



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 674 of 1984

Sagheer Ahmad

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Petitioner(s)	: Kr. Shanti Prakash, Anil Kumar, Kr. Mridul Rakesh, Syed Mohammad Abid, Umesh Chandra Shukla
Counsel for Respondent(s)	: Govt. Advocate

Court No. -10

**Reserved on 29.10.2025
Delivered on 22.01.2026
AFR**

**HON'BLE RAJNISH KUMAR, J.
HON'BLE ZAFEER AHMAD, J.**

(Per : Rajnish Kumar, J.)

- (1)** Heard Sri Syed Ahmad Saud, Advocate alongwith Sri Syed Mohammad Abid, learned counsel for the appellant and Sri Pawan Kumar Mishra, learned AGA for the State.
- (2)** This Criminal Appeal under Section 374 of Criminal Procedure Code (hereinafter referred to as Cr.P.C.), has been filed against the judgment and order dated 25.08.1984 passed in Sessions Trial No.266/1981 (The State versus Sagheer Ahmad) by Ist Additional Sessions Judge, Sultanpur, by means of which the appellant has

been convicted and sentenced with life imprisonment under Section 302 of Indian Penal Code(hereinafter referred as IPC) and to undergo 4 years rigorous imprisonment under Section 201 IPC. It has further been provided that the substantive sentence of imprisonment is sufficient and no fine need to be imposed.

- (3) The prosecution case is that the the deceased Rehan @ Bablu aged about 10 years, son of Abdul Bashir, was residing with his mother Smt. Haseen Jahan. He used to come to her house and his children used to call him Mamu. Sagheer came to the house of Smt. Haseen Jahan at about 5:00 p.m. on 14.04.1981. The deceased Bablu was playing outside alongwith his brother Salman at that time. Bablu was wearing striped bush shirt and blue pant. Sagheer took Bablu on his cycle on the pretext of showing him exhibition. Bablu was seen in the company of the accused by Salim who works in a tailoring shop in the neighbourhood of Smt. Haseen Jahan and also by Jamil Ahmad at Charbagh Station, Lucknow in the evening. Bablu did not return in the night, therefore, after waiting throughout the night, Smt. Haseen Jahan asked Haji Mushtaq at about 5 a.m. on 15.04.1981 for lodging a missing report of Bablu at Police Station. Mushtaq Ahmad lodged a missing report of Bablu at about 11:30 a.m. on 15.04.1981.
- (4) Sub-Inspector Shambhoo Nath of Police Station Chowk searched for the missing child and made enquiries. He came to know that the accused Sagheer was detained by the persons of Mohalla Chobdari. He made enquiries from the accused, who told Sub-Inspector about the

whereabouts of the child. Thereafter the Sub-Inspector took him alongwith him and came to village Jagdishpur, District Sultanpur on 16.04.1981 and made search for the missing child Bablu but he was not found. Thereafter, the Sub-Inspector went alongwith the accused Sagheer to Village Wazirganj, District Sultanpur, where he came to know that the dead body of a child was found near the canal and the police of Police Station Jagdishpur has prepared the inquest report of the dead body. The Sub-Inspector went to the Police Station Jagdishpur on 17.04.1981, where he showed photograph of the child Bablu, which was identified and he came to know that the dead body of Bablu was found in Khanti(ditch) near canal, information of which was given by Kandhai, Chowkidar of Village Namdarpur at Police Station Jagdishpur. The said information was noted in the general diary of Police Station Jagdishpur at Sl. No.30 on 15.04.1981. Thereafter, Sub-Inspector Rohan Lal proceeded to the spot and prepared inquest report and the site plan. The dead body was sent for post mortem examination, which held on 16.04.1981 at 12:45 p.m. The photograph of the deceased was also taken on 15.04.1981.

- (5) Sub-Inspector Shambhoo Nath returned to Police Station Chowk and detained the accused in connection with the murder of Bablu and after receipt of the post mortem examination report of Bablu, a case under Section 302 and 201 IPC was registered on 25.04.1981. The Investigating Officer, after completing the investigation and on the basis of material and evidence collected during investigation, filed a

charge sheet against the accused i.e. the appellant. Charge was framed by the learned Session Judge under Section 302 and 201 IPC. The accused pleaded not guilty to the charge and claimed to be tried.

- (6) In order to prove its case, the prosecution examined Kandhai as P.W.1, Salim as P.W.2, Uma Charan Jaiswal as P.W.3, Ghulam Waris as P.W.4, Mohd. Salman as P.W.5, Smt. Haseen Jahan as P.W.6, Jamil Ahmad as P.W.7, Moti Lal as P.W.8, Dr. C.K. Gupta as P.W.9, Rohan Lal, Sub-Inspector as P.W.10, Banarasi Rai A.S.I. as P.W.11, Head Constable Sheo Sahai Pandey as P.W.12 and Sub-Inspector Shambhoo Nath as P.W.13. The prosecution also placed on record certain documentary evidence and proved the same, which have been exhibited.
- (7) Dr. C.K. Gupta (P.W.9), who conducted the post mortem, opined that the cause of death was due to asphyxia, as a result of compression of neck and death could have occurred in the night of 14/15.4.1981. He proved post mortem report Ex. Ka 2.
- (8) Learned counsel for the appellant argued three grounds i.e. absence of motive, lack of identification and lack of corroboration. He submitted that in absence of test identification, the evidence of P.W.6 could not have been relied. He also submitted that the other shop keepers have not been examined, so the case of prosecution was not corroborated. He further submitted that no disclosure and recovery has been made at the instance of the appellant. He further submitted that there are major contradictions in the evidence of P.W.3 and P.W.7. He further submitted

that it is highly improbable that the accused would have carried the deceased from Lucknow to Sultanpur on cycle. Thus, he submitted that neither the prosecution story is believable, nor the prosecution proved it's case beyond reasonable doubt. He further submitted that it was a case of circumstantial evidence and the motive or the chain of circumstances leading to the guilt of the appellant only could not be proved by the prosecution. Therefore, the conviction of the appellant made by the learned trial Court is not sustainable in the eyes of law. Thus, the impugned judgment and order of conviction and sentence is liable to be set aside. The appeal is liable to be allowed and the appellant is liable to be acquitted. Learned counsel for the appellant relied on **Shatrughan versus State of Chhatisgarh;(2023) 20 SCC 63**, **Nandu Singh versus State of Madhya Pradesh(Now Chhatisgarh);(2022) 19 SCC 301** and **Balwinder Singh versus State of Punjab; 1995 Suppp (4) SCC 259**.

- (9) Learned AGA vehemently opposed the submissions of learned counsel for the appellant. He submitted that the deceased was missing since 14.04.1981 and the missing report was lodged after search on 15.04.1981 at 11:30 a.m. He further submitted that the body of the deceased was recovered on 16.04.1981, in a village in Sultanpur. He further submitted that it is a case of circumstantial evidence, in which, the prosecution proved the chain of circumstances, which are complete and they lead to the guilt of the appellant only. The prosecution has proved it's case beyond reasonable doubt. The learned trial court, after

considering the evidence and material on record, has rightly and in accordance with law convicted and sentenced the appellant by means of the impugned judgment and order by passing a reasoned and speaking order. The impugned judgment and order does not suffer from any illegality or infirmity, which may call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds. The appeal is liable to be dismissed.

(10) We have considered the submissions of learned counsel for the parties and perused the records.

(11) The missing report of the deceased Rehan @ Bablu son of Abdul Waheed, aged about 10 years, who was residing with his mother Smt. Haseen Jahan and brothers, was lodged by Mustaq Ahmad at Police Station Chowk on 15.04.1981 at 11:30 a.m. During search, Rehan @ Bablu was found dead, therefore, a case under Section 302 and 201 IPC was registered on 22.04.1981 and after investigation charge sheet was filed against the appellant, cognizance was taken and the case was committed to session. The charge was framed by the trial court, which was denied by the appellant. Hence trial held and the appellant has been convicted and sentenced as disclosed above. Hence, this appeal has been filed.

(12) Smt. Haseen Jahan, mother of the deceased Rehan @ Bablu, who appeared as P.W.6, stated that her son Rehan @ Bablu was playing outside before 4 to 5 in the evening, while he was missed. He was wearing striped bu-shirt and blue pant at that time. Rehan @ Bablu was

playing with her other son Salman. The accused is her cousin brother(fufi jaat bhai). He had come to her house on the said date and after the namaj of magrib, he went. Her son Salman came to house and went for sleeping. Rehan @ Bablu had not come. She thought, he must have been playing but Rehan @ Bablu did not come in the night, therefore, after waiting upto 4 to 5 in the morning, he asked to Haji Mustaq to lodge the F.I.R. She has also stated that Sagheer had come to her house on the next date, when the police came and made enquiries from him and took him with them. She also stated that the accused used to demand money from her but she declined to give, as she had no means to pay. Her husband was working in a factory in Arab at that time. On a query of the court, she stated that on the date of the incident, the accused had demanded money from her but she had declined, as she had no money. She had stated that she had not asked from Salman about Rehan @ Bablu, when he came back and he had also not told and he had slept.

- (13) Salman, the brother of the deceased Rehan @ Bablu appeared as P.W.5. He was aged about 7 years at the time of his evidence on 06.12.1983, therefore, at the time of alleged incident, he must have been around 5 years of age. He properly replied the answers as recorded by learned trial court. Learned trial court has also recorded that he is capable of understanding the facts and given the rational answers of the questions put to him. He recognized photograph of his brother in the group photograph (Ex.1). He also stated that other name of the Bablu was

Rehan. He stated that he also recognizes the accused Sagheer and stated that he is his Mamu in relation. He stated that many days ago, his Mamu Sagheer had took away his brother Bablu for showing exhibition. It was evening time and time of namaj of Magrib and since then his brother has not come home. He took away his brother from near the house and he was present there at that time. He has also stated that he had also asked for taking him also and wept for that but the accused Sagheer had given him coin(chawanni) and thereafter he had not gone. He has also stated that the accused took away Bablu by cycle and thereafter he has not returned. He does not know as to whether he is alive or dead. He also stated that the accused Sagheer made Bablu sit on the front rod of cycle. He had not told to his mother after returning home that his brother Bablu had been taken away by his Mamu Sagheer and he slept and when he woke up at night, his mother asked from him, then he told her that his Mamu Sagheer had taken away Bablu to show exhibition. Thus, the brother of the deceased, who was aged about 7 years at the time of evidence, has specifically stated that the deceased was taken away by the appellant in the evening and he took away him from cycle. The testimony of the child cannot be dis-believed because as observed by the learned trial court he is capable of understanding things and answering rational answers and it could not be controverted by any cogent evidence or material.

(14) The Hon'ble Supreme Court, in the case of *Digambar Vaishnav & Anr. Versus State of Chhattisgarh; 2019(4) SCC 522*, has held that the

evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring, therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. The relevant paragraph 22 and 23 extracted hereinbelow:-

22. This court has consistently held that evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring. Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. It is more a rule of practical wisdom than law.

23. In Alagupandi alias Alagupandian vs State of Tamil Nadu; (2012) 10 SCC 451, this Court has emphasized the need to accept the testimony of a child with caution after substantial corroboration before acting upon it. It was held that:

“36 It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The court in such circumstances can safely rely upon the statement of a child witness and it can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a rule of prudence the court always finds it desirable to seek corroboration to such evidence from other reliable to seek evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable.”

- (15)** The relationship of the appellant with the family of the deceased has not been denied by the appellant, although he has denied that he was familiar with the children. The accused has stated in his evidence under

Section 313 CR.P.C. that he had advanced Rs.5,000/- to Smt. Haseen Jahan as loan, which was not returned to him, even after repeated demands, which shows that the appellant had visited the house of Smt. Haseen Jahan as claimed by the prosecution and motive.

(16) P.W.2 Salim, who was working in a tailor shop at a distance of 30 steps from the house of the deceased, has stated that on 14.04.1981 he saw accused taking away the deceased on his cycle, on which he was sitting on the front rod, towards Chowk side. This witness is not related to the family of the deceased and there is no evidence that he was having any enmity with the appellant. However, he knew the deceased, his brothers and their uncle. Thus he supports the evidence of child witness i.e. P.W.5, therefore, once the evidence of child witness is in conformity with the evidence of an independent witness, there remains no ground to discard his evidence, even non examination of other shopkeepers. When the appellant was known to them, there was no need of test identification parade.

(17) P.W.7 Jameel Ahmad, who also knew the deceased and his family and his uncle, as he resides in the same Mohalla Chobdari, where the house of the deceased was situated, had seen the appellant alongwith the deceased at Charbagh Railway Station, Lucknow at about 6:30 in the evening, while he was going from Nathha Hotel to Mawaiya market. He stated that he was sick at that time and on 14.4.1981, he had gone to collect his pay from his office, which is situated at Charbagh Railway Station, Lucknow. He categorically stated that he had seen the deceased

Bablu alongwith the accused Sagheer at the Chargbagh Railway Station. He had not enquired anything from Bablu and went away to Mawaiya Bazar where his loco shade is situated. He is also an independent witness and had no enmity with the accused. Perusal of the evidence of this witness indicates that he was not familiar with the family of the deceased and he had no particular affinity with the family. However, he knew them because they reside in his area and the appellant used to come to meet them, therefore, merely, because he has stated that he had not made any enquiry from Bablu at that time, his presence cannot be doubted because if he used to see the appellant going to house of the deceased and had no particular affinity with his family, it was obvious for him not to ask anything from him, therefore, it cannot be a ground to discard his evidence.

- (18)** The deceased was last seen by P.W.8 Moti Lal of Village Warisganj, Police Station Jagdishpur, District Sultanpur at about 11:00 or 11:30 p.m. in the night with the deceased Rehan @ Bablu on a cycle when he came to his shop. At that time he was taking food outside the door of his house. At that time, the accused Sagheer alongwith the deceased came from the side of Jagdishpur and asked the way of Village Kisni. He has also stated that two electric bulbs were burning at his house. He has also stated that he had asked the appellant not to go at that time to village Kisni as the way was not good but the appellant went away. An argument was that it is highly improbable that the appellant would have gone by cycle to Warisganj P.S Jagdishpur but no question was put in

cross-examination in this regard, therefore, now it can not be a ground to disbelieve the evidence of prosecution witness. Even otherwise earlier the people used to travel by bus or train with their cycle so that they may not face difficulty in transport at the place where they were going.

(19) P.W.7 and P.W.8 are independent witnesses. P.W.8 neither knew the deceased or the appellant from before nor could have any enmity with them. His statement is consistent. He has also stated that after about two days, the police came to Warisganj and the appellant was also with them. They were making enquiries, therefore, the people had collected. Seeing it, he himself went there and after seeing the appellant with them, told that the appellant had come and enquired from him as to where is village Kisni. Learned trial court has also recorded that perusal of the case diary shows that the accused had informed P.W.13 Shambhu Nath, the Investigating Officer that his friend Firoz lives in Village Kisni. Thus, the testimony of P.W.8 cannot be disbelieved.

(20) P.W.6 Smt. Haseen Jahan has stated in her evidence that the appellant Sagheer had come to her house on the next day of missing of his son Bablu. At that time, the police had also come and made enquiries from the appellant and police took him with them for search of her son. The Investigating Officer(Sub Inspector), who appeared as P.W.13 has stated that the missing report of the boy was lodged by Mustaq Ahmad at 11:30, which was recorded by Sri Bhagat Singh at Rapat No.18 at 11:30 on 15.04.1981, which is Ex. Ka 13. He was assigned

investigation of the case. He had recorded the statements of Haseen Jahan, Suleman, Salim and Jameel Ahmad. Thereafter, he met to the appellant Sagheer, who was being detained by the people of the area(mohalla). He made enquiries from the appellant and as told by him, he took him to Jagdishpur, District Sultanpur. Before going with the appellant, he had procured the photograph (Ex.1) of Bablu @ Rehan from his mother. He went with the appellant to Raniganj Sultanpur and made enquiries. He searched the boy at the places told by him but he was not traceable, then he went with the appellant to Warisganj, where he came to know that a dead body of a boy has been found aside the canal, inquest of which has been done by the police of Jagdishpur, therefore, he went to the Police Station Jagdishpur on 17.04.1981 and made enquiries about the boy. He showed the photograph of the missing Bablu @ Rehan, who was recognized by the Investigating Officer there. Thereafter he recorded the statement of the Investigating Officer of the Police Station Jagdishpur and returned to the police station Chowk, Lucknow and lodged the case of murder.

- (21) Kandhai; P.W.1, who was a farmer and watchman, resident of Bhadema, Police Station Jagdishpur, District Sultanpur has stated that on 15.04.1981 the information was given to him at his home at about 9:00 in the morning that a dead body is lying aside the canal in Khanti. He went there and found the dead body of a boy, who would have been about 12 years of age. He had seen the dead body but he could not found any injury on the dead body. However, the dead body was of a

muslim boy. He gave the information of the dead body at the Police station Jagdishpur at about 2:00 to 2:30, as the police station was about 3 kms. and he had gone on foot. Thereafter, the Investigating Officer came on the spot and made the inquest and after sealing it sent for post mortem. The photograph of the dead body was taken in Sultanpur, when it was opened for post mortem. He had seen the dead body at the time of the post mortem while taking the photograph and he can recognize the boy. He also recognized the photograph of the boy in Ex.

1. The photographer Uma Charan Jaiswal appeared as P.W.3. He also proved the photograph of the dead body taken by him. He also produced the negative of the photograph as Ex. 2. The dead body was found with a blue pant(Mat Ex. 4), which has been proved by the tailor Ghulam Waris, who appeared as P.W.4. He stated that the said pant was of Bablu @ Rehan, which was stitched by him, who had four brothers and he knew them. He works at the shop of uncle (chacha) of the deceased. The deceased also used to sit at the shop to learn the work. He had also gone to Jagdishpur to identify the pant.

- (22) Rohan Lal Yadav, Sub Inspector, appeared as P.W.10, who was posted at Police Station Jagdishpur on 15.04.1981 as Second Officer. He stated that the information was received in his presence from the watchman that the dead body of a boy is lying in Khanti in the north of the footpath of canal, situated in North East of Village Naamdarpur. On the said information, he went on the spot and after seeing the dead body and making enquiry from the persons in the vicinity, prepared the

inquest and sent it for post mortem with Constable Chhedi Singh and Rameshwar Prasad. He proved the inquest Ex.Ka 3. He further stated that thinking the matter to be doubtful, he had sealed the dead body for post mortem and prepared the photo laash as Ex. Ka 4, Challan Laash as Ex. Ka 5, letter for post mortem as Ex. Ka 8 and sample of seal as Ex. Ka 9 and letter to R.I. as Ex. Ka 7, which are in his handwriting and signed by him. Ex. Ka 7 is the letter to R.I. alongwith it. He further stated that when S.N.Dubey(Shambhu Nath Dubey), Police Station Chowk came to Police Station Jagdishpur on 17.04.1981 and enquired for recovery of child then he informed to him about the recovery of the dead body and inquest. He showed him the photograph of the deceased as Ex. 1, which was of the boy, whose dead body was recovered and the inquest was prepared. He further stated that on receipt of the result of the post mortem on 25.04.1981, case under Section 302/201 IPC vide Case Crime No.164 was lodged. He started the investigation on 26.04.1981 and after taking statements of watchman Kandhai Lal and the witness of the inquest and making enquiries from the persons, prepared the site plan Ex. Ka 10. Thereafter he was transferred. In the cross examination, he stated that the dead body was at distance of 5-6 feet from the road and there was some mud on the dead body and apparently there was no injury but the injury was appearing on the neck of the dead body. Thus, it is proved that the dead body of the deceased Bablu @ Rehan was found under the Police Station Jagdishpur in District Sultanpur and the independent witnesses as well as the

Investigating Officer proved that it was the dead body of the deceased Bablu.

(23) Sheo Sahai Pandey, the Head Constable(P.W 12), who was posted as Head Moharrir on 15.04.1981 at Police Station Jagdishpur, proved that the information of recovery of the dead body was received from Kandhai Lal, watchman at 14:20, which is in consonance with the time of giving information at police station told by the watchman Kandai(P.W.1) in his evidence. It was written by him at Rapat No.20 of GD, which is on record as Ex. Ka 6 and after receipt of the report of post mortem on 25.04.1981 Case No.164 under Section 302/201 IPC was lodged at Rapat No.16 of GD, which is Ex. Ka 2 and he proved the same.

(24) P.W.11 Banarasi Rai A.S.I., Police Station Kudwar, District Sultanpur, who was posted as S.I. in Police Station Jagdishpur on 09.07.1981, stated that he after taking statements of certain witnesses on 18.07.1981 had filed the charge sheet, as prima facie offence was found to have been committed by the appellant.

(25) P.W.9 Dr. C.K.Gupta, who had conducted the post mortem of the deceased, proved the following injuries caused to the deceased Bablu:-

(i) Three small abrasions, each measuring 1 cm x 0.2 cm in an area of 3.5 cm x 3 cm over the left side neck upper part just below the left lower jaw:

(ii)Faint contusion 3 cm x 1.5 cm over the right side neck, upper part below the right lower jaw.

(26) He had examined the dead body at 12:45 on 16.4.1981. He stated that the age of the deceased was about 12 years and he had died about one and a half days ago. The rigor mortis had passed away from the upper part of the

body and present in the lower part. The decomposition of the body had started. The height of the deceased was about 4 feet. Circumcision(khatna) of the boy was done. He proved the photograph of the deceased In the internal examination of dead body thick blood was present in the neck. In the aforesaid injuries, the muscles of vein were congested. However, hyoid bone was fractured. Larynx and the vein of the tracheal were congested and there were rings on it. The full pant was on the body of the deceased, which was sealed. The doctor opined that the deceased had died on account of pressing of the neck of the deceased(strangulation). He proved the report Ex. Ka 2. He also stated that the injuries present on the neck of the body of the deceased could have come by pressing from hands. There was a contusion on the neck of the deceased, which may have been of thumb and the abrasions on the other side may have been of finger tips. He also stated that the neck could have been pressed by the finger tips. Thus, the doctor proved the injuries and also that the death could have been caused by pressing the neck. The prosecution case is supported by the evidence of doctor and post-mortem.

(27) In view of above, it is apparent that there is no direct evidence of the incident and it is a case of circumstantial evidence and 'last seen'. In the case of circumstantial evidence, the evidence and material on record has to be analyzed on the touch stone of 5 golden principles laid down by the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda versus State of Maharashtra; AIR 1984 SC 1622**, wherein while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in the

prosecution cannot be cured by a false defence or plea. The said 5 golden principles are as under:-

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

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

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

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

(28) The Hon'ble Supreme Court, in the case of **Balwinder Singh versus State of Punjab (supra)**, has held that in a case based on circumstantial evidence, it is now well settled that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. The relevant paragraph 4 is extracted hereinbelow:-

"In a case based on circumstantial evidence, it is now well settled that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence the Court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations,, howsoever strong they may be, to take the place of proof. It is in the context of the above settled principles, that we shall analyse the evidence led by the prosecution."

(29) The Hon'ble Supreme Court, in the case of **Shatrughan versus State of Chhattisgarh(supra)**, has held that once there is no eye witness of the incident, the prosecution will have to establish a motive for the commission of the crime in-as-much as in a case of direct evidence, motive may not have a major role. If there is no motive set up or proved and there are direct eye witnesses, motive may lose its importance. Similar view has been taken by the Hon'ble Supreme Court in the case of **Nandu Singh versus State of Madhya Pradesh(now Chhattisgarh)(supra)**. The relevant paragraph 9 is extracted hereinbelow:

"In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused."

(30) In view of above, in a case of circumstantial evidence, the prosecution has to prove firstly that every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and, secondly, all the circumstances must be consistent only with the guilt of the accused.

(31) Adverting to the facts of the present case and as discussed above, the prosecution has been able to prove the chain linking guilt of the appellant, which are as under:-

i). It has been proved that the appellant had come to the house of Smt. Haseen Jahan, i.e., mother of the deceased child on the date of the incident on 14.04.1981. It has been proved by Smt. Haseen Jahan, who appeared as P.W.6. which has been supported by the evidence of P.W.2

Salim, who was working in a tailor shop at a distance of 30 steps from the house of the deceased.

ii). P.W. 2 Salim as well as P.W.5 Mohd. Salman, the brother of the deceased Rehan @ Bablu, who was playing with him, have not only proved that the appellant had come to the house of Smt. Haseen Jahan but also that he took away the deceased child with him, making him sit on the rod of the cycle.

iii). P.W. 7 Jameel Ahmad, who also reside in the same Mohalla Chobdari, in which the deceased child with his mother was residing, proved that he had seen the appellant with deceased at the Charbagh Railway Station on the same day.

iv). P.W.8 Moti Lal of Village Warisganj, Police Station Jagdishpur, District Sultanpur, has proved that he had seen the appellant with the deceased at about 11:00 or 11:30 p.m. in the same night and the appellant had asked from him the way of village Kisni.

v). P.W.1 Kandhai, who was a farmer and a watchman, resident of Bhadema, Police Station Jagdishpur, District Sultanpur, has proved that on information of the dead body at about 9:00 in the morning of 15.04.1981, he went to the place and found dead body of the deceased lying aside the canal in Khanti and gave it's information at Police Station Jagdishpur at about 2.00-2.30 in the afternoon, which is supported by the evidence of Head Constable P.W.12. He recognized the deceased in the photograph EX.1 produced by the prosecution. The

photographer Uma Charan Jaiswal, who appeared as P.W.4, proved that he had taken the photograph of the dead body.

vi). Dr. C.K. Gupta, who appeared as P.W.9, had conducted the post mortem. He proved the post mortem report and the injuries of the deceased. He also stated that blue pant was on the dead body, which was handed over by him to the police. He has opined that the cause of death was due to asphyxia, as result of compression of neck and death could have occurred in the night of 14/15.4.1981 and it could have been caused by pressing from finger tips, marks of which were appearing on neck, therefore no recovery was required. Even otherwise mere non recovery cannot be a ground to disbelieve the prosecution, if otherwise it is proved. The blue pant wore by the deceased has been proved by his mother as well as P.W.4 Ghulam Waris, the tailor who had stitched the same. He knew him also as he used to sit on shop to learn the work.

vii). Head Constable Sheo Sahai Pandey, who had appeared as P.W. 12 has proved that he had received the information of recovery of the dead body from Kandhai Lal, watchman at about 14:20, which was written by him at Rapat No.20 of GD(Ex. Ka 6) and after receipt of the report of post mortem on 25.04.1981, Case No.164 under Section 302/201 IPC at Rapat No.16 of GD (Ex. Ka 2).

(32) In view of above, this Court is of the view that the learned trial court considering the evidence and material on record and the testimony of the independent witnesses i.e. P.W. 2, P.W.7 and P.W.8 as well as the medical evidence, according to which, the death of the deceased could

have taken place in the mid night of 14.4.1981 and 15.4.1981 held that the circumstances point out clearly that the accused Sagheer is responsible for the death of the deceased. It has further been observed that the suggestion of the defence that he has been falsely implicated in the case because he continued to demand Rs.5,000/-, which the accused had advanced to the mother of the deceased, cannot be believed in view of the independent reliable and convincing testimony in this case. Learned trial court also found that the statement of the appellant that he had advanced Rs.5,000/- to Smt. Haseen Jahan as loan, which was not returned to him, even after demands shows that he had visited the house of Smt. Haseen Jahan, which is as per the prosecution case. It also shows the motive of committing the crime. None of the grounds taken by appellant are tenable.

(33) In view of above, this Court does not find any illegality or error in the findings recorded by the trial court, by means of which, the appellant has been convicted and sentenced by a reasonable and speaking order. Thus the judgment passed by the trial court is upheld and punishment confirmed. The appeal has been filed on misconceived and baseless grounds and it is liable to be dismissed.

(34) The appeal is, accordingly, **dismissed**.

(35) The appellant is on bail. He is directed to surrender within two weeks from today before the Chief Judicial Magistrate concerned, who shall send the appellant to jail to serve out the sentence. In case the appellant does not surrender within a period of two weeks from today, the Chief

Judicial Magistrate concerned shall take appropriate steps for arrest of the appellant.

(36) Let a copy of this judgment alongwith the Trial Court's record be sent back forthwith and in any case within a period of one week from today for compliance.

(Zafeer Ahmad,J.)

(Rajnish Kumar,J.)

Order Date :- 22.01.2026
Akanksha Sri/-