

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 396 of 2007

Against the judgment of conviction, dated 16.01.2008/14.02.2007, and order of sentenced dated 22.01.2008/24.02.2007 passed by Sri Ram Dhyanji Pal, Additional Sessions Judge, I, Khagaria, in Sessions Trial No. 112 of 2005 arising out of Khagaria Muffasil P.S. Case No. 269 of 2004

Rajesh Kumar Singh, son of Amarnath Singh, resident of Rasouk, P.S. Markachi, district Khagaria Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 398 of 2007

Pankaj Chowdhary, aged 26 years, son of Ramdeo Chowdhary, resident of Mehauri, P.S. Muffasil Khagaria, district Khagaria Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 465 of 2007

Ratan Kumar Gupta, son of Shri Paras Nath Gupta, resident of village Barauni, P.S. Fulwariya, district Begusarai Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 535 of 2007

Oman @ Umanath @ Raj Kumar @ Tiwari Baba, son of Mahavir Tiwari, resident of village Chitra Balia, P.S. Ekma, district Saran at Chapra Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 341 of 2008

Raj Kumar Singh, son of late Saryug Singh, resident of village Mahenderpur, P.S. Naya Gaw, district Begusarai Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No. 396 of 2007)

For the Appellant : Mr. Manoj Kumar Jha, Amicus Curiae

(In CR. APP (DB) No. 398 of 2007)

For the Appellant : Mrs. Fauzia Shakeel, Amicus Curiae

(In CR. APP (DB) No. 465 of 2007)

For the Appellant : M/S Vinay Ranjan & Mritunjay Kumar, Adv.

(In CR. APP (DB) No. 535 of 2007)

For the Appellant : Mr. Nutan Sahay, Adv.

(In CR. APP (DB) No. 341 of 2008)

For the Appellant : Mr. Vivekanand Singh, Adv.

For the Respondent : M/S D.K. Sinha, S.B. Verma and A Sharma, Advs.
(in all the appeals)

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

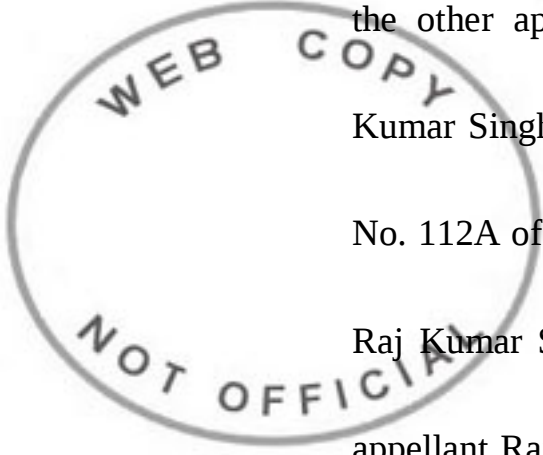
(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 01-07-2015

The present batch of five appeals have been preferred individually by five convicts, tried together by the learned Additional Sessions Judge, Court I, Khagaria, in Sessions Trial No. 112A of 2005 as also Sessions Trial No. 112A of 2005 against judgment dated 16.01.2008 by which all appellants, except Raj Kumar Singh, were held guilty of committing offence under Sections 364A/34, 302/34 and 201/34 of the Indian Penal Code. As regards appellant Raj Kumar Singh he was acquitted of the charge under Sections 302/34 and 201/34 of the Indian Penal Code, but, was held guilty of committing the offence under Section 364A of the Indian Penal Code.

2. In fact, Sessions Trial No. 112 of 2005 was fixed for judgment on 14.02.2007, but, appellant Raj Kumar Singh absented on that day forcing the Court to pass an order under Section

317(2) of the Criminal Procedure Code to separate his trial from that of the other appellants and the judgment in respect of conviction, Raj Kumar Singh was delivered by the learned trial Judge in Sessions Trial No. 112A of 2005 on 16.01.2008. While appellants other than appellant Raj Kumar Singh, were heard on sentence on 24th of February, 2007, appellant Raj Kumar Singh was heard on sentence on 22.01.2008. The appellants, other than Raj Kumar Singh, were directed to suffer rigorous imprisonment for life under Sections 364A/34 and 302/34 of the Indian Penal Code as also to pay a fine of Rs.10,000/- each on each of the counts of their conviction else to suffer simple imprisonment for six months each in lieu of the sentence of fine on both the counts. They were further directed to suffer rigorous imprisonment for seven years under Section 201/34 of the Indian Penal Code and also to pay a fine of Rs.5,000/- each else to suffer simple imprisonment for three months each. So far as the sentence passed upon Raj Kumar Singh is concerned, he was directed to suffer rigorous imprisonment for life as also to pay a fine of Rs.10,000/- under Section 364 of the Indian Penal Code and in case of defaulting in paying up the fine, he was to suffer simple



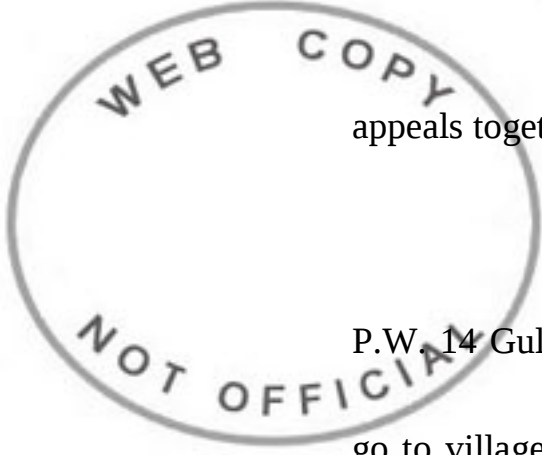
imprisonment for a further term of six months.

3. We have heard the present batch of five appeals together and we are disposing them of by the present judgment.

4. Pranav Kumar, aged about 25 years and son of P.W. 14 Gulab Prasad Yadav and P.W. 13 Nilam Kumari, left Patna to go to village Hulas his native place, on 04.06.2004. It appears that he

did not reach his village as may appear from the written report Exhibit 8.

P.W. 14 Gulab Prasad Yadav after confirming that his son Pranav Kumar nick named Jiku, had not reached his destination, requested his nephew P.W. 16 Niraj Kumar to lodge a missing report with Raghopur Police Station. It appears that phone calls were received by the mother of Pranav Kumar at their Patna residence on land line telephone number 0612-2221308 as may appear from the evidence of P.W. 13 Nilam Kumari, the mother of Pranav Kumar. She was the first person who received the call and the caller had informed her that her son had been kidnapped and that Rs.10,00,000/- (ten lakh) was required to be paid as ransom money, else the boy would be killed. The written report states, as does the evidence, that the call which was made to the parents of



Pranav Kumar had emanated from the cell phone which was in possession of the victim of the offence and during such a call at about 09.20 P.M. the informant happened to pick up some sounds which could be emanating from a railway station announcing the departure of Mahananda Express from Khagaria Railway Station to Patna.

5. The informant stated that it was inferred by him that his son had been kidnapped from Khagaria and accordingly, he instructed his nephew P.W. 16 Niraj Kumar to gather information about the kidnapping of Pranav Kumar from Khagaria who later on passed information to P.W. 14 that Pranav Kumar had been confined in Mahendrapur Diara. On gathering information from Mahendrapur Diara it was known that Pranav Kumar had been shifted to Mehsouri within the district of Khagaria. Mahendrapur Diara was falling within the district of Begusarai. The anxious family members of the victim went to village Mehsouri with a photograph of the victim and the villagers, looking at the photograph, told them that the boy had been seen in the village, but, he was no longer there and further gathered information that (1) Nepali Tiwary, son of Ganesh Tiwary, resident of Mehsauri, Khagaria, (2)

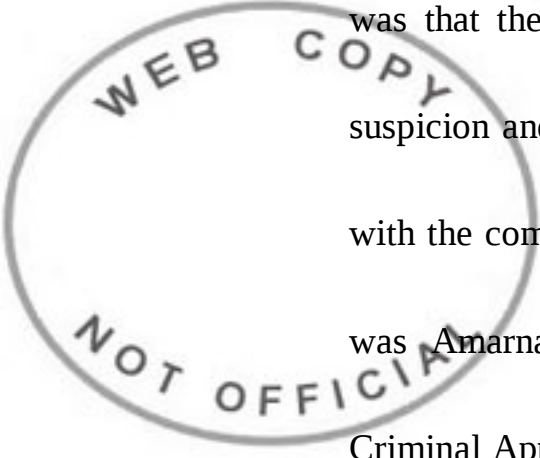
Rajesh Singh (appellant), son of Amarnath Singh, who was a Peon in the local Block Development Office and was the resident of village Sanhauli, Khagaria, (3) Raju Rai, son of unknown, resident of Mehsauri, Khagaria, (4) Devniti Singh, member Panchayat Committee, resident of Mehsauri, Khagaria and (5) Navin Choudhary, resident of Mehsauri, Khagaria had kidnapped his son.

6. It appears from the evidence that the calls continued to be received by the parents of Pranav Kumar and during the talk with the criminals his parents also negotiated the release of the boy. Both P.Ws. 13 and 14 as also P.Ws. 12 and 16 would told the Court that an amount of Rs.2,50,000/- was fixed as ransom money which was to be paid for getting the boy back safely. Evidence further indicates that P.W. 12 Ramanugrah Prasad and P.W. 16 Niraj Kumar, nephew of P.W. 14, took to themselves the task of carrying the amount and they reached Turki within the district of Muzaffarpur where they were directed by the criminals, supposed to have kidnapped Pranav Kumar, to put the bag containing the cash amount on the road. Both P.Ws. 12 and 16 would state that they, accordingly, put the cash kept in a poly bag on the road

and moved away from there to see that a person who did not appear amongst the accused persons came and took up the bag and went away. From that day there was no phone call and there was no trace of victim Pranav Kumar @ Jiku either. Thus, leading to the conclusion that Jiku had been killed by his captors.

7. The evidence of witnesses including the investigating officer, Sub Inspector of Police Sanjay Kumar Pandey examined as P.W. 17 does not really give any clue as to who could have and in which manner the boy had been kidnapped from any particular place.

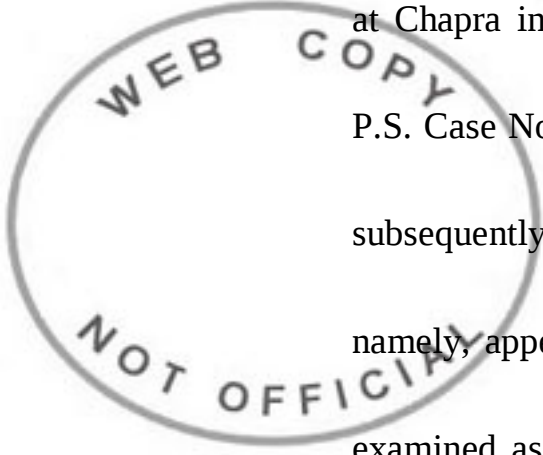
The story which we have just narrated was created by no reading the evidence of witnesses, who gave one link or the other of the story without further details as regards the persons who could have indulged in commission of the offence. The absence of personal details as regards the culprits of crimes which was initially appearing in the written report (Exhibit 8) also vanished during the course of the trial as none of the witnesses stated that any of them had even the faintest of suspicions against any of the five appellants or other than them as



persons who could have committed the heinous offence. What we found was that the police was acting on one tip or the other or merely on suspicion and was picking up several persons as suspects in connection with the commission of the offence. The first person who was arrested was Amarnath Singh, father of appellant Rajesh Kumar Singh of Criminal Appeal (D.B.) No. 396 of 2007 and examined as D.W. 1 in the case. He was remanded as appears from the judicial record on 18.08.2004 and thereafter, as may appear from orders passed on 06.09.2004 and 10.09.2004. Other accused persons were also remanded in the case either on being arrested or on account of a prayer having been made before the Chief Judicial Magistrate, Khagaria, as appears in the case of Oman @ Umanath @ Raj Kumar @ Tiwary Baba (we describe him as 'Oman') as appears from the order of remand passed by the Chief Judicial Magistrate, Khagaria on 13.09.2004.

8. We do not have any evidence as to how they were picked up and as we have noted, we only have the evidence of P.W. 17, the investigating officer that the accused persons were suspected and arrested. As regards Oman he was not even found in the

vicinity of Khagaria rather he was found languishing in district jail Saran at Chapra in connection with a particular case registered as Raghopur P.S. Case No. 5 of 2004 and was remanded in the present case and was subsequently produced from district jail Chapra. Two accused persons, namely, appellants Ratan Kumar Gupta and Rajesh Kumar Singh, also examined as D.W. 2 were produced together before the Chief Judicial Magistrate, Khagaria for being remanded in the case on 10.09.2004 with a remand application. Another application was made by the investigating officer to allow the two accused persons to be taken on police remand. That particular order dated 10.09.2004 indicates that the Chief Judicial Magistrate, Khagaria readily agreed on reasons assigned by him in that particular order to allow the police to have the two accused persons on remand. The Chief Judicial Magistrate, Khagaria directed the police to, firstly, get the two medically examined before the two had been taken out of jail by them on remand and the remand order was only for 17.09.2004 when again the two were required to be medically examined. We do not have any hesitation in noting that that particular order which form part of the remand order was not complied



by the police officer, who had investigated the case, i.e., P.W. 17.

However, P.W. 17 produced the two accused persons before the Chief Judicial Magistrate, Khagaria on 17.09.2004 with further request that the two accused persons were confessing to their guilt and, as such, their confession should be recorded by a Judicial Magistrate. The Chief Judicial Magistrate, Khagaria passed an order on 17.09.2004 deputing Shri Girish Mishra, Judicial Magistrate, 1st Class, Khagaria, (P.W. 5) to record the confessional statements, i.e., Exhibits 2 and 2/1.

9. The learned trial Judge placing reliance heavily upon the two confessions recorded by P.W. 5 not only held appellants Rajesh Kumar Singh and Ratan Kumar Gupta guilty of committing the offences but considering the confessional statements of the two appellants, went on to hold the other appellants also guilty of the offences which we had pointed out at the very outset. The appellant Rajesh Kumar Singh whose confession was firstly recorded by P.W. 5 filed a petition on 03.12.2004 retracting his confession which application was forwarded by the Superintendent of Jail, Khagaria to the Chief Judicial Magistrate, Khagaria and it was duly received on

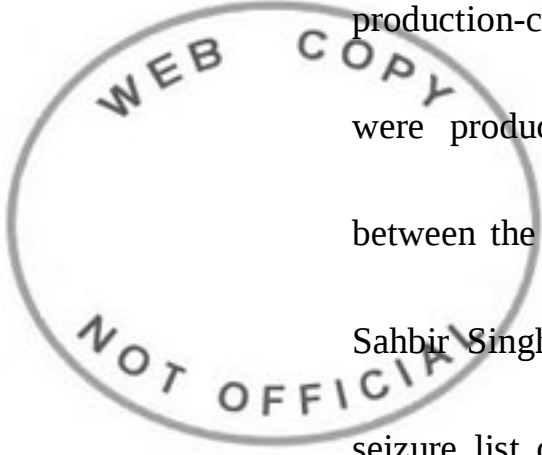
13.12.2004. The two defence witnesses D.W. 1, the father of appellant Rajesh Kumar Singh examined as D.W. 2 were also examined on the retraction of the confession as also on the circumstances under which they were coerced and forced to confess to the guilt. Other appellants had simply pleaded not guilty and had further pleaded innocence and false implication at the hands of the police officer.

10. We may record that out of 17 witnesses P.W. 1 Sanjay Kumar Singh was a witness of formal character who had signed the seizure memos in respect of recovery of certain articles from two appellants Rajesh Kumar Singh and Ratan Kumar Gupta as also the production of the audio cassette by one Sanjay Kumar who had not been examined. P.W. 3 Bijay Ram was deposing on purchase of a Samsung cellular phone and its charger from appellant Ratan Kumar Gupta which cellular phone set was subsequently alleged by the police to be used in conferring with the captives of Pranav Kumar by using the very cellular phone of the victim, the print outs in respect of which deliberations were brought on records by examining P.W. 10 the Subdivisional Telecom Officer, Khagaria. P.W. 4 Manoj Kumar Gupta was the person who had

obtained cellular phone number 9834088908 in the year 2003 by using his identity records and was stating that the cellular phone went out of order but subsequently the same documents of P.W. 4 were used by some persons for obtaining another connection from the Reliance Cellular Service providers.

11. P.W. 5 Shri Girish Mishra was the Judicial Magistrate, 1st Class, Khagaria who had recorded the confession of appellants Ratan Kumar Gupta and Rajesh Kumar Singh. P.W. 6 Shyam Bihari Prasad had prepared the seizure-cum-production list in respect of the Samsung cellular phone and had tendered the document seizure-memo in evidence. P.W. 7 Bilas Paswan had entrusted the investigation of the case and he recorded the further statement of the informant and other witnesses and inspected the place of occurrence. The first place he inspected was that of accused Nepal Tiwary who was named in the first information report. He obtained the information about the use of Reliance cellular phone bearing number 9835219051 and the manner in which the connection had been obtained and thereafter, he handed over the charge of investigation to P.W. 17. P.W. 8 Shahid Khan was the

literate Constable posted in Mansi Police Station and he had prepared the production-cum-seizure memo in respect of two audio cassettes which were produced at the Police Station containing the conversations between the family members of the victim and the offenders. P.W. 9 Sahbir Singh had signed as one of the witnesses to production-cum-seizure list of audio cassette. P.W. 10 Shivshanker Prasad, we have already noted, was the Subdivisional Telecom Officer posted in Khagaria. P.W. 11 Rajiv Kumar was a witness to the search of Rajesh Kumar Singh and recovery of a sim card, a telephone diary and the preparation of the seizure memo in respect of the seizure. P.W. 11 was also witness of search of Ratan Kumar Gupta and recovery of a cellular phone, a Napalese currency note and other things as per his evidence. P.W. 12 Ramanugrah Prasad and P.W. 16 Niraj Kumar, we have already noted, were persons who had been entrusted to carry the ransom amount of Rs.2,50,000/- which they left, as per the direction of the criminals, on the road to be picked up by any of them. P.Ws. 13 and 14, we have already noted, were the parents of the victim. P.W. 15 was the Assistant Vice President, Billing of Reliance Telecom Limited and he had

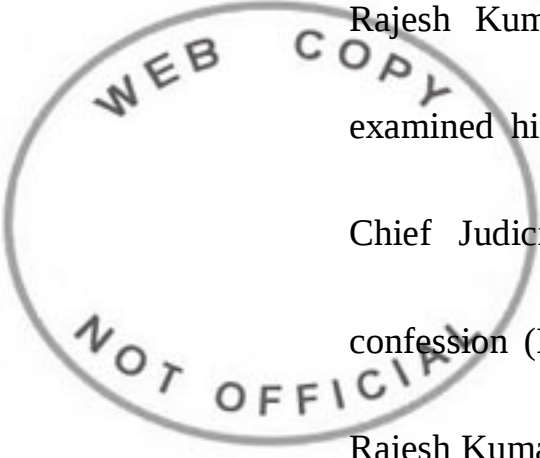


produced the call chart of cellular phones bearing nos. 9835276059 and 9835010035 as also the other number bearing no. 9835165074. P.W. 17 we have already noted as Sub Inspector of Police had investigated the case finally.



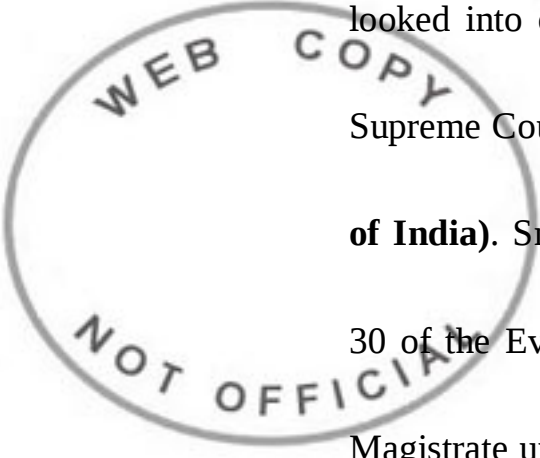
12. Shri Vinay Ranjan, Advocate, has appeared for appellant Ratan Kumar Gupta, Smt. Nutan Sahay, Advocate, has appeared for appellant Oman @ Umanath @ Raj Kumar @ Tiwari Baba, Smt. Fauzia Shakeel, Amicus Curiae, had appeared on behalf of appellant Pankaj Chowdhary while Shri Manoj Kumar Jha, Amicus Curiae, had appeared for appellant Rajesh Kumar Singh while Shri Vivekanand Singh, Advocate, has appeared on behalf of appellant Raj Kumar Singh.

13. The common argument of all the learned counsel appearing on behalf of the appellants was that they were not named in the first information report and their names appeared in the two confessional statements of appellants, Ratan Kumar Gupta (Exhibit 2) and Rajesh Kumar Singh (Exhibit 3). Submission was that Ratan Kumar Gupta in his confessional statement appears exculpating himself while



implicating other appellants. So far as the confession of appellant Rajesh Kumar Singh was concerned, the submission was that he examined himself as D.W. 2 and also had filed a petition before the Chief Judicial Magistrate, Khagaria, on 13.12.2004 retracting his confession (Exhibit 3). In that petition marked as Exhibit A appellant Rajesh Kumar Singh had detailed the circumstances under which he was forced and coerced through his father to make judicial confession and had further stated that his sister had been kidnapped, who had not been released by the time he was filing the petition and that was yet another circumstance of coercion as a result of which he had given the confessional statement. Submission of the counsel was that in addition to not being named in the first information report, there was no further evidence of any witness showing the complicity of any of the appellants and the learned trial Judge had also relied only upon the two confessions recorded by P.W. 5, Shri Girish Mishra, Judicial Magistrate, 1st Class, Khagaria, to hold the appellants guilty.

14. Smt. Fauzia Shakeel, Amicus Curiae, who had appeared on behalf of appellant, Pankaj Chowdhary, had submitted that

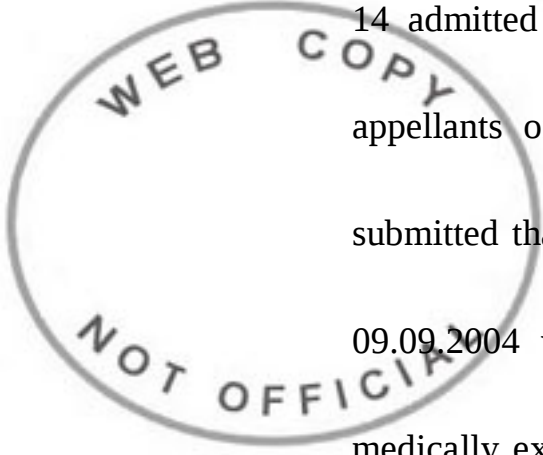


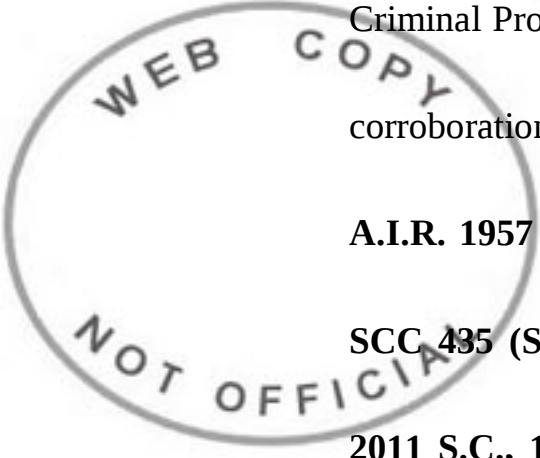
confession in any view could not be substantive evidence and it could be looked into only to seek further corroboration as was observed by the Supreme Court in **A.I.R. 2011 S.C. 1436 (Ravindra Pal Vrs. Republic of India)**. Smt. Shakeel also drew the attention of the Court to Section 30 of the Evidence Act and submitted that a confession recorded by a Magistrate under Section 164 of the Criminal Procedure Code must pass the two tests before it could be admitted in evidence. It was pointed out that the tests were (a) as to whether the confession was voluntary and (b) whether the same was true and trustworthy. Submission also was that if the confession was exculpating the maker of the confession, then, it must not be taken into consideration to convict other accused persons. Smt. Shakeel was placing reliance in support of the above submissions upon **A.I.R. 1957 S.C. 216 (Balbir Singh Vrs. State of Punjab)**.

15. Shri Majoj Kumar Jha, Amicus Curiae, who had appeared on behalf of appellant Rajesh Kumar Singh had also drawn the attention to the evidence of P.W. 14, Gulab Prasad Yadav, the father of the deceased, who had in spite of not naming any one in his written report, had uttered certain names during his evidence. However, during

his cross examination in paragraph 9 at page 38 of the paper book, P.W.

14 admitted that he had, in fact, named those accused persons, i.e., appellants only after having heard their names from others. It was submitted that Rajesh Kumar Singh was taken by police on remand on 09.09.2004 with a direction to the investigating officer to get him medically examined before taking him out of the jail and to reproduce him for judicial remand on 17.09.2004 and before producing him. The police was to get the appellant, Rajesh Kumar Singh, medically examined. Submission was that at none of the two occasions the police had got Rajesh Kumar Singh or any other accused medically examined and, thus, it had flouted the conditions of police remand and the purpose was very clear and that was narrated by D.W. 2. D.W. 2 stated that he was after being taken on police remand was taken to the Police Station where he was beaten up so much so that one of his fingers was fractured and in spite of being remanded to judicial custody on 17.09.2004, his father was tortured and coerced to pressurize the appellant to confess his guilt else his father would be killed. Submission was that these circumstances could not be conducive to accept the confessional

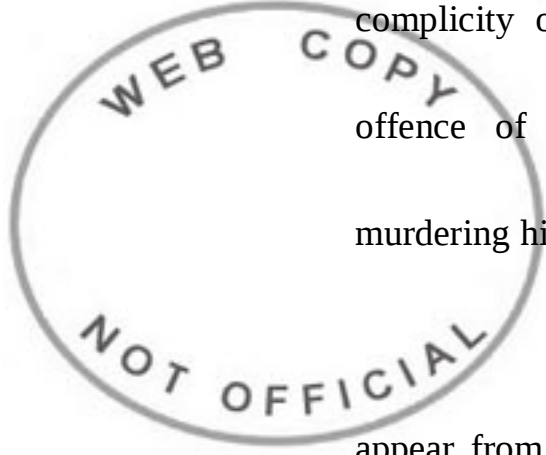




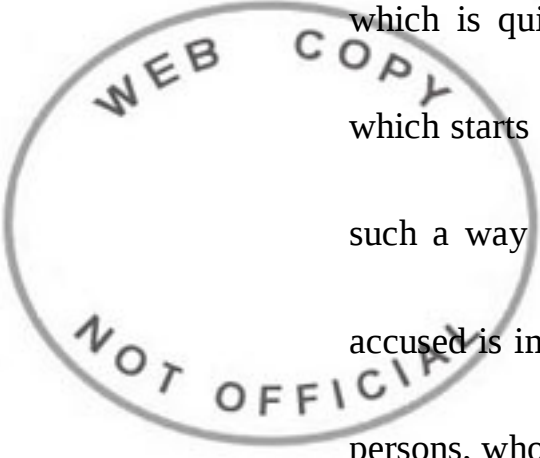
statement of the accused persons, even recorded under Section 164 of the Criminal Procedure Code as substantive piece of evidence as there is no corroboration as is required to be had as per various decisions right from **A.I.R. 1957 S.C. 216 (Balbir Singh Vrs. State of Punjab)** to **(1978)3 SCC 435 (Shankaria Vrs. State of Rajasthan)** and further to **A.I.R. 2011 S.C., 1436 (Rabindra Pal Vrs. Republic of India)**. It was next contended by the counsel that the cassettes which were produced by the police as testimony to the conversations between the family members, i.e., P.Ws. 13 and 14, Neelam Kumari and Gulab Prasad Yadav respectively and the criminals might be there, but, there is no evidence as to which voice was of whom and, thus, the voice contents of those cassettes also appear of no avail.

16. Sushri Shashi Bala Verma, appearing on behalf of the State was very candid in submitting that if the confessional statements of two appellants, Ratan Kumar Gupta and Rajesh Kumar Singh, were excluded from consideration, there was no evidence even raising a semblance of inference regarding the culpability of the appellants. Submission was that recovery of cellular phone belonging to

one or the other does not really lead to any conclusion as regards the complicity of the accused persons in commission of the gruesome offence of kidnapping Pranav Kumar @ Jiku and subsequently murdering him.



17. We have considered the evidence and as may appear from the various paragraphs of the present judgment we have already noted that there was virtually no evidence and the learned trial Judge relied heavily on the confessional statements of appellants, Ratan Kumar Gupta and Rajesh Kumar Singh, marked Exhibits 2 and 3 respectively in the case. Confessions generally had to be excluded if they are before the police unless some parts of it are treated as information, which lead to discovery of a particular fact with pre-condition that the accused must be in police custody who had disclosed that information to the police. General rule of excepting the confession made before the police has the only exception contained in Section 27 of the Evidence Act as pointed out just now which makes the information, even by way of a confession given by a person accused of committing the crime and being in custody of the police which leads to discovery of a fact relevant



to the issue. However, Section 30 of the Evidence Act is a provision which is quite different from earlier provisions relating to confession which starts from Section 24 of the Indian Evidence Act. It is worded in such a way as to making the confessional statement admissible if the accused is implicating himself while implicating his companion accused persons, who were being tried together with him then only the part of the confession which inculcates the fellow accused persons could be used against them other than him who had made the confession. Thus, what appears from Section 30 of the Evidence Act is that the condition for admitting a confession made by the accused is that he must implicate himself equally with the other accused persons while confessing to his guilt. This was one of the conditions pointed out by the Supreme Court in **Balbir Singh (supra)** where Their Lordships pointed out the scope and ambit of Sections 24 and 30 of the Indian Evidence Act in the following terms :

“So far as the confessional statement of one accused is concerned, it may be taken into consideration against the other accused if it fulfils the condition laid down in S. 30 of the Evidence Act. One of the conditions is that the confession must implicate the maker substantially to the same extent as the other accused person against whom it is



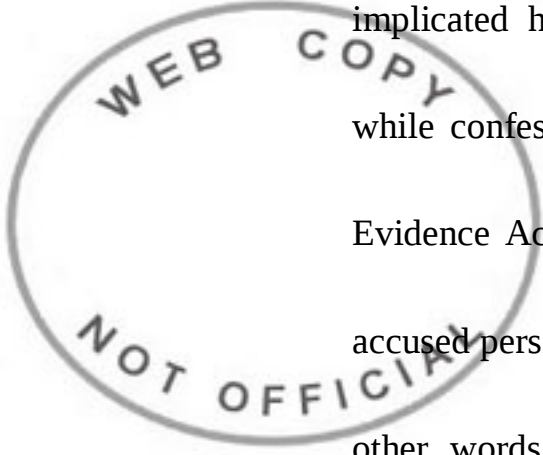
sought to be taken into consideration. Where on reading the confession as a whole it appears that he was really trying to throw the main blame on the other accused and make out that he was an unwilling spectator of the crime committed by the other accused the utmost that can be stated is that the confession cannot be used at all against the other accused. But because there are differences between his confession and the confessional statement of the other accused, out of hand or in limine as untrue where some of the differences are immaterial, some others are due to the desire of the accused to throw the blame on the other and the rest stand clearly resolved by other evidence in the case.”

18. Besides the above, the Supreme Court was also considering the situation as appears available to us also when an accused could be retracting his judicial confession. Their Lordships expressed their opinion in the following terms :

“Where both confessions were retracted subsequently the proper approach is to consider each confession as a whole on its merit and use it against the maker thereof, provided the Court is in a position to come to an unhesitating conclusion that the confession was voluntary and true; and though a retracted confession, if believed to be true and voluntarily made, may form the basis of a conviction, the rule of practice and prudence requires that it should be corroborated by independent evidence.” (Emphasis added)

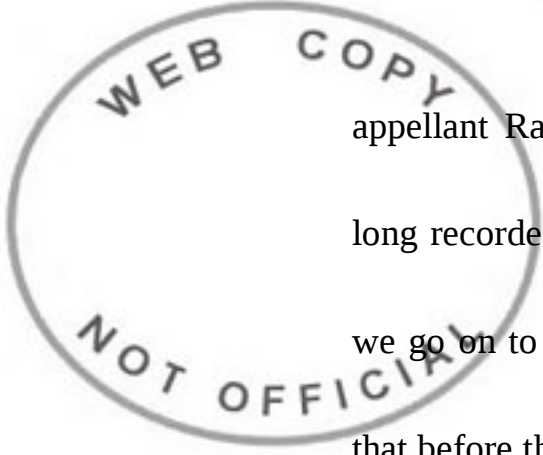
19. Thus, what appears from the above

observations of the Supreme Court is that if an accused had not implicated himself and had instead implicated other accused persons while confessing before a Judicial Magistrate under Section 30 of the Evidence Act, then such a confession has never to be used against the accused persons other than the accused who had made the confession. In other words, a confession which exculpates the maker thereof has altogether to be excluded from consideration as a piece of evidence as regards other accused persons or all accused persons when it comes to holding them guilty. So far as the retraction of the confession is concerned, as may appear from the above observation of the Supreme Court, it has to be promptly retracted and in case of a retracted confession, the Court has to find out as to whether the retracted confession was still meritorious as an evidence to be used during the trial. For that purposes the Court has to consider as to whether the ground of retraction, that's, the accused had been coerced, threatened or had unduly been influenced were coming out from the records of case. In other words, the Court has still to find out as to whether the confession was made voluntarily and, as such, was true and trustworthy by all the

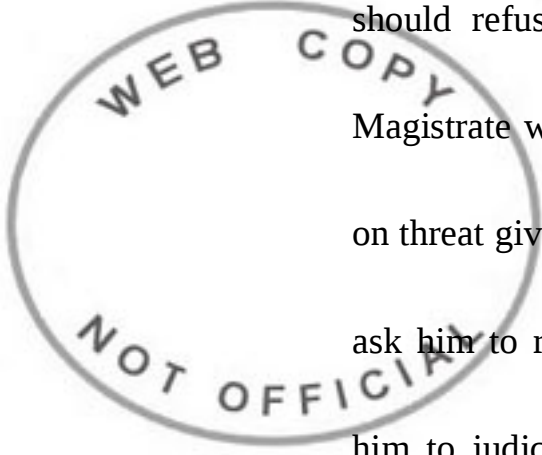


incidents as narrated by the co-accused.

20. We have the confession (Exhibit 2) of appellant Ratan Kumar Gupta and we had carefully gone through the long recorded statement recorded by P.W. 5 Shri Girish Mishra. Before we go on to consider the merit of that confession we want to point out that before the judicial pronouncements in **Shankaria (supra)** this Court had framed rules for the guidance of the Magistracy as regards recording of judicial confessions. That rule is numbered as Rule 29 in the bunch of rules which are known as Criminal Courts Rules framed by the Patna High Court. This Court had elaborately pointed out while framing that particular Rule 29 that the Magistrate before whom an accused is produced for recording confession must not record the confession immediately on his production. He should point out to the accused in his own way that any statement made by him to him could be used against him during trial and on that basis he may be punished to any sentence. He should also by questioning the accused attempt to gather as to whether there had been any influence, threat or coercion applied upon the accused so as to forcing him to make the confession and if he finds



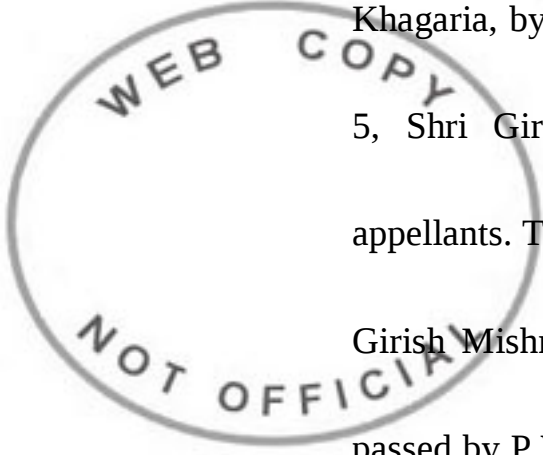
that there were those elements which were applied to the accused then he should refuse the recording of the judicial confession. In case, the Magistrate was finding that there was no coercion and undue influence on threat given to the accused then he should warn him again and should ask him to reconsider his decision of making the confession and send him to judicial custody. This exercise has to be carried out in Court room, but, in absence of the police officer or any police personnel. While remanding the accused to the custody he should ensure that no police personnel accompanied him and he can be free from any influence in the judicial custody. He should fix a date for production of the accused and tell him that date and should point out to him to come after reconsidering his decision and should warn him again not to make the confession which may be used against him as would appear from the bunch of Rules, which is contained in Rule no. 29. On production of the accused before the Magistrate, he has again to warn him by pointing out to him that he was not obliged to make any confession before him as any statement of the accused recorded by him, that's, a Judicial Magistrate, might be used against him as evidence and it may entail upon him any



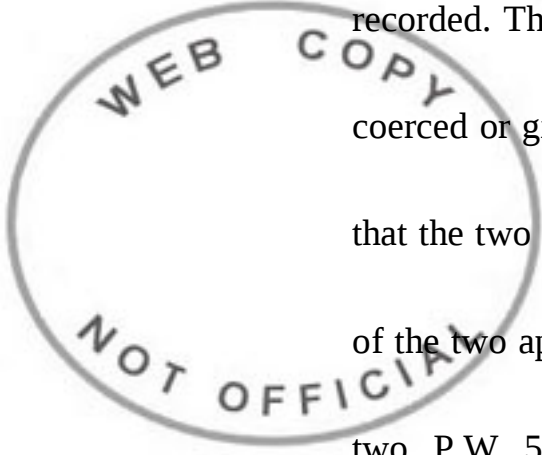
serious sentence. Before recording the confession he should again give him some time very much in the Court room to reconsider the decision and again talk to him and if he finds that indeed the accused was voluntarily making the confession then he should proceed to record the confession. After he had recorded the confession, he must put down a certificate in terms of Section 164 of the Criminal Procedure Code about every aspects of persuasion, questioning including his request to reconsider the decision to make confession and then proceed to sign the document.

21. We have the occasion of perusing the judicial records and we find that the two appellants, Rajesh Kumar Singh and Ratan Kumar Gupta, were produced before the Chief Judicial Magistrate, Khagaria, on 17.09.2004 after the end of period of police remand which had been obtained in respect of the two appellants on 09.09.2004. While producing the two appellants, the investigating officer of the case, i.e., P.W. 17, Sanjay Kumar Pandey, filed a petition on 17.09.2004 requesting the Chief Judicial Magistrate to depute a Judicial Magistrate for recording the confessions of the two accused as they were

willing to confession their guilt. The learned Chief Judicial Magistrate, Khagaria, by the later part of the order, dated 17.09.2004, deputed P.W. 5, Shri Girish Mishra, for recording the confessions of the two appellants. The record of the two accused persons was placed before Shri Girish Mishra (P.W. 5) on 17.09.2004 as may appear from the order passed by P.W. 5 on 17.09.2004. He had pointed out to the two accused that if they had made statement before him, the same may go against them and that they were free to make statement and further that they were before a Judicial Magistrate. P.W. 5 has not recorded in that particular order as to what was the response of the accused on words stated by P.W. 5 to the two appellants and had merely noted that he “thought it proper to give sufficient time to collect their mind and to reflect for that purpose” and directed the production of the two before him on 18.09.2004. The two appellants were produced before P.W. 5 on 18.09.2004 who put the first question as to whether they had really decided to make their confession and then pointed out to them that the two were not required to make any statement before him regarding the commission of the offence as the same may be used against them as



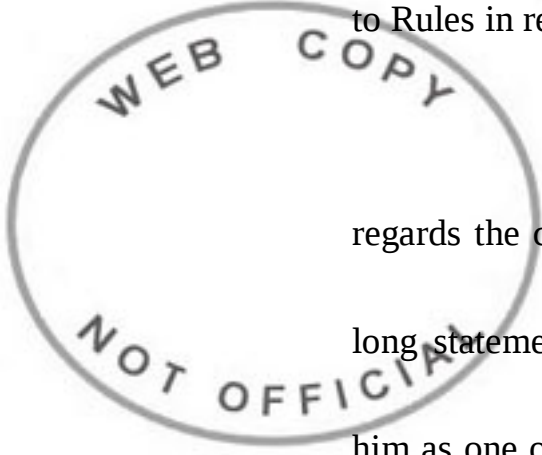
evidence and whether still they were ready to get their statements recorded. The last question was as to whether they had been threatened, coerced or given undue influence for making the confession and finding that the two had not been, proceeded to record the individual confession of the two appellants. It is true that on 17.09.2004, on production of the two, P.W. 5 had sent them back to judicial custody for reconsidering their decisions to confess before him and it also appears that he had pointed out to them the possibility of their statements being used against them as evidence, but, what we find is that it has never been pointed out by him as to why the statement could be used against them as evidence. The law requires that the Magistrate has to point out that he was a Judicial Magistrate and any statement by way of confession made to him could be treated as evidence against the maker of the statement, which may entail any serious consequence upon the accused. Not only that while putting the three questions, the learned Judicial Magistrate (P.W. 5) was not again taking any precaution of putting them at some secluded place may be in his chambers or a place like that with further request to them to reconsider their decision before he had proceeded to record their



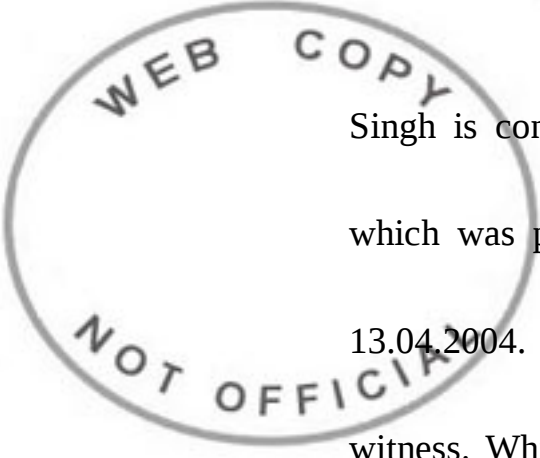
statements. Thus, what we find is that there is an incomplete compliance to Rules in recording judicial statement.

22. In addition to the above, what we find is that as regards the confession of appellant Ratan Kumar Gupta nowhere in the long statement he had stated a single fact which could be implicating him as one of the participants in commission of any part of the offence.

From his evidence, it appears that he had not kidnapped Pranav Kumar @ Jiku and he was told by some of the original kidnappers about it and when they want to use his father's official railway quarter for confining the victim, he was opposing it. When finally Pranav Kumar @ Jiku was taken to a particular *Bandh* for being killed, he did not move from there and remained sitting tight on the *Bandh* while others went down the *Bandh*. His appears a pious confession of a culprit as it does not appear indicating that he had, even in his thought least to talk about by his act, had participated in commission of any part of the offence. Confession, as such, of Ratan Kumar Gupta was exculpatory in nature and that falls quite short of the requirement of Section 30 of the Indian Evidence Act and, as such, it could not be used as a valid piece of evidence for any



purpose.



23. So far as the confession of Rejesh Kumar Singh is concerned, he had retracted it by filing a petition from Jail which was placed before the Chief Judicial Magistrate, Khagaria, on 13.04.2004. He had examined in support of his retraction himself as a witness. While deposing as D.W. 2, Rajesh Kumar Singh had pointed out that after being taken on police remand on 09.09.2004 he was taken to the Police Station and was beaten up daily so much so that one of his fingers was also fractured. He had being tortured by the police and was asked to confess his guilt else his father was also to be implicated. In spite of having been put back in judicial custody on 17.09.2004, he was being coerced through his father by the police who was asking his father to pressure him to confess his guilt else the consequences could be as serious as to implicate his father, namely, Amarnath Singh. He stated that he was promised by the investigating officer of the case that if he had confessed his guilt, he will ensure that he was absolved from the charges as an accused in the case.

24. It may, at the first blush, appear that an

orchestrated statement was made by an accused in getting rid of the trauma of facing a trial and of being convicted. But, if indeed he was confessing, then, there was no need for him to offer himself to depose in the case as an accomplice as appears from the last line of his confession (Exhibit 3). Ratan Kumar Gupta stated before P.W. 5 that he was willing to be cited as a witness on behalf of the State. This also appears one of the elements of unduly influencing the accused in order to extracting a confession.

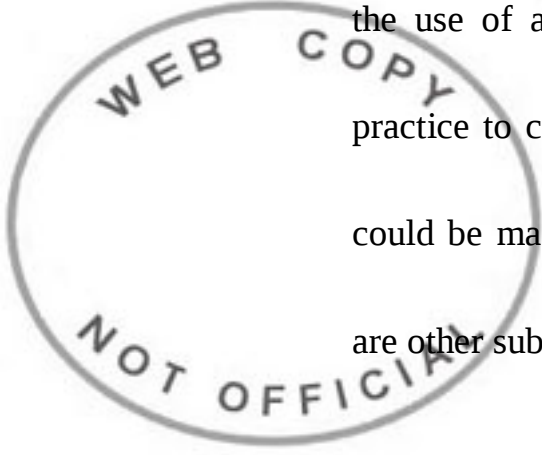
25. We have already pointed out it in some earlier part of the judgment that the Chief Judicial Magistrate had hemmed his order of allowing the police to obtain the two accused persons on remand by directing their examination before they had been taken out of the Jail and before they were put inside it. In that connection we have also pointed out that the police had not complied with that part of the order. We see quite some clear purpose of the police in not complying with the orders of the Chief Judicial Magistrate granting the police on remand the two appellants on their application. The confession, as such, appears not voluntary as regards appellant Rjesh Kumar Singh.

26. Consistent views of the Court have been that

the use of a confessional statement could not be a sound of judicial practice to convict an accused and the use of such a piece of evidence could be made is to use it as a corroborative piece of evidence if there are other substantial acceptable material.

27. We have already noted the contentions of the

learned counsel for the State that if are had excluded the two confessions from our consideration then there was indeed no real evidence showing the complicity of any of the accused persons. This state of evidence is highlighted more by the fact that Oman @ Umanath @ Raj Kumar @ Tiwari Baba was already in judicial custody in connection with some case in Saran at Chapra and he had been implicated from that case pending in Chapra into this case and had been remanded after sending production warrant, the basis again being while the same confessional statement of the accused persons. There was no substantive acceptable material even that at that stage of investigation which could have justified the request of the police for sending the production warrant to the concerned Court in Saran at Chapra seeking the production of that



particular appellant before the Chief Judicial Magistrate, Khagaria.

Recoveries of a purse or taking out a print out showing the conversation from one cellular phone to other we have not found connecting of any of the accused persons to the commission of the crime. Besides, there is no evidence that indeed the recovered articles or cell phone are used for the purpose of negotiating payment of ransom.

28. We could not find out from the evidence as to who was it, who had picked up Rs.2,50,000/-, which was put in a polly bag on the road in Turki, Muzaffarpur, and who were the persons whose voices were recorded in the two cassettes. No evidence on these aspects of the prosecution story appears adduced by the prosecution, leaving quite some gap as regards the proof of the charges.

29. After considering the evidence in the light of the submissions and law cited before us, we find that there was no sufficient material to justify the conviction of all the appellants of the five appeals. Indeed the prosecution had miserably failed in bringing the charges home to the accused persons as a result of which we allow the five appeals. We acquit the five appellants of the charges they had been

held guilty of. It appears, from the perusal of the records that appellant, Rajesh Kumar Singh, of Cr. Appeal (D.B.) No. 396 of 2007, is in custody, while appellants of other appeals are on bail. Let Rajesh Kumar Singh be released from custody if not wanted in any other case. As regards other appellants, they shall stand discharged from the liabilities of their respective bail bonds.

30. **The appeals are allowed.**

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

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