

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 456 of 2014

Against the judgment of conviction dated 27.06.2014 and order of sentence dated 03.07.2014 passed by Shri Dhruwa Narain Singh, Ad-hoc Additional Sessions Judge-IV, Araria, in connection with Sessions Trial No. 725 of 2013/Trial No. 163 of 2013 (arising out of Forbesganj P.S. Case No. 344 of 2012 G.R.No. 2233 of 2012).

Birju Paswan @ Mukesh Pandey Son of Late Mahadeo Pandey resident of Ward No.-11, Forbesganj, P.S.- Farbisganj, District- Araria

.... Appellant

Versus

The State of Bihar

.... Respondent

WITH

Criminal Appeal (SJ) No. 447 of 2014

Rakesh Roy son of Late Surendra Roy, resident of Matiyari, P.S.- Farbisganj, District- Araria

.... Appellant

Versus

The State of Bihar

.... Respondent

WITH

Criminal Appeal (SJ) No. 380 of 2014

Rajendra Goshwami Son of Late Harihar Goshwami Resident of village- Matiyari, P.S.- Forbesganj, Dist.- Araria

.... Appellant

Versus

The State of Bihar

.... Respondent

WITH

Criminal Appeal (SJ) No. 394 of 2014

Md. Guddu, Son of Md. Mustaque Resident of Village Jogbani, P.S. Jogbani, District Araria

.... Appellant

Versus

The State of Bihar

.... Respondent

WITH

Criminal Appeal (SJ) No. 439 of 2014

Md. Dilnawaz son of Md. Aftab, Resident of village- Bhagkohalia, P.S.- Forbesganj, Dist- Araria

.... Appellant

Versus

The State of Bihar

.... Respondent

WITH

Criminal Appeal (SJ) No. 460 of 2014

Sanjay Yadav, Son of Shiv Narayan Yadav, Resident of Village-Palasi, P.S. Narpatganj, District- Araria

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (SJ) No. 456 of 2014)

For the Appellant : Mrs. Asha Verma, Advocate.
Mrs. Sajane, Advocate.

For the State : Mr. S. A. Ahmad, A.P.P.

(In CR. APP (SJ) No. 447 of 2014)

For the Appellant : Mr. Vikramdeo Singh, Advocate.
Mr. Mukesh Kr. Rana, Advocate.

For the State : Mr. Sujeet Kumar Singh, A.P.P.

(In CR. APP (SJ) No. 380 of 2014)

For the Appellant : Mr. Ramesh Kumar Singh, Advocate.
Mr. Sanjay Kumar Singh, Advocate.

For the State : Mrs. Abha Singh, A.P.P.

(In CR. APP (SJ) No. 394 of 2014)

For the Appellant : Mr. Ramesh Kumar Singh, Advocate.
Mr. Sanjay Kumar Singh, Advocate.

For the State : Mr. Bipin Kumar, A.P.P.

(In CR. APP (SJ) No. 439 of 2014)

For the Appellant : Mr. Ramesh Kumar Singh, Advocate.
Mr. Sanjay Kumar Singh, Advocate.

For the State : Mr. Z. Hoda, A.P.P.

(In CR. APP (SJ) No. 460 of 2014)

For the Appellant : Mr. Rana Pratap Singh, Senior Advocate.
Mr. Aarusi Singh, Advocate.

For the State : Mr. Binod Bihari Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 08-03-2016

Heard learned counsel for the appellants and learned counsel
for the State.

2. Six appeals are being heard together and disposed of by
common judgment as six appeals arise in connection with Sessions



Trial No. 725 of 2013/Trial No. 163 of 2013 (arising out of Forbesganj P.S. Case No. 344 of 2012 G.R.No. 2233 of 2012) by which appellants Sanjay Yadav, Birju Paswan @ Mukesh Pandey, Rakesh Roy, Md. Dilnawaz, Md. Guddu and Rajendra Goswami have been convicted for offence under Sections 364 of Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and payment of fine of Rs. 7,000/- and for non-payment of fine further sentenced to undergo rigorous imprisonment for six months. Further they were convicted for offence under Section 386 of Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and further payment of fine of 5000/- and for non-payment of fine further sentenced to undergo rigorous imprisonment for four months. Further they have been convicted for offence under Section 120B of Indian Penal Code and sentenced to undergo rigorous imprisonment for five years. Further the appellant, Rakesh Roy had been convicted for offence under Section 25(1-b) of the Arms Act and sentenced to undergo rigorous imprisonment for three years and payment of fine of Rs.1000/- and for non-payment of fine further sentenced to undergo rigorous imprisonment for one month. He had further been convicted for offence under Sections 26 and 35 of Arms Act and sentenced to undergo rigorous imprisonment for five years and payment of fine of Rs. 2000/- and for non-payment of fine further sentenced to undergo

rigorous imprisonment for two months.

3. The prosecution case alleged in the First Information Report on the written report of Dr. Jayanta Kumar Paul alleging therein that on 18.10.2012 at about 2.45 P.M. he received a mobile call on his mobile no. 9470227564 by an unknown person bearing mobile no. 8873666584 and commanded him to pay Rs. 10,00,000/- (Ten lakhs) in pretext that he has good practice and threatened to kill, if he refused to pay, on which the informant disclosed him that he had normal practice and he is unable to pay the said amount, on which the unknown person on telephone abuses and threatened if the money is not paid then the unknown person shall come to his house and then the family members of the informant along with the informant will be murdered by hurling bomb and accused persons will kidnap the son of the informant. It is further alleged that said unknown person on mobile also told the informant that the informant has got four kathas land in front of his house and hence he would sell it. Further case is that the informant disclosed him that he can be able to give Rs.1,00,000/-(one lakh) then said unknown person asked him to arrange money within twenty four hours. Further case is that on 18.10.2012 itself at about 8.15 P.M. he again received a mobile call from unknown person and commanded him to arrange money immediately, otherwise he will be killed in the clinic itself. The



unknown accused person further threatened to think about it till 8.00 A.M. on 19.10.2012. The informant thereafter gave an information to the then Officer-in-Charge, Forbesganj. Again on 19.10.2012 at about quarter to eight in the morning, the informant again received call of his mobile and it was intimated to arrange the money till six O'clock in the evening. Further case is that at about quarter to six in the evening on 19.10.2012, the informant received a call from another mobile bearing no. 9939809760 and it was intimated to bring Rs. 1,00,000/- to railway over bridge of Forbesganj, where the man of the accused persons will collect the money from him and it was again threatened, if money was not given then he will be killed then the informant disclosed him that he cannot come to the railway station in the night as he has become frighten so he cannot go to the railway station in the night. Further case is that a reply came from the side of the accused persons on mobile that his man is going to the house of the informant and to gives him money in a bag. Further case of the prosecution is that on 19.10.2012 itself two persons came on motorcycle at 7.00 P.M. at the house of the informant and blow horn of the motorcycle and when the informant came out then both of them hurled abused and asked where is the money, on which the informant disclosed that he had not given the money till date or money had not been arranged then both the accused persons tried forcibly to take him



of kidnapped him on motorcycle to kill. Thereafter, they tried by force to kidnap the informant on motorcycle and to flee away. On hullah, the inmates of the house as well neighbourers and police posted in plain dress as well as witness Suresh Thakur surrounded the accused persons on which accused persons leaving the informant tried to flee away, but they were apprehended by the police force. Thereafter, the police searched the apprehended accused person, namely, Rakesh Roy and from his possession one loaded pistol was recovered and the motorcycle of the accused persons on which the accused person had come were seized and person who was apprehended disclosed his name as Birju Paswan @ Mukesh Pandey and disclosed the name of his associate as Nihal @ Julfi.

4. On the written report of the informant, Dr. J. K. Paul, F.I.R. was lodged. During investigation, police recorded further statement of the informant and the statement of the witnesses and on disclosure of the accused Rakesh Roy and Birju Paswan @ Mukesh Pandey other accused persons were arrested from the railway station and a country made pistol, live cartridges were also recovered. After completing the investigation, the police submitted charge sheet. Cognizance taken and case was committed to the Court of Sessions.

5. During trial after framing of the charge, eleven witnesses were examined by the prosecution. P.W. 1 Amir Hamza, P.W. 2 is

Md. Nazim Ansari, P.W.3 is Shyamsunder, P.W. 4 is Nasim Ahmad, P.W. 5 is Ranvinay Kumar, P.W.6 Dr. Jayant Kumar Paul, the informant, P.W. 7 is Suresh Thakur, P.W.8 Rajen Kumar, the A.S.I.(I.O.) at that place, P.W. is 9 Prushottam Singh, A.S.I., Araria, P.W.10 is Bipin Kumar and P.W. 11 is Prakash Kumar Sah and Final Form accepted.

6. The trial court taking into consideration the evidence of witnesses convicted the appellants on the ground that on the written report of the informant trial proceeded and there was demand of Rs.10,000,00/- (Ten lakhs). Thereafter, an attempt was made to kidnap the informant and they were apprehended by the prosecution party and witnesses have proved the seizure list holding that prosecution has been able to prove the charges against the appellants.

7. The learned counsel appearing on behalf of appellant, Birju Paswan, in Cr. Appeal No. 456 of 2014 has submitted that entire action taken on the intimation given by the informant, but the F.I.R. has been drawn even prior to the preparation of the seizure list, though, the case of the prosecution that police party were in plain dress, but nothing had brought into notice that how the police party came and what was the information on which the police reached there and hence, earliest version had been suppressed. It has further been contended that Birju Paswan was not identified by any of the



witnesses in the case. It has further been submitted witnesses of the seizure list had not come to support the evidence and their evidence only to the effect that no material was recovered in their presence and their signatures were taken on plain paper. It has further been stated that neither the motorcycle on which it is alleged that miscreants came have been produced nor there is any evidence who is owner of the said motorcycle. It has been further contended that evidence of the witnesses suffer from various infirmities and except the informant, none had come to support the prosecution case. Further submitted that except the informant, none have identified the appellants who were committing crime.

8. Learned counsel appearing on behalf of appellant Rakesh Roy in Cr. Appeal No. 447 of 2014 has submitted that offence under Sections 364 and 380 of Penal Code are not maintainable against this appellant as ingredient for offence under Sections 364 and 386 of Penal Code had not attracted for conviction and sentence and attention drawn that it can be based only for offence under Sections 387 or 347 of Indian Penal Code.

9. Learned counsel for the appellants in Cr. Appeal No. 380 of 2014, Cr. Appeal No. 394 of 2014, Cr. Appeal No. 439 of 2014 and Cr. Appeal No. 460 of 2014 have stated that there is no evidence against them except confessional statement of co-accused which is not

admissible in evidence and virtually there is no evidence against them and none of them identified by the witnesses in doing any crime. Hence order of conviction and sentence against them recorded by the trial court is not sustainable.

10. Learned counsel for the State however, contends that evidence of P.Ws. 6 and 7 are in court and they have supported the prosecution in material particular to record conviction of the appellants.

11. Having regard to the respective submissions of the parties, I proceed to consider the evidence of witnesses as to whether the prosecution has been able to prove the charges levelled against the appellants beyond all reasonable doubts. However, the prosecution story at the outset in the First Information Report that the informant received a mobile call in his mobile and from the said mobile unknown person demanded Rs.10,00,000/- (Ten lakhs) in the pretext that informant had good practice with a threat if he has not been paid the demanded money, his entire family members will be exploded by the bomb and his son will be kidnapped. It has further been alleged that accused person commanded to sale the land in front of his house and paid the aforesaid demanded money. Thereafter, another mobile call received with a threat to arrange the money and brought the money to railway bridge. On refusal, the accused persons came to the



house of the informant and tried to kidnap the informant. The informant stated to the accused persons that he could not arrange the money, then they tried to kidnap the informant. On hullah, several persons as well as police force surrounded them and apprehended. The police on search, found one loaded pistol from the appellant, Rakesh Roy as well as one motorcycle was seized from the place of occurrence. Another appellant disclosed his name as Birju Paswan @ Mukesh Pandey and both the appellants disclosed that they were with other six accused persons including one Nehal @ Julfi was involved in this occurrence. However, Nehal @ Julfi was not made accused in this case.

12. On the basis of written of Dr. J. K. Paul, an endorsement was made to register Forbesganj P.S. Case No. 344 of 2012 dated 19.10.2012 for offence under Sections 386, 120B of Penal Code as well as Sections 25(1)(b), 26 and 35 of the Arms Act. F.I.R. was lodged on 19.10.2012 at 8.00 P.M., though, occurrence as alleged on 18.10.2012 and 19.10.2012 with regard to demand of ransom. The S.I. Rajan Kumar investigated the case. However, P.W. 8, the Officer-in-Charge in his evidence had stated that he had to go to the house of the doctor and he reached at 7.15 P.M. in the morning. He has further stated that doctor had kept a written report and he got the investigation of the case. He has further stated that he went to the



place of occurrence and there a loaded pistol and cartridges were recovered and seized. He prepared seizure list which was marked as Exhibits- 4, 4/1, 4/2 and 4/3. However, Exhibit-4 is search-cum-seizure list of mobile in which two SIMS of Idea and Vodaphone seized from the shirt of one Sanjay Kumar Yadav, Exhibit-4/1 is one loaded Katta and one unnumbered Bajaj Discover motor cycle in black colour, Exhibit-4/2, is two Chinese mobiles, one bearing SIM of Tata Docomo No. 8603457131 and another mobile bearing SIM of Airtel No. 9939809787 from the pocket of Nehal @ Julfi , but he was not made accused in this case and Exhibit-4/3 is the mobile in black colour bearing Idea SIM no. 8581033285 recovered from the possession of Rajendra Goswami.

13. However, the prosecution case as alleged by the informant that a demand of Rs.10,00,000/- was made as Rangdari and on refusal a threat was made that his family members will be killed by bomb and his son will be kidnapped then the informant informed to the then Officer-in-Charge of the police station. Again on 19.10.2012 at 6.00 P.M. a mobile call was received from mobile no. 9939809787 to fulfill the demand and directed him to come with Rs. 1,00,000/- at Forbesganj railway bridge. On refusal, the accused persons told that his man is going on at the gate of the informant and ordered him to hand over the amount to that man in a bag. Thereafter, two persons

came on a motorcycle at his gate and demanded the money in which the informant told them that he could not be able to arrange the money, then the miscreants tried forcibly taken away the informant. On hullah, two persons were apprehended by the police in plain dress.

14. However, F.I.R. has been drawn on the written report of J. K. Paul on 19.10.2012 at 8.00 P.M. but seizure list has been prepared even prior to lodging of the F.I.R. Exhibit-4/1 which shows seizure list regarding possession of loaded katta and motorcycle in which accused persons had come which shows seizure list prepared at 7.00 P.M. on 19.10.2012 and Exhibit-4/2, is two Chinese mobiles, one bearing SIM of Tata Docomo No. 8603457131 and another mobile bearing SIM of Airtel No. 9939809787 from the pocket of Nehal @ Julfi , but he was not made accused in this case. However, seizure lists marked as Exhibit-4/1 and 4/2 regarding seizure of loaded pistol as well as two mobile bearing SIM No. 9939897877 and SIM No. 8603457131 from which call was made as per First Information Report on 19.10.2012 at 6.15 P.M. and second seizure list has been prepared even prior to lodging of the F.I.R. and handed over to the to the I.O. P.W.6 is informant Dr. J. K. Paul had supported the prosecution case regarding demand of Rs.10,00,000/- (Ten lakhs) on mobile as mentioned in the First Information Report. Further, he had stated that on 19.10.2012, the police came in plain dress and



thereafter, two persons came on motorcycle and demanded money then the informant disclosed that he could not be able to arrange the money then they tried forcibly to get the informant on motorcycle, but on hullah, police and witness Suresh Kumar came and both the accused persons was apprehended by the police along with the witness and the apprehended person disclosed his name as Rakesh Roy and Birju Paswan @ Mukesh Ram and from the possession of Rakesh roy one loaded pistol was recovered and the informant had identified both Rakesh Roy and Birju Paswan @ Mukesh Pandey.

15. However, criticism has been made on behalf of the appellants that the informant though, had stated in the First Information Report when he received information in the evening to arrange the money till 8 O'clock in the morning on 19.10.2012, the informant informed to the then Officer-in-Charge. However, information given to the Officer-in-Charge had not been brought on record and neither Suresh Thakur the neighbourer even met nor the police had brought on record the earlier version on record to suggest that no action was taken.

16. P.W. 7, stated in his evidence that he has advised Dr. J. K. Paul on telephone one day prior to the occurrence and calling a meeting of peace committee and the informant disclosed that some persons were demanding Rangdari and threatening for kidnapping the



son of the informant then he intimated the matter to the S.D.P.O. Farbesganj, then Dr. Paul gave a petition, but the copy of the said petition had not been brought on record. He has further stated that he went to meet the doctor thereafter, two accused persons came on motorcycle and before Mr. Paul to give the bag to the accused persons, the miscreants tried to kidnap Dr. Paul on motorcycle, but the police party reached there and apprehended the appellant. This witness has stated that one of the accused person was caught by him and he disclosed his name as Rakesh and second criminal was caught by the police. Seizure list was prepared which he had signed on it which has been marked as Exhibit-4/1. However, Exhibit-4/1 is with regard to recovery of loaded pistol from the possession of Rakesh Roy. Further, this witness has stated that one of the accused person was caught at the place of occurrence and taken by the police. However, he has identified only Rakesh Roy in Court. P.W. 8 is Rajan Kumar the I.O. of the case. However, it is pertinent to mentioned witness no. 7 mentioned that police who were in plain dress were Rajan Kumar, Bipin Kumar and other constable. P.W. 8 is Rajan Kumar, Bipin Kumar is P.W. 10. P.W. 8 in his evidence has stated that he visited the place of occurrence before lodging of the F.I.R. Further deposed that from the possession of Rakesh Roy one loaded pistol and mobile was recovered and seizure list was prepared.



However, he has proved seizure list Exhibit-4 and 4/1. However, in cross-examination he has stated that F.I.R. was lodged on 19.10.2012, he got the charge of the investigation of the case at 8.00 P.M. and went to the place of occurrence at 20.00 hours. However, in his cross-examination he has stated that the investigation was initiated after recording the Sanha. He has further stated that said Sanha Entry had not been brought in the case diary. He has further stated that seizure list was prepared prior to the lodging of the F.I.R. and at that time preparation of seizure list in column no. consisting subject was left vacant and was recorded after came at the police station.

17. Hence, from the evidence, it is apparent that even prior to lodging of the F.I.R. P.W.8 went to the place of occurrence. He has further stated that investigation was initiated after lodging the Sanha, but the said Sanha entry had also not been produced or brought on record. P.W. 9 had come to depose that he had taken charge of this case as S.H.O. and sent fire arm for examination and had procure the prosecution sanction from the D.M. In cross-examination he had stated that material exhibit was not produced before him and he did not record the statement of any witness but only submitted charge sheet. P.W. 10 is Bipin Kumar had stated that on 19.10.2012 he was asked to come Forbesganj. Thereafter, he went to the house of Dr. J. K. Paul where the accused persons Rakesh Roy and Birju @ Mukesh

Paswan were arrested. He has further stated that he was also instrumental in catching hold of the accused. Hence, this witness had deposed that he was asked to go to the house of Dr. J. K. Paul where the accused persons were apprehended. P.W. 11 is formal witness. So far P.Ws.1, 2 and 5 are concerned, they are seizure list witnesses.

18. Hence taking into consideration the entire evidence, it is apparent that appellants, Rajendra Goshwami, Md. Guddu, Md. Dilnawaz and Sanjay Yadav are concerned, there is no evidence against them as neither they have been identified by any witness nor there is any legal evidence against them whatsoever and even most competent witness P.W. 6 and 7 have also not whisper any word against them. So far evidence against appellant Rakesh Roy and Mukesh Pandey is concerned, as per evidence of P.W. 6 that they were apprehended in the house of the informant and they also demanded money and when the informant shows his inability to arrange money then they tried to forcibly kidnap the informant by force on the motorcycle, but apprehended at the spot. P.W. 6, though, identified both the appellants as Rakesh Roy and Mukesh Pandey @ Birju Paswan, but in cross-examination, stated that he only identified one of the accused Rakesh Roy and it is stated that none of the accused was caught by the police. Further, he had not identified Mukesh Pandey, though, prosecution case as per evidence of P.W. 6



that two A.S.I. and other constable were present in the house of the informant before registering the case. P.W. 8 stated that he had been at the P.O. where loaded pistol were recovered from the possession of Rakesh Roy. However, from the seizure list, it is apparent that recovery of pistol was made from the possession of Rakesh Roy prior to institution of the F.I.R., but neither sanction has been proved nor Sergeant Major who was expert has been examined to depose that arms were effective. Hence there is no evidence that arm send was fire arm. Hence conviction recorded against Rakesh Roy for offence under Section 25(1-b) of Arms Act is not sustainable.

19. So far offence under Sections 386 and 364 of Indian Penal Code are concerned, learned counsel for the appellant Rakesh Roy has submitted that as per allegation made and the evidence adduced, no offence is made out against Rakesh Roy for offence under Sections 364 and 386 of Penal Code on the ground that ingredient for offence under Sections 364 and 386 of Penal Code has not been proved as there is no evidence in the prosecution evidence that money was given to the accused and it is submitted that if money was not given, then therein the ingredient for kidnapping and extortion is not attracted. There is no merit in the submission that no offence is made out for kidnapping and extortion for only reason that the money was not transferred by the prosecution to the accused. However, Section 386

of Indian Penal Code has been defined for extortion which is as follows:

“Whoever commits extortion by putting any person in fear of death or by grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine”.

20. Learned counsel for the appellants, however, submits that instead of Section 386 of Penal Code, Section 387 of Penal Code may be applicable which provides as follows:

“whoever, in order to committing of extortion, puts or attempts to put any person in fear or death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, shall also be liable to fine”.

Extortion has been define under Section 383 of Penal Code which reads as follows;

“Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”.

From the definition itself it is apparent that extortion has

two ingredients, the first is to put a person under fear, secondly that to put a person on fear is to compel him to deliver any property. There is no ingredient or word mention to express that third ingredient is required to prove that there was delivery of property done. The delivery of property where done or not is thus irrelevant.

21. Here the allegation is that a demand of Rs.10,00,000/- was made with a threat that if demand is not fulfilled, then informant will be killed. Further allegation that accused persons threatened the informant that they will enter into the house of the informant and clinic and will hurl bomb and threat to kidnap his son and kill him if money is not paid. Hence, from the allegation itself it is clear that apparently demand has been made by dishonestly inducing the informant by putting him in fear of killing or kidnapping his son and hence apparently allegation made fulfill the ingredients for extortion.

22. However, there is merely demarcation of Section 386 and 387 of Penal Code specifically mentioned that the ingredients are firstly person is put in fear of death or grievous hurt and secondly that the person was put in fear for deliver the property and when two ingredients are established, the offence is made out. However, Section 387 of Penal Code provides that “whoever, in order to the committing of extortion, puts or attempts to put a person in fear’. However, it is not a case of attempt to put a person in fear but really the informant

has put under fear to commit extortion and prosecution was threatened to kill his son if money is not paid.

23. Here under the facts and circumstances, demand has already been made of Rs. 10,00,000/- (ten lakhs) with threat either to kill or hurl bomb in the house and clinic of the informant as well kidnap the son of the informant and hence ingredient for offence under Section 386 of Penal Code is fulfilled.

24. Section 364 of Penal Code provides that “whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person shall be punishable with death, or imprisonment for life, and shall also be liable to fine. However, abduction or kidnapping has been defined under Sections 362, 363 and 363 of Penal Code. However, Section 362 of Penal Code provides that “whoever by force compels, or by deceitful means induces, any person to go from any place, is said to abduct that person. However, there is allegation that two persons came to the house of the informant and demanded money and they compel him to force to sit on motorcycle or to go with them to some other place under threat to kill and hence, apparently, offence of abduction for murder having been established for compliance

under Section 384 of Penal Code. However, there is no merit in the submission that offence under Sections 364 or 386 of Penal Code is not made out.

25. However, prosecution story come to merit of the case that demand was made on mobile to the tune of Rs.10,00,000/- with threat to kill by entering into the house or clinic of the informant even to kill his son or kidnap.

26. However, criticism has been made, that, though, there is allegation of demand in the First Information Report itself it is stated that the matter was informed to the police station and in consequence the police was sent to place of occurrence in plain dress. It has also come in the evidence of P.W.1 that police came in plain dress on 19.10.2012. P.W. 7 has also stated that he was intimidated by the informant about demand and in this connection a meeting was organised. Thereafter, S.D.P.O. was informed even petition was filed before him. Further, the I.O. P.W. 8, though, he has stated that even prior to lodging of the F.I.R. he recorded the re-statement of the informant. This witness has further stated that he had gone to the place of occurrence and he recovered the loaded pistol from the possession of the accused Rakesh and mobile from other accused persons. Accordingly, he prepared the seizure list in his pen and signature. This witness has identified his signature over the seizure



lists, which have been marked as Exhibit-4, 4/1, 4/2 and 4/3. The I.O. has also admitted in evidence in paragraph 7 that seizure list was prepared before institution of the case. Further he has stated in his evidence prior to initiate investigation, Sanha entry was made. He has further stated that said Sanha entry has not been brought on record. Hence, criticism has been made that F.I.R. has been lodged after search and seizure from the possession of the accused persons and even the fact that threat was made on 18.10.2012 and police was reported on 18.10.2012, but earlier version which was reported to the police even a petition had been filed to the S.D.P.O. and Sanha entry has not been brought on record so earlier version has been suppressed by the prosecution which has not been brought on record.

27. However, there is allegation in the First Information Report that informant received a call regarding demand and threat from mobile bearing no. 8873666584 as well as again from mobile bearing no. 9939809787. However, call details of these mobiles have not been received or brought on record. The I.O. stated that when he received information regarding demand, he was engaged in other works so a person was deputed by the S.H.O. to be present in plain dress. P.W.10, though, had stated that he was called to come at Forbesganj police station. Thereafter, he had gone to the house of Dr. J. K. Paul. The accused persons Rakesh, Birju@ Mukesh Pandey

were arrested on the spot and he returned to Narpatganj. This witness also claimed to identify the accused persons before the court. P.W.7 had specifically stated that Rajan Kumar and Bipin Kumar was present at the place of occurrence and this stand corroborated by the evidence of P.Ws. 8 and 10 as well as P.W. 6 and 7.

28. However, criticism exists that earlier version has not been brought on record, but fact that two persons were apprehended as per prosecution story when they came to collect demand money and there is evidence of P.Ws. 6, 7 and 10 regarding implication of Rakesh Roy and apprehension of Birju Paswan @ Mukesh Pandey. P.W.6 and P.W. 10 specifically stated that two appellants namely; Rakesh Roy and Birju Paswan @ Mukesh Pandey were apprehended. However, the Investigating Officer who was present at the place of occurrence even prior to the lodging of the F.I.R. also be deprecated.

29. However, criticism has been made that earlier version has not been brought on record but when going to the evidence of P.Ws. 6,7,8 and 9 there is nothing in the evidence to disbelieve the prosecution or to suggest that there was no intention to implicate the accused persons. The case of the defence was that two appellants were only caught on suspicion which does not make out a case to believe the prosecution case. However, it is true that I.O. has not properly investigate the case and call details of mobile has not been

brought on record nor Sanha entry has been brought on record or procure the earlier version.

30. Having regard to the facts and circumstances of the case, prosecution has been able to prove the charges for offence under Sections 364 and 386 of Penal Code against Rakesh Roy and Birju Paswan @ Mukesh Pandey and their conviction under Sections 364 and 386 of Penal Code is established. However, conviction under Section 120B of Penal Code as well as for offence under Sections 25(1-b), 26 and 35 of Arms Act against Rakesh Roy has not been established and is hereby set aside.

31. So far appellants Sanjay Yadav, Md. Dilnawaz, Md. Guddu and Rajendra Goshwami (in Cr.Appeal(SJ) 460 of 2014, Cr.Appeal(SJ) 439 of 2014, Cr.Appeal (SJ) 394 of 2014 and Cr.Appeal (SJ) 380 of 2014) are concerned, there is no evidence against them for their implication in this case. Hence, the order of conviction and sentence recoded by the trial court against them is set aside. They are on bail. They are discharged from the liabilities of their respective bail bonds. **Accordingly, their appeals are allowed.**

32. So far appellants Birju Paswan @ Mukesh Pandey and Rakesh Roy (in Cr.Appeal(SJ) No. 456 of 2014 and Cr.Appeal(SJ) 447 of 2014) are concerned, they were apprehended at the spot, hence their conviction under Sections 386 and 364 of Indian Penal Code is

hereby sustained.

33. However, taking into consideration the facts and circumstances of the case, by modifying the sentence of the appellants Birju Paswan @ Mukesh Pandey and Rakesh Roy(in Cr.Appeal(SJ) No. 456 of 2014 and Cr.Appeal(SJ) 447 of 2014) to undergo rigorous imprisonment for seven years instead of ten years for offence under Section 364 of Indian Penal Code.

34. Hence, with the modification of sentence against the appellants Birju Paswan @ Mukesh Pandey and Rakesh Roy, the appeal against them is **partly allowed**.

(Gopal Prasad, J)

m.p.
N.A.F.R.

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