

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.80 of 2019

Arising Out of PS. Case No.-48 Year-2002 Thana- BIDUPUR District- Vaishali

- 1. PANTULAL ROY Hari Narayan Roy Resident of Village- Amer, P.S.- Bidupur, District - Vaishali
- 2. Rasgulla Roy Late Harihar Roy Resident of Village-Amer, P.S.- Bidupur, District - Vaishali

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 152 of 2019

Arising Out of PS. Case No.-48 Year-2002 Thana- BIDUPUR District- Vaishali

- 1. AKHILESH ROY son of Late Ram Ekbal Roy, resident of village- Bishunpur Raj Khand,
- 2. Kanak Roy, son of Late Shyamdeo Roy resident of Village Bishunpur Rajkhand,

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 80 of 2019)
For the Appellant/s : Mr. Sanjay Singh, Sr. Advocate
Mr. Rudrank Shivam Singh, Advocate
Ms. Soni Shrivastava, Advocate
Mr. Kalyan, Advocate
Mr. Ravi Bhardwaj, Advocate
For the State Respondent: Mr. Sujeet Kumar Singh, APP
For the Informant Mr. Ashok Kumar, Advocate
(In CRIMINAL APPEAL (DB) No. 152 of 2019)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
Ms. Kiran Kumari, Advocate
For the Respondent/s : Mr. Sujeet Kumar Singh, APP
For the Informant Mr. Ashok Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and



**HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 06-11-2023

Both these appeals have been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') against the judgment of conviction dated 15.12.2018 and order of sentence dated 18.12.2018, passed by learned Additional Sessions Judge-II-cum-Special Judge, Hajipur, Vaishali in Sessions Trial No. 288 of 2011, arising out of Bidupur P.S. Case No.48 of 2002, by which all the appellants have been convicted for the offences punishable under Section-364 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and sentenced to undergo imprisonment for life and a fine of Rs.20,000/- each and in default of payment of fine, to further undergo imprisonment for 6 months.

2. Prosecution story, in brief, is as under:-

“On 01.03.2002 at around 3:00-4:00 a.m., Rudal Roy, the father of the informant, had gone to ease himself. In the meantime, the mother of the informant woke up and enquired the younger brother of the informant Sanjeet about her husband who confirmed that he had gone to ease himself. In the morning seeing the water pot on the window, the informant's mother again tried to locate his



whereabouts, but to no avail. The father of the informant had to go to Danapur Cantonment to meet the informant's younger brother Samarjeet Kumar, who is a Sepoy in Army. All the family members got an impression that he has gone to Danapur without informing any member of the family. On that day at about 1:30 p.m., Bhajanlal, the cousin of the brother-in-law of the informant dialed from his phone No.54083 on phone No.53749 which belongs to Ram Anek Roy, the neighbour of the informant, and informed the informant that his father has informed him that in the morning when he was returning, accused Akhilesh Roy, Kanak Roy, Pantu Roy and Rasgulla Roy kidnapped him and took him to an unknown place under threat and when Bhajanlal asked informant's father from which place he was talking, he replied that he was blind-folded and he has no idea of his whereabouts. The informant's case is that Milan Roy's brother is the brother-in-law of Akhilesh Roy. Milan Roy wanted to solemnize his sister's marriage with the informant's younger brother Samarjeet. He had given Rs.5000/- on the occasion of engagement at Danapur. The informant's younger has denied to marry. The money was given on 9th February. The father of the informant said that if his son (proposed groom) himself is not agreeable to the marriage, the marriage cannot be solemnized. This discussion had taken place on 28.02.2002 at about 5:00 p.m. in



the presence of the informant's youngest brother Sanjeev Kumar, Rameshwar Roy and Ashok Kumar at the door of Ram Ishwar Roy. Aggrieved with this refusal, with a view to take revenge, his father was forcibly kidnapped/abducted by accused Akhilesh Roy, Kanak Roy, Pantu Lal Roy, Rasgulla Roy and others by blind-folding and gagging his mouth. This incident is the outcome of a pre-planned conspiracy.”

3. After filing of the F.I.R., the investigating agency carried out the investigation and during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter initially filed the final report in favour of the accused. However, it is pointed out by the learned counsels that the Court directed the investigating agency to carry out further investigation and thereafter the investigating agency filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions.

4. Before the Trial Court, during the course of trial, the prosecution had examined 14 witnesses and the defence had also examined 3 witnesses. Statement of the accused under Section-313 of the Code came to be recorded. After conclusion



of the trial, the trial court passed the impugned judgment and order.

5. Heard learned Senior Counsel Shri Sanjay Singh assisted by Mr. Rudrank Shivam Singh for the appellant Pantulal Roy and Ms. Soni Shrivastava, learned counsel assisted by Mr. Kalyan and Mr. Ravi Bhardwaj for the appellant Rasgulla Roy and Shri Sujeet Kumar Singh, learned APP for the respondent-State and Mr. Ashok Kumar, learned counsel for the informant in Cr. Appeal (D.B.) No.80 of 2019 and Mr. Ajay Kumar Thakur, learned counsel assisted by Mrs. Vaishnavi Singh, Mr. Ritwik Thakur and Ms. Kiran Kumari appearing for the appellant, Mr. Sujeet Kumar Singh, learned APP for the respondent-State and Mr. Ashok Kumar Mishra, learned counsel for the informant in Cr. Appeal (D.B.) No.152 of 2019.

6. Learned counsels for the appellants have referred the deposition of the witnesses and thereafter contended that there is no eye-witness to the alleged kidnapping/abduction of Rudal Roy/father of the informant. Even the prosecution has failed to prove abduction of Rudal Roy by leading cogent evidence before the Trial Court. Thus, the prosecution has miserably failed to prove the abduction/kidnapping punishable under Section-363 of I.P.C. and, therefore, there is no question



of committing the alleged offence punishable under Section-364 of I.P.C. by the appellants. It is further contended that even the prosecution has failed to prove that Rudal Roy (the so called kidnapped person) has died as the dead body of Rudal Roy has not been found. Thus, the prosecution has failed to prove that Rudal Roy has been killed by the accused by leading cogent evidence before the Trial Court and only on the basis of presumption that nothing has been heard with regard to Rudal Roy for seven years and, therefore, it is presumed that he must have died and the said death of Rudal Roy is caused by the present appellants. It is, therefore, contended that only on the basis of presumption and assumptions, the Trial Court has recorded the conviction of the appellants for the offence punishable under Section-364 of I.P.C. and, therefore, the impugned order is required to be quashed and set aside.

7. On the other hand, learned counsels appearing for the respondents have opposed these appeals. It is mainly contended that the prosecution has proved the motive on the part of the appellants to commit the alleged offence. It is contended that accused Akhilesh Roy was interested to see that the marriage of the sister of his *Sadhu* (brother-in-law) with the son of Rudal Roy. However, when Rudal Roy declined/refused for



the said purpose, on the ground that his son Samarjeet Kumar is under training as a Sepoy in Army, all the accused gathered prior to the date of occurrence and Akhilesh Roy gave threats of dire consequences. Thus, the prosecution has proved the motive on the part of the appellants/accused to commit the alleged offence. It is further submitted that the abducted person, i.e. Rudal Roy, himself has made telephone call to one Ram Anek Roy and also made telephone call to Dilip Compounder and on both the occasions Rudal Roy has himself informed the concerned witnesses that he has been abducted by the accused. However, his eyes were covered and his hands and legs were tied. Learned counsels, therefore, urged that the prosecution has proved the case against the appellants for commission of the offences of kidnapping/abduction and thereafter, for a period of seven years, when the whereabouts of the abducted person has not been found, it can reasonably be said that the appellants have committed the murder of Rudal Roy, thereby, committed the offence punishable under Section-364 of I.P.C. Learned counsels, therefore, urged that when the Trial Court has not committed any error while passing the impugned judgment and order, no interference be made in the said in the judgment and order.



8. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence led by the prosecution before the Trial Court. It would emerge that the prosecution had examined 14 witnesses with a view to prove its case against the appellants before the Trial Court.

9. P.W. 1 Sanjeet Kumar is the son of Rudal Roy. The said witness has stated in his examination-in-chief that on March, 2002 at about 4:00 p.m. when he was sleeping with his father in the house, his father woke up and asked for the water pot (Lota) and thereafter he went for attending the nature's call. When his mother enquired, he told that his father had gone to attend nature's call. However, his father did not return and thereafter it was found that the water pot was lying near the window and, thereafter the family members started searching for his father. However, his whereabouts were not found. It is further stated by one relative of the said witness that Ram Anil Roy received telephone call on his telephone No. 53749. It was informed that when Rudal Roy had gone to the cow-shed, four persons covered his eyes and he was taken to an unknown place. Thereafter, name of the accused were given. The said witness has also stated that his elder brother Samarjeet Kumar is



working as a Sepoy in the Army and was posted at Danapur and, therefore, they were under the impression that his father must have gone to his place. However, it is further stated that Akhilesh Roy wanted to see that marriage of the sister of his *Sadhu* (brother-in-law) is solemnized with the brother of the witness, namely Samarjeet. However, his brother refused to marry and, therefore, on 28th of February, 2002, during the evening hours, near the house of Rameshwar Roy all the accused gave threats to the father of the said witness. The said witness has, therefore, said that because of the aforesaid incident, his father must have been kidnapped/abducted by the accused and thereafter he has been killed by the accused and his dead body has been disposed of.

9.1 During cross-examination, he has admitted that he had not seen anybody kidnapping/abducting his father. He has further stated that in the house itself there are two toilets. However, the same is for the purpose of use of ladies. His further statement was recorded on 02.04.2005 by the police. He has also admitted that there was no quarrel between the family of the accused and his family.

10. P.W. 2 Arun Kumar has stated in his examination-in-chief that on 01.03.2002, at about 3:00 to 4:00



a.m. in the morning, he was sleeping in his house and Rudal Roy had gone to attend the nature's call in the morning. However, when he did not return to his house, they started searching for him. Water pot was found near the window. Thereafter at 2:00 p.m. one phone call was received in the house of Dilip Compounder whose telephone number was 53574. One of the person from his house came to the house of the said witness and informed that one phone call was received with respect to Rudal Roy. The said witness, therefore, went to the house of Dilip Compounder. After 10 minutes, a phone call was received from Rudal Roy. He told that when he had gone to attend the nature's call in the morning, he was forcibly taken by the four accused in a car. They had tied his eyes. He is not aware where he has been kept. He has also shown apprehension that he would be killed. The said witness further stated that his cousin Samarjeet Kumar is posted at Danapur and is serving in the Army. He has further stated that negotiation was made with regard to the marriage of Samarjeet with the sister of the brother-in-law of Akhilesh. However, the boy refused for the said marriage. Akhilesh, therefore, gave threats. The said witness has also stated that Rudal Roy is not found out till date and, therefore, all the accused must have killed him and his dead



body is disposed of. The said witness identified the accused who were present in the Court.

10.1 During cross-examination, the said witness has stated that he did not know the name of the person who was having telephone No.53749. He also did not know about the other two telephone Nos.54083 and 53574. He is also not aware about the fact that from which phone number the telephone call was made by Rudal Roy. Said witness further admitted that except one or two, all the witnesses are of one family and near relatives. The said witness has also admitted that the incident of threat given on the previous evening was not reported to the concerned S.P. He is also not aware whether the boy had refused to marry. Dilip Compounder is also not his relative. The said witness further specifically admitted that he had not seen anybody taking Rudal Roy.

11. P.W. 3 is Ram Ishwar Roy. The said witness has stated that at about 5:00 p.m., he was at his door. All the accused and Rudal Roy came at his place. Negotiation was going on with regard to the marriage between Akhilesh and Rudal Roy. Rudal Roy was refusing for solemnization of marriage of his son Samarjeet by saying that his son is still under training. After training is over, his marriage can be solemnized. At that time,



Akhilesh was giving threats. They were talking loudly for half an hour. The said witness further stated that on the next day afternoon when he was returning from the field, he came to know that Rudal Roy was kidnapped and all the accused have kidnapped him.

11.1 During cross-examination, the said witness has stated that he is a neighbour of Rudal Roy. The said witness further stated that he did not know whether the investigating agency has filed final report against the accused, except Akhilesh.

12. P.W. 4 is Bhola Singh. The said witness has stated that his brother Upendra Singh informed him that his cousin Bhajan Lal received telephone call and on telephone he got the information that his father-in-law Rudal Roy has been kidnapped. When he went to the house of his father-in-law, he came to know from his mother-in-law Saraswati Devi that on the previous day during evening hours accused Akhilesh Roy, Pantu Lal Roy, Kanak Roy and Rasgulla Roy came at their house and thereafter Rudal Roy had gone with them at the house of Rameshwar Roy. He also came to know that Akhilesh and other accused gave threats that he will be kidnapped if the marriage of Samarjeet will not be fixed in the family of Milan



Roy. Thereafter, Rudal Roy returned to the house and on the next day Rudal Roy was kidnapped. He further stated that, as Rudal Roy has refused for marriage of his son, he has been kidnapped and thereafter he has been killed by the accused.

12.1 During cross-examination, said witness stated that his statement was recorded after 7 to 8 days of the incident. He is the son-in-law of the informant. The said witness has stated that he did not know the telephone number of Bhajan Lal. He is also not aware about any dispute with regard to land between accused and his in-laws.

13. P.W. 5 Virendra Singh has stated that he got the information from his brother-in-law (*Sadhu*) Bhola Singh with regard to the occurrence on 01.03.2002. He was told that his father-in-law Rudal Roy has been kidnapped. The said witness also stated about the story of the incident which had taken place previous to the date of occurrence during evening hours.

13.1 During cross-examination, the said witness has stated that he is a relative of the informant and he is not an eye-witness to the occurrence. He has admitted that he has given his deposition as a hear-say witness.

14. P.W. 6 Samarjeet Kumar is the son of the person who has been allegedly kidnapped. At that time, he was



under training. The said witness also is not a witness to the occurrence in question and he got the information from his brother Indrajeet that his father has been kidnapped. The said witness has also stated that he is sure that his father has been kidnapped by the accused and thereafter he has been killed.

14.1 During cross-examination, the said witness has stated that his statement was recorded by the police after a number of days. He has further stated that his father made telephone call twice, first to Dilip Compounder and thereafter to Bhajan Lal. He is not aware about the telephone number from which such telephonic calls were made by his father. He has further stated that his family members did not see who has kidnapped his father and he had not talked with his father with regard to his marriage.

15. P.W. 7 Bhajan Lal is the witness who had received telephone call when he was at his residence. Said witness has stated that on 01.03.2002, at about 1:00 p.m., when he was at his house, he received phone on his basic phone No. 54083. When he picked up the phone, he came to know that Rudal Roy, who is father-in-law of his cousin Bhola Singh, has made the said call. He has further stated that Rudal Roy informed him that 4 persons have kidnapped him and their



names are Akhilesh Roy, Kanak Roy, Rasgulla Roy and Pantu Roy. His hands and legs are tied. The said Rudal Roy informed him that Kiran Devi be called and, therefore, the said witness called Kiran Devi. Kiran Devi talked with Rudal Roy. At that time, the said witness was present. After talking with Rudal Roy, Kiran Devi started crying. Thereafter, the said witness made telephone call to Anek Roy and Indrajeet Roy, son of Rudal Roy came at the place of Anek Roy and talked with him. The said witness informed Indrajeet about the telephonic talk. After one hour Rudal Roy made telephone call and enquired whether he had informed his family members or not. The said witness further stated that he is sure that Rudal Roy has been kidnapped and thereafter he has been killed. The said witness did not identify any of the accused who were present in the Court.

15.1 During cross-examination, the said witness further stated that he received telephone call twice. However, he did not know from which mobile phone or basic phone he received the same. His statement was recorded by police on 07.09.2002. The said witness was not having any document as to whether he holds any basic phone.

16. P.W. 8 Sharmila Kumari is the daughter of Rudal Roy. She stated in her examination-in-chief that on the



date of incident i.e. 01.03.2002, she was at her parental house at Sheetalpur Chakmanger. Her father had went out to relieve himself but he did not return till date. In the afternoon her brother-in-law (husband of her sister) received a telephonic call from Akhilesh Roy, Kanak Roy, Pantu Lal Roy and Rasgulla Roy. Her father informed her brother that while going to ease himself, he was abducted by accused Akhilesh Roy, Kanak Roy, Pantu Lal Roy and Rasgulla Roy. The reason was the failure of marriage negotiations for marriage of her brother Samarjeet. It is her firm belief that all the accused had kidnapped her father and killed him and disposed of his dead body. She identified all the four accused present in the Court.

16.1 In her cross-examination she has *inter alia* stated she had stated before the police that a phone call was received on the phone of Ram Anek Roy. She did not know Ashok Roy. She did not have any talk with Ram Anek Roy. He talked with her brother. She did not remember whether she was present at home on 28.03.2002. She was at home on 28.02.2002. On that day she had not seen the accused persons. She could not say from which phone number the phone call was received nor on which phone number the call was received. She has admitted that she did not see anybody abducting/kidnapping her father.



She had not stated before the police that Akhilesh Roy had given Rs.5000/- to my brother at the time of engagement. She admitted to have stated that Akhilesh Roy had talks with her father and later on he was abducted. Her further statement before the police was taken after three years of the incident. She had no knowledge that the police had submitted final report.

17. P.W. 9 Saraswati Devi is the wife of Rudal Roy. The incident took place about 12 years ago. At about 5:00 a.m. her son was sleeping with Rudal Rai and when she enquired about his father, he stated that he had gone outside to ease himself. On seeing the water pot (Lota) on the window, all the family members started searching for him, but he could not be located. Bhajan Lal informed on telephone to her son that Rudal Roy has been kidnapped/abducted. She further stated that it was also informed that Pantu Lal Roy, Rasgulla Roy, Kanak Roy and Akhilesh Roy had kidnapped her husband. She started crying. She further stated that accused Akhilesh Roy wanted solemnization of marriage between the sister of his brother-in-law (*Sadhu*) and Samarjeet who was under training in Danapur Military Cantonment, due to which the negotiation failed. Her husband has not returned till date and she has strong apprehension that the aforesaid accused persons had him after



kidnapping/abducting him. She has identified all the accused.

17.1 In her cross-examination she has stated that her husband had not gone to the house of Nasibi Roy. She knew Ram Anek Roy. She did not receive any information that 6 days before the date of incident her husband had gone to the house of Ram Anek Roy in the morning. She has given the description of her house and has stated that all the accused are of different families, but from the same village. They had never met the *Sadhu* of Akhilesh Roy. She had not seen anybody kidnapping her husband, but they had threatened a day ago. She has further stated that police had taken her first statement on the date of incident and the second statement was taken after three years. Concerned Darogaji had come on the date of kidnapping/abduction, when several members of the family were present. Statements of some members of the family were also recorded. She denies the suggestion that police had not found the complicity of the accused in the said incident. She also denies the suggestion that she was giving false statements and no such incident had actually taken place.

18. P.W. 10 Indrajeet Kumar Roy is the informant. He has stated that on 01.03.2002 he was sleeping in his house. At 3-4 a.m. his mother woke him up and informed that his father



had gone to ease himself, as per his younger brother, but the water pot is there outside and he has not returned. Find out as to where he actually is. I went outside the house and to the cow-shed, but he was not there even. The cow was also not there. His mother told him that accused Akhilesh Roy, Kanak Roy, Rasgulla Roy and Pantulal Roy and a few other unknown persons had threatened his father at the door Ram Ishwar Roy with dire consequences for refusing the marriage proposal. He has further stated that he had gone to Danapur Cantonment in search of his father with his friend Santosh (now deceased) where his brother Samarjeet informed that the father had not gone there. He has further stated that Bhajan Lal Roy, brother of his brother-in-law, telephonically informed him that his father has been abducted. He personally talked to his father. Rudal Roy informed that when he went to the cow-shed, accused Akhilesh Roy, Kanak Roy, Pantu Lal Roy and Rasgulla Roy tied his eyes and have taken him to an unknown place in their vehicle and are threatening to kill him. He has stated that the motive behind the incident is refusal of marriage proposal of his brother with the sister of Akhilesh Roy's *Sadhu*. He also stated that in the evening of 28.02.2002 at 5:00 p.m. all the accused assembled at the house of Ram Ishwar Roy and threatened my father of dire



consequences. He further stated that he had given written information to Bidupur P.S. in his pen and signature. When the police started faulty investigation, he had also filed protest petition. The High Court directed to write to S.P. and S.P. was directed to re-investigate, but by that time charge-sheet had been submitted with the notes “abducted person traceless” and the S.P. had directed to complete the investigation in two months. He identifies accused Akhilesh Roy, Rasgulla Roy, Pantulal Roy present in the court and claims to identify Kanak Roy. He further states that due to refusal to marry his father was abducted/kidnapped, killed and his dead body was disposed of. Since 01.03.2002 his father is traceless till date. He has identified the protest petition signed by him.

18.1 In his cross-examination he has stated that he had gone through the charge-sheets filed. First charge-sheet was filed only against accused Akhilesh Roy and others were declared not guilty. He has supported his statement that in both the charge-sheets the incident of abduction/kidnapping and killing was mentioned. In his re-statement, he had reiterated the names of Kanak Roy, Rasgulla Roy and Pantulal Roy as stated in his statement recorded in 2005. He had stated in his statement dated 01.03.2002 that on 28.02.2002 a hot exchange of words



had taken place in presence his father, his younger brother Sanjeet Kumar, Ram Ishwar Roy, Ashok Roy, compounder Nityanand Singh at the door of Ram Ishwar Rai with Akhilesh Roy, as Akhilesh wanted to solemnize the marriage of the sister of his *Sadhu* with his brother which proposal was refused by his father. On refusal Akhilesh Roy threatened of dire consequences. He has admitted that he had seen the accused after the incident of abduction only when they were arrested by the police. To his information, his family had no land dispute with the accused persons. He denies the suggestion of filing a false case against the accused persons. The accused persons have lodged many false cases against his family after the incident. He has also denied the suggestion that he has given false statements.

19. P.W. 11 Virendra Yadav is the Investigating Officer. He has stated that he took charge of the investigation of the present case on 10.07.2005. He recorded the re-statement of informant Indrajeet Kumar Roy on 25.08.2005. He enquired about the abducted person Rudal Roy from the Chaukidars and they expressed apprehension that Rudal Roy has been killed, as recorded in para-76 and 79 of the case diary. He further stated that he submitted a corrigendum in the Court to add Section-



364/34 I.P.C. in the charge-sheet. Thereafter he was transferred to Vaishali and he handed over the charge of investigation to the then Officer-in-Charge Shri R.P. Roy.

19.1 In his cross-examination, he has stated that against accused Akhilesh Roy, charge-sheet had already been filed. He thought it prudent to record the statement of the informant again and, accordingly, recorded his statement once again. He did not record statement of any other witness whose statement had been recorded earlier. In his re-statement Indrajeet Roy did not state that he had not stated about the telephone number and the talks that had taken place on phone. He denies the suggestion that he had taken re-statement of the informant under his instructions.

20. P.W. 12 Mebalal Ram is another Investigating Officer. He has stated that he took charge of the investigation of the present case on 04.02.2006. He collected the supervision report. He submitted charge-sheet against accused Rasgulla Roy, Pantu Roy and Kanak Roy.

20.1 In his cross-examination he has stated he had not put the date in the margin. He had gone through the case diary before filing charge-sheet. He admits that he had not visited the place of occurrence. He had submitted the charge-



sheet in the light of supervision report submitted by the superior officer. He has denied that he submitted the charge-sheet under the influence of superior officer.

21. Raj Kishore Singh is another Investigating Officer who was posted on 25.03.2005 at Bidupur Police Station. He has stated that he started the investigation of the present case on receiving an order of learned Chief Judicial Magistrate on 01.04.2005. He also received a High Court order through S.P. and the application submitted by informant Indrajeet Kumar Roy directing for finding out the abducted father of the applicant and filing the compliance report. In course of investigation, he recorded the statements of informant Indrajeet Kumar Roy, Saraswati Devi, Sanjeet Kumar, Ram Ishwar Roy, Nasibi Roy, Sharmila Kumari and by visiting the place tried to get the whereabouts of the abducted person, but to no avail. He circulated the photograph of the abducted person among the Dafadars and Choukidars and officers posted at the police station and directed them to recover the victim. On 07.05.2005, he recorded the statement of Sbrajit Kumar, Lala Roy @ Veera Roy. He recorded the re-statement of the informant. The informant informed that accused Akhilesh Roy, Pantu Lal Roy, Kanak Roy and Rasgulla Roy had, by hatching a



criminal conspiracy, killed his father after abducting/kidnapping him. Thereafter, consequent upon his transfer, he made over the charge of further investigation to the Officer-in-Charge Virendra Yadav. He has stated that all the accused have supported the prosecution case.

21.1 In his cross-examination, he has stated that he had not gone through the case diary written by his predecessor. He states that he has information that his predecessor had found all the accused not guilty except accused Akhilesh Roy. He has further stated that he recorded the statements of witnesses at the place of occurrence, but did not mention the same in the case diary. He had taken the re-statement of informant Indrajeet Kumar Roy on 23.06.2005. Again on 25.08.2005 he had taken the statement of the informant. He had not investigated about the phone calls. He had mentioned in the case diary by the order of the Court. He has denied to have prepared a faulty case diary on the instruction of the informant.

22. P.W. 14 Mahesh Kumar Singh is the Investigating Officer. He has stated that on 01.03.2002 he was posted as the Officer-in-Charge at Bidupur Police Station. He had lodged the F.I.R. of this case which is in his handwriting and he identifies the same. After registering the F.I.R. he started



the investigation of this case and recorded the re-statement of the informant. He has described the place of occurrence in two parts detailing the brick house in which Rudal Roy was sleeping and where the water pot (*Lota*) was lying and the cow-shed from where he is alleged to have been blind-folded and forcibly abducted by the accused. He has stated that he recorded the statements of witnesses Saraswati Devi, wife of Rudal Roy and Sanjeet Kumar, son of Rudal Roy and thereafter on 02.03.2002 a raid was conducted against the named accused. Thereafter he recorded the statements of witness Saraswati Devi, wife of Rudal Roy, and Sanjeet Kumar, son of Rudal Roy. On 02.03.2002 a raid was conducted against the named accused at their places. He also recorded the statements of witnesses namely Sitab Roy, Vinay Singh, Arun Kumar, Nityanand Singh, Chandraket Prasad Singh and Sharmila Kumari, daughter of Rudal Roy. During investigation, he also recorded the statements of Bhajan Lal and Samarjeet Roy. When he came to know about the criminal antecedent of accused Rasgulla Roy, he found that he is an accused in Bidupur P.S. Case No.37 of 2001 in which charge-sheet has been submitted for the offence punishable under Sections- 341, 323, 504/34 of I.P.C. Charge-sheet against accused Akhilesh Roy was filed in his



handwriting. It also bears his signature which he identifies. He identifies the apprehended accused Akhilesh Roy who is present in Court along with other accused.

22.1 In his cross-examination, he has stated that he took charge of the investigation on 01.03.2002 and recorded the statements of the prosecution-witnesses and then submitted the charge-sheet against accused Akhilesh Roy and submitted final report against other accused. On inspection of the two places of occurrence the incident of kidnapping was established. He has stated that the name of the person on whose phone call was made is Alok Roy and he had recorded his statement. He had not recorded the statement of *Sadhu* of Akhilesh Roy. He had not recorded the statement of the girl whose marriage was to be solemnized. He had himself registered the F.I.R. and started investigation. He has further stated that P.W. 1 Sanjeet Kumar had stated before him that threats were given by Akhilesh Roy. He has denied that Arun Kumar had given statement that Rudal Roy had gone to ease himself at 3:00-4:00 a.m. in the morning and did not return. The water pot was kept near the window. This witness had not stated before him that Akhilesh Roy had stated that marriage has to be solemnized at any cost. He further denies that this witness had stated that Akhilesh Roy had asked



to marry with the sister of his *Sadhu*. The witness had also not stated that before him that the hot exchange continued for half an hour. He denies that the said witness had stated that when he came after sleeping in the afternoon, he came to know that Rudal Roy had been abducted nor he had stated that he heard that Akhilesh Roy, Pantu Roy and Rasgulla Roy had together abducted Rudal Roy. The said witness had also not stated that as the proposal for marriage was refused, Akhilesh Roy, Pantu Roy and Rasgulla Roy hatched a conspiracy and abducted Rudal Roy, killed him and disposed of the dead body. Witness Bhola Singh had not stated before him that Milan Roy had told Rudal Roy to request his family members to accept the proposal of marriage. Witness Virendra Singh had not stated before him that he had gone with his *Sadhu* Bhola to show the face of the proposed bride or that they had threatened anyone. Witness Samarjeet had also not stated before him that Chakmengar village is adjacent to his village where the call regarding abduction of his father was received by Dilip Compounder. Witness Bhajan Lal had also not stated before him that on the same date he had gone to village Chakwa and there negotiation for the marriage of Rudal Roy's son had taken place. The witness had not stated before him that Rudal Roy did not return



to his house and that he was killed under a criminal conspiracy. This witness had not disclosed the names of the four accused and the phone number. He has denied that the investigation carried out by him is faulty.

23. The defence has examined three witness, namely Ravindra Kumar Singh, Krishna Mohan Pathak and Akhilesh Kumar. Witness Ravindra Kumar Singh is 'Kespradas' and witnesses Krishna Mohan Pathak and Akhilesh Kumar are Advocate Clerks. All the three witnesses are witnesses to the certificates, Ext-1, A/1 and A/2. They have not stated anything about the incident in question.

24. From the aforesaid evidence led by the prosecution, it transpires that none of the prosecution-witnesses have seen that Rudal Roy has been kidnapped by the present appellants. Further, it is revealed that the prosecution has also failed to prove that Rudal Roy has died and even the dead body of Rudal was not traced.

25. It is revealed from the record that the prosecution has examined only interested and related witnesses with a view to prove the case against the appellants/accused. Further, the said witnesses also came to know that Rudal Roy has been kidnapped by the appellants only on the basis of the



telephone call made by Rudal Roy on the telephone of Bhajan Lal and Dilip Compounder. The prosecution has not examined Dilip Compounder. Though Bhajan Lal has been examined by the prosecution as P.W. 7, it is revealed from his deposition that the said witness received telephone call. On the other side Rudal Roy was speaking. He told that his hands and legs are tied and he has been kidnapped by the accused. Rudal Roy informed him to call Kiran Devi, i.e. the daughter of Rudal Roy. Therefore, the said witness called Kiran Devi and she also talked to Rudal Roy. Thereafter, said witness informed to Ram Anek Roy on his phone number and the said Ram Anek Roy informed to the informant about the incident of telephone call. At this stage, it is also relevant to note that P.W. 2 Arun Kumar Roy got information from the house of Dilip Compounder. Therefore, he went to the house of Dilip Compounder and after 10 minutes Rudal Roy called on the phone of Dilip Compounder and Rudal Roy narrated the story about his kidnapping. The informant has stated in the written complaint that when Bhajan Lal inquired from his father, his father told that his eyes were tied. Thus, from the aforesaid evidence led by the prosecution, it is revealed that though the eyes, hands and legs were tied, Rudal Roy had managed to make telephone calls on two different telephone



contacts of the witnesses. From the deposition of the said witness, it is further revealed that when Rudal Roy informed about the story of his kidnapping made by the appellants/accused, the accused were not present. Further the Investigating Officer failed to collect any evidence in the form of call details of the telephone of Dilip Compounder and Bhajan Lal that from which telephone the phone calls were made to them. On the other side who was speaking. The conduct of the witnesses also are to be examined. Rudal Roy made telephone call to Bhajan Lal and asked him to call his daughter Kiran Devi and after 10 minutes once again Rudal Roy made telephone call and informed about the incident of his kidnapping. Similarly, Rudal Roy called on the telephone of Dilip Compounder and asked him to call his son i.e. P.W. 2 Arun Kumar Roy and when Arun Kumar Roy reached to the house of Dilip Compounder after 10 minutes once again Rudal Roy made telephone call and narrated the story of his kidnapping.

26. We are of the view that the aforesaid story put forward by the prosecution-witnesses cannot be believed in absence of any material collected by the investigating agency. Merely because prosecution has alleged about the motive on the part of the appellants to commit the crime by contending that



son of Rudal Roy i.e. Samarjeet has refused to marry the sister of brother-in-law (Sadhu) of accused Akhilesh Roy, i.e. one of the appellants, it cannot be presumed that the appellants have kidnapped Rudal Roy and thereafter killed him.

27. It is to be noted that the prosecution has failed to prove that Rudal Roy has been killed. Dead body of Rudal Roy has not been found and, therefore, in absence of the same, it cannot be presumed that Rudal Roy has expired or has died. The Trial Court has observed that for 7 years from the date of occurrence nothing is heard about Rudal Roy and, therefore, it can be reasonably presumed that Rudal Roy has expired and, therefore, it is for the appellants to prove by leading cogent evidence that Rudal Roy is still alive and when the appellants have failed to prove the same, the Trial Court has presumed that the appellants must have killed him.

28. We are of the view that the aforesaid reasoning recorded by the Trial Court is totally misconceived.

29. At this stage, we would like to refer the provisions contained in Sections-362 and 364 of I.P.C. which provide as under:

“Section-362: Abduction.- Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.



Section-364: Kidnapping or abducting in order to murder.- Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

30. From the evidence led by the prosecution, it cannot be said that the present appellants have kidnapped/abducted Rudal Roy. Further, the prosecution has also failed to prove that Rudal Roy has been killed by the appellants and, therefore, the provisions contained in Section-364 of I.P.C. i.e. kidnapping or abducting in order to murder is also not proved beyond reasonable doubt.

31. In view of the aforesaid discussion, we are of the view that the Trial Court has committed grave error by recording the order of conviction and, therefore, the impugned judgment and order is required to be quashed and set aside.

32. The impugned judgment of conviction dated 15.12.2018 and order of sentence dated 18.12.2018 passed by learned Additional Sessions Judge-II-cum-Special Judge, Hajipur, Vaishali in Sessions Trial No. 288 of 2011 arising out of Bidupur P.S. Case No. 48 of 2002 is quashed and set aside. The appellants, namely, Pantulal Roy, Rasgulla Roy, Akhilesh



Roy and Kanak Roy are acquitted of the charges levelled against them by the learned trial court. They are directed to be released forthwith, if not required in any other case.

3. Accordingly, the appeals stand allowed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

K.C.Jha/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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