

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.826 of 2015

Arising Out of PS. Case No.-81 Year-2011 Thana- DULHIN BAZAR District- Patna

1. Manoj Kumar, Son of Sri Lal Mohan Yadav,
2. Dallu Kumar @ Dalu Kumar, Son of Sri Saha Yadav
Both residents of village- Varathpura Panshari, P.S. Dulhin Bazar, District- Patna.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 658 of 2015

Arising Out of PS. Case No.-81 Year-2011 Thana- DULHIN BAZAR District- Patna

Pintu Kumar, S/o Sri Rajeshwar Yadav, resident of village – Bharatpura Pansari, P.S. Dulhin Bazar, Distt. - Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 826 of 2015)

For the Appellants : Mr. Dharendra Kumar Sinha, Advocate
Mr. Yashpal Yadav, Advocate
Ms. Soni Kumari, Advocate

For the State : Ms. Shashi Bala Verma, Addl.PP

(In CRIMINAL APPEAL (DB) No. 658 of 2015)

For the Appellant : Mr. Manoj Kumar No. 1, Amicus Curiae

For the State : Ms. Shashi Bala Verma, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 26-09-2024

Heard Mr. Dharendra Kumar Sinha, learned counsel for the appellants in Cr. Appeal (DB) No. 826 of 2015, Mr. Manoj Kumar No.1, learned Advocate as learned Amicus Curiae in Cr. Appeal (DB)

No. 658 of 2015 and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State.

2. These two appeals have been preferred for setting aside the judgment of conviction dated 26.06.2015 (hereinafter referred to as the impugned judgment) and the order of sentence dated 29.06.2015 (hereinafter referred to as impugned order) passed by the learned Additional Sessions Judge-II, Danapur, Patna (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 1681 of 2011 arising out of Dulhin Bazar P.S. Case No. 81 of 2011 corresponding to G.R. No. 1097 of 2011 registered under Sections 363, 364 and 364(A) of the Indian Penal Code (in short 'IPC'). By the impugned judgment, the learned trial court has been pleased to convict the appellants for the offences punishable under Sections 302, 201 and 120(B) IPC and by the impugned order, they have been ordered to undergo sentence of life imprisonment under Section 302 and 120(B) IPC as also to pay fine of Rs.10,000/-(Rupees Ten Thousand) each and for the offence under Section 201 IPC, they have been ordered to undergo rigorous imprisonment for one year. Both the sentences are to run concurrently.

Prosecution Case

3. The prosecution case is based on written application dated 21.05.2011 submitted by one Rajeshwar Yadav, who has

been examined as PW-3 in course of trial. In his written application, the informant (PW-3) has stated as under :-

On 20.09.2011 at about 12:00 Noon, his son, namely, Sintu Kumar had gone to visit Bharatpura Bazar. When he did not return, the informant tried to search for him at his level but could not succeed. Later on, one Parmanand Yadav, Postmaster of his village told the informant that he had seen his son at about 12:30 PM going with two boys of the same village, namely, Dallu Kumar and Manoj Kumar on bicycle towards Ular Road. On getting this information, when the informant inquired from Dallu Kumar and Manoj Kumar in the evening, they did not give any satisfactory answer. In the meantime, Manoj Kumar who is the cousin brother of the informant seized the opportunity and fled away and he had not returned till the time of lodging of the FIR. The informant alleges that he is certain that Dallu Kumar and Manoj Kumar have kidnapped his minor son Sintu either to kill him or for demanding ransom.

4. On the basis of the written application (Exhibit-2), a First Information Report giving rise to Dulhin Bazar P.S. Case No. 81 of 2011 dated 21.05.2011 was registered under Sections 363, 364/364(A) IPC. Vide order dated 06.06.2011, Section 302 IPC has also been added. Upon investigation of the case, the

Investigating Officer (I.O.) submitted a chargesheet against all the three accused persons whereafter, the learned Additional Chief Judicial Magistrate, Danapur took cognizance of the offence on 05.09.2011. Since the offences alleged were triable by the court of Sessions, the learned Magistrate committed the records to the Court of Sessions. In the Court of Sessions, it was registered as Session Trial No. 1681 of 2011. The accused persons were explained the charges which they denied and claimed to be tried. In these circumstances, the learned trial court framed the charges on 10.12.2011. A perusal of the memo of charge would show that all the accused persons were charged for having committed offence under Sections 302, 201 and 120(B) IPC.

5. In course of trial, the prosecution examined as many as 10 witness and got exhibited some documentary evidences which have been marked Exhibit-1 to Exhibit-8/A. The defence examined one witness, namely, Harkhit Narayan (DW-1). One of the accused of this case, namely, Manoj Kumar, who is the Appellant No. 1 in Cr. Appeal (DB) No. 826 of 2015 got recorded his confessional statement before learned Judicial Magistrate under Section 164 Cr.P.C. and his confessional statement has been exhibited as Exhibit-4 at the instance of Shri Subhash Chandra Sharma, the then learned Magistrate who has been examined as

PW-7. The full description of the prosecution witnesses, defence witnesses and the documents marked exhibits are being mentioned hereunder for a ready reference:

List of Prosecution Witnesses

PW-1	Kunj Bihari Yadav
PW-2	Raja Ram Yadav
PW-3	Rajeshwar Yadav
PW-4	Ram Kumar
PW-5	Parma Nand Yadav
PW-6	Dr. Nawal Kishore Singh
PW-7	Subhash Chandra Sharma
PW-8	Abhay Kumar
PW-9	Dayanand Prasad Sinha
PW-10	Raju Saw

List of Exhibits on behalf of the Prosecution

Exhibit ‘1’	मृत्यु समीक्षा रिपोर्ट पर राम कुमार का हस्ताक्षर	8.6.12	Sd/- 8.6.12
Exhibit ‘2’	दिनांक 21-5-11 के फर्दब्यान	8.6.12	
Exhibit ‘1/A’	मृत्यु समीक्षा रिपोर्ट पर राजेशवर यादव का हस्ताक्षर	29.6.12	Sd/- 29.6.12
Exhibit ‘3’	अन्तय परीक्षण प्रतिवेदन	17.1.13	Sd/- 17.1.13
Exhibit ‘4’	दिनांक 24-5-11 का मनोज कुमार का 164 के ब्यान	22.4.13	Sd/- 22.4.13
Exhibit ‘2/A’	पृष्ठांकन लिखित ब्यान पर	28.5.13	Sd/- 28.5.13
Exhibit ‘5’	दल्लू का स्वीकारोक्ती ब्यान	“	
Exhibit ‘6/B’	मृत्यु समीक्षा रिपोर्ट	“	
Exhibit ‘6’	जब्ती सुची (साईकिल का प्रदर्श)	“	
Exhibit ‘7’	जब्ती सुची (मोबाईल का)	“	
Exhibit ‘8/A’	जब्ती सुची	“	
Exhibit ‘8’	औपचारिक प्राथमिकी	“	
Exhibit ‘6/A’	जब्ती सुची पर साक्षी दयानंद प्रसाद का हस्ताक्षर	03.10.13	Sd/- 03.10.13 16.6.15

6. It would appear that the accused persons were given an opportunity to explain the incriminating circumstances which were brought against him by the prosecution, their statements under Section 313 of the Code of Criminal Procedure (in short Cr.P.C.) were recorded, in which they pleaded innocence.

Findings of the Learned Trial Court

7. The learned Trial court analyzed the evidences, both oral as well as the documentary which were available on the record and reached to a conclusion that the evidences of the PWs 1, 2, 3 & 8 finds full collaboration from the evidence of Dr. Nawal Kishore Singh (P.W.6) who has proved the post-mortem report (exhibit 3).

8. The learned trial court found that the dead body of Sintu Kumar as well as his bicycle, both were recovered from the place about which the accused Dallu Kumar had made disclosure during his interrogation in police custody. Referring to the confessional statement of the appellant Manoj Kumar recorded on 24.05.2019 by the learned Magistrate, 1st Class, Danapur (PW-7) under Section 164 Cr.P.C., the learned trial court held that from this confessional statement, it is revealed that this accused Manoj Kumar played an active role in slitting the throat of the deceased Sintu along with Dallu Kumar on being abetted by Pintu Kumar,

who is agnate of the accused Manoj Kumar. Drawing strength from the confessional statement (Exhibit-4), learned trial court held that Exhibit-4 reveals that Pintu Kumar had assured this accused Manoj Kumar to give him Rupees One Lakh in lieu of committing murder of Sintu Kumar. Hence, it has been concluded by the learned trial court that the accused Manoj Kumar and Dallu Kumar committed the murder of Sintu Kumar in lieu of assurance of giving money to them for the work on commission of murder by Pintu Kumar. The learned trial court rejected the plea of false implication of the accused Pintu Kumar saying that in connection with the demand of rangdaari made by the two other accused, the court had asked the question from the informant Rajeshwar Yadav during his examination as to whether he had informed the police about such demand before the occurrence or not, upon which the informant had replied that he had given the information to the Officer-in-Charge of Dulhin Bazar police station about the said demand but during his examination, the I.O. Abhay Kumar, has not been grilled by the defence on this point. For this reason, the learned trial court has rejected the defence document (Exhibit-A) in which the informant had taken a plea of false implication of his son Pintu Kumar alleging therein that other accused persons have demanded rangdaari against the kidnapping of his son Sintu

Kumar @ Sadhu and he was threatened that if the said rangdari demand was not fulfilled then they (Dallu and Manoj) firstly kill the kidnapped boy and then falsely implicate his elder son Pintu Kumar.

9. The learned trial court has taken into consideration the statement of the I.O. (PW-8) that the Call Detail Report (in short 'CDR') were procured by him of the two mobiles which were recovered and seized from the possession of Pintu Kumar and the accused Manoj Kumar and from the CDR, it was shown that on the date of alleged occurrence, this accused Pintu Kumar was in contact with the accused Manoj Kumar. Treating this oral testimony as a reliable piece of evidence, the learned trial court concluded that the hatching of criminal conspiracy for getting the deceased Sintu Kumar murdered by Pintu Kumar with the help of Manoj Kumar and Dallu Kumar cannot be ruled out and drawn out easily.

10. The learned trial court also rejected the contention of the appellants that the confessional statement of the accused Manoj Kumar under Section 164 Cr.P.C. cannot be taken as a substantive piece of evidence against the co-accused. The judgment of the Hon'ble Supreme Court in the case of **Haricharan Kurmi and Others Vs. State of Bihar** reported in

AIR 1964 SCC 1184 : 1964 SCC OnLine SC 28 was placed before the learned trial court on behalf of the appellants but in the impugned judgment, there is no discussion on that.

**Submissions on behalf of appellants in Cr. Appeal DB
No. 826 of 2015**

11. Mr. Dharendra Kumar Sinha, learned counsel for the appellants (Manoj Kumar and Dallu Kumar) has submitted before this Court as under:-

(i) There is a delay of 19 hours in lodging of the First Information Report. It is submitted that though the victim boy had gone missing on 20.05.2011 and he was not seen after 12:30 PM, the written report was given to the police station only on the next day and the appellant Dallu Kumar was handed over to police by the informant. The FIR has been registered on 21.05.2011 at 07:00 AM. According to him, the prosecution has not explained the delay in lodging of the FIR.

(ii) It is submitted that Dallu was juvenile on the date of occurrence which would be evident from his second statement under Section 313 Cr.P.C. in which he has disclosed his age as 19 years on 27.11.2014. It is submitted that no doubt, in his first statement recorded under Section 313 Cr.P.C., he had disclosed his age as 22 years on 02.11.2013 and from the said date, if the age is

calculated then on the date of occurrence, he would be around 20 years of age. But after few days, once again, his statement under Section 313 Cr.P.C. was recorded because in between his first statement and the second statement, the defence witness had brought on record Exhibit-A. In his second statement, he had disclosed his age as 19 years and if this age as disclosed by him is taken into consideration, then he would be a juvenile on the date of occurrence.

(iii) Learned counsel submits that there is no eye-witness to the occurrence in this case and while preparing the seizure list, the I.O. has not followed the procedure prescribed under Section 100 Cr.P.C.

(iv) It is one of the submissions of learned counsel for the appellants that both the appellants were available in their house after the occurrence and this would be a relevant conduct post-occurrence which would be admissible in evidence in view of Section 8 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act').

(v) Learned counsel submits that regarding the second place of occurrence, the I.O. has simply stated in his deposition that he had mentioned about the place of occurrence in paragraph

‘13’ of the case diary. This cannot be taken as a proof of the place of occurrence as required.

(vi) It is submitted that the learned trial court has proceeded to convict the appellants on the assumption of guilt because of the statement of the appellant Manoj Kumar recorded under Section 164 Cr.P.C.. The learned trial court has assumed that the accused has pleaded guilty which is not a fact as the accused has only pleaded guilty as envisaged under Section 229 Cr.P.C.

(vii) It is also submitted that the Doctor’s opinion with regard to the weapon by which the crime was committed does not corroborate the manner of occurrence as disclosed in the confessional statement of the appellants.

**Submissions on behalf of the appellant in Cr. Appeal
(DB) No. 658 of 2015**

12. Mr. Manoj Kumar No. 1, learned Advocate who has been appointed as learned Amicus Curiae in this case to assist this Court on behalf of the appellant has submitted before this court that as regards the guilt of this appellant, the prosecution has miserably failed to bring any material at all to prove his guilt beyond all reasonable doubts. It is submitted that a close perusal of the judgment of the learned trial court would show that the learned trial court has convicted this appellant on the basis of the

confessional statement of the co-accused Manoj Kumar recorded under Section 164 CrPC. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Haricharan Kurmi** (supra), learned counsel submits that the Hon'ble Constitution Bench of the Hon'ble Supreme Court laid down the law more than five decades ago and has held that the confessional statement of a co-accused can be acted upon if it is corroborated in material particulars. If the other evidences are satisfactory in connection with the case then the confessional statement may only be looked into for an assurance in support of the conclusion which the court may arrive from other evidences.

13. Learned Amicus submits that in this case, none of the prosecution witnesses have implicated this appellant. According to him, the prosecution cannot start with the confessional statement of the co-accused to secure conviction of this appellant. In his submissions, the learned trial court has erred in accepting the oral testimony of the I.O. as regards the CDR of the mobile phones of Manoj and Dallu. The observation of the learned trial court that the CDR goes to show that on the date of alleged occurrence, this accused was in regular contact with the accused Manoj Kumar is perverted because in course of trial, the CDR which is an electronic document has not been proved much

less proved in accordance with law laid down by the Hon'ble Supreme Court in the light of Section 65B of the Evidence Act.

14. It is, thus, submitted that this appellant has been convicted without any material on the record against him and his appeal is fit to be allowed by setting aside the impugned judgment and order.

Submissions on behalf of the State

15. Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State has submitted before this Court that in this case, the victim boy went missing after he went to Bharatpur Bazar on 20.05.2011 at 12:00 Noon. It has come in evidence of the prosecution witnesses that he had visited the said Bazar that day from where he was kidnapped by Manoj and Dallu. Manoj is the nephew of the informant. Dallu Yadav was handed over to police and after his arrest, in police custody his confessional statement was recorded wherein he disclosed the place where the victim boy was killed and his dead body was concealed. It is submitted that the said part of his confessional statement by which he disclosed the fact i.e. the place where the occurrence had taken place and the dead body was concealed and on the basis of which the material object i.e. the dead body was recovered would be a relevant fact admissible in evidence. The learned Additional PP has placed

before this Court Section 27 of the Evidence Act and the part of the confessional statement made by Dallu Kumar which has been marked Exhibit '5'. Learned Additional Public Prosecutor has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ravishankar Tandon versus State of Chhattisgarh** reported in **2024 SCC OnLine SC 526**.

16. Learned Additional Public Prosecutor submits that on the basis of the disclosure made by Dallu Kumar, the bicycle of the victim was found in front of the house of Dayanand Prasad Sinha (PW-9) who has proved his signature on the seizure list as Exhibit '6/A'. The another seizure list witness has proved his signature as Exhibit '6/B' on the seizure list.

17. Learned Additional Public Prosecutor further submits that the statement of Manoj Kumar recorded under Section 164 Cr.P.C. by the learned Magistrate (PW-7) has been duly proved in course of trial and the same has been marked as Exhibit '4'. Perusal of Exhibit '4' would show that before recording the confessional statement of the accused Manoj Kumar, the learned Magistrate had followed the established procedure of law and only after due compliance with the requirements of law, the statement under Section 164 Cr.P.C. was recorded. In his confessional statement, Manoj Kumar has disclosed the reason

behind the occurrence and the manner in which the conspiracy was hatched and executed by him along with Dallu Kumar and Pintu Kumar. He has stated that Pintu Kumar happens to be the step-brother of the deceased, father of Pintu Kumar had killed his mother and in order to take revenge of this, he had planned the murder of Shintu Kumar who was born out of the second wedlock of his father (the informant).

18. Learned Additional Public Prosecutor has further submitted that so far as the plea of learned counsel for the appellant Dallu that he was a juvenile on the date of occurrence is only a half-hearted argument at this stage in the midst of the hearing of this appeal. It would appear that at no stage, either in course of trial or before this Court, any request was made to conduct an inquiry in terms of Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Even while arguing this appeal, the only plea which has been taken by learned counsel for the appellant Dallu Kumar is that in view of the age recorded in his statement under Section 313 Cr.P.C. on the second occasion he is to be held a juvenile. It is submitted that even as it is well-settled that the plea of juvenility may be raised at any stage but in the present case, it cannot be said to have been raised at any stage of the trial or the appeal. In fact, at this stage his submission is that

taking note of the age as recorded in the second 313 Cr.P.C. statement and relating back the same to the date of occurrence, Dallu should be declared juvenile. It is submitted that the half-hearted submission of learned counsel for the appellant is liable to be rejected.

19. Learned Additional Public Prosecutor has submitted that so far as the case against accused Pintu Kumar is concerned, she would have no hesitation in making a submission that the accused Manoj Kumar has in his confessional statement come out with a case that it was Pintu Kumar who had planned the murder of his step-brother because he was not happy with the second marriage of his father but if that confessional statement of Manoj Kumar is excluded from the records for purpose of consideration of the case against appellant Pintu Kumar, no other material which may be said to be a material evidence in the nature of independent evidence may be found on the record.

20. It is submitted that in view of the Hon'ble Constitution Bench judgment in the case of **Haricharan** (Supra), the confessional statement of Manoj Kumar may not be solely taken to form a basis of conviction and to that extent, the Court would be required to look into the other material particulars on the basis of which guilt of the accused may be established. It is

submitted that the prosecution witnesses are the grandfather, father and uncle of the deceased who have deposed as PW-2, PW-3 and PW-1 respectively in this case. They have not made any statement against Pintu Kumar. These prosecution witnesses have stated that the co-accused had taken name of Pintu Kumar only in order to falsely implicate.

21. Learned Additional Public Prosecutor has further submitted that the medical evidence which has been proved by the Doctor (PW-6) corroborates the manner of occurrence as disclosed in the confessional statement of the co-accused and the submission of learned counsel for the appellants in Criminal Appeal (DB) No. 826 of 2015 that the medical evidence would not corroborate the ocular evidence has no basis to stand.

Consideration

22. Having heard learned counsel for the appellants and learned Additional Public Prosecutor for the State in both the appeals as also on going through the trial court's records, we find that in this case the minor son of the informant had gone to visit the Bharatpura Bazar but he did not return. According to the written application (Exhibit-2) submitted by the informant, his son was seen in the company of the two boys of his village namely Dattu Kumar, son of Saha Yadav and Manoj Kumar, son of Lal

Mohan Yadav by a cycle in the Ular Road at 12.30 PM on 20.05.2011, this was told to the informant by his co-villager Parmanand Yadav. It is stated in Exhibit-2 that on query made from Dallu Kumar and Manoj Kumar they did not give any satisfactory reply. Manoj Kumar is the cousin brother of the informant and it is stated that, finding an opportunity he fled away and could not be caught. The informant alleged that Dallu Kumar and Manoj Kumar had with pre-concert of mind kidnapped the minor boy of the informant for money. Dallu Kumar was caught hold of by the informant and he was handed over to police. This information was furnished to the police station on the next day on 21.05.2011 at 7.00 AM whereafter the case was registered.

23. In course of investigation, police extracted confessional statement from Dallu Kumar (Exhibit-5) who disclosed the place where the victim boy was taken and had been killed. He disclosed the manner of occurrence and that the dead body was concealed at the said place under the bush. Dallu Kumar further disclosed that he and his accomplice Manoj Kumar had left the bicycle of the victim near a house in Sanhori park and from there they reached their village by a tempo at 4.00 PM.

24. It is this confessional statement in which the place of occurrence has been disclosed and where the dead body was

concealed has been exhibited on behalf of the prosecution. On the basis of the disclosure made by Dallu Kumar, I.O. went to the place of occurrence and verified the place where the dead body was concealed. In paragraph '4' of his examination-in-chief, the I.O. (PW-8) has given the description of the said place from where as per disclosure of Dallu Kumar the dead body of the victim was recovered. Thus, in his deposition, he has given description of the place of occurrence which he had recorded in paragraph '13' of the case diary. The submission of learned counsel for the appellants Manoj and Dallu on this issue is completely misplaced and the same is liable to be rejected. PW-8 had prepared the inquest report and in presence of two witnesses namely Rameshwar Yadav (the informant) and Ram Kumar Yadav (PW-4). He has identified the signature of the witnesses and at his instance inquest report has been proved as Exhibit-1/B. He has stated to have taken the statement of those witnesses which were recorded in the case diary. He has stated that he had recorded the description of the place from where the dead body was recovered in paragraph '13' of the case diary.

25. The I.O. has further deposed that on the basis of the disclosure of Dallu Kumar, he had gone to village Selwari and

recovered the bicycle. He had prepared a seizure list and the same has been marked Exhibit-6.

26. We have further noticed that the I.O. had seized the mobile phone of Pintu and the seizure list was made which has been marked as Exhibit-7. This witness has stated that he had obtained the call detail report (CDR) of the seized mobile from which it was confirmed that with regard to the planning of the murder there was a talk between Manoj and Pintu. The CDR has however not been proved in course of trial, therefore, the prosecution is not able to prove the location of the mobile phone of the appellants and the time at which they were allegedly talking to each other on the date of occurrence. This being a relevant fact in the chain of circumstantial evidence, has not been proved by the prosecution. The prosecution has, however, proved a relevant fact that there was a disclosure with regard to the place where the dead body of the victim boy was concealed and on the basis of the said information the dead body was recovered. The prosecution has also proved that a disclosure with regard to the place where the bicycle was left after the occurrence led to recovery and seizure of the bicycle.

27. It is evident from the records that after the recovery of the dead body and the bicycle on 21.05.2011, police had

arrested Manoj on 23.05.2011 who was produced before the learned Magistrate-1st Class, Danapur, Patna (PW-7) for recording of his confessional statement under Section 164 Cr.P.C. on 24.05.2011. At the time of his arrest, from possession of Manoj Kumar a mobile phone was seized, the seizure list has been exhibited and marked as Exhibit-8/A. The I.O. has stated that he had obtained the CDR of this mobile also but again it has not been proved in course of trial. In the cross-examination on behalf of Pintu Kumar, the I.O. (PW-8) has stated that he had not produced the mobile of Pintu Kumar before the learned C.J.M., the SIM in the said mobile was of his Mausera brother Upendra but he had not recorded the statement of Upendra in course of investigation. He had not produced the mobile in course of trial before the learned trial court. The I.O. has stated that he had made Pintu Kumar an accused in this case on the basis of the mobile and the confessional statement of the co-accused.

28. On record, the confessional statement of Manoj Kumar recorded under Section 164 Cr.P.C. is available, the same has been marked as Exhibit-‘4’ and it has been duly proved by PW-7. During his cross-examination on behalf of Manoj Kumar, PW-7 has not been questioned as regards the authenticity of the statements of Manoj Kumar. Dattu Kumar did not cross-examine

PW-7. In his confessional statement, Manoj Kumar has stated that on 20.05.2011, the *Bua* of the victim boy was going her home and the victim had gone with his *Bua* to *Bazar* carrying her luggage. He has stated in paragraph '3' of his statement that the victim boy was sitting with his *Bua* when Pintu gave him a signal to take away the victim boy and he told him that the victim will accompany him on the pretext of catching parrot then after taking him there he would be killed. It is at this point that the learned Amicus Curiae representing Pintu Kumar has submitted that it is difficult to believe that on the one hand Pintu Kumar was giving an indication to take away the victim boy which means Pintu was at some distance from Manoj but if he was at some distance and he was telling Manoj by giving an indication from some distance how can he speak to Manoj from such distance.

29. It has been pointed out to this Court that the father of the victim who is also the father of Pintu Kumar has stated that his son was kidnapped for money and when Manoj and Dallu were caught then they had falsely implicated his elder son Pintu Kumar on a false pretext. In his evidence the father of the victim has stated that in order to falsely implicate his son Pintu Kumar in their statement the accused had taken name of his son. He has stated that Pintu was already married and Sintu and Pintu are full

brothers, they are born from the same mother namely, Indu Devi. In this case, Indu Devi has not been examined by the prosecution. The father of the victim was suggested in course of his evidence that Pintu and Sintu were step-sons but this suggestion was denied. He also denied this suggestion that mother of Pintu is from Kharona village who was killed by him. This Court has found from the evidence on the record that save and except a suggestion to the father of the deceased (PW 2) that the mother of Pintu is from village Kharona village who was killed by this witness, no evidence has at all been brought on this point. No one from village Kharona has been examined and no material has been brought on record in form of evidence of any independent witness or documentary evidence to show that there was any allegation of murder of his wife against this witness. This Court, therefore, finds that so far as Pintu Kumar is concerned, the prosecution has tried to built it's case on the basis of the statement of Manoj and Dallu in their confessional statements saying that Pintu happened to be the step brother of Sintu (victim), his father was married to a lady from Kharona village who was killed by his father but in course of investigation neither the investigating officer had collected any material on this point nor any evidence has been brought on the record. This Court would therefore, take a view that the motive as

alleged against Pintu Kumar for hatching a conspiracy to kill Sintu is not getting proved beyond all reasonable doubts.

30. We have taken note of the confessional statement of Dullu Kumar recorded before Police which led to recovery of the dead body and the bicycle, then we have already noticed the confessional statement of the appellant Manoj Kumar recorded before learned Magistrate Ist Class, Danapur under Section 164 Cr.PC. We would discuss the admissibility, relevancy and evidenciary value of these confessional statements at appropriate stage in this judgment.

31. In connection with this case prosecution has examined Kunj Bihari Yadav (PW-1) who is the uncle of the deceased. He has supported the prosecution case and has stated that in course of search someone told that he was seen going with Manoj and Dullu Yadav. He has stated that on the basis of the disclosure made by Dullu Yadav, dead body of Sintu was recovered. In his cross-examination on behalf of Pintu this witness has stated that Pintu had been falsely implicated in this case. Pintu is not involved in the occurrence. He has further stated in response to the court's question that Pintu and the deceased were full brothers. He had not seen Sintu going with Manoj and Dullu but he was told about this by one Parma Yadav (PW-5).

32. Rajaram Yadav (PW-2) is the grandfather of the deceased. He has supported the prosecution case. In his examination-in-chief he has stated that in Bharatpura Bazar there is a *Nasta* Shop of one Balli Sah which he had seen. He had told that Manoj and Dallu had provided *Nasta* to his grandson and had taken him towards western direction. Parmanand postman had also told him that he had seen Sintu in the company of Manoj and Dallu. This witness has stated in paragraph '3' of his examination-in-chief that Dallu and Manoj had asked for rupees Five lakhs as ransom and had threatened to kill Sintu if the money would not be paid. They killed Sintu and both of them falsely implicated Pintu in their confessional statement. In his cross-examination this witness has also stated that Pintu and Sintu are full brothers. In course of examination on behalf of Manoj and Dallu, this witness has stated that Manoj and Dallu had never asked for rangdari from him.

33. Rajeshwar Yadav (PW-3) is the informant of this case and is father of the deceased as well as Pintu Kumar. He has supported the prosecution case. He has proved the written application submitted before this Court which is marked Exhibit-2. He has stated that on the disclosure of Dallu, the dead body of Sintu was recovered by police. The dead body was concealed

under a bush. He has stated that Sintu was his younger son whereas Pintu is his elder son. He has disclosed the name of the mother of both the sons as Indu Devi on court's query. As stated above, he denied the suggestion of the defence that Pintu and Sintu are step-brothers.

34. On a bare perusal of the evidence of PW-1, PW-2 and PW-3, it would appear that they are quite consistent that Sintu was kidnapped by Dallu and Manoj and there was a demand of Rs.5,00,000/- as ransom. The defence on behalf of Manoj and Dallu has not suggested the prosecution witnesses that the dead body and the bicycle of the victim were not recovered on the basis of the disclosure made by Dallu Kumar. PW-2 was not cross-examined suggesting that there was no demand of 'ransom', rather the suggestion was made that there was no demand of 'rangdaari'. Both are two different things. To this Court, it appears that PW-1, PW-2 and PW-3 have supported the prosecution case, though they had not seen taking away of the victim but had explained the circumstances as to how when queries were being made from Manoj and Dallu, Manoj had fled away and then Dallu was handed over to police who was arrested and then disclosed about the place where the dead body was lying.

35. Ram Kumar (PW-4) is a witness to the inquest report who has proved his signature on the inquest report which has been marked Exhibit- 1/A. Parmanand Yadav (PW-5) is the Postmaster of Bharatpura has though stated that Sintu was murdered but he has stated that it could not be known that who had killed him. This witness has been declared hostile. Dr. Nawal Kishore Singh (PW-6) is the Medical Officer who was posted at Sub-Divisional Hospital, Danapur and has conducted the autopsy on the dead body. He had found the following injuries externally: (1) Incised wound 5"x3"x3" mid of in front of neck. All the muscle, large blood vessels nerves, trachea and esophagus were out, margin of the wounds were regular and (2) Multiple abrasion of about 1/2"x1/2" over both dorsal and ventral aspect of both hands.

36. The Doctor had noticed that the time lapsed since death was beyond 36 hours and in his opinion, the death was due to haemorrhage and shock leading to cardiac respiratory failure caused by above-mentioned ante-mortem wound caused by sharp cutting substance. PW-6 has proved the post-mortem report as Exhibit '3'. In his cross-examination, the Doctor has opined that this injury caused on the boy may be possible by blade if used with force but generally, such type of injury is caused by heavy sharp edge. In his cross-examination on behalf of accused Manoj Kumar,

PW-6 has stated that the injury no. 2 is the sign of struggle and it cannot be self-inflicted. Multiple abrasions have been found on the dead body which is not possible by rubbing on hard surface. This Court finds that in the confessional statement of Manoj Kumar, he has stated that when after throttling the neck of the deceased, he became unconscious, Dattu caught hold of the deceased by his legs and he cut the neck of the victim by blade. To this Court, it appears that the post-mortem report is fully corroborating the manner of occurrence as disclosed by Manoj Kumar in his confessional statement before the learned Magistrate. In this regard, the contention of learned counsel for the appellants that the post-mortem report talks of use of a sharp cutting weapon and hence, it does not corroborate ocular evidence cannot be accepted.

37. Shubhash Chandra Sharma (PW-7) is the learned Magistrate who has deposed before the learned trial court and proved the statement under Section 164 Cr.P.C. of Manoj Kumar. Abhay Kumar, who is the I.O. of the case, has deposed as PW-8 and we have taken note of his deposition in the initial discussions. PW-9 and PW-10 are the seizure list witnesses of the seizure of the bicycle. PW-9 has stated that he was made a seizure list witness by police because police had recovered bicycle in front of his house in East side. In his cross-examination, though he has stated that the

police had obtained his signature on a blank sheet of paper and he had no personal information about the occurrence, this Court finds that this witness has proved the place of recovery of the bicycle and his signature on the seizure list. PW-10 has stated that he had put his signature on the seizure list in the police station, however, in his examination-in-chief, he has stated that on the seizure list of the bicycle, it was his signature which has been Exhibited -6/A by him.

38. On behalf of the defence, one witness, namely, Harkhit Narayan has deposed as DW-1. He is an Advocate Clerk and has proved the application which is in four pages typed by one Vinay Kumar and signed by the informant.

39. On the point of admissibility of confessional statements made before police leading to recovery of a material object, the Hon'ble Supreme Court has, in the case of **Ravishankar Tandon** (supra), discussed as to what would be required for the prosecution to establish for bringing a case under Section 27 of the Evidence Act. Paragraph '13' of the said judgment reads as under:-

“**13.** As such, for bringing the case under Section 27 of the Evidence Act, it will be necessary for the prosecution to establish that, based on the information given by the accused while in police custody, it had led to the discovery of the fact, which was distinctly within the knowledge of the maker of the said statement. It is only so much of the

information as relates distinctly to the fact thereby discovered would be admissible. It has been held that the rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and it can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused.”

40. In the light of the observations of the Hon’ble Supreme Court in the case of **Ravishankar Tandon** (supra), when we examine the deposition of the I.O. (PW-8), we find that Dallu had given the disclosure while in police custody and the said disclosure as to the place is the discovery of fact which was distinctly within the knowledge of Dallu. Thus, so much of the information as relates distinctly to the fact discovered would be admissible.

41. In the case of **Babu Sahebagouda Rudragoudar and Others versus State of Karnataka** reported in **2024 SCC Online SC 561** again the Hon’ble Supreme Court has reviewed the previous case laws on the subject and it has been held that the statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the Investigating Officer during interrogation which has been taken down in writing. The confession part of such statement is inadmissible and only the part which distinctly leads to discovery of facts is admissible in

evidence. Reference in this regard has been made to the judgment of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh versus Deoman Upadhyaya** reported in **AIR 1960 SC 1125**. Paragraph '60' of the said judgment reads as under:-

“60. In *Ibrahim v. Emperor*, 1914 AC 599 : (AIR 1914 PC 155), Lord Sumner gave the history of rules of common law relating to confessions, and pointed out that they were “as old as Lord Hale”. Lord Sumner observed that in *R. v. Thompson*, (1893) 2 QB 12, and earlier in *R. v. Warrickshall*, (1783) 1 Leach 263 : 168 ER 234, it was ruled (to quote from the second case):

“A confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape, when it is to be considered as the evidence of guilt, that no credit ought to be given to it.”

Lord Sumner added:

“It is not that the law presumes such statements to be untrue but from the danger of receiving such evidence Judges have thought it better to reject it for the due administration of justice : *R. v. Baldry*, (1852) 5 Cox CC 523. Accordingly when hope or fear were not in question, such statements were long regularly admitted as relevant, though with some reluctance, and subject to strong warnings as to their weight.”

Even so, in the judgment referred to by Lord Sumner, Parke, B. bewailed that the rule had been carried too far out of “too much tenderness towards prisoners in this matter”, and observed:

“I confess that I cannot look at the decisions without some shame, when I consider what objections have prevailed to prevent the reception of confessions in evidence ... Justice and common sense have too frequently been sacrificed at the shrine of mercy.”

Whatever the views of Parke B., Lord Sumner points out that “when Judges excluded such evidence, it was rather explained by their observations on the duties of policemen than justified by their reliance on rules of law.””

42. We find from the evidence of PW-8 that he has stated in his deposition about the manner in which Dallu had interacted with him and made the disclosures. What is worth noticing is that when the I.O. was being cross-examined on behalf of Manoj and Dallu, he was not even suggested on behalf of the accused that Dallu had not given any confessional statement disclosing the place of recovery of the dead body or the bicycle rather the I.O. was asked as to whether he had got the medical examination of Dallu conducted before recording his confessional statement. It is, thus, evident from the deposition of the I.O. that neither the confessional statement made by Dallu has been questioned nor it has been suggested that any coercive method was applied to extract confessional statement from Dallu. We, therefore, find that the prosecution has duly proved that part of the statement of Dallu which would be covered under Section 27 of the Evidence Act, the same is admissible and being a relevant fact proved by the prosecution would be a wholly reliable piece of evidence.

43. The confessional statement of Manoj Kumar recorded under Section 164 Cr.P.C. is an admissible piece of evidence. It has been proved by the learned Magistrate (PW-7) and no question has been raised by Manoj in course of his cross-

examination with regard to the authenticity of the statement and the manner of recording of the same by the learned Magistrate. Thus, it would again be an admissible piece of evidence on behalf of the prosecution.

44. One of the submissions made on behalf of the appellant Dallu Kumar is that he should be declared juvenile by this Court. This Court finds that the plea of juvenility on his behalf has neither been taken before the learned trial court nor before this Court. The manner in which only a half-hearted submission has been made in the midst of hearing of the appeal, it cannot be taken as raising a plea of juvenility. In fact, the submission of learned counsel for the appellant is that considering the age recorded by accused Dallu Kumar during his second 313 Cr.P.C. statement as 19 years, if it is related back to the date of occurrence, he will be about 17 years so on that date, he would be a juvenile. This Court finds from the records that the first statement under Section 313 Cr.P.C. of this accused was recorded on 2nd of November 2013, on the said date he disclosed his age as 22 years. Thereafter, his second statement was recorded on 27th Day of November, 2014, this time, he disclosed his age as 19 years. In the judgment of the learned trial court, the age of this appellant has been recorded as 22 years. If the appellant had to raise a plea of juvenility, he was

required to move either the trial court or before this Court by filing an appropriate application seeking an inquiry in accordance with law but no such application has been moved. This Court is of the opinion that while making submissions, in the midst of the argument, a bare submission that Dallu Kumar was a juvenile on the date of occurrence cannot be taken as a plea of juvenility.

45. Learned counsel for the appellant has submitted that there is a delay of 19 hours in lodging of the first information report. It is well-settled in law that delay in lodging of the FIR alone cannot be a ground to throw out the prosecution case. It will depend upon the facts and circumstances of a case in which the delay has occurred. In this case, the minor boy had left his home at about 12:00 noon and when he did not return by evening then the informant and other family members went in search of him. They were making queries from the local people and in course of that, there was a delay in lodging of the FIR. The FIR was lodged on 21.05.2011 at 07:00 AM. This Court is reminded of the judgment of the Hon'ble Supreme Court in the case of **Tara Singh versus State of Punjab** reported in **1991 Supp (1) SCC 536** where the Hon'ble Supreme Court has observed in paragraph '4' as under:-

“4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human

nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. ...”

We, therefore, find that even this plea of learned counsel for the appellants would not appeal this Court.

46. On the basis of the evidence of PW-1, PW-2, PW-3, PW-6 and PW-8 and the fact that the place from where dead body and bicycle were recovered was disclosed by Dallu and then Manoj had made confessional statement under Section 164 Cr.P.C., we have no iota of doubt that the prosecution has been able to prove the guilt of the accused Manoj Kumar and Dall Kumar beyond all reasonable doubts. Learned trial court has not committed any error in convicting these two appellants for the offences punishable under Sections 302, 201/34 and 120B IPC. Their conviction and sentence are affirmed and Cr. Appeal (DB) No. 826 of 2015 is hereby dismissed. Since both of them are on bail, they are directed to surrender within a period of two weeks from today in the learned court below and shall serve the remaining period of sentence.

47. Now, coming to the case of Pintu Kumar, we have noticed that the prosecution witnesses have consistently stated that

he is the full brother of the deceased and he has been falsely implicated by Manoj and Dallu in order to take revenge. The defence on behalf of Manoj and Dallu came out with a plea that Pintu and Sintu were step-brothers and the informant who is their father had killed the mother of Pintu for which Pintu was aggrieved and in order to take revenge, he had hatched a conspiracy but this Court would record that the prosecution has miserably failed to prove this fact that Pintu and Sintu were step-brothers and has also failed to bring any material on the record to show that the informant was married to any other lady and Pintu was born out of that wedlock.

48. We have noticed that the I.O. has stated in his evidence that he had made Pintu Kumar an accused in this case only after recording of the confessional statement of Manoj Kumar.

49. To us, it appears that the learned trial court has committed grave error in accepting the prosecution case that the CDR of the mobile of Pintu Kumar was showing that on the date of occurrence, he was in regular contact with Manoj and Dallu. In fact, no CDR of mobile either of Pintu or Manoj has been brought on record by way of evidence. The mobile of Pintu Kumar which was allegedly seized by the I.O. was neither produced before the

Court nor the CDR of the said mobile has been proved. The learned trial court has also erred in using the confessional statement of Manoj Kumar against Pintu Kumar for proving the guilt of Pintu Kumar. Learned Amicus Curiae has taken this Court through the judgment of the Hon'ble Constitution Bench of the Supreme Court in the case of **Haricharan Kurmi** (supra). This judgment was referred before the learned trial court but learned trial court has not gone through it and could not appreciate the discussions made in the judgment of the Hon'ble Constitution Bench as regards the admissibility, relevancy and reliability of a confessional statement of a co-accused. We would reproduce paragraphs '13', '14' and '15' of the Hon'ble Constitution Bench judgment in the case of **Haricharan Kurmi** (supra) hereunder for a ready reference:-

“13. In appreciating the full effect of the provisions contained in Section 30, it may be useful to refer to the position of the evidence given by an accomplice under Section 133 of the Act. Section 133 provides that an accomplice shall be a competent witness against an accused person; and that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Illustration (b) to Section 114 of the Act brings out the legal position that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Reading these two provisions together, it follows that though an accomplice is a competent witness, prudence requires that his evidence should not be acted upon unless it is materially corroborated; and that is the effect of judicial decisions dealing with this point. The point of

significance is that when the court deals with the evidence by an accomplice, the court may treat the said evidence as substantive evidence and enquire whether it is materially corroborated or not. The testimony of the accomplice is evidence under Section 3 of the Act and has to be dealt with as such. It is no doubt evidence of a tainted character and as such, is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars.

14. The statements contained in the confessions of the co-accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against an accused person, the court cannot begin with the examination of the said statements. The stage to consider the said confessional statements arrives only after the other evidence is considered and found to be satisfactory. The difference in the approach which the court has to adopt in dealing with these two types of evidence is thus clear, well understood and well-established. It, however, appears that in Ram Prakash's case, 1959 SCR 1219: (AIR 1959 SC 1) some observations have been made which do not seem to recognise the distinction between the evidence of an accomplice and the statements contained in the confession made by an accused person. "An examination of the reported decisions of the various High Courts in India," said Imam, J., who spoke for the Court in that case, "indicates that the preponderance of opinion is in favour of the view that the retracted confession of an accused person may be taken into consideration against a co-accused by virtue of the provisions of Section 30 of the Act, its value was extremely weak and there could be no conviction without the fullest and strongest corroboration on material particulars". The last portion of this observation has been interpreted by the High Court in the present case as supporting the view that like the evidence of an accomplice, a confessional statement of a co-accused person can be acted upon if it is corroborated in material particulars. In our opinion, the context in which the said observation was made by this Court shows that this Court did not intend to lay down any such proposition. In fact, the other evidence

against the appellant Ram Prakash was of such a strong character that this Court agreed with the conclusion of the High Court and held that the said evidence was satisfactory and in that connection, the confessional statement of the co-accused person was considered. We are, therefore, satisfied that the High Court was in error in this case in taking the view that the decision in Ram Prakash's case, 1959 SCR 1219: (AIR 1959 SC 1) was intended to strike a discordant note from the well-established principles in regard to the admissibility and the effect of confessional statements made by co-accused persons.

16. Considering the evidence from this point of view, we must first decide whether the evidence other than the confessional statements of the co-accused persons, particularly Ram Surat, on whose confession the High Court has substantially relied, is satisfactory and tends to prove the prosecution case. It is only if the said evidence is satisfactory and is treated as sufficient by us to hold the charge proved against the two appellants, that an occasion may arise to seek for an assurance for our conclusion from the said confession. Thus, considered, there can be no doubt that the evidence about the discovery of bloodstains on which the prosecution relies is entirely insufficient to justify the prosecution charge against both the appellants. In our opinion, it is impossible to accede to the argument urged before us by Mr Singh that the said evidence can be said to prove the prosecution case. In fact, the judgment of High Court shows that it made a finding against the appellants substantially because it thought that the confession of the co-accused persons could be first considered and the rest of the evidence could be treated as corroborating the said confessions. We are, therefore, satisfied that the High Court was not right in confirming the conviction of the two appellants under S. 396 of the Indian Penal Code.”

50. From the judgment of the Hon'ble Constitution Bench, it is crystal clear that Pintu Kumar could not have been convicted only on the basis of the confessional statement of co-accused Manoj Kumar. In fact, learned Additional Public

Prosecutor has stated at the Bar that if the confessional statement of Manoj Kumar is excluded from the evidence against Pintu Kumar, there would be no independent evidence to connect Pintu Kumar in this case. We, having considered the entire materials on the record find that the conviction of Pintu Kumar is solely based on his implication by the co-accused Manoj Kumar and Dallu Kumar. In our opinion, learned trial court has committed gross error in convicting Pintu Kumar on the basis of the confession of the co-accused. Manoj and Dallu tried to set up a case that Pintu is the step-brother of Sintu (deceased) and his father had killed his mother, the prosecution proceeded with this case against Pintu but in course of trial, they have miserably failed to prove it. We are, therefore, of the opinion that the impugned judgment and order as against Pintu Kumar is liable to be set aside and we do so accordingly. Pintu Kumar, the appellant in Cr. Appeal (DB) No. 658 of 2015 is acquitted of the charges under Sections 302 and 201/120B IPC giving him benefit of doubt. He is presently on bail. He and his sureties are being discharged from the liability of their bail bonds/sureties.

51. We acknowledge the assistance rendered by Mr. Manoj Kumar No. 1, learned Advocate as learned Amicus Curiae in Cr. Appeal (DB) No. 658 of 2015. A consolidated sum of Rs.

15,000/- (Rupees Fifteen Thousand Only/-) shall be paid to the learned Amicus Curiae by the Patna High Court, Legal Services Authority within one month from the date of receipt of a copy of this judgment.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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