

82 (1999) DELHI LAW TIMES 730 (DB)

DELHI HIGH COURT

Anil Dev Singh & R.S. Sodhi, JJ.

STATE—Petitioner

versus

RAVI @ MUNNA—Respondent

And

RAVI @ MUNNA & Anr.—Appellants

versus

STATE—Respondent

Murder Reference No. 4 of 1997 with Criminal Appeal Nos. 309 & 320 of 1997—

Decided on 11.10.1999

(i) **Indian Penal Code, 1860**—Sections 302, 120-B, 364, 386—Murder, Criminal Conspiracy, Kidnapping, Extortion : Circumstantial Evidence : Chain Incomplete, Benefit of Doubt—No actual act attributed to appellant accused in Cr. A. No. 320/97—No proof of planning or criminal conspiracy or execution thereof—Necessary ingredients to attract Section 120-B, IPC not made out—Accused cannot be convicted under Section 302, IPC simplicitor nor with aid of Section 34 or 120-B, IPC—Prosecution not able to establish charges against accused beyond reasonable doubt—Chain of events required to prove hypothesis, miserably incomplete—Accused entitled to benefit of reasonable doubt and acquitted of all charges. [Paras 56 & 57]

(ii) **Criminal Trial : Tape Recorded Conversation : Evidentiary Value**—Can only be used as corroborative evidence of such conversation deposed to by any of the parties to conversation.

Held : It is settled law that rendering a tape recorded conversation can be legal evidence by way of corroborating the statement of a person who deposes that the other speaker and he carried on with the conversation or even of the statement of a person who deposes that he overheard the conversation between the two persons and what they actually stated had been tape-recorded. The tape-recorded conversation can only be used as corroborative evidence of such conversation deposed to by any of the parties to the conversation. In the instant case, there is absence of such evidence, therefore, the tape-recorded conversation is indeed no evidence and cannot be relied upon. (Para 55)

(iii) **Criminal Trial : Circumstantial Evidence : Tests to be Satisfied**—Discussed. [Para 52]

Result : Appeals allowed.

Murder Reference answered accordingly.

Cases referred :

1. AIR 1962 SC 1211.

[Para 15]

2. 1993 (3) Crl.L.J. 3151. (<i>Referred</i>)	[Para 16]
3. AIR 1968 SC 178. (<i>Referred</i>)	[Para 21]
4. JT 1991 (2) SC 546. (<i>Referred</i>)	[Para 22]
5. 1994 SCC (Crl.) 1376-II (1994) CCR 531 (SC). (<i>Relied</i>)	[Para 35]
6. AIR 1986 SC 1991. (<i>Referred</i>)	[Para 47]
7. 1998 (1) Ch.L.R. 452. (<i>Referred</i>)	[Para 47]
8. AIR 1982 SC 1043. (<i>Relied</i>)	[Para 55]

Counsel for the Parties :

For the Petitioner in Murder Reference No. 4/97 & Respondent in Crl. Appeal Nos. 309 & 320/97 : Ms. Mukta Gupta, Advocate.

For the Respondent in Mur. Ref. No. 4/97 & Appellant in Crl. Appeal No. 309/97 : Mr. Jitender Sethi, Advocate.

For the Respondent in Crl. A. No. 320/97 : Mr. Jitender Sethi, Advocate.

JUDGMENT

R.S. Sodhi, J.—Criminal Appeal No. 320 of 1997 has been filed by Chandrika and Criminal Appeal No. 309 of 1997 has been filed by Ravi @ Munna, both challenging the judgment and order of the learned Additional Sessions Judge dated 7th June, 1997 in Sessions Case No. 125 of 1990, holding them guilty of the offences charged while Murder Reference No. 4 of 1997 seeks confirmation of the sentence of death imposed upon Ravi @ Munna. The appeals as also the Murder Reference are being disposed of by this judgment.

2. Brief facts of the case are that on 21st November, 1989, Rajesh, a student of 7th class, of Government Boys Senior Secondary School, went to attend school but did not return. At around 8 O'clock on that day there was a telephonic message at the house of Puranmal (PW 7) to the effect that Rajesh would be released upon a ransom of Rs. 1 lac being paid. Puranmal reported the aforesaid incident to the police control room where the message was received by lady constable, Vidya, who passed on the same to Police Station, Mangolpuri. The entry of this information was made in D.D. No. 23-A. Inspector Vinor Kumar (PW 21) was assigned the case. However, it was only on 23rd November, 1989 that an FIR No. 493/89 was registered. On 11th December, 1989, Duleshwar (A-1) was arrested from near D-Block bus stand of Mangolpuri. While in custody Duleshwar made a disclosure statement leading to the recovery of the body of Rajesh from beneath the floor in the House No. G-303, Mangolpuri alleged to be in the tenancy of the appellants. Inquest proceedings were held by the SDM, Vipul Mitra (PW 13) while post mortem was conducted by Dr. L.T. Ramani (PW 1).

3. On 11th December, 1989, Chunni Lal (PW 17) made a statement to the effect that he had seen Rajesh on 21st November, 1989, at about 1.00 p.m. in the company of all the three accused. On 4th January, 1990, Ram Narain, father of the deceased, produced two letters (Ex. P-1 and P-2) which were taken into possession *vide* Memo (Ex. P-10/A). These letters are alleged to be from Ravi @ Munna demanding ransom.

4. On 16th January, 1990, accused, Ravi @ Munna, was arrested at Gaya (Bihar).

Production warrants were obtained and he was brought to Delhi. His specimen writing was taken by the Investigating Officer for the purpose of comparison with Ex. P-1 and Ex. P-2. Accused, Chandrika, who was already in custody with Bihar Police, was also brought to Delhi. After completion of investigation, the police filed challan on the basis of which the accused were sent up for trial where charges were framed under Sections 120-B, IPC, 364, IPC read with Section 120-B, IPC, 386, IPC read with Section 120-B, IPC and 302, IPC read with Section 120-B, IPC. The accused pleaded not guilty and sought a trial. The defence put up by the accused was that Ravi @ Munna was not arrested on 16th January, 1990, but was taken into custody at Khagariya on 7th December, 1989, and remained in custody ever since. This aspect of the defence case was put to the prosecution witness in cross-examination. Besides, evidence was led by way of defence to prove their case, in the shape of Daily Diary Entry recorded by Bihar police at Khagariya, showing arrest of Ravi @ Munna on 7th December, 1989. The defence, also sought to prove, that possession of the House Nos. G-302 and G-303, Mangolpuri, at the relevant time, was not with the accused, rather Nirmala (PW 25) and Sanjay had also access to the same. After the statement of the accused under Section 313 of the Code of Criminal Procedure, prosecution once again adduced additional evidence by producing Munshi Ram (PW 26) who sought to disprove the defence version regarding arrest of Ravi @ Munna. Nirmala was also brought into the witness box.

5. The prosecution, in order to prove the case, examined as many as 26 witnesses. The Trial Court by its judgment and order dated 17th June, 1997, acquitted Duleshwar (A-1) of all charges while holding Ravi @ Munna and Chandrika guilty of offences under Sections 120-B, IPC, 364, IPC read with Section 120-B, IPC, 386, IPC read with Section 511, IPC and 302, IPC read with Section 120-B, IPC and then by its order dated 1st July, 1997 sentenced Ravi @ Munna to death for entering into a conspiracy and for committing murder of Rajesh in pursuance of the said conspiracy. He was also sentenced to undergo rigorous imprisonment for life with a fine of Rs. 2,000/- for having committed offence under Section 364, IPC read with Section 120-B, IPC. He was further sentenced to undergo rigorous imprisonment for five years and pay a fine of Rs. 2,000/- for having committed offence under Section 386, IPC read with Section 511, IPC and in default of payment of fine to undergo rigorous imprisonment for a further period of one year. Benefit of Section 428, Cr.P.C. was extended to him.

6. As regards Chandrika, the learned Additional Sessions Judge sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/- for entering into conspiracy of committing the murder of Rajesh and acting in pursuance to the said conspiracy. He was also sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/- for having committed offence under Section 364 read with Section 120-B, IPC. He was further sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 2,000/- for committing offence under Section 386 read with Section 511, IPC. In default of payment of fine, he was to undergo rigorous imprisonment for a further period of one year. Benefit of Section 428, IPC was extended to him as well.

7. We have been taken through the record of the case by learned Counsel for the parties.

8. Ms. Mukta Gupta, learned Counsel for State, has argued strenuously that the judgment and order of the learned Additional Sessions Judge ought to be confirmed

for reasons, *inter alia*, that the prosecution has been able to prove its case beyond shadow of doubt and that chain of circumstances is complete in all respects which point only to one hypothesis, namely, guilt of the accused person.

9. Learned Counsel for the State has argued that to bring home guilt of the accused, the prosecution has established that the body of the deceased was recovered from the house of the appellants, Ravi and Chandrika. For this purpose, she has referred to PW 13, Shri Vipul Mitra, District Magistrate who states that :

"On 11.12.1989 I was posted as S.D.M., Punjabi Bagh, Delhi. On being informed by police, I reached House No. G-303, Mangol Puri and got the dead body of Rajesh, son of Ram Narain disinterred. I filled inquest form which is Ex. PW 13/A. It bears my signature at Point A. I sent the dead body for post-mortem to mortuary, Subzi Mandi *vide* application Ex. PW 13/B which also bears my signature. A memo of brief facts was dictated by me. The same is Ex. PW 13/C. It bears my signature. The dead body was identified by Radhey Shyam and Pooran Mal. The identification memos are Ex. PW 13/D and Ex. PW 7/A. Both memos bear my signature."

10. Learned Counsel further referred to PW 9, Radhe Shyam, who states that :

"On 11.12.1989 police arrested accused Duleshwar present in Court in my presence. One Pooran Mal was also with us. Accused made disclosure statement to the effect that on 21.11.1989 he kidnapped Rajesh alongwith other accused persons and murdered him. Said disclosure is Ex. PW 7/C and bears my signatures. Duleshwar pointed out House No. G-303 and got recovered dead body of Rajesh from underneath the earth after the digging the earth in the room and at that time SDM and police officials were also present. Dead body was seized *vide* memo Ex. PW 7/D which also bears my signatures. Police also seized various articles like Sambal, Ex. P-7, sample earth and cement concrete Ex. P-11, school bag with copies and books, Ex. P-6, one register Ex. P-4, the broken lock, Ex. P-9, Lungi in which dead body was wrapped, Ex. P-5, open cement bag Ex. P-8. All these articles were seized *vide* memo, Ex. PW 7/E which also bears my signatures. They were sealed with the seal of V.K. One receipt of television set in the name of accused Ravi Kumar and two rent receipts were also seized *vide* memo Ex. PW-7/F. Slip of T.V. is Ex. P-13 and rent receipts are Exs. PW-5/A&B. Pooran Mal also produced two cassettes in which voice of the accused persons had been taped which are Exs. P. 14 & 15 and were seized by the police *vide* memo Ex. PW-7/G. It also bears my signatures."

11. This witness also deposes as to the recovery of the register, Ex. P-4, from House No. G-303, Mangolpuri, which contains accounts of day to day business as also two rent receipts, Ex. P-5/A and Ex. P-5/B, together with receipt of payment for television which is Ex. P-13.

12. This witness in cross-examination states that :

"I was joined with investigation around 2 or 2.30 p.m. on 11.12.1989 from F-Block, Mangol Puri. My factory was open on that day. Again said I do not remember if the factory was open or not. I met the police as I was going to factory from my house. Pooran and other persons were also present there. Ram Narain was not there. I do not know the names of the other persons who were standing there."

Duleshwar was already with police at that time. I do not know from where he was arrested from F-Block.....

House No. G-303 was locked when we reached there. There were residential houses on the right left and opposite side of the said house. A crowd had gathered and I do not know if any person was called to join investigation. I do not recollect if the lock of the house was seized by the police. The lock was perhaps broken open. The lock had been broken and at about the same time the Magistrate arrived. I do not remember if accused Duleshwar was in hand cuffs when the SDM arrived. The floor was broken by the police and I had also joined. The hammer for breaking the floor we as brought from the neighbourhood."

13. Learned Counsel for the State then referred to PW 7, Puranmal who also states that :

"On 23.11.1989 police recorded my statement Ex. PW 7/A which bears my signatures at point A. On 11.12.1989 police arrested accused Dullu @ Dileshwar and prepared his personal search memo which is Ex. PW 7/B. Police made enquiries from Duleshwar and his disclosure is Ex. PW 7/C which bears my signatures. Accused Duleshwar pointed out House No. G-303, Mangolpuri and got recovered dead body of Rajesh from underneath the earth after digging the earth. I cannot say as to who had actually dug out the earth. S.D.M. was also present at that time. Police took into possession the dead body *vide* Ex. PW 7/D."

14. Puranmal also deposes about the recovery of the register, Ex. P-4, *vide* memo Ex. PW 7/E, rent receipts Ex. P-5/A, Ex. P-5/B and payment receipt for the television, Ex. P-13, which is taken into custody *vide* memo Ex. P-7/F from House No. G-303, Mangolpuri.

15. Learned Counsel for the State referred to PW 21, Inspector Vinor Kumar, who states that :

"The telephone, the number of which was probably 7272975 and which was of Rohini Exchange, was kept under observation. Whatever message was being received on the said telephone was being tape recorded. The voice on the telephone was identified by Rajender Kumar as being that of accused Rajesh. We kept searching for Rajesh as he used to visit accused Duleshwar. On 11.12.1989 accused Duleshwar, present in Court, was arrested. On interrogation he disclosed that the dead body of Rajesh had been buried under the floor in H. No. G-303, Mangolpuri. The disclosure statement Ex. PW 7/C of Duleshwar was recorded. I informed Shri Vipul Mitra who was then S.D.M., Punjabi Bagh and apprised him of all the facts. He arrived at H. No. G-303, Mangolpuri."

She further referred to PW 20, Suresh Kumar, the photographer who has exhibited the photographs, Ex. PW 20/A-1 to PW 20/A-9. These photographs are of the recovery of the body. Learned Counsel submitted that in Section 313 statement Ravi @ Munna has admitted his presence in the said house upto November, 1989 while Chandrika admits staying there till 3rd December, 1989. Learned Counsel contended that the burden of proof would shift on the accused to show how the body came to be found in the house in their possession.

Learned Counsel was conscious of the fact that Duleshwar had been acquitted by the Trial Court. No appeal has been filed against his acquittal, and, therefore, urged that

even if an appeal against the acquittal has not been filed, yet the Court can consider the evidence afresh and come to a contrary conclusion. In support thereof she referred to *Sunder Singh and Others v. State of Punjab*, AIR 1962 SC 1211.

Learned Counsel next contended that the prosecution has been able to prove constructive and actual physical possession of House Nos. G-302 and G-303, Mangolpuri with Ravi and Chandrika at the relevant time. She referred to PW 5, Sudershan Kumar, who let out the premises to the appellants. Ex. PW 5/A is a receipt for rent for the duration 17th October, 1989 to 17th November, 1989 while Ex. PW 5/B is rent receipt for the period 17th November, 1989 to 17th December, 1989.

16. It was submitted for the State that Dr. T.L. Ramani, PW 1, has indicated the time of death which he puts at about three weeks. The Doctor further found undigested food and few ground nuts and Kheera seeds, which the learned Counsel has argued is of no consequence since the process of, digestion varies from person to person and the type of food taken. She further submitted that the cause of death, even, if not given by the Doctor can always be inferred by the Court from other circumstances. For this purpose she referred to *Vasudevan v. The State*, 1993 (3) Crl.L.J. 3151.

17. The next circumstance in the chain of events, pointed out by the learned Counsel, is the taped telephonic conversation of the demand of ransom, which has been deposed to by PW 6, Rajinder Kumar, who states that :

"I knew Munna @ Ravi for the last one year before the incident since he used to come to us and got prepared sweaters as there were business dealings. Munna demanded ransom from Shri Ram Narain on telephone and that voice was taped in a cassette. Munna had demanded ransom of Rs. 1,00,000/- and to bring the same at Old Delhi Railway Station platform. I had heard the tape and recognised the voice of Munna."

18. Learned Counsel has drawn our attention to the statement of this witness where he states that the "cassette was recorded by my brother-in-law, Ram Narain. The cassette was recorded in the last week of November or in the first week of December, 1989. I do not remember the dates". From this, the learned Counsel wants us to infer that the tape recording took place prior to 7th December, 1989.

19. PW 10, Ram Narain, father of the deceased, has deposed about the demand of ransom. This has been corroborated by PW 8, Puranmal, uncle of the deceased, who has handed over the cassettes to the Investigating Officer *vide* memo Ex. PW 7/G on 11th December, 1989. PW 9, Radhe Shyam, has deposed about the cassettes being taken into possession by the Investigating Officer, PW 21, *vide* memo Ex. PW 7/G. PW 22, Rajinder Singh, has deposed about the transcription prepared by him from the cassettes. PW 21, the Investigating Officer, has deposed about the recovery of the register from House No. G-303, Mangolpuri, and the hand-writing on the register that had been sent to the CFSL alongwith the specimen hand-writing of Ravi @ Munna taken on 29th March, 1990 in the presence of PW 24, Mahinder Singh as also the admitted hand-writing on the college admission form, Ex. PW 23/C, seized *vide* memo Ex. PW 21/C and that as per the report of PW 23, T.S. Nehra, the ransom note and the admitted hand-writing was similar. The learned Counsel further pointed out that Ex. P-3 is the letter written by Ravi @ Munna at Pal Restaurant, Khagariya. The hand-writing on Ex.

P-3 tallies with that of Ravi and PW 6, Rajinder Kumar, has identified the writing on Exs. P-1, P-2, P-3 and P-4 to be that of Ravi.

20. Learned Counsel for the State has further referred to the statement of PW 10, Ram Narain to the effect that in the first week of November, 1989 Ravi had demanded Rs. 50,000/- as loan, which the witness had refused and had upset Ravi, which is the conduct and motive.

21. Learned Counsel has been at pains to show that the accused were effectively represented during the trial proceedings by Mrs. Sadhna Bhatia, Advocate, who had been appointed as *Amicus Curiae* and that there should be no grievance of the accused on this score. The criticism, if at all, on account of summoning of witness after the recording of the 313, Cr.P.C. statement of the accused has caused no prejudice to the accused and also the Court was well within its right to do so in view of Section 311, Cr.P.C. in support whereof she has referred to *Jamatraj Kewalji Govani v. State of Maharashtra*, AIR 1968 SC 178. It was, therefore, submitted by learned Counsel for the State that the prosecution having been able to place on record cogent evidence to bring home guilt of the accused has discharged its burden in all aspects of the case to complete the chain of circumstances, bringing home the guilt of the accused.

22. Lastly, it was contended by the learned Counsel that the sentence of death on Ravi @ Munna ought to be confirmed in view of the fact that the act of kidnapping a child of 13 years for ransom followed by murder and disposing off the body in the manner stated above is a pre-planned action of a depraved and hardened criminal. This is a case which can be termed as 'rarest of the rare'. She has referred to *Sevaka Perumal etc. etc. v. State of Tamil Nadu*, JT 1991 (2) SC 546, to contend that while considering question of sentence, the doctrine of benefit of doubt has no play.

23. Mr. Jitender Sethi, learned Counsel for the appellant, has contended that the Trial Court has not appreciated the evidence on record and, therefore, has erred in recording the finding of conviction. He has urged that the investigation has been unfair, biased and tainted inasmuch as the evidence was created, record falsified and case fabricated to suit the prosecution story.

24. To substantiate his arguments, learned Counsel for the appellant has contended that the prosecution case as regards the arrest of Ravi @ Munna is a total fabrication inasmuch, as, though the prosecution claims to have arrested Ravi @ Munna on 16th January, 1989 from Gaya (Bihar) as stated by the Investigating Officer (PW 21), but the fact of the matter is, that Ravi @ Munna was arrested on 7th December, 1989 at Khagariya (Bihar) and his custody was handed over by the Bihar Police to the Delhi Police. He has drawn our attention to Ex. D-1 which is the D.D. entry No. 211 of Police Station, Khagariya. This document is dated 7th December, 1989 maintained at Police Station, Khagariya which reads as follows :

"A copy of D.D. No. 211 dated 7.12.1989 maintained at PS Khagaria, 211-21/30 hours. I, S.K. Dass incharge of the Police Station Khagaria alongwith Lalit Kumar Singh of Delhi Police, P.S. Mangolpuri, in connection with giving assistance to the aforesaid police officer in case (FIR) No. 493/89 u/Sec. 364, IPC and case (FIR) No. 462/89 left for searching out accused. It is worth mentioning that accused Munna Singh @ Ravi @ Rajesh Kumar, s/o Jamuna Singh, r/o Vasudev Pur, PS Kotwali Munger, Distt. Munger, accused in case (FIR) No. 493/89 u/Sec. 364, IPC, having been arrested in a

dramatic manner, was handed over to S.A.N. Munshi Ram of Delhi Police who alongwith his constable has left for Delhi."

25. Learned Counsel for the appellant states that this fact of the accused having been arrested on 7th December, 1989, was put to the Investigating Officer (PW 21) who denied the same and reiterated that Ravi @ Munna was arrested on 16th January, 1990 and produced before the Magistrate on 18th January, 1990. Learned Counsel for the appellant has also taken us through the cross-examination of the Investigating Officer (PW 21), where he states :

"I do not remember the date when I went to Bihar. I went there in December, January and March. In December, 1989 I was accompanied by Constable Ishwar Singh and one other constable. I do not remember which places of Bihar I visited in December, 1989. It is wrong to suggest that I had arrested accused Ravi and Sanjay, brother of complainant, from village Khagaria, Bihar in December, 1989. It is wrong to suggest that ASI Munshi Ram had also gone with me. It is wrong to suggest that accused Ravi was detained at Delhi till 16th January, 1990 or that he was taken to Bihar on that date and formally arrested there after obtaining production warrant. I do not know if news about the arrest of accused Ravi was published in newspaper in Bihar on 9.12.1989."

SI Munshi Ram (PW 26) states that :

"In the year 1989 I was posted as ASI in Spl. Staff, North West District, Delhi. On 5.12.1989 I had left Delhi for Khagariya alongwith two constables and one Sanjay, the CHACHA of Rajesh. We had gone there to arrest accused Munna. We had stayed in Pal Restaurant in Khagariya. The manager of the restaurant gave to Sanjay a letter which had been delivered to him by a rikshaw puller. I had gone through the contents of the letter. The letter is Ex. P-3. The rikshaw puller was still standing outside the restaurant. I and two constables were all in civil clothes. We engaged the said rikshaw puller and one other riskshaw. We requested the rikshaw puller to take us to the person who had given the letter to him for delivery at the restaurant. The rikshaw puller said that he recognised the said person but did not know his name. We had gone to a distance of about 500 yards when the rikshaw puller pointed to accused Munna who was standing at a Khokha of Paan. Both constables over powered accused, Munna, present in Court. Sanjay identified him. We took accused Munna to the police station at Khagariya. On interrogation accused Munna disclosed that he could get his companions arrested from Delhi. He also stated that he was illiterate and that he had not committed the crime. I gave telephonic message to SHO Mangol Puri. On 7.12.1989 we left for Delhi by train alongwith Munna. I had reposed faith in Munna but he slipped away during the night."

He further states that :

"I was sent to Khagariya in connection with investigation of FIR No. 493/89, Mangolpuri. I had made entry of arrival at the local police station at Khagariya. I did not record the statement of the Manager of Pal Restaurant or the rikshaw puller who had pointed to the accused. I did not prepare personal search memo when I apprehended the accused. Accused Munna was not kept in the lock up at Khagariya. It is wrong to suggest that the custody of Munna was given to me on 7.12.1989 by the police of P.S.

Khagariya. The accused slipped away some where near Mugal Sarai. I do not know that there is a police station of GRP at every railway station. I did not make any report at the police station at Mugal Sarai regarding the escape of the accused. Sanjay was with us during the to and fro journey. I did not lodge any report at any police station in Delhi regarding the escape of accused Munna. Vol. I had informed the Senior Officers. My statement was not recorded by the IO."

It may be noticed that this witness, PW 26, Munshi Ram, was produced after the recording of the statement of the accused under Section 313, Cr.P.C. Had Ravi @ Munna escaped from custody on 7th December, 1989, Munshi Ram (PW 26) would have taken recourse to legal procedure for seeking his arrest. But nothing has been brought on record in this regard. This clearly shows that there was no escape from custody. Munshi Ram was suspended for negligence and later reinstated, as stated by him, the order suspending him has been withheld. The order would have given reasons for the suspension, if at all. Further, the superior officer to whom Munshi Ram had reported the incident of escape of Ravi @ Munna has not been examined nor has any member of the arresting party which went to Khagariya and took Ravi @ Munna into custody been examined. The withholding of material evidence must give benefit to the accused.

26. Next, it was contended by learned Counsel for the appellant that the evidence of Chunni Lal which was pressed into service to establish the last seen theory is most unreliable the same was a deliberate introduction, which smacks of unfairness on the part of prosecution. Chunni Lal (PW 17) had stated :

"I had seen Rajesh for the last time on 21.11.1989 at about 1 p.m. while he was in the company of all the three accused present in Court in the Gali."

"My statement was recorded on the day when the dead body was recovered."

He further states :

"Even before the recovery of dead body Ram Narain had met me and he had told me that his son was missing. I had told Ram Narain that I had seen his son in the company of the accused persons. Ram Narain did not take me to police station for having my statement recorded."

27. He also invited our attention to the statement of DW 1 to show that it was not possible for Chunni Lal to have seen Rajesh in the company of the accused persons on 21st November, 1989 at about 1.00 p.m. The statement of DW 1 to the extent it is relevant reads as follows :

"I have brought the admission register for the period 9.5.1984 to 12.4.1988. Rajesh Kumar, s/o Ram Narain was admitted to class 6th 'H' on 9.4.1988 *vide* admission No. 1021. The date of birth of Rajesh Kumar as per record was 3.9.1977.

I have also brought the attendance register of Class 7th B for November, 1989. As per this register Rajesh Kumar was present in first meeting as well as second meeting on 21.11.1989. It was election holiday on 22.11.1989. The school timings for boys was from 1.00 p.m. to 6.00 p.m."

28. From the above, it is clear that Chunni Lal is a propped up witness with no credibility, and his statement stands belied by documentary evidence.

29. Learned Counsel has further contended that it was essential to prove "Homicidal death" before conviction under Section 302, IPC can be recorded. He has

drawn our attention to PW 1, Dr. L.T. Ramani, who performed the post mortem. He stated :

"In my opinion no definite opinion can be given regarding cause of death as Exs. 1 and P-2 (Viscera and Blood) show negative test of common poison, there was no obvious external injury on the body and body was in advance stage of decomposition."

"There was no obvious external injury mark or violence anywhere on the body. Internal examination reveals as follows :

"Scalp tissues were decomposed. Scale bones were intact. Brain was liquified and was grey in colour. Net structures were decomposed. Hybid bone and thyroid cartilage were intact/Tracheal Mucosa was decomposed. Rears were intact. Lungs and heart were decomposed. Stomach contained about 2 oz. of semi digested food. Few ground nuts and some seeds resembling Kheera seeds to be identified in the stomach contents. No typical smell was detected in the stomach contents. Other abdominal organs were decomposed."

30. Thus it is clear that the Doctor was unable to give any opinion with regard to the cause of death. He should have sent the body to an Anatomy Expert. The accused cannot be made to suffer because of that omission on the part of the Doctor. If there is any gap or lacuna in the prosecution evidence, the accused and not the prosecution would be entitled to get benefit of that.

31. Learned Counsel has contended that there is no evidence on record to show as to at what point of time the body was buried, if at all, in the house and that there is no evidence to show that this act was done by the accused. There is also no evidence to show that the appellants were in physical possession of the house at the time when the body was buried therein. He states that for the purpose of showing possession, the prosecution has relied upon the rent receipts (Ex. P-5/A and Ex. P-5/B). These rent receipts have been deposed to by Sudarshan Kumar (PW 5) who states :

"I am owner of House Nos. G-302 & 303, Mangolpuri. On 18.10.1989 I let out both the houses to Ravi and Chandrika, accused present in Court, on rent. I issued rent receipts Ex. PW 5/A and Ex. PW 5/B in respect of the rent received from the said accused persons. Both the receipts are in my hand and bears my signatures. I gave these receipts to both the said accused. The accused then disappeared. No rent receipt was issued in December, 1989."

32. He points out that no counterfoils have been produced nor is there any evidence on record to show that there was a practice of issuing rent receipts in the normal course of letting out, either prior, to letting out to the accused or subsequent thereto. Neighbours have not been produced to show that the appellants were in possession of the house in question at the relevant time. It was pointed out that these houses are built on 25 yards plot in a high density population area. Even otherwise there is nothing to show, which, of the accused was in possession of House No. G-303 as there are two houses, namely G-302 and G-303. Therefore, except for PW 5/A and PW 5/B which are the purported rent receipts, there is no other evidence to establish that the appellants were in possession of the premises at the time when the body was placed under the floor of the premises G-303, Mangolpuri. The rent receipts cannot establish

that the appellants remained in possession of the house till December, 1989. The landlord (PW 5) does not say that he had actually seen the appellants during the months of November, 1989 and December, 1989 in the premises in question.

33. It may not be out of place here to mention that Duleshwar has been acquitted and no appeal has been preferred against his acquittal. It was at his pointing out that the body was recovered. His presence having been disbelieved by the Trial Court, leaves a void as to how the prosecution came to recover the body from House No. G-303, Mangolpuri on 11th December, 1989.

34. Though it is admitted that accused-Chandrika stayed in House Nos. G-302 and G-303, Mangolpuri, till 3rd December, 1989 and Ravi @ Munna had left sometime in November, 1989, no evidence has been adduced by the prosecution to show that the appellants stayed in the houses in question after the said dates. Besides, mere recovery of the stray articles from the premises in question cannot lead to the inference of possession of the appellants at the relevant time.

35. In this case Duleshwar, having been acquitted, and the manner in which the recovery has been affected throws considerable doubt on the factum of recovery of the body from House No. G-303, Mangolpuri. We may also point out here that there is no charge framed and no conviction recorded for offence under Section 201, IPC. (See *Sukhwinder Singh and Others v. State of Punjab*, 1994 SCC (Crl.) 1376-II (1994) CCR 531 (SC)).

36. Learned Counsel has further contended that no sane person would keep a dead body in his house buried and also live in the same house. Another aspect of the matter to which our attention has been drawn is the fact that the purported disclosure statement of Duleshwar (Ex. PW 7/C) was recorded at House No. G-303, Mangolpuri. This is stated by PW 7, who states as follows :

"Disclosure statement of Duleshwar Ex. PW 7/C was recorded at G-303. I do not remember if police had called anybody from the nearby houses before recording the disclosure. Before breaking the lock of House No. G-303 disclosure of Duleshwar was recorded. I do not remember if police enquired from any neighbours as to the owner/occupier of House No. G-303. I cannot give the make of the lock which was broken nor can I say whether it was of brass or iron nor the shape nor the item with which it was broken. That item was procured from some nearby place but I cannot say from where nor I can say who brought the same."

37. From the above statement it appears to us that the police already knew the place where the body was lying and that the disclosure statement itself was nothing more than an eye-wash, therefore, the recovery of the body from House No. G-303, is doubtful.

38. Another aspect of the matter which was brought out in the application dated 3rd March, 1997 by the accused, Ravi @ Munna and highlighted by the learned Counsel for the accused, is that the keys of the house were given to Nirmala (PW 25) and Sanjay who were at that time residing with him. The said application forms part of 313 statement. It was submitted that the prosecution has not cared to controvert the same and, therefore, ought to be taken as correct. This, we are afraid, is not correct appreciation of law. A defence, if taken, must be proved. Mere *ipse dixit* cannot be a substitute.

39. Learned Counsel has drawn our attention to Ex. PW 15/A, which is a report of the crime team which assisted in the investigation. The report mentions articles seized by the Investigating Officer, namely, one school bag of the deceased with books and note books, cement bag, mortar of newly constructed floor, mortar of the old floor, chappals of the deceased and ransom letters. Emphasis at this point is made on the ransom letter. He has contended that the seizure memo (PW 7/E) prepared by the Investigating Officer makes no mention of this item, namely, the ransom note. The absence of the ransom letter in the Investigating Officer's recovery Memo is deliberate as the original ransom letter, has wilfully been, withheld, so as to substitute it at a later point of time and also no investigation was made as to whom it was addressed and by whom that ransom letter was written. The Investigating Officer, deliberately, did not pick up finger prints from the premises and this has led to an unfair investigation. He has also, strenuously, argued that even the digging of the floor, to place the body under ground, has not been noticed by the neighbours in the locality, which is a thickly populated one having small house of 25 sq. yards with adjacent walls joining each other. From the recovery memos there is nothing to show that there was any wool, for knitting sweaters or any other article which suggests the physical and exclusive possession of the appellant at the relevant time. On the contrary, the absence of these articles suggests that the appellants were not, in fact, in physical and exclusive possession of the House Nos. G-302 and G-303, Mangolpuri at the time of placing the body nor at the time of recovery.

40. The next point of attack by learned Counsel for the appellant is the recovery of letters (Ex. PW 1, PW 2 and PW 3) as also the audio cassettes (Ex. P-14 and P-15). Learned Counsel has contended that if the accused, Ravi @ Munna, was in the police custody on 7th December, 1989 till 16th January, 1990 and letters received by PW 10 on 16th December, 1989 and 8th January, 1990 which letters were handed over to PW 12 only on 8th January, 1990 for the first time, would coincide with the period during which the accused was in custody. He argued that no worthwhile explanation has come from PW 10, who had received the first, so-called, ransom note on 16th December, 1989, for not handing it to the Investigating Officer on that day. This was probably the only relevant material at that time. The case put up by the accused in his 313 statement, as also the application dated 3rd March, 1997 is that he was kept by the Delhi Police in a secluded place, where he was made to write several letters over and over again, at the instance of the police as also the complainant and, therefore, finally letters Ex. P-1, Ex. P-2 and Ex. P-3 were created as evidence against him to implicate him in the present case. He contended that since the defence has proved that the appellant, Ravi @ Munna, was in their custody from 7th December, 1989 till 16th January, 1990, the letters (Exs. P-1, P-2 and P-3) as also Ex. P-4, cannot be taken into consideration as incriminating evidence against the appellants.

41. The examination of Munshi Ram (PW 26) after the closure of the defence case does not carry the prosecution's case any further, for the reason, that the prosecution's case, as brought out by the Investigating Officer, would then stand contradicted. The Investigating Officer had been put the question regarding arrest of the appellant, Ravi @ Munna, on 7th December, 1989 which the Investigating Officer firmly denied. Therefore, the explanation given by Munshi Ram (PW 26) cannot buttress the prosecution case. In any event of the matter, once the defence has been able to establish from the daily diary entries of the Bihar Police that custody was given to the Delhi Police on

7th December, 1989 which fact has been withheld by the Investigating Officer, cannot be allowed to be rebutted by way of filling up lacunas in the prosecution's case with the introduction of Munshi Ram (PW 26). Such an attempt would be grossly unfair to the accused and, therefore, ought not to have been allowed specially when Munshi Ram was neither cited as a witness nor any statement was recorded under Section 161, Cr.P.C.

42. Another aspect to which our attention has been drawn is Ex. PW 3, which is stated to be another letter by the accused, Ravi @ Munna. The prosecution apparently has not been able to show as to who gave Ex. PW 3 to the Investigating Officer. It is only PW 26, Munshi Ram, who mentions that Ex. P-3 was given to him by the Manager of Pal Restaurant at Khagariya. Surprisingly, there is no seizure memo prepared nor has the statement of the Manager of Pal Restaurant been recorded during investigation. As a matter of fact, this does not find mention in the charge-sheet under Section 173, Cr.P.C.

43. While through the record, we have also noticed that Ex. P-1, Ex. P-2 as also Ex. P-3 were never sealed by the Investigating Officer during investigation and it can, therefore, be legitimately argued that these letters were capable of being changed at any stage. The learned Counsel attacks the use of Ex. P-14 and Ex. P-15, the audio cassettes, which are supposed to be recording, of telephonic messages of Ravi @ Munna. The voice in these cassettes has been identified by PW 6, Rajinder Kumar. PW 6, was examined on 11th February, 1994, when he states that he knew Ravi @ Munna for the last one year before the incident and that Ravi @ Munna demanded ransom from Shri Ram Narain on telephone and that the voice was taped in a cassette. He states that he had heard the tape and recognised the voice of Ravi @ Munna. In his cross-examination this witness states :

"I did not tell telephone number to the police on which the information was received for ransom as it was not asked. Ram Narain had not told me the date on which he had received telephone. I did not recognise the voice of the tape before any Magistrate. Even today the tape was not played. I did not possess any letter written by Munna with me.

"My statement was recorded by the police twice, on 6.12.1989 and 11.12.1989. It is incorrect that I am deposing falsely on account of relationship with deceased."

44. This witness, it appears, was again called on 16th December, 1996 nearly two-and-a-half years later when the cassettes were played to him in the Court and he recognised the voice of Ravi @ Munna. In his cross-examination he states that "the cassette was recorded by my brother-in-law, Ram Narain. The cassette was recorded in the last week of November, 1989 or first week of December, 1989. I do not remember the date." He further states : "the cassette was handed over to the police as soon as the conversation was tape recorded. I do not remember the dates. I was not asked to identify the voice of the cassettes, Ex. PW 6/A, Ex. PW 6/B pertaining to the business dealings between myself and Ravi @ Munna. Vol. We had no documents. Police recorded my statement regarding the cassettes in the first week of December, 1989." Recovery memo of audio cassette is dated 11th December, 1989.

45. We may observe that this witness was not a party to the so-called telephonic conversation contained in the above cassettes. PW 7, Puranmal as also PW 10, Ram Narain, who are identified by PW 6 to have recorded the conversation do not mention

anything about the recording of the conversation in these audio cassettes. Thus the evidence of PW 6 would be in the nature of hearsay. Moreover, no specimen voice of Ravi @ Munna was recorded nor was the same sent for comparison to an expert. Therefore, mere *ipse dixit* of PW 6, Rajinder Kumar, cannot be taken as substantive evidence to prove the voice of Ravi @ Munna recorded in the audio cassettes. There is also, therefore, nothing on record, by way of evidence, to suggest that other voices contained in the audio cassettes were that of PW 10, his wife or for that matter any other person. It may be pertinent to note that the cassettes were seized on 11th December, 1989, i.e. the date of recovery of the body. They were handed over to the police by Puran Mal, PW 7 at House No. G-303, Mangolpuri. If that be so, then the statement of PW 6, Rajinder Kumar, to the effect that the cassettes were handed over to the police as soon as the conversation was recorded would only go to show that the conversation was recorded on 11th December, 1989. The telephone was kept under surveillance has also been brought to our notice. There is no evidence to show as to what was the source of the telephone conversation, namely, was it from Delhi or from outside Delhi. Also no recording has been done by the telephone department which had kept this telephone under surveillance.

46. What, therefore, emerges is that PW 7 carried the cassettes alongwith him during the recovery of the dead body at House No. G-303, Mangolpuri and handed them over to the Investigating Officer (PW 21) at the spot. Prior to this time, there is no disclosure to the Investigating Officer of Ravi @ Munna as being the author of the telephonic calls even though PW 6, Rajinder Kumar, states that he heard the cassettes earlier and recognised the voice of Ravi @ Munna. If Ravi @ Munna was in custody from 7th December, 1989, the surfacing of the cassettes for the first time on 11th December, 1989 coupled with the statement that the cassettes were handed over to the police as soon as the conversation was taped recorded, would throw considerable doubt on their veracity.

47. Learned Counsel for the appellant has laid considerable stress on the fact that during the trial proceedings, Chandrika was unrepresented. He has painstakingly taken us through the order sheets of the Court where it shows that Mr. V.B. Sharma, Advocate, was appointed as *Amicus Curiae* for Ravi @ Munna while Mr. J.K. Sinha was appointed as *Amicus Curiae* for Chandrika. Mr. Sinha withdrew and was replaced by Mr. Anil Walia, Advocate, *vide* order dated 13th May, 1991. Mr. Walia, however, stopped attending the proceedings and, therefore, Chandrika was not represented. Moreover, Mr. Sharma, who was appointed for Ravi also stopped appearing and was then replaced by Smt. Sadhna Bhatia as *Amicus Curiae* for Ravi. It appears that no *Amicus Curiae* was appointed for Chandrika. Therefore, from 22nd October, 1991 onwards till the end of the trial, Chandrika remained unrepresented. Therefore, the statements of PW 5 and PW 26 recorded during the time when the accused remained unrepresented would clearly vitiate the trial. The learned Counsel has placed reliance on the decision of the Supreme Court in the case of *Suk Das and Another v. Union Territory of Arunachal Pradesh*, AIR 1986 SC 1991 as also *Sagir Ahmad v. State*, 1998 (1) Ch.L.R. 452. He has, therefore, contended that grave prejudice has been caused to the accused inasmuch, as he was not effectively represented. Further it is contended that on 3rd March, 1997 even Ravi stated before the Court that he has lost confidence in his Counsel, for the reason, that she was not heeding to his line of defence nor consulting him for the purpose of cross-examination. Despite this protest the Court continued the same

Amicus Curiae and proceeded to record the statement of PW 25, Nirmala Devi as also PW 26, Munshi Ram and also further cross-examined PW 21 on 10th April, 1997.

48. It was submitted that the plea of defence taken in the letter dated 3rd March, 1997 has not been effectively developed, namely, that PW 25, Nirmala Devi had developed illicit relations with Chandrika. Also PW 7 and PW 10 had disowned Sanjay, therefore, both Nirmala and Sanjay were living in the House No G-303, Mangolpuri on which account PW 7 and PW 10 nursed a grudge against the appellants for having given shelter. It was also the case of Ravi @ Munna that the keys of the said house was in the possession of PW 25, Nirmala Devi, and Sanjay, this has not been put to PW 25 for the reason that he was not effectively represented at that point of time. However, PW 25, admits that Sanjay was disowned by his brother two months prior to the incident. The learned Counsel wants us to infer that even Nirmala Devi was deserted by her husband and was not living with him, therefore, it cannot be said that only the appellant and nobody else was in occupation of the house.

49. The learned Counsel has strenuously argued that these witnesses, namely, Nirmala Devi as also Sanjay were withheld by the prosecution for eight years on the plea that they were not traceable though they are sister and brother of PW 7 and PW 10. He has further drawn our attention to the endorsement made by PW 7 and PW 10 to the effect that they have severed relations with PW 25 and Sanjay, on the summons that were sent for procuring the presence of Nirmala and Sanjay by the Court. These reports on the summons as well as the statement of PW 7 and PW 10 prove the plea taken by Munna in his application dated 3rd March, 1997 regarding the relationship of Nirmala Devi and Sanjay.

50. Besides, therefore, pleading prejudice the learned Counsel has strenuously argued that the investigation has been unfair, tainted, selfish and most condemnable. He has contended that the prosecution has miserably failed to bring home the guilt of the appellants, Ravi and Chandrika.

51. In any view of the matter as regards Chandrika, the only evidence which is sought to be pressed into service is, that he too was, in joint tenancy of the premises from where the recovery of the dead body is stated to have been effected.

52. It is well settled that when a case rests entirely on circumstantial evidence, such evidence must satisfy the three tests. Firstly, the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established. Secondly, those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused. Thirdly, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probabilities the crime was committed by the accused and none else. That is to say, the circumstances should be incapable of explanation on any reasonable hypothesis save that of the accused's guilt.

53. Let us see whether these conditions were fulfilled in this case. The circumstances that the deceased was last seen in the company of the accused by Chunni Lal, PW 17, has not been clearly established. According to Chunni Lal, PW 17, he had seen Rajesh on 21st November, 1989 at about 1.00 p.m. in the company of all the three accused present in Court in the Gali. He states that this information was given for the first time to the police on the day of recovery of the body i.e. on 11th December, 1989. What

prevented this witness from informing the police earlier when hunt for the missing Rajesh was on, is not explained. He says he had informed Ram Narain. On the other hand, Ram Narain does not support this. This witness is belied by DW 1, S.K. Dhayia who brought the attendance register of class 7th 'B' for November, 1989 wherein Rajesh was shown present in the first meeting as well as second meeting on 21st November, 1989. The school timings of boys were from 1.00 p.m. to 6.00 p.m. The child, Rajesh, therefore, having attended the school on that day could not have been said to be last seen with the accused persons. Further, this witness has not been relied upon by the Trial Court which has given cogent reasons for discarding him.

54. Next link in chain of circumstances is the recovery of the body at the instance of Duleshwar from premises No. G-303, Mangolpuri which is alleged to be in the possession of the appellants. This circumstance is not clinching, for the reasons that the only evidence sought to be produced by the prosecution are the rent receipts showing the premises taken on rent by the two accused. There is no evidence to show that the accused persons were in possession at the time when the body is purported to have been buried in the House No. G-303, Mangolpuri. No person from the neighbourhood has been examined specially when the defence has categorically stated that Ravi @ Munna was in possession only upto November, 1989 and Chandrika upto 3rd December, 1989. It was incumbent upon the prosecution to show, the time, when the body was placed in the premises. Merely relying upon rent receipts would not be enough. Moreover, the rent receipts allegedly recovered from the premises have not been corroborated with the aid of counterfoils, which ordinarily bear signatures of the tenant. There is also nothing on record to show the practice of issuing rent receipts by the landlord before or after issuing of the present two rent receipts.

55. The attempt on the part of the prosecution to prove that the death having occurred about three weeks from the date of post mortem does not fix the date of burial of the body which should have been got proved by referring the body to an Anatomy Expert. Even here the presence of semi-digested food in the stomach creates doubt about the time of death deposed to by the Doctor. Therefore, the prosecution has left a void in their evidence by not clinching the issue of either physical possession of the premises or the time when the body was buried in the ground nor the time of burial. The Investigating Officer has stated that Ravi was arrested by him from Gaya (Bihar) on 16th January, 1990. He has denied that Ravi was ever arrested on 7th December, 1989 by Munshi Ram (PW 26). This witness, Munshi Ram, (PW 26) who was pressed into service after the close of the 313, Cr.P.C. statement by the accused stated that Ravi was arrested and custody taken from Bihar Police on 7th December, 1989. He was tendered into evidence in a clumsy move to demolish the defence version and has introduced the escape theory. This inspires no confidence in view of the material on record which has already been referred to while noticing the case of the defence and need not be repeated here. We, therefore, hold that the prosecution has failed to prove that Ravi @ Munna was arrested on 16th January, 1990 for the first time and that he was not in custody from 7th December, 1989. There is credible evidence placed on record by the defence to the effect that Ravi was arrested on 7th December, 1989. Once the arrest of Ravi is believed to be on 7th December, 1989 the entire case of the prosecution crumbles. The introduction of ransom note, the telephonic conversation and recording thereof both would be of no avail in furthering the prosecution's case. Even otherwise conversation between Ravi and members of the family of the deceased recorded cannot be relied

upon. It is settled law that rendering a tape recorded conversation can be legal evidence by way of corroborating the statement of a person who deposes that the other speaker and he carried on with the conversation or even of the statement of a person who deposes that he overheard the conversation between the two persons and what they actually stated had been tape-recorded. The tape-recorded conversation can only be used as corroborative evidence of such conversation deposed to by any of the parties to the conversation. In the instant case, there is absence of such evidence, therefore, the tape-recorded conversation is indeed no evidence and cannot be relied upon. The Supreme Court in *Mahavir Prasad Verma v. Surinder Kaur*, AIR 1982 SC 1043 has held: "tape-recorded conversation can only be relied upon as corroborative evidence of conversation deposed to by any of the parties to the conversation and in the absence of evidence of any such conversation, the tape-recorded conversation is indeed no proper evidence and cannot be relied upon.

Lastly, before parting with this case, we would like to point out that appointment of Counsel at State expense who represent an unrepresented accused during the criminal trial is not an ideal formality. It is a right enshrined under Article 21 of the Constitution, violation of which would render the trial bad and vitiated. In this case there appears to have been some lapse. The Trial Court continued the recording of evidence even after no-confidence had been expressed by Ravi in his Counsel while Chandrika remained unrepresented. A valuable right in cross-examining PW 25 has been lost to the accused which could have gravely prejudiced the case of the accused.

56. No actual act is attributed to Chandrika. There is no proof of planning or conspiracy or execution thereof. The ingredients necessary to attract Section 120-B, IPC are not made out. Therefore, Chandrika cannot be convicted under Section 302, IPC simplicitor nor with the aid of Sections 34, 120-B, IPC nor for that matter any of the offences charged.

57. After examining the entire evidence and the circumstances of this case we are unable to affirm the conviction of the appellants on the evidence produced before us. The prosecution has not been able to establish the charges against the accused beyond reasonable doubt. The chain of event required to prove the hypothesis in this case is miserably incomplete. We, therefore, give the benefit of reasonable doubt to the accused and acquit them of all charges. The appeals of the appellants are allowed. The judgment and order of the Additional Sessions Judge dated 7th June, 1997 in Sessions Case No. 125 of 1990 is set aside. The appellants, if not wanted in any other case, shall be released from custody forthwith. The Murder Reference stands answered accordingly.

*Appeals allowed.
Murder Reference answered accordingly.*
