



Reserved
AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1752 of 1984

Dr. Vinod Alias Ram Vinod Alias Ram Niwas

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Chandra Bhushan Prasad, G.p.dixit
Counsel for Respondent(s)	: A.G.A.

Court No. - 47

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

(Delivered by: Sanjiv Kumar, J.)

1. This criminal appeal by the convict Dr. Vinod alias Ram Vinod alias Ram Niwas is directed against the judgment and order dated 05.06.1984 passed by Sri S.C. Srivastava, the then Special Additional Judge, Muzaffarnagar in Sessions Trial No. 47 of 1983 (State Vs. Suresh and another), under Section s 201, 364 and 302/34 IPC, Police Station Civil Lines, District Muzaffarnagar.

2. By the impugned judgment and order, the Trial Court has convicted the appellant, Dr. Vinod @ Ram Vinod @ Ram Niwas, and non-appellant, Suresh, for offences punishable under Section 302 r/w 34 IPC and sentenced them to undergo imprisonment for life and three years rigorous imprisonment for the offence punishable under Section 201 r/w 34 IPC, of which too they have been convicted. The Trial Court directed that both the sentences shall run concurrently.

3. Feeling aggrieved, Dr. Vinod @ Ram Vinod @ Ram Niwas has preferred the present criminal appeal, whereas non-appellant, Suresh, filed another Criminal Appeal No. 1719 of 1984, which was abated *vide* order dated 15.09.2025, as the appellant Suresh died.

4. Brief facts of the prosecution case are that upon an application dated 09.10.1982 (Ext. Ka-1) made by the informant Dr. Bale Ram Pal, son of Raja Ram Pal, a resident of village Chaitaura, Police Station Jansath, District Muzaffarnagar, along with a covering letter of same date by the Principal, Government Inter College, Muzaffarnagar, an information was given at Police Station Civil Lines, Muzaffarnagar, stating that the first informant's son Sunil Kumar studies in Class-VII in Government Inter College, Muzaffarnagar. On October, the 8th, 1982, his son left school after 11:30, but did not return until 11:00 a.m. on 09.10.1982. He regularly goes to school from his house, situated in village Chitaura. When he did not return home, that day i.e. 09.10.1982, the informant made inquiries about him at the school, from his relatives and also launched a search for him. However, his whereabouts could not be traced. On the 9th, he met the Principal of the school and inquired from some students about his son. Thereupon he came to know that his son was last seen with his class-mates near the railway crossing, where buses ply for village Chitaura. Beside this, no other information came to his notice. He expressed apprehension that his son had been kidnapped.

5. The said report was endorsed to S.I. R.C. Gupta for necessary action, who sent it to Police Station Nai Mandi. A report was received back from Police Station Nai Mandi on 09.10.1982 and investigation commenced at Police Station Civil Lines on 16.10.1982. Meanwhile, the accused Suresh handed over two letters (Exts. Ka-9 and Ka-10) contained in a postal cover piece (Exts. Ka-7 and Ka-8) to Bale Ram. The envelop (Ext. Ka-7) contained Sunil's photograph. In the aforesaid letters, a ransom of Rs.30,000/- was demanded and, according to the prosecution, the appellant Suresh intimidated Bale Ram that the boy was with him and would be killed, if Bale Ram takes any indiscreet step.

6. According to the prosecution, Bale Ram handed over these letters and photograph to S.I. R.C. Gupta, the same evening and, on that basis, a case under Section 365 IPC was registered at Police Station Civil Lines, the same day at 09:30 p.m. The investigation commenced on 17.10.1982. S.I. Surendra Singh (P.W. 8) commenced investigation and arrested the accused Suresh the same day, while co-accused Vinod was already confined in jail in another case. He was brought from the other jail and a confession of the appellant Vinod recorded. On 13.11.1982, Sunil's dead body was recovered from the premises of the Brij Ice factory upon the information furnished by the appellant Vinod. The inquest was held and a report prepared at the spot and thereafter, the dead body was sealed and sent for autopsy. At the instance of the appellant Suresh, a school bag, books and exercise books of deceased Sunil were recovered from the same compound on the same day and its recovery memo prepared. Specimen handwriting of Suresh was obtained and the same along with ransom letters were sent to handwriting expert, who opined that the handwriting in both the documents was of the same person. The Investigating Officer recorded statements of the informant and other witnesses. The Investigating Officer inspected the place of occurrence from where deceased Sunil was kidnapped and prepared its site plan (Ext.Ka-104). He also prepared a site plan of the place, from where the dead body of the deceased was recovered (Ext. Ka-91). After completion of investigation, the Investigating Officer submitted a charge-sheet against Suresh and Dr. Vinod Alias Ram Vinod Alias Ram Niwas, under Sections 304, 302, 301 and 120B IPC before the learned Magistrate.

7. The Magistrate took cognizance of the offence and summoned the accused. They appeared before the Court and were furnished copies of relevant prosecution papers under Section 207 Cr.P.C. Thereafter, the case was committed to the Court of Sessions for trial.

8. The appellant and co-convict Suresh appeared before the Court of Sessions and charges under Sections 365 read with 34, 302 read with 34 and 201 IPC were framed against them, to which they pleaded not guilty and claimed to be tried.

9. The prosecution have examined nine witnesses to prove their case to wit, Ganga Sharan Sharma (P.W.1), Dr. Mahendra Kumar Taneja (P.W.2), Anwar Mohammad (P.W.3), Bale Ram (P.W.4), Ramesh Chand (P.W.5), Vijay Pal Singh (P.W.6), Mahender Pratap Singh (P.W.7), Surendra Singh (P.W.8) and Indar Pal Sharma (P.W.9).

10. P.W.1 Ganga Sharan Sharma is the Principal of the Rajkiya Inter College, Muzaffarnagar. He, in his testimony, has said that in October, 1982, the studies in his college used to be held in two shifts, namely from Class-VI to VII, in first shift (07:00 to 11:30 a.m.) and for rest of classes in second shift (12:00 noon to 05:00 p.m.). The school uniform was white shirt and *khakhi* pant. Sunil, son of Bale Ram, was a student in Class-VII, who came to attend classes on 08.10.1982 in the first shift. On 09.10.1982, after the school was opened, the deceased's father, Bale Ram, came to his office and informed him that Sunil had not returned home after school yesterday. Thereafter, he asked his senior teacher Shri Ram Prasad to bring the attendance registers for Class-VII relating to all the sections and it was verified from the registers that Sunil had attended school on 08.10.1982. His attendance had been duly marked. Thereafter, his classmates were asked, who informed that after the school was over, Sunil was seen standing in college field, near the railway crossing. Thereafter, Sunil's father gave the principal a written information, which he forwarded along with his own forwarding letter to the Police Station Kotwali, Muzaffarnagar. Bale Ram had written his application in his own handwriting, which P.W. 1 got typed out. Next, Bale Ram had put his signature and the same was sent to Police Station Kotwali. The witness has proved the application of Bale Ram and his own covering letter as Exts. Ka-1 and Ka-2, respectively.

11. In his cross-examination, P.W. 1 has said that senior teacher Shri Ram Prasad, after returning from Sunil's class, did not tell him the names of those students, who had seen Sunil standing near the railway crossing. His college's field extends up to the railway line. He has stated that in the application there is an overwriting on the word 'Kotwali' and subsequently 'Civil Lines' is scribed in Exts. Ka-1 and Ka-2 in his office

by some clerk. It is because his college was not within the jurisdiction of Police Station Kotwali, but it fell under Police Station Civil Lines. It is correct that there are no initials over these cuttings. He had himself asked his clerk to make these cuttings.

12. P.W.2 Dr. Mahendra Kumar Taneja has conducted the post-mortem examination on deceased's cadaver on 13.11.1982 from 03:00 p.m. He has said that on 13.11.1982, he was posted as Medical Officer in District Hospital, Muzaffarnagar and on that day, at about 03:00 p.m., the body of deceased Sunil, son of Bale Ram, was brought to him for post-mortem examination by Constable Vijay Pal and Constable Dinesh Chand of Police Station Civil Lines, Muzaffarnagar in a sealed cloth. The deceased was aged about 12 years and death had occurred about one month ago. The entire body was decomposed. The skin, in some places, had vanished and the muscles had become blackish red. The hair were loose. Skull was present but its wall had decomposed. Heart and lungs had decomposed. Peritoneum membrane and tongue had also decomposed and were missing. There were fourteen teeth each in both upper and lower jaws. Heart had decomposed, weighing about one pound. Some parts of the deceased's body and bones were preserved. The witness has proved the post-mortem report as Ext. Ka-3 and said that the deceased had died between 08.10.1982 to 22.10.1982. He did not find any presence of maggots. He further said that after ten days from death, the skin starts decomposing and the muscles become blackish from red. The skin starts peeling after ten days and, after four weeks, hair loosen from the skin. There was a vest (*Banyan*), underwear, pant, shirt and a pair of sandal on the dead body. These materials were sealed in a box and handed over to the Constable. The above sealed box was opened before the Court, and the witness has proved articles contained in it as Exts. 1 to 5.

13. In his cross-examination, P.W. 2 has deposed that after burying a dead body under wet earth, decomposition delays, compared to decomposition in moist air. It is true that body of a child decomposes faster than that of a young man. It is not necessary that maggots would

be found in a body after 14 to 20 days. Sunil could have died on 25/26 of October, 1982. The probability is less, but it cannot be entirely ruled out. The deceased could have died one or two days earlier than on 08.10.1982.

14. P.W.3 Anwar Mohammad is a witness of fact. He, in his examination-in-chief, has deposed that he was acquainted with Bale Ram, who resides in his village. He further stated that he also knows the appellants Suresh and Vinod. He next stated that he knows the appellant Vinod 15-20 days prior to the date of incident. On 08.10.1982 between 11:30 a.m.-12:00 noon, he had gone to Muzaffarnagar from his village Chitaura by bus. When his bus turned at the railway crossing, he saw the accused Suresh, Vinod and Sunil son of Bale Ram proceeding from the railway crossing towards Mahavir Chauk. Sunil was carrying his school bag and wearing a white shirt and *khakhi* pants. The same day at about 08:00 p.m., it came to his knowledge that his brother Mohammad, who resides in Meerut, had fallen ill. Therefore, the next day in the morning he went to Meerut and stayed with his brother. After 18-19 days, he returned to his village as there was curfew due to Hindu Muslim riots in Meerut. Upon returning from Meerut, he went to his agricultural field and while returning from there, at about 04:30 p.m., he met the Investigating Officer near a temple, where he was inquiring about Bale Ram's son. There, he told the Investigating Officer that he saw Sunil a few days ago. After seeing his (Sunil's) photograph (Ext. Ka-29), P.W. 3 said that this is the photo of Dr. Bale Ram's son, whom he had seen going along with the accused.

15. In cross-examination, P.W.3 deposed that his brother was not hospitalized, and was taking treatment from a private doctor. He was suffering from double pneumonia and the doctor had prescribed medicines to his brother before him. He had not told the Investigating Officer that he had gone to Meerut and returned after 18-19 days as the Investigating Officer had not asked so. He did not know that any Panchayat took place in village Chitaura after Sunil got missing. It is when the Investigating Officer enquired of him, it came to his notice that

Sunil was missing and, as he had seen Sunil with the accused on 08.10.1982 who went missing since then, he thought that may be the accused had kidnapped him. He knows Dr. Vinod because the accused Suresh had come to him along with Vinod to get a room on rent.

16. P.W. 4 Dr. Bale Ram is the deceased Sunil's father. He has said, on oath, that his son was aged about twelve years, who was studying in Class-VII in the Government Inter College, Muzaffarnagar. He used to go to the school daily by bus and usually returned by 12:30-01:00 p.m. He wore a white shirt and *khakhi* pants and was carrying his school bag and identity card. On 08.10.1982, Sunil had gone to school, but did not return home. During those days, he usually treated patients from the morning till 12:00 noon at his home, and thereafter, from 02:00 to 07:00 p.m. in the clinic at Vilaspur. On that day, he returned from Vilaspur at about 07:15 p.m., whereupon his wife Chandrakali informed him that Sunil had not returned from school, which caused him concern. Sunil, after telling him, had earlier stayed back on some occasions at his elder brother Ram Pal's house, located in Mohalla Prempuri, Muzaffarnagar. On that day, Sunil had not told him that he was staying in Muzaffarnagar. He consoled his wife that Sunil might have stayed at his uncle's house. In the morning at about 05:00 a.m., he went to Prempuri, where his son was not found. Thereafter, he enquired from his relatives, but Sunil was also not there. Next, he went to the Government College, Muzaffarnagar where, he met the Principal at 08:00 a.m., who sent him to Class-VII with the teacher where, Sunil's classmates told him that on 08.10.1982, they saw Sunil near the railway crossing, Nai Mandi, Muzaffarnagar at 12:00 p.m. carrying his school bag. The class teacher after perusing the school register told that Sunil was present on 08.10.1982 and attended all the periods. Thereafter, he wrote down an application and the Principal got it typed in duplicate. He had put his signatures over there and the Principal gave him a covering letter and asked him to go the police station along with the application and the covering letter to Police Station Kotwali. A constable from the Police Station Kotwali told him that Government Inter College is not within the

territorial jurisdiction of Police Station Kotwali and it falls within the territorial jurisdiction of Police Station Civil Lines. Thereafter, he returned to the college and informed the Principal, who called a clerk, who scored out Police Station Kotwali and wrote it down as Police Station Civil Lines. Thereafter accompanied by a peon, he went to Police Station Civil Lines, where he filed the application. On 16.10.1982, at about 04:00 p.m., the accused Suresh, came to his house in village Chitaura and handed him two letters, one of the letters was bearing seal dated 12.10.1982 of the Post Office and the other had the seal dated 16.10.1982 over it. The witness has proved both these envelopes as Exts. Ka-7 and Ka-8 and letters as Exts. Ka-9 and Ka-10. He has said that after handing him the envelopes, the accused Suresh told him that his son is with him along with Vinod and two or three other accomplices and, if he raises any alarm, then his son would be killed. Thereafter, Suresh left his house and he opened envelope dated 12.10.1982, which carried Sunil's photo and a letter. Thereafter, he called a few persons from the village and, after consultation, went to Muzaffarnagar and near the northern gate of the District Court. An Inspector from Police Station Civil Lines met him, whom he handed over the letters and the photo. The Inspector made inquiries from him on 13.11.1982.

17. P.W. 4 further testifies that Sunil's dead body was found in Brij Ice Factory. Sunil's school bag and books were not found at the place of recovery. The accused Suresh and Vinod both were present there in handcuffs. The accused Suresh dug the earth near the place, where the dead body was found and pulled out the school bag from it. P.W. 4 identified his son's school bag, books and school uniform, which were sealed at the spot. The witness has proved the vest (Ext. 1), underwear (Ext. 2), pants (Ext. 3), shirt (Ext. 4) and sandal (Ext. 5) and said that Sunil was wearing all these clothes. In the other sealed cover, seven books, nine copies, a diary and an instrument box, belonging to Sunil, were found, which the witness has proved as Exts. 11 to 29. On some of the books and copies, Sunil's name and Class-VII-B was written.

18. In his cross-examination, he has deposed that a foul smell was emanating from the books as if something had rotten. Books were placed inside the school bag. The first page of the book was stuck but not torn. The books were recovered from a pit about one foot deep and about 2.5 to 2.25 feet width. The above pit was dug in his presence. The pit from which the dead body was recovered was not dug before him. The place from which the books were recovered was barren. He reached the Ice Factory at about 09:00 a.m. and the S.P. Muzaffarnagar was present there. The dead body was sent from the spot in his presence. He stayed there for about one or one and a half hour. There was a large crowd gathered there. The accused Vinod showed ignorance upon being asked about Sunil's school bag, and told that Suresh might be knowing about it. On 13.11.1982, he stayed at his elder brother's house in the city and went to the police station alone at 08:30 a.m. and there he came to know that Sunil's dead body has been found in the courtyard of the Brij Ice Factory. He further deposed that the accused Suresh was his cousin, whose father is a peon in the Brij Ice Factory.

19. Further in his cross-examination, P.W. 4 deposed that Suresh handed him envelopes Exts. Ka-7 and Ka-8 on 16.10.1982 at about 04:00 p.m. and had a conversation with him for about two-three minutes. Suresh told him that you read the letters and fulfill the demand mentioned in it. As Suresh had threatened him and the matter concerned his child's life, he did not endeavour to apprehend him. He asked Suresh to stop but he ran away. He further stated that he does not remember whether Suresh was present in the village from 08.10.1982 to 16.10.1982, as he was busy in the search for his child. Suresh's house is adjacent to his own house. On 16.10.1982, he did not search for Suresh in the factory, where his father worked. At that time, he was not familiar with Vinod and had seen him only once while going to Suresh's house.

20. On 17.10.1982 and 18.10.1982, he did not search accused Suresh and on 18.10.1982, he had said the same before the Police. He held a meeting in the village on 16.10.1982 and the same day, the news spread in the village that his son was with the accused Suresh. In the night of

17.10.1982, he was at his house in the village, when he came to know that Suresh has been arrested. On 18.10.1982, he came to the police station Civil Lines along with many villagers. He does not know when the accused Vinod was arrested. On 18.10.1982, he reached the Police Station Civil Lines, where accused Suresh was present and was being interrogated.

21. P.W. 4 further stated that it is incorrect to say that on 08.11.1982, he appointed Shri Nazar Hussain, Advocate in Meerut for bail of accused Vinod and accused Vinod had refused to come out from jail. He knows that accused Vinod's father is a doctor. Envelops (Exts. Ka-7 and Ka-8) bear the seal of Post Office, Muzaffarnagar. Since before the incident, he and the accused Suresh used to go to each other's house. On 16.10.1982, when a meeting in the village was held, some persons collected donations. There was a place mentioned in both the letters, where the ransom was to be delivered and he went to that place alone on 18.10.1982. It is correct that another witness Ramesh Chand is his relative, who is married to his uncle Tara Chand's daughter. It is correct to say that witness Tara Chand and Jodha Singh are cousins.

22. P.W.4 in his further cross-examination has said that in the month of April, since before the incident, there was an election for the Gram Pradhan, in which witness Sita Ram was one of the candidates. He does not know that there was some tension due to the election and that any firing had taken place at election booth, but some persons were arrested from the village. He himself and witness Sita Ram were also arrested and after being released from jail, he filed a complaint against Babu and Tarik Mehar Illahi. He got information about the dead body of his son on 13.11.1982 at Police Station Civil Lines. When he reached the Brij Ice Factory, about 100-150 person were present there. Some of them were his relatives and his fellow villagers.

23. P.W. 5 Ramesh Chand has stated that he knows the accused, the informant as well as the deceased. In the morning on 09.10.1982, Dr. Bale Ram came to his house inquiring about the whereabouts of Sunil and had said that Sunil had not returned from school. On 13.10.1982, at

about 06:45 pm., he went to Police Station Civil Lines, Muzaffarnagar where two inspectors and four constables in a jeep along with the accused Suresh were present at the gate. The Inspector said to him that the accused is confessing to his crime and asked him to accompany them. Thereafter, he accompanied them. On the way, they met Kamar Abbas and Jodha Singh, who also came along with them. Subsequently, they reached near the Brij Ice Factory and the accused Vinod said that he had buried the dead body of Sunil's body in this factory after he was killed with the help of a stick and with the assistance of Suresh. The Inspector recorded his statement and got his signature over it, which the witness has proved as Ext. Ka-4. Thereafter, Vinod dug the pit upto a depth of about three feet, and the deceased Sunil's dead body was found buried there. Thereafter, other Police personnel reached there and the dead body was taken out of the pit. The dead body was identifiable. He has proved the recovery memo as Ext. Ka-5 and said that Bale Ram also reached there and identified the dead body. Bale Ram asked the Inspector to enquire from the accused about the school bag, upon which, Vinod said that Suresh knows about the bag. Thereafter, the Inspector sent a Constable to the police station and brought Suresh over. Suresh said that he had buried the school bag in the north western corner, near the wall. Suresh dug the pit and a school bag was found in it. The witness has proved the recovery memo relating to school bag as Ext. Ka-6 and said that at about 01:00 p.m., the dead body was sent for post-mortem examination.

24. In his cross-examination, P.W. 5 deposed that Bale Ram is his distant relative. Police Station Civil Lines is near the District Court. Brij Ice Factory is about three-four kilometers away from Police Station Civil Lines. They reached near the factory in 20-25 minutes. The Factory gate was close but not locked. Ext. Ka-5 was written at about 08:00 a.m. It took about half an hour to dig the pit. People living nearby and Member of Parliament Vijay Pal Singh had also reached the place, from where the dead body was recovered. Dr. Bale Ram reached after the dead body was taken out of the pit. Sunil Kumar never went to his house, since before

this incident. The deceased's body was not decomposed and the face was identifiable. He cannot give any reason why he has stated to the Investigating Officer that the dead body was decomposed and could be identifiable by clothes alone. The Constable had brought Suresh within an hour. The pit from which the school bag was recovered and the pit from which the dead body was recovered were about fifteen meters apart.

25. P.W.6 Constable Vijay Pal Singh has said that he was posted at Police Station Civil Lines as a Constable in October and November 1982 and the accused Vinod's house was raided before him. On 13.11.1982, he along with Constable Dinesh Chand, Satpal and Kotwal, R.C. Gupta left the police station by jeep at 07:00 a.m. and reached Gata Bazar. They met Ramesh Chand there and took him along with them. At Prakash roundabout, two persons met and they were also taken along. They reached near the Ice Factory and Vinod said that this is the Kothri in which he, along with Suresh, had strangled Sunil with the help of a stick. Thereafter, the accused Vinod showed them the place, where the dead body was buried and dug a pit from which the dead body was found. Thereafter, other police personnel, Sunil's father and others reached there. Sunil's father identified the dead body and asked the Inspector about the school bag and books of his son. Then Vinod said that only Suresh can tell about them. Thereafter, the Inspector sent a Constable and brought forth Suresh from the Police Station, who dug another pit nearby the place from which, the school bag was recovered.

26. In his cross-examination, P.W. 6 said that earlier this case was being investigated inquired by R.C. Gupta. He had not seen Ramesh Chand earlier at the Police Station. The dead body was found at about 08:20-08:45 a.m. and the constable had gone to the police station to bring Suresh at about 11:00 a.m. Suresh came at about 12:00 noon. Accused Vinod was at the Police Station in the night. He was also present at the place where the dead body was recovered, and there was no grass cover over it. Signatures of the witnesses were obtained on the recovery memo and he had also put his signatures over it. After perusing

Exts. Ka-5 and Ka-6, the witness said that they do not bear his signature and he himself said that his signatures are there on the inquest report. When the witness was shown the inquest report, he said that it also does not bear his signature.

27. P.W.7 Mahender Pratap Singh is an expert witness and has said that he is a Document Expert with the Forensic Science Laboratory, Lucknow since 1961. He further said that he has prepared about 20,000 reports after examining disputed and sample hand writings. He compared the disputed letters Exts. Ka-9 and Ka-10 with sample letters and came to the conclusion that the person who had written the sample, shown as S-3520 to S-3610, had also written the disputed writing on Q-3513 to Q-3519. The witness has proved the expert reports as Exts. Ka-7 and Ka-8. His assistant had taken the negatives Exts. Ka-9 and Ka-10. Enlarged prints were also produced by him, which were 79 in numbers and proved them as Exts. Ka-11 to Ka-89. The point of similarity in hand writing are shown in red ink over those prints. The original letters (Exts. Ka-9 and Ka-10) and sample on written paper 23/Ka/1 to 23/Ka/92 were brought by Constable Vijay Pal Singh of Police Station Civil Lines and sealed in a box before him.

28. In his cross-examination, P.W.7 said that line quality of both the disputed and sample writing, are poor and is written by the left hand. The letter formation is not well coordinated and has no flow of writing. It is correct that for identifying, the line quality is an important factor. If line quality is found poor, then an opinion is given that the writer is not skilled. All the sample writing, which are written with left hand and right hand, match the disputed writing. The writing characteristics of both the hands has natural variation except the line quality and the muscular co-ordination.

29. P.W.8 S.I. Surendra Singh is the Investigating Officer of the case and has said that before him S.I. R.C. Gupta was investigating the case, who was ill for the last eight-nine months. He has stated about the investigation carried out in this case and said that on 17.10.1982, he recorded the statement of informant Bale Ram and accused Suresh, who

was arrested the same day. On 20.10.1982 and 21.10.1982, houses of Vinod at different place were raided. On 11.11.1982, accused Vinod was brought from Meerut Jail to Muzaffarnagar Jail. On 13.11.1982, he recorded the statement of accused Vinod and, at his pointing out, recovered the dead body of the deceased from Brij Ice Factory. He had taken samples of plain earth and blood-stained earth from the place, where the dead body was recovered, prepared its recovery memo and proved it as Ext. Ka-90. He had taken samples in two boxes, which he proved as Exts. 30 and 31. At his direction S.I. R.C. Gupta prepared the inquest report and recorded statement of the accused Suresh, upon whose pointing out, the school bag, books and copies were recovered. The recovery memo was proved as Ext. Ka-91. He proved the inquest report as Ext. Ka-92 and related papers, such as photo-nash, letter to CMO, reference report regarding post-mortem, letter to R.I., challan-nash as Exts. Ka-93 to 97 respectively. He had moved an application seeking police remand for the accused Vinod, which he proved as Ext. Ka-98 and the order of the learned Magistrate, as Ext. Ka-99. He has proved the charge-sheet Ext. Ka-102. He further stated that the accused Suresh's father Kaluram was a watchman with the Brij Ice Factory.

30. In his cross-examination he deposed that on 13.11.1982, this case was converted into one under Sections 302, 120-B, 364, 201 IPC vide G.D. No.24 at 03:10 p.m. The dead body was sent from Brij Ice Factory on 13.11.1982 at 01:30 p.m. On 17.10.1982, the accused Suresh was arrested, and a country made pistol, along with cartridges, recovered from him. He was interrogated and he confessed to his crime. The door of the factory was not locked. At about 09:30 a.m., the dead body was recovered. Suresh was called from the Police Station after the dead body was recovered. He did not record statement of any student of Government Inter College, Muzaffarnagar, who had seen the deceased Sunil on 08.10.1982 near the railway crossing. No foul smell was emanating from the books, recovered. He has proved the site plan of the place of recovery as Ext. Ka-104 and the recovery memo of the attachment, as Exts. Ka-105 and 106. The sample of plain earth and the

blood-stained earth were not sent for chemical examination. Witness Ramesh had given him the statement that the dead body was almost decomposed and could be identified only by clothes.

31. P.W.8 was recalled by the prosecution and, in his further statement, he stated that on 18.10.1982, the accused Suresh was brought before the court of the C.J.M. and his sample hand written note was taken, which he proved as Ext. Ka-121 to Ka-126. He has said that he sent the sample and the disputed writing to the hand writing expert, who instructed him that sample of hand writing from both hands be obtained. Thereafter, sample of hand writing of both the hands of accused Suresh were taken.

32. P.W.9 Head Constable Indar Pal Sharma is a formal witness, who has said that on 13.10.1982, he was posted at Police Station Civil Lines, Muzaffarnagar. S.I. R.C. Gupta handed him an application and covering letter Exts. Ka-1 and Ka-2, upon which he lodged a report. He has proved report Ext. 107 and G.D. No. 28 at 15:40 hours as Ext. Ka-8. On 16.10.1982, he prepared G.D. No. 36 at 21:30 hours, which he proved as Ext. Ka-109. He has also proved G.D. No. 20 dated 17.10.1982 at 20:30 hours as Ext. Ka-110 and G.D. No.42 at 23:05 hours dated 20.10.1982 as Ext. Ka-111 and other police papers and G.Ds. of different dates as Exts. Ka-112 to Ka-120.

33. After closure of the prosecution evidence, the statement of accused were recorded under Section 313 Cr.P.C., where they denied the prosecution case and have said that they have been falsely implicated in this case and the witnesses were deposing against them on account of being relatives of Bale Ram. Accused Vinod has admitted that on 17.10.1982, the accused Suresh was arrested and accused Vinod surrendered in Meerut after his house was raided on 20.10.1982 and 21.10.1982. He brought to Muzaffarnagar on 11.11.1982. He has said that his father had a clinic near Soojdu Chungi and the informant Dr. Bale Ram wanted to have a shop adjacent to the shop. His father did not let Bale Ram have that shop, on account whereof, he has been falsely roped in this case.

34. Accused Suresh has admitted that Ext. Ka-6 is Sunil's photograph. On 17.10.1982, he was arrested. He also admitted that on 18.10.1982, his sample hand writing was obtained and, on 05.01.1983, the sample handwriting of his both hands were taken. He has said that last year, there was election in the village. One party was of Bale Ram and another was of his own. There was dispute between both the parties and Dr. Bale Ram was confined in jail. Dr. Bale Ram had suspicion about him and therefore, he has been falsely implicated in this case.

35. In defence, D.W.1 A.S. Kapoor, hand writing and finger print expert has been examined on behalf of the accused, who has stated that since last 51 years, he is engaged in the field of a handwriting expert. He had compared the disputed handwriting with the admitted handwriting and come to the opinion that they do not match each other. He has proved his expert report as Ext. Kha-1 and stated that he himself took the photographs and prepared its negatives and enlarged the prints. He has submitted negatives as Exts. Kha-2/1 to 2/11 and enlarged photos as Ext. Kha-3 to Kha-25. In his cross-examination, he has stated that over some letters in the disputed writing, the tilt is from left to right. Letter 'Da' on Ext. Kha-8 has been written hurriedly without any hesitation, whereas letter 'Da' in Ext. Ka-22 is written with hesitation and there are no similarities between the two. If a person is in habit of writing by his right hand but writes with the left hand, then there would be difference in both his writings. The slant of writing is from left to right in Ext. Ka-14. He is in private practice. In the sample handwriting, there is a wrist movement, whereas in the disputed writing, there is fingers' movement. It is correct that in one of the cases in Meerut, the Additional Sessions Judge had passed strictures against him regarding the evidence, but the appellate court was in agreement with him. He has denied the suggestion that the strictures against him remained untouched in appeal.

36. After hearing the submissions of both parties and perusing the evidence on record, the learned Trial Judge came to the conclusion that the prosecution have been able to prove their case beyond reasonable doubt. It was proved that the accused had murdered Sunil and to conceal

evidence, buried the dead body in a pit at the Brij Ice Factory. The Trial Court found that technically the offence under Section 365 IPC was not proved as there was no evidence of deceit or use of force while taking away Sunil and, accordingly, the appellants Suresh and Dr. Vinod @ Ram Vinod @ Ram Niwas were found guilty, convicted, and sentenced to the term as indicated above.

37. Heard Mr. Chandra Bhushan Prasad, learned Counsel for the appellant and Mr. Anil Kumar Mishra, learned Additional Government Advocate appearing on behalf of the State.

38. It is submitted on behalf of the appellant that the prosecution have not examined material witnesses, such as Sita Ram (the alleged eye-witness), Jodha Singh and Qamar Abbas (witnesses of *fard baramadgi*), Dile Ram, Vijay Pal Singh, Atar Singh and Nirdosh Kumar (witnesses of inquest), other independent/public witnesses of the locality as well as the watchman and the owner of the Brij Ice Factory. Also statement of classmates of the deceased, who had last seen him at the railway crossing adjacent to the college field were not recorded and thus, non-production of these witnesses has materially affected the prosecution case. It is further submitted that in the post-mortem report, the cause of death could not be ascertained and viscera was preserved. The prosecution has not filed any Forensic Science Laboratory report to establish the cause of death, which has adversely affected their case. It is further submitted that the appellant, Dr. Vinod is neither a relative nor a friend of the deceased's family. So, there was no occasion for P.W.4 and P.W.5 to know and identify him prior to the incident.

39. In support of his arguments, learned Counsel for the appellant has relied upon **Jagish Murav v. State of Uttar Pradesh and others, (2006) 12 SCC 626**, which relates to a case of attempt to murder. In the above case, the Trial Court had acquitted the accused and in appeal, the High Court set aside the acquittal and convicted the appellants, against which, they approached the Supreme Court. There, it was found that no independent witness was examined. The site-plan was also not brought on record. Report of the Serologist was not made available. The First Information

Report ('FIR' for short) was found ante-timed and ante-dated. The statements of prosecution witnesses were full of contradictions. In view of the above, the Supreme Court set aside the judgment of the High Court and acquitted the appellants.

40. Another authority that is relied upon by the learned Counsel for the appellant is, **Sampath Kumar v. Inspector of Police, Krishnagiri, (2012) 4 SCC 124**. The above case related to murder and is one based on circumstantial evidence. In the above case, it was found that the evidence of the prosecution witnesses was not reliable. It was only after five years of the occurrence that the witness, for the first time, disclosed in Court the story about him having seen the appellant standing near the deceased. There was no independent corroboration of the prosecution story. Thus, the appellants/accused were found entitled to acquittal and the appeal was allowed.

41. Similarly, **Jaikam Khan v. State of Uttar Pradesh, (2021) 13 SCC 716**, has been relied upon on behalf of the appellant, in which, it was held that the burden is on the prosecution to prove its case and when the prosecution is not able to prove its case beyond reasonable doubt, then it cannot take advantage of the fact that the accused has not been able to probabalise their defence. Accordingly, the conviction and death sentence imposed upon the accused was found unsustainable in law and the appeal was allowed.

42. The appellant has also pressed in aid **State of Punjab v. Sawaran Singh, (2005) 6 SCC 101**, The authority relates to Section 18 Narcotic Drugs and Psychotropic Substances Act, 1985. In the above case, the evidence of prosecution witnesses was not specifically put to the accused under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) and thus, it was held that in the absence of these facts been put in the form of questions to the accused, the evidence could not have been used against him.

43. Lastly, it has been argued that the appellant was put composite question in the statement under Section 313 Cr.P.C. Therefore, he was prejudiced and thus, the conviction and sentence is not sustainable.

44. Per contra, the learned Additional Government Advocate on behalf of the State has submitted that the prosecution have proved their case beyond reasonable doubt. The case rests on circumstantial evidence and the prosecution have proved the chain of events, which ultimately point to the guilt of the appellant. The testimony of prosecution witnesses is consistent and reliable. The deceased was last seen alive in the company of the appellant and at his pointing out, the dead body was recovered. Therefore, the learned Trial Court had rightly convicted and sentenced the appellant.

45. In view of the arguments of both parties and the evidence on record, let us see whether the prosecution has been able to prove its case beyond reasonable doubt. It is settled law that in a criminal case, the burden of proof lies on the prosecution. In this regard, the following observations of the Supreme Court in the case of **Anand Ramachandra Chougule v. Sidarai Laxman Chougula and others**, (2019) 8 SCC 50 are relevant :

10. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.

46. In the present case, it is not in dispute that the deceased, Sunil, aged about 12 years was son of the informant, Dr. Bale Ram. It is also not in dispute that Sunil has died. His post-mortem report has been filed and proved. There is no direct evidence that Sunil was murdered by the appellant and the co-convict. Thus, the case rests on circumstantial evidence.

47. In a case based on circumstantial evidence, the prosecution has to prove the chain of events, which ultimately point towards the guilt of the accused and it should be proved that it was the accused who had committed the murder of the deceased and none else. In **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, the Supreme Court has laid down the following golden tests to be satisfied in a case based on circumstantial evidence :

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

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

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

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

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

48. In the present case, it is not in dispute that the first informant, Dr. Bale Ram, gave a missing report of his child, Sunil on 09.10.1982. It is also an admitted fact that co-convict, Suresh, was arrested on 17.10.1982 and the surviving appellant, Dr. Vinod, surrendered in a Court in Meerut in another case, after his property was attached on 20.10.1982 and 21.10.1982. Admittedly, the appellant, Dr. Vinod, was brought from Meerut jail to Muzaffarnagar on 11.11.1982.

49. According to the prosecution, when the informant, Dr. Bale Ram, handed over two envelopes to Sub-Inspector R.C. Gupta containing letters regarding demand of ransom, then, on 16.10.1982, a case was lodged under Section 365 of the Indian Penal Code, 1860 ('IPC' for short). It was converted under Section 364 IPC. Further, on 13.11.1982, when the dead body of the deceased was recovered, then, the case was further converted under Sections 302, 120-B, 364 and 201 IPC.

50. Looking at the facts and circumstances of the present case, the prosecution has to prove the following chain of events to establish that it was the appellant, Vinod and co-convict, Suresh, who had kidnapped and murdered the deceased Sunil, and thereafter, to remove or destroy the evidence of crime, they buried the dead body:

(1) Whether the deceased, Sunil went to school on 08.10.1982 and did not return from there, after the school was closed at 11:30 a.m.?

(2) Whether the deceased was last seen alive in the company of appellant, Dr. Vinod and co-appellant, Suresh the same day i.e. 08.10.1982 at about 11:30 a.m. or 12 noon, while going towards Mahavir Chowk from railway crossing?

(3) Whether the dead body of the deceased was recovered at the pointing out of the appellant, Dr. Vinod, on 13.11.1982 from the premises of Brij Ice Factory?

(4) Motive?

51. With regard to Point No. 1, the prosecution have examined P.W.1 Ganga Sharan Sharma and P.W.4, Dr. Bale Ram to prove this point. P.W.1 Ganga Sharan Sharma is the Principal of Government Inter College, Muzaffarnagar, where the deceased was studying in Class VII. P.W.1 has said that in his college, there were two shifts. The first shift was for Class VI to VIII, which ran from 07:30 a.m. to 11:30 a.m. He has said that deceased Sunil was studying in Class VII and had come in the first shift to the college on 08.10.1982 for studies. He has said that on 09.10.1982, Sunil's father, Bale Ram, came to him and said that his child had not returned by the evening of 08.10.1982. Then, he sent Bale Ram with a senior teacher, Ram Prasad, to his child's classroom, where his classmates told that he was seen at the railway crossing near the school field, after school break. He has said that his school's field extends up to the railway crossing and after calling for the attendance register of Class VII, it was verified that Sunil had come to school on 08.10.1982 and attended all the classes.

52. P.W.4, Dr. Bale Ram, is the father of the deceased. He said that his son, Sunil had gone to school on 08.10.1982 and did not return home. He has said that he is a doctor and when he reached his house in the evening from the clinic, his wife told him that Sunil had not returned from school, which worried them. On some occasions, Sunil, after informing, stayed at his uncle's (Tau) house, so they thought that Sunil might have stayed at his Tau's house. In the next morning, Bale Ram inquired about his son Sunil at his Tau's house and other relatives, and when Sunil was not found there, then he went to the school, where he met the Principal and the class teacher. Then, he came to know that Sunil had attended the school on 08.10.1982, but did not return home. His classmates had told that he was seen near the railway crossing, after the school break.

53. There are no major contradictions in the testimony of P.W.1 Ganga Sharan Sharma, the Principal of the Government Inter College, Muzaffarnagar and P.W.4, Dr. Bale Ram, the father of the deceased on this point. It has neither been suggested to P.W.4 Dr. Bale Ram that Sunil had not come to the college for attending classes on 08.10.1982. Though the Investigating Officer ('IO' for short) has not collected the attendance register and also not interrogated the classmates, who had seen Sunil standing near the railway crossing, but, looking into the above evidence, any lapse on the part of the IO on this point has no adverse effect on the prosecution case. P.W.4, Dr. Bale Ram, had submitted an application, (Ex.Ka.1) dated 09.10.1982, which also corroborates the prosecution case on this point. It has come in evidence that upon receiving the application of the informant the then Station House Officer, Surendra Singh had directed Sub-Inspector R.C. Gupta to take necessary action in the matter. Here, it is relevant to note that in the FIR, no accused was named and it was simply a missing report. If the first informant had any intention to manufacture a case, then he could have named the accused in his application. It proves the genuineness of the report and its receipt on 09.10.1982.

54. In view of the above discussion, we come to the conclusion that the prosecution has proved that on 08.10.1982, Sunil had gone to his

school i.e. Government Inter College, Muzaffarnagar to study and after the school break, at 11:30 a.m., he did not return home.

55. So far as Point No. 2 is concerned, the prosecution has examined P.W.3, Anwar Mohammad. According to the prosecution, Anwar Mohammad is the person who had last seen the deceased alive in the company of the appellant and the co-appellant on 08.10.1982 between 11:30 a.m.-12 noon near the railway crossing. He has stated on oath that he knows both the appellants, Suresh and Vinod and also the first informant, Dr. Bale Ram. The above witness resides in the same village where the first informant lives. He has said that on 08.10.1982, at about 11:30 a.m.-12 noon, he was going to Muzaffarnagar from his village Chitora riding a bus. When his bus crossed the railway crossing at Mandi Ram Baag and turned towards the railway station, he saw appellants, Suresh and Vinod, along with Dr. Bale Ram's son Sunil, going towards Mahavir Chowk. He has said that Sunil had a school bag with him and wearing a white shirt and a *khakhi* trouser. According to him, he returned to his village the same evening, but at about 08:00 p.m., he came to know that his brother, Aan Mohammad, residing in Meerut, was ill. So, in the morning, he went to Meerut and stayed there for 18-19 days, because, in the meantime, curfew was imposed due to Hindu-Muslim riots. When he returned to his village, then he saw the Inspector inquiring about Dr. Bale Ram's child. Then, he told the IO what he witnessed at the railway crossing, while riding on the bus. The above witness has been thoroughly cross-examined, but nothing material has come in his deposition to make him unreliable.

56. It has been submitted on behalf of the appellant that the IO has recorded his statement under Section 161 Cr.P.C. belatedly, raising suspicion about his presence on the spot. We do not agree with his submission, because, the this witness has clearly stated that the same day, he received information about the illness of his brother at Meerut, and proceeded there the next morning. He returned after 18-19 days. He has also said that due to communal riots and the imposition of curfew at Meerut, he could not return earlier to his village. This witness was

interrogated on 27.10.1982. P.W.3, Anwar Mohammad has said that his brother was suffering from double Pneumonia. In the circumstances, his staying at Meerut for the period of time that he did is not unnatural. Here, it is relevant to note that in the above circumstances, the I.O. could not have known before meeting this witness that he had seen Sunil in the company of the appellants. So, there was no occasion for the I.O. to interrogate him earlier. It has come in the statement of P.W.3, Anwar Mohammad, that when the I.O. asked him as to whether he knew anything about the child, then this witness came to know that Sunil was missing and he told the I.O. what he saw earlier at the railway crossing.

57. It is next submitted on behalf of the appellant that it was hard for P.W.3 Anwar Mohammad to see the deceased, while sitting inside a running bus, and thus, this witness is highly unreliable. We do not agree with his submission. There is no evidence on record to show as to which side of the bus P.W.3 Anwar Mohammad was sitting. It has come in his evidence that the bus was one of two-seat unit. After perusing the site plan Ex.Ka.104, it is clear that the appellants and Sunil were on the northern side of the road and Sunil went with them towards Mahavir Chowk on the southern side of the road. In that circumstance, if the bus was approaching from the eastern side, this witness would have seen Sunil and the appellants seated on the left side of the bus. Therefore, the testimony of P.W.3, Anwar Mohammad on this point is consistent and reliable. He has said that co-appellant Suresh resides in his own village, so naturally, Suresh was known to him since before.

58. So far as the appellant Dr. Vinod is concerned, the above witness has said that he knew Vinod since before 15-20 days of the incident, because co-appellant, Suresh, had brought the appellant, Dr. Vinod to his house to get an accommodation on rent. The defence has not cross-examined the witness on this point. Therefore, his testimony, that he knew the appellant Dr. Vinod since before the incident is unchallenged and, thus, reliable. There is no evidence that this witness is inimical to the appellants or is close to the first informant. He is an independent

witness and consistent in his testimony. He is thus reliable and trustworthy.

59. In view of the above discussion, we come to the conclusion that that the prosecution have been able to prove the point that the deceased, Sunil was last seen alive in the company of appellant, Vinod and co-appellant, Suresh on 08.10.1982 at 11:30 a.m.-12 noon while going from railway crossing towards Mahavir Chowk. There is no evidence that thereafter, the deceased was seen alive at any place by any person.

60. So far as Point No. 3 is concerned, the prosecution has examined P.W.4 Dr. Bale Ram, P.W.5 Ramesh Chand, P.W.6 Constable Vijay Pal Singh, P.W.8 IO Surendra Singh and P.W.9 Head Constable Indra Pal Sharma to prove this point. P.W.4, Dr. Bale Ram, has stated that when his son's dead body was found inside Brij Ice Factory on 13.11.1982, he went there and identified it. He has said that both Suresh and Vinod were present there. At the pointing out of co-appellant Suresh, the school bag and the school uniform of the deceased was dug out from a nearby place. The witness has proved the uniform, sandal, underwear of the deceased as Ex.1 to 5 and has said that Sunil was wearing all these apparels when he had left home for school. He has also identified books, copies, a diary and an instrument box as Ex. 11 to 29 and said that on some books and copies, it is written "सुनील कुमार कक्षा 7-B". He has said that he reached the ice factory at about 09:00 a.m. and after 45 minutes, the dead body was wrapped in a cloth before him. He has said that on 13.11.1982, he has stayed in the city at his elder brother's house and as usual, he went to the Police Station Civil Lines, Muzaffarnagar at about 08:30 a.m. There, he came to know that Sunil's dead body was recovered from the premises of Brij Ice Factory.

61. P.W.5 Ramesh Chand, is the first informant's distant relative and according to him, Dr. Bale Ram happens to be his aunt's (Bua) son. He has said on oath that on 13.11.1982, at about 06:45 a.m., he had reached Police Station Civil Lines, Muzaffarnagar, where, two Inspectors and four constables met him in a Jeep at the gate along with appellant Vinod

and the Inspector had told him that the appellant is confessing his crime. Thereafter, he accompanied them and near Prakash Talkies, they met Qamar Abbas and Jodha Singh, who were also taken along and then they reached Brij Ice Factory, where the appellant Vinod said before them that he had buried the dead body in the factory and it was he and the co-appellant Suresh who had killed Sunil in this *kothri* by pressing his neck with a stick and strangulated him. The I.O. recorded the statement and obtained his signature, which he proved as Ex.Ka.4 and has said that thereafter, appellant Vinod took them to the western wall of the factory and dug about three feet deep into the earth with a spade, where the dead body was found.

62. The memo of recovery (*Fard Baramadgi*) of the dead body was prepared before him, which was proved as Ex.Ka.5. P.W.5 has said that meanwhile, Dr. Bale Ram reached there, who also identified the dead body. When Bale Ram asked about the deceased's school bag, the appellant Vinod revealed that it was co-appellant Suresh who knew about the school bag. Then Suresh was called from the police station and at his pointing out, from another place to the north west, from a flower bed like feature in the earth, the school bag containing copies and books was recovered. The witness has been cross-examined thoroughly by the defence, but nothing material has come in his evidence that may raise suspicion about his testimony.

63. P.W.5 Ramesh Chand has proved the statement Ex.Ka.4 made by appellant Vinod on 13.11.1982, leading to recovery of the dead body of Sunil by digging up earth on the premises of Brij Ice Factory by Vinod himself. As the above statement of the appellant Vinod contained a confession of killing Sunil and the fact that he could lead to the recovery of the dead body of the deceased, the above statement of appellant Vinod comes under Section 27 of the Indian Evidence Act, 1872 ('Evidence Act' for short). Acting upon the above statement, the dead body was recovered. Therefore, that part of the statement, which led to the recovery of the dead body of the deceased is admissible under Section 27 of the Evidence Act. The recovery memo contains the signature of

P.W.5 Ramesh Chand. No doubt, Ramesh Chand is a relative of Dr. Bale Ram, but, merely on account of being a relative, the evidence of a witness cannot be discarded. Here, it is relevant to note that the defence has not put forth any suggestion or adduced any evidence to prove that there was enmity between the appellant, the first informant and P.W.5 Ramesh Chand. Therefore, there was no reason for P.W.5 Ramesh Chand to depose falsely against the appellants.

64. P.W.6 Constable Vijay Pal Singh is one of the policeman who accompanied the I.O. and the appellant to the Brij Ice Factory and before whom, the above recovery took place. He has testified about the manner of recovery. It is true that Constable Vijay Pal Singh has not signed Ex.Ka.4 to 6, but the fact remains that he was one of the constables who had been handed over Sunil's dead body, after the inquest was prepared and he conveyed the dead body on 13.11.1982 itself before the doctor for autopsy as would evident from the inquest report, Ex.Ka.92 and the autopsy report, Ex.Ka.3. Further, P.W.8, I.O. Surendra Singh has said that public witnesses were present at the time of recovery, so he had not taken the signatures of his fellow policemen. In the above circumstances, the presence of P.W.6, Vijay Pal Singh at the place of recovery cannot be doubted, simply on the ground that his signatures are not there on recovery memos. P.W.8, I.O. Surendra Singh is the person who had taken the witnesses and the accused to the place of recovery and recorded the confessional statement of the appellant, Vinod, which led to recovery of the deceased's dead body. P.W.8, I.O. Surendra Singh has proved the statement of the appellant Vinod about the burying the dead body of Sunil and recovery of the school bag etc. at the instance of co-appellant Suresh.

65. Here, it would not be out of place to mention that co-appellant, Suresh is the first cousin of the first informant and he lives adjacent to the first informant's house. It has come in evidence that Suresh's father was a watchman with the Brij Ice Factory. It has also come in evidence that when the police party, along with the appellant and the witnesses went to Brij Ice Factory, then the gate was closed, but it was not locked,

and, in the premises of Brij Ice Factory, the dead body, school bag, uniform etc. were recovered at the pointing out of appellant Dr. Vinod and co-appellant Suresh.

66. It has been submitted on behalf of the appellant that the earth recovered from both the places of recovery was not sent to the chemical examiner. So, it cannot be held that the recoveries were made from the above two places. We do not agree with this submission. It has come in evidence that foul smell was emanating from the pit in which the dead body of the deceased was buried, but, it may be noted that smell is a physical property which may evaporate with passage of time. So the chemical examiner, on the basis of smell, if any, could not have opined that it was the place where from the dead body was recovered.

67. It is submitted on behalf of the appellant that no local witness was called at the time of recovery, which renders the recovery doubtful. We do not agree with this submission also. It is true that according to P.W.8, Surendra Singh, a large number of people met on way from the police station to the ice factory and Ramesh Chand is a relative of Dr. Bale Ram. If the I.O. had not taken called any local witness for the to recovery, it would have no adverse effect over the prosecution case, because, Ramesh Chand, who was examined, as a witness of recovery was an independent, and it has come in evidence, that he had no animosity against the appellants to depose against them falsely.

68. It has come in the statement of Dr. Taneja, P.W.2 that the dead body could not be identified as the hair over the head were loose and the skin was peeling off. So, he may have been killed 14-20 days before the recovery of the dead body. But, it is also relevant to mention that the doctor had not found any sign of maggots infesting the dead body. In the present case, the heart and lungs had putrefied to such an extent that it was not possible to identify them, but the liver was identifiable. There is a process designated as “Adipocere”, in which cases, the dead body retains its natural form, outline and facial features so well that it may be easily identified years after death. Taking into all these, the various

changes after the death vary considerably with the temperature and the medium in which the body was lying.

69. P.W.2 Dr. Taneja had clearly opined that death had occurred about one month before the autopsy and the defence was not able to successfully challenge the above duration during the cross-examination of the witness. There is nothing in the autopsy report to show that the face of the deceased had been mutilated, though it has come in the statement of P.W.5, Ramesh Chand, recorded during investigation to the effect that the dead body was almost decomposed and was identified by clothes. But, this contradiction can only be used, so far as Ramesh Chand is concerned and has no effect on the testimony of Dr. Bale Ram, P.W.4. In any case, the clothes Ex.1 to 5 found on the body of the deceased were intact and identifiable, and which were also one of the modes of identification of the body of the deceased.

70. In view of the above discussion, we come to the conclusion that the prosecution has been able to prove that the dead body of the deceased Sunil was recovered at the pointing out of appellant Dr. Vinod on 13.11.1982 from the premises of Brij Ice Factory.

71. Recovery of the dead body from the place pointed out by the appellant is a formidable and incriminating evidence. In **State of Maharashtra v. Suresh, (2000) 1 SCC 471**, the Supreme Court, in the facts there, held that recovery of a dead body, which was from the place pointed out by the accused, was formidable and incriminating evidence. This would, the Court held, reveal that the dead body was concealed by the accused, unless there is material and evidence to show that somebody else had concealed it, and this fact came to the knowledge of the accused either because he had seen that person concealing the dead body or was told by someone else that the dead body was concealed at the said location.

72. Here, if the accused declines and does not tell the Court that his knowledge of the concealment was on the basis of the possibilities that absolved him, the Court can presume that the dead body (or physical

object, as the case may be) was concealed by the accused himself. This is because the person who can offer the explanation as to how he came to know of such concealment is the accused. If the accused chooses to refrain from telling the Court as to how has he came to know of it, the presumption is that the concealment was by the accused himself.

73. In view of above, the recovery of Sunil's dead body at the instance of appellant Dr. Vinod is a significant circumstance against the appellant Dr. Vinod, showing his complexity in this crime.

74. Now, we come to the last point that needs our consideration in the case. According to the prosecution, the murder was committed for demand of ransom. To prove this fact, the prosecution has examined P.W.4, the informant, Dr. Bale Ram, who has said that co-appellant, Suresh, had handed him over two envelopes, containing a letter and a photograph of the deceased, demanding ransom to release the child. He has said both these letters were handed over to him by the deceased co-appellant Suresh and he had threatened him that the child is in his and Dr. Vinod's custody, and if the informant acts otherwise, then serious consequences would follow.

75. The prosecution have examined P.W.7, Mahendra Pratap Singh, a handwriting expert from the Forensic Science Laboratory, Lucknow, who had compared the disputed handwriting with the specimen of Sunil's handwriting. He has said that after examination the disputed handwriting and the specimen writing, he was of opinion that both had been written by the same person. He has proved his report Ex. Ka.8 and said that the person who has written the sample documents marked S-3520 to S-3610 has also written the disputed documents marked Q-3513 to Q- 3519. It is said in the report that upon an intense comparison, the disputed handwriting are consistent, amongst themselves, in their writing, characteristics and have been written by the same person. An examination of the line quality of the disputed handwriting exhibits less fluency and grace of outline. The lack of muscular control exhibited by the unaccustomed will be reflected in lack of fluency, poor rhythm,

crudity in the formation of loops, curves and eyelets, which is absent from the normal handwriting. It means that the disputed handwriting have been written by an unaccustomed hand and are genuine.

76. So far as the sample writing is concerned, an intense comparison thereof exhibits the essential resemblance between the writing of two hands is not surprising, when it is realised that disputed handwriting is substantially the unconscious product of the mind. An intense comparison of sample writing reveals that samples marked S-3520 to S-3525 and S-3568 to S-3610 have been written by an unaccustomed hand, which exhibits lack of muscular control, fluency and grace of outline and crude formation of letter, like the disputed handwriting. In comparing both the disputed sample handwritings, the hand action, poor muscular control, slow speed of writing, trembling line quality, combined with smooth and free nature of strokes, crude formation of letters, generally longer size of letters, medium proportion of the size of letters, relative spacing, slant alignment, formation of curves, initials, terminals, direction of pen movement, poor rhythm of writing, all these, when examined together, show that both these hand writings are of the same person.

77. We have gone through the disputed hand writings as well as the specimen writing of co-appellant Suresh, and after careful examination, we agree with the conclusion of the handwriting expert P.W.7 Mahendra Pratap Singh. The shape of letters in Ex. 9 and 10 are more resembling the letters of the left hand specimen handwriting of the deceased co-appellant, Suresh.

78. The appellants have also examined handwriting expert S. Kapoor as D.W.1. He has opined that the disputed hand writings were not written by the person who had written the specimen handwriting. We have gone through his report, Ex. Kha 2/1 to Kha 2/11 and photo enlargements, Ex. Kha 3 to Kha. 25. We are of opinion that although he has tried to mention individual characteristics of letters and handwriting, but they are all superficial. He has admitted that in some of the letters in the

disputed handwriting, the slant is from the left to the right, as in the specimen handwriting. Thus, we do not agree with the opinion of S. Kapoor, where he has pointed out that the production of some of the letters was different.

79. Therefore, we have come to the conclusion that the disputed letters, Ex.Ka.9 and Ex.Ka.10, regarding demand of ransom of Rs. 30,000/-, were written by Suresh, as he was a cousin of the first informant and lived in the house adjacent to the first informant's. So he must have had knowledge about the financial condition of the first informant, which may have led the appellants to kidnap his son and demand ransom money.

80. Thus, the prosecution has been able to prove motive for the appellants to commit the said crime.

81. It is submitted on behalf of the appellants that appellant Dr. Vinod was put composite questions in his statement under Section 313 Cr.P.C., which has prejudiced him in fair trial, resulting in the miscarriage of justice. Therefore, the conviction and sentence are not sustainable. In this case, we have perused the evidence of the prosecution as well as the statement of the appellant, Dr. Vinod under Section 313 Cr.P.C.

82. First of all, it is relevant to mention here that though this point has been raised on behalf of the appellants, but, attention of the Court has not been drawn to any specific question(s) which, according to the appellant, is a composite question of such nature, which resulted in prejudice to the appellant. Upon a perusal of the statement the appellant Dr. Vinod under Section 313 Cr.P.C., we do not find any of the questions which are composite in such a manner that it would have prejudiced the appellant and adversely affected him in this case. All the questions are well-drafted and thus, the argument on behalf of the appellant has no force.

83. In view of the above discussion, we come to the conclusion that the prosecution have been able to prove the chain of events, which show that it was the appellant, Dr. Vinod and the deceased co-appellant

Suresh, who had kidnapped Sunil, and later on murdered him and, buried his dead body in the campus of Brij Ice Factory to conceal the evidence of crime.

84. The Trial Court had acquitted both the appellants of offence punishable under Section 365 IPC on ground that there was no evidence of use of force while taking away Sunil, and thus, technically, the offence under Section 365 IPC was not proved. The State has not come against the said acquittal of appellant on the charge under Section 365 IPC. So, we are reserving our views on this point.

85. In view of the above discussion, we come to the conclusion that the prosecution have to proved their case beyond reasonable doubt and the Trial Court has appreciated the evidence on record correctly and come to the right conclusion of the guilt for appellant, Dr. Vinod. He has rightly convicted and sentence the minimum of the law has rightly been passed upon the appellant Dr. Vinod as indicated above.

86. In view of above, this appeal has no force and is liable to be dismissed. It is, accordingly, **dismissed**. The conviction and sentence of the appellant are affirmed.

87. The appellant is on bail. His bail bonds and personal bonds are cancelled and the sureties discharged. He shall surrender before Chief Judicial Magistrate, Muzzafarnagar within three weeks of date to serve out the sentence awarded to him.

88. Let a copy of the order be sent to the Trial Court concerned and the C.J.M. Muzzafarnagar for information and necessary compliance. Let the lower Court records be returned to the Trial Court.

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

May 05 ,2026

Ishan/Subham