

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.44 of 2009

Arising Out of Raghunathpur PS.Case No. -13 Year-2007, G.R. No. 258 of 2007, District- SIWAN, giving rise to Sessions Trial No. 3 of 2008.

- 1. Uday Bhan Singh @ Neta Singh
- 2. Gena Singh @ Genda Singh

Both sons of lat Nagina Singh, resident of Village Chhitauni, P.S. Maniar, District Balia (U.P.)

.... Appellant/s

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 111 of 2009

Sunil Kumar Chaurashiya, S/O Sri Ramdeo Chaurashiya, resident of Village Barki Barik, P.S. Manier, District Balia (U.P.)

.... Appellant

Versus

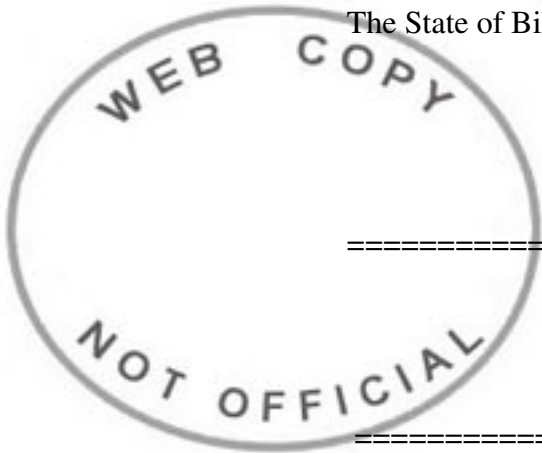
The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 119 of 2009

- 1. Sudhir Singh, son of Suraj Singh, resident of Village Jimuchak, P.S. Pakri, Dstrict Balia (U.P.)
- 2. Shailesh Patel, son of Kedar Patel, resident of Villag Malahi Chak, P.S. Bandih, District Balia (U.P.)



.... Appellant/s

Versus

The State of Bihar

.... Respondent

with

=====

Criminal Appeal (DB) No. 183 of 2009

=====

Pandav Yadav, son of Satya Narayan Yadav, resident of Village Sani Sokara Bala Par, P.S. Raghunathpur, District Siwa

.... Appellant

Versus

The State of Bihar

.... Respondent

with

=====

Criminal Appeal (DB) No. 194 of 2009

=====

Dablu Yadav, son of Markanday Yadav, resident of Village Barkibari, P.S. Maniar, District Balia (U.P.)

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 196 of 2009

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=====

Vinod Singh @ Jalim Singh, son of Nagina Singh of Village Chhitauni, P.S.
Maniar, District Balia (U.P.)

..... Appellant

Versus

The State of Bihar

..... Respondent

=====

Appearance :
(In CR. APP (DB) No. 44 of 2009)

For the Appellant/s : Shri Vikram Deo Singh, Advocate
Shri Dharmendra Kumar Singh, Advocate

For the Respondents : Shri Dilip Kumar Sinha, A.P.P.
Sushri Shashi Bala Verma, A.P.P.

(In Cr. App. (DB) No. 111 of 2009)

For the Appellant/s : Shri Arbid Kumar Singh, Advocate
For the Respondent/s : Shri Dilip Kumar Sinha, A.P.P.
Sushri Shashi Bala Verma, A.P.P

(In CR. APP (DB) No. 119 of 2009)

For the Appellant/s : Shri Vikram Deo Singh, Advocate
Shri Dharmendra Kumar Singh, Advocate
For the Respondent/s Shri Dilip Kumar Sinha, A.P.P.
Sushri Shashi Bala Verma, A.P.P: .

(In CR. APP (DB) No. 183 of 2009)

For the Appellant/s : Shri Bijay Prasash Sngh, Advocate
Shri Sada Nand Roy, Advocate.
For the Respondent/s : Shri Dilip Kumar Sinha, A.P.P.
Sushri Shashi Bala Verma, A.P.P

(In CR. APP (DB) No. 194 of 2009)

For the Appellant/s : Shri Arbind Kumar Singh, Advocate
For the Respondent/s : Shri Dilip Kumar Sinha, A.P.P.
Sushri Shashi Bala Verma, A.P.P.

(In CR. APP (DB) No. 196 of 2009)

For the Appellant/s : Shri Vikram Deo Singh, Advocate

Shri Dharmendra Kumar Singh, Advocate

For the Respondent/s :

Shri Dilip Kumar Sinha, A.P.P.

Sushri Shashi Bala Verma, A.P.P

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: **HONOURABLE SHRI JUSTICE DHARNIDHAR JHA**)

Date: 26-03-2015

The present batch of six appeals arises out of the judgment of conviction dated 15.1.2009 passed by the learned Presiding Officer, Fast Track Court-IV, Siwan in Sessions Trial No. 3 of 2008, by which the appellants had been held guilty of committing the offence under Section 364-A/34 of the Indian Penal Code. The hearing on sentence was taken up on 19.1.2009 and by an order passed on that day after hearing the appellants and the State, the learned trial Judge directed each of the eight appellants to suffer rigorous imprisonment for life as also to pay a fine of Rs. 5,000/- each, else, to suffer rigorous imprisonment for further period of one year.

2. The appellants were put on trial together by being jointly charged for committing the offence they had been held guilty of. However, after their conviction, they have chosen to prefer these appeals by way of arraying all the appellants as indicated in the title

head of the present appeals. We have heard these appeals together and we are disposing them of by the present common judgment.

3. The prosecution of the appellants had resulted after filing of the report in the form of fardbeyan of P.W.2 Meena Devi who happened to be the mother of P.W.1 Manjesh Kumar Yadav, a child of nine years, who had been picked up from his house in the night at about 10 P.M. on 7.2.2007 while he was sleeping with his mother and his two brothers Ranjay and Sanjay because his father was away from home. The criminal forcibly pushed the doors of the house causing its latches to give way and thereafter forcibly entered into the house and after asking about the whereabouts of Sanjay and Meena Devi telling that he was ill due to suffering from some heart ailments, they pulled away a shawl in which the victim was wrapped to take him away. P.W. 2 stated that her brother Rajnath (not examined) was also present in the house and P.W.2 Meena Devi and said Rajnath followed the kidnappers of Manjesh Kumar Yadav pleading with them to release him, but they were threatened and were asked to keep silence, else, they would shoot the child there. The mother stopped wailing and pleaded with them to release him but the criminals went away with the child.

4. The criminals were not the neighbours and, as is evident from the narration contained in Ext.2 the fardbeyan of P.W.2,

they were unknown to her and that was the reason that no one was figuring as an accused by his name.

5. The lady further stated that subsequently she could learn that the criminals had also picked up one Ramayan Chaudhary from her neighbouring house and had taken him away. The lady stated that her husband was working in Haridwar in some private Company and he was not at home and further that her family survived on the wages earned by her husband and she did not see any reason as to why her little child had been kidnapped as they were poverty stricken persons.

6. As may appear from the evidence of P.W. 7, S.I. Satyendra Choudhary who was posted as the Officer-in-charge of Raghunathpur Police Station, before recording the fardbeyan Ext. 2 he had received some telephonic information that Ramayan Chaudhary and Manjesh Kumar (P.W.1) had been kidnapped from the same Village Sani Sonikara. He had received the information at 10.45 P.M. and he had reduced the information into station diary entry dated 7.2.2007 and had started for verification of the information with S.I. Ramanand Singh and some constables of the Armed Force. After having reached the place of occurrence, he had recorded the fardbeyanf (Ext..2) of P.W.2 Meena Devi After having recorded the fardbeyan, he had recorded further statement of P.W. 2 and the

statement of her brother Rajnath Yadav and informed the Senior Police Officers who had also reached the place of occurrence in the very night itself. A combing operation for arrest of the criminals was launched and when P.W. 7 had returned to his Police Station, he drew up the F.I.R. of the case (Ext/ 3).

7. As may appear from the evidence of P.W. 7, he had visited the place of occurrence and recorded the statements of various persons of the village and attempted to gather information about the persons who could have been behind the commission of the offence. On 8.2.2007, he could learn that appellant Pundev Yadav could be behind the commission of the offence and he went to Village Basdih Maniar in the district of Balia (U.P.) and from there he had arrested the appellant Pundev Yadav. In the meantime, he could also know that some kidnapping of Abhishek Kumar (P.W. 6) also took place and he had been recovered and by gathering information in respect thereof had also recorded the statement of Abhishek Kumar. He arrested the appellant Pundev Yadav, Binod Singh @ Jalim Singh and Sudhir Singh and recorded their confessional statements on 25.4.2007 and on the basis of the confessional statement of appellant Pundev Yadav recorded in Raghunathpur P.S.Case No. 28 of 2007 P.W. 5 Lallan Jee Pandey was examined. P.W. 7 could not recover Manjesh Kumar and this was so happened that he was subsequently found released by his



captors. As may appear from the evidence of P.W. 7 in paragraph 15 of his evidence, he met Majesh Kumar who was kept at Garhbar Police Station of Balia district (U.P.) and took him into his custody and produced him before a Judicial Magistrate, for recording his statement under Section 164 Cr.P.C. P.W. 7 also recorded his statement. The Investigating Officer recovered a cellular phone and a motorcycle from the possession of Pundeo Yadav and prepared the seizure memo. It appears from the evidence of P.W. 7 that the other victim Ramayan Choudhary who had also been abducted in the same night from the neighbourhood of P.W. 2 had escaped away from the confinement of his captors and P.W. 7 met Ramayan Choudhary and recorded his statement, as may appear from paragraph 21 of the evidence of P.W. 7 After closing the investigation of the case, P.W. 7 sent the accused persons up for their trial. This is how the appellants were tried and ultimately convicted and sentenced, as pointed out at the very out set of the present judgment.

9. The defence of the appellants is of non-participation and false implication which appears prominently from the trend of cross examination on evidence of identification of the appellants by P.Ws.1, 5 and 7.

10. Shri Vikram Deo Singh, learned counsel appearing on behalf of the appellants Uday Bhan Singh alias Neta Singh, Gena



Singh alias Genda Singh, Sudhir Singh, Shailesh Patel and Vinod Singh alias Jalim Singh as also Shri Bijay Prakash Singh appearing on behalf of appellant Pundev Yadav and Shri Arbind Kumar Singh appearing on behalf of rest of the appellants, took us through the evidence of the witnesses and submitted that the question of identification remained in doubt inasmuch as no Test Identification Parade had been organized by calling the victim like, P.Ws. 1,4 and 6 to attend the parade so as to fixing the real identities of the culprits. It was submitted that identification of the appellants in court in absence of the Test Identification Parade was farce to sustain their conviction. The submission was also that the evidence of P.Ws. 5 and 6, i.e., Lallan Jee Pandey and Abhishek Kumar could not be read into this trial because for their respective acts individual F.I.R. had been drawn up and those trials were separately had to be taken up. It was contended, as such, that extraneous materials had been used for the conviction of the appellants.

11. Shri Dilip Kumar Sinha and Sushri Shashi Bala Verma, learned Additional Public Prosecutors appearing for the State of Bihar were submitting that it may be true that for kidnapping/abduction of P.Ws. 5 and 6 there were separate F.I.R.s registered and separate Sessions Trial were also pending, but the value of the evidence of P.Ws. 5 and 6 was there as they had also been



confined at the same place or places where Manjesh Kumar had been identified and,, as such, the evidence of the two witnesses, namely, Lallan Jee Pandey and Abhishek Kumar was material as regards that part of the prosecution case. It was contended that the evidence of P.Ws. 5 and 6 cannot be brushed aside as extraneous to the facts in issue. It was further pointed out that the identification evidence in court was for the first time in court and that appears more acceptable inasmuch as P.W. 1 Manjesh Kumar, as may appear from the evidence at page 25 of the Paper Book, had lived with his captors, mixed up with them, moved out with them and confined for 82 to 83 days and had properly seen and identified each of them. There was, as such, no use of holding Test Identification Parade because the witness was fully acquainted with the accused persons and had known them from before he was found out by the police. Similar was the contention as regards the value of identification by the witnesses P.Ws. 5 and 6. The submission was that the mother of Manjesh Kumar Yadav P.W. 2 Meena Devi had not named any one in her fardbeyan nor did she identify any one in the court. Likewise, P.W. 3 Vijay Bahadur Yadav, the father of Manjesh Kumar Yadav had not named any one nor identified any one in dock. P.W. 2 had stated only on the facts of the case of kidnapping of P.W. 1 Manjesh Kumar and further stated as to how she and her husband P.W. 3 had received a



telephonically message directly from the criminals requiring them to pay up rupees one lakh, else, their son would be annihilated The submission was that these were subsequent events and even when the F.I.R. was lodged, these things were not in the knowledge of P.W. 2. The submission was that overall view of the evidence leads to one conclusion that Manjesh Kumar was kidnapped, he was wrongfully confined and his parents were asked to pay a ransom of rupees one lakh, else he was to be killed and, as such, the evidence of the witnesses appears fully valid and reliable.

12. It is true that seven witnesses were examined by the prosecution, but what appears from the evidence of these witnesses is that the material facts as regards the proof of the charge and the identification of the perpetrators of the offence comes from three witnesses. P.W. 1 Manjesh Kumar was the victim who had been lifted from his house while he was sleeping with his mother P.W. 2 Meena Devi and was taken away by three criminals to different places and lastly to Village Gimmichak where he was confined. The value of the evidence of P.W. 2 is also important because she was the informant of the case and real witness as regards three unknown criminals who barged into her room and then after making inquiry about the whereabouts of her son Sanjay Kumar had taken Manjesh Kumar away. The purity of her evidence was that she had neither



named any one in her written report nor she was speaking anything extraneous as she was not naming any of the three criminals who had invaded her privacy by breaking the latch of the doors. When we were perusing the evidence of P.W.2 Meena Devi and that of P.W.1 Manjesh Kumar, we do not find any challenge, even a semblance of it, being set up by the defence to prove that Manjesh Kumar had not been kidnapped from the lap of his mother. It was never challenged that he was confined for quite long a period and that he had lastly been freed but in the meantime the criminals had given a few calls to his parents, as appears deposed to by P.W. 4 Vanshi Sah who was having a Wireless Loop Line Telephone Booth (WLL) to run commercial call booth that calls had come for the parents of Manjesh Kumar and he had duly informed them and they had talked to the criminals. Likewise, P.Ws. 2 Meena Devi and P.W. 3 Vijay Bahadur Yadav have also deposed uniformly that they had received calls from the criminals coming at the W.L.L. booth of P.W. 4 Vanshi Sah and the spouses had gone there on foot to the booth and had received the calls who had talked not only to their son but also to the criminals. Their son had informed them to pay up rupees one lakh to the criminals, else he could be killed. The criminals had commanded them to pay up the amount, else, to lose the life of their son.. On receiving such calls, Vijay Bahadur Yadav, the father of Manjesh



Kumar, was pleading with the criminals that he was not a man of means, then the criminals were asking him to sell his land out and pay them up the sum as ransom. Thus, the victim P.W. 1 Manjesh Kumar also was deposing to these facts of being kidnapped and of being taken away by three criminals to a secluded place where any one could not be presumed to be taken and then moved out to different places by use of motorcycle and lastly was confined at village Jimichak where criminals used to visit the house to keep a watch on him. P.W. 1 has stated that he was asked by the criminal to talk to his parents and ask them to pay the ransom amount, else he could be annihilated. Thus, kidnapping of the child Manjesh Kumar from his house, confining him firstly at a secluded deserted place and then moving out from one place to other and lastly confining him at village Jimmichak from where he was moved to different places appears completely established by the prosecution.

13. We have already referred to the evidence of P.Ws. 2 and 4 as also to that of P.W.1. A demand of ransom was made to the parents as also to their son and they had been showing their inability and financial incapacity in paying up the demand of ransom amount. A threat was given to the parents as also to the boy that unless the amount was paid, Manjesh Kumar could be annihilated.

14. During the course of cross examination of P.Ws. 2 and



3 suggestions were given by drawing their attention to certain part of their respective examination-in-chief that they had not made their statements to P.W. 7 S.I. Satyendra Choudhary that the criminals had asked them to pay up ransom and that demand was made by them telephonically. The Police Officer S.I. Satyendra Choudhary stated that they were firm in giving evidence by telling the defence counsel that they had made statements that the criminals had talked to them by giving telephonic ring and during their talk had demanded an amount of rupees one lakh from them as ransom in respect of the life of their son. This evidence in cross examination of P.W. 2 appears in paragraph 26, P.W. 3 in paragraph 22. The Police Officer during his cross examination had stated that these statements were never made before him either P.W.2, the mother of the victim or his father P.W.3.

15. We, by resorting to the provision of Section 172 Cr.P.C. so as to giving an aid in appreciating the evidence, have looked to the case diary. We were amazed to find that the Police Officer P.W. 7 had recorded in paragraphs 67 and 138 of the case diary that he had met the parents of Manjesh Kumar and had questioned them about any message having come to them from the criminals and both of them had stated to him that they had telephonic message from the criminals and pursuant to that message they had also talked to the criminals but they had denied that the ransom was



paid. Then what we find is that the Police Officer (P.W.7) was concealing some facts which were stated to him and, probably, was doing so with a purpose of helping out the defence in watering down the records and some proved facts which had really been happened during that transaction. While perusing the case diary and evidence which were recorded by the learned trial Judge, we have also had a very strong inference coming out of it. We find that the learned Judge who was recording the evidence was fully indifferent as to what he was carrying for and he was not pulling himself so as to finding out as to whether the questions which were firstly put to P.Ws. 2 and 3 as also to P.W.1 and thereafter to the Police Officer, P.W.7 were really admissible and relevant. The questions which were put specifically to P.Ws. 2 and 3 during their cross examination were that they had not stated those important facts regarding realization of ransom. They were completely inadmissible and misleading because, as we have just pointed out, the witnesses had very well supported the prosecution case that they had received telephonic calls and they had talked to the criminals during which course they were asked to pay up the ransom amount.

16. Coming to the evidence again as also to the statements of the witnesses, P.Ws. 5 and 6 may not be relevant to the facts of the present case and further that their evidence could be



irrelevant and extraneous on account of being related to a different transaction, we could point out that we have considered their evidence with all seriousness it deserves. We are very much clear in our mind that the trials upon which the questions were put were never the trials in respect of the present case in which either P.W.5 or P.W.6 had been kidnapped or abducted. It was a trial confined only to the facts which were in issue as regards the kidnapping, wrongful confinement and the demand of ransom as regards P.W. 1 Manjesh Kumar. The prosecution, we find, was not examining P.Ws. 5 and 6 on facts which were constituting offence of their kidnapping/abduction. What we find further is that this is a weak evidence. P.W. 5 Lallan Jee Pandey and P.W. 6 Abhishek Kumar were examined only because they had remained confined with P.W.1 Manjesh Kumar at one place, i.e., Jimmichak. P.W. 5 has stated that he was also confined at Jimichak after being shifted from a couple of places where he met another boy Manjesh Kumar who was kidnapped by the criminals and they had demanded ransom. Probably, that information as regards their confinement at Jimmichak, they had narrated as to who were the perpetrators of the offence who were visiting the place and who came there and in that connection the two witnesses P.W. 5 Lallan Jee Pandey and P.W. 6 Abhishek Kumar had named the accused persons.

The evidence on demand of ransom is not single



compartment evidence. It is always compartmental and the evidence could not be used by mere assertion or presentation of facts that someone was picked up and abducted. The manifested thought is material. As may appear from the evidence, there might have been a case that one could find some persons picking up the victim, three unknown persons in the case,; the other set of persons keeping the custody of the victim and transporting him from one place to different places. There might be another set of persons when the victim was shifted from one place to other and last other set of persons in shifting the victim to final destination. There might be some other set of persons who could be keeping guard on the victim. There might be other group or party to arrange meals for the victim while other group of persons could be coming and visiting the village and could be found negotiating payment of ransom. There could be a hidden group of persons who could be negotiating with the police. These are not hidden matters rather they are known as regards the administration of industrial mind suggesting to come and kidnap/abduct a person for ransom.

18. Here in the present case, what we find is that three unknown criminals were closely associated with lifting of two persons- Manjesh Kumar from the lap of his mother and Ramayan Chaudhary from his house. They were taken to the secluded and



deserted place which is generally known in this part of Bihar as Kharhar from where the victim was moved out and lastly he was taken and confined in a particular house of Sudhir Singh from where he was finally taken .to Jimmichak from where he was released. The criminals were negotiating with the parents of Manjesh Kumar for release of their son on ransom amount of rupees one lakh. The plight of Manjesh Kumar was distressing. But, the grand father of P.W. 6 Abhishek Kumar has stated that he had paid rupees two lakhs and the boy was released. As regards P.W. 5 Lallan Jee Pandey, he was rescued by the police, may be because he had political connection and he had been released on account of political pressure being put on the police and that he was rescued from his kidnappers. Manjesh Kumar was not that fortunate on account of his father being a crane operator earning rupees two thousand per month upon which the family survived. Manjesh Kumar was confined by his captors for 82 to 83 days as appears from page 25 of the Paper Book. He had remained amidst the criminals and he had seen them from very close range. As may appear from the evidence, he was freed from his mind and pang by the criminals who could have confined the child and further finding himself amidst persons who had given that much of pain and serious jolt in his life. He must have a permanent pain in his mind of the features of the persons who had indulged in such commission of



offence. During his period of confinement for 82 to 83 days the child must have picked up the physical features of the criminals being transported upon there. He was quite well-known to them. As such, the submission that the Test Identification Parade ought to have been organized for putting the persons over it by calling Manjesh Kumar to participate in it to identify them appears of no substance. His parents were also known to them and, as such, there was no use of organizing the Test Identification Parade. His identification of the appellants in court was substantive evidence which could be very well used as admissible and reliable evidence to find out as to who had indeed kept, confined or demanded ransom. Manjesh Kumar had identified appellant Uday Bhan Singh alias Neta Singh, Gena Singh alias Genda Singh, Shailesh Patel, Pundev Yadav and Vinod Singh alias Jalim Singh. Besides identification by this witness as regards the above noted appellants, appellants Uday Bhan Singh alias Neta Singh, Gena Singh alias Genda Singh and Shailesh Patel were also identified by P.Ws. 6 and 5 respectively. Appellant Sudhir Singh was identified by P.W.5 Lallan Jee Pandey when he was narrating his story of being shifted to Jimmichak. So far appellant Pundev Yadav and Sunil Singh are concerned, they were also identified by P.W.5 in the same connection by either of confining him or putting a watch upon him or shifting him from one place to others. Similar is the case with Pundev

who appears regularly visiting the place where the victims had been confined. Appellant Dablu Yadav had been identified by P.W. 5 without assigning any role to him. P.W. 6 had also identified the present set of appellants who were identified either in connection with kidnapping or in connection with keeping guard or further in connection of shifting the victim from one place to other.

19. Thus, we find that except appellant Dablu Yadav who does not appear assigned any serious role, all the appellants appear assigned some serious role or activities as regards complete commission of offence of kidnapping/abduction for the purpose of ransom.

20. The reason which we have assigned for placing reliance on the evidence of identification is coming from the evidence of P.W.1 and the same in respect of the remaining two witnesses P.Ws. 5 and 6 who were the victims of two different transactions having taken place on different dates, different from the one in which we are judging the present set of appellants. But, one common feature of the evidence of P.Ws. 1, 5 and 6 is that there were same set of accused persons who had actively participated either in kidnapping or abduction of the witnesses or moving them out from one place to other in spite of not realizing ransom. No ransom was realized also in respect of P.W.1, but P.W. 6 had stated that his grand father had paid



rupees two lakhs to his captors upon which he had been released. So far the evidence of P.W. 5 is concerned, he had been a politically connected person as he appears stating in his evidence that he had fought an Assembly election. So the police was acting in that case as fast as in a case of politician so as to rescuing him and, probably, to have its action drummed up so as to retrieve from the political pressure on the police. Both P.Ws. 5 and 6 had remained in the company of the accused persons for a long period of confinement and they had very close counters with them so as to picking up the features correctly to identify them in court while deposing there.

21. However, learned counsel for the appellants had raised a very serious issue as regards the legality of the evidence on identification in court without holding the Test Identification parade by calling the witnesses to attend it. It is not that for the first time this Court is confronted with the issue which has been raised by the learned counsel for the appellants, Shri Vikrm Deo Singh. The same question was agitated before a Bench of this Court in the case of **State of Bihar Vs. Krishna Bihari Singh** reported in **2010(2) BJR 767**. The Bench, which had delivered the judgment in **State of Bihar Vs. Krishna Bihari Singh (Supra)** of which one of us (Dharnidhar Jha,J.) was a party, had considered the issue at great length after having perused some of the leading cases decided by the Supreme

Court , as appears from paragraphs 54 and 55 of the judgment in **State of Bihar Vs. Krishna Bihari Singh (Supra)** and had adopted the proposition laid down by the Supreme Court in the case of **Dana Yadav Vs. State of Bihar** reported in **AIR 2002 SC 3325**, which runs as follows:-

"38. In view of the law analysed above, we conclude thus:

(a) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.

(b) In cases where according to the prosecution the accused is known to the prosecution witnesses from before, but the said fact is denied by him and he challenges his identity by the prosecution witnesses by filing a petition for holding test identification parade, a court while dealing with such a prayer, should consider without holding a mini-inquiry as to whether the denial is bona fide or a mere pretence and/or made with an ulterior motive to delay the investigation. In case the court comes to the conclusion that the denial is bona fide, it may accede to the prayer, but if, however, it is of the view that the same is a mere pretence and/or made with an ulterior motive to delay the investigation, question for grant of such a prayer would not arise. Unjustified grant or refusal of such a prayer would not necessarily enure to the benefit of either party nor the same would be detrimental to their interest. In case prayer is granted and test identification parade is held in which a witness fails to identify the accused, his so-called claim that the accused was known to him from before and the evidence of identification in court should not be accepted. But in case either prayer is not granted or granted but no test identification parade held, the same *ipso facto* cannot be a ground for throwing out evidence of identification of an accused in court when evidence of the witness, on the question of identity of the accused from before, is found to be

credible. The main thrust should be on answer to the question as to whether evidence of a witness in court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence adduced in court in relation to identity of the accused. But if, however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced in court.

(c) Evidence of identification of an accused in court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of the accused by a witness in court.

(d) Identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable dispatch for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.

(e) Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form the basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being

corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above."

22. After having adopted the proposition laid down by the Supreme Court in the case of **Dana Yadav Vs. State of Bihar (Supra)**, the Bench had considered some other decisions of the Supreme Court in paragraph 55 which runs as under:-

"In (2005) 11 SCC 600 State NCT v. Navjot Sandhu @ Afsan Guru, it was contended that a test identification parade should have been held to assure credibility of the evidence in identification of the accused by the shop keepers. The Supreme Court relied upon the judgment in (2003) 5 SCC 746 Malkhan Singh v State of M.P. to hold that identification in Court was substantive evidence while T.I.P. was corroborative evidence for identification in Court, if required. What weight must be attached to the evidence of identification in Court not preceded by a T.I.P. is a matter for the Court to examine on facts. Identification in the dock may be doubted where the identifying witness is a total stranger who had just a fleeting glimpse of the person identified or had no particular reason to remember the persons concerned. In (1991) 3 SCC 434 Bollavaran Pedda Narsi Reddy and Ors. v. State of Andhra Pradesh, the facts were of a fleeting glance during a hit and run attack in the darkness of the night when it was held that the belated identification in the dock in absence of earlier T.I.P. vitiated the same. In A.I.R. 1979 Supreme Court 1127 Kanan and Ors. V. State of Kerala, the facts were of a mob attack, when the Appellants were seen running away with the witness admitting that he knew the Appellants by face and yet named them while

identifying them in Court indicating of that their names had been supplied to the witnesses by someone else. The later two cases are completely distinguishable on facts of the present case.”

23. Thus, what appears from the above position of law ultimately rendered by the Supreme Court in the case is that the substantive evidence being of identification in Court was substantial evidence and Test Identification Parade has to be held only to confirm the suspicion regarding participation of an accused. It was held that identification in Court is a weak evidence but at the same time if the facts and circumstances of the case were such as to lend credence to such an identification in court, then substantive evidence on identification in court could very well be acceptable. In our opinion a decision in a particular case may not be laying down universally applicable the proposition of law as regards admissibility of evidence. The decision could vary as per facts of each of the cases. If a witness had long been associated with an accused in any manner so as to knowing him quire well before they had come to the witness box to depose in a trial and had identified the accused in court, the identification may not be questioned as a weak piece of evidence. The very long association of the victims with the accused persons and identifying them by name and other features as also on account of presentation of a particular set of facts which may be constituting the



offence alleged could be reliable upon which evidence on identification in court could be tested and if the court finds strong circumstances on identification of the accused in court were acceptable then in that case evidence on identification in court has never to be discarded. It is as strong a evidence as it could be any evidence in criminal trials and the court could very well affirm direct or otherwise participation of an accused on such identification. We are firmly of the view that the very association of the victims with the accused persons for such a period as coming out of the present case itself is a very strong circumstance making their identification in court acceptable and reliable. It was not a chance evidence. They had seen them from very close range, they were living with them, they were moving together as P.W.1 Manjesh Kumar was telling that appellant Uday Bhan Singh alias Neta Singh was moving with him. These special circumstances with others like appellant Uday Bhan Singh alias Neta Singh had a crooked finger who was the same person who had been identified as the accused in dock when the witnesses were deposing. The evidence appears quite establishing the identities of the accused who had been identified by the witnesses.

24. Shri Bikram Deo Singh, learned counsel was referring to the provision of Section 364-A of the Indian Penal Code and was submitting that the facts may not constitute that offence. We again

refer to the decision of this Court in the case of **State of Bihar Vs. Krishna Bihari Singh (Supra)** where this Court had the occasion of considering the same submission and the Court had laid down the proposition in paragraphs 42 to 46 of the report in the case of **State of Bihar Vs. Krishna Bihari Singh (Supra)** and on a perusal of that proposition we have hardly any doubt that the evidence constitutes that offence under Section 364-A of the Indian Penal Code. The evidence on record clearly proves that

- (i) the accused had kidnapped or abducted P.W. 1,
- (ii) had kept him under detention after said kidnapping or abduction; and
- (iii) lastly the kidnapping/abduction was for the purpose of Ransom..

The Supreme Court in the case of **Malleshi Vs. State of Karnataka (2004)8 SCC 95** had also observed that ultimately question to be decided was as to what was the intention behind kidnapping or abduction and if it was for demand of ransom then only the demand is material and it is never material whether any payment had been made or not.

25. Here in the present case, the evidence on demand of ransom of P.W. 1 as also that of identifying the accused in court leaves no manner of doubt that Manajesh Kumar was kidnapped only

with an intent to realize a ransom from his parents and that demand message came telephonically which was conveyed to them to pay up rupees one lakh to them, else their son could be annihilated. There was no payment but as pointed out in the case of **Malleshi Vs. State of Karnataka (Supra)**, it is not germane whether payment was made and only demand was made that had established their intention.

26. Thus, what we find on consideration of the evidence is that the judgment of conviction for an offence under Section 364-A of the Indian Penal Code could not be faulted. It was meritorious and as regards the sentence that also does not require any interference from this Court.

27. In the result, all these appeals fail and they are dismissed.

28. Appellant Uday Bhan Singh alias Neta Singh in Cr. A.(DB) No. 44 of 2009 and appellant Sudhir Singh one of the appellants in Cr. A.(DB) No. 119 of 2009 are in custody while other appellants are on bail. The bonds of appellants Gena Singh alias Genda Singh, Sunil Kumar Chaurasiya, Sudhir Singh, Pundav Yadav, Dablu Yadav and Vinod Singh alias Jalim Singh are cancelled. They must surrender to their bonds and serve out the sentence. If they do not surrender, then the trial court shall take all steps necessary in law to ensure that they are arrested and committed to the custody to serve

out the sentence.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

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