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Geetam Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-06-2001

Reported in : 2001CriLJ4791

Judge : G.P. Mathur and ;Ashok Bhushan, JJ.

Acts : Evidence Act - Sections 3, 27, 30 and 114; Indian Penal Code (IPC) - Sections 34, 120B, 201, 302, 364 and 365; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. A. No. 999 of 1980

Appellant : Geetam Singh

Respondent : State of U.P.

Advocate for Def. : D.G.A.

Advocate for Pet/Ap. : S.I. Jafri, Adv.

Disposition : Appeal dismissed

Judgement :

Ashok Bhushan, JJ.

1. This is an appeal against the judgment and order dated 24th April, 1980 passed by the 4th additional and Sessions Judge, Saharanpur in Session Trials No. 126 of

1979 and 395 of 1979 convicting the accused appellant for the offences punishable under Section 302 I.P.C. read with Section 34 I.P.C. and Sections 364 and 201 I.P.C. and sentencing him to undergo imprisonment for life Under Section 302 read with 34 I.P.C. four years' Rule I. Under Section 364 I.P.C. and two years Rule I. under Section 201 I.P.C.

2. The prosecution case, in brief, is that Satish son of Brahma Singh aged about 12 years disappeared from his house on 19-2-1979 from 11A.M. Brahma Singh after making search returned to his house in the morning of 21 -2-1979 when he saw a Pamphlet pasted on the door of his house. In the Pamphlet demand of ransom amount of Rs. 5000/- was made for return of Satish. The amount was to be paid on 21 -2-1979 at 7.00 p.m. at the well of Ramji Lal. The ransom note stated that if the police is informed then his son will not remain alive. Brahma Singh after geting the Pamphlet read immediately rushed to the police station and lodged first information report at 10.00 a.m. on the same day. Sub Inspector came to the village and took in his possession the camphlet. Kalian, the next door neighbour of Brahma Singh informed Brahma Singh that Geetam Singh enquired from Kalian twice as to what is being done by Brahma Singh regarding disappearance of Satish. Kalian informed Brahma Singh that while making the aforesaid enquiry Geetam Singh was not feeling any sense of sorrow rather he enquired the aforesaid fact Smilingly. Brahma Singh in the morning of 2-3-1979 saw Shripal and Shivraj coming out of the sugarcane field work he of Qadar. Brahma Singh became suspicious and collected persons of the village and apprehended Geetam Singh from the sugarcane field was sitting on a bedding along with several utensils, clothes etc. At the time when Geetam Singh was apprehended he was writing a ransom note and several ransom note similar to one which was pasted on the house of Brahma Singh on 21-2-1979 found with Geetam Singh, Geetam Singh was given a beating by the villagers and was taken to police station. Before reaching to the police station Geetam Singh prayed that he be not taken to police station and he will reveal the true facts. Geetam Singh confessed before Brahma Singh, Mam Chandra, Kalian, Chhatrapal and certain other persons of the village that Shripal and Shivraj told him to abduct Satish by which handsome amount of money will be received. Sripal brought Satish in the sugarcane field and gave him to Geetam Singh. Geetam Singh maintained

custody of Satish in the sugarcane field of Qadar. Shripal and Shivraj told Geetam Singh that if Satish is freed then he will tell the names of all persons and all will be sent to jail; hence Satish be killed. Geetam Singh accused confessed that Satish was killed by them. Shripal told that body of Satish be buried in sugarcane field of Atmaram. A pit was dug in the sugarcane field and body was buried beneath it. Geetam Singh Wrote ransom note demanding money and it was pasted on the door of Brahma Singh by Shripal. Accused Geetam Singh further confessed that they were making efforts for ransom amount and ransom note was written by him in the name of Ranjeet Singh Pundir. After making aforesaid extra judicial confession Geetam Singh was taken to police station and was taken in the custody. All the articles which were found with Geetam Singh at the time he was apprehended were handed over to the police. An entry in the general diary was made about the arrest of Geetam Singh and articles. Geetam Singh also confessed his crime before the police and offered to lead the police to the place where the dead body was hidden. The Sub Inspector of police along with some constables, Brahma Singh, Mamchandra and other public persons were led by Geetam Singh to the sugarcane field of Atmaram, Geetam Singh after removing the earth showed the dead body of Satish. The body was then sealed and sent for post mortem, Dr. R.C. Vedi conducted the post mortem examination on the dead body of Satish and found the following ante mortem injuries :

(i) Contusion 6 cm. x 2 cm. on the upper lip more to the right side.

(ii) Contusion 12 cm. x 8 cm. on the back of head.

(iii) Contusion 10 cm. x 6 cm. on right side head and on right temple.

(iv) Contusion 2 cm. x 1 cm. on right side neck, 3 cm. to the right of adam apple at that level.

(v) Contusion 1cm. x 1 cm. on left side neck, 2 cm. to the left of adam apple at that level.

(vi) Contusion 1 cm. x cm. on left side nose, cm. below No. 5.

(vii) Contusion 3/4 cm. x cm. on left side neck, cm. below No. 6.

The cause of death shown in the report is asphyxia as a result of throttleing.

3. Dr. Vedi has appeared as P.W. 6 who proved the post mortem report and stated that the death took place between 19th - 20th February, 1979.

4. Brahma Singh being dissatisfied with the progress of the investigation filed a Criminal complaint in the Court of the Chief Judicial Magistrate, Saharanpur under Sections 302, 201, 120B and 365 I.P.C. against Geetam Singh, Shivraj and Rishipal on 20th June, 1979. In the criminal complaint Brahma Singh stated that his son Satish disappeared on 12-2-1979 at 11.00 A.M. Brahma Singh made a search of his son and when he returned on. 21-2-1979 he found a Pamphlet pasted on his door asking giving of Rs. 5000/- at 7.00 p.m. at the well of Ramji Lal, Brahma Singh has stated in the complaint that he lodged the first information report on 21-2-1979. The police on the same day seized the Said Pamphlet and thereaftr police did not take any special steps in spite of repeated request by Brahma Singh. Brahma Singh has stated that Sub Inspector showed his displeasure on his repeated request. Brahma Singh stated that he himself was enquiring the matter and was informed by Kallan that Geetam Singh has made enquiry from Kallan as to what is being done by Brahma Singh regarding disappearance of Satish, Brahma Singh stated that he became suspicious that Geetam Singh is responsible for the disappearance of his son Satish. On 2-3-1979 Kalian met Brahma Singh and informed that Geetam Singh has asked twice-thrice from Kalian as to what is happening with Brahma Singh and what steps are being taken by Brahma Singh in this regard, Kalian informed Brahma Singh that Geetam Singh was not feeling sorry and had made the aforesaid enquiry smilingly. Brahma Singh came to know that Geetam Singh is hiding in sugarcane field of Qadar. Brahma Singh collected several persons of the village and apprehended Geetam Singh along with clothes, utensils, stove, empty bottles of liquor and ransom notes. Brahma Singh further stated that when Geetam Singh was being taken to the police station he in the way near octroi post stated that he be not taken to the police station and he will reveal the truth. Geetam Singh confessed before Brahma Singh, Man Chand, Kalian, Chhatrapal, and others that he was told by Shripal and Shivraj that if Satish is lifted they will get handsome money. Sripal lured Satish and Geetam Singh and Sripal caught Satish and took him in the sugarcane field of

Qadar. While Geetam Singh maintained the custody of Satish, Shivraj and Phool Singh went to the village and called Sripal. Shripal and Shivraj told that if Satish is released he will tell the names of all persons and they all will be sent go the jail. Hence Satish be killed and his dead body be buried in the sugarcane field. Ransom note was written by Geetam Singh which was pasted by Sripal on the door of Brahma Singh. Geetam Singh after he made the aforesaid extra judicial confession was handed over to the police on the same date i.e. 2-3-1979. Geetam Singh again made confession before the police and offered to show the body of Satish, Geetam Singh in hand cuffs led the police party and Brahma Singh, Shambhoo, Mam Chandra, Chhatrapal and others to the field of Atmaram where he dug earth and showed the body of Satish. In spite of all the aforesaid proof the Investigating Officer has not taken interest in the investigation; hence the complaint is being filed.

5. After completing the investigation in police case a charge sheet was submitted by the police against Geetam Singh, Shivraj Shripal and Phool Singh.

6. Charges were framed on 21-11-1979 against Geetam Singh, Shiv Raj and Shripal (Rishipal), All the three persons were firstly charged of kidnapping Satish on 19-2-1979 in order to murder him committing the offence under Section 364 I.P.C. Secondly they were charged that during 19-2-1979 and 21-2-1979 Satish was murdered in pursuance of their common intention thereby committing an offence punishable under Section 302 I.P.C. read with Section 34 I.P.C. All the three accused persons were further charged of burying the dead body of Satish in the field of accused Sripal's uncle Atma-ram in village Karanjali with intent to cause the evidence of the commission of the offence of murder to disappear and thereby committed the offence punishable under Section 201 of the Indian Penal Code.

7. The accused pleaded not guilty hence they were put to trial. Session Trial No. 126 of 1979 on the basis of the charge sheet submitted by the police and Session Trial No. 305 of 1979 on the basis of the criminal complaint made by Brahma Singh were consolidated and consolidated trial took place.

8. Prosecution examined six witnesses P.W. 1 Brahma Singh is the father of deceased Satish; P.W. 2 Kalian is the next door neighbour of Brahma Singh belonging to same village Karanjali; P.W. 3 Mamchand is again resident of same village; P.W. 4 Ram Pal Singh is the Head Constable who received the first information report on 21 -2-1979 and also entered the report in the General diary on 2-3-1979 stating that Brahma Singh and others brought Geetam Singh along with recovered articles at the police station; P.W. 5 Sri R.D. Verma, Sub Inspector is the Investigating Officer. P.W. 6 Dr. R.C. Vedi is Doctor who conducted the post mortem examination on the dead body of Satish, Statement of Geetam Singh was also recorded under Section 313 Cr. P.C. putting him the questions. The ransom notes are Ex. 21 to Ex. 25. The report of the Director, Forensic Science Laboratories, U.P. Lucknow comparing the admitted writing of Geetam Singh along with the ransom notes, was also received and placed on the record.

9. The learned Sessions Judge by the Judgment dated 24-4-1980 convicted the accused Geetam Singh and sentenced him as stated earlier. Accused Shivraj and Shripal were acquitted. Feeling dissatisfied with the conviction and sentence Geetam Singh has preferred the present appeal.

10. The learned Sessions Judge after carefully examining the evidence on record held that extra judicial confession made by Geetam Singh before Brahma Singh and other public witnesses is corroborated by other evidence on record namely other circumstantial evidence on the basis of which conviction of Geetam Singh has been recorded. With the help of learned Additional Government Advocate, we have gone through the record of the case, evidence on record and have heard him.The facts and circumstances in which the present appeal has been heard without any one appearing on behalf of the appellant, have already been stated in our order dated 27th April, 2001 passed on the order sheet.

11. The prosecution case is based on extra judicial confession of Geetam Singh and circumstantial evidence. There is no eye-witness of the incidence. Before proceeding to examine the evidence on which conviction has been recorded, it will be appropriate to examine as to how far extra judicial confession can be relied for basing the conviction. Further, what are the principles for recording the conviction

on circumstantial evidence has also to be looked into.

12. The apex Court in Kashmira Singh v. State of Madhya Pradesh AIR 1952 SC 159. Had observed :-

The confession of an accused person is not an evidence in the ordinary sense of the term as defined in Section 3. It cannot be made the foundation of a conviction and can only be used in support of other evidence. The proper way is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.

13. The apex Court in subsequent decision in Chandrakant Chimanlal Desai v. State of Gujarat reported in (1992) 1 SCC 473 : (1992 AIR SCW 2028) while quoting the above observations of Kashmira Singh's case, has held :-

As held in the decision cited above, only if on such consideration on the evidence available, other than the confession a conviction can safely be based then only the confession could be used to support that belief or conclusion.

14. A recent judgment in the case of State of Maharashtra v. Damu and Ors. reported in (2000) 41 All Cri C 56 : (AIR 2000 SC 1691), the Supreme Court after examining the aforesaid judgment laid down in paragraphs 24, 25 and 26 as under :-

24. The Division Bench has erroneously understood the ratio laid down by this Court in Kashmira Singh v. State of Madhya Pradesh AIR 1952 SC 159. The portion of the decision extracted by the Division Bench in the impugned judgent was the same as this Court has quoted in the Chandrakant Chimanlal Desai v.

State of Gujarat (1992) 1 SCC 473 : (1992 AIR SCW 2028). The following is that portion :The confession of an accused person is not an evidence in the ordinary sense of the term as defined in Section 3. It cannot be made the foundation of a conviction and can only be used in support of other evidence. The proper way is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to Act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.

25. We may make it clear that in Kashmira Singh (AIR 1952 SC 159) (supra) this Court has rendered the ratio that confession cannot be made the foundation of conviction in the context of considering the utility of that confession as against a co-accused in view of Section 30 of the Evidence Act. Hence the observations in that decision cannot be misapplied to cases in which confession is considered as against its maker. The legal position concerning confession vis-a-vis the confessor himself has been well-nigh settled by this Court in Sarwan Singh Ratan Singh v. State of Punjab (AIR 1957 SC 637) as under :-

In law it is always open to the Court to convict an accused on his confession itself though he has retracted it at a later stage. Nevertheless usually Courts require some corroboration to the confessional statement before convicting and accused person on such statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case.

26. This has been followed by this Court in Kehar Singh v. State (Delhi Administration) AIR 1988 SC 1883.

15. With regard to the circumstantial evidence for recording a conviction the Apex Court in (2000) 41 All Cri C 210 : (AIR 2000 SC 2138); Vasa Chandrasekhar Rao

v. Ponna Satyanarayana has held (at P. 2140 of AIR):-

Where the prosecution wants to prove the guilt of the accused by circumstantial evidence, it is necessary to establish that the circumstances from which a conclusion is drawn, should be fully proved; the circumstances should be conclusive in nature; all the facts so established, should be consistent only with the hypothesis of the guilt and inconsistent with the innocence; and the circumstances should exclude the possibility of guilt of any person other than the accused. In order to justify an inference of guilt, the circumstances from which such an interference is sought to be drawn, must be incompatible with the innocence of the accused. The cumulative effect of the circumstances must be such as to negate the innocence of the accused and to bring home the offence beyond any reasonable doubt. Where accused on being asked, offers no explanation or the explanation offered is found to be false, then that itself forms an additional link in the chain of circumstances to point out the guilt.

16. The Division Bench of our Court delineating the principle governing conviction on the basis of circumstantial evidence held in the case of Bhuri Singh v. The State, reported in (2000) 4 All Cri C 281 as under :

14. In the case of Jawahar Lal Dass v. State of Orissa (1991) 28 ACC 267 (SC) the Apex Court enumerated following principles:-

1. that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

2. that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

3. that 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 it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

15. The Apex Court in the case of Dhanjay Chatterji v. State of West Bengal (1994) 1 JT (SC) 33 held that in a case based on circumstantial evidence, the

Court has to be satisfied that the circumstances from which the conclusion of guilt is to be drawn have not only been fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis, except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not mere indignation of the Court can form the basis of conviction and the more serious the crime, the greater care should be taken to scrutinise, the evidence lest suspicion takes the place of proof.

16. It is thus well settled that each circumstance relied upon by the prosecution must be established by cogent, succinct and reliable evidence; and if the circumstances established are such as cannot be explained on any hypothesis except the guilt of the accused, conviction of the accused can be based. In other words the circumstances should be of an incriminating character and all the proved circumstances must provide a complete chain, no link of which should be found missing and the circumstances must unequivocally point to the guilt of the accused and must be entirely incompatible with the hypothesis of innocence of the accused, and this responsible duty has, to be discharged by the Court with utmost care and caution.

17. That before referring to extra judicial confession it will be appropriate to examine the evidence and the circumstances to find out as to whether the evidence on record and the circumstances provided a complete chain unequivocally pointing of the guilt towards the accused.

18. P.W. 1 Brahma Singh is the father of Satish. He stated that he is an employee of sugar mill, Deoband and about thirteen months ago he went fpr his duty at 5.00 p.m. On the same day in the after noon Satish went some where and when he was returning in the morning from duty Satish had not returned. Brahma Singh went in search of his son and returned on the next day morning and he found pasted a poster on his door. Villagers read the poster and informed that Ranjeet Singh

Pundir has made a demand of Rs. 5000/- for return of Satish. Brahma Singh went to the police station and lodged the first information report on 21-2-1979. Police came with him in the village and took out the poster from the door. Brahma Singh waited for the police to take any action. After eight days of disappearance of Satish Geetam Singh'accused enquired from Kalian as to now Brahma Singh is feeling. Geetam Singh met twice to Kalian and smillingly enquired on being informed by Kallan of the aforesaid fact. Brahma Singh 'became suspicious. On next day when he had gone for easing out in sugarcane field he saw Shripal and Shivraj coming out from the sugarcane field which gave suspicion to Brahma Singh and he went in the village collected villagers and surrounded the sugarcane field. Geetam Singh was apprehended from the sugarcane field who was sitting on a bedding there. Geetam Singh was in the mid of the field along with bedding, quilt, pillow, utensils for preparation of food, stove iron rod for digging the field and 2-3 empty bottles of liquor and similar ransom notes, one which was pasted on the door of the house of Brahma Singh. Geetam Singh was Writing one similar ransom note when he was apprehended. When Geetam Singh was being taken to the police Station he pleaded that he should not be taken to the police station and he will reveal the whole truth. Geetam Singh confessed that 10-12 days ago he had a talk with Shripal and Shivraj who told that by abduction of the son of Brahmai Singh they will get sufficient money. Sripal brought Satish on the pretext of collecting leaves in sugarcane field. Shripal thereafter handed over Satish to Geetam Singh. Geetam Singh further confessed, that all the three killed Satish since they apprehended that Satish will get them arrested. The dead body of Satish was buried in the sugarcane field of Atmafam. Brahma Singh further Stated that Geetam Singh after reaching the police station again told above facts to the Sub-Inspector. Geetam Singh was arrested. Geetam Singh took Sub-Inspector towards the sugarcane field along with Brahma Singh, Mamchandra, Chhatrapal etc. where Geetam Singh dug the earth and showed the dead body of Satish. When the police did not show any interest in the case then he filed a criminal complaint on 20-6-1979. Brahma Singh was cross-examined on behalf of Geetam Singh in which suggestion was made that ransom notes were got written forcibly from Geetam Singh by beating him.

19. P.W. 2 is Kalian who is next door neighbour of Brahma Singh. He stated in his statement that Geetam Singh is resident of Jadauda Jat. He stated that Satish son of Brahma Singh disappeared and after 6-7 days Geetam Singh met Kallan and smilingly enquired as to what is being done by Brahma Singh regarding his son. Geetam Singh made aforesaid enquiry twice from Kallan. Kallan stated that he passed on this information to Brahma Singh. Ten days thereafter Brahma Singh came in the village and said that in the sugarcane field of Qadar alias Lakshaman dacoits are hiding on which 30-40 persons went to the field of Qadar and apprehended Geetam Singh. At the time of apprehending Geetam Singh, he was sitting on a a bedding and was writing some thing. From the possession of Geetam Singh Stove, Utensils, clothes and Pamphlets were recovered. Geetam Singh was taken to the police station. Near the octroi post Geetam Singh pleaded that he should not be taken to the police station and he will tell whole truth. At that time there were 100 persons. Geetam Singh confessed that Shripal told him that if the son of Brahma Singh is abducted they will get sufficient money. Geetam further said that Shripal brought Satish, Shripal told that if the boy is freed then he will get all of them sent to jail and it will be better to kill him. Geetam further told that Shripal brought spade and body was buried in the sugarcane field of Atmaram. Geetam Singh after reaching at the police station reiterated the aforesaid statements before the Investigating Officer. Geetam Singh then led the police party to the sugarcane field of Atmaram where the dead body of Satish was buried, then Mamchandra brought spade and thereafter Geetam Singh dug the earth and the dead body of Satish was recovered.

20. P.W. 3 Mamchandra is the resident of same village Karanjali. He stated that after 10-12 days of disappearance of Satish Brahma Singh came to village and told that criminals are hiding in the sugarcane field of Qadar. They collected large number of persons and went to sugarcane field of Qadar and surrounded the same. Geetam Singh was found in the sugarcane field writing ransom note. Quilt, clothes, utensils, stove and empty bottles of liquor were found with Geetam Singh. One iron rod for the purpose of digging the earth was also found. On seeeing these articles Exs. 1 to 20 Mamchand told that these articles were found with Geetam Singh. He further stated that near the octroi post Geetam Singh told that he should not be taken to the police station and he will reveal all the truth. Geetam

Singh informed that Shripal came to Geetam Singh along with the son of Brahma Singh. At that time Geetam Singh was sitting with Shivraj. Shripal said that the boy should be killed. All the three persons then killed Satish then Shripal brought spade and told that the body be buried in the sugarcane field of Atmaram since the crop of that field will be out in the last. All the three persons then buried the dead body of Satish in the sugarcane field of Atmaram. At the police station Geetam Singh told same things and informed that he will get the dead body of Satish recovered. Geetam Singh led the police party and other persons of the village to the field of Atmaram where the dead body was buried and then Mamchand brought the spade and Geetam Singh removed the earth by the spade and the body of Satish was recovered. A suggestion was made to Mamchandra witness that ransom note was got written from Geetam Singh by force and it is wrong to say that Geetam Singh was arrested from the house of Katu.

21. P.W. 4 Ram Pal Singh is the Head Constable. He stated on 21-2-1979 Brahma Singh had given a typed report on which he registered a case in the general diary which was marked Ex. Ka-3 and copy of the same was marked as Ex. Ka-1. On 2-3-1979 at 3.10 p.m. Brahma Singh and some persons brought Geetam Singh along with recovered Articles from him. An entry about this fact has been made by him in the general diary and copy of which has been filed in Court which was marked as Ex. Ka-6.

22. P.W. 5 R.D. Varma is the Investigating Officer in this case. He stated that on 21-2-1979 he was posted as Sub-Inspector at the police station and he was given investigation of the said case. On 21-2-1979 he went to the village and took in his custody the poster which was pasted on the door of the house of Brahma Singh. The poster was marked as Ex. Ka-21. A recovery memo of the poster was prepared which was marked as Ex. Ka-7. He stated that he went to the village and recorded the statement of Kalian and other witnesses. He stated that on 24-2-1979 he again went to the village and came to know that Geetam Singh and Shivraj are bad characters. On 2-3-1979 Brahma Singh and other witnesses brought Geetam Singh along with some goods. Geetam Singh on interrogation confessed his guilt and offered to get the dead body recovered. Geetam Singh was taken in hand cuffs to the sugarcane field along with some villagers. In the

sugarcane field of Atmaram accused Geetam Singh showed the place where the dead body of Satish was buried. At that place the sugarcane crops were broken and earth was uneven. Mamchand witness brought a spade and from that place the dead body of Satish was recovered after digging the earth. A recovery memo was prepared to this effect and Panchayathnama of the dead body was prepared.

23. P.W. 6 is doctor R.C. Vedi who conducted the post mortem examination on the dead body of Satish. He stated that there were several injuries on the dead body and the death was caused due to throttling. The probable period of death was said to be 19th or 20th of February, 1970. Injuries Nos. 4, 5, 6 and 7 were on neck and due to above injuries the asphyxia was caused.

24. Accused Geetam Singh was also examined under Section 313, Cr. P.C. by the Court and ten questions were put to him.

25. The trial Court has referred to circumstantial evidence and extra judicial confession which was found to be corrbprated from the evidence on record. The ransom notes were found to be written by Geetam Singh. The circumstances of Geetam Singh maintaining regular establishment in the standing sugarcane crop of Q.adar alias Lakshman was found to be consistent with the involvement in the matter of kidnapping. The recovery of dead body through Geetam Singh was held to be important circumstance and the evidence on record corrborated the confessional statement of Geetam Singh. The recovery of Pamphlet of the type which was found pasted on the door of Brahma Singh, from the custody of Geetam Singh at the time of arrest was found to be corroborative link in support of his extra judicial confession.

26. The evidence which was led by the prosecution in this case points out to various circumstances which unequivocally points out finger of guilt towards the accused. The first circumstance which is important circumstantial evidence proved by he witnesses is finding of ransom note pasted on the door of Brahma Singh on 21-2-1979 in the handwriting of Geetam Singh and recovery of Similar ransom notes from the possession of Geetarn Singh when he was apprehended on 2-3-1979 from the sugarcane field of Qadar. All the ransom notes along with the admitted writing of Geetam Singh were sent to the Director, forensic Science

Laboratories, U, P. Lucknow, The report of the Director, Forensic Science Laboratories, U.P. Lucknow is on the record to the effect that the sample writing marked S-10056 to S-10062 were written by the same person who wrote the disputed writing marked Q-10047 to Q-10055, While cross-examining P.W. 1, P.W. 2 and P.W. 3 a suggestion was given that the aforesaid ransom notes were got written from Geetarn Singh by giving him beating. From the evidence it is proved that Geetam Singh for the first time was apprehended by Brahma Singh and other villagers on 2-3-1970 from the sugarcane field of Qadar and on the same day he was handed over to the police. The ransom note Ex. 21 which was pasted on the door of Brahma Singh on 21 -2-1979 was seized by the police on the same day. Geetam Singh in his statement under Section 313, Cr. P.C. has not denied his writing on the ransom notes but he stated that the ransom notes were got written from him by giving beating. The ransom note which was pasted oh 21-2-1979 was much before the date on which Geetam Singh was apprehended. The recovery of ransom note Ex. 21 has been proved by P.W. 1 and P.W. 5, P.W. 1, P.W. 2, P.W. 3 and P.W. 5 have all stated that Geetam Singh was first apprehended on 2-3-1979; The theory that the ransom notes were got written from Geetam Singh by giving beating is, therefore, unbelievable and the witnesses have successfully proved that Geetam Singh has written all the ransom notes. The flow of words indicates the natural flow of words and they have been written at leisure. The aforesaid circumstantial evidence proved that Geetam Singh was abductor and was writer of the ransom notes to extract ransom money from Brahma Singh.

27. The other circumstantial evidence which points and continues the chain of events is that Geetam Singh was maintaining a separate establishment in the mid of sugarcane field of Qadar far away from the village. Geetam Singh who was writing the ransom note for extracting ransom money was hiding himself away from the village in the midst of sugarcane field. Recovery of utensils, stove, bedding, etc. proves that he was maintaining separate establishment far away from the eyes of the people. This circumstance points that Geetam Singh was abductor and for carrying on operation for receiving the ransom money was maintaining separate and secret establishment in the midst of sugarcane field.

28. Geetam Singh was apprehended by Brahma Singh and villagers on 2-3-1979 in the afternoon from the sugarcane field of Qadar and handed over to the police the same day. In the same evening on 2-3-1979 Geetam Singh led the police along with the independent witnesses to the sugarcane field of Atmaram and got the dead body of Satish recovered. The statement of Geetam Singh which led to the recovery of dead body is relevant under Section 27 of the Indian Evidence Act and can be safely relied upon to prove that Geetam Singh was aware of the place where the dead body was buried by them. In the statement under Section 313, Cr. P.C. Geetam Singh was put to explain regarding the recovery of dead body by him. No explanation came forward regarding the recovery of dead body from the side of accused. Recovery of dead body at the instance of Geetam Singh is very important circumstance which points finger of guilt towards him.

29. Apart from the above circumstantial evidence the prosecution witnesses have also proved the extra judicial confession by Geetam Singh which was made by him while he was being taken to the police station by Brahma Singh and others. The extra judicial confession by Geetam Singh was proved by Brahma Singh P.W. 1, Kalian P.W. 2 and Marn Chand P.W. 3. Kalian and Marn-chandra P.W. 2 and P.W. 3 are the residents of the same village and are not related to Brahma Singh. In the cross-examination of the aforesaid witnesses there is not even a suggestion that they had any enmity or motive to implicate the accused Geetam Singh. The fact that immediately after making extra judicial confession Geetam Singh, pointed to lead the recovery of the dead body which completes the chain of events and gives strength to the evidence proving extra judicial confession by Geetam Singh. The circumstantial evidence on record and the extra judicial confession which has been proved successfully by the prosecution witnesses proves the guilt of the accused and the circumstances unequivocally points to the guilt of accused and are incompatible with the hypothesis of innocence of the accused. From the above it is proved; that it was Geetam Singh who abducted Satish and after killing him burled his dead body in the sugarcane field.

30. In view of the above evidence and circumstances the Sessions Judge did not commit any error in recording conviction of Geetam Singh. The Apex Court in the case of State of West Bengal v. Mir Mohd. Omar, reported in (2000) 41 All Cri C

598 : (AIR 2000 SC 2988) in paragraphs 31, 32, and 33 held as under :-

30. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.

31. In this case, when prosecution succeeded in establishing the afore-narrated circumstances, the Court has to presume the existence of certain facts. Presumption is a course recognised by the law for the Court to rely on the conditions such as this.

32. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reach a logical conclusion as the most probable position. The above principle has gained legislative recognitiion in India when Section 114 is incorporated in the Evidence Act. It empowers the Court to presume the existence of any fact which it thinks likely to have happended. In that process Court shall have regard to the common course of natural events, human conduct etc. in relation to the fact of the case.

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

31. From the above discussion it is clear that the Sessions Judge did not commit any error in convicting and sentencing the accused-appellant on the basis of the evidence brought on record by the prosecution. There is no merit in this appeal and the same is dismissed. The bail of the appellant has already been cancelled by a Division Bench of this Court by order dated 16-2-2000. The appellant shall be taken into custody to serve out the sentences awarded by the Court below. The Chief Judicial Magistrate, Saharnpur is directed to take all steps available under law to secure the arrest of the appellant. The Chief Judicial Magistrate is directed to send a compliance report to this Court.

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