IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1246 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

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Approved for Reporting	Yes	No

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HIRENBHAI JAYANTIBHAI PATEL
Versus
STATE OF GUJARAT

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Appearance:
HCLS COMMITTEE(4998) for the Appellant(s) No. 1
MR PV PATADIYA(5924) for the Appellant(s) No. 1
MS CM SHAH APP for the Respondent No. 1

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 15/04/2025

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. This Criminal appeal preferred by the appellant – Hiren Patel (A-1) under Section 374(2) of the Cr.P.C. is directed against the judgment of conviction and order of sentence dated 15.04.2013 passed by the learned Additional Sessions Judge, Vadodara in Sessions Case No. 206 of 2010 by which the appellant has been convicted under Section 302, 363, 364A and 201 of

the IPC and sentenced as tabulated hereinunder:

Accused	**Conviction under Section**	**Punishment**	**Fine**	**In default of fine**
Hiren Jayantibhai Patel (A-1)	Section 363 of IPC	Rigorous imprisonment for 7 years	10,000/-	Simple imprisonment for 6 months
Hiren Jayantibhai Patel (A-1)	Section 364-A of IPC	Life imprisonment	20,000/-	Simple imprisonment for 6 months
Hiren Jayantibhai Patel (A-1)	Section 302 of IPC	Life Imprisonment	25,000/-	Simple imprisonment for 6 months
Hiren Jayantibhai Patel (A-1)	Section 201 of IPC	Rigorous imprisonment for 7 years	10,000/-	Simple imprisonment for 4 months

2. The case of the prosecution leading to conviction of the appellant accused is as follows:

2.1 The appellant herein – Hiren Patel is resident of Village Chapad, City Vadodara and at the time of incident i.e. on 05.07.2010, he was living with his father Jayantibhai, mother Dharmishthaben and brother Nimish in a joint family at Village: Chapad. PW.13 Jignesh Patel with his family was also residing in the same village and his house is situated adjacent to the house of appellant-accused. The relations of the parties as neighbors were cordial and they had been living as a family.

2.2 PW.13 on 05.07.2010, was not in his village as he had gone to Amarnath Pilgrimage and his son-Shrey aged about 8 years was at the house of his village and did not accompany to him at Amarnath. On 05.07.2010, at about 6:00 p.m., the child Shrey had gone to purchase sweets and pepsi at the shop of PW.9 Nagin Patel and accordingly, after purchasing the same, he was on way to his house. The appellant-accused before the child could reach at his house, kidnapped him for ransom of Rs.10 lakh and took the child at his room situated at the first floor of the house, there he was strangulated to death with a cotton rope by the accused-appellant herein. The family members had made extensive search of the child as till late evening on that day he did not return to the house. The cousin brother PW.6 Harshad Patel lodged a missing complaint (Exh.63) with Makarpura Police Station. PW.13 Jignesh Patel was informed about missing of his child and he immediately returned to Vadodara on 06.07.2010. Meanwhile, the Makarpura police made extensive search in the nearby area, but the whereabouts of the child could not be found. PW.13 – father of the child requested the police to deploy a dog squad for scientific search. On 07.07.2010, before dog squad could come, the appellant-accused at about 12:00 p.m., talked with the PW.13 Jignesh Patel on his landline no.221919 allegedly dialed by him from the

STD/PCO booth owned by Pritesh Shah (PW.12). The appellant-accused demanded a ransom amount of Rs.10 lakh from PW.13 and further informed that, the child is with him and presently he is safe. The accused-appellant also informed that they are total 5 persons and they took the child from where he had bought pepsi. PW.13 was further informed by the caller i.e. appellant that his informer is standing near the transformer of the village and giving every update of every movement and therefore, he had been cautioned not to play any mischief. PW.13 after hearing the conversation from the caller -appellant, agreed and conveyed that he is ready to pay Rs.10 lakhs and further requested that he wants to talk to his child. The caller -appellant thereafter, said that he would call him at 7:00 p.m. and cut down the call. PW.13, did not disclose anyone except his brother about the call conversation and waited up to 9 o’ clock evening because he was in waiting of call as assured by the caller. Thereafter, when there was no response of the caller, the PW.13 had realized and identified that the voice of the caller is of his neighbour appellant Hiren. In such circumstances, as a last resort, he lodged a complaint at about 10:00 p.m. on 07.07.2010 narrating the facts of the call conversations as referred above, alleging inter alia, that the appellant-accused and five others kidnapped

his child for ransom. The Makarpura police registered an offence under Sections 363, 364A read with Section 114 of the IPC against the appellant and five unknown persons.

2.3 PW.22, I.O. Raghuveersingh Bhadoriya during the course of investigation, went to Village: Chapad and called the appellant-accused and upon his preliminary inquiry, it was revealed that, on 05.07.2010, when minor Shrey after eating the sweet and pepsi from the shop of PW.9 Naginbhai, was on the way to his house, had been kidnapped for ransom of Rs.10 lakh by the appellant-accused and under the guise of learning computer, the minor Shrey was taken to the house of accused Hiren and taking him at the room situated at first floor, he had been strangulated to death with cotton rope. It was further revealed that, in order to dispose of the dead body, it was put in the plastic bag and then in the tin barrel. Thereafter, the tin barrel was brought down from first floor to ground floor by using a ladder made of iron and then taken to the farming yard situated near the house by the appellant. The accused purchased a 15 kg bag of salt from the provision store of the village. The accused -appellant then after digging the mud, put the dead body of the child into water tank of the yard and after sprinkling the salt on it, he buried the dead body.

2.4 The investigating officer PW.22 during the course of investigation, arrested the appellant and at the instance of the accused, seized and recovered the slippers of the child and discovered his body from the yard. The body was sent for postmortem and according to opinion of the doctor PW.17, the cause of death was asphyxia due to strangulation. The PW.22 as a part of investigation, called a Scientific Officer, FSL, Vadodara for investigation. PW.19 – R.L. Gondaliya, Scientific Officer inspected both the places i.e. where murder took place and the dead body buried at the yard. According to opinion of the PW.19, the lowering down of the tin barrel filled with the dead body from first floor to ground floor and then at the yard, it could not be possible for a single person to execute the entire act and according to his opinion, considering the position of the staircase, the involvement of other persons cannot be ruled out. The PW.19 also found stains on the computer gadgets as well as on the floor of the room, which in his opinion, it might be a fluid of decomposed body. The PW.19, found clothes allegedly lying on the chair situated in the kitchen of the house. The clothes found with foul smell and having human blood. In such circumstances, the I.O. PW.22 had arrested the father, mother and brother of the accused and according to prosecution case, the accused with their common intention, killed

the deceased for ransom and in order to save the appellant – their son, have caused the offence of disappearance of evidence. The I.O. during the course of investigation, recorded the statements of witnesses, obtained the postmortem report, sent the seized articles to FSL for chemical analysis and thereafter, filed the chargesheet against the appellant and 3 others who are father, mother and brother of the accused Hiren for the offence punishable under Sections 363, 364A, 302, 201, read with Sections 34 and 114 of the IPC. Thereafter, the case was committed to the Sessions Court, Vadodara.

3. After due framing of charge, and upon accused not pleading not guilty, the trial commenced before the Additional Sessions Judge, Vadodara. The prosecution examined following witnesses and exhibited following documents:

Oral evidence

PW 1 – Exh.27	Ramanbhai Bavabhai Patel, panch witness
PW 2 – Exh.29	Maheshbhai Sajanbhai rabari, panch witness
PW 3 – Exh.33	Gopalbhai Narottambhai Patel, panch witness
PW 4 – Exh.39	Chandrakantbhai Kashibhai Patel, panch witness
PW 5 – Exh.54	Rajendrabhai Shankarbhai Patel, panch witness
PW 6 – Exh.62	Harshadbhai Taljabhai Patel
PW 7 – Exh.66	Ajitsinh Motisinh Makwana
PW 8 – Exh.67	Maheshbhai Dilipbhai Padhiyar
PW 9 – Exh.68	Naginbhai Kashibhai Patel
PW 10 – Exh.69	Umakantbhai Tanajirao Sonavane
PW 11 – Exh.70	Sharmilaben Mohanbhai Tadvi

PW 12 – Exh.71	Pritesh Suryakant Shah
PW 13 – Exh.72	Jigneshbhai Hasmukhbhai Patel
PW 14 – Exh.76	Naranbhai Varsing Rathva, complainant (father of deceased)
PW 15 – Exh.77	Shabdadasiben Pramodbhai Patel, sarpanch
PW 16 – Exh.80	Narendrabhai Shravanbhai Bhavsar
PW 17 – Exh.84	Dr. Ashok K. Mahajan, medical officer
PW 18 – Exh.88	Shyamsunder K. Prajapati, nodal officer
PW 19 – Exh.93	Ramniklal L. Gondaliya, FSL officer
PW 20 – Exh.96	Punjabhai Arjunbhai, Police Station officer
PW 21 – Exh.102	Amitbhai Bhailalbhai Patel
PW 22 – Exh.104	Raghuvarsinh M. Bhadoriya, Investigation officer
PW 23 – Exh.112	Nisarg Vasantbhai Patel, Investigation officer

Documentary evidence

Exh.28	Panchnama of physical examination of body
Exh.30	Panchnama of physical examination of body
Exh.34-37	Muddamal notes
Exh.38	Panchnama for collecting clothes of body
Exh.40-48	Muddamal receipts
Exh.49	Handwritten note
Exh.50	Panchnama of scene of offence
Exh.55	Panchnama of collection of slippers of deceased
Exh.56	Discovery panchnama as per Section 27of Evidence Act
Exh.57	Inquest panchnama
Exh.63	Application about missing child
Exh.64	Statement recorded upon application about missing child
Exh.73	Complaint
Exh.74	Telephone bill
Exh.78	Certificate by Chapad Gram Panchayat
Exh.81	Photographs
Exh.85	Yadi for post mortem
Exh.86	Post mortem note
Exh.89	Application for phone connection
Exh.90	Certificate under Section 65-B of Evidence Act
Exh.91	Forwarding letter for demanding call details
Exh.92	Call details
Exh.94	Investigation report by FSL van
Exh.95	FSL report
Exh.97-99	Copy of extracts of station diary
Exh.100	Order of handing over investigation
Exh.106	Sketch of scene of offence

Exh.107	Yadi for registering offence
Exh.108-109	FSL forwarding note
Exh.110	FSL yadi
Exh.111	FSL report

4. After closure of the prosecution evidence, the appellant was questioned under Section 313 of Cr.P.C., to which he stated that he has been falsely implicated and prosecuted in the serious offence of murder. The witnesses are interested and related persons and deposed against them at the behest of PW.13. In nutshell, they have denied the entire case of the prosecution and evidence adduced before the Trial Court.

5. The accused appellant has not adduced any evidence in their defence.

6. The learned Additional Sessions Judge, after hearing the parties and upon appreciation of the evidence, found the accused Hiren Patel guilty of the charges, consequently, he has been convicted under Sections 363, 364A and 302, 201 of the IPC. The co-accused who are father, mother and brother have been acquitted from the charge of murder; however, they have been convicted under Section 201 read with Section 114 of the IPC.

7. Being dissatisfied with the judgment and order of conviction, the appellant Hiren Patel has come up with the present appeal.

8. We have heard Mr. P.V. Patadiya, learned counsel appearing for the appellant and Ms. C.M. Shah, learned APP for the State.

9. Mr. P.V. Patadiya, while assailing the impugned judgment, vehemently contended that the complete chain of events leading to the involvement of the appellant in the crime in question have not been established by the prosecution. According to him, the prosecution has failed to prove its case beyond reasonable doubt. The case is of one of circumstantial evidence and the onus to prove the case by leading cogent, appropriate and linking evidence is on the prosecution. The appellant had been implicated on the basis of suspicion as there is no evidence of last seen together i.e. none of the witnesses have stated that the accused appellant was seen with the child together on 05.07.2010. Thus, the ingredients of Section 363 of IPC are not proved and established. There are no any incriminating circumstances proved by the prosecution to establish that on 05.07.2010, the child was kidnapped or abducted by the appellant; so far as offence of kidnapping for ransom is

concerned, the prosecution failed to prove that the accused has kidnapped or abducted or detained the child and was in his custody; that the factum of demand of ransom also has not been proved; according to the case of the prosecution, the accused made a call on the landline number of PW:13 and demanded a ransom of Rs.10 lakhs; that PW:12 Pritesh Suryakant Shah refused to identify the accused when he was taken to his shop where as per the prosecution, call was made; the address of the STD PCO booth was shown at the different address of Vadodara and according to the prosecution case, call was made from the shop situated at Sayajiganj area of Vadodara; the I.O. failed to obtain the transcript of conversation nor he did a voice spectrography of the accused to identify the voice of the call; thus, the prosecution failed to prove the necessary ingredients of Section 364A of the IPC; that the witnesses are interested witnesses and closely associated with PW:13 as he is a politically influence person and his wife was the Sarpanch of the village. Thus, the witnesses viz. PW:4 Chandrakant Patel, PW;5 Rajendra Patel, PW:7 Ajit Makwana, PW:8 Mahesh Padhiyar, PW:9 Nagin Patel are highly interested persons and therefore, in absence of any independent evidence, their testimonies do not inspire confidence; that PW:9 Nagin Patel being an owner of cold-drinks shop had

did not disclose about the child in his first two statements recorded by the police and later on, the theory of purchasing sweets and pepsi being projected by him; that PW:11 Sharmila Tadvi is improving her version about throwing dead body in the tank by the accused, as such she did not disclose the said facts in her police statement and therefore, she seems to be a got up witness and her presence at the place creates a doubt; that the place where the dead body found belongs to the accused or his family members and according to PW:15, the land is a gaucher land vest with the village panchayat and as per the prosecution case, surrounding the plot, there is no boundary and therefore, the place is open for accessible to all; that when the possession and ownership of yard is not proved and established then the discovery and recovery of the dead body of the child from the place and at the instance of the accused, cannot be accepted; that the evidence of recovery or discovery of the dead body is not trustworthy and reliable. There are material contradictions in the testimony of panch witnesses of the panchnama at Exh.56, and deposition of I.O. PW:22. That the contents of panchnama Exh.56 have not proved by the panch witnesses as well as I.O. and therefore, the factum of recovery or discovery cannot be used to connect the accused in the crime.

10. In such circumstances, referred to above, Mr.Patadiya, learned counsel submitted that the Court below has committed a serious error in appreciating the evidence against the appellant and wrongly convicted them under Sections 363, 364A, 302 and 201 of the IPC and therefore, he submitted that the judgment of the conviction and order of sentence are not sustainable in law and the same may be quashed and set aside, the appellant be acquitted from all the charges.

11. On the other hand, learned APP Ms. C.M. Shah supported the view taken by the Court below and further contended that the prosecution in this case, has proved beyond reasonable doubt the factum of discovery or recovery of dead body at the instance of appellant accused for which he has not explained anything in his further statement recorded under Section 313 of the Cr.P.C.; that the accused and the complainant party were neighbours and taking disadvantage of the situation, the accused kidnapped the child and taken him to the room at the first floor of the house and strangulated to him to death; the cotton rope and one handkerchief found from the body of the deceased and the same were taken by P.M. doctor and handed over to the police (Exh.38); that the contents of panchnama at Exh.56 have been proved by the panch witnesses Rajendra Patel PW:5

and Subhash Patel PW:6 and the I.O. PW:22 in his deposition stated the statement made by the accused voluntarily about his willingness to discover the dead body buried by him in the yard; the accused and PW:13 since long they were neighbours and based on their relations, PW:13 identified the voice of the caller, who had demanded the amount of ransom; thus, the factum of discovery of the dead body at the instance of the accused is proved and ingredients of demanding ransom is also being proved by the prosecution; that the bloodstained clothes found from the house of the accused and the blood matched with the blood of the deceased; that there is no any explanation on the part of the accused about the incriminating material and circumstances, as referred above, which would be additionally to prove the complicity of the accused in the crime.

12. Ms. C.M. Shah, learned APP in the aforesaid contentions submitted that the Court below has rightly appreciated the oral as well as documentary evidence and each one of the circumstances as referred have been established and all circumstances put to gather lead to the inference that the accused has committed the murder of the deceased and motive behind the murder was the ransom amount. Thus, therefore, she submitted that there being no merits in the appeal

and the same may be dismissed.

13. We have heard at length learned advocate for the respective parties and perused the case records.

14. Before dealing with the rival contentions of the parties, it would be useful to analysis the evidence of some of the relevant witnesses.

(A) PW:17 Dr.Ashok Mahajan – the witness had conducted the postmorterm and while conducting the postmorterm, he noticed that the body was decomposed body and there was one cotton rope and handkerchief around the neck as well as face of the deceased. The doctor further noticed the external injuries viz. (i) contusion, 3x4 cm present on right side of the face, on chick irregular margins, faint in read colour; (ii) ligature mark around the neck, totally horizontal, diffused, depressed, total length 26 cm and 2.5 to 4 cm wide with foul smell below the level of thyroid cartilage found in red colour. The doctor also noticed the 40 grams of partly digested non smelling food present in mucusa. According to opinion of the doctor, the cause of death was asphyxia following strangulation. It was the opinion of the doctor that the external injury no.2

corresponding injuries mentioned in column no.20 were sufficient in ordinary course of nature to cause death. The time of death as per the doctor was between 48 hours to maximum to 72 hours from the time of commencement of the postmorterm.

(B) PW:6 Harshad Patel being a cousin brother of PW:13 has stated that on 05.07.2010 till evening, despite of extensive search of the child, they could not get any input as a result, he lodged a missing complaint with Makarpura Police Station. In the cross examination, nothing fruitful brought on record to substantiate the version of the prosecution.

(C) PW:13 Jignesh Hasmukhbhai Patel being a father of the child has stated that on 05.07.2010, when he was in Amarnath Pilgrimage, he informed by one Hajibhai who was school vehicle driver of Shrey that Shrey was missing. The witness has stated that he immediately came to his village Chapad and on 06.07.2010, at about 11:00 to 12:00 noon, when he was sitting with his brother Ashok, one call on his landline number was received and according to caller, the child Shrey was kidnapped by him on 05.07.2010, from the

shop where he had eaten the sweets and pepsi and further informed that they were in number of five persons. The caller had further informed PW:13 that his informer is giving all the information about the every movement of search of child and is standing near the transformer of the village and therefore, he caused not to play any mischief. PW:13, during the conversation with the caller, agreed to pay Rs.10 lakhs and asked the caller that he wants to talk with his child. The caller said that he would call him at 07:00 p.m. PW:13 in his testimony further stated that he waited till evening and did not disclose about the demand of ransom to anyone, except the family. The witness has further stated that till 09:00 o'clock p.m., he did not receive any call and during the interregnum period, he realized and identified that the caller was Hiren Patel his neighbour. The witness thereafter decided to lodge an FIR for the offence of kidnapped for ransom and accordingly, the FIR came to be registered with Makarpura Police Station against Hiren Patel. The witness has stated that after registration of the offence, the involvement of the appellant was surfaced and he strangulated to death his son in the room of the first floor of his house and thereafter, the dead body was removed in a tin

barrel and taken into the farm yard of the appellant accused where he buried it in the water tank. In the cross examination, the question regarding his connection with the political party, and the status of his wife being asked which he had answered accordingly. In the cross examination, nothing substantially proved that due to his political influence, the accused was falsely implicated in the offence and the witnesses deposed at their instance.

(D) PW:5 Rajendra Patel – the said witness was the witness of discovery of sleepers of the child and dead body at the instance of the appellant accused. It was stated by the witness that he along with Subhash Patel had been called at about 10:00 o'clock on 06.07.2010 by the police and at that time, the witness accused Hiren Patel voluntarily stated that he had saw the sleeper of the deceased lying nearby the canal of the village and accordingly, in their presence, the sleeper was shown by the accused and seized it by the police by drawing the panchnama at Exh.55. The witness has further stated that thereafter, at about 02:20 p.m., the police had called them. The witness has further stated that at that time, the accused Hiren Patel was under police custody and he voluntarily

made a statement that he would like to point out the place where he had buried the dead body after killing the deceased at his room of the house. The witness has further stated that after narrating the said fact in the panchnama, they had been taken to the place where the dead body was buried. The witness has further stated that in the presence of the accused and at his instance, the dead body was found from the water tank. The witness has further stated that thereafter, in the presence of the accused, they went to his house where the police seized a computer gadget and taken a sample of bloodstained in the presence of FSL Officer. The witness identifies the signature made by him at Exh.56 and also identifies the accused and other things recovered and seized by the police. In the cross examination, it was asked that he and other panch Subhash Patel known to PW:13. However, the facts remain that in the presence of witnesses, at the instance of accused, the dead body of the child was discovered.

(E) PW:7 Ajitsingh Makwana being an owner of the provisions store, has stated that on 07.07.2010 at about 08:00 a.m., the appellant accused came to his shop and purchased 15 bags of shops for earthing purpose and his helping hand PW:8

Mahesh Padhiyar had accompanied the accused in his scooter to deliver the salt at the yard. In the cross examination, usual questions were being asked but nothing brought on record to disprove the facts of purchasing of the salt by the accused.

(F) PW:8 Mahesh Padhiyar was a part time associated with PW:7 as part time worker. The witness has stated that after purchasing the 15 bags of the salt, he carried the bags and seated on the rear side of the two wheeler for delivery. The delivery was made at the yard of the accused and thereafter, he returned alone as the accused stated that he has some work in the yard. In the cross examination, questions were asked with regard to his employment of PW:7 and nothing else.

(G) PW:9 Nagin Patel being an owner of cold-drinks shop, stated on oath on 05.07.2010 at evening 06:00 o’clock, the child Shrey came to his shop and purchased sweets (laddu) and pepsi and thereafter, he proceeded towards his home. In the cross examination, the witness has denied to the suggestion that the child has never come to his shop.

(H) PW:4 Chandrakant Patel being a panch witness (Exh.50), has stated on oath that on 08.07.2010, he along with Vishnu Barot had been called by the police at the house as well as the yard of the accused. The witness has stated that in their presence, the FSL officer inspected the house as well as the yard and seized the bloodstained clothes from the house and other things.

(I) PW:10 Umakant Sonvane has stated on oath that on 07.07.2010, at about 07:00 o'clock, when he was going towards the milk dairy, he met the appellant accused, carrying with a drum and when he asked that why you are carrying such heavy things, then he said that he is going to clear the garbage. The witness has been confronted on the aspect of his presence, but nothing being brought on record that he was telling lie.

(J) PW:11 Sharmila Tadvi has stated on oath that her parents came to village Chapad for labour work near the yard of the accused. The witness has stated that on 07.07.2010, he saw accused Hiren in the yard and was digging the mud near the area and also requested her in the digging work. The witness has stated that the accused Hiren took

something out of the drum and threw it into the tank. In the cross examination, she admitted that in her police statement, she has not stated that Hiren took out something from the drum and threw it in the tank.

(K) PW:12 Pritesh Suryakant Shah has stated on oath that the police came to his shop along with the appellant accused and asked him to identify the accused and according to the police, on 06.07.2010, he made a call from his shop using coin box on the landline number of PW:13 Jignesh Patel. The witness admitted that he was having a connection of Airtel company no.9898110746 and it was used for the customer by inserting coin in the box. On the issue of identification of the accused, he came to his shop on 06.07.2010, he could not identify the accused because of long time gap.

(L) PW:14 Naran Rathva has stated on oath that on 07.07.2010 at Village Chapad, he was employed as Watchman by the owner of Divydharm Farmhouse which situated near the open yard of the accused Jayantibhai Patel who happened to be a father of the appellant. The witness has stated that the light connection was sought from his

farmhouse for the purpose of discovery or recovery of the dead body of the child and the same was found from the yard.

(M) PW:15 Ms.S.P. Patel has stated that she is the sarpanch of the village Chapad and the yard used by the accused belongs to village panchayat. The witness has stated that the accused and his father Jayantibhai using the said yard for keeping their animals and other farming instruments.

(N) PW:18 Shyamsundar Prajapati – the said witness has stated that at the relevant time, he was working as a Nodal Officer with Airtel Company and on the basis of requisition made by Makarpura Police Station, the call details records of Airtel no.9898110746, between 06.07.2010 to 10.07.2010, had been provided by his company. The witness with the certificate of 65B of the Evidence Act produced the called details which have been exhibited as Exhs.90 to 92.

(O) PW:22 the Investigating Officer Mr.R.M. Bhadoriya has stated that when he was working as a P.I. with Makarpura Police Station, a missing complaint with regard to child Shrey registered on 05.07.2010, and on 06.07.2010, the witness Hiren Patel, show

the sleeper of the deceased which he had seized in the presence of panchas and drew the panchnama at Exh.55. Thereafter, he made extensive search of the deceased and was about to deploy a dog-squad at the village, however, at the instance of PW:13, he postponed the deployment of the dog-squad as the complaint against the accused for kidnapping, kidnapping for ransom came to be registered by PW:13. The I.O. has further stated that after registration of the offence, he went to village Chapad and during the interrogation, the accused confessed that he had killed the deceased. The accused was arrested by him and during the course of investigation, in the presence of independent witnesses, the accused made a voluntarily statement that he would point out the place where he had committed the offence and buried the dead body. The witness has further stated that in the presence of panchas, the accused pointed out the place where the dead body was buried and accordingly, the dead body recovered from the yard of the accused. The witness has stated that after the inquest, the dead body was sent for postmorterm. The witness has stated that he had called the FSL officer PW:19 for inspection of both the places and in his presence as well as in the presence of accused and

independent witnesses, the necessary samples of bloodstained and other stains from the house of the accused were being collected. The witness has further stated that the bloodstained clothes having foul smell found on the chair lying in the kitchen had been recovered and seized. The I.O. has further stated that he had recorded the statement of the witnesses, sent the muddamal articles to the FSL for chemical analysis, arrested the father, mother and brother of the accused Hiren who had helped the accused Hiren in disposing of the material evidence like dead body, etc. The I.O. has further stated that he found sufficient materials against the appellant accused and three others for the commission of the offences punishable under Sections 363, 364A, 302, 201 read with Sections 34 and 114 of the IPC and filed the chargesheet before the Jurisdictional Court. In the cross examination, the witness has admitted that, he did not find any evidence to show that on 05.07.2010, the accused was found presence at the outskirt of the village. The witness has admitted that on 05.07.2010, no one has seen the deceased Shrey going towards the house of the accused. The witness had admitted that the sleeper of the deceased had not been sent to the FSL. The witness has admitted that during the

investigation, it was found that the call was made from the coin box of one Arvind Limbachiya. He also admitted that the yard where the dead body was found is open land and the said land belongs to the village panchayat. He also admitted that during the course of investigation, he did not seize the two wheeler allegedly used by the accused. The witness has denied to the suggestion that the accused never disclosed that he would point out the place where he buried the dead body.

15. The prosecution case rests on the circumstantial evidence. Law with regard to the conviction on the basis of circumstantial evidence has been discussed in detailed by the Supreme Court in the case of **Harishchandra Ladaku Thange Vs. State of Maharashtra** reported in AIR 2007 Supreme Court 2957. It will be useful to reproduce the relevant paras:-

> "8. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan (AIR 1977 SC 1063), Eradu v. State of Hyderabad (AIR 1956 SC 316), Earabhadrappa v. State of Karnataka (AIR 1983 SC 446), State of U.P. v. Sukhbasi & Ors. (AIR 1985 SC 1224), Balwinder Singh alias Dalbir Singh v. State of Punjab (AIR 1987 SC 350) and Ashok

Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621) it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

9. We may also make a reference to a decision of this Court in C. Chenga Reddy & Ors. v. State of A.P. (1996 (10) SCC 193), wherein it has been observed thus : "21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

10. In Padala Veera Reddy v. State of A.P. (AIR 1990 SC 79) it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

11. In State of U.P. v. Ashok Kumar Srivastava (1992 Crl. LJ 1104) it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

12. Sir Alfred Wills in his admirable book `Wills' Circumstantial Evidence' (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

13. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

14. In Hanumant Govind Nargundkar and another v. State of M.P. (AIR 1952 SC 343) it was observed thus: "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any

reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

15. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are : (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established; (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (3) the circumstances should be of a conclusive nature and tendency; (4) they should exclude every possible hypothesis except the one to be proved; and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

16. The facts of this case are to be considered on the touchstone of the law, which has been laid down by the Apex Court.

17. In the case on hand, the prosecution has relied on the following circumstances to establish its case:

(i) On 05.07.2010, the deceased child Shrey when he was returning back after purchasing the sweets and pepsi from the shop of PW:9 Naginbhai at Village Chapad, kidnapped by the appellant accused for ransom.

(ii) The deceased child then took by the accused at his house at the first floor of the room and then the deceased was strangulated to death;

(iii) On 07.07.2010, at about 07:00 o'clock morning, the accused, in order to dispose of the body, removed it by putting the body in the tin barrel and buried the dead body in the water tank of his farm yard and then, sprinkled the salt which he had purchased from the shop of PW:7.

18. We have carefully examined the evidence, as discussed hereinabove and perused the judgment impugned. A question that arises for our consideration is whether the circumstances referred in Para-17 of this judgment forms a complete chain pointing to the guilt of the appellant accused and the proved facts are capable of giving rise to inference of his guilt for committing the murder and offence of kidnapping for ransom and causing disappearance of evidence ?

19. Let be examined the first circumstances about the kidnapping the deceased for ransom. Section 364A defined the act of kidnapping for ransom. Section says that whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person or by his conduct give rise to a reasonable apprehension that such person may be put to death or hurt, or cause hurt or death to such person in order to compel the government or any other person to do or abstain from doing any act or to pay ransom shall be punishable with death or imprisonment for life. The plain reading of section would say that before section is attracted and a person is convicted the prosecution must prove the following ingredients:

(a) the accused must have kidnapped, abducted or detained any person;

(b) he must have kept such person under custody or detention; and

(c) kidnapping, abduction or detention must have been for ransom. To pay a ransom in the ordinary sense means to pray price or demand for ransom. This would show that the demand has to be communicated (Malleshi Vs. State of Karnataka (AIR 2004 Supreme Court 4865));

In the facts of the present case, admittedly, on 05.07.2010, after 6:00 p.m., deceased child was missing and he was lastly seen by PW:9 Nagin Patel who had sold sweet and pepsi to the deceased. A missing complaint came to be lodged by PW:6. On next date i.e. 06.07.2010, at late evening, PW:13 came to his village from Amarnath Pilgrimage. The evidence shows that he was having a connection of BSNL landline phone no.221919. According to the version of PW:13, he received a phone call demanding amount of ransom from the accused, demanding Rs.10 lakhs and further informed that his child is safe with him. The accused during the conversation said that he would call him at 07:00 p.m., for hearing the voice of the child. In such circumstances, we are of the opinion that considering tensed situation, it was the natural conduct of the father waited till evening however, no phone call was done by the accused. The PW-13 being a neighbour was having a close relationship with the accused and his family members. In other words, the complainant and the accused known to each other and in that circumstances, the complainant PW-13 can certainly identified the accused by his voice and that is why, after phone call, the complainant PW-13 was able to identify the voice of the accused. The PW-13 when he did not receive the call from the accused till evening, registered a

complaint by name that the accused abducted his child for ransom and threatened to cause his death. The defence counsel raised the contention that, for recognition of voice, no any spectography being done by the IO and therefore, relying on testimony of PW-13 for identification of voice of accused, is risky in a criminal trial. On this issue, the Supreme Court in the case of **Dola @ Dola Gobinda Pradhan Vs. State of Oddisa (AIR 2018 SC 4020)**, held that, when the persons are known to each other, a person can certainly identify the other person by voice. Referring the judgment of **Kirpal Singh Vs. State of U.P. (AIR 1965 SC 712)**, further observed that, the evidence about the identification by a person by timbre of his voice depending upon subtle variance in the over tunes when the person recognizing is not familiar with the person, recognized may be somewhat risky in criminal trial but the appellant was intimately known to Rakhasingh and for more than fortnight before the date of the offence, he had met the appellant on several occasions in connection with the dispute with regard to sugarcane crop. Rakhasingh had heard the appellant and his brother calling Karamsingh to come out from the hut and also heard the appellant, as a prelude to the shooting referring the dispute about sugarcane. The Supreme Court further observed that, in light of above observation, the Court found that the

voice identification of the accused by witness whose credibility had otherwise being accepted by the court below is not improbable. The Supreme Court while referring the case of **Mohansingh Vs. State of Punjab (AIR 2011 SC 3534)**, on the aspect of voice identification of the accused, held that, the voice identification can be accepted if there is no evidence adduced to challenge the evidence of witness that, he had acquaintance with the accused and that he knew the voice of the accused. The Supreme Court after referring the aforesaid decisions cull out the principle that the identification from the voice of the accused, may be possible if there is evidence to show that, the witness was sufficiently acquainted with the accused in order to recognize him or her by voice.

In the matter on hand, PW-13 the father of the victim, is living adjacent to the house of the accused in the same village and since long, their relations were cordial. The PW-13 due to acquaintance of him with the accused, could able to identify the voice of the accused and when call was not received again from the accused, he lodged an FIR disclosing the name of the accused Hiren Patel for the offence of abduction, and abduction for ransom. In the cross-examination, the relationship of the parties and their acquaintance having not been challenged and there is no any

motive on the part of PW-13 to involve the accused falsely. Thus, the evidence of PW-13 on the aspect of call conversation made by the accused demanding Rs.10 lakhs as ransom and it was specifically communicated by the accused that, he want Rs.10 lakhs and for that purpose, he had kidnapped the child is trustworthy, acceptable and reliable. Thus, in our opinion, the circumstance 17(i) referred above has been proved against the accused as, the deceased after the abduction was taken by the accused in his house and considering the incriminating circumstances of bloodstained cloths and computer gadgets whereupon the bloodstain of the deceased was found, for which, there is no explanation offered by the accused in his statement and therefore, after the abduction, the deceased was kept by the accused for the purpose of ransom.

20. The second circumstance relied by the prosecution is that the child after abduction was taken to the first floor of the house and then he was strangulated to death by the accused. It is relevant to note that on 05.07.2010 the child was abducted. The accused being a neighbour, was also a member of search party and at his instance, the sleeper of the deceased being recovered on 06.07.2010. The IO on the basis of missing complaint, seized sleepers by drawing

panchnama Exh. 55. The panchas of the said panchnama, supported the case of the prosecution. The another relevant circumstance would be disclosure statement of the accused on the aspect of pointing out the place where the dead body had been buried and the room where he strangulated the deceased. The FIR came to be lodged on 07.07.2010 by disclosing the name of the accused. The IO PW-22 has clearly stated in his evidence that after preliminary inquiry, the complicity of the accused in the offence was disclosed and accordingly, he was arrested in the late night. The IO PW-22 in the presence of two independent witnesses - Rajendra Patel and Subhash Patel, PW-5 and PW-6, have stated that the accused voluntarily disclosed that he would point out the place, where the dead body of the deceased buried by him and also made confessional statement that he had kidnapped the child for ransom and took the deceased at his home and strangulated him. The I.O has specifically stated that, he noted the said facts in the preliminary panchnama Exh. 56 and at the instance of accused, the dead body was found from the yard of the accused. On this aspect, the defense has raised the contention that, the confession of the guilt made by the accused was before the police and therefore, it is not admissible as evidence. The other contention raised is that, the discovery of facts

in terms of Section 27 of the Evidence Act, has not been proved, in accordance with law and therefore, said incriminating material cannot be used against the accused. The IO PW-22, had drawn the discovery panchnama Exh. 56, as contemplated under Section 27 of the Evidence Act. The IO in his evidence, has stated about the exact words uttered by the accused and proved the contents of the discovery panchnama. The witnesses of the panchnama, have also stated the exact words uttered by the accused. In such circumstances, we are not agree with the contention that the discovery of dead body of the deceased at the instance of accused cannot be relied or admissible in evidence. Therefore, the dead body found in the yard of the accused being discovered at the instance of accused, for which he has not explained satisfactorily in his statement recorded under Section 313 of the Cr.P.C. In these context we may refer with the profit to the ruling in State of Maharashtra Vs. Damu Gopinath Shinde (2000 (6) SCC 269), wherein, it has been observed that the basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principal that if any fact is discovered in the search made on the strength of any information, obtained from the prisoner, such discovery is a guarantee that the information supplied by the

prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of facts, it becomes a reliable information. Hence, the legislature has permitted such information to be used as an evidence by restricting the admissible portion to the minimum. In the facts of the present case, the accused has led to discovery of dead body and sleeper of the deceased and the said facts were within his special knowledge. The FSL officer PW-19 when took visit of the house, the cloths with bloodstain Group “A” and computer gadgets with bloodstain “A” had been seized which matched with blood group of the deceased. The cotton rope allegedly found from the neck of the deceased and it was there when the dead body discovered at the instance of the accused. Thus, the circumstance as referred in para-17 (ii) of this judgment has been proved and established.

21. The third circumstance relied by the trial Court that the accused on 07.07.2010 removed the dead body from his house and taken it to the yard and buried it into the water tank and thereafter, he sprinkled the salt which he had purchased from shop of PW-7.

In order to prove the said incriminating circumstance, the prosecution has mainly relied on the

testimony of PW-7 Ajitsinh Makwana, PW-8 Mahesh Padhiyar, PW-10 Umakant Sonwani and PW-11 Sharmila Tadvi. The appellant accused according to prosecution case after killing the deceased, the dead body was kept in the room situated in the first floor of the house and it was removed by using tin barrel and then, the dead body buried in the water tank of the yard situated near the same village. The accused on 07.07.2010 went to the shop of PW-7 and purchased 15 bags of salt. The said 15 bags delivered at the yard with the help of PW-8 Mahesh Padhiyar, who worked part-time with PW-7. In our opinion, we do not find any infirmities in the evidence of aforesaid two witnesses. The village is not the big village and naturally, the person living in the village known to each other. Thus, merely a deposing in support of the prosecution by the witnesses in the facts of the present case, cannot be said that they are interested in the outcome of the case or at the instance of PW-13 they are falsely deposing against the accused. It is relevant to note that, when the cause of purchasing salt was being asked by PW-7, the accused gave false reply that, for the purpose of earthing he needs salt in bulk. The PW-8 Mahesh Padhiyar, who had accompanied as a pillion on the bike, was return back on his bare foot from the yard, as it was said by the accused that, he has some work to do in the yard. In such circumstances, the

purchase of salt for disposing of the dead body having been proved and established. The another circumstance, would be a carrying a tin barrel from the house to the yard by the accused. In the morning, when accused on the way to yard, carrying the tin barrel filled with the dead body, was seen by the PW-10 Umakant Sonwani, and while asking about the carrying heavy barrel in his hand, the accused gave a false reply that, for disposal of garbage he is carrying the barrel. The presence of PW-10 in our opinion, was natural, as it was his routine schedule to come to a village for the purpose of selling milk at the dairy of the village. Therefore, nothing unusual found from the evidence of PW-10 that, he was intentionally telling lie against the accused. So far as PW-11 Sharmila Taldi is concerned, she came to village at her father’s house. In our opinion, she made some improvement about the facts which she did not have disclosed in her police statement and that improvement are material improvement. Therefore, we do not want to rely on the testimony of PW-11 on the aspect of throwing the dead body in the water tank by the accused. In such circumstances, on 07.07.2010, at about 7-00 to 8-00 in the morning the accused had removed the dead body from his house and taken it to the yard and thereafter, he went to the shop of PW-7, where he had purchased the salt. The evidence shows that some of

the samples of salt were being collected by the IO in presence of FSL officers. The damaged tin barrel was also found at the place i.e. yard. In such circumstances, the ownership of the yard would not be a ground to discard the other incriminating circumstances as referred above. The accused and his father was in possession of the yard for keeping their animals and other miscellaneous farming instruments and water tank was also found in the yard.

22. For the discussions made hereinabove, the circumstances as referred above from which the conclusion of guilt has to be drawn, has been proved. The circumstances and the chain of events from 05.07.2010 to 07.07.2010 as referred above proved by the prosecution is fully established and the circumstances collectively lead only to the irresistible conclusion that the appellant accused is the perpetrator of the crime.

23. Accordingly, the prosecution has been able to prove that on 05.07.2010 after 6-00 PM the child Shrey was abducted for ransom and his intention behind the abduction was ransom as in clear terms he demanded and conveyed to the PW-13 that, he needs Rs.10 lakhs and at that time, he had already strangulated to death the deceased. Despite of this, he did not disclose or

inform to any one about the death of the deceased and thereafter, in order to cause disappearance of the evidence, he removed the dead body from his house and buried it in his open yard, whereby, he committed an offence causing disappearance of evidence. In such circumstances, we are in agreement with the conclusion arrived at by the trial Court that the prosecution able to prove the case beyond reasonable doubt against the accused by adducing sufficient, cogent and acceptable evidence.

24. In the result, we do not find any infirmity in the judgment passed by the learned trial Court. The appeal of the appellant is without any merit and same is dismissed accordingly. The appellant is on bail. The appellant is directed to surrender within 4 weeks from the date of this judgment. The bail bond is hereby cancelled and surety is discharged. R&P, if any, be sent back to the court concerned forthwith.

(ILESH J. VORA,J)

(SANDEEP N. BHATT,J)

P.S. JOSHI

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PALLAV SUBHASHCHANDRA JOSHI(HC00177), Principal Pvt. Secretary, at High Court of Gujarat on 15/04/2025 16:57:57