

Court No. - 44

Case :- CRIMINAL APPEAL No. - 2123 of 2016

Appellant :- Dayaram Verma

Respondent :- State of U.P.

Counsel for Appellant :- Laxmi Narayan Rathour, Tarun Kumar Tripathi

Counsel for Respondent :- G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Tej Pratap Tiwari, J.

1. Heard Shri Laxmi Narayan Rathour, learned counsel for the appellant and Shri Murtaza Ali, learned A.G.A. for the State.

2. The present appeal arises from the judgment and order dated 17.03.2016 passed by Shri Shiv Daan Yadav, learned Additional Sessions Judge/F.T.C. Jalaun at Orai, whereby the learned court below has convicted the present appellant for offence under Section 302 IPC for the murder of his wife Sunita and sentenced him for life with fine Rs. 10,000/-. Also, the learned court below has convicted the appellant for offence under Section 201 IPC and sentenced him for five years and fine Rs. 5000/-. Further, the learned court below has convicted the appellant for offence under Section 498A IPC and sentenced him for three years and fine Rs. 3000/-. In default of payment of fine, the appellant has been awarded six months default sentence.

3. Earlier, the first bail application pressed by the appellant was rejected on 25.10.2017 by a coordinate bench. That was challenged by the appellant before the Supreme Court in **Special Leave Petition (Crimina) Diary No. 25994 of 2025 (Dayaram Verma Vs. The State of Uttar Pradesh)**. It was disposed of *vide* order dated **22.05.2025** with the observation that the High Court may

make best efforts to decide the second bail application filed by the appellant-Dayaram Verma (in the meanwhile), at the earliest.

4. Today, upon the second bail application being pressed by learned counsel for the appellant, we found, paper book is ready. Accordingly, with the consent of the parties, the appeal itself has been heard on merits.

5. The prosecution story emerged on the Written Report dated 15.12.2013 submitted by the first informant Raja Ram Verma (P.W.-1 at the trial) narrating therein that his younger daughter Sunita (the deceased) was married to the appellant about 10 years earlier. They were living in a rented accommodation, along with their two children namely 'T' aged about 7 years (P.W.-4 at the trial) and a younger son 'D' aged about 3 years (not examined at the trial). The couple used to earn their livelihood by performing manual labor such that the appellant was a rickshaw puller whereas the deceased Sunita was a domestic help. The appellant was addicted to alcohol. He used to quarrel with the deceased for money for alcohol. Because the deceased used to ask the appellant to not fall prey to alcohol, he used to assault her. In that regard, the deceased had regularly complained to the first informant about such conduct of the appellant. At about 11 a.m. on 15.12.2013, he learnt from his nephew Pappu that Sunita had died. He discovered the dead body of the deceased Sunita lying in the play field of Gandhi Inter College. On making enquiries, he learnt that the appellant had killed Sunita, the previous night. He further found, the appellant had fled from his house with his two children. The Written Report is Ex.Ka-1 at the trial. On that Written Report, FIR was registered at P.S. Kotwali Orai on 15.12.2013 at about 1 p.m. It is Ex.Ka-3 at the trial.

6. On that FIR being registered, Inquest Report was prepared on

15.12.2013 between 2:20 p.m. to 3:30 p.m. The Inquest Report is Ex.Ka-2 at the trial.

7. Thereafter, Dr. R.P. Singh conducted the autopsy examination on the dead body of the deceased on 16.12.2013 at about 3 p.m. In that, he noted following ante-mortem injuries :

“(1) Contusion size 12 cm x 1 cm x brown color margin abraded over front of neck 9 cm below Rt ear 7 cm below chest 8 cm below left ear.

On Dissection - congestion (illegible) engorged Hyoid bone Rt Rami fractured trachea congestion.

(2) Abrasion size 3 cm x 0.5 cm over left shunt 4 cm away for base of neck.

(3) Abrasion horizontal plane left side over breast abdomen lumbar region 6 cm x 1.5 cm.”

8. He also opined that the death may have been caused due to strangulation. The Autopsy Report is Ex.Ka-5 at the trial.

9. Upon the charge-sheet being submitted and the case being committed for trial to the Court of Sessions, following charges came to be framed against the appellant by the learned court below, vide its order dated 17.07.2014 :

“FIRST: That on 14/15-12-2013 at any time in the rented house of Jagdish Gupta situated near campus of Gandhi Inter College Mohalla Rajendra Nagar Orai, police station Kotwali Orai district Jalaun you caused death of Smt. Sunita by beating her otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty and harassment by you for or in connection with demand of dowry and that you thereby committed an offence punishable under section 304-B I.P.C. and within my cognizance.

SECONDLY: That on the aforesaid date, time and place and prior thereto, you Gaurav Singh being husband you being husband of deceased subjected Smt. Sunita to cruelty for or in connection with demand of dowry and that you thereby committed an offence punishable under section 498A I.P.C. and within my cognizance.

THIRDLY: That you on the aforesaid date time and place knowing that offence of dowry death punishable with death has been committed by you screened the dead body, of deceased in the campus of Gandhi Inter College with the

intention of screening yourself from legal punishment and you thereby committed an offence punishable under section 201 IPC and within the cognizance of this Court.

ALTERNATIVE CHARGE

That on the aforesaid date, time and place you committed murder by intentionally and knowingly causing the death of Smt. Sunita and you thereby committed an offence punishable under section 302 I.P.C. IPC and within the cognizance of this Court.

And I hereby direct that you be tried by this Court on the aforesaid charges.”

10. At the trial, besides relying on the above described documentary evidence, the prosecution led oral evidence through seven witnesses. In that, Raja Ram Verma (P.W.-1), the father of the deceased; 'T' (P.W.-4), the daughter of the deceased; Chatur Singh (P.W.-4), an uncle of the deceased, and Arvind Verma (P.W.-3), a cousin of the deceased Sunita, were examined as witnesses of fact.

11. Besides the above four witnesses of fact, Constable Narayan Das was examined as P.W.-5. He proved the registration of the F.I.R. and the relevant G.D. entries.

12. Dr. R.P. Singh who conducted the autopsy examination was examined as P.W.-6. He proved the ante-mortem injuries received by the deceased and the cause of her death as also the autopsy examination report.

13. Last, S.S.I. Subhash Chand Shakya, the Investigation Officer was examined as P.W.-7. He proved the recoveries, various steps of investigation and submission of charge sheet.

14. Thereafter, the statement of the appellant was recorded under Section 313 Cr.P.C.

15. In that evidence led before the learned court below, the order of conviction has been passed against the appellant. Consequently, he has been sentenced as noted above. At present, he has remained confined for about 13 years.

16. Submission of learned counsel for the appellant is, no one saw the occurrence. The deceased was the second wife of the appellant. His first wife died a natural death. 'T' (P.W.-4) and 'D' (not examined at the trial) were born to the appellant from his first wife (pre-deceased). Neither Raja Ram Verma (P.W.-1), the father of the deceased nor his brother Chatur Singh (P.W.-2) nor Arvind Verma (P.W.-3), the cousin of the deceased saw the occurrence. On their own showing they were not present at the place and time of the occurrence. They derived knowledge of facts (attempted to be proved by them), from others. Neither those other persons were specifically named nor they were examined before the trial court. Therefore, the fact allegation made by Raja Ram Verma (P.W.-1), Chatur Singh (P.W.-2) and Arvind Verma (P.W.-3) are mostly in the nature of hearsay, especially related to the actual occurrence.

17. Second, in any case it was specifically established that the dead body of the deceased was discovered not inside the house of the present appellant but at a place described as dilapidated school building of one Gandhi Inter College. No credible evidence exists as may lead the Court to believe that the appellant had caused such occurrence or that it had been caused by him at the place where the dead body was discovered. No recovery whatsoever exists to link the present appellant with that occurrence.

18. Then, the prosecution story led through 'T' (P.W.-4), is wholly unreliable. In the first place, the learned court below has erred in not complying with the provision of Section 118 of the Indian Evidence Act. No objective assessment appears to have been made by the learned court below to ascertain if 'T' was capable of giving rational responses to questions put to her at the trial. Admittedly, she was seven years of age on the date of occurrence and about 10 years of age on the date her statement recorded before the learned

court below. Being a child witness and by virtue of her character (as a witness), the learned court below should have made a fair assessment of her competence to make reliable statements to the Court.

19. On the other hand, learned court below has recorded its wholly subjective satisfaction that 'T' was capable of making reliable statements to the Court. Second, 'T' maintained during her cross-examination that the appellant had caused the occurrence and further maintained that the appellant had thrown away the dead body of Sunita. During her cross-examination she candidly admitted that she did not raise any alarm as she had gone to sleep. She further clarified that she had not seen the occurrence as she was asleep at that time and therefore she could also not tell the Court how the deceased was done to death. Third, as to the risk of tutoring, she further stated to the learned court below that her maternal grand-father i.e. Raja Ram Verma (P.W.-1) had brought her to Court after telling her to make a statement against the appellant.

20. Referring to the evidence led by Dr. R.P. Singh, it has been contended that the said witness clearly proved that there were no extensive injuries other than the ligature mark and fractured hyoid bone. In absence of any material recovered from the appellant to link him with that occurrence, the prosecution story is based on presumptions and imaginations. Even the place of occurrence has not been fixed and no corroborative material exists to believe that the occurrence had been caused inside the house of the parties and not at the place where the dead body was recovered.

21. On the other hand, learned A.G.A. would submit that the child witness has spoken the truth. She is the natural born daughter of the present appellant and the step daughter of the deceased Sunita. Yet,

she has testified in Court against her father. Therefore, there is inherent truth spoken by her. Second, it has been stressed that the occurrence was caused inside the house of the appellant. Therefore, the presumption raised under Section 106 of the Indian Evidence Act would attract. Third, he has referred to the evidence led by Dr. R.P. Singh to submit that other than the ligature mark there are further injuries that established that the deceased had been brutally assaulted and done to death by strangulation. Fourth, referring to the statement of the prosecution witnesses that the appellant used to assault the deceased on earlier occasions, he being addicted to alcohol, the premeditation and/or intention that had arisen was also established.

22. Having heard learned counsel for the parties and having perused the record, in the first place, it may be recorded that the FIR was lodged without any delay inasmuch as considering the fact that it had been lodged by the father of the deceased who was living far away from the place of occurrence, he may have taken time to acquire knowledge of the occurrence and also in offering effective response by first reaching place of occurrence; making inquiries, and thereafter lodging the FIR. Yet, the FIR was lodged by 1 p.m., the same day. At the same time, it may be further recorded that the first informant Raja Ram Verma (P.W.-1) had no direct knowledge of the actual occurrence. While we may have less reason to doubt existence of some quarrel in the marital life of the deceased and the appellant, it is also not the prosecution case that the first informant Raja Ram Verma (P.W.-1) or the deceased had lodged any earlier complaint or police case against the appellant, in the 10 years of marriage between those parties.

23. Then, Chatur Singh (P.W.-2) is also not an eye-witness of the occurrence. He described himself as the uncle of the deceased.

During his cross-examination he too specifically admitted that he was not present at the time and place of occurrence. At the same time, he did state that the appellant had been once arrested/challaned on an earlier occasion in connection with consumption of liquor. He also tried to prove that the appellant was to drawn to gambling. Importantly, it came out, he was the father of the first (pre-deceased) wife of the appellant to whom 'T' and 'D' were born.

24. Insofar as Arvind Verma (P.W.-3) is concerned, he is a cousin of the deceased. He tried to prove that the appellant did not treat the deceased well and that he was addicted to alcohol and used to quarrel with the deceased and used to assault her-often to extract money to cater to his addiction. During his cross-examination though he maintained that he was witness to domestic quarrels between the appellant and the deceased, but he could not recollect any particular quarrel with reference to date etc. Also, he did not produce copy of any FIR or complaint made. On being confronted with his previous statement he could not explain why he had not stated during investigation that the appellant did not treat the deceased well or that he had thrown the dead body of the deceased inside the dilapidated building of the Inter College. At the same time, he also admitted that he was not present at the place and time of occurrence.

25. Coming to the solitary child witness, it is true that the learned court below has not made any objective assessment of her capacity to make a reliable statement to the Court. Section 118 of the Indian Evidence Act clearly obligates the Court to ascertain if the witness including a child witness was prevented from understanding the question put to them or from furnishing rational answers to such questions, amongst others, for reason of tender years. Here, 'T'

(P.W.-4) was of 10 years of age on the date of her statement recorded by the learned court below. In **State of Madhya Pradesh Vs. Balveer Singh, 2025 SCC OnLine SC 390**, the entire conspectus of the law pertaining to evidence of child witness and test of tutored testimony was examined by the Supreme Court. The law was summarised as below:

"58. We summarize our conclusion as under:—

(I) *The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence and cannot be rejected outrightly.*

(II) *As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.*

(III) *Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.*

(IV) *The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.*

(V) *The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.*

(VI) *The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.*

(VII) *There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the*

evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.

(VIII) Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.

(IX) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.

(X) The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.

(i)

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors have to be established being as under:—

• **Opportunity of Tutoring of the Child Witness in question** whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

• **Reasonable likelihood of tutoring** wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-

examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.

(XI) Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.

(XII) Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of the child witness can be believed and taken into consideration or the purpose of corroboration as in the case of a hostile witness.”

(emphasis supplied)

26. Therefore, for reason of absence of that objective exercise (in terms of Section 118 of the Indian Evidence Act) by the learned court below, we are unable to make any independent assessment of facts required to be ascertained under Section 118 of the Indian Evidence Act. To the extent, the child 'T' (P.W.-4) was about 7 years of age on the date of occurrence and not more than 10 years of age on the date of her statement being recorded, in absence of assessment made under Section 118 of the Indian Evidence Act, clearly, doubt may arise as to the reliability of her statement, she being the solitary eye-witness presented by the prosecution.

27. Then, 'T' did make direct statement (during her examination in chief) that the appellant used to quarrel with and assault the deceased and that he used to consume liquor. Then, she proved that the appellant had strangled the deceased and thrown her dead body. At the same time, during her cross-examination, she

specifically stated that she had gone off to sleep and not seen the appellant carry the dead body of the deceased. Once the child witness 'T' (P.W.-4) specifically stated that she had not seen the occurrence as she had gone off to sleep, her description of the occurrence immediately slips into a shadow of doubt.

28. Then, during her cross-examination, she further admitted that she had come to Court with her maternal grandfather Raja Ram Verma (P.W.-1) who had asked her to make a statement against the appellant i.e. her father. That statement itself leads us to look into her ability to stand the test of a 'wholly reliable' witness, with greater circumspection.

29. At the same time, we cannot ignore the fact that during his statement recorded under Section 313 Cr.P.C., the appellant had clearly stated that he first married to the daughter of Chatur Singh (P.W.-2) who died natural death. He remarried the daughter of Raja Ram Verma (P.W.-1), Raja Ram Verma (P.W.-1) and Chatur Singh (P.W.-2) being real brothers. Further, he explained, he used to earn his livelihood by pulling rickshaw during night hours. Hence he was not present at the place of occurrence and was outside the house when the deceased may have been done to death.

30. Child witnesses are vulnerable witnesses who are at risk of tutoring. That risk arises primarily for reason of tender years and their innocence that leads to their incapacity to fully understand and appreciate the consequence of their statements made to a Court.

31. On the strength of the prosecution witnesses, it is clear that the appellant and the deceased were not living a happy family life. It may also to be true that larger responsibility may have vested on the appellant for that sub-normal status of family relations. How the child witness 'T' (P.W.-4) may have perceived that situation and

how that may have affected her bonds with the appellant and the deceased, is a factor to be borne in mind while dealing with her statement. In **Vadivelu Thevar Vs State of Madras, AIR 1957 SC 614**, the Supreme Court observed as below.

"The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the Innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a

participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

(emphasis supplied)

32. Then, in **Joseph vs State of Kerala, (2003) 1 SCC 465**, with respect to testimony of single eye-witness, the Supreme Court further observed:

"To our mind, it appears that the High Court did not follow the aforesaid standard but went on to analyse evidence as if the material before them was given for the first time and not in appeal. Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a court to record and sustain a conviction on the evidence of a solitary eye witness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence. By this standard, when the prosecution case rests mainly on the sole testimony of an eyewitness, it should be wholly reliable. Even though such witness is an injured witness and his presence may not be seriously doubted, when his evidence is in conflict with other evidence, the view taken by the trial court that it would be unsafe to convict the accused on his sole testimony cannot be stated to be unreasonable."

(emphasis supplied)

33. Again, in **Bhimappa Chandappa Hosamani vs State of Karnataka, (2006) 11 SCC 323**, word of caution was added by the Supreme Court, a Court may pass the order of conviction, solely on that testimony. It observed as below:

"We have undertaken a very close and critical scrutiny of the evidence of PW 1 and the other evidence on record only with a view to assess whether the evidence of PW 1 is of such quality that a conviction for the offence of murder can be safely rested on her sole testimony. This Court has repeatedly observed that on the basis of the testimony of a single eyewitness a conviction may be recorded, but it has also cautioned that while doing so the court must be satisfied that the testimony of the solitary eyewitness is of such sterling quality that the court finds it safe to base a conviction solely on the testimony of that witness. In doing so the court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the court as wholly truthful, must appear to be natural and so convincing that the court has no hesitation in recording a conviction solely

on the basis of the testimony of a single witness."
(emphasis supplied)

34. Next, as to the reliance that may be placed on the statement or deposition of child witness, in **Dattu Ramrao Sakhare vs State of Maharashtra, (1997) 5 SCC 341**, it was clearly observed that though a child witness is a competent witness and their statement may be relied even in absence of oath administered yet, the credibility of such evidence would depend upon circumstances of each case.

35. The Court should watch out for element of tutoring that may always arise in the case of a child witness. The Supreme Court further recognized that there may exist no rule or practice requiring corroboration of the statement made by a child witness. Yet, rule of prudence may always be enforced by Courts to seek corroboration, where required. Pertinent to our observation, it was observed as below:

"The entire prosecution case rested upon the evidence of Sarubai (PW 2) a child witness aged about 10 years. It is, therefore, necessary to find out as to whether her evidence is corroborated from other evidence on record. A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanor must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record. In the light of this well-settled principle we may proceed to consider the evidence of Sarubai (PW 2)."

36. Then, again in **Ratansinh Dalsukhbhai Nayak vs State of**

Gujarat, (2004) 1 SCC 64, after relying on **Dattu Ramrao Sakhare (supra)**, the Supreme Court further elaborated on the vulnerability of a child witness and observed that a child witness may remain amenable to tutoring. Therefore, a more careful scrutiny is required of such evidence. In that regard, it was observed as below:

"The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

37. Therefore, in the first place, we are unable to place full reliance on the credibility, truthfulness and completeness of the facts proven by the child witness 'T' (P.W.-4) during her examination-in-chief. Consequently, while examining her statement, we are of the opinion that it would be desirable to look for corroboration before any part of her statement may be relied to reach the conclusion of guilt of the present appellant. Corroboration, there is none. Neither there is any recovery at the pointing out by the appellant or otherwise to link the appellant with the occurrence nor there is any other fact and circumstance proven by the prosecution that may lead us to

believe either that the occurrence was caused by the appellant or that the occurrence had been caused inside the house of the appellant. Needless to add, once the prosecution sought to prove its case on the strength of direct evidence led through an eye-witness account, upon failure of that attempt, it may not be open to the prosecution to fall back in Section 106 of the Indian Evidence Act. In that regard, the Supreme Court in **Murlidhar v. State of Rajasthan, (2005) 11 SCC 133**, has observed as below :

“23. In the result, we are of the view that the prosecution having put forward a case that, what transpired after Ramlal was dragged away by the assailants was within the knowledge of witnesses, utterly failed in proving the said facts. Once this is established, it was not open for the High Court to have fallen back on the rule of burden of proof under Section 106 of the Evidence Act. In fact, as we notice, it was nowhere the case of the prosecution that Section 106 of the Evidence Act applied to the facts on record. The High Court seems to have brought it out on its own, but without any justification. We are, therefore, of the view that the conviction of Murlidhar, Chhajuram and Babulal, s/o Chhajuram under Section 364 IPC is justified and liable to be confirmed, but their conviction under Sections 302/34 IPC cannot be sustained and they are liable to be acquitted of the said charges.”

38. In fact, there is doubt exists how the dead body of the deceased landed up inside the dilapidated building and or the campus of the Inter College. The child witness 'T' (P.W.-4) clearly did not see the appellant either cause the occurrence or carry the dead body of the deceased, outside their house. The prosecution did not lead evidence to establish that Raja Ram Verma (P.W.-1); Chatur Singh (P.W.-2) and Arvind Verma (P.W.-3), all came to learn about the occurrence, through other persons. Such other persons were not examined as may have revealed any part of the occurrence or how the dead body of the deceased was supposedly carried from inside the house of the appellant to the dilapidated structure where it was found. If it had been proven, that may have been the only circumstance that may have weighed against the appellant. Though

the allegation of his addiction to alcohol; engagement in gambling and the fact that he along with his two children may have fled from his house after the occurrence may exist, they may not carry the case of the prosecution beyond the sphere of suspicion, to the realm of proof. To the extent that deficiency persists, we are left with no option but to grant a benefit of doubt to the appellant.

39. Accordingly, the appeal succeeds and is **allowed**. The impugned judgment and order is **set aside**. The appellant is in jail. He may be released forthwith unless wanted in any other case. The appellant is directed to furnish bail bonds in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two months from today.

40. A copy of this judgment alongwith original record of the trial Court be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court, at the earliest. Office is directed to keep the compliance report on record.

41. In view of the order passed today, Criminal Misc. IInd Bail Application No. 06 of 2022 has been rendered infructuous. It is **dismissed as such**.

Order Date :- 11.8.2025
SA/Prakhar

(Tej Pratap Tiwari, J.)

(S.D. Singh, J.)