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Cr1.A.No. 1201 OF 2001
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ITEM No.103 Court No. 09 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Cr1. Appeal No.1201 of 2001

Raj Kumar Appellant (s)

VERSUS

State of (N.C.T.) of Delhi Respondent (s)

(With office report)

With

SLP(Cr1.)No.7173/2001(with appln. for c/delay in refiling SLP)

Date : 14/08/2002 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE

HON'BLE MR. JUSTICE BISHESHWAR PRASAD SINGH

For Appellant (s) Mr. Shiv Kumar Suri, Adv. (A.C.)
& for Respdt. in
SLP(Cr1.)7173/01

For Respondent (s) Mr. Kailash Vasudev, Sr. Adv.
& for petn. in Mr. R.K. Rathore, Adv.
SLP(Cr1.)7173/01 Ms. Varuna Bhandari Gugnani, Adv.
Mr. D.S. Mahra, Adv.

UPON hearing counsel the Court made the following

O R D E R

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Mr. Shiv Kumar Suri, Advocate learned amicus curiae argued from 10.45 a.m. to 11.30 a.m. Hearing concluded.

Criminal Appeal No.1201 of 2001 and SLP(Cr1.) No.7173 of 2001 are dismissed in terms of the signed order.

It is directed that the learned amicus curiae be paid a sum of Rs.750/- as fee.

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(Pawan Kumar)
Court Master

(Prem Prakash)
Court Master

(signed order is placed on the file)

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.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Raj Kumar

..Appellant

Vs.

State of (N.C.T.) of Delhi

..Respondents

With SLP(Crl.)7173 of 2001@@
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Criminal Appeal No.1201 of 2001@@
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The appellant in this appeal was charged for the offence punishable under Section 302 for having committed the murder of one Sarla his sister-in-law and Ashu son of Sarla on 22th May, 1994 at about 11.30 a.m. in their house situated in Arya Pura, Subzi Mandi, Delhi. The appellant was also charged for an offence punishable under Section 307 for having caused injuries on Anita, PW.18 and her son Golu on the very same day in the ground floor of the same house. He was also charged for an offence under Section 27 of the Arms Act for having used Chhura in the above said offences. The learned Additional Sessions Judge, Delhi found the appellant guilty of the charges framed against him and convicted and sentenced the appellant to death sentence for the offence punishable under Section 302 on the ground that the crime committed by the appellant was one of the rarest of the rare cases deserving a capital punishment. For the offence under section 307 he imposed a sentence to undergo R.I. for 10 years and for the offence punishable under Section 27 of the Arms Act appellant ...2/-

- 2 -

was sentenced to undergo R.I. for two years. Thereafter, he referred the case under Section 366 of the Cr.P.C. for confirmation of the death sentence by the High Court. The appellant independently challenged his conviction by way of a separate appeal to the High Court.

The High Court after considering the material on record came to the conclusion that the imposition of the capital punishment was not called for since in its opinion the case before it was not one of the rarest of the rare cases and rejected the reference. In the appeal of the appellant the High Court relying on the evidence of PWs.7 and 8 who are eye-witnesses to the two incidents, convicted the appellant for the offence punishable under Section 302 and modified the sentence to one of life imprisonment and confirmed the sentence awarded by the Additional Sessions Judge in regard to the offence under Section 307 IPC. However, the High Court found the appellant not guilty of the offence under Section 27 of the Arms Act and accordingly acquitted him of the said charge.

The brief facts necessary for the disposal of this appeal are as follows :

The appellant was living with his family in a house situated in Arya Pura, Subzi Mandi, Delhi in a three storeyed building in which he occupied first floor, whereas his elder brother occupied ground floor and the husband of the deceased occupied third floor with their families. The appellant had ...3/-

some dispute with his brothers in regard to his share of right in the shop owned by his father. He also had a grievance that he did not have a male child and his only daughter was mentally retarded. On the fateful day of 22nd May, 1994, it is stated by the prosecution that the appellant came to the third floor of the building and attacked Sarla with a knife giving many blows on her head and hands. Thereafter, the appellant attacked her small child, Ashu with the same knife. On account of these injuries both Sarla and Ashu died on the spot. It is the further case of the prosecution that this incident was noticed by PW.8, Bhawana the daughter of deceased who after the accused left the place came down crying. By that time the prosecution alleges that after the attack on Sarla and her son the appellant came down and attacked PW.18, Anita, who was living in the ground floor. It is stated that he also attacked the son of Anita by name Golu injuring him. This incident was noticed by PW.7, Sonia. In the meanwhile it is stated that PW.8 came down crying that the appellant has killed her mother and brother. The prosecution also relies on the statement of PW.18 injured witness in support of its case even though she has not supported the prosecution case in its entirety. She in her cross-examination stated that some person whom she had not identified and attacked her and her son on the day of incident in her house. Learned Addl. Sessions Judge accepting the evidence of PWs.7 and 8 and relying upon that part of the evidence of PW.18 which ...4/-

corroborates the PWs.7 and 8 held the appellant guilty of the charged framed against him and sentenced him as stated above.

The High Court in appeal while rejecting the Reference of the Learned Additional Sessions Judge sentenced the appellant for life relying upon the evidence of PWs.7 and 8. In the said process the Court after elaborate discussing the law on admissibility of the evidence of child witness came to the conclusion that the both child witnesses PWs.7 & 8 were speaking the truth and there was no reason whatsoever to disbelieve them. Accordingly, basing its finding on the evidence of PWs.7 & 8 it confirmed the conviction of the appellant while reducing the sentence of death to life imprisonment.

Before us Shri S.K. Suri, learned amicus curiae, appearing for the appellant primarily contended that it is not safe to rely upon the evidence of PW.8 who was about 8 years of age at the time of the incident without any corroboration.

We have independently examined the evidence of PW.8 and we find that her presence at the place of the incident cannot be doubted at all. Even in her evidence she has very clearly stated the difference between truth and falsity which shows capability in answering the question put to her correctly. The defence has not been able to establish anything to doubt her evidence. This witness who knew the identity of the appellant in clear terms has explained that the appellant had attacked her mother and brother. Her evidence is corroborated by the subsequent event to which PW.7 ...5/-

is an eye-witness whose evidence is also unimpeachable. We also agree as to the attack taking place on the date of incident even PW.18's evidence proves it. Statements of PWs. 7 & 8 have been recorded by the I.O. very promptly and the investigation in this case has also started immediately. In this background we find no reason to disbelieve the evidence of PWs.7 & 8 and accepting the same we find no reason to interfere with the findings of the two Courts below. Hence dismiss this appeal.

We must record our appreciation of the assistance by

Shri Shiv Kumar Suri, Advocate to the Court as amicus curiae
and we direct the payment of Rs.750/- as fee to him.

SLP(Crl.) No.7173 of 2001.@@
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Delay condoned.

We heard learned senior counsel, Shri Kailash Vasudev,
appearing for the State (NCT) Delhi. We find no reason to
interfere with the finding of the High Court that the crime
involved in this case is not one of the rarest of the rare,
therefore, does not call for capital punishment. Accordingly,
the special leave petition is dismissed.

.SP1

.....J.
(N. SANTOSH HEGDE)

.....J.
(BISHESHWAR PRASAD SINGH)

New Delhi,
August 14, 2002.