

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction, dated 06.01.2012, and order of sentence, dated, 16.01.2012, passed by Shri Mahendra Prasad, learned Additional Sessions Judge, F.T.C.-II, Ara, Bhojpur in Sessions Trial No. 263 of 2009 / 37 of 2010, arising out of Ara Town P.S. case No. 48 of 2009)

Criminal Appeal (DB) No. 221 of 2012

Arising Out of PS. Case No. -48 Year- 2009 Thana -null District- BHOJPUR

- 1. Amarendra Kumar @ Pintu, son of Bijay Bahadur Roy, Resident of Village- Sahejani, P.S.- Piro, Distt.- Bhojpur.
- 2. Ankur Kumar @ Setu, son of Sri Birendra Singh, Resident of Village- Samahuta, P.S.- Karhagar, Distt.- Rohtas.

.... Appellants

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 291 of 2012

Chandra Pratap Singh @ C.K. Singh @ Chand Pratap Singh, son of late Ramesh Singh, resident of Village- Sahegani, P.S.- Piro, District- Bhojpur.

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 265 of 2012

Binit Kumar Singh, son of Sushil Kumar @ Khaderan Singh, Resident of Village- Chhinegar, P.S.- Sinha, District- Bhojpur

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No. 221 of 2012)

For the Appellant/s : Mr. Surendra Singh, Sr. Advocate
Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr. A. K. Sinha, APP

(In CR. APP (DB) No. 291 of 2012)

For the Appellant/s : Mr. Vishwanath Prasad Sinha, Sr. Advocate
Mr. Sanjay Prasad Mani, Advocate

For the Respondent/s : Mr. S.C. Mishra, APP
(In CR. APP (DB) No. 265 of 2012)
For the Appellant/s : Mr. Vikramdeo Singh, Advocate
For the Respondent/s : Mr. A. Sharma, APP
For the Informant: Mr. Akhileshwar Prasad Singh, Sr. Advocate
Mrs. Anita Kumari Singh, Advocate
Mr. Bimal Kumar No.2, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)
Date: 19-08-2016

All the three appeals have been filed against the judgment of conviction, dated 06.01.2012, and order of sentence, dated, 16.01.2012, passed by Shri Mahendra Prasad, learned Additional Sessions Judge, Fast Track Court-II, Ara, Bhojpur in Sessions Trial No. 263 of 2009 / 37 of 2010, arising out of Ara Town P.S. case No. 48 of 2009, by which all the appellants have been convicted under Sections 364A, 302, 201 read with Section 34 of the Indian Penal Code and for the aforesaid offences, the appellants have been sentenced to undergo R.I. for life with a fine of Rs.10,000/- each and in default of the same, to undergo S.I. for six months.

2. The prosecution case, as set out in the written report, dated 08.03.2009 of Kashi Nath Singh (P.W.6), is that his son, namely, Santosh Kumar Singh, aged about 20 years, left his house on 06.03.2009 at 7.00 A.M. to meet his brother, who was staying at



Yarpur, Patna. On the following day i.e. 07.03.2009, he talked to his son Sunil Kumar Singh, who informed that Santosh Kumar Singh had not reached Patna. On the day of filing written report, i.e. 08.03.2009, the informant received a call from Mobile No. 9661344365 at about 11.30 A.M., on his basic number 06182693839, wherein the caller after stating that Santosh Kumar Singh is with him, snapped the call. Again a call came from the same number at 7.00 P.M. in the evening for a ransom of Rs.8,00,000/- (eight lakh) fixing the deadline, as 10.03.2009, failing which, his son would be killed. The informant further mentioned in his written report that he has land dispute with his Pattidar Ravi Ranjan Prasad Singh, son of late Bharat Singh, with whom litigation is going on.

On the basis of the written report of the informant, Ara Town P.S. Case No. 48 of 2009, dated 09.03.2009, has been registered against unknown under Sections 364/364A Indian Penal Code. Later on, Sections 302/201/34 of the Indian Penal Code has been added vide order, dated 14.04.2009 by the Chief Judicial Magistrate, Ara.

3. The police after investigation submitted charge-sheet against the appellants under Sections 364A, 302, 201/34 of the Indian Penal Code. The learned Magistrate after taking cognizance



committed the case to the Court of Sessions. Thereafter Charges were framed under Sections 364A/34, 302/34, 201/34 of the Indian Penal Code against all the four appellants to which they pleaded not guilty. In the statement made under Section 313 of the Code of Criminal Procedure, there is complete denial of the commission of the offences by the accused-appellants. The learned trial Court, upon consideration of the materials on record, convicted the appellants under Sections 364A, 302, 201 read with Section 34 of the Indian Penal Code.

4. The prosecution examined altogether 11 (eleven) witnesses in support of its case. P.W. 1, Pradeep Narayan Singh, P.W. 2, Rameshwar Singh; P.W. 3, Sri Ram Singh, are co-villagers. P.W. 4 Sunil Kumar Singh and P.W. 5 Pramod Kumar Singh, are brothers of the deceased. P.W. 6 Kashi Nath Singh is informant and father of the deceased. P.W. 7 (Anil Kumar Singh) is brother of the deceased, P.W. 8 (Subodh Kumar Singh) recovered the dead body of the deceased on tips provided by the appellant Chandra Pratap Singh from a ditch in Himachal Pradesh. P.W. 9 Md. Shabbir Khan is the investigating officer of the case, P.W. 10 Dr. Harendra Jeet Singh Sekhawat conducted post-mortem on the dead body of the deceased Santosh Kumar Singh, and P.W. 11 Arjun Singh is witness of inquest, which was prepared at Shimla Medical College Hospital.



5. P.W.1 Pradeep Narayan Singh stated that on 06.03.2009, at about 6.00 A.M., while he was going north of the village to answer the call of nature, he saw Santosh @ Mantosh and the appellant Binit talking at the door of the latter. When he returned after attending the call of nature, none of them were found there. In the evening, he came to learn from Anil (P.W.7) and his family members that Santosh @ Mahtosh had left his house for Patna, but he never reached Patna at all. On 08.03.2009, at 7.00 P.M., he again came to learn from the family members of Anil (P.W.7) that there was a demand of ransom of Rs.8,00,000/- for releasing Santosh @ Mantosh. He further stated that Binit Kumar Singh was not seen in the village after 06.03.2009. On enquiry, his parents informed that he left for Goa. Later on, he came to learn from Anil Singh that Santosh has been murdered in Himachal Pradesh.

6. In his cross-examination, he stated that prior to his statement to the police, he talked with the family members of the deceased quite a number of occasions. He stated that he informed Anil Singh (P.W.7) and his family members that he saw Santosh @ Mantosh talking with Binit on the date of occurrence. This witness in his cross-examination has denied the suggestion that he has not stated before the police that on 06.03.2009, he had seen Santosh Kumar



talking with Binit at the door of the latter. On the other hand, P.W.9 Md. Sabbir Khan, the investigating officer, in paragraph 30 of his evidence stated that P.W.1 has not stated before him that he had seen Binit Kumar and the deceased talking at the door of Binit on 06.03.2009, rather he had stated that he had seen Santosh Kumar in front of the house of Binit Kumar.

7. P.W. 2 Rameshwar Singh in his evidence stated that on 06.03.2009 at about 6.15 A.M. in the morning, he was going towards road side to collect newspaper, when he saw Binit and Santosh talking with each other at the former's door. When he returned after collecting the newspaper, none were present there. On the same day, he learnt from the family members of the Santosh that he had gone to Patna to meet his brother. However, his brother on phone informed that Santosh did not reach Patna at all. Furthermore, Binit was too not found in the village and on query, parents of Binit informed that he had gone to Goa. Later on, he learnt that Santosh Kumar @ Mantosh Kumar was murdered in Himachal Pradesh and his dead body was recovered from a ditch. He also came to learn that the police had gone to Himachal Pradesh along with C.P. Singh (appellant) and Anil Singh (P.W. 7) and recovered the dead body from the ditch. In cross-examination, he stated that in the evening of

06.03.2009 itself, he informed Anil Singh that he had seen Santosh and Binit talking with each other. He denied the suggestion that he had not taken the name of the appellants Amrendra and Ankur before the police, as an accused

8. According to this witness, informant, Kashi Nath Singh (P.W.6) and Anil Kumar Singh (P.W.7), father and brother of the deceased, were aware of the fact that Santosh was talking with Binit in the morning of 06.03.2009, however, in the F.I.R., Kashi Nath Singh (informant) did not disclose those vital matter in his written report.

9. P.W. 3 Sri Ram Singh also stated that on 06.03.2009 at about 6.00 A.M., he saw Binit and Santosh @ Mantosh talking to each other at the door of Binit. On 07.03.2009, in the evening, he came to learn that Santosh had gone to Patna to meet his brother, but in fact he did not reach there. Furthermore, Binit too was not seen in the village, since 06.03.2009. He stated that he came to learn from Anil Singh on 08.03.2009 that Santosh has been kidnapped. He further stated that Santosh is not alive; rather he has been murdered for ransom. He recognized all the four accused, who are present in dock.

10. In his cross-examination, P.W. 3 stated that he had



no personal knowledge about the occurrence, but learnt about the same from Anil Singh. After 8-10 days of the occurrence, he learnt that the appellants have committed the crime. He admitted in paragraph 11 of his cross-examination that Rakesh Ranjan @ Tinu is his son. He did not know that police has raised suspicion against him (Rakesh Ransj @ Tinu) also. He further stated that on 06.03.2009 in the morning, at about 7.30 A.M. he returned to Barki Sindhi from Pirganj and when he came near bridge, he saw Santosh and Binit going together to station, who informed him that they are going to Varanasi.

11. P.W. 11 Arjun Singh stated that the inquest report of the dead body of Santosh @ Mantosh was prepared on 08.04.2009 in Himachal Pradesh, to which he is also a signatory. The place from where the dead body was recovered, is situated in Himachal Pradesh. He also proved his signature, which has been marked as Ext. X/1. He further stated in his examination-in-chief the deceased and Binit were seen together at the bridge, who informed him that they are going to Varanasi.

12. However, P.W.11 in his cross-examination admitted stated that he is making all these statements for the first time in the Court, as such the prosecution cannot take any advantage of his

testimony in absence of any explanation, as to why he did not make any statement before the police.

13. P.W. 4 Sunil Kumar Singh is the brother of the deceased and the son of the informant. He stated that on 06.03.2009, he was posted at Patna. On the same day in the evening, he got a telephonic message that his brother Santosh @ Mantosh left the house stating that he is going to Patna to meet him. Thereupon, he informed his father that he (Santosh) had not reached his house at Patna, as yet. On 07.03.2009 at 8.30 P.M., his father called on his mobile and informed that Santosh has been kidnapped and accused are demanding ransom of Rs.8,00,000/-, failing which they would kill his son. On 09.03.2009, this witness came to his house and asked his brother, Anil Singh (P.W. 7), to tape the conversation of abductors and to prepare a C.D. of it. He, accordingly, got the conversation recorded and C.Ds. were prepared. He recognized from the voice that the abductors were Binit and Chandra Pratap Singh @ C.P. Later on, his brother Anil Singh (P.W. 7) informed that Ara Town police had taken him and the accused Chandra Pratap to Nahan and on disclosure of latter (Chandra Pratap), the dead body was recovered and he (Anil) identified the same as that of his brother Santosh. He stated that Binit, Chandra Pratap, Amrendra and Ankur @ Setu had hands in murder of

his brother Santosh. He recognized all the accused persons present in the dock.

14. In his cross-examination, he stated that he was in know how of all the informations, which he had stated in his deposition. He admitted that his statement was recorded by the police after 5 ½ months of the occurrence. He denied the suggestion of the defence that he did not disclose the name of Ankur and Amrendra in his statement before the police, however, the investigating officer in para 39 confirmed that this witness had not disclosed the name of these two appellants in his statement before the police.

15. From the evidence of this witness, it is evident that his statement was recorded after 5 ½ months of the occurrence and he has not named the two of the four appellants, namely, Ankur and Amrendra. The evidence of this witness, as such, would not be of much avail to the prosecution in absence of any explanation for the delay in making statement before the police.

16. P.W. 5 Pramod Kumar Singh is another brother of the deceased and the son of the informant. He stated that on 06.03.2009, he was posted at Jehanabad. On 07.03.2009, his younger brother, namely, Sunil Kumar Singh informed him through phone that Santosh Kumar Singh @ Mantosh Singh has left for Patna on



06.03.2009, but has not reached there as yet. Thereafter, he came to his village Singhi on 08.03.2009 and enquired from his father, namely, Kashi Nath Singh (P.W.6) and brother Anil Singh (P.W.7) and other family members about Santosh, who was not traceable. In the evening at 7.00 P.M., a phone call was received on basic no. 723839 from Mobile no. 9661344365 demanding a ransom of Rs.8,00,000/- with warning that if the amount is not paid, the abducted boy would be killed. He stated that call for ransom was made on the Mobile number 9905263370 of his brother, which was also taped. The demand of money was made by appellant Chandra Pratap @ C.P., whose voice was identified.

17. In cross-examination, he stated that co-villager Shri Ram Singh, Rameshwar Singh (P.W. 2) and Pradeep Narayan Singh (P.W.1) informed that on 06.03.2009, at about 6.30 AM., they had seen Santosh and Binit at the door of Binit. This witness denied the suggestion that he had not taken the name of Amrendra and Ankur in his statement before the police, but the investigating officer in para 39 of his evidence stated that none of the witnesses had taken the name of Amrendra and Ankur in their statement made to him.

18. P.W. 7 Anil Kumar Singh is the another brother of the deceased and son of the informant. He stated that on 06.03.2009,



at about 7.00 A.M., his brother Santosh Kumar Singh @ Mantosh Kumar Singh left the house stating that he is going to meet his brother at Yarpur in Patna. On 07.03.2009, he learnt from his elder brother, namely, Sunil Kumar Singh, that Santosh @ Mantosh has yet not reached his house. Thereafter they began to look for him. On 08.03.2009, at 11.30 A.M., a call came on his Tata Indicom phone that Santosh Kumar is in their custody and a ransom of Rs.8,00,000/- should be paid by 10th, otherwise he would be killed. The call had come from Mobile no. 9661344365. The said demand was made by Chandra Pratap @ C.P. Singh, Binit Singh, Amrendra Singh and Seti (all the appellants). He taped the call/voice of the callers, making calls from the said mobile number and got a C.D. prepared through technician Ramjee Prasad (not examined). The technician Ramjee Prasad works at Rohit Computer Centre and had prepared three sets of C.D. One set of C.D. was given to Shabbir Khan (P.W.9) Inspector of Town police station and the other copy was given to Dy.S.P. and one copy was retained by him. In course of investigation, police of Town police station took him along with Arjun Singh and accused C.P.Singh, to Himachal Pradesh, where on the disclosure of C.P.Singh, the dead body of Santosh Kumar was recovered from a valley in Dehradun. On the basis of clothes and wrist watch, he



identified the dead body of his brother. The police of Nahan prepared inquest report, on which he and Arjun Singh put their signatures. He has recognized his signature on inquest report, which is marked as Ext-X. This witness, stated that C. P. Singh informed that he along with Binit Kumar Singh, Amrendra Singh, Ankur @ Setu (all the four appellants) had committed murder of his brother Santosh. He further stated that after recovery of the dead body, the same was sent for post-mortem, whereafter the dead body was handed over to them for performing last rites.

19. In his cross-examination, he stated that the body had not got severed in two parts, though the neck was cut. However, he stated that the dead body was not identifiable, though there was some flesh and skin on it.

20. From the evidence of this witness, it transpires that he had gone along with the police and C. P. Singh to Himachal Pradesh, whereupon on disclosure of C.P. Singh, the dead body of the deceased was recovered from a valley at Dehradun and that the part of the dead body was not severed from each other. It also appears from the evidence that the dead body was not recognizable from its face. He recognized the dead body on the basis of wrist watch and clothes.

21. P.W. 6 Kashi Nath Singh is the informant of the case



as well as father of the deceased Santosh Singh @ Mantosh Singh. He stated that on 06.03.2009, at about 7.00 AM., his son left his house stating that he is going to Patna to meet his brother Sunil Kumar Singh (P.W. 4). However, on 07.03.2009, Sunil Kumar informed him that Santosh has not reached his residence at Patna, which made him nervous and started searching for him. On 08.03.2009 at 11.30 AM., he received a phone call informing that Santosh is with him, whereafter the caller disconnected the phone. Again in the evening, at 7.00 – 7.30 P.M., he received a call from the same caller, demanding a sum of Rs.8,00,000/- as ransom to be deposited by 10th of March, otherwise his son would be killed. He stated that in the morning of 06.03.2009, his son was seen talking with Vinit Kumar Singh near his boundary wall. The accused Binit Singh, since then has not been seen in the village. The informant suspects that his son has been kidnapped for ransom and that Binit, C.P. @ Chandra Pratap, Amrendra Singh and Ankur @ Setu have hands in his abduction. He, accordingly, made a written report to the Ara town police station of the incident. He has identified his written report, which has been marked as Ext-1. He also stated that he got recorded the conversation of the caller, and has got prepared a C.D., one copy of which was handed over to the Darogajee of Ara Town Police station. In his examination-in-chief, he stated that



apart from the accused calling on his mobile, they also called on the mobile of his son Anil (P.W.7) on 08.03.2009, for ransom. All conversations were recorded and C.D. prepared. In course of conversation, the voice of the caller were recognized as that of C. P. Singh, Amrendra Kumar Singh, Vinit Singh and Ankur @ Setu. Santosh @ Mantosh was wearing a “Chek shirt” and cream colour pant and was having a Titan watch. In course of investigation, the dead body of his son was recovered in presence of his son Anil Singh (P.W.7) and Arjun Singh (P.W.11).

22. In cross-examination, this witness admitted that he had not disclosed the name of Ankur and Amrendra in the F.I.R. and in his re-statement. The investigating officer (P.W.9) too has confirmed the aforesaid fact in his evidence. In his cross-examination, he stated that he used to have talks with C. P. Singh, who used to come to his house along with Binit. He does not know as to how many brothers, he (C.P.Singh) has.

23. From the evidence of this witness, it appears that he was in knowhow before lodging of the case that his son Santosh @ Mantosh was seen with Binit at the latter's door in the morning of 06.03.2009, but this fact inquisitively does not find mention in his written report (Ext.-1).



24. P.W. 8 Subodh Kumar Singh was posted in Ara Town Police Station as J.S.I. on 06.04.2009. On the same day, as per the order of Department, he along with A.S.I. Asgar Ali and two constables and accused Chandra Pratap Singh @ C. P. Singh went to district Sirmaur in Himachal Pradesh. He stated that on information provided by C. P. Singh, the dead body of Santosh Kumar was recovered from a ditch on the main road. The place, from which the dead body was recovered, was within the jurisdiction of Nahan police station. The dead body was identified on the basis of clothes and watch, by two witnesses, namely, Anil Kumar Singh (P.W.7) and Arjun Singh (P.W.11), as that of Santosh Kumar Singh. He prepared the inquest report in their presence, on which he has put his signature, which he identified. The dead body of Santosh was sent to Shimla Medical College Hospital for post-mortem. After post-mortem, the dead body was handed over to his brother Anil Kumar Singh (P.W.7).

25. In his cross-examination, he stated that the dead body was in a decaying condition. He did not state in his statement under Section 161 of Cr.P.C. that the dead body was recognized through his face by Anil Singh, but by the watch and clothes. The watch and clothes were seized and a seizure list was made, but the same is not before him. He stated that he is not investigating officer of the case



and has not submitted any case diary separately. He stated that C. P. Singh was not arrested while he was going to Himachal Pradesh, rather he was arrested after recovery of the dead body after consulting the investigating officer. He denied the suggestion of the defence that it is not true that Anil (P.W.7) was called only after recovery of the dead body.

26. P.W. 9 Md. Shabbir Khan is the investigating officer of the case. On 09.03.2009, he was posted as Sub-Inspector of Ara Town police station. He proved the formal F.I.R., which was prepared by the officer-in-charge of Ara Town police station and the same is proved as Ext.-2. He took charge of investigation on 05.04.2009 on the direction of Inspector of Police Sunil Kumar from Prithvi Chand Singh and took the statement of Shri Ram Singh (P.W.3). From perusal of the case diary, he learnt that Binit Kumar was already sent to jail. In course of investigation, he received secret informations that suspected accused were staying in Regal Hotel. He accordingly went to Regal Hotel and arrested C. P. Singh on 05.04.2009 and recorded his confession. On search, a white-black colour mobile of Nokia company was recovered from his possession, which had a Airtel sim. On disclosure of C. P. Singh, he authorized one Subodh Kumar, Sub-inspector of Police (P.W. 8) and other police officials to proceed to



Himachal Pradesh for recovery of the dead body of Santosh @ Mantosh. On 07.04.2009, he took Binit Kumar on police remand and recorded his confessional statement. In course of investigation, on 10.04.2009, he received confidential information on telephone that suspected non-F.I.R. accused Amrendra Kumar @ Pintu is talking to one person at Ramna ground. On receipt of the aforesaid information, he proceeded to Ramna ground and arrested Amarendra Kumar and recorded his confessional statement. Amrendra Kumar Singh was in possession of Nokia Mobile, which was seized and a seizure was prepared in presence of witnesses Ajay Singh and Sushil Shukla (both not examined). In course of investigation, he talked to Anil Singh (P.W.7), son of the informant, who had prepared a C.D. of conversation of callers and received one copy of it, which has been marked as material Ext.-II. After receiving the post-mortem report and supervision note of Sub-Divisional Police Officer, Town Bhojpur, he submitted charge-sheet against Binit Kumar Singh, Amarendra Kumar @ Pintu, Chandra Pratap Singh @ C.P. and Ankur Kumar under Sections 364A, 302/201/34 of the Indian Penal Code. He further stated that on 09.07.2009, he received the call details of Mobile No. 9661344365 from which ransom was demanded. On perusal of the call details, it appeared that the calls were made from the said number

on the mobile of Anil Singh (P.W.7). The call details have been prepared in six pages. On 18.07.2009, he received the call details of mobile no. 985244435, which stood in the name of Rakesh Ranjan Singh and was used by accused Chandra Pratap Singh @ C.P.

27. In cross-examination, he admitted that there is no eye witness to the occurrence and he could not find any witness, who had either claimed to have seen the occurrence or the deceased in the company of the accused, after the evening of 06.03.2009. He also did not come across any witness, who shared any information on which train, the deceased proceeded for Himachal Pradesh. He stated that description of the watch and the clothes worn by the deceased were not incorporated in case diary. He stated that C. P. Singh was arrested on 05.04.2009 and was remanded to judicial custody on 14.04.2009 with the forwarding report. To a query, as to where he kept C. P. Singh between 05.04.2009 to 14.04.2009, he replied that after arresting him on 06.04.2009, he was taken to Narayangarh with P.W.8 (Subodh Kumar Singh). On his return from Narayangarh, there is no mention in the case diary that he was remanded on 14.04.2009. He further stated that he had not heard the contents of the C.D., nor the same was displayed, nor any detail with respect to it has been given in the case diary. He admitted in his cross-examination that Rakesh

Ranjan Singh, who is the owner of the Sim no. 9852444435, is neither the witness nor accused in the case. He further learnt from the statement of witness that the sim was used by C. P. Singh.

28. PW.10 is Dr. Harendra Jeet Singh Sekhawat. On 14.04.2009, he was posted at Shimla Medical College Hospital. On the same day, he conducted post-mortem examination on the dead body of Santosh Kumar, which was identified by Anil Kumar Singh (P.W.7), brother of the deceased and Arjun Singh (P.W.11) on the basis of clothes and watch.

29. He stated that on the external examination of the dead body, he found the following injuries:

The dead body was in decomposed position full of dry cocoon and live maggots. The skull and mandible was not present along with soft tissues of neck thorax, abdomen, left upper limbs and right foot absent. He stated that traces of gnawing by wild animals were present on various part of the body. There were signs of internal organs, skin on lower limbs, right upper limbs, left forearm. All the ribs are separated along with both clavicle and scapula. Two cervical and six upper vertebrae were found separated from each other. Rest vertebra was attached with false tissues of the body. External genital organ was not present, black pubic hairs were present. There was no



duplication of bone or body parts and the body was of a single human being. He estimated the age of deceased between 20 to 25 years. He stated that there was evidence of cut of bone of 7th vertebra of right side, but due to decomposition, it was not possible to opine whether the injury was ante-mortem. He stated that it was not possible to give a definite opinion about the cause of death, time of death, but stated that probable time of death would be around three weeks. He stated that no viscera was present for clinical examination.

30. Mr. Surendra Singh, learned Senior Counsel, submits that the prosecution has not brought conclusive circumstances to establish that the crime was committed by the accused-appellants. He submits that the prosecution has put much emphasis on the circumstance that the dead body of the deceased was recovered from valley in Dehradun on confessional statement of appellant C.P.Singh, which has not even been brought on record. Furthermore, the investigating officer Md. Sabbir (P.W.9) in his evidence has not stated the detailsof the said confessional statement, much less, the exact words spoken by the appellant C.P.Singh, which was necessary in view of the decision of the Hon'ble Apex Court in case of Bodhraj alias Bodha and Others Vs. State of Jammu and Kashmir, reported in (2002) 8 SCC 45 (para 18). He next submits that in any view of the



matter, mere recovery of the dead body of the deceased on the confessional statement of an accused would not be conclusive proof of his guilt in commission of the murder. In support of submission, learned counsel has relied upon decision in case of Bakshish Singh Vs. The State of Punjab, reported in AIR 1971 SC 2016 (para 8). He next submits that equally an accused cannot be convicted on the circumstance of last seen and that the dead body was found near portion of the portion of the building occupied by him. In support of his submission, learned counsel has relied upon decision in case of Anant Bhujangrao Kulkarni Vs. State of Maharashtra, reported in AIR 1993 SC 110 (para 12). He further submits that the prosecution has not even conclusively proved the circumstance of last seen of the accused with the deceased on 06.03.2009, the day the deceased went missing. He submits that the identification of the deceased is also doubtful, as Anil Kumar Singh (P.W.7), who was the witness to the inquest, stated that the deceased was bearing a Titan watch, whereas the doctor found that the deceased had a Sonata watch on his hand. He next submits that the doctor, who conducted post-mortem examination on the dead body of the deceased, was unable to state with certainty that the injury on the body was ante-mortem or post-mortem, as such the cause of death is also not proved.



31. He next submits that the prosecution has heavily relied upon the conversation made by the callers on the basic phone and the mobile number of Kashi Nath Singh (P.W.6). Furthermore, it appears from the evidence of prosecution witnesses that the mobile, which was used by the kidnappers for demanding ransom, belonged to one Rakesh Ranjan Singh, who is son of Sri Ram Singh (P.W.3), a prosecution witness himself. However, the said Rakesh Ranjan Singh has neither been made accused nor has been examined by the police, as to how the mobile had passed on to accused C. P. Singh, which too has not been recovered. He next submits that the C.D., which is said to have captured the conversation of the kidnappers and the family members of victim, has not been played in the Court. Furthermore, the author of the C.D. has not been examined, which was necessary to establish its authenticity. In support of his submission, learned counsel has relied upon decisions in case of Nilesh Dinkar Paradkar Vs. State of Maharashtra, reported in (2011) 4 SCC 143 (para 33).

32. Mr. Akhileshwar Prasad Singh, learned Senior counsel, appearing on behalf of the informant, submits that the dead body was recovered at the instance of C. P. Singh, which raises a strong suspicion of his involvement in the kidnapping and murder of



the deceased. He submits that in order to prove the crime, it is not necessary that one should have seen the accused committing the occurrence. The same can be inferred from the motive and substances. Besides this, P.W.1, P.W.2 and P.W.11 had seen the deceased with appellant Binit Kumar Singh on 06.03.2009, the date on which the victim Santosh Kumar Singh went missing. Furthermore, none of the accused-appellant has challenged the voice recorded/taped in the C.D. were not theirs. Learned counsel for the State too supports the submission advanced by learned counsel for the informant.

33. From the evidence adduced and submissions made above, it appears that the prosecution has relied upon the following circumstances:

(a) The deceased was last seen in the company of appellant Binit Kumar by P.W.1 and P.W.2 in the morning of 06.03.2009 and by Arjun Singh (P.W. 11) in the evening near the Railway Station;

(b) The dead body of the deceased Santosh Kumar Singh was discovered from a valley in Himachal Pradesh on information provided by Chandra Pratap Singh @ C. P. Singh.

(c) The dead body was identified by Anil Kumar Singh (P.W.7), the brother of the deceased, on the basis of the clothes worn

and his watch.

(d) The voice of the kidnappers was recognized by P.W.6 and P.W.7, and was also trapped in CD, which has been exhibited and marked as Exhibit.

34. Admittedly, there is no eye witness of the occurrence and the case of the prosecution is based on circumstantial evidence. In the case of Bakshish Singh (supra) it has been laid down that where a case rests on circumstantial evidence, the circumstances put forward must be a chain of evidence complete in itself and not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused and the accused alone.

35. In the light of the aforesaid principles of law, as laid down by the Hon'ble Apex Court, we would now examine whether the circumstances relied upon by the prosecution are sufficient to hold the accused guilty beyond all reasonable doubt.

36. The first circumstance relied upon by the informant is of last seen. As per P.W.1 and P.W.2, the deceased Mantosh Kumar Singh was last seen at the door of appellant Binit Kumar in the morning of 06.03.2009, the day the victim went missing. Furthermore,



the victim was again seen in the evening on 06.03.2009 at the Railway Station by Arjun Singh (P.W.11). In case, the evidence of P.W.1 and P.W.2 are reliable, it can be said that the prosecution has proved one of the circumstances. However, we find that the evidence of these two witnesses on the point of last seen is not worthy of reliance. It is true that P.W.1 and P.W.2 in their evidence stated that they saw the deceased in the morning of 06.03.2009 at the door of appellant Binit Kumar, however, in their cross-examinations, they admitted that they had talked with the family members of the deceased on quite a number of occasions, prior to lodging of the F.I.R. on 09.03.2009. They also admitted in their cross-examination that they had informed Anil Singh (P.W.7), the brother of the deceased and the family members that the latter was seen talking with appellant Binit Kumar in the morning of 06.03.2009. However, the aforesaid facts are conspicuously missing in the fardbeyan of the father of the deceased (P.W.6). Furthermore, the investigating officer (P.W.9) in his evidence did not confirm the evidence of P.W.1 and P.W.2 that they stated before him in their statements under Section 161 Cr.P.C. that they had seen the deceased in the company of appellant Binit Kumar on 06.03.2009. The other witnesses, namely, Arjun Singh (P.W.11), who have claimed to have seen the deceased with appellant Binit



Kumar in the evening of 06.03.2009, (the date on which the victim went missing), stated in his cross-examination that he is making such statement in the Court for the first time. As per his own admission, this witness has not made any such statement before the police under Section 161 of the Cr.P.C., his evidence too cannot be reliable. The evidence of these witnesses cannot be given any credence in absence of any explanation for not making statement before the police under Section 161 of the Cr.P.C., as such the prosecution has not been able to prove the circumstance of last seen beyond all reasonable doubt.

36. The second circumstance, on which the prosecution has relied, is that on the statement of C. P. Singh, the dead body was recovered from a valley in Himachal Pradesh. There is no presumption in law that if a dead body is recovered on the statement of an accused, the same would be conclusive proof of his hand in the commission of the crime, unless and until the same is corroborated with other reliable evidence.

37. Learned counsel for the appellants, in this respect, has rightly relied upon the judgment of the Hon'ble Apex Court in case of Bakshish Singh Vs. The State of Punjab, reported in AIR 1971 SC 2016 (para 8) and in case of Anant Bhujangrao Kulkarni Vs. State of Maharashtra, reported in AIR 1993 SC 110 (para 12). Para 12 of

the judgment rendered in case of Anant Bhujangrao Kulkarni (supra) is quoted herein below:

“12. The only circumstances that have been found established are that the deceased was last seen alive in the company of the appellant on October 13, 1975 at about 6 p.m. and that the dead body of the deceased was found in the Ladni near the residential portion of the appellant in Pargaonkar's wada. The said two circumstances, in our opinion, cannot be said to be inconsistent with the innocence of the appellant and on the basis of these two circumstances alone, it cannot be held that the appellant was a party to the murder of the deceased. The conviction of the appellant for the offence under Section 302 read with Section 34, IPC cannot, therefore, be upheld.

38. It would be apt to point out that the Hon'ble Apex Court in Kanbi Karsan Jadav v. State of Gujarat, reported in AIR 1966 SC 821 observed that mere fact that the dead body was discovered on the information provided by the accused would not necessarily lead to the conclusion of his involvement in the crime.

39. The third circumstance, on which the prosecution has relied, was that the P.W.6 and P.W. 7 recognized the voice of the appellants, who made the call for demand of ransom and has recorded



the conversation in C.D. The Hon'ble Apex Court in case of Nilesch Dinkar Paradkar Vs. State of Maharashtra, reported in (2011) 4 SCC 143 observed that the voice of the speaker must be duly identified by the maker of the record or by other, who recognized his voice. In the instant case, neither the maker of the record, namely, Ramjee Prasad (Technician), who prepared the C.D. was examined nor the C. D. was displayed before the police or before the Court.

40. In absence of the aforesaid conditions, it would not be safe to place reliance on such C.D., the contents of which were never displayed in the Court. Even if, we do not dispute the identity of the dead body, which was recognized by P.W.7 on the basis of clothes and watch, the same cannot prove the guilt of the accused, as the prosecution has failed to prove the other circumstances conclusively beyond all reasonable doubts.

41. In view of the discussions made above, we are of the considered view that the prosecution has not been able to prove its case beyond all reasonable doubts and as such all the three appeals are allowed and all the appellants, namely, Amarendra Kumar @ Pintu and Ankur Kumar @ Setu [Cr. Appeal (DB) No. 221 of 2012], Chandra Pratap Singh @ C. K. Singh @ Chand Pratap Singh [Cr. Appeal (DB) No. 291 of 2012] and Binit Kumar Singh [Cr. Appeal

(DB) No. 265 of 2012] are acquitted of the charges levelled against them. All the appellants are in judicial custody, they are directed to be released forthwith, if not required in any other cases.

(Samarendra Pratap Singh, J.)

(Rajendra Kumar Mishra, J.)

A.F.R.
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