

**The State of Rajasthan Vs. Moda Ram**

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**Court :** Rajasthan

**Decided On :** Jul-08-1991

**Reported in :** 1991(1)WLN358

**Judge :** R.S. Verma and; N.K. Jain, JJ.

**Appeal No. :** D.B. Cri. Murder Ref. No. 1 of 1990 and D.B. Cri. Jail Appeal 196 of 1990

**Appellant :** The State of Rajasthan

**Respondent :** Moda Ram

**Judgement :**

**N.K. Jain, J.**

1. This common judgment will decide both, the murder reference as well as the Criminal appeal filed by Moda Ram.

2. The prosecution case is that Mana Ram and Moda Ram are brothers, sons of Bheru Ram, he has two more sons Harisingh and Jala Ram. The agricultural land is in the name of Bheru Ram and the partition had not take place but as Moda Ram wanted large share, relations between Mana Ram and Moda Ram were strained. The informant PW 5 Mana Ram has been living at Jamnagar for the last 4 years. His wife, 3 sons and one daugther have been living at Kundanpura. On

the basis of information of Kesharam PW 6 that he saw Raju with Moda on 6.6.1989. PW 5 Manaram filed a written report Ex. P. 31 on 30.6.1989 at 6 A.M. which was reduced in writing as Ex. P. 7 alleging that on 6.6.1989, the appellant Modaram came to the residence of Mana, where his wife PW 8 Smt. Phuli and PW 9 Sheru were present. In their presence he allured his son Raju who was playing there, to leave with him to attend some marriage, where he would give sweets. Phuli told Raju not to go with Moda. On this, Moda gave beating and also gave threat to her. Moda took Raju. Raju did not return thereafter. Smt. Phuli searched Raju but could not find him. Phuli went to village, Alamsar on 8.6.1989 to her brother another Kesharam PW 19. PW 19 Kesharam also tried to find out Raju but could not succeed, then PW 19 Kesharam went to Jamnagar and narrated the story to Manaram, who came to village on 17.6.1989. On the same day he lodged a report Ex. P. 6 at Police Station Sedwa at 4 P.M. that his son Raju was missing and he suspected Modaram for this. Moda Ram was also absconding since then and he was arrested on 30.6.1989. On the information Ex. P. 33 of the accused Modaram and at his instance, the dead-body of the deceased was recovered from the well on 30.6.1989 in a gunny-bag Ex. P. 10. On the basis of information furnished at 10.30 A.M. by the accused vide Ex. P. 35 Angochha (Ex. P. 39) was recovered at his instance. Description memo of the corpus was prepared by S.H.O. vide Ex. P. 12. PW 2 Dr. Jagdish Prasad performed autopsy and found that the body was completely decomposed and he could not ascertain the cause of death as merely skeleton was left. The duration of the death was estimated between 3 to 4 weeks. Site plan Ex. P. 11 and site inspection memo Ex. P. 8 were prepared on 30.6.1989 itself.

3. On the completion of usual investigation, police submitted a challan Under Sections 364, 302 and 291 IPC before the learned Munsif and Judicial Magistrate, Barmer who committed the case for trial to the Court of Additional Sessions Judge, Barmer. The learned trial Judge on 21.9.89 framed the charges against the accused appellant for offence Under Sections 364, 302 and 201 IPC. The accused Modaram pleaded not guilty of the charges and claimed trial. In support of its case the prosecution has examined 22 witnesses and filed 36 documents. The accused appellant in his statement Under Section 313 Cr. PC. has denied the charges. No defence witness has been examined but four documents have been produced by

the accused in his defence.

4. On the completion of the trial, the learned Additional Sessions Judge found the case well established against the accused appellant and convicted him Under Section 302 IPC and was sentenced to death, Under Section 364 IPC for life imprisonment and with a fine of Rs. 100/-, in default of payment of fine to undergo further one month rigorous imprisonment and Under Section 301 IPC 7 years rigorous imprisonment with a fine of Rs. 100/-, in default of payment of fine to undergo further one month rigorous imprisonment with a direction that all the sentences shall run concurrently. The learned trial Judge has made this D.B. Criminal Reference No. 1/90 to this Court for confirmation of the death sentence. Modaram has also filed jail appeal, D.B. Cr. Appeal No. 196/90 against this conviction and sentence.

5. Mr. M.L. Garg, was appointed by the Court as Amicus Curiae for the accused.

6. Mr. M.L. Garg, learned Counsel for the accused appellant has submitted that the learned trial Judge has convicted the accused only on the basis of circumstantial evidence of last seen, recovery and motive. The circumstance hardly have any nexus with the alleged murder by the accused. The FIR was not recorded at the alleged time. The dead body was recovered from the well which was not identifiable due to complete decomposition and Dr. Jagdish Prasad PW 2 was not able to find out the cause of death, therefore, it could not be said that whether his death was natural, accidental or homicidal. He has further submitted that the alleged recovery on the basis of the information regarding dead body is not admissible. It was pointed out that recovery of 'Nekar' and 'Angochha' at the instance of accused could not be believed, and the motive was also not strong so as to connect the accused with the offence and the prosecution had not been able to prove its case beyond reasonable doubt.

7. Mr. Shanker Mal Singhvi, learned Public Prosecutor has opposed the appeal and has stated that the recovery of the dead body along with the 'Nekar' and 'Angochha' has been proved and there is sufficient evidence to connect the accused with the offence. The circumstances which were held by the learned trial Judge complete the chain of evidence against Moda Ram which is sufficient to

hold him guilty and no interference is called for.

8. We have heard learned Counsel for the parties and have carefully perused the record.

9. Before dealing with circumstantial evidence led by the prosecution to prove its case, I would like to observed that where the case of prosecution hinges only upon the circumstantial evidence the incriminating circumstances from which the guilt is to be infered should be conclusive and must be proved beyond any reasonable shadow of doubt. Further, the circumstances so established must lead to the only inference that the accused must be guilty of the offence with which he was charged. In other words the circumstances proved on record must not be capable of explanation upon any other hypothesis than that of the guilt of the accused. If upon scrutiny, the several pieces of circumstantial evidence are found incapable of forming a complete chain against the accused than no inference of guilt can legitimately be drawn against the accused. In view of the observations of the Hon'ble Supreme Court in Hanumant v. State of M.P. 1952 SCR 1091, for assessing the value of circumstantial evidence, we may proceed to scrutinise the several pieces of circumstances which have borne on record by the prosecution in this case in order to come to the conclusion. The learned trial Judge has relied upon following pieces of circumstantial evidence in order to connect Moda Ram with the crime. We proceed to deal with these circumstances one by one which are: (i) Motive, (ii) Last seen, and (iii) Recovery of dead body.

10. Since we are deciding reference for confirmation of death sentence, we propose to examine and assess the entire evidence independently and formulate the relevant circumstances in brief.

1. Relation between Moda & Mana and the evidence pertaining to alleged motive.
2. Moda visited Mana's house on 6.6.89, in the presence of Phuli and Sheru.
3. Moda was last seen with Raju by PW 6 Kesha Ram, while Kesha Ram was searching his she-goat on 6.6.89 at 9 P.M.
4. Moda was also seen by PW 7 Hariram in mid night with 'Gathri' and,

5. PW 10 Buran saw Moda with white cloth.

6. Dead body of Raju was recovered at the instance of accused from well on 30.6.89.

7. Identification of dead body by PW 19 Kesharam maternal uncle and PW 5 Manaram on the basis of clothes, 'Nekar' and 'bushirt' which were worn by deceased at the time of recovery on 30.6.89.

8. Moda had been absconding since 6.6.89 till the date of arrest i.e. 30.6.89.

9. Medical evidence.

11. As regards motive, there are as many as 6 witnesses viz. PW 5 Manaram, his wife PW 8 Mst. Phuli, PW 9 Mst. Sheru neighbour, PW 11 Magaram, PW 6 Kesharam and PW 19 another Kesharam. It would be proper to discuss the evidence of these witnesses in brief.

PW 5 Manaram has stated that land stood in the name of his father and the same has not been partitioned. He has also stated that there is no dispute between him and Moda regarding agricultural land but there was some minor animosity in respect of the land but on the advice of his brothers he gave up. In cross-examination he has stated that there was no litigation between him and Modaram regarding agricultural land.

PW 8 Mst. Phuli, mother of the deceased has stated that Moda came to her house in after-noon, and tempted Raju and asked for scissor but on its refusal, it annoyed him and he gave 'Thola' and twisted her hand. She has also stated that Moda took Raju. She has further stated that there was a dispute between younger brother of Modaram and her husband regarding 'Seda of Khet' and on account of the Modaram was annoyed. She has also stated that Raju used to play with the children of Moda and some time he used to stay there and took meal also. PW 9 Mst. Sheru has stated that the husband of Phuli had a dispute with Moda only with regard to agricultural land. PW 11 Magaram has stated that there is a dispute between Mana and his brothers Moda. Narsingha and Jalu on agricultural land. He has also stated that all the four brothers of Mana are of one party and Moda is of

the other party. PW 6 Kesharam has stated that there is dispute between Moda and Mana regarding agricultural land. He has stated that Raju used to visit Moda's house and grand brothers and his father. PW 19 another Kesharam S/o Himtharam has stated that there is dispute between his brother-in-law Manaram and Modaram. He has also stated that there is no dispute between the other brothers and Manaram.

It is clear from the perusal of the above evidence that there was a trivial dispute between Modaram and Manaram in respect of agricultural land. While assessing the veracity of the evidence of PW 8 Mst. Phuli, PW 5 Manaram and PW 9 Smt. Sheru it is clear that PW 5 Mana Ram has not stated any particulars of the dispute and the allegation of dispute was a vague. PW 8 Smt. Phuli has stated that Raju used to play with children of Moda which means that their relations were cordial. As per the statement of Smt. Phuli, dispute was between her husband and younger brother of Modaram regarding 'Seda of Khet'. She has not stated that nature of the dispute and also the name of Mana. she has also stated that she had narrated the entire story to her husband regarding the visit and conversation held with Modaram. In FIR Ex. P. 6 dated 17.6.89 and Ex. P. 7 dated 30.6.89 lodged by Manaram, the facts about demand of scissor, taking away of Raju after alluring, threatening and beating of his wife by Modaram have not been stated at all. The omission of these material facts in the two F.I.Rs. by Manaram are of important nature and in the absence of any explanation in this regard, is fatal to the prosecution. Apart from that in FIR Ex. P. 7 dated 30.6.89, Manaram has only mentioned that he had 'suspicion' on Moda but in its copy., the word 'suspicion' is missing, this further creates doubt regarding the prosecution case, PW 8 Smt. Phuli, has stated that Raju had been taken at 'Dopher' (noon) by Moda and uttered the word 'thu ghani royegi, yeh akshar yad rakhna' whereas PW 9 Smt. Sheru had stated that Moda Ram took Raju after sun-set. Thus, there is a discrepancy between two material witnesses regarding time of visit and taking of Raju by Modaram. The other important fact which emerges from the statements of PW 8 Phuli and PW 9 Sheru that none of them had visited Moda's Dhani to search Raju which was not at a long distance. They also not gone to Bheru's dhani to search Raju. As per the evidence on record, the agricultural land was in the name of Moda's father Bheruram which was not partitioned. PW 5 Manaram has stated that

on the advice of his brothers he ended enmity with Moda. On the other hand Smt. Phuli has stated that the dispute was between the younger brother and Modaram and thus, there is a clear discrepancy in the testimony of the two material witnesses PW 5 Manaram and his wife PW 8 Phuli regarding the animosity. Therefore, it cannot be inferred that the dispute between Modaram and Manaram was of such a grave nature which could have afforded any ground of motive to Modaram for killing Raju. On the other hand, the elimination of Raju could not help Modaram in getting larger share of the land & as such, it could also not be motive to kill Raju. It is also not out of place to mention that the father Bheruram and other brothers of the accused had not been examined to substantiate the prosecution story. It is clear from the statement of PW 5 Manaram, PW 8 Phuli, PW 9 Sheru and even PW 19 Kesharam, who is the brother of PW 8 an interested person in Manaram, that none of them have spelled out the nature and the particulars of dispute between Modaram and Manaram. So much credence cannot be placed on the testimony of these witnesses. As by itself motive, if proved, is not sufficient to convict an accused but in the present case as discussed above, the prosecution has even failed to prove motive. In view of the above circumstances, who hold that there is no such evidence of motive to connect the accused with crime.

12. We would now discuss the other circumstance that the deceased Raju was last seen in the company of the accused Modaram by PW 8 Mst. Phuli, PW 9 Sheru, PW 6 Kesharam, PW 7 Hariram and PW 10 Buran. Brief evidence of these witnesses in this regard is given below:

PW 8 Phuli has stated that before 6-1/2 months at 'Dopher' (Noon) Moda allured and took Raju with him and since then he was missing PW 9 Sheru has stated that Moda took Raju with him when the sun was setting in. PW 6 Kesharam has stated that when he was searching his she-goat at 9 P.M. on 6.6.89, Moda was going with Raju but after half an hour Moda was coming alone, when asked he informed that Raju's mother had taken him back. He has stated that he left for Barmer in the morning of 7.6.89 and came back on 29.6.89 in the night at 10 P.M. He has stated that when he reached the village, he came to know that there was a rumour, about missing of Raju and then he went to Mana's house in the next morning at 4.30 A.M. and narrated the story. He has stated that he did not find his she-goat nor he

reported the matter to police. He has further stated that it took 10 minutes to reach the house of Mana and he had taken 10 minutes' time to narrate the story to him on 30.6.89. He has also stated that he had not visited Thana with Manaram to lodge the report and stated that Mana went to Police Station to report in his presence. He has also stated that dead body was recovered after 27 days of the report. He has also stated that he had not disclosed the incident of missing of Raju to any body. He has further stated that he was searching his she-goat in the way between the Dhanies of Moda & his father Bheru & the distance between the two Dhanies was 500 pavanda and he saw Raju with Moda at a distance of 100 Pavanda from the Dhani of Moda. He has denied the suggestion that B.A. Final examination had finished on 15th May, and stated that after examination nobody goes to college but can go for other works. In the cross-examination he admitted that there was no holiday when he visited his village on 6.6.89.

PW 7 Hariram has stated that while he was going in the mid-night he saw a man and when he flashed light over that the man he saw that he was Moda and on asking that what was in his 'Gathri', the reply was that it contained some goods. He has stated that it was a white cloth. In cross-examination he has stated that distance between him and Moda Ram was about 5 to 7 pavandas. He has also stated that he was far away from him, as such he could not see him clearly. He has also stated that the place where he saw Modaram was about 1 km. from the village and Moda's Dhani was 2 kms. from Kundanapura and his Dhani was also at a distance of two kms. from the village. He has also stated that he had narrated these facts to Manaram on the date only when he came from Jamnagar but not stated to any other person.

PW 10 Buran has stated that in the night due to Diarrhoea he went for latrine in the mid-night and saw a man near the house of Sarpanch. He called him 2-3 times thereafter he saw the man in the light coming the Sarpanch's Shop that he was Moda and asked, where he had gone. Moda replied that he had brought goods from shop PW 10 has also stated that Moda had a white cloth in his hand. Moda was going from shop to his house. In cross-examination he stated that distance between him and Moda was about 10 pavandas, he could not remember whether that night was moon-light or not. He has not stated with certainty, whether the light

was coming from the shop of Sarpanch. He has also stated that shop was earlier of Sarpanch but now it was a Admal. He was also stated that his Dhani is at a distance of about 3 to 4 km. from Basti and Sarpanch is living at a distance of 3-4 km. away from his house.

The only witness who had seen Raju with Moda on 6.6.1989, is PW 6 Kesharam. He has stated that he had come from Barmer on 29.6.89 at 10 P.M. and visited village and heard the rumour missing of Raju and also that Modaram was suspected for the crime. But inspite of that he did not narrate the story to any person even after hearing the rumour. The entire evidence of Kesharam shows that he saw Raju on 6.6.1989 and inspite of suspicion he left for Barmer and came only on 29.6.1989. He has not explained why he did not lodge the report of missing of his she-goat and he has not been able to give satisfactory explanation of missing of Raju and he states that after 10 p.m. when he visited the village he heard rumour missing of Raju and then only at 4.30 in the morning he informed Mana. As a matter of fact when he was knowing he should have reported the matter immediately to Mana or any body else, as such the statement of this witness is not trust worthy. As per the statement of PW 6 Kesha Ram dead body was recovered after 27 days of the report. The dead body was recovered on 30.6.1989 which did not corroborate with the date of missing i.e. on 6.6.1989 the day of last seen as per Doctor's evidence. Therefore, on his statement much credence cannot be placed as he is a chance witness and his presence is doubtful. The other aspect which creates doubt is that there is long gap between the accused being seen with Raju on 6th June and the recovery of dead body. In view of this after 6th June the possibility of deceased being seen by other persons cannot be ruled out as the prosecution has not produced any evidence that he was not seen thereafter by any one. So far as the testimony of PW 10 Hari Ram and PW 11 Buran is concerned they have not stated on what date and at what time they saw accused Moda. With some goods from a distance of about 5 to 7 Pavandas with a 'Gathri' and also admitted that he could not see clearly due to distance, therefore, on this basis it cannot be said that it was a dead body. He has also stated that he narrated this fact to Mana Ram. But curiously enough Mana Ram did not visit the Dhani of Moda to verify it. There is another infirmity which creates a doubt in my mind relating to veracity of his testimony. The infirmity is that

as per evidence of PW 5 Manaram height of Raju was 3 ft. and who was of 11 years of age and as such it was not possible to take the body in a 'Angochha'. In view of the discussion, the statements of PW 10 Hariram and PW 11 Buran are not convincing and do not support the theory of last seen evidence of prosecution.

13. So far as the circumstance of recovery of dead body is concerned, there is no evidence on record to show that the dead body was recovered in pursuance of the disclosure statement of Moda. The evidence of PW 2 Dr. Jagdish Prasad Sharda who performed the autopsy of the dead body shows that it was unidentifiable. PW 2 Dr. Jagdish Prasad Sharda has opined that the cause of death of deceased Raju could not be ascertainable, as there was only bony cage of child, of which anatomical position of body was disturbed. The question then arises as to whether the death was homicidal or accidental. So far as this aspect is concerned the Doctor has deposed that he found jaw of dead body was open, which would also be possible in the case of a natural death. According to PW 2 Dr. Jagdish Prasad Sharda he could not find the cause of death because the dead body was in decomposed state. Palvic bones were separate. All the bones of lower limbs were separate, lumbar vertebrae were separate. Penis and scrotum were not seen. Though as per statement of the Doctor the possibility of natural death cannot be ruled out as jaw of dead body was found opened. But as per recovery memo, the feet of the deceased were tied with cord. Hence the possibility of accidental death is ruled out. The other important evidence on record is that the duration of death as given by Doctor is between 4 to 6 weeks which does not corroborate with the time of the occurrence as alleged by the prosecution. There is also discrepancy regarding duration of death, in the post mortem examination report it is mentioned as 3-4 weeks, whereas in the statement of PW 2 Dr. Jagdish Prasad Sharda is mentioned as 4-6 weeks, so in the absence of definite and specific opinion of PW 2 Dr. Jagdish Prasad in that regard it is not safe to form any opinion regarding nature and duration of death and to connect the accused Moda with the commission of offence.

14. The dead body was identified by PW 19 Kesharam, maternal uncle of deceased and PW 5 Manaram father of the deceased. PW 5 Manaram has stated that he identified the dead body of Raju on the basis of 'Knicker' A-1 and 'Bushirt

A-2.' In cross-examination he admitted that he was not in a position to say, whether the same clothes were worn by Raju on the last day. He has further stated that he got same type of clothes for his son that is why, the clothes belongs to Raju. PW 21 Gopal Singh I.O. has stated that he had not got identified the clothes as well as the structure of bones from the wife of Manaram. So far as the recovery of the dead body is concerned, the evidence which has been adduced in this regard is far from satisfactory in the absence of evidence as there is no positive evidence on record to show as to what clothes Raju was wearing at the time when he disappeared from the house and that the same clothes were worn by him. That apart, the identification on the basis of clothes on such evidence without following the procedure of identification is not proper and suffers from infirmity. It is pertinent to note that as per post mortem report penis and serotum were not seen, there was no finding of the Dr. Jagdish Prasad that the body was of a male child. In the absence of any positive finding of PW 2 Dr. Jagdish Prasad, that the person whose dead body was recovered was of male or female, it cannot be held that it was the dead body of Raju and, therefore, no conviction can be maintained on the material available on record.

15. As regards the circumstance that Modaram was absconding, the prosecution has produced only one witness to substantiate it.

PW 18 Gopalram has stated that he did not go to Dhani of Moda on 6.6.89 and for the first time he went to Moda's house on 17.6.1989 but Moda was not available on 17.6.89 and he was informed by the wife of Modaram that he had gone to Kundanpura. Thereupon, he went to Kundanpura but he could not find Moda and later on he visited on 23.6.89 whereas, as per the statements of PW 8 Phuli and PW 9 Mst. Sheru, Moda took Raju with him and since then he had been missing but since no efforts were made by prosecution to search them. That apart, no satisfactory explanation was given that what prevented Phuli and Sheru from visiting Moda's Dhani when they were knowing that Moda had kidnapped Raju from the house on 6.6.1989. Therefore, the evidence of these two witnesses is not reliable. The I.O. PW 21 Gopal Singh, stated that he had not enquired about disappearance of Raju from the wife of accused Moda Ram. The prosecution has not produced any material on record to show that they were searching Moda Ram

whereas Mana Ram in his report had mentioned that he had suspicion on Moda Ram. As the prosecution Keshrimal and Sagat Singh were sent to search Raju and Moda Ram but they have not produced as such there is no evidence of absconding and without making any effort of searching Moda Ram it cannot be said the Moda Ram was absconding. Though absconding by itself is not conclusive either of guilt or of guilty conscience, but in the present case prosecution has failed to prove that Moda Ram was absconding. Therefore, it cannot be said that the testimony of above witnesses substantiate the circumstance of absconding against the accused.

16. In the present case FIR was recorded at 6 a.m. on 30.6.89 whereas the accused was brought by Head Constable Bhar Singh at Police Station at 8 a.m. but as per arrest memo Ex. P. 2 he was arrested at 10 a.m. by Bhar Singh while the accused was going for natural call. Bhar Singh was not examined. The information regarding recovery of dead body Ex. P. 33 is at 10.30 a.m. but in Ex. P. 10 recovery memo of dead body 'CANKAL' time is not mentioned. PW 5 Mana Ram has stated that Ex. P. 7 dated 30.6.89 written application was filed by Man Ram, after recovery of dead body. He has also stated that dead body was handed over to him and after cremation he lodged the report at 4 p.m. He has also stated that Ex.P. 7 was written by 'Thanedar' only.

PW 21 Gopal Singh I.O. has stated that he has prepared all memos on 30.6.89 between 11.30 to 1.30 p.m. and admitted that he left blank space for entering time. He has explained that he had forgotton to mention time due to oversight which makes his statement suspicious. PW 21 Gopal Singh has also stated that Ex. P. 6 bears his signature whereas Mana Ram has stated that it was written by his brother in law. The I.O. has also stated that he recovered the dead body and it was not in his handwriting. He has admitted that there is difference in writing and ink between portion A to B of Ex. P. 6 and has given explanation that it had happened because he used a new pen as ink of his earlier pen had dried. May be it so, but in any way the explanation is not plausible and it cannot be said the Raju when last seen was alive and when left was wearing Khaki 'Niker' and 'Bushirt'. In memo of information Ex. P. 36 the time recorded as 9.30 a.m. but later on by over writing it has been changed to 9.30 p.m. It is clear that time has been changed. A

perusal of documents placed on record and evidence discussed above it is clear that the conduct of the Investigating Agency is not fair. If the statement was recorded at 9.30 a.m. then information for recovery of dead body vide Ex. P. 34 at 11.20 a.m. does not remain admissible as the fact had already come to the knowledge of I.O. at 9.30a.m. and as per the statement of PW 5 Manaram, the report was lodged at 4 p.m., therefore, recovery at the instance and on the information of the accused is full of doubt. The alleged extra judicial confession is inadmissible in evidence, as it has been made in the presence of I.O. The confessional statement has been recorded of the accused at 9.30 but the timings have been changed to 9.30 p.m. In view of this discrepancy the information by accused is not trustworthy. Thus, the entire investigation becomes most suspicious and unreliable.

17. Upon careful review of the evidence, the inference of murder can not be drawn on the basis of recovery of dead body, in the absence of proper identification of clothes and without definite opinion of sex of the dead body by Doctor. It is well settled that all the facts proved by the circumstantial evidence must provide a complete chain, no link of which must be missing and they must unequivocally point to the guilt of the accused and excluded any hypothesis consistent with his innocence, but in the case in hand as there was sufficient interval between the death of the boy and the recovery of the body and as discussed above, the link in the circumstantial evidence does not appear to be fully complete. Thus, there are no circumstances in the case which connect the accused Modaram with the crime and his conviction cannot be sustained and is liable to be set aside.

18. In view of the foregoing discussion. I hold that prosecution has failed to prove the guilt beyond reasonable doubt against the accused. It has not been proved that the appellant had kidnapped Raju and after murder he threw the body in the well. Thus, I allow the D.B. Criminal Jail Appeal No. 196/90 filed by Modaram against his conviction Under Sections 302, 201 and 364 IPC and acquit him of the charges Under Sections 302, 364 and 201 IPC and judgment passed by Additional Sessions Judge is set aside. Modaram is in jail and he shall be released forthwith if not required in any other case. Fine if deposited, shall be refunded. Consequently, the death sentence is not confirmed and the D.B. Criminal Murder

Reference No. 1/90 is rejected.

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