
(2010) 09 PAT CK 0099

In the Patna High Court

Case No : Death Reference No. 1 of 2008 and Cr. App. (DB) No. 56 of 2008

Chandan Kumar

APPELLANT

Vs

The State of Bihar
 The State of Bihar Vs Chandan
Kumar

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0099

Judgement

V.N. Sinha, J.—Death Reference Case No. 1 of 2008 and Cr. Appeal No. 56 of 2008 arise out of judgment/order of sentence dated 18/20.12.2007, passed by Sri Umesh Chandra Mishra, Additional District and Sessions Judge, Fast Track Court No. 5, Rohtas (Sasaram) in Sessions Trial No. 220 of 2006/Trial No. 29 of 2007. Death Reference Case No. 2 of 2008 and Cr. Appeal Nos. 34, 36, 51, 59, 116, 137 of 2008 arise out of judgment/order of sentence dated 18/20.12.2007, passed by Sri Umesh Chandra Mishra, Additional District and Sessions Judge, Fast Track Court No. 5, Rohtas (Sasaram) in Sessions Trial No. 39 of 2005/Trial No. 225 of 2007. As the aforesaid two judgments have been rendered in connection with Nasariganj P.S. Case No. 30 of 2004, both the References and the seven appeals pay a fine of have been heard together and are being disposed of by this common judgment.

2. Under judgment and order dated 18/20.12.2007, passed in Sessions Trial No. 220 of 2006/Trial No. 29 of 2007, appellant Chandan Kumar has been convicted for the offence under Sections 302/149, 364A and 201 of the Indian Penal Code and has been sentenced to death with further direction to pay a fine of 5,000/- (Rs. Five thousand). Under judgment dated 18/20.12.2007, passed in Sessions Trial No. 39 of 2005/Trial No. 225 of 2007, Nanhkut Chaudhary @ Shyamji Chaudhary @ Nanhkut, Arbind Kumar, Chhotan Khan, Gyani Prasad, Sonu Kumar and Pradeep Kumar Sah @ Pradeep Kumar have been convicted for the offence under Sections 302/149, 364A, 201 and 120B of the Indian Penal Code. Out of the aforesaid six appellants, Nanhkut Chaudhary @ Shyamji Chaudhary @ Nanhkut, Arbind Kumar and Chhotan Khan have been sentenced to death with

direction to pay a fine of 5,000/- (Rs. Five thousand) each. Appellants Gyani Prasad, Sonu Kumar and Pradeep Kumar Sah have been sentenced to undergo rigorous imprisonment for life with further direction to pay a fine of 5,000/- (Five thousand) and in default to undergo rigorous imprisonment for one year for their conviction under Sections 302/149 of the Indian Penal Code.. For conviction u/s 120B of the Indian Penal Code, they have been asked to undergo rigorous imprisonment for ten years with further direction to pay a fine of 3,000/- (Rs. Three thousand) and in default to further undergo rigorous imprisonment for six months. For conviction u/s 201 of the Indian Penal Code, the aforesaid three appellants have been asked to undergo rigorous imprisonment for five years and to pay a fine of 1,000/- and in default to further undergo rigorous imprisonment for three months. The sentences have been directed to run concurrently and no separate sentence has been passed for conviction u/s 364A of the Indian Penal Code.

3. The prosecution case, as set out in the fard-e-beyan of the Informant, Jai Prakash Gupta, son of Dhruv Narain Sah of Mohalla Hariharganj, P.S. Nasariganj, District Rohtas dated 24.3.2004 is that he serves as a Manager in the Liquor Shop of Manish Sah at Raigarh in the State of Orissa where he telephonically learnt during the night on 21.3.2004 from his father that his son Ujjawal has perhaps been made to disappear by some one. Having received such information, he came and learnt from his father, Dhruv Narain Sah and mother, Mandodari Devi that on 21.2.2004 at about 6.00 P.M. Ujjawal was playing outside the house along with Raju Kumar, son of Ramji Prasad Sah alias Domi Sah, resident of Mohalla Hariharganj. Mother of the Informant asked Ujjawal to come inside the house, but he continued playing. Soon thereafter Ujjawal disappeared, mother and father of the Informant searched for him in the vicinity, but Ujjawal was not found, whereafter information was sought about the whereabouts of Ujjawal from Raju Kumar, son of Ramji Prasad Sah alias Domi Sah, who informed that sometime before he had seen Ujjawal and Chandan going along with another person. Ujjawal was even calling Raju Kumar to accompany him but Raju Kumar refused to accompany Ujjawal, as he was doing his home work, whereafter parents of the Informant went to Chandan, son of Rajendra Prasad, who is the agnate of the Informant and sought information about the whereabouts of Ujjawal, who refused to divulge any information about the whereabouts of Ujjawal. It is further averred in the fard-e-beyan that there is land dispute between Rajendra Prasad, his son, Chandan and the Informant and his parents. Clod was thrown at the house of the informant during the previous Holi festival at their instance while betel shop of Chandan Kumar situate by the side of the house of informant remained open leading to altercation with the mother of the informant, in retaliation, Chandan Kumar conspired for disappearance of Ujjawal with intention to kill him.

4. Having investigated the case, police submitted charge-sheet for the offence under Sections 302/149, 364A, 201 and 120B of the Indian Penal Code against the aforesaid seven appellants and Rajendra Prasad, Gyani Kumar Sulesh Kumar

and Surendra Prasad. In support of the accusation, Investigating Agency cited number of witnesses, namely, Ganesh Prasad, resident of the locality, Raju Kumar, who was playing with the victim boy just before his disappearance, Mandodari Devi, mother of the informant, who had asked the victim to come inside the house just before his disappearance and searched for him in the vicinity after his disappearance as also sought information about the victim from Raju Kumar, Chandan Kumar and Rajendra Prasad, Kashi Prasad Gupta, brother of the informant, Jitendra Prasad alias Jitendra Kumar, cousin of informant, Bharat Prasad Sah, uncle of the informant, Jai Prakash Gupta, the informant and father of the victim, Sushma Kumari, the Investigating Officer, Dr. Arvind Kumar Singh, Medical Officer, but did not include Sunita Devi, wife of the younger brother of the informant, although she is said to have informed her mother-in-law, Mandodari Devi soon after the disappearance of Ujjawal that she had seen Chandan from roof top holding the hand of Ujjawal and going together. Rajendra, Surendra, Gautam, Gyani, Salekh and Sonu were following the two. After submission of the charge-sheet, cognizance of the offence(s) alleged was taken, appearance of the accused persons secured, case was committed to the court of Sessions for trial. Two trials were conducted. In Sessions Trial No. 220 of 2006, appellant Chandan Kumar was tried and in Sessions Trial No. 39 of 2005, six other appellants along with four others were tried. The trial court framed charges for the offence under Sections 302/149, 364A, 201 and 120B of the Indian Penal Code.

5. In Sessions Trial No. 39 of 2005, prosecution examined the aforesaid ten witnesses, out of whom, Ganesh Prasad and Raju Kumar did not support the prosecution case and were declared hostile. The other witnesses, namely, Mandodari Devi, Kashi Prasad Gupta, Jitendra Prasad alias Jitendra Kumar, Bharat Prasad Sah, Jai Prakash Gupta, Sushma Kumari, Dr. Arvind Kumar Singh and Sunita Devi have supported the prosecution case in both the trials. In Sessions Trial No. 220 of 2006, all the aforesaid witnesses were examined, except Ganesh Prasad and Raju Kumar.

6. Mandodari Devi, mother of the informant has been examined as P.W.3 in Sessions Trial No. 39 of 2005 and as P.W.4 in Sessions Trial No. 220 of 2006. She has supported the occurrence and has asserted that the occurrence took place about three years earlier. On the date of occurrence at about 6.00 P.M., she was sitting along with her husband near the entrance of her house. Rajendra, Gyani, Gautam, Chandan, Surendra, Salekh and Sonu were also present at the entrance of their houses. Her grandson Ujjawal aged about 12 years, was playing with Raju. Near about dusk, she asked Ujjawal to come inside the house to resume studies, but Ujjawal continued playing. Mandodari Devi, however, returned inside the house to light the lamp. Having lit the lamp, she came to the entrance of her house, but did not find Ujjawal, Raju, Rajendra, Chandan, Gyani and quietness prevailed all around. She searched for Ujjawal in the vicinity and asked about his whereabouts from Raju, who informed her that Chandan had taken Ujjawal in the lane where an unknown person was standing. Mandodari along with her husband

searched for Ujjawal in the lane, but his whereabouts could not be known. She returned home where her daughter-in-law, Sunita Devi, wife of Om Prakash informed her that she had seen from the roof top Chandan holding the hand of Ujjawal and going along with him. Mandodari also instructed the family members to telephonically inform her three sons in Orissa about the disappearance of Ujjawal. Sister-in-law of Mandodari, Saraswati Devi was called from adjoining village Sato Amiyawar, who later telephonically informed the three sons of Mandodari as also other relatives about the disappearance of Ujjawal. Mandodari further stated that having received telephonic information, her three sons arrived from Orissa three days after the occurrence, whereafter Jai Prakash, the eldest son of the witness went to the Police Station to solicit assistance from the police and lodged the present case. Mandodari further asserted that the kidnappers of Ujjawal telephonically called upon the household to pay the ransom amount of Ten/five lacs, whereafter her son Jai Prakash, as per the instruction of the accused persons, went to Dhawapul at 12 noon and paid the ransom amount. In exchange, the accused persons handed over T. Shirt/apparel of Ujjawal to Jai Prakash. Jai Prakash informed her that Gyani, Chandan, Sonu, Nanhkut Chaudhary, Chhotan Khan, Pradeep and Arbind had taken money from him and had also asked him to wait near the bus stand with further undertaking that they shall ensure that Ujjawal boarded the bus. Mandodari further stated that the accused persons had accepted before the police at the Police Station that Ujjawal was killed by them by tying a rope around his neck, his body is buried in a ditch, which is full of watercress. They also dug out the carcass of Ujjawal and handed over to the police. The witness identified the accused persons in court, namely, Gyani, Rajendra, Sonu, Nanhkut and Chhotan Khan as kidnappers of Ujjawal. The witness has stood the test of cross-examination and stated in paragraph 13 that she, her husband and daughter-in-law, Sunita Devi, wife of the informant informed her three sons after their arrival from Orissa the manner in which the occurrence was committed. She also stated in paragraph 14 that before the arrival of the sons from Orissa, police was not informed about the occurrence. In paragraph 15 of the cross- examination, she stated that neither she nor her husband had asked Saraswati Devi or men coming from her house to inform the police about the occurrence. She further confirmed in paragraph 16 that she met the police three days after the occurrence when her sons arrived. In paragraph 18 of the cross- examination, she stated that she had informed the Investigating Officer that her son, Jai Prakash, the informant had informed her that Arvind, Pradeep, Chandan, Nanhkut, Chhotan Khan had taken the ransom money. In paragraph 18 of the cross- examination, she categorically denied the suggestion that Arvind, Pradeep, Chhotan Khan, Gyani, Chandan, Sonu have been falsely implicated. In paragraph 19 of the cross- examination, she has accepted that her father-in-law Maujilal had one brother, Hiralal. Accused Rajendra Prasad is son of Hiralal whose sons Gyani, Gautam and Chandan are also accused in the case. In paragraph 20 of the cross- examination, she has admitted that there was land dispute between her family and the family of Rajendra Prasad, which was decided 20-21 years earlier in favour of Rajendra Prasad, for the present, they

were on dining and visiting terms with each other. In paragraph 22, it has been stated that her house is surrounded by the house of the accused persons and in front of her house, there is vacant land over which the children of the vicinity play. In paragraph 24, she has stated that Chandan was arrested three days after the occurrence. In paragraph 25, she has stated that her statement was recorded by the police also three days after the occurrence. In paragraph 26, she stated Surendra and Rajendra did not visit her house after the occurrence. In paragraph 27, she has confirmed that she and her husband, both were shocked and did not speak to each other about the occurrence.

7. Kashi Prasad Gupta, brother of the informant has been examined as P.W.4 in Sessions Trial No. 39 of 2005 and P.W.1 in Sessions Trial No. 220 of 2006. He also arrived with informant from Orissa on 23.3.2004 between 7.30 -8.00 P.M. when he was informed about the occurrence by his mother, Mandodari Devi, father and sister-in-law, Sunita Devi that Ujjawal was playing with Raju on 21.3.2004 in front of the house. While Ujjawal and Raju were playing, Rajendra Prasad, Gyani Prasad, Gautam Kumar, Chandan Kumar, Surendra Prasad, Salekh Kumar and Sonu Kumar were also present at the entrance of their house. After the evening set in, his mother Mandodari Devi asked Ujjawal to come inside the house to resume studies, but Ujjawal continued playing, his mother Mandodari, however, came inside to light the lamp. Having lit the lamp, she came outside not to find Ujjawal, Raju. Rajendra Prasad, Gyani Prasad, Gautam Kumar, Chandan Kumar, Surendra Prasad, Salekh Prasad, Sonu Kumar were also not present at the entrance of their houses and quietness prevailed all around. His mother searched for Ujjawal in the vicinity and asked for his whereabouts from Raju who informed her that Ujjawal went along with Chandan and one unknown person was in the lane, Ujjawal had also asked Raju to accompany him, but he did not. The witness further stated that his mother searched for Ujjawal, but he could not be found, his sister-in-law, Sunita Devi had seen from the roof top Chandan going along with Ujjawal and such information was conveyed to his mother. In paragraph 2, the witness confirmed that having arrived, he went to the house of Rajendra and Surendra to know about the whereabouts of Ujjawal, but he could not meet any male members in the house of Rajendra Prasad and the family members of Surendra Prasad informed him that they are unaware about the occurrence. In the morning, on 24.3.2004 the Officer-in-charge came at his residence and Jai Prakash lodged the criminal case. Ransom call(s) were received on 1.4.2004 demanding 30/10/5 lacs. Finally the accused persons agreed to release Ujjawal on payment of one lac. On 7.4.2004, I along with Jai Prakash and cousin Jitendra Prasad Gupta went to Bikramganj Dhawapul for payment of the ransom amount, but on account of the presence of the patrolling party near Dhawapul, the witness and others could not contact the accused persons. Having waited for 11/2 hours, the witness and others returned back. Again on 8.4.2004 telephone call was received asking them to come near Dhawapul at about 1.00 P.M. In compliance of such instructions, witness along with informant Jai Prakash and Jitendra went to Dhawapul with the ransom

amount where the accused persons called them and after the three covered some distance, accused persons asked the witness and Jitendra to wait. Witness identified six accused persons present at Dhawapul, namely, Chhotan Khan, Arvind Kumar, Pradeep Kumar, Gyani Prasad, Nanhkut Chaudhary and Sonu. Chhotan Khan took the bag containing the ransom amount of one lac and handed over the T-shirt of Ujjawal. All the accused persons present warned the witness and his two brothers not to disclose, failing which they along with Ujjawal shall be killed. Accused present at the Dhawapul also assured that Ujjawal shall return within two hours. Witness and others waited for return of Ujjawal for 4-5 days, but when he did not come back, Police was informed the names of the accused persons, Chhotan Khan, Arbind, Pradeep, Nanhkut and Gyani. On 27.4.2004, the Officer-in-charge arrested Chhotan Khan, Arvind Kumar, Pradeep and Sonu and recorded confessional statement of Chhotan Khan, who confessed to have kidnapped Ujjawal on 21.3.2004 and to have killed him on the banks of Sone river by tying a rope around his neck and buried his dead body in a ditch beneath the watercress. Chhotan Khan further confessed that his accomplice in the crime, who had conspired for the abduction of Ujjawal were Rajendra Sao, Surendra, Gautam and Salekh and occurrence was committed with the active assistance of Arbind, Pradeep, Sonu, Gyani, Chandan. The witness also confirmed that he was present at the police station when Chhotan Khan was recording his confessional statement. The witness further stated that Officer-in-charge along with accused persons, Chhotan, Arbind, Pradeep and Nanhkut went to the bank of river Sone at Dehri and recovered the dead body of Ujjawal at the instance of the aforesaid four accused persons in presence of the witness, Jai Prakash Gupta and Bharat Sao, who identified the dead body. The witness has stood the test of cross-examination and has again reiterated in paragraphs 13 and 14 of the cross-examination that after his arrival on 23.3.2004, he had gone to the house of Ramji Prasad, Baijnath, Soni, Ajay, Sanjay Sah and others as also to the house of Rajendra Prasad and Gyani on 23.3.2004 itself, but none had told him anything about the occurrence. In paragraph 15, the witness confirmed that his father had given information to the police on the basis of which station diary entry was recorded on 22.3.2004. He also confirmed that fard-e-beyan was lodged on 24.3.2004 in the morning and name of Chandan Kumar was also disclosed to the police on the same day. In paragraph 19 of the cross-examination, he confirmed that he does not have the list of telephone number wherefrom ransom call was received. Verbal information about the ransom call received was being conveyed to the Officer-in-charge. In the same paragraph the witness admitted that advance information about the instructions dated 7/8.4.2004 of the accused persons to come with the ransom amount of One lac at Dhawapul was not given to the officer-in-charge. In paragraph 21 of the cross-examination, he has confirmed the name of his relatives from whom One lac was arranged for payment to the accused persons. In paragraphs 22 and 23 witness further confirmed that dead body of Ujjawal was a carcass, which was identified by him on account of overlapping incisor (front) teeth and fracture sign on the forehead of Ujjawal. After recovery of the dead body, the Officer-in-charge prepared a

recovery memo. In the same paragraph, the witness has denied the suggestion that Rajendra and his two sons have been falsely implicated. In paragraph 24, the witness accepts that at the time of his arrival on 23.3.2004, his relatives were at his residence, who informed him that station diary entry has been made in regard to the occurrence. The witness confirmed in paragraph 26 that information about non-payment of One lac to the accused persons as ransom amount near Dhawapul on 7.4.2004 was not given to the Officer-in-charge. In paragraph 27 of the cross-examination, the witness confirmed that accused Arbind Kumar and Pradeep Kumar are co-villagers and are known to him from much before. In the same paragraph and in paragraph 31, it is further stated that even after payment of ransom amount on 8.4.2004 when Ujjawal did not return, information was given in the police station on 12.4.2004 disclosing the names of the accused persons. The witness, however, states that he does not remember whether he or his other brothers and relatives had gone to the police station on or before 9/11.4.2004. In paragraph 28, the witness confirmed that besides the present case, accused Arbind and Pradeep are not accused in any other case. In paragraph 29, the witness states that on 7/8.4.2004 when he had gone to Dhawapul for payment of ransom amount, other strangers were not present in its vicinity. In paragraph 32, the witness confirmed that he had informed the Officer-in-charge about the complicity of accused Arbind Kumar and Pradeep Kumar in the crime and denied the suggestion that Arbind Kumar and Pradeep Kumar have been falsely implicated in the case for the reason that they are the neighbours of the witness. In paragraph 34 of the cross-examination, the witness accepted that the accused persons while accepting the ransom money at the Dhawapul had covered their face with towel and witness was at a distance of 20 feet from the accused persons. In paragraph 35, the witness accepted that he does not remember the size and the mark of T-shirt of Ujjawal, which remained in the house during the period between 8.4.2004 till 27.4.2004 and was handed over to the Officer- in-charge on 27.4.2004. He also confirmed the fact that during the aforesaid period i.e. 8.4.2004- 27.4.2004, he met the police officers on two occasions i.e. on 12.4.2004, the witness, however, does not remember the other date when he met the police officers on the second occasion. He also confirmed that he and his other brother, Jai Prakash Gupta met the police officer together. He made verbal statement before the police on 12.4.2004. In paragraph 36, the witness further confirmed that he learnt about the occurrence from his father, aunt and mother who gave detailed description of the occurrence. In paragraph 37, the witness confirmed the fact that he has stated before the officer-in-charge as to how he and his other brothers had gone to pay the ransom amount on 7.4.2004, which could not be paid on account of the presence of the Patrolling party and after waiting for 11/2 hours, they had come back on 7.4.2004. He further stated in the same paragraph the manner in which ransom amount was paid on 8.4.2004 to six accused persons, namely, Chhotan Khan, Arbind, Pradeep, Gyani, Nanhkut and Sonu Kumar and that the accused persons were identified by him. He further clarified in the same paragraph that it was Chhotan Khan who had handed over the T-shirt of Ujjawal after receiving the

ransom amount of One lac and having received the ransom amount, the accused persons threatened of dire consequences in case of disclosure. In paragraph 38 also the witness reiterated the fact that having paid the ransom amount when Ujjawal did not come back then after waiting for 4-5 days, information about the complicity of accused persons giving out specific name was given to the Officer-in-charge on the basis of which the accused persons, Chhotan Khan, Arbind Kumar, Pradeep and Sonu were arrested on 27.4.2004 and their confessional statement was recorded in which they accepted the guilt that on 21.3.2004 having kidnapped Ujjawal, they killed him by tying a rope around his neck and buried his dead body beneath watercress. The witness further confirmed that Chhotan Khan disclosed the names of the conspirators, namely, Rajendra Sao, Surendra, Gautam, Salekh and stated that he (Chhotan Khan) along with conspirators and Arbind, Pradeep, Gyani and Sonu kidnapped Ujjawal and killed him. The witness also confirmed that Officer-in-charge had taken Chhotan, Arbind, Pradeep and Nanhkut to the bank of river Sone at Dehri where they dug out the dead body of Ujjawal. In paragraph 40, the witness accepted that his elder brother, Jai Prakash Gupta had two marriages. Ujjawal is the son of Late Pratima Devi, after whose death, Jai Prakash again married with Babita Devi who gave birth to a daughter. Om Prakash and his wife Sunita have only one son, namely, Akash. The witness has only one daughter. In the same paragraph, the witness has denied the suggestion that the relationship between Ujjawal and Babita was not cordial and that she used to assault him frequently. In paragraph 41 again he has denied the suggestion that he has falsely implicated Surendra Prasad on account of land dispute. In paragraph 42, the witness accepted that he is known to Nanhkut from before as he is resident of the same locality and is an electrician and was once involved in theft of cycle. In paragraph 43, the witness has stated that when he identified Nanhkut at Dhawapul, he did not inform his guardian in the village about the conduct of Nanhkut. In paragraph 44, the witness confirmed that he also knew Chhotan Khan from before who resided as a tenant in the house of Kayum Mian, the barber and is engaged as a hawker of cloths. Even after payment of ransom amount when Ujjawal did not return, the witness did not visit the house of Chhotan Khan. In paragraph 45, the witness confirmed that accused persons recorded their confessional statement in his presence at the police station and denied the suggestion that Chhotan Khan and Nanhkut did not record their confessional statement.

8. Jitendra Prasad alias Jitendra Kumar, maternal brother of the informant has been examined as P.W.5 in Sessions Trial No. 39 of 2005 and P.W.3 in Sessions Trial No. 220 of 2006. He was also at his work place in Orissa and telephonically learnt about kidnapping of Ujjawal Kumar alias Guddu, son of his maternal brother. Having learnt about the occurrence, he came to Hariharganj where he was informed about the occurrence by maternal uncle, Dhrub Narayan Sao, his wife Mandodari Devi and sister-in-law, Sunita Devi and one Alakh Niranjana that at about 6.00 P.M. in the evening on 21.3.2004, Ujjawal was playing with Raju in front of the house of Rajendra Sao, family members of Rajendra and Surendra

were also present in the vicinity of their houses. While his maternal uncle had gone to ease himself, the maternal aunt asked Ujjawal to come inside the house, who said that he would play for some more time and continued playing. The maternal aunt, however, came inside to light the lamp, having lit the lamp, she again went outside within 5-10 minutes, but did not find Ujjawal, Raju, including Rajendra, Surendra and their family members who were earlier present while the two were palying. The maternal aunt of the witness thereafter, while searching Ujjawal, went to the house of Raju and learnt from Raju that Chandan has taken Ujjawal towards the lane, whereafter maternal aunt of the witness went into the lane and searched for Ujjawal in 2-4 houses, but the whereabouts of Ujjawal could not be known. The maternal aunt of the witness thereafter came back to her house and was informed by the middle sister-in-law of the witness, Sunita Devi that she had seen Ujjawal from the roof top going along with Chandan. In paragraph 2 of the examination-in-chief, the witness stated that ransom calls were received. On 7.4.2004, he alongwith Kashi Prasad Gupta, P.W.4/P.W.1 and Jai Prakash, the informant had gone to Dhawapul at about 7.00 P.M. in the evening with One lac, but could not meet the accused persons and having waited at the Dhawapul for 11/2 hours, they came back. Again on 8.4.2004, the accused persons telephonically informed them to come at Dhawapul around 1.00 P.M., whereafter the witness along with Kashi Prasad and Jai Prakash again went to Dhawapul on motorcycle with One lac at 1.00 P.M. After alighting from the motorcycle, the witness noticed that six accused persons were sitting on the southern end of the bridge and the witness claims to have identified those sitting on the southern end of the bridge as Chhotan Khan, Arbind, Pradeep, Gyani, Sonu and Nanhkut Chaudhary. While the witness and his two brothers were proceeding towards the accused persons and had covered the distance of 10 steps, one amongst the accused persons asked only one of the three to come near them, whereafter Jai Prakash went ahead, the witness and Kashi Prasad stayed there. Amongst the accused persons, Chhotan Khan stood up and came forward displaying the T-shirt of Ujjawal. Jai Prakash having identified the T-shirt, exchanged the T-shirt with the bag ontaining One lac from accused Chhotan Khan, whereafter all the six accused persons told that the victim boy shall come back within two hours and further threatened that in case of disclosure, consequences shall be bad. In paragraph 3 of the chief, the witness stated that he learnt on 27.4.2004 that the accused persons have been apprehended, whereafter he went to the police station and saw Chhotan Khan, Nanhkut Chaudhary, Arbind, Pradeep, Sonu, Gautam and Rajendra Prasad present there. The witness also claims that Chhotan Khan recorded his confessional statement that on the date of occurrence itself Ujjawal was taken to Dehri and killed, whereafter the Officer-in-charge took Chhotan Khan, Arbind, Pradeep and Nanhkut Chaudhary to Dehri. The witness along with Kashi Prasad, Jai Prakash and Bharat Prasad also went to Dehri and in their presence from the eastern bank of river Sone near the railway crossing, carcass of Ujjawal was dug out from beneath the watercress by Arbind, Chhotan, Pradeep and Nanhkut Chaudhary as also the members of the police force present there. The carcass

was identified to be that of Ujjawal Kumar. In paragraph 4, the witness has identified all the accused persons present in the dock. The witness has stood the test of cross-examination. In paragraph 11, he has stated that on the second day at the Dhawalpul, the witness and his two brothers remained for 10-20 minutes and the development of that day was informed to the police by other brothers on 12.4.2004 and he had not gone to give such information to the police. In paragraph 12, the witness says that on 5.5.2004, he recorded his statement before the police. In the same paragraph, he states that on 27.4.2004, Jai Prakash, Bharat and Kashi Prasad, family members of his maternal uncle were present at the police station along with others. In paragraph 13, the witness accepts that Chandan was arrested on 24.3.2004, but Rajendra and his two sons, Gayni and Gautam were arrested on 27.4.2004 from their residence. In paragraph 16, the witness explains the fact that carcass was identified by fracture sign/dent mark over the forehead and on account of overlapping of incisor (front) teeth. In paragraph 17, the witness denied the suggestion that at the instance of his maternal uncle, he has falsely implicated Rajendra and his family members. In paragraph 18, the witness clarifies that on the first day (7.4.2004) he and others returned from the Dhawalpul at about 8.30 P.M. and beneath the bridge, there was water in canal, but the Chart land was fallow and dry. In paragraph 19, he has stated that the ransom calls were received on telephone No. 232342 by Jai Prakash. In paragraph 20, the witness clarified that at the time of payment of the ransom amount, he had not seen anyone present in the hut and the temple situate by the side of Dhawalpul. In paragraph 21, the witness claims to have known the accused persons from long time before and further claims that he can disclose the details of apparel put on by them on the date of payment of the ransom amount. In paragraph 22, he admits that his mother had reached Hariharganj before he reached there from Orissa. In paragraph 24, the witness states that he does not remember whether his maternal uncle, aunt and sister-in-law had informed him the name of the accused persons when he came to Hariharganj from Orissa. In paragraph 26, the witness denies the suggestion that he had not given the statement against Arbind and Pradeep before the police and that he is falsely deposing to implicate the accused persons. In paragraph 32, the witness confirmed that the carcass was intact when the same was dug out. In paragraph 34, he denied the suggestion that he had reported to the Officer-in-charge that on 8.4.2004 near the Dhawalpul he and Kashi remained near the motorcycle. In paragraph 35, the witness accepts that on 8.4.2004, the accused persons had covered their faces with towel up-to lip. In paragraph 38, the witness accepted that he did not inquire from the family members of Nanhkut Chaudhary why Ujjawal did not return. The witness also does not remember whether Jai Prakash and Kashi asked from the parents of Nanhkut Chaudhary why Ujjawal did not return even after payment of ransom. In paragraph 13 of his cross-examination in Sessions Trial No. 220 of 2006, the witness specifically asserted that after his arrival from Orissa at Hariharganj, he learnt about the occurrence from his maternal uncle, aunt and sister-in-law, Sunita Devi and statement to that effect was given by him

in the police station.

9. Bharat Prasad Sah is a close relative of the informant as the informant is the son of his brother-in-law, has been examined as P.W.6 in Sessions Trial No. 39 of 2005 and P.W.2 in Sessions Trial No. 220 of 2006. On the date of occurrence, he was also at his work place at Asansol. Having received the information about the kidnapping of Ujjawal, he came to Hariharganj where Dhruv Narayan Sao, his brother-in-law, his wife Mandodari Devi and their daughter-in-law, Sunita Devi informed him about the manner of occurrence. From paragraph 8 of his evidence, it is evident that he did not accompany the informant to Dhawapul for payment of ransom amount and has deposed as hearsay witness. From paragraph 11 of the deposition, it further appears that he is a witness to the factum of the recovery of the dead body by the accused persons. From paragraph 29, it appears that he has been examined by the police on 27, 28.3.2004 which appears to be a mistake for 27, 28.4.2004 and 5.5.2004. In paragraph 6 of the cross- examination in Sessions Trial No. 220 of 2006, the witness categorically denied the suggestion that he did not inform the police that Sunita Devi had informed him that she had seen Chandan from the roof top holding the hand of Ujjawal and going along with him.

10. Jai Prakash Gupta, the informant and father of Ujjawal has been examined as P.W.7 in Sessions Trial No. 39 of 2005 and P.W.5 in Sessions Trial No. 220 of 2006. On the date of occurrence i.e. 21.3.2004, he was at Raigarh in the State of Orissa, his work place and was telephonically informed about the occurrence at about 8.00 P.M. by his father. Having learnt about the occurrence, he telephonically informed his other brothers, namely, Om Prakash, Jitendra and Kashi Prasad about the occurrence and proceeded for Hariharganj reaching on 23.3.2004 at 8.00 P.M. Having reached home, he spoke to his mother, father and Sunita Devi, wife of his younger brother about the occurrence. The mother of the witness informed him that on 21.3.2004 at about 6.00 P.M., Ujjawal Kumar and Raju Kumar were playing in the vacant land in front of their house and Chandan Kumar, Gautam, Gyani Prasad, Rajendra Prasad, Salekh Kumar, Sonu Kumar and Surendra Prasad were at the entrance of their respective houses. His mother further informed him that she asked Ujjawal that evening has set in and he should come inside the house to resume studies, but Ujjawal continued playing. Mother of the witness thereafter went inside the house for lighting the lamp and his father went to ease himself. Having lit the lamp, mother of the informant came out of the house and found that Ujjawal Kumar was not present. She thereafter called Ujjawal loudly and went to the house of Raju Kumar, who informed her that he had seen Chandan holding the hand of Ujjawal and taking him towards the lane. Ujjawal had also asked Raju to come along with him, but Raju did not accompany him. Having learnt the aforesaid fact, mother of the informant searched for Ujjawal in the lane for some distance, but his whereabouts could not be known. Mother of the informant thereafter came back to her house and was informed by Sunita Devi, wife of the younger brother of the informant, Om Prakash that while she was picking up the dry clothes at the

roof, she also saw Chandan holding the hand of Ujjawal and both were going together and behind them, Rajendra Prasad, Gautam Kumar, Gyani Prasad, Sulekh Kumar, Sonu Kumar and Surendra Prasad were following the two. On 24.3.2004, Sushma Kumari, the Officer-in-charge of Nasariganj police station came to the house of the informant and recorded his fard-e-beyan. Having lodged the fard-e-beyan, informant searched for Ujjawal in his own village as also in the adjoining villages. In course of search, enquiries were made from the family members of Rajendra Prasad and Surendra Prasad, but they became angry and did not divulge anything about Ujjawal. Ransom call was received on 30.3.2004 on telephone number 232342. Initially the ransom caller was demanding 20, 5 lacs. On 5.4.2004, deal was struck for payment of the ransom money of Rs. One lac, whereafter on 7.4.2004 at 7.00 P.M. , the informant, Jitendra Prasad and Kashi Prasad went with One lac to Dhawapul but the accused persons could not be contacted, as patrolling party was found patrolling near Dhawapul. On the following day i.e. 8.4.2004, accused persons again gave ransom call and asked that the ransom amount of One lac be paid at Dhawapul at 1.00 P.M. On 8.4.2004 at about 1.00 P.M., the informant, Jitendra Prasad and Kashi Prasad went to Dhawapul on a motorcycle with the ransom amount. Having parked the motorcycle by the side of the bridge, the informant and his brothers proceeded and identified six accused persons, namely, Chhotan Khan, Pradeep Kumar, Arbind Kumar, Sonu Kumar, Gyani Prasad and Nanhkut Chaudhary @ Shyamji Chaudhary. Chhotan Khan asked the informant to come alone, no sooner the informant reached near the accused persons, Chhotan Khan came ahead and displayed the T-shirt of Ujjawal Kumar, informant having identified the T-shirt of Ujjawal Kumar, took the T-shirt and handed over bag containing the ransom amount of One lac to Chhotan Khan, who told the informant that his son would reach home within 2 hours. The six accused persons further told the informant that as he has identified them not to disclose their identity, failing which they shall not spare anyone in his house even to light the lamp. The informant and others thereafter came back and waited for 2-3 days for Ujjawal to arrive and noticed that in the meanwhile, Surendra Prasad, Salekh Kumar, Gautam Kumar, Rajendra Prasad were keeping a close watch on the activities of the informant. When Ujjawal Kumar did not return, on 12.4.2004, the informant informed the Officer-in-charge, Nasariganj police station about the names of the aforesaid six accused persons, namely, Chhotan Khan, Arbind Kumar, Pradeep Kumar, Sonu Kumar, Gyani Prasad and Nanhkut Chaudhary, who had taken the ransom amount on 8.4.2004. The accused persons were apprehended on 27.4.2004 and the informant saw them sitting in the Varanda of the police station. Statement of Chhotan Khan was recorded by the Officer-in-charge, who made his statement fearlessly and also signed beneath his statement, Ext. 1, which was also perused/identified by the informant. Chhotan Khan stated in his statement that on the instruction of Chandan, he along with Arbind Kumar and Nanhkut Chaudhary had taken Ujjawal to Dehri on the banks of river Sone and killed him by pressing his throat with coconut rope, the dead body has been buried beneath the watercress. Officer-in-charge having recorded the confession

of Chhotan Khan, went to Dehri along with Chhotan Khan, Pradeep Kumar, Arbind Kumar and Nanhkut Chaudhary. The informant and Bharat Prasad also accompanied them. At Dehri near the bank of Sone river, after removing watercress, dead body of Ujjawal was dug out. The carcass was intact from skull to feet, at the joints flesh was also visible. The Informant identified the carcass as that of Ujjawal since Ujjawal had dent mark over his forehead and overlapping incisor (front) teeth. Coconut rope was also found and seized with the carcass. The Officer-in-charge, Sushma Kumari drew up recovery memo in front of the informant and Bharat Prasad, who signed as witnesses over recovery/seizure memo, Ext.4. After recovery of the carcass, officer-in-charge and others returned to the police station. The informant thereafter produced before the officer-in-charge the T-shirt, which he had exchanged from Chhotan Khan on payment of ransom money in presence of witness Ajay Kumar Gupta and Ramji Prasad. Officer-in-charge drew up seizure memo of the T- shirt over which the informant, Ajay Kumar Gupta and Ramji Prasad put their signature, the seizure memo is Ext. 4/A. Nanhkut Chaudhary, Pradeep Kumar and Arbind Kumar also recorded their confessional statement in presence of the informant, which is in the handwriting of the Officer-in-charge, Sushma Kumari and signed by the respective accused persons and marked as Exts. 5, 5/A and 5/B. In paragraph 13 of the chief, the informant has indicated that land dispute is the cause of the occurrence, as 15-20 days earlier at the time of Holi festival, mud clod and stones were thrown at his house by the family members of Surnedra Prasad and Rajendra Prasad, which led to altercation with his mother, the accused persons threatened them of dire consequences. Informant had also made telephone call and was also threatened. In paragraph 14, the informant identified the rope, which was recovered from the bank of river Sone in his presence and the rope was marked as material Ext.I. In paragraph 15, the informant identified the T-shirt of Ujjawal, which was given to him by Chhotan Khan at the time of payment of ransom amount and produced by the informant before the officer-in-charge. The T-shirt was marked as material Ext.II. In paragraph 16, the witness identified all the accused persons present in dock by their name and further claimed that he can identify those who are represented through counsel. In paragraph 17, the informant claimed that witness, Raju Kumar has been gained over. The witness has been cross-examined at length, which is evident from the contents of paragraph Nos. 18 to 65 of his cross-examination and perusal thereof indicates that the witness has stood the test of cross-examination. In paragraph 18, he has stated that Ujjawal on the date of occurrence was 12-13 years old and his height was 4-41/2 feet. In paragraph 19, he has clarified that the place from where the dead body was recovered, was not a cremation ground and no other dead body was found cremated there. In paragraph 21, he has clarified that on 12.4.2004, he made verbal statement before the Officer-in-charge. In paragraph 22, he has further clarified that he did not hand over the T-shirt to the Officer- in-charge until recovery of the carcass and denied the suggestion that he has handed over any other T-shirt of Ujjawal from his house. In paragraph 23, he clarified that while giving description of the physical appearance of Ujjawal, he

had informed the Officer-in-charge that Ujjawal had overlapping teeth and there was fracture/dent mark over his forehead. In the same paragraph, he, however, states that he does not remember whether such description of Ujjawal was recorded by him before the Magistrate. In paragraph 24, he states that he had signed the fard-e-beyan after having perused the same and having found the contents correct. In paragraph 25, he states that he recorded his statement before the Magistrate on 29.4.2004 and the third statement before the Officer-in-charge on 28.4.2004, which was written by the Officer-in-charge. In paragraph 26, he states that before the Magistrate, he had stated that having received information about the occurrence, he reached his home on 23.3.2004 in the evening and spoke to mother, father and Sunita, wife of his younger brother and learnt about the occurrence from his mother that on 21.3.2004 at about 4.00 P.M. in the evening, Ujjawal Kumar and Raju Kumar were playing in front of the house in the vacant land and Chandan Kumar, Gautan, Gyani, Rajendra Prasad, Salekh, Sonu and Surendra were at their residence. In the same paragraph, he claims to have stated before the learned Magistrate that his mother had asked Ujjawal to come inside the house and resume studies but Ujjawal continued playing whereafter mother of the informant went inside the house to light the lamp and his father went to ease himself. He further claimed to have stated before the Magistrate that his mother told him that when she came after lighting the lamp, she did not find Ujjawal. He further claimed that he had stated before the Magistrate that his mother had gone to search for Ujjawal when Raju told her that he had seen Chandan holding the hand of Ujjawal and taking him towards the lane along with one another person. In paragraph 27, informant stated that he does not remember whether he had stated before the Magistrate that his mother informed him that after having searched Ujjawal when she came back to her house, Sunita Devi, wife of the younger brother of the informant informed the mother of the informant that while she was picking up dried clothes from the roof, she had seen Chandan holding the hand of Ujjawal and going along with him followed by Surendra, Salekh, Gyani etc. In the same paragraph, he claims to have stated the aforesaid facts before the police in his further statement. In the same paragraph, he further states that he does not remember whether he had stated before the Magistrate about non-cooperation of Rajendra, Surendra Prasad and their family members during the search and enquiry and that they became angry when queries were made about the whereabouts of Ujjawal from them. In paragraph 28, he claimed that after 7- 8 days of the occurrence, I.D. Caller was installed in the telephone at his residence, but he could neither note the number nor obtained print out from the telephone department. The police authorities may have taken out such print out. In paragraph 29, he further stated that he had not noted the number wherefrom ransom call for payment of One lac was made. In paragraph 30, he stated that at the time of payment of ransom amount at Dhawapul, two persons had accompanied him and denied the suggestion that he was accompanied by three. He further stated in the same paragraph that before the Magistrate, he had stated that on the second day he received telephone call instructing him to come at Dhawapul with ransom money

at 1.00 P.M. On 7.4.2004 also he had gone to Dhawapul with Jitendra Prasad and Kashi Prasad with One lac. In the same paragraph, he, however, clarifies that he does not remember whether he had stated before the Magistrate that he had gone with Jitendra and Kashi Prasad on a motorcycle. In paragraph 31, he has stated that when he reached Dhawapul, he saw six accused persons, who had covered their faces with towel. In paragraph 32, he denied the suggestion that he told the Officer-in-charge that from the gait and gesture of the six accused persons, it appeared to him that he had seen them before. In paragraph 33, the informant accepted that he stated before the learned Magistrate that six accused persons having taken the ransom amount gave him the T-shirt as also warned him not to disclose their identity since he had identified them failing which they shall not spare anyone in his house to even light the lamp. In the same paragraph, the informant accepted that he had spoken before the Magistrate that even after receipt of the ransom amount when his son did not return then on 12.4.2004, he informed the Officer-in-charge the name of the six accused persons, who had taken the ransom amount of One lac. In the same paragraph, the informant further stated that he had stated before the Magistrate that his son could not be traced, but his carcass was traced near Dehri bridge beneath the watercress. In the same paragraph, he stated that he does not remember whether he had informed the Magistrate that the confessional statement of Chhotan Khan was recorded by the Officer-in-charge in his presence and that Chhotan Khan was recording his statement fearlessly and that he signed the statement. In the same paragraph, he further claimed that before the Magistrate, he had stated that Chhotan Khan had confessed that as per the instruction of Chandan, he along with Arbind Kumar and Nanhkut had taken Ujjawal to Dehri near Sone river and killed him by pressing his throat with coconut rope and buried his dead body beneath the watercress. He further accepted in the same paragraph that before the Magistrate, he stated that along with Officer-in-charge at about 12.00 Noon he, Bharat Prasad and the accused persons namely, Chhotan Khan, Pradeep Kumar, Arbind Kumar and Nanhkut Chaudhary had gone to Dehri near the bank of Sone river where the carcass was dug out by the four accused persons from beneath the watercress. In paragraph 34, he accepted that having come from Orissa, he did not ask from his father whether information about the occurrence has been lodged before the police. In paragraph 35, he claimed that he had not stated before the Officer-in-charge that he had any land dispute with Surendra Prasad. He further denied the suggestion that he wanted Surendra Prasad and his sons to become witness in this case, but when they did not agree to become the witness, they have also been falsely implicated. In paragraph 36, he accepted that he had not informed the Dy.

11. Dr. Arbind Kumar Singh has been examined as P.W.9 in Sessions Trial No. 39 of 2005 and P.W.8 in Sessions Trial No. 220 of 2006. At the request of the Investigating Officer, he examined the skull with mandible (lower jaw), one humerus (largest bone of arm), one Tibia (bone connecting knee with the ankle) and flat part of right pelvic bone and submitted report dated 6.7.2004,

Ext.7, perusal whereof indicates that the bones were of human being, whose age was between 13 to 15 years and sex was male. During examination- in-chief, he has confirmed the aforesaid findings recorded in the report and reiterated the findings in the cross-examination.

12. Sunita Devi, wife of Om Prakash Gupta and younger sister-in-law of the informant has been examined as P.W.10 in Sessions Trial No. 39 of 2005 and P.W.7 in Sessions Trial No. 220 of 2006 in compliance of the order dated 23.5.2006, 9.8.2007 passed in the two trials. Perusal of the aforesaid two orders of the trial court dated 23.5.2006 and 9.8.2007 indicates that trial court allowed the examination of Sunita Devi as witness in the two trials, as it was of the opinion that witnesses, P.W.3 Mandodari Devi, P.W.4 Kashi Prasad Gupta, P.W.5 Jitendra Prasad and P.W.6 Bharat Prasad Sah had deposed in the trial court that they derived information about the disappearance of Ujjawal from Sunita Devi who informed the aforesaid witnesses that she had seen Chandan from the roof top holding the hand of Ujjawal and going along with him followed by Rajendra, Surendra, Gautam, Gyani, Salekh and Sonu and there was no reason for her not to appear before the Investigating Officer to record her statement u/s 161 Cr.P.C. and in appreciation of the aforesaid fact examination of Sunita Devi was allowed with reference to the powers contained in Section 311 Cr.P.C. to examine any material witness though not included in the charge sheet. She has stated in paragraph 1 of her examination-in-chief that the occurrence has taken place 21/2 years before in the evening between 6-7 P.M. when she had gone to the roof for picking up the dried clothes she had seen Chandan holding the hand of Ujjawal and both were going together. Rajendra , Gautam, Gyani, Surendra, Salekh and Sonu were following the two from behind. She identified Gautam, Salekh and Surendra standing in the dock and further claimed that she can identify the represented accused, Rajendra and Sonu, if they are made available for identification. During cross-examination, in paragraph 2, she confirmed that she had informed her mother-in-law and father-in-law, father-in-law about the disappearance of Ujjawal at the instance of Chandan and the two were being followed by Rajendra, Surendra and their sons. In paragraph 3 of the cross-examination, she further confirmed that she also informed the aforesaid facts to Jai Prakash, her husband Om Prakash and Kashi Prasad when they returned from Orissa that Chandan was holding the hand of Ujjawal and going along with him followed by Rajendra, Gautam, Gyani, Surendra, Salekh and Sonu. In paragraph 4 of the cross- examination, she confirmed that the police officers had not come to her house either on the date of occurrence or on the day following. She further confirmed that the officer-in- charge never enquired anything about the occurrence from her either on the date of occurrence or the next morning. She also stated that on the date of occurrence, Ujjawal was wearing T-shirt of Chocklet colour, but she does not remember the number and mark of T-shirt. In paragraph 6 of the cross-examination, she has confirmed the topography of her house. In paragraph 7, she has stated that the informant, Jai Prakash married twice and Ujjawal is the son of his first wife, who is dead. From the second wife,

Jai Prakash has two daughters. In paragraph 8, she stated that on the day following after the occurrence, police did not arrest anyone from the house of Rajendra and Gyani. Chandan was arrested on 24.3.2004 after the police party visited her house at 6 A.M. She further asserted that she informed the police about the complicity of Rajendra, Gyani and Gautam in the occurrence before the arrest of Chandan on 24.3.2004. She has further denied the suggestion that she had not seen Chandan from the roof of her house holding the hand of Ujjawal and both going together and that she has deposed falsely. In paragraph 17 of her cross-examination in Sessions Trial No. 220 of 2006, the witness categorically asserted that her statement was taken by the police officer on 24.3.2004, but she is not aware whether such statement was recorded in the case diary by the police officer.

13. Sushma Kumari, the Officer-in-charge of Nasariganj P.S. is the Investigating Officer, who has been examined as P.W.8 in Sessions Trial No. 39 of 2005 and P.W.6 in Sessions Trial No. 220 of 2006. In paragraph 1 of her examination-in-chief, she has stated that on 24.3.2004, she recorded the fard-e-beyan of Jai Prakash Gupta at 9.00 A.M., which is in her handwriting and was signed by the informant in her presence on the basis of which Nasariganj P.S. Case No. 30 of 2004 was registered and the formal First Information Report was drawn by her, Ext.6. She took up the investigation and recorded further statement of the informant, statement of witness Raju Kumar as also inspected the place of occurrence, which is pitch road in front of the house of the informant in Hariharganj locality of Nasariganj town wherefrom the son of the informant, while playing with Raju, was abducted. She instructed the informant to install caller I.D. in his telephone No. 232342 and thereafter arrested accused Chandan Kumar and returned to the police station. Informant informed her that the ransom call was received between 9-10 O clock on the basis of which print out was obtained. Confidentially the Investigating Officer learnt about the complicity of Chhotan Khan who earlier was tenant in Hariharganj locality, but is presently residing in Milky locality within Piro police station. Having received such information, along with Officer-in-charge Piro police station, she raided the house of Chhotan Khan and arrested him. On interrogation, Chhotan Khan accepted his complicity along with Arbind Kumar of Nasariganj, Pradeep Kumar, Sonu Kumar, Nanhkut Chaudhary alias Shyamji Chaudhary, Chandan Kumar and his father and brother, Gautam, Gyani, all resident of Mohalla Hariharganj. Having arrested Chhotan Khan, the Officer-in-charge along with Chhotan Khan came to Nasariganj and as per the lead given by Chhotan Khan, raid was conducted at the house of accused Arbind Kumar, Pradeep Kumar, Sonu Kumar, Chandan and his father, Rajendra and brother Gautam Kumar and Shyamji Chaudhary alias Nanhkut Chaudhary and they were arrested. On search, 2000/- was recovered from the person of Chhotan Khan. Chhotan Khan also recorded his confessional statement, Ext.5/C, wherefrom it appears that Chhotan Khan along with Nanhkut Chaudhary and Arbind Kumar had taken Ujjawal Kumar to Dehri railway crossing near the bank of river Sone and had killed him by pressing his throat with

coconut rope. He had taken out the T-shirt of the victim and had concealed the dead body near the bank of river Sone beneath the watercress. On the basis of the statement of Chhotan Khan, the Officer-in-charge along with armed force and accused Arvind Kumar, Nanhkut Chaudhary and Pradeep Kumar and family members of Ujjawal Kumar went to Dehri and having reached near the bank of river Sone, recovered skeleton/carcass of Ujjawal Kumar from the watercress near the bank of river Sone as per the information divulged by the accused persons, a coconut rope soaked with mud and water was also recovered. The skeleton was identified by the informant and his relative, Bharat Prasad on the basis of the dent mark on the forehead and the overlapping of the incisor (front) teeth. In paragraph 13 of the examination-in-chief, she (I.O.) has given the description and topography of the place wherefrom the carcass was recovered. The recovery/seizure memo of the skeleton was prepared by the officer-in-charge in her own handwriting in presence of the informant and Bharat Prasad, the memo is marked as Ext.4. In paragraph 16, the Investigating Officer states that the informant had obtained T-shirt of his son from the accused persons after payment of ransom amount of One lac, which was produced by the informant before her and production/seizure list was made in presence of the witness Ajay Kumar Gupta and Ramji Prasad, Ext.4/A. Arrested accused Shyamji Chaudhary alias Nanhkut Chaudhary, Pradeep Kumar, Arbind Kumar also recorded their confessional statement and singed the same out of their own volition, Exts. 5, 5/A and 5/B. In paragraph 18, the Investigating Officer stated that she visited the house of Nanhkut Chaudhary where his mother, Lalita Devi gave the Investigating Officer 1000/- (one thousand) stating that the said amount was given to her by Nanhkut. Having recovered the amount, the Investigating Officer prepared seizure-cum- production memo in presence of two witnesses, Ext.4/C. In paragraph 19, she has stated that in course of investigation, she visited the house of Jai Prakash Gupta and recorded his further statement as also the statement of Mandodari Devi, Kashi Prasad Gupta and Bharat Prasad. In paragraph 20, she states that she obtained print out of the calls received by the informant, which is appended with the case diary. In paragraph 21, the Investigating Officer states that in course of investigation, Gyani Prasad of Hariharganj was arrested. In the same paragraph, she further states that skeleton/carcass recovered was sent to P.M.C.H. for examination and report. Having collected the materials and having found the allegations to be true, charge sheet against accused Chandan Kumar, Arbind, Pradeep Kumar, Sonu Kumar, Chhotan Khan, Gautam Kumar, Gyani Prasad, Shyamji Chaudhary alias Nanhkut Chaudhary, Rajendra Prasad, Triloki Upadhyay and Avinash Upadhyay was submitted and the investigation kept pending against accused Surendra Prasad and Salekh Kumar. Further investigation was also conducted by her, but she handed over the investigation to S.I. Rajeev Kumar on 9.8.2004. In paragraph 27, she has stated that she produced the informant, Jai Prakash Gupta for recording his statement u/s 164 Cr.P.C. In the same paragraph, she has further stated that the date and time of the steps taken by her in course of investigation has been mentioned in the case diary by her. In paragraph 29, the

Investigating Officer identified the material exhibit coconut rope and the T-shirt. In paragraph 30, the Investigating Officer accepted the fact that witness Raju son of Ramji Sah has stated before her that he was playing with Ujjawal in front of his house, but little earlier, he returned to his own house and having lit the lantern, resumed studies and at about 6-7 in the evening saw Ujjawal going along with Chandan of the same locality and one stranger. She further stated in the same paragraph that Raju had further stated before her that Ujjawal had asked him also to come along, but he refused to accompany saying that he had to study and that he (Raju) learnt later that Ujjawal was abducted. In paragraph 31, the Investigating Officer stated that witness Ganesh Prasad had also supported the occurrence before her. During cross-examination, in paragraph 32, the Investigating Officer reiterated that Chhotan Khan was arrested on the basis of the confidential information in the night between 26-27.4.2004 at 1.30 A.M., whereafter he recorded his confessional statement on 27.4.2004 at about 9.30 A.M. In paragraph 34 of the cross- examination, she has admitted that in the seizure list, she had not indicated the size and the mark of the T-shirt. In paragraph 39, the Investigating Officer states that she met the informant on 27.4.2004 at the police station as also outside the police station and on the same day she arrested seven accused persons. She further stated that on 27.4.2004, she has not mentioned in the case diary that the informant had identified the accused persons, while paying the ransom money. In paragraph 41, the Investigating Officer accepts that before lodging Nasariganj P.S. Case No. 30 of 2004, family members of the informant had given information, which has been recorded in the station diary, details whereof has been mentioned in the case diary. Paper containing the original information is presently not before her and may be in the station diary. To verify the contents of the information recorded in the case diary, she deputed instructed A.S.I., Ramanand Singh as also herself visited Hariharganj. She further confirmed that she had read the contents of the information, but she does not remember whether information about the colour of the T-shirt as also general description about the stature of Ujjawal was mentioned therein. She also confirmed that A.S.I. Ramanand Singh did not submit his report regarding information received and mentioned in station diary. In paragraph 42, the Investigating Officer stated that the informant had not stated anything in his further statement beyond the statement recorded in the fard-e-beyan. In paragraph 43, the Investigating Officer confirmed that the second place of occurrence of the instant case i.e. place from where the body was recovered is a lonely place. In paragraph 45, she denied the suggestion that the investigation made by her is erroneous as also the fact that Chhotan Khan had not recorded any confessional statement and further that on his statement neither any coconut rope nor skeleton of Ujjawal was recovered. She further denied the suggestion that money recovered from Chhotan Khan was his own money. In paragraph 47, she confirmed that the father of the informant had submitted written information on 22.3.2004 and to verify the contents of the written information, she had gone to the house of Rajendra on 24.3.2004 and had made enquiry from the ladies of the house of Rajendra Prasad, but their

statement has not been recorded in the case diary. In paragraph 49, she confirmed that she had arrested Rajendra and Gautam from their house on 27.4.2004 at about 4.00 P.M. on the basis of the statement of Chhotan Khan, who was arrested in the night between 26-27.4.2004 at about 1.30 A.M. In paragraph 51, the Investigating Officer states that prior to 27.4.2004, complicity of only Chhotan Khan in the instant case was known to her. In paragraph 52, she accepts that in compliance of the direction of the S.P., informant was produced for recording his statement u/s 164 of the Cr.P.C. In paragraph 55, she denied the suggestion that charge sheet has been submitted against Rajendra, Gyani and Gautam without there being any material against them only with a view to harass them. In paragraph 56, the Investigating Officer states that Sanha information was in regard to disappearance of Ujjawal. Having recorded the fard-e-beyan, neither further statement nor any other information from the informant was recorded in the case diary until 27.4.2004. In paragraph 57, the Investigating Officer states that having recovered the skeleton at about 1.30 P.M., she recorded the statement of Pradeep Kumar, which was at his own volition. In the same paragraph, she further states that no effort was made by her to record the confessional statement of Pradeep Kumar before the Magistrate. In paragraph 58, the Investigating Officer confirmed that Pradeep Kumar is the neighbour of the informant whose house is at a distance of 100-150 yards from the house of the informant. In paragraph 59, the Investigating Officer states that Kashi Prasad had not stated before her that he had gone to Dhawapul on 7.4.2004, but she admits that Kashi Prasad had stated before her that he had identified the accused persons on 8.4.2004, but neither disclosed their name nor stated before her that they had covered their face with towel. In paragraph 60, the Investigating Officer states that Jitendra Prasad had not stated before her that he had gone to Dhawapul on 7.4.2004. She further states in the same paragraph that Jitendra Prasad had not disclosed the name of the accused persons sitting at the Dhawapul. In paragraph 61, the investigating Officer states that she did not take any steps to ascertain criminal antecedent of the accused persons. In paragraph 62, she denied the suggestion that Pradeep Kumar has been falsely implicated at the instance of the informant. In paragraph 65, the Investigating Officer states that during the period between 24.3.2004 till 27.4.2004, she did not record the statement of any charge sheet witness, except Raj Kumar. In the same paragraph, she further states that in between 8.4.2004 till 27.4.2004, the informant, Om Prakash and Jitendra Prasad did not state before her that on 8.4.2004, the informant along with Kashi Prasad and Jitendra Prasad had gone to Dhawapul to pay One lac to the accused persons and Chhotan Khan had given them T-shirt of Ujjawal. In paragraph 66, the Investigating Officer, however, states that on 27.4.2004, the informant stated before her that the accused persons having taken One lac, gave him the T- shirt of Ujjawal. In paragraph 67, the Investigating Officer described the colour of T-shirt produced by the informant. In paragraph 68, the Investigating Officer states that the statement of the informant, Mandodari Devi, Kashi Prasad, Bharat Prasad was recorded on 28.4.2004. In paragraph 69, the Investigating Officer

has stated that the bones seized were sent for examination, but it has not been mentioned in the case diary that photograph of the skeleton was taken by her. In paragraph 70, she states that photograph of Ujjawal Kumar was obtained, which is kept in the station diary along with Sanha, but there is no photograph in the case diary. In paragraph 71, she has stated that the recovered skeleton was brought from Dehri in a gunny bag. In paragraph 72, she stated that she has not entered the contents of the Sanha in the case diary, but number of the station diary entry has been indicated in the case diary without indicating the time when the same was received. In paragraph 73, she stated that non-F.I.R. accused, Triloki Upadhyay was arrested on 4.4.2004 and his statement recorded whereafter Avinash Upadhyay was arrested and his statement was also recorded. In paragraph 74, she states that the court had asked explanation about the injuries on the person of Chhotan Khan and she submitted the same, but she does not remember about the order passed on the explanation. In paragraph 75, she stated that Mandodari Devi never informed her that Jai Prakash on return had told her that Arbind, Pradeep, Gyani, Chandan, Nanhkut and Chhotan Khan had accepted money from him. In paragraph 76, she stated that Mandodari Devi had not given any signed statement before her three days after the occurrence. In paragraph 77, she stated that Mandodari Devi never told her that prior to the occurrence, Rajendra, Surendra, Salekh, Sonu, Gyani, Gautam and Chandan were at the entrance of their residence. She further stated in the same paragraph that Mandodari Devi had not stated before her that after ten minutes when she came out of her house, there was absolute silence and Rajendra etc. had disappeared. In paragraph 78, the Investigating Officer stated that Kashi Prasad never stated before her that his mother had told him that she along with her father was sitting at the entrance of the residence when Ujjawal and Raju were playing and Rajendra, Gyani, Gautam, Chandan, Surendra, Salekh and Sonu were standing at the entrance of their residence. She further states that Kashi Prasad never stated before her that when Ujjawal declined the instruction of his grandmother to come inside the house, his grandmother went inside the house to light the lamp and having lit the lamp when she returned, she did not find Raju and Ujjawal as also Rajendra, Gyani, Gautam, Chandan, Surendra, Salekh and Sonu at their residence. The Investigating Officer further states that Kashi Prasad never informed her that her mother had learnt from his sister-in-law, Sunita Devi who had gone to the roof that she had seen Chandan going along with Ujjawal. The Investigating Officer further states that Kashi Prasad never told her that having learnt about the occurrence, he had gone to the house of Rajendra and Surendra for enquiry. In paragraph 79, the Investigating Officer states that Jitendra had not stated before her that he learnt from his maternal aunt that when she came outside her house the second time, she neither found Ujjawal nor the family members of Rajendra and Surendra. The Investigating Officer further states in the same paragraph that the witness had not stated before her that having learnt about the occurrence when he returned from Orissa then family members of his maternal uncle informed him that Ujjawal was playing near the entrance of Rajendra and that the family members of Rajendra

and Surendra were there. The Investigating Officer further stated in the same paragraph that the witness had not stated before her that at the time of payment of ransom money at the Dhawapul, accused persons had threatened of dire consequences in case of disclosure. In paragraph 80, the Investigating Officer stated that Bharat Prasad never stated before her that having come to Hariharganj, he learnt from Jai Prakash, his parents and Sunita Devi that Ujjawal was playing and Chandan holding his hand, took him to the lane where a stranger was waiting. The Investigating Officer further stated in the same paragraph that the witness had never stated before her that accused persons were asking for payment of ransom and the deal was struck at One lac. She further stated in the same paragraph that the witness never stated before her that the accused persons had called them to Dhawapul at 7.00 P.M. and after going to Dhawapul with money, they could not meet the accused persons and the accused persons again called them the next day at Dhawapul at 1.00 P.M. The Investigating Officer further stated in the same paragraph that the witness never stated before her that ransom money was taken by Chhotan Khan and that he gave T-shirt of Ujjawal. She further stated in the same paragraph that at the time of payment, besides, Chhotan Khan 5-6 other accused persons were also there, including Arbind, Pradeep, Gyani and Sonu. In paragraph 81, the Investigating Officer has stated that the informant never informed her that his son had overlapping teeth and dent mark over his forehead. In paragraph 82, the Investigating Officer stated that the informant never stated before her that his mother ever informed him that Sunita told her that while picking up clothes on the roof, she had seen Chandan holding the hand of Ujjawal and going away along with him followed by Surendra, Salekh, Gayani etc. In paragraph 83, the Investigating Officer asserted that during investigation, she did not record the statement of Sunita Devi. In the same paragraph, she further denied the suggestion that the case diary has been doctored and that she had begun writing the case diary on 28.4.2004. She also denied the suggestion that the skeleton was not recovered from the place wherefrom it is said to have been recovered. She further denied the suggestion that stray body parts and bones of unknown have been collected by her from the cremation ground which is projected to be the skeleton of Ujjawal Kumar. She also denied the suggestion that there is no independent witness about the recovery of the skeleton. The Investigating Officer has further denied the suggestion that being in collusion with the informant, she had collected erroneous material in the case diary. In paragraph 84, she denied the suggestion that she never visited Dhawapul during the investigation. From perusal of the deposition of the officer-in-charge in both the trials, it does not appear that she has disputed the assertion of Jitendra Prasad that he learnt about the disappearance of Ujjawal from his sister-in-law, Sunita Devi and others and information to that effect was given by him to the officer-in-charge as has been asserted by him in paragraph 13 of his deposition in Sessions Trial No. 220 of 2006, as such, there is no difficulty in concluding that the name of Sunita Devi appeared in course of investigation through the mouth of a witness and her statement was required to be recorded in the case diary.

14. Sri Kanhaiya Prasad Singh, learned Senior Advocate appearing on behalf of the four appellants, namely, Chandan Kumar, Chhotan Khan, Gyani Prasad and Sonu Kumar submitted that Ujjawal Kumar, son of the informant, while playing in front of his house, disappeared on 21.3.2004 at about 6 P.M., information to that effect was telephonically conveyed to the informant who was at Raigarh in Orissa by his father, Dhrub Prasad Sah the same evening that it appeared that somebody has taken away Ujjawal, Such fact is stated in the fard-e-beyan dated 24.3.2004, although in the earliest information about the occurrence submitted to the Officer-in-charge, Nasariganj P.S. dated 22.3.2004 by the grandfather of the victim recorded as station diary entry No. 400 dated 22.3.2004, it has been stated that Ujjawal Kumar, aged about 11 years, height 4 1/2 feet, complexion fair, student of Class VII, wearing white shirt and paint, who speaks Hindi, has disappeared while playing in front of his house on 21.3.2004 at 6.30 P.M. and request was made to do the needful. With reference to the contents of the aforesaid station diary entry, fard-e-beyan, the evidence of P.W.3, Mandodari Devi, P.W.10 Sunita Devi, wife of the younger brother of the informant, P.W.4, Kashi Prasad Gupta, brother of the informant P.W.7, informant, Jai Prakash Gupta and P.W.5, Jitendra Prasad, cousin brother of the informant, it is submitted that none except, Sunita Devi, P.W.10 has seen the actual disappearance of the victim and she cannot be relied upon as she was never examined in support of the occurrence before the police u/s 161 Cr.P.C., although she was available in the house at the time of occurrence and is said to have seen Chandan holding the hand of Ujjawal and taking him towards the lane and the two were being followed by Rajendra, Gautam, Gyani, Surendra, Salekh and Sonu, soon thereafter and she is said to have informed the aforesaid fact to her mother-in-law, father-in-law as also the informant and his brothers after they returned from Raigarh in Orissa, but such fact is not mentioned either in the station diary entry or in the fard-e- beyan though the station diary was recorded on 22nd and fard-e-beyan was recorded on 24th of March 2004. The mother-in-law, P.W.3 also accepts in court that the aforesaid information was divulged by Sunita Devi soon after the occurrence when she returned inside the house after searching for Ujjawal in the lane. In the circumstances, the story propounded by the prosecution does not appear to be true.

15. Sri Singh further submitted, with reference to the evidence of P. Ws. 3, 4, 5, 7 that ingredients of Section 364A of the Indian Penal Code is not made out, as they have not seen the appellants abducting Ujjawal, in the circumstances, the evidence that Chhotan Khan and other appellants, namely, Sonu Kumar, Nanhkut Chaudhary, Gayni, Pradeep and Arbind demanded ransom which was paid by informant, P.W.7 in presence of P. Ws. 4, 5 on 8.4.2004 will not establish the offence of abduction for murder u/s 364A of the Indian Penal Code against the appellants as there is no evidence to establish that the victim was in custody of the appellants between 21.3.2004 till 7/8.4.2004, the date on which the victim disappeared and ransom amount was paid in exchange of the T-shirt of the victim.

16. Sri Singh further submitted that the story of identification at the Dhawapul is highly incredible and doubtful, reason being that the appellants Gyani and Sonu, who are closely related to the members of the prosecution party, will not go to receive the ransom amount themselves. The conduct of the informant and his two brothers, P. Ws. 4 and 5, the witnesses to the factum of payment of ransom amount and exchange of T-shirt with assurance that the child shall come back within two hours also appears to be doubtful as the informant and others did not make any hue and cry before the guardians of the appellants, who are known to them from before, about the failure of the child to come back within the time assured. In this connection, learned Counsel for the appellants further submitted, with reference to the evidence of P.W.3 in paragraph 29, that P. Ws. 4, 5 and 7 did not convey the information gathered at the time of payment of ransom money/exchange of T-shirt to the other family members and in this connection relied upon the following statements of P.W.3, Mandodari Devi:

eS nkjksxkth ls ugha dgh Fkh fd pksj ykx :i;k ysdj esjs yM+ds t; izdk" k dks fpUg ds :Ik esa tlhZ dqrkZ fn, FksA

17. With reference to the evidence of the Investigating Officer, P.W.8 in paragraphs 59 and 60, which is quoted below:

xokg dk"kh izlkn esjs le{k fnukad 07-04-2004 dks /kkokiyy ij tkus dh ckr ugh dgk gSA dk"kh izlkn vius c;ku esa 8-4-2004 dks vfHk;qDrks dh igpku djus dh ckr dgk gS fdUrq uke ugh dgk gS A /kkok iyy ij cSBs O;fDr;kas }kjk viuk eqWag rkSfy;k ls dus dh ckr ugh dgk gSA

Xkokg ftrsUnz izlkn vius c;ku esa 7-4-04 dks /kkokiyy ij tkus dh ckr ugha dgk gS A ;g xokg esjs le{k vius c;ku esa /kkokiyy ij cSBus okys fdlh vfHk;qDr dk uke ugh crk,A

learned Counsel for the appellants submitted that P. Ws. 4 and 5 did not even narrate before the Investigating Officer that they had gone to Dhawa bridge on 7.4.2004 and that they did not name the accused, who were identified at the said bridge and with reference to the aforesaid statement, it is submitted that the story of identification at the bridge is wholly unreliable. Learned Counsel for the appellants further submitted that the production of the T-shirt of the victim on 27.4.2004 by the informant, which he had received in exchange of payment of ransom money on 8.4.2004, is a circumstance suggesting that entire prosecution story has been cooked up after the recovery of the carcass on 27.4.2004 as there is no earthly reason to explain as to why the production of the T-shirt before the Investigating Officer was held up until recovery of the carcass/skeleton. In this connection further reference is made to the evidence of the Investigating Officer that Chhotan Khan was arrested on confidential information in the night between 26/27.4.2009 at 1.30. A.M. whereafter on the basis of his statement other co-accused, Nanhkut Chaudhary, Pradeep and Arbind were arrested and the four assisted the Investigating Agency in the recovery of the skeleton/carcass on the bank of river Sone buried beneath the

watercress. In the back ground of the aforesaid fact, it is submitted that if the informant and his two brothers had identified the accused persons, while paying the ransom money on 8.4.2004, they should have disclosed the name of the culprits and produced the T-shirt on 8.4.2004 or within a reasonable time thereafter, such disclosure would have given credence to the prosecution case, but as the Investigating Officer has proceeded to arrest the accused, Chhotan Khan on confidential information, the prosecution case that ransom money was paid on 8.4.2004 in exchange of T-shirt, is lacking credence, which is required to establish offence u/s 364 of the Indian Penal Code. In this connection, learned Counsel submitted that this Court should ignore the evidence of the informant, P.W.7 in paragraph 9 at page 150 of the brief, which reads as follows:

mTtoy dqekj ds ugha ykSVus ij fnukad 12-4-2004 dks Fkkuk izHkkjh ukfljhxat dks lwpuk fn;k fd mijksDr N% vijk/kh;ksa NksVu [kkWa] vjfoUn dqekj] iznhi dqekj] lksuw dqekj] Kkuh izlkn rFkk uUgdwV pkS/kjh gels iSlk fy, gSA

18. Learned Counsel for the appellants also submitted that there is no evidence worth the name to establish that the T-shirt, which has been produced, is the Tshirt which the victim boy was wearing on the date, he disappeared, as such information and confirmation could have only come from those who had seen him on the date of disappearance, namely, his grandmother, step mother and the aunt, Sunita Devi, but neither the grandmother, Mandodari Devi nor the aunt, Sunita Devi had said that Tshirt, Material Ext. II, is the T-shirt which Ujjawal was wearing on the date of disappearance.

19. Learned Counsel for the appellants further submitted that recovery of the skeleton/carcass at the instance of appellants Chhotan Khan, Nanhkut Chaudhary, Pradeep and Arbind would only establish recovery of the skeleton at the instance of the aforesaid four appellant and they shall be liable only for conviction u/s 201 of the Indian Penal Code. Recovery of the skeleton at the instance of the aforesaid four appellants shall not mean that they are also held guilty for the offence under Sections 364A and 302 of the Indian Penal Code.

20. Learned Counsel for the appellants further submitted that the Bone Examination Report, Ext.7 should not be relied upon in the instant case as skeleton recovered was of 4 1/2" in length, but was sent for examination in a hardboard box of 11"x 11"x7". In the circumstances, according to the learned Counsel for the appellants, skeleton was broken and thereafter sent for examination to P.M.C.H. and as the skeleton was broken, there is possibility that the bones sent for examination were not of the same skeleton, which was recovered at the instance of the four appellants. In the circumstances, according to learned Counsel, no reliance should be placed on the findings recorded in the report that the bones were of human male aged about 13 to 15 years.

21. Sri Abhay Kumar Singh No. 2 appearing for the appellant, Arbind Kumar, besides adopting the submission of Sri Kanhaiya Prasad Singh, further submitted that Ujjawal disappeared on 21.3.2004 at about 6.00 P.M., but information to

that effect was given to the Officer-in-charge, Nasariganj P.S. by the grandfather of the victim, Sri Dhrub Prasad Sah on 22.3.2004 and the fard-e-beyan about the occurrence was lodged on 24.3.2004 at 7.00 A.M., although the father of the victim had arrived from Raigarh in Orissa on 23.3.2004 in between 7.30-8.00 P.M. and thus considerable delay in informing the police station as also in lodging the fard-e-beyan has been made by the prosecution party, which has not been explained and such delay, if not explained, should persuade this Court to acquit the appellants on the ground of delay in informing the police station about the occurrence as also in lodging the fard-e- beyan.

22. He further submitted that 164 Cr.P.C. statement of the informant recorded on 29.4.2004 being belated, should not be relied upon. Recovery memo of the carcass, Ext.4 cannot be relied upon as the memo neither contains the signature of the appellants at whose instance skeleton is said to have been recovered nor copy thereof was given to them.

23. Sri Singh further submitted that appellant Arbind Kumar and three others at whose instance carcass was recovered, cannot be held guilty of the offence under Sections 364A, 302 and other allied Sections of the Indian Penal Code with the aid of Section 27 of the Evidence Act.

24. He finally submitted that the recovery of the carcass was not at the instance of Chhotan Khan and three others, including Arbind Kumar and in this connection pointed out the evidence of P.W.7, paragraphs 10 and 33, which reads as follows:

eS rFkk Hkjr izlkn Hkh xkM+h esa cSBs Fks A fMgjh lksu unh ds fdukjs tkus ij tydqEHkh gVkdj yk" k fudkys A**

^^eS eftLVSSv lkgsc ds ;gkWa c;ku fn;k Fkk fd Fkkuk izHkkjh ds lkFk 12 cts fnu esa eS Hkjr izlkn ,oa vijk/kh NksVu [kkWa] iznhi dqekj] vjfoUn dqekj vkSj uUgdwV pkS/kjh ds lkFk fMgjh x, vkSj fMgjh lksu unh ds fdukjs tydqEHkh fudkydj yk" k fudkysA

25. Learned Counsel also submitted that there is discrepancy in the age of the victim as recorded in the Sanha information, Ext C, whereunder it has been recorded that the victim at the time of disappearance was 11 years old, but from the Bone Examination Report, Ext.7, it appears that the bones examined were of human male aged about 13 to15 years and thus it is difficult to establish that the skeleton recovered was of Ujjawal. He further pointed out that the occurrence having taken place on 21.3.2004 at 6.00 P.M., fard-e-beyan was lodged on 24.3.2004 at 7.00 A.M. in which none of the appellants, except Chandan was named at the instance of Raju Kumar who saw Chandan holding the hand of Ujjawal and going along with him, as such, on the ground of delay and failure of Raju Kumar to confirm the aforesaid fact as also for the failure of the prosecution to name other appellants in the fard-e-beyan, this Court should acquit all the appellants of the charges levelled against them.

26. He further submitted that in the telephone set of the informant Caller I.D.

was installed after the occurrence, but prosecution has not come out with any details of the calls received by the informant and his other family members in which negotiation was made during the period between 30.3.2004, the date on which first ransom call was received and 7.4.2004 when the informant and his two brothers went to Dhawapul in the evening to pay ransom amount, but could not make such payment as police patrolling party was present there, again another ransom call was received on 8.4.2004 asking the informant and his brothers to come again near Dhawapul on 8.4.2004 at 1.00 P.M. when T-shirt of Ujjawal was given to the informant by Chhotan Khan after payment of ransom amount of One lac in presence of the other appellants, except Chandan Kumar with assurance that Ujjawal shall reach home within two hours, Ujjawal did not come back within the time given by Chhotan Khan and other appellants, the informant and others did not even inform the police or the parents of the appellants about the development which had taken place on 8.4.2004, the information said to have been given to the police on 12.4.2004 also does not appear to be correct as there is no such entry in the police case diary coupled with the fact that Chhotan Khan, Arbind Kumar and other appellants, except Chandan Kumar, were arrested on 27.4.2004 or thereafter on the basis of the confidential information and not on the basis of the information furnished by the prosecution party (informant) that he paid ransom amount of One lac to Chhotan Khan on 8.4.2004 on the assurance of Chhotan Khan and other five appellants that victim shall return home within two hours as also were warned not to disclose the factum of payment of ransom amount, failing which none shall be spared to even light the lamp in the household of the prosecution party (informant).

27. Learned Counsel further doubted the prosecution case for failure of the informant to produce T-shirt exchanged with the ransom amount on 27.4.2004 as according to him if the T-shirt was really exchanged with the ransom amount then should have been produced before the Investigating Officer on 12.4.2004 when information about payment of ransom amount was given to the Investigating Officer.

28. Sri Anil Kumar Singh, Advocate appearing for appellant, Pradeep Kumar at our request, while adopting the submissions made by M/s Kanhaiya Prasad Singh and Abhay Kumar Singh No. 2, further submitted that perusal of the statement made by appellant Pradeep Kumar u/s 313 Cr.P.C. would disclose that he has been seriously prejudiced by not explaining the entire circumstances, which were against him. In this connection, he referred to the aspect of his extra judicial confession recorded by the Investigating Officer on 27.4.2004 at 6.30 P.M. in which appellant Pradeep Kumar is said to have accepted his guilt, but the court below while explaining the circumstances appearing against Pradeep Kumar, did not even refer to the extra judicial confession made by appellant Pradeep Kumar while asking him to make his statement u/s 313 Cr.P.C. and failure of the court below to put question to Pradeep Kumar about extra judicial confession made before the Investigating Officer on 27.4.2004 at 6.30 P.M. vitiates his trial and

taking into account the prejudice caused to him, this Court should acquit him. In this connection, learned Counsel relied upon the judgment of the Hon"ble Supreme Court in the case of Ajay Singh v. State of Maharastra reported in (2008) 1 SCC (crl.) 371 and in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, paragraphs 142, 144 and 198.

29. Sri Lala Kailash Bihari Prasad, Senior Advocate appearing for the State submitted that the submissions made by the learned Counsel for the appellants that the appellants are innocent and have been falsely implicated in this case is wholly misconceived which would appear from the following submission.

(i) Ujjawal while playing with Raju Kumar in front of his house, disappeared on 21.3.2004 at 6.00 P.M. Having noticed the disappearance of Ujjawal, his grandmother, P.W. Mandodari Devi enquired from Raju Kumar, who told Mandodari Devi that he had seen chandan holding the hand of Ujjawal and going towards the lane where a stranger was standing. Ujjawal also asked Raju Kumar to accompany but Raju did not go as he was doing his home work. Having learnt about the disappearance of Ujjawal Kumar, Mandodari Devi went the lane searching for Ujjawal, but Ujjawal could not be traced and Mandodari Devi came back to her house and was informed by her daughter-in-law, Sunita Devi, wife of Om Prakash that while picking up dried clothes over the roof top, she has seen Chandan holding the hand of Ujjawal and going along with him. The grandmother of the victim witness also confirmed the fact that while Ujjawal was playing with Raju Kumar, Rajendra, Surendra and their sons were seen present along with him at the entrance of their respective residences, but after disappearance of Ujjawal, Rajendra, Surendra and their sons, namely, the three appellants, Chandan, Gayani and Sonu were also not found available at their residences. The witness also confirmed that Rajendra and Surendra are not only her neighbours, but Rajendra is also a close agnate and between them, there was visiting/dinning relationship yet none from their household visited the house of the witness after the occurrence.

(ii) Learned Counsel for the State, with reference to the evidence of the informant and his two brothers, who arrived with him on 23.3.2004 during the evening hours from their work place in Orissa, submitted that the informant Jai Prakash initially learnt about the occurrence telephonically from his father on 21.3.2004 whereafter he telephonically informed his other brothers about the occurrence and proceeded for home reaching Hariharganj on 23.3.2004 at about 8.00 P.M. and learnt the details of the occurrence from his mother, Mandodari Devi, who told him that on 21.3.2004 around 6.00 P.M., Ujjawal and Raju Kumar were playing together in front of their house. While the two were playing, Chandan, Gautam, Gyani, Rajendra, Salekh, Sonu and Surendra Prasad were also present at the entrance of their residence(s). She further told the informant that having asked Ujjawal to come inside the house to resume studies, the witness (Mandodari Devi) came inside the house to light the lamp and having lit the lamp the witness came outside and not finding Ujjawal where he was earlier

playing, Mandodari Devi loudly called Ujjawal and began to look for him. While looking for Ujjawal, she came near the house of Raju Kumar and asked Raju Kumar the whereabouts of Ujjawal who told her that he had seen Chandan holding the hand of Ujjawal and going towards the lane along with a stranger. Ujjawal even asked Raju Kumar to accompany him, but Raju declined to do so. Having learnt the aforesaid fact, mother of the informant searched for Ujjawal in the lane as well and having not found Ujjawal, mother of the informant came back home and was informed by the wife of younger brother of the informant, Sunita Devi that while she was picking up clothes from the roof top, she had seen Chandan holding the hand of Ujjawal and going along with him followed by Rajendra Prasad, Gautam Kumar, Gyani Prasad, Salesh Kumar, Sonu Kumar and Surendra Prasad. The informant having come back home during the evening hours on 23.3.2004 and learnt about the occurrence from his mother visited the house of Rajendra Prasad, Surendra Prasad and Raju Kumar the same evening to confirm about the occurrence.

(iii) Along with the informant, P.W. Kashi Prasad Gupta had also come from Orissa on 23.3.2004 around 7.00- 7.30 in the evening and learnt about the occurrence from his parents as also Sunita Bhabhi, who told him that just before the disappearance, Ujjawal and Raju were playing together and while the two were playing together, Rajendra Prasad, Gyani Prasad, Gautam Kumar, Chandan Kumar, Surendra Prasad and Sonu Kumar were standing at the entrance of their residence. She further informed Kashi Prasad Gupta that her mother-in-law had asked Ujjawal to come inside the house as evening had set in to resume his studies, but Ujjawal continued playing. The mother-in-law came inside the house to light the lamp and having lit the lamp, she came outside to notice that Ujjawal, Raju, Rajendra Prasad, Surendra Prasad and others including appellants, who were present earlier, had disappeared from the front of their residences, whereafter the mother of the witness moved out searching for Ujjawal and asked Raju the whereabouts of Ujjawal, who told her that he had seen Chandan and a stranger taking Ujjawal in the lane. Raju further informed the mother of the witness that Ujjawal was even asking him to accompany but Raju did not go whereafter mother of the witness searched for Ujjawal and having not found him, came back home where she was informed by Sunita Bhabhi that she has also seen Chandan from the roof top taking away Ujjawal. Kashi Prasad Gupta having come back home on 23.3.2004 during the evening hours and having learnt about the occurrence, went to the house of Rajendra and Surendra to ascertain the whereabouts of Ujjawal where no male member was available and the lady inmates of the two houses informed him that they are unaware about the occurrence.

(iv) P.W. Jitendra Prasad, cousin brother of the informant also came to the village of occurrence from Orissa and learnt about the occurrence from his maternal aunt, Mandodari Devi and Sunita Bhabhi that Ujjawal had disappeared on 21.3.2004 around 6.00 P.M. while playing with Raju and at the time of his disappearance, family members of Rajendra and Surendra had also disappeared.

He further learnt from his maternal aunt that she had learnt about the disappearance of Ujjawal from Raju, who informed her that he had seen Chandan holding the hand of Ujjawal and going towards the lane whereafter his maternal aunt even looked for Ujjawal in the lane as also asked the residents of the 2-4 houses in the vicinity, Ujjawal, however, could not be found. Having not found Ujjawal, maternal aunt of the witness came back home and learnt from Sunita Bhabhi that she had seen Ujjawal from the roof top going along with Chandan.

(v) Learned Counsel for the State, with reference to the aforesaid evidence of the informant and his two brothers, Kashi Prasad Gupta and Jitendra Prasad, submitted that there is no difficulty in concluding that at the time of disappearance of Ujjawal, Chandan was seen by the witness Sunita Devi holding the hand of Ujjawal and going towards the lane where a stranger was present and soon thereafter not only Chandan, but all his family members who were present while Ujjawal and Raju were playing, also disappeared. Even on 23.3.2004 during the evening hours when informant and Kashi Prasad Gupta arrived and learnt about the occurrence from Mandodari Devi and Sunita Devi and went to the house of Rajendra and Surendra to enquire about the whereabouts of Ujjawal, they found that none of the male members in the two houses of Rajendra and Surendra were available and the lady inmates informed the witness Kashi Prasad Gupta that they are unaware about the disappearance of Ujjawal.

(vi) According to the learned Counsel for the State, the indifference shown by the family members of Rajendra and Surendra including the appellants, Chandan, Gyani and Sonu in the matter of disappearance of Ujjawal, is a strong circumstance connecting them with the crime as before disappearance of the victim, all the male members of the family of Rajendra and Surendra including appellants, Chandan, Gyani and Sonu were present in front of their residence while Ujjawal and Raju were playing, but after disappearance of Ujjawal not only the male members disappeared from the village and continued to remain absent from their houses for three days i.e. until 23.3.2004 when the informant and Kashi Prasad Gupta had gone to their house to ascertain the whereabouts of Ujjawal, but the lady inmates of the two houses stated that they are unaware about the disappearance of Ujjawal although Mandodari Devi and her husband raised alarm soon after the disappearance of Ujjawal on i.e. 21.3.2004 at 6.00 P.M. in the vicinity/lane and such conduct of the appellants, Chandan, Gyani and Sonu destroy the presumption of innocence of those appellants and is sufficient to maintain their conviction. In this connection, learned Counsel for the State has placed reliance upon the judgment of the Hon''ble Supreme Court in the case of Anant Chintaman Lagu Vs. The State of Bombay, , paragraph 15. Learned Counsel for the State also placed reliance upon the judgment of the Hon''ble Supreme Court in the case of Suman Sood alias Rajeev Sudan alias Vinay Kumar v. State of Rajasthan, reported in (2007) 2 SCC (Cr.) 637, paragraphs 60, 63 and submitted that offence of kidnapping is complete against not only abductors but also against those who act as go between to facilitate abduction and

collection of ransom amount.

(vii) Learned Counsel for the State, with reference to the evidence of P. Ws., Mandodari Devi, Kashi Prasad Gupta, Jitendra Prasad and Bharat Prasad Sah, submitted that all the aforesaid witnesses learnt from witness Sunita Devi that of disappearance of Ujjawal was effected by Chandan as she had seen from the roof top Chandan holding the hand of Ujjawal and going along with him. Aforesaid statement was made by both the witnesses before the Investigating Officer. The Investigating Officer, however, in case of P. Ws. Bharat Prasad Sah and Jitendra Prasad did not even challenge such assertion of witness Bharat Prasad Sah and Jitendra Prasad that they had asserted before the Investigating Officer that they learnt about the disappearance of Ujjawal from witness Sunita. In the circumstances, according to the learned Counsel, the assertion being unchallenged, this Court has to proceed on the basis that witness Bharat Prasad Sah and Jitendra Prasad had asserted before the Investigating Officer that they had learnt about the disappearance of Ujjawal by Chandan from Sunita Devi and such information was given to the Investigating Officer, but the Investigating Officer failed to record the statement of Sunita Devi u/s 161 Cr.P.C. and the court having considered the aforesaid fact, examined Sunita Devi in the present trial in compliance of the orders dated 23.5.2006 and 9.8.2007, although Sunita Devi was not shown as witness in the charge sheet.

(viii) Learned Counsel for the State, with reference to the evidence of the informant, submitted that ransom call began coming on his telephone No. 232342 from 30.3.2004, initially the demand was 20 lacs, 5 lacs, finally the deal was, however, struck at One lac on 5.4.2004 whereafter the informant along with Jitendra Prasad and Kashi Prasad Gupta proceeded to Dhawapul on 7.4.2004 at 7.00 P.M. to pay the ransom amount, but on account of presence of the police patrolling party, payment could not be made. Another ransom call was received on 8.4.2004 asking the informant to come again at Dhawapul on 8.4.2004 itself at 1.00 P.M. The informant and his two brothers, Jitendra Prasad and Kashi Prasad Gupta as directed by the ransom caller again went to the Dhawapul on motorcycle and found all the appellants, except Chandan Kumar, present at the Dhawapul. No sooner the informant and others alighted from the motorcycle, Chhotan Khan instructed the informant from the other end of the bridge to come alone and came ahead displaying and displayed the T-shirt of Ujjawal Kumar, which was identified by the informant. In exchange of the T-shirt, informant gave the bag containing One lac to Chhotan Khan, who stated that the child shall come back within two hours. The other appellants, except Chandan Kumar also warned the informant not to disclose their identity to any one, failing which none shall be spared to even light the lamp in his house. The informant and his two brothers having come back from Dhawapul, began to wait for return of Ujjawal, but Ujjawal did not come back. Information about payment of ransom amount of One lac to Chhotan Khan in presence of appellants Arbind, Pradeep, Sonu, Gyani and Nanhkut was disclosed by the informant to the Officer-in-charge that accused persons took the ransom money on 8.4.2004 at 1.00 P.M. on the

Dhawapul and in exchange Chhotan Khan gave the T-shirt of Ujjawal with promise that Ujjawal shall come back within two hours. As promised, Ujjawal did not come within two hours the informant and his brother, Kashi Prasad Gupta, mother Mandodari devi having waited until 11.4.2004 informed the Officer-in-charge on 12.4.2004 the manner in which appellant Chhotan Khan and had duped them of One lac on 8.4.2004 at 1.00 P.M. on the false promise that Ujjawal shall come back within two hours, but even after passage of three days Ujjawal did not return. Learned Counsel for the State submitted that the aforesaid statement of the informant, Kashi Prasad Gupta and Mandodari Devi does not appear to have been recorded by the Officer-in-charge in the case diary as she was not taking down any statement in the case diary during the period between 24.3.2004 and 27.4.2004. From paragraph 65 of the evidence of the Officer-in-charge, it appears that during the period between 24.3.2004 till 27.4.2004, she had only recorded the statement of witness Raju Kumar. In the same paragraph, Officer-in-charge further stated that the informant and Jitendra Prasad had not stated before her between 8.4.2004 to 27.4.2004 that informant, Kashi Prasad Gupta and Jitendra Prasad had paid ransom amount of Rs. One lac to appellant Chhotan Khan on 8.4.2004. In paragraph 66, the Officer-in-charge, however, confirmed that such statement was made before her on 27.4.2004.

(ix). With reference to the deposition of the Officer-in-charge in paragraphs 65 and 66, learned Counsel for the State submitted that as the Officer-in-charge was not recording any statement during the period between 24.3.2004-27.4.2004, except the statement of Raju Kumar, which was recorded on 24.3.2004, she has not recorded the statement of the informant and Kashi Prasad Gupta given to her on 12.4.2004 that they had paid One lac as ransom amount to the appellant Chhotan Khan on 8.4.2004 in presence of other five appellants. In this connection, he has also referred to the statement made in paragraph 59 of her evidence that Kashi Prasad Gupta in his statement made on 8.4.2004 had stated about the identity of the accused persons who were identified by him on 8.4.2004, but he did not disclose their names.

(x) Learned Counsel for the State further submitted that notwithstanding the controversy as to how and when the Officer-in-charge learnt about the complicity of appellant Chhotan Khan in the crime of kidnapping of Ujjawal Kumar, she arrested Chhotan Khan during the night between 26-27.4.2004 at 1.30 A.M. and on the basis of the lead given by Chhotan Khan, she also arrested other appellants, namely, Arbind Kumar, Pradeep Kumar, Sonu Kumar and Nanhkut Choudhary on 27.4.2004 and thereafter recorded the confessional statement of Chhotan Khan at 9.30 A.M. and on the basis of the statement of Chhotan Khan proceeded to eastern bank of river Sone near the railway crossing, Dehri where carcass of Ujjawal was dug out from watercress by appellants Chhotan Khan, Arbind Kumar, Pradeep Kumar and Nanhkut Choudhary in presence of the informant and his other brothers. The carcass was 4 1/2 feet in length which was identified by the informant and his brothers as that of Ujjawal on the basis of overlapping incisor (front) teeth and dent mark on the forehead. The carcass was

brought to Dehri P.S. in a gunny bag. Having brought the carcass to the P.S., Officer-in-charge asked the informant to produce the T-shirt which he had received in exchange of payment of ransom amount on 8.4.2004 and the informant produced the same which has also been produced in court and has been marked as material exhibit. Having received the T-shirt from the informant, Officer-in-charge also recorded the confessional statement of Nanhkut Choudhary, Arbind Kumar and Pradeep Kumar at 4.30, 5.20 and 6.30 A.M. respectively. Learned Counsel for the State further pointed out that while bringing the carcass to the P.S. in gunny bag, the carcass got broken and was sent to P.M.C.H. for bone examination in a hard board box of 11" x 11" x 7" size. The bone examination was conducted by P.W. Dr. Arvind Kumar Singh, Assistant Professor which is marked as Ext.7. The Doctor confirmed the fact that the carcass was of a male child aged between 13-15 years.

(xi) It is submitted by the counsel for the State that appellant Chhotan Khan and others present at the Dhawapul on 8.4.2004 while accepting the ransom amount, held out before the informant and his two brothers that Ujjawal is in their custody and in token of such fact displayed/exchanged his T-shirt stating that he shall be back home within two hours but Ujjawal never returned and now on 27.4.2004 at 1.30 P.M., his carcass was dug out by appellant Chhotan Khan, Nanhkut Choudhary, Pradeep Kumar and Arbind Kumar on 27.4.2004 at 1.30 P.M. then it has to be presumed that Ujjawal has been done to death by none other than those who abducted him and held out before the informant and his brothers on 8.4.2004 that he shall come back home within two hours. In support of the aforesaid contention, learned Counsel for the State relied upon the judgment of the Hon'ble Supreme Court in the case of State of M.P. v. Lattora, (2003) 11 SCC 761 and Sucha Singh Vs. State of Punjab, submitted that if abduction is proved and victim found murdered, it is for the accused to satisfy as to how victim was dealt with by those who abducted him.

(xii) Learned Counsel for the State also refuted the submission of the learned Counsel for appellant Pradeep Kumar that Pradeep Kumar was prejudiced while recording his statement u/s 313 Cr.P.C., as the factum/contents of his confession was not put to him. In this connection, he submitted that confession recorded by the officer-in-charge not being admissible in view of the provisions contained in Section 25 of the Evidence Act is not material piece of evidence which could be relied upon, as such, trial court rightly did not confront appellant Pradeep Kumar with the contents of his confession and further pointed out, with reference to the provisions contained in Sub-clause (b) of Clause (1) of Section 313 Cr.P.C. that it is the discretion of the trial court to question the accused on the general aspect of the case and the discretion of the trial court to question the accused on the general aspect of the case which the trial court considers it to be appropriate cannot be guided by the accused or his counsel. In this connection, learned Counsel relied upon the judgment of the Division Bench of this Court in the case of Kare Singh Vs. State of Bihar paragraph 24 and submitted that Pradeep Kumar was first asked by the trial court whether he has heard the evidence recorded

against him, in response where to Pradeep Kumar replied in affirmative and thereafter the trial court questioned Pradeep Kumar in regard to the abduction of Ujjawal on 21.3.2004 at 6.00 A.M. and collection of the ransom amount by Chhotan Khan, four others and Pradeep Kumar on 8.4.2004 and to have killed the victim between 21.3.2004- 27.4.2004 and to have concealed his dead body at the bank of river Sone. Pradeep Kumar replied in negative to the aforesaid question posed by the trial court. It is thus submitted that question posed by the trial court to Pradeep Kumar during his examination u/s 313 Cr.P.C. is in context of the evidence led against him and there does not appear to be any illegality in recording his statement.

(xiii) Learned Counsel for the State also defended conviction of Pradeep Kumar and others u/s 120B of the Indian Penal Code, although there was no such charge framed against them with reference to the provisions contained in Section 464 Cr.P.C. Learned Counsel for the State further submitted that the trial court having allowed the request of the prosecution to examine Sunita Devi resorting to the powers u/s 311 Cr.P.C., ought not to have discarded her evidence, as she is the most important prosecution witness, who was present in the house at the time of the disappearance of Ujjawal and the police officer investigating the case, was duty bound to record her statement u/s 161 Cr.P.C., as it is the duty of the police officer investigating the case to examine any person who is supposed to be acquainted with the facts and circumstances of the case and for the failure of the Investigating Officer to examine Sunita Devi, although she was present at the time of disappearance of Ujjawal and had reported about the occurrence not only to her parents-in-law, but also to her husband and brother-in-law after they returned from Orissa and in appreciation of such fact, her evidence being of utmost importance for the prosecution, ought not to have been discarded by the trial court. Having examined her as a witness during the trial by resorting to the powers u/s 311 Cr.P.C., the trial court was duty bound to appraise her evidence like the evidence of any other witness. Reliance in this connection is placed on the judgment of this Court in the case of Narmadeshwar Pradhan Vs. State of Bihar, paragraphs 9, 10, in the case of Ronny alias Ronald James Alwaris and Ors. v. State of Maharashtra, reported in 1998 SCC (Cr.) 859, paragraph 23, in the case of Malkhansingh and Others Vs. State of Madhya Pradesh, in the case of Sunderlal v. State of M.P., reported in (2003) 2 SCC (Cr.) 1246 and in the case of Pramod Mandal v. State of Bihar, reported in 2005 SCC (Cr.) 75.

30. Having considered the submission of the counsel for the appellants and the State and having perused the contents of the fard-e-beyan and the evidence of the prosecution witnesses recorded in the court, I am of the view that on 21.3.2004 around 6.00 P.M. Ujjawal was playing with Raju Kumar in front of his house and while he was so playing, Rajendra Prasad, Surendra Prasad and their sons, Chandan Kumar, Gautam Kumar, Gyani Prasad, Salekh Kumar and Sonu Kumar were also present in front of their residence. At dusk, grandmother of Ujjawal Kumar asked him to come inside to resume studies, but Ujjawal continued playing. Grandmother came inside the house to light the lamp and

having lit the lamp, she came out and found silence prevailing all around and neither Ujjawal, Raju Kumar nor Rajendra Prasad, Surendra Prasad and their sons present where they were earlier present while Ujjawal and Raju played. Having noticed the disappearance of all present, Mandodari Devi raised alarm calling Ujjawal and came to the house of Raju Kumar who informed her that he has seen Chandan holding Ujjawal by his hand and going towards the lane, whereafter Mandodari Devi went inside the lane and searched for Ujjawal in the lane. Having not found Ujjawal in the lane, Mandodari Devi came back to her house where she was informed by her daughter-in-law, Sunita Devi, wife of Om Prakash Gupta that while picking up dried clothes she saw Chandan from the roof top holding the hand of Ujjawal and going along with him. Having learnt the aforesaid fact, Mandodari Devi and her husband continued with their search. Later, in the evening telephonic information was given to the father of Ujjawal, Jai Prakash Gupta in Orissa that Ujjawal has perhaps been made to disappear by someone around 6.00 P.M. Next morning i.e. 22.3.2004, Station Diary entry reporting disappearance of Ujjawal was made at the Police Station. Father of Ujjawal, Jai Prakash Gupta and his two brothers Kashi Prasad Gupta and Om Prakash Gupta arrived from Orissa on 23.3.2004 during evening hours and thereafter learnt about the disappearance of Ujjawal from their parents and sister-in-law, Sunita Devi, wife of Om Prakash Gupta that while Ujjawal and Raju were playing in front of their house on 21.3.2004 at 6.00 P.M., Rajendra, Surendra and their sons Chandan Kumar, Gautam Kumar, Gyani Prasad, Salekh Kumar and Sonu Kumar were also present in front of their respective residences, Ujjawal disappeared and at the time of disappearance of Ujjawal, Sunita Devi, wife of Om Prakash Gupta saw Chandan from the roof top holding the hand of Ujjawal and going along with him. Aforesaid information was also confirmed from Raju Kumar whom Ujjawal had asked to accompany, but Raju declined as he was doing his home work. Soon after arrival from Orissa on 23.3.2004, informant and his brother Kashi Prasad Gupta went to the house of their agnate, Rajendra and neighbour Surendra with whom there was visiting/dinning relationship to confirm about the occurrence since a fortnight earlier, there was altercation between their mother, Mandodari Devi and Appellant Chandan Kumar, son of Rajendra and mud clod was thrown at their residence while betel shop of Chandan Kumar was open and transacting business, but none of the male members were found in the house of Rajendra and Surendra. Lady inmates present also expressed their ignorance about the disappearance of Ujjawal. On 24.3.2004 at about 6.00 P.M., Officer-in-charge came to the house of the informant to confirm the factum of disappearance of Ujjawal as reported in Station Diary and recorded the fard-e-beyan of Jai Prakash Gupta, father of Ujjawal and after recording the fard-e-beyan and statement of Raju Kumar, arrested Chandan on 24.3.2004 itself. Further statement of the informant and his other family members was not recorded by the officer-in-charge soon after drawing up of First Information Report as the mental make up of the informant and his other family members was not satisfactory to record such statement. Informant was, however, instructed to install caller I.D. in his telephone set. Ransom call was first received

on 30.3.2004 when the caller demanded ransom amount of twenty lacs. Later, further calls were received and negotiation was made on telephone itself and ultimately the ransom amount was finalized at One lac. The ransom caller instructed the informant to come near Dhawapul for paying the ransom amount on 7.4.2004 at 7.00 P.M. The informant and his two brothers, Kashi Prasad Gupta and Jitendra Prasad went near Dhawapul on 7.4.2004 at 7.00 P.M. for making payment of the ransom amount, but on account of presence of the police patrolling party, the bag containing the amount could not be delivered to the ransom caller. Further ransom call was received on 8.4.2004 instructing the informant to again come to Dhawapul at 1.00 P.M. the same day to pay the ransom amount. In compliance of the instructions, informant and his two brothers, Kashi Prasad Gupta and Jitendra Prasad again went to Dhawapul the same day at 1.00 P.M. on motorcycle. No sooner the informant and his two brothers alighted from the motorcycle on the northern end of Dhawapul, they saw the accused persons sitting towards the southern end of the bridge, the informant and his two brothers proceeded towards them and covered ten steps, appellant Chhotan Khan from amongst the other appellants, instructed the informant to come alone and came ahead displaying T-shirt of Ujjawal Kumar, which was identified by the informant. In exchange of the T-shirt, the informant gave Chhotan Khan the bag containing the ransom amount of One lac. After receiving the bag Chhotan Khan assured that the child shall come back within two hours. Before the informant could turn around, the appellants present, including, Chhotan Khan warned him not to disclose their identity to any one, failing which none shall be spared to even light the lamp in his house. Such warning was given by the appellants present at the Dhawapul, as they had partially covered their face with towel and during the dialogue, exchange of the bag containing the ransom amount with the T-shirt and announcement of the warning by all the appellants present at the Dhawapul on 8.4.2004, they were identified by the informant, as they being the resident of the same locality, were known to the informant from before. The informant and his two brothers having paid the ransom amount to appellant Chhotan Khan in presence of other appellants at Dhawapul, returned to their village and began to wait for arrival of Ujjawal but when he did not come, information about payment of ransom amount of One lac to Chhotan Khan in presence of other five appellants, excluding Chandan, was disclosed by the informant to the officer-in-charge on 12.4.2004, but the officer-in-charge disputes such fact. As per the version of the officer-in-charge, she has learnt about the complicity of Chhotan Khan in the crime through confidential source and proceeded to arrest him during the night between 26-27.4.2004 at 1.30 A.M. and on the basis of the lead given by Chhotan Khan, she further arrested the appellants, Arbind Kumar, Pradeep Kumar, Nanhkut Choudhary and Sonu Kumar in the morning of 27.4.2004. Having arrested Chhotan Khan, the officer-in-charge recorded his confessional statement on 27.4.2004 at 9.30 A.M. in which he is said to have committed the crime of abduction and murder of Ujjawal on the instruction of appellant Chandan Kumar along with other appellants and has concealed his dead body

near the railway crossing on the bank of river Sone at Dehri. The officer-in-charge having recorded the aforesaid extra judicial confession of Chhotan Khan proceeded for Dehri on 27.4.2004 along with Chhotan Khan, Arbind Kumar, Pradeep Kumar, Nanhkut Choudhary to recover the dead body of Ujjawal in the company of the informant and his cousin brother, Bharat Prasad Sah. As per the lead given by the appellants, Chhotan Khan, Arbind Kumar, Pradeep Kumar, Nanhkut Choudhary, the officer-in-charge, informant and his brother Bharat Prasad Sah along with the aforesaid appellants reached the bank of river Sone at Dehri near the railway crossing where aforesaid four appellants dug out the dead body (Carcass) from beneath the watercress, which was identified by the informant and his brother, Bharat Prasad Sah with the help of overlapping incisor (front) teeth and dent mark over the skull/forehead of Ujjawal, as would appear from the seizure list, Ext.4. The carcass was brought to the P.S. in a gunny bag. Having brought the carcass to the P.S., the officer-in-charge further recorded the confessional statement of appellants Nanhkut Choudhary, Arbind Kumar and Pradeep Kumar at 4.30 P.M., 5.20 P.M. and 6.30 P.M. respectively, Exts. 5, 5/B and 5/A. The carcass while being carried to the P.S. in a gunny bag, got broken and the bones were sent for further examination to the P.M.C.H. in a hard board box of 11" x 11" x 7" size. The bones were examined by Dr. Arbind Kumar Singh, Assistant Professor, who reported vide report, Ext.7 that the skull, lower jaw and other body parts received for examination are of a male human being aged between 13-15 years. Having recorded the confessional statement of the accused persons on 27.4.2004, the officer-in-charge on the following day i.e. 28.4.2004 recorded further statement of the informant and statement of his mother and two brothers, Kashi Prasad Gupta and Bharat Prasad on 28.4.2004 in paragraphs 108, 109, 110 and 112 of the case diary. Statement of Jitendra Prasad was recorded by the officer-incharge on 5.5.2004 in paragraph 140 of the case diary where Jitendra Prasad is said to have stated before the officer-incharge that having learnt about the occurrence, he came to Hariharganj on 29.3.2004.

31. During the trial, grandmother of the victim, Mandodari Devi confirmed the fact that Ujjawal disappeared while he was playing with Raju on 21.3.2004 around 6.00 P.M. in front of her house. She also stated that while Ujjawal was playing with Raju, Rajendra, Surendra and their sons, Chandan, Gyani, Gautam, Salekh and Sonu were also present at the entrance of their houses, but they also disappeared along with Ujjawal. She further stated that having noticed the disappearance of Ujjawal, she went to Raju to ascertain the whereabouts of Ujjawal, who informed her that he had seen Chandan holding the hand of Ujjawal and going towards the lane where a stranger was also present. Raju also stated the aforesaid facts before the officer-in-charge when she examined him on 24.3.2004 u/s 161 Cr.P.C. Raju although did not confirm the aforesaid fact during the trial as he became hostile but the officer-in-charge in her evidence has confirmed the fact that Raju had stated before her during his statement u/s 161 Cr.P.C. that he had seen Chandan on 21.3.2004 around 6.00 P.M. holding the hand of Ujjawal and going towards the lane where a stranger was also present.

Mandodari Devi stated that having learnt the fact that Ujjawal had gone with Chandan towards the lane, she searched for him in the lane, but could not find him and returned home where she was informed by Sunita Devi, her daughter-in-law that while she was picking up dried clothes at the roof top, she had seen Chandan holding the hand of Ujjawal and going along with him. Rajendra, Surendra and their sons, Gautam, Gyani, Salekh and Sonu were following the two from behind. Mandodari Devi further stated that information about the disappearance of Ujjawal was given to his father, Jai Prakash on telephone the same evening. She also stated that Jai Prakash along with his two brothers came from his work place in Orissa on 23.3.2004 during the evening hours when she had informed him about the occurrence. Mandodari Devi further stated that ransom amount was paid to the kidnappers on 8.4.2004 at the Dhawapul by her son, Jai Prakash, who had gone along with his brothers Kashi Prasad Gupta and Jitendra Prasad. In exchange of the T-shirt of Ujjawal with ransom amount one of the kidnapers, Chhotan Khan, who had assured Jai Prakash that Ujjawal shall come back within two hours. She further stated that during the exchange and dialogue with the kidnappers, her son had identified the kidnappers and when Ujjawal did not return, the name of the kidnappers was disclosed to the officer-in-charge. Informant Jai Prakash also confirmed in the court that he learnt about the occurrence telephonically at his work place in Orissa from his father on 21.3.2004 in the late evening and thereafter conveyed the information about the occurrence to his two brothers and boarded the train reaching home on 23.3.2004 during the evening hours, whereafter learnt about the occurrence from his parents that Ujjawal disappeared while playing with Raju on 21.3.2004 around 6.00 P.M. He also stated that his mother also informed him that while Ujjawal was playing with Raju, Rajendra, Surendra and their sons were also present at the entrance of their residence and they also disappeared along with Ujjawal. He also stated that his mother informed him that after searching for Ujjawal in the lane when she came back home, she learnt from her daughter-in-law, Sunita Devi wife of Om Prakash that she had seen Chandan from the roof top holding the hand of Ujjawal and going along with him. Having learnt about the occurrence, informant visited the house of Rajendra and Surendra the same evening but could not meet either Rajendra, Surendra or any of their sons. The lady inmates present in the house of both Rajendra and Surendra stated that they are unaware about the disappearance of Ujjawal. On 24.3.2004 Jai Prakash recorded his fard-e-beyan before the officer-in-charge who visited his house to confirm the station diary entry made by his father on 22.3.2004 about the disappearance of Ujjawal. Informant further stated that first ransom call was received on 30.3.2004 in which demand of 20 lacs was made, whereafter further ransom calls were also received in which negotiation was made and ultimately deal was struck at One lac. Informant also stated that in order to pay the ransom amount, he along with his two brothers, Kashi Prasad Gupta and Jitendra Prasad had gone to Dhawapul on 7.4.2004 around 8.00 P.M. but the amount could not be paid as police patrolling party was present near Dhawapul. On 8.4.2004 again ransom call was received instructing him to come to Dhawapul at 1.00 P.M.. The

informant and his two brothers, Kashi Prasad Gupta and Jitendra Prasad again went to Dhawapul at 1.00 P.M. by motorcycle. No sooner the informant and his two brothers alighted from the motorcycle on the northern end of Dhawapul, they saw the accused persons sitting on the southern end of the bridge and proceeded towards them. Having covered a distance of ten steps, appellant Chhotan Khan from amongst the other appellants present instructed the informant to come alone and came ahead displaying the T-shirt of Ujjawal Kumar, which was identified by the informant. In exchange of the T-shirt, the informant gave Chhotan Khan a bag containing Rs. One lac and was assured by Chhotan Khan that the child shall come back within two hours, whereafter all the appellants present, including Chhotan Khan stated that as he (the informant) has identified them, should not disclose their identity to any one, failing which none shall be spared to even light the lamp in his house. The warning was announced by Chhotan Khan and all other appellants present at the Dhawapul, as they themselves realized that they have been identified by the informant. The informant and his two brothers having paid the ransom amount to appellant Chhotan Khan in presence of other appellants at Dhawapul, returned to their village and began to wait for arrival of Ujjawal. When Ujjawal did not come, information about payment of ransom amount of One lac to Chhotan Khan in presence of other appellants at Dhawapul on 8.4.2004 at 1.00 P.M. by the informant was given to the officer-in-charge on 12.4.2004. Two other brothers of the informant, who had gone along with him to Dhawapul for payment of ransom amount on 7.4.2004 and 8.4.2004 also confirmed the version of the informant about the manner in which payment was made to the accused persons in exchange of T-shirt of Ujjawal and the identification of the accused persons present at the Dhawapul by the informant. Prosecution witnesses, Kashi Prasad Gupta, Bharat Prasad Sah and Jitendra Prasad also confirmed the fact that after they came back to Hariharganj from their work place, they learnt about the occurrence from the mouth of Sunita Devi wife of Om Prakash that on the date and time of disappearance of Ujjawal, she had seen Chandan from the roof top holding the hand of Ujjawal and going along with him. They also stated that they had also informed the officer-in-charge about the factum of their gathering information about the disappearance of Ujjawal from Sunita Devi. The officer-in-charge, however, disputed the fact that name of Sunita Devi as witness of disappearance of Ujjawal by Chandan was never disclosed during the investigation. The trial court considered the request of the prosecution to examine Sunita Devi as witness in trial, although she was not cited as a witness in the charge sheet. The trial court having considered the request in the light of the deposition of the informant, Jai Prakash, Mandodari Devi, Kashi Prasad Gupta, Bharat Prasad Sah and Jitendra Prasad under orders dated 23.5.2006 and 9.8.2007 passed in the two trials resorting to the powers u/s 311 Cr.P.C., allowed the request of the prosecution to examine Sunita Devi as prosecution witness in both the trials, as prosecution witnesses asserted before the court in their evidence that on the date of occurrence around 6.00 P.M. while she was at the roof top picking up dried clothes, had seen Chandan holding the hand of Ujjawal

and going along with him. Sunita Devi also deposed in the court that on 21.3.2004 at about 6.00 P.M. while she was picking up dried clothes at the roof top, she had seen Chandan holding the hand of Ujjawal and going along with him. She also stated in her deposition that she had informed about the factum of disappearance of Ujjawal by Chandan to his father-in-law as also further stated in her deposition in both the trials that she made her statement before the police officer on 24.3.2004 at about 6.00/7.00 A.M. implicating Chandan, Rajendra and Gyani Prasad, but she is not aware whether such statement was reduced to writing by the police officer. The trial court, Placing reliance on the judgment of this Court over the case of Manik Chandra Watsalya and Ors. v. State of Bihar, reported in 2006(1) BCCR (PHC) 167, however, chose not to rely on her deposition as she never recorded her statement before the Investigating Officer u/s 161 Cr.P.C. Perusal of the judgment of this Court in the case of Manik Chandra Watsalya (supra) indicates that thereunder reliance has been placed over the judgment of the Hon'ble Supreme Court in the case of Ram Lakhan v. State of Uttar Pradesh, reported in AIR 1977 SC 1936 in which the Hon'ble Court while appraising the evidence led in the trial cautioned the courts below speaking through P.K. Goswami, A.C. Gupta and P.N. Shinghal, JJ. As their lordships then was not to place reliance over the testimony of a witness who never figured during the investigation and was not named in the charge sheet. In this connection, reference may be made to the provisions contained in Sub-section (1) of Section 161 Cr.P.C. which empowers the police officer investigating the case to examine any person supposed to be acquainted with the facts and circumstances of the case which the police officer is investigating so as to enable the police officer to collect all the materials required for concluding the investigation of the case. It is the police officer who is saddled with the responsibility to find out the person(s) supposed to be acquainted with the facts of the case so as to enable the police officer investigating the case to collect the materials for completing the investigation. In the instant case, officer-in-charge recorded the statement of only Raju Kumar on 24.3.2004 at 10.00 A.M. in which Raju Kumar confirmed the factum of disappearance of Ujjawal by Chandan. Statement of other family members of the victim including his step mother was not recorded on that day i.e. 24.3.2004 as they were perplexed, under shock and unable to record their statement. Later, on 28.4.2004 further statement of informant, Jai Prakash, the father of the victim and Statement of Mandodari Devi, the grandmother of the victim, Kashi Prasad Gupta and Bharat Prasad Sah, the uncles of the victim was recorded in paragraphs 108, 109, 110 and 112 of the case diary. Statement of Jitendra Prasad another uncle was recorded on 5.5.2004. While recording the statement of the grandmother and other relatives of the victim on 28.4.2004 and 5.5.2004, it was incumbent upon the officer-in-charge to have also recorded the statement of other inmates of the house present on the date and time of occurrence i.e. 21.3.2004 around 6.00 P.M., as it was her duty to ascertain the relevant information from all concerned who were available in the house when Ujjawal disappeared. Failure of the officer-in-charge not to record the statement of Sunita Devi in the case diary is dereliction of duty

on the part of the officer-in-charge and for any dereliction of duty on the part of the officer-in-charge, the prosecution cannot be allowed to suffer. In the circumstances, failure of the trial court to rely on the deposition of Sunita Devi has led to miscarriage of justice as while doing so, the trial court has ignored the evidence of Bharat Prasad Sah and Jitendra Prasad who categorically asserted in their deposition that on their arrival from their work place on 27.3.2004 and 29.3.2004 respectively, they learnt about the occurrence and disappearance of Ujjawal by Chandan from the mouth of Sunita Devi wife of Om Prakash Gupta and they made such statement before the officer-in-charge, which was not even challenged/disproved by the officer-in-charge in her deposition before the court in Sessions Trial No. 220 of 2006. In the opinion of this Court, trial court erred in discarding the evidence of Sunita Devi. Once Sunita Devi was directed to be examined as a witness by resorting to the powers u/s 311 Cr.P.C. by the trial court, her evidence should have been appraised by the trial court like the evidence of any other witness. Having appraised the evidence of Sunita Devi in both the trials, I am satisfied that she is a truthful witness unfolding only such part of the prosecution story of which she is eye witness. Relying on the evidence of Sunita Devi, there is no difficulty in concluding that appellant Chandan Kumar effected the disappearance of Ujjawal on 21.3.2004 around 6.00 P.M.

32. The officer-in-charge in her deposition also asserted that the informant, Jai Prakash did not inform her on 12.4.2004 about the story of exchange and payment of ransom amount by him to Chhotan Khan and others at the Dhawapul on 8.4.2004 and their identification. In this connection, reference was made by the learned Counsel for the appellants to the statement made in paragraph 39 of her deposition where she stated that on 27.4.2004, she has not stated in the case diary that informant identified the accused persons at the time of payment of ransom amount. During hearing of these matters, the case diary was verified by us and from the case diary, it appears that on 28.4.2004 statement of informant has been recorded by the officer-in-charge in which name of appellant Chhotan Khan and other appellants, except Chandan Kumar, has been mentioned as recipient of the ransom amount and their identification made during dialogue, exchange of the bag containing the ransom amount with the T-shirt.

33. Having considered the evidence as discussed above, it appears that Ujjawal disappeared on 21.3.2004 around 6.00 P.M. while he was playing with Raju. The disappearance was effected by Chandan who was seen going along with Ujjawal holding his hand by Sunita Devi which fact was duly conveyed to Mandodari Devi, her sons, Jai Prakash Gupta, Kashi Prasad Gupta and other relatives, namely, Bharat Prasad Sah and Jitendra Prasad. The ransom amount was paid by the informant, Jai Prakash to appellant Chhotan Khan at the Dhawapul on 8.4.2004 at 1.00 P.M. in presence of other appellants except Chandan, who got the T-shirt of Ujjawal in exchange on the assurance that Ujjawal shall come back home within two hours, but he did not come back. Dead body/carcass of Ujjawal was exhumed by appellant Chhotan Khan and other appellants, namely, Arbind, Pradeep and Nanhkut on 27.4.2004 in presence of the informant and his two

brothers, which was duly identified with the help of overlapping incisor (front) teeth and dent mark on the skull/forehead of Ujjawal. In the circumstances, the conviction of the appellants under Sections 364A, 302/149 and 201 of the Indian Penal Code appears to be just and proper. There being no charge framed u/s 120B, conviction of the appellant(s), namely, Chhotan Khan, Arbind Kumar, Nanhkut Chaudhary @ Shyamji Chaudhary @ Nanhkut, Pradeep Kumar Sah @ Pradeep Kumar, Gyani Prasad and Sonu Kumar u/s 120B of the Indian Penal Code is, however, set aside.

34. From the facts of the case as discussed above, it appears that appellant Chandan Kumar effected the disappearance of Ujjawal, Chhotan Khan and other appellants present along with him at Dhawapul sharing common object exchanged the T-shirt of Ujjawal with the bag containing the ransom amount, in the circumstances, I am satisfied that the instant case cannot be categorized as one of the rarest of rare cases to justify death sentence. The death sentence awarded to appellants, Chandan Kumar, Chhotan Khan, Arbind Kumar, Nanhkut Choudhary @ Shyamji Chaudhary @ Nanhkut is converted into lesser punishment of life imprisonment and with this modification in the sentence, appeal of the appellants, namely, Chandan Kumar, Chhotan Khan, Arbind Kumar and Nanhkut Choudhary @ Shyamji Chaudhary @ Nanhkut is dismissed. The Death Reference Nos. 1 and 2 of 2008 are answered accordingly. The appeal of other appellants, namely, Pradeep Kumar Sah @ Pradeep Kumar, Gyani Prasad and Sonu Kumar who have been awarded imprisonment for life is also dismissed in the light of the findings above.

35. Having considered the merit of the reference and the appeals, now I proceed to consider the report of the Juvenile Justice Board dated 26.7.2010 submitted in compliance of our order dated 23.12.2009 passed in these matters. Learned Counsel for the State submitted that report of the Juvenile Justice Board has been rendered with reference to the two reports of the Medical Board dated 19.3.2010 and 15.7.2010 without examining the Doctors constituting the two Medical Boards and according to the learned Counsel for the State the report of the Medical Board cannot be relied upon to hold the appellants as juvenile on the date of occurrence for failure to examine the Doctors submitting report. According to the learned Counsel the report cannot be admitted in evidence in the light of the provisions contained in Sections 293 and 294 Cr.P.C. as the report of the Medical Board is not a report included in Sub-section (4) of Section 293 Cr.P.C. unless the Doctors submitting the report are examined in support of the findings contained in the report. The report has been submitted by the Medical Board in compliance of the orders of the Juvenile Justice Board. After submission of the report neither the appellants nor the State objected to the contents of the report. In the circumstances, the contents of the report cannot be questioned when the same has already been considered and relied upon by the Juvenile Justice Board. The objection taken by the counsel for the State about the admissibility of the report does not appear to be justified and is, accordingly, rejected.

36. From the report of the Juvenile Justice Board, it appears that on 19.3.2010, appellants, Sonu Kumar, Gyani Prasad and Pradeep Kumar Sah @ Pradeep Kumar have been assessed by the Medical Board as 20, 22 and 18 years of age respectively. On the basis of their age assessed by the Medical Board, Sonu Kumar and Pradeep Kumar Sah @ Pradeep Kumar have been held to be juvenile on the date of occurrence i.e. 21.3.2004. The Juvenile Justice Board, however, in the case of Gyani Prasad differing with the opinion of the Medical Board has assessed him to be an adult on the date of occurrence of the instant case i.e. 21.3.2004. Such finding has been recorded by the Juvenile Justice Board on the basis of his date of birth (8.9.1980) recorded in the cross list of the Bihar School Examination Board. During the hearing of the appeals, We requested the counsel for the Bihar School Examination Board to produce the original of the cross list referred to in the report of the Juvenile Justice Board. In compliance of our direction, original Tabulation Register was produced in which date of birth of Gyani Prasad has been recorded as 8.9.1980. The date of birth recorded in the Tabulation Register of the Bihar School Examination Board cannot be relied upon to reject the age assessed by the Medical Board as the date of birth recorded in the Tabulation Register has no probative value unless the parents or the person who has the special knowledge about the date of birth of the person whose age is the subject matter of controversy is examined. In this connection, reliance is placed by the learned Counsel for the appellants on the decision of the Hon'ble Supreme Court in the Case of Birad Mal Singhvi Vs. Anand Purohit, . Having perused the original Tabulation Register produced by the counsel for the Bihar School Examination Board, we are satisfied that from the Tabulation Register it does not appear that the date of birth of appellant Gyani Prasad recorded therein as 8.9.1980 is on the basis of the statement of his parents or the persons who have the special knowledge about his date of birth. In my opinion, therefore, the Juvenile Justice Board erred in placing reliance over the date of birth of appellant Gyani Prasad recorded in the Xerox copy of the cross list. Accordingly, exercising the revisional power of the High Court u/s 53 of the Juvenile Justice (Care and protection of Children) Act, 2000 (hereinafter referred to as the Act), I set aside the finding of the Juvenile Justice Board that appellant Gyani Prasad was adult on the date of occurrence and relying on the report of the Medical Board hold that Gyani Prasad was juvenile on the date of occurrence i.e. 21.3.2004.

37. Other appellants, namely, Chandan Kumar and Arbind Kumar were held to be between 24-25 years on the date of the report of the Medical Board i.e. 15.7.2010 and taking into account the lower side of the age assessed by the Medical Board, the Juvenile Justice Board has held appellants, Chandan Kumar and Arbind Kumar to be juvenile on the date of occurrence. Counsel for the appellants with reference to the judgment of the Hon'ble Supreme Court in the case of Jyoti Prakash Rai v. State of Bihar, reported in (2) AIR 2008 S.C.W. 1985 and Dharmbir v. State (NCT of Delhi) and Anr. reported in (2010) 2 SCC (Crl.) 1274 submitted that the lower side of the age determined by the Medical Board should be accepted for assessing the age of the appellants on the date of

occurrence and relying on the said judgment, the Juvenile Justice Board has rightly assessed the age of Chandan Kumar and Arbind Kumar taking into account the lower side of the age assessed by the Medical Board and this Court should accept the age assessed by the Board.

38. The Act being a beneficial legislation enacted for granting benefit to a juvenile so as to enable the juvenile to reform himself, it is meet and proper to assess the age for the purposes of the Act taking into account the lower end of the age assessed by the Medical Board. Age of Chandan Kumar and Arbind Kumar has been assessed by the Juvenile Justice Board taking into account the lower end of the age assessed by the Medical Board, I do not find any illegality in such assessment made by the Juvenile Justice Board.

39. Chhotan Khan and Nanhkut Choudhary @ Shyamji Chaudhary @ Nanhkut have been assessed by the Medical Board on the date of report i.e. 15.7.2010 between 25-26 years. The Juvenile Justice Board having taken the lower side of the age assessed by the Medical Board, has assessed them to be of 19 years 8 months 6 days on the date of occurrence. Learned Counsel for the two appellants has questioned such assessment on the ground that from the records of the Juvenile Justice Board itself, it will appear that the Doctors constituting the Medical Board to assess the age of the four appellants, including Chhotan Khan and Nanhkut Choudhary @ Shyamji Chaudhary @ Nanhkut under letter dated 7.7.2010 informed the Civil Surgeon that X-ray report of the four appellants regarding ossification of bones is not clear and required further opinion from Radiological Expert for which X-ray plate is required to be sent to IGEMS, Patna and such information was conveyed by the Civil Surgeon to the Juvenile Justice Board under letter dated 8.7.2010 but without seeking any opinion of the Radiological Expert of IGEMS, Patna, the age of the two appellants have been declared between 25-26 years on 15.7.2010 and such report be rejected and matter be referred for further examination. In the light of the submission above, We examined the records of the Juvenile Justice Board wherefrom it appears that earlier Medical Board constituted under order dated 1.7.2010 consisted of four Doctors, namely, Dr. Rajesh Kumar Singh, Dr. Sri Bhagwan Singh, Dr. Vinod Kumar, all Medical Officers, Sadar Hospital, Sasaram and Dr. Bulum Kumar Pushkar, Medical Officer, Primary Health Centre, Nasariganj. The Board did not had any assistance of Orthopaedics Surgeon, as such, it was not in a position to consider the X-ray reports and required the assistance of Radiological Expert. Appreciating the aforesaid fact, Civil Surgeon reconstituted the Medical Board appointing Dr. Nand Lal Chauhan, Orthopaedics Surgeon, Sadar Hospital, Sasaram in place of Dr. Bulum Kumar Pushkar and with the assistance of Dr. Chauhan, the Medical Board examined the X-ray plate of the four appellants, including Chhotan Khan and Nanhkut Choudhary @ Shyamji Chaudhary @ Nanhkut and submitted report dated 15.7.2010, perusal whereof indicates that the Medical Board had considered the fusion in four joints of body and recorded its opinion about the age of four appellants. The Medical Board has recorded its opinion on the basis of its objective finding. In the circumstances, there is no

occasion for us to direct for fresh medical examination of the two appellants.

40. Having considered the report of the Medical Board dated 19.3.2010 in the case of appellants Sonu Kumar, Gyani Prasad and Pradeep Kumar Sah @ Pradeep Kumar and report dated 15.7.2010 in the case of Chandan Kumar and Arbind Kumar, I am satisfied that the appellants, Sonu Kumar, Gyani Prasad, Pradeep Kumar Sah @ Pradeep Kumar, Chandan Kumar and Arbind Kumar were juvenile on the date of occurrence. Due to their being juvenile on the date of occurrence, sentence of imprisonment cannot be passed against them in view of the provisions u/s 16 of the Act. Therefore, sentence of imprisonment as passed against them by the trial court is hereby set aside. During the trial, appellant Sonu Kumar has remained in jail custody from 28.4.2004 to 1.3.2006 and thereafter he is in custody since 18.12.2007. Appellant Gyani Prasad has remained in jail custody from 8.5.2004 to 2.3.2006 and thereafter he is in custody since 18.12.2007. Appellant Pradeep Kumar Sah @ Pradeep Kumar is in jail custody since 28.4.2004. Chandan Kumar is in jail custody 25.3.2004. Appellant Arvind Kumar is in jail custody since 28.4.2004. The five appellants have remained in jail custody for a period exceeding three years. In such view of the matters, there is no scope for passing any order against them under the provisions of the Act. Therefore, the aforesaid five appellants are ordered to be released forthwith, if not wanted in any other case. Appellants, Chhotan Khan and Nanhkut Chaudhary @ Shyamji Chaudhary @ Nanhkut shall undergo their sentence as modified by this judgment.

C.M. Prasad, J.

41. I agree