

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

AND

HON'BLE JUSTICE M. GANGA RAO

CRIMINAL APPEAL No.809 OF 2013

JUDGMENT : *(Per Hon'ble Dr. Justice B. Siva Sankara Rao)*

The sole accused, by name, Hatwal Dashrathlal, aged about 27 years maintained the present appeal, aggrieved by the conviction judgment of the learned Metropolitan Sessions Judge, Hyderabad, dated 09.07.2013, in Sessions Case No.179 of 2013 in finding guilty on the charges under Sections 364 and 302 IPC to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.100/- with default sentence of one month simple imprisonment for the offence under Section 364 IPC and to undergo life imprisonment with fine of Rs.100/- with default sentence of one month simple imprisonment for the offence under Section 302 IPC and both the sentences imposed against the accused shall run concurrently, while finding the accused not guilty for the offence under Section 8(c) read with 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'), maintained the present appeal.

2. The contentions in the grounds of appeal vis-à-vis oral submissions and the written submissions of the learned counsel for the appellant/accused are that the conviction judgment of the learned Sessions Judge is contrary to law, weight of evidence and probabilities of the case and the learned Judge ought to have seen that there is no substantial evidence to prove the guilt of the appellant and

the trial Court did not formulate the issues for consideration and collect the evidence and the pros and cons bearing upon the issue in order to arrive to correct decision thereon and erred in admitting the evidence improperly and rejecting certain material evidence which in fact occasioned a failure to justice, omitted to consider the very important evidence, which is in favour of the appellant, which will prove the innocence of the appellant and also failed to notice that the prosecution miserably failed to establish any case against the appellant by examining of any direct or acceptable evidence for the alleged offences and the trial Court ought to have seen that there is no direct witness in this case and the proceedings of PW.24, dated 16.07.2011, in the Test Identification of the accused clubbing with five non-suspects is also shabby and the evidence of PWs.7 and 9 also inconsistent and incredible, so also with reference to the descriptive particulars of the suspected with accused of allegedly seen while taking the minor girl and there is 21 days delay in conducting Test Identification parade from the date of arrest and PW.9 did not state the age of the accused, the so-called confession and disclosure statement is created in foisting the false case, that was discussed by the learned trial Judge with reference to the evidence of PW.12-Rakesh by allegedly recorded by PW.20-Investigating Officer and the call details information is also incomplete from the evidence of PWs.17 and 18 as to what is the conversation, PW.17 stated that he cannot give the particulars of two mobile phones and as to the ownership of the user

could not be given as per PW.12 and the chain of circumstances link the accused with the crime could not be made out, much less established and thereby setting aside the conviction judgment and acquit the accused by allowing the appeal.

3. The learned Public Prosecutor supported the trial Court's conviction judgment on all material aspects with the contentions of, for this Court while sitting in appeal with reasoned conclusions arrived by the trial Court's in finding the accused guilty for the offences under Sections 364 and 302 IPC and sentencing him referred above no way requires interference in any manner and sought for dismissal of the appeal. Leave about the non-filing of the appeal against acquittal on the charge for the offence under Section 8(c) read with 20(b)(ii)(A) of the NDPS Act not a ground to impugn the conviction judgment in the IPC offences supra.

4. Heard both sides and perused the entire material on record by re-appreciation with reference to the facts and law from what is heard in detail.

5. The sum and substance of the accusation from the report-Ex.P.1 of the *de facto* complainant Ex.P.1, dated 24.06.2011 registered F.I.R.-Ex.P.11 in Shahinayathgunj Police Station by PW.15-Head Constable was that on 24.06.2011 at 08.30 hours, the *de facto* complainant (PW.1) and his wife (PW.2) left the house to Rajbhavan, as they are working sweepers, by leaving their child Soni (deceased), aged 1 ½ year, with Swathi (PW.3), who is the sister-in-law of the *de*

facto complainant, and around 9.30 a.m. PW.1 received a phone call from PW.3 that the elder brother of the *de facto* complainant, by name, Dasharath (accused) taken away their child Soni saying he will provide tiffin to the child and then the *de facto* complainant and his wife came to the house and met PW.3 and while causing enquiries, at about 11.30 hours PW.1 received a phone call from Cell No.9989406403 on his Cell No.9133637254 in which his brother Dasharath (accused) threatened to kill his daughter Soni, as they did not permit him to stay in their house along with them, on that PW.1/*de facto* complainant and his wife decided to give police complaint and gave the complaint supra requesting to hand over his daughter Soni from his brother and also take necessary action against him. It is also mentioned by the *de facto* complainant that earlier his brother (accused) from Kulsumpura P.S. ~~went~~ to jail and came.

6. When the police made efforts to apprehend the accused by issuing look out notices and alerting the Rakshak and blue colt staff, the accused was found with possession of ganja stuffed in a bed sheet in the plastic carry bag at Kachiguda Railway Station on 26.06.2011 at 19.30 hours. Accordingly, the police after investigation filed the charge sheet for the offences punishable under Sections 364 and 302 IPC and Section 8(c) & 20(b)(II)(A) of NDPS Act and the learned Committal Magistrate taken cognizance by allotting P.R.C.No.62 of 2012 and committed to the Court of Sessions and the learned

Metropolitan Sessions Judge, Hyderabad, allotted Sessions Case No.179 of 2013, for disposal.

7. During the course of trial, on behalf of prosecution PWs.1 to 24 were examined and Exs.P.1 to P.27 and M.Os.1 to 13 were marked, among whom PW.1 is the *de facto* complainant and father of the deceased, PW.2 is the mother of the deceased and wife of PW.1, PW.3-minor, who is the sister of PW.2, PW.4 is the brother of PW.2, PW.5 is the brother of PW.1, PW.6 is a salesman working in a General Store, PWs.7 to 9 are residents of Ziaguda, who are the witnesses while carrying the deceased by the accused to the graveyard, PW.10 is a circumstantial witness, PW.11 is the circumstantial witness, who speaks about purchasing of Idly by the accused, PW.12 is the panch witness for confessional-cum-seizure panchanama-Ex.P.9, PW.13 is the panch for scene of offence and confessional panchanama-Ex.P.10, PW.14 is a Scientific Officer in A.P. Forensic Science Laboratory, Hyderabad, PW.15 is the head constable, who registered the crime by issuing F.I.R. supra, PW.16 is the Assistant Professor, Department of Forensic Medicine, Kakatiya Medical College, Warangal, who conducted postmortem examination and issued Ex.P.13 postmortem report, PW.17 is the Nodal Officer in Bharathi Airtel Limited, who issued call detail particulars-Ex.P.15, PW.18 is alternate Nodal Officer, Reliance Communications Ltd., Madhapur, who issued call details of cell No.9394607325-Ex.P.17, PW.19 is the panch witness for inquest panchanama-Ex.P.18, PWs.20

to 23 are Investigating Officers and PW.24 is the Senior Civil Judge, who recorded 164 Cr.P.C. statements of PWs.1 to 6 and conducted Test Identification Parade-Ex.P.26 based on PW.23 requisition including of one P.Srinu covered by Ex.P.27. Among material objects, M.O.1-Ganja, M.O.2-Bed Sheet, M.O.3-T-Shirt and M.O.4-Pant seized under Ex.P.9 confession-cum-seizure panchanama in the presence of PW.12. M.O.5-Broken pieces of grave, M.O.6-Control of grave, M.O.7- Swab, M.O.8-Diary and M.O.9 is Loose papers book were seized under Ex.P.10-scene of offence panchanama in the presence of PW.13. M.O.10-T-shirt of the deceased seized in the presence of PW.19 while conducting inquest panchanama-Ex.P.18. M.O.11-two samples packets of ganja received from F.S.L., M.O.12-T-shirt of accused and M.O.13-Jeans pant of accused were seized in the presence of panch witnesses by the PW.20-Investigating Officer. After closure of prosecution evidence, when the accused is examined under Section 313 Cr.P.C., he denied the truth of the evidence and pleaded no defence and the same is under attack referred supra in maintaining the appeal in seeking to acquit by setting aside the conviction judgment.

8. From the above material and from the hearing referred supra, the points that arise for consideration with reference to the material on record are that:

1. Whether the deceased Soni @ Sona, aged about 1 ½ years by the time she met with homicidal death and if so in the hands of the accused?

2. If not, whether the prosecution case of accused abducted for kidnapping and murdered the deceased with reference to the facts and circumstances including the trial Court's conviction judgment from the evidence on record referred supra is unsustainable?
 3. If not, to what extent the trial Court's conviction judgment including on the penal provisions requires interference, if not and with what observations?
 4. to what relief?
9. As all the points for consideration require to discuss together to avoid repetition of facts in each point those are taken up together to decide.
10. PWs.1 and 2 are the parents of the deceased kid Soni @ Sona and no other than the brother and brother's wife of the accused deposed in their evidence in tune to the contents of Ex.P.1-complaint and also their statements during investigation including through Section 164 Cr.P.C. recorded by the Magistrate under Exs.P.2 and P.3 that they are staying at Jummerath Bazar, Hyderabad, by working as part-time sweepers in Rajbhavan. The deceased Soni @ Sona is their daughter, aged about 1 ½ years at the time of incident. At their house besides their kid, PWs.1's second elder brother Hatwal Dasharath (accused), sister of PW.2 and brother of PW.2 together residing. The accused is habituated to smoking and consuming liquor and narcotic drugs and he involved even in cases of chain snatching, etc., and was sent to jail and came out later. While staying in their family, the accused one day scolded PW.2 which she informed to PW.1 from

which they sent him away from the house. The accused brought their another brother to pacify, but PW.1 did not accept the proposal to allow the accused to stay with them. The accused while leaving the house in failure of his effort supra to stay with them, threatened them with dire consequences to destroy family. As per PW.1, while so on 24.06.2011 morning when himself and his wife PW.2 left to attend their sweeping job by left their kid Soni at home with PW.2's sister Swathi (PW.3, minor girl, aged about 12 years, by then) to take care of the child, it was while so at about 10.00 a.m. PW.3 called PW.1 over phone that the accused taken away Baby Soni under the guise of feeding Idly, however, he did not bring back the child. It is therefrom PWs.1 and 2 rushed back to home and searched in and around and then at about 12.00 Noon lodged a complaint and it was at 12.00 Noon PW.1 was at Police Station, the accused gave a phone call to PW.1 informing that the baby Soni was with him and he would kill her for they did not permit him to stay in the house of PWs.1 and 2. He asked the police to save their baby Soni. Again at 2.24 p.m. PW.1 received another phone call from the accused of he killed baby Soni and left the dead body at Muslim Graveyard, Imampura, Ziaguda so to collect the dead body. Immediately they went to the graveyard and searched there and found the dead body of baby Soni in the bushes with injuries on head and hands, etc., and part of the body was noticed burnt. In the cross-examination of PW.2 she denied the suggestion of she is deposing falsehood as if the accused scolded her or she

informed to her husband and therefrom the accused go out from the house or therefrom he bore grudge against them and killed their daughter. She stated that the phone number of her husband is 9133637254 and denied the suggestion of the said cell phone number does not belong to her husband. She also deposed that she did not go to Imampura graveyard to see the child. She deposed that her brother and her husband went to the graveyard and see the dead body and she saw the daughter's dead body at hospital and she did not go to the police station. She denied the suggestion of accused did not accustom to any consuming of liquor and alleged scolded and it is a false case based on suspicion against him. PW.1 deposed in his cross-examination in same lines. He stated that he did not mention the dates on which the quarrel ensued between them and when he asked the accused to go away from the house and he is illiterate though he can sign in English. He further deposed that his statement was recorded by police and obtained his signature, having recorded to his narration and denied the suggestion of he did not state in Ex.P.1-report about accused was addicted to narcotics. He also confirmed his cell No.9133637254, though he cannot re-collect the phone number of the accused and he also cannot recollect whether the accused rang up from any landline or cell phone to his phone about the accused informed of kidnapped and killed his daughter respectively. He deposed that police also accompanied him to the graveyard where the dead body was found and his statement was recorded by the police

before going to the graveyard and seen the dead body on the same day. He denied the suggestion of accused was not accustomed to liquor or narcotic drugs or other vices or he foisted a false case on mere suspicion. What all suggested further is regarding their 164 Cr.P.C. statements recorded by Magistrate, both stated they did not remember the date of giving. From that cross-examination what all suggested is PW.1 given the report and PW.2 states only on suspicion and as if no incident of accused scolded PW.2 and from her information PW.1 asked his brother (accused) not to stay in the house and go away and from that he bore grudge and with that motive he has taken the baby Soni having kidnapped and killed at the graveyard or he telephoned twice to the said cell phone of PW.1. There is no dispute of the said cell phone belongs to PW.1 it is not even stated accused has no cell phone in his name with him by any suggestion.

11. PW.3 is the crucial witness if at all to corroborate the evidence of PWs.1 and 2 of their child left by PWs.1 and 2 with PW.3 at the house was taken by accused and later found at the graveyard died with injuries, for the accused to explain how the child taken by him if at all died lying at the graveyard with injuries including under Section 106 of the Indian Evidence Act of the fact exclusively within his knowledge in this regard from the last seen theory, which is also one of the vital circumstances in linking the chain besides the motive referred supra. In this regard, what PW.3 baby Swathi at the time of her evidence aged about 14 years, from the preliminary questions put

found by the Court fit to give evidence from the rational answers, deposed in corroboration to that of PWs.1 and 2 of she is residing along with PWs.1 and 2 in their house since her parents are no more and her elder brother is Jagadishwer (LW.4) also residing with them and on 24.06.2011 at about 9.30 a.m. or so the accused took away the minor daughter Soni @ Sona of the PWs.1 and 2, from her stating to feed Idly and did not return even after half an hour and therefrom she telephoned to PW.1 and informed the same and she also deposed about her brother Jagadishwer PW.4 was also there with her at the time of accused taken away the baby Soni from her custody. She also deposed that on receiving phone call from PW.1, PWs.1 and 2 came back to the house and they are searched for baby Soni and also for the accused and could not traced. Then went to the Police Station and PW.1 lodged the report. She further stated in her chief-examination of she came to know of accused rang up PW.1 and informed about the accused kidnapped Soni and later as killed her and kept the dead body in Muslim graveyard of Imampura, Ziaguda, and when police recorded her statement she stated the facts, so also in Ex.P.4-statement recorded under Section 164 Cr.P.C. by the Magistrate. PW.3 categorically deposed in her chief-examination therefrom of accused taken the child Soni of PWs.1 and 2 from her under the guise of feeding with Idly and did not bring the child back and he did not return. It is to say the child is last seen in the custody of the accused before she breathed last at the graveyard and found with injuries. In

the cross-examination of PW.3 by accused only four lines elicited which reads *“Police examined and recorded my statement at my house. The police did not tutor me today to give evidence in this case. I came to know through my brother in law about the death of my sister’s daughter. It is not true to suggest that at the instance of my brother in law, I am deposing false.”* There is no any suggestion including of the child was not taken from her custody by the accused after the child was left by the parents PWs.1 and 2 with the PW.3-Swathi. There is no any suggestion including of PW.4-Jagadishwer was also at the house at that time. There is no denial of the evidence of it is thereby after waiting some time PW.3 rang up to PW.1 about the factum of the accused taken the baby Soni under the guise of feeding Idly and he did not bring back even after waiting for half an hour, thereby called PWs.1 and 2 and they came immediately to the home. Those aspects are materially corroborating with the evidence of PWs.1 and 2 including on the fact that on 24.06.2011 after 9.30 p.m. which is subsequent to PWs.1 and 2 left for works at Rajbhavan by leaving their child Soni with PW.3 the accused taken the child from the custody of PW.3 for outing under the guise of feeding the child with idly.

12. PW.4 is brother of PW.3 referred supra by name, Jagadishwer Reddy @ Jagadish, aged 20 years, who also deposed in corroboration to it on material aspects to the evidence of PWs.1 to 3 as also residing with PWs.1 and 2 and accused used to quarrel including for money to

purchase liquor and ganja and accused beat PW.1 in the quarrel, from that PW.1 sent away the accused from the house and accused brought his another brother and raised a Panchayat and even therefrom PW.1 did not allow. The suggestion to the stay of accused in the house of PWs.1 and 2 and it is while so on 24.06.2011, after PWs.1 and 2 left for works, in the morning, at about 9.00 a.m. or so the accused came to the house and took away the baby Soni of PWs.1 and 2 from PW.3 when himself and PW.3 were present at the house, under the guise of feeding Idly to the baby Soni and after one hour waiting even he did not bring back the child therefrom PW.3 rang up to PW.1 and so informed and therefrom PWs.1 and 2 came to the house and they searched for the girl and accused and could not traced and PW.1 along with PW.2 went to the police station to report the matter. He also deposed about accused telephoned to PW.1 and informed of he was going to kill the deceased baby Soni and again rang up and told of he killed baby Soni and left at the graveyard and PW.1, himself and police went to the graveyard and found the dead body of the baby Soni with injuries including partly burnt injuries and brought to hospital later and he stated the facts when examined by police including in his statement Ex.P.5 under Section 164 Cr.P.C. In the cross-examination he denied the suggestion of he did not state before the police of the accused quarreled with PW.1 for money and beat. Even it is an omission it is not a material omission, much less tantamounts to contradiction therefrom. He deposed that there is one

room and one kitchen in the house and when myself and my sister and baby Soni were in the room, the accused came after 9.00 a.m. or so on the day. This positive suggestion corroborates their evidence in this regard of PWs.3 and 4 were at the house when baby Soni with them after PWs.1 and 2 left the house, the accused came there. Coming to the further aspects he denied the suggestion of there were disputes between PW.1 and the accused and at the instance of PW.1 this case is foisted on suspicion. Even then what PWs.1 to 4 deposed of the disputes between the accused and PW.1 where from what they deposed of from accused coming under intoxication or consuming liquor/narcotic or by smoking, raising disputes and altercation including with PW.1. PW.4 further deposed of himself and PW.1 went to the graveyard along with police and what PWs.2 and 3 also deposed in corroboration with that of PW.1. Thereby from the evidence of PW.4 also there is nothing in the cross-examination to describe the testimony or to belie the said evidence which consistently establishes that on 24.06.2011 after 9.00 a.m. PWs.1 and 2 left to Rajbhavan for sweeping, having left the child baby Soni with PW.3 when PW.4, brother of PW.3, was also there, accused came there at about 9.30 a.m. or 10.00 a.m. and taken the child baby Soni from PW.3 under the guise of feeding Idly and even after waiting for half an hour or so, he did not bring back the child and thereby she telephoned to PW.1 and therefrom PWs.1 and 2 rushed to home and they are searched for baby Soni and accused and could not found and

then PWs.1 and 2 etc., went to the police station to report by 12 Noon or so, it is by then at Police Station, PW.1's statement was recorded by police covered by Ex.P.2 and he signed from what was narrated, accused telephoned saying he was going to kill baby Soni with him, daughter of PWs.1 and 2, and later he telephoned about he killed baby Soni and left the dead body at the graveyard, Ziaguda, and it is therefrom they rushed there, other than PW.2, along with police and found the dead body with injuries. It is clearly establishes that it is the accused that he taken the child from PWs.3 and 4 in the house when PWs.1 and 2 were not there and killed the child with no lapse of time and left the dead body at the graveyard, Ziaguda, and the motive is he was consuming liquor and alcohol and narcotics and raising quarrels and PWs.1 and 2 asked him to left the house and not to come again from which even he raised disputes through other brother and PW.1 unheeded to the persuasion to allow him to stay from the grudge he bore.

13. PW.5 is no other than the other brother of PW.1 and accused, who deposed in corroboration to the above that as accused was usually quarrelling with PWs.1 and 2 including for money to purchase liquor and drugs and therefrom PW.1 asked the accused to go away from the house, accused came to him and requested to pursue PW.1 not to sent out, then he went to PW.1 and asked to pacify and PW.1 did not accept to permit the accused to stay in their house, then accused went away saying he would see the end of PWs.1 and 2, for

they did not allow him to stay and eight days there after the incident took place i.e., on 24.06.2011 at about 11.00 a.m. PW.1 came to his house and asked whether accused brought their daughter Soni and he told that the accused did not bring and himself and PW.1 also went in search of the child, but could not trace and PW.1 went to police station and lodged complaint and on the same day PW.1 rang up to him and informed of he received phone call from accused stating he killed his daughter Soni and abandoned at Muslim graveyard at Imampura, Ziaguda, and he also went to the graveyard and found the dead body with injuries and partly burnt injury. Later the child was shifted to hospital and police examined and he also stated the facts before the learned Magistrate in Ex.P.6. In his cross-examination he denied the suggestion of he did not state before police of PW.1 came to his house and informed that he received phone call from accused stating accused killed the deceased. He denied the suggestion of he do not know how the deceased died. What this witness deposed referred supra in his chief-examination is only PW.1 rang up and informed and not came and informed. He categorically deposed of since he does not know about the family affairs and disputes that took place in the house of PW.1, he did not state in detail to the police about the quarrel by accused for money etc., This evidence of PW.5 also corroborates on the material aspects including on motive aspect and what PW.1 stated from what the phone call received by PW.1 from accused of he was going to kill the deceased/child of PW.1 with

him, that is admissible under Section 6 of the Indian Evidence Act as per expression of Division Bench of this Court in **Bandela Nagaraju and others v. State of A.P.**¹ speaks with reference to illustration (a) of Section 6 of the Evidence Act that a declaration made by a witness subsequent to the occurrence is admissible under Section 6 of the Act provided it can be validly assumed that the existing influence continued. While examining whether the declaration is connected with the fact in issue so as to form part of the same transaction, all the surrounding circumstances obtaining in each case have to be taken into consideration. In that case it was observed that the conduct of D in not immediately rushing to the Police Station does not give room for the assumption that his declaration was not contemporaneous or that the interval was such as to allow fabrication. The conditions for admissibility of such a statement relevant are the proximity of time and the proximity of the police station and continuity of action. The statement contained in Ex.P.1 thereby held satisfies the requirements of Section 6 of the Evidence Act and it is admissible, for that conclusion referred to **Rex v. Christie**², where it is laid down categorically that there cannot be any fixed limit of time and each case must depend upon its own facts and circumstances and a circumstance subsequent to the act may be admissible if it is a part of it and not a mere report of the past occurrence. The expression in Christie supra

¹ APLJ 1984 (1) (HC)

² (1914) AC 545

referred the earlier expression of House of Lords in **Bedingfield**³ case that was referred in **Wigmore's Treatise's** in 3rd edition Volume VI page 1756 and also **Sarkar's** evidence 13th edition page 69. The same was reiterated and confirmed the conclusion though differed on facts by another Division Bench judgment in **Daravath Kishen v. The State**⁴ particularly para 10.

14. PW.7, Qudrath Ali of Ziaguda, deposed that on that day when he was at his house at about 3.00 p.m. he saw the accused carrying a female baby proceeding towards the graveyard of Imampura, Ziaguda and two hours thereafter many people gathered at the graveyard and he also went there and found the female baby dead body with burn injuries on the hands and blood oozed out from the mouth. In his cross-examination he stated that he cannot say the age of the girl that was carrying by accused and he was running a kirana shop and he was outside the kirana shop at that time and saw the accused taking away the female baby and he cannot give the colour of the dress of the accused by then. He deposed that police examined him at the graveyard in front of his house and not at the police station. He deposed that he did not stated the police that accused was in fair complexion, in fact that was elicited in the cross-examination cannot be called or considered as omission. He denied the suggestion of he did not see the accused at that time and at the instance of police he is deposing falsehood that he saw the accused taking away the child with

³ (1879) 14 Cox CC 341

⁴ 1995 1 ACJ (Crl.) 504

him to the graveyard. There is nothing to suggest any motive for this witness aged about 60 years, whose house undisputedly opposite to the graveyard, for not even a chance witness to speak falsehood without saying from every probability of the seen, that is corroborating on material aspects of the evidence of PWs.1 to 5 discussed supra of the accused carrying the child to the graveyard was seen by PW.7 just before the deceased breathed last at the graveyard with injury as the last seen to say it is the accused alone and none else that killed the deceased from that proximity of time very less to the time of last seen to the time of deceased killed with injuries that too when taken to the graveyard by the accused and deceased found at the graveyard with injuries.

15. PW.8, another circumstantial witness whose house is also at Imampura, Ziaaguda, by name Rahana Begum, deposed that on that day at about 01.00 p.m. or so she saw a person carrying a female baby aged about 7 or 8 years. No doubt, this witness' evidence is with no cross-examination and cannot be given credence though not elicited anything worth, but for suggestion of what she stated is confronted covered by Ex.P.8 statement of the child is only one year or so and not stated as 7 years or so.

16. Coming to the evidence of PW.9, Syed Mansoor, whose house is at Ziaaguda, Imampura, very near to graveyard, that on that day at about 11.00 a.m. or so while he was standing at his house, accused was carrying a female girl towards the graveyard and after 3.30 p.m.

or so people gathered at the graveyard and he also went there and found the dead body of the baby with injuries at the graveyard and police examined him, subsequently in the Test Identification Parade conducted, he identified the accused as said person who carried the deceased girl on that day to the graveyard and Magistrate recorded his statement during Test Identification Parade proceedings at the Central Prison, Cherlapally. In the cross-examination he deposed that he saw the accused only once on that day at the graveyard and stated accused was in dark complexion, who took the girl into the graveyard and did not state the age of the accused. The age of girl taken by the accused stated about 12 or 13 years. Regarding the Test Identification Parade proceedings, he stated accused was mixed up with 8 to 10 persons and denied the suggestion of police shown to him earlier prior to conducting of Test Identification Parade proceedings to identify or accused taking the girl into the graveyard or deposing falsehood. He deposed that accused was wearing black shirt, though he could not remember the colour of the pant at the time of conducting Test Identification Parade proceedings. In the cross-examination by learned Public Prosecutor with no cross-examination by the accused he was confronted to his statement saying the girl was aged about 1 or 1 ½ years and he admitted the same of the girl carrying by accused on his shoulder at that time he going to the graveyard, he could not guess her age as to one and one and half years and what he stated is only approximately in his chief-examination. He clarified and still accused

did not cross-examine much less disputed the evidence of PW.9 corroborates to PW.7 which all of corroborates to the evidence of PWs.1 to 5 and to some extent of PW.8 other than the age stated approximately.

17. PW.6 is one G. Suresh of Jumnerath Bazar, stated working as salesman at Khatedan in a general stores and accused and PW.1 are his friends and that on 24.06.2011 he received a phone call between 1.30 p.m. and 2.00 p.m. to his cell phone No.9394607325 from accused, who rang up from a landline saying he kidnapped the daughter of PW.1 baby Soni and killed her and left the dead body at Imampura Muslim graveyard and when he asked the accused as to why he did so, he told that PWs.1 and 2 sent him away from their house and thereby he killed the child of them and asked the accused to meet him and then he disconnected the phone. He deposed that he rang up to PW.1 and found his phone engaged thereafter he informed over phone to PW.1 about receiving a call from the accused of the said conversation between himself and accused and PW.1 also informed of he also received a phone call from the accused of he kidnapped and killed his daughter Soni, then himself, PW.1 and police searched at the Muslim graveyard later found the dead body with injuries including burnt injuries and the body was shifted to Hospital and his statement recorded by police and he also deposed under Ex.P.7 before Magistrate under Section 164 Cr.P.C. In the cross-examination he deposed that they have searched for baby at Imampura

and did not search for accused. When he received phone call from accused, he was at house and accused might have rang up to him from coin box phone and he rang up to PW.1, but do not remember to what cell phone number of PW.1. He denied he suggestion of accused did not ring up to him nor informed about he is killing daughter of PW.1 or he is deposing falsehood at the instance of PW.1 or he did not go to the graveyard and saw the dead body. In the re-examination, PW.6 deposed that he received the call and he do not know the difference between coin box number and cell phone number and the call received is with 10 digits and he thought that the phone is only from coin box for so deposing. This witness evidence is also on all material aspects admissible including as extra judicial confession of the accused admissible under Section 24 of the Indian Evidence Act to PW.6 soon after he killed the deceased and even otherwise regarding the motive and conduct under Section 8 of the Indian Evidence Act.

18. PW.10 U.Bala Sailoo, deposed that on 24.06.2011 on some news spread about baby Soni was killed at the graveyard of Ziaguda, Imampura, he went and found the dead body with injuries at the graveyard and the police shifted the dead body later and the accused is the elder brother of PW.1, who is father of deceased Soni, and accused used to quarrel with PWs.1 and 2 for consuming liquor and drugs for not giving money. In the cross-examination he deposed that he was examined by police at the graveyard and not at other place and did not state about accused quarrelling with PW.1 by asking for

money for consumption of liquor and drugs and he is deposing falsehood at the instance of PW.1.

19. PW.11, Panjala Srinu, who was running Idly shop at Puranapul, Hyderabad, on a pushcart, deposed that on that day at about 9.00 a.m. or so while he was preparing Dosa and Idly for sale on his pushcart at Puranapul, the accused came along with a girl aged about 1 ½ years or so and took a plate Idly parcel and went away and on the next day he read the news in the newspaper about said girl was killed and he stated the facts to police. In the cross examination he deposed that he do not remember the name of the newspaper in which he saw the news and cannot read and write and only on seeing the photograph in the paper he learnt about the incident and police examined him at the police station and denied the suggestion of accused and the girl did not come to his Idly shop nor he purchased Idly and he is deposing falsehood. This evidence of PW.11 also corroborating with the evidence of PWs.1 to 5 in this regard.

20. PW.12 is B.Rakesh, who is a witness about the disclosure statement by accused on 26.06.2011 after arrest, while at the police custody and police lead him and accused to graveyard and accused shown the place and also shown a bed sheet wrapped there in graveyard and police drawn samples and seized the same covered by M.Os.1 and 2 reduced to writing under Ex.P.9 and police also seized T-Shirt and brown colour Jeans Pant worn by accused which are M.Os.3 and 4 that also covered by in the panchanama and in the cross

examination he deposed that he knows the house of accused and police enquired the accused at first in the police station then accused lead them to graveyard at Imampura and S.I and two Constables also present at that time at police station when accused made a disclosure that was reduced to writing under Ex.P.9. What he stated supra etcetera facts and police enquired the accused in his presence and he did not enquire additionally the accused about the incident and denied the suggestion of he is a stock witness or deposing falsehood. To the extent of there is any disclosure leading to discovery that is admissible under Section 27 of the Indian Evidence Act and other portion not as hit by Section 25 of the Indian Evidence Act.

21. PW.21 is the inspector of police at the relevant time at Shahinayathgunj police station and deposed about that in the course of investigation and in the presence of the mediator from what he disclosed reduced to writing and seized the material objects referred supra by PW.12.

22. PW.13 is M.Chinna Narasimha who stated that on 24.06.2011 he along with another witness to the graveyard of Imampura stood as panch witnesses to the scene observation panchanama which is at the graveyard platform, where found the dead body of the girl aged about nearly 3 years with injury on the head and other parts including burnt injury and opined the cause of death as beaten death and burnt and same is covered by Ex.P.10 and at that time police seized stone pieces, controlled earth and blood stained swab, with which blood

collected and a small size diary, which are marked as M.Os.5 to 8 and also a loose paper containing small book M.O.9 under cover of panchanama-Ex.P.10 and that also deposited by PW.20-Inspector of Police. In the cross examination of PW.13, he denied the suggestion of he signed at the police station and not at the graveyard and nothing taken place or deposing falsehood.

23. PW.14 is the document expert, A. Raja Naik, who deposed that he received intimation over phone from S.H.O., Shahinayathgunj Police Station, Hyderabad, on 24.06.2011, and went to the graveyard, Imampura and as part of clues team, visited the scene of offence at the graveyard and found blood stains on the grave and a pocket diary containing some writings and one red colour button and collected controlled earth and blood stained earth from the scene of offence and handed over to the Investigating Officer-PW.21. M.O.8 is the pocket diary, M.O.6 is the controlled earth of grave, M.O.7 is the blood stains collected from the grave in swab and those were seized by the Investigating Officer. In the cross-examination what he deposed is he collected and handed over to the police the clues and material objects.

24. PW.19 one P. Geetha is one of the inquest panchanama mediators on the dead body of the deceased Soni, deposed about the fact of they found injury on the forehead and also burn injuries on the right hand of the deceased and seized underwear and T-shirt of the deceased. M.O.10 is the T-shirt of the deceased seized at the time of inquest covered by Ex.P.18-inquest panchanama and opined of

deceased might have died of injuries. She deposed that she cannot read Telugu or English and inquest panchanama not read over to her. She denied the suggestion of no inquest panchanama prepared or she is deposing falsehood.

25. PWs.17 and 18 are S. Deepak Kumar and S. Madhusudhan Gupta are the Nodal Officer of Bharathi Airtel Limited and Alternate Nodal Officer of Reliance Communications Limited, respectively. PW.17 deposed that on 03.05.2012 as per the requisition of ACP, Goshamahal, by e-mail to provide call particulars of the Bharathi Airtel Subscriber No.9989406403 and 9989406465 from 20.06.2011 to 30.06.2011 and he has furnished the particulars of location, time, cell number and IMEI. He cannot give the details of the conversation that was not recorded in server. Ex.P.14 is the e-mail received from ACP, Goshamahal, Ex.P-15 call detail particulars furnished in ten sheets, which is computer generated statement. In the cross-examination he deposed that he forwarded the said information by mail to ACP, Goshamahal, and furnished the particulars of two mobile sought and those are not pertaining to any coin box. He did not furnish for not called the ownership of the mobile phone, denied the suggestion of he accommodate ACP, Goshamahal, suitably.

26. PW.18 also deposed of on 03.05.2012 he received e-mail from ACP, Goshamahal, and furnished the call details of 9394607325 from 20.06.2011 to 30.06.2011, where he furnished the details and server is

at Mumbai and he is the authorized person to obtain the details from server. So far as call particulars at Hyderabad and he collected and furnished Ex.P.16 is e-mail received from A.C.P and Ex.P.17 call detail particulars and in the cross examination he deposed that he furnished the details though e-mail on the same day of receiving e-mail from A.C.P and did not give the particulars regarding the ownership and user of the said phone and denied the suggestion of it is only to suit the prosecution the particulars furnished.

27. Ex.P.W.20, G.Guru Raghavendra, inspector of police, deposed that he received on 24.06.2011 C.D. file of Crime No.146 of 2011 registered by P.W.15 and in the course of investigation formed parties to nab the accused and examined P.Ws.1 to 6 etc., and visited the scene of offence at the graveyard, Imampura and found the dead body of baby Soni aged about 1 ½ years and enquired the witnesses PWs.7 to 9, recorded their statements, secured clues team, collected the clues at the scene of offence and conducted inquest over the dead body of the deceased in the presence of mediators and also conducted scene observation panchanama and prepared rough sketch in the presence of mediators and seized M.Os.5 to 9 and recorded the statement of P.W. 10 and referred the dead body to conduct postmortem.

28. In this regard P.W. 16 Doctor Shaik Khaja Mohiuddin, Assistant Professor, Osmania Medical College at the relevant time, deposed that on 25.06.2011 at 02.00 p.m. he received a requisition from Shahinayathgunj Police Station to conduct autopsy over the dead

body of the deceased Soni brought by P.C. 7202 of Shahinayathgunj Police Station and conducted postmortem examination between 2.10 p.m. and 3.15 p.m. and found anti-mortem burnt injury of 15 X 6 cm present over the dorsal aspect of the right forearm, another anti-mortem burnt injury of 4 X 3 cm present over the left frontal region, an abrasion of 1 X ½ cm present over the middle of the forehead an abrasion of 0.5 X 0.5 cm present just lateral to the right eye and multiple skull bone fractures varying sizes present and difused extradural and subdural haemorrhage present over both cerebral hemispheres and death caused was due to head injury and injury no.5 supra with bone fractures of skull is a fatal one, sufficient to cause death and might have died 23 hours prior to conducting autopsy and the injuries are possible holding the lower limbs of a person hitting against hard surface. Ex.P.13 is the postmortem report marked based on Ex.P.12-police requisition. He denied the suggestion of the postmortem report issued suitable to the prosecution case.

29. Coming to further evidence of P.W.20 and the evidence of PWs.22 to 24 remained, PW.20 deposed that on 26.06.2011 he apprehended the accused who made a disclosure and lead in the presence of mediators including PW.12 to the graveyard where shown a bed sheet underneath there is ganja in a plastic carry bag that was seized and after giving option by notice of examining before gazetted officer from acknowledgement by accused covered by Ex.P.19 and Ex.P.20 from the disclosure statement recorded, seized the ganja

M.O.1, after collected sample M.O.11 and seized T-shirt and Jeans pant of accused M.Os.12 and 13 and addressed letter to A.C.P for adding section of law by adding under Section 8(c) read with 20(b)(ii)(A) of NDPS Act covered by Ex.P.22 is the altered memo and arrested the accused and submitted to the judicial custody and made requisition to the learned Magistrate to conduct Section 164 Cr.P.C. statements of witnesses and identification proceedings of accused and after received postmortem report and sent material objects to FSL, handed over further investigation to his successor. In the cross examination he deposed that M.O.8 diary seized from the scene of offence containing the name of H.Dasharath and at some place as Dasharathlal and he did not enquire of whom the cell number belongs from which the accused rang up and spoke to his brother and searched ganja packets and punch witnesses not resident of locality. He denied the suggestion of investigation is a table made one and a false case is foisted.

30. PW.22, K. Srinivasulu, Additional Inspector of Police, deposed of earlier worked as Sub-Inspector, who deposed about his examination of PWs.1 and 2 after received case file from PW.15, visited the house of the *de facto* complainant and cause enquiry and after received phone call from the accused by PW.1 of he killed their baby Soni and left the dead body at a Muslim graveyard, he proceeded to the graveyard after 4.45 p.m. or so, where he recorded the statement of witnesses, altered section of law covered by Ex.P.22 alteration

memo, hand over case file to PW.20-Guru Rahavendra referred supra and he also denied the suggestion of investigation is a table made one.

31. PW.23, P.Sattaiah, Inspector of Police, deposed about collection of the call data information from PWs.17 and 18 through DCP and analyzed and stated the above details reflects of conversation between the cell phone of the *de facto* complainant and accused and accused taken on LW.6 supra and Ex.P.25 is the F.S.L. report reveals Item Nos.1 to 7 are examined and report given, after verifying the investigation he filed the charge sheet. In the cross-examination, he deposed of cell phone No.9989406465 belongs to accused and he gave requisition to the Nodal Officer with regard to the particulars of ownership and not furnished the particulars and denied the suggestion of said phone does not belongs to the accused and deposing falsehood.

32. PW.24 is the learned Magistrate, who conducted Test Identification Parade proceedings and recording the statement of witnesses, deposed the same in corroboration what is referred supra. In the cross-examination deposed whether he does not aware PWs.7 and 9 were produced by the police, but for to say they were already present at the entrance of the jail at the time he reached, conducted the Test Identification Parade proceedings 22 days after the incident. He recorded the statement of witnesses as per requisition as per Section 164 Cr.P.C.

33. This evidence corroborates with the medical evidence consistently shows soon before the deceased was killed and the left the dead body at the graveyard, the accused was found taking while alive the deceased towards graveyard and from what the witnesses deposed in corroboration to some time before the house of PWs.1 and 2 from the custody of PW.3 in the presence of PW.4, accused taken the girl under the protest to feed with Idly and having taken to Idly shop one of the witnesses supra purchased the Idly parcel and went away with the child and later telephoned to PW.1 and another witness supra of going to kill and killed and the same is co-relating with the call data information analyzed by police having secured PWs.17 and 18 that confirms to the evidence of the witnesses particularly PW.1 and PW.6. Thereby, the trial Court rightly came to the conclusion of accused brutally killed the deceased girl, having kidnapped for both the offences under Sections 364 and 302 IPC in sentencing to undergo for the offence under Section 364 IPC of three years rigorous imprisonment with fine of Rs.100/- with default sentence of one month and for the offence under Section 302 IPC life imprisonment while acquitting for the offence under Section 8(c) read with 20(b)(ii)(A) of the NDPS Act for nothing to interfere including on the quantum of sentence of imprisonment.

34. Accordingly and in the result, the criminal appeal is dismissed.

Miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

M. GANGA RAO, J

23rd November 2018.

mar

