

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.732 of 2016

Arising Out of PS. Case No.-517 Year-2015 Thana- KHAJANCHI HAT District- Purnia

1. Niraj Yadav @ Niraj Kumar Chaudhri, Son of Late Kapildev Prasad Yadav @ Kapildev Prasad Chaudhari, Resident of Village- Ufrail, Police Station- K.Hat Maranga, District- Purnea.
2. Kishore Yadav @ Kishore Kumar Yadav @ Kishore Kumar, Son of Pramod Yadav, Resident of Village- Leela, Police Station- Bhawanipore, District- Purnea.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants	:	Mr. Y.V. Giri, Sr. Advocate Mr. Devashish Giri, Advocate Mr. Birendra Kumar Singh, Advocate
For the State	:	Mr. Ajay Mishra, Addl. P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 09-09-2024

Heard Mr. Y.V. Giri, learned Senior Counsel assisted by Mr. Devashish Giri, learned Counsel for the appellants and Mr. Ajay Mishra, learned Additional Public Prosecutor for the State.

2. The instant criminal appeal has been filed by the appellants against the judgment of conviction dated 06.06.2016 and order of sentence dated 13.06.2016 passed by the court of learned 1st Additional Sessions Judge, Purnea in Sessions Case No. 417 of 2015/Trial No. 376 of 2015 arising out of K. Hat P.S.



Case No. 517 of 2015 whereby and whereunder the learned trial court convicted the appellants for the offences punishable under Sections 364A, 302, 120B and 201 of the Indian Penal Code (in short 'IPC'). The appellants have been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh) each for the offence under Section 364A of IPC. They have been further ordered to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,00,000/- (Rupees Two Lakh) each for the offence under Section 302 of IPC. They have been also ordered to undergo rigorous imprisonment for life and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh) each for the offence under Section 120B of IPC. They have been further ordered to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 50,000/- each for the offence under Section 201 of IPC. All the sentences have been ordered to run concurrently.

Prosecution Story:-

3. The prosecution's case in brief is that as per the written report filed by the informant, Amit Ranjan (PW-4), on 03.08.2015 at about 12:30 P.M., while he, along with his nephew, Punit Kumar (the deceased), came near the house of appellant no.1 riding on a motorcycle, then Niraj Yadav and



Kishore Yadav (the appellants) who were standing outside their house got their motorcycle stopped and after catching hold of the collar of Punit Kumar (hereinafter referred to as 'victim') by uttering as to why he was not paying *Rangdari* (extortion money) to them, asked him to pay *Rangdari* immediately, when the informant and victim showed their incapability to fulfill their demand, the appellants started assaulting them and attempted to pick up and push the victim forcefully inside a white colour car bearing registration No. BR 11M-4242 of Niraj Yadav (appellant no. 1) then resistance was made by the informant but he was threatened by the appellants by pointing pistol at him. Prosecution's further case is that the appellants forcibly got the victim inside the car of appellant no.1 after assaulting him and thereafter, they drove away the car towards Ufrail Chowk and then the informant rushed behind their vehicle by raising a *hulla* but the vehicle was diverted by the appellants towards Mewalal Chowk and thereafter, the informant went rushing to Maranga P.S. to inform the police about occurrence and lodge the FIR. The further case of the prosecution is that within three hours from the commission of the abduction of the victim, the appellants were apprehended by the police and in furtherance of the disclosure statement made



by the appellant no. 1, the dead body of the victim was found and recovered near the *kamat* of one namely, Rajendra Khirahari and upon the dead body several injuries were found and there was active bleeding from the nose, forehead and other parts of the body and as per the inquest report (Ext.-4) the dead body was recovered at 5:50 P.M.

4. On the basis of the written report filed by the PW-4, the formal FIR bearing No. 517 of 2015 was registered at K. Hat Maranga Police Station under Section 364A read with 34 of IPC and later on Section 302 of IPC was added and the FIR set the criminal law in motion.

5. After the completion of investigation, the appellants were chargesheeted for the offences under Sections 364A, 302, 120B and 201 of IPC read with Section 34 of IPC.

6. The learned Chief Judicial Magistrate, Purnea, took cognizance of the alleged offences and thereafter, committed the case of the appellants to the court of Sessions.

7. The appellants stood charged for the offences punishable under Sections 364A, 302 and 201 of IPC all read with Section 34 of IPC and also charged with 120B of IPC. The charges were read over and explained to them which they denied and claimed to be tried for the charged offences.



8. During trial, the prosecution examined altogether nine witnesses in oral evidence who are as under:-

PW-1:- Anil Prasad Singh

PW-2:- Piyush Kumar Singh

PW-3:- Khagendra Prasad Sinha

PW-4:- Amit Ranjan, the informant

PW-5:- Dr. Parmanand Thakur

PW-6:- Mithilesh Kumar, Judicial Magistrate

PW-7:- Anil Kumar Gupta, Investigating Officer

PW-8:- Prashant Kumar Bhardwaj

PW-9:- Sanjay Kumar Singh

9. In documentary evidence, the prosecution proved the following documents and got them marked as exhibits which are as under:-

Ext.-1:- The signature of a witness namely, Anil Prasad Singh over his statement recorded under Section 164 of the Code of criminal procedure (in short 'Cr.P.C.')

Ext.-1/a:- The signature of the prosecution's witness namely, Piyush Kumar Singh upon his statement recorded under Section 164 of Cr.P.C.

Ext.-1/b:- The signature of the prosecution's witness namely, Khagendra Prasad Sinha over his statement recorded



under Section 164 of Cr.P.C.

Ext.-1/c:- The signature of the prosecution's witness namely, Amit Ranjan upon the inquest report

Ext.-1/d:- The signature of the informant namely, Amit Ranjan upon his written report

Ext.-1/e:- The statement under Section 164 of Cr.P.C.

Ext.-2:- The Postmortem Report of the deceased

Ext.-3 & 3/a:- The forwarding endorsement made by the concerned police official over the written report & other endorsements made by the concerned police officials upon the written report.

Ext.-4:- The Inquest Report

Ext.-5:- The Seizure Memo of blood stained grass and soil

Ext.-5/a:- The Seizure Memo of a white colour Maruti Ritz Car bearing registration No. BR 11M-4242

Ext.-6:- The confessional Statement of the accused/appellant Niraj Yadav

Ext.-7:- The application filed by the investigating officer to record the statement of the witness under Section 164 of Cr.P.C.

Ext.-8:- The photocopy of Station Case Diary Entry



No. 67 dated 03.08.2015

10. After the completion of prosecution's evidences, the statements of the accused/appellants were recorded under Section 313 of Cr.P.C. giving them an opportunity to explain the incriminating evidences appearing against them from the prosecution's evidences.

11. The appellants in their statements denied all the incriminating evidences and took the specific defence that they had been implicated in furtherance of a conspiracy and they claimed themselves as innocent persons.

12. The appellants in their defence produced and examined three witnesses who are as under:-

DW-1:- Shankar Poddar

DW-2:- Santosh Kumar Mehta

DW-3:- Mahanand Chaudhari

13. The appellants produced a Sale Deed bearing Registration No. 11522 dated 26.10.2007 in their defence and got it marked as Ext.-A.

Arguments on behalf of the appellants:-

14. Mr. Y.V. Giri, learned Senior Counsel appearing for the appellants has argued that in actual, there is no eye-witness of the alleged occurrence of abduction and there is



serious contradiction among the testimonies of PW-1, PW-2 and PW-3 who are said to be the eye-witnesses of the alleged occurrence of abduction and PW-4 did not say anything regarding the presence of other so-called eye-witnesses at the time of the commission of the abduction of the victim at the alleged place. Admittedly, there is no eye-witness of the alleged occurrence of murder of the victim and in this regard, the prosecution based its case on circumstantial evidences but the prosecution failed to prove all the alleged circumstances to complete the entire criminological chain of the alleged occurrence of abduction and killing of the deceased and further, the circumstances appearing from the prosecution's evidences upon which basis, the appellants have been held guilty of the murder of the deceased/victim, are not of a conclusive nature and all the important links to complete the entire chain of the alleged occurrences from the beginning to end are missing. In support of this submission, learned Senior Counsel has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in (1984) 4 SCC 116.

15. Learned Senior Counsel has further argued that in every offence, the motive of the accused assumes a great



significance, particularly, where the case is based on circumstantial evidence. In the present matter, the prosecution has failed to prove the motive of the appellants to kill the victim and merely by the *factum* of abduction of the victim by the appellants, it cannot be presumed that the appellants had a motive to kill the victim. In support of this submission, learned Senior Counsel has placed reliance upon the judgment of Hon'ble Apex Court passed in **Sharad Birdhichand Sarda** (*supra*) which was also followed by the **Hon'ble Patna High Court** in the case of **Sunil Kumar Jha @ Sunil Jha Vs. The State of Bihar** reported in **2024 (4) BLJ 528**.

16. It has been further argued that admittedly the dead body of the victim was recovered from an open place and at the time of recovery, the alleged place was accessible to all, so, reliance cannot be placed upon the portion of the statement of the appellant Niraj Yadav which is said to have led the police party to the place where the dead body was lying and the prosecution cannot take any benefit from such statement on the basis of the provisions of Section 27 of the Evidence Act. In support of this argument, learned Senior Counsel has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of **Manjunath and Others Vs. State of Karnataka**



reported in **2023 SCC OnLine SC 1421**. Particularly, the reliance has been placed upon the paragraph nos. 4.5 and 25 to 29 of the said judgment.

17. Learned counsel has further argued that as per the prosecution's case, the FIR was registered at 2:20 P.M. on 03.08.2015 and the inquest report of the deceased is said to have been prepared at 5:50 P.M. on the same day and the postmortem examination was conducted upon the dead body of the deceased on the same day at 8:30 P.M. but these material documents do not have the FIR number which shows and proves that the FIR was registered after due deliberations, consultation and afterthought and in the light of the principles laid down by the Hon'ble Apex Court in the case of **Meharaj Singh Vs. State of U.P.** reported in **(1994) 5 SCC 188** both the said documents (Ext. 2 and Ext. 4) cannot be deemed to be reliable and the same casts a serious doubt in the prosecution's story which entitles the appellants to get a benefit of doubt.

18. Learned Senior Counsel has further argued that the provisions of Section 157 of Cr.P.C. were not followed by the police official of the concerned police station as the FIR, after registering it, was sent to the Magistrate concerned after inordinate delay which was not explained by the prosecution. In



support of this submission, learned counsel has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of **Arjun Marik & Others Vs. State of Bihar** reported in **1994 Supp(2) SCC 372** and the reference of the paragraph nos. '24' and '25' of the above judgment has been made.

Arguments on behalf of the State:-

19. On the contrary, Mr. Ajay Mishra, learned Additional Public Prosecutor appearing for the State has vehemently opposed this appeal and argued that the testimony of PW-4 is completely reliable and the defence/appellants could not have succeeded from the cross-examination of this witness as well as PW-1 and PW-2 who are relatives of PW-4 to show any inimical term between PW-4 and the appellants and there was no reason for the informant (PW-4) to falsely implicate the appellants in the alleged occurrence of abduction and murder of the victim. It is an admitted position that the victim was murdered, so, the first part of the occurrence relating to abduction of the victim, can also be deemed to be reliable. As the police officials of Maranga P.S. came into action immediately after receiving the information of the offence of abduction and immediately proceeded to the place of occurrence after alerting the police officials of nearby police stations and all



the proceedings as to going towards the place of the occurrence from where the victim was abducted, the searching of the victim, the arrest of the accused and recovery of the dead body of the victim after recording the confessional statement of appellant no. 1, completed within four hours and the material documents such as the inquest report and the confessional statement of appellant no. 1, were prepared at the spot, so, in such a situation, particularly, when the concerned police officials were in the field, it cannot be expected from them to complete all the formalities such as mentioning of the FIR number in the inquest report and other relevant documents of the prosecution and further, the investigating officer was not cross-examined on the said point and he could not get an opportunity to explain the same.

20. Learned Addl. P.P. has further argued that no inordinate delay took place in sending the FIR to the Magistrate concerned as the FIR was registered at 2:20 P.M. on 03.08.2015 and the same was received in the court of learned C.J.M., Purnea, on 04.08.2015 at 12:05 P.M. and in this regard, the formal FIR may be perused.

21. It has been further argued by learned Addl. P.P. that though from the first part of the occurrence relating to



abduction, it can be deemed that while committing the said occurrence of abduction, the appellants might have only a motive to abduct the victim but as the appellants were surrounded by the police party of several police stations and when they found themselves to be unable to extort any money from the victim and then to destroy the main evidence of the crime of abduction, they suddenly made-up their mind to kill the victim and from the evidences, it can be deemed that the motive to kill the victim suddenly arose in their minds on account of the subsequent circumstances which were against the appellants.

22. Learned Addl. P.P. has further argued that though there was some litigation in between PW-3 and the appellant no.1, Niraj Yadav, at the time of commission of the alleged offences but the presence of the said witness at the place of abduction of the victim, was quite natural as the house of this witness is situated adjacent to the alleged place of occurrence and further, in the cross-examination, the appellants could not prove any kind of intimacy between this witness and the family of the victim, so, there was no reason for this witness to be involved falsely with the informant in respect of the alleged offences.

23. Learned Addl. P.P. has further argued that the



most important evidence going against the appellants is the recovery of the dead body of the victim in following with the disclosure statement made by the appellant no. 1. Though, the place from where the dead body was recovered, was an open place but there is no material to show that the said place was accessible to everyone and further, within 5 to 6 hours from the abduction of the victim, the dead body of the victim was recovered, so, the appellants cannot get a benefit merely on this ground that the dead body was recovered from an open place. Learned Addl. P.P. further submitted that the prosecution fully succeeded to prove the arrest of the appellants at about 3:00 P.M., on the same day of the occurrence and in this regard, the evidence of defence witness, DW-2, is also relevant and all the main ingredients to make the portion of the confessional statement of the appellant, Niraj Yadav @ Niraj Kumar Chaudhri, leading to the recovery of the victim's body, admissible under Section 27 of the Evidence Act, are available in this matter.

Consideration and Analysis:-

24. We have heard both the sides, perused the judgment impugned and gone through the evidences available on the trial court's records and also gone through the statements



of the appellants/accused recorded by them under Section 313 of Cr.P.C.

25. The main offences for which the appellants stood charged relate to abduction for ransom and murder allegedly committed by them with having common intention in respect of the victim/deceased. There are mainly two parts of the alleged occurrence. In the first part, the appellants allegedly abducted the victim namely, Punit Kumar by putting him and his companion in fear by showing a pistol with the help of a Maruti Ritz Car bearing registration no. BR 11M- 4242 and the second part relates to the recovery of the dead body of the victim.

26. While convicting the appellants for the charged offences, the learned trial court mainly placed reliance upon the evidences of Anil Prasad Singh (PW-1), Piyush Kumar Singh (PW-2), Khagendra Prasad Sinha (PW-3) and the informant (PW-4). These witnesses were considered as eye-witnesses of the first part of the alleged occurrence.

27. From the prosecution story, the following important facts emerge:-

(i) The alleged occurrence of abduction for the purpose of ransom is said to have been committed near the house of the appellant Niraj Yadav.



(ii) At the time of occurrence, the victim Punit Kumar who happened to be nephew of the informant, was coming with the informant on a motorcycle.

(iii) The victim and the informant started their journey at 12:30 P.M. from a CEAT Tyre Showroom on a motorcycle and before that they were also together and going to the victim's home situated at Gokul Krishna Ashram Road.

(iv) On seeing the victim and informant, the appellants firstly stopped the motorcycle of the victim and made an extortion demand from them and threatened to kill them if their demand was not fulfilled immediately.

(v) When the informant and the victim showed their incapability to fulfill the demand of the appellants then the appellants started assaulting them with saying to abduct the victim with an intention to extort money from him. And then the appellants forcefully put the victim into a white color Maruti Ritz vehicle bearing registration No. BR 11M- 4242 and that act was opposed by the informant and then the appellants took out pistols and threatened to kill him and thereafter, the vehicle used in the crime, was driven away by them towards Ufrail Chowk.

(vi) The informant chased the appellants' vehicle with raising *hulla* and saw that the appellants diverted their vehicle



towards Mewalal Chowk from Ufrail Chowk and then the informant went rushing to Maranga Police Station to inform the police about the occurrence.

(vii) After getting the information of the occurrence, the police officer concerned posted at Maranga P.S. (K. Hat, Purnea) immediately lodged an FIR and forwarded the informant's application (FIR) to K. Hat Police Station and considering the seriousness of the occurrence and requirement of prompt action, informed and alerted the Khajanchi P.S., Mufassil P.S., Sadar P.S., Inarwa P.S., Kasba P.S. and K. Hat P.S. and he himself proceeded towards the place of occurrence of first part with other police officials.

(viii) About three hours after the occurrence of abduction, the police succeeded to intercept the vehicle detailed in the FIR, near *Maa Kaali Dhaba* situated in western side of NH-57 falling under Kasba Police Station and the appellants tried to flee but they were apprehended by the police.

(ix) The Station House Officer (in short 'SHO') of K. Hat P.S. recorded the confessional statement of the appellant Niraj Yadav just after his arresting and at that time, the police officials of Maranga P.S. also arrived there.

(x) The seizure of the vehicle which was allegedly



used by the appellants in abducting the victim was made by way of seizure memo, Ext.- 5/a.

(xi) On the basis of disclosure made by the appellant Niraj Yadav, the dead body of the victim Punit Kumar was recovered near a farm house (*Kamat*) of one namely, Rajendra Khirahari.

(xii) As per the inquest report, the dead body was recovered at 5:10 P.M. and there was active bleeding from nose, forehead and back portion of head of the deceased when the body of the victim was found and some scratches were also found on the back and chest of the deceased.

28. At first we would like to discuss the evidence of PW-4, the informant, who is said to be the most important witness of the prosecution.

The witness is said to be an uncle of the deceased so he is a related witness. But merely by this fact his evidence cannot be discarded. Though, his evidence is required to be scrutinized carefully. The witness deposed in the examination-in-chief that on 03.08.2015 at about 12:15 P.M., he and Punit (victim) started on a motorcycle from a CEAT Tyre showroom towards their house situated at Gokul Ashram road, when they reached in front of the house of the accused/appellants, they were stopped



by them and they said to the victim Punit that he earned much money but did not pay any extortion money to them and then they threatened to kill him if, their demand of extortion money was not fulfilled. The witness further stated that when he and victim Punit opposed to the act of the appellants then the appellants started assaulting Punit (victim) and said that he would be released only after fulfilling their demand of extortion money, thereafter, they tried to put the victim forcefully inside their vehicle, which was a white colour Maruti Ritz Car bearing registration no. BR 11M- 4242, he resisted then both the accused/appellants took out pistols and pointed the weapons at him and also threatened to kill him by causing firearm injury and the victim was forcefully taken inside the vehicle by the appellants, after that, the appellant Niraj Yadav started driving the vehicle and the appellant Kishore Yadav sat with the victim in the vehicle. He further stated that after abduction, the appellants went towards Ufrail Chowk and he also rushed behind them with raising *hulla* and thereafter, he saw that the accused diverted their vehicle towards Mewalal Chowk and thereafter, he went rushing to Maranga Police station and submitted his written application at the said police station. He further stated that he returned back at the place of occurrence



with the police and found one namely, Piyush Kumar Singh (PW-2) being already present there and the police recorded the statement of said Piyush Kumar and after that, the police went towards Mewalal Chowk through Ufrail Chowk and after three hours he knew that the accused had been apprehended and they took the police at the place where the dead body of the victim was lying and he also reached at Lalganj where the dead body was lying. He further stated that the police prepared an inquest before him upon which he made his signature. The witness identified his signature upon the inquest report which was marked as Ext.-1/c. The witness also identified his signature upon the written report which was marked as Ext.-1/d. From the discussion of the evidence deposed by this witness in the examination-in-chief, we find his evidence being consistent completely to the prosecution story narrated by him in the FIR. The witness was cross-examined at length by the accused. In the cross-examination he stated that he did not reside at Purandhata and on 02.08.2015, he came at the house of Punit (victim) due to his own work as he wanted to purchase some parts of tractor and he had come in the evening of 02.08.2015 by a bus. He further stated that he met Punit at his house and told him about his work and earlier also, he had come at the house of Punit. He



further stated in the cross-examination that he left the house of the victim along with him on his motorcycle in the morning at 8:30 A.M., from the house they firstly went to the Bus Stand Office of the victim where they stayed for one and a half hour and from there, they went to CEAT Tyre showroom which is situated three (03) km away from the office of the victim and they stayed for two hours at the CEAT Tyre showroom and thereafter, started returning back from the showroom through NH-31 and Ufrail Chowk. From these stated facts the reason of the presence of this witness with the victim clearly appears and the acts which were done by him and victim between 8:30 A.M to 12:00 P.M., were properly explained by him and the conduct of both appears to be completely normal and does not create any type of suspicion. He further stated in the cross-examination that he rushed to Maranga police station and reached there within 20-25 minutes and recorded his statement and stayed there for about half an hour and thereafter, came at the place of occurrence with the police and Piyush (PW-2) was found at the place of occurrence along with several others and police stayed there for 20-25 minutes and after that, he went towards Ufrail village in search of the victim and then went towards Mewalal Chowk and at that time he was on his foot, where an unknown



person told him that the police went towards Lalganj area. He went from Mewalal Chowk to Lalganj and reached there between 4:30 P.M. and 5:00 P.M., where he saw the dead body of Punit lying at a *parti* land and blood was flowing from the nose of the deceased and there was blood also on the land as well as the clothes of the victim. He further stated in the cross-examination that the first part of the occurrence took place at 12:30 P.M. and he did not inform the family members of the victim as he had no phone with him at that time and at the time of occurrence, the victim's brother Pranav, grandparents were not present who came next day and victim's mother and Piyush were only present at that time. He further deposed in the cross-examination that he knew the accused Niraj Yadav since before the occurrence. The witness gave the details of the properties of the appellant Niraj Yadav.

From the facts stated by this witness in the cross-examination which was done by the defence at length, we find that the witness did not say anything which is contradictory to the above mentioned relevant facts and his evidence completely remained consistent to the prosecution story as well as the facts stated by him in the examination-in-chief.

The appellants could not have succeeded to elicit any fact



by cross-examining this witness to show him as an unreliable witness. From the evidence of this witness it is also evident that there was no any prior enmity in between the victim and the appellants, so, there was no reason for this witness, who is informant, to implicate the appellants falsely in the alleged occurrence. Though, there was inimical relation in between the appellants and Khagendra Prasad Sinha (PW-3) which will be discussed later, on this point the witness was cross-examined by giving the suggestion that he implicated the appellants falsely on account of the said enmity which he flatly denied. On this point, we would like to discuss the evidence of PW-3, Khagendra Prasad Sinha. The witness deposed in the cross-examination that he never visited the house of Punit (victim) though he knew the father of the victim but he did not know the fact regarding his ownership over the bus stand and he met victim's father twenty years ago at the bus stand. He further stated that after the occurrence, he did not have any conversation with any family member of the victim and he did not know the relationship between the informant and victim's family. He further deposed in the cross-examination that he had no talk (contact) with the informant and never travelled with him and he did not go at the place where the dead body of the



victim was found. From these facts, one thing is quite clear that the said witness had no intimacy with the informant and the victim's family, so it is not believable that at the instance of Khagendra Prasad Sinha (PW-3), the informant falsely implicated the appellants in the alleged occurrence.

29. Learned Senior Counsel appearing for the appellants has tried to impeach the credibility of PW-4, the informant, on this ground that the witness knew English language at the time of filing of the FIR as he made his signature in English language upon his written report on that basis, the FIR was registered but the contents of the FIR was written in Hindi language and the witness remained silent about the presence of any other person by whose help he got his application written. We find no force in the said submission as it is a common knowledge that many persons put their signature in English language despite having no proper knowledge of English. Moreover, the appellants did not cross-examine PW-4 on the said point and if he would have been cross-examined then he might have explained the reason behind writing the contents of his written application in Hindi language. Hon'ble Apex Court in **Laxmibai (dead) Thr. L.Rs. & Anr. vs. Bhagwantbuva (dead) Thr. L.Rs. & Ors.** reported in AIR



2013 SC 1204 observed as under:-

“**40.** ...If a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it which has been objected to by the other party as being untrue, without this it is not possible to impeach his credibility and the provisions of Section 138 of the Evidence Act enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination-in-chief and the scope of this provision stands enlarged by Section 146 of the Evidence Act which permits a witness to be questioned *inter alia* in order to test his veracity, thereafter, the un-challenged part of his evidence is to be relied upon for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regard the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him is not fit to be believed, thus, if a party intends to impeach a witness he must provide adequate opportunity to the witness in the witness-box to give a full and proper explanation which is essential to ensure fair play and fairness in dealing with witnesses. ...”

Accordingly, in view of the above-mentioned principle laid down by the Hon’ble Apex Court, the above contention raised by the appellants’ counsel is not helpful to the appellants.



30. The alleged occurrence is said to have taken place at 12:30 P.M. and as per the evidence of the informant, he went rushing to the police station just after the commission of the first part of the occurrence and he reached the police station very soon and the FIR was registered at 2:20 P.M., so the witness got two hours to write the FIR or get his FIR written from any other person which could be deemed to be a possible act. As the FIR was registered within two hours from the commission of the first part of the occurrence, so there was no possibility of the fabrication of a false story with the false allegations against the appellants by the informant as after an occurrence of abduction which has been witnessed by one, the normal conduct of such witness who happens to be a relative, would be to rush immediately towards the police station to get the necessary help and the same conduct was of the informant in this matter.

31. Accordingly, we find the FIR to be reliable and the evidence of this witness (PW-4) with regard to the manner of occurrence of first part, place of occurrence, number of the accused, the weapons which were allegedly used by them and the vehicle which was allegedly used by them in taking the victim, regarding the direction towards the accused proceeded after the abduction and regarding the place at where the dead



body of the victim was found, is completely trustworthy and reliable.

Though, the witness admittedly did not see the second part of the occurrence relating to murder of the victim but his evidence is completely reliable and sufficient to prove the first part of the occurrence of abduction of the victim by the appellants and it is a well settled principle that if two offences particularly, the offence of abduction and thereafter, murder of the abducted person are committed in the same sequence without no much gap of time and prosecution succeeds to prove the first part of the occurrence then the burden shifts on the accused, who abducted the victim, to explain the circumstances under which the victim died and in this regard, the observation made by the Hon'ble Apex Court in the case of **Paramsivam & Others Vs. State through Inspector of Police** reported in **(2015) 13 SCC 300** is very relevant and the same is being reproduced as under :-

“25. When deceased is shown to be abducted, it is for the abductors to explain how they dealt with the abducted victim. In the absence of explanation, the court is to draw inference that abductors are the murderers.”

While laying down the above principle, the Hon'ble Court took into account the observation made by the Hon'ble Apex



Court in the case of **Sucha Singh vs. State of Panjab, (2001) 4 SCC 375** in which the similar principle was laid down. The same situation is available in the present matter as the evidence of this witness (PW-4) is completely reliable and sufficient to prove the first part of the occurrence having been committed by the appellants with the victim and the appellants could not have been able to explain their innocence in the commission of the murder of the deceased who was in their possession and captivity during the last hours of his life.

32. So far as the evidence of PW-1 and PW-2 is concerned, though both the witnesses claimed themselves to be eye-witnesses of the first part of the occurrence but they do not seem to be eye-witnesses of the first part of the occurrence and in this regard, their own statements are relevant.

33. It has come in the evidence of PW-3 that the house of the victim is situated about one kilometer away from the place where the first part of the occurrence was committed. PW-1 who happens to be a relative of the victim, deposed in the chief-examination that at about 12:00 noon, he and Piyush (PW-2) were sitting in the house of the victim then they heard a *hulla* and thereafter, they rushed towards behind K.P. Market and saw the appellants assaulting the victim. The evidence of PW-4



reveals that the alleged occurrence of abduction and assault took place for some minutes only but regarding the presence of PW-1 and PW-2 at the time of commission of the first part of the occurrence, no supportive fact was revealed by the informant (PW-4) and furthermore, it was not possible for PW-1 and 2 to reach immediately at the place of occurrence within a few minutes. Further, the evidence of PW-2 is contradictory to the evidence of PW-4 as he deposed that when he tried to save the victim the accused pointed the pistol at him. No such evidence has been given by the PW-4. PW-2 stated that at the time of occurrence, he was present behind the K.P. Market and he deposed in the cross-examination that the information regarding the commission of the occurrence was firstly given on the mobile phone of his sister, namely, Poonam and then he rushed towards the place of occurrence and on the way, he did not talk with anyone. The said evidence is contradictory to PW-1 and also shows that he reached at the place of occurrence of first part some minutes after the happening of the occurrence.

34. Accordingly, we find PW-1 and PW-2 to be not eye-witnesses of the first part of the occurrence and the learned trial court erred in deeming both the said witnesses as eye-witnesses but however, the evidence of both the witnesses



regarding the immediate subsequent events such as the act of searching for the victim after his abduction, by them, informant and the police, is relevant and to this extent corroborative to prosecution story.

35. The prosecution witness, PW-3, claimed himself to be an eye-witness of the alleged occurrence of abduction of the victim. So far as the reliability of this witness is concerned, though he has accepted in his evidence that there was litigation in between him and the appellant Niraj Yadav which shows an inimical relation in between the said appellant and this witness and the same can be deemed to be a ground to put a question on the reliability of this witness but there are two circumstances which persuade us to deem this witness to be reliable to some extent. Firstly, the house of this witness is said to be situated near the place of occurrence of abduction, so, his presence near the place of occurrence can be deemed to be natural. Secondly, he was cross-examined at length with regard to the intimacy with the prosecution party but the accused failed to elicit any fact to show his closeness with informant and other non-official witnesses of the prosecution. So, in such a situation, there was no reason for this witness to become a false witness at the direction of the informant and others. Thirdly, the witness fully



supported the prosecution's case in the examination-in-chief and in the cross-examination, he did not reveal any fact being contradictory to the incident of abduction which was witnessed by him as per his claim. The witness also recorded his statement under Section 164 of Cr.P.C. in which he also remained consistent to the allegations of the first part of the prosecution story and the said statement is corroborative to his testimony given before the trial court. Further, if PW-3 was made a witness of the prosecution by way of an afterthought by the prosecution party then in such a situation his details as a witness could have been given in the FIR but in this regard, the informant remained silent which shows the naturality of his act of rushing towards the police station to lodge the FIR. So, in view of these circumstances, PW-3 can be deemed to be a reliable witness of prosecution and his evidence is supportive to the prosecution's case.

36. In this matter, the second part of the prosecution story relates to the recovery of the dead body of the victim. As per the prosecution, the dead body of the victim was recovered in the light of the disclosure statement made by the appellants and in this regard, the confessional statement of the appellant Niraj Yadav was recorded by the police and thereafter, police



proceeded towards the place where the dead body was thrown by the appellants. As per the prosecution, the portion of the confessional statement of the appellant Niraj Yadav which disclosed the location of the dead body as well as lead to the recovery of the dead body by the police is an admissible evidence under the provisions of Section 27 of the Evidence Act.

37. Learned Senior Counsel appearing for the appellants has argued that the so-called disclosure of the appellant Niraj Yadav which is said to have led the police party to the place where the dead body was found, is not an admissible evidence as the alleged place of recovery was an open place and accessible to everyone and further the investigating officer did not give the complete description of the conversation between him and the appellant with respect to the alleged disclosure statement. In support of this submission, learned counsel has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of **Manjunath & Others Vs. State of Karnataka** reported in **2023 SCC OnLine SC 1421** and has referred to the following paragraphs of the said judgment which are as under:-

“ 25. The next aspect is the recovery of the alleged weapons, we have noted the



particulars thereof while discussing the findings of the Trial Court. Such recoveries were discarded by the trial court stating that the clubs were recovered from a place accessible to the public and, the chopper and the rods were recovered from a house where other persons were also residing which compromises the sanctity of such recovery and takes away from the veracity thereof.

26. Further discovery made, to be one satisfying the requirements of Section 27, Indian Evidence Act it must be a fact that is discovered as a consequence of information received from a person in custody. The conditions have been discussed by the Privy Council in *Pulukuri Kotayya v. King Emperor*³⁸ and the position was reiterated by this Court in *Mohd. Inayatullah v. State of Maharashtra*³⁹, in the following terms:—

“12...It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only “so much of the information” as relates distinctly to the fact

38. 1946 SCC OnLine PC 47

39. (1976) 1 SCC 828



thereby discovered is admissible. The rest of the information has to be excluded. The word “distinctly” means “directly”, “indubitably”, “strictly”, “unmistakably”. The word has been advisedly used to limit and define the scope of the provable information. The phrase “distinctly relates to the fact thereby discovered” is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery...”

(Emphasis supplied)

27. Prima facie, in the present facts, the 3 conditions above appear to be met. However, the Trial Court held, given that the discoveries made were either from a public place or from an area where other persons also resided, reliance thereupon, could not be made. We find this approach of the trial court to be correct.

27.1 This court has, in various judgments, clarified this position. Illustratively, in *Jaikam Khan v. State of U.P.*⁴⁰ it was observed:—

“One of the alleged recoveries is from the room where deceased Asgari used to sleep. The other two recoveries are from open field, just behind the house of deceased Shaukeen Khan i.e. the place of incident. It

40. (2021) 13 SCC 716



could thus be seen that the recoveries were made from the places, which were accessible to one and all and as such, no reliance could be placed on such recoveries.”

(Emphasis supplied)

27.2 Also, in *Nikhil Chandra Mondal v. State of W.B.*⁴¹ the Court held:—

“**20.** The trial court disbelieved the recovery of clothes and weapon on two grounds. Firstly, that there was no memorandum statement of the accused as required under Section 27 of the Evidence Act, 1872 and secondly, the recovery of the knife was from an open place accessible to one and all. We find that the approach adopted by the trial court was in accordance with law. However, this circumstance which, in our view, could not have been used, has been employed by the High Court to seek corroboration to the extra-judicial confession.”

(Emphasis supplied)

28. As reflected from record, and in particular the testimony of PW-15 it is clear that the discoveries (stick as shown by A10, for instance) was a eucalyptus stick, found from the eucalyptus plantation, which indisputably, is a public place and was found a week later. A second and third stick purportedly found half kilometre away on

41. (2023) 6 SCC 605



that day itself, was found by a bush, once again, a place of public access. Two further sticks recovered at the instance A6 and A7, were also from public places. An iron chain produced from the house of A1 and A2, is not free from the possibility that any of the other occupants of their house were not responsible for it. We, further cannot lose sight of the fact that sticks, whether bamboo or otherwise, are commonplace objects in village life, and therefore, such objects, being hardly out of the ordinary, and that too discovered in places of public access, cannot be used to place the gauntlet of guilt on the accused persons...”

38. We find no force in the above contention as there are some strong circumstances to believe the recovery of the dead body of the victim on the basis of the disclosure statement made by the appellant Niraj Yadav. Firstly, within five hours from the alleged time of abduction of the victim, victim's dead body was recovered. Secondly, the prosecution's witnesses remained firm and consistent regarding the direction towards which the victim was taken away by the appellants. Thirdly, as per the investigating officer, all the nearby police stations were alerted by the Maranga P.S. just after receiving the information of occurrence and several police parties proceeded in search of the victim and accused and in that course, the appellants were



apprehended near *Maa Kali Dhaba* at about 3:00 P.M. and the vehicle which was used by them in carrying the victim after his abduction, was also recovered at the spot and the same was seized by way of seizure memo (Ext.- 5/a) and the appellants were arrested. In order to make a disclosure of an accused, with regard to the presence of a relevant fact, admissible, it must be proved that such accused was in police custody when he made the statement. In the instant matter, the investigating officer (PW-7), proved the arrest of the accused/appellants before the recovery of the dead body and the important thing is that the defence witness DW-2, Santosh Kumar Mehta, stated that on 03.08.2015, the date of occurrence, he knew that the appellants had been apprehended by the police between 3:00 P.M. to 4:00 P.M. and after the arrest they were taken by the police towards the farm house (*Kamat*). In the cross-examination, the witness stated that he heard about the arresting of the accused near *Maa Kali Dhaba*. So, the evidence of this defence witness is corroborating the *factum* of arrest of the appellants in between 3:00 P.M. to 4:00 P.M. on the alleged day of occurrence. The dead body of the deceased was recovered at about 5:50 P.M. on the same alleged day. So far as the place of recovery is concerned, the dead body was recovered near a farm house



(*Kamat*) of one namely, Rajendra Khirahari. Though, the said place can be deemed to be an open place but the appellants could not succeed in eliciting any fact from the investigating officer to show that the said place was in the visibility of others in normal circumstances. In this regard, the Hon'ble Apex Court in the Case of **State of Himachal Pradesh Vs. Jeet Singh** reported in **(1999) 4 SCC 370** observed as under:-

“ 26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is “open or accessible to others”. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.”



The above principle has been reiterated by the Hon'ble Apex Court in the case of **Lochan Shrivastava Vs. State of Chhattisgarh (2022) 15 SCC 401**.

39. There is one more important circumstance which goes in favour of the prosecution with regard to the credibility of the recovery of the dead body in the light of the disclosure statement made by the appellant Niraj Yadav. The alleged occurrence of abduction is said to have been committed at about 12:30 P.M. which has been established by the evidence of PW-3 and PW-4 and the *factum* of police custody of the appellants before the recovery of the dead body has also been proved by the I.O. as well as the defence witness namely, Santosh Kumar Mehta (DW-2) and the dead body was recovered at about 5:50 P.M. So, all these events took place within six hours and at the time of recovery of the dead body, there was active bleeding from the nose and forehead of the deceased which shows that he had been killed just some hours before the recovery and the evidence of PW-4 is sufficient to prove that the victim was in the captivity of the appellants during the last hours of his life. Accordingly, we find no force in the above contention of the appellants' counsel as the facts and circumstances of the present



matter are quite different from the cited case in which the provisions of Section 27 of the Evidence Act were seen in different context.

40. Learned counsel for the appellants has argued that in the present matter, there is no direct evidence to prove the killing of the victim by the appellants and the prosecution's case with regard to the alleged murder of the victim is based on circumstantial evidence but the prosecution failed to establish all the circumstances completing the criminological chain of the alleged offences. In support of this submission, learned Senior Counsel has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in (1984) 4 SCC 116 and has referred to the paragraph no. 153 of the said judgment which is being reproduced as under:-

“ **153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may



be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*¹⁹ where the following observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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

- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
- (3) the circumstances should be of a conclusive nature and tendency,
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

41. No doubt, in the present matter, there is no eye-witness of the commission of the murder of the deceased but all the relevant circumstances from the beginning of the occurrence

19. (1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783



and till the recovery of the dead body of the deceased have been proved by the prosecution in this matter. First circumstance relates to the abduction of the victim by the appellants by using a white colour car and in this regard, the evidence of PW-3 and PW-4 is very relevant. Second circumstance relates to taking the victim forcefully by the appellants with the help of the car of appellant no.1 towards Ufrail Chowk and then diverting towards Mewalal Chowk. The said circumstance has also been proved by PW-3 and PW-4. Third circumstance relates to the swift action by the police on getting the information of abduction which has been proved by the I.O. himself (PW-7). Fourth circumstance relates to the arresting of the accused/appellants within some hours from the commission of the abduction. The circumstance has been proved by the I.O. and the same finds support from the defence witness Santosh Kumar Mehta (DW-2). Fifth circumstance relates to the recovery of the vehicle which was used in carrying the victim which has also been proved by the I.O. and there is nothing against his evidence with regard to the recovery of the said vehicle with the accused. Sixth circumstance relates to the recovery of the dead body of the deceased in the light of the disclosure made by the appellants.



The prosecution proved the disclosure statement of the appellant Niraj Yadav and also proved the recovery of the dead body of the victim at the place which was disclosed by the appellant, Niraj Yadav, in his statement. Accordingly, all the material and relevant circumstances to complete the entire criminological chain of both the parts of the alleged occurrences, have been fully established by the prosecution's evidences and the same are sufficient to conclude the involvement of the appellants in the commission of abduction and killing of the victim. Further the occurrence of abduction has been established by the prosecution by the direct evidence of PW-3 and PW-4 and it is settled principle of law that when it is proved to the satisfaction of the court that the victim was abducted by the accused and then the accused alone knew what happened to the victim, if the victim was found murdered within a short time after the abduction then the court may draw the presumption that the accused has/have murdered the victim. In this regard, the observation made by the Hon'ble Apex Court in the case of **State of W.B. vs. Mir Mohammad Omar and Others** reported in **(2000) 8 SCC 382** is relevant which is being reproduced as under :-

“ 34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused



and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody.”

Accordingly, we find no force in the above contention of the appellants’ counsel.

42. It has been further argued by the appellants’ counsel that in the cases of circumstantial evidence, the motive of the accused has to be established and in the present matter, the motive of the appellants to kill the victim has not been established.

43. We find no force in the above contention of appellants’ counsel as the prosecution succeeded to prove the first part of the occurrence by adducing the direct evidence to show that the appellants with an intention to extort money from the victim, firstly stopped him and when he did not accept their demand then he was forcefully taken by the appellants by a car with an intention to get money in the form of ransom from the victim’s family. There is sufficient evidence to prove these alleged facts which clearly indicate that the appellants killed the



victim when they found that it was not possible for them to get money from the victim or his family due to the alertness of the police party of several police stations. Hon'ble Apex Court in the case of **Jeet Singh (supra)** observed as under:-

“33. Though, it is a sound of proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant.”

44. In the present matter, the prosecution succeeded to prove the first criminal act of the appellants relating to abduction which shows their intention to commit an offence and just some hours after the commission of abduction, the dead body of the victim was recovered in following with the disclosure made by the appellants and the alleged vehicle was also recovered at the spot in the possession of the appellants which are sufficient to prove the criminal psychology of the appellants and also to show that after abduction, they immediately made up their mind to commit the murder of the victim with a motive to destroy the main evidence of the abduction on account of finding themselves to be not able to



extort money from the victim or his family.

45. It has been argued by learned counsel for the appellants that there is no details of the FIR number in the inquest report as well as postmortem report which is sufficient to prove that the FIR of the instant matter was lodged after due deliberation and consultation. In support of this submission, learned counsel has placed reliance upon the judgment of the Hon'ble Apex Court passed in the case of **Meharaj Singh Vs. State of U.P.** reported in (1994) 5 SCC 188 and has referred to the Paragraph No. 12 of the said judgment which is being reproduced as under : -

“ 12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR



was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.”

46. Though in the present matter, there is no details of



the FIR number in the inquest report and postmortem report of the deceased but we find a reasonable explanation from the prosecution's evidence for non-mentioning of the FIR number in both the documents. As the instant matter relates to abduction and the informant (PW-4) who witnessed the abduction, went rushing to the police station to inform the police about the occurrence of abduction and upon getting the said information, the police of Maranga police station swung into action and also informed the police of adjoining police stations and immediately proceeded to search for the victim and accused and after making an endorsement on the written report of the informant, forwarded the same to K. Hat police station and these proceedings were done immediately by PW-7. The formal FIR was registered at 2:20 P.M. and the victim's dead body was recovered at 5:50 P.M. on the same day as reflects from the inquest report and the same shows that since the time of receiving of the FIR and making the recovery of the dead body, the police officials concerned got only about three and a half hours and during that period of time, the police officials of the concerned police station remained in the field in search of the victim and accused and during that course, apprehended the accused, recorded the statement of appellant Niraj Yadav and



then recovered the dead body of the deceased and alleged vehicle. So, in such circumstances happened fastly, if the concerned police official did not mention the FIR number in the inquest memo then the same can not be deemed to be a material fault on the part of the said police official and the postmortem examination was done at 8:30 P.M., just two and a half hours after the recovery of the dead body, so, during that period of time, it can be deemed that the police officials and the Doctor concerned, did not get sufficient time to mention the details of the FIR number and the same can be deemed to be a reasonable explanation for non-mentioning of the FIR number in the inquest report and postmortem report. Further it is a well settled law that the inquest report and postmortem report cannot be termed to be substantive evidence and any discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case, as the contents of the inquest report cannot be termed as evidence though they can be looked into to test the veracity of the witnesses. In this regard, the principle laid down by the Hon'ble Apex Court in Paragraph No. 23 of the judgment passed in the case of **Shambhu Das Alias Bijoy Das And Another vs. State**



of Assam reported in **2010 (10) SCC 374** is relevant. Paragraph '23' of **Shambhu Das (supra)** reads as under:-

“ 23. Inquest report and post-mortem report cannot be termed to be substantive evidence and any discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. The contents of the inquest report cannot be termed as evidence, but they can be looked into to test the veracity of the witnesses. When an officer in charge of the police station receives information that a person had committed suicide or has been killed or died under suspicious circumstances, he shall inform the matter to the nearest Magistrate to hold an inquest. A criminal case is registered on the basis of the information and investigation is commenced under Section 157 CrPC and the information is recorded under Section 154 CrPC and, thereafter, the inquest is held under Section 174 CrPC.”

47. Recently, in the case of **Chotkau vs. State of Uttar Pradesh** reported in **(2023) 6 SCC 742**, the Hon'ble Supreme Court has observed as under:-

69. On the question of compliance of Section 157(1) along with logical reasoning for doing so, the following passage from the decision in *Jafarudheen v. State of Kerala* *Jafarudheen v. State of Kerala*⁸ may be usefully quoted as under (paragraph 28 and 29):-

28. The jurisdictional Magistrate plays a pivotal role during the investigation process.

8. (2022) 8 SCC 440 : (2022) 3 SCC (Cri) 436



It is meant to make the investigation just and fair. The investigating officer is to keep the Magistrate in the loop of his ongoing investigation. The object is to avoid a possible foul play. The Magistrate has a role to play under Section 159CrPC.

29. The first information report in a criminal case starts the process of investigation by letting the criminal law into motion. It is certainly a vital and valuable aspect of evidence to corroborate the oral evidence. Therefore, it is imperative that such an information is expected to reach the jurisdictional Magistrate at the earliest point of time to avoid any possible ante-dating or ante-timing leading to the insertion of materials meant to convict the accused contrary to the truth and on account of such a delay may also not only get bereft of the advantage of spontaneity, there is also a danger creeping in by the introduction of a coloured version, exaggerated account or concocted story as a result of deliberation and consultation. However, a mere delay by itself cannot be a sole factor in rejecting the prosecution's case arrived at after due investigation. Ultimately, it is for the court concerned to take a call. Such a view is expected to be taken after considering the relevant materials.”

Further, in the case of **Hari Prasad @ Kishan Sahu vs. State of Chhattishgarh** reported in (2024) 2 SCC 557, the



Hon'ble Supreme Court in paragraph '10' of its judgment has held as under:-

10. Of course, the delay in lodging an FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of prosecution. The court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of prosecution.

Accordingly, we find no force in the above contention and the principles laid down by the Hon'ble Apex Court in the above referred judgment do not help the appellants.

48. It has been further argued by the appellants' counsel that there was an inordinate delay in sending the FIR by the police to the concerned Magistrate and the provision of Section 157 of Cr.P.C. was violated by the police and the same can also be deemed to be a ground to suspect the commission of the alleged offences. In this regard, reliance has been placed by the appellants' counsel on the case of **Arjun Marik and Others. Vs. The State of Bihar** reported in **(1994) Supp(2) SCC 372** decided by the Hon'ble Apex Court.

49. We find no force in the above submission as in the instant matter, the FIR was registered on 03.08.2015 at 2:20 P.M. and till the late evening, the police remained busy in



recovering the victim's body and postmortem examination over the body and just next day i.e. on 04.08.2015, the copy of the FIR was sent to the Chief Judicial Magistrate, Purnea and the same was received on that day at 12:05 P.M. which shows that there was no inordinate delay in sending the FIR to the Magistrate concerned by the police. Further, nothing was put to the investigating officer as regards the alleged delay in sending the FIR to the Magistrate and/or that an a prejudice was caused to the appellants on that account. If the investigating officer would have been cross-examined with regard to the said delay then he might have explained the reason for the delay, so, in the absence of cross-examination on the said point, the appellants cannot take any benefit. In this regard, the observation made by the Hon'ble Apex Court in paragraph No. 26 of the judgment passed in the case of **Manga Alias Man Singh Vs. State of Uttarakhand** reported in **2013 (7) SCC 629** is relevant. The same is being extracted hereunder for a ready reference :-

“26. In the case on hand nothing was put to PW 13 (investigating officer) as regards the alleged delay in sending the FIR to the Magistrate and/or that any prejudice was caused to the appellants on that account. It would have enabled the investigating officer to explain the reason for the delay. In any event nothing has been shown as to any prejudice caused to the appellants on the ground of alleged delay in sending a



copy of FIR to the Magistrate.”

Accordingly, we find no force in the above contention of the appellants’ counsel.

Conclusion:-

50. After having discussed the evidences available on the case records of the trial court and also taking into account the arguments advanced by both the sides, we are of the considered view that the evidence of PW-4, the informant, is completely reliable to prove the first part of the occurrence relating to the abduction of the victim as the appellants/accused did not succeed to elicit any fact from this witness as well as PW-1 and PW-2, who are said to be the relatives of the informant, to show any kind of inimical term in between the victim or victim’s family and the accused/appellants, so, there was no reason for the informant (PW-4) to implicate the appellants falsely in the alleged occurrence of abduction and as the victim was admittedly murdered just within three hours from the commission of his abduction and at the time of recovery of the dead body, there was active bleeding from some parts of the body of the deceased, so, in such a situation, the allegation as to the commission of the abduction of the victim can be deemed to be reliable. There is no serious contradiction in between the facts of the FIR narrated by the informant and his evidence and



the appellants did not succeed in eliciting any fact from the cross-examination to impeach his credibility and trustworthiness, though, in view of the facts stated by PW-1 and PW-2 both the said witnesses cannot be deemed to be eye-witnesses of the first part of the occurrence but their evidence is also relevant to some extent in respect of the events which happened subsequent immediately just after the commission of the abduction. Though, PW-3 was having some litigation and dispute with appellant no. 1 at the time of commission of the alleged offences but his presence at the alleged place of abduction of the victim, was quite natural as his house is situated adjacent to the said place of occurrence and further, he did not reveal any kind of intimacy with the prosecution party as well as victim's family and his evidence seems reliable and goes in favour of the prosecution. The most important evidence going against the appellants is the recovery of the dead body of the deceased in following with the disclosure statement made by the appellant no.1 and the prosecution succeeded to prove the arresting of the appellants at about 3:00 P.M. on the day of the occurrence of abduction and recording of the statement of appellant no. 1 and thereafter, recovering of the dead body near the farm house (*Kamat*) of one namely, Rajendra Khirahari and



it has come into light in the evidence of I.O. (PW-7) that the farm house (*Kamat*) of the appellant no. 1 was situated at the distance of 300 to 400 *Gaj* (Yards) from the place at where the dead body of the victim was lying and from the evidence of the I.O. it does not appear that the place where the dead body of the victim was lying, was in the approach and visibility of everyone and as all the events from abduction of the victim, searching of the victim and appellants, recovery of the dead body of the victim, took place within 5 to 6 hours from the starting point of the time of occurrence, so, in such a situation, the statement of appellant no.1 leading to the recovery of the dead body cannot be thrown out merely on this ground that the recovery of the dead body was made from an open place. In view of the occurrence of abduction of the victim by the appellants which has been established by the evidence of PW-4, it can be deemed that the motive/intention to kill the victim arose in the mind of the appellants suddenly just one or two hours after the commission of the abduction when they found themselves to be unable to extort any money from the victim and not able to hide the victim due to the alertness of the police officials of many police stations and further, the appellants could not have explained the circumstance as to how the victim died while he



was in their captivity during the last moments of his life. Accordingly, we find no merit in this appeal and the conclusion of the trial court in holding the appellants guilty of the alleged offences for which they were charged, appears to be proper and correct and there is no reason to interfere in the said conclusion of the learned trial court.

51. In the result, the impugned judgment of conviction and order of sentence are hereby affirmed and the instant appeal stands dismissed.

52. The Appellant No.1, Niraj Yadav @ Niraj Kumar Chaudhri is on bail for a period of four (04) months on medical ground by virtue of order dated 07.08.2024 passed by the Hon'ble Supreme Court in SLP (Crl) No(s). 9601/2024 so, after the expiry of the provisional bail period, the said appellant shall surrender in the court below and serve the remaining part of his sentence awarded by the trial court unless the provisional bail period is extended by the Hon'ble Supreme Court or an otherwise relief is granted to him by the Hon'ble Supreme Court. If the Appellant No.1 fails to surrender after the expiry of provisional bail period or the extended period as the case may be, the learned trial court shall procure the presence of the Appellant No.1 in accordance with law.



53. Let the judgment’s copy be sent to jail Superintendent and the trial court concerned for information and needful.

54. Let the trial court’s records be sent forthwith to the court concerned.

(Shailendra Singh, J)

I agree.

(Rajeev Ranjan Prasad, J)

(Rajeev Ranjan Prasad, J)

maynaz/-

AFR/NAFR	AFR
CAV DATE	22.08.2024
Uploading Date	09.09.2024
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