

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.347 of 2017

Arising Out of PS. Case No.-67 Year-2015 Thana- DIGHWARA District- Saran

1. Mohd Phool Sharif @ Phool Sharif Son of Late Gafur Miyan.
2. Mohd Shahabuddin Son of Phool Sharif Both are Resident of Village- Madarpur, P.S. Basantpur, District- Siwan.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 173 of 2017

Arising Out of PS. Case No.-67 Year-2015 Thana- DIGHWARA District- Saran

Rajesh Kumar Yadav Son of Motilal Rai, Resident of Village--Kanhauli, P.S. Basantpur, District-Siwan

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 247 of 2017

Arising Out of PS. Case No.-67 Year-2015 Thana- DIGHWARA District- Saran

Suresh @ Rukhendra Manjhi @ Rukander Manjhi Son of Shivpujan Manjhi, resident of Village- Surajpura, P.S. Basantpur, District- Siwan.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 312 of 2017

Arising Out of PS. Case No.-67 Year-2015 Thana- DIGHWARA District- Saran

Rashid @ Dilshad son of Late Akhtar Ali R/o Mohalla Bagh Khal, P.S. Pishra, District Hoogali W.B..



... .. Appellant/s
Versus
The State Of Bihar
... .. Respondent/s

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with
CRIMINAL APPEAL (DB) No. 378 of 2017
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Arising Out of PS. Case No.-67 Year-2015 Thana- DIGHWARA District- Saran
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Mahtab Alam Son of Mohd. Saleem Mian, Resident of Village- Kishanpura,
P.S.- Basantpur, District- Siwan.

... .. Appellant/s
Versus
The State Of Bihar
... .. Respondent/s

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Appearance :
(In CRIMINAL APPEAL (DB) No. 347 of 2017)
For the Appellant/s : Mr. Udit Nr. Singh, Advocate
Mr. Dhananjay Mishra, Advocate
Mr. Nilesh Kumar Nirala, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP
(In CRIMINAL APPEAL (DB) No. 173 of 2017)
For the Appellant/s : Mr.Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
Ms. Kiran Kumari, Advocate
For the Respondent/s : Mr. Binod Bihari Sinha, APP
(In CRIMINAL APPEAL (DB) No. 247 of 2017)
For the Appellant/s : Ms. Vaishnavi Singh, *Amicus Curiae*
For the Respondent/s : Mr. Ajay Mishra, APP
(In CRIMINAL APPEAL (DB) No. 312 of 2017)
For the Appellant/s : Mr.Tribhuwan Narayan, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP
(In CRIMINAL APPEAL (DB) No. 378 of 2017)
For the Appellant/s : Mr.Dewendra Narayan Singh, Advocate
For the Respondent/s : Mr.Binod Bihari Sinha, APP
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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN

CAV JUDGMENT



(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)

Date : 16-12-2025

Heard Mr. Udit Nr. Singh, learned counsel assisted by Mr. Dhananjay Mishra and Mr. Nilesh Kumar Nirala, learned Advocate in Criminal Appeal (DB) No. 347 of 2017; Mr. Ajay Kumar Thakur, learned counsel assisted by Ms. Vaishnavi Singh, Mr. Ritwik Thakur, and Ms. Kiran Kumari, Advocates in Criminal Appeal (DB) No. 173 of 2017; Ms. Vaishnavi Singh, learned *Amicus Curiae* in Criminal Appeal (DB) No. 247 of 2017; Mr. Tribhuwan Narayan Singh, learned counsel in Criminal Appeal (DB) No. 312 of 2017; Mr. Dewendra Narayan Singh, learned counsel in Criminal Appeal (DB) No. 378 of 2017; Mr. Ajay Kumar Mishra, learned APP in Criminal Appeal (DB) Nos. 347 of 2017, 247 of 2017, and 312 of 2017; and Mr. Binod Bihari Sinha, learned APP in Criminal Appeal (DB) Nos. 173 of 2017 and 378 of 2017.

2. The aforementioned appeals have been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr. P.C.'), challenging the judgment of conviction dated 19.01.2017 and the order of sentence dated 25.01.2017 passed by the learned 1st Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 421 of 2015 arising out of Dighwara P.S. Case No. 67 of 2015,



whereby all the accused mentioned above were convicted under Sections 364A and 120B of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- each; and in default of payment of fine, the convicts were directed to further undergo simple imprisonment for six months. All the sentences were directed to run concurrently.

3. The prosecution case is based on a written application submitted before the Superintendent of Police, Chapra, which was forwarded to the Dighwara Police Station. On the basis of the written application of the informant, Shabnam Khatoon, Dighwara P.S. Case No. 67 of 2015 was registered on 21.04.2015 at 10:30 a.m. against Puri Baba, Babloo, and seven unknown persons for the offence punishable under Sections 364/34 of the Indian Penal Code. As per the prosecution case, one Puri Baba, a resident of Chapra, and Babloo, a resident of Lemumabagh, Barh, had called the informant's husband to provide contract work at Chapra. When her husband Anwar Khan went to Dighwara along with Salauddin, Puri Baba, with the help of his associates, allegedly abducted both of them and took them towards the Railway Wheel Factory. Thereafter, the accused persons released



Salauddin and took away the informant's husband. It is further alleged in the written report that the incident took place on 16.04.2015 at about 9:00 p.m. near Dighwara Station and that the assailants, seven in number, had arrived in a golden - coloured Bolero vehicle. The informant further stated that Salauddin, who had accompanied her husband to Dighwara, narrated the entire occurrence to her on 17.04.2015 at about 10:00 a.m. She further alleged that even after the expiry of three days, there was no trace of her husband.

4. During the investigation, on the basis of mobile tower location and CDR analysis, the police recovered the victim and submitted chargesheet against Md. Shahabuddin, Md. Phool Sharif, Suresh Manjhi @ Rukhendra Manjhi, Rajesh Kumar Yadav, Mahtab Alam, and Md. Rashid Dilshad for offences punishable under Sections 364A and 120B of the IPC. The investigation was kept pending against Md. Shahabuddin, while the FIR-named accused persons Puri Baba and Babloo were shown as not involved.

5. After submission of the chargesheet, cognizance was taken by the Judicial Magistrate, 1st Class, Chapra against the aforementioned six accused persons for offences under Sections 364A and 120B IPC. The case was committed to the



Court of Sessions on 10.08.2015, and was received there on 21.08.2015. Subsequently, the case record was transferred to the Court of the Vth Additional Sessions Judge, Saran for trial. Upon further transfer, the case record was received in the Court of the 1st Additional Sessions Judge, Saran at Chapra on 12.09.2016, at the stage of prosecution evidence.

6. On 5.10.2016, the prosecution evidence was closed. On 02.11.2016, the statements of the accused persons were recorded under Section 313 Cr.P.C., wherein they completely denied the prosecution allegations and claimed innocence. On 11.11.2016, the defence evidence was also closed.

7. In order to prove the charges leveled against the accused persons the prosecution has examined altogether 8 witnesses out of whom P.W.1 is Ram Pravesh Ram, P.W.2 Shabnam Khatoon, P.W.3 Munni Khatoon, P.W.4 Anwar Khan (Victim), P.W.5 Aanand Bhushan, P.W.6 Neeraj Kumar (I.O), P.W.7 Chaukidar Abhay Kr. Manjhi and P.W.8 is Dr. Suresh Kumar,. Beside the oral evidence, prosecution has proved Ext.1 written application of Informant, Ext 2 signature of Anwar Khan on the statement of u/s 164 Cr.P.C., Ext.3 statement of victim recorded u/s 164 Cr.P.C., Ext.4 seizure list of mobile set



recovered from accused Shahabuddin, Ext.4/A seizure list of mobile set recovered from the accused Mohd Rashid @ Dilshad, Ext. 4/B seizure list of mobile set recovered from accused Phool Sharif, Ext.4/C seizure list of mobile set recovered from accused Rajesh Yadav, Ext.5 requisite for examination of injury of victim Anwar Khan, Ext.6 injury report of Anwar Khan and prosecution has also produced the seized mobile sets as material exhibit and they have been marked as Ext. I to Ext. V.

8. On the other hand, defence has produced neither oral evidence nor documentary evidence.

9. P.W.1, Rampravesh Ram, was examined on 09.02.2016. In his examination-in-chief, he stated that he worked as a painter on the contract work of Anwar Khan at Patna and he resided in Anwar Khan's Patna house on rent.

9.1 In paragraph 2, he stated that Salauddin also worked for two months on Anwar Khan's contract work and had told Anwar Khan to arrange good contractual work at Chapra. On 16.04.2015, at about 11 A.M., Salauddin left with Anwar Khan for Chapra. When Ram Pravesh Ram (P.W.1) went to Anwar Khan's house on 17.04.2015, he found Munni Khatoon and her children crying. Upon inquiry, Munni Khatoon



informed him that Anwar Khan had been abducted, and the kidnappers were demanding Rupees One Crore as ransom. In paragraph 3, the witness has further stated that Anwar Khan was recovered by the police on 24.04.2015, and after returning to Patna, Anwar Khan told him that six to seven persons had abducted him and kept him at Madarpur. Anwar Khan allegedly named Dilshad Ahmad, Mahtab Alam, Suresh Manjhi, Phool Sharif Miya, Shahabuddin Miya, Rajesh Kumar Yadav, and Salauddin Miyan as the persons involved in his kidnapping.

9.2 He was cross-examined only on behalf of accused Rajesh Kumar. In para 5, he stated that Anwar Khan did not tell him the parentage or address of the kidnappers. In para 7, he denied having told the police that after the victim's recovery on 24.04.2015, Anwar Khan disclosed the names of the kidnappers to him. In para 8, he admitted that he does not know the native village of Anwar Khan and has no documentary proof of working with him. In para 11, he stated that he had given his statement before Dighwara Police on 23.04.2015, and that he went to the police station on his own, without being summoned.

10. P.W.2 Shabnam Khatoon, the informant of this case and the wife of Anwar Khan (the victim), deposed in her



examination-in-chief at paragraph 1 that on 16.04.2015 at about 1:00 P.M., Salauddin and her husband Anwar Khan proceeded to Chapra. They first reached Hajipur by motorcycle, and from Hajipur they proceeded to Chapra by train. When the train reached Dighwara station, they got down, and from Dighwara, the men of Salauddin took her husband away in a Bolero vehicle. In paragraph 2, she stated that when her husband did not return that night, she called his mobile number, but the phone was switched off. She further stated that she went to the house of Salauddin, but he was not present. On 17.04.2015, Salauddin came to her house and informed her that Anwar Bhaiya had been abducted. In paragraph 3, she stated that Salauddin told her that Puri Baba and Babloo had called Anwar and that they, through their men, had abducted him, and that near the wheel factory they released Salauddin and took Anwar Bhaiya away. In paragraph 5, she stated that her husband was recovered by the police on 23.04.2015, and her husband informed her that it was Salauddin who had planned his kidnapping for ransom through his associates, namely Dilshad, Rukhendra Manjhi, Rajesh Yadav, and Mahtab Alam, who had taken him away in a vehicle.

10.1 This witness was cross-examined only on behalf



of accused Rajesh Kumar. In paragraph 10, she stated that she had submitted her written application based on the information given by Salauddin, and she had given her restatement on the basis of information provided by her husband. She further deposed in paragraph 11 that accused Rajesh Kumar had no involvement in the alleged occurrence.

11. P.W.3 Munni Khatoon, the first wife of Anwar Khan (the victim), has supported the prosecution case in her examination-in-chief. She stated that her husband was abducted on 16.04.2015 for a ransom of Rupees One Crore. On that day, Salauddin came to her house between 1:00–2:00 P.M. and, on the pretext of providing good contract work, took her husband from the house. On receiving a phone call from Dilshad, her husband and Salauddin went to Dighwara, after which her husband did not return. When the informant's sister dialed her husband's mobile number, the phone was found switched off. At paragraph 2, the witness stated that on 17.04.2015, Salauddin came to her house and informed her that both he and her husband had been abducted, but he was released near the wheel factory while the kidnappers had taken her husband to an unknown place. At paragraph 3, she stated that on 17.04.2015, between 12:00 and 1:00 P.M., a missed call was received from



her husband's mobile number. She further stated that on 20.04.2015, between 9:00 and 10:00 A.M., a call was received from Dilshad's mobile on the mobile phone of her sister, Shabnam Khatoon, in which a demand of Rupees One Crore was made as ransom, along with a threat that her husband would be killed if the ransom was not paid. She further stated that similar calls continued to be received every 24 hours on her mobile phone until 22.04.2015.

11.1 This witness has further stated at paragraph 4, that on 23.04.2015 at about 12:30 A.M. (night), Dighwara Police recovered her husband from the house of accused Phool Sharif of Madarpur village, where four accused persons, namely, Dilshad, Rajesh, Phool Sharif, and Shahabuddin were arrested. At paragraph 5, this witness has stated that her husband told her that it was Salauddin who had planned his kidnapping for ransom. She also stated that her husband had two marriages, and his second marriage was with her sister, Shabnam Khatoon.

11.2 In her cross-examination on behalf of accused Rajesh Kumar Yadav, at paragraph 9, she stated that accused Rajesh had no role regarding contract work with her husband. She further stated that she did not know from which mobile



number the ransom calls were made or to which mobile number they were received. At paragraph 10, she stated that on 17.04.2015 she came to know for the first time that her husband had been abducted, and that Salauddin did not disclose the names of the kidnappers. She further stated that her husband was recovered on 23.04.2015 by the police of Basantpur and Dighwara Police Stations, and after receiving information from the police station, she and Shabnam went to Dighwara P.S. At paragraph 11, she deposed that her husband told her at the police station that accused Rajesh threatened to kill him, and she conveyed this information to the police.

11.3 In her cross-examination on behalf of accused Dilshad, the witness stated that Shabnam is her own sister and that she did not accompany her husband from Hajipur to Dighwara. She also stated that she did not know the address or the parentage of Dilshad. At paragraph 16, she stated that the occurrence was not committed in her presence. At paragraph 18, she denied the defence suggestion regarding her husband's alleged involvement in fake currency business.

11.4 In her cross-examination on behalf of accused Shahabuddin and Phool Sharif Miya, at paragraph 21, she stated that she was unaware of whether her husband paid income tax



on his annual income, or whether he possessed a licence for contract work. At paragraph 24, she admitted that her husband was also engaged in the business of sale and purchase of land. At paragraph 25, she denied the defence suggestion that her husband had taken Rupees Three Lakhs from the wife of Phool Sharif for three Kathas of land, misappropriated the amount, and filed a false case.

12. P.W.4 Anwar Khan (the victim) stated at paragraph 1 of his deposition that on 16.04.2015, Salauddin came to his house at Phulwarisharif, Patna and informed him about a good contract work available at Chapra. He further stated that Salauddin told him that Dilshad would arrange the contract work and for that they would have to go to Dighwara. He further deposed that on the same day, he along with Salauddin reached Hajipur at about 1:30 p.m., and from Hajipur they reached Dighwara by train at about 8:30 p.m. near the railway crossing, where a cinema hall is situated, Salauddin introduced him to Dilshad, Mahtab, Suresh Manjhi, and Rajesh Yadav, and at that place a silver-coloured Bolero was standing. He further stated that Dilshad told him that they would visit the site, whereupon he sat in the Bolero. Dilshad then told him that the main road was jammed, so they proceeded through the



bypass. However, when they reached near the Rail Wheel Factory at Bela, he felt something suspicious. He took out his mobile, whereupon Dilshad snatched it. Suresh Manjhi tied a cloth over his mouth and Dilshad tied his hands; thereafter they placed him under the middle seat of the vehicle.

12.1 This witness further stated at paragraph 2, that accused Rajesh Yadav threatened him, and when they reached Malmaliya, Salauddin got down from the vehicle and told the other accused persons to kill him after realizing the ransom. He further stated that from Malmaliya the accused persons took him to Madarpur, where they kept him in a dark room, tied him to a cot, and assaulted him with lathis, telling him to bring one crore rupees, failing which he would be killed and his body thrown away. At paragraph 3, he stated that on 17.04.2015, the accused persons attempted to contact his house from his mobile phone, but the call could not be connected for some reason. Thereafter, from 19.04.2015 to 22.04.2015, they contacted his house once every 24 hours from their own phones and demanded ransom from his wives. At paragraph 4, he stated that on 23.04.2015, with the assistance of Basantpur P.S. and Dighwara P.S., he was recovered from a house at Phoolsharif in Madarpur. At paragraph 5, he stated that he had given his



statement before the Judicial Magistrate under Section 164 Cr.P.C., and he proved his signature on that statement, which has been marked as Exhibit 2. At paragraph 6, this witness identified all the accused persons in the courtroom.

12.2 In his cross-examination on behalf of accused Rajesh Kumar at paragraph 7, he stated that the discussion regarding arranging contract work was between him and Salauddin, and Salauddin worked under him in contract work; however, there is no documentary proof of this. He stated that during this discussion both his wives and a labourer, Rampravesh (PW-1), were present. At paragraph 8, he admitted that he does not hold a licence for contract work. At paragraph 9, he stated that he was abducted from the northern side of the railway crossing near the cinema hall, which is about half a kilometre from Dighwara P.S. At paragraph 10, he stated that he sat in the Bolero vehicle of his own free will. At paragraph 12, he stated that Dilshad used to speak with his wives in the presence of the other accused persons and Dilshad obtained his wife's mobile number from his mobile phone. He also stated that during the investigation only his mobile phone was seized, and his wife's mobile phone was not seized. At paragraph 13, he stated that he does not pay income tax. At paragraph 15, he



stated that he does not know the address or the parentage of accused Rajesh Yadav.

12.3 In his cross-examination on behalf of accused Phool Sharif, Shahabuddin, and Satyendra @ Suresh Manjhi, he stated at paragraph 19 that he was unaware of the lodging of Siwan Muffasil P.S. Case No. 110/2005 against him and he does not know the facts of that case. At paragraph 21, he stated that he employs 15–20 labourers and, after expenses, earns Rs. 30,000–35,000 per month. At paragraph 22, he denied being involved in the business of sale and purchase of land. At paragraph 23, he denied involvement in fake currency business and also denied that he had taken three lakh rupees from the wife of accused Phoolsharif for purchasing land and had filed this false case to misappropriate that amount. At paragraph 24, he stated that the accused persons had contacted his wife 3–4 times on the phone, but there is no recording of those conversations. At paragraph 29, he stated that he is originally a resident of Lauwan Village in Siwan district, where his father and brothers reside. At paragraph 30, he stated that after his kidnapping, his father did not come to his house, but his brother came. He stated that his own house is at Phulwarisharif and the papers of the house are in his wife's name, but then added that



the papers are in the name of his two sons. At paragraph 33, he stated that after the occurrence he visited his native village twice, but no villager came to visit his house thereafter. At paragraph 34, he stated that he had been residing at Phulwarisharif for 18 years. At paragraph 45, he stated that prior to this occurrence he knew only Salauddin and did not know the other accused persons. At paragraph 47, he stated that besides his house in Patna, he also owns two kathas of land at Akbarpur. At paragraph 51, he stated that before this incident he had not received any large amount of money and that he had only 4–5 lakh rupees in his bank account. At paragraph 52, he stated that the mobile phone he used was not in his name; it was in a woman's name, though he does not know her. He had been using that phone for the last 4–5 years. A phone in his own name was at his village. At paragraph 55, when confronted with portions of his statement before the police, he denied having made those statements. At paragraph 58, he again denied involvement in fake currency business and denied falsely implicating the accused persons in this case.

13. P.W.5 Anand Bhushan, who had recorded the statement of victim Anwar Khan in his capacity as Judicial Magistrate, 1st Class, at Chapra, proved the statement, which



has been marked as Ext. 3.

13.1 In his cross-examination, this witness stated that Anwar Khan was brought before him by his staff for the purpose of recording his statement. He further stated that he did not demand any identity proof from Anwar Khan to verify his identity.

14. PW-6 Niraj Kumar is the Investigating Officer of this case, and in his examination-in-chief he has stated that on 21.04.2015, he was posted as Police Sub-Inspector at Dighwara P.S. On that day, he took charge of the investigation of Dighwara P.S. Case No. 67/15 by order of the Officer-in-Charge. After taking charge of the investigation, he recorded the restatement of the informant Shabnam Khatoon, and thereafter he also recorded the statement of Munni Khatoon, who is the sister of the informant and the second wife of Anwar Khan. In paragraph 3, he has stated that on the basis of the statement of the informant, he wrote a letter to the Technical Cell of the S.P., Saran, requesting the CDR and CAF of mobile numbers 9386284724, 7677931975, 7779829830, 7631741665, and 9128942299. In paragraph 4, he has stated about conducting the inspection of the place of occurrence. In paragraph 5, he has stated that he made inquiries from the local



people and also went to the Railway Wheel Factory, but nothing was found during his inquiry.

14.1 From paragraph 6 to paragraph 29, this witness has stated about the CDR, CAF, and tower locations of different mobile numbers. In paragraph 26, he has stated that IMEI No. 911257807862040 was found associated with mobile no. 9128942299, and the same IMEI number was also found associated with mobile no. 8651348067, which was used by Dilshad. He further stated that the tower locations of both mobile numbers were at Village Kishanpura, P.S. Basantpur, District Siwan. In paragraph 27, he has stated that from 20.04.2015 to 22.04.2015, several conversations were found between mobile no. 9128942299 and mobile no. 7541909728. Mobile no. 7541909728 belongs to the informant, and ransom of Rupees One Crore was demanded on this number from mobile no. 9128942299. In paragraph 28, this witness has stated that on the basis of the CDR and tower locations, it was clear that abducted Anwar Khan was kept within the jurisdiction of Basantpur P.S. In paragraph 29, he has stated about receiving the CAF of mobile no. 9973268206, which shows that the holder of this mobile number is Rajesh Kumar Yadav.



14.2 In paragraph 30, he has stated that with the help of Basantpur P.S., he reached the house of Rajesh Kumar Yadav on 22.04.2015, where Rajesh's brother, Vikesh Yadav, told him that Rajesh had not returned with his vehicle. Vikesh also informed that on 16.04.2015, Suresh Manjhi @ Rukhendra Manjhi had come and taken the vehicle along with Rajesh Yadav to bring the relative of Md. Phoolsharif from Dighwara Station. Vikesh further told the mobile number of Rajesh Yadav as 9973268206. In paragraph 31, this witness has stated that on 23.04.2015, he raided the house of Phoolsharif at Madarpur village, and upon opening the room situated near the main door of the house, three persons were found standing inside the room, and one person was found tied to a cot. The persons standing in the room were Rashid @ Dilshad, Md. Shahabuddin, and Phoolsharif. In paragraph 32, he has stated that the man who was tied to the cot was Anwar Khan (victim), and the police rescued him from there and arrested the above-named three persons. In paragraph 33, the witness has stated that, on search, one double-SIM mobile set was recovered from the pocket of the pant of Md. Shahabuddin, having IMEI Nos. 354873052548759 and 35487305748754, with SIM Nos. 9708455764 and 8809044192. Two double-SIM mobile sets



were also recovered from the possession of Rashid @ Dilshad —one having IMEI Nos. 911257807652049 and 911257807862044, with SIM No. 9128942299; and another mobile having IMEI Nos. 911367852962613 and 911367852962621, with SIM Nos. 7563920474 and 8100704195. In paragraph 34, this witness has stated about the preparation of the seizure lists of the recovered mobile sets and proved the same, which have been marked as Exhibits 4 to 4/B. In paragraph 35, he has stated that from the mobile number of Dilshad, conversations had been made to the mobile number of the informant. In paragraph 36, he has stated that accused Rashid @ Dilshad made a confessional statement, and along with the abducted person and the arrested accused persons, he raided the house of Rukhendra Manjhi at Village Surajpura, but he was not found there. Thereafter, he went to Village Kanhauli and raided the house of Rajesh Yadav and arrested him. On search, one Samsung mobile set was recovered from Rajesh's possession, having IMEI Nos. 356841/05/585603/0 and 356842/05/585603/8, with SIM Nos. 9973268206 and 9430595376. He also stated about the preparation of the seizure list and proved the same, which has been marked as Exhibit 4/C. In paragraph 37, he has stated that efforts were made to



trace the vehicle used in the occurrence, but it could not be found. In paragraph 38, he has stated that he raided the house of Hasim Miya, but he was not present there. In paragraph 39, he has proved the requisition for the medical examination of Anwar Khan (victim), which has been marked as Exhibit 5.

14.3 At paragraph 43, this witness deposed that on 26.04.2015, the CDR of mobile no. 9973268206 was received, which was registered in the name of Rajesh Kumar Yadav, son of Motilal Rai, resident of Village Kanhauli, P.S. Vasantpur, District Siwan. From the perusal of the CDR, it was found that on 16.04.2015, a conversation took place between mobile nos. 9973268206 and 9973184639 at 11:50:34, and the tower location of mobile no. 9973268206 was at Village Kishanpura, P.S. Vasantpur, District Siwan. Another conversation took place between these two mobile numbers at 12:32:56, whose tower location was also Kishanpura. A further conversation occurred at 13:31:17, and at that time, the tower location of mobile no. 9973268206 was Village Bhagwanpur Malmaliya, District Siwan. Another conversation between the same two mobile numbers took place at 14:17:05, in which the tower location of 9973268206 was Village Dumri (Tupia), P.S. Taraiya, District Chapra. Again, at 15:45:10, a conversation took place between



mobile nos. 9973268206 and 9934363357, and the tower location of 9973268206 was Village Fatehpur, P.S. Parsa. Another conversation between these two numbers occurred at 16:53:35, and at that time, the tower location of 9973268206 was Village Basti Jalal, P.S. Dighwara, District Saran.

14.4. This witness further stated at paragraph 45, that from the perusal of the said CDR, it was also revealed that Rajesh, along with his associates Md. Rashid @ Dilshad, Rukhendra Manjhi, Mahatb, and Rajesh Kumar Yadav, came to Dighwara in his Bolero vehicle bearing registration BR-29S-3225, and along with Salauddin, abducted Anwar Khan and took him away. At paragraph 47, this witness stated that on 06.05.2015, the CAF of mobile no. 9128942299 was received, and upon its perusal, it was found that the said mobile number was in the name of Wusan Rai, son of Manager Rai, resident of Village Surajpura, P.S. Vasantpur, District Siwan. This mobile number was recovered from Dilshad @ Rashid, and it was the same number from which a ransom demand of Rupees One Crore was made to Shabnam Khatoon, wife of abducted Anwar Khan. At paragraph 48, this witness stated that the injury investigation report of abducted Anwar Khan was received. On 13.05.2015, the CAF and CDR of mobile no. 9102983628 were



received, and upon perusal, it was found that this mobile number was in the name of Rukhendra Manjhi, son of Shivpujan Manjhi, resident of Village Surajpura, P.S. Vasantpur, District Siwan. From the CDR, it was found that on 16.04.2015, a conversation took place from mobile no. 9102983628 to mobile no. 7563920474 at 11:46:09, and the tower location of 9102983628 was Village Kishanpura, P.S. Vasantpur, District Siwan. At paragraph 51, the witness stated that on 25.06.2015, an application was given, seeking a report regarding the ownership of the Bolero vehicle no. BR-29S-3225 used in this case, but no report was received. On 26.06.2015, Suresh Manjhi @ Rukhendra Manjhi was arrested from Surajpura, and accused Mahatab Alam was arrested from Village Kishanpura. On 27.06.2015, on being questioned, Pushpa Devi, wife of arrested accused Suresh Manjhi @ Rukhendra Manjhi, provided mobile no. 9102983628. At paragraph 52, this witness stated that on the basis of the supervisory comments and the report of the senior officer received during the investigation, and on the basis of the CDRs, CAFs, tower locations of the mobile numbers, and other materials collected during investigation, he submitted the charge sheet against accused Md. Shahabuddin, Md. Phoolsarif, Suresh Manjhi @ Rukhendra Manjhi, Rajesh Kumar Yadav,



Mahatab Alam, and Md. Rashid @ Dilshad for the offences punishable under Section 364(A)/120(B)/34 IPC.

14.5 Upon recall of this witness, at paragraphs 90 and 91, he proved the FIR and the endorsement on the written application, which have been marked as Exhibits 6 and 7.

15. On behalf of the defence, this witness was examined at length. In paragraph 54 of his cross-examination, he stated that he had not recovered the cot or the rope. In paragraph 55, the witness stated that he had sent an application regarding the Bolero vehicle to the D.T.O. Office, but no report was received. In paragraphs 58 and 59, he stated that he had not recorded the statement of any shopkeeper. In paragraph 60, he further stated that he had not recorded the statement of any employee of the Rail Wheel Factory. In paragraph 61, he stated that during the investigation, upon perusal of the CDR, the name of accused Rajesh Yadav surfaced as a companion of the other accused persons; however, no other document was found showing his association or business dealings with the co-accused. In paragraph 64, he stated that the victim Anwar Khan was recovered on 23.04.2015, brought to the police station, and on 25.04.2015 he was produced before the Judicial Magistrate for recording of his statement. After recording the statement,



the victim was handed over to him. In paragraph 65, he also stated that the vehicle of Rajesh Yadav was hired by the other accused persons. In paragraph 66, the witness denied the suggestion that he had submitted a false charge sheet or that accused Rajesh Yadav was falsely implicated in this case. In paragraph 67, he stated that the informant Shabnam never talked to the accused persons in his presence, and he did not ask her for any audio tape of conversations regarding ransom. In paragraph 69, he stated that accused Dilshad had confessed about a dispute involving the exchange of money with Anwar Khan (victim), and had also stated about Anwar Khan's involvement in fake-currency business. The witness further stated that he had investigated this aspect, but did not mention it in the case diary.

15.1 This witness further stated at paragraph 70, that he had not made any effort to inquire into the criminal history of Anwar Khan (victim). In paragraph 72, he stated that the informant had provided him five mobile numbers, and out of these, three numbers were found to be registered in the names of Hirdaya Yadav of Village Balli, District Siwan; Sunanda Devi of Mohalla Surahiganj, Patna; and Budhan Rai of Village Suryapura, P.S. Basantpur, District Siwan. In paragraph 73, he



stated that he had not recorded the statement of any of the holders of those mobile numbers. In paragraph 74, this witness stated that he had not attached the copy of the letter sent to the Superintendent of Police, Saran (Technical Cell), requesting the CDR and CAF reports. In paragraph 79, he clearly stated that he had not recorded the statement of any neighbour of Anwar Khan at Phulwarisharif, Patna, except that of Rampravesh Ram (P.W.1), who was the tenant of Anwar Khan. In paragraph 80, he stated that he had not investigated the social or financial status of victim Anwar Khan, nor his criminal background. In paragraph 81, he stated that after arresting the three accused persons, he had prepared their arrest memos, but these memos were not available with the case diary. In paragraph 82, he stated that although he had mentioned the place of arrest at paragraph 30 of the case diary, he had not written the boundary details of that place and had not recorded the statement of any person from that locality. In paragraphs 88 and 89, the witness denied the suggestion that the accused persons had been falsely implicated with his assistance.

16. P.W.7 Chaukidar Abhay Kumar Manjhi, is a formal witness. He has only produced six mobile sets before the trial court from the Malkhana of Dighwara Police Station and



stated that, in compliance with the order of the Court, these mobile sets were handed over by the Officer-in-Charge for production before the Court. These mobile sets are related to Dighwara P.S. Case No. 67/15 and have been marked as material exhibits Ext. 1 to V.

16.1 In his cross-examination, in paragraph 3, he stated that all the mobile sets had been wrapped in paper, which was neither sealed nor bearing the signature of any police officer; only the case number, i.e., Case No. 67/15, was written on the wrapped paper.

17. P.W.8 is Dr. Suresh Kumar, who was posted at PHC, Dighwara on 23.04.2015. On that day, at about 1:25 p.m., he examined the victim, Anwar Khan, and found the following injuries on his person:

- (i) complaint of pain in both legs;
- (ii) complaint of pain in both soles with swelling;
- (iii) complaint of pain in the whole body.

This witness stated that the age of the injuries was between 5 to 20 hours. In paragraph 2, he proved the injury report, which has been marked as Ext. 6.

17.1 In his cross-examination, in paragraph 3, he



stated that he had not found any apparent external injury on the person of the injured. In paragraph 4, he admitted that there was overwriting in the column indicating the time of injury, and in paragraph 5, he stated that a complaint of pain does not fall within the category of “injury.”

18. After completion of the prosecution evidence, the learned Trial Court fixed the case for examination of the accused persons under Section 313 Cr.P.C. Thereafter, no defence witness was examined. Upon appreciation of the evidence on record, the Trial Court held that the victim, Anwar Khan, had been abducted by the accused persons after full preparation and for the purpose of ransom. Accordingly, the Trial Court found all the accused persons guilty, convicted them, and imposed the sentences mentioned above, directing that both the sentences shall run concurrently.

19. Learned counsel for the appellants in Criminal Appeal (DB) No. 347 of 2017 submits that PW-2, Shabnam Khatoon, the informant of the case, did not state in her deposition who had demanded the ransom. He further submits that PW-6, Neeraj Kumar, the Investigating Officer, has not produced any reliable evidence except the recovery of the victim. In the entire evidence of PW-6 or PW-2, as well as in



the testimony of PW-4, the victim himself, nothing has been disclosed regarding any conspiracy. Even the victim, Anwar Khan, did not state that the appellants were present at the time of abduction, and the identification of the appellants is also doubtful. Learned counsel further submits that although the I.O. referred to mobile phone conversations, no certificate under Section 65B of the Indian Evidence Act, 1872 has been produced. It is contended that the names of the appellants did not appear in the FIR and that they were identified for the first time in court, despite the fact that the witnesses had already seen them at the police station. According to the learned counsel, the identification of the accused has not been duly proved. He also argues that though one Salauddin was named, he was not made an accused, and no witness has deposed that the appellants participated in any conspiracy. The named accused, Puri Baba and Babloo, were not chargesheeted. It is further submitted that no separate charge under Section 120B of the Indian Penal Code was framed against the present appellants. Therefore, according to him, the prosecution has failed to establish the case against the appellants, who accordingly deserves acquittal.

20. Learned counsel appearing for the appellant



Rajesh Kumar Yadav (in Criminal Appeal (DB) No. 173 of 2017) submits that the appellant was not known to the victim as per the evidence of PW-4 and also no CDR has been produced. It is further argued that nothing has come on record to show that the appellant participated in the alleged abduction. Learned counsel submits that no identification of the appellant ever took place, as no Test Identification Parade (TIP) was conducted. He further points out from the evidence of PW-6 (the Investigating Officer) that the owner of the vehicle allegedly used in the crime was not identified. The appellant has not been named in the FIR, nor is he known to the victim or alleged to be a conspirator. The victim saw him for the first time at the police station. Learned counsel further submits that apart from the alleged telephonic conversation, there is no other material against the appellant. No TIP has been conducted, and except for repeating the same allegations, nothing incriminating has been established. It is further submitted that the appellant was not arrested from the place of the alleged recovery of the victim; rather, he was arrested from his own house. Counsel also contends that the mobile phone allegedly recovered from the appellant has no proven connection with the alleged occurrence. Neither any CDR has been exhibited nor has any



certificate under Section 65B of the Indian Evidence Act been produced. Learned counsel additionally submits that although the appellant is alleged to be the owner of the vehicle used in the offence, he has not been identified either as the owner of the said vehicle or as an accused involved in the commission of the crime.

21. Ms. Vaishnavi Singh, learned *Amicus Curiae*, appearing for appellant Suresh @ Rukhendra Manjhi @ Rukander Manjhi (Criminal Appeal (DB) No. 247 of 2017), submits, upon a perusal of the record, that nothing was recovered from the possession of this accused either, and he too was not arrested from the place from where the so-called victim Anwar Khan was recovered. According to her, the appellant has been falsely implicated on account of previous enmity, and there exist significant contradictions in the prosecution's evidence. She further submits that the appellant is not named in the F.I.R. and, like the previous appellant, was identified only in the Court by the victim.

22. In support of their argument learned counsel for the appellant in (Criminal Appeal (DB) No. 247 of 2017) and learned *Amicus Curiae* in (Criminal Appeal (DB) No. 173 of 2017) has relied upon the following judgements :-



(i) AIR 2024 Supreme Court 3233 :: AIR Online 2024 SC 437 titled Naresh Kumar Vs. State of Delhi in which it has been held that failure on the part of the trial court in asking incriminating circumstances in course of examination of the accused under section 313 of the Cr.P.C. causes material prejudice and it resulted in blatant miscarriage of justice. Said defect was not curable defect and it was nothing but patent illegality vitiating trial of accused.

(ii) In Raj Kumar @Suman Vs. State (NCT of Delhi), AIR SC 3113, where the hon'ble Supreme Court was pleased to hold that not confronting the accused during their examination under Section 313 Cr.P.C. with the only allegation of the prosecution against them causing serious prejudice to the accused. The Court further observed that, only alleged incriminating circumstance appearing against the appellant in the evidence produced by the prosecution has not been put to him in his statement under Section 313 of Cr.P.C. and, therefore, he had no opportunity to explain the said circumstance. Moreover, his conviction is based only on this circumstance. The relevant paragraphs 14 and 25 of Raj Kumar (supra) are extracted below:

14. Thus, we will have to proceed on the



footing that the only alleged incriminating circumstance appearing against the appellant in the evidence produced by the prosecution has not been put to him in his statement under Section 313 CrPC and, therefore, he had no opportunity to explain the said circumstance. Moreover, his conviction is based only on this circumstance.

25. The prosecution examined 37 witnesses. The material against the appellant is in the form of one sentence in the evidence of PW 5. As mentioned earlier, if we read 42 questions put to the appellant in his statement under Section 313 CrPC, any accused having ordinary intelligence will carry an impression that there is absolutely no material against him. The appellant was not confronted during his examination under Section 313 CrPC with the only allegation of the prosecution against him. This is how, on facts, we find that a serious prejudice was caused to the appellant.

(iii) In *Anvar P.V. v. P. K. Basheer and Ors.*, (2014)

10 SCC 473, in which the hon'ble Apex Court has held that admissibility of secondary evidence of electronic record depends upon satisfaction of conditions as prescribed under Section 65B. Paragraph 15 to 18 of *Anvar P.V.* (Supra) are relevant and quoted below:

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the



statement,

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A-opinion of Examiner of Electronic Evidence.

18. The Evidence Act does not



contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65-B of the Evidence Act are not complied with, as the law now stands in India.

(iv) In the case of Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors., (2020) 7 SCC 1, in which it has been held that certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record.

(v) In the case of Gireesan Nair and Ors. Vs. State of Kerala, (2023) 1 SCC 180, in which it has been held, that, in cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept “baparda” to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via media (newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence. Para 31 of Gireesan Nair (Supra) is relevant and quoted below:

31. In cases where the witnesses have had ample opportunity to see the accused before the



identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept "baparda" to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via media (newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence (Lal Singh v. State of U.P. and Suryamoorthi v. Govindaswamy).

(vi) Judgment of Hon'ble Apex Court of India in the case of Jafar Vs. State of Kerala in Criminal Appeal No. 1607 of 2009 wherein it has been held that in the absence of proper identification parade being conducted, the identification for the first time in the Court cannot be said to be free from doubt. Para 7 of the judgement is relevant and reproduced below:

7. In the absence of proper identification parade being conducted, the identification for the first time in the Court cannot be said to be free from doubt. We find that the other circumstance that the Courts relied for resting the order of conviction is with regard to the recovery of an iron rod. An iron rod is an article which could be found anywhere. It is not the case of the prosecution that any stolen article was recovered from the appellant herein.

(vii) Learned counsel submits that when an accused has not been subjected to a Test Identification Parade, the prosecution fails to prove the identification. He further submits



that the applicability of Section 313 Cr.P.C. has specific relevance, but the allegations put to the accused therein are absolutely defective, and on this ground alone, the appellants are fit to be acquitted. With respect to the non-availability of a certificate under Section 65B of the Evidence Act, it is argued that any statement of the Investigating Officer relating to mobile phone data is inadmissible, and even the CDR has not been exhibited. Hence, the evidence of the Investigating Officer is essentially a futile exercise and nothing can be proved against the appellant.

23. Learned counsel for the appellant (in Criminal Appeal No. 312 of 2017) submits that it also appears from the examination of PW-4 that he played an important role, as a series of conversations had taken place from his mobile phone. He further submits that in Exhibit 4A, the Investigating Officer produced three mobile phones allegedly belonging to the present appellant, Rashid @ Dilshad and others, from which the ransom was allegedly demanded; however, the said phones were actually registered in the name of another person. The prosecution has neither produced the CDRs nor the certificate under Section 65B of the Evidence Act. In the absence of the CDRs and the mandatory certificate under Section 65B, any



allegation sought to be made through the oral testimony of the Investigating Officer regarding mobile phone data is neither sustainable nor admissible. He further submits that no specific charge under Section 120B of the Indian Penal Code has been framed against the accused persons. Therefore, the appellant deserves to be acquitted.

24. It has been submitted on behalf of the appellant Mahtab Alam (in Criminal Appeal No. 378 of 2017) that the FIR does not contain even a whisper regarding any demand for money or ransom. It has further been stated that PW-6 categorically deposed in paragraph 3 of his examination-in-chief that at the time of recovery of the victim only three persons were found present, and no material has emerged to show that the appellant had abducted the victim. Except for his mere presence, no other allegation has been made against him.

25. Learned counsel for the appellants in all the Criminal Appeals mentioned above have collectively argued that the prosecution witnesses have given contradictory statements; that the appellants are not named in the F.I.R.; and that no villager of Madarpur has been examined to support the prosecution claim that the victim Anwar Khan was recovered from the house of Phoolsharif in a tied condition on a cot, in the



presence of the appellants, who were then arrested. Learned counsel further argue that no seizure list regarding the cot or rope was prepared, which casts serious doubt on the prosecution case, and that no independent witness has been examined. They also contend that only the tenant of the alleged victim and the victim's wives have deposed, their evidence lacks consistency, and that the C.D.R. of the recovered mobile phone has not been proved in accordance with law. No TIP was conducted, the place of occurrence has not been proved and the role of accused has also not been established and hence the entire prosecution's case is fundamentally unsustainable and therefore fit to be dismissed

26. In support of his argument, learned counsel for the appellants in Criminal Appeal (DB) No. 347 of 2017 has relied upon the judgement rendered in the case of Chhote Pathak, Naresh Bin and Singhasan Yadav Vs. the State of Bihar reported in 2002 (e) PLJR-PT 1717720 (in Criminal Appeal No. 381 of 1997) decided on 31.10.2002. In the said judgement it has been held that appellants were convicted for life imprisonment by the trial court. It was found from the evidence of the witnesses that some of the accused persons directly participated in the kidnapping and took the victim to an



unknown place but some of the accused persons after reaching unknown place provided food and thereafter used to meet kidnappers. The offence of kidnapping is not a continuing offence as such conviction of accused persons who were found directly involved in kidnapping was upheld and remaining against whom offence was not proved beyond reasonable doubt were acquitted.

27. Learned counsel further relied on a judgement rendered in the case of Mohd Mobin Ah @ Moquim Ali Vs. State of Bihar reported in 2005 (e) PLJR-PT 1717611 (in Criminal Appeal (DB) No. 572 of 2001) decided on 07.09.2005 in which it has been held that in a case of kidnapping for ransom, where the alleged occurrence is supported only by hearsay witnesses who have not claimed to identify any of the kidnappers, and where the victim himself did not disclose the names of the kidnappers after his release from captivity, a serious doubt arises that the implication of the appellants is an afterthought.

28. On the other hand, the learned A.P.P. has argued on behalf of the prosecution that the non-recovery of the cot and rope is not fatal to the prosecution case, especially when the prosecution witnesses have supported the case without any



major contradictions. It is further submitted that, on the basis of the C.D.R. and the tower location of the mobile phone, the victim Anwar Khan was recovered from the house of accused Phoolsharif at Madarpur village in Siwan district, from where three accused persons were arrested. On the basis of the confessional statement of accused Rashid @ Dilshad, accused Rajesh Kumar Yadav who was the driver of the vehicle allegedly used in the kidnapping was also arrested.

28.1 The learned A.P.P. further contended that, due to the present trend of reluctance among the public to participate in criminal investigations, the non-examination of independent witnesses cannot be a ground to discard the prosecution's case. He argued that the statements of the victim Anwar Khan under Sections 161 and 164 Cr.P.C., as well as his deposition before the Court, are consistent, and that the testimony of the victim alone is sufficient to prove the charges against the accused persons.

29. After hearing the parties and upon going through the prosecution witnesses, it transpires that P.W.1 Ram Pravesh Ram is the staff of the victim who was subject to abduction, P.W.2 Shabnam Khatoon is the informant and wife of victim, P.W.3 Munni Khatoon is the second wife of victim and sister of



informant, P.W.4 Anwar Khan is the victim, P.W.5 Aanand Bhushan is the Judicial Magistrate who has recorded the statement of victim under Section 164 of the Cr. P.C., P.W.6 Neeraj Kumar is the I.O., P.W.7 Chaukidar Abhay Kr. Manjhi is Chaukidar who has exhibited mobile sets recovered from the accused persons and P.W.8 is Dr. Suresh Kumar before whom the victim was produced after recovery. Besides the oral evidence, the prosecution has proved Ext.1 written application of Informant, Ext 2 signature of Anwar Khan on the statement of u/s 164 Cr.P.C., Ext.3 statement of victim recorded u/s 164 Cr.P.C., Ext.4 seizure list of mobile set recovered from accused Sahabuddin, Ext.4/A seizure list of mobile set recovered from the accused Mohd Rashid @ Dilshad, Ext. 4/B seizure list of mobile set recovered from accused Phool Sharif, Ext.4/C seizure list of mobile set recovered from accused Rajesh Yadav, Ext.5 requisite for examination of injury of victim Anwar khan, Ext.6 injury report of Anwar Khan and the prosecution has also produced the seized mobile sets as material exhibit and they have been marked as Ext. I to Ext. V.

30. Before coming to conclusion it is necessary to examine the evidence adduced by the prosecution witnesses. PW-1 has deposed that the informant disclosed to him that the



kidnapping of her husband had taken place and the abductors had demanded a ransom of Rupees One Crore. However, this assertion does not find place in the First Information Report. PW-1 has further stated that he learnt about the recovery of Anwar Khan from the victim himself, who allegedly informed him about the abduction. This Court finds that the evidence of PW-1, insofar as it pertains to the act of abduction and the alleged demand of ransom, is wholly derivative and based on the information supplied by others. Such testimony is hearsay in nature and cannot be relied upon to establish the factum of abduction against the accused persons.

30.1 PW-2, the informant, has stated that her husband had gone with one Salauddin in connection with a contract and that it was Salauddin who informed her about the alleged abduction. She further stated that she initially approached the Dighwara Police Station where no FIR was registered and thereafter approached the Superintendent of Police, Chapra, upon which her written fardbeyan was recorded which is marked as Exhibit-1. However, the FIR itself has not been formally exhibited in the present case.

30.2 PW-2 has further deposed that her husband disclosed to her that Salauddin was also involved in the



abduction; yet, surprisingly, Salauddin has not been made an accused. PW-2 identified all the accused persons before the Court but admitted that she had already seen them earlier at the police station. In cross-examination, she categorically stated that her knowledge regarding the kidnapping and the names of the accused was based exclusively on the information provided by her husband. Her evidence, therefore, is not based on direct knowledge and is essentially hearsay. Moreover, she has neither stated in her fardbeyan nor in her deposition before the Court that the abduction was for ransom or any demand for ransom was communicated to her directly. She only stated that her husband told her that the abduction was made “for money.” Such testimony does not satisfy the legal requirement for establishing a charge of kidnapping for ransom.

30.3 PW-3, the second wife of the victim, has deposed that she had received a call in the night demanding Rupees One Crore. However, this material fact is conspicuously absent from the FIR. She admitted that the recovery of the victim did not take place in her presence and that she came to know of the recovery only through her husband. She also disclosed that she, along with her sister, first went to the police station after the recovery, where they saw the accused persons.



In cross-examination, PW-3 candidly admitted that the kidnapping did not occur in her presence. Although she denied the suggestion that the present case was lodged due to a land-related dispute, her testimony remains based on information received from her husband and is not an account of events witnessed by her.

30.4 The testimony of PW-4, the victim himself, is of relevance as he is the only witness claiming direct knowledge of the alleged incident. PW-4 has deposed that he was abducted by the accused Dilshad @ Rashid, Mahtab, Suresh Manjhi, and Rajesh Yadav, who allegedly took him to a house, tied him to a cot, and gagged him. He further claimed that the accused persons exerted pressure on him for a ransom of Rupees One Crore and attempted to communicate with his family on his mobile phone, though no connection was established.

30.5 PW-5, the learned Magistrate, has stated that the victim narrated his statement before him. However, during cross-examination, he candidly admitted that when the victim was produced before him, he did not demand any identification document to verify whether the person making the statement was indeed Anwar Khan. In the absence of such verification, the identity of the person whose statement was recorded



remains doubtful. Therefore, it cannot be conclusively held that the identification of Anwar Khan was duly established at the time of recording of his statement.

30.6 PW-6, the Investigating Officer, stated that he had taken five mobile numbers belonging to the informant. He further deposed that he had written to the Superintendent of Police for obtaining the Call Detail Records (CDRs). According to him, the CDRs and Customer Application Forms (CAFs) were made available to him by the service provider, and based on those details, he made a series of entries in the case diary. However, surprisingly, no certificate under Section 65B of the Indian Evidence Act was produced along with the CDRs. In the absence of such a certificate, the CDRs are inadmissible in evidence. Similar deficiency persists with regard to the mobile phones allegedly recovered during the raid. The witness stated that during the raid for the recovery of the victim, he found three persons standing at the spot and recovered mobile phones from them. While he noted the mobile numbers and IMEI numbers, he failed to correlate which mobile number belonged to which accused in his deposition. He stated that during investigation he seized five mobile sets, but only one such mobile set was produced in Court. Although PW-6 also narrated



which calls were made and from which mobile numbers, such evidence again stands unproved for want of the mandatory certificate under Section 65B. The mobile number from which conversations allegedly took place also does not match with the number said to have been recovered from the accused persons. He also claimed that upon inquiry regarding ownership of the seized mobile sets, one number was said to belong to Budhan Roy and another to Rukhendra Manjhi; however, no certificate or documentary proof to substantiate these claims has been produced. PW-6 was also unable to specify the exact location from where the victim was allegedly recovered, and no description of the surroundings is found in the case diary. He conceded that there is no witness supporting the alleged demand of Rupees One Crore as ransom. He further admitted that it has not been stated anywhere in the case diary how many rooms were in the house from where the victim was purportedly recovered.

30.7 With respect to accused Rajesh Kumar Yadav (appellant in Criminal Appeal (DB) No. 173 of 2017), PW-6 deposed that the said appellant was not recovered from the place of occurrence. He further stated that investigation revealed that the kidnapping was committed using a Bolero



vehicle, for which he had written to the District Transport Officer, Siwan, seeking ownership details. However, neither any document showing the ownership of the Bolero nor any steps for recovery of the vehicle were produced.

30.8 PW-7, the Chaukidar, merely produced six mobile phone sets before the trial court from the Malkhana of Dighwara Police Station. In his cross-examination, he admitted that the mobile sets had been wrapped in plain paper which was neither sealed nor bore the signature of any police officer. The only marking on the wrapper was the case number (Case No. 67 of 2015). Such a lack of sealing or authentication raises serious doubts regarding the sanctity of the seized articles.

30.9 PW-8, the doctor who examined the victim after his alleged recovery, deposed in his cross-examination that he did not find any apparent external injury on the body of the victim. He further admitted that there was overwriting in the column of the medical examination report indicating the time of injury. These omissions and discrepancies weaken the prosecution's version regarding the alleged manner of confinement and physical treatment of the victim.

31. We deem it appropriate to examine the judgments relied upon by the learned counsels for the appellants in the



present case.

31.1 On the point of Test Identification Parade, learned counsel for the appellant in Criminal Appeal (DB) No. 247 of 2017 and learned *Amicus Curiae* in Criminal Appeal (DB) No. 173 of 2017 have placed reliance upon the judgment rendered in *Gireesan Nair and Ors. (supra)*, paragraphs 28, 30, 31, 32 and 51 whereof are reproduced below

“28.The object of conducting a TIP is threefold. *First*, to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the crime. *Second*, to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. *Third*, to test the witnesses' memory based on first impression and enable the prosecution to decide whether all or any of them could be cited as eyewitnesses to the crime (*Mulla v. State of U.P.* [*Mulla v. State of U.P.*, (2010) 3 SCC 508, paras 44, 45 & 55 : (2010) 2 SCC (Cri) 1150]).

30. It is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that a TIP is held without avoidable and unreasonable delay after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses before the test identification parade. This is a very common plea of the accused, and therefore, the



prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. But reasons should be given as to why there was a delay (*Mulla v. State of U.P.* [*Mulla v. State of U.P.*, (2010) 3 SCC 508, para 45 : (2010) 2 SCC (Cri) 1150] and *Suresh Chandra Bahri v. State of Bihar* [*Suresh Chandra Bahri v. State of Bihar*, 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60]).

31. In cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept “baparda” to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via media (newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence (*Lal Singh v. State of U.P.* [*Lal Singh v. State of U.P.*, (2003) 12 SCC 554 : 2004 SCC (Cri) Supp 489] and *Suryamoorthi v. Govindaswamy* [*Suryamoorthi v. Govindaswamy*, (1989) 3 SCC 24 : 1989 SCC (Cri) 472]).

32. If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless (*Sk. Umar Ahmed Shaikh v. State of Maharashtra* [*Sk. Umar Ahmed Shaikh v. State of Maharashtra*, (1998) 5 SCC 103 : 1998 SCC (Cri) 1276]). Even a TIP conducted in



the presence of a police officer is inadmissible in light of Section 162 of the Code of Criminal Procedure, 1973 (*Chunthuram v. State of Chhattisgarh* [*Chunthuram v. State of Chhattisgarh*, (2020) 10 SCC 733 : (2021) 1 SCC (Cri) 9] and *Ramkishan Mithanlal Sharma v. State of Bombay* [*Ramkishan Mithanlal Sharma v. State of Bombay*, (1955) 1 SCR 903 : AIR 1955 SC 104]).

51. In *Suresh Chandra Bahri v. State of Bihar* [*Suresh Chandra Bahri v. State of Bihar*, 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60] , it was held that : (SCC p. 126, para 78)

“78. ... it is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards were effectively taken so that the investigation proceeds on correct lines for punishing the real culprit. ... It is in adopting this course alone that justice and fair play can be assured both to the accused as well as to the prosecution. But the position may be different when the accused or a culprit who stands trial had been seen not once but for quite a number of times at different point of time and places which fact may do away with the necessity of a TI parade.”

31.2 On the very same point, learned counsel have also placed reliance upon another judgment of the Hon'ble Apex Court in *Jafar v. State of Kerala (supra)*, Criminal



Appeal No. 1607 of 2009, wherein para 7 reads as under:

“In the absence of proper identification parade being conducted, the identification for the first time in the Court cannot be said to be free from doubt.”

32. Any documentary evidence in the form of an electronic record, in view of Sections 59 and 65-A of the Evidence Act, can be proved only in accordance with the procedure prescribed under Section 65-B. On this point, the learned counsels have placed reliance on the judgment rendered in *Anvar P.V. v. P.K. Basheer and Others* (supra), wherein the relevant paragraphs 7 and 14 read as under:—

“7. Electronic record produced for the inspection of the court is documentary evidence under Section 3 of the Evidence Act, 1872 (hereinafter referred to as “the Evidence Act”). The Evidence Act underwent a major amendment by Act 21 of 2000 [the Information Technology Act, 2000 (hereinafter referred to as “the IT Act”)]. Corresponding amendments were also introduced in the Penal Code (45 of 1860), the Bankers Books Evidence Act, 1891, etc.

14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the



admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some



time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.”

32.1 On the same point, learned counsels have relied on another judgement rendered in the case of *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors. (supra)*.

32.2 Reference may be made to the judgment rendered in *Raj Kumar @ Suman v. State (NCT of Delhi)* (supra), the relevant paragraph 14 of which reads as under

“14. Thus, we will have to proceed on the footing that the only alleged incriminating circumstance appearing against the appellant in the evidence produced by the prosecution has not been put to him in his statement under Section 313CrPC and, therefore, he had no opportunity to explain the said circumstance. Moreover, his conviction is based only on this circumstance.

32.3 Learned counsels also relied on the judgement rendered in *Naresh Kumar Vs. State of Delhi* paragraph 11 whereof reads as under :-

“11. In the context of the issues thus involved, it is only proper to look into the very object of Section 313, Cr.PC. This aspect has been considered many a



times by this Court to hold that it embodies one salutary principle of natural justice viz., audi alteram partem and empowering the Court to examine the accused thereunder is to give the accused concerned an opportunity to explain the incriminating circumstances appearing against him in the prosecution evidence. In the decision in V.K. Sasikala v. State¹, this Court held that examination of an accused under Section 313, Cr.PC, would not only provide an opportunity to him to explain the incriminating circumstances appearing in evidence against him, but also would permit him to forward his own version with regard to his alleged involvement in the crime. Furthermore, it was held that such an examination would have a fair nexus with a defence he might choose to bring and, therefore, any failure in such examination might take the effect of curtailing his right in the event he took up a specific defence. The general position is that if any incriminating circumstance, appearing against an accused in the prosecution evidence, is not put to him it should not be used against him and must be excluded from consideration. At the same time, we may hasten to add that it is a well-neigh settled position that non-examination or inadequate examination under Section 313, Cr.PC, on any incriminating circumstance, by itself, would not vitiate a trial qua the convict concerned unless it has resulted in material prejudice to him or in miscarriage of justice. In the decision in Suresh Chandra Bihari v. State of Bihar² and in Wariyam Singh & Ors. v. State of U.P.³, this Court held that mere defective/improper examination under Section 313, Cr.PC, would be no ground to set aside a conviction of the accused unless it has resulted in prejudice to the



accused. In view of the said position which is being followed with alacrity we do not think it necessary to multiply the authorities on it. “

32.4 This Court also feels it necessary to mention the judgement in the case of ***Chhote Pathak, Naresh Bin (supra)*** rendered by a Division Bench of this Court relied on by the learned counsel for the appellants in Criminal Appeal (DB) No. 347 of 2017 wherein the Division Bench has held that “it was found from evidence of witnesses that some of the accused persons directly taken part in kidnapping and took the victim to unknown place but some of the accused persons after reaching unknown place provided food and thereafter used to meet kidnappers - the offence of kidnapping is not continuing offence as such conviction of accused persons who were found directly involved in kidnapping was upheld and remaining against whom offence was not proved beyond reasonable doubt were acquitted”.

32.5 Another judgement rendered in the case of ***Singhasan Yadav Vs. the State of Bihar (supra)*** by a Division Bench of this Court in which it has been held that “court below should have looked for corroboration of victim’s evidence from other independent witness and without corroboration should have discarded victim’s evidence.”



33. After a careful consideration of the evidence and the exhibits on record, it transpires to this Court that the Investigating Officer has conducted the investigation in a manner that suffers from serious procedural lapses. The FIR, which forms the foundation of the prosecution's case, has not been exhibited in accordance with law. Furthermore, the Call Detail Records (CDRs) placed on record are not accompanied by the mandatory certificate under Section 65B of the Indian Evidence Act, 1872, rendering them inadmissible in evidence. For an offence under Section 364A IPC to be established, the prosecution must prove not only the act of kidnapping or abduction but also the demand of ransom and the circumstances indicating that the accused persons committed the act with the requisite intention. Similarly, to sustain a charge under Section 120B IPC, the prosecution must establish the existence of an agreement or meeting of minds to commit the offence.

34. In the present case, no Test Identification Parade (TIP) was conducted, though the accused persons were allegedly unknown to the witnesses at the initial stage. The absence of TIP severely undermines the reliability of the in-court identification, particularly when the witnesses admit to having seen the accused at the police station prior to such



identification. Moreover, there are sharp and material contradictions in the statements of the prosecution witnesses, and such inconsistencies strike at the very foundation of the prosecution case.

35. The most crucial aspect, which is fatal to the present prosecution's case, is the absence of a certificate under Section 65B of the Indian Evidence Act. In the absence of such a certificate, the electronic evidence, including the materials extracted from the CDR, becomes inadmissible and cannot be relied upon. This omission strikes at the very root of the prosecution's case.

36. In view of the discussions made hereinabove, we find and hold that the prosecution has failed to establish its case beyond reasonable doubt. For the reasons stated above, we are unable to accept the findings recorded by the Trial Court, as they are unsustainable in law and on facts.

37. In result, all the appeals above-mentioned are hereby allowed.

38. Accordingly, the judgment of conviction dated 19.01.2017 and the order of sentence dated 25.01.2017 passed by the learned 1st Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 421 of 2015 arising out of Dighwara P.S.



Case No. 67 of 2015 are hereby quashed and set aside.

39. Since the appellants Mohd. Phool Sharif @ Phool Sharif & Md. Shahabuddin (Criminal Appeal (DB) No. 347 of 2017) are in jail, they are directed to be released from custody forthwith, if their presence is not required in any other case.

40. So far as appellant Rashid @ Dilshad (Criminal Appeal (DB) 312 of 2017), Rajesh Kumar Yadav (Criminal Appeal (DB) No. 173 of 2017), Suresh @ Rukhendra Manjhi @ Rukander Manjhi (Criminal Appeal (DB) No. 247 of 2017) and Mahtab Alam (Criminal Appeal (DB) 378 of 2017) are concerned, since they are already on bail, their respective bailors are discharged from the liabilities of their bail bonds.

41. Accordingly, Interlocutory Application No. 4 of 2024 preferred in Criminal Appeal (DB) No. 347 of 2017 also stands disposed of.

42. This Court deems it appropriate to acknowledge the valuable assistance rendered by Ms. Vaishnavi Singh, learned *Amicus Curiae*, in Criminal Appeal (DB) No. 247 of 2017. The Court records its appreciation for her diligent efforts and the clarity with which she assisted in the adjudication of the matter. It is further noted that, when the question of remuneration was raised, Ms. Singh graciously declined the



same and volunteered to render her services *pro bono*. The Court commends her sense of duty and professional commitment.

(Dr. Anshuman, J)

Bibek Chaudhuri, J : I agree.

(Bibek Chaudhuri, J)

Ashwini/-

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