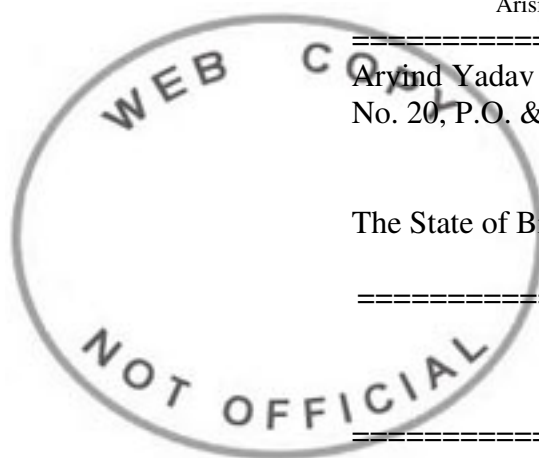




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1329 of 2010

Arising Out of Dehri P.S. Case No. 11 of 2008, District- SASARAM (ROHTAS)

=====

Aryind Yadav @ Binod Yadav, S/o Rajbansh Singh, R/o Vill. Bhabua Town, Ward
No. 20, P.O. & P.S. Bhabua, District – Kaimur at Bhabua.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

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With

Criminal Appeal (DB) No. 1265 of 2010

=====

Nirmal Yadav, S/o late Sumer Singh, R/o Vill. Nibi, P.S. Bhagwanpur, District –
Kaimur at Bhabua.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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With

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Criminal Appeal (DB) No. 1325 of 2010

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Ramashish Yadav, S/o Lal Bachan Yadav, R/o Bhabua Ward No.2, (Baheliya Tola)
P.S. Bhabua, Distt.Kaimur at Bhabua.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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With

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Criminal Appeal (DB) No. 1337 of 2010

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Sheo Muni Ram @ Shivmuni Ram @ Lambu S/o Chhedi Ram, R/o Vill. Dhanidari,
P.S. Durgawati, District – Kaimur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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With

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Criminal Appeal (DB) No. 1385 of 2010

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Satyendra Ram S/o Ram Briksh Ram R/o Vill- Bhadaini (Dhanauchho) P.S-
Durgawati Distt- Kaimur at Sasaram

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 1114 of 2012

Bijendra Yadav @ Lambu Yadav, S/o Laxmi Narayan Yadav, R/o Vill. Rahua, P.S.
Durgawati, District – Kaimur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 1329 of 2010)

For the Appellant/s : Mr. Kumar Sunil

(In CR. APP (DB) No. 1265 of 2010)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Adv.
Mr. Birendra Kumar Singh

(In CR. APP (DB) No. 1325 of 2010)

For the Appellant/s : Mr. Sandeep Kumar,
Mr. Vikeka Nand Singh

(In CR. APP (DB) No. 1337 of 2010)

For the Appellant/s : Mr. Uma Kant Sharma
Mr. Ravi Shankar Sahay
Mr. Ajay Nandnan Sahay

(In CR. APP (DB) No. 1385 of 2010)

For the Appellant/s : Mr. Bindeshwar Pd. Singh
Mr. Rudra Deo

(In CR. APP (DB) No. 1114 of 2012)

For the Appellant/s : Mr. Uma Kant Shukla
Mr. Ravi Shankar Sahay
Mr. Ajay Nandan Sahay
For the Respondent/s in all cases : Mr. A.K. Sinha, A.P.P.
Mr. S.C. Mishra, A.P.P.
Mr. A. Sharma, A.P.P.
Mr. S.B. Verma, A.P.P.
Mr. S.N. Prasad, A.P.P.
Mr. D.K. Sinha, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 01-12-2015

Heard learned counsels for the parties.

2. All the Appellants have been convicted under sections 364(A)/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life by the Additional Sessions Judge, F.T.C. No. II, Rohtas at Sasaram on 05.10.2010 and 08.10.2010 respectively in Sessions Trial No. 305 of 2008/331 of 2009 arising out of Dehri P.S. Case No. 11 of 2008 (G.R. Case No. 82 of 2008).

3. The case of the prosecution, according to Nand Kishore Kalbaghe (P.W.8), is that his brother-in-law (sister's husband), Rajendra Bhaorao Gawhane (P.W.7) used to work in M/s AFCONS Company as Electrical Supervisor at Dehri in connection with a project, which had been undertaken by the Company and used to live in a rented flat. On 03.01.2008, his brother-in-law had gone to eat in mess and left from there but he did not come again to the mess on 04.01.2008, at which the mess staff informed the Company about his absence on 05.01.2008. Then the authority of the Company, Mukti Ranjan Kumar Singh (P.W.2) filed a *Sanha*. On 07.01.2008, from the mobile of his brother-in-law a call was made to his landline phone at Maharastra from an unknown person, which was received by the sister-in-law of the victim, who was



informed that Rajendra Bhaorao Gawhane (P.W.7) had been kidnapped and a demand for ransom of Rs. 50 lakhs was made. The family members were called to Bihar. He then became nervous on hearing this and along with the rest of the family members came to Dehri on 12.01.2008 and contacted the officials of the Company and started to search the victim (P.W. 7). Repeatedly, calls were made from the mobile of the victim for demand of ransom and when he was convinced that they would not be able to search him out, they found it essential to give a written report to the Police. The case was instituted on such written report against unknown persons on 13.01.2008.

4. During trial, the prosecution examined eight witnesses. To understand the present case, which is based on circumstantial evidence, we would try to look into the evidence on important aspects which to consider firstly whether the ingredients under section 364(A) of the I.P.C. is satisfied and thereafter, consider the role of each of the Appellants and evidence in support of their complicity.

5. P.W. 7, Rajendra Bhaorao Gawhane is the victim of the kidnapping and he says that on 03.01.2008 at about 09.00 pm. when he was returning from Annpurna Mess run by AFCONS Company at Dehri, he saw a vehicle parked on the road. When he



attempted to cross the car, suddenly the door was opened, which hit him on his head. He said to the occupants that they should have seen before opening the door and then he walked a few steps when 2-4 persons caught him from the back and closed his mouth and stuck a pistol upon him and told him to be quietly seated in the car and pushed him inside where 4-5 persons were inside and closed his eyes and increased the volume of music, which was running in the car. After driving for about two hours, the car stopped on the side of the road and then he was made to cross the road and put at a place where after opening a shutter. He could understand that the place was underground. His hands and legs were tied and he had to spend the whole night there. He heard the some sounds from which he could catch that it was a place where there was a lot of traffic movement. The kidnappers then consulted each other and said that it was not safe to keep him there and he should be taken to the field of Satyendra Ram. On the next day, he was taken to a field where he walked for about one and half hours and then he was pushed in a room from where he was recovered on 15th by the Police.

6. The next witness on the point of kidnapping is the informant, Nand Kishore Kalbaghe (P.W.8), who happens to be brother-in-law of the informant. He stated that on 03.01.2008 at about 9.00 pm., he was in Maharashtra and on 05.01.2008, a call



were received by his sister, wife of the victim, that Gawhane was missing since the last two days. Yet another two days later, calls were received from the mobile of the victim that he had been kidnapped and demand of ransom of Rs. 50 lacs were made for his release. This information was given to the wife of the victim, who happens to be his sister. Then he along with rest of the persons then left for Dehri and consulted the officials of the AFCONS Co. and made return calls on the mobile of the victim and pleaded that they would not be able to pay such a large amount. However, he was threatened that the victim would be killed.

7. P.W.2, Mukti Ranjan Kumar Singh, is an official of APCONS Co. and worked for the same project. He stated that while the victim was working in the same company and working for the said project at Dehri, he was living on rent in the house of Satynarayan and used to have his meals at Annpurna Mess where everyone else used to eat. On 05.01.2008 at about 8.00 am. when he reached his office, some employees used to work in Annpurna Mess and came and told him that R.B. Gahwane was missing and that after having dinner on 03.01.2008, he did not come again for taking meals on 04.01.2008. In this regard, a *Sanha* was registered on 05.01.2008. They attempted to find out whereabouts of the victims, in course of which on 06.01.2008, some calls were made on the



phone of Prakash Nam deo Kamble (P.W.5) that the victim was in their clutches and Rs. 50 lacs would have to be paid for his release. On this information, Officer-in-Charge, Dehri took mobile of P.W.5 and started monitoring the calls. The company on the request of the Police gave Rs. 2 lakhs to the relative of the victim. A few days later, he learnt that the victim had been recovered and on the company's prayer, Rs. 2 lakhs had been released by the Court.

8. P.W. 5, Prakash Nam Deo Kamble used to also work with the victim and stated that after having had dinner on 03.01.2008 at about 9.00 pm., the victim had stopped attending the mess. When he did not come to eat on 05.01.2008, he and others informed Mukti Ranjan Kumar Singh (P.W.2) in this regard. On 06.01.2008, from the mobile of the victim, a call was received, who stated that the victim was in their clutches and Rs. 50 lakhs be paid for his release. He then informed P.W.2 about the same. On 07.01.2008, once again another call was received telling him to arrange for the money. He allegedly told the person, who was calling as to why calls were made to him and he gave his mobile to Sanjay Singh, his officer.

9. From the evidence of the aforesaid persons, it is evident that the first ingredient of kidnapping and demand for ransom for recovery of the victim is well established.

Now for the role of the Appellants :

10. P.W.1, Parmanand Choudhary, who was posted at Dehri Police Station, stated that on 15.01.2008, a team was constituted, in which he was also a member. As per information, the informant was to take two lakhs to Kudra Station on 15.01.2008 and accordingly, the entire team (in civil dress) left for Kudra Station from Dehri Station on a passenger train in which P.W. 8, Nand Kishore Kalbaghe and company officials, Sanjay Kumar Singh and others proceeded. They were scattered around in the same compartment. At about 11.00 to 11.30 am., the train reached Kudra Station where all of them got down and once again spread themselves. The informant with Hawaldar sat on the bench. About five minutes later, three persons came to a tea shop and then he saw the informant met three of them near a bush handing over a 'Jhola' to them. The entire team then rushed towards the three persons and surrounded and caught them there. They disclosed their names as Bijendra Yadav, Sheo Muni Ram and Binod Yadav @ Arbind Yadav. A seizure list was prepared of the recovered 'Jhola' and the money contained therein which was handed over to the three accused. The confessional statement of Bijendra Yadav was recorded by the Officer-in-Charge, Dehri, on the basis of which two motorcycles were recovered near the tea shop. On his pointing, they

reached village Dhanechha near the boring well of Satyendra Ram fromwhere the victim was recovered. The victim allegedly identified the three accused persons and gave his statement to the Officer-in-charge.

11. P.W.3, Basant Baitha, is also an S.I. On 14.01.2008, according to him, he was posted at Dehri P.S., a team was constituted for laying a trap of accused persons, who had detained the victim and were to receive ransom money. In the leadership of Officer-in-Charge, Dehri, a team was constituted by P.W.4, Anand Lal Mahto and they proceeded on 15.01.2008 on a passenger train for Kurda Station. They then got off there and scattered themselves. A little while later, three persons came to the railway track and took a bag from the brother-in-law of the victim, P.W.7, who was apprehended along with a 'Jhola'. Some associates of the miscreants fired and ran away leaving the motorcycle. The three persons disclosed their names Bijendra Yadav, Sheo Muni Ram and Arbind Yadav. From the Jhola, Rs. 2 lakhs was recovered of which a seizure list was prepared on which independent witnesses signed. On the statement of the accused, two motorcycles were recovered. They also disclosed as to where the victim was concealed at which they went to Dhanechha village and in the *Bahiyar* where the boring chamber of Satyendra Ram was located,



they say some people running away from there and the door was found locked. From inside somebody answered at which the lock was broken open and the victim was recovered. The victim allegedly identified the three accused persons, who had come with them for locating the victim. They also disclosed the name of Nirmal Yadav and somebody else whose name he could not remember.

12. P.W.4, Anand Lal Mahto is the Investigating Officer, who stated that on 13.01.2008, while he was posted as the Officer-in-Charge of Dehri Police Station, he had received a written statement of the informant in regard to kidnapping of the victim for reasons of ransom at which he had instituted a case and assumed investigation. He identifies the first information report as Exhibit-1. He then stated that on 05.01.2008, he had also received information from AFCON administrative officer Mukti Ranjan Singh (P.W.2) in regard to missing of the victim at which a *Sanha* was recorded. On 07.01.2008, allegedly calls had come to the basic phone of the victim from his own phone informing the brother and the wife and sister-in-law that the victim had been kidnapped for the purposes of ransom and if Rs. 50 lakhs was paid, he would be released. The Police then started monitoring the phones. From it, they could assume that frequent calls were being made for payment of ransom



at which a special team was constituted on the orders of the S.P. Rohtas. In course of investigation, he learned that the informant had received two lakhs from the company, which was to be paid to the kidnappers on 14.01.2008, but on the said date, the informant did not reach so on 15.01.2008 on a fresh information, he along with rest of the Police Officials reached Kudra Station and scattered themselves on the platform concealing their identity. While the transaction was in progress, three accused persons were caught namely Bijendra Yadav @ Lambu, Sheomuni Ram @ Lambu and Arbind Yadav @ Vinod Yadav along with Rs. 2 lakhs and seizure list was prepared on which some independent witnesses signed and copies of the same were given to the three accused persons and two motorcycles were also recovered from the tea shop of Ram Bachan Yadav. A seizure list was prepared which was marked as Exhibits 3 and 3/1. On the statement of Bijendra Yadav, they reached at the boring of Satyendra Ram, which fell within the Dhanechha Village and recovered the victim. He gave some details of the money which had been disbursed by the Company for payment of ransom which is marked Exhibit-4.

13. P.W.6, Afroz Ahmad, who is S.I. posted at Dehri Police Station, stated that on 13.01.2008 a team was constituted in the leadership of Anand Lal Mahto (P.W.4), in course of which,



they reached Kudra Police Station along with a ransom money carried by the officials of the AFCON Co. The team then caught hold of all the three kidnappers along with a 'Jhola' containing Rs. 2 lakhs and a seizure list was prepared. The accused then gave their confessional statement, on the basis of which the victim was recovered from the boring of Satyendra Ram in Village Dhanaecha. He could not identify the three accused persons because of lapse of time.

14. P.W.7, R.B. Gawhane, the victim himself had also stated about his recovery from the boring.

15. P.W.8, Nand Kishore Kalbaghe, the informant, who stated that after the kidnapping of his brother-in-law, he had negotiated with kidnappers, who had agreed on a sum of Rs. 2 lakhs. They had called him to Kudra Station with the amount but since on 14.01.2008, he could not reach there, on the next day i.e. on 15.01.2008 he along with Mukti Ranjan Singh (P.W.2), Company Official and cook Sanjay Singh reached at Kudra Station and sat on the bench at the platform when a phone call came stating that three accused persons would meet him towards east side and money should be handed over to them, then the victim would be released one or two stations ahead after receiving of money. On this information, he went about 200 yards east side of the Station, where



he met three persons, who stated that the victim was in their possession and money should be handed over to them. Then he gave bundles of two lakhs and handed over bag to them. As soon as they turned, some Police Officials in civil dress surrounded them at which other criminals started firing. However, three miscreants with 'Jhola' containing Rs. 2 lakhs were apprehended of which a seizure list was prepared, which is marked Exhibit-10. Three accused persons disclosed that Nirmal Yadav and Gajendra Singh had come with motorcycle to take money and they were outside. Thereafter, the Police recovered the motorcycle. On the statement of the accused persons, they reached village Dhanechha where victim was recovered from the boring.

From the aforesaid evidence, the prosecution appears to have proved well to the factum of arrest of the three accused persons along with ransom amount and recovery of the victim.

Ransom Calls :

16. P.W.2, Mukti Ranjan Kumar Singh, stated that after a *Sanha* was recorded, he learnt that phone calls had been made to P.W.5, Prakash Nam Deo Kamble giving him information that the victim was detained by them and demands of Rs. 50 lakhs were made which information was given to the Officer-in-Charge, Dehri, who took his mobile and started monitoring the same and he

had been informed.

17. P.W.5, Prakash Nam Deo Kamble stated that on 06.01.2008, he received calls from the mobile of the victim that the victim had been detained by them and demands of Rs. 50 lakhs were made for his release. He had given this information to P.W.2. On the next day, once again on 07.01.2008, calls were made to him that he should make arrangements for the money at which he had given his mobile to his Officer, Sanjay Singh, who talked to these persons. In his cross-examination, he stated that he had given his mobile to the Police which was handed over to him after the investigation was over.

18. P.W.8, Nand Kishore Kalbaghe (informant) also confirmed that on 07.01.2008 calls were received from the mobile of the victim that money should be arranged from his release and that he had negotiated with the kidnappers, who agreed upon a sum of Rs. 2 lakhs. These Rs. 2 lakhs were disbursed by the Company.

19. P.W.4, Anand Lal Mahto stated that the informant confirmed the fact that he had received information about demands of ransom to the basic phone of the family members of the victim and also from P.W.2 at which the mobile number of the victim was kept under watch from which it appears that repeated calls had been made making demands of ransom. He further stated that he had

learned that the Company had disbursed Rs. 2 lakhs to the family of the victim which was marked Exhibit-4.

20. Thus, it appears that there is positive evidence with regard to demands of ransom as well.

Role of the Appellants :

21. From the evidence discussed as above, it appears that the prosecution case is that after the victim was kidnapped, calls were made to the family members and his colleagues for demands of ransom and it was decided that on payment of Rs. 2 lakhs at Kudra Station, the victim would be released.

The consistent evidence of P.W.1 Parmanand Choudhary, P.W.2 Mukti Ranjan Kumar Singh, P.W.3 Bansant Baitha, P.W.4 Anand Lal Mahto, P.W.5 Prakash Nam Deo Kamble, P.W.6 Afroz Ahmad, P.W.7 R.B. Gawhane and P.W.8 Nand Kishore Kalbaghe is that three persons were apprehended when the handing over of the bag at Kudra Station was in progress.

22. During trial, P.W.1 Parmanand Choudhary, identified Bijendra Yadav, Sheo Muni Ram and Binod Yadav @ Arbind Yadav as the three persons who were caught at Kudra Station.

23. P.W.3, Basant Baitha stated that the accused



persons had disclosed the name of Nirmal Yadav and some others which he did not remember. He claimed to have identified the three accused persons, who were caught at Kudra Station and identified Nirmal Yadav, Rajan Singh and Bijendra Yadav as three miscreants. However, he appears not to have wrongly identified Nirmal Yadav and Rajen Singh, since they were not the persons, who had been arrested at Kudra Station.

24. P.W.4 Anand Lal Mahto, is the Investigating Officer, who corroborates the entire prosecution case, but after having stated that three accused persons namely Bijendra Yadav @ Lambu, Sheo Muni Ram @ Lambu and Arbind Yadav @ Binod Yadav had been arrested at the spot with bag of Rs. 2 lakhs at Kudra Station and Bijendra Yadav had given the confessional statement on the basis of which, the boring of Satyendra Ram had been raided from where the victim was recovered. It appears that neither this witness identify was made to the accused persons in dock nor did the defence challenge their identification. In view of which, the fact that three miscreants were caught at Kudra Station is amply corroborated by other documentary evidence. Also there is enough evidence that the name of Satyendra Ram was disclosed on the basis of which the boring was raided from the place where the victim was recovered, which is acceptable as unavoidable evidence.

25. P.W.6 Afroz Ahmad stated that he could not identify the three persons, who had been apprehended at Kudra Station because of lapse of time. However, in his statement, he stated that the victim had been recovered from the boring of Satyendra Ram which fact also will have to be accepted as admissible evidence.

26. P.W.7, R. B. Gawahana, the victim, had stated that he had heard the accused persons planning to move him to the boring of Sateyndra Ram and it is then that he was recovered. He identified his kidnappers being Ramashish Yadav, Arbind Yadav, Bijendra Yadav and Sheo Muni Ram.

27. No doubt, he has stated that within 15-16 seconds of being pushed into the car he was blind folded but we consider the manner of occurrence that the victim had walked a few steps where he was surrounded and thereafter, a scuffle took place and then he was pulled into the car, we would think there was sufficient time for him to identify the miscreants.

28. P.W.8 Nand Kishore Kalbaghe, the informant, had stated that on 15.01.2015, three persons had come to receive the money from him at Kudra Station, who had been arrested. He identified the three accused being Satyendra Ram, Arbind Yadav and Bijendra Yadav. No doubt, he has identified Satyendra Ram

wrongly but finding that sufficient time was elapsed from the date of occurrence to the date of evidence, we are inclined to condone the same.

29. In the result, we find that there is documentary evidence to show that the three Appellants namely, Arbind Yadav, Bijendra Yadav and Sheo Muni Ram had been arrested at the spot and produced before the Court. No doubt, an argument has been made with regard to not holding a Test Identification Parade, but we do think it was redundant since they had been caught at spot and there was no occasion for them to have been put on Test identification Parade. We find also that from the statements of the witnesses and accused that identification of the three Appellants has not been challenged in any manner and hence, we are inclined to reject such submission. In view of there being direct evidence, as against these three Appellants, we are inclined to uphold their conviction and dismiss the appeal.

30. Whereas the evidence against Satyendra Ram is concerned, we find that there is consistent evidence that the boring belonged to Satyendra Ram. No doubt, there was no name plate or any particular identification of his name on the same, but when there is consistent evidence of independent witnesses, who had no reason to falsely implicate Satyendra Ram, we are inclined to accept

that the boring belonged to Satyendra Ram. The further notable point is that when a specific question was put to Satyendra Ram in regard to the recovery of the victim from his boring, he merely denied this circumstance without an explanation or a rebuttal that the boring belonged to him.

31. Here, we would like to draw attention to Section 106 of the Evidence Act, 1872 :

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

Illustrations :

- (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
- (b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

32. According to the illustrations, we find that both the illustrations require shifting of burden of proof on the accused on a positive point. The fact that the boring belonged or not to Appellant Satyendra Ram was only within his special knowledge and has not having negated, it satisfactorily in our opinion since he has not

discharged the said burden, we would be compelled to accept the oral evidence of the witness that the boring belonged to Satyendra Ram from where the victim was recovered.

34. As for Appellant Ramashish Yadav, who also happened to be a cook in the mess and well known to him, we find that the victim himself identified him in Court as one of the kidnappers and hence, in view of the discussion on the point of identification above, we are inclined to uphold his conviction as well. Thus, his appeal is also dismissed.

35. However, we find that there is complete paucity of any evidence against Appellant Nirmal Yadav and hence, Cr. Appeal No. 1265 of 2010 is allowed and the Appellant Nirmal Yadav is acquitted of the charges levelled against him, and discharged from the liability of his bail bond. The rest of the Appeals are dismissed.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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