
(2001) 10 DEL CK 0135

Delhi High Court

Case No: Murder Reference 1/99 with Criminal Appeal No. 89/99

State (NCT of Delhi)

APPELLANT

Vs

Ajit Seth @ Ajit

RESPONDENT

Date of Decision: Oct. 1, 2001

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (2002) 3 AD 317 : (2002) 61 DRJ 178

Hon'ble Judges: Usha Mehra, J; Mahmood Ali Khan, J

Bench: Division Bench

Advocate: Ravinder Chadha, for the Appellant; R.L. Tandon and Vivek Tandon, for the Respondent

Judgement

Usha Mehra, J.

Can love thrive where one makes the rigid rules to follow, Love is a game with no rule book. A man in passion rides a wild horse and so we have heard. Love is blind but can it be that blind in madness that it turn the man cruel, crazy and barbaric never heard. It can be seen in this case. It is a tragic story of two un fortunate innocent children, namely; Master Sunny Arora aged about seven years and Ms. Shikha Arora aged about three or three and a half years. Their life was snatched at the cruel hands of the appellant Ajit Seth.

2. The learned Additional Sessions Judge after due deliberation on the basis of oral and documentary evidence concluded that charge u/s 364 IPC and u/s 302 IPC stood proved beyond reasonable doubt against the appellant. He consequently convicted him on both the charges. u/s 302 IPC he has been sentenced to death and u/s 364 IPC he has been sentenced to rigorous imprisonment for 10 years and also fine of Rs. 1,000/-, in default of payment of fine to further undergo rigorous imprisonment for one month. Per the provision of Section 366 Code of Criminal Procedure (in short Cr.P.C.) after sentencing the appellant to death, the learned Addl. Sessions Judge

has forwarded the case to this court for the execution of the sentence awarded by him which is listed as Reference No. 1/99. On the other hand Ajit Seth has preferred the appeal thereby assailing the order of his conviction and sentence vide Appeal No. 89/99.

3. The case of the prosecution primarily hinges on the dying declarations made by the deceased Sunny Arora. One dying declaration was witnessed at the place of occurrence by Chander Bhan (PW-2), Rajinder Prasad (PW-3) and Rakesh Kumar (PW-4), all independent persons not related in any manner to the deceased family or to the family of the accused. Second dying declaration was witnessed by ASI Brahamjit Singh (PW-32), Inspector Mahesh Chand Sharma (PW-50) and SI L.C. Yadav (PW-54) at RML Hospital.

4. In order to appreciate the challenge raised in the appeal by the appellant and the supporting arguments for confirmation of death sentence by Mr. Ravinder Chadha, Counsel for the State, we may have a glance to the facts of this case. The story of the prosecution is unfolded thus;

5. Ajit Seth, the appellant herein came and settled in the neighborhood of Mr. Harish Arora and Indu Arora. They were in occupation of house No. B-2/261, Paschim Vihar, Delhi. The Arora couple had a son named Sunny and daughter Shikha. Ajit Seth came and settled in the neighborhood in house No. B-2/260, Paschim Vihar, Delhi. In order to utilise the facility of telephone installed in the house of Aroras, Ajit Seth started visiting their house. During these visits he developed love for Indu Arora, wife of Harish Arora and mother of those unfortunate two children. With the passage of time the bond between Ajit Seth and Indu Arora became very strong. On 17th October, 1987 on the birthday of Ajit Seth, both Indu and Ajit went to hotel Raj Hans at Surajkund, Faridabad, Haryana and spent the day together. The secret of their love could not remain hidden for long. On coming to know of it, Harish Arora in order to get rid of Ajit Seth sold his house in March, 1988. He shifted to house No. A-2/207, Paschim Vihar on rent. Unfortunately for him the shifting of the house did not yield any results in separating his wife from Ajit Arora rather they continued meeting each other. So much so Indu Arora started eloping with Ajit Seth. First time she eloped on 2nd April, 1988. However, on 3rd April, 1988 Harish Arora and his family brought Indu back. Being , frustrated with her conduct, Harish sent her to her parents house at Sarvpriya Vihar. But the bond of love between Indu and Ajit did not deter her there also. She again eloped with Ajit Seth from her parents house on 12th April, 1988. She also took her daughter Shikha with her. This time Indu and Ajit stayed at Sidharth Hotel, New Delhi in Room No. 302 which was booked in the assumed name of Amita Gugnani. Indu came back on 15th April, 1988 and apologized for her conduct. She then started living with her husband. However, compelled by her desire to be with Ajit, Indu again eloped with Ajit Seth on 25th May, 1988. Harish Arora lodged a missing report on the same day at police station Paschim Vihar. While eloping she also took her daughter Shikha with her. Report of

this incident was also lodged with the police by the father of Ajit Seth. He informed the police that his son Ajit Seth had gone in a Maruti Car with some jewellery belonging to him. However when Ajit came back his father disowned this report. Indu and Ajit Seth with Shikha had gone to Meerut. They also stayed at Hotel Connaught Palace, New Delhi in the assumed name of Naresh Chopra and Neeta Chopra. After two days Indu came back.

6. Out of love for Indu, Ajit Seth purchased a flat of Indu's choice at Pitampura bearing No. PD/43-A. She had a plan to run a beauty parlour at the said premises under the name and style of "Shikha Beauty Parlour". In order to fulfill the wishes of his beloved, Ajit Seth not only purchased the flat but also got pamphlets printed for giving publicity for the said Parlour.

7. Love has no barriers and being desperate to possess Indu, Ajit Seth called Harish Arora about 10 days prior to this occurrence. He threatened that Harish should forget about Indu otherwise harm would be caused which Harish would remember for all times. This threat was repeated by Ajit Seth when he called Harish Arora to Sidharth Hotel Coffee Shop. He even threatened that in case Harish Arora came in between him and Indu, he would finish his children. Indu Arora being blind in love for Ajit plainly told her husband Harish Arora that she could do anything for her lover Ajit Seth, and that she neither care nor bothered for Harish or for that matter for children. In the first week of June, 1988 in the presence of Darshan Lal (PW-42), she repeated that she did not care for her husband or for the children.

8. Ajit Seth was 22 years 5ld in 1988. He was unmarried whereas Indu Arora was elder to him. Ajit Seth was engaged. Because of his love for Indu he broke his engagement.

9. Sunny Arora had been going for tuition to Mrs. Lalita Bali (PW-41) during summer vacations. Mrs. Bali was a teacher in the Martin Public School. She was residing at B-4/79, Paschim Vihar. On the fateful day i.e. 24th June, 1988, when Harish Arora was taking Sunny for tuition, Indu Arora insisted that Shikha be also taken Along with for tuition. Harish Arora took both the children and dropped at the house of Mrs. Bali at 9.30 A.M. The tuition hours were between 9.30 A.M. to 11 A.M.

10. That day Harish Arora was busy hence he was not to pick up the children at 11 A.M. Accordingly Mrs. Bali took the children and hired a rickshaw of Babu Lal (PW-1) so that the children could be dropped back at home. Rikshaw Driver, Babu Lal (PW-1) was told to drop the children at A-2 block, Paschim Vihar. Hardly had Babu Lal (PW-1) covered a distance of 100 yards, a motorcyclist came and stopped his rikshaw. He asked the children to come with him so that he could drop them home on the motorcycle. Sunny, the deceased got down and identified the motorcyclist as "Ajji uncle". Since Ajit Seth was wearing helmet, Shikha had not recognised the motorcyclist hence got frightened. She remained seated in the Rikshaw till such time Sunny told her that motorcyclist was "Ajji uncle". Said motorcyclist took both the

children with him on his motorcycle. He paid a new one rupee note to Babu Lal (PW-1). The motorcyclist instead of going towards A-2 block, Paschim Vihar went opposite direction wherefrom Rikshaw driver was bringing the children, hence Babu Lal (PW-1) got suspicious. He immediately went to the house of Mrs. Bali Since Mrs. Bali was not at home, Bhawna daughter of Mrs. Bali met him. He narrated the fact that the children have been taken away by a motorcyclist whom children called "Ajji" uncle. That they had been taken in opposite direction.

11. When the children did not reach home, Indu Arora went to the house of Mrs. Bali at about 12.30 P.M. On enquiry about the children, she was told by Mrs. Bali that the children were sent in the rickshaw of Babu Lal (PW-1) at about 11 A.M. That the rickshaw driver informed that a motorcyclist has taken the children on his motorcycle but in the opposite direction and that the children addressed him as "Ajji uncle". On being questioned as to whether there was any person known to Indu by the name of "Ajji", Indu nodded her head but kept quite. On getting this information, Indu Arora did not show any cause of anxiety. Indu Arora again came to the house of Mrs. Bali for enquiring about the children. At that time Mrs. Bali told her that she was prepared to go to police station with her, Indu Arora refused and went away.

12. Indu had not informed Harish at the earliest opportunity that children had not come back home after the tuition or that they are missing. This information she gave to him for the first time at about 1.45 P.M. On getting this information, Harish Arora rushed to the house of Mrs. Bali. In the meantime police official came to his house and left the message with his neighbour to come to police station. When Harish Along with Indu came home, his neighbour informed that police had come and he has been called to the police station Paschim Vihar. They accordingly went to police station where he was informed that children had been admitted in RML Hospital.

13. On 24th June, 1988, Chander Bhan (PW-2) was on duty as Chowkidar at DDA Park, Pusa Hill near Rajinder Nagar, New Delhi. There was a deserted room known as Madrasi Temple at Pusa Hill. At about 11.45 A.M. Chander Bhan (PW-2) who was on duty in the DDA Park heard the cries and shrieks of children pomading from that room. On hearing these cries he rushed towards the Madrasi Temple at Pusa Hill where he saw two children - one boy and one girl - on fire. He extinguished the fire. Some students and labours of Pusa Institute who were present in that area also reached the spot. On being asked by Chander Bhan(PW-2), the boy Sunny (the deceased) told his name and also the fact that "Jit uncle" had brought them there on his motorcycle. He set them on fire after tying. Rajender Prasad (PW-3), Rakesh Kumar (PW-4) along with their colleagues Davinder Kumar, Rajinder Singh, Surinder Kumar, Kuldip Chand were doing survey as trainee in the field of Pusa Hill which was at a distance of about 200 meters from the place of occurrence. When Chander Bhan(PW-2) rushed to the spot two lady gardeners also rushed after him. On seeing

this commotion the above said students also rushed after these ladies and reached the spot. Rajinder Prasad (PW-3) deputed his colleagues to call PCR van but when it did not reach early, Rajinder Prasad (PW-3) himself left for search of one. Rajinder Prasad (PW-3) informed on Telephone No. 100 about the burning of two children and also gave description of the place of occurrence. In the meantime one PCR Van was brought by his colleagues in which Sunny and Shikha were taken to RML Hospital.

14. Children were brought to RML Hospital at 12.20 P.M. The duty constable PW Rajesh enquired from Sunny Arora, his name, parentage, address. On getting the details from Sunny the deceased those were got incorporated in the MLC. However, the name of the girl was not correctly given instead of Shikha it was given as Sita Arora.

15. Information to Rajinder Nagar Police Station was given by the PCR at about 12 noon. Accordingly SHO, Mr. R.K. Ahuja (PW-33) reached at the spot i.e. Pusa Hill but by then the children had already been taken to RML Hospital. Since the place of occurrence fell within the jurisdiction of police station Inder Puri, hence PCR was asked to give information to police station Inder Puri. PCR informed police station Inder Puri on wireless that two children have been burnt at Pusa Hill opposite Rattan Puri Chowk and that they have been taken to RML Hospital by the PCR Van. Information was accordingly recorded vide DD No. 8-A Ex. PW6/A at 12.30 P.M. Enquiry was accordingly entrusted to SI L.C. Yadav. PCR also informed police station Paschim Vihar on telephone that Sunny Arora and Shikha Arora r/o A-2, Paschim Vihar have been admitted to RML Hospital in burnt condition. They were brought from DDA park Mandir near ITI, Rajinder Nagar, New Delhi. Enquiry was entrusted to ASI Brahmjit Singh, SHO PS Paschim Vihar. Inspector of police station Inder Puri on receiving the information reached RML Hospital. SI L.C. Yadav also reached the hospital. The SHO of police station Paschim Vihar Inspector Mahesh Chand Sharma Along with ASI Brahmjit Singh also reached RML hospital directly.

16. Sunny Arora and Shikha Arora were admitted in emergency ward of the RML Hospital. SHO Rajbir Singh of police station Inder Puri in the presence of SI L.C. Yadav and SHO of police station Paschim Vihar Inspector Mahesh Chander Sharma enquired the cause of his fire from Sunny Arora as to who burnt them. The time of enquiry was approximately 1 P.M. Chowkidar Chander Bhan (PW-2) was also present. Sunny Arora informed that "Ajji uncle" brought him and his sister on motorcycle and set them on fire. He also told that "Ajji uncle" used to visit their house and was a resident of B-2, Paschim Vihar. SI L.C. Yadav approached the doctor for recording the statement of Sunny but by then i.e. at 1.15 P.M. Sunny was not to make the statement. On the basis of the statement given by deceased Sunny Arora, case was got registered u/s 307 IPC vide FIR No. 100/88 dated 24th June, 1988 at PS Inder Puri.

17. Shikha succumbed to her injuries on the same day i.e. on 24th June, 1988 while Sunny died on 25th June, 1988. Accused Ajit Seth was arrested on the same day from his shop at Chawri Bazar. His motorcycle was also seized. Rickshaw driver Babu Lal (PW-1) identified accused Ajit Seth as well as his motorcycle.

18. On 25th June, 1988 on being interrogated Ajit Seth made a disclosure statement and another disclosure statement on 29th June, 1988 pursuant to which he got recovered the plastic bottle from near the place of occurrence and also pointed out the shop from where he had purchased the bottle and the petrol pump from where he purchased the petrol. That the hotels where Indu and Ajit Seth stayed were also discovered pursuant to the disclosure statement of Ajit Seth. The clothes of Indu Arora and that of deceased Shikha Arora were recovered from flat No. PD-43A, Pitam Pura. Records of the various hotels where Ajit Seth and Indu Arora stayed were also recovered and taken into possession. Police got the questioned writings of the records of the hotels and the specimen writings of Ajit Seth got compared from the CFSL Hand-writing expert opined that the questioned writings on the records of Hotel Rajhans and on the registration card of Hotel Connaught Palace were written by the writer of the specimen writings i.e. Ajit Seth.

19. On further investigation, it was found that accused Ajit Seth was in Paschim Vihar on the date of occurrence at about 10.00/10.15 A.M. He had gone to the house of Virender Kumar (PW-5) to collect payment. Ajit Seth and Indu Arora had been seen talking to each other at about 10.45 A.M. at the traffic inter-section of Jawala Heri Market, Paschim Vihar by Ashwani Kumar (PW-33).

20. Dr. L.K. Baruah (PW-39) conducted the post-mortem on the dead bodies of the deceased children and opined that both the children had ante-mortem burn injuries caused by fire which were sufficient to cause death in the ordinary course of nature.

21. Indu Arora was arrested on suspicion on 26th June, 1988 on the ground that Indu and Ajit conspired to kill the children

22. Challan u/s 109 r/w Section 302 IPC was framed against Indu Arora and challan u/s 364/302 IPC was framed against accused Ajit Seth and a charge u/s 120-B IPC was framed against both Indu Arora as well as Ajit Seth.

23. After the trial the learned Additional Sessions Judge by impugned judgment dated 18th December, 1998 held that charge u/s 109 r/w Section 302 IPC against accused Indu Arora and the charge u/s 120-B IPC against both the accused not proved. However, charge u/s 364 IPC and 302 IPC against accused Ajit Seth stood proved beyond reasonable doubt.

24. Awarding death sentence by the learned Additional Sessions Judge for the offence of killing two innocent children u/s 302 IPC required this criminal reference u/s 366 of the Code of Criminal Procedure for confirmation of the said death sentence and the appeal by the said convict Ajit Seth u/s 374(2) of the Code

challenging the conviction and sentence. Since appeal and reference have arisen from the same judgment hence these are taken up together to be disposed of by this order.

25. Mr. Ravinder Chadha appearing for the State contended that there is an overwhelming evidence available on record to connect the accused with the guilt and the crime. Two innocents' lives were taken by him because of his lust to possess their mother. It is not only a heinous crime committed against these two children but lesser punishment would encourage the criminals and make justice suffer by weakening the system's credibility. Law requires that he should be sentenced to death. It is a rarest of the rare case, Therefore, no lenient view should be taken. To support his contention that lenient view should not be taken he placed reliance on the following cases.

26. In the case of [Dhananjay Chatterjee alias Dhana Vs. State of W.B.](#), it has been observed that:-

"Shockingly large number of criminals go unpunished thereby encouraging the criminals and in the ultimate making justice suffer by weakening the system's credibility. The imposition of appropriate punishment is the manner in which the Court respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence for the heinous crime committed by the accused. The courts must not only keep in view the rights of the criminal but also the rights of the victims of the crime and the society at large while considering imposition of appropriate punishment."

27. In the case of [Jashubha Bharatsinh Gohil and Others Vs. State of Gujarat](#), it has been held that:-

"In the matter of death sentence the courts are required to answer new challenges and mould the sentencing system to meet these challenges. The object should be to protect the society and to deter the criminals in achieving avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system as to impose such sentence which reflects the conscious of the society and the sentencing process has to be stern where it should be."

28. In the case of [Ravji alias Ram Chandra Vs. State of Rajasthan](#), 7 it has been held that:-

"It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity

and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the criminal. If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation most deterrent punishment is not given the deterrent punishment will lose its relevance."

29. To support his contentions that appellant committed heinous crime and that the prosecution proved the guilt of the accused beyond a shadow of doubt, Mr. Ravinder Chadha, counsel for the State relied on the following incriminating circumstances :-

1. The appellant was crazy in love with Indu Arora and had lust to possess her at any cost;
2. To satisfy his desire and lust for Indu, he eloped with her on number of occasions;
3. He even threatened Harish, husband of Indu Arora of dire consequences in case Harish came in his and Indu's way;
4. On 24th June, 1988 at about 10/10.15 A.M., Ajit Seth visited the house of one Varinder Kumar (PW-5) at Paschim Vihar to collect money;
5. On 24th June, 1988, both the children had been left by Harish Arora, father of unfortunate children at the house of Mrs. Bali (PW-41) for taking tuition;
6. Tuition finished at 11 A.M. and since Harish was not to pick up the children on that day, hence, Mrs. Bali got a rickshaw for the children and sent them to their home at A-2 Paschim Vihar;
7. He stopped the rickshaw driver and asked the children to come with him on motorcycle so that he could drop them to their home.
8. He paid a new one rupee note to the rickshaw driver;
9. Children after recognising that motorcyclist "Ajji uncle" accepted his offer and went away with him on his motorcycle;
10. Instead of taking them home, he went on different directions and brought them to Pusa Hill in a deserted vacant room known as Madrasi Temple;
11. He was on visiting terms to the house of Aroras, Therefore, the children used to call him "Ajji uncle";
12. At Pusa Hill in that room he set the children on fire;
13. At the spot burnt/half burnt exercise books of the children were found;
14. Near the place, of occurrence, tyre marks of motorcycle were also noticed;
15. Chander Bhan (PW-2) Rajinder Prasad (PW-3) and Rakesh Kumar (PW-4) witnessed the dying declaration made by deceased Master Sunny Arora at the spot;

16. Inspector M.C. Sharma, SHO Paschim Vihar (PW-50), SI LC Yadav, 10 and Inspector Rajbir Singh (PW-56) also witnessed the dying declaration made by the deceased Sunny Arora in the RML Hospital; 17. SHO Paschim Vihar enquired from Aroras as to who is "Ajji", to which Harish replied he is Ajit Seth.

30. The case as set up by the prosecution with regard to relations between Indu Arora and the appellant stood proved from the testimonies of Harish Arora (PW-40), Manoj Kumar (PW-36), Darshan Lal (PW-42) beside the documentary evidence of hotels. Hotel records proves that after eloping from home number of times. Indu and Ajit stayed in different hotels. Harish Arora and Manoj Kumar (PW-36) are brothers. Harish (PW-40) proved that his wife Indu was having affair with Ajit. Being blind in love neither Indu nor Ajit cared for any one. Even his son deceased Sunny saw Ajit lying on the bed with Indu and told the same to Harish. Harish Arora (PW-40) and Manoj Kumar (PW-36) testified that Ajit Seth came and settled in the neighborhood of Harish Arora at B-2/260 Paschim Vihar whereas Harish Arora was living at B-2/261. Ajit, in order to avail the facility of telephone, had been visiting his house. During these visits Ajit developed love for Indu. This part of Harish Arora's testimony is fortified by the admission made by the appellant in his statement recorded u/s 313 Cr.P.C. He admitted his intimacy and love for Indu Arora. Harish Arora in order to separate Indu from her paramour i.e. this appellant sold his house B-2/261 and settled in a rented house at A-2/207 Paschim Vihar. He, however, failed in his efforts to separate her from Ajit. Indu & Ajit crossed all limits of decency by eloping from home and staying at various hotels in Delhi as well as outside Delhi. Not only they started eloping but Ajit in order to win over Indu purchased a flat bearing No. PD-43A, Pitampura. The purchase of flat by Ajit Seth has been proved by Bhupinder Pal Singh (PW-10) when he stated that Indu Arora contacted him for a house for running a Beauty Parlour. She approved house No. PD-43A, Pitampura and told that her husband would come later and would purchase the house, which Ajit Seth purchased in March, 1988. This has also been confirmed by the testimony of Ashok Arora (PW-13). In order to make her beauty parlour a success. Ajit Seth got printed 500 hand bills. Those hand bills have been proved by Gian Chand Taneja (PW-12) as Ex. PW12/A titled as "Shikha Beauty Parlour" PD-43A LIG flats, Pitampura. This part of Gian Chand Taneja's statement has not been subjected to any cross examination rather this fact has been admitted by the appellant himself in his statement u/s 313 Cr.P.C. These facts are clear pointer to Ajit's craze and lust for Indu. In order to possess Indu he did not leave any stone unturned. By showering costly gifts on her like purchasing of house in order to help her to establish Beauty Parlour shows he wanted to win over Indu Arora from her husband at any cost.

31. Ajit eloped with Indu Arora this fact stood proved by the testimony of Harish Arora (PW-40). He proved that on 2.4.88 Indu eloped with Ajit Seth. She again eloped with him on 12.4.88. Harish Arora lodged police report at P.S. Paschim Vihar. Report is Ex. PW40/A. After 3 or 4 days Indu came back. On 16.4.88 when Harish Arora went to police station, Ajit Seth was already present. At police station Ajit Seth gave in

writing that henceforth he and Indu would not meet. This writing was given in the presence of Darshan Lal (PW-42). Writing was endorsed by PW-42, Darshan Lal. Darshan Lal (PW-42) corroborated the testimony of Harish Arora in this regard and proved the writing executed by Ajit Seth and witnessed by Darshan Lal Ex. PW42/A. After the execution of this document, Indu Arora was taken away by her brother Mukesh Malik. Admittedly that writing was executed by Ajit Seth in police station and witnessed by Darshan Lal (PW-42). Mr. R.L. Tandon counsel for the appellant contended that Harish Arora stated that this writing was given by appellant on 16-4-88 whereas writing shows it is of 15-4-88. This aberration on the part of Harish Arora as rightly pointed out by the Learned Addl. Sessions Judge is insignificant. Fact remains that this writing was executed by the appellant and the signatory to Ex. PW42/DA i.e. Darshan Lal (PW-42) has correctly given the date of this writing to be 15.4.88, Therefore, the aberration on the part of Harish Arora has not created any dent to the prosecution. Indu eloped with Ajit Seth again on 12.4.88. Their elopement has been corroborated by hotels records. Hotel bills of Hotel Sidharth have been proved as Ex. PW16/DB-1 to DB-16. Registration Card is proved as Ex. PW16/A and its carbon copy as Ex. PW16/A-1. These documents were proved by Raj Kumar (PW-16) and Mr. Vipin Sharma (PW-. 23). Ex. PW16/A bears the signature of Raj Kumar (PW-16). He also identified Indu Arora as the visitor who stayed in his hotel from 12.4.88 to 15.4.88 in the assumed name of Amita Gugnani. Similarly Vipin Sharma (PW-23) proved the stay of Indu Arora as Mrs. Amita Gugnani in room No. 302. On material facts their statements remained consistent."

32. Ajit Seth and Indu again eloped in May, 1988. Ex. PW32/A (also marked Ex. PW34/A) is the report lodged by Harish Arora (PW-40) at police station Paschim Vihar. DD No. 82-A dated 27.5.88 was reported by Hari Seth, father of the appellant, thereby informing police control room on telephone that his son Ajit Seth left home in Maruti Car after taking jewellery with him. Police control room in turn informed police station Paschim Vihar about this fact. When Indu Arora returned, her husband informed the police of Paschim Vihar on 30.5.88 that his wife had gone to her parents house instead of returning home which was recorded vide DD No. 22-A dated 30.5.88 i.e. Ex. PW32-A. Hari Seth disowned the report by saying the police that he had not lodged any report to the police vide Ex. PW20/A on 27.5.88. Trial court, to our mind, rightly analysed that after Ajit and Indu returned the complainant parties tried to play down the episode. Those daily dairies reports were recorded in due course of official business Therefore cannot be suspected nor its authenticity can be doubted particularly when nothing has been brought on record to prove the contrary. Their elopement and staying together has also been proved by the testimony of Naresh Kumar (PW-14) i.e. Manager of Hotel Mayur, Meerut. He proved that Indu Arora and Ajit Seth with a girl aged 3 years came to his hotel. They did not stay in his hotel because Ajit Seth did not approve of the room. They however took lunch in the restaurant of his hotel. His statement has not been shaken despite lengthy cross-examination. Their staying together at hotel

Connaught Palace, New Delhi on 27.5.88 has also been proved vide registration Card Ex. PW28/A. T.R. Nehra (PW-51) hand writing expert of the CFSL compared the writings on the registration Card Ex. PW28/A of hotel Connaught Palace with specimen writing of Ajit Seth. He opined vide his report Ex. PW 15/C that the writer of the specimen writing is the author of the writing on Ex. PW28/A. This is a clinching evidence of their staying together after elopement.

33. It has been proved on record that on 17.10.87 i.e. on the birthday of Ajit Seth, he took Indu to Hotel Rajhans, Suraj Kund at Faridabad. Entry in the hotel register was in the assumed name Ajit Khanna. S.B. Munjal (PW-25), Manager of that hotel proved reception register as Ex. PW25/A and Ex. PW25/A-1. These exhibits contained relevant entries of Ajit Seth and Indu Arora staying in the hotel. M.P. Sharma (PW-43), employee of this hotel handed over the record of this hotel to SI Prakash Chand Mann. Hand writing expert Sh. T.R. Nehra (PW-51) after comparison opined vide his report Ex. PW51/C that questioned writing has been written by the author of specimen writings. Thus from the oral and documentary evidence discussed above it is proved beyond doubt that Ajit was madly in love with Indu. To satisfy their lust and desire they had been eloping from home.

34. Threat to Harish Arora (PW-40) by Ajit Seth has been proved by Harish Arora (PW-40) himself. If Ajit Seth could brake his engagement for the sake of Indu then it cannot be doubted that for his desire to possess Indu he could have given threat to Harish. Ajit Seth became used to Indu Arora, Therefore, could do anything. It is rightly said that a habit is like an adhesive tape, easy to stick on, but when it is ripped off, it takes skin with it. Having got used to Indu could not tolerate anybody coming in their way. This fact has been conclusively proved by the prosecution. We see no reason to differ with the conclusion arrived at by the learned Additional Sessions Judge on this count.

35. The fact that Ajit Seth was in the vicinity of Paschim Vihar at 10/10.15 A.M. has been conclusively proved by the testimony of Varinder Kumar (PW-5). In no uncertain words he deposed that his wife was running business of insulation tapes. She purchased material from the appellant three times up to 24th June, 1988. Appellant came to collect Rs. 6,100/- from his house on 24.6.88. Time was 10 AM or 10.15 A.M., though no documentary evidence has been produced by PW-5 to show that appellant came to his house to collect Rs. 6,100/-. The where about of this witness and the fact of collecting money had also been disclosed by the appellant. It was only on his disclosure that Varinder Kumar (PW-5) was interrogated. Moreover there is nothing on record to infer that this independent witness had any axe to grind by falsely implicating the appellant. Nor from his cross-examination defense could elicit any contradiction nor from the perusal of his statement it can be said that he was not speaking the truth. In fact his testimony inspires confidence.

36. It has been conclusively proved by the testimonies of Harish Arora (PW-40), Mrs. Lalita Bali (PW-41) and even the admission made by Indu Arora in her statement u/s

313 Cr.P.C. that Sunny Arora and Shikha Arora were dropped by Harish Arora at the house of Mrs. Lalita Bali (PW-41) on 24.6.88 for taking tuition. Their tuition finished at 11 A.M. Since their father Harish Arora was not to pick them up hence Mrs. Bali hired a rickshaw and made them seated in the rickshaw of Babu Lal (PW-1). This fact stood proved from the un rebutted testimony of Mrs. Bali(PW-41) and of Babu Lal (PW-1), the rickshaw driver. In spite of lengthy cross-examination, the defense has not been able to shake their statements that the children were seated in the rickshaw of Babu Lal (PW-1) at 11 A.M. Though Mrs. Lalita Bali (PW-41) has been subjected to cross examination on many aspect like her going to her friend Mrs. Malhotra's house and/or going to market at 4 P.M. as well as her talking to Babu Lal (PW-1) and on other details furnished by her, but on the aspect of hiring a rickshaw and making children seated on the Rickshaw of Babu Lal (PW-1) at 11 A.M. she has not been subjected to cross examination nor even a suggestion given to Mrs. Bali or for that matter to Mr. Babu Lal that children were not seated on Babu Lal's Rickshaw. Some improvements appears to have been made by Mrs. Bali while deposing in the Court beside some minor discrepancies here and there in her statement but those do not touch the basic structure of prosecution case that she hired the Rickshaw of Babu Lal (PW-1) and made the children seated in the that Rickshaw at 11 A.M. with the direction to him to leave the children at A-2, Paschim Vihar. Her statement on this count in fact stood corroborated by the testimony of Babu Lal (PW-1), the rickshaw driver. From the question put to Babu Lal (PW-1) by the defense clearly show that appellant admitted that the children were carried by Babu Lal (PW-1) in his rickshaw on 24.6.88 at 11 A.M. We feel that Babu Lal's (PW-1) statement is not only truthful but inspire confidence also. It has been correctly analysed by the learned trial court when he concluded that children were seated in the rickshaw of Babu Lal (PW-1) and he was carrying them towards their home when motorcyclist came and stopped him. Motorcyclist told the children to come with him on his motorcycle and that he would drop them at their home. Sunny told Shikha it was "Ajji uncle" and, thereafter both the children sat on his motor cycle. That motorcyclist paid a new one rupee note to Babu Lal (PW-1) which is proved and exhibited on record. Since the motorcyclist took the children in opposite direction, Babu Lal (PW-1) got suspicious and reported the matter at the house of Mrs. Bali. Babu Lal identified Ajit Seth at the police station to be that motorcyclist who took the children on his motorcycle and who paid him one rupee note and to whom Sunny called "Ajji uncle".

37. Mr. Ravinder Chadha contended that cumulative affect of the above circumstances as stood proved on the record from the unimpeachable testimony of prosecution witnesses leaves no manner of doubt that the appellant herein is the one who snatched the two little buds before they could bloom into flowers. He further contended that the circumstances enumerated above and which stood established by the prosecution clearly show that appellant herein because of his lust and desire for Indu Arora make him do this barbaric and heinous crime. From the

above facts Ajit Seth's crazy and mad love for Indu and consequent motive to do away the children is stood fully established. The desire to possess her was so strong that he even tried to win over by purchasing a house of her choice bearing No. PD-43/A Pitampura in order to enable her to run a beauty parlour in the said house. His action not stop at that, he even went to the extent of threatening Harish Arora not to come in his way. The final blow he gave when he picked up both the children from the rickshaw, took them away on his motorcycle to a deserted room at Pusa Hill where the little souls were cruelly killed.

38. The identity of the motorcyclist who took the children with him has been established by the statement of Babu Lal (PW-1) when he said the boy, Sunny called the motorcyclist "Ajji uncle". It has come in the evidence of Harish Arora (PW-40) as well as his brother Manoj Kumar (PW-36) that since the appellant was on visiting terms to their house, the children started him addressing as "Ajji uncle". The fact that Babu Lal (PW-1) at the first available opportunity informed Mrs. Bali's daughter that a motorcyclist by the name of Ajji has taken the children on his motorcycle proves the identity of the motorcyclist. Babu Lal (PW-1) could not have known the name of appellant unless so called out by Sunny the deceased as "Ajji uncle". Even when his statement was recorded by the police at about 5.30 or 6.00 P.M. on 24.6.88 he repeated the same thing that the motor cyclist who took the children from his rickshaw was addressed by Sunny as "Ajji uncle". Mrs. Bali(PW-41) has corroborated Babu Lal (PW-1) to the extent that he came to her house and narrated so. She also confronted Indu as to whether she knew anybody by the name of "Ajji" because by that name Sunny Arora addressed the motorcyclist. Coupled with the testimony of Babu Lal (PW-1) and Lalita Bali (PW-41) we have the statements of Chander Bhan (PW-2), Rajinder Prasad (PW-3) and Rakesh Kumar (PW-4) who also testified that deceased Sunny Arora told them that he and his sister Shikha were brought at the place of occurrence by "Ajji uncle" on his motorcycle. Hence identity of the motorcyclist who took away the children from the rickshaw of Babu Lal stood conclusively established on record. There is no discrepancy or inconsistency in the statement of the prosecution witnesses on this count. Rather from the statements of Harish Arora (PW-40) and Manoj Kumar (PW-36) it is proved that Ajit Seth the appellant herein in short was addressed by the children as "Ajji uncle". Therefore, it can safely be concluded that there is no doubt about the identity of the motorcyclist.

39. On the esher hand, Mr. R.L Tandon, counsel for the appellant contended that since prosecution failed in establishing the charge of conspiracy to kill the children between Indu Arora and Ajit Seth hence there is no other evidence to show that the appellant knew that Sunny Arora had been going to the house of Mrs. Ball to take tuition nor he could have known the timings of the tuition. If Indu had not conspired with Ajit then how Ajit Seth could have known these facts. Mr. R.L. Tandon contended that in the absence of any evidence or material on record to show that someone fed the facts to this appellant the following facts have not been inferred:-

1. That the appellant knew that Sunny Arora was going or had gone to the house of Mrs. Bali on 24th June, 1988?

2. That his tuition hours were from 9-30 A.M. to 11.00 A.M. He could not have imagined that Shikha Arora would also be going to the house of Mrs. Bali for taking tuition on 24th June, 1988 and at what time the tuition would be over?

3. That appellant could not have known that Harish Arora or for that matter none else would be coming to pick up the children from the house of Mrs. Bali for being taken to their house No. A-2/207, Paschim Vihar, New Delhi?

40. Mr. R.L. Tandon's plea was that since the story of conspiracy failed and there being no evidence on record showing that Ajit Seth was aware of above facts, the appellant cannot be linked with the crime. In reality these facts could not be said to have been proved. In fact in the absence of any information regarding the moment of the children having been fed to the appellant the case of the prosecution must fail. Moreover there was no motive to kill the children nor picking up of the children by Ajit Seth on his motorcycle has been established. According to Mr. Tandon once there is no evidence that appellant had the information or knew that the children were to go to the house of Mrs. Bali for tuition and would not be picked up by their father and that after finishing the tuition at 11 o'clock Mrs. Bali would be hiring a rickshaw for them, it can safely be said that prosecution is tainted and the witnesses planted. Finger of suspicion cannot be raised towards this appellant. In the absence of having established and prove that appellant had the information about the children, entire prosecution case must fail on this ground. Moreover, evidence of Ashwani Kumar (PW-37), whom the prosecution adduced to prove the conspiracy has admittedly been disbelieved by the learned Additional Sessions Judge in his judgment, Therefore, in the absence of conspiracy having been established, all other consequential evidence and the circumstances enumerated by the prosecution fall to the ground.

41. Mr. R.L. Tandon then contended that the law related to circumstantial evidence is well settled by umpteen judgments of the Apex Court. In fact in a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again, those circumstances should be of a conclusive nature and tendency, and that they should be such as to exclude every hypothesis but one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. He placed reliance on the following decisions of the Apex Court: (1) [Bakhshish Singh Vs. State of Punjab](#), (3) [Khasbaba Maruti Sholke Vs. The State of Maharashtra](#), ; and (4) [Hukam Singh Vs. State of Rajasthan](#),

42. Mr. R.L. Tandon contended that in the case in hand charge of conspiracy has failed and prosecution case of circumstantial evidence having been disproved, hence the entire chain of circumstantial evidence stood broken. No conviction against the appellant could validly be recorded without the involvement of co-accused Indu Arora because it was only on account of her infatuation towards the appellant that the appellant became bold and committed the murder of two small children. But with the breaking of chain of circumstantial evidence and the motive having not been proved, no conviction can be entailed on such evidence. There cannot be any quarrel with the proposition of law that in a case based on circumstantial evidence the entire chain of circumstances must be complete. In the case in hand from the evidence of prosecution witnesses chain stood completed. It has not broken at any point. As already pointed out above, question was not who fed the information to Ajit Seth that Sunny was going for tuition to the house of Mrs. Ball during the relevant time nor what were the timings of his tuition. Ajit Seth could have gathered this information at any time since Indu and he had been in touch with each other and as per record they were lastly together as late as on 28th May, 1988. Therefore it can be inferred that such an information the appellant could have easily gathered. Children's activities could have been gathered by him even otherwise also than by physically meeting Indu. Inspire of prosecution having been disbelieved on the ground of conspiracy that by itself does not prove that the appellant is innocent. The fact that the children were sent to take tuition from Mrs. Ball (PW-41) has been proved beyond shadow of doubt. Even Indu Arora in her statement u/s 313 Cr.P.C. admitted that children were sent for tuition to Mrs. Bali. Further fact that they were got seated in the rickshaw of Babu Lal (PW-1) has been proved by the unrebutted and uncontroversial testimony of Mrs. Bali (PW-41) as well as Babu Lal (PW-1) himself. It was the appellant who took both the children on his motorcycle from the rickshaw of Babu Lal (PW-1) has also been proved. Sunny addressed the motorcyclist as "Aji uncle" has also been proved, Therefore, even if the charge of conspiracy failed the fact that this appellant lifted the children from the rickshaw of Babu Lal (PW-1) and brought them to a deserted room at Pusa Hill and set them on fire stood established. Hence failure of the charge of conspiracy by itself has not created any doubt to the case of the prosecution that the children were murdered by this appellant which facts have been otherwise proved from the dying declaration of deceased Sunny Arora. Merely the fact that prosecution in so many words did show who informed the appellant about Sunny taking tuition or timing of tuition by itself is not-such a circumstance which can break the chain which otherwise is complete in all respect. Case of the prosecution that it was the appellant who murdered the children and how he did it those circumstances have been proved thereby linking the appellant with the crime. There is no inconsistency in the same.

Dying declarations made by Master Sunny Arora at the spot as well as in the Hospital.

43. Evidence of witness who has no axe to grind and is not interested in taking side can be relied upon to show how the incident took place. Chander Bhan (PW-2), Rajinder Prasad (PW-3) and Rakesh Kumar (PW-4) are independent witnesses. They had no axe to grind, Therefore, narration given by them as to how the children got burnt can be relied upon keeping in view the law laid down by the Apex Court in the case of *State of Madhya Pradesh v. Sardar* AIR (2001) SC 2897. It is settled law that when the evidence of independent witness is found trustworthy, it can be decisive in securing conviction.

44. There is no denial of the fact that dying declaration has to be treated with care and caution since the maker of the statement cannot be subjected to any cross-examination. This was the view propounded by the Apex Court in the case of [Tarachand Damu Sutar Vs. The State of Maharashtra](#), followed in the case of [Munnu Raja and Another Vs. The State of Madhya Pradesh](#), and then in the case of [K. Ramachandra Reddy and Another Vs. The Public Prosecutor](#). Though the dying declaration must be approached with caution but there is neither a rule of law nor a rule of prudence to show that a dying declaration cannot be acted upon unless it is corroborated. The court need not look out for corroboration unless it comes to the conclusion that the dying declaration suffers from any infirmity by reason of which corroboration is necessary. Conviction can be founded even without any corroboration if the court is satisfied that the deceased was in a fit state of mind to make the statement and had a clear opportunity to observe and identify of his assailant and that he was making the statement without any influence or rancour.

45. Prosecution in this case revolves around and rests on the oral dying declarations of Sunny Arora, made at the spot to Chander Bhan (PW-2), Rajinder Prasad (PW-3) and Rakesh Kumar (PW-4) and to the police witnesses at the RML Hospital. Admittedly dying declarations of deceased Sunny Arora was not pen down nor endorsed by the Sub Divisional Magistrate or by a doctor. Chander Bhan appearing as PW-2 corroborated the case of the prosecution in its entirety. He could not be shaken on material facts touching the basic structure of the prosecution despite lengthy cross examination. He was employed as a chowkidar/gardener in the DDA park near Rajender Nagar during June, 1988. He was on duty in that DDA park and was working towards Ridge side of the said park from 7 A.M. to 7 P.M. on 24th June, 1988 at about 11.45 A.M. While he was performing his duties in the said park, he heard cries and shrieks of children coming from Madrasi Temple comprised of one room lying vacant on the hillock of Pusa. On hearing those cries he rushed towards the spot. On reaching there he saw two children - one boy and one girl - burning. Entire clothes of the girl had been burnt while clothes of the boy i.e. a half sleeve bushirt was still burning and sticking to his skin. He plucked the burning portion of the clothes. He extinguished their fire. He questioned the boy as to who had set them on fire, what reply the boy gave and as stated by him read as under:-
"Jit uncle" had tied them and had set them on fire and had run away."

46. After he had questioned the boy by which time those two women gardeners, Angad supervisor and 6 or 7 students of the Pusa Institute also reached there. Out of those students two of them went and brought the PCR jeep in which both the children were removed to the hospital. Chander Bhan (PW-2) also accompanied the children to the hospital and to the emergency ward. In his presence, the police officials enquired from Sunny Arora, the deceased the cause of fire to which the boy replied that "Jit uncle" had set them on fire. Sunny, the deceased, also informed that he lived in Paschim Vihar. He gave the name of his father as Harish. Chander Bhan's (PW-2) statement was recorded by the police while he was still in the hospital. His second statement was recorded by the Metropolitan Magistrate after 10 or 15 days of the occurrence. The same is exhibit PW2/A which according to him contained correct and truthful narrations of facts as actually happened. The two labourers who also reached the spot were Mrs. Gora Bai and Mrs. Laliti. They were employees of the DDA, employed as gardeners in that very Park. Chander Bhan (PW-2) was near the nursery. Nursery was about 10 paces away from the place where he was working and about 200 paces away from the place of occurrence. In his presence students of Pusa Institute, who had collected there also asked Sunny about the cause of fire. Sunny repeated to them as well that they were brought at the spot by "Jit uncle" and after tying them he set them on fire. These facts were repeated by Sunny as and when anyone asked him. Admittedly children were taken in the PCR Van to RML hospital. Chander Bhan (PW-2) accompanied the children in the Van. There were two police officials in the Van beside the driver. One of the official was Sikh and other two were non-sikh. His colleague Mr. Silo Raj also accompanied him to the hospital. Boy was asking for water but the same was not given rather he was put in the Jeep and rushed to RML hospital. Constable on duty asked Sunny the deceased the cause of his burn. Sunny repeated to the Constable on duty the same facts which he told to Chander Bhan (PW-2). Duty Constable enquired from Sunny his and his sister's name, father's name and address. Sunny furnished the particulars by telling his name, his father's name and address. He repeated that they were burnt by "Ajji Uncle". According to Chander Bhan (PW-2) when these facts were told by Sunny, Silo Raj his colleague was not present. Three to four doctors and two nurses were present in the Nursing Ward. These were attending the children as well as other patients simultaneously. These facts Chander Bhan (PW-2) disclosed in his cross-examination. To a question that boy was given injecting immediately on reaching the hospital, Therefore, was not in a position to make the statement has been denied by PW-2 and by police witnesses. According to Chander Bhan after 5-10 minutes of their reaching the emergency ward injection was given to Sunny. The injection, according to Chander Bhan (PW-2) was given to Sunny when duty constable was asking particulars. defense has not been able to dislodge him despite lengthy cross examination nor could elicit any material contradiction to disprove his version. His presence at the place of occurrence and of extinguishing of the fire has not been questioned. After extinguishing the fire it was natural for him to find out who those children were and who set them on fire. This is precisely what Chander

Bhan (PW-2) did. On his query, Sunny the deceased made the statement which on his death is now called his dying declaration. Sunny was capable of understanding the import of the question that is why he could tell how they were brought at the spot and by whom, and also that it was this appellant whom Sunny called "Jit or Ajji uncle" who brought them there on his motorcycle and then set them on fire.

47. Chander Bhan withstood the test of cross-examination. He witnessed the oral dying declaration made by Sunny Arora at the spot. It could not be shaken. His witnessing of the deceased's statement remained unchallenged on record. He is an independent witness. He was on duty at a place which was hardly 200 paces from the place of occurrence. It was but natural for him to reach there after hearing children's cries and shrieks. Cries and shrieks were audible at a distance of 200 paces. Therefore, it cannot be said that Chander Bhan (PW-2) is a planted witness. It is nobody's case that fire was not extinguished by him. It is he who reached the spot first and extinguished the fire. Rest of the facts described by him and as heard from deceased Sunny have not been shaken even by subjecting him to a lengthy cross examination. From his testimony it is clear that at that time Sunny was in a position to understand the query put by Chander Bhan (PW-2). He was conscious and Therefore, in a fit state of mind to answer these queries. It was not even suggested to him that Sunny was not in a fit state to answer his queries. Chander Bhan's (PW-2) statement is spontaneous, natural and truthful. It inspires confidence. He had no axe to grind in falsely implicating this appellant nor he could have imagined those facts which he attributed were uttered by deceased Sunny. Statement of Chander Bhan (PW-2) on this aspect is corroborated by two other independent witnesses namely

48. Rajender Prasad (PW-3) and Rakesh Kumar (PW-4). Rajender Prasad (PW-3) and Rakesh Kumar (PW-4) also witnessed the oral dying declaration made by Sunny Arora at the spot. During the period of 1988 they were trainee student of ITI Pusa, New Delhi. On 24th June, 1988 at about 11.45 A.M. they along with their colleagues Surinder Kumar, Rakesh Kumar, Devinder Kumar, Rajinder Singh, Kuldeep Chand and Janak Raj were surveying the field at Pusa Hill. The distance-where, they were doing the survey and the place of occurrence was hardly 200 meters. While they were surveying in the field two lady gardeners running towards the deserted room on the hillock. Seeing the commotion they also followed them. On reaching the room they found two burning children - a boy and a girl. The boy was about 7 years old and the girl was about 3-1/2 years old. They found a male gardener and the two female gardeners present there. The girl was not speaking but was only weeping. They enquired from the boy as to how they caught fire and where were they living? How they reached at that spot? In response to their queries, Sunny the deceased told his name as Sunny, his address as at A-2, Paschim Vihar and father's name Harish. Sunny further told them that "Ajji uncle" had brought them on his motorcycle from rear side of the hillock in that room and then set them on fire after tying. He himself had fled away.

49. Rajinder Prasad (PW-3) deposed that Sunny while narrating the facts looked towards back side of the room. His colleagues went to check back side of the hillock but did not find anyone there. Rakesh Kumar, Gajinder Singh and Davinder Kumar went out to bring the PCR Van. Rajinder Prasad (PW-3) had noticed the school bags of the children and half burnt books/ exercise books of the children. He also noticed tyre marks of a motorcycle near the spot. He waited for the Van but when the PCR Van did not arrive he himself went out to make arrangement for a vehicle. He sought help of a car driver, but the car driver refused to carry the children. However, he helped him in taking him to a nearby PCO installed at general store, Rajinder Nagar bus stand, wherefrom he rang up at number 100 and informed the police that two children were burnt at Pusa Hill, he also gave the directions of the place as also how to reach the spot. When he returned the spot by then his colleagues had already arranged for PCR Van and the children were being seated in the same for taking to the hospital. Rajinder Prasad was subjected to grilling cross-examination but nothing could be extracted to discredit his statement with regard to the statement made by Sunny, the deceased. He not only withstood the test of cross examination but proved that he was telling the truth and that he was not a planted witness. When defense tried to test his statement regarding details of the place where they were standing and the place of occurrence he could tell precisely the sequence of events and the places. He explained that there was nursery on the left side of that passage while going towards the hillock. That they were ahead of Nursery about 70 to 80 meters and were standing under the Neem tree on the right side of the passage. That the male gardener had reached the spot earlier than them and had already extinguished the fire. Gardner had plucked the burnt clothes sticking to the body of the children. He vividly and with precision narrated what was stated by the deceased Sunny in response to his questions and the questions put by his colleagues. Sunny's answers were heard by them all. When questioned he, however, could not tell who individual student asked what question but he remembered what was told by Sunny in response to each query. Sunny the deceased told them that "Ajji uncle" had brought them there on the motorcycle from rear side of the Hillock and set them on fire after tying them. He testified that one passage existed on the rear side of that room which led to Todapur Road. Sunny the deceased while narrating how "Ajji uncle" brought them there and set them on fire looked backward to point out rear passage of the room. He admitted that while reporting to the police on 100 number he did not furnish details of the incident or the name of "Ajji uncle". Mr. R.L. Tandon contended that his statement is unreliable because while reporting the matter to police he did not tell the name of the boy and of the accused. This argument of Mr. Tandon is without substance. Rajender Prasad (PW-3) reported the burning of two children on Pusa Hill and wanted the police to come there immediately. At that time it was not necessary nor expected that he would start furnishing all the details. Even otherwise it is now settled law that even if details are not furnished in the FIR the prosecution case does not fail on that count. He, however, in his statement to the police furnished all the details. The only minor

contradiction which defense counsel could point out in his statement was that instead of mentioning Hillock in his statement Ex. PW3/DA to the police he had mentioned Pusa Park. Mr. R.L. Tandon tried to point out other contradictions namely he did not mention to the police specifically that one male gardener and two female gardeners were rushing towards the Hillock. The factum of their rushing towards the hillock being not mentioned in Ex. PW-3/DA does not ipso-facto proves that he tried to improve his statement in Court nor, to our mind, it is a relevant consideration to discard his testimony which otherwise inspire confidence and appears to be truthful and natural.

50. Mr. R.L. Tandon's contention that PW-3 Rajinder Prasad improved his statement in the court, this argument is noted to be rejected because these are very trivial and even otherwise irrelevant to the statement made by Sunny, the deceased. In his statement to police vide Ex. PW3/DA he did say that he saw burnt/partly burnt exercise books of the children at a time when Devender Kumar, Rajinder Singh and Rakesh Kumar had gone to bring the PCR van. Whereas in court he said he saw books after the children had left in the PCR van for hospital. Then again in court he said he saw motorcycle tyre marks near the spot, whereas to police in his statement Ex. PW-3/DA it was not so recorded. It is a fact on record that it was he who pointed out exercise books of the children at the spot and the same were seized by the police. These variations in no way effect the dying declaration made by Sunny, the deceased. These alleged improvements have no bearing on Sunny's statement. Rajinder Prasad (PW-3) remained consistent on all material facts. These minor variation could be due to lapse of time. This can't by any stretch of imagination can be called material contradiction going to the root of the prosecution case nor affect the veracity of his testimony. So far as the fact of dying declaration made by Sunny to which he witnessed, that part of his testimony has not been challenged inspire of the extensive cross-examination. Mr. Tandon's contention that there were material contradiction in his statement because in Court he said he did not remember the number of police persons reached at the spot after the PCR Van with the children had left. Similarly in his statement Ex. PW-3/DA to police he specifically said that he had gone to fetch three-wheeler scooter whereas in the Court he denied this fact. These contradictions as already pointed out, in no way affect the oral statement made by the deceased. Rajender Prasad (PW-3) was a student of ITI Pusa and was in fields doing survey. He had no malice or motive to falsely implicate this appellant. His evidence establishes beyond doubt that he witnessed the dying declaration made by the deceased. Sunny Arora, thereby implicating the appellant of the crime committed by him.

51. In fact, Rajinder Prasad (PW-3) in material particular corroborates the statement of Chander Bhan (PW-2). Rakesh Kumar (PW-4) colleague of Rajinder Prasad PW-3 was also present with Rajender Prasad (PW-3) at Pusa Hill and doing survey on the field. He corroborates every bit Rajinder Prasad's statement and in particular the dying declaration made by Sunny Arora, the deceased thereby implicating the

appellant with the commission of crime. He too asked Sunny his name and other particulars and how they got burnt. In his presence Sunny told his name, the name of his sister beside furnishing his address as A-2, Paschim Vihar and father's name as Harish. He witnessed Sunny, deceased saying that "Ajji uncle" had brought them on motorcycle from the rear side of the hillock in that room and set them on fire by tying if fled away. The deceased Sunny also pointed out backward while disclosing the above facts. He is the one who along with Gajender Singh and Devinder Kumar went to call for a PCR Van. He spotted the PCR Van present near the Pusa gate and brought the same to the Pusa park of that hill. The children were put in the PCR Van and sent to hospital. He testified that the gardener Chander Bhan (PW-2) accompanied the children in the PCR Van. The defense tried its best to shake his testimony but he stood the test of cross-examination. Nothing could be elicited from his lengthy cross-examination which could cast any shadow of doubt on the truthfulness of the version given by him. He also found burnt books/exercise books and burnt skins of the children lying near the spot. He explained that rear passage of the room led to Todapur Road. Rest of his cross-examination rested in extracting the details as to how much time it took to him to reach the Patel Chowk Police Booth and in tracing the PCR Van beside the number of the police official present in the PCR Van etc. He, however, admitted having not told all the details told by the deceased Sunny Arora, to the local police because he thought his colleague had already disclosed those facts. He felt it necessary to repeat the same. To our mind his Explanation for having not furnished all the details of Sunny's statement to police is plausible. Since he knew his colleague had furnished those details it is possible he thought it necessary to repeat the same. He denied that Sunny did not name "Ajji uncle" or that he told that "One Bada Ganda Daku (Notorious dacoit)" had brought them and set them on fire. Mr. R.L Tandon's contention that statement of these witnesses cannot be relied upon because they contradicted on material aspects has no force and is contrary to record.

52. According to Mr. Tandon, Sunny was not in a position to make any such statement. We are not impressed with this contention because neither Chander Bhan (PW-2) nor Rajinder Prasad (PW-3) or for that matter Rakesh Kumar (PW-4) had any axe to grind against the appellant. They were not on inimical terms nor had any enmity with him. They are independent and natural witnesses. Not even a suggestion was given to them that Sunny was not in a fit state of mind to state what he stated to these witnesses. Chander Bhan was working as a gardener in the park which was hardly 200 paces away from the place of occurrence and so Rajinder Prasad (PW-3) and Rakesh Kumar (PW-4) were in the field near the place of occurrence. So naturally on hearing the commotion they reached the place of occurrence. Their presence at the place of occurrence cannot be doubted nor any doubt can be entertained about their being truthful witnesses. Chander Bhan (PW-2) was the one who extinguished the fire. On reaching the spot the first thing he did was to extinguish the fire and then enquired from Sunny as to how he got the fire

and who he was. Sunny, the deceased was capable of understanding and in a fit state of mind to answer their queries. That is why he could tell his name, his father's name, the name of the person i.e. "Ajji uncle" who brought them there on motorcycle and then set them on fire. Sunny Arora in no uncertain words named the appellant to be the culprit. He called the appellant "Ajji uncle". He also told that "Ajji brought them on motorcycle. Children's school bags, exercise books and books were also found there. The fact that children had gone to take tuition, Therefore, they were carrying books/ exercise books. They were taken away by the appellant on his motor cycle stood proved by the testimony of Babu Lal (PW-1). Statements of Chander Bhan (PW-2), Rajinder Prasad (PW-3) and Rakesh Kumar (PW-4) that they witnessed the dying declaration and that Sunny was capable of understanding and was in a fit state of mind is fortified by the entries recorded in the MLC by the doctor at 12.20 P.M. Children were taken in the PCR Van from Pusa Hillock, straight to hospital. They reached RML Hospital at 12.20 P.M. That is the time recorded in the MLC. At RML hospital the Constable on duty again asked Sunny his particulars which were furnished by Sunny Arora. These details to the extent that his name was Sunny, his father's name Harish Arora and that he was resident of A-2, Paschim Vihar finds mention in the MLC. Had these details not been furnished by Sunny, the deceased himself, the doctor on duty could not have imagined the same nor could have incorporated the same in the MLC. It has come on record by the testimony of Rajinder Prasad (PW-3), Rakesh Kumar (PW-4) that on the exercise book only name of Sunny was written neither his father's name nor address was given. But MLC Ex. PW-47/A contains these details which Sunny alone could have mentioned. MLC corroborates the version given by these independent witnesses. Their statements inspire confidence and have full of credence.

53. Mr. R.L Tandon then argued that it has not been proved that this appellant was also known as "Ajji". We find no substance in this submission in view of our above discussion.

MOTIVE

54. Mr. Tandon contended that there was no motive for the appellant to kill the children. If at all he wanted Indu then he should have killed Harish Arora her husband. Removal of children from the scene would not have got him Indu. This argument has a reason but person blind in love does not reason. Human psychology differ from person to person. In what circumstance "A" will react need not be that "B" will also react in the same manner. Appellant might have thought that Indu's bond with her husband is children. If they are removed she will be free to join him. Moreover children were easy target, but unfortunately for him, PW-2 to PW-4 were present in that deserted place also where he took the children and set them on fire, thinking no body would know who set them on fire.

55. Mr. Tandon then contended that Indu had taken twice Shikha with her when she eloped with appellant. If he wanted, Shikha could have been killed then. This

argument is devoid of merits. He could not have killed Shikha at that time thinking he would surely be caught.

56. Mr. Tandon then contended that there was no motive to kill the children. In fact Mr. Tandon forgets that desperation to possess the beloved itself was sufficient motive. Even otherwise absence of strong motive by itself is no ground to reject the case of the prosecution. For support reliance can be placed on the decision of Supreme Court in the case of [Datar Singh Vs. The State of Punjab](#), wherein it is held that mere absence of a strong motive for committing an unnatural crime as patricide or the mode of its commission cannot be of assistance to the accused, if the offence could be proved by evidence.

57. In the case of [State of U.P. Vs. Babu Ram](#), the Apex Court posed a question - if the proof of motive was essential, should prosecution fail on not establishing the motive? After analysing, the Apex Court observed that though motive is a relevant factor, not proving would not fail the prosecution. In a case depending upon circumstantial evidence, motive could be counted as one of the circumstances.

58. Mr. Tandon contended that case of the prosecution must fail because it relied on the circumstance that the children were burnt with petrol. Prosecution to prove the same relied on the alleged disclosure statement of the appellant and consequential recovery of the plastic bottle and the petrol pump from where petrol was purchased. Admittedly this part of prosecution story falls to the ground in view of the medical evidence. Dr. L.K. Baruah (PW-39) has in no uncertain words stated that there was no smell of kerosene oil or petrol found in the scalp hair of Sunny as well as of Shikha. Therefore, the recovery of plastic bottle at the instance of the appellant and or petrol pump cannot be relied upon. But at the same time we can't gloss on the fact that Master Sunny, the deceased never stated that "Ajji uncle" set them on fire by pouring petrol. Sunny's statement as witnessed by Chander Bhan (PW-2), Rajinder Prasad (PW-3), Rakesh (PW-4) clearly say that he and his sister were set on fire by "Ajji uncle" after tying them. Therefore, even if prosecution failed on this count the dying declaration cannot be faulted, for that. Prosecution on this count based its case on the disclosure statement of this appellant and not on the dying declaration. Hence dying declaration made at spot cannot be discarded. Even otherwise it is settled law that even if there is contradiction in the eye witnesses' count and medical evidence that itself will not affect the trustworthiness of the eye-witnesses as in this case namely Chander Bhan (PW-2), Rajinder Prasad (PW-3) and Rakesh Kumar (PW-4).

59. Mr. R.L Tandon also contended that no rope marks were found on the body of the deceased. It was not the case of the prosecution that the children were tied with the rope. We do not know with what the children were tied. Fact has been established from the dying declaration made by deceased Sunny that he and his sister were set on fire by this appellant. Once there is no reason to doubt the presence of the witnesses to the dying declaration at the place of occurrence nor

any inconsistency brought about through their cross-examination thereby creating doubt regarding veracity of their evidence, there being no enmity with the appellant coupled with the fact that there was no reason for them to falsely implicate him in the commission of crime, we see no reason not to believe their version. Moreover, there is no inconsistency in the dying declaration made by deceased Sunny Arora and as witnessed by Chander Bhan (PW-2), Rajinder Prasad (PW-3) and Rakesh Kumar (PW-4) with regard to the part played by this appellant, Therefore, the dying declaration made by Sunny Arora to Chander Bhan (PW-2), Rajinder Prasad (PW-3) and Rakesh Kumar (PW-4) at the spot cannot be doubted.

60. Sunny was capable of narrating the sequence of events which fact is established by the testimony of Rajinder Prasad (PW-3), Rakesh Kumar (PW-4) as well as Chander Bhan (PW-2). According to them Sunny pointed towards the rear passage of the room to show as to wherefrom appellant left after setting them on fire. The motorcycle tyre marks were also noticed near the spot and the passage from the rear side of the room led to the main road. This appellant escape from the rear side after setting the children on fire. Dying declaration made by Sunny the deceased to these independent witnesses and the details furnished by him clearly show that Sunny had clear opportunity to express the identity of his assailant i.e. this appellant whom he knew from before and who after picking them from the rickshaw brought there. He was making the statement without any influence or rancour. The dying declaration made by Sunny to independent witnesses does not suffer from any infirmity and, Therefore, does not require any corroboration.

61. Last but not the least, Mr. R.L. Tandon contended that the dying declaration alleged to have been made by Sunny in the hospital in the presence of Inspector Mahesh Chand Sharma (PW-50), Inspector Rajbir Singh (PW-56) and Inspector L.C. Yadav (PW-54) cannot be relied upon for the reason that these police officials as per their own showing could not have reached the hospital at 1 P.M. when the purported dying declaration was made by the deceased Master Sunny. Inspector Mahesh Chand Sharma (PW-50) admitted that DD entry No. 27-B was recorded at 12.37 P.M. at Paschim Vihar police station. Thereafter he took time to go to the house of Mr. M.L. Sharma. That shows up to 12.54 P.M. he was in Paschim Vihar. Within six minutes he could not have reached RML Hospital. Similarly Inspector Rajbir Singh (PW-56) was on petrol duty at JJ Colony, Inder Puri at 12.30 P.M. when he received the message. He left from there at about 12.40 P.M. and reached the spot at about 12.55 P.M. After 2 to 3 minutes he started for RML Hospital, which must be somewhere at 12,58 P.M. Within two minutes he could not have reached the hospital. Inspector L.C. Yadav (PW-54) admitted that he reached the hospital at 1 P.M. and heard the dying declaration made by Sunny. Their movements as narrated by them prove that these police officers are planted witnesses. They could not have been in the hospital at 1 P.M. which was the time alleged when Sunny purportedly made the dying declaration. If at all Inspector L.C. Yadav (PW-54) reached the hospital, he went straight to Doctor Vinod Samal, who declared the children unfit to

make the statement at 1.15 P.M. This fact is recorded in the two MLCs Exhibit PW46/A and PW47/A and also proved through Dr. Vinod Samal who appeared as DW-2. He corroborated that Sunny was unfit to make statement at 1.15 P.M. We cannot appreciate this argument of Mr. Tandon because these police official gave approximate time spent by them. It does not prove that they meticulously recorded minute by minute spent by them from one place to the other. Inspector Rajbir Singh (PW-56) was patrolling and from there he went to the spot and then to the hospital. After all from Pusa Institute to RML hospital it could not have taken more than 7 to 10 minutes in a police vehicle. Similarly the DD No. 27-B was recorded at 12.37 P.M. at P.S. Paschim Vihar. Inspector Mahesh Chand Sharma (PW-50) started immediately after the recording of the DD 27-B and on the way picked up Mr. M.L. Sharma in his jeep for the hospital. It might have taken him 15-20 minutes, still he could have made it. As regard Inspector L.C. Yadav (PW-54) he heard Sunny narrating the sequence of events. He wanted doctor to endorse it but before doctor could witness at 1.15 P.M. Sunny became unfit to make the statement.

62. It is at this juncture Dr. Vinod Samal issued a letter Ex. PW54/A that he saw some police official talking to Sunny Arora. This letter (Ex. PW-54/A), dated 24.6.88 written by Dr. Vinod Samal, corroborates the statement of police witnesses. There is nothing to doubt their presence at the hospital and witnessing the dying declaration made by Sunny Arora in the hospital.

63. For the reasons stated above we find no merit in the appeal.

64. Now, the question arises what should be the sentence. Mr. Chadha contended that death sentence should be confirmed whereas Mr. Tandon contended that the circumstances do not make out a case for death sentence and the death sentence be converted to life imprisonment.

65. After hearing the counsel for the parties and taking into consideration the totality of circumstances and also the fact that appellant is guilty of murdering of two innocent children, who had yet not blossom into flowers, an we call it a rarest of rare case. We have given a thoughtful consideration to the relevant contentions raised at the Bar on the question of sentence and after going through the facts and the Law as laid down by the Supreme Court in various decisions, we are of the view that even though it is a case where the appellant has committed a heinous and barbaric offence still it is not a rarest of the rare case. In similar circumstances, the Supreme Court in the case of [State of Maharashtra Vs. Damu Shinde and Others](#), while considering the order of sentence wherein several innocent children were murdered on superstitions, observed that as the children were not abducted and killed for ransom or vengeance though the act of accused was horrendous, normal punishment prescribed for murder would serve ends of justice and in that case death penalty was converted into life imprisonment. Similarly in the case of Bhagwan v. State of Rajasthan (2001) 2, The Law Reports of India, 1305 Apex Court converted death sentence into life imprisonment for 20 years. In that case accused

was 20 years old. He was helped by an old man to get rehabilitated in life. Even though he was thrown out earlier by that old man for committing theft, however, later on that old man brought the accused to his house where the accused gave the reward of old man's kindness by murdering him, his wife and three daughters including one whose marriage was fixed after two months. Still the Apex Court reduced the death penalty to life imprisonment by observing that punishment should be sufficient so as to have deterrent effect as well as no further chance to the accused for relapsing into the crime and becoming danger to society. After having said so, the Apex Court further observed that "considering the heinous, barbaric offence committed by the accused, in no set of circumstances accused should be released before completion of 20 years of imprisonment". Relying on these decisions in the case of State of U.P. v. Babu Ram (Supra) and Bhagwan Dass (Supra), we convert the death sentence of the appellant into life imprisonment with a direction that the appellant shall undergo the sentence of imprisonment for life and he shall not be released from the prison unless he has served at least 20 years of imprisonment including the period already undergone by him. Rest of the sentence will remain the same.

66. With the above modification, the appeal and the reference are disposed of. Order be conveyed to the appellant through Superintendent Central Jail, Tihar.