

\$~R-15.

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

+ CRIMINAL APPEAL No. 496/2009

Date of decision: 19th November, 2012

KULDEEP SINGH

..... Appellant

Through Mr. K.B. Andley, Sr. Advocate with
Mr. Mohd. Shamikh, Advocate.

Versus

STATE

..... Respondent

Through Mr. Sanjay Lao, APP for the State.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE S.P.GARG

SANJIV KHANNA, J. (ORAL):

The appellant-Kuldeep Singh, by the impugned judgment dated 26th March, 2009, stands convicted under Section 302 of the Indian Penal Code, 1860 (IPC, for short) for murder of his wife-Nidhi. In addition, the appellant has also been convicted, under Section 364 IPC, for abduction of the deceased. By the order of sentence, dated 31st March, 2009, under Section 302 IPC, he has been sentenced to life imprisonment and fine of Rs.50,000/-. In default of payment of fine, he is to undergo simple imprisonment for a period of one year. For the

offence under Section 364 IPC, the appellant has been sentenced to rigorous imprisonment for a period of ten years and fine of Rs.25,000/-. In default of payment of fine, the appellant is to undergo simple imprisonment for a period of six months. We may note here that the appellant and his parents, namely, Raghubir Singh and Krishna, were also tried, under Section 498A IPC, but have been acquitted by the trial court. The State or the victims have not preferred any appeal, therefore, the acquittal is not under challenge before us.

2. The appellant married Nidhi, on 24th February, 2002, and they had a girl child Ritika, on 30th November, 2002.

3. Balwant Singh (PW-6), father of Nidhi, deposed that, a month after the birth of her child, Nidhi and her daughter Ritika were brought to the deceased's parental house by her husband, Kuldeep. Thereafter, she lived with her parents. PW-6 alleged that the appellant did not take his wife and child back because of non-fulfillment of dowry demand. However, on 25th June, 2004, after about 1 ½ years, the appellant-Kuldeep came to their house and expressed his desire to take Nidhi back. Nidhi and Ritika went with the appellant, Kuldeep. On 5th July, 2004, the appellant came to visit PW-6's house with Nidhi and their daughter, Ritika. He informed PW-6 that the appellant had a dispute with his brother, Pradeep, and, consequently, he wanted to live separately. He assured that he would look for a house in Narela, Delhi,

and, thereafter, take Nidhi and Ritika to reside with him. On 9th July, 2004, at 4.30 P.M., the appellant came to their house and stayed there for about ten minutes. He took Nidhi with him, on the pretext that he wanted to show a house in Narela. He had said that he would drop Nidhi back soon, but, Nidhi did not return for next three-four days. Thereafter, with some of his relatives, and PW-6 went to the appellant-Kuldeep's house, at village Samalkha, District Panipat, Haryana. Nidhi was not found to be there. On an enquiry, from Kuldeep and his parents, they received evasive and unsatisfactory replies. This made Balwant Singh suspicious. He felt that she might have been killed, concealed, or had been made to disappear, by her in-laws. Accordingly, a complaint (vide Ex.PW-6/A) was filed to the SHO, Kanjhawala, Delhi, on 12th July, 2004 at 9.30 P.M.

4. Seema (PW-8) Nidhi's sister, made a similar statement about Nidhi's marriage to the appellant, on 24th February, 2002, and the girl child, Ritika's birth, on 30th November, 2002. She avered that, when Ritika was about one month old, the appellant-Kuldeep brought Nidhi and Ritika to Nidhi's parental house, in Delhi, and left them there stating that he could not afford to look after them. Nidhi remained with her parents, for about 1 ½ years, and nobody came to take either her or Ritika back, despite various requests. Suddenly, on 25th June, 2004, the appellant-Kuldeep came to PW-6's house, and took Nidhi

and Ritika with him to his village at Samalka. At that time the appellant had said that he had suffered a loss in his juice-shop business and was in need of Rs.50,000-60,000/-,to start a new business. On 5th July, 2004, the appellant-Kuldeep again came to Nidhi's parental house and left her and Ritika there. On 9th July, 2004, the appellant came back to PW-6's house and took Nidhi saying that he wanted to show her a house, he wanted to rent, in Narela. PW-8, who was present in the house at the time, had heard the conversation that had taken place between the appellant and her father, Balwant (PW-6). The appellant had stated that he would drop Nidhi back after a short time. PW-8 accompanied Nidhi and the appellant to the bus stand. She recollected that Nidhi was wearing a pink and white salwar suit, with a white coloured chunni and brown leather sandals. On 12th July, 2004, she had received the appellant's phone call wherein Kuldeep had stated that we would be coming to take Nidhi. PW-8 retorted that Nidhi had left with the appellant, on 9th July, 2004. On this, he did not reply and disconnected the call. PW-8 told this fact to her father and mother. In court, she identified her sister's clothes and sandals.

5. In addition to this, we have statement of Sudesh (PW-10), a neighbour of PW-6. She has stated that PW-6's eldest daughter Nidhi was married to the appellant-Kuldeep. She correctly identified Kuldeep in the court. On 9th July, 2004, at about 4.15/4.30 P.M., she

last saw Nidhi and Kuldeep walking in the street, accompanied by Seema. Thereafter, on 13th July 2004 she came to know that Nidhi had been murdered by Kuldeep. Obviously, the last statement is not admissible. She affirmed that Nidhi was staying in PW-6's house for 1 ½ years, prior to the day she saw her last, i.e. 9th July, 2004. She has stated that Nidhi used to tell her that there were some problems, in her in-laws house, regarding "give and take" (lain-dain).

6. We have examined the cross-examination of PWs 6, 8 and 10, on behalf of the appellant, and there is nothing to discredit the statements made by PWs 6, 8 and 10, that Nidhi was seen for the last time, when she had left with the appellant on 9th July, 2004. She had not returned, thereafter. PW-6 and some others visited Kuldeep's house in village at Samalka, Panipat, and on being questioned, Kuldeep could not give specific reply, about the whereabouts of Nidhi. Thus, it has been proved beyond doubt that Nidhi had left with the appellant, on 9th July, 2004. Thereafter, Nidhi was not seen and did not return to her parental house.

7. PW-6 was unable to find Nidhi, therefore, on 12th July, 2004, he made a written complaint to the Police Station, Kanjhawala (vide Ex.PW-6/A). This complaint was recorded by Sub-Inspector Hans Raj (PW-9) who affirmed that the complaint (marked Ex.PW-6/A) had been made to the SHO, Police Station Kanjawala and was, thereafter,

marked to him for necessary action and investigation. On receiving the complaint, PW-9 prepared the rukka (vide Ex.PW-9/A) on 13th July, 2004 morning and handed over the same, to the duty officer for registration of the case. On this basis, FIR No. 168/2004 was registered under Section 498A/364 IPC. PW-9 has stated that, on 13th July, 2004, he, along with some other police officers, went to Mayur Vihar Colony, Samalkha, District Panipat, Haryana and interrogated Kuldeep. Thereafter, he was arrested (vide memo Ex.PW-2/A) at 11.30 A.M., of that morning. Personal search memo of the accused (Ex.PW-2/B) was signed and proved by him. Upon interrogation, Kuldeep made and signed the disclosure statement (Exhibit PW-2/C) in his presence. In the said disclosure statement, the appellant had stated as under:-

“.....On 10th July, 2004 on the request of my mother I had taken Nidhi to Dehradun and had spent the night at Kaluram Dharamshala. On the next day at 11th July, 2004 I took Nidhi to Mussoorie where we went to see Kempty Falls. In the evening I took Nidhi to a turn on the Mussoorie-Dehradun road, and after about three kilometers, I took her down an unmetaled road. Thereafter, I had pressed Nidhi's neck with my hands, and killed her. I then threw the dead body of Nidhi down the mountain cliff. I hid the slippers and chunni of Nidhi in a pit near the bushes.”

(We have translated the disclosure statement.)

8. For the purpose of Section 27 of the Evidence Act, 1872, the

disclosure statement is admissible only in respect of the averment made by Kuldeep -that the body of Nidhi, and her slippers and chunni could be found about three kilometers down the Mussoorie-Dehradun road. The other portions of his statement, regarding commission of the offence, are not admissible in view of the provisions of Sections 24 to 27 of the Evidence Act.

9. After the disclosure statement was made, the appellant was produced before the Metropolitan Magistrate, Tis Hazari Court, on 13th July, 2004. On the same day, PW-9 made an application, before the Metropolitan Magistrate, seeking the appellant's police custody, for five days, in order to make the recovery of the dead body, on the basis of the disclosure statement made. The said application is available on the trial court record. By order dated 13th July, 2004, police remand was allowed for a period of five days. The court recorded that the dead body was yet to be recovered in the said case.

10. Thereafter, PW-9, along with the second Investigating Officer Inspector Dharampal (PW-15), some police officers and Rajesh and Pramod (relatives of the deceased), went to Mussoorie in a private vehicle, and spent the night of 13th July, 2004, at Dehradun. On 14th July, 2004, while they were en route an area just 3 kilometers before Mussoorie, Kudeep identified the place in the forest, where he had thrown Nidhi's body from the mountain. On the basis of the

identification, made by the appellant, they recovered two leather slippers and one white coloured chunni which was sealed in a pulanda by the IO and taken into possession (vide Ex.PW-9/C which was signed by PW-9). The said articles, as per PW-9, were identified by Pramod (PW-14) as articles which belonged to his cousin sister, Nidhi. Thereafter, they went to Police Station, Mussoorie and got in touch with the S.O., Police Station Mussoorie, District Dehradun- S.I. Ashok Arora. K.P. Singh, S.D.M., Mussoorie reached there and accompanied them to the spot from where the appellant had thrown the body, down the hill into the forest. On the basis of the identification made by the appellant, they recovered the body of Nidhi from the bushes. It was noticed that Nidhi had not died and that there was some movement in her body. She was subsequently taken to Trinity Hospital, Landoor, Mussoorie and admitted there, as per the directions of the S.D.M.. The recovery of Nidhi was duly inventorised and documented vide Ex.PW-4/A which was signed by PW-9. Nidhi was admitted in the said hospital, at about 10 P.M., but was unable to give any statement. Sometime after 10.00 P.M., Nidhi was declared dead. Her body was sent to the mortuary for the post mortem, as per the directions of the S.D.M., Dehradun. The post mortem was conducted by Captain Hemant Bhardwaj (PW-12) who was the Medical Officer, Doon Hospital, Dehradun. We will refer to his statement

subsequently.

11. Inspector Dharampal (PW-15) has made a similar statement that he, along with SI Hans Raj (PW-9), Constable Ramesh and two public persons, Rajesh (PW-2) and Pramod (PW-14), had left for Mussoorie on 13th July, 2004. They spent the night at Dehradun and reached Mussoorie on 14th July, 2004 morning. Appellant-Kuldeep pointed out the area where he threw Nidhi's body which was three kilometers before Mussoorie in the "Ban Suman Estate" area. Thereafter they, got in touch with the SHO, Police Station Mussoorie, SI Ashok Arora, who passed on the information to the area S.D.M.. The S.D.M. then came to the police station and was present when Nidhi's body was found. Nidhi was discovered to be still breathing and was admitted to the hospital, on the directions of the SDM. Photographs were taken by the S.I. Ashok Arora. The slippers and chunni lying near the spot, were recovered and taken into possession vide Ex.PW-9/C. On 24th August, 2004, he received the papers of the inquest proceedings from Dehradun, through Constable Ramesh, and, on the basis of those, he prepared and filed the challan.

12. Learned senior counsel, appearing for the appellant, before us has submitted that the dead body of Nidhi was recovered on 13th July, 2004 and the appellant was not taken to Mussoorie for identification. He has submitted that, in the photographs, police officers, S.D.M. etc.

are visible, but the appellant cannot be seen. He has drawn our attention to the cross-examinations of PW-9 and PW-15, in which it was accepted that Kuldeep was not visible in the photographs. He submits that this was because Kuldeep was still in the lock up at the time.

13. Both PW-9 and PW-15 have denied the suggestion that Kuldeep was locked up, when the recoveries were being made, and that the appellant had not accompanied them the spot. We agree and accept the prosecution version. The photographs, which have been marked Ex.PW-15/1 to Ex.PW-15/11, clearly show that the emphasis was on Nidhi. There are also some photographs of the van in which the body was taken. The emphasis was not on the persons who were present over there on the spot or on the appellant. The presence of the appellant at Mussoorie is established and proved beyond doubt by the statements of PW-9, PW-15, as well as that of SI Ashok Arora (PW-16), and the SHO Mussoorie, S.D.M. K.P. Singh (PW-4). SI Ashok Arora (PW-16) has stated that, on 14th July, 2004, he was posted as SO at Police Station, Mussoorie, Dehradun. At about 10.30 P.M., Inspector Dharampal, from the Delhi Police, had come to the Police Station along with Kuldeep, who was correctly identified in the court. The arrival entry was duly recorded in the Police Station, Mussoorie vide DD entry No. 18 which was marked Ex.PW-16/A. Thereafter,

their departure from Police Station, Mussoorie and their subsequent return to the Police Station were made vide DD entry Nos. 19 and 35. The certified copies of these were marked Ex.PW-16/A1 and A2, respectively. He has stated that they, along with the S.D.M., went with the appellant, to a spot which was at a distance of about three kilometers below Mussoorie, on the Dehradun road. The appellant-Kuldeep led them to a spot, about 400/500 metres down a “kuccha rasta” or unmetalled road, off the main road. At the said place there was a sharp slope going down the valley. From above, they could see a lady’s body lying about 60-70 feet down. He has stated that one other person, namely, Pramod, who was probably the brother of Nidhi, was accompanying them. The police officers and Nidhi’s brother managed to pull Nidhi’s body out, with great difficulty. They noticed that Nidhi was still alive, and the S.D.M. directed to take her to the nearest hospital. She was accordingly taken to Trinity Hospital, Landour, Mussoorie where she was provided medical treatment. Nidhi was unable to speak and was in great pain. At about 10 P.M. she succumbed to her injuries and died in the hospital. He had taken some photographs when Nidhi was being pulled out and these were subsequently developed. He also brought the negatives of the said photographs which were marked Ex.PW-16/1 to Ex.PW-16/11. The inquest proceedings were conducted the next day, at 11 A.M., by the

S.D.M. and another S.I., R.S. Pal, and the body was then sent for a post-mortem examination to Dehradun.

14. K.P. Singh, S.D.M. (PW-4) has stated similar facts. He has stated that the body of a lady, Nidhi, was recovered on the basis of the identification of the area made by Kuldeep. Recovery memo for the same was prepared, vide Ex.PW-4/A, which bears his signatures at point A. A sketch of the body, showing the injuries sustained, was prepared vide Ex.PW-4/B. Nidhi was sent to the Trinity Grace Hospital, Mussoorie, but she was not in a fit condition to make a statement. After about 5/7 hours, she died in the hospital. The police had sent a report (Ex.PW-4/C) for initiation of inquest proceedings under Section 174 Cr.P.C. which was signed by him. He prepared a panchnama. On his directions, the post mortem was conducted at Dehradun. In the cross-examination, he has stated that the Eco Task Force had been deputed to patrol the plantation area but it was wrong to suggest that Eco Task Force had informed him about the recovery of the dead body. He further avered that there was no building or guest house in the area within the radius of 100 metres from the place of recovery.

15. Dr. Avinash Shastri (PW-3), Director Trinity Grace Hospital, Landour, Mussoorie, Uttaranchal, has stated that on 14th July, 2004, one Nidhi Rathi, aged 21 years, was brought to the emergency ward by

S.D.M. K.P. Singh, local police and the Delhi Police at about 11.15 P.M. She was unconscious and was not responding to external stimuli. Her hair was matted with twigs, leaves and mud. Bruises could be seen on both forearms, the lower-right part of the chest, back and on both buttocks. Scratches were seen on her neck. The patient was severally dehydrated, eyes congested and red, with foul smell fetor and finger tips cynose (bluish). The necessary examination and treatment was given, but in spite of resuscitative measures, the patient could not be revived, and was finally declared dead at 10.05 P.M. on 14th July, 2004.

16. From the aforesaid it is clear that Nidhi had not been recovered by the Eco Task Force on 13th July, 2004, otherwise, she would have been admitted to the hospital much earlier. Not only officers from Delhi Police, but also officers from the Mussoorie police and the S.D.M., Mussoorie went to admit the deceased, in the hospital at 11.15 P.M. on 14th July, 2004. This clearly belies and negates the contention of the appellant that the body of Nidhi was found, by the Eco Task Force, before the disclosure statement and she was already hospitalized for treatment on 13th July, 2004. The aforesaid statements of the police officers of Delhi Police, Police Station Kanjhawala are affirmed by the statements of Rajesh (PW-2) and Pramod (PW-14), who are deceased's relatives. Pramod (PW-14) states that on 13th July,

2004 he, Inspector Dharampal, SI Hans Raj and two others had gone to Mussoorie, with the appellant Kuldeep, in a private Maruti van. On 14th July, 2004 they were going towards Mussoorie, when the appellant asked them to stop the vehicle about three kilometers before Mussoorie. The appellant pointed out to a kind of platform, about 400-500 meters below the road, and said that that he had thrown Nidhi from the said platform down into the ravine after killing her. The appellant pointed out, a pair of slippers and a chunni, and stated that these belonged to Nidhi which PW-14 recognised. He has stated that Nidhi was not in a fit condition to make a statement when she was in the hospital. The vehicle in question belonged to one Rajesh, who was also travelling with them.

17. Rajesh (PW-2) has avered that he is related to Balwant Singh (PW-6) and has good relations with him. He states that Balwant Singh's daughter, Nidhi, was married to the appellant-Kuldeep. They had a daughter Ritika. He reiterated the facts which have already been stated by PW-6, PW-8 and PW-10. He has stated that the appellant Kuldeep had taken Nidhi with her on 9th July, 2004 on the pretext that he wanted her to see a house in Narela. He has further stated that on 12th July, 2004 on Balwant Singh's request, he had gone with him to the appellant-Kuldeep's house, and had questioned him about Nidhi. The appellant did not give a proper reply, and on the basis of this, they

filed an FIR (complaint) with the Police Station, Kanjhawala. He has stated that, on 14th July, 2004, he and Pramod (PW-14) had accompanied the police to Mussoorie, and Kuldeep was also with them. The appellant had pointed out the place, which was about three kilometers before Mussoorie on the Dehradun road, from where he had thrown Nidhi on 11th July, 2004. The said platform was about 40-50 feet down the hill, and the slippers and chunni of Nidhi were also found lying on the platform, which were then taken into possession. The local police was also called, and they went down in the ravine and brought the body of Nidhi onto the platform. She was taken to the hospital, as she was unconscious but breathing. The S.D.M. was also present there.

18. It is clear that the aforesaid statements, which are in seriatim, corroborate that the recovery of the dead body was done pursuant to the identification of the location, made by the appellant. No one but the person, who had committed the offence, could have known the place where Nidhi's body could be found. The body was found in a far-off place, on the Dehradun-Mussoorie road, at a spot three kilometers before Mussoorie. It is apparent that the exact location of the place, where the body of Nidhi could be found, was known only to the appellant and to no one else. Recovery of the dead body at the instance of, and on the basis of, disclosure statement made by the

appellant is an incriminating fact which substantially establishes the offence against the appellant.

19. Faced with the aforesaid position, learned counsel for the appellant has drawn our attention to four aspects. Firstly, it is submitted that there was a delay in reporting the matter to the police. Nidhi had not returned home on 9th July, 2004, but the rukka vide Ex.PW-6/A was made on 12th July, 2004 at 9.30 P.M. Secondly, it is stated that sister of Nidhi, namely, Namita is married to the brother of the appellant Kuldeep, i.e., Pradeep. It is pointed out that the statements of Namita and Pradeep have not been recorded. Thirdly, our attention is drawn to the statement of Darshan Lal Saklani (PW-5), a watchman at Lala Kallumal Dharamshala, Dehradun, who has stated that he did not see any lady with Sunil. It is the prosecution case that the appellant, along with his wife, had stayed in the said dharamshala, on 10th July, 2004. Fourthly and importantly, he emphasised that the appellant and his parents have been acquitted from the charge under Section 498A IPC. Accordingly, it is submitted that motive had not been proved or established. There was no reason or cause for the appellant to commit murder of Nidhi. Lastly, it is pointed out that the Post Mortem Report (Exhibit PW-12/A) does not mention to any strangulation mark on the neck. He has drawn our attention to the external and internal injuries stated and mentioned in the post mortem

report and the statement of Captain Hemant Bhardwaj PW-12, Medical Officer Doon Hospital who had conducted the said post mortem.

20. Regarding the first contention, the delay in making the complaint is explained and elucidated in the statements of PW-6 and PW-8. The appellant had only recently re-established/re-newed his relations with the deceased, and had expressed desire, to move in, independently, with the deceased, in Narela, Delhi. For this, on 9th July, 2004 he had taken the deceased to show her a place for rent, in Delhi and had promised to get her back soon. A few days earlier also Nidhi and Ritika had gone and stayed with Kuldeep, the appellant. There was no reason for PW-6 or 8 to suspect foul play. It was only when the appellant himself, called PW-8, on 12th July, 2004, apparently to take the deceased with him, that she alerted the household. They have also averred that PW-6, and some relatives, went, on the very same day, to the house of the appellant at Sonapat, to enquire about the deceased. On receiving evasive replies, the same night, at 9.30 P.M., the complaint was filed and FIR registered. In the light of these circumstances, we do not think that any delay was made in filling the complaint once PW-6, and his family, were apprised of the facts and became suspicious.

21. It is correct that sister of Nidhi- Namita is married to brother of the appellant, i.e., Pradeep. This factual position is accepted and admitted

by the prosecution. Inspector Dharampal (PW-15), in his cross-examination, has also accepted the said fact. He has avered that he had tried to examine Namita but she refused. Husband of Namita, Pradeep also did not join. It has come on record that, after birth of daughter Ritika, in November, 2002, Nidhi had come back to her parental house and had stayed there for 1 ½ years. During this period, Namita had continued to stay with Pradeep and did not come back to her parental house. Apparently, the relationship, between Namita and Pradeep, was cordial and smooth, whereas the relationship, between the appellant and Nidhi, was sour since there were disputes and differences inter se. Therefore, it is understandable why Namita and Pradeep refused to take sides. They were in an awkward position as brother of Pradeep, i.e., the appellant was being implicated for murder and death of Nidhi, sister of Namita. Namita's non-joining does not, in any way, affect the statement of other witnesses and is, therefore, not fatal to the prosecution case. It should also be noticed that neither Namita nor Pradeep appeared as defence witness.

22. Darshan Lal Saklani (PW-5), the watchman of Lal Kallumal Dharamshala, Naglaia, Raja Road, Dehradun, has stated that on 10th July, 2004, one person named Sunil had come to the dharamshala and stayed there alone. He has stated that, as the matter was 2-3 years old, he does not recollect seeing any lady with "Sunil". He, however,

admitted that police had come to the dharamshala twice for interrogation and once the police had come along with the boy, in whose name the slip was prepared. The statement of PW-5 was recorded, on 31st July, 2006. Obviously number of persons visit the Dharamshala and PW-5 has stated that, on every day basis, he was dealing with several persons and, therefore, he could not even identify whether the appellant, who was present in the court, was the same person who had stayed in the Dharamshala, in the name Sunil. The statement of PW-5 alone, therefore, does not cast any doubt or dent on the prosecution case.

23. On the question of motive, the police had tried to make a case under Section 498A but was not successful. What has come on record is the factum that the appellant Kuldeep had suffered a heavy loss in his business and had wanted money for starting a new business, as averred by PW-6 and PW-8. Reflection of the same can be found in the statement of PW-10, the neighbour. Failure of the charge under Section 498A does not show that there were no disputes and differences between the appellant and Nidhi. Motive, in several cases, can be very difficult to establish as it is a matter of intention. Motive is relevant and important in cases of circumstantial evidence but not mandatory. In *Ravinder Kumar v. State of Punjab*, (2001) 7 SCC 690, the Supreme Court has emphasised that:

18....It is generally an impossible task for the prosecution to prove what precisely would have impelled the murderers to kill a particular person. All that the prosecution in many cases could point to is the possible mental element which could have been the cause for the murder. In this connection we deem it useful to refer to the observations of this Court in *State of H.P. v. Jeet Singh* [(1999) 4 SCC 370 : 1999 SCC (Cri) 539] : (SCC p. 380, para 33)

“33. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.”

19. ... We are, therefore, not persuaded to change the tide on account of the inability of the prosecution to prove the motive aspect to the hilt.”

24. Conviction is possible even if motive is not conclusively proved. What has to be seen is the cumulative effect of entire evidence which is proved beyond doubt. If the evidence, on record, establishes that the accused was the perpetrator of the crime and no third person could have committed the same, conviction is possible and mandated. In the present case, looking at the evidence on record, we are satisfied that it has been proved beyond doubt that the appellant had taken

Nidhi, with him on 9th July, 2004 and, thereafter, she did not return to her parental home. The appellant has not stated and avered what happened and where Nidhi had gone. Pursuant to the disclosure statement, made by the appellant, the dead body of Nidhi was found in the ravine off Dehradun-Mussoorie Road, three kilometers before Mussoorie. Till then, no one knew where Nidhi was and what had happened to her. It has been established that it was appellant who revealed the spot from where body was recovered. On the basis of the identification of the location, pointed out by the appellant, Nidhi was recovered from the ravine and taken to the hospital.

25. The contention, of the appellant, that the Post Mortem Report does not refer the strangulation marks and Captain Hemant Bhardwaj (PW-12) who conducted the said post mortem has not referred to the same, according to us, is inconsequential. Dr. Avinash Shastri (PW-3), in his statement, has stated that scratches were seen over the neck. The Post Mortem Report refers to the cause of death as “combined effects of cerebral damage and aspiration pneumonipis following head injury as a result of blunt trauma.” As per the prosecution, the appellant threw Nidhi, in the ravine, on 11th July, 2004, and her body was recovered, on 14th July, 2004, at about 10 A.M. At that time, Nidhi was unconscious but still breathing and had some life in her. It is obvious that the death had not taken place because of the strangulation

but because of the fact that the Nidhi was thrown off the cliff. The statement of PW-3, in this regard is relevant, and is reproduced below:-

“...The patient was unconscious, not responding to external stimuli with hair matted with twigs, leaves and mud. Bruises seen on both forearms, right lower part of the chest, back and both buttocks. Scratch seen over neck. The patient was severally dehydrated, eyes congested and red with foul smelling fetor, finger tips cyanotic (bluish).

On examination of the chest coarse creps were heard, ronchi heard. Pupils slightly reacting to the light. Per vaginal examination there is a purulent discharge (dirty discharge) with bleeding and excoriations over the labia majora, faeces around vaginal and inner thighs.

All necessary lab investigations were done. Necessary medication given details of which was mentioned in the documents running into 9 pages, photocopy of the same are collectively Ex.PW-3/A (Original seen and returned). All the resuscitative measures were taken but as the patient was brought in a state of unconsciousness, patient could not be revived and CPR (Cardio Pulmonary Resuscitation) was done and finally patient was declared dead at 10.05 P.M. on 14th July, 2004.”

26. When we read the aforesaid statement, along with the Post Mortem Report, we do not think absence of strangulation marks, from the post mortem report, is relevant and or casts doubt on the prosecution case.

27. In view of the aforesaid, discussion, we do not find any merit in the present appeal and the same is dismissed. Conviction of the

appellant is upheld. We also upheld the sentence awarded to the appellant. However, we reduce the fine of Rs.50,000/- and Rs.25,000/- imposed under Sections 302 and 364 IPC to Rs.25,000/- and Rs.10,000/- respectively. In case of non payment of fine, the appellant will be liable to undergo simple imprisonment for a period of three months and one month respectively.

SANJIV KHANNA, J.

S.P. GARG, J.

NOVEMBER 19, 2012
VKR