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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 01.03.2023

Decided on: 16.05.2023

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CRL.A. 91/2019

DEV SHARAN

..... Appellant

Represented by: Mr. B. Badrinath, Advocate
(DHCLSC) with Mr. Dhruv Bhardwaj
and Mr. Rajesh Raj, Advocates

versus

STATE

..... Respondent

Represented by: Mr. Prithu Garg, APP for the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J :-

1.0 Vide this appeal, the appellant is assailing the judgment dated 30.10.2018 ('**impugned judgment**' in short) passed by Ld. ASJ (Pilot Court), West District, Tis Hazari Courts, Delhi, whereby the appellant was convicted under Sections 363/302 of The Indian Penal Code, 1860 ('**IPC**' in short) for kidnapping and murder of Radhika in FIR no. 793/2016, Police Station Rannhola ; and order on sentence dated 30.10.2018, whereby the appellant was sentenced to undergo imprisonment for life under Section 302 IPC with fine of Rs. 10,000/-, in default to undergo simple imprisonment for six months; and further to undergo rigorous imprisonment for seven years

for the offence under Section 363 IPC with fine of Rs. 5,000/-, in default of payment of fine to undergo simple imprisonment for six months.

2.0 Briefly stating, case of the prosecution is that, on 24.10.2016, ASI Manraj (PW-13) through telephone informed PS Ranhola that caller vide phone 7011548300 informed that at Mohan Garden-5, Gandhi Chowk, one person is beating a two year old girl who has got injured and has become unconscious. Said information was reduced into writing vide DD no. 26A (Ex. PX1), which was handed over to SI Praveen Kumar (PW-19) for necessary action, who along with HC Parminder (PW-17) and Ct. Rajiv (PW-15) left for the spot. On reaching the spot i.e., Santoshi Mata Mandir, Plot no. 181, Gali no. 5, Sector-2, Sainik Enclave, Mohan Garden, broken pieces of bangles and one Topaz blade were found lying near the staircase of the temple and one blood stain was noticed on the cement lid of the gutter. At the spot, one Ashok Kumar (PW-1) produced the appellant/accused before SI Praveen Kumar (PW-19) stating that *“isi shaksh ne ladki ko mandir ki podiyo par patak-patak ke mara tha, jise uski maa hospital le gyi hai”*. SI Praveen Kumar (PW-19) called Mobile crime team. In the meanwhile, another information was received by duty officer PS Ranhola that one girl Radhika D/o Pappu, aged about 1-1/2 has been declared brought dead vide MLC no. 10628/16 at DDU Hospital. On receipt of the said information, SI Praveen Kumar left for the hospital and collected the MLC of the deceased (Ex. P7), vide which the patient had been declared brought dead at 1 pm. The body had already been shifted to mortuary and in the mortuary, parents of the deceased i.e. Pappu Kumar (PW-3), Rama Devi (PW-2, who claimed to be the eye witness) and other relatives met.

Thereafter, SI Praveen Kumar (PW-19) along with parents of the deceased returned to the spot, got the same inspected and photographed through crime team officials SI Devender Singh (PW-9) and Ct. Satish (PW-8) and photographs (Ex. PW-2/D1 to Ex. PW-2/D6 and Ex. PW-8/A1 to Ex. PW-8/A6) were taken and crime team report (Ex. PW-9/A) was furnished. Thereafter, PW-19 recorded the statement of PW-2 Smt. Rama Devi (Ex. PW-2/A) in the presence of her husband (PW-3). On the basis of the said statement, PW-19 SI Parveen Kumar prepared rukka (Ex. PW-19/A) and got the FIR (Ex. PX-3) registered. Thereafter, further investigation was taken up by Ins. Subhash Malik, SHO PS Ranhola, (PW-18) who also reached there. Site plan of the place of occurrence (Ex. PW-18/A) was got prepared and exhibits i.e. pieces of broken bangles [Ex. P-1 (colly)], one topaz blade (Ex. P-2) and blood stained concrete (Ex. P-3), were lifted, sealed and seized vide seizure memos Ex. PW-17/A to Ex. PW-17/C, respectively. Statements of the witnesses were recorded. The appellant/accused was arrested in the matter vide arrest memo Ex. PW-2/B and his disclosure statement Ex. PW-17/E was recorded. The appellant/accused was got medically examined. On 25.10.2016, post-mortem of the body of the deceased was got conducted vide postmortem report (Ex. PW-14/A) and thereafter, the body was handed over to the relatives.

3.0 Dr. V K Ranga PW-14 who conducted post mortem of the deceased vide his report Ex. PW14/A observed and opined as under:

“P. M. No :1772/2016 Dated: 25.10.2016

FIR No. : 793/16 Dated: 24.10.2016

Dead body of: Radhika, Age: 1 year 4 months, Sex Female,

D/o: Pappu Kumar

Address: H. No. 130/3, Gali No. 6, Sec-11, Sainik Enclave, Mohan Garden, Uttam Nagar, New Delhi.

Date & Hour of Receipt of inquest papers: 25.10.2016 at 12:10 PM

Date & Hour of Starting Autopsy: 25.10.2016 at 12:25 PM

Autopsy completed: 25.10.2016 at 01:45 PM

BRIEF HISTORY (As per inquest Papers): *Alleged history of deceased that she was brought to DDU Hospital 24.10.2016 at 01:00 PM where she was **declared brought Dead vide MLC No. 10628/16***

GENERAL DISCRPTION

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*Clothes worn & Their Condition: **Yellow printed frock, pink sandal. (Both blood stained).***

GENERAL EXAMINATION

*Condition of eyes: Both eyes closed with **right eye black.***

*Mouth/Tongue: Partially opened **with tongue between teeth.***

Bleeding from mouth and nostrils.

EXTERNAL EXAMINATION:

External Injuries :-

- 1. **Contusion, reddish** in colour of size 16cm x 4cm present **over forehead.***
- 2. **Contusion, reddish** in colour of size-1cm x 1cm present **over inner side of lower lip.***
- 3. **Incised wound** of size 4cm x 0.2cm x 0.1cm present **over lower front of right leg.***

INTERNAL EXAMINATION

HEAD

a. Scalp /Sub scalp: Effusion of blood present overfrontal region of head.

b. Brain , Meninges & Vessels: SDH present over frontal region of cerebral hemisphere of the brain and SAH present all over the brain.

*c. Skull and Base of skull: **Fracture of both parietal bone of skull.***

ABDOMEN

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3. Stomach :

a. Contents :About 100 ml of blood mixed fluid present.

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Preserved Items:

1. Blood on gauze piece.

2. Cloths.

All exhibits sealed with seal of "PM, DDUH" and handed over to I.O concerned.

OPINION:

1. TIME SINCE DEATH: About one day prior to post mortem examination.

*2. The cause of death: Cause of death is **cranio cerebral damage consequent upon blunt force impact to the head: Injury no. 1 is sufficient to cause death in ordinary course of nature. All injuries are antemortem in nature, fresh in duration. Injury no. 1 and 2 are could be caused by blunt force impact and injury no. 3 could be caused by sharp edged weapon.***

3. The possibility of homicidal cannot be ruled out.

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3.1 Exhibits of the deceased handed over by Dr. V.K. Ranga, PW-14 were seized. On 30.11.2016, the exhibits were sent to the FSL for examination. Scaled site plan Ex. PW-10/A was got prepared through PW-10 ASI Om Prakash. On completion of investigation, charge-sheet under Sections 363/302 IPC against the appellant/accused was filed before the Court.

4.0. The prosecution in order to prove its case examined 19 witnesses.

5.0 Learned counsel for the appellant argued that the prosecution has failed to prove that the appellant/accused had caused any injury to the deceased causing her death. He submitted that there are material contradictions and inconsistencies in the testimonies of the material witnesses; they do not corroborate the version of star witness of the prosecution i.e. PW-1 with respect to sequence of the events. It was further argued that PW-1 Ashok Kumar put forth as an eye-witness by the prosecution, did not support the prosecution case and did not depose about the presence of Rama Devi PW-2 and hue and cry made by her at the time of incident. Ashok Kumar PW-1 stated that he had not seen the appellant hitting the child's head on the staircase of the mandir and he only saw that a girl was lying dead at the Mandir. It was argued that Raju PW-5, who reached the spot on hearing the noise, in his cross-examination stated that he was the first person to pick up the injured child lying at the spot and from his hands, the mother of the child (PW-2) took the girl; and this fact is corroborated by Smt. Nirjal (PW-6), who deposed that mother of the child took the child from the hands of Raju (PW-5). Hence, the statement of PW-2 Rama Devi that she attempted to snatch/snatched the child from the appellant while he was assaulting the child, cannot be believed at all, because other witnesses have stated that the child was lying on the floor near the staircase of the Mandir. Thus, from the testimonies of PW-1, PW-5 and PW-6, it is clear that PW-2 reached the spot after the incident and only saw the child lying on the floor outside the temple in an injured condition.

5.1. Ld. Counsel for the appellant further argued that PW-2's statement that the child was assaulted thrice, has not been corroborated by medical evidence/postmortem report Ex. PW-14/A, which shows one major injury and one minor injury.

5.2. Ld. Counsel for the appellant also argued that as per the testimony of PW-2, the appellant was having a blade in his hand, but said blade was not shown to/identified by PW-2 and even in FSL report Ex. PX, no blood was detected on the blade seized vide memo Ex. PW-17/B.

5.3. Ld. Counsel for the appellant argued that the prosecution has even failed to prove any motive on the part of the appellant to kill the child. Motive attributed by PW-2 to the appellant has not been corroborated by any of the other family members. He submitted that in the light of the circumstances, it is quite possible that the child received injuries while playing outside her house and on seeing this, the appellant took her to his mother, who was working at Santoshi Mata Temple, but in this process, it was mistaken that the appellant/accused caused injuries to her.

5.4 Lastly, the learned counsel for the appellant/accused made an alternate prayer that in absence of any motive, the prosecution has failed to show any intention on the part of the appellant to kill the deceased. At the most, only a knowledge can be attributed to the appellant/accused that the kind of injury caused by him may result in death. Therefore, the appellant/accused could at best be convicted under Section 304 IPC.

6.0. *Per contra*, the Learned Prosecutor argued that by way of clear and cogent testimony of PW-2, mother of the deceased, the eye witness, which is duly corroborated by Smt. Rama Devi (PW-4), Raju (PW-5) and Smt. Nirjal (PW-6), it has come on record that the appellant/accused, who was undisputedly present at the spot, committed the heinous offence. It was further argued that there are no material inconsistencies, contradictions or improvements in the testimony of PW-2 (eye-witness). From her testimony, it is clear that it was the appellant/accused, who first kidnapped the child from outside her house and took her to the narrow lane and then hit her against the staircase of the temple and caused injuries on her person, which ultimately resulted in her death. The person residing in the vicinity of the temple i.e. Raju PW-5 and Smt. Nirjal PW-6 have further given important *res gestae* evidence that the appellant/accused, who was present at the spot, was given beatings by the public for having committed the offence. Learned Prosecutor submitted that though the other eye witness PW-1 resiled from his previous statement, he proved that the appellant and PW-2 were present at the spot and the appellant was beaten by public for murdering the deceased. He even deposed that he believed that the appellant/accused had committed the offence.

6.1. Ld. Prosecutor further argued that the medical evidence/postmortem report Ex. PW14/A also corroborated the version of Smt. Rama Devi PW-2 and seizure of blade from the spot also substantiates her version that the appellant/accused was having a blade in his hand, with which he had caused an injury at the leg of the child.

6.2 Learned Prosecutor argued that the appellant has been rightly convicted under Sections 363 and 302 IPC considering the brutal manner in which the offence was committed leaving no room for modification of the appellant's conviction to one under Section 304 IPC.

7.0 We have duly considered the submissions made by both the sides.

8.0 PW-2 Smt Rama Devi, mother of the victim deposed that the appellant/accused lived in the adjacent room as a tenant in the same house in which she along with her family members including her one and four months old child/Radhika/deceased, lived. The appellant often threatened her children because of which, children never visited him. On 24.10.2016 while she was working inside her room, her daughter/the deceased went outside. On which, she also came out of the room and saw that the appellant was taking her daughter and when she came out, he started running towards the narrow lane. She also ran after him but fell down. In the meantime, the appellant inflicted injury on her daughter's leg with blade. By the time she could reach near the appellant, he took her to *Santoshi Mata Mandir* and hit her head on the third step of the *mandir* holding her by legs; and when she reached, he again hit her head on the staircase twice. She raised hue and cry on which, public persons gathered; and public person snatched her daughter from the hands of the appellant. She further stated that Ashok PW-1 was also present there arranging articles on his *rehri*. She also deposed that she made a telephone call to her sister Ram Devi and her husband, who along with two neighbours reached there. She along with her sister and neighbours took her daughter/victim to DDU hospital in a TSR, where she was declared brought

dead by the doctor and the dead body was shifted to Mortuary of the said hospital . Police also reached the hospital and in the evening her statement Ex. PW2/A was recorded in the police station. The appellant was arrested vide arrest memo Ex. PW2/B. During her deposition, PW-2 identified the frock and sandal which her daughter/deceased was wearing at the time of the incident, identity of which was not disputed by the appellant/accused. PW-2 also identified broken pieces of green colour plastic bangles which the deceased was wearing at the time of the incident.

8.1 PW-2 stood by her deposition in her cross examination. She stated that she had made a complaint to the appellant's mother about the appellant extending threat to her children and his mother had asked the appellant not to behave in such manner. She further stated that she had come out of her room on hearing the cries of her daughter and saw that the appellant was carrying her daughter in his arms and was running. She clarified that though she had fallen while chasing the appellant, she immediately stood up and ran after him; and that the appellant was visible to her throughout. She further stated that she was not able to see the appellant when he hit the head of her daughter on the staircase of the *mandir* for the first time as he was at a distance of 10-12 paces. However, when she reached near him, he again hit her daughter's head against the staircase and she had raised hue and cry. But the appellant did not stop hitting her daughter's head on the staircase and hit the same twice in front of her. He hit her head even when she was trying to snatch her from his hands. PW-1 Ashok managed to snatch her daughter from the hands of the appellant. She stated that she did not know Ashok well, but knew that he resided in the street of Santoshi Mata Mandir. She

further stated that public persons had also gathered on her making hue and cry. She could identify them but did not know their names. She stood by her version that she had seen blade in the appellant's hands but stated that she had not seen him hitting on her daughter's leg with the same. On being confronted with photographs, PW-2 identified *Santoshi Mata mandir* (Ex. PW2/D1-D5). She even pointed out the place where she had tried to snatch her daughter from the appellant in photograph Ex. PW2/D6. PW-2 categorically denied that no such incident as narrated by her, had taken place and her daughter sustained injuries due to accidental fall.

8.2 It is noteworthy that Dr. V.K Ranga PW-14 (who conducted the post mortem) in his cross examination categorically stated that the injury as severe as found in the case of the deceased is not possible due to accidental fall of a person on hard surface like marble or cement. He also denied that all the three injuries mentioned in the post mortem report were possible because of accidental fall. He also denied that injury no. 3 was possible due to accidental fall on sharp edged stairs. He even denied that the blunt force impact found in this case was due to accidental fall of the deceased.

8.2.1 It is significant to note that to PW-2 in cross examination, it was suggested by the appellant that one of her close/known neighbor had taken her daughter for playing with her permission and then she had received a call from someone informing that her daughter had fallen from the said person's hands and has sustained injuries; and on reaching that place, where she was called, she came to know from the crowd that her daughter has suffered injuries due to accidental fall and the said known person/neighbor spread the rumor that it was the appellant, who had made her daughter fall causing

injuries. These suggestions were categorically denied by PW-2. Interestingly, no such submission was made by the appellant in his statement under Section 313 Cr.P.C. While admitting his presence at the spot, he rather stated (Q.57) that the deceased had accidentally slipped from the lap of Ashok Kumar (PW-1), who was holding her and in order to divert the issue, PW-1 Ashok Kumar made a false hue and cry and falsely implicated him. Even to police official SI Praveen Kumar (PW-19), it was suggested that the real culprit Ashok Kumar was let go and the appellant/accused was falsely implicated. Whereas, no such suggestion that the deceased had fallen from the lap of PW-1 Ashok Kumar was put to PW-2, in cross examination. Significantly, even to Ashok Kumar (PW-1), against whom the aforesaid facts were alleged, no such suggestion was put in cross examination that the deceased had slipped from his lap; and that he had spread the rumor implicating the appellant. These facts expose the falsehood of the defence taken by the appellant. Taking a false defence itself adds up as an incriminating circumstance against the appellant (*Ramanand alias Nandlal Bharti V. State of Uttar Pradesh, 2022 SCC OnLIjine SC 1396* and *Sharad Biridhichand Sarada v. State of Maharashtra, (1984) 4 SCC 116*).

9.0 PW-1 Ashok Kumar, eye witness of the prosecution, deposed that he was engaged in selling ladies' cosmetics on a *rehdi*, moving in the area of Mohan Garden. He could not remember the date and month of the incident but stated that the incident had taken place when Deepawali was about to be celebrated. On that day, at about 11:45 am, when he was arranging the articles on his *rehdi* (as is also stated by PW-2 Rama Devi), he heard noise by public persons and went near *Mandir* and saw a girl lying dead at the

Mandir. He went back home as he had to pick up his children from the school. As he resiled from his previous statement, he was cross examined by the Id. Prosecutor. In his said cross examination, PW-1 stated that he knew the appellant as he lived in the same area in another *mohalla* and came to know about his name at the spot. He further stated that he had seen the appellant at about 11:45 am at the *mandir*, while public persons had caught hold of him. He also stated that he had seen the deceased in the hands of the appellant but had not seen him hitting her head on the staircase of the *mandir*. He however further stated that the appellant had killed the victim child and that he can say so as some other person had taken the victim child from the appellant's hands. PW-1 admitted that mother of the deceased (PW-2) had taken the deceased to the hospital. He was cross examined on behalf of the appellant only to the effect that he had not seen the appellant holding the victim child; and that he had no reason to state that the appellant killed the victim child, which was denied by PW-1.

9.1 Though Ashok Kumar, PW-1 did not fully support the prosecution version, he corroborated the version of PW-2 to the extent that the deceased was seen in the hands of the appellant at the aforesaid *mandir*; and on hearing public noise, he noticed the deceased lying dead at *mandir*; and that the public persons had caught hold of the appellant at the spot. He further corroborated PW-2's version that she had taken her daughter/deceased to the hospital. The fact that the deceased was taken to DDU Hospital by her mother Rama Devi PW-2, is corroborated by deceased's MLC Ex. PX-7 which records as under:

“ Date & Time: 24.10.2016; 1:05 pm

Brought by: Rama mother

...

Pt. brought to casualty in unconscious and unresponsive state with A/H/O physical assault by neighbor as told by B/by... ”

9.1.1 It is noteworthy that the appellant/accused in his statement under Section 313 Cr. P.C has admitted that PW-2 Smt. Rama Devi was residing in a tenanted room in House no. 130/3, Gali no. 6, Sector-02, Sainik Enclave, Mohan Garden, Uttam Nagar, Delhi and he was also residing in the adjacent room in the same house as tenant. He also admitted his presence at the spot at the time of incident and that the child Radhika had suffered injuries, but further stated that he was present there as he had gone there to meet his mother, who was working as a cleaner in the Santoshi Mata Mandir. He also admitted the factum of death of the deceased but stated that it happened because the deceased accidentally slipped from the lap of Ashok PW-1 who was holding her.

10.0 Testimony of PW-2 that on the happening of this incident she had called her sister who had reached, who accompanied her to DDU Hospital is further corroborated by her sister Ram Devi PW-4. PW-4 deposed that on 24.10.2016, she received a phone call from her sister Rama Devi (PW-2) that her tenant Dev Sharan has killed her daughter Radhika on which she immediately reached her sister's house at Mohan Garden where she saw her sister in the *gali* holding her daughter/the deceased in her lap who was in unconscious state and was bleeding from mouth and nose. They immediately took the deceased to DDU hospital where she was declared brought dead. PW-4 has stood by her testimony in cross examination and stated that she had reached her sister's place within five minutes. She stated that when she

reached there she saw a large crowd in *mandir wali gali* where the appellant had been caught by public persons. She also stated that she had seen the broken bangles of the deceased lying near the temple and even explained that she could identify those bangles belonging to the deceased as she had seen her (deceased) wearing them. She categorically denied that she had not visited the spot and had reached the hospital straight.

11.0 PW-2's version is further supported by Raju PW-5. PW-5 deposed that he worked as a loader at Palam Airport. On 24.10.2016 at about 11:30 am, when he was sleeping at home after finishing his night duty, he heard noise coming from the street. He woke up and went outside and saw that the appellant (duly identified in court) had been held by one Ashok, who lived in their locality at *Santoshi Mata Mandir*. The public persons gathered there were beating the appellant and the injured girl was also in front of the *mandir*. Mother of the injured girl was weeping. A woman made a call at no. 100 on which police arrived after about 10-15 minutes and the appellant was handed over to the police. PW-5 also stood by his deposition in cross examination. He stated that when he reached in front of the *mandir*, the injured child was lying on ground in front of steps of *Santoshi Mata mandir*. He also stated that he knew Ashok (PW-1) for last about 7-8 years. He even told the names of some of the persons namely Manoj, Panna Lal and Rajender, who were present in the street at that time. He categorically denied that he never visited the spot and had not seen anything.

12.0 PW-6 Nirjal, who lived in the neighbourhood, deposed that her house is in front of *Santoshi Mata Mandir*. On 24.10.2016 at about 11:30 am, she heard noise coming from the street. She went outside and saw that crowd had

gathered and public persons had apprehended the appellant/accused (duly identified). Mother of the injured child was weeping and the injured child was bleeding from nose and was unconscious. Public persons present there told her that the appellant had hit the girl at the staircase of *Santoshi Mata Mandir* and killed her. She made a call at no. 100, on which police arrived and took the appellant from there. She also heard everyone saying that Ashok (PW-1) was the first person to see the appellant/accused committing the offence. PW-6 also stood by her testimony in cross examination. She stated that she came to know about the mother of the injured child as she was badly crying taking the name of the child. She also stated that mostly people of the street were present whom she can identify by their faces but do not know their names. She also stated that she had made a call at no. 100 from her mobile. She further stated that she had seen wife of Bhure holding the collar of the appellant who was held/caught by several other persons. She further stated that by the time police arrived, the injured child had been taken to hospital by her mother and other relatives.

13.0 In view of the fact that PW-1, PW-4, PW-5 and PW-6 have been examined by the prosecution, the contention of the learned counsel for the appellant that no public person who was present at the spot has been produced/examined by the prosecution, is bereft of any merit.

14.0 Version of PW-2 and PW-1 about presence of PW-1 at the spot also finds corroboration in the testimony of PW-13 ASI Manraj. He deposed that on 24.10.2016 at about 11:40 am, PCR call recorded vide DD no. 30A (Ex. PX-2) was received mentioning that at Mohan Garden, Gandhi Chowk, one person is beating two years old girl who is unconscious and injured. He went

to the spot and came to know that the injured had already been removed to DDU hospital by her mother. Public persons had caught hold of the appellant (duly identified), who was handed over to him stating that he had hit the girl child on the ground two-three times at the staircase of *mandir* of *Santoshi Mata* inflicting grave injuries to her. As the place of occurrence fell under the jurisdiction of PS Ranhola, he transferred the call to PS Ranhola from where, SI Praveen Kumar (PW-19) arrived at the spot along with his staff. He handed over the appellant to him. He stood by his version in cross examination. He stated that when he reached the spot, one public person namely Ashok (PW-1) had told him about the incident and had produced the appellant to him. His testimony is corroborated by the contents of DD no. 26A (Ex. PX-1) which records “Mohan Garden *gali* no.5, Gandhi Chowk *ek admi do saal ki ladki ko maar peet kar raha hai jo behosh ho gai jo injured hai*”

15.0 Testimony of PW-13 is corroborated by PW-19 SI Praveen Kumar. PW-19 deposed about receipt of DD no. 26A (Ex. PX1) at PS Ranhola on 24.10.2016. On which, he along with HC Parminder (PW-17) and Ct. Rajiv (PW-15) reached the spot i.e., *Santoshi Mata Mandir*, Plot no. 181, gali no. 5 Sector 2 Sainik Enclave Mohan Garden, Delhi where besides public persons, ASI Manraj of PS Uttam Nagar (PW-13) was present. He also deposed that PW-13 informed that the injured had been taken to hospital and one public person Ashok (PW-1) has caught the appellant, who was then handed over to them. On enquiry, said Ashok (PW-1) informed that the appellant had killed the two year old girl. He also deposed that at the spot near the staircase of the *mandir*, one shaving blade make Topaz, pieces of broken plastic bangle of

green colour and blood stain was found. After making enquiry about the girl's residence, he visited their house which was found locked. In the meantime, he received telephonic information about DD no. 30A (Ex. PX2) that the injured girl, who was taken to DDU hospital was reported to be brought dead. Leaving the staff behind, he proceeded to DDU Hospital while informing the mobile crime team to reach the spot. He obtained MLC of the deceased and came to know that she had been shifted to mortuary of DDU Hospital.

15.1 PW-19 further deposed that at the mortuary, mother of the deceased Rama Devi (PW-2) was found to be an eye witness of the occurrence and accordingly, her statement (Ex PW2/A) was recorded, on which rukka was prepared and FIR no.793/16 under Sections 363/302 IPC (Ex. PX-3) was got registered. Mobile crime team after inspection provided scene of crime report and also took photographs of the place of occurrence. Whereafter, he handed over the documents to SHO Inspector Subhash Malik/IO (PW-18). IO seized pieces of broken bangles, blade, blood stained earth and earth control from the spot vide seizure memos Ex. PW17/A, PW17/B and PW17/C, respectively. Site plan of the place of occurrence (Ex. PW18/A) was prepared. Accused was got medically examined and his disclosure statement (Ex. PW17/E) was recorded. Statement of witnesses was recorded. On 25.10.2016, post mortem examination of the deceased was got conducted at mortuary of DDU Hospital. After post mortem, the concerned doctor handed over to him, sealed pullandas containing blood in gauze and clothes of the deceased which were seized vide seizure memo PW 16/A . The exhibits were deposited in malkhana.

15.2 In his cross examination, PW-19 categorically denied that Ashok (PW-1) had not stated anything on enquiry and had rather told that he did not know anything about the incident. He also denied that the appellant had informed that the girl child had fallen accidentally from the lap of Ashok. Nothing could be extracted in cross examination of PW-19 to discredit his testimony.

16.0 PW-18 Subhash Malik, the Investigating Officer testified on the same lines as PW-19 and deposed about sealing and seizure of pieces of broken bangles (Ex. PW17/A), topaz blade (PW17/B), blood stained concrete near the staircase of *mandir* (Ex. PW17/C) and their deposit in malkhana and thereafter, sending the same to FSL Rohini. He also deposed that mobile crime team handed over scene of crime report (Ex. PW9/A), arrest of appellant/accused vide arrest memo Ex. PW2/B, recording of supplementary statement of the complainant PW-2 and statement of other witnesses getting the appellant/accused medically examined, recording of his disclosure statement (Ex. PW17/C), getting the post mortem conducted and preparation of site plan later on. PW-18 identified the exhibits in the court. PW-18's testimony also remained unshaken.

17.0 Seizure of one topaz blade from the spot by the police vide memo Ex. PW17/B further corroborates PW-2's version that she had seen a blade in the appellant's hand. Opinion rendered by Dr. V.K Ranga/PW-14 in the post mortem report (Ex. PW14/A) that injury no. 3 on the lower front of right leg could be caused by sharp edged weapon further substantiates the version of PW-2.

18.0 Vide testimony of PW-14 and the post mortem report Ex. PW14/A, it has been established that the deceased suffered head injury i.e. over her forehead and also an injury on the side of her lower lip, which is consistent with the testimony of PW-2 that the appellant had hit the deceased's head on the stairs of the temple two three times.

19.0 In view of the above evidence on record, there is hardly any merit in the appellant's contention that PW-2 was not an eye witness and that her account of assault is not corroborated by medical evidence.

20.0 Learned counsel for the appellant argued that the depositions of PW-1, PW-5 and PW-6 do not corroborate the sequence of events as given by PW-2. He submitted that as per PW-5 Raju, he was the first person to pick up injured child from the spot and PW-2 had taken the child from his hands. Even PW-6 Nirjal deposed that the child was taken by PW-2 from the hands of PW-5. Whereas, PW-2 Rama Devi herself stated that she attempted to snatch/snatched the child from the hands of the appellant. This material inconsistency creates serious doubt about the PW-2's version. Suffice it to state that in view of the evidence which has come on record, testimony of PW-2 cannot be discarded in the light of the minor discrepancy pointed out in the aforesaid witnesses' account, by the learned counsel.

21.0 Learned counsel for the appellant also argued that the prosecution has failed to prove any motive on the part of the appellant to kill the deceased except a bald allegation of PW-2 in her deposition that the appellant used to threaten her children, which has remained uncorroborated. Learned counsel submitted that rather, PW-4 (sister of PW-2) in her cross examination has

stated that she was never told by PW-2 about any quarrel between her and the appellant; and that to her knowledge, PW-2 had no problem with the appellant. Suffice it to state that non proving of motive on the part of the appellant is not always fatal to the prosecution case (*Shivaji Genu Mahite vs. State of Maharashtra, (1973) 3 SCC 219* and *State of U.P. vs. Kishanpal, (2008) 16 SCC 73*). More so, in the facts of the instant case, as the prosecution has been able to prove beyond reasonable doubt that the appellant had hit the deceased, an infant, against the floor/stairs of the *mandir* causing injuries on the head and other parts.

22.0 Further, Dr. V.K Ranga (PW-14) in the post mortem report (Ex. PW-14) has opined the cause of death to be cranio cerebral damage consequent upon blunt force impact to the head; and the injury no. 1 was sufficient to cause death in ordinary course of nature.

23.0 In view of the above, the prosecution has been able to prove its case beyond reasonable doubt. Thus, we find no merit in this appeal. Appeal is accordingly dismissed.

24.0. Copy of the judgment be uploaded on the website and be sent to the Superintendent Jail for updation of record and intimation to the appellant.

(POONAM A. BAMBA)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 16, 2023/g.joshi