

(2001) 06 GUJ CK 0038

In the Gujarat High Court

Case No : Criminal Appeal No's. 141 and 161 of 1990

Rameshkumar Bhaverlal Jain

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 18-06-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162 , 313
Penal Code, 1860 (IPC) — Section 114, 120B, 201, 302, 34

Citation : (2001) CriLJ 4069

Hon'ble Judges : Sharad D. Dave, J;R.K. Abichandani, J

Bench : Division Bench

Advocate : K.J. Shethna, in Criminal Appeal No. 141 of 1990 and D.N. Patel, APP in Criminal Appeal No 161 of 1990, for the Appellant; D.N. Patel, App in Criminal Appeal No. 141 of 1990 and K.J. Shethna in Criminal Appeal No 161 of 1990, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Abichandani, J.—These appeals arise out of the judgement and order passed by the learned Additional City Sessions Judge, Ahmedabad on 2nd January 1990 in Sessions Case No.296 of 1988, convicting the original accused No.1(appellant of Criminal Appeal No. 141 of 1990) for the offences under sections 302, 201, 363, 343, 364, 365 and 120B of the Indian Penal Code, and sentencing him to imprisonment for life for the offence u/s 302 of the IPC and to suffer rigorous imprisonment of six months for each of the other offences which were to run concurrently, and imposing a fine of Rs.200=00, in default, to undergo rigorous imprisonment for one month. The State has appealed (Criminal Appeal No. 161 of 1990) for enhancement of the sentence praying for imposition of death sentence on the original accused No.1 on the ground that this was a rarest of rare cases warranting death penalty as the said accused No.1 / appellant had committed a cold-blooded murder of his two young cousins aged 4 years and 7 years, and had acted in a cruel and unusual manner. The original accused No.2 - Sandip Dinkarlal was acquitted and no appeal has been preferred against his

acquittal.

2. The charge framed against the accused at exh.2 alleges that, on 19th April 1988, around 6.00 o'clock in the evening, these two accused persons i.e. Rameshkumar Bhanvarlal Jain and Sandip Dinkarlal and one other accused Mukesh Shantilal Jain (who is said to be a juvenile accused) had kidnapped minors Rakesh and Harsh, who were the sons of the complainant - Ghisumal Jain, from his lawful guardianship in order that a big sum of money may be extorted or in order that they may be murdered, and thereby, committed offences under sections 363 and 364 of the IPC. It was further charged that these two accused had, after kidnapping Rakesh and Harsh, kept them in wrongful confinement in Block No. 44/339 of Kalapinagar and committed their murder by causing injuries and thereby, committed offences under sections 302, 342, 343, 368 and 385 of the IPC. A further charge was that these two accused persons, with the intention of screening themselves from legal punishment, had caused the evidence of commission of offence of murder to disappear or had attempted or had tried to destroy the evidence, and thereby, committed the offence under section 201 of the IPC. Having levelled individual charges under sections 363, 364, 302, 342, 343, 368, 385 and 201 of the IPC, the Charge proceeded to further allege that these two accused and Mukesh Shantilal had entered into a criminal conspiracy to kidnap Rakesh and Harsh for the purpose of extorting a big amount of money from the complainant - Ghisumal Jain and committed their murder and caused disappearance of the evidence of the offences, and thereby, committed offences under sections 302, 201, 342, 343, 363, 364, 368, 385 read with section 120B of the Indian Penal Code. On the same facts, it was also alleged that these two accused had acted in furtherance of their common intention and a separate charge was framed for the offences under the aforesaid provisions read with section 34 of the Indian Penal Code. An independent charge for abetment of these offences was also framed against these two accused persons in context of the provisions of section 114 of the IPC.

2.1 The prosecution version was that Rakesh and Harsh who were 7 years and 4 years of age respectively had gone to play in the evening at about 6 o'clock in the open space adjoining their flat (Julie Apartments). As they did not come back till 7 o'clock, their mother phoned up Ghisulal and told him that they could not be traced around the area where they had gone to play. The complainant Ghisulal, therefore, came from his shop and tried to find out his sons. As the children could not be traced out, he informed the police that they were lost. In the morning, his complaint was recorded as per exh.125 in which he had stated that, after the children were lost, he had received telephone calls six to seven times and someone was just saying 'hello' and keeping the receiver back. According to the complainant, the children were kidnapped on 19-4-1988 while they had gone to play.

2.2 On 20th April, 1988, the search for tracing out the children continued. On 21st April 1988, at about 2.55 p.m., a telephone call was received by

the complainant at his residence, in which someone had said that his children were with him and if he wanted them back, he should give Rs.5 lakhs. Thereupon, the complainant said that Rs.5 lakhs was a big amount. The person who had telephoned had then said, he may come with Rs.2 lakhs near the Roopali cinema in the evening at 5.00p.m. Earlier, the complainant had arranged for his telephone being kept under observation and therefore, the telephone from which the said call came was traced out as Telephone No. 68116. The said telephone was installed in the house in which the accused No.2 - Sandip Dinkarlal Sanghvi resided in Sujata Flats, Shahibag. The complainant had gone with money in a briefcase near Roopali Talkies in the evening at 5 o'clock. He had already informed the police about the demand. The police had accompanied him in plain clothes. However, no one turned up in the evening for collecting the ransom amount and the complainant, therefore, returned at 6 o'clock. His attempt to trace out the children continued, but in vain.

2.3 On 24th April 1988, dead body of the younger son Harsh was found near village Bhaat. The prosecution case is that the appellant - accused No.1 had taken the keys of the house of one Purshottambhai from his son Vishnu, who was his friend for the purpose of reading for the 12th Standard examination. The said accused No.1 Ramesh Bhanvarlal Jain, along with Mukesh Shantilal Jain, used to visit the said house in Kalapinagar (Block No. 44, House No. 339). From 20-4-1988, they were seen by the nearby residents going in that house. Foul smell started emitting from that house since the morning of 23rd April 1988 and on being questioned, the accused No.1 - Ramesh had told the neighbours that a cat had died in the house and that he would take steps to get it removed. As the foul smell continued, the residents became restless and went to Parshottambhai for asking him to get his house cleaned. At Parshottambhai's place, his two daughters told the neighbours that the keys of the house were with the accused No.1, and that they will do the needful. Vishnu, therefore, went to the house of the accused No.1 on 28-4-1988, but could not meet him, but left a message. However, since the accused No.1 did not turn up in the evening, Vishnu again went to his house on the next day i.e. on 29th April 1988 in the morning and while he was sitting in that house with a relative of the accused No.1, the police had come there and taken him to the Shahibag police station and from there, to the Sardarnagar police chowky, and at that place, he had identified the keys of his house which he had given to Ramesh and which were recovered from the accused No.1 Ramesh. According to the prosecution, the accused No.1 had purchased the cardboard box and other things during the period that the bodies of these two children were lying in the said house and on the morning of 24th April 1988, he had along with Mukesh taken the dead body of Harsh tied up in a chaddar and a pillow cover and put in the cardboard box which the accused No.1 had purchased on 23rd April 1988 and taken the dead body for its disposal near village Bhaat where they had dug up a pit in which they placed the dead body and had gone away on the scooter. That scooter is said to have been stolen on 4th April 1988. Initially, the accused No.1 - Ramesh used to go on a cycle, but

around 20th April 1988, he started going on the said scooter at the said house.

2.4 The dead body of the other child Rakesh was traced out from that house, in a decomposed state tied in a bundle and locked in the lavatory, on 29th April 1988 when the accused No.1 Ramesh is said to have led the panchas and the police to that place.

2.5 The prosecution version is that the accused No.1 had, thus, kidnapped these two minors from the lawful guardianship of their uncle Ghisumal Jain in the evening of 19th April 1988 and kept them wrongfully confined in the said house, and that this was done pursuant to a conspiracy between him and Mukesh to extort money from his uncle, and that as per the medical evidence, these children were killed around 22nd April 1988 and the accused No.1, with the help of Mukesh, clandestinely removed the body of Harsh in a cardboard box tied in a chaddar and a pillow cover and disposed it off by placing it in a pit near village Bhaat and the accused No.1 had also secreted the body of Rakesh by tying it in a bundle and locking it in the lavatory of the said house till it was recovered at his instance on 29-4-1988.

3. The accused no.1, who was of 18 years of age at the relevant time, pleaded not guilty. From the record, it appears that the accused No.1 - Ramesh Bhanvarlal Jain also used to sign his surname as 'Mehta' and there is no dispute about it. The case of this accused is of total denial. In his statement u/s 313 of the Code of Criminal Procedure, he admits having taken the keys of Vishnu Purshottambhai's house in Kalapinagar for the purpose of study around February 1988. He admits that he used to go to that house for reading purpose. He has admitted that, at times, Mukesh used to come with him. When he was confronted with the deposition of witness Somabhai that one short statured person used to come to that house with him, he admitted that Mukesh used to sometimes come with him in that house. The accused No.1 filed a written reply at exh. 244, in which he stated that though he had taken the key of Vishnu's house, he had returned it to him after the examination was over in March 1988, and that thereafter, he had never entered that house. He has stated that, on 29th April 1988, when he was arrested by the police, he was not having the key of that house. He has stated that he had only shown the house of Vishnu to the police and that he did not know that there was a dead body lying in it. According to him, he had not gone to Bhaat village, and states that witness Bhikhabhai and Pramukhbhai who are said to have seen him there, were lying and that the neighbours of Kalapinagar were falsely implicating him. He has denied that he had used the stolen scooter which belonged to Indulal. In his statement, he has further stated that he knew Mukesh and Mukesh used to sometimes accompany him to the house in the Kalapinagar before the examination, and that he had not met him after the examination. He has further stated that he had not purchased the muddamal cardboard box from witness Narayan Chauhan, nor had he purchased the jute rope (Bhindi) from witness Sundarmal. He has stated that he had no reason to kill sons of his uncle and that he had in fact helped his uncle in trying to trace out the children. He has

also denied that he had purchased perfume from witness Mohammad Miya. He has stated that he had purchased medicines from witness Dr. Kantilal, who is having his dispensary opposite the house in question, but that was in February 1988.

4. The trial Court marshalled the evidence under three heads, each pointing at the important circumstance which indicated involvement of the accused No.1 in the crime. The first head was the finding of the dead body of Rakesh from the house No. 44/339 in Kalapinagar which was in possession of the accused No.1, the foul smell which was coming from that house, to which the neighbour had deposited and the fact that the neighbours had told the accused No.1 - Ramesh about it, who tried to mislead them by saying that there was a dead cat lying in that house. The other head of circumstance, as discussed by the trial Court, was in respect of finding out of the dead body of Harsh from near village Bhaat and the movement of the accused No.1 - Ramesh in connection therewith showing that he had dumped that dead body in a pit near village Bhaat. The third head of circumstantial evidence was the purchase of the cardboard box, rope, perfume etc. by the accused No.1 from various shops on 23rd April 1988 and 28th April 1988 which shops were shown to the panchas by him after he was apprehended and the shop owners identified him as the person who made these purchases. The trial Court also took into account the fact that the keys to the house were recovered from the accused No.1, and that they were given to him by Vishnu and further that the bed-sheet (chaddar) and the pillow cover in which the body of Harsh was found to have been tied and placed in a cardboard box and which was found near village Bhaat, were the chaddar and pillow cover belonging to Vishnu and which were taken from said house at Kalapinagar. The trial Court took into account also the circumstance that the accused No.1 had used the stolen scooter for carrying the dead body of Harsh to village Bhaat where he was found digging a pit and placing the body in the pit and thereafter, going away on the scooter along with Mukesh by two witnesses. From the fingerprints which appeared from two soft drink bottles, recovered from the said house at Kalapinagar, which were proved by expert evidence, the trial Court found that Mukesh Shantilal Jain was also involved as he used to come along with the accused No.1 in the house from which these bottles were recovered. From the medical evidence, it was noted that both the children were done to death by strangulation, and that it was possible to carry the body of the younger child Harsh in the cardboard box which was 18" x 13" x 16" in size, after it was tied in a chaddar and a pillow cover. As per the medical evidence, the death of Harsh could have been caused between 48 and 96 hours prior to the post mortem examination which was conducted on 25th April 1988, while the death of Rakesh could have been caused between 5 to 7 days prior to the date of his post mortem examination which was conducted on 29th April 1988. In paragraph 45 of its judgement, the trial Court enumerated as many as thirteen circumstances for holding that the chain of those circumstances clearly established that the accused No.1 Ramesh Bhanvarlal Jain had, with the help of his companion, committed murder of both these children. It was found that

Mukesh, the juvenile accused, was also with him in commission of the crime and that there was a criminal conspiracy between him and Mukesh. The accused No.1 was, therefore, convicted for each of these offences and sentenced, as stated above. The accused No.2 was acquitted for paucity of evidence against him.

5. The learned counsel appearing for the appellant accused No.1 submitted that, while it cannot be denied that death of both these children was homicidal, there was no reliable evidence to connect the accused No.1 with the crime. He submitted that there was no motive established which would have prompted the said accused to commit the murder and there was absolutely no evidence to show that these boys were kidnapped by the accused No.1. It was submitted that, even the father of the deceased boys did not implicate the accused No.1 either in the complaint or in his deposition, and that the accused No.1 was in fact helping him in trying to trace out the children after they were missing in the evening of 19th April 1988. The learned counsel argued that the keys to the house in Kalapinagar from which the dead body of Rakesh was recovered, were taken by the accused No.1 from Vishnu in February 1988 and were returned to Vishnu in March 1988 after the examination was over. It was also submitted that there may be duplicate keys, a suggestion which no one ever made till the arguments of the learned counsel. It was further contended that no nexus was established between the prosecution case as to the demand of ransom and any role played by the accused No.1. It was argued that the accused No.1 could not have imagined that conspiracy to extort money would end in murder of his cousins. It was submitted that the circumstantial evidence relied upon by the trial Court was not sufficient to prove any conspiracy. It was contended that the other alleged conspirator Mukesh was not before the Court as he was to be tried separately as a juvenile offender and therefore, conspiracy could not have been inferred. It was further contended that, from the telephonic demand of ransom on 21st April 1988 at 2.55 p.m. and other telephonic message said to have been received thereafter by the complainant, it appears that there may have been other persons who may be pursuing the same end, and that the connection between such persons who made the demand and the accused No.1 was not established. It was submitted that, having regard to the age of the accused No.1, his relations with the victims and the fact that there was no enmity between him and his uncle, there was no possibility of the accused No.1 agreeing to any conspiracy to commit these offences and the circumstances before, during and after the occurrence, do not indicate involvement of the accused No.1. It was contended that a false explanation was only an addition in the chain of circumstantial evidence which is required to be established independent of such false explanation of the accused.

6. The learned Public Prosecutor, on the other hand, submitted that this was a case which warranted imposition of death penalty, because, two minor children who were related to the accused No.1 and who must have trusted him for protection, were murdered by the accused No.1 after being kidnapped and taken to the house in which the accused No.1 had locked them up and after killing them, disposed of the body of Harsh. It was submitted that the accused No.1

gave a false explanation to the neighbours with a view to mislead them by saying that the foul smell emitting from the house was of a dead cat. He submitted that the purchase of cardboard box on 23rd April 1988 for the purpose of removing the body of Harshin the morning of 24th April 1988 for being taken to village Bhaat for hiding it in a pit, and the purchase of other materials, such as, jute cloth, rope, perfume, jute string etc. on 28th April 1988 which were to be used for tying the body of Rakesh, which was found locked in the house till 29-4-1988 when the accused No.1 showed it, proved that he was involved in the commission of the crime, and that he was trying to destroy the evidence by disposing of the dead bodies of these two children. It was submitted that the time of death of these children, as per the medical evidence and the evidence of the neighbours who have deposed about the foul smell coming out of the house, was around 22nd April 1988. It was submitted that since the appellant was informed by the complainant after the ransom call was received by him at 2.55 p.m. on 21st April 1988, no one turned up for collecting the ransom in the evening at 5 o'clock near the Roopali Cinema which suggested that the information must have passed on from close quarters to those who demanded the ransom and this was followed by the death of these two innocent children.

6.1 Relying upon the decision of the Supreme Court in case of *Machhi Singh v. State of Punjab* reported in 1983 SCC (Cri.) 681, learned Additional Public Prosecutor submitted that murder of these two innocent young children warranted death penalty. It was submitted that false denial by the accused No.1 was itself an incriminating circumstance, on the authority of the decision of the Supreme Court in case of *Earabhadraappa alias Krishnappa v. State of Karnataka* reported in 1983 SCC (Cri.) 447.

7. In reply, the learned counsel for the accused No.1 reiterated that there was no direct evidence to prove the involvement of the accused No.1 and that circumstantial evidence was not sufficient to convict the accused No.1 for the offence of murder or the offence of criminal conspiracy. He submitted that since the matter rested on circumstantial evidence, and no gain by the accused No.1 was proved and as a long time had elapsed after the commission of the offence when the accused was hardly 18 years of age, this case did not warrant death penalty.

7.1 The learned counsel appearing for the accused No.1 relied upon the following decisions in support of his contentions :

[a] *Ramkishan Mithanlal Sharma v. State of Bombay* reported in AIR 1955 SC 104 was cited for the proposition that in the case of test identification parade arranged by the police and held in the presence of panch witnesses, their statements involved in the process of identification would be statements made by the identifying witnesses to the panch witnesses and would be outside the purview of section 162 of the Code of Criminal Procedure provided the process of identification is carried out under the exclusive direction and supervision of the panch witnesses and the police had completely obliterated themselves from the

parade. However, where the test identification is carried out by the police in their presence, no distinction can be made between the statements made to the police officers and the statements made to the panch witnesses called by the police officers when conducting the test identification parades.

[b] P.K.Narayanan v. State of Kerala reported in 1995 SCC (Cri.) 215 was cited for the proposition that the ingredients of the offence of criminal conspiracy are that there should be agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal, and therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence.

[c] Kehar Singh v. The State (Delhi Administration) reported in AIR 1988 SC 1883 was cited for the proposition that entering into an agreement by two or more persons to do any illegal act or legal act by illegal means is very quintessence of the offence of conspiracy. It was held that, the Court must inquire whether the two persons are independently pursuing the same end, or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does.

[d] State of Kerala Vs. P. Sugathan and Another, was cited to show that, in criminal conspiracy, "There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence."

8. In the present case, there is no direct evidence of eye witnesses to the crime of murder or kidnapping. The accused No.1 is said to have taken the keys of the house of Parshottambhai, father of his friend Vishnu and according to Vishnu, he had given him the keys of the house. According to the accused, he had taken the keys in February 1988 so that he can read in the house for his 12th Standard examination which was to take place in March 1988. There is no dispute about the fact that the complainant - Ghisulal Jain is the uncle of the accused No.1 and that they were staying in Juli Apartments. On 19th April 1988, Rakesh and Harsh had gone to play in the open space near their house in the evening at about 6 o'clock and thereafter, they were not traced. This aspect is borne out from the deposition of the complainant Ghisulal at exh. 124 and corroborated by his complaint at exh. 125. He was at his shop when he received his wife's telephone about their two sons not being traced, and therefore, he rushed back from his shop. On that evening, there was a hurricane. The complainant informed

the police at about 10 o'clock that the children were missing. The police recorded his complaint ex. 125 on 20th April 1988. On 19th April 1988 itself, after the children were missing, the complainant had received some telephone calls, but the caller disconnected the line without saying anything. On 21st April 1988, at about 2.55 p.m., he received the telephone call, which as noted above was traced out to becoming from Telephone No. 681166, over his residential Telephone No. 65453 in which the caller had stated, "Aapke Bachay Mere Paas Hai, Aapko Chaihey?" (Your children are with me, do you want them?). He further states that the caller had asked for Rs.5 lakhs and when he said that it was a big amount, the caller told him to bring Rs.2 lakhs near Roopam Cinema at 5 o'clock in the evening on that day. The complainant informed the police about this. Earlier on 19th April 1988 night, he had asked the Telephone Department to keep his telephone under observation. After receiving the phone call at 2.55 p.m. on 21-4-1988, he had gone at 5 o'clock near Roopali Cinema and stood there with money in his briefcase for about an hour, but no one turned up and therefore, he returned at 6 o'clock. There is no reason to doubt the complainant's version that he had received a telephone call asking for ransom on 21st April 1988 at 2.55 p.m., if he wanted his children back and that he had gone with the amount of Rs.2 lakhs in a briefcase in the evening at 5 o'clock. It transpires from the evidence of the police witnesses that the complainant was accompanied by police personnel in plain clothes since he had already informed the police about the telephone call seeking ransom amount for the release of his children. The fact that the person seeking ransom at 2.55 p.m. and requiring the complainant to come with the amount at 5 o'clock near Roopali Cinema did not turn up, in light of the complainant's statement that he had informed the police about the telephone call, clearly indicates that the person seeking ransom was alerted about the police having been informed so that he may not go to collect the ransom in the evening at 5 o'clock and get caught. After he received the telephone call at 2.55 p.m. seeking ransom, the complainant received another phone call at 3.30 p.m. in which he was told that if police was informed by him, he will not get his children. Ultimately, the dead body of the younger son Harsh who was 4 years of age, was recovered from near village Bhaaton 24th April 1988, while the dead body of the elder son Rakesh who was 7 years of age, was recovered from the house bearing Block No. 44/339 in Kalapinagar in a decomposed state.

9. The dead body of Harsh was examined on 25th April 1988 by Dr. Deshmukh (PW- 29, Exh. 130), who was Professor of Forensic Medicine in the B.J. Medical College for post mortem. He commenced the examination at 12.20 hrs. noon and concluded it at 2.45 p.m. on 25th April 1988. On examination, he found that it was a dead body of a male child about 4 to 5 years of age. Both the clothes on the dead body were soiled with products of decomposition. Rigor mortis had passed out from the dead body. Post mortem lividity was present on back aspect appearing as dark greenish red. Features of dead body were bloated distended with gas. Epidermis was peeling off. The dead body was blackish red with greenish discoloration over abdomen joints etc. It was emitting foul smell.

There were maggots over neck, face, oral cavity and cluster of fly eggs present on scalp hair. The following external injuries and wounds were noted :

"(1) At the neck, because of decomposition and bloating due to gases in tissue, a fold of skin with crease was appreciated on front aspect. A band of ligature mark with paleness at its base was present on neck over the lower part of Thyroid Cartilage and upper part of Trachea with bruising at the margins. The bruising at margin was about 0.5 cms wide and well marks at upper border of the ligature mark. It was better appreciated after removing the decomposing epidermis from the neck. The bruising red in colour had been present in full thickness of skin and underlying platysma muscle. The redness persisted even on washing the area and incised skin with swab. The width of ligature mark is about 1.0 to 1.5 cm. The ligature mark was extending horizontally across the sides of neck, backwards encircling the neck. It is faintly appreciable. The injuries were antemortem in nature."

The internal injuries were as under :

"(1) The muscles on the front and sides of neck are pale under the base of ligature mark. They show bruising of the marginal areas for about 0.5 to 1 cm width. The left sternomastoid muscle is bruised at the course of ligature.

(2) The underlying ribbon muscles on front of neck are also bruised at both the marginal areas of ligature course.

(3) The wall of trachea under the course of ligature is bruised.

All the organs and viscera are affected by decomposition. Stomach and intestine were empty. There was little amount of faecal matter at small firm lumps in ascending and transverse colon was present. The organs were congested."

8.1 The medical expert opined that the death was due to asphyxia as a result of strangulation and it occurred within 48 to 96 hours of the post mortem examination. Therefore, the death occurred between 21st April 1988 and 23rd April 1988. The post mortem notes are proved at exh. 131. The injuries noted by the medical expert were, according to him, sufficient in the ordinary course of nature to cause death. The ligature marks on the neck were possible by rope and compressing it by applying force.

9. The same medical expert was called on 29th April 1988, at about 3.30 p.m. at house No. 44/339 in Kalapinagar, where a bundle in which the dead body of Rakesh was tied and which was emitting foul smell of decomposition had been opened and the medical expert saw that dead body in an advanced stage of decomposition. He observed that maggots were crawling on the body, particularly on his face, neck and chest and also on quilts ('godris'). He saw fly maggots and pupas lying in the latrine where the bundle containing the body was earlier kept. He was told by the police that they had taken out the bundle from the lavatory and kept it in the room. The body was shifted to the Civil Hospital and he had done the post mortem examination between 5.25 p.m. and 7.45 p.m. He had

noted that the dead body was lying on a white 'godri' and there was a 'kantani' (i.e. jute cloth) with a jute rope lying under the 'godri'. The 'kantani' and the upper 'godri' were covering the lower two - third part of the dead body. The 'godris' (i.e. quilts) were soaked in products of decomposition and maggots were crawling on the body and the 'godris'. The clothes of the child were soaked in products of decomposition. The T-Shirt was stained with hemolyzed blood. Between two 'godris', a foil of Becozyme 'C' Forte of ROCHE make and a foil of Paracetamol of Avaran Medicare, both containing five tablets, were found and four small packets (padikas) of paper containing medicinal tablets were also found. The body was emitting foul smell. The maggots were white and brown. There was loss of eyes, eyelids, skin and muscle from left side of face including nose, lower jaw, centre of upper jaw, scalp and muscle etc. The underlying bones were exposed. The floor of the mouth and the tongue were missing. The scrotum was inflated with gases. A groove mark appearing as impression of rope was present on outer aspect and front part of left leg.

The external injuries and internal injuries and wounds noted by the medical expert were as under :

"External injuries and wounds :

- (1) Ligature mark brown in colour was present at back of neck at right postero lateral aspect at lower part at the level of 5th cervical spine, extending horizontally medially for 3.5 cm length. It was about 1.0 to 1.5 cm wide. Its base is grooved and epidermis is adherent.
- (2) Another ligature mark was present 1.5 cm above external injury No.1 extending horizontally medially and nearly parallel to No.1. It is about 3.5 cm long and about 0.75 to 1.0 cm wide having character similar to No.1.
- (3) The ligature mark external No.1 was traceable to left side of back of neck for about 1.5 cm length.
- (4) Ligature mark was present over left antero lateral aspect of lower part of neck but in the level of upper part of trachea and extending slightly upward and medially for about 1 cm length. It was about 1.5 cm wide. It was in the line of lower ligature mark i.e. ext. No.1 and 3. Its medial end was about 1 cm left from the mid-line.

Internal injuries :

- (1) Bruising of the skin dermis and muscles round underneath and at the margins of the ligature mark described already i.e. under ext. injuries. Bruise was of red colour. The skin and muscles over left upper and mid parts of post lateral aspect and left upper postero lateral aspect were missing because of advanced decomposition. The lungs were congested. All the organs in the dead body were affected by decomposition. Brain was liquified. The spleen was nearly liquified. The liver was spongy flabby, softened, the lungs were soft and flabby. Stomach and small intestine was empty. Faecal matter was present in sigmoid colon and in

rectum. Viscera was preserved."

9.1 The Supreme Court has in *Daryao Singh v. State of M.P.* (1991) 2 SCC 588 held as under :

"Ordinarily after rigor mortis has passed off, the process of putrefaction sets in but it may set in even earlier during summer depending on the heat and humidity. Body changing colour and emitting foul smell, are the two special characteristics of the decomposition process. The first external evidence of putrefaction is the formation of greenish discoloration of the abdominal skin over the iliac fossae which occurs within six to twelve hours in summer and spreads all over the body within twelve to eighteen hours of death. As time passes they deepen in colour and become purple. With the spread of bacteria, there is gradual development of gases in the intestines within twelve to eighteen hours and liquifaction also takes place and soon spreads to other parts of the body. Putrefaction thus results in general disintegration of the tissues due to residual enzymatic activity in the cells causing widespread formation of gases emitting foul smell and if the body is exposed, as in the present case, flies lay eggs on exposed wounds forming maggots. The body gets bloated and liquified, the skin loses coherence, the superficial layers peel off easily and blisters are formed."

9.2 The post mortem report is proved at exh. 132. As per the final opinion of this medical expert, the death was due to asphyxia as a result of strangulation. This opinion at exh. 134 was given after considering the F.S.L. Report. In a reply to exh. 136 to the query by the police, he had opined that, in both the cases, the ligature material appeared to be like that of a rope and that the death of Rakesh had occurred five days before the time of post mortem examination. In paragraph 24 of his deposition, he has stated that it is probable that Rakesh would have died at a time before 5.30 p.m. of 24th April 1988 and the upper time limit could be within seven days which would mean that, Rakesh as per the medical opinion had been killed between 22nd April 1988 and 24th April 1988.

10. The medical opinion thus indicates the time of death of both the children around the same date i.e. 22nd April 1988. It will be recalled that, after receiving the call demanding ransom over the telephone at 2.55 p.m. on 21st April 1988, according to the complainant, he had received another phone call at 3.30 p.m. informing him that he would not get the children if the police was informed. In fact, he had already informed the police when the call was received as his telephone was already kept under observation. Though he had gone with the ransom amount near Roopali Cinema at 5.00 p.m., as required over the telephone at 2.55 p.m. by the caller, no one appeared for collecting the ransom amount, presumably because, the police was informed which fact came to be known by the caller. The accused No.1 in view of the nature of his involvement as is proved by the evidence on record, would have been such person interested in informing about the police having been alerted by his uncle, because, even according to the complainant, after the children were missing, the accused No.1 used to come to the complainant's house. Therefore, he had every opportunity to know about

the fact that the police was already informed by the complainant about the call which he received at 2.55 p.m. on 21st April 1988 demanding ransom.

11. The positive involvement of the accused No.1 in the crime is borne out from very cogent evidence which has been led for showing that the house No. 44/339 of Kalapinagar was being visited by this accused between 20th April 1988 and 28th April 1988. The accused No.1 had obtained the keys of that house from his friend Vishnu and the keys came to be recovered from him at the time when he was arrested on 29th April 1988. The dead body of Rakesh was admittedly found from this house, locked in the lavatory. According to the prosecution, accused No.1 had led the panchas to the house and the house was opened by the keys which were recovered from him. The prosecution has also led very cogent evidence to show that this accused No.1 had given a false excuse for the foul smell which was coming out due to the decomposition of the body, by stating to the neighbour that it was a foul smell of a dead cat. The prosecution has led reliable evidence to show that accused No.1 had made purchases of cardboard boxes, jute rope (bhindi), jute cloth (kantan), jute string (sutali) for tying the bodies and for removing them from the house and had also purchased perfume for fighting with the foul smell.

11.1 There is another set of witness examined by the prosecution which again showed the direct involvement of the accused No.1 in disposing of the body of the younger child Harsh near village Bhaat and as per that part of evidence, the accused No.1 along with his friend Mukesh had taken the dead body of Harsh, tied in a 'chaddar' and a pillow cover and put in cardboard box, on a stolen scooter. He was seen by two witnesses near village Bhaat where he and his friend had dug up a pit in which the dead body of Harsh was dumped and they had gone away on the scooter, which was earlier stolen on 4th April 1988 and was identified by one of the witnesses of village Bhaat who had seen them.

12. Vishnubhai Parshottam Chauhan, PW-3, who has deposed at exh. 31, was a friend of the accused No.1. According to him, the accused No.1 - Ramesh was to appear at the 12th Standard Examination and therefore, he had asked for the keys of his house in Kalapinagar. After consulting his parents, he gave the keys of the house to the accused No.1. He has stated that their neighbour in Kalapinagar one Vallabhkaka had, in April 1988, come to his house stating that there was severe foul smell coming from his house and a cat had died in it, and that they should get it cleaned. On the next day, the other neighbour Somabhai came and he also complained of foul smell and told them that if they did not get it cleaned, he would make an application to break open the lock. Therefore, this witness went to the house of Ramesh in Juli Apartments, but could not meet the accused No.1 Ramesh. On being asked by his parents as to why he had come, he told them that he had given the keys of his house to the accused No.1 and that he wanted them back, because, foul smell was coming out of the house. The father of the accused No.1 told him that Ramesh had gone to the shop and would come in the evening. As the accused No.1 did not turn up in the evening, this witness again

went to his house on the next morning i.e. 29th April 1988. Again, the accused No.1 was not there and one of his relatives had told him that he had gone to his maternal uncle's house. The relative of accused no.1 had started asking him questions. While he was sitting there, the police had come and he was taken to the Shahibag police station and from there, to Sardarnagar Camp police chowky. He was shown the keys which he identified as the keys given by him to the accused No.1 Ramesh. He has stated that these keys were returned by the accused No.1 - Ramesh after the 12th Standard examination of Gujarat was over, but he had taken them again because he was to appear in the 12th Standard examination of Karnataka. There was absolutely no reason for this witness to falsely implicate his friend, the accused No.1, whom he had given the keys for reading purpose.

12.1 The fact that the keys of the said house were recovered from the accused No.1 - Ramesh, is amply borne out from the other reliable evidence on record. Panch Babubhai Madhavlal Patel, PW-2, has deposed at exh. 27 that, on 29th April 1988, when the arrest panchnama of the accused No.1 was drawn as per exh. 28, these three keys were found from the right pant pocket of the accused No.1. The fact that these three keys were found from the right pant pocket of the accused No.1 at the time of his arrest panchnama exh. 28 and the fact that the keys were taken out and given to the panchas, is amply borne out from the contents of the panchamas exh. 28 and exh. 29 and they corroborate the say of the panch witness about the recovery of these keys from the accused No.1 and about the accused No.1 having led the panchas to the said house Block No. 44/339 of Kalapinagar which was opened by these keys by the panchas. The belated suggestion at the time of the arguments before us that there may have been a duplicate set of keys is not warranted, because, had there been a duplicate set of keys, Vishnu would not have gone twice to collect the keys from the accused No.1 for opening his house when the neighbours were persistently complaining about the foul smell from the house.

13. Vallabh bhai, PW-5, who has deposed at exh. 33, stated that the accused No.1 (whom he earlier knew as Pavan and later came to know that his name was Ramesh and whom he identified as the person who used to come to the said house No. 44/339 in Kalapinagar), had told him that foul smell was coming, because, a cat had died in the house and that he will get it cleaned. This witness had gone to Parshottambhai's house on the next day as the foul smell increased and told the daughters of Parshottambhai about it. He was told that they did not have the key and that it was lying with the person to whom the house was given for reading purposes. On the next day, the other neighbour Somabhai and one other person had also gone to Parshottambhai and complained. This witness resides in house No. 44/340 and according to him, they had suffered this nuisance of foul smell for about 6 to 7 days. He has stated that he had gone to Parshottambhai's house on 27th April 1988 and Somabhai had gone there on 28th April 1988. This witness had no enmity against the accused No.1 and there is no reason why he should be falsely implicating him.

13.1 The other important witness who was residing in the adjoining house wherein Block No. 44/338 is, Somabhai Patel, PW-8, who in his deposition at exh. 36, has stated that the accused No.1 was known to him as Pavan and later on, he came to know his real name Ramesh and that, this person, whom he identified, used to earlier come and read in the house in March 1988. He has then stated that, around the period when there was a hurricane in Ahmedabad, he used to come with a younger boy on a racer bicycle. Around 20th April 1988, he started coming on a grey coloured scooter. Around 23rd April 1988, the accused No.1 and the younger boy had come and that the younger boy had asked Vallabhkaka and Kashiben as to why foul smell was coming from their house and was told by Kashiben that it was not coming from their house. He further states that it was noticed that this foul smell was coming from the house of Parshottambhai. On the next day i.e. on 24th April 1988, the accused No.1 had gone on a scooter at a full speed when this witness was in his shop and therefore, he could not contact the accused No.1. On 25th April 1988, early in the morning, the accused no.1 and the younger boy were seen near the scooter in the front of their house and when he had come out of the house of Parshottambhai, Kashiben had shouted at him to do something about the foul smell and he had replied that he would bring a sweeper as the cat had died and will get it removed and after that, both of them had gone away on the scooter. Thereafter, Vallabhkaka had gone to Parshottambhai on 25th or 26th April 1988 to complain about the foul smell and returned and told this witness that he had talked to the daughters of Parshottambhai about it and they had said that Parshottambhai or Vishnu will go to the house of the accused No.1 and get the keys for getting the house cleaned. On the next morning, this witness and one Azizbhai had gone to Parshottambhai's house at 10.00 o'clock and again complained to his two daughters about the foul smell and told them that everyone was upset and that they should get it cleaned, otherwise they would inform the police. Both the daughters had told them that Vishnu will get the keys from the accused No.1 and any how get the house cleaned. This happened on 28th April 1988. Thereafter, at about 1.30 p.m. to 2.00 p.m., the accused No.1 had come to the said house. He was having jute cloth pressed in his armpit. When this witness saw the accused No.1, he went near him and told him to get the house cleaned. The accused No.1 told him, "Boss, Chinta Mut Karo, Abhi Saaf Kara Dunga" (Boss, don't worry, I will get it cleaned immediately). Thereafter, the accused No.1 opened the lock of that house and entered in it. He appeared nervous and therefore, this witness offered to him help, but the witness was not allowed to go in the house. The accused No.1 closed the outer grill and also closed the door from inside. After about half an hour, he had come out; and when his wife called him, this witness was in his shop and before he could come, the accused No.1 had gone away. According to this witness, when he came near the said house, they all could get a smell of perfume mixed with the foul smell. On 29th April 1988, the police had come to their place and the accused No.1 was also with them. In his cross examination, he has stated that the foul smell had started coming from the morning of 23rd April 1988, and it was increasing day by day. This witness is

perfectly a natural witness and there was no reason for him to falsely implicate the accused No.1. His complaining about the foul smell emitting from the house of Parshottambhai was a natural reaction, because, he was the adjoining owner. He had no reason at that time to suspect that it was a foul smell of a human body and when he was given the false explanation by the accused No.1 that the foul smell was of a dead cat, he readily accepted it and expected the accused No.1 and the owner of the flat Parshottambhai to get the house cleaned. According to him, the foul smell started coming from morning of 23rd April 1988, which again tallies with the time of death of these two children which was in case of Harsh 48 to 96 hours prior to the date of his postmortem examination that took place on 25th April 1988 and in case of Rakesh, 5 to 7 days before the date of his post mortem examination which was carried on 29th April 1988.

13.2 Abdul Pathan, PW-6, who has deposed at exh.34, was having a tailoring shop in a portion of the premises of block No. 44/338 and was a tenant of Somabhai, has also stated that the accused No.1 used to initially come on a bicycle and later, he was coming on a grey coloured scooter and one other younger boy was also coming with him. He has given the registration number of that scooter as GJ-I-3675. That is the scooter which was stolen on 4th April 1988, in respect of which a complaint was filed and later on, it was recovered and was identified as having been used by the accused No.1 when he had gone along with younger boy Mukesh carrying the dead body of Harsh for its disposal by tying it in a "chaddar" and pillow cover and keeping it in a cardboard box, near village Bhaat. According to this witness, there was a foul smell coming out of the house No.44/339. He has identified accused No.1 as the person who used to come to that house. He has also stated that Vallabhkaka had complained about the foul smell to Parshottambhai on 27th April 1988 and Somabhai had also gone to Parshottambhai on 28th April 1988 in that regard, and that they were told that, after getting the keys from the accused No.1, they will get it cleaned. He had seen Ramesh getting out of the said house on 28th April 1988 in the afternoon. In his cross examination, he has admitted that he did not hear any child crying from that house, nor any one banging the doors.

14. The depositions of Vallabhkaka, Somabhai and Abdul Pathan clearly establish that the accused No.1 used to come to the said house, and that initially he was coming on a bicycle and thereafter, he started coming on a scooter and the younger boy used to accompany him. The depositions of these witnesses clearly establish that the keys of the house were with the accused No.1. He was seen opening the house even on 28th April 1988. The prosecution has satisfactorily established that the accused No.1 was in exclusive possession of the said house during the period in question, and he was seen coming there on 20th April 1988 and thereafter till 28th April 1988. He was seen going on the scooter which was earlier stolen and one of the witnesses Abdul Pathan had ample opportunity to see the number of the scooter which was parked near the house, because, he was working as a tailor in the adjoining premises belonging to Somabhai. There is therefore absolutely no substance in the contention that the keys of the house

were not with the accused No.1 at the relevant time, and that he had never taken them back after he returned them earlier to Vishnu. It is satisfactorily established from the prosecution evidence that the foul smell started coming from the house of Parshottambhai (No.44/339) around the morning of 23rd April 1988, and that on being asked, the accused No.1 tried to mislead these witnesses by stating that the foul smell was of a dead cat. It is also established that Mukesh Shantilal used to accompany the accused No.1 in the said house. The accused No.1 was seen going inside the house even on 28th April 1988 and he did not allow Somabhai to enter the house when Somabhai offered to help him in removing the dead cat. He remained inside the house for half an hour and thereafter, had gone away. Soon thereafter, the residents found that, with the foul smell, fragrance of scent was also coming. Thus, the accused No.1 tried to take steps to reduce the foul smell by using perfume which he had purchased on that day. The evidence of these witnesses residing in Kalapinagar also establishes that the accused No.1 was coming on a scooter during the period between 20th April 1988 and 28th April 1988 and that for about a week, his bicycle was lying near the 'Pan Galla', as stated by Somabhai in his deposition at exh.36. The accused No.1, in his statement under section 313 of the Criminal Procedure Code when asked about the short younger boy, has admitted that Mukesh used to come along with him at times in the said house. From the deposition of the prosecution witnesses residing in Kalapinagar, it appears that the same younger boy Mukesh tried to pose as if they did not know from where the foul smell was coming, by telling Vallabhkaka and Kashiben that the foul smell was coming from their house but Kashiben who was the wife of Vallabhkaka replied to him that it was not coming from their house. The evidence discloses that fingerprints of Mukesh were found on the two bottles of soft drinks which were recovered from the said house. The prosecution evidence has also established that the scooter bearing registration No. GJ-I-3675 was being used by the accused No.1 and the accused No.1 and the said younger boy used to come to the said house in Kalapinagar on that scooter, as stated by the prosecution witness Abdul Yakubkhan Pathan in his deposition at exh.34.

15. The fact that the accused No.1 had led the panchas on 29th April 1988 to the house in which the dead body of Rakesh was lying and of which the keys were recovered from the accused No.1, is clearly borne out from the deposition of panch witness - Babubhai Patel, who has fully supported the prosecution and is corroborated by the panchnama at exh. 28 and 29. In the arrest panchnama at exh.28 which is proved by this witness, the fact about the said three keys having been found from the right pant pocket of the accused No.1 is mentioned. Even in the panchnama at exh.29 which was drawn in presence of these witnesses, that fact is stated and the particulars of these keys are noted. The keys were thus recovered from the pant pocket of the accused No.1 and the accused No.1 led the panchas to the house bearing No. 44/339 in Kalapinagar, and the house was opened by one of the three keys which were recovered from the accused No.1. When they entered the front room, there was an empty soda water bottle

lying there and foulsmell was coming. Then they entered the next room which was dark and very foul smell was coming in that room. Empty boxes of incense sticks were lying. From that room, they went in the next room which was locked, by opening that lock by using the keys shown by the accused No.1. Very foul smell was coming from that room. There were a mattress and two pillows lying in that room with blood stains. From that room, they went in the next room, adjoining to which was a bathroom and a lavatory. There was a pick-axe (trikam) without handle lying there. By one of the three keys which were recovered from the accused No.1, the lock which was applied to the lavatory was opened and an unbearable foul smell was coming from the lavatory. There was a bundle lying in the lavatory which was taken out from the lavatory and brought in the room. It was tied with jute string (sutali). The two panchas opened it. There was a dead body of a boy in that bundle with maggots in it. There was a red T-Shirt and a red half-pant on the dead body. When the bundle was opened, a steel bowl (vatka) with medicinal tablets in it was found. At that time, people from Forensic Science Laboratory had come and a photographer had also come. In that room, there was one steel 'lotta' with sand in it and there was empty packet of incense sticks lying. There was also a bottle of scent (Aattar) lying there. There was one medicinal bottle. There was one steel 'thali' lying on the floor, behind which there was a writing in a ball-pen to the effect that, "The dead body of two children was in our possession". There was a mattress (gadla) with two pillows which had blood marks and maggots were seen. On the floor, there were marks of blood below the 'gadla'. There was a chisel ('chhini') and a big iron needle. In the front room, there were empty boxes of biscuits, 'chavana', slices of bread, empty boxes of incense sticks and bowl (vatka). The panchnama exh.29 was drawn of the seizure of various items which are mentioned by this witness. It is important to note that one of the items (article 32) was a passbook belonging to the accused No.1. From the deposition of panch witness Babulal and panchnamas at exh.28 and 29, it is clearly borne out that the keys of the house were recovered from the accused No.1 at the police station and he had led the panchas to the house in which the dead body of Rakesh was found, tied up in a bundle and locked in the lavatory. Incriminating articles were seized under the panchnama including passbook belonging to the accused No.1 of his savings account no. 4773 in the Ahmedabad Mercantile Cooperative Bank Ltd. were found from the said house.

15.1 We have seen the muddamal account passbook of the accused No.1 of his Account No. 4734 which was recovered from the said house under the panchnama exh.29. The fingerprints on the two soft drink bottles which were recovered from the said house were ultimately found to be those of Mukesh Shantilal Jain, the short younger boy who used to accompany the accused No.1 as per the evidence on record. The report of the Finger Print Bureau at exh.66 establishes that the fingerprints found on the sprint bottle and the soda water bottle, were those of Mukesh Shantilal Jain. The prosecution evidence, therefore, clearly establishes that the accused No.1 was having the keys to the

said house bearing No.44/339 in Kalapinagar, and that he was seen by the neighbouring witnesses of Kalapinagar coming to that house with Mukesh on a stolen scooter, and that, after foul smell started coming from that house since morning of 23rd April 1988, the accused No.1 had given a false explanation to mislead the neighbours by stating that it was a foul smell of a dead cat lying in the house. The prosecution witness Vishnu had identified the keys at the police chocky and these keys were recovered under the panchnamas at exh.28 and 29 when the accused No.1 was arrested and the accused No.1 led the independent panchas to the said house which was opened by the keys recovered from the accused No.1 and the dead body was found tied up in a bundle which was locked in the lavatory, which lock again was opened by one of these keys recovered from the accused No.1. The evidence of the witnesses residing in Kalapinagar houses Nos. 338 and 340 of Block No.44 as well as the evidence of the tailor who was having his shop there, the recovery of the keys of the house No.339 of block No.44 from the accused No.1 and the discovery of the body at the instance of the accused No.1 from that house, are all a clear pointer to the fact that the accused No.1 was directly involved in the crime and that, he was making attempt to dispose of the dead body of Rakesh which was still lying in the said house, after having disposed of the dead body of Harsh in the morning of 24th April 1988, which fact is established by the other set of cogent evidence. Before we advert to that part of the evidence, we may note that the accused No.1 had, as per the reliable evidence on record, made purchases of certain items which were to be used by him in removing the dead bodies and he had also purchased perfume (Aattar) to reduce the foul smell which was emitting from the dead body of Rakesh which was lying in the said house for a longer period.

16. The witness Naranbhai, PW-15, in his deposition at exh.104, has stated that he is having a shop in Mahalaxmi Tea Depot near Delhi Darwaja and that in that shop, they are also selling Jashwant Chhap Telephone Bidis. These Bidis are purchased in a big carton which is covered in a jute cloth. The cartons are of cardboard box and in one carton, there are 32,000 Bidis. There is a printed number on each cardboard box. He has stated that, on 23rd April 1988, in the morning at about 10 o'clock, one tall thin boy, whom he identified as the accused No.1, had come and inquired for a cardboard box. This witness has stated that the cardboard box was purchased by the accused No.1 from him for Rs.4=00. This witness had identified the accused No.1. He also identified the muddamal - cardboard box (article No.1) and the jute cloth in which it was packed (article 50), which was bearing the same number - 5591 written on the cardboard box. This is the cardboard box in which, as per the prosecution version, the dead body of Harsh was carried by the accused No.1 and his companion Mukesh to village Bhaat, near which the dead body was dumped in a pit on 24th April 1988 and later discovered.

16.1 Then there is evidence of Sundarmal, PW-16, at exh.105, who has deposed that, on 20th April 1988, the accused No.1 with another shorter boy had come to his shop and asked for 'Bhindi' i.e. jute rope (used in cots, as stated by this

witness). He has stated that 'Bhindi' is used by poor people in their cots. According to him, the muddamal articles No.7 and 47 were the 'Bhindis' purchased from him by the accused No.1. According to this witness, accused No.1 had purchased 700 to 800 grams of 'Bhindi' for Rs.8=00. He identified the accused No.1 as the person who had purchased the rope from his shop.

16.2 Witness Mohammad Miya Ahmed Miya, in his deposition at exh.35, has stated that, on 28th April 1988, accused No.1 had come to his shop at about 12.30 in the noon to purchase 'Aattar' and that he had purchased a bottle of 'Mogra Aattar' for Rs.8=00. This witness identified the accused No.1 as the person who had purchased the Aattar from him and also identified the muddamal article No.36 which was the bottle in which the accused No.1 had purchased the 'Aattar' from him.

16.3 Prosecution witness - Jagdishsinh Jadeja, in his deposition at exh. 110 has stated that the accused No.1 had led them to the shops from where he had purchased 'Bhindi' (jute rope), jute string (sutali), jute cloth (kantan) and a big needle, as stated in the panchnama at exh.111.

17. It is established from the deposition of Dahyabhai, at exh. 76, who was serving as Assistant Examiner that the disputed articles on the steel Thali, "25-Mr. Tamara bey chhokara aamari jode chai" (Mr. your two children are with us), were written by the person who had written the admitted writings mark A/1 to A/6. These admitted writings were of the accused No.1 - Ramesh Bhanvarlal Jain. All this is borne out from the deposition of Dahyabhai, exh. 76 and the material forwarded to him under the letter at exh. 77 and his opinion at exh. 80.

18. The prosecution evidence has clearly disclosed that the dead body of the other child Harsh was found from near village Bhaat. Witness Manharbhai, in his deposition at exh. 40, has proved the panchnama in that regard. He has deposed about the fact that the dead body of Harsh was found tied in a bundle in a bed-sheet and a pillow cover, which all were in a cardboard box of Telephone Bidis. He has proved the panchnamas at exhs.30 and 41. There is reliable evidence on record to show that the accused No.1, accompanied by his companion Mukesh, had gone to the place from where the dead body of Harsh was recovered. Witness Bhikhabhai Bharvad, in his deposition at exh. 37, has stated that, in the morning at about 6 o'clock, when he was proceeding from near his field, he had seen two boys digging a pit near the culvert. He, therefore, went back and informed Vitthalbhai about the same. Thereafter, he and Vitthalbhai armed with a dharia and a lathi went to that place near those boys and asked them as to what were they doing. They were told that the college boys were to come and play there. On asking these boys as to from where did they come, this witness was told that they came from Meghaninagar. Thereafter, this witness and Vitthalbhai went to the field of this witness and the two boys went towards the road. According to this witness, he had gone to his field and stood there and saw that the boys had gone on the road. According to this witness, after he went to his field, he saw that the boys had put one bundle in the pit and then gone away. He

has stated that the boys had come on a scooter. This witness identified the accused No.1. In his cross-examination, he has maintained that, from the terrace of the room which was in his field, he had seen the movement of the two boys. He had gone in the village and told the village persons that two boys had kept the bundle from which small portion of foot was seen and gone away.

18.1 Then there is evidence of Pramukhbhai Patel, at exh.39, who has deposed that, in the morning of Sunday at about 7 o'clock, Bhikhabhai had shouted that somebody had come on a scooter and put a bundle and gone away. According to this witness, he has seen these two persons while they were going towards Indira bridge; one was tall and fair and the other was a medium built. They went on the scooter which was driven by the tall person, whom this witness identified as the accused No.1 in the Court. According to this witness, they had then gone to the place where the bundle was buried. From the bundle, a foot was seen. In his cross examination, he stated that he had seen the boys from a distance of 2 to 3 feet. When he had seen the foot in the bundle, he suspected that murder may have taken place. The evidence of Bhikhabhai and Pramukhbhai clearly establishes that, in the early morning of 24th April 1988, they had seen the accused No.1 accompanied by a shorter person identified as Mukesh Jain as per the panchnama exh.16 proved by PW-1 who has deposed at exh.15, leaving the dead body of Harsh, tied in the bed-sheet and the pillow cover in a pit near village Bhaat.

18.2 Witness - Dipsinh, Police Patel of village Bhaat, in his deposition at exh. 121, has deposed to the effect that, on 24th April 1988, when he was proceeding towards Koteshwar for his work, he had noticed a crowd near a culvert. He had seen foot of a child and a box of Jashwant Chhap Bidi. He then went to call the police and returned with the police sub inspector at the place where the body was lying.

18.3 The fact that the scooter bearing registration No. GJ-I-3675 was seen driven by the accused No.1 both near the house No.44/339 in Kalapinagar and also by the witnesses at village Bhaat as a scooter which was driven by the accused No.1, has been clearly established by the prosecution. Even witness Abdulbhai had given the registration number of that scooter. The scooter was ultimately traced out as per the panchnama at exh.119 at midnight between 28th April 1988 and 29th April 1988, as per the deposition of witness Dahyabhai.

19. The evidence brought on record clearly establishes that the accused No.1 had brought both the boys in the said house bearing No. 44/339 in Kalapinagar soon after they were kidnapped by him and both the boys were killed by strangulating them on or about 22nd April 1988 in the said house and because of the foul smell coming out of the house and the neighbours' inquiring, the accused No.1 with the help of Mukesh, had taken the body of Harsh tied in the bed-sheet and pillow cover and put in the cardboard box to near village Bhaat when he tried to dispose of the body by burying it in the morning of 24th April 1988. The evidence establishes that the accused No.1 had purchased the cardboard box on 23-

4-1988 from the shop of Naranbhai, PW-15, at exh.104. It is also established that the accused No.1, in the company of Mukesh, used to go in the said house where these two children were taken by him. It appears from the medical evidence that the death of both the children took place between 21st April 1988 and 23rd April 1988.

20. As noted above, after receiving the telephonic demand on 21st April 1988 at 2.55 p.m., the father of these children had gone to the spot at 5 o'clock in the evening near Roopali Cinema, but no one turned up. It is clear that, after the call for seeking ransom was received by Ghisumal, the complainant, the party calling was alerted and no one turned up at 5 o'clock in the evening to collect the ransom. It is obvious that, before the complainant Ghisumal could reach near the Roopali Cinema with the ransom amount, the person who had telephoned him was already alert. Unfortunately, though the telephone from which the call came was traced out, no further information about the caller was forthcoming. Since the accused No.1 was in proximity with the complainant - Ghisumal, it is obvious that he came to know immediately about the police accompanying Ghisumal at the time when he carried the sum of Rs.2 lakhs in response to the phone call which was received at 2.55 p.m. The facts and circumstances which are established from the reliable prosecution evidence on record, clearly indicate that the accused No.1 had taken the children who were related to him and would have had no resentment in going along with him to the house bearing No. 44/339, which was at that relevant time in his possession. He had purchased valium tablets which had tranquilizing effect. He also took the help of Mukesh who used to accompany him. He had purchased the cardboard box, jute cloth, jute string, Bhindi, scent etc. for the purpose of removing the dead bodies of these children and had successfully removed the dead body of the younger child Harsh, but because of the foul smell emitting and the neighbours becoming alert, he was ultimately apprehended with the keys of the house in which he had tied up the body of the other child Rakesh and locked it in the lavatory. Despite his young age, the conduct of the accused No.1 has been established to be a very cool and calculated. Both the children had confidence in him since he was their near relative and having taken the children in the house which was in his exclusive possession, he attempted to knock out a ransom. Obviously because his voice would be recognised by his uncle, he used some other medium for putting in the call for ransom. However, having come to know about the police being informed and accompanying the complainant Ghisumal, he could not pursue the path of recovery of ransom. He was the earliest person who could have known that the police was alerted and would be accompanying Ghisumal when he had carried a sum of Rs.2 lakhs after receiving telephone call at 2.55 p.m. on 21st April 1988.

21. There is no substance in the contention which is sought to be raised on behalf of the accused No.1 that the two children might have been killed elsewhere and their dead body alone was brought in this house which was at that time in the exclusive occupation of the accused No.1. There would be no point in bringing bodies of these children if they were killed elsewhere by strangulation. Moreover,

the evidence discloses that the accused No.1 used to come to this house and was seen there on 20th April 1988 onwards till 28th April 1988. The false explanation that he tried to give to the neighbours who asked him about the stench which was emitting from the house that a cat had died in it, was a clear pointer to his guilt and this was obviously done to buy time to dispose of the dead body of Rakesh, after having disposed of the dead body of Harsh. The accused No.1 has all throughout acted in a cool and calculated manner, despite his young age. Having taken his two young cousins to the said house and having kept them and tried to knock out the ransom amount, but on fearing that the police was already alerted and he would be detected, he strangled both the children, disposed of the body of the younger child Harsh by removing it in a clandestine manner from the house and putting it in a pit near village Bhaat, where he was seen by the two witnesses along with his companion Mukesh. The evidence clearly discloses that he had led the panchas to the said house bearing No. 44/339 which was opened from the keys which were recovered from him and the dead body of Rakesh tied up in a mattress was recovered on 29th April 1988. As per the medical opinion, the death was caused between 5 to 7 days before the post mortem was done on the body of Rakesh. The medical evidence indicates that both the boys were killed around 22nd April 1988 by strangulating them. This followed due to failure of the bid to extract the amount on 21st April 1988 after the call for paying the ransom amount was received by the father of these two unfortunate children at 2.55 p.m. on 21st April 1988.

22. The evidence clearly discloses that the accused No.1 - appellant was in the exclusive possession of the house No. 44/339 in Kalapinagar, the keys of which he had taken from his friend Vishnu. Both the children Rakesh and Harsh being cousins of the accused No.1 who was staying in the same Housing Complex of Juli Apartments and had even stayed in their house while his parents were in Karnataka, were closely acquainted with him and would have followed him without fear or resentment. The dead body of Rakesh was found from the said house after its keys were recovered from the accused No.1, who led the panchas to that house on 29th April 1988. It was tied up in a quilt and jute cloth and locked in the lavatory of that house. The evidence clearly discloses that earlier in the morning of 24th April 1988, the accused No.1 along with Mukesh took the dead body of Harsh for its disposal concealing in a cardboard box and tied in a bed-sheet and pillow cover to a near village Bhaat and dumped it in the pit dug by them. In the process, he had used the scooter which was earlier reported to be stolen on 4th April 1988. The said bed-sheet and the pillow cover were proved to be those which were in the house No. 44/339 from the deposition of Vishnu and the panchas, as proved by the panchnama at exh.142 under which he had identified the same as a bed-sheet and pillow cover which were in his house No. 44/339. Unless the dead body of Harsh was brought from the said house itself by the accused No.1 tied in the said bed-sheet and pillow cover, these two articles would not have appeared at village Bhaat on 24th April 1988 with body of Harsh tied in them. This circumstance unequivocally establishes that the accused No.1

had tied the body of Harsh in the said bed-sheet and pillow cover and brought it concealed in the cardboard box which he had purchased for the purpose on 23rd April 1988, which was carried by him on the scooter with the help of Mukesh to village Bhaat and left in a pit dug by them on the morning of 24th April 1988.

23. The contention of the learned counsel for the accused No.1 was that even if it were to be held that the dead body of Rakesh was kept concealed in the said house, there was nothing to show that the children were brought by the accused No.1 alive. According to him, the possibility of their being killed elsewhere and then being brought to the said house for concealment cannot be ruled out. There is absolutely no substance in this contention. The children were known to the accused No.1 and would have readily accompanied him to the said house. There were biscuits and other eatables found lying in that place. The william tablets which the doctor had prescribed to the accused No.1 were also found there. The neighbours had not heard any shots or banging of doors from that house. The children who trusted their elder cousin brother had no reason to panic and would expect accused No.1 to be their protector rather than destroyer and would have gone with him in the said house least suspecting that they were being kidnapped. It is impossible to imagine that dead bodies of these two children will be brought in the house after they were killed elsewhere by someone else, as was sought to be urged. The accused No.1 would not, in normal course of conduct of any human-being, have brought the dead bodies of his cousins to a house of which he was having the keys, if they were killed by someone else outside the house. It is impossible to conceive that dead bodies of two children, 7 years and 4 years of age, would be brought by the accused No.1 to the house if they were killed outside the house. Instinct to dispose of the dead bodies will be to put them off in a way that the disposal is not linked with the accused and not to put it at a place which would directly implicate him. There was no indication found in the house to infer that the dead bodies were brought in the house from somewhere else. We are fully satisfied from the evidence that both the boys were alive when taken to the house by their elder cousin- the accused No.1 and on the ransom attempt having failed due to the information given to the police by the complainant, both the boys were done away with by the accused No.1, because, if they were allowed to remain alive, they would have disclosed to everyone that it was the accused No.1 who had kept them in the house, the key of which were recovered from him. The accused No.1 had taken the help of Mukesh who used to accompany him to the house from which his finger prints were found on two soft drink bottles. The handwriting of the accused No.1 was proved from the steel Thali recovered from the house, by expert evidence. Since the ransom went haywire due to the police being alerted which the accused No.1 must have come to know as he had a natural access to the complainant's house, the accused No.1 was vitally interested in disposing of the boys so that he may not be traced out as the person who kidnapped them for ransom. The accused No.1 was taking help of Mukesh, whose fingerprints on the two soft drink bottles showed that he must have remained in the said house for

considerable time and this would have facilitated the accused No.1 in also going to the house of the complainant in Juli Apartments where he too resided in a nearby block with a view to keep a watch on the situation that was developing. With the help of sedatives and Mukesh, accused No.1 was able to manage the situation by being present around the complainant's house to know as to what was happening there while keeping children locked in the house till they were killed by strangulation around 22nd April 1988 after the ransom bid failed due to his knowledge about the police having been alerted by the complainant and accompanying him in plain clothes when he took the ransom amount of Rs. 2 lakhs near the Roopali Theatre at 5.00 p.m. on 22nd April 1988.

24. From the evidence on record, we are fully satisfied that it was the accused No.1 alone who had kidnapped both the children from the lawful guardianship of his uncle, the complainant and kept them in the house No. 44/339, the keys of which were with him and on the attempt to get the ransom having failed, he killed both the children by strangulation. The purchased material was to be used for disposal of their bodies. He also used perfume to put the neighbours off their track when they were becoming nosy about the foul smell emitting from the house. He along with Mukesh disposed of the dead body of Harsh by dumping it in the pit near village Bhaat where he was seen by two eye witnesses in the morning of 22nd April 1988. Before he could dispose of the dead body of Rakesh which was tied up in a bundle and put in the lavatory which was locked by him, he was arrested under suspicion and he showed the place where he had locked the dead body. The evidence clearly discloses that the accused No.1 was the person who kidnapped the children on 19th April 1988 and they remained in his custody in the house No. 44/339 in which he committed their murder by strangulating them around 22nd April 1988 and disposed of the body of Harsh on 24th April 1988 and secreted the body of Rakesh for disposal and destroying the evidence, till it was detected at his instance by the panch on 29th April 1988. We fully endorse the reasoning and finding of the learned trial Judge holding the accused No.1 guilty of the offence u/s 302 of the Indian Penal Code and also of the other offences under sections 201, 363, 342, 343, 363, 364 and 120B of the Indian Penal Code.

25. In the above view of the matter, we find ourselves in complete agreement with the reasoning adopted by the trial Court for holding the accused No.1 guilty of the offences with which he was charged. The accused No.1 appellant has been sentenced by the trial Court to life imprisonment for the offence u/s 302 of the Indian Penal Code. He is also found guilty of other offences under sections 201, 342, 343, 363, 364 and 120B of the Indian Penal Code and imposed punishment of six months rigorous imprisonment for each of those offences and a fine of Rs.200=00, in default to undergo one month rigorous imprisonment. It is contended on behalf of the State that the appellant - accused No.1 has acted in a heinous manner and has done to death to his close relatives, who were innocent children of 7 years and 4 years of age and who never would have doubted that their own relative will harm them. The trial Court has, taking into account

that the appellant accused No.1 was a young boy of 18 years of age, refrained from imposing death penalty on him. At this distant point of time, we do not find it proper to interfere with the sentence by enhancing it to death penalty.

26. Before parting, we may refer to one disturbing aspect of the matter. When the hearing of these appeals commenced on 11th June 2001, we had inquired about the presence of the appellant - accused No.1. and we were informed that he had been absconding since 1991. It appears that no intimation was sent to the High Court Registry about his having absconded though the State appeal for enhancement of sentence to death sentence as well as the appeal filed by the appellant - accused No.1 against his conviction and sentence of life term were pending. The Court had all these years not been moved by the State Government for taking any steps in respect of the appellant - accused No.1 who had absconded. The State does not seem to have taken any concrete steps against the officers and other staff who have been indifferent over the convicts' not reporting back to jail after his parole period ended on 26-5-1991. The jail authorities have, during the hearing of these appeals, sent an intimation to the learned Public Prosecutor which does not at all indicate as to what action was taken by the jail authorities soon after the convict failed to report on 26-5-1991 after he was released on parole by the District Magistrate, Junagadh. Though right from the date of commencement of the hearing of these appeals, we required the State through its Public Prosecutor and the police officers, who were present from time to time in Court, to produce the appellant - accused No.1, we have been told by the learned Public Prosecutor that they have not been able to trace him out. There is nothing put on record to show the efforts made for tracing out the convict. The indifference of the authorities towards securing the presence of the convict and their failure to trace him out despite the State having filed an appeal for enhancement of sentence to capital punishment, reflects poorly on the law enforcing agencies. We do expect the Government to take stern action against those who were responsible to report that the convict had not returned, but did not report and those who were expected to take steps for taking the convict in custody after he failed to report, but have been indifferent and negligent in the performance of their duties. The statistics have shown that very few trials result in conviction and it will be sheer mockery of the criminal justice system, if even for those few offenders who are brought to book, their escape is made easier by simply not taking any action when they do not report back at the end of parole or temporary bail. We expect the State Government to bestow its special attention to the aspect of the convicts of serious offences absconding and the failure of the administration to track them out and to chalk out a strategy to ensure that an appropriate vigil is kept when the convicts are enjoying parole and if they do not report on the day that they are required to report, swift action is taken to take such convicts in custody and for this purpose, to form a Special Task Force to trace out the absconding accused or convicted persons.

We, therefore, direct the State Government to issue necessary instructions to all the jail authorities to send urgent written intimation to the concerned Court where

any proceedings are pending in respect of any accused / convict who does not report himself of the period of his temporary release and also simultaneously inform in writing about it to the State Government in its Home department and to the Director General of Prisons and the Director General of Police who will on their part maintain the record of such cases and take urgent steps to trace out the absconding accused / convict and in cases of lapses of concerned official and staff, take suitable departmental action in the matter.

27. For the reasons that we have indicated in our judgement, we dismiss both the appeals.