Section 308 IPC to Section 304 IPC and the documents in support thereof. P.W. 6-Dr R.C. Prasad has proved the postmortem report and the injuries shown by him in the postmortem report. The evidence of P.W. 6 was questioned on the ground that the lacerated wound was shown by the doctor in his medical report dated 22.12.1999, whereas blue mark was found by him but the learned trial court found it at the same place where the medical officer had found lacerated wound and P.W. 6 after opening the same, had also found the deposited blood. Thus, it is only a matter of opinion and it may be on account of fact that at the time of medical examination on 22.12.1999, it was a fresh injury and the postmortem was done after his death on 24.12.1999, during which period it cannot be said that the status of injury would remain same and it might have been dried. This Court does not find any legality or error in the findings recorded by the learned trial court.

18. P.W. 7-Saffruddin, who investigated the matter after conversion of case after death of Sonelal from Section 308 IPC to Section 304 IPC, proved the conversion, statement of witnesses, inquest report and arrest of the accused(s) on 31.12.1999 and filing of chargesheet after investigation in accordance with law in the matter.

19. In view of above and considering the overall facts and circumstances of the case, the contention of learned counsel for the appellant, that the independent witness P.W. 4-Rakesh @ Kalia has not proved the incident, therefore, the appellants could not have been convicted, is totally misconceived and not tenable as the incident has been proved by the P.W. 1 and time and place of incident has been proved by P.W. 4 also and it is also proved from his evidence that at that time and place, the deceased was injured and was lying in injured condition, on account of which he died subsequently. Thus, he supported the evidence of P.W. 1. The learned trial court has recorded finding after considering the evidence and material on record in accordance with law. The findings recorded by the learned trial court does not suffer from any illegality, error or perversity, which may call for any interference by this Court. The conviction and the punishment awarded is also commensurate to the charge, which has been proved by cogent evidence. The appeal has been filed on misconceived and baseless grounds.

20. The appeal is, accordingly, dismissed upholding the impugned judgment and order passed by the trial court.

21. Let a copy of this order along with the records be sent back to the concerned court forthwith for compliance.

(2025) 5 ILRA 659
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.05.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Criminal Appeal No. 1585 of 1983

Kalloo ...Appellant

Versus

State of U.P. ...Respondent

Counsel for the Appellant:
K.N. Dwivedi,Kaustubh Tewari,Shrinath,Sri Nath Dwivedi

Counsel for the Respondent:

A.G.A

(A) Criminal Law - Circumstantial Evidence - Kidnapping and Murder of minor child for ransom - Indian Penal Code, 1860 - Sections 302, 364 & 201 - Appeal against conviction - Indian Evidence Act, 1872 – Sections 8, 27, 118 - Evidence re-scrutinized and re-appreciated - Last seen evidence – Recovery of dead body and clothes at instance of accused - Law relating to competency and credibility of child witness explained - Prompt lodging of missing report and FIR enhancing reliability - Motive not essential when chain of circumstances complete - Testimony of competent child witness can form sole basis of conviction - Circumstantial evidence established chain pointing to guilt of appellant - Conviction can be based on complete chain of circumstantial evidence leading to only one inference of guilt - Where minor child last seen with accused, who absconded, and dead body/clothes recovered at his instance, conviction sustainable even without proof of motive, if chain of circumstances complete and evidence inspires confidence.(Para-3, 35 to 40, 45,46,)

Appellant, servant of complainant (PW-1), enticed 8-year-old boy - on pretext of giving old lottery tickets - boy last seen going towards canal with accused - missing report lodged same night - accused absconded - arrested next day with two others - on his pointing out, clothes recovered from bushes, dead body recovered from pond - post-mortem revealed death due to strangulation and drowning - two co-accused acquitted for want of identification. (Paras 4 to 14, 19, 23, 25, 33 to 34)

HELD:- Prosecution proved complete chain of circumstances. Last seen evidence, recovery of dead body and clothes at accused's instance, post-conduct, and credible child witness left no hypothesis except guilt. Co-accused acquitted due to lack of identification. Conviction of appellant (kalloo) under Section 302, 364, and 201 IPC upheld. **(Para - 35,39,40)**

Appeal dismissed. (E-7)

List of Cases cited:

1. Sharad Birdhichand Sarda Vs St. of Maha., (1984) 4 SCC 116

2. Jai Prakash Singh Vs St. of Bihar & anr., (2012) 4 SCC 379

3. Dattu Ramrao Sakhare Vs St. of Maha. , (1997) 5 SCC 341

4. St. of M.P. Vs Balveer Singh, 2025 SCC OnLine SC 390

5. A.N. Venkatesh Vs St. of Karn., (2005) 7 SCC 714

6. St. (NCT of Delhi) Vs Navjot Sandhu @ Afsan Guru, (2005) 11 SCC 600

7. Sidhartha Vashisht @ Manu Sharma Vs St. of NCT Delhi, AIR 2010 SC 2352

8. Ashok Vs St. of Maha., 2015 (4) SCC 393

(Delivered by Hon'ble Praveen Kumar Giri, J.)

1. Heard Mr. Sri Nath Dwivedi, learned counsel for the appellant and Sri Rahul Asthana, learned A.G.A.-I for the State and perused the record.

2. The above noted appeal has been filed against the judgment of conviction and order of sentence dated 01.06.1983 passed by Vth Additional Sessions Judge, Kanpur in Sessions Trial No. 391 of 1982, wherein, the Trial Court has convicted the accused-appellant under Section 302 I.P.C. for life imprisonment under Section 364 I.P.C. for seven years rigorous imprisonment and under Section 201 I.P.C. for five years rigorous imprisonment.

3. The Trial Court's record is received and paper book is ready. With the

assistance of learned counsel for the parties, the entire evidence is re-scrutinized and re-appreciated.

4. **Prosecution story** is that Sri Basant Lal Gupta was residing in house No.69/196 Bhoosa Toli, Kanpur. His father Sri Anni Lal Gupta lived in house No.61/196 Hoolaganj. Basant Lal Gupta had one son Sudhir Kumar Gupta alias Deynee, one daughter Km. Kalpana Gupta aged about 12 years and another younger daughter. On 23.7.1982, in the evening at about 5.00 or 5.30 P.M., Kalpana Gupta alias Dezi and Sudhir Kumar Gupta alias Daynee had gone to the house of their grandfather to play. After they had gone, Basant Lal Gupta, his wife and the younger daughter went for an evening walk. Besant Lal Gupta had one servant, namely, Kalloo (accused). Kalloo remained at the house, when all these persons left the house, he had also left the house after Basant Lal Gupta has gone out. At about 9:00 P.M., the younger brother of Basant Lal, namely, Kamal, came from the house of his father and enquired whether Daynee had returned because he was not available at his residence. Basant Lal Gupta also left the house to search his son and when he also could not get him he went at the police station and lodged the missing report at 10 P.M. regarding the missing of Sudhir Kumar Gupta alias Daynee.

5. On 23.07.1982, P.W.-1, Basant Lal Gupta (father) had given written information to the police that his 8 years old child, Sudhir Kumar Gupta alias Deynee was missing since 8 O'clock night from his residence. The relevant portion of missing report (Ex. Ka-1) is being quoted below:

"दिनाँक 23-7-82

सेवा में,
श्रीमान थानाध्यक्ष
हरबंश मोहाल
कानपुर
मान्यवर महोदय,

निवेदन है कि हमारा लडका सुधीर कुमार गुप्ता उम्र 8 वर्ष रात्रि 8 बजे हूलागंज गुडमण्डी से कही लापता हो गया है। कृपया इसकी रिपोर्ट लिख ले तथा उचित व्यवस्था करें।

भवदीय
वसंत लाल गुप्ता
69/115 भूसा टोली
कानपुर

तफसील लडका

उम्र 8 वर्ष
कद नाटा
रंग सांवला
कपडे पहने हुये हरा पैन्ट सफेn बुशर्ट छपी हुई
ए०आई/सी०ओ० पी०एस० हरवंश मो०
कृपया बाद तलाश रिपोर्ट दे।"

6. On 23.07.1982, at 22 O'clock, the police of Police Station Harbans Mohal, District Kanpur, made entry of missing report in **General Diary (GD)** of Police Station as G.D. No. 40, dated 23.07.1982, time 22 O'clock. The relevant portion of G.D. entry is being quoted herein below:

"इस समय बसंतलाल गुप्ता 69/115 भूसा टोली कानपुर ने हाजिर थाना आकर एक तहरीर दाखिल किया बावत गुम हो जाने लड़का सुधीर कुमार नकल तहरीर सेवा में थानाध्यक्ष हरबंश मोहाल थाना कानपुर मान्यवर निवेदन है कि हमारा लड़का सुधीर कुमार गुप्ता उम्र 8 वर्ष रात्रि 8 बजे हूलागंज गुड़मंडी से कहीं लापता हो गया है। कृपया इसकी रिपोर्ट लिख ले तथा उचित व्यवस्था करें। भवदीय बसंतलाल गुप्ता 69/115 भूसा टोली कानपुर तफसील लड़का 8 वर्ष कद नाटा रंग सांवला कपड़ा पहने हरा पेन्ट सफेद बुशर्ट छपी हुयी बसंतलाल। एवं बावत तलाश लडका प्रा0 ———सम्बन्धित रवाना किया जावेगा।

लेखक
बादाम सिंह का0पु0
ता0 23—7—82

7. On 24.07.1982, at about 7.30 A.M., S.I. Prem Kumar Mishra, P.W.-9, started enquiry/investigation on the basis of missing report. The police as well as family members of missing minor boy Sudhir Kumar Gupta alias Daynee, were searching for the missing child.

8. The accused-appellant, Kalloo, was serving in the house as well as shop of P.W.-1. Consequently, they went to Kalloo's residence that night and the following day, from morning to evening. However, Kalloo's father stated that the accused (Kalloo/appellant) had gone to see a picture but hadn't returned since the evening of July 23, 1982. The police and the abducted child's family began searching for Kalloo. The police then received information that Kalloo and others might be arrested if they will go alongwith mukhbir. Subsequently, the appellant Kalloo alongwith two other persons, namely, Pradeep and Pankaj was arrested. On 24.07.1982, at about 5.45 P.M. (evening) on the pointing out of appellant Kalloo and two other co-accused, clothes of the abducted child Sudhir Kumar Gupta alias Daynee was recovered from bushes. In the presence of Basant Lal Gupta; P.W.-1, Ashok Kumar; P.W.-7 and Puttan Lal, the recovery memo of clothes and slipper were prepared by P.W.-9 S.I. Prem Kumar Mishra and same was proved during trial and it was shown as Ex. Ka-2. After recovery of clothes and slippers on the point out of appellant-Kalloo and other the dead body of minor child was recovered from a pond. The relevant portion of the memo of recovery of dead body is being quoted below:

"अतः उपरोक्त बयानों के आधार पर उपरोक्त तीनों गिरफतार शुदा मुल्जिमान को आगे करके मय गवाहान ठीक उसी स्थान पर पहुंचे जहां पर उपरोक्त सुधीर कुमार गुप्ता की लाश को गडा होना बताया गया उपरोक्त कल्लू, प्रदीप, पंकज ने गवाहान उपरोक्त के समक्ष तलइया के पूर्वी दिशा के किनारे से तीन कदम पानी के अन्दर घुसकर 3 फिट गहराई से कुछ मिटटी बगैगर हटाकर एक बच्चे की लाश बरामद की और उसे लाकर जैसे ही पानी के बाहर रखा कि उस मृतक के पिता श्री बसंत लाल गुप्ता व सगे सम्बन्धी जो मौजूद थे लिपट कर रोने लगे और यह बताया कि यह वही बच्चा सुधीर कुमार गुप्ता उर्फ डेनी है जो दि० 23-7-82 को रात्रि के समय गुम हो गया था मृतक के पिता व सगे सम्बंधियों को काफी समझाने बुझाने व दिलाशा देने के बाद उपरोक्त शव को कब्जा पुलिस में लिया गया लाश का पंचायतनामा बाद फर्द मुरत्तवी लिया जा रहा है फर्द मौके पर मुरत्तब करके बाद सुनाने मजबून अलामात गवाहान बनवाये जा रहे है।

ह० अशोक कुमार
ह०अप०
ह० बसंतलाल गुप्ता
एस०आई०
हव पुत्तन लाल गुप्ता
24-7-82

समय 6.45 पी०एम०"

9. After recovery of the dead body of Sudhir Kumar Gupta alias Daynee, P.W.-9 S.I. Prem Kumar Mishra prepared the recovery memo of dead body of the deceased Sudhir Kumar Gupta alias Daynee at 6.45 P.M. The recovery memo was also proved by the P.W.-9 and it was shown as Ex. Ka-3.

10. P.W.-9 has also deposed that he has recorded statement of Basant Lal Gupta (P.W.-1) and Kumari Kalpana (P.W.-3). He has stated that he has also **prepared Panchayatnama** on the direction of inspector of the police station and also sent

the dead body for **post mortem**. On 25.07.1982, post mortem was conducted on the dead body of the deceased aged about 8 years and duration of dead body has been mentioned about 1 and ½ days and cause of death has been mentioned as **death due to asphyxia as a result of drowning with strangulation.**

11. P.W.-10, Incharge Officer of police station deposed before the court that after recovery of the dead body of the deceased, Sudhir Kumar Gupta alias Daynee, the missing report was converted into Crime No. 265 of 1982, under sections 365/302/201 read with section 34 I.P.C. and, thereafter, the investigation was handed over to P.W.-10 (Incharge Officer) Sri Satish Chandra Seth. P.W.-10 after investigating the matter submitted **charge sheet** against three accused persons, namely, Kalloo, Pradeep Kumar and Pankaj Gupta and on the charge sheet cognizance has been taken by the concerned Judicial Magistrate under section 190(1)(b) Cr.P.C. and after compliance of provisions of section 207 Cr.P.C., the case was committed to the court of Sessions Judge, Kanpur, under section 209 Cr.P.C. and in the session trial the case was numbered as Session Trial No. 391 of 1982. The court of Additional Sessions Judge, Kanpur, framed charges against Kalloo, Pradeep Kumar and Pankaj Gupta under sections 364, 302 and 201 I.P.C. The accused have not pleaded guilty, therefore, the trial court directed the prosecution to adduce his witnesses.

12. The prosecution has adduced his witnesses as P.W.-1 Basant Lal Gupta, father of the deceased, P.W.-2; Rajji Lal, P.W.-3; Kumari Kalpana Gupta (aged about 11 years), P.W.-4; Ramesh Chandra Gupta, P.W.-5; head constable Pratap Singh, P.W.-6; Heera Lal Gupta, P.W.-7; Ashok Kumar, P.W.-8; Dr. K.K. Omar, P.W.-9; S.I. Prem Kumar Mishra and P.W.-10; Satish Chandra Seth (Inspector).

13. The **P.W.-1 Basant Lal** was adduced as prosecution witness before the trial court who deposed in his examination-in-chief that the accused Kalloo is serving at the shop as well as house of Basant Lal before four years of the alleged incident and the house of Kalloo is situated about 1 and 1/2 Farlang away from his residence. The shop of father of accused-appellant Kalloo is also on the lower portion of house of the father of P.W.-1. The P.W.-1 deposed before the court that he and his wife went for walking and at that time his daughter, his son and Kalloo-appellant was at the residence of his father and when he came back from walking, he could not found his son, therefore, he went to search his son at the residence of Kalloo and the father of Kalloo informed that Kalloo went to see the picture but he hadn't returned since the evening of July 23, 1982. In the morning, about 6.30 A.M., the daughter Kumari Kalpana (P.W.-3) also informed that the deceased was accompanied with Kalloo. The relevant portion of the **examination-in-chief of P.W.-1** is being reproduced herein below:

"(2) घटना के चार साल पहले से कल्लू मुलजिम हाजिर अदालत मेरे यहां काम करता था यह हमारे घर का कामकाज तथा दुकान का मसाला बनाने का काम करता था। कल्लू का मकान मेरे मकान से आधा फर्लांग दूर पर है। कल्लू के पिता की दुकान मेरे पिता के मकान के नीचे है। मुलजिम पंकज व प्रदीप हाजिर अदालत को जानता हूँ। ये तीनों आपस में दोस्त है। प्रदीप व पंकज के मकानात भी हमारे मकान से करीब आधा पौन फर्लांग दूर है।

(3) आज से दस साढे दस माह के पहले का वाक्या है पांच साढे पांच का समय था मैं अपने घर में था। मेर तीनों बच्चे मेरी पत्नी तथा कल्लू घर में थे। कल्पना व सुधीर हूलागंज मेरे पिता के मकान पर खेलने कूदने चले गए। हम लोग यानी मैं मेरी पत्नी व छोटी लडकी घूमने निकल गए। जब तक हम लोग घर पर थे कल्लू घर पर रहा जब हम लोग चले गए तब यह भी निकल गया। रात के

साढे आठ बजे हम लोग घूम फिर कर वापस आए उस बीच मेरा छोटा भाई कमल पिता जी के मकान से आया उस समय करीब नौ बजा था और पूंछा कि "डेनी यहां तो नही आया काफी देर से मिल नहीं रहा है।" इसके यह कहने पर मैं व कमल उसे ढूढने निकल गया। आस पास देखकर पौने दस बजे घर वापस आया। सब लोगो ने कहा कि थाने पर रिपोर्ट कर दो। तब मैंने घर पर बैठकर अपने हाथ से रिपोर्ट लिखी जो इक्ज क 1 है। मेरे हाथ की लिखी व दस्तखती है उसे थाने मे ले जाकर लगभग दस बजे दाखिल किया रात में। सब लोगों ने और हम व कमल ने भी कहा कि कल्लू के घर चल कर देख ले। हम कमल, राम प्रकाश, सुरेशचंद्र गुप्ता कल्लू के घर गए। वहां कल्लू नहीं मिला उसके पिता रामलाल मिले। उन्होंने बताया कि " कल्लू पिक्चर देखने कह कर गया है" हम लोग ढूढ ढाड़ कर ढाई बजे राम वापस घर आए। सबेरे छः साढे छः बजे मेरी लडकी कल्पना ने बताया कि कल्लू पिता जी के घर के नीचे लाटरी की दुकान के पास खडा होकर इशारा से डेनी को बुला रहा था इस पर डेनी नीचे चला गया। कल्लू ने डेनी को लाटरी के पुराने टिकट दिए और कुछ बाते करता रहा इसके बाद वह डेनी को कैनाल रोड की तरफ ले गया। इसके बाद डेनी फिर वापस नहीं आया। इस सूचना पर मैं फिर अपने भाईयों के साथ कल्लू के घर गया कल्लू के पिता राम लाल ने बताया कि वह रात से पिक्चर देखकर वापस ही नहीं आया। फिर मुझे पर शंका होने लगी और हम लोग घर चले आए हम लोगों के घर आने के पांच सात मिनट बाद ही पुलिस वाले आ गए मैंने शंका के बारे में पलिस वालो को बताया कि मुझे कल्लू व उसके साथ घूमने वाले पंकज व प्रदीप पर शंका है पुलिस वालों ने कहा कि हम तो देखेगे ही आप भी इन लोगो के घर पर में इधर उधर देखे दिए जब भी कोई सूचना इसके या लडके के बारे में मिले तो हमें सूचित करते रहिए। यह भी कहा कि यदि कोई सूचना न भी मिल तो भी दोपहर बाद मुझे अपनी पूरी रिपोर्ट दीजिए।"

(4) पुलिस जब मुझे हिदायत देकर चली गई तब मैं बच्चे को इधर उधर ढूंढता रहा। मुलजिमान के घर में भी इधर उधर दूढता रहा। मुलजिमान भी घर पर नहीं मिले तथा मेरा बच्चा डेनी ही मिला। फिर दोपहर बाद तीन सवा तीन बजे चौकी हूलागंज गया वहां पर दरोगा जी को तलाश किया। वहां मालूम हुवा कि दरोगा जी सुन्दर टाकीज गए है। हमारे साथ हमारे भाई पुत्तन लाल सुन्दर टाकीज 3-3-30 बज गए। वहां मिश्रा जी दरोगा मिले। उनको मैंने बताया कि मुलजिमान तथा मेरा लडका नहीं मिला। सुन्दर टाकीज पर ही अशोक कुमार आ गए थोडी देर बाद सेठ साहब इन्सपेक्टर आ गए उनकी जीप पर एक मुखबिर भी था। सेठ साहब ने मिश्रा दरोगा जी से कहा कि इस मुखबिर के साथ सर्किट हाउस जाजमऊ की तरफ चले जाइए उधर ही मुलजिमान के मिलने की सम्भावना है। जीप पर मैं, अशोक कुमार, पुत्तन तथा मिश्रा दरोगा दो तीन सिपाही व मुखबिर बैठकर सर्किट हाउस के पास पुलिया के पहले ही मुखबिर ने गाडी रूकवा दी वहीं पर कल्लू, पंकज व पदीप मुलजिमान खडे थे। हम लोग जीप से उतरे हम लोगों को उत्तरते देख तीन मुलजिमान भागे परन्तु हम लोगों ने दौडा कर इन तीनों को पकड़ लिया। दरोगा जी ने तीनों से नाम पते पूछे। मुझसे पूछा तो मैंने कहा कि यही तीनों है। दरोगा जी ने इन तीनो से डेनी के बिषय में पूछाँ तब कल्लू ने मेरा पैर पकडते हुए कहा कि प्रदीप व पंकज़ के कहने पर पन्द्रह हजार रूपया फिरौती के उददेश्य से डेनी का अपहरण कर लिया है। पूछने पर कल्लू ने यह भी बताया कि डैनी की लाश चांदमारी क्षेत्र में एक तालाब में डाल दी है। कपडे जयपुरिया पार्क के सामने एक झाडी में रख दिए है तथा यह भी बताया कि डैनी को रखने की जगह न मिलने के कारण हम लोगों ने उसकी हत्या की है। उसने कहा कि लाश व कपडे हम बरामद करवा देगें। वहां से हम लोग जयपुरिया पार्क गए वहां पर मुलजिमान के कहने से जीन जयपुरिया पार्क के सामने रूक गई सभी लोग नीचे उत्तरे मुलजिमान से कहा गया कि कपडे मृतक के निकालिए। इस पर तीनों एक दूसरे से कहने लगे कि तुमने रखा है तुमने रखा है। तीनो मुलजिमान झाडी में घुसा कर कल्लू अभियुक्त एक पोटली लेकर बाहर निकला। उसमें तीन चीजे निकली एक पैन्ट, एक बुशर्ट व एक चप्पल निकली। वे इक्ज-1 टू है से तीनो मेरे बच्चे की थी। कपडा के निकलने के बाद वहीं उनकी फर्द लिखी गई जो फर्द इक्ज क 2 है इस पर मेरे भी दस्तखत है। मेरा लडका यही तीनों चीजे पहिने मेरे पिता जी के घर गया था। कपडो को वही पर सील मुहर किया गया। इसके बाद हम सब लोग थाने गए।

(5) जहां से कपडे बरामद हुए थे वहां से थाना केवल आधा फर्लांग है। थाने पर कपडे आदि जमा करवाए गए और थाने से कुछ कागजात लेकर चांदमारी वाले क्षेत्र पर हम लोग गए वहां एक तालाब के पास तीनों मुलजिमान के कहने से जीप रोकी गई। सब लोग जीप से उत्तरे। वहां तीनों एक तालाब में घुसे और कल्लू ने लडके का हाथ पकडा और कहा कि भैय्या तुम दोनों भी आओ उस पर इन दोनों में भी लडके का पैर पकडा तथा तीनों ने मिलकर लाश बाहर निकाली। मैंने लाश को पहिचाना फिर फद्र लिखी गई हमारे दस्तखत तथा पुत्तन व अशोक के दस्तखत बनवाए गए फर्द इक्ज- क-3 है। मौके पर पंचायतनामा लिखा गया तथा लाश सील हुई तथा पोस्टमार्टम को भिजवाई गई।''

14. **P.W.-1** also deposed that when his son could not come back then he had apprehension about accused Kalloo. The P.W.-1 in his cross-examination has also deposed that the appellant was his servant and also deposed that the recovery of clothes, as well as, dead body was done before him on the pointing out of accused Kalloo and others.

15. The Prosecution also adduced **P.W.-2, Rajji Lal**, who in his **examination-in-chief,** deposed that appellant Kalloo called Sudhir (the minor child) and Kalloo accompanied with the minor child and went towards the canal. The relevant portion of his examination-in-chief is quoted below:

"(2) आज से दस ग्यारह माह की बात है। ईद का त्यौहार था। शाम के सात साढे सात बजे का समय था मैं अपनी उपरोक्त दुकान पर बैठा था। मैने अपनी से देखा कि कल्लू लाटरी गोयल वाले की दुकान पर खडा सुधीर उर्फ डैनी को बुला रहा है। सुधीर अपने बाबा अन्नी लाल के मकान के छजजे पर खड़ा था। सुधीर उतर कर नीचे कल्लू के पास आया। ये दोनों आपस में बातचीत करते हुए दस मिनट रूके फिर कल्लू सुधीर को लेकर नहर किनारे की तरफ चला गया।"

16. The P.W.-2 also deposed in his deposition that he informed P.W.-1 next day of the alleged incident that appellant Kalloo had enticed away his son.

17. The prosecution also adduced **P.W.-3, Kumari Kalpan**a, aged about 11 years. As P.W.-3 was a minor, therefore, the presiding officer followed the standard procedure for recording deposition of a minor child. The Presiding Officer had put some moral question to the child witness and when the presiding officer found that she is fit to give her statement, then her statement was recorded. The deposition was recorded by the court putting question to the witness aged about 11 years, P.W.-3 deposed that appellant Kalloo called her brother "Deynee" minor child aged about 8 years and gave some old tickets of lottery to the minor child, Sudhir, and both went towards the canal. P.W.-3 further deposed before the court that she and her brother had come to the residence of their grandfather. She deposed that she left her house at about 7.30 P.M. At that time, her father, mother, younger sister and Kalloo (the servant) were present at their residence. After 7.30 P.M., Kalloo also came outside the residence of her grandfather. Her brother was standing on the balcony of first floor of the house of her grandfather and the appellant Kalloo called his brother and enticed away after providing old ticket of lottery. On the next morning, she informed the entire incident to his father P.W.-1. The relevant portion of the **examination-in-chief of P.W.-3** is quoted below:

"मेरा नाम कुमारी कल्पना गुप्ता उर्फ डेजी मेरे पिता का नाम पुत्री बसन्त लाल मेरी आयु 11 साल व्यवसाय विद्यार्थी मेरा घर स्थान दाना खोरी थाना हरवंश मुहाल जिला कानपुर में है।

मैं स्थान में रहता हूँ।

I had a talk with the witness she understand the questions & replies properly. She understands the sanctity of oath while she says"

गलत कसम खाने से पाप पडता है।

oath administered to the witness by me.

प्रश्न- आज से कितने दिन पहले की बात है

उत्तर- करीब 10-1/2 माह पहिले की बात है।

प्रश्न- डैनी तुम्हारा कौन था

उत्तर- मेरा भाई था।

प्रश्न- कितना बजा था।

उत्तर- शाम के 4-1/2 बजे थे।

The answers can be written in the narrative form.

मैं अपने बाबा के यहां गई थी। मेरे साथ मेरा भाई सुधीर उर्फ डैनी भी था। अपने घर से 7-1/2 बजे चली थी। जब घर से चली थी तो घर में मेरे पिता जी, मां, छोटी बहिन व कल्लू नौकर थे। कल्लू घरेलू नौकर था। 7-1/2 बजे दादी के मैं कमरे में बैठी थी। यह कमरा बीच खण्ड में है। उस कमरे का दरवाजा सडक की ओर खुलता है। कमरे में मैं टी०वी० देख रही थी। डैनी को टी०वी० अच्छा नहीं लगा रहा था तो वह छज्जे पर चला गया। मैं कमरे से जब कल्लू की आवाज 'डैनी' करके सुनी तो मैं भी छज्जे पर चली गई। डैनी कल्लूकी

ओर देखने लगा। कल्लू ने इशारा करके सुधीर को बुलाया तो सुधीर कल्लू के पास नीचे चला गया। कल्लू ने गोयल लाट्री सेण्टर के काउण्टर के बाहर से इशारा किया था। कल्लू ने सुधीर को कुछ लाट्री के पुराने टिकट दिये फिर उसे नहर के तरफ ले गया। उसके बाद मैं अन्दर को चली गई। जब काफी देर हो गई तो मुझे घबराहट होने लगी तो कमल चाचा जी को बताया कि सुधीर नीचे गया हुआ था अभी आया नहीं। फिर कमल चाचा उसे ढूंढने चले गये 10-1/2 बजे रात के करीब में अपने घर चली आयी। घर में जब गई तो मम्मी पापा घर पर नहीं थे। मेरी छोटी बहिन सो रही थी। मैं भी सो गई। सुबह उठकर देखा कि सभी लोग सुधीर को ढूढ रहे है तब पापा ने मुझसे पूछा तो सब बात उन्हें बताई। "

18. The minor witness, aged about 11 years, was cross examined by the defence. In her cross-examination, she has deposed that her brother Sudhir Kumar Gupta alias Deynee was enticed away by accused Kalloo.

19. Prosecution adduced **P.W.-4, Ramesh Chandra Gupta,** who deposed before the court that at about 8.00 P.M., Sudhir Kumar Gupta alias Deynee was sitting on the rod of bicycle being ridden by accused Pradeep, while the appellant Kalloo was sitting on the carrier. Approximately five to six steps behind them, accused Pankaj was riding another bicycle. The relevant portion of **examination-in-chief of P.W.-4** is quoted below:

"(2) आज से करीब 9-10 माह पहिले की बात है। मैं अपने दोस्त से मिलने के लिए रियो रेस्टोरेन्ट हीर पैलेस के सामने खडा था। कुल्फी खा रहा था। सडक के तरफ मुंह किए अपने दोस्त कौसिक का इन्तजार कर रहा था। उस समय लगभग 8 बजे रात का समय था। मैंने देखा कि नहर के तरफ से आगे डण्डे पर सुधीर बैठा था उस साइकिल को प्रदीप चला रहा था। उसी साइकिलके पीछे कैरियर पर कल्लू बैठा था। साइकिल के 5, 6 कदम पीछे एक साइकिल पर पंकज जा रहे थे। यह सब लोग सुन्दर टाकीज के तरफ जा रहे थे।"

20. In his cross-examination, he has deposed that he came to know about the incident through a newspaper on 26.07.1982, Subsequently, on 27.07.1982, he informed to the P.W.-1 that he had seen the accused persons going by bicycle alongwith minor child. The police recorded his statement 10-11 days later.

21. The prosecution also adduced **P.W.-5, Pratap Singh (head constable 164)**, who has proved the missing report, as well as the General Diary (G.D. entry) regarding the recovery as well as arrest of the accused persons.

22. Prosecution has also adduced **P.W.-6, Hira Lal Gupta**, who deposed in his examination-in-chief that he saw Kalloo alongwith two other co-accused persons on the date of alleged incident.

23. **P.W.-7 Ashok Kumar**, in his deposition before the trial court, deposed that he knew all three accused persons. He further deposed that earlier, at about 4 O'clock, he met with Chowki in-charge, Shri Mishra, who was alone and quite upset there, when P.W.-7 inquired about this, subsequently, he was informed about the abduction of a boy named Deynee. At the same time, the informant, Basant Lal along with Puttan arrived. The sub-inspector told him that the said missing boy was son of Basant Lal. At that time, Inspector Seth also arrived at the same location with some police personnel and an unknown person. The inspector instructed Sub-Inspector Mishra to accompany these individuals towards the circuit house. Following this, P.W.-7, along with Sub-Inspector Mishra, the unknown person, the informant, and Puttan travelled by jeep towards the circuit house. The jeep was stopped on the instruction of the unknown person

(Mukhbir). When the jeep stopped, they saw the accused, Kalloo, Pradeep, and Pankaj there and further accused attempted to flee away but were surrounded by the police and apprehended. Sub-Inspector Mishra asked for the names of these persons. P.W.-1, the informant, confirmed their identities. Subsequently, the accused Kalloo touched the feet of the informant Basant Lal and started crying and further admitted that he had kidnapped Deynee for ransom. He then stated that Deynee had been killed by them and indicated that the dead body and clothes would be recovered. Accused further specified that clothes would be recovered from the bushes of Jaipuria Park and the dead body would be recovered from Chandmari area. Thereafter these three accused persons accompanied the police and they also recovered the clothes from the bushes of Jaipuria Park and the dead body from the pond in Chandmari area. The relevant portion of his **examination-in-chief** is quoted herein below:

"तीनों मुलजिमान हाजिर अदालत को पहले से जानता हूँ ये लोग हमारे पडोसी थे। सुन्दर टाकीज पर चार बजे दिन मुझे चौकी इन्चार्ज श्री मिश्रा जी मिले उस समय वे अकेले थे । मैंने उन्हें कुछ परेशान दिखाई दिए मैंने पूछा क्यों परेशान हो। उन्होनें कहा कि एक लडका डैनी का अपहरण हो गया है उसी समय बसन्तलाल गुप्ता व पुत्तन आ गए। दरोगा जी ने बताया कि इन्ही का बच्चा था। इसी बीच इन्स्पेक्टर सेठ आ गए और उनके साथ कुछ सिपाही तथा एक अनजान आदमी भी था। सेठ जी ने मिश्रा जी से कहा कि आप इस आदमी के साथ सर्किट हाउस की तरफ चले जाये फिर मैं मिश्रा जी व आदमी तथा बसन्त लाल व पुत्तन सब जीप से पुल के उपर से होते हुए सर्किट हाउस की तरफ चले। हम लोग जीप से सर्किट हाउस के आगे पहुंचे पुल के पास उस अनजान आदमी के कहने से जीप रूकी। जीप के रूकने पर कल्लू प्रदीप पंकज तीनों नजर आए जीप रूकते ही ये तीनों भागने की कोशिश करने लगे। हम लोगों ने घेर कर कुछ दूर पर तीनों को पकड़ लिया। मिश्राजी ने इन तीनों का नाम पूंछा तथा बसन्त लाल गुप्ता से पूंछा कि क्या ये वहीं लोग है इस पर बसन्त लाल ने कहा कि हां यही है। उसके बाद कल्लू बसन्त लाल का पैर पकड कर रोने लगा और कहा कि डैनी को फिरौती के लिए पकड़ कर लाए थे गल्ती हो गई माफ किया जावे। (opposed by defence) उसने कहा कि हमने उसे मार दिया है और कपडे व लाश बरामद करा देगें। जयपुरिया पार्क के सामने इमली के पेड के पास झाडियां है वहां से कपडे बरामद करने को बताया और लाश को चांदमारी क्षेत्र में बताया।

(2) इसके बाद तीनों मुलजिमान जीप पर बैठ कर जयपुरिया पार्क के पास आए । वहां पर कल्लू ने जीप रोकने को कहा उतने क बाद तीनो मुलजिमान झाडी में घुसे तथा कल्लू ने पोटली निकालकर दी उसमें से एक हाफ पैन्ट एक बुशर्ट तथा एक चप्पल निकली ये सामान आज अदालत में है जो इक्ज I ता III है। इस सामान की लिखा पढी हुई फर्द इक्ज क-2 है इस पर मेरे भी हस्ताक्षर है। इसके बाद हम लोग थाने वापस आए फिर थाने से चांदमारी क्षेत्र गए तीनों मुलजिमान के बताने के अनुसार वहां गए। चांदमारी क्षेत्र में तालाब के किनारे मुलजिमान के कहने से गाडी रोक दी और तीनो तालाब में घुसे लाश गडी हुई थी कल्लू ने पैर पकड़ कर निकाला पंकज व प्रदीप ने मदद की। लाश निकाल कर बाहर रखी गई तथा लिखा पढी की गई फर्द इक्ज क 3 है इस पर मेरे हस्ताक्षर है। बच्चे के शरीर पर सैन्डो बनियाइन थी जो आज अदालत में है यह इक्ज IV है।"

24. P.W.-7, in his cross-examination, also supported his deposition from the examination-in-chief.

25. The prosecution produced **P.W.-8, Dr. K.K. Omar**, who, in his deposition, confirmed the contents of the post-mortem report. He deposed that the deceased was approximately 8 years old and the dead body was about one and a half days old. Rigor mortis had passed and decomposition was just started to begin and on the dead body, there was a bluish mark near the neck, measuring 6.4 inches and death was found due to asphyxia as a result of strangulation. Post-mortem report was proved by P.W.-8 and exhibited as

Ex.Ka.7. The relevant portion of the **examination-in-chief** is quoted hereinbelow:

> *'' उस दिन सुधीर कुमार पुत्र बसन्त लाल के सील्ड शव का मौतोपरान्त परीक्षण मैंने 2-15 पी०एम० पर किया था। मृतक की उम्र लगभग 8 साल की थी। उसके मरे लगभग 1-1/2 दिन हो चुका था। मौत की अकड़न पास ऑफ हो गई थी। डिकम्पोजिशन शुरू हो गया था। उसके शरीर पर निम्नलिखित चोटे पायी। (1) निलगू निशान दाहिने कान के नीचे गर्दन में 6" x 4" का। और कोई जाहिरा चोट नहीं था।मृतक की मृत्यु गला दबाने तथा सांस के घुटन के कारण हुआ था। पोस्टमार्टम रिपोर्ट इक्ज क 9 मेरे हाथ की लिखी व दस्तखती है वरवक्त मुआइना तैयार किया गया था। ''*

26. The prosecution also adduced **P.W.-9, Sub-Inspector Prem Mishra**, who inquired/investigated the case after receiving the missing report. In his deposition, he deposed that one day after the incident i.e. 24.07.1982, he started enquiry/investigation at 7:30 A.M. He recorded statements of informant Basant Lal (P.W.-1) and Kumari Kalpana (P.W.-3). Thereafter, at about 4:00 P.M., he was standing near Sundar Talkies talking to Ashok Kumar where Basant Lal, (P.W.-1), and Puttan came there and informed him that accused Kalloo, Pradeep, and Pankaj were not present at their residence. At the same time, Inspector Shri S.C. Seth arrived in a police jeep, accompanied by an unknown person. The inspector directed him to go along with that unknown person towards the circuit house, stating that accused Kalloo, Pradeep, and Pankaj were present there. He, along with police personnel, informant, Puttan, and Ashok, went by jeep, with Mukbir. The mukhbir was sitting on the front seat of the jeep. As soon as they reached near the Pulia (small bridge) towards the circuit house, they found the accused Kalloo, Pradeep, and Pankaj sitting on the Pulia. Accused Kalloo attempted to flee, but they were apprehended by the police. Accused Kalloo touched the feet of informant Basant Lal Gupta and started crying and asked for pardon. He told to the P.W.-1 that the clothes and dead body of Deynee would be recovered, claiming that the clothes would be found in Jaipuria Park and the dead body in a pond located in the Chandmari area. Later, these items were recovered and identified by P.W.-1, Basant Lal (father of the deceased). The relevant portion of the examination-in-chief of PW-9, S.I. is being quoted below:

> *"जुलाई सन 1982 में चौकी हरवंश मुहाल थाना हरवंश मुहाल में सब इन्स्पेक्टर के पद पर तैनात था इस मुकदमा की तफतीश मुझे मिली। मैंने दिनांक 24-7-82 को समय करीब साढे सात बजे शुरू की। नकल रपट केस डायरी में दर्ज की। वादी बसन्त लाल का बयान लिया फिर कुमारी कल्पना उर्फ डेजी का बयान लिया। फिर करीब चार बजे शाम को मैं सुन्दर टाकीज पर खडा अशोक कुमार से बात कर रहा था उसी समय बसन्त लाल व पुत्तन वहां पर आए उनका अशोक से परिचय कराया उन्होंने बताया कि कल्लू, प्रदीप व पंकज अपने घर पर मौजूद नहीं है। उसी बीच इन्स्पेक्टर श्री सेठ जीप से आ गए उनके साथ एक व्यक्ति और था श्री सेठ ने मुझसे कहा कि जीप में बैठकर इसके साथ सर्किट हाउस की तरफ जाओं क्योंकि कल्लू, पंकज व प्रदीप मौजूद है। इस पर मैं बहमराह कर्मचारीगण बसन्त कुमार गुप्ता व पुत्तन लाल व अशोक को भी बैठा लिया। मुखबिर को आगे जीप में विठाकर रवाना हुए। सर्किट हाउस के आगे जाजमऊ रोड पर पुलिया के पहिले करीब तीस कदम पर जीप रोंक दिया जीप को देखकर पुलिया पर बैठे कल्लू, पंकज व प्रदीप जो जीप देखकर भागे उन्हें हम लोगों ने घेर कर व दौड़ाकर पकड लिया। पकडे जाने पर कल्लू, बसन्त लाल गुप्ता के पैरो पर गिर कर रोने लगा तथा माफी माँगने लगा और कहा कि कपड़े व लाश सुधीर की बरामद करवा दूंगा उसने कपडो को जयपुरिया पार्क के पास झाडी के अन्दर से बरामद कराने को कहा व लाश को चादमारी तालाब के अन्दर से बरामद करवाने को कहा आपोज्ड। हम सब लोग जीप पर जयपुरिया पार्क के पास आए। अभियुक्त कल्लू, पंकज व प्रदीप तीनों ने आगे आगे चलकर*

झाडी के अन्दर से कल्लू ने कपडों को निकाल कर दिया और पंकज व प्रदीप ने सहयोग किया। कपडो को देखकर बसन्त लाल गुप्ता ने अपने लडके सुधीर के कपडे होना शिनाख्त किया। मौके पर कपडो की फर्द तैयार की जो इक्ज क-2 है। यह मेरे हाथ की लिखी व दस्तखती है। तीनों मुलजिमान व उक्त बरामद शुदा कपडे मेरे जिल्द सामने है। इसके बाद थाने आए वहां से जिल्द पंचायतनामा व जरूरी कागजात लेकर व हेडमुहर्रिर को हिदायत किया कि इन्स्पेक्टर साहब जैसे ही आए उन्हें चांदमारी क्षेत्र भेज दे। थाने से हम लोग यानी बसन्त लाल पुत्तन, अशोक तथा तीनों अभियुक्त चांदमारी मैदान चकेरी गए। वहां ये तीनों अभियुक्त तालाब में करीब तीन फिट गहराई से लाश को निकाला। श्री बसन्त लाल गुप्ता ने सुधीर की लाश की शिनाख्त की। लाश की बरामदगी की फर्द मौके पर मैंने अपने हाथ से तैयार किया इस पर गवाहों के भी दस्तखत लिए फर्द इक्ज क-3 है। अंधेरा होने लगा था पेट्रोमेक्स की व्यवस्था की उसी समय इन्स्पेक्टर साहब आ गए उनके निर्देशन में मैंने पंचायतनामा इक्ज क-11 मुरत्तिब किया चालान लाश बनाया। यह इक्ज क 12 है। शव का फोटो बनाया जो इक्ज क 13 हैं आर० आई महोदय को चिटठी लिखी जो इक्ज क 14 है। सी०एम०ओ० को पोस्टमार्टम हेतु पत्र लिखा जो इक्ज क 15 है। मौके पर शव को सर्व मुहर किया तथा नमूना सील तैयार किया जो इक्ज क 16 है इसके बाद इन्स्पेक्टर महोदय ने तफतीश अपने हाथ में ले ली।''

27. P.W.-9 also supported the version of the F.I.R. in his cross-examination and also proved the arrest of the accused appellant and recovery memo of clothes as well as dead body of the deceased minor boy.

28. The prosecution also adduced **P.W.-10 (Satish Chandra Seth)**, inspector in-charge of Police Station Harbansh Mohal, District Kanpur, who investigated the matter after recovery of the dead body of the deceased. In his examination-in-chief, P.W.-10 has deposed that after the recovery of the dead body, the missing report was converted into First Information Report, registered as Case Crime No. 265 of 1982, under sections 365, 302, 201 and 34 I.P.C. implicating accused Kalloo, Pradeep and Pankaj. P.W.-10 also deposed that Sub-Inspector Prem Kumar Mishra had earlier conducted the investigation. He further recorded the statement of witness Ashok Kumar (P.W.-7), in whose presence the recovery memo of dead body as well as clothes of the deceased Sudhir was prepared. A topography report was also prepared in the presence of the witness Ashok Kumar. P.W.-10 also deposed that he recorded the statements of Basant Lal and Puttan, as their statement was also recorded by P.W.-9 after the missing report was filed. The relevant portion of **examination-in-chief** of P.W.-10 is being quoted below:-

''(1) वर्ष 1982 के जुलाई माह में भी मैं थाना हरवंश मुहाल में प्रभारी निरीक्षक के पद पर था। दिनांक 24-7-82 को थाना हरवंश मुहाल के रोजनामचा आम की रपट नं0 36 समय 20-30 बजे गुमशुदा बच्चा सुधीर कुमार उर्फ डैनी की लाश बरामदगी के बाद अपराध संख्या 265 पर अन्तर्गत धारा 365/302/ 201 सपठित धारा 34 आई०पी०सी० का तरमीम किया गया। जिसमें अभियुक्त कल्लू, प्रदीप पंकज थे।

(2) इस अभियोग की विवेचना सब इन्स्पेक्टर श्री पी०के० मिश्रा से ली दिनांक 25/7/82 से अपनी कार्यवाही प्रारम्भ की। दिनांक-25/7/82 को फर्द बरामदगी मृतक सुधीर के कपडे व लाश के गवाह अशोक कुमार निवासी कछियाना मोहाल का बयान लिया। इसी गवाह की निशादेही पर जिस स्थान से कपडा व लाश बरामद हुए थे अलग अलग नक्शा नजरी बनाया जो मेरे लेख व हस्ताक्षर में है ये कमशः इक्ज क-8 व इक्ज क 9 है। इसमें खसरे दर्ज है।

(3) इसके बाद गवाहान अन्य के बयान लिए। दिनांक 26-7-82 को पुनः बसन्त लाल व पुत्तन लाल से मजीद पुछतांछ की। उनके बयानाम मुरत्तिब किए। दिनांक 27-7-82 को कास्टेवल रघुवीर सिंह व

कान्स्टेवल निगम लाल जो लाल का पोस्टमार्टम कराने ले गए थे उनके बयानात लिए।

(4) दिनांक 3-8-82 को रज्जी लाल गुप्ता कमल कुमार आदि, के बयानात अंकित किए तथा रज्जी लाल गुप्ता की निशादेही पर जहाँ से सुधीर कुमार उर्फ डैनी के अपहरण करके ले जाया गया था उसका नक्शा नजरी बनाया।

(5) दिनांक 8-8-82 को गवाह रमेश चंद्र गुप्ता तथा हीरा लाल गुप्ता के बयानात लिए। बाद तकमीला तफतीश अभियुक्तों के खिलाफ चार्जशीट इक्ट क 10 है यह मेरी दस्तखती है।"

29. P.W.-10, Satish Chandra Seth, in his cross-examination deposed that after investigation he submitted a charge sheet against the accused persons.

30. The learned trial court recorded the statement under section 313 Cr.P.C. of the accused persons where they have denied the allegations.

31. **Learned counsel for the appellant submitted** that there was delay in recording the statements of the witnesses by the Investigating Officer. He also contended that there is discrepancy in the investigation. It is also submitted by learned counsel for the appellant that it is a case of circumstantial evidence but there is no motive assigned by the prosecution for causing such incident by the accused. Learned counsel for the appellant also argued that there are contradictions in the statements of the prosecution witnesses and they have not supported the prosecution case beyond reasonable doubt. Learned counsel for the appellant further submitted that on the basis of same evidence two accused persons were acquitted while the appellant was convicted by the trial court. The learned counsel for the appellant submitted that testimony of a child witness (P.W.-3) cannot be relied upon to hold guilty the appellant-accused.

32. Per contra, learned A.G.A. submitted that the accused Kalloo was last seen with the deceased minor boy and P.W.-2, P.W.-3, P.W.-4 and P.W.-6 also deposed that the accused Kalloo was seen with the deceased minor Sudhir and, thereafter, the clothes as well as the dead body of the deceased was recovered at the instance of the accused appellant Kalloo. P.W.-7, Ashok Kumar, in his deposition, also deposed that at the time of arrest, the accused-appellant Kalloo confessed that he enticed/kidnapped the minor boy for ransom but later killed him. Learned A.G.A. also submitted that P.W.-4, Ramesh Chandra Gupta, in his cross-examination, deposed that he had not identified accused Pankaj and Pradeep. He did not know the names of the accused Pankaj and Pradeep before the incident. He has seen the photographs of the accused Pankaj and Pradeep in the newspaper but no identification parade was conducted to identify Pankaj and Pradeep while against appellant accused Kalloo, the entire evidence is intact. The case of the appellant is distinguishable from the other accused persons.

33. Learned A.G.A. has submitted that the accused appellant was a servant of P.W.-1, Basant Lal, and because of that the minor child accompanied with the accused appellant. The accused-appellant enticed away/kidnapped him for ransom but the family members of the deceased immediately started searching for the missing boy. Therefore, the accused appellant killed the boy. After his arrest, the dead body of the deceased was recovered by the accused appellant entering

into the three-feet deep pond. This recovery was made as per section 27 of the Evidence Act.

34. Learned A.G.A. has also submitted that the independent witness Ashok Kumar (P.W.-7) proved the recovery memo of both the dead body as well as the clothes of the deceased. He further submitted that the father of the deceased promptly informed to the police regarding the missing of his minor child. The police recorded the missing report in the G.D. entry on the same day and started enquiry/investigation. The accused-appellant was not found at his residence. The post-conduct of the accused-appellant showed that he had absconded from his residence when P.W.-1 and other family members visited the residence of accused Kalloo. Subsequently, the police searched for appellant Kalloo, and he was later on arrested. The dead body and clothes of the deceased were recovered by the appellant along with two other accused persons. The minor child was enticed away/kidnapped by the accused appellant, while two other accused were arrested alongwith the appellant Kalloo, and they were not identified by the witnesses during the investigation, therefore, the case against those co-accused was not proved beyond a reasonable doubt. The accused-appellant Kalloo was servant of the P.W.-1, Basant Lal, and because of that the boy went alongwith the accused appellant Kalloo. The accused Kalloo was always seen with the minor boy. The investigation revealed that the accused Kalloo kidnapped the minor child for ransom but the family members of the deceased minor started searching, immediately, therefore, the accused Kalloo killed the minor child and the dead body and clothes of the minor child was recovered by the accused Kalloo, therefore, the case of the appellant Kalloo is distinguishable from the case of other co-accused Pradeep and Pankaj.

35. After going through the entire record, depositions and documentary evidence, it is clear that the prosecution case is undeniably built upon circumstantial evidence. The legal principles governing cases solely reliant on such evidence have been **clearly established** in the landmark judgment of Hon'ble the Supreme Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, wherein the Apex Court has held as under :

> *"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up to date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198: 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625: AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129]:*
>
> > *"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully*

established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

36. As discussed above, in this case a **prompt information** was given to the police in respect of the missing of the minor child. The Supreme Court while highlight the value of a prompt F.I.R in **Jai Prakash Singh Vs. State of Bihar and another, (2012) 4 SCC 379** has held as under :

"12. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye- witnesses

present at the scene of occurrence. If there is a delay in lodging the FIR, it looses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. ***Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.*** *(Vide: Thulia Kali v. The State of Tamil Nadu, AIR 1973 SC 501; State of Punjab v. Surja Ram, AIR 1995 SC 2413; Girish Yadav & Ors. v. State of M.P., (1996) 8 SCC 186; and Takdir Samsuddin Sheikh v. State of Gujarat & Anr., AIR 2012 SC 37)."*

37. The minor child was last seen with accused-Kalloo by Kumari Kalpna alias Dezi (PW-3) who was aged about 11 years at the time of incident. It was contended that she was a **child witness**, therefore, her testimony cannot be relied upon. In this regard, Section 118 of Evidence Act, 1872, is relevant and is reproduced herein under :

"Section 118- who may testify*.-All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind."*

38. **Section 118 of Evidence Act** does not specify a minimum age for a child to be deemed incompetent as a witness rather it provides that a person who is capable of understanding the questions put to him/her and able to give rational answers to those questions may testify. Hon'ble the Apex Court in **Dattu Ramrao Sakhare Vs. State of Maharashtra (1997) 5 SCC 341** has held that as long as a child witness is found to be competent to depose i.e. capable of understanding the questions child witness is found to be competent to depose i.e., capable of understanding the questions put to it and able to give rational answers, the testimony of such witness can be considered as evidence in terms of Section 118 of the Evidence Act, irrespective of their tender age or absence of any oath. The only additional factor to be considered is that the witness must be found to be reliable, exhibiting the demeanour of any other competent witness, with no likelihood of having been tutored. The decision in Dattu Ram Rao Shakre (Supra) has been considered in **State of Madhya Pradesh Vs. Balveer Singh, 2025 SCC OnLine SC 390**, wherein the Apex Court has held under :

"58. We summarize our conclusion as under: -

(I) The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence and cannot be rejected outrightly.

(II) As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.

(III) Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty

of speaking the truth and must clearly state why he is of such opinion.

(IV) The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.

(V) The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.

(VI) The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.

(VII) There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.

(VIII)Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.

(IX) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.

(X) The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.

(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice

and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors have to be established being as under: -

▪ *Opportunity of Tutoring of the Child Witness in question whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established.*

This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

▪ *Reasonable likelihood of tutoring wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.*

(XI) Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.

(XII) Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence.

The untutored part of the evidence of the child witness can be believed and taken into consideration or the purpose of corroboration as in the case of a hostile witness."

39. In the present case, before the deposition/statement of PW-3 (the child

witness), the learned Additional Sessions Judge had put some moral question to her and when he found that she was fit to give her statement, then her statement was recorded. She deposed that her brother was standing on the balcony of first floor of the house of her grand father when appellant Kalloo called her brother and enticed him away after providing old tickets of lottery. In her cross examination, this witness has remained consistent with her deposition/statement. PW-2, Rajji Lal, has also supported the statement/deposition of P.W.-3. Therefore, the learned Sessions Judge has rightly relied upon the deposition/statement of PW-3 in holding the appellant guilty.

40. Immediately, after the child went missing, the family members, including P.W.-1, went to the residence of Kalloo in the evening/night and again in the morning but accused Kalloo was not at his residence and he tried to evade himself from the police. He was apprehended and, thereafter, on his pointing out the dead body as well as clothes of the deceased were recovered. Thus, the post conduct of the accused and the recovery of dead body and clothes of the deceased on pointing out of accused are to be seen in the light of Section 8 and Section 27 of the Evidence Act which are relevant for our purposes and are reproduced here under :

> *"**Section 8: Motive, preparation and previous or subsequent conduct**.-Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.*
>
> *The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.*
>
> *Explanation 1. -- The word conduct in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.*
>
> *Explanation 2. -- When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant."*
>
> *27. **How much of information received from accused may be proved.**-Provided that, 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."*

41. In **A.N. Venkatesh v. State of Karnataka, (2005) 7 SCC 714**, The Apex Court in paragraph No. 9, has held as Under:

> *"9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. **The evidence of the circumstance, simplicitor, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing***

out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand Vs. State (AIR 1979 SC 400). Even if we hold that the disclosure statement made by the accused appellants (Ex. P14 and P15) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8*. The evidence of the investigating officer and PWs 1, 2, 7 and PW4 the spot mazhar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act."*

(emphasis added)

42. In the **State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600**, the Apex Court has held as under :

"Before proceeding further, we may advert to Section 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either previous or subsequent conduct. There are two Explanations to the Section, which explains the ambit of the word 'conduct'. They are:

Explanation 1 : The word 'conduct' in this Section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other Section of this Act.

Explanation 2 : When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. The Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute 'conduct' unless those statements "accompany and explain acts other than statements". Such statements accompanying the acts are considered to be evidence of res gestae. Two illustrations appended to Section 8 deserve special mention.

(f) The question is, whether A robbed B. The facts that, after B was robbed, C said in A's presence"the police are coming to look for the man who robbed B", and that immediately afterwards A ran away, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

We have already noticed the distinction highlighted in Prakash Chand's case (supra) between the

conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 Cr.P.C. The evidence of the circumstance, simplicitor, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as 'conduct' under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in Prakash Chand's case. In Om Prakash case (supra) [AIR 1972 SC 975], this Court held that

"even apart from the admissibility of the information under Section, the evidence of the Investigating Officer and the Panchas that the accused had taken them to PW11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW11 himself would be admissible under Section 8 as 'conduct' of the accused."

(emphasis added)

43. In **Sidhartha Vashisht alias Manu Sharma Vs. State of NCT Delhi, AIR 2010 SC 2352**, the Apex Court has held that the conduct of the accused where the accused had absconded from his home after committing the murder, the conduct of accused in such cases is very relevant under Section 8 of the Evidence Act and disclosure and recovery of clothes and dead body made by him is relevant under Section 27 of the Evidence Act.

44. In **Ashok vs. State of Maharashtra, 2015 (4) SCC 393**, **the Apex Court** has observed that last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused etc., non-explanation of death of the deceased, may lead to a presumption of guilt.

45. In the present case, from above discussion, it is clear that the accused was ***last seen with the deceased-appellant*** who was the servant in the house of the deceased, the deceased-boy went missing and the accused-appellant ***was absconding. A prompt information*** regarding missing of the deceased was given. Accused-appellant, Kalloo was apprehended and, thereafter, the accused along with the police went near the pond and the **appellant himself recovered the dead body from the pond and the clothes from the bushes.** Thus, the post conduct of the appellant in **absconding** after the incident become relevant under ***Section 8 of Evidence Act*** which finds support of the subsequent recovery of the dead body and clothes of the deceased on the pointing out of the accused-appellant which is an admissible piece of evidence under Section 27 and section 8 of Evidence Act.

46. So far as motive is concerned, the accused enticed away/kidnapped the minor child for ransom but prompt searching of the minor child could not give room to the accused-appellant for demanding ransom. Consequently, just to save from the offence of kidnapping, the accused appellant killed the minor child but on the next day when he was arrested in the evening, he confessed that he has enticed away/kidnapped the minor child for ransom but later he had killed the minor child and

then he informed to the police before the witness that the clothes as well as the dead body of the deceased could be recovered. The case of the accused Kalloo is distinguished from that of accused Pradeep and Pankaj as the appellant Kalloo who enticed away/kidnapped the minor and the other co-accused were with him at the time of recovery of the dead body and clothes of the deceased. The case of the appellant was beyond reasonable doubt hence the appellant was convicted only.

47. From the depositions of prosecution witness, the post conduct of the appellant and on his pointing out subsequent recovery of the dead body and clothes, it is clear that chain of circumstantial evidence is complete. Therefore, we find no infirmity in the finding returned by the Trial Court. The conviction of the accused appellant Kalloo by the learned trial court is in consonance with the evidence and there is no need to interfere with the judgment of the trial court.

48. In view of the above, we concur with the findings of the learned trial court in holding the accused-appellant guilty.

49. The appeal being devoid of merits is **dismissed**. The impugned judgment of conviction and order of sentence are confirmed. Since the accused appellant is absconding, his bail bonds are cancelled and the sureties are discharged. He shall be taken into custody forthwith to serve the sentence. The Chief Judicial Magistrate and Senior Superintendent of Police/Superintendent of Police shall ensure the arrest of the accused-appellant.

50. Trial court record be sent to the concerned Court forthwith.

51. Let this order be communicated to all concerned by the Registrar (Compliance) for compliance.

(2025) 5 ILRA 679
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED:ALLAHABAD 09.05.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Criminal Appeal No. 5215 of 2003

Asif Ali ...Appellant

Versus

State Of U.P. ...Respondent

Counsel for the Appellant:
Araf Khan

Counsel for the Respondent:
Govt. Advocate, Satish Trivedi

Criminal Law - Indian Penal Code, 1860 - Sections 147, 148, 149, 302 & 307 - Code of Criminal Procedure,1973 - Sections 161 & 164 - Murder - PW-2, injured eye-witness was neither injured nor eye-witness - Injuries on right side of face of PW-2 could never occurred in incident, enormity was evident from F.I.R. itself - When four bullets fired from front and four of them exited from back, logical conclusion that PW-2 should have injured by one of bullets which exited from body of deceased - PW-2 throughout changing his version - He St.d immediately after incident he jumped off motorcycle, ran through sugar cane field, then reached police station along with PW-1 - Later St.d F.I.R was not lodged then he went to maternal uncle of deceased, accompanied him to police station where F.I.R lodged - Further St.d he had seen body being thrown from bridge into river - Improbable story, as he only heard about manner in which body disposed of but never seen actual disposal of dead-body,