2025:AHC:201385-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1078 of 1985

Shesh Narain

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	S.N. Singh
Counsel for Respondent(s)	:	D.G.A.

AFR

Court No. - 44

HON'BLE J.J. MUNIR, J.
HON'BLE SANJIV KUMAR, J.

(Delivered by: Sanjiv Kumar, J.)

1. The instant appeal has been filed by the appellant/convict Shesh Narain against the judgment and order dated 21.02.1985 passed by Special Judge (E.C. Act)/Additional Sessions Judge, Kanpur in Sessions Trial No. 530 of 1982 (State Vs. Shesh Narain and others), arising out of Case Crime No.191 of 1982, under Section 364, 302, 201 Indian Penal Code (in short 'IPC'), Police Station Harbans Mohal, District Kanpur.

2. By the impugned judgment and order, the appellant, Shesh Narain, was convicted and sentenced to undergo imprisonment for life for offence punishable under Section 302 IPC; ten years' rigorous imprisonment for offence punishable under Section 364 IPC and seven years' rigorous imprisonment for offence punishable under Section 201 IPC. All the sentences were directed to run concurrently. By the same judgment and order, non-appellants/co-accused Brij Mohan and Hari Om were

acquitted of the charge framed against them under Section 302 read with Section 34 IPC due to lack of evidence.

3. Brief facts of the prosecution case are that on 23.10.1982 at about 01:00 p.m. deceased Vijai, aged about 8 years, son of Bhagwan Das Sharma, was playing near his House No. 66/111, Kachiyana Mohal, Kanpur and thereafter went missing. Thereupon, his disapperance was reported at 07.15 p.m. on the same day by Neeraj Kumar Sharma (P.W.1), the deceased's cousin, at Police Station Harbans Mahol, District Kanpur. Thereafter, upon information furnished by the appellant, Shesh Narayan, on 25.10.1982, to the informant Banarsi Das Sharma son of Jagannath Prasad Sharma, R/o House No. 66/111, Kachiyana Mohal, Kannpur, the dead body of Vijai was found in a gunny bag in Raipurwa, Kanpur, the same day after 9 a.m. Then informant Banarasi Das Sharma (P.W.7), lodged an FIR at Police Station Raipurwa, District Kanpur on 25.10.1982 at 10:35 a.m., stating therein that his nephew Vijai, son of Bhagwan Das Sharma, aged about 8 years had gone missing while playing near his house since 23.10.1982. They had searched for him and also reported his 'missing' to Police Station Harbans Mohal, but all in vain. On 25.10.1982 at about 09:00 a.m., while he was going to his duty at Singh Engineering Works, Kamalganj and reached near Chacha Nehru Hospital, Koparganj, Shesh Narain Mishra, son of Ram Narain Mishra, coming from *Deputy Ka Parao* met him. Shesh Narayan informed him that he was taking tobacco from a shop and came to know that a dead body is lying in a gunny bag in Raipurwa. Thereafter, both of them went there and, upon opening the gunny bag, the dead body of Vijai was found near Harijan Colony in *Mohalla* Raipurwa.

4. It was further stated in the FIR that the informant has a house bearing No. 128/82, E-Block in *Mohalla* Kidwai Nagar and Shri Brij Mohan Dubey is his tenant. He repeatedly asked Brij

Mohan to vacate the house and about 20-25 days ago, he alongwith Shri Rameshwar Prasad (Nana of deceased Vijai) and his mother went there and asked for the payment of arrears of rent and also to vacate the house. Thereupon, Brij Mohan got agitated and threatened him. His son Hari Om is a goon, who went to jail in a murder case. He suspected that Brij Mohan Dubey and his son had kidnapped his nephew Vijai, murdered him and after putting his dead body in a gunny bag thrown it in Raipurwa.

5. Upon this information, an FIR under Section 302, 364 and 201 IPC was lodged against Brij Mohan Dubey and Hari Om at Police Station Raipurwa. Since the offence was committed within the local limits of Police Station Harbans Mohal, the case was transferred to Police Station Harbans Mohal and investigation commenced.

6. During investigation, the appellant's name came to light regarding his involvement in commission of the offence and at his pointing out, on 26.10.1982, a tin box was recovered from the house of his mother-in-law, in which he kept the dead body of the deceased after his murder. The inquest report was prepared and autopsy done. As per *post-mortem,* there were 1st and 2nd degree burns over dead body and two contusions were also there over the head. In the doctor's opinion, the cause of death was shock, as a result of burn injuries. The Investigating Officer recorded statements of witnesses, prepared a site-map of the place of recovery of the dead body and place of recovery of the tin-box, recovered at the instance of the appellant and after concluding investigation, filed a charge-sheet before the court of Chief Metropolitan Magistrate, Kanpur against the appellant Shesh Narain and non appellants/co-accused Brij Mohan Dubey and Hari Om, under Section 364, 302 and 201 IPC.

7. The concerned court took cognizance of the offence, summoned the accused and after furnishing relevant prosecution

papers to them under Section 207 Cr.P.C., committed the case to the Court of Sessions for trial. The Sessions Court i.e. Special Judge (E.C. Act)/Additional Sessions Judge, Kanpur framed charges under Section 364, 201 and 302 read with Section 34 IPC against the appellant and also framed charge under Section 302 read with 34 IPC against the non-appellants/co-accused Brij Mohan Dubey and Hari Om. The appellant and co-accused pleaded not guilty and claimed to be tried.

8. The prosecution has examined 13 witnesses namely, Neeraj Sharma (P.W.1), Banarasi Das Sharma (P.W.2), Rameshwar Prasad (P.W.3), Meera Sharma (P.W.4), Head Constable Pratap Singh (P.W.5), Head *Moharrir* Shri Narain (P.W.6), Jagannath Prasad Sharma (P.W.7), Anup Kumar Gupta (P.W.8), S.I. Tulsi Singh (P.W.9), Rakesh Chandra Shukla (P.W.10), Medical Officer Dr. C.K. Singh (P.W.11), Constable Ram Jatan Singh (P.W.12) and S.I. Ramendra Singh (P.W.13) in support of the prosecution case.

9. P.W.1 Neeraj Sharma is a cousin of the deceased and the person, who lodged the missing report (Ext. Ka-1) of the deceased at Police Station Harbans Mohal on 23.10.1982 at 07.15 p.m. According to the prosecution, he returned to his house at 02:00 p.m. the same day and found the deceased missing. After a search he lodged the missing report. P.W.2 Arvind Kumar Sharma, aged about 13 years, is also a cousin of the deceased, who, according to the prosecution, was playing with the deceased on the fateful day at about 01:00 p.m, when Shesh Narain came there on his bicycle. Arvind Kumar went inside the house, while playing, but upon his return from the house within 5 minutes, he saw that the appellant and deceased both were not there.

10. P.W.3 Rameshwar Prasad is the deceased's uncle and a witness to the demand to vacate the house and payment of arrears of rent from co-accused Brij Mohan Dubey. P.W.4 Meera

Sharma is the deceased's mother. She is also a witness of the demand for payment of rent from co-accused Brij Mohan Dubey. She is also a witness of the fact that her son deceased Vijai was playing with Arvind outside her house on 23.10.1982 at about 01:00 p.m. Thereafter she, alongwith other family members, went to the house of her relative in J.K. Colony for a *Grih Pravesh* function and returned at about 09:00 p.m., the same night.

11. P.W.5 Head Constable Pradeep Singh is a formal witness, who scribed the 'missing' report at Police Station Harbans Mohal upon an application of Neeraj Sharma. He has also deposed that on 25.10.1982, he made the G.D. entry, when a constable of Police Station Raipurwa came to his police station alongwith the *Tehrir* (Ext. Ka-3) of Banarasi Das Sharma and *Chik* FIR (Ext. Ka-6). He has also proved the fact that a big tin-trunk and two sealed packets were kept in the *Malkhana*. P.W.6 Head Constable Shri Narain has proved the *Chik* FIR and the concerned G.D., which he made upon the *Tehrir* of informant Banarasi Das at Police Station Raipurwa. P.W.7 Banarasi Das Sharma is an uncle (*Tau*) of the deceased and also the informant of the present case. He is a witness of the fact that on 25.10.1982 at 9 a.m. while he was going for work on a bicycle, the appellant Shesh Narain met him on way and it was the appellant, who gave him the information that a dead body is lying in a gunny bag in Raipurwa. Thereafter, both of them reached there and found that the dead body was of his nephew Vijai. Then, he lodged the FIR against his tenant Brij Mohan and Hari Om.

12. P.W.8 Anup Kumar Gupta is a witness of last seen, who, on 25.10.1982 at about 02 p.m. saw the appellant alongwith co-accused Brij Mohan and his son Hari Om near Deputy Ka Parao roundabout with deceased Vijai, who was riding Shesh Narain's bicycle. He is also a witness of recovery of tin box from the house of mother-in-law of appellant Shesh Narain on 26.10.1982, in

which the dead body of Vijai was kept after his murder. P.W. 9 S.I. Tulsi Singh is a formal witness before whom Inquest Report of the deceased was prepared along with other related documents. The gunny bag, pieces of cotton and *Dhoti,* found inside the gunny bag, were taken into possession and its recovery memo prepared. P.W.10 Rakesh Chandra Shukla is a witness of fact, who saw the appellant Shesh Narain near the house of the informant on 23.10.1982 at about 01:00 p.m. and when Arvind went inside the house, while playing, Shesh Narain took away Vijai on his bicycle. According to P.W.10, he witnessed all this from the balcony of his house.

13. P.W.11 Dr. C.K. Singh is an expert witness, who conducted the *post-mortem* examination on the dead body. He found that de-composition had started. He found following *ante-mortem* injuries over the body :--

> *(i) entire body was burnt. The degree of burn was of first and second degree and there were blisters.*
>
> *(ii) contusion of the size of 3 cm x 2 cm on front part of the head.*
>
> *(iii) contusion 3 cm x 1 cm over right side of head.*

14. On internal examination, the doctor found that there were coal particles in the trachea. The lungs, kidneys and liver were also congested. In the opinion of P.W.11, Dr. C.K. Singh, the cause of death was shock as a result of burn injuries. He proved the *post-mortem* report, Ext. Ka-18, and has stated that the death of the deceased would have happened on 23.10.1982 after 01:00 p.m.

15. P.W. 12 Constable Ram Jatan Singh is a formal witness, who accompanied S.I. Tulsi Singh (P.W.9), at the place where the inquest report of the deceased was prepared. Thereafter, he took the dead body of the deceased for *post-mortem*. P.W.13 S.I. Ramendra Singh is the Investigating Officer of this case. He has

stated about the investigation conducted by him and further stated that he recorded statements of the witnesses. Upon receiving secret information, on 26.10.1982, he arrested the appellant Shesh Narain from Mathuri Mohal Tiraha. This witness has said that at Shesh Narain's pointing out, he recovered a big tin box from Shesh Narain's *sasural,* wherein he had stowed away the dead body of the deceased after committing murder. He has also stated that there was a foul stench emanting from the box. He proved the recovered box and also prepared site plan from where the dead body was recovered.

16. The prosecution produced following documents in evidence:- Missing Report (Ext. Ka.-1), entry of Missing Report in G.D. No. 32 at 07:15 p.m. at Police Station Harbans Mahol (Ext. Ka.- 2), *Tehrir* (Ext. Ka-3), G.D. No. 32 dated 25.10.1982 at 14:50 p.m., G.D. No.44 dated 26.10.1982 at 19:00 p.m. regarding deposit of a big tin box in *Malkhana* of the Police Station (Ext. Ka.-4), G.D. No. 57 dated 15.03.1984 at 08:15 p.m. regarding deposit of two bundles (case property) (Ext. Ka.- 5), Chik FIR (Ext. Ka-6), G.D. No. 25 dated 25.10.1982 at 10:35 a.m. (Ext. Ka-7), G.D.No 30 at 02:30 P.M dated 25.10.1982 regarding deposit of one sealed bundle (gunny bag) (Ext. Ka.- 8), Written Report (Ext. Ka-9), Recovery Memo regarding recovery of tin box (Ext. Ka.-10), Inquest Report (Ext. Ka.-11), Papers relating to *post-mortem* report (Ext.Ka.-12 to Ext. Ka.-16), Recovery Memo regarding recovery of gunny bag and pieces of cotton and *dhoti* from inside the gunny bag (Ext. Ka.-17), post-mortem report (Ext. Ka.-18), site plan of the place where the dead body of the deceased was found (Ext. Ka.-19) and Charge-sheet (Ext.Ka-20).

17. The following material exhibits were also produced on behalf of the prosecution :- (i) half pant and shirt of the deceased Material Exts.-1 and 2, Gunny Bag, pieces of cotton and Dhoti Material Exts.- 3 to 5.

18. After closure of the prosecution evidence, statements of appellant as well as non-appellants/co-accused were recorded under Section 313 Cr.P.C. The appellant, in his statement under Section 313 Cr.P.C., denied the prosecution case and admitted that he lives near the house of the informant. He has also stated that his *sasural* is situate nearby the place from where the dead body of the deceased was found. He has also stated that the informant Banarasi Das and his family members asked him to give false evidence against co-accused Brij Mohan and Hari Om, which he refused. Thus, he has been falsely implicated in the present case. No evidence was produced by the defence.

19. The learned trial Judge vide judgment and order dated 21.02.1985 convicted the appellant Shesh Narain and sentenced him in the manner already indicated above. He acquitted co-accused Brij Mohan and Hari Om for lack of evidence.

20. Aggrieved by the impugned judgment and order, the appellant has filed the instant appeal.

21. We have heard Mr. Ranjan Tripathi, learned counsel for the appellant and Mr. Shashi Shekhar Tiwari, learned A.G.A. on behalf of the State.

22. Learned counsel for the appellant has submitted that the prosecution has failed to prove any motive against the appellant to commit this offence. The case rests upon circumstantial evidence and there was no motive for the appellant to commit murder of the deceased. Thus, the learned trial court has wrongly convicted him in absence of any motive.

23. It is also submitted on behalf of the appellant that there is no last seen evidence against the appellant and the learned trial court failed to appreciate the evidence in its proper perspective. The evidence of P.W. 10 Rakesh Chandra Shukla is not reliable

as he is a chance witness. Thus, his presence at the place of occurrence is highly doubtful. Similarly, P.W. 8 Anup Kumar Gupta is also a chance witness and his evidence cannot be relied upon. If he had seen the appellant at Deputy Ka Parao alongwith the deceased, then he too should have informed this fact to the family members of the informant, promptly. It is further submitted that both these witnesses have been planted by the prosecution to give weight to the prosecution case and fill up the missing chain of circumstances.

24. It is next submitted that it is highly unlikely that the appellant Shesh Narain would himself tell the informant Banarasi Das about the dead body of the deceased Vijai lying in a gunny bag in Raipurwa. If the appellant would have murdered the deceased, he would never have informed Banarasi Das of the fact. This clearly shows that the appellant was not involved in this crime and the trial court has wrongly appreciated the evidence and illegally convicted the appellant. It is also submitted that the recovery of tin box from inside the *sasural* of the appellant is inadmissible because no public witness of the vicinity was secured by the I.O. during the course of recovery. Further, no scientific examination of the tin box was carried out to know about the nature of foul smell allegedly coming out of the box.

25. Lastly, it is submitted that the informant and his family members wanted the appellant to become a witness against the accused persons named in the F.I.R. and upon his refusal to give false evidence, he was falsely implicated in this case.

26. On the other hand, learned A.G.A. appearing on behalf of the State has argued that the prosecution has proved its case beyond reasonable doubt. The case rests upon circumstantial evidence and the prosecution has proved the chain of circumstances, which establish that it is only the appellant, and none else, who has committed the murder of the deceased. It is

also submitted that there is evidence that the appellant kidnapped Vijai from outside his house. Later on, the deceased was last seen near Deputy Ka Parao with the appellant on his bicycle and thereafter the dead body of the deceased was found near appellant's *sasural* at the information of the appellant himself. Therefore, the deceased was last seen alive with the appellant and the appellant has failed to explain how and under what circumstances, the deceased parted his company.

27. Lastly, it has been submitted that it is true that in a case of circumstantial evidence motive plays a significant role, but it is also well settled that if there are other circumstances, which would lead to the only conclusion that it was the accused alone, and none else, who committed the murder, then motive becomes immaterial. Thus, in the instant case, even if the prosecution has failed to prove motive for the appellant to commit the murder of the deceased, the chain of circumstances fully establish that it was the appellant, who kidnapped Vijay and thereafter committed his murder and kept his dead body in a tin box, and in order to cause disappearance of the evidence of crime, kept his dead body in a gunny bag and left it in Raipurwa. Thus, the appellant was rightly convicted by the trial court and this appeal has no force, which is liable to be dismissed.

28. No doubt, this is a case based upon circumstantial evidence because nobody has seen any person committing the murder of the deceased. P.W. 11 Dr. C.K. Singh conducted the *post- mortem* examination of the deceased Vijay's cadaver. In the doctor's opinion, the cause of death was shock resulting from extensive burn injuries. As per *post-mortem* report, the deceased sustained burn injuries of the 1st and 2nd degree all over his body with blisters and two contusions on his head. Therefore, this is a case of unnatural death, where a young boy Vijay, aged about 8 years,

was murdered. It is to be seen whether it is the appellant who kidnapped and committed his murder.

29. It is an admitted fact that the house of the deceased is located in the vicinity of the appellant's house. The missing report of the deceased was lodged on 23.10.1982 at 07:15 p.m. at Police Station Harbans Mohal. Thereafter, when the dead body of the deceased was found on 25.10.1982, the FIR was lodged by the informant Banarasi Das at 10.35 a.m. The FIR was lodged against non-appellants/co-accused Brij Mohan and Hari Om and during the course of investigation, the name of the appellant surfaced with regard to his involvement in commission of this offence and ultimately a charge-sheet was filed against all the three accused. Co-accused Brij Mohan and Hari Om have been acquitted for lack of evidence against them and there is no appeal on behalf of State against their acquittal.

30. In a criminal trial, the burden of proof lies upon the prosecution to prove its case. The present case is based upon circumstantial evidence. The Supreme Court in different pronouncements has propounded certain golden principles with regard to circumstantial evidence. In such cases the prosecution is required to prove the chain of circumstances to establish the guilt of the accused.

31. *In Sharad Birdhichand Sarda v. State of Maharashtra*, *AIR 1984 SC 1622*, it has been held that the onus is on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution case cannot be cured by a false defence or plea. The following conditions must be fully established, before conviction could be based on circumstantial evidence:--

> *"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully 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."

32. Again, in ***Padala Veera Reddy v. State of Andhra Pradesh, AIR 1990 SC 709***, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:--

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

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

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

33. In view of the above settled principles, the prosecution was required to establish following chain of circumstances in the present case to prove the guilt of the appellant:-

(I) Whether the appellant Shesh Narain kidnapped the deceased Vijai from near his house on 23.10.1982 at 01:00 p.m.

(II) Whether the deceased Vijai was last seen alive in the company of appellant on 23.10.1982 near Deputy Ka Parao at 02:00 p.m.

(III) Whether the dead body of the deceased was found near Raipurwa on 25.10.1982 after 9 a.m. upon the information of the appellant.

(IV) Whether the appellant hid the dead body of the deceased in a tin box after committing his murder and the tin box was later recovered at his instance from his sasural on 26.10.1982.

(V) The motive for appellant to commit this offence.

34. So far as the Point No.(I) is concerned, the prosecution case is that deceased Vijai was residing in House No. 66/111 Kachiyana Mahol, Police Station Harbans Mohal, District Kanpur alongwith his parents and other family members. On 23.10.1982, at about 01:00 p.m., he was playing with his cousin Arvind Kumar Sharma outside his house, then appellant Shesh Narain reached there riding a bicycle. Arvind Kumar Sharma went inside his house, while playing, and when he returned within five minutes, he saw that both Vijai and Shesh Narain were not present there. According to the prosecution, the appellant's house is in the same locality as the deceased and he frequently visited the deceased's house. He had cordial relations with the family of deceased and would dine with them occasionally. P.W. 1 Neeraj Sharma, P.W. 2 Arvind Kumar Sharma, P.W. 3 Banarasi Das Sharma, all relatives of the deceased and P.W.4 Meera Sharma (mother of the deceased), have said in their testimony in Court that the appellant Shesh Narain was their neighbour and frequently visited their house. It has also been stated that he occasionally dined with them also. The appellant, in his statement under Section 313 Cr.P.C., has admitted that his house is in the same locality where the deceased resided. According to the prosecution, the appellant Shesh Narain kidnapped the deceased, took him on his bicycle from outside his house, a fact seen from the balcony by P.W.10 Rakesh Chandra Shukla, who was residing at the upper portion of

the same house. To prove this fact, the prosecution has produced P.W.1 Neeraj Sharma, P.W.2 Arvind Kuma Sharma, P.W.4 Smt. Meera Sharma (mother of the deceased) and P.W.10 Rakesh Chandra Shukla.

35. P.W.1 Neeraj Sharma is a cousin of the deceased's and stated that on the date of occurrence, when he returned to his house around 02:00 p.m., he came to know from his sister Alka Sharma that Vijai was missing since 01:00 p.m. He searched for him and when Vijay was not found, he lodged a missing report on the same day at 07.15 p.m. P.W.1 Neeraj Sharma has proved the missing report as Ext. Ka-1. As per the prosecution, he is the witness before whom, though the kidnapping did not happen but he reached soon thereafter at his house, searched for the deceased and lodged a missing report.

36. P.W.2 Arvind Kumar Sharma, aged about 13 years, is also a cousin of the deceased. He has stated on oath that he was playing with Vijay outside the house, when the appellant Shesh Narain came over on his bicycle. P.W.2 went inside the house, while playing, leaving Vijai outside. When he (P.W.2) returned within five minutes, both Shesh Narain and Vijay were not present there. In his cross-examination, the witness has stated that he did not take much notice of this fact and was under the impression that Vijai might be playing somewhere. Thereafter, he alongwith his mother Vidya Sharma and aunt Meera Sharma left for J.K. Colony to participate in a *Grih Pravesh* ceremony, being organized there by his uncle. He has also stated that when they were proceeding to the J.K. Colony, they looked for Vijai here and there. His aunt (mother of the deceased) thought that Vijay might be playing somewhere and instructed his sister Alka Sharma to serve him food after his return. The witness has said that they returned from the J.K. Colony at about 09:30 p.m.

37. There are no major contradictions in his testimony and he has proved the fact that on 23.10.1982 at about 01:00 p.m., while he was playing with Vijai, the appellant reached there on his bicycle, and, soon thereafter, both appellant and Vijay were missing. Here, it is relevant to note that prosecution evidence proves that appellant Shesh Narain had friendly relations with the family of the deceased. The appellant was familiar with the deceased and his family members. Therefore, he was in a position to entice the deceased to come over with him on his bicycle. Vijay was familiar with him and could hardly doubt intentions of the appellant. The appellant was not a stranger to the deceased and, therefore, the appellant was in a position to take him for a ride on his bicycle.

38. The prosecution has also produced P.W. 10, Rakesh Chandra Shukla, who happens to live in the upper portion of the deceased's house. P.W.10 Rakesh Chandra Shukla has also supported the prosecution case and stated that at about 01:00 p.m. on the fateful day, he was in the balcony of his house. Vijai and Arvind were playing outside the house. The appellant Shesh Narain came over there on his bicycle. When Arvind went inside the house, Shesh Narain took away Vijai on his bicycle. After about three days, he came to know that Vijay has died and his dead body recovered from Raipurwa. This witness has been cross-examined at length by the defence. There are no major contradictions in his statement. It has come in his testimony that he has a shop in Delhi and he comes over to Kanpur three or four times a month. He stays in Kanpur for 3-4 days.

39. It has been argued by learned counsel for the appellant that P.W.10 Rakesh Chandra Shukla is a chance witness. Thus, his testimony is not reliable.

40. We do not agree with the submission of the learned counsel for the appellant. It has come in evidence that P.W.10 Rakesh

Chandra Shukla resides in the upper portion of the house of the informant and would come to Kanpur on three or four times a month. At the time of incident, he was in Kanpur and saw the incident from his balcony. As he was a resident of the house so his presence there on the fateful date and time can not be doubted. Even if it is assumed that he is a chance witness, then the law regarding the testimony of a chance witness is well settled that merely on account of being a chance witness his testimony cannot be ruled out. The reason for a chance witness being present on the spot and his testimony requires close scrutiny and if the same is otherwise found reliable, his testimony cannot be discarded merely on the ground of his being a chance witness.

41. In the present case, a scrutiny of the entire testimony of P.W.10, Rakesh Chandra Shukla, does not raise any doubt about his presence at the spot. The fact, which he deposed to, is supported by P.W.2 Arvind Kumar Sharma also. There is no evidence that he had any inimical relation with the appellant which could prompt him to give false evidence against the appellant.

42. Beside this, P.W. 4 Meera Sharma, mother of the deceased, has stated that on 23.10.1982 at about 01:00 or 01:30 p.m., she along with her sister-in-law (*Jethani*), Ved Sharma, her son Ajay Sharma and Arvind Sharma went to J.K. Colony to attend a function. Before that, at around 01:00 P.M, her son Vijai was playing with Arvind outside their house.When she returned home by 09:00 p.m., Vijai was missing and lateron after three days his dead body was found. She has stated that her relations with the appellant Shesh Narain were cordial, who used to visit their house and have food with them occasionally. She has clearly stated that she herself saw her son Vijai playing ouside the house alongwith Arvind for more than half an hour. She has also deposed that she did not search for her son in the appellant’s house because, she had no suspicion about him and was under the impression that

Vijay might be playing somewhere. Thus, P.W.4 Meera Sharma has also proved that on the fateful day at about 01:00 p.m., the deceased was playing outside the house alongwith Arvind Sharma.

43. It is submitted on behalf of the appellant that P.W. 1 Neeraj Sharma has not disclosed the fact in the missing report that the deceased was playing with his cousin Arvind Kumar Sharma, when the appellant Shesh Narain came over on his bicycle, and thereafter, both Shesh Narain and Vijay went missing, an event Rakesh Chandra Sharma witnessed from his balcony. Thus, the prosecution has improved its case and has falsely implicated the appellant.

44. We do not find any force in this submission also. It has come in evidence that P.W.1 Neeraj Sharma returned home at 02:00 p.m., when he came to know from his sister Alka Sharma that Vijai was missing. Thereafter, he launced a search for Vijai in the vicinity of his house and other possible places he could be. When Vijay was not found, he lodged a missing report on the same day. It has also come in evidence that Arvind Kumar Sharma, with whom Vijai was playing outside the house, had gone with his mother and other family members to J.K. Colony to attend a *Grih Pravesh* function and all of them returned after 09:00 p.m. So Neeraj Sharma had no occasion to meet Arvind Kumar Sharma and inquire from him about the said facts. There is no evidence that before lodging the missing complaint Neeraj Sharma met Arvind Kumar Sharma. Therefore, non-mentioning Arvind Kumar Sharma in missing report is not fatal to the prosecution case. The case is the same with regard to P.W.10 Rakesh Chandra Shukla and there is no evidence that Neeraj Sharma met Rakesh Chandra Shukla before lodging the missing report. Therefore, if the missing report lacks these facts, then it has no adverse effect on the prosecution case.

45. In view of the above discussion, we come to the conclusion that the prosecution has proved the fact that on 23.10.1982 at about 01:00 p.m., deceased Vijai was kidnapped from outside his house by appellant Shesh Narain.

46. The next point for consideration is Point No. (II) that whether deceased Vijai was last seen alive in the company of the appellant on 23.10.1982 near Deputy Ka Parao at 02:00 p.m.

47. To prove this fact, the prosecution has produced P.W. 8 Anup Kumar Gupta in evidence. He has stated that on 23.10.1982 at about 02:00 p.m., he was going to Unnao riding his Hero Majestic moped to attend a meeting and when he reached near Deputy Ka Parao roundabout, he saw Shesh Narain, co-accused Brij Mohan and his son Hari Om going towards Sangeet Talkies on bicycles. The deceased Vijai was sitting on the crossbar of the the appellant's bicycle. He did not take much notice of this, as the appellant frequently visited the informant's home and was familiar with the informant and his family. Thereafter, he went to Unnao to attend a meeting and on 25.10.1982, when he returned home, he came to know that Vijai had gone missing since 23.10.1982 at 01:00 p.m. from outside his house and his dead body was recovered from Raipurwa. This witness has been thoroughly cross-examined by the defence but nothing material has came out from his evidence to suspect the prosecution case.

48. P.W. 8 has stated that he was a Supervisor in Sahara India, Kanpur. On the instructions of his Manager, he firstly reached his Sector Office wherefrom he went to the branch office at Gumti No.5. From Gumti No. 5, he went straight to Unnao. The In-charge had instructed him to contact two persons near Sangeet Talkies, and, therefore, he went via Raipurwa and Deputy Ka Parao. He has also said that he attended the meeting from 03:00 to 05:00 p.m. He has further said that he returned from Unnao on 25.10.1982, and, in the meantime, he stayed at his sister's house

in Unnao. Since between 23.10.1982 to 25.10.1982 he remained at Unnao, he had no occasion to meet the informant or know that something bad had happened to the victim. He has no enmity with the appellant and there is no reason why he would give false evidence against him.

49. It has been argued on behalf of the appellant that P.W.8 Anup Kumar Gupta is a chance witness, and, therefore, his evidence cannot be relied upon.

50. We do not agree with this submission of learned counsel for the appellant. In our opinion P.W.8 Anup Kumar Gupta is not a chance witness. He was a Supervisor in a company and had field work. He was well within the area of his job. He has stated the reason that upon the instructions of his Manager to meet some clients, he was on his way to Unnao, when he saw the deceased alongwith the appellant on his bicycle near Deputy Ka Parao. Thus, his presence at Deputy Ka Parao at that time cannot be a coincidence and cannot be doubted. He has no enmity with the appellant or close contact with the informant or his family so as to give him the reason for making a false deposition against the appellant.

51. In view of the above, the testimony of P.W.8 Anup Kumar Gupta is truthful, inspires confidence and is thus reliable. He has proved the fact that on 23.10.1982 at about 02:00 p.m., he saw the deceased Vijai with the appellant on his bicycle near Deputy Ka Parao. There is no evidence that thereafter the deceased was seen alive by someone somewhere else in the company of other person(s). Therefore, it is proved that deceased Vijai was last seen alive in the company of the appellant on 23.10.1982 near Deputy Ka Parao at 02:00 p.m.

52. So far as Point No. (III) is concerned, the prosecution has examined informant P.W.7 Banarsi Das to prove this fact.

According to the prosecution, it was the appellant, who informed Banarasi Das (P.W.7), while he was on his way to office on 25.10.1982 after 09:00 a.m., that it has come to his knowledge that a dead body was lying in a gunny bag in Raipurwa. Then both of them went there and found that the gunny bag contained deceased Vijay's dead body. P.W. 7 Banarasi Das Sharma, the informant, has supported the prosecution case and stated that while he was going to attend his duties in Singh Engineering Works, Fazalganj, Kanpur, near Chacha Nehru Hospital, Koparganj, the appellant Shesh Narain met and informed him that while buying tobacco at the Kamal Mainpuri Tobacco Shop, he had heard that a dead body was lying in a gunny bag in Raipurwa. Thereafter, both of them proceeded to Raipurwa and found the gunny bag carrying the deceased Vijai's dead body. He has also stated that his relation with the appellant Shesh Narain were cordial and he lodged the FIR against his tenant Brij Mohan. P.W. 7 Banarasi Das Sharma has proved the *Tehrir* as Ext-Ka-9.

53. In his cross-examination, the witness has stated that the dead body was found near the Kash Devi Temple in Raipurwa located in the vicinity of the Harijan Colony. Nothing adverse has come in his statement. The appellant has neither shown his presence elsewhere at the alleged date, time and place nor it has been suggested to P.W.7 that he had not met and gave any information to Banarsi Das on 25.10.1982 after 9 a.m. and was not present alongwith Banarsi Das, at the place where the dead body of the deceased was recovered. Thus, from the statement of P.W.7, the prosecution has proved that it was upon information of the appellant, that the dead body of the deceased was found in Raipurwa.

54. It has been argued on behalf of the appellant that it is highly unlikely that the appellant after committing the murder would

disclose the fact of the dead body being kept in a gunny bag to the informant and lead him to the place of recovery.

55. We do not find any substance in this argument. It is hard to read the mind of a criminal. This conduct of the appellant would rather show that he wanted to portray himself as innocent and had kept a close watch on the progress of investigation regarding the then missing victim. And by doing so, he must have thought that nobody would suspect his involvement in the crime. Therefore, this conduct of the appellant was not so unnatural as to disbelieve the prosecution case. At that particular time, the informant Banarsi Das (P.W.7) also did not suspect him of committing this crime and lodged the F.I.R. soon after the dead body of the boy was found, against other named accused. It was after the evidence collected by the Investigating Officer during investigation that the finger of suspicion pointed towards the appellant. Importantly, it has come in evidence that the appellant's *sasural* is located nearby the place, where the dead body of the deceased was found in the gunny bag. These facts do lend weight to the prosecution case.

56. Therefore, from the above discussion, we come to the conclusion that the prosecution has proved the fact that at the pointing out of the appellant, the dead body of the deceased was found near Raipurwa on 25.10.1982 after 09:00 a.m.

57. Now we come to Point No. (IV). According to the prosecution, during investigation, a tin box was recovered at the instance of the appellant from his *sasural* on 26.10.1982, in which the dead body of the deceased was stowed away after his murder. To prove this fact, the prosecution has examined P.W.13 S.I. Ramendra Singh, the Investigation Officer of this case. He has stated that on 26.10.1982, he chased the appellant Shesh Narain upon secret information and arrested him at Mathuri Mohal Triangle. The appellant was interrogated. He revealed during investigation that he could cause recovery of the tin box in which

he had once concealed the deceased's dead body. Upon this information, the Investigating Officer took him to his *sasural* in Devnagar and there at the appellant's pointing, the box was recovered from a room. There was a foul stench coming out from the tin box. The recovery memo of the tin box was prepared. P.W.13 has proved the recovery memo and has stated that from the foul smell, it seemed, as if something had rotten inside the box.

58. It has also come in the evidence of P.W. 13 S.I. Ramendra Singh (I.O.) that there were pieces of cotton found inside the box. Here it is material that as per testimony of P.W.9 S.I. Tulsi Singh, before whom inquest report (Ex. Ka-11) was prepared, the gunny bag from which the dead body of the deceased was recovered also contained some cotton pieces inside it.

59. It has been argued on behalf of the appellant that the prosecution has not sent the tin box for chemical examination to know exactly the cause of foul smell. Thus, not sending the tin box for chemical examination has adversely affected the prosecution case.

60. We do not agree with this submission. It may be possible that with the passage of time, the foul smell may evaporate and the exact reason for the foul smell may not be known. Further, not sending the tin box for chemical examination may be lapse on the part of Investigating Officer and if the prosecution case is proved by other evidence, then defective investigation cannot be a ground to acquit the accused. Therefore, not sending the tin box for chemical examination has no adverse bearing upon the prosecution case.

61. It is also submitted on behalf of the appellant that the alleged recovery of the tin box is doubtful because no public

witness from the vicinity was associated by the Investigating Officer.

62. We do not agree with this submission also. It has come in evidence that there were public witnesses with the Investigation Officer. P.W.8 Rakesh Chandra Shukla was one of the public witness, who was present at the time of arrest of the appellant and in his presence the tin box was recovered at the pointing out of the appellant. Under these circumstances, if no public witness of the vicinity were taken by the Investigating Officer, then it has no adverse effect upon the prosecution case.

63. So far as the legal sanctity of recovery of the tin box is concerned, Section 27 of the Indian Evidence Act is material in this regard. According to Section 27 Evidence Act '*when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved*'. In other words, any statement made by an accused in police custody, which leads to any discovery of a fact is relevant.'

64. Here, after his arrest by the police, the appellant informed the police while being in custody that he could cause the recovery of the tin box in which the dead body was hidden after his murder. Therefore, that part of the statement of the appellant, which led to the recovery of the tin box, is admissible in evidence.

65. In view of the above discussion, it has been proved by the prosecution that at the pointing out of the appellant, a tin box was recovered on 26.10.1982.

66. Now we come to the last point for discussion, which is Point No. (V). In this regard, it has been submitted on behalf of the

appellant that there was no motive for appellant to commit murder of the deceased Vijai and there is no evidence on behalf of the prosecution in this regard. The case is based on circumstantial evidence and, in cases, which are based on circumstantial evidence, motive plays a vital part. Therefore, in the absence of motive, the prosecution case may be regarded as doubtful.

67. We do not agree with this submission also. 'Motive' is a state of mind which drives a person to do something. The following observations regarding motive made by the Supreme Court in the case of ***Nathuni Yadav and others v. State of Bihar and another, 1997 (34) ACC 576*** are worth mentioning:-

> *"Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impells a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Chambell struck a note of caution in 'Reg v. Palmer' thus: "but if there be any motive which can be assigned I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of Criminal Courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties."*

68. In the case of ***State of H.P. Vs. Jeet Singh, (1999) 4 SCC 370 : (AIR 1999 SC 1293)***, the Supreme Court has made the following observations:-

> *"No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be*

> *construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offendoffender towards the person whom he offended."*

69. Regarding the motive for commission of a crime, the Supreme Court has observed as under in the case of ***Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420*** (in para 21 of the report at page 2429):-

> *"Sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime."*

70. In view of the above, it is true that in cases which are based on circumstantial evidence, motive plays a significant part, but it is also true that it is a state of mind of the accused, which cannot be judged from outside and if there are other circumstances which would lead to the only conclusion that it was the accused alone and none else who committed the murder, then motive becomes immaterial. The Supreme Court in ***Ganeshlal v. State of Maharashtra, (1992 Crl.L.J. 1545)***, has held:

> *"In circumstantial evidence also when the facts are clear it is immaterial that no motive has been proved. Men do not act wholly without motive. Failure to discover the motive of the offence does not signify the non-existence of the crime. The failure to discover motive by appropriate clinching evidence may be a weakness in the proof of the prosecution case, but it is not necessarily fatal as a matter of law. Proof of motive is never an indispensable factor for conviction. The absence of*

motive, which may be one of the strongest links to connect the chain would not necessarily become fatal provided the other circumstances would complete the chain and connect the accused with the commission of the offence, leaving no room for reasonable doubt, even from thep roved circumstances."

71. Further, in ***Mulakh Raj v. Satish Kumar,*** **(1992) SCC (Cri.) 482**, it has been held as follows:

"Undoubtedly in cases of circumstantial evidences motive bears important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case."

72. Again, in ***Jarnail Singh v. State of Haryana,*** **(1993) SCC (Cri.) 869**, the Supreme Court held:

"7. It is true that normally there is a motive behind every criminal act and that is why the investigating agency as well as the court while examining the complicity of an accused, first try to ascertain as to what was the driving force which compelled the accused to commit the crime in question. But with complex growth of society and which has also produced complex characters, the actions and reactions of persons either on the accused side or on the prosecution side are not very easy to ascertain and judge. It is a matter of common experience that even a small or trifle incident has a different reaction on different persons. That is why it is not always easy for the court to weigh and judge as to whether under the circumstances brought on record by the prosecution, in normal course the accused concerned could have acted as alleged by the prosecution."

73. In ***State of Gujarat v. Anirudhsing, (1997) SCC (Cri.) 946,*** the Supreme Court has held that the motive gets locked in the mind of the makers and it is difficult to fathom it and that if the motive is proved that would supply a chain of links but absence thereof is not a ground to reject the prosecution case. Again in

Uday Kumar v. State of Karnataka, (1998) SCC (Cri.) 168, it has been held that in a case of circumstantial evidence, motive is one of the circumstances which assumes importance but it cannot be said that in the absence thereof, other proved circumstances although complete the chain would be of no consequence.

74. In *Mani Kumar Thapa v. State of Sikkim, (2002) SCC (Cri.) 1637*, the Supreme Court held that if the prosecution is able to establish beyond all reasonable doubt from other circumstantial evidence that it is the accused alone who could have committed the murder, the absence of motive will not hamper a safe conviction. The Supreme Court has reiterated the above view in *Yuvaraj Ambar Mohite v. State of Maharashtra* reported in *(2006) 12 SCC 512*, wherein it was held that circumstances brought on record by the prosecution clearly demonstrate that it was the appellant alone who committed the murder and in that view of the matter absence of motive would be immaterial.

75. In view of above legal position, it is crystal clear and is also well settled that motive looses its significance even in cases of circumstantial evidence, if the circumstances proved by the prosecution point to the guilt of the accused.

76. In the present case the prosecution has not produced any evidence with regard to motive for appellant to commit this crime and thus, has failed to prove motive for him to commit the murder of the deceased but in view of the authority of the Supreme Court noted above, failure to prove motive has no bearing on the prosecution case as the prosecution has proved the complete chain of circumstances which show that it was the accused, and none else, who kidnapped and then committed Vijay's murder.

77. It is argued on behalf of the appellant that the informant Banarasi Das and his family members wanted him to be a witness against accused Brij Mohan and Hari Om, named in the F.I.R. and

upon his refusal, he has been falsely implicated in this case. On the other hand it is submitted on behalf of the State that if the informant wanted his false implication, then he would have named him in the F.I.R. itself. It is the Investigation Officer, who collected the evidence during investigation, which indicated his participation in this crime. The appellant has not produced any evidence in support of this claim. From the evidence adduced by the prosecution it is established that there were cordial relations between the informant and the appellant. We find no reason why the informant and his family would want him to be a witness against accused named in the F.I.R. and moreover upon his refusal would falsely implicate him in this case.

78. It has been argued on behalf of the appellant that there are contradictions regarding the opinion of cause of death of the deceased in the inquest report and the *post-mortem* report. In the inquest report, there is opinion of the *Panchas* that the cause of death was strangulation whereas in the post-mortem report, the cause of death has been opined shock as a result of burn injuries. Thus, these contradictions, according to the appellant, do adversely affect the prosecution case.

79. We do not agree with this submission of learned counsel for the appellant. The object of the proceedings of inquest report, under Section 174 Cr.P.C., is merely to ascertain whether a person has died under suspicious circumstances or sufferred an unnatural death, and, if so, what is the apparent cause of the death. The *Panchas* are not medical experts, who can judge the cause of death more precisely. They gave their opinion from mere appearance of the dead body and as there was a *saree* wrapped around the neck, legs and hands were tied and the body was swollen, with the tongue and both eyes protruding, so they formed an opinion that it was a case of strangulation. It is only after the *post-mortem* that the exact cause of death was ascertained. Here

it is also relevant that in inquest report also there is a mention that there were blisters over the dead body, a fact which the *Panchas* may not have noticed while giving their opinion, perhaps, due to the fact that there was saree tied around the neck. In case of cause of death the opinion of the doctor, being expert, would certainly be entitled to more weight than that of a common man, though in both cases it is only opinion. Thus, the above discrepancies do not adversely affect the prosecution case.

80. In view of the above discussion, we come to the conclusion that the prosecution has proved its case beyond reasonable doubt against the appellant by proving the chain of circumstances of the case which conclusively establish and prove that it was the appellant Shesh Narain, who kidnapped the young boy Vijai, aged about 8 years, on 23.10.1982 at 01:00 p.m. from outside his house, and, later on, committed his murder and hid his dead body in a tin box to cause disappearance of the evidence of crime and on his information, the dead body was found near Raipurwa on 25.10.1982. Thus, the prosecution has proved the facts, which unerringly complete the chain of circumstances that point guilt towards the appellant Shesh Naraian, that it was the appellant and none else, who kidnapped Vijay to commit his murder and subsequently committed his murder and hid his dead body in a tin box and later at his instance the body was discovered from Raipurwa in a gunny bag. Thus, the prosecution has proved its case beyond reasonable doubt that the appellant kidnapped vijay to commit his murder which is punishable under Section 364 IPC, thereafter committed his murder, which is punishable under Section 302 IPC and hid the evidence of murder, thus, he has committed the offence punishable under Section 201 IPC.

81. Thus, this Criminal Appeal preferred by the appellant Shesh Narain has no force and is, hereby, **dismissed** and his conviction passed by the trial Court stands **affirmed**.

82. The appellant is lodged in District Jail, Kanpur Nagar. He is directed to serve out the remaining part of sentence imposed upon him by the trial court.

83. A copy of this judgment along with the trial court record be sent to the court concerned for information and necessary compliance.

(Sanjiv Kumar, J.) (J.J. Munir, J.)

November 13, 2025
Subham

Digitally signed by :-
SUBHAM KUSHWAHA
High Court of Judicature at Allahabad