

Sessions Case No.1 of 2022**FORM - A**

**IN THE COURT OF 3rd ADDITIONAL SESSIONS JUDGE
AT VIRAMGAM**

Date of Judgment -- 27.02.2023

Sessions Case No.1 of 2022

Exh. ____

(Particulars of F.I.R./Offence & Police Station

Viramgam Rural Police Station CR No.I-65/2018

Offence : Sec.302, 201, 120(b), 114 of I.P.C.

Police Station : Viramgam Rural Police, Tal: Viramgam, Dist.: Ahmedabad

Complainant	Navghanbhai Kodabhai Kolipatel
Through Ld. APP	Ld. APP Shri H. R. Solanki
Accused	(1) Rameshbhai @ Kato Navghanbhai Ko.Patel (2) Joshnaben W/o. Jagdishbhai Navghanbhai Ko.Patel Both residing at : Jalampura, Tal: Viramgam, Dist.:Ahmedabad
For Accused	Ld. Adv. Mr.S. K. Barot

FORM - B

Date of Offence	28.09.2018
Date of Complaint	30.09.2018
Date of Charge-sheet	29.09.2021
Date of Framing of Charge	06.07.2022
Date of Evidence	19.07.2022
ચુકાદો સંરક્ષિત રાખ્યાની તારીખ	
Date of Judgment	27.02.2023
Date of order of Conviction	-

Details of Accused :-

Sr. No.	Name of Accused	Date of Arrest	Date of order bail	of Offence	Acquittal / Conviction	Punishment	
1	Rameshbhai @ Kato Navghanbhai Ko. Patel	02.07.2018					
2	Joshnaben W/o. Jagdishbhai Navghanbhai Ko. Patel		16.04.2022	302, 201, 120(b), 114 of IPC			

FORM - C**Witness List :-**

Sr. No.	PW	Exhibit	Name of the witness	Description of the witness
1	PW-1	Exh-11	Kirankumar Rasiklal Bhavsar	Panch witness of inquest panchnama
2	PW-2	Exh-13	Ajitbhai Vajubhai Lakum	Panch witness
3	PW-3	Exh-15	Vijabhai Meghabhai Koli Patel	Panch witness
4	PW-4	Exh.17	Navghanbhai Kodabhai Koli Patel	Complainant
5	PW-5	Exh.19	Jagdishbhai Navghanbhai Koli Patel	Witness
6	PW-6	Exh.21	Varunbhai Khimjibhai Bamniya	Panch witness
7	PW-7	Exh.22	Rekhaben Rajubhai Devipujak	Panch witness
8	PW-8	Exh.24	Ranchhodbhai Hirjibhai Koli Patel	Panch witness
9	PW-9	Exh.26	Tinaben Rameshbhai Koli Patel	Witness
10	PW-10	Exh.28	Parvatiben Navghanbhai Kolipatel	Witness
11	PW-11	Exh.29	Akashbhai Kanubhai Thakor	Panch witness
12	PW-12	Exh.40	Mansingbhai Popatbhai Koli Patel	Panch witness
13	PW-13	Exh.41	Baldevsinh Charansinh Zala	Panch witness
14	PW-14	Exh.44	Kirankumar Rasiklal Bhavsar	Panch Witness
15	PW-15	Exh.45	Mit Prafulkumar Parikh	Witness
16	PW-16	Exh.47	Thakrsi Shivabhai Prajapati	Witness
17	PW-17	Exh.48	Bharatbhai Govindbhai Thakkar	Witness
18	PW-18	Exh.50	Umeshbhai Bhabhlabhai Dhakhada	P.I., Investigating Officer
19	PW-19	Exh.68	Rameshbhai Ganeshbhai Makwana	Head Constable
20	PW-20	Exh.77	Ajitsinh Devisinh Solanki	F.S.L. Officer

DOCUMENTARY EVIDENCE:

Sr. No.	Exhibit	Description of the Documents
1	Exh.12	Panchnama of arrest
2	Exh.14	Discovery Panchnama
3	Exh.16	Panchnama of place of incident
4	Exh.18	FIR
5	Exh.25	Panchnama of cover with letter
6	Exh.30	Reconstruction Panchnama
7	Exh.33 to 38	Handwriting of accused No.1 Ramesh
8	Exh.42	Panchnama of seizer of DVD
9	Exh.51	Letter
10	Exh.53	Report of FSL for the place of offence
11	Exh.54	Letter by FSL
12	Exh.55	Letter of IO to FSL officer
13	Exh.56	Letter of FSL
14	Exh.57	Case Abstract
15	Exh.58	Copy of handwriting report
16	Exh.59	Report of FSL for examining CNG Auto Rickshaw
17	Exh.60	Seizer Panchnama of auto seat cover
18	Exh.61	Report of IO for adding Sec.302, 201, 120(B) & 114 of IPC
19	Exh.62	Letter from FSL
20	Exh.63	FSL dispatch note
21	Exh.69	Panchnama of Search Warrant
22	Exh.70	Certificate of Principal
23	Exh.73	Certificate of Principal
24	Exh.75	Certificate of Principal
25	Exh.76	Panchnama of Search Warrant
26	Exh.78	Letter to DSF, Gandhinagar
27	Exh.79	Case Abstract
28	Exh.80	Hand writing report

Muddamal

Sr. No.	Muddamal	Particulars
Muddamal Receipt No.01/2020		
1	Article No.1	Postal cover with stamp
2	Article No.2	Samples of handwriting of Ramesh @ Katto
3	Article No.3	DVD

J U D G M E N T

1. The accused is facing charges for the offence punishable under Section 302, 201, 120(b) and 114 of the Indian Penal Code at the instance of the complaint lodged by Mr. Navghanbhai Kodabhai KoliPatel at Viramgam Rural Police Station.

2. The factual matrix of the case of prosecution from the record is as under:

The Complainant is father of the accused No.1 and father-in-law of accused no.2. He in his complaint has submitted that his elder son Jagdish was married to Joshnaben accused No.2 before eight years. On 28/9/2018 at 7.00 am, his elder son Jagdish went to farm, at 6:00 am his younger son Ramesh went to his job and Parvatiben went for social work at Vasveliya while complainant with Joshnaben and her children were at their house. It is further

submitted that at 8:00 am, Joshnaben with her daughter Shradhaben went to pond for washing clothes. While Hardik was at home. Thereafter, at 9:00 am Hardik went to purchase chocolate from the shop of Butabhai Babubhai Kolipatel. While as he was returning from the shop, complainant found him missing. Thus, he searched around for Hardik but he could not be found. Complainant had also called his son Ramesh to ask his mother about Hardik being with her or not? Thereafter, as the Hardik could not be found the present complainant had filed missing complaint of the Hardik- his grand child.

3. As per the complaint, earlier investigation was carried out of kidnapping of Hardik. Thereafter, during the investigation, it was found that Hardik was killed by his mother and his paternal uncle thus, investigation of Murder was carried out by the Investigating Officer. During the course of investigation, the I.O. had prepared panchnamas, obtained statements of various witnesses, obtained letter and cover of ransom and obtained FSL reports. After completion of investigation, the I.O. had submitted the charge sheet under Section 302, 201, 120(b) of I.P.C. against both the

accused before the Court of 2nd Judicial Magistrate First Class, Viramgam, on 29.09.2021 which came to be registered as Criminal Case No.2348/2021.

4. The Learned 2nd Additional Judicial Magistrate First Class, Viramgam, supplied free copies of the police papers and other documents of the charge-sheet to the accused and inquired of obtaining lawyer for his defense under Section 207 of Cr. P. C. and thereafter committed the case on dt.03.01.2022, as the case was exclusively triable by the Sessions Court, as provided under Section 209 of the Cr. P. C.. Thereafter, the said case was registered as Sessions Case No.01/2022. Ld Sessions Judge, Viramgam, had framed charge under Section 302, 201, 120(b) & 114 of the Indian Penal Code below Exh.8 on dt.06.07.2022, it was read over to the accused. The accused did not plead guilty in his plea recorded vide Exh.9 & Exh.10 and claimed for trial. Thus, Trial Commenced.
5. The Learned A.P.P. has tendered closing pursis below Exh.81 by stating that the prosecution does not want to lead further evidence after giving necessary evidence on record. Heard Ld.

APP for the state. It is submitted by him that accused no.1 is the paternal uncle and accused no.2 is the mother of Victim Hardik. Further, it is submitted that 17 independent witness, two panch and one FSL in toto 20 witnesses have been examined. It is submitted that the complainant is father of accused No.1 and father-in-law of accused No.2. Earlier, complaint was given for missing victim Hardik against unknown person. Thereafter, the investigation remained silent for years together. Thereafter, again investigating officer were inquired about the status regarding missing cases by their superior authority thus, the investigation again started. Here, during the investigation they found a letter of ransom, which was written by accused no.1 as per the FSL report. Thus, interrogation was strictly held wherein it was found that accused no.1 and accused no.2 both had killed Hardik as he was a eyewitness of their illicit relationship. It is further submitted that accused no.1 during the police interrogation has admitted his crime which is recorded by the Government Photographer. DVD was prepared when accused no.1 had demonstrated and reconstruction of the offence was done. Further, accused no.1 had also shown where they killed Hardik and buried him in the farm.

Thereafter, they had burnt his body and his ashes were thrown in water. The entire narration was recorded in DVD by the Government authorized photographer. Thus, the case of the prosecution stands on two footings, (1) on the admission given in DVD and (2) on the writings of accused no.1 being established on the letter of ransom. It is also submitted that though the panch and witnesses have turned hostile, the aforesaid evidences are concrete and stand independent. It is submitted that the CD of admission can not be considered as statement before the police as the said was given without any hesitation or threat. The CD has been established by the Investigating Officer in his deposition below Exh.50. It is also submitted that though the complaint was given earlier in year 2018, as the investigation came to the conclusion in the year 2021 hence, the charge-sheet has been filed in year-2021. It is further submitted that as per the letter of ransom, amount of Rs.4 Lacs was demanded from the father of Hardik. It is further argued that the letter of ransom was written by accused no.1 as per the report of FSL. Thus, it is a clear case of kidnapping. Though, the accused are not charge-sheeted for kidnapping and charge-sheet is filed under Sec.302 of IPC against

the accused by the Investigating Officer. It is further argued that the child Hardik is yet not been found nor his body has been recovered. Hence, kidnapping is proved by the prosecution. It is submitted by the Ld. APP that court has discretionary power to alter the charge at any point of time before pronouncement of judgment. Thus, the Ld. court is requested to alter the charge of kidnapping. The prosecution has also proved the motive of kidnapping or killing of the victim Hardik. The CD clearly reflects that both the accused had illicit relationship between them which was eye witnessed by the victim Hardik. In the said CD, accused no.1 has voluntarily admitted the entire offence without any threat as observed in the CD itself. Thus, the motive of the kidnapping or killing is proved by the prosecution. The accused No.1 and 2 have killed a child which is around 5 years of age without showing any mercy which has been clearly proved by the CD. Thus, as the entire case has been proved by the prosecution, accused are required to be punished rigorously.

6. Head Ld. Adv. for the accused and read Written Arguments of the accused below Exh.84 and produced supported judgments below

Exh.85. It is submitted that prosecution has failed to prove the case against the accused. In his written argument Ld. advocate for the accused has submitted that first incident occurred on date 28.09.2018 at 6:00a.m. and its complaint was given on 30.09.2018 at 19:20 o'clock. It is submitted that a missing complaint was given by the complainant for their grandchild. No investigation was held against the said complaint and thereafter, on a pressure to conclude the complaint the present accused are falsely implicated in the offence. It is submitted that the complainant and other witnesses have clearly narrated in the complaint as well as statement, that victim Hardik was with his grandparents till 09:00 a.m. While as per the contentions of investigating agency Hardik was missing from 06:00 a.m.. On 02.07.2021 police has added Sec.302 and 201 of IPC and arrested the accused No.1 Ramesh and accused no.2 Joshnaben. The prosecution witnesses have not supported the version of the prosecution and most of the witnesses turned hostile.

He further submitted that actually the Hardik was kidnapped on 28.09.2018, around 09:00 o'clock and the complaint was registered on 30.09.2018. Thereafter on

02.07.2021, Viramgam Rural Police has added Sec.302,120(b), 201 & 114 of IPC in the said complaint. He further submitted that after the three years of the original complaint, police had added sections without any evidence. The police had found illicit relationship between both the accused and arrested them. It is further argued that confession of the accused were taken forcefully and a note was forcefully written by the accused no.1. He further submitted that before the confession of the accused no.1, the police had tortured the family members of the accused, beaten them at the police station and went to their farm and digged the farm with JCB and had harassed them. Therefore, Gelabhai Kodabhai Kolipatel had filed complaint under Sec.323, 504, 506(2), 342, 343, 348 and 330 of IPC against the P.I. of Viramgam Rural Police Station, Shaileshbhai - constable, Rameshbhai - constable, Jeminbhai - constable and Bharatbhai - constable before the Viramgam Judicial Magistrate First Class. The said is yet pending as Court Inquiry No.12/2021. Therefore, it is proved that by beating up the accused, confessions have been recorded. Looking to the entire facts of the case, police did not find enough evidence in the matter except a letter/note and the

confession of the accused before the police. Both the evidences on which the prosecution relies are not reliable evidences. Looking to the depositions of witnesses, it is clear that police had created all the evidences. It is further argued that the letter/note on which the police story relies is not named to anyone. Further, it is argued that no one had lastly seen the Hardik with accused. In the present case, Parvatiben deposed that when she was went to Vasveliya at that time she gave Rs.2/- for chocolate to the Hardik, so, it is proved that Hardik was at home till 08:45 a.m. Further, it is argued that as per the deposition of Butabhai at 08:45 a.m. Hardik went to his shop thus the aforesaid contention has been proved. As per the deposition of the Jagdishbhai father of Hardik, it is proved that he was went to his farm between 08:00 a.m. to 08:30 a.m. at that time Hardik was at home, so, the story of the police that Hardik was missing since 06:00 a.m. is false. It is further submitted that witness Umeshbhai Bhabhlubhai Dhakda who is the Investigating Officer of the present case has admitted in his cross-examination that at 06:00 a.m., incident took place. Further, he admitted that in FIR, it is mentioned that at the time of incident accused no.1 was at grocery store of Bharatbhai and

accused no.2 went to the pond for washing cloths. He further admitted that as per the complaint Hardik was with his grand father till 09:00 a.m.. Further, there is no evidence on record which proved the illicit relationship of both the accused. It is also argued that in discovery and reconstruction panchnama, nothing has been recovered. Further, the name of the place and its owner's name does not reflect in the said panchnama. The Ld. adv. further submitted that panchnama of cover is produced on record vide Exh.25, it reflects name of Kodabhai Jalambhai on the cover which is not sent to the FSL. He further submitted that the I.O. has clearly admitted that no confession has been made except before the police by the accused. The Ld. adv. further submitted that the prosecution has failed to prove the facts of the case. So, both the accused are innocent and as per the ruling judgments of the Hon'ble Apex court, the accused are liable to be acquitted. He relied upon the various judgments of the Hon'ble Apex Court which are respectfully read as under:

1. SLP (Cri.) 8792-8795 of 2022 dated 30.09.2022, (SC) MuniKrishna @ Krishna Vs. State by Ulsoor PS
2. Appeal (Civil) No.7488 of 2004 (SC), Commissioner of Police, New Delhi Vs. Narender Singh

3. Criminal Appeal No.122 of 2021 (SC), Kalicharan & Ors. Vs. State of Uttar Pradesh
 4. Criminal Appeal No.1330 of 2018 (arising out of SLP (Cri.) No.2440 of 2018) (SC), Reena Hazarika Vs. State of Assam
 5. 1984 AIR (SC)1622, Sharad Birshi Chand Sarda Vs. State of Maharashtra
 6. Criminal Appeal No.434-436 of 2020 (SC), Jaikam Khan Vs. The State of Uttar Pradesh
 7. Delhi District Court, State Vs. Kashi Ram & Ors.
7. Further statement of the accused had been recorded under the provisions of Section 313 of the Cr. P. C. on 29-12-2022. The accused have denied the allegations / evidence produced against them. They have stated that they are innocent and have been falsely implicated in the offence and they are facing false charges. They have given written statement for defence wherein they have narrated that they have been arrested under presumption. Further Dead body of Hardik is not yet found. It is also submitted that letter was implanted to arrest the accused. They have also narrated that they were forced to admit the crime. while their family has already filed complaint of ill-treatment of the police

before JMFC court. Further has denied to examine any witnesses or keep any evidence in their support.

8. Prosecution has relied on the oral evidence as follows :

- Ajitbhai Vajubhai Lakum PW 2 below Exh.13 has submitted that when he was working at Mamlatdar office he was called by Ahmedabad Rural Police to remain present as panch. He submits that he with another panch Varunbhai Khimjibhai went to a farm in the private car followed by police car. Further, it is submitted that police tried to dig the farm by JCB machine but nothing was obtained. It is also submitted that they had gone to another places as well, it were open farms. Further, he state that at that time they knew the name of the accused but as much time is lapsed he does not recall. The present witness identifies the accused before the court. The present witness also identifies his signature on panchnama place of offence below Exh.14. In his cross-examination, he has admitted that they had followed a Government car which drew them to the place of offence. The said facts has not been mentioned in the panchnama nor has mentioned that the place was diged by JCB. Further, he has

admitted that he is unaware about a person showing the route of the car. He has admitted that nothing was recovered at the place of offence in his presence by the police. He has also admitted that the entire procedure was written down by the police after giving them a knowledge about it. It is also submitted by him that they had seen the digging process at the place of offence. Further, it is admitted that panchnama does not narrate specific place of digging. The present witness is unable to narrate the time of panchnama.

- Vajabhai Meghabhai Kolipatel PW 3 has been examined below Exh.15. He in his deposition submitted that Sarpanch had called him at the place of offence. Thus, he had signed the panchnama. He further state that the place of offence is near the farm of Jayrambhai Ratubhai, Dhanjibhai Haribhai, Dharamshibhai Kungabhai and farms of complainant's family. The present witness identifies his signature on the panchnama of place of offence below Exh.16.
- Navghanbhai Kodabhai Kolipatel PW 4 has been examined below Exh.17. He in his deposition has narrated that before five years

back his son Jagdish went to farm, Ramesh went to job, his wife Parvatiben went to Vasveliya village for death rituals and he with his daughter-in-law Joshnaben, grand son Hardik and his grand daughter were at home. It is further submitted that at 08:00 to 08:30 a.m. Joshnaben went to pond for washing clothes with her little child Shraddha, at that time the present witness and Hardik were alone in the house. It is further narrated that grandmother of Hardik had given him Rs.2/- for chocolate while leaving so, Hardik went to the shop of Butabhai Babubhai Kolipatel which was on the opposite direction of his house. It is further submitted that at that time the present witness had called Hardik for lunch, in the meantime Hardik was found missing. It is further submitted that they had inquired about Hardik but he was not found. Thus thereafter called Ramesh for inquiring whether the Hardik had been to Vasveliya with her grand mother Parvatiben. It is submitted that within that period Joshnaben came home. As the Hardik was not found, the present witness gave a complaint of missing. The present witness identifies his thumb impression on complaint and narrates that till date Hardik is not found. In his cross-examination, he has admitted that offence was made out on

28.09.2018 and the complaint was lodged on 30.09.2018. The present witness admits that the offence occurred at 9.00 am. It is admitted by the present witness that other residential houses as well as shops are near his house thus, if Hardik is kidnapped, people can visualize it. It is admitted that within 5-10 minutes, Jagdishbhai, Rameshbhai and Joshnaben came home. Further, it is admitted that after the offence, Rameshbhai had left his job. It is also stated that Rameshbhai and Joshnaben did not go out of their house after the incident. The present witness does not suspect anyone for kidnapping.

- Jagdishbhai Navghanbhai Kolipatel PW 5 has been examined below Exh.19. He in his deposition states that he has two children one is Shradha and another Hardik (5 years 8 Months). Hardik was studying in 1st STD. The present witness has narrated that he was working at the farm of Bhikhabhai Sutharbhai at that time of offence. Further, it is submitted that Rangabhai called him narrating that his son was missing. It is further submitted that though they had inquired about missing Hardik, he has not yet been found. It is also submitted that they are unaware whether the

child is alive or not. He in his cross-examination admits that the offence occurred on 28.09.2018 and complaint was lodged on 30.09.2018 by his father regarding kidnapping of Hardik. It is also submitted that kidnapping took place at 09:00 a.m. It is admitted by the present witness that other residential houses as well as shops are near his house thus, if Hardik is kidnapped, people can visualized it. It is admitted that within 5-10 minutes, he, Rameshbhai and Joshnaben came home. Further, it is admitted that after the offence, Rameshbhai had left his job and he and Joshnaben did not step out of their house for long period. The present witness does not suspect anyone for kidnapping.

- Varunkumar Khimjibhai Bambhaniya PW 6 examined below Exh.21. He in his deposition narrates that one year back he went to Jalampura village with the police. Further, it is submitted that he was riding in the car which was followed by the police car which was with accused Rameshbhai. The car was stopped at his farm. The said farm was a open land surrounded by other farms. The present witness has narrated that he with the police had went to Gatar (canal) and surroundings of the farm. The present

witness submit that he had seen the accused while the Panchnama was drawn by the police. Further, it is submitted that as one year has been lapsed he cannot identified the accused. He in his cross-examination state that his superior authority had orally directed him for panchnama so, at 11:15 a.m. he went at the police station and at 11:45a.m. panchnama was started which concluded at 02:30 p.m. The present witness admits that they were in the private car followed by the police car. Further, he has narrated that he is unaware about the person showing the route in the police car. It is further submitted that accused and police were in the police car while he along with panch no.1 and driver were in the private car. The present witness had admitted that nothing has been recovered by the police in his presence. Further, it is narrated that the panchnama was drawn in his presence after informing him thereafter he has signed. He has identified his signature on the panchnama below Exh 14.

- Parvatiben Navghanbhai Kolipatel PW 10 below Exh.28 has submitted that she has two sons and one daughter. Out of which her elder son is Jagdishbhai and younger one is Rameshbhai. She

has further submitted that Hardik was son of Jagdishbhai who has not yet been found. It is submitted by her that on the fateful day she went to Vasveliya village after giving Rs.2/- to Hardik. Thereafter, she came to know about Hardik missing. The present witness was declared hostile by the Ld. APP and during her cross-examination, she had admitted that she suspected Surabhai Valjibhai & their family members about the missing child Hardik. In her cross-examination by the Ld. Adv. for the accused she has admitted that Jagdishbhai was at his farm, Rameshbhai was at his job, Joshnaben went to wash cloths and she went to Vasveliya at the time of offence. She has admitted that as soon as they came to know about Hardik missing, Jagdishbhai, Rameshbhai, Joshnaben and she immediately rushed at their residence. She has also admitted that after the offence, Rameshbhai & Joshnaben did not come out of the residence for days together. Here she has stated that she does not have a doubt on anybody at this point of time. Further, it is admitted by her that since the day of offence Rameshbhai had left his job.

- Akashbhai Kanubhai Thakor PW 11 has been examined below Exh.29 who has turned hostile and does not support the contents of the panchnama below Exh.30. But he has identified his signature on panchnama. In his cross-examination by the Ld. APP, he has admitted that accused Joshnaben was present at the place wherein she has showed that the child was strangled and burnt. It is also submitted by him that the Government car was driven as narrated by the accused lady. It is further submitted that the accused lady had admitted in his presence that she and her brother-in-law Rameshbhai had strangled the child. It is also admitted by the present witness that accused lady had admitted in the presence of panch witnesses and police that she had burnt dead body of Hardik. It is further submitted that the place of offence was near farms of Bhartiben Shakaji and another Koli Patel. It has been admitted that name of Joshnaben was revealed to him by the police. The present witness was cross-examined by the Ld. adv. of the accused where he has narrated that the name of the accused Joshnaben was revealed during the interrogation of police. It is admitted by him that police took him at the place of offence from his hotel. It is also admitted by him that he can not

narrate on whose farm and on which survey number he was taken. It is admitted by him that he can not narrate where the panchnama took place. It is admitted by the present witness that police had written whatever narrated by the Joshnaben and thereafter he had signed. It is admitted by the present witness that nothing was recovered in his presence by the police.

- Thakrshibhai Shivabhai Prajapati PW 16 has been examined below Exh.47. He in his deposition has narrated that earlier he was working as a postman at Jalampura. It is submitted by him that a letter of Chogabhai Kodabhai of Jalampura was obtained thus, he went to Chogabhai's place wherein he was requested to read the letter. It is further submitted that as per the letter Jagabhai was directed to bring Rs.4,00,000/- for his child and to recover the child back. The said amount was to be given where the "flag" was found. The present witness identifies the cover of Chogabhai Kodabhai and the letter of extortion. In his cross-examination, he narrates that the ink of the handwriting on the cover is in black pen while on the letter, blue ink is found. The present witness in his cross-examination narrates that he is not sure shot that the

letter which he identifies before the court is the same which he had read earlier. The present witness admits that he has not read any cover of Matrabhai Khodabhai Jalambhai. It is also admitted by him that the letter did not bear any name and address of the sender nor the letter was referred to anyone. Further, it is also admitted that the cover also did not mentioned name of the sender.

- Bharatbhai Govindbhai Thakkar is examined below Exh.48 as PW 17 has narrated that he is having a provisional store at Viramgam Golwadi Bharwadi road. It is submitted by him that Rameshbhai Navghanbhai of Jalampura was working at his provisional store. It is submitted that after kidnapping of Jagabhai's son, Rameshbhai stopped coming to his shop till date. The present witness narrates that Rameshbhai used to come at 07:00 to 08:00 a.m. and used to work till 05:00 to 06:00 p.m. at his provisional store. The present witness has denied that Rameshbhai ever left the store during the store hours on a call from his village. It is also submitted that on the date of kidnapping, Rameshbhai had came to his store at 08:00 o'clock and left at 09:30 a.m. Further, Rameshbhai had also

narrated that his brother's son was found missing thus, he had to leave. It is submitted that thereafter Rameshbhai had never been regular in his job. The present witness identifies Rameshbhai before the court. In his cross-examination he has admitted that on the day of offence Rameshbhai had come between 07:30 a.m. to 08:00 a.m. at his shop. It is also submitted that at around 09:30 a.m. he got a call thus, he left for his house. It is also admitted that to reach Jalampura from his shop around hour or hour and a half time is taken.

- Umeshbhai Bhabhlubhai Dhakda is examined below Exh.50 as PW 18 who is investigating officer of the crime. He in his deposition has narrated that during the charge of Viramgam, he had obtained the papers of complaint under Sec.363 thus, primary investigation was held and statements of the family members and the neighbours were obtained. It is further submitted that dog squad was called and investigation of missing Hardik was proceeded at different places. Even TV announcement were made but the victim was not found. Thereafter, family of the victim had obtained a letter wherein the amount of extortion was demanded for the

victim. Thus, the investigation was made on the missing complaint, but no fruitful result came on record. It is also submitted by him that they could not trace from where the letter of extortion was delivered. Thereafter, the investigation was forwarded to PSI-Dhandhaliya which was again transferred to the present witness. As, nothing fruitful came on the record the present witness had filed A summary in the case. Thereafter, thorough investigation was directed by the superior authorities thus, the investigation was restarted on 25.06.2021. It is further submitted that they had obtained secret information about Ramesh @ Katto left the village and absconded to Bharuch after the offence. It is also submitted that Ramesh @ Katto had married a lady bootlegger at Bharuch which created doubt against him. Thus, constable Rameshbhai Ganeshbhai along with other policemen went to Ankleshwar, Tal: Andara wherein statement of Lalitaben Vasava was obtained. She in her statement has narrated that Ramesh had told her that villagers and his family members suspected him for the kidnapping of his nephew. Thus, he had came to her. Thus, Ramesh was called upon for the interrogation wherein his body language was found abnormal and he narrated

that "*he has not killed child.*" Thus, the present witness has suspected him and investigated on the said line. It is submitted by the present witness that Ramesh @ Katto had confessed of the offence before the police. Thus, arrest panchnama was drawn. It is submitted that as Ramesh inclined to show the place of offence, thus, two panch were called upon and videography was made. It is submitted that accused Ramesh demonstrated the entire offence in the presence of two panch and Government photographer. Thus, the discovery panchnama was prepared. It is submitted that Joshnaben was arrested on the confession that she took the victim to the farm. She also showed how the victim was killed thus, reconstruction panchnama was prepared. It is submitted by the witness that the route shown by Ramesh in the discovery panchnama and route shown by the accused Joshnaben in reconstruction panchnama was found to be same in the investigation. Further, it is submitted that handwriting of Rameshbhai was obtained and were sent to FSL along with the letter of extortion. Further, the present witness had obtained statement of Tiniben Rameshbhai Kolipatel, Parvatiben Navghanbhai Kolipatel and had sent muddamal to FSL for

examination and had filed charge-sheet against the accused. In his cross-examination, he has narrated that during investigation it has come on surface that victim was taken by the accused at 5:00 to 6:00 a.m. It is admitted by the present witness that first complaint was given on 28.09.2018 for missing Hardik at 09:00 a.m.. It is admitted by the witness that the papers under which section the first complaint was given has not been placed in the present case. It is also admitted by the witness that on 24.07.2019, reminder for investigation was obtained. Before the said reminder, statements of Jagdishbhai Navghanbhai, Parvatiben Navghanbhai, Vishabhai Podabhai, Mathurbhai Podarbhai and other witnesses were obtained on 30.09.2018. It is admitted by the witness that during investigation, it had been on record that accused no.1 was at the shop of Bharatbhai and accused No.2 was at the pond for washing clothes. It is also admitted by the I.O. that there are residential houses and shops at the place of offence. Further, it is admitted that house of the complainant is on public place. It is admitted by the I.O. that he did not find any evidence against the accused related to the victim being taken away by them. It is also admitted that on the date of offence none of the accused were found to be

going at their farm alone. It is also admitted that as per the investigation, grandfather of victim Hardik narrated that till 09:00 a.m. Hardik was with him. Here, I.O. has narrated in his cross-examination that due to the secret information obtained by him, he had started investigation under Sec.302 of IPC against the accused. The present witness can not narrate when such information was obtained by him. Further, he in his cross-examination state that he had obtained such information after three years of the offence. It is admitted by the witness that he has not placed any such information on record with charge-sheet.

Further, it is admitted by the I.O. that he did not get any evidence of love affair of the accused. It is admitted by the witness that none of the family members had mentioned the death of the victim. It is admitted by the I.O. that the statement of the owner of the farm was not obtained. It is admitted by the I.O. that the letter dated 10.10.2018 is referred to Matrabhai Kodabhai Jalam. It is also admitted by the IO that he does not recall from whom the letter of extortion was obtained in the investigation. Further it is admitted that the letter of extortion does not reflect to whom it was referred and by whom it was written. It is admitted by the I.O.

has not mentioned in his panchnama, who has produced cover and letter to them.

It is admitted by the I.O. in the cross-examination that Jalampura is 15 Km. away from Viramgam and to reach Viramgam at 08:00 a.m. one has to leave at 07:00 a.m. from Jalampura. It is also admitted that Rameshji got a call at Bharatbhai's shop at 09:00 a.m. regarding missing Hardik. It is admitted by the present witness that as per the statement of Jagdishbhai, Hardik went missing at 09:00 a.m. It is also admitted that in the statement of Jagdishbhai he has suspected Surabhai Sodabhai, Surabhai Valjibhai, Dhaniben Valjibhai, Meghabhai Sodabhai and Bharatbhai Govindbhai and their family members for kidnapping of Hardik. It is also mentioned in the statement that Jagdishbhai, he has narrated that family members of Surabhai Sodabhai, Surabhai Valjibhai, Dhaniben Valjibhai, Meghabhai Sodabhai and Bharatbhai Govindbhai had narrated that "they have done whatever they wanted to do, and now nothing would be undone." Thus, they suspected the aforesaid persons for missing Hardik. It is also narrated in the statement of Jagdishbhai that he gave two blows of cudgel to Surabhai Valjibhai thus, Surabhai mentioned

that he would conclude the matter of missing child. It is submitted by the I.O. that on the aforesaid contention suspected were interrogated and rickshaw was seized. The cover of rickshaw was sent to FSL for inquiring whether the stain found on the cover is blood or not? Further, it is narrated that on the litmus test the stain was not found of blood. Here, Investing Officer has narrated that they have not obtained any written statement of the suspect. They had interrogated orally on 30.09.2018 and 31.09.2018. It is also submitted by the witness that Jagdishbhai in the presence of Rajgura Sir had stated that he with his wife Joshna left at 07:00 a.m. to their farm. It is also admitted by the I.O. that in the statement of Parvatiben Navghanbhai, she has narrated that at 09:00 a.m. when she was going to Vasveliya village, her grand child Hardik was given Rs.2 for chocolate by her. It is admitted that as per the preliminary investigation at 09:00 a.m. Hardik was with his grand mother Parvatiben. It is admitted that as per the extortion letter amount was directed to be kept on the road of Ram Chhapri to Lakhtar, Nr. Dholi Dhaja (White Flag) but no such Dholi Dhaja was found on the said road. It is admitted by the present witness that during the panchnama of place of offence,

reconstruction and discovery panchnama, nothing has been recovered. It is also admitted by the witness that the accused had confessed the offence in the presence of police.

- Rameshbhai Ganeshbhai Makwana is examined below Exh.68 as PW 19. He in his deposition narrated that in the year 2018 offence of kidnapping was registered. Thereafter, in the year 2021, Deputy Commissioner of Police had directed PI Mr.Dhakda and PSI Mr. V.A. Shaikh for the investigation of missing child. The present witness narrates that PI Mr.Dhakda had shown a letter/note and instructed to investigate on Ramesh @ Katto. It is narrated that on inquiry it came on surface that Ramesh @ Katto was at Bharuch. Thus, he was called upon for interrogation. During the interrogation Ramesh @ Katto had informed that he had a illicit relationship with his sister-in-law Joshnaben. On one such occasion child had seen them together. Thus, they apprehended that the child would narrate the incident to his father and they would be defamed. Further, it is narrated that on one fine morning Joshnaben had sent the child for the chocolate, when her father-in-law was sitting outside and her mother-in-law had went

for toilet and her husband went for collecting grass. Thereafter, she took the child at the farm where Ramesh was there. Rameshbhai had strangulated the throat of the child and Joshnaben had caught hold of his legs and mouth. On confirmation that the child was dead he was burnt and his ashes were buried near the tree of "Limda" and thereafter, the ashes were thrown away in water.

It is further submitted that earlier during the interrogation of Ramesh, he had narrated that child is studying at Andala, Ankleshwar, Bharuch. On inquiry, it was found that no such child was studying in any of the school over there. Further, Ramesh had narrated that child was at Maheshbhai's place, but on search no such child was found at his place. It is thereafter when the Ramesh submitted that child was buried near the canal of Moti Thori, Lakhtar. But, the child was not found there. It is submitted that during the investigation, it came on record that the child was kept by the accused and evidences were intentionally disappeared by the accused. The present witness has drawn search panchnama of Lalitaben's House. He has obtained certificate from Primary Kumar Shala, Andala, he has obtained certificate from Primary Mishra

Shala, Nandelav, he has obtained certificate from Primary Rahadpur Shala, Bharuch and the present witness has also drawn search panchnama of Maheshbhai Jivanbhai's House. In his cross-examination, the present witness has admitted that he is unaware of the investigation taken place from 2018 to 2021. The present witness has submitted that after obtaining remand of Rameshbhai, he went to Bharuch for the inquiry. The present witness has narrated that before and after the interrogation, they went to Bharuch. It is further admitted that he does not remember when he went to Bharuch prior to 02.07.2021. It is further stated that I.O. has not obtained any statement of the present witness. It is also admitted that the documentary evidence which he has placed with his deposition as evidence has not been cited in the charge-sheet. The present witness further state that he does not recall whether he has made any entry in the movement register. Further, he also does not recall whether he has made any entry in the station diary before leaving for Bharuch. The present witness narrates that the offence of Hardik took place at 05:00 a.m. Further, it is denied that at 09:00 a.m. Hardik was with his grandfather as per the investigation but as per the complaint at

09:00 a.m. Hardik was with his grandfather. Further, it is also admitted that Rameshbhai was at Bharatbhai's shop at 09:00 a.m.. The present witness state that on 01.07.2021 and on 02.07.2021, Dhakda Sir had shown a letter/note with a cover. The present witness does not recall the address on the cover. Further, the present witness has admitted that Rameshbhai had not signed anything which he gave in written form in his presence to the police. It is admitted by the witness that except the letter no other evidence was found against the accused. It is also admitted that the child was not found studying in any of the school at Bharuch. Further, it is also admitted that there was no evidence that the child was staying at Maheshbhai or Lalitaben's place.

- Ajitsinh Devisinh Solanki is examined below Exh. 77 as PW 20. The present witness is Government authorized Handwriting expert. He in his deposition narrate that he had obtained letter dated 16/07/2021 with seal cover of the documents pertaining to the present case. He further adds that Mark A1 was given to white cover dated 10/10/2018 bearing stamp of Jalampura post. On perusing the cover, a note/letter in which Rs.4 lac was demanded

to be kept on Surendranagar road 13 kms away near temple is given mark A1/1. The present witness has narrated that aforesaid disputed writing were compared with the natural writings of Rameshbhai which were given Mark A2, A2/1 to A2/5. On examination of those documents, Mark A1/1 and Mark A2, A2/1 to A2/5 were written by the same person. While Mark A1 could not be examined as there were no natural writings of the accused sent for examination. The present witness submits that the report of examination is given by him which is placed below Exh,79 and Exh.80. The present witness identifies the cover and the letter/note which came to him for examination. The present witness has further stated that handwriting on the note/letter are of the person who had given his natural writings to the FSL for examination. In his cross-examination has admitted that opinion is based on comparison of Natural writings and disputed writings. He has also admitted that the opinion is for the letter only and not for the cover. It is also admitted by him that the writings of the cover was not compared with the hand writings of Ramesh as there was no instruction for the writings of the cover from the

police. Further, it is also narrated that as the natural writings of the cover was not obtained by the police, thus, no opinion is given.

9. Witnesses who have not supported prosecution Case:

- Kirankumar Rasiklal Bhavsar PW 1 examined below Exh.11. He in his deposition has narrated that near Viramgam rural Police station, he had signed panchnama. He narrates that no one was present when he signed the panchnama. He does not identify the accused. He has been turned hostile by the APP as he does not support the contents of the arrest panchnama of the accused. But it is found that he has identified his signature on the panchnama below Exh.12.
- Rekhaben Rajubhai Devipujak PW 7 examined below Exh.22. She in her deposition has stated that as they used to reside near the police station, thus, she was called upon by the police. She in her deposition has submitted that no one was present in the police station when she signed the panchnama. Thus, she was turned hostile by the Ld. APP. In her cross-examination, nothing fruitful has come in support of prosecution.

- Ranchhodbhai Hirjibhai Kolipatel PW 8 examined below Exh.24 has turned hostile and does not support the contents of recovery discovery panchnama below Exh.25. But has identified his signature on the Panchnama. He in his deposition narrate that nothing was recovered by the police in his presence. He does not identified the cover of the post. The present witness denies that Handwriting of the Accused Ramesh were obtained in his presence.
- Tiniben Rameshbhai Kolipatel PW 9 examined below Exh.26 has narrated in her deposition that she is a sibling of Jagdishbhai & Rameshbhai. It is submitted that Hardik was son of her elder brother Jagdish who was found missing till date. It is further submitted that she came to know about Hardik at the hospital. It is further submitted that she has never read any letter written by her brother. Thus, she was declared hostile by the Ld. APP. In her cross-examination by the Ld.APP, she has denied that she read a note/letter written by Ramesh for extortion and obtaining of Rs.4,00,000/-. She has also denied that Ramesh had given extra judicial confession before her that he and his sister-in- law had

killed Hardik. During her cross-examination by the Ld. Adv. for the accused, she has admitted that police had written her statement on its own.

- Mansangbhai Popatbhai Koli PW 12 has been examined below Exh.40 wherein he has narrated that police has not recovered any thing in his presence. The present witness has identified the cover below Exh.32 and has identified his signature in panchnama below Exh.25 as panch witness No.1. In his cross-examination by the Ld. APP he has denied that the police had obtained postal cover in their presence. Further, he has also denied that police had obtained writings of the accused Ramesh in six different papers.
- Baldevsinh Charansinh Zala PW 13 has been examined below Exh.41. He in his examination in chief has denied the contentions of panchnama below Exh.42 and has turned hostile and do not support the contents of the recovery panchnama of DVD. But it is found that he has identified his signature on the panchnama below Exh.42. He in his examination in chief has denied that police had recovered anything in his presence.

- Kirankumar Rasiklal Bhavsar PW 14 has been examined below Exh.44. He in his examination in chief has narrated that one person had delivered DVD to the police in his presence. He has identified his signature on panchnama below Exh.42. He in his cross-examination has submitted that he does not have any knowledge of panchnama except his signature. Further, he adds that he does not have any knowledge of contents of DVD.
- Mit Prafulkumar Parikh PW 15 has been examined below Exh.45. He in his examination in chief has narrated that he and his contractor Jitubhai were called for video shooting by the police. It is narrated that they had a video shoot on the farm. He in his cross-examination has denied that on 02.07.2021, during panchnama of Rameshbhai Navghanbhai Kolipatel, he had done videography. He has also denied that he had video shoot of accused Joshnaben who had informed in his presence that she strangulated the victim and burnt his body and thereafter threw his ashes in the water. In his cross-examination, he has clearly narrated that during the videography only police persons were with him. No one was present except them. It is also submitted by

him that he had a video shoot of the place which was shown by the police persons.

10. From the above discussions, for the adjudication of the present case, following issues has arisen.

ISSUES

1. Whether the prosecution proves beyond reasonable doubt that the accused No.2 Joshnaben took away the child to accused no.1 Rameshbhai and he strangulated the throat of child Hardik while accused no.1 Joshnaben had caught hold of his legs and mouth thereby committed the offence under Section 302 and Section 114 of IPC?
 2. Whether the prosecution proves beyond reasonable doubt that accused had caused disappearance of the evidences of the offence committed and gave false information regarding it hereby committed the offence under Section 201 of IPC?
 3. Whether the prosecution proves beyond reasonable doubt that accused had committed criminal conspiracy to commit the offence hereby committed the offence under Section 120(b) of IPC?
 4. What order?
11. My findings on the above points are as under for the reasons recorded thereon.

- In Negative
- In Negative
- In Negative
- As per final order.

REASONS

12. The present accused are charged under section 302, 201, 120(b) and 114 of IPC which read as under :

Sec. 302 of I.P.C. : "Punishment for murder - Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine."

Sec. 201 of I.P.C. : "Causing disappearance of evidence of offence, or giving false information to screen offender. - Whoever, knowing or having reason to believe that an offence has been committed, cause any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false."

Sec.120(B) of I.P.C. : "Punishment of criminal conspiracy. - (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

Sec.114 of I. P. C. : "Abettor present when offence is committed.
 - Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

The present case is based on circumstantial evidence and no eye witness are found in the case. The aforesaid issues are dealt and replied together as under.

ISSUE NOS.1 TO 3

CIRCUMSTANTIAL EVIDENCE:

13. Looking to 2014 (4) GLR 2915 CHAMPABEN D/O. CHELABHAI GAMJIBHAI PATNI (VAGHRI) V.STATE OF GUJARAT it is held that When the entire case of the prosecution hinges on circumstantial evidence. The following conditions must be fulfilled before a case against an accused based on circumstantial evidence could be said to be fully established:

(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.

14. In the present case, record transpires that there is no eye witness in the case and hence the case is based on circumstantial evidence. It is argued by the Ld. Advocate for the accused that there is no circumstantial evidence against the accused. Further he has also argued that the chain of circumstances does not form.

In the present case complainant had given complaint of missing his grandchild Hardik at 9:00 a.m. on 30.09.2018. The complainant and other witnesses have admitted in their depositions that missing Hardik was with his grandfather at his residence till 9:00a.m. on 28.09.2018 and thereafter went missing. While as per the investigating officer Hardik was taken away by his mother at 6:00 a.m. on the fateful day and thereafter killed. There is no one who had seen child being taken away by

his mother in the morning though child was taken away from the road in the public area. Further, I.O. admits that during investigation it had come on record that Accused Ramesh had been at his job and Accused Joshna had been at pond to wash cloths. Further investigating officer has not found dead body of the deceased nor any evidence of the dead body of the victim. As per the version of the investigation officer, he has narrated in his deposition that he got information that Ramesh had left his house and went to Bharuch and married a bootlegger, thus he was suspected and the investigated the offence commenced again. It is also narrated that during interrogation behavior of Ramesh was found to be abnormal as he stated that he has not killed Hardik. Thus thorough investigation has held wherein Ramesh confessed the offence before them.

Thus, investigating officer relies on the confession of the accused. On perusing the confession made by the accused in the CD there are several missing chain.

In the CD Ramesh has narrated that after burning the dead body of the child, they had collected Half burnt dead body and its Ashes (Ashti) in a sack and burried under in the sand farm. Now

if he see the deposition of the investigating officer dog Squad were called and they smelled of the child cloths, but nothing fruitful came out. Thus dog Squad was unable to track the child despite of the fact that the child was taken by way of walking. Further it is very strange that the Ashes which include bones of the victim is buried at the isolated place thereafter no animals took the sack out till next day.

It is also required to be note that a child of 5 years of age is burnt at the farm in the morning and none of the villagers came to know about it. Further when the child of 5 years is burnt, one has to make huge preparations like having huge amount of wood, inflammable substances etc. Here as per the narration in CD by Ramesh, he had killed victim on the very next day when they were caught in compromising position by the victim. Thus it is unbelievable that such a plan can be executed in such a short span. As held in **2022 0 Supreme(SC) 224; GADADHAR CHANDRA Vs. THE STATE OF WEST BENGAL; CRIMINAL APPEAL NO. 1661 OF 2009; Decided on : 15-03-2022** Section 34 of IPC pre-supposes prior concert. It requires Meeting of minds. It requires a pre-arranged plan before a man can be

vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused. In the present case, the record transpires that there is nothing on evidence which reflects that both the accused had made any arrangements or there were preplanned for the execution of offence.

IRREGULAR INVESTIGATION

15. From the record it reflects that the complaint of missing Hardik was given on 30.09.2018 while offence was made out on 28.09.2018. Thereafter, during the investigation section 302 and 201 of IPC was added on 02.07.2021 and thereafter, the charge-sheet was filed against the accused under section 302, 201, 120(b) and 114 of IPC. There is no explanation regarding the delay in adding the section. Here, it is pertinent to note that investigation of the offence under Sec.363 of IPC was concluded and thereafter, in the year 2021 an application for adding section 302 of IPC was given against the accused. Here, there is no link of evidence to show how the Investigating Officer had switched his investigation from kidnapping to murder when the letter for

extortion was received in the year 2018. The record transpires that no investigation regarding the said letter was done at that point of time, though, the statement of the postman was obtained on 11.10.2018 regarding the cover received of ransom. Here, it is pertinent to note that the hand writing of the accused were obtained in the year 2021 and sent to FSL till then no investigation regarding the said was found. On perusing the cross-examination of the Investigating officer, he has admitted that they had obtained reminder regarding the missing complaint on 24.07.2019. Thus, due to the aforesaid reminder from the superior authorities, the investigation was restarted and thereafter, the police suspected Ramesh for murder. In the present case, dead body of the victim as well as the evidences of the dead body have not ever recovered.

Though, the FIR was filed under Sec.363 of IPC, charge-sheet of the offence was filed under Sec.302, 201, 120(b) and 114 of IPC against the accused. From the entire record it reflects that the chain of investigation does not form.

DELAY IN FIR:

16. Id advocate for the accused has argued that the Complaint under Sec.363 of IPC was given on 30.09.2018 while Sec.302 and 201 were added on 02.07.2021. On perusing the complaint it was filed on 30.09.2018 while the victim is found to be missing on 28.09.2018 as per the FIR itself. Nothing is explained about delay in filing the complaint.

LETTER OF RANSOM

17. The story of the investigating officer is that the accused Ramesh had kidnapped his Nephew Hardik. It is alleged that the letter of extortion was written by the accused Ramesh demanding Rs 4 Lac from Jagabhai. The Handwriting on the letter below Exh.51 was found to be of the accused Ramesh as per FSL report below Exh.80. Now Looking to the cover of the letter it was mentioned to Chagabhai Kodabhai. Here, it is pertinent to note that the letter which was received during the investigation was delivered to Chagabhai Kodabhai and not to the family members. The Handwriting of Ramesh was found in the letter as per the FSL Report. Now on perusing the Letter of Ransom it was received at

the time of complaint of missing Hardik. The Investigating Officer did not investigate at that point of time and had obtained the handwriting of the accused after they had suspected Ramesh for the offence in 2021. There is no explanation that why investigating officer had not investigated the said thing when the victim was missing. Further it is pertinent to note that the letter of Ransom was delivered to Changabhai Kodabhai who is not a relative or family member of the victim. On perusing the letter of ransom below Exh 51, the said letter does not reflect any name to whom it is narrated nor mentions any name of the person who has written it. Thus if victim is kidnapped for the Ransom than to obtained ransom it should be delivered to his family members or the parents. A kidnapper can't be sure that the villager would informed to the family members of the victim about the letter.

From the deposition of postman Thakarshibhai, it transpire that his statement was obtain by the police on 11.10.2018 regarding the cover and the letter of Extortion was delivered to Chogabhai. Thus, it had come to notice during the first investigation itself, but nothing was investigated during that period, thereafter when investigating officer was asked to solve

the case, they suddenly went to investigate on the letter and cover, which seem to be dramatically done.

Here panch in whose presence the letter and cover was recovered turned hostile and does not support the contents that the cover and letter were obtained by the Investigating officer during the investigation. Further prosecution has failed to examine the person to whom the letter was delivered. On perusing the deposition of Head Constable Rameshbhai Ganeshbhai, he clearly narrates that Investigating Officer - Mr.Dhakda had shown the letter of extortion to the police. Thus, the letter of extortion seems to be created by the Investigating Officer to solve the case.

CONFESSION OF THE ACCUSED :

18.The entire case of the prosecution is based on the confession made by the accused no.1. Here, it is pertinent to note that the confession by the accused is done in the presence of the police. Accused no. 1 has not given his confessional statement before the court under section 164 of CRPC. On perusing the Contents which are narrated by the Accused No 1 Ramesh in the CD it transpires

to be narrated before the police party and in the presence of police persons. As per **Section 25 of Indian Evidence Act, 1872**. Confession to police officer not to be proved.— No confession made to a police officer, shall be proved as against a person accused of any offence.

Further, **Section 26 of Indian Evidence Act, 1872** also **narrate** Confession by accused while in custody of police not to be proved against him.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate shall be proved as against such person. Here no such confession is made before any Magistrate by the accused.

Further, on perusing the CD, only Ramesh has confessed his crime with the co-accused Joshnaben before the Police while the police have not obtained any confessional statement of co-accused Joshnaben. In **RAMCHANDRA VS. STATE OF U.P., AIR 1957 SC 381** and in **BISHNUPRASAD SINHA VS. STATE OF ASSAM (2007)11 SCC 467** it clearly narrates that confession of co-accused can not be treated as substantive evidence. Such confession should be treated as a piece of corroborated evidence.

Here, it is pertinent to note that there is no evidence on record for which such corroboration can be done.

On perusing the record, it reflects that the application under Sec.164 of CRPC was filed before JMFC Court which was rejected by the Ld. Trial Court. Thereafter, no appeal/revision was filed by the Investigating Officer against the said order. Further, brain mapping application was also given by the Investigating Officer which was rejected on the ground that the accused denied to consent.

Here, Mit Prafulkumar Parikh who is the photographer appointed by the police had been at the place of offence with the police for video shooting while conducting panchnama. The said person does not identify the accused. Further, in his cross-examination he has denied that he had a video shooting of accused Rameshbhai Navghanbhai Kolipatel while he admits that he went to the farm in Government vehicle. It is also admitted by him that during the videography he was with the policemen and no other person was with him.

Thus, from the aforesaid deposition, it transpires that the CD in which the Accused No.1 Ramesh had confessed his offence was

done in the presence of police party by the videographer, but the present videographer had not shoot the said. As from the deposition of the videographer it transpires that the accused was not present at the time of videography. Looking to the CD, it clearly reflects that Accused No.1 Ramesh is admitting his crime in the presence of the Police party the said is video graphed. Here Accused has placed a copy of complaint against the police persons of beating them for admission of crime below Exh.82. In the present case, Accused has taken a defence that Accused family was tortured by the investigating officer prior to their arrest for confessing the offence. On perusing the complaint, it clearly transpire that Jagabhai navghanbhai, Joshnaben Jagabhai and Rameshbhai were beaten and pressurized to confess the guilt. The said complaint was given by Gelabhai Kodabhai Kolipatel on 02.07.2021. On perusing the discovery panchnama for which CD was made is drawn on 02.07.2021.

Now Looking to the **Section 24 of Indian Evidence Act, 1872 -**

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.—A confession made by an accused person is irrelevant in a criminal proceeding, if the

making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Thus from the aforesaid facts it can be said that the accused No.1 Ramesh had not confessed willingly and his confession does not owe any importance as evidence in the case.

PRESENCE OF ACCUSED:

19. As per the depositions of complainant below Exh.17, it reflects that accused Ramesh had been to his job while accused Joshnaben was at pond at the time of offence. It is narrated in the complaint as well as in the deposition of the complainant that his grandchild Hardik went missing between 08:00 a.m. to 08:30 a.m.. Here, it is pertinent to note that except the complainant

none of the other witnesses were present with the victim Hardik before he went missing.

On perusing the deposition of Bharatbhai below Exh.48, it reflects that on the day of offence accused Rameshbhai was found to be working at his shop. Further, it is narrated in his deposition that on the day of offence, Ramesh had arrived at 08:00 a.m. to his store and thereafter, he left at 09:30 a.m.. Thus, from the deposition of Bharatbhai it is clear that at the time of offence Rameshbhai was found at the store of Bharatbhai. As per the complaint victim is kidnapped from the road of the house of the complainant while the shop from where the victim is kidnapped is on the opposite side of the complainant house. The statement of the Shopkeeper is not found to be taken by the investigating officer. Thus there is no record that the accused had induced or took away the victim from the road side of the complainant's house. Further from the evidences on record, presence of the accused becomes doubtful as no one has seen him or her at the place of offence taking the child away.

MOTIVE :

20. In every offence motive plays a vital role. The offence cannot be without a motive. In **2012 (3) GLR 2042 SHANKERBHAI @ PAGALGIR PUROHIT V. STATE OF GUJARAT SHUIVCHARNI GANESHBHAI** It is held that where the evidence is only circumstantial, motive assumes importance.

In the present case motive of the offence is shown by the police about illicit relationship between the accused who are sharing relationship of brother-in-law and sister-in-law. In the present case prosecution has mentioned that the deceased child had seen his mother and his paternal uncle in compromising position thus they killed the deceased. There is no evidence of illicit relationship on record. None of the witness has mentioned in their deposition before the court about accused having illicit relationship between them. Further the investigating officer has not placed any evidence in form of independent witness or any documentary evidence (when it is said that the child Hardik was the child of the accused No.1) to show that accused were in relationship.

From the evidences on record nothing reflects that the accused were sharing illicit relationship between them. Thus the motive shown by the police cannot be established. **In CRIMINAL APPEAL NO. 1121 OF 2016 ANWAR ALI AND ANOTHER VS. THE STATE OF HIMACHAL PRADESH** decided on 25-09-2020 it was held that Absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused.

DEAD BODY:

21. From the record it transpires that though it is alleged that accused no.1 had shown the place of offence and had informed the police that he had thrown the Bones of the dead body (Ashthi) of victim child Hardik in the Canal. Nothing was found during the discovery panchnama. It is admitted by the IO in his deposition that nothing was recovered from the accused nor discovered from the place of offence. Further, on perusing the deposition of the complainant and father/relatives of the victim, none of have affirmed that the victim is dead. The contention of the complainant is that the victim is yet missing. Now, when the dead

body is not yet found and there is no evidence which narrate the victim being dead, it would be inappropriate to consider victim to be dead.

C.D.

22. The main evidence of the prosecution is CD in which it is alleged that the accused Ramesh has admitted his crime. CD is the electronic evidence under the evidence act. Section 65(b) of Indian Evidence Act is based on the electronic evidence. It is read as under:

Sec.65(B) : Admissibility of electronic records .- (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computed output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following namely :-

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or its derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether -

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combination of computers operating in succession over that period; or (d) in any other manner involving the

successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record was produced by a computer

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section -

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or

processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Now Looking to the deposition of Mit Prafulkumar Parikh below Exh 45 he denies videography was done in the presence of panch. It is narrated by him that the place was shown to him by the police while the panchnama was performed in presence of police persons only. While the panch witnesses in their depositions have narrated that the accused had showed the place of offence. In their cross-examination, they have narrated that they are unaware of the place and does not identify the accused. Here it is pertinent to note that Mit Prafulkumar Parikh below Exh 45 has narrated that none of the accused were present during the panchnama. Thus the contents on CD is not proved.

In **ANWAR P.V. VS. P. K. BASHEER AND OTHERS** it is clearly narrated by the Hon'ble Supreme Court that secondary data in CD/DVD/Pen Drive are not admissible without a certificate under Sec.65(B)(4) of Indian Evidence Act. It has been elucidated that electronic evidence without certificate under Sec.65(B) can not be proved by oral evidence and also the opinion of expert under Sec.45(A) Evidence Act can not be restored to make such electronic evidence admissible. Here, no such certificate is placed before the Court. Thus, it can be said that the CD produced by the Investigating Officer has not been proved.

On perusing the Contents which are narrated by the Accused No 1 Ramesh in the CD transpires that Ramesh had informed the police that the victim child (Hardik) was his child. Now It is the matter of consideration that when he was aware that the child itself was his child why he would kill the child who is only 5 years old.

Further it is alleged that the child was witness of their illicit relationship thus they were afraid that he would inform to his elder brother about the relationship. Now child being 5 years of

age would be able to know about the illicit relation between his mother and his uncle is a subject of a thought. Now if accused were found to be in compromising position at home due to their illicit relationship. Whether the family members who are residing at home with accused might not be aware of such relationship in which a child Hardik had born.

It is alleged that the child was taken away by his mother at farm where they strangled him. It is also alleged that the child was taken away by his mother at 6.00 am while it is a contention of the complainant as well as witness Parvatiben that she gave Rs.2 for chocolate to Hardik before leaving house at 8.00am to 8.30 am., then how the said is possible. The prosecution stands mute on the said issue.

Here, family members of the accused have given complaint against the police wherein it is mentioned that they are beaten by the police and it is alleged that they were forced to accept the guilt. Thus, when the accused has accepted his offence in the presence of police persons without any independent witness in the video shoot, it can be suspected to be given in pressure. Further, investigating officer has not obtained any certificate of

Sec.65(B) while placing any electronic evidence like CD. The panch witness of seizer of CD have turned hostile. Thus, the CD is recovered from specific person is not established. Further, the videograoher does not support the contents of the CD. Thus, the CD is not proved by the investigating officer.

COVER :

23. The present case of the prosecution is also based on the cover in which the letter of extortion was delivered. On perusing the cover placed below Exh.32, it clearly reflects receivers name of Changabhai Kodabhai. While on perusing the deposition of postman Thakarshibhai below Exh.47 it reflects that the cover below Exh.32 was sent to Chagabhai. On perusing the deposition of I.O., he in his deposition below Exh.50 has narrated that the cover was obtained from the family members of the victim while in the cross-examination he state that the cover of letter dated 10.10.2021 was sent to Matrabhai Kodabhai Jalambhai. The said has also been narrated in the panchnama below Exh.25. Thus, it can be said that the cover obtained by the police as per the

panchnama was of Matrabhai Kodabhai Jalam while the cover placed before the court is of Chagabhai Kodabhai.

RE- CONSTRUCTION PANCHNAMA:

24. Reconstruction panchnama is drawn at Exh.30. It narrates that accused Joshnaben had reconstructed the scene of offence in presence of panch.

While on perusing the deposition of panch witness PW 11 he in his deposition has earlier narrated that he had signed panchnama at his Tea stall where none of the person either male or female were present. Further he stated that he had not been with the police anywhere for the panchnama. Thereafter in his cross-examination by the Ld. APP he has admitted that Joshnaben had confessed that she and her brother-in-law Ramesh had strangled Hardik and had showed the place of offence in the presence of women constable. But the witness is unaware where he was taken by the police for panchnama. In his cross-examination by the ld. adv. for the accused, he is unaware of when the panchnama was conducted and where he went. While

none of the woman constable is either cited nor examine by the prosecution.

PANCHNAMA:

25. On perusing the deposition of panchas of discovery panchnama, both the panchas have turned hostile and do not support the contentions of the discovery panchnama below Exh.14. Further, one of the panch have admitted that the accused was present with the police but he does not identify the accused while the another panch identified the accused. In the cross-examination of the aforesaid witnesses, they have narrated that they followed the car of the police in which the accused were sitting with the police. It is also admitted by them that nothing has been recovered in their presence by the police from the place of offence. Thus both the panch are unaware who were showing the path to the place of offence as accused has not showed path to place of offence before them.

On perusing the deposition of the panchs for the recovery of cover (which includes the letter of Extortion) and for obtaining the Handwriting of the accused No. 1 Rameshbhai, have turned

hostile and does not support the contentions of the Panchnama. Thus police had obtained Handwriting of the accused No. 1 Ramesh for sending at FSL has remained unproved. Further the cover (which includes the letter of Extortion) is seized during investigation by the police also remains unproved.

It is pertinent to note that Rameshbhai Ganeshbhai Makwana below Exh 68 who is also a police witness has narrated in his deposition that Letter was shown by the I.O Dhakda after they restarted the investigation on the direction of Asst. Police commissioner. Now it is a matter of concern that why I.O Dhakda did not investigated the letter at the point when it was received and the said was investigated after the reminder from his superior authority.

KIDNAPPING OF THE VICTIM

26. It is argued by the Learned Advocate for the state has argued that though there is no enough evidence of murder of the Victim against the accused there is sufficient evidence of kidnapping by the accused. Here it is pertinent to note that no witness have deposed before the Court that they have seen the accused

kidnapping the victim. Further, there is no corroborative evidence which reflects that the victim was kidnapped by the accused. It is the story of the Investigating Officer that accused had kidnapped the victim and thereafter killed him. The said story is based on confession made by accused No.1 Ramesh before the police. Thus, The police witness Rameshbhai Ganeshbhai Makwana is examined below Exh.68 who in his deposition narrates that accused No.1 Ramesh had told him that victim was studying at Andala, Ankleshwar so, he went to investigate there and had obtained certificates from various schools that the child was not studying there. Now, looking to the certificate of school below Exh.72 to Exh.75, it is issued by the principal on 02.07.2021 while the offence is registered in the year 2018. The present witness has clearly narrated in his deposition that the investigation of missing Hardik re-started due to the inquiry by the Superior Authorities of the Investigating Officer. Here, it is pertinent to note that though the entire investigation was based on the admission of Ramesh - Accused No.1 that the child was studying there, nothing was found. Further, there is nothing on record which reflects that Accused No.1 Ramesh had ever

mentioned that the child was with him. Thus, the allegation that the accused had kidnapped the child becomes baseless.

DISAPPEARANCE OF EVIDENCE

27. In the present case, it is alleged by the prosecution that accused have disappeared the evidence against them. From the record it transpires that the original complaint was given regarding kidnapping of child in the year 2018. Thereafter, again investigation was held and it was found that the child was murdered by the accused. It is alleged that the accused had killed the child, burnt him and buried his ashes in the farm and thereafter, threw them away in the water. During the entire investigation, the dead-body of the child, nor the ashes of the child were recovered. Further, even the belongings of the child were not recovered from the place of offence. On perusing the place of offence, it has been shown that the child was strangulated in his farm. Thereafter, he took the child to another farm and burnt him and his ashes were buried. Thereafter, those ashes were thrown away in the canal (gutter). This entire story of prosecution is based on the confession made before the Police.

Thus, from the aforesaid fact, there is around three places where the dead-body of the child was taken by the accused. But, in none of the places any of the belonging of the child was recovered by the police. Here, it is the plea of the police that the evidences related to the crime has been disappeared by the accused but there is nothing concrete on record which reflects that the evidences has been disappeared by the accused. Thus, the story of the prosecution can not be believed.

CRIMINAL CONSPIRACY

28. The prosecution has alleged that the accused had committed criminal conspiracy for killing victim Hardik. The prosecution alleges that Hardik was witness of illicit relationship of his mother and paternal uncle and on the very next day they decided and planned to kill him. There is nothing on record, which reflects that their minds had met before the criminal conspiracy prior to the execution of offence except the confession before the police by accused no.1. Thus, there is no evidence on record which shows criminal conspiracy of the accused.

29. From the entire evidences on record, there is nothing on record on which the prosecution case stands. On perusing the evidences on record though the prosecution case stands on the CD based on confession of accused no.1, it is not proved by the prosecution. No independent witness or evidence is found on record. From the record, it reflects that as the Superior Authority had asked to solve the case of missing child, Investigating Officer had obtained confession of accused No.1. On perusing the confession of the accused, one of the confession is at the police station itself as per the CD. Here, prosecution has failed to prove CD thus, the evidence of the CD can not be considered. Thus, prosecution has miserably failed to prove that accused had strangulated the throat of child Hardik and disappeared the evidences of the offence and gave false information and had committed criminal conspiracy in the offence. Hence, issue no.1 & 2 are answered in Negative.

ISSUE NO. 3:

30. Since the prosecution has failed to proved his case beyond reasonable doubt and as **Supreme Court has, in G. Parshwanath v. State of Karnataka, AIR 2010 SC 2914** laid down that, if the

cumulative effect of all the proved facts, each one of which should reinforce the conclusion of guilt, and the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, then only the conviction would be justified. There is no such evidence against the accused on record which could be the base of conviction. Hence, Issues no.1 to 3 are answered in “Negative” and following order is passed in the interest of justice.

ORDER

- In Viramgam Rural Police Station I-CR No. 65/2018 which is registered as Sessions Case No. 1/2022, the Accused No.1 **Rameshbhai Navghanbhai Kolipatel** and Accused No.2 **Joshnaben Jagdishbhai Kolipatel** is Acquitted for the charge punishable under section 302, 201, 120B and 114 of the Indian Penal Code.
- The muddamal after the completion of the Appeal period, should be destroyed.

Dictated and pronounced in the open court today this on 27th day of February, 2023.

Date: 27.02.2023

Place: Viramgam

(Ms. Purvi N Dave)
3rd Additional Sessions Judge,
Viramgam
GJ 00648