

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1054 of 2012

Arising Out of PS.Case No. -68 Year- 2010 Thana -NANHPUR District- SITAMARHI

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1. Nanhe Nadaf @ Mangala S/O Pachkauri Nadaf Resident of Village Birar Aliman
Tola, P.S. Nanpur, District Sitamarhi. Appellant.

Versus

The State of Bihar. Respondent.

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Appearance :

For the Appellant/s : M/s Ashhar Mustafa, Talib Mustaffa
and Vikash Kumar Jha, Advocates.

For the State : Mr. Ashwini Kumar Sinha, A.P.P.

For the Informant : Mr. Bijay Kumar Sinha, Advocate.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date: 10-04-2018

Heard learned counsel for the appellant, learned
counsel for the informant and learned A.P.P. for the State on
this criminal appeal.

2. This appeal has been preferred against the
judgment and order of conviction dated 24.09.2012 and order
of sentence dated 26.09.2012 passed by Adhoc Additional
Sessions Judge-VI, Sitamarhi in Sessions Trial No. 15 of
2011/03 of 2011, arising out of Nanpur P.S. Case No.68 of
2010, whereby the learned trial court convicted the accused
Nane Nadaf alias Mangala under Section 302/34, 201/34 and
366 (A)/34 of the Indian Penal Code (hereinafter in short
referred to as the 'IPC') and sentenced him to undergo



imprisonment for life and slapped him with a fine of Rs.10,000/- under Section 364-A/34 IPC and in default of payment of payment of fine to further undergo rigorous imprisonment for 1 years and also sentenced him to rigorous imprisonment for life and slapped him with a fine of Rs.10,000/- under Section 302/34 IPC and in default of payment of fine to further undergo rigorous imprisonment for one year and also sentenced him to undergo rigorous imprisonment for three years and slapped him with a fine of Rs.5000/- under Section 201/34 IPC and in default of payment of fine to undergo simple imprisonment for two months. All the sentences were directed to run concurrently.

3. The factual matrix of the case is that Nanpur P.S. Case No.68 of 2010 was initially instituted under Section 364-A/34 IPC and subsequently added with Section 302 and 201 IPC against unknown miscreants on the basis of fardbeyan of Anwari Begum, wife of Md. Sabir recorded by S.I. Anant Ram, S.H.O. Nanpur on 28.04.2010 at 10 AM at the door of Anwari Begum with the allegation in succinct that on 27.04.2010 at 12'o clock her son Md. Asif alias Arsu aged about 9 years stepped out of the house but when he did not regress to the house till 3 PM she started making search for



him. Her villagers also made search in the adjoining villages but in vain. At 8 PM on the mobile phone of Md. Zafirul, bearing No.9430614841 some unknown person demanded ransom money of Rs.3 lacs at Dalkola Nepal extending threatening of dire consequences to the victim in case of not obliging him by mobile phone bearing No.08109335047. On venting inability of the informant to cough up his demand by the receiver of the phone Md. Israil, the caller started slating him and switched off the phone. Further on the following morning at 8 AM the same person demanded ransom money of Rs.2 lacs at Pupri Tower Chowk in lieu of release of the boy on the same mobile and by the said mobile on talk with Mahendra Thakur and Arun Choudhary who had picked up the phone. Her villagers gave information of the occurrence to her husband at Bombay and to the police.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused namely, Md. Sadab, Md. Atahar and Md. Nanhe Nadaf under Section 302/201/364-A/34 IPC. Later on, the case of the two accused persons, namely, Md. Atahar alias Atahar Pravej and Md. Sadab was separated and sent to the Juvenile Justice Board, Sitamarhi for



determination of their age.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid accused and committed the case to the court of sessions and after commitment and on transfer finally the case came *in seisin* of the Adhoc Additional Sessions Judge-VI, Sitamarhi for trial.

6. Charge under Section 302/34, 201/34 and 366 (A)/34 IPC was framed against the accused Md. Nanhe Nadaf. Charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether 15 prosecution witnesses namely, Mahendra Thakur as PW-1, Pappu Ram as PW-2, Md. Zahid as PW-3, Upendra Sahni as PW-4, Md. Asfaque as PW-5, Zabir Hussain as PW-6, Md. Sabir as PW-7, Informant Anwari Begum as PW-8, Md. Sabir Hussain as PW-9, Md. Yunus as PW-10, Babban Jha as PW-11, Md. Wasim Danish as PW-12, I.O. Anant Ram as PW-13, Dr. Fanindra Nath Verma, who conducted autopsy of the cadaver of the deceased as PW-14 and Rakes Kumar Singh as PW-15.



The prosecution has also filed and proved some documents by way of documentary evidence.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming himself to be innocent. The accused person has examined one witness, namely, Pachkauri Nadaf as DW1 in buttress of his case.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the



appellant that this is a case of circumstantial evidence and chain of circumstances is not complete and tightly linked to substantiate the guilt of the appellant in the occurrence. No one had seen any accused taking away the deceased. There is no evidence that appellant or at his instance other person had made demand of ransom. It is further submitted that bloodstained knife, handkerchief and the jeans pant were not examined by expert to prove that it bore human blood and of the group of the deceased and finger print on the knife was also not taken and examined by the expert. No incriminating article has been recovered from the possession of the appellant to connect him with the commission of the offence. It is further submitted that the mobile phones and SIM cards recovered from the appellant's house have not been used for demand of ransom and there is no evidence to the aforesaid facts. Thus, the prosecution has utterly and miserably failed to substantiate the case and the guilt of the appellant beyond all reasonable doubt by adducing consistent, cogent and reliable evidence. Hence, the appellant is entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that the informant



has fully supported the prosecution case and other material witnesses examined by the prosecution, have also corroborated the same. Ocular evidence also stand corroborated by the medical evidence and correctly appreciating the facts and material available on record, the learned trial court has rightly passed the impugned judgment and order of conviction and sentence, which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of the record, it appears that it is a case of circumstantial evidence. In the case of holding the accused guilty on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn must be cogent and firm. Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none-else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with



the guilt of the accused but should be inconsistent with his innocence.

15. Hon'ble Apex Court in **Shard Birdhichand Sarda Vs. State of Maharashtra** reported in **1984 (4) SCC 116** has postulated the cardinal principle regarding the appreciation of circumstantial evidence by holding that whenever the case is based on circumstantial evidence, the following features are required to be complied with and proved by cogent evidence: (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 from 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. Hon'ble Apex Court in **Kanhaiya Lal Vs. State of Rajasthan** reported in **(2014) 4 Supreme Court Cases 715** has been



pleased to rule that the circumstances of last seen together does not by itself necessarily lead to inference that it was accused who committed crime. There must be something more establishing connection between accused and the crime, that points to guilt of accused and none else. Mere non-explanation of being last seen together with deceased person on part of accused, by itself cannot lead to proof of guilt against him. It is further held that where a case rests squarely on circumstantial evidence, reiterated, inference of guilt can be justified only when all incriminating facts and circumstances are found to be incompatible with innocence of accused or guilt of any other person. Circumstances from which an inference as to guilt of accused is drawn have to be proved beyond reasonable doubt.

16. Regarding the circumstances to prove the guilt of the appellant in the occurrence it is the case of the prosecution that after missing of the son of the informant on 27.04.2010 at 12'o clock a ransom call was made on the mobile phone of Md. Zafirul bearing mobile no.9430614841 by some unknown miscreants by his mobile no.08109335047 in the night of date of occurrence at 8 PM, which was received by Md. Israil and again on the following morning at about 8 PM ransom call was made by the same person on the said mobile



number by some mobile phone and at that time Mahendra Thakur and Arun Choudhary interacted with the miscreants. On 29.04.2010 at about 12'o clock throat slitted dead body of the victim, namely, Md. Arif alias Arshu was found dumped under the R.C.C. bridge near Bhalini Chaur near Math and during the course of investigation appellant was apprehended and on the basis of his confessional statement the bloodstained knife from the aforesaid place and bloodstained handkerchief of the appellant dumped by him at about 100-120 yards from the aforesaid place were recovered and bloodstained full pant of co-accused Md. Sadab from his house and bloodstained earth from the place of occurrence were also recovered. Besides the above, two mobile phones along with two SIM cards and pocket diary containing telephone number and name of the appellant apart from above were also recovered from the house of the appellant. Print out of the call details of the mobile phone of Md. Zafirul on which the miscreants had made ransom calls was procured which contains the call details, 12 in number made at the relevant point of time by the miscreants by mobile no.08109335047 on the aforesaid mobile and PW-4 Upendra Sahni had divulged the factum of witnessing the appellant and other accused persons interacting with the victim near the



graveyard on way to Bela village on the date of his missing while other witnesses have corroborated the factum of kidnapping of the victim and making ransom call on the mobile on the aforesaid date and time.

17. From perusal of the testimony of PW-4 Upendra Sahni it appears that though in his examination-in-chief he has stated that 15 months back while he was working near his house he witnessed appellant interacting with, Chhote, Athar and Saddam near the door of Pachkauri Nadaf and on the same day while he was proceeding to the village Bela to deliver 'Pidihia' to Hasnan, he witnessed the appellant and the said accused Chhote, Athar and Sadam interacting with Hasnan (victim) on the way ahead of the graveyard and on the next day he learnt about the demand of ransom money of Rs. 3 lakhs in lieu of release of victim and on the third day the body of Md. Asif @ Arsu was dumped under the bridge located south of village Bhalini after committing his murder. But attention of the said witness has been drawn by the defence in Para 4 of his cross-examination regarding contradiction between the statement given before the Court and that given before the I.O. under Section 161 Cr.P.C. regarding witnessing of accused persons interacting with victim on the date of missing of victim.



I.O. has also corroborated the aforesaid contradiction. Thus, in view of the aforesaid contradiction between his statement given before the Court and that before the (I.O.) under Section 161 Cr.P.C., the said witness appears to have taken altogether different stand before the Court regarding the aforesaid aspect of the case and the said witness does not appear to be reliable and worth credence. Barring the said witness no other witness has stated about witnessing the appellant with the victim on the date of occurrence or later thereto.

18. PW-5 Md. Asfaque has stated in his examination-in-chief that appellant Md. Nadaf had arrived at his motorcycle repairing shop to purchase old motorcycle in Rs.3000/-. On his refusal to have a motorcycle in the said cost, he divulged him that he would kidnap a child and thereafter he would return the motorcycle and would also not charge for the same and thereafter he would purchase a new motorcycle in Rs. 30 to 35 thousand. He has further stated that 1½ months later he learnt about kidnapping of the son of Sabir resident of village Aliman Tola. He has further stated that on learning the same he rushed to the P.S. Nanpur and divulged the aforesaid fact to the S.H.O. Nanpur. But in Para 4 of his cross-examination he has stated that he does not do the business of vending motorcycle.



In Para 7 of his cross-examination he has further stated that he had no dispute with Nanhe Nadaf earlier over repairing of the motorcycle as he had no motorcycle. The aforesaid statement of PW-5 indicates that the Nanhe Nadaf has no motorcycle and said witness does not do the business of vending motorcycle so Nanhe Nadaf had no earlier contact and intimacy with the said witness in course of repairing of the motorcycle then why the appellant would approach the said witness for purchasing of the motorcycle from him. Then million dollar question arises as to why the appellant would divulge his planning of commission of the kidnapping of the boy by the vehicle to a stranger to whom he has no contact and intimacy in advance at the risk of frustration of his planning and his apprehension before the same. Thus, the aforesaid statement of PW-5 appears to be against the natural course of conduct and not convincing and plausible to us. Moreover, the said witness has stated in Para 4 of his cross-examination that he had not given information to the police at the time of interaction with him by Nanhe Nadaf of purchasing the motorcycle from him for kidnapping rather had given the information regarding the aforesaid information to the police after kidnapping of the victim. The aforesaid aspect of the case also creates serious doubt about the reliability and



credential of the said witness as to why he has not given information at the earliest regarding the commission of occurrence by the appellant in order to check the commission of crime rather waited for commission of the said crime and he does not appears to be good netizen. In view of the aforesaid evidence of P.W.5, he does not appears to be reliable and worth credence witness and his testimony does not inspire our confidence to hold conviction of the appellant relying upon the same.

19. From perusal of the testimony of PW-1 Mahendra Thakur, PW-2 Pappu Ram and PW-3 Md. Zahid, it appears that the said witnesses have stated about kidnapping of the victim by some unknown miscreants and receiving of the ransom call on the mobile phone of Md. Zafirul by some unknown miscreants by mobile no.08109335047 in the evening of occurrence and on the following morning in lieu of release of the victim. But the said witnesses have not taken the name of the appellant in the occurrence either as a kidnapper or the person making the ransom call on mobile phone. They have not even identified the voice of the appellant on the mobile phone though the said witnesses and appellant happens to be co-villagers. Moreover, attention of PW-1 has been drawn in para-



6 of his cross-examination regarding contradiction between his statement given before the Court and that given before the I.O. under Section 161 Cr.P.C. regarding the aforesaid aspect of the case which has been corroborated by the I.O. Hence, in view of the aforesaid contradiction between the statement given before the Court and that before the I.O. regarding aforesaid aspect of the case he does not appears to be worth credence and reliable witness. The said witness (PW-1) has stated in para-5 of his cross-examination that he had visited the police station Nanpur at 10 AM and given information regarding receiving of information by them on mobile and the I.O. after getting the information written by him got his signature on the same but the I.O. in para-23 of his cross-examination has denied the same. Thus, in view of the aforesaid aspect of the case, PW-1 appears to be a dam liar.

20. PW-2 Pappu Ram has stated in para-8 & 10 of his cross-examination that he had not seen the occurrence and kidnapping of any boy. He has not given statement before the police thus he appears to have given statement for the first time before the Court. PW-3 Md. Zahid has stated in para-1 of his examination-in-chief that at about 9:30 PM, while he was sitting at the door of Md. Sabir along with Md. Israil and other



villagers there was call on the pone of Md. Zafir Nadaf then of Zafir, namely Sadam rushed to the door of Md. Sabir with mobile phone and divulged that there is a call of some unknown person on his mobile about kidnapping the son of Sabir, namely, Md. Arif alias Arshu and demand of ransom of Rs.3 lakhs under threat to victim, but there is no such case of the prosecution about rushing of the son of Md. Zafir, namely, Sadab with the mobile and divulgence at the door of Sabir of kidnapping of victim by some unknown person and demand of ransom by them from him. As it is the case of the prosecution that after kidnapping of the boy in the evening of the occurrence there was a ransom call on the mobile of Md. Zafirul which was received by Md. Israil and on the following morning there was again ransom call on the mobile of Zafirul which was received by Mahendra Thakur and Arun Choudhary. The said witness has stated in para-4 of his examination in chief that he had given information of the occurrence at the police station on the instruction of Ansari Begum but in quite contradiction to the aforesaid statement in para-9 of his cross examination he has stated that he had not given any information or learning of the occurrence either to the police or the Magistrate. In view of the aforesaid contradiction, the evidence



of the said witness also does not appears to be worth credence and reliable.

21. PW-6 Zabir Hussian in para-2 of his examination-in-chief has stated that following morning of the occurrence wife of Sabir (informant) divulged him that Nanhe had approached to her in the last night and given assurance to her to search out her son but there is no such case of the prosecution about giving assurance by the appellant to the informant approaching her on the night of the occurrence about searching of the victim by him. Moreover, the informant has also not corroborated the factum of divulgence of the aforesaid aspect of the case by her to the said witness. Hence, for want of corroboration the aforesaid statement of the PW-6 is also not admissible in evidence.

22. PW-7 Md. Sabir happens to be father of the victim. At the time of occurrence he was not present at the place of occurrence rather at Bombay and arrived at his house later on, on giving information to him by the informant on telephone. He has stated in para-3 of his examination-in-chief that during the course of search the two mobiles and telephone diary were recovered from the house of Nanhe Nadaf and Mumtaz. The name and telephone number of Nanhe Nadaf was



written in the diary. Zahid divulged him that Nanhe Nadaf and Mumtaz had confessed their guilt in commission of the kidnapping of Arshu for ransom along with Sadab and Athar and commission of his murder for not getting the ransom amount and on the disclosure of Nanhe and Mumtaz the police had recovered the bloodstained knife from the maize field located one kilometer south east to the village Bhalini and bloodstained jeans paint and bloodstained handkerchief from the house of Sadab but the said Md. Zahid examined in this case as PW-3 has not corroborated the divulgence of the aforesaid aspect of the case to PW-7. Thus, for want of corroboration the aforesaid statement of Md. Sabir is not admissible in evidence. In para-4 of his cross-examination said witness has stated that no occurrence has taken place before him. No one had demanded ransom money either from him or before him.

23. PW-8 Ansari Begum (informant) has stated in para-3 of her examination-in-chief that she learnt that son of Packauri Nadaf, Nanhe and Mumtaz had kidnapped Arshu enticing him along with Athar and Sadab and demanded ransom money and on not getting the same committed the murder of Arshu by slitting his neck but she has not disclosed name and



identity of source of information. In para-6 of her cross examination she has stated that the Arshu had divulged her about proceeding with Nanhe and Mumtaz though he had not divulged about place of his visiting, but there is no such case of the prosecution as adumbrated in the fardbeyan. More so in the said para she has stated that she had not disclosed the name of any accused at the time of lodging the case. Had the Arshu divulged her about proceeding with the appellant and Mumtaz at the time of occurrence and she learnt the occurrence of kidnapping of her son by the accused persons, demanding ransom by them and committing his murder for not getting the ransom money, the informant would have certainly mentioned the same in her fardbeyan. Hence, the aforesaid evidence of the informant appears to be after thought and not worth credence and reliable.

24. PW-9 Md. Sabir Hussain happens to be seizure list witness of the bloodstained full pant seized from the house of Sadab. PW-10 Md. Yunus happens to be seizure list witness of the seizure of bloodstained earth from the place of occurrence and seizure of mobile phone and diary from the house of Nadaf. PW-11 Babban Jha happens to be seizure list witness of the seizure of bloodstained knife from the maize



field of Upendra Jha. But PW-9 Md. Sabir Hussain has stated in para-3 of his cross-examination that he had seen the full pant in the hand of S.I. and in para-2 of his cross-examination he has stated that that he had put his L.T.I. on some written document at the instruction of S.I. which indicates that the aforesaid seizure was not made before him. PW-11 Babban Jha has stated that in para-3 of his cross-examination that he had seen the handkerchief and knife in the hand of S.I. at first. The aforesaid statement of PW-11 also rules out the seizure of the bloodstained handkerchief and bloodstained knife before him. As per the case of the prosecution, the aforesaid articles were recovered on the disclosure of appellant-Nanhe Nadaf from the aforesaid place and Nanhe Nadaf was also present there at the time of recovery but the said witnesses have not stated about the recovery of the aforesaid articles in presence of appellant. Other seizure list witness of the seizure of bloodstained knife and handkerchief, namely, Vijay Jha has not been examined by the prosecution. While seizure list witness of the seizure of mobile phone, SIM cards and diary from the house of appellant. Md. Zahid (P.W.3) has stated about seizure of aforesaid articles before him but in para-11 of his cross-examination he has stated that I.O. divulged him about recovery of the aforesaid articles



from the house of the appellant. The aforesaid statement of said witness goes to indicate that the aforesaid mobile phone, diary and SIM card were not recovered from the house of the appellant Nanhe Nadaf in presence of the said witness, rather he appears to have given statement regarding the aforesaid recovery from the house of the appellant on the basis of revelation made by the I.O. Thus, from the evidence of the aforesaid witnesses, it appears that the said witnesses have not established the seizure of the mobile phone, SIM card and diary from the house of the appellant and recovery and seizure of the bloodstained knife and bloodstained handkerchief.

25. Though as per the evidence of PW-10 Md. Yunus I.O. had recovered mobile, and a diary from the house of the appellant before him but from perusal of the statement of I.O. given in para-28 of his cross-examination, it appears that he had not made investigation regarding handwriting of the diary seized from the house of Nanha Nadaf and had also not procured the print out of both the SIM cards seized from the house of Nanhe Nadaf and he had also not investigated as to whether ransom was made by the aforesaid SIM card or not. Aforesaid statement of the I.O. indicates that the writing of the diary has not been got examined by the I.O. by any handwriting



expert to establish that the aforesaid diary has been written by the appellant and print out of the aforesaid SIM card was also not procured to establish that the ransom call was made by using the aforesaid SIM card seized from the house of the appellant.

26. The most important aspect of the case is that from perusal of the diary marked as Ext.M/8, it appears that on the said diary along with other numbers and name of persons holding the mobile number, the name of only Nanhe with the mobile no.08109335047 has only been written. The full name of the appellant Nanhe Nadaf has not been written in the diary. Which in our considered opinion, is not sufficient to connect the appellant with the aforesaid mobile number and also as the said diary is said to have been recovered from the house of the appellant then why the appellant would write his name and mobile number along with name and with mobile numbers of other persons instead of writing his name and mobile number separately either in the front page of the diary or the top of it and not along with other persons. The aforesaid aspects of the case indicate that the said diary is not hailing to the appellant and prosecution has utterly and miserably failed to substantiate the said diary and the said mobile number to be of the appellant.



27. Though from perusal of the print out of the mobile number of Md. Zafirul marked as Ext.16 it appears that on the said mobile number 12 calls were made from mobile no. 08109335047 by some person in the evening of the occurrence and on the following day of the occurrence but the prosecution has failed to establish that the aforesaid call was made by the appellant-Nanhe Nadaf as discussed by us earlier. The prosecution has utterly and miserably failed to substantiate that the aforesaid mobile number by which the ransom was made is hailing to the appellant. Moreover, from perusal of the print out and evidence of PW-15 Rakesh Kumar Singh, who was computer operator in the office of Superintendent of Police, Sitamarhi and who has taken out the print out of the aforesaid mobile at the instructions of the Superintendent of Police, Sitamarhi, it appears that the said print out neither bear the signature of PW-15 or S.P., Sitamarhi nor any certificate as per Section 65 B of the Indian Evidence Act. Thus, the aforesaid print out of the mobile no.9430614841 on which the ransom call was received is not admissible in evidence.

28. Though the bloodstained knife and bloodstained handkerchief of the appellant were recovered in the vicinity of the place of recovery of dead body and



bloodstained full pant of accused Md. Sadam was also recovered at the instance of appellant but from perusal of the evidence of the I.O. as given by him in para-21 and 31 of his cross-examination it appears that the bloodstained soil, knife and pant had not been sent by him to forensic science laboratory for its chemical examination despite direction of the supervising authority, namely, Dy. S.P. He had also not procured the finger print on the knife. In para-22 of his cross-examination, he has further stated that he had not got examined the blood group of blood seized from the place of the recovery of dead body. Thus from the evidence of I.O. it appears that the prosecution has failed to establish the complicity of the appellant in the occurrence as the finger print of the appellant on the knife was not established and it is also not established that the blood collected from the place of recovery of the dead body and that from the bloodstained knife, handkerchief and full pant of Md. Sadab was of the deceased by getting the same examined by the fingerprint expert and F.S.L.

29. In view of the facts and circumstances of the case and discussions made by us, we find and hold that the circumstances such witnessing of appellant with the deceased preceding to occurrence, name of appellant in the diary seized,



hailing of diary to appellant, finger print of appellant on the seized knife, blood of deceased on the seized knife, handkerchief and full pant of Saddam, hailing of mobile number by which the ransom call was made to the appellant have not been established by the prosecution to give the hypothesis of guilt of appellant and non-else in the occurrence. Thus, we find and hold that the prosecution has utterly and miserably failed to substantiate the aforesaid case of prosecution and to bring home the charge levelled against appellant by adducing consistent, reliable, trustworthy and cogent ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence is set aside and the appellant is acquitted giving him benefit of doubt. As the appellant is in custody, he is directed to be released forthwith, if not wanted in any other case. Accordingly, this appeal is allowed.

(Dr. Ravi Ranjan, J.)

(Prakash Chandra Jaiswal, J.)

Trivedi/-

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