

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.255 of 2013

Arising Out of PS.Case No. -23 Year- 2010 Thana -DANAPUR District- PATNA

Banti Gupta @ Kamal Kumar Gupta @ Kamal Kishore Gupta S/O Late Krishna Kumar Gupta, Resident Of 28, Grand Squarar, Danapur Cant, District Patna.

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 284 of 2013

Arising Out of PS.Case No. -23 Year- 2010 Thana -DANAPUR District- PATNA

Sumit Kumar @ Yash @ Ashwini Gupta, son of Jagdish Prasad Gupta, resident of Village – Shahpur, Near Punjab National Bank, P.S. - Shahpur, Distt. - Patna

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 250 of 2013

Arising Out of PS.Case No. -23 Year- 2010 Thana -DANAPUR District- PATNA

Mithilesh Kumar Rai, son of Shila Nath Singh, resident of Sultanpur, P.S.- Danapur, Dist.- Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 535 of 2013

Arising Out of PS.Case No. -23 Year- 2010 Thana -DANAPUR District- PATNA

Amit Kumar @ Shankar, son of Jagjeet Prasad Gupta Resident Of Village- Shahpur, P.S.- Shahpur, District- Patna

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 401 of 2013

Arising Out of PS.Case No. -23 Year- 2010 Thana -DANAPUR District- PATNA

Sanjay Rai, son of Sri Lalit Rai, resident of Mohalla Lal Kothi, Danapur, P.S. Danapur, District Patna.

.... Appellant/s

Versus

The State Of Bihar



.... Respondent/s

Appearance :

(In CR. APP (DB) No.255 of 2013)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate
Mr. Ghanshyam Tiwary

For the Respondent/s : Mr. S.N. Prasad, APP

For the informant : Mr. Prem Kumar Jha, Mr. Rajesh Kumar Jha
(In CR. APP (DB) No.284 of 2013)

For the Appellant/s : Mr. Ashok Kumar Mishra, Mr. Ravi Kumar

For the Respondent/s : Mr. S.B. Verma, APP

For the informant : Mr. Prem Kumar Jha, Mr. Rajesh Kumar Jha
(In CR. APP (DB) No.250 of 2013)

For the Appellant/s : Mr. Pramod Kumar Singh

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

For the informant : Mr. Prem Kumar Jha, Mr. Rajesh Kumar Jha
(In CR. APP (DB) No.535 of 2013)

For the Appellant/s : Mr. Ashok Kumar Mishra, Mr. Ravi Kumar

For the Respondent/s : Mr. Abhimanyu Sharma, APP

For the informant : Mr. Prem Kumar Jha, Mr. Rajesh Kumar Jha
(In CR. APP (DB) No.401 of 2013)

For the Appellant/s : Mr. Pramod Kumar Singh

For the Respondent/s : Mr. G.P. Jaiswal, APP

For the informant : Mr. Prem Kumar Jha, Mr. Rajesh Kumar Jha

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE SANJAY KUMAR

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SANJAY KUMAR)

Date: 23-05-2017

These five appeals are cognate as they arise out of judgment of conviction dated 18.02.2013 and order of sentence dated 25.02.2013 passed by Addl. Sessions Judge-I, Danapur in S.T. No. 951 of 2010.

2. For the sake of convenience, we shall hereinafter refer appellant Banti Gupta @ Kamal Kumar Gupta @ Kamal Kishore Gupta of Cr. Appeal (DB) No. 255 of 2013 as A/1, Sumit Kumar @ Yash @ Ashwini Gupta of Cr. Appeal (DB) No. 284 of 2013 as A/2, Mithilesh Kumar Rai of Cr. Appeal (DB) No. 250 of 2013 as A/3, Amit Kumar @ Shankar of Cr. Appeal (DB) No. 535 of 2013 as A/4 and Sanjay Rai of Cr. Appeal (DB) No. 401 of 2013 as A/5. They have filed the present set of appeals against the impugned



judgment of conviction and order of sentence by which appellants A/2 to A/5 have been held guilty under sections 364(A)/34, 302/34 and 201/34 of the Indian Penal Code and sentenced to undergo R.I. for life with fine having default clause. A/1 was convicted under section 364(A)/34 of the Indian Penal Code and sentenced to undergo R.I. for life with fine having default clause. A/2 to A/5 were further sentenced under section 302/34 of the Indian Penal Code to undergo R.I. for life with fine having default clause. A/2 to A/5 were also sentenced to undergo R.I. for 05 years with fine having default clause under Section 201/34 IPC. All the sentences were directed to run concurrently. It may be pointed out that co-convict Jagjeet Prasad Gupta had challenged the judgment of conviction and order of sentence in Cr. Appeal (DB) No. 234 of 2013. During the pendency of the appeal, he died and said appeal was disposed of as having abated.

3. Prosecution case as unfolded in the written report at Ext.-1 lodged by P.W.-2 on 28.01.2010 filed before the S.H.O., Danapur Police Station, in brief, is that on 24.01.2010, his 15 years old son Amit Kumar Choudhary had left the house but did not return. A phone call was made to him which was picked up by him to inform that he would return in few hours. When he did not return, again a call was made to him which he did not pick up. The following morning, a search was made to locate him. Having failed to locate his son, the father lodged a *sanha* entry on 26.01.2010 (wrongly marked as Ext.-3). The following day, a message was received on the mobile of the father sent from the mobile of his traceless son demanding ransom for his release. Promptly, the following day, the written report (Ext.-1) was filed



alleging that his son had been kidnapped for ransom. It was lodged against unknown. The registration of the case ignited investigation. The case was initially investigated by P.W.10 who, within few days of taking up the investigation, made over charge of investigation to P.W.-11 on 31.01.2010. In course of investigation, the I.O. is said to have on one occasion accompanied the informant and some of the appellants of the present case to Mohania where the informant was called upon to go through the SMS sent by the kidnappers to him from the cell phone of the victim (son). The circumstances revealed in course of investigation prompted the I.O. to arrest A/4 first on 21.2.2010. Thereafter A/3, A/2 and Jagjeet Prasad Gupta (since deceased) were arrested on the same day whose confessional statements were recorded by the I.O. which are placed on record as Exts.-3, 3/1, 3/2 and 3/3 respectively. Attempt was made to arrest A/5 but he was found absconding. It further revealed in course of investigation that a dead body of a young man was found lying under a bridge on 25.1.2010 which was detected by the Road Chaukidar (P.W.-13), on whose statement, an F.I.R. was lodged against unknown vide Ext.-8. The father (P.W.-2) and mother (P.W.-4) of the victim were taken to the Udwant Nagar Police Station where they identified the photograph of the dead body of his abducted son. The dead body was found deserted under a bridge in the morning of 25.01.2010. The I.O. collected the copy of the F.I.R., the inquest report and the post mortem report. Those documents have been produced at the trial as Exts.-8, 9 and 7 respectively. The vehicle which is said to have been used in the kidnapping of the victim was also recovered in a garrage called Magadh Garage located in the district



of Nawada. The recovery memo of the vehicle is on record as Ext.-4/3. Upon conclusion of investigation, charge-sheet was laid against the appellants on which cognizance was taken and the case was committed to the Court of Sessions where charges were framed against the appellants under section 364/34, 364A/34 and 302/34 of the Indian Penal Code which were read over to the accuseds-appellants who abjured the guilt and claimed to be tried. The defence of the appellants is complete denial of the occurrence and their false implication.

4. In order to bring home the guilt of the accuseds-appellants, the prosecution, in all, examined 13 witnesses. P.W.1 Binod Choudhary is the brother of the informant, P.W.2 Shankar Choudhary is the informant himself, P.W.3 Bhuwali Rai is a witness to the seizure of articles made from different accuseds. P.W.4 Uma Devi is the mother of the victim (wife of the informant). P.W.5 Sanjay Kumar is a formal witness who has proved his signature over the seizure memo (Ext.-2/1). P.W.-6 Dheeraj Kumar is again a formal witness who has only stated that the Tata Safari vehicle purchased by him on finance was sold to Jagjeet Prasad Gupta, one of the co-convicts and father of two appellants herein. P.W.-7 Shankar Prasad is again a formal witness who has proved his signature over the seizure memo Ext.-2/1. P.W.8 Suman Kumar is elder brother of the victim who has spoken about relevant aspects of the prosecution case. P.W.9 Prabhat Kumar Sinha is again a formal witness who has produced material exhibits and SIM cards before the Court. P.W.10 Bishwambhar Jha is the first Investigating Officer who, upon registration of the case, took up the investigation and within few days



thereafter made over the same to P.W.-11 Kumar Abhinav, who made investigation into the case, effected arrest of several accuseds, recorded the confession of many of them, prepared the seizure memo(s) of the recoveries made from the possession of some of the accuseds and upon conclusion of investigation, laid the charge-sheet. P.W.12 Jainendra Kumar Sinha is the doctor who had conducted autopsy on the dead body which was recovered beneath the bridge in the morning of 25.01.2010 for which Udwanthnagar P.S. Case No. 16 of 2010 was registered. This was the dead body of the victim of the present case. He has proved the post-mortem report (Ext.-7). P.W.13 Radhey Shyam Yadav is the Road Chaukidar who, upon detection of the unidentified dead body of a young person on the morning of 25.01.2010, lodged the case before the Udwanthnagar Police Station. He has proved the inquest report conducted on the then unidentified dead body (Ext.-9) as also the F.I.R. of the case (Ext.-8). He also proved the final report dated 31.5.2011 submitted in the Udwanth Nagar P.S. Case No. 16 of 2010. The defence also adduced evidence and examined D.W.1 Amit Kumar (A/4). On a critical appraisal of the evidence adduced by the prosecution, the learned Trial Court held the charges having been proved against the appellants and convicted them in the manner noted above.

5. We have heard Mr. Kanhaiya Prasad Singh, Senior Advocate in support of Cr. Appeal (DB) No. 255 of 2013, Mr. A.K. Mishra in support of Cr. Appeal (DB) No. 284 of 2013 and Cr. Appeal (DB) No. 535 of 2013, Mr. Pramod Kumar Singh in support of Cr. Appeal (DB) No. 250 of 2013 and Cr. Appeal (DB) No. 401 of 2013, Mr. Prem Kumar Jha appearing on behalf of



the informant and Mr. Satya Narayan Prasad, APP for the State.

6. It has been urged by Mr. Kanhaiya Prasad Singh that there is no reliable evidence against A/1. His confession was not recorded by the I.O. and it is not the prosecution case that in consequence thereof, certain discoveries have been made by the Police which relate distinctly to the fact thereby discovery. He has taken us through the evidence of P.W.-4 at paragraphs 8 and 12 as also the testimony of the elder brother of the victim (P.W.-8) wherein they have spoken that some of the co-accuseds who were of the same locality were constantly visiting them after the kidnapping and making inquiries about the call of ransom, the amount of ransom and the place where the ransom was to be handed over and also that the informant was called upon repeatedly by them to go to the house of A/1. He also referred to the evidence of the informant (P.W.2) wherein the said witness has not spoken about his visit along with other co-accuseds to the bungalow of A/1. It has thus been argued that on the strength of such scanty evidence, which remotely do not suggest implication of the A/1 in the crime, the learned Trial Court has wrongly convicted the appellant (A/1).

7. Mr. Pramod Kumar Singh, appearing in support of A/3 (in Cr. Appeal (DB) No. 250 of 2013) and A/5 (in Cr. Appeal (DB) No. 401 of 2013), on the other hand has submitted that recovery of Airtel SIM was made from the possession of A/3 when he was arrested on 21.2.2010 whereas there is no such recovery of any incriminating article from A/5. If the confession and recovery was incriminating circumstance appearing against A/3 then the Court was obliged to put before the accused while his statement under



Section 313 Cr.P.C. was recorded. It was not so done. Recovery of SIM from the possession of A/3 at best would prove a case of possession of stolen property. Relying on ***Raj Kumar Vs. State (N.C.T. of Delhi) reported in AIR 2017 S.C. 614***, it has been submitted that on the basis of such recovery of the Airtel SIM used in the crime, A/3 cannot be held guilty under Section 364-A IPC. Insofar as A/5 is concerned, it is submitted that there was no recovery made from his possession of any incriminating article inasmuch as he is not one of the appellants who made confession before the Police in course of investigation leading to recovery of any incriminating article or the dead body. There is no legal evidence on record which would justify his conviction by the learned Trial Court. Referring to the evidence of D.W.1, he submits it is a case of retracted confession which, in the eye of law, has no legal sanctity.

8. Mr. A.K. Mishra appearing in support of Cr. Appeal (DB) No. 284 of 2013 and Cr. Appeal (DB) No. 535 of 2013 (for A/2 and A/4 respectively) has also criticized the judgment of conviction on diverse counts. It is submitted that these appellants were of the same locality of the informant and had been voluntarily assisting the family of the informant in making search of the deceased as they were on visiting terms to the family of the victim. Their repeated appearance after the kidnapping before the informant to make inquiries about the call of ransom and place of delivery thereof made by the kidnappers should not be construed as the incriminating circumstance. Mr. Mishra, however, adopted the leading submissions advanced by Mr. Kanhaiya Prasad Singh.



9. We have scanned carefully the relevant evidence adduced by P.W.-2 (informant), P.W.4 (mother of the victim), P.W.8 (brother of the victim) and the two I.Os of the case namely P.Ws.10 and 11. At the outset, it is noted that the prosecution has not placed reliance on the evidence of P.W.1 (brother of the informant) and P.W.3 (who is witness to the seizure of some of the articles). P.Ws. 5, 6, 7 and 9 are formal witnesses who are either witness to the seizure of diverse articles seized in course of investigation or proved the material exhibits such as mobile phone and SIM. P.W.6 requires special mention as he is the witness although formal but has deposed to the effect that the vehicle used in the crime was initially sold to one Jagjeet Prasad Gupta, one of the co-convicts (since deceased) and the father of A/2 and A/4. P.W.-13 is the Road Chowkidar who first detected the dead body of a young boy on the morning of 25.01.2010 at 8.30 a.m. and reported the matter to the Udwant Nagar Police Station. On his statement, Udwant Nagar P.S. case No. 16 of 2010 was registered whereafter the panchnama (Ext.-9) of the dead body was prepared on the same day by the Officer-in-charge of the Udwant Nagar Police Station and the dead body was sent for post mortem examination which was held on 25.01.2010 by P.W.-12 (Dr. J.K. Sinha). The post-mortem report is on record as Ext.-7. It may further be noted here that as the dead body was till then unidentified, his photograph was retained by the police station before cremating the dead body after post-mortem. From the evidence of P.W.2 (father of the victim), P.W.4 (mother of the victim) as well as brother of the victim (P.W.8), it appeared that they were later taken to the Udwant Nagar Police Station to identify the photograph of the unidentified



boy whose dead body was found in the morning of 25.01.2010. These witnesses on seeing the photograph identified the picture of the victim. The post-mortem report (Ext.7) held on the said body records the following ante-mortem injuries found on the person of the deceased:-

“External finding:

Black bruise of ligature mark on front and both side of the upper neck, swelling of the neck, fracture and collapse of wind pipe, chest wall collapsed and contused and fracture of the ribs.

External examination:

On dissection, there is contusion of neck and petrelvial hemorrhages into the Laryngeal Mucosa Fracture. On dissection of chest fracture of 2, 3 and 4 ribs of the right side and 4, 5 and 6 ribs of the left side. One litre of blood in the chest cavity. Both lungs contused and congested with spotted blackish. Heart right full and left side empty, Liver spleen all congested. Stomach contain 100 mg. gastric juice and digested food materials.

Cause of death: strangulation- asphyxia- death, time elapsed since death 6-36 hours”

The doctor, on the basis of clinical examination, opined that death had occurred due to asphyxia caused by strangulating the victim.

10. We have no hesitation on the basis of the aforesaid findings to hold that the kidnapped son of the informant was done to death in the night of 24.01.2010 at the hands of the perpetrators of the crime. The defence has also not seriously disputed the aforesaid factum.

11. Having held so, we would examine the complicity of the appellants herein in the crime where a young boy was kidnapped for ransom and was done to death. It has rightly been submitted on behalf of the appellants that it is a case based on circumstantial evidence. The chain of the circumstances proved at the trial conclusively proves the guilt of the



appellants or not is the seminal question for our consideration.

12. Counsel for the State has submitted that there are overwhelming circumstances available on record in the shape of the oral evidence and the documentary evidence which, if connected to each other, would lead to only one conclusion that is the guilt of the appellants.

13. The victim of this case is the son of the informant who left his house in the evening of 24.01.2010 at 4 p.m. As he did not return, on the following day, a *sanaha* bearing No. 1061 was lodged on 26.01.2016 with Danapur Police Station. The informant received a SMS demanding ransom for his release from the mobile of his son on 28.01.2010. After several attempts, he could not contact over his mobile and so the informant became confident of his kidnapping and lodged the written report (Ext.1) with Danapur Police Station. The informant (P.W.2) has stated that Amit Kumar and Sumit Kumar (A/4 and A/2) were friends of the victim who started visiting at his house on 27.01.2010 to inquire about his son and whether the demand of ransom was made or not by the kidnappers. A/2 and A/4 again visited him on 29.01.2010 and 02.02.2010 at his residence and on each visit, they persuaded the informant to pay the ransom as demanded for the safe return of his son. They further on all occasions cautioned him not to pass information to the Police or seek their help. If he does so, it shall be detrimental to the life of his kidnapped son. The informant in the meanwhile kept on receiving calls and SMS on his mobile asking him to pay the ransom from the mobile of his son. As per direction received on his mobile, the informant was persuaded by A/2, A/4 and their father Jagjeet Prasad Gupta



(since deceased) to make the payment at the place as instructed on his mobile. The informant on getting a message from the kidnappers on 31.01.2010 visited Hajipur to pay the ransom as per direction sent through SMS but nobody met at the appointed place. A/2 and A/4 again visited him (the informant) and advised that he had committed a blunder by accompanying the police with him to Hajipur. Thereafter, the informant was again called on his mobile from the cell phone of his son and called him to Buxar requiring him to go to a designated place at Buxar with the ransom amount for payment thereof. In the same night at 12 p.m., the father of A/2 and A/4 called on the informant at his house for finalizing the plan to visit Buxar and as per the instruction received from the kidnappers. He also volunteered to go to Buxar with the informant. The informant thereafter visited Buxar where he was asked to come to Varanasi. The informant, as per direction of A/4 and his father Jagjeet Prasad Gupta (since deceased), arranged two vehicles which were provided by the A/2 and A/4. In one vehicle, the informant, Jagjeet Prasad Gupta and two S.T.F. personnel in plain dress (their identity concealed by informant) sat and in the another vehicle, A/2, A/4, A/3 and A/5 sat with two or three more persons. Both the vehicles proceeded to the destination as communicated through SMS on the mobile of informant. A/2, A/4 and their father Jagjeet Prasad Gupta (since deceased) kept inquiring about the two unidentified persons who were with the informant whereupon the informant concealing their identity disclosed that they were his close relatives. These two persons were actually the S.T.F Police Officers provided by the Police in civil dress. The informant has



further stated that they proceeded for Varanasi but in the way, he again received a SMS wherein he was asked to proceed for Mohania. The informant continued to pass these informations to A/2 who was following him in another vehicle and kept on calling him giving out several advices. Both the vehicles reached Mohania where A/2, A/4 and their friends told him that they were searching the kidnappers. At this moment, the two S.T.F. personnel who were sitting with the informant in the vehicle doubted the conduct of the appellants who were following them in another vehicle. Thereafter, they all proceeded towards Ara. On the way, the informant received a call from the kidnappers asking him to drop the ransom amount of Rs. 5 lacs he was carrying. The caller told him that his man was watching the movement of informant and he will collect the money. The informant, however, did not do so as by dropping the money, he was not going to release his son from the captivity. Thereafter, they came to Ara and took dinner at about 12 p.m. (midnight). The Police, suspecting the conduct of the accuseds who had accompanied the informant on the said trip, apprehended A/2, A/4 and their father Jagjeet Prasad Gupta (since deceased) and recovered the mobile phone of the victim from the possession of A/2 (Sumit Kumar). They all confessed their complicity and on their confession, the police party arrested Mithilesh Kumar Rai (A/3). He also confessed his complicity and disclosed that in the night of 24th January, 2010, they kidnapped his son by a Tata Safari vehicle and later by pressing his neck with his muffler, they had committed murder of the son of the informant and threw the dead body at Udwant Nagar. The informant along with police party and apprehended accuseds visited Udwant Nagar Police Station where the



Udwant Nagar Police had shown a photograph of the unidentified boy whose dead body was found near the bridge under Udwant Nagar Police Station on the morning of 25.01.2010. The informant and his family members identified the deceased after seeing the photograph. The Road Choukidar (P.W.13) had first seen the dead body in the morning of 25th January, 2010 and informed the police whereafter Udwant Nagar P.S. Case No. 16 of 2010 was registered against unknown and after registering the case, the dead body was sent for post mortem examination. The Udwant Nagar Police provided post mortem report, inquest report and fardbeyan of the Road Chaukidar to the I.O. of the case.

14. In this case, we find that there is no eye witness to the occurrence of kidnapping and murder of deceased. This is purely a case of circumstantial evidence. The witnesses P.Ws.2, 4 and 8 being father, mother and full brother of deceased have stated the entire episode from 24th January, 2010 till the arresting of the accused persons. Their evidence is consistent on the point of departure of the deceased from their house in the evening of 24.01.2010. They all, in one tone, have stated that on 24th January, 2010, the victim left the house and in the night when call was made to him, the victim informed that he had proceeded to attend a *tilak* ceremony of one of his friends and thereafter, he became traceless. On 28th January, 2010, the informant received SMS from the mobile of his son demanding ransom for the life of his son. A/2, A/4 and their father Jagjeet Prasad Gupta (since deceased) in the meanwhile frequently visited the house of the informant to take stock of the situation and advising the informant to pay the ransom as



demanded for safe release of his son. Jagjeet Prasad Gupta (since dead) also cited instance of his family where the kidnapped person (his brother-in-law) was released on payment of ransom amount. In a bid to search the victim, they also arranged vehicles at the cost of the informant and as per direction received from time to time from the mobile of his son, proceeded at different places. The evidence of P.W.1, who is full brother of informant, supports the prosecution case to this extent that the son of informant was kidnapped and remained traceless since the night of 24th January, 2010. In this case, two Investigating Officers were examined as P.Ws.10 and 11. P.W.10 is the first Investigating Officer who registered Sanha No. 1061 dated 26.01.2010. The second I.O. (P.W.-11) took charge of investigation on 30.01.2010 and in course of investigation, he visited at different places and lastly, suspecting the conduct of the appellants, apprehended A/4, A/2, their father Jagjeet Prasad Gupta (since deceased), and A/3 Mithilesh Kumar Rai. P.W.11 recorded statement of A/4, A/3, A/2 and Jagjeet Prasad Gupta (since deceased) at 7 a.m., 8.45 a.m., 11.50 a.m. and 1 p.m. respectively. Their confessional statements have been marked as Ext.-3, 3/1, 3/2 and 3/3 respectively. The confessional statement of A/2 was recorded for the first time when he was arrested at the house of Banti Gupta (A/1). P.W.-11 (second I.O.) arrested Mithilesh Kumar Rai (A/3) at his residence and recorded his confessional statement at 8.45 a.m. Then the I.O. visited the house of A/2 where he effected arrest of Jagjeet Prasad Gupta (since deceased) and recorded his confessional statement. P.W.-11, in his evidence has stated that he seized mobile phone No. 9798355855, Samsung Mobile



bearing No. 9504061675 and one L.G. mobile set no. 9334694797 as per seizure list which has been marked as Ext.4/1 during his evidence. He further seized red colour envelope of Airtel Company with a writing 'life time SIM Card bearing No. 9546917976' and a Micromax mobile phone with SIM No. 9308614741. He has proved the seizure list as Ext.4/2. He further seized Airtel SIM No. 8084758229 and a mobile of Bluetooth bearing No. 9570343747 from possession of Mithilesh Kumar Rai (A/3). The seizure list with respect to these articles has been marked as Ext.-4. This witness (P.W.11) also seized Tata Safari vehicle No. BR01 PA-2369 as per seizure list (Ext.4/3). The seizure was made from the campus of Magadh Garage, Nawada in presence of witnesses. He recorded statement of the employees of Tata Company who disclosed that the said vehicle was purchased by Dheeraj Kumar (P.W.6) and it was financed by the Company. The said vehicle was sold to Jagjeet Prasad Gupta (the father of A/2 and A/4) on 11.06.2009. The second purchaser had defaulted in depositing the loan installments and the vehicle was repossessed by the Company and was parked at Magadh Garage. This witness (P.W.11) has further stated that this was the vehicle which was used for kidnapping the victim. In confessional statement, the appellants i.e. A/2, A/4 and Jagjeet Prasad Gupta (since deceased) admitted this fact.

15. Learned counsel for the appellants have challenged the admissibility of confessional statement by submitting that these are not admissible in law. At the time of recording statement under Section 313 Cr.P.C., the fact as regards recording of confessional statement was not put before the appellants. So, it cannot be used as evidence besides that A/4 has



retracted from his confessional statement. He has been examined as D.W.1 and has denied his confession before Police.

16. We have carefully examined the evidence of D.W.1. In his evidence, we find that he has denied and retracted from his confessional statement recorded by Police. In his evidence, he has stated that neither he nor his family members was acquainted with the informant or his family members. They never visited at the house of informant. He has, however, admitted his signature on the confessional statement and further admitted at paragraph 8 that he had used the said Safari vehicle bearing No. BR01-PA 2369 for going to Mohania and Arrah with the informant in a bid to pay the ransom and get safe release of his son from the captivity of the kidnappers. He also admitted to have received Rs. 5,000/- from the informant. This appellant at paragraph 20 of his evidence has stated that the description of the status of his family disclosed in the confessional statement is true but other parts recorded in the confessional statement were incorrect. At paragraph 21 of his deposition, he has declined to identify the accuseds except his father Jagjeet Prasad Gupta (since deceased) and his brother Sumit Kumar (A/2), although, this witness was arrested by police at the house of Banti Gupta (A/1). At paragraph 30 of his evidence, he has stated that he could know about other appellants in jail during his custody. The fact that recovery of vehicle was made from the garage and the vehicle belongs to Jagjeet Prasad Gupta (since deceased) is not in dispute. P.W.6 was the original registered owner of said vehicle and he has stated that he had sold the said vehicle to Jagjeet Prasad Gupta in the year 2009 for a total consideration of Rs. 2,70,000/- The



installment of loan was to be deposited by the purchaser but on account of default of payment of instalment of loan, the vehicle was re-possessed by the Tata Motors which was subsequently seized by the Investigating Officer during investigation. On perusal of seizure list (Ext.4/3), we find that the I.O. has also stated that on the front of said vehicle, a plate written with "Vice Chairman, Chhawani Parishad, Danapur Cantt." was fixed . In the evidence of witnesses, it has also come that the A/1 (Banti Gupta) was the Vice Chairman of Chhawani Council, Danapur. Appellant Amit Kumar (A/4) has admitted that the vehicle was being run by both the brothers and they were engaged in transport business under the tutelage of Banti Gupta (A/1). The evidence of informant (P.W.2) and the Investigating Officer (P.W.11) establish the fact that the series of SMS received from the mobile of victim was being used by A/2, A/4 and A/3. They used to call the informant and direct him to reach at different places i.e. Hajipur, Varanasi, Bhabhua, Mohania and Ara with the ransom amount for payment to the kidnappers. The informant visited at different places as directed through the SMS over his mobile. The mobile phone and SIM were recovered promptly from the possession of the appellants and thereafter no SMS was received or any demand of ransom was made on the mobile of informant after the arresting of the appellants. The Investigating officer (P.W.11), in his evidence, has stated that he requisitioned the print out of all the connected mobile numbers and also the name of the persons in whose name the said mobile phone stands. The details provided by Mobile Company under different annexures have been marked as "X". In this regard, the Investigating Officer also recorded the statement of the Officer of



Reliance Company during investigation.

17. It is trite law that confession itself shall not form the basis of conviction. Mr. Kanhaiya Prasad Singh has strenuously argued referring to Section 3 of the Evidence Act that a confession of an accused made before the Police would not fall in the category of evidence. However, Section 30 provides that a confession may be taken into consideration not only against its maker but also against the co-accused. It is an evidence in a non-technical sense. The Court will first look to the substantive evidence on which the prosecution relies. If those evidence, in the estimation of the Court, is satisfactory, capable of sustaining the charge framed against the accused, the Court turns to the confession with a view to ensuring itself that the conclusion which is inclined to draw from the other evidence is correct. Precisely, this is the legal position clarified by the Hon'ble Supreme Court in the case of ***Haricharan Kurmi vs. State of Bihar, AIR 1964 SC 1184*** which has been reiterated by the Hon'ble Apex Court in the case of *Pancho vs. State of Haryana AIR 2012 SC 523* on which the Counsel for the defence has relied to criticize the judgment.

18. It has next been contended by Mr. Singh that confession as an incriminating substance was not put to the appellant while recording his statement under Section 313 Cr.P.C. We find a basic fallacy in the said contention. As we have noted that confession is not a substantive piece of evidence. It can be referred to by the Court to lend assurance to its view based on the substantive piece of evidence. Moreover, we find that the Court placed before the accused extensively all the incriminating circumstances that



revealed against the appellants in course of the evidence of the prosecution. We also find from the statement of the accuseds-appellants recorded under Section 313 Cr.P.C. that they simply denied the questions put to them by the Court without furnishing any explanation on any relevant aspect of the prosecution. We are mindful of the fact that the F.I.R. was lodged against unknown. The informant was treating some of the appellants who were of the same locality and acquainted with the family as the person who were trying to help him out in safe release of his son until the prosecution grew suspicious of their conduct and some of them were arrested in quick succession. It was thus not a case of false implication. The informant initially trusted some of the appellants who were of the same locality. For this reason, we have also perused their statement made under Section 313 Cr.P.C. wherein they have not furnished any reason of their false implication in the case by the informant. The purpose of the Court interacting with the accused and putting all incriminating circumstance to him with a view to solicit his reply/explanation has some inherent meaning. In the ruling reported in ***A.I.R. 1997 SC 765***, the Hon'ble Apex Court has observed that the examination of accused is not a mere formality. Answers given by the accused to the questions put to him during such examination has a practical utility for criminal Courts. Apart from offering an opportunity to the delinquent to explain incriminating circumstances against them, they help the Court in appreciating the entire evidence adduced at the trial. At the time of giving statement under Section 313 Cr.P.C., all the appellants kept mum and they simply denied their complicity.



19. The next contention of Mr. Pramod Kumar Singh in support of A/3 merits consideration. It has been submitted that recovery of Airtel SIM (Ext.4) from the possession of A/4 would only lead to the conclusion that he was in possession of a stolen article. We are unable to agree with his contention. We have already examined the relevant evidence and found that A/3 like A/5 had accompanied A/2 and A/4 on the last leg of the trip of the informant to Varanasi when SMS/calls were sent through the mobile using the said number which was with the victim when he was kidnapped to instruct the informant to do a particular act. The evidence is replete that the kidnappers used the said mobile to send text messages or calls to the informant instructing to do a particular act in order to ensure safe return of his kidnapped son. The recovery of the article from A/3 (Mithilesh Kumar Rai) thus cannot be seen in isolation. We have also noticed that no sooner arrest of the appellants including A/4 was made by the Police, the sending of text messages/calls from the said mobile stopped. We thus conclude on this point and held that recovery of the article from possession of A/4 gravely incriminated the said appellant in the crime. The contention of Mr. Pramod Kumar Singh, in the facts of the case, has no substance. The reliance placed by him on paragraph 12 of ***Raj Kumar (supra)*** in our view is inappropriate.

20. We have perused the document marked as “X” which is print out of different calls. On perusal of these documents, we find that the mobile phone/SIM which were seized from the possession of A/4 and A/3 were used for demanding ransom. It remained with the appellants and the appellants were shrewdly in constant touch with the informant and monitoring his every



move. They virtually gave repeated calls and sent/received messages to/from the informant. The call details further show that they carried the mobile phone and SIMs to different places where the informant alongwith appellants had visited as per instructions given on his cell phone. The said phones were within the tower location of Maner, Mohania, Ara etc on the relevant date when they travelled to search the deceased. We further find on analyzing the evidence of P.Ws. 2, 4 and 8 that A/2 and A/4 alongwith his father always used to insist the informant to go to the house of A/1 for a negotiation for safe release of his son. It is also found from the evidence that A/4 and A/3 were arrested from the house of A/1. It is also well established from the evidence that the son of the informant had already been killed in the night he was kidnapped and the appellants using his mobile phone/SIM continued to demand ransom for his release. A/2 and A/4 was in continued touch with A/1 to whom they referred at times as 'uncle'. The A/2, A/3 and A/4 had in a concerted move following the informant for payment of the ransom amount. A/1 was the king pin who remained in contact with A/2 and A/4. The vehicle on which the son of the informant was kidnapped and taken to a place with Udwant Nagar Police Station where he was done to death was being used by A/1. We find that the circumstances are overwhelming showing complicity of all the appellants in the crime.

21. In appreciation of the entire evidence on record, the chain of the circumstances which emerge from the records are summarized as under:

(i) A/2, A/4 and their father Jagjeet Prasad Gupta (since deceased) were fully acquainted with the informant and his family members as they



reside in the same locality. The victim was well acquainted with A/2 and A/4 as they were friends and the victim had visited at the place of Banti Gupta with A/2 and A/4.

(ii) The family of A/2 and A/4 was under great financial distress. They had one unmarried sister who could not be married for which the father of A/2 and A/4 had requested the informant for financial help earlier which was denied to him by the informant (vide evidence of P.W.4 and P.W.8).

(iii) The mobile phone no. 9798355855, Airtel SIM No. 8084758229 and SIM No. 9835581179 were in possession of the deceased on 24th January, 2010 when he left the house. This fact has come in evidence of P.Ws. 2, 4 and 8. The said mobile No. 9798355855 and SIM No. 8084758229 were seized from the possession of A/2 and A/3 by the S.T.F. in the morning of 21st February, 2010 (vide Ext. 4/1 and 4).

(iv) On the basis of confessional statement of A/2, A/4, A/3 and Jagjeet Prasad Gupta (since deceased), the informant along with his family members and police party visited at the place where the dead body was thrown in the night of 24.01.2010. Udwant Nagar Police Station had registered the case on the information of P.W.13 on 25.01.2010. The Investigating Officer got information regarding institution of Udwant Nagar P.S. Case No. 16 of 2010 with respect to recovery of dead body of an unknown.

(v) The informant (P.W.2), P.W.4 and P.W.8 identified the photograph of the deceased as the dead body of the victim which was produced by the Udwant Nagar Police (marked 'X' for identification).



(vi) The post-mortem report (Ext. 7), death inquest report (Ext. 9) and evidence of P.W.12 establishes the fact that the dead body of the victim was recovered on 25.01.2010 in the morning at the place pointed out by the appellants (A/2 and A/4). His death was homicidal.

(vii) In the evidence of P.W.2 (informant), P.W.4 and P.W.8, it has come that Jagjeet Prasad Gupta had sought help of money for performing the marriage of his daughter on 20.01.2010 which was flatly denied by the informant. The father of A/2 and A/4 had defaulted in payment of the instalments of the vehicle to the Financer and subsequently the vehicle was repossessed by the Finance Company after few days of occurrence (Ext.3/2).

(viii) The vehicle bearing No. BR01 PA 2369 seized as per seizure list (Ext.4/3) was used for kidnapping the victim has been admitted by the appellant in their confessional statement(s)(Ext-3 series).

(ix) Following the day of kidnapping of the victim, A/2 and A/4 alongwith their father started visiting the informant on the pretext of helping him in searching the victim and persistently advised him to follow the instruction of the kidnappers and pay the ransom amount as instructed through SMS or phone calls.

(x) The A/2, A/4 and their father visited at the house of the informant regularly from 28.01.2010 to 19.02.2010 and always insisted the informant to go and meet A/1 at his bungalow to ensure safe release of his kidnapped son.

(xi) The board written as “Vice Chairman, Chhawani Parishad, Danapur” was found fixed in the front of the vehicle which shows that the



vehicle was being used by Banti Gupta (A/1).

(xii) Amit Gupta (A/4) was arrested at the house of Banti Gupta (A/1) who is cousin uncle of A/2 and A/4 (Ext.-3/1). From the evidence of D.W.1, it is also apparent that the vehicle used in kidnapping the victim was being used by A/2 and at times by A/1.

(xiii) A/2 and A/4 were in constant touch with A/1.

(xiv) One of the SIMs bearing No. 8084758229 standing in the name of informant Shankar Gupta and being carried by the deceased on the fateful day was seized from the possession of A/3 Mithilesh Kumar Rai.

(xv) All the three SIMs/Mobile were taken from the deceased and used for calling/sending SMS to the informant till their arrest.

(xvi) In the last leg of trip to Mohania, A/3 and A/5 had also accompanied A/2 and A/4 and they were following the informant who was accompanied by father of A/2 and A/4 just to ensure that the informant parts with the amount of ransom demand from him by them which he was carrying.

(xvii) The amount of ransom which was to be dropped by the informant as per instruction received on mobile was to be picked up by none else than the appellants who were occupants of the following vehicle running just behind the vehicle of informant.

(xviii) The appellants in their confessional statements (Ext.3 series) have stated that one of the SIMs bearing No. 9835581179 was retained by A/5 who could not be arrested immediately.

(xix) A/4 (Amit Kumar) who has detracted from his confessional statement and has been examined as D.W.1 has stated at paragraph 31 that he



had no enmity either with the Police or with the informant. None of the appellants during his statement given under Section 313 Cr.P.C. has given any explanation as regard his false implication by the informant.

(xx) A/2 (Amit Kumar) has given contradictory version at the time of his cross-examination which demolishes his defence of false implication.

The aforesaid chain of circumstances clearly establishes the fact that it was none else but the appellants who under conspiracy kidnapped the son of informant for ransom and committed his murder in the night of 24th January, 2010 and disposed of his dead body under a bridge on the road falling in the Udwant Nagar Police Station.

In view of the discussions made above, we do not find any merit in these appeals. All the appeals are, accordingly, dismissed. The bail bonds of A/2 (Sumit Kumar @ Yash @ Ashwini Gupta in Cr. Appeal (DB) No. 284 of 2013), A/4 (Amit Kumar @ Shankar in Cr. Appeal (DB) No. 535 of 2013) and A/5 (Sanjay Rai in Cr. Appeal (DB) No. 401 of 2013) are cancelled and they are directed to surrender before the Court below to serve the sentences.

(Sanjay Kumar, J)

Kishore Kumar Mandal, J: I agree.

(Kishore Kumar Mandal, J)

Pankaj/-

AFR/NAFR	AFR
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