

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.419 of 2019

Arising Out of PS. Case No.-78 Year-2016 Thana- SAKURABAD District- Jehanabad

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Sonu Kumar @ Tutu Kumar, aged about 22 years, Son of Surendra Prasad,
Resident of Village-Noawan @ Neama, Police Station-Shakurabad in the
District of Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with

CRIMINAL APPEAL (DB) No. 568 of 2019

Arising Out of PS. Case No.-78 Year-2016 Thana- SAKURABAD District- Jehanabad

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Rajeev Kumar @ Golu @ Samit Kumar, aged about 27 years, male, Son of
Shiv Shankar Sharma, Resident of Village-Nowama, P.S.-Sakurabad, District-
Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 419 of 2019)

For the Appellant/s : Mr. Sunil Kumar, Advocate

For the State : Mr. Binod Bihari Singh, APP

(In CRIMINAL APPEAL (DB) No. 568 of 2019)

For the Appellant/s : Mr. Raghubir Chandrayan, Advocate

For the State : Mr. Binod Bihari Singh, APP



CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 22-08-2023

Both the appeals have been taken up together and are being disposed off by this common judgment.

2. We have heard Mr. Sunil Kumar and Mr. Raghubir Chandrayan for the two appellants respectively. The State is represented by Mr. Binod Bihari Singh, the learned APP.

3. Both the appellants have been convicted under Sections 302, 364(A), 120(B) and 201 of the I.P.C. *vide* judgment dated 08.03.2019 passed by the learned 1st Addl. District & Sessions Judge-Cum-Special Judge, Jehanabad in Sessions Trial Nos. 56 of 2017/11 of 2017, arising out of Shakurabad P.S. Case No. 78 of 2016 and by order dated 15.03.2019, they have been sentenced to undergo R.I. for life, to pay a fine of Rs.



50,000/- each and in default of payment of fine, to further undergo R.I. for one year for the offences under Sections 302 and 120(B) of the I.P.C.; R.I. for life, to pay a fine of Rs. 25,000/- each and in default of payment of fine, to further suffer R.I. for one year for the offence under Section 364(A) of the I.P.C. and R.I. for three years, to pay a fine of Rs. 10,000/- each and in default of payment of fine, to further undergo R.I. for six months for the offence under Section 201 of the I.P.C. All the sentences have been directed to run concurrently.

4. The 11-year old boy of Ganauri Sao (PW-1) is said to have been kidnapped, murdered and thrown in the river which was in spate. The name of the appellants was taken in the confession of one of the accused persons, namely, Bhopali @ Shashi Ranjan, who was found to be a juvenile at the time of the occurrence and, hence, his and the case of another juvenile accused, namely, Dhiraj Kumar @ Dhiraj Kishore was



sent to the Juvenile Justice Board for determination of their guilt.

5. The other material relied upon by the Trial Court for convicting and sentencing the appellants is the CDRs of their respective telephone numbers, which were used by them for making ransom call to PW-1 and talking amongst themselves.

6. The afore-noted CDRs have been brought on record as Ext.-7.

7. The Trial Court, therefore, found that Bhopali @ Shashi Ranjan, a mate of the son of PW-1 called him for playing in the field. There, both the appellants were present and out of an earlier hatched conspiracy, killed him, called for ransom money from PW-1 and, thereafter, disposed off the dead-body.

8. The dead-body of the deceased has not been recovered.

9. Both the appellants claim to be innocent and have urged that they have been proceeded against



and convicted only on the basis of the confession of a juvenile accused.

10. Assuming but not admitting, it has been argued on behalf of both the appellants, that the SIM card from which the ransom call was come was used by their telephone sets and that they had talked amongst themselves, that by itself would not render them guilty of any conspiracy, kidnapping and as a result of such conspiracy, killing of the deceased.

11. Lastly, it has been submitted that the deceased might have been drowned in the river by the bank of which the village of the informant (PW-1) and the deceased is situated and which river was in spate at the time when the son of PW-1 was found to be missing.

12. Ganauri Sao (PW-1) had lodged a written report on 24.08.2016, alleging that on 21.08.2016, his 11-year old son, namely, Om Prakash Gupta had gone out of the house to play, but did not return till 8 O'clock in the evening. PW-1 along with his



neighbour looked for him at all places and reported the matter to the police on 22nd of August, 2016. However, no report was lodged and the Officer-in-Charge of the police station was only orally informed about the son of PW-1 having gone missing on 23.08.2016, *i.e.*, after two days.

13. One Shambhu Kumar @ Shambhu Sharma, a neighbour of PW-1, has been examined as PW-3. He had received a telephone call from a mobile telephone bearing No. 8541095908. The caller had asked afore-noted Shambhu Kumar to make him talk to PW-1. Shambhu Kumar came with his mobile telephone five minutes later and, thereafter, tried several times to call back on the same number, but the number was found to be switched off. This made PW-1 really wary of the situation and he suspected that his son has been kidnapped.

14. On the basis of the afore-noted written report, initially a case was instituted *vide* Shakurabad



P.S. Case No. 78 of 2016, dated 24.08.2016, for the offence under Section 365 of the I.P.C. against unknown. Shortly, thereafter, telephone calls were received by PW-1 and PW-3, seeking ransom money for the release of the victim. This led to the arrest of one Bhopali @ Shashi Ranjan, who confessed that the deceased was brought near the river side on the asking of appellant/Rajeev Kumar @ Golu @ Samit Kumar. When the deceased was brought near the river side by Bhopali @ Shashi Ranjan, he was taken in contact of the appellants, who killed him and disposed off his dead-body. Aforesaid Bhopali @ Shashi Ranjan was not present when the deceased was killed, but was only told a day later by one of the appellants that the deceased has been killed and the dead-body has been thrown in the river.

15. This was the basis for proceeding to investigate the case against the appellants.

16. The statement of Bhopali @ Shashi



Ranjan, Shambhu Kumar (PW-3) and one of the friends of one of the appellants, namely, Chandan Kumar @ Bittu were recorded under Section 164 Cr.P.C. All such statements pointed towards the guilt of the appellants and the two other juvenile accused persons.

17. The Trial Court has examined eight witnesses on behalf of the prosecution and has convicted and sentenced the appellants as afore-noted.

18. The father of the deceased (PW-1) narrated the same story in his examination-in-chief, but has also stated that he again received a telephone call on his mobile telephone on 04.09.2016, asking for Rs. 25,00,000/- for securing the release of his son. This was followed by another call on his mobile telephone by mobile No. 9708612552. This was communicated by him to the police. The police found out that the call from the later number was made from a SIM card belonging to one Kameshwar Singh. It was at that instance that PW-1 claimed to have entertained the idea



that the appellants and two others had kidnapped his son for ransom and had also killed him.

19. During the trial, PW-1 had also stated that appellant/Rajeev Kumar @ Golu @ Samit Kumar had demanded Rs. 25,00,000/- as *rangdari* out of the proceeds of the sale of his land, if such land would have been sold.

20. This, therefore, in our estimation, makes out a new case of the prosecution against the appellants.

21. This victim and Bhopali @ Shashi Ranjan were seen by one Nakal Pandit @ Ramesh Pandit (PW-2) on the day when the victim went missing. PW-1 had actually asked him if he had seen his son, to which he replied in affirmative. It was only later that he learnt that the victim was kidnapped and, perhaps, killed.

22. Shambhu Kumar (PW-3), who happens to be a neighbour of PW-1, received a call for the first time on 23.08.2016 from mobile telephone No. 7654023210, asking him to let the caller speak to PW-



1. When PW-3 came to the house of PW-1 and tried to contact on the afore-noted mobile telephone number, it was found to be switched off. PW-3 received another telephone call on 27.08.2016, when the said telephone call was picked-up by two of the associates of PW-1, who assumed that in the background, a child had been crying. However, no conversation took place between any one of the parties on such telephone number.

23. The prosecution has also examined two of the Judicial Officers, namely, Chandan Kumar and Sandeep Patel as PW-4 and PW-5 respectively, who have testified to the fact that Shambhu Kumar (PW-3) and Chandan Kumar @ Bittu as also Bhopali @ Shashi Ranjan had made their statements under Section 164 Cr.P.C.

24. Chandan Kumar @ Bittu, whose statement was recorded by PW-4, divulged that appellant/Rajeev Kumar @ Golu @ Samit Kumar, who is his cousin, had come to stay with him in B.N. College



Hostel, Patna and stayed there for about 10 to 15 days. During his stay in the hostel along with afore-noted Chandan Kumar @ Bittu (not examined), appellant/Rajeev Kumar @ Golu @ Samit Kumar appeared to be very worried and when he was asked the reason for his being so stressed out, no definite answer was given by him except that he had lost on some money. Thereafter, according to Chandan Kumar @ Bittu, appellant/Rajeev Kumar @ Golu @ Samit Kumar exited from the hostel and became incommunicado. Later, he again came back to the hostel and told Chandan Kumar @ Bittu that his entire planning had failed. A day after, the police arrested him from a room of the hostel of B.N. College, Patna.

25. What, however, is important to note is that all these persons who had got their statements recorded under Section 164 Cr.P.C. were earlier called to Shakurabad Police Station and were told by the Officer-in-Charge that the deceased has been killed and,



perhaps, the appellants and two other juvenile accused are the perpetrators of the crime. Thus, it appears that 164 statement appears to have been recorded on the dictates of the investigating agency after a confession was extracted from Bhopali @ Shashi Ranjan.

26. We have further found from the analysis of the evidence on record that the I.O. of this case (PW-6) obtained the CDR of mobile telephone No. 8541095908, the number from which, for the first time, the call was made to PW-3, enabling the caller to contact PW-1. From the CDR of the number referred to above, it appeared that the SIM card was used by a particular IMEI number of a telephone-set. The afore-noted SIM card was used by another telephone-set with another IMEI number. The two other SIM cards were registered in the name of one Kameshwar and Rakhi Singh respectively. Rakhi Singh was found to be a Doctor in P.M.C.H., Patna, who had earlier made a complaint about her mobile telephone having been stolen



from P.M.C.H. for which a case *vide* Pirbahore P.S. (Patna) Case No. 172 of 2016 was registered.

27. Three telephone numbers were put on the surveillance by PW-6, namely, 8541095908, 9708167403 and 8298701667 from which either PW-1 or PW-3 were called at different times, either asking for payment for ransom money or for establishing contact with any one of the relatives of the victim. From the analysis of the CDRs of the afore-noted telephone numbers, PW-6 claimed that different SIM cards were used which were registered in the name of different persons, one of which was registered in the name of one Manir Ansari of Nawada. It was only after this that the telephones along with the SIM cards of the appellants were seized and on the analysis of the CDRs of all the telephone numbers, it was found that the appellant/Rajeev Kumar @ Golu @ Samit Kumar had talked to Bhopali @ Shashi Ranjan and appellant/Sonu Kumar @ Tutu Kumar a number of times on the day



when the victim went missing.

28. As it appears, this was the sole basis for the I.O. to investigate the case and charge-sheet the appellants as having conspired and killed the deceased.

29. From the possession of the appellant/Rajeev Kumar @ Golu @ Samit Kumar, three mobile sets were recovered, one of which was the said mobile set from which the SIM card was used for making a call for ransom.

30. The seizure-list of the mobile sets recovered from the appellants was prepared by Sub-Inspector/Chandan Kumar, which has been exhibited as Ext.-6/1.

31. Ext.-6/2 reflects that some usable articles were also recovered from the houses of the appellants, which were not particularly be incriminating in nature.

32. PW-6 has stated before the Trial Court that after obtaining the CDRs from the technical cell with



the help of S.I./Deepak Kumar, the same were marked as Exhibit-7, which was proved by him. The appellants were initially not arrested, but, later, with the telephone numbers talling after the CDRs of different telephones were analyzed, they were taken into custody.

33. The mobile telephone sets so recovered were produced before the Trial Court by S.I./Binod Kumar-II (PW-7).

34. The prosecution has relied upon the statement of Deepak Kumar (PW-8), a police official, who was posted in the Confidential Section of the Office of S.P., Jehanabad and also worked as District Intelligence In-charge, to prove that the telephone companies were requisitioned for the CDRs and that those CDRs were obtained from computer generated source. The call detail records have been marked as Ext.-4, which was sought to be proved by PW-8.

35. Section 65-B of the Indian Evidence Act, 1872 provides for the procedure for admissibility of any



electronic records.

36. Section 65-B of the Indian Evidence Act,
1872 reads as follows:-

"65-B. Admissibility of electronic records.—(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in subsection (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities



regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or



(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

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

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

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

(c) dealing with any of the matters to which the conditions mentioned in sub-section



(2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without



human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.”

37. In the present case, we do not find any compliance of Section 65-B of the Indian Evidence Act as has been explained in ***Anvar P.V. Vs. P.K. Basheer & Ors.; 2014 (10) SCC 473*** and ***Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal & Ors.; (2020) 7 SCC 1***. There is no certificate on record as contemplated under Section 65-B of the Indian Evidence Act, 1872. This definitely makes the evidence with respect to the CDRs, which are the sole basis for proving the case of conspiracy as against the appellants, as inadmissible in the eyes of law.

38. PW-8 could not have certified that the CDRs of various telephones were obtained through the telephone companies, which information was generated



in usual course.

39. Thus, we find the prosecution loosing out on their case in proving the charge against the appellants.

40. We say so for the reason that the basis for coming to the conclusion that the appellants had conspired with two other juvenile accused is the CDR which, in the present case, is inadmissible piece of evidence because of non-compliance of Section 65-B of the Indian Evidence Act, 1872.

41. So far as killing is concerned, there is no witness to the afore-noted act as also of disposing off the dead-body. We have already noted that the dead-body has not been recovered despite the efforts by the police in that direction.

42. Bhopali @ Shashi Ranjan was a friend of the son of PW-1. That they went out to play is not something unusual. That the appellants had talked amongst themselves and with aforesaid Bhopali @



Shashi Ranjan for a number of times also is not an evidence strong enough to conclusively hold that such telephone calls amongst themselves were only for hatching out a conspiracy and planning to get the deceased somewhere near the river where he would be killed and ransom money could be demanded.

43. The circumstances also are not so complete so as to completely exclude the innocence of the appellants, unless the evidence is of a conclusive nature which would unerringly point towards the guilt of the appellants and the appellants alone, to the exclusion of any other.

44. In that view of the matter, we find that the Trial Court has relied upon an inadmissible piece of evidence and has also erred in believing the supposition of the prosecution, which is only based on conjectures and surmises.

45. For the reasons afore-noted, we find the conviction of the appellants to be bad in the eyes of law.



46. Perforce, we set aside the judgment of conviction dated 08.03.2019 and the consequent order of sentence dated 15.03.2019 passed by the learned 1st Addl. District & Sessions Judge-Cum-Special Judge, Jehanabad in Sessions Trial Nos. 56 of 2017/11 of 2017, arising out of Shakurabad P.S. Case No. 78 of 2016. The appellants are acquitted of the charges levelled against them.

47. The appellant/Sonu Kumar @ Tutu Kumar [*Cr. Appeal (DB) No. 419 of 2019*] and the appellant/Rajeev Kumar @ Golu @ Samit Kumar [*Cr. Appeal (DB) No. 568 of 2019*] are in custody. They are directed to be set at liberty forthwith unless their detention is required in any other case.

48. Both the appeals stand allowed.

49. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and for the purposes of record.

50. The records of these appeals be



returned to the Trial Court forthwith.

51. Interlocutory application/s, if any, also
stand disposed off accordingly.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Praveen-II/Amit

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.08.2023
Transmission Date	24.08.2023

