IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.142 of 2019

Arising Out of PS. Case No.-225 Year-2016 Thana- BIBHUTIPUR District- Samastipur

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MUKESH PASWAN @ BIMLESH PASWAN @ BHAGAT JI Son of Visheshwar Paswan Resident of Village - Bajitpur

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 153 of 2019

Arising Out of PS. Case No.-225 Year-2016 Thana- BIBHUTIPUR District- Samastipur

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SURENDRA KUMAR @ SULENDRA KUMAR @ GORE LAL Son of Late Ram Bahadur Mahto Resident of Village – Khanjahapur P.S- Cheriya-Bariyarpur, Distt.- Begusarai.

... ... Appellant/s

Versus

THE STATE OF BIHAR

... ... Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 142 of 2019)

For the Appellant/s	:	Mr. RanVijay Anand, Advocate Ms. Sarita Kumari, Advocate
For the Respondent/s	:	Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 153 of 2019)

For the Appellant/s	:	Mr. Ranjan Kumar Jha, Advocate Mr. Rana Pratap Singh, Advocate Mr. Mritunjay Kr. Mishra, Advocate Mr. Vikash Kumar, Advocate
For the Respondent/s	:	Mr. Sujit Kumar Singh, APP

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

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

Date : 18-02-2025

The present appeals have been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter

referred as ‘Cr.P.C.’) challenging the judgment of conviction and order of sentence both dated 12.12.2018, whereby the appellants have been convicted for the offence punishable under Sections- 364A/34, 302/34, 201/34 and 302/120B of I.P.C. and the appellants have been sentenced to undergo imprisonment for life and a fine of Rs. 10,000/- each for the offence punishable under Section-364A/34 of I.P.C. and, in default of payment of fine, to further undergo R.I. for six months each. Further, they have been sentenced to undergo imprisonment for life and a fine of Rs. 10,000/- each for the offence punishable under Section-302/34 of I.P.C. and, in default of payment of fine, to further undergo imprisonment for six months each. Further, they have been sentenced to undergo R.I. for three years and a fine of Rs. 2000/- each for the offence punishable under Section-201/34 of I.P.C. and, in default of payment of fine, to further undergo imprisonment for one month each. Further, they have been sentenced to undergo imprisonment for life each for the offence punishable under Section-302/120B of I.P.C. All the sentences have been directed to run concurrently.

2. Heard Mr. Vijay Anand, learned counsel for the appellant assisted by Ms. Sarita Kumari (in Cr. Appeal (D.B.) No. 142 of 2019), Mr. Ranjan Kumar Jha, learned counsel for

the appellant assisted by Mr. Rana Pratap Singh, Mritunjay Kr. Mishra and Mr. Vikash Kumar (in Cr. Appeal (D.B.) No. 153 of 2019) and Mr. Sujit Kumar Singh, learned A.P.P. for the respondent-State in both the matters.

3. As both the appeals arise out of the same judgment and order, they are taken up together and are being disposed of by this common judgment.

4. The brief facts leading to the filing of the present appeals are as under:

"The informant Kailash Paswan lodged an F.I.R. on 02.10.2016 with regard to missing of his son namely Raushan Kumar stating that his son went missing at 02:00 p.m. on 30.09.2016 and he received a ransom call on his Mobile No. 9006122925 from Mobile No. 8151957018 demanding a ransom of Rs.15,00,000/- for safe return of his son. When call made on the said mobile phone, there is no response from that side and till lodging the F.I.R. his son is traceless."

5. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case

was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No.31 of 2017.

6. Thereafter, further statement of the accused persons was recorded under Section-313 of the Code and after completion of the trial, the trial court passed the impugned judgment and order, against which the appellants have preferred the present appeals.

7. Learned advocates, at the outset, submit that there is a delay in lodging the F.I.R. and, in fact, for the incident which took place on 30.09.2016, written complaint was given by the informant on 02.10.2016. It is also submitted that even after registration of the F.I.R., copy of the same was sent to the concerned Magistrate only on 06.10.2016 for which no explanation has been given by the prosecution. It is also submitted that the appellants are not named in the F.I.R.

8. Learned advocates for the appellants 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 establish complete the chain of circumstances from which it can be said that the present appellants have committed the alleged offences, despite which the trial court has recorded

the judgment of conviction and order of sentence. It is further submitted that there are major contradictions, improvement and discrepancies in the deposition of the prosecution-witnesses and, therefore, the deposition given by the prosecution-witnesses be discarded. Learned advocates submit that the prosecution has also failed to prove the motive on the part of the accused to kill the deceased. However, it has been pointed out by the learned advocates that there was no dispute with the family of the informant and accused Mukesh Paswan. In fact, accused Mukesh Paswan is the nephew of the informant. It is contended at this stage that though the prosecution has alleged that the accused persons have demanded Rs. 15,00,000/- by way of ransom from the informant, it has come on record that informant is a Class-IV employee of Railway and, in fact, he has no means to pay the same. It has been contended that accused Mukesh Paswan is the nephew of the informant. Therefore, he was aware about the poor financial condition of the informant and, therefore, there was no question of demanding Rs. 15,00,000/- from the informant, as alleged.

9. Learned advocates would further submit that the entire case of the prosecution is based on confessional statement of co-accused Mantosh Kumar whose trial was separated as the

said accused is juvenile. The present two appellants have been separately tried. Learned advocates also contend that even the confessional statement of co-accused Mantosh Kumar cannot bind the present appellants and simply relying upon the said confessional statement of co-accused, conviction of the present appellants cannot be recorded. Learned advocates would also contend that the prosecution has also failed to produce the C.D.R. before the Court and even the C.D.R. has not been duly proved in absence of any certificate issued under Section-65B(4) of the Evidence Act. It has been pointed out by the learned advocates appearing for the accused Surendra Kumar @ Gore Lal that the Investigating officer has admitted during his cross-examination that he had not got the mobile phone recovered from accused Surendra Kumar verified from the Telephone Department. Further, it has been admitted by the I.O., P.W. 11, that there is no witness to the incident of Mukesh Paswan carrying away the deceased on a bicycle. Learned advocates also submit that the I.O. did not verify from the office of the D.T.O. with regard to mobile phone recovered from accused Mukesh Kumar as to whether the said mobile is in his name or in the name of his family member. Learned advocates further submit that even while recording the further statement of

the appellants/accused under Section-313 of The Code all the evidence led by the prosecution was not put to them, as a result of which serious prejudice has been caused to the defence and thereby the defence was not given proper opportunity to explain the same.

10. Learned advocates, therefore, urged that the impugned judgment and order be quashed and set aside and both these appeals be allowed.

11. In support of their contention, learned advocates for the appellants have placed reliance upon the following decisions rendered by Hon'ble Supreme Court:-

1. **Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh**, reported in **2022 SCC OnLine SC 1396**:

2. **Haricharan Kurmi And Jogia Hajam Vs. State of Bihar**, reported in **1964 SCC OnLine SC 28**:

3. **Subramanya Vs. The State of Karnataka**, reported in **(2023) 11 SCC 255**:

12. On the other hand, learned A.P.P. has opposed both these appeals. Learned A.P.P. would mainly contend that though the present is a case of circumstantial evidence, the prosecution has completed the chain of circumstances and thereby proved the case against the accused beyond reasonable

doubt. Learned A.P.P. submits that on the basis of the details given by the informant with regard to the telephone numbers, investigation was carried out and on the basis of the C.D.R. it was revealed that the call for demand of ransom was made from the mobile of Mantosh Kumar. The said accused was, therefore, arrested and the said accused confessed his guilt and disclosed the role played by other accused. Further, on the basis of confessional statement of Mantosh Kumar, the dead body/skeleton of the deceased was discovered. Further, the present appellants were also arrested. It is further submitted that there was a motive on the part of the appellants to extract money from the informant and, therefore, demand of ransom was made. However, in the meantime, the accused killed the deceased boy, i.e. son of the informant. Learned A.P.P., therefore, urged that there is ample evidence available on record from which it can be said that appellants have initially kidnapped the boy and thereafter killed him. Therefore, learned trial court has not committed any error while passing the impugned judgment and order. It is also submitted that even if all the incriminating material and evidence was not put to the accused while recording their statement under Section-313 of the Code, even then, in absence of any prejudice being caused

to the accused, it is an irregularity and, therefore, benefit of the said irregularity cannot be given to the appellants/accused.

13. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

14. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution.

15. Before the Trial Court, prosecution examined twelve witnesses.

16. PW-1 Babita Devi is the daughter of the informant. She has stated in her examination-in-chief that the incident took place one year ago at 02:00 P.M. On that day, she was at the house of the informant at Kalyanpur. She has further stated that Mukesh Paswan (appellant) came and asked about Raushan. She replied that he was playing near temple. Further, she has stated that Mukesh told her that he will go with Raushan to Dadu Chowk and from there he will send Raushan back with the bicycle. Further, she has stated that Raushan did not return home even after two to three hours due to which she along with her mother started searching for him. She further states that when she reached at the said chowk, she came to

know that Surendra, Mukesh, Santosh and Anil took him (Raushan) away on motorcycle and on the next day in the morning, at 06:00 a.m., a call was made on her father's (informant) mobile phone bearing No.9006122925 demanding a ransom of Rs.15,00,000/- for safe return of his son. Further, she has stated that when further call was made on the said mobile phone, there was no response from that side. After two days, she came to know that her brother's dead body was lying near the Chowk.

16.1. During her cross examination, she stated that her in-laws' place is at Bakhomal, Begusarai. She resides at her parental house since the death of her brother Deepak. She has further stated that the incident occurred on 30.09 one year ago. She does not remember the year. The time of incident was 02:00 p.m. and at that time, she was alone at her home. During the course of enquiry by Darogaji, she has denied the suggestion that she had not informed him that Raushan is going with Mukesh. Daroga ji came at her house after two to three days of the occurrence. She has denied the suggestion that she had not disclosed before Darogaji that Mukesh told her that he sent Raushan from Dadu Chowk and when she along with her mother went at the said Chowk, they came to know that

Mukesh, Surendra, Santosh and Anil took away Raushan on a motorcycle and on the next day a call was made demanding ransom of Rs. 15,00,000/- for safe return of Raushan. She further stated that accused were on two motorcycles and she did not see accused taking away Raushan from the said Chowk. She has deposed about the said incident as gathered by her from others at Dadu Chowk. She stated that she went to see the dead body after two days. She identified the deceased by his Jeans Pant and Green Shirt. She had gone to the house of accused Mukesh where his father and aunt etc. were present. Nobody searched for the boy during the night of the incident. Mukhiyaji had gone to the police station and her father had put his signature on 01.10. She has denied that as she resides in her in-laws' place, she is not aware about the affairs of her parental house and she has deposed falsely, as instructed by others and that Mukesh was outside at the time of occurrence in connection with his profession and he has falsely been implicated.

17. P.W. 2 Shanti Devi is the wife of the informant. She has stated that the incident took place at 02:00 p.m. She had gone to Kalyanpur. On her return when she reached to Dadu Chowk, she saw that accused Mukesh Paswan was taking her

10 year old son on a bicycle. When she came home, she asked her daughter about the boy. When the boy did not return for 1, ½ hours, they started searching for him, but could not find him. People present at Dadu Chowk said that three persons had taken the boy on motorcycle. When her husband came at 04:00 p.m. he also asked about the boy. Her daughter said that Mukesh had taken the boy with him. Thereafter, her husband received a phone call demanding Rs.15,00,000/- as ransom for safe return of the boy.

17.1. In her cross-examination she has stated that Darogaji had recorded her statement. She has stated that Mukesh and she share a common courtyard as Mukesh is the son of elder brother of her husband. Mukesh and Raushan had no enmity nor the parents of Mukesh had any enmity. She had seen Mukesh taking her son at 02:00 pm on the carrier of the bicycle. Though she had seen Raushan going with Mukesh, but she did not forbid him as Mukesh was his brother. She has further stated that earlier also her son used to go out of the house, but he used to return. At times he had even left the hostel. Nobody except her had seen the boy being taken away by Mukesh on a bicycle. She had not disclosed the event of her son being taken away by Mukesh to anyone. During the course

of search, she was informed by unknown passers by of Dadu Chowk that Mukesh and two others took away the boy on motorcycle, but they did not say as to where. She returned home at 03:00 p.m. and disclosed about Mukesh to her husband. She saw the dead body of her son on 05.10. after five days. The dead body was dismembered. Only the trunk was lying with flesh intact. When she embraced the trunk, blood was not oozing. Blood had spilled near the place of occurrence. Sugarcanes were broken and trampled. She identified the dead body by clothes. She has denied the suggestion of false implication of Mukesh and giving false evidence.

18. P.W. 3 Narayan Paswan is an independent chance witness. He has stated that the incident is of about 13 months at 02:00 p.m. At the relevant time he had gone to Dadu Chowk to pick his daughter Vimla Devi when he saw Mukesh Paswan taking the son of Kailash Paswan, namely Raushan Paswan on a bicycle. Two motorcycles were parked at Dadu Chowk and two persons were riding each motorcycle. From there they took Raushan on motorcycle. He had seen the dead body of Raushan out of which foul smell was coming. He and Kailash identified the dead body. He identifies accused Mukesh, present in Court.

18.1. In his cross-examination, he has stated that he is hard of hearing. He has denied the suggestion that he had not told Darogaji that the occurrence took place at 02:00 p.m. and that when he had gone to pick his daughter he had seen Mukesh Paswan taking away the son of Kailash Paswan on a bicycle. He has denied the suggestion that he had no personal knowledge of such occurrence nor any such incident took place.

19. P.W. 4 Upendra Paswan is also an independent chance witness. He has stated that when he was returning from Panchayat Bhawan, he chanced to see Mukesh Paswan taking away the son of Kailash Paswan on a bicycle, but he went home. On search, the boy could not be traced out. Two days after the incident he came to know that the dead body of the boy was found in Goabari Chour, Cheria Bariyarpur. He came to know that a ransom of Rs.15,00,000/- was demanded for safe return of the boy, but on non-fulfilment of the same, the boy was killed. He identifies the accused present in Court.

19.1. In his cross-examination, he has stated that his statement was recorded by Nareshji at the police station in presence of 20-25 persons on the date on which the boy went missing. He has further stated that he had no talk with Kailash Paswan. He had not discussed about the incident with anybody

except the wife of Kailash Paswan. Kailash Paswan is not a man of means and he somehow supports his family from the earning from his job. He has denied the suggestion of giving false evidence.

20. P.W. 5 Ram Chandra Paswan is a seizure-list witness. He has put his signature on the seizure-list of seized Samsung Mobile (Ext-1). He does not know who else had put his signature on the seizure-list. He left the place after putting his signature. He has denied the suggestion of giving false evidence.

21. P.W. 6 Bhikhan Paswan is a hear-say witness. He has simply said that he came to know in the evening that Mukesh took away Raushan on his bicycle and did not return. In his cross-examination, he has stated that he does not know anything about the occurrence.

22. P.W. 7 Kailash Paswan is the informant. He has stated in his examination-in-chief that the incident took place at 02:00 p.m. He came from duty at 04:00 p.m. Raushan was not at house. When he enquired of his daughter Babita Kumari about Raushan, she informed that Mukesh had taken him to Dadu Chowk. On search, he could not be traced out. Babita also said that her mother had gone to Kalyanpur. When he asked his

wife, she stated that she had seen Mukesh taking away Raushan near Dadu Chowk on a bicycle. Thereafter she returned home. His son did not return on the day of occurrence. Next day he received a ransom call on his mobile No. 9006122925 from mobile No. 8151957018 demanding an amount of Rs. 15,00,000/- for safe return of his son. He got a written complaint drafted by the Mukhiyaji, put his signature on the same and submitted at the police station. He has identified his signature (Ext-2). After registration of the case, police had come to his house and interrogated him and also recorded his statement and the statement of his daughter and wife. After five days, S.H.O. of the concerned police station asked him to come to Goabari Chour. He, his wife and daughter went there. So many persons were already there. The dead body of his son was lying in the sugarcane field which he identified to be of his son by the Jeans pant. The body was in pieces and headless. He claims to identify the accused persons out of whom Mukesh and Surendra @ Gore Lal are present in the Court.

22.1. In his cross-examination, he has stated that he had not seen the occurrence with his own eyes. He had no enmity with Gore Lal nor he was on talking terms with him. He had not given the names of the accused in the written

complaint. He further states that he had given only the name of Mukesh and none else.

22.2. In his cross-examination on behalf of of accused Mukesh he has stated that Mukiyaji had drafted the written complaint submitted by him at the police station. He has denied the suggestion that he had only written the name of the owner of mobile No. 8151957018 rather he had also given the name of accused Mukesh. He has further stated that the dead body of his son was found on 05.10.2016, i.e. after five days of the occurrence. He has further stated that his daughter, his wife, Upendra and Narayan Paswan had seen Mukesh taking away his son with him. He has no enmity with Mukesh or his father. He and Mukesh share a common courtyard. He has stated that his son was taken away on a bicycle at 02:00 p.m. which was seen by his daughter and his wife. He had talked to his wife before going to the police station. When his son did not return, he asked the father of Mukesh when wife of Mukesh said that Mukesh has also not returned. Again at 08:00 p.m. he went to the house of Mukesh and again his wife said that Mukesh has not returned. He has denied the suggestion that he has deposed as a hearsay witness. He has also denied the suggestion that on mere suspicion he has lodged this case.

23. P.W. 8 Naveen Kumar Pandit is a seizure-list witness. He has stated that he had put his signature on the seizure-list of the seized Carabon Screen Touch Mobile bearing SIM of Idea and Tata Docomo from accused Anil Kumar. He has identified his signature on the seizure-list (Ext-3). He had also put his signature on the seizure-list of the seized silver colour Kechaoda Mobile bearing two SIMs from the house of accused Surendra Kumar @ Gore Lal. He has identified his signature on the seizure-list (Ext-3/1). He had also put his signature on the seizure-list of the seized black colour Kechaoda D.A. mobile bearing SIMs of Airtel and Reliance. He has identified his signature as Ext-3/2.

23.1. In his cross-examination on behalf of accused Mukesh, he has stated that his statement was not recorded before the police. He had put his signature on a blank paper. In his cross-examination on behalf of of accused Gore Lal, he has stated that he had put his signatures on 3-4 blank papers. When the police took signature, no mobile was put before him nor any accused was searched in his presence.

24. P.W. 9 Anjani Kumar Singh is also a seizure-list witness. He has stated that he has also put his signatures on the seizure-list of the items as described by P.W. 8. He has

identified his signatures as Exts. 3/4, 3/5 and 3/6 respectively.

24.1. In his cross-examination, he has just repeated the version as given by P.W. 8.

25. P.W. 10 Sanjeet Kumar has deposed that on 21.12.2016 he was posted as S.H.O., Bibhutipur. On 02.10.2016 he took over the charge of investigation of Bibhutipur P.S. Case No. 225 of 2016 from C.S. Kumar. He did not find any criminal antecedent of Mukesh Kumar and Gore Lal in the police record. After completion of investigation, he submitted charge-sheet against accused Mantosh Kumar and Surendra Kumar @ Sulender Kumar @ Gore Lal, Anil Kumar and Mukesh Paswan for the offence punishable under Section- 364A, 302, 201, 120B/34 of I.P.C.

25.1. In his cross-examination, he has stated that he did not collect any incriminating material during investigation and he submitted the charge-sheet against the F.I.R. named accused on the instruction of his senior based on the evidence collected by his predecessor.

26. P.W. 11 Chaturvedi Sudhir Kumar has stated in his deposition that on 02.10.2016 he was posted as S.H.O., Bibhutipur P.S. He registered Bibhutipur P.S. Case No. 225 of 2016 dated 02.10.20216 on the basis of written report submitted

by the informant Ram Kailash Paswan for the offence punishable under Sections- 363, 364A of I.P.C. He identifies the written application paginated by him and bearing his signature (Ext-2/1). He identifies his signature on the formal F.I.R. (Ext-4). He collected studied the C.D.R. and location of Mobile No. 8151957018 from which he came to know that the mobile from which ransom was demanded was bearing SIM No. 8151957018, IMEI No. 868903020284804. The owner of the said mobile had acquaintance with the owner of Mobile No. 9199202290. As such, it was necessary to locate the owner of Mobile No. 9199202290. On analysis of the C.D.R. of both the mobile numbers and the most common contact No. 9102840568 it was revealed that the location of the number from which ransom was demanded was at Khanjahapur, P.S. Cheria Bariyarpur, District- Begusarai. Since the incident, there are regular calls between mobile Nos. 9102840568 and 9199202290 which is still continuing. When he was informed that ransom was demanded from mobile No. 8151957018, he dialed the said number when the owner of that number replied that he resides at Mangalore and he has not talked to anybody. He has further stated that he convinced the local people that Kailash Paswan should submit a written complaint with regard

to the incident and should get his statement recorded after which Kailash Paswan came to the police station and submitted the written complaint based on which he registered Bibhutipur P.S. Case No. 225/2016 dated 02.10.2016 and started investigation. During the course of investigation, he went to the house of Ram Pratap Mahto and asked about the owner of mobile No. 9199202290 at which Mantosh Kumar said that it is his mobile phone and that he is the son of Ram Pratap Mahto. In presence of two witnesses namely Anjani Kumar Singh and Navin Kumar he prepared the seizure-list of that mobile phone also bearing the Airtel SIM No. 7482979565 and handed over a copy of the same to Mantosh Kumar and arrested him. He also recorded the confession of accused Mantosh Kumar in which he confessed his guilt. He had identified the signature of police officer, Cheriya Bariyarpur on the seizure list (Exhibit-3/8). He has further stated that on the clue given by FIR accused Mantosh Kumar he went to the place of occurrence that is near *Bhagwanak* well situated at *Guabari Chaur* where foul smell was coming. When he reached near the western side of a large sugarcane field, the foul smell increased from which it was evident that the dead body of Raushan Kumar is lying somewhere around that place. Later on, a dead body without

legs and head was found in a rotten condition wearing jeans, full pant which was informed by him to the Superintendent of Police, Samastipur, Inspector of Police, Rosera and the father of missing boy Raushan Kumar. Kailash Paswan, father of the missing child Raushan Kumar reached there and identified the dead body to be of his son with the help of the clothes on the dead body. The Inquest Report of the dead body was prepared by the police officer Shambhu Sharma of Cheriya Bariyarpur P.S. upon which the deponent put his signature. At some distance from the place of occurrence, the head was found as if partly eaten by jackals or wild animals. Thereafter, he conducted the raid of the house of Surendra Kumar @ Gorelal and recovered Kachaedo mobile bearing No. 9102840568 and 8431785255. He prepared the seizure list of the same (Exhibit-M/1). He also recovered mobile No. 7654613804 from the house of Gorelal (Exhibit-M/2). Based on the confessional statement of Mantosh Kumar he raided the house of Anil Kumar and recovered Karbonn mobile bearing two sims i.e., Nos. 8651977240 and 8904710763 (Exhibit-M/3) and arrested accused Anil Kumar. All the FIR accused persons were interrogated one after another and they all confessed their guilt and stated that Mukesh Paswan @ Vimlesh Paswan had

kidnapped his cousin brother Raushan Kumar and on his instruction they demanded ransom under the threat of killing him. He thereafter raided the house of Mukesh Paswan @ Vimlesh Paswan @ Sadhu @ Bhagat and recovered a Samsung black colour mobile bearing No. 9525816772 (Exhibit-M/4). He arrested FIR accused Mukesh Paswan @ Vimlesh Kumar and recorded his statement in which he confessed his guilt and stated that he wanted to kill his cousin Raushan Kumar due to family feud and he planned for it at Banglore itself with Mantosh Kumar and Surendra Kumar @ Gorelal. According to their plan, on 30.09.2016 Mukesh Kumar took his cousin Raushan Kumar to Cheriya Bariyarpur and handed him over to Mantosh Kumar and Gorelal @ Surendra Kumar. They took him to the house of Mantosh Kumar and Mukesh returned to his house. A few children had seen Mukesh carrying Raushan Kumar on his bicycle due to which Kailash Paswan asked him about the whereabouts of Raushan Kumar. Mukesh replied that Raushan Kumar got down from his bicycle near St. Xavier School at Dahul Chowk. On 01.10.2016, Gorelal and Mantosh Kumar demanded a ransom of Rs. 15,00,000/- from the mobile phone of Gorelal. Upon this, Mukesh ordered to kill Raushan Kumar and then demand the money as if he is alive, the

conspiracy will come to the light. They including Anil Kumar took the boy to the sugarcane field, strangulated him to death and dumped the dead body there on 01.10.2016. But when Mantosh was arrested, on his statement all the accused were apprehended. Vimlesh Paswan also put his signature in the case diary.

26.1 In his cross-examination, on behalf of accused Mukesh Paswan @ Vimlesh, he has stated that he did not get the mobile phone recovered from Mukesh verified from the DTO. He did not seize any document with regard to the mobile No. 9525816772 recovered from Mukesh. Before the arrest of Mukesh, Mantosh had already confessed his guilt and disclosed the conspiracy behind the whole incident. He further stated that he did not try to get the statement of accused persons, who confessed their guilt, recorded under Section 164 Cr.P.C. He has also stated that the conspiracy was detected on the basis of tower location and CDR of the mobile phone and accused persons were arrested based on scientific investigation. He has further stated that there is no witness to the incident of Mukesh carrying the deceased on bicycle to Cheriya Bariyapur. Besides accused, no other witness stated that Mukesh had taken the deceased on a bicycle. The father of the deceased in his

statement had stated that the deceased had once left the school.

26.2 In his cross-examination, on behalf of accused Surendra Mahto @ Gorelal he has stated that he had seized two mobile phones of Gorelal and handed over a copy of the seizure list of the same to Gorelal which bears his signature as also the signature of the accused. He has further stated that he had not got the mobile phone recovered from Surendra verified from Telephone Department. He has denied the suggestion that he has conducted a faulty investigation.

27. PW-12 Dr. Ravi has deposed in his examination-in-chief that, on 07.10.2016, he was posted as a Tutor in the Forensic Medicine Department of Darbhanga Medical College. On that day, he received the skeleton remains of Roushan Kumar in plastic sheets kept in a metallic box and noted the following observations:-

> "On opening the box skeletonised dead body with some muscular attachment over chest, both upper limbs & lower limbs and hip emitting foul smell. Head (skull) was not available for examination. Glued portion of abdomen and thoracic viscera were available with foul smell.
>
> Following bones were identified:-
>
> Femur-2 Tibia-2, Vertebra- All Sacrum-1, Humerus-2 Radius-2, Hip bone-2, Ulna-2.
>
> (i) Regarding origin: The available bones

confirmed to human anatomy and there was no duplication.

(ii) Regarding sex: Greater sciatic notch was narrow and deep, sub pubic angle was acute. The sacrum was narrow, long with evenly distributed curvature and well marked sacral promontory. 1st sacral vertebrae was large.

(iii) Regarding age: Ischioppubic rami were found fused. The triradiate cartilage of both acetabular cavity was not appeared. The centre of medial and lateral epicondyles of both humerus were appeared but not fused. All sacral vertebrae were not united with each other. The centre of ossification of lesser trochanters of both femur were not appeared.

(iv) Regarding injury: No injury mark could be detected on any of the available bones. Preserved glued material of abdominal and thoracic viscera were preserved in s/s of common salt in boyam properly labelled and sealed with medicolegal seal and handed over to accompanying chaukidar 2/1 Umakant Sah for onward transmission to the same I.O. of this case to sent F.S.L. Bihar Patna for further investigation, if required.

Opinion: The skeletal remains belonged to male aged about 10-12 years (Ten to Twelve years). Cause of death could not be ascertained. The time elapsed – since death appeared to be within 5 to 7 days from the time of examination. The viscera preserved as stated may be used by I.O. for further examination if needed."

27.1. In his cross-examination, he has stated that he had not conducted the D.N.A. test as the same was not demanded. He had not returned the dead body not disposed the same. He did not mention about the same in his report.

28. We have considered the arguments canvassed by the learned counsels appearing for the parties, re-appreciated the entire evidence led by the prosecution as well as defence and perused the paper-book and trial court record.

29. It would emerge from the F.I.R. given by the informant that, as per the case of the informant, his son, aged about 10 years was missing since 02:00 p.m. of 30th September, 2016. Further, on 01.10.2016 at about 06:45 a.m. a demand of ransom of Rs. 15,00,000/- was made from the informant. However, the written complaint was given to the police on 02.10.2016 at about 12:30 hours. Initially, the F.I.R. was lodged for commission of the offence under Sections- 363 and 364A of I.P.C., the informant has not expressed any suspicion on any person. Thus, the written complaint was given against unknown person. It would further reveal from the record that even after registration of the F.I.R. on 02.10.2016, the investigating agency sent the same to the concerned Magistrate on 06.10.2016. Thus, there is a delay in sending copy of the F.I.R.

to the learned Magistrate.

30. It would further reveal from the evidence led by the prosecution that there is no eye-witness to the incident in question, including the incident of kidnapping and incident of carrying away of the son of the informant. Therefore, the case of the prosecution rests on circumstantial evidence. With a view to prove the case against the appellants, the prosecution had examined 12 witnesses, including the near relatives of the deceased. From the deposition given by P.W. 1, who is sister of the deceased, it would reveal that it is her case that accused Mukesh Paswan, who is her cousin, came to the place of the said witness and enquired about Raushan (deceased. It is her case that she replied that her brother (Raushan) was playing near temple and, therefore, Mukesh told her that he will go with Raushan to Dadu Chowk and he will send Raushan back with the bicycle.

30.1. Similarly, P.W. 2 Shanti Devi, who is mother of the deceased, has also stated before the court that she had gone to Kalyanpur. However, at the time of returning from the said place to her house, when she reached to Dadu Chowk, she saw that accused Mukesh Paswan was taking her 10 year old son on bicycle. P.W. 3 Narayan Paswan, who is an independent

witness, has stated that at the relevant time he had gone to Dadu Chowk to pick his daughter Vimla Devi. At that time, he saw Mukesh taking the son of Kailash Paswan (informant) on a bicycle. Similar is the version of P.W. 4 Upendra Paswan, who is also an independent witness. Further, the informant has specifically admitted that the complaint was written by the Mukhiya and he has just signed the same. However, the Mukhiya has not been examined by the prosecution.

30.2. However, it is pertinent to note that the aforesaid version given by P.W. 1 to P.W. 4 cannot be relied upon because it is nothing but an afterthought and an improved version of the said witnesses. At this stage, if the written complaint given by the informant is carefully seen, it is revealed that for the alleged incident which took place at about 02:00 p.m. on 30th September, 2016, and for the demand of ransom made at 06:45 a.m. on 01.10.2016, written complaint was given at 12:30 hours on 02.10.2016. Thus, the written complaint was given after two days. There is no reference in the written complaint given by the informant, who is father of the deceased, with regard to the incident of seeing Mukesh Paswan with the deceased Raushan on the bicycle at the relevant point of time. Even after a period of two days nobody has disclosed

that the deceased was lastly seen with Mukesh Paswan on bicycle. P.W. 1, who is the sister of the deceased, and P.W. 2, who is the mother of the deceased, if they were aware about the fact of Mukesh Paswan taking the deceased on bicycle, then, in natural course, they would have disclosed about the said aspect to the informant as well as the police at the time of lodging the F.I.R. Even the so-called two independent witnesses did not disclose about the said aspect at the relevant point of time and, therefore, P.W. 3 and P.W. 4 are merely chance witnesses.

31. Keeping in view the aforesaid evidence led by the prosecution, if the deposition given by P.W. 11, I.O., is carefully examined, it transpires that on the basis of the details of mobile phone number given by the informant, the I.O. collected the C.D.R. and after carrying out necessary analysis of the said details, the I.O. arrested accused Mantosh Kumar. It further transpires that on the basis of the confessional statement given by co-accused Mantosh Kumar, the dead body/skeleton of the deceased was discovered. It is the case of the prosecution that co-accused Mantosh Kumar, in his confessional statement, had given the names of other accused and the manner in which they have committed the alleged offences and thereafter appellant/accused Mukesh Paswan @ Bimlesh Paswan @

Bhagatji came to be arrested. Similarly, the other appellant namely Surendra Kumar @ Gore Lal was also arrested on the basis of the confessional statement given by co-accused Mantosh Kumar.

32. It would further reveal from the cross-examination of P.W. 11, I.O. that he did not verify about the mobile phone which was seized from appellant Mukesh from the office of D.T.O. as to whether the said mobile was in the name of Mukesh or his family member. He did not collect any document with regard to the said mobile phone. The Investigating Officer also admitted that before Mukesh Paswan was arrested, confessional statement of Mantosh was already recorded. Further, in para-24 of the cross-examination the I.O. admitted that there is no witness to the incident of Mukesh carrying away the deceased on bicycle. Similarly, in para 33 of his cross-examination P.W. 11 has admitted that two mobile phones were seized from accused Surendra Kumar. However, he had not got the mobile phones recovered from Surendra Kumar verified from the Telephone Department.

33. Thus, from the aforesaid evidence given by the I.O., P.W. 11, it can be said that there was no witness who had seen Mukesh carrying the deceased on his bicycle. Further,

though the mobile phones were seized from appellant Mukesh as well as appellant Surendra Kumar, no efforts were made by the I.O. to verify the ownership of the same from the concerned Telephone Department.

34. At this stage, it is pertinent to observe that, as per the case of the prosecution, on the basis of confessional statement of co-accused Mantosh, dead body/skeleton of the deceased was discovered. Further, on the basis of confessional statement of co-accused Mantosh, the present appellants have been arrested. It is not in dispute that the said co-accused Mantosh has been separately tried as he was juvenile and the trial of the present appellants was also separated. Thus, in the present case, the only material available with the prosecution is the confessional statement of co-accused Mantosh on the basis of which the skeleton of the deceased was discovered. The effect of confessional statement given by co-accused against the appellants is also to be examined in the present case. The question before us is whether, on the basis of confessional statement of a co-accused, in absence of any other material evidence available against the appellants, the order of conviction can be passed against the appellants or not.

35. At this stage, we would like to consider the

decisions rendered by the Hon'ble Supreme Court upon which reliance has been placed by the learned advocates for the appellants.

36. In the case of **Ramanand @ Nandlal Bharti** (supra), the Hon'ble Supreme Court has observed in para Nos. 53 and 54 as under:-

> 53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend

credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

54. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW-2, Chhatarpal Raidas

> was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the blood stained clothes. The second panch witness namely Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the blood stained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth."

37. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that when the accused has shown willingness to give his confessional statement, it is the duty of the Investigating Officer to call for two independent witnesses at the police station itself and after the independent witnesses arrive at the police station, in their presence, the

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

38. Keeping in view the aforesaid decision rendered by the Hon'ble Supreme Court, if the facts of the present case are examined, it is revealed that in the entire oral evidence of the Investigating Officer, he had not disclosed about the aforesaid aspects and, therefore, the theory of the prosecution with regard to the evidence of discovery made by co-accused Mantosh raises doubt and the discovery on the basis of confessional statement is not duly proved.

39. Even otherwise, in the present proceedings, we are not considering the case of co-accused Mantosh. It is the case of the prosecution that on the basis of the confessional statement of co-accused Mantosh, the present appellants have been implicated. Thus, at this stage, we would also like to refer the decisions rendered by Hon'ble Supreme Court on this point as to whether the confessional statement of a co-accused can bind the present appellants or not and to what extent.

40. In the case of **Haricharan Kurmi** (supra)**,** the Hon'ble Supreme Court has observed that the question about the part which a confessional statement made by an accused person can play in a criminal trial has to be determined in the light of provisions of Section-30 of the Evidence Act. It has been also observed that Section-30 provides that when more

than one persons have been tried jointly for the same offence and the confession made by one person affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. It has been further observed that a confession cannot be treated as evidence which is substantive evidence against co-accused person. In dealing with criminal case where the prosecution relies upon confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such other accused person and if the said evidence appears to be satisfactory and the Court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the Court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right.

40.1. In the case of **Subramanya** (supra), the Hon'ble Supreme Court has dealt with the aforesaid aspect in paragraph Nos. 63 to 67. The Hon'ble Supreme Court has mainly observed that Section 30, however, provided that the Court might take into consideration the confession and thereby no doubt made it evidence on which the Court could act, but the

section did not say that the confession was to amount to proof. Equally, there must be other evidence and confession or only one element in consideration of all the facts proved in the case which may be put into the scale and weighed with other evidence. The Hon'ble Supreme Court further observed that in criminal trial there is no scope for applying the principle of moral conviction or grave suspicion. Further, in criminal cases where the other evidence adduced against the accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of co-accused person, the presumption of innocence, which is a basis of criminal jurisprudence against the accused persons and compels the Court to render the verdict that the charge is not proved against him and so he is entitled to benefit of doubt.

41. Keeping in view the aforesaid decisions, rendered by the Hon'ble Supreme Court, if the facts and the evidence of the present case are analyzed, it would reveal that the present two appellants have been separately tried in a separate trial and, therefore, the confessional statement of co-accused Mantosh cannot be treated as proof against the present appellants. Even otherwise, in the present case, except the confessional statement of co-accused Mantosh, there is no other

evidence available on record connecting the present appellants with the incident in question. Even the theory of last seen together put forward by the prosecution against appellant Mukesh Paswan cannot be believed in view of the discussion made by us hereinabove. Further, so far as appellant Surendra Kumar @ Gore Lal is concerned, there is no evidence connecting the said appellant with the alleged incident.

42. Thus, we are of the view that the prosecution has failed to complete the chain of circumstances from which it can be said that the present appellants have committed the alleged offence.

43. In the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra**, reported in **(1984) 4 SCC 116**, the Hon'ble Supreme Court has observed in paragraph 152 and 153 as under:

> "152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be

proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) 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,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

44. At this stage, we would also like to deal with the contention raised by the learned advocates appearing for the appellants with regard to the recording of the further statement

of the accused under Section-313 of the Code. While recording their statement under Section-313 of the Code, only two questions were put to the appellants/accused as under:

> "1. There is evidence against you that on 30.09.2016, you kidnapped Raushan Kumar, son of informant from village Jagarnathpur (Kalyanpur), police station Vibhutipur, with the intention of murder and ransom, and on 01.10.2016, you demanded a ransom of Rs. 15 lakhs and threatened that if the demand is not met, the kidnapped person will be killed?
>
> 2. There is also evidence against you that on 01.10.2016, you, along with co-accused, in furtherance of common intention, murdered the kidnapped Raushan in the sugarcane field west of Bhagwana Kuan at Goawadi Chaur and threw the dead body with the intention of destroying evidence?"

45. Now, at this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Raj Kumar @ Suman Vs. State (N.C.T. of Delhi),** reported in **2023 scc OnLine SC 609** wherein the Hon'ble Supreme Court has discussed about the relevance of provisions contained in Section 313 of the Code in para Nos. 10 to 13. Mainly, it has been observed by the Hon'ble Supreme Court that the object of Section-313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is

important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Each material circumstance appearing against the accused is required to be put to him specifically, distinctly and separately. Failure to do so amounts to a serious irregularity vitiating the trial if it is shown to have prejudiced the accused.

46. Keeping in view the aforesaid observation made by the Hon'ble Supreme Court, if the question/incriminating circumstance put by the Court to the accused is carefully examined, it transpires that the circumstance of confessional statement of co-accused Mantosh on the basis of which so-called discovery of skeleton/dead body of the deceased was found was not put to the accused. Further, the circumstance of the appellant/accused Mukesh Paswan being lastly seen with the deceased Raushan on bicycle by the concerned witnesses was also not put to the said accused/appellant.

47. At this stage, it is required to be observed that it is the specific case of the prosecution through P.W. 1 to P.W. 4 that they had seen the deceased lastly in company with the appellant Mukesh on bicycle. However, even that circumstance

was not put to him.

48. It is the specific case of the defence that because of the aforesaid gross illegality/irregularity committed while recording the statement under Section-313 of the Code of the appellants, serious prejudice has been caused to them and they were deprived of opportunity of explaining the said circumstances to the Court.

49. Thus, from the aforesaid deposition of the prosecution-witnesses, we are of the view that there are major contradictions and improvement in the deposition of the prosecution-witnesses. The prosecution has, thus, failed to complete the chain of circumstances in the present case.

50. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellants/accused beyond reasonable doubt, despite which the Trial Court has recorded the impugned judgment of conviction and order of sentence. As such, the same are required to be quashed and set aside.

51. Accordingly, the impugned judgment of conviction and order of sentence both dated 12.12.2018 are quashed and set aside. The appellants are acquitted of the

charges levelled against them by the learned Trial Court.

51.1. Both the appellants are in custody. They are directed to be released from jail custody forthwith, if their custody is not required in any other case.

52. Both the appeals stand allowed.

(Vipul M. Pancholi, J)

(Alok Kumar Pandey, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	25.02.2025
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