

Rajinder Kumar and Another Vs The State

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 7, 1961

Acts Referred: Penal Code, 1860 (IPC) â€” Section 302

Hon'ble Judges: Shamsher Bahadur, J; R.P. Khosla, J

Bench: Division Bench

Advocate: Jagan Nath Kaushal, Lal Chand Passey and S.K. Jain and M/s Dara Singh and S.S. Diwan, for the Appellant; Lachhman Das Kaushal, D.A.G., for the Respondent

Judgement

Shamsher Bahadur, J.

Rajinder Kumar and his father Jagdish Chander (hereinafter also referred to as the first and second appellants

respectively) were tried by the learned Sessions Judge of Patiala on two counts for causing (1) the death of Anil Goyal alias Tonhy, aged 3 1/2,

son of their neighbour Ravinder Kumar Goyal, on 5th of January, 1961, u/s 302, Indian Penal Code, and (2) disappearance of the evidence of the

offence of murder u/s 201, Indian Penal Code. Whereas the first appellant alone has been found guilty of murder, the learned Judge has convicted

both the sons and the father under the second count and has sentenced each of them to seven years" rigorous imprisonment. The sentence

awarded to the first appellant for the offence of murder being one for death the proceedings are also before us for its confirmation.

2. The families of both the accused and the deceased live in adjacent houses recently built in a locality known as the "Bank Colony" in Patiala, and

had known each, other even before they came to occupy these houses. Besides the appellants, the wife, sister and a child of the first appellant also

reside there. The house of the deceased boy is owned by his grandfather Shri A.P. Goyal, who is the Chief Accountant in the State Bank of

Patiala. The father of the deceased boy is Ravinder Kumar Goyal, aged twenty-four, and is an (sic) of the Life Insurance Corporation, Patiala,

Sudha Goyal, aged twenty-two, is the mother of the deceased boy. In the house of Shri A.P. Goyal also reside his daughters Sashi Goyal and her

sister.

3. The deceased boy was found missing at 4 O'clock on 5th of January, 1961, and his dead body was recovered exactly one month later on 5th

of February, 1961, from a pit at point "A" in the site plan (Exhibit P.K.), in the house of the accused, after the ground had been dug to a depth of

four feet, at a distance of five feet-six inches from the gate. In the other direction of the house of the accused is the boundary wall about four feet

high which separates the house of the accused from that of the Goyals. For more than three weeks frantic efforts were made for the search of the

boy and it was at a very late stage that suspicion was cast on the first appellant. It was as a result of the disclosure statement made by the first

appellant on the 5th of February, 1961, that the recovery of the dead body was affected on the same day. In the view of the learned Sessions

Judge, the prosecution has established the case against the first appellant only for the actual murder of the boy while he and his father have been

found guilty of disappearance of the evidence of murder and have accordingly been sentenced to undergo rigorous imprisonment for seven years

each.

4. The case for the prosecution rests entirely on circumstantial evidence, no direct testimony of either murder or disappearance of evidence being

available. An inference in such a case has to be made about a fact from the evidence of other facts concerning it, a process which all of us go

through every day in our lives. In cases of calculated and cold-blooded murders, the culprit generally tries to conceal the deed committed by him

and it is not a matter of surprise that we have only circumstantial evidence in support of the prosecution case. As rightly contended by Mr. Jagan

Nath Kaushal, we have to be far more careful in appraisal of evidence in a case where the crime alleged, as in this case, is of a ghastly nature,

generating a good deal of prejudice and ill will against the accused. The circumstances on which the prosecution places its reliance must be such as

are compatible only with the guilt of the accused and this must be proved beyond the possibility of reasonable doubt keeping always in view that

the burden remains on the prosecution throughout to establish its case. In the celebrated phrase of Lord Sankey in *Woolmington v. The Director of*

Public Prosecutions 1935 A.C. 462, at 481, (at page 481), "throughout the web of the English Criminal Law one golden thread is always to be

seen, that it is the duty of the prosecution to prove the prisoner's guilt" and the burden is never shifted on the defence to prove the innocence of the

accused. We approach a consideration of evidence of this case keeping in view this principle firmly in our minds and we make a special mention of

it because Mr. Kaushal has urged with great vehemence that the circumstances brought out against the accused should be viewed independently of

each other without losing sight of the presumption of innocence unless guilt is conclusively proved.

5. It is axiomatic to say that there must be good and reliable evidence of motive in a case where the crime is sought to be established by

circumstantial evidence. Mr. Kaushal was argued that no real motive existed for the crime with which the appellants are charged. The two houses

of the appellants and the Goyals were constructed about the same time and it appears that Shri A.P. Goyal had borrowed some building material

from the appellants who in turn had taken some ballast and sand from him. Ravinder Kumar Goyal was keeping accounts of these transactions.

Some money was claimed in the end and the veracity of this amount was challenged. Though it is denied by the accused in their statements made

u/s 342 of the Code of Criminal Procedure, the evidence on this aspect of the case given by A.P. Goyal and Ravinder Kumar Goyal as P.Ws.

Nos. 15 and 26 respectively, does not appear to have been seriously challenged. There was also some difference of opinion between Rajinder

Kumar and Ravinder Kumar Goyal about the loan of a press. A more important irritant, however, was provided by the behaviour and personality

of the first appellant, a young man of twenty-five, described as a "loafer" by Ravinder Kumar Goyal, P.W. 26, who did not like his wife being

addressed by the first appellant and told him so in her presence. This incident was more or less contemporaneous with one relating to the house

building account. As a result of this unpleasantness, Ravinder Kumar Goyal and his wife on the one hand and Rajinder Kumar and his wife on the

other ceased to have friendly relations. The other members of the two families, however, maintained good relations but the unfriendliness between

the two branches of the families came to be reflected in the attitude of the children. Tonny and Kitty, the son and daughter of Ravinder Kumar

Goyal stopped visiting the house of the appellants though Tonny's visits were revived a few days before the 5th of January, 1961, the first

appellant having evinced a special interest in the boy by giving him sweets. This is all the evidence of motive. A sensitive person may of course,

take it very ill when he is asked to stop social contacts. Whether in the background of this relationship it could be inferred that Rajinder Kumar had

a sufficient and adequate motive to take away the life of an innocent child is a matter on which only expert psychologist could offer an explanation.

We have merely to see whether we could recognise the existence of a motive and it would be clearly beyond the scope of our judicial task to

make any attempt to rationalise it is not unknown that a person at variance with some one of against whom he entertains animosity may get so

worked up that he may choose a most irrational and strange mode of resentment. The evidence of Sudha Goyal, P.W. 4, mother of the deceased

boy, and Ravinder Kumar Goyal, P.W. 26, is quite clear that the first appellant took it very ill when he was told by Ravinder Kumar Goyal to

desist from visiting their house. Ravinder Kumar Goyal, has also stated that the first appellant had no occupation and in spite of the denial of the

accused u/s 342, Code of Criminal Procedure, this assertion finds support even from the testimony of the defence witness Ishwar Chander D.W.

11, a first cousin of the first appellant. Ishwar Chander has stated that the first appellant did not do anything and had no shop. The evidence with

regard to motive has remained unchallenged and we would be content to say that while it is difficult to probe into the mind of a person who

imagines himself to have a grievance, the first appellant may have been a victim of some psychological aberration under which he felt an urge to

inflict a pain on the parents of the deceased boy who had stopped his visits to their house.

6. We have next to see whether the first appellant had an opportunity to commit the murder of which he has been found guilty. The learned Deputy

Advocate-General, who has argued the case for the State, has gone so far as to urge that the first appellant and he alone had the opportunity to

cause the death of Tonny and indeed he had so managed that he was left by himself in his house between 3-30 and 4 P.M. The composition of the

two families has already been set out. The second appellant who is a Hakim was absent having gone to his shop. The wife of the first appellant had

gone to call on Shrimati Asha Goyal, P.W. 3, wife of Shri Jagdish Goyal, brother of Shri A.P. Goyal, at 3-15 P.M. According to Shrimati Asha

Devi, P.W. 3, the wife of the first appellant came to see her with her small daughter somewhat unexpectedly. In fact, Shrimad Asha Devi asked the

caller the purpose of her visit and she was told that Usha, the sister of her husband, having gone out she thought she should come to call on

Shrimati Asha Devi. She stayed there for about forty-five minutes and then returned home at 4 O'clock. Usha, the sister of the first appellant, went

with Mrs. Gurdeep Kaur Girin, P.W. 5 for shopping at 2-30 P.M. Bhagat Ram, P.W. 12, servant of the appellants, was sent out at 2-30 P.M. on

the errand of having a stand fixed up on the cycle. The first appellant was thus left alone in the house. Tonny had revived the visits to the first

appellant who had lured him by giving some sweets. On 5th of January, 1961, Tonny and his sister went to the house of the first appellant at about

9 A.M. when the other members of his family were also present. The children returned home for midday meal at about 12-30. Tonny went again

to the house of the first appellant in the afternoon saying that he had been promised "sugar drops". Sudha Goyal, after finishing her chores, sat for a

while with Sashi Goyal on the chabutra and from there saw Tonny playing with Rajinder Kumar in his garden at about 3-15 P.M. Sashi Goyal P.

W. 2, saw the boy with Rajinder Kumar till 3-30 P.M. Both Sashi Goyal and Sudha Goyal saw the first appellant pulling out carrots from his

garden and giving these to Tonny for eating. Mrs. Girin, P.W. 5 also saw the boy in the house of the first appellant when she went for shopping at

2-30 P.M. Mrs. Girin's house is near that of the accused.

7. At about 4 P.M. Sudha Goyal wanted to give refreshment of milk and egg to her son and went to call him for this purpose. She did not find him

with the first appellant who on enquiry told her that Tonny must have gone out with his wife. Just then the wife of the first appellant was seen

entering the house and she told Sudha Goyal on enquiry that she had left Tonny playing with her husband. The first appellant was somewhat

confused and when taxed with further enquiry told Sudha Goyal that the boy must have gone to the shop of one Baba to "fetch a toast". Bhagat

Ram also returned to the house about the same time and he saw the first appellant locking the door of the garage. Bhagat Ram wanted to place the

bicycle in the garage where it was usually kept and asked him to open the lock. The first appellant, however said that he had placed some

important articles" in the garage and the cycle should be placed elsewhere in the house. The entire evidence regarding the sequence of events

given by Sudha Goyal, Sashi Goyal, Mrs. Girin and Bhagat Ram does not appear to have been challenged and we accept it unreservedly. It is

quite clear to us that the first appellant was with Tonny between 3-30 and 4 P.M. Both of them were last seen together between 3 and 3-30 P.M.

by Tonny's mother and Sashi Goyal and a little earlier by Mrs. Girin and Bhagat Ram. It is pertinent that the first appellant in answer to this part of

the prosecution case merely stated that he was at his shop between 10 A.M. and 5 P.M. As is clear from the evidence of the defence witness

Ishwar Chand, D.W. 11, the first appellant never owned a shop and is unemployed. Mr. Jagan Nath Kaushal has pointed out to us that Sudha

Goyal, according to her own statement, did not notice the presence of Bhagat Ram at about 4 O'clock and for this reason we should reject her

evidence as discrepant. Sudha Goyal was perturbed at that time as her son was missing and it is possible that she may not have noticed that Bhagat

Ram who was standing near the garage. It is, however, well to point out that Sashi Goyal, P.W. 2, has deposed that Bhagat Ram was present with

his bicycle at about 4 P.M. and both he and the first appellant left in search of Tonny thereafter.

8. It has been suggested by the learned Deputy Advocate-General that the child was perhaps done to death between 3-30 and 4 P.M. in the

garage which the first appellant was seen locking about that time. It is, of course, not necessary for the prosecution to show how and when the

deceased was killed by the first appellant. At this stage it would be of advantage to refer to the relevant medical evidence. The dead body of

Tonny, after its recovery on the 5th of February, 1961, was subjected to the post mortem and according to the doctor, the tissues of the chest

showed "adipocere, formation which is a state of condition which delays decomposition. According to Lyon's Medical Jurisprudence for India,

(ninth edition) at page 126 adipocere ""occurs in bodies submerged in water or buried in moist graves"". As stated by Taylor in his principles and

practice of Medical Jurisprudence, Volume I (11th edition) at page 200, ""adipocere is mixture of fatty acids formed from certain changes in and

hydrogenation of, pre-existing body fats and cold and humid" conditions are conducive to formation. In the words of Taylor ""some adipocere

may form even when only very small quantities of water are present but in general terms water or at least a moist environment is essential to

facilitate the change"". When such a change has taken place, the body maintains its condition for many years and ""it is often possible to obtain

precise information leading to identity, cause and time of death in bodies converted into adipocere."" Taylor has mentioned a case in which

identification and full data were available even after two years of the death. The corpse of Tonny having been buried in the compound of the first

appellant only at a depth of four feet below the surface in midwinter had only just started decomposing and the doctor whose evidence has not

been challenged in cross-examination stated that the death resulted from an injury which had been caused by asphyxia. A piece of cloth was found

stuffed in the mouth. The stomach was healthy and contained three ounces of semi-solid food matter with undigested carrots. Death, according to

the doctor, was due to asphyxia resulting from suffocation caused by packing the mouth with a cloth and must have ensued immediately after the

injury which was found in the mouth. This injury was on the tongue and must have stained the cloth with which the mouth had been packed. The

piece of cloth which was stuffed as also the clothes which Tonny was wearing have been found to be stained with human blood by the Serologist

vide his report, Exhibit P.R. The doctor stated that the death must have taken place approximately a month before the post mortem examination:

may be ""a week more or less."" The clothes in which the body was found were the same in which he had been dressed by his mother on that fateful

day of 5th of January, 1961.

9. There was also a wire ring found on the right thumb of the deceased but the doctor stated that there was no symptom of the death having taken

place as a result of electric shock. The suggestion of the defence is that perhaps the deceased received an electric shock from the pumping

machine, a suggestion which cannot be countenanced in face of the clear testimony that the death was due to violence and not accidental shock.

When no questions were put to the doctor, it is not fair to expect the Court to speculate on what may have happened. As the doctor has stated,

the stuffing of the throat with a cloth was sufficient to cause asphyxia and death in the ordinary course of nature. We are satisfied that this opinion

of the doctor is borne by the careful examination to which he subjected the body.

10. The prosecution further relies on the conduct and behaviour of the appellants after Tonny had been found missing. To resume the thread of the

narrative, the first appellant and his servant Bhagat Ram went immediately in search of the missing boy. The father of the deceased boy returned

from Chandigarh at 4-15 P.M. where he had gone the previous day with his mother and grandmother and was told about the disappearance of

Tonny by his wife and sister. He at once contacted his father who returned home at about 5 P.M. from his office. The first appellant was out till 5

P.M. and the second appellant on return from his shop at about 6 P.M. went straight to the house of A.P. Goyal. Both the Appellants simulated

great concern and anxiety. According to the evidence of Gurdarshan Singh P.W. 22 and Virinder Nath P.W. 23, who are both employees of the

State Bank and had come to make enquiries about the missing child, the second appellant took charge of the telephone calls which kept on

coming. At about 6-30 P.M. the second appellant told Om Parkash to send for Mukandi Lal alias "Viceroy", Raj Kumar and Bhagwan Singh who

were his special friends, as he wanted to depute them to make a search for the child. The second appellant sent for the car of Mr. Modi at about 8

P.M. and Rajinder Kumar went in it to look for the missing child. The second appellant dissuaded Ravinder Mumar Goyal from accompanying the

first appellant in this quest. It may be mentioned that both Ravinder Kumar Goyal and his wife Sudha Goyal at first entertained some suspicion

against Rajinder Kumar but because of the solicitude shown by him and his father in their affliction it did not take any root in their minds. At about

9 P.M. Ravinder Kumar Goyal went in the same car to bring his mother and grandmother from Chandigarh and the first appellant accompanied

him. They returned from Rajpura where the two ladies were seen coming towards Patiala in a taxi. After they returned to Patiala at about 11 P.M.,

a report was lodged at police Station Civil Lines Patiala by Shri A.P. Goyal, father of Shri Ravinder Kumar Goyal, at about 11-30 P.M. In this

report the police was informed that Tonny, the grandson of Shri A.P. Goyal, aged 31/2, "is missing from my residence in Bank Colony Patiala

since about 3-30 P.M. today.....It appears that somebody has kidnapped the boy while he was playing in the street in front of my bungalow in

the Bank Colony with dishonest intention.

11. Bhagat Ram P.W. 12, after having finished the domestic work between 9 and 10 P.M. asked for the key of the garage where he usually slept

during the night. The second appellant told him that he should sleep in the kitchen. The second appellant himself brought the bedding of Bhagat

Ram from the garage and handed it over to him. The first appellant, who had gone with Ravinder Kumar Goyal towards Chandigarh returned to

the house at about midnight. He put on the light to ensure that Bhagat Ram was asleep. After about two hours, when Bhagat Ram went out to

urinate, he saw both the appellants walking about in front of the garage and enquired from him why he had come out. Bhagat Ram heard the two

appellants whispering to each other. The evidence of Bhagat Ram has been assailed on the ground that it is false and improbable. It has been

pointed out that Sudha Goyal had stated in her evidence that many people came to the house in the evening and there was a search in the Bank

Colony for the whole of the night. She, however, stated that she went to sleep during the night as she had been crying the whole evening. Now,

according to the statement of Shri A.P. Goyal every one went home after the report had been lodged with the police at about 11-30 P.M. He

stated that after he had sent the ruqa to the police station people who had collected at his house went away. There appears to us no contradiction

between the statements of Sudha Goyal and Shri A.P. Goyal. Indeed, Sudha Goyal having gone to sleep could not know whether the search was

continued during the night. It is to be expected in the natural course of events that people would not remain at the house of Goyah after midnight.

There was a regular stream of callers and sympathisers between 5 P.M. and 11 P.M. and we believe the evidence of Shri A.P. Goyal that they all

dispersed late in the evening. The Bank Colony appears to have been combed out and there was no point in still continuing the search. In the

context, therefore, we find the evidence of Bhagat Ram in this respect to be acceptable: it appears that the two appellants were busy doing

something after midnight near the garage of their house.

12. As against Bhagat Ram, it has also been urged that his statement by the police was recorded as late as 7th of February, 1961, after the dead

body had been recovered. According to Bhagat Ram, he had gone on leave for ten days to his village near Joginder Nagar from where he returned

on 6th of February, 1961. Mr. Kaushal has urged that Bhagat Ram was actually at the police station after the 30th of January. Two letters, Exhibit

D.F. and D.G. have been produced to show that Bhagat Ram had not actually gone to his home town. On a perusal of the stamp marks on one of

these letters, it appears that this evidence has been fabricated. Even the contents of these documents do not support the assertion of the defence

that Bhagat Ram was in fact in Patiala and not at his home town. Exhibit D.G. is a letter which purports to have been sent on the 24th of January,

1961 and according to the postal mark it was received in Patiala on the same day. Obviously, the letter could not have reached Patiala the same

day and no satisfactory explanation has been given about this clumsy piece of forgery. It is true that some witnesses have stated that Bhagat Ram

was at the C.I.A. office on 4th of February, 1961, but we have no reason to disbelieve Inspector Ram Nath Passey, P.W. 30, that Bhagat Ram

was not available in Patiala for the recording of his statement till the 7th of February, 1961.

13. The two appellants continued to keep up appearances even on the following days. In the morning of the 6th of January, the police had reached

the house of the Coyals and the statements of the witnesses had been recorded. It was suggested by the second appellant that Ambala being an

outlet for abducted children, a search should be directed towards that place. Consequently, Om Parkash, Tarsem Lal Tandon, P.W. 16 and the

second appellant went to Ambala in a car and made general enquiries at the railway station, restaurants and bus-stand. No clue was, however,

obtained. The second appellant denied having made the suggestion though he admitted that he went in the car with Tarsem Lal Tandon and Om

Parkash for making enquiries. We have no reason to disbelieve the statements of Tarsem Lal Tandon and A.P. Goyal that it was the second

appellant who had made the suggestion for a visit to Ambala. On 7th of January, 1961, the second appellant gave a telephone call to Shri A.P.

Goyal that news had been received about the recovery of the boy at Nabha. Gian Parkash P.W. 25, a friend of Ravinder Kumar Goyal received

this message of the second appellant and at once handed over the telephone receiver to Shri A.P. Goyal. The message was that Tonny had been

recovered at police station Nabha. Ravinder Kumar Goyal, Tarsem Lal Tandon, Dev Raj and Gian Parkash went to Nabha to make enquiries

about the information which turned out to be false. The evidence of these persons has not been seriously challenged. True, the story has been

denied by the second appellant altogether but we have no reason to doubt its veracity. Throughout the attempt of the appellants had been to put

the Goyals on a wrong track to gain time. In the evening of 8th of January, 1961, one Shri Babu Singh, retired Superintendent of Police, who has

been a friend of Shri A.P. Goyal, came to call on him having learnt of the disappearance of Tonny. Being a retired police officer, he offered to

make enquiries about the missing child with the assistance of Jagjit Singh Malhotra and Tarsem Lal Tandon. The second appellant who was

present at the house put strong resistance to this suggestion and said that there were ladies in the house and they would not like to be subjected to

any questioning by strangers. The second appellant in fact told Babu Singh to mind his own business.

14. We now come to the evidence of extra-judicial confession made by the first appellant to Raj Kumar P.W. 7 on the 9th of January, 1961. As

stated earlier, the immediate reaction of the second appellant on the evening of 5th of January, 1961, was to send for three of his special friends

including Raj Kumar P.W. 7 and Mukandi Ram alias "Viceroy". Mahabir Dayal P.W. 8 is the son of Mukandi Ram. It was to Raj Kumar P.W. 7

(who later reproduced it to Mahabir Dayal) that the extra-judicial confession was made. These two witnesses were no strangers to the family of

the appellants and there is, therefore, nothing improbable or unnatural in the extrajudicial confession which was made by the first appellant.

According to the statement of Raj Kumar P.W. 7, a teacher of a primary school, the first appellant went to the bridge in Mohalla Jauri Bhattian,

where people usually assemble, on 9th of January, 1961, and took him aside. Mahabir Dayal P.W. 8 was also with him at that time. The first

appellant is said to have confided the secret to Raj Kumar, that he with the connivance of his father had killed Tonny, and in fact wanted the

assistance of Raj Kumar in the removal and disposal of the dead body. Raj Kumar refused. Mahabir Dayal, who was not present when the

confession was made, on enquiry from Raj Kumar was told what had been said to him in confidence by the first appellant. Mahabir Dayal said that

Raj Kumar should at least. have acceded to the suggestion said to have been made by the first appellant in his confession to Raj Kumar P.W. 7

that a call should be put to Shri A.P. Goyal that the child could be obtained from the Gurdwara at Kalyan after paying a ransom of Rs. 5,000/-.

Mahabir Dayal took upon himself the task of putting through this call which he made at the house of Shri A.P. Goyal from Phul Cinema. There can

be no doubt that this call was received at the house of A.P. Goyal by Suresh Chand P.W. 24, also an employee of the State Bank.

15. It is significant that the extrajudicial confession receives corroboration from the fact that a party was actually organised to go to Kalyan

Gurdwara as asked for in the message which was received on the night of 9th of January, 1961. It is also meaningful that on the morning of 10th of

January, the second appellant made a particular enquiry from A.P. Goyal whether any message had been received the night before and was

informed about the telephone call. Shri A.P. Goyal was easily persuaded by the second appellant to act according to the directions received. Dev

Raj P.W. 19, brother of Sudha Goyal, was asked to arrange for a sum of Rs. 5,000/-. It is not denied by the second appellant that he took this

money to the Gurdwara at Kalyan on the night of the 11th. The prosecution case, however, is that he also went in the morning to the Kalyan

Gurdwara taking no one else with him. There is abundant evidence to show that the second appellant went to Kalyan Gurdwara both in the

morning and evening of 11th of January, 1961. A.P. Goyal, Ravinder Kumar Goyal, Tarsem Lal Tandon, Jagjit Singh Malhotra, Dev Raj and

others have deposed that the second appellant went to Kalyan Gurdwara and did not agree to anyone else going with him. When his morning visit

proved abortive, he opposed the suggestion that the matter should be reported to the police on the plea that it might put the life of Tonny in

jeopardy. The nocturnal visit to Kalyan Gurdwara, admitted by the second appellant, has been corroborated by Hari Ram P.W. 18, who is the

motor driver of Mr. Modi in whose car he went there. Hari Ram took the car to the house of the Goyals in the Bank Colony at about 10-30 P.M.

and the second appellant went in it to Kalyan Gurdwara between 11 and 12 P.M. The second appellant suddenly went to a field and professed to

meet someone there. No one, however, came from the sugar cane field where the second appellant went. The second appellant came back at 1:30

A.M. and announced the failure of his mission. Karam Chand P. W. 20 and Dev Raj P.W. 19 are the father and brother of Sudha Goyal and

arranged for the sum of Rs. 5,000/- which was made over to the second appellant for payment as ransom. Tarsem Lal Tandon P.W. 16 and

Jagjit Singh Malhotra P.W. 17 are the persons in whose presence the whole talk took place. Shri A.P. Goyal P.W. 15 has deposed about the

earlier visit on the same day of the second appellant who in order to create confidence in himself deposed that he had given a sum of Rs 60/- to a

person who had originally demanded a ransom of Rs. 7,000/- which he (the second appellant) ultimately managed to reduce to Rs. 5,000/-. The

bare denial of the second appellant pales into insignificance when put in juxtaposition with the consistent story which has been given by the

prosecution witnesses and there is no room for doubt that the two appellants were instrumental in keeping the Goyals busy on the wrong track. In

the Kalyan affair it is plain that the second appellant was playing on the sentiments of the parents and grandfather of Tonny and succeeded to some

extent in creating confidence in his own favour by representing that he had actually parted with a sum of Rs. 60/- in making payment to the alleged

blackmailer.

16. Our pointed attention has been brought to some improvements in the statements of Raj Kumar P.W. 7 and Mahabir Dayal P.W. 8 made

before the police by subsequent statements u/s 164 of the Code of Criminal Procedure. One of these improvements related to the part played by

the second appellant. It is, however, to be observed that in Court these improvements have not been stuck to and we have no reason to disbelieve

the evidence of these two witnesses as given in Court. The benefit of this improvement has been given to the second appellant by the learned

Sessions Judge who has acquitted him of the charge of murder. Mahabir Dayal's testimony is sought to be discredited on the ground that he made

a statement towards the end of his cross-examination that he came to know of the death of the child after the recovery of the dead body and not

earlier. The extra-judicial confession which had been made by the first appellant to Raj Kumar had been reproduced to Mahabir Dayal and in fact

the telephone call which the latter gave to A.P. Goyal made it clear that he knew about the whole confession. It appears to us that this statement

cannot be read in isolation and the evidence taken as a whole shows that the first appellant had admitted his guilt to Raj Kumar on 9th of January,

1961. The improvements and discrepancies in our opinion do not affect the substantial truth which is contained in the statements of Raj Kumar and

Mahabir Dayal. Much has been said in argument against the validity and the value of the extra-judicial confessions. It is true that such evidence has

to be received with a measure of caution as stated by Mr. Justice S.K. Das in Ratan Gond Vs. The State of Bihar, and some corroboration from

independent sources is required. In the present case both Raj Kumar and Mahabir Dayal had been well known to the appellants and material

corroboration is forthcoming from the statements of Shri Gurdip Singh Dhillon P.W. 9 and Suresh Chand P.W. 24, who received the telephone

message leading to the Kalyan visit.

17. As deposed by Shri A.P. Goyal and corroborated by other witnesses, the second appellant observed after the Kalyan incident that now a

letter would be received and not a telephone call. It was, however, suggested that the telephone calls should be tapped and the first appellant very

officially took upon himself the responsibility of this task as he knew someone in the Telephone Department. At first Malhotra was deputed to

assist the first appellant who, however, sent him away saying that he could manage the work himself. The second appellants remark about the letter

proved to be prophetic for a postcard (Exhibit P.E.) written on 13th of January, 1961, was received on the 18th from one Mst. Kalawati of

Saharanpur that she had found the child which she would be glad to deliver and would also like to be rewarded for the care which she had

bestowed in keeping the child. This postcard was handed over to the police and the enquiry in this direction turned out to be a wild goose chase.

18. The investigating officers who had kept on expressing suspicions against the appellants did not stay their hand any longer inspite of the fact that

the members of the Goyal family in their unsuspecting minds gave the best possible complexion to the zeal and anxiety evinced by the appellants in

tracing the missing child. On the 27th of January, 1961, the second appellant was taken to Kalyan to show the place where he had gone on 11 th

of January, 1961 to offer the ransom of Rs. 5,000/-. He pointed out a place to Inspector Ram Nath P.W. 30 where nobody could go as it was

surrounded by a hedge near a well. The second appellant actually broke down under the stress of questioning and started shivering and was given

a glass of water to drink although it was winter time. In the evening the second appellant asked Shri A.P. Goyal to see him. Shri A.P. Goyal and

his son went to the house of the second appellant who in a nervous and excited condition disclosed that he had ""committed a great sin and blunder

and admitted that he had made up a false story regarding the telephone message to keep the anxiety of the Goyals at rest."" The second appellant in

a state of shock was found trembling. According to the evidence of Raj Kumar P.W. 7 the first appellant also could not keep composed and again

met him on the 13th OF 14th of January, 1961 when he was informed that the police was visiting the Bank Colony quite often and his advice was

sought regarding the disposal of the dead body. Raj Kumar P.W. 7 refused to give any advice and when approached again on 23rd or 24th of

January by the first appellant with the enquiry about the time it took for a dead body to decompose he advised him to consult a doctor in this

matter.

19. We now come to the events which constitute the final stage of the prosecution story leading to the recovery of the dead body of Tonny on 5th

of February, 1961. The first appellant was placed under formal arrest on 5th of February, 1961, and his father four days later on 9th of February.

A little earlier than the arrest of the first appellant the police had started suspecting the accused and some digging operations had been done in the

compound of the appellants" house. Realising the futility of keeping silent any longer. Raj Kumar and Mahabir Dayal consulted their friend Gurdip

Singh Dhillon P.W. 9 who advised them to make a clean breast of the whole affair to the police. Their statements were recorded on the 4th of

February, 1961. Finding the net closing round him and moved by the final entreaty of Shri A.P. Goyal that he should now at least disclose the

place where the body is buried, the first appellant made a statement in the presence of Shri Narinder Singh, Assistant Excise and Taxation

Commissioner, Patiala, a neighbour, Ravinder Kumar, Dr. Chaman Lal, S. Jiwan Singh and Shri A.P. Goyal and immediately afterwards the dead

body was recovered from the place specified therein. It has been canvassed very strongly that the statement made by the first appellant leading to

the discovery does not fall within the ambit of section 27 of the Indian Evidence Act. It is urged that the police had already dug up pits in the

compound of the accused on 3rd of February, 1961, as stated by Mrs. Girin. Reliance for this contention is also placed on the statement made by

Raj Kumar that on the 13th or 14th of January the first appellant had told him that the police was keeping a watch on the Bank Colony and also on

the statement made by him u/s 164 of the Code of Criminal Procedure on 21st of February, 1961, that "the police is keeping a watch on the pit in

which the child is buried." Now the statement u/s 164 was made on 21st of February, 1961, long after the discovery. It cannot be said that the

nebulous statement that the police was keeping a watch on the pit where the child was buried furnished the full information which led to the

recovery. The child was, of course, buried in a pit but it had not been specified at any stage before the disclosure statement made on the 5th of

February 1961 by the first appellant that the place was near the Gul Mohar tree, at a distance of six or seven feet from the main gate. It was further

stated that the body was wrapped in a piece of gunny bag. The spade with which the earth was dug and the dead body were duly recovered in the

presence of persons whose credibility cannot for a moment be doubted. The dead body was in a state that it could be easily identified. It has

already been discussed that adipocere was present and this helped to retard the onset of decomposition. The clothes worn by the deceased were

the same in which he had been dressed by his mother a month earlier on 5th of January, 1961. All the clothes were found bloodstained. A piece of

towel which according to Bhagat Ram was the one which was in use by him was stained with blood. This towel had been used in wrapping up the

child. It seems clear to us that the first appellant had buried the dead body of Tonny after having killed him.

20. Piecing together our conclusions, we would hold that the charge of murder has been brought home against the first appellant. We are satisfied

that the first appellant was in the company of the deceased boy for most part of the day on 5th of January, 1961, and especially in the crucial half

an hour before his disappearance at 4 P.M. We consider it of no consequence that in the police report made late in the evening of 5th of January,

1961 it was mentioned that the boy was seen playing outside the house. We cannot take this to mean that Tonny had in fact not been seen at the

house of the appellants. Indeed, we have emphasised throughout that the Goyals had not suspected the appellants in the first instance and the

suggestion made from any other quarter against them was boldly repelled. We also attach no importance to the very strong argument presented by

Mr. Kaushal that the behaviour ascribed to the first appellant is extraordinary and therefore, ought to be rejected. In such cases we are not

expected to look at the recognised norms of behaviour and apply every circumstance to the touchstone of reason in judging its veracity. Mr.

Kaushal's contention that death has not been proved to have taken place on 5th of January, 1961 is wholly unacceptable because of the clear

medical testimony that undigested carrots were found in the dead body of Anil Goyal. This definitely fixes the time of death shortly after 3 P.M.

when the boy was seen eating carrots given to him by the first appellant. We accept the evidence of the extra-judicial confession against the first

appellant although Raj Kumar and Mahabir Dayal did not give their statements till a late stage. A large number of authorities have been cited

before us by Mr. Kaushal but we would be content only to deal with a Division Bench authority of the Lahore High Court in Kehri and another v.

Emperor 99 I.C. 857, in which Sir Shadi Lal Chief Justice and Le Rossignol J. observed that ""the evidence of a witness who reports a matter to

the police at a very late date and who is not able to give any explanation for the delay should be treated with suspicion."" In the present instance,

Raj Kumar and Mahabir Dayal entertained fears that any disclosure by them might expose them to danger of suspicion and it was only when they

found that it was silence and not disclosure that would be suspicious that they went and consulted Gurdip Singh Dhillon who advised them to make

their statements before the police. We have derived guidance from a Supreme Court decision in Vemireddy Satyanarayan Reddy and Others Vs.

The State of Hyderabad, In the words of Chandrasekhara Aiyar J., who delivered the judgment of the Court, ""there is no warrant for the extreme

proposition that if a man sees the perpetration of a crime and does not give information of it to anyone else, he might well be regarded in law as an

accomplice and that he could be put in the dock with the actual criminals. Indeed, there can be no doubt that the evidence of such a man should be

scanned with much caution and the Court must be fully satisfied that he is a witness of truth, especially when no other person was present at the

time to see the murder..... the Court would still want corroboration on material particulars as he is the only witness to the crime.....Such

corroboration need not, however, be on the question of the actual commission of the offence: what the law requires is that there should be such

corroboration of the material part of the story connecting the accused with the crime as will satisfy reasonable minds that the man can be regarded

as a truthful witness."" Nor are we moved by the arguments of the learned counsel for the appellants that a person whose statement is recorded u/s

164 of the Code of Criminal Procedure should be rejected on ground of unreliability. As we have already observed, Raj Kumar P.W. 7 whatever

improvements he may have made in his statement made u/s 164 of the Code of Criminal Procedure has reverted to the truth in the testimony which

he gave before the Sessions Judge. As observed by their Lordships of the Supreme Court in Kalawati and Another Vs. The State of Himachal

Pradesh, the probative value of a statement or confession made u/s 164 has always to be decided in the light and context of the other evidence and

any proposition of law which requires its rejection per se cannot be said to be well founded. Finally, the discovery of the dead body at the instance

of the first appellant from the premises of his own house has been established by unimpeachable evidence. From this evidence, read with the other

circumstantial evidence, we are convinced of the guilt of the first appellant. We may also make a mention that a number of circumstances have

been left unexplained by the first appellant as already pointed out aforesaid. In particular, the denial of the first appellant regarding the evidence of

being last seen together with the deceased is singularly unimpressive. As observed by Mr. Justice Imam in Pershadi Vs. State of Uttar Pradesh,

where in a murder charge, the accused falsely denied several relevant facts which had been conclusively established, the Court would be justified in

drawing an adverse inference from this against the accused." To a similar effect is the observation of Mr. Justice Jagannadhadas in an earlier

Supreme Court decision, Deonandan Mishra Vs. The State of Bihar, in which in a case of circumstantial evidence it was said that where "the

circumstances point to the accused as the probable assailant, with reasonable definiteness.....and he offers no explanation, which if accepted,

though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation

or false explanation would itself be an additional link which completes the chain.

21. We also consider that the attempts made by the defence to hold out Bhagat Ram as a false witness by fabrication of evidence point to the

conclusion that the importance of his evidence having been realised every effort has been made to discredit it. In our opinion the statement of

Bhagat Ram in substance harmonises with the realities of the case and lends an additional support to the prosecution story.

22. It was finally urged on behalf of the first appellant that the failure of the prosecution to give any explanation for the wire found tied on the right

thumb of the deceased boy makes it plausible that the deceased may have met with an electric shock and the first appellant having realised that

suspicion would fall on him may have lost his head in causing death by asphyxia. This explanation offered during the course of arguments does not

seem to have any merit in it. We cannot spell out a case for the defence from the medical testimony when no question was put to the doctor. The

doctor has definitely excluded the possibility of an electric shock and it would be a vain surmise to hold that the boy suffered a shock though no

apparent symptom of it was found on his body.

23. As regards the second appellant, we do not agree with Mr. Jagan Nath Kaushal that sympathy evinced by him has been mistaken for guilt. His

arrival at the house of A.P. Goyal at 6 P.M. straight from his shop, on 5th of January, 1961, shows that he had been apprised of the death

probably by his son. He assumed the position of the director of operations in the search and in retrospect we must find that he was deliberately

leading the Goyal family on the wrong scent. He gave false information about Nabha. He was putting them off in suggesting a search at Ambala. He

was instrumental in organising the visit to Kalyan Gurdwara though it may be that it was the first appellant and not he who was the originator of the

plan. He repelled the efforts of Shri Babu Singh to unfathom the mystery, and having been seen by Bhagat Ram in conversation with his son on the

night of the occurrence it is difficult to escape the conclusion that he had knowledge of the death of the deceased. He completely broke down

when the police took him to Kalyan on the 27th of January, 1961, and felt impelled to make a confessional statement the same evening to Shri

A.P. Goyal and his son. It may be that this confession was not mentioned in the police statement but that does not injure the prosecution case. His

partial acceptance only of the incident of the Kalyan Gurdwara leaves no doubt in our minds that he was suppressing a portion of the story, and the

observations of the Supreme Court in Deonandan Mishra Vs. The State of Bihar, , and Pershadi Vs. State of Uttar Pradesh, would equally apply

in his case. The evidence against him is overwhelming and has been given by witnesses who have no interest or animus against either of the two

appellants. The entire conduct of the second appellant clearly showed that he had reason to believe that an offence had been committed and the

various incidents which we have discussed above show that his object was to screen the offender from legal punishment. His conduct as also of the

first appellant who definitely concealed the evidence of his crime clearly bring them within the mischief of section 201 of the Indian Penal Code. As

against the second appellant, however, it must be said that he was playing a part out of filial regard and obligation. We are not inclined to view his

offence with the same severity as that of the first appellant. While maintaining the conviction of the appellants u/s 201 of the Indian Penal Code, we

would reduce the sentence of imprisonment in the case of the second appellant only to three years. The sentence of death imposed on the first

appellant is confirmed.

24. In the result, the appeal fails except to the slight extent that the sentence of the second appellant is reduced u/s 201, Indian Penal Code, to

three years.

R.P. Khosla, J.

25. I agree.