

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.399 of 2013

(Against the Judgment of conviction dated 16.03.2013 and Order of sentence dated 19.03.2013 passed by the Additional Sessions Judge-14, Patna, in Sessions Trial No.904 of 2008)

Atul Kumar Verma, son of Om Prakash Singh, resident of Village- Kasma, P.S- Kinjar, District- Arwal, at Present Chankya Colony, P.O- Kurthaul, P.S- Parsa Bazar, District- Patna.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 419 of 2013

Shankar Prasad Jaiswal, son of Late Ram Prasad Jaiswal, resident of Village- Nathupur (Parsa), P.S. Parsa Bazar, District Patna.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 513 of 2013

Shakti Paswan, son of Sri Yadunandan Paswan, resident of Village- Sharfuddinpur, P.O.- Shinghara, P.S.- Dulhin Bazar, District- Patna.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

Appearance :

(In CR. APP (DB) No. 399 of 2013):

For the Appellant : M/s. Gauranga Chaterjee & Nilanjan Chaterjee, Advocates.
For the State : Mr. S.C. Mishra, APP.

(In CR. APP (DB) No. 419 of 2013):

For the Appellant : Mr.Praveen Kumar Agrawal, Advocate.

For the State : Mr. Ashwini Kumar Sinha, APP.

(In CR. APP (DB) No. 513 of 2013):

For the Appellant : M/s. Akhileshwar Prasad Singh, Senior Advocate, Sunil Kumar & Amit Anunaye, Advocates.

For the State : Mr. S.N. Prasad, A.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: 17-02-2016

All the three Appellants have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life and fine of Rs.5000/-, in default of which, further simple imprisonment for one year, as also under Sections 364A/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life and fine of Rs.5000/-, in default of which, further simple imprisonment for one year and under Sections 201/34 of the Indian Penal Code and sentenced to rigorous imprisonment for three years vide Judgment of conviction dated 16.03.2013 and Order of sentence dated 19.03.2013 passed by the Additional Sessions Judge-14 in Sessions Trial No.904 of 2008.

2. The brief facts of the case is that one Ramesh Paswan gave information to the effect that his son Akash Kumar alias Arbind who used to live in Loahanipur had disappeared on 07.01.2008 and some calls were made on his phone demanding ransom and, subsequently, upon this information, a case was instituted on

13.01.2008.

3. Initially, on this information, the First Information Report was instituted under Section 364A/34 of the Indian Penal Code and after the recovery of the dead body of Akash Kumar alias Arbind, Sections 302 and 201/34 of the Indian Penal Code was added.

4. During trial, the prosecution examined altogether 8 witnesses.

5. P.W.1 Lallan Paswan is merely on the point that the victim had called and asked him about the health of his daughter and, thereafter, he was informed by his father that the boy is missing but, subsequently, the dead body was recovered.

6. P.W.2 Surendra Paswan is the uncle of the deceased who also stated likewise that after Akash Kumar alias Arbind went to the station on 07.01.2008, he went missing and some persons demanded ransom from his brother. On this information, case was instituted. Subsequently, the dead body was recovered from the house of Shankar Sao. He learnt that three Appellants had demanded ransom. In cross examination, he stated that he had not learnt about the murder of his nephew from the police officers.

7. P.W.3 Manoj Kumar alias Gholu stated that he used to live with his cousin Akash alias Arbind and on 07.01.2008 Bandhu Paswan came and on his mobile repeated calls were coming,

whereafter Bandhu Paswan had left telling Akash alias Arvind the victim to come to the station where Sunil would meet him. One hour later, Appellant Atul Kumar Verma had come and taken the victim with him whereas he remained in his room. When Akash alias Arvind did not return, he asked Bandhu and Sunil about the whereabouts of Akash alias Arvind but they did not disclose anything. Later, the police arrested Bandhu and Sunil and yet Akash alias Arvind did not return and only the dead body was recovered. He did not know as to how the deceased had died. He identified Bandhu and Sunil and Appellant Atul Kumar Verma at the police station.

It appears that even though he was living with the victim and had disclosed the names of three persons, Bandhu Paswan, Sunil and Appellant Atul Kumar Verma but these names were not mentioned in the initial Fardbeyan.

8. P.W.4 Ramesh Paswan is the Informant who stated that his son the victim Akash alias Arvind used to study at Patna and he was called on his wife's phone and demand of ransom was made for release of his son. He informed his family members and arrived at Patna and also tried to look for his son. During the course of inquiry, his nephew Gholu Paswan (P.W.3) told him that Appellant Atul Kumar Verma and Bandhu Paswan used to call on the mobile phone of Akash alias Arvind who wanted to talk with him about the



examination and he never returned. After that, on 11.01.2008 at about 11.00 A.M. in the morning and in the night at 07.00 P.M. some body had called him saying that he is calling last time and if Rs.5,00,000/- is not given, Akash alias Arbind would be murdered. He then informed the police on 13.01.2008. He proves the Fardbeyan which is Ext.1. He further stated the persons who used to call him and demand ransom were Appellants Atul Kumar Verma, Shankar Prasad Jaiswal and Shakti Paswan and one Bandhu Paswan whom he identified in the court. He further stated that the dead body was recovered from the house of Appellant Shankar Prasad Jaiswal.

It appears as even though he has stated that the calls were made by three Appellants but their names were not mentioned in the Fardbeyan which creates doubt about the veracity of the statement.

We also take note of the fact that he had stated that the dead body was recovered from the house of Appellant Shankar Prasad Jaiswal.

9. P.W.5 Shakti Paswan stated that the kidnappers were the present Appellants and the dead body was recovered from the house of Shankar Sao. In cross examination, he stated that in his presence, the dead body was recovered from the house of Shankar Sao.

We notice that he has stated that the dead body was

recovered from the house of Shankar Sao and even though he stated that he was present there but he does not mention the presence of any of the accused persons there or then having received any recovery memo.

10. P.W.6 Dr. Vishnu Deo Prasad fairly stated that the dead body of the deceased was recognized. He conducted the post-mortem examination of the dead body of the deceased and found the following ante mortem injury on his person:

“The ligature mark of size 11” X 1/2” was present around the neck at the level of thyroid bone.”

11. P.W.7 Satrugan Singh is the Executive Magistrate who stated that on 24.01.2008 he was directed by Ishwar Chandra Singh to conduct the search in the house of Raj Kumar Sao and in a plastic cloth, after digging about three feet, the dead body was recovered which was decomposed but still recognized by his cousin P.W.3 Manoj Kumar alias Gholu. He proves the entry of the inquest report in the case diary.

We find that even though he has stated that the dead body which was recovered was identified by P.W.3 but P.W.3 himself stated that he had seen the dead body at the police station. We also find that there is no signature of P.W.3 on the inquest report.

12. P.W.8 Ajay Kumar Singh is the Investigating Officer.

He stated that after the Fardbeyan was given, he identified it as the same was already marked as Ext.1. He proves his signature as Ext.1/1. He stated that he inspected the place of occurrence which was rented by the victim alongwith P.W.3 his cousin Gholu and then tried to trace out the whereabouts of the mobiles from which ransom calls were made. The actual location of the same was found around Patna. He then stated that the mobile of the deceased was recovered from the possession of the Appellant Atul Kumar Verma which was being used after inserting another SIM, which he proves as Ext.4 but he admits that the same was recovered by R.P. Mishra, S.H.O. of Parsa Bazar, who has not been examined. He further stated that he had recorded the confessions of the three Appellants which he marked as Exts.5, 6 and 7. He further stated that on the pointing of Appellant Atul Kumar Verma, the dead body was recovered from the house of Raj Kumar Sao in presence of the Executive Magistrate Sri Satrugan Singh (P.W.7) of which entry was made in the case diary. He further stated that he arrested the Appellant Shankar Prasad Jaiswal and recorded his confessional statement, which is Ext.6. He searched the house of Raj Kumar Sao from where the dead body was recovered which was reportedly in the tenancy of Appellant Shakti Paswan. However, in cross examination, he stated that he did not make any inquiry from the neighbours with regard to the information that it was

in occupation of Shakti Paswan who was a tenant of one Dhirendra Gope. He also did not find any article which would show that any one was living in the house and only dead body was recovered from there. There is nothing else which is of note in the further cross examination of this witness.

13. From the analysis of the evidence of the witnesses, we find that apart from the confessional statement of the Appellant Shankar Prasad Jaiswal of Criminal Appeal (DB) No.419 of 2013 before the police which is Ext.6, there is no further material as against him. We are, therefore, inclined to acquit him of the charges.

14. As for Appellant Atul Kumar Verma of Criminal Appeal (DB) No.399 of 2013, there are two following circumstantial evidence which have emerged from the evidence of the Investigating Officer:

- (i). Recovery of mobile phone of the deceased in which another SIM was inserted.

However, the person who prepared the seizure list has not been examined nor any signatory to it was produced by the prosecution.

None of the family members of the deceased have stated about the recovery of the mobile phone from the possession of Appellant Atul Kumar Verma.

(ii). The dead body was recovered at the instance of Appellant Atul Kumar Verma.

This appears highly doubtful, since, if at all, the dead body was recovered at his instance, it would naturally be in his presence. We further find that P.Ws.3 and 7 have given varying statements in regard to the identification of the dead body noting it doubtful as to whether the dead body was at all identified. However, we find that P.W.7 does not say anything about the presence of this Appellant. Nor does he say that any recovery memo containing the signature of the appellant prepared. This makes it story of the dead body at the instance of the Appellant doubtful.

15. As far Appellant and Shakti Paswan of Criminal Appeal (DB) No.513 of 2013, we find that the only material against him is that the room from where the dead body was recovered was in his occupancy. The Investigating Officer has conceded that he did not make any inquiry to verify as to whether this Appellant was, in fact, the tenant of that premises. He himself conceded that there was no article found there which could indicate that this Appellant used to live there.

16. In such circumstances, for want of any reliable

evidence, the aforesaid two Appellants are also acquitted of the charges.

17. In the facts and circumstances of the case, these Appeals are allowed. The Judgment of conviction and order of sentence passed against the Appellants, above named, are set aside. They are in jail custody, so they are directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**A.B. Bhardwaj/Pradeep Srivastava/
A.F.R.**

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