

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.751 of 2007

With

Criminal Appeal (DB) No. 805 of 2007

With

Criminal Appeal (DB) No. 956 of 2007

With

Criminal Appeal (DB) No. 1161 of 2007

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AGAINST THE JUDGMENT AND ORDER OF CONVICTION DATED 28.4.2007, PASSED BY THE ADDITIONAL SESSIONS JUDGE-XI, PATNA IN SESSIONS TRIAL NO. 471 OF 2006, ARISING OUT OF KOTWALI POLICE STATION CASE NO. 10 OF 2006.

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RANDHIR KUMAR, SON OF KAILASH SINGH @ KAILASH PD. SINGH, RESIDENT OF VILLAGE DHARHARA KALA, POLICE STATION AMNAUR, DISTRICT SARAN

... Appellant (in Cr. Appeal No.751 of 2007)

WITH

SANJAY SAO, SON OF BISHUN SAO, RESIDENT OF VILLAGE RUSTAMPUR POLICE STATION RAGHOPUR, DISTRICT VAISHALI

... Appellant (in Cr. Appeal No.805 of 2007)

WITH

RAM KRIPAL SAHNI, SON OF GHORAN SAHNI, RESIDENT OF VILLAGE AND POLICE STATION MADAR DISTRICT SIRHA, NEPAL AT PRESENT C/O SHASHI RAI (MUKHIA), RESIDENT OF VILLAGE JETHULI, POST OFFICE KACHCHI DARGAH POLICE STATION FATUHA, DISTRICT PATNA

...Appellant (in Cr. Appeal No.956 of 2007)

ABHISHEK MISHRA, SON OF PRAPHUL KUMAR MISHRA, RESIDENT OF VILLAGE DUMARIYA, POLICE STATION BISHANPUR, POLICE STATION JARMUNDI, DISTRICT DUMKA

....Appellant (in Cr. Appeal No.1161 of 2007)

VERSUS

STATE OF BIHAR

.... Respondents in all the four appeals.

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Appearance :

(In CR. APP (DB) No. 751 of 2007)

For the Appellant : Mr. Shyameshwar Kr.Singh, Advocate

For the State : Mr. Abhimanyu Sharma, APP

(In CR. APP (DB) No. 805 of 2007)

For the Appellant : Mr.

For the State : Mr. Abhimanyu Sharma, APP

(In CR. APP (DB) No. 956 of 2007)

For the Appellant : Mr. Santosh Kr.Verma, Advocate

For the State : Mr. S.N.Prasad, APP

(In CR. APP (DB) No. 1161 of 2007)

For the Appellant : Mr. Umesh Pathak, Advocate and

Mr.Ranjan Kumar Jha, Advocate

For the State : Mr. Abhimanyu Sharma, APPELLANT

Mr Neeraj kumar @ Sanidh, Amicus Curiae in all the four appeals.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 24-03-2015

We appoint, Mr Neeraj kumar @ Sanidh, learned Counsel, who is present in Court, as *Amicus Curiae* in all the four Criminal Appeals in addition to the names of the learned counsel for the appellants.

2. All the four appeals have been heard analogous and are

being disposed of by this common judgment as they have been filed against common judgment dated 28.4.2007, passed in Sessions Trial No. 471 of 2006, arising out of Kotwali Police station Case No. 10 of 2006, whereby learned Additional Sessions Judge, FTC XI, Patna has convicted all the four appellants under sections 364A and 120B of the Indian penal Code (herein after referred to as 'the IPC') and sentenced them to life imprisonment. They have also been directed to pay a fine of Rs.5000/- each, and in default to undergo simple imprisonment for six months.

3. The prosecution case, as disclosed in the written report of one Ujwal Kumar Jain (PW 11), who is father of victim Prashant Kumar Jain (PW 11) to PW 9 (officer- in-charge of Kotwali police station, Patna), on 5.1.2006 at about 10 PM at his residence in the White House Apartment (herein after referred to as 'the Apartment'), Buddha Marg, Patna, is as follows:-

a) Informant's son Prashant Kumar Jain and his (informant) younger brother Ranjan Jain at about 10 PM on 5.2.2006 after closing the shop, namely, Kamla Stores located in New Market in the township of Patna started for their respective residence in separate scooters.

b) Ranjan Jain proceeded towards his Boring road residence, whereas Prashant Kumar Jain took turn for his White House apartment which was situated on Budha Marg near Land Development bank. As soon as Prashant Kumar Jain reached near his Apartment, 4 to 5 persons, who were in look out for him, pushed his Scooter and dragged him into the white coloured Maruti Esteem car bearing No. DL 2C 5659 and fled with a view to kidnap him.

c) The matter was reported to the informant by the night guard of the Apartment namely Mani Kant Mishra (PW 8), who had witnessed the occurrence.

d) Police station was forthwith informed on telephone.

4. On the basis of the written report of the informant,

Kotwali Police station Case No. 10 of 2006 dated 5.1.2006 was instituted at 11.30 PM under section 364A and 120B of the IPC. The police after investigation submitted charge sheet under sections 364A and 120B of the IPC against the appellants and some other accused persons. Accordingly, cognizance was taken and the case was committed to the court of sessions. Charges were framed against the appellants under sections 364A/120B of the IPC to which they pleaded not guilty and claimed to be tried.

5. The prosecution examined 15 witnesses in support of its case. Out of them PW 7 is uncle of the informant who is a hearsay witness. PW 2 (Neera Jain) is mother of the victim Prashant Kumar Jain (PW 11) and a hearsay witness. PW 3 Amit Kesari is another resident of White house apartment and has claimed to have seen unknown persons in front of the apartment when he was returning in the night to his flat around 10 to 15 minutes before the occurrence. PW 4 Basawan Ram is the Officer-in-charge of Bakhtiarpur police station, who registered Bakhtiarpur Police station Case No. 9 of 2006, consequent to recovery of Maruti Esteem car used in the crime. PW 5 Rajesh Kumar is a friend of accused Santosh and Abhishek Kumar and is a hearsay witness. PW 6 Aniket Kumar is another friend of accused Abhishek Kumar and Vikki who had traveled in the white Esteem car from Fatuha to Bakhtiarpur. On the fateful night. PW 7 Alok Ranjan @ Appu is a friend of accused persons and is a hearsay witness. PW 8 Manikant Mishra is the night guard of the apartment who saw the white Maruti Esteem car parked outside the apartment in suspicious circumstances. After sometime, he found the scooter of victim Prasant Kumar Jain lying on the street near the apartment. PW 9 Ujwal Kumar Jain is the informant of this case and father of victim Prasant Kumar Jain (PW 11). He is however not an eye witness to the occurrence. PW 10 Ravindra kumar Mishra is the ex-owner of the white Maruti Esteem car who is said to have sold the same to Pankaj Kumar Das, brother of Santosh Kumar Das, since deceased.

PW 11 (Prashant Jain) is the victim and son of PWs. 2 and 9, and nephew of PW 1. PW 12 Ram Krishna Sinha @ Pappu is the owner of brick chimni (Kiln) where the Esteem car was found abandoned. PW 13 Chandrika Prasad is the ASI of Bakhtiarapur police station. He chased the Esteem car and ultimately seized it parked near the brick kiln in village Sabnima. PW 14 Chandrika Prasad is the SI of Kotwali police station. He is the Investigating officer (herein after referred to as 'the IO') of the case. PW 15 Ajay Kumar Singh is the Officer-in-charge of Kotwali police station and 2nd IO of this case. He arrested the accused persons of the case. Besides examining 15 witnesses the prosecution also brought various exhibits on record to support its case.

6. The defence did not choose to examine any witness nor it produced any document. Their statements under section 313 of the Code of Criminal Procedure (herein after referred to as 'the Cr.P.C.') were complete denial of their involvement in the alleged incident.

7. The trial court on consideration of materials on record convicted the appellants under sections 364A and 120B of the IPC as already noticed in the earlier paragraphs of the judgment. All the appellants i.e. Randhir Kumar, Sanjay Sao, Ram Kirpal Sahni and Abhishek Mishra have preferred separate criminal appeals, namely, Cr.Appeal No. 751, 805, 956 and 1161 of 2007 respectively.

8. One fact stands admitted is that the victim Prasant Kumar Jain (PW 11) returned to his house on 17.1.2006 all on his own. Manikant Mishra, (PW 8), the night guard of the Apartment claims to have seen the Maruti Esteem car parked in front of the western gate with three to four boys, who on seeing him drove the car in eastern direction only to move again in greater speed in suspicious circumstances and immediately thereafter the scooter of Prashant Kumar Jain was found lying on road near the western gate of the apartment. The victim Prasant Kumar Jain (PW 11) himself is a witness to the occurrence.

9. In order to substantiate the prosecution case, the prosecution examined as noticed in the earlier paragraph as many as 15 witnesses. Out of them, the most important witness is PW 11, Prashant Jain, the victim himself. He is indisputably the eye witness to the occurrence. But before we examine PW 11, it would be advantageous to examine PW 8, the night guard on whose information the written report was lodged by Ujwal Kumar Jain (PW 9), father of the victim.

10. PW 8 in his examination-in-chief stated that he works as a night guard in the Apartment situated in the Buddha Marg, Patna. At about 10 PM on 5.1.2006 he was on his duty at the Apartment. Around 10 PM Amrit Kesari told him that a car was parked outside the gate with 3-4 boys loitering around which seemed abnormal. PW 8 accordingly came outside the gate and saw a white Esteem car parked at the western gate of the Apartment and noted the number of the car. As PW 8 proceeded towards them, the accused started the car and sped towards eastern direction. PW 8 in the meantime was able to memorize the car number as DL 2 CC 5859. After some time, he saw the same car coming back from eastern side in speed. Sensing some foul play, PW 8 stepped outside the gate of the Apartment. He found the scooter of the victim Prashant Kumar Jain lying on road near the western gate. He identified the scooter to be of Prashant Kumar Jain (PW 11), bearing registration number BR 1F/4829. He immediately informed Ujwal Kumar Jain, father of Prashant Kumar Jain (the victim) who owned and resided in Flat no. 701B at the 7th floor of the Apartment. On getting this unfortunate information, Ujwal Kumar Jain, the informant (PW 9) rushed down. Manikant Mishra immediately passed on the number of the car to Ujwal Kumar Jain and the police was accordingly informed. The police arrived at the place of occurrence within 15 to 20 minutes and inquired about the incident whereafter Ujwal Kumar Jain (PW 9) submitted a written report.

11. PW 9 father of the victim in his deposition supported the

prosecution case. He stated that on 5.1.2006 his brother Ranjan Kumar Jain and Prashant Kumar Jain had gone to the shop located in New Market, Patna. This witness on the relevant day had not gone to the shop. At about 9.45 PM on 5.11.2006, the night guard informed him through Intercom that the scooter of his son Prashant Jain was lying on the road in front of the western gate of the Apartment. On receiving the news, he came down and learnt about the incident from PW 8. PW 9 found the scooter of his son lying on the road at the place indicated by the night guard. He at once informed his brother Ranjan Kumar Jain (PW 1) on phone and then the police. Soon PW 1 arrived at his place. The police later arrived and PW 9 submitted the written report. He stated in his evidence that his son/the victim Prashant Jain was carrying a mobile phone and the sale proceeds of the shop to the tune of Rs.25,000/- at the time of his abduction. This written report and signature has been marked as exhibit 1 and 1/1.

12. PW 3 Amrit Keshari also supported the incident as spelt out by PW 9. He stated that on 5.1.2006 at about 10 PM he was returning to his flat bearing Flat No 704 of A Block situated in the same Apartment after playing Badminton at his uncle's place. As soon as he came near the Apartment, he saw ¾ persons standing at the west side gate of the Apartment with a car. The boys initially had advanced towards him, but soon retracted. As the behaviour of the boys were not normal, he informed the PW 8, the night guard to keep watch on them.

13. From the evidence of PW 8, the night guard, and evidence of PW 3 Amrit Kesari, two circumstances come to the fore front. Firstly that the white Maruti Esteem car was found parked near the western gate (the 2nd gate) in suspicious circumstances and 3 to 4 persons were found standing near it. On seeing the night guard, the occupants of the car hurriedly drove towards western direction. After sometime they again returned from the eastern side and sped speedily towards the west. Secondly,

soon the car sped towards west, the scooter of Prashant Jain was found lying abandoned on the road in front of the 1st gate near Land Development Bank which was seen by the witnesses including father of the victim and the guard. The police officials namely PWs 14 and 15 also found the abandoned scooter lying on the road in front of the 1st gate of the Apartment. The fact that the victim was returning by the said scooter has also been confirmed by PW 1 who stated that he and the victim had left the shop at around 9.45 PM on their respective scooters. He (PW 1) proceeded towards Boring road whereas his nephew (the victim) took turn on the Buddha Marg towards his apartment. After sometime, he got the message from his brother Ujwal Kumar Jain that the latter's son has been abducted from near the Apartment. Thereafter, he immediately rushed to the Apartment.

14. Now, we would examine PW 11 Prashant Kumar Jain who is the most important witness of the case being the victim and eye witness of the occurrence. He deposed that on the night of 5th January at about 9.30 PM, he along with his uncle Ranjan Kumar Jain after closing the shop proceeded towards their residence. His uncle Ranjan Kumar Jain (PW 1) proceeded for his residence at Boring Road and this witness proceeded for his apartment in White House on Budha Marg. As soon as he reached near the Apartment, he saw a white car parked near the apartment where 4 to 5 persons were standing in suspicious circumstances. They pushed the scooter and made him fall on road and dragged him into car. When he tried to raise alarm, they assaulted him with butt of the revolver on head causing injury. The cap which he was wearing also dropped. PW 11 had suspicion that he has been abducted. He stated that the car had no light and the accused persons covered his (the victim) eyes with Muffler and made to lie on the floor of the car. In the conversation, names of Abhishek, Vikky and Dilip figured. He was having Rs.5000/- and Rs.25,000/- of the sale proceeds, beside a Mobile phone and a gold chain. The accused persons snatched all his



belongings and switched off his mobile phone. The car moved for 25 to 30 minutes and then it stopped at a place, where some people were present from before. He was lifted by one of them on his shoulder. He was soon loaded on a boat which sailed for 10 to 15 minutes. Thereafter, they again traveled on foot for sometime. After going some distance, the accused persons finally removed muffler from his eyes. They were three in number and had covered their faces. He was finally taken to a house and confined to a room. He was provided a gunny bag for sleeping. One person provided him Biscuit and water. One person generally guarded his room. On knocking of the door a woman used to open it. He can recognize the woman on seeing her. There was a small hole in the wall to facilitate ventilation. A Pit was provided in the corner of the room for answering call of nature. After 2 to 3 days, the accused persons informed him that he would be released shortly. He was finally released on 16th January, 2006. However, his eyes were covered till he reached the bank of a river. As no boat was available, the accused persons waited the whole night along with him on the bank for the boat. In the morning, a boat man came. PW 11 was given Rs.30/- for his traveling and other expenses. He traveled on the boat in which some persons were also sitting from before. The boat dropped him near Bidupur. He informed his brother Nishant Kumar Jain from a telephone booth that he has been released and he would be reaching Hajipur bridge. This witness reached village Jarhua near Hajipur, but no one had arrived by then to meet him. He again made a telephone call and after sometime his family members came and met him near the Hajipur bridge. Some police personnel had also come with his family members. The next day his statement was recorded under section 164 of the Cr.P.C. which has been marked as exhibit 4.

15. The next important witness in the sequence is PW 4 Basawan Ram, who was posted as Officer-in-charge of Bakhtiyarpur police station. He stated that in the night of 5.1.2006



at about 11.15 PM, he received a wireless message of higher officials that a person was kidnapped and was being carried in the east direction by a Esteem car bearing registration no. DL 2 CC 5859. He was directed to keep a vigil of it. On receiving the informations PW 4 along with police party including PW 13 put a road blockade at New Bye pass More, N.H.Bakhtiarpur. After 20 to 25 minutes, he saw an Esteem car coming from Patna side. He signaled the driver to stop, but the driver after slowing down the car sped fast it. As the car closeted, he was able to identify the registration number which tallied with the number of the vehicle given by the higher police officials. He also identified the driver and the person sitting beside him, in flash of torch light. He identified accused Abhishek Mishra in court as the driver of the Maruti vehicle. PW 4 and his police party chased the vehicle. The miscreants opened fire in retaliation. The police also opened fire in defence. The miscreants succeeded in escaping after abandoning the vehicle at village Sabneema near the brick kiln of Papu Singh (PW 12). He seized the vehicle bearing Registrastion no. DL 2 CC 5859 and prepared seizure list. He found the bullet marks on the vehicle and blood stains on its back seat. He registered Police station Case No. 9 of 2006 under sections 307, 353, 332, 120B, 333 and 34 of the IPC. The version of PW 4 was fully corroborated by his colleague Chandrika Prasad, PW 13 and as such we need not advert to his evidence in detail.

16. The prosecution has examined PW 14 Ashwani Kumar, SI of Kotwali police station and IO of the case. PW 15 Ajay Kumar Singh is Officer-in-charge of Kotwali police station at the relevant time and 2nd IO of this case. PW 14 stated that on getting telephonic information of abduction of Prashant Jain, he along with PW 15 arrived at White House. He enquired from Ujwal Kumar Jain and his wife about the incident. He also inspected the place of occurrence. He found two gates facing north. One was on the eastern side and the other was west to it, close to Land

Development Bank. According to the witness the vehicle in question was parked near the latter gate. He was informed that the scooter of Prashant Jain was lying fallen near this gate. The eastern gate of the Apartment was generally used for passage and the western gate generally remained closed. PW 11 Ujwal Kumar Jain gave written report of the occurrence which was registered as Kotwali Police station Case No. 10 of 2006, marked as exhibit 8. He recorded statement of PWs 1,2,3,8 as well as the informant.

18. One Tez Narain Singh, Havildar informed PW 4 that a car bearing registration no. as DL 2CC 5859 said to be used in abduction, was seized by Bakhtiarpur police at village Sabnima. On such information, he along with police party reached village Sabnima and found the Maruti Esteem car stranded near the brick kiln of Papu Singh. He found bullet marks on the car and blood stains inside it. He enquired about the matter from PWs 12 and 13. On enquiry, he learnt that the car initially belonged to one Shashi Bhushan Singh who sold the same to one Pankaj Kumar Das, the brother of Santosh Kumar, one of the charge sheeted and convicted accused, who died during the pendency of the appeal. He found that the car used was registered in the name of Pankaj Kumar Das, but was in charge of his brother Santosh Kumar.

19. PW 15 Ajay Kumar Singh is Officer-in-charge of Kotwali police station. He took up the investigation of the case on 9.1.2006 from Ashwini Kumar (PW 14). He arrested accused Santosh Kumar on 9.1.2006 and recorded his statement. On the basis of statement of Santosh Kumar, he arrested accused Vikky Singh and Abhishek Mishra from Jamtara on 14.1.2006. In course of investigation, on 14.1.2006, he reached village Fath Jampur, police station Didarganj and arrested one Rajesh Kumar from Barh. Thereafter he recorded the statement of Sanjay Kumar Chauhan, a relative of accused Randhir Kumar. Sanjay Kumar Chauhan revealed that one Randhir Kuamr, a relative of his used to work as a sales man in his mobile phone shop and one Abhishek

Mishra, Vikky Singh and Kanhai Sao used to visit his shop. Subsequently, on 16.12.2006, he arrested Ram Kripal Sahni who disclosed that Prashant Kuamr Jain was kept in captivity in the house of Vishnudeo Sao alias Vishun Sao of village Malikpur, police station Raghapur district Vaishali. Vishun Sao is the father of accused Sanjay Sao. The victim Prashant Jain was kept in his house as captive as per instructions of accused Dilip Ravidas. Accused Ram Kripal Sahni admitted that he was keeping watch on the abducted Prashant Jain for which he was promised Rs.20,000/- per day. On the disclosure of accused Ram Kripal Sahni, the house of accused Sanjay Sao, son of Vishun Sao village Malikpur was raided. Accused Ram Kripal Sahni led PW 15 to the room of house of Vishun Sao where Prashant Jain was kept in detention. The description of the room fully tallied as described by PW 11 in his statement.

20. On the strength of these evidences, learned Addl. P.P. submits that there are sufficient materials to bring home charge under sections 364A and 120B of the IPC against the convicted accused.

21. On the other hand, Mr. Neeraj, learned counsel appearing as Amicus curiae submits that the evidence of the witnesses are not reliable and are in variance with each other. He submits that the case is based on circumstantial evidence and chain of circumstances are not complete to point to the guilt of the accused and the accused alone. He points out the following infirmities in the prosecution case:-

(i) PW 9 stated that PW 8 Manikant Mishra, the night guard informed him that the accused persons had abducted his son in a vehicle, but PW 8 nowhere in his statement before the court stated that he saw the accused persons actually abducting Prashant Jain in their car.

(ii) The recovery of blood stained cap was seized belatedly after four to five days. Furthermore, though the blood stained cap

was sent for Forensic Science Laboratory, there is no report that the blood stains found on the cap was that of PW 11.

(iii) No seizure list was prepared with respect to recovery of scooter.

(iv) Earlier statement of PW 9, father of the victim was not registered as FIR, rather his written statement which was made after his oral statement, was registered as FIR. He submits that the written report made after oral statement cannot be treated as the FIR in view of the decision of the Hon'ble Apex Court in case of Lalita Kumari Vs. Government of UP and others, reported in 2014(1) BBCJ, 81 and in case of Ashwani Choudhary and another Vs. The State of Bihar, reported in 2014(3) BBCJ 187.

(v) No motive has been assigned for the alleged abduction.

(vi) PW 6 Aniket Kumar, friend of Abhishek Mishra and Vikky Singh, admitted that he went along with the accused persons to Bakhtiarapur at 11 PM in the same vehicle in which victim Prashant Kumar Jain (PW 11) was being carried. But surprisingly he did not notice the victim in the car.

(vii) As per PW 4, 6 and 13 there were exchange of firing as the car tried to speed away on Bakhtiarapur National Highway in the night of 5.1.2006 at about 11.15 PM. But PW 11 does not speak of any exchange of firing.

(viii) There is no legal evidence either against Randhir Kumar, Sanjay Sah and Ram Kripal Sahni and Abhishek Mishra to fasten with guilt under section 364A and 120B of the IPC.

22. Mr. Shyammeshwar Prasad Singh and Mr. Randhir Kumar Mishra, learned counsel appearing for their respective appellants fully supported the submissions advanced by Mr. Neeraj appearing Amicus curiae in these appeals. They submitted that the accused are innocent and have been falsely been implicated in this case merely on their confession which could not be admissible under section 25 of the Indian Evidence Act. Furthermore, the

material circumstances appearing against the accused person were not put to them by the prosecution while examining them under section 313 of the Cr.P.C.

23. Before we deal with the submissions of Mr. Neeraj, we would first examine whether the prosecution has been able to establish a case of kidnapping for ransom. We find that PW 3 said that when he reached near the Apartment, he saw a white Maruti Esteem car parked near about the western gate. He found 4 to 5 persons moving in suspicious conditions. PW 8 Manikant Mishra the night guard in the White House apartment too stated that on the relevant date on 5.1.2006 he was on duty at about 10 PM. On information of PW 3, he came out and saw a white Maruti Esteem car parked facing east. On seeing him coming out, the inmates drove the car towards east. However, he memorized the registration number of the car bearing no. DL 2 CC 5859 and he returned to his seat. After sometime, he again saw the white Maruti Esteem car speeding towards west coming from the eastern side. Soon thereafter he found the scooter lying on the road near the western gate which he recognized to be of Prashant Jain. Father of the victim Ujwal Kumar Jain also recognized the scooter of his son lying in front of western gate and his son was traceless. The defence argued that it is not established that the scooter belonged to Prashant Kumar Jain. In view of positive statement of PW 9 (father of the victim), PW 1 (uncle of the victim), PW 3 an independent witness as well as PW 8 (the night guard) it is difficult to accept the defence case that it has not been established beyond doubt that the scooter belonged to Prashant Kumar Jain.

24. The statement of the victim Prashant Kumar Jain fully establishes that he was pushed from the scooter and dragged and abducted in a Maruti Esteem car. Besides this, PW 11 had stated that as soon as he reached near the turning on the road leading to his Apartment, he was pushed from his scooter by 3 to 4 persons and was dragged inside Maruti Esteem car. The statement of the

victim also supplements the statement of PW 3 and PW 8 and fills up the gap as to what happened in the meantime. All these evidences establish beyond doubt that the victim Prashant Kumar Jain (PW 11) was kidnapped and abducted.

25. The other issue would be whether the victim was kidnapped or abducted for ransom. On the point of ransom, the prosecution has examined PWs 6 and 7. PW 6 Aniket Kumar in his evidence stated that on the relevant date he was moving in the vehicle DL 2CC 5859 along with Abhishek Mishra and Vikky Singh from 12 Noon onwards. At about 6 PM, he was asked to board the vehicle at Fatuha. However, he boarded the vehicle at Fatuha at 11 PM. The vehicle was being driven by Abhishek Mishra. He stated that accused Abhishek Mishra and Vikky Singh told him that they had kidnapped a boy and would get a heavy amount for his return. PW 7 Alok Ranjan alias Appu is also a friend of Vikky Singh and Abhishek Mishra. He learnt on 6.1.2006 that Prashant Jain was kidnapped in a white Maruti Esteem car. After 2 to 3 days, he received a missed call from Vikky Singh. He called back, whereupon Vikky Singh informed him that Abhishek Mishra has kidnapped Prashant Jain. Vikky Singh revealed that 2 to 3 persons participated in the occurrence. The evidences of PW 6 and PW 7 establish beyond a doubt that the victim was kidnapped for ransom.

26. Mr. Neeraj Kumar, Learned counsel appearing as Amicus curiae submits that PWs 6 and 7 should have been made an accused in this case as they were both the friends of Vikky and Abhishek and were also moving in the car along with him. In our view, the submission of learned counsel is not well founded. There is no material on record to establish that PWs 6 and 7 had any inkling of conspiracy to kidnap Prashant Kumar Jain (PW 11). Furthermore, none of them were admittedly present around the place of occurrence at the time of occurrence. The case of the prosecution is that PW 6 boarded the car after the victim was

handed over to other accused at Didarganj by accused persons. As such the former did not find the victim in the car. Furthermore the defence has not produced any evidence or material to conclude that Pws 6 and 7 shared a common intention with the accused to kidnap PW 11.

28. Situated thus, and in view of forgoing discussions, we are of the considered view that the prosecution has fully established the factum of kidnapping of Prashant Kuar Jain for ransom which brings the case under purview of section 364A and 120B of the IPC. The vital issue is whether all these appellants were part of the conspiracy in execution of which the victim was abducted.

29. Learned counsel for the appellants submit that there is no legal evidence against the accused persons and there are many missing links in the case. Even the victim has not identified all these accused persons. PW 3 Amrit Keshri who is said to have seen accused persons in front of the gate near the car has not disclosed the names of any of them. Furthermore, the accused were not put on Test Identification Parade. They submit that the only evidence in this regard is of PW 4 who stated that the person who was driving the car looks like Abhishek Mishra in the dock. He submits that such identification would not have any evidentiary value.

30. We would examine the case of the accused persons one by one on their own merit on point of conspiracy in kidnapping. We would first take up the case of Randhir, the appellant in Cr.Appeal No.669 of 2007.

31. Mr. Abhimanyu Sharma, learned Additional Public Prosecutor submits that Sanjay Chauhan is 'Mama' of accused Randhir Kumar, co-accused Vikky, Abhishek Mishra and others persons used to come to his mobile phone shop to meet Randhir Kumar. We find that Sanjay Chauhan has not been examined as witnesses in the case. Thus, the very person from whom the police is said to have received the informations about other accused

meeting Randhir Kumar has not been produced before the court for corroboration. Even assuming the disclosure of Sanjay Chauhan to PW 14 to be true, still the same would not constitute any offence merely because some of the persons involved in a crime used to meet a person on and off, would not render him an accused in absence of at least some corroborative evidence, which is lacking in his case.

32. In this view of the matter, we find that there is absolutely no legal evidence against him and as such, we acquit Randhir Kumar of the charges under section 364A and 120B of the IPC. He is accordingly discharged of the liabilities of bail bonds. In the result, Cr. Appeal No.1751 of 2007 is allowed and the judgment of conviction and sentence against him is set aside.

33. We would next take up the case of Sanjay Sao and Ram Kirpal Sahni together. As per the prosecution evidence unfolded during the trial, it is true that these two accused persons did not participate in actual commission of kidnapping of the victim. But it is the prosecution case that Ram Kirpal Sahni in his confession stated that Dilip Rabidas has arranged the place of Bisundeo Sah, the father of the accused, Sanjay Sao for captivity of the abducted person. Ram Kirpal Sahni in his confessional statement had stated that he kept watch on the victim as he was assured a sum of Rs.20,000/- per day. Furthermore Ram Kirpal Sahni was the person who showed the IO the house in which victim Prashant Kumar Jain was kept in captivity for about 10 days. The house so shown by accused Ram Kirpal Sahni fully tallied with the description of the house narrated by Prashant Kumar Jain as well as PW 15, the IO of the case. Prashant Kumar Jain in his evidence has given complete detail of the manner of occurrence.

35. Learned counsel for the appellants as well as learned Amicus curiae submitted that confession before the police cannot be used as evidence against the accused persons in view of section 25 of the Evidence Act.

36. We have no dispute on the aforesaid proposition of law. But as per section 27 of the Evidence Act, any discovery in consequence of the information received from a person accused of any offence in the custody of a police officer would be admissible to the extent of the discovery. On the disclosure of accused Ram Kripal Sahni, the house of accused Sanjay Sao was raided where the victim was kept in captivity, which establishes that accused Sanjay Sao and accused Ram Kripal Sahni were active partners in the kidnapping and each were performing a role assigned to them in facilitating the offence.

37. We would now take up the case of Abhishek Mishra, the appellant of Cr.Appeal No.1161 of 2007. It is relevant to state here that the case of co-accused Vikky Singh has been separated on the ground of juvenility.

38. It is true that neither PW 8 (the night guard) nor PW 11, the kidnapped person, Prashant Kumar Jain identified Abhishek Mishra by face as in course of kidnapping, the accused persons had not kept their face covered with Muffler etc. Besides this, the victim stated that while he was being abducted in the car, he heard the accused persons taking the names of Abhishek Mishra, Vikky Singh and others. As submitted by the defence mere taking of the names would not establish that the said person had participated in the occurrence itself. PW 4 Basawan Ram, Officer-in-charge, Bakhtiarpur police station, in his evidence, stated that in the torch light he identified two persons sitting in the said Maruti Esteem car. He identified the person in the dock (Abhishek Mishra) as the person driving the vehicle. The defence argued that Abhishek Mishra was not put on TI parade immediately and was identified by PW 4 belatedly in court and as such the same in itself would not bear any evidentiary value. However, the evidence of PWs 5,6 and 7 establish beyond all doubts, active participation of the witness in the crime.

39. PW 5 stated that at the relevant date he was in the

Maruti Esteem car which was being driven by Vicky and Abhishek Mishra was also sitting in the car. The evidence of this witness is truthful. Furthermore, there is no material to doubt the statements of the said witness as he is a friend of Abhishek Mishra and Vikky Singh. Similarly PW 7 stated that the whole day from 12 Noon to 6 PM he was in the said car along with Abhishek Mishra and Vikky. The latter was driving the car and they asked him to board the car at Fatuha for going to Rajgir. PW 6, accordingly went to Fatuha on the same night and boarded the same Maruti Esteem car at 11 PM along with Vikky and Abhishek Mishra. The car proceeded towards Bakhtiarpur and during their conversation one of them informed PW 6 that they had kidnapped a boy for ransom. The evidence of PW 6 supports the statements of PWs. 3,4,5 and form a complete chain which establish that accused Abhishek Mishra was one of the occupants of the car in which the victim Prashant Kumar Jain was dragged into the car and kidnapped on 5.1.2006 at 10 PM.

40. Mr. Neeraj Kumar, learned Amicus curiae submitted that as per PW 6 he was seated in the back seat of the car. As per PW 11 he was made to lie on the floor of the rear seat and blind folded. In case PW 6 was also sitting in the car from Fatuha to Bakhtiarpur he could not have failed to notice the victim in the car. The submissions of learned counsel appearing for the appellants seems very attractive at the first instance. But the factual situations are different. As per the victim, he was taken off from the car after 25 to 30 minutes of journey. It would appear from the evidence of PW 15 that the victim was made to step down from the car near Fateh jam under Didarganj police station near the PCO of Dilip Ravidas. From the evidence of PW 15 Ajay Kumar Singh, Officer-in-charge of Kotwali Police Station and 2nd IO of the case, it would appear that this place comes prior to Fatuha en-route to Bakhtiarpur. The victim was off loaded from this vehicle at around this place, as such PW 6 could not have possibly found the victim

in the car when he boarded at 11 PM at Fatuha. The victim was abducted at around 10.15 PM and according to him he was off loaded after 20 to 25 minutes. This means he was off loaded before 11 PM, when PW 6 Aniket Kumar boarded the car. This explains as to why the victim did not hear the exchange of firing which took place on the High way near Bakhtiarpur which is good 25 to 30 minutes further east of Fatuha where police was on alert for trapping the vehicle and the kidnappers. Thus, in our considered view, on the strength of evidence on record, the prosecution has succeeded in bringing home the charges under sections 364A and 120B of the IPC against appellant Abhishekh Mishra.

41. In the result, appeals of Sanjay Sah, Ram Kripal Sahny and Abhishek Mishra are dismissed. Their bail bonds are accordingly cancelled and they are directed to surrender immediately before the court below for serving out remaining part of their sentence.

(Samarendra Pratap Singh,J)

(Kishore Kumar Mandal, J)

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