

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

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Reserved on: 23.03.2023

Decided on: 24.04.2023

+ **CRL.A. 256/2019**

NAREJ SHEIKH

..... Appellant

Represented by: Mr. Manu Sharma, Advocate
(DHCLSC) with Mr. A. Sharma,
Mr. M. Bhardwaj, Mr. Kartik
Shanna, Mr. Gyanendra and Mr.
Karl P. Rustom Khan, Advocates

versus

STATE

..... Respondent

Represented by: Mr. Prithu Garg, APP for the State
with SI Satish, PS Seelam Pur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J.

1.0 Vide this appeal, the appellant is assailing the judgment dated 25.10.2018 ('**impugned judgment**' in short) passed by Ld. ASJ-03 (North East), Karkardooma Courts, Delhi, whereby the appellant was convicted for the offence punishable under Section 302 Indian Penal Code ('**IPC**' in short), in Sessions Case No. 125/16, in case FIR no. 222/2016, Police Station Seelampur; and order on sentence dated 30.10.2018, whereby the appellant was sentenced to life imprisonment under Section 302 IPC with fine of Rs.50,000/-, in default to undergo rigorous imprisonment for six months.

2.0 Criminal justice system was set into motion on receipt of a call at No. 100 on 19.03.2016 at 14:02:22 from mobile no. 9250228771 as reflected in PCR Form (Ex.PW15/A) about a man having killed one child, who had been overpowered. The said information was passed on to the concerned police station. On which, DD No. 17A (Ex.PW1/A), dated 19.03.2016, PS Seelam Pur, was recorded. Same was assigned to ASI Data Ram/PW-19, who along with Ct. Raj Kumar/PW-6 reached the spot i.e. House No. B-487, Near Buland Masjid, Shashtri Park, Delhi, where HC Vidya Dhar/PW-11 was already present. On reaching the spot, PW-19 found a crowd in front of the said house and one man (whose name was later revealed as Narej Sheikh, the appellant/accused), was being beaten up by public persons, who was saved by PW-19 with the help of one public person Zarinuddin @ Zarinu (PW-7).

2.1 As the injured had already been removed to hospital, PW-19/ ASI Data Ram along with PW-6/ Ct. Raj Kumar went to Jag Pravesh Chandra Hospital ('Jag Pravesh Hospital' in short) and collected the MLC Ex.PW6/1, of the injured Suraiya, aged about 2½ years, whereby she was declared brought dead. PW-19 called crime team, which inspected the body and the photographer took photographs Ex.PW4/A-1 to Ex.PW4/A-4 of the dead body in hospital. Thereafter, the dead body was shifted to mortuary of GTB Hospital for the purpose of post-mortem examination. Thereafter, PW-19 along with Rahul (PW-27) brother of the deceased and crime team officials reached the house of the appellant/place of incident, where some meat was kept on the floor of the room besides one *angocha* (cloth piece), *belan* etc. On pointing out of

Rahul/PW-27, photographer of the crime team had taken photographs of the house of the accused/place of incident Ex.PW4/A-5, Ex.PW4/A-6, Ex.PW4/A-8, Ex.PW4/A-9, Ex.PW4/A-11, Ex.PW4/A-13, Ex.PW4/A-15 & Ex.PW4/A-16. At that time mother of the deceased Smt. Firdosa (PW-28) also came. Statement (Ex.PW19/A) of brother of the deceased Rahul (PW-27)/eye witness was recorded, whereby he stated that he along with his sister Suraiya (deceased), mother Firdosa and step-father/appellant was living in a jhuggi at Shashtri Park. His mother worked as house-maid and used to leave home at about 08:00 a.m. in the morning and would return by 05:00 p.m. His step-father, the appellant, is a rickshaw puller. On that fateful day i.e., 19.03.2016 as usual his mother Firdosa (PW-28) left for work at 08:00 a.m. The appellant also left for work but returned around 11:00 a.m. and asked him to bring cooking oil as he wanted to cook meat. His sister Suraiya (deceased) insisted to accompany him, but the appellant did not allow her, on which she started crying. When he returned after purchasing oil, he saw that the appellant was beating Suraiya (deceased) with fist and kick blows and had held her from neck and beat her up by throwing her. His sister (deceased) became unconscious. His father asked him to take her out and he came out with her in the gali, where he met one lady and requested her to save his sister. That lady tried to put some water in his sister's mouth, but she did not drink. In the meanwhile, another lady came there who took him and his sister to hospital. Doctor on examining Suraiya/his sister, declared her brought dead.

2.2. On above statement of Rahul/PW-27, Rukka Ex.PW2/A was prepared and was sent to the police station through PW-11 Ct. Vidya Dhar for registration of the FIR; on which, PW-2 HC Satish Kumar registered FIR (Ex. PW-2/C) under Section 302 IPC.

2.3 In the meanwhile, IO Inspector Pramod Kumar (PW-29), to whom the investigation was assigned, reached the spot. All the documents were handed over to him. After completion of investigation, charge-sheet against the appellant/accused u/S. 302 IPC was filed.

3.0 To prove its case the prosecution examined 29 witnesses.

4.0 In his statement u/S. 313 Cr.PC, the appellant/accused while denying the incriminating evidence put to him, admitted the facts that on 19.03.2016 he was residing as a tenant at B-487, Buland Masjid, Shashtri Park, Delhi ; he was residing in live-in relationship with Smt. Firdosa/ PW-28 and her two children namely, Master Rahul (PW-27) (aged about 12 years) and Km. Suraiya (the deceased), aged about 2½ years. He however stated that he was 'living-in' with her for last 2-3 months. He admitted that Smt. Firdosa was working as a house maid in the area of Shashtri Park while he was plying rickshaw. Though, he denied that she used to leave for work at 08:00 a.m. and returned at 04:00 p.m and he also used to leave for work in the morning. He further stated that the deceased suffered injuries due to fall from the stair-case when she was going upstairs, at which time he was inside the room and was busy in preparation of lunch/meat. He came out on hearing the shrieks of Suraiya (deceased). In the meantime, mohalla people came and took her to

hospital and he was restrained by the mohalla people in the gali. Police officials arrived and falsely implicated him in the present case.

5.0 Appellant chose to lead defence evidence and produced two witnesses in his defence namely, Salma (DW-1) and Gulam Peer (DW-2), his neighbours.

6.0 Ld. Counsel for the appellant/accused argued that the Ld. Trial Court erred in convicting the appellant/accused on the basis of sole eye witness PW-27 Rahul, who is totally unreliable. There are material contradictions in the statements made by him at different stages i.e., his statements u/S. 161 Cr.PC (Ex.PW19/A), u/S. 164 Cr.PC (Ex.PW25/B) and his testimony before the court. It was argued that in his first statement Ex.PW19/A (on which FIR came to be registered), PW-27 Rahul stated that the appellant was slapping and kicking the deceased and held her by her neck and threw her on the floor. Whereas in his statement u/S. 164 Cr.PC/Ex.PW25/B, which was recorded after ten days i.e. on 29.03.2016, he stated about the appellant even beating him and threatening to throw him in Yamuna river if he disclosed this fact to his mother and also stated that the appellant had broken teeth and hand of the deceased ; and has even talked about killing the deceased with *gamcha* (*usko gamcha dabakar mar diya*). Whereas nothing to this effect was stated by him in his earlier statement. Not only this, he further improved upon his statement in his deposition before the court wherein he stated that when he returned home after buying oil, he saw that the appellant was beating his sister/deceased with *belan* and caught her by legs and hit her against the ground. PW-27 also stated that his arm was

twisted and his mouth was tied with *gamcha*, which was not stated on earlier occasion.

6.1 It has been further argued that PW-27's statement u/s. 164 Cr.PC (Ex.PW25/B) and his testimony before the Ld. Trial Court, shows that he is not an eye witness. Not only that, his version is at variance with that of the neighbour PW-7 Zarinuddin. He also argued that other neighbours namely Tuntunni (PW-14) and Rubina (PW-24), who took the deceased to the hospital, have not supported the prosecution version. Ld. Counsel also argued that PW-7 Zarinuddin has deposed that they broke open the latch of the door but no such broken latch has been shown.

6.2 Ld. Counsel for the appellant/accused also argued that the prosecution has failed to prove any motive on the part of the appellant/accused to kill the child. In the testimony of mother of the child, PW-28/Smt. Firdosa, there is not even a whisper in this regard.

6.3 Ld. Counsel further argued that testimony of mother of the deceased PW-28 Firdosa is hardly believable as she has deposed that when she returned, she saw that the blood was spread all over the floor; the clothes lying in the room were also blood stained and *gamcha* lying on the floor was smeared with blood. Whereas the photographs on record do not show any blood either on the floor or on any of the articles. Further, there is no mention about the same even in the crime team report Ex.PW5/A.

6.4 Ld. Counsel also argued that though the deceased suffered 13 injuries, they are mostly contusions and show that the deceased had suffered the same due to fall from the staircase ; and staircase can be seen in the site plan and the photographs placed on record.

6.5 Lastly, the Ld. Counsel for the appellant/accused made an alternate submission pleading that considering the facts and the injuries suffered by the deceased, the case does not fall u/S. 300 (Thirdly) IPC. Thus, the appellant could at best be convicted under Section 304 Part II IPC.

7.0 *Per contra*, the Ld. Prosecutor submitted that PW-27 Rahul is a child eye witness whose statements made at different stages are consistent in material particulars. The discrepancies pointed out by the Ld. Counsel for the appellant are not such so as to discredit the cogent testimony of PW-27. Minor variations in the descriptions of the incident by PW-27 at different stages are explained by his tender age and the time lag in recording of his testimony. It was submitted that PW-27, who was aged about 12 years was under immense trauma when he made his first statement u/S. 161 Cr.PC/Ex.PW19/A ; he gave further details in his subsequent statement u/S. 164 Cr.P.C/Ex.PW25/B. Further, there is no material contradiction in his testimony before the court and his earlier statements. Ld. Prosecutor further argued that PW-27's testimony is even corroborated by PW-14 and PW-24 about PW-27 bringing his sister and that they accompanied PW-27 for taking his sister/deceased to the hospital for medical examination, though, they turned hostile to the extent that PW-27 had told them that his sister became unconscious

because of fist and kick blows given by the appellant. Rather, the fact that PW-14 and PW-24 contradict each other shows that they were won over by the appellant/accused being neighbours.

7.1. Ld. Prosecutor also argued that the testimony of PW-27 is corroborated even by PCR call (Ex.PW15/A), as per which the information was received soon after the incident i.e. at 14:02:22 from mobile no. 9250228771 and records that one man has killed a child and he has been apprehended. It also records further report, corroborating PW-27's version. PW-27's version is further corroborated by PW-8 Multazim, who had made a call on number 100 from mobile no. 9250228771 (as mentioned in the PCR form Ex. PW-15/A), after being told by PW-27 about the appellant having given merciless beatings to his sister Suraiya/deceased. PW-8's testimony is corroborated by another neighbour PW-7 Zarinuddin.

7.2 Ld. Prosecutor also argued that the post-mortem report Ex.PW20/A shows 13 injuries suffered by the deceased including fracture of ribs 7 to 9. Same further corroborate PW-27's version that the deceased was mercilessly beaten by the appellant/accused. Ld. Prosecutor submitted that the appellant's version in his statement u/S. 313 Cr.PC that the deceased had suffered injuries due to fall from the staircase is falsified by the testimony of PW-20 Dr.Vishwajit Singh, who has stated that the injuries suffered by the deceased could not be caused by fall. Thus, the prosecution has proved its case beyond reasonable doubt and the appellant has been rightly convicted by the Ld. Trial Court.

8.0. We have duly considered the submissions made by both the sides and have perused the record.

9.0. Prosecution case is based on an eye witness account of PW-27 Master Rahul besides other evidence. PW-27, aged about 12 years at the time of deposition, deposed (on 12.04.2017) that about one year back, he along with his mother (PW-28), sister Suraiya (deceased) and the appellant/accused used to reside in a jhuggie near Masjid, Shastri Park, Delhi. His father is a rickshaw puller. His mother worked as house-maid and had left home, as usual, at 8.00 am on the day of the incident. The appellant had also left home at 8.00 am but returned home at about 10.00 am with meat. He asked him (PW-27) to bring oil for cooking meat and had provided him a bottle for the purpose. While, he was leaving for fetching oil, his sister Suraiya insisted to accompany him, but the appellant/accused did not allow her. On which she started weeping. PW-27 further deposed that on his return after buying oil, he saw that the appellant/accused was giving beatings to his sister by a *belan* and also caught her by legs and hit her against ground. While the appellant was beating the deceased, the appellant/accused played music at high volume and also locked room from inside. The appellant/accused also twisted his arm and tied his mouth by *gamcha* and he tried to put his sister in one bag, but he (PW-27) came out of the room along with his sister and raised alarm. On which, neighbours gathered and the appellant was apprehended by the public persons. Someone informed police and the said person's wife took his sister to the hospital and he had

accompanied her to the hospital. Doctor examined and told that she was no more.

9.1. PW-27 further testified that police officials from the hospital accompanied him to the spot. His mother (PW-28) had also returned home at about 4.00 pm and he disclosed the entire happening to his mother. The police recorded his statement Ex. PW-19/A. Police officials also took him to the court, the next day, where his statement Ex. PW-25/B was recorded. PW-27 also stated that the appellant used to ask his mother that she should marry him or else he would kill her daughter.

9.2. PW-27 stood by his deposition in cross-examination. The fact that the appellant was residing with PW-27's mother and that PW-27 called him 'papa' was suggested by appellant himself to PW-27 in cross examination. PW-27 also stated that he had gone to purchase edible oil and had returned home within a minute after purchasing the same as the shop was nearby. He categorically denied that his sister went to the roof and fell down from the stairs when he had gone to purchase oil. He also denied that he was deposing falsely at the instance of his mother. He also stated in cross examination that when he brought his sister out, she was alive and the locality persons gave her water, but she died; and that ten to fifteen persons of the locality had apprehended the appellant from inside the room.

10.0. PW-27's version that his mother was at work at the time of incident and that he had narrated the entire incident to her when she

returned home at about 4.00 pm, is corroborated by his mother Firdosa /PW-28. PW-28 deposed that for about one month, she was residing with the appellant in a live-in-relation at Shastri Park Theka, Delhi along with her two children- PW-27 and the daughter Suraiya/deceased. She had left for work at 8.00 am leaving the appellant and her children at home. At about 4.00 pm, when she returned home, many public persons had gathered outside her house, who informed her that the appellant/accused had beaten her daughter dead. Her son/PW-27 also told her that the appellant had beaten up Suraiya and killed her and that she was taken to the hospital by neighbours. Someone had informed the police and the appellant had been taken away by the police. She also stated that inside their room, articles were scattered all over and blood was also all over the floor. Clothes in the room were also having blood stains. One *gamcha* (Ex. P-1) with blood on it, was also lying on the floor. She handed over the *gamcha* to the police, which was seized vide seizure memo Ex. PW-28/A. PW-28 was not cross-examined, thus her testimony remained uncontroverted.

10.1 In view of the above, there is hardly any substance in the argument of learned counsel for the appellant that testimony of PW-28 is hardly believable as no blood was seen on the spot. Suffice it to state that PW-28 has only stated about the description of events given to her by PW-27 on her return from work; and that she had seen the house in disarray, with articles scattered all over in the room, which is also evident from the photographs (Ex. PW4/A1 to A16). Merely because blood is not seen in photographs does not make her version unbelievable.

11.0 Testimony of PW-27 is also corroborated by PW-14 Smt. Tuntooni and PW-24 Rubina, the neighbours. Although, PW-14 and PW-24 did not fully support the prosecution case, they corroborated PW-27's version that he had come out of his house with his sister Suraiya (deceased) in his lap in a battered state on that fateful day in the afternoon; and that ladies in the neighbourhood gave his sister, water; and that one of the ladies rushed his sister to the Hospital, where, after medical examination, she was declared dead. PW-24 Rubina deposed that she is living in the neighbourhood of the appellant. On 19.03.2016 at about 2.00 pm, when she was present in the gali along with PW-14 Tuntooni, PW-27, son of the appellant/accused came with his sister in his lap and told them that she was unwell, who was semiconscious at that time. She/PW-24 along with some ladies of the mohalla took PW-27's sister to Jag Parvesh Hospital. Doctor declared her dead. As she resiled from her previous statement, she was cross-examined by the Ld. Prosecutor. In her cross-examination, PW-24 admitted that PW-27 Rahul had accompanied them, when the deceased was taken to hospital.

11.1. PW-14 Smt. Tuntooni also deposed (on 01.12.2016) that the appellant, a rickshaw puller has been residing in their neighbourhood. About 6 to 7 months back in summer, at about 3.00 pm, PW-27 Rahul came along with his sister and put her in PW—14's lap, who was live and conscious. Several mohalla people had gathered and they asked her to take PW-27's sister to the hospital. One Rubina/PW-24 came and took Rahul/PW-27 and her sister, who looked sick (*bimar lag rahi thi*),

to the hospital for medical examination ; and that Rahul had gone to the hospital along with Rubina. She also stated that Rahul/PW-27 had told her that his sister had fallen from the stair case. The next day, she came to know that PW-27's sister had died. She was cross-examined by the Ld. Prosecutor as she resiled from her previous statement and during said cross-examination, she admitted that it was 19th March 2016, when Rahul/PW-27 had put his sister Suraiya in her lap, but denied that he had also told her that she was beaten/given fist and kick blows by the appellant and that she was unconscious at that time. She also stated that she had tried to administer water to Suraiya and further stated that another lady also tried putting water in Suraiya's mouth, but she did not consume it. She admitted that the next day, she came to know from the Mohalla people that the deceased died due to beatings given to her by the appellant.

12.0. The fact that in March 2016, sometimes after about 2.00 pm, PW-27 Rahul had come out of his house carrying his sister Suraiya in his hands and that mohalla people had gathered outside the house of appellant and that PW-27 asked PW-14 Smt. Tuntoonni to bring some water; PW-24 Rubina had taken the Suraiya in her lap and had rushed her to the hospital where she died, has come in the deposition of the appellant's own witnesses DW-1 Salma and DW-2 Gulam Peer.

13.0. Rahul/PW-27's testimony is further corroborated by medical evidence. PW-22 Dr. Adiba, CMO, Jag Parvesh Hospital, Shashtri Park, Delhi deposed that on 19.03.2016 at about 3.06 pm, patient Suraiya d/o

Sh. Jiyafot aged about 30 months female brought by brother Rahul and neighbor Raveena with alleged history of being brought unconscious to the hospital as told by persons who brought. On local examination, bruises were found present over the both the cheek and both ears. Patient was declared brought dead and her body was advised to be preserved for postmortem. Relevant portion of MLC Ex. PW-22/A is reproduced hereunder :-

“MEDICAL LEGAL INJURY REGISTER

Name Suraya ***Daughter of*** Jiyafat ***Age*** 30 months ***Sex*** Female

Residential Address B-487, Balal Majzid, Shashtri Park

Name of relative or Friend B/B (brother) Rahul & (neighbour) Raveena

Date of Examination 19.3.16 at 3:06 PM JPC -48617

PARTICULARS OF INJURIES OR SYMPTOMS, IN CASE OF POISONING

Alleged H/o. being brought unconscious to the hospital on 19.3.16 at 3:06 PM by the brother & neighbour.

L/E: Bruises present over both the cheeks and both the ears.

Type of Injuries _____
Pt. brought dead & declared dead on 19.3.16 at 3:06 PM.”

13.1. Testimony of PW-22 and MLC records that the deceased was brought in unconscious condition by her brother and a neighbor, identified as Ravina, (Rubeena/PW-24) as has also come in PW-24's testimony and the kind of injuries noticed on the body of the deceased, support PW-27's version that the deceased was given fist and kick blows and had become unconscious.

14.0. Post mortem examination was conducted by PW-20 Dr. Vishwajeet Singh, who prepared postmortem report Ex. PW-20/A, which inter alia reads as under :-

“Date and time of receiving dead body and inquest paper : 20/03/16 at 11:30 AM

Date and time of starting Autopsy : 20/03/16 at 11:35 AM

Date and time of conducting Autopsy : 20/03/16 at 11:35 AM

Body brought & identified by: Inspector Pramod Kumar
Police Station:Seelampur

Constable: Rajkumar ***No.***645/NE

Name of the deceased Suraiya Father.... ***Age*** 30 months ***Sex*** Female

Address B-487, Buland Masjid, Shastri Park, Delhi
.....

Height: 85cms
.....

Weight: 8.4kgs

Details of External injuries

1. Reddish contusion, 2.0 x 1.2 cm present over **right-side forehead**, 2.2 cm from midline and 1.0 on above **right eyebrow**.
2. Reddish contusion, 3.4 x 3.2 cm present over **left side forehead**, 0.2 cm from midline and 3.0 cm above left eyebrow.
3. Reddish contusion, 2.0 x 1.6 cm present over **left mastoid and back of left pinna**.
4. Reddish contusion, 3.0 x 1.5 cm present over **left mastoid and back of left pinna**.
5. Reddish contusion, 1.2 x 1.0 cm present over **right-side face**, 4.0 cm from midline and just below lateral end of right eyebrow.
6. Reddish contusion, 4.6 x 4.2 cm present over right side 1 5.0 cm from midline and 1.5 cm below right eyebrow.

7. Reddish contusion, 0.9 x 0.5 cm present over **right-side face**, 2.5 cm from midline and 1.0 cm below lower lip.
8. Reddish contusion, 1.5 x 1.4 cm over **right side of chin**, 1 cm from midline.
9. Reddish contusion, 2.4 x 1.0 cm over **left side of chin**, 3 cm from midline.
10. Reddish contusion, 6.0 x 5.5. cm present over **left side cheek**, 5 cm from midline and 1.5 cm below lateral end of left eyebrow.
11. Reddish contusion, 2 x 1 cm over **left shoulder top**.
12. Reddish contusion, 5 x 4.5 cm present over **right-side abdomen**, 5.0 cm from midline and 12.0 cm below middle of **right clavicle**.
13. Reddish contusion, 4.5 x 4.2 cm present over **right-side middle back**, 4.0 cm from midline and 2.5 cm below. Inferior angle of scapula.

Internal Examination

Scalp: Extra-vasation present over bilateral fronto-temporal and midline occipital region and bilateral temporalis muscle.

Skull: NAD

Brain: 960 gm, **subdural haemorrhage** over both cerebral

hemisphere. Subarachnoid haemorrhage over bilateral frontoparietal region.

Neck: NAD

Chest cavity contains about 500 ml blood.

Ribcage: Left - NAD, **Right- fracture of 7th to 9th rib** in mid clavicular line and posterior vertebral line with extravasation.

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Opinion Time since death was about one day.

Cause of Death: Shock as a result of **ante mortem injury to head, chest and abdomen produced by blunt force impact**. All injuries were antemortem in nature. **Injury No.1, 2, 3,4, 12 and 13 are sufficient to cause death individually and collectively in ordinary course of nature.** Injury No.1 to 13 is produced by **blunt force impact**. ”

14.1. PW-20 Dr. Vishwajeet Singh in his cross-examination stated that he had noticed three injury marks on the chin of the deceased, mentioned at serial no. 7, 8 and 9 and also injury mark on the neck. He further stated that it was not possible for the deceased to have suffered the external injuries as mentioned at serial nos. 1 to 12 due to fall. Number and nature of injuries suffered by the deceased as per the post mortem report Ex. PW 20/A, corroborates PW-27's version that the deceased- a 2 ½ year child, was mercilessly beaten up by the appellant. Further, PW-20's deposition that such injuries were not possible by fall shows that the appellant/accused took a false defense pleading that the Suraiya/deceased had suffered injuries by fall from staircase. Further, the falsity of the said defense is also evident from the fact that to PW-27, the eye-witness Rahul, it was suggested that the deceased went to roof and fell down from the stairs. Whereas, the appellant's own witnesses DW-1 and DW-2 stated that Rahul/PW-27 told them that the deceased fell down from the stairs when she was playing with other children. But no such suggestion that the deceased was playing with other children was put to the eye witness/PW-27. Further, DW-2 Gulam Peer in his cross-examination stated that he had not seen any other children with Rahul/PW-27 when he brought his sister nor did he notice the children who were playing with the deceased or the number of children, who were playing. It is also significant to note that when the incriminating evidence was put to the appellant/accused during recording of his statement under Section 313 Cr.P.C, he himself did not mention that the deceased was playing with other children when she fell down the staircase. He simply stated that the

deceased suffered injuries due to fall from the staircase when she was going upstairs. False defence/explanation offered by the accused is an additional link in the chain of incriminating circumstances against him. (*Sharad Biridhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622; Ramanand @ Nandlal Bharti Versus State of Uttar Pradesh, 2022 SCC OnLine SC 1396*)

15.0. PW-27's version that the appellant/accused was apprehended at the spot by the neighbours and the police was informed; and that with the help of a lady in the neighbourhood, the deceased was taken to hospital is also corroborated by the testimony of PW-7 Zarinuddin and PW-8 Multazim. PW-7 Zarinuddin, another neighbour also deposed that the appellant was residing with his wife, son and daughter. On 19.03.2016, at about 2.00 pm, while he was present at home, he heard a noise from the appellant's house and came out. He saw that the *mohalla* people had gathered outside the appellant's house and were knocking at his door. They had then broken open his door, on which the appellant tried to run away, but with the help of a neighbour Multazim (PW-8) the appellant was overpowered near the main gate of the house. Rahul (PW-27) who was present, told that his step father gave beatings to his sister Suraiya. He also deposed that by that time, some ladies from the *mohalla* also reached there and one of them lifted the baby and took her to Jag Parvesh Hospital. Multazim made a call at number 100 as PW-27 had told that the appellant had given beatings to his sister. Within 10 minutes, police arrived and the *mohalla* people handed over the appellant/accused to the police. Later on, at about 4.00/5.00 pm, they came to know that Suraiya

had been declared brought dead. He has stood by his testimony in his cross-examination and denied that he had not seen the crowd outside the house of the appellant or that he was not present at the spot. He rather stated that at the time of incident, he was taking meals at home, when he heard the noise. He also stated that 40-50 persons had gathered in front of the appellant's house when he reached; and that gate of the appellant's house, which was made of iron (*halki tin chaddar*) was broken open by pushing. He also reiterated that PW-27 Rahul was present at a distance and was weeping by holding his sister in his lap. He further stated that Smt. Rubina/PW-24 and Smt. Tuntooni PW-14 had taken the deceased to the hospital. He also stated in cross-examination that the police officials had arrived within 10-15 minutes and that he had handed over the appellant to the police. He even stood by his version that Murtazim (Multazim PW-8) had made a call at number 100 as PW-27 Rahul had told that his father had given beatings to his sister.

16.0. PW-8 Multazim also deposed on the similar lines stating that on 19.03.2016, at about 2.00 pm, when he was present outside his house in the gali, he heard noise from the house of the appellant and also seen that many mohalla people were present at the door of the appellant and knocking at his door. He also deposed that the appellant was overpowered by PW-7 Zarinuddin and other mohalla people in his presence and that he had made a call to the police at number 100 from his mobile number 9250228771. Nothing of substance could be extracted in his cross-examination so as to discredit his testimony. He has stated that he had made a call at number 100 in between 1.30 pm to 2.00 pm.

16.1. PW-8's version that he had made a call at number 100 from his mobile number 9250228771 is corroborated by PCR Form PW-15/A proved by PW-15 Ct. Manoj Kumar. PW-15 testified that on 19.03.2016, he was on duty at Channel No. 127 at PHQ to attend the call of 100 number. During his duty, at about 2.02 pm, a caller from mobile no. 9250228771 had called and informed that one man killed a child who has been overpowered at the place i.e. near pipeline at some distance from Metro Pul, Shastri Park in Gali no.1, near Bilal Masjid H.No. E-487. Accordingly, he had filled up PCR Form (Ex. PW-15/A) and the same was sent to wireless section to pass on information to all concerned. PW-5 was not cross-examined and hence his version remained uncontroverted.

16.2. PW-15 Ct. Manoj Kumar's testimony finds corroboration in the deposition of PW-1 W/ASI Mary rose, who deposed that on receiving a telephonic call at about 2.10 pm about the incident that one child was killed by one man at House no. E-487, near Bilal Masjid at some distance ahead of Metro bridge Pipe Line, Shashtri Park and the killer was in custody, she recorded the same vide DD no. 17A (Ex. PW-1/A). Ex. PW1/A DD no. 17-A and Ex. PW15/A PCR Form further corroborate the testimony of PW-27 eye witness and PW-8, Multazim, particularly in view of the short duration, within which, the said call was made and recorded.

17.0. PW-6 Ct. Raj Kumar to whom the aforesaid DD no. 17/A Ex. PW1/A was handed over has deposed that on 19.03.2016 while he was posted at Police Station Seelam Pur, Duty officer had handed over to him DD no. 17-A (Ex. PW-1/A) at about 2.10 pm directing him to hand over the same to PW-19 ASI Data Ram; after receipt of DD no. 17-A, PW-19 ASI Data Ram alongwith him and PW-11 HC Vidhya Dhar went to the spot, where crowd was found and one person whose name was later revealed to be Narej Sheikh (appellant/accused) was in their custody and had been beaten by them. He also deposed that they had saved the appellant from the public. They also came to know that the appellant had given beatings to his daughter Suraiya and that she has been taken to Jag Parvesh hospital. He also deposed that thereafter, custody of the appellant was handed over to PW-11 HC Vidyadhar and the appellant was arrested vide memo Ex. PW-11/A. PW-5 was not cross-examined in this respect except asking him about time of delivery of DD No. 17A to him and how much time was taken by the duty officer to record the same. Thus, his version to the above effect has remained uncontroverted.

17.1. PW-11 HC Vidya Dhar also deposed on the same lines of having accompanied PW-6 Ct. Raj Kumar and PW-19 ASI Data Ram to the spot. He also stated that PW-19 ASI Data Ram had recorded the statement of PW-27 Rahul and prepared rukka by making endorsement on the same which was handed over to him for registration of FIR. He had taken the rukka to the police station and got the FIR registered. PW-11 also deposed that the appellant/accused was handed over to them by public and he had handed him over to PW-19, who arrested the

appellant/accused vide arrest memo Ex. PW-11/A. PW-11 has stood by his deposition in cross-examination and testified that 15/20 persons were present in front of the appellant's house, when they reached; they were informed that the injured had already been taken to the hospital by females of *mohalla*. He also stated that PW-7 Zarinuddin and another public person, whose name he could not remember, had produced the appellant before him.

17.2. To PW-29, Ins. Pramod Kumar/second IO, the appellant/accused himself suggested in cross-examination to which he responded, 'It is correct that it came into my notice on reaching at spot that accused had been overpowered by *mohalla* people.'. PW-29 also stated that the room where the incident took place, was inspected by him and house-hold articles and clothes of the residents were lying scattered and the meat arranged by the appellant/accused for cooking was also lying in one pot on the floor of room. Site plan was prepared by him. He also deposed that PW-27 Rahul had initially not disclosed about using of *angocha* and only when, they obtained the copy of PW-27's statement under Section 164 Cr.P.C, they came to know that the same was used in the crime. He also stated in his cross-examination that said *angocha* was produced by the mother of the deceased and was seized on 29.03.2016 and denied that the same has been planted by them on the appellant/accused after being arranged from the deceased's mother. It was also suggested to PW-29 that the appellant/accused, PW-28 Firdosa, PW-27 Rahul and the deceased Suraiya were residing in the room in question; and that during investigation, it was revealed that they were residing in live-in-relation

and the appellant was not the biological father of the deceased and PW-27.

18.0. It is also noteworthy that the appellant in his statement under Section 313 Cr.P.C has not disputed the facts that on 19.03.2016, he was residing as a tenant at B-487 (in the house of one Nafees), Bulland Masjid, Shastri Park, Delhi, i.e., the place of incident; and that he was living there with Smt. Firdosa and her two children; and that PW-28/Smt. Firdosa was doing the household work as maid in the area of Shastri park and he used to ply rickshaw; and that the deceased had suffered injuries on that day though he stated that the same were suffered due to fall from the stair-case when she was going upstairs while he was inside the room busy cooking lunch/meat. He himself has stated that when he came out on hearing shrieks of Suraiya (deceased), *mohalla* people had already arrived and he was restrained by them in the *gali* while the deceased was taken to hospital; and that the police officials arrived and falsely implicated him in the present case. Thus, the appellant/accused has admitted all the facts except that he had beaten the deceased Suriaya causing her death and stated that she suffered injuries due to fall from the stair case.

19.0 In view of the above, there is hardly any merit in the argument of the learned counsel for the appellant that the testimony of PW-27 is not trustworthy as he made different statements at different stages i.e., u/S. 161 Cr.P.C (Ex. PW19/A), u/S. 164 Cr.P.C (Ex. PW25/B) and his testimony before the court. Suffice it to state that PW-27, who was

barely 11 years old at the time of the incident, must have been under immense mental trauma on seeing his baby sister meeting the fate, she met on that fateful day, when his statement under Section 161 Cr.P.C was recorded on the same day i.e., 19.03.2016. Same explains the absence of details, which he gave later on when his statement under Section 164 Cr.P.C (Ex. PW25/B) was recorded. Even otherwise, PW-27's version has remained consistent as to the material fact of the deceased being mercilessly beaten by the appellant and inspires confidence. For the same reasons, we find no force even in the Learned Counsel's argument that PW-27 was not an eye witness. Moreover, as noted above, testimony of PW-27 stood corroborated by other witnesses i.e., PW-7, PW-8, PW-14. PW-24 and medical evidence, which has come on record.

20.0. In view of the above evidence on record it is established that the appellant was living (in a live-in-relationship) with PW-28 Firdosa along with her children i.e., PW-27/Rahul and Suraiya/deceased. The appellant, a rickshaw puller, on that fateful day i.e. 19.03.2016, returned home at around 10.00/11.00 am along with meat and asked PW-27 to bring edible oil to cook the meat. PW-28 Firdosa, was away to work at that time. When, PW-27 was about to leave for fetching oil, his sister Suraiya/deceased insisted to accompany him, but the appellant did not allow her, on which she started crying. It has also been established that when PW-27 returned home with oil, he saw that the appellant was beating Suraiya mercilessly and even hit her against ground. PW-27 managed to bring his sister/deceased out of the house. Hearing the cries,

neighbours gathered outside the appellant's house. While, the appellant/accused was overpowered and apprehended by the neighbours, the ladies in the neighbourhood (PW-14 Tuntooni and PW-24 Rubina) attended to the deceased. When the deceased did not consume water despite their efforts, she was rushed to the Jag Parvesh Hospital by PW-24. PW-27 Rahul also accompanied her to the hospital, where Suraiya/deceased was declared brought dead.

20.1 It has further been established vide testimony of PW-20 and post mortem report Ex, PW20/A that the deceased suffered total 13 injuries on forehead, eyebrows, ear, neck, chin, cheek, shoulder, abdomen etc. including fracture of 7th to 9th rib in mid clavicular, which could not have been caused by fall. In view of the same, it is established beyond reasonable doubt, that the deceased suffered the aforesaid injuries at the hands of the appellant.

21.0 Ld. Counsel for the appellant/accused argued that the appellant had no reason to kill the deceased Suraiya and the prosecution has failed to prove any motive on his part. Learned Prosecutor on the other hand, argued that motive can be discerned from the testimony of PW-27 Rahul, who has stated that the appellant used to ask his mother to marry him or else he will kill her daughter. In rebuttal, Ld. Counsel for the appellant submitted that mother of the deceased, PW-28/Smt. Firdosa herself has not stated anything in this regard in her testimony. We find force in the argument of learned counsel for the appellant, as PW-28 in her

testimony, has not uttered a word about any such threat being extended to her by the appellant.

21.1 However, vide testimony of PW-27 Rahul, it has come on record that while he was leaving for fetching oil, his sister Suraiya insisted to accompany him, but the appellant/accused did not allow her. On which, she started weeping. When he returned after buying oil, he saw the appellant/accused giving beatings to his sister. From the same it is apparent that the appellant/accused got enraged when the deceased started crying and gave her merciless beatings leading to her death. It is thus evident that there was no premeditation on the part of the appellant/accused to kill the deceased, particularly in absence of any specific evidence in this respect having been led by the prosecution. Thus, what needs to be seen is, whether these facts would call for conviction u/S. 302 IPC or u/S. 304 Part I & Part II IPC. Co-ordinate Bench of this Court in ***Mehboob Khan @ Babu Vs. State, 2014 SCC OnLine Del 2993***, while examining the same question in somewhat similar situation, noted as under :

“17. In the landmark judgment of Virsa Singh v. State of Punjab, reported in (1958) 1 SCR 1495, the Supreme Court held that the following are the four steps of inquiry involved in the offence of murder under Section 300 IPC, clause thirdly:

“First, it must establish, quite objectively, that a bodily injury is present.

Secondly, the nature of the injury must be proved;

These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and.

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature.”

18. After laying down the aforesaid guidelines, the Hon'ble Judge further went on to observe as under : -

“Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 ‘thirdly’. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.”

19. As would be seen from the above observations and tests laid down by the Apex Court, the determinative factor in Section 300 (thirdly) is an intentional injury which must be sufficient to cause death in the ordinary course of nature and it would be immaterial whether the offender had knowledge that the act of that kind will result in death. To find out whether the offender had intention to cause such fatal injury which in the ordinary

course of nature was sufficient to cause death, the factors which are required to be kept in mind are -

- i. The force with which the blow has been dealt with;*
- ii. The type of weapon used*
- iii. Vital or organ or the particular part of the body attracted;*
- iv. Nature of injury caused;*
- v. Origin and genesis of the crime and the circumstances attending upon the death. (Referred to Jagrup Singh v. State of Haryana, (1981) 3 SCC 616 : 2001 AIR SCW 1021)*

.....

23. The evidence on record thus would clearly show that *there was no motive, enmity or premeditation on the part of the appellant due to which the appellant had targeted his mother-in-law to annihilate her.*
..... Whatever may be genesis of dispute, there remains no doubt that the present appellant caused injuries on the forearm of his sister-in-law Nagma and two stab injuries on the abdomen of his mother-in-law and these injuries were caused in a sudden fight and in the heat of passion without there being any motive or premeditation.

.....

36.Whatever may be cause of provocation, the two stab injuries i.e., one after the other was caused by the appellant with the intent to cause such bodily injury which was likely to result in the death of the deceased.

37. We are, therefore, of the considered view that the appellant had the requisite intention that the injury which was caused by him on the vital part of his body, was likely to cause his death and therefore, the case would more appropriately fall under *Section 304 Part I of the IPC.*”

21.2 In view of the above position of law, considering the facts and circumstances in the instant case, evidence on record in entirety and in absence of any premeditation on the part of the appellant, conviction u/S. 302 IPC can not be sustained.

22.0 Ld. Counsel for the appellant, by way of an alternate plea, argued that though the deceased suffered 13 injuries, they were mostly contusions except fracture of ribs, therefore, the appellant's case would fall under Exception 4th Section 300 IPC; the appellant at best could be convicted u/S. 304 Part II IPC.

22.1 It cannot be lost sight of that the appellant mercilessly beat the deceased – barely a two and a half years old child causing her total thirteen injuries including fracture of three ribs. Taking into account, the cruel manner in which the deceased, a hapless child was beaten by the appellant, number and nature of injuries she suffered and that the injuries no. 1, 2, 3, 4, 12 and 13 have been opined to be sufficient to cause death individually and collectively, in ordinary course of nature, this is a fit case for conviction under Part I of Section 304 IPC.

23.0 In view of the above, conviction of the appellant is modified from Section 302 IPC to Part 1 of Section 304 IPC. Considering the facts and circumstances of the case, we are of the considered opinion that imprisonment of 10 years shall meet the ends of justice. Sentence of the appellant is reduced from life imprisonment to ten years. The fine and sentence in default of payment of fine will remain the same as directed by the learned Additional Sessions Judge.

23.1. Appeal is disposed of accordingly.

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

**(POONAM A. BAMBA)
JUDGE**

**(MUKTA GUPTA)
JUDGE**

APRIL 24, 2023/g.joshi

