

A

YOGESH NARAIN SAXENA

v.

STATE OF UTTARANCHAL

MARCH 9, 2007

B

[C. K. THAKKER AND LOKESHWAR SINGH PANTA, JJ.]

*Indian Penal Code, 1860 :*

C

*Section 302—Conviction under-Based on circumstantial evidence—  
Held, on facts, proved.*

D

The appellant was charged with the offence of committing murder and attempt to cause disappearance of the dead body of a young boy, son of his next door neighbour with whom he was on visiting terms. The dead body of the victim was found in a tin box lying in the inner room of the quarter of the accused. The dead body was removed from the box and on visual examination marks of strangulation were noticed on the neck of the deceased. The case of the prosecution rests solely on circumstantial evidence. The accused, in his defence, also got examined four witnesses including his wife. The trial court, after considering the evidence on record, recorded conviction and awarded sentence as aforesaid. The accused-appellant preferred an appeal. The High Court, as noted above, confirmed the conviction and sentence imposed upon the appellant by the trial court.

E

F

G

It was contended on behalf of the appellant that (i) that the case is based on circumstantial evidence and the circumstances highlighted by the prosecution do not present a complete chain to show that in all human probability the act must have been done by the appellant and the judgments of the trial court as well as that of the High Court are based on hypothesis and conjectures. The prosecution has failed to establish that the circumstances from which the inference of guilt is to be drawn by the prosecution, is not cogently and firmly established; (ii) that no motive of any kind whatsoever has been established by the prosecution from the evidence on record against the appellant; (iii) that there is no evidence at all of last seen of the deceased with the accused on the day and at the relevant time of occurrence; (iv) that there is no evidence led by the prosecution to prove that any body saw the

H

child entering into the appellant's house which is surrounded by a number of houses and shops; (v) that the statement of P.W. 1 that the appellant was seen by him in the evening on the fateful day in front of his house is just an improvement and an after thought; (vi) that no witness has deposed of the presence of the appellant in his quarter on the fateful night, (vii) The trial court as well as the High Court have failed to appreciate and re-appreciate the evidence of the defence witnesses who have established on record that on the day of the occurrence the appellant and his wife both were at some other place; and (viii) that the recovery of dead body of the deceased allegedly at the instance of the appellant cannot be a conclusive proof of murder by the appellant. It was urged that the crime had been committed by some other person who concealed the body of the child in the house of the appellant to frame him in a false case. If the evidence of the prosecution is accepted, the appellant could only be held guilty for committing the offence under Section 201 IPC and not for offence under Section 302 IPC, was the last contention of the counsel.

The counsel for the State, on the other hand, submitted that the reasons given by the trial court as well as by the High Court for recording the order of conviction of the accused are based upon proper appreciation of evidence led by the prosecution in the case. According to him, the chain of circumstances is consistent only with the hypothesis of the guilt of the accused.

#### Dismissing the appeal, the Court

HELD1.1. There being no direct evidence to connect the accused with the crime, the case of the prosecution rests solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by the this Court, viz. the circumstances from which an inference of guilt sought to be drawn, must be cogently and firmly established; (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused; (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. [Para 8]

A *Gambhir v. State of Maharashtra*, [1982] 2 SCC 351 : AIR 1982 SC 1157; *Rama Nand v. State of Himachal Pradesh*, [1981] 1 SCC 511 : AIR (1981) SC 738, *Prem Thakur v. State of Punjab*, [1982] 3 SCC 462 : AIR (1983) SC 61, *Earabhadrappa v. State of Karnataka*, [1983] 2 SCC 330 : AIR (1983) SC 446, *Gian Singh v. State of Punjab*, [1986] Suppl. SCC 676 : AIR (1987) SC 1921, *Balvinder Singh v. State of Punjab*, [1987] 1 SCC 1: B AIR (1987) SC 350; *Hanumant Govind Nargundkar v. State of M.P.*, AIR (1952) SC 3443; *Sharad Birdhichand Sarda v. State of Maharashtra*, [1984] 4 SCC 116 : AIR (1984) SC 1622 and *C. Chenga Reddy v. State of A.P.*, [1996] 10 SCC 193, referred to.

C 2.1. The evidence of prosecution witnesses is natural, convincing and trustworthy. There is no material on record from which an inference can be drawn that these witnesses have implicated the appellant in a false case. On independent analysis and scrutiny of the evidence of these witnesses, they fully establish the case of the prosecution against the appellant. There is no reason to disbelieve them. [Para 19]

D 2.2. The evidence of the defence witnesses has been rightly discarded and disbelieved by the courts below as the defence witnesses are highly interested witnesses. Suffice it to say that in case there was any iota in the truth of their testimony, they would not have kept silent for more than a year from the day when the appellant was arrested. [Para 21]

E 3.1. This plea of the appellant that in the evening on the day of the occurrence he alongwith his wife again left the house, cannot be accepted as it is not plausible, satisfactory and believable. [Para 22]

F 3.2. The plea put forth by the appellant that it was possible for some unknown person to have committed the murder and then having concealed the dead body in the inner room of his quarter is unrealistic and false, and in itself, an additional circumstance leading support to the other impelling circumstances unfailingly pointing out the guilt of the accused. [Para 23]

G 3.3. In view of the fact that the relationship of the appellant and his father-in-law and other family members was cordial and in such circumstances, the plea of the appellant that the residents of Punjabi community of the locality were not happy with the marriage of the appellant, a non-Sikh person, with a sikh female is not believable as there is not an iota of evidence led by the appellant to substantiate any such allegation. [Para 23]

H

4.1. There are number of impelling circumstances leading to an irresistible and inescapable conclusion that it was the appellant and the appellant alone who caused the death of the innocent child by strangulating him and then concealing his body inside a tin box in the inner room of the quarter exclusively occupied by the appellant. The evaluation of the findings recorded by the trial court which are accepted by the High Court does not suffer from any illegality, manifest error or perversity or it has overlooked or wrongly discarded any vital piece of evidence. Hence, the findings of facts recorded by the courts below do not call for any interference. [Para 24]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 371 of 2005.

From the Judgment and Order dated 23.11.2004 of the High Court of uttranchal at Nainital in Criminal Appeal No. 1069 of 2001.

J.C. Gupta, Rajesh and Ramesh Chandra Patra for the Appellant.

A.S. Rawat, AAG and J.K. Bhatia for the Respondent.

The Judgment of the Court was delivered by

**LOKESHWAR SINGH PANTA, J. 1.** The appellant has filed this appeal against the judgment dated November 23, 2004, passed by a Division Bench of High Court of Uttaranchal at Nainital confirming the conviction and sentence for life in respect of the offence punishable under Section 302 of the Indian Penal Code [for short "the IPC"] and further rigorous imprisonment for seven years under Section 201, IPC, awarded by the Sessions Judge, Dehradun, in Sessions Trial No. 77/79.

2. Brief facts, which led to the trial of the accused, are as follows:-

Appellant-Yogesh Narain Saxena is a permanent resident of Jabalpur. He was employed as Junior Electrician in Hydel Department at Dak Pathhar, P.S. Vikas Nagar, District Dehradun. The appellant for the last about 5-6 years prior to the date of occurrence, i.e. 24.7.1979, was living in Quarter No. 5(B), Gol Market, Dak Pathhar. Sunder Lal (P.W.3) along with his three brothers, namely, Rajesh Kumar (P.W.4), Gopal Krishna and Pradeep Kumar, were also living in the nearby quarter at Gol Market. They were running small shops in front of their quarters.

A Sandeep *alias* Bunti, son of Sunder Lal (P.W.3), aged about 10<sup>1/2</sup> years, was a student of Class VI. He was taking tuition from Surender Singh Patia (P.W.1). In the evening of 24.7.1979, Sandeep had gone to the house of P.W.1 for taking his routine lessons from P.W. 1. He came back to his home after about one hour but again he went back to the house of P.W. 1 to collect his inkpot which he by mistake left there. Sandeep did not return to his home till about 9.00 p.m. P.W.3, P.W.4 and other family members in the company of neighbours proceeded in search of Sandeep but he could not be traced anywhere. P.W. 4 at 9.45 p.m. lodged a missing report of Sandeep at Police Out-post. Sub-Inspector Jeet Singh (P.W.8) along with three Constables immediately reached Gol Market. They cordoned the area and initiated search of Sandeep throughout the night in the market and nearby places. According to the prosecution, the accused had cordial and friendly relations with P.W. 3 being a neighbour, but he did not show any interest for searching the missing boy.

D It was alleged that in the morning of 25.07.1979, the accused was seen present in his quarter by Gopal Krishna (not produced), brother of P.W. 3 and P.W. 4. Gopal Krishna asked the accused whether he had seen Sandeep, anywhere in the vicinity, but the accused did not utter any word and on the contrary, he got upset and quietly went inside his quarter. After sometime, Rajendra Kumar (P.W.2) noticed the accused locking the door of his quarter and going out. It was alleged that on 25.07.1979 at about 9.00 a.m., P.W. 3 - E father of Sandeep, received a call on his telephone from Dehradun. The caller demanded a ransom of Rs.20,000/- for returning his son, Sandeep. Finally, the deal was settled for Rs.12,000/-. P.W. 3 was asked by the caller to keep money near Bindal Bridge, Dehradun, on the same night at 9.00 p.m. It was alleged that the voice of the caller appeared somewhat like that of the appellant. P.W.8 F - the Sub Inspector Jeet Singh advised P.W. 3 to keep the amount as demanded by the caller at the appointed time and place under watch and control of the police so that the police could apprehend the culprit. According to the settled plan, P.W. 3 left the money at the place as directed, but it appeared that the culprit somehow got information of the presence of the police so he did not turn up till midnight to collect the ransom amount. Finally, P.W. 3 and the G police party decided to go back to Dak Pathhar as there was no useful purpose of waiting at that place.

H It was in the forenoon of 26.07.1979 at about 3.45 p.m. when P.W. 4, Jagdish Prasad (P.W. 9), a shop keeper in the neighbourhood of P.W. 3 and

P.W. 8 along with police constables and other residents of the area were on the look out of Sandeep near a place known as Khadar, they noticed the accused coming from the opposite side of Gol Market. On seeing the police party and other persons, the accused tried to run away, but he was overpowered by the members of the search party. On interrogation by P.W. 8, the Investigating Officer, the accused disclosed that he had dumped the dead body of Sandeep in his quarter and the same could be recovered by him. Pursuant to the information supplied by the appellant, the Investigating Officer recorded the said information in writing marked as Exhibit Ka-28 in the case diary.

3. The accused was arrested at Gol Market on the spot and was taken to his quarter. The Investigating Officer asked the accused to handover the keys of the lock of the outer door of the quarter but he replied that he had lost the keys. The Investigating Officer was left with no other option except to get the locks of the outer door and also the lock of the other door of the inner room of the quarter broken up in the presence of witnesses. On entering the inner room of the quarter, the accused opened a tin box in which dead body of Sandeep was found lying. The dead body was removed from the box and on visual examination marks of strangulation were noticed on the neck of the deceased. The Investigating Officer recorded the First Information Report under Sections 302/201 IPC on 26.7.1979 at 5.15 p.m. against the accused and held necessary *mazhar* on the spot. The neck and knee of the deceased were found tied with a piece of cloth when the dead body was removed from the tin box. The dead body of the deceased was despatched for autopsy which was performed by Dr. P.D. Jakhmola (P.W. 5) on the following day. The Investigating Officer recorded the statements of the material witnesses on the spot. When the accused was further interrogated on 27.07.1979, he took the Investigating Officer and other witnesses to the rear portion of his quarter and got a pair of *chappal* of the deceased recovered from a water drain. After completion of the investigation and after receipt of *post-mortem* report and other reports, charge sheet was filed against the accused for offences punishable under Sections 302 and 201 IPC. The prosecution examined as many as nine witnesses to support its version. In his statement under Section 313 of the Code of Criminal Procedure, 1973 [for short "the Cr.P.C."], the accused has denied his involvement in the crime. In answer to question No.25 [viz., Do you have to say anything more?], he replied as under:-

"I am working as Junior Electrician at Dak Pathhar in Electricity

A Department since 1973. Every one was satisfied with my work. I was married on 10.10.78 in a Punjabi family due to which some Punjabi families became annoyed with me and threatened me to destroy. On 31.3.79, my father-in-law was transferred to Uttar Kashi. My wife was in a family way. My wife said that she would not be able to go in future, so for some days, 'I want to go to Uttar Kashi'. Therefore, I applied for earned leave from 10.7.79 to 30.7.79 and we left for Uttar Kashi on 10.7.79. On 23.7.79, myself and my wife came to Dehradun from Uttar Kashi. We reached Dehradun in the evening of 23.7.79 at 4.30 p.m. My wife said that tomorrow we shall go to Dak Pathhar for the cleaning of the house. On this, I agreed and on 24.7.79, myself and my wife went to Dak Pathhar in the morning. There cleaning etc. was done and we took breakfast at 2 p.m., purchased biscuits from the shop of Sunder Lal. In the evening at 5.00 p.m. we came back to Dehradun. On 25.7.79 we went to Dehradun market. On 24.7.79 at about 8.30 p.m. we went to take dinner at the house of one friend. Came back at 10.30 in the night. On 26.7.79 we had gone to Kanak Talkies to see a movie. At Dehradun, I went to my brother-in-law at 3.30 p.m. who lives at 52-A, Connought Place, Dehradun. There some police constables were standing. I went inside the house. Two Sub-Inspectors were sitting with my brother-in-law. Thereafter Darogaji brought me to Dak Pathhar on the pretext for making enquiries. They brought me in car. Rajesh Kumar, witness also sat with us from Dehradun. After taking me to Dak Pathhar Out-post they said to me that they will take search of my house. I said you may take but what the matter was. Darogaji said that you would know it later, first you proceed to your house.

F When I went to my house on 26.7.79 at about 5.00 p.m. then I found that my quarter was unlocked. I told Darogaji that there were no locks. Darogaji asked me to shut up. Thereafter Darogaji collected witnesses from the neighbourhood and then entered into my quarter with me. Inside, I saw that my doors were open. I told that some one has entered into it but Darogaji silenced me. After entering inside they opened the big Box Ex.1. In this box, the dead body of Sandeep was kept. Foul smell was emanating. He closed the box then and there. Meanwhile, a crowd had collected outside the quarter. Hearing hue and cry, I was sent to Police Out-post, Dak Pathhar. On 27.7.79, in the morning at 7.30 I was sent to Dehradun jail."

H

4. The accused in his defence examined his wife Smt. Asha Saxena (D.W.1), Vijay Singh (D.W.2) and Mahendra Pratap Saxena (D.W.3). The trial court, after considering the evidence on record, recorded conviction and awarded sentence as aforesaid. The accused-appellant preferred an appeal under Section 374(2) Cr.P.C. The High Court, as noted above, confirmed the conviction and sentence imposed upon the appellant by the trial court.

5. The case of the prosecution rests on circumstantial evidence. The circumstances on which the trial court placed reliance for recording conviction are as follows:-

1. The accused is admittedly almost a next door neighbour of the deceased. It is not controverted that he was on visiting terms with the father and the uncles of the deceased. In fact, he used to make purchase from the shop of P.W. 3 Sunder Lal close-by. The deceased who was a young lad of ten years used to call the accused an uncle. In view of the proximity and close affiliation, the accused had the faith and confidence of the deceased besides having unrestricted approach and access to him.
2. The accused had love marriage with a beautiful Punjabi girl about 9 or 10 months prior to his occurrence involving considerably extra financial burden especially as she was in family way in July 1979. Apart from it, the accused owed considerable money to the club which was to be repaid and which has not so far been repaid.
3. The wife of the accused was out of station having left on 10.7.1979 to visit her parents in Uttarkashi. The accused was thus all by himself on 24.7.1979 to plan a scheme for collecting money without any hindrance from any quarter in the calm and quiet of his inner room of the quarter.
4. Strangulation of a lad aged ten years needed confidence and faith of the object to avoid cries and shouts. It was possible for the accused only with the deceased. It is noteworthy that the deceased had no other injury on his person, that the dead body was neatly and carefully packed in tin box (Ex.1) and that the right hand was raised over the body clearly indicating that it was dumped immediately after strangulation.
5. There was no motive at all for any of the prosecution witnesses

- A to falsely implicate the accused. There is no reason either to support that anybody, much less a Punjabi, was aggrieved or agitated because of inter caste marriage of the accused with a Punjabi girl. Even if it be assumed for a second that some of them had any ground to be displeased with the accused, they had no reason at all to achieve that object by killing the young son of one of their own company.
- B
6. None else had any access or opportunity to plan dead body of the deceased inside the quarter of the accused. In any case, it was impossible for anybody else to plant a fresh dead body inside the box of the accused.
- C
7. The accused was in Gol Market in his quarter on 24.7.79 and left the quarter at about 5.30 a.m. the next morning. What is noteworthy is that the accused admitted his presence in his quarter along with his wife upto the afternoon of 24.7.79 and not thereafter. This was totally false. Moreover, the accused was found to be in his quarter even in the early morning of 25.7.79 and when approached by his neighbour for enquiry about the whereabouts of the deceased he got upset and soon thereafter left locking the quarter.
- D
8. There was a telephone call from Dehradun to P.W. 3 Sunder Lal, father of the deceased, at 9.00 a.m. on 25.7.79 demanding ransom and the voice of the caller resembled that of the accused.
- E
9. Immediately after his arrest, in the afternoon of 26.7.79 the accused revealed the entire story without any coercion, compulsion or threat and stated that he could point out and recover the dead body of the deceased from inside his quarter. The statement was followed with actual recovery of the dead body at his instance from inside the inner room of his quarter dumped in his own tin box (Ex. 1) over his quilt and plastic cover.
- F
10. Earlier assertion of the accused was that his quarter and the inner room were locked with different locks but now it is contended that they were lying open. This false assertion was necessary to prop up the story of plantation of the dead body inside the quarter by strangers.
- G
11. *Chappals* of the deceased which he was wearing at the time when he disappeared too were discovered and recovered at the
- H

instance of the accused from a drain very close to his quarter in the morning of 27.7.79. A

12. Last but not the least defence is full of omissions and lies.

6. Shri Sushil Kumar and Shri J.C. Gupta, learned senior counsel appearing on behalf of the appellant, assailed the judgment of the High Court *Inter alia* contending:- B

- (i) That the case is based on circumstantial evidence and the circumstances highlighted by the prosecution do not present a complete chain to show that in all human probability the act must have been done by the appellant and the judgments of the trial court as well as that of the High Court are based on hypothesis and conjectures. The prosecution has failed to establish that the circumstances from which the inference of guilt is to be drawn by the prosecution, is not cogently and firmly established; C
- (ii) that no motive of any kind whatsoever has been established by the prosecution from the evidence on record against the appellant; D
- (iii) that there is no evidence at all of last seen of the deceased with the accused on the day and at the relevant time of occurrence; E
- (iv) that there is no evidence led by the prosecution to prove that any body saw the child entering into the appellant's house which is surrounded by a number of houses and shops;
- (v) that the statement of Surendra Singh (P.W. 1) that the appellant was seen by him in the evening of 24.7.79 in front of his house is just an improvement and an after thought; F
- (vi) that no witness has deposed of the presence of the appellant in his quarter on the fateful night;
- (vii) that for the first time during trial, it was introduced by the prosecution through the mouth of Brij Mohan Gupta (P.W. 6) that the wife of the appellant had left the quarter of the accused about 15-20 days before 24.7.79 and thereafter the appellant was living alone in the quarter. The trial court as well as the High Court have failed to appreciate and re-appreciate the evidence H

A of the defence witnesses who have established on record that on the day of the occurrence the appellant and his wife D.W. 1 both were at Dehradun; and

(viii) that the recovery of dead body of the deceased allegedly at the instance of the appellant cannot be a conclusive proof of murder by the appellant. It was urged that the crime had been committed by some other person who concealed the body of the child in the house of the appellant to frame him in a false case. If the evidence of the prosecution is accepted, the appellant could only be held guilty for committing the offence under Section 201 IPC and not for offence under Section 302 IPC., was the last contention of the learned counsel.

7. The learned counsel for the State, on the other hand, submitted that the reasons given by the trial court as well as by the High Court for recording the order of conviction of the accused are based upon proper appreciation of evidence led by the prosecution in the case. According to him, the chain of circumstances is consistent only with the hypothesis of the guilt of the accused.

8. Before adverting to the arguments advanced by the learned counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused in question with the evidence and the prosecution rests his case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:-

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should

H

not only be consistent with the guilt of the accused but should be inconsistent with his innocence. [See *Gambhir v. State of Maharashtra*, [1982] 2 SCC 351 : AIR (1982) SC 1157] A

See also *Rama Nand v. State of Himachal Pradesh*, [1981] 1 SCC 511 : AIR (1981) SC 738, *Prem Thakur v. State of Punjab*, [1982] 3 SCC 462 : AIR (1983) SC 61, *Earabhadrapa v. State of Karnataka*, [1983] 2 SCC 330 : AIR (1983) SC 446, *Gian Singh v. State of Punjab*, [1986] Suppl. SCC 676 : AIR (1987) SC 1921, *Balvinder Singh v. State of Punjab*, [1987] 1 SCC 1 : AIR (1987) SC 350. B

9. As far back as in 1952 in *Hanumant Govind Nargundkar v. State of M.P.*, AIR (1952) SC 3443, it was observed thus: C

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused." D E

A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra*, [1984] 4 SCC 116 : AIR (1984) SC 1622. Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are (SCC pp. 185, para 153) : F G

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (ii) the facts so established should be consistent only with the H

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

C

We may also make a reference to a decision of this Court in *C. Chenga Reddy v. State of A.P.*, [1996] 10 SCC 193, wherein it has been observed thus: (SCC pp.206-207, para 21)

D

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

E

10. Bearing the above principles of law enunciated by this Court, we shall scrutinize scrupulously and examine carefully the circumstances appearing in this case against the appellant.

F

There are certain salient and material features in the present case which are admitted; they being that the appellant and P.W. 3- father of the deceased child were the neighbourers in the colony of Gol Market, Dak Patthar. The appellant was on visiting terms with P.W. 3 and the deceased used to call him as uncle. It is the evidence of P.W. 3 that the appellant was a regular customer of his shop and even on 24.07.1979, the appellant came to the shop and purchased some essential commodities from him. He stated that on 24.07.1979 at about 6.30 p.m. Sandeep had gone to the house of P.W. 1 (tutor) for taking tuition and after finishing his work, Sandeep came back to home. On reaching home, Sandeep left his bag of books at his house and immediately went out of the house saying that he would come back soon, but his son did not return till 9.00 p.m. He went out in search of his missing son towards Dhalipur

H

Dhakrani side, but he could not get any clue of Sandeep. He asked his younger brother P.W. 4 to lodge the missing report of Sandeep. On the following day at about 8.00 a.m., he came back from Dhalipur Dhakrani. On 25.07.1979, he received a telephone call at his house from Dehradun and the person who made the said call asked P.W. 3 that if he wanted safe and sound return of his son, he had to pay a ransom of Rs. 20,000/-. He showed his inability to pay such a huge amount. The caller of the telephone then made a demand of Rs. 15,000/- and on showing his inability to pay the said amount the caller reduced the demand to Rs. 12,000/-. Thereafter, the caller of the phone instructed him to pack the money in a bag and place the bag at 9.00 p.m. on the last step of the staircase of the north-eastern side of the Bridge of Bindal River at Dehradun. The caller of the telephone threatened him not to report the matter to the police or anybody else, lest his son would be finished. It is his say that the caller of the telephone also extended threat that if he failed to reach at the settled place with ransom money, the child would be finished and even the dead body would not be made available to him. He categorically stated that the voice of the telephone caller was somewhat similar to the voice of the accused. He consulted his younger brother-Gopal Krishna in regard to the further course of action. Gopal Krishna told him that the accused was not found present in his quarter since 5.30 in the morning of 25.07.1979. The entire matter was narrated and discussed with the Investigating Officer who advised him to arrange Rs. 12,000/- and place the bag of the money at the suggested place. He was assured by the Investigating Officer that police would ensure for his personal safety. As per plan he went to Dehradun at 8.45 in the night and concealed himself near some shop located there. He remained hiding there for about 2 1/2 hours but nobody turned up to lift the packet of money. The Investigating Officer came to him and told that as nobody had come and sufficient time had passed he should go to the place and collect the packet of money. He then lifted the packet of money and returned home with police party. A suggestion of the defence that since the accused had married a Sikh girl, therefore, the members of the Sikh and Punjabi communities, living at Dak Patthar became annoyed with him, is denied by the witness.

11. P.W. 4 is the brother of P.W. 3. His evidence shows that he along with P.W. 3 and two more brothers namely, Gopal Krishna and Pradeep and their father are jointly residing in one house at Gol Market, Dak Patthar. He corroborated the testimony of P.W. 3 in its entirety. He got recorded the missing report of Sandeep in the police station. It is his evidence that on

A 26.07.1979 in the evening at about 3.45 or 4.00 p.m., he accompanied by Shadiram, Chetandas, Subhash Bhatia and some more persons of the town had again gone in search of Sandeep and when they reached at a place known Khadar they saw the accused coming from the school side and going towards Gol Market, Dak Pathhar. On seeing them, the accused stopped for a while and then tried to run backward. The police personnel who were accompanying them apprehended the accused and later on he was interrogated. The accused initially kept silent, but after some time he narrated the entire incident to the police and disclosed that he could get the dead body of Sandeep recovered from the inner room of his quarter. The accused led the police party to his quarter and having reached there, the accused said that he had lost the keys of the locks of the doors. Then the lock of the outer door of the quarter was broken by the police. On opening of the quarter, the accused went through one room on the back side of the courtyard. The police broke open the lock of the door of inner room. He along with the accused and police personnel went inside the room where a tin box was placed. The accused opened the box in which dead body of Sandeep was found concealed. The police closed the box and removed it out of the room. The Investigating Officer prepared the majhar of the dead body [Ex. Ka-20] which was duly signed by him and other witnesses. It is his evidence that on the dead body of Sandeep one cloth piece of salwar was wrapped and the neck and knee of Sandeep were found jointly tied with a chunni (a piece of scarf). He stated that quilt Ex. 4 and plastic table cover Ex. 5 which were underneath the dead body, and a piece of salwar Ex. P-2 and chunni Ex. P-3 were taken into possession by the Investigating Officer on the spot. Box, Ex. 1, in which the dead body was concealed and two broken locks Ex. 6 and Ex. 7 were also taken into possession in his presence. Bushirt, undershirt and half pant which were found on the dead-body of Sandeep marked Ex. 8, Ex. 9 and Ex. 10 were identified by him in the Court. On 27.7.1979 at about 8.30 a.m. at the instance of the accused, the police in his presence and other witnesses recovered a pair of chappal (slippers) Ex.11 and Ex. 12 of the deceased from a water drain located on the back side of the quarter of the accused. He admitted in the cross-examination of the defence that the police inflicted one or two danda blows on the person of the accused when he was trying to run away on seeing the police party at Khadar. A suggestion of the defence that on 26.07.1979 at about 3.30 p.m., the police arrested the accused from the house of his brother-in-law at Dehradun is denied by the witness.

12. P.W.1-Surendra Singh Patia lived in Quarter No. 7-A, Gol Market,

H

Dak Patthar, which is about 10-15 yards away from the quarter of the accused. He was the Tutor of the deceased. It is his evidence that in the evening of 24.07.1979 he was teaching Sandeep in the verandah of his quarter, when he saw the accused passing through his quarter and going towards his own quarter. It has come in his cross-examination that after return from the Club on the day of incident, he came to know about the missing of Sandeep. He joined the searching party but they could not trace Sandeep.

13. P.W. 2 - Rajendra Kumar Sharma is residing in Quarter No.4, Gol Market, Dak Patthar. He is the neighbour of both P.W.3 and the accused. He deposed that on the fateful night he took part in search of missing Sandeep. It is his evidence that on the morning of 25.07.1979 at about 5.00 a.m. he along with Gopal Krishna again made inquiries from every family members residing in the quarters at Gol Market about the whereabouts of Sandeep. They had also gone to the house of the accused and enquired from him whether he had seen Sandeep who was missing since evening of 24.7.1979. He stated that on their asking the accused got perplexed and went inside his quarter saying that he did not know anything about the boy. They came back from the quarter of the accused and after about 10-15 minutes he saw the accused locking the outer door of his quarter and going out from there. The presence of the appellatant at Gol Market on 24.7.1979 has been established on record in the deposition of P.W. 2, an independent witness. This witness has also proved the presence of the appellatant in his quarter at about 5.00 a.m. in the morning of 27.7.1979.

14. P.W.6-Brij Mohan Gupta is also a resident of Gol Market area. He deposed that the wife of the appellatant was not staying in the house of the appellatant for the past fortnight from the day of the incident. He was also a member of the search party with the police officials in the evening of 26.07.1979 when the appellatant was apprehended. He witnessed the recovery of a pair of *Chappals*, Ex.11 and Ex.12, of the deceased at the instance of the appellatant in the evening of 27.07.1979 from a water drain at the backside of the house of the appellatant. He is an independent witness and his testimony has remained unshattered and unshaken in the cross-examination. His testimony corroborates the version of the other witnesses that in the afternoon of 26.07.1979 the appellatant was arrested at Dak Patthar by the police. The defence of the appellatant that the police apprehended him at Dehradun is falsified by the witness. There is not an iota of evidence on record to infer that this witness is in any way interested for any reason whatsoever to implicate the appellatant

A in a false case.

15. P.W.9-Jagdish Prasad is also a resident of Gol Market whose house is close to the house of P.W.3. He was also a member of the search party when the appellant was apprehended in the afternoon of 26.07.1979 near Gol Market. He testified that immediately after the arrest of the appellant, the police interrogated him whereupon the appellant revealed the entire story disclosing that the dead body of Sandeep was laid in his quarter. He witnessed the breaking of the locks of the rooms of the quarter of the appellant and recovery of the dead body of the deceased concealed inside a small tin box. He is the attested witness of the recovery Memos Ex.Ka.6, Ex. Ka.3 and Ex. Ka.20. Nothing is brought on record by the appellant to infer that this witness is an interested witness to the prosecution or he has deposed falsely against the appellant.

16. P.W.7- Satyavrat, at the relevant time, was posted as Clerk in the Telegraphic Office, Dehradun. On 25.07.1979, he was on trunk calls booking duty. He produced on record receipt No.52 in Book No.4758 dated 25.07.1979 issued and signed by him. The receipt would prove that on 25.07.79 at about 8.50 a.m. the telephone caller had booked an ordinary telephone call from Dehradun to some person at Telephone No. 55 and the said call matured at about 9.00 a.m. It has come in the evidence of P.W.4, uncle of the deceased, that number of their joint telephone installed at Gol Market, Dak Patthar is 55. The evidence of P.W.7 would establish an additional link in the circumstances that in all probability it was the appellant who booked a trunk call from Dehradun to telephone number of P.W. 3, father of the deceased, for making demand of ransom money for the release of his son Sandeep.

17. P.W.8-Jeet Singh, Sub-Inspector, conducted the investigation. He has testified the arrest of the appellant on 26.07.1979, and recovery of the dead body of the deceased concealed inside a small tin recovered from the inner room of the appellant after breaking open the locks of the doors as also the recovery of a pair of *Chappals* of the deceased from a water drain located at the backside of the house of the appellant. He denied the suggestion of the appellant that the appellant was in fact arrested on 26.07.1979 at 3.30 p.m. in the house of his brother-in-law at Dehradun.

18. P.W.5-Dr. P.D. Jakhmola was posted as Medical Officer, Dehradun in the year 1979. He examined the dead body of Sandeep at about 12.40 p.m. on 27.07.1979. He noticed blisters on the body. Eye balls were bulging out and

H

the tongue was protruding. Froth mixed with blood was coming out from both the nostrils. He found ligature mark all around the neck of the deceased, which was somewhat depressed and horizontal. The width of the ligature mark was 4 cms. and its colour was brownish. According to the Doctor, there was excavation of blood under the ligature mark as well as in the muscles of the neck, which could be caused by tying a piece of cloth like Ex.P-3. In the opinion of the Doctor, the cause of death was due to strangulation and the death was possible in the night of 24.07.1979 at about 8.00 p.m. The defence has chosen not to put any question to the Doctor in the cross-examination.

19. The evidence of P.W.1, P.W.2, P.W.3, P.W.6, P.W.8 and P.W.9 is natural, convincing and trustworthy. There is no material on record from which an inference can be drawn that these witnesses have implicated the appellant in a false case. On independent analysis and scrutiny of the evidence of these witnesses, they fully establish the case of the prosecution against the appellant. There is no reason to disbelieve them. When the news of disappearance of the deceased was spread over in the town, all the neighbours and the relatives of P.W. 3 took part in the search of the deceased except the appellant though he was on visiting terms and having good relations with the father and other members of the family of the deceased.

20. D.W.1 - Smt. Asha Saxena, wife of the appellant, in her deposition stated that she accompanied her husband to Uttarkashi on 10.7.1979 where her father was posted. On 23.7.1979, they both went to Dehradun and on 24.7.1979 from Dehradun they had gone to Dak Pathhar to get their house cleaned. It is her evidence that in the evening of 24.7.1979, she and her husband went back to Dehradun.

D.W.2, Vijay Singh, is the friend of the appellant. He deposed that on 23.07.1979 when he was going to Mussorie, he had seen the appellant present at the Mussorie Bus Stand. He invited the appellant for dinner on 24.07.1979 and the appellant and his wife D.W.1 both joined him for dinner.

D.W.3-Mahendra Pratap Saxena is the brother-in-law of the appellant and has repeated the same version as stated by D.W.1 and D.W.2.

21. The evidence of the defence witnesses has been rightly discarded and disbelieved by the courts below as the defence witnesses are highly interested witnesses. Suffice it to say that in case there was any iota in the truth of their testimony, they would not have kept silent for more than a year

A from the day when the appellant was arrested at Dehradun as per their version till their statements were recorded by the trial court.

22. The presence of P.W.4 - Rajesh Kumar, P.W. 6 - Brij Mohan Gupta and P.W. 9 - Jagdish Prasad along with the police party in the evening of 26.07.1979 at the house of the appellant has not been doubted by him in his statement recorded under Section 313 Cr.P.C. The appellant has also admitted the recovery of the dead body of Sandeep concealed in a tin box in the inner room of his quarter. It is proved on record by the prosecution that the appellant was on leave from 10.07.1979 to 30.07.1979. The appellant also admitted that he accompanied by his wife had gone to Uttarkashi on 10.07.1979 where his father-in-law was working. His plea was that on the morning of 24.07.1979 he and his wife both had gone to Gol Market, Dak Pathhar from Dehradun to get their quarter cleaned and after doing the cleaning work, they took breakfast at about 2.00 p.m. and then purchased some biscuits from the shop of P.W.3. In the evening at about 5.00 p.m. on the same day, he and his wife again returned to Dehradun. This plea of the appellant cannot be accepted as it is not plausible, satisfactory and believable. The trial court as well as the High Court have rightly disbelieved the defence story of the appellant in the light of the cogent and more satisfactory evidence led by the prosecution in this case.

23. The pair of *Chappals* of the deceased which he was wearing on the fateful evening was recovered by the Investigating Officer in the presence of P.W.4, P.W.6 and other persons at the instance of the appellant from the water drain located at the backside of the quarter of the appellant which were found smeared with mud. The unrealistic and false plea put forth by the appellant stating that it was possible for some unknown person to have committed the murder of Sandeep and then having concealed the dead body in the inner room of his quarter is, itself, an additional circumstance leading support to the other impelling circumstances unfailing pointing out the guilt of the accused. It is clear from the statement of the appellant recorded under Section 313 Cr.P.C. and his defence witnesses that the appellant and his wife, both had gone to Uttarkashi to meet his father-in-law who was working there. The relationship of the appellant and his father-in-law and other family members was cordial and in such circumstances, the plea of the appellant that the residents of Punjabi community of Dak Pathhar were not happy with the marriage of the appellant being a non-Sikh person with Smt. Asha Saxena D.W.1 has been disbelieved by the courts below and in our view, rightly so

H

as there is no iota of evidence led by the appellant to substantiate any such allegation. A

24. Having given our careful consideration to the submissions made by the learned counsel for the parties and in the light of the convincing and trustworthy evidence of the witnesses, who are quite natural and in the background of the principles highlighted above, we are of the view that there are number of impelling circumstances attending this case leading to an irresistible and inescapable conclusion that it was the appellant and the appellant alone who caused the death of Sandeep, an innocent child, by strangulating him and then concealing his body inside a tin box in the inner room of the quarter exclusively occupied by the appellant. The evaluation of the findings recorded by the trial court which are accepted by the High Court does not suffer from any illegality, manifest error or perversity nor it has overlooked or wrongly discarded any vital piece of evidence. Hence, we hold that the findings of facts recorded by the courts below do not call for any interference. B C D

25. In the result, there is no merit in this appeal and it is dismissed accordingly. D

B.K.

Appeal dismissed.