

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

RESERVED ON: 28.11.2011
PRONOUNCED ON: 09.01.2012

+ **CRL.A. 671/2008**

RAVI KUMAR GHAI Appellant
Through: Ms.Neelam Grover and
Ms.Aasha Tiwari, Advocates.
versus

NCT OF DELHI Respondent
Through: Mr.M.N.Dudeja, APP

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE PRATIBHA RANI

MS. JUSTICE PRATIBHA RANI

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1. It is the dream of every parent to provide the best of education to his child. When parents are not educated enough to guide them in studies, they depend on Coaching Centres so that the child can perform better. Resultantly, Coaching Centres have mushroomed. Often, these centres are barely adequate with poor infrastructure. They are commercialized, and charge considerable fees. Parents turn to these in the absence of alternatives, as they are in the neighbourhood, and save time, expense and commuting costs.

2. PW-5 Paramjit Kaur was one such parent whose husband was working in Abu Dhabi. She was staying in a flat in Patel

Nagar, New Delhi for the purpose of her two children's education. The appellant, Ravi Ghai was running the "Vidyarthi Coaching Centre" in Patel Nagar. The deceased 'S' aged 15 years (name of the deceased is being withheld to conceal her identity and she is hereinafter referred to as 'S') was a student of class-X in a prestigious school in New Delhi. Since a coaching facility was in the vicinity of her resident, 'S' was sent to the appellant's centre. She was also getting home tuitions from the appellant.

3. On 02.09.2001 DD No.4A was recorded at Police Station Patel Nagar at 10:55 AM that from the second floor of the Vidyarthi Coaching Centre, the owner of the centre and a girl had fallen down. Their condition was described to be serious and they were taken to the hospital. The DD was handed over to SI Kashmiri Lal, who with Ct. Sunil left for the spot. The photographer was informed. The SHO too reached the spot in his official vehicle.

4. When SI Kashmiri Lal reached the spot, he came to know that the injured Ravi and 'S' had been taken to RML hospital. After leaving the Constable to guard the spot, he left for the hospital and collected the MLC of both injured. 'S' was declared 'brought dead'. Ravi, who was also admitted in the hospital, though declared 'fit for statement', preferred not to make any statement.

5. When the SHO returned the spot, he met Master Love Sahani, a student of 6th standard, who claimed to be an eye witness of the incident. He made a statement (Ex.PW-3/A) to the effect that in the morning at about 10:30 AM during the commercial break of

a TV serial, he was standing in the balcony. He saw that on the roof top of a house in front, near the water tank, a girl was weeping and Ravi uncle, who gave tuitions, was standing beside her. Ravi uncle pushed the girl and she fell down. He shouted “*uncle kya kar rahe ho*’. On hearing this, his father also came into the balcony. Ravi uncle started climbing down the water pipe. When his father said ‘*Ravi kya ho gaya hai*’; he fell down. On the basis of this statement, the FIR No.591/2001 under Section 302 IPC was registered against the appellant.

6. During the investigation, the crime scene was photographed. The dead body was sent for postmortem. The statements of material witnesses were recorded. After interrogating Ravi Ghai, his disclosure statement was recorded. At his behest, some books, notebooks and love letters were recovered from his coaching centre, which also included the replies to the letters; which had been written at the back of such love letters in his handwriting. The admitted and questioned handwritings were sent to CFSL for comparison. After completion of investigation, the chargesheet was filed.

7. The Trial Court, after framing the charge, examined 24 witnesses. After recording the statement of the appellant under Section 313 Cr.P.C and that of his two defence witnesses, the Trial Court found the testimonies of the eye witnesses to be without blemish and by the judgment dated 02.07.2008 and the order on sentence dated 04.07.2008, while convicting him under Section 302 IPC, sentenced him to undergo life imprisonment and to pay a

fine of Rs.2,000/-. Feeling aggrieved, the appellant has impugned the judgment and the order on sentence.

8. The appellant has impugned the judgment on the ground that, the manner in which the offence is claimed to have been committed by him, is highly improbable, as neither is there any access to the bathroom roof where two water tanks are placed nor is there enough space to stand. Further, the entire prosecution story that he was trying to scale down the water pipe, is also improbable; if that were the case he would not have received only abrasion after falling from such a height. He claimed that the complainant child witness Love Sahani (PW-3) was a tutored witness and raised suspicion at the presence of PW-4 Ankit Talwar, and also termed the statement of Rajesh Sahani (PW-8), the father of Love Sahani as hearsay, (as he was not present in the balcony). He urged that none of the testimonies of these witnesses are reliable nor can they lead to a conviction in view of the improbability of the circumstances narrated. It was urged that a demonstration was held at the Police Station by residents after the occurrence and that Ravi Ghai was the victim of false implication, that the police were under the pressure of the Residents Welfare Association and that even the FIR was ante timed for the reason that the special report received by the learned MM reflected that it was received only at 8:35 PM. This time gap of more than 7 hours has remained unexplained.

9. Referring to the Appellant's statement under Section 313 Cr.P.C., it has been contended that in fact at the time of the alleged

incident, he was conducting coaching classes and came down only after hearing the commotion. Since the deceased was from his coaching centre, the Appellant was given beatings by the residents who had gathered there. He suffered injuries due to beatings and this was proved through testimony of DW-2 Kamal Bhatia, a student of the coaching centre, who is a reliable witness.

10. Referring to the testimony of Paramjit Kaur (PW-5), the mother of the deceased and the postmortem report (Ex.PW-15/A), it has been contended that according to the mother, the deceased was having breakfast when the appellant telephoned to send for her, but the postmortem report negates this version as it suggests that the undigested food found in her stomach might have been consumed by the deceased 2-3 hours before death. It was further submitted that there was neither any telephone installed at the coaching centre nor did the appellant had any reason to place the call. Therefore, PW5's version in this regard has to be discarded.

11. It was urged that even the scaled site plan has been prepared by the Draughtsman at the behest of the Investigating Officer, and not at the instance of the eye witness and, therefore, cannot be looked into. An inspection of the spot was planned by the learned Trial Judge to ascertain whether, from the balcony of the complainant, the spot was visible or not without any obstruction. However, no such inspection report is on the record.

12. Referring to the delay in recording the statement of Ankit Talwar at the police station and also of the other witnesses after the lapse of substantial time, the appellant's counsel urged that none of

the eye witnesses was present at the spot when police reached, immediately after the occurrence. Later false witnesses were planted in this case, who are tutored and unreliable. Thus, they submitted that the learned Trial Court had committed an error in basing the appellant's conviction solely on the testimony of child witnesses, who were tutored; and on hearsay evidence, ignoring the real fact that neither was the spot accessible nor was the story of the prosecution probable. The learned Defence counsel has relied upon *State of H.P. v. Sukhvinder* 2004 (1) SCC 297; *Rambilas v. State of M.P.* AIR 1997 SC 3954; *Bhagwan Singh & Ors. v. State of M.P.* 2003 (1) JCC 454; *Muluwa v. The State of M.P.* (1976) SCC 37; *Rajeevan & Anr. v. State of Kerala* 2003 (1) JCC 527; *Ganesh Bhavan Patel & Anr. v. State of Maharashtra* AIR 1979 SC 135; *Dudhnath Pandey v. State of U.P.* AIR 1981 SC 911; *Bhagirath v. State of M.P.* AIR 1976 SC 975; and *Mohan Singh v. Prem Singh* 2003 Cri.L.J. 11.

13. On behalf of the State, learned Addl. Public Prosecutor submitted that the fact that the deceased received coaching from the appellant in his centre is not disputed and on the day of incident too she went there for tuition. The roof top of the premises from where the deceased was pushed was the premises of the appellant only who was running the centre on the second floor. Even the independent witness PW-18 Sita had seen the deceased and the appellant going towards the roof. She was under the impression that they were going there to check the water level in the tank, on the roof of the bath room. It was further urged that neither the

complainant nor the other child witnesses had any animosity with the appellant. They are true and natural witnesses, and deposed in a natural manner. It was urged that the Trial Court has rightly believed their testimonies to convict the appellant in this case, for the offences committed by him. Even the various love letters written by the deceased to the appellant and the postmortem report reveal that the relationship between the appellant and the deceased was not only that of a tutor and student but went beyond that and their physical intimacy was confirmed from the postmortem report. In the circumstances, the eye witnesses account in the form of testimony of public witnesses PW-3 Master Love Sahani, PW-4 Master Ankit Talwar, PW-8 Sh. Rajesh Sahani, PW-1 Smt. Baljeet Kaur and PW-18 Sita, the maid servant, (who was cleaning the utensils at that time), is sufficient to prove the appellant's guilt and there is no reason for this Court to interfere with the impugned judgment.

14. The prosecution's case is based on the testimony of eye witnesses i.e. PW-3 Master Love Sahani, PW-4 Master Ankit Talwar – who was present in the same balcony, from where PW-3 witnessed the occurrence and PW-1 Smt. Baljeet Kaur – who also happened to be present in her balcony at the relevant time and witnessed the incident. The testimony of PW-18 Sita – who was working as a domestic help in the flat of Mr. Dogra is a witness to the appellant and the deceased going upstairs to the roof just before she fell to her death.

15. PW-1 Master Love Sahani, who made the complaint

Ex.PW3/A, was examined by the Court after it recorded its satisfaction that he was capable of understanding the questions and answering them rationally. At the time of the incident, he was a student of 6th standard. His statement that on 02.12.2001 at about 10.00 AM, his friend Ankit Talwar (PW-4) who was also residing in the house nearby, had come to his house, during the commercial break of the serial 'Kaun Banega Crorepati (Junior)', Ankit went to the balcony and had also called him there. From the balcony, he saw a girl and boy near the water tank of the building which was to the right of their gallery. The girl was weeping and Ravi Uncle i.e. the appellant trying to console her. Then he took her a little further and pushed her down from the 4th floor. He shouted, 'Uncle do not do it' and on hearing that, his father also came out of the balcony. In the meantime, his father called out to Ravi Ghai, who was scaling down the water pipe. Ravi Ghai loosened his grip and fell down. All of them reached the spot and from there, the appellant and the deceased girl both were taken to the hospital in an ambulance. He made his statement Ex.PW3/A before the police as well as Ex.PW3/B before the Magistrate.

16. PW-4 Master Ankit Talwar, another child witness also deposed about his presence in the balcony of PW-3 Love Sahani during the commercial break of the TV serial 'Kaun Banega Crorepati (Junior)'. He too mentioned the presence of the appellant with deceased on the roof top near the water tank. He saw the girl weeping and being consoled by the appellant and thereafter, he took her forward and pushed her down. He also

witnessed the appellant scaling down the water pipe. When PW-8 Sh. Rajesh Sahani went to the balcony and questioned the appellant, he lost the grip of the pipe and fell down; they were soon removed to the hospital.

17. Since his statement was recorded by the police on the next day, he has given an explanation that on the same day, he informed his father about the incident being witnessed by him. His father took him to the police station on the next day after he returned from the school. His statement Ex.PW4/A was also recorded under Sec.164 CrPC by the Magistrate.

18. PW-1 Smt. Baljeet Kaur is an independent eye witness. She saw the appellant pushing 'S' from the 4th floor and thereafter scaling down the pipe. She deposed that the pushing incident took place in her view, in a few seconds.

19. PW-8 Sh. Rajesh Sahani – father of PW-3 Master Love Sahani, went to the balcony on hearing the voice of his son. He was in the balcony with PW-4 during the commercial break of the serial 'Kaun Banega Crorepati (Junior)'. He heard the noise of a ball. When inquiring from his son about what happened, he saw appellant scaling down the pipes. He asked the appellant to stop. The appellant turned his face towards him and then his grip loosened and he too fell down. They all went down and saw 'S' and the appellant lying on the ground. Thereafter they were taken to the hospital in the same ambulance of Mr. Parvez Khanna (PW-7) and by that time, the appellant's father reached there.

20. PW-5 Smt. Paramjit Kaur, the deceased's mother deposed

about her receiving a call from the appellant on telephone after she returned from tuition at about 10.00 AM for breakfast. ‘S’ again went for tuition. At about 10.30 AM, she was informed that ‘S’ fell down from the roof of the Education Centre of the appellant. On reaching the spot, she saw appellant as well as her daughter being taken away in the ambulance of Mr. Parvez Khanna (PW-7).

Delay in FIR

21. The contention of counsel for the appellant is that the occurrence had taken place at about 10.30 AM whereas the FIR was received at the residence of the Id. MM at about 8.35 PM. It can be inferred that the delay is fatal; it has remained unexplained.

22. The mere circumstance that statement of the eye witness PW-3 Master Love Sahani was recorded some time before 1.30 PM (the rukka was sent at 1.30 PM) is insignificant since immediately on getting information by DD No.4/A, the first effort of the police was to reach the injured and ascertain their condition/fitness and record their statement, if possible. As ‘S’ was brought dead and the appellant, though fit, did not record any statement, the police returned to the spot and on coming across the eye witness, recorded the statement without any delay. The contention of the Appellant’s counsel has no force for the simple reason that the rukka was sent at 1.30 PM on the basis of the complainant Master Love Sahani’s statement and by DD No.7A, the FIR was registered at 1.40 PM. The record also reveals that there was a law and order problem due to the incident and there was demonstration by the public. It cannot therefore be said that sending the special report by 8.35 PM,

in any case, was an inordinate delay.

23. Even if it is assumed that there was a delay of about 7 hours in sending of the FIR to the Illaqa Magistrate, the question for consideration is whether the delay was fatal to the prosecution case. The manner in which events unfolded and the presence of neighbours especially PW-1 Smt. Baljeet Kaur, PW-3 Master Love Sahani, PW-4 Master Ankit Talwar and PW-8 Sh. Rajesh Sahani (who have unequivocally implicated the appellant), rules out manipulation by the Investigating Officer to ante-time the FIR.

Motive

24. Ld. Counsel for the appellant propounded the theory that 'S' committed suicide urging that she in her various letters Ex.PW7/1 to 7 (written to the appellant) expressed her feelings of love towards him and even expressed her desire to put an end to her life in one such letter (Ex.Q9) by writing '*I will really kill myself if or whenever I feel*'. Further, her MLC, in the history (column) recorded that '*alleged history of suicide by from 4th floor of building. Patient brought dead*'. In the column 'brought by', the name of Smt. Paramjeet – mother was mentioned. Neither is it the prosecution case nor does the statement of PW-5 Smt. Paramjeet Kaur show her as a witness to the incident. As the patient was brought dead, the history on the MLC of the deceased appears to have been recorded taking cue from the history recorded on the MLC of the appellant who was conscious and oriented; he mentioned that he had a fall from the height (allegedly suicidal).

25. The first letter (Ex.Q6) written by the deceased to the

appellant is crucial to decide about motive and the relationship which the appellant had with her. The letter (Ex.Q6) is extracted as under :

“ H

*This is my first letter which I am writing to any person except my Dad. You can throw all the papers which I gave to you or I will give to you but please keep this slip of paper with you always. I am really sorry for all happened yesterday. From today onwards, I promised you that I'll not think anyone as my brother. I'll just talk to you as my friend, my companion and everyone for me. I'll never talk to anyone on phone except you and my friends, it's a promise to you. This is all because of your care and love that I don't need anyone else. I really love you and also care for you. **Therefore, please don't ever say the sentence if 'I'll make friends, then I should forget you. If you believe me then I really agree to take swear that I'll not share my feeling with anyone except you.***

I love You

Yours W”

26. A reading of the letter (Ex.Q9) and the context in which she wrote that she would kill herself stands explained. The reading of another letter reveals that ‘S’ was unwell during that period, but did not take medication or food since the appellant scolded her, about her behaviour; and thereafter she became depressed and tense. The reason behind her desire to kill herself, as can be inferred from this letter is that the deceased was talking to some male students which was disliked by the appellant. The relevant portion of letter is (Ex.Q9) extracted as under :-

‘H (loving and caring)

*Today, I am not happy just because of yesterday, what all happened yesterday about Ricky and Sandeep. I am really feeling embarrassing till know about what Ricky did yesterday and what I told Sandeep on phone. I'm telling you the truth which I did not told my mother that I did not took any medicine from yesterday till this time, and also I didn't took my meal from yesterday onwards. I am not able to have anything and **I'll not have anything till you say that. You forgive me***

this time. But still to give myself punishment I'll not have my breakfast and lunch and also my medicine for five days. And please don't scold or slap me for this. Rahul told you that he'll ask Ricky about all that happened but he didn't asked anything. I can't tell my parents or anyone else about it except you but you can't do anything about this. Please do not tell me to change my face expressions for few days till I don't feel good. Please I also wan't to say one more thing that if you will take tension I WILL REALLY KILL MYSELF IF OR WHENEVER I FEEL Again don't scold me or say anything to me about it because every time when you are depressed or you take tension, the reason behind it is me. So, if you'll think about this or any other matter I take swear that I'll kill myself so if you want this, please never be depressed or think about anything deeply. I also promise you that I'll not even talk to any of the student at the centre also except the girls. I am sure that what all I promised you today, I'll always remember them. Don't think that these restrictions made because of you or anyone else, these are made by me and also for myself. Once I stopped Rahul from beating Ricky because if he say anything to Ricky then Ricky would cry and tell his mother which would create a big problem between both the families. But I really don't care for anyone except you."

27. So the context in which she wrote that she would kill herself was out of feelings of love and loyalty to the appellant; so much so that she promised not to talk to any boy even in the coaching centre.

28. Other letters also contain the feelings of the deceased towards the appellant with some details of what used to take place in their daily lives.

29. Letters Ex.PW7/1 to 7 which also included letter/writing (Ex.Q12) containing the writing of the appellant, together with his admitted writings, were sent to the FSL. According to the FSL report, the author of standard writings was also the author of the questioned writings. During the course of hearing too, it was not disputed that the letters and writings attributed to the appellant and

the deceased was not theirs. Counsel for the appellant repeatedly referred to the letter (Ex.Q9) where the deceased expressed her desire to kill herself. Letter (Ex.Q11) written by the deceased also assumes significance because in its back, the appellant has replied (Ex.Q12). During the course of arguments, Counsel for the appellant especially referred his feeling expressed by him that '*I am ready to leave breathe and not you*' saying that he could not have pushed her down from the 4th floor and he had absolutely no motive to cause homicidal death of 'S'.

30. To understand the relevance of Ex.Q12, it is necessary to extract Ex.Q11 and Ex.Q12. These throw light on the kind of relationship between the two. Ex.Q11 is extracted as under:-

'Dear H

Yesterday evening my mother told me that you came in the morning and she also told me that what all you told her and what she told you. You told her not to send 'S' to the tuition centre but my mother told you that she wants to study from you and you asked why is it so? Don't you know the reason. Don't you know how much I love you. When my mother told me about this from that time I am really tensed that do you want to leave me but at the same time, I think it might because you can't see me in tension.

My tension will find its way to go out if or when I see your routine to be normal. Please reply to me soon about the above if it is because you want to leave me touch my right hand and if it because of the fact you can't see my tension then touch my left hand.

PLEASE BE NORMAL

So that I won't be more tensed.

I REALLY LOVE YOU

Your and only yours W".

Ex. Q12, which is the reply on the other side of the same page in the appellant's handwriting, is extracted below :-

"Another reason for home tuition is to release your tension.

Just to convince her that there is nothing wrong between us.

How can you think that I will leave you. I am ready to leave breath but not you.

You went to my mother by my name. Is it possible that you go to other place by name.

This will create a problem for you. You know your mother”.

31. The deceased's postmortem report shows that she had habitual sexual intercourse. She was a minor girl aged about 15, having no boyfriend. It was only the appellant with whom she had a relationship, giving rise to the inference that it was the appellant who was in a physical relationship with her. All the letters written to the appellant start with 'Dear H' (may be husband) and end with 'yours W' (may be wife).

32. The contention of counsel for the appellant is that even as per PW-5 Smt. Paramjit Kaur – deceased's mother, there was no telephone in the coaching centre. Therefore, the appellant could not have called the deceased girl. This contention is noted to be rejected for the reason that the photographs of the coaching centre board display its telephone number, the letters Ex.PW1/1 to 7 too mention about telephone conversation and above all PW-5 mentions that the appellant had a mobile.

33. PW-5 Smt. Paramjeet Kaur deposed that initially the appellant called 'S' for tuition in the morning and then she returned for breakfast. She received the appellant's telephone call later to send her daughter back for another class and 'S' apparently left immediately without having breakfast. What transpired thereafter between the appellant and the deceased could either be known to the deceased or to the appellant and he has preferred not to speak

about this during his statement under Sec.313 CrPC. However, from the ocular evidence in the form of deposition of PW-1 Smt. Baljeet Kaur, PW-3 Master Love Sahani, PW-4 Master Ankit Talwar, PW-8 Sh. Rajesh Sahani and PW-18 Ms. Sita, it has been established beyond doubt that the appellant and the deceased went to the roof top of the coaching centre, where water tanks were placed. Obviously the appellant was not taking any coaching classes of the deceased near the water tanks. He was seen consoling 'S' while she was crying and then taking her forward and pushing her down.

34. Every crime has a motive. However, motive loses significance whenever there is ocular evidence as in the present case, connecting the accused with the commission of crime.

Improbable manner of occurrence

35. The photographs of the place where the water tanks are placed were taken immediately after the occurrence and are Ex.PW11/20 to 38. The principal contention is that neither the bathroom roof where the two water tanks were placed was accessible through any staircase nor was there enough space for two people to stand. Further the pipes originating from the water tanks and the ground floor are at such height that the appellant too could not have escaped with simple injuries. Here the testimony of PW-18 Ms. Sita reveals that she thought that they (the appellant and the deceased) were going upstairs to see the water level in the tanks. This impression of the maid servant leads to the inference that it was a common practice for the residents to go and check the

water level, in their roof top. That no permanent staircase was erected did not mean that the roof was inaccessible. That it could be accessed can be confirmed from the photographs which have been taken from the top; they reveal a full view of the water tanks as well as the space available. In fact, during cross examination, PW-6 Sh. Tirath Raj Singh, Draughtsman stated that a bamboo ladder was there which was used by him. This answer clears the cloud, if any, about the accessibility to the spot.

36. So far as scaling down the pipe is concerned, the appellant was getting down consciously through the pipe and he would have succeeded, had he not been distracted by PW-8. That his act was witnessed by some residents was sufficient to tell on his nerves; it resulted in his fall. This aspect has been dealt with in detail by Id. Addl. Sessions Judge. Even the photographs taken, show his hands with pipe dust.

37. So far as, non-availability of sufficient space for two persons to stand on the roof of the bathroom, (where the two water tanks were placed) is concerned, the gap between the two water tanks as well as the space around them reflected in the photographs falsifies the contention. The photographs showing the spot where 'S' fell to her death and where blood was found lying, can indicate the place from where she could have been pushed. It was not argued that after falling from the place where water tanks were placed, she could not have fallen in the manner or at the place where she was found, before being removed to the hospital. We do not find any reason to differ with the reasoning given in the impugned

judgment.

Cause of death

38. The postmortem report Ex.PW15/A reveals the cause of 'S' death as head injury and that all injuries suffered by her were antemortem. Removal of 'S' as well as of appellant to the hospital from the ground after he loosened his grip on the pipe and fell down, has been proved by PW-1 Smt. Baljeet Kaur, PW-3 Master Love Sahani, PW-4 Master Ankit Talwar and PW-8 Sh. Rajesh Sahani, all of whom are unrelated to the victim and having no animosity qua him. The eye witness account is sufficient to prove that it was the appellant who pushed the deceased from the 4th floor. Thus, the death of 'S' was homicidal. Significance of postmortem report was dealt in the case reported as ***State of Haryana v. Ram Singh 2002 (1) JCC 385***, wherein it was observed as under :

'Value of the postmortem report by itself is not a substantive piece of evidence, but the evidence of the doctor conducting the postmortem can by no means be ascribed to be insignificant. The significance of evidence of Doctor lies vis-à-vis the injuries appearing on the body of the deceased person and likely use of the weapon therefore and it would then be the prosecutor's duty and obligation to have the corroborative evidence available on record from the other prosecution witnesses.'

Tutored, infirm & interested witness

39. The appellant has tried to brand two grown-up children i.e. PW-3 Master Love Sahani & PW-4 Master Ankit Talwar, who happened to witness the occurrence as unreliable witnesses contending that corroboration by PW-1 Smt. Baljeet Kaur of their statement of the same brand does not make them reliable so as to

base the conviction on the basis of such infirm witnesses. Reliance has been placed on ***Muluwa son of Binda & Ors. v. The State of Madhya Pradesh (1976) 1 SCC 37***. The case law relied upon in this regard by the appellant is clearly distinguishable from the fact of the present case. In *Mulwa's* case (Supra), the nature of infirmities considered by the Supreme Court were (1) Complete silence maintained by prosecution witnesses about the assailants and the manner of assault until their statement was recorded several hours after the occurrence; and (2) Exaggerations and embellishments in the evidence of witnesses, and in these facts, the above observations were made. In para 17 of the judgment, it was held as under :

'It is elementary that the evidence of an infirm witness does not become reliable merely because it has been corroborated by a number of witnesses of the same brand; for, evidence is to be weighed not counted. Since the evidence of PWs 5 and 6 suffered from the same infirmities, as that of Smt. Jugatia, it cannot be said that the trial Judge had not basis, whatsoever, for stigmatizing it as unreliable.'

40. A child witness cannot be termed as incompetent or unreliable witness as was discussed in a recent judgment ***State of Madhya Pradesh Vs. Ramesh & Anr. (2011) 4 SCC 786***. The credibility of a child witness was dealt with in para 7 of the judgment. While referring to the decision of the Supreme Court in ***Rameshwar v. State of Rajasthan AIR 1952 SC 54***, it was held that *'every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age, extreme old age, disease whether of body or mind or any other*

cause of the same kind and that there is always competency in fact unless the court considers otherwise’.

41. After discussing the case law in ***Mangoo v. State of M.P.*** ***AIR 1995 SC 959***; ***Panchhi v. State of Maharashtra (2008) 12 SCC 565***; ***Ratansinh Dalsukhbhai Nayak v. State of Gujarat (2004) 1 SCC 64***; ***Himmat Sukhadeo Wahurwagh vs. State of Maharashtra (2009) 6 SCC 712***; ***State of U.P. vs. Krishna Master (2010) 12 SCC 324***; and ***Gagan Kanojia v. State of Punjab (2006) 13 SCC 516***, in para 14 of the judgment, the issue was summarised as under :-

“14. In view of the above, the law on the issue can be summarized to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.”

42. It needs a lot of courage and an urge to seek justice for someone with whom one has no connection, to come forward and depose in the Court. When the police returned from the hospital, it was the child PW-3 Master Love Sahani who immediately came forward to depose as a witness showing courage and social responsibility, with the support of PW-8 Sh. Rajesh Sahani. He allowed his minor son to entangle himself as complainant in this incident, especially after seeing the horrific end of a young girl aged about 15 years at the hands of the appellant. If at all any kind

of tutored witness had to be introduced, the deceased's mother was the best person to become such a witness since she was a resident of the same area and was aggrieved. However, the investigation has been carried out in an objective manner and relying only on the eye witness account given by a child, the FIR was registered. Thus, neither can the child witness be termed as incompetent or unreliable nor can reliance on the same, in this case, be termed as hazardous as it is supported by PW-1 Smt. Baljeet Kaur, another public witness.

Plea of false implication under pressure of RWA and witnesses and defence witness to be treated at par with prosecution witnesses

43. Ld. Counsel for the appellant had vehemently urged that (and as seen in the statement of IO PW-23 Inspector Nirmal Singh) after the occurrence, there was a demonstration by the residents in the evening and in view of the pressure by the Residents Welfare Association, the appellant was falsely implicated, as the deceased 'S' was studying in his coaching centre. This argument is inconsequential because the demonstration appears to have been due to police inaction in not arresting the appellant, though the complaint was made by an eye witness, i.e. a child studying in the 6th standard. The personal search memo (which was prepared after the arrest of appellant) records the date as 03.09.2001. Though he was available, the Appellant was arrested and interrogated only on the next day by the police in this case.

44. Merely because residents of the area were seeking action for a child who met her untimely death at the hands of the appellant (the incident having been witnessed by many residents), their demand for justice cannot be termed as pressure, nor could it be the reason for the appellant's false implication. The eye witness account in the form of Ex.PW3/A was already with the police and FIR was registered in which the appellant was named as the offender. The demonstration could, at the most, only be to pressurize the authority to take action, which cannot be interpreted as false implication.

45. So far as contention of counsel for the appellant that defence witnesses have to be treated at par with prosecution witnesses is concerned, there is no dispute on the legal proposition laid down in *Dudhnath v. State of U.P. AIR 1981 SC 911* relied upon by counsel for the appellant. In the instant case, the main defence of the appellant is that he was teaching the class when heard about the commotion and went down. He was manhandled by some people present there as the residents of the area and complainant suspected him as the cause of her suicide. DW-2 Sh. Kamal Bhatia was examined by the appellant to prove this defence.

46. PW-8 Sh. Rajesh Sahani deposed that when the appellant was taken to hospital, his father also reached there, which is proved from the appellant's MLC, wherein in the column 'brought by', his father's name is mentioned. Within 20 minutes of the incident, the appellant and deceased were in the RML Hospital. Taking into consideration the time taken to arrange the ambulance (belonging

to PW-7 Parvez) and journey time, it was highly improbable that appellant was given beatings by the residents before taking them to hospital. The evidence suggests that the residents did not wait for any hospital ambulance and the appellant was taken inside the ambulance of Mr. Parvez Khanna (PW-7), even before 'S' who was profusely bleeding at that time. The incident took place at 10.30 AM and the MLC of the appellant and deceased 'S' shows that they were taken to RML Hospital at 10.50 AM. Thus within 20 minutes not only was the ambulance arranged but the shortest possible time was taken to reach the hospital, ruling out the possibility of any beatings by the public.

47. Even, the father of the appellant who happened to reach at the spot by the time the ambulance of Mr. Parvez Khanna (PW-7) was arranged preferred not to enter into the witness box. It is possible that he could not have named any resident who had beaten his son. Even in the complaint made to the area Magistrate, the allegations were only about obtaining signature on some papers and not beatings given by the public. Apart from that, the appellant Ravi was conscious, oriented and 'fit for statement' at the time of his admission in RML Hospital. Despite these, he did not make any statement or lodge any complaint about the beatings being given to him by the residents.

48. Even otherwise, in the MLC Ex.PW2/C of the appellant prepared at 10.50 AM, the history given is that of a fall from height (allegedly suicidal). This was prepared within about 20 minutes of the incident; he was removed in the ambulance immediately

alongwith 'S'. There was consequently no reason for members of the public to give him beatings. The residents concentrated all the efforts on their immediate removal to the hospital for medical aid. The testimony of DW-2 Sh. Kamal Bhatia that the appellant was in the coaching centre at the time of occurrence is falsified from the photographs showing dust on appellant's hands which he had while climbing down the pipes. In these circumstances, the testimony of DW-2 Sh. Kamal Bhatia cannot be believed.

Credibility of child/eye witnesses

49. Now the credibility of the eye witnesses, two of whom are child witnesses, has to be considered. The testimony of PW-3 Master Love Sahani and that of PW-4 Master Ankit Talwar is that the place from where 'S' was pushed by the appellant was clearly visible from their balcony. Nothing contrary has been brought on record to say that their view and that of PW-8 was obstructed. No doubt, PW-3 and 4 are child witnesses, however, the reasons given by them for their presence in the balcony as well as the statement made by PW-3 Master Love Sahani after the police returned to the spot from the hospital makes them trustworthy witnesses. Here, it is pertinent to mention that PW-8 Sh. Rajesh Sahani – father of PW-3 Master Love Sahani, also witnessed the occurrence to the extent that he saw the appellant getting down the pipe. Neither the appellant nor the deceased were related to any of the prosecution eye witnesses and all the three prosecution eye witnesses have deposed in a natural manner only to the extent that they have witnessed the occurrence.

50. Although attempts have been made to cast doubts about the presence of Ankit, as he was not named in the complaint Ex.PW3/A, that is not a ground to discard his testimony. He was a student of 6th standard at that time. His testimony has been corroborated by PW-1 Smt. Baljeet Kaur who also happened to go to her balcony and witness the occurrence without even knowing at that time that the incident had been witnessed by two other children i.e. PW-3 Master Love Sahani and PW-4 Master Ankit Talwar.

51. Even if it were assumed for the sake of arguments that there was confusion about presence of PW-4 Master Ankit Talwar at the time of incident because his statement was recorded on the next day, yet, in view of the explanation given by him, the confusion is cleared. His presence with PW-3 Master Love Sahani in the balcony has been corroborated by PW-8 Sh. Rajesh Sahani too.

52. We notice that members of the general public are reluctant to come forward and depose, especially in criminal trials for various reasons. In the case ***State of A.P. v. S. Rayappa & Ors.***(2006) 4 ***SCC 512***, the Supreme Court commented upon the reasons for reluctance of public persons to join as witnesses in criminal cases.

In para 7 of the report, it was observed as under :

'7. On the contrary it has now almost become a fashion that the public is reluctant to appear and depose before the Court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are a harassed lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross examination.'

53. The case in hand is unlike one taken note of by the Supreme Court. All the public witnesses in this case are independent and

natural witnesses who deposed what they saw without any fear or favour.

54. Ld. Counsel for the appellant referred to some discrepancies in the testimony of prosecution witnesses which, to our mind, are not substantial. The Supreme Court had dealt with, as to what are normal discrepancies and material discrepancies in the case reported as ***State of Rajasthan v. Kalki 1981 Cri.L.J. 1012***, which is extracted as under :

‘.....normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of normal person. Courts have to label the category to which a discrepancy may be categorized.’

55. We are of the considered view that all witnesses to the occurrence were consistent and had corroborated each other on all material aspects and there is no contradiction on any major point.

56. Referring to the case law reported as ***Bhagirath v. State of M.P. (Supra) and Mohan Singh v. Prem Singh (Supra)***, the contention of Counsel for the appellant urged that the prosecution cannot take advantage of weakness of the defence, and that the statement under Sec.313 CrPC of the appellant cannot be made the sole basis of conviction. These have no application to the facts of the present case as all material allegations were proved on the basis of testimony of eye witnesses who were found to be credible.

57. In view of above, we affirm the findings of Id. Addl. Sessions Judge that the evidence adduced by the prosecution

conclusively and unerringly point towards the appellant's guilt, as the one who pushed 'S' from the 4th floor resulting in her instantaneous death. We do not find any error or infirmity in the impugned judgment and order. The appeal being devoid of merit is hereby dismissed. The appellant is already in J/C. Copy of the order be transmitted to Jail Superintendent to ensure compliance. TCR be sent back along with copy of this order.

PRATIBHA RANI, J

S. RAVINDRA BHAT, J

JANUARY 09, 2012
dc/st