
(2008) 07 DEL CK 0035
In the Delhi High Court
Case No : Criminal A. 52 and 628 of 2003

Rai Singh

APPELLANT

Vs

State
 Ramesh @ Pappu Vs State (GNCT) of Delhi

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 173, 201, 302, 34, 363

Citation : (2008) 07 DEL CK 0035

Hon'ble Judges : Rajiv Shakdher, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : Charu Verma, for the Appellant; Richa Kapoor, APP, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Shakdher, J.—These are Appeals u/s 374(2) of the Cr.P C against the judgment dated 9.10.2002 and sentence dated 28.10.2002 passed by the learned Additional Sessions Judge, Delhi Shri M.S. Sabharwal in Sessions Case No. 40/1999 arising out of FIR No. 81/99 PS Samey Pur Badali. By virtue of the impugned judgment and order the Appellant, Rai Singh, in Criminal Appeal No. 52/2003 has been convicted with respect to offences u/s 364-A, Section 302, 201 and Section 34 of the Indian Penal Code, as also of an offence committed u/s 377 of the Indian Penal code. Similarly, by virtue of the impugned judgment the Appellant, Ramesh alias Pappu being Appellant in Criminal Appeal No. 628/2003 has been convicted for offences u/s 364-A/302/377/201 and 34 of IPC. It is important to note that there was no charge against Shri Ramesh @ Pappu u/s 377 of the IPC. Shri Sadre Alam, the Appellant in Criminal Appeal No. 294/2003 has been convicted and sentenced by the very same judgment for offences u/s 364-A/302/201 and Section 34 of IPC as also u/s 377 of the IPC.

2. We propose to dispose of all the three Appeals by a common judgment as they arise out of the same impugned judgment and order of sentence passed by the

learned Additional Sessions Judge.

3. Before dealing with grounds set out in the Appeal, it would be important to state the case of the prosecution before the trial court. On 7.2.1999 one Shri Prempal Singh R/o N-41/E-235, Jhuggi, JJ Camp, Suraj Park, Samaypur Badli, Delhi filed a missing person's report at around 8.00 pm with the Police Station at Samaypur Badli, Delhi (hereinafter referred to in short as the "said Police Station"). In the report which is exhibited as Ex.PW8/A and which was diarized as Daily Diary Entry No. 31/B it is mentioned that he is a resident of N-41/E-235, Jhuggi, JJ Camp, Suraj Park, Samaypur Badli, Delhi; that today i.e 7.2.1999 since 1.00 pm, his son Pravesh aged about six years who was playing with some children is missing and has not returned home since then. He is further stated to have communicated that even though he had tried to search for the missing child on his own, they had not succeeded and consequently, the report was being filed with the said Police Station. He also supplied the description of his missing son, Parvesh who, he stated, was about 3 ft. in the height and was wearing at the relevant time a sweater having red and green colour stripes and white colour shorts.

4. The said Prempal Singh further went on to state that he had received this information about his child, Parvesh having gone missing on 7.2.99 at around 3.45 pm, when his wife telephoned him at his work place.

5. Since the child could not be found, even after a missing person's report was lodged on 7.2.1999. Shri Prempal Singh on 9.2.1999 got an FIR registered (Ex PW9/A) u/s 363 of the IPC. The FIR briefly described the events which had transpired till then as follows:

Prempal Singh Along with his family resided in a Jhuggi bearing No. N-41/E- 235, Jhuggi, JJ Camp, Suraj Park, Samaypur Badli, Delhi; he worked as a labourer in a factory situated at B-59, Wazirpur Industrial Area, Delhi-52, for the last 14 years and that he has been residing in the aforesaid premises for the last 10 years, his family comprised of his wife, Smt Santosh Devi, his two daughters, Rajni aged 12 years and Pooja aged 8 years, and a son aged, six years, who was missing since 7.2.1999; that on 7.2.1999 he had left for work at about 8.00 am when at around 3.45 pm, his wife Smt Santosh Devi informed him telephonically that their son Parvesh had gone missing; on receiving this information from his wife, he rushed home and looked for his son Parvesh in the neighborhood ;his attempts to locate his son met with failure, which is when, he had lodged a missing person's report with the Police Station on 7.2.1999. The prosecution based on the aforesaid background facts and circumstances, attempted to establish that on 10.2.1999, Shri Prempal Singh came to the Police Station with a ransom note written in Hindi which, according to him, was found by his wife placed in between two bricks outside their residence. The ransom note (Ex PW4/X) was taken in possession by the Police vide memo dated 10.2.1999 (Ex PW4/A). The said memo (Ex PW4/A) bears the signatures of Shri Prempal Singh PW8 and sub-Inspector Birender Singh (PW 15).

6. It is the prosecution's case that it is at this point in time that Prempal Singh (PW8) for the first time suspected the Appellant's Rai Singh and Ramesh @ Pappu as possible suspects in the case. The investigation of the case was taken over by Inspector Ved Prakash, the Station House Officer of the said Police Station. Taking the aforesaid suspicion forward a supplementary statement of Prempal Singh (PW8) was recorded by Inspector Ved Prakash. By way of his supplementary statement Shri Prempal Singh (PW8) is stated to have said that he was informed by the playmates of his child Parvesh, Keshav (PW2) and Rupesh (PW3) that Rai Singh had given a one rupee coin to Pravesh and asked him to accompany Ramesh @ Pappu for purchasing a sweet/candy, and that upon receiving the ransom note, his suspicion of Rai Singh and Ramesh being involved in the kidnapping of his child got confirmed.

7. It transpires that Inspector Ved Prakash made enquiries with the complainant, Prempal Singh, his wife Smt Santosh Devi, as well as, the two playmates of deceased Pervesh, Keshav (PW2) and Rupesh (PW3). Upon making enquiries endeavours were made to locate the appellants/accused Rai Singh, Ramesh @ Pappu and Sadre Alam. A police party finally apprehended the appellants/accused near the western Yamuna canal adjacent to north of Khera Kalan, Bawana Road, Delhi, at around 7.00 am on 11.2.1999.

8. The appellants/accused were interrogated. Upon interrogation they made disclosure statements which led to the recovery of the body of the deceased child, Pravesh and the weapon of offence; a ligature (i.e Tagri). The appellants/accused guided the police party to a deserted DTC depot on the bank of western Yamuna canal. Inside the deserted depot which was locked and had a peripheral boundary wall which was about 14 ft. high, the body of the deceased child was found behind a cluster of reeds and bushes. The body of the deceased child was identified by Shri Prempal Singh (PW8). At that point in time when the body was recovered it was found that the clothes from the lower half of the body were removed and there was a abdominal wound. A ligature (i.e tagri) was found tied around the neck of the deceased child. A statement with respect to identification of the body was recorded by the investigating officer Mr. Ved Prakash both of the father of the child Prempal Singh (PW8), as well as, the uncle, that is, the brother of Prempal Singh, Shri Hardesh. The said statements are marked as Ex PW22/B and Ex PW22/C respectively.

9. Consequent thereto, the dead body was sent for post mortem. The post mortem was conducted on 12.2.1999 at about 12.30 pm in the afternoon. The post mortem was conducted by Dr. L.C. Gupta (PW16). The post mortem report notes that upon external examination it was found that both hands of the deceased child were tied together with a coloured Polythene; a colorless polythene was found around the neck as loose ligature; and that a ligature (tagri) with black coloured multilayer thread/string having two metal beads (Ghungru) found around the neck was used to strangulate the deceased child causing death by asphyxia. The report also noted that the child had been

castrated and his testicles were found removed from the scrotum. Importantly, the report has also opined that the child had been sodomised. Consequently, an anal swab was taken for detection of semen stain and/or sperm etc. This report was proved by Dr. L.C. Gupta (PW16). Based on the post mortem, Inspector Ved Prakash (PW22) in his testimony has stated that when he was informed that the child had been sodomised on 13.2.1999 the Appellants/accused were once again interrogated with respect to the castration and sodomy of the child before being put to death. Based on information received, two out of the three accused, that is, Appellants; Rai Singh and Sadre Alam were sent for medical examination. Their medical examination was conducted on 13.2.1999 about 2.30 pm. During examination blood samples of both Rai Singh and Sadre Alam were also taken and sealed. In this examination opinion was sought of the experts as to whether the appellants/accused Rai Singh and Sadre Alam were capable of sodomy. The doctor concerned vide his opinion (Ex PW19/A) opined that both Rai Singh and Sadre Alam were capable of sodomy. On 15.2.1999 further investigation was carried out which resulted in, further disclosure being made. According to the prosecution, the appellant, Rai Singh led the police to the site near the Yamuna canal situated near Raja Vihar; being the place where he had hidden behind some bushes his shorts and trousers which he was wearing at the time of commission of the crime. The said shorts and trousers were seized vide seizure memo Ex PW 15/E and sealed with the seal of "VP". Similarly, the other accused Sadre Alam is said to have pointed out the area where he had hidden the knife which was allegedly used to inflict injuries on the child. The said area was also adjacent to the area from where the clothes of the accused Rai Singh were recovered. A sketch of the knife was made, which is, marked as Ex PW 15/F. The said knife was seized vide seizure memo (Ex PW 16/G) and sealed with a mark of "BS". The said recoveries made were deposited with the store room of the Police Station. In the interregnum the police claim that they had also seized a note book from the house of the accused Rai Singh which contained certain writings, in the form of verse. The said note book which is marked as P-2 was seized vide memo Ex PW12/A. The police also obtained specimen handwriting of the accused on blank sheets of paper marked as Ex PW22/N to Q. The sealed parcels received after the post mortem from the mortuary were sent to the CFSL for analysis. The CFSL vide its report dated 8.6.1999 (Ex PW 22/X) has given its opinion which we propose to discuss in the latter part of our judgment.

10. Based on the aforesaid, the police filed a report u/s 173 of the Cr.PC. By an order dated 8.9.1999 charges were framed against the appellants/accused. In so far as Rai Singh and Sadre Alam are concerned, an additional charge u/s 377 of IPC was also framed. The charges framed against all three accused Rai Singh, Ramesh @ Pappu and Sadre Alam read as follows:

Firstly, that on 07.02.1999 during the day time after 12 pm you all in furtherance of your common intention kidnapped a minor Parvesh s/o Prem pal Singh from the street near Jhuggi of Prem Pal Singh at Suraj Park, Delhi within the jurisdiction of PS Samay Pur Badali with intention to cause his death or hurt to

him in order to compel his parents to pay a ransom of Rs. 1.10 lac and thereby committed an offence punishable u/s 364A IPC, within the cognizance of this Court.

Secondly, that after so kidnapping the minor Parvesh on the aforesaid date and place you all in furtherance of your common intention committed his murder intentionally and knowingly by strangulation and cutting his tactical at a secluded place growing bushes surrounded with walls of DTC Depot, Western Yamuna canal, Bawan Road, within the jurisdiction of P S Samey Pur Badali and thereby committed an offence punishable u/s 302/34 IPC, within the cognizance of this Court.

Thirdly, that after intentionally and knowingly committed the murder of the said boy Parvesh Pal on the above said place mentioned above and after 12 pm on 07.02.1999, you all in furtherance of your common intention concealed his dead body under the bushes, threw his tactical in the Yamuna canal disposed off his clothes, as well as clothes of your co-accused Rai Singh as the knife used in the commission of offence so as to cause disappearance of the evidence of his murder and in order to save you from legal punishment and thus committed an offence punishable u/s 201/34 IPC, within the cognizance of this Court.

11. In addition the following identical charge was framed against the accused Rai Singh and Sadre Alam:

That on 07.02.1999 after kidnapping the minor Parvesh Pal after 12 pm from his street near Jhuggi , Suraj Park, you took him to a deserted place in the four walls of DTC Depot, in the south of Bawana Road, Western canal, Bawan Road, within the jurisdiction of P S Samey Pur Badali and before committing his murder you had carnal intercourse with the said boy against the order of nature, and thereby committed an offence punishable u/s 377 IPC, within the cognizance of this Court.

12. The appellants pleaded that they were not guilty and claimed trial. Consequently, a trial was commenced and by the impugned judgment and order the appellants were convicted of the charges framed against them and sentenced for the offences as stated hereinabove.

13. The learned Counsel for the appellants has impugned the judgment of the trial court on the following grounds:

(i) there is no eye witness to the commission of the crime. The entire case of the prosecution is based on circumstantial evidence which requires the prosecution to establish with certainty every circumstance so that the court can come to a definitive conclusion with regard to guilt of the accused. It is the submission of the learned Counsel for the Appellant that the test to be applied by the Court in the case of conviction based on circumstantial evidence is that all the circumstances, which are links in the chain, should unerringly point to the guilt of the accused and exclude every such hypothesis which establishes the innocence of the accused;

(ii) the learned Counsel for the appellants has submitted that there are several contradictions and inconsistencies in the testimony of the witnesses produced by the prosecution. In particular, the learned Counsel has attempted to establish that the edifice of the prosecution's case is based on the last seen circumstance, which is, that the deceased child was last seen in the company of the appellants/accused, Rai Singh and Ramesh @ Pappu. This the learned Counsel submitted is demolished upon a close scrutiny of the testimonies of the mother, Smt Santosh (PW1) and Keshav (PW2) and Rupesh (PW3) which form the basis of the last seen circumstance. An examination of the testimony of Smt. Santosh (PW1) scrutiny would show that she had based her testimony on what she had been told by the two child witnesses, Keshav (PW2) and Rupesh (PW3). While both Keshav (PW2) and Rupesh (PW3) had categorically stated that the deceased child Pravesh returned after having purchased the sweet/candy. The learned Counsel further submits that as a matter of fact one of the child witness Rupesh (PW3) in the cross-examination had made a reference to only Rai Singh as the one who had offered the one rupee coin to the deceased child for purchasing the sweet. The learned Counsel submits that there is no reference to the other accused Ramesh in the testimony of Rupesh (PW3).

(iii) The learned Counsel for the Appellants has also referred to other discrepancies, which is, that there is no mention in the missing person's report filed on 7.2.1999, or in the FIR registered on 9.2.1999 of the appellants as possible suspects.

According to the learned Counsel for the Appellants this fact attains importance in view of the fact that there was never any suspicion in the mind of the family as regards to the Appellants; the appellants have been named as accused only on the say so of the police.

(iv) the learned Counsel for the Appellants has further submitted that the ransom note on the face of it lacks credence. Firstly, for the reason that it does not with certainty give the location, time or place where the ransom money had to be paid and second, it makes no sense for the Appellants to have placed the ransom note outside the house of the deceased child on 10.2.1999 when, according to the post mortem report, the child had already been killed on 9.2.1999;

(v) the counsel for the Appellants also submitted that the place where the crime is said to have been committed according to the prosecution; is highly unlikely and improbable. It is the learned Counsel's submission that it would not have been possible for the Appellants to have scaled a fourteen (14) feet high boundary wall of the deserted DTC depot with a six year old child without aid of a ladder or some such equipment. It is contended that the prosecution has not recovered a ladder or any other such equipment which may have been used to scale the boundary wall.

(vi) the learned Counsel for the Appellants has also submitted that the recoveries allegedly made by the Appellants are plants and hence, have to be discarded;

(vii) lastly, the learned Counsel for the Appellants has submitted that the charge u/s 377 of the IPC against the accused Rai Singh has not been proved and the reasoning of the trial court on the aspect also cannot be sustained for the reason that there was no blood sample of the accused taken which could then have been matched with the rectal swab taken at the time of the post mortem of the deceased child.

14. Per contra, the learned Additional Public Prosecutor (APP) has submitted that the court would take cognizance of the fact that the deceased child was last seen with the accused Rai Singh and the Ramesh @ Pappu. In this regard, the learned APP seeks to place reliance on the testimony of the mother, Smt Santosh Devi (PW1) and Keshav (PW2) and Rupesh (PW3).

15. The learned APP has attempted to meet the submission of the learned Counsel for the Appellants that the Appellants/accused were not named either in the missing person's report lodged on 7.2.1999, or in the FIR registered on 9.2.1999 by taking recourse to the testimony of the father, Prempal Singh (PW1) that the complainant's suspicion became firm only after the receipt of the ransom note on 10.2.1999 which thereupon propelled the investigating officer, Shri Ved Prakash (PW22) to record a supplementary statement of the complainant, in which, he had categorically made a statement suspecting the role of the Appellant, Rai Singh in the kidnapping of his son Pravesh.

16. The learned APP has further submitted that after apprehending the Appellants, at the instance of the complainant the Appellants were interrogated. In the course of their interrogation on 11.2.1999 the Appellants made disclosure statements which led to the recovery of the dead body and the ligature used for strangulating the child Pravesh. The learned APP further submitted that upon receipt of information by the investigating officer Shri Ved Prakash from Dr. L.C. Gupta who conducted the post mortem it got revealed that the child Pravesh had been sodomised before being done to death. Consequently, further investigation was carried out which led to the recovery of the Knife used for inflicting abdominal wound, as well as, carrying out castration of the deceased child, as well as the recovery of the clothes worn by Rai Singh at the time of commission of the crime. The learned APP relied upon seizure memo of the clothes (Ex PW 15/E) which relates to the clothes i.e trousers and shorts worn by accused Rai Singh at the time of commission of the crime. The learned APP also placed before the court (Ex PW 15/G) which is the seizure memo pertaining to the Knife used in castrating, as well as, inflicting abdominal injuries on the deceased child. The learned APP also relied upon Ex PW 22/B and Ex PW22/C which were statements of the father of the deceased Shri Prempal Singh and the uncle, Shri Haradesh (PW7) whereby they identified the dead body of Pravesh which at the relevant point in time was lying behind the bushes, in the compound of the DTC depot, near Bawana Road. The learned APP also relied upon the post mortem report (PW16/A), the CFSL report (Ex PW22/Y), the ransom letter (Ex PW4/X), and the report of the handwriting expert to demonstrate that the accused had a common

intention to abduct the child for ransom on 7.2.1999, and that they kidnapped the child after being sodomised by the accused Rai Singh had been done to death by manual strangulation.

17. Having heard the learned Counsel for both the Appellants and the State and after perusal of the evidence on record, we are of the view that there are several crucial missing links in the evidence placed before the Court by the prosecution. The discrepancies in our view have arisen are largely due to crucial lapse in the investigation of the case by the police.

18. Our conclusion that the material placed before the court is not sufficient to convict the Appellants of the offences they are charged with, is based on the following:

19. The first lacunae in the case is with regard to the reference of the prosecution on the testimonies of the mother Smt Santosh Devi (PW1), Keshave (PW2) and Rupesh (PW3) to establish last seen circumstance. A close scrutiny of the testimony of Smt Santosh Devi would establish that the case of the prosecution is that between 12.00 noon and 1.00 pm the deceased child, Pervesh was accosted by Shri Rai Singh in the company of Ramesh @ Pappu. Rai Singh at that point in time offered a one rupee coin to Pravesh. He is said to have told his accomplice Ramesh @ Pappu to accompany the child Pravesh to purchase a sweet/Candy. It is also the prosecution's case based on the testimonies of the two child witnesses PW2 and PW3, that is, Keshav and Rupesh that they were made to flee the place as they had been slapped by Rai Singh and that they immediately hid themselves in a nearby toilet. A close scrutiny of the testimony of the mother, Smt Santosh Devi (PW1) would show that she seemed to have a cordial relationship with the family of Rai Singh one of the accused, as at the relevant point in time she was basking in the sun on the roof of her house in the company of several women which included the mother of the accused Rai Singh. In her testimony she admits that she had seen the accused Rai Singh and Ramesh @ Pappu in the morning at 12.00 noon. In so far as the accused Sadre Alam is concerned, she says that she had not seen him on the fateful day i.e 7.2.1999. She has also deposed that she was told by Rupesh (PW3) that the accused Rai Singh had given one rupee coin to Pravesh and had sent Pravesh with the accused Ramesh @ Pappu to purchase a sweet/candy. In her testimony she has said that on the same day i.e on 7.2.1999 at about 6.30 pm accused Rai Singh and Ramesh @ Pappu came to their house at which point in time she enquired from them about the whereabouts of her son, Pravesh in response to which she was told that after getting her son, Pravesh a Candy they have left Pravesh in front of her house and thereafter left for work. The fact that the deceased child Pravesh had come back after purchasing the Sweet/candy is also borne out from the testimony of Keshav (PW2) where PW2 has stated that he had seen Pravesh eating the toffees and that Pervesh had two such toffees in his hands. Furthermore, what is also noted from the deposition of PW1, the mother, that the relationship between the family of the deceased child and Rai Singh was

cordial. The mother of the accused Rai Singh, as noted above, was at the relevant point in time in the company of the mother of the deceased child. Furthermore, the mother of the deceased child, Smt Santosh (PW1) has also accepted the fact that the accused Ramesh @ Pappu occasionally visited her house and had seen the accused Rai Singh and Ramesh @ Pappu at about 6.30 pm on the fateful day which is when, she had made enquiries about disappearance of her son, Pravesh whose reply to the effect that they had brought the child back after purchasing a toffee; seemed to have satisfied PW1. As a matter of fact, Rupesh (PW3) has also stated that both accused, Rai Singh and Ramesh @ Pappu had also joined in the search of Pravesh. Though the learned Counsel for the Appellants has also tried to highlight the point that Rupesh (PW3) in his cross-examination makes no reference to Ramesh @ Pappu at that point in time when Pravesh was made an offer of a toffee by accused Rai Singh is according to us insignificant as in the examination-in- chief there is a reference to both Rai Singh as well as Ramesh @ Pappu. Nevertheless, we are of the view that the prosecution's attempt to place the guilt on the doorstep of the Appellants, Rai Singh and Ramesh on the basis of them having been last seen with Pravesh cannot be sustained in view of the discussion above.

20. The aforesaid discussion attains importance in view of the fact that on 7.2.1999 when the complainant i.e Prempal Singh, the father of the deceased child lodged a missing persons report with the Police Station he did not name the Appellants as possible suspects. As a matter of fact, even on 9.2.1999 when Shri Prempal Singh lodged an FIR with the Police he did not name that the Appellants as possible suspects in the case. It is important to note at this juncture an observation by the trial court while recording the testimony of the mother, Smt Santosh Devi (PW1) which reads as follows:

The witness is not replying the question as to whether she suspected the complicity of accused Ramesh and Rai Singh or not.

21. The above circumstance is rather curious in view of the fact that the uncle of the deceased child, that is, the brother of Shri Prempal Singh; Shri Haradesh (PW7) in his testimony has stated that about three to four years ago the accused, Rai Singh had attempted to molest Rajni, the other girl child of Shri Prempal Singh but that attempt failed and he was caught red handed and beaten up by the residents of the locality. If this were true one would have expected the family members to immediately name Rai Singh as a possible suspect in the abduction of the child, Parvesh. As a matter of fact, in his cross-examination Haradesh Singh (PW7) admits that with respect to the molestation of the other girl child of Prempal Singh, Rajni, no police report was lodged; though there is a denial to the suggestion made in the cross- examination that since molestation did not take place, no report had been made to police.

22. The third major lacunae in the case, according to us, is with regard to the ransom note. It does not fit with the sequence of events placed before us by the prosecution that the ransom is the motive behind commission of this ghastly

crime. The reason being that as per the post mortem report, the child had been done to death on 9.2.1999 around 12.30 pm in the afternoon. The ransom note according to the testimony of PW1, that is, the mother Smt Santosh Devi was received on 10.2.1999. Therefore, it does not fit in the sequence of events as to why the kidnappers would have delivered a ransom note at the house of Shri Prempal Singh after the child had already been done to death on 9.2.1999 and taken the risk of placing the ransom note in front of the house when it was known that there was heightened tension on account of the missing child. Furthermore, a bare perusal of the ransom note (Ex PW4/X) shows that ransom note does not state with specificity as to when, where and how the ransom had to be paid. This is apart from the fact that in the ransom a demand is made to deliver Rs. 1,10,000/- on 15.1.1999 i.e nearly three weeks prior to the date of kidnapping of the child. Even if we were to overlook the date of 15.1.1999 as an inadvertent mistake on the part of the kidnappers, the reading of the note does not inspire confidence as being a note which was written contemporaneously by the accused, Rai Singh on 10.2.1999. The accused, Rai Singh who, according to the prosecution is the author of the ransom note is moderately literate . He is stated to have studied up to 8th standard from DAV Senior Secondary School, Samaypur Badli, Delhi. Furthermore, the prosecution in attempting to prove that the ransom note was in the hand of the accused, Rai Singh has sought to compare this questioned document with the writings found in a note book (PW-2) seized from the house of the accused, Rai Singh. The writings found in the note book are according to the prosecution in poetry/verse form. Taking into account these cumulative facts it does not appear to us that the said ransom note placed on record as evidence by the prosecution is contemporaneous in point of time to the date when the prosecution has stated the said ransom note was recovered by the mother of the deceased child.

23. The other lacunae in the case is with regard to the site where the crime is stated to have been committed. The prosecution's case is that the crime was committed within the compound of a deserted DTC depot near the western Yamuna canal, North of Bawana Road. The boundary wall which envelops the said DTC depot is, even according to the prosecution's witnesses PW7; nearly 14 ft. in height with an iron railing on the top of the boundary wall. The prosecution witnesses have clearly stated that when they were informed by the accused as to the place where the dead body of the child could be recovered they could enter compound of the DTC depot only by using a ladder to scale the boundary wall. In these circumstances, we are not convinced that the Appellants/accused could have carried Pravesh across the boundary wall without the help of a ladder or some other equipment to facilitate them to scale the wall. In the medical examination it has come out of both Sadre Alam and Rai Singh are of an average built; the child himself was about 3 ft. in height. Therefore, it seems improbable if it is for a moment believed that the child was kept on the shoulder of the accused, Sadre Alam as sought to be contended by the prosecution with Rai Singh on the top of the wall that he could have bent down and physically covered

a distance of several feet and lifted the child over the wall when admittedly the wall had iron railing on the top of it. A close scrutiny of the post mortem report also reveals that both the hip and thighs of the dead body had stains of mud and dust. There is no Explanation as to how mud stains were found on the hip and thighs of the dead body.

24. As regards the scientific analysis carried out on the Knife which is said to be weapon used both to inflict abdominal wound and to castrate the deceased child; it is revealed in the report that the blood on the Knife (Ex-6) was so insufficient in quantity that it was not possible to carry out a serological study. An analysis of the trousers/pant (Ex 5a) and the shorts/underwear (Ex 5b) did not reveal any blood stains. The reliance of the prosecution on the rectal swab (Ex-9) which the CFSL report opined carried human semen would not help the prosecution since the blood samples of Rai Singh (Ex-4) had putrefied and haemolysed and hence no opinion could be formed. Furthermore, in the CFSL report (Ex PW22/X) it is clearly opined that in so far as the trouser/pant Ex 5a and shorts/underwear Ex 5b used by the accused, Rai Singh are concerned, no stains of semen could be detected. The aforesaid scientific evidence on which reliance was placed by the learned APP does not unerringly conclude that the accused Rai Singh had sodomised Pravesh as alleged. As a matter of fact, the finding and the conclusion of the trial court on this issue is bereft of any analysis or reasoning. The reasoning of the trial Court is found in Paragraphs 42 and 43 of the impugned judgment. The relevant extracts reads as follows:

42. Accused Rai Singh has also been charged u/s 377 IPC and the allegations against him are that on 7.2.99 after kidnapping the minor child Parvesh, he had carnal intercourse with the said boy against the order of nature. The IO of the case Ins. Ved Prakash has deposed that after the post mortem, Dr. L.C. Gupta had disclosed that deceased Parvesh Pal before his death was sodomized. Dr. L.C. Gupta was examined as PW-16 and he also opined that anal findings are suggestive of something hard blunt penis like object introduced in it. This observation of Dr. L.C. Gupta also reveals that before his death, Parvesh Pal was subjected to sodomy.

43. Accused Rai Singh was also medically examined by Dr.Keshav Sharma PW-11 and he proved his report Ex. PW-11/A. On examination the doctor found that the accused Rai Singh has got the capacity to perform sexual intercourse and there was nothing to suggest that he was not capable of doing carnal intercourse. These circumstances also prove that accused Rai Singh, who was capable of doing carnal intercourse, had a carnal intercourse with the child Parvesh Pal before committing his murder.

25. A bare perusal of the observations made in the afore-mentioned paragraphs of the impugned judgment would show that there is nothing on record to connect the accused Rai Singh with the offence u/s 377 of the IPC. It is to be noted that the trial court has exonerated the other accused Sadre Alam of the offence u/s 377 of the IPC, however, curiously the trial court convicted Rai Singh when there

was no evidence to connect him to the offence. As a result of the discussion held above, we are of the view that the prosecution has failed to prove its case beyond a reasonable doubt and because of the lacunae and gaps in the evidence placed before the court which have come to fore, we are of the view that the benefit of doubt should go to the Appellants. Resultantly, the Appeal is allowed and the accused are directed to be set free unless they are required in any other case.