

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.708 of 2017

Arising Out of PS. Case No.-572 Year-2013 Thana- BETTIAH CITY District-
West Champaran

=====

Shobha Devi Wife of late Manmohan Patel Resident of Village- Naraianapur,
Police Station- Bagaha, District- West Champaran.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 808 of 2017

Arising Out of PS. Case No.-572 Year-2013 Thana- BETTIAH CITY District-
West Champaran

=====

BAL KUNWAR MAHTO S/o Late Hiralal Mahto, Resident of Mohalla- Teen
Lalten Chowk, Bhola Babu Colony, P.S.- Bettiah Town, District- West
Champaran.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 855 of 2017

Arising Out of PS. Case No.-572 Year-2013 Thana- BETTIAH CITY District-
West Champaran

=====

Raja Kumar @ Raja Son of Ramprit Chaudhary Resident of Village-
Narainapur, P.S. Bagaha, District- West Champaran.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 708 of 2017)

For the Appellant/s : Mr. Krishna Kant Pandey, *Amicus Curiae*

For the State : Mr. Sujit Kumar Singh, A.P.P.

(In CRIMINAL APPEAL (DB) No. 808 of 2017)

For the Appellant/s : Mr. Bimlesh Kumar Pandey, Advocate

For the State : Mr. Sujit Kumar Singh, A.P.P.

(In CRIMINAL APPEAL (DB) No. 855 of 2017)

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Indian Penal Code, 1860—Sections 302, 364A, 120B—Murder by kidnapping—case based upon Circumstantial Evidence—deceased (son of informant) himself has voluntarily left the house with a view to attend the party of his friend and he was in contact with the informant for three days—there is no eye-witness to the occurrence either of kidnapping or killing—appellant had not been arrested with any amount of ransom nor he was arrested while making any kind of demand nor with the alleged mobile from which the demand was being made—mobile phone was seized from appellant but its CDR was not obtained during investigation—prosecution has failed to prove that the appellant was in contact with the other accused and he had demanded amount of ransom from the informant—from whose mobile phone ransom was demanded that accused was acquitted by Trial Court—knife which was used in killing of the deceased has been discovered at the instance of the accused and it was discovered from an agricultural field which is open and accessible to all—knife was not sent for scientific test by F.S.L. nor there is any reference with regard to the blood-stain over the knife discovered/recovered from the agricultural field—prosecution has failed to produce post-mortem report of the deceased—doctor, who had conducted the post-mortem examination, also not examined—Death Certificate of the deceased was in Nepali Language, it was also not on record/produced—prosecution has failed to prove that victim (deceased) died because of homicidal death and nature of injury sustained by the victim (deceased) as well as the cause of the death of victim (deceased), it is immaterial that the knife discovered at the instance of accused/appellant—merely because knife has been discovered at his instance, it cannot be presumed that the knife was used for killing the victim (deceased)—prosecution has failed to prove that the victim (deceased) has been kidnapped by the appellants and have killed the victim (deceased)—link to connect the appellants with the incident in question is missing and the prosecution has failed to complete the chain of circumstances from which it can be established that the appellants must have committed the alleged offences—judgment of conviction and order of sentence quashed and set aside.

(Paras 28, 31, 41, 42, 44)

Care for 1st paragraph 7th line –kidnapper procedure, 1973

(2024) 3 SCC 481; (2011) 11 SCC 724; (2023) 6 SCC 399; (2024) 8 SCC 149
—Relied upon.

Criminal Trial—Circumstantial Evidence—certain features are required to be complied with, i.e., circumstances from which the conclusion of guilt is to be drawn ‘must be’ or ‘should be’ and not merely ‘may be’ fully established—facts established should be consistent only with the hypothesis of guilt of the accused, i.e., to say they should not be explainable on any other hypothesis except that the accused is guilty—there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

(Para 38)

Indian Evidence Act, 1872—Section 27—statement of accused recorded by Police officer, under Section 27 Act, 1872 is basically a memorandum of confession of the accused recorded by the investigating officer during interrogation which has been taken down in writing—confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence, therefore, when the investigating officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him thereby the investigating officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact.

(Para 40)

Criminal Trial—recovered object—importance of discovery of the material object at the disclosure of the accused, such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused—thereafter, burden lies on prosecution to establish a close link between discovery of the material objects and its use in the commission of the offence.

(Para 40.1)

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BAL KUNWAR MAHTO S/o Late Hiralal Mahto, Resident of Mohalla- Teen Lalten Chowk, Bhola Babu Colony, P.S.- Bettiah Town, District- West Champaran.

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CRIMINAL APPEAL (DB) No. 855 of 2017

Arising Out of PS. Case No.-572 Year-2013 Thana- BETTIAH CITY District- West Champaran

Raja Kumar @ Raja Son of Rampriti Chaudhary Resident of Village- Narainapur, P.S. Bagaha, District- West Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 708 of 2017)
For the Appellant/s : Mr. Krishna Kant Pandey, Amicus Curiae
For the State : Mr. Sujit Kumar Singh, A.P.P.
(In CRIMINAL APPEAL (DB) No. 808 of 2017)
For the Appellant/s : Mr. Bimlesh Kumar Pandey, Advocate
For the State : Mr. Sujit Kumar Singh, A.P.P.
(In CRIMINAL APPEAL (DB) No. 855 of 2017)
For the Appellant/s : Mr. Bimlesh Kumar Pandey, Advocate
For the State : Mr. Sujit Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 30-01-2025

All these appeals arise out of common impugned judgment of conviction dated 06.03.2017 and order of sentence dated 16.03.2017 passed by learned 6th Additional District and Sessions Judge, West Champaran at Bettiah in Sessions Trial No. 59 of 2014, arising out of Bettiah Town P.S. Case No. 572 of 2013 (G.R. No. 3979 of 2013). All these appeals are filed under Section 374(2) of the Code of kidnappers Procedure, 1973 (hereinafter referred as 'Code'), whereby the concerned Trial Court has convicted and sentenced the present appellants for the offences punishable under Section 302, 364A, 120B of the Indian Penal Code and sentenced them to undergo rigorous life imprisonment for conviction under Section 302 of the Indian Penal Code and fine of Rs. 10,000/-, further sentenced to undergo rigorous life imprisonment for conviction under Section 364A of the Indian Penal Code and a fine of Rs. 10,000/-, and further sentenced to undergo rigorous life imprisonment for conviction under Section 120B of the Indian Penal Code and a fine of Rs. 10,000/- and, in case of default of payment of fine, the same shall be recovered from the property of the appellants.



1.1. Since, all these appeals arise out of common judgment and order, they have been heard together and are being disposed of by this common judgment.

FACTUAL MATRIX:-

2. The prosecution story, in a nutshell, is as under:-

2.1. The informant has stated, in his *fardbeyan*, that his son Ranjeet Kumar left home saying that he was going to his friend's party on 25.08.2013. He talked on his mobile number on 26.08.2013. He said that he would come home tomorrow. When he talked again on 27.08.2013, he said that he was unwell. He would come home by evening on 28.08.2013. His mobile number got switched off after 02:00 p.m. on 28.08.2013. He went to the party after talking on mobile number 9006285020. Again, on 30.08.2013, after 13 attempts, he contacted his mobile no. 7277641828, but some other person picked up the phone. He asked him to let him talk to his son on which he replied that he had kidnapped his son and if they want to get his son back safe and sound, he should keep ready Rs. 3 lakhs and that he will tell the place where he can send it. Meanwhile Rs. 2,000/- and Rs. 5,000/- were withdrawn from Bagaha ATM on 27.08.2013 and 29.08.2013 respectively. He was afraid that some untoward incident has happened to his son or that he has been kidnapped.



2.2. After registration of the F.I.R., the Investigating Officer started the investigation and, during the course of the investigation, he had recorded the statement of the witnesses and thereafter filed the charge-sheet against the appellants/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Trial No. 59 of 2014.

2.3. Before the Trial Court, the prosecution had examined following 16 witnesses:-

PW-1	Kanhaiya Sah
PW-2	Sushila Devi
PW-3	Neha Kumari
PW-4	Suresh Sah
PW-5	Puja Kumari
PW-6	Subodh Sah
PW-7	Mahesh Prasad Yadav
PW-8	Om Prakash Chauhan
PW-9	Anil Ram
PW-10	Kameshwar Prasad
PW-11	Vimalendu Kumar
PW-12	Narendra Kumar
PW-13	Rajendra Kumar Pandey
PW-14	Abhay Kumar
PW-15	Nawal Kishore Singh
PW-16	Srikant Ram

3. Before proceeding further, it is pertinent to observe at this stage that the learned counsel, who had filed *vakalatnama* on behalf of the appellant is not appearing in the matter



and he is not present when the matter is called out. Further, the matter was adjourned from time to time. However, nobody appears on behalf of the appellant Shobha Devi in the present appeal. The present appeal is pending since the year 2017 and the appellant-lady accused is in custody since long. Therefore, we requested Mr. Krishna Kant Pandey to assist the Court and, with his consent, he was appointed as an *Amicus Curiae*.

3.1 In Criminal Appeal (DB) No. 708 of 2017, we have heard Mr. Krishna Kant Pandey, learned *Amicus Curiae* for the appellant and Mr Sujit Kumar Singh, learned A.P.P. for the Respondent-State.

3.2. In Criminal Appeal (DB) No. 808 of 2017, we have heard Mr. Bimlesh Kumar Pandey, learned counsel for the appellant and Mr Sujit Kumar Singh, learned A.P.P. for the Respondent-State.

3.3. In Criminal Appeal (DB) No. 855 of 2017, we have heard Mr. Bimlesh Kumar Pandey, learned counsel for the appellant and Mr Sujit Kumar Singh, learned A.P.P. for the Respondent-State.

SUBMISSIONS ON BEHALF OF THE APPELLANTS:-



4. Learned counsel appearing on behalf of the respective appellants would mainly submit that the present is a case of circumstantial evidence and there is no eye-witness to the incident in question. The prosecution has failed to complete the chain of circumstances from which it can be established that the appellants herein have committed the alleged offences despite which, the Trial court has passed the impugned judgment and order. Learned counsel have referred the deposition of the prosecution witnesses and the other documentary evidence. Thereafter, it has been submitted that, as per the case of the informant, his son (victim) left his house on 25.08.2013 to attend party hosted by one of his friends and thereafter continued in touch with his family members telephonically for a few days. Thus, it cannot be said that the victim was kidnapped by the accused and, in fact, he had left his house on his own. Learned counsel, at this stage, submits that, in the present case, dead body of the victim has not been recovered nor *post-mortem* examination report of the victim has been brought on record. Further, the death certificate of the victim has not been duly proved. Thus, the prosecution has miserably failed to prove the death of the victim and the cause of death of the victim.

5. Learned counsel further submits that PW-1 has stated that the Police caught Bal Kunwar Mahto behind Bajaj



Agency at Teen Lalten Chowk. However, the informant (PW-4) has given an altogether different story and has stated that he had gone at Teen Lalten Chowk with the Police on the call of the kidnappers but the kidnappers made a call saying that there is crowd at the said place and asked him to come to Shiv Temple near Sagar Pokhara. Further, when the informant and the others reached Sagar Pokhara, then again they cancelled the programme and called them to Bhola Babu Colony and again the kidnappers called the informant in the bush behind the colony but the administration stopped the informant and the Police went ahead and caught one person namely Bal Kunwar Mahto and from there two persons managed their escape. Learned counsel further submits that PW-11 has deposed before the Court that he had apprehended the accused Bal Kunwar Mahto at Bhola Babu Chowk who had come to collect the ransom. Learned counsel, therefore, contended that the prosecution witnesses are not even consistent with regard to the place from where the appellant Bal Kunwar Mahto has been apprehended by the Police. It is further submitted that so far as the appellant Bal Kunwar Mahto is concerned, there is no evidence led by the prosecution connecting his involvement with the other co-accused. There is no telephone call made by the appellant to other accused nor to the victim or the informant. No demand was made by him and, in fact, he was



apprehended just at the distance of 500 meters from his house while urinating. It is further submitted that, while giving statement under Section 313 of the Code, the appellant Bal Kunwar Mahto has specifically stated about the aforesaid aspect.

6. Learned counsel thereafter submitted that so far as the appellant Raja Kumar @ Raja is concerned, the investigating agency initially made him as a witness and the statement of the said appellant was recorded under Section 164 of the Code. In the said statement, he had specifically stated that Manmohan Patel @ Sohan Patel had come to his house with Ranjeet on Sunday and had dinner and thereafter Sohan, Ranjeet and Shobha slept in one and the same room and on the following morning, they returned. He has further stated that Manmohan Patel @ Sohan Patel had introduced Ranjeet as his friend. It is submitted that, in the said statement, the said appellant has specifically stated that he had no knowledge with regard to the kidnapping of Ranjeet. At this stage, it is also submitted that the appellant Raja Kumar @ Raja was thereafter implicated as an accused and thereafter, on the basis of confessional statement of the accused, it is alleged that a knife has been discovered from an agricultural field which is open and accessible to all. It is further submitted that the prosecution has also failed to prove that the said knife which was recovered at the instance of the appellant Raja



Kumar @ Raja, was used for killing the victim and that the appellant had killed the victim. It is further submitted that the said knife was not sent for necessary analysis to the F.S.L. nor any blood-stain of the deceased could be proved over the knife. At this stage, it is also contended that it is improbable that the accused persons would have taken the risk to take back the knife from Nepal to Bagaha (West Champaran) after crossing the Indo-Nepal border covering a distance of more than a hundred kilometers after committing the so-called occurrence. Learned counsel, therefore, urged that the said appellant is also falsely implicated in the incident in question.

7. Learned counsel would further submit that no CDR has been proved to show that the appellants herein are involved in the alleged occurrence and there are major contradictions in the deposition of the prosecution witnesses. It is also submitted that PW-7 (investigating officer) has deposed that ransom was demanded from the mobile of accused Pramod Chaudhary bearing SIM No. 9939975553. However, the said co-accused Pramod Chaudhary has been acquitted by the Trial court since no call details report has been legally proved by the prosecution in view of the provisions contained in Section 65B(4) of Indian Evidence Act. Learned counsel further submits that none of the Police officials have stated regarding confession of any of the appellants with regard to the



killing of the victim and of making demand of ransom. Learned counsel, therefore, urged that the prosecution has failed to prove the case against the present appellants beyond reasonable doubt despite which, the Trial court has recorded the order of conviction and, therefore, the same is required to be quashed and set aside.

8. Learned counsel Mr. Bimlesh Kumar Pandey appearing for the appellants has placed reliance upon the following decisions in support of his submissions:-

(i) **Raja Naykar Vs. State of Chhattisgarh**, reported in **(2024) 3 SCC 481**.

(ii) **Mustkeem @ Sirajudeen Vs. State of Rajasthan**, reported in **(2011) 11 SCC 724**.

(iii) **Laxman Prasad @ Laxman Vs. State of Madhya Pradesh**, reported in **(2023) 6 SCC 399**.

(iv) **Babu Sahebgouda Rudragoudar & Ors. Vs. State of Karnataka**, reported in **(2024) 8 SCC 149**.

9. Learned *Amicus Curiae* appearing on behalf of the appellant Shobha Devi (in Criminal Appeal (DB) No. 708 of 2017) has also supported the submissions canvassed by the learned counsel who is appearing in two other appeals. However, in addition to that, learned counsel would contend that so far as the appellant Shobha Devi is concerned, she has been implicated merely because



she is wife of an accused Manmohan Patel @ Sohan Patel. It is contended that the said co-accused Manmohan Patel died during the pendency of the trial. He has also submitted that the prosecution has failed to connect the appellant Shobha Devi with the incident in question and there is no evidence with regard to the kidnapping of the victim by the appellant nor there is any evidence led by the prosecution by which it can be proved that the appellant Shobha Devi has killed the deceased at Nepal. Learned counsel, therefore, urged that the appeal filed by the appellant Shobha Devi be allowed by quashing and setting aside the impugned judgment.

SUBMISSIONS ON BEHALF OF THE STATE:-

10. On the other hand, learned A.P.P. has opposed the present appeals. Learned A.P.P. has submitted that though it is a case of circumstantial evidence, the prosecution has proved the case against the appellants/accused beyond reasonable doubt. Learned A.P.P. would submit that though initially, victim left the house voluntarily. Thereafter he was kidnapped by the accused and by making telephone call to the family members of the victim, demand for ransom was made. It is further submitted that the appellant Bal Kunwar Mahto was apprehended by the Police and two other accused fled away from the place. It is further submitted that so far as the appellant Raja Kumar @ Raja is concerned, initially he was



shown as a witness and his statement was recorded under Section 164 of the Code, thereafter it has been revealed that he is also involved in the incident in question and, therefore, on the basis of the confessional statement of the accused, he was arrested and thereafter the knife which was used in commission of the crime was discovered at the instance of the said appellant. Thus, when the knife has been discovered, the prosecution has proved that the appellant has been involved with the other accused in committing the alleged offences. It is further submitted that so far the appellant Shobha Devi is concerned, she is the wife of the other co-accused Manmohan Patel @ Sohan Patel. There is ample evidence led by the prosecution from which it can be established that Manmohan Patel @ Sohan Patel has committed the alleged crime. However, he died during the pendency of the trial. The present appellant Shobha Devi is also involved with her husband in committing the alleged offences and, therefore, the Trial court has not committed any error while passing the impugned judgment and order of conviction of sentence. Learned A.P.P., therefore, urged that all these appeals be dismissed.

**DISCUSSION WITH REGARD TO THE
DEPOSITION OF THE PROSECUTION WITNESSES:-**

11. PW-1 Kanhaiya Sah has stated, in his examination-in-chief, that the informant Suresh Sah is his uncle. He



went to the Police Station and recorded his statement and his uncle got the case registered. He has further stated that the location of the mobile was found in Narkatiaganj. When the Police Inspector asked if he had any relatives there, he refuted it. No one was caught from Narkatiaganj. The accused said on the phone that they will only allow them to talk to Ranjeet only after depositing Rs. 20,000/- in his account. They deposited Rs. 20,000/- in Ranjeet's account. Ranjeet had an ATM card and the accused withdrew money from the ATM card in three installments. Later on, the Police caught three accused namely Shobha Devi, Pramod Chaudhary and Raja. Raja was released after Police interrogation. When the accused called again regarding money, they went to give the money behind the Bajaj Agency at Teen Lalten Chowk. Police also went there with them in civil attire. While giving the money, the Police caught Bal Kunwar Mahto. Bal Kunwar told that Manmohan, Raja and Nandkishore ran away. Later, Raja and another accused Manmohan were caught by the Police. Manmohan told that he (the victim) was taken from Bagaha to Birgunj and was murdered behind the Medical College. Three knives, two mobile phones and a SIM card were recovered from Manmohan. On getting the information, they went to Birgunj with DSP. At Birgunj Police Station, they were shown Ranjeet's photo, clothes, cap and slippers of three men.



11.1. In his cross-examination, he has stated that his statement was recorded by the Police four days after the incident. His statement was recorded four days after the kidnapping.

12. PW-2 Sushila Devi is the mother of the deceased. She has deposed, in her examination-in-chief, that her son Ranjeet Kumar left home saying that he was going to a friend's party. He told her on the phone in the evening that he would be home at night. Her son did not come home at night. Then, in the morning, when her husband called on her son's mobile, he said that if he does not come by 10:00 a.m., he will come by evening. Her son did not come in the evening either. On the third day, when she called, he told her that he was not feeling well and that he had a stomachache. When she asked him about the medicine, he told her affirmatively that he had taken the medicine and that he would come by the evening but he did not come. Then when she called, her son's mobile was switched off. On the fourth day, when she called again, someone else picked up the call and said that if they want the boy safe and sound, then they should give him Rs. 3 lakhs as ransom and he will release the boy. When they asked where to bring the money, he said that he will tell them where to bring the money. At first, he called and told them to bring the money to Narkatiaganj. Her husband and brother-in-law's son went to Narkatiaganj after taking the money, a



call came and told them to take the money and return since a man was after them. He will inform again regarding the place and time. Like this, the kidnapper used to call every two to four days and call them somewhere and send them back without taking any money. When they informed Police about this, raids started and, during this time, Shobha Devi and Pramod Chaudhary were caught from behind the Bagaha jail. One accused was caught from Teen Lalten. Her son was not found. Raja was also caught by the Police. When Manmohan Patel and Raja were caught, they gave statements that they had taken the boy to Birgunj and murdered him behind the Medical College. The knife was recovered.

12.1. In her cross-examination, she has stated that after her son left, whenever they would receive the call from kidnappers, both she and her husband used to talk to them. The kidnappers had talked to her 2-3 times. Further, she has stated that the Police took her statement. She told the Police that she had also received the kidnapper's phone thrice and that they had demanded ransom. She also told the Police that, the kidnappers used to call them at different places and send them back without taking any money. Her husband had informed the Police and she had also gone along with him. Pramod Chaudhary was arrested from behind the Bagaha jail. This was known to them by the administration. When



they went to the Police Station, the Police informed them. When Bal Kunwar was caught, he told about Ranjeet's murder. She gave the number to the Police from which the kidnappers used to call them. She gave this information to the Police within 5-7 days. She had talked to Manmohan and Pramod over the phone. She has further stated that she and her husband kept roaming around for a month on the calls of the kidnappers. The accused persons had no previous enmity with her son. She has further stated that she does not remember as to how much money was given to Iqbal, who was the travel agent. Both the husband and wife received information about Ranjeet's murder at the Police Station. She has denied the fact that everyone were enemies of her son Ranjeet and that there was a dispute with some people regarding the transaction of money for taking him abroad due to which Ranjeet disappeared somewhere and it cannot be said that Ranjeet has been murdered and that she has given wrong names of the accused by misleading the Police.

13. PW-3 Neha Kumari has stated, in her examination-in-chief, that the incident is of 25.08.2013. She has further stated that the Police caught one of the accused near Teen Lalten Chowk during transaction of money. He told his name was Bal Kunwar Mahto. He told the name of the ones who ran away as Manmohan and Raja. Then, he called them to Bagaha and



Narkatiaganj with money but asked them to return as the Police was after them. Police raided and caught Shobha Devi and Pramod Chaudhary from Bagaha. Other people ran away. Later, Manmohan and Raja were caught. Shobha Devi and Pramod were caught with ATM pin and mobile. Manmohan and Raja told them that they have murdered their son behind the Medical College at Birgunj. When the Police told her father, he went to the Police at Birgunj. Her elder brother's clothes and slippers were found there which was recognized by her father.

13.1. In her cross-examination, she has stated that the Police took her statement which she gave 8-9 days after the incident. She had also stated that when the Police raided, Shobha Devi and Pramod Chaudhary were caught. She had also stated that Manmohan and Raja were also caught. She had stated, in her statement, that ATM, PAN card and mobile were recovered from the accused persons. She had also stated that Manmohan and Raja had told them that they have murdered their son behind the Medical College in Birgunj. She had also stated that when the Police informed her father, he went to Birgunj Police Station where her brother's clothes and slippers were found which was recognized by her father. She knew her brother's friends but does not remember their names. He had 4-5 friends who used to come to her house. Her elder brother did



not tell her the name of that friend to whose house he was going to attend the party. Her father had talked to her elder brother on phone. When her elder brother did not come for two days, she did not ask her father which friend's house her elder brother had gone to. She did not know where the friends were from. Her father did not tell her which friend's house her elder brother had gone to. She has further denied the fact that her brother had many enemies and that her brother was a criminal type and that is why, he did not even inform at home whose house he was going.

14. PW-4 Suresh Sah is the informant of this case. He has stated, in his examination-in-chief, that Ranjeet Kumar was his son. The incident occurred on 25.08.2013 when Ranjeet left the house saying that he was going to a friend's party and would return by evening. When he did not return by evening, he called him and his son said that he would return on the next day by 10:00 a.m. On 26.08.2013, at 01:00 p.m., when he came home to have lunch, his son had not returned by then. He called him again and his son said that he would return by evening. When he came home in the evening, he said over the phone that he was unwell and would return by 10 o'clock in the morning on the next day. When his son did not come till 27.08.2013, he called him again on which his son replied that he would come by 10:00 a.m. on 28.08.2013. He did not come



till 10:00 a.m. and when he came to have lunch in the afternoon, he called his son again and he said that he would come by evening. He did not come till evening on 28.08.2013 and when he called him, his mobile was switched off. On 29.08.2013, when he tried to call him the whole day, his mobile was switched off. On 30.08.2013, after continuous efforts, his son's phone rang at 08:00-08:15 a.m. but an unknown person picked up the phone and told him that he had kidnapped his son and if he wants his son's safety then he has to pay a ransom of Rs. 3 lakhs. After that, he made a request to talk to his son on which kidnapper replied him in negation that he will not be able to make a conversation with his son and that his son is at a safe place and that no network worked there. After that, the kidnapper said that he will let him talk to his son on the next day on the condition that he will have to bring Rs. 3 lakh. Further, the kidnapper told him to prepare the money and that he will tell him the place. On 01.09.2013, he gave a written report to the Police Station after which Police came to his house and recorded his statement. On 02.09.2013, the kidnappers called him and told him to bring the money to Bettiah Railway Station and give money in one hand and take the boy with the other hand. He called the police and told them everything and went to the Railway Station with the Police. After an hour, the kidnappers called and told him to return home as they



cannot come. On the same day at 02:00 p.m., they called again and told him to catch the passenger train in the evening and come to Gorakhpur. He then informed the Police. When the senior officer of the Police Station, he and his nephew Kanhaiya Sah reached Kumarbagh by train, the kidnappers called on his mobile and told him to go back since the Police administration was with them. After that, he came back. The kidnapper's had used the SIM card of his son. On 03.09.2013, he received a call from his son's SIM card asking him to transfer the money to his account as soon as possible. His son will withdraw the money and will give it to him. He informed the Police about everything. He went to SBI, Bettiah Bazar Branch to deposit the money but the bank was not accepting Rs. 2 lakh without PAN card. After this, he went to Kalibagh, where the Inspector told him to deposit at least Rs. 20,000/- in his account, so he deposited Rs. 20,000/- in the account. Then the kidnappers called and he informed them about depositing Rs. 20,000/- in the bank. When he got the passbook printed, he came to know that these people had withdrawn all the money from the ATM at Bagaha. The kidnappers Shobha Devi, Pramod Chaudhary and Raja were caught on the basis of photo from Bagaha ATM. His ATM card, Ranjeet Kumar's PAN card and Ranjeet's passport photocopy, LAVA mobile, clothes, bag and some documents were recovered from the same



place where the accused were caught. The second kidnapper called him again on his mobile and told him to release an innocent boy who has been caught. He has stated that the kidnapper had said on the mobile that if they do not release that innocent person then they will slit the veins of his son and throw him away. He had recorded it on mobile and then played the said recording to the Police administration. After this, FIR was lodged. After 3-4 days, he got another call from his son's mobile telling him to give them the money and then take his son from Teen Lalten Chowk. The kidnappers had made this call from Ranjeet Kumar's phone. After that, he went to the Police Station and played the recording of his mobile. They told him that they will come to their house at 12 o'clock and take him along with them. He took the money and sat on the rickshaw. The administration was also with him. When they reached Teen Lalten Chowk, the kidnapper called again from Ranjeet's mobile saying that there is a lot of crowd at Teen Lalten Chowk, and that they should come near Sagar Pokhara Shiva Temple. When they reached Sagar Pokhara, the call came again telling him come to Bhola Babu's colony. When they reached there, the kidnappers called again and told him to come wearing a *saree* behind the colony. The administration forbade him to go there. The police administration itself went ahead of him. From there, Bal



Kunwar Mahto was caught and two men ran away. Bal Kunwar himself told the name of Manmohan Patel and another person that ran away. The police chased the escapees but they could not be caught. Police informed him and called him to Mufassil Police Station and DSP showed him the photograph that Manmohan Patel, Shobha Devi, Raja, Pramod Chaudhary and Bal Kunwar took the victim behind Birgunj Medical College and killed him. A day after this, his nephew Kanhaiya Shah went to Birgunj Police Station and inspected the place where his son was murdered. The boy's clothes, shoes and cap were found there. In this case, the accused Raja stated that a knife was recovered from the dam of the field.

14.1. In his cross-examination, he has stated that his son Ranjeet used to work in Russia. His son had returned from abroad in July, 2013. His passport was made through an agent and his visa was also done through an agent. After his son's disappearance, he did not inform the agent as his son had to go abroad again. He came to know about the kidnapping at around 08:00 a.m. on 30.08.2013. He did not give any information to the Police on that date. He informed the Police on 31st August in the afternoon. He has further stated that his son did not tell him the name of which friend's party he was going to. He did not tell him where he was going. The Police did not show him the CCTV footage



of the ATM booth. He got the Death Certificate which was in Nepali language. The Police told him that they had caught the accused on the basis of CCTV footage. He has further stated that the money was withdrawn from ATMs from Bagaha and Narkatiaganj. He did not know any girl from Kalibagh named Muskan. He was not aware that his son was in a love affair with a girl named Muskan from Kalibagh. He has denied the fact that he and Subodh had the knowledge about the love affair. He has denied the fact that because of a girl named Muskan, his son went to Motihari and went away from there.

15. PW-5 Pooja Kumari is the sister of the deceased Ranjeet Kumar. She has stated, in her examination-in-chief, that her brother Ranjeet left home saying that he was going to a party at his friend's house. He did not return from there. For two days, father talked to him on phone and he said he would come tomorrow morning but he did not come. After that, her brother's mobile was switched off. After that, her father called and some criminal picked up the phone and said that they have kidnapped Ranjeet and they want a ransom of Rs. 3 lakhs or else they will kill him. Her father filed a case at the Police Station. The Police came and started the investigation. After investigation, the police caught Shobha Devi and Pramod Chaudhary from Bagaha. She already knew Shobha Devi



because she lived at Cantonment Chowk. Mobile, PAN card, ATM card and photocopy of passport were recovered from her. Then, the criminals called and demanded money at Station Chowk. Her father went to give money. They did not take the money there. Again, he was called to Teen Lalten Chowk where the accused Bal Kunwar was caught and the others fled. The accused persons also called them to Narkatiaganj. The accused Manmohan and Raja were also caught by the Police. Manmohan said that they have murdered Ranjeet near Birgunj Medical College. Her brother's clothes, shoes, cap, etc., were found there.

15.1. In her cross-examination, she has stated that her statement was recorded at the Police Station. The Police recorded her statement at home five days after Ranjeet had left.

16. PW-6 Subodh Sah has stated, in his examination-in-chief, that Ranjeet was his friend. When he went to Suresh Sah's house, the Police interrogated him there. He told him that, before the kidnapping, a girl name Shobha Kumari used to call him on his mobile phone. He asked him to make him talk to the girl. When he talked to her and asked her name, the girl told him that her name was Muskan and that she had passed intermediate. He had not seen the girl but had only seen her photo. Ranjeet showed him the photo. He



recognizes the girl who is standing in the court dock (the girl is the accused Shobha Devi).

16.1. In his cross-examination, he has stated that after the kidnapping of Ranjeet, he told Ranjeet's father that he used to talk to a girl named Muskan whose house is near Kalibagh.

17. PW-7 Mahesh Prasad Yadav is the Investigating Officer of this case. He has stated, in his examination-in-chief, that on 01.09.2013, he was posted as Station Incharge at Kalibagh Police Station. The informant and the witness told that before leaving his house, the kidnapped Ranjeet Kumar had talked to mobile number 9006285920 from his Mobile no. 7277651828. On tracing the call of mobile number 9006285920, it was found that this number is in the name of Nazmul Nisha, PO- Mathiya, Ramnagar. To verify this, he went to the house of Nazmul Nisha and took her statement where she told that when her son was going to Jammu with the mobile phone of this number, the mobile got lost in the train. On obtaining the CDR of the mobile of the kidnapped person, it was found that on 25.08.2013, from 12:21 hrs. to 13:23 hrs. of 27.08.2013, his tower location was at Bagaha. On taking out the CDR of the number 9006285920 from which the kidnapped person's mobile made the most calls, it was found that its tower location was also at Bagaha. The statement of the informant was again taken wherein the



informant told that in order to save his son's life and due to fear of criminals, he had deposited Rs. 20,000/- in his account number 32591297578 (SBI) which the criminals withdrew from the ATM in three installments from Narkatiaganj and Bagaha. The account was of the informant whose ATM card was taken by the informant's son. He went to Bagaha SBI and found number 1667 and 1669. On 30.08.2013, many calls were made to mobile no. 7765005716 from mobile no. 7604096106. On obtaining and observing the call details of 7654096106, it was found that many calls were made to mobile no. 9939975553. On taking out the CAF of mobile no. 7765005716, it was found that the said SIM belongs to Manmohan Singh, s/o Nagina Singh, r/o- Baswalia Refugee Colony, P.S.- Bettiah. The photograph of that person was also found in this CAF. On showing that photograph to the spy, the spy told that the photograph is of criminal Manmohan Patel @ Sohan Patel, who was a resident of Patel Nagar, Bettiah and was arrested in a kidnapping case in the past. After studying the tower location of all the above mentioned SIMs, it was found that he is in Bagaha. After contacting the spy and showing him the photograph of Manmohan, it was found that he was residing in the house of Rampreet Chaudhary, near Bagichak, east of Narayanpur Mohalla. The spy also informed that Pramod Chaudhary, brother-in-law of Rampreet Chaudhary, was seen with him. After



that, Pramod Chaudhary was arrested at Bagaha and when he was searched, a Micromax mobile was recovered from him in which a SIM card with the number 9939975553 was found. The SIM Card of this mobile was seized by preparing a Seizure List which is marked as Exhibit-2. Pramod Chaudhary gave his confessional statement which he recorded and is marked as Exhibit-3. In his confessional statement, he had stated that he had asked for ransom and that Manmohan @ Sohan Patel took out the money from the ATM and told him that he would give him Rs. 2,000/- from the withdrawn money. He also told him that Manmohan would meet him at his sister Sheesham Devi's house. On the basis of the information provided by the accused Pramod Chaudhary, search and raid was conducted at Sheesham Devi's house where Manmohan @ Shohan Patel's wife Shobha Devi and Sheesham Devi's son Raja Kumar were found. On searching, an extension company mobile was found from Raja Kumar's pocket whose IMEI No. is 35577605209406/3 & 35577605209406/1 in which Uninor Sim no. 8936049919 was found. It was seized by preparing a Seizure List in the presence of two independent witnesses which was marked as Exhibit-2/9. After that, he prepared two separate Seizure Lists of the items recovered after searching the room which is marked as Exhibit-2/b & 2/c. He recorded the confessional statement of Shobha Devi which is marked



as Exhibit-3/9. The statement of Raja Kumar was recorded in the court under Section 164 of the Code. During the investigation, it was found that Ranjeet Kumar was killed by the kidnappers. Hence, an application was filed in the court to add Section 302 of I.P.C. On 20.09.2013, the accused Shobha Devi was taken on Police remand and based on the information received from her, the mobile phone of the kidnapped person was recovered by S.I. Kameshwar Prasad of Kalibagh O.P. Shobha Devi's confessional statement was again recorded by ASI Kameshwar Prasad which was marked as Exhibit-3/b.

17.1. In his cross-examination, he has stated that Pramod Chaudhary was arrested after evidence against him was found. Intelligence sources informed that Pramod Chaudhary also lives with Manmohan. In Para-17, the witness Subodh has stated that Ranjeet used to talk day and night with a girl named Muskan who was from Kalibagh. After Subodh's statement, he enquired about a girl named Muskan in Kalibagh but did not find her. He has further stated that the demand for ransom was made from Pramod Chaudhary's SIM number 9939975553 which is mentioned in Para-40 of the Case Diary. After the statement of Raja Kumar was recorded under Section 164 of the Code, he was released.



18. PW-8 Om Prakash Chauhan is also the Investigating Officer of this case. In his deposition, he has stated that, on 12.09.2013, he was posted at Town Police Station, Bettiah. Under the leadership of S.H.O. Vimalendra Kumar, on 12.09.2013, he went to Teen Lalten Chowk, Bettiah as a member of the raiding team in connection with this case. At that place, the accused Bal Kunwar asked the informant to come with the ransom money. They arrested Bal Kunwar from Teen Lalten Chowk. After arresting him, they raided the accused at Bhairoganj Railway Station in connection with this case. At that place, the accused Sohan Patel @ Manmohan Patel was caught.

18.1. In his cross-examination, he has stated that the accused Bal Kunwar was arrested at Teen Lalten Chowk 100 feet Bank Road. Bank Road is stated to be the busiest road of Bettiah. Raja Mahto was arrested from Bagaha. He did not know in whose name the seized mobile was at the time of arrest. They did not take the independent witnesses with them. The Seizure was made in front of the independent witness. He has denied the fact that Bal Kunwar was arrested on the basis of suspicion as they did not find the real culprit whom they went to arrest.

19. PW-9 Anil Ram has stated, in his examination-in-chief, that he was posted as SHO in Shanichari Police Station on



01.09.2013. He went to Bagaha on the orders of the senior police official to assist in the raid during his duty. Vimalendra Kumar and others were in the raiding party. During the raid, the accused Raja was caught and goods were also recovered.

19.1. In his cross-examination, he has stated that no articles were recovered from Raja in his presence.

20. PW-10 Kameshwar Prasad was posted at Kalibagh O.P. on 27th May, 2013. He had written the confessional statement of the female accused Shobha Devi on the instructions of the investigator of this case which is marked as Exhibit-3/b. On the basis of that confessional statement, when a raid was conducted at the house of Rampreet Chaudhary at Bagaha, a mobile phone of Lava company was recovered which was the mobile of the deceased. At that time, there was no SIM card in it.

20.1. In his cross-examination, he has stated that the confessional statement and Seizure List were prepared by him. He has denied the fact that he has no evidence that the mobile phone recovered from the house of Rampreet belonged to the deceased.

21. PW-11 Bimalendra Kumar was posted in Town Police Station, Bettiah on 08.09.2013. On that day, the investigating officer of Town Police Station Case No. 572/13 took his statement. He had helped in the raids in that case. They conducted raids with



regard to various articles in Bettiah city, Bagaha and Bhairoganj. He took over the charge of investigation on 02.09.2013. During the investigation, the accused Bal Kunwar from Bhola Babu Colony was arrested on 12.09.2013. On that day, the deceased's father received a call from the deceased's mobile asking him to bring the ransom money. The accused who had come to collect the ransom money was cornered and arrested near Bhola Babu Chowk. When he was caught, he told his name as Bal Kunwar Mahto. During the investigation, a black and red colour mobile phone with SIM no. 8227084900 was found in his possession. On 15.09. 2013, ASI Om Prakash Chaudhary along with the armed force reached Bhairoganj and arrested Manmohan Patel @ Sohan Patel, who is the accused in the case. A black colour Nokia mobile set with SIM no. 7277641828 was recovered from him and a grey colour Samsung mobile set with SIM no. 7654096106, three 100 rupees note, a black colour Lava charger, black and red colour checkered saree, green colour printed saree, pink colour petticoat and other inner garments, creams etc. were found in a white coloured bag. On the basis of his confessional statement, they left for Bagaha. In the confessional statement, he had said that he gave the knife to Raja with which the deceased Ranjeet was murdered. The confessional statement is in his handwriting and also bears the signature of the accused and is marked as Exhibit-3/c.



On 16.09.2013, he went to Bagaha Narayanpur and waited for Raja. When Raja arrived, he was taken into custody and questioned. In his statement, he told that he had hidden the knife with which the murder was committed, under the ridge of the field at a little distance from the house. On the basis of the statement of the accused, a red coloured knife with an iron handle was recovered. A Seizure List was prepared for the same. The confessional statement of the accused Raja is marked as Exhibit-3/b. The Seizure List of knife is marked as Exhibit-2/b. The Seizure List of the items recovered from the possession of Manmohan Patel @ Sohan Patel in which the deceased's mobile SIM was also recovered is marked as Exhibit-2/c.

21.1. In his cross-examination, he has stated that the informant in this case had informed him to arrest Manmohan Patel from Teen Lalten Chowk. They had gone to arrest him. The call was made from the informant's son's mobile SIM and ransom money was demanded. The informant told that Manmohan Patel had demanded money. He did not obtain the details of the mobile phone etc. recovered from Bal Kunwar Mahto during his investigation. He had prepared the Seizure List of the items recovered from Bal Kunwar Mahto.

22. PW-12 Narendra Kumar has stated, in his examination-in-chief, that the purse which was seized was of black



colour and has a PAN card in the name of Sohan Patel and a voter ID card of Sohan Patel and some document in the name of Dharmendra Kumar Mishra, a voter ID card in the name of Sheesham Devi and blood group in the name of Ranjeet Kumar.

22.1. In his cross-examination, he has stated that a red knife was recovered in this case. A black file bag was found which contained some papers. It contained Ranjeet Kumar's slip of invoice and a photocopy of the invoice. Ranjeet Kumar's photocopy of the Bihar School Examination Board's incharge and a blue colour diary were there which is a bulletin and a photocopy of the certificate and passport were recovered from Rampreet Chaudhary and this entire file was marked as Exhibit-VIII.

23. PW-13 Rajendra Kumar Pandey has stated, in his examination-in-chief, that on 10.09.2013, he was posted as a Judicial Magistrate in Bettiah. He recorded the statement of witness Raj Kumar under Section 164 of the Code as per the instructions of the Additional District Magistrate, Bettiah.

24. PW-14 Abhay Kumar has stated, in his deposition, that he had extracted the call details of the accused from the crime scene which is in CD. Mahesh Prasad's handwriting is on the CD. The CD was extracted in five copies.



24.1. In his cross-examination, he has stated that the call details are in CD. He does not remember the names of the person whose call details were there.

25. PW-15 Nawal Kishore Singh has deposed that on 15.09.2013, he was at Bhairoganj Railway Station. A person named Manmohan Patel was caught by the Police. A mobile charger and a mobile were found in his bag and there were a lot of things in it.

25.1. In his cross-examination, he has stated that items were recovered in front of him. He cannot say about the brand of mobile. There was a cloth in the bag. He cannot say as to what was written on it. There were two pants and shirt.

26. PW-16 Srikant Ram has stated that, on 15.09.2013, he was at Bhairoganj Railway Station. Nawal Kishore Singh was also there with him. Manmohan Patel was caught by the Police. Baggage items, charger, mobile were recovered from him. A Seizure List was prepared which was marked as Exhibit-2/d.

26.1. In his cross-examination, he has stated that *darogaji* showed the contents of the bag and told him to see that these were the items. There was a number on mobile and charger. He cannot tell its brand name. There were many other people there, he cannot tell their names.



27. Deposition of Raja Kumar, Court Witness, under Section 164 Cr. P.C. has been recorded in which he has stated that Sohan whose name is also Manmohan brought Ranjeet to his house in Bagaha. He does not remember the date but only remembers that they had food and drinks. Sohan, Ranjeet and Shobha slept in one room and he slept next to him. After that, Sohan left with Ranjeet. Sohan introduced Ranjeet as his friend and Ranjeet also introduced him as his friend. After that, everyone left his house. He has no knowledge of this case.

OBSERVATION AND REASONING:-

28. We have considered the submissions canvassed by the learned counsels, perused the documentary evidence and re-appreciated the entire evidence led by the prosecution. The present is a case of circumstantial evidence and there is no eye-witness to the incident in question. From the evidence led by the prosecution, it transpires that the written complaint was given by the informant Suresh Sah on 01.09.2013 at about 20:40 hours for the incident which took place on 25.08.2013. In the written complaint itself, the informant has stated that his son Ranjeet Kumar left home saying that he was going to his friend's party and thereafter he talked on his mobile phone on 26.08.2013. He again talked on 27.08.2013 and informed that he was unwell and that he would come home by



evening on 28.08.2013. However, thereafter his mobile phone got switched off after 02:00 p.m. on 28.08.2013. In the complaint itself, it has been specifically stated that he went to the party after talking on mobile phone No. 9006285020. It is further stated that after 13 attempts, he contacted the mobile of his son. However, some other person picked up the phone. The said person replied that he had kidnapped his son and if they want to get his son back safe, he should keep ready Rs. 3 lakhs. Further, details are also given in the written complaint. However, from the said written complaint, it is revealed that, on 25.08.2013, the victim himself has voluntarily left the house with a view to attend the party of his friend and he was in contact with the informant for three days.

29. From the deposition of PW-1, who is the nephew of the informant, it transpires that the said witness has deposed before the Court that the accused made telephone call and informed that Rs. 20,000/- be credited in the account of Ranjeet and, therefore, Rs. 20,000/- was credited in the said account and through ATM Card, amount was withdrawn. The said witness has further deposed that the accused made telephone call and called the informant at Teen Lalten Chowk behind Bajaj Agency and when they went at the said place with the Police, Bal Kunwar Mahto was apprehended and, on the basis of the information given by Bal Kunwar Mahto,



Manmohan and Raja were apprehended. Manmohand informed that he has killed the victim near the Medical College, Birgunj. When they went to the Birgunj with DSP, the Officer of Birgunj Police Station showed them the photograph, clothe and slippers of the victim and after seeing the photo, they came to know that Ranjeet has been killed. PW-2 (Sushila Devi), who is the mother of the victim, has also deposed that her son had gone to attend the party of his friend. She has further stated that the appellant/accused Bal Kunwar Mahto was apprehended at Teen Lalten Chowk.

30. PW-4 Suresh Sah (informant) has deposed in Para 8 of his deposition that, on the basis of photo taken at ATM, Bagaha, kidnappers were apprehended and Shobha Devi, Pramod Chaudhary and Raja Kumar @ Raja were arrested. However, during cross-examination, the said witness has stated, in Para-12, that initially the kidnapper informed him on the telephone to come at Teen Lalten Chowk. However, thereafter it was informed that the said place is crowded and, therefore, informant was asked to Sagar Pokhara Shiv Temple. When the informant and the Police went to Sagar Pokhara, once again, telephone call was made and it was informed that now programme is cancelled and the informant was asked to come to Bhola Babu Colony. He has specifically stated that Bal Kunwar Mahto was apprehended by the Police at the said place.



During cross-examination, he has further admitted that CCTV footage captured by the Police from the ATM booth was not shown to him. The said witness has further admitted that *post-mortem* report was not shown to him and the death certificate which was given to him is in Nepali language.

31. We have also gone through the deposition given by the investigating officer. From the entire evidence led by the prosecution, it is revealed that there is no eye-witness to the occurrence either of kidnapping or killing. The appellant Bal Kunwar Mahto had not been arrested with any amount of ransom nor he was arrested while making any kind of demand nor with the alleged mobile from which the demand was being made. In fact, from the deposition given by PW-11 (Vimalendu Kumar), while investigating the case on 12.09.2013 has recorded in the case diary that the informant had told that Manmohan Patel @ Sohan Patel had called him at Teen Lalten Chowk to meet and thereafter PW-11 with his team members, started waiting for Manmohan Patel @ Sohan Patel who had to come to take money from the informant but he apprehended Bal Kunwar Mahto, who is the resident of Bhola Babu Colony. PW-11 has specifically deposed, in Para 2 of his deposition, that he had apprehended accused Bal Kunwar Mahto at Bhola Babu Chowk who had came to collect ransom. Thus, there are different



versions with regard to the place from which the appellant Bal Kunwar Mahto was apprehended. In fact, it is a specific case of the appellant that he is a resident of Bhola Babu Colony and he was apprehended just at a distance of 500 meters from his house while urinating. Thus, there are all probability of arrest of Bal Kunwar Mahto merely on the basis of suspicion. In fact, the prosecution has failed to establish his connection with other co-accused persons by leading cogent evidence. From Para-10 of the cross-examination of PW-11, it is revealed that one mobile phone was seized from appellant Bal Kunwar Mahto. However, he has admitted that CDR of the said mobile was not obtained by him during the course of the investigation. Thus, the prosecution has failed to prove that the said appellant was in contact with the other accused and he had demanded amount of ransom from the informant. It would further reveal from the deposition and, more importantly, from Para-30 of the cross-examination of PW-7 (investigating officer) that ransom amount was demanded from the mobile phone of Pramod Chaudhary. However, it is pertinent to note, at this stage, that the said co-accused Pramod Chaudhary has been acquitted by the Trial court. Thus, we are of the view that the prosecution has failed to prove that the accused/appellant Bal Kunwar Mahto was involved in the act of kidnapping and killing of the victim Ranjeet Kumar.



32. So far as the appellant Raja Kumar @ Raja is concerned, it is pertinent to note that initially he was shown as a witness by the investigating agency and, therefore, his statement under Section 164 of the Code came to be recorded. The said document is marked as an Exhibit-4. In the said statement, he has stated that he is aged about 17 years and he has stated that Manmohan Patel @ Sohan Patel had come with Ranjeet at his house on Sunday, had dinner and thereafter Manmohan Patel @ Sohan Patel, Ranjeet and Shobha Devi had slept in one and the same room and on the following morning, they returned. He has further stated that Manmohan Patel @ Sohan Patel had introduced Ranjeet as his friend and, in fact, he has specifically stated that he had no knowledge regarding the kidnapping of Ranjeet. From the record, it further transpires that thereafter, on the basis of the confessional statement of the co-accused, Raja Kumar @ Raja was arrested and his confessional statement was also recorded. It is a case of the prosecution that knife which was used in killing the deceased has been discovered at the instance of the said accused Raja Kumar @ Raja and it was discovered from an agricultural field which is open and accessible to all. It is relevant to note, at this stage, that the said knife was not sent for scientific test by F.S.L. nor there is any reference with regard to the blood-stain over the said knife.



33. At this stage, it is very important to observe that, in the present case, the prosecution has failed to produce *post-mortem* report of the deceased. The Doctor, who had conducted the *post-mortem* examination, is also not examined. It appears that, on the basis of the confessional statement of the accused Manmohan Patel, Police along with the informant went to Nepal at Birgunj Police Station where the photograph of the victim was shown and certain articles of the victim were shown to the informant and the investigating officer by the Police officer of Birgunj Police Station, Nepal and the informant has admitted that even the death certificate which was given by the said Police Station was in Nepali language. The said document is also not produced. Thus, fact remains that there is no evidence with regard to the death of the victim Ranjeet Kumar. Even if it is believed that the victim Ranjeet Kumar died, even then what was the cause of the death of the victim is not known. The injury sustained by the deceased is also not known and, therefore, merely because the knife has been discovered at the instance of the accused, it cannot be said that the death of Ranjeet Kumar has been caused with the said knife which was discovered at the instance of appellant Raja Kumar. Further, the said knife was discovered from an agricultural field which is open and accessible to all. The said knife was not sent to F.S.L. for necessary analysis.



Thus, we are of the view that merely because the knife was discovered at the instance of appellant Raja Kumar, it cannot be presumed that the said knife was used in killing the deceased Ranjeet Kumar in absence of any other material. Thus, we are of the view that the prosecution has failed to prove the case against the appellant Raja Kumar beyond reasonable doubt.

34. So far as the appellant Shobha Devi is concerned, it is revealed that she is wife of the co-accused Manmohan Patel @ Sohan Patel, who died during the pendency of the trial. However, there is no evidence on record to suggest that Shobha Devi has kidnapped the victim and that Shobha Devi has made telephone call to the informant or any other prosecution witness and demanded ransom amount. It appears that certain articles including the SIM of the mobile of the deceased has been seized from the co-accused Manmohan Patel @ Sohan Patel. However, on the basis of the same, it cannot be presumed that the appellant Shobha Devi is involved in act of kidnapping of the victim and killing of the victim. We are of the view that the prosecution has failed to complete the chain of circumstances from which it can be established that the present appellants have committed the alleged offences.



35. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Raja Naykar (supra)**, wherein the Hon'ble Supreme Court has observed in **Para 8 & 17** as under:-

“8. At the conclusion of trial, the trial Judge found that the prosecution had succeeded in proving that the appellant had committed the murder of the deceased. The prosecution further proved that the accused persons committed criminal conspiracy to destroy the evidence, and threw the body of the deceased after burning the same behind the Baba Balak Nath temple. The prosecution also proved that Accused 2 helped in throwing the body of the deceased and destroying evidence by way of cleaning the bloodstains, etc. of the deceased.

17. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused “must be” and not merely “may be” proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved”. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.”



36. In the case of **Mustkeem @ Sirajudeen (supra)**, the Hon'ble Supreme Court has observed in **Para 23, 24 & 25** as under:-

“23. It is too well settled in law that where the case rests squarely on circumstantial evidence the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. No doubt, it is true that conviction can be based solely on circumstantial evidence but it should be decided on the touchstone of law relating to circumstantial evidence, which has been well settled by law by this Court.

24. In a most celebrated case of this Court, Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116 : 1984 SCC (Cri) 487] in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (SCC p. 185)

“(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely ‘may be’ fully established;

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and



(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.”

37. In the case of **Laxman Prasad (supra)**, the Hon’ble Supreme Court has observed in **Para 2, 3 & 4** as under:-

“2. The present one is a case of circumstantial evidence. The prosecution led evidence to establish three links of the chain : (i) motive, (ii) last seen, and (iii) recovery of weapon of assault, at the pointing out of the appellant. The High Court, while dealing with the evidence on record, agreed with the finding of motive and the last seen, however, insofar as the recovery of the weapon of assault and bloodstained clothes were concerned, the High Court in para 18 of the judgment held the same to be invalid and also goes to the extent to say that the recovery which has been made does not indicate that the appellant has committed the offence. Still, it observed that looking to the entire gamut and other clinching evidence against the appellant of last seen and motive, affirmed the conviction.

3. We do not find such conclusion of the High Court to be strictly in accordance with law. In a case of circumstantial evidence, the chain has to be complete in all respects so as to



indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point. Reference may be had to the following cases:

(i) Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] ;

(ii) Shailendra Rajdev Pasvan v. State of Gujarat [Shailendra Rajdev Pasvan v. State of Gujarat, (2020) 14 SCC 750 : (2020) 4 SCC (Cri) 856 : AIR 2020 SC 180] .

4. Thus, if the High Court found one of the links to be missing and not proved in view of the settled law on the point, the conviction ought to have been interfered with.”

38. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that whenever the case is based on circumstantial evidence, certain features are required to be complied with i.e. the circumstances from which the conclusion of guilt is to be drawn 'must be' or should be and not merely 'may be' fully established. The facts established should be consistent only with the hypothesis of guilt of the accused i.e. to say they should not be explainable on any other hypothesis except that the accused is guilty. Further, there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.



39. In the case of **Babu Sahebgouda Rudragoudar (supra)**, the Hon'ble Supreme Court has held in **Para 61, 62, 63 & 67** as under:-

“61. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the investigating officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in State of U.P. v. Deoman Upadhyaya [State of U.P. v. Deoman Upadhyaya, 1960 SCC OnLine SC 8 : AIR 1960 SC 1125] .

62. Thus, when the investigating officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him. The investigating officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact(s).

63. As per Section 60 of the Evidence Act, oral evidence in all cases must be direct. The section leaves no ambiguity and mandates that no secondary/hearsay evidence can be given in case of oral evidence, except for the circumstances enumerated in the section. In case of a person who asserts to have heard a fact, only his evidence must be given in respect of the same.

67. Similar view was taken by this Court in Ramanand v. State of U.P. [Ramanand v. State of U.P., (2023) 16 SCC 510 : 2022 SCC OnLine SC 1396] , wherein this Court held that mere exhibiting of memorandum prepared by the investigating officer during investigation cannot tantamount to proof of its contents. While testifying on oath, the investigating



officer would be required to narrate the sequence of events which transpired leading to the recording of the disclosure statement.”

40. From the aforesaid observation made by the Hon’ble Supreme Court, it can be said that the statement of accused recorded by Police officer, under Section 27 of the Evidence Act, is basically a memorandum of confession of the accused recorded by the investigating officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence. Therefore, when the investigating officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him thereby the investigating officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact.

40.1. Further, from the decision rendered by the Hon’ble Supreme Court in **Mustkeem (supra)**, it can be said that what is important is the discovery of the material object at the disclosure of the accused. However, such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter burden lies on the



prosecution to establish a close link between discovery of the material objects and its use in the commission of the offence.

41. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the evidence as discussed hereinabove is once again examined, we are of the view that when the prosecution has failed to prove that victim Ranjeet died because of homicidal death and nature of injury sustained by the victim as well as the cause of the death of victim, it is immaterial that the knife is discovered at the instance of accused/appellant Raja Kumar @ Rala. Merely because knife has been discovered at his instance, it cannot be presumed that the said knife is used for killing the victim Ranjeet Kumar.

42. Thus, we are of the view that, in the present case, the prosecution has failed to prove that the victim has been kidnapped by the present appellants. The prosecution has also failed to prove that the appellants have killed the victim Ranjeet Kumar. The link to connect the appellants with the incident in question is missing and the prosecution has failed to complete the chain of circumstances from which it can be established that the present appellants must have committed the alleged offences.

43. In view of the aforesaid facts and circumstances of the present case, we are of the view that the Trial court has



committed an error while passing the impugned judgment and order and, therefore, the same is required to be quashed and set aside.

CONCLUSION:-

44. Accordingly, the impugned common judgment of conviction dated 06.03.2017 and order of sentence dated 16.03.2017 passed by learned 6th Additional District and Sessions Judge, West Champaran at Bettiah in Sessions Trial No. 59 of 2014, arising out of Bettiah Town P.S. Case No. 572 of 2013 (G.R. No. 3979 of 2013) are quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

45. The appellant namely Raja Kumar @ Raja (in Criminal Appeal (DB) No. 855 of 2017) is on bail. He is discharged from the liabilities of his bail bonds.

46. The appellants namely Shobha Devi (in Criminal Appeal (DB) No. 708/2017) and Bal Kunwar Mahto (in Criminal Appeal (DB) No. 808/2017) are directed to be released from jail custody forthwith, if their presence is not required in any other case.

47. All the appeals stand allowed.

48. Before parting with the appeal, we record our appreciation for the able assistance rendered by Mr. Krishna Kant Pandey, learned *Amicus Curiae*.



49. The Patna High Court, Legal Services Committee is, hereby, directed to pay ₹ 3,000 (Rupees Three Thousand) to Mr. Krishna Kant Pandey, learned *Amicus Curiae*, in Criminal Appeal (DB) No. 708 of 2017 as consolidated fee for the services rendered by him.

(Vipul M. Pancholi, J)

(Alok Kumar Pandey, J)

Sachin/-

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CAV DATE	N.A.
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