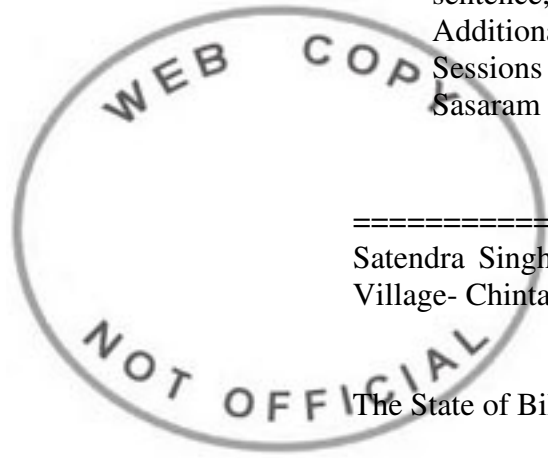




IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated 20.09.2007 and order of sentence, dated 25.09.2007, passed by Shri Umesh Chandra Mishra, Additional Sessions Judge, Fast Tract Court No.-V, Rohtas (Sasaram) in Sessions Trial No. 280 of 2006 (Tr. No. 16 of 2007), arising out of Sasaram (Town) P.S. case No. 207 of 2005, G.R. No. 704 of 2005)

Criminal Appeal (DB) No.1455 of 2007

Satendra Singh Yadav @ Satendra Yadav, Son of Late Muni Singh, resident of Village- Chintavanpur, Police Station- Sasaram (M), District- Rohtas at Sasaram.
..... Appellant.
Versus
The State of Bihar Respondent
With

Criminal Appeal (DB) No. 1421 of 2007

Kutum Khatic, Son of Late Khaderan Khatic, Resident of Mohalla- Sagar (Alamganj), P.S. Sasaram, District- Rohtas.
..... Appellant.
Versus
The State of Bihar Respondent.
With

Criminal Appeal (DB) No. 1461 of 2007

1. Shyama Kumar Khatik, Son of Late Vishwnath Khatik, Resident of Mohalla- Sagar (Alamganj), P.S. Sasaram, District- Rohtas.
2. Rameshwar Singh Yadav, Son of Ramjanam Singh
3. Manoj Yadav, son of Dewan Singh
Both are residents of Village- Chintawanpur, Police Station- Sasaram (Mufasil), District- Rohtas at Sasaram.
..... Appellants.
Versus
The State of Bihar Respondent.
With

Criminal Appeal (DB) No. 14 of 2008

Aslam Rain, son of Kamruddin Rain, resident of Mohalla- Kabirganj, Police Station- Sasaram (T), District- Rohtas at Sasaram.
..... Appellant
Versus
The State of Bihar Respondent.
With

Criminal Appeal (DB) No. 22 of 2008

Anish Rain, son of Abdul Rasid Rain, resident of Mohalla- Kabirganj, P.S. + P.O. - Sasaram, District- Rohtas at Sasaram.
..... Appellant.
Versus
The State of Bihar Respondent.

Appearance :

(In CR. APP (DB) No. 1455 of 2007)

For the Appellant/s : Mr. B.P. Pandey, Sr. Advocate
Mr. Pramod Kumar, Advocate
Mr. Ashok Kumar Mishra, Advocate
Mr. Varun Kumar, Advocate
Mrs. Pratibha Srivastava, Advocate
For the Respondent : Mr. Abhimanyu Sharma, Addl. P.P.
Mr. Satya Narayan Prasad, Addl. P.P.

(In CR. APP (DB) No. 1421 of 2007)

For the Appellant/s : Mr.
Mr. Shambhu Nath Singh
For the Respondent/s : Mr.

(In CR. APP (DB) No. 1461 of 2007)

For the Appellant/s : Mr.
Mr. Shambhu Nath Singh
For the Respondent/s : Mr.

(In CR. APP (DB) No. 14 of 2008)

For the Appellant/s : Mr.
Mr. Sheela Pandey

For the Respondent/s : Mr.

(In CR. APP (DB) No. 22 of 2008)

For the Appellant/s : Mr.
Mr. Syed Asgher Najmi
Mr. Mritunjay Kumar Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 24-04-2015

All these five appeals, totaling seven appellants, have been preferred against the judgment of conviction, dated 20.09.2007, and order of sentence, dated 25.09.2007, passed in Sessions Trial No. 280 of 2006 (Tr. No. 16 of 2007), arising out of Sasaram (Town) P.S. case No. 207 of 2005, G.R. No. 704 of 2005, whereby the learned Additional Sessions Judge, Fast Tract Court No.-V, Rohtas (Sasaram) has convicted all the appellants under Section 364-A of the Indian

Penal Code and sentenced each of them to Rigorous Imprisonment for life and a fine of Rs.5,000/- (Five thousand) each and in default to undergo further simple imprisonment for six months.

2. Cr. Appeal (D.B.) No. 1455 of 2007, Cr. Appeal (D.B.) No. 1421 of 2007, Cr. Appeal (D.B.) No. 14 of 2008 and Cr. Appeal (D.B.) No. 22 of 2008 are represented by sole appellant, whereas Cr. Appeal (D.B.) No. 1461 of 2007 comprises of three appellants, namely, Shyama Kumar Khatik, Rameshwar Singh Yadav and Manoj Yadav.

3. The prosecution case in short as made out in the Fardbeyan (Ext.5) of Mustaq Ahmad (P.W. 4) recorded by Sri T. N. Ojha, Inspector-cum-Officer-in-charge of Sasaram (T) Police Station on 05.06.2005 at 8.00 P.M. at his house, is as follows:

According to the informant, his son Altmas @ Munna (P.W. 3), aged about 11 years, Gulam Sarwar, aged about 15 years (not examined), Md. Sahid, aged 16 years (P.W. 5) came around 5.30 P.M. and started for "Urs" at Hazrat Madar Sailani Pir Rahamatullah to offer prayer. After offering their prayer, when the three boys were returning and as soon as they reached near Mazar of Bhola Sahid, they saw a white colour Maruti Van standing on the main road with one of the rear doors of the car open. One unknown occupant of the car enquired as to who is Munna. On hearing, the P.W. 3 replied that



he is Munna. Thereafter the unknown person dragged him by hand inside. The Van then sped fast towards south. The information about the incident was immediately given to the informant by Gulam Sarwar and Sahid (P.W.5), who had witnessed the kidnapping. Both these boys have recognized the Car, in which Altmas @ Munna was abducted.

4. On the basis of Fardbeyan of Mustaq Ahmad (P.W. 4), formal F.I.R. (Ext.6) was drawn, giving rise to Sasaram (Town) P.S. case No. 207 of 2005 dated 05.06.2005 under Sections 366-A of the Indian Penal Code.

5. It is relevant to state that the investigating officer, namely, Triloki Nath Ojha (P.W. 8) while on Mobile duty, received information of kidnapping from police station Mobile and proceeded to the place of the informant after making necessary Station Diary Entry. The police in course of investigation, inspected the place, from where P.W. 3 was abducted in a Maruti Van. The police installed Caller I.D. in the basic Telephone of the informant and succeeded in tracking the telephone number from which ransom was demanded. It transpired that the calls were made from local Telephone booth. The booth owner provided information of the person and the number of bike by which he used to come to booth for making ransom call. On the basis of the information revealed by booth owner, the

investigating officer apprehended the caller and on his confessional statement, the victim boy was recovered in wee hours of 8/9.06.2005 from the house of Sateyndra Somgj Yadav, who is appellatant in Cr. Appeal (D.B.) No. 1455 of 2007, namely, Village- Chintavanpur, Police Station- Sasaram (M), District- Rohtas at Sasaram.

6. The police after investigation submitted charge-sheet under Section 364-A of the Indian Penal Code against all the accused persons under Sections 364-A, 120-B/34 of the Indian Penal Code except Shyama Kumar Khatik. Subsequently, supplementary charge-sheet was submitted against Shyama Kumar Khatik vide charge-sheet no. 21 of 2006 dated 04.03.2006.

7. The Prosecution in support of its case examined altogether 8 (eight) witnesses; who are as follows: P.W. 1 Md. Sagruddin is the grand-father of the victim, P.W. 2 Md. Sajjad is a hearsay and has proved various documents, P.W. 3 Altamas @ Munna is the victim, P.W. 4 is Mustaq Ahmad, the father of the victim (informant), P.W. 5 is Sahid, P.W. 6 is Tarikh Bin Ahamad, P.W. 7 is Manoranjan Bharti and, P.W. 8 is Triloki Nath Ojha. The three police officials, namely, P.W. 6 (Tarikh Bin Ahamad), P.W. 7 (Manoranjan Bharti) and, P.W. 8 (Triloki Nath Ojha) constituted the team along with others to trap the accused persons and to recover the victim boy from the house of appellatant Satendra Singh Yadav.

8. The defence also examined four witnesses, namely D.W.1 Kamaruddin Raeen, D.W. 2 Md. Asalam, D.W. 3 Ram Swarup Ram, and D.W. 4 Nasim.

9. The case of the accused in the statement under Section 313 Cr.P.C. is complete denial of the occurrence. The trial court on consideration of materials on record convicted all the five accused persons under Sections 364-A of the Indian Penal Code and sentenced each of them to Rigorous Imprisonment for life and a fine of Rs.5,000/- (Five thousand) each and in default to undergo further simple imprisonment for six months.

10. The prosecution in order to bring home charge against the appellants have examined 8 witnesses. Out of these witnesses P.W.-3 Altamash @ Munna, aged 16 years and P.W. 5 Md. Shahid, are the witnesses on the point of occurrence, whereas P.W. 4 Mustaq Ahmad, is the father of the victim, who has supported and corroborated the prosecution case. P.W. 3 stated that on 05.06.2005 at about 5.30 P.M., he left his house along with Sarwar, who is his Fufera brother and Sahid (P.W.5) to offer prayer at Hazrat Majar Sailani Pir Rahamatullah. Earlier, at about 12.00 noon. Earlier in the day Md. Aslam and Anish had come to his house and wanted him to accompany them to Hazrat Majar Sailani Pir Rahamatullah for offering prayer, which he had refused. P.W.3 in his evidence further



stated that while he was at Pir Rahamatullah, he noticed Aslam and Anish Rain momentarily in the crowd. After offering prayer, the victim (P.W.3) along with Sahid and Gulam Sarwar started for their house at 6.45 P.M. Around 7.30 P.M., no sooner he reached the Majar of Bhola Sahid, he saw Maruti Van with its door open, parked on the left plank of the road. As they came near the van, some one dragged him in the waiting Van and the van took him to a place, where he was kept in captivity in one of the rooms of a house nearby. He recognized Aslam, who was driving the Van and Md. Anis, who was sitting by the side of the driver. He could learn the names of other accused persons from their conversations, who had taken him into captivity. The names figuring in their conversations deputed involvement in the crime hands of Shyam Khatik, Kutumb Khatik, Rameshwar, Satendra Singh Yadav, Manoj, Aslam and Anis. He further supported the prosecution case that the accused persons on phone demanded ransom from his father for his release. In order to demonstrate that the boy was actually in their captivity, the accused persons took off his shirt to place at the designated place. He stated that the police rescued him in the intervening night of 8/9.06.2005 from the house of Satendra Singh Yadav and arrested the appellant, Satendra Singh Yadav, Manoj Kumar and Rameshwar Yadav from the said premises. The victim stated that the three other accused

persons Kutumb, Aslam and Anis fled away on seeing the police. According to him, he was brought to the police station at 10.30 A.M. on 09.06.2005 and was handed over to his parents.

12. We will now examine the evidence of P.W. 5, Sahid, who has also been examined as a witness on the point of commission of occurrence of kidnapping. While supporting the prosecution case, Md. Sahid too stated that after offering prayer at Mazar, they were returning home at about 7.30 P.M. As soon as they reached near the Mazar of Bhola Sahid on Baulia Road, he saw a Maruti Van parked on the left side of the road. One of the doors of the Van was open. As they reached near the vehicle, one of the accused persons sitting inside the vehicle dragged Altmas @ Munna (P.W.3) into the Van and sped fast towards the south. P.W. 3 was finally recovered on 09.06.2005.

13. Apart from these two eye witnesses on the point of commission of occurrence, the prosecution examined P.W. 1 and P.W.4, the grand father and father of the victim boy as corroborative witnesses. Both of them supported the prosecution case, as stated in the F.I.R. P.W. 4 stated that he received a number of calls on 07.06.2005 and 08.06.2005 for ransom. However, he was unable to identify the caller. The evidence of P.W. 4 is to the extent that the caller initially demanded a sum of Rs. 30 lakhs for his release, which



was reduced to 20 lakhs and ultimately to Rs. 8 lakhs. He sought evidence from the kidnappers with respect to their claim that his child is in their captivity. In order to establish that his son is in their captivity, the accused persons placed the 'full shirt' of the informant's son at the Mazar. On seeing the shirt, the informant was satisfied that the same is of his son and about his captivity. P.W.4 in his evidence stated that the police in order to track down the kidnappers had attached caller I.D. to his basic phone bearing number 221820. P.W. 4 in para.10 of his evidence stated that finally in the morning of 09.06.2005, he received information from the police that his son has been recovered.

14. We find that the prosecution has also examined one Md. Sajjad (P.W.2), cousin of the informant, who is a hearsay witness, who in his evidence stated that the police made a seizure of shirt of the victim and prepared a seizure list on which he and one Shamshad Ahmad attested and the same was marked as Material Ext. 1. This witness has also proved the seizure of T-shirt of the victim, which he was wearing at the time of recovery (Material Ext-I/A). He has identified his signature and that of Shamshad Ahmad, which were marked as Material Ext. 2 and 2/A.

15. P.W. 6 Tarikh Bin Ahmad was the part of the team constituted by the Superintendent of Police, Rohtas for keeping an



eye on the Telephone calls and for tracking of the accused. P.W. 6 was deputed at the house of the victim to monitor the calls coming on the basic phone of P.W. 4 with the aid of Caller ID (parallel phone), which was attached to the phone. P.W. 6 stated that calls were made on the basic telephone to demand ransom for release of the victim boy on 06.06.2005, 07.06.2005 and 08.06.2005. He further supported the prosecution case that the owner of telephone booth rang up and enquired from P.W. 4 as to why the person who just called was hurling abuses on the phone. He further stated that telephone booth owner disclosed that a person riding a motorcycle bearing registration no. DL 4 CF 2715 had made the ransom call and hurled abuses from his booth. On the basis of the information revealed by the booth owner, Shyam Kumar Khatic, the owner of the motorcycle, was finally apprehended on 08.06.2005.

16. P.W. 8 stated that on information received from P.W. 6, he kept a watch on persons coming to the Telephone booth and ultimately he succeeded in apprehending Shyam Khatik with his motorcycle bearing registration no. DL 4 CF 2715. On the basis of information furnished by Shyam Khatik, the raiding team headed by the Superintendent of Police recovered the victim from the house of Sateyndra Singh Yadav in village Chintamanpur. Three of the accused persons, namely, Sateyndra Singh Yadav, Rameshwar Singh



Yadav and Manoj Singh Yadav were apprehended with fire arms from the said house, whereas two of the accused persons succeeded in fleeing. He stated that the raid was conducted in presence of two independent witnesses, namely, Rajendra Singh and Sri Ram Eqbal Singh. He recorded the statement of the victim boy in presence of two witnesses and soon thereafter informed his parents about his recovery.

17. On the basis of these evidence, Mr. Abhimanyu Sharma, learned Additional Public Prosecutor has submitted that the prosecution has successfully proved that the accused persons in league with each other, kidnapped the victim while he was returning after offering prayer at Hazrat Majar Sailani Pir Rahamatullah. The evidence of P.W.5 and the victim (P.W.3) fully corroborates the date, time and manner of kidnapping. The evidence of P.W. 3 , P.W. 4 and P.W.6 establish that kidnapping was done for ransom and as such the trial court has rightly convicted them under Section 364-A of the Indian Penal Code.

18. Mr. Bibhuti Prasad Pandey, learned senior counsel appearing on behalf of the appellants, in all the appeals, submits that the prosecution has failed to prove the charge under Section 364-A of the Indian Penal Code against the appellants beyond all reasonable doubt. He submits that the prosecution has withheld the material



witnesses, namely, Gulam Sarwar, who was together with Md. Sahid and victim, when the latter was alleged to have been dragged into the Maruti Van and kidnapped. He submits that the prosecution has examined Md. Sahid, who generally lives in Daltonganj and per chance is said to have come to the house of his brother-in-law, namely, Nasruddin, whose house is situated next to the informant. Nasruddin is inimical to one of the appellants, who is his full brother. He next submits that the booth owner, who gave the details of the kidnappers and the bike, has not been examined as a witness. He next submits that Shyam Khatik was apprehended on the clue given by the booth owner, which led to recovery of the victim boy and as such he was very relevant witness in the case, as according to the prosecution, the kidnappers has been making ransom calls from his booth. He further submits that no seizure list was produced in the court with respect to seizure of motorcycle, which was used by one of the kidnappers, namely, Shyam Khatik and the Maruti Van, which was used for kidnapping of the victim. Learned counsel also submits that even the owner of the vehicle was neither made an accused nor a witness in the instant case. He next submits that no call detail report has been legally proved in the court in order to establish that calls were made from telephone booths on the basic phone of the informant (P.W.4). He next submits that the prosecution witnesses



are not consistent in the statement and have given different times of recovery of the victim boy, which creates doubt about the authenticity of the prosecution case. It has also been contended that the prosecution has given a go bye to their initial case recorded in the F.I.R. that one of the occupants of the Van enquired as to the identity of the victim as all the accused were local and lived in the vicinity and were known to each other and thus could not have enquired as to who is 'Munna'. Learned counsel submits that curiously enough none of the prosecution witnesses including the victim in their evidence in the court has mentioned about the query being made by one of the occupants of the car regarding the identity of the victim. Furthermore, the provisions of Section 313 of the Cr.P.C. were not followed in its true letter and spirit, as laid down by the Hon'ble Apex Court in a number of cases. The latest being the case of Nar Singh Vs. State of Haryana, reported in (2015) 1 SCC (Cri) 699.

19. Elaborating his submissions, learned counsel for the appellants submits that as per the prosecution case the victim was recovered from the house of Satendra Singh Yadav of village Chintamanpur. However, while examining him under Section 313 of the Cr.P.C., no question was put to him to the effect that the boy was recovered from his house and as such he was deprived of an opportunity to explain the accusations. He submits that for the same

reasons, the case against Shyam Kumar Khatic would too fail, as no question was put to him regarding the use and recovery of motorcycle.

20. Once we have noticed the case of both the prosecution and the defence in some details, we would now examine the points one by one raised by the appellants. Counsel for the appellants submitted that all the witnesses were either interested or partisan witnesses. For instance, it is submitted on behalf of the defence that P.W. 5 Sahid is inimical towards appellant Aslam Rain and his close friend Anis Rain. It is not in dispute that Aslam is own brother of Nasruddin and they are on inimical terms. It has further come in evidence that the informant is also on inimical term with Aslam. P.W.5 Md. Sahid is the own brother-in-law of Nasruddin, who is step brother of Md. Aslam Rain. Furthermore, we find that Sahid is not a resident of the said village, rather he is resident of Daltonganj and as per chance he was present in the village on the relevant date. On these premises, counsel for the defence has argued that the evidence of Sahid (P.W. 5), who is on inimical term with Md. Aslam Rais ought not to be relied upon while convicting the accused persons or to hold them guilty.

21. It is relevant to state that Sahid (P.W.5) is the only witness, who is privy to the kidnapping of the victim (P.W.3) and on



the basis of information supplied by Shahid and Gulam Sarwar (not examined), the F.I.R. was lodged by P.W. 4. It is well established that evidence of a witness cannot be rejected on the ground that he is interested or a partisan witness. On the other hand, the rule is that in such circumstances, the evidence of the witness should be examined cautiously, carefully and with circumspectively. We find that on the informations given by Sahid, the informant in the F.I.R. stated that one of the occupants while kidnapping the victim enquired as to who is 'Munna' and once P.W. 3 answered he was Munna, he was dragged inside the Maruti Van. However, P.W. 5 Sahid in his evidence was silent on the issue whether one of the kidnappers before kidnapping enquired, as to who is Munna. We, thus, do not find the evidence of Sahid is to be fully reliable. However, the prosecution besides Md. Sahid, has examined the victim (P.W.3), and his father (P.W.4), who have supported the prosecution case.

22. The defence argued that the material witness has been withheld and as such adverse inference would be drawn against the prosecution. According to the defence Gulam Sarwar, who had accompanied the victim and Sahid to the Majar for offering prayer on 05.06.2005 ought to have been examined along with Sahid. However for the reasons best known to the prosecution, examination of Gulam Sarwar has been withheld. Similar plea was taken by the defence with

respect to non-examination of the owner of the Maruti Van, whose vehicle is said to have been used for kidnapping as well as the owner of the motorcycle.

23. In a criminal trial, it is not necessary that the prosecution examine a large number of witnesses on a particular point, which may vary from case to case. At times, it may be suffice to examine one witness on the point and in some cases, examination of several witnesses may be held inadequate. It is true that examination of Gulam Sarwar, another boy, who was present at the time of kidnapping could have lent credence to the prosecution case, but his non-examination would not be fatal to the prosecution.

24. Learned counsel had next argued that the witnesses were not consistent with respect to the date, time and recovery of the victim boy. We find that there is some discrepancies in the evidence of the prosecution witnesses in this regard. According to P.W.1 the victim boy was recovered at 12.00, in the night of 8/9.06.2005, and was brought after an hour at 1.00 A.M. and restored to the family. But according to the victim (P.W.3), he was rescued in the night of 8/9.06.2005 and was brought to the police station at 10.30 A.M. in the morning. On the other hand, P.W. 4 had stated another version. According to him, he received information in the morning about the recovery of his son, whereafter he went to the police station and the

boy was restored to him around 12.00 'O' clock. P.W. 5 Sahid was silent on the time of recovery of boy. Thus, we find that evidence of P.Ws. are not consistent on the point of time of recovery of the boy.

25. In our view, the discrepancies with respect to the time of recovery of the boy would not be fatal to the prosecution case, if it is able to prove that it was the appellants, who had kidnapped the victim and was kept in captivity in the house of Satendra Singh Yadav in village Chintamanpur from where he was recovered. The evidence of the victim boy and the evidence of Md. Sahid too established that the victim was kidnapped / abducted from Bhola Sahid Majar in a Maruti Van. There is no reason for us to doubt the aforesaid statements of the P.W. 5 and P.W. 3 on the point of occurrence, as they were privy to the same.

26. We further find that the prosecution has brought sufficient materials to come to a conclusion that the boy was recovered from the house of Satendra Singh Yadav. The evidence of the investigating officer (P.W.8), the victim boy (P.W. 3) clinches the issue. Both investigating officer (P.W.8), as well as P.W. 7 stated that the victim was recovered from the house of Satendra Singh Yadav along with three other appellants, who were arrested on the spot. As such, we find that the prosecution has been able to establish the factum of confinement of the victim boy in the house of Satendra

Singh Yadav.

27. The appellants had argued that no opportunity was provided to explain major accusation under Section 313 of Cr.P.C. and that no case under Section 364A of the Indian Penal Code would be made out.

28. We would examine the grounds taken by defence vis-à-vis the respective appellants, where violation of provision of Section 313 of Cr.P.C. has been alleged. We would first advert to the case of Kutum Khatic, who is the sole appellant in Cr. Appeal (D.B.) No. 1421 of 2007. We find that the only evidence against this appellant is the statement of the victim boy that when the police conducted raid in the house of Satendra Singh Yadav, this accused along with two other accused fled away from the place of occurrence, whereas Manoj Kumar Yadav, Rameshwar Singh Yadav and Satendra Singh Yadav, who were present, were arrested. We find that this appellant has not been named by P.W.1, P.W.2, P.W.4 and P.W. 5 in their evidence. We find that apart from the bald statement of P.W.3 that the appellant fled away on seeing the police party, there is no further corroboration to bring home against him the charge under Section 364-A of the Indian Penal Code. Situated thus, we hold that the prosecution has not been able to prove the charge against this appellant under Section 364-A of the Indian Penal Code, beyond doubt. The judgment and

order of conviction and sentence passed against him under Section 364-A of the Indian Penal Code is accordingly set aside. The appellant is on bail, he is discharged from the liabilities of the bail bonds.

29. On behalf of appellant, namely, Shyam Kumar Khatic, it has been submitted that the Motorcycle, which is said to be used by him in commission of the occurrence, particularly for making ransom call has neither been produced nor a seizure list of it has been prepared and exhibited. We also find that no explanation was sought from the accused under Section 313 of Cr.P.C. in respect of the same.

30. In our view, non-production of the Motorcycle used by Shyam Kumar Khatic would in itself not demolish the prosecution case with respect to his involvement in the offence. We find that the main gist of the allegation with respect to the commission of offence was put to him and besides this he was also given an opportunity to make any further explanations that he may want to offer. As such we are of the considered view that no prejudice has been caused to this appellant by not putting an effective question with respect to use of motorcycle in commission of offence.

31. On behalf of appellant Satendra Singh Yadav, it was argued that the main case against him as per the prosecution, is the recovery of victim boy from his house. However, he is alleged to



have not been provided any opportunity to make any explanation with respect to the said accusations in the statement under Sections 313 of the Cr.P.C. We find that this appellant had sufficient opportunity to make his explanations, as the question was wide enough to cover the accusations. Thus, the plea of the appellant that the prosecution case would fall, as the provisions of Section 313 Cr.P.C. has not been followed, is bereft of any merit and is rejected.

32. Learned counsel for the appellants in alternative has argued that the case would not fall under Section 364-A of the Indian Penal Code, as the demand of ransom after kidnapping has not been established, which is one of the vital requirement of the offence.

33. The submissions of the appellants require considerations. It is the prosecution case that the ransom call was demanded on phone and the police has installed caller I.D. to track the calls and the conversation by establishing parallel connection, for which P.W.6 was deputed. However, no evidence with respect to installation of parallel connection has been brought on record. The booth owner, from whose telephone booth calls for ransom were made, has not been examined. The call detail report has not been proved by any witness. The statement of P.W. 3 has not been found to be truthful by the trial court. Furthermore, no question has been put under Section 313 of Cr.P.C. as to whether after kidnapping there

was a demand for ransom. In our considered view, the prosecution has failed to produce legal evidence to substantiate the charge of demand of dowry after kidnapping which is an essential ingredients of Section 364A of the Indian Penal Code.

34. In the result, the conviction of the appellants under Section 364-A of the Indian Penal Code is held not sustainable. The case would fall one under Section 365 of the Indian Penal Code, which carries maximum punishment of seven years. We, accordingly, hold them guilty under Section 365 of the Indian Penal Code.

35. The appellant, namely, Satendra Singh Yadav @ Satendra Yadav of Cr. Appeal (D.B.) No. 1455 of 2007, has already remained in custody for about 10 years. He is directed to be set at liberty forthwith, if not wanted in any other case.

36. However, appellants of Cr. Appeal (D.B.) No. 1461 of 2007 have remained in custody for more than six years. Similarly, the appellant of Cr. Appeal (D.B.) No. 1461 of 2007, namely, Aslam Rain, and Cr. Appeal (D.B.) No. 1461 of 2007, namely, Anish Rain, have remained in custody for more than five years. We reduce their sentence to the period(s) already undergone by them, which would serve the ends of justice. All the above appellants are on bail. They are discharged from their liabilities bail bond(s).

39. All these appeals are dismissed with the modification in

the judgment and order of sentence.

40. Send back the lower court records along with a copy of the judgment to the concerned court below.

(Samarendra Pratap Singh, J.)

(Kishore Kumar Mandal, J.)

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