



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

% **Reserved on: 13th July, 2022**
Pronounced on: 28th July, 2022

+ **CRL.A. 1013/2016**

DINESH Appellant
Represented by: Ms. Sushma Sharma, Mr.
Girish Kumar Sharma, Mr.
Karan Verma & Ms. Aayushi
Gaur, Advocates.

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Represented by: Ms. Aashaa Tiwari, APP for
State with SI Parvesh, PS Nihal
Vihar.

+ **CRL.A. 1016/2016**

SH. VIKASH @ VICKY Appellant
Represented by: Ms. Sushma Sharma, Mr.
Girish Kumar Sharma, Mr.
Karan Verma & Ms. Aayushi
Gaur, Advocates.

versus

STATE (GOVT OF NCT OF DELHI) Respondent
Represented by: Ms. Aashaa Tiwari, APP for
State with SI Parvesh, PS Nihal
Vihar.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MR. JUSTICE ANISH DAYAL

**JUDGMENT****ANISH DAYAL, J.**

1. The above captioned appeals impugn the judgment dated 25th April, 2016 whereby the appellants have been convicted for offence punishable under Section 302/307/34 IPC and order on sentence dated 26th April, 2016 being sentenced to life imprisonment with a fine of Rs.25,000/- each and in default of payment of fine to undergo 1 year imprisonment for the offence punishable under Section 302 IPC/Section 34 IPC. Both the appellants were also sentenced to 10 year imprisonment with a fine of Rs.10,000/- each and in default of payment of fine to undergo 6 months imprisonment for the offence punishable under Section 307 IPC/Section 34 IPC, both sentences to run concurrently.

The Incident:

2. The facts in brief as culled from the documents and trial court's record are as under:

- (i) As per the prosecution, a call with a DD No.8 (A) was received at PS Nihal Vihar and the consequently, the police team reached No.8, Yadav Park Extension, Kamruddin Nagar, Najafgarh Road, Delhi where it transpired that the injured had been removed to Satya Bhama Hospital. When the police reached the hospital they found a deceased aged lady (Smt. Krishna Devi) and a young child (Miss. Nancy) with no cardiac activity. They also found two other children 'I' and 'R' under



treatment. MLCs were duly collected and the statement of 'T' was recorded.

- (ii) 'T' in her statement mentioned that she was nine years of age and residing at the address mentioned above with her father, mother, brother and sister. On the evening prior, her parents had gone to the house of her aunt in neighbouring Haryana and her grandmother Krishna, her sister Nancy, brother 'R' and a cousin 'A' were present at home and were preparing to sleep. At about 10:30 pm her cousin 'A's' brother-in-law (appellant no.1) and appellant no.1's brother (appellant no.2), who used to come to their house, had come on that particular day as well. After tea, all of them slept in the inside room while 'A' slept in the outer room.
- (iii) While the three children Nancy, 'R' and 'T' slept on the double bed, the grandmother Krishna slept on the cot and the two appellants slept on the small bed. Sometime during the night 'T' heard her grandmother screaming and she saw appellant no.1 strangulating the neck of the grandmother with the cloth while appellant no.2 had put a pillow on the mouth of the grandmother to suffocate her. 'T' stated she was scared and did not open her eyes and after sometime, the screams of the grandmother subsided. Thereafter appellant no.1 held tight the mouth and neck of Nancy and also started pressing her mouth with a pillow. When 'T' started to protest, the appellant no.1 caught hold of her neck and started pressing it. 'T' managed to run away from the room and came to the room where 'A' was



sleeping and narrated the entire story to 'A'. On this 'A' went to the room where the appellants were and tried to switch on the light but the appellants shouted at him to switch it off. 'A' asked them what they were doing, and they replied that since the children were having bad dreams, they were "treating" them. Later, 'A' went upstairs and was followed by the appellants and they could not find 'A'. 'T' was inside the room of 'A' having bolted the door from inside which the appellants tried to open but could not and then they left the house. At about 4 am when they opened the door of the inside room they found that grandmother Krishna and Nancy were unconscious and her brother 'R' was also scared and had injuries on his eyes and neck.

- (iv) 'A' made a phone call to his uncle 'RL' who reached their house immediately and took the injured to the hospital where Nancy and Krishna passed away.
- (v) Bodies of the deceased were sent to the mortuary under the supervision of the police team. After inspection of the spot, a case under Section 302/307/Section 34 was registered and exhibits were lifted and seized, site plan was prepared.
- (vi) On 9th April, 2011, accused appellant no.1 was arrested by officers of PS Anand Vihar [DD no.16 (A)] and his statement was recorded. On 15th April, 2011, accused appellant no.2 was also arrested and his statement was also recorded. On 23rd April, 2011, statements of 'T' and 'R' were recorded under Section 164 Cr.P.C. and on 21st June, 2011, blood samples of



both the accused were taken and exhibits were deposited in FSL, Rohini.

- (vii) During the investigation, it was apparently revealed that appellants were doing property dealing and had suffered losses in the business and consequently borrowed Rs.3,50,000/- from their relative 'S' (father of the deceased, 'I' and 'R') who was demanding back his money. They had come to know of the selling of a plot by 'S' in Sonapat and knew that he had kept Rs.5,00,000/- in the house. As per the prosecution using this as an opportunity, they reached the house of 'S' and murdered Krishna and Nancy.
- (viii) The prosecution examined 31 witnesses followed by recorded the statements of the accused appellants recorded under Section 313 Cr.P.C. The defence presented one witness who was the neighbour of the appellants.

Submissions by the Appellants:

3. Assailing the impugned judgment and order on sentence, both the appellants preferred these appeals and raised the following contentions:

- (i) The learned trial court failed to appreciate that PW-10 'I' was a child witness of only 9 years of age and, therefore, her testimony does not inspire confidence and that she was a witness tutored by her father who had a financial dispute with the appellants.
- (ii) The father 'S' PW-3 had wrongly entangled the appellants in the FIR because of his financial dispute with them.
- (iii) Despite PW-10 having deposed that her sister Nancy was gagged



with a cloth, no such cloth was seized by the police team and none was found on the spot.

- (iv) PW-2 'R' was also a child witness and his testimony does not inspire confidence since he was also a tutored witness.
- (v) The place of occurrence was in a congested locality of J.J. Cluster, however, no neighbour was either made a witness despite the incident taking place at about 10 pm and no alarm was raised by the witnesses.
- (vi) The prosecution witnesses have deposed different timelines and, therefore, they are material contradictions in their testimonies.
- (vii) The role of 'A' was very suspicious since he was a cousin aged 24 years and the learned trial court did not consider it relevant to take this into account for the purposes of reaching a conclusion of guilt beyond reasonable doubt. 'A' was examined as PW-15 and had made a strange statement asking for the keys while the children were hurt and so was the grandmother.
- (viii) There were no call records for the purported calls made by PW-15 to his uncle PW-14 'RL'.
- (ix) There was no proof that an amount of Rs.5,00,000/- was in the house, lying in the bed and that it was missing.
- (x) No finger prints were lifted despite the appellants having allegedly had tea in their house.
- (xi) PW-29 Investigating Officer confirmed that the statements of the relatives of the deceased or the witnesses were not recorded at that time nor any statement was recorded in the hospital, except for child 'R'.



- (xii) As per the testimony of PW-31, Senior Scientific Officer of FSL, Rohini, the blood group of the deceased was B Group while the appellants was A Group.
- (xiii) There was no proof of any motive, no location charts had been made, no call details had been taken and there was no witness to show that the appellants had visited the house.

In support of her contentions, learned counsel for the appellants has relied on the following judgments:

- (a) *Arjunbhai Gokulbhai Rathod v. The State of Gujarat* { CrI. A. 1715/2006; CrI. A. 501/2009 }
- (b) *State of Assam v. Mafizuddin Ahmed* (1983) 2 SCC 14
- (c) *K. Venkateshwarlu v. State of Andhra Pradesh* (2012) 8 SCC 73
- (d) *Digamber Vaishnav v. State of Chhattisgarh* (2019) 4 SCC 522
- (e) *Devender Alias Vikki & Anr. v. State of Haryana* (2009) SCC OnLine P&H 267

Submissions by the Prosecution:

4. On the other hand, learned Additional Public Prosecutor has vehemently countered contentions of the appellant and submitted as under:

- (i) The incident had two injured eye witnesses whose testimonies must be taken into account and believed. Both 'T' and 'R' were in the room when the incidence occurred and their statements were consistent.



- (ii) The statement of 'T' had been taken as part of the *Rukka*.
- (iii) Statements of all the witnesses recorded under Section 161 Cr.P.C. were consistent.
- (iv) The MLCs of 'T' and 'R' both mentioned that they had been brought to the hospital by their relative 'RL'.
- (v) Statements of 'T' and 'R' recorded under Section 164 Cr.P.C. by PW-26, Metropolitan Magistrate are duly exhibited and corroborate their earlier statements.
- (vi) PW-11, the doctor at the DDU Hospital, in his testimony has clearly stated that there were multiple abrasions which were all *ante mortem* injuries, as well as there was congestion in the lungs and extravasation of the blood in the neck. As per the doctor, the cause of death was a cumulative effect of asphyxia due to smothering and strangulation which is sufficient to cause death in the ordinary course of nature.

In support of contentions, learned Additional Public Prosecutor relied upon the following judgments:

- (a) ***Waman and Others v. State of Maharashtra*** (2011) 7 SCC 295
- (b) ***Dayal Singh & Ors. v. State of Uttaranchal*** (2012) 8 SCC 263
- (c) ***Jodhan v. State of Madhya Pradesh*** (2015) 11 SCC 52
- (d) ***Yogesh Singh v. Mahabeer Singh & Ors.*** (2017) 11 SCC 95

Analysis of the evidence:



5. The following relevant aspects are gleaned from the perusal of evidence on record:-

- (i) PW-10 'I' the sister of the deceased Nancy and grand-daughter of the deceased Krishna, aged about 9-10 years in her testimony before the Court stated that on the night of 01.04.2011, while her parents were away outside town, she was present in their own house along with her brother 'R', sister Nancy, cousin 'A' and her grand-mother Krishna. While they were sleeping, she was woken up by a sound of falling steel glass and saw that appellant no.1 was pressing Krishna's neck with a shawl while appellant no.2 was pressing her mouth with a pillow. Her sister Nancy also saw this and when she complained, appellant no.1 tied her neck with a scarf she was wearing and also pressed her mouth with a pillow. Upon this commotion, their brother 'R' also woke up and appellant no.2 pressed the neck of 'R' with his hands. 'I' then managed to escape and went to the room where her cousin 'A' was there and woke him up and told him about the assault. 'A' left his room and went to the room where the children and the grandmother were sleeping and tried to switch on the light of the room but was shouted down by both the appellants to switch it off. 'A' asked both the appellants as to what they were doing and they replied that the children were having a bad dream and therefore they were "*treating them*". 'A' then told her that he was going upstairs to the toilet and 'I' saw the appellants following 'A' upstairs but came down stating



that they did not find him there. She had bolted the door of 'A's room inside and when the appellants tried to push it and could not open, they left the house on a bike. When she went to the room where her grandmother and siblings were, she saw that they were in an injured state and consequently 'A' and 'R' telephoned their uncle 'RL' who came and took Nancy and later Krishna to the hospital where both of them were reported to have died. She stated that when the police came the next day, her statement was recorded which she had signed. Her statement as recorded in the *Rukka* Ex.PW-10/A was substantially the same except she had not stated about her cousin 'A' going upstairs and instead had said that he had locked the room inside and later after the assailants had left (at about 4 pm) they had opened their door and then witnessed the scene of occurrence. In her statement under Section 164 Cr.P.C. which was recorded on 23rd April, 2011, she had substantially given the same narrative except the additional information that the appellants had already been in their house from 10 pm and had slept with them after having some tea. She had also said that they had tried to force her grandmother to have tea which she had refused. She had also stated that at 3:30 am when she had escaped to 'A's room, it was time to open the shop and 'A' had asked for the keys of the shop from appellant no.1 and appellant no.1 had refused. Subsequent to that 'A' went upstairs and was followed by the appellants who were shouting



at him and on not finding 'A' upstairs they came down and went out of the house.

- (ii) The appellants' contentions in this appeal that PW-10's statement in the *Rukka* was not signed on the same date because of what she had stated in her testimony that she had only signed once and her signatures were not taken by the police when her statement was recorded in the hospital may not be relevant since PW-10 has given a substantial narrative describing the events that transpired on that night in her statement recorded under Section 164 Cr.P.C. and testimony before the Court. The minor variation about her cousin 'A' being locked in the room with her and later going upstairs, will not have any relevance to the fact that she was an eye witness to the assault by the two appellants on her sister and grandmother earlier as she herself was an injured witness. The details of her testimony are substantially consistent through her statements before the police, the Magistrate and then later before the learned trial court. The MLC of PW-10 also notes that she was brought in by uncle 'RL' and reports her assault and injuries as well which were duly recorded in the MLC.
- (iii) PW-2 'R', the brother of 'I' was also an eye witness to the assault and gave substantially the same narrative including identification of the two appellants who were in the room and had assaulted her sister Nancy and grandmother Krishna. He was also injured since appellant no.2 had stuffed his mouth and



pressed his neck. The MLC of PW-2 records the same and notes the injuries. PW-2 also stated that he saw the appellants open the box of the bed by putting him and Nancy on the side “*did something in the box of the bed*” but closed the box and went to the shop in front. He also confirmed that he heard somebody going upstairs and that the appellants followed him but reported that ‘A’ had run away and then they left. He also confirmed that ‘A’ was shouting that the kids had been assaulted and also to open the shop and was asking for the keys of the shop from the appellants, when the appellants left. In his statement under Section 164 Cr.P.C., he stated that ‘T’ had escaped to the room where ‘A’ was and told him “*chor aa gaye*” and that is when ‘T’ closed the door while ‘A’ came out to their room. He corroborated the narrative relating to the switching on and switching off of the lights and then about ‘A’ going upstairs.

- (iv) The appellants’ contention that this cry out by ‘T’ about thieves having come in, as reported by PW-2 could lead to the conclusion that it was actually some unidentified assailants who had come into the house, cannot be sustained, since the rest of the narrative of PW-2 is quite detailed and corroborates that of PW-10. His reporting about the “*chor aa gaye*” “*chor aa gaye*” cry could have been a mistake borne out of the chaotic events of that night which cannot obliterate the rest of the testimony regarding the appellants presence and their assault on



the two deceased. As an injured eye witness, his testimony would also carry substantial weight.

- (v) Contextualizing both the eye witnesses PW-10 and PW-2 with the scaled site plan (Ex.PW-8/A), it would seem that while the room in *which* 'A' slept was in the front portion and was part of the shop having the shutter opening out to the road, there was an interconnecting door from that room to the lobby which then had a further connecting door to the room in which the assault took place. It was therefore totally possible that 'I' escaped from room where the assault happened through the interconnecting door towards the lobby and to the place where 'A' was sleeping. She would have bolted the interconnecting door between A's room and the lobby. The report that 'A' had gone upstairs is also corroborated by the fact that there is a staircase leading from the lobby to a toilet upstairs.
- (vi) PW-3 also stated that the appellants used to visit their house frequently and had about six months prior to the date of incident taken a loan from him in two instalments amounting to Rs.2,00,000/- and Rs.1,50,000/- respectively for investing in a plot, but had not returned the amount even after about two months despite DW3 requesting them. He also stated that immediately prior to the date of the incident his mother, the deceased Krishna, had sold her house in Sonipat for Rs.5,00,000/- and kept that money in cash in the box of the bed. This cash amount, he stated, was later found after the incident



in a locked box beneath the clothes of the deceased Krishna. PW3's testimony therefore confirms that there was an amount of Rs.3.5 lacs owed by the appellants to PW3 and there was a refusal of the appellants to return the amount clearly indicating that appellants were in need of money. Since the appellants used to come to their house (the house of PW3) they knew about the cash amount of Rs.5,00,000/- which was secured by the deceased Krishna. These facts clearly prove the motive behind the occurrence. Even if they had no prior intention to kill Nancy but on her resisting, they decided to kill her as well. The fact that the cash of Rs.5,00,000/- was still intact even after the incident corroborates the testimony of the eye witness PW2 that the appellants had opened the box of the bed and tried to do something there and thereafter closed it. The cash clearly was stored in another locked box kept under the clothes of the deceased Krishna and not in the box of the bed. The appellants' contention in this regard that PW3 could not prove the loan taken by the appellants or of the sale of the Sonapat house by the deceased Krishna is not tenable since as regards the former, it could have been an informal loan being given to a relative without any writing and as regards the latter. Further, PW3 did state that the documents of the house sold by the deceased Krishna were with the buyer of the house.

(vii) PW-15, the cousin 'A's testimony also substantiated the narrative given by the eye witnesses. However, he stated that



when he switched on the light of the room where the assault had taken place, he did see the appellant no.1 sitting on the body of Nancy and suffocating her with a pillow while appellant no.2 was sitting on the back of PW2 and trying to strangle him as well. He also in that moment saw a shawl wrapped around the face and neck of the deceased Krishna. When he was told to switch off the lights by the appellants, according to him he hid himself upstairs in the toilet and then on the adjoining roof. When later the appellants tried to locate him/search for him and not being able to find him, left the house. He was not cross-examined on the statement regarding the keys of the shop that were reported as being asked for by him from the appellants (as per the testimonies of the eye-witnesses, 'I' and 'R').

(viii) No doubt the conduct of 'A' was strange but there was nothing suggested in his cross-examination that he had been involved with the appellants in abetting or conspiring in the assault in any manner whatsoever. Even if PW-15's testimony may be slightly inconsistent, it may also be attributed to the fact that the two appellants were his close relatives, appellant no.1 being his brother-in-law and appellant no.2, appellant no.1's brother. He may have been, therefore, prone to vacillating in his testimony. Further, the testimony of 'A' does not discredit the testimonies of the two injured eye witnesses 'I' and 'R', rather corroborates their version in material particulars.

(ix) As per the testimony of PW-29, the Investigating Officer, the



information was first received at about 6:25 a.m. on 02nd April, 2011 by the PCR and he visited the spot pursuant to which he requisitioned the crime team. Subsequently, when the crime team inspected the spot, amongst various things recovered were three small steel glasses lying under the double bed, a frying pan in the kitchen having some tea leaves. This corroborates the testimony of the eye witnesses who had stated that the appellants had tea on the date of the incident and that “T” had woken up on hearing the sound of steel glass falling. He also stated that the case was registered pursuant to the *Rukka*. PW-17, the constable, who had also gone to the spot, confirmed that while PW-19 had prepared the *Rukka*, he had taken it to the police station and got the FIR lodged and then returned with the copy of the FIR and the *Rukka* to the spot. The FIR details also prove that the information was received at 11 am on 02nd April, 2011 and which stated the narrative of PW-10 complainant in detail, who had named both the appellants.

- (x) Accordingly, the contention of the appellants that the recording of the FIR was manipulated at the behest of the interested witnesses, possibly the father PW-3, due to his quarrel with the appellants regarding the money loaned, is untenable since no such suggestion has been put to PW-17 as author of the *Rukka*. In fact PW-19 denies the suggestion that the statement recorded in the *Rukka* was done at the instance of PW-3 the father.
- (xi) PW-31, Senior Scientific Officer, FSL, Rohini, confirmed that as per the serological report, the blood group of the deceased



was B Group and that of the appellants' was Group A. However, nothing much turns on this testimony and report. It is evident from the testimony of PW-11, the doctor, who conducted the *post mortem* of deceased Nancy that the cause of death was cumulative effect of asphyxia due to smothering and strangulation (manual) that was sufficient to cause death in the ordinary course of nature. Similarly, the testimony of PW-12, the doctor, who conducted the *post mortem* on deceased Krishna, was that the cause of death was due to asphyxia consequent to smothering over face and neck and homicidal in nature. The opinions of the doctors as per the two *post mortem* reports further corroborate the testimonies of 'I' and 'R' who deposed the manner in which the two deceased were smothered.

Conclusions:

6. Pursuant to meticulous examination of the documents on record and evidence, this Court is of the opinion that the prosecution has successfully proved its case beyond reasonable doubt. It has been established, with the assistance of evidence, both ocular and medical that the crime of murder of the two deceased, was committed by the appellants.
7. *Firstly*, there were testimonies of two eye witnesses (child witnesses), who were also injured and were substantially consistent, both of them having deposed on similar line and there was no major or substantial contradiction to create any reasonable doubt as regards the crime having not been committed by the appellants.
8. *Secondly*, the appellants in their statements recorded under Section



313 Cr.P.C. stated that they were actually not in the house where the crime had occurred. This plea of *alibi* by the appellants was not proved by them either though the evidence led by the defence or in cross-examination.

9. *Thirdly*, as regards the judgments cited by the parties regarding testimony of child witness and/or related witness, Courts have postulated *inter alia* the following broad parameters on appreciation of evidence of a related and /or child witness:

- (a) The evidence of a witness, who is a relative, cannot be by itself discredited or discarded, unless it suffers from some basic infirmity.
- (b) An interested eye witness would have no reason to shield the real culprit and rope in innocent persons.
- (c) There is no hard and fast rule that family members can never be true witnesses to an occurrence and that they will always depose falsely before the Court.
- (d) Concept of an interested witness essentially must carry with it element of unfairness and undue intention to falsely implicate the accused, only then can the statement be unworthy of credence.
- (e) Testimony of an injured witness stands on a higher footing and is conferred a special status in law.
- (f) Testimony of a child witness must find adequate corroboration and must be evaluated carefully.
- (g) It is hazardous to rely on the sole testimony of a child witness if not available immediately after the occurrence and before it there was any possibility of coaching and tutoring.

10. Applying these principles to the facts of the case, it is evident that there is not one child witness but two, their testimonies are corroborated by



the testimony of their cousin PW-15 'A', and the *post mortem* reports of the two deceased, both the child witnesses are injured witnesses, the statements were recorded within few hours after the incident and FIR was immediately registered, thereby, leading very little scope for manipulation to frame the appellants, the father of the two child witnesses was not available when the police arrived who could have tutored his children in order to frame the two appellants, the appellants have not provided any information or proof regarding their alternative location/alibi.

11. Having arrived at the above conclusions, this Court is of the considered view that the case of the prosecution which is duly supported by ocular evidence, medical reports and chain of circumstances, proves beyond reasonable doubt that the alleged offence has been committed by the appellants. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence.

12. Appeals are accordingly dismissed.

13. Copy of this order be uploaded on website and be also sent to Superintendent, Tihar Jail for intimation to the appellants and updation of records.

(ANISH DAYAL)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 28, 2022/mk