

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 869 of 2012

Arising Out of PS. Case No.-172 Year-2010 Thana- Kudra District- Bhabhua (Kaimur)

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Ajay Paswan S/O Bangali Paswan Resident of Village - Karma, P.S. -
Kudra, District - Kaimur (Bhabua).

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

with
Criminal Appeal (DB) No. 566 of 2012

Arising Out of PS. Case No.-172 Year-2010 Thana- Kudra District- Bhabhua (Kaimur)

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Dinesh Kumar Pal Son of Sukhu Pal Resident of Village- Pasathuwa, P.S.-
Parsathuwa (kochas), District- Rohtas.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

(In Criminal Appeal (DB) No. 869 of 2012)

For the Appellant	:	Mr. Kumar Sunil, Advocate
For the State	:	Mr. Satya Narayan Prasad (A.P.P.)
For the Informant	:	Mr. Rajesh Kumar Mishra, Advocate
		Mr. Sourendra Pandey, Advocate

(In Criminal Appeal (DB) No. 566 of 2012)

For the Appellant	:	Mr. Rajendra Narain, Sr. Advocate
		Mr. Kumar Sunil, Advocate
For the State	:	Mr. Satya Narayan Prasad (A.P.P.)
For the Informant	:	Mr. Rajesh Kumar Mishra, Advocate
		Mr. Sourendra Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 11-01-2018

Since in aforesaid two appeals, both the appellants were



convicted and sentenced in Sessions Trial No. 277/33 of 2011 (arising out of Kudra P.S. Case No. 172 of 2010), both the appeals were heard together and are being disposed of by this common judgment.

2. Both the appellants were put on trial on the charge of committing offence under Sections 302/34, 201, 364/34, 394/34 and 411 of the Indian Penal Code and both the appellants were finally held guilty and convicted under Sections 364/34, 394/34, 302/34 and 201 of the Indian Penal Code, whereas, the appellant Dinesh Kumar Pal (in Cr. Appeal DB No. 566 of 2012) was further convicted under Section 411 of the Indian Penal Code by judgment of conviction dated 04-06-2012 passed by learned 1st Additional Sessions Judge, Bhabhua, Kaimur (hereinafter referred to as the 'Trial Judge'). Both appellants were directed to undergo rigorous imprisonment for life separately for offence under Sections 302/34, 394/34, 302/34 of the Indian Penal Code and each of the appellants were imposed a fine of Rs. 25,000/- (twenty five thousand) and in default, they were directed to further undergo rigorous imprisonment for one year. Under Section 201 of the Indian Penal Code, both were directed to



undergo rigorous imprisonment for seven years alongwith fine of Rs. 25,000/- (twenty five thousand) each and in default, they have been directed to further undergo rigorous imprisonment for one year. The appellant Dinesh Kumar Pal in Cr. Appeal DB No. 566 of 2012 has also been directed to undergo rigorous imprisonment for three years under Section 411 of the Indian Penal Code. All the sentences were directed to run concurrently.

3. Short fact of the case is that on 16-10-2010 at 16.45 hours (4:45 PM) *fardbeyan* of one Kamla Singh (P.W.8) was recorded by Sub-Inspector of Police Bashant Baitha (P.W. 14), officer incharge of Kudra Police Station. The *fardbeyan* was recorded in Karma Badhar in the paddy field of one Hyder Ansari. In the *fardbeyan*, the informant disclosed that on 14-10-2010, his son Sanjay Singh (deceased), aged about 30 years, with his Mahindra Tractor D.I. 275, bearing registration no. BR45A-9324, had gone to Kochas Bazar for getting his tractor hired, where three unknown merchants had hired the same for loading potato from Pusauli Cold Storage. The informant disclosed that with three unknown persons, his son with his tractor had left at 5:00 PM for Pusauli and in the



night at about 9:00 PM, his son Sanjay Singh through his mobile, having SIM no. 7250952142, informed the informant that they had reached to the petrol pump and after parking the tractor, he was going to have meal, whereupon the informant instructed his son not to leave the vehicle, however; his son replied that since it would be difficult to carry the vehicle, he (deceased) informed that he will remain on the tractor itself. Thereafter, no communication could be made, since mobile of the son of the informant was shown to be 'Switched Off'. On the next date i.e. on 15-10-2010, he (informant) with his relatives, with a view to search for his son, went to Kudra and in Kudra, he also visited petrol pump, which was about 4 km of the eastern side from the road. He enquired from the petrol pump, but he could not get any information, thereafter, the informant went to the cold storage and tried to enquire about his son. After examination of the register of the cold storage, it was found that there was no movement of potato from the cold storage, thereafter, the informant returned back to his village. Again, on 16-10-2010, in search, he went near the Karma Beej Nigam and thereafter, he got an information that in Karma Badhar, one unclaimed dead body was lying. After



getting such information, he alongwith his other relatives reached Karma Badhar and he noticed that police official of Kudra Police Station had already reached the place of occurrence and he noticed that the said dead body was of his son Sanjay Singh, and thereafter, his *fardbeyan* was got recorded. The informant claimed that three unknown merchants, in the pretext of loading potato from cold storage, had persuaded his son for hiring the tractor on rent and his son was taken from Kochas to Pusauli and thereafter, he was killed and dead body was thrown in the paddy field. The accused had fled away with the tractor and had also taken mobile of his son.

4. After reading the *fardbeyan*, the informant put his signature on it and thereafter, against unknown, an F.I.R., vide Kudra P.S. Case No. 172 of 2010 under Sections 302, 201, 379, 34 of the Indian Penal Code was drawn on 16-10-2010 at 19 hours (7:00 PM). The investigating officer thereafter prepared inquest report of the dead body and dead body was sent for *post-mortem* examination. The police investigated the case and it appears that during investigation, on the basis of call details, the appellant Dinesh Kumar Pal in Cr. Appeal



(DB) No. 566 of 2012 was arrested and alleged mobile set of deceased was seized from possession of the appellant Dinesh Kumar Pal. He was arrested on 26-03-2011. During further investigation, the involvement of Ajay Paswan (appellant in Cr. Appeal DB No. 869 of 2012) also surfaced and thereafter, he was arrested on 01-04-2011 and on the next date, he was remanded in the case. Surprisingly, though Ajay Paswan was arrested on 01-04-2011, after about two months, he was put on T.I. Parade and he was got identified by three witnesses, namely; 1. Rajendra Singh (P.W.3), 2. Hiralal Singh (P.W.4) and 3. Ajay Kumar Singh (P.W.5).

5. Subsequently, against aforesaid appellants, chargesheet was submitted on 21-06-2011 for commission of offence under Sections 394, 302, 411 of the Indian Penal Code and on the next date i.e. 22-06-2011, the learned Chief Judicial Magistrate took cognizance of the offences. After completion of process under Section 207 of the Cr.P.C., on 03-08-2011, the case was committed to the court of sessions and thereafter, on 13-09-2011, charges against both the appellants were framed for commission of offence under Sections 302/34, 201, 364/34, 394/34 and 411 of the Indian



Penal Code. During trial, to establish its case on behalf of the prosecution, altogether 14 witnesses were examined.

6. Sri Kumar Sunil, learned counsel appearing on behalf of appellant in Cr. Appeal (DB) No. 869 of 2012 as well as Sri Rajendra Narayan, learned senior counsel for the appellant in Cr. Appeal (DB) No. 566 of 2012, after referring to entire evidences i.e. oral and documentary evidences, have argued that it was a case of false implication of both the appellants. It has been argued that the informant, while giving *fardbeyan* after recovery of the dead body in a paddy field within the jurisdiction of Kudra Police Station, had not raised any suspicion against any of the accused persons, save and except he disclosed the fact that his son (deceased) on mobile in the night at about 9:00 PM on 14-10-2010 had informed him that his son alongwith three unknown persons, who had hired the tractor, was moving for loading potato from Pusauli Cold Storage and immediately after that conversation, the connection failed and despite his best effort, he could not contact the deceased. This is the reason that F.I.R. was lodged against unknown. By way of referring to evidence of P.Ws. 3, 4 and 5, it was argued that those witnesses have also stated



that on 15-10-2010, they were with informant and other witnesses in search of the son of the informant and on 16-10-2010 also, all the three witnesses were present when the dead body was recovered within the jurisdiction of Kudra Police Station. Had it been a case that those three witnesses had noticed presence of Ajay Paswan (appellant) at Kochas Bazar with deceased, there was no reason not to disclose such fact to the informant. It has been argued that if for the time being it is assumed that F.I.R. or *fardbeyan* may not be taken as encyclopedia, immediately after recording *fardbeyan*, such important fact was required to be intimated by the three witnesses to the informant or to the investigating officer, but for about two months, there was no whisper regarding involvement of Ajay Paswan (appellant) with his feature or description, what to talk about name. But only after two months on 04-01-2011 (whereas alleged occurrence had taken place on 14-10-2010), suddenly without any notice to any of the witnesses, even without recording as to at which place statement under Section 161 of the Cr.P.C. was going to be recorded, the police had shown recording of statement of P.Ws. 3, 4 and 5 under Section 161 of the Cr.P.C., in which,



from the mouth of P.W.3, the name of Ajay Paswan was put. He submits that even so called disclosure of the name of Ajay Paswan by Rajendra Singh (P.W.3) appears to be suspicious, due to the reason that appellant Ajay Paswan was not resident of the district of deceased or informant. It has been argued that deceased and informant were resident of Kochas within the district of Rohtas, whereas, the appellant Ajay Paswan was resident of an area, which was far away and a different district i.e. district – Kaimur (Bhabua) and police station – Kudra. It has been suggested that it appears that due to some village politics, the appellant Ajay Paswan was fabricated in the present case. It has also been suggested that the investigating officer, only with a view to save his own skin regarding non-finding of any clue, has falsely implicated the appellant/Ajay Paswan.

7. Sri Rajendra Narayan, learned senior counsel appearing on behalf of the appellant Dinesh Kumar Pal (in Cr. Appeal DB No. 566/12) has argued that beyond stretch of any imagination without any evidence, this appellant has been fastened, as if, he was involved in murder of son of informant and loot of the tractor as well as mobile. It has been argued



that the investigating officer himself has accepted in paragraph 34 of his cross-examination that in paragraph – 109 of the case diary, it has been recorded that on deep enquiry, it was found that one **Haider Ali** had sold the set of the so-called mobile of the deceased to appellant Dinesh Kumar Pal on consideration amount of Rs. 400/- (four hundred). He has also accepted that this appellant was running an electronic shop/mobile repairing shop. He submits that even though, offence under Section 411 of the Indian Penal Code was not applicable in the present case against the appellant (Dinesh Kumar Pal), the investigating officer, to the reasons best known to him, had come to the conclusion, as if, the appellant (Dinesh Kumar Pal), besides committing offence under Section 411 of the Indian Penal Code, had also committed the same offence, for which, appellant Ajay Paswan was held guilty. He further submits that the mobile set, which was marked as **material Ext. I** was not the same mobile, which was actually shown to be seized, since in the seizure list, number of I.M.E.I. (International Mobile Equipment Identity) was given as 359574018202243, however; in Malkhana, a different mobile set was deposited and same was produced



during the trial, which was marked as material Ext. 1. He submits that *Malkhana* Register, which has been got exhibited as Ext. 4, shows that in entry no. 571 of the said Register, number of the said mobile set i.e. I.M.E.I. was given as 399574018202243. He tried to persuade the Court that it was not the same mobile set, which was shown to be seized. However, the Court is of the opinion that only on the basis of difference in one digit i.e. 1st two digit of I.M.E.I. i.e. 35 and in *Malkhana*, first two digit is 39, one may not come to a definite conclusion that there is so apparent difference. There is possibility that while making entry in the *Malkhana* Register, one digit '5' was erroneously mentioned as '9'. However, Sri Narayan, learned senior counsel has argued that even if for the time being, it is assumed that the looted mobile was shown to be found in possession of the appellant Dinesh Kumar Pal, only on the plea that said looted mobile was recovered from possession of the appellant, the appellant was not required to be held guilty for offence under Section 411 of the Indian Penal Code in absence of any evidence to show that this appellant was having knowledge that the said purchased mobile was stolen mobile or not. He has argued



that it appears that the said mobile set was deposited in the mobile repairing shop of the appellant after removal of the SIM and during that period, search was conducted and it was recovered. According to Sri Narayan, in absence of any specific evidence of the prosecution that knowing the fact that said mobile was stolen, the appellant had purchased or kept same in his shop, the learned Trial Judge has committed serious error in holding him guilty for offence under Section 411 of the Indian Penal Code. He submits that even beyond showing involvement of the appellant under Section 411 of the Indian Penal Code, which too is not sustainable, there is no iota of evidence to show that petitioner was having any connection with the loot of the tractor or murder of the son of the informant. He submits that even for the time being, if it is assumed that appellant was amongst three unknown persons, who had talked with the deceased in the Kochas Bazar, once this appellant was arrested, the prosecution would have taken step to put him on Test Identification Parade for his identification. He submits that since there was nothing against appellant Dinesh Kumar Pal as well as the fact that the investigating officer had purposely tried to screen main



accused i.e. Haider Ali, the appellant was made scape goat and he was put on trial. He submits that even though there was no evidence showing involvement of the appellant, the learned Trial Judge has incorrectly held him guilty and convicted and passed judgment of sentence, which requires to be interfered with. Both the counsel for appellants have argued that it is a glaring case, in which, the investigating officer, with a view to save main accused person, has falsely implicated both innocent persons and as such, in the light of the observation of the Hon'ble Supreme Court, which were dealt with by a Division Bench of this Court in judgment dated 27-11-2017 in Cr. Appeal (DB) No. 1007 of 2012 with Cr. Appeal (DB) No. 941 of 2012, besides passing judgment of acquittal of both the appellants, may direct the Director General of Police, Bihar to take appropriate disciplinary action against the investigating officer of the present case.

8. Sri Satya Narayan Prasad, learned Addl. Public Prosecutor has tried to persuade the Court that the impugned judgment of conviction and sentence is justified, which requires no interference.



9. Sri Rajesh Kumar Mishra, learned counsel for the informant supports the submission of learned Addl. Public Prosecutor, however; he was also of the view that the investigating agency is required to conduct further investigating for apprehending other culprit as well as taking step to recover looted tractor.

10. Besides hearing learned counsel for the parties, we have minutely perused the materials available on record. It is an admitted fact that none of the witnesses had seen the actual occurrence, only it was a case based on the principle of 'last seen' and as such, it would be appropriate to firstly examine the evidence of witnesses, who had claimed that they had seen the deceased, having conversation with three unknown persons and they had given description of those persons and one of the witness had even disclosed the name of one of the accused, who is appellant in Cr. Appeal (DB) No. 869 of 2012 i.e. Ajay Paswan.

11. P.W.3 Rajendra Singh in his evidence has stated that on the date of occurrence at about 5:00 in the evening, he had visited to a tea stall of one Kanhaiya Sah and he was sipping the tea. Besides him, one Awadhesh Singh (not



examined), Hiralal Singh (P.W.4) and other persons were also taking tea. He stated that near the tea stall of Kanhaiya Sah, there was a tractor stand, where 2-4 tractors were standing. This witness stated that tractor of Sanjay Singh (deceased) was also there. He stated that with Sanjay Singh, one unknown person was talking and on being asked by Sanjay Singh (deceased), said person disclosed his name as Ajay Paswan and said that he was a resident of Kudra. With said Ajay Paswan, there were 2-4 more persons standing. Ajay Paswan had asked for hiring the tractor from Sanjay Singh (deceased) and thereafter, Sanjay alongwith said accused went towards western side. In paragraph – 2, in his examination-in-chief, he stated that when Sanjay did not return, then on 15-10-2010, he alongwith others had gone to search for Sanjay (deceased), but they could not get any information. On 16th October, 2010, they got information that dead body of Sanjay was lying in Karma village, which was on the western side of Kudra. The said body was thrown in a paddy field. He claimed that he alongwith number of persons went to Karma village and seen the dead body of Sanjay. On being asked by the police, they carried the dead body of



Sanjay to Kudra Police Station and thereafter, he returned back to his village. In paragraph – 4, in his evidence, P.W.4 stated that after some days, he got an information that mobile of deceased was seized from one Pal of village Parsathuwa. Again, in paragraph – 4, P.W.3 further stated that after 5-6 months from the date of occurrence, he got information from the father of the deceased that one accused was arrested then he alongwith father of deceased and others went to Kudra Police Station. In paragraph – 5, P.W.3 further stated that he had seen the arrested accused in Kudra Police Station, who was subsequently identified by him in Test Identification Parade, who was the person, whom he had seen talking with deceased Sanjay in Kochas near tea stall in respect of hiring of the tractor. He accepted that in T.I.Parade, which was held in Bhabua jail, he participated and identified the accused. He also identified his signature on T.I. chart, which was got marked as **Ext. 1/2**. However, in paragraph – 9 of his evidence, P.W.3 had made categorical statement that due to lapse of time, he was not in a position to identify accused in the dock, whom he identified in T.I.Parade. At this juncture, it is necessary to notice that this witness surprisingly only after



seeing one for a short period with deceased talking with the appellant/Ajay Paswan, who was obviously resident of a different village, he claimed to identify him with his name and his village during investigation and also identified the accused i.e. appellant Ajay Paswan (in Cr.Appeal DB No. 869/12) in Test Identification Parade, but in his evidence, which was recorded on 14th March, 2012, he failed to identify the said accused in dock. Moreover, this witness himself has stated that after getting information regarding arrest of one of the accused person, he alongwith father of the deceased and others went to Kudra Police Station, where he identified an accused (Ajay Paswan) and thereafter, he claimed to identify the same accused in the Test Identification Parade and as such, the said T.I.P. appears to be only formal having no relevance for adjudication of the case. The evidence of P.W.3 also appears to be doubtful due to the simple reason that in his evidence, he has stated that on the next date of alleged occurrence, he alongwith father of the deceased (informant) and others were searching for the deceased but he did not bother to give any indication to either informant or anyone that he had seen Ajay Pasway (appellant in Cr.Appeal DB No.



869/12) talking with the deceased near the tea stall in Kochas and only when this Ajay Paswan was arrested after lapse of considerable time he had come out with a case that he had seen the deceased talking with appellant Ajay Paswan and as such, his evidence may not be relied upon.

12. Similarly, P.W.4 Hiralal Singh has also claimed as if he was taking tea alongwith P.W.3 and others on 14-10-2010 at about 5:00 PM in the tea stall of Kanhaiya Sah and he stated that he had seen the deceased talking with three unknown persons. This witness has further stated that he had heard that carriage was fixed @ Rs. 1300/- (thirteen hundred). Such statement appears to be doubtful, keeping in view the fact that he was simply having tea in the tea stall and while sipping tea, he had claimed that he had seen three persons talking with the deceased and also about detailed conversation and rate of transportation fixed. Surprisingly, he had not claimed to hear that the appellant/Ajay Paswan had disclosed his name and his village to Sanjay Singh (deceased) like claimed by P.W.3. This witness during evidence had tried to justify the stand of Test Identification Parade and he stated that he participated in Test Identification Parade and



identified Ajay Paswan in T.I.Parade. It is pertinent to indicate here that in the case, Ajay Paswan was arrested after about six months from the date of occurrence i.e. on 01-04-2011, however; without any explanation, he was kept inside jail and after about two months on 06-06-2011, he was put on Test Identification Parade. *Normally, once an accused is arrested and remanded in judicial custody, as per law, every fortnightly he is required to be produced before the court for further remand order and as such, there was every possibility of getting the accused identified by the witnesses before the Test Identification Parade* and as such, his claim of identification of appellant/Ajay Paswan has got no force. In similar manner, P.W.5 Ajay Kumar Singh has stated.

13. On examination of evidence of Ajay Kumar Singh (P.W.5) as well as Hiralal Singh (P.W.4), it is evident that they had also participated in searching Sanjay Singh (deceased) on 15th as well as on 16th October, 2010, but they have not whispered that they had seen the deceased talking with Ajay Paswan or other two unknown persons. It appears that subsequently name of appellant/Ajay Paswan had surfaced in the present case. In the present case, though, 14 prosecution



witnesses were examined to establish its case, the sheet anchor in the case was evidence of P.Ws. 3, 4 and 5, otherwise there was no other evidence to connect the appellant/Ajay Paswan in the present case. So far as evidence of P.W.1 Vinod Kumar and P.W.2 Vinay Kumar is concerned, it is evident that they have been shown to be witness to the seizure list in relation to seizure of so called mobile of the deceased from possession of appellant Dinesh Kumar Pal in Cr.Appeal (DB) No. 566/12. Ofcourse, they have identified their signature on the seizure list, but they have categorically stated that nothing was seized in their presence, only their signature was obtained on a blank paper.

14. P.W.1 Vinod Kumar has identified his signature on seizure list in relation to mobile, which was marked as **Ext. '1'**. P.W.2 Vinay Kumar has proved his signature on the seizure list, which was marked as **Ext. 1/1**. P.W.6 Nirmal Kumar Singh and P.W.7 Ramjee Singh are yet again formal witnesses, who have proved their signature on inquest report. P.W.6 Nirmal Kumar Sinha has proved his signature on inquest report, which was marked as **Ext. 1/3**, whereas, P.W.7



Ramjee Singh has proved his signature on the inquest report, which was marked as **Ext. 1/4**.

15. P.W.8 Kamla Singh is the informant and father of the deceased. In his evidence, in paragraph -1, he has stated that occurrence had taken place on 14-10-2010 at about quarter to 5:00 PM. His son Sanjay Singh for the purposes of getting the tractor on hiring had gone alongwith tractor to Kochas and he had parked his tractor near Mohania road (opposite of the tea stall of one Kanhaiya Sah) near the sand depo. He gave the description of the tractor as of Mahindra company model D.I. 275, having registration no. BR 45A/9324. This witness stated that on the same date in the night at about 9:00, his son gave call on mobile from mobile no. 7250952142 and he informed that he had reached just ahead of Kudra near petrol pump. On being asked, his son stated that he was going for loading of potato to Pusauli Cold Storage and he disclosed that alongwith him, there were three other persons. His son further informed that three persons were going to take meal, however; his son was asked by the informant not to leave the vehicle. Subsequently, the informant failed to contact his son and his son's mobile was



shown to be 'Switched Off'. On the next date, since morning, his son did not return nor his tractor had come, the informant went to Sand Depot, the place of parking of tractor, of son of the informant and tried to get information, then he got an information that his son had gone for loading of potato and alongwith him, there were other three persons. On 15th October, 2010 in the morning for about 2 or 3 hours, he tried to get location of his son but he did not get any information. He alongwith Nirmal Kumar Singh (P.W.6), Kunj Bihari (not examined), Ramjee Singh (P.W.7), Rajendra Singh (P.W.3) and others went to Mohania via Parsathuwa. He also tried to get information from Kudra, but neither any information could be received nor he found any location of the vehicle (tractor). In the evening, he returned back and again on the next date i.e. on 16th he with Birendra Singh (not examined), P.W.6 Nirmal Kumar Singh, Kunj Bihari (not examined) and others went to Parsathuwa and thereafter, he went to Kudra and he also tried to get information from Pusauli Cold Storage and on the basis of register of the said cold storage, he was informed that no such vehicle had arrived there. On the same date, they subsequently got information that one



unknown dead body was lying in a paddy field, thereafter, he alongwith others visited to the said place and noticed the said body as the dead body of his son Sanjay Singh. The informant noticed that his son was killed by pressing of neck. He further stated that before his arrival, Kudra police had already arrived there and there were number of persons present there and thereafter, the *fardbeyan* was recorded at the same place, on which, he put his signature, which he identified and same was marked as **Ext. 1/5**. In paragraph – 7 of his evidence, he stated that after 4 or 5 months, during investigation, he got information that mobile of his son was seized from Dines Kumar Pal (appellant in Cr. Appeal DB No. 566/12) and thereafter, Darogaji sent chowkidar for calling him and then he identified the seized mobile to be the mobile of his son deceased Sanjay. In paragraph 16, he has given the description of the place, from where, mobile was seized. In paragraph 22 of his cross-examination, this witness (informant) has claimed that whatever he had disclosed regarding the mobile, said fact was stated before Darogaji. In paragraph 24, he has denied the suggestion that he had purposely suppressed the fact that Dinesh Kumar Pal



(appellant) was running a mobile repairing shop. In paragraph 29 of his cross-examination, he has further stated that after 5 & ½ and 6 months from the date of death of Sanjay, accused persons were arrested.

16. P.W.9 Dr. Kameshwar Nath Tiwary on 17-10-2010 was posted at Sadar Hospital, Bhabua (Kaimur) and on the same date at 8:30 AM, he conducted *post-mortem* examination on the dead body of Sanjay Singh (deceased), son of the informant and on examination, he noticed following facts:-

“Body was swollen, maggots present all over body and foul smelling. Body in state of decomposition.

On External examination:-

Blackening present over the Anterior surface of neck.

On Dissection:-

Skull bone -normal, Brain matter soften, muscular haemorrhage present over the blackening area of the Anterior surface of neck. Tracheal Ring collapsed. Hyoid bone fractured. All the thoracic viscera soften. All abdominal viscera also soften, stomach empty. Bladder contains about 20 c.c. of residual urine.

(I) Above injuries is ante-mortem in nature caused by hard blunt substance.



**II) Death is due to asphyxia caused by throttling.
Time elapsed since death from P.M. examination
within three to four days.
Injury on the body of deceased in ordinary course
of nature found sufficient to cause death.”**

This witness has stated that *post-mortem* examination report was written by his pen and was having his signature and it was marked as **Ext. 2**.

17. P.W.10 Sri Ashutosh Kumar Upadhyay was learned Judicial Magistrate, who on the order of the Chief Judicial Magistrate, had conducted Test Identification Parade of Ajay Paswan (appellant in Cr.Appeal DB No. 869/12) on 06-06-2011 and he proved the T.I.Chart, which was marked as **Ext. 3**. It is made clear that in the said T.I.Parade, P.Ws. 3, 4 and 5 had claimed to identify appellant/Ajay Paswan.

18. P.W.11 Ram Raj Singh is the formal witness and he was incharge of *Malkhana* in Kudra Police Station and he proved entry in *Malkhana* Register, which was marked as **Ext. 4** and he also produced mobile, which was initially marked as **material Ext. X**, however; subsequently, the same was got marked as **material Ext. I**.



19. P.W.12 Bhudeo Das was police officer of Kudra Police Station and he proved the Station Diary Entry No. 378 and 380, which was marked as **Ext. 4/1** and **4/2** respectively. The said station diary was exhibited with a view to prove that on information on rumor, the police of Kudra Police Station visited the place where dead body was lying and regarding entry in respect of their return to the police station.

20. P.W.13 Pitambar Choudhary was also a police officer i.e. Sub-Inspector of Police in Kudra Police Station and he proved *fardbeyan*, which was marked as **Ext. 5**. He also proved inquest report as **Ext. 6**, Formal F.I.R. as **Ext. 7** and Seizure List relating to seizure of mobile as **Ext. 4/3**.

21. Since, it was case based purely on circumstantial evidence, the evidence of the investigating officer has got much relevance for adjudicating the present case. The investigating officer Sri Basant Baitha was examined as P.W.14. He stated that at the time of occurrence, he was officer incharge of Kudra Police Station and he proved his endorsement in the F.I.R., which was marked as **Ext. 1/8**. He also proved the material exhibit relating to mobile, which was marked as **material Ext. I**. In paragraph 4 of his evidence, he



has stated that he had recorded *fardbeyan* of Kamla Singh and he identified his endorsement on the said *fardbeyan*, which was marked as **Ext. 1/8** and thereafter, he described as to how he got the inquest report prepared and sent the dead body for *post-mortem* examination. The place, where dead-body was found, was explained by the investigating officer as field of one Hyder Ansari of Karma village lying in the jurisdiction of Kudra Police Station. In paragraph 13 of his evidence, he has stated that during investigation, he obtained the call details of alleged mobile of the deceased and thereafter, it was noticed that the said mobile set was being used by the use of different SIM and he got the location of the said mobile, thereafter, he seized the said mobile from possession of Dinesh Kumar Pal (appellant in Cr.Appeal DB No. 566/12). He further stated that during investigation, he recorded statement of Hiralal Singh (P.W.4), Ajay Kumar Singh (P.W.5) and Rajendra Singh (P.W.3). In paragraph 17, he stated that the witnesses, who had given description of the accused in their statement, who had taken the tractor on hire, on secret information, he arrested the said person, having same identification, and arrested person disclosed his name as Ajay Paswan (appellant



in Cr.Appeal DB No. 869/12). Meaning thereby that even though, he had claimed to examine aforesaid three witnesses, the investigating officer was not knowing the accused with name, only he had got information on the basis of certain identification of the said accused. This witness in paragraph – 18 further stated to identify the seized mobile and he proved the mobile, which was marked as **material Ext. I** and thereafter, he accepted that he recorded confessional statement of Ajay Paswan (appellant), which was shown to be recorded in paragraph – 99 of the case diary and further stated that on the basis of call details, he noticed as to from 06-10-2010 to 25-10-2011 the said mobile was with whom. The investigating officer i.e. P.W.14 in paragraph 34 of his cross-examination has categorically stated that in paragraph 109 of the case diary, he recorded that on enquiry regarding the accused namely Dinesh Kumar Pal, he found that he was running a mobile recharge shop and in the said transaction, he had purchased mobile set on consideration amount of Rs. 400/- from one Haider Ali, resident of Parsathuwa, P.S. Parsathuwa, District – Rohtas. He further stated that on examination of the profile on the screen of the said mobile, he



had noticed the name of Haider. He further stated that in paragraph – 110 of the case diary, he had referred that Haider Ali was in custody in Kudra P.S. Case No. 63 of 2011 dated 28-03-2011 for offence under Section 414 of the Indian Penal Code, however; on his further cross-examination, it is evident that he accepted that he had not taken any step either to record the statement of Haider Ali or he visited the jail, where Haider Ali was lodged. The investigating officer had not taken any step to get Haider Ali remanded in the present case. This creates serious doubt on the approach of the investigating officer. In paragraph 37 of his cross-examination, he has stated that in case diary, he has not at all recorded about the reason for not remanding Haider Ali in the case. Further, in paragraph 38 of his cross-examination, he stated that the mobile, which he recovered from the electronic shop of Dinesh Kumar Pal (appellant), was not sealed. He accepted in paragraph – 39 of his cross-examination that he never recorded statement of Haider Ali in respect of said seized mobile, which was seized from possession of Dinesh Kumar Pal (appellant). In paragraph 43 of his cross-examination, he has categorically stated that he did not get the



seized mobile, which was seized from Dinesh Kumar Pal (appellant), identified by Kamla Singh (P.W.8, informant), however; to the reasons best known to the informant (P.W.8), in his evidence, he stated that in police station he had seen the seized mobile and he had stated that said seized mobile was of deceased (Sanjay). Meaning thereby that during investigation under Section 161 of the Cr.P.C., the informant/Kamla Singh has not said that he had identified the seized mobile. In paragraph 46 of his cross-examination, the Investigating Officer had denied the suggestion that with a view to save Haider Ali from the case, he had falsely implicated Dinesh Kumar Pal (appellant). Though, in paragraph 48 of his cross-examination, the investigating officer/P.W.14 had accepted that all the occurrences had initiated from Kochas and Kochas Bazar was the first place of occurrence, he did not inspect the first place of occurrence. However, to the reasons best known to the investigating officer, in subsequent paragraphs, he had stated that during investigation in Kochas Bazar, he had recorded statement of three witnesses i.e. P.W.3, 4 and 5 and from their mouth, he recorded the description of one of the accused as well as



name of one of the accused as Ajay Paswan (appellant in Cr.Appeal DB No. 869/12). This categorically reflects that with oblique motive, the investigating officer had dragged Ajay Paswan (appellant) in the present case. In paragraph – 54 of his cross-examination, the investigating officer (P.W.14) has stated that on 04-01-2011 in Kochas Bazar, he recorded statement of Awadhesh Singh (not examined), Hiralal Singh (P.W.4), Rajendra Singh (P.W.3) and Ajay Kumar Singh (P.W.5), however; he clarified that in the case diary, he had not recorded as to at which place or on what time, he had recorded the statement of those witnesses. This suggests that the investigating officer had only done table work in the investigation, otherwise, even though, he had recorded *fardbeyan* at the place of recovery of dead body i.e. a paddy field within the jurisdiction of Kudra Police Station, he did not bother to inspect the first place of occurrence i.e. Kochas Bazar and subsequently, he tried to justify that he recorded statement of P.Ws. 3, 4 and 5 in Kochas Bazar. This is the reason that though, he had recorded in the case diary that on 04-01-2011, he recorded statement of aforesaid three P.Ws., but in the case diary, he had not mentioned as to at which



place and time, recorded the same. This witness in paragraph 57 has further accepted that in the Kochas Bazar, he had never pasted any notice inviting any witness nor he has given any information to any of the witness to come and make statement, but surprisingly, it has been shown that he recorded the statement of aforesaid three witness and from their mouth, a clue was taken regarding the description of one of the accused Ajay Paswan and P.W.3 had also disclosed the name of Ajay Paswan, whereas, Ajay Paswan was resident of an area, which was within the jurisdiction of Kudra in a different district, whereas, the said witness (P.W.3) was resident of Kochas. In paragraph 61 of his cross-examination, the investigating officer has accepted that on 24-03-2011, the informant Kamla Singh had submitted an application in which he had raised suspicion against number of accused persons. The said application was addressed to the Superintendent of Police and subsequently, the same was marked to the investigating officer, however; this witness has accepted that on the said application, the informant had raised suspicion against number of accused persons. This investigating officer had not taken any step either to take step



to collect any material against those persons and only he submitted chargesheet against both the appellants. In paragraph 64 of his cross-examination, he has accepted that from paragraph 84 to 120 of the case diary, which deals with the fact regarding application filed by the informant raising suspicion against others, this witness has accepted that against those persons he had not conducted any investigation. In paragraph 66 of his cross-examination, he further accepts that when he received application of Kamla Singh (informant), which was marked from the office of Superintendent of Police, he never tried to contact Kamla Singh. In this context, he even did not try to take any step to ascertain as to how Kamla Singh (informant) was having suspicion against such accused persons. In paragraph 67, the P.W.14 has accepted that Ajay Paswan (appellant) was arrested by him on G.T.Road from a bus. The investigating officer, though has stated regarding arrest of Ajay Paswan, in subsequent paragraphs, he has categorically accepted that he never conducted any raid in the house of the Ajay Paswan, whereas, it was case of the informant that his son (deceased) was murdered and his tractor and other belongings were also taken



away by the accused persons. In normal course, immediately after arrest of Ajay Paswan, if the investigating officer was having surety regarding his involvement, in that event, it was mandatorily required to conduct a search in his house or other places to ascertain about the looted tractor or other material, but no such step was taken by the investigating officer. Even though, he had arrested Ajay Paswan from G.T.Road, he never took any step to inform the informant or any of the witnesses regarding his arrest nor any specific communication was made reflecting the same in the case diary, however he accepted that the fact regarding arrest of Ajay Paswan was disclosed in the newspaper. It is relevant to indicate herein that the appellant Ajay Paswan was arrested on 01-04-2011, but to the reasons best known to the investigating agency, he was put on T.I.Parade after expiry of more than two months from the date of his arrest. In paragraph 68 of his cross-examination, the investigating officer has accepted that in the case diary, it has not at all mentioned regarding the fact that officer incharge of the Kochas Police Station was even informed either on phone or wireless regarding the arrest of Ajay Paswan (appellant). In paragraph 70 of his cross-



examination, the investigating officer has stated that regarding Test Identification Parade of Ajay, no notice was issued from his police station to any of the witnesses. Once the investigating agency had decided to get the appellant Ajay Paswan identified in the T.I.Parade, it was mandatorily required to give notice to the witnesses. Non-issuance of any notice suggests that T.I.Parade was only a formality. He has accepted in paragraph 71 that regarding identification of Ajay Paswan (appellant), fact of intimation by the investigating officer was not recorded in the case diary. In paragraph – 73 of his cross-examination, he has accepted that the looted tractor was still traceless and in paragraph 75 of his cross-examination, he stated that two months after the arrest of Ajay Paswan (appellant), he was put on Test Identification Parade. In paragraph 78, he stated that after the arrest of Ajay Paswan, he had never conducted search in the house of Ajay Paswan (appellant). In paragraph 79 of his cross-examination, the investigating officer has stated that in the so called confessional statement of Ajay Paswan, he had stated regarding involvement of Birjan Singh, Kanhaiya Singh, Bhim Singh, who had taken away the tractor, however, he



accepted that for their arrest in the said light, he had not taken any step. In paragraph 80 of his cross-examination, he has stated that he has not mentioned in the case diary that in respect of looted tractor he conducted any raid at any place nor any such step was taken in the said direction. In paragraph 82 of his cross-examination, he has categorically accepted that against Ajay Paswan, there was no direct evidence. In paragraph 84 of his cross-examination, the investigating officer (P.W.14) has made categorical statement that from the Kochas to the said place of occurrence, none of the witnesses had said that Ajay Paswan (appellant) was with Sanjay Singh on the tractor. He further denied suggestion in paragraph 35 of his cross-examination that after two months, he had arrested Ajay Paswan, due to animosity of villagers and falsely got him identified in the Test Identification Parade.

22. In view of evidences, which we have discussed elaborately hereinabove, it is evident that prosecution has miserably failed to prove its case showing involvement of either of the appellants. In the present case, save and except evidence of P.Ws. 3, 4 and 5, there was no *iota* of evidence to



show involvement of the appellant Ajay Paswan. However, evidence of P.W. 3, 4 and 5 is also not reliable, due to the simple reason that despite the fact that aforesaid three witnesses in their evidence have categorically stated that they were with the informant and others all along during the search of the son of the informant, just from the morning of 15.10.2010 till finding of the dead body in a field within the jurisdiction of Kudra Police Station, for about two months, nothing was said by either of aforesaid witnesses that they had seen Ajay Paswan with son of the informant and identified them in the Kochas Bazar, while deceased and three unknown persons were having discussion for settlement of the rate of hiring of the tractor of the deceased. The statement of P.W. 4 and 5 to the extent that at that very time, they also heard exact settlement rate of hiring of the tractor and stated that it was fixed for Rs. 1300/- (thirteen hundred) appears to be out-and-out false statement, otherwise had they noticed those circumstances, there was no reason not to disclose such fact immediately to the father of the deceased, who is informant (P.W.8). Even veracity of the Test Identification Parade also appears to be doubtful. P.W.3 in his evidence has



stated that he heard that one of the accused was arrested, thereafter, he visited police station and in police station, he identified Ajay Paswan and thereafter, he has claimed that he identified him in Test Identification Parade also. This fact itself reflects regarding the approach of the investigating agency.

23. So far as involvement of Dinesh Kumar Pal (appellant in Cr.Appeal DB No. 566/12) is concerned, it has been admitted by the investigating officer (P.W.14) that during enquiry and investigation, he had collected material suggesting that the appellant Dinesh Kumar Pal had purchased the so called seized mobile set on consideration amount of Rs. 400/- (four hundred) from one Haider Ali. Once the investigating officer had noticed the fact that looted mobile set had travelled from the hand of Haider Ali to Dinesh Kumar Pal (appellant) on sale, it was mandatorily required for him to immediately examine Haider Ali. In the case, even on screen of the said mobile, name of Haider Ali was also noticed by the investigating officer. It is not a case that Haider Ali was some unknown or non-traceable person, but investigating officer himself has stated that Haider Ali



was in custody in a police case on remand. Once this fact was noticed by the investigating officer, he would have taken step to get his remand in the present case, however; he had not taken such step. Even for the time being, if it is assumed that only on the basis of information that one Haider Ali had sold mobile to such Dinesh Kumar Pal (appellant), it was not sufficient to make him accused, at least, as a witness, he was required to be examined and for examining him, if Haider Ali was inside jail, then with the permission of the court, the investigating officer would have visited jail premises and would have recorded his statement under Section 161 of the Cr.P.C. No such step has been taken by the investigating officer. This act of the investigating officer certainly creates doubt in the mind of the Court that the investigating officer purposely with a view to save Haider Ali had not taken such step.

24. Similarly, the investigating officer appears to be completely irresponsible. In his evidence, P.W.14 (investigating officer) has accepted that during investigation informant Kamla Singh (P.W.8) had filed an application, in which, he had raised doubt against number of accused



persons. The said application was submitted to the Superintendent of Police, which was marked to the investigating officer, however; the investigating officer during his cross-examination has accepted that on such complaint or information or direction of the Superintendent of Police, he has not taken any such step. This reflects indiscipline on the part of the investigating officer.

25. On the aforesaid evidence, which does not suggest involvement of either of the appellants, there is no reason not to interfere with the judgment of their conviction and sentence.

26. Accordingly, the judgment of their conviction and sentence dated 04.06.2012 and 11.06.2012 respectively passed by Sri Rudra Pratap Singh, learned 1st Additional District & Sessions Judge, Bhabua (Kaimur) in Sessions Trial No. 277/33 of 2011 (arising out of Kudra P.S. Case No. 172 of 2010) is, hereby, set aside and both appeals are allowed.

27. Before parting with the judgment, it would be necessary to take note of the observation of the Hon'ble Supreme Court in **(2014) 5 Supreme Court Cases 108 (State of Gujarat vs. Kishanbhai and others)**. In the said



judgment, the Hon'ble Supreme Court, while passing the judgment of acquittal, has observed that after noticing irresponsible act of the investigating officer/prosecutor and others, while passing judgment of acquittal, it is necessary to direct for taking appropriate departmental action against erring officials. It would be appropriate to refer to paragraph 23 of the judgment of Apex Court in **Kishanbhai's case** (*supra*), which is as follows:-

“23. On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the



Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.”

28. Similarly, the Hon’ble Supreme Court in a case reported in **(2012) 8 Supreme Court Cases 263 (Dayal Singh and others vs. State of Uttaranchal)** has observed that in such cases, appropriate action is required to be taken against the investigating officer. Even if it is found that such investigating officer is retired, action should be taken for forfeiting his retiral dues. The Supreme Court, in **Dayal Singh’s case (supra)**, has recorded such observation in paragraph 43 and 47.4, which are quoted hereinbelow:-



“43. Similarly, the Director General of Police U.P./Uttarakhand also be issued notice to take appropriate action in accordance with the service rules against PW6, SI Kartar Singh, irrespective of the fact whether he is in service or has since retired. If retired, then authorities should take action for withdrawal or partial deduction in the pension, and in accordance with law.

47.4. The Directors General of Police U.P./Uttarakhand are hereby directed to initiate, and expeditiously complete, disciplinary proceedings against PW6, SI Kartar Singh, whether he is in service or has since retired, for the acts of omission and commission, deliberate dereliction of duty in not mentioning reasons for non-disclosure of cause of death as explained by the doctor, not sending the viscera to the FSL and for conducting the investigation of this case in a most callous and irresponsible manner. The question of limitation, if any, under the Rules, would not apply as it is by the direction of the Court that such enquiry shall be conducted.”

29. In view of aforesaid observation of the Supreme Court and in view of the fact that this Court has noticed the illegal act of the investigating officer and indiscipline on his



part, while passing judgment of acquittal, it is necessary to direct the Director General of Police, Bihar to take appropriate action against the concerned investigating officer.

30. Accordingly, the Director General of Police, Bihar is directed to take appropriate departmental action against the investigating officer of the present case. The D.G.P., Bihar is further directed to submit action taken report (A.T.R.) within a period of six months from the date of receipt/production of a copy of this judgment. The said report is to be addressed to the Registrar General of the Patna High Court.

31. It is further evident that the investigating officer in the case diary, which has been stated during his evidence, has accepted that investigation against others was still pending. In the present case, this Court has noticed that the so called seized mobile had travelled to the hand of Dinesh Kumar Pal (appellant) on payment of consideration amount of Rs. 400/- without any knowledge of stolen property, certainly the appellant Dinesh Kumar Pal was not required to be held guilty even under Section 411 of the Indian Penal Code. Since evidence has come that seized mobile was initially in the hand of Haider Ali and the informant during investigation had



submitted an application before the Superintendent of Police, which was marked to the investigating officer raising suspicion against some of the accused persons, while allowing the present appeal, it is necessary to direct the concerned Superintendent of Police to conduct further investigation on that issue so that steps may be taken to trace the looted tractor and find the main culprit of the offence.

32. With above observation and direction, both the appeals stand allowed. Since the appellant Ajay Paswan (in Cr. Appeal DB No. 869 of 2012) is in custody and the appellant Dinesh Kumar Pal (in Cr. Appeal DB No. 566 of 2012) is on bail and judgment of their conviction and sentence has already been set aside, it is necessary to direct to forthwith release Ajay Paswan.

33. Accordingly, it is, hereby, directed to release Ajay Paswan forthwith, if not required in any other case. The appellant Dinesh Kumar Pal is, hereby, discharged from the liability of the bail-bond.

34. Let a copy of this judgment be sent to Director General of Police, Bihar and concerned Superintendent of



Police i.e. Superintendent of Police, Bhabhua, Kaimur for its compliance.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	N/A
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