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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. Appeal No. 928/2011

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**Reserved on: 2nd January, 2013
Date of Decision: 15th January, 2013**

VARITA SONI

....Appellant

Through Mr. Joginder Tuli, Mr. Ashu Kumar
Sharma and Ms. Damini, Advocates.

Versus

STATE

....Respondent

Through Mr. Sanjay Lao, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SIDHARTH MRIDUL

SANJIV KHANNA, J.

The appellant Varita Soni, by this appeal challenges her conviction vide impugned judgment dated 21st May, 2011, arising out of FIR No. 80 dated 31st January, 2007, P.S. Dabri, under Section 302 of the Indian Penal Code, 1860 (IPC, for short) for contriving and murdering her step-daughter Vandana Soni, aged around 9/10 years on 31st January, 2007.

2. The appellant has also impugned order of sentence dated 31st May, 2011, by which she was sentenced to imprisonment for life, out of which she has to undergo ten years rigorous imprisonment. According to the trial court directions the appellant is not be released before completing twenty years in jail.

3. Homicidal death of Vandana Soni on 31st January, 2007, has been established beyond doubt and the appellant's counsel fairly accepted that factual position cannot be disputed. Vandana Soni was taken to Deen Dayal Upadhyay Hospital where she was referred for emergency treatment. The MLC (Ex. PW5/A) records that Vandana Soni was brought to the hospital in CAT's Ambulance with Shanti Devi (PW-10), her grandmother and she was unconscious at the time of admission. The MLC records that the external wounds, including some incise wounds, were visible. Post Mortem Report of Vandana Soni (Ex. PW14/A) dated 1st February, 2007 was written and proved by Dr. Sarvesh Tandon (PW-14). According to the report, on external examination, following wounds were noticed:

- "1. Incised penetrating wounds (IPW) over front of abdomen multiple seven in number, 0.5 – 1 cm in size each, sharp edges clean cut margins.
2. IPW 2 cm long were taken over right side of abdomen, 3 cm above and right to umbilicus, deep, sharp clean edges clean cut margins.
3. Incised wound over chin 2.5 cm long, horizontal, muscle deep with a surrounding red bruise, 2 cm area.
4. Lower lip was lacerated, in middle, 2 cm long.
5. Bruise 7 cm area, over right eye and its surrounding area, red in colour.
6. Abrasion – 4 x 2 cm size, grace form, red in colour.
7. Stitched wound with 3 black stitches, 5 cm long, over front of head, just to the left of mid-line, with lacerated edges.
8. IPW's multiple, 6 in number, muscle deep, some stitched, 3 over back of neck, 1-2 cm long each, sharp edges clean cut margins, both angles acut.

9. Incised wound 4 in number over the mid-line, over the lower back, 0.5X1 cm each, stitched, muscle deep, sharp edges (SE), clean cut margins (CCM).

10. Incised wound over front of left wrist, 4 cm long, stitched, muscle deep only, horizontal, SE, CCM.

11. Incised wounds 3 number, muscle deep, 1 cm each, over front of right wrist, SE, CCM."

4. Internal injuries were delineated as below:

"1. Head:- Scalp tissues were contused all over and lacerated below injury number 7. All skull bones were fractured irregularly. All the brain matter was contused and lacerated. All types of cerebral hemorrhages were mixed.

2. Neck: All the structures were intact and NAD.

3. Thorax ribs were NAD, lungs were pale and heart was NAD.

4. Abdomen – the cavity was full of dark and clotted blood. Stomach was full of semi-digested pasty food. Rectum and Urinary Bladder were full. Uterus was child like.

External Injury No. 2 was going into anterior abdominal muscles and then into mesentery which was sharply cut (total depth was 7 cms from the exterior)."

5. The cause of death, as per the Post Mortem Report (Ex. PW14/A) and PW-14's testimony, was opined to be:-

"Cranio cerebral damaged and haemorrhagic shock combinedly or singularly caused by another party. Cranio cerebral damage (head injury) was due to blunt force impact over the head. Injuries number 1, 2, 3, 8, 9, 10 and 11 were caused by sharp edged weapon. Other injuries were due to blunt force impact. Head injury as mentioned above and injury number 2 were singularly or collectively fatal, and were sufficient to cause death in the ordinary course of nature. All the injuries were anti

mortem in nature. Time since death was same as in hospital records. Blood gauze was sealed and handed over to police IO. My detailed report is Ex. PW14/A which bears by signatures at point A.”

6. The weapon of offence i.e. knife was produced and shown to PW-14, by IO Dharamveer vide application dated 8th March, 2007. PW-14 opined (Report marked as Ex. PW14/B) that injuries 1, 2, 3, 8, 9, 10 and 11 were possible with the said or similar weapon i.e. the knife. PW-14, on examination of second weapon of offence i.e. wooden piece, opined (Report marked as PW14/C) that injury No. 7 and the resultant injury on the head were possible with the said or similar weapon.

7. The primary issue before us relates to whether the appellant was the perpetrator of the said injuries which led to death of Vandana Soni. Appellant counsel has submitted that the deceased's grandfather Tara Chand Soni had called from his mobile number 92137739504 to Police Control Room, on 31st January, 2007 at 1641 – 42 Hrs. The said complaint (Ex. PW11/A) records that “a man had given knife blows to his daughter and left”. Reference is made to the statement of PW-17 – Mansa Soni, wife of Suresh Soni (PW-2) who was residing in the same property and has not supported the prosecution entirely. The appellant counsel has submitted that, in view of Complaint (Ex. PW11/A) and statement of PW-17, possibility of a third person committing the said offence cannot be ruled out and, being a case of circumstantial evidence, the appellant is entitled to benefit of doubt.

8. We have considered the said contentions but do not find merit in the same. Nandini Tiwari (PW-1), a neighbour in her testimony has averred that, on 31st January, 2007, she heard a shout “Chachi bachao, chachi bachao” coming from the house of Mr. Soni. The cry was made

by the deceased Vandana. Public had gathered and later on she saw Vandana lying in the bathroom, on the top floor of the house. She has disclosed that the only way to reach the top floor of the Mr. Soni's house was from the ground floor. Public prosecutor had put the leading question and she admitted that the deceased Vandana was also heard crying "Mummy mujhe maar dalegi" with cry "Chachi mujhe bachao, Chachi mujhe bachao". Nothing in her cross-examination dents her statement.

9. Suresh Soni (PW-2), brother of Ramesh Soni (PW-4) who is the father of the deceased, has stated that first wife of Ramesh Soni and mother of Vandana Soni- Sadhna Soni- had expired on 31st March, 2004. Thereafter, Ramesh Soni had married the appellant Varita Soni and the two were residing on the first floor, of the same house where he i.e. Suresh Soni (PW-2) and deceased Vandana were residing along with his parents i.e. grandparents of Vandana Soni, on the ground floor. On 31st January, 2007, at about 4.00 P.M., appellant took Vandana on the top floor of the house, on the pretext of showing her marriage album. His wife Mansa Soni (PW-17) was with them but returned, after collecting dried clothes from the roof. Vandana remained with the appellant, on the roof. At about 4.30 PM, when he and his wife were watching TV, some neighbours knocked at the door apprised that Vandana was shouting 'chachi mujhe bachao, chachi mujhe bachao, mummy mujhe maar Dalegi'. PW-2 immediately ran to the roof, with his wife and some other neighbours. The door of the staircase, leading to the roof, was bolted from the other side. Even after continuous thumps on the door and shouts for opening the door for 8 to 10 minutes, the appellant did not open the door. Ultimately, he managed

to reach the roof from the rooftop of adjacent house. On reaching there he saw that the appellant was sitting on a cot, wearing a green colour suit, and the marriage album was lying beside her. He opened the door to his roof and his wife, along with the neighbours, came in. He asked Varita what had happened. He noticed Vandana lying in the bathroom, with several injuries caused by knife on her body, and blood was spread all over the bathroom floor. One wooden danda and a knife with one pair of chappal of Vandana and one pair of chappal of Varita were lying there. Both pair of chappal were blood stained. Vandana was unconscious and was moved to the DDU hospital, by father of PW-2. Maxi worn by Varita, the danda and knife were seized by the police. He identified the said articles, in the court, which were marked as P-5, P-4 and P-1, respectively. PW-2 has averred that the appellant had strained relationship with the deceased. Earlier the appellant had objected to Vandana going with them to Mussoorie as she would not have liked being addressed as Mummy, by the deceased. The appellant had claimed that somebody had jumped from the left side of the house belonging to Nandini Tiwari (PW-1), as recollected by PW-2 in his cross-examination. He has further averred that all articles i.e. Ex. P1, P4 and P5 were lying in the bathroom and were seized by the police. He agreed that his father, namely, Tar Chand Soni was missing from 8th August, 2007 due to the incident but denied the suggestion that his father had left the house because the appellant had been falsely implicated.

10. Savita, who appeared as PW-3, was declared hostile as her statement did not support the prosecution version. However, she has stated that at 4.30 P.M., on 31st January, 2007, while she was preparing tea for her guests, there was hue and cry and her neighbour Sonu

(probably the reference is made to Suresh) asked her to open the door. Some people had gathered and were saying that Vandana had been killed by her mother. PW-3, in her cross-examination by Public Prosecutor, denied the suggestions given to her with reference to Section 161 Cr. P.C. statement. In the cross-examination by the counsel for the appellant, PW-3 has stated that police men and ambulance had come to the spot but no enquiries were made from her and she had not gone to the roof of the house of Mr. Soni.

11. Shanti Devi (PW-10), grandmother of Vandana and mother-in-law of the appellant, has deposed on the same line as PW-2 and supported the prosecution case in entirety. In her testimony, she has stated that she was present on the ground floor, on 31st January, 2007, with her husband Tara Chand, her son Suresh and daughter-in-law Mansa. At about 4.00 P.M., the appellant her daughter-in-law had come to her floor and had asked Vandana to come and see the album. Mansa accompanied them but came back after five minutes. At the time, they were watching TV on her floor. At about 4.30 P.M., she heard noise from outside and her son Suresh opened the door. Some ladies were shouting that they had heard crys from the upper side of the house "Chachi mujhe bachao, mummy mujhe mar dalegi". Thereafter, Suresh along with his wife Mansa and some other ladies, went to the upper side of the house but the door of the second floor was closed from the other side and they could not enter. Suresh reached on the second floor of their house from the roof of the adjoining house and opened the door of the second floor. Thereafter she, along with her husband, daughter-in-law Mansa and some other ladies, reached on the second floor and found that Varita was sitting on the bed and Vandana was

lying in the bathroom, in a pool of blood. When the appellant was questioned, she replied that someone had caused injuries and fled. On leading question by the Public Prosecutor, PW-10 has averred that one wooden fatta and pair of sleepers, with blood stains, were found on the second floor. In her cross-examination, PW-10 has affirmed that she had taken Vandana to the hospital, in the ambulance, with Mukesh. At that time Vandana was conscious and breathing. Police had come to their house, the same night. She has claimed that she did not see anything, except wooden fatta and a pair of sleepers, besides the body of Vandana. Suresh (PW-2) opened the door in her presence. Mukesh (PW-6) had reached the spot after 4-5 minutes. Her husband left the house because of murder of their grand daughter Vandana. Mansha left the house because of differences with her husband. Similarly, Hansa, the second daughter in law had left the house because she had more affection towards her father. She has denied the suggestion that the appellant had not murdered Vandana and someone else killed her and vanished.

12. Mukesh Soni (PW-6) has similarly stated that, between 4.30 and 4.45 PM on 31st January, 2007, he had received a phone call from Suresh (PW-2) that Vandana was bleeding profusely and he should reach there immediately. On reaching, he found Vandana in a pool of blood, in the bathroom, with several injuries. He rang Ramesh (PW-4), father of Vandana and asked him to come immediately. Police had been informed and Vandana was taken to DDU Hospital. Vandana was not able to speak though she had not expired by then. The appellant was pregnant at that time. Ramesh used to love her daughter Vandana. PW-6 has alleged that the appellant felt that Ramesh would

not love the appellant's baby as much as he loved/liked Vandana. The appellant was jealous of Vandana and wanted to get rid of her. In the cross-examination, he accepted that his father had also called the police, prior to him, and the police had not seized his clothes though they had blood stains when he lifted Vandana. He has stated that he was not aware of whereabouts of his father and he was missing from 8th August, 2007. Mansha was residing with her father, in Lucknow, since 13th December, 2007. Similarly other sister in law Hansa was residing with her father for about three years, around 2006 onwards. Mansa and Hansa were real sisters.

13. Ramesh Soni, father of the deceased and husband of the appellant, appeared as PW-4. He has stated that he married Sadhana, mother of Vandana on 2nd May, 1995, but she expired on 21st March, 2004. At that time, Vandana was 6 years old. He came in contact with the appellant through his daughter as the appellant used to visit Ashram of Raj Vidya Kendra, Mehrauli. Maharaj Ji was common Guru of Varita's family and their family. The appellant had married him at Arya Samaj Mandir, in spite of opposition from her family members. He was residing with the appellant, on the first floor, and his parents with his two brothers were staying on ground floor. There was no dispute between him and the appellant. Vandana used to live with his parents and she never disturbed their matrimonial life. On returning from work, he used to first meet Vandana and then Varita, as his daughter was living on the ground floor with his parents. In June 2008, his wife, the appellant had objected to Vandana accompanying them to Mussoorie on the ground that she would not liked Vandana calling her mummy when she was still wearing suhag ka Chuda. Therefore, PW-4

left his daughter at the house for that trip. He has stated that in hindsight he realized that appellant used to avoid Vandana. In the cross-examination, he accepted the position that he had reached the house at 5.25 P.M. when 2-3 policemen and the police van was standing there. The appellant was sitting on the bed and the police took him, his father, Varita and Mansa in the police van. Varita and Mansa were dropped at the police station and he and his father went to DDU hospital. His father was missing since 8th August, 2007. He denied the suggestion that his father had stated that some unknown person had killed Vandana. Mansa had left the house on 13th December, 2007. When PW-4 statement was recorded i.e. on 29th July, 2009, Mansa was residing in Lucknow. He denied the suggestion that his parents and brothers were not happy when he decided to marry the appellant. He has accepted that he and the appellant had rented a place in Gurgaon when she was pregnant as the appellant was working in Gurgaon. He denied the suggestion that the appellant Varita was having a knife scar on her face. However, he accepted that he had met the appellant Varita and their daughter Greshi in Tihar Jail on 23rd October, 2007. He denied the suggestion that he had deposed falsely and someone else had killed Vandana and the said person had also inflicted injuries on the face of the appellant. He volunteered that the injuries on the face of the appellant were self-inflicted.

14. A reading of the aforesaid testimony establishes the prosecution case beyond any doubt. The testimonies of PW-2 and PW-10 are reliable and trust-worthy. They are substantially corroborated by the statements made by PW-1, PW-4 and PW-6. The aforesaid witnesses are related to both the appellant and the deceased and there would be

no plausible reason for them to falsely implicate the appellant Varita. They have testified truthfully and narrated what had actually transpired at the time of the occurrence. There is no evidence whatsoever to even suggest involvement of any third party, in the present case. PW-2 has categorically stated that the appellant did not open the door for 8 to 10 minutes. To reach the roof, he had to reach residence of Savita (PW-3) and climb onto their roof and then managed to reach the roof of their house. MLC of the appellant Varita (Ex. PW20/A) shows that she had suffered minor scratches, on her cheek and forehead. She was conscious and oriented. There is no reason for any third person to inflict incised injuries and cause multiple fracture on Vandana's head, a small girl of age 9/10 years, but leave the appellant Varita after inflicting minor injuries i.e. the scratches on her face. Further, in case such situation had arisen, the natural reaction the appellant would have been to shout for help or rush down from the roof in anguish and trauma. The appellant made no attempt to even open the door for next eight-ten minutes. It is apparent that house in question is located in a congested area and a large number of people were present at the time of incidence. In case a third person had committed the offence, the public would have chased or tried to catch that person. The FSL reports (PW23/A and PW23/B) corroborate the prosecution version as Blood was detected on the wooden fatta, knife and the maxi (Ex. P1, P4 and P5). Blood group could not be ascertained on the said exhibits and the FSL Report, to the said effect, remained inconclusive since the blood showed no reaction but this does not dislodge the prosecution version. Similarly, we do not think that the PCR message (Ex. PW11/A) establishes involvement of a third person instead of the appellant. The

said message was recorded on the basis of telephone call made by grandfather Tara Chand Soni, on 31st January, 2007 at 4.41 – 42 P.M., from his telephone number. Tara Chand Soni has not appeared in the witness box. At the time of making the call, it is plausible that he might have gone by the initial statement made by the appellant and did not suspect that the appellant could have committed murder of her step daughter Vandana. The fact that he was shaken and was mentally affected is apparent from the fact that he quietly left the house on 8th August, 2007 and his whereabouts, at the time when the statement of witnesses were recorded, was unknown.

15. We do not think that statement of Mansa Soni (PW-17) dents the prosecution case or creates doubt about the statement made by other witnesses. Mansa Soni (PW-17), wife of Suresh Soni (PW-2) when her statement was recorded was residing with her parents in Lucknow. She has testified that at the time of occurrence she was residing on the ground floor and the appellant and her husband were residing on the first floor. At about 4.30 P.M., her father in law raised an alarm, after hearing the voice of the appellant. She along with her father-in-law went upstairs thinking that something had happened to the appellant who was pregnant. There they saw Varita with some scratches on her hands and face and Vandana lying nearby, on the ground. Vandana was removed to the hospital. She has averred that the appellant was a decent girl and a computer graduate. She was cross-examined by the public prosecutor but denied the suggestions given to her from the statement under Section 161 Cr.P.C. It was suggested to her that she had deposed in favour of the appellant as she had differences with her husband and had been won over by the appellant. In the cross-

examination, she has claimed that the appellant had love marriage with Ramesh and all the family members, except her father in law, were annoyed. She deposed that the door or gate from ground floor to first floor was open, at the time of the incident. She has even claimed that the appellant had accompanied Vandana to the hospital. However, she has stated that appellant had changed the maxi worn by her. The statement of Mansha Soni has its own limitations and is not trustworthy and reliable. Appellant's presence in the hospital with Vandana is contradicted by the MLC. PW17's statement that the door opening towards the roof was open is not correct. Her testimony is silent on who had committed or was involved as the perpetrator of the crime. It is noticeable that PW-17 accepts presence of Varita and Vandana on the roof top/terrace. It is apparent that she had developed ill will and was residing separately, after moving out from her matrimonial home. Her sister Hansa was married to her brother-in-law and Hansa had also moved out before her. Both of them i.e. two sister in laws were residing with her parents. Therefore, we do not place much reliance on PW-17's account to the extent indicated above.

16. Tehrir (Ex. PW22/A) was recorded on 31st January, 2007 at about 8.00 P.M. As at that time Vandana had not expired and Section 302 IPC was not invoked. In the said Tehrir, it was mentioned that at the spot no eye witness was found. However, as noticed above, the appellant Varita was arrested on 31st January, 2007 at 11.00 P.M., as per the arrest memo (Ex. PW19/A) i.e. within a short span of time. Prior to her arrest, she had been taken to the hospital for examination which was conducted at about 10.15 P.M., as per (MLC Ex. PW20/A). Thus, involvement of Varita, as the perpetrator, was ideated immediately and

not after considerable delay. It cannot be regarded as an afterthought or an attempt to falsely implicate to save a third person or because no other person could be arrested.

17. Appellant counsel, in arguendo, has urged that the appellant's conviction under Section 302 IPC is unsustainable and at best appellant can be convicted and sentenced under Section 304 Part I or Part II, IPC. It was highlighted that the appellant was pregnant, at the time of occurrence, and had given birth to a girl child within one month of the occurrence. Reliance is placed upon ***Golla Yelugu Govindu v. State of Andhra Pradesh*** (2008) 16 SCC 769. In the said case, the accused had hacked the deceased in the neck with a sickle and had, thereafter, once again hacked on the neck and the left ear causing severe bleeding injuries to the deceased. Considering the factual scenario in that case and the fact that the assault was made during the course of sudden quarrel, the conviction under Section 302 was aside and the accused was convicted under S. 304 Part I. This case provides no aid or help to the appellant, as the facts herein are distinguishable. This is not a case of heated sudden quarrel, but the facts on record, suggest a planned assault and attack on the deceased. As noticed above, the Post Mortem Report (Ex. PW14/A) refers to as many as eleven wounds which were visible on external examination. Some of the wounds were incised wounds, multiple in nature. The cause of death in fact is cranio cerebral damaged and haemorrhagic shock. The same was caused by a knife and by blunt forced impact over the head. Obviously, the appellant had used the wooden fatta to strike at the head. As per the Post Mortem Report, on internal examination, all skull bones were found to be fractured irregularly. All the brain matter was contused and

lacerated. The injuries caused were multiple. The Post Mortem Report reveals that there were multiple incised wounds on her body apart from the fracture caused on her head. The head injury and injury No. 2, an incised one on the right side of the abdomen, as per the post mortem report was sufficient to cause death in ordinary course of nature. The deceased was a small girl who had not even reached her teen, barely 9-10 years old. The innocent girl would have been harmless to anyone's existence. As per the statement of witnesses PW-2 and PW-10, she was called and taken upstairs by the appellant, on a pretext of showing her the marriage album. There is nothing on record to show that any heated arguments or sudden quarrel had taken place between the two. Neither has the appellant, in her statement under Section 313 Cr.P.C., made any suggestion to this effect. Cross-examination of the witnesses do not indicate any such circumstances. Keeping in view of the aforesaid facts, we hold that the appellant has been rightly convicted under Section 302 IPC.

18. On the question of quantum of sentence, we uphold the sentence of the appellant for life imprisonment but delete the direction of the trial court that "in no case the appellant will be released before completing 20 years in jail". The question of remission etc. is for the appropriate government to decide. It has been reiterated and held in numerous cases that a sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its power as per law to remit either the whole or a part of the sentence. (See **State of M.P. v. Ratan Singh** (1976) 3 SCC 470, **Sohan Lal v. Asha Ram** (1981) 1 SCC 106, **Bhagirath v. Delhi Admin.** (1985) 2 SCC 580, **Zahid Hussein v. State of West**

Bengal (2001) 3 SCC 750, **Subash Chander v. Kishan Lal** (2001) 4 SCC 458 and others.) Recently, in **Sangeet v. State of Haryana** 2012(11) SCALE 140 it has been observed as under:

“74. Under the circumstances, it appears to us there is a misconception that a prisoner serving a life sentence has an indefeasible right to release on completion of either fourteen years or twenty years imprisonment. The prisoner has no such right. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government Under Section 432 of the Code of Criminal Procedure which in turn is subject to the procedural checks in that Section and the substantive check in Section 433A of the Code of Criminal Procedure.

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78. What Section 302 of the Indian Penal Code provides for is only two punishments-life imprisonment and death penalty. In several cases, this Court has proceeded on the postulate that life imprisonment means fourteen years of incarceration, after remissions. The calculation of fourteen years of incarceration is based on another postulate, articulated in **Swamy Shraddananda**, namely that a sentence of life imprisonment is first commuted (or deemed converted) to a fixed term of twenty years on the basis of the Karnataka Prison Rules, 1974 and a similar letter issued by the Government of Bihar. Apparently, rules of this nature exist in other States as well. Thereafter, remissions earned or awarded to a convict are applied to the commuted sentence to work out the period of incarceration to fourteen years.

79. This re-engineered calculation can be made only after the appropriate Government artificially

determines the period of incarceration. The procedure apparently being followed by the appropriate Government is that life imprisonment is artificially considered to be imprisonment for a period of twenty years. It is this arbitrary reckoning that has been prohibited in ***Ratan Singh***. A failure to implement ***Ratan Singh*** has led this Court in some cases to carve out a special category in which sentences of twenty years or more are awarded, even after accounting for remissions. If the law is applied as we understand it, meaning thereby that life imprisonment is imprisonment for the life span of the convict, with procedural and substantive checks laid down in the Code of Criminal Procedure for his early release we would reach a legally satisfactory result on the issue of remissions. This makes an order for incarceration for a minimum period of 20 or 25 or 30 years unnecessary.”

19. Accordingly, the appeal is disposed of.

-sd-
(SANJIV KHANNA)
JUDGE

-sd-
(SIDHARTH MRIDUL)
JUDGE

JANUARY 15, 2013
Kkb/NA