

A RANJEET KUMAR RAM @ RANJEET KUMAR DAS

v.

STATE OF BIHAR

(Criminal Appeal No. 1831 of 2011)

B

MAY 15, 2015

[T. S. THAKUR AND R. BANUMATHI, JJ.]

Penal Code, 1860: ss.364A, 302/34, 120B, 201 –
C *Kidnapping and murder – Prosecution case was that five year old son of PW-8 was kidnapped for ransom and later murdered – The victim child was playing with his sister PW-2 in the street when A-5 and A-3 lured him with chocolates and took him away – After 5-6 days, A-1 and A-4 told PW8*
D *that his son would come back if he would pay money – After 3 months, PW8 received phone call demanding a ransom – Kidnappers informed PW8 to come with money with his neighbours A-1 and A-4 – PW8 wrapped the ransom money in plastic bag and kept it in gunny bag under the carrier of*
E *his cycle and accompanied A-1, A-4 and A-2 – They reached the place as instructed by kidnappers and A-3 and A-5 came out of a hut and snatched the money from under the carrier of the cycle and informed PW8 that his son would be back by evening – However the boy did not return – Investigating*
F *officer conducted raid and made arrests – Based on statement of A-1, currency notes were recovered – Based on statements of A-3, A-4 and A-5, IO went to the place where dead body of victim boy was recovered – Trial court convicted*
G *A-1, A-3, A-4 & A-5 for kidnapping and murder and A-2 for kidnapping – High Court acquitted A-2 however upheld conviction of A-1, A-3, A-4, A-5 – On appeals, held: The testimony of the PW-2, sole child witness was reliable and consistent – Evidence of PW-8 corroborated the evidence of*
H *PW-2 – Evidence of PW-8 established that the victim boy*

was last seen in the company of A-3 and A-5 – Conduct of A-3 and A-5 of pulling money kept in gunny bag from PW-8's cycle showed that they had knowledge about money which only indicated prior meeting of minds of accused – Concurrent finding of courts below that A-3 and A-5 were guilty for kidnapping and murder not interfered with – As regards, A-1, he was brother-in-law of A-3 – His conduct in not showing any reaction to his brother-in-law's act of kidnapping was not in consonance with natural human conduct – This conduct of A-1 coupled with the evidence that he has been persuading PW8 to pay the money to kidnappers to get back his son led to the irresistible inference that A-1 shared the common intention with A-3 and A-5 in kidnapping the child and committing murder – Recovery of currency note from the house of A-1 was yet another link strengthening his complicity in the commission of offence – As regards A-4, neither any recovery was made from him nor any incriminating evidence was available against him – Case against A-4 not proved beyond reasonable doubt and his conviction set aside.

Dismissing the appeals filed by A-1, A-3 and A-5 and allowing the appeal filed by A-4, the Court

HELD: 1. Key witness PW2 aged seven years and sister of the deceased boy identified A-3 during the test identification parade and in the court she identified A-5 as the person who offered chocolate to her and to her brother and took him away. In spite of searching cross-examination, PW2 remained consistent throughout. Before she was examined as a witness in the court during trial, her statement under Section 164 Cr.P.C. was recorded by the Judicial Magistrate (PW13). In his evidence, PW13 has stated that he tested the understanding of witness PW2 and after being satisfied about her understanding, recorded her statement under

- A Section 164 Cr.P.C. When PW2 was examined as a witness in the court during trial, the trial judge had also put preliminary questions to the child witness PW2 and satisfied that she was capable of understanding the questions put to her. PW2 though sole witness, by
B concurrent findings courts below found her evidence unassailable. [Paras 12 and 14] [46-H; 47-A-C; 48-A-D]

2. In the test identification parade, PW8 identified A-5 and A-3 as the persons who took away ransom money from the carrier of his cycle. The evidence of PW8
C amply corroborated the evidence of PW2 as to the complicity of A-5 and A-3 in the offence. Evidence of PW2 coupled with the evidence of PW8 clearly established that the accused A-5 and A-3 kidnapped
D PW8's son and PW8 informant paid Rs. 1,05,000/- to them as ransom amount. On the evidence of PW2, courts below rightly recorded concurrent findings that the prosecution has established that deceased boy was last
E seen alive in the company of accused A-5 and A-3. There is no explanation forthcoming from the accused which is a strong militating circumstance against the accused A-5 and A-3 which indicates that they are responsible for the crime. This is further fortified by the evidence of
F PW8 who stated that the accused Nos.3 and 5 had snatched the money kept in the carrier of his cycle, when he was near the hut of A-3. [para 15,16] [48-G-H; 49-A-D]

3. Based on the statement of A-5 and A-3, investigating officer- PW12 went to a place where the
G body of a deceased boy was recovered. Identification of clothes recovered from the body of deceased boy beneath the pulia and identification of the photographs and knowledge of A-3 and as to the place of dead body
H is a strong militating circumstance against A-5 and A-3.

Though the statement recorded from A-5 and A-3 did not lead to any recovery as admissible under Section 27 of the Evidence Act, their statement led to the disclosure of the details of the dead body and registration of F.I.R. If no statement was recorded from the accused, place of the dead body of deceased boy would have remained unknown. [Paras 17 and 19] [49-E, G; 50-E-F]

4. Ideally based on the statement recorded from the accused, the investigating officer should have taken the accused to the alleged place of occurrence which would have led to the disclosure of place of occurrence and omission to do so, is only a lapse in the investigation. In criminal trials even if the investigation is defective, the rest of the evidence must be scrutinized independently of the impact of the defects in the investigation otherwise the criminal trial will plummet to the level of the investigation. Corpus delicti in some cases may not be possible to be traced or recovered. If the recovery of a dead body is an absolute necessity to convict an accused, in many cases the culprits would go unpunished as the accused would manage to see that the dead body is destroyed or not recovered. Any lapse in recovery of the dead body or missing link qua the dead body will not enure to the benefit of the accused. The courts below recorded cogent and concurrent reasoning that A-5 and A-3, for kidnapping the boy for ransom and committed murder and the conviction of A-5 and A-3 under Sections 364A, 302 and 201 IPC and the sentence of imprisonment imposed on them cannot be interfered with. [Paras 20-23] [50-H; 51-A, C, E-H; 52-A]

5. Conviction qua A-1 and A-4: A-3 is the brother-in-law of A-1. Had there been no complicity of A-1 in the commission of the offence, on knowing for the first time

A that his brother-in-law A-3 was involved in the kidnapping, A-1 must have been greatly shocked and he must have questioned his brother-in-law A-3 as to why he had committed such gruesome act of kidnapping his neighbour's son? But A-1 had not reacted to the situation and he remained quiet. His conduct in not showing any reaction is not in consonance with natural human conduct. This conduct of A-1 coupled with the evidence that he has been persuading PW8 to pay the money to kidnappers to get back his son leads to the irresistible inference that A-1 shared the common intention with A-3 and A-5 in kidnapping the child and committing murder. Recovery of currency note from the house of A-1 is yet another link strengthening his complicity in the commission of offence. Considering the act of A-1 and the proved circumstances, courts below rightly held that A-1 had the common intention of kidnapping and committing murder of the boy. [Paras 25, 26 and 28] [53-B-G; 54-F]

E 6. As far as A4 is concerned, he is also a vegetable vendor in the same market. Though the circumstances that he has also persuaded PW8 to pay the ransom amount to kidnappers and also accompanied PW8 to pay the ransom amount to the kidnappers, A-4 might have accompanied PW8 as a bonafide helper. Neither any recovery was made from A-4 nor any incriminating evidence is available against him. Though there may be strong suspicion about his involvement in the commission of the offence, suspicion however strong it may be, cannot take the place of proof. The case against A-4 is not proved beyond reasonable doubt and his conviction is liable to be set aside. [Para 29] [54-G-H; 55-A-B]

H *State of M.P. vs. Mansingh & Ors.* (2003) 10 SCC 414:

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2003 (2) Suppl. SCR 460 ; Sheo Shankar Singh vs. A
State of Jharkhand and Anr. (2011) 3 SCC 654: 2011
(4) SCR 312; Munuiappan & Ors. vs. State of Tamil
Nadu (2010) 9 SCC 567: 2010 (10) SCR 262 – relied
on.

Case Law Reference

2003 (2) Suppl. SCR 460 relied on. Para 21

2011 (4) SCR 312 relied on. Para 21

2010 (10) SCR 262 relied on. Para 21 C

CRIMINAL APPELLATE JURISDICTION: Criminal
Appeal No. 1831 of 2011.

From the Judgment and Order dated 11.10.2010 of the D
Division Bench of the High Court at Patna in CR.APP (DB)
No. 268 of 2008.

WITH

Crl.A. Nos. 1820-1821 and 1817 of 2013 E

Anupam Lal Das, Anirudh Singh, Shankar Divate,
Sushma Manchanda for the Appellant.

Anuj, Shubhra Rai, Gopal Singh, Abhinav Mukerji, F
Purnima Krishna for the Respondent.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. These appeals are directed G
against the judgment dated 11.10.2010 passed by the Patna
High Court in Criminal Appeals (DB) No.268/2008, 357/2008,
451/2008, No.156/2008 and Death Reference No.6/2008, in
and by which, the High Court dismissed the appeals filed by
the accused persons confirming the verdict of conviction on
the charge of murder of five years old boy Vicky and dismissed H

A the death reference by converting the death sentence of Chintoo Singh (A-5) into life imprisonment.

2. On 27.02.2006, Sunil Kumar Singh-PW8, a vegetable vendor in Paswan Chowk, lodged a complaint stating that his son Vicky aged five years was playing near PW8's vegetable shop and Rubi Kumari aged seven years sister of the victim boy Vicky was also playing with him. At that time two unknown persons [later identified as Chintoo Singh (A-5) and Birendra Bhagat (A-3)] offered chocolates to Vicky and other children and took away Vicky saying that they would come back and drop the boy; but the boy Vicky did not come back. On the above complaint on 28.02.2006, a case was registered as P.S. Case No.105/2006 at Hazipur Town (Industrial Area), Police Station, Vaishali. In spite of search, the missing boy could not be traced. After 5-6 days passed, Ranjeet Kumar Ram (A-1) and Sanjay (A-4), who were also vegetable vendors in the same market i.e. at Paswan Chowk, told PW8 that his son would come back if he would pay money. Nearly after three months of the incident, on 23.06.2006, PW8 received a phone call and the kidnappers demanded a ransom of four lakh rupees for return of his son; but PW8 expressed his helplessness to meet the demand, and the demand was reduced to two lakh rupees. Another telephone call was received by PW8 on 1.07.2006 and the final amount of ransom was fixed for Rs.1,05,000/-. On 3.07.2006, PW8 received another call from the kidnappers and PW8 informed them that he has arranged the ransom money and PW8 was asked to bring the money at New Gandak Bridge ahead of Line Hotel of Bachcha Babu at Sonapur. When PW8 expressed fear in coming alone with money, he was instructed by the kidnappers to come with his neighbours Ranjeet Kumar Ram (A-1) and Sanjay (A-4).

3. In order to pay the ransom money, PW8 had

withdrawn Rs.80,000/- from his Savings Bank account with A
Bank of India at Rajendra Chowk, Hazipur and PW-8 arranged
balance money from his own savings and borrowings from his
father-in-law. On 4.07.2006, PW8 wrapped the ransom amount
in a plastic bag and kept it in a gunny bag under the carrier of
his cycle and PW8 accompanied by Ranjeet Kumar Ram (A- B
1) and Sanjay (A-4) and Sanjeet (A-2) proceeded to the place
as instructed by the kidnappers. When they reached the New
Gandak Bridge, Sanjeet (A-2) got down from PW8's cycle and
went inside a hut on the left side of the road and PW8 followed
him. At that time two persons came out and pulled away the C
money from the carrier of PW8's cycle. Sanjeet (A-2) informed
PW8 that his brother-in-law-Birendra Bhagat (A-3) lives in that
hut and PW8 was informed that his son would be returned by
evening. Even after payment of the money, the boy was not D
returned. To inquire about the boy, PW8 went to the hut and
learnt from the local people that Birendra Bhagat (A-3) is a
criminal and the other person was identified as Chintoo Singh
(A-5). On 16.08.2006, PW8 informed the investigating officer-
Reeta Kumari (PW12), the names of the accused persons and E
also about the demand and payment of money to the
kidnappers.

4. Investigating Officer (PW-12) conducted a raid at
Sonepur and arrested Ranjeet Kumar Ram (A-1) and Sanjeet F
(A-2) and recorded their statement. Based on the statement
of Ranjeet Kumar Ram (A-1), investigating officer recovered
a currency note of five hundred rupee containing the name of
Sunil Kumar Singh-PW8, written in green ink in the handwriting
of PW8, from the house of Ranjeet Kumar Ram(A-1), which G
is recorded in the seizure list (Ex.18). Thereafter, the accused
persons Sanjay (A-4), Birendra Bhagat (A-3) and Chintoo
Singh (A-5) were also arrested and their statements were
recorded. Investigating Officer-PW12, on the basis of
statements went to Fakuli Out-Post and learnt about recovery H

A of dead body of a boy aged 4-5 years near the culvert of
Bhagwanpur village wherein (Fakuli OP) P.S. Case No.128/
06 dated 22.04.2006 under Sections 302, 201 and 34 IPC
was registered. PW12 obtained from Fakuli police the seizure
list relating to recovery of vest and half pant of deceased boy
B and his photograph. From the photograph shown to PW8, he
identified the dead body of child as well as clothes, as that of
Vicky. After the completion of the investigation, PW-12 filed
the chargesheet against five accused under Sections 364A,
302/34, 120B and 201 IPC.

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5. To bring home the guilt of the accused, prosecution
has examined fourteen witnesses and exhibited documents
and material objects. When questioned under Section 313
Cr.P.C., the accused denied incriminating evidence and
D circumstances put against them. Defence has examined seven
defence witnesses.

6. Vide judgment dated 24/28.01.2008, the First
Additional Sessions Judge, Vaishali at Hazipur convicted the
E accused Chintoo Singh (A-5) and Birendra Bhagat (A-3) under
Section 364A IPC and sentenced them to undergo rigorous
imprisonment for life with fine of Rs.10,000/-. For his conviction
under Sections 302/34 IPC, Chintoo Singh (A-5) was awarded
death sentence. Sanjeet (A-2), Ranjeet Kumar Ram (A-1) and
F Sanjay (A-4) were convicted under Section 364A/120B IPC
and were sentenced to undergo rigorous imprisonment for life
and were imposed a fine of rupees Rs.10,000/- each with
default clause. Further, Ranjeet Kumar Ram (A-1), Sanjay (A-
4) and Birendra Bhagat (A-3) were convicted under Section
G 302/34 IPC and were sentenced to undergo rigorous
imprisonment for life with a fine of Rs.10,000/- each with default
clause. The sentences imposed on Birendra Bhagat (A-3),
Ranjeet Kumar Ram (A-1) and Sanjay (A-4) were ordered to
H run concurrently.

7. Being aggrieved by the verdict of conviction, accused A filed Criminal Appeals No. 268/2008, 357/2008, 451/2008 and 156/2008 in the High Court of Patna. For confirmation of death sentence awarded to Chintoo Singh(A-5), State filed Death Reference Case No.6/2008. The High Court vide common impugned judgment dated 11.10.2010, dismissed the appeals B filed by the accused persons and thereby confirmed the conviction and sentence imposed on accused A-1, A-3 to A-5. The High Court converted the death sentence awarded to Chintoo Singh (A-5) as life imprisonment. Accepting the C defence plea of *alibi*, the High Court acquitted 2nd accused—Sanjeet in Criminal Appeal (DB) No.249/2008. In these appeals, appellants assail the correctness of the verdict of the conviction and sentence imposed on them.

8. Learned counsel for the appellants contended that D Rubi Kumari (PW2) aged seven years, daughter of PW8, the key witness has not implicated Ranjeet Kumar Ram (A-1) and in her statement she has identified only Birendra Bhagat (A-3) and PW2 being a child witness her sole testimony cannot form E the basis for conviction. It was submitted that Sunil Kumar Singh (PW8) on his own has requested Ranjeet Kumar Ram(A-1) and Sanjay (A-4) to accompany him to pay the F alleged ransom and merely because A-1, A-2 and A-4 accompanied PW8, they are being falsely implicated. Learned counsel for Chintoo Singh (A-5) submitted that in the test G identification parade, PW2 has not identified Chintoo Singh (A-5) and her identification of A-5 in the open court is unreliable and without proper appreciation of the flaws in the prosecution case, courts below erred in convicting the accused.

9. Per contra, learned counsel appearing for the respondent-State contended that the sole eye-witness-Rubi Kumari (PW2) has satisfactorily identified accused-Birendra Bhagat (A-3) in the test identification parade and while she H

A was examined in the court she has identified Chintoo Singh (A-5). It was submitted that PW8 has clearly deposed that Ranjeet Kumar Ram (A-1), Sanjay (A-4) in conspiracy with Birendra Bhagat (A-3), Chintoo Singh (A-5), induced him to pay ransom money, even when no such demand was made, which clearly shows their involvement in the commission of the offence. It was submitted that the kidnappers asked PW8 to bring Ranjeet Kumar Ram (A-1), Sanjay (A-4) and that they accompanied PW8 to pay the money which proves the complicity of accused Ranjeet Kumar Ram (A-1) and Sanjay (A-4) in the commission of the offence and upon proper appreciation of evidence, courts below rightly convicted the appellants for the offence under Sections 302/34, 364A, 120B and 201 IPC and the concurrent findings recorded by the courts below warrant no interference.

10. We have considered the rival contentions and perused the impugned judgment, evidence and material on record.

11. Sunil Kumar Singh (PW8) and his wife Nilam Devi (PW6) are vegetable vendors in Paswan Chowk Market, Hazipur. Ranjeet Kumar Ram (A-1) and Sanjeet (A-2) [since acquitted] are brothers who are also vegetable vendors in the same market having shop situated nearby the shop of PW8 and Birendra Bhagat (A-3) is their brother-in-law. In her evidence, PW6 stated that first accused and his brother Sanjeet were jealous of them as PW8 had good business. Though jealousy is suggested as a motive, but it appears that the commission of murder of victim boy Vicky is mainly due to kidnapping for ransom.

12. Key witness PW2-Rubi Kumari is aged seven years and is the sister of the deceased boy Vicky. PW2 deposed that on the date of incident i.e. 27.02.2006, PW2 was playing around the place where PW8 was selling the vegetables. PW2

stated that two persons came on a motor cycle and gave chocolate to the children including PW8's son Vicky and made Vicky to sit on the tank of the motor cycle and took him away. PW2 stated that the man who took her brother-Vicky told that he would come back and drop her brother. Rubi Kumari (PW2) identified Birendra Bhagat (A-3) during the test identification parade and in the court she identified Chintoo Singh (A-5) as the person who offered chocolate to her and to her brother and took him away. Inspite of searching cross-examination, PW2 remained consistent throughout her cross-examination.

13. On behalf of Chintoo Singh (A-5), it was contended that PW2's testimony is not reliable as she has not identified Chintoo Singh during the test identification parade and that PW2's identification of Chintoo Singh (A-5) in the court was not reliable. Identification of the accused by the witness soon after the former's arrest is of course important because it lends assurance to the prosecution, in addition to corroboration of the evidence of the witnesses. As noticed earlier, in the open court during the trial, Rubi Kumari (PW2) identified Chintoo Singh (A-5) and she has not identified him in the test identification parade conducted in the prison. Ordinarily, courts do not give much credence to the identification made in the court for the first time; but the identification of the accused for the first time in court is permissible in law. But the said principle has to be applied in the facts and circumstances of each case. While PW2 was examined in the court, trial court which had the opportunity of seeing and observing demeanour of PW2 found her version identifying Chintoo Singh (A-5) trustworthy and we see no reason to take a different view.

14. At the time of occurrence, as well, while deposing in Court, Rubi Kumari (PW2) was aged only seven years. Evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of

A a child witness is that the witness must be a reliable one.
Before PW2 was examined as a witness in the court during
trial, her statement under Section 164 Cr.P.C. was recorded
by the Judicial Magistrate (PW13). In his evidence PW13 has
B stated that he tested the understanding of witness Rubi Kumari
(PW2) and after being satisfied about her understanding,
recorded her statement under Section 164 Cr.P.C. When PW2
was examined as a witness in the court during trial, the trial
judge had also put preliminary questions to the child witness
C Rubi Kumari (PW2) and satisfied that she was capable of
understanding the questions put to her. When the trial court
has ascertained the discernment of PW2 and has formed an
opinion that PW2-Rubi Kumari is competent to testify and then
recorded her evidence, we see no reason to discredit PW2's
D testimony. PW2 though sole witness, by concurrent findings
courts below found her evidence unassailable and we find no
ground to take a different view.

15. On 4.7.2006, PW8 wrapped the ransom amount in a
plastic bag and kept it in a gunny bag under the carrier of his
E cycle and accompanied by Ranjeet Kumar Ram (A1), Sanjeet
(A-2) and Sanjay (A-4), PW8 went to pay the ransom amount
to the kidnappers. When they reached New Gandak Bridge,
accused-Sanjeet (A-2) got down from the cycle and went inside
F the hut on the left side of the road and PW8 followed him. At
that time, two persons came out of the hut and took away the
money from the carrier of PW8's cycle. In the test identification
parade, PW8 identified Chintoo Singh (A-5) and Birendra
Bhagat (A-3) as the persons who took away ransom money
G from the carrier of his cycle. The evidence of PW8 amply
corroborates the evidence of PW2 as to the complicity of
Chintoo Singh (A-5) and Birendra Bhagat (A-3) in the offence.

16. Evidence of Rubi Kumari (PW2) coupled with the
H evidence of Sunil Kumar Singh (PW8) clearly establishes

that the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3) kidnapped PW8's son Vicky and PW8 informant paid Rs.1.05,000/- to them as ransom amount. On the evidence of PW2, courts below rightly recorded concurrent findings that the prosecution has established that deceased boy Vicky was last seen alive in the company of accused Chintoo Singh (A-5) and Birendra Bhagat (A-3). It is for the accused to explain how and when they parted company of the deceased child Vicky. Absolutely, there is no explanation forthcoming from the accused which is a strong militating circumstance against the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3) which indicates that they are responsible for the crime. This is further fortified by the evidence of PW8 who stated that the accused Nos.3 and 5 had snatched the money kept in the carrier of his cycle, when he was near the hut of Birendra Bhagat (A-3).

17. Based on the statement of Chintoo Singh (A-5) and Birendra Bhagat (A-3), investigating officer- Reeta Kumari (PW12) went to Fakuli O.P. and learnt that the body of a deceased boy was recovered on 22.4.2006 beneath the *pulia* in between Bhagwanpur-Bahadurpur road for which F.I.R. in (Fakuli OP) P.S. Case No.128/2006 dated 22.4.2006 under Sections 302, 201 IPC read with Section 34 IPC was registered. PW12 received the clothes (material Ext.11), photographs of the deceased boy and PW8 has identified the said clothes (material Ext.11) as that of his son and also photographs (Ext.3 & 3/1) as of deceased boy Vicky. Identification of clothes recovered from the body of deceased boy beneath the *pulia* and identification of the photographs and knowledge of accused No.3 and as to the place of dead body is a strong militating circumstance against the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3).

18. Learned counsel for the accused Chintoo Singh(A-

A 5) and Birendra Bhagat (A-3) contended that the alleged disclosure statement of the accused is hit by Section 25 of the Evidence Act which makes the disclosure statement inadmissible and the statement recorded from the accused did not lead to disclosure of any fact so as to make it
B admissible under Section 27 of the Evidence Act and there is nothing to connect the accused with the dead body of a boy recovered from beneath the *pulia* in connection with (Fakuli OP) P.S. Case No.128/2006. It was submitted that the link to
C connect the accused with the murder of deceased boy Vicky is missing and that the confession statement of accused Chintoo Singh (A-5) and Birendra Bhagat (A-3) recorded by police is not admissible in evidence which was not kept in view by the courts below.

D 19. So far as the recovery of dead body of boy under the culvert between Bhagwanpur and Bahadarpur road is concerned, as noticed earlier, a F.I.R. was registered in (Fakuli OP) P.S. Case No.128/2006 dated 22.4.2006 under Sections 302, 201 IPC read with Section 34 IPC. Though the statement
E recorded from the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3) did not lead to any recovery as admissible under Section 27 of the Evidence Act, their statement led to the disclosure of the details of the dead body and registration of
F F.I.R. in (Fakuli OP) P.S. Case No.128/2006. If no statement was recorded from the accused, place of the dead body of deceased boy would have remained unknown.

G 20. So far as the contention regarding the inadmissibility of the statement recorded from the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3), of course, the statement did not lead to the disclosure of any fact as admissible under Section 27 of the Evidence Act. Ideally based on the statement recorded from the accused, the investigating officer should
H have taken the accused to the alleged place of occurrence

which would have led to the disclosure of place of occurrence and omission to do so, is only a lapse in the investigation. Even if it is accepted that there was deficiency in investigation that cannot be a ground to doubt the prosecution version which is otherwise cogent and credible. A

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21. It is well settled that in criminal trials even if the investigation is defective, the rest of the evidence must be scrutinized independently of the impact of the defects in the investigation otherwise the criminal trial will plummet to the level of the investigation. Criminal trials should not be made casualties for any lapses committed by the investigating officer. In *State of M. P. vs. Mansingh & Ors.*, (2003) 10 SCC 414, it was held that even if there was deficiencies in the investigation that cannot be a ground for discrediting the prosecution version. The same view was reiterated in *Sheo Shankar Singh vs. State of Jharkhand And Anr.*, (2011) 3 SCC 654 and *C. Muniappan & Ors. vs. State of Tamil Nadu*, (2010) 9 SCC 567. C

D

22. We are not impressed with the arguments advanced on behalf of the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3) that there is nothing to connect the accused with the body found under the bridge. *Corpus delicti* in some cases may not be possible to be traced or recovered. If the recovery of a dead body is an absolute necessity to convict an accused, in many cases the culprits would go unpunished as the accused would manage to see that the dead body is destroyed or not recovered. Any lapse in recovery of the dead body or missing link qua the dead body will not enure to the benefit of the accused. E

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23. Upon appreciation of evidence of PW2 and PW8, the courts below recorded cogent and concurrent reasonings that Chintoo Singh (A-5) and Birendra Bhagat (A-3), for kidnapping the boy Vicky for ransom and committed murder H

- A and the conviction of Chintoo Singh (A-5) and Birendra Bhagat (A-3) under Sections 364A, 302 and 201 IPC and the sentence of imprisonment imposed on them cannot be interfered with.

24. Conviction qua Ranjeet Kumar Ram (A-1) and

- B **Sanjay (A-4):** PW6—Nilam Devi and PW8—Sunil Kumar Singh, mother and father respectively of the deceased boy Vicky are the vegetable vendors in the Paswan Chowk Market. Ranjeet Kumar Ram (A-1) and Sanjay (A-4) were also selling vegetables in the same market. In her evidence, PW6 stated
- C that Ranjeet Kumar Ram (A-1) and Sanjay (A-4) were jealous of PW6 and PW8 as in their vegetable shops they were having good business. PW8 in his evidence stated that he was persuaded by Ranjeet Kumar Ram (A-1) and Sanjay (A-4) to pay the ransom money and get back his son even when no
- D such demand was made by the kidnappers viz., Chintoo Singh (A-5) and Birendra Bhagat (A-3). After number of phone calls, demand of ransom was reduced to Rs.1,05,000/- and PW8 was asked to deliver the amount. PW8 categorically stated that when he expressed fear of going alone, kidnappers told
- E him over phone to bring his neighbours Ranjeet Kumar Ram (A-1) and Sanjay (A-4). PW8 withdrew Rs.80,000/- from his Savings Bank account with Bank of India at Rajendra Chowk and Ext.5 is the Savings Bank passbook of PW8. PW8 took
- F loan of Rs.20,000/- from his father-in-law Sakal Mahto and PW8 was already having Rs.5,000/-. In his evidence, PW8 stated that the amount he arranged was of denomination of five hundred rupees and in some of the currency notes, he has signed. PW8 stated that he wrapped the ransom amount in a plastic bag and kept in a gunny bag in the carrier of his cycle
- G and when they reached New Gandak Bridge, Sanjeet (A-2) got down from his cycle and went to the hut on the left side of the road and when PW8 followed him, Chintoo Singh (A-5) and Birendra Bhagat (A-3) pulled away money kept in the gunny
- H bag from PW8's cycle. Only accused Ranjeet Kumar Ram

(A-1) and Sanjay (A-4) had the knowledge that the money was kept in the gunny bag in the carrier of cycle. From the conduct of A-5 and A-3, it appeared as if they were already having knowledge about money being kept in the gunny bag in the carrier of the cycle of PW8 which only indicates prior meeting of minds of the accused.

25. Birendra Bhagat (A-3) is the brother-in-law of Ranjeet Kumar Ram (A-1). Had there been no complicity of Ranjeet Kumar Ram (A-1) in the commission of the offence, on knowing for the first time that his brother-in-law Birendra Bhagat (A-3) was involved in the kidnapping, Ranjeet Kumar Ram (A-1) must have been greatly shocked and he must have questioned his brother-in-law Birendra Bhagat (A-3) as to why he had committed such gruesome act of kidnapping his neighbour's son? But Ranjeet Kumar Ram (A-1) had not reacted to the situation and he remained quiet. His conduct in not showing any reaction to his brother-in-law's act of kidnapping of PW8's son, which is not in consonance with natural human conduct. This conduct of first accused coupled with the evidence that he has been persuading PW8 to pay the money to kidnappers to get back his son leads to the irresistible inference that accused Ranjeet Kumar Ram (A-1) shared the common intention with accused Nos.3 and 5 in kidnapping the child and committing murder.

26. Recovery of five hundred rupee currency note (Ex.1) from the house of Ranjeet Kumar Ram (A-1) is yet another link strengthening his complicity in the commission of offence. Pursuant to the statement of accused Ranjeet Kumar Ram (A-1), currency note of Rs.500/- which contained signature of PW8-Sunil Kumar Singh in green ink was seized from the house of first accused under Ext.1 seizure list (Ext.18). PW4-Raj Banshi Devi, a neighbour had spoken about the recovery of Ext.1 currency note of Rs.500/- from the house of accused

A No.1 and PW8 had identified his signature on Ext.1 currency note. Recovery of a part of ransom amount from the house of Ranjeet Kumar Ram (A1) is a determining link completing the chain of circumstantial evidence against Ranjeet Kumar Ram (A-1), pointing to his guilt.

B

27. Defence plea of accused Ranjeet Kumar Ram (A-1) is that some time prior to the occurrence, there was an altercation between him and PW8 and at that time PW8-Sunil Kumar Singh stated that he would falsely implicate Ranjeet in a criminal case. To prove the defence plea, defence witnesses Baiju Sharma and Budhan Paswan were examined as DWs 4 and 5. The defence plea that PW8 falsely implicated Ranjeet Kumar Ram (A-1) and his family members in the offence of kidnapping and murder of his son defies logic and rightly rejected by the trial court as well by the High Court.

D

28. Direct evidence of common intention is seldom available. Such common intention of the accused can only be inferred from the evidence and circumstances appearing from proved facts of case. In furtherance of common intention, Ranjeet Kumar Ram (A-1) had been persuading PW8 to pay the ransom amount even before there was no such demand from the kidnappers viz., Chintoo Singh (A-5), Birendra Bhagat (A-3). Considering the act of Ranjeet Kumar Ram and the proved circumstances, courts below rightly held that Ranjeet Kumar Ram had the common intention of kidnapping and committing murder of the boy Vicky and the courts below rightly convicted Ranjeet Kumar Ram (A-1) under Section 364A IPC and Sections 302/34 IPC.

F

G

29. As far as Sanjay Mahto (A4) is concerned, he is also a vegetable vendor in Paswan Chowk Market. Though the circumstances that he has also persuaded PW8 to pay the ransom amount to kidnappers and also accompanied PW8 to Sonapur to pay the ransom amount to the kidnappers, Sanjay

H

might have accompanied PW8 as a bonafide helper. Neither A
any recovery was made from Sanjay nor any incriminating
evidence is available against him. So far as Sanjay Mahto
(A-4) is concerned, though there may be strong suspicion about
his involvement in the commission of the offence, suspicion B
however strong it may be, cannot take the place of proof. The
case against Sanjay (A-4) is not proved beyond reasonable
doubt and his conviction is liable to be set aside.

**30. Criminal Appeals No.1831/2011, 1817/2013 and C
1821/2013:** These appeals filed by Ranjeet Kumar Ram (A-
1), Chintoo Singh (A-5) and Birendra Bhagat (A-3) are
dismissed.

31. Criminal Appeal No.1820/2013: Conviction of D
Sanjay (A-4) is set aside and this appeal is allowed. He is
acquitted of the charges and he is ordered to be set at liberty
forthwith if not required in any case.

Devika Gujral

Appeals disposed of.

E