

Ranjeet Kumar Ram. Vs. State of Bihar.

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Court : Patna

Decided On : Oct-11-2010

Judge : Shiva Kirti Singh, J.

Acts : Indian Penal Code (IPC) - Sections 364A read with 109, 302, 34, 201, 368; Code of Criminal Procedure (CrPC) - Section 164; Evidence Act - Section 27, 114(g), 106

Appeal No. : DEATH REFERENCE No.6 OF 2008; CR. APP (DB) No.156 OF 2008

Appellant : Ranjeet Kumar Ram.

Respondent : State of Bihar.

Advocate for Def. : Mr. Lala Kailash Bihari Pd, Adv.

Advocate for Pet/Ap. : Mr. Surendr Kumar Singh; Mr. Ganesh Prasad Singh; Mr. Kanhaiya Pd. Singh; Mr. Ashutosh Kumar; Mrs. Jyotsna; Mr. Jai Prakash Singh; Mr. L.B. Singh; Mr. Rajeev Ranjan; Mr. Sudhir Kumar Singh, Adv.

Judgement :

1. The Death Reference and connected five Criminal Appeals arise out of a common judgment and order dated 24th January 2008 passed by learned First Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 422 of 2006 whereby he has convicted appellant, Chintoo Singh @ Vijay Singh and appellant, Birendra Bhagat under Section 364A of the IPC and the remaining three

appellants under Section 364A read with Section 120B of the IPC and has awarded all of them rigorous imprisonment for life and fine of Rs.10,000/- each. Appellant Sanjeev Das has been acquitted of the charge under Section 302/34 and 201 of the IPC but the remaining four appellants have been convicted for the said charges also for which appellant Chintoo Singh @ Vijay Singh has been awarded death sentence and the remaining three appellants have been awarded rigorous imprisonment for life and a fine of Rs. 10,000/- each. No separate sentence has been passed under Section 201 of the IPC but in default of payment of fine the concerned convict is required to undergo a further rigorous imprisonment for one year.

2. According to prosecution case, Vickey a five year old son of the informant, Sunil Kumar Singh (PW-8) was enticed away by two unknown persons on a motorcycle on 27.02.2006 at about 5:30 p.m. from near the vegetable shop of the informant at Paswan Chowk, Hajipur. A short and precise information was given by the informant to the police through written report dated 27.02.2006 (Ext-2) which disclosed that while the informant was selling vegetables in the evening hours at his shop at Paswan Chowk and his son was playing nearby, a person who came on motorcycle, gave chocolates to the boy and took him on his motorcycle. The age of the boy was five years. That person who enticed away the boy told the daughter of the informant that he would come back with the boy after returning from a washerman's place but he did not come back till the time of information. The informant requested the police to search for the boy. On the basis of the said written report, Hajipur Town (Industrial) P.S. Case No. 105 of 2006 was instituted on 28.02.2006 at 10:15 a.m. against unknown persons. The formal FIR has been proved as Ext-13.

3. It is further case of the prosecution as disclosed by the informant that in spite of search the boy was not found. After five or six days of the kidnapping appellant, Sanjay Pandit and Ranjeet told the informant that his son would come back if he paid money. Both the said appellants have vegetable shops in the neighbourhood of informant's shop. After three months on 23.06.2006 through telephonic information at the gaddi of one Baleshwar, the informant was asked to pay Rs.4 Lacs for return of his son, Vickey. When the informant expressed his inability to

pay that much, the demand was reduced to Rs.2 Lacs and the phone was disconnected. On 1st July 2006, a telephone call came at the gaddi of one Surendra and after bargain the amount was fixed at Rs. 1,05,000/- . On 3rd July 2006 phone was received at STD Booth in front of vegetable shop and when the informant replied that he had arranged the money then he was asked to bring the money across the new Gandak Bridge ahead of Line hotel of Bachcha Babu at Sonapur. When the informant expressed fear in coming with the money alone then he was instructed on telephone to come with his neighbours Ranjeet and Sanjay Pandit. Informant had withdrawn Rs. 80,000/- from his saving accounts with Bank of India at Rajendra Chowk, Hajipur and had taken loan of Rs. 20,000/- from his father-in-law, Sakal Mahto and Rs.5,000/- was available with him from before in cash. He requested Sanjay Pandit and Ranjeet to accompany him to Sonapur where he had to pay the money. By chance, appellant, Sanjeet also came there and offered to go along with them for paying the money. On the next date i.e., 4th July 2006 at about 4 O'Clock in the morning the informant wrapped the amount of Rs. 1,05,000/- in a plastic bag and kept it in a gunny bag under the carrier of his cycle. Sanjeet sat on the informant's cycle whereas Sanjay Pandit sat on the cycle of Ranjeet. They crossed the new Gandak Bridge and reached Sonapur. Two steps ahead of Line hotel of Bachcha Babu, Sanjeet got down from informant's cycle and went in a hut on the left side of the road. After the informant had preceded about five steps, two persons came out and pulled away the money concealed in a gunny bag under the carrier of informant's cycle. It appeared that those two persons already knew where the money was kept. Appellants Ranjeet and Sanjay Pandit were also standing there. On enquiry by the informant he was told by the person who had taken the money that his son would reach him by evening hours. When the informant started returning, Sanjeet came out of the hut and sat on his cycle. On informant's enquiry Sanjeet disclosed that his sister's husband whose name is Birendra Bhagat lives in that hut. That Birendra Bhagat was wearing blue shirt and had a light moustache, he was short and fair complexioned whereas the other person was tall and wheatish in complexion and was wearing ring in his ears. This person with ring in his ears was subsequently identified as appellant, Chintoo Singh.

4. After two days also the boy did not return and then on 3rd day the informant went to the hut where he had paid the money. He learnt from the persons in the vicinity that Birendra Bhagat is an out-sider who lives in that hut which is situated on Government land. He was told that Birendra Bhagat was a criminal and the other person Chintoo is a neighbour but on that date both could not be found at their place. Thereafter, informant went to the police again. According to the prosecution case as unfolded by the Investigating Officer, Reeta Kumari, PW-12 on 16.08.2006 she again recorded the statement of the informant in which he named five accused persons and further disclosed about the demand and payment of money. He explained that because of threat to the safety of his son he did not disclose these developments earlier to the police. According to I.O. a raid was conducted at Sonapur and at the same time Ranjeet Kumar and Sanjeet Kumar were arrested. Ranjeet made a confessional statement and disclosed that the kidnapped child was kept at Kudhni in the house of Kaushalya Devi but later he was killed by Chintoo Singh by pressing the neck and by further injuries to head by a brick and the dead body was left under the culvert of road going from Bhagwanpur to Bahadur. Ranjeet further disclosed about some ransom money being kept in a note book in his room. The I.O. also obtained signature of Ranjeet on the said confessional statement (Ext-14). The I.O. arrested Sanjay Mahto @ Pandit and recorded his confessional statement (Ext-15). According to I.O., thereafter, Birendra Bhagat and Chintoo Singh were also arrested. Their confessional statements were also recorded and have been proved as Exts. 16 and 17 respectively. Same location of dead body is in Exts. 15,16 and 17.

5. It is further case of the prosecution as disclosed by the I.O., PW-12 that on the basis of confessions by the aforesaid accused persons police went to Kudhni P.S. and reached Phakuli out-post. The Incharge of that Phakuli out-post, Rakesh Kumar Singh, S.I. of Police (PW- 11) gave a statement and disclosed that near the culvert of Bhagwanpur village the dead body of a boy aged about 4-5 years had been recovered for which Kudhni (Phakuli out-post) P.S. Case No. 128/06 dated 22.04.2006 under Sections 302, 201, and 34 of the IPC had been registered. Thereafter, the I.O. arrested co-accused, Kaushalya Devi (since acquitted) and placed the accused persons on Test Identification Parade after obtaining permission of the Chief Judicial Magistrate. She obtained from Phakuli O.P., the

production/seizure list in relation to a vest and half pant and the informant identified the photograph of the dead body of the child as well as the clothes. According to I.O., in course of the investigation, on the confessional statement of Ranjeet, his room was searched and a currency note of Rs.500/- was seized on which name of the informant, Sunil Singh was written with a sketch pen of green colour. The said currency note has been proved as Material Ext. No.1 and the signature of the informant on that note of Rs. 500/- has been proved as Ext-6. The fardbeyan lodged by the concerned Chaukidar which is the basis of Kudhni (Phakuli out-post) P.S.Case No. 128/06 is Ext-9, the formal FIR is Ext-10. The Inquest Report of that case is Ext-8, the seizure list is Ext-11, photograph of the child is Ext-3 and the production-cum-seizure list is Ext-12.

6. After completing the investigation the I.O. submitted charge-sheet under Sections 364A,302, 368 and 201 of the IPC in the court of Chief Judicial Magistrate, Vaishali against five appellants and one Kaushalya Devi, mother-in-law of appellant Birendra Bhagat. Learned Chief Judicial Magistrate, Vaishali took cognizance and committed the case to the court of sessions on 15.09.2006. The accused persons were charged under Section 364A, 120B, 302/34 and 201 of the IPC. They denied the charges and were hence put on trial. The general defence of the appellants is that they are innocent, have not committed any offence and have been falsely implicated due to enmity or business rivalry. It is the defence of accused Ranjeet Kumar that nothing was recovered from his house. The appellant Sanjeet Kumar Das has taken a further defence that on 27.02.2006 when the boy was enticed and kidnapped, he was taking examination of intermediate at Samastipur and from 2nd July to 6th July 2006 he was busy in the marriage of his Saali (wife's sister) in a village in the district of Muzaffarpur.

7. The prosecution, in order to prove the charges examined 14 witnesses in total and exhibited a large number of documents whereas seven defence witnesses were examined on behalf of the accused persons.

8. PW-1, Rakesh Kumar Singh is a relation of the informant, he has corroborated the fact that informant's son Vickey was enticed away by two persons on a motorcycle on 27.02.2006 and he participated in the search but the boy could not

be found. On other relevant and important aspects of the case, he is a hearsay witness. PW-2, Ruby Kumari is an important witness. She is daughter of the informant and sister of the victim boy, Vicky. At the time of occurrence, she was slightly less than 7 years of age and was playing near the place where Vicky was also playing with some other children. She has deposed that two persons came on a red motorcycle (splendor). The person who was wearing ring in the ears gave chocolates to all children including Vicky after purchasing the same from a shop at that place. He persuaded her also to sit on the motorcycle but she did not agree. Vicky sat on the motorcycle in the front, on tank. That man told her that he was going to washerman to bring clothes and thereafter he will drop the boy but they never came back. According to her, Ranjeet and Pandit also used to sell vegetables in the nearby shops and they used to tell her father to pay money to get the boy back. In the court, she recognized the accused persons including Chintoo Singh as a person who gave chocolate to her and to Vicky. She identified Birendra Bhagat as the person who was with Chintoo Singh at the time the boy was taken away. She claimed that she had identified Birendra Bhagat in jail also i.e., during Test Identification Parade. She has fairly admitted in cross-examination that she had learnt from her father regarding suggestion to pay money for return of the victim. Nothing material has been extracted from her cross-examination. Her claim that she recognized Chintoo Singh and he had given chocolate to her and the victim boy has not been challenged in cross-examination.

9. PW-3, Sukhdeo Singh is maternal uncle of the informant. He has deposed that on the date of occurrence at about 9:00 p.m. he was at his house and the informant came and told him that his son, Vicky had been kidnapped at about 5:00 in the evening. He had been taken away on a motorcycle. He has not been cross-examined in respect of his aforesaid statement and only some formal questions were put to him.

10. PW-4, Raj Bansi Devi is a witness of search of the house of accused, Ranjeet Das and of recovery of a currency note of Rs.500/- on which name of the informant was written with green ink. She has identified that currency note as Material Ext-1. She has also identified her signature on the seizure list as Ext-1. She has identified appellant, Ranjeet & Sanjeet. In cross-examination, she has

admitted that the house from-where recovery of currency note was made is inhabited by other members of the family of Ranjeet also. She has claimed that the I.O. went inside the house and opened an almirah from which the currency notes of Rs.500/- was recovered from a copy. She has also admitted that she was at the entrance of the concerned room inside the house. There is nothing to discredit the claim of PW-4 that she witnessed search and seizure as claimed by her. She has not been shown to be an interested or partisan witness.

11. PW-5, Jay Kumar Singh is also only a hearsay witness about kidnapping of Vicky which was disclosed to him by the informant and his wife on the date of occurrence itself. He was told that two persons on motorcycle had taken away Vicky.

12. PW-6, Neelam Devi is wife of the informant. She has claimed that at the time of occurrence at about 5:00 p.m. she along with her husband was selling vegetables in their shop. Her daughter and her son Vicky were playing nearby along with other children. After some time on enquiry she learnt from that two persons had come on a red colour motorcycle and had given chocolate to the children. She was asked to sit on the motorcycle but she expressed fear. Vicky was made to sit on the motorcycle and on her query she was told that while returning from washerman's house with clothes, Vicky will be dropped. But her son was not brought back. In spite of search, Vicky could not be found. She had one son and one daughter only. She had undergone an operation for family planning only 15-20 days earlier. Next to her shop is the shop of Sanjay Pandit followed by shop of Ranjeet and Sanjeet. She has deposed that phone calls started coming after 8-10 days demanding 8 to 10 Lacs as extortion money. On her husband's expressing inability to pay such amount the phone calls stopped coming. Two months later again phone call came whereupon Sanjay Pandit, Ranjeet and Sanjeet taunted that they were being guided by love for money and not for their son. Thereafter, agreement was reached on phone for payment of Rs.1,0,5000/- .Her husband went with the money at about 5:00 in the morning across the new bridge along with Sanjay Pandit, Ranjeet and Sanjeet. The money was taken away but the boy was not returned. Later, it was found that the boy had been killed. She has identified appellants, Sanjay Pandit and Sanjeet. In cross-

examination, it has been extracted from her that Sanjay Pandit was running his shop in the neighbourhood for about 10 years. Because there was more sales in her shop hence, others were jealous of her. She has admitted that talks on phone and demand for money were disclosed to her by her husband, the informant. She has admitted that Sanjeet has a kirana shop away from her house but has denied the suggestion that Sanjeet has been falsely implicated. Her evidence is found to be reliable and nothing has been extracted to discredit her testimony.

13. PW-7, Arvind Kumar Yadav has a shop near the place of occurrence. He has deposed that on the date of occurrence at about 6:00 in the evening one person purchased toffees for Rs.4.50 paise from his shop. He had come on a motorcycle. He gave toffees to the children who were playing in front of his shop. After some time he heard that son of the informant namely, Vicky had been kidnapped. He has claimed that Sunil, the informant runs vegetable shop at some distance towards north-east of his shop. He has been cross-examined on behalf of appellant, Birendra Bhagat, Chintoo Singh and Ranjeet but nothing has come out in such cross- examination so as to affect his testimony.

14. PW-8, Sunil Kumar Singh is the informant. His evidence will be considered later.

15. PW-9, Sahdeo Singh is another maternal uncle of the informant who has, like PW-3, Sukhdeo Singh has claimed to have heard about the occurrence in the same evening from the informant and his wife.

16. PW-10, Dr. Ram Biswash Yadav has proved the postmortem report of a boy aged about 5 to 6 years at the hospital in Muzaffarpur on 22nd April, 2006. He has proved the postmortem report as Ext-8 and his signature thereupon as Ext-7. According to the doctor, there were bruises of various shapes and sizes in the anterior portion of the neck. There was bleeding from nose and mouth. One lacerated wound of size 4"x 1"x 1/2" in the left parietal region and a swelling in the right parietal region of the scalp of the size 5"x 1 1/2". On dissection of scalp the doctor found the right parietal bone and right portion of the frontal bone fractured. The right parietal, left parietal, frontal and occipital bones were found separated at sutures. The 4th and 5th cervical vertebrae were also found fractured. In the

opinion of the doctor the deceased died due to haemorrhage and shock as a result of blow by heavy blunt object. Time since death was six to ten hours approximately. He has stated in cross-examination that the dead body was not decomposed, it was identifiable. Although, in cross-examination it has been obtained that the injuries on the body of the deceased might be caused in accident but it appears that unlikely in view of bruises of different shapes and sizes in the anterior portion of the neck and injuries on the left parietal region as well as on the right parietal region along with fractured 4th and 5th cervical vertebrae. Such injuries from different sides of the body clearly suggest assault in a deliberate attempt to cause death.

17. PW-11, Rakesh Kumar Singh is a Sub-Inspector of Police who at the relevant time was In-charge of Phakuli O.P. under Kudhni P.S. He has deposed that on 22.04.2006 body of a dead body was recovered from under a culvert on the road going from Bhagwanpur to Bahadurpur. He lodged Kudhni P.S. Case No.128/06 on the statement of Chaukidar, Bharat Rai. He has proved the Fardbeyan as Ext-9 and the formal FIR as Ext-10. He has deposed that he took up investigation of that case and prepared inquest report (Ext-8). He recorded statement of witnesses and obtained post-mortem report. He recovered an old striped towel having blood marks from the place where the dead body was found. He prepared seizure list for the same which has been marked as Ext-11. He got the dead body of the deceased boy photographed. He has proved the photograph which has been marked as Ext-3. He has further deposed that on account of an accident he went on leave and on joining his duties on 15.11.2006, he was informed by Surya Narayan Yadav that Sub-Inspector, Reeta Kumari of Hajipur Town (Industrial) P.S. and Sunil, father of the deceased boy had come and the dead body was identified with the help of photograph and that a case for kidnapping of the dead boy had been lodged by father of the deceased in the Hajipur (Industrial) P.S. as case No. 105/2006. On that basis this witness prepared a production-cum-seizure list of the seized clothes and photographs which has been marked as Ext-12. He has also deposed that on the date of recovery the dead body was not decomposed. Nothing material has been extracted in cross-examination of this witness. The evidence of Investigating Officer, S.I. Reeta Kumari, and PW-12 shall be considered later.

18. PW-13, Sandeep Mishra is a Judicial Magistrate who while posted at Hajipur recorded the statement of PW-2, Kumari and PW-8, Sunil (informant) under Section 164 Cr.P.C. on 18.08.2006 in connection with Hajipur (Industrial) Town P.S. Case No.105/06. Statement of PW-2 has been marked as Ext-19 and that of PW-8 as Ext-20.

19. PW-14, Dilip Kumar Singh is another Judicial Magistrate, 1st Class who was posted at Hajipur on 23.08.2006 when he conducted TIP of accused persons in the Hajipur Divisional Jail in connection with present case. In the TIP PW-8 and PW-2 participated as witnesses and Birendra Bhagat and Chintoo Singh were amongst suspects. PW-2, Kumari identified Birendra Bhagat as the person who was driving the motorcycle and PW-8; the informant identified both the suspects who had extorted money. The TIP chart has been exhibited as Ext-21. Both the witnesses are formal and nothing material has come in their cross- examination.

20. Coming to the deposition of the informant, Sunil Kumar Singh, PW-8, it is clear that he has not claimed to be a witness of the actual occurrence of kidnapping because admittedly he was busy in selling vegetables in his shop at that time along with his wife PW-6. However, after the actual kidnapping he has deposed that he learnt of the whole occurrence from his daughter, Rubi (PW-2). He has given the same account of occurrence of kidnapping as given by PW-2. After occurrence when his son did not return, he searched for him and went to washerman's house as well as to his own house but could not found his son. Then he gave a written information at the police station which he has identified and proved as Ext- 2.

21. According to PW-8 the informant, his son could not be found in spite of search. After 5-6 days of the occurrence Sanjay Pandit and Ranjeet Ram told him that on paying money his son will come back. After three months on 23.06.2006 4 Lacs was demanded on telephone for release of the boy. The demand was reduced to 2 Lacs and the telephone was disconnected. On 1st July, on telephone the amount was fixed as Rs.1,0,5000/- and on 3rd July again a telephone call was received and on informant disclosing that he has arranged the money, he was asked to come with the money ahead of Line Hotel of Bachcha Babu at Sonapur after

crossing the new Gandak Bridge. When the informant expressed fear in going with the money, he was told on telephone that he could bring his neighbours Ranjeet and Sanjay Pandit. When the informant requested both of them for going to Sonapur with money, Sanjeet also arrived there and volunteered to go for paying the money. The informant has given account of how he concealed the money in a gunny bag and pressed it in the carrier of a cycle and went to pay the money with Sanjeet on his cycle and Sanjay Pandit on the cycle of Ranjeet. After they had gone about two steps ahead of the Line Hotel of Bachcha Babu, Sanjeet got down from the cycle and went inside the hut on the left side. When the informant preceded five steps further, two persons came and pulled away the money from the carrier of his cycle as if they knew where the money was kept. Ranjeet and Sanjay Pandit were standing at that place. The person who took the money told the informant on enquiry that the boy would reach him by evening hours. When the informant started coming back, Sanjeet came out of the hut and sat on his cycle and disclosed to him that his relation, Birendra Bhagat lives in that hut and he was the person who was wearing blue shirt and had a light moustache and he was short and fair while the other person was wheatish and was wearing ring in his ears. The person with ring in ears was identified by the informant in the court also as appellant, Chintoo Singh. The informant and others came back but the boy did not return. After two days the informant went back to the place where he had delivered the money and learnt that Birendra Bhagat lives there and hut was constructed on Government land. He learnt that Birendra Bhagat is a criminal and the other person with ring in the ears is Chintoo Singh. His house was by the side of house of Birendra Bhagat but both could not be found in their houses. The informant has deposed that he did not disclose about the phone calls and demand of money to the police because Sanjay Pandit, Ranjeet and Sanjeet used to tell him that if it was disclosed to the police then criminals would kill his son. They also used to tell him that when demand was being made on phone he should pay the money. After some time the informant disclosed all the facts to the police whereupon Sanjay and Ranjeet were arrested. Then it was learnt that the boy had been kept at Phakuli village with Kaushalya Devi but he was killed and the dead body was concealed under a culvert. Phakuli village is within Muzaffarpur district. He claimed to identify the photograph of the dead body as that of his son and also

the clothes which were shown to him by the police. Both the photographs identified by the informant as that of his son have been marked as material Exts-3 and 3/1. The clothes (vest and half-pant) were identified by the informant have been marked as material Ext-2. He has proved his signature on the statement under Section 164 Cr.P.C. as Ext-4 and has claimed that he identified appellants, Birendra Bhagat and Chintoo Singh in the TIP which was held in jail in presence of a Magistrate. He has also deposed that he taken out Rs.80,000/- from the Bank account No.16808 of Bank of India whose pass book was produced by him. He has deposed that he had paid the ransom money in currency having denomination of 500/- and on 2-3 notes he had put his signature and mentioned the date as 3/7. He has identified his signature in green ink upon material Ext. No.1 as Ext-6. Although, suggestion has been given to this witness that he has implicated Ranjeet, Sanjeet and Sanjay Mahto @ Pandit on account of business rivalry or enmity but nothing material has been elicited in the cross-examination which may discredit the testimony of this witness. His deposition appears to be truthful and reliable. The criticism that he did not disclose about telephone calls and payment of money to the police at the relevant time is well explained by the witnesses that he did not do so because of threat and fear that his son, the victim may be harmed by the criminals.

22. PW-12, Reeta Kumari is the Investigating Officer of this case. She has proved the formal FIR as Ext-13. She claims to have examined the place of occurrence soon after taking charge of investigation. She also recorded statement of PW-2 and other witnesses. She has claimed that on 16.08.2006 the informant Sunil Kumar came to the police station and again gave a statement in which he named all the five appellants and gave details about the demand of money on telephone and payment of money at Sonapur. He also told her that he was threatened not to disclose the demand of money to the police.

23. As per information given by the informant, the I.O. went to Sonapur to effect arrest. There, she learnt that Birendra Bhagat was a criminal and was living in a hut made over Government land. She arrested Ranjeet Kumar and Sanjeet Kumar. Ranjeet made a confessional statement disclosing where the kidnapped boy had been kept near village, Kudhni with Kaushalya Devi. The confessional

statement recorded in her own hand- writing and signed by Ranjeet as identified by the I.O. in her deposition has been marked as Ext-14. She also recorded confessional statement of Sanjay Mahto @ Pandit (Ext-15). She arrested Birendra Bhagat and Chintoo Singh from a bazaar at Sonapur. Confessional statement of Birendra Bhagat and of Chintoo Singh has been proved by her as Ext-16 and 17. She has claimed that on the basis of the confessional statements she went to P.S Kudhni and reached Phakuli O.P. and recorded statement of In-charge of that outpost, Rakesh Kumar Singh (PW-11). He disclosed about the recovery of dead body of a child aged 4-5 years leading to Kudhni (Phakuli O.P.) P.S Case No. 128/2006 dated 22.04.2006 under Sections 302, 201 and 34 of the IPC. On the basis of confessional statements she raided the house of Kaushalya Devi and arrested her. She obtained permission of the Magistrate and placed the accused persons on TIP. She received from Phakuli O.P. vest and half pant with production-cum-seizure list. The informant identified the photograph of the dead boy and his clothes as that of his son, the victim. In course of investigation, on the basis of confessional statement of Ranjeet she recovered a currency note of Rs.500/- from room of Ranjeet. On that note name of Sunil Singh was written with green sketch pen. She has identified that currency note (material Ext-1). She claimed that she had prepared seizure list of the currency note in presence of two witnesses and on her identification the seizure list has been proved as Ext-18. She also received postmortem of the deceased boy and on completing investigation submitted charge-sheet. She identified all the accused persons present in court.

24. The cross-examination of this witness discloses that she committed several kinds of careless mistakes in conducting the investigation. She has admitted that she was taken by the informant to the place where money was paid but admits that the fact that she saw the place and identified it, is not mentioned in the case diary. She also admitted that she did not give a copy of the seizure list to any member of family of Ranjeet. She did not examine the chaukidar of Phakuli O.P., Bharat Rai, the informant of Kudhni P.S. Case No.128 of 2006. She did not mention the fact in the case diary that she had received photographs of the dead body from the Officer In-charge of Phakuli O.P. She did not record the statement of witnesses of seizure made at the house of Ranjeet. She has also admitted in paragraph-108 and 109 of her deposition that in her later statement PW-6, Neelam

Devi had disclosed that ransom amount was fixed at Rs.1,0,5000/- and her husband went with Ranjeet and Sanjeet across the new bridge and paid the money but child was not returned. But she has added that even after listening to such statement of PW-6 she did not record the same in the case diary. Thus, the I.O. appears to be lacking in efficiency and competence but this has not affected the prosecution case because the material facts have been proved by either PW-2 who has identified the two persons who kidnapped the victim boy and took him on motorcycle or by the informant, PW-8 who has truthfully given out all the circumstances and has also identified the two kidnappers as the persons who took money from his cycle at the place near Line Hotel of Bachcha Babu in Sonapur. The circumstances against the other three accused persons are also proved by the informant and corroborated by his wife, PW-6 and by two police officials- PW-11 and the I.O. (P.W-12).

25. The defence has examined 7 witnesses in all. DW's 1,2,3 and 6 have deposed in favour of plea of alibi or defence of Sanjeet that he took Intermediate Exam from 13.02.2006 to 3.3.2006 at Samastipur and / or he attended his sister-in-law's marriage between 2 to 6th July 2006. The charge of conspiracy is not affected by such defence plea. DW's 4 and 5 have come forward to support general defence of enmity as reason for false implication. They do not inspire any confidence. DW-7 has raised a plea of alibi for Chintoo Singh although this accused never took such plea himself. Hence the DW's are found to be of no substance and value.

26. The fact that informant's son, Vicky was kidnapped in the evening hours on 27.02.2006 by two persons on a motorcycle has not been seriously controverted and stands proved by the evidence of PW-2, PW-6 and the informant, PW-8. The occurrence has been corroborated by some of the hearsay witnesses also who met the informant and his wife soon after the occurrence. The fact that the victim boy Vicky never returned is also not disputed. The recovery of dead body of a boy from a place near Kudhni, the Inquest Report and Post Mortem Report are also not under challenge. The dispute raised on behalf of the appellants is with regard to identification of Chintoo Singh @ Vijay and Birendra Bhagat as the two persons who had come on motorcycle and taken away the victim boy after Chintoo Singh had given chocolates to the children and the victim. Further dispute is that

these two persons have not been correctly identified as the persons who took the ransom money from the informant by snatching it from the carrier of the cycle. On these two aspects, after going through the statement of PW-2 and of the informant PW-8, there appears no doubt that both these persons have been correctly identified. On behalf of the appellant Chintoo Singh an attempt was made to take advantage of the fact that he could not be identified by PW-2 in course of TIP wherein she identified only Birendra Bhagat. However, she has identified him in court with confidence and this was not challenged by way of cross-examination. Further, his identification by the informant, both in Test Identification Parade as well as in court do not suffer from any infirmity and cannot be doubted. Appellant Birendra Bhagat has been identified by both the witnesses in the T.I.P. as well as in Court. Hence, the direct involvement of appellants, Chintoo Singh @ Vijay Singh and Birendra Bhagat in the offence of kidnapping and taking of ransom money i.e., under Section 364A of the IPC is found to have been proved beyond any reasonable doubts.

27. The other aspect of the case relating to murder of the victim boy and charge under Section 302 read with Section 34 and Section 201 of the IPC requires deeper consideration in view of submission advanced on behalf of the convicted accused persons that there is no direct or circumstantial evidence in support of charge under Sections 302/34 and 201 of the IPC.

28. On analyzing the evidence led on behalf of prosecution it is found that it has succeeded in proving that on the basis of confessional statement of Ranjeet (Ext-14) and that of 3 others (Exts 15 to 17) recorded one after another in succession within a short span of time, i.e., between 9.20 hours to 12.40 hours of 18.08.2006 as deposed by the I.O., she learnt that the boy had been kept near Kudhni. On the basis of such disclosure the I.O. went to Kudhni P.S. and Phakuli O.P. thereunder, leading to discovery of the fact that dead body of a boy aged 4-5 years had been recovered from the place revealed in the confessional statements leading to Kudhni (Phakuli O.P.) P.S. Case no. 128 of 2006 dated 22.04.2006. It is also established that on the basis of photograph and clothes of that dead body PW-8, informant identified the same to be of his son, Vickey. Considering that Vickey never returned and his father identified the photograph and clothes and there

being no good or conceivable reason of making a false identification, it is found that the prosecution has established that the victim boy Vicky was murdered by some person or persons a few hours earlier to discovery of his dead body as per the postmortem examination which was held on 22.04.2006 itself. The main challenge before the prosecution was to establish as to whom were the persons responsible for causing murder of the victim boy Vicky. It has to be seen whether the prosecution has been successful in proving the charge under Section 302/34 and 201 of the IPC against remaining four appellants or not (appellant, Sanjeet Kumar Ram @ Sanjeet Kumar Das has been acquitted of this charge).

29. The charge of murder has been fastened against four appellants with the aid of Section 34 of the IPC which provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone. In the case of *Maqsoodan V. State of Uttar Pradesh*, AIR (1983) SC 126 it has been held that common intention is a question of fact. Its determination is subjective and can be inferred from the facts and circumstances brought on record by the prosecution. In order to meet the argument advances on behalf of the appellants that there is no evidence on record as to who participated in the criminal act of murder, the prosecution is required to prove by direct evidence or by circumstances that the four appellants in question had participated in the criminal act of murder. Admittedly, there is no direct evidence as to who committed the murder of the victim boy and in what manner. The circumstances proved by the prosecution against the concerned appellants is to the effect that the boy was kidnapped and kept concealed for some days till his dead body was found on 22.04.2006 from the place and with injuries, as disclosed in their confessional statements. Since the boy was kidnapped by appellants, Chintoo Singh and Birendra Bhagat, they are the persons who were last seen with the deceased boy. They have not offered any explanation as to subsequent events leading to murder and recovery of dead body of the victim boy. The burden of proving any fact which is especially within the knowledge of any person lies upon that person as per Section 106 of the Indian Evidence Act. Once it is found that the aforesaid two appellants had possession of the victim boy on account of his kidnapping, subsequent information about that boy was within their special knowledge but they have not stated or led any

evidence to prove that they parted company with the kidnapped boy while he was still alive. It was within their power to depose on this issue or lead material evidence but no such evidence was produced by them. Section 114 of the Indian Evidence Act permits the court to presume the existence of any fact which it would think likely to have happened regard being had to the relevant factors. As per illustration (d) to that Section a thing or state of things which has been shown to be in existence may be presumed to be still in existence till it is shown to have changed. According to illustration (g) of the same Section 114 of the Indian Evidence Act, the evidence which could be and is not produce may be presumed to be unfavourable to the person who withholds it, if it had been produced. In the circumstances of the case, it can safely be presumed that possession of appellants Chintoo Singh and Birendra Bhagat over the kidnapped boy continued in existence till he was murdered. They have not produced evidence of any kind to show that something else happened to the victim boy and hence, in the facts of the case, it would be quite safe to presume that evidence if produced on this point would be unfavourable to these two appellants who have withheld the evidence.

30. In view of the aforesaid facts and circumstances and legally drawn presumptions it is found that appellants Chintoo Singh and Birendra Bhagat were having control over the victim boy till his death. They had full opportunity to cause his murder in view of apparent difficulty in keeping a kidnapped boy concealed for a long period. Thus, they had the opportunity and motive and no other person except the appellants had any reason or opportunity to cause the murder of the deceased boy. Accordingly, it is found and held that the charge under Section 302/34 and Section 201 of the IPC has been rightly held proved against these two appellants.

31. Charge under the aforesaid Sections in respect of appellants Ranjeet and Sanjay Mahto @ Pandit have been found proved by the learned trial court. But on their behalf it has been argued that since their conviction is based solely upon their alleged confessional/disclosure statements before the Police, it cannot be sustained. It is clear from evidence on record that against aforesaid two appellants circumstantial evidence has been adduced but those relate to charge under Section 364A read with Section 109 of the IPC which shall be discussed

hereinafter. But the charge under Sections 302/34 and 201 of the IPC is dependent only upon their confessional/disclosure statements (Exts-14 and 15). In those statements before the I.O. during investigation it was disclosed inter alia that Vicky, the victim boy was taken to a place near Kudhni and was then murdered at a place on the road from Bhagwanpur to Bahadur and the body was left under a culvert over a dry "Nala", i.e., drain or canal. On this information I.O. went to the concerned Police Station because long time had elapsed from murder and confessional statements. The facts found by the I.O. corroborated the disclosure as to the place of keeping the dead body as well as the manner of killing by injuries on the neck and head. The Inquest report (Ext-8) corroborates both while the Post Mortem Report (Ext-7) corroborates the location and nature of injuries appearing from the confessional statements.

32. Section 27 of the Indian Evidence Act is in the nature of exception to Sections 25 and 26. As held in several cases including in the case of Arun Mandal v. State of Bihar, 2008 (1) PLJR 296, decided by us on 2.11.2007, Section 27 makes admissible only so much of information given by an accused in police custody as relates distinctly to the facts thereby discovered. This Section is based on the doctrine of confirmation by subsequent events. In the present case, the subsequent events confirm the correctness of disclosure made as noticed above. The facts proved attract Section 27 and make it applicable as per law laid down by the Supreme Court in the case of Geejagonda Somaiah v. State of Karnataka, (2007) 3 SCC (Cri) 135, wherein it has also been held that the requirements for the applicability of the Section 27 are:-

- (i) Information must be such as has caused discovery of material facts and
- (ii) Information must relate distinctly to the facts discovered.

The Supreme Court has thus expanded the meaning of this Section and has further held that in appropriate case after applying Section 27 for the limited purpose, the Courts can also draw presumption under Section 114, and Section 106 of the Evidence Act. The disclosure part of Exts. 14 and 15 is, therefore, found admissible against appellants Ranjeet and Sanjay Mahto @ Pandit also. The presumption under Section 114(g) is also available against them. Regard being

had to the common course of natural events and human conduct, a presumption will arise that they were associated with the murder of the deceased boy whose body was found at the very place disclosed by them. It also had injuries on neck and head as disclosed. Under Section 106 of the Evidence Act, mitigating facts to explain such knowledge was in their special knowledge and the burden of proving such facts was not discharged even in their statements under Section 313 of Cr.P.C. wherein they have simply pleaded false implication due to enmity. Hence, charge under Section 302/34 and 201 of the IPC is found proved against Ranjeet and Sanjay Mahto @ Pandit also.

33. So far as charge under Section 364A read with Section 120B of the IPC against the appellants, Sanjeet Kumar, Ranjeet Kumar & Sanjay Mahto @ Pandit is concerned, it has been argued on their behalf that the circumstances proved by the prosecution are not sufficient to prove they said charge beyond reasonable doubts and they have been implicated only on account of petty business rivalry, jealousy and suspicion. As noticed earlier there is no direct evidence on record in respect of the aforesaid charges relating to these three appellants. The circumstances which have been proved by the prosecution are slightly different against each of the three appellants named above. Against Sanjay Pandit and Ranjeet the informant has deposed that after 5-6 days of the occurrence they told him that on paying money his son will come back. The informant has disclosed the name of these two appellants as the persons who were to accompany him for paying the ransom money as per suggestion given to him on telephone by the criminals. On informant's request these two agreed to go with him and were present when the money was snatched away from his cycle. His wife, PW-6 has corroborated him on some of these claims. It has also come in the evidence that these two appellants and Sanjeet used to tell the informant not to disclose about the ransom calls to the police. Against appellants Ranjeet and Sanjay Mahto @ Pandit it has further come in the evidence of the I.O. that they in their confessional statements disclosed that the victim boy had been kept near Kudhni and as per Ext-14 and 15, he was killed at a nearby place. On such disclosure the I.O. went to Kudhni P.S. leading to facts showing recovery of the dead body of the victim boy from the particular place. According to evidence of the I.O. supported by PW-4, Raj Banhi Devi, a currency note of Rs.500/- was also recovered from the room of

Ranjeet on the basis of his disclosure. That currency note bearing name of the informant has been proved as Material Ext-1. No doubt copy of the seizure list in respect of seizure of the said currency note was not given to family members of Ranjeet and that makes the seizure procedure defective but for that lapse of the I.O. it is not possible to disbelieve the evidence of the PW-4 who has deposed regarding the factum of recovery of Material Ext-1 from room of Ranjeet.

34. On careful consideration of the aforesaid circumstances, the charge of conspiracy in relation to offence under Section 364A read with under Section 109 of the IPC is found to have been proved beyond reasonable doubts against appellant, Ranjeet Das and Sanjay Mahto @ Pandit. However, the circumstances mentioned above against appellants Sanjeet Das do create some suspicion but are not sufficient to show that he was also in conspiracy with the other appellants. The circumstances against him are capable of being compatible with his innocence and hence the appellant Sanjeet Das deserves to be given benefit of doubt in respect of charge under Section 364A/120B of the IPC.

35. As discussed and found earlier, the charge under Sections 302/34 and 201 and also the charge under Section 364A of the IPC are found proved against appellants, Chintoo Singh and Birendra Bhagat. Appellants, Ranjeet Das and Sanjay Mahto @ Pandit are also found guilty under Sections 302/34 and 201 as well as Section 364A/109 of the IPC. The appellant, Sanjeet Das stands acquitted of all the charges.

36. The sentence awarded to appellants, Birendra Bhagat and the other convicted appellants, Ranjeet Das and Sanjay Mahto @ Pandit for the respective charges require no interference. But so far as sentence of death awarded to appellant, Chintoo Singh is concerned, upon proper consideration of law laid down by the Apex Court in the case of Machhi Singh v. State of Punjab, AIR 1983 S.C. 957 and some other cases that death sentence should be awarded only in rarest of the rare cases and upon considering the facts and circumstances of this case wherein conviction is based for the offence under Section 302/34 and Section 201 of the IPC only on circumstantial evidence, the sentence of death awarded to appellant, Chintoo Singh is not found fit to be confirmed. The same is set aside and is

commuted to rigorous imprisonment for life and also fine of Rs.10,000/- which, if not paid would require him to undergo further rigorous imprisonment for one year. Life imprisonment awarded to the appellants in this case would not be less than actual rigorous imprisonment for fourteen years.

37. As a result, death reference is answered in negative and with modification in sentence in respect of offence under Section 302/34 of the IPC the appeal of Chintoo Singh stands dismissed. Similarly, the appeal of Birendra Bhagat, Ranjeet Kumar Ram and Pandit @ Sanjay Mahto also stand dismissed. The appeal of Sanjeet Das is allowed as he has been acquitted of all the charges. He should be released forthwith if not required to be kept in jail in connection with any other case.

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