

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.918 of 2010

(Against the Judgment of conviction dated 13.07.2010 and order of sentence dated 20.07.2010 passed by the learned Additional Sessions Judge-cum-F.T.C.-V, Banka in Sessions Trial No. 13 of 2010 (Trial No. 334 of 2010), arising out of Amarpur P.S.Case No. 147 of 2009 corresponding to G.R. No. 1038 of 2009 under Section 364A/34 IPC).

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Ajay Kumar Yadav @ Ajay Yadav @ Shashtri Jee, son of late Mani Kant Yadav, resident of village- Shergarh, P.S.- Gogari Jamalpur, District- Khargaria.

.... Appellant

Versus

The State of Bihar

.... Opposite Party

with

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Criminal Appeal (DB) No. 925 of 2010

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Abu Zafar @ Picho, son of Md. Rustam, Resident of village- Islampur, P.S.- Parbatta, Distt.- Khagaria

.... Appellant

Versus

The State of Bihar

.... Opposite Party

with

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Criminal Appeal (DB) No. 1044 of 2010

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Rajesh Yadav @ Tiger, son of Shri Mahendra Prasad Yadav, resident of Sergarh, P.S.- Gogri Jamalpur, District- Khagaria.

.... Appellant

Versus

The State of Bihar

.... Opposite Party

with

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Criminal Appeal (DB) No. 883 of 2012

(Against the Judgment of conviction dated 20.07.2012 and order of sentence dated 23.07.2012 passed by the learned Adhoc Additional Sessions Judge-1st, Banka in Sessions Trial No. 468 of 2010 arising out of Amarpur P.S.Case No. 147 of 2009 corresponding to G.R. No. 1038 of 2009 under Section 364A/34 IPC).

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Soni Jha, S/O Mayank Mauli Jha, Resident of village - Suri Khamia, P.S. Amarpur, District - Banka

.... Appellant/s

Versus

The State of Bihar



.... Opposite Party

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Appearance :

(In CR. APP (DB) No.918 of 2010)

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate.

Mr. Aarsh Kumar, Advocate.

For the State : Mr. A.K.Sinha, A.P.P.

Mr. S.C.Mishra, A.P.P.

Mr. D.K.Sinha, A.P.P.

Mr. Ajay Mishra, APP.

(In CR. APP (DB) No.925 of 2010)

For the Appellant/s : Mr. Aarsh Kumar, Advocate.

Mr. Heera Jha, Amicus Curie

For the State : Mr. A.K.Sinha, A.P.P.

Mr. S.C.Mishra, A.P.P.

Mr. D.K.Sinha, A.P.P.

Mr. Ajay Mishra, APP.

(In CR. APP (DB) No.1044 of 2010)

For the Appellant/s : Mr. Vivekaand Singh. Advocate.

Mr. Aarsh Kumar, Advocate.

For the State : Mr. A.K.Sinha, A.P.P.

Mr. S.C.Mishra, A.P.P.

Mr. D.K.Sinha, A.P.P.

Mr. Ajay Mishra, APP.

(In CR. APP (DB) No.883 of 2012)

For the Appellant/s : Mr. Heera Jha, Amicus Curie

Dr. Shashi S.Kishore, Advocate.

Mr. Abhay Krishna, Advocate.

For the State : Mr. A.K.Sinha, A.P.P.

Mr. S.C.Mishra, A.P.P.

Mr. D.K.Sinha, A.P.P.

Mr. Ajay Mishra, APP.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 19-01-2017

As all the aforesaid four appeals arise from common police case number bearing, Amarpur P.S. Case No.147 of 2009, corresponding to G.R. No.1038 of 2009 registered under Section 364A/34 of the I.P.C., they have been heard together and are being



disposed of by a common judgment by this Court.

Out of these appeals, three appeals, namely, Cr. Appeal No.918 of 2010 (Ajay Kumar Yadav @ Shashtri Jee), Cr. Appeal No.925 of 2010 (Abu Zafar @ Picho) and Cr. Appeal No.1044 of 2010 (Rajesh Yadav @ Tiger) arise from common judgment of conviction, dated 13th July, 2010 passed by Sri Subhash Chandra Srivastava, learned Additional Sessions Judge-cum-F.T.C.-V, Banka, in Sessions Trial No.13 of 2010 (Trial No. 334/2010), whereby all the three appellants, namely, Ajay Yadav @ Shashtri Jee, Rajesh Yadav @ Tiger and Abu Zafar have been convicted under Section 364A/34 of the Indian Penal Code and sentenced to undergo life imprisonment along with a fine of Rs.50,000/- and in default of payment of fine, have been further convicted to undergo additional simple imprisonment for one year, whereas co-accused Vijan Yadav has been acquitted by the trial court from the charges leveled against him in the case.

Cr. Appeal (D.B.) No.883 of 2012 has been preferred by the appellant Soni Jha against the judgment of conviction, dated 20.07.2012 and order of sentence, dated 23.07.2012 passed by Sri Prem Ranjan Mishra, Adhoc Additional Sessions Judge-I, Banka in Sessions Trial No.468 of 2010, whereby he has been convicted under Section 364A/34 of the I.P.C. and sentenced to undergo life



imprisonment along with a fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for further six months.

The prosecution case, as made out in the fardbeyan, dated 4.7.2009 of Rajendra Paswan, resident of village Sudhiyari, P.S. Amarpur, District Banka to Officer-in-Charge, Amarpur Police Station, in short, is as follows :-

The informant stated that his son Rakesh Kumar Paswan left his house on 1.7.2009 at about 8.00 P.M. for Bhagalpur for taking admission in Bhagalpur College. On the same day, at about 8.00 P.M., he received a call on his WLL Telephone No. 06420-292222 from Mobile No.9934337884 to pay a ransom of Rs.10 lacs, otherwise his son would be killed. The informant was also threatened not to give any information to the police. On 2.7.2009 at about 11.00 A.M., the informant again received a call on his WLL Telephone, this time from Mobile No.9461082935, that the money has not been brought asking him to arrange the money and to inform accordingly. Again on 4.7.2009, he received a call from Mobile No.9801396157 at about 9.30 O' Clock on the mobile of the son of the informant Rakesh Kumar Paswan for making a demand of ransom. The first call, on 1.7.2009, was made on his WLL No.06420-292222 by his captive son, who pleaded to make necessary arrangement of money at the



earliest, otherwise the accused to kill him.

On the basis of the fardbeyan of the informant, Rajendra Paswan, Amarpur P.S. Case No.147 of 2009, dated 4.7.2009 was registered under Section 364A/34 of the I.P.C. against unknown. After investigation, the police submitted two charge sheets. In the first charge sheet, bearing No. 206 of 2009, dated 22.09.2002, four persons, namely, Ajay Yadav @ Shastriji, Rajesh Yadav @ Tiger, Abu Zafar @ Picho and Vijan Yadav were made accused. In the second charge sheet bearing No. 2 of 2010 dated 08.01.2010, Soni Jha was the sole accused. The learned Magistrate took cognizance of the offence and committed the case to the court of Sessions. First charge sheet No.206 of 2009 led to Sessions Trial No.13 of 2010, whereas second charge sheet No. 2 of 2010 led to trial of Soni Jha being Sessions Trial No.468 of 2010. The trial court framed charges under Section 364A/34 of the I.P.C. to which all the five accused persons pleaded not guilty and claimed to be tried.

First, we would take up Sessions Trial No.13 of 2010 in which appellants Ajay Yadav @ Shastriji, Rajesh Yadav @ Tiger, Abu Zafar @ Picho and Vijan Yadav faced trial and then we would take up Sessions Trial No.2 of 2010 in which appellant Soni Jha being the sole accused faced trial.

Re.: Sessions Trial No.13 of 2010



After receipt of the record, the trial court framed charges under Section 364A/34 of the I.P.C. against all the four appellants to which they pleaded not guilty and claimed to be tried. In this case, the prosecution has examined as many as six witnesses in support of its case. P.W.1, Ramesh Paswan, is the son of the informant and brother of the victim, P.W.2, Rajendra Paswan is the informant himself, P.W.3, Kishori Yadav is a seizure list witness, who identified his signature, but at the same time, stated that the police procured his signature on a blank paper, P.W.4, Tabassum Khatoon, is a formal witness and is relevant to the extent that she had filled up the form and handed it over to accused Abu Zafar @ Picho for obtaining a new Sim, P.W.5, Sanjay Kumar is the then Investigating Officer of the case and P.W.6, Rakesh Kumar Paswan is the victim himself. Apart from the oral evidence, the prosecution also adduced documentary evidence, including F.I.R. and seizure list.

The defence neither examined any witness nor produced any material in support of its case. However, the defence of the accused, in the statement recorded under Section 313 Cr.P.C., was complete denial of the occurrence.

The trial court, on considerations of the materials on record, convicted the aforesaid three appellants, namely, Ajay Yadav @ Shastriji, Rajesh Yadav @ Tiger and Abu Zafar @ Picho under



Section 364A/34 I.P.C. and sentenced them to undergo life imprisonment along with a fine of Rs.50,000/- and in default of payment of fine, have been directed to undergo additional simple imprisonment for one year. The trial court acquitted accused Vijan Yadav from all charges framed against him.

Being aggrieved, the aforesaid three appellants have filed separate appeals, as noted above. The prosecution, in order to substantiate its case, examined six witnesses. Out of which, P.W.2 is the informant and P.W.6 is the victim, who is alleged to have been abducted for ransom.

P.W.1, Ramesh Paswan is the son of the informant and brother of the victim. He stated that on 1st September, 2009, his brother Rakesh Kumar proceeded for Bhagalpur along with Soni Jha (Appellant of Cr. Appeal No.883 of 2012). His brother had gone from the house stating that he is proceeding to Bhagalpur to take admission in the College. On the next day, a phone call came around 7-7.30 P.M. in the evening on WLL No.292222. The call was made by Rakesh Kumar Paswan, who has stated that he has been kidnapped. However, he was unable to state the name of the accused persons and he stated that he had gone with video camera. After 15-20 minutes, again a call came on the WLL number, by which the accused were making a demand of Rs.10 lacs as ransom for the release of Rakesh Kumar



Paswan, failing which his brother would be cut to death. This witness, in order to find out his brother, went to the house of Soni Jha, who stated that they had gone up to Kulhariya together, whereafter they parted ways.

P.W.2 is Rajendra Paswan, the father of the victim and the informant of the case. He stated that on 1.7.2009, when he came back to his house, he learnt that his son Rakesh Kumar Paswan is traceless. This information was given to him by his wife Laxmi Devi. The informant proceeded to Bhagalpur to find out his son, however, he could not find him. On the next day, he went to Thana, where Darogaji took his statement and finding the same to be true, signed the same. On 4.7.2010, the victim Rakesh Kumar Paswan was handed over to his father. He stated that he had a talk with his son while he was kidnapped. He stated that accused persons had kidnapped his son and sought a ransom of Rs.10 lacs, otherwise the victim would be killed.

P.W.3, Kishori Yadav is the seizure list witness on the point of recovery of mobile from the appellant Rajesh Yadav @ Tiger and his brother Vijan Yadav. Though, he acknowledged his signature on the seizure list, he stated that the same was taken on a blank paper.

P.W.4, Tabassum Khatoon is a formal witness. She stated that she had lost her mobile phone and thereafter, she does not



remember exactly as to what had happened. She made her statement before the Judicial Magistrate under Section 164 Cr.P.C. She had identified her signature on the statement recorded under Section 164 Cr.P.C., which has been exhibited as Ext.3. Her statement is not of any consequence, save and except, that she had lost a mobile phone about ten months ago and she does not possess any mobile phone on the day.

P.W.6, Rakesh Kumar Paswan is the victim himself. He stated that on 1.7.2009 at about 7.00 A.M., accused Soni Jha came to meet him and requested him to accompany him as there is marriage of his friend's sister. On his request, he went along with him to Kulhariya Bus Stand and from there to Golhatta Chowk, Bhagalpur. Thereafter, they proceeded together to Koyala Depot. From there, they took Tempo for Zero mile and from Zero mile to Maraiya by Jeep where Soni Jha told him that he has already contacted his friend, who would be coming shortly. The friend of Soni Jha came around 2 to 2.30 P.M. The word 'Tiger' was imprinted on one of his hands. Both, Soni Jha and Tiger, forced him to call his household number and on refusal, assaulted him. Soni Jha and Tiger, thereafter asked him to come along with them on a tempo to his village. After traveling some distance, they got down from it. Soni Jha took his mobile and kept it with himself. Thereafter, they took him to Banana Orchard where



three accused were present from before. As soon as he reached Banana Orchard, the accused persons started assaulting him. One of them was one eyed and the word 'Sarwan Kumar' was scribed on the hand of one of the three accused. The accused persons took him forcibly to Kasar Jungle and kept him there the whole night. In the jungle, the accused persons forced him to drink water from a ditch in which a dead body was lying. All the accused forced the victim to call and ask his family members to pay ransom of Rs. 10 lacs, otherwise they would kill him. On the following morning, the police raided the Banana Orchard and recovered him. The police arrested Tiger as well as Kokal Yadav. The police thereafter got his statement recorded under Section 164 of the Cr.P.C. in Banka Court. The victim came to recognize all the accused persons involved in the crime. He recognized Rajesh Yadav @ Tiger, Shastri Jee and one co- accused, who was present in the dock.

PW-5 is the Investigating Officer of the case. He stated that on 4.7.2009, he was posted as Officer-in-Charge of Amarpur Police Station. After taking charge of investigation, he recorded the first information report of Rajendra Paswan. Thereafter, he proceeded along with him to the place of occurrence, which is the house of the informant. He again took re-statement of the informant. Thereafter, he took statement of Ramesh Paswan, another son of the informant



Sachidanand Paswan. Thereafter, he began to look for Soni Jha, who was found absconding from his house. Thereafter, he obtained print out of the call details running in three pages through e-mail from the office of the Superintendent of Police, Khagaria, which were marked for identification as X, Y and Z respectively. From the print out, it transpired that the Mobile No.9461082935, from which call was made on informant's WLL phone, was also used in making number of calls on Mobile No.9973207212. On enquiry from Airtel Company, it transpired that the mobile number was registered in the name of Tabassum Khatoon (P.W.4), resident of village Deori Dumar and location was at Maraya within Gogari Police Station, District Khagaria. The Mobile No. 9461082935 was used from mobile set bearing IMEI No.354041030074088, from which the call was made from Kota in the State of Rajasthan. In the meantime, he contacted Tabassum Khatoon, who disclosed that earlier SIM was rejected and as such she had signed papers and handed it over to Abu Zafar for another SIM, which he never gave. On being confronted face to face with Tabassum Khatoon, Abu Zafar @ Picho accepted that he obtained a Sim, bearing No.9973207212 on papers signed by Tabassum. However, he gave the same to Rajesh Yadav @ Rajesh Tiger, P.S. Gogari, District Khagaria. It was on this mobile number, on which frequent calls were made from Mobile No.9461082935 from



Kota. P.W.5 thereafter, proceeded to village Shergarh and the informant thereafter, forming a police party raided the village home of Rajesh Tiger, wherefrom the victim was recovered from his Banana Orchard. Rajesh Yadav @ Rajesh Tiger and his brother Vijan Yadav were arrested. The Mobile along with the SIM, bearing No.9973207212 was recovered from the possession of Rajesh Yadav. Another mobile was recovered from the possession of his brother Vijan Yadav. Thereafter, he prepared a seizure list of the mobiles, on which Sanjay Yadav (not examined) and Kishori Yadav had made their signatures. Thereafter, he took the confessional statement of Rajesh Yadav @ Tiger, which was marked as Ext.5. On the order of the Superintendent of Police, Banka, the Officer-in-Charge along with some more police personnels proceeded to Kota for arresting Ajay Yadav @ Shastriji, who was the owner of SIM No.9461082935. On being apprehended, Ajay Yadav @ Shastriji admitted that he had thrown the said SIM. Though the I.O. could not recover the SIM, but he was able to recover the mobile from which the SIM was used on the basis of IMEI number. As the boy was recovered, the Investigating Officer did not enquire about the other Mobile No.9934222788.

In light of evidence of the witnesses and materials produced in course of trial, learned A.P.P. submitted before this Court



that the prosecution has produced sufficient materials on record to bring home the charges under Section 364A/34 of I.P.C. against all the accused persons.

On the other hand, learned counsel for the appellants submit that there is no legal evidence to convict the appellants under Section 364 of I.P.C. and there are material discrepancies in the evidence of the witnesses. As separate arguments were made, we will consider the appeals one by one.

Re.:Cr. Appeal No.918 of 2010 (Ajay Kumar Yadav @ Ajay Yadav @ Shastri Jee)

Mr. Ramakant Sharma, learned Senior Counsel appearing on behalf of the appellant, has made the following submissions: (i) He submits that even assuming the prosecution case to be true, this appellant was all along in Kota during the relevant period and had not participated in the actual kidnapping of the victim. (ii) The only material against him is that a call was once made from his mobile on the WLL phone of the informant and some calls were made on Mobile No.9973207212, which was being used by Rajesh Yadav @ Tiger Yadav. He submits that the prosecution has failed to prove the call details of informant's telephone on which ransom call was made from his mobile and neither the same was codified or certified by anyone much less any competent person. The print out of mobile number was



collected in C.D., but the same was not exhibited and thus there was no compliance of Section 65B of the Evidence Act (hereinafter referred to as the 'Act'), which was necessary if conviction is being sought with aid of electronic documents. In support of his submission, learned senior counsel has relied upon a decision in the case of **Anvar P.V. v. P.K. Basheer** reported as **A.I.R. 2015 S.C.180**.

On the other hand, learned A.P.P. submits that though the call details have not been certified by a competent authority, but nonetheless the call details quoted in the diary would point to the guilt of the accused in the crime.

The main material against this appellant is that the witnesses have stated that there was a call made from the mobile used by this appellant on informant's phone, making a demand for ransom. There is no other material to indicate that this appellant participated in the actual kidnapping of the victim. The appellant has been convicted solely on the basis of call being made from his mobile on informant's mobile and thus, the material against him is based on electronic record. He further submits that the SIM number was not recovered and the IMEI, noted by the I.O., was of 15 digits and it did not tally with the mobile set from which the call was said to be made by this appellant.

If the prosecution is relying upon electronic record, the



same too has to be duly proved. The matter concerning admissibility of electronic record, is a special provision, which has been inserted in the Evidence Act by Sections 65A and 65B. Both the provisions inserted by Amendment Act 21 of 2000 with effect from 17.10.2000. The provision of Sections 65A and 65B of the Evidence Act, is a complete code in itself. The Hon'ble Apex Court in the case of **Anvar P.V.** (supra) observed that an electronic record by way of secondary evidence cannot be admitted in evidence unless the requirements under Section 65B are satisfied.

“21. It may be seen that it was a case where a responsible official had duly certified the document at the time of production itself. The signatures in the certificate were also identified. That is apparently in compliance with the procedure prescribed under Section 65B of the Evidence Act. However, it was held that irrespective of the compliance with the requirements of Section 65B, which is a special provision dealing with admissibility of the electronic record, there is no bar in adducing secondary evidence, under sections 63 and 65, of an electronic record.

22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of



electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

23. The appellant admittedly has not produced any certificate in terms of Section 65B in respect of the CDs, Exhibits-P4, P8, P9, P10, P12, P13, P15, P20 and P22. Therefore, the same cannot be admitted in evidence. Thus, the whole case set up regarding the corrupt practice using songs, announcements and speeches fall to the ground.

24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section



65B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on electronic record with reference to Sections 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance of the conditions in Section 65B of the Evidence Act.”

We are constrained to hold that neither the call details report of Mobile No.9461082935, which is said to be used by this appellant, nor the call details report of the telephone number of the informant have been verified or certified, as required under Sections 65A and 65B of the Evidence Act, as the evidence against the appellant is based on electronic records which are in admissible on account of non compliance of mandatory provisions of Sections 65A and 65B of Evidence Act, we hold that there is no legal and sufficient evidence available to hold the appellant Ajay Kumar Yadav guilty of charge under Section 364A/34 of the I.P.C. and acquit him accordingly. The judgment of conviction and order of sentence passed against the appellant namely Ajay Kumar Yadav @ Ajay Yadav @ Shastri Jee, is set aside. The appellant, who is in custody, is directed to be released forthwith, if not wanted in any other case.

Re.:Cr. Appeal No.925 of 2010 (Abu Zafar @ Picho)

So far as this appellant is concerned, it appears from the



prosecution case that one Tabassum Khatoon signed some papers and gave it to this appellant for procuring a new SIM. This appellant however, after getting a new SIM, handed the same to Rajesh Yadav @ Tiger Yadav instead of handing it over to its real owner Tabassum Khatoon. This apart, there is no material on record to connect him in any way with the kidnapping of victim Rakesh Paswan. Furthermore, there is no material to establish any demand of ransom made at his end from the father of the victim or the victim. Furthermore, the police has, in course of investigation, not found any incriminating material to sustain the guilt under Section 364A/34 of the I.P.C. against this appellant.

Hence, we acquit the appellant namely Abu Zafar @ Picho of the charges levelled against him under Section 364A/34 of the Indian Penal Code. Accordingly, the judgment of conviction and order of sentence passed against this appellant is set aside. The appellant is already on bail, as such he is discharged from the liability of his bail bonds.

Re.:Cr.Appeal (DB) No. 1044 of 2010(Rajesh Yadav @ Tiger) and Cr. Appeal (DB) No. 883 of 2012 (Soni Jha)

Now we take up the case of Rajesh Yadav @ Tiger Yadav and the case of Soni Jha together for disposal. It is relevant to state here that the trial of Soni Jha was separated which was numbered as



Sessions Trial No. 468 of 2010. However, in his case also, six witnesses were examined by the prosecution. Out of six witnesses, four witnesses, namely, (i) Ramesh Paswan, the brother of the victim, (2) Rajendra Paswan, the father of the victim and the informant of the case, (3) Sanjay Kumar, the Investigating Officer of the case and (4) Rakesh Paswan, the victim himself, are common. The evidence of the prosecution witnesses, in substance, is similar, as deposed in the earlier connected Sessions Trial bearing S.T.No. 13 of 2010/334 of 2010. The other two prosecution witnesses, namely PW-5 Binod Kumar and PW-6 Sanjay Kumar Pandey are the police officers, but they have not been examined in the first case i.e., in S.T.No. 13 of 2010/334 of 2010. PW-5 Binod Kumar is a formal witness and he has submitted only charge sheet and proved the same. PW-6 Sanjay Kumar Pandey is the Officer-in-Charge of Amarpur Police Station, who had also gone to Kota with the raiding party, where Ajay Yadav @ Shastri Jee was arrested. He was also one of the members of police party, which raided Banana Orchard of Rajesh Yadav @ Tiger from where the victim was recovered alongwith Rajesh Yadav @ Tiger and others.

Learned counsel appearing on behalf of two appellants submitted that there is lack of legal evidence to convict these appellants also under Section 364A/34 of the Indian Penal Code. All



the points raised in case of Ajay Yadav would also be applicable in their case.

Besides this, learned Amicus Curie appearing on behalf of Soni Jha, has submitted that there is no material on record to suggest that the victim was abducted from his legal guardian for the purpose of ransom. Learned counsel submits that after handing over the victim to Tiger Yadav, this appellant went back to his house. Furthermore, the victim was not recovered from the premises of this appellant.

Mr. Vivekanand Singh, learned counsel appearing on behalf of Rajesh Yadav @ Tiger Yadav, while adopting the submissions of other counsels, submits that it appears that the boy was not at all kidnapped, but he framed a story along with his friends to extract money from his father, who has just retired from the Telephone Department. He submits that there were two seizure list witnesses, namely, Kishori Yadav and Sanjay Yadav, on the point of recovery of mobile from the possession of the Rajesh Yadav @ Tiger Yadav and his brother Vijan Yadav. He submits that P.W-5, the Investigating Officer, in para 11, has clearly stated the aforesaid facts. However, for the reasons best known, the seizure list witness Sanjay Yadav was not examined, whereas Kishori Yadav, PW-3, though he acknowledged his signature on the seizure list, however, stated that the same was procured on a blank paper from him by the police. On



this basis, learned counsel submits that the factum of recovery of mobile no. 9973207212 from Tiger Yadav is not at all proved muchless beyond any reasonable doubt. He next submits that as per the victim boy (PW-6), Tiger Yadav and Vijan Yadav were arrested, whereas according to the Investigating Officer, Rajesh Yadav @ Tiger and Gokul Yadav were arrested from the spot. At this juncture, learned counsel submits that the prosecution version is far from being one, which would inspire confidence.

On the other hand, learned A.P.P. appearing on behalf of the State submits that victim was recovered by the police party from a Banana Orchard of Rajesh Yadav @ Tiger Yadav. He further submits that the victim (PW-6) stated that the accused Soni Jha was the master mind of the entire episode and took out the appellant from his house on the false pretext of meeting his friend whose sister was getting married. He submits that the victim boy has fairly stated that Soni Jha took him from Bhagalpur and thereafter not only he handed him over to Rajesh Yadav, but also went along with him to Banana Orchard, where he was kept in captivity and also assaulted.

We have heard learned counsel for the parties. We would agree with the submission of learned counsel for the State that Soni Jha was found in taking out the victim boy from his house and handed him over to Rajesh Yadav @ Tiger Yadav. The victim boy, in Para



nos. 1 and 2 of his evidence, stated that Soni Jha came to his house in the morning at about 7:00 A.M., then on the pretext of meeting his friend whose sister was getting married, took him to Bhagalpur and thereafter he ultimately handed him over to Tiger Yadav. Thereafter both of them went to Banana Orchard of Tiger Yadav in village Shergarh under Gogari Police Station where he was assaulted and forced to drink water of a ditch. They also forced him to make a call to his father seeking ransom, otherwise he would be killed. The Investigating Officer (PW-5) recovered the victim boy along with Rajesh Yadav @ Tiger Yadav from his Banana Orchard. The mobile of Tiger Yadav was also seized. PW-1 and PW-2 also corroborates the prosecution case against them : Situated thus, we are of the considered view that the prosecution has been able to establish a chain of circumstances which points to the guilt of both the accused beyond all reasons doubts.

As such we would uphold the judgment of conviction passed against them by the trial court. Cr.Appeal (DB) No. 1044 of 2010 and Cr. Appeal (DB) No. 883 of 2012 are dismissed. Cr.Appeal (DB) No. 918 of 2010 and Cr. Appeal (DB) No. 925 of 2010 succeed.

So far as sentence is concerned, we find that this is the first offence against them, and as such while maintaining the sentence of life imprisonment, we reduce the fine amount of Rajesh Yadav @



Tiger Yadav from Rs.50,000/- to Rs.5,000/- and that of Soni Jha from Rs.10,000/- to Rs.2,000/-. We further observe that in default of payment of fine, both the appellants would undergo additional imprisonment for three months.

As the appellant Rajesh Yadav is in custody, he will remain in custody to serve the remaining part of sentence. The appellant Soni Jha, who is on bail, is directed to surrender before the court below to serve the remaining period of sentence.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

N.H./Sujit

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