
(2009) 04 DEL CK 0069
In the Delhi High Court
Case No : Criminal A. No. 56 of 2009

Raj Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0069

Hon'ble Judges : P.K. Bhasin, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : R.S. Soni, in Criminal A. No. 56/2009 and R.K. Burman, in Criminal A. No. 221/200, for the Appellant; M.N. Dudeja, APP., for the Respondent

Judgement

P.K. Bhasin, J.—These two appeals are directed against the judgment dated 08.12.2008 and order on sentence dated 11.12.2008 passed in Sessions case No. 37/2008 arising out of the FIR No. 138/2003 PS Kapashera, whereby the Additional Sessions Judge, Dwarka has convicted the two appellants under Sections 302/201/363 IPC. The appellant Raj Kumar was additionally convicted u/s 457 IPC also. Both the appellants were sentenced to life imprisonment and also to pay a fine of Rs. 5,000/- each, in default to further undergo simple imprisonment for three years u/s 302 IPC. u/s 363 IPC the appellants were awarded five years" rigorous imprisonment and fine of Rs. 3,000/, in default of payment of fine to undergo simple imprisonment for one year. For the conviction u/s 201 IPC appellants were sentenced to two years rigorous imprisonment and fine of Rs. 1000/- each, in default to undergo simple imprisonment for six months. Appellant Raj Kumar was awarded rigorous imprisonment for two years and fine of Rs. 1,000/-, in default of payment of fine to further undergo simple imprisonment for six months u/s 457 IPC. All the substantive sentences, however, ordered to run concurrently.

2. The appellants have been held guilty of having first kidnapped one 3 1/2 years old child Himanshu from his house in the night intervening 24/25.7.2003 and thereafter for having murdered him and thrown away his dead body in order to

destroy the evidence of the crime. The relevant facts are that the appellant Raj Kumar had married PW-1 Smt. Rachna, who was a widow, on 15.5.2002. Her first husband Devender had died on 5.11.1999 and out of that wedlock she had been blessed with the deceased child Himanshu. It was the case of the prosecution that although Raj Kumar had married a widow having a child from her first marriage but after marrying her the relations between husband-wife became strained over some matters including that of Raj Kumar being a drunkard due to which Rachna left her matrimonial home and started living at her parental house in Shahabad, Mohammadpur, New Delhi. Further case of the prosecution is that on the night of 24.7.2003, the complainant Rachna as well as all other family members of her family including her son Himanshu had gone for sleep and when at about 2.00 a.m. the mother of the complainant Smt. Rachna woke up to attend the call of nature she noticed that Himanshu was missing from his bed, which was adjoining to the bed of his mother Smt. Rachna. She then woke up everyone else also. They all looked around for Himanshu but he could not be found and so the police was informed. The police reached and immediately on coming to the house of the complainant her statement Ex.PW-1/A was recorded.

3. In the statement Ex.PW-1/A Smt. Rachna had claimed that after her marriage with accused Raj Kumar, a TSR driver, on 15/05/02, which was solemnized after the death of her first husband, their relations became strained for some reasons and as Raj Kumar was a drunkard and so she had started living with her parents. That night at about 11 p.m. Himanshu was put to sleep. Around 2 a.m. when her mother got up for going to bathroom she did not find Himanshu on his bed. Then everybody was woken up and Himanshu was not found in the house and was not traced outside also. She expressed the suspicion against her husband Raj Kumar in the disappearance of Himanshu. In view of the suspicion expressed by Rachna that her husband only must have removed the child after entering the house SI Shiv Singh (PW-11) got one FIR under Sections 351/363 IPC registered. He also accompanied by PW-4 Mukesh, brother of the complainant, who was also living along with her in the same house, and other police officials went to the village of Raj Kumar which was somewhere in District Sonapat. Raj Kumar was not found present in his house at the time of their visit there. His father was, however, found and he gave the information that Raj Kumar had not come to the house even on the last night (when the deceased Himanshu was allegedly kidnapped from his house). The police team also came to know that Raj Kumar was a close friend of one Mahipal, (appellant in CrI.A. No. 221/09) who was also living in the same village. Then the police team went to the house of Mahipal but he was also not present in his house. However, Mahipal's brother Ashok was present and he informed the police that Mahipal was a vagabond type of person and then Ashok also joined the police team for the search of Raj Kumar and Mahipal.

4. Since the two accused could not be found at different places where Ashok had taken the police, the police team came back to Delhi. When they reached Singhu Border, Raj Kumar was spotted there by PW-4 and immediately he was captured.

He was interrogated by the investigating officer and he is alleged to have made a disclosure statement and informed the police that he could get the dead body of Himanshu recovered. Raj Kumar also allegedly informed the police regarding the involvement of accused Mahipal in the crime and then Raj Kumar had pointed towards accused Mahipal who was standing at some distance from the place from where Raj Kumar was apprehended. Thereafter accused Mahipal was also arrested and he also allegedly made a disclosure statement and he also volunteered to get the dead body of Himanshu recovered. It is the further prosecution case that pursuant to their disclosure statements both the accused had then led the police team to a place near a school in Shahbad Mohammadpur, in which area the complainant was living with her parents and brothers, and from that place on their pointing out the dead body of the deceased Himanshu was recovered which was lying in the bushes.

5. The dead body of Himanshu was got subjected to mortem examination and as per the post-mortem report Ex. PW-13/A the cause of death of the deceased child was "smothering.

6. After completion of usual investigation formalities both the accused-appellants were charge-sheeted and in due course they came to be charged and tried for the various offences mentioned already and for which they were finally convicted also by the learned Additional Sessions Judge. Feeling aggrieved, both the convicts filed separate appeals. However, since both the appeals had arisen out of the same judgment of the trial Court they were heard together and so are being disposed of by this common judgment.

7. The arguments advanced by learned Counsel for the two appellants were almost common. It was contended that the conviction of the accused is not based on any admissible evidence and is based on the confessional statements which they had allegedly made after arrest. In this regard learned Counsel drew our special attention to paras No. 14, 16, 33, 34 and 35 of the impugned judgment wherein the learned Additional Sessions Judge has not only extensively quoted the totally inadmissible parts of the disclosure statements of both the accused but had also made totally impermissible observations in para No. 35 to the effect that the disclosure statements of the two accused to the effect that they had kidnapped and murdered the deceased child Himanshu were duly corroborated and strengthened from not only the medical evidence adduced by the prosecution but also from quick succession of events which followed after disappearance of the child from his house. Learned Counsel further submitted that the entire prosecution case rests on the solitary circumstance of the recovery of the dead body at the pointing out of the two accused pursuant to their respective disclosure statements and based on that solitary circumstance alone the learned trial Court has convicted them. It was further contended that even this circumstance had not been established beyond reasonable doubt and in any event even if it is held to be established, the same by itself was not sufficient to convict the accused persons for the offence of murder. It has also been argued

that although the prosecution had relied upon one more circumstance but that was even more weak circumstance than the first one and that circumstance is the expression of suspicion by the wife of accused Raj Kumar against him for his involvement in the disappearance of Himanshu and even the trial Court has not taken that into consideration. Learned Counsel submitted that in fact that police had already recovered the dead body of the child before the accused were arrested and that is evident from the fact that in their arrest memos, which were allegedly prepared around 6.30 p.m. on 25.7.2003, Section 302 IPC was mentioned. Learned Counsel argued that it is the prosecution case itself that by the time the accused persons were arrested it was not known to the police that child Himanshu had been murdered and so Section 302 IPC having been written in the first arrest memos shows that the police had already come to know about the murder of Himanshu and the body of Himanshu also must have been recovered by the police.

8. On behalf of appellant Mahipal his learned Counsel submitted that as far as this accused is concerned neither there was any motive for him to join his co-accused Raj Kumar in kidnapping the child and then killing him nor even a suspicion was expressed against him by any of the members of the complainant's family and so there was no justification for his arrest. Learned Counsel for Mahipal also submitted that as far as the circumstance of recovery of dead body of the deceased Himanshu allegedly was pursuant to the disclosure statement made by Mahipal was totally inadmissible inasmuch as it was not clear from the evidence of any of the witnesses who had spoken about the recovery of the dead body of the child as to who out of the two accused had given the information about the child's body to the investigating officer first in point of time and further that none of the witnesses had also claimed as to what exactly this accused had informed to the police and where he had led the police team along with the co-accused. In support of this submission, learned Counsel has placed reliance on a decision of a Division Bench of this Court in Arun Kumar v. State (1996) 2 Crime 470, wherein the evidence of recovery of the dead body of the deceased on the pointing out of the two accused persons was not found to be acceptable. Learned Counsel submitted that Mahipal has been implicated in the present case just because the police had some information that he happened to be a closed friend of accused Raj Kumar although even to that effect also there is no evidence whatsoever.

9. On the other hand learned APP for the State submitted that prosecution has been able to establish various circumstances which lead to only one conclusion that both the accused had in furtherance of their common intention kidnapped and killed the deceased child Himanshu. Mr. Dudeja submitted that the case against the two accused was not based on one circumstance only and the circumstance which the prosecution had relied upon are:

(1) Suspicion expressed against accused Raj Kumar by his wife immediately on the child Himanshu having been found missing from his house around 2.00 a.m.

on 25.7.2003;

(2) There was a strong motive for accused Raj Kumar to eliminate child Himanshu who was born out of the wedlock between his wife and her first husband Devender Kumar, as Raj Kumar was nursing hatred towards Himanshu;

(3) On 24/-7/03 accused Raj Kumar had threatened his brothers-in law PW-3 Yogesh and PW-4 Mukesh(brothers of the complainant Rachna) that he would kill Himanshu;

(4) The dead body of Himanshu was recovered pursuant to the disclosure statements made by the both the accused;

(5) Death of deceased Himanshu was found to be homicidal.

10. Mr. Dudeja submitted that the cumulative effect of all these circumstances which had been established also beyond reasonable doubt lead to the only conclusion that both the accused were responsible for the offences for which they have been convicted. Mr. Dudeja submitted that there is no embargo on the Court taking into consideration the joint disclosure statement of both the accused as well as the evidence of recovery of the dead body pursuant thereto. In support of this argument he placed reliance on the decision of the Hon"ble Supreme Court in State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, (which has now come to known as the Parliament Attack case). It was submitted that in this case, the Supreme Court has held that evidence of joint disclosures of more than one accused is not inadmissible and so the decision of the Division Bench of this Court cited by the counsel for accused Mahipal to the effect that joint disclosure statements are not not admissible stands impliedly overruled. Mr. Dudeja further submitted that even if this Court finds the circumstance of recovery of dead body only to have been established beyond reasonable doubt that circumstance itself would also be sufficient to sustain the conviction of both the accused persons in support of this contention he placed reliance on one decision of Supreme Court in Gulab Chand Vs. State of Madhya Pradesh, .

11. At the outset we may state that we have noticed that in the impugned judgment, as was pointed out by the learned Counsel for the appellants, that the learned trial Judge has extracted certain portions from the disclosure statements of the two accused, which are totally confessional in nature, in the impugned judgment and has also observed that the same were corroborated also by other evidence. That is quite evident from a bare reading of paras 33, 34 and a part of para No. 35 of the impugned judgment which are reproduced below:

DISCLOSURE STATEMENT:

33. Ex. PW4/B is the disclosure statement of accused Raj Kumar. Short and summarized disclosure statement of accused Raj Kumar is as under:

Disclosed that he is residing at village Mukimpur, Jila Sonapat, Haryana and he is plying TSR between his village and Singhu Border, Delhi. He got married with

Smt. Rachna in the year 2002. Smt. Rachna was already married having a son, Himanshu, aged 3 1/2 years before his marriage. After the marriage with Smt. Rachna he felt that his wife, Smt. Rachna was more emotionally attached to her son Himanshu than to him. His wife Smt. Rachna used to spend more time in caring of her son without caring the marital relations with him as a result of which he was jealous of his step son. Moreover, he was not born from his lions. Because of this reason he determined to eliminate Himanshu. Once, before 24.7.2003 he tried to eliminate Himanshu by taking him in his house but could not succeed as his father in law reached there very next day and took him away. On 24.7.2003 he along with co-accused Mahipal came to Delhi who has given him the advice that if he takes away deceased Himanshu from his in laws house the wife Rachna automatically will follow him. On this advice he along with Mahipal came to Delhi and telephoned at in laws house which was attended by his brother in law, Mukesh. He threatened him and told him that he will kidnap the Himanshu and run away to UP. Accordingly at about 1.30/2.00 am, he along with co-accused Mahipal reached to the in laws" house and he make stand co-accused Mahipal at the gate and he entered into the house by jumping over the wall where he saw deceased Himanshu sleeping nearby his wife at a cot in naked condition. He lifted the boy Himanshu and came out from the house and handed over the boy to the co-accused then jump over the wall and thereafter they were going towards Johar(Pond) near Senior Secondary School, Shahbad Mohammadpur. On the way the deceased Himanshu woke up and started weeping. Thereafter he told the co-accused Mahipal to catch hold of deceased Himanshu by legs and hands and he close the mouth and nose of the deceased Himanshu as a result of which he died and then they had thrown the dead body near pond by the side of the wall and they run away from the spot and took a bus and reached to the Sonipat. He can point out the place where they have thrown the dead body of deceased Himanshu and the dead body can be recovered from there.

34. Ex. PW4/A is the disclosure statement of co-accused Mahipal. Short and summarized disclosure statement of co-accused Mahipal is as under:

Disclosed that he is married and residing at village Mukimpur, Sonipat, Haryana and is a labourer. Whenever he does not find work he work with his friend Raj Kumar on TSR. Raj Kumar used to tell him about his grievances about the marital relations with his wife, Smt. Rachna. Kumar used to tell him that he can not accept deceased Himanshu as he is not born from his lions and that accused Raj Kumar used to tell him that if deceased Himanshu is eliminated his marital relations can improve. As his friend he has given advice to accused Raj Kumar that if he kidnapped deceased Himanshu, his wife would automatically follow him. Accordingly on 24.7.2003 he along with Raj Kumar reached at Najafgarh and he telephoned at his in laws" house and thereafter at about 2.00 am he along with accused Raj Kumar reached the house of in laws" of accused Raj Kumar, accused Raj Kumar jumped over the wall and entered into the house. Thereafter, he brought the deceased Himanshu who was naked and handed over

to him. Thereafter he along with accused Raj Kumar were on the way and in between the boy Himanshu started weeping. On this accused Raj Kumar told him to catch hold of his legs and hands. He accordingly caught hold the hands and legs of deceased Himanshu and accused Raj Kumar close the mouth and nose of the deceased as a result of which the boy died. Thereafter they have thrown the dead body of the boy Himanshu into bushes near Johar near Senior Secondary School and thereafter they run away to Sonipat by boarding a bus. He can point out the house of in laws" of accused Raj Kumar and also the place where the dead body was thrown and also get recover the dead body of the deceased Himanshu from the said place.

35. (i) The disclosure statement of accused Raj Kumar Ex.PW4/B and disclosure statement of co-accused Mahipal, Ex.PW4/A are corroborated with the medical evidence i.e. Post Mortem report Ex.PW13/A wherein the cause of death is shown to be due to smothering as there is no other cause suggested by the accused persons in the present case.

(ii) The disclosure statement Ex. PW4/B and Ex. PW4/A further gets strengthened by quick succession of events i.e. immediately taking away the deceased Himanshu and on noticing the same by mother of complainant Smt. Rachna, father Om Prakash telephoning the police at 2.20 a.m....

12. In our view, learned trial Judge has not adopted the correct approach while dealing with the disclosure statements of the accused. He was not expected to bring into his judgment the entire disclosure statements of the accused and then to say that the same were corroborated also by other evidence. In fact we are coming across many judgments of Courts below where this kind of mistake is being committed which is not desirable. However, we are also of the view that just because of this approach of the trial Judge the accused cannot derive any benefit. The prosecution evidence has still to be analysed by us independently in order to find out whether the conviction of the two accused or anyone of them can be sustained or not and now we shall undertake that exercise.

13. We shall take the last circumstance first. The prosecution case is that the deceased Himanshu was murdered. On this aspect, learned Counsel for the two appellants did not dispute the fact that the death of the child Himanshu was homicidal. That fact is even otherwise clearly established from the evidence of PW-14 Dr. B.N.Mishra who proved the post-mortem report Ex.PW-13/A. This report was prepared by Dr. M.M. Narnaware who however could not be examined since he had expired. PW-14 had deposed that he had been conducting post-mortems with Dr. Narnaware and that he could identify the handwriting and signatures of Dr. Narnaware. In our view, the fourth circumstance stood established.

14. Now we come to the first and second circumstances relied upon by the prosecution as both can be taken together since evidence to establish these circumstances is of common set of witnesses. Suspicion expressed against

accused Raj Kumar by his wife PW-1 Rachna for the disappearance of child Himanshu had led to his arrest. That suspicion was expressed by PW-1 immediately when the police had come to her house on being informed of the disappearance of the child while sleeping in the house on the night of 24/25-07-03. PW-1 had deposed that Raj Kumar did not like Himanshu as he was born out of her wedlock with Devender Kumar who had expired. To the same effect is the evidence of PW-2 Om Parkash, father of PW-1 Rachna, PW-3 Yogesh and PW-4 Mukesh, the two brothers of Rachna. PW-2 Om Parkash deposed that accused Raj Kumar used to beat his daughter and harass her and used to say that why should he look after Himanshu who was not his child. He further deposed that accused was a habitual drunker also and his daughter had told him all these facts and she had started living with him (PW-2) along with the child. He further deposed that once accused Raj Kumar had come to their house under the influence of liquor and had taken away Himanshu without informing anyone and on the same night he (PW-2) had brought back the child. This witness also deposed that he had also expressed his suspicion before the police that Himanshu had been kidnapped by Raj Kumar since he had earlier also taken away the child. PW-3 Yogesh, the brother of the complainant Rachna also deposed that Raj Kumar was asking his sister Rachna to leave Himanshu as he was not a legitimate child. He further stated that when the police had asked them whether they have any suspicion against anyone they had expressed their suspicion against Raj Kumar. To the same effect is the testimony of PW-4 Mukesh, another brother of the complainant Rachna. None of these witnesses could be discredited in cross-examination as far as their statements to the effect that accused Raj Kumar had strained relations with his wife Rachna soon after their marriage and we have no reason to disbelieve anyone of them. Accused Raj Kumar is the husband of complainant Rachna, Son-in-law of PW-2 Om Parkash and brother-in-law of PW-3 and 4. In case accused Raj Kumar really had cordial relations with his wife Rachna and he had also known ill will against the deceased Himanshu they would not have falsely deposed against him. We are, therefore, of the view that the first two circumstances relied upon by the prosecution also stood established beyond reasonable doubt. However, these circumstances relating to the "suspicion" expressed by the complainant, her father and two brothers and the "motive" are incriminating circumstances only in respect of accused Raj Kumar. Against accused Mahipal none of them had either expressed any suspicion or attributed any motive to him for joining hands with co-accused Raj Kumar for killing Himanshu after kidnapping him. Raj Kumar, of course could be expected to have a motive to eliminate Himanshu, who was not his own son, since his wife was paying more attention to the child from her earlier marriage than to him as her husband. There was nothing unusual for him to have developed ill feeling towards such a child after living with him for sometime during which period he might have found that his wife was not giving him the attention which he as her husband was expected to receive. So, we do not find force in the submission of the learned Counsel for accused Raj Kumar that there could possibly be no motive for Raj Kumar to have killed Himanshu when he had

married Rachna knowing that she had a child from her first marriage nor can it be said to be a weak motive also.

15. Circumstance No. 3 relied upon by the prosecution is that a day before the disappearance of the deceased child Himanshu accused Raj Kumar had made telephone calls to his brothers-in-law PW-3 Yogesh and PW-4 Mukesh that he would kill Himanshu. This has been deposed to PW-3 Yogesh as well as PW-4 Mukesh. In the cross-examination of PW-4 it was not even suggested to him on behalf of accused Raj Kumar that he had not made any such threatening call to him. PW-2 Om Prakash, father of these two witnesses had also claimed that his son Mukesh had received a threat call from Raj Kumar on 24-07-2003. To him also it was not suggested in cross-examination that he had not made any threatening call to Mukesh. In these circumstances, we have no reason to disbelieve their testimony and although a bald suggestion was given to PW-3 Yogesh in cross-examination that Raj Kumar had not extended any threat to kill Himanshu but we have no reason to reject the testimony of PW-3 Yogesh also in this regard. This witness had informed to the police also on the night of incident itself regarding this threat call received by him from Raj Kumar. As has been observed already, accused Raj Kumar is the brother-in-law of PWs 3&4 and son-in-law of PW-2 Om Prakash and so they were not expected to falsely implicate him by expressing a baseless suspicion against him before the police and introducing a false motive aspect into the prosecution case. So, circumstance No. 3 also stood established by the prosecution beyond any doubt. Extending of such like threat before the occurrence of the incident has been considered to be an incriminating circumstance even by the Supreme Court in one of its decisions in the case of *Pershadi Vs. State of Uttar Pradesh*, .

16. We now come to the fourth circumstance relied upon by the prosecution and that circumstance is that pursuant to the disclosure statements made by the two accused the dead body of the deceased child was recovered on the night of 25.7.2003. We have examined the evidence of the prosecution witnesses who have deposed regarding the making of disclosure statements by the accused persons and then recovery of the dead body pursuant to that information. As far as the arrest of both the accused persons from Singhu border, which we were told is the Delhi-Haryana border, and both the accused persons used to live in village Mukimpur in District Sonapat which was at some distance from this border. They were arrested around 6.30 p.m. on 25/07/03. The investigating officer SI Shiv Singh who had gone to arrest accused Raj Kumar only (since there was no suspicion against accused Mahipal) alongwith some constables and PW-4 Mukesh and one Kailash, has deposed that when they could not find accused Raj Kumar at his house and even at some other places they returned back to Delhi and when they reached Singhu border accused Raj Kumar was seen there by Mukesh and Kailash and on his identification was captured and was interrogated. PW-11 further deposed that accused Raj Kumar pointed out towards one person with a beard standing at some distance from there and accused Raj Kumar identified him to be accused Mahipal and then he interrogated Mahipal also. At

first instance both the accused did not tell him anything but when accused Raj Kumar was interrogated further he confessed the crime and also informed that the dead body of the deceased had been thrown near the wall behind school of Shahabad Mohammadpur and further that the dead body of was recovered from a place near Johar(dry pond) of Senior Secondary School,. Shahabad, Mohammadpur. PW-11 also stated that "Both the accused persons then led us to the place where they had thrown the dead body of Himanshu and in this regard pointing out memos Ex.PW-4/G and Ex.PW-4/M were prepared.". In cross-examination PW-11 stated that accused were arrested around 6.30 p.m. on 25/07/03 and it was put to him that by the time the accused were arrested the dead body of the deceased child had not been recovered and he answered in the affirmative. The main ground of challenge to the evidence of this police witness urged by the learned Counsel for the accused-appellant Raj Kumar was that if actually the dead body of the deceased had not been recovered at the time of arrest of the two accused then in their arrest memos as well as in the disclosure statements Section 302 IPC could not have been mentioned by PW-11 SI Shiv Singh and since this Section of IPC is actually mentioned in the arrest memos and disclosure statements it becomes clear that the police had already come to know that the child had been murdered and dead body also must have had been recovered and merely on the basis of suspicion expressed by the mother and other relatives of the deceased against Raj Kumar he was implicated by the police simply to solve the murder case. PW-11 had admitted in cross-examination that Section 302 IPC was mentioned in these documents but he also clarified that he had written that only after the accused had made disclosure statements. So, that clarification given by the investigating officer, which we have no reason to suspect, removes all doubts and so it cannot be accepted that evidence of PW-11 is doubtful for the said reason put forth by the counsel for accused Raj Kumar. As far as his statement that the dead body of the deceased was recovered pursuant to the disclosure statement of Raj Kumar and on his pointing out is concerned we have no reason to reject the same. He had no axe to grind against the accused. His evidence is fully reliable and cannot be rejected since he was a police officer, as was also the submission of the learned Counsel for the accused.

17. The evidence of PW-11 is corroborated by the other witnesses to the making of the disclosure statements and recovery of the dead body pursuant thereto. Those witnesses are PW-4 Mukesh, PW-6 HC Vijay Kumar, PW-8 Ct. Mahender Singh, PW-9 Ct. Kanwar Singh, PW-12 HC Parveen Singh and PW-15 Insp. Baljeet Singh. None of these witnesses also could be shattered in their cross-examination. In our view, as far as accused Raj Kumar is concerned it stands established from the evidence of these witnesses of recovery of the dead body that the dead body of the deceased child Himanshu was recovered pursuant to the disclosure statement made by him while in police custody. However, as far as accused Mahipal is concerned he cannot be fastened with the liability of recovery of the dead body of the deceased child by invoking Section 27 of the Evidence

Act. We have already noticed that PW-11 SI Shiv Singh has deposed that when the police team had reached Singhu Border on their return to Delhi from the village of the two accused they had spotted accused Raj Kumar standing at the border and he was identified by PW-4 Mukesh. Thereafter, he was interrogated by him and then Raj Kumar had made a disclosure statement and further that the dead body of the deceased was recovered from a place near a dry pond of Senior Secondary School in Shahbad Mohammadpur. From this statement of SI Shiv Singh it is apparent that accused Raj Kumar had already given the information to SI Shiv Singh regarding the place where the dead body of the child had been thrown by him. However, none of the witnesses of recovery deposed that Mahipal had also stated that he could get recovered the dead body of the deceased recovered or that he had informed the police about the place where the dead body had been thrown. Therefore, the prosecution case that the dead body of the deceased was recovered at the instance of accused Mahipal also becomes doubtful. Here we may also refer to a decision of a the Supreme Court in Bakhshish Singh Vs. State of Punjab, , cited by the learned Counsel for the accused wherein it was held mere recovery of dead body of the deceased at the instance on accused is not a conclusive circumstance. We may also refer to a judgment of a Division Bench of this Court in the case of Vijay Kumar v. The State Crl. Appeal No. 654/2005, decided on 22/02/08. In that case also the dead body of the deceased was allegedly recovered at the instance of three accused persons pursuant to their respective disclosure statements. This Court held that the evidence of joint disclosure statements by different accused was not inadmissible in view of the decision of the Supreme Court in the Parliament Attack case(supra), which was cited by Mr. Dodeja, but as far as one of the three convicts was concerned since there was no other evidence against him except the evidence of making of the disclosure statement by him and recovery of the dead body pursuant thereto also he could not be convicted for the offence of murder. In the present case also, thus, even if evidence of recovery of the dead body of the deceased were to be considered to be credible, though we do not consider it to be so, Mahipal's conviction on this sole circumstance could not be sustained. The fact that nobody had expressed any suspicion against accused Mahipal and that admittedly he had no motive to kidnap and murder Himanshu also persuades us not to give any credence to the prosecution allegation that the dead body of the deceased child was recovered at his instance also. Learned Counsel for this accused was right in his submission that he has been roped in the present case only because of the information which police got that Mahipal happened to be a friend of Raj Kumar and both were not available at their respective homes on 24-07-2003 when the police had gone there in search of accused Raj Kumar only.

18. We are, therefore, of the view that as far as accused-appellant Raj Kumar is concerned the above-noted circumstances which we have found to have been established cogently and beyond reasonable doubt are sufficient to sustain his conviction. Those circumstances do form a chain which is so strong and so

complete that no other conclusion can be drawn from those circumstances except that accused Raj Kumar is guilty of the offences for which he stands convicted. So, the appeal filed by accused Raj Kumar (being CrI.A. No. 56/09) being devoid of any merit is liable to be dismissed. However, accused-appellant Mahipal is entitled to be acquitted by giving him the benefit of doubt and his appeal (being CrI.A. No. 221/09) deserves to be allowed.

19. Resultantly, we dismiss CrI.A.56/2009 filed by accused Raj Kumar while CrI.A.221/2009 is allowed and consequently accused Mahipal stands acquitted of all the charges for which he had been tried and held guilty by the trial Court. He is stated to be lodged in jail and undergoing the sentence awarded by the trial court. As a result of acquittal, he is directed to be released from there forthwith unless he is required to be detained in custody in any other case.