

State of Bihar and Etc. Vs. Neeraj Kumar and Etc.

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SooperKanoon Citation : sooperkanoon.com/124403

Court : Patna

Decided On : Sep-03-2008

Judge : Shiva Kirti Singh and Madhavendra Saran, JJ.

Appellant : State of Bihar and Etc.

Respondent : Neeraj Kumar and Etc.

Prior history : Shiva Kirti Singh, J. 1. The Death Reference is in respect of the six accused who have been tried together and convicted for the offence under Sections 364(A), 302, 201 and 120(B) read with Section 34 of the Indian Penal Code. Accused Gorakh Singh alias Gorakh Nath Singh has been sentenced to death for the offence under Section 302 read with 120(B) of the Indian Penal Code whereas the remaining five accused have been sentenced to death for the offence under Section 364(A) of the Indian Penal C

Judgement :

Shiva Kirti Singh, J.

1. The Death Reference is in respect of the six accused who have been tried together and convicted for the offence under Sections 364(A), 302, 201 and 120(B) read with Section 34 of the Indian Penal Code. Accused Gorakh Singh alias Gorakh Nath Singh has been sentenced to death for the offence under Section 302 read with 120(B) of the Indian Penal Code whereas the remaining five accused have been sentenced to death for the offence under Section 364(A) of

the Indian Penal Code. No separate sentence has been awarded to them for other offences. Accused, Gorakh Singh alias Gorakh Nath Singh and his son, accused Sunny alias Sunny Deol have jointly preferred Cr. Appeal No. 1216 of 2007 whereas the remaining four accused, Ravindra Kumar alias Ravindra Kumar Singh, Ravi Chor alias Ravi Rai, Neeraj Kumar and Santosh Kumar alias Loha have preferred separate Criminal Appeals bearing No. 1085, 1173, 1194, and 1275 all of 2007 respectively. The Death Reference and the Criminal Appeals have been heard together and are being disposed of by this common Judgment.

2. The prosecution case, as disclosed in the written report (Ext-1) of Sudhir Kumar Sinha (PW-1) lodged on 22-9-2004 at 7.00 a.m. is to the following effect:

Informant's son, Sumit Kumar aged about 13 years, on 21-9-2004 went on a bicycle to his school, BMP High School, Phulwarisharif from his house. Sunny, son of Gorakh Singh met in the school at about 1.00 p.m. and told him that a cricket match is to be played for which a ball will be given by Ravindra Singh son of Ramnath Singh and for that Sumit should accompany Sunny. Sumit left the school with Sunny at about 1.30 p.m. He was kidnapped by Ravindra Singh and his gang with wrong motives. When Sumit did not return to his home till about 6.00 p.m. then efforts were made to search him. In the night at 8.00 p. m. a Station diary (sanha) was recorded. In the morning at about 5.00 a.m. accused, Sunny was seen and was apprehended by the general public which informed the police. Sunny on being apprehended accepted his guilt and disclosed that Sumit had been murdered. Thereafter, police recovered the dead body of Sumit from the side of railway line and his school bag was also recovered. The informant claimed that Sunny, Ravindra Singh and their gang men had kidnapped Sumit and with a view to destroy evidence and with bad intentions they committed murder of Sumit. On the dead body of Sumit there were marks of injury. Blood had flown from nose and ears. There were burn marks caused by cigarette and acid. Ravindra Singh and Sunny reside in Adarsh Nagar Colony where the informant resides.

3. On the basis of the written report of Sudhir Kumar Sihha, Phulwarisharif P.S. Case No. 649/04 was instituted on 22-9-2004 at 11.15 a.m. The FIR was sent to the Court and seen by learned Chief Judicial Magistrate, Patna on 23-9-2004. The

case was investigated by Anand Prakash Singh, Inspector of Police, then posted as Officer Incharge, (PW-18) and he was assisted by Sub Inspector, Arun Kumar (PW-16) who at the relevant time was posted as Sub Inspector in Phulwarisharif Police Station. PW-16 has admitted that in the evening of 21-9-2004 at about 8.30 while he was on patrolling duty in the evening special mobile, he received wireless information about the missing of Sumit but no clues could be found in the evening. Next day, in the morning at about 7.00 a.m., on receiving information from father of Sumit (Sudhir Kumar Sinha, PW-1) that residents of Mohalla (Colony) had caught Sunny and were assaulting him and that Sunny had admitted the kidnapping of Sumit which had created anger amongst the people, he went with force and took Sunny in custody. After making the crowd peaceful he began to interrogate Sunny. He admitted his involvement and disclosed that with the help of his friends he had murdered Sumit. The confession (Ext-4) was recorded by PW-16. As disclosed by Sunny Police went 500 yards east of Phulwarisharif station and from north of the railway line and about 10 yards south to boundary wall of airport, from bushes the dead body of Sumit was recovered. It was without any clothes. There were plenty of bushes all around and ants had encroached all around the dead body. According to PW-16 he had recorded the confession of Sunny as per directions of Officer Incharge of Phulwarisharif P.S., PW-18 and participated in further investigation as per his orders.

4. Allegedly, Sunny disclosed the names of other accused persons as miscreants involved in the occurrence. PW-16 proved the inquest report as Ext.5, the dead body chalan as Ext.-6, seizure list in respect of school bag of Sumit as Ext-7, the confessional statement of another accused, Ravindra Kumar as Ext-8, the confessional statement of Santosh alias Loha as Ext-9, the confessional statement of Ravi Chor as Ext-10, the confessional statement of Neeraj as Ext-11, station diary entry No. 693 dated 21-9-2004 as Ext-12 and another station diary entry No. 702 dated 22-9-2004 as Ext-13. He also identified the school bag (material exhibit 1/8) as the bag recovered on the disclosure of Sunny. He also identified the books' and copies kept in the bag.

5. According to PW-18, the I.O. who at the relevant time was Officer In Charge of Phulwarisharif P.S., on 22-9-2004 he received a telephonic information from the

informant that persons of the colony had apprehended Sunny on suspicion and Sunny had admitted that Sumit had been kidnapped. On this information another station diary entry (sanha) No. 702 was recorded. After taking Sunny in custody and recording his confession and after recovering the dead body on his disclosure, PW-18 prepared the inquest report and sent the dead body for autopsy to Patna Medical College Hospital. He also prepared a seizure list in respect of school bag of deceased, Sumit which was recovered as per disclosure made by Sunny from inside the boundary of airport. He recorded further statement of the informant and the statement of other witnesses. He also got recorded statement of Pramod Kumar (PW-10) before the Judicial Magistrate under Section 164 Cr.P.C. He arrested the other accused persons who also gave their confessional statements as claimed by PW-16. He has proved his signature on the confessional statement of accused, Ravindra as Ext-8/1 and his signature on confessional statement of Santosh Kumar alias Loha as Ext-9/1. According to him Ravindra had admitted his guilt and had disclosed that the school dress of Sumit and a piece of tyre strip which was used for strangulating Sumit had been thrown by him at a particular place amongst bushes inside boundary of the airport at about 150 yards east of western cabin of Phulwarisharif railway station and on his pointing out, the school uniform of Sumit a blue full pant, a white shirt and a tyre strip about 1 and 1/2 cubits length was recovered from under the bushes. The seizure list for those articles was proved as Ext-14. He has also proved his signature on the confessional statement of accused Ravi Chor alias Ravi Rai and confessional statement of accused Neeraj as Ext-10/1 and 11/1 respectively. After investigation he submitted charge-sheet including supplementary charge-sheet against the accused persons.

6. After submission of charge-sheet cognizance was taken by the learned Magistrate and the case was committed to the Court of sessions. Charges were framed on 14-2-2006 to which the accused persons pleaded not guilty and hence they were put on trial. The defence of the accused persons, as appears from the trend of cross-examination is total denial of their involvement in the kidnapping and murder of Sumit.

7. The prosecution, in order to prove the charges examined 20 witnesses in all and also proved several documents such as the written report, the FIR, the confessional statement, the seizure list and the postmortem report as exhibits. In the main trial no witnesses were examined on behalf of the defence. Only for the purpose of enquiry in respect of claim of accused Sunny that he was a juvenile and which plea was subsequently rejected up to the stage of this Court, some persons were examined as witnesses.

8. As noticed earlier, PW-1, Sudhir Kumar Sinha is father of the deceased, Sumit and also the informant of this case who gave written report (Ext-1) to the police. PW-2, Om Prakash is a witness in respect of seizure of clothes and a tyre strip which according to him were recovered on the disclosure made by accused, Ravindra Singh. He has proved his signature on the seizure list as Ext-1/9. He has also identified accused Ravindra. PW-3, Anil Kumar Sinha is brother of PW-1 and a witness of the facts stated by PW-1 that Sumit became traceless after going to school and during search the name of Sunny and Ravindra was heard and police was informed which took Sunny in custody and then he confessed his guilt and on his disclosure dead body was recovered from the place pointed out by him. He has supported the prosecution case and has proved the signature on inquest report as Ext-1/10. He has deposed that besides Sunny Ravindra was also apprehended and on his disclosure full pant and shirt of Sumit which were tied with a tyre stripe were also recovered for which the seizure list was prepared. He has proved his signature on the said seizure list as Ext-1/11.

9. PW-4, Manish Ranjan Sinha and PW-5, Sonu alias Rajive Ranjan are sons of PW-3 and cousins of the deceased. According to them also in course of search for Sumit on 21-9-2004 the names of Sunny and Ravindra surfaced. They went to their houses but their family members did not disclose anything and they were not found at their houses. Next day in the early morning at about 5.00 a. m. Sunny was apprehended by the residents of colony and on their query he admitted that Sumit had been kidnapped for ransom. When police came and took him in custody and made further interrogation then he admitted the entire occurrence and also disclosed the names of his friends and accomplices as Loha, Neeraj, Ravi Chor and Ravindra Singh. On the disclosure of Sunny police recovered the dead body

as well as the school bag and books of deceased, Sumit. They have identified the accused persons in dock. PW-6, Bittu Kumar is son of sister of PW-1, the informant. He has given the details that in course of search for Sumit he and his friends met a boy named, Ranjan who disclosed that Sunny had come to school gate during lunch time. In the colony Gopal Sharma (PW-15) another boy who was friend of Sumit disclosed that Ravindra had promised to give a ball to Sumit and had called him from school through Sunny. They went to the house of Sunny where his father accused, Gorakh Nath Singh gave different excuses but in the meantime younger brother of Sunny came out from his room and on asking he also disclosed that during lunch time Sunny had come at the school gate. In view of conflicting versions of family members of Sunny a suspicion arose about them. During search this witness and his friends also went to the house of accused, Ravindra but his family members also made different excuses. After some time the police had also come to make interrogations. On 22-9-2004 Sunny was seen in the colony and was apprehended by the residents of the colony on suspicion. On sustained interrogation he admitted that he and his friends had kidnapped Sumit. Thereafter PW-1 gave telephonic information to the police which came and took Sunny in its custody. Thereafter, he has supported the prosecution case regarding confessions by Sunny and recovery of the dead body as well as school bag and books of deceased Sumit as per disclosure made by Sunny. He identified the accused persons but wrongly named Ravi Chor as Loha and Loha as Ravi Chor.

10. PW-7, Baidyanath Lal is a formal witness who has admitted his signature on the inquest report relating to dead body of Sumit. PW-8 Girish Prasad Singh is another formal witness who has proved his signature on the seizure list relating to school bag of Sumit containing his books and copies. He has deposed that the said recovery was made in his presence on the disclosure of accused Sunny.

11. PW-9, Archana Sinha is wife of PW-1 and mother of the deceased. Her statement under Section 164 of the Cr.P.C. has been proved by her as Ext 2. She has in general supported the prosecution case regarding missing of her son, Sumit on 21-9-2004, Sunny being apprehended by people of the colony on 22-9-2004 and his confession before the people that he with his friends had kidnapped Sumit for ransom, about arrival of the police on telephonic information and about

confession by Sunny before the police in which he allegedly disclosed the names of the co-accused. Besides the above, she has also deposed that in the evening of 21-9-2004 at about 7.00 p. m. in course of search for Sumit and while going towards station she saw accused, Gorakh Singh talking to an unknown person. She heard Gorakh Singh saying that family members of the boy are searching for him desperately and it appears that the matter is turning serious and police may have been informed and his name may also come into open therefore, sweep the market clean.

12. PW-10, Pramod Kumar is also a young boy acquainted with the accused Ravindra and Sunny. He has deposed that his statement was recorded by the police and he had also given a statement in the Court before the Magistrate disclosing that on 21 -9-2004 at about 9.30 p.p. Ravindra and his friend Sunny came to him. He enquired as to what was the reason for their coming. Ravindra said that he had entered into arguments with his father. About Sunny he disclosed that he is a neighbour and they will go back in the morning. Both of them slept at his house during the night and in the morning when he woke up he found that both of them have gone away. The witness was thereafter declared hostile and on cross examination by the public prosecutor he claimed that due to fear he had made the statement before the Magistrate that when he got up in the morning he found that Sunny had gone away and on query Ravindra disclosed that a boy had been murdered. He admitted that he never gave in writing to any Court that he is under fear or he has been put under pressure by any body. He admitted his signature on his statement under Section 164 Cr.P.C. The said statement has been marked as Ext-3. He has also admitted that he had stated before the Magistrate all the facts stated in Ext.-3 including the fact that in the morning he saw that Sunny had gone away and on his enquiry Ravindra disclosed that he and Sunny had committed murder of the boy and they were therefore hiding themselves and on knowing this fact he had turned Ravindra Kumar out of his house. His attention was also drawn to the facts to the aforesaid effect disclosed by him to the police and he admitted his earlier statement in favour of the prosecution case.

13. PW-11, Surendra Singh is a peon of BMP-5 High School. PW-12, Ranjan Raj, PW-13, Prem Sagar and PW-14, Pintu Kumar are students. The peon has simply stated that on 21-9-2004 during night hours PW-12 and some other boys had come to enquire about another boy and this witness told them to come next day at about 10.00 when the school will be open. On 21-9-2004, he learnt that the missing boy had been killed and after five minutes of observing silence the school was closed. The three students have also deposed simply to the effect that they went to the school to enquire about the missing boy and thereafter they got no knowledge about anything relating to the case.

14. PW-15, Gopalji is an important witness who had, according to some of the PWs, disclosed that Sumit was called by Ravindra through Sunny for giving him cricket ball. But in Court Gopalji turned hostile. He was definitely under pressure to conceal the truth because in paragraph-1 he has gone to the extent of saying that he does not know any boy of the name Sumit from his colony. But on being cross examined by the prosecution, in para 3 he has deposed that by the side of his house is the house of one constable (sipahiji) and the next house is of Sumit. He has also disclosed that Sumit was also known by his alias name Lalan. He has denied the suggestion that he has deposed due to fear.

15. The gist of evidence of Sub Inspector, Arun Kumar PW-16 and Inspector, Anand Prakash, PW-18 has already been noticed earlier. PW-18 is the investigating officer and PW-16 had assisted him in course of investigation. PW-17, Dr. Pankaj Kumar conducted autopsy on the dead body of deceased Sumit and has proved the postmortem report as Ext-13. From his evidence: it is clear that autopsy was conducted on 22-9-2004 and he found ligature mark, all around neck which had indicated strangulation and cause of death was asphyxia. He also found abrasion on right arm and spots of ant bite marks all over the body, mostly over the chest, upper limb, interior abdominal wall and lower limbs. According to him those marks had been wrongly suspected as cigarette marks. According to doctor the injury on the dead body was sufficient to cause death in ordinary course of nature and death had taken place within 24 hours.

16. P-19, Satyendra Singh and PW-20, Raj Kishore Rai are the Judicial Magistrates, (First Class) who have deposed that they recorded statements of Pramod Kumar PW-10 and statement of Archana Sinha, PW-9 respectively, under Section 164 of the Code of Criminal Procedure. Those statements have been marked as Ext-3/1 and 2/1 respectively. From the evidence of these Judicial Magistrate, it is clear that they had taken precaution by warning the witnesses and according to them the witnesses have given their statements voluntarily.

17. Before discussing the submissions advanced on behalf of the accused persons so as to find out whether they have been convicted rightly or not and whether it is a case fit for sentencing them to death penalty, it will be useful to first take a bird's eye view of the evidence emerging from the statement of witnesses noticed above.

18. It is admittedly a case where there is no eye-witness and therefore no direct evidence either in respect of kidnapping of Sumit Kumar or his killing. The circumstantial evidence on records, even prior to detailed scrutiny and thorough examination, is only by way of (i) Suspicion against the two accused, Sunny alias Sunny Deol and Ravindra Kumar alias Ravindra Kumar Singh in course of search and their being named in the FIR lodged by PW-1 on the next day of the occurrence, (ii) Sunny was allegedly apprehended by the residents of the colony and had confessed before them regarding kidnapping of Sumit. (iii) Confessions of accused persons except Gorakh Singh alias Gorakh Nath Singh made before the police while in custody (iv) recovery of dead body and school bag of Sumit Kumar on the disclosure by accused, Sunny (v) recovery of clothes of Sumit and a tyre strip of 1 and Ms cubit length alleged to be weapon used for strangulation, recovered on the disclosure made by accused, Ravindra Kumar Singh, (vi) evidence of PWs indicating that during search Sunny and Ravindra were not found in their houses and its corroboration by evidence of PW-10, Pramod Kumar although he has been declared hostile and (vii) evidence of Archana Sinha, PW-9 against accused Gorakh Singh alias Gorakh Nath Singh that she over heard his conversation with an unknown person in the late evening hours of 21-9-2004 which suggests that he was a party to the killing of the kidnapped boy at least as a conspirator.

19. It requires no detailed scrutiny and reasoning to come to the conclusion that confessions attributed to the accused persons which were allegedly made by them to the police officials while they were in custody are inadmissible in evidence except to the extent permitted by Section 27 of the Indian Evidence Act. On that well established principle of law the confessions of other accused persons except that of accused Sunny alias Sunny Deol and Ravindra Kumar Singh alias Ravindra Kumar are inadmissible in evidence. Once those confessions are left out of consideration, no legal evidence is left on record in respect of accused Ravi Chor alias Ravi Rai, Neeraj Kumar and Santosh alias Loha.

20. So far as remaining three accused are concerned, against accused Ravindra and Sunny there are more than one circumstances but against accused, Gorakh Singh alias Gorakh Nath Singh the only circumstance is the allegation by PW-9, Archana Sinha that she, while going towards station in course of search for Sumit saw accused, Gorakh Singh talking to an unknown person on 21-9-2004 at about 7.00 p.m. She has claimed that she heard Gorakh Singh saying that since the family members of the boy are desperately searching for him (boy) and since the matter is turning serious and the police may have been informed and there was likelihood of his name being disclosed, hence the market should be swept clean. This kind of statement, according to prosecution was in relation to the missing boy, Sumit and cleaning the market impliedly meant killing Sumit. She has further claimed that these facts were conveyed by her to her husband (PW-1) at about 11.00 p.m. in the night. There is no witness to support such a claim of PW-9 and no other material to prove the charge that accused Gorakh Singh was in conspiracy with the other accused persons in the matter of kidnapping and killing of Sumit. The evidence of PW-1 shows that he has not supported the aforesaid claim of PW-9 that she disclosed to him the alleged utterances of Gorakh Singh while talking to any person. No such facts were disclosed by PW-1 even in the Sanha, Ext-13 lodged on 22-9-2004 or in the first information report. Such uncorroborated claim of PW-9 which is the only evidence against accused, Gorakh Singh is clearly not sufficient to establish the charges against him.

21. So far as the case against accused Sunny & Ravindra Kumar is concerned, it has been noticed earlier that they are named in the FIR lodged soon after arrest

and confession of Sunny and recovery of the dead body and school bag of the deceased Sumit. The most important circumstance against these two appellants is their alleged disclosure before the police which fact has been corroborated by witnesses and which resulted in recovery of dead body and school bag of deceased, Sumit on the disclosure by accused Sunny and recovery of clothes of Sumit and a tyre strip of 1 and W cubit length on the disclosure by accused Ravindra Kumar Singh. The other circumstance is the fact emerging from the evidence of several PWs indicating that during search for Sumit they went to the house of Sunny and Ravindra but they were not in their houses. It is also clear from the evidence of PW-10, Pramod Kumar although he has been declared hostile, that on 21-9-2004 at 9.30 p. m. Ravindra and Sunny had gone to his house and they spent the night at his house. He has also admitted that he had given a statement under Section 164 Cr.P.C. before a Magistrate which is contained in Ext-3. According to that statement and as per statement of the I.O. PW-18 in paragraphs of his deposition, this witness had disclosed that Ravindra and Sunny had come to his house on the relevant date at about 9.30 p. m. and they stayed in his house. In the morning he found that Sunny had left and on enquiry Ravindra disclosed that he, Sunny and some others had killed the boy. The evidence of the Magistrate, PW-19 Satyendra Singh confirms that PW-10, Pramod Kumar had given his statement under Section 164 Cr.P.C. voluntarily. The Magistrate has deposed that before recording the statement he had pointed out that it could be used also against him and he had also tested that person was ready to make statement voluntarily. The Magistrate has further deposed that Pramod Kumar did not make any complaint before him that he was making the statement under pressure of anyone. In paragraph 2 of his deposition PW-10 has admitted that he never gave in writing to the Court that he was in fear of anyone or he had been pressurized by anyone. In paragraph-1 he has no doubt given an explanation that he had deposed before the Magistrate out of fear that when he got up in the morning he found that Sunny had gone away and on enquiry Ravindra disclosed about the murder of a boy. Such explanation in respect of statement before the Magistrate does not appear to be convincing in view of evidence of the Magistrate, PW-19. Moreover, no such explanation has been given for his statement before the police about which he has admitted in

paragraph 5 of his deposition that he stated before the police that on enquiry in the morning Ravindra disclosed that in the night he and Sunny had committed murder of a boy.

22. Simply because PW-10 has been declared hostile and cross examined by the prosecution, his evidence in Court does not lose its value. His admission about his earlier statement before the police in paragraph 5 came out in course of cross-examination by the prosecution and it is supported by the evidence of the I.O. PW-18. This part of evidence of PW-10 is clearly reliable and can be used against the appellant, Ravindra. Since the aforesaid part of evidence of PW-10 is found reliable it flows from the same that accused, Ravindra had made an extra judicial confession before PW-10 that he and the co-accused, Sunny who has been tried together had committed murder of the boy in the night of 21-9-2004 and thereafter instead of remaining in their houses, obviously for the purpose of hiding themselves, they spent the night in the house of PW-10.

23. The extra judicial confession of accused, Ravindra proved through PW-10 may also be taken into consideration against Sunny in view of Section 30 of the Evidence Act, although with great caution only for seeking assurance for the inference which may arise from other circumstances appearing against him. The position would have been different, had the confession of Ravindra been exculpatory but that is not the situation here. From the evidence of PW-10 noticed above it is clear that the confession of Ravindar Kumar before PW-10 as corroborated by Ext. 3, the statement under Section 164 Cr.P.C. and by the I.O. PW-18 disclosing the earlier statement of PW-10 made before him, was voluntary and inculpatory.

24. Learned Counsel for the appellants, Ravindra and Sunny has submitted that the prosecution evidence that Sunny was apprehended by persons of the colony and before them he confessed that he with his friends had kidnapped Sumit is not reliable because such people of the colony have not been named and the admission of the I.O. that there were injuries on the person of Sunny for which he was sent for medical examination also shows that such confession could at best be under coercion and threat. The aforesaid submission appears to have merit

and in that view of the matter the aforesaid confession of Sunny allegedly made before the people of the colony cannot be accepted as a voluntary confession and hence it is inadmissible in view of Section 24 of the Evidence Act.

25. It was next contended on behalf of the aforesaid two accused persons that from admission of the I.O. made in paragraph-29 of his deposition it is clear that the dead body of Sumit was recovered from a place within the jurisdiction of Gardanibagh Police Station. Further, on the basis of suggestion to the I.O. that the dead body was recovered by police of that police station and that in her statement under Section 164 Cr.P.C. PW-9, Archana Sinha, the mother of the deceased indicated the time of recovery of the dead body as 7.30 or 8.00 in the morning, it was submitted that there is some discrepancy regarding the time of recovery of the dead body and since it was recovered from a place under different police station hence the prosecution case of recovery of the dead body on the basis of arrest and confession of accused, Sunny is doubtful and such claim should be rejected as such. However, on a careful perusal of the FIR, the inquest report which was prepared on 22-9-2004 at 8.30 a. m. and the evidence of witnesses it is found that there is no material contradiction and the prosecution case cannot be doubted that in the morning of 22-9-2004 Sunny was taken into custody by the police and on his disclosure made to the police in presence of witnesses, the dead body and the school bag of deceased, Sumit was recovered by the police.

26. It was further submitted on behalf of the aforesaid two accused that prosecution has not proved that the I.O. obtained a written permission for entering into premises of airport for recovery of school bag and articles belonging to the deceased, Sumit. No doubt, the I.O. has admitted that he did not obtain permission from the authorities of the airport in course of investigation but this fact alone is not sufficient to raise doubt regarding recovery of school bag of deceased Sumit along with books and copies which have been made material exhibits, and also in respect of recovery of clothes of Sumit along with a tyre strip. Both the recoveries are supported by seizure lists which have been proved by witnesses. The conduct of the I.O. in gaining entry into the airport without obtaining permission of the competent authority, at least in writing, can have several plausible explanations including reluctance of the Guards at the airport to interfere

with the police investigation. On this account alone the factum of recovery of incriminating articles on the basis of disclosure made by accused Sunny and Ravindra cannot be disbelieved.

27. Learned Counsel for the appellants. Sunny and Ravindra referred to several judgments including the judgment of Privy Council reported in AIR 1947 P.C. 67 : 1947 Cri LJ 533 (Kottaya v. Emperor) to submit that only those words given out by the accused to the police are admissible in evidence under Section 27 of the Evidence Act which directly and distinctly relate to the relevant facts discovered as a consequence of such disclosure. The other part of statement of the accused before the police which do not relate to the discovery of relevant facts are inadmissible.

28. The law relating to Section 27 of the Evidence Act is no longer under any confusion. Through catena of judgments including a recent judgment of the Supreme Court in the case of Anil v. Administration of Daman and Diu, Daman reported in (2008) 1 SCC (Cri) 72 it is well recognized that Section 27 is by way of exception to Sections 25 and 26 of the Evidence Act and it makes admissible only so much of information given by an accused in Police custody as relates distinctly to the facts thereby discovered. It is also now settled that the fact discovered embraces the place from which the object is produced as well as the knowledge of the accused and not only to the material objects found at the place disclosed by the accused.

29. While keeping the aforesaid law in mind and also the admitted legal position that the fact of disclosure leading to recovery of incriminating facts alone is not sufficient for conviction as held by a bench of this Court in a recent judgment in the case of State of Bihar v. Diwakar Mehta 2008 (3) PLJR 118 to which one of us (Shiva Kirti Singh, J.) was a party, we have analyzed all the facts and circumstances and found that against the FIR named appellants, Sunny and Ravindra Kumar the prosecution has succeeded in proving the following circumstances:

(i) In the night of the occurrence i.e. 21-9-2004 in course of search of the deceased, Sumit they were not at their houses.

(ii) Both the said accused had taken unusual step of staying in that night at the house of PW-10.

(iii) Accused Ravindra had made extra judicial confession before PW-10 which was inculpatory in nature to the effect that he and Sunny had committed murder of a boy in that night before taking shelter in the house of PW-10.

(iv) While in custody of police accused, Sunny made disclosures which lead to discovery of dead body and school bag of deceased, Sumit found concealed amongst bushes.

(v) While in police custody accused, Ravindra made disclosures leading to recovery of clothes of deceased, Sumit along with a tyre strip of 1 and XA cubit, alleged to be used for strangulating the deceased.

30. The aforesaid facts coupled with lack of any explanation by the said two accused as to how they could know the facts disclosed by them leading to recovery of incriminating materials, in my view are sufficient to establish the charge under Section 302 read with 34 of the Indian Penal Code against appellants Sunny @ Sunny Deol and Ravindra Kumar @ Ravindra Kumar Singh beyond any reasonable doubts. However, the charge of kidnapping for ransom or conspiracy has not been proved beyond reasonable doubts.

31. On behalf of the appellant Sunny, argument was advanced that his plea of being a juvenile on the date of occurrence has been wrongly disallowed by the trial Court although he had examined some witnesses including himself in course of enquiry for that purpose. It has been submitted that on account of Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 which has been introduced through Amendment Act, 2006 w.e.f. 22-8-2006, the claim of juvenility can be raised before any Court at any stage and after determining such claim in terms of provisions contained in Act of 2000 and the rules made thereunder, even in the case of a juvenile who has ceased to be so, the sentence passed against a person who is found to be a juvenile on the date of commission of the offence must be declared to have no effect.

32. The aforesaid plea suffers from a factual fallacy. No doubt, under law as amended through Section 7-A, now it has been recognized through the statute that a claim of juvenility may be raised before any Court at any stage but that does not mean that such a claim which has been raised before the competent Court and decided against the accused on facts, can again be raised although the earlier finding that appellant, Sunny Deol was not a juvenile under the Act of 2000 has already attained finality on account of dismissal of his criminal revision bearing No. 471/07 dismissed by this Court on 16-5-2007. Learned Counsel for the State has rightly placed reliance upon the judgment of the Supreme Court in the case of Sidharth v. State of Bihar : 2005 CriLJ4499 whereof the Supreme Court has held that since at the earlier stage the accused had failed in his challenge to the finding that he was not a juvenile, again before the Supreme Court he could not challenge that finding because the decision on that issue had become conclusive and final. Hence, in the facts of the case, this Court has no option but to hold that since appellant, Sunny could not succeed even before this Court in challenging the finding of the trial Court that he was not a juvenile and therefore not entitled to protection of the Juvenile Justice Act of 2000, such plea cannot be permitted to be raised by the appellant again before this Court in the present proceeding.

33. Coming to the question of sentence, I have considered all the facts and circumstances and I have no hesitation in coming to the conclusion that the offence in question cannot be treated as rarest of rare and therefore award of death penalty to appellant, Sunny @ Sunny Deol and appellant, Ravindra Kumar @ Ravindra Kumar Singh is found to be not in accordance with law. In view of earlier discussions and findings these two accused are found guilty of the charge under Section 302/34 of the IPC and their conviction for such charge is affirmed. As discussed above it is not a rare case deserving award to extreme penalty of death and hence the award of death penalty to these two appellants is not found appropriate. For the charge found approved against them, the ends of justice would be satisfied by awarding them life imprisonment.

34. As a result of discussions and findings given earlier the other four accused persons, namely, Ravi Chor @ Ravi Rai, Nooraj Kumar, Gorakh Singh @ Gorakh Nath Singh and Santosh @ Loha are acquitted of all the charges. Accordingly, the

death reference against them is answered in negative. Their appeals stand allowed. The appeals of appellant. Sunny @ Sunny Deol and Ravindra Kumar @ Ravindra Kumar Singh are allowed in part but dismissed in respect of their conviction under Section 302 read with Section 34 of the Indian Penal Code. As discussed, the death penalty awarded to them is commuted to life imprisonment. The death reference in respect of them is also answered in negative.

35. As a result of their acquittal of all the charges, the appellants, Ravi Chor @ Ravi Rai, Neeraj Kumar, Gorakh Singh @ Gorakh Nath Singh and Santosh @ Loha are directed to be released from custody forthwith if they are not required in connection with any other case.

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