

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1117 of 2012**

Arising Out of PS. Case No.-32 Year-2012 Thana- DAWATH District- Rohtas

Sanjay Sharma, S/o Girdhari Sharma, Resident of Village- Suryapura, P.O. &
P.S.- Suryapura, District- Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Md.Fazle Karim Mr.Sanjay Sinha
For the Respondent/s	:	Mr. S.N. Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)

Date : 17-05-2019

1. Heard learned counsel appearing for the appellant and the learned Addl. P.P. appearing for the State.

2. This appeal is directed against the judgment of conviction dated 01.10.2012 and the order of sentence dated 05.10.2012, passed by the Sri Ram Shreshtha Roy, learned Sessions Judge, Rohtas at Sasaram in connection with Sessions Trial No. 161 of 2012 arising out of Dawath P.S. Case No. 32 of 2012, whereby and whereunder the appellant has been convicted for the offence punishable under Sections 364A, 302 and 201 of the Indian Penal Code and has been sentenced to undergo imprisonment for life with a fine of Rs. 25,000/- for the offence under section 364A of I.P.C. He has further been sentenced to



imprisonment for life with a fine of Rs. 25,000/- for the offence under section 302 of I.P.C. The appellant has also been sentenced to undergo rigorous imprisonment for 2 years with a fine of Rs. 2,000/- for the offence under section 201 I.P.C. All the sentences have been directed to run concurrently. In default of payment of fine, the appellant has been directed to undergo simple imprisonment for 2 years.

3. The prosecution case, in brief, is that one Vinod Singh gave his statement on 14.04.2012 stating therein that at 3:20 P.M. on 07.04.2012, his younger brother Govind Kumar @ Guddu Kumar aged about 14 years at 1:00 PM. had gone to Maliyabag with his mobile phone for undergoing training of mechanic of computer and mobile phone from an unknown person and when he did not return then on 13.04.2012, at early morning, nephew of the informant Sanjay Singh from his mobile phone made a call. Some another person received the aforesaid call and made a demand of Rs. 2 Lakhs as ransom for releasing his brother, Govind Kumar. It was suspected that his brother has been kidnapped for ransom.

4. On the basis of the aforesaid *fardbeyan* of the informant, Dawath P.S. Case No. 32 of 2012 was registered on 14.04.2012 for the offence under section 363/364A of the Indian



Penal Code against unknown. After investigation, the police submitted charge-sheet under sections 364A, 302, 201 of I.P.C. on 01.05.2012 against Sanjay Sharma. Thereafter, cognizance has been taken on 02.05.2012 and the case was committed to the Court of Sessions for trial on 05.05.2012. Charges were framed against the appellant on 14.05.2012 for the offence under sections 364A, 302 and 201 I.P.C. to which the appellant pleaded not guilty and claimed to be tried.

5. During trial, the prosecution has examined altogether 09 witnesses. P.W.1/ Sanjay Kumar Singh, P.W. 2/ Rajni Kant Ranjan @ Ranjan Kumar, P.W. 3/ Govind Kumar, P.W. 4/ Bhagwano Devi, mother of the deceased, P.W. 5/ Vinod Kumar, the informant of the case, P.W. 6/Gopal Prasad Gupta, P.W. 7/ Kundan Kumar, P.W. 8/ Surendra Rai and P.W. 9/Sanjay Kumar, the Investigating Officer of the case.

6. In order to establish the charge, the prosecution has proved the following documents as exhibits :

Exhibit -1 Signature of witness Sanjay Kumar Singh on the memorandum of identification parade.

Exhibit-2 Signature of the informant on the Fardbeyan

Exhibit-3 Signature of informant on the memorandum of identification parade.

Exhibit-4 Signature of witness Gopal Prasad Gupta on Seizure List dated 27.04.2012.



- Exhibit-4/1 Signature of witness Gopal Prasad Gupta on
Seizure List dated 28.04.2012.*
- Exhibit – 5 Account opening Form of accused Sanjay Sharma*
- Exhibit – 6 Signature of witness Kundan Kumar on Seizure
List dated 30.04.2012.*
- Exhibit – 7 Signature of I.O. on the fardbeyan.*
- Exhibit – 7/1 Formal F.I.R.*
- Exhibit – 8 Seizure List dated 30.04.2012.*
- Exhibit – 8/1 Seizure List dated 27.04.2012/SBI*
- Exhibit–8/2 Seizure List dt.27.04.2012 /Karma Village (14:35 hrs.)*
- Exhibit-8/3 Seizure List dt. 27.04.2012/ Karma Village/15:00 hrs.*
- Exhibit– 8/4 Seizure List dt 27.04.2012/ Dhamna (16:00 hrs.).*
- Exhibit – 8/5 Seizure List dated 27.04.2012 at 17:45 hrs.*
- Exhibit – 8/6 Seizure List of the house of Gopal Prasad Gupta
(27.04.2012 at 18:30).*
- Exhibit – 8/7 Seizure List of the house of Gopal Prasad Gupta
(28.04.2012 at 7:30).*
- Exhibit – 9 Case Diary of Dawath P.S. Case No. 32/2012
(Para 1 to 122).*
- Exhibit–9/1 Supplementary Case Diary of Dawath P.S. Case
No. 32 of 2012 (Para 1 to 4).*
- Exhibit–9/2 Supplementary Case diary of Dawath P.S. Case
No. 32 of 2012 (Para 1 to 8).*
- Exhibit–9/3 Supplementary Case diary of Dawath P.S. Case
No. 32 of 2012 (Para 1 to 10).*
- Exhibit – 10 F.S.L. Report dated 09.05.2012.*
- Exhibit – 10/1 F.S.L. Report dated 15.05.2012.*
- Exhibit – 10/2 F.S.L. Report dated 25.05.2012.*
- Exhibit – 11 Report dated 05.05.2012*



Exhibit – 12 Confessional statement of accused Sanjay Sharma.

Exhibit – 13 T.I.P. Chart.

7. The appellant in his statement under Section 313 of the Code of Criminal Procedure has said that he is innocent and has falsely been implicated in this case.

8. During trial, no defence witness has been examined.

9. Before reaching to any conclusion, it is felt necessary to firstly examine the evidence of all the witnesses.

10. It is the evidence of P.W. 1 Sanjay Kumar Singh that on 07.04.2012, accused Sanjay Sharma made a call on the mobile phone of deceased Guddu Kumar and called him upon which Guddu went there. On that day itself, Binod Singh, brother of the deceased Guddu Kumar, talked with Guddu Kumar who said that he will return on the same date itself, but he did not return. On 13.04.2012, accused Sanjay Kumar made a call on his mobile phone bearing no. 9507980644 from the mobile of Guddu Kumar and demanded a ransom of Rs. 2 lacs for his safe return. Binod had recorded this call. The accused also gave him account number and asked him to deposit the aforesaid amount in that account.

On 26.04.2012, the accused was apprehended. Guddu was killed and even his dead body could not be



recovered. Pant, shirt and slippers of the child were recovered, which he identified in the test identification parade and had also put his signature on the paper. This witness identified his signature, which was marked as Exhibit-1.

In the cross-examination, the defence could not extract anything which could strengthen their case.

11. P.W. 2/Rajni Kant Ranjan deposed that on 07.04.2012 at 1:30 p.m., he had gone to Maliabag with Guddu Kumar and Basant Kumar. On the way, a call was made on the mobile phone of Guddu Kumar. Guddu got down from the Tractor on reaching Maliabagh. Both of us returned after making purchase.

Later on he came to know that Guddu had been murdered. He does not know as to who had made the call and who killed Guddu Kumar.

12. P.W. 3/Govind Kumar deposed that on 28.03.2012, he received a call on his mobile asking him to come to Maliabagh on the promise of teaching him Computer related work. The caller disclosed his name as Raju. He went to Maliabagh and met Raju but he did not have any shop. He took him to Navinagar and wanted to detain him in his house. When he told him about worship in his house, then he allowed him to



go.

The witness after seeing the accused in the Court stated that it is he who had called him. The number of the mobile through which call was made was 9507275641.

Guddu was also taken away by the accused for computer training.

13. P.W./4 Bhagwano Devi, who is the mother of the deceased, has stated that the occurrence took place about two months ago. My son, Guddu, aged about 14 years, left the house at 2:00 p.m. saying that he is going to Maliabagh for learning computer. Someone had called my son on phone. Guddu did not return. A phone call was received on the mobile phone of my son Binod Kumar to the effect that the boy will be returned on payment of a ransom of Rs. 2 lacs. Thereafter, it was learnt that accused Sanjay Sharma has committed murder of my son because of non-fulfillment of ransom of Rs. 2 lacs.

The clothes and slippers of Guddu were recovered by the Police. He identified the said clothes and slippers. He put his thumb impression on the paper of identification.

14. P.W.5/ Binod Kumar, who is brother of the deceased and the informant of the case, has stated that on



07.04.2012, Guddu (deceased) said to him that he was going to Maliabagh for computer training as a person is calling him on the assurance that after completion of training, Rs. 100/- per day will be paid to him. Guddu did not return and his phone was switched off. Information was given to the Police Station. On 13.04.2012, when Sanjay made a call, it was said from the other end that Guddu was with him and on payment of Rs. 2 lacs, he would be released. This conversation was recorded by the witness and information was given to the Police Station.

After 2-4 days, the same person gave his A/c No. 32173987364 of State Bank of India and asked to deposit the money in the same account. We did not deposit any money. When he made call, we informed that money has been deposited. As soon as he came to withdraw the money at the Bank, the Police arrested him.

The witness informed the police about giving *fardbeyan* and proved his signature on the *fardbeyan* as Exhibit-2.

In the Test Identification Parade, he had identified the clothes and slippers of Guddu. Document was prepared. The witness identified his signature on the document as Exhibit-3.

He also said that his mobile number is



8294767873. The mobile number of Guddu is 8651930483 and the mobile number of Sanjay (P.W.1) is 9507980644.

In cross-examination, he stated that seizure/recovery was not made in his presence rather police had called him on phone for identification.

15. It is the evidence of P.W. 6/Gopal Prasad Gupta that accused Sanjay Sharma, whom he identified in the Court, had taken his house on rent. The police had come to his residence with the accused. On 27.04.2012, the police had seized a pair of blue coloured slippers and a piece of cream coloured clothe. These materials were recovered from the house which the accused had taken on rent. The seizure was made in his presence. He had put his signature on the seizure list. The witness identified his signature as Exhibit-4.

On 28.04.2012, the police again came and went to the room of the accused where it found blood stains on the wall, which the police seized by scratching the wall. The police also found the blood stains on the Northern wall of the house and on the outer wall of the toilet, which also the police seized by scratching the wall. Blood stains were also found on the door of the toilet, which was seized by cutting the wood of the door. The police also found the blood stains wiped with cotton on the Bed



which was also seized.

The seizure list was made in his presence and he had put his signature on the same. The witness identified his signature as Exhibit-4/1.

In cross-examination, he admitted that there is no written document about letting the house.

16. P.W.7/Kundan Kumar has stated in his evidence that at present he is posted as Branch Manager at S.B.I., Branch Piro, Sasaram. The witness identified the Bank account opening form of accused Sanjay Sharma bearing A/c. No. 32173987364 and his signature on the same. It was marked as Exhibit-5. On the written application of the Superintendent of Police, the Form was given to the police. The police had prepared the seizure list of this Form in presence of this witness on which he had put his signature. The witness identified the seizure list as Exhibit-6.

17. P.W. 8/Surendra Rai has stated in his evidence that he has his account in S.B.I. Branch Piro. He was the identifier of accused Sanjay while opening the bank account. He had put his signature as the identifier on the account opening form. The witness identified his signature.

This witness also identified the accused in the



Court.

18. P.W. 9/Sanjay Kumar, who is the investigating officer of this case, has stated in his evidence that on 14.04.2012, he was posted at Dawath Police Station. On that day, he recorded the fardbeyan of Binod Singh on which Binod Singh put his signature. An F.I.R. was registered on the basis of that *fardbeyan*. He made the endorsement on the margin of the *fardbeyan* and put his signature. The witness identified his signature as Exhibit-7. The witness also admitted the formal F.I.R. to be in his writing and signature and proved it as Exhibit-7/1.

He himself took the charge of investigation and then recorded the re-statement of the informant and the statement of witnesses.

In course of investigation, he demanded the information about the mobile numbers mentioned in the first information report as also the call details from the company. From the call details, location was traced out, which was Hasan Bazar. On the basis of call details, he summoned Govind (P.W.3) and recorded his statement.

He verified the bank account of the accused. He seized all the documents relating to the said account. The



witness proved his signature on the seizure lists as Exhibit-8 and Exhibit-9.

He arrested accused Sanjay Sharma at Hasan Bazar and interrogated him and raided the places disclosed by him from where he recovered white cream coloured pant of the kidnapped boy. On the inputs given by the accused, he recovered a severed head from a well. On the basis of indication of the accused, he also recovered a Samsung Mobile, a Hammer, Garasa, a pink shirt and a blood stained plastic bag of cement. On the indication of accused, he went to the house of Gopal Prasad (P.W. 6) and recovered a square shaped piece of white cream coloured pant and a slipper of blue colour. From the house of Gopal Prasad himself, he seized the blood stained earth and cuttings of wood of the door. This witness proved seizure list of all these items as Exhibits-8/1 to 8/7.

He also said that all these seizure lists were prepared in presence of independent witnesses.

The identification parade of these items was conducted by the Circle Officer, Dawath where the witnesses identified the clothes and slippers of the deceased.

He received the call details of those mobiles which were used during commission of crime and recorded



them in the para-3 of the supplementary case diary.

He sent the recovered severed head to F.S.L. Patna and Magadh Medical College, Gaya for its examination.

Different paragraphs of case diary and supplementary case diary were also proved by this witness as Exhibits-9, 9/1, 9/3 and 9/3 respectively.

He seized the mobile through which the accused had made calls to the deceased and his family members bearing SIM No. 9507275641. The mobile set was produced from the *Malkhana* (Material Exhibit-I).

A SIM which was registered in the name of the informant (No. 8651930483) was recovered from the possession of the accused which was produced that day from *Malkhana* (Material Exhibit-II).

Another mobile of the deceased recovered from the house of the Manendra Sharma, brother-in-law (Bahnoi) of accused Sanjay, was also produced by this witness (Material Exhibit-III).

Finding the case to be true, he submitted the charge-sheet in the Court.

In his cross-examination, he deposed that the SIM recovered from the accused was registered in the name of one



Bishwajeet Das of District -Kishanganj. In course of investigation, he did not investigate or gather information about Bishwajeet Das. The name of the father of accused Sanjay Sharma in his bank account was mentioned as Nageshwar Sharma, Vill. Jitaura, P.S. Piro, District – Bhojpur, whereas the name of the father of the accused Sanjay Sharma is Girdhari Sharma, Vill. Bangla Chowk, P.S. Surajpura, District – Rohtas.

On recall, the witness was re-examined in which he stated that the accused Sanjay Sharma had made his confessional statement before him in which he had confessed his involvement in the crime. The S.H.O., Sanjeev Kumar, had recorded the statement of the accused in presence of this witness. The accused has put his signature on the statement after going through the same and finding the same true. The confessional statement was proved by this witness and marked as Exhibit-12.

The Test Identification Parade of the seized articles was conducted on 01.05.2012, which was got conducted by the Circle Officer, Dawath. In the said Identification Parade, the witnesses Bhagwano Devi, Sanjay Kumar Singh, Rambabu Singh and Binod Singh had identified the belongings of the deceased Guddu Kumar. The witness stated the memorandum of



test identification parade to be in the writing and signature of the Circle Officer and proved the same as Exhibit-13.

The witness in his cross-examination stated that he did not try to take the statement of the accused under section 164 Cr. P.C. and did not produce the aforesaid materials before the Court.

19. Learned counsel appearing on behalf of the appellant Sri Fazle Karim argued that there is no eye witness to the alleged occurrence. The F.I.R. is registered after a week. The witnesses to the seized articles are not examined. No one saw the accused and the deceased together. Besides the deceased, P.W. 3 also stated to have gone to the house of the accused but no one saw these two together.

The name and address of the father is different in the bank account. The SIM Card is registered in the name of one Bishwajeet Das, who has nothing to do with the accused.

The fact of the accused withdrawing money from the bank also appears to be unrealistic because he could have withdrawn the money through ATM at any place.

The confession made before the Police has no evidentiary value and conviction on the basis of the same is not justified.



For the aforesaid reasons, the accused is entitled for a clean acquittal or at least he should be given the benefit of doubt.

20. Sri Satya Narayan Prasad, A.P.P., has vehemently opposed this appeal and has stated that though it is true that the confession before the Police has no evidentiary value, nevertheless if the confession leads to recovery then that part of the confession is acceptable in evidence. In the present case, on the confession of the accused, a severed head, the clothes and slippers, etc. of the deceased have been recovered.

P.W. 5/Binod Kumar specifically states that the accused was his tenant and the police had seized blood stained from his room. Even the slippers of the deceased were also recovered from the same room, which were identified by the witnesses in the T.I.P.

P.W. 3/Govind Kumar, who is a minor boy of the age of the deceased, identifies the accused and says that the accused had called him also to his room on the excuse of teaching computer.

Call details depict that the accused was in regular touch with the deceased, the informant and his brother.

It is worth consideration as to how the informant



got the details of bank account of the accused.

Insofar as the name of the father being different in the bank accounts is concerned, anyone who is opening his account to keep the money gained by illegal means will never disclose the correct name and address to the Bank. The important thing is that P.W. 8 has specifically said that he had become identifier for opening the account of accused Sanjay. He also identified the accused in the Court. Therefore, it is not significant that the accused had given wrong father's name and address.

In the same manner, insofar as the SIM used by the accused being registered in the name of one Bishwajeet Das is concerned, no offender will ever use the SIM registered in his name through his mobile for demanding ransom. It is obvious that the SIM has been procured through theft or loot. Relevant thing is that the SIM has been recovered from the possession of the accused and not from the possession of Bishwajeet Das.

P.W. 3, P.W. 5 and P.W. 8 are independent witnesses. They are not related to either the deceased or the informant. In the aforesaid circumstances, why would they depose falsely against the accused.

It is most relevant to note that the SIM issued in



the name of the informant Binod Kumar is recovered from the accused and the accused could not give any reasonable explanation as to how this SIM was in his possession.

21. This Court is in agreement with the submissions advanced by Sri Satya Narayan Prasad and rules out all the points raised on behalf of the appellant. Accordingly, the appeal is dismissed and the judgment of conviction dated 01.10.2012 and the order of sentence dated 05.10.2012, passed by the Sri Ram Shreshtha Roy, learned Sessions Judge, Rohtas at Sasaram in connection with Sessions Trial No. 161 of 2012 arising out of Dawath P.S. Case No. 32 of 2012 are, hereby, affirmed.

(Arvind Srivastava, J)

Rakesh Kumar, J : I agree.

(Rakesh Kumar, J)

Shailendra/-

AFR/NAFR	NAFR
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