
(2015) 04 SC CK 0173

In the Supreme Court Of India

Case No : Criminal Appeal Nos. 1388-1394 of 2009

Uday Kumar Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Evidence Act, 1872 — Section 25, 26, 65B

Citation : (2015) 3 RCR(Criminal) 789 : (2015) 7 SCALE 79

Hon'ble Judges : Pinaki Chandra Ghose, J;U.U. Lalit, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. These appeals are against a common judgment and order dated 04.03.2009 passed by the Patna High Court in Death Reference Case No. 4/2007 and Death Reference Case No. 12/2008 alongwith the criminal appeals filed by the accused persons against the judgment and order of the trial court. The trial court convicted the accused persons and awarded death sentence, which was referred before the High Court for confirmation. The High Court after hearing the parties set aside the judgments and orders of conviction passed by the trial court against the accused persons. Hence, these appeals have been filed by the informant/complainant before this Court. The facts of the case, briefly stated, are as follows:-

a) On 30.12.2005, Tej Pratap, the victim, aged about six years, became traceless while returning home from a shop at about 10.30 a.m. Uday Kumar Singh, the father was informed at his place of duty from his home. On hearing of such news, he came back and started searching in the neighborhood, but the same was in vain. Accordingly, an FIR was lodged by the father with Barun Police Station alleging incident of kidnapping of his son by unknown miscreants.

b) The Superintendent of Police, Aurangabad, learning the said fact, constituted two special Task Force for recovery of the victim boy.

c) On 05.01.2006, Chandan Kumar (PW 8/9), cousin of the informant received information on his telephone No. 244103 whereby the caller informed that Tej Pratap was in his custody. On 09.01.2006, another call was received on the said telephone No. by Babita Sinha(PW 5/6), mother of Tej Pratap in which caller demanded Rs. 60 lakhs as ransom for releasing the victim. Investigating Officer (PW 11/10) was duly informed about the said calls, who made arrangements for installing Caller I.D. on the said telephone. On 12.01.2006 at 10.25 a.m., another call was received from Mobile No. 9431615667 on the same telephone No. 244103 and the caller asked the receiver of the call to hand over the call to the father of the victim. Two more calls were received on the same telephone No. from mobile No. 9431135489 at 10.48 and 11.37 a.m. and instructions were given to the father of the victim to arrange the ransom to secure the release of the victim.

d) The I.O. obtained the print out of these concerned mobile numbers 9431615667 and 9431135489 through the Sub-Inspector of Police Shri Sunil Kumar Singh. From the said print out, the subscribers were identified as Radhe Shyam Gupta and Arvind Kumar Singh, both of Pandu Bazar, Jharkhand in respect of mobile Nos. 9431615667 and 9431135489 respectively.

e) On inquiry, the I.O. learnt from Arvind Kumar Singh that he has exchanged his SIM Card with Raju Kumar Gupta of Pandu Bazar and he is using the said SIM Card for operating the telephone booth with number 9431135489. He further stated that Mukesh Kumar Gupta (PW 9/11), who managed the said booth, may be in a position to identify the callers.

f) After identifying the telephone booths, the I.O. requested the Officer Incharge of Kutumba Police Station and of Vishrampur Police Station to seize the SIM Card and router machine of the two telephone booths of Radhe Shyam Gupta and Raju Kumar Gupta. Accordingly, on 24.01.2006, the SIM Card, router machine and the registers maintained in the two booths were seized at 12.30 p.m. and 13.30 p.m. respectively. Such seizure was made in the presence of two seizure-list witnesses, namely, Munna Kumar Singh and Sanjay Kumar Gupta.

g) The I.O. thereafter interrogated Radhe Shyam Gupta and Raju Kumar Gupta. Radhe Shyam Gupta stated that he is not in a position to identify the caller who had made call from his booth on 12.01.2006. However, Raju Kumar Gupta confirmed :he fact that he has exchanged his SIM Card with Arvind Kumar Singh and his telephone booth No. 9431135489 is being managed by his nephew Mukesh Kumar Gupta (PW 9/11). Accordingly, Mukesh Kumar Gupta was examined on 29.01.2006, who stated that on 12.01.2006. Upendra Singh, Manoj Kumar Singh and Yogendra Singh had come to his booth looking for his uncle, Raju Kumar Gupta and along with him went inside his residential house and they made calls at 10.48 a.m. and 11.37 a.m. from the said booth on telephone number 244103.

h) On the basis of such statement, Raju Kumar Gupta, Upendra Singh and Manoj

Kumar Singh were arrested on 30.01.2006. On 30.01.2006, Upendra Singh recorded his confessional statement at 14.00 hours at Barun Police Station. He admitted that he along with other accused persons went to the booth of Radhe Shyam Gupta and Raju Kumar Gupta on 12.01.2006 and had made three ransom calls from the said booth. He further stated that two days prior to the recording of the confessional statement, Upendra Singh was informed by Yogendra Singh that with the help of local liner the victim boy has been killed and his dead body has been kept in a gunny bag and thrown in a dry well near a temple located in a field situate on the western side of the road in village Barain.

i) Accordingly, the I.O. along with Upendra Singh proceeded to village Barain and the dead body was recovered on 31.01.2006 at 18.30 hours. Such recovery was made in the presence of Chandan Kumar (PW 8/9) and Jag Narayan Choudhary, as foul smell was emanating therefrom.

j) From the post-mortem report as also from the evidence of Dr. Shyam Narayan Sahu, PW 10 and Dr. Devendra Kumar, PW 8, who were the members of the team of doctors who conducted autopsy on the dead body of victim Tej Pratap, it was evident that he was strangled to death as there was finger-tip pressure mark on left side of his wind pipe in front of neck leading to cardiac respiratory failure on account of asphyxia.

k) After recovering the dead body, the I.O. produced both Arvind Kumar Singh and Mukesh Kumar Gupta (PW 9/11) before Shri Ratan Kumar (PW 12) the Judicial Magistrate for recording their statement Under Section 164 Code of Criminal Procedure, which was duly recorded on 02.02.2006, in which Arvind Kumar Singh confirmed the fact that he had exchanged his SIM Card with Raju Kumar Gupta, on the basis of which he had established telephone booth with number 9431135489, which was managed by Mukesh Kumar Gupta. Mukesh Kumar Gupta in his statement Under Section 164 Code of Criminal Procedure also confirmed the said fact and further that on 12.01.2006, all the Appellants had come to his booth looking for his uncle and had gone inside the residence of his uncle wherefrom they made calls on telephone No. 244103.

2. The trial court on the basis of the evidence adduced before it convicted all the accused persons (Manoj Kumar Singh & Yogendra Singh in Death Reference Case No. 4/2007, Kameshwar Singh, Upendra Singh & Anuj Singh in Death Reference Case No. 12/2008) and awarded them death sentences, after putting the case in rarest of rare category and the matter was submitted to the High Court for confirmation of death sentences.

3. The High Court duly heard the said death reference cases as well as the appeals filed by the accused persons and by a common judgment, set aside the judgments and orders of the trial court holding that:-

(i) There is no legally admissible material available on record by which the accused persons could be connected with the kidnapping and murder of the child victim.

(ii) There is no material which could connect the accused persons with the recovery of the dead body of the victim child.

(iii) Arvind Kumar Singh, who gave his statement Under Section 164 Code of Criminal Procedure on 02.02.2006 has not been examined in Court and Mukesh Kumar Gupta was examined as PW 9/11, has resiled from the statement recorded Under Section 164 Code of Criminal Procedure and stated that such statement was made under police pressure and duress when he was under police custody and under threat of being made accused in the case. In these circumstances, the High Court correctly held that the evidences cannot be of any help to the prosecution.

(iv) The High Court further found that the print-out, which was produced before the Court has not been proved in accordance with the provisions of Section 65B of the Evidence Act. Further, the High Court noticed that the print-out produced does not bear any certificate of the competent officer of the telephone exchange, certifying the correctness of the data indicated therein. Hence, the High Court correctly held that the said printout cannot be admitted in the evidence and it would not be safe to rely on the same for convicting the accused.

(v) The High Court also did not accept the confessional statements of the accused persons recorded in the police custody and held that the said statements do not stand to the test of the provisions of Sections 25 and 26 of the Evidence Act.

(vi) The High Court also opined that the evidence of the I.O. was that he could reach near the well and recover the dead body as foul smell was emanating therefrom and, therefore, it cannot be said that at the instance of Upendra Singh, the said dead body was recovered.

(vii) Further, the High Court came to the conclusion that the answers given by Kameshwar Singh Under Section 313 of Code of Criminal Procedure, for question Nos. 4 and 5 cannot bind him or the other accused persons.

(viii) With regard to the seizure of the SIM Card and router machine of the two telephone booths, none of the officers who effected the seizure nor the witnesses, who were present at that time, were examined as witnesses in the Court and under these circumstances, the High Court held that the seizure-memo cannot be relied upon.

(ix) In these circumstances, the High Court held that it has no option but to grant the accused persons the benefit of doubt of the charges levelled against them.

4. We have heard the learned senior Counsel for the parties at length. After considering the materials in these appeals and the reasons given by the High Court on the given facts, we do not find any room to interfere with the judgment and the order so passed by the High Court. The reasons given by the High Court, in our opinion, can not be said to be flawed. There is no merit in these appeals

which are accordingly dismissed.