

Court No. - 45

Case :- CRIMINAL APPEAL No. - 5498 of 2023

Appellant :- Guddu

Respondent :- State of U.P.

Counsel for Appellant :- Chakshuvendra Pachauri, Ritesh Singh, Suresh Singh

Counsel for Respondent :- G.A.

Alongwith

Case :- CRIMINAL APPEAL No. - 8392 of 2023

Appellant :- Shripal

Respondent :- State of U.P.

Counsel for Appellant :- Kuldeep Johri

Counsel for Respondent :- G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Sandeep Jain, J.

(Per: Hon'ble Sandeep Jain, J.)

1. Heard Sri Kuldeep Johri and Sri Ritesh Singh, learned counsel for the appellants, Sri Pankaj Kumar Tripathi, learned A.G.A. for the State and perused the record.
2. Submission is, there is absolutely no evidence against the appellants, namely, Shripal and Guddu. Neither the evidence of last seen exist nor there is motive nor there is any confession made to the Court.
3. Thus, at this stage, it has been pressed that requirement of paper book may be dispensed and appeals itself be heard on its merit.
4. Learned A.G.A., with all fairness, does not oppose the prayer. Learned counsel for the parties have availed the opportunity to go through the trial court record.

Thereafter, we have heard their submissions on the appeal, with the consent of learned counsel for the parties.

5. Both these criminal appeals have been preferred by the convicted accused Guddu & Shripal against impugned judgement and order dated 31.03.2023 passed by Sri Chandramohan Mishra, Special Judge (NDPS Act)/4th Additional Sessions Judge, Pilibhit in Special Sessions Trial No.240 of 2012 (State of U.P. Vs. Naresh & others) arising out of case crime No.63 of 2007, under Section 302, 364, 201, 120B I.P.C. and Section 2/3 Gangster Act, P.S. Neuria, District Pilibhit, whereby both the accused have been convicted under Section 364 I.P.C. and sentenced to undergo 10 years rigorous imprisonment along with fine of Rs.15,000/-, in default to undergo further rigorous imprisonment of one year, under Section 302/34 I.P.C. to suffer life imprisonment along with fine of Rs.25,000/-, and in default to undergo further rigorous imprisonment of two years, under Section 120-B I.P.C. to suffer life imprisonment along with fine of Rs.25,000/- and in default to undergo further rigorous imprisonment of two years, under Section 201 I.P.C. to suffer rigorous imprisonment of seven years along with fine of Rs.10,000/-, in default to undergo further rigorous imprisonment of six months and under Section 2/3 Gangster Act to suffer rigorous imprisonment of ten years along with a fine of Rs.15,000/-, in default to undergo further imprisonment of one year. These sentences have been ordered to run concurrently.

6. The prosecution narrative began with an application, exhibited as Ex.Ka-1, submitted by the informant, Smt. Bhagwandeai (P.W.-1 at the trial), at Police Station Neuria, District Pilibhit. In her application, she stated that on 02.02.2007 at about 7:30 a.m., her 14-year-old son-Roopkishore, had gone from Potakhurd to village Meinthi for tuition, as was his routine. When he was returning at about 9:30 a.m. with Vikram (P.W.-4 at the trial), who was also returning from tuition, then near Bankati culvert (*Puliya*), they met a person who made Roopkishore sit on a bicycle, and then both went away. Vikram, under the impression that Roopkishore had left with a relative, later disclosed this fact to the first informant. At that time, the informant's husband, Janki Prasad (P.W.-2 at the trial), was working as a contractor in Kanakore. The first informant subsequently informed her husband about the incident.

7. Significantly, prior to this event, the first informant's first husband, namely, Amar Singh, had been murdered as a result of a conspiracy orchestrated by Maya Devi, along with Rambahadur and Bhikari Lal, residents of village Basantapur. As earlier, the first informant firmly believed that her son had been kidnapped by the aforementioned individuals due to this pre-existing animosity. She continued to search for her son, but when her efforts to trace him proved futile, she and her husband went to the police station to register a report. Based on this application, exhibited as Ex.Ka-1, a First Information Report was registered on 02.02.2007, at 6:15 p.m., as

Case Crime No.63 of 2007, under Section 364 I.P.C., naming Maya Devi, Rambahadur, and Bhikari Lal as the accused persons.

8. The investigation of the case was assigned to S.I. Suresh Babu Sharma (P.W.-12 at the trial), who prepared the Site Plan of the occurrence spot on 03.02.2007, which is Ex.Ka-13. Subsequently, accused Naresh and Shripal were arrested on 07.02.2007, at about 2:00 p.m. Based on the information they provided, the dead body of the kidnapped Roopkishore @ Kamal, was recovered from a well in the jungle of *Mahof* on 07.02.2007 at 4.30 p.m. The accused also confessed that Roopkishore was kidnapped for ransom and taken to the jungle. However, because he raised an alarm, he was strangulated to death, and his body was then hidden in the well. The recovery memo of the dead body is Ex.Ka-4 at the trial.

9. On 08.02.2007, at 9:15 a.m., in the presence of witnesses Suraj Pal (P.W.-7 at the trial) and Harcharan Lal, search was conducted in the jungle of *Mahof-Mustafabad*. This search was prompted by the disclosure statements made by the accused-Naresh (who later died during the trial) and Shripal. From beneath trees and bushes, bicycle, pant, woollen cap, book, rough copy and a pair of slippers belonging to the deceased Roopkishore were recovered. The Recovery Memo of these items is Ex.Ka-5 at the trial, which was prepared under the supervision of S.H.O. Ayyub Hasan (P.W.-9 at the trial).

10. The '*Panchayatnama*' of the deceased Roopkishore alias Kamal's dead body was prepared by S.I. Lallan Babu Mishra (P.W.-8 at the trial) on 07.02.2007 between 3:30 p.m. to 6:00 p.m. in the presence of '*Panch*' witnesses, namely, Yogesh Chandra, Durga Prasad, Sohan Lal, Harish and Lalta Prasad, which is Ex.Ka-2 at the trial. According to the '*Panch*' witnesses, Roopkishore was strangled to death.

11. The post-mortem examination of Roopkishore @ Kamal's dead body was conducted on 08.02.2007 at about 3:45 p.m. by Dr. Uday Veer Singh (P.W.-13 at the trial). According to the post-mortem report (Ex.Ka-14), the following ante-mortem injuries were found on the dead body:-

- "i. Abrasion 9.0 c.m. x 1.0 c.m. on the medial side of right thigh 6.00 c.m. above knee joint.*
- ii. Abrasion 6.0 c.m. x 6.0 c.m. on the medial aspect of right leg 9.0 c.m. below knee joint.*
- iii. Contusion 12.0 c.m. x 9.0 c.m. on the front of chest on both side of sternum on dissection sternum & 5th, 6th & 7th rib on right side 5th to 9th ribs on left side found fractured.*
- iv. Ligature mark 27 c.m. x 3 c.m. on the front of the neck Horizontal placed, continuous base of the mark is brown and soft sub cutaneous tissue under the ligature mark is echymosed."*

12. According to the doctor, Roopkishore died due to asphyxia as a result of ante-mortem strangulation about three to five days, before the time of post-mortem examination.

13. The investigation was concluded and charge-sheet (Ex.Ka-16) was submitted against the accused Naresh, Shripal and Guddu under Section 302, 364, 201 & 120B I.P.C. and 2/3 U.P. Gangster Act. During trial, co-accused

Naresh died, as such the case against him was abated on 20.09.2014 by the trial court.

14. The trial court framed charges against the accused-appellants on 26.05.2008, under Sections 364, 302/34, 201 I.P.C. and Section 2/3 Gangster Act and on 23.03.2023 under Section 120B I.P.C., to which they pleaded not guilty and claimed trial.

15. During trial, the prosecution examined the following witnesses, who proved the following documents/items:

SI. No.	Witnesses	Documents proved
1.	P.W.-1 Bhagwande, the first informant	Proved the 'Tehreer' as Ex.Ka-1
2.	Janki Prasad as P.W.-2	No document proved
3.	Bhagwandas as P.W.-3	No document proved
4.	Vikram as P.W.-4	No document proved
5.	Harish Kumar as P.W.-5	Proved the ' <i>Panchayatnama</i> ' as Ex.Ka-2
6.	Kunwar Sen as P.W.-6	Proved the certified copy of NCR as Ex.Ka-3
7.	Suraj Pal as P.W.-7	Proved the recovery memo of the body of Roopkishore as Ex.Ka-4
8.	Retired S.I. Lallan Babu Mishra as P.W.-8	Identified his hand writing and signature on ' <i>Panchayatnama</i> ' (Ex.Ka-2) , proved the recovery memo of cycle, pant, woollen cap, pair of sleeper etc. as Ex.Ka-5. i.Cycle bearing no.A48763 on frame as material Ex-1 ii.Blue coloured woollen cap as material Ex-2 iii.Blue coloured pant as material Ex-3 iv.One rough copy star brand as material Ex-4 v.One book Upkar Navodaya Vidyalaya Entrance Examination, 2007 as material Ex-5 vi.One pair of sleepers black colour as material Ex-6 & 7
9.	Retired Dy.S.P. Ayyub Hasan	Proved the site plan of the

	as P.W.-9	spot of the recovery of the dead body of Roopkishore as Ex.Ka-7 and the site plan of the spot from where the cycle, books, clothes and pair of sleepers of the deceased were recovered as Ex.Ka-8. Also, proved the Gang Chart against the accused persons as Ex.Ka-9
10.	Retired S.I. Siya Ram Rathore as P.W.-10	Proved the charge-sheet against the accused Naresh in Case Crime No.223 of 2004 under Section 4/25 Arms Act as Ex.Ka-10
11.	S.I. Shankar Pal Singh as P.W.-11	Proved the Check FIR as Ex.Ka-11 and carbon copy of G.D. Entry No.29 time 18.15 hours dated 02.02.2007 as Ex.Ka-12
12.	Retired S.I. Suresh Babu Sharma as P.W.-12	Proved the site plan of the spot from where the deceased Roopkishore was kidnapped as Ex.Ka-13
13.	Dr. Uday Veer Singh as P.W.-13	Proved the post-mortem report of the deceased as Ex.Ka-14
14.	Retired Inspector Narbadeshwar Shukla as P.W.-14	Proved the charge-sheet against the accused Guddu in Case Crime No.134/99 under Section 325 and 323 I.P.C. as Ex.Ka-15
15.	Circle Officer Ravindra Pratap Singh as P.W.-15	Proved the charge-sheet against the accused as Ex.Ka-16 and prosecution sanction from Police Superintendent, Pilibhit under Section 2/3 of U.P. Gangster Act as Ex.Ka-17.

16. Bhagwande (P.W.-1), in her examination-in-chief, testified that her son-Roopkishore, left for tuition around 7:30 a.m. and, upon reaching Bankati culvert at about 9:30 a.m., was taken away on his own (Roopkishore's) bicycle by an unknown person. Vikram, who was also returning from tuition and following her son, informed her that he was under the impression that Roopkishore had been taken by a relative. Upon receiving this information,

the first informant searched for her son, but when he could not be traced, she had an application written by one Om Prakash and submitted it to Police Station Neuria. In this application, she implicated Maya Devi, Bhikhari Lal and Rambahadur (the assailants of her first husband-Amar Singh). She further deposed, the kidnapped Roopkishore was her son from her first marriage, and after Amar Singh's death, she had solemnized a second marriage with Janki Prasad. The first informant proved the '*Tehreer*' (written report), which was available in the file of S.T. No. 258/2007 as Ex.Ka-1.

17. P.W.-1 deposed in her cross-examination that Amar Singh was her first husband who died 25 years ago. The deceased Roopkishore was her son (from Amar Singh), she had married Janki Prasad after the death of Amar Singh. She denied selling her house to Maya Devi, asserting instead that Maya Devi had forcibly occupied it and that she had never executed a sale deed of the property. She recounted that her son had left for tuition at about 7:00 a.m., and after waiting for him till 10:00 a.m., she began inquiring about him from other children in the village. When he still couldn't be traced, she continued her search till 12:00 noon, thereafter, she went to Police Station Neuria and submitted the '*Tehreer*'. She had phoned Janki Prasad at 10:00 a.m., and he arrived at 11:00 a.m., subsequently accompanying her to the police station. She travelled to the police station on a motorcycle. The police then searched for her son, and his bicycle and clothes were found in the jungle. His dead body was

eventually recovered from a well, six days later. She confirmed seeing his dead body at the police station and stated that Naresh and Rambahadur admitted to killing Roopkishore. Rambahadur had been arrested by the Police.

18. The first informant's husband-Janki Prasad P.W.-2 deposed in his examination-in-chief that on 02.02.2007, at about 7:00 a.m., he left to attend to his work. At about 8:00 a.m., his wife telephoned him and informed him that Roopkishore had not returned from tuition. His son used to attend tuition every morning with Vikram, who (Vikram) subsequently came to his house and told him that his son (Roopkishore) had been taken by three people on bicycle towards the jungle. After this, Janki Prasad returned home and along with other villagers searched for his son but he could not be traced. Later in the afternoon, he, along with his wife Bhagwande and Om Prakash went to the police station and registered F.I.R. They searched for 3-4 days and on the fifth day on 07.02.2007, Roopkishore's dead body was recovered from a well in the jungle of *Mahof* at the instance of Naresh, Shripal, and Guddu.

19. P.W.-2 Janki Prasad further deposed in his cross-examination that Bhagwande is his wife, whose first husband was Amar Singh, and Roopkishore is Amar Singh's son. Amar Singh was also murdered, in which Maya Devi, Bhikhari Lal, and Rambahadur were accused, who were tried for murder, though they were acquitted in that case. This witness also admitted that Rambahadur,

who was tried for Roopkishore's murder, was acquitted as well. Roopkishore used to go to village Meinthi Sadullah for tuition, which is at a distance of 1.5-2 kilometers from his house, and would return by 9:00 a.m. When Roopkishore's body was found, he and his wife Bhagwandeï went to Police Station Neuria. Both he and his wife had seen the dead body of Roopkishore and identified him at the Police Station. However, the dead body was not recovered in his presence; this fact was disclosed by other persons. He accepted that no dead body was recovered in his presence. Along with the dead body, clothes and bicycle were also recovered from the well. At the time of the incident, Roopkishore was aged about fourteen years old.

20. Bhagwandas P.W.-3 deposed in his examination-in-chief that he had gone to Bankati jungle for obtaining firewood then he saw Janki Prasad's son Roopkishore on Naresh's bicycle at about 10:00 a.m. When he returned to village then he came to know that Roopkishore was missing, then he told people that he saw Roopkishore going on Naresh's bicycle. He had not seen Guddu and Shripal on that day. This witness was declared hostile by the prosecution and in the cross-examination by the State, deposed that he does not know Guddu and Shripal. This witness denied his previous statement under Section 161 Cr.P.C.

21. Vikram (P.W.-4) deposed in his examination-in-chief that on 02.02.2007, he had gone to attend coaching in Meinthi. When he was returning at about 8:30 a.m.,

Roopkishore was not with him. He sometimes used to go by bicycle and sometimes was dropped off by his father. He further stated that he had not seen Roopkishore being taken on a bicycle by anyone in the jungle of village Bankati. He also denied having informed Roopkishore's father-Janki Prasad, that Roopkishore had been taken by three persons on a bicycle towards the jungle. Further, he denied that Janki Prasad came to his house at 12:00 noon. This witness was also declared hostile by the prosecution. In the cross-examination by State, this witness denied his previous statement under Section 161 Cr.P.C. He admitted that Roopkishore used to study with him in primary school and also attended coaching in Menthi, but clarified that Roopkishore was not his classmate. He stated that their houses did not fall on the same route, while returning from coaching classes. However, he stated that he did not know when Roopkishore started attending coaching and school.

22. Harish Kumar (P.W.-5), in his examination-in-chief, deposed that about eleven years prior, at 4:30 p.m., the dead body of Roopkishore @ Kamal, was recovered from a well inside the jungle at the instance of accused Naresh and Shripal. He stated that the '*Panchayatnama*' of the dead body was prepared in his presence by the police personnel, and he had seen the dead body. In his opinion, Roopkishore died due to strangulation and injuries found on his body. This witness identified his signature on the '*Panchayatnama*' and proved it as Ex.Ka-2. However, in cross-examination, this witness denied his previous statement under Section 161 Cr.P.C. He further deposed

that upon receiving information about the recovery of a dead body, he reached the jungle, and then the police personnel carried out, what he described as fraudulent proceedings. He further stated that neither any dead body was recovered from the well in his presence, nor he had seen it. He claimed that the deceased's school bag and bicycle were taken by Roopkishore's father to Police Station Neuria and handed over to the police personnel. He further stated that he saw Roopkishore's dead body for the first time at Police Station Neuria.

23. Kunwar Sen (P.W.-6) deposed in his examination-in-chief that about 19 years prior, at about 7:30 p.m., while returning to his house after defecation, on the way accused Guddu started abusing him. When he objected, accused Guddu assaulted him with a '*Danda*' (stick) on his neck. Regarding this incident, he registered an NCR at the Police Station, the next day. The police personnel sent him for medical examination and in the X-ray examination, his collar bone was found broken. This witness proved the certified copy of the NCR No. 87/99, under Sections 323 and 504 I.P.C., Police Station Neuria, as Ex.Ka-3. He further deposed that later on, he had compromised with accused Guddu.

24. In the cross-examination, P.W.-6 deposed that he had sustained the injury due to a fall, and that Guddu had not assaulted him. He further stated, there was no terror of Guddu in the village and that Guddu maintained cordial relations with everyone. The witness affirmed that Guddu

was neither a member of any gang nor did he trouble anybody. He claimed, he had registered the report because he was misled by villagers.

25. Suraj Pal P.W.-7, deposed in his examination-in-chief, that about eleven and a quarter years prior, police personnel from Police Station Neuria, accompanied by accused Naresh and Shripal, arrived in the village. He, along with village Chowkidar Harcharan Lal, then accompanied them to a well in *Mahof* range. From this well, he and the Chowkidar recovered the dead body of a boy, aged about 14 years old, using a rope. The boy's neck was tied with a knot. The body was clothed in a shirt but had no pant. At that time, many villagers had gathered there. Later, the dead body was identified as that of Roopkishore. This witness identified his thumb impression on the recovery memo of Roopkishore @ Kamal's body and proved it as Ex.Ka-4. In cross-examination, this witness deposed that accused Naresh and Shripal had not confessed to their crime in his presence. He further stated that the police personnel had obtained his thumb impression on a blank paper. He confirmed that accused Naresh has died. He asserted that he was not a witness to the occurrence and did not know Roopkishore or anything about him prior to his death. He also stated that he did not know accused Shripal and Naresh.

26. S.I. Lallan Babu Mishra, P.W.-8, deposed in his examination-in-chief that on 07.02.2007, while investigating Crime No. 63 of 2007 under Section 364

I.P.C., he received information from an informer that accused Shripal, Naresh and Guddu were in the jungle of *Mahof*. He then arrested accused Naresh and Shripal. Upon inquiry, the accused confessed that they had killed Roopkishore @ Kamal for ransom. They stated that they kidnapped Roopkishore while he was returning from tuition. The accused Naresh took him to the jungle on his (Roopkishore's) bicycle. Guddu and Shripal accompanied them on another bicycle. Guddu and Shripal attempted to contact Roopkishore's family on telephone but were unsuccessful. It was evening, since Roopkishore was crying, they strangled him with his (Roopkishore's) own pant, to avoid detection and then threw his body into an old well near Gaon Chowk to conceal it. They also stated that they had hidden Roopkishore's clothes, cap, slippers, books, copy, and bicycle in the jungle beneath trees and bushes, and could recover them. Thereafter, at the instance of the accused Shripal and Naresh, Roopkishore's dead body was recovered from a well. He prepared the '*Panchayatnama*' of the dead body on 07.02.2007, and identified his handwriting and signature on it, which was already exhibited as Ex.Ka-2. At the instance of accused Shripal and Naresh, several items were recovered, such as red-colored cycle (bearing frame no.A48763), blue terrycot pant with two back and two side pockets, a blue woollen cap, one pair of black coloured slippers, one Upkar Navoday Vidyalaya Class-VI book (with signatures in English and Hindi), and one star-brand rough copy (some pages of which were torn and rain water-soaked). This witness proved the recovery memo of these objects as

Ex.Ka-5. These objects were produced in the trial court and proved as material Ex-1 to material Ex-7. In cross-examination, this witness deposed that he had not recorded the statement of accused Naresh, who had told the investigating officer Ayyub Hasan P.W.-9 about the incident in his presence, in detail. He stated that he went with accused Naresh and Shripal, but the dead body was recovered only at the instance of accused Naresh on 07.02.2007, and the clothes were recovered on 08.02.2007. On 07.02.2007, Naresh had not disclosed anything about the clothes and other items. He had no knowledge whether any statement of Naresh was recorded on 08.02.2007, or not. However, on 07.02.2007 itself, Naresh had disclosed where he had hidden the slippers, cap, copy-book, and bicycle beneath the bushes. They recovered only the dead body on 07.02.2007, and the remaining items were recovered on 08.02.2007, because it was 6:00 in the evening on 07.02.2007. He had not shown the recovered items to the deceased's mother because the items had already been sealed. He noted that the well, which was inside the jungle, was dry. Forest personnel were not present at the time of recovery, though a Chowki was situated near the jungle. He concluded that everything had been disclosed after Naresh's statement and nothing new had been disclosed by accused Shripal in his statement.

27. Ayyub Hasan, P.W.-9, deposed in his examination-in-chief that accused Naresh and Shripal were arrested on 07.02.2007, at 2:00 p.m., while their accomplice, accused

Guddu, fled. After their arrest, the accused were taken to the Police Station for inquiry. They confessed to their crime and disclosed that they had concealed the dead body in the jungle of Mahof range. Thereafter, at the instance of both accused, the dead body of the kidnappee, Roopkishore, was recovered from a well in the presence of witnesses Suraj Pal and Harcharan Lal, among others. This witness further deposed that the '*Panchayatnama*' of the deceased was prepared by police personnel subordinate to him, and thereafter, the dead body was sent for post-mortem. He proved the Site Plan of the place where Roopkishore's dead body was recovered as Ex.Ka-7, and the Site Plan of the place where the deceased's bicycle, clothes, books, etc., were recovered as Ex.Ka-8. This witness also identified his handwriting and signature on the gang chart and proved it as Ex.Ka-9. In cross-examination, this witness further deposed that he had initially recorded the statement of accused Naresh. At the instance of accused Naresh, the dead body was recovered. Accused Shripal had accompanied them. He confirmed that the dead body, bicycle, books, cap, etc., were recovered from different places on different dates. This witness denied the suggestion that no recovery had been effected from accused Shripal. He further acknowledged that co-accused Naresh, who was also accused in this case, had been murdered.

28. Retired S.I. Siya Ram Rathore P.W.-10 in his examination-in-chief proved the charge-sheet against the accused Naresh Kumar in Case Crime No.223 of 2004

under Section 4/25 Arms Act P.S. Neuria as Ex.Ka-10. In cross-examination, this witness has further deposed that accused Naresh had been arrested and at his instance Roopkishore's body, bicycle, clothes, books, cap etc., were recovered.

29. S.I. Shanker Pal Singh P.W.-11 in his examination-in-chief proved the check FIR and G.D. Entry No. 29 time 18.15 hours dated 02.02.2007, as Ex.Ka-11 and Ex.Ka-12 respectively.

30. S.I. Suresh Babu Sharma P.W.-12 in his examination-in-chief proved the Site Plan of the place from where Roopkishore was said to have been kidnapped as Ex.Ka-13. In cross-examination, this witness further deposed that he had neither arrested any accused nor recovered the dead body.

31. Dr. Uday Veer Singh, P.W.-13, deposed in his examination-in-chief that he had conducted the post-mortem examination of the deceased Roopkishore's body on 08.02.2007, at about 3:45 p.m. He estimated that Roopkishore could have died about 3 to 5 days prior to the post-mortem examination. The ante-mortem injuries found on the dead body have already been described previously in this judgment. According to the doctor, 5th 6th and 7th ribs on the right side and 5th , 6th , 7th , 8th and 9th ribs on the left side were found broken. A ligature mark on neck was also found on the dead body. In the doctor's opinion, Roopkishore died due to asphyxia as a result of ante-mortem strangulation. This witness proved the post-

mortem report of the deceased Roopkishore as Ex.Ka-14. In cross-examination, this witness further deposed that Roopkishore could have died seven days prior to the date of the post-mortem examination. He also stated that while he could have died five days prior, due to winter season, there was a greater possibility that he had died seven days prior to the post-mortem examination.

32. Retired Inspector Narbadeshwar Shukla, P.W.-14, deposed in his examination-in-chief that on 30.04.1999 he was posted as Sub-Inspector at Police Station Neuria, then Kunwar Sen orally informed him that he had been assaulted by Guddu regarding which NCR No. 87 under Sections 323/504 I.P.C was registered, in which, on the basis of injury report and supplementary report, Section 325 I.P.C. was added, which converted the NCR into Case Crime No. 134/99. This witness proved the charge-sheet in Case Crime No. 134/99 under Sections 325 & 323 I.P.C. against accused Guddu as Ex.Ka-15.

33. Circle Officer Ravindra Pratap Singh, P.W.-15, deposed in his examination-in-chief that he had conducted the investigation of the case, added the offence under the Gangster Act, and further investigated the matter. This witness proved the charge-sheet against the accused, as Ex.Ka-16, and the sanction accorded by the Superintendent of Police, Pilibhit, under Section 2/3 U.P. Gangster Act dated 02.05.2007, against the accused as Ex.Ka-17.

34. The accused, in their statement under Section 313 Cr.P.C., denied the prosecution story, pleaded that they had been falsely implicated, and stated that they were innocent.

35. Submission of learned counsel for the appellants is that there is no eyewitness of the alleged incident, and no evidence exists to show that the accused were last seen with the kidnappee Roopkishore, before his murder. It has been averred that the prosecution has failed to prove the motive of the crime. The accused had not confessed to their guilt before the court. It is further submitted that the alleged recovery of Roopkishore's dead body, bicycle, clothes, etc., was effected at the instance of co-accused Naresh, who died during the trial. As such, learned counsel submitted that the accused-appellants cannot be convicted solely on the basis of that recovery.

36. Learned counsel further contended that the chain of evidence against the accused-appellants is incomplete. Neither were the accused-appellants seen with the deceased Roopkishore, nor were they seen at the place from where the deceased's dead body was recovered. Learned counsel further submitted that the trial court convicted the appellants solely on the basis of evidence led by the police personnel. With these submissions, it has been prayed that the appeals be allowed and the accused-appellants be acquitted of all the charges.

37. On the other hand, learned A.G.A. has submitted that the kidnappee Roopkishore was last seen alive in the

company of the accused. Thereafter, Roopkishore was kidnapped, and when he resisted, he was killed. In order to conceal the evidence of murder, the dead body was hidden in a well in the jungle, which was later discovered at the instance of the accused. Besides this, the bicycle, clothes, books, copy and woollen cap of the deceased were also recovered at the instance of the accused. The chain of circumstances against the accused is complete and besides the accused, no one else had the opportunity to kill Roopkishore. It has further been submitted that the prosecution has proved its case beyond reasonable doubt. With these submissions, it has been prayed that the criminal appeals be rejected.

38. We have heard learned counsel for both sides and perused the evidence on record. From the evidence of the first informant Bhagwande P.W.-1, it is evident that she did not witness Roopkishore being taken by the accused. She was informed by Vikram P.W.-4 that Roopkishore had been taken by someone and Vikram himself was under the impression that Roopkishore had been taken by a relative. P.W.-1 had searched for Roopkishore but could not trace him. Thereafter, P.W.-1 had given "*Tehreer*" implicating her first husband Amar Singh's assailant Maya Devi, Bhikhari Lal and Rambahadur in the kidnapping of Roopkishore. However, after investigation, these persons were not found to be involved in the crime. It is clear that P.W.-1 is not an eyewitness of the alleged kidnapping of Roopkishore.

39. From the evidence of Janki Prasad (P.W.-2), it is evident that he was informed that Roopkishore was missing by his wife, Bhagwandeï P.W.-1. They then searched for Roopkishore, who could not be traced. P.W.-2, along with P.W.-1 and Om Prakash, had gone to the Police Station and registered an FIR. Both P.W.-1 and P.W.-2 had seen the dead body of Roopkishore at the Police Station, but neither the dead body nor the other items of the deceased were recovered in their presence.

40. From the evidence of Bhagwandas P.W.-3, it is evident that he has not supported the prosecution case, who had been declared hostile by the prosecution. This witness admitted that he had seen Roopkishore with co-accused Naresh on a bicycle but denied that Roopkishore was seen alive by him in the company of accused-appellants.

41. From the evidence of Vikram P.W.-4, it is evident that Roopkishore and Vikram used to attend coaching classes together but on 02.02.2007, the day Roopkishore was allegedly kidnapped, this witness had not seen Roopkishore with anybody. It is the case of the prosecution that first informant-Smt. Bhagwandeï (P.W.-1) was informed by this witness Vikram that Roopkishore was taken by some person on a bicycle but P.W.-4 denied this fact and during trial was declared hostile by the prosecution. P.W.-4 also denied his previous statement under Section 161 Cr.P.C. On the basis of the evidence of P.W.-4, it is not proved that Roopkishore was last seen

alive in the company of accused or accused had taken Roopkishore on a bicycle with them.

42. From the examination-in-chief of Harish Kumar (P.W.-5), it is evident that the dead body of Roopkishore was recovered at the instance of accused Naresh and Shripal from a well inside the jungle. However, in cross-examination, this witness specifically denied that any such recovery was made in his presence. This witness further deposed that upon receiving information about the recovery of the dead body, he reached the jungle, and later, the police personnel executed fraudulent proceedings. Although this witness proved the '*Panchayatnama*' of the deceased Roopkishore's body as Ex.Ka-2, he failed to prove that Roopkishore was last seen alive in the company of the accused or Roopkishore's dead body was recovered at the instance of the accused.

43. From the evidence of Kunwar Sen (P.W.-6), it is evident that accused Guddu had abused him and assaulted him with '*danda*,' regarding which he had registered NCR No. 87/99 under Sections 323 & 504 I.P.C. at Police Station Neuria. A certified copy of this NCR was proved by this witness as Ex.Ka-3. However, based on this NCR, it is neither proved that Roopkishore was last seen alive in the company of the accused nor the body of the deceased Roopkishore was recovered at the instance of the accused.

44. From the evidence of Suraj Pal (P.W.-7), it is evident that the dead body of Roopkishore was recovered from a well, with its neck tied, in the presence of many villagers.

Although the recovery memo of Roopkishore's dead body was proved as Ex.Ka-4 by this witness at trial, but in cross-examination, this witness deposed that the accused Naresh and Shripal had not confessed to their crime in his presence and that the police personnel had obtained his thumb impression on a blank paper. This witness further denied being a witness to the occurrence and also denied knowing Roopkishore. In view of the above inconsistencies and from the overall evidence of P.W.-7, the recovery of Roopkishore's dead body at the instance of accused Naresh and Shripal becomes highly doubtful.

45. From the evidence of S.I. Lallan Babu Mishra (P.W.-8), it appears that accused Naresh and Shripal were arrested based on information provided by an informer, but co-accused Guddu fled. During interrogation, the arrested accused, Naresh and Shripal, disclosed that they had kidnapped Roopkishore for ransom. They lured him on the pretext of giving meat, when he was returning from tuition. Roopkishore was taken on his bicycle by Naresh, while Guddu and Shripal accompanied them on another bicycle. Naresh then detained Roopkishore in the jungle. Meanwhile, Guddu and Shripal attempted to contact Roopkishore's family by telephone but were unsuccessful. By then, it had become dark, and Roopkishore had started crying. To prevent further complications, they killed Roopkishore by strangulating him with a pant. Thereafter, to conceal the crime, they hid his dead body in an old well near Gaon Chowk. The above evidence adduced by P.W.-8 in his examination-in-chief is inadmissible and, therefore,

solely on the basis of this evidence, it is not proved that the accused had kidnapped and later murdered Roopkishore.

46. P.W.-8 further proved the '*Panchayatnama*' of the deceased Roopkishore's body as Ex.Ka-2. He also proved the recovery of a red-coloured bicycle having frame No.A48763, blue-coloured pant, blue woollen cap, one pair of black sleepers, one book of Upkar Navoday Vidyalaya Class-VI, and one rough copy (star brand), allegedly at the instance of the accused as material Ex-1 to 7. He further proved the Recovery Memo of these items as Ex.Ka-5. It is pertinent to note that the above alleged recovery was effected in the presence of public witnesses, Suraj Pal (P.W.-7) and Harcharan Lal (not examined at the trial). However, according to the Recovery Memo (Ex.Ka-5), the recovery of these objects was effected only at the instance of accused Naresh and Shripal, not Guddu. It is also pertinent that co-accused Naresh died during the trial, leading to the abatement of the case against him. Crucially, the public witness, Suraj Pal (P.W.-7), did not support this recovery. Moreover, in cross-examination, P.W.-8 admitted that accused Naresh had initially disclosed information about these items in his statement. Subsequently, Naresh and Shripal had jointly led them to the alleged place of recovery. It was then, at the instance of only accused Naresh, that Roopkishore's dead body was recovered on 07.02.2007, and on 08.02.2007, the deceased's clothes and other items were recovered. P.W.-8 specifically admitted in his cross-examination that the

entire story of Roopkishore's murder had been narrated by accused Naresh, and no new disclosure was made by accused Shripal. From the evidence of P.W.-8, it is also proved that Roopkishore's dead body, his bicycle and other items were recovered only at the instance of accused Naresh and no recovery was effected on the disclosure statement of accused Shripal. It is further evident that neither any disclosure was made by accused Guddu nor any recovery was effected from him.

47. The above fact is also corroborated from the evidence of P.W.-9, who admitted in his cross-examination that, he had first recorded the statement of accused Naresh, and then, at the instance of accused Naresh, Roopkishore's body was recovered, with accused Shripal accompanying them.

48. From the evidence of P.W.-8 and P.W.-9, it is proved that the recovery of Roopkishore's body was effected only at the instance of accused Naresh, regarding which accused Shripal and Guddu had not made any disclosure. This fact is further confirmed from the statement of police witness P.W.-10 who in his cross-examination admitted that at the instance of accused Naresh, deceased Roopkishore's body and other items were recovered.

49. P.W.-10 is a police witness who only proved the charge sheet in Case Crime No. 223 of 2004, under Section 4/25 Arms Act, Police Station Neuria against accused Naresh Kumar, who has already died. P.W.-11 proved the registration of the F.I.R. and its corresponding

entry into the general diary maintained at the police station. P.W.-12 is also a police witness, who proved the site plan of the spot from where Roopkishore was allegedly kidnapped. P.W.-13 is the Doctor who conducted the post-mortem examination of the body of deceased Roopkishore and proved that Roopkishore died due to asphyxia as a result of ante-mortem strangulation approximately 3-5 days prior to the date of the post-mortem examination. P.W.-14 is a police witness, who proved the charge sheet against accused Guddu in Case Crime No.134/1999, under Section 323, 325 I.P.C. as Ex.Ka.15. P.W.-15 is also a police witness, who proved the charge sheet against the accused as Ex.Ka-16 and the prosecution sanction under Section 2/3 Gangster Act against accused granted by the Superintendent of Police, Pilibhit dated 02.05.2007 as Ex.Ka-17. On the basis of the above evidence of P.W.-10, P.W.-11, P.W.-12, P.W.-13, P.W.-14 and P.W.-15, involvement of the accused in the crime is not proved.

50. There is no evidence on record that the accused had formed an organized gang of criminals, who were involved in violence, intimidation, engaged in anti-social activities to disturb public order or gained undue advantage as defined in the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986. It is true that the prosecution proved the gang chart as Ex.Ka-9, during trial in which only three cases have been mentioned as under:-

(i) Case Crime No.63 of 2007, under Sections 302, 364, 201& 120-B I.P.C., P.S. Neuria, District Pilibhit against accused Naresh, Shripal and Guddu.

(ii) Case Crime No.223 of 2004, under Section 4/25 Arms Act, P.S. Neuria, District Pilibhit against accused Naresh.

(iii) Case Crime No.134 of 1999, under Sections 323 & 325 I.P.C., P.S. Neuria, District Pilibhit against accused Guddu.

51. There is no evidence on record that the accused Naresh has been convicted in Case Crime No.223 of 2004 and accused Guddu has been convicted in Case Crime No.134 of 1999. In fact accused Naresh has died, as such, Case Crime No.223 of 2004, under Section 4/25 Arms Act has been abated. In view of this, there is no evidence to sustain the conviction of accused under Section 2/3 Gangster Act.

52. In the light of the above evidence on record, it is proved that there is no eye witness of the alleged kidnapping of Roopkishore. Roopkishore was neither seen alive in the company of accused-appellants nor the appellants were seen near the dead body of Roopkishore. There is evidence on record that Roopkishore was taken on bicycle by co-accused Naresh, but he died during trial and case against him has been abated. According to the prosecution, the dead body of Roopkishore was recovered from a well in the jungle at the instance of accused Shripal and Naresh but from the evidence of P.W.-7, the alleged recovery becomes highly doubtful. The police witnesses have accepted in the cross-examination that the disclosure statement was made by co-accused Naresh and only on the basis of such disclosure, dead body of Roopkishore and his bicycle, clothes, cap, book, etc., were recovered. It has further come on record that no additional/new disclosure was made by accused-appellants nor any additional recovery of incriminating items had been effected at their instance. This case is based on circumstantial evidence, in which the accused can only be convicted, if the chain of

circumstances established against the accused is of a conclusive nature and is complete so as to prove that only the accused could have committed the crime and other than the accused, none had the opportunity to commit this crime.

53. The trial court has only convicted the accused on the basis of alleged disclosure statement made by accused before police personnel which is not supported by any public witness, as such, the trial court has committed grave illegality in relying upon such disclosure statement made before the police personnel, which is wholly inadmissible in evidence. The alleged recovery of dead body and other items of the deceased is highly suspicious and in the absence of other link evidence, the complicity of the accused in the crime is not proved beyond reasonable doubt. Since Roopkishore was neither last seen in the company of the accused nor the accused were seen near the spot from where the dead body of Roopkishore was recovered, as such, the chain of circumstances against the accused in this alleged crime is not complete. There is no evidence to sustain a finding that the accused had formed an organized gang of criminals as defined in the U.P. Gangster Act, 1986. Altogether, a perverse finding has been recorded by the trial court, which warrants interference from this Court. The trial Court has committed grave illegality in convicting the accused-appellants for offence under Sections 364, 302/34, 120-B, 201 I.P.C. and 2/3 Gangster Act.

54. Accordingly, both the criminal appeals are **allowed**.

55. The impugned judgment and order dated 31.03.2023 passed by the trial Court in Special Sessions Trial No.240 of 2012 (State of U.P. vs. Naresh and others), arising out of Case Crime No.63 of 2007, under Sections 302, 364, 201, 120-B I.P.C. & Section 2/3 of Gangster Act, Police Station Neuria, District Pilibhit is hereby **set aside**.

56. The accused-appellants are acquitted of the charges framed against them.

57. Both the appellants are in jail, who shall be released forthwith, if not wanted in any other case.

58. Let the trial court record along with a copy of this order be transmitted to the court concerned through Registrar (Compliance) forthwith and a copy of this order may also be sent to the jail authorities for necessary compliance.

59. Trial court concerned, shall submit its compliance report to this Court, within a month.

Order Date:- 22.5.2025

Jitendra/Himanshu/Anurag/-

(Sandeep Jain, J.) (S.D. Singh, J.)