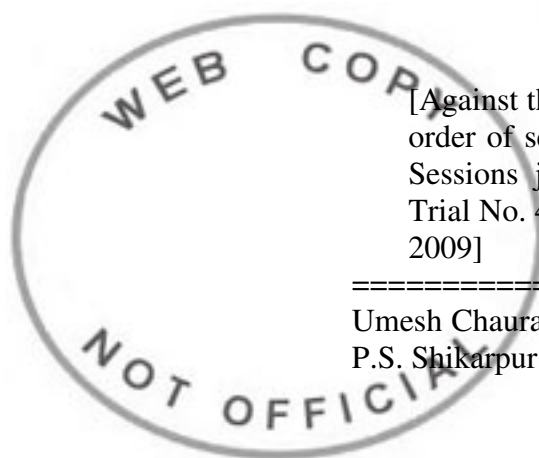




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.999 of 2011

[Against the Judgment of conviction dated 17th day of September, 2011 and order of sentence dated 21st September, 2011 passed by the 1st Additional Sessions judge, Bettiah, West Champaran, in connection with Sessions Trial No. 485 of 2009 arising out of Bettiah Town P.S. Case No. 135 Year-2009]

=====

Umesh Chaurasiya, son of late Dwarika Pd. Chaurasiya, r/o village - Prakashnagar, P.S. Shikarpur, District - West Champaran (Bettiah)

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 1073 of 2011

[Against the Judgment of conviction dated 17th day of September, 2011 and order of sentence dated 21st September, 2011 passed by the 1st Additional Sessions judge, Bettiah, West Champaran, in connection with Sessions Trial No. 485 of 2009 arising out of Bettiah Town P.S. Case No. 135 Year-2009]

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Ashok Yadav, son of Sitaram Yadav, resident of village -Goiti, P.S.-Bagaha, Dist.-West Champaran (Bihar)

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 1082 of 2011

[Against the Judgment of conviction dated 17th day of September, 2011 and order of sentence dated 21st September, 2011 passed by the 1st Additional Sessions judge, Bettiah, West Champaran, in connection with Sessions Trial No. 485 of 2009 arising out of Bettiah Town P.S. Case No. 135 Year- 2009]

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Rambhu Ram, son of Shankar Ram, resident of village Prakash Nagar, Naya Tola, P.S. Shikarpur, Distt. West Champaran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 1103 of 2011

[Against the Judgment of conviction dated 17th day of September, 2011 and order of sentence dated 21st September, 2011 passed by the 1st Additional Sessions judge, Bettiah, West Champaran, in connection with Sessions Trial No. 485 of 2009 arising out of Bettiah Town P.S. Case No. 135 Year-2009]

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Shambhu Ram, son of Shankar Ram, resident of village Prakash Nagar, Naya Tola, P.S. Shikarpur, Distt. West Champaran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.999 of 2011)

For the Appellant/s : Mr. Anil Kumar Singh, Advocate
Mr. Surendra Kumar, Advocate
Mr. Sanjay Kr. Singh, Advocate

For the State : Mr. A.K. Sinha, Additional P.P.
(In CR. APP (DB) No.1073 of 2011)

For the Appellant/s : Mr. Vijay Kr. Singh No. 1, Advocate

For the State : Mr. A. Sharma, Additional P.P.
(In CR. APP (DB) No.1082 of 2011)

For the Appellant/s : Mr. Raghu Nandan Kumar, Advocate
Mr. Upadhayay Saurabh Kr., Advocate

For the State : Mr. S. C. Mishra, A.P.P.
(In CR. APP (DB) No.1103 of 2011)

For the Appellant/s : Mr. Raghu Nandan Kumar, Advocate
Mr. Upadhayay Saurabh Kr., Advocate.

For the State : Mr. D.K. Sinha, Additional P.P

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 24-06-2016

Heard learned counsel for the Appellants and learned
counsel appearing on behalf of the Public Prosecutor.

2. The four Appellants have been convicted under



Sections 364A and 302 Indian Penal Code and sentenced them to undergo life imprisonment under Sections 364A and 302 Indian Penal Code and a fine of Rs.20,000/- each, in default of which further sentenced them to undergo rigorous imprisonment for one year passed by the 1st Additional Sessions judge, Bettiah, West Champaran, by a Judgment of conviction dated 17th September, 2011 and order of sentence dated 21st September, 2011, in connection with Sessions Trial No. 485 of 2009 arising out of Bettiah Town P.S. Case No. 135 Year- 2009.

3. The case of the Prosecution according to the Informant PW 14 (Vijay Patel) is that his brother Jitendra Kumar Patel used to study living in a lodge and had disappeared from there. On 27.5.2009, he received a phone call on his Mobile number that Jitendra Kumar Patel had been kidnapped and if Rs.15,00,000/- was not paid as ransom, he would be killed. He gave the number of the mobile being 9771131629 from which call was made. He then gave a written report before the Officer-in-Charge, Town P.S., Bettiah.

4. On going through the evidence of the witnesses, we find that there is no direct evidence in regard to kidnapping or murder. The case is based on circumstantial evidence and the evidence in support of the Prosecution importantly are that of PW 2 (Kamal Kishore Singh), S. I., PW 6 (Lal babu Yadav), PW 8 (Munna Kumar), PW 11 (Md. Irshad Alam) all Police Officers, PW 12



(Kamakhya Narayan Singh), PW 13 (Sanjay Kumar Jha) as also PW 14 (Vijay Patel) the Informant. PW 16 (Dr. Arun Kumar Singh) who conducted the Postmortem and PW 17 (Sanjeev Kumar) Court witnesses, have also been examined who are material witnesses. PW 1 (Mantosh Das), PW 3 (Suraj Kant Mishra), PW 4 (Puran Das), PW 5 (Mukesh Kumar) and PW 7 (Chintu Kumar) have not supported the case of the Prosecution and declared hostile. PW 9 (Ajman Alam), PW 10 (Rajendra Yadav) and PW 15 (Vijay Kumar Pandey) are formal witnesses.

5. Individually, the case against each of the four Appellants is on different footing. Whereas Appellant Umesh Chaurasiya is concerned, his name transpired in the confessional statement of Shambhu Ram who was arrested when he came to receive the ransom amount. So far as the Appellant Shambhu Ram is concerned, he has been identified by the witnesses as the person who had come to receive the ransom amount. Appellant Ashok Yadav is said to have given a discovery statement on which basis, some incriminating articles and the dead body of the deceased was recovered. Appellant Rambhu Ram happened to be in Jail at that time and was the brother of Appellant Shambhu Ram and the main architect of the occurrence.

6. Now to consider the sustainability of conviction, we proceed to examine the evidence of the witnesses to test the

aforesaid materials appearing against the Appellants.

7. PW 2 (Kamal Kishore Singh) stated that on 29.5.2009 when he was in Lauriya Police Station as S.I., a Task Force was constituted on the written statement of the Informant and they were entrusted the work of recovery of the victim. He confirmed calls were made to the informant demanding ransom. The mobile phone was monitored by Kamakhya Narayan Singh (PW 12) and Abrar Ahmad, Court witness no. 4. He was in the know of the dealing which went on between the kidnappers and the Informant and the decision that 1.5 lacs be paid at a certain point. After due planning, the Police Force reached Loriya where the ransom taker was summoned as pre-decided and while they were keeping a watch, they saw one person picking up the bag which was kept at the appointed place and when he was caught, he disclosed his name as Appellant Shambhu Ram and the person who fled away, as Appellant Umesh Chaurasiya. He confessed his guilt as also disclosed the names of others on the basis of which, the rest of the accused persons were arrested and the dead body of Jitendra Kumar Patel was recovered. He identified the Appellant Shambhu Ram in Court.

In cross examination, he explained the manner in which the Task Force was constituted as also that he never had a personal talk with the kidnappers and he was only stating the fact about demand of ransom on hear say evidence. He also explained in a

detailed manner in which a watch was kept and how the accused was arrested.

8. PW 6 (Lal Babu Yadav) is the next important witness who was the friend of Munna Kumar (PW 8) and he learnt about the factum of kidnapping of Jitendra Kumar Patel through him on which he went along with him to the Town Police Station and got the case instituted. They also conducted search for the victim. He confirmed that calls were made with demand of ransom to the tune of Rs.15,00,000/- and finally the deal was settled at 1.5 lacs . The accused were called at Railway Station where the Police Force was there. He along with the Informant and PW 8 went to the appointed place where the Appellant Shambhu Ram came to collect the ransom. He was immediately apprehended whereas other persons fled away. He proves the seizure list as Ext. 2/B. When Shambhu Ram was questioned, he disclosed the name of Appellant Umesh Chaurasiya. He also disclosed the names of Appellant Ashok Yadav and some others, on the basis of which, the Police raided the house of one Mahesh Mahto (absconding accused) from where the Appellant Ashok Yadav and some others were arrested. He proves the seizure list as Ext. 2/C regarding the recovery of mobile phones from the possession of Appellant Ashok Yadav. Appellant Ashok Yadav disclosed names of other co-accused persons. All the accused admitted that they had killed the victim and thrown the dead body in

Phoola Rai Ghat. They then proceeded to that place and recovered the dead body. He identified Appellant Shambhu Ram as also Appellant Ashok Yadav.

In cross examination, he stated that in the 4-5 days he was with the Police Personnel several locations were raided in and around Bettiah. He explained on cross examination the manner in which the ransom amount was to be handed over. He once again confirmed that Appellant Shambhu was at the Pokhra whereas Appellant Rambhu Ram was not there.

9. PW 8 (Munna Kumar) another important witness stated that he was the brother-in-law of the Informant. He stated that on 26.5.2009 he learnt that Jitender Kumar Patel was missing since 23.5.2009 when the Informant asked him as to whether he was with him. On 27.5.2009, phone calls were received on the mobile of the Informant demanding ransom of 15 lacs within three days failing which Jitender Kumar Patel would be murdered. On 28.5.2009, he along with PW 6 (Lal Babu Yadav) went to the Police Station and instituted the case. All along he was with the Police Force in order to recover the victim and on the appointed date, the agreed amount of Rs.1,50,000/- was to be handed over to a person who would come to receive it on 29.5.2009. The Police Force was also posted there. In course of the same, two persons came to take the bag out of which Appellant Shambhu Ram was caught whereas the other accused



person fled away. Appellant Shambhu Ram disclosed the name of his accomplice being Appellant Umesh Chaurasiya. From the possession of Shambhu Ram, a Mobile phone was recovered of which a seizure list was prepared which is marked as Ext. 4. Thereafter, on the disclosure statement of Shambhu Ram, some other accused persons including the Appellant Ashok Yadav was arrested with Mobile phone of which seizure list was prepared marked as Ext. 2D and 2E. Appellant Ashok Yadav allegedly gave a recovery statement on the basis of which a locket of the victim was recovered from an orchard and the dead body was recovered from the bank of the river and inquest report was prepared which is marked as Ext. 5. Several raids were conducted in which Mobile phones were recovered of which a seizure list was prepared on which he and the previous witness Lal Babu Yadav signed which proves as Ext. 6. He identified the Appellant Shambhu Ram in Court.

In cross examination, he stated that the Appellant Shambhu Ram had given a statement at the spot itself and he had not seen the Appellant Umesh Chaurasiya and it was on 30.5.2009 early morning Ashok Yadav was arrested upon which the locket and the dead body of the deceased was recovered.

10. PW 11 (Md. Irshad Alam) was posted at Sathi Police Station and was part of the Task Force which had been constituted to recover the victim. He started keeping a watch on the

mobile calls of the Informant and he proves the report and the calls as Ext. 9 which he had handed over to the Investigating Officer. He also proves the telephone call Chart which is Ext. 10.

In cross examination he stated that the prints out were obtained periodically and he had given his report on 26.9.2009.

11. PW 12 (Kamakhya Narayan Singh) was also a Police Officer and a member of Task Force Officer-in-Charge, Manjhaulia, constituted for recovery of the victim. He stated that he started to talk to the kidnappers pretending to be his brother and reached the locations near Narkatiya station where the Appellant Shambhu Ram, Umesh Chaurasiya had come to receive the ransom amount. As soon as Appellant Shambhu Ram came and took the money, he was arrested whereas the Appellant Umesh Chaurasiya fled away. Appellant Shambhu Ram disclosed the name of other co-accused persons on the basis of which, others were arrested. From the person of Shambhu Ram, a Mobile phone was recovered. It was on this mobile directions were being given for collecting ransom amount by his brother Appellant Rambhu Ram. On the pointing out of the accused persons, the dead body was recovered upon which further action was taken. He allegedly recovered a Mobile phone from the person of the Appellant Rambhu Ram who was lodged in Jail. He identified all the accused persons in the Court.

In cross-examination, he stated that Appellant Umesh

Chaurasiya could not be caught despite an effort to do so and it could identify him whereas he, Anil and PW 2 (Kamal Kishore Singh) caught hold of Appellant Shambhu, the others tried to catch Umesh but he ran away. He stated that he could identify the Appellant Umesh Chaurasiya.

12. PW 13 (Sanjay Kumar Jha) is the next Police Officer and the Investigating Officer who stated that on 28.5.2009 he instituted a First Information Report on the written statement of the Informant which is marked Ext. 11. He assumed investigation and inspected the place of occurrence as also kept a watch on the calls being made between the kidnappers, the Informant and his family members and on the basis of tower locations, they started keeping a tab on the accused and then a deal was struck between the kidnappers and the Informant that they would come to receive money at a certain point. It was then Appellant Shambhu Ram was caught while receiving the ransom amount whereas Appellant Umesh Chaurasiya fled away. From the presence of Shambhu Ram, a mobile phone and a SIM were recovered which is marked as Ext. 12. A Mobile phone and a SIM were also recovered from the person of the Appellant Ashok Yadav and Jitender Kumar Sahni of which seizure list was prepared which is marked as Ext. 13 and 14. He confirmed the fact of recovery of the dead body on the confessional statement of Appellant Ashok Yadav of which inquest report was prepared which is Ext. 16. The

skeleton was sent to the Forensic Department for examination. Thereafter, charge sheet was submitted under Section 364A and 302 Indian Penal Code.

In cross-examination, he conceded that he did not obtain the print out of the Mobile phones but the rest of the Officers had done so. There is no further notable point in the cross-examination of this witness.

13. PW 14 (Vijay Patel) is the Informant who confirmed that after he suspected that his brother had been kidnapped and phone calls were made on his mobile for demand of ransom, he gave a written report before the Officer-in-Charge, Town Police Station, which he proves as Ext. 19. He further stated that he along with Police Force came to the lodge and went to various locations. On the appointed date, two persons came to receive the ransom amount which was kept in a bag, out of which, one person i.e. Appellant Shambhu Ram was arrested whereas Appellant Umesh Chaurasiya fled away. It was on the disclosure statements of Shambhu Ram that several other accused persons were apprehended including the Appellant Ashok Yadav. They then went to Bettiah Jail. According to him, Appellant Ashok Yadav disclosed that they had killed the deceased and thrown the dead body on the Ghat. On the statement of Appellant Ashok Yadav and others, the dead body was recovered which was identified by him of which an inquest report was prepared.

In cross examination, he stated that he had transmitted all the information to the Police Officers and the deal had been settled at 1.5 lacs. He described the exact manner in which the Police Force had scattered themselves when Appellant Shambhu Ram was apprehended and the Appellant Umesh Chaurasiya who had been chased for a certain distance, fled away. He also stated that a locket of the deceased was found which was identified by him.

14. PW 16 (Dr. Arun Kumar Singh) has stated that on 4.6.2009 he had received a wooden box properly sealed for bone examination, the report of which is as follows:-

“On examination, dark colour full pant with leather belt, Sando Ganji and T. Shirt with white sand and soil on the body was found. No skin was found on the body. Maggots were crawling on the whole body. All viscera were decomposed. Some parts of the body were devoid of muscles and tissues. No any part was missing.

Bones of scalp were heavy stout with prominent muscular markings. The Glabella, Zygomatic arch, mastoid processes and occipital protuberance were more prominent. Orbit are square with rounded margins. Basal sphenoid and basal-occiput were partly fused (No complete fusion). Skull sutures were not fused. 14 sockets with 8 teeth and spacing were found in the upper jaw. One comminuted fracture of $\frac{3}{4}$ ” x $\frac{1}{2}$ ” was found on right side of skull, $\frac{1}{2}$ ” behind from Rt. ear.

Mandible was large with square scape chin. Ascending ramus was broader with larger condylar facets. Anatomical angle was averted. The mental foramen was midway. 16 sockets with 14 teeth were present in lower jaw. No.

attrition was found in the teeth.

Llial crest was found fused, Sacrum was narrower with more evenly distributed curvature.

Opinion:

(i) *The bones were automatically human in nature*

(ii) *Sex – Male*

(iii) *Cause of death:- could not be ascertained, however, the decomposed heart, lung, liver, spleen, kidney and stomach has been preserved.*

(iv) *Time of death:- 10 to 15 days approx. from the date of receiving of the body.*

(v) *Age – 18 to 21 years (in between 18 yrs to 22 yrs)”.*

15. PW 17 (Sanjeev Kumar) stated that on 24.5.2009, Appellant Ashok Yadav came and kept his cycle and did not return for the next two days. Later, he learnt that the Police had taken away the cycle. He appears to be irrelevant.

16. Court witness (Sushil Kumar Gupta) is on the point of being a signatory to the inquest report marked as Ext. 23.

17. Court witness No. 2 (Kumar Mangalam) was the Block Development Officer cum Circle Officer, Bettiah, in whose presence the confessional statement of Appellant Ashok Yadav was recorded.

18. The Court Witness No. 3 (Ramesh Singh) posted in Bettiah Jail is on the point of recovery of a Mobile Phone on which he was also a signatory which is marked as Ext. 25.

19. Court witness No.4 (Abrar Ahmad Khan) Police

Officer was also a member of the Task Force and confirmed the facts of demand of ransom, arrest of Appellant Shambhu Ram, his confessional statement, disclosure of the name of Appellant Umesh Chaurasiya, recovery of a mobile phone and the arrest of eight accused persons on whose statement, the dead body was recovered.

20. On going through the evidence of the witnesses, we find that there appears to be no evidence as regards Rambhu Ram apart from the confessional statement before the Police of his brother Appellant Shambhu Ram. Admittedly, exchange of phone calls was not verified by the Police Officer. In such view of the matter, on account of complete paucity of legal evidence as against him, Cr. Appeal (DB) No. 1082 of 2011 is allowed and the Judgment of conviction dated 17th day of September, 2011 and order of sentence dated 21st September, 2011 passed by the 1st Additional Sessions judge, Bettiah, West Champaran, in connection with Sessions Trial No. 485 of 2009 arising out of Bettiah Town P.S. Case No. 135 of 2009 against the Appellant Rambhu Ram, is hereby, set aside.

The Appellant Rambhu Ram of Cr. Appeal (DB) No. 1082 of 2011, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

21. As for Appellant Umesh Chaurasiya, we find that the evidence against him is that his name was disclosed by Appellant Shambhu Ram in his confession before the Police and his



identification which is of very weak nature inasmuch as the sole identifying witness PW 12 (Kamakhya Narayan Singh) claimed to identify the Appellant in Court but this fact is not supported by the rest of the persons of the Task Force. In view of such, Cr. Appeal (DB) No. 999 of 2011 is allowed and the Judgment of conviction dated 17th day of September, 2011 and order of sentence dated 21st September, 2011 passed by the 1st Additional Sessions judge, Bettiah, West Champaran, in connection with Sessions Trial No. 485 of 2009 arising out of Bettiah Town P.S. Case No. 135 of 2009 against the Appellant Umesh Chaurasiya, is hereby, set aside.

The Appellant Umesh Chaurasiya of Cr. Appeal (DB) No. 999 of 2011, who is on bail, is discharged from the liabilities of his bail bonds.

22. As for the evidence as regards Appellant Shambhu Ram of Cr. Appeal (DB) No. 1103 of 2011, we find that there is complete consistency that he was the person who was apprehended when he had come to receive the ransom amount thus revealing his complicity in the occurrence. In view of such, finding no merit in the Appeal, the same is dismissed.

23. Similarly, there is complete consistency as regards the Appellant Ashok Yadav of Cr. Appeal (DB) No.1073 of 2011 that it was on his recovery statement that the dead body and the locket of the deceased was recovered from the river side which was identified

by his family members which points to his involvement in the transaction of kidnapping for murder, and, therefore, his Appeal is also dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

S.Ali/-

AFR/NAFR	NAFR
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