

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.144 of 2022

Arising Out of PS. Case No.-155 Year-2015 Thana- BARACHATTI District- Gaya

Amit Singh Son of Late Dhanjay Kumar @ Dhananjay Singh R/o - Satyendra Nagar Block Colony Ward No.-3, P.S.- Nagar, District- Aurangabad

... ... Appellant

Versus

The State of Bihar

... ... Respondent

with

CRIMINAL APPEAL (DB) No. 403 of 2018

Arising Out of PS. Case No.-155 Year-2015 Thana- BARACHATTI District- Gaya

Vijay Singh @ Bijay Singh @ Vijya Singh S/o Late Rajendra Singh @ Late Rajendra Prasad, R/o Village- Chitrasara, P.S.- Rateganj, District- Aurangabad. At present Ram Pariva Yadav Ke Makan Mein, Sushil Singh ke Petrol Pump Ke Samne, Maharajganj Road, New Area, P.S.- Nagar, District- Aurangabad.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

with

CRIMINAL APPEAL (DB) No. 428 of 2018

Arising Out of PS. Case No.-155 Year-2015 Thana- BARACHATTI District- Gaya

Sunil Kumar Singh S/o Rajdeo Singh, Resident of Village- Kathrua, Ward No.- 1, P.S.- Nagar, District- Aurangabad.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

with

CRIMINAL APPEAL (DB) No. 539 of 2018

Arising Out of PS. Case No.-155 Year-2015 Thana- BARACHATTI District- Gaya

Anil Singh, Son of Mana Singh, Resident of Village- Vadi, Police Station-Badi Shiv Sagar, District-Rohta

... ... Appellant

Versus

The State of Bihar

... ... Respondent

with



CRIMINAL APPEAL (DB) No. 714 of 2018

Arising Out of PS. Case No.-155 Year-2015 Thana- BARACHATTI District- Gaya

Ajay Singh @ Neeraj Pratap Singh @ Rajeev Sekhar Singh @ Narendra Pratap Singh Son of Late Mangal Singh @ Mangal Prasad Singh @ Mahendra Singh, resident of Gothani, P.S. Rafiganj, District- Aurangabad.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

with

CRIMINAL APPEAL (DB) No. 1010 of 2018

Arising Out of PS. Case No.-155 Year-2015 Thana- BARACHATTI District- Gaya

Rahul Kumar Soni @ Bittu S/o Amar Jeet Soni @ Amarjeet Prasad Gupta, resident of Vararhi Gola, P.S. Akorhi Gola, District- Rohtas.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

with

CRIMINAL APPEAL (DB) No. 1038 of 2018

Arising Out of PS. Case No.-155 Year-2015 Thana- BARACHATTI District- Gaya

Mritunjay Singh @ Bablu Singh @ Mritunjay Kumar Singh @ Babloo s/o Ram Lakhan Singh, R/o Vill.- Kajpa, P.S.- Rafiganj, District- Aurangabad Bihar.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

with

CRIMINAL APPEAL (DB) No. 923 of 2019

Arising Out of PS. Case No.-155 Year-2015 Thana- BARACHATTI District- Gaya

Amit Singh @ Amit Kumar Singh Son of Mritunjay Singh @ Mritunjay Kumar Singh Resident Of Village- Tikari, P.S.- Rafiganj, District- Aurangabad

... ... Appellant

Versus

The State of Bihar

... ... Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 144 of 2022)

For the Appellant/s : Mr. Ansul, Sr. Advocate
Mr. Sanjay Kumar, Advocate



For the Respondent/s : Ms. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 403 of 2018)
For the Appellant/s : Mr. Ansul, Sr. Advocate
Mr. Javed Aslam, Advocate
For the Respondent/s : Mr. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 428 of 2018)
For the Appellant/s : Mr. Ravindra Kumar Sinha, Advocate
For the Respondent/s : Mr. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 539 of 2018)
For the Appellant/s : Mr. Anil Singh, Amicus Curiae
For the Respondent/s : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 714 of 2018)
For the Appellant/s : Mr. Bindhyachal Singh, Sr. Adv.
Mr. Vipin Kumar Singh, Adv.
Mr. Kumar Awnish Ankit, Adv.
Dr. Rajesh Kumar Singh, Advocate
For the Respondent/s : Mr. Shivesh Chandra Mishra
(In CRIMINAL APPEAL (DB) No. 1010 of 2018)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Bhaskar Shankar, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha
(In CRIMINAL APPEAL (DB) No. 1038 of 2018)
For the Appellant/s : Mr. Ansul, Sr. Advocate
Mr. Sanjay Kumar, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP
(In CRIMINAL APPEAL (DB) No. 923 of 2019)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Sanjay Kumar, Advocate
For the Respondent/s : Mr. Shiwesh Chandra Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 16-05-2025

These appeals have been preferred for setting aside the judgment of conviction dated 20.02.2018 (hereinafter referred to as 'the impugned judgment') and the order of sentence dated 27.02.2018 (hereinafter referred to as 'the impugned order') passed by the learned Additional District and Sessions Judge-I, Gaya (hereinafter called 'the learned trial court') in Sessions Trial No.190



of 2016 (S.J.)/419 of 2016 (arising out of Barachatti P.S. Case No. 155/2015).

2. By the impugned judgment, the learned trial court has convicted the appellants for the charges under Sections 364(A), 395 and 412 of the Indian Penal Code (for short 'IPC'). The appellant Ajay Singh @ Neeraj Pratap Singh @ Rajeev Sekhar Singh @ Narendra Pratap Singh (in Cr. Appeal (DB) No. 714 of 2018) has been sentenced to undergo rigorous imprisonment for life with fine of Rs. 50,000/- under Section 364A of IPC and in default of payment of fine, he shall further undergo rigorous imprisonment for two years. He has further been sentenced to undergo rigorous imprisonment for life with fine of Rs. 50,000/- under Section 395 IPC and in default of payment of fine, he shall further undergo rigorous imprisonment for two years and further he has been sentenced to undergo rigorous imprisonment for life with fine of Rs. 50,000/- under Section 412 IPC and in default of payment of fine, he shall further undergo rigorous imprisonment for two years. The other appellants have been sentenced to undergo rigorous imprisonment for life with fine of Rs. 50,000/- under Section 364A IPC and in default of payment of fine, they have been ordered to further undergo rigorous imprisonment for one year, they have been sentenced rigorous imprisonment for ten years with fine of Rs. 25,000/- under Section 395 IPC and in default of payment of



fine, they have to further undergo rigorous imprisonment for one year and they have been further sentenced to undergo rigorous imprisonment for ten years with fine of Rs. 25,000/- under Section 412 IPC and in default of payment of fine, they have to further undergo rigorous imprisonment for one year.

Prosecution Case

3. The prosecution is based on a written application dated 01.05.2015 submitted by the informant Neeraj Kumar Gupta (PW-3) to the Officer-in-Charge of Barachatti Police Station in the District of Gaya. In the said written application, the informant has alleged that on 30.04.2015, his elder brother Dr. Pankaj Kumar Gupta with his wife Subhra Gupta had gone to Giridih from Gaya for attending marriage ceremony of his maternal brother. Today, on 01.05.2015, they had left Giridih by his Audi vehicle bearing No. JH01AB-7698 of black colour at 10:00 hours. At 11:30 hours conversation took place on his mobile no. 9431224411 and at 12:30 hours conversation took place with driver Ram Ji Kumar with his bhabhi on mobile no. 9934023411 at that time, they said that within one hour they would reach there. Again at 4:00 o'clock when he tried to talk on both mobile numbers, both numbers are indicating switched off. The informant raised suspicion that his elder brother and bhabhi both have been kidnapped along with Audi vehicle in the region of Barachatti Police Station by unknown criminals. On



the basis of the written application dated 01.05.2020, a First Information Report giving rise to Barachatti P.S. Case No. 155/2015 dated 01.05.2015 was registered under Section 364 IPC.

4. Upon completion of investigation, police submitted charge sheet bearing No. 168 of 2015 dated 10.08.2015 against the accused-appellants, on which cognizance for the offences under Sections 364(A), 395 and 412 IPC was taken by the court on 31.03.2016. Thereafter, police papers were supplied to the accused and the case was committed to the court of Sessions.

5. In the Sessions Court, the charges were explained to the accused-appellants which they denied and claimed to be tried whereafter charges were framed against the appellants on 03.11.2016 for the offences under Sections 364(A), 395 and 412 IPC.

6. To prove the charges against the appellants, the prosecution examined as many as 22 witnesses and got exhibited some documentary evidences. The list of witnesses and the list of documents which have been marked exhibits on behalf of the prosecution are as under:-

List of Prosecution Witnesses

PW 1	Ramji Kumar
PW 2	Mahesh Kumar
PW 3	Niraj Kumar Gupta
PW 4	Ram Chand Bhanu



PW 5	Gaurav Sindhu
PW 6	Kamlesh Pd. Sharma
PW 7	Birendra Kumar Sinha
PW 8	Rakesh Kumar Brahmchari
PW 9	Pranav Kumar Giri
PW 10	Jaynarayan Mishra
PW 11	Prakash Chandra Jain
PW 12	Ram Raj Kushwaha
PW 13	Manoj Yadav
PW 14	Subodh Kumar Singh
PW 15	Sona Lal Singh
PW 16	Dr. Pankaj Kumar Gupta
PW 17	Kumar Vivek Vimal
PW 18	Devendra Chaturvedi
PW 19	Shakeel Ahmad
PW 20	Subhra Gupta
PW 21	Ravi Prakash Singh
PW 22	Indra Soti Sharma

List of Exhibits

Ext-1	Written Statement of F.I.R
Ext-2	C.D.R. from 25-4-15 to 1-5-15 of mobile no of Shubhra Gupta(Victim)
Mark “x”	Signature of Chandra Bhanu on Fard arresting
Ext-3	Statement of A/c no. 20143850739 of Neeraj Pratap Singh (SBI) (Page 1 to 21)
Ext-3/A	Bank Statement of A/c No. 50100068574449 of Neeraj Pratap Singh (HDFC)
Ext-3/B	Bank A/c Statement of Allahabad Bank of A/c No. 50161570576 of Rajeev Shekhar Singh
Ext-3/C	Union Bank of India A/c Statement of A/c No. 535102010707098 of Rajeev Shekhar Singh
Ext-3/d	Transection Inquiry of a/c No. 619300012087 of Neeraj Pratap Singh of Union Bank (3 pages)
Ext-3/e	Summary of A/c no. 628101566197 of ICICI Bank in the Name of Rajeev Shekhar Singh
Ext- 4	Xerox Copy of voter I/D Card of Neeraj Pratap Singh, Narendra Pratap Singh and Rajeev Pratap Singh (All in one Page)
Ext- 4/A	Xerox Copy of Pan Card and Driving License of



	Neeraj Pratap singh(Both are in one Page)
Ext-5	Confessional Statement of Accused Ajay Singh(10 pages)
Ext-5/A	Confessional Statement of Shravan Kumar(4 pages)
Ext- 6	Xerox Copy of register of R.K. Guest house
Ext-7	Voter ID (Xerox copy) of Bablu Singh
Ext-7/A	Xerox copy of voter I.D of Mirtunjay Singh
Ext- 8	Report endorsed to S.P(c), CRD(Bihar), Patna dt. 8.6.15
Ext- 9 to 9/F	Confessional Statement of Mirtunjay Singh, Bijay Singh, Amit Kumar Singh, Sunil Kumar Singh, Anil Singh, Rahul Kumar Soni and Amit Singh
Ext- 10	Letter No. 651 dt 6.6.15 of P.V.P Office Barachatty
Ext- 11	Report of T-I Prade of articles dated 5.6.15
Ext- 12 to 12/B	Signature of Prakash Chand Jain, Niku Kumar & Vikash Kumar on seizure list at hotel Sarogi,Gaya
Mark Y	Arr. & depature register of hotel in Photocopy in four page.
Mark Y/1	Xerox copy of voter I.D of Sandip Baraik
Mark Y/2	Xerox copy of voter I.D. of Auchit Raj
Mark X/3	Photocopy of arresting report
Mark X/4	Photocopy document.
Ext -13	Petition of sub-inspector
Ext-13/a	Signature of P.W 12 on copy of F.I.R of Gomti Nagar P.S. 258/15
Ext- 14 Ext-14/A	Sample seal by Gomti Police Station Lucknow
Ext-15	Report regarding exhibit material produced by S.H.O. Barachatty P.S.
Ext-16	Column No. 192 of the register of Malkhana of Barachatti P.S. in Barachatty P.S. Case No. 155/15
Ext- 17 to 17/F	CAF report of Jaimasi Munda, Mirtunjay Kumar Mojahid Hazruddin, Surendra Nath Mahto, Neeraj Pratap Singh, Reyaz Noori and Jaimasi



	Munda
Ext-18	CDR (Page No. 1 to 28)
Ext-19	Statement U/s 164 Cr. P.C. of Victim Pankaj Kumar Gupta
Ext-20	Sign of Kr. Vivek Vimal on Seizure list dt 15-5-15
Material Ext-I	One C/D of Seosagar Toll Plaza
Material Ext I/A	C/D dt. 28.4.15 Mohania Toll
“ I/B	C/D dt/ .1.5.15 Mohania Toll
“ I/c	C/D DAFFI Toll Plaza
Ext- 21	Signature of 3 witnesses on seizure list dt 15.5.15
Ext 21/A	Signature of 3 witnesses on seizure list of 15.5.15
Ext-22	Signature of Shubhra Gupta on the Statement u/s 164 Cr.P.C
Ext-22/A	Production-cum-Seizure list Dt. 8.5.15
Ext- 23	Petition dt. 9.5.15 for issue P/W against the accused persons
Ext-24	Petition dt. 9.5.15 for order to produce seized material in the Sherghati court
Ext- 25	C.C. of order dt. 14.5.15 Passed by C.J.M. lucknow
Ext-26 to 26/B	Production-cum-Seizure list dt 15.5.15 of C/D
Ext- 27	Petition dt 16.5.15 for listing the received material in this case
Ext- 28	List of seized material dt 16.5.15
Ext- 29	Petition dt. 18.5.15 for taking police remand
Ext-30	Formal F.I.R
Ext-31 to 31/c	Signature of witness Indira Soti Sharma on his petition dt 10-4-17 and affidavit



Ext-32	C.C. of F.I.R of Gomti Nagar P.S. Case No. 299/15, 300/15 & 301/15
Ext-33	C.C. of Fard giraftari of Gomti Nagar P.S Case No. 299/15, 300/15, & 301/15
Ext -34	C.C. of Charge Sheet of Gomti nagar P.S Case No 299/15

Findings of the Learned Trial Court

7. The learned trial court, after scrutinizing the materials available on the record came to the conclusion that charges for the offences under Sections 395 and 364(A) IPC are proved according to the evidence of the victim (PW-16).

8. Learned trial court took note of the evidence of victim (PW-16) who deposed that 4-5 persons wearing commando dress got down from a white colour Fortuner car and asked him to open the window glass of car for searching and when he opened window glass of car, then they dragged him and his wife Shubhra Gupta (PW-20) from his car and boarded them in the backseat of his Audi car and put handcuffs to them and covered their face with black cap, when PW-16 asked as to where they were taking him then they told that they were going to the headquarter. When he again asked, then they told that you have been kidnapped/abducted and you will not be released without payment of money and after long travel, they were lodged and detained in a room till 05.05.2015. Learned trial court found that this fact has



been supported by another victim (PW-20). Learned trial court observed that charge under Section 364 IPC is fully established.

9. For the charge under Section 395 IPC, learned trial court took the evidence of PW-16 and PW-20 and opined that both were abducted by four persons along with Audi Car and other articles and ornaments, the accused persons had dishonestly kept such articles without the consent of the victims. Learned trial court reached to the conclusion that the prosecution had established the charge for the offence under Section 395 IPC against all eight accused persons. Further, learned trial court found that the accused persons were arrested with Audi Car and other articles belonging to the victim couples during raid jointly made by Gaya Police and UP Police. Recovery of looted articles from the accused persons established the charge under Section 412 IPC.

Submissions on behalf of the appellants

10. Learned counsel for the appellants has taken the various grounds to support their contention that the learned trial court has not properly appreciated the evidences available on the record.

11. In their submissions, the impugned judgment and order are liable to be set aside and the appellants would be entitled



to acquittal by giving them benefit of doubt. The grounds raised are as under:-

(a) It is submitted that there is no identification of the appellants. The appellants have not been put on TIP nor identified by anyone. The identification at the time of arrest or in dock would not be sufficient to establish the guilt of the appellants. In this regard, it is submitted that the victims of this case have not disclosed the name and description of the kidnappers. The victims did not identify anyone in the TIP. Similarly, PW-1, PW-2, PW-3 and PW-4 had not gone for TIP. PW-4 and PW-5 identified the appellants in dock. One of the victims (PW-20) has stated that the accused persons had not hidden their face and also not hidden the face of the victim. She has stated that she and her husband had never gone to the jail for identification of the accused persons. PW-21 Ravi Prakash Singh has stated that he had not conducted test identification parade, he identified all the accused persons in the dock.

(b) The prosecution has neither been able to prove recovery nor produced the seizure list or examined any seizure list witness, therefore the seizure list/recovery of articles becomes doubtful and not proved.



It is submitted that the prosecution has claimed the seizure from two places and from three vehicles namely (i) Audi, (ii) Fortuner and (iii) Innova from the parking of (i) Sharda Apartment (ii) some articles like uniform, beacon light, number plates of vehicle etc. from the room of the flat of Sharda Apartment where the victims were allegedly confined.

(c) It is submitted that the prosecution has claimed that three teams were constituted to conduct the raid headed by I.G., D.I.G. and S.S.P. except one witness who claimed five raiding teams had been constituted. None of the officers heading the team to conduct raid were examined by the prosecution to prove the factum of either raid, arrest or seizure of vehicles and articles.

(d) It is submitted that the appellants are said to be sitting in Audi car and were arrested by team headed by I.G. though some witnesses have stated that arrest was made by the team headed by the D.G. The witnesses examined as PW-4 and PW-5 on behalf of the prosecution do not claim either to be member of the team headed by D.G. or I.G. and therefore, they are not competent to depose with respect to the alleged arrest and seizure from the possession of the appellant Ajay Singh (A-1).

(e) It is submitted that according to the prosecution witnesses, the flat of Sharda Apartment was searched under leadership of



D.G., Lucknow, but the D.G. Lucknow has not been examined in this case.

(f) As regards the manner of occurrence with respect to Ajay Singh (A-1) at the time of his arrest, contradictory statements have been given by the witnesses. Some of the witnesses claimed that the appellant (A-1) was in personal possession of arms and he attempted to fire, whereas some witnesses particularly PW-5 deposed without alleging that the appellant (A-1) was in personal possession of arms and attempted to fire, rather he deposed that the arms were recovered from the vehicle.

(g) It is submitted that the articles allegedly seized from the flat of Sharda Apartment do not tally with the TIP of articles conducted by the BDO Barachatti. TIP witnesses, namely, Parmanand and Binod Kumar Gupta were not examined by the prosecution. Even the victim, namely, Dr. Pankaj Kumar Gupta had denied to have put his signature on TIP of articles. The prosecution has not been able to prove on the basis of authentic document of *malkhana* etc. where the articles were kept after the seizure and produced during course of trial. In absence of examination of any witness and admissible documents in this regard, the prosecution case gets completely demolished with respect to the seizure, recovery and production of articles.



12. Learned Senior Counsel for the appellants submits that the relevant evidence to prove/corroborate the aforesaid facts which have been brought on record are (i) Seizure from two places (a) Parking of Sharda Apartment, Gomti Nagar, Lucknow (Audi Car, Fortuner and Innova), (b) Flat No. 906 of Sharda Apartment (uniform, beacon light, etc.). Ram Chanda Bhanu (PW-4) posted at Technical Cell, S.S.P. Gaya has stated that it was the I.G. who was heading the first team who seized the Audi car but the I.G. has not been examined. It is submitted that no seizure list of Audi car, Fortuner and Innova were produced by the prosecution. The D.I.G. and S.S.P., Lucknow who are said to have seized the Fortuner and Innova have not been examined. PW-4 has stated that he had not seen the seizure list. No seizure list witness has been produced.

13. It is submitted that Gaurav Sindhu of Technical Cell in the Office of S.S.P. Gaya (PW-5) has stated that total five teams were constituted, he was member of the fifth team. He has given a different manner of occurrence. There is no allegation of attempt to fire in his statement. There is no allegation of arm being seized from personal possession rather alleged recovery was from vehicle.

14. Learned Senior Counsel submits that Pranav Kumar, BDO Barachatti (PW-9) has stated that 46 household articles were



kept in the TIP but it has not been corroborated by PW-4 and PW-5. There is no seizure list produced and no seizure list witness has been examined. The TIP witnesses Parmanand and Vinod Kumar Gupta have not been examined. There is no mark upon 46 articles. In paragraph '3', PW-9 has stated that 10 articles similar to seized articles were kept in the TIP but not marked. It is submitted that Ram Raj Khuswaha (PW-12) who is Senior Police Inspector, Gomti Nagar has said that one fake dress of commando, belt, banner and pistol were seized from the three accused, however, Subodh Kumar Singh (PW-13) has stated that at the time of seizure of articles he was not present. It is submitted that articles mentioned by PW-14 does not corroborate with the articles described by PW-4 and PW-5.

15. Learned Senior Counsel further submits that neither the CDR nor the bank account of the accused has been marked exhibits by complying with the requirements of Section 65B of the Evidence Act. In this connection, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Anvar P.V. vs. P.K. Basheer** reported in **(2014) 10 SCC 473**. In this connection, reference has been made to the statement of PW-6 Kamlesh Prasad Sharma in paragraph '3' of the deposition who has proved Exhibit '4' series.



16. Learned counsel further submits that in this case, the place of occurrence has not been established by the prosecution. Prosecution has alleged two places of occurrence. The first place of occurrence is the GT Road near Line Hotel, Barachatti where the main offence of kidnapping was committed and the second place of occurrence is the Sharda Apartment, Gomti Nagar, Lucknow from where appellants and other co-accused persons were allegedly arrested, three vehicles and other articles were seized. It is submitted that the place from where kidnapping was done is a busy area where many line hotels are situated, however, none of the witnesses either present in the line hotel from nearby place has been examined by the prosecution. No one has claimed to have identified the appellants or any other accused. Evidence has come that the accused persons were not concealing their faces, even the witnesses manning at different toll plaza such as PW-17, PW-18 and PW-19 have made no reference of either crossing of the vehicle in question or identification of the accused with the victim. It is submitted that non-examination of any witness of the first place of occurrence creates a doubt about the place of occurrence.

17. Learned counsel has relied upon the evidence of PW-17 who has stated in paragraph '2' to '6' of his deposition that



in the seizure list there is no mention of the number of the vehicle. He has stated that the person sitting in the vehicle cannot be seen in the CCTV footage. It is also stated that he had not put his signature on the CD of CCTV footage and there is no case number on it. Darogaji had taken his statement during investigation.

18. Learned counsel further submits that the another witness namely Devendra Chaturvedi (PW-18) was an employee of the toll plaza. He had prepared the CD from the cameras which were installed at the toll plaza. He had prepared it on the request of Barachatti Police and he has proved Exhibit 'I/A' and 'I/B'. He has stated in his cross-examination that he had not run the CD and had not seen that what were there.

19. Learned Senior Counsel submits that Shakil Ahmed (PW-19) had only handed over the CD to Police. Ravi Prakash Singh (PW-21) has stated that there were so many line hotels at Bhaluachatti, no one told him that he is a witness of the occurrence. He had not seen face of the accused persons in the CCTV footage. He had also not noted down vehicle number in the case diary. This witness has stated in paragraph '8' of his deposition that he had seen the CCTV footage in every toll plaza on the GT road going west to the place of occurrence but he could not see the face of the accused but he had seen the red light



equipped vehicle which was used in the abduction. In the case diary he had given description of the vehicle but had not written the case number.

20. Learned Senior Counsel submits that the prosecution has failed to examine any independent witness in support of its case. The official witnesses can prove the fact only with respect to steps and procedures taken by them post FIR. The evidence of PW-17, PW-18 and PW-19 are irrelevant to prove the prosecution case. No witness of the search, seizure, recovery and production of articles has been produced by the prosecution. The owner of flat, namely, Amod Madhu was examined during investigation but was not examined as witness on behalf of the prosecution during trial. Manoj Yadav, the guard of Sharda Apartment has not supported the prosecution case and as such he has been declared hostile. It is submitted that the evidence of the rest of the witnesses are not relevant to prove the prosecution case. It is his submission that where the prosecution could have produced the witnesses but those were not produced, the presumption under Section 114(g) of the Evidence Act would come in play and adverse inference may be drawn. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Gyan Singh vs. State of U.P.** reported in **1995 Supp (4) SCC 658** (paragraph '3').



21. Learned counsel has also raised an issue of delayed examination of the prosecution witnesses. It is submitted that Ram Chand Bhanu (PW-4) has stated that he did not remember on which date the I.O. had recorded his statement. PW-5 has stated that he was examined by the I.O. on 30.07.2015. It is, thus, submitted that he has been examined after three months of the occurrence. Kamlesh Prasad Sharma (PW-6) has stated that he deposed in this court only for the first time in this case. He was suggested that the I.O. had recorded his statement in paragraph '35' of the case diary in respect of Barachatti P.S. Case No. 37 of 2015, this witness denied the suggestion and said that he is not aware of it. Birendra Kumar Sinha (PW-7) has stated that his statement was never recorded by police and for the first time he was appearing as a witness in this case. Rakesh Kumar Brahmachari (PW-8) has deposed that he had not given statement to the I.O. The case was being investigated by the Crime Investigation Department and he was acting on the direction of the Department. He had submitted his report but had not disclosed the fact that he was investigating the case.

22. Learned counsel submits that from the evidences available on the record, the ingredients of the offence under Sections 395 and 412 IPC are not established. So far as the



previous conviction of the appellant Ajay Singh (A-1) is concerned, learned counsel submits that PW-8 has disclosed that A-1 has been convicted in Jaipur P.S. Case No. 42 of 2003 in which he has been awarded life imprisonment but in 2012, he absconded while he was on parole but in this regard he had not seen any document. It is submitted that no other documentary evidence in this regard has been proved and even Bhawar Lal who told it to PW-8 has not been examined. There is no compliance of Section 211(7), 236 and 258 of the CrPC, therefore, the sentence would be unsustainable.

23. It is lastly submitted that in this case the prosecution has not adhered to the mandatory requirement of Section 313 CrPC. It is submitted that the appellants have not been given any opportunity to explain all the circumstances. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Prakash vs. State of Karnataka** reported in **(2014) 12 SCC 133.**

24. Mr. Anil Singh, learned Amicus Curiae, representing the appellant in Criminal Appeal (DB) No. 539 of 2018 submits that the only circumstance against this appellant is that he was arrested from the car in the Sharda Apartment. It is submitted that PW-4 and PW-5 claimed that they reached Lucknow on



02.05.2015, there was a GPS in the vehicle and from the GPS they could get the location of the vehicle but they raided the premises of Sharda Apartment on 06.05.2015 only. The raid which started at 1:30 PM continued till 6:00 PM. The accused were taken into custody at 3:40 PM. If the raid was conducted at 1:30 PM then why they have been shown arrested at 3:40 PM remains a question mark. Learned counsel submits that Ram Chand Bhanu (PW-4) has stated in paragraph '7' of his deposition that he did not remember the date on which he had given his statement to the I.O. He did not remember that after how many days his statement was recorded by the I.O. He did not remember whether he had given statement and he did not fully remember that what statements he had made before the I.O. Referring to this, learned counsel submits that this shows the quality of evidence and this witness cannot be said to be a credible witness.

25. Learned counsel further submits that the two victims of this case namely PW-16 and PW-20 have stated in their cross-examination that there were 4-5 persons but in this case, altogether nine persons were arrested in Sharda Apartment. It is his submission that the prosecution has not been able to show that whether there were four or five persons.



26. Learned counsel submits that according to PW-4 and PW-5, all the nine were arrested from the parking but the I.O. (PW-21) has stated in paragraph '2' of his deposition that all the accused persons were arrested from Flat No. 906 of the Apartment. Thus, it is not proved as to from which place the accused persons were arrested. It is submitted that the confession 9 series would not be admissible in evidence. The I.O. (PW-21) has accepted in paragraph '26' that this appellant is not having any criminal antecedent.

27. It is pointed out that PW-16 and PW-20 both had occasion to see the accused persons but they have not identified the accused in dock. No TIP of the accused persons has been conducted. The BDO (PW-9) who held the TIP of the articles had submitted his report to the PW-21 which reached court after four days. PW-16 had not signed on that. It is also submitted that some material witnesses who are relatives of PW-16 and whom PW-16 had given calls have not been examined.

28. It is submitted that in 313 CrPC statement, the time of leaving the victim is stated to be night of 06.05.2015 but the victim had already reached home in the afternoon. It is thus submitted that the prosecution had not placed all the incriminating



materials to the accused at the time of their statement under Section 313 CrPC.

Submissions on behalf of the State

29. Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State submits that on perusal of the entire evidences on the record, it would appear that these nine appellants are involved in abduction of Dr. Pankaj Kumar Gupta and his wife Subhra Gupta with their Audi car (black colour) from the jurisdiction of Barachatti P.S for ransom. The victims in their deposition and statement under Section 164 CrPC have admitted that on 05.05.2015 at night convicts-appellants had freed them near Allahabad Railway Station and they boarded a train which was passing through the said Station for Gaya. They reached Gaya where brother-in-law of PW-16 retained them. The victim (PW-16) had informed him from the mobile of another person.

30. It is submitted that in this case, prosecution has examined twelve witnesses. Learned Additional P.P. has taken this Court through the evidence of the prosecution witnesses and has submitted that the main accused Ajay Kumar Singh with his gang had kidnapped Dr. Pankaj Gupta and his wife Subhra Gupta. The accused had shown himself in different names as Neeraj Pratap



Singh, Rajeev Kumar Singh with different ID but photograph pasted on the same was of Ajay Kumar Singh.

31. It is submitted that abduction offence is not a single man crime rather related with a gang. The accused persons have been arrested from the premises of Sharda Apartment, Gomti Nagar with Audi vehicle of the Doctor, a Fortuner vehicle related with Barachatti P.S. Case No. 37 of 2015 and Innova about which Ajay Singh is claiming it his personal vehicle but it is in the name of one Gulrej Khan. The looted articles of doctor couple were also recovered from Flat No. 906 of Sharda Apartment. Ajay Kumar Singh is the main conspirator in both the cases of kidnapping of Barachatti P.S Case No. 37 of 2015 and Barachatti P.S. Case No. 155 of 2015 and other accused are in the gang of Ajay Singh. No explanation has come that under what circumstances the said Audi, Fortuner and Innova were in their possession at the time of raid nor about the articles recovered from the apartment which belonged to the doctor couple.

32. Learned Additional Public Prosecutor submits that this is the best case as circumstances added with the recovery of articles would show that the accused persons were involved in the kidnapping of the doctor couple. Minor discrepancies, if any, cannot be taken into account for acquittal. It is submitted that the



kind of materials available on the record, the learned trial court has not committed any error in appreciation of the evidences available on the record.

Analysis of the Evidences - Consideration

33. We have heard learned counsel for the appellants and learned Additional Public Prosecutor for the State as also perused the trial court's records.

34. We would first examine and appreciate the evidences available on the record, the informant Neeraj Kumar Gupta (PW-2) has proved his written information (Exhibit '1'). This written information is the basis of registration of the First Information Report giving rise to Barachatti P.S. Case No. 155 of 2015 on 01.05.2015 under Section 364 IPC. According to the written information, Dr. Pankaj Kumar Gupta (PW-16) and his wife Subhra Gupta (PW-20) had gone from Gaya to Giridih to attend a marriage ceremony of the maternal cousin brother of Dr. Pankaj Kumar Gupta which was held on 30.04.2015. On 01.05.2015, they were returning by their Audi car bearing Registration No. JH01AB-7698 (black color). At about 11:30 AM, the informant had a talk with his brother, Dr. Pankaj Kumar Gupta and thereafter at 12:30 noon, he had a talk with the driver from the mobile number of his bhabhi, and he was informed that they would reach



Gaya within one hour. The informant (PW-3), however, stated in his written information that when he tried to contact them at 4:00 PM, both the mobiles were coming off. He expressed his apprehension that his brother and bhabhi both together with the vehicle have been abducted by unknown criminals.

35. The driver of the vehicle, Ramji Kumar (PW-1) has supported the prosecution case. He has stated that at 12 o'clock he had a talk with Subhra Gupta Madam on his mobile when he was told to keep the food ready. She had informed that she would be reaching within one hour. This witness had gone with Mahesh Kumar, Compounder in search of the doctor upto Barhi Border but he could not trace the doctor. He informed Neeraj (the informant) who told him to come to Bharachatti Police Station. The informant came to the police station and gave the information in this regard. He has stated that six days after the occurrence, doctor had returned and this witness met the doctor in his sasural where doctor told him that he had been abducted for ransom. He had also given the description of the persons who had abducted him, they were in a Fortuner vehicle on which a red color beacon light was fixed and all the accused persons were in dress who stopped the vehicle after overtaking and asked the doctor to open the glass. They had handcuffed the doctor, introduced themselves as officers,



put black color clothes on the head and put the doctors on the backseat and the accused sat in the vehicle, he started driving. This witness came to know later on that the vehicle of the doctor was found in Sharda Apartment at Gomti Nagar and all the accused were caught from there. This witness has stated in his cross-examination that he was accompanying the doctor whenever he used to go outside, but the doctor had gone driving the vehicle himself. This witness has stated in his cross-examination that doctor had not disclosed him the name of the kidnappers and the physical description of the abductors. He has stated that the doctor had returned on 6th at about 2-3 o'clock. This witness has stated that during inquiry from the toll tax, on looking into the computer, they were informed that the vehicle of the doctor had passed through the route.

36. Mahesh Kumar (PW-2) is the Compounder of the doctor who has deposed on the line of PW-1. He had made his statement before police in Barachati Police Station. His statement was, however, not recorded after the return of the doctor.

37. Neeraj Kumar Gupta (PW-3) is the brother of Dr. Pankaj Kumar Gupta. He is also the informant of this case. He has narrated the occurrence on the same line as stated by PW-1. He had sent the driver to find out his brother. He had also met City



DySP and had requested him to help. DySP had advised him to go to S.P. (City) whereafter he had gone to S.P. (City) Residence, but S.P. (City) was not there. Thereafter, he had gone to S.S.P., but he was also not there as he had gone in meeting thereafter he talked to D.M. over telephone and told him about the occurrence. He had gone to Barachatti Police Station where driver and compounder also came. The driver informed that Doctor Sahab had crossed Barhi Toll Plaza. At about 7 o'clock, the FIR was registered. At about 9 o'clock, S.S.P. reached Barachatti Police Station where Senior S.P. had recorded his statement, the statement of the driver and the compounder.

38. This witness (PW-3) has stated that after five days, his brother and bhabhi had returned to his *sasural* after they were set afree. His brother told him about the occurrence. He told that when he had crossed Barhi Toll Plaza, then one white color Fortuner vehicle on which a red color beacon light was fixed came, some persons were there in dress who overtook the vehicle of his brother and one person handcuffed him and they put black clothes on their head and then they put them on the backseat. The vehicle was running in high speed and for about 8-9 hours, the vehicle was running whereafter his brother and *bhabhi* were taken to a room. This witness came to know from the newspaper report that his



brother and bhabhi were kept in Sharda Apartment at Lucknow. He also came to know that all the accused persons were of Aurangabad district and nine persons had been arrested. The Audi vehicle and the articles of his brother were also seized from the Sharda Apartment. In his cross-examination, this witness has stated that the occurrence of abduction had not taken place in his presence and no article had been recovered in his presence.

39. Ram Chand Bhanu (PW-4) is the S.H.O. of Chandauti Police Station who was posted in the Technical Cell on 22.01.2015 at the SSP Residence. He had received the information with regard to the abduction of Dr. Pankaj Kumar Gupta and he was asked to provide the Call Details Report (CDR). He was in the investigation team of SSP, in the Technical Cell. He had taken out the phone of Subhra Gupta and later on the CDR of the driver and Pankaj Gupta were also seen. He had given the CDR to the I.O. He has proved the three CDRs which he had taken out from the computer of the Technical Cell in the SSP residence and he has proved it as the same and one. At his instance, the five pages of CDR have been marked Exhibit '2'. Thus, this witness has proved the printout of the CDR which he had generated from the computer of the Technical Cell in SSP Residence.



PW-4 being a member of the team of the City SP Rakesh Kumar, had also gone to Lucknow. With him, Gaurav Sindhu, Sub-Inspector (PW-5), Constable Dharmendra Kumar, Rajesh Kumar and three other members of the armed forces were present. They had met the SSP of the STF Amit Kumar at Lucknow. D.G. of Bihar had sought help from D.G. of Uttar Pradesh. A team was constituted there and they were told that in Barachatti P.S. Case No. 37 of 2015, Ravi Ranjan and two other persons were abducted in a Fortuner vehicle and in their case, ransom was given for their return at Lucknow. From the GPS it has been found that it was either Sharda Apartment, Jamuna Apartment and Ganga Apartment in Gomti Nagar. Thereafter a local spy was deputed by Amit Kumar, SSP STF-UP. The spy informed that Ajay Kumar is living on the ninth floor of Sharda Apartment and if the police would not move swiftly, they may flee away. On this information, under the leadership of D.G. Lucknow, five teams were constituted. First team was headed by the I.G., the second team was in the leadership of S.S.P. in which this witness was there, the third team was headed by D.I.G., he did not remember who was heading the other teams. According to this witness, the first vehicle in the leadership of I.G. entered into Sharda Apartment where on the left side, a black color Audi was parked and four persons were sitting



inside. They were ready to leave. Ajay Singh had tried to make a firing from the Audi vehicle but he was caught by I.G. In the same parking, one Fortuner vehicle was also there and the third vehicle was in the parking. One person had tried to fire from the Fortuner, but he was caught and three persons were arrested from the Innova. On asking about the Audi vehicle, Ajay Singh told that this vehicle came to them on abduction of the doctor couple and the Fortuner vehicle was brought by abduction of Ravi Ranjan. He claimed that Innova vehicle was his own, but could not produce any paper. In course of his examination, Ajay Singh told that he was living on the ninth floor of the apartment and he had kept the doctor couple in the said flat and their articles are kept on the ninth floor in the apartment which he had taken on rent. Thereafter, Ajay Singh had taken out a key from the flower pot kept near the flat and opened the flat. This witness has stated that in the room, the articles of the doctor couple were found and in one room, a *khaki vardi* and the dress of the police, shoes and many number plates on which the sign of the Governor and other officers were put, yellow color beacon light and other articles were found. A seizure list was prepared there and one copy of the same was given to the accused persons whereafter they came to the headquarter of the STF and took further action. PW-4 has identified all the accused persons



who were present in the dock. He has also proved the arrest which was prepared at the instance of I.G. on which he had identified the signature of D.G. S.T.F., D.I.G. S.T.F, S.S.P. S.T.F., City S.P. Gaya and members of the team as also his own signature. This document was marked (X) for identification. In his cross-examination, this witness has reiterated that he was posted in the Technical Cell. Learned Amicus Curiae has made a submission with regard to the quality of his evidence by referring to paragraph '7' of his deposition but we find that this witness has withstood the test of cross-examination and only because he did not remember the date of making of his statement before the I.O. and his complete statement made before the I.O., his testimony cannot be discarded. He is a credible witness. He was a member of the team which raided Sharda Apartment and in his presence, the accused persons were arrested from the vehicles which were in the parking of Sharda Apartment. This witness was suggested by the defence in paragraph '16' of his deposition that in his statement before the I.O. he had not stated that S.S.P. Gaya had given him order to go with the investigating team to Lucknow and in Lucknow, in his presence the accused persons were arrested and the vehicles were seized and that he had gone to Sharda Apartment in Gomti Nagar. This witness denied the suggestions of the defence. The defence



has not got exhibited the statement of this witness recorded by the I.O. when the I.O. came in dock to prove otherwise and to draw a contradiction. From the pattern of cross-examination of this witness in paragraph '19' of his deposition it would appear that the defence suggested him that he had only taken out the mobile call details and the statement which he had made in the court, he had not made that statement to the I.O. This witness has denied the suggestion.

40. Gaurav Sindhu (PW-5) is the SHO of Khizersarai Police Station. On 01.05.2015, this witness was posted in the Technical Cell of the Confidential Section of the Senior Superintendent of Police, Gaya and he has also stated that on the direction of the S.P., team of police officers were constituted for unearthing the occurrence. He has stated that in the said team City S.P. and two Sub-Inspectors namely he himself and one Ram Chand Bhanu (PW-4) had gone to Barachatti and from there they had gone to Lucknow by government vehicle. He has deposed on the line of PW-4 and fully corroborated him. He was in the fifth team which was constituted at Lucknow. He has stated that on 6th they had conducted raid in Sharda Apartment, Gomti Nagar, Lucknow from where one black color Audi, one Fortuner and one Innova vehicle were seized. Four persons were sitting in the Audi



vehicle, three persons were sitting in the Fortuner and two persons were present in Innova vehicle. All of them were searched. From all the three vehicles, arms were recovered. He said that one of the arrested persons was Ajay Singh but he did not remember the name of other persons. He has also stated about the search conducted in the flat of 9th floor of Sharda Apartment from where the police and military dress, shoes, belt and red color VIP beacon light and other articles of the victims were found. He has stated that raid continued from 1:30 PM to 6:15 PM. He has also stated that papers relating to the raid were prepared on which he had put his signature. He has proved his signature on the Xerox copy of the paper which has been marked Exhibit 'X/1'. He claimed that he can identify the accused persons who were present in Sharda Apartment. He identified the accused persons present in dock. He identified Ajay Singh as the person who was wearing a spectacle. This witness was suggested by the defence that all the work relating to raid was done by the STF Lucknow and he had not done anything. This witness denied the suggestions. He has stated in his cross-examination that on the date of raid itself his statement was taken by the police. Regarding this witness, it is stated that his statement was recorded after three months i.e. on 30.07.2015, however, we find from a complete reading of the deposition of this



witness that he being a member of the raiding team was present in the Sharda Apartment and that in his presence accused persons were arrested cannot be doubted. He was also present at the time of raid of the flat situated at 9th floor in Sharda Apartment under the leadership of D.G. STF, Lucknow, several uniforms of police and military persons including shoes, belt, beacon light, blue light and red colour VIP light, several number plates of vehicle, monograms of Ashok Stambh were recovered. Even if his statement was recorded by the I.O. on 30.07.2015, that would not take away his credibility in the present case.

41. Kamlesh Prasad Sharma (PW-6) is a member of the investigating team under leadership of SSP. On the direction of SDPO, Sherghati, he had fetched the accounts of accused persons. He has also proved the account numbers and page '143' to '170' belong to Neeraj Pratap Singh @ Ajay Singh and Rajesh Shekhar Singh of different bank SBI, Allahabad Bank, ICICI Bank. He has proved the computer generated paper with seal of the bank (Exhibit '3' to Exhibit '3/A'). This witness has specifically stated in paragraph '3' of his deposition that ID, voter card, driving license which had been recovered although in different names but according to this witness, the photographs which were pasted on the ID is of accused Ajay Singh. This witness was suggested by



the defence that he had not done anything in this case which he had denied.

42. Birendra Kumar Singh Dy.SP CID (PW-7) was posted as Police Inspector CB team Gaya on 01.05.2015. He has also supported the prosecution case. He has stated that he along with other police personnel had verified the records of Barachatti P.S. Case No. 37 of 2015 and the confessional statement of Sona Lal Singh of Ajay Kumar Singh in Gandhi Maidan, Patna. The same *modus operandi* was found in Barachatti PS Case No. 155 of 2015 and Barachatti PS Case No. 37 of 2015. On the basis of this fact, PW-7 had requested and wrote an advice note to SP Gaya in PS Case No. 155 of 2015. Thereafter, DG Crime Branch had issued order and constituted team in which Rakesh Kumar Brahmachari (PW-8), Raushan Kumar and this witness were kept. On 09.05.2015, this witness along with team had reached Lucknow, Gomti Nagar where articles were seized and kept. During enquiry it came to the knowledge that few members of the kidnappers namely Amit Kumar and Bablu Singh @ Mrityunjay Kumar had stayed in R.K. Guest House. It also came to the notice that appellant Bablu Singh had given photocopy of voter card in the guest house. Before kidnapping of Pankaj Kumar Gupta and his wife Subhra Gupta, one Sharvan Kumar along with three



persons had stayed in the guest house and appellant Mrityunjay Kumar Singh had given photocopy of voter ID card for identification. On seeing the photographs it came to the knowledge that voter ID cards are different but photographs were of the same person. On 19.05.2015, this witness got information that gang of kidnappers have been taken on police remand by the Barachatti Police. The team reached to the Barachatti PS where confessional statement of the appellant Ajay Kumar Singh and Sharvan Kumar (Exhibit '5' and Exhibit '5/A' respectively) were recorded. Photocopy of the register of RK Guest House, photocopy of voter ID card have been marked Exhibit '7' to '27/A'. It also transpired in course of investigation that the used vehicle in kidnapping was the same vehicle of Ravi Ranjan, the stone crusher businessman who had been abducted vide Barachatti PS Case No. 37 of 2015.

43. Rakesh Kumar Brahmachari (PW-8) is the Superintendent of Police, CID, Patna. On 01.05.2015 he was on the post of Police Inspector in the CID. He along with other police officers had gone to Barachatti PS on 02.05.2015 where they perused the records of the case pertaining to abduction of Ravi Ranjan, the businessman of stone crushing. He had also perused the confessional statement of Ajay Singh which was recorded by Sona Lal Singh in the year 2000. In the said confessional statement



he had admitted about his involvement in many cases in which he had abducted a person with the vehicle. A copy of the confessional statement was given at Barachatti Police Station and one copy was given to SSP Gaya whereafter Station House Officer of Barachatti Police Station was advised to focus on investigation in Banaras and Lucknow. This witness has stated that on 08.05.2015 on information with regard to the arrest of the accused persons of this case this witness had gone for examining them. He was amongst the three persons who were ordered to go to Lucknow. He had brought the written order and submitted the same in the court room. He had gone to Gomti Nagar Police Station, Lucknow where nine accused persons were arrested and local police was investigating them. Police from Rajasthan had also come. This witness has stated that the In-charge Sub-Inspector Bhawar Lal of Rajasthan team had informed that Ajay Singh is a convict in Jaipur kidnapping case no. 42 of 2003. He came out on parole in the year 2011 whereafter he absconded. There is also a case for this reason in Rajasthan being Case No. 46 of 2011. He also informed that Ajay Singh was wanted in a kidnapping case of Dhanabad Police Station. This witness had inquired from Ajay Singh and he had told them that prior to the occurrence Mrityunjay @ Bablu and Amit Kumar had stayed in R.K. Guest House, Gomti Nagar,



Lucknow. They were also staying in Vishwas Khand 3/210 apart from Sharda Apartment. This witness had conducted verification in the R.K. Guest House and Vishwas Khand. Owner of the house Jai Narayan Mishra had told this witness that Ajay Singh had taken the house in the name of Neeraj Pratap Singh and he had introduced himself as a property dealer. One day he had also come with a black colour Audi vehicle and next day he had gone. This witness had seized the bank account ledger of Ajay Singh from Punjab National Bank, State Bank of India, HDFC Bank, Bank of India and Allahabad Bank. This witness has been cross-examined by the defence and he has denied the suggestion that he had prepared the enquiry report in his office and had recorded the statement of the accused by threatening them. This witness has stated that the accused persons were taken on remand on 19.05.2015 and he had recorded the statement of the accused persons on 19.5.2015, 20.05.2015 and 21.05.2015.

44. Pranav Kumar Giri (PW-9) is the Block Development Officer, Barachatti. He was posted there on 05.06.2015. He had got conducted the test identification parade of the seized articles in Barachatti PS Case No. 155 of 2015. He had done it on the direction of the court and had submitted his report which he proved as Exhibit '10'. He has stated about the seized



articles such as bag of red colour, ladies purse, metal chain of yellow colour, small handbag of black colour, one bottle of perfume, etc. There were 46 articles. All the articles were identified by Dr. Pankaj Kumar Gupta and his wife Subhra Gupta. He has proved the TIP chart which was prepared in his handwriting and bore his signature. This TIP chart has been marked Exhibit '11'.

In his cross-examination, he has stated that there was no special mark on any of the 46 articles. He has stated that like these seized articles, he had kept 10 other articles which he had not written. He has stated that he got written Exhibit '10' by a Clerk but date is not written there. He has stated that he had handed over the TIP chart on the same date to Daroga. He has further stated in his cross-examination that the seized articles are available in the market. He has further stated that the TIP chart has been seen by SDJM on 09.06.2015. On examining the evidence of the BDO (PW-9) we find that his evidence is credible. The seized articles were identified by the victims of the crime who are themselves respectable and credible persons. The defence is not able to take any contradiction from PW-9 so as to disbelieve him.

45. Jai Narayan Mishra (PW-10) is the house owner who had provided his house on rent to Ajay Singh. Ajay Singh had



taken the tenancy in the name of Neeraj Pratap Singh. He has stated that he knew Neeraj Pratap Singh had taken his house 3/210 Vishwas Nagar on rent from November 2012 to May 2015 till he was not arrested. Ajay Singh had approached this witness on the basis of advertisement given by this witness in the Times of India for renting out his house. This witness has stated that on 6 May 2015 police arrived at his house at about 5:00 PM and conducted raid. When he returned from Bazar (market) then he found that police had come and they had brought Neeraj with them. On not finding the key, the lock was broken and then search was conducted. Police had informed him that the real name of Neeraj Pratap Singh was Ajay Singh who was a criminal and had done abduction of a doctor couple. Officers of Bihar police had come to record his statement. From the pattern of cross-examination of this witness it is evident that the defence does not deny the fact that Ajay Singh had taken the house of this witness on rent and Ajay Singh had presented himself as Neeraj Pratap for purpose of taking the premises on rent.

46. Prakash Chandra Jain (PW-11) is the owner of the Hotel Saravgi, Gaya. He had read about the abduction of Dr. Pankaj Gupta in the newspaper. He has proved the arrival and departure register of his hotel which he had given to police. He has



stated that two persons had come to stay in the hotel. He has proved Exhibit '12', '12/A' and '12/B' which are the photocopies of the ID card, copy of the register and voter ID which police had seized and on which this witness has put his signature.

47. Ram Raj Kushwaha (PW-12) is the Senior Police Inspector of Gomti Nagar Police Station, Lucknow who had taken charge of the investigation of the Gomti Nagar PS Case No. 299 of 2015, 300 of 2015 and 301 of 2015. All the four cases were registered on the basis of the statement of Sri Sujit Pandey, I.G., STF and from that it appeared that the case relates to the abduction of Dr. Pankaj Gupta and his wife Dr. Subhra Gupta. Altogether nine accused persons were arrested from Sharda Apartment, Gomti Nagar. The team was constituted under the leadership of I.G., STF. He has stated that in the said team, people from Gaya, Bihar were also there and in the raid, three vehicles, one Fortuner, one Innova and Audi car was seized. He has also stated about the seizure of the articles of the doctor couple from Flat No. 906 of Sharda Apartment. In his cross-examination, this witness has withstood the test of cross-examination and has clearly stated that at the time of arrest of the accused persons, he was present there. He had conducted investigation in the case registered at Lucknow.



From the statement of this witness, it is evident that he was a member of the team which had conducted raid and he confirms the presence of the police officers of Gaya, Bihar in the said team.

48. Manoj Yadav (PW-13) was posted as guard in Sharda Apartment, Gomti Nagar, Lucknow. He has confirmed in his examination-in-chief that Bihar Police and U.P. Police had conducted raid in the Apartment but he has stated that he cannot say who were arrested in the said raid because he was not there. The trial court has taken note of the demeanour and recorded that this witness is looking afraid and this witness has been declared hostile by the prosecution and has been cross-examined. In his cross-examination, he has said to have heard that in the raid, arrests were made. From the deposition of this witness, at least this much is evident that he supports the prosecution case that the raid was conducted in the Sharda Apartment by the teams of the police officers.

49. Subodh Singh (PW-14) is the Sub-Inspector of Barachatti Police Station who had brought the material exhibits of the case to the court and proved them in course of evidence which were marked Exhibit '12', Exhibit '13' and Exhibit '14'. In his cross-examination, he has stated that at the time of seizure, he was not there and the seized articles were not kept in his presence in the malkhana.



50. Sona Lal Singh (PW-15) was posted in the Crime Investigation Department Headquarters, Patna on 01.05.2015. He was In-charge of the Technical Cell. He had also gone to the place of occurrence. He has supported the prosecution case regarding constitution of the police team who had gone to Lucknow. He had taken out the CDR of the telephones of Ajay Singh and his gangman. He has stated that the document which is from page no. 307 to 345 of the case diary are of different mobile numbers, these are CDR and CAF report which were generated from the computer of the Technical Cell and he had taken out the same. He has proved page no. 307 to 345. At his instance, the CDR and CAF reports have been marked Exhibit '17' to '17/F' and Exhibit '18'. He has stated that on analysis of the CDR of mobile no. 8677837053, he found that the tower location of this mobile no. from 28 April 2015 to 02.05.2015 was between Gaya and Gomti Nagar and it was showing movement and there was a talk taking place on 8677829596. Phone no. 8174913008 had a same SIM on the KYC of Ajay Singh and phone no. 8756511310 was being used by Ajay Singh. This witness was cross-examined by defence and in his cross-examination he has stated that in the KYC form of the bank account, both the numbers are provided. But he had not verified the KYC form because for that he was not authorized.



51. Dr. Pankaj Kumar Gupta (PW-16) is the victim of this case and he has narrated the occurrence which took place on 01.05.2015 while he was on way to his home after attending the marriage ceremony of his maternal cousin brother. He has stated that the occurrence had taken place on the GT Road before Barachatti. He has stated that one white color Fortuner vehicle on which 'Government of India' was inscribed and whose registration was of Delhi came fastly blowing siren. This witness has stated that he thought that there is perhaps a VIP vehicle so he stopped his vehicle in the side of the road whereafter the Fortuner vehicle stopped just ahead of the vehicle of this witness, 4-5 persons who were in commando dress came out of the vehicle and asked him to open his glass. When this witness inquired as to what is the matter then they said they have to search the vehicle. This witness has stated that the moment he opened the glass, they pulled them down and put a black color cloth on their face and handcuffed them and put in the back seat of their vehicle. When this witness asked them that where are they being taken then they said they are being taken to the headquarter. When again they asked them then they said that they have been abducted and they would not be released without taking money. Thereafter they were given water to drink. After covering long distance, the vehicle stopped in the night at one



place where PW-16 and his wife were transferred in another vehicle, thereafter about half an hour travel the vehicle stopped, they were taken out. This witness has stated that he could experience that they were taken through a lift and thereafter they were put in a room. Thereafter they were being provided breakfast and foods. Whenever they were being provided food, they were being asked to wear the cap and turn their face towards the wall. On 05/06.05.2015 in the night they were told that they would be set at free in the night, thereafter in the night both of them were taken out. Caps were placed upon them and then they were put in a vehicle. After covering some long distance they were released and told that they would not turn behind. This witness has stated that when he moved ahead, he found that there was Allahabad Railway Station and one train had stopped there. They enquired about the train and then they were told that the train was going to Gaya. They boarded on the said train and reached Dehri-on-Sone where they took the mobile of a passenger and informed to his brother-in-law. His brother-in-law came to receive them at Gaya and from there he went with his brother-in-law and family members to his sasural at Katari Hill Road, Gaya. There he met his family members. After some time police came and he disclosed his ordeals to the Dy.SP and Senior SP. He informed them that the



abductors had kept the Audi car and his Apple mobile, the ornaments of his wife and the articles of his daily use such as clothes, saving kit, clothes of his wife and the makeup articles of his wife. The abductors had not handed over those articles to them while leaving them. In his examination-in-chief itself this witness has stated that he cannot identify the abductors because the occurrence took place so fastly and all the times he was kept in cover of a black cap and he was asked to turn around towards the wall. He has stated that when he already given statement before police, he came to know from the police personnel and TV that his abductors had already been arrested and his vehicle and other articles were seized. After seizure police had conducted a TIP. He had not put his signature on the TIP. His statement was also recorded before the Magistrate. In the TIP, some articles were of him of which he identified. He identified his signature on his statement as Exhibit '19'. He could not identify the accused persons who were standing in the dock.

Learned counsel for the appellants have made all efforts to make out a case for acquittal of the appellants on the ground that the victim (PW-16) could not identify them. However, this Court finds that the victim (PW-16) has told the truth in course of his deposition. The entire occurrence took place in such a short



interval and the manner in which the victim was put under cover of a black colour cloth for all the times, it cannot be expected that in the kind of trauma with which he was suffering for all these period it could have been possible for him to identify the accused persons. In course of his cross-examination, this witness has stated that he had reached his home in the morning at about 7 o'clock on 06.05.2015 from Allahabad Railway Station.

Learned Amicus Curiae while arguing on behalf of the accused Anil Singh in Cr. Appeal (DB) 539 of 2018 has pointed out that PW-16 has stated that he was left in the night of 06.05.2015 as per 164 CrPC statement but PW-16 has stated that he reached his home in the morning of 06.05.2015. While rejecting this contention of learned Amicus Curiae, we are of the opinion that PW-16 has clearly stated in his statement under section 164 CrPC as also in his examination-in-chief in course of trial that in the night of 05.05.2015 he had left Allahabad Railway Station and reached his home on 06.05.2015.

52. Another victim of this case is Subhra Gupta (PW-20) who is wife of PW-16. We deem it just and proper to take note of her deposition at this stage. In her examination-in-chief she has narrated the entire occurrence in the like manner as has been stated by PW-16. She has given the same modus operandi which has



been narrated by PW-16 and this Court finds that both PW-16 and PW-20 are quite consistent in their deposition. She has also identified her articles in presence of Magistrate in Barachati Police Station. She has stated that in those articles her ornaments were not there, only one earring was found. She had made statement before the Magistrate. She identified her signature on her statement as Exhibit '22'. She has also stated that the entire occurrence took place so fastly that she could not identify the accused persons. In her cross-examination she has stated that when the accused persons abducted her, they were not concealing their face and her face was also not concealed. Learned counsel for the appellants has pointed out this statement of the victim (PW-20) in order to draw strength in their submission that for this reason the victim should have identified the accused and if she has not identified the accused, the prosecution case cannot be taken to have proved beyond all reasonable doubts. We do not agree with the submission of learned counsel for the appellants. This Court is of the considered opinion that only for few seconds, the victim had occasion to see the accused that too when they were in military dress and within few seconds face of both the victims were covered by black clothes and they were put in the backseat of the vehicle. They had no occasion to see any of the accused persons



including those who were involved at the time of abduction at the GT Road.

53. Kumar Vivek Vimal (PW-17), Devendra Chaturvedi (PW-18) and Shakil Ahmed (PW-19) are the staffs of the Toll Plaza. PW-17 had shown the CCTV footage to the Darogaji and had given the CD of the said CCTV footage. He has proved the document which he had given to Darogaji and the same has been marked as Exhibit '20'. The CD has been marked Material Exhibit '1'. He has stated that the CD has been prepared by his subordinate of the IT department namely Shri Ajay Kumar, Executive. In the cross-examination, he has stated that the persons seated in the vehicle cannot be identified in CCTV footage. PW-18 has proved his signature on the production-cum-seizure list of the CD. He has also proved the signature of Hiteshwar Dayal Singh and Rajesh Choubey who are the other two employees of the Toll Plaza.

54. The CD of the CCTV footage were prepared from his computer by the In-charge of the IT department Md. Mohsin. The two CDs have been marked as Material Exhibit '1/A' and Material Exhibit '1/B' respectively at the instance of this witness. The signatures of the employees proved by him has been marked Exhibit '21'. In his cross-examination, he has stated that he had



not seen the CD. PW-19 has proved the Material Exhibit '1/C' which is another CD which was handed over to Barachatti Police after preparing it from the computer of the Toll Plaza through Sri Ashok Kumar, Executive of the IT. He has proved his signature on the production-cum-seizure list of the CD and has also identified the signature of other two employees. It has been marked Exhibit '21/A'. In his cross-examination, he has stated that he had given the CD from the IT Executive to police but he had not given any other thing. With regard to the CD, learned counsel for the appellants have submitted that the CDs have not been duly proved in accordance with Section 65 of the Evidence Act. We are of the considered opinion that even for argument sake, if these CDs are kept aside, the fact that the Doctor couple had been moving on the GT Road and they had crossed the Toll Plaza is well proved from the statement of the victims itself and other evidence also.

55. Ravi Prakash Singh (PW-21) is the Inspector, Rail Police. He was SHO Barachatti of 01.05.2015. He had received the information with regard to abduction of PW-16 and PW-20. This witness had registered the formal case being Barachatti PS Case No. 155 of 2015. He had also acted as investigating officer of this case and had recorded the restatement of the informant and the witnesses who were present with him, namely Ramji Kumar and



Mahesh Kumar. He has proved the place of occurrence which is on GT Road (NH-2) near Bhaluachatti. He has stated that the last tower location of the mobile number of Subhra Gupta (PW-20) was found at this place. He has stated that from this place a road goes in the east towards Champaran and one goes towards Barachatti, Bihar. North to the GT Road is Rajasthan Hotel, Panchavati Line Hotel, Vinayak Line Hotel, in South, Jai Ma Bhadrakali Hotel, Patliputra Line Hotel and other hotels. He had taken statement of the persons of some of the line hotels and had gone to the Barhi Toll Plaza and saw the video footage of the vehicles passing through the toll plaza. He found from the video footage that on 01.05.2015 at 12:38:57 the black color Audi vehicle had crossed from booth no. 2. He had also taken the photo of the same from the toll plaza and had enclosed it with the case diary. This witness had gone to record the statement of the recovered victims of Barachatti P.S. Case No. 37 of 2015 in order to obtain some clue and he had gone to Amas Toll Plaza and Shiv Sagar Toll Plaza, Rohtas. At Shiv Shagar Toll Plaza he had seen in the CCTV footage that at about 3:16 PM the black color Audi car on which VIP light was fixed ahead of the said car one white color VIP light fixed Fortuner vehicle were moving from the southern side lane. He had also found CCTV footage of 3-4 days earlier of



28.04.2015 in which at 7:47 AM, from the north side lane white color VIP light fixed Fortuner vehicle was moving from west to east side. He had requested the manager of Shiv Sagar Toll Plaza to make available the CD of video footage of 28.04.2015 and 01.05.2015. He had also seen from the CCTV footage of 01.05.2015 and 28.04.2015 at about 16 hours and 7:10 AM that Audi car and white color Fortuner vehicles were found moving. He had requested for the CCTV footage and from the deposition of the I.O. it appears that he had also inspected the second place of occurrence i.e. the Flat No. 906 of Sharda Apartment in Gomti Nagar. He has given the description of the said flat in his deposition. He has stated about the guard Manoj Yadav. He had recorded statement of Manoj Yadav, Guard of Sharda Apartment who had stated before him that the owner of Flat No. 906 is Gaurav Sharma who works in merchant navy and Ajay Singh had taken his flat on rent. He had seen Ajay Singh visiting the said flat and with him people were found moving in police dress giving an impression that he is a police officer but when the raid was conducted in the apartment then he came to know that they were kidnappers and had abducted the doctor couple from Bihar. The I.O. has stated that Manoj Yadav had said about the parking of the Fortuner, Audi and Innova in the parking area of the apartment.



This witness had brought the material exhibits vide production-cum-seizure list Exhibit '26', '26/A' and '26/B' from Gomti Nagar Police Station and had produced the same in the court of Sri N.P Singh J.M. First Class, Sherghati and had submitted an application in the court that all seven articles be maintained in the records of both the cases. He has proved Exhibit '27' which is in his signature. He has also proved Exhibit '28'. He had deposited all the articles in the police station Malkhana. He had also taken the accused persons on remand for five days. The accused persons were examined by the CID team, Bihar Patna. He had also recorded the statement. The accused persons were sent to jail on 22.05.2015 again. He had examined Ajay Singh from 19.05.2015 who had disclosed that the non-FIR named accused Mrityunjay Singh @ Babloo Singh and Amit Kumar Singh had stayed on 12.05.2015 and 23.03.2015 in R.K. Guest House situated in Gomti Nagar. He had also verified these places. The I.O. has identified all the accused persons in his deposition.

56. Indira Soti Sharma (PW-22) is a resident of Sharda Apartment, Gomti Nagar, Lucknow. She has stated that Flat No. 906 belonged to her son Gaurav Sharma and the daughter-in-law Nayantara Sharma. Her son is in merchant navy, therefore, he remains on ship for long time. She has stated that Flat No. 906 was



given on rent to Mr. Rajeev Shekhar in December 2014. In the said flat, Rajeev and other persons were residing and they were depositing the rent amount in the bank account. All of a sudden, she came to know from a news channel and her relatives who gave her a phone call that Rajeev @ Ajay Singh abducted a doctor couple. She has stated that she got disturbed on hearing it and talked to her relatives whereafter she met DGP Lucknow Sri A.K. Jain and told him that she had provided the flat on rent. She had also shown the papers and she had informed that broker Arun Srivastava had mediated in giving the flat on rent. Arun had told her that father of Rajeev is in police and his one son is IAS. The DGP had sent her to I.G. STF Sudip Pandey. She had shown the rent paper to him also. There she came to know that the real name of Rajeev Shekhar is Ajay Singh. She had never met Ajay Singh. She has identified her application on which she had put her signature which has been marked Exhibit '31', '31/A', '31/B' and '31/C'. In her cross-examination this witness has stated that prior to giving the flat on rent she had never inquired about Rajeev Shekhar @ Ajay. She had taken the identity card of Rajeev Shekhar from the broker. The photocopy of the same is on the record of the court. The defence suggested her that there was no



tenant in the name of Rajeev Shekhar in the society and she was giving a wrong statement which this witness denied.

57. Having examined the entire materials on the record, we find that in this case the prosecution has well proved it's case beyond all reasonable doubt. The victims namely PW-16 and PW-20 have, though not identified the accused persons but they have well explained the reason for not identifying them. The arrest of the accused persons by the raiding team in the parking of the Sharda Apartment, seizure of the Audi car of the doctor couple with the Fortuner and seizure of the personal belongings of the doctor couple from Flat No. 906 of Sharda Apartment have been duly proved on the strength of oral and documentary evidence both as discussed earlier.

58. The evidence of Jai Narayan Mishra (PW-10) and Indira Soti Sharma (PW-22) clearly proved that both the premises were hired by Ajay Singh in two different names.

59. We have taken note of the evidences available on the record. Learned counsel for the appellants have though submitted that there are contradictory statements given by the witnesses with regard to the arrest of the appellants, we have noticed that on the point of arrest of appellants, the SHO of Chandauti Police Station (PW-4) who was at the relevant time posted in the technical cell at



the SSP residence has stated that the first vehicle in the leadership of IG entered into Sharda Apartment, in the left side a black colour Audi car was parked and four persons were sitting inside. Ajay Singh had tried to make a firing from the Audi vehicle but he was caught by IG. In the same parking, one Fortuner and one Innova vehicle were also parked. One person had tried to fire from Fortuner but he was caught and three persons were arrested from the Innova. Although, in course of his cross-examination, the defence suggested to this witness that he had not said to the I.O. that SSP, Gaya had given him order to go with Investigating Team to Lucknow and in Lucknow, in his presence, accused persons were arrested and vehicles were seized in the Sharda Apartment. This witness denied this suggestion of the defence. The prosecution did not exhibit the statement of this witness recorded by the I.O. to prove otherwise and to draw a contradiction. PW-4 is a credible witness and has proved the manner of arrest.

60. The submission of learned Senior Counsel for the appellants that PW-4 has not claimed either to be a member of the team headed by DIG or IG, therefore, he is not competent to depose with respect to the alleged arrest and seizure is not a correct statement and submission. It would appear from the deposition of PW-4 that he has given full description of how the



raid was conducted. He identified all the appellants in the dock and he has clearly stated in his examination-in-chief that after arrest of the appellants, further steps were taken and all the members of the team had signed on the fard-giraftari (Exhibit '33'). He had also put his signature on the same and all the arrested accused had also put their signatures. There is no reason to disbelieve PW-4 in absence of any contradiction in his deposition shown to this Court.

61. On the manner of arrest of the accused persons-appellants, PW-5 is another credible witness who was also posted in the technical cell of the confidential section of SSP, Gaya. He has corroborated the statement of Ram Chand Bhanu (PW-4). No contradiction may be found in the evidence of PW-4 and PW-5. On the face of the evidence of PW-4 and PW-5, the submissions on behalf of the appellants that PW-4 and PW-5 are not competent witnesses with respect to the arrest and seizure of arms or that non examination of IG, DIG and SSP, Lucknow would have any bearing upon the prosecution case, are only misconceived submissions.

62. There is yet another witness, namely, Rakesh Kumar Bhramchari (PW-8) who was one of the three officers who had gone to Lucknow. He had brought the written order of the SSP and submitted the same in the courtroom. In his presence, all the nine



accused persons were arrested in the parking of Sharda Apartment, Gomti Nagar, Lucknow in the manner stated by PW-4 and PW-5. After taking the arrested accused on remand, he had recorded the statement of the accused persons on 19.05.2015, 20.05.2015 and 21.05.2015. PW-8 had also conducted verification in the RK Guest House and Viswas Khand and he has stated that Ajay Singh had told him that prior to the occurrence Mrityunjay @ Babloo and Amit Kumar had stayed in RK Guest House, Gomti Nagar, Lucknow. They were also staying in Viswas Khand 3/210 apart from Sharda Apartment.

63. The evidence of Jai Narayan Mishra (PW-10), who is house owner and had provided his house to Ajay Singh proves that Ajay Singh had taken the tenancy in the name of Neeraj Pratap Singh in 3/210 Viswas Khand.

64. From all these evidences, there is no iota of doubt that the accused persons who are permanent residents of Aurangabad in the State of Bihar were in Lucknow, they were living in the houses taken by Ajay Singh in different names by providing fake ID cards. Exhibit '4' and '4/A' have been proved. Exhibit '4' is showing that Ajay Singh had made three voter cards from Election Commission of India. Those were in the name of Neeraj Pratap Singh, son of Mahendra Pratap Singh, Narendra



Pratap Singh, son of Vijay Pratap Singh and Rajiv Pratap Singh son of Mahendra Pratap Singh giving different dates of birth and different addresses. Exhibit '4/A' are the copies of PAN card and driving licence in the name of Neerap Pratap Singh.

65. Learned Senior Counsel for the appellants have taken a plea that the seizure list of the articles seized from Flat No. 906 of Sharda Apartment has not been proved. In this connection, this Court finds from Exhibit '33' that the members of the raiding team headed by IG, STF in which PW-4 was also present had followed Ajay Singh who took them to the 9th Floor of Sharda Apartment. There, he took out the key of the Flat from a flower pot kept near the door of the Flat. There, from the North side room, they found a red colour ladies bag and white colour trolley bag about which Ajay Singh disclosed that these were of the wife of the Doctor. In the red coloured bag, the articles such as comb, cream, clip which are used by ladies in day-to-day life were kept. In a golden colour ladies purse, there was a chain of yellow substance, two big tops, one lady spectacles and one shaving kit. In the suitcase, there were saaree, blouse, salwar, kurta, t-shirt, half-pant, ladies undergarment. Police had also seized one khaki vardi two star, city dodi, nameplate Anup Oraon O+ batch Jharkhand Police, khaki vardi with Jharkhand Police batch, khaki



vardi with Jharkhand Shashastra Police batch and khaki vardi without batch. The cloths in form of police dress and batches clearly show that those were being used by the accused for purpose of concealing their identity and they posed themselves as government officers. The seizure of these articles from Flat No. 906 is duly proved from Exhibit '33'. On perusal of the TIP chart which has been proved as Exhibit '11' by PW-9, it would appear that the lady bag red color, lady hand purse, one yellow metal chain, two ear tops, one black color handbag, one bottle boss perfume, one bottle Gillette shaving gel, Gillette razor, comb, shaving brush, body lotion, nail cutter, moisturiser, one lips liner, two pieces of eyeliner, one beauty spray, one packet kajal, two pieces of hair clips, toothbrush, ladies jackets with long kurta, ladies salwar, gents t-shirt, one half pant, lady night suit, three lady undergarments etc. were identified by victims and this identification proved by the BDO Barachatti (PW-9) cannot be doubted. The fact that two witnesses namely Parmanand Vishwakarma and Vinod Kumar Gupta have not been examined by prosecution would not take away the credentials of the witness PW-9. PW-16 and PW-20 who are the victims have stated that they had participated in the TIP of the seized articles. Thus, even on this aspect, there is no ambiguity in the prosecution evidence.



66. The learned trial court has rightly appreciated the evidences of the prosecution witnesses who are the police officers. Some of the accused persons were arrested from the Audi car of the doctor couple who were abducted, some of them were in the Fortuner and some were in the Innova in the parking. In this case, even though no separate charge has been prepared for the previous conviction of Ajay Singh but the Court finds from the pattern of cross examination of the prosecution witnesses that the fact that Ajay Singh has been convicted and sentenced to life imprisonment in a case in the state of Rajasthan has not been disputed by the defence.

67. The place of occurrence both at NH-2 at the GT Road within Barachatti Police Station and Flat No. 906 of Sharda Apartment have also been duly proved.

68. This Court is of the opinion that PW-16 and PW-20 as also the other prosecution witnesses who are the police officers are highly reliable and credible witnesses whose testimonies considered together inspire confidence of this Court.

69. We have found from the records that the learned Additional Public Prosecutor on behalf of the State filed an application under Section 77 read with Section 74(2) and Section 76 of the Evidence Act (as existed on the said date) in which the



learned Additional Public Prosecutor prayed for marking exhibit the certified copy of FIR of Gomti Nagar P.S. Case No. 299 of 2015, 300 of 2015, 301 of 2015 and 302 of 2015 dated 06.05.2015 and certified copy of the *fard-giraftari* dated 06.05.2015 and certified copy of the chargesheet of Gomti Nagar P.S. Case No. 299 of 2015. The said application was taken up for consideration by the trial court on 27.07.2017. It was contested by the defence, however, after hearing and scrutinising the materials on the record, learned trial court found that the defence counsel had not opposed for exhibiting of chargesheet in Gomti Nagar P.S. Case No. 299 of 2015 but he was opposing for exhibiting of the FIR and the *fard-giraftari*. The learned trial court held that the certified copies may be produced as public document. Vide order dated 27.07.2017, learned trial court ordered for exhibiting of those documents in the present trial. The petition filed on behalf of the learned Additional Public Prosecutor was allowed. It further appears from the record that those documents have been marked Exhibits '32', '33' and '34' respectively.

70. This Court has perused Exhibits '32', '33' and '34'. Exhibit '33' is a thirty-three pages document, the heading of the document reads as under:-

“फर्द गिरफ्तारी अपहरणकर्ता अभियुक्तगण व बरामदगी तीन अद्द पिस्टल नाजायज मय कारतूस व अपहरण में लूटी गयी फॉरचूनर, ऑडी तथा इनोवा



कार एवं अपहृत के जेवर व अन्य सामान तथा कूट रचित दस्तावेज / नम्बर प्लेट एवं पुलिस / कमाण्डो की वर्दी एवं बैच, V.I.P. फ्लैश लाइट, हथकड़ी, मोबाइल फोन, लैपटॉप एवं अन्य सामान”

This document has been signed by all the members of the raiding party. The writer of the document is Vinay Kumar Diwakar, STF Lucknow. Chandrabhanu, S.I., Bihar (Gaya), Gautam, S.I., Gaya (Bihar) and Rakesh Kumar, S.P. City, Gaya (Bihar) and other members of the team are signatories of this document. Copy of this document has been handed over to all the accused persons and it bears signature of all the nine accused persons who were arrested by the raiding party on 06.05.2015 from Sharda Apartment along with looted Audi Car of PW-16 and PW-20.

71. On perusal of Exhibit ‘33’, it appears that raiding party had seized three pistols loaded with cartridges, the description of the arms seized from the possession of the appellants, namely, Ajay Singh, Rahul Kumar Soni and Amit Kumar Singh are duly mentioned. After their arrest by the raiding party, on the disclosure of Ajay Singh, several personal articles of Dr. Pankaj and Dr. Subhra as discussed in detail in the preceding paragraphs were seized from Flat No. 906 of Sharda Apartment. Exhibit ‘33’ contains other details of the manner in which this



gang of Ajay Singh was operating. This document has a great evidentiary value as it contains the narration of the occurrence. PW-4 and PW-5 who are the police officers have proved their signatures also on this document. The *fard-giraftari* (Exhibit '33') is a clear proof of the fact that all these appellants were arrested in the parking of Sharda Apartment with the looted vehicle on the date and time stated by the prosecution witnesses who are the police officers. Exhibit '34' is the chargesheet together with the list of witnesses filed by police in Gomti Nagar P.S. Case No. 299 of 2015.

72. The defence has tried to raise some issues out of the TIP of the articles conducted by the B.D.O. (PW-9). This document has been marked Exhibit '11'. We have perused the same. It is evident that both PW-16 and PW-20 have identified all their articles mentioned in column no. '3'. In column No. '5', it is stated about the manner of identification. According to column no. '5', the articles were kept in the ratio of 1:6 and the victims were asked to identify the articles. In column no. '8', it is stated that save and except two articles mentioned at serial nos. '46' in column no. '3', the victims identified all other articles. The TIP chart has been duly signed by the witnesses, namely, Parmanand Vishwarkarma and Binod Kumar Gupta who have not been



examined but the BDO who conducted the TIP has put his signature on this document (Exhibit '11') and has proved it in course of trial. He is a credible witness.

73. The accused persons did not explain in their statements under Section 313 CrPC as to how they were in possession of Audi, Fortuner and Innova.

While recording their statements under Section 313 CrPC, the learned trial court seems to have referred the night of 05.05.2015 as night of 06.05.2015, maybe for the reason that after 12 Hrs of 05.05.2015, the date changed and the trial court recorded it as night of 06.05.2015. This is a minor discrepancy which has not caused any prejudice to the defence. From the deposition of PW-16 it is evident that he has narrated the entire occurrence in a truthful and credible manner. He has explained convincing reasons for not identifying the accused persons.

A plea has been taken on behalf of the defence that in their 313 CrPC statements, the incriminating materials which were brought by the prosecution were not brought to their notice but this Court finds that the incriminating materials which were brought to the notice of the accused were the evidences on the point of the place of occurrence at NH-2 GT Road, time of occurrence between 12:30-2:30 PM, the abduction had taken place with Audi car has



also been brought to the notice of the accused. They had posed themselves as Income Tax Officers and then the victims were lodged in the Sharda Apartment Flat No. 906 in Gomti Nagar, Lucknow and then their articles were looted. They were left in the night of 06.05.2015 at Allahabad Station and thereafter in the raid conducted by joint team of UP Police, STF and Bihar Police, the accused were arrested from Sharda Apartment, Gomti Nagar, Lucknow and the vehicle of the victims with other articles were seized for which a separate case being Gomti Nagar P.S. Case No. 299 of 2015, 300 of 2015, 301 of 2015 and 302 of 2015 were also lodged from where the accused were taken on remand in the present case. The attention of the accused was drawn towards the prosecution evidence on this point. The accused persons did not come out with any explanation. They did not deny their presence in the Sharda Apartment. They did not deny their arrest in the manner proved by the prosecution. This Court, therefore, finds that in the kind of evidences available on the record, no fault may be found with the compliances on the standard of proof as required by the prosecution.

74. In the case of Gopal Singh and Others versus The State of Bihar reported in **1993 (1) PLJR 236**, this Court has held that the totality of the prosecution case is to be judged on the basis



of the entire evidences and it cannot be thrown out by taking note of minor discrepancies, the totality of the circumstances as also the broad probabilities of the case cannot be lost sight of.

75. It is evident from the aforementioned materials on the record that the prosecution has proved it's case beyond all reasonable doubts.

76. The appeals are dismissed.

77. The appellants named above in Cr. Appeal (DB) No. 403 of 2018, Cr. Appeal (DB) No.428 of 2018, Cr. Appeal (DB) No. 539 of 2018, Cr. Appeal (DB) No. 1010 of 2018, Cr. Appeal (DB) No. 1038 of 2018 and Cr. Appeal (DB) No.923 of 2019 are on bail, their bail bonds are cancelled and they shall surrender in the learned trial court, Gaya within two weeks from today failing which the learned trial court shall take appropriate steps to procure their custody. The appellants namely Amit Singh in Cr. Appeal (DB) No. 144 of 2022 and Ajay Singh @ Neeraj Pratap Singh @ Rajeev Sekhar Singh @ Narendra Pratap Singh in Cr. Appeal (DB) No.714 of 2018 are in jail, they shall undergo the remaining sentence.

78. We acknowledge the assistance rendered by Mr. Anil Singh, learned Advocate as learned Amicus Curiae in Cr. Appeal (DB No. 539 of 2018. A consolidated sum of Rs. 15,000/- shall be paid to the learned Amicus Curiae by the Patna High Court Legal



Services Committee within one month from the date of receipt of a copy of this judgment.

79. Let a copy of the judgment along with the records of the trial court be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(S. B. Pd. Singh, J)

Rishi/-

AFR/NAFR	
CAV DATE	11.04.2025
Uploading Date	16.05.2025
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