

IN THE HIGH COURT OF JUDICATURE AT PATNA

Death Reference No.6 of 2016

(Against the Judgment of conviction dated 11.08.2016 and order of sentence dated 23.08.2016 passed by the learned Additional District and Sessions Judge-1st Begusarai in Sessions Trial No. 345 of 2015 arising out of Bhagwanpur P.S.Case No. 181 of 2014).

The State of Bihar

.... Petitioner/s

Versus

- 1. Lalo Paswan , son of Sri Lal Paswan
- 2. Bhawani Mandal, son of late Mahendra Mandal
- 3. Navin Mandal, son of late Mahendra Mandal
- 4. Sanjeet Mandal, son of Gulo Mahto
- 5. Chhotu Mahto, son of Chandra Shekhar Mahto

.... Respondent/s

with

Criminal Appeal (DB) No.973 of 2016

Chhotu Mahto, son of Chandra Shekhar Mahto, resident of Village- Banbaripur, P.S.- Bhagwanpur, District- Begusarai

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No.1010 of 2016

Lalo Paswan, son of Sri Lal Paswan, resident of village- Banwaripur, Police Station- Bhagwanpur, District- Begusarai.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No.1011 of 2016

Sanjeet Mahto, son of Gulo Mahto, resident of village- Banbaripur, P.S.- Bhagwanpur, District- Begusarai.

.... Appellant/s

Versus

The State of Bihar



.... Respondent/s

with
Criminal Appeal (DB) No.1073 of 2016

1. Naveen Mandal

2. Bhawani Mandal,

Both are sons of late Mahendra Mandal, resident of village- Bhagwanpur, P.S.-

Bhagwanpur, District- Begusarai.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In D. REF. No.6 of 2016)

For the Appellants : Mr. Neeraj Kumar @ Sanidh, *Amicus Curiae*

For the Respondent/s : Mr. Ashwani Kumar Sinha, A.P.P.

For the informant : Mr. Abdul Kalam, Advocate.

(In CR. APP (DB) No.973 of 2016)

For the Appellant : Mr. Ram Bilash Mahto, Advocate.
Mr. Krishna Prasad Singh, Advocate.

For the Respondent/s : Mr. S.C.Mishra, A.P.P.

(In CR. APP (DB) No.1010 of 2016)

For the Appellant : Mr. N.A.Shamsi, Advocate
Mr. Syed Ehteshamuddin Advocate.

For the Respondent/s : Mr. Dilip Kumar Sinha, A.P.P.

(In CR. APP (DB) No.1011 of 2016)

For the Appellant : Mr. Baxi S.R.P.Sinha, Sr. Advocate.
Mr. Randhir Kumar No. 1, Advocate.
Mr. Aditya Nath Jha, Advocate.

For the Respondent/s : Mr. Maya Nand Jha, A.P.P.

(In CR. APP (DB) No.1073 of 2016)

For the Appellants : Mr. Rajni Ranjan Prasad Singh, Advocate.

For the Respondent/s : Mr. S.P.Verma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
and
HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)
Date: 04-04-2017



Heard learned counsel for the parties.

2. The death reference along with the four appeals, in which all the appellants have been sentenced to death under Section 302/34 of the Indian Penal Code, have been heard together, as they arise from the common judgment of conviction, dated 11.08.2016 passed by the learned Additional District & Sessions Judge- 1st, Begusarai in Sessions Trial No. 345 of 2015 (arising out of Bhagwanpur P.S.Case No. 181 of 2014). All the five appellants have been convicted under Sections 302/149/120B/364/201/34 of the Indian Penal Code. For the offence under Section 302/34 of the Indian Penal Code, they have been awarded death sentence. For the offence under Section 364 of the Indian Penal Code, they have been sentenced to life imprisonment along with fine of Rs. 5000/-. For the offence under Section 201 of the Indian Penal Code, they have been awarded to 05 years rigorous imprisonment along with fine of Rs. 2000/- and in default of payment of fine to undergo S.I. for one year and for the offence under Section 120B of the Indian Penal Code, they have been awarded 05 years rigorous imprisonment. All the sentences have been directed to run concurrently.

3. The prosecution case, in short, as stated in the *fardbeyan* of Ram Bilas Paswan (PW-4), resident of Banwaripur Paswan Tola, Ward No. 09, Thana-Bhagwanpur, District-Begusarai, recorded by S.I.



Balmukund Roy (PW-8) of Bhagwanpur Police Station on 18.10.2014 at 9:30 hours at village- Banwaripur Hanuman Chawk, P.S.- Bhagwanpur, District- Begusarai, is as follows:

(i) The informant stated that on 17.10.2014 at 4:00 P.M., his son Muskan Raj and one another boy Abhishek Kumar, son of Ram Pravesh Paswan also of village Banwaripur, had gone to play nearby Naga Baba Mandir. The informant's son did not return though good times had lapsed. Now the informant went to the house of father of the boy Abhishek Kumar, the other boy, who too had gone to play around that time at Nagababa Mandir, who too had not returned. Then, both of them started searching their children. In the course of search, they learnt that (1) Manjay Paswan @ Mandal, (2) Sanjay Paswan, (3) Lalo Paswan, all sons of Sri Lal Paswan, (4) Radha Devi wife of Lalo Paswan, (5) Sri Lal Paswan, son of late Baun Paswan, (6) Navin Mandal, (7) Bhawani Mandal, both sons of late Mahendra Mandal, (8) Chhotu Mahto, son of Chandre Shekhar Mahto, (9) wife of Sri Lal Paswan, (10) Sanjit Mahto, son of Gulo Mahto, and (ii) Dharmendra Paswan, all residents of village Banwaripur, P.S.- Bhagwanpur, have abducted both the children. Thereafter, they went to the house of the accused persons, but all were missing from their houses. On the next day, i.e., 18.10.2014, they went towards Bankhandi searching their children, where they saw Abhishek Kumar lying dead near the bush on



the bank of Balan river. The dead body of other boy Muskan Raj was also found 400 metres east from the place where Abhishek Kumar was lying dead. The informant claims that the accused persons lifted both the boys from the Mandir and after killing them threw them at two different places.

(ii) The informant states that about one and a half year ago, his daughter Lusi Kumari was abducted by Manjay Paswan. However, his daughter was recovered from Delhi with the help of Delhi Police. The informant believes that because of aforesaid incident the accused persons have killed his son Muskan Raj. As the other boy Abhishek Kumar had seen the accused killing Muskan Raj, they killed him also in order to wipe off evidence.

4. On the basis of the *fardbeyan* of Ram Bilas Paswan (PW-4), the police registered Bhagwanpur P. S. Case No. 181 of 2014 dated 18.10.2014 under Sections 364, 302, 201 and 120B/34 of the Indian Penal Code. The *fardbeyan* was also attested by Ram Pravesh Paswan (PW-3), the father of the deceased boy Abhishek Kumar.

5. The police, in course of investigation, inspected all the three place of occurrence namely; the field where the boys were playing and the two places from where the dead bodies of both boys were recovered. The police also took further re-statement of the informant and the statement of other witnesses under Section 161



Cr.P.C. The police arrested the accused persons including accused Manjay Paswan @ Mandal, son of Lalo Paswan, who in his confessional statement, admitted that he killed both the boys along with other accused persons and threw their dead bodies in the river. The police, after obtaining post-mortem reports of both the boys, Muskan Raj and Abhishek Kumar, and finding the accusation true against the accused persons, submitted charge sheet against Sanjay Paswan, Radha Devi, Sri Lal Paswan, Bhawani Mandal, Navin Mandal, Dharmendra Paswan, Manjay Paswan @ Mandal, Lalo Paswan, Ram Dulari Devi, Chhotu Mahto @ Balbant Kumar and Sanjit Mahto under Sections 364, 302, 201 and 120B/34 of the Indian Penal Code. The learned Magistrate took cognizance of offence and committed the case to the court of sessions for trial.

6. It appears that the case of accused Manjay Paswan @ Mandal was separated as he was declared juvenile. The cases of Radha Devi, Sri Lal Paswan and Dharmendra Paswan were also separated.

7. The charges were framed against 06 accused persons, namely, Lalo Paswan, Bhawani Mandal, Navin Mandal, Sanjeet Mahto, Chhotu Mahto and Ram Dulari Devi under Sections 302/149/120B/364 and 201/34 of the Indian Penal Code to which they pleaded not guilty and claimed to be tried.

8. The case of the defence, as appearing from the mode of



cross-examination of the witnesses and the statements of the accused persons recorded under Section 313 of the Cr.P.C., is one of complete denial of the occurrence and false implication on mere suspicion. The trial court, relying upon the confessional statement of Manjay Kumar and the evidence of PWs 1, 2, 3 and 4, convicted the appellants and sentenced them to death under Section 302/34 of the Indian Penal Code apart from other offences.

9. The prosecution, in order to substantiate its case, examined as many as 06 witnesses, namely PW-1 Nilu Devi, who is the mother of deceased boy, Abhishek Kumar, PW-2 Sushila Devi, who is mother of the deceased boy Muskan Raj, PW-3 Ram Pravesh Paswan, who is the father of deceased boy Abhishek Kumar and PW-4 Ram Bilas Pawan, who is the father of deceased boy Muskan Raj, PW-5 Dr. Arun Kumar, who had conducted post-mortems on the dead bodies of Abhishek Kumar and Muskan Raj and opined that death was caused by asphyxia due to twisting of neck. PW-6 Bal Mukund Rai is the Investigating Officer of the case.

10. PW-1, Nilu Devi, in her evidence, has supported the prosecution case. She stated that her son Abhishek Kumar and Muskan Raj were studying in the same class and in the same school. Both children had gone out to play around 5:00 P.M. When they did not return after playing, she went to the house of Ram Bilas Paswan to



look for her child, who too stated that his son has also not returned. Thereafter they began to search their children. In course of search, they went to the house of Manjay Paswan and made enquiry from him. Thereafter they went to the house of Bhawani Mandal, Sanjeet Mahto, Chhotu Mahto and Lalo Paswan respectively, but all of them showed ignorance about the whereabouts of their children. On the next morning, at about 6:00 A.M., she along with the informant and others saw the dead body of Abhishek Kumar and Muskan Raj near the shore of Balan river. The dead body of Muskan Raj was found 400 Metres east from the place where the dead body of Abhishek Kumar was recovered.

11. PW-2, Sushila Devi, in her evidence, has also supported the prosecution case. She stated that the occurrence took place on 17.10.2014 at 5:00 P.M. Around that time, her son Muskan Raj along with Abhishek Kumar, son of PW-1 Nilu Devi, had gone to play near Naga Baba Mandir. She saw the children playing around 6:00 P.M. When children did not return, she and Nilu began to look for their children. However, she subsequently stated that when she did not find the children, she came home and informed her husband on telephone about the missing of her son Muskan and Abhishek. Thereafter, on hearing the news, her husband came home and all of them began to look for their children. They went to the house of Manjay Paswan,



Navin Mandal, Bhawani Mandal, Chotu Mahto, Sanjeev Mahto, Dharmendra Paswan, but they all were not present in their house; nor her son was found in their house. On 18.10.2014, the dead body of Abhishek Kumar was recovered in the river by the side of Bhola Baba (Naga Baba Mandir). Thereafter, they rang up the administration. The police came. She stated that the accused persons, named in the FIR, have killed her son because of past dispute, as earlier Manjay Paswan, with the help of others, had abducted her daughter.

12. PW-3, Ram Pravesh Paswan, is the father of deceased boy Abhishek Kumar, who was murdered along with Muskan Raj. He too has supported the prosecution case. He stated that the occurrence took place at 5:00 P.M on 17.10.2014. His son had gone to play along with Muskan Raj, son of Rama Bilas Paswan, at Naga Baba Mandir. After some time, he also went towards Naga Baba Mandir, where he saw the two children playing and Manjay Paswan, Sanjay Paswan, Chotu Mahto, Bhawani Mandal and Navin Mandal were sitting on the stairs of the Mandir. After some time, he came back to his house. When his son did not return for quite some time, though it was time for study, he along with his wife began to look for him and went to Naga Baba Mandir, but he could not meet them. Thereafter he went to the house of Ram Bilas Paswan (PW-4) and enquired about the children from his wife Sushila Devi (PW-2), who too informed that her son is



also missing. In course of search, the following morning, the dead body of Abhishek Kumar was recovered from the river just by the side of Bhola Baba Sthan (Naga Baba Mandir) and the dead body of Muskan was recovered 400 metres east away from the dead body of Abhishek Kumar. He believed that the accused persons named in the FIR have killed the children.

13. PW-4 Ram Bilas Paswan is the informant of the case and father of one of deceased child Muskan. He stated that on 17.10.2014 at 4 to 5 P.M., his son had gone to play near Naga Baba Mandir about 100 metres away from his house. When his son did not return till 6:30 P.M. in the evening, then in course of search , he learnt that 10 accused have abducted him and his friend Abhishek.

14. The post-mortem reports, which have been produced by the prosecution, as exhibits, show that the death of both children was not suicidal but homicidal, as they died on account of asphyxia caused by twisting their necks. On these premises, the prosecution has tried to establish its case and bring home the charge against the appellants.

15. Separate arguments were advanced by the learned respective counsels appearing on behalf of the appellants in different appeals.

16. Mr. Ashwani Kumar Sinha, learned A.P.P. appears in the death reference on behalf of State, Mr. Abdul Kalam, learned



counsel appears for the informant and Mr. Neeraj Kumar @ Sanidh appears as *amicus curiae* in these cases.

17. Mr. Baxi S.R.P.Sinha, learned senior counsel, who appears for Sanjeet Mandal, the sole appellant in Cr. Appeal (DB) No. 1011 of 2016, makes the following submissions:

(a) There is no eye witness to the occurrence and the case is based on circumstantial evidence and to be specific on the theory of last seen. The prosecution has not been able to produce any material on record to prove that the accused persons had any motive to kill the deceased children. Furthermore, PW-4, at best, is a hearsay witness, as according to his wife (PW-2), he was away on duty and he came home only, when his boy went missing in the evening on 17.10.2014. Furthermore, PW-1 and PW-2, who are the mothers of the deceased children, have also not stated that they saw the accused in the company of the boys, after they went out from the houses to play at Naga Baba Mandir.

(b) PW-3, Ram Pravesh Paswan, the father of one of the boys namely Abhishek Kuamr, has, for the first time, stated before the court that he saw Manjay Paswan, Sanjay Paswan, Chotu Mahto, Bhawani Mandal and Navin Mandal sitting on the stairs of Naga Baba Mandir where children were playing. The Investigating Officer however in his evidence, has denied that this witness PW-3, in his



statement under Section 161 of the Cr.P.C. stated that he saw the accused persons sitting on the stairs while said children were playing near Naga Baba Mandir.

(c) The case of the appellant Sanjeet Mahto stands on better footing as PW-1, PW-2, PW-3 and PW-4 have not even stated that this appellant was present near Naga Baba Mandir, where the children were playing. Furthermore, the father of Muskan Raj (PW-4) and the mother of Abhishek Kumar (PW-1) stated that they had no enmity with this appellant. The story of last seen with other accused persons is also a subsequently development, as in the FIR, the informant nowhere stated that anyone had earlier seen the accused persons sitting or being around the Naga Baba Mandir when the children were playing.

18. On these premises, Mr. Baxi submits that prosecution has not been able to establish a chain of circumstances to prove the guilt of the accused persons much less that of Sanjeet Mandal.

19. In support of his submission, Mr. Baxi relies upon the decisions of the Hon'ble Supreme Court as reported in the case of Mustkeem @ Sirajudeen v. State of Rajasthan; 2011(6) AIR SCW 4410, and of Sharad Birdhichand Sarda v. State of Maharashtra; AIR 1984 SC 1622; 1984 Cri LJ173 laying down the cardinal principles regarding appreciation of circumstantial evidence.



20. Mr. A.K.Sinha, learned A.P.P. and Mr. Abdul Kalam, learned counsel for the informant, have defended the judgment of conviction and order of sentence passed against the appellants. They submit that this is an unfortunate crime in which two small boys have been killed by twisting their necks and then thrown in the nearby river. They submit that the informant and other witnesses have stated that the appellants have committed the crime because of previous enmity as Manjay Paswan is alleged to have abducted the informant's daughter Lusi Kumari one and a half year ago, who was subsequently recovered by the Delhi Police from Delhi.

21. We have heard learned counsel for the parties and perused the materials on record. Admittedly, there is no eye witness to the occurrence and the case is based on circumstantial evidence. It is not in dispute that conviction can be sustained even in case there is no direct evidence and the case is based on circumstantial evidence. It is also well settled that where the case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or guilt of any other person. The Hon'ble Apex Court, in the case of Mustkeem @ Sirajudeen (supra), laying down broad principles in cases based on circumstantial evidence, observed as follows:



“It is too well settled in law that where the case rests squarely on circumstantial evidence the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. No doubt, it is true that conviction can be based solely on circumstantial evidence but it should be decided on the touchstone of law relating to circumstantial evidence, which has been well settled by law by this Court.”

22. The Hon’ble Apex Court, while coming to the aforesaid principles, relied upon the law regarding appreciation of circumstantial evidence laid down in case of Sharad Birdhichand Sarda (supra), the relevant extract of which is quoted hereinbelow:

“26. In a most celebrated case of this Court reported in 1984 (4) SCC 116: AIR1984SC1622:1984 CriLJ1738) Sharad Birdhichand Sarda v. State of Maharashtra in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under:

- (i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely ‘may be’ fully established.
- (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
- (iii) The circumstances should be of a conclusive nature and tendency,
- (iv) They should exclude every possible hypothesis except the one to be proved, and
- (v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”



23. In the light of the aforesaid principles laid down by the Hon'ble Apex Court, we would now examine whether the prosecution has been able to prove a complete chain of circumstances, which would point at the guilt of the appellants. From the materials on record, at the best, the following circumstances emerge in the case:

(i) Two children had gone to play in the evening at Naga Baba Mandir, which was very closed to the house.

(ii) As per PW-3 and PW-4, they have seen the accused persons sitting at the stairs of Naga Baba Mandir, where the children were playing in the evening around 5:00 P.M.; whereas PW-4 has named 10 accused persons, but not Sanjeet Mahto. PW-3 has named only 05 persons, namely, Manjay, Sanjay, Chhotu, Bhawani Mandal and Navin Mandal sitting on the stairs of temple.

(iii) The dead bodies of the two boys recovered from the Balan river on the next morning near Bhola Baba Mandir (Naga Baba Mandir). The body of Muskan Raj was found 400 metres east to the place from where the dead body of Abhishek was found.

(iv) The accused Manjay was on inimical term with the informant as he is alleged to have abducted informant's daughter prior to the occurrence.

24. We would now examine whether the circumstances on which the prosecution has relied are worth the credence in any view of



the matter and form a complete chain pointing to the guilt of the accused.

25. The first circumstance against the appellants is that they were seen near the Naga Baba Mandir, where the children had gone to play after returning from the school between 4-5 P.M. In this respect, we have evidence of two witnesses on that point, namely, Ram Pravesh Paswan (PW-3) and Ram Bilas Paswan (PW-4) who are the respective fathers of deceased children Abhishek Kumar and Muskan Raj. As per the informant (PW-4), the occurrence took place on 17.10.2014 at about 4-5 P.M. In the FIR, this witness stated that his son had gone to play along with Abhishek Kumar at about 4:00 P.M. at Naga Baba Mandir. However, when he did not return, even by evening, he went to the house of Ram Pravesh Paswan (PW-3) to make enquiry about his son, who (PW-3) stated that his son has also not returned. Thereafter they began to search their sons. In course of search, they learnt that accused persons had abducted their sons. Subsequently, their dead bodies have been found in the river Balan near Bhola Baba Mandir. The informant (PW-4) in para-1 of his evidence also stated that when his son did not return, he began to search for him and in course of search, he learnt that the accused persons have abducted his son. However, in para-3 of his evidence, he made a departure and stated that when his child had gone to play, he



had gone there in order to keep a vigil on him and in course of which, he saw the accused persons moving around the place of occurrence. The evidence of the informant inspires contradictions to the statement made in the FIR.

26. Besides this, PW-2, Shushila Devi, stated that her husband works in the Railway and on the relevant day, he was at Khagaria. At about 5:00 P.M., her son along with Abhishek had gone to play near Naga Baba Mandir. When they did not return at 6:00P.M., she went to look for them, but could not see them. Thereafter she came home and informed her husband on telephone that her son is missing. Thereafter, her husband came (18 KM distance) and began to look for the children. The statement of PW-2, Sushila Devi, the wife of the informant (PW-4) contradicts the statement of the PW-4 that on the relevant day and time, he was present in the house and had gone before 6:00 P.M. to Naga Baba Mandir to keep vigil on her child, who was playing. As such the evidence of this witness is not reliable on the point that he had seen the accused persons in the evening moving around Naga Baba Mandi, where the children had gone to pay.

27. We would now examine the evidence of PW-3, Ram Pravesh Paswan. This witness, in his evidence, stated that on 17.10.2014, his son had gone to play at Naga Baba Mandir around 4-5 P.M. Soon thereafter, in order to keep a vigil, he went towards Naga



Baba Mandir where he saw 05 accused persons namely Manjay, Sanjay, Chhotu, Bhawani Mandal and Navin Mandal sitting on the stairs. Learned counsel for the appellants had argued that this witness had made improvement on his earlier statement made before the police under Section 161 Cr.P.C that he had gone out to Naga Baba Mandir to keep a vigil where he saw the accused persons as well.

28. PW-6, who is the I.O. of this case, in his deposition, at para-19, supports the contention of the appellants. The I.O. states that PW-3 nowhere stated in his statement recorded under Section 161 Cr.P.C. that on the relevant evening, he saw the accused persons sitting on the stairs of Naga Baba Mandir where the children had gone to play. The evidence of I.O. also contradicts the claim of PW-3 that he had seen the accused persons sitting near the place where the children were playing. Situated thus, we are of the considered view that neither PW-3, father of Abhishek nor PW-4 father of Muskan have been able to prove even the theory of last seen of the appellants with the deceased boys.

29. The next argument advanced by the prosecution that there were two motives for the appellants to kill the deceased Muskan Raj and his friend Abhishek. As per the prosecution case, the appellants were annoyed with the informant (PW-4) as had alleged dubious role of accused Manjay Kumar in abduction of the informant's



daughter Lusi Kumari. The second motive assigned for killing of the children is that the appellants were feeling jealous as the informant was financially well off.

30. So far as the first motive is concerned, admittedly, there is no material on record with respect to the alleged abduction of Lusi Kumari by Manjay Kumar. Admittedly, no case was instituted by the prosecution side against the appellant Manjay Kumar and his associates. In absence of any evidence, it is difficult to presume that the appellants were annoyed with the informant with respect to alleged abduction of Lusi Kumari by Manjay and others. Now we take up the second motive assigned for the occurrence that the appellants committed murder of Muskan and Abhishek due to jealousy as the informant was financial well off. Again there is no iota of evidence on this point also to arrive at a conclusion that appellants were jealous because of prosperity of PW-3 or PW-4. Furthermore, the prosecution has not brought on record the inquest report, which could have thrown light with respect to place from where the dead bodies were recovered or the injuries on person of deceased. The I.O., on the other hand, has stated in para-9 of his evidence that he had not prepared the inquest report.

31. It appears that the trial court was influenced by the confessional statement of Manjay Kumar, who stated that he along



with his associates abducted Muskan and his friend Abhishek from Naga Baba Mandir and killed them by pressing their necks and thereafter threw them in the river to hide/wipe off any evidence against them. The I.O. has also admitted that the confessional statement was made in his presence, which would not have any evidentiary value in view of Sections 25 and 26 of the Evidence Act.

32. On going through the evidence, we find this to be an unfortunate case where two small children were abducted and murdered while they were playing after returning from school. Still more unfortunate is the lackadaisical manner in which the prosecution has conducted the investigation of the case without rendering it to a case of no evidence. Furthermore, we are constrained to hold that the prosecution has not been able to establish a chain of circumstances, save and except, the post-mortem reports to bring home the charge under Sections 302/149/120B/364/201/34 of the Indian Penal Code.

33. In the result, the appeals succeed. The judgment of trial court convicting the appellants under Sections 302/34, 149/ 120B/ 364/ 201/34 of the Indian Penal Code are set aside. The appellants are in custody, they are directed to be set at liberty, if not wanted in any other case. The death reference is accordingly answered in negative.

34. Let Mr. Neeraj Kumar @ Sanidh, *Amicus curiae* be paid prescribed fee by the Patna High Court Legal Services



Committee.

35. Let a copy of the first page and the last page of the judgment be handed over to Mr. Neeraj Kumar @ Sanidh, *Amicus curiae*, for needful.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	29.06.2017
Transmission Date	

