

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.720 of 2007

(Against the judgment of conviction dated 13.04.2007 and order of sentence dated 16.04.2007, passed by Shri Om Prakash, learned Additional Sessions Judge, Fast Track Court-V, Patna in S.T. No. 257 of 2006, arising out of Gandhi Maidan P.S. Case No. 329 of 2005)

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Ajai Jha @ Rahul @ Ajay Kumar Jha, son of Permanand Jha, resident of Vill. -302 Saket Galaxy, Anandpuri, Boring Canal Road (W), P.S.- Sri Krishnapuri, District-Patna.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

With

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Criminal Appeal (DB) No. 764 of 2007

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Ranjeet Kumar Singh, son of Sri Pawan Kumar Singh, resident of Tarapatti, P.S.- Khajauli, District- Madhubani, at present resident of Mohalla- Mauna, P.S.- Chapra Town, District- Chapra.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

With

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Criminal Appeal (DB) No. 854 of 2007

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Shashi Kumar @ Bhushan Kahar, son of Sri Ram, resident of Mahadeoganj, P.S. Nawa Nagar, District- Buxar.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

With

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Criminal Appeal (DB) No. 858 of 2007

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Ranjeet Kumar Rai @ Chhotu, son of Chanarik Rai, resident of Mohalla- Digha Ghat, Police Station- Digha, District- Patna.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

With

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**Criminal Appeal (DB) No. 915 of 2007**

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Vikki Singh @ Vikash Singh @ Chhote Sarkar @ Pratap Rana, son of Sri Lalan Singh, Singh, resident of Mohalla- Dahiyawa Tola, P.S.- Town, District- Saran at Chapra.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

**With**

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**Criminal Appeal (DB) No. 943 of 2007**

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Vijay Kumar Singh @ Mukesh Kumar, son of Sri Ram Chandra Prasad Singh, Moh- Sadha Khemaji Tola, P.S.- Chhapra Mufassil, District- Saran.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

**With**

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**Criminal Appeal (DB) No. 971 of 2007**

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Baliram Kumar Singh, son of Dhanesh Singh, resident of Vilalge- Afour Ke Purab Tola, P.s.- Khaira, District- Saran (Chapra).

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

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**Appearance :**

(In CR. APP (DB) No.720 of 2007)

For the Appellant/s : Mr. Abhay Kumar Singh, Sr. Advocate  
Mr. Binod Murari Mishra, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

(In CR. APP (DB) No.764 of 2007)

For the Appellant/s : Mr. Binod Murari Mishra, Advocate  
For the Respondent/s : Mr. S. N. Prasad, APP

(In CR. APP (DB) No.854 of 2007)

For the Appellant/s : Mr. Bindhyachal Singh, Advocate  
Mr. Prafull Chandra Dwivedi  
Mr. Prem Kumar

For the Respondent/s : Mr.

(In CR. APP (DB) No.858 of 2007)

For the Appellant/s : Mr.



Mr. Sunil Prasad Singh

For the Respondent/s : Mr.  
(In CR. APP (DB) No.915 of 2007)

For the Appellant/s : Mr.  
Mr. Prafull Chandra Dwivedi  
Mr. Prem Kumar  
Mr. Tej Pratap Singh

For the Respondent/s : Mr.  
(In CR. APP (DB) No.943 of 2007)

For the Appellant/s : Mr.  
For the Respondent/s : Mr.  
(In CR. APP (DB) No.971 of 2007)

For the Appellant/s : Mr.  
Mr. Gopal Prasad Roy  
Mr. Ajay Kumar Sharma  
Mr. Sunil Kumar Pathak  
Mr. Chandan Kumar Kashyap  
Mr. Binod Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)**

**Date: 16-09-2017**

All the seven appeals have been preferred by the appellants assailing the judgment of conviction, dated 13.04.2007 and order of sentence dated 16.04.2007, passed by learned Additional Sessions Judge, Fast Track Court-V, Patna in S.T. No. 257 of 2006, arising out of Gandhi Maidan P.S. Case No. 329 of 2005, by which all the appellants herein have been convicted under Sections 364A/34, 120(B), 323/34 and 379/34 of the Indian Penal Code and the appellants, namely, Vikki Singh @ Vikash Singh @ Pratap Rana @ Chhote Sarkar (Criminal Appeal (DB) No. 915 of 2007), Ajai Jha @



Rahul (Criminal Appeal (DB) No. 720 of 2007) and Ranjeet Kumar Rai @ Chhotu (Criminal Appeal (DB) No. 858 of 2007) have been sentenced to undergo imprisonment for life and a fine of Rs.50,000/- each for the offence under Section 364A/34 read with Section 120(B) of the Indian Penal Code and in default of payment of fine sentenced to undergo R.I. for two years. The appellants, namely, Ranjeet Kumar Singh (Criminal Appeal (DB) No. 764 of 2007), Vijay Kumar Singh @ Mukesh Kumar (Criminal Appeal (DB) No. 943 of 2007) and Baliram Kumar Singh (Criminal Appeal (DB) No. 971 of 2007) have been sentenced to undergo imprisonment for life and a fine of Rs.25,000/- each for the offence under Section 364A/34 read with Section 120(B) of the Indian Penal Code and in default of payment of fine they have been further sentenced to undergo R.I. for one year. The appellants, namely, Shashi Kumar @ Bhushan (Criminal Appeal (DB) No. 854 of 2007) has been sentenced to undergo imprisonment for life and a fine of Rs.1,000/- for the offence under Section 364A/34 read with Section 120(B) of the Indian Penal Code and in default of payment of fine to undergo R.I. for six months. All the appellants have been further sentenced to undergo R.I. for six months for the offence under Section 323/34 of the Indian Penal Code and R.I. for two years for the offence under Section 379/34 of the Indian Penal Code read with Section 120(B) of the Indian Penal Code. However,



all the sentences have been directed to run concurrently.

2. The prosecution case in brief as reflected from the written report of informant, namely, Gulab Chand Surana, (P.W. 6) is that on 16.10.2005 at about 11.00 A.M. his son Rahul Surana @ Banti went out from his house on his Bajaj Pulsar black colour motorcycle No. BR 10- 2986 by saying that he is goingn to see off his elder brother in train and he will return home before 10.00 P.M. It is further alleged that about 8.30-9.00 P.M. one Syed S. Masidul Haque informed the informant on telephone that his son Asimul Haque went away on motorcycle with Rahul Surana from his house at 12.30 P.M., but since 3.00 P.M. he is trying to contact them on their mobile no. 9835413157 and 9334070223 and both mobiles are responding as switched off. Thereafter, the informant also tried to contact his son Rahul Surana on his mobile no. 9334313113, but the mobiles of Rahul and Asim were found switched off.

3. It is further alleged that at about 3.20 P.M. and 11.00 P.M. on the same day missed calls were made from mobile no. 9835255511 on his house basic phone with caller ID no. 2320964. At about 4.00 A.M. on 17.10.2005, the informant tried to contact Rahul on his mobile phone but the same was shown as out of range. Then, at about 4.30 A.M. a call was made by mobile phone of Rahul Surana and one unknown person firstly enquired about the name of the



informant and then he told that your son Rahul is with me and he should arrange for money and he will be again contacted later on. It is further alleged that in view of the above said facts, the informant expressed belief that his son Rahul Surana and Asim have been kidnapped.

4. On 24.10.2005, Sub-inspector of Police, Abhay Narayan Singh, posted in Special Branch, Patna, went to Magistrate Colony in connection with kidnapping case of Manager of Bajaj Allianz in order to ascertain the house where the kidnapped Manager of Bajaj Allianz is kept.

5. The case of the prosecution is that S.I. Abhay Narayan Singh met with Ram Charitar Prasad, Assistant Sub-Inspector of Police, Shashtri Nagar Police Station and requested him to assist in the matter of locating the house at Kalyan Bihar Colony. Thereafter information was sent to Arshad Jama, Dy.S.P., Sachivalaya, who reached the spot with force and Sub-Inspector Shri Kant Pathak of Danapur police station. They conducted raid in the house where they found Rahul Surana, Ashimul Haque with five accused persons and on enquiry Rahul Surana and Ashimul Haque told the police officer that they have been abducted and confined there. It is the case of the prosecution that during the course of raid they recovered country made pistol from the possession of Ranjeet



Kumar Rai and also recovered motorcycle of Rahul parked in the campus of the said house. The prosecution story further is that Rahul Surana and Asimul Haque disclosed that Rahul @ Ajay Jha brought them to the said house on the pretext that he will introduce to some Bhaiya, who will give them some work relating to computer and when they reached the house they found Vikash Singh @ Vikki, who was introduced as Bhaiya and thereafter one person with gun entered the house and assaulted them with belt and took their mobile phone, ATM Card etc. Thus, the prosecution has built up the story that Rahul Surana and Asimul Haque were abducted and kept in confinement from 16.10.2005 to 24.10.2005 for ransom but they were recovered by the raiding party.

6. The police after investigation submitted charge-sheet against seven accused persons, namely, Vikky Singh @ Vikash Singh @ Chhote Sarkar @ Pratap Rana, Ranjeet Kr. Rai @ Chhotu, Ranjeet Kumar Singh, Vijai Kumar Singh, Baliram Singh, Shashi Kumar @ Bhushan Kahar and Ajai Jha @ Rahul under Sections under Sections 364A/120B, 323/34, 379, 411 and 120B/34 of the Indian Penal Code. Thereafter the learned Magistrate took cognizance and case was committed to the Court of Sessions for trial. Thereafter charges were framed and the appellants pleaded not guilty and claimed to be tried for the offences aforesaid.



7. The prosecution in order to establish the charges examined altogether 17 witnesses. P.W.1 Abhay Kumar Singh is a Sub-inspector of Police, who was posted at the relevant time in the Special Branch, Patna as Sub-Inspector of Police and it is he who led the raid on 24.10.2005 and recovered the kidnapped Rahul Surana and Asimul Haque. P.W. 2 is Shri Kant Pathak, who is also ASI and was a member of the raiding party. P.W.3 Gauri Shankar Prasad is the landlord of the building where the kidnapped Rahul Surana and Asimul Haque were kept and from where they have been recovered. P.W. 4 Rahul Surana is the alleged victim of kidnapping. P.W.5 Subhash Kumar is the friend of Gulab Chand Surana (informant). P.W.6 Gulabchand Surana is the informant himself. P.W.7 is Sayad Asimul Haque (another kidnapped boy), who was recovered along with Rahul Surana. P.W.8 is Ram Naresh Sharma, who is resident of Kalyan Bihar Colony, a neighbour of Gauri Shankar Prasad. P.W. 9 is Ram Charitra Prasad, who at the relevant time was posted as Additional Officer-in-Charge, Shashtri Nagar police station and was a party to the raid on 24.10.2005. P.W.10 is Arshad Jama, Dy.S.P., who was the senior most police officer present at the time of raid. P.W.11 is Sayad Masudul Haque, the father of Asimul Haque. P.W.12 is Pan Mal, the relative of Gulab Chand Surana. P.W.13 is Sanjay Kumar Pandey, who was associated with the case being Sub-Inspector posted



in Anti Rangdari Cell. P.W.14 is Rajnish Sinha, the then Associate Vice President of UTI Bank, Saket Tower, S.P. Verma Road. P.W.15 is Hare Ram Sah, who was posted as Sub-Inspector in Gandhi Maidan police station, who registered the Gandhi Maidan P.S. Case No. 329 of 2005. P.W.16 is Ramesh Kumar Mishra, who was also posted as Sub-Inspector in Gandhi Maidan police station. P.W. 17 is Prakash Mishra, who was the Judicial Magistrate, who recorded the statement of Asimul Haque and Rahul Surana under Section 164 of the Cr.P.C.

8. On behalf of the defence four witnesses have been examined. D.W.1 is Lal Mati Devi, D.W.2 is Sher Ali Khan, D.W.3 is Dharmendra Kumar and D.W.4 is Shambhu Saran Sinha. Gauri Shankar Prasad, Rahul Surana and Sayad Asimul Haque were also examined as Court witness.

9. The trial Court on the basis of the scrutiny of the evidence adduced by the prosecution and also considering the defence case held out that the prosecution has been able to prove the charge of abduction of the victim Rahul Surana and Ashimul Haque for ransom and as such hold the appellants guilty for offence under Section 364A/34 of the Indian Penal Code. The Court held out that the offence under Section 120B of the Indian Penal Code is proved beyond reasonable doubt against the accused persons. The trial court also found that Ranjeet Kumar Rai assaulted the victim by belt and as such



convicted all the accused persons for the offence under Section 323/34 of the Indian Penal Code. The trial court further held out that accused persons have snatched mobile phone, ATM Card from the victim, as a result of criminal conspiracy and common intention and therefore they are also guilty for the offence under Section 379/34 of the Indian Penal Code read with Section 120B of the Indian Penal Code.

10. From the materials, it appears that Rs.48,000/- in different installments was withdrawn from the account of the firm of Rahul Surana.

11. Mr. Abhay Kumar Singh, learned senior advocate appearing on behalf of appellant Ajai Kumar Jha @ Rahul has assailed the very genesis of the case and referring to the chain of events submitted that in the totality of the facts situation, no case of kidnapping for ransom is made out. He submitted that in the instant case P.W.4 Rahul Surana has built up the case of kidnapping for ransom. In his deposition, he has stated that he is in the business of computer, he has done Diploma in Software technology from Computer Maintenance Corporation (CMC) Institute, Patna and during the course of undergoing that Diploma course he has developed friendship with certain boys including Rahul @ Ajay Jha, who was of senior batch. After 1998 he met with Rahul @ Ajai Jha in 2005 and when he disclosed that he is in business of computer, Rahul



enquired about the mobile number and one or two days thereafter Rahul @ Ajay Jha made a call on his mobile and has asked him to see at Mauryalok but due to the busy schedule he did not meet Rahul. He (P.W.4) introduced the story that on 16.10.2005 at around 10.00 A.M. he received a call from Rahul @ Ajai Jha, who asked him to see Madhuban Restaurant at Hartali Chawk. Thereafter Rahul along with Asimul Haque visited Madhuban Restaurant on his bike. When they both reached at about 12 ½ P.M. Rahul was sitting there, he told that in connection with Software business there is a Bhaiya, who will give details, if you meet him and thereafter on the same bike all the three moved towards Ashiana More and entered in a house. It is the statement of Rahul Surana that he parked the bike out side the gate and entered the house with Rahul @ Ajay Jha, who introduced a person that he is Bhaiya, thereafter one man with pistol entered the room and assaulted Rahul and Asimul with belt and threatened that if you raise halla, you will be done to death and thereafter it is the case of Rahul that out of fear he handed over the purse, A.T.M. card, key of bike and mobile. Similarly on the gun point mobile was taken from Asimul Haque.

12. Mr. Singh has submitted that the manner in which Rahul and Asimul Haque reached the alleged house indicate that they reached there for business purpose and they were confined by the



accused persons and their ATM card and Mobile phones were taken by the accused persons and thereafter from their mobile certain call was made to the father of Rahul Surana. Mr. Singh thereafter referring to the case lodged by the father of Rahul Surana, which was the basis for lodging the F.I.R. submitted that from the F.I.R. as well as deposition of the father of Rahul Surana one cannot find any specific demand of ransom, as the only allegation in the F.I.R. is that one unknown person has informed him that Rahul is with him, you arrange money, we will contact later on. Mr. Singh referring to the deposition of the prosecution witnesses has submitted that there is contradiction in the version of the prosecution witnesses. He submitted that the entire investigation was perfunctory. No effort was made by the investigating officer to investigate on the point (a) whether any ransom was demanded by the accused person and if made through which phone number or mobile number. There is no attempt to collect the call details of the accused and the father of the victim to co-relate the communication pertaining to demand of ransom. He submitted that the investigating officer has not made any attempt to examine the details of the bank transaction of the firm of Rahul Surana. He highlighted that in the instant case, the police has not been able to ascertain the most crucial fact that during the aforesaid period bank account of Rahul Surana was operational and



not only withdrawal but deposit was also made in the said account. The police has not made any attempt to ascertain who was operating the aforesaid Bank account. He also highlighted the prosecution case that victims were kept in confinement after alleged kidnapping in a thickly populated area is beyond comprehension. It is most unrealistic that these two victims were confined in such thickly populated area for 8 days and the landlord and the neighbours were completely ignorant of the incident of kidnapping and use of force in silencing the victims. Mr. Singh referring to the deposition of the landlord submitted that the landlord was residing in the first floor of the same house and as such one cannot believe his story of ignorance, about kidnapping and confinement of the victims in the ground floor of the tenanted premise. Both stories of kidnapped kept in the tenanted premise for 8 days and ignorance of the same by landlord cannot go side by side. He also highlighted that the story of kidnapping in the instant case is most artificial and unrealistic story. He submitted that at the time when they were recovered, they were free, as it is nobody case that their hands and legs were tied by the accused persons and as such they could not move from that place or there is no material to establish the physical torture of the victim during 8 days confinement. There is absolutely no case or material to support physical torture in this case, as it is not supported by any medical evidence. In the totality



of the facts situation, the case appears to be a case of voluntarily residing of the victim at the place and not under any duress, coercion or any threat. Mr. Singh thus submitted that in the totality of the facts situation, no case of kidnapping much less kidnapping for ransom is made and the prosecution has miserably failed to establish the charges.

13. Mr. Abhay Kumar Singh, learned senior counsel has questioned the identity of the appellant Ajay Kumar Jha. In fact he never used @ name Rahul and he is not known by his alias name by either his family members or in his known circle. In fact, in the instant case one Rahul Kumar was identified, but he was released on P.R. Bond and on mistaken identity his client was apprehended. He referred that the case was introduced initially against Rahul, but subsequently added alias name to implicate the appellant Ajay Kumar Jha. He submitted that from the deposition of P.W. 3, the landlord of the house, the house in question was rent out to Vikki and whose family i.e. wife and daughter were residing with servant Shashi Kumar and from deposition of P.W.3 it appears that Vikki and his family was out of the tenanted premise for the last 10 days i.e. 10 days ahead the raid. He has admitted in his cross-examination that Vikki was not staying there for more than 10 days, as he was out of station 10 days ahead the raid whereas the case of Rahul Surana and Asimul



Haque was that he was present at the time when they entered the house and even on the date of raid i.e. just two hour before the raid he was present and this contradiction is difficult to reconcile. He submitted that if the tenant is out of station for 10 days prior to raid then in his place how six persons including the kidnapped victims were residing and this kind of activity was going on and the landlord pleaded total ignorance is difficult to believe. The police has not properly investigated on the point.

14. Mr. Abhay Kumar Singh has referred to the statement of the prosecution witnesses and submitted that there are major contradictions in their depositions before the police under Section 161 of Cr.P.C. and their statement before the Magistrate under Section 164 of Cr.P.C. as well as in the Court. He highlighted various contradictions in the prosecution case; (i) P.W.4 in his statement under Section 164 of Cr.P.C. named Rahul Kumar only and not Ajay Jha, whereas in the trial he has named Ajay Jha @ Rahul Kumar. (ii) P.W.4 has stated in his statement in the Court that the accused persons did not demand ransom from his family members whereas his father stated that accused made a call that Rahul is with him, he must arrange money, he will be contacted later on, this is another contradiction. (iii) He also referred to the statement of P.W. 4 where he said that he did not go for Software deal with Rahul, but for talk



whereas the entire prosecution case is that he accompanied Ajay Jha @ Rahul to met Bhaiya in connection with Software deal. (iv) P.W.4 has mentioned that Pistol and Mouzer was not recovered in his presence, but after he and Ashimul came out from the room, it was recovered, whereas P.W.7 stated that pistol and Mozer was recovered in his presence. (v) P.W.4 stated that the person entered the room with pistol and assaulted with belt, whereas P.W.7 mentioned that the person was carrying gun, there is another contradiction. (vi) He also referred to various contradiction of P.W.7 in the statement under Sections 161 and 164 of the Cr.P.C. Mr. Singh submitted that P.W.4 and 7 are well educated Software Diploma holders and as such they are supposed to be aware of the difference between pistol, revolver and gun. The major contradiction in description of the arms has not been explained. (vii) P.W.9 has stated that seizure list was prepared in dining hall, whereas P.W.10 stated that it was scribed in bed room. (viii) P.W. 8 Ramnaresh Sharma stated that he himself reached the gate of Gauri Shankar, whereas P.W.9 stated that he went to the house of P.W.8 and after 5 minutes P.W.8 came out and accompanied him. (ix) P.W.1 has mentioned that he led the raid in connection with recovery of Manager of Bajaj Allianz, whereas P.W.10 has stated that the Manager of Bajaj Allianz was free much before the raid was conducted.



15. He submitted that in addition to the aforesaid major contradiction in the version of the witnesses, there is statement of the witnesses, which render the whole prosecution case improbable. P.Ws.4 and 7 have stated that they went to Madhuwan restaurant and even the house where they were allegedly kept under confinement on their own sweet will. P.W.7 has stated that he does not remember the mobile number of the alleged mobile snatched by the accused persons. He submitted that in the statement under Section 164 of Cr.P.C., the victim (P.W.4) has named Rahul Kumar only and not Ajay Jha, as such it was obligatory on the part of the prosecution to put Ajay Jha on Test Identification Parade, but the same was not done, since Ajay Jha and Vikash Singh were not arrested on the spot. The prosecution was required to put them on TIP, which was not done. The investigating officer has not placed any material to corroborate that Rahul Surana and Ajay Jha have studied in the same institute at N.P. Centre, particularly, when the case of Ajay Jha was that he was never the student of that institute. Rahul Surana has also not been able to make out the case that he and Ajay Jha have studied in the same institute by placing any document or other material. None of the seized material was produced in the court, which renders the entire case of the prosecution under doubt. There is no investigation on the point, who has talked with the informant of the case from which



number. There is no demand of any ransom amount only on the basis of the statement of informant that Rahul is with him and he should arrange money and he will be contacted later on cannot be enough to draw that there was demand of ransom for releasing Rahul. There is no statement from any witnesses that any demand of ransom was made for release of Ashimul Haque. The investigating officer, on enquiry about Rahul Kumar interrogated one Rahul Kumar at Frazer Road, but later on released him on P.R. bond, this conduct of investigating officer coupled with non-adherence to TIP renders the prosecution case doubtful. There is no investigation by the police as to how and who deposited Rs. 5,000/- and 5,000/- on 20.10.2005 when the P.W.4 was allegedly in the confinement. There is no investigation on the point of Bank operation. There is no CCTV footage to make out a case that who in fact has operated the ATM. The presumption of Bank operation is always by the holders, unless contrary is proved. In the instant case, neither the guardian of the P.W.4 Rahul Surana nor the police has made any attempt for stopping the operation of the account of the victim in the Bank, which also creates serious doubt and lapse in the entire investigation.

16. Mr. Singh highlighted the perversity of the approach of the trial court, as instead of explaining contradiction by the prosecution, the trial court has tried to explain the lacuna in the



prosecution case by explaining and filling up the gap. The contradictions taken together and the lapses in the investigation and non-explanation of various situation connected with the crime creates serious doubt that P.W.4 and P.W.7 have staged drama of their kidnapping in order to extract money from their parents and the case of kidnapping by these appellants are under serious doubts.

17. Mr. Bindhyachal Singh and other counsels appearing on behalf of other batch of criminal appeals have adopted the submissions advanced by Mr. Abhay Kumar Singh, the senior counsel, and submitted that if the genesis of the crime is under cloud, the whole case of the prosecution fails and the appellants deserve acquittal on account of lapses in the conduct of the investigation and lack of explanation on the point of no demand of ransom or payment of ransom.

18. Mr. Ajay Mishra, learned A.P.P. confronted with the various contradictions in the statement of witnesses including the deposition of the witnesses, submitted that the appellants cannot take advantage of the lapse of investigation, although he admitted the lapse of the police in the matter of non-investigation on the point of demand of ransom and collecting call details to connect the appellants/accused and the father of the victim Rahul Surana. He also admitted the lapse in the matter of thorough investigation as to under what circumstance



the accused and the victim entered the tenanted premise of Jagdish Prasad when they were not renters. He admitted that the area is thickly populated, he has no answer when he was confronted by the court on the point that from the deposition of the Associate Vice President of the UTI Bank during the aforesaid period, neither the police nor the family members or the customer Rahul Surana ever requested the Bank to withhold the operation of the account. P.W.1, who led the raid has stated that he received secret information that officer of Bajaj Allianz has been kept there, as appears from para 35 of the deposition. P.W.1, who led the raid in his deposition stated that he visited Shashtri Nagar in connection with kidnapping of Manager of Bajaj Allianz and in that connection he conducted the raid and during the raid victims were recovered. P.W.10, the Dy.S.P. Arshad Jama in para. 25 of his deposition stated that Manager of Bajaj Allianz was released much before the said raid. Thus, there is a major contradiction in the manner, the raid was conducted. If the raid was in furtherance of the kidnapping of Manager of Bajaj Allianz was the story introduced by P.W.1 and the manager was released much before the raid was conducted creates further doubts in the manner the prosecution has introduced the case of kidnapping for ransom and confinement.

19. In this case, the victims were not examined by



doctor to ascertain whether they sustained any injury. In addition thereto at the time of raid their hands and legs were not tied and they were free men. The bike of Rahul was also lying in the campus. The contradiction in the version of the victim about the presence of Vikki on 16.10.2005 and even on the date of raid and the version of the landlord that he was out of station 10 days ahead the raid. The fact that Bank account was operation during the said period creates serious doubt about the story of kidnapping and confinement of the victims. In the absence of any medical report of injury suggesting threat for not raising halla during confinement coupled with the fact that the Bank account was operational through out renders the case of the prosecution under serious doubt. Apart from the infirmity in the investigation on the point of demand of ransom, non-collecting of call details, non-investigation on the point of contradiction in the version of the landlord and the victim as to the presence of Vikki, the story of meeting with alleged Rahul Surana with Rahul @ Ajay Jha is most unrealistic, as after six years of the so called completion of Diploma course they meet dramatically and exchange the mobile number and thereafter despite repeated calls Rahul Surana avoided Ajay Jha earlier suddenly on receipt of call at 10.00 A.M. on 10.10.2005 he visited Madhuban restaurant and accompanied him to the place on the same bike renders the whole prosecution case under serious doubt.



The cumulative effect of lapse of the investigation and the contradiction in the version of P.W.1 and P.W.10 on the point of manner in which the raid was conducted. Further, it is nobodies case that the police including Abhay Narayan Singh, Sub-Inspector of police, Special Branch, has received any clue about the hostage of the victims of this case at the place and the serious dispute on the point of use of force and recovery of pistol and live cartridges, as the witnesses have stated that they have signed the seizure list on mere asking.

20. Thus, in the aforesaid backdrop of facts and circumstances, we are of the considered view that the genesis of the offence is not established beyond reasonable doubts. The conduct of the landlord, the conduct of the police in the matter of investigation is most unnatural. There are serious doubts about the identity of the accused. Failure on the part of the investigation to ascertain how the accused persons entered the tenanted premise when the house was tenanted to Vikki and his family. There is no specific demand of any ransom amount. The story of captivity is under serious doubt and as such we are of the considered view that the prosecution has not been able to prove the allegation beyond all reasonable doubt and as such the appellants deserve benefit of doubt for the reasons discussed above.

21. Accordingly, these appeals are allowed and the



judgment of conviction and order of sentence passed by the learned trial court is set aside and the appellants are acquitted from the charges leveled against them. All the appellants are on bail, they are discharged from the liabilities of their bail bonds.

**(Rajendra Menon, CJ)**

Uday/-

**(Anil Kumar Upadhyay, J)**

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