the connection between Sipra Deb to be the daughter of the deceased. He has also drawn the attention of the deposition of Dr. TD Dogra, PW26, Head of Department, Forensic Science, CBI who had deposed that no positive findings could be given on the skeletal remains recovered.

51. The learned counsel for the appellant has further drawn the attention of the Court to the production memo from South Yorkshire, UK to the CBI and has contended that in the DNA profiling, it was observed that the same was highly degraded and no opinion could be given. He has also referred to the autopsy report wherein no cause of death could be given. As regards the recovery of the pacemaker, Shri Dutta, learned counsel has submitted that there is no mention of any model number, in absence of which, such pacemaker cannot be linked to the deceased.

52. As regards the confessional statement made by his client, he has submitted that such statement is wholly unacceptable as evidence. Apart from the retraction of the same in his statement under Section 313 of the Cr.PC, the alleged confessional

statement did not mention the date of occurrence, the place of occurrence, or even any statement leading to discovery.

53. In support of his submissions, he has relied upon the case of ***Union of India Vs. V. Sriharan @ Murugan & Ors.***, reported in **(2016) 7 SCC 1**. He has also referred to Section 57 of the IPC and has submitted that fraction of terms may be considered while imposing the penalty of life imprisonment. Reliance has also been placed upon the cases of ***Ravinder Singh Vs. The State Govt. of NCT of Delhi***, **[2023] 4 SCR 480** and ***Shiva Kumar @ Shiva @ Shivamurthy Vs. State of Karnataka***, **[2023] 4 SCR 669**.

54. In the case of ***Ravinder Singh*** (*supra*), the following observations have been pressed into service:

> "*14. Significantly, both Gouri Shankar (supra) and Shiva Kumar (supra) were cases wherein the Trial Court could have imposed a death sentence had the circumstances warranted it, as those cases arose under Section 302 IPC. The question would then arise as to whether the power to pass a modified sentence of life imprisonment would be available to the High Courts and this Court even in cases where the law does not prescribe the death sentence as one of the punishments and limits the maximum punishment to imprisonment for life with nothing further, as in the case on hand. In this context, we may note that the observations made in Swamy Shraddananda (supra) and V. Sriharan (supra) clearly indicate the existence of such power, though the Court stopped short of declaring so and linked the special category sentences passed in those cases to substitution for a death sentence. As pointed out in Swamy Shraddananda (supra), the Court would take recourse to the expanded option primarily because the life sentence of 14 years imprisonment may amount to no imprisonment at all in a given*

case. This observation is wide enough to take within its ambit all sentences of life imprisonment. Similarly, in V. Sriharan (supra), the majority opinion noted that there is no prohibition in the Penal Code, where death penalty or life imprisonment is provided for, that imprisonment cannot be imposed for a specified period within the said life span and when life imprisonment means the whole life span of the convict, the Court which is empowered to impose the said punishment would also have the power to specify the period up to which the said sentence of life should remain, befitting the nature of crime. Again, this edict would hold good for all sentences of life imprisonment. No doubt, the majority opinion also linked it to capital punishment, by observing that such special category of sentences could be substituted for death. More recently, in Shiva Kumar (supra), this Court affirmed that even in a case where capital punishment is not 'proposed', Constitutional Courts would have the power to impose a modified or fixed-term sentence.

15. The above observations manifest the applicability of the same principle in cases where the maximum punishment prescribed by law is imprisonment for life with nothing further. Even in such cases, it would be a parody of justice to allow the convicts so sentenced to avail the benefit of remissions and the like, liberally conferred by the State, and cut short the length of their life sentence to a mere 14 years. We are, therefore, of the considered opinion that the law laid down in Swamy Shraddananda (supra) and V. Sriharan (supra) with regard to special category sentencing to life imprisonment in excess of 14 years by fixing a lengthier term would be available to the High Courts and this Court, even in cases where the maximum punishment, permissible in law and duly imposed, is life imprisonment with nothing further. We must, however, hasten to add that exercise of such power must be restricted to grave cases, where allowing the convict sentenced to life imprisonment to seek release after a 14-year-term would tantamount to trivializing the very punishment imposed on such convict. Needless to state,

cogent reasons have to be recorded for exercising such power on the facts of a given case and such power must not be exercised casually or for the mere asking."

55. The case of ***Shiva Kumar @ Shiva @ Shivamurthy*** (*supra*) has been cited in support of the submission that a Constitutional Court can exercise powers of imposing a modified or fixed term sentence.

Contentions advanced on behalf of appellant in Crl.A.(J)/50/2017.

56. Shri D Nandi, learned counsel for the appellant-Rupdhan Chakma has clarified, at the outset that though the appeal was initially registered as jail appeal, subsequently, he was engaged. He has submitted that in the instant case, there would be no application of Section 364A of the IPC. He has submitted that from the materials on record, it appears that his client did not lead to any discovery. He has reiterated the contention advanced by the learned counsel for the other appellants that there was no match of the DNA. Coming to the aspect of the confession of his client he has submitted that the pertinent question regarding the tutoring part was absent and in any case in his statement under Section 313 of Cr.PC, the appellant had retracted from his confession. Specific reference has been made to Q. No. 384 to which, he had responded that the confession was made out of fear and against Q. No. 385, he had retracted the confession. Against Q. No. 390, his client had responded that he did not make any disclosure statement.

57. By referring to the deposition of PW7-Lakshman Malakar, Shri Nandi, learned counsel has submitted that the said PW7 had clearly deposed that he had not accompanied the investigating team for the recovery of the rings and yet, he stated that he was present. He submits that it is only the ring by which, his client is sought to

be implicated in the offence involved. He has also raised serious objections to the manner by which PW3-Sudip Deb had identified the rings. He has also reiterated that the pacemaker sought to be recovered did not contain the serial number of the model and therefore, could not have been related to the deceased. He has also submitted that the persons who were produced as witnesses were all interested persons and the relevant witnesses were not examined.

58. On the submission that Section 364A of the IPC is not applicable to his client, the learned counsel, Shri Nandi has relied upon the case of ***Neeraj Sharma Vs. State of Chhattisgarh***, reported in **AIR Online 2024 SC 12**. He submits that PW1, PW4 and PW5 were with the deceased and his client was allegedly identified by the said PW1, PW4 and PW5. He submits that the three conditions laid down in Section 364A of the IPC are not fulfilled in the instant case.

59. The case of ***Neeraj Sharma*** (*supra*) deals with Section 364A of the IPC and by referring to an earlier case, the following observations have been made:

> "*14. This court in the case of Shaik Ahmed v. State of Telangana (2021) 9 SCC 59 has held that in order to make out an offence under Section 364 A, three conditions must be met:*
>
> *A) There should be a kidnapping or abduction of a person or a person is to be kept in detention after such kidnapping or abduction;*
>
> *B) There is a threat to cause death or hurt to such a person or the accused by their conduct give rise to a reasonable apprehension that such person may be put to death or hurt*
>
> *C) Or cause death or hurt to such a person in order to compel the Government or any foreign state or intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom.*

The necessary ingredients which the prosecution must prove, beyond a reasonable doubt, before the Court are not only an act of kidnapping or abduction but thereafter the demand of ransom, coupled with the threat to life of a person who has been kidnapped or abducted, must be there. It was reiterated by this Court in the case of Ravi Dhingra v. State of Haryana (2023) 6 SCC 76.

15. For making out a case under Section 364-A, the first condition i.e., kidnapping or abduction must be coupled with either the second or the third condition as held by this Court in Shaik Ahmed (supra) [Para 33 induces,]. Under the said provision, the accused is liable to be punished either by death or imprisonment for life and is also liable to be fined considering the gravity of the offence. In the present case, even if it is presumed for the sake of argument that an offence under Section 364 is made out, we do not find that the offence would come under the ambit of Section 364A.

… ”

Contentions advanced on behalf of appellant in Crl.A./95/2017.

60. Shri S Borgohain, learned counsel for the appellant-Khagendra Chakma @ Khagen, has submitted that in the *Ejahar* dated 18.03.2004, his client was not implicated. Though the CBI had registered another FIR on 20.04.2005 and had also exhibited the same as Ext.-167, the said Ext.-167 is a different document and therefore, the same is hit by Section 162 of the Cr.PC. He has also submitted that the arrest memo pertaining to his client was neither proved nor brought on record. Further, the charge sheet was not exhibited. He has submitted that though his client has allegedly made a confessional statement, the same is an exculpatory one and therefore, would not be relevant.

61. Coming to the evidence adduced by the prosecution, Shri Borgohain, learned counsel has submitted that PW1, PW2, PW3, PW4 and PW5 did not implicate his client and had also negated his confessional statement. He has highlighted amongst them, PW1, PW4 and PW5 are the so-called eye-witnesses and victims. He has also submitted that so far as PW35 is concerned, the so-called disclosure statement was not proved. He submits that as a matter of fact, none of the disclosure statements made by the other accused persons were also proved in accordance with law. He has submitted that in the examination of his client under Section 313 of the Cr.PC, material questions based on the evidence were not framed whereas certain questions were framed which were not based on the evidence on record. He has cited for instance, Q. No. 275 put to his client.

62. As regards the TIP held on 07.10.2005, it is submitted that the PW3 had not identified his client and even in the dock, his client could not be identified. He has submitted that apart from the alleged confession which is also retracted, there are no other materials to implicate his client and accordingly, the impugned conviction and sentence is unsustainable in law and liable to be set aside. In support of his submissions, the learned counsel has relied upon the following case laws:

i) ***Haricharan Kurmi & Anr. Vs. State of Bihar***, **AIR 1964 SC 1184**;

ii) ***Bhagirath Vs. Delhi Administration***, **(1985) 2 SCC 580**;

iii) ***Bogai Bouri Vs. The State of Assam &Anr.***, **2017 0 Supreme (Gau) 3** and

iv) ***Babu Sahebagouda Rudragoudar & Ors. Vs. State of Karnataka***, **(2024) 8 SCC 149**.

v) *Kuthu Goala Vs. The State of Assam*, 1980 SCC OnLineGau21;

63. In the case of ***Haricharan Kurmi*** (supra), it has been laid down that accomplice evidence to be taken into consideration is required to be corroborated by other material evidence.

64. The case of ***Bhagirath*** (*supra*) has been relied upon on the aspect of the meaning of the expression "imprisonment for a term" which includes life imprisonment.

65. The case of ***Bogai Bouri*** (*supra*) has been cited in which the principles laid down in the case of ***Haricharan Kurmi & Anr.*** (*supra*) with regard to the Section 30 of the Evidence Act has been reiterated. The relevant observation is extracted hereinbelow:

> "*6. Section 30 of the Evidence Act provides that when more persons than one are being tried jointly for the same offence and a confession made by one of such persons implicating himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes all such confession. What is discernible from the provision of Section 30 is that it merely enables the Court to take the confession into account and how it is to be done have received consideration in various judicial decisions. A confession cannot be treated as evidence which is substantive evidence against a co-accused person. A Constitution Bench of the Apex Court in the case of Haricharan Kurmi v. State of Bihar, reported in AIR 1964 SC 1184, have held that in a criminal case where the prosecution relies upon the confession of one accused-person against other accused-person, the proper*

approach to be adopted is to first consider the other evidence against such a accused-person, and if the said evidence appears to be satisfactory and the Court is inclined to hold that the said evidence may sustain the charge framed against the said accused-person, the Court would turn to the confession to assure itself that the conclusion which it is inclined to draw from the other evidence is right. Therefore, confession can only be used to lend assurance to other evidence against a co-accused. The Apex Court held that in dealing with a case against an accused-person, the Court cannot start with the confession of co-accused person but it must begin with other evidence adduced by the prosecution. In other words, the stage to consider the confessional statements arise only after the other evidence is considered and found to be satisfactory. It is well settled that the proper way to approach a case where conviction is based on confessional statements of other co-accused's, is first to marshal the evidence against the accused by excluding the confession altogether from consideration and see whether a conviction could safely be based on it."

66. In the case of ***Babu Sahebagouda Rudragoudar & Ors.*** (*supra*), the Hon'ble Supreme Court, after referring to earlier cases holding the field, has explained the meaning and interpretation of Section 27 of the Indian Evidence Act and the relevant paragraphs are extracted hereinbelow:

"*60. We would now discuss about the requirement under law so as to prove a disclosure statement recorded under Section 27 of the Indian Evidence Act, 1872(hereinafter being referred to as 'Evidence Act') and the discoveries made in furtherance thereof.*

61. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the Investigating Officer during interrogation which has

been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in the case of State of Uttar Pradesh v. Deoman Upadhyaya.

62. Thus, when the Investigating Officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him. The Investigating Officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact(s).

63. As per Section 60 of the Evidence Act, oral evidence in all cases must be direct. The section leaves no ambiguity and mandates that no secondary/hearsay evidence can be given in case of oral evidence, except for the circumstances enumerated in the section. In case of a person who asserts to have heard a fact, only his evidence must be given in respect of the same.

64. The manner of proving the disclosure statement under Section 27 of the Evidence Act has been the subject matter of consideration by this Court in various judgments, some of which are being referred to below.

65. In the case of Mohd. Abdul Hafeez v. State of Andhra Pradesh, it was held by this Court as follows: -

> "*5. ….If evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be*

connected to the person giving the information so as to provide incriminating evidence against that person."

67. The case of ***Kuthu Goala*** (*supra*) has been cited on the aspect of confession in a criminal trial – the manner of recording the same and the implication *vis-a-vis* the rights under Articles 22(1) and 20(3) of the Constitution of India.

68. *Per contra*, Shri Haloi, learned Special PP, CBI has opposed the appeals and defended the impugned judgment of the learned Trial Court. He submits that in the present case, there are both direct evidence in the form of eye-witness and also circumstantial evidence. He has also submitted that the aspect of leading to discovery, which is a relevant piece of evidence under Section 27 of the Evidence Act, has been proved. He has also submitted that the other evidence would also prove the motive behind the offence and form the link amongst the circumstances. He has submitted that the accused Rupdhan Chakma, Sahadev Chakma @ Hurhaba, Sahadev Chakma @ Master, Krishna Madhab Chakma, Batibura were involved in causing the death. He has also submitted that all the appellants had confessed their guilt and such confessional statements were duly proved.

69. Elaborating his arguments, the learned Spl. PP has submitted that in the instant case, PW1 is an eye-witness and his evidence has remained unimpeached who had given a vivid description of the events. It is submitted that though PW1 was subjected to cross-examination, he was unshaken and there was no inconsistency. He has submitted that PW5 is an independent witness whose evidence would clearly implicate the appellants. On the aspect of recovery and seizure of the skeletal remains, wearing apparels and rings of the deceased as well as the arms allegedly used in the offence, the learned Spl. PP has submitted that such disclosure statements were duly proved by PW12, PW13, PW16, PW24 and PW28.

70. By drawing the attention of the deposition of PW14, the learned Spl. PP has submitted that the business transaction was duly proved. He submits that though the said PW14 was declared hostile, those parts of the evidence which supports the case of the prosecution can be relied upon. He has also highlighted the evidence of PW15-Akbar Hussain, who had deposed about the dispute between the deceased and appellant Jamaluddin @ Budul Mian as the supply of bamboo by Jamaluddin was stopped. He has submitted that PW29 Suker Ali Laskar had deposed that he had earlier worked with the appellant-Khagndra Chakma and he had accordingly, identified the said appellant. He had clearly deposed regarding the handing over of ten pieces of blankets to him and the payments were made by Khagendra Chakma. He has also highlighted the confessional statement of Khagendra Chakma who had stated that the appellant-Budul had told that the deceased used to brag too much and he should be kidnapped. He has also highlighted the evidence of the Magistrate (PW9) who had recorded the confessional statements and had also conducted the TIP. He has submitted that the confessional statements of Khagendra and Ranjit Chakma had clearly implicated Jamaluddin. As regards the involvement of Khagendra, PW14, PW15 and PW29 have clearly implicated him which is also supported by his confessional statement.

71. On the aspect of the relationship, the learned Spl. PP has submitted that Smt. Sipra Deb is the daughter of Pratul Deb. He has also drawn the attention of the deposition of Dr. Timothy Marc Cleton-PW32, who was not even given any suggestion that Sipra Deb is not the daughter of Pratul Deb. He has also submitted that there is no doubt on the recovery of the skeletal remains to be of the deceased inasmuch as, apart from the wearing apparels, the pacemaker was found which was implanted on him.

72. The learned Spl. PP, accordingly submits that the materials available on record would prove beyond all reasonable doubts the complicity and involvement of the appellants in the commission of the offence in question and accordingly, the appeals are liable to be dismissed.

73. In support of his submissions, the learned Special PP has relied upon the following case laws:

i) Harnath Singh Vs. The State of MP, **AIR 1970 SC 1619;**

ii) *Shankaria Vs. State of Rajasthan*, **(1978) SC 435**;

iii)*Md. Abdul Malek Vs. The State of Assam &Ors.*, **2020 0 Supreme (Gau) 782**;

iv) *Ram Swaroop &Ors. Vs. State of Rajasthan*, **(2004) 13 SCC 134**

v) *Prithi Vs. State of Haryana*, **(2010) 8 SCC 536** and

74. The case of **Harnath Singh** (*supra*) has been cited regarding the aspect of Test Identification Parade. The legal obligations of the Magistrate conducting such proceeding and the reason and scope have been explained.

75. The case of ***Shankaria*** (*supra*) is with regard to the aspect of confessional statement in which, it has been laid down that no inflexible Rule is there regarding the amount of time to be given to an accused for reflection and everything depends on the facts and circumstances of each case and the duty of the learned Magistrate recording the confession is to be satisfied regarding the voluntariness.

76. The case of ***Md. Abdul Malek*** (supra) has been relied upon in which a Division Bench of this Court has dealt with Section 27 of the Evidence Act leading to discovery and the relevant observations are extracted hereinbelow:

> "21. *In order to invoke the provision of Section 27 of the Evidence Act, so as to make any discovery of facts admissible, prosecution is required to prove, firstly that there was disclosure statement made by the accused, secondly the discovery of the facts must be the direct consequence of such information or disclosure statement given by the accused, thirdly the accused must be in the custody of the police, while making the disclosure statement and fourthly the information given by the appellant must be 'distinctly' related to the facts discovered*."

77. The cases of ***Ram Swaroop & Ors.*** (*supra*) and ***Prithi*** (*supra*) have been cited on the aspect of the admissibility of the evidence of hostile witness. In the later case of ***Prithi*** (*supra*), the following observations of the Hon'ble Supreme Court would be beneficial:

> "*25. Section 154 of the Evidence Act, 1872 enables the court in its discretion to permit the person who calls a witness to put any questions to him which might be put in cross- examination by the adverse party. Some High Courts had earlier taken the view that when a witness is cross-examined by the party calling him, his evidence cannot be believed in part and disbelieved in part, but must be excluded altogether. However this view has not found acceptance in later decisions. As a matter of fact, the decisions of this Court are to the contrary. In Khujji @ Surendra Tiwari v. State of Madhya Pradesh (1991) 3 SCC 627, a 3-Judge Bench of this Court relying upon earlier decisions of this Court in Bhagwan Singh v. State of Haryana (1976) 1 SCC 389, Sri Rabindra Kumar Dey v. State of Orissa (1976) 4 SCC 233 and Syad*

Akbar v. State of Karnataka (1980) 1 SCC 30 reiterated the legal position that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on careful scrutiny thereof.

26. In KoliLakhmanbhaiChanabhai v. State of Gujarat (1999) 8 SCC 624, this Court again reiterated that testimony of a hostile witness is useful to the extent to which it supports the prosecution case. It is worth noticing that in Bhagwan Singh9 this Court held that when a witness is declared hostile and cross-examined with the permission of the court, his evidence remains admissible and there is no legal bar to have a conviction upon his testimony, if corroborated by other reliable evidence."

78. The rival submissions have been duly considered and the materials on record, including the TCRs have been carefully examined.

79. Before straightaway going to the depositions of the witnesses, it would be necessary to keep in mind the background of the case. Initially, the *Ejahar* was lodged on 18.03.2004 by Anil Chandra Deb-PW2, who is the younger brother of the deceased-Pratul Dev. It was alleged that his elder brother along with two of his employees, namely, Munia Lohar (Driver) and Md. Jalal Uddin (Moharar) had gone out from the house on the earlier morning towards Bhairabi and they were taken away by Riang militants. The matter was investigated and at that stage, one PIL, being PIL/48/2004 was filed by an NGO to handover the investigation to the CBI and such order was passed by this Court on 12.04.2005. The CBI after investigation, had laid the charge sheet on 24.11.2005 followed by a supplementary charge sheet. Accordingly, the charges were framed by the learned Trial Court on 21.05.2007.

80. As regards the appellant, Md. Jamaluddin Mazumdar @ Budul Mian is concerned, in the initial charge sheet dated 24.11.2005 is concerned, he was not named as an accused and only in the supplementary charge sheet, his name was implicated. Out of the 37 nos. of PWs, the evidence of PW14, PW15 and PW29 would be relevant. However, all the aforesaid witnesses were declared hostile. Though there is no dispute in the proposition that by the mere fact that a witness who has been declared hostile, his deposition would not be rendered otiose, there would be a requirement of some extra caution to take into consideration any part of such evidence. An examination of the depositions of the aforesaid witnesses, PW14, PW15 and PW29 would show that the evidence cannot be said to be conclusive in nature so as to implicate the appellant, Jamaluddin Mazumdar. Stoppage of the business of the deceased with the appellant cannot be a ground to come to a conclusion of his involvement in causing the death. The said PW14 was also successfully contradicted with the statements made by him before the CBI and in fact, all the suggestions which were put to him by the prosecution after he was declared hostile were negated. Similarly, PW15 had proved certain business transactions with regard to supply of bamboo between the appellant and the deceased and nothing more than that and this witness was also declared hostile. He had also denied the statements allegedly made by him before the CBI and the contradictions were proved.

81. PW29 who is a daily wager and used to work with the appellant, Khagendra Chakma @ Khagen for some time and after a quarrel, had discontinued. He deposed that the appellants-Budul and Khagendra knew each other as they were in the same line of business. No other substantial implications were made and this witness was also declared hostile. In the cross-examination, he had denied of making any statement to the CBI and had further stated that during that time, he was beaten up.

82. This brings us to the aspect of the other materials against this appellant, Jamaluddin Mazumdar @ Budul Mian which are in the form two confessional statements made by A7-Khagendra Chakma and A8-Ranjit Chakma. As recorded above, both the confessional statements were retracted by the aforesaid accused persons in their examination under Section 313 Cr.PC and in fact, A8-Ranjit Chakma had deposed that he was severely beaten by the CBI personnel.

83. In this connection, this Court finds force in the contention advanced by Shri Katakey, the learned counsel, who by relying upon the Constitution Bench judgment in ***Haricharan Kurmi & Anr.*** (*supra*), has submitted that accomplice statement cannot be taken as a relevant piece of evidence unless corroborated by other material witnesses.

84. In this connection, it would be apposite to examine the relevant provisions of the Indian Evidence Act, namely, Section 30 and illustration (b) to Section 114 which read as follows:

> "30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.
>
> When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons 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.
>
> [Explanation. - "Offence" as used in this section, includes the abetment of, or attempt to commit, the offence.] *[Inserted by Act 3 of 1891, Section 4.]*
>
> 114. (b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars."

85. In the aforesaid case of ***Haricharan Kurmi & Anr.*** (*supra*), the principle has been laid down by the Constitutional Bench that a harmonious construction would be required. In other words, there would be a requirement of corroboration by material evidence of any accomplice statement which, otherwise would not constitute a relevant piece of evidence. The relevant observations of the Hon'ble Supreme Court are extracted hereinbelow:

> "*14. In appreciating the full effect of the provisions contained in S. 30, it may be useful to refer to the position of the evidence given by an accomplice under Section 133 of the Act. Section 133 provides that an accomplice shall be a competent witness against an accused person; and that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Illustration (b) to Section 114 of the Act bring out the legal position that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Reading these two provisions together, it follows that though an accomplice is a competent witness, prudence requires that his evidence should not be acted upon unless it is materially corroborated; and that is the effect of judicial decisions dealing with this point. The point of significance is that when the Court deals with the evidence by an accomplice, the Court may treat the said evidence as substantive evidence and enquire whether it is materially corroborated or not. The testimony of the accomplice is evidence under Section 3 of the Act and has to be dealt with as such. It is no doubt evidence of a tainted character and as such, is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars.*"

86. Shri Katakey, learned counsel has reiterated that his client is on bail which was granted by this Court.

87. Let us now come to the case of the appellant-Sahadev Chakma @ Hurhaba in Crl. A./266/2016. The learned counsel Shri Dutta has strenuously argued that the materials on record would not be sufficient to implicate his client. By drawing the attention of this Court to the deposition of PW7 who had allegedly accompanied the CBI and had proved the disclosure statements of his client and Krishna Madhab as Exts.-8 and 15, he has submitted that no golden articles were recovered and only one register "*Bohikhata*" was recovered. As noted above, he had also assailed the evidentiary value of the deposition of PW8 who had conducted the inquest and the TIP conducted on 09.10.2005 by submitting that his client was regularly produced in the Court and therefore, TIP made thereafter would not have any meaning. He has also raised serious objection on the identification of the deceased on the basis of the skeletal remains and has also submitted that the confessional statement is absolutely vague which, in any case, was retracted.

88. As regards the present appellant, no golden articles were recovered and the entries in the *bohikhata* were taken into consideration. It is pertinent to note that the golden articles were admittedly stolen materials and not purchased from any authorised shop and therefore, the very aspect of maintaining a register becomes highly doubtful and such entry cannot be regarded as significant piece of evidence in a criminal trial. However, there are other relevant evidence which cannot be overlooked.

89. We have, however observed that the said appellant has been clearly implicated by PW1 and PW4 who are eye-witnesses by deposing that the appellant-Rupdhan had taken part in the kidnapping in which, they were themselves victims and they had also identified the present appellant. Further, both PW1 and PW4 have also implicated and identified this appellant in the aspect of collecting money in two installments along with accused Krishna Madhab Chakma. Further, PW3 who was involved in payment of

one part of the ransom had also identified this appellant. The said evidence of PW1 and PW4 as well as PW3 do not appear to be impeached. Therefore, even if the disclosure statement made and the confession by the appellant are overlooked, the evidence of the PW1, PW3 and PW4, who appear to be trustworthy, would remain. It is trite law that conviction can be on the basis of a sole eye-witness if such eye-witness appears to be trustworthy and inspires confidence.

90. Shri Dutta, learned counsel had also made an argument on the aspect of Section 57 of the IPC and relied the judgment of ***Sriharan @ Murugan & Ors.*** (*supra*).

91. Under Section 57 of the IPC, it has been laid down that in calculating fractions of terms of punishment, imprisonment for life shall be reckoned and equivalent to imprisonment for 20 years. The aforesaid Section 57 is under Chapter-III of the Indian Penal Code on the subject "Of punishments". However, the said section has to be read in the context of the aspect of computation of sentence of imprisonment for life under Section 55 where such computation can be done for a term not exceeding 14 years. Further, Sections 65, 116, 119, 129 and 511 of the IPC also to be taken into consideration for a proper meaning. In any case, the issue is well settled regarding the meaning of a sentence for life imprisonment which means the entire life.

92. In this connection, reference may be made to the decision of the Hon'ble Supreme Court in the case of ***Arif @ Ashfaq Vs. Registrar, Supreme Court of India & Ors.***, reported in **(2014) 9 SCC 737**. The majority view of the Constitutional Bench in the said case after taking into consideration of the earlier judgments had made the following observations. It may be mentioned that Section 57 of the IPC was also specifically dealt with:

"*43. Turning now to the facts of W.P.No.77/2014, we find that the petitioner*

was arrested on 25.12.2000 and convicted by the learned Sessions Judge on 31-10-2005. The High Court dismissed his appeal on 13.9.2007 and the Supreme Court dismissed the appeal from the High Court's judgment on 10.8.2011. The Review Petition of the petitioner was, thereafter, dismissed on 28.8.2012. We are informed at the bar that a curative petition was thereafter filed sometime in 2013 which was dismissed on 23.1.2014. All along, the petitioner has been in jail for about 13½ years. Since the curative petition also stands dismissed after the dismissal of review petition, we would not like to reopen all these proceedings at this stage. Also, time taken in court proceedings cannot be taken into account to say that there is a delay which would convert a death sentence into one for life. [See: Triveniben v. State of Gujarat, (1989) 1 SCC 678, at paras 16, 23, 72]. Equally, spending 13½ years in jail does not mean that the petitioner has undergone a sentence for life. It is settled by Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 that awarding a sentence of life imprisonment means life and not a mere 14 years in jail. In this case, it was held as follows:

> '*75. It is now conclusively settled by a catena of decisions that the punishment of imprisonment for life handed down by the Court means a sentence of imprisonment for the convict for the rest of his life. [See the decisions of this Court in Gopal Vinayak Godse v. State of Maharashtra (Constitution Bench), Dalbir Singh v. State of Punjab, Maru Ram v. Union of India (Constitution Bench), Naib Singh v. State of Punjab, Ashok Kumar v. Union of India, Laxman Naskar v. State of W.B., Zahid Hussein v. State of W.B., Kamalanantha v. State of T.N., Mohd. Munna v. Union of India and C.A. Pious v. State of Kerala.]*
>
> *76. It is equally well settled that Section 57 of the Penal Code does not in any way limit the punishment of imprisonment for life to a term of twenty years. Section 57 is only for calculating fractions of terms of*

punishment and provides that imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. (See: Gopal Vinayak Godse and Ashok Kumar). The object and purpose of Section 57 will be clear by simply referring to Sections 65, 116, 119, 129 and 511 of the Penal Code."

93. Coming to the case the appellant-Rupdhan Chakma in Crl.A./50(J)/2017, the thrust of the argument advanced by the learned counsel for the appellant is that the provision of Section 364A of the IPC is not applicable. It has also been submitted that the DNA of the skeletal remains were not matching. The disclosure statement allegedly made by the appellant as well as the confessional statement has been assailed by submitting that those are not relevant piece of evidence under the Indian Evidence Act. Specific reference has been made to the examination of the appellant under Section 313 of the Cr.PC, who had clearly reflected the confessional statement and had also responded that such confessional statement was made out of fear. He had also responded that he did not make any disclosure statement and in this regard, the judgment of the Trial Court is incorrect.

94. We have however observed that the said appellant has been clearly implicated by PW1 and PW4 who are eye-witnesses by deposing that the appellant-Rupdhan had taken part in the kidnapping in which, they were themselves victims and they had also identified the present appellant. Even PW5, who was the person coming in the motor cycle and was forced to accompany the deceased to the jungle during the abduction, had implicated and identified the present appellant along with three others in the dock. In the cross-examination, he had reiterated that prior to the TIP, he had no occasion to see the accused persons. The evidence of PW1, PW4 and PW5, who are eye-witnesses, do not appear to be impeached. Therefore, even if the disclosure statements made and the confessions by the appellant are overlooked, the evidence of

the PW1 and PW4, who appear to be trustworthy, would remain. As observed above, a conviction can be on the basis of a sole eye-witness if such eye-witness appears to be trustworthy and inspires confidence.

95. Coming to the case of the appellant-Khagendra Chakma @ Khagen in Crl. A./95/2017, the grounds of challenge is that in the first *Ejahar* lodged on 18.03.2004, he was not named. The said submission, however, cannot be countenanced both from the settled position of law as well as from the background on which the *Ejahar* was lodged. It is seen that the *Ejahar* was lodged on 18.03.2004 by the brother of the deceased stating that when his elder brother along with his two workers had left for Bhairavi, some Riang militants have abducted them. Obviously, no names could be attributed at that time as the *Ejahar* was lodged only on the basis of some information since the deceased had neither returned nor contracted.

96. In any case, it is well settled that an *Ejahar* is not an encyclopedia and is only a means to set the criminal law into motion. In the case of ***Superintendent of Police, CBI Vs. Tapan Kumar Singh***, reported in **(2003) 6 SCC 175** and the relevant observations are extracted hereinbelow:

> "*20. It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the*

basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

97. The aforesaid view has been reiterated in many subsequent decisions, including in the Constitutional Bench case of ***Lalita Kumari Vs. Govt. of Uttar Pradesh***, reported in **(2014) 2 SCC 1**.

98. Therefore, it would be necessary to examine the materials against the present appellant. As pointed out by the learned Spl. PP, PW14, PW15 and PW29 have deposed and implicated the said appellant-Khagendra Chakma @ Khagen. Moreover, the appellant had made a confessional statement as well as disclosure statement. Emphasis has also been given on the confessional statements of the co-accused.

99. Let us first deal with the depositions of the relevant witnesses.

100. PW14 is Md. Sarif Ali Laskar, who had worked with the deceased for two months and used to keep accounts of the bamboo business. He has not directly implicated the present appellant. Further, he had stated of not remembering regarding making of any statement before the CBI. The said PW14 was declared hostile and was cross-examined by the prosecution. He had denied of stating before the CBI that the deceased had told him that accused Budul Mian is a man of low grade. It may be mentioned that while recording the deposition, the learned Trial Court had also indicated that such a statement was also made under Section 164 of the Cr.PC. He had also denied that any quarrel had taken place between Budul Mian and the deceased regarding bamboo business.

101. Statement under Section 164 Cr.PC is not evidence in strict sense and can only be used for corroboration. Further, it is required that the maker of such statement has to affirm the same as a witness in the dock. It is also seen that PW14 had denied making of any statements before the CBI and even the suggestions appear to be pertaining to the involvement of another appellant, namely, Jamaluddin Mazumdar @ Budul Mian.

102. Similarly, PW15-Akbar Hussain, who had worked under Budul Mian deposed that

on the instruction of the deceased, his Munib had stopped the bamboo to take royalty and had explained that if the bamboos are from Mizoram, royalty is to be paid. This witness was also declared hostile and was cross-examined by the prosecution. He had, however, denied a suggestion that there was a quarrel between Budul Mian and the deceased. The statements are wholly concerning another appellant, namely, Jamaluddin Mazumdar @ Budul Mian and not the present appellant.

103. Coming to the deposition of PW29-Suker Ali Laskar, he has stated that he belonged to the same village as appellant-Khagendra who was doing bamboo business and knew him and further that Khagendra and Budul Mian were known to each other as they were in the same line of business. He had also deposed that he used to work with Khagendra earlier and left after a quarrel. He had deposed of being handed over 10 pieces of blanket, the payment of which was made by Khagendra. He came to know about the death after 31 months. This witness was also declared hostile and it came to light that he was beaten up by the CBI while recording his statement. He had denied of making any statement that since he suspected Budul Mian, Budul had asked Khagendra to buy a good pant and make some payment.

104. Though we are aware that mere turning hostile will not make the entire deposition of a witness otiose and the prosecution can still rely upon those parts which support its case, in the deposition of the aforesaid 3 witnesses, no implication, worth its name, against the appellant-Khagendra Chakma @ Khagen is made out.

105. While the prosecution has relied upon the disclosure statements of co-accused, Sahadev Chakma, Krishna Madhab Chakma, Rupdhan Chakma and Kalapuna, the defence counsel has strenuously urged that such disclosure statements have not been proved in accordance with law. Be that as it may, even without going to that issue, on a careful perusal of the records, we do not find that there are corroborating materials

to implicate the present appellant. The requirement of such corroboration has already been discussed above by citing the Constitutional Bench judgment in the case of ***Haricharan Kurmi & Anr.*** (*supra*).

106. So far as the recovery of the alleged rifles is concerned in which, PW24 was a witness, the evidence of PW22-Abhijit Dey, Senior Scientific Officer of Central Forensic Scientific Laboratory, CBI would be relevant. He had clearly deposed that he found one wooden made toy gun in parcel one and wooden made body portion, hollow pipe pieces, wooden magazine of the toy gun and one small metallic stick. He had opined that none of the material exhibits qualified as firearms under the provisions of the Arms Act, 1959. Therefore, such recovery would not come to any aid of the prosecution.

107. In view of the aforesaid discussions, we are of the opinion that the conviction and sentence so far as the appellants, Md. Jamaluddin Mazumdar @ Budul Mian in Crl.A./245/2016 and Khagendra Chakma @ Khagen in Crl.A./95/2017 are unsustainable in law and are accordingly set aside by giving them the benefit of doubt. However, Crl. A./266/2016 (Sahadeb Chakma @ Hurrhaba) and Crl.A. (J)/50/2017 (Rupdhan Chakma) are dismissed. The appellants in Crl.A./245/2016 (Md. Jamaluddin Mazumdar @ Budul Mian) and in Crl.A./95/2017 (Shri Khagendra Chakma @ Khagen) are set at liberty and are directed to be released forthwith unless, they are wanted in any other case. The bail bond of the appellant, Md. Jamaluddin Mazumdar @ Budul Mian stands discharged.

108. Send back the TCRs.

JUDGE ***JUDGE***

Comparing Assistant