

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 1009 of 2012

Arising Out of PS. Case No.-54 Year-2010 Thana- Ganga Bridge District- Vaishali

1. Vidyanand Rai @ Vidya Rai, son of Late Lal Babu Rai,
2. Sarun Kumar @ Lakhua @ Lakhua Rai, son of Baijnath Rai,
3. Tuntun Kumar, son of Dinesh Singh
All are resident of Village – Terasiya (East of 12 number pole), P.S. - Ganga Bridge, District – Vaishali.

... .. **Appellants**

Versus

The State of Bihar

... .. **Respondent**

Appearance :

For the Appellant/s	:	Mr. Pramod Kumar, Advocate Mr. Vashanti Vikash, Adv. Mr. Sunil Kumar Pathak, Adv. Mr. Surendra Kumar Mishra, Adv.
For the Respondent/s	:	Mr. Ajay Mishra (APP)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 24-08-2018

The present appeal was filed under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Cr.P.C.’) on behalf of the three appellants against their conviction and sentence passed in Sessions Trial No. 115 of 2011. All the three appellants by judgment of conviction and sentence dated 31-08-2012 were held guilty and convicted for commission of offence under Sections 364(A)/34 and 201/34 of the Indian Penal Code, 1860



(hereinafter referred to as 'I.P.C.'). Under Section 364(A)/34 of the I.P.C., all the aforesaid three appellants were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/- (twenty thousand) each and in default of payment, they were directed to further undergo imprisonment for two months. Under Section 201/34 of the I.P.C., they were directed to undergo rigorous imprisonment for five years and to pay a fine of Rs. 5,000/- (five thousand) each and in default of payment of fine, they were directed to further undergo imprisonment for one month. All the three appellants were tried together in Sessions Trial No. 115 of 2011 (arising out of Ganga Bridge P.S. Case No. 54 of 2010). The judgment of conviction and sentence was passed by learned Additional Sessions Judge - II, Vaishali at Hajipur (hereinafter referred to as 'Trial Judge').

2. Short fact of the case is that on 23-12-2010 at about 7:15 PM, one Ram Pravesh Rai of village Terasiya, P.S. - Ganga Bridge, District Vaishali submitted written report before the officer incharge of Ganga Bridge Police Station, Vaishali. In the written report, it was disclosed that on the last date i.e. 22-12-2010, his son namely Niraj Kumar, aged about 4 years & 3 months of village Terasiya had gone to Aanganbari Centre No. 6 in village Terasiya for his study, however till 12:00 noon, he



did not return. Thereafter, the informant and his whole family searched him, but of no avail. In said context, on 23-12-2010, he had lodged a sanha report in Ganga Bridge Police Station. Again, on the same date at 7:15 P.M. he had lodged a written report in Ganga Bridge Police Station. On 23-12-2010 at about 1:49 PM from mobile No. 9204804332, the informant received a call on his mobile, bearing no. 9631027628, and he was threatened and asked to pay ransom amount of Rs. 15,00,000/- (fifteen lacs), otherwise informant was directed to see the consequences. The informant suspected that his son Niraj Kumar was kidnapped for ransom. On aforesaid information, he gave written report to the police with request to take appropriate steps for recovery of his son.

3. On the basis of said written report, on the same date and same time i.e. 23-12-2010 at 7:15 P.M., a formal F.I.R., vide Ganga Bridge P.S. Case No. 54 of 2010, was registered under Section 364(A) of the I.P.C. against unknown. During investigation, all the three appellants were arrested and finding the case true, on 31-01-2011 charge-sheet was submitted against all the three accused persons, whereupon on 22-02-2011, learned Judicial Magistrate 1st Class, Vaishali at Hajipur took cognizance of the offence and case was committed to the court of sessions



on 31-03-2011 and it was numbered as Sessions Trial No. 115 of 2011. In the case, on 14-07-2011, joint charges were framed under Sections 364 A/34, 302/34 and 201/34 of the I.P.C. against all the three appellants.

4. During the trial, to establish its case on behalf of the prosecution, altogether 10 witnesses were examined. Out of 10 witnesses, P.W. 2 Dilip Rai (brother of the informant and uncle of victim), P.W. 3 Prahlad Rai (maternal uncle of the victim), P.W. 5 Nathun Rai (father of the informant and grand father of the victim) and P.W. 7 Ram Pravesh Rai (informant and father of the victim) are witnesses on the point of occurrence. P.W. 1 Ram Janam Rai and P.W. 4 Mahesh Rai are witnesses to the seizure list, particularly relating to seizure of mobile sets from possession of appellant no. 1 Vidyanand Rai @ Vidya Rai and appellant no. 2 Sarun Kumar @ Lakhua @ Lakhua Rai. P.W. 8 Sub-Inspector of Police is also formal witness, who has proved certain material exhibits. P.W. 10 Manoj Kumar Singh, Assistant Sub-Inspector of Police has proved one information under the Right to Information Act, 2005 (hereinafter referred to as 'R.T.I. Act'), which was marked as Ext. 9. P.W. 9 Amit Nandan is the investigating officer of the case and he has proved number of documents and exhibits.



5. After the completion of the prosecution evidence, on 27-02-2012, all the evidences and circumstances collected during the trial were explained to all the appellants and statement under Section 313 of the Cr.P.C. was got recorded. From the defence side, no witness was examined, however in the statement recorded under Section 313 of the Cr.P.C., all the appellants had denied the charges.

6. Sri Pramod Kumar Singh, learned counsel, though had appeared on behalf of all the appellants, has precisely highlighted the case of Vidyanand Rai @ Vidya Rai (appellant no. 1). After placing entire evidence, learned counsel for the appellant has argued that the entire prosecution case is based on no direct evidence, neither on the point of kidnapping nor murder. He submits that during the trial, the prosecution has miserably failed to establish the case of murder and this was the reason that the appellants were not held guilty for commission of offence under Section 302 of the I.P.C., whereas charges were also framed under Section 302/34 of the I.P.C. Besides this, it has been argued that the prosecution has precisely proceeded on the basis of so called confessional statement of the three appellants. According to Sri Pramod Kumar Singh, learned counsel for the appellants, confession made by the appellants



may not be treated as evidence, since the confession was obtained by threat and allurement. He submits that in view of Section 24 of the Indian Evidence Act, 1874 (hereinafter referred to as 'Evidence Act'), the learned Trial Judge was not at all required to place any reliance on the confessional statement of the appellants. He further submits that confessional statement in the case has been considered in two parts. Firstly, confession was made before the police and secondly, it was claimed that confession had led to recovery. According to learned counsel for the appellants, though during investigation, one mobile each from appellant no. 1 (Vidya Rai) and appellant no. 2 (Sarun Kumar @ Lakhua) was shown to be recovered, fact remains that those mobiles were not in name of either of the appellants. Nokia mobile shown to be recovered from the possession of appellant no.1 (Vidya Rai) was actually in the name of one Lal Babu Rai and mobile, having no. 9162603249, was shown to be recovered from appellant no. 2 (Sarun Kumar @ Lakhua) was in the name of a lady Ramwati Devi. It has been argued that since both the appellants were not actual owner of those mobiles, the prosecution was not required to place any reliance on such recovered mobiles. He further submits that the second part of confession has been shown to lead to recovery of so called cloth



of deceased/victim. It has been argued that the color of sweater, which victim was wearing and mentioned in *sanha*, was not actually similar to the colour of recovered cloths of so-called victim and as such, even the confession showing to recovery may not be relied upon and it cannot be treated as exception under Section 27 of the Evidence Act. In sum and substance, it has been argued that case is based on no evidence and only on suspicion, the appellants have been held guilty and sentenced and as such, the judgment of conviction is liable to be set aside.

7. Sri Sunil Kumar Pathak, learned counsel though had properly assisted Sri Pramod Kumar Singh, learned counsel for the appellants, has separately made submission on behalf of the appellant no. 2 namely Sarun Kumar @ Lakhua. He submits that it is admitted fact that in the case, there is no eye witness to the occurrence and case is based on principle of circumstantial evidence. He submits that in a case, based on circumstantial evidence, unless entire chain is shown to be proved connected, one may not be held guilty. According to Sri Pathak, the prosecution has not shown connection of any chain and as such, the judgment of conviction & sentence is liable to be set aside.

8. Similarly, Sri Sudama Rai, learned counsel assisted by Sri Surendra Kumar Mishra, learned counsel, though has



assisted Sri Pramod Kumar Singh, learned counsel, has separately argued on behalf of the appellant no. 3 (Tuntun Kumar). He submits that it is true that there is some evidence against other two appellants regarding recovery of mobile or CDR showing their connection, but so far as appellant no. 3 Tuntun Kumar is concerned, there is no such material. He submits that Tuntun has been held guilty only on a material, as if, Vidya Rai (appellant no. 1) was having discussion with this Tuntun Kumar to eliminate appellant no. 2 (Sarun Kumar @ Lakhua), since they were apprehending that Lakhua may disclose the fact relating to the occurrence, however, he has not denied the fact that this appellant (Tuntun) has also made confession before the police and confession has led to recovery of bicycle, which was allegedly used while transporting the victim after kidnapping.

9. Sri Ajay Mishra, learned Addl. Public Prosecutor submits that in view of entire evidence, it is evident that the investigating agency has done a marvelous job. He submits that the investigation has been conducted in methodical manner and all details, even small details, were collected by the investigating agency, which has established the fact that all the three appellants were involved in kidnapping the son of the informant



with a view to collect huge ransom amount of Rupees Fifteen lacs. He submits that during evidence, the fact has come that grand father of the deceased had recently sold huge chunk of land and he was having Rs. 16-17 lacs in his house and the appellants, being neighbour and also conversant with this fact, in an ill-designed manner, had firstly kidnapped the son of the informant and immediately thereafter, they killed the boy and disposed of the dead body and thereafter, started demanding ransom for amount of Rupees Fifteen lacs, which was subsequently reduced to Rupees Twelve lacs. He submits that apart from confessional statement leading to recovery of relevant facts, which were exclusively within the knowledge of the appellants, call details record (CDR) relating to mobile/SIM, which was used for demanding ransom, has come to fore during investigation. He submits that after kidnapping, first ransom call was received by Ram Pravesh Rai (P.W. 7, informant and father of the victim) on his mobile, having mobile no. 9631027628, from the caller, bearing mobile number 9204804332. This call was received on mobile of the informant at 13 hrs 49 mins & 54 sec. i.e. about 2:00 PM, by which, the informant was directed to pay ransom amount of Rs. 15 lacs and this call had led the informant to draw an inference that his son



was kidnapped for ransom and thereafter, he ran to the police station and lodged a written report, which is the basis of the First Information Report. Sri Mishra submits that prior to lodging the written report, since the son of informant was missing from one day prior to the lodging of the written report in the morning at 9:00 AM, on 23-12-2010 itself the informant after failing to get any trace of his son was constraint to approach the police and lodge a *sanha* regarding missing of his son. Till that movement, the informant was of the opinion that his son went missing and there was no any link of any kidnapping. However, in the evening, while he received the call for demanding ransom, he rushed to the police station and lodged written report. Thereafter, police started investigation. During investigation, it was noticed that first call i.e. call given on 23-12-2010 at about 2:00 PM was given from an unmanned booth situated near Gandhi Maidan, Patna and as such, it was difficult to get any trace of the caller. Subsequently, on 26-12-2010, second ransom call was received on the mobile of the informant from mobile no. 9006365475 at 16 hrs 59 mins & 26 sec. i.e. about 5:00 PM. Again, on third occasion on 28-12-2010, another ransom call was received on the mobile of the informant from mobile, having SIM No. 9006365475. After noticing the mobile number,



from which ransom was demanded, information was given to the S.P. office and thereafter, the said mobile number was kept on watch and subsequently, the tower location indicated that the said mobile was being used in the same village i.e. village - Terasiya. The name of SIM holder of SIM No. 9006365475 was also traced and it was noticed that the said SIM was lying in the name of one Nawal Kishori Devi. Thereafter, police rushed to Nawal Kishori Devi, who was a rustic old lady and her husband was also an old person. On inquiry by the police, the said lady informed that she was the actual owner of the said SIM, but she disclosed that about three months back, her mobile was stolen and being rustic lady, she did not bother to inform the police or any agency for even locking the SIM number. Further during investigation, it could be traced that the SIM was used in a mobile set, having I.M.E.I. No. 356280019444620. During investigation, call details were also obtained and it was established that the mobile set, having I.M.E.I. No. 356280019444624, was being used mainly by inserting another SIM i.e. SIM no. 9955630621. During investigation, it was noticed that same SIM was lying in the name of one Lal Babu Rai of the same village i.e. village Terasiya, who was none else but father of the appellant no. 1 (Vidya Rai) and during



investigation, secret information was obtained that the same mobile i.e. mobile no. 9955630621 was in regular touch with another mobile, having mobile no. 9162603249. As per call details, obtained during investigation, it transpired that mobile no. 9162603249 was lying in the name of one Ramwati Devi, who was none else but grand mother of appellant no. 2 (Sarun Kumar @ Lakhua @ Lakhua Rai). During investigation, both Vidya Rai (appellant no. 1) and Sarun Kumar @ Lakhua (appellant no. 2) were apprehended and from their possession, Nokia mobiles were recovered. Nokia mobile, having silver color with SIM no. 9955630621 was recovered form pocket of appellant no. 1 (Vidya Rai), whereas another Nokia mobile, having black color with SIM no. 9162603249 was recovered from possession of appellant no. 2 (Sarun Kumar @ Lakhua). After their arrest, they made confessional statement before the police and in confession, they confessed their guilt and also their confession led to recovery of cloth of the victim/deceased. According to Sri Mishra, the evidence of the informant and investigating officer with documentary evidence i.e. call details categorically establishes the case against all the appellants and as such, learned Trial Judge has rightly passed the judgment of conviction and sentence, which requires no interference.



10. Besides hearing learned counsel for the parties, we have also minutely examined the entire evidences i.e. both oral and documentary evidences. However, before proceeding, it would be necessary to firstly examine the evidence of informant i.e. Ram Pravesh Rai, who was examined as P.W.7.

11. Ram Pravesh Rai (P.W.7) during trial has proved *sanha*, which was marked as Ext.2. He also proved his signature on the written report i.e. the basis of the F.I.R., which is marked as Ext. 1/2. After lodging F.I.R., he had given second written information to the police after receipt of second call of demand of ransom on 26-12-2010, which was marked as Ext. 3. He also proved his signature on seizure list relating to recovery of mobile from appellant no. 1 (Vidya Rai), which was marked as Ext. 1/3. His signature on seizure list relating to recovery of mobile of appellant no. 2 (Sarun Kumar @ Lakhua), which was marked as Ext. 1/4, signature on seizure list of bicycle, which was recovered as per confessional statement of appellant no. 3 (Tuntun Kumar), and same was marked as Ext. 1/5 and on the same seizure list i.e. relating to cycle, he proved the signature of one Pawan Kumar, who was not examined, which was marked as Ext. 1/6. He also proved his signature on seizure list of SIM card, which was used for demand of ransom and his signature



was marked as Ext. 1/7 and on the same seizure list, he also proved the signature of Pawan Kumar (not examined) as Ext. 1/8. He also proved his signature on the seizure list relating to cloth of deceased, which was marked as Ext. 1/9. In his evidence, he stated that occurrence had taken place on 22-12-2010. His son Niraj Kumar, aged about 4 years and 3 months, at 9:00 AM with other children of the same village had gone to Anganbari Centre No. 6 for reading, however; he did not return. The informant searched him, but of no avail. He had searched his son in several areas. He got information regarding non-return of his son while he was in Hajipur market. The informant disclosed that he was doing whole-sale business of vegetables and on telephone, he had received information that from Anganbari his son went missing. Regarding search of his son, he also advertised through loud-speaker, but no information could be gathered. On the next day i.e. 23.12.2010 in the morning at 9.00 hrs., he went to Ganga Bridge Police Station and gave missing report, on which, *sanha* entry was made. He also proved the *sanha*, which was containing his writing and signature. On the same date at 1:49 P.M. on his mobile no. 9631027628, he received call from mobile no. 9204804332, whereby he was threatened that his son was kidnapped and he



was asked to pay Rs. 15,00,000/- (fifteen lacs) by 26th of that month, otherwise he would see the consequences. Then, he came to know that his son was kidnapped for ransom. On the same date, in the evening, he went to Ganga Bridge Police Station and submitted written report for lodging F.I.R. In paragraph - 4 of his evidence he deposed that after receipt of second call on 26-12-2010 for ransom, he again gave written information to the police. In similar manner, on 28-12-2010, he received threatening call from same mobile i.e. mobile no. 9006365475, which he received at 8 hrs. 29 minutes. After about 10 days, his villager Vidyanand Rai (appellant no. 1) and Sarun Kumar @ Lakhua (appellant no. 2) were arrested at 9:30 in the morning by the police at pillar no. 16. At that very time, the informant was at pillar no. 12. After getting the information of arrest within 4-5 minutes, he rushed to the police, where prior to his arrival, he noticed that Mahesh Rai (P.W.4) and other villagers were present. In presence of informant and others, police recovered Nokia mobile from Vidya Rai (appellant no. 1), which was of silver colour and from possession of appellant no. 2 (Lakhua) recovered black colour mobile. Seizure list was prepared in his presence, on which, he put his signature, which were marked as Ext. 1/3 and 1/4 respectively. Police thereafter



carried both the accused persons and thereafter, the informant heard that at pillar no. 20, the police had arrested Tuntun Singh (appellant no. 3) and thereafter, police taken all the three accused persons to police station. On the same date at about 1:00 PM, police carrying all the three accused persons went to the house of Tuntun Singh, from where, an old bicycle was recovered and seizure list was prepared, on which, he put his signature, which was marked as Ext. 1/5. On the same seizure list, one Pawan Kumar (not examined) has also put his signature, which was marked as Ext. 1/6. Thereafter, following the police, the informant with other villagers also gone there. From the house of Ram Nath Rai, the police recovered a SIM of Airtel wrapped in a small paper, which was concealed on ventilator of a window in the room of Ram Nath Rai. The said SIM was having mobile no. 9006365475. The said recovery was made as per disclosure made by the accused persons. It can be clarified that the SIM, having mobile no. 9006365475, was used for demanding ransom from the informant on 26-12-2010 as well as on 28-12-2010. In respect of seizure of SIM of Airtel, the seizure list was prepared, which was signed by the informant and marked as Ext. 1/7 and he also proved signature of another witness on the seizure list, which was marked as Ext.



1/8. Thereafter all the three accused persons led the police to banana orchard of one Haridayal Rai, which was in the village Terasiya. The informant and other villagers also followed the police and in their presence, on the same date, one blue colour half pant with elastic, having yellow buttons and one yellow-red-green-blue stripe colour sweater was seized. According to informant, those clothes were of his son Niraj, which he was wearing at the time of missing. The police also recovered one red-white-black colour tape (नारा). Besides this, one wrapper of Parle-G biscuit was also seized, for which, seizure list was prepared. On the said seizure list, Ram Janam Rai (P.W.1) put his signature and the informant also stood as witness to the seizure list and his signature was marked as Ext. 1/9. The P.W.7 in paragraph - 11 of his evidence further stated that all the three accused persons namely Vidyanand Rai, Sarun Kumar and Tuntun (all appellants) disclosed that they, after kidnapping Niraj, had killed him and with a view to conceal the dead body, they had digged the land and buried the body, which was covered by banana tree leaf. The dead body was searched, but it could not be traced, however Ram Janam Rai (P.W.1) informed that about 5-6 days back he had noticed that dog and jackal were eating dead body of a child and this was the reason that the



dead body could not be recovered despite search was made for about 8-9 hours. After the arrest of all the accused persons, the informant came to know that his son was kidnapped by them for ransom. This witness was cross-examined at length, however after going through his evidence, it appears that in his cross-examination, no apparent fact could be gathered to create doubt on his evidence.

12. P.W.1 Ram Janam Rai is the witness to the seizure list, however in his evidence, he deposed that 8 days back from the date of recovery of the cloth, he had seen a dead body of a boy, which was eaten by dog and jackal. He stated that in his presence, on disclosure made by accused persons, cloth of boy was recovered and he stood as a witness to the seizure list.

13. P.W.2 Dilip Rai, brother of the informant and P.W.3 Prahlad Rai, maternal uncle of the victim have also disclosed almost in similar manner like the informant.

14. P.W.4 Mahesh Rai is witness to the seizure list relating to seizure of two mobiles and he proved the signature, which was marked as Ext.1 and Ext. 1/1, on seizure list relating to recovery of one mobile from Vidya Rai (appellant no. 1) and another mobile from Sarun Kumar @ Lakhua (appellant no. 2).



15. P.W.5 Nathun Rai is the father of the informant and grand father of the victim. He is also witness on the point of occurrence and had deposed almost similar to the evidence of informant.

16. P.W.6 Mahasundari Devi was at the relevant time Sahayika in the Anganbari Centre, where the victim had allegedly gone to study and from there, he went missing. Her evidence is up-to the extent that she alongwith victim and some other children of the village had gone to Anganbari Centre and at about 10:00 AM, she went to prepare *khichari* i.e. mid-day meal of the school and when she returned back, she did not see the victim boy Niraj and she thought that Niraj had already gone to his house. At about 12.00 noon after closing Anganbari centre, while she went back, she came to know that Niraj had not reached his house. Search was made for the boy. On the next date, Ram Pravesh Rai, P.W.7 (informant) gave information to the police regarding missing of his son and on the same date at 2:00 PM on Ram Pravesh's mobile, ransom amount of Rupees fifteen lacs was demanded. After ten days, police arrested all the aforesaid three appellants. Thereafter, she came to know that the boy was kidnapped by aforesaid accused persons. In paragraph - 5 of her evidence, this witness has stated



that on the date of occurrence, she had seen Vidya Rai (appellant no. 1) near the Anganbari Centre. She too was cross-examined at length, but on examination of her cross-examination, we did not find anything to consider the evidence of P.W.6 as doubtful.

17. P.W.8 Suresh Kumar, Sub-Inspector of Police has produced certain materials in court and he proved the Nokia mobile, bearing no. 9162603249 as Material Ext. No. I, Nokia mobile no. 9955630621 as Material Ext. No. I/I, SIM of Mobile No. 9006365475 as Material Ext. No. II, sealed packet containing cloth of the deceased was marked as Material Ext. No. III and recovered bicycle was marked as Material Ext. No. IV.

18. P.W.10 Manoj Kumar Singh, Assistant Sub Inspector has simply proved one information received under the Right to Information Act, 2005 (hereinafter referred to as 'R.T.I. Act') under the writing and signature of Sub-Inspector of Police Anshu Priya, which was marked as Ext. 9.

19. P.W.9 Amit Nandan was the investigating officer of the case. In his evidence, he has proved Sanha No. 441 of 2010 dated 23-12-2010, which was marked as Ext. 4. He proved endorsement on the F.I.R., which was marked as Ext. 4/1. He



proved print-out (call details) of mobile, which was marked as Ext.5, consumer application form as Ext.6, seizure list of mobile recovered from appellant no. 1 Vidya Rai, which was marked as Ext.7, seizure list of mobile recovered from appellant no. 2 Lakhua marked as Ext. 7/1, confessional statement of appellant no. 3 Tuntun Singh, which was marked as Ext.8, confessional statement of appellant no. 2 Lakhua marked as Ext. 8/1 and confessional statement of Vidya Rai appellant no. 1 marked as Ext. 8/2. He also proved seizure list relating to seizure of bicycle of Tuntun, which was marked as Ext. 7/2, seizure list of SIM no. 9006365475 as Ext. 7/3 and seizure list of cloth of victim marked as Ext. 7/4. He also proved sealed packet containing seized articles, which were marked as Material Ext. III. In his evidence, he stated that on 23-12-2010 he was posted as officer incharge of Ganga Bridge Police Station, Hajipur and on the same date in the morning, he had received application of Ram Pravesh Rai (P.W.7), in which, he disclosed that his son Niraj went missing from Anganbari Centre and thereafter, he recorded sanha entry, vide Sanha No. 441/10 dated 23-12-2010. On the same date in the evening, he received written information from the informant after receipt of ransom call and thereafter, on the basis of written report, a formal F.I.R. was lodged and he started



investigation. During investigation, he recorded statement of Prahlad Rai (P.W.3), Mahasundari Devi (P.W.6), Nathun Rai (P.W.5) and Dilip Rai (P.W.2). He also inspected the place of occurrence, which has been described in paragraph – 3 of his evidence. He, in paragraph 5, deposed that during investigation he got an information that grandfather of the victim (Niraj) had sold his land for consideration amount of Rs. 16-17 lacs and this was the reason for kidnapping. He inquired in respect of number of phone calls i.e. 9204804332, from where, 1st demand of ransom was made and it was noticed that it was lying near the Gandhi Maidan, Patna in an unmanned booth. Further, in paragraph 7, he stated that on 26-12-2010 (it appears that it was incorrectly written as 25.12.10) again the informant came and gave a written information that accused persons had again demanded ransom amount from mobile no. 9006365475 and Rupees twelve lacs ransom was demanded and he was also threatened. On inquiry, he got information in respect of said mobile from the office of Superintendent of Police and it was noticed that mobile no 9006365475 was lying in the name of one Nawal Kishori Devi, wife of Nifir Bhagat of village Rustumpur. Then he went to Rustumpur and inquired from Nawal Kishori Devi, who told that said number was of her, but



2-3 months back, she lost the mobile. She was illiterate and she was not knowing that for such missing, any sanha was required to be lodged. Her husband was an old person. On 28-12-2010, he had a discussion with Confidential Section of office of Superintendent of Police and he obtained call details and thereafter, he could noticed that location of SIM No. 9006365475 was in the village Terasiya, which was of Airtel SIM. The said SIM was fixed in a hand-set (mobile phone), bearing I.M.E.I. No. 356280019444620, and it was being used for demanding ransom. Actually, the said hand-set was being regularly used with SIM No. 9955630621. The holder of the same SIM was one Lalbabu Rai of village Terasiya, P.S. Ganga Bridge. The investigating officer further stated that he came to know that the said Lalbabu Rai was a simple person and he was having two sons namely Vidya Rai (appellant no. 1) and Vikash Kumar. In paragraph 10 of his evidence, P.W.9 further stated that on 28-12-2010 the informant came to the police station and said that at 8.47 hrs. (morning) from mobile no. 9006365475, again ransom was demanded, then he got print-out of the said mobile number and then he noticed that I.M.E.I. No. 356280019444620 was the set, in which, regularly from SIM no. 9955630621 was being used, however; on 26-12-2010 and 28-12-2010 at the time



of demanding ransom in the said set, SIM No. 9006365475 was used. From the print-out, he came to know that before demand of ransom and after demand, the said mobile i.e. mobile having SIM No. 9955630621 was continuously in touch with mobile no. 9162603249 (Material Ext. I) and then he came to know that the holder of the said mobile was also involved in the kidnapping. The holder of mobile SIM no. 9162603249 was one Ramwati Devi, wife of Shital Rai of village Terasiya, P.S. Ganga Bridge, who was grandmother of appellant no. 2 (Lakhua @ Sarun Kumar). Ramwati Devi had already died and said mobile was being used by Lakhua (appellant no. 2). He also proved the print-out of the mobile received from the confidential section of S.P. Office and it was marked as Ext.5. He also proved the Consumer Application Form, which was marked as Ext.6. In paragraph – 13 of his evidence, P.W.9 (I.O.) further deposed that on 31-12-2010 from an informer, he got information that Vidya Rai (appellant no. 1) near Airtel tower was seen alongwith Tuntun Singh (appellant no. 3) and both were having discussion that Lakhua (appellant no. 2) should be eliminated, otherwise he will disclose the secret and then the investigating officer came to know that Tuntun (appellant no. 3) was also involved in the crime. Thereafter, during investigation on 02-01-2011 on the



basis of aforesaid information, Vidya Rai (appellant no. 1) and Sarun @ Lakhua (appellant no. 2) were arrested and from their possession, mobiles were seized and seizure list was prepared, which were marked as Ext.7 and 7/1 respectively. Thereafter, both mobiles were sealed in a packet. The said seal was opened in court. Both the mobiles were marked as Material Ext.I and I/1. On the same date, Tuntun Singh (appellant no. 3) was also arrested and he was brought to the police station and he was also interrogated. During interrogation, he confessed his guilt and all the three accused persons made confession and he (I.O.) proved the confessional statement of all the three accused/appellants, which were marked as Ext. 8, 8/1 and 8/2 respectively. Confessional statement of appellant no. 3 (Tuntun) is Ext. 8, confessional statement of appellant no. 2 (Lakhua) is Ext. 8/1 and confessional statement of appellant no. 1 (Vidya Rai) is Ext. 8/2. On the confessional statement, Sarun Kumar @ Lakhua (appellant no. 2) gave his thumb impression, whereas, Tuntun (appellant no. 3) and Vidya Rai (appellant no. 1) put their signature. All the three accused in their confessional statement disclosed that from Anganbari centre, while the boy was returning and reached on brick soling road, he was lifted in the lap by Vidya Rai (appellant no. 1) and then on the bicycle of



Tuntun (appellant no. 3), he was given in the lap of Sarun @ Lakhua (appellant no. 2). On the basis of pre-decision, they proceeded ahead of pillar no. 20 with a view to conceal the boy Niraj, but since there was difficulty in concealing the boy, he was done to death and dead body was buried after digging land. In paragraph – 17, the investigating officer further stated that on the said confession, cycle of the Tuntun was recovered and seized. On the basis of confession of Vidya Rai, the SIM No. 9006365475, which was used in demand of ransom, was recovered from the house of मौसा (husband of mother's sister) of Vidya Rai (appellant no. 1). The said SIM was concealed and wrapped in a paper, for which, seizure list was prepared. The confession of all the three accused had led to the recovery of sweater, half-pant, wrapper of *Parle-G* biscuit and चाड़ा (cloth-tape), by use of which the boy was done to death by tying neck, were recovered and seizure list was prepared. The investigating officer stated that he tried to search for the dead body, but it could not be recovered. Ram Janam Rai told that 5-7 days earlier he had seen that the dead body was being eaten by dog and jackal. He also prepared the site plan, which was mentioned in para 176 of the case diary. He had further given details regarding dates, he obtained print-out.



20. On examination of aforesaid evidence, it is established that it is not a case of only confession before the police, but confession of all the three accused had led to recovery of certain facts, which were exclusively within the knowledge of the appellants and as such, their confession can be treated as exception under Section 27 of the Evidence Act, 1872. Besides confession, there were other circumstances, which were sufficient to come to a conclusion that the prosecution has established its case beyond all reasonable doubt.

21. In view of entire evidence, as discussed hereinabove, we are of the opinion that the learned Trial Judge has committed no error in passing the judgment of conviction and sentence and as such, there is no reason to interfere with the judgment of conviction and sentence.

22. Accordingly, the judgment of conviction and sentence dated 31.08.2012 passed in Sessions Trial No. 115 of 2011 (arising out of Ganga Bridge P.S. Case No. 54 of 2010) by Sri Bashistha Shukla, learned Additional Sessions Judge 2nd, Vaishali at Hajipur is, hereby, affirmed and appeal stands dismissed.

23. Since appellant no. 1 (Vidya Rai) is on bail, his bail-bond is cancelled and he is directed to surrender before the



court below forthwith, otherwise, the learned court below will take all steps for securing his appearance.

24. Before parting with this judgment, we must record our appreciation for commendable investigation done by the investigating agency and in particular Sri Amit Nandan, the Investigating Officer of the case.

25. Let a copy of this judgment be communicated to the Superintendent of Police, Vaishali at Hajipur and D.G.P., Bihar.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	30.08.2018
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