

Lalit Kumar Vs. State

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Court : Delhi

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1996(37)DRJ306

Judge : A.B. Saharya and; M.S.A. Siddiqui, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 365

Appeal No. : Criminal Appeal No. 210 of 1994 and Murder Reference No. 5 of 1994

Appellant : Lalit Kumar

Respondent : State

Advocate for Pet/Ap. : Rajiv Kanwar,; T.C. Sharma,; S.C. Sharma and;

Judgement :

Arun B. Saharya, J.

(1) By this common judgment, we would dispose of the Appeal filed by Lalit Kumar against judgment and order dated 31st of August 1994 passed by the Additional Sessions Judge, Delhi convicting and sentencing him to undergo rigorous imprisonment for a period of four years under Section 365 Indian Penal Code and to death under Section 302 Indian Penal Code and the above-noted

Murder Reference made by the Sessions Court for confirmation of the death sentence under Section 302 IPC.

(2) The charge against Lalit Kumar was that on 17th of January 1992, he kidnapped Anil, aged about 9 years, son of Om Parkash, resident of P2-175, Sultanpuri, Delhi; and during the period 17th of January 1992 to 24th of January 1992 committed murder of the child in the forest of Avagarh in Distt. Aita, U.P.

(3) The prosecution case is that on 17th of January 1992 Om Parkash (PW-10) lodged a report (EX.PW- 1/D) at Police Station Sultanpuri, Delhi, that his son Anil had gone out to ease himself at about 4 p.m. and was missing. Same day, at about 5,30p.m., Rajinder Singh (PW-2), Sarvan Kumar and Bir Singh saw Lalit together with Anil at the Azadpur bus stand. Thereafter, on 22nd of January 1992, at about 6.15p.m., the accused was last seen together with the boy by Pokh Pal (PW-3), Rampal, Puran Singh and some others, in Village Bachakar. Later, at about 7.45 p.m., when Geetam (PW-4) met him, the accused was alone at Village Nangla Bakhti. The accused had asked at both these places for the way to go to Village Misa Khurd. On 23rd of January 1992, early in the morning, abandoned dead body of a child was found lying in a pit in the forest area between Village Bachakar and Village Nangla Bakhti, within the jurisdiction of P.S. Avagarh, Distt. Aita, U.P. A large number of villagers from the neighbouring villages gathered there. Pokh Pal (PW-3), who also reached there, recognised the dead body and told those present that on the previous day, after sunset, he had seen the child along with a man who wanted to go to Village Misa Khurd. Manpal Singh (PW- 5), a resident of Village Nangla Bakhti, was also there when Pokh Pal (PW-3) gave this information. On his return to Village Nangla Bakhti, in the evening, he met Geetam (PW-4), who told him that only the previous day, late in the evening, he too had met some-one, who had a chat with him about his relative Heera Lal Dhobi and asked him to show the way for going to Village Misa Khurd, in pursuance of the clues so gathered from Pokh Pal (PW-3) and Geetam (PW-4), on 24th of January 1992, Manpal Singh (PW-5) along with 10 to 15 companions from Village Nangla Bakhti, embarked upon search of the suspicious stranger and proceeded to the next Village Misa Khurd. There, they located the house of Heera Lal and found the accused standing at the gate. On inquiry, a local resident pointed towards him and

revealed that he was the one who had come the night before last very late. They caught hold of the accused and brought him back to Village Nangla Bakhti, where Geetam (PW-4) identified him as the person who met him and talked about going to Village Misa Khurd. The accused was then conducted to Village Bachakar. Here, Pokh Pal (PW-3) and others also identified him and confirmed that he was the one who was seen together with the deceased child on 22nd of January 1992. Thus confronted, the accused admitted that he had brought the child from Delhi and that he had killed the child. Thereafter, he cunningly took to his heels. Finally, he was arrested on 28th of January 1992 at Delhi.

(4) It would be appropriate to note some of the other facts also at this stage. On 23rd of January 1992, the puzzled villagers sent information through Chandrapal to P.S. Avagarh that the dead body of a child had been found in the forest. Head Constable Ram Dev Sharma (PW-7) recorded it in the daily diary at 1730 hrs. as Report No. 26 (Ex. PW-7/A). Station Officer Jaspal Singh, along with other police personnel, arrived at the spot and drew up the Inquest Report (Ex. PW-5/A), which was witnessed, among others, by Manpal Singh (PW-5) and Constable Vimal Kant (PW-8). It was recorded that the dead body of an unknown boy, was lying in the desolate jungle, that the death appeared to have occurred in suspicious circumstances but the actual position was not clear, and that the cause of death could be ascertained after postmortem. Hence, the dead body was covered, sealed and sent at 2000 hrs, to the mortuary, through Constable Vimal Kant (PW-8) and another Constable Narain Pandey, for post-mortem.

(5) On 24th of January 1992, Dr. S.S. Gahlot (PW-9) conducted the post-mortem at 2 p.m. at the District Hospital, Aita and submitted his report (Ex. PW-9/A). He external, the following injuries:-

1. Contusion mark size 3 cm x 2 cm. on the right side of the neck below the mandible near the angle. On dissection underlying muscles were having blood.

2. Contusion mark 5 cm x 3 cm. on the left side the neck below mandible above the level thyroid, on the side of wind pipe. On dissection under lying muscles were connected.

3. Abrasion mark in an area size 6 cm x 4 cm on the right side forehead.

4. Abrasion size 3 cm x 2 cm on the right side head.

(6) Also that membrane of brain and walls of the chest pleura both the lungs larynx and trachea, walls of abdomen, peritoneum, liver and gall bladder, pancreas, spleen and kidney all were connected and that the stomach contained about one ounce of undigested liquid material. The time between death and post-mortem was about twodays. He opined:-

'The death was due to asphyxia as a result of A.M.I on account of throttling.'

(7) In Court, in his cross-examination, Dr. Gahlot (PW-9) explained that generally in strangulation cases, ligature marks in the shape of contusions are present, the same were also present in this case and on one side of the neck there were finger contusions and on the other side the contusions were caused by pressing the thumb. He justified his opinion that death in this case was caused due to asphyxia because force was applied on the trachea and larynx and the underlying tissues were also having blood.

(8) On 24th of January 1992 itself, Om Parkash (PW-10), came to know from his brother Bir Pal, who had come to Delhi, that dead body of a child had been recovered in the area of P.S. Avagarh. Immediately, he along with Bir Pal and some others, reached Avagarh and from there they went to dead house Aita. There, Om Parkash (PW-10) identified the dead body of the child to be that of his missing son Anil. Then, on 25th of January 1992, he submitted a complaint at P.S. Avagarh, narrating the circumstances in which he had reached there and stated, inter alia, that on 17th of January 1992, he had lodged a missing report about his son Anil at P.S. Sultanpuri, Delhi, that on 18th of January 1992, Rajinder Singh (PW-2), Sarvan Kumar and another had disclosed to him that they had seen Lalit Kumar taking his son at Azadpur bus stand, and that Anil had kidnapped his son from Delhi for ransom and committed the murder. This complaint EX.PW-10/A was recorded as Fir No. Nil under Section 365/302 Indian Penal Code at P.S. Avagarh and was forwarded through Constable Mahesh Chand to P.S. Sultanpuri, Delhi, where it was received by Head Constable Balwan Singh (PW-1) on 25th of

January 1992 vide report No.26-A recorded in daily diary(EX.PW- 1/B). On receipt of this information, a case under Section 365/302 Indian Penal Code was registered in the form of Fir No.34/92 dated 25th of January 1992 at P.S, Sultanpuri,Delhi, which is EX.PW-1/A.

(9) The case was entrusted for investigation, vide report No.27-A dated 25th of January 1992 (EX.PW- 1/C), to S.I. Manohar Singh (PW-12). He examined the documents received from P.S. Avagarh and immediately recorded statements of some of the local witnesses, including Om Parkash (PW-10) and Rajinder Singh (PW-2), under section 161 Criminal Procedure Code On 27th of January 1992, he proceeded to Avagarh and collected photograph of the dead body along with the negatives (Ex.PW-12/A and EX.PW-12/B), recorded statements of the concerned police personnel, went to the place where the dead body was found, prepared site plan (Ex.PW-12/C) and also recorded statements of witnesses Pokh Pal (PW-3), Geetam (PW-4) and Manpal Singh (PW-5). On 28th of January 1992, he arrested the accused, on the pointing out of Udey Vir Singh (PW-6) from a park near the Inter-State Bus Terminus at Delhi. Thereafter, on 12th of February 1992, Om Parkash (PW-10) handed over to the Investigating Officer an inland letter Ex.PA demanding from him payment of Rs.1,70,000.00 as ransom, which was taken into possession, vide Memo Ex.PW-6/C.

(10) After the prosecution witnesses were examined in Court, the accused in his statement under Section 313 Criminal Procedure Code denied the entire incriminating evidence. He denied that Anil was missing and that his father had made a report on 17th of January 1992. He pleaded that he was not there at Bachakar, Nangia Bakhti or MisaKhurd. He stated that he did not write the letter Ex.PA demanding ransom. He setup the defense that he used to love Sonia, the daughter of Sarvan Kumar; that Om Parkash (PW-10) was having a weakness for the wife of Sarvan Kumar; that Sarvan Kumar and Om Parkash did not approve of his love affair with Sonia; and that in order to take revenge, in connivance with Sarvan Kumar, Om Parkash (PW-10) false ly implicated him in the case. In the end, he stated: 'I did not strangulate the deceased. I loved the deceased child most as he was my nephew (bhanja). This is a false case against me. I am innocent. The witnesses of U.P. have been procured by Om Parkash in connivance with the

police'. He, however, did not produce any evidence in defense.

(11) The trial Court found that procurement has proved by evidence on record that:(a) the accused was seen together with the deceased boy on 17th of January 1992 at Azadpur bus stand and then on 22nd of January 1992 in Village Bachakar and later on the same day alone at Village Nangia Bakhti; (b) extra-judicial confession was made by him before the residents of Village Nangla Bakhti and Village Bachakar on 24th of January 1992; (c) conduct of the accused was unnatural before and after commission of the murder as he declined the suggestion of Pokh Pal (PW-3) to stay back at Village Bachakar as night had fallen on 22nd of January 1992, and, after admitting his guilt, he ran away from Village Bachakar, when he was told that he would be handed over to the police on 24th of January 1992; and (d) demand for ransom by letter Ex.PA appeared to be the motive. Consequently, the trial Court held the accused guilty of commission of the charged offence under Section 365/302 Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of four years for the offence under Section 365 Indian Penal Code, and the sentence of death, subject to confirmation by the High Court, under Section 302 Indian Penal Code Death, instead of life sentence, has been recommended for the reasons that the accused brutally murdered the boy at a place far off from Delhi, in the jungle, where there was nobody to protect the helpless child; and because the accused used to call the deceased his nephew (bhanja) and yet he betrayed the confidence of the family in kidnapping and brutally killing the child.

(12) Commission of the offence of kidnapping and murder of the minor boy Anil is sufficiently proved on record, inter alia, by the missing report EX.PW-1/D, report Ex.PW-7/A regarding dead body of the child found lying in the jungle of Village MisaKalan registered at police station Avagarh. Inquest Report Ex.PW-5/A, Post-mortem Report Ex.PW-9/A, report of Om Parkash Ex.PW-10/A recorded at P.S. Avagarh, registration of the case Ex.PW-1/A at P.S. Sultanpuri, Delhi, and by the oral evidence of Rajinder Kumar (PW-2), Pokh Pal (PW-3), Geetam (PW-4), Manpal Singh (PW-5) and Om Parkash (PW-10). It has been conclusively established by the Post-mortem Report Ex.PW-9/A and the evidence of Dr. S.S. Gahlot (PW-9) that death of the child was caused by throttling. This part of the

case is beyond the pale of controversy, and no dispute about it was raised at the time of hearing of the appeal.

(13) The vital questions urged are: whether accused Lalit Kumar is guilty of commission of the crime, and, if so, what is the appropriate punishment.

(14) There is no direct evidence to prove that murder of the child was committed by the accused, in the sense that there is no eye witness of the actual commission of the crime. But, there is sufficient evidence on record showing movements of the accused, proximate in time and situation, pointing with reasonable definiteness to his culpability. It is truly a case of circumstantial evidence.

(15) The law applicable to cases of circumstantial evidence is now well settled. For example, see *Khashaba Maruti Shelke V. The State of Maharashtra*, : [1974]1SCR266 , *Mohan Lal Pangasa V. The State of U.P.*, 1974 CrLJ.800, *Sharad Birdhichand Sarda V. State of Maharashtra*, : 1984 CriLJ1738 , *Padala Veera Reddy V. State of Andhra Pradesh and others*, : AIR 1990 SC79 and *Balwinder Singh V. State of Punjab*, : 1996 CriLJ883

. The five cardinal principles, described as 'panchsheel', have been crystalised by the Supreme Court in *Sharad Birdhichand Sarda* (supra), in the following terms:-

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances 'must' or 'should' and not 'may' be established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

(16) The circumstances from which conclusion of guilt of the accused is sought to be drawn are enumerated below:-

(1) On 17th of January 1992, at about 5.30 p.m., Rajinder Singh (PW-2) had seen Lalit and Anil together at Azadpur bus stand in Delhi;

(2) On 22nd of January 1992, at about 6.15 p.m., the accused was last seen together with the boy Anil at Bachakar, when the accused talked to Pokh Pal (PW-3) and others and asked for the way to go to Misa Khurd;

(3) On the same day, i.e' 22nd of January 1992, later, at about 7.45 p.m., the accused alone was seen by Geetam (PW-4) halfway at Nangla Bakhti. There too he enquired about the way for going to Misa Khurd;

(4) On 23rd of January 1992, dead body of the boy was found lying in the forest area between Bachakar and Nangla Bakhti; Pokh Pal (PW-3) recognised the deceased and told the others present there, including Manpal Singh (PW-5), about what had transpired on the eve at Bachakar; and by the late evening, Manpal Singh (PW-5) and the other residents of Village Nangla Bakhti got from Geetam (PW-4) additional clues indicating that the assailant had moved on to the next Village Misa Khurd.

(5) On 24th of January 1992, villagers of Nangla Bakhti, led by Manpal Singh (PW-5), traced out and nabbed the accused at Village Misa Khurd; trekked him back to Nangla Bakhti and then to Bachakar, where Geetam (PW-4) and Pokh Pal (PW-3) respectively identified him as the very same person each of them had met.

(6) The accused confessed to Manpal Singh (PW-5) (extra-judicial confession) that he had brought the child from Delhi and killed him. Thereafter, he took to his heels.

(7) The conduct of the accused, persisting in taking the child into the forest area after sun-set, on the 22nd January, despite Pokh Pal (PW-3) suggesting otherwise; and then, after being fully exposed, absconding from Bachakar on 24th January.

(8) On 28th of January 1992, after his unexplained truancy during the intervening period, the accused was arrested from a park near the Inter-State Bus Terminus at Delhi; and

(9) Ultimately, letter EX.PA also was received by post demanding from father of the deceased ransom, which confirmed motive for the crime.

(17) The first circumstance is proved by the evidence of Rajinder Singh (PW-2). He deposed that he was previously employed in the factory of Om Parkash (PW-10). He knew the accused, who was related to Om Parkash. He too was working in the same factory, Om Parkash used to bring his son Anil after school hours and the accused used to take him around. The factory of Om Parkash closed down some time before Diwali that year and all the employees then shifted to the factory of Vijay Kumar. On 17th of January 1992; after finishing work, he, Bir Singh and Sarvan Kumar were going to Jahangirpuri, when they saw the accused together with Anil at the Azadpur bus stand in Delhi. Next day, they told Om Parkash, when he came to their factory and talked about his missing son, that they had seen Anil with the accused. In cross-examination, a futile bid was made to discredit his testimony by a faint suggestion that he was related to Om Parkash. He denied the suggestion and maintained that he knew Om Parkash as he was previously employed in his factory. Even that relationship was no longer subsisting as he was in the employment of Vijay Kumar at the relevant time. Undoubtedly, he knew the accused as well as the deceased child. He withstood thorough cross-examination on the pertinent aspect of seeing the accused and Anil together. He firmly maintained that on 17th of January 1992 he left the factory after completing his duty and reached Azadpur at about 5.30 p.m. He explained that he was sitting in a bus at a distance of two furlongs from the Azadpur bus stand at the time when he saw the two of them together. He even described the clothes that the accused was wearing, namely, a jersey, a pant and shoes without laces. Reliability of this witness was sought to be challenged also on the plea that Om Parkash (PW-10) did not fully corroborate his statement, Om Parkash (PW-10) had merely stated, in his examination-in-chief: 'In the factory of Vijay Kumar, Sarvan Kumar, Rajinder Singh (PW-2) and Bir Singh told me that they have seen the accused Lalit Kumar at Azadpur bus stand on 17.1.92 when they were going to their house from the

factory after finishing their duty'. No doubt, the pertinent part that the accused Lalit Kumar was seen together with Anil was left out. The advantage of this omission, however, was frittered away by the suggestion in his cross-examination that Rajinder Singh (PW-2) 'falsely named the accused that Lalit was seen by them in the company of Anil Kumar the deceased'. Of course, the suggestion that the accused was 'falsely named' by Rajinder Singh was denied by Om Prakash. The material fact that Rajinder Singh did tell Om Parkash that he and the others had seen the accused in the company of Anil is very much there in the form of the suggestion, and it is clear that what Om Parkash (PW-10) denied was that he had 'falsely named the accused'. Thus, there is no inconsistency in the statement of Rajinder Singh (PW-2) and Om Parkash (PW-10) on this aspect and the first circumstance has been established.

(18) In order to properly appreciate evidence of the various witnesses on these remaining circumstances, relating the chain of events that took place immediately before and after the murder in the neighbouring Villages of Bachakar, Nangla Bakhti, Misa Khurd and the forest area, all within the jurisdiction of P.S. Avagarh, let us advert to the site plan Ext.PW-12/C.

The site plan Ex.PW-12/C (Trial Court record pages 173 and 174) depicts the Avagarh-Jalesar-Sikandara road, laid up from South to the North, on the left hand side. Branching off, to the right side, from the said Avagarh-Jalesar Road is shown the entire area of operation, namely. Village Bachakar, the forest (where the dead body was found), Village Nangla Bakhti and Village Misa Khurd, connected by an unmetalled pathway (Kacha Rasta) running through each of the said places in the North-East direction. Off the main road on the right hand side, on the Kacha Rasta is located Village Bachakar. Beyond this point, the pathway turns further North Eastwards. It crosses over a gutter and passes through desolate portion of the forest area on both sides. Farther on, a narrow path branches off towards the East and leads to nearby Village Misa Kalan, and the main pathway passes through Village Nangla Bakhti and leads onwards to Village Misa Khurd. Six legend notes indicate relative distance of some of the relevant places marked A, B, C, D and E on the site plan. Mark 'A' depicts the place beyond the gutter, Mark 'B' the pit, two meters North of the gutter-dike, and a little distance

away towards the East of the Kacha Rasta in the forest area. In between 'A' and 'B', a pair of shoes was found. Mark 'C' is the place in Village Bachakar, where Ram Pal, Puran Singh and Pokh Pal (PW-3) were sitting when the accused talked to them. The distance between place 'C' (Village Bachakar) and place 'A' (where the dead body was found) is stated to be approximately one kilometer and a half. The place marked 'D' indicates Village Nangia Bakhti, where the accused is stated to have reached alone and talked to Geetam (PW-4) about his relative's house and asked the way for going to Village Misa Khurd. This place also is indicated to be approximately one kilometer and a half away from the place of occurrence. Mark 'E', at the farthest end of the Kacha Rasta in the North- East, indicates Village Misa Khurd. Thus, it appears that walking from the Avagarh-Jalesar Road on the Kacha Rasta, one would first pass through Village Bachakar (Mark C), then one kilometer and a half upwards, just across the gutter and a little distance away from the Kacha Rasta, the place (Mark A) and the water pit (Mark B) where the dead body of the child was found abandoned inside the forest area. From that spot, back again on the Kacha Rasta, at a distance of another one kilometer and a half, one would reach Village Nangla Bakhti (Mark D), and then finally arrive at Village Misa Khurd (Mark E).

INSPECTOR Manohar Singh (PW-12) testified that he had prepared site plan EX.PW-12/C and all the Foot Notes in his hand, that the same were correct, and that he had prepared the site plan on Manpal Singh (PW- 5) pointing out the various places. He explained in his cross-examination also that it would take approximately 15 minutes for one to walk from Village Bachakar to the place of occurrence, where the dead body was found. Here, we may set out the Explanation given by him in his own words. This is what he said: 'To reach from point C to A one will hardly take 15 minutes while walking on foot'.

(19) Now, on the basis of the relative position and location of the various places clearly depicted on the site plan Ex.PW-12/C and explained by Inspector Manohar Singh (PW-12), we may take up for discussion the evidence of Pokh Pal (PW-3), Geetam (PW-4) and Manpal Singh (PW-5) in relation to the remaining circumstances.

(20) With regard to the second circumstance, Pokh Pal (PW-3), a resident of Village Bachakar, has deposed in the following terms:-

(LNEExamination-in-Chief)

'It was three or four days prior to 26th of January, I do not know the year as I am illiterate. In the evening at about 6.15 P.M. I along with Ram Pal, Puran Singh etc. were sitting at Jalesar, Avagarh Road which is a kacharoad. We were sitting by the side of burning fire due to winter. Accused came from the side of Jalesar along with a child aged about 8/10 years. Accd. asked the way for going to Misakhurd Village. I asked the accused that night has fallen and he should stay there, but the accused stated that he will go and not stay there. I told him the way and the accused went away with that child, whose hand the accd. was holding.'(In Cross-examination)

'MY eye sight is not weak. There is fixed time of working in the fields. I am illiterate. As such I have no knowledge of hours and minutes, as such I cannot say for how long I was sitting by the side of fire. I started sitting with the fire when the sunset and I felt cold. I cannot tell time in hours for how long I remained sitting by the side of fire. I lit the fire. I do not remember the names of other persons sitting with me except Ram Pal and Puran Singh. IT is correct that several persons were sitting there. Their number may be 10/12. I told the police of Delhi that 10/12 persons were sitting by the side of the fire along with me. I do not remember for how long Ram Pal and Puran Singh remained sitting with me prior to the time of the incident and thereafter, there was no electricity light at that place. The light was from the fire. Houses were just nearby, may be at a distance of about 10/15 feet. That house was mine. It is correct I was warming myself with the fire just nearer to my house, which was in front of my house. At that time it had not grown much dark. However, the night started falling. There is no electricity in my village. I cannot tell of what colour was of the accused's clothes. I did not notice what was the shape of the shoes of the accused, I only saw him by face. I never saw them before 22.1.92 and saw him for the first time on this date when he asked me the way to Village Misakhurd. The accused did not stay with me at the place where I was warming with the fire. The accd. stayed just like a twinkling and after asking the way to

Village Misakhurd he left my company. I do not remember whether anybody else except me talked with the accd. or not.'

(21) Next, about the third circumstance Geetam (PW-4), a resident of Village Nangla Bakhti, has deposed as follows:-

(Examination-in-chief)

'ON 22.1.92 at about 7.45 Pm accused now present in Court was passing from the gali near my house. The accused asked me the way for Village Misakhurd, and he told that it was his mother's parental village, in the house of one Heera Lal Dhobi. I accompanied the accused up to the limit of my village and left him on the way to Village Misakhurd. I returned to my house.'

(Cross-examination)

'I remember 22.1.92 because the accd. asked me the way for Misakhurd on this date. I did not note this date in any diary.'

'The accd. on 22.1.92 alone came there and he talked with my father who

Was warming himself by the fire. The accd. sat there and smoked one bidi in the company of my father and I stayed there after having taken my supper. I did not tell the police that when the accd. asked the way from me to Misakhurd my father was warming by the fire and the accd. sat with him and smoked a bidi. I do not remember the time when the Delhi Police met me. I even approximately am unable to tell the time. I did not go to the police station in connection with this case. I cannot tell with what clothes the accd. was clad in at that time since it elapsed near about two years. I also cannot tell what type of shoes the accd. was wearing.'

(22) The fourth circumstance consists of three parts. The first two parts are based upon the evidence of Pokh Pal (PW-3) and Manpal Singh (PW-5), and the third part on that of Geetam (PW-4) and Manpal Singh (PW-5). The common factor, connecting the three parts, is Manpal Singh (PW-5). His deposition read with that of Geetam (PW-4) clearly brings the third part into proper perspective. The statements of these three witnesses may now be read in the given sequence.

Pokh Pal (PW-3) stated:-

(Examination-in-chief)

'In the morning I and other persons went to our fields. Near a water pit a dead body of a child was found. I also reached there. Many other persons also came there and after seeing the dead body I identified the same which was of the boy/child who was with the accd. in the previous night.'

'When the dead body of that child was recovered I told the persons present there that I have seen this child in the company of a person who has asked way for Misakhurd Village on the previous day after sun set.'

(Cross-examination)

'My fields are in Village Misakalan which may be at a distance of two furlongs from the place where the accused met me in-the company of the deceased.'

'On the following day I came to the place where the dead body of the deceased Anil Kumar was lying at about noon. Apart from me there were many other persons present also. I stayed there by evening. Vol. Many people collected there. Police came on the spot in my presence. I did not talk with the police. The police sealed the dead body and took that away with them. I stayed there till the police stayed. I do not know the numerical of the hours, but the police stayed there for quite a long time. I did not tell the police that the deceased was seen by me in the company of the accused on the previous evening. The Pradhan of my village was not present there, but there was crowd of the people, on that place the Pradhan of Village Baleyko Nangla was present. His name was Tulsan Pal. I did not lodge any report in our concerned police station. It is wrong to suggest that I am deposing falsely.'

MANPAL Singh (PW-5) narrated his role connecting the different parts as follows:-

(Examination-in-chief)

'ON 23.1.921 came to know that the dead body of a child was lying in the fields, near a pond, in village Majra Misakalan. I along with Abhey Partap Singh, Ram

Parkash and others reached there. We saw the dead body lying in the pit. I sent my nephew to inform the police as nobody was ready to inform the police. I also went to the P.S. and informed the Station Officer. I returned at the spot. The S.O. and other staff also came there. Tursanpal Singh Ex- Pradhan of Village Nangla Waley also came there. Panchnama of the dead body was prepared by the police, which was signed by me and others. Panchnama is Ex.PW-5/A. It is signed by me at point A. Deadbody was taken by the police. I was informed by the residents of Village Bachakar that the deceased child was seen by them in the company of a person on 22.1.92 at about 6.15 P.M. and that the person was asking the way for Misakhurd which was told by them. In my village Public Witness Geetam (told me) that a person had gone to Misakhurd in the night on 22.1.92 and he has asked the way from him and has told that his relative Hira Lal was resident of Village Misakhurd and he was going there.'

(Cross-examination)

'I came to know about the dead body of Anil Kumar on 23.1.92 at about 2PM. I reached there at about 3 Pm at the place where the dead body was lying in the pond. About 300/400 persons of adjoining villages had collected there. I went to inform the police. I did not give anything in writing. I verbally informed the S.O. Police of P.S. Avagarh reached the spot at about 4.30/5 PM. Pokh Pal and Puran Singh were present there at that time. They did not tell me anything till the police remained there. Police remained there till 6 PM. I signed the panchnama at the spot at about 6 P.M. Thereafter when the police left the spot Pokh Pal and others told me that the deceased was seen by them in the company of the accused on 22.1.92. I tried to verify and trace the accused. I did not inform the police that Pokh Pal and others have told me the above said facts. Geetam Public Witness also told me about the accused on 23.1.92 when I returned to my village from Bachakari.e. the place where dead body lay. Geetam told me that one person met him on 22.1.92 at about 7.45 Pm and asked the way for Village Misakhurd and he had left him on the way to that village and he had gone to his relative Hira Lal. This information was given by Geetam at about 8 Pm on 23.1.92.' Oeetam (PW-4) testified:-

(Examination-in-chief)

'ON the next day after the recovery of dead body of the deceased child I told to Manpal Singh, Abheypal Singh and Ram Parkash that on the previous night at 7.45 Pm one man asked from me the path to Village Misakhurd.'

'ON 22.1.92 the accused, was alone and there was no child in his company (Cross-examination)

'I came to know about the dead body of deceased Anil Kumar on 23.1.92 at about 4 PM. I did not go to the place where the dead body of Anil Kumar lay: I received this information from the villagers. No specific villager told about the accident to Manpal Singh, Abbey Partap Singh and Ram Parkash on 23.1.92 in the evening.'

(23) The fifth circumstance is a combination of three phases of follow-up action taken by inhabitants of the adjoining villages of Nangla Bakhti, Misakhurd and a part of it at Bachakar, who collectively and systematically nailed the accused on 24th of January 1992. The common factor, who took up the initiative to trace out the suspected assailant and rendered the complete account of the steps taken at all the stages, is again Manpal Singh (PW-5). Geetam (PW-4) and Pokh Pal (PW-3) have narrated the part played by each of them respectively in establishing culpable involvement of the accused. Manpal Singh (PW-5) narrated the events as follows:-

(Examination-in-chief)

'ON 24.1.92 I along with other persons numbering 10-15 went to Village Misakhurd and enquired from Hira Lal. He and other persons were frightened from the accident and due to fear they were not disclosing about the accident. and I took them in confidence and one of them told that he was the person who has come on 22.1.92 in the night. We caught the accused. Then we came to our village in the company of the accused Lalit now present in the Court. Geetam Public Witness identified the accident and confirmed that he was the person who met him and has asked the way for Misakhurd and has told the name of his relative Hira Lal. Thereafter, we took

the accused to Village Bachakar where witnesses Pok Pal, Rampal and others identified the accused that he was the person who was seen in the company of the deceased child on 22.1.92.'

(Cross-examination)

'I did not know Hira Lal Dhobi. Hira Lal did not meet me at Misakhurd on 24.1.92. We went to the house of Hira Lal the grandfather of the accused at about 6 Pm and he was not available at his house. The accd. was found standing at the gate. We at once catching him hold brought him in Village Nangla Bakhti.'

GEETAM (PW-4) deposed about identification of the accused at Misakhurd in the following terms:- (Examination-in-chief)

'ON the next day of recovery of dead body persons from my village brought the accused now present in court from Misakhurd. I identified the accused and told them that he was the same person who has asked me the way for Misakhurd on 22.1.92. The accd. was brought on 24.1.92.'

(Cross-examination)

'THE accd. was brought by the abovementioned three persons. My house falls on the way and those persons were passing through that way in the company of the accused. I did not accompany the accused and Public Witness Manpal Singh etc.'

POKHPal (PW-3), who identified the accused at Bachakar, stated:- (Examination-in-chief)

'ON the next day of the recovery of the dead body of the child some persons brought the accd. now present in the Court from Village Misakhurd. Many persons of the village collected there and I identified the accd. to be the same who was in the company of the deceased.'

(Cross-examination)

'ON the second day after the receipt of the dead body of Anil Kumar the accd. was brought to me by one Manpal (PW-5) and many other Thakurs. They brought in the

evening. They stayed there for a long time. After that the accused ran away. I did not lodge a report in the police that the accused ran away from the custody of the Thakurs and Manpal (PW-5). Every body numbering about 10/12 testified the presence of the accused on 22.1.92 when we were warming ourselves before the fire. I cannot tell after how many days the Delhi police came to me. My statement was recorded by the police.'

(24) The sixth circumstance primarily rests on the evidence of Manpal Singh (PW-5). After Pokh Pal (PW-3) confirmed that the accused was the person who was seen together with the deceased child, Manpal Singh (PW-5) demanded his explanation. Then, he made the confession. The admission of guilt made by the accused and the attending circumstances come out clearly in the statement of Manpal Singh (PW-5) in the following words:-

(Examination-in-chief)

'I also enquired from the accused and he requested me to leave him and admitted that the child was killed by him. Many persons of the village collected there. Accused also told that the child was brought by him from Delhi.'

(Cross-examination)

'When the accused was caught by us he was not terrified. We brought him by catching his hand. He was not beaten by any of the villagers. I told the accused that he would be handed over to the police and on hearing this he ran away. It is wrong to suggest that accused did not admit his guilt before me and implored to leave him.'

(25) For the seventh circumstance on the first aspect of the accused insisting upon taking the child into the forest area after sun set in spite of being asked to stay back at Bachakar, the later part of the statement of Pokh Pal (PW-3) in his examination-in-chief reproduced in paragraph 20 (supra) may be read. Regarding abscondence of the accused from Bachakar, reference may be made again to relevant portions of the deposition of Pokh Pal and Manpal Singh. Pokh Pal (PW-3) stated:-

(Examination-in-chief)

'Many persons of the village collected there and I identified the accd. to be the same Who was in the company of the deceased. After some lime theaccd. ran away from there 'Chakma Dey Kar Bhag Gaya'.'

(Cross-examination)

'After that the accused ran away. I did not lodge a report in the police thatthe accd. ran away from the custody of the Thakurs and Manpal (PW-5).'

MANPALSingh (PW-5) has further clarified the position about the cunniges cape by the accused from the scene and the reason why the Avagarh Police was not informed about it in his deposition as follows:-

(Examination-in-chief)

'WHENI was taking water the accused ran away from there.'(Cross-examination)

'I told the accused that he would be handed over to the police and on hearing this he ran away. It is wrong to suggest that accused did not admit his guilt before me and implored to leave him. I did not inform the police thatthe accd. ran away from my custody. I did not tell the police of Ps Avagarh regarding the information given to me by Pokh Pal Public Witness and others. I did not give any information to the police till 27.1.92 when Delhi Police met me.I did not inform the police about the running away of the accused on 24.1.92till 27.1.92 because the accused was not in our custody.'

(26) Challenge to the evidence on circumstances No.(2) to (7) may be taken up together for discussion. The evidence of Pokh Pal (PW-3), Geetam (PW-4) and Manpal Singh (PW-5) is sought to be discarded as wholly unreliable on the ground that they are all got-up witnesses. In addition, it has been contended that no reliance should be placed upon the testimony of Pokh Pal (PW-3) as he was unable to tell the colour of the clothes and the shape of the shoes worn by the accused, who is stated to have 'stayed just like twinkling' on 22/01/1992; and he did not tell the local police on 23/01/1992 that he had seen the deceased child

together with another person on the previous day. The evidence of Geetam (PW-4) is sought to be discounted on the plea, that he did not tell the police in his statement under Section 161 Cr.P.C. that the accused sat and smoked a bidi in the company of his father and made this spacious improvement in his deposition in court; and that on 22/01/1992 there was no occasion for him to tell anybody, including Manpal Singh (PW-5) about the stranger who had asked him the way to Misa Khurd on the previous day. The testimony of Manpal Singh (PW-5) is assailed on five counts. First, that Pokh Pal (PW-3) did not name him as the person to whom he had talked about the accused. Secondly, that Geetam (PW-4) did not state that he told Manpal Singh about the accused's relative Hira Lal Dhobi residing at Misa Khurd, Thirdly, that there was no occasion for Manpal Singh and others to go to Village Misa Khurd. Fourthly, that there is No evidence on record to explain (a) how the search party hit upon the house of Hira Lal and (b) who pointed out the accused at Misa Khurd, Fifthly, that the whole story of watching the accused at Misa Khurd and then bringing him back to Nangla Bakhti and then to Bachakar introduced through Manpal Singh is wholly unnatural and unbelievable. For the reasons given below, we find no substance in any of these propositions.

(27) It is not in dispute that dead body of Anil was found abandoned in the forest area, between Bachakar and Nangla and Nangla Bakhti on the way to Misa Khurd within the jurisdiction of Police Station Avagarh. Pokh Pal (PW-3) is a farmer residing at Bachakar and having his fields, two furlongs away, in Misa Kalan near about. Geetam (PW-4) and Manpal (PW-5) are both residents of Nangla Bakhti. Thus, the presence of each of them at the relevant time and places, where the related events had occurred, is quite natural. They are raw and rustic villagers. Each of them is an independent and disinterested witness, having no axe to grind one way or the other. There is nothing in their cross-examination or otherwise on record to suggest even remotely any connection between any of them and the deceased or his family. The testimony of each of them is natural, to the point, and free from contradictions and embellishments. Their deposition has withstood the test of cross-examination, and has a ring of truth. We find no merit in the plea that they are got-up witnesses or that their evidence is unreliable.

(28) Next, let us take up for discussion, challenge to the deposition of each of them separately. Pokh Pal (PW-3) asserted in his cross-examination that his eye sight was not weak and there was sufficient light emanating from the fire around which he and the others were sitting. Naturally, in that position, looking up for the brief conversation, he could only see the face of the visitor, and not his shoes nor could he notice the colour of his clothes, so as to be able to recall and honestly depose about the same. Indeed, as is common among well-meaning village folk, Pokh Pal (PW-3) did suggest to the hiker that he should stay back at Bachakar rather than going through the forest, and that too with a child, all the way to Village Misa Khurd, at that late hour. When he found the outlander indifferent, he simply pointed out the way and let him go. He truthfully stated, without the slightest exaggeration, that he was unable to tell the colour of the clothes and the shape of shoes worn by the accused as he only saw his face. The occasion was quite sufficient for him to get a good look at the 'boy' and the 'man' so as to recognise the victim the very next day, and the assailant a day after, and, then, in view of the unusual encounter, to correctly identify the accused arrayed in Court. He was equally candid in his deposition about his limited role on 23/01/1992. He was not interested in falsely incriminating the accused. When the local police arrived on the spot, only the inquest report was drawn up as required under Section 174 Criminal Procedure Code. The opinion formed and recorded in the Report Ext. PW-5/A was that dead body of the unknown boy was lying in suspicious circumstances, and the cause of death could be ascertained only after post-mortem. Being an illiterate farmer, he may not have comprehended the importance of the information available with him, or may have been too perplexed or initially reluctant to get involved in the affairs of utter strangers. He did not speak at all to the police personnel. Why he did not speak out in the presence of the local police was not even put to him for giving an Explanation in cross-examination. Nevertheless, it clearly emerges from combined reading of his deposition with that of Manpal (PW-5) that in the course of discussion that ensued amongst the fellow-villagers, after the police party left, he did disclose the facts known to him to those present there. Moreover, Pokh Pal (PW-3) promptly related all the facts in his statement, which was recorded by the investigating officer S.I. Manohar Singh (PW-12) under Section 161 Cr.P.C., and there was no contradiction pointed out between that

statement and his deposition in court. In these circumstances, merely because of short stay and brief conversation of accused with Pokh Pal on 22/01/1992, and that Pokh Pal (PW-3) did not tell the facts known to him to the local police on 23/01/1992, his testimony cannot be discarded. On the contrary, the whole evidence of Pokh Pal (PW-3) appears to be natural and truthful.

(29) Coming to Geetam (PW-4), it is pertinent to point out that his evidence has not been challenged on the material facts, namely that the accused was alone when he met him at Nangla Bakhti; that the accused asked him the way for going to Misa Khurd and told him that his mother's parental house of Heera Lal Dhobi was in that village; and that he had accompanied the accused up to the periphery of Village Nangla Bakhti and even saw him off to Village Misa Khurd. That the accused talked to his father, sat and smoked a bidi by the side of the fire etc., are details given by the witness in answer to questions put to him only in cross-examination and not examination-in-chief nor in his statement under Section 161 Criminal Procedure Code. The same cannot be branded as 'improvements' to discredit his evidence. On the contrary, these details buttress and reinforce proof of the third circumstance by the earlier mentioned uncontroverted deposition in the examination-in-chief of this witness. The criticism of his evidence in respect of the part played by him in evolution of the fourth circumstance also is misconceived. The question raised before us was not put directly to the witness for giving an explanation. Nevertheless, the occasion for Geetam (PW-4) to give the crucial clue has emerged clearly from the evidence on record. It has come in Geetam's cross-examination that he did not go to the place where dead body of the boy was found. He came to know about it later in the evening when many of his village-fellows, who had come back from there were talking about it. The tip from Pokh Pal (PW-3), that the deceased child was earlier seen together with another person after sun-set time at Bachakar and that the adult companion was enquiring about the way to Misa Khurd was already known. Surely, that was enough for Geetam to recall his encounter later in the evening with the accused as narrated by him to Manpal Singh (PW-5) and others. This is quite natural and there is nothing improbable about it. On these grounds, the evidence of Geetam (PW-4) cannot be disbelieved.

(30) Next, we take up for discussion the five points of challenge to the evidence of Manpal Singh (PW-5). His presence at the place where the dead body was found has been proved beyond doubt on the basis of oral and documentary evidence and is not in question. Pokh Pal (PW-3) stated in general terms that a crowd of many persons had collected, and he told those present there about what had transpired on the previous evening. Simply because in this context he did not specifically name Manpal Singh (PW-5), correctness of the Explanation given by the latter, in his cross-examination, that he had come to know about the events that had taken place on the previous evening from Pokh Pal and the other residents of Bachakar, cannot be doubted. Likewise, in relation to the second part also, the probative value of his evidence cannot be eclipsed merely on the ground that Geetam (PW-4) did not state that he told Manpal Singh (PW-5) that the accused had mentioned to him about his relative Heera Lal's house at Misa Khurd. Geetam (PW-4) did depose (paragraph 21 supra) that the accused told him that his mother's parental house of Heera Lal Dhobi was in Village Misa Khurd. Manpal (PW-5) clearly deposed that Geetam (PW-4) had given him the information about the accused proceeding to Misa Khurd and even the name of Heera Lal. In any event, the name of Heera Lal is a matter of detail. The material part was the clue given by Geetam (PW-4) to Manpal Singh (PW-5) and the others on 23/01/1992 that on the previous evening at about 7.45 P.M. the accused alone had proceeded to Misa Khurd. So far as the question about the occasion for Manpal (PW-5) and the others going to Misa Khurd is concerned, composite reading of the whole of his statement furnishes the answer. It shows that he had taken keen interest and played an important role from the beginning to the end, in calling the police, independently mobilising the local people, gathering important clues and catching the assailant. The aim and object of the Samaritan affirmed in his cross-examination was 'to verify and trace the accused'. This is what prompted him to embark upon the mission to Misa Khurd. Once the search party had reached Misa Khurd, nabbing the accused was not difficult as the name of his relative Heera Lal was already known. By that time, news about the abandoned dead body of the child being found in the forest, on the way of everyone living in the adjoining villages, had spread in the entire area like wild fire. In the common course of natural events, arrival and movement of a nonresident gets generally known in a

small village. Manpal Singh (PW-5) has deposed that on enquiry, initially, the local villagers were frightened and due to fear they were not inclined to give information about the accused. After he took them in confidence, one of them disclosed that the accused was the person who had come the night before last very late. That is how the search party detected the accused. In cross-examination, he explained that he and his companions had gone to the house of Heera Lal and the accused was found standing there at the gate at about 6 p.m. Lastly, after capturing the suspected person at Misa Khurd, the exercise of bringing him back to Nangla Bhakti and then to Bachakar, and taking him to those who had seen him earlier for confirmation of his identity was quite logical. On this aspect, deposition of Manpal Singh (PW-5) is fully corroborated by the evidence of Pokh Pal (PW-3) and Geetam (PW-4), which has not been challenged.

(31) With specific reference to the sixth circumstance, challenge to the extra judicial confession is based on the plea that it is highly improbable that the accused would have made the confession, and that on this aspect the evidence of Manpal Singh (PW-5) has not been corroborated by Pokh Pal (PW-3) and no other witness from Village Bachakar has been produced. Further, it has been urged that the alleged admission cannot be used against the accused as a confession as it does not contain material particulars about the name of the child and when and where the child was killed. We find no substance in any of these pleas also.

(32) The confession was made by the accused only after he was identified as the culprit, when he stood completely exposed and the mystery about death of the unknown child had been successfully solved. Naturally, at that stage, the accused thought that his entreaties to be let off would be accepted, rather than the local villagers involving themselves into the dreadful hassles of being dragged to Delhi in connection with the investigation and trial of the case. It is clear from the statement made by Manpal Singh (PW-5) in his examination-in-chief that on further enquiry, after Pokh Pal (PW-3) confirmed his involvement, the accused confided in him and made the confession in the fond hope of being let off. The accused admitted his guilt in two parts: (1) that he had brought the child from Delhi, and (2) that he had killed the child. However, on sensing that he would be handed over to the police, he managed to escape. It is true that Pokh Pal (PW-3) has not talked

about the confession and the prosecution has not produced any other witness to depose about it. Nevertheless, the admission made by the accused is convincingly proved by the fully truthful evidence of Manpal Singh (PW-5), which needs no corroboration. Association of the accused with the dead child, though not named, and the time and place of commission of the crime were very well established. In the given circumstances, want of these particulars in the words of the accused would not denude the admission of its probative value as confession of guilt. In any event, even if the extra-judicial confession is brushed aside, the earlier discussed circumstances are strong enough to sustain his conviction.

(33) The unnatural conduct of the accused before and after commission of the offence is also an incriminating circumstance, which is inconsistent with his innocence. Pokh Pal (PW-3) suggested to the accused to stay back at Village Bachakar. He made the suggestion, obviously, because he thought it would be unwise for a person accompanying by a child to walk down the distance to Village Misa Khurd, through the desolate forest area, after sunset. But the accused had something else in his mind. He decided to proceed further and made use of the otherwise hostile conditions for committing the crime and getting away with it. Such conduct, in the given circumstances, clearly indicates his pre conceived plan to commit the crime. Likewise, his showing the heels on 24th of January 1992 from Village Bachakar, when he realised that he would be handed over to the police, has been rightly reckoned by the trial court as an incriminating circumstance against the accused.

(34) Identification of the accused was sought to be assailed by learned counsel for the accused on the ground that photograph of Lalit Kumar was shown by the Investigating Officer Manohar Singh (PW-12) to Pokh Pal (PW-3), Geetam (PW-4) and Manpal Singh (PW-5). Reliance was placed upon decision of the Supreme Court in Laxmi pat Choraria and others V. State of Maharashtra, 0065/1967 : 1968 CriLJ1124 , where it was explained that if the intention is to rely on the identification of the suspect by a witness his ability to identify should be tested without showing him the suspect or his photograph for identification; and that showing of a photograph prior to the identification makes the identification of the accused worthless. The proposition of law explained in that case, however, is not

applicable to the facts and circumstances of the present case.

(35) Here, the accused was seen by Pokh Pal (PW-3) and Geetam (PW-4) on 22nd of January 1992. On the basis of clues given by these two witnesses, Manpal Singh (PW-5) and others caught hold of the accused at Village Misa Khurd and brought him back to Nangla Bakhti and then to Bachakar on 24/01/1992, when Geetam (PW-4) and Pokh Pal (PW-3) confirmed that the accused was the suspect they had earlier met. All this was done by the witnesses on their own, prior to commencement of investigation and without involvement of the police. The investigating officer showed the photograph of the accused to the witnesses on 27th of January 1992 only to confirm that they were talking about the accused, who was stated to have absconded, and no one else. This is different from showing a photograph to a witness for identification of the suspect by a witness in the sense discussed in the case of Laxmi pat Cheroria (supra). In the present case, quite rightly, no test identification parade was held, and each of the witnesses, namely, Pokh Pal (PW-3), Geetam (PW-4) and Manpal Singh (PW-5) had correctly identified the accused when their statements were recorded two years after the incident in court. The plea regarding identification of the accused is, therefore, rejected.

(36) Motive for the commission of the offence has been traced to the demand of ransom made from the deceased boy's father by letter EX.PA, which was received soon after the murder. The learned trial Court has found that the accused strangulated the child Anil Kumar to death because he did not succeed in extracting ransom and he feared that the boy, if left alive, would expose his involvement in kidnapping. In the light of the evidence of Om Parkash (PW-10), the ransom letter EX.PA was taken as the motive.

(37) Learned counsel for the accused has contended that the letter EX.PA is not proved to be in the handwriting of the accused, therefore, it should be excluded from consideration. This plea, at first sight, appears to be attractive; but, on deeper examination of totality of the oral and documentary evidence on record, it has to be rejected.

(38) Let us first take up the oral evidence. Udaivir Singh (PW-6) testified about the ransom letter in the following words:

'One inland letter which was addressed to Om Parkash was produced by him before the police which was taken into possession vide memo EX.PW-6/C which is signed by me at point A. I do not remember the date on which this letter was produced before the police.'

OMParkash (PW-10) deposed as follows:

'One letter was received by my brother Rohtas approximately on 27.1.92 and he had kept the same with him. Rohtas told me about this letter about 8/10 days thereafter. The same was handed over by me to the police afterwards which was taken into possession vide Ex.PW6/C which is signed by me at point B.'

MANOHAR Singh (PW-12) spoke about it in the following terms:

'ONE letter which was received at the address of the complainant and the same is EX.PA was produced before me by Om Parkash on 12.2.92 and the same was taken into possession vide memo Ex.PW6/C which is signed by me at point C.'

These statements made by the witnesses were not challenged in cross-examination. Therefore, the same have to be accepted as cogent.

(39) Now, let us turn to the documentary evidence. Ex.PW-6/C is a memo dated 12th of February 1992. It records that the inland letter produced by Om Parkash (PW-10), who had come to the Police Station along with Udaivir Singh PW-6, was taken into possession. It is signed by S.I. Manohar Singh PW-12 and witnessed by Om Parkash (PW-10) and Udaivir Singh PW-6. The exact contents of the inland letter, produced and taken into possession, are reproduced in the said memo. Thereafter, a note is made, which reads as follows:-

'The words, '(Distt. Eeta, U.P.)' are mentioned in the letter. Name and address of the sender are not mentioned in the letter. There are four cuttings in the writing of the letter. Two postal stamps are affixed on the letter. The words 'Nangloi 110004 and dated 28' are imprinted on one of the seals. Nothing is legible on the other

seal. Om Parkash revealed about the letter that the postman had on 31.1.92 delivered this letter to my younger brother standing in the street near my house. He forgot to tell about the letter to any one because of wailing in the family on that day. On receipt of the letter from the part of Rohtas we read it today and produced the letter before you. The photocopy of the letter was detained after getting it prepared and the original letter having put into white paper -envelope was sealed with the seal of M.S. and the same was taken into police possession. The memo was duly prepared.'

The original inland letter Ex.PA is on the trial court record at page 205. We have ourselves examined it carefully. We find that it bears out the observations contemporaneously recorded by Manohar Singh (PW-12) in the memo Ex.PW-6/C. The words 'Distt. Etah (U.P.)' are mentioned in the letter. The name and address of the sender are not stated. There are two postal seal marks. One, cancelling the postal stamp embossed on the inland letter form is on the front side, i.e. the side where the name and address of Om Parkash is written. This seal mark, however, at present, is not decipherable. The other postal seal mark is affixed on the backside of the inland letter form. Here only five out of the usual six numerals of the Pin Code '11004' and the date '28' are discernable. The letter Ex.PA sets out the demand for payment of ransom of Rs.1,75,000.00 by 28th of January 1992 at the place described as 'Gola Kuan near the Kacchila Bridge, Distt. Aita Bareilly Road'. The other contents of the letter, giving out various threats etc., need not be stated here.

(40) The fact that the letter Ex.PA was mailed, delivered and received by post, at the correctly stated address of Om Parkash (PW-IO), stand proved by the existence of the postal seal marks, raising a presumption that the same had been done in the common course of official acts regularly performed by the postal authorities under Section 114 of the Evidence Act. The address of Om Parkash written on the front side of the inland letter specifically mentions Pin Code '41' which corresponds to the Pin Code number of Post Office Nangloi, which is '110041', whereas the first five out of the usual six numerals of the Pin Code are decipherable from the postal seal marks affixed on Ex.PA. The figure '28' also marked in the postal seal shows that the said letter Ex.PA was received in the

Nangloi post office on 28th of January 1992 and then the same was delivered at the house of Om Parkash (PW-IO), which is located in Sultanpuri, within the jurisdiction of Post Office Nangloi in Delhi. The delay in Om Parkash (PW-10) handing over the letter to the Investigating Officer only on 12th of February 1992, has been explained in the contemporaneously recorded note appended to the memo Ex.PW-6/C. The Explanation, orally stated by Om Parkash (PW-10) also, appears to be quite reasonable and understandable, particularly in view of the grief and trauma that had overtaken the members of the family by the tragic assassination of the child. The genuineness and admissibility of the said letter Ex.PA is, therefore, unquestionable.

(41) The letter Ex.PA does appear to be linked with the crime. The facts, period of time and the location of places stated in the letter are all found to be corroborated with the actual movements of the accused that have been fully established by the evidence on record. Merely, the fact that the specimen hand-writing (EX.PB) of the accused Lalit Kumar disagreed with the questioned writing of the letter Ex.PA, as per the CfsI Report Ex.PW-12/J, implying that it was scribed by some one else, would not absolve the accused of his involvement in the crime, especially when the contents and the tenor of the letter are taken into consideration together with all the circumstances that have been earlier discussed. In the totality of the circumstances, the only logical and irresistible conclusion is that involvement of the accused in the commission of the crime is directly connected with the demand for ransom Ex.PA.

(42) The accused has given no Explanation whatsoever of his whereabouts from 17th of January 1992 to 28th of January 1992. He merely denied that he visited Village Bachakar and Village Nangla Bakhti. He also denied that he was caught at Village Misa Khurd, that he made the confession, and that he absconded from Village Bachakar. He claimed that he did not even know that the dead body of Anil was recovered from the jungle in Misa Kalan. Since the accused has not offered any Explanation consistent with innocence regarding the incriminating facts proved against him, that by itself is a circumstantial fact against him.

(43) On the basis of the foregoing discussion, we find that the incriminating circumstances enumerated in paragraph 14 (supra) have been firmly established by credible evidence on record. Circumstances No.2 and 3 are vital, being the closest in proximity to the time and place of commission of the crime. Taken together, circumstances No.1 to 5 constitute a complete chain of conclusive evidence required to exclude every possible hypothesis except the one to be proved and fix, with reasonable definiteness, the guilt of the accused. The other circumstances No.6 to 9 serve as additional links in the chain to supplement, strengthen and support the whole of the prosecution case. The same lend assurance to the Court in coming to the firm conclusion that there is no scope for entertaining any reasonable doubt consistent with the innocence of the accused and that the entire prosecution cadence considered conjointly, consistently and conclusively establishes the sole inference that in all human probability the crime must have been committed by the accused. The finding of the learned trial court (noted in paragraph 9 supra) regarding the guilt of the accused is, therefore, correct and confirmed.

(44) Finally, we come to the most sensitive question of the suitable punishment for the crime. For the offence of kidnapping under Section 365 Ipc, we uphold the sentence of rigorous imprisonment for a period of four years. For murder, in the case of sentence of death, instead of life, sub-section (3) of Section 354 Criminal Procedure Code requires special reasons to be stated. Guidelines for this purposes have been laid by the Apex Court in a number of cases. Suffice it to mention a few of them, namely, Bachan Singh V. State of Punjab, : 1980 CriLJ636 , Machhi Singh and others V. State of Punjab, : 1983 CriLJ1457 , Allauddin Mian and others Sharif Mian and another V. State of Bihar, 1989 CriLJ1466 , Ediga Anamma V. State of Andhra Pradesh, 1974 Scc (Cri) 479, Shankar @ Gauri Shankar and others V. State of Tamil Nadu, : 1994 CriLJ3071 and Ashok Kumar V. State (Delhi Administration), 1995 Scc (Cri.) 1085. In awarding the sentence, we have to take into consideration the circumstances of the criminal, the nature of the crime, the wrong done to the victim, and the impact of the crime on the community, keeping in mind that life imprisonment is the rule and death sentence an exception, and taking a life through law's instrumentality ought not to be done save in the rarest of the rare cases when the alternative option is unquestionably foreclosed.

(45) It has been pointed out to us that the accused is a young man, his age was 18 years at the time of his arrest, his relations with the deceased child and his father were cordial and that he is not a habitual criminal and, therefore, the routine life sentence would be adequate punishment. On the other side, we should not lose sight of the ruthless murder of the kidnapped and helpless 9 years old child, who was apple of the eye of the whole family of Om Parkash, the vicious breach of faith of the family reposed in the accused, and that too for no rhyme or reason but lure for ransom, and also the impact of the commission of crime on the community at large.

(46) It emerges clearly from the deposition of Om Parkash (PW-10) that the accused is his wife's cousin, being her mother's sister's son. He was given employment for some time by Om Parkash in his own factory. When Om Parkash closed down his factory, he got him employed in the factory of Vijay Kumar, where the accused was working till a couple of days preceding the incident. The deceased child was very friendly with him. He used to take the child out off and on, to the market and sometimes even to his sister's house. The deceased was the only male child in the family of Om Parkash and his brothers. The family had provided livelihood and love to the accused and reposed in him full faith. In return, the accused inflicted upon the family anguish, misery, pain and irreparable loss by kidnapping and killing the child.

(47) After picking up Anil on 17th of January 1992, the accused managed to keep the child hidden at some undisclosed place for the unexplained period up to 22nd of January 1992. When he was unable to hold the child away from the family much longer, he decided to kill the child. The plan that he made for eliminating the innocent child was deceitful and diabolic. This is evident from the time, place and the manner meticulously chosen by him for the perfect execution of his evil design and him self getting away to a safe sanctuary.

(48) The choice of the place for committing the crime and the time for traversing the distance in the far-flung rural area, and the conduct of the accused, despite being cautioned by the local farmers, in persisting to proceed through the desolate and other wise hostile conditions in the forest on the way, all put together, go to

show the preconceived and unshakable determination of the accused to commit the crime; and, at the same time, keeping open a fair chance of himself getting out of it clean. Ordinarily, the devouring beasts of the forest, would have eaten away the dead body during the night, and he himself would have been safe in his maternal parents' home in the far off and remote Village Misa Khurd. The accused did succeed in the vicious performance of his part, but providence turned around and paved the way for his trial.

49. The accused committed the crime in cold blood. He showed no anxiety or restlessness at all before or after committing the murder. The manner in which he committed the crime was ruthless. It is blood-curdling to think of the child gasping and writhing for breath when he was throttled to death. Then, the child was dumped in a pit in the desolate forest and the accused coolly walked away.

(50) The impact of the crime on society also can be assessed from the evidence on record. On hearing about the dead body of the unknown child found in the forest, residents of the adjoining areas came fluttering to the spot and a large number of them remained there throughout the day. Their concern and feeling of resentment was aroused to such an extent that many of them went out of the way, without support of the police, and detected the assailant.

(51) Keeping in view interest of the community at large and the fact that cases of kidnapping and murder for ransom are growing at an alarming rate, it hurts our human conscience when we are told that such crime has now become usual, and we too should take a lenient view. At the same time, even if the moralistic aspects are allowed to play a part, we are still unable to say that this particular case falls in the category of 'rarest of rare cases'. Therefore, bound as we are by the criterion laid down by the Apex Court, we feel compelled by judicial discipline to rule out the extreme punishment of death in this case.

(52) As a result of the above discussion, conviction of the appellant for committing the offences under Section 365 and 302 Indian Penal Code is upheld; the sentence for the offence under Section 365 Indian Penal Code is also upheld; but, the sentence of death is commuted to imprisonment for life for the offence under Section 302 IPC. Accordingly, the reference is rejected and the appeal partly

allowed.

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