

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.822 of 2021

Arising Out of PS. Case No.-457 Year-2015 Thana- BIHAR District- Nalanda

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Vivek Kumar @ Vivek @ Modi @ Ram Vivek Kumar, age 35 years, Male,
Son of Nand Kishore Prasad, resident of Village- Majitpur/ Majidpur, P.S.-
Manpur, Post- Itaura, District- Nalanda, Bihar, Pin- 803107

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 99 of 2022

Arising Out of PS. Case No.-457 Year-2015 Thana- BIHAR District- Nalanda

=====

Ritesh Kumar @ Vikas Kumar @ Vikas @ Ritesh, Male, aged about 24 years,
S/O Mukesh Kumar, Resident Of Village - Chandi, P.S. - Ariari, District -
Sheikhpura.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Acts/Sections/Rules:

- Sections 201, 302, 120B, 364A of the Indian Penal Code
- Section 65-B of the Evidence Act

Cases referred:

- Vikram Singh and Others Vs. State of Punjab, reported in 2010 ALL MR (Cri) 982 (SC)
- Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116
- Dilavar Hussain and ors. v. State of Gujarat and Anr., (1991) 1 SCC 253
- Devi Lal vs. State of Rajasthan AIR 2019 SC 688

- Shivaji Sahebrao Bobade vs. State of Maharashtra 1974 SCR (1) 489
- Jasbir Singh Vs. State of Punjab reported in AIR 1998 SC 1660
- State of Rajasthan Vs. Gurmail Singh reported in AIR 2005 SC 1578
- Padala Veera Reddy v. State of Andhra Pradesh AIR 1990 SC 79
- Jaharlal Das Vs. State of Orissa reported in (1991) 3 SCC 27
- Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal And Ors. [2020] 7 SCR 180
- Anvar P.V. v. P.K. Basheer [2014] 11 S.C.R. 399
- Subramanya v. State of Karnataka 2022 SCC Online SC 1400
- Ashish Jain vs. Makrand Singh and others AIR 2019 SC 546

Appeal - filed against the judgement of conviction whereby the appellant has been convicted for the offence punishable under Sections 302, 364A, 120B of the Indian Penal Code.

Held - There were no eye-witnesses to the occurrence in trial - Appellants were not named in the FIR - Inquest report was prepared in the presence of witnesses but these witnesses were not local residents. - Prosecution did not examine the witnesses in the presence of whom the inquest report was made. (Para 39)

The trial Court has also erred in not requiring the production of the alleged weapon - Fingerprints on black wire recovered near the dead body of the victim was not sent for forensic examination. (Para 40)

Trial Court has not scrutinized the entire prosecution evidence in the broad spectrum of the materials available on the record. The material inconsistencies, false implication of the persons and naming them on mere suspicion are evident from the evidence of the prosecution witnesses. (Para 42)

In the present case, the only circumstance is the suspicion against the accused/appellants - The owner of the phone from which alleged ransom call was made, was not examined - No voice recording was brought forth to show

that the demand for ransom was actually made by the appellants/accused themselves. (Para 45)

Prosecution has failed to supply the report directly without any human intervention in compliance of Section 65B(5). (Para 50)

Investigating Officer did not recover the dead body of the deceased/victim on the same day as the day when the confessional statement of the accused/appellant was recorded and the dead body was recovered after sixteen hours. - There is no arrest memo on the record showing the date and time of arrest of the accused persons. (Para 51)

When the confessional statement of the accused/appellants was being recorded, no independent witness was called by the Investigating Officer - So called confessional statement given by accused/appellants would not be admissible in evidence. (Para 53)

Prosecution has failed to prove arrest of the accused persons prior to discovery of the dead body. (Para 54)

Appeal is allowed. (Para 59)

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... .. Appellant/s

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S/O Mukesh Kumar, Resident Of Village - Chandi, P.S. - Ariari, District -
Sheikhpura.

... .. Appellant/s

Versus

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... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 822 of 2021)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Birendra Kumar, Advocate

For the Informant : Mr. Gaurav Prakash, Advocate

For the State/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 99 of 2022)

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

For the Informant : Mr. Gaurav Prakash, Advocate

For the State/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date: 16-01-2025

Heard Mr. Ajay Kumar Thakur learned, counsel for
the appellant in Cr. Appeal (DB) No. 822 of 2021 assisted by Mr.
Birendra Kumar, Mr. Kaushal Kumar, learned counsel for the
appellant in Cr. Appeal (DB) No. 99 of 2022, Mr. Gaurav Prakash,



learned counsel for the informant and Ms. Shashi Bala Verma learned APP for the State.

2. Both appeals are arising out of the judgment of conviction dated 03.11.2021 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 20.11.2021 (hereinafter referred to as the 'impugned order') passed by learned Additional Sessions Judge-III, Nalanda at Bihar Sharif (hereinafter referred to as the 'learned trial Court') in Session Trial No. 337 of 2016 arising out of Bihar P.S Case No. 457 of 2015. By the impugned judgment, the appellant, namely, Vivek Kumar @ Vivek @ Modi @ Ram Vivek Kumar has been convicted for the offence punishable under Sections 302/120B of the Indian Penal Code (hereinafter referred to as 'IPC') to undergo life imprisonment and a fine of Rs. 25,000 and in default of payment of fine he shall further undergo imprisonment of another 3 months. In the said fine amount, Rs. 15,000 would be paid to the mother of the deceased. For the offence punishable under Sections 364A/120B of the IPC, he shall undergo life imprisonment and a fine of Rs. 25,000 and in default of payment of fine, he shall further undergo imprisonment of another 3 months. In the said fine amount, Rs. 15,000 would be paid to the mother of the deceased. For the offence punishable under Sections 201/120B of the IPC, he shall undergo rigorous imprisonment for



seven years and a fine of Rs. 15,000 and in default of payment of fine, he shall undergo an imprisonment of another 3 months. In the said fine amount, Rs. 7,000 would be paid to the mother of the deceased. The appellant namely, Ritesh Kumar @ Vikas Kumar @ Vikas @ Ritesh has been convicted for the offence punishable under Sections 302/120B of the Indian Penal Code (hereinafter referred to as 'IPC') to undergo life imprisonment and a fine of Rs. 25,000 and in default of payment of fine, he shall further undergo imprisonment of another 3 months. In the said fine amount, Rs. 15,000 would be paid to the mother of the deceased. For the offence punishable under Sections 364A/120B of the IPC, he shall undergo life imprisonment and a fine of Rs. 25,000 and in default of payment of fine, he shall further undergo imprisonment of another 3 months. In the said fine amount, Rs. 15,000 would be paid to the mother of the deceased. For the offence punishable under Sections 201/120B of the IPC, he shall undergo rigorous imprisonment for seven years and a fine of Rs. 15,000 and in default of payment of fine, he shall undergo an imprisonment of another 3 months. In the said fine amount, Rs. 7,000 would be paid to the mother of the deceased.

Prosecution Case

3. As per the prosecution story, the *fardbeyan* of the informant, PW-5 was recorded on 01.10.2015 at 4:45 PM by P.S.I.



Jitendra Kumar of Bihar PS Case No. 457 of 2015 in which she alleged that in the morning of 01.10.2015 her son Ravi Kumar, aged 14 years, had left home at around 7:30 in the morning to study at Cambridge School, Professor Colony but did not return. When she went to the school and asked the headmaster about the whereabouts of her son, she was told that the boy had not come to school. There were endeavors to search for the minor boy in the neighborhood area. She also called the relatives and asked but the boy was not found. All her efforts did not evoke results. She had a suspicion that on 28.09.2015 when her son Ravi and daughter Ananya were going to withdraw money from an ATM, Devanand got into a fight with her son and threatened him. Also, about 20 days ago, two people were pressurizing her brother in law Rajiv Kumar Sharma to send two persons abroad but her husband refused to help him to send anyone abroad as he did not have a visa. Her brother-in-law had already taken money from those people and was threatening her husband that he would face the dire consequences for not sending people abroad. In the end, the informant stated that she was suspicious that her son Ravi Kumar had been kidnapped by Rajiv Kumar Sharma and Devanand along with some other people and they are demanding money from mobile number 7321072463.

4. Pursuant to the first information report of the



informant, the investigating officer, police of Bihar PS registered the case bearing PS. Case No. 457 of 2015 under Sections 364A, 363, 368, 302, 201 and 120B of the IPC and set the penal law in motion. An eight member team was formed. The informant immediately furnished the details of telephone numbers to the police of the Bihar PS about the demand of ransom. The investigating officer recorded the statements of witnesses acquainted with the informant and the victim Ravi Kumar. The police of Bihar police station immediately swung into action and picked up one of the accused for investigation.

5. During the custodial interrogation the accused Vivek Kumar @ Modi confessed about the crime and stated that he accompanied with other co-accused persons Vikas Kumar @ Mali, Suraj Kumar, Ritesh Kumar, Munna Kumar, kidnapped and abducted the victim Ravi Kumar and committed his murder. The Investigating Officer also apprehended the other accused persons from other places for the sake of investigation. The Investigating Officer recovered the dead body and the 1.5 metre long black-colored wire from the place where the dead body of the boy was found. The place was shown at the instance of the accused persons who willingly showed the place where they disposed off the dead body of victim Ravi Kumar. The accused persons led the police to



the spot located near the NH-31, 20 meters away from the road within the vicinity of village Chakrasalpur on 05.10.2015 at about 3:30 AM. The dead body was recognized which was kept covered from the dried leaves and branches of the tree and the body was foul smelling. The police dealt with the mortal remains of victim Ravi Kumar, prepared the inquest report and referred the dead body to the Sadar Hospital of Bihar Sharif, Nalanda for postmortem. The concerned doctors conducted the postmortem and opined that the victim Ravi Kumar breathed his last prior to 36 to 72 hours.

6. During investigation it transpires from the confessional statements of accused persons that they were involved in the mission of kidnapping the victim Ravi Kumar. It was also revealed from the perusal of the statement that Suraj Kumar picked up the victim Ravi Kumar on the motorcycle under the pretext that he will take him to Disney-land.

7. Another accused joined him as pillion Rider and vanished from the spot accompanied by the minor boy. Investigating Officer has also visited various places where from the tower location has been found. First he collected the CDR from the office of SP, Nalanda and then the Investigating Officer also recovered the wire from which the victim was alleged to be murdered. The entire process from the recovery of the dead body to



what happened was video-graphed and was recovered in front of the witness. A seizure list of mobile sets recovered from the medical hall of Vivek @ Modi was also prepared during the course of investigation. After completion of Investigation, the Investigating Officer submitted the charge sheet under Sections 364(A), 363, 368, 302, 201 along with 120B of the IPC before the Learned Chief Judicial Magistrate against the eight accused persons. He also filed a separate charge sheet against the child in conflict with law before the concerned Juvenile Justice Board, Bihar Sharif Nalanda for the trial within the ambit of law.

8. After submission of charge-sheet under Sections 364A, 363, 368, 302, 201 read with 120B of the IPC and report of Investigation under Section 173 of Cr.P.C, the Learned Chief Judicial Magistrate verified the charges pitted against accused persons. It transpired that charges levelled against the accused for the commission of crime of kidnapping and murder for ransom after a criminal conspiracy is triable exclusively by the Court of Sessions. The Learned Magistrate, Bihar Sharif, Nalanda committed the case of Bihar PS case No. 457 of 2015 in respect of GR. 3903 of 2015 to the Court of Sessions, Nalanda for trial of the accused persons within the ambit of law vide Commitment order dated 15.06.2016.



9. Taking into consideration the nature of oral and circumstantial evidence produced on record and the gravity of the allegations nurtured on behalf of the prosecution the trial Court recorded the statement of the accused prescribed under Section 313 of Cr.P.C to afford them an opportunity to explain the incriminating circumstances brought on record against them. But the accused persons in their reply vociferously opposed the incriminating circumstances and denied the allegations. The accused persons claim their false implications in the case. Defence has not produced any oral evidence rather filed some documentary evidences.

Analysis of Prosecution Evidences

10. On behalf of the prosecution, altogether twelve witnesses were examined and sixteen documents were exhibited in course of trial which are being shown here-under in a tabular form:-

PW-1	Sanjay Kumar
PW-2	Chandra Bhusan Prasad
PW-3	Sunil Kumar Rajbanshi
PW-4	Vimla Devi
PW-5	Priti Devi (Informant mother of victim)
PW-6	Kamdeo Sharma
PW-7	Sunil Kumar Nirjhar (Investigating Officer)
PW-8	Dr. Anup Kumar
PW-9	Rakesh Kumar(Investigating Officer)
PW-10	Dr. Faisal Arshad (Medical Officer)
PW-11	Jitendra Kumar (Investigating Officer)



PW-12	Md. Javed Akhtar (Nodal Officer Bharti Airtel Ltd. at Patna)
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List of Exhibits

Ext-1	Signature of informant Preeti Devi
Ext-2	Writing and signature of Nitish Kumar
Ext- 2/1	Signature of Nitish Kumar on his own confessional statement
Ext-3	Writing and signature of Vikas Kumar on confessional statement and Signature of Sunil Kumar
Ext-3/1	Signature of Vikas Kumar @ Mali
Ext-3/2	Writing and Signature of Ritesh Kumar
Ext-4	Signature of Ritesh Kumar on confessional statement
Ext-5	Writing and signature of Suraj Kumar on confessional statement
Ext-5 /1	Signature of Suraj Kumar on confessional statement
Ext-5 /2	Writing and signature of Rakesh Kumar on Arnav Kumar's confessional statement
Ext-6	Signature of Arnav Kumar on confessional statement
Ext-7	Post Mortem Report
Ext-8	Confessional statement of Vivek Kumar @ Modi
Ext-9	Letter of SP vide Letter No 236/2016
Ext-10	Prapatra IV
Ext-11	CDR
Ext-12	Seizure list of mobile sets



Ext-13	Seizure list of motorcycle
Ext-14	Charge Sheet No 448/2015
Ext-15	CAF (with objection)
Ext-16	Inquest Report
Ext-16/1	Signature of Ramdeo Sharma on inquest report
Ext-16/2	Signature of Ganesh Sharma on inquest report

Documentary Evidence on behalf of Defence

Ext- A	Deposition of Vimla Devi (vide JJB case no 191 of 2015)
Ext- A/1	Deposition of Preeti Devi
Ext- A/2	Deposition of Archana Sharma
Ext- A/3	Deposition of Kamdev Sharma
Ext- A/4	Deposition of Chandra Bhushan Prasad
Ext- A/5	Deposition of Kishori Prasad
Ext- A/6	Deposition of Jitendra Kumar
Ext- B	Certified copy of the Judgment of JJB case No. 191 of 2015

11. The prosecution story rests on the information given by the informant, PW-5 mother of the victim who stated in her examination-in-chief that on 01.10.2015, her son left for school at 7:30 AM to study at the Cambridge School located in Professor Colony and did not return. When he was leaving for school, a boy named Suraj Kumar was standing at the gate who lived on rent in the locality. On the same day at 12:27 PM, she received a call telling that her son had been kidnapped and demanded a ransom of



70 lakh rupees failing which her son would be killed. After this, she first went to the school, where she asked the headmaster about her son. It was found that her son had not come to school. At 12:31 pm, her phone rang once again. After this she called her relatives and her husband who worked in Dubai. The son was 14 years old at the time of abduction. When he did not come, she gave a written complaint to the police station informing about both the phone numbers from which she received the calls and on this very basis the police started the investigation. In her FIR, PW-5 named two persons, Devanand and Rajiv Kumar Sharma on the basis of suspicion that they had kidnapped her son, but later on during the investigation they were found to be innocent. The dead body of her son was recovered after 4 days of the incident. She saw the dead body in the hospital.

11.i. In her cross-examination, she stated that whatever she had written in the FIR was only on the basis of mere suspicion, because 20 days ago her husband had a fight with Rajiv Kumar Sharma and a few days back some altercation took place between her son and Devanand when he was going to withdraw money from ATM. She did not know any of the accused and named the accused on the basis of what was told by one of the accused Suraj, who was her neighbor. She stated that she saw the dead body



of her son 04.10.2015 at the hospital.

12. PW-1 and PW-2 namely Sanjiv Kumar and Chandra Bhushan Prasad Singh were brothers and joint owners of the Himgange Water Plant where allegedly the kidnapped child was kept. Both PW-1 and PW-2 have stated in their examination-in-chief that they did not know anything about the incident. They only knew one of the accused, Ritesh who used to work in their water plant.

13. PW-3 Sunil Kumar Rajvanshi was posted as Sub-Inspector at Bihar Police Station on 01.10.2015 and stated in his examination-in-chief that on the date of occurrence, he received information about the kidnapping of one boy from Pandit Nagar at 7:30 in the morning. On the basis of this information, the SHO of the police station formed an investigation team consisting of Sub-Inspector Anup Kumar, Sub-Inspector Rakesh Kumar, Sub-Inspector Jitendra Kumar, Sub-Inspector Sunil Kumar Nirjhar and District Information Unit's Sub Inspector Alok Kumar. On the same day at 12:27 PM, the informant received a call informing her that her son had been kidnapped after which she informed the police about the same. PW-3 stated that they tracked the call details and location of the mobile which showed that the calls were made from



several locations in the district of Nalanda. On investigation it was found that the alleged mobile number from which the call demanding ransom was made belonged to one Sanjiv Kumar, S/O Mevalal Rai who resided in Patna. Sanjiv Kumar informed the police that he had not been to Bihar Sharif in a long time and that he did not get any mobile number from Bihar Sharif. On further investigation, it was found that the shop from which the number had been taken was Vivek Medical Hall located in Binaulia under Bihar police station. After that the medical store was contacted and questioned, from where it was informed that a boy named Arnav who lived in a rented house located in Binaulia, had been given the particular SIM. Then police went to the rented house to interrogate Arnav, but he was found absconding.

13.i. Further, the medical hall was searched by the police and a number of fake SIMs were recovered from that place. The owner of the medical hall, one of the appellants Vivek Kumar @ Modi was taken to the police station for interrogation. He stated in his confessional statement that 2 months ago Vikas Kumar Mali, Suraj Kumar, Ritesh Kumar, Munna Kumar and he himself planned near Bihar Sharif railway station to kidnap someone. Munna Kumar said that he would arrange the weapon. Nitish Kumar said that he would arrange the vehicle. After that the appellant himself said he



would arrange a fake sim. Vikas @ Mali said that they would both make arrangements to keep the victim. Then Suraj Kumar said that he knows a boy who was very rich and his father lived abroad. According to the plan, on 01.10.2015, Ravi Kumar left home for school at 7:30 AM, meanwhile on the way both Suraj Kumar and Rohit Kumar made the boy sit on a motorcycle because Suraj Kumar knew that boy very well. He had been living on rent next door. After that, on the pretext of showing Disneyland to Ravi Kumar, he took him to the room at the Himgange Water Plant near Disneyland. Vivek Kumar @ Modi, Vikas @ Mali, Munna Kumar, Ritesh Kumar, Nitish Kumar were already in that room. That room belonged to Ritesh Kumar who used to work in Himgange Water Plant. After kidnapping the boy, the accused demanded money from the informant from various places. Few of them were also watching the activity of the police as they started to feel that the police would catch them. Then on 02.10.2015 and on 03.10.2015, the deceased Ravi was taken to Deepnagar Chakrasalpur NH-31 and allegedly killed there. The dead body was thrown into the bush near NH-31. He was murdered by strangulating his neck. The dead body of Ravi Kumar was recovered on 04.10.2015. The wire by which the deceased was allegedly strangulated was also recovered from near the dead body. The entire process from the recovery of the dead



body was video-graphed and the discovery of the dead body was made in front of witnesses.

13.ii. In his cross-examination, PW-3 stated that in the inquest report, there was a vague mention of the place of discovery of the dead body. The specific location of discovery was not mentioned.

14. PW-4 Vimla Devi is the aunt of the deceased victim. She stated in her examination-in-chief that she did not recognize any of the accused except Suraj and Vikas @ Ritesh. She further stated that since the accused were not given the ransom money, they killed the her nephew, the victim by putting a piece of cloth in his mouth and strangulating him to death with an electric wire.

14.i. In her cross examination, she stated that she got the information of the occurrence when she was in Arena. She went to Bihar Sharif to visit PW-5 Preeti Devi who told her about the occurrence. Later she said that she got the information about the occurrence from her brother, Kamdeo Sharma i.e. PW-6.

15. PW-6 Kamdeo Sharma is the father of the deceased. On the date of occurrence he was in Dubai, where he used to work. In his examination-in-chief he has stated that at 12



PM on 01.10.2015 his wife informed him that in the morning Suraj Kumar came to pick up their son and that their son was kidnapped. He also stated that the accused had called him and demanded a ransom of 70 lakh rupees failing which they would kill their son. He came back from Dubai on 03.10.2015. The dead body of his son was recovered from near the road on NH-31. He also stated that he only recognized Suraj and Vivek who used to keep visiting their house. In his cross-examination PW-6 has stated that he got the information of the occurrence from his wife and neighbors.

16. PW-7 Sunil Kumar Nirjhar stated in his examination-in-chief that on the date of incident, he was posted as Sub Inspector in Bihar Police Station. A special team was formed for the discovery of the victim Ravi Kumar and for the arrest of the accused. The team members were SHO Bihar Rajesh Kumar Sharma, Sunil Kumar Rajvanshi, Anoop Kumar, Jitendra Kumar, Rakesh Kumar and Alok Kumar. Vivek Kumar @ Modi gave his confessional statement about the entire incident and named Vikas Kumar, Arnav Kumar, Munna Kumar, Ritesh Kuamr, Suraj Kumar and Nitish Kumar as co-accused. He confessed that Suraj Kumar informed them that the father of the kidnapped child was a wealthy man who used to work abroad. One of the accused, Munna Kumar agreed to arrange the weapon of crime, Nitish Kumar arranged the



vehicle and Vikas Kumar made arrangement to keep the victim confined in a place. Vivek Kumar made arrangements for a false ID on the basis of which the alleged SIM card was taken which was to be used to make the ransom call. According to their conspiracy, on the morning of 01.10.2015, Suraj Kumar and Nitish Kumar took away the deceased victim Ravi Kumar under the pretext of visiting the Disneyland and confined him in a room in Himgange water plant. There Ravi Kumar was kept with his hands and feet tied. A ransom of 70 lakh rupees was demanded and after not getting the money, Ravi Kumar was killed and the dead body was disposed off in a bush on NH-31.

16.i. The informant received two calls on her mobile number-95045439203 from 7321072463 and 8873094952 demanding ransom. The mobile tower locations of all the criminals were found at Araut, Bena Police Station, Musahari, Rupaspur, Mehnaur, Hosttungi, Thana Deepnagar, Patel Nagar, Nai Sarai, Aziz Ghat, Bihar Sharif, Shekhana and Binaulia respectively. The SIM was issued in the name of one Sanjeev Kumar, Village Mohalla North Mandiri Patna. On verification, it was found that that SIM card has been issued by Vivek Medical Hall, Banaulia Police Station, Bihar. On interrogation by the police team Vivek Kumar @ Modi said that he had given the SIM card to Arnav Kumar. The



mobile tower location of both the numbers were also found near Bihar Sharif. On 4.10.2015 the shop of SIM card seller Vivek Kumar @ Modi was searched and some incriminating documents and 9 mobiles were recovered.

16.ii. The body was recovered on the basis of the confessional statement of the accused-appellant and a black wire was recovered from near the dead body and its videography was also done. PW-7 further stated that he recorded the confessional statement of one of the accused Nitish Kumar on 4.10.2015 who admitted his involvement in the incident. On 4.10.2015 itself, at 11:30 PM, the confessional statement of Vikas Kumar @ Mali was also taken by him and reduced into writing.

16.iii. In his cross-examination, PW-7 stated that only one team was constituted for discovery of the kidnapped victim. He stated that the FIR was not registered against unknown persons. He had no idea whether the person in whose name the SIM was issued was arrested or not. He stated that he saw the black wire at the place of discovery but was not aware if this incriminating material was produced before the trial Court. He was also not aware if the wire was sent for forensic investigation. He stated that the place from where the body was found was not an isolated place.



There were houses at a distance of 100-200 meters.

16.iv. He further stated that the owner of the shop from where the SIM was taken was called for questioning two days after the police were informed of the incident. There was no paper proof that Nitish Kumar and Vikas Kumar lived in Himgange water plant, but they were arrested from there. He said that several incriminating articles were recovered from the SIM seller's shop but denied remembering whether the articles were seized or not. The witness categorically denied the suggestions that the confessional statement of the accused was not taken but he arrested the school going students, and Nitish and Vikas do not work in Himgange water plant but they are the students of intermediate. Further the witness stated that Vivek's shop was raided due to the statement of Sanjeev Kumar and technical reasons, Vivek had a shop of khichdi paros in which he also used to sell SIM etc. Some SIMs were found in the raids from Vivek's shop, he didn't remember how many articles were found there, the seizure list was made. The mobiles that were recovered were all old Mobiles.

17. PW-8 Anup Kumar stated in his examination-in-chief that on 04.10.2015 he was posted as Sub-Inspector at Bihar Police Station. On the said date, a team was formed for finding the



kidnapped victim, Ravi Kumar and arresting the accused. The team members were SHO Bihar Rajesh Kumar Sharma, Sub-Inspector Sunil Kumar Rajvanshi, Sub-Inspector Sunil Kumar Nirhjar, Sub-Inspector Jitendra Kumar (Investigating Officer) and District Intelligence Unit's Sub-Inspector Alok Kumar. He stated that the investigating team was divided into two groups to carry out the investigation. He stated that his team searched the place around Himgange Water Plant where they interrogated one of the accused, Ritesh Kumar. The accused initially did not cooperate with them but then confessed that the kidnapped victim, Ravi Kumar was kidnapped for the purpose of demanding ransom from his father and that Vikas Kumar @ Mali, Arnav Kumar, Munna Kumar, Vivek Kumar @ Modi, Suraj Kumar and Nitish Kumar were involved in the conspiracy.

17.i. PW-8 further stated that the appellant Ritesh confessed that on getting the ransom money, he and the co-accused took Ravi Kumar to a place on NH-31 Chakrasalpur which was 50 meters away from Dharmendra's Cement Shop and killed him there and hid his body in a bush on NH-31. The confessional statement of Ritesh was recorded by PW-8 himself. He stated that the other team of police reached the water plant with four of the kidnappers. Thereafter the entire team along with the arrested accused went to



the house of accused Rohit Kumar in village Patuana and conducted a search of his house and arrested him from there. Thereafter the team went to village Gauragarh and arrested Suraj Kumar from his house. From there the team and all the accused went to N-31 Chakrasalpur from where the dead body of the victim, Ravi Kumar was discovered. They found a black plastic wire about 1.5 meters long which was allegedly used to strangle Ravi Kumar in order to kill him. He further stated that in the presence of two independent witnesses an inquest report was prepared and the black wire was seized by the Investigating Officer of the case, i.e., PW-11.

17.ii. In his cross-examination, PW-8 stated that he was not an eye-witness to the occurrence. He said he did not find any proof of the fact that Ritesh Kumar worked at Himgange Water Plant. He did not know who all were made accused in the instant case.

18. PW-9 Rakesh Kumar stated in his examination-in-chief that on 04.10.2015 he was posted as Sub Inspector of Police in Bihar Police Station. A boy Ravi Kumar was kidnapped on the same day dated 1.10.2015, and a case was registered under Case No. 457/15 in Bihar PS. A team was formed in which Jitendra Kumar (Investigating Officer), Sunil Kumar Rajvanshi, Sunil



Kumar Nirjhar, Anoop Kumar and Alok Kumar were the members of the team. The team was divided into two parts. One team consisting of him and SI Anup Kumar along with the armed forces had gone towards West Nala Road, and the second team consisting of IO Jitendra Kumar, SI Sunil Kumar Rajvanshi, SI Sunil Kumar Nirjhar and SI Alok Kumar was sent from the Thana towards East Banaulia.

18.i. PW-9 on reaching near Himgange Water Supply Plant near New City Family Restaurant located on Nala Road met an employee of Himgange Water Plant. On asking the name of the employee, he was told that his name as Ritesh Kumar and that he worked in the water plant. Later on, on being questioned about the incident, he admitted his involvement and told that he stayed in one room in the plant itself. He also confessed that Ravi Kumar was kept there with his hands and feet tied. Ritesh Kumar's confessional statement was taken by SI Anoop Kumar on which he put his signature. The team went to Fatua to conduct search where from Rohit Kumar was arrested who also accepted his involvement in the conspiracy to kidnap. From there, the team went to the house of Suraj Kumar who was arrested after he confessed his involvement. The confessional statement of Suraj Kumar has been taken by this witness to which he identified to be in his own



handwriting and signature.

18.ii. Further the witness says that at the instance of the accused the entire team along with the accused persons reached village Chak Rasulpur located on NH-31, where the foul smell was coming. The dead body of Victim Ravi Kumar was found covered with tree leaves under a tree to the west side of the road. Next to the body a black-colored plastic wire was found, which was about 1.5 meters long. The inquest report of the dead body was prepared by Jitendra Kumar, and the body was sent to Sadar Hospital Bihar Sharif for postmortem. All police parties reached Sadar Hospital Bihar Sharif. The confessional statement of Arnav Kumar @ Shivam Kumar was also taken by PW-9.

19. PW-10, Dr Faisal Arshad stated in his examination-in-chief that on 05.10.2015 he was posted as medical officer at Sadar Hospital, Bihar Sharif, Nalanda. On this day postmortem examination was done on the dead body of Ravi Kumar aged about 14 years, at 9:10 AM which was brought and identified by the Hawaldar 84, Hari Mohan Singh. On external examination he found that rigor mortis was absent in all four limbs. The body was at the stage of decomposition. Both hands were tied up with cotton rope. Blisters found all over the body from place to place and



the whole body was swollen. The right eye excised from its socket. Maggots were creeping inside both eyes and the whole face. A putrefied smell coming out of the whole body.

19.i. He stated that the mouth was gagged with long cotton cloth. A long cotton cloth was found inserted in anal orifice. Mark of ligature, black in color encircled the whole neck and were 3/4 inch wide.

On dissection- Head- all cranial bones were intact in brain and its meninges were intact and congested.

Neck -underneath the mark of ligature tissue found congested.

Trachea- found compressed and fractured and congested and hyoid bone fracture

Thorax- thoracic cage NAD

Heart-all Chambers filled with dark coloured blood.

Lungs -intact and congested.

Abdomen- stomach empty.

Urinary bladder- empty.

All other abdominal viscera intact and congested.



Opinion- in my opinion the cause of death is due to asphyxia resulting from strangulation. Time elapsed since death within 36 to 72 hours. The postmortem report was prepared on his direction on the computer and bears his signature.

19.ii. In his cross examination he stated very clearly that after one hour of death rigor mortis starts from fingers of legs and gradually goes upwards. It remains for 24 hours. It is wrong that rigor mortis is possible for 72 hours. He further stated that he does not know as to from which limb rigor mortis disappears whether from fingers of hands or any other organ. In case of strangulation the chambers of heart become congested and filled with dark blood. Since the body was decomposing no external mark of injury was found over the body. Maggots were eating the body of the deceased. The empty stomach suggested that the deceased had not taken a meal for a long time. If the dead body was left in the open sky in the field, what time would be sufficient to decompose the dead body is not comprehensible. Black ligature marks appeared on body and every injury turned black. He further stated that he could not say how much time would be required to turn an injury into brown in color. Age of injury is assessed by the color of the injury however he said that he could not say the age of injury if



the color of injuries turned black.

20. PW-11 Jitendra Kumar, was the Investigating Officer in the instant case and has stated in his examination-in-chief that on 01.10.2015 he was posted as sub-inspector in Bihar police station, and took charge of investigation of Bihar Police Station Case number 457 of 2015. He recorded the written application of the informant in the case diary. He took the statement of the informant thereafter again. Inspected the place of occurrence. He took the statement of witnesses Vimala Devi, Archana Kumari. The alleged mobile number used in this incident was 7321072463. To get its CDR, a letter was sent to the Superintendent of Police for report vide Letter No. 2724/15. He received the CDR and CAF of the mobile used in the kidnapping case from the Superintendent of Police, through which money was demanded.

20.i. From the perusal of the report it was found that his mobile number was purchased from Airtel Retailer ID 8969057151 which belonged to Vivek Kumar from Vivek Medical Hall Banaulia, Bihar Sharif Police Station, Bihar. Voter ID card used in purchasing the said SIM, beared number AF50178707, which belonged to Sanjeev Kumar Singh s/o Mevalal Rai, 71 North Mandiri Patna, Circle Patna District. On reaching Vivek Medical



Hall, it was found that the mobile number (7321072463) used in the kidnapping was issued by the appellant-accused in a fraudulent manner to demand ransom in the incident. CDR and CAF of that mobile number showed that a conversation had taken place between 7321072463 and 9304445877. This mobile number was issued in the name of Munna Kumar s/o Raju Yadav, Garh, Bihar Sharif who made the call to the informant in the process of committing the offence of kidnapping and demanding ransom. A team was formed consisting of Sub Inspector Rakesh Kumar, SI Anoop Kumar, SI Sunil Kumar Nirjhar, SI Sunil Kumar Rajvanshi, Umesh Kumar and the armed forces of the police station. The team was divided into two parts.

20.ii. PW-11 along with his team left for Banaulia and after reaching there, they searched the shop of Vivek @ Modi. From there Vivek @ Modi was arrested and 9 mobiles were recovered from his shop. The confessional statement of Vivek @ Modi was also taken, which was attached to the FIR and sent to the Court. The confessional statement of Vivek Kumar @ Modi was recorded by PW-11. The team also searched the house of Nitish Kumar and he was arrested. A motorcycle bearing registration BR-21-C-2049 was recovered from his house itself. The confessional statement of Nitish Kumar was taken. From Banaulia the team went



to Garhpar Bihar Sharif where they searched the house of Munna Kumar, and thereafter arrested him. From Banaulia, the team reached Himgange supply office situated at Nala Road, where the second team was already present and Police Sub-Inspector Anoop Kumar arrested Ritesh Kumar from there and took his confessional statement. All the arrested accused/appellants confessed during interrogation that they had kidnapped Ravi Kumar for demanding money and after not getting the money and for fear of being caught by the police, they killed him and threw his dead body near NH 31 Chakrasalpur. The team proceeded towards NH 31, Rasalpur along with all the accused persons and after reaching there, they saw that 20 meters west of NH-31 something was lying covered with tree branches and dried leaves and the dead body was smelling. Blisters found all over the body. The body of the kidnapped Ravi Kumar was recovered from the place at the instance of the accused, the inquest report was prepared and the body was sent to the hospital for postmortem. Injuries were found on the body-face swollen, neck swollen, maggots creeping in both eyes, there was a black spot around the throat, a black plastic wire was found about one and a half meters in the neck and the cause of death was strangulation.

20.iii. On 09.10.2015, the CDR and CAF of the alleged mobile numbers which were used to demand ransom in the



kidnapping i.e. 7321072463 and 8873094952 was sought through letter No. 236 of 2019 DIU, Office of the Superintendent of Police, Nalanda and on 03.11.2019 received the certificate issued by the District Information Unit under Form-IV. When the reports were examined minutely it became clear that the ransom call was made on Preeti Devi's mobile numbers 9504549203 from 7321072463 and 8873094952 for the amount of Rs 70,00,000 as ransom. From the observation of CAF of mobile number 7321072463 it appeared that the SIM was issued in the name of Sanjeev Kumar Singh. Voter ID card bearing number AF150178707 had been used for purchasing the SIM card from Vivek Kumar's medical hall. He stated that the photo in the voter ID card was different from the photo received from the company, which showed that appellant-accused Vivek Kumar @ Modi had obtained this SIM card for the kidnapping the victim without verification. The seizure list was prepared which was in the handwriting of PW-11. On 14.10.2015, the postmortem report of the deceased Ravi Kumar was received. In his cross examination PW-11 stated that the informant stated in her statement that on 28.09.2015 her son and daughter were going to withdraw money from the ATM where they had a fight with one Devanand who had threatened to kidnap him. She also stated that 20 days ago one Rajiv Kumar had an altercation with her husband.



The appellants-accused were not named in the FIR. PW-4, Vimla Devi and one Archana Kumari also stated in their deposition that a boy named Devanand had threatened to kidnap Ravi Kumar and that Rajiv Kumar Sharma also gave threatening. He further stated that he did not investigate against either Devanand or Rajiv Kumar Sharma.

20.iv. In Para-15 of his cross-examination PW-11 stated that there were no eye-witnesses in the case who saw the occurrence of kidnapping or killing of the victim. In Para-16 he stated that there was no forensic investigation of the fingerprints found on the black wire discovered from near the dead body. He further stated that he did not mention anywhere that a piece of cloth was found from the mouth of the deceased. The doctor also did not submit any piece of cloth after postmortem of the dead body. The appellants-accused Ritesh was arrested on 04.10.2015 but was not presented before the Magistrate till 6.10.2015. Further, the mobile phone which was used to make the call was not in the name of Ritesh Kumar. The owner of the SIM, Sanjiv Kumar Singh was not made an accused in the present case. In Para 19 of his cross-examination he also stated that he did not verify who made the call to the informant and no voice recording was found which would show that the accused made the call. He further stated that he did



not record the confessional statement of either of the accused.

21. PW-12 Md Javed Akhtar the Nodal Officer of Bharti Airtel Ltd at Patna in his examination-in-chief stated that he produced the original CAF of mobile number 7321072463 before the Court. He stated that the SIM was issued by the retailer of Vivek medical hall, Banaulia, Bihar Sharif, Nalanda, Bihar in the name of one Sanjeev Kumar Singh on the basis of election I-card. This CAF was kept safe in the company. No manipulation was done with this document

21.i. In his cross-examination, PW-12 stated that the police did not inquire anything about the CAF. He was not the custodian of the CAF. It is the general rule that the person in whose name the SIM is issued, it is presumed that the same person uses it.

Findings of Trial Court

22. The learned trial Court, after analyzing the evidences of prosecution witnesses concluded that the entire case is based on circumstantial evidence. The trial Court noted that the prosecution has succeeded in proving the entire chain of circumstances wherein the victim Ravi Kumar was kidnapped by the co-accused persons. The co-accused persons picked the victim from his school and carried him to Himgange water plant where he



was strangled to death. Eventually, based on the confessional statements of one of the co-accused, Vivek @ Modi, the dead body of the victim was found in accordance with Section 27 of the Indian Evidence Act. The CDR/CAF of the telephonic conversations between the accused persons/appellants and PW-5, the informant who is the mother of the victim also point towards the guilt of the accused persons/appellants and the same has been supported by PW-11, who was the Investigating Officer of the case and PW-12, the Nodal Officer for Bharti Airtel Ltd. Patna. The learned trial Court also found that the circumstances of demand for ransom and the motive of the accused persons/appellants supported the versions of the prosecution witnesses and thus proved the nexus of the accused with the alleged homicidal death of the victim. The learned trial Court thus convicted the accused persons/appellants of the charges leveled against them and held them responsible for the conspiracy of kidnapping and homicidal death of the victim.

Submission on behalf of the Appellants

23. Learned counsel for the appellants have assailed the judgment under appeal (hereinafter referred to as the 'impugned judgment') on various grounds. The Learned counsel argued that the requisite documents of CDR produced on record are not the



electronic record and same could not be considered as an admissible evidence under the provision of Section 65(B) of the Evidence Act. He submitted that the documents of CDR produced on record vide Ext-11 did not indicate the I.P. Address of the master server. Moreover, there is no certificate relating to software used for recording the data in the server etc. issued by the concerned software company. Therefore, it cannot be said that there was compliance with Section 65 (B) of the evidence Act. Hence, the CDR of the cellphone of the PW-5 and others would not be a reliable evidence in this case. More over learned counsel argued and raised objection with respect to the documentary evidence CAF that, the CAF is manipulated so can not be relied upon. Learned counsel for the appellants further submitted that the entire case of prosecution is based on circumstantial evidence. It was incumbent on the part of prosecution to prove each and every circumstances of incriminating in nature to point out the guilt of the accused and exclude any hypothesis consistent with their innocence.

24. Learned counsel further submitted that Ritesh Kumar @ Vikas Kumar is not named in the FIR and the mobile sim which has been used in the occurrence is not in his name so the electronic record of CDR cannot be used against him. The confessional statements have been recorded against their will after



pressurizing, moreover the confessional statement of Ritesh Kumar is contradictory because as per the prosecution evidence the dead body was recovered at 3:30 am on 05.10.2015 whereas the confessional statement of Ritesh Kumar has been recorded on 04.10.2015 at 11:30 pm and it has also come on the record that the dead body was recovered on 4th of October 2015 during day time. There is no eye witness of the occurrence and the sim which was used in the occurrence has been issued in the name of Sanjeev Kumar Singh who has not been made accused in this case. Nothing has been recovered from the accused/appellant namely Ritesh Kumar and no specific allegation levelled against him.

25. Learned counsel on behalf of the accused/appellant namely Vivek @ Modi submitted that appellant namely Vivek @ Modi is only shopkeeper and doing the work of mobile repairing, he has got no concern with the other accused persons and he sold only the Sim to the accused/appellant. Issuing a sim cannot be said to he fallen in any category of any offence.

26. Learned counsels further submitted that in the instant case, prosecution adduced the evidence of kidnapping of the victim Ravi Kumar. Thereafter, his dead body was recovered from the Bypass road NH 31, Chakrasalpur. The prosecution also



attempted to bring on record that the accused/appellants were connected to each other. But, no material were produced on record to establish that the accused/appellants committed the murder of the victim Ravi Kumar. The absence of evidence attributing the overt-act of the accused/appellants for murder of the boy created vacuum in the prosecution case. The lacuna in the prosecution case is sufficient to draw inference that prosecution failed to prove the complete chain of circumstances for adverse inference against the accused.

27. Moreover, as per the postmortem report time of death is 36 to 72 hours before the recovery of the dead body. The postmortem report bears the address of the private clinic of the doctor that indicates that the postmortem is only table work and nothing else and it has not been done in the hospital. The inquest report submitted before the postmortem which raised doubtful question towards the genuineness of the postmortem report. The inquest report bears the signature of Ramdev Sharma, who is none else but the father of Rajiv Kumar Sharma who was earlier the named accused of the FIR, it is not known as to how he reached to the place where the dead body was recovered. This creates doubt. The date of postmortem report and the date of the recovery of the dead body is contradictory to each other. Hence, benefit of doubt in



prosecution cases be given to the accused/appellants.

28. Learned counsel further reiterated that the appellant was not named in the FIR and that the FIR. was registered solely on the basis of suspicion. Hence, his conviction is bad in law and the same is fit to be set aside. He also submitted that the defense had filed the certified copies of the deposition of the witnesses vide J.J.B. case no. 191 of 2015 wherein rest of the accused were acquitted as they were not found guilty.

Submission on behalf of the Informant

29. Learned counsel on behalf of the informant submits that the accused persons kidnapped/abducted the minor victim Ravi Kumar on the way when he was going to his school with malafide and dishonest intention to extract a huge ransom of seventy lakhs rupees from his mother. He further submits that PW-5 Priti Devi, the informant is the mother of the victim who establishes the circumstances of the demand of ransom on the part of the accused/appellants as well as the electronic document of CDR of telephonic conversation of the accused/appellants with the mother of the victim. He next submits that PW-5 Priti Devi, the mother of the deceased victim Ravi Kumar stated very clearly in her examination-in-chief that she received three calls from the accused



persons/appellants demanding ransom money and this fact has also been supported by PW-11 Jitendra Kumar on the point of receipt of threatening calls by the PW-5 Priti Devi.

30. Learned counsel for the informant further submits that in this case it is also evident from the evidence that the accused Vivek @ Modi issued the sim on forged documents in the name of one Sanjeev Kumar Singh for the purpose of ransom. He next submits that it is the rule of law that the electronic record produced before the Court is documentary evidence under Section 3 of Evidence Act. Learned counsel for the informant lastly submits that the impugned judgment and order do not suffer from any infirmity and no interference is required.

Submission on behalf of the State

31. The Learned APP for the State vehemently submitted that the prosecution has proved the circumstances of abduction of Ravi Kumar by the accused persons/appellants as they carried the minor innocent victim boy to the room of the Himgange water plant situated at Nala Road, Bihar PS and killed him in a brutal manner by strangulation. The accused persons/appellants also ventured to dispose of the dead body of victim Ravi Kumar. The prosecution established that after the arrest of the



accused/appellants, the dead body of the victim was recovered from the place of crime at the behest of both accused persons/appellants under Section 27 of Evidence Act. Moreover, the accused persons/appellants made confessional statements about the black plastic wire which was found lying near the dead body of the victim Ravi Kumar. These circumstances categorically demonstrate the active participation of both the accused persons/appellants for committing the crime. The evidence of PW-11, and PW-12 also attributes suspicious circumstances against the accused/appellants for the criminal conspiracy on their part.

32. He further submitted that these all circumstances are sufficient to prove that the accused hatched the criminal conspiracy to commit the crime and relied upon the observations of the Lordship in the case of *Vikram Singh and Others Vs. State of Punjab, reported in 2010 ALL MR (Cri) 982 (SC)* in which their Lordship has dealt with the similar circumstances of kidnapping of the minor boy for ransom and consequently committed his murder. In this judicial precedent, their Lordships of Hon'ble Apex Court held the accused are guilty under Section 120-B of IPC. He lastly submitted that the attending circumstances on record are sufficient to raise the presumption that the accused are only the perpetrator committed the murder of victim and the impugned judgment and



order do not suffer from any infirmity and no interference is required.

Consideration

33. We have heard the learned counsels for the appellants, learned counsel for the informant and learned APP for the State as well perused the trial Court's records.

34. Before we proceed to test the correctness of the findings returned by the trial Court, we must bear in mind that the prosecution case rests on evidence which are circumstantial in nature as arrived at by the learned trial Court in Paragraph '16' of the judgment under appeal. Keeping in view the findings of the learned trial Court and the submissions of learned counsel for the appellants and learned APP for the State, this Court would examine as to whether on the basis of the evidences on the record, it may be safely concluded that the prosecution has been able to prove its case beyond all reasonable doubts and the criminological chain of events leading to the death of Ravi Kumar is complete. This Court is reminded of the judgment of the Hon'ble Supreme Court in the case of *Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*. Paragraph '152' of the said judgment is being reproduced here-under for a ready reference:



“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is **Hanumant v. State of Madhya Pradesh**. This case has been uniformly followed and applied by this Court in a large number of later decisions up- to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh* and *Ramgopal v. State of Maharashtra*. It may be useful to extract what Mahajan, J. has laid down in Hanumant case:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.””

35. In the case of **Dilavar Hussain and ors. v. State of Gujarat and Anr., (1991) 1 SCC 253**, once again the Hon’ble Supreme Court has laid down the principles governing appreciation of circumstantial evidences. Paragraphs ‘3’ and ‘4’ of the judgment



in the case of ***Dilavar Hussain*** (supra) reads as under:-

“3. All this generated a little emotion during submissions. But sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty. Although guilty should not escape (sic). But on reliable evidence, truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution however abhorrent and hateful cannot reflect in deciding the guilt.

4. Misgiving, also, prevailed about appreciation of evidence. Without adverting to submissions suffice it to mention that credibility of witnesses has to be measured with same yardstick, whether, it is ordinary crime or a crime emanating due to communal frenzy. Law does not make any distinction either in leading of evidence or in its assessment. Rule is one and only one namely, whether depositions are honest and true. Whether the witnesses, who claim to have seen the incident in this case, withstand this test is the issue? But before that some legal and general questions touching upon veracity of prosecution version may be



disposed of.”

36. To bring home the guilt, the prosecution in the present case would be required to prove the involvement of the appellants in the alleged kidnapping, their demand for ransom, the presence of witnesses and the possibility of them seeing the incident and identification of the appellants. Adding on to the aforesaid legal principles, in ***Devi Lal vs. State of Rajasthan AIR 2019 SC 688***, a three-judge bench of the Hon'ble Supreme Court held that:

“in a case based on circumstantial evidence where two views are possible, one pointing to the guilt and the other to his innocence, the accused is entitled to the benefit of one which is favorable to him. Besides that, before recording conviction, the court must be satisfied that the accused ‘must be’ and not merely ‘maybe’ guilty”.

37. In ***Shivaji Sahebrao Bobade vs. State of Maharashtra 1974 SCR (1) 489***, the Supreme Court, elaborating upon the above principle, observed that the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions. Therefore, even if the prosecution evidence generates strong suspicion against the accused, it cannot be a substitute for proof.

38. Bearing in mind the aforesaid legal principles,



we would examine and consider –

(a) whether the circumstances relied by the prosecution have been proved beyond reasonable doubt;

(b) whether those circumstances are of a definite tendency unerringly pointing towards the guilt of the accused;

(c) whether those circumstances taken cumulatively form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused;

(d) whether they are consistent only with the hypothesis of the accused being guilty; and

(e) whether they exclude every possible hypothesis except the one to be proved.

39. A bare perusal of the statements of the prosecution witnesses establish that there were no eye-witnesses to the occurrence in trial. PW-1 and PW-2 turned hostile. PW-4 and PW-6 are related to the informant and the rest of the prosecution witnesses are the police members who were part of the investigation team and the doctor who conducted the postmortem of the dead body. PW-12 is the sole independent witness but he also did not witness the occurrence. The prosecution rests its case on the confessional statements of the appellants-accused which led to the discovery of the dead body. It is a significant fact that the appellants



were not named in the FIR. It is also surprising that the inquest report was prepared by PW-11 at Bihar Sharif but the witnesses in whose presence, the report was prepared were residents of Lakhisarai. Also, the prosecution did not examine the witnesses in the presence of whom the inquest report was made.

40. One of the discoveries which was made in furtherance of the confessional statements of the accused was a 1.5 meters long black plastic wire which was allegedly used in strangulating the dead victim. PW-8 in Para 6 of his examination-in-chief has stated that the police team had prepared the inquest report in the presence of two witnesses and had seized the black plastic wire. He said that the seizure list was prepared by PW-11, who was the Investigating Officer in the instant case. The 1.5 meters long black plastic wire was an important discovery however it was neither mentioned in the seizure list by the prosecution nor was it produced before the learned trial Court. The trial Court has also erred in not requiring the production of the alleged weapon. PW-11 also stated that the fingerprints on black wire recovered near the dead body of the victim was not sent for forensic examination. PW-7, who was also in the investigation team has stated in Para-12 of his cross-examination that he did not know if the black wire was sent for forensic examination or not or if it was mentioned in the



seizure list.

41. In the case of *Jasbir Singh Vs. State of Punjab* reported in *AIR 1998 SC 1660* it was held that “*weapon* was sealed on the spot and there is no evidence *produced* by the prosecution that after seizing the *weapon* it was kept in Malkhana of Police Station properly and *not produced* Malkhana register, then seizure of the *weapon* is doubtful.” In the case of *State of Rajasthan Vs. Gurmail Singh* reported in *AIR 2005 SC 1578* the Apex Court held that “if it was not proved by evidence that seized *weapon* was kept in Malkhana in sealed situation, then prosecution case may be doubtful.”

42. We are afraid that the learned trial Court has not scrutinized the entire prosecution evidence in the broad spectrum of the materials available on the record. The material inconsistencies, false implication of the persons and naming them on mere suspicion are evident from the evidence of the prosecution witnesses. The fact remains that what has been held by the Hon’ble Supreme Court in the case of *Sharad Birdhichand Sarda (supra) and Dilavar Hussain (supra)* as the principles of Panchseel governing a case of circumstantial evidence is completely missing in this case.

43. Again, in *Padala Veera Reddy v. State of*



Andhra Pradesh AIR1990SC79, this Court affirmed that when a case rests solely upon circumstantial evidence, such evidence must satisfy the following tests:

“1. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

2. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

3. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

44. In the case of ***Jaharlal Das Vs. State of Orissa*** reported in ***(1991) 3 SCC 27***, the Hon’ble Supreme Court has held that an accused cannot be convicted on mere suspicion how so strong it may be. Reference in this connection may be made to the judgment of the Hon’ble Supreme Court in the case of ***Jaharlal*** (*supra*). Paragraph ‘4’ is being reproduced here under for a ready reference.



“4. No doubt the offence is a shocking one but the gravity of the offence cannot by itself overweigh as far as legal proof is concerned. Invariably in such cases a person last seen with the victim, unless otherwise there are circumstances prima facie exonerating him, would be the prime suspect but in the ultimate judicial adjudication suspicion, howsoever strong, cannot be allowed to take the place of proof.”

45. In the light of the aforementioned judgments of the Hon'ble Supreme Court, this Court finds that in the present case, the only circumstance is the suspicion against the accused/appellants. In the present case, PW-11, the Investigating Officer has stated that the mobile phone from which the alleged ransom call was made, was found belonging to one Sanjiv Kumar Singh. The SIM was allegedly used by the appellants/accused in a fraudulent manner for demand of ransom. However, based on the material on record, it appears that the police did not conduct any investigation about this person, Sanjiv Kumar Singh and neither he was examined as Prosecution Witness nor sent up for trial as accused by the Police. The CDR and the CAF shows that there was one conversation which took place between the alleged mobile number-7321072463 and the informant's number- 9304447877. The prosecution however, has not proved that it was the appellants who called from the alleged mobile number. As was admitted by PW-11,



the Investigating Officer, no voice recording was brought forth to show that the demand for ransom was actually made by the appellants/accused themselves.

46. In order to deal with the admissibility of the electronic evidence in the present case which is the Call Details Report and the CAF, it is necessary to delve into the necessary legal provisions of the Indian Evidence Act, i.e., Section 22-A, Section 65-A and Section 65-B of the Act. Section 22-A of the Evidence Act, which deals with the relevance of oral admissions as to contents of electronic records, reads as follows:

“22A. When oral admission as to contents of electronic records are relevant-Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.”

“65A. Special provisions as to evidence relating to electronic record-The contents of electronic records may be proved in accordance with the provisions of section 65B.”

“65B. Admissibility of electronic records.

Notwithstanding anything contained in this Act, any records. information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the



conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.”

The conditions referred to in sub-section;

(1) in respect of a computer output shall be the following, namely:-

a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

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

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

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

(3) Where over any period, the function of



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

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

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

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

d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers.

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

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

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

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



c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

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

(5) For the purposes of this section,-

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

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

c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

47. The Supreme Court in ***Arjun Panditrao Khotkar***

v. Kailash Kushanrao Gorantyal And Ors. [2020] 7 SCR 180

referred to its decision in ***Anvar P.V. v. P.K. Basheer [2014] 11***



S.C.R. 399 where it discussed the provisions of Section 65B of the Indian Evidence Act. The Court made the following observations:

“Section 65B(1) opens with a non-obstante clause, and makes it clear that any information that is 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, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible. The deeming fiction is for the reason that “document” as defined by Section 3 of the Evidence Act does not include electronic records.

22. Section 65B(2) then refers to the conditions that must be satisfied in respect of a computer output, and states that the test for being included in conditions 65B(2(a)) to 65(2(d)) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in sub-sections 2(a) to 2(d) must be satisfied cumulatively.

23. Under Sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the



operation of the relevant device; or a person who is in the management of “relevant activities” – whichever is appropriate. What is also of importance is that it shall be sufficient for such matter to be stated to the “best of the knowledge and belief of the person stating it”.

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.*

48. 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. 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.

49. The CDR/CAF submitted by the Investigating Officer was signed by the District Intelligence Unit which was received through e-mail from the concerned telecom agency/RTMS in the form of computer generated CDR/CAF which has formed the basis of fastening liability on the appellants was not certified in accordance with the law enshrined in Section 65B (5)(a)(b)(c) of the Indian Evidence Act, whereas Section 65B (5)(a)(b)(c) of the Indian Evidence Act states that:

(5) For the purposes of this section,-

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

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

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



appropriate equipment.

50. The prosecution has submitted the certified copy of the mail sent to the authorities which was certified by the District Intelligence Unit but when the law prescribes that the person who has the custody of the electronic device or the person who operates it, is required to certify such copy of the electronic evidence. Further, the prosecution has failed to supply the report directly without any human intervention in compliance of Section 65B(5). In light of the statutory mandate and the decisions of the Apex Court (supra) on the same, this Court is not inclined to accept the admissibility of the CDR and CAF in the absence of the requisite certificate from the persons who had the custody of the mobile phone.

51. Further based on the material on record, the prosecution has submitted that the confessional statements of the accused were recorded by the Investigating Officer on 04.10.2015 at 11 pm and on the basis of the same, the police recovered the dead body of the deceased victim Ravi Kumar on 05.10.2015 at 3 pm. This version of the prosecution witness is very doubtful as the Investigating Officer does not recovered the dead body of the deceased/victim on the same day whereas the confessional statement of the accused/appellant was recorded on 04.10.2015 at



11 pm and the dead body of the deceased/victim was recovered on 05.10.2015 at 3 pm. There is no arrest memo on the record showing the date and time of arrest of the accused persons.

52. In the case of ***Subramanya v. State of Karnataka 2022 SCC Online SC 1400***, Apex Court held as under: -

“82. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:

“27. How much of information received from accused may be proved. — Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

83. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

84. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial



of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc. When the accused while in custody makes such statement before the two independent witnesses (panch-witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch-witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated



under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.”

(emphasis supplied)

53. Whereas in this case, when the confessional statement of the accused/appellants was being recorded, no independent witness was called by the Investigating Officer to lend credence to the confessional statement of the accused/appellants. In such circumstance, the so called confessional statement given by accused/appellants would not be admissible in evidence.

54. Apart from above mentioned lapses which the prosecution case suffers, it is found that no arrest memo has been submitted by the prosecution showing the date and time of arrest of the accused persons. Therefore, the prosecution has failed to prove arrest of the accused persons prior to discovery of the dead body. The Investigating Officer has blatantly stated in his deposition that the accused gave their confessions and on the basis of the same, the police team recovered the dead body of Ravi Kumar from behind a bush on the road near Chak Rasalpur, NH-31, Bihar Sharif. In ***Ashish Jain vs. Makrand Singh and others AIR 2019 SC 546***, Apex Court held that:



“once a confessional statement of the accused is found, on facts, to be involuntary, it would be hit by Article 20(3) of the Constitution of India, rendering such a confession inadmissible. It was further noted that there is an embargo on accepting self-incriminatory evidence, but if it leads to the recovery of material objects in relation to a crime, it is most often taken to hold evidentiary value as per the circumstances of each case. Apex Court further cautioned that if such a statement is made under undue pressure and compulsion from the Investigating Officer, the evidentiary value of such a statement leading to the recovery is nullified.”

55. On a cumulative reading of the evidences discussed here-in-above, this Court is of the considered opinion that prosecution has failed to bring cogent evidences to prove the guilt of the accused-appellants beyond shadow of all reasonable doubts. The essential ingredients of the offence under Sections 364A and 302 IPC is lacking and the link between the kidnapping and murder of victim and role of the accused-appellants in connection with the occurrence in question could not be fully established so as to reach to a conclusion of guilt against the appellants.

56. In result, the impugned judgment of the trial Court is set aside. The appellants are acquitted of the charges giving them benefit of doubt.

57. Both the appellants, Vivek Kumar @ Vivek @



Modi @ Ram Vivek Kumar, Son of Nand Kishore Prasad (Cr. Appeal (DB) No. 822 of 2021) and Ritesh Kumar @ Vikas Kumar @ Vikas @ Ritesh, Son of Mukesh Kumar (Cr. Appeal (DB) No. 99 of 2022) are said to be in custody. They shall be released forthwith, if not wanted in any other case.

58. A copy of this judgment together with the trial Court record be sent back to learned trial Court.

59. Both the appeals are allowed.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

AFR/NAFR	AFR
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