

**In the High Court of Punjab and Haryana at Chandigarh**

**CRA-D-1078-2019 (O&M)**

**Reserved on: 26.7.2023**

**Date of Decision: 01.8.2023**

Dinesh Kumar

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. U.K.Agnihotri, Advocate  
for the appellant.

Mr. Ankur Mittal, Addl. A.G., Haryana with  
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

Mr. J.S.Mehndiratta, Advocate with  
Mr. Rahul Dhanda, Advocate  
for the complainant.

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**SURESHWAR THAKUR, J.**

1. The instant appeal is directed against the impugned verdict, as made on 19.10.2019, upon Sessions Case No. 10 of 2014, by the learned Additional Sessions Judge, Kaithal, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 364 and 302 of the IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against accused-appellant. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the convict to undergo rigorous imprisonment for life, thus for an offence punishable under Section 302 of the IPC, besides also imposed, upon the convict sentence of fine, as comprised in a sum of Rs. 50,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo simple imprisonment for a period of one year. Moreover, the

learned convicting Court also sentenced the convict to undergo rigorous imprisonment for a period of five years, thus for the commission of an offence punishable under Section 364 of the IPC, and, also imposed, upon him the sentence of fine, as comprised in a sum of Rs. 10,000/-, besides in default of payment of fine amount, it sentenced the convict to undergo simple imprisonment for a period of three months.

2. Both the above imposed sentences of imprisonment, were ordered to run concurrently, but the period of detention undergone, by the convict, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

3. The accused-convict becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal, before this Court.

#### **Factual Background**

4. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. PO is assigned. The narrations carried in Ex. PO are, that on 01.04.2014, Complainant Surender son of Hari Singh moved a written application to SHO Police Station City Kaithal, transpiring that he was a resident of Gali No. 3, Arjun Nagar Kaithal and was labourer by profession. He had a son named Yashpal, of approximately 14 years in age. On 31.03.2014 at about 10:30 AM, Yashpal had gone to enjoy Mela (Seasonal Fair) at Mata Gate, Kaithal, but did not return till the time of moving complaint. He had searched for his son Yashpal at approximately every possible place, but in vain. He suspected that some unknown person

had kidnapped his son. Legal action was called accordingly. Upon that, the present FIR No. 103 was registered at Police Station City Kaithal on 01.04.2014.

**Investigation proceedings**

5. During investigation, call-details record was obtained from the Cyber-cell, Kaithal and statement of Munish son of Bharat was recorded. Upon that, Section 364 IPC was substituted, in place of Section 365 of IPC. During investigation, Yashpal @ Golu was recovered in unconscious state from a cabin in the shop of accused Dinesh. Recovery memo was accordingly prepared. One plastic bottle of green-colour containing some liquid in it and one plastic tumbler half-filled with some liquid were recovered from underneath the cot, on which Yashpal was lying. The liquid of tumbler was put in a small plastic bottle. Separate parcels of the plastic tumbler and the plastic bottle were prepared. The bed-sheet spread on the cot was also taken into police custody. Three medicine strips bearing Mark 'ATIVAN 2 mg' were also recovered from below the bed-sheet. Two strips were having 25 tablets each, whereas one strip was empty. The same were also enclosed in a parcel. Three seals of Mark 'RS' were affixed on each of the parcels. Yashpal @ Golu was carried to G.H.Kaithal, but he was declared 'brought dead' by the doctors concerned. Upon that, Section 302 of IPC was incorporated in the case. Inquest proceedings regarding dead-body of Yashpal @ Golu were conducted under Section 173 Cr.P.C. Post-mortem examination of dead-body of Yashpal was got conducted through Board of doctors of G.H.Kaithal. On 03.04.2014, accused Dinesh Kumar was arrested from Bus Stand Kaithal. His first disclosure statement was recorded on 04.04.2014. In consequence thereof, Sections 387, 328 and 342 of IPC were also incorporated in the present case. When the accused was being carried on

05.04.2014, for effecting recovery in pursuance of his disclosure statement dated 04.04.2014, he got halted the police party near Barwala and made another disclosure statement. In pursuance of the fresh disclosure statement, the accused Dinesh got recovered a Maruti car bearing registration No. DL2CS-1657 alongwith its key, its Registration Certificate and a cell-phone, from a place near old Bus Stand, Kaithal. Above commodities were taken into police custody vide a separate memo. Video recording of the recovered cell-phones and of messages received on the cell-phone of complainant Surender was got conducted through Ct. Ram Niwas. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned Court concerned.

#### **Committal Proceedings**

6. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 5.5.2014, hence proceeded to commit the accused to face trial before the Court of Session.

#### **Trial Proceedings**

7. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw a charge against accused, for the offences punishable under Sections 364 and 302 of the IPC. The afore drawn charge was put to the accused, to which he pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 14 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned

trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. He also chose to adduce defence evidence, but did not lead any witness into the witness box.

9. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charges (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

**Submissions of the learned counsel for the appellant**

10. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

**Submissions of the learned State counsel**

11. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

**Recovery of the body of deceased Yashpal @ Golu from the shop/premises of the convict-appellant.**

12. The dead body of deceased Yashpal @ Golu became recovered from the premises of the convict-appellant, thus through recovery memo Ex. PB.

13. Be that as it may, the prosecution has made a strident attempt to convincingly establish the charges drawn against the convict-appellant, thus

on anvil of the hereinafter alluded incriminatory pieces of evidence. Nonetheless, for the reasons to be assigned hereinafter, this Court refrains from assigning any credence to the said incriminatory pieces of evidence. Therefore, this Court is constrained to allow the instant appeal, and, to acquit the appellant of the charges, as became framed against him, by the learned trial Judge concerned.

14. Initially, it is deemed apt to refer to the post-mortem report, which became conducted upon the body of the deceased, by a team of doctors, and, to which Ex. PGG, becomes assigned. The said report became proven by PW-16.

15. Before proceeding to analyse the relevant evidence, wherein may become spelt, the cause of death of the deceased, it is but pertinent to allude to the observations, as became made qua the body of the deceased, by the doctors, who conducted an autopsy, on his body. The said observations are extracted hereinafter.

**“External appearance:-**

*A dead body of male child moderately build and nourished wearing green t-shirt, gray lower with white strip, black underwear. Mouth and eyes closed. Rigor mortis present throughout the body. Post mortem stainig was present over dependent part of body and get fixed.*

**Cranium and Spinal:-**

*NAD*

**Thorax:-**

- *Walls, ribs and cartilages -healthy on B/L.*
- *Pleural cavity healthy.*
- *Larynx and trachea was healthy.*
- *Piece of Lung sent to chemical examiner Karnal and Department of Histopathology.*

- Heart as a whole sent to Department of Histopathology of PGI MS Rohtak. Blood sample taken and sent to chemical examiner Karnal.

**Abdomen:-**

- Anterior abdominal wall was healthy.
- Peritoneum was healthy.
- Mouth, Pharynx & Oesophagus- Healthy
- Stomach- as whole sent to chemical examiner Karnal.
- Piece of small and large intestines sent to chemical examiner Karnal.
- Liver, spleen and kidneys- pieces of each sent to chemical examiner Karnal.
- Bladder- contain small amount of urine.
- There was external genitalia of male and healthy.

**Injuries:-**

1. Abrasion of size 2x2 cm over right zygomatic process.

**Remarks:**

The Board is of the opinion that the cause of death Examiner Karnal and Department of Histopathology PGI MS in this case will be given after the report from Chemical Rohtak. Probable time that elapsed Between death and Post mortem- within 24 hours.”

**The death of the deceased neither on account of strangulation or smothering or any fatal assault made on his person, at the instance of the convict-appellant**

16. Moreover, it is also deemed fit to refer to the carried therein remarks, as, made by the medical officer concerned. From a keen analysis of the above extracted post-mortem report, to which Ex. PGG, is assigned, it becomes unveiled, that thereins occur no speakings about there being any ante mortem injuries, thus in and around the neck region. Resultantly, it may become concluded, that the deceased was neither strangulated, nor also when thereins there is no speaking about any other ante mortem injuries, thus existing on the body of the deceased, and, which could be attributed to a

fatal assault becoming committed, upon the deceased, thus through user(s) of any incriminatory weapon of offence, upon, the deceased. Therefore, it has to be concluded, that the cause of demise of the deceased was not a sequel of strangulation or smothering, nor the deceased succumbed to any ante mortem injuries, especially when none was found there, and, predominantly also when no incriminatory weapon of offence, became recovered at the instance of the appellant-convict.

17. Be that as it may, there is also no firm opinion pronounced in Ex. PGG about the cause of demise of the deceased. However, there was a deferment of recording of an opinion, thus with respect to the cause of demise of the deceased, thus till an apposite opinion becomes received, from the chemical examiner concerned, whereto whom rather the relevant material became sent for examination(s).

18. Resultantly, the report of the chemical examiner concerned, to which Ex. PW-19/A becomes assigned, rather assumes utmost importance. The items, as became thereto sent for examination, and, also the results thereof, become extracted hereinafter.

<b>“Parcel No. and Seal No.</b>	<b>and Seal Impression</b>	<b>Description of parcel (s)</b>
1.	1-RB	One sealed cloth parcel containing Exhibit-1.
2.	1-RB	Exbt-1: One white/black coloured selof designed bed-sheet. One sealed cloth parcel containing Exhibit-2.
3.	1-RB	Exbt-2: One green coloured tumbler (Gilas) stucked with some whitish/orange materials on its base and inner walls. One sealed cloth parcel enclosing a plastic bottle containing exhibit-3.
4.	1-RB	Exbt-3: Some orange/yellow liquid approx = 40 ml. One sealed cloth parcel containing Exhibit-4. Exbt-4: Two aluminum foil each



*labeled as "ATIVAN-2 mg" Each embedded with twenty orange coloured rounded and flat tablets and an empty aluminum foil labelled as "ATIVAN-2mg"*

5. Note

*One viscera box returned unexamined sealed with seals of SS/chem/FSL(H) MBN.*

**Laboratory examination**

*Chemical test and techniques were employed to detect common gaseous and volatile poisons, metallic poisons, inorganic ions, plant poison, pesticides and drugs in exhibits- 1,2,3 and 4. Based upon the examination carried out in the laboratory, the results are given as under:-*

**Results of examination**

1. *Lora zepam (a Tranquilliser) was detected in Exhibits- 2, 3 and 4.*
2. *No common poison/drug be detected in exhibit-1."*

**Analysis of the report of the chemical examiner**

19. Though, on examination of the above items, the chemical examiner concluded, that Lorazepam (a tranquillizer), became detected in Exhibits 2, 3, and, 4. However, as evident from the above extracted report, though, one viscera box also became sent to the chemical examiner concerned, but a reading of Sr. No. 5 of Ex. PW-19/A, reveals that the said box containing the viscera of the deceased, thus remained unexamined, and, thereby the same became returned. In consequence, the mere presence of tranquillizer in Exhibits 2, 3, and 4, thus cannot be concluded to lead to the further ill consequence, that the said tranquillizer became either voluntary consumed or became forcibly administered to the deceased, and, thereby the deceased suffered his demise. The reason is but simple, that unless the said tranquillizer was found in the viscera of the deceased, and, in such a quantum, that it evidently led to the ill consequence of the deceased

suffering his end, that thereby since the deceased was found in the shop of the convict-appellant. Resultantly, thus it would become concluded, that the deceased had either voluntarily consumed the said tranquillizer or it became forcibly administered to the deceased by the convict-appellant, and, thereby the deceased suffered his end. However, since the viscera box rather containing the viscera of the deceased, remained unexamined, therefore obviously when the post-mortem report Ex. PGG also refrains to give any opinion about the cause of demise of the deceased, thus on the premise, that the report of the chemical examiner, upon the viscera of the deceased, thus is awaited. Resultantly when the viscera of the deceased remained unexamined, as such, the non-making of examination(s) thereof, cannot lead to an opinion, that the deceased had died on account of his either voluntarily consuming or becoming forcibly administered rather any tranquillizer. Therefore, when no candid material exist(s) on record, thus suggestive about the cause of demise of the deceased, thus irrespective of the fact that the body of the deceased was found in the premises of the convict-appellant. Resultantly, rather no conclusion can be made that the convict-appellant had any incriminatory role as such in the demise of the deceased.

20. Furthermore, since the father of the deceased, Surender, who stepped into the witness box as PW-12, stated in his cross-examination, that his wife was undertaking hence treatment for epilepsy from the convict-appellant. Therefore, though it becomes rebuttedly suggested by the defence counsel to PW-12, that the deceased was called on telephone by the accused to arrive at a particular place, and, that thereafter he took him to his shop, where he ensured his demise through making him consume tranquillizer(s). However, this Court cannot yet accept, that through a telephonic call made by the convict-appellant to the deceased, the latter was allured to come to the

premises of the convict-appellant. Contrarily, it appears that may be the deceased, and, his mother, thus visited the premises of the convict-appellant, especially when rebutted suggestions to the above effect are meted by the learned defence counsel to the father of the deceased, besides also when rebutted suggestions are also meted to PW-12 about the convict, and, the mother of the deceased allegedly rather having an illicit relationship. Though, but the said suggestions became denied, yet this Court is led to take a view, especially when PW-12 rather has spoken in his cross-examination, that his wife was undertaking treatment for epilepsy from the convict-appellant, that yet, as above stated, both the deceased, and, his mother visited the premises of the convict-appellant. Therefore, but results in negation of the present theory qua the convict-appellant telephonically alluring the deceased to visit the relevant place.

**Report of the Pathologist**

21. The report of the pathologist, to which Ex. PF, is assigned, and, the report of PW-16, as exists in his cross-examination, are both required to be read together. Resultantly when Ex. PF states, that the condition of the lungs of the deceased rather showed mild congestion, and, when the said fact is also spoken by PW-16, thus in his cross-examination. Therefore, it appears that the cause of demise of the deceased was owing to a lung infection, which may have remained untreated. Consequently, the demise of the deceased, but thus appears to be natural, than homicidal.

**Signed disclosure statement of convict Dinesh Ex. PU**

22. During the course of investigations, being made into the appeal FIR, convict-appellant Dinesh Kumar made a signed disclosure statement, to which Ex. PU is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

*“In the presence of following witnesses, above accused Dinesh Kumar has disclosed in the police custody without any fear that Yashpal @ Golu son of Surender Singh, resident of Arjun Nagar, Kaithal, who previously lived in my village Dohala and I visit usually at their home and they also come in my home at village Dohala. I prepared the plan of kidnapping Yashpal in greed of money and according to my plan I borrowed the Maruti car no. DL-2CS-1657 from my friend Vikram son of Satya Naryan, caste Dhiman, resident of Dalamwala, District Jind for my personal work for two days and after taking it, I come to Kaithal on 31.03.2014 and I told Yashpal @ Golu for coming in temple at Mata Gate Kaithal by calling him on his mobile no. [REDACTED] by my mobile no. [REDACTED] uring this time I talked with Yashpal @ Golu many time on mobile and after coming of above Yashpal @ Golu son of Surender, I took him on tea shop for taking tea and after taking tea we both went to our village Dohala and I locked him in the cabin of my clinic at village Dohala and keeping him unconscious by giving him tablets of drugs in his meal with the intention to kill him and keep sending the message on the mobile phone No. 90688-30208 of Surender son of Hari Singh, father of Yashpal @ Golu from mobile phone of Yashpal @ Golu that transfer your Kaithal's plot on the name of your brother Mahinder and give him one lac rupees also, otherwise I will kill your son Yashpal @ Golu and Mahinder did not know any thing about this. I sent the name of Mahinder in the message. So, that no one can doubt on me. And later on I would take the money and plot from Mahinder by pressurize him. The Maruti car no. DL-2CS-1657, Which was used by me in this occurrence is parked at old bus stand Kaithal behind the place of Peer for hiding it and mobile phone of Yashpal @ Golu no.90687-23408, which was used by me for message is kept by wrapping it in a paper in the desk board of Maruti car no. DL-2CS-1657, no one know about this Maruti car and mobile phone except me and the key of Maruti car was hidden by me after digging a few land behind the place of Peer and a brick was kept above it and I can recover the key of car, car and mobile phone by demarcation. I also demarcated that place on 04.04.2014 where I kept Golu @ Yashpal for killing him in the cabin of my shop and on 4-4-2014 in my previous disclosure statement I told lie about the Maruti car no.DL-2CS-1657 that I were hidden it at the home of my sister in Hissar and mobile phone of Yshpal @ Golu that it were kept in my rented room at Chandigarh that who will go so far to pick these things and today I disclosed my truth facts to you.”*

23. Pursuant to the above signed disclosure statement, convict-appellant got recovered, through recovery memo Ex. PV, thus respectively Maruti car bearing No. DL-2CS-1657, key of the said car, RC of the car, one mobile phone make 'Karbon' having IMEI-I No. 911340852468782 and

IMEI-2 No. 911340852468790, all which were also taken into police possession.

***Reason for not assigning any evidentiary vigour to the above disclosure statement and pursuant thereto recovery memo***

24. A reading of the contents of the disclosure statement Ex. PU, as made by the convict-appellant, as also the contents of the pursuant thereto recovery memo(s), and, to which Ex. PV, is assigned, does suggest, that the convict-appellant was nursing a motive to extort money from the father of the deceased. Resultantly, an attribution is made to the convict-appellant, that he abducted the deceased child of the complainant, and, when the said demand of extortion remained unsatiated, thus he proceeded to commit the murder of the deceased child of the complainant.

25. Though, the contents of the disclosure statement (supra), and, also the contents of the recovery memo (supra), wherethrough the relevant recoveries were made by the convict-appellant to the investigating officer concerned, do contain, the uncontested signatures of the convict-appellant. Moreover since therethrough a Maruti car bearing No. [REDACTED] and, also a mobile phone make 'Karbon' evidently carrying IMEI-I No. [REDACTED] and IMEI-2 No. [REDACTED] of deceased Yashpal, thus became recovered, and, though from the said recovered mobile phone, extortionate messages were purportedly sent to the mobile phone of the complainant. Moreover, though the said mobile make 'Micromax' is having IMEI No. [REDACTED], and, IMEI No. [REDACTED]. However, the CD, to which Ex. P8 is assigned, though thus became prepared by PW-8, wherein, the incriminatory extortionate messages thus purportedly exchanged between the above, thus became enclosed. Moreover, though the hereinafter extracted extortionate

demand(s) messages, thus became purportedly made from mobile bearing No. [REDACTED] as purportedly belonging to the deceased, thus to the mobile bearing No. [REDACTED] of the father of the deceased.

- (a) *Heme pata hai tum meri phon lokesan ka pata laga rehe ho golu ko jinda nahi chate kaya.*
- (b) *Kar lo phone lokesan ki janch our sath me relwaye station se golu ko le jana aakhiri warning.*
- (c) *Poulis me hmare bhi aadmi hai is liye koi hosiyari nahi jake bolo ke golu mil gaya uski buva ke yahan.*
- (d) *Yad rahe aaj rat tak kam ho jana chiye kam hote hi golu ghar sahi salamat pahunch jayega our phon mat kar sms kar.*
- (e) *Phele FIR wapis le our aaj hi Mahender ke naam plat ka afidevit court me banwa our ye 100000 rupye teyar rakh our kam ho jane par sms kar.*
- (f) *Our ye baat ghar me kisi ko nahi kahni warna golu jinda nahi yad rehe jab tak plat tumhare bhai Mahender naam nahi ho jata tab tak golu nahi aayega me.*
- (g) *Agar tum subham ko jinda chate ho to tumhara plat jo tum banane aye ho wo Mahender ke naam kar do our 100000 rupeye Mahender ko dedo tume Subham jinda mil jaega.*
- (h) *Suno agar polis me gaye to tumhare ladke ko mar denge.*
- (i) *Main 30 mints tak tumhae jawab ka intazar karunga our 30 mints bad golu ki las relwy station par milegi.*
- (j) *Tumhare pass aj rat tak ka time waqut barbad mat karo hame dundne me warna golu mara jayega jo men kaha ha wo karo.*

26. Nonetheless, for the reasons to be assigned hereinafter, this Court refrains from assigning any credence thereto, besides relents from thus concluding, that the said purported exchange of messages, were, as a matter of fact, made at a stage when the deceased child was purportedly in the illegal custody of the convict-appellant.

27. The reason for this Court making the above inference, stems from the factum (supra), qua it being imminently spoken by the complainant in his cross-examination, that neither he nor, his brother informing the

investigating officer concerned, thus at the relevant time, about the relevant mobile number, as becoming purportedly held by the deceased child, rather to become purportedly held, as such at the stage, of his being purportedly in the unlawful custody of the convict-appellant, nor also when there is any evidence, as to the manner of the deceased child of PW-12, assuming possession or custody of the said mobile phone. Moreover, since the mobile of the deceased, as became used by the convict-appellant, to therefrom his purportedly making extortionate messages to the mobile phone of the father of the deceased, rather evidently is in the name of Pawan son of Hari Bilas r/o Dahola, District Jind. Therefore, this Court cannot but conclude, that the recovery of mobile phone, as made through recovery memo Ex. PV, was thus a fictitious recovery or a well engineered recovery, rather by the investigating officer concerned, thus purportedly at the instance of the convict-appellant, but irrespective of the fact, that the disclosure statement in pursuance whereof it became recovered, rather contains the uncontested signatures of the convict-appellant. Significantly, when the owner of the mobile phone rather has remained unassociated by the investigating officer concerned, in the relevant investigation, whereas, only upon his becoming associated, thus in the relevant investigation, it may have emerged whether he had handed over the custody of the said mobile phone to the deceased. Since the above evidence is amiss, therefore, it appears that the owner of the mobile phone, but surreptitiously handed over the relevant mobile phone, to the investigating officer concerned, who thereafter took to engineer its sham recovery, but at the purported instance of the convict-appellant.

28. The most conspicuous prime reason for negating the evidentiary worth of the CD (supra), purportedly containing the hereinabove extracted extortionate messages, is rather embedded in the factum, that the dates of

making of the said messages, from the recovered mobile phone, of the deceased, to the mobile phone of the complainant, thus are not mentioned therein. Moreoso when Ex. P-8 is also silent about the said referred dates. The absence of mentioning in Ex. P8, and, also for absence of any speakings by the investigating officer concerned, or by the videographer concerned, who stepped into the witness box as PW-8, about the said messages, rather emanating from the recovered mobile phone of the deceased, to the mobile phone of the complainant, thus on the dates when the deceased child rather was in the purported unlawful custody of the convict-appellant, thus begets an inference, that the author of the said scribed messages, but was not the convict-appellant, rather the author of the said scribed messages, was other than the convict-appellant. In other words, the occurrence of the said extortionate messages in the incriminatory mobile phone, rather appears to be a person, who but in connivance with the investigating officer concerned, deployed a clever stratagem to incriminate the convict-appellant. In summa, upon combining the lack of opinion (*supra*) about the cause of demise of the deceased, thus with gross suspicion pervading about the authorship of the extortionate messages, as occur in the incriminatory mobile phone, thus brings home a firm conclusion, that the impugned verdict of conviction, and, consequent thereto order of sentence, are liable to be interfered with. Significantly when thereons the motive for the occurrence of the crime event, rather becomes grooved. The reason being that both suffer from a gross misappreciation, and, non appraisal of evidence (*supra*), thus germane to the charge(s) drawn against the convict-appellant.

**Final order**

29. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow it. Consequently, the appeal is



allowed. The impugned judgment and order convicting, and, sentencing the appellant, and, as recorded by the learned trial Judge concerned, are quashed, and, set aside. The appellant is acquitted of the charges framed against him. The fine amount, if any, deposited by him, be, in accordance with law, refunded to him. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty.

30. Records be sent down forthwith.

31. The miscellaneous application(s), if any, is/are, also disposed of.

**(SURESHWAR THAKUR)**  
**JUDGE**

**(KULDEEP TIWARI)**  
**JUDGE**

**August 1<sup>st</sup>, 2023**  
**Gurpreet**

**Whether speaking/reasoned : Yes/No**  
**Whether reportable : Yes/No**