

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.609 of 2016

Arising Out of PS. Case No.-130 Year-2011 Thana- RUPASPUR District- Patna

(Against the judgment of conviction dated 5.5.2016 and order of sentence dated 12.5.2016 passed by learned Krishna Pratap Singh, Addl. District Sessions Judge-III, Patna in Sessions Trial Case No. 1413 of 2011 (arising out of Rupaspur P.S. Case No. 130 of 2011)).

Sanoj Kumar @ Sanoj Yadav Son of Devendra Yadav, Resident of Village - Potahi, P.S. - Punpun, District - Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 553 of 2016

Arising Out of PS. Case No.-130 Year-2011 Thana- RUPASPUR District- Patna

(Against the judgment of conviction dated 5.5.2016 and order of sentence dated 12.5.2016 passed by learned Krishna Pratap Singh, Addl. District Sessions Judge-III, Patna in Sessions Trial Case No. 269 of 2012 (arising out of Rupaspur P.S. Case No. 130 of 2011)).

Lallan Singh S/o Nagendra Singh, resident of Village- Bakarpur, P.S.-Punpun, District-Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 574 of 2016

Arising Out of PS. Case No.-130 Year-2011 Thana- RUPASPUR District- Patna

Sintu Kumar S/o Late Ram Ashish Singh Resident of village - Deokuli, P.S. Pipra, District - Patna

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 613 of 2016



Arising Out of PS. Case No.-130 Year-2011 Thana- RUPASPUR District- Patna

Ravi Kumar @ Ravi Ranjan Son of Birendra Singh, Resident of Semra, P.S. -
Koilarwar, District - Bhojpur (Ara).

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 609 of 2016)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Advocate
Mrs. Meena Singh
Mr. Dharendra Nath Jha
For the Respondent/s : Mr. Ajay Mishra, APP
For the Informant : Mr. S.D. Yadav
Mr. Prashant Kumar

(In Criminal Appeal (DB) No. 553 of 2016)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate
Mr. Sanjay Kumar Sinha,
Mr. Pratik Mishra
Mr. Pankaj Kumar
Mr. Nawal Kishore Prasad
For the Respondent/s : Mr. Ajay Mishra, APP
For the Informant : Mr. S.D. Yadav
Mr. Prashant Kumar

(In Criminal Appeal (DB) No. 574 of 2016)

For the Appellant/s : Mr. Subodh Kumar Jha
For the Respondent/s : Mr. Ajay Mishra, APP
For the Informant : Mr. S.D. Yadav
Mr. Prashant Kumar

(In Criminal Appeal (DB) No. 613 of 2016)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate
Mr. Sanjay Kumar Sinha,
Mr. Pratik Mishra
Mr. Rakesh Kumar
For the Respondent/s : Mr. Satya Narayan Prasad, APP
For the Informant : Mr. S.D. Yadav
Mr. Prashant Kumar

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date : 18 -01-2018

A-1 (Sintu Kumar), A-2 (Sanoj Kumar @ Sanoj Yadav) and A-

3 (Ravi Kumar @ Ravi Ranjan) were tried and convicted in S.T. No.



1413/2011 arising out of Rupaspur P.S. Case No. 130/2011 vide judgment of conviction dated 05.05.2016 passed by learned Additional Sessions Judge-III, Patna. They were held guilty under Section 364A, 302/120B/34 and 201 of I.P.C. and by order of sentence dated 12.05.2016 were directed to suffer imprisonment for life and to remain in prison for the rest of their life under section 364A and 302/120B/34 of the I.P.C. Additionally, they were sentenced to suffer R.I. for 07 years with fine having default clause under Section 201 IPC. A-4 (Lallan Singh) was tried separately in S.T. No. 269/2012 and by a separate judgment and order of conviction passed on the same day by the same learned Trial Court, he was also held guilty under Section 364A/120B of the IPC and Section 201 of the IPC and sentenced to suffer imprisonment for life in prison for rest of his life under Sections 364A/120B of the IPC and R.I. for 07 years with fine having default clause under Section 201 IPC. The appellants have filed the present appeals challenging their conviction.

2. Aditya Kumar was the only son of his parents. He was then residing in Mohalla Tilak Nagar within Rupaspur Police Station in the township of Patna. His father (P.W.1) was then posted as the District Agriculture Officer, Bettiah. On 24.08.2011, Aditya left the house in the evening to attend the coaching classes. He did not return



thereafter. His mother (P.W.11) grew suspicious and started searching. His Father (P.W.1) and other acquaintance of the family were informed. Late in the night, the father of the victim (P.W.1) arrived in Patna. Immediately in the wee hours of 25.08.2011, the written report (Ext.1) was made over to the Police alleging about the factum of kidnapping of his son for ransom. This was so because at about 9.12 p.m. on 24.08.2011, P.W. 11 being the mother of the deceased had received a call on her mobile number from the mobile of the victim/deceased bearing No. 9835206840 informing her about the kidnapping of her son for ransom. At the outset, the sequence of events that unfolded thereafter shall be summarised hereunder.

3. On 25.08.2011 at 1.30 a.m., P.W. 1 lodged the written report whereon a formal F.I.R. was drawn. At 2.27 a.m., a call from another mobile No. 8651446457 on the mobile phone of P.W. 11 was made when the victim was allowed to speak to the parents whereafter the kidnappers took over the phone and demanded Rs. 75 lakhs for his safe return. At 2.30 a.m., P.W. 13, the Station House Officer of Rupaspur arrived at the house of the informant when he was disclosed about the receipt of the second call from the kidnappers. P.W. 13 immediately requested P.W. 14 (Sanjay Kumar Verma, S.H.O. of Special Investigation Unit, Patna) to trace the location and IMEI



number of the mobile used by the victim for making second call. It was detected that another SIM was used in the mobile of the victim for making the call bearing No. 8235567727. Said SIM was found officially registered in the name of one Deepak Kumar. After contacting Deepak Kumar, the Investigating Officer found the said SIM obtained on forged papers. With the help of the SHO of Special Investigation Unit, the I.O. of the present case (P.W. 13) found on electronic surveillance of the said SIM, there were calls made on Mobile No. 9334993973 on previous days. On the electronic surveillance of the said mobile made with the help of Special Investigation Unit, the I.O. found the said phone belonged to Vikas Kumar (P.W.9). P.W. 9 was then working in a Nursing Home at Kankarbagh. The Police immediately went to interrogate Vikas Kumar (P.W.9) who disclosed that co-accused Avinash Kumar (his cousin) was the holder of the said mobile number. On 25.08.2011 itself, the I.O. raided the house of co-accused Avinash Kumar. He was not present at his home. His mother, however, disclosed that Avinash Kumar had gone to the house of Sintu Kumar (A-1) in village Deokulia under Pipra Police Station. P.W.13, acting in a swift manner, proceeded to village Deokulia with a police team and arrested A-1, A-2, co-accused Avinash Kumar @ Rifal and co-accused Saurav



Kumar from the house of A-1. It may be stated here that co-accused Avinash Kumar and Saurav Kumar, whose complicity in the crime had manifested, were later declared juvenile in conflict with law and are facing the inquiry before the Juvenile Board. The I.O., in presence of two of the Constables constituting the raiding team namely P.W. 5 Vijay Singh and P.W. 6 Yatindra Kumar searched and seized Nokia mobile No. 8235567727 from co-accused Avinash Kumar, Samsung mobile without SIM from possession of co-accused Saurav Kumar. Mobile phone having SIM No. 8282534040 was seized from possession of A-1. However, nothing was recovered from possession of A-2 (Sanoj Kumar). Immediately thereafter, the I.O. (P.W. 13) recorded the confessional statements of the four arrested accuseds. The confessional statement made by co-accused Avinash Kumar on 26.08.2011 at 00.30 hours is Ext.7 in S.T. No. 1413/2011. Similarly, confessional statements of co-accused Saurav Kumar recorded at 1.50 a.m., A-1 (Sintu Kumar) and A-2 (Sanoj Kumar) at about 4.10 a.m. on 26.8.2011 have been placed on record as Ext. 7/a, 7/b and 7/c respectively. The I.O. had also drawn seizure memoies in respect of those recoveries. All the four accuseds, in their respective disclosure statements admitted about the hatching of the conspiracy for kidnapping the victim and thereafter strangulating him to death



and discarding the dead body into a well located at a secluded place one kilometer away from the house of A-1. Co-accused Saurav Kumar in his disclosure statement (Ext. 7/a) also disclosed about presence of one sandal belonging to the victim in the room of A-1. The I.O., on search, found one piece of sandal of the make of Pro Company from the room of the A-1. A seizure memo (Ext.4/c) was drawn and the sandal was seized in presence of P.Ws. 5 and 6, a copy whereof was made over under endorsement (Ext. 6/c) to A-1. Similarly, seizure memo was also drawn in respect of the recoveries of the mobile phones from the three accuseds present in the house of A-1. P.Ws. 5 and 6 stood as witness to those preparation of the seizure memo copies whereof were given to the accused persons from whom such recoveries were made under endorsement. Signatures of the accuseds from whom recoveries of the mobile phone were made have been proved by the Investigating Officer. After having completed the formalities at the house of A-1, the Police in the early morning around 7 a.m. of 26.08.2011 went to the well situated at a lonely place almost half covered by the lemon tree along with A-1, A-2 and two other accuseds arrested at the house of Sintu Kumar (A-1). The sandal seized from the house of A-1 was also carried. The dead body of the victim was found dumped into the



well. P.W. 13 immediately informed the father (P.W.1) to reach the said place. P.W. 1, on reaching the said place, identified the dead body of his son and also one piece of sandal belonging to his son. Inquest over the dead body was carried out at the said spot and the inquest report (Ext.8) was drawn by P.W. 13 himself in presence of P.Ws. 7 and 8. After having completed the formality at the spot and after having dispatched the dead body for post-mortem examination, the I.O., while returning to Patna, received a call from one informer/spy about the presence of A-3 (Ravi Kumar @ Ravi Ranjan) on the Ambedkar Path in the township of Patna. Immediately, the I.O. drove to Ambedkar Path, Bailey Road and after a chase effected arrest of A-3 at about 11 a.m. On interrogation, he disclosed his identify as Ravi Kumar. His person was immediately searched in presence of two Police Constables (P.Ws. 2 and 10) and a mobile bearing SIM No. 7488404416 was recovered from him which was seized under a panchnama duly witnessed by P.Ws. 2 and 10 copy whereof was handed over to A-3 under his endorsement. Signatures of the witnesses and that of A-3 on the seizure memo have been proved at the trial. On further tracking, the I.O. found the aforesaid mobile number officially registered in the name of one Rahul Kumar. On the basis of Call Detail Report (CDR) (Ext.9)



furnished by the Service Provider, it was revealed that from Mobile No. 8651446457 having IMEI No. 354318045054530, call was made on the mobile of P.W.11 between 2.27 a.m. to 2.30 a.m. on 25.08.2011. It further disclosed that between 01.06.2011 to 25.08.2011, the SIM was used in two mobile numbers having distinct IMEI numbers. The SIM No. 8235567727 having IMEI No. 358013030152750 recovered from the possession of Avinash @ Rifal (Ext. 12) further discloses that on 21.08.2011, calls were made from Mobile No. 9334993973 to 8235567727. The mobile No. 9334993973 belonged to one Vikas Kumar. Later, A-4 (Lallan Singh) was arrested. Prior thereto his house was searched and the motorcycle used by A-3 was recovered.

4. On conclusion of investigation, the charge-sheet was filed by P.W. 13 which led to S.T. No. 1413 of 2011 on the file of the learned Trial Court. It further appears that a second charge-sheet was filed on 31.10.2011 against A-4 (Lallan Singh) which gave rise to S.T. No. 269/2012 on the file of the same Trial Judge. Both the trial, it appears, were conducted analogously.

5. In order to bring home the charge, the prosecution examined 18 P.Ws. in S.T. No. 1413/2011. In S.T. No. 269/2012, P.W.17 being the Officer-in-charge of Punpun Police Station was examined as P.W.17



additionally. The prosecution produced on record the confessional statement made by A-4 (Ext. 8/e) and the seizure memo in respect of the motorcycle recovered from the house of A-4.

6. A summary of the witnesses examined by the prosecution in S.T. No. 1413/2011 from which submissions have been advanced by both parties is as under:

P.W. 1 Shailesh Kumar is the father of the victim/deceased and the informant. P.W. 2 Kundan Kumar Rai and P.W. 10 Anil Kumar are the members of the raiding team led by P.W. 13 which arrested A-3 at the Ambedkar Path in the township of Patna on 26.08.2011. They are also witnesses to the seizure memo drawn at the spot of the mobile phone recovered from possession of A-3. P.W. 3 Akansha Sharma is the sister of the deceased. P.W. 4 Narendra Singh is a formal witness who had brought seized mobile phones (Material Exts. II to II/d) and the recovered slipper (Material Ext.I) to the Court. P.W. 5 Vijay Singh and P.W. 6 Yatindra Kumar are the two Constables posted at Rupaspur Police Station constituting the raiding team headed by the SHO (P.W.13) when the house of A-1 was searched and four accused persons including A-1 and A-2 were apprehended. They are also witness to the seizure of mobile phones from three of the apprehended accused persons. Signature of P.W. 5 on the seizure



list have been proved and marked Exts. 4 to 4/c. P.W. 7 Mukesh Kumar and P.W. 8 Shailendra Thakur are the witnesses to the inquest report (Ext.8) of the deceased drawn in the morning of 26.08.2011 at the well from where the dead body of the victim was recovered. P.W. 9 Vikash Kumar is cousin of co-accused Avinash Kumar @ Rifal (since declared juvenile). P.W. 11 Pramila Devi is the mother of the deceased who first received a call from the mobile of her son at 9.12 p.m. on 24.08.2011 when the kidnappers disclosed to her about the abduction/kidnapping of Aditya (her son). She had received another call from a different mobile number at about 2.27 a.m. on 25.08.2011 when the accused had specifically demanded ransom for safe release of the victim and also permitted the victim to speak to her. P.W. 12 is the doctor who was then posted as the Assistant Professor in the Department of Forensic Science, P.M.C.H., Patna and had conducted the autopsy on the cadaver on 26.08.2011 at 11.30 a.m. and drew up the post mortem report (Ext.5). P.W. 13 Sunil Kumar Mandal is the SHO of Rupaspur Police Station who had received the written report (Ext.1), drawn up formal F.I.R. and himself investigated the case and laid the charge-sheet. P.W. 14 Sanjay Kumar Verma is the Station House Officer of Special Investigation Unit, Patna who co-operated in the investigation and



provided the required details with regard to electronic evidence as sought by P.W. 13. P.Ws. 15 Vivek Ranjan, P.W. 16 Prakash Kumar Singh, P.W. 17 Saiyad Anjum Moim and P.W. 18 Ashutosh Dwivedi are the Nodal Officers of Idea, Reliance Telecommunications, Tata Telecommunication and M.T.S. respectively, the four telecom service provider companies to prove the electronics records/details. P.W. 15 took the dock to prove the CDR (Ext.9), P.W. 16 proved the CDR (Ext.10) and CAF (Ext.11), P.W. 17 proved the CDR (Ext.12) whereas P.W. 18 proved the CDR (Ext. 13) without objection. The learned Trial Court, on appraisal of the evidence (both oral and documentary) found the case projected by the prosecution proved as the circumstances established during trial were only consistent with the hypothesis of the guilt of the accuseds. Having held so, A-1 to A-3 were convicted. By separate judgment passed on the same day in S.T. No. 269/2012, A-4 was held guilty in the manner noted above.

7. Heard Mr. Kanhaiha Prasad Singh, learned senior counsel assisted by Mr. Pratik Mishra, Mr. Krishna Prasad Singh learned senior counsel assisted by Mrs. Meena Singh and Mr. Subodh Kumar Jha for the appellants in their respective appeals, Mr. S.D.Yadav for the informant and Mr. Ajay Mishra, APP for the State.



8. Mr. Subodh Kumar Jha appearing in Cr. Appeal (DB) No. 574 of 2016 submits that the chain of circumstance proved against the appellant Sintu Kumar (A-1) is wholly deficient. According to the prosecution, he was arrested along with co-accused Sanoj Kumar (A-2), Avinash Kumar and Saurav Kumar at his house. The confessional statement of all the four including A-1 was recorded. On the confessional statement of co-accused Saurav Kumar, a sandal allegedly belonging to the deceased was recovered from his room whereas on his confessional statement as well as the confessional statement of three other accused persons apprehended at his house, the dead body of the victim was recovered in the following morning from a well located at a distance of one kilometer from his house. The prosecution case further is that two mobiles were recovered from the possession of A-1 bearing Mobile Nos. 95723555714 and 8292531040. The call details taken thereof as well as recovery of the dead body of the victim on his confessional statement are not the circumstances which, in the facts and circumstances of the case, conclusively prove the guilt of the appellants.

9. Mr. Krishna Prasad Singh, learned Senior Counsel appearing in Cr. Appeal No. (D.B.) No. 609/2016 for the A-2 (Sanoj Kumar),



similarly submits that the case is based on circumstantial evidence. No eye witness has turned up to depose on any part of the prosecution case. According to the prosecution, the appellant was apprehended in the night of 25.08.2011 at the house of co-accused Sintu Kumar (A-1). The appellant was in fact not arrested at the said place. He was arrested from his house in the early morning of 25.08.2011. Our attention has been drawn to the evidence of D.Ws. 2 and 4 who have stated about the same. His arrest was effected by the S.H.O. of the Punpun Police Station and not by the I.O. (P.W.13) of the present case. From the possession of the appellant, nothing incriminating was recovered. P.W. 13 (I.O.) has clearly in his evidence at paragraph 138 has stated that the appellant was injured and was given medical treatment. He has been implicated in this case only on the ground that the A-2 along with co-accused Sintu Kumar (A-1) was accused in bank dacoity case lodged several years ago. In fact, the appellant was arrested in connection with the said case.

10. Mr. Kanhaiya Prasad Singh, learned senior counsel appearing in Cr. Appeal (D.B.) Nos. 613/2016 and 553/2016 on behalf of the appellants of these two appeals made the lead submissions. He would urge that indisputably the prosecution case hinges on the circumstantial evidence. A-3 (Ravi Kumar) is the



neighbour of the victim. The tower location produced through the electronic evidence by the prosecution, at best, establishes his presence in and around village Deokuli and at Rupaspur. So far as his presence at Rupaspur is concerned, it was not unnatural as the A-3 was the resident of that place. In that connection, he drew attention to the evidence of P.W. 1, 3 and 11 who have also stated about the A-3 is living in their neighbourhood as a tenant since last 5-6 years and is a friend of the victim. As the prosecution case has heavily relied on the electronic evidence, learned counsel for the appellant has also questioned the admissibility of Exts. 9, 10, 12 and 13 which are the CDRs and other electronic records relating to the SIM numbers and the mobile used in the crime. It is submitted that those exhibits are not admissible in evidence as they have not been properly proved as required under Section 65B(4) of the Evidence Act. It is stated that those exhibits do not bear the required authenticity or certification. Reliance in this regard has been placed on the case of **Anvar P.V. versus P.K. Basheer and Ors. since reported in (2014) 10 SCC 473**. Emphasising further, it has been argued that involvement of A-3 in the case has been sought to be proved only on the basis of two tower locations showing his presence within Punpun or Pipra Police Station on or before



24.08.2011. There is nothing on record that he was last seen with the deceased anywhere on the relevant date. He also criticised the impugned judgment where reliance was placed to convict him on the confessional statement made by him and other co-accused. The celebrated case of **A. Nagesia vs. Bihar State [AIR 1966 SC 119]** was pressed into service by him to submit that the confessional statement made by A-3 or any other co-accused would only be relevant and admissible as provided under Section 27 of the Evidence Act. The principle of severability in the appreciation of confessional statement would not be permissible in law.

11. While challenging the judgment of conviction of Lallan Singh (A-4), it is submitted that recovery of motorcycle allegedly belonging to A-3 from his house was considered as the incriminating circumstance. There is nothing on record that the motorcycle so recovered did belong to A-3. Copy of the seizure memo was not tendered either to him or his family members. Challenging the factum of recovery itself, it has been submitted that none of the witnesses to the recovery has been examined in the Sessions Trial No. 269/2012. In this connection, it is also urged that such recovery in joint operation was conducted by A.S.I. of Rupaspur Police Station namely Kaushlendra Kumar who has not been examined in this case



and by S.I. of Punpun Police Station who has been examined as P.W. 17 in S.T. No. 269/2012. Learned counsel placed the evidence of P.W.17 to demonstrate that the witness has clearly admitted that he knew nothing about the seizure of the motorcycle from the campus/house of A-4. It is also submitted that there is no evidence on record worth credence to show that the said motorcycle was used in the abduction of the deceased. Criticising Ext. 7/E (or 7/e) (confessional statement of A-4), the similar criticism was made. It was highlighted that such confessional statement was taken several weeks after the discovery of the dead body of the victim. It is thus not a case that his confessional statement led to recovery/discovery of a new fact relevant in the case.

12. Counsel for the informant and the State conversely supported the findings of guilt recorded by the learned Trial Court. They would urge that the investigation was conducted by P.W. 13 in tandem with P.W. 14 being the Station House Officer of the Special Investigation Unit, Patna as the investigation necessarily called for electronic surveillance and assistance. On reading the evidence of P.Ws. 13 and 14, it would distinctly appear that as and when the assistance of electronic evidence was required to proceed with the investigation, a request was sent to the concerned Service Provider



for the relevant electronic details of the mobile or the SIM used in those mobiles used in the crime.. The Nodal Officers of the Service Provider companies namely P.Ws. 15, 16, 17 and 18 have taken the dock to state that the electronic records (CDRs), on request of the Investigating Officer, were taken out/generated from the system itself where they are, in ordinary course, preserved/registered/stored and after due verification and authentication, they were provided to the Investigating Agency. The Nodal Officers have also deposed about the authenticity of those records provided to the I.O. by them inasmuch as they have clearly deposed that every page of the CDR bore the signature of the authority as well as the seal of the Company. On the basis of aforesaid, they have distinguished the present case from the factual profile of Anwar P.V. (Supra). The electronic records produced in the case by the prosecution comply with the requirements of law and the learned Trial Court has rightly considered them in the light of other evidence adduced on record to find the guilt of the appellants in the crime. The circumstances proved at the trial in the light of the electronic evidence adduced at the trial conclusively prove the charge.



13. Intrinsically, the prosecution case rests on the circumstantial evidence. The electronic evidence produced by the prosecution played a significant role in establishing the complicity of the appellants in the crime. Three witnesses namely, P.W. 1, 3 and 11 are the family members of the victim. On overhauling their evidence, it is explicit that they have stated about leaving of the deceased, the only son of P.W. 1, around 5.30 p.m. on 24.08.2011 to attend the coaching class. He did not return thereafter. A call was received on the cell phone of the mother (P.W. 11) from the mobile phone of her son (the victim). The caller informed her about kidnapping of the boy and obviously demanded ransom for his safe return. By the time, father of the victim (P.W.1) was informed and he reached Patna late in the night and filed a written report against unknown alleging kidnapping of his son for ransom. A *Sanha* was earlier entered by the I.O. (P.W. 13) about the missing of the victim boy. It appears thereafter at 2.27 a.m. on the early morning of 25.08.2011, a call was received on the cell phone of P.W. 11 from Mobile No. 8651446457 when the kidnapped boy was allowed to talk to family members and the kidnappers demanded 75 lakhs as ransom amount. Further, they have deposed that A-3 was residing in their neighbourhood on rent since last 5-6 years and had picked up good



friendship with the victim. The factum of the A-3 residing in the same mohalla since past few years is not disputed by the defence. In fact, while explaining the incriminating circumstance evidencing from the electronic evidence, it was stated that his location traced on 24.8.2011 in the late evening in Rupaspur was not unnatural as A-3 was a resident of Mohalla Tilak Nagar. The rest of the prosecution case hinges on the electronic evidence and the recoveries/discoveries made of the incriminating articles such as the dead body, one piece of sandal belonging to the deceased from the house of A-1 and recovery and seizure of motorcycle from the house of A-4 allegedly used in the commission of the crime on the basis of confessional statements of A-1, A-2 and A-3.. The learned Trial Court has profusely referred to the electronic evidence in order to conclude on the guilt of the appellants. It is, therefore, necessary to first examine the relevant electronic evidence noticed by the learned Trial Court in paragraph 6 which is extracted hereunder:-

“Some documents have also been marked as Exhibits in this case. They are as follows:- Ext. Signature of the informant in the F.I.R.. Ext. 1/a writing with signature on the written report. Ext. 2 Signature of the witness Kundan Kumar on the seizure list, Ext. 3 to 3/k Signature of witnesses on the seizure list, Ext. 3/1 and 3/m signature on the confessional statement of Avinash Kumar and Saurabh Kumar, Ext. 3/n signature of witness S.K. Mandal on seizure list, Ext.3/o signature of Sintu Kumar on the confessional statement, Ext. 3/p



signature of Sanoj Kumar on the confessional statement, Ext. 3/q signature of Ravi Kumar on the confessional statement, Ext. 4 to 4/c signature of the witnesses on the seizure list, Ext. 4/d signature on the seizure list of L.G. Company and Ext. 4/e seizure list of seized motor cycle, Ext. 5 Post mortem report, Ext. 6 signature of Saurav Kumar on Ext. 4/b, Ext. 6/a signature of Avinash Kumar on Ext. 4, Ext. 6/b signature of Sintu Kumar on seizure list, Ext. 6/c signature of Sintu Kumar on Ext. 4/c, Ext. 6/c signature of accused Ravi Kumar, Ext. 7 confessional statement of Avinash Kumar, Ext.7/a confessional statement of Saurav Kumar, Ext. 7/b confessional statement of Sintu Kumar, Ext. 7/c confessional statement of Sanoj Kumar, Ext. 7/d confessional statement Ravi Kumar, Ext. 7/c1 confessional statement of Lallan Kumar, Ext. 8 is inquest report, Ext. 9 formal F.I.R., Ext. 9/a call letters, Ext. 10 C.D.R. of Reliance Company (9 sets), Ext. 11 C.A.F. of the Reliance Company (4 set), Ext. 12 call details of 4 set Tata Telecm, Ext. 13 M.T.S. call details, Ext. X and Ext. Y are the signatures of the witnesses on the inquest report for identification. Besides these, some material exhibits have also been marked as Ext.-I- Chappal, and Ext. II to II/d five mobile phones.

14. Now, it is desirable to consider the contention of Mr. Kanhaiya Prasad Singh questioning the admissibility of the electronic records placed as electronic evidence at the trial. The objection to their admissibility has primarily been raised with reference to the provisions contained in Section 65B(4) of the Evidence Act which reads thus:-

“64B (4):-In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-



(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purpose of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.”

15. To appreciate the said contention, the Court first adverts to the evidence of Investigating Officer (P.W. 13) as also the evidence of P.W. 14, the S.H.O. of S.I.U., Patna. As the phone calls were made twice on the cell phone of the mother (P.W. 11), the first being from the cell phone of the victim and the second from the cell phone bearing SIM No. 8651446457, the I.O. immediately informed the S.H.O. of S.I.U., Patna and requested to provide the location of the mobile by getting the CDR. A written request was made to the service provider. On providing the details by the service provider, it revealed that the SIM was used in two mobile sets having distinct IMEI numbers, i.e. 358013030152750 and 354318045054530. IMEI



No. 354318045054530 belonged to the mobile set of the victim. The SIM of the victim was used in the first mobile set. On further tracking, it was found that on IMEI No. 358013030152750, SIM No. 8235567727 was run on 19.08.2011, 20.08.2011, 21.08.2011, 22.08.2011, 23.08.2011 and 24.08.2011. It was, however, found registered in the name of Deepak Kumar and on further investigation, it revealed that on fake identity, the same was obtained but was being used by some other person. On further tracking the details of the calls, it was found that from Mobile No. 8235567727, call was made on 21.08.2011 on Mobile No. 9334993973 on three times. Mobile No. 9334993973 was issued to Vikas Kumar (P.W. 9). P.W. 9 when interrogated, disclosed that the aforesaid mobile SIM number was being used by Avinash Kumar @ Rifal. I.O. went to the house of Avinash Kumar @ Rifal where he was not found present. His mother, however, disclosed that Avinash Kumar had gone to village Deokuli at the house of A-1. The I.O. immediately rushed to Punpun and with the help of Officer-in-charge of Punpun Police Station, raided the house of A-1 and arrested four accused persons namely A-1, A-2, co-accuseds Avinash Kumar and Saurav Kumar. Their confessional statements were recorded as noted above. From the possession of Avinash Kumar, a



mobile phone bearing IMEI No. 358013030152750 was recovered in which SIM No. 8235567727 was used. P.W. 14 has stated that on written request made by P.W. 13, he requested the concerned Service Provider(s) to provide the required details of the mobile numbers including call details, tower locations etc. It further appears as and when the I.O. required the assistance of the electronic details/records of cell phones suspected to be used in the crime in order to proceed further with the investigation, he had been taking required steps. Turning to the evidence of P.W. 15, the Alternate Nodal Officer of IDEA, it appears that the witness stated that the call details of Mobile No. 8651446457 between the period 1.6.2011 to 25.8.2011 was generated by him from the computer in presence of the I.O. of the case. He further stated that such record is preserved/stored in the system for one year. He further stated that since the call details were directly generated from the system where it is registered and stored, it does not require the signature. The defence did not cross-examine him on the sanctity or veracity of the electronic details furnished by him generated directly from the system and provided to the I.O. P.W. 16 is the Nodal Officer of Reliance Tele-communications. He has stated that on a written request made by the Investigating Officer of the case, he provided



the system generated call details bearing his signature and seal running in nine pages out of which four pages of the bunch were the CAF details (the identification of the user). He identified his signature and seal on each page of the print outs. On his identification, the C.D.R. were marked as Ext. 10 and the CAF as Ext.11. The defence, in course of cross-examination only elicited that the date on which the signature was made or the seal was put was not apparent from the record. P.W. 17 is the Nodal Officer of Tata Telecommunications. He had provided the call details of IMEI No. 358013030152750 for the period 02.07.2011 to 25.08.2011. The details were again directly generated from the system and bore his attestation/certification under his signature and seal. On his identification, it was marked as Ext. 12. Nothing fruitful was elicited by the defence from his cross-examination. P.W. 18 being the Nodal Officer of M.T.S. took the dock to state that he himself had drawn the call details of M.T.S. mobile No. 8434352602. It was drawn from the computer running into three pages showing the details of calls between 20.08.2011 to 27.08.2011. He identified his signature and seal over each page of the print outs. The document was exhibited as Ext.13 without any objection. According to him, in the print out, the first column details the calling party number, the second column



details the called party number, the third column details the time and duration of the call, the sixth column details the tower location, 7th column details the call duration whereas the 8th column details the IEMI number. No serious cross-examination was made by the defence to question the authenticity of those details. The document was admitted in evidence without objection.

16. Having scanned the relevant evidence, the Court turns to consider the case of **Anwar P.V. (supra)** relied by the defence. The factual profile of the case has some significance. It arose out of an election dispute where the defeated candidate had challenged the election of the elected candidate under section 123(2)(a)(ii) of the R.P. Act. One of the grounds was that the elected candidate used the songs and announcements as part of the election propaganda that amount to commission of corrupt practice under Section 123(4) of the R.P. Act. The defeated candidate had produced before the Court the C.Ds. used for announcements and songs. The original C.Ds. used for objectionable songs or announcements were, however, not seized through the police or the Election Commission and produced before the Court. The Court found that the speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, C.Ds. were made therefrom which



were produced in Court without due certification. In that context, the Court relying on Section 65B of the Evidence Act concluded that those C.Ds cannot be admitted in evidence since the mandatory requirements in law were not satisfied. In the case at hand, on going through the relevant exhibits in the light of the deposition of the I.O. and the Nodal Officers who provided those electronic details/records in course of discharge of their duties, it is not difficult for the Court to find that they were generated directly from the system where these details are ordinarily stored/preserved. The exhibits also contained the required attestation/certification under the signature and seal of responsible officer of the Service Provider company. The Nodal Officers have taken the dock to vouch their genuineness/authenticity besides stating as to how and on whose behest, the print out/CDRs were generated from the system where they are preserved/registered/stored. In the totality of the circumstances manifesting from the records and also considering the cross-examination made by the defence of those witnesses, the Court is of the view that those exhibits relating to electronic record/details produced at the trial comply with the requirements of law. The purpose of insisting on the requirements of proving the document in relation to the electronic records is to provide an



amount of certainty in the mind of the Court about their genuineness considering the diverse technologies available in the field of electronics to fake such electronic details. The objection to their admissibility in evidence raised by Shri Singh does not appear well grounded.

17. Notably, it may be stated that the abduction/kidnapping for ransom is an offence which involves pre-planning. The appellants were also charged and convicted for the same. It is common experience that very seldom, a direct evidence on the point is produced seemingly because conspiracy is hatched secretly and very often well before the crime is executed. The Courts have, thus, held that such charge can be inferred from the circumstances proved at the trial. However, before embarking on consideration of the proved circumstances at the present trial, it is pertinent to consider the submission of the defence with regard to the extent of admissibility of the confessional statement made by the accuseds before the Police. A confession or admission is evidence against the maker of it unless its admissibility is excluded by some provisions of law. Quite expressly, Sections 24 and 25 of the Evidence Act bar admissibility of such statement or admission in evidence if made by inducement, threat, promise or made to the



Police Officer under any circumstance. However, Section 27 of the Evidence Act carves out an exception. It provides *inter alia* that when any fact is deposed to as discovered in consequence of disclosure made by the accused of any offence in the custody of Police Officer, so much of such information, whether it amounts to confession or not, as relates distinctly to the fact thereby discovered, may be proved. Such statements are generally termed as disclosure statement leading to discovery which are presumably in the exclusive knowledge of the maker. This is because if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby. It is, therefore, held that such disclosure statement should not be discarded outrightly only on the ground that it was made to a Police Officer during investigation. The gist of the provisions of law noted above is well expounded in ***Agnoo Nagesia (supra)*** and in case of ***Geejaganda Somaiah versus State of Karnataka (AIR 2007 SC 1355)***.

18. Having found so, it is now relevant to consider the findings of the doctor (P.W. 12) in the post-mortem report (Ext.5). Relevant findings of the autopsy surgeon is extracted hereinbelow:-

- “(i) One abrasion 1” X 1/2” left from mid line
- (ii) One ligature mark all around the neck 15” X 1” front and back of neck, 1 1/2” below the



level of left ear 1/2 inch below the right ear at the level of thyroid cartilage.

On dissection: Blood and blood clots were found in both sides of neck, muscles paratracheal and para oesophageal region, trachea was found congested with blood clots fringe. Oesophagus was also congested with blood clots present. Both lungs were found congested and oedematous.

Opinion:- time since elapsed 36 to 48 hours since time of death, cause of death: Asphyxia due to strangulation, Nature of violace- injury no. 1 caused by impacted with hard and blunt object.”

The injuries were found ante mortem in nature.

19. According to the prosecution case on tracking the location of the mobile(s) used twice in calling the mother of the victim (P.W. 11) in the night intervening 24th and 25th August, 2011 and after getting the whereabouts of co-accused Avinash Kumar @ Rifal from his mother, the I.O. raided the house of A-1 in village Deokuli in the night of 24.08.2011 and arrested A-1, A-2, co-accused Avinash Kumar and co-accused Saurav Kumar (both declared juvenile in conflict with law) from the house of A-1. Confessional statement of co-accused Avinash Kumar (Ext.7), co-accused Saurav Kumar (Ext.7/a) were recorded by the I.O. P.W. 13 (I.O.) on the basis of disclosure statement of co-accused Saurav Kumar recovered one piece of sandal of Pro Company (Ext.4/c) from the house of A-1 which belong to the victim Aditya Kumar. Confessional statement of



A-1 (Ext.7/b) and A-2 (Ext. 7/c) were also recorded. In their respective disclosure statement of the accuseds stated in graphic detail about how a planning was hatched earlier between A-1, A-2, A-3, A-4, co-accuseds Saurav Kumar and Avinash Kumar to kidnap the victim for ransom and further detailing about how and when the victim was dropped by A-3 in the evening of 24.08.2011 and drove to village Deokuli whereafter A-3 left the place. The victim was done to death in the house of A-1 by strangulating him and the dead body was discarded in a well at a lonely place. A-3 was apprehended on 25.8.2011 with a mobile phone bearing no. 7488404416 which was seized vide Ext.4/d. In his confessional statement, A-3 also disclosed about conspiracy hatched between all the appellants few days prior to the kidnapping. The deceitful means by which he kidnapped the victim in the evening of 24.8.2011 and drove him to the house of A-1 and after having handed over the victim to the other accused at the house of A1, he parked the motorcycle in the house of A-4 and returned back to his place of residence in mohalla Tilak Nagar, the same night. After having delineated their respective disclosure statements, the Court proceeds to consider the facts discovered thereby and proved at the trial which are as follows:

(a) Evidence of P.Ws. 1, 3 and 11 established that the



deceased left the house at about 5.30 p.m. on 24.08.2011. He did not return thereafter. The accused had kidnapped him soon thereafter.

(b) In the late night of 24.08.2011, A-1, A-2, co-accused Avinash Kumar and Saurav Kumar were arrested in the house of A-1 at Deokuli.

(c) On disclosure of accused Saurav Kumar, one sandal of the victim of specified make was recovered from the house of A-1.

(d) On the disclosure statement of accuseds arrested at the house of A-1, the dead body of the deceased was found dumped in the well which was located in the field of Rajnandan Sharma, the lonely place.

(e) The autopsy surgeon found ligature mark around the neck of victim resulting in asphyxia.

(f) P.W. 1 was called at the well to identify the dead body as well as the sandal found and recovered from the house of A-1 on the basis of disclosure statement of co-accused Saurav Kumar.

(g) P.W. 1 identified the dead body as well as the sandal carried by the I.O.(P.W.13).

20. These discoveries of fact proved at the trial in consequence to the disclosure made by A-1, A-2 and A-3 lead



credence to the prosecution case on material aspects.

21. Incidentally, it may also be noticed that Section 10 of the Evidence Act can very well be employed to prove the conspiracy hatched by the accuseds. Section 10 of the Evidence Act reads as under:-

“10. Things said or done by conspirator in reference to common design.—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

22. The facts emerged during the investigation on the basis of disclosure statement made by the accused and the names of the conspirators associated in the crime was scientifically proved by the prosecution by providing the electronic evidence such as the CDRs and tower locations of the accuseds which proved that they were present at around the place of occurrence as disclosed by the accused in their respective disclosure statement. Those facts proved at the trial pursuant to the disclosure made by the accuseds can be used against each other so far as the conspiracy hatched for



commission of crime is concerned by them. It is evident that prior to the date of occurrence, a meeting was held in Punpun to hatch a plan of crime. The call details of A-3 (Ext.10), the tower location of his mobile in Punpun on 22.08.2011 at about 7.12.09 hrs, the seizure memo of the mobile set and the SIM used produced as material Ext. II/4 leave no doubt to infer that all the accuseds had hatched plan to commit the offence few days prior to the occurrence. A criminal conspiracy was hatched to kidnap the victim for ransom and murder. On 24.8.2011, at about 16.49.56 hrs, the tower location of mobile found from possession of A-3 was near Shahid Palace, Samanpura, Raja Bazar, Patna and tower location of victim Aditya Kumar was also near Ambedkar Path, Khajpura at 17.25.47 hrs. Both these areas are adjacent to each other. The aforesaid facts establish through the electronic evidence lead to the conclusion that the victim was in the company of A-3 and was being driven to village Deokuli. On way to Deokuli, Aditya Kumar reached near village Potahi. Therefore, his tower location indicated connection with tower installed at Makhdumpur Police Station, Karai Parsural (Nalanda). The time slot was 18.22.56 hrs and 18.25.12 hrs. Makhdumpur is situated towards east south corner to village Potahi. The mobile of Aditya Kumar got connected with the tower of Makhdumpur according to the call



detail chart (Ext.10). These facts clearly evidencing from record also proved that A-3 was present at the house of Sintu Kumar (A-1) from 19.08.28 hrs to 19.21.53 hrs as his mobile was connected with towers of Lakhanpur Punpun, Masaurhi and again Lakhanpur Punpun. The records indicate that village Deokuli is situated in the centre of three towers i.e. Punpun, Masaurhi and Pitmas (Naubatpur). The electronic records pertaining to mobile phone of A-3 further proved his presence in village Deokuli as per plan from 19.08.28 hrs to 19.21.53 hrs as the prosecution story goes, A-3 handed over Aditya Kumar to his associates accused and returned Patna. On way back to Patna, his tower location is near Lakhanpur Punpun at 19.41.52 hrs, at near Seristabad at 20.06.10 hrs, near Shahid Palace Samanpura at 20.49.08 hrs CDR (Ext.10) proved that on 21.08.2011 at 11.41.30 hrs, on the same day at 17.54.30 hrs and again on 22.08.2011 at 17.46 hrs to 18.02.09 hrs, again on 23.8.2011 at 16.26.59 had talks with Aditya Kumar's mobile. Being the neighbour and good friend of the victim, he had ample opportunity to know the family background of the victim, who was the only son. A-3 in a very shrewd manner had planned and orchestrated the entire occurrence. On the confessional statement of A-3, the motorcycle bearing No. BR-01 BD 1911 was recovered and seized



vide Ext.4/3 from the house of A-4. The criticism with regard to the paucity of evidence relating to recovery of the motorcycle from the house of A-4 made by the Counsel for the appellants is not such which create doubt with regard to such recovery. It is stated that the witnesses to the said recovery have not been examined inasmuch as one of the Police Officers constituting the raiding team had also not been examined. However, one of the Police Officers who had led the team has proved the seizure memo. There is no worthwhile cross-examination on this aspect. The recovery of the motorcycle from the house of A-4, pursuant to the disclosure statement made by A-3, is a relevant fact proved at the trial which would prove not only the conspiracy angle against each of the appellants but also their participation in the crime.

23. At this stage, the Court will again advert to the confessional statement of A-1, A-2, co-accuseds Avinash Kumar and Saurav Kumar who all have stated about the participation of A-4 also in the crime. Recovery of the motorcycle from the house of A-4 pursuant to the disclosure statement of A-3 re-enforces the complicity of A-4 in the crime. Ext.10 further establishes that mobile no. 9835206840 was used by accused at 21.12.18 hrs on 24.08.2011 to call P.W. 11 (mother of the victim). The tower location of the



victim was connected with tower of village Pitmas (Naubatpur) whereas Aditya was in village Deokuli in the house of A-1. It may be highlighted that A-1 in his confessional statement had disclosed about talking to A-4 on his mobile no. 8434352602. Ext.13 further establishes that conversation had taken place between A-1 and A-4 on 20.08.2011 at least on three occasions and again on 21.08.2011 at 8.53.48 hrs, again on 23.08.2011 at 10.06.42 hrs and on the date of commission of the crime i.e. 24.08.2011 talks were made at 9.08.31 hrs, 11.06.30 hrs and 19.15.36 hrs, lastly, on 25.08.2011, the talk was made at 8.31.55 hrs. These evidences, in all probability, establish the complicity of A-4 in conspiring to commit the crime in the manner planned.

24. The conclusion drawn by the Court in the light of evidence (both oral and documentary) on the time, place and manner of occurrence provide a coherent links in a case based on circumstantial evidence.

25. The Court is mindful that if an unexceptional situation is shown, the Court of justice is expected to apply an unconventional test. The relevant part of the confessional statements leading to recovery of fact(s) proved at the trial have been relied in view of the legal principle enunciated in ***Prithipal Singh and Ors versus State of***



Punjab and Anr reported in (2012) 1 SCC 10.

26. At this stage, the Court reminds itself of the legal principle enunciated in ***State of Punjab versus Karnail Singh (2003) 1 SCC 271*** wherein it was held that a judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape the tentacles of justice. This is what the justice stands for. The legal principle with regard to the circumstantial evidence is not a fossilized one. It has to be carefully scrutinized and applied to the peculiar facts of the case.

27. Taking into account the relevant facts well established at the trial, the chain of events is found well knit proving the complicity of the appellants in the crime pursuant to the conspiracy hatched between them. The appellants in all probabilities had participated and contributed in the crime. The proved links are complete and closely interlinked not leaving any reasonable doubt on their complicity. A-4 has rightly been held guilty under Sections 364A/120B and Section 201 of the IPC whereas there is no legal infirmity in the findings of the guilt recorded against A-1, A-2 and A-3 under Sections 364A, 302 and 120B/34 of the IPC as also under Section 201 IPC. Their conviction under relevant charged sections are



upheld. The sentence imposed on A-4 u/s 364A/120B and on A-1 to A-3 under Sections 364A/302/120B IPC is altered and it is directed that they shall suffer R.I. for life. Other part(s) of the sentence imposed by the Trial Court shall, however, remain unaltered.

28. With the aforesaid modification in sentence, as noted above, the appeal(s) are dismissed.

(Kishore Kumar Mandal, J)

Prakash Chandra Jaiswal,J: I agree.

(Prakash Chandra Jaiswal, J)

Pankaj/-

AFR/NAFR	AFR
CAV DATE	11.01.2018
Uploading Date	18.01.2018
Transmission Date	18.01.2018

