

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.541 of 2019**

Arising Out of PS. Case No.-565 Year-2009 Thana- LAKHISARAI District- Lakhisarai

Uday Yadav, son of Arjun Yadav Resident of Village-Lakhochak, Police
Station-Chanan, District-Lakhisarai.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr.Yogesh Chandra Verma, Sr. Advocate
For the Respondent/s : Mr.Sujit Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)**

Date : 03-05-2024

Heard Mr. Yogesh Chandra Verma, learned senior
counsel for appellant and Mr. Sujit Kumar Singh, learned
Additional Public Prosecutor for the State.

2. The present appeal has been filed by the
appellant-convict under Section 374(2) of the Code of
Criminal Procedure, 1973 (hereinafter referred to as 'the
Code') challenging the impugned judgment of conviction and
order of sentence dated 03.05.2019 passed by learned Fast
Track Court-II, Civil Court, Lakhisarai in Sessions Trial No.
494A/2011/Trial No. 326/2018, arising out of Lakhisarai
P.S. Case No. 565/2009 G.R. Case No. 1226 of 2009



whereby the concerned Trial Court has convicted the present appellant for the offences under Section 363, 364 and 365 of the I.P.C. and directed to undergo rigorous imprisonment for life and a fine of Rs. 10,000/- under Section 364 of the I.P.C. and in case of failure to deposit the fine, he shall to undergo S.I. of one month, R.I. for five years and fine of Rs. 5000/- under Section 363 of the I.P.C. and in default of payment of fine, fifteen days S.I. and R.I. for five years and fine of Rs. 5000/- under Section 365 of the I.P.C. and in default of payment of fine, fifteen days S.I. All the sentences. However, all the sentences have been ordered to run concurrently.

3. The brief case of the prosecution, as speaks through written information of the informant namely, Manohar Sao, PW-8, which was given to Superintendent of Police, Lakhisarai on 08.11.2009, stating therein that his son namely, Sonu Kumar aged about nine (9) years was kidnapped on 04.11.2009 at about 9:00 p.m. from village – Lakhochak, Post – Bichhwai, P.S. - Itaun, District – Lakhisarai. Narration also speaks about description of his



kidnapped son regarding his body complexion and mark of identification having a scar mark on right cheek below eye, he was in black full-pant and white half shirt. It also appears from written information that he received a ransom call of Rs. 5,00,000/-(Five Lakhs) on 07.11.2009 from Mobile No. 9504963018, which was recorded by him. It is also stated thereof that he has strong suspicion that his son namely, Sonu Kumar might be kidnapped and murdered by one Harikishan Yadav, Shashi Bhushan Yadav, Laxmi Yadav and Santosh Yadav, all sons of Late Vijay Yadav @ Jhuna Yadav as there is land dispute with them, who had threatened him in past to face the dire consequences.

4. On the basis of the aforesaid written information, Lakhisarai (Chanan) P.S. Case No. 565 of 2009 dated 09.11.2009 was registered for the offence under Sections 363-A/34 of the I.P.C., where police, after investigation on the basis of the materials collected during investigation, submitted charge-sheet against the named accused persons and also against the accused-appellant. The learned Jurisdictional Magistrate, after making compliance of



Section 207 of the Cr.P.C., took cognizance for the offence under Section 363, 364 and 365 of the I.P.C. against the accused persons including the accused-appellant and committed case to the court of session under Section 209 of the Cr.P.C. for trial and disposal.

5. The learned trial court after receiving the record upon commitment, registered this case for trial as Session Trial No. 494/2011 and on the basis of the materials collected during course of investigation and as available on record framed charge against all eight accused persons including accused-appellant for the offences under Sections 363, 364 and 365 of the I.P.C. which they denied and plead not guilty. Consequent upon as accused-appellant claimed trial, it was commenced.

6. At this juncture, it would be appropriate to mention that original session trial no. 494/2011, as above, out of eight accused, one Dinesh Kumar Yadav was found juvenile and his case was separated accordingly. The accused Uday Yadav (appellants-convict) and Sudhir Yadav absconded at the stage of judgment, consequent upon, their



case was separated, where trial of appellant/accused was re-numbered as S.T. No. 494A/2011, where he found guilty for the offences under section 364(A), 363 and 365 of the Indian Penal Code.

7. The prosecution, as to established its case before the learned trial court examined altogether ten (10) witnesses, who are PW-1 Rajiv Kumar Sao; PW-2 Sudama Kumar; PW-3 Ram Rajak; PW-4 Sabo Devi; PW-5 Dablu Mahto; PW-6 Pinki Devi; PW-7 Putul Devi; PW-8 Manohar Sao; PW-9 Sohan Mahto and PW-10 Atul Kumar Mishra (Investigating Officer of this case).

8. Beside above, one witness namely, Sanjeev Kumar has been examined by the court as CW-1.

9. The prosecution also rendered following documentary evidence in support of the case, which are as under:

Exhibit '1' – Signature of informant namely, Manohar Sao on written report;

Exhibit '2' – Endorsement regarding lodging of F.I.R. and signature; and

Exhibit 'I' – Mobile No. 9631146123.



10. No oral or documentary evidence were adduced by the defence in support of its case during trial.

11. On the basis of evidences as surfaced during course of the trial, the learned trial court put all those incriminating evidences to the appellant-accused as per provision laid down under Section 313 of Cr.P.C., which he denied by negating all such circumstances and evidences as explained to him and stated about false implication by claiming his innocence.

12. On the basis of materials surfaced during the trial and also by considering the argument of the parties, the learned trial court convicted and sentenced the appellant-accused as stated here-in-above.

13. Being aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant-accused preferred the present Appeal.

14. Hence, the appeal.

Argument on behalf of the appellant-accused

15. It is submitted by Mr. Yogesh Chandra Verma, learned senior counsel appearing on behalf of the appellant-



accused that the appellant was initially not named in the First Information Report, rather his name appears during the course of investigation out of previous enmity. It is submitted by learned senior counsel that the version of informant appears improved on several material aspects during course of trial. It is submitted that mere for the fact that the ransom call, which was received by the informant was made by the appellant-accused without having any corroborating evidence, he was convicted in the case.

16. It is submitted by learned senior counsel that the informant namely, Manohar Sao (PW-8) has claimed himself as an eye witness of the occurrence and specifically stated in his examination-in-chief that how his son namely, Sonu Kumar was kidnapped by the accused persons. It is stated that the informant specifically stated that co-accused Bhushan Yadav and Santosh Yadav taken away his son through motorcycle while his son was hold by co-accused Bhushan Yadav, whereas Santosh Yadav and Rajesh Yadav were on second motorcycle. It is pointed out that if, it was so, this very testimony of informant clearly suggest that



appellant-accused was not present at the place of occurrence. It is submitted that occurrence is of 04.11.2009, where none but the father of victim minor boy was the eye-witness of the occurrence but instead of lodging F.I.R. immediately, informant put himself on waiting mode for so many days by visiting office of the Superintendent of Police, making whole thing doubtful as F.I.R. in this case lodged only on 09.11.2009 i.e. after five days of the occurrence.

17. It is further submitted by learned senior counsel that informant stated that he received a ransom call of Rs. 5 Lakhs on his mobile No. 9631146123 from mobile No. 9504963018, which was made by Uday Yadav (appellants-convict) and Sudhir Yadav. It is was so, then, the appellant-accused must be named in the F.I.R. because F.I.R. speaks that by the time of lodging it, he has already received a ransom call from the aforesaid mobile number, but he improved his version during the trial and implicate appellant-accused, who is innocent.

18. It is submitted that even the mobile number on which ransom call was made does not belongs to this



appellant-accused. It is pointed out that there is no Call Detail Report (in short the 'CDR'), there is no forensic examination, there is no voice sampling and even the mobile in issue was not seized during course of investigation, through which call was made, making the entire allegation false on its face itself, suggesting that mere on the basis of conjectures and surmises, the appellant-accused was held guilty with the crime in question. It is also submitted by learned senior counsel that the search was made by the informant (PW-8) regarding his kidnapped son namely, Sonu Kumar alongwith his brother-in-law Gautam Kumar, who was not examined by the prosecution during the trial.

19. It is also submitted by learned senior counsel that the informant (PW-8) immediately during occurrence, while he found that his son was being taken by the accused persons namely, Bhushan Yadav and Santosh Yadav, chased them for a short distance but as he could not succeed to apprehend them, he returned back to his home and thereafter described the occurrence to his brother namely, Rajiv Kumar Sao (PW-1), grand-mother of the victim (PW-



4), his wife (PW-6) and wife of his younger brother (PW-7) and one Gautam Kumar, who was not examined in course of trial, which clearly suggest that these prosecution witnesses are not the eye-witness of the occurrence, but during the course of trial they claimed to be an eye witness of the occurrence. The prosecution failed to explain these contradictions/improvement, which completely overlooked by learned trial court while convicting the appellant-accused. In this context, it is also submitted that PW-10 being Investigating Officer of the case, specifically stated during trial that none of the prosecution witnesses, claimed during investigation being an eye witness of the occurrence. It is further submitted that convicts of S.T. No. 494/2011 were already acquitted by the Hon'ble High Court through Cr. Appeal (DB) No. 960/2013, Cr. Appeal (DB) No. 1082/2013 and Cr. Appeal (DB) No. 71/2014, almost with same set of evidence and as such principle of 'parity' also favour the appellant/accused.

20. Learned senior counsel while concluding his argument relied upon the legal reports of Hon'ble Supreme



Court in the matters of **State Represented by Inspector of Police Vs. Sarvanan and Another [(2008) 17 SCC 587]; Nand Lal and others Vs. State of Chhattisgarh [(2023) 10 SCC 470]; Sampath Kumar Vs. Inspector of Police, Krishnagiri [(2012) 4 SCC 124]; Tomaso Bruno and Another Vs. State of Uttar Pradesh [(2015) 7 SCC 178.**

21. Mr. Sujit Kumar Singh, learned A.P.P. while appearing on behalf of the State submitted that the informant in this case is an illiterate persons and he is not aware about the technical aspect of law and, as such, the minor discrepancies are bound to surfaced during trial which would not be a barrier for imparting justice. It is pointed out, that as far the submission regarding delay of lodging of F.I.R. is concerned, it is well explained through testimony of informant itself that first he went to police station as to lodge complaint regarding the occurrence, but only upon refusal, he went to S.P. Lakhisarai, whereas in the meantime, he also at his own level alongwith family members/relatives searched their best for his kidnapped son.



22. It is also submitted by learned A.P.P. for the State that acquittal of other co-accused persons is of no bearing over the merit of present case as the trial of accused/appellant was separated where the nature of allegation is also appearing different, which is more incriminating for this appellant-accused as he made ransom call.

23. It is further submitted by learned A.P.P. that in view of other eye witnesses of the occurrence, non-examination of brother-in-law of informant, who accompanied him in search of victim boy namely, Sonu Kumar is not appears fatal for prosecution as other eye witnesses fully supported the case of the prosecution. It is finally submitted that in the aforesaid factual background, the conviction of accused-appellant by the learned trial court is not required to be interfered with at the appellate stage and same be affirmed accordingly.

24. We have heard the argument as canvassed by learned counsel appearing for the parties and have perused the materials available on record. It appears to us that re-



appreciation of evidence is required for just and proper decision of the present appeal, which are as under:-

25. PW-8 Manohar Sao, who is the informant of this case and father of the victim boy Sonu Kumar aged about nine years. It is deposed by him that occurrence is of 04.11.2009 and it was 9:00 p.m. He deposed that by that time the cycle race was organized near to library where his son was also present to watch said cycle race, which came to an end by 9:30 p.m. It further deposed that while he was returning to his home after cycle race, he saw that his son Sonu Kumar was taken on motorcycle by co-accused Bhushan Yadav and Santosh Yadav, where he was hold by Bhushan Yadav and on another motorcycle co-accused Santosh Yadav and Rajesh Yadav was there. They proceeded towards forest. He also deposed that he chased them but when they went out of sight he returned to home and narrated the entire occurrence to his brother Rajiv Kumar (PW-1), grand-mother (PW-4), wife (PW-6) and his brother-in-law namely, Gautam Kumar (not examined). It is further deposed that they again made a joint search for Sonu



Kumar, but could not traced him and ultimately returned to him in night. On next morning, he along with his brother Rajiv Kumar Sao (PW-1) went to police station and narrated occurrence to P.S. Incharge, who send him back by saying that to make first a thorough search on their own part and then to come. On 7th day of the month, he visited to the Superintendent of Police, Lakhisarai where he made his statement which was written by S.P. Lakhisarai. He also deposed that a ransom of Rs. 5 Lakhs was made on his mobile phone by Sudhir Yadav and Uday Yadav (appellant-accused), which was made to his mobile No. 9631146123 from mobile No. 9504963018. He recorded said audio call. He informed to the Superintendent of Police, also regarding ransom call and played recorded audio call before him. He identified his signature over *fardebayan* which upon his identification exhibited as **Exhibit '1'**. He also played audio call record regarding ransom before police Incharge. He did not approached Uday Yadav (appellants-convict) and Sudhir Yadav out of fear that they might confined him. His son aged about nine years did not recovered till date. He came to



know from Newspaper that his son was killed and his dead body was thrown to the river Ganga. He identified the appellant-accused before the court.

25.1 Upon cross-examination, he stated that both motorcycles were of black colour and he searched initially for his son with Gautam Kumar (not examined), who was with him before two days of the occurrence. He stated that he went to the Superintendent of Police, Lakhisarai on 7th day, whereas occurrence is of four. He never visited to any one out of fear of accused persons. He went to S.P., Lakhisarai only when he received ransom call. It was stated that it was his mobile but the SIM Card was in the name of Rajiv Kumar Sao (PW-1). He stated that while he was making statement to S.P. Lakhisarai, his uncle Uday Sao (not examined) was also present there. The S.P. Lakhisarai did not make his uncle as a witness of his statement. He did not disclosed the S.P. regarding land dispute. On further cross examination, he stated that the written information was not written before him and he did not know even the name of person who authored it. It was also stated by him that during



occurrence, mobile was with him. It was stated that his statement was recorded by police incharge on 9th day of the month after recording of F.I.R. and on same very day the statement of his mother (PW-3), brother (PW-1) and other five persons were recorded. It was stated by him that about 200 peoples were present in the cycle race. His son Sonu Kumar came to watch cycle race at about 6:30 p.m. alongwith his friends Sudama (PW-2) and Sandeep Kumar (not examined). They had no inimical term with said Sudama and Sandeep Kumar. He denied the suggestion that he made his statement before police that he saw his son was taken on the motorcycle of Sonu Kumar. He received a ransom call from mobile No. 9504963018 for Rs. 5 Lakhs, which was recorded by him. The said recorded audio was played before the S.P. but was not seized by him. It was stated by him that mobile was not in his name rather it was in the name of Rajiv Kumar Sao (PW-1). It is stated by him that the same statement what he made before this court was given before S.P. Lakhisarai. It was stated that the contents of statement was not read over to him by S.P. Lakhisarai. It was stated



that statement given before S.P. was read over by his lawyer, who filed protest in this case. It was stated by him that he make statement before S.P. Lakhisarai that he received call on mobile No. 9631146123, which he received after three days of the occurrence. It was stated that mobile print-out was not taken by Police and the same was not produced before the court. He denied the suggestion that no such ransom call of Rs. 5 Lakhs was made to him by appellant and under conspiracy he falsely implicate the appellant-accused.

26. PW-1 is Rajiv Kumar, who is the brother of informant (PW-8), who supported the date and time of the occurrence. He claimed to be an eye witness of kidnapping and stated that when his nephew Sonu Kumar (victim) was coming back to him, he was hold by Harkishan Yadav, Bhushan Yadav, Santosh Yadav, Dinesh Yadav, Vikash Yadav, Uday Yadav (appellants-convict), Sudhir Yadav and Rajesh Yadav. Alarm was raised by his friend Sudama Kumar and Santosh Kumar. It was deposed that the victim was taken by co-accused Bhushan Yadav and Rajesh Yadav.



He categorically stated that he is the eye witness of the occurrence. It was deposed by him that after 4-5 days, a mobile call was made by Uday Yadav (appellants-convict) and Sudhir Yadav and asked for a ransom of Rs. 4 to 5 Lakhs from his brother Manohar Sao (Informant/PW-8). His nephew was traceless till date. It was stated that after four days of the occurrence, information was given to the Superintendent of Police, Lakhisarai. It was deposed that the accused persons committed the crime in question due to money and still they are threatening him not to depose in this case.

26.1. Upon cross examination, it was stated that the Investigating Officer came to his village after 4-5 days of the occurrence and enquired to him regarding the occurrence. It was stated by him that after four days of the occurrence his brother (PW-8) went to give information to Dy.S.P., Lakhisarai and he was not accompanied him. He also made a statement during trial that he gave statement to Investigating Officer that on the date and time of occurrence he was with his nephew Sonu Kumar and Gautam Kumar



(brother of informant/PW-8). He denied that he made statement before the I.O. that his nephew was hold by Harkishan Yadav, Bhushan Yadav, Santosh Yadav, Dinesh Yadav, Vikash Yadav, Uday Yadav (appellants-convict), Sudhir Yadav and Rajeshwar Yadav. He stated that before I.O. that his nephew Sonu Kumar and his friend Sudama Kumar and Santosh Kumar raised alarm. It was stated by him that the night was dark but there was a single electric bulb at place of occurrence. It was stated by him that the accused persons fled away towards south direction. It was stated by him that in search operation, three accused persons were also accompanied them but by that point of time they were not aware about their involvement in crime, which was disclosed only after arrest of Dinesh Yadav. It was stated by him that immediately after the occurrence his brother (PW-8) did not make a call to police station rather he made a call in next morning between 10:00 – 11:00 a.m. to Chanan Police Station. It was stated that he can produce the print out of call details of mobile number from which a ransom call of Rs. 4 to 5 Lakhs was made. He did not



produce the said phone print to the I.O. under apprehension that the accused persons might have killed his nephew. He failed to disclose about the make of motorcycle. He failed to disclose also about the colour of motorcycle. It was stated that he came to know about the involvement of appellant-accused only after arrest of co-accused Dinesh Yadav. He could not see co-accused Dinesh Yadav while watching the cycle race.

27. PW-2 is Sudama Kumar and was the friend of victim Sonu Kumar and also present with him during his kidnapping, as per case of the prosecution, and raised alarm did not support the case of the prosecution during the trial and he turned hostile. Nothing appears substantial in his cross-examination on behalf of the State which may use for purpose of corroboration/contradiction *qua* depositions of other prosecution witnesses, who supported the occurrence.

27.1. Upon cross examination, he stated that he deposed out of his own will without any pressure and he did not see Sonu Kumar (victim) in *Mela*.

28. P.W-3 is Ram Rajak, who did not declare



hostile by the prosecution but certain questions were put to him in the court who said that he did not went to saw *Mela* and also did not make any statement before police.

29. PW-4 is Sabo Devi, who is the grant-mother of the victim Sonu Kumar, who also supported the date and time of the occurrence, deposed about the involvement of Harkishan Yadav, Bhushan Yadav, Laxmi Yadav and Santosh Yadav in alleged occurrence of Kidnapping. She also supported ransom demand of Rs. 5 Lakhs as raised by the appellant.

29.1. Upon cross examination on behalf of appellant-accused Uday Yadav that it was night and she was at her home. Upon cross examination on behalf of rest of the accused persons, she stated that there was inimical terms with the accused persons before the occurrence. She specifically stated that she could not see without help of spectacles. She came to know regarding occurrence from neighbour, while she was in the outer courtyard of one Sohan Mahto.

30. PW-5 is Dablu Mahto, who did not support the



case of prosecution and turns hostile. Nothing appears in his cross examination while examined by State for purpose of corroboration/contradiction with the statement of other eye witnesses who appears supported the case of the prosecution.

31. PW-6 is the mother of victim and wife of PW-8/informant, who supported the date and time of the occurrence and deposed that her son was kidnapped by Harkishan Yadav, Bhushan Yadav, Laxmi Yadav, Santosh Yadav, Dinesh Yadav, Rajesh Yadav, Uday Yadav (appellants-convict), Bilas Yadav, Sudhir Yadav. At this stage, a question was advanced by the learned prosecutor that whether she saw these persons taken away her son ? Where in reply, she said 'Yes'. Subsequently, this question was not allowed being a leading question. She deposed that Gautam Kumar (not examined) and her husband (informant/PW-8) informed her regarding kidnapping of Sonu Kumar and only then she came to know about the occurrence. Whereafter, on said information, she came near to library and saw that accused persons were going towards



south-east direction. It was deposed that after four days, a ransom demand of Rs. 5 Lakhs was made on mobile of her husband (PW-8).

31.1. On cross examination, she stated that after ten minutes of occurrence, Gautam Kumar and her husband namely, Manohar Sao (PW-8) came to home, no other person was with them. It was stated that immediately after one to two minutes her husband and Gautam went away, and after ten minutes, she came near to library (place of occurrence), where she did met with five persons, who were co-villagers but she did not remember their name. She stated that she could not chase the accused persons with the help of co-villagers. It was stated that three co-accused persons were on motorcycle. She could not disclose the number of mobile phone on which a ransom call was made. She stated that the colour of motorcycle was black. She could not disclose the name of the persons who were caught hold of Sonu Kumar on motorcycle as his face was covered.

32. PW-7 is Putul Devi, who is mother of the informant/PW-8, supported the date and time of the



occurrence and stated that by that time she was at her home. She named Harkishan Yadav, Bhushan Yadav, Laxmi Yadav, Santosh Yadav, Vikash Yadav, Dinesh Yadav, Rajesh Yadav, Sudhir Yadav, Uday Yadav (appellants-convict) as to kidnap Sonu Kumar near to library. She came to know this fact from Gautam Kumar (not examined). She went to library, where she came to know that three persons were on Scooter. It was stated by her that on 07.11.2009 co-accused Bhushan Yadav, Laxmi Yadav, Santosh Yadav, Uday Yadav, Rajesh Yadav, Sudhir Yadav and Uday Yadav (appellants-convict) came to her home and asked for ransom of Rs. 5 Lakhs, failing which they threatened to kill the child. It is stated that before this ransom call was made on mobile of PW-8 also. It was stated that as child was not returned, therefore, Rs. 5 Lakhs was not paid to the accused persons.

32.1. Upon cross examination, it is stated that she stated that Gautam Kumar is the brother of his sister-in-law (PW-6 Pinki Devi). It was stated by her that Gautam Kumar came on same very day at about 3:00 p.m. to watch cycle race. It was stated that the ransom demand was first time



made by Sudhir Yadav and Uday Yadav (appellants-convict) at home, the demand was first time made by Bhushan Yadav. She made her statement before police after four days of the occurrence. She stated before police regarding land dispute with her neighbor Harkishan Yadav, Bhushan Yadav, Laxmi Yadav, Santosh Yadav. It was stated that the phone call was made on 06.11.2009 by Sudhir Yadav and Uday Yadav (appellants-convict). She came to know about the occurrence at 9:00 a.m. from Gautam Kumar and by that time her mother-in-law (PW-4), *Gotni* (sister-in-law) Pinki Devi (PW-6), and Rajiv Kumar Sao (PW-1) were there and except them, no one was there. It was stated that she went alongwith Pinki Devi (PW-6) and her husband Rajiv Kumar Sao (PW-1) to the place of occurrence. Her mother-in-law (PW-4) remains at home with childrens. A court question was asked to her which she replied that no immediate information was given to police after ransom call over phone and also at home.

33. PW-9 is Sohan Mahto who turns hostile during the trial and did not support the case of the prosecution.



Nothing substantial surfaced during his cross examination on behalf of the State which may use for corroboration/contradiction with the testimony of other prosecution witnesses, who appears supported to the case of prosecution.

34. PW-10 is the Investigating Officer of this case namely, Atul Kumar Mishra. He deposed in his examination-in-chief that on 04.11.2009 he was the Incharge of Chanan Police Station and was posted over there. He received a letter on 18.11.2009 from the office of S.P. Lakhisarai which was given by Manohar Sao (PW-8), informant of this case and on the basis of said information he lodged a formal F.I.R. and started investigation by assuming the charge as investigating officer. He identified written information and his initial signature regarding forwarding to lodge the formal F.I.R. which he identified before the court and on his identification, it was exhibited as **Exhibit '2'**. He recorded the statement of witnesses during course of investigation. It was deposed by him that on 10.11.2009, he got recorded the statement of one Sanjiv Kumar under Section 164 of the



Code of Criminal Procedure (in short the 'Cr.P.C.') whose mobile number was used for making ransom call and the same was made from mobile No. 9504963018 to mobile No. 9631146123, which was recorded and displayed before him. He identified mobile No. 9631146123 and on his identification, it was exhibited during trial as material **Exhibit No. 1 (with objection)**. It was stated by him that the victim is still traceless and Dinesh Yadav (co-accused) upon arrest said through his confessional statement, that after 4 -5th day of kidnapping they had murdered the kidnapped child near '*Barahiya Taal*' and also confessed about the involvement of the accused persons.

34.1. Upon cross-examination, he stated that during investigation he did not seized the mobile. He also stated that he did not mark the mobile, which was produced before him by the informant, as to identify before the court. He did not took print out of call details report (CDR) during investigation regarding either of the mobiles. It was stated that in this case, no mobile was seized and no call detail report (CDR) was obtained. During cross examination, he



also denied that PW-1 never made statement before him that his nephew was caught hold by Harkishan Yadav, Bhushan Yadav, Santosh Yadav, Dinesh Yadav, Vikash Yadav, Uday Yadav (appellants-convict), Sudhir Yadav and Rajesh Yadav, whereafter Sonu Kumar (victim) alongwith his friend Sudama Kumar and Santosh Kumar raised alarm and thereafter Bhushan Yadav and Rajesh Yadav taken away Sonu Kumar by motorcycle. He also stated that PW-1 not claimed as an eye witness during investigation. He further stated on cross examination that informant/PW-8 Manohar Sao did not make statement during investigation that while he was returning to his home after closing of cycle race at 9:30 p.m., he saw Bhushan Yadav and Santosh Yadav are takeing away his son Sonu Kumar. He also stated that in his re-statement he did not said that victim was hold by Bhushan Yadav and on next motorcycle Santosh Yadav and Rajesh Yadav were there, whereafter they proceeded towards forest. He also made statement that informant did not said during investigation that he had chased for a short distance to the appellant-accused and returned when they



went off the sight. It was also stated that informant did not disclosed in his re-statement during investigation that after coming to home he narrated the occurrence to his brother Rajiv Kumar Sao (PW-1), grand-mother (PW-4), wife (PW-6), mother (PW-7) and brother-in-law Gautam Kumar (not examined). He also stated that Pinki Devi (PW-6) did not stated during investigation before him that he saw that Harkishan Yadav, Bhushan Yadav, Santosh Yadav, Dinesh Yadav, Rajesh Yadav, Vikash Yadav, Bilash Yadav, Uday Yadav (appellants-convict), Sudhir Yadav were taking away Sonu Kumar (victim). He also stated that Putul Devi (PW-7) did not make her statement on 07.11.02009 that accused Bhushan Yadav, Laxmi Yadav, Santosh Yadav, Kishan Yadav, Vikash Yadav, Dinesh Yadav, Rajesh Yadav, Sudhir Yadav and Uday Yadav (appellants-convict) came to her home and asked for a ransom of Rs. 5 lakhs. He specifically stated that all prosecution witnesses, whose statement was recorded by him during investigation are not the eye witness of the occurrence. He also made statement that no cycle or motorcycle were seized in connection with the present case.



He did not even said about the land dispute during investigation between informant/PW-8 and accused persons.

35. CW-1 is the Sanjiv Kumar, who appears holder of mobile no. 9504963018 from which ransom call was made. It was stated by him that the SIM is in the name of his mother Rita Devi. It was stated that said mobile and SIM was under use by him and his mother. It was stated that said mobile number was taken by co-accused Sudhir Yadav in the year 2009 and thereafter never returned to him. He stated to disclose this fact also before Police Inspector during investigation. This statement was also recorded before the court, which he identified during trial which upon identification exhibited as **Exhibit '1'**. He identified Uday Yadav (appellant-accused) before the court. He did not made any application with any authority/police regarding the fact that his phone was taken by Uday Yadav (appellants-convict). He did not even request to company to close the services of SIM Card. He denied the suggestion that SIM Card with him, only to help criminals by providing his mobile to make a ransom call.



36. From the aforesaid discussions of oral evidences, it appears that informant PW-8 claimed himself as an eye witness of the occurrence. He lodged statement before the Superintendent of Police, Lakhisarai. From his deposition, it appears that he already received a ransom call of Rs. 5 Lakhs before making statement to the S.P. Lakhisarai, but he did not disclose the name of this appellant-accused thereof. Therefore, naming this appellant-accused during trial appears contradictory to his earlier statement made through his written statement given before S.P. Lakhisarai creating a serious doubt regarding involvement of appellant-accused.

37. It is an admitted position that the basis of the present F.I.R. is the statement given before the S.P. Lakhisarai who was not examined during course of trial and, therefore, the contents of F.I.R. cannot be said proved in its true spirit. It appears that informant/PW-8 did not saw appellant-accused at the place of occurrence, whereas PW-1, PW-6 and PW-7 named appellant-accused to caught hold of the minor son of the informant at the place of occurrence.



PW-7 who is the wife of younger brother of informant i.e. Rajiv Kumar Sao (PW-1) specifically stated that after ransom call made over phone by the appellant-accused a direct call of ransom was also made by co-accused persons Bhushan Yadav, Laxmi Yadav, Santosh Yadav, Kishan Yadav, Vikash Yadav, Rajesh Yadav, Uday Yadav (appellants-convict) including Sudhir Yadav. It was stated specifically by PW-6 that ransom at home was asked by co-accused Bhushan Yadav. This important aspect regarding demand of ransom which appears the sole basis of conviction of the appellant-accused was not raised either through F.I.R. or not stated by the informant or any other prosecution witnesses during trial creating a serious doubt regarding demand of ransom by this appellant-accused.

38. It is admitted position what appears from the statement of I.O. (PW-10) that no mobile phone was seized during investigation including SIM, as claimed to be involved in asking ransom to corroborate the fact as alleged. Non-seizure of mobile and SIM and also availability of any Call Detail Report (CDR) in this connection makes a serious



doubt regarding ransom call raised by appellant-accused. It is important to mention that mobile No. 9504963018 which was alleged to use for demanding ransom of Rs. 5 Lakhs was under use of one Sanjiv Kumar who examined as CW-1 and whose statement was also recorded under Section 164 Cr.P.C. The said SIM was in the name of his mother namely, Rita Devi. He stated and admitted during trial that his phone was taken on 11th Month of 2009 by co-accused Sudhir Yadav. No evidence surfaced during trial by prosecution that said SIM was at any point of time with the appellant-accused. Moreover, the audio which was recorded by PW-8 and admittedly displayed before PW-10 was not send for any forensic examination, which was claimed to be called by appellant-accused and other co-accused Uday Yadav. The mobile number on which the call of ransom was received i.e. 9631146123 does not belong to informant, rather it belongs to PW-1 Rajiv Kumar Sao.

39. In this context, it would be apposite to reproduce para **25 & 26** of the judgment of Hon'ble Supreme Court in the case of **Tomaso Bruno** (supra), which reads as under:

"25. The production of scientific and electronic evidence



in court as contemplated under Section 65-B of the Evidence Act is of great help to the investigating agency and also to the prosecution. The relevance of electronic evidence is also evident in the light of ***Mohd. Ajmal Amir Kasab v. State of Maharashtra [(2012) 9 SCC 1 : (2012) 3 SCC (Cri) 481]***, wherein production of transcripts of internet transactions helped the prosecution case a great deal in proving the guilt of the accused. Similarly, in ***State (NCT of Delhi) v. Navjot Sandhu [(2005) 11 SCC 600 : 2005 SCC (Cri) 1715]***, the links between the slain terrorists and the masterminds of the attack were established only through phone call transcripts obtained from the mobile service providers.

26. The trial court in its judgment held that non-collection of CCTV footage, incomplete site plan, non-inclusion of all records and sim details of mobile phones seized from the accused are instances of faulty investigation and the same would not affect the prosecution case. Non-production of CCTV footage, non-collection of call records (details) and sim details of mobile phones seized from the accused cannot be said to be mere instances of faulty investigation but amount to withholding of best evidence. It is not the case of the prosecution that CCTV footage could not be lifted or a CD copy could not be made."

40. Under the aforesaid circumstances, it appears not convincing to connect appellant-accused to make a ransom call to informant/PW-8 from mobile No. 9504963018.

41. It is further to say that even F.I.R. is not disclosing that informant or any prosecution witnesses is the eye witness of the occurrence. The I.O./PW-10 also stated specifically that no prosecution witnesses are the eye witness



of the occurrence. It appears that the several improved version regarding occurrence for which attention was drawn by the learned defence counsel during trial which was put before the I.O./PW-10 who recorded statement during investigation under Section 161 of Cr.P.C. and specifically denied during cross examination, that PW-1 never made statement before him that his nephew was caught hold by Harkishan Yadav, Bhushan Yadav, Santosh Yadav, Dinesh Yadav, Vikash Yadav, Uday Yadav (appellants-convict), Sudhir Yadav and Rajesh Yadav, whereafter Sonu Kumar (victim) alongwith his friend Sudama Kumar and Santosh Kumar raised alarm and thereafter Bhushan Yadav and Rajesh Yadav taken away Sonu Kumar by motorcycle. He also stated that PW-1 not claimed as an eye witness during investigation. He further stated on cross examination that informant/PW-8 Manohar Sao did not make statement during investigation that while he was returning to his home after ending of cycle race at 9:30 p.m., he saw Bhushan Yadav and Santosh Yadav being taken away his son Sonu Kumar. He also stated that in his re-statement he did not



said that victim was hold by Bhushan Yadav and on next motorcycle Santosh Yadav and Rajesh Yadav were there, whereafter they proceeded towards forest. He also made statement that informant did not said during investigation that he had chased for a short distance to the appellant-accused and returned only when they went off the sight. It was also stated that informant did not disclosed in his re-statement during investigation that after coming to home he narrated the occurrence to his family members. He also stated that Pinki Devi (PW-6) has stated during investigation before him that she saw that accused persons including Uday Yadav (appellant accused) were taken away Sonu Kumar (victim). He also stated that Putul Devi (PW-7) did not make her statement on 07.11.2009 that accused Bhushan Yadav, Laxmi Yadav, Santosh Yadav, Kishan Yadav, Vikash Yadav, Dinesh Yadav, Rajesh Yadav, Sudhir Yadav and Uday Yadav (appellants-convict) came to her home and asked for a ransom of Rs. 5 lakhs. He specifically stated that all prosecution witness, whose statement was recorded by him during investigation are not the eye witness of the



occurrence. He also stated that no cycle or motorcycle were seized in connection with the present case. He did not even informed about the land dispute during investigation by informant/PW-8 and his family members.

42. These aforesaid discussed contradictions and improvement does not suggest that this is a case of minor contradiction rather it suggest that it is a complete improvement over the allegation as raised through F.I.R. Denial of I.O./PW-10 to make any such statement during the investigation, as aforesaid, is sufficient to impeach the credibility of the prosecution witnesses in terms of section 155(3) of the Evidence Act and their testimony is not appears safe, reliable and trustworthy to accept *qua* involving appellant-accused in crime in question.

43. It would further apposite to reproduce paragraph 21, 22 and 23 of the judgment of Hon'ble Supreme Court in the case of **Sampath Kumar Vs. Inspector of Police, Krishnagiri** reported in **(2012) 4 SCC 124** where the Hon'ble Apex Court has held as under:

"21. In *Narayan Chetanram Chaudhary v. State of Maharashtra* [(2000) 8 SCC 457 : 2000 SCC (Cri) 1546 : AIR 2000 SC 3352] this Court held that while



discrepancies in the testimony of a witness which may be caused by memory lapses were acceptable, contradictions in the testimony were not. This Court observed: (SCC p. 483, para 42)

"42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person."

22. The difference between discrepancies and contradictions was explained by this Court in *State of H.P. v. Lekh Raj* [(2000) 1 SCC 247 : 2000 SCC (Cri) 147 : AIR 1999 SC 3916] . Reference may also be made to the decision of this Court in *State of Haryana v. Gurdial Singh* [(1974) 4 SCC 494 : 1974 SCC (Cri) 530 : AIR 1974 SC 1871] where the prosecution witness had come out with two inconsistent versions of the occurrence. One of these versions was given in the court while the other was contained in the statement made before the police. This Court held that these were contradictory versions on which the conclusion of fact could not be safely based.

23. This Court in *Gurdial Singh* [(1974) 4 SCC 494 : 1974 SCC (Cri) 530 : AIR 1974 SC 1871] observed: (SCC p. 500, para 21)

"21. The present is a case wherein the prosecution witnesses have come out with two inconsistent versions of the occurrence. One version of the occurrence is contained in the evidence of the witnesses in court, while the other version is contained in their statements made before the police. ... In view of these contradictory versions, the High Court, in our opinion, rightly came to the conclusion that the conviction of the accused could not be sustained."

44. In the present case, admittedly the F.I.R. was



lodged after five days of the occurrence. The prosecution witnesses PW-3, PW-6 and PW-7 stated specifically regarding land dispute and inimical terms with the accused persons. Hence, lodging of delayed F.I.R. is also creates a doubt over credence of the prosecution case. It would be apposite to reproduce para '31' of the judgment in the case of **Nand Lal** case (supra).

"31. As held by this Court in Ramesh Baburao Vs. State of Maharashtra [(2007) 13 SCC 501], the FIR is a valuable piece of evidence, although it may not be substantial evidence. The immediate lodging of an FIR removes suspicious with regard to over implication of number of persons, particularly when the case involved a fight between two groups. When the parties are at loggerheads, the immediate lodging of the FIR provides credence to the prosecution case."

45. In the present case, it appears from the deposition of PW-8/informant that he did not saw the appellant-accused at the place of occurrence and when he returned home after initial search, narrated the occurrence to other prosecution witnesses i.e. PW-1, PW-4, PW-6 and PW-7 and other family members. But all these witnesses during trial claimed themselves to be an eye witness of the occurrence. These witnesses are the parents/immediate relatives of the victim being family members. The land



dispute/neighbourhood dispute is admitted position. Hence, in the circumstances, it is unsafe to accept their version qua involvement of appellant-accused being an interested witnesses as to secure the conviction of appellant-accused anyhow by deviating from the case of the prosecution as set-out.

46. As per the deposition of informant/PW-8 and other prosecution witnesses who came immediately over the place of occurrence specifically stated that there were crowd of about 200 persons who were mostly the co-villagers and resident of nearby area, but no independent witness was examined in this case. It appears that only independent witness is PW-3 Ram Rajak, nothing stated during trial to connect culpability of appellant-accused. He not even whisper anything regarding the occurrence by stating that he was not made any statement before the Investigating Officer and was also not visited the place of occurrence. It would be apposite to reproduce para '14' of the judgment of Hon'ble Apex Court in the case of **Saravanan** (supra) which reads as under:

"**14.** The theory that the witnesses being close relatives



and consequently being partisan witnesses, should not be relied upon, was repelled by this Court in the year 1953 itself in *Dalip Singh v. State of Punjab* [(1953) 2 SCC 36 : AIR 1953 SC 364] wherein it was held as under : (AIR p. 366, para 26).

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

47. In view of the facts and circumstances, as discussed above, we arrived upon conclusion that conviction and sentence of the appellant-accused cannot be said sustainable in the eye of law.

48. Accordingly, extending the benefit of doubt as the prosecution has failed to answer several important aspects during trial as to connect the appellant-accused with crime in question, hence, impugned judgment of conviction and order of sentence dated 03.05.2019 passed by learned



Fast Track Court-II, Civil Court, Lakhisarai in Sessions Trial No. 494A/2011/Trial No. 326/2018, arising out of Lakhisarai P.S. Case No. 565/2009 G.R. Case No. 1226 of 2009 is hereby set-aside.

49. The appellant-accused, namely, Uday Yadav is acquitted of the charges levelled against him by the learned trial court. He is directed to be released forthwith, if his presence is not required in any other case.

50. The appeal stands allowed.

51. Let a copy of this judgment alongwith the Trial Court Records be sent to the learned Trial Court forthwith.

(Anjani Kumar Sharan, J.)

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
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